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Tamta Mamaiashvili[*]

Independent Process of Settlement - from Conflict to Consensus

The article offers the analysis of one of the key issues of civil procedure - closure of a civil case through the independent process of settlement from conflict to consensus, its legal importance and characteristics.
The article focuses on the concept of settlement process and procedural meaning of settlement, which is not interpreted In Georgian legal space and respectively, the parallel is made with German law. Specifically, based on below judgments it is deduced that settlement is substantial phenomenon on the one hand and procedural on the other. According to the reasoning offered in the article determination of dual nature of settlement is itself connected with the definition of a right, where of crucial importance is the fact of its application, its exercise.
According to the reasoning offered in the article settlement is a legal phenomenon with dual nature.
Settlement, as a procedural phenomenon, implies settlement as an independent process and settlement as a constituent part of civil proceedings. It should be mentioned, that dual legal nature of settlement is indivisible. They are discussed together and simultaneously, what is conditioned by the accessory nature of closure of a civil case. The independent process of settlement implies a way from conflict to consensus, following what the settlement, as an independent process, acquires accessory nature and becomes grounds for the closure of case proceedings.
The fundamental legal characteristic of settlement process is its systemic nature.
According to reasoning offered in the article the independent process of settlement implies the systemic nature of relations, which is not unambiguous, has no legal regulation and mostly depends on the basic principles of contract negotiations, dispute resolution, settlement. Of essential and crucial importance is the consistent conduct of settlement procedure through settlement attempts, settlement conferences. Particular attention should be paid to communication phase of settlement process, which actually continues throughout the whole process.
According to reasoning of the article the settlement conditions should be clear, unambiguous, explicit, and should be oriented on the main purpose, i.e. on dispute resolution and closure of the case. A settlement offer should not be conditional, it should not depend on some future and unknown event, because such a condition will never become either a legal guarantee for conflict resolution or the ground for termination of case proceedings in the court of law. For better guarantee, a settlement condition can be secured with a collateral, envisaged by law - through mortgage or pledge in the case of monetary obligations. As regards surety, being a personal collateral is cannot be applied when a guarantor is not a party to proceedings.
The conclusion of the article summarises, that the independent process of settlement has no statutory regulation, there is no legal definition of settlement process and the phases thereof are not regulated at the legislative level. Hence, for the independent process of settlement to play the adequate role within the legal system as a ground for termination of case proceedings, it is reasonable for the Code of Civil Procedure to allocate a special chapter for the legal meaning of settlement, where the settlement procedure will be discussed from a conflict to consensus as a process with relevant set of legal principles and characteristics aiming at the termination of case proceedings.
Keywords: *settlement, conflict, consensus, communication, settlement efforts, settlement negotiations, settlement offers.*

1. Introduction

One of the key issues of civil procedure law is the closure of civil proceedings through settlement. "Law is not a goal in itself, but rather the mean of attainment of certain goal".[1] Settlement is an efficient tool to overcome difficulties and settle conflicts arising between the parties on the one hand and on the other - grounds for termination of civil proceedings and legal phenomenon regulating judicial system.

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[*] Doctor of Law, Ivane Javakhishvili Tbilisi State University, Faculty of Law.
[1] *Khubua G.,* Theory of Law, Tbilisi, 2015, 57 (In Georgian).

Public relations are multilateral and diversified. The will of the parties is always oriented on the development of new, beneficial for them relations. However, the subjective will of the parties in this process may change, what is further supplemented by objective circumstances and as a consequence, the result is not always attained. The signs of a conflict[2] show up in the existing relations what ultimately develops into a dispute[3].

The relations cannot advance and develop in a disagreement, conflict situation[4]. As a general rule, such a situation creates uncertainty of a right, when obligation is not fulfilled and a right is not exercised. The necessity of regulation of human behaviour and relations arises. There are different ways and means of regulation of a conflict situation. From purely legal point of view this is the resolution of a dispute through the court of law when litigations are conducted in accordance with the procedure, prescribed by procedure law and, as a rule, there is only one winner party. When parties fail to find a solution to the situation they are in, the dispute is referred to the court of law and develops into a litigation. "Recourse to the court by a person for the protection of a right, that is recourse to this time- and money-consuming process already means that the parties failed to peacefully settle the dispute that arose between them."[5] However, there still are the chances to peacefully settle[6] the dispute, what brings about the question of settlement as an independent process of negotiation and settlement as a ground for termination of case proceedings.

A human being is a negotiator by nature. The members of the society are unconsciously but permanently engaged in negotiations.[7] A individual may not be even aware that he is negotiating with himself as controversial motivations frustrate him and he is constantly engaged in negotiations to settle them.[8] In general, the motivation of settlement is the human desire to live according to own decisions and attain desired goals. The main obstacle of this desire is the fundamental difference in individuals' attitude to various events, and negotiation is a medium to overcome this difference.

Resolution of a dispute through judicial proceedings is associated with a rather long and legally complicated process. Settlement is the legal phenomenon, which resolves the existing disagreement legally, within judicial system and at the same time, takes account of parties' will to maximum practicable extent. Judicial proceedings have the beginning and the end, that are based on specific procedure-law events and rules. Specifically, such proceedings are initiated on the basis of a statement of claim, and one of the means of its closing is the court settlement. Closing of judicial proceedings through settlement is no less important

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2 *Tsvetkov V.L.*, Conflict Psychology, Tbilisi, 2015, 210 (In Georgian).

3 In 1924 the Permanent Court of International Justice defined a 'dispute' as a disagreement on a point of flaw or fact, a conflict of legal views or interest between two persons'. *Peters A.,* International Dispute Settlement: A Network of Cooperational Duties, Vol. 14, No.1, Ejil 2003, 3. With further reference: Mavrommatis Palestine Concessions Case (1924), PCIJ, Ser. A, 2. at 11. See on the existence of a dispute with reference to the Mavrommaties definition, ICJ, Case Concerning Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie, Preliminary Objections (Libyan Arab Jamahiriya v. USA), Judgment of 27th February 1998, 37 ILM (1998) 587, at 598, paras 21-38.

4 A conflict can be either destructive or constructive. *Menkel-Meadow C.,* From Legal Dispute to Conflict Resolution and Human Problem Solving: Legal Dispute Resolution in a Multidisciplinary Context, Georgetown University Law Center, Association of American Law School, 54 J. Legal Educ., 2004, 13. With further references: *Deutsch M*., The Resolution of Conflict: Constructive and Destructive Processes (New Haven, 1973); *Lewin K.*, Resolving Social Conflicts, New York, 1948.

5 *Liluashvili T.,* Civil Procedure Law, 2nd ed., Tbilisi, 2005, 261 (In Georgian).

6 In international relations the term '*peaceful settlement*' is always used for the settlement of existing disputes. Handbook on the Peaceful Settlement of Disputes between States, Office of Legal Affairs Codification Division, United Nations, New York, 1992, 9. The European Court of Human Rights applies the term '*peaceful settlement*' with regard court settlement of a dispute. See Thematic Inventory of the Judgments of the European Court of Human Rights, Supreme Court of Georgia, Tbilisi, 2013, 121. The term "friendly settlement" is also used. See Collection of Selected Judgments and Decisions of the European Court of Human Rights of 2012, SCG, Tbilisi, 2003, Introduction.

