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The Function of the Judge in Concluding of Civil Case with Settlement and the Results Achieved by Settlement

Settlement, as the basis for concluding of the civil case, is carried out within the court and, consequently, represents the judicial settlement. The initiator of successful settlement is a judge, who shall be involved in the process with the status of "the third passive party" and undertake important function like settlement of disputing parties. The term "judge" is a universal notion, however, following from the obligations, imposed on the judge in the process of settlement, it is appropriate to introduce the term "judge-arbitrator", which exactly expresses the status of the judge in the process of settlement. Judges-arbitrators must be interested in creating the relevant environment and conditions for settlement in the court room, manage to focus the parties on common objective of settlement, obtain comprehensive understanding of the subject of dispute and interests of the disputing parties, which shall become the pre-condition for successful settlement.

Conclude of the dispute by settlement actually means its resolution, ensures conflict regulation, which is productive resolution of a dispute for the disputing parties as well as for the judicial system. The main basis of conclude of the dispute by settlement is a free will of the parties and the goal of obtaining of the desired result, where conflict regulation, restoration of justice occurs, long disputes are avoided, trust towards the court increases and, besides, the attitude of judges towards settlement changes. Conclude of civil proceedings by settlement brings real result for the disputing parties, which is expressed in mutual satisfaction of the rights and requirements, envisaged by the subject of dispute.

Key Words: *settlement, proceedings, judge, judge-arbitrator, mediator, qualification of the judge, competence of the judge, functions of the judge, settlement process, settlement result.*

1. Introduction

Any legal event arises following from the need. The need of settlement in civil procedural law is conditioned by public relations and legal regulation mechanisms.

Litigation, as a rule, is related to long and complex process. Settlement conculde the disagreement between the parties with maximum consideration of the will of the parties and in a lawful way. „Concluding of case by settlement is no less important form of completion of litigation than making decision on the case. On the contrary, they have equal ranking, in some cases settlement is even better alternative.[1] However, only under one the sole condition, that the purpose of offering settlement is not easing of the judge's workload, but fair settlement of the conflict,[2] related to the subject of dispute between the parties".[3]

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[1] *Otis L.,* Alternative Dispute Resolution: Judicial Mediation, The early settlement of disputes and the role of Judges, 1st European Conference of Judges, Proceedings, organized be the Council of Europe in co-operation with the Consultative Council of European judges (CCJE), Strasburg, 24 and 25 November 2003, 70, With further reference to: *Goldberg S. B., Sander F. E., & Rogers N. H.,* Dispute Resolution: Negotiation, Mediation, and Other Processes, 3rd ed., Boston: Little, Brown & Company, 1996, 1; *Miller J. R.,* Alternative Dispute Resolution (ADR): A Public Procurement Best Practice that has Global Application, 21-23 September, 2006, 653.

[2] There is great difference of opinions on the terms – "conflict" and "dispute". The meaning of the above-mentioned terms is diverse. Some authors take them for synonyms and make parallel between the meanings of legal dispute and conflict. The court does not differ these terms. And conflict experts often see the difference between these two terms. The term "conflict" is used for definition of dispute, existing between two or more persons, whereas use of the term "dispute" is appropriate for denoting of "legal conflict". According to this approach, the court settles the dispute and not the conflict, which form the basis for this dispute. Compare: *Ervasti K.,* Conflicts before the Courts and Court-annexed Mediation in Finland, Scandinavian Studies in Law, 1999-2012, 191. see. e.g. *Abel R. L.,* A Comparative Theory of Dispute Institutions in Society, Law & Society Review 1974, 227; *Aubert V.,* Rettens sosiale funksjon, Oslo 1976, 172, *Sandole D. J. D.,* Paradigms, Theories and

The purpose of implementation of justice in regard to civil cases is to regulate and eliminate the conflict, existing in public relations, so that the parties to public relations are able to enjoy rights without hindering, establish stable public relations and stable civil turnover under favorable and desired conditions. One of the best legal ways for achievement of the above-mentioned goal is settlement between the parties.

Concluding of civil proceedings with settlement is the dispositional power, granted by the law. It, on the one hand, is a bargain, obtained on the basis of demonstration of free will and agreement of the parties, and, on the other hand, is an act of settlement, approved by the court on the basis of control of lawfulness, which terminates the existing litigation in the court.

Resolution of the dispute, emerged between the parties, by settlement was always considered and is presently considered the best way of resolution of this dispute. It is mentioned in foreign researches that quite big percentage share of the cases, existing in the court, doesn't reach the litigation process,[4] as on the last minute (before starting litigation) it becomes possible to conclude the case by settlement. Nowadays arrangement of pre-trial meetings and use of mechanisms for settlement of dispute by alternative method is a kind of predecessor for settlement, consequently, the number of courtroom-door dispositions increase, having positive impact on perception of settlement.[5]

It is the obligation of the court to take all measures, provided by the law, for settlement of the parties.[6] Judge shall always try to conclude the case by settlment. The role and the function of the judge in the above-mentioned process is equally important in proper selection of the ways of achievement of settlement, direction of settlement process, regulation of the process and approval of settlement conditions. For the purpose of full-value implementation of the above mentioned, the judge shall be equipped with the knowledge of procedural norms, high qualification of the lawyer and the skills, which will assist him/her in settlement.

The public figure – Ilia Chavchavadze – mentioned: „Local resident shall trust the judge-arbitrator. To obtain this trust, knowledge of law is not as necessary, as the knowledge of thinking of people, customs and ways of people, in one word, knowledge of everything that surrounds local life in general and, besides, man shall have quick wit, honest nature and faultless life".[7]

Metaphors in Conflict and Conflict Resolution: Coherence or Confusion? in Conflict Resolution Theory and Practice. Integration and Application (eds. *Sandole D.J.D., Merwe H. V. D*), Manchester, 1993, 7; *Burgess H., Burgess G. M*., Encyclopedia of Conflict Resolution, Santa Barbara, California, 1997, 74-75; In legal literature "dispute" is also defined as unresolved conflict. *Byrne R.*, *Clancy Á., Flaherty P., Diop sa Gh.*, *Leane E., Ní Chaoimh G.*, *Ní Dhrisceoil V, O'Grady J.*, *O'Mahony C., Staunton C., Diop sa Gh.*, Alternative Dispute Resolution, Consultation Paper, Law Reform, Copyright Law Reform Commission, 2008, 9.

3 *Lutringhouse P.,* Methodology of Making Decision on Civil Case, Bakuriani, October 18-21, 2007, 133 (In Georgian).

4 *Mnookin R. H.,* Negotiation, Settlement and the Contingent Fee, DePaul University, University Libraries, DePaul Law Review, Vol. 47, Issue 2, 1998: Symposium – Contingency Free, Financing of Litigation in America, Article 8, 1998, 364, With further reference: all automobile insurance claims, the majority settle before any court filing, and most of those suits that are brought to trial settle before any jury verdict. see. *Franklin M. A. et al.,* Accidents, Money and The Law: A Study of the Economics of Personal Injury Litigation, 61 Colum. L. Rev. 1, 1961, 10-11; *Galanter M.,* Reading the Landscape of Disputes: What We Know and Don't Know (and Think We Know) About Our Allegedly Contentious and Litigious Society, 31 Ucla L. Rev. 4, 1983, 27; *Laurence H.R.,* Settled out of Court, 1970 (discussing how the law on a day-to-day basis revolves around settlement and not trial); *Trubek D. M.,* Litigation Research Project: Final Report(reporting on a nationwide study of civil cases and discussing the frequency of litigation, costs and lawyers' activities). 1983; Settlement also occurs in some 80% or 90% of criminal matters in almost every American jurisdiction in the form of "plea bargaining. See *Alschuler A.W*., The Prosecutor's Role in Plea Bargaining, 36 U. CHi. L. Rev., 50, 1968, 50; Galanter, supra, at 27. Similarly, some 75% or more of all administrative proceedings end in agreements rather than trials. *Robinson G. O., Gellhorn E.,* The Administrative Process, 1974, 523; *Woll P.,* Informal Administrative Adjudication: Summary of Findings, 7 Ucla L. Rev, 436, 1960, 437.

5 *Baar C.,* The Myth of Settlement, Paper Prepared for delivery at the Annual Meeting of the Law and Society Association, Chicago, Illinois, 1999, 2; *Ervasti K.,* Conflicts Before the Courts and Court-annexed Mediation in Finland, Scandinavian Studies In Law, 1999-2012, 193.

6 Articles 205 and 218 (3) of the CPCG (In Georgian).

7 *Grigalashvili N.,* Accompanying Spirit, newspaper "24 Hours", published on April 20, 2010.

The impact of settlement on civil litigation is unambiguously positive for the disputing parties, as well as for the court. In this case, each action of the judge shall be directed towards searching for correct, lawful ways of dispute resolution. Each step of the judge shall be made on highly professional level, with greatest responsibility and for specific purpose. „Being judge is primarily a huge responsibility. Two determining factors shall exist in the judge's mind: his internal desire – to be worthy judge and high sense of responsibility. Judge shall have the sense of justice and, above all, shall not make inexcusable mistake".[8]

Settlement has become particularly actual after 2007, when amendments were made to Civil Procedural Code of Georgia (hereinafter – CPCG) for the purpose of efficient utilization of the institute of settlement in tractive.[9] In particular, settlement was given legal designation for the purpose of conclusion of civil litigation, which was expressed in refinement and extension of functions of the court and judge.

The First Rule of the Code of Judicial Ethics of California defined that the integrity and independence of the court depends on how bravely and unbiasedly the judges act. For maintenance of the public trust in unbiasedness of the court, each judge shall fulfill obligations. Otherwise, the trust of public towards the court weakens and causes damage to judicial system.[10]

As a result of judicial reform, number of good deeds were done, but if the independence of the central person, heading the system of judicial authority – judge – is not be ensured, it will be impossible to speak about the success of the reform.[11] It is just the independent, highly professional and qualified judge, who shall ensure conclusion of litigation with settlement, which will have substantial impact on judicial system and stability of public relations in general.

2. Status of the Judge in Settlement Process

2.1. Judge, as an Arbitrator

„Nobody is born as a judge. Person acquired the skills, characteristic for this profession during years. For the beginning, it is his education, personal features, the ability of independent thinking, honesty, objectivity that matters."[12]

The term „judge" is universal for all circles of judicial authority and, in general for legal space. According to the definition, judge is a person, who is constitutionally granted the power to exercise justice and shall fulfill his obligations on professional basis.[13] Primarily, judge is a person, who exercises justice on behalf of the state.[14] „Since the day of appointment in this position, judge shall know that only the law is supreme for him".[15]

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8 *Shavliashvili G.,* City Court Will Become Available and Efficient for Citizen, Supreme Court of Georgia, Journal "Martlmsajuleba" ("Justice"), №1, Tbilisi, 2006, 66 (In Georgian).

9 The Law of Georgia On Introduction of Amendments and Additions into the Civil Procedural Code of Georgia" № 5669, approved on December 28, 2007 (In Georgian).

10 *Henley V.*, Indifference towards Fulfillment of Judge's Obligations and its results, "Court Independence and Judge's Profession", 27/28 September, Tbilisi, 2013, 29 (In Georgian).

11 *Ghibradze D.,* Relieving Judges and Distribution of Cases," Court Independence and Judge's Profession", Tbilisi, 27/28 September, 2013, 49 (In Georgian).

12 *Kublashvili K.,* I will be the First Defender of Honest and Unbiased Judges, Supreme Court of Georgia, Journal "Martlmsajuleba" ("Justice"), № 1, Tbilisi, 2006, 11 (In Georgian).

13 *Tezelishvili S.,* Legal Encyclopedia, Tbilisi, 2008, 376 (In Georgian).

14 In details, *Liluashvili T., Liluashvili G., Khrustal V., Dzlierishvili Z.,* Civil Procedural Law, Part I, Tbilisi, 2014, 40-45 (In Georgian).

15 See the Code of Judicial Ethics of Georgia, Resolution № 6 dated June 23, 2001 of the Conference of Judges of Georgia, Comments to the Code of Judicial Ethics of Georgia, Article 17, <http://www.ujg.ge>, [01.07.2019].

