

## IV. LABOR LAW AND SOCIAL WELFARE LAW

**Information for citation:**

Zaitseva L. V., Chukreyev A. A. *Chastnye agentstva zanyatosti i zaemnyy trud v Rossii: sravnitel'no-pravovoe issledovanie* [Private Employment Agencies and Contingent Labor in the Russian Federation: Comparative Law Research]. *Vestnik Permskogo Universiteta. Juridicheskie Nauki* – Perm University Herald. Juridical Sciences. 2017. Issue 35. Pp. 84–94. (In Russ.). DOI: 10.17072/1995-4190-2017-35-84-94.

UDC 34: 331(075)

DOI: 10.17072/1995-4190-2017-35-84-94

***PRIVATE EMPLOYMENT AGENCIES AND CONTINGENT LABOR  
IN THE RUSSIAN FEDERATION: COMPARATIVE LAW RESEARCH***

Tyumen State University

6, Volodarskogo st., Tyumen, 625003, Russia

ORCID: 0000-0001-6134-3734

ResearcherID: A-6167-2017

Articles in DB “Scopus” / “Web of Science”:

DOI: 10.17223/15617793/406/31

DOI: 10.12737/18029

DOI: 10.17589/2309-8678-2014-2-2-145-156

e-mail: larisa\_zaitseva72@mail.ru

**A. A. Chukreyev**

Tyumen State University

6, Volodarskogo st., Tyumen, 625003, Russia

ORCID: 0000-0002-9502-8860

ResearcherID: P-1576-2016

Articles in DB “Scopus” / “Web of Science”:

DOI: 10.17072/1995-4190-2015-2-106-118

e-mail: aachukreyev@mail.ru

**Introduction:** temporary and flexible forms of employment have become widespread in the post-industrial labor market. This development is facilitated by the dynamics of today's economy, new quality of the workforce and modern technologies, which do not require fixed hours or assigned workspaces. **Purpose:** to describe the current state and prospects of the legal regulation of private employment agencies and their services in the contingent labor market in Russia. **Methods:** this research is based on a set of methods, with the systemic method and comparative law analysis being the major ones. **Results:** the paper provides a detailed analysis of Federal Law No. 116-FL of May 5, 2014, which is the first act to regulate temporary provision of employees and to define the legal status of private employment agencies in Russia. This federal law went into effect in 2016. The authors have a positive attitude towards the law in general, but criticize some of its ambiguities and limitations. The law demonstrates some contradictions between the Russian legislation and the international acts, which explains the lack of ratification of the latter by the Russian Federation up to date. **Conclusions:** this research suggests that Russian legislature should take into account previous mistakes and successful legislative practices of other countries (including the former Soviet Union states) to further improve Russian laws and regulations in this area. Special attention should be paid to the countries where private employment agencies have had a long history and where the legal regulation of temporary employment has obvious advantages and provides a favorable balance between the interests of employers and employees.

---

Keywords: alternative labor relations; legal regulation; worker; private employment agency; contingent labor; employee leasing; contract for the provision of employees (staff); outsourcing

## Information in Russian

### **ЧАСТНЫЕ АГЕНТСТВА ЗАНЯТОСТИ И ЗАЕМНЫЙ ТРУД В РОССИИ: СРАВНИТЕЛЬНО-ПРАВОВОЕ ИССЛЕДОВАНИЕ**

#### **Л. В. Зайцева**

Кандидат юридических наук, доцент, зав. кафедрой трудового права и предпринимательства  
Институт государства и права Тюменского государственного университета  
625003, Россия, г. Тюмень, ул. Володарского, 6

**ORCID:** 0000-0001-6134-3734

**ResearcherID:** A-6167-2017

Статьи в БД «Scopus» / «Web of Science»:

**DOI:** 10.17223/15617793/406/31

**DOI:** 10.12737/18029

**DOI:** 10.17589/2309-8678-2014-2-2-145-156

e-mail: larisa\_zaiцева72@mail.ru

#### **А. А. Чукреев**

Кандидат юридических наук, доцент кафедры трудового права и предпринимательства  
Институт государства и права Тюменского государственного университета  
625003, Россия, г. Тюмень, ул. Володарского, 6