7 *Hames D.S.,* Negotiation, Clothing Disputes and Making Team Decisions, University of Nevada, Las Vegas, Los Angeles, London, New Delhi, Singapore, Washington DC, 2012, 4; *Peters A.,* International Dispute Settlement: A Network of Cooperational Duties, Vol. 14, No.1, Ejil, 2003, 3.

8 *Lempereur A.P., Colson O.*, Negotiation Method, Tbilisi, 2009, 12 (In Georgian).

way of dispute resolution than trial of a case on merits and adjudication. What is more, in most cases settlement is the better alternative.[9]

2. A Conflict

The informal source of the independent process of settlement is believed to be a conflict between the parties.[10] Society requires refined and efficient methods of conflict resolution.[11] "Law promotes the conciliation of different interests and discharges the function of conflict regulation, the law has the function of avoidance, i.e. prevention of a conflict~.[12]

Public relations are boundless and diverse, but in most cases they are shaped as conflicts. Conflict is a concomitant to human relations phenomenon.[13] From times immemorial there have always been conflicts in culture, religion, society and public efforts were just focused on finding solutions for their elimination to minimise negative and unfavourable consequences caused by them.[14]

In its turn a conflict has dual nature. On the one hand it promotes human advancement, enables them to develop, while on the other hand it can ruin human relations.[15] Furthermore, a conflict is associated with resistance, opposition and violence on the one hand and on the other - with conflict settlement, resolution. Hence a conflict has dual function - destructive (negatively understood) and constructive (positively understood).[16]

Initially the term 'conflict' meant 'quarrel', dispute, fight, opposition between the parties. Later this definition was changed and it became more specific, namely, "Strong opposition or/and disagreement conditioned by different interests[17] and/or ideas~.[18] Actually a conflict is the relationship between two or more persons full of negative emotions.[19] And the multitude of people participating in a conflict, changes its type and relatively complicates it. However, the conflict itself complicates both business and personal relations between the parties, exacerbates the basis of the conflict and ultimately, negatively incites them against each other.

Conflict, as an event, has several stages. There are only a few facts at the first stage, are differently understood by the parties or even not understood at all. The second stage begins when the parties make chaotic and emotional decisions even not understanding the purpose of these decisions. The situation becomes ever more complicated in such case. At the third stage " all their bridges are burnt", when parties stop

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9 *Lutringhaus P.,* Methodology of Making Decision on Civil Cases, Seminar for Judges, Bakuriani, 18–21 October, 2007, 133 (In Georgian).

10 "Conflict - difference, divergence of opinions, which opposes our efforts to satisfy our interest". *Hames D.S.,* Negotiation, Clothing Disputes and Making Team Decisions, University of Nevada, Las Vegas, Los Angeles, London, New Delhi, Singapore, Washington DC, 2012, 3.

11 *Byrne R., Clancy Á., Flaherty P., Leane E., Ní Chaoimh G., Ní Dhrisceoil V., O'Grady J., O'Mahony C,. Staunton C.,* Alternative Dispute Resolution, Consultation Paper, Law Reform, (LRC CP 50-2008) Copyright Law Reform Commission, First Published July 2008, ISSM 1393-3140, 9.

12 *Khubua G.,* Theory of Law, Tbilisi, 2015, 60 (In Georgian).

13 *Menkel-Meadow C.,* From Legal Dispute to Conflict Resolution and Human Problem Solving: Legal Dispute Resolution in a Multidisciplinary Context, Georgetown University Law Center, Association of American Law School, 54 J. Legal Educ. 7-29, 2004, 9.

14 *Katz A.,* The Effect of Frivolous Lawsuits on the Settlement of Litigation, Department of Economics and Law School, University of Michigan, Ann Arbor, MI 48109, USA, International Law Review of Law and Economics, 1990, 10 (3-27), 2.

15 *Tsertsvadze G.,* Mediation, Alternative Dispute Resolution (General Overview), Tbilisi, 2010, 29 (In Georgian).

16 *Jorbenadze R.,* Mediation, Tbilisi, 2012, 5 (In Georgian).

17 It is far easier to reach settlement when there are different interests (claims). *Comp. Austermiller S.M., Swenson D.R.,* Alternative Means of Dispute Settlement in Georgia, Tbilisi, 2014, 86 (In Georgian).

18 *Chaladze G.,* Mediation and Conflict Psychology, Mediation - Conflict Settlement through Negotiations, Tbilisi, 2014, 23 (In Georgian).

19 *Katz A.,* The Effect of Frivolous Lawsuits on the Settlement of Litigation, Department of Economics and Law School, University of Michigan, Ann Arbor, MI 48109, USA, International Law Review of Law and Economics, 1990, 10 (3-27), 2.

communication. Here it comes to open conflict situation. As a general rule at this stage a procedure is being sought for to resolve the dispute. Potential outcomes: losing, winning and compromise.[20]

The search for the means of elimination of a conflict at the initial stage is not always juridical, to be more precise, it does not directly start with legal grounds. As a rule, there are attempted negotiations even before the trial of the case at the court of law. However, at this stage the parties are not interested in finding a solution to their conflict, but rather the guilty party, moreover if the parties have hostile feelings against each other. They believe, that in this case there are only the winner and loser parties. They never admit that both parties may lose or win. According to causal model both parties are sure, that the other party is the reason of the conflict, and they only reacted to this. This is the self-exculpation situation, when own escalation is justified by the behaviour of the other party. The foregoing is not limited only to self-exculpation and the conflict becomes generalised. As a result the other aspects and persons also get involved, the dispute becomes complex and it becomes difficult to reach an agreement.

A conflict may arise in any situation and circumstances, it is an integral part of public relations and thus, it should be managed *(conflict management, or conflict resolution).*[21] Conflict management has a pyramid structure. Specifically, it is possible for a party to be totally inert at the first stage. Then he may initiate informal negotiations and later - search for an advice. Quite often, in such a situation the initiative of the party about the management and self-direction of the conflict is futile. After incorrect and futile attempt to regulate the conflict one of the parties makes a decision to try to settle the conflict with the other party under the assistance of the state and legislature and applies to the court of law or employs alternative dispute resolution means.[22] The purpose is the resolution of the conflict. As a rule "It is the function of the law and order to peacefully regulate a conflict, when a dispute is resolved not in favour of the strong party, or according to personal opinion, but rather according to the requirements of law."[23]

The further development of the situation depends on the will and endeavours of the parties to the conflict. However, only this factor cannot serve as a guarantee of conflict resolution. The latter requires systemic approach, the outcome of which is the satisfaction of mutual interests and attainment of the favourable for both parties result. In this situation settlement should assume its major function - resolution of a conflict, what ensures sustainable and consistent development of legal relations.