Judge is different by his activities and personal features.[16] „In all countries, judge is different from his fellow citizens at certain extent. Principality, honesty, objectivity, decency, unbiasedness – these are the main features, which all judges shall have.“[17]

Georgian judicial system is oriented towards high qualification, competence, culture and education of a judge, as „only highly professional and highly educated judge can be entrusted with implementation of justice.“[18]

Following from the circumstance that the judge is the initiator of conclusion of case with settlement and the person, directing the settlement process, his status in settlement process is different. The term „judge- arbitrator“,[19] in its literal meaning, suits the status of the judge, who assists the parties in concusion of proceedings with settlement for the purpose of conclusion of proceedings, the best way.[20] „The institution of judge- arbitrator“ emerged in the end of the 14th century in England and was widely spread.[21] In Switzerland, the so-called *Sxhneverfahren* has great tradition; it almost always precedes beginning of litigation and achieves quite good results. This procedure implies the effort of the parties to achieve conciliation with the help of judge- arbitrator *(Friedensrichter).*[22]

Georgia legal space does not know the term „judge - arbitrator“ in the above- mentioned context. To denote the judge, implementing the functions of judge- arbitrator, legislator uses the term „magistrate judge“ – and puts cardinally different legal face on it.[23] Under present circumstances, „magistrate“ („magistrate judge“) and „arbitrator“ („judge- arbitrator“) are mostly identical notions, synonyms, or, in other cases, different sides of one medal.[24]

In some countries, according to the name, only magistrates‘ institute and the relevant courts exist (Zealand, Sweden, India, etc.) and in more countries, according to the name, only settlement courts (judges) exist (Russia, Italy, Greece, Belgium, Israel, Turkey, etc.); and in some countries (Malta, Canada, Malaysia, England) they exist in combined (both) forms.[25]

The „priority and main objective of the judge- arbitrator is settle of the parties and, thus, resolution of conflict as quickly as possible, with the minimum expenses of time, energy and funds, i.e. achievement of maximum effect (result) with maximum „procedural economy“ (!) – of course, mainly from quantitative (!) viewpoint.“[26] It is not difficult to notice, that the term „arbitrator“, primarily, indicates to the priority objective and tasks (or method) of activities of such court (judge), which are directed towards settle of the parties, which, as a rule, implies their settlement and de-escalation-settlement of conflict through it“.[27]

Following from the above judgment it is clear, that the status of „judge- arbitrator“ best fits the judge, who exerts best efforts for the parties to compete the case with settlement.

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16 *Cratsley J. C.,* Judges and Settlement, So Little Regulation with So Machar Stake Judicial Mediation and Settlement, Dispute Re-solution Magazine, Published by The American Bar Association Section of Dispute Resolution, Vol.17, №3, Magazine, Editor: Chip Stewart Texas Christian University Fort Worth TX, Spring 2011, 4.

17 *Kublashvili K.,* I will be the First Defender of Honest and Unbiased Judges, Supreme Court of Georgia, Journal “Martlmsajuleba”, (“Justice”), №1, Tbilisi, 2006, 11 (In Georgian). *Pogonowski P.,* Role of Judges and Party-autonomy in Settlement in Litigation, John Paul II Catholic University of Lublin, – Ol Pan, 2008, 153.

18 *Liluashvili T., Liluashvili G., Khrustal V., Dzlierishvili Z.,* Civil Procedural Law, Part I, Tbilisi, 2014, 14 (In Georgian).

19 Justice of the Peace. See *Gabisonia I.,* Jury, Magistrate Courts and Conciliation Courts, Tbilisi, 2008, 350 (In Georgian).

20 One of the obligations of the judge is to assist the parties in conciliation. In this case, the role of judge, as conciliator and its importance for efficiency of justice is underlined. See the Issues of Ethics of Legal Professions (American Bar Association, the Rule of Law initiative), Washington, 2009, 105.

21 See *Gabisonia I.,* Jury, Magistrate Courts and Conciliation Courts, Tbilisi, 2008, 342 (In Georgian).

22 *Tsertsvadze G.,* Mediation, Alternative Dispute Resolution Form (General Overview), Tbilisi, 2010, 127 (In Georgian). With further reference to: *Kumpan C., Bauer C.,* Mediation in der Schweiz, in: *Hopt K., J., Steffek F.,* Mediation, Rechtsvergleich, Regelungen, “Mohr Siebeck”, Tübingen, 2008, 87.

23 Article 13 (2) and Article 14 of CPCG (In Georgian).

24 *Gabisonia I.,* Jury, Magistrate Courts and Conciliation Courts, Tbilisi, 2008, 98 (In Georgian).

25 Ibid, 102.

26 *Gabisonia I.,* Jury, Magistrate Courts and Conciliation Courts, Tbilisi, 2008, 109 (In Georgian).

27 Ibid, 100.

2.2. Judge, as a Mediator

For centuries, judges were regarded as experts in jurisprudence and law controllers (the same applies to them nowadays). It is a paradox, but judges often have difficulties in mediation process. They often have to give up their broad powers, legal behavior, unity of diplomatic habits and ability to convince. It is also paradoxical that big group of mediators of the world are staffed by the resigned judges.[28]

Like judge, mediator appears in the role of mediator. Mediation is support and facilitation of negotiation process, as a process of structural negotiation with participation of professional mediator.[29]

„Mediator is a person, who, in the process of direction of mediation process, assists parties to outline their interests, come to the ways of resolution of the problem, provides alternative ways of dispute resolution to the parties, however, he is not limited to this function only".[30] Mediator is the third party, equipped with special knowledge, who helps the parties in proper direction of negotiation process.

It could be mentioned that mediation is not a „profession". Mediator may not have legal education, but be equipped with negotiation skills, which, in its turn, shall be enhanced by the methods of law, psychology, sociology, etc. Often, mediators are lawyers, notaries and judges.[31]

Mediator cannot be the third person, who is interested in the outcome of the case or depends on either party to mediation process. It is mediators' rule that in the process of implementation of mediation, the mediator[32] shall be internally „empty", he shall not have any personal relation with the parties.[33]

Equalization of qualification and professionalism of a judge and mediator is difficult.[34] However, whether the judge or the mediator leads the negotiation process, concluding of the case with settlement is still the opportunity and privilege of the parties.[35]

The judge's being in the role of arbitrator was subject to dispute and judgment years ago (USA). Part of judges considered that their participation in settlement process compromised their activities as they were appointed as judges and not as arbitrators (or mediators). Many judges mentioned that it was additional, labor-consuming function for them. Consequently, part of judges didn't get involved in settlement process, entrusting this function to lawyers,[36] who, in their turn, considered that the judge's involvement in settlement process would bring legal results to the both disputing parties.[37]

In spite of the above-mentioned judges often demonstrated mediators' features and approaches in settlement process.[38] In particular, they arranged separate meeting with the parties and their lawyers, observed

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28 *Certilman S. A.,* Judges as Mediators: Retaining Neutrality and Avoiding the Trap of Social Engineering, 2007, 24.

29 In details, see *Tsertsvadze G.,* Mediation, Alternative Dispute Resolution Form (General Overview), Tbilisi, 2010, 34 (In Georgian). With further reference to: *Nunn P.,* Time is Money: Strategies to Ensure a Speady Resolution in: ADR in Asia Solutions for Business, Euromoney Publications, Hong Kong, 2005, 19.

30 Code of Professional Ethics of Mediators, Article 3. See *Tsertsvadze G.*, Prospects of Legal Regulation of Mediation in Georgia, National Center for Alternative Dispute Resolution, Tbilisi, 2013, 262-264 (In Georgian).

31 In details, see Tsertsvadze G., Mediation, Alternative Dispute Resolution Form, Tbilisi, 2010, Chapter VI, 218 (In Georgian).

32 "Term mediate is derived from the latin word mediare' which means to be in the middle". *Byrne R.*, *Clancy Á., Flaherty P., Diop sa GH* , *Leane E., Ní Chaoimh G.*, *Ní Dhrisceoil V, O'Grady J.*, *O'Mahony C., Staunton C., Diop sa GH*, Alternative Dispute Resolution, Consultation Paper, Law Reform, Copyright Law Reform Commission, 2008, 19.

33 See *Kokhreidze L.,* Legal Aspects of Judicial Mediation, Journal "Martlmsajuleba da Kanoni" ("Justice and Law"), № 4(39)'13, Tbilisi, 2013, 22. With further reference: *Lukianova O.V., Melnichenko R.G.,* The Fundamentals of Legal Conflictology and Mediation, Guide, Volgograd, 2011, 69.

34 Except the case, if we, as an exception, disregard settlementory properties, which are necessary for settlement process.

35 *Crane S. G.,* Judge Settlements versus Mediated Settlements, Dispute Resolution Magazine, 2011, 22.

36 Lawyers are able to convince the clients to make decision on settlement. And it can be achieved by creation of primary expectation of settlement, preparation of clients for productive negotiations and offering the settlement. *Robbennolt J. K.,* Attorneys, Apologies and Settlement Nagotiation, Harv. Neg. L. Rev., 2008, 34.

37 *Wall J. A. Jr., Rude D. E.,* Judges Role in Settlement: Opinions from Missouri Judges and Attorneys, Journal of Dispute Resolution, Missouri School of Law Scholarship Repository, 1988, 3, <http://scholarship.law.missouri.edu/jdr>, [01.07.2019].

38 *Pieckowski S.,* Using Mediation in Poland to Resolve Civil Disputes: A short Assessment of Mediation Usage from 2005-2008, International, November 2009/January 2010, 85.

confidentiality, investigated non-financial aspects of dispute, repeatedly offered settlement to the parties for purpose of dispute resolution. Although judge often does not have conciliatory skills, characteristic for mediator, he actively uses his experience and personal properties.[39] It is not disputable that judge has all resources for direction of settlement process, stimulate it and finally, conclude the case by settlement.[40]

3. Qualification of Judge in Settlement Process

3.1. The Fundamentals of Judge's Qualification

"It is known that even the most ideal judicial system will not give the result, if the court corps is not staffed with highly qualified judges".[41]

„The judge's profession is prestigious in all countries, including Georgia, but it is related to huge work and responsibility. The judge has to implement his activities in the framework of the existing legislation, at the same time, he, as a citizen, is limited in his day-by-day activities and personal life. Although he, as the member of society, shall not be isolated from the society, he has to behave in compliance with the Code of Ethics of Judges in his everyday life".[42]

Independence of judges is the central element of judicial independence. „The Code of Judicial Ethics repeated fundamental principles of implementation of justice, as the judge's actions shall comply with the law and only independent, impregnable judge is able to correctly use and apply law".[43] Consequently, the interests of formation of court, as independent authority, require ensuring of judge's independence, supported by the law. The main expression of judge's independence is that nobody has the rights to interfere in judge's activities during consideration- making decision on specific cases by him.[44]

However, there exists another understanding: independence is not granted to the judge as a privilege, but as the possibility of fulfillment of rights and obligations, imposed by the Constitution. Moreover, it is a kind of personal property of a judge, which he shall maintain and develop (or, even lose) for ensuring of the above-mentioned purpose.[45]

The methods of judicial activities are not formulated anywhere in the law, they are not mandatory either. It is the result of judicial practice.[46] Judicial system depends on high qualification and professionalism of judges, as only such judge can be entrusted with implementation of justice. Judge's activities are based on significant principles, including: independence, unbiasedness, honesty, observance of ethic norm, equality, competence and diligence,[47] as well as professional, social and personal competences.[48]

„Principles of Independence of Court" determine classification, selection procedure and training of judges and rules, that „the person, selected as judges, shall be persons with dignity and capabilities with the relevant

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39 *Cratsley J. C.,* Judicial Ethics and Judicial Settlement Practices, Time for Two Strangers to Meet, Dispute Resolution Magazine, 2005, 16.

40 Ibid, 17.

41 *Liluashvili T.,* Civil Procedural Law, 2nd ed., Tbilisi, 2005, 14 (In Georgian).

42 Code of Judicial Ethics of Georgia, adopted by the Resolution №6 dated June 23 2001 of the Conference of Judges of Georgia. Comments to the Code of Judicial Ethics of Georgia, Article 1, <http://www.ujg.ge>, [01.07.2019].

43 Ibid. Article 4, <http://www.ujg.ge>, [30.06.2016].

44 *Liluashvili T., Khrustal V.,* Comments to the Civil Procedural Code of Georgia, Tbilisi, 2007, 11-12 (In Georgian).

45 *Boling H.,* Judge's Independence and Acceptance of the Judge's Decision by the Parties – Direction of the Case Hearing, Conversations on Settlement and Peaceful Dispute Resolution; *Lutringhause P.*, Methodology of Decision- Making on Civil Code, Judges' Seminar, Bakuriani, October 18-21, 2007, 138 (In Georgian).

