

**CHARACTERISTICS OF CONTRACTS FOR THE BENEFIT OF THIRD PARTIES****Malvin Kacaj**

**ABSTRACT:** *A contract can affect a third party. However, the doctrine of privity means that, as a general rule, a contract cannot confer rights or impose obligations arising under it on any person except the parties to it. This paper deals with the theoretical and practical analysis of the contract for the benefit of a third person by which the benefit obtained from the obligation passes to the third non contractual party. Due to the particular features of this contract, it is important to examine it in detail in order to highlight the special legal nature of the contract for the benefit of the third party as a legal transaction, the elements of the contract, the characteristics, its historical development etc. Also, this paper presents a concept of the specific status of the third party. The author supports the view that the third party (the beneficiary) is an independent contractor who has specific duties and obligations as well as rights and benefits, which is an argument based on the modern theory of interdependence of legal rights and obligations.*

**KEYWORDS:** Third Party, Contract, Beneficiary, Rights, Obligations.

**INTRODUCTION****Historical development of the contract for the benefit of a third person**

Although the contract figure in favor of a third person was created and is present in all modern legal systems of civil law, on the other hand, as a general rule, Roman law did not accept that contracting parties might lead the obligation to the other party to a third party to the right of the party to claim the contract of work obligation. There were examples where the responsibility for mismanagement of the student was present or the one who was forced to build or donate a fund and that later he made a similar conclusion to the others by offering services as the original promoter<sup>1</sup>. Beyond what have just highlighted Roman law, at least in a purely practical but bypassed approach to third parties to accept the use of specific legal mechanisms that provide us with abundant news resources, For example, the provision of a clause requiring punishment (stipulatio poenae) in the case when the promisor did not perform the service may decide in favor of the third.

According to Justinian's Institutes it is impossible to stipulate in favour of a third party: *alteri stipulari nemo potest*. This rule implies that such a contract has no effect. From other texts in the Corpus Iuris Civilis it appears that this principle not only applied to the verbal contract of stipulation, but also to other contracts, pacts and clauses in favour of an absent beneficiary. At the same time, the Institutes acknowledges two exceptions:

1. The stipulation in favour of a third party is valid in the case where the stipulator has a monetary interest in the performance for the third party.

<sup>1</sup> H. Honsell. Die Haftung für Gutachten und Auskunft unter besonderer Berücksichtigung von Drittinteressen. – V. Beuthien (Hrsg.). Fest-schrift für Dieter Medicus Zum 70. Geburtstag. Köln, Berlin, Bonn, München: Heymanns 1999, p. 211.

2. The second exception exists in the fact that adding a penalty clause renders the stipulatio alteri valid.

In both cases only the stipulator can invoke the contract and the third party does not acquire a right. These two principal rules are based on an even more fundamental rule of the Roman law of contracts, namely that a contract creates a personal bond between parties, comparable to the privity of contract which from the nineteenth century until recently was the prevailing principle of English common law. In the Corpus Iuris a few exceptional cases can be found where the third party has the right to enforce the performance stipulated in his favour.

### **The codifications of civil law**

In the nineteenth century it was accepted in legal doctrine present in legal doctrine that one can stipulate for a third party and that this third party can enforce what was stipulated in his favour. This happened for two important factors:

- the French Civil Code of 1804,
- and the German Historical School.

However, with the progress of the nineteenth century these two requirements were seen as undesirable in view of the increasing social importance of life assurances.

The Industrial Revolution had dramatically changed the sources of income of a major part of the population and hence the means to look after the well-being of surviving relatives. The latter was no longer secured by family property.

### **"Common Law"**

According to the customary traditional law of the Common Law, the contract for the benefit of a third person was not known by linking with the doctrine of the contract, which expresses the rights obligations and facilities obtained from it towards the contracting parties. However, a number of changes and exclusions to the contract for the benefit of a third person are late in the "Common Law" countries, and recent legal changes are underway in this regard. According to English legislation, the third-party beneficiary is defined as a person who is not party to a contract but has legal rights to enforce the contract or to participate in the proceeds that because of the contract was made for the benefit of the party third. An example of a concrete case to illustrate what was said the following: *"A person signs a contract with a car company to buy a nephew a gift car for his graduation, after which the company after a delay in payment refuses to proceed with the sale of the item. So, the grandson at this moment is entitled to file a lawsuit for breach of contract for the benefit of a third person by the company."*

A contract concluded between the two parties is a contract for the benefit of a third party, when the latter has no retrieve as parties to the classical contractual obligations where the parties have rights and obligations. A contract for the benefit of a third person is a life insurance contract intended to benefit a living person. For real estate, the concept of this contract constantly comes as an attempt by the injured individuals to claim that they are beneficiaries of the contract for the benefit of third parties, as a third party, between property owners, observers, assessors or distributors and this is why the third beneficiary gets the right to file a lawsuit for breach of contract.

