Revisiting the Concept of Outsourcing

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Abstract: This article focuses on the acute for the Russian Federation issue of the outsourcing addressing to the legal and theoretical interpretations of this phenomenon and peculiarities of its legal regulation. The author offers a new approach to the definition of outsourcing and draws the distinction between such categories as the outsourcing and the provision of temporary staff.

Key words: Provision of Temporary Staff • Outsourcing • Outsourcer • Specialist Contractor • Core and Non-core Activities

INTRODUCTION

The transition to the market economy followed by the globalization process outlined conceptually new phase in the world development. These processes affected all the types of social relations and labour relations, in particular. New labour market trends are shaping new work statuses and non-typical employment with the provision of temporary staff to be especially noteworthy [NB: The provision of temporary staff in Russian Federation and several states of the CIS is generally referred to as “zayomniy trud”].

Neither the personnel leasing nor the outstaffing, which are generally referred to as the basic types of the provision of temporary staff, are not provided for by the Russian labour legislation. For this reason, Russian academic circles engaged a permanent discussion about the further legalization or prohibition of the provision of temporary personnel. Taking into the account the Draft Federal Law No. 451173-5 “On Amending Certain Legislative Acts of the Russian Federation”, which is aimed at absolute prohibition of the provision of temporary staff [1], the issue of defining the notion of “outsourcing” appears to be very crucial so far as the absence of coherent theoretical approach to this legal category and the uniform legal definition (and especially in the draft Federal Law No. 451173-5) on the top of that can result in extremely unfavorable consequences as long as the usage of the outsourcing in the business activity by the various juridical persons (including the public ones such as educational institutions, military bazes, etc.) has become widespread by now. Moreover, the outsourcing evolves not only at the federal but at the regional level as well [2].

Outsourcing Legal Foundations: The opinions on this issue among the Russian civil and labour law scholars can be primarily divided in two groups. The first group represented by such authors as A. M. Kurennoy, Ye. R. Bogatova, R. N. Tarasov considers the outsourcing to be the type of the provision of temporary personnel. They are opposed by the A. F. Nurtdinova, T. Yu. Korshunova, Ya. V. Krivoy, M. S. Vlasenko, V. S. Vitko, Ye. A. Tsaturyan, who understand the outsourcing as either the type of organization of labour or an economic category. The interpretations of the outsourcing included in the sub-laws and local acts [TN: corporate by-laws] of the major corporations introduce exclusively economic-oriented interpretations.

For instance, the Letter of the Ministry of Education and Science “On Application of the Mechanism of Private-Public Partnership in the Sphere of Education” contains the following definition of “outsourcing”: an activity of external Executives (Contractors) that perform
the functions of maintenance and resource management for the educational institutions according to the terms of the contract [3].

The Regulation of the outsourcing procedure for the territorial branches of the JSC Russian Railways regards the outsourcing as a way to optimize the activity of the branches via focusing on the core activity and contracting out of a certain business activities (works and services) to the specialized organizations or individual entrepreneurs that result in respective branch layoffs [4].

Analyzing above mentioned definitions the outsourcing relations can be characterized as following:

- A Corporate Customer and an Outsourcer (Executor) conclude a contractor service agreement or a contract for provision of services;
- A service provider establishes a labour relations with the employees whereas a service receiver does not establish any legal relations with them;
- An outsourcer is eligible and responsible as if an employer.

This approach is approved by the judicial practice. For instance, the Supreme Commercial Court of Russian Federation defined that outsourcing contract “commences a complex relations that are regulated by both civil law and labour law on the grounds that there are two basic scopes for regulation: property relations and labour relations… Such contacts do not contravene the law [5]”.

For example, outsourcing appears to be a complex legal category. Russian legal theory scholars research on a variety of controversial aspects of this phenomenon with a legal regulation of the outsourcer’s employees activities on the territory of the customer as the most crucial and disputable one.

