

UDC 346.3:005.591.43

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A PHENOMENON OF OUTSOURCING ACTIVITY AS AN OBJECT OF ECONOMIC AND LEGAL REGULATION

The main feature of the current period of economic development is globalization. Under complicated political and economic conditions, enterprises try to search new forms of collaboration, including with foreign partners, the most effective ways of development, reduction of expenses, which, in turn, will lead to enhancement of competitiveness. As a result, outsourcing as a legal and economic phenomenon becomes increasingly common.

It is worth mentioning that outsourcing is primarily considered as an economic rather than juridical phenomenon. Nevertheless, there is no single approach to defining this concept. Firstly, scientists think that outsourcing is an instrument of optimization of activity of an organization specialized in a corresponding industry. Another group of scientists point out that outsourcing is a way of optimization of activity of enterprises due to concentration on the main subject and transfer of non-core functions and corporate roles to external specialized companies. According to a definition, which is presented in a consolidated platform of knowledge on the outsourcing industry «The Outsourcing Professional Body of Knowledge» that has been developed by the international association of professionals in the outsourcing area, outsourcing is long-term outcome-oriented business collaboration with an external supplier of services. This definition highlights advantages of collaboration for a customer. Either way, the author may conclude that outsourcing is confined to the following definition: concentration of own efforts on activity and issues, which are the main for a particular company, and transfer of secondary and other functions to outsourcers, i.e. specialized companies. Therefore, it can be concluded that economic optimization of expenses for production of goods is the main incentive for usage of outsourcing.

Analyzing outsourcing from the standpoint of law, the author may conclude that the juridical doctrine does not also have an opinion regarding understanding of this phenomenon. V. Vytko points out that there are no reasons to indicate an agreement of outsourcing as a separate type, since any specific characteristics being relevant for classification are absent. Moreover, relations arising from such agreement are entirely encompassed by agreements on execution of works and providing ser-

vices. H. Korniiichuk also thinks that a customer factually buys a service from an outsourcer if a customer entrusts an outsourcer to fulfill a service in accordance with an outsourcing agreement.

According to the second position, an outsourcing agreement is a combination of civil, labor, and economic elements. Many scientists point out that concluding an outsourcing agreement consists in concluding a mixed agreement, which combines elements of civil, economic, and labor law. That is to say, from the standpoint of civil understanding of this agreement, an outsourcing agreement is either an agreement of providing services or a contract for services, or a contract for staff leasing, etc. Taking into account a labor aspect, it is worth mentioning that amendments to the Code of Laws about Labor, which were enshrined in the Law of Ukraine of 28 December 2014, led to exclusion of Part 4 of Article 24 that determined permission for an employer to perform his obligations as a reason for emergence of labor relations. Therefore, such labor element of an outsourcing agreement is not relevant. Since this agreement is concluded between economic entities, activity of which is subject to regulation by economic law norms, an economic component consists in the specific content of parties. T. Korshunova mentions that execution of employer functions is simultaneously controlled by two organizations – a supplier, who must provide appropriate quality for services and a customer, who must receive services and pay for them according to agreement terms.

There are numerous criteria, which enables to indicate different types of outsourcing. Hence, outsourcing may be classified in the following way: a) according to importance of functions, which is transferred to other companies, outsourcing is divided into strategic, when a company transfers the main functions, and tactic, when a company transfers supplementary and axillary functions; b) depending on the location of a company of a customer, scientists indicate insourcing, off-shoring, off-shore and on-shore outsourcing; c) according to activity, outsourcing is divided into production outsourcing, outsourcing of business processes (marketing logistics, staff management, security services), outsourcing of knowledge (collection of information, analysis and decision-making, creation of intellectual property), IT-outsourcing (service and technical maintenance, creation, servicing, and maintenance of web-sites, etc.), outstaffing, which is divided into leasing, selection of temporary staff, and outsourcing of staff.

It is worth highlighting that outsourcing is of considerable importance for development and strengthening the national economy. Let us consider advantages of outsourcing in a case, when domestic companies are executors. Outsourcing to some extent solves issues related to an insufficient amount of workplaces, since execution of assignments given by foreign companies need involvement of

a greater number of labor resources. As a result, population employment grows. Secondly, studying new technologies by staff leads to the increase of quality of labor resources. In other words, innovativeness is implemented in the national economy. Thirdly, outsourcing may be considered as means of involvement of domestic companies in transnational companies and world market entry. When domestic companies transfer of a part of functions to other companies, optimization of expenses, which forms favorable conditions for development of business, is one of advantages. In addition, outsourcing gives access to services of the world class and to new technologies, which increases competition within the domestic market.

Taking into account legal forms of outsourcing, it is presented through agreements for services and execution of work. Therefore, an outsourcing agreement is always an agreement for services or execution of work. Nevertheless, such agreements are not always outsourcing agreements. Therefore, the question is, when does such agreements perform an outsourcing function? O. Zozulev mentions that outsourcing is a strategy of managing a company. It is the main discrepancy between an outsourcing agreement and related contracts. Parties of an agreement become participators of integration processes, which are related to specialization. That is to say, the mentioned agreements are types of a partnership interrelation between several companies, which can be performed permanently or temporary. At the same time, outsourcing becomes a lifecycle of a company.

In Ukraine, the modern market of outsourcing is not considerably developed. This fact is concerned with instable political and economic conditions, absence of the legal basis of regulation of an outsourcing agreement, mistrust and a low level of awareness of new forms of doing business and a low level of competition of domestic enterprises. Companies frequently transfer functions such as marketing, logistics, accounting to outsourcing in Ukraine. However, IT-outsourcing is the most perspective sphere related to high professionalism of labor resources and low prices compared to a foreign market. Nevertheless, we may hardly expect rapid development of the market and world market entry without governmental support and exercising an effective regulatory and incentive economic and legal policy. In such case, it would be appropriate to give an example of India, which has become a leader of outsourcing due to an effective government policy. The government has determined perspective directions of development of an industry of information technologies and begun to create expert and production zones with subsidiary regimes of taxation. In addition, the government permanently increases a level of education and qualification of professionals, adopts laws, which guarantee protection of intellectual property rights, non-disclosure of a commercial secret and provide tax subsidies that attract foreign investments.

Consequently, the author may conclude that outsourcing assumes growing importance under conditions of globalization. It is an effective method of involvement of foreign capital, development of domestic business, the increase of competition and world market entry. Nevertheless, Ukraine may fail to become one of leaders of providing IT-services without an appropriate government policy. Moreover, it is expedient to form a certain legal regime for those companies being of considerable importance for the Ukrainian economy in order to form favorable conditions for their development and, as a result, strengthening the economy.