3. Communication

The mandatory precondition of conflict resolution and, respectively, of settlement is communication, existence of contact. For the maintenance of continuous contact it is necessary to communicate correctly, to have intensive negotiations.[24] First and foremost, communication is the actual relationship between the parties what is of paramount importance as adequate communication assists its parties to duly understand mutual motivations, what makes good basis of negotiation.[25] Adequate relationship is continuous communication between the parties, which should be conducted in a manner as not to lose the minor that which should lead a party to a settlement decision.[26] Nobody is able to negotiate without the exchange of ideas,

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[20] *Tsertsvadze G.,* Mediation, Alternative Dispute Resolution (General Overview), Tbilisi, 2010, 271–272 (In Georgian). With further reference: *Heussen B.,* Die Auswahl des richtigen Verfahrensein Erfahrundsbericht, in: *Fritjof H. von Schlieffen K. (Hrsg.),* Handbuch Mediation, 2. Auflage, "Beck", München, 2009, 221.

[21] *Katz A.,* The Effect of Frivolous Lawsuits on the Settlement of Litigation, Department of Economics and Law School, University of Michigan, Ann Arbor, MI 48109, USA, International Law Review of Law and Economics, 1990, 10 (3-27), 2.

[22] *Byrne R., Clancy Á., Flaherty P., Leane E., Ní Chaoimh G., Ní Dhrisceoil V., O'Grady J., O'Mahony C,. Staunton C.,* Alternative Dispute Resolution, Consultation Paper, Law Reform, (LRC CP 50-2008) Copyright Law Reform Commission, First Published July 2008, ISSM 1393-3140, 13.

[23] *Khubua G.,* Theory of Law, Tbilisi, 2015, 60 (In Georgian).

[24] Negotiations is a separate phase, however it can be presumed as one of the types and constituent parts of settlement attempts.

[25] *Lempereur A.P., Colson O.*, Negotiation Method, Tbilisi 2009, 86 (In Georgian).

[26] Types (phases) of communication. *Yong K.S., Travis H.P.,* Oral Communication, Skills, Choices and Consequences, Long Grove, Illion, 2012, 59.

i.e. communication.[27] The essence of communication[28] stems from the problem to be resolved, however, it is important for the communication to exist between the parties at every stage of case proceedings, what will become the basis of settlement and vice versa, the absence of contact[29] or lack of desire[30] excludes the prospect of settlement. The parties should be aware that the consequence of "such" conduct of the case,[31] i.e. without any contact, will not be beneficial for either party and they may lose even "more".

In general, the science explains communication as interchange of information, facts, understandings, ideas, judgments, expectations and desires.[32] It is necessary for communication to be based on good will, responsibility and correct attitude toward the subject-matter of the dispute - this is the basis and guarantee of a successful court session.[33] One of the key preconditions of judicial proceeding is that the parties to proceedings understand what the plaintiffs, attorneys and judges are saying and what they want to say. It should be explicitly stressed, that in court, the basis of successful communication is the disposition and attitude of a judge to each participant of the proceedings, how judge will appear before the parties and also how the parties will behave with regard to him.[34] Furthermore, the communication is based on respect. As a general rule, respect is demonstrated when a judge gives floor to a party, asks his opinion and demonstrates certain trust and respect with regard to him,[35] what may enable a judge to turn less successful proceedings into positive.[36] Communication is a complex process with many challenges, that may be resolved through negotiations.[37]

4. Settlement Efforts

A judge is obliged by law to make a reasonable offer about settlement. However, it is not explained, what is meant under a reasonable offer. According to every thorough analysis, reasonability implies a consequential offer, when the desirable goal is easily attainable after the offer.

A reasonable offer about settlement is not limited only to making a proposition about settlement. Settlement efforts are based on mutual exchange of opinions. The exchange of opinions should be focused on mutually beneficial purpose, to what end the parties must coordinate on cooperation.[38] Otherwise an effort will never turn into actual negotiations. Within the framework of settlement efforts it is necessary for the parties to find a kind of "golden ratio" in their legal relations in dispute.[39] It is essential for the parties to agree their positions, analyse the flow of the case, coordinate or/and approximate their opinions.[40]

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27 *Lempereur A.P., Colson O.*, Negotiation Method, Tbilisi, 2009, 72 (In Georgian).

28 Communication means the synergy of listening and speaking. See *Lempereur A.P., Colson O.*, Negotiation Method, Tbilisi, 2009, 72 (In Georgian).

29 *Tsertsvadze G.,* Mediation, Alternative Dispute Resolution (General Overview), Tbilisi, 2010, 272 (In Georgian). With further reference: *Schreiber A.,* Obligatorische Beratung und Mediation, ain Verfahrensmodell für die auβerderichtliche, Streitbeilengung im Rahmen des §15 EGZPO, Dunker & Humblot, Berlin, 2007, 266.

30 In most cases the aspiration for settlement-oriented contact arises during the most difficult phase when objective circumstances of case proceedings develop in unfavourable for the parties' direction.

31 In undesirable for them manner.

32 *Gogishvili M., Sukhanishvili M., Meskhishvili K., Jinoria Kh., Gelashvili R. (eds.),* Relationships at the Court Hall, Communication and Legal Aspects of Court Hearing Management and Settlement of Parties, Supreme Court of Georgia, Tbilisi, 2010, 8-9, 11 (In Georgian).

33 *Chachanidze E., Zodelava T., Gogishvili M., Sulkhanishvili M.,* Communication in the Court of Law, Tbilisi, 2013, 8 (In Georgian).

34 *Gogishvili M., Sukhanishvili M., Meskhishvili K., Jinoria Kh., Gelashvili R., (eds.),* Relationships at the Court Hall, Communication and Legal Aspects of Court Hearing Management and Settlement of Parties, Supreme Court of Georgia, Tbilisi, 2010, 8-9-12 (In Georgian).

35 ibid, 8-9, 12.

36 Ibid, 12.

37 *Hames D.S.,* Negotiation, Clothing Disputes and Making Team Decisions, University of Nevada, Las Vegas, Los Angeles, London, New Delhi, Singapore, Washington DC, 2012, 159.

38 *Nadler J.,* Rapport in Negotiation and Conflict Resolution, Marquette Law Review, 2003-2004, 877, With further reference: *Schelling Th. C.,* The Strategy of Conflict, 60 (1960).

39 *Tsertsvadze G.,* Mediation, Alternative Dispute Resolution (General Overview), Tbilisi, 2010, 236–237 (In Georgian), With further reference: *Berger K. P.,* Private Dispute Resolution in International Business, Negotiation, Mediation, Arbitration, Volume II, Case Study, "Kluwer Law International", Alphen aan den Rijn, 200, 246.

40 See *Gogishvili M., Sulkhanishvili M., Meskhishvili K., Jinoria Kh., Gelashvili R. (eds.),* Relationships at the Court Hall, Communication and Legal Aspects of Court Hearing Management and Settlement of Parties, Supreme Court of Georgia, Tbilisi, 2010, 86 (In Georgian).