### **Provision by Albanian Civil Code**

The Civil Code of 1981, in a series of provisions, has regulated this relationship. Exceptionally, the contract may also have consequences for third parties who are not party to it. This is only the case foreseen in the law. In these contracts, the third person acquires rights in his favor, does not participate as a party neither at the time of the conclusion of the contract nor later in its implementation.

The civil code provides for this contract only as a definition in Article 694, from the content of which the main features of this contract arise, whereas in concrete cases of daily life are provided in the provisions of special contracts of the Civil Code. A contract for the benefit of a third person is valid when the person who links has interest in it. A person who has accepted the promise in favor of the third person or the latter has the right to request the performance of the contract, unless there is another agreement. The contract cannot be broken or changed after the moment the third person has stated that he or she agrees to benefit from its affiliation, unless the proposer has reserved this right. In the event of a revocation of the contract award or refusal of the third person to benefit from it, the obligation remains in the benefit of the proposer, unless it is otherwise contrary to the will of the parties or the nature of the contract<sup>2</sup>. From the understanding of the contract to the benefit of a third person it appears that the third person or the third party benefiting is the purpose of the contract concluded between the two parties that realize it, who decide that through the contract between them to profit intentionally the third party .

The third party beneficiary in the contract law is a person who may have the right to sue in a contract despite being not an initial party to that contract. This right arises when the third party is the intended beneficiary for the purpose of the contract, as opposed to a random beneficiary. Depending on the circumstances in which the third party participates in the contractual relationship, it is entitled to sue the person charged with rights or even the person charged with obligations under the contract. Article 1113 of the Civil Code gives the meaning of the insurance contract, which provides: *"With the insurance contract, one party (the insurer), if the event foreseen in the contract is verified, is obliged: a) in the case of insurance of the property to reimburse the other party or a third person for the benefit of which the contract is concluded, the damage suffered within the limits of the amount provided for in the contract; b) in the case of providing the person to pay to the other party or to a third person for the benefit of which the contract is concluded, the amount of the security provided for in the contract. The insured is obliged to pay the premium (insurance price) fixed in the contract. The insurer may be a public or a private person."*

From the wording of this provision we conclude that the lawmaker has defined the meaning as a contract for the insurance of the property of a natural or legal person, as well as the contract of life and health insurance of a natural person.

### **Characteristics of contract for the benefit of a third person.**

If we would summarize the general contractual characteristics for the benefit of the third person we would distinguish:

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<sup>2</sup> Art. 694 of the Albanian Civil Code

1. The third person should be a foreigner in the contract, ie not to participate neither as a party nor as a representative of any of the parties that have concluded the contract .
2. With the conclusion of a contract for the benefit of a third party, the parties should have intended for the third person to exercise an independent right of access to the debtor. It does not matter that the third person has the ability to act because he does not participate in the contract and does not show his will, but the third party only gains rights from the contract. So even a minor, although lacking the ability to act, has the ability to gain the right under the contract in his favor.
3. The third party benefiting from the contract is not obliged to accept the right to award the contract. Thus, the right conferred upon him by the parties that conclude the contract does not automatically pass to the third person, because the latter may also renounce it. The Recipient acquires, on the basis of the contract, a direct and independent right from the moment of the conclusion of the contract, but this right becomes final from the moment the third party expresses the consent to the acceptance of the right<sup>3</sup>.

In this regard, our legislation stipulates that the third party to whom the contract is awarded shall acquire the rights indicated in the contract from the moment it has notified one of the parties that it agrees to benefit from these rights. It is worth mentioning that in cases when the third person has renounced the right recognized in the contract, the obligation does not end when the right of research passes to the creditor, which in this case requires fulfillment for the benefit of himself if such a thing does not contradict the purpose of the contract. No legal form is required for the grant of a third party consent or for waiver of his right<sup>4</sup>.

4. Before the moment the third person has stated that he will exercise the right to benefit from the contract, the creditor has the right to cancel the contract or to make any changes that may affect, reduce or limit the right of a third person.

If the beneficiary states that he agrees to benefit from the agreement made, the contract concluded in his favor may not be revoked unless the proposer of the contract has reserved this right expressly in the contract in his favor<sup>5</sup>.