46 *Tchanturia L., Boeling H.,* Methodology of Judicial Decision - Making on Civil Case, Tbilisi, 2003, 56 (In Georgian).

47 "Bangalore Principles of Judicial Conduct" and its comments, Tbilisi, 2015, 219.

48 *Gogishvili M., Sulkhanishvili M., Meskhishvili K., Jinoria Kh., Gelashvili R.,* Relations in the Court Meeting Room, Communicational and Legal Aspects of Meeting Management, Settlement of Parties, Supreme Court of Georgia, Tbilisi, 2010, 8-9 (In Georgian).

training and qualification in the sphere of law (p. 10)".[49] Besides, judge shall be equipped with objective criteria like honesty and ability, and, most importantly, he shall have internal state of independence granted by the law (predisposal of independence), which forms the basis of the basis for implementation of justice.[50]

In accordance with the requirements and privileges, provided by Georgian (and not only Georgian) legislation, judge has judge's immunity,[51] which, on the one hand, protects him and on the other hand, imposes obligations. Judge's immunity plays significant role in justice and, this, in independence of judicial power.[52] The right to the independent court is the right, based on people's interest and belongs to people. The purpose of judge's immunity is to protect and ensure interest of the society to have independent court.[53]

Civil proceedings are based on the principle of dispositionality and competition. Consequently, implementation of civil proceedings shall not be taken as implementation of norms, specified in CPCG. Although the parties are authorized to dispose the subject of dispute on the basis of right and apply to the methods of fight (following from dispositionality), court has the leading position during the process, as it is the representative of the state authority, which the parties obey. The actions of the parties are directed towards giving providing beginning and basis to the court's activities for making the relevant decision.[54]

3.2. Professionalism of Judge

„Judge, primarily, is required to respect the law and, independently, properly apply and execute the law in his judicial activities",[55] however, the judge, working with civil cases, can fulfill his tasks and obligations only if he possesses personal and specific professional properties, which imply fundamental knowledge of legislation and certain life experience.[56]

Qualification and professionalism of judge, on the one hand, requires high-level knowledge of legislation, and, on the other hand, implies judge's ability to implement his activities within his competences, through proper communication and skills. The judge shall establish certain communication with entrusted people and manage the hearing so that the parties find their own selves within their legal dispute.[57]

Majority of lawyers thinks that only consistent, fundamental, objective and rational decision-maker can lead proceedings towards settlement. However, many factors prove the circumstance that recently psychological influence on decision-making process increases more and more.[58] And settlement, on the one

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49 "Basic Principles on Court's Independence", Vol. 2, Tbilisi, 1999, 67.

50 *Liluashvili T., Liluashvili G., Khrustal V., Dzlierishvili Z.*, Civil Procedural Law, Part I, Tbilisi, 2014, 21 (In Georgian).

51 In details, see System Analysis of Judges' Responsibility (National Legislation, International Standards and Local Practice), Tbilisi, 2014, 85 (In Georgian).

52 "The notion of judicial immunity is not the privilege, invented in favor or for protection of personal interests of judges. The right to free court is the right, which is based on the interest of people and which belongs to people. For this very reason, this right is included in the Constitution. The purpose of the judicial immunity is to protect and ensure the right of the society to have independent judicial system". See *Henley V.,* Indifference towards Fulfillment of Judge's Duties and its Results, Conference of Judge's Profession. Independence of the Court and Judge's Profession, Materials of the Judge's Conference, Tbilisi, 27/28, 2013, 33.

53 *Henley V.,* Indifference towards Fulfillment of Judge's Duties and its Results, Conference of Judge's Profession, Tbilisi, September 27/28, 2013, 33.

54 *Treushnikova M. K. (ed.),* Chrestomathy of Civil Proceedings, M., 1996, 62.

55 Code of Judicial Ethics of Georgia, adopted by the Resolution №6 dated June 23 2001 of the Conference of Judges of Georgia. Comments to the Code of Judicial Ethics of Georgia, Article 11, <http://www.ujg.ge>, [01.07.2019].

56 *Tchanturia L., Boeling H.,* Methodology of Judicial Decision - Making on Civil Cases, Tbilisi, 2003, 1 (In Georgian).

57 See *Chachanidze E., Zodelava T., Gogishvili M., Sulkhanishvili M.,* Communication in the Court, Tbilisi, 2013, 22 (In Georgian).

58 *Birke R., Fox C. R.,* Psychological Principles in Negotiation Civil Settlements, Harv. Neg. L. Rev., 1999, 1.

hand, is an important legal measure and on the other hand, is the process with psychological loading,[59] requiring from judge highly professional independence.[60]

Judge shall implement judicial power with dignity, unselfishly and in unbiased manner.[61] While making decision, the judge's opinion shall not fluctuate under political, social, party's interest, social impact or impact of other relation, or under the fear of criticism.[62]

Judge's professionalism implies that in the course of implementation of judicial duties, the judge shall be free from any preliminarily created or obsessive idea, opinion, superstition or disposition. He shall avoid such behavior (mimics, expression, gesturing, etc.) which will be perceived by the participants of the process as preliminary created or obsessive opinion.[63] For the judge to implement justice, serve to the rule of law and ensure maximum protection of the parties' interests, he shall be equipped with various skills and competences.

Judge is the guarantor or supremacy of rule and law, which, primarily, is based on the greatest personal (judicial), moral responsibility and further – on the implementation of judicial power. In particular, „the judge shall be devoted to the law, judge's oath and duty, in the course of implementation of justice – the guarantor of supremacy of rule and law".[64]

The judge shall preserve the prestige of justice and not behave in the manner, inappropriate for the authority of the court and title of the judge.[65] The judge, in the course of implementation of justice, is independent and makes decision only in compliance with the law, universally recognized principles and norms of international law.[66]

4. Judge's Competence in Settlement Process

The judge plays the greatest role in directing and regulation of settlement process.[67] The judge shall be equipped not only with the knowledge of procedural norm, but the skills, which are necessary for proper fulfillment of judicial duty.[68]

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[59] *Gogishvili M., Sulkhanishvili M., Meskhishvili K., Jinoria Kh., Gelashvili R.,* Relations in the Court Meeting Room, Communicational and Legal Aspects of Meeting Management, Conciliation of Parties, Supreme Court of Georgia, Tbilisi, 2010, 27 (In Georgian).

[60] *Todua M., Kurdadze Sh.,* The Peculiarities of Decision- Making on Civil Cases of Certain Category, Association of Judges of Georgia, Tbilisi, 2005, 80 (In Georgian).

[61] See Code of Judicial Ethics of Georgia, adopted by the Resolution №6 dated June 23 2001 of the Conference of Judges of Georgia. Comments to the Code of Judicial Ethics of Georgia, Article 12 (In Georgian).

[62] Ibid, Article 13.

[63] Ibid, Article 14.

[64] Code of Judicial Ethics of Georgia, adopted dy the Resolution №6 dated June 23 2001 of the Conference of Judges of Georgia. Comments to the Code of Judicial Ethics of Georgia, Article 4 (In Georgian).

[65] See ibid, Article 6.

[66] See Code of Judicial Ethics of Georgia, adopted by the Resolution №6 dated June 23 2001 of the Conference of Judges of Georgia. Comments to the Code of Judicial Ethics of Georgia, Article 11 (In Georgian).

[67] Settlement process is informal and voluntary unlike the process of legal proceedings, which is directed by the judge and which, in its turn, is binded by formalities and procedural rules. The above mentioned becomes more obvious, when the judge tried to settle the Parties. *Ervasti K.,* Conflicts before the Courts and Court-annexed Mediation in Finland, Scandinavian Studies in Law, 1999-2012, 191. With further reference: *Menkel-Meadow C.*, Pursuing Settlement in an Adversary Culture: A Tale of Innovation Co-opted or "The Law of ADR", Florida State University Law Review, 1991, 1-46.

[68] See the Issues of Ethics of Legal Professions (American Bar Association, Rule of Law Initiative). Washington, 2009, 108. Implementation of settlementory function by judge gives him managerial task, which slightly changes general characterization of a judge. See and compare: *Roberts K.,* What Judges Actually Do, Judges' Journal, 2010, 29; *Floyd D.H.,* Can the Judge do this? – The Need for a Clearer Judicial Role in Settlement, Arizona State Law Journal, 1994, 48-49.

[68] See ibid, 100.

The judge's position may simultaneously be an opportunity, privilege, responsibility[69] and duty.[70] The judge's activities cover certain competences. Their unity creates uniform system, with the help of which is possible to analyze, manage and use one's own emotions.

The objective of settlement is settlement of dispute, conflict.[71] „The most famous and widely spread is professional competence, which in itself includes legal knowledge and the ability of use of this knowledge within the legal dispute to be resolved by it. Besides, professional competence implies high qualification of consideration of the case, which, in its turn, includes knowledge of management of hearing, holding conversation and knowledge of methodology. It also implies the skill of negotiating related to settlement. Professional qualification requires possession of skill of speaking, argumentation and convincing."[72]

„The judge shall consider each specific case with attention, without haste, with the greatest responsibility. He shall be patient towards the parties, observant and convincing."[73]

Social competence, i.e. communication skill, which is presently considered the most important one among judge's functions, is obtaining growing importance in judge's activities.

The science explains communication as exchange of information, facts, perceptions, ideas, assessments, emotions, feelings, expectations and wishes. Social competence requires from the judge to equalize different interests, demonstrate the ability of problem solving and motivation of the participants. Social competence also implies conflict management skill.[74]

Personal competence is also important, which implies, that the judge shall possess natural authority, appear before society confidently, reasonably and prudently, understand his own strengths and weaknesses.[75]

In addition to the above mentioned, "emotional intellect" is also important for the judge, which implies analysis, management and utilization of emotions. The above mentioned includes key qualifications and skills like intuition, confidence, ability of criticism and conflict resolution, comeliness, ability of teamwork, analytical thinking.[76]

Implementation of judicial powers means complex rules of conduct. The above-mentioned rules of conduct include:

- Moral –the judge shall implement his powers with dignity, honesty, unselfishly and unbiasedly;[77]
- Independence – in the course of decision- making, the judge shall be independent and impregnable;
- Firmness – his opinion shall not fluctuate due to the influence of political, social, party's interest, impact of society or other relations, or under the fear of criticism;[78]

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69 See European Charter on Judge's Status, Strasbourg, 1998, 8, <library.court.ge>, [01.07.2019].

70 In details, see the Issues of Ethics of Legal Professions (American Bar Association, Rule of Law Initiative). Washington, 2009, 89-142.

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

72 *Gogishvili M., Sulkhanishvili M., Meskhishvili K., Jinoria Kh., Gelashvili R.,* Relations in the Court Meeting Room, Communicational and Legal Aspects of Meeting Management, Settlement of Parties, Supreme Court of Georgia, Tbilisi, 2010, 8 (In Georgian).

73 Code of Judicial Ethics of Georgia, adopted dy the Resolution №6 dated June 23 2001 of the Conference of Judges of Georgia. Comments to the Code of Judicial Ethics of Georgia, Article 12, <http://www.ujg.ge>, [01.07.2019].

74 *Gogishvili M., Sulkhanishvili M., Meskhishvili K., Jinoria Kh., Gelashvili R.,* (compilers), Relations in the Court Meeting Room, Communicational and Legal Aspects of Meeting Management, Settlement of Parties, Supreme Court of Georgia, Tbilisi, 2010, 8-9 (In Georgian).

75 *Chachanidze E., Zodelava T., Gogishvili M., Sulkhanishvili M.,* Communication in the Court, Tbilisi, 2013, 22 (In Georgian).

76 *Gogishvili M., Sulkhanishvili M., Meskhishvili K., Jinoria Kh., Gelashvili R.* (compilers), Relations in the Court Meeting Room, Communicational and Legal Aspects of Meeting Management, Settlement of Parties, Supreme Court of Georgia, Tbilisi, 2010, 9 (In Georgian).

77 Code of Judicial Ethics of Georgia, adopted by the Resolution №6 dated June 23 2001 of the Conference of Judges of Georgia. Comments to the Code of Judicial Ethics of Georgia, Article 12 (In Georgian).