Quite often it is believed the initiator of a settlement effort is the party of the proceedings who has the "weak position". However, this is only an unwarranted presumption. There are cases, when the party with "winning" position duly analysis the situation, the ways and means of winning the case and makes a decision on initiation of settlement process.[41] The judge is also entitled to engage in settlement process in accordance with the procedure, prescribed by law, as a "passive third party" to act in "good will" and fulfil the statutory obligations. And what is more, as a rule, settlement attempt implies no less hard-work of the judge, than conduct of case proceedings.[42]

The judge is supposed to make an efficient settlement offer in the best interest of dispute resolution and improvement of the process of negotiations between the parties. The judge is required to offer different versions of settlement to the parties, show them the weak and strong points of their positions, assure them of the advantage of closure of the case through settlement.[43] Within the framework of efficient offer the judge is entitled to give advice to the parties, describe potential consequences of dispute resolution in advance.[44] The judge is supposed to explain the essence of the case to the parties, as well the actual perspectives of its development and assist them in making a correct decision.[45] The foregoing is a novelty in civil procedure to a certain extent and facilitates more relaxed relationship between the judge and the parties, their getting closer within the frame of law. The foregoing is a kind of ~support~ of settlement effort on the part of the judge.[46] At the same time, the judges should examine and develop different approaches, skills, competences and options for closure of cases through settlement. The judge should choose different methods of settlement based on his evaluation of the merits of the case, the past and present relations between the parties, etc.[47]

Offering settlement and settlement efforts do not imply coercion. Not only the negotiations cannot be initiated, but even the justice will not be administered when it comes to coercion. The judge has no mechanism of coercion and no settlement will be achieved without the consent of the parties.[48] Settlement effort may further develop or even stop as soon as attempted. The concernment of the parties to resolve dispute through settlement should be so crucial for case proceeding as to make it necessary to search for each and every way and mean to find common ground.[49] Moreover the settlement means the attainment of mutually beneficial goal through taking account of mutual interests and comparison of the positions.[50]

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41 See *Gogishvili M., Sulkhanishvili M., Meskhishvili K., Jinoria Kh., Gelashvili R. (eds.),* Relationships at the Court Hall, Communication and Legal Aspects of Court Hearing Management and Settlement of Parties, Supreme Court of Georgia, Tbilisi, 2010, 52 (In Georgian).

42 *Llevin A.L., Shuchman P., Yamnb C.M.,* Civil Procedure, Cases and Materials – Successor Edition, New York, 1992, 520-521.

43 *Gogishvili M., Sukhanishvili M., Meskhishvili K., Jinoria Kh., Gelashvili R. (eds.),* (edit.), Relationships at the Court Hall, Communication and Legal Aspects of Court Hearing Management and Settlement of Parties, Supreme Court of Georgia, Tbilisi, 2010, 39 (In Georgian).

44 Code of Civil Procedure of Georgia , Article 218, Part 2.

45 *Cratsley J.C.,* Judges and Settlement, So Little Regulation with So Much at Stake, Judicial Mediation and Settlement, Dispute Resolution Magazine, Published by The American Bar Association Section of Dispute Resolution, Volume 17, No.3, Magazine, Editor**:** *Stewart Ch.,* Texas Christian University Fort Worth TX**,** Spring 2011, 5.

46 *Gogishvili M., Sulkhanishvili M., Meskhishvili K., Jinoria Kh., Gelashvili R., (eds.),* Relationships at the Court Hall, Communication and Legal Aspects of Court Hearing Management and Settlement of Parties, Supreme Court of Georgia, Tbilisi, 2010, 39 (In Georgian).

47 *Llevin A. L., Shuchman P., Yamnb C. M.,* Civil Procedure, Cases and Materials – Successor Edition, New York, 1992, 521.

48 *Chanturia L., Boeling H.,* Methodology of Making Court Decisions on Civil Cases, 2003, 30 (In Georgian). *Comp. Tsertsvadze G.,* Mediation, Alternative Dispute Resolution (General Overview), Tbilisi, 2010, 226 (In Georgian).

49 Effective settlement negotiations require that all persons to the dispute communicate with each other in an effort to find common ground. *Starnes H.E., Finman S.E.,* The Court's Role in Settlement Negotiations, Published in Family Advocate, American Bar Association, Vol. 37, No. 3, 2015, 30-35.

50 Different interests of the parties diminish settlement perspective. *Korobkin R.,* Aspiration and Settlement, Cornel Law Review, 2002, 8.

5. Settlement Negotiations

The essential and crucial phase of settlement is the conduct of settlement negotiations.[51] The negotiations aim at the satisfaction of the interests and claims of the parties.[52] Negotiations is the most acceptable for the parties, fair and successful process.[53]

Settlement is attained with regard to the subject matter of the dispute. Negotiations are conducted within the framework of a litigation concerned and cannot go over the subject matter of the dispute.[54] However, sometimes the parties try for the deed of settlement to cover more, than envisaged by the subject matter of the dispute in order to avoid further complications.[55] The dispute may concern one specific situation, but it may be settled through agreement the other situations and matters. Hence, the subject matter of the dispute, conditions agreed with a view of its settlement and scope of negotiations should not be mixed up.

There is no danger in the fact that the parties may go over the subject matter of the dispute during negotiations. On the contrary, the openness of the parties and diversified presentation of their opinions can even serve as a precondition for outlining the settlement conditions to a certain extent. One of the privileges of court settlement is that the court oversees the process of settlement negotiations. The settlement process is not only the event, manoeuvred by the parties, which will go over the purpose and subject of dispute regulation. As regards the scope of settlement conditions, it should naturally cover the subject matter of the dispute based on causal link existing between the conflict and the settlement. The situation is different, when settlement negotiations may fail to take full account of the subject matter of the dispute. This situation is regulated by law, specifically, by the principle - whatever was not settled should be reviewed according to general rule.[56]

A judge may get involved in settlement negotiation as a mediator, a person who knows law, an assistant, who is interested in closure of the disputed via settlement. Involvement of a judge as a professional in negotiations is reflected in the outcomes of the negotiations.[57] Such ~intervention~ is not only the initiative of the court, but in most cases, the desire of the parties and their attorneys as well.[58] When judge gets involved in negotiations, as a general rule, he leads the confidential process of negotiations when the parties are required to be absolutely frank. The judge may oblige the parties to attend the settlement conference arranged by him.[59]

Efficient application of negotiations strategy is of decisive importance during the settlement of a dispute.[60] The attorneys[61] sometimes wait for the judge's initiative about settlement before the initiation of their own strategic negotiations. Most of the attorneys are of the opinion that judge's involvement in negotiations

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51 For details see *Tsvetkov V.L.,* Conflict Psychology, Tbilisi, 2015, 12 (In Georgian).

52 *Craver C. B., Alverson F.H.,* Effective Legal Negotiation and Settlement, George Washington University Law School, Washington, D.C., 2010, 12.

53 *Hollander-Blumoff R*., Just Negotiation, Washington University Law Review, 2013, 414.