This problem can be explicitly illustrated with the following example. An LLC (the Customer) concludes a contract for provision of services with a private security company (the Executor). Such a contract includes several provisions that are regulated by the labour legislation, such as “the Customer shall ensure the compliance of the working conditions with the requirements of the occupational safety and health for the personnel provided by the Executor”, or “the Customer shall equip the work place for the personnel provided by the Executor in compliance with the requirements of the labour legislation” (which are the responsibilities of the employer according to the Article 22 of the Labour Code of the Russian Federation [6]). In this respect, the employment contract with the security guard is also remarkable as it contains the following clauses: “the Employer shall equip the work place for the personnel provided by the Executor in compliance with the requirements of the labour legislation” and “the Employer shall ensure the compliance of the working conditions with the requirements of the occupational safety and health for the Employee”. Nonetheless, such clauses can be nothing but a mere declaration because de facto these are the responsibilities of the Customer. It is also important to note that the employees of the private security company are constrained to comply with the internal labour regulations and schedule of the Customer during the working time, at least (in case 24-hour security is not required). However de facto these provisions do not affect labour rights of the security guards anyhow: this aspect is a subject to the item 1 of the Article11 and by the Article 19 of the Federal Law "On Private Detective and Security Activity in the Russian Federation" [7].

Our Approach to Outsourcing Definition: With reference to the foregoing, we propose to address to the phenomenon of outsourcing from two different perspectives. Outsourcing can be considered as the economic category when one company transfers the non-core activities to a specialized organization focusing resources towards core activities and optimizing its business process.

At the same time, outsourcing is a legal category that can be defined as a type of the organization of labour when one company transfers the non-core activities to a specialist contractor by concluding a contractor service agreement or a contract for provision of services, or a contract that includes the provisions of civil and labour law.

Herein specialist contractor is assumed as the juridical person or individual entrepreneur for which the outsourced activity corresponds with the core activity that was authorized during the procedure of incorporation (registration – for individual entrepreneurs) [9] and/or special legal confirmation procedure [10].
Therefore, the primary type of economic activity (or core activity) influences greatly on the contribution to the Insurance Fund against labour accidents and occupational diseases [11] according to the Classification of economic activities by the occupational risk classes [12]. Every juridical person should undergo annual confirmation procedure for the basic type of economic activity because after the incorporation the type of economic activity which constituted the biggest share in the total production of goods and services according to the annual report is generally referred to as the basic type of the economic activity (according to the clause 8 of the Regulation of classifying the economic activities by the occupational risk classes).

Speaking about the non-core activities we should understand them as a subsidiary functions aimed at maintenance of the core economic activities or referred to as a non-core activity by the act of law. For instance, according to the clause 2 of the Order of the Minister of Defense of the Russian Federation “On Approval of Guidelines for military (ship) administration in the Armed Forces of the Russian Federation” (hereinafter the Order No. 2222) [13] economic activity of the military units is aimed at maintaining combat potential and mobilization readiness; seeing that, in order to release the resource necessary for maintaining required combat potential, improving combat and mobilization readiness of troops and for improving the maintenance of weaponry and military equipment and materials the following activities were eventually outsourced (see Chapter VII of the Order No. 2222): food supply and catering, clothing exchange and bath operations, fueling, maintenance of weaponry and military equipment, organization of fuel supply, public utility of barracks and quarters.

**CONCLUSION**

Overall, we can conclude that outsourcing does not correlate with the provision of temporary staff so long as, first of all, the employer is represented by the specialized company but not the employment agency; secondly, outsourcer concludes permanent, not fixed term, contract with the employees; thirdly, the labour rights of the outsourcer’s employees are not infringed at all; fourthly, outsourcing implies the relation about the provision of services, whereas the provision of temporary staff is based on the provision of personnel. At the same time the problem of outsourcing remains rather disputable and constitutes a subject for the further discussion and theoretical development.

**REFERENCES**