78 Ibid, Article 13.

• High professionalism – in the course of implementation of justice the judge is independent and makes decision only in compliance with the law, universally recognized principles and norms of international law.[79]

Trust of society towards independence, unbiasedness and fairness of judicial system finally depends on personality, integrity and moral properties of individual judge.[80]

"Even implementation of all constituent components of judicial reform cannot provide the desired results, if the most important requirement is not fulfilled – staffing of the system with unbiased, honest and, most importantly, qualified personnel. In general, judge, his professionalism, honesty and objectiveness is the main objective of the reform, as the basis of success of the reform is their activities. Only such judges can restore the population's trust towards court, fight against corruption through enactment of internal control mechanism of judicial system – disciplinary proceedings, provide principal response to the attempts of interference with their activities and influencing them and thus, restoration and enhancement of prestige of the court."[81]

5. Judge's Functions in Settlement Process

5.1. Implementation of Justice

Fundamental principles of legal assurance of judicial independence are reflected in the Constitution of Georgia, which rules that the state power shall be exercised on the basis of the principle of distribution of powers.[82] In accordance with the Article p. 3 of the Article 59, justice shall be exercised by general courts, which shall be guided by the rule, established by the law of hearing- resolution of case. Diversion from this rule shall not be regarded as implementation of justice.[83]

The most important element of independence of judicial power is the judge's independence, which is supported by universally recognized principles, recommended by the UN[84] and Committee of Ministers of European Council[85], which shall create conditions of independence for judges, and those of restraining from unlawful activity for other branches of power.[86]

"Implementation of justice on civil case is based only on one goal – to settle and eliminate the conflict, emerged in public relations, enable the participants of public relations to exercise their rights without any barriers, under favorable and desirable conditions".[87]

"The rule of implementation of justice is accurately and exhaustively specified in the law. In particular, implementation of only the procedural actions and based on the rules, provided by the law, is admissible; the court decision may be based only on the factual circumstances, which are determined through proofs, exactly identified by the law; the parties have the right of participation in hearing of the case, as well as the right of appearance by representative (lawyer); the person, who considers that unjustified decision is made in regard to him, has the right to appeal it in higher judicial instance; valid system of regulation of

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79 Code of Judicial Ethics of Georgia, adopted by the Resolution №6 dated June 23 2001 of the Conference of Judges of Georgia. Comments to the Code of Judicial Ethics of Georgia, Article 11 (In Georgian).

80 *Balant T. J.,* Independence of Court and Judge's Profession, Tbilisi, 2013, 64.

81 Basic Directions of Judicial Reform, Supreme Court of Georgia, Journal "Martlmsajuleba" ("Justice"), №1, Tbilisi, 2006, 26 (In Georgian).

82 Article 4, part 3 of the Constitution of Georgia (In Georgian).

83 *Liluashvili T.,* Civil Procedural Law, 2nd ed., Tbilisi, 2005, 25 (In Georgian).

84 Basic Principles on Independence of Court, adopted by the UN 7th Congress on Prevention of Crime and Treatment of Offenders, Milan, August 26 – September 6, 1985.

85 Recommendation №R92(12) dated October 13 1994 of the Committee of Ministers of European Council "On Independence, Efficiency and Role of Judges".

86 *Liluashvili T.*, Civil Procedural Code, 2nd ed., Tbilisi, 2005, 18 (In Georgian).

87 *Gogishvili M., Sulkhanishvili M., Meskhishvili K., Jinoria Kh., Gelashvili R.,* Relations in the Court Meeting Room, Communicational and Legal Aspects of Meeting Management, Settlement of Parties, Supreme Court of Georgia, Tbilisi, 2010, 41 (In Georgian).

special bodies and their activities is established for the purpose of verification of lawfulness and justification of court decisions, etc.".[88]

For the judge to exercise justice, it is necessary to make fair and justified decision in accordance with the law and his own internal belief. "Each verdict and decision, made by a judge shall be justified in compliance with the requirements of the law, in order to convince the loser party in frivolousness of its claim".[89] The accompanying and equal function of implementation of justice is for the judge to serve to the society in conformity with the rule of law, as the major axis or justice.

5.2. Study of a Case

„Judge shall consider each specific case with attention, without haste, with responsibility and be patient, observant and convincing towards the parties".[90] He is obliged to fulfill the imposed duties with attention and on the basis of self-control. During the hearing of the case, judge shall act on the basis of the law, as well as internal belief and individual views, but not willfully.[91]

In order to achieve settlement, primarily, risks shall be assessed accurately and objectively, which will be obvious in the case of failure to achieve settlement; and the best way of assessment of these risks is possessing information on all facts and circumstances of the disputable case.[92] In the case of settlement, at any stage of proceedings, judge, primarily, shall be oriented towards the subject and legal state of the dispute, consequently, mostly, towards the same criteria, as it is oriented during decision-making on the case".[93] "The precondition of proposal of settlement is fundamental analysis of the subject and factual circumstances of the case, which, mainly, doesn't differ from the process, which is required for the formation of the final decision by judge".[94]

Judge shall profoundly know the essence of the case, its factual circumstances,[95] on which settlement is to be implemented. It could be stated that the judge shall know from the very beginning, whether or not is will be possible to conclude the case by settlement. The essence of the case, primarily, is created by the content of the suit and unity of its constituent elements. Any information on each factual circumstance and the evidences these circumstances are based on, are primarily reflected in the suit. The suit is the main and fundamental document, which forms the precondition for initiation of legal proceedings, hearing in the court and settlement. "Both the means of protection of the violated or disputable rights and the nature of the future court decision depend on the elements of the suit".[96] The suit has two elements: the subject and the basis of the suit.[97] The demand on the claim of the plaintiff is formulated and the right violated is specified in the suit. The suit represents formal legal object, on which settlement shall be performed.[98]

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88 *Liluashvili T., Liluashvili G., Khrustal V., Dzlierishvili Z.,* Civil Procedural Law, Part 1, Tbilisi, 2014, 32 (In Georgian).

89 Code of Judicial Ethics of Georgia, adopted dy the Resolution №6 dated June 23 2001 of the Conference of Judges of Georgia. Comments to the Code of Judicial Ethics of Georgia, Article 5, <http://www.ujg.ge>, [01.07.2019].

90 The Issues of Ethics of Legal Professions (American Bar Association, Rule of Law Initiative), Washington, 2009, 94.

91 Ibid, 101-102.

92 *Cory M. V. Jr.,* How to Negotiate the Best Settlement, Danks, Miller & Cory 213 South Lamar Jackson, MS, 2011, 3, <http://danksmillercory.com/>, [01.07.2019].

93 *Tchanturia L., Boeling H.,* Methodology of Judicial Decision-Making on Civil Case, Tbilisi, 2003, 93 (In Georgian).

94 Ibid, 92.

95 The above-mentioned particular applies to the reporting judge and chairman following from their responsibility. *Tchanturia L., Boeling H.,* Methodology of Judicial Decision-Making on Civil Case, Tbilisi, 2003, 51 (In Georgian).

96 *Kurdadze Sh., Khunashvili N.,* Civil Procedural Law, Tbilisi, 2012, 298 (In Georgian).

97 In details see ibid, 299-300.

98 In details see ibid.

Determination of whether or not it is possible to approval settlement in the case of settle of the parties on the stage of appeal, submitted in regard to default judgment and on the stage of submission of private claim, is also related to the study of case by a judge. The idea of the above-mentioned questions is that in the case of approval of settlement judge does not familiarize with substantial part of the case and is limited only to implementation of specific procedural actions, which gives origin to the possibility of approval of unlawful settlement.[99]

In judges' opinion, approval of settlement is possible on any stage of legal proceedings for the purpose of observance of parties' interests and dispositionality principle, as well as implementation of quick justice.[100] Besides, all measures shall be taken for prevention of approval of unlawful settlement. In the course of settlement, the court shall not limit only by specific procedural actions, it shall go beyond the boundaries of the claim and private claim demands, study the case and approve settlement only after that.[101] Thus, the issue of study of case is unambiguously substantial for minimization of probability of approval of unlawful settlement.

5.3. Correct Resolution of Dispute

One of the main tasks of the judge is correct and fast resolution of legal dispute. To achieve the above-mentioned goal, he, first, will try to take the parties to dispute civil case by agreement, in particular, by settlement, or achieve such agreement by mediation and within its scope. Certainly, such dispute-free and agreement-based result if desirable, however, it cannot be always achieved. "If settlement is not possible, the judge shall settle the disputable issue through litigation".[102]

The Article 394 of the CPCG establishes the cases of violation of procedural norms, which form the basis for nullification of decision. This basis may be violation of norms or incorrect use of procedural law, but under the condition, that such violation resolved the case substantially incorrectly.[103] As for mistaken use of the norm of material law, this is the case, when "the court incorrectly identified the parties' legal relations and resolved the dispute on the basis of the law, regulating other legal relations".[104] Implementation of justice is related to proper classification of dispute. Incorrect classification may lead the judge to erroneous decision, the basis of which may be even slight and insignificant mistake.[105]

Conflict is a concomitant event of human relations[106] and the society need refined and efficient methods for its resolution.[107] Conflict is a relation, full of negative emotions, arising between two or more persons.[108] "The law facilitates settlement of different interests and performs the function of conflict regulati-

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99 See Recommendations on Problematic issues of Judicial Practice of Civil Law, XXX, Homogeneous Practice of the Supreme Court of Georgia in Regard to Civil Cases, Supreme Court of Georgia Tbilisi, 2007, 39 (In Georgian).

100 *Moffitt M.,* Pleading in the Age of Settlement, Indiana Law Journal, 2005, 737.

101 See Recommendations on Problematic issues of Judicial Practice of Civil Law, XXX, Homogeneous Practice of the Supreme Court of Georgia in Regard to Civil Cases, Supreme Court of Georgia Tbilisi, 2007, 39 (In Georgian).

102 *Schmidt S., Hichter H.,* Decision-Making by Judge in Civil Procedural Law, Tbilisi, 2013, 7 (In Georgian).

103 See *Kurdadze Sh., Khunashvili N.,* Civil Procedural Law of Georgia, Tbilisi, 2012, 559 (In Georgian).

104 *Kurdadze Sh., Khunashvili N.,* Civil Procedural Law of Georgia, Tbilisi, 2012, 560 (In Georgian).

105 Two opinions exist in regard to non-legal definition of making incorrect decision by judge: the first, that judges in general are prone to mistakes and the second, that the disputing parties shall apply to the alternative dispute resolution means to avoid judicial mistakes. *Lande J.,* Judging Judges and Dispute Resolution Processes, Nevada Law Journal, Vol. 7, 2007, 457-458.

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

107 *Byrne R.*, *Clancy Á., Flaherty P., Diop sa Gh.*, *Leane E., Ní Chaoimh G.*, *Ní Dhrisceoil V., O'Grady J.*, *O'Mahony C., Staunton C., Diop sa Gh.*, Alternative Dispute Resolution, Consultation Paper, Law Reform, Copyright Law Reform Commission, 2008, 9.

108 *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, Int. Int. Rev. Law and Econ., 1990, 10 (3-27), 2.

on; the law has the function of avoidance, i.e. prevention of conflicts".[109] The judge will not be successful and have his duty fulfilled without permanent goal – serve to the society. Freedom, peace, order and healthy governance are integral part of society. Consequently, the power of justice lies in governing the society in compliance with the law.[110] For the judge to exercise justice, it is necessary to make fair decision in compliance with the law and his internal belief. The court performs this function as the right, granted by the God – "do right justice".[111]

5.4. Suggestion of Settlement

Suggestion of proposal[112] is the prerogative, as well as obligation of the judge.[113] The judge's attempt to conclude the case by settlement shall start with suggestion of settlement.[114] Suggestion of settlement by the judge aims at creation of correct impression about judge andenhancement of trust towards justice.[115]

It is safe to say that settlement needs good moderator. In the case of court-annexed settlement judge is the best person and advisor.[116] The judge shall use his best efforts for settlement.[117] In accordance with the Article 372 and p.1 of the Article 218, court shall facilitate, by all means, and take all measures, provided by the law, for the parties to settle the case by settlement. "Taking all measures" means purposeful and professional[118] attempts of the judge to convince the parties in the advantage of concusion of case with settlement. For the purpose of the above mentioned, the judge is obliged to exptain, in due form, to the parties, harmful result for one of the parties in the case of failure to achieve settlement; that as a result of decision following proceedings, both parties will not obtain the desired outcome, and in the case of settlement it is possible, moreover – guarantees.[119]

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

110 *Brennan G.,* The Role of the Judge, National Judicial Orientation Programme, 1996, <http://www.hcourt.gov.au/-assets/publications/speeches/former-justices/brennanj/brennanj_wollong.htm>, [01.07.2019].