54 Civil Code of Georgia, Article 248.

55 Meaning complication, related to voluntary fulfilment of settlement terms and conditions as a hindering situation.

56 *Comp.* Ruling of the Civil Chamber of the Supreme Court of Georgia in Case №AS-790-747-2015, dated 22nd September, 2015.

57 *Hollander-Blumoff R*., Just Negotiation, Washington University Law Review, 2013, 420.

58 "They wrote in France in 1979, that a lawyer (attorney) should feel pleased not in the case of winning a process, but rather in the case of resolution of a dispute through settlement procedure". See *Tsertsvadze G.,* Mediation, Alternative Dispute Resolution (General Overview), Tbilisi, 2010, 74 (In Georgian). With further references: *Cohen, J. H.,* Commercial Arbitration and the Law, "Appleton and company," New-York, London, 1918, 31-32. *Comp.* Ibid, 169. With further references: *Reinhard G.,* Mediation und Justiz, in: *Reingard G.,Hannes U. (Hrsg.),* Die Zukunft der Mediation in Deutschland, "Beck" München, 2008, 95.

59 *Sourdin T.,* Five Reasons Why Judges Should Conduct Settlement Conferences, Australia Centre for Justice Innovation (ACJI), Monash University Law Review, 2011, 148-152.

60 *Dye T.A.,* Winning the Settlement – Keys to Negotiation Strategy, ABA Section of Litigation, Corporate Counsel CLE Seminar, February 11-14, 2010, 9.

61 A lawyer who is capable of avoiding contractual disputes even before their origin through conducting successful negotiations, does more valuable work than the winning of judicial proceedings. *Ayres I., Speidel R.E.,* Studies in Contract Law, USA, 2008, 1096.

confirms the perspective of reaching an agreement even when the parties have not applied with this request thereto.[62]

The art of negotiation employed by Judge is of paramount importance in the course of negotiations. Negotiations should be based on careful attitude, free (clear) communication, targeted perspective. Successful settlement negotiation is based on mutual compromise and, at the same time, aims at gaining mutual benefit.[63]

6. Settlement Offers

6.1. Formulation of Settlement Offers

The basic principle of contract law is the freedom of contract. Specifically, "Subjects of private law are free to enter into contracts within the frame of law and provide for the content of these contract. They may enter into such contracts, that are not envisaged by law but do not contradict it."[64] The freedom of contract principle covers two sub-types: 1) In a free and democratic society any person in entitled to enter into a contract or abstain from entering into a contract; 2) The parties to contract are free to decide upon the type of contract they are willing to enter and the content of the contract concerned, i.e. "to invent" the contract themselves that best reflects their relations, obligations and rights.[65] In itself a settlement is the new regulation of existing legal relations and it first of all aims at removal of misunderstandings between the parties, what ultimately serves the regulation of the existing dispute through judicial proceedings. "Such formation of legal relations is nothing else than one of the manifestations of the freedom of contract when the parties are not restricted to modify the terms and conditions, that cause misunderstanding and disagreement, within single legal relation."[66]

Settlement offers are contract terms and conditions. Their drafting and inclusion into a deed of settlement are subject to the principle of freedom of content of a contract. Upon formulation of settlement offers it is necessary for each party to correctly and clearly present his opinion, analyse the essence of the dispute, desirable outcome, also the wealth it will be obliged to surrender.[67] However, in the case concerned it should be taken into consideration that any offer or condition should be focused on the resolution of the existing conflict about the subject-matter of the dispute. Settlement offers, first of all, should be fair,[68] should not contradict law, regulate relations, be intermediate link for the facts of the case and what is most important, serve the resolution of the dispute in a beneficial for both parties manner and with good consequences. Settlement related offers should be based on criteria that depend not on personal will of a party, but rather on mutually beneficial objective ones. To this end it is necessary to find fair,

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62 *Llevin A.L., Shuchman P., Yamnb C.M.,* Civil Procedure, Cases and Materials – Successor Edition, New York, 1992, 549.

63 *Tanford J.A.,* Basics of Negotiation, Indiana University School of Law, 2001, 1, <http://www.law.indiana.edu/instruction/tanford/web/archive/Negotiation.html >, [01.02.2019].

64 Civil Code of Georgia, Article 319, Part 1.

65 *Svanadze G., Dzlierishvili Z., Tsertsvadze G., Robakidze I., Tsertsvadze L., Janashia L.,* Contract Law, Tbilisi, 2014, 102 (In Georgian).

66 Decision of Civil Chamber of Tbilisi Court of Appeals in Case №2B/1084-13, dated 05 November, 2013.

67 In property (monetary) disputes settlement offers may provide for the most convenient payment schedule, what is the key point in, say, credit relations. In his case it is necessary for settlement terms and conditions to be close to the essence of the case and stem from the facts of the case. *Comp. Martin J. W.,* Drafting the Contract or Settlement Agreement That Says out of Court, The Breaf, 2003, 50.

68 *If an outcome is not fair, parties will not agree, but if parties have agreed, the outcome must be fair. Hollander-Blumoff R*., Just Negotiation, Washington University Law Review, 2013, 408. With further references: Some literature has explicitly suggested that negotiation may not be the right mechanism for a dispute that implicates fairness concerns. Perhaps most famously, Owen Fiss argued that settlement was inappropriate in some situations, namely when issues of societal justice and fairness were concerned. *Fiss O.M.,* Against Settlement, 93 Yale L. J. 1073, 1075, 1984, Making More of Alternative Dispute Resolution, Summary, Acas Policy Discussion Papers, № 1, January, 2005, 3.

efficient, reasonable, professional, functional and sustainable solution.[69] Although settlement is the demonstration of the principle of the free exercise of material and procedural rights by the parties to legal proceedings and provides for the freedom of will of the parties, "no such conditions shall be agreed through settlement procedure, which are conditioned by coercion and impair the rights of the third persons."[70]

Settlement cannot always be conducted with correctly-formulated settlement offers. The process of drafting settlement offers by the parties may come to a dead end. Despite the foregoing, the demand of the court for the parties to formulate settlement offers and present them to the court is fully reasonable and correct. It is also reasonable for the parties to draft a framework agreement in advance,[71] what facilitates focusing on discussion, identification of issues, which otherwise could have been left out of account.[72]

6.2. Conditional Settlement Offers

The clarity of settlement offers (settlement conditions) means their explicit and unambiguous nature, what guarantees from the very outset that the conditions will be exercisable after their approval by the court. The foregoing poses the question and makes a parallel with conditional transaction. Under Article 90 of the Civil Code of Georgia (CCG) "A transaction is conditional when it depends on future and unknown event to the extent, that the fulfilment of the transaction is deferred until its occurrence or the transaction is terminated upon occurrence of the event concerned".