5. A third person who benefits a right from this contract has the right to ask the proposer or debtor to exercise the right unless there is an opposite agreement. A legal problem is raised in this case if the debtor has the right to make to the third person all the rejections arising from the contract or not. Such is, for example, the rejection that until the creditor has failed to fulfill his obligation in a bilateral contract he also as a debtor may not fulfill his obligation to a third person. I think that the debtor has the right of such a proxy when the contract is a two-way contract, but if the debtor has any objections against the creditor, objections which do not derive from the contract, he can not address it to the third person.
6. The third person only benefits from the contract and has not obligations.
7. In order to become a true legal form and to be considered related, the third person should be a foreigner in the contract, thus not having participated either as a party or as a representative of any of the parties that have entered into the contract.

<sup>3</sup> M. Tutulani-Semini, "E drejta e detyrimeve dhe e kontratave, Real Stamp, Tirana 2006, p. 66.

<sup>4</sup> Art. 672, Albanian Civil Code.

<sup>5</sup> Subparagraph 3, Art. 694 of Albanian Civil Code.

8. By entering into a contract for the benefit of a third party, the parties should have intended for the third person to exercise an independent right of access to the debtor. It does not matter that the third person has the ability to act because he does not participate in the contract and does not show his will, but only gains rights from the contract<sup>6</sup>.

### **The beneficiary's legal status**

Beneficiary is not a contracting party to a contract concluded for the benefit of a third person. Therefore, he can not influence the legal fate of that contract, but can only realize the benefit of this contract to him. Because of this situation, the legal contract fate for the benefit of the third person is in the hands of the parties to that contract, first of all and foremost in the hands of the stipulant (third party), when it comes to the benefit itself. Thus, the third party benefit can be revoked or amended until the third person declares that he accepts what is contracted for his benefit. If the contract for the benefit of a third person does not foresee the conditions in which a third person may revoke the benefit of a third person, then he can always do so with unilateral declaration of will<sup>7</sup>. After that declaration of acceptance, the beneficiary can no longer revoke the unilateral declaration of his will.

Albanian legislation and the foreign law generally do not contain provisions to explicitly or explicitly express, to whom should the beneficiary inform that he or she accepts the benefit or the right. For this reason, the beneficiary may give his or her own statement as a pompous and promising person, and if the statement is given to one party then that party must inform the other contracting party. Also, in Albanian legislation there is no provision as to the form of the beneficiary's declaration of contract award for the benefit of the third person. Therefore, for this contract, the provisions on the form of contracts can be applied analogously, according to which this statement is not formal because no other law is foreseen. If no other way has been found or if, by the circumstances of the case, there is no other benefit contract for the benefit of the third person, it produces legal effects among the living. This implies that the beneficiary can accept the benefit and that the promising party is obliged to execute the contractual obligation for the benefit of the third through the life of the beneficiary person. But, on the other hand, the law allows the contract for the benefit of a third person to produce legal effects on a third person, as well as after the death of a beneficiary.

### **CONCLUSIONS**

The contract may also have legal consequences for third parties who are not party to it. This is only the case foreseen in the law. In these contracts, the third person who earns the right in his favor does not participate as a party neither at the moment of the conclusion of the contract nor later in its implementation.

The civil code provides for this contract only as a definition in Article 694, from the content of which the main features of this contract arise, whereas in concrete cases of daily life are provided in the provisions of special contracts of the Civil Code.

<sup>6</sup> M. Tutulani-Semini, "E drejta e detyrimeve dhe e kontratave, Real Stamp, Tirana 2006, p. 68.

<sup>7</sup> Clearinghouse Review. "Use Contract Law To Enforce Third-Party Beneficiary Claims Against Vendors And Agencies", 2008, pg 42.

A person who has accepted the promise in favor of the third person or the latter has the right to request the performance of the contract, unless there is another agreement.

In the event of a revocation of the contract award or refusal of the third person to benefit from it, the obligation remains in the benefit of the proposer, unless it is otherwise contrary to the will of the parties or the nature of the contract.

The third party, the beneficiary in the contract law is a person who may have the right to sue in a contract despite being not an initial party to that contract. This right arises when the third party is the intended beneficiary for the purpose of the contract, as opposed to a random beneficiary.

The contract forms for the benefit of a third person date back to Roman law, continuing with the Anglo-saxon system of law and beyond.

As examples of a third-person benefit contract, as foreseen by Albanian legislation, we can mention the property and life insurance contract.

## REFERENCES

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