111 *Lazarishvili L.,* The Society Shall Believe that the Court Can Perform its Real Function – Execute Justice, the Supreme Court of Georgia, Journal "Martlmsajuleba" ("Justice"), №1, Tbilisi, 2006, 58-59 (In Georgian).

112 In some countries settlement is defined as the process, where neutral person undertakes mush active role of the offerer. See *Ostermiller S. M., Svenson D. R.,* Alternative Dispute Resolution Means in Georgia, Tbilisi, 2014, 123, footnote 85. With further reference to: Dispute Resolution Terms, National Alternative Dispute Resolution Advisory Council (Australia) 2003, 3, <http//1.1.1.1./467929504/472002888T080531121212.txt.binXMysM0-dapplication/pdfXsysM0dhttp://www.nadrac.gov.au/agd?WWW/rwpattach.nsf/VAP/(CFD7369FCAE9B8F32F341DBE097801FF)~1Report8_ 6Dec.pdf/Sfile/1Report8_6DEC.pdf>, [19.10.2008].

113 *Maureen A. W.,* Confidentiality's Constitutionality: The Incursion on Judicial Powers to Regulate Party Conduct to Regulate Party Conduct in Court-Connected Mediation. Harvard Negotiation Law Review, Spring 2003, 3.

114 In some judicial systems offering of mediation is the pre-condition of submission of suit, which means that the plaintiff is required to offer mediation to the defendant and the decision of the latter conditions how the hearing-resolution of the dispute will proceed – through mediation or litigation. See *Ostermiller S. M., Svenson D. R.,* Alternative Dispute Resolution Means in Georgia, Tbilisi, 2014, 136.

115 See *Tchanturia L., Boelling H.*, The Methodology of Judicial Decision Making on Civil Case, Tbilisi, 2003, 93 (In Georgian).

116 See *Gogishvili M., Sulkhanishvili M., Meskhishvili K., Jinoria Kh., Gelashvili R.,* Relations in the Court Meeting Room, Communicational and Legal Aspects of Meeting Management, Settlement of Parties, Supreme Court of Georgia, Tbilisi, 2010, 27 (In Georgian).

117 „Court was procrastinating conclusion of the process wilfully, for the purpose of allowing the parties agree somehow". See *Tsertsvadze G.*, Mediation, Alternative Dispute Resolution Form (General Overview), Tbilisi, 2010, 66 (In Georgian). With further reference to: *Haft F.,* Verhandlung und Mediation, in: *FritJo H,f, von Schlieffen K., (Hrsg.)* Hanbuch Mediation, 2. Auflage, "Beck", München, 2009, 72-73.

118 "The Englishmen don't restain from mentioning that during mediation the mediator may not even restrain from "blandishing" the parties on the way of achievement of agreement". In details, see *Tsertsvadze G.*, Mediation, Alternative Dispute Resolution Form (General Overview), Tbilisi, 2010, 236. With further reference to: *Andreus N.,* Mediation: A Pillar of Civil Justice in Modern English Practice, in: Zeitschrift Für Zivilprozess International, 12. Band. 2007, "Carl Heymann", Köln, 2008, 3.

119 See the Ruling dated March 10, 2008 of the Chamber of Civil, Entrepreneurial and Bankruptcy Cases if the Supreme Court of Georgia on the case: AS-95-375-08. The appellants explained that although real possibility of settlement existed, the court did not take necessary measures for it. In particular, it did not use its power for the

The forms of suggestion of settlement are different. Minimum is provision of the relevant consulting to the parties, as maximum – creation of preconditions for settlement. Practical value of consulting is its timeliness, i.e. action of judge – provide useful information in required time. Doing it later may be understood as pressure from the judge.[120] As for the preconditions for settlement – preconditions are a kind of basis, motive, reason for concluding of proceedings by settlement. The above-mentioned preconditions are legal and non-legal, subjective and objective. They are closely inter-related. They form the unity of bases, directed towards conclusion of proceedings with settlement.

The judge's attempt to terminate the case by settlement shall start with suggesting settlement, which is not limited only by settlement offer.[121] "settlement is offered before finalization of decision-making or, if the case is heard by collegial court, final formation of internal belief".[122]

For suggestion of settlement by the judge, he must have the feeling of justice and reasonability, life experience, knowledge of human character, psychological attitude, benevolence, ability to convince, knowledge when to continue consideration of the issue or, on the contrary, declare break for the purpose of relief.[123]

Some judges try to better involve[124] the parties in the process of negotiation, whereas other judges, with subjective attitude towards the issue, are not so eager to do it;[125] and it is the prerogative and obligation of the judge to offer settlement. The judge shall correctly assess the circumstances, facts, see future prospects and, at certain extent, predict the future development of the case, create the relevant environment, situation for conciliation, choose the right time and place for it.

"Up to now courts restrained from offering the parties to terminate the case by settlement, as such offer is seen as biasedness of the judge and a party may use it as the basis and justification for submission of appellation on diversion".[126] "The judge's offer on resolution of dispute by settlement can in no case be the basis for submission of appellation on diversion, in accordance with sub-paragraph "d" of p.1 of the Article 31 of CPCG, due to absence of objectivity, unbiasedness of the court, even when the judge expresses his opinion on future development of proceedings and possible or assumed outcome".[127]

Judge is not authorized to restrain from suggesting settlement basing on his assumption of making better decision as a result of proceedings. The more qualified and high professional the judge is the more cases he will conclude the case by settlement. Besides, the judge's attempt to terminate the case by settlement is based on two factors – achievement of settlement shall be possible, and the judge shall be the initiator of settlement.[128]In the course of implementation of the above mentioned activities, the actions: "involvement" and

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purpose of conclusion of the case with settlement, the possibility of announcement of break on its initiative or the party's solicitation so that it could listen only to the parties during the session or without attendance of other persons. The Appeal Court did not use 2 of the Article 373 of Civil Procedural Code of Georgia, according to which the appeal judge shall take measures for conclusion of the case with settlement. See the Ruling dated September 23, 2010 of the Chamber of Civil, Entrepreneurial and Bankruptcy Cases if the Supreme Court of Georgia on the case: №AS-513-482-10.

120 *Merrills J. G.,* International Dispute Settlement, New York, 2005, 3.

121 Only verbal offer is implied.

122 *Lutringhouse P.,* Methodology of Making Decision on Civil Case, Judges' Seminar, Bakuriani, October 18-21, 2007, 135 (In Georgian).

123 *Gogishvili M., Sulkhanishvili M., Meskhishvili K., Jinoria Kh., Gelashvili R.*, Relations in the Court Meeting Room, Communicational and Legal Aspects of Meeting Management, Settlement of Parties, Supreme Court of Georgia, Tbilisi, 2010, 41-42 (In Georgian).

124 Judge's professional effort for convincing the party to make the first step towards settlement is implied.

125 In details, see *Cornes D.,* Commercial Mediation: The Impact of the Courts, Tomson, Sweet & Maxwell Limited, 2007, 17.

126 *Lutringhouse P.,* Methodology of Making Decision on Civil Case, Judges' Seminar, Bakuriani, October 18-21, 2007, 134 (In Georgian).

127 Ibid.

128 *Lacey F. B.,* The Judge's Role in the Settlement of Civil Suits, Education and Training Series, The Federal Judicial Center, *Levin A. L., Ebersole J. L., Crawford K. C., Nihan C. W., Eldridge W.B., O'Donnell A .L.,* (Division Directors), Washington, D. C., 2005, 5-6.

"interference" shall be delimited from each other.[129] Involvement of the parties by the judge in the process of settlement attempt is voluntary and is implemented on the basis of being allowed by the law. In particular, in the case of "involvement", the authorized person tries to implement the activity, permitted by the law, in the relevant form for achievement of the relevant result.[130] As for "interference", it is implemented by unauthorized persons in irrelevant form and contradicts law, which does not occur in the given statutory case.

Conclusion of with settlement is fundamental function of the judge. This, from procedural viewpoint, his role cannot be passive. Making final decision on the terms of settlement is the prerogative of the parties; however, settlement process cannot be imagined without specific role and function of the judge.

6. Legal Outcomes of Settlement

6.1. Outcome for the Parties

6.1.1. Dispute Resolution at the Discretion of the Parties and with the Desired Outcome

Settlement if a voluntary legal event, implemented between the disputing parties,[131] which is based on reciprocal concession[132]. Unlike litigation, settlement is based on voluntary agreement of the parties on the rule of resolution of disputable issues.[133] Relations of the participants are based on equality of rights[134] and they do not subordinate to each other, whether they are natural persons or legal, public entities, etc.[135]

Compulsory implementation of settlement is forbidden. „Compulsion is not a necessary sign of law. The law, primarily, is associated with justice and not with compulsion".[136] Freedom of choice of the parties to nagotiate to conclude the dispute by settlement is related to the principle of equality of the parties in the eyes of the law.[137] Consequently, slight push on the part of judges shall not be taken for compulsion.[138] However, some judges achieve settlement through coercion, intimidation and presentation of the circumstances of the case in complicated form, which is unacceptable for major part of judges and is strongly opposed.[139]

Conflict may arise in any situation and circumstances. As conflict is an integral part of society, its managements *(conflict management, or conflict resolution)*[140] is necessary. Conflict is characterized by certain pyramid structure. On the first stage, the party is absolutely inactive. It may apply to informal negotiation process, advice. The next stage is application to the court or resolution of dispute in alternative form.[141]

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129 It is the prerogative of the parties solely and exclusively, to resolve the dispute by settlement and interference of the court in this process is inadmissible. However, if such interferences occur in juducial system, it indicates not to the legal unawareness of specific judge, but general conceptual abolishment, which is a vary dangerous trend for the state. See *Kiria G.,* Teoretical-Practical Comments to the Revision of Court Decisions, according to the Civil Procedural Code of Georgia, Tbilisi, 2002, 28 (In Georgian).

130 The initiative of the judge to conclude the case with settlement may be regarded as the form of such effort.

131 Often, settlement is a result, which the parties consider attractive, especially in the case of resolution of domestic and business disputes, when they speak about preservation of future relations. *Ervasti K.,* Conflicts before the Courts and Court-annexed Mediation in Finland, Scandinavian Studies in Law, 1999-2012, 190.

132 Mutual concession – when the party reduces the demand or concedes something from this demand. See *Liluashvili T.,* The Issues of Civil Proceedings in the Practice of Georgian Courts, Part I, Tbilisi, 2002, 114 (In Georgian).

133 *Les A., Cullen B.,* Settlement and Reform of the Civil Justice System: How Settlement is Changing the Practice of Law, Waikato Law Review, Vol. 17, 2009, 39.

134 Ibid, 40.

135 See *Akhvlediani Z.,* Mandatory Law, Tbilisi, 1999, 10 (In Georgian).

136 See ibid, 53.

137 Article 62 of the Constitution of Georgia.

138 *Cornes D.,* Commercial Mediation: The Impact of the Courts, Tomson, Sweet & Maxwell Limited, 2007, 13.

139 *Crane S. G.,* Judge Settlements versus Mediated Settlements, Dispute Resolution Magazine, 2011, 21.

140 *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, Inter. R. Law and Econ., 10 (3-27), 1990, 2.

141 *Byrne R.*, *Clancy Á., Flaherty P., Diop sa GH*, *Leane E., Ní Chaoimh G.*, *Ní Dhrisceoil V, O'Grady J.*, *O'Mahony C., Staunton C., Diop sa Gh.*, Alternative Dispute Resolution, Consultation Paper, Law Reform, Copyright Law Reform Commission, 2008, 13.

For the purpose of settlement of the case with the desired outcome, mutual concession of positions of the parties is necessary. Under such circumstances, communication is a fundamental basis for conciliatory negotiations. It is a kind of complex process with a lot of challenges, which may be overcome by negotiations.[142] In the process of settlement, each party yields its own position in favor of the other party. One party may have less favorable position in the course of proceedings, however, during the settlement process, it may offer the other party the benefit, which will balance and regulate the existing conflict. Mutual interest is the necessary preconditions, which provides legal outcome of settlement in the shortest time. In the case of settlement, „loser's position" does not exist and the status of the parties in settlement is the „reconciled", they are given the opportunity „to preserve their own prestige", which is the important precondition for further continuation of impaired entrepreneurial relations.[143] Winning and losing are subjective categories and each party to settlement understands them differently. Success is measured by what it is achieved through.[144]

6.1.2. Saving Procedural Costs

Civil procedural legislation, its norms and institutes are structures so that the goal of legal proceedings, prompt and correct resolution of case are achieved with as little costs of time and procedural means as possible.[145]

Implementation of justice on civil cases is chargeable. The parties and the third persons pay monetary funds in favor of court for implementation of procedural activities. Besides, the purpose of costs is prevention of unfounded application to the court and additional legal sanction for the party, violating the obligation.[146]

There are two types of process costs: court costs (which are exhaustively defined by the law) and the costs outside the court[147] (which are not exhaustively defined by the law). In parallel to all those costs, Procedural Code establishes the exceptions, when exemption from the payment of the court costs,[148] postponing of payment and reduction of payable amounts[149] of their distribution among the parties[150] is possible.