"A settlement may subject to some negative or positive condition, that certain event will or will not occur within a certain period (conditional transaction)".[73] If a settlement offer is not shaped as a specific offer, but rather a condition, which depends on future and unknown event, it cannot become ground for termination of case proceedings via settlement, what is conditioned by the legal nature of a conditional transaction.[74] In particular, although a conditional transaction is regarded as made from the very outset, it is not legally valid until the occurrence of the condition. The transaction will never become legally binding, unless the condition occurs.[75]

Title 4 of German Civil Code (Conditions and Specification of Time) provides, that in the case of setting some condition the legal consequences of a transaction become dependent on future unknown event and in the case of specification of time (§163), on the contrary - the future known event is decisive for occurrence or cancellation of a legal consequence. Postponement or suspension condition links a future event with occurrence of a legal consequence while cancellation or resolution condition - with their further existence.[76] The BGB further explains, that account should be taken of the impossibility of entering into certain transaction on some condition. In certain cases the so-called potestative conditions are allowed, when occurrence of the condition depends upon the sole will of one of the parties ((§199, field 1, §2065 field 1).[77]

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69 *Gogishvili M., Sulkhanishvili M., Meskhishvili K., Jinoria Kh., Gelashvili R. (eds.),* Relationships at the Court Hall, Communication and Legal Aspects of Court Hearing Management and Settlement of Parties, Supreme Court of Georgia, Tbilisi, 2010, 96 (In Georgian).

70 Decision of the Civil Chamber of Tbilisi Court of Appeals in Case №2B/1084-13, dated 05 November, 2013.

71 *Chechelashvili Z.,* Contract Law, Tbilisi, 2014, 33 (In Georgian). Framework of mediation and interim agreement. *Comp. Tsur M.,* Art of Drafting a Mediation Agreement, Guidelines, Alternative Dispute Resolution, ADR Yearbook, TSU Publishing House, Tbilisi, 2012, 225-227 (In Georgian).

72 *Gogishvili M., Sulkhanishvili M., Meskhishvili K., Jinoria Kh., Gelashvili R.*, Relationships at the Court Hall, Communication and Legal Aspects of Court Hearing Management and Settlement of Parties, Supreme Court of Georgia, Tbilisi, 2010, 92 (In Georgian).

73 *Totladze L., Gabrichidze G., Tumanishvili G., Turava P., Chachanidze E.,* Explanatory Law Dictionary, Tbilisi, 2012, 296 (In Georgian).

74 "The Cassation Chamber is of the opinion, that specific settlement condition is not presented, because of when the request of closure of the case concerned through settlement procedure should not be met." See *Nachkebia A.,* Interpretation of Administrative Law Provisions in Supreme Court Practice, 2005-2014, Tbilisi, 2015, 364 (In Georgian). See Case №BS-1369-1308 (K-10), 21.04.2010.

75 *Chechelashvili Z.,* Contract Law, Tbilisi, 2014, 53-54 (In Georgian).

76 *Kropholler J.*, German Civil Code, Educational Comments, 13th revised ed., Tbilisi, 2014, 77 (In Georgian).

77 See, ibid.

The meaning of settlement as a conditional transaction contradicts the essence and purpose of settlement - to terminate a specific legal dispute. It also contradicts the fact, that makes the termination of civil proceedings dependent on some condition. Hence, for a settlement to become ground for termination of case proceedings, it should be based on a set of specific, clearly defined and unconditional settlement offers.[78]

Conditional settlement offer is other that deferral of fulfilment of conditions envisaged by a deed of settlement for a certain period of time.[79] In its turn the foregoing should be differentiated from deferral of the recognition of claim, i.e. satisfaction, enforcement of the claim by the defendant.[80] Deferral of an action subject to fulfilment on the basis of recognition of claim for a certain period is not a settlement. Settlement is not the recognition, but rather the conditions of the parties agreed on the basis of mutual compromises, the fulfilment of which may be limited to a certain period of time. The agreement of the parties, that the condition under the deed of settlement will be fulfilled starting from or by some specific date, implies better guarantees than the settlement will be enforced voluntarily, at an agreed time, place and under the agreed conditions, as it is legally characteristic for ordinary contract relations.[81]

6.3. Security for Settlement Offers

When drafting settlement offers the parties to settlement have the option to guarantee the fulfilment of settlement conditions by various statutory means of collateral.[82] The CCG provides for various means to secure claim, and mortgage amongst them, being the most widely applied and prevailing one. Under the CCG any obligation can be secured by mortgage. However, "in financial relations mortgage is frequently applied as a collateral for monetary obligations".[83] Mortgage can be employed as a collateral for both contractual and statutory claims. It can also be applied with regard to conditional and future claims, when they can be defined for the moment of establishing mortgage.[84]

It should be mentioned that mortgage arises upon its registration in Public Registry. The basis for existence and registration of mortgage, as an accessory right, is the main obligation. In the case of court settlement the parties are entitled to secure settlement conditions by mortgage, when the basis for origin of mortgage and the right to claim its registration will be the settlement condition, in the capacity of main obligation. Furthermore, insofar as a settlement condition is reflected in the deed of settlement and the deed of settlement - in court ruling on discontinuation of judicial proceedings, the ruling on approval of the settlement is submitted to Public Registry as grounds for origin and registration of mortgage.

In its turn, non-fulfilment of the settlement condition agreed between the parties can be secured, according to directly prescribed procedure, by the fulfilment of another action, e.g. through transfer of disputed property under ownership, what is additional collateral for the fulfilment of the settlement condition. Like mortgage, pledge can also be used to secure the settlement condition. Pledge is again an accessory right and it is closely connected with secured claim.[85] As regards surety, it is a personal mean to secure a claim.

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78 The parties cannot leave the settlement offers open on condition that detailed provisions will later be specified by a party or a third person. *Comp. Chechelashvili Z.,* Contract Law, Tbilisi, 2014, 74 (In Georgian).

79 Decision of the Civil Chamber of Tbilisi Court of Appeals in Case №2B/4936-14, dated 29 July, 2015.

80 *Liluashvili T.,* The Questions of Civil Procedure in Judicial Practice of Georgian Courts, Part I, Tbilisi, 2002, 115 (In Georgian).

81 Civil Code of Georgia, Article 361.

82 The debtor party recognised his indebtedness to a micro-finance organisation and undertook to cover the liability in accordance with the agreed schedule. Under the same deed of settlement, the repayment of indebtedness was secured by the real estate under the ownership of the debtor party. For details see Ruling №2B/3275-15 of the Civil Chamber of the Tbilisi Court of Appeals, dated 06 October, 2015.

83 *Shotadze T.,* Mortgage as a Mean to Secure Bank Credit, Tbilisi, 2012, 90 (In Georgian). With further reference: *Erp J.H.M. (Sjef).*, Personal and Real security, Elgar Encyclopaedia of Comparative Law, ed. by *Smits Cheltenham J. M. S*, Elgar, 2006, 517 ff.

84 *Shotadze T.,* Property Law, Tbilisi, 2014, 356 (In Georgian).