Settlement aims at saving procedural costs; for this purpose, legislator displayed humanity and established different distribution of costs in the case of settlement between the parties. In particular, in accordance with p.2 of the Article 54 of CPCG, if, in the case of settlement, the parties considered the rule of distribution of the court costs and the costs, borne for Lawyer's assistance themselves, the court settles this issue in accordance with their agreement. "In the case of settlement of the parties, they can agree on the rule of division of the court costs between themselves, which is mandatory for the court. If the parties haven't agreed, the court shall divide the court costs between the parties itself, on its own initiative."[151] P. 1 of the Article 49 of CPCG envisages reduction of the official fee. In particular, in the case of settlement of the parties, the official fee is halved.[152] In accordance with the mentioned Article, the official fee shall be hal-

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142 *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.

143 *Lutringhouse P.,* Methodology of Making Decision on Civil Case, Judges' Seminar, Bakuriani, 2007, 133-134.

144 *Berghoff E. A., Fieweger M.J., Linguanti T. V. M., Morkin M. L., Vigil A. C. (eds.), Williams P., Stewart M.,* The International Negotiations Handbook, Success through Preparation, Strategy, and Planning, A Joint Project from Baker & McKenie and The Public International Law & Policy Group, 2007, 9.

145 In details see *Liluashvili T., Liluashvili G., Khrustal V., Dzlierishvili Z.,* Civil Procedural Law, Part 1, Tbilisi, 2014, 103-105 (In Georgian).

146 See *Kurdadze Sh., Khunashvili N.,* Civil Procedural Law of Georgia, Tbilisi, 2012, 185 (In Georgian).

147 Part 1 of the Article 37 of CPCG (In Georgian).

148 Article 47 of CPCG (In Georgian).

149 Article 48 of CPCG (In Georgian).

150 Article 54 of CPCG (In Georgian).

151 *Liluashvili T.,* Civil Procedural Law, Tbilisi, 2nd ed., 2005, 147. In details, see recommendations on Problematic issues of Judicial Practice of Civil Law, XXX, Homogeneous Practice of the Supreme Court of Georgia in Regard to Civil Cases, Supreme Court of Georgia Tbilisi, 2007, 36 (In Georgian).

152 *Kurdadze Sh., Khunashvili N.,* Civil Procedural Law of Georgia, Tbilisi, 2012, 186 (In Georgian).

ved if the parties settle on the main court session. In accordance with p. 2 of the Article 49 of CPCG, if settlement takes place before the main session,[153] the parties will be completely exempt from official fee.[154]

Thus, the advantage of settlement is manifested in cost effectiveness of dispute resolution.[155] By means of settlement, long processes (through different instances), permanently related to the court costs, may be avoided.[156] [157] In the case of settlement, it is possible to agree on court costs, and the costs, related to execution, may be completely avoided.

6.1.3. Conflict Resolution and Restoration of Justice

Conflict is a social phenomenon. It is caused by certain events, facts, situations, preceding the conflict and which, under certain condition, is caused by the subjects.[158] In the environment of existing of conflict, parties may change their positions and find the relevant resources for peaceful resolution of dispute (dispute *will only be pursued by peaceful means).*[159] The need of establishment of the court was conditioned by the need of enhancement of public order, elimination of offence, resolution of conflicts emerging between the parties.[160] The role of the judge in conflict regulation and direction of communication process is unambiguously active.[161]

The ways, means and outcomes of resolution are different in the case of proceedings and conclusion of case with settlement.[162] Conclusion of dispute by settlement factually implies resolution of dispute, settlement of conflict. Factual resolution is a meaningful resolution. Resolution of dispute by settlement shall bring "real" result to the parties. Legal definition of "real result" does not exist. Real is the result, which is expressed in satisfaction of the requirements (rights) of the parties, envisaged by the subject of the dispute. Thus, in the case of settlement of case by settlement, the dispute between the parties is resolves not only le-

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153 See Ruling dated March 17, 2015 of the Chamber of Civil Cases of Tbilisi Appeal Court on the case: №2B/4963-14 (In Georgian).

154 See *Kurdadze Sh., Khunashvili N.,* Civil Procedural Law of Georgia, Tbilisi, 2012, 195 (In Georgian).

155 Compare: *Sale H. A.,* Judges Who Settle, Washington University Law Review**,** Vol. 89, Issue 2, 2011, 385. With further reference: Many articles discuss settlements and agency costs and solutions. See *Lahav A.,* Fundamental Principles for Class Action Governance, 37 Ind. L. Rev. 65, 2003, 128 (advocating an active adversarial process during fairness hearings, ―a kind of trial on the merits of the settlement) [hereinafter Fundamental Principles]; *id.* At 136 (discussing the use of magistrate judges in negotiating settlements); *Rose A. M.*, Reforming Securities Litigation Reform: Restructuring the Relationship between Public and Private Enforcement of Rule 10b-5, 108 Colum. L. Rev. 1301, 1354, 2008, 1363 (developing an ―oversight approach‖ for the SEC in 10b-5 cases); *Rubenstein W. B.,* The Fairness Hearing: Adversarial and Regulatory Approaches, 53 Ucla L. Rev. 1435, 2006, 1452-66 (examining various proposals for reducing agency costs at the settlement stage, including use of devil's advocates). In addition, agency cost concerns have been explored at some length in the literature on class certification and settlement classes, or classes certified solely for settlement purposes. See: Class Action Accountability, supra note 27, at 372–73. Those concerns and arguments have some salience here, but the focus of this paper is different. I am interested in the context of settlement approval generally.

156 Resolving Your case Before Trial, Guidebooks for Representing Yourself in Supreme Court Civil Matters. Produces by: www. JusticeEducation.ca, Funded by: www.LawFoundationBC. org. Justice Education Society, The Law Foundation of British Columbia, July, 2010, 1-2.

157 *Tchanturia L., Boelling H.*, The Methodology of Judicial Decision Making on Civil Case, Tbilisi, 2003, 89 (In Georgian).

158 *Tsvetkov V. L.*, Psychology of Conflict, Tbilisi, 2015, 2013 (In Georgian).

159 *Merrills J.G.*, International Dispute Settlement, New York, 2005, 1.

160 See *Liluashvili T., Liluashvili G., Khrustal V., Dzlierishvili Z.,* Civil Procedural Law, Part I, Tbilisi, 2014, 55 (In Georgian).

161 *Cratsley J. C.,* Judges and Settlement, so Little Regulation with So Machar Stake Judicial Mediation and Settlement, Dispute Resolution Magazine, Published by The American Bar Association Section of Dispute Resolution, Vol. 17, №3, Magazine, Editor**:** Chip Stewart Texas Christian University Fort Worth TX**,** Spring 2011, 4.

162 It is not disputable that there is big difference between court decisions and the expectation, which the disputing parties or the court has. In details, see *Gleeson M.,* Future of Civil Justice Adjudication or Dispute Resolution, Otago Law Review, 1999, 454-455.

gally, but also factually.[163] And factual resolution implies meaningful resolution; "As a result of settlement, is it possible to restore "justice" at greater degree, than in the case of making decision on dispute, when the latter is often oriented towards formal criteria".[164]

Justice is assessable and in each specific case, it is defined by the achieved result with consideration of specificity of the case. Restoration of justice is not expressed only in the decision, made according to the rule under legislation and, in implementation of justice in general, but in manifestation of the will of the parties as well. Court cannot eliminate all problems, existing among people and cannot ensure formation of the best relations and attitudes after settlement of dispute through legal proceedings. "Court only settles the dispute and determined how the further relations are to be guided".[165] Mostly, regulation, maintenance of the existing relations, their placement within the limits of justice depends on the parties. The terms of settlement shall refine and regulate further cooperation of the parties.[166] Confronting, difficult attitude shall be transformed into the desire of cooperation and mutual respect.[167] In the case of resolution of dispute by settlement, new relations shall be established and peace shall be restored between the parties.[168] And all that is based on free will of the parties and their desire to resolve the conflict for the purpose of meaningful continuation of further relations.

6.2. Judicial Outcome

6.2.1. Avoidance of Long Legal Proceedings

"One of the problems of the present justice is great number of cases[169] and extremely heavy workload of judges, which, obviously, affects the quality of justice and, at the same time, causes fair dissatisfaction of society due to procrastination of hearing of cases. It is the problem of courts of all instances, but it shall be taken into account that judicial activities are creative activities. They do not like haste. The judge shall not think that his deadlines will not be met due to the "sunk" cases, and he will be put to accountability by the Council of Justice, but only about correct interpretation of the law and proper resolution of this or that specific case."[170]

The process of consideration of civil case before making decision and directly in the process of formation of decision implies performance of a lot of actions, provided by the law.[171] Duration of each court

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163 *Liluashvili T., Khrustal V.,* Comments to the Civil Procedural Code of Georgia, Tbilisi, 2007, 480 (In Georgian).

164 *Lutringhouse P.,* Methodology of Making Decision on Civil Case, Judges' Seminar, Bakuriani, October 18-21, 2007, 134 (In Georgian)

165 *Chachanidze E., Zodelava T., Gogishvili N., Sulkhaishvili M.,* Communication in the Court, Tbilisi, 2013, 74 (In Georgian).

166 It implies the relations, which are counted and based on long-term cooperation of the parties. Orientation towards cooperation is based on the principle of conflict regulation strategy "win-win". In details, see *Jorbenadze R.,* Mediation, Tbilisi, 2012, 13. Compare *Ostermiller S. M., Svencon D. R.,* Alternative Dispute Resolution Means in Georgia, Tbilisi, 2014, 15.

167 *Chachanidze E., Zodelava T., Gogishvili N., Sulkhaishvili M.,* Communication in the Court, Tbilisi, 2013, 23 (In Georgian).

168 *Lutringhouse P.,* Methodology of Making Decision on Civil Case, Judges' Seminar, Bakuriani, October 18-21, 2007, 133 (In Georgian).

169 About 60 000-70 000 cases are heard annually. In details, see *Darjania T.,* Electronic System of Legal Proceedings, Georgian Experience of Electronic Justice, Tbilisi, 2015, 6 (In Georgian).

170 *Lazarishvili L.,* The Society Shall Believe that the Court Can Perform its Real Function – Execute Justice, the Supreme Court of Georgia, Journal "Martlmsajuleba" ("Justice"), №1, Tbilisi, 2006, 56 (In Georgian).

171 See *Gilles P.,* Judicial System from Critical Sight: Comparative Analysis from German Position, "Samartlis Zhurnali" ("Journal of Law"), №2, 2009, 232-233 (In Georgian). With further reference to:"Deutsche Ziviljustiz als Beispiel für die Überlastung staatlicher Gerichte und Strategien zu ihrer Entlastung", in: Ankara Barosu Dergisi (Anwaltskammer-Zeitschrift), Ankara,Heft 5, 1992, 749 ff.; "Anmerkungen zum Thema Justizbelastung und zur Notwendigkeit eines Entlastungsstrategiekonzepts", in: Jürgen Brand/Dieter Strempel (Hrsg.), Soziologie des Rechts, Festschrift für Erhard Blankenburg zum 60. Geburtstag, Schriften der Vereinigung für Rechtssoziologie, Band 24, Baden-Baden 1998, 531 ff.

hearing is determined by procedural legislation and is related to full-value conclusion of all stages, required for conclusion of proceedings and making justified decision.[172] These activities consist of number of stages, out of which, based on content as well as legal aspect, substantial is establishment of content of disputable legal relations and putting it into the undisputed state (the subject of decision); establishment of the norms of law, according to which the disputable legal relations is to be regulated (sources of law); determination of the volume of rights and obligations of the subjects of legal relations, established by the court.[173] Alongside with the above mentioned, there are non-contentwise, formal aspects, which have substantial impact on the process of proceedings.