85 Ibid, 377–378.

It is formalised in an agreement (statement) and its main subjects are the guarantor and the creditor. "Guarantor is the person who undertakes the responsibility before the creditor of the other person to fulfil the obligation together with the debtor, the fulfilment of which obligation the creditor may claim".[86] Surety agreement secures the fulfilment of already existing real obligation. The law does not provide for its scope of application. Surety can be employed to secure any obligation, including future and conditional obligations, and particularly, the obligations that originated through deferral condition.[87] But surety, as legal security of fulfilment of already existing obligation under the participation of a third person, cannot be applied as a collateral for settlement conditions.[88] The foregoing is conditioned by the fact, that guarantor is not a party to a court litigation (which should be settled). The will, expressed by the latter - independent statement about surety - is a third person's will, while deed of settlement is executed between the parties to a dispute. They are parties to the ruling on approval of the settlement. Consequently, a guarantor, being an outsider third person, cannot become a party to the ruling concerned.

7. Reaching Compromise

"After the commencement of negotiations and discussion of possibility-standard, compatible with each issue, it is desirable to reach an consensus, which is based on conclusions made during the negotiations and conveys the interests of both parties to the extent practicable."[89] The compromise is often spontaneous and serves the only purpose - to avoid non-fulfilment of obligation and related thereto further litigations. In certain cases the ground for reaching an agreement i.e. a compromise can be the impossibility to fulfil the obligation.[90]

Settlement is based on certain human and legal balance between the parties. This balance should provide the parties with the precondition of agreement of interests at certain phase of case proceedings, what will become somewhat ground for closing the case with settlement. The option of the parties to close the case via settlement, that is backed by the principle of the free exercise of material and procedural rights by the parties to legal proceedings, means compromise between the parties in the course of settlement,[91] what is reflected in details in the deed of settlement as settlement conditions and, in the case of compatibility of such conditions with the law, is approved by the deed of settlement.[92]

The following are the means of reaching compromise[93]: breaking the ice, bringing future settlement of dispute into focus, tentative discussion of common interests,[94] focusing on potential and not imminent

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86 *Shengelia R., Chanturia L., Zoidze B., Ninidze T., Khetsuriani J.,* Commentary on the Civil Code of Georgia, Book 4, 2nd Vol., Tbilisi, 2001, 228 (In Georgian).

87 Ibid, 229.

88 "No obligation can be imposed on a third person under settlement procedure. Settlement may concern a third person, but only in the context, when a party to the settlement waivers the right against a third person through settlement (*pactum de non pedento*)". See Ruling №2B/1084-13 of the Civil Chamber of the Tbilisi Court of Appeals, dated 05th November, 2013. With further reference: Münchener Kommentar zum BGB, Habersack, BGB §779, 6. Auflage 2013.

89 *Gogishvili M., Sulkhanishvili M., Meskhishvili K., Jinoria Kh., Gelashvili R. (eds.),* Relationships at the Court Hall, Communication and Legal Aspects of Court Hearing Management and Settlement of Parties, Supreme Court of Georgia, Tbilisi, 2010, 92 (In Georgian).

90 See Ruling №2B/1084-13 of the Civil Chamber of the Tbilisi Court of Appeals, dated 05th November, 2013.

91 Unilateral compromise. See Ruling №2B/1084-13 of the Civil Chamber of the Tbilisi Court of Appeals, dated 05th November, 2013.

92 See *Nachkebia A.,* Interpretation of Administrative Law Provisions in Supreme Court Practice, 2005-2014, Tbilisi, 2015, 494 (In Georgian). See Case №AS-792-1079-09, 09.11.2009.

93 The "strategy of compromise" means equal division of resources. Compromise of one party to the dispute should be equal to that of the other party. The basic principle of this strategy is a as follows: "If we want to get something, each of us should give out something". For details see *Jorbenadze R.,* Mediation, Tbilisi, 2012, 12 (In Georgian).

consequences. The imminent consequence becomes known when the court goes to a conference room and makes a final decision.[95]

When reaching settlement the attention should be paid to the fact, that the party refusing settlement is actually at risk, as even the court is not aware of the decision it will make after the review of the case. It is possible for the court to make reference to potential consequences, but the parties should not take potential consequence as if their dispute is resolved. When speaking about potential consequences the court should refer to specific law, judicial practice, opinion of the lawyers and society, but at the same time it should stress that all the foregoing may change as a result of parties' attitude towards the case.[96] In the case of hindrance of negotiations about the key aspects of the dispute, the parties may agree on the resolution of the case through judicial procedure.[97]

8. Accessory Nature of the Independent Process of Settlement

Settlement, as grounds for termination of civil proceedings, will become a purposeless legal phenomenon, unless it is included into the scope of civil proceedings. Hence, when the independent process of settlement becomes ground for legal termination of a court litigation, settlement becomes the constituent part of judicial proceedings. This situation speaks for the accessory nature of the independent process of settlement. Regarding the independent process of settlement as a constituent part of civil proceeding is inspired by the purpose of settlement - to terminate case proceedings through settlement.

Civil Procedure Law is an integral part of the whole system of law and hence, it is impossible for it not to be linked with the other branches of this system. The closest link and interconnection is has with civil substantive law as procedure law provides for the rules of review of dispute arising from relations regulated by material law. The relationship between substantive and procedure law is the relationship between form (substantive law) and content (procedure law).[98] Hence, the purpose of existence of civil procedure law is the legal provision for the exercise of relations regulated by substantive law.

As already mentioned, procedure law serves the purposes of regulation and exercise of relations regulated by substantive law. Such "service" is bilateral with regard to settlement. Settlement, envisaged by substantive law serves the purposes of procedure law as it is a ground for termination of case proceedings, while procedure law serves the purposes of administration of substantive law, i.e. resolution of disputed relations.

Chapter XXIX of the Code of Civil Procedure of Georgia (CCPG) provides for closure of case proceedings without making a decision, meaning the termination of case proceedings and abandonment of the claim. One of the legal means of termination of civil proceedings is settlement. Legal conduct of settlement as a mean of discontinuation of civil proceedings depends on the procedure of case proceedings and does not exist without it.[99]

On the one hand, settlement has law-of-obligations nature and according to above judgements it is a constituent part of substantive law. On the other hand, settlement is a procedural action, which constitutes ground for termination of case proceedings and it is a constituent part of procedure law. The form of settlement, as independent process, as a constituent part of procedure law is revealed in its accessory nature.

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94 *Gogishvili M., Sulkhanishvili M., Meskhishvili K., Jinoria Kh., Gelashvili R., (eds.),* Relationships at the Court Hall, Communication and Legal Aspects of Court Hearing Management and Settlement of Parties, Supreme Court of Georgia, Tbilisi, 2010, 25 (In Georgian).

95 Ibid, 35.

96 Ibid.

97 *Merrills J.G.,* International Dispute Settlement, New York, 2005, 12.

98 *Liluashvili T., Liluashvili G., Khrustali V., Dzlierishvili Z.,* Civil Procedure Law, I Part, Tbilisi, 2014, 66 (In Georgian). *Comp. Kobakhidze A.,* Civil Procedure Law, Tbilisi 2003, 9 (In Georgian).

99 It should be stressed that Georgian procedure law recognises only the court settlement, what again proves the indivisible link between settlement and case proceedings.

Article 153 of the CCG provides for the content of accessory and limited rights and states, that "A right, that is connected with the other right in such a manner, that it can never exist without this right, is an accessory one".[100] The purpose of settlement, as a substantive law phenomenon, is the resolution of disputed relations. The purpose of settlement, as a procedural action, is the same, but to be more precise, here the settlement aims at the resolution of dispute through case proceedings. The legal form of attainment of this purpose is the agreement of the will of the parties. However, independently existing will cannot ensure the resolution of a dispute referred to the court. To this end, there exists the rule, prescribed by procedure law, that settlement, as a procedural action, is the mean of closure (termination) of civil proceedings.

The accessory nature of settlement is also conditioned by the fact, that settlement requires object or thing with regard to which the settlement is to be accomplished.[101] The object of settlement is the dispute envisaged by a statement of claim. The necessity of settlement will never arise and the independent process of settlement will never be accomplished without main procedural right, case proceedings. If there is no case proceedings - a dispute to be resolved by court - no settlement will be accomplished as there will never exist a thing, with regard to which the parties should settle. Hence, if there is nt dispute, nothing is to be settled. A dispute or uncertainty of the parties about legal status is a precondition of settlement.[102] Only in the case of existence of a dispute, subject to trial by court - case proceeding - one can speak about settlement, the legal process of accessory nature.

Settlement is a constituent part of case proceedings, its accessory part. However, as far as it is an independent process in itself, the different terms should be applied thereto. The first case, when settlement is an independent legal process, should be referred to as "settlement process". And the other case, when the aforementioned settlement process is viewed in the light of civil proceedings, as its essential constituent part - should be defined by the term "process of proceedings". Such conclusion is conditioned by the fact that settlement is an independent process, however, it will be a non-existing legal phenomenon, unless viewed in the context of civil proceedings.

In general the settlement process is of two types, according to its place: judicial process (*adjudicative process*) and extrajudicial process (*consensual process*). Judicial process includes: judicial proceedings or arbitral proceedings, when a dispute is resolved by a judge, arbitrator or jury. Extrajudicial process (*consensual*) process includes various types of settlement (*mediation, conciliation, negotiation*), where parties independently try to reach an agreement. The fact that one of the legal means of closure of a case - settlement - is accomplished within the court and respectively is judicial settlement, is also associated with the accessory nature of settlement. Case proceedings can be closed only through judicial settlement.[103] If a dispute becomes subject to extrajudicial settlement, it does not constitute a part of case proceedings, but rather becomes a dispute, resolved through independent agreement of the parties.

9. Conclusion

The main purpose of settlement process is the resolution of a conflict between the parties.[104] The above judgements evidence several important circumstances. First and foremost, settlement is a ground for closure of case proceedings, their termination, what is reflected in a court ruling as a deed of settlement.

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100 CCG, Article 153, Part 1.

101 *Comp. Liluashvili T., Liluashvili G., Khrustali V., Dzlierishvili Z.,* Civil Procedure Law, I Part, Tbilisi 2014, 66 (In Georgian). *Comp. Kobakhidze A.,* Civil Procedure Law, Tbilisi, 2003, 59-60 (In Georgian).

102 See *Chechelashvili Z.,* Contract Law, Tbilisi, 2014, 97 (In Georgian).

103 In many developed countries, court settlements have become a very important means of closing pending cases. The increase in the number of settlements has had a profound impact on the nature of judicial work. *Ervasti K.,* Conflicts Before the Courts and Court-Annexed Mediation in Finland, Scandinavian Studies in Law, 1999-2012, 193.

104 *Menkel-Meadow C.,* From Legal Dispute to Conflict Resolution and Human Problem Solving: Legal Dispute Resolution in a Multidisciplinary Context, Georgetown University Law Center, Association of American Law School, 54 J. Legal Educ. 7-29, 2004, 9.

The second - settlement is an independent process, which implies certain passage from conflict to consensus. In the case of successful passing this road, the settlement, as an independent process, acquires the accessory nature and becomes ground for closure of case proceedings.

The independent process of settlement is a specific phenomenon with the whole set of legal, social and psychological factors. This process is conducted under intensive assistance of the court and is initiated outside the court, as an initial conflict. This very conflict become the basis of settlement process, which conflict the parties have failed to resolve with own forces and applied to the court of law for its resolution through judicial proceedings.

Crucial among the legal characteristics of settlement process is its systemic nature, that is not conclusive, has no legal regulation and mostly depends on the basic principles of contract negotiation, dispute resolution and settlement. The detailed analysis of this process includes a set of social and psychological factors along with legal ones, what is associated with readiness of law to assume the role of adequate mediator on the one hand and on the other - with the disposition of the parties to turn the process from negative into positive.

Particular attention should be paid to communication phase of settlement process, which actually continues throughout the whole process. The precondition of successful settlement process is continuous communication both between the parties and the parties and the judge. Termination of communication, even in timespan, may result in unsuccessful end of settlement efforts of the parties, not to mention the loss of the so-called settlement disposition of the parties, what, as a general rule, is the result of intensive work and efforts of the judge.

The most important part of settlement process is drafting of settlement offers, they adequate formulation and inclusion into the deed of settlement. At that moment it can be boldly said that party disposition to get settled is attained, however, the formulation of settlement offers mostly depends on the maintenance of this disposition and drafting the final version of the deed of settlement. The judgments explicitly demonstrate, that settlement conditions should be clear, non-ambiguous, apparent and should be oriented on the main purpose - the resolution of the conflict and closure of case proceedings, it should not depend on some future and unknown event, as such condition will not become either the legal guarantee of resolution of the conflict or ground for termination of case proceedings at the court. For better guarantee, a settlement conditions can be secured by statutory means of collateral, what can be done through mortgage or pledge in the case of pecuniary obligations. As regards surety, being a personal mean of security, it cannot be applied, when the guarantor in not a party to proceedings.

Settlement process is an independents, peculiar phenomenon, with its beginning, phases and end. However, its end in itself is not only the successful accomplishment of this process. It has broader and valid purpose. The independent process of settlement should become a part of case proceedings, otherwise the meaning of the independent process of settlement will resolve only a conflict, when the conflict itself has become a subject matter of court litigations. Based on the foregoing, the settlement process is of accessory nature as it serves the purpose of closure of case proceedings and is a legal phenomenon with ho function without it. Hence, the settlement process, which constitutes ground for closure of a court litigation through settlement is an integral and accessory part of case proceedings.

In conclusion it can be said, that the independent process of settlement has no legal regulation and for the independent process of settlement to play the adequate role within the integrated system of law as a ground for termination of case proceeding, it is reasonable for the Code of Civil Procedure to allocate a special chapter for legal importance of court-annexed settlement, where the settlement process will be discussed thoroughly - from conflict to consensus, as a process existing owing to the unity of legal principles and characteristics, for the purposes of termination of case proceedings.

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