Distribution of cases to judges was and still is one of the key issues. It is safe to say that proper and fair policy of distribution of cases may determine transparency and independence in the court. Proper distribution of cases is important for balancing the judges' workload, elimination of corruption and formation of trust towards the court.[174] In parallel with the heaviest workload, the issue of sufficient number of judges is on agenda so that cases do not pile up and their hearing is not impeded.[175]

For the purpose of proper development of judges' workload and case distribution principle, it is expedient to focus on the circumstances like calculation of the required number of judges in the court; rule of distribution of cases among judges and the possibility of inobservance of this rule; the role of the Chairman of the Court and High Council of Justice of Georgia in avoidance of piling up of cases.[176]

"Alongside with other problems, presently existing in judicial system, special dissatisfaction of citizens is caused by procrastination of hearing of cases in the court.[177] The issue is really extremely topical, as the cases continue for years, often they "go round in circles" – return to the courts of lower instance, are reconsidered, etc. The person, who wins the case after several years, is so tired of such procedures and has borne such a lot of expenses that the decision has not sense for him/ her".[178]

The purpose of settlement, on the one hand, is prompt and final settlement of specific dispute, avoidance of long judicial processes, and, on the other hand, each dispute, settled by settlement, raises attitude in society in regard to the judicial system and trust of society towards the court.[179] The opportunity of settlement of the case by settlementis a kind of legal opportunity for the participants of legal proceedings as well as for judicial system, to avoid long court sessions and overburdened proceedings.[180]

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172 Resolution of dispute through settlement becomes more and more actual, which, in its turn, is related to development of legal relations and change of approaches towards proceedings. *Glover J. M.,* The Federal Rules of Civil Settlement, Journal of International Law and Politics, 2012, 1723.

173 *Todua M., Kurdadze Sh*., The Peculiarities of Decision - Making on Civil Cases of Certain Categories, Association of Judges of Georgia, Tbilisi, 2005, 81 (In Georgian).

174 In details, see *Darjania T.,* Electronic System of Legal Proceedings, Georgian Experience of electronic Justice, Tbilisi, 2015, 21 (In Georgian).

175 *Shavliashvili G.*, Civil Court Will Become Available and Efficient for a Citizen, the Supreme Court of Georgia, Journal "Martlmsajuleba" ("Justice"), №1, 2006, 65 (In Georgian).

176 In details, see *Ghibradze D.,* Workload of Judges and Distribution of Cases, "Court Independence and Judge's Profession", Materials of Judges' Conference, Tbilisi, 27/28 September, 2013, 49-61 (In Georgian).

177 The judge shall fulfill his rights and obligations without any procrastination – to respect the dignity of the court and its participants. See the Issues of Ethics of Legal Professions (American Bar Association, the Rule of Law initiative), Washington, 2009, 92. A lot of norms exist, in regard to which the courts of different instances have different opinions. The above mentioned, finally, reflects on resolution of cases and causes procrastination of proceedings. see Recommendations on Problematic issues of Judicial Practice of Civil Law, XXX, Homogeneous Practice of the Supreme Court= of Georgia in Regard to Civil Cases, Supreme Court of Georgia Tbilisi, 2007, 5 (In Georgian).

178 Basic Direction of Judicial Reform, the Supreme Court of Georgia, Journal "Martlmsajuleba" ("Justice"), №1, 2006, 28.

179 The courts represent not only the authorities, implementing justice, but also the supporters if settlementory agreement as well. *Roberts S.,* Settlement as Civil Justice, Modern Law Review, 2000, 739.

180 Besides, the following question emerges: are all state courts, due to strong interest towards them, not only too loaded, but overloaded, as a result of permanently increasing surge of cases, as the result is worsening of the significant worsening of quality of legal protection and, consequently, reduction of the "benefits of justice". See

6.2.2. Time of Settlement

Factor of time is always special for proper direction of public as well as legal processes, protection of the violated or disputable right, regulation of legal relations.[181] Factor of time plays key role directly in the process of proceedings. It often makes judge to cut down his activities to time constraints, as for the judge, who wants to provide detailed answer to all important issues, arising in regard to the legal dispute, it will be difficult to conclude the work in timely manner.[182]

The purpose of legal proceedings is not only protection of person's rights, but also protection of these rights in timely manner and in reasonable time limits. For this purpose, civil procedural legislation defines legally established time limits of implementation of procedural actions,[183] exact observance of which is very important.[184] "Procedural time limits - is certain period of time, during which this or that procedural action shall be performed".[185] And where time limits are not specified by the law, they shall be defined by the court.[186] Cases shall be heard in reasonable time limits.[187] When determining the duration of procedural time limits, judge shall consider the feasibility of procedural action, for which they were set.[188]

The importance of factor of time, i.e. time limit in civil proceedings is directly related to the goals and objectives of proceedings.[189] "If the time, during which the disputing parties have to perform this of that procedural action, is not set, civil proceedings would never end, protection of rights would never be implemented, chaos and willfulness would establish in proceedings, implementation of justice would completely depend on the will of the parties, which is not interested in hearing of the case".[190]

It is difficult to observe all legislative conditions, related to procedural time limits; and it is difficult for overloaded and permanently working judicial system to rely only on judicial mechanism.[191] Conciliation represent the judicial mechanism, one of the goals of which is to relieve judicial system from overloaded schedule of cases at the expense of procedural regulation of settlement time.

After the parties make decision on conclusion of civil proceedings with settlement, they begin development of settlement proposals and agreement on formation on settlement terms in conciliation act. As soon as the court verified lawfulness as settlement act, it makes decision on approval of the court ruling. Prompt and productive conclusion of this process is in the interests of the court too, consequently, joint efforts of the parties and the judge expedite settlement agreement. As a result, settlement allows settlement of dispute in shorter time than it is required for settlement of case by litigation. In particular, the main workload falls on the timespan, which the parties to settlement need for development of settlement terms.[192] Ho-

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and comp. *Gilles P.,* Judicial System from Critical Sight: Comparative Analysis from German Position, "Samartlis Zhurnali" ("Journal of Law"), №2, Tbilisi, 2009, 235 (In Georgian).

181 Violation of the principles of civil procedural legislation leads to procrastination of hearing of disputes in the courts, failure of performance of procedural actions in regard to the cases of certain categories without termination of proceedings. In details, see *Kiria G.,* Teoretical- Practical Comments to the Revision of Court Decisions, according to the Civil Procedural Code of Georgia, Tbilisi, 2002, 7 (In Georgian).

182 E. g., lease disputable issues without consideration when working on legal conclusion and draft decision. See *Tchanturia L., Boelling H.,* The methodology of Judicial Decision Making on Civil Case, Tbilisi, 2003, 54-55 (In Georgian).

183 Part 1 of the Article 59 of CPCG (In Georgian).

184 Articles 59-69 of CPCG (In Georgian). In details, see *Liluashvili T., Liluashvili G., Khrustal V., Dzlierishvili Z.,* Civil Procedural Law, Part 1, Tbilisi, 2014, 226-239 (In Georgian).

185 *Liluashvili T.,* Civil Procedural Law, 2nd ed., Tbilisi, 2005, 65 (In Georgian).

186 Article 59 of CPCG, part 2, sentence 1 (In Georgian).

187 In details, see *Liluashvili T.,* Civil Procedural Law, 2nd ed., Tbilisi, 2005, 65 (In Georgian).

188 Article 59 of CPCG, part 2, sentence 2.

189 *Liluashvili T., Liluashvili G., Khrustal V., Dzlierishvili Z.,* Civil Procedural Law, Part 1, Tbilisi, 2014, 98-105 (In Georgian).

190 *Liluashvili T.,* Civil Procedural Code, 2nd ed., Tbilisi, 2005, 134 (In Georgian).

191 *Darjania T.,* Electronic System of Legal Proceedings, Georgian Experience of Electronic Justice, Tbilisi, 2015, 21 (In Georgian).

192 Setting out of Court, How Effective is Alternative Dispute Resolution, Viewpoint, Public Policy for The Private Sector, The World Bank Group, Financial and Private Sector Development vice Prudency, October 2011, Note Number 329, 3.

wever, it should be mentioned that in the case of settlement of case by settlement no less procedural actions are to be implemented than in the case of litigation.[193]

Thus, the portion of cases of judicial system, which are settled by settlement, has great impact on statistics of cases, existing in the court. In the process of relief of loaded schedule of hearing of cases, existing in the court, the share of cases, settles by settlement is unambiguously great.

6.2.3. Enhancement of Trust towards the Court

The number of cases, settled by settlement builds the trust towards the court. The basis for this statement is provided by the circumstance that settlement of proceedings in short time, at minimum time and expenses and with desirable outcome is substantially important for the society, and, directly for disputing parties. In such circumstances mutual relations of the society and the court develop on positive context, society develops positive attitude towards judicial system, sound public relations build up outside the court and not the negative emotion of the loser party as a result of court decision.[194] "Conclusion of process with settlement enhances positive attitude towards the judges, making decision and towards the justice on the whole".[195]

The impact of decisions of the higher court and overwhelming nature of position of the Supreme Court is obvious in regard to the decisions, made by lower instances and, in general, by court, serving to integrity of rule and law.[196] Attitude of the parties and the courts towards settlement of case by conciliation is conditioned by abundant judicial practice, which is particularly diverse since 2008. Attitude of the Supreme Court of Georgia towards settlement is also reflected in its recommendations and explanations,[197] which actively support settlement. Recommendations are not mandatory; however, from the viewpoint of formation of homogeneous judicial practice and uniform legal approach, they have to be attached special importance.[198] The role of the courts of higher instances is twice as importance in the case of settlement of case by settlement. Their open speeches shall serve as an example for the uniform judicial system.[199] "Obtaining of public trust towards judicial system, formation of independent and unbiased judicial system in Georgia is the most important guarantee of development of Georgian law-governed state".[200]

6.2.4. Attitude of Judges towards Settlement

Some judges are skeptical in regard to application of alternative dispute resolution means. In their opinion, legal process has already proven its efficiency. Therefore, there is no need of searching for innovations in this direction.[201] Certain part of judges considers that conciliation cannot be given preference

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193 *Tchanturia L., Boelling H.,* The Methodology of Judicial Decision Making on Civil Case, Tbilisi, 2003, 92 (In Georgian).

194 This emotion is finally directed towards judicial power and judicial system.

195 *Tchanturia L., Boelling H.,* The methodology of Judicial Decision Making on Civil Case, Tbilisi, 2003, 90 (In Georgian).

196 *Bolling H.,* Judge's Independence and Acceptance of Judge's Decision by the Parties – Management of Case Hearing, Talks on Settlement and Peaceful Dispute Resolution. *Lutringhouse P.,* Methodology of Making Decision on Civil Case, Bakuriani, October 18-21, 2007, 38 (In Georgian).

197 Recommendations on Problematic issues of Judicial Practice of Civil Law, XXX, Homogeneous Practice of the Supreme Court of Georgia in Regard to Civil Cases, Supreme Court of Georgia Tbilisi, 2007 (In Georgian). See Practical Recommendations for Magistrate Judge, Supreme Court of Georgia Tbilisi, 2008 (In Georgian).

198 See Recommendations on Problematic issues of Judicial Practice of Civil Law, XXX, Homogeneous Practice of the Supreme Court of Georgia in Regard to Civil Cases, Supreme Court of Georgia Tbilisi, 2007, 6 (In Georgian).

199 *Bolling H.,* Judge's Independence and Acceptance of Judge's Decision by the Parties – Management of Case Hearing, Talks on Settlement and Peaceful Dispute Resolution. Methodology of Making Decision on Civil Case, Bakuriani, October 18-21, 2007, 143 (In Georgian).

200 The Issues of Ethics of Legal Professions (American Bar Association, the Rule of Law initiative), Washington, 2009, 91.

201 See *Tsertsvadze G.,* Mediation, Alternative Dispute Resolution Form (General Overview), Tbilisi, 2010, 168 (In Georgian). And part of judges actively support settlement rather trials (judges are promoting settlements rather

over litigation. In their opinion, consent is often compulsory and even refer to settlementas capitulation.[202] However, certain part of judges broadly supports and positively assesses conclusion of proceedings with settlement. They share the position that it is their direct business to support settlement, which put a positive spin on judge's role.[203] It is mentioned in foreign researches that quite big percentage share of the cases, existing in the court, doesn't proceed to litigation,[204] as it becomes possible to conclude the case with settlementthe last minute (before commencement of legal proceedings). Presently, arrangement of pre-trail meetings and use of alternative dispute resolution mechanisms represent a kind of pre-requisites for settlement, consequently, the number of *courtroom-door dispositions* increase, having positive impact on understanding in regard to settlement.[205]

Judge plays central role in mutual relations of judicial system and society. Trust of society towards the court and the level of trust depend on day-by-day activities of judge. In addition to professional skills, inherent to the profession of practicing lawyer, judge shall have deep understanding of human phenomenon, as it distinctly reflects on the authority of the judge and, thus, that of the court.[206] In particular, honest fulfillment of duties by each judge enhances society's trust towards judicial system and convinces citizens in impregnability of justice.[207]

The impact of conclusion of proceedings with settlementon civil proceedings is unambiguously positive not only for the disputing parties, but for judicial system on the whole.[208] It is the judicial system and numerous corps of judges, who has the best understanding of what difficulties the parties may face in the course of proceedings, how much time, energy, changes, unexpected developments and financial problems are related to proceedings, how long way each party shall go to achieve the desired victory.

6.3. Mutual Result – Prohibition of Repeated Application to the Court

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than trials). Comp. *Resnik J.,* Mediating Preferences: Litigant Preferences for Process and Judicial Preferences for Settlement, Journal of Dispute Resolution, 2002, 155- 158. With further reference: trong v. BellSouth Telecomm, Inc., 173 F.R.D. 167, 172 (W.D. Ill1.99 7) (observing that "[i]thni scase, I could hold my nose and accept the settlement, after all, it is said that a bad settlement is better than a good trial").

202 *Parness J. A.,* Improving Judicial Settlement Conferences, U. C. Davis Law Review, 2006, 1995.

203 *Ervasti K.,* Conflicts before the Courts and Court-annexed Mediation in Finland, Scandinavian Studies in Law, 1999-2012, 190.

204 *Mnookin R. H.,* Negotiation, Settlement and the Contingent Fee, DePaul University, University Libraries, DePaul Law Review, Vol. 47, Issue 2, Winter 1998: Symposium – Contingency Free, Financing of Litigation in America, Article 8, 1998, 364, With further reference: Of all automobile insurance claims, the majority settle before any court filing, and most of those suits that are brought to trial settle before any jury verdict. See. *Marc A. Franklin et al.,* Accidents, Money, and the Law: A Study of the Economics of Personal Injury Litigation, 61 Colum. L. Rev. 1, 1961, 10-11; *Galanter M.,* Reading the Landscape of Disputes: What We Know and Don't Know (and Think We Know) About Our Allegedly Contentious and Litigious Society, 31 Ucla L. Rev., 1983, 4, 27; *Laurence H. R.,* Settles out of Court, 1970; (discussing how the law on a day-to day basis revolves around settlement and not trial); *Trubek M. D.,* Civil Litigation Research Project: Final Report,1983. (reporting on a nationwide study of civil cases and discussing the frequency of litigation, costs and lawyers' activities). Settlement also occurs in some 80% or 90% of criminal matters in almost every American jurisdiction in the form of "plea bargaining." see. *Alschuler A.W.,* The Prosecutor's Role in Plea Bargaining, 36 U. CHi. L. Rev. 50, 1968, 50; Galanter, supra, at 27. Similarly, some 75% or more of all administrative proceedings end in agreements rather than trials. *Robinson G. O., Gellhorn E.,* The Administrative Process, 1974, 523; see. *Woll P.,* Informal Administrative Adjudication: Summary of Findings, 7 Ucla L. Rev. 436, 1960, 437.

205 *Baar C.,* The Myth of Settlement, Paper Prepared for delivery at the Annual Meeting of the Law and Society Association, Chicago, Illinois, 1999, 2. *Ervasti K.,* Conflicts before the Courts and Court-annexed Mediation in Finland, Scandinavian Studies in Law, 1999-2012, 193.

206 *Chachanidze E., Zodelava T., Gogishvili M., Sulkhanishvili M.,* Communication in the Court, Tbilisi, 2013, 10 (In Georgian).

207 Issues of Ethics of Legal Professions (American Bar Association, the Rule of Law initiative), Washington, 2009, 92.

208 It shall also be mentioned here that the opinion is expressed in legal literature, that the institute of settlement (settlement) is based on public nature of the court and private nature of settlement. Critics of settlement mention the asymmetry, existing between litigation and settlement, as between utopic and real settlement methods of proceedings. *Bilsky L., Fisher T.,* Rethinking Settlement, Theoretical Inquiries in Law, 2014, 89.

The most important outcome of settlement, which occurs for the parties and the court simultaneously, is specified in legislative reservation. In particular, after termination of proceedings, repeated initiation of the similar case is inadmissible. Termination of proceedings is the form of conclusion of proceedings, which excludes the right of repeated application to the court with the same suit.[209] The above mentioned is envisaged by p.2 of the Article 273 of CPCG, according to which, in the case of termination of proceedings, it is impossible to apply to the court repeatedly on the same subject between the same parties and on the same basis. "The parties don't have other demands towards each other. The know the results of settlement, in particular, that as a result of settlement, proceedings terminate and dispute between the same parties, on the same subject, on the same basis is inadmissible".[210]

There are cases in judicial practice, when the terms of settlementare not fulfilled or the party abuses its right[211] or has lost the interest towards settlementand repeatedly applies to the court with the demand of renewal of proceedings, which is inadmissible.[212] Failure of fulfillment of the terms of settlementfor any reason is not the basis for repeated initiation of suit on the same dispute. The essence of the rule under legislation is that if the party does not agree to the condition of settlementor fails to fulfill it, he shall not demand renewal of proceedings, but appeal the ruling on approval of the act of settlementor apply to the execution proceedings on compulsory fulfillment of settlementterms. Failure of fulfillment of the terms of settlementis the basis for compulsory execution.[213]

The guarantee of avoidance of these circumstances again lies in legislative reservation, that the court shall explain the outcomes of settlementto the parties.[214] In particular, judge shall, in the manner, extremely understandable for the parties, explain sub-paragraph „b" of p.1 of the Article 186, sub-paragraphs „b", „c", „d" of the Article 272 of CPCG, as well as the Article2 of the Law of „execution Proceedings";[215] shall clearly explain the fact, that they will not have the possibility of repeated application to the court on hearing of the subject of dispute on the same basis. Besides, the parties shall treat the agreement on the terms of settlementwith special responsibility, as after their approval by the court the dispute under consideration will be concluded and the agreement of the parties will obtain the power of the court decision.[216]

It is impossible for the court to return to the issue and perform actions, envisaged by procedural legislation endlessly. The above-mentioned legislative reservation is a kind of guarantee that the dispute on one and the same topic will not become the subject of repeated consideration by the court, will not be burdened but groundless applications on renewal of litigation, negative emotions of the disputing parties, which ensures legal and social stability of judicial system and society.

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209 *Kurdadze Sh., Khunashvili N.,* Civil Procedural Law, Tbilisi, 2012, 409 (In Georgian).

210 Ruling dated November 07, 2008 of the Chamber of Civil, Entrepreneurial and Bankruptcy Cases of the Supreme Court of Georgia on the case: №AS-346-598-08 (In Georgian).

211 Ruling dated October 09, 2008 of the Chamber of Civil, Entrepreneurial and Bankruptcy Cases of the Supreme Court of Georgia on the case: №AS-436-678-08 (In Georgian).

212 The authors of one of the princely claims explained that "as the other party abused its right and didn't fulfill the obligation, taken under settlement, settlement has no sense for them, due to which they want to continue the dispute. Appeal Court didn't share the above mentioned, as the parties, by agreeing on settlement, disposed their rights, granted by the law, to determine by themselves and make decision on conclusion of the case with settlement and termination of proceedings and the circumstance, that one of the parties fails to fulfill the obligation, taken under settlement, cannot form the basis of cancellation of the appealed Ruling, as the authors of the private claim are authorized to demand compulsory execution of this Ruling". See Ruling dated September 10, 2008 of the Chamber of Civil, Entrepreneurial and Bankruptcy Cases of the Supreme Court of Georgia on the case: №AS-621-846-08 (In Georgian).

213 Ruling dated June 11, 2008 of the Chamber of Civil, Entrepreneurial and Bankruptcy Cases of the Supreme Court of Georgia on the case: №AS-302-559-08 (In Georgian).

214 Ruling dated March 10, 2008 of the Chamber of Civil, Entrepreneurial and Bankruptcy Cases of the Supreme Court of Georgia on the case: №AS-95-375-08. See Ruling dated March 17, 2015 of the Chamber of Civil, Entrepreneurial and Bankruptcy Cases of the Supreme Court of Georgia on the case: №2B/4963-14 (In Georgian).

215 *Kurdadze Sh., Khunashvili N.,* Civil Procedural Law of Georgia, Tbilisi, 2012, 396 (In Georgian).

216 Ruling dated June 06, 2012 of the Chamber of Civil, Entrepreneurial and Bankruptcy Cases of the Supreme Court of Georgia on the case: № AS-1770-1750-2011.

7. Conclusion

Settlement process is based on systemic unity and legal norms. On each stage of settlement, judge has specific function, who settles proceedings with specific legal outcomes. In particular:

"Judge" is a common, accepted term for legal space. Judge, who directs the settlementprocess, is equipped with the status of the "judge-settlementator". Georgian legal space does not know the notion of the judge- conciliator. However, uses the term, adequate term of the judge, implementing legal functions and competences for the purpose of settlement – "magistrate judge" in quite different legal space and in other meaning. Judge, who directs conciliation process, shall be referred to as "judge- settlementator".

Settlement process needs mediator. Judge is the best person and advisor for this purpose. The function of the judge is unambiguously important in settlement process. The judge represents the central axis of proceedings, and, consequently, settlement, around which all procedural and non-procedural actions, directed towards settlement, are performed. For full-value and productive performance of this function, judge shall be equipped not only with knowledge of procedural norms and high qualification of lawyer, but also with the skills, which will help him settle the proceedings with settlement. In the process of settlement, his activities shall be based on the judge's personal properties, professional abilities, key principles and competences like independence, unbiasedness, honesty, observance of ethical norms, equality, competence and diligence. Besides, for the purpose of direction of proceedings in compliance with the requirements of the law, the judge shall be equipped with professional, social and personal competence. The judge's ability of communication is special. Settlement is a parallel process of communication of the parties and judge. Communication, implemented on the part of the judge, required offering of settlement, conducting of conciliatory negotiations, development of settlementatory proposals and consulting of the parties. The judge shall manage to understand subjective characteristics of the disputing parties, see the future prospects of settlement, and predict, at certain extent, development of the case.

The judge is obliged to offer the parties different versions of settlement, show them the weaknesses and strengths of their position, convince them in advantage of resolution of case by settlement and, most importantly, indicate to the possible outcomes of dispute resolution in advance, which is certain novation in civil litigation and facilitates more correct relations for the judge and the parties and their approximation within the limits, permitted by the law. Thus, the judge is authorized according to the procedure under legislation, to get involved in conciliation process as the "third passive party" for implementation of "good will and duties, imposed on him by the law.

Classification of the results of concluding of civil proceedings by settlement can be according to the result for the parties on the one hand, and judicial result, on the other hand.

According to the result for parties, in the case of conclusion of proceedings with settlement the dispute is resolved with the will of the parties and the desirable results; justice is restores; interests of the parties are identified in the environment of equality; settlement is cost-effective and easily enforceable; dispute is resolves in peaceful and non-conflict ways; new relations are established between the parties and peace is restored between them, which is the prerequisite for future cooperation. Besides, settlement means saving time, energy, emotion, prevention of stress and maintenance of high attitude, as there is not loser in the case of settlement.

According to the judicial result, settlement allows relief from overloaded schedule of cases; prevention of procrastinated and long litigation; rising of trust towards the court; healthy human relations occur outside the court and not the negative emotion of any of the parties - resulting from the court decision – which, finally, is directed towards judicial power and judicial system. When the parties obtain maximum result from the dispute, resolved by settlement, their mood and attitude changes unambiguously positively in the courtroom itself, which contributes to rising of trust towards the court.

The impact of conclusion of proceedings with settlement on civil proceedings is unambiguously positive not only for the disputing parties, but for judicial system on the whole; however, conciliation, existing only

on legislative level, will not bring the relevant result without support from active judicial mechanism, judicial corps and members of society. Legal space shall make stronger accent on settlement of parties, when the goal of implementation of the principle of dispositionality and the judge's role in formation of flexible mechanism of regulation of the parties' will is special. The judges are obliged to make every effort for conclusion of proceedings with settlement. The judge's disposition to settle the case by conciliation facilitates not only full-value implementation of justice, but also proper legal formation of society.

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