**ORCID:** 0000-0002-9502-8860

**ResearcherID:** P-1576-2016

Статьи в БД «Scopus» / «Web of Science»:

**DOI:** 10.17072/1995-4190-2015-2-106-118

e-mail: aachukreyev@mail.ru

**Введение:** Развитие временных и гибких форм занятости становится одним из основных направлений трансформации рынка труда в постиндустриальном обществе. Новые альтернативные формы применения труда обусловлены потребностями рынка, степенью развитости трудовых ресурсов, новыми технологиями, не требующими постоянного присутствия работника на территории, подконтрольной работодателю. **Цель:** оценить текущее состояние и перспективы правового регулирования деятельности частных агентств занятости по временному предоставлению персонала в России. **Методы:** методологическую основу данного исследования составляет совокупность методов научного познания, среди которых основное место занимают системный и сравнительно-правовой методы. **Результаты:** детально рассматривается Федеральный закон от 5 мая 2014 г. № 116-ФЗ, который впервые урегулировал временное предоставление персонала и закрепил правовой статус частных агентств занятости в России, вступив в силу с 2016 года. В целом авторы положительно оценивают данный закон, но критически относятся к некоторым имеющимся в нем неясностям и ограничениям. Указываются отдельные противоречия российского законодательства международным правовым актам, что объясняет отсутствие их ратификации Российской Федерацией до настоящего времени. **Выводы:** предлагается при дальнейшем совершенствовании российского законодательства (и законодательства других стран, расположенных на постсоветском пространстве) учитывать ранее допущенные ошибки, а также несомненные преимущества законодательств других стран мира по рассматриваемым вопросам. В частности, интерес вызывает опыт тех стран, где существует более длительная история деятельности частных агентств занятости и где правовое регулирование временной занятости имеет явные плюсы и обеспечивает сбалансированность интересов работодателей и работников.

Ключевые слова: альтернативные трудовые отношения; правовое регулирование; работник; частное агентство занятости; заемный труд; лизинг персонала; договор о предоставлении труда работников (персонала); аутсорсинг

## Introduction

By the end of the 20<sup>th</sup> century, contingent labor as a social and legal practice had become widespread around the world. Now this form of alternative labor relations is also popular in Russia. However, Russian legislation lacked special rules on contingent labor until recently. In January 2016, the Russian Federation (RF) brought into force several acts which enabled private employment agencies (PEA) to make contracts for the provision of temporary employees, as well as introduced rules on contingent labor provided by employees working under such contracts in a user organization.

The authors rely on extensive legal and theoretical material: they analyzed international laws produced by the International Labor Organization (ILO), the European Union (European Parliament and European Council), and the Commonwealth of Independent States (Inter-Parliamentary Assembly). The systematic analysis was applied to employment laws and regulations of the RF as well as to some legislation of the Republic of Kazakhstan and Ukraine. In addition, the authors used a variety of sources to identify specific characteristics of the legal regulation of PEAs and temporary employment in the United States, the United Kingdom, Germany, the Netherlands, Australia, France, Lithuania, Poland, and Slovakia.

### Private Employment Agencies: History and Development

Initially, commercial mediation in the area of employment appeared in Germany and France. It had both advantages and disadvantages, which are still of importance. One of the strongest features of PEAs is the impartial and uninvolved nature of their services along with the high level of efficiency, which is stimulated by the necessity to generate profit. On the other hand, the pursuit of profit sometimes leads to the neglect of the interests and abuse of the rights of the parties involved. In Germany, this type of commercial activity became a legally acknowledged business in 1869 after having been specifically mentioned in the Industrial Code. Similar legal regulations were also in place in Austria.

Commercial job placement went through a number of regulation periods, which featured various limitations, ranging from restrictions on this business imposed by Napoleon in France to the total ban in Russia in 1917.

When public authorities realized the importance of mediation in the labor market, Europe saw the arrival of first municipal and national job placement services. There appeared a network of job placement offices which provided available, fair and free services to the public. Since then public employment services have been significantly out-competing private agencies in the labor market.

In Russia first commercial job placement companies began to appear in the early 1990s. They met the new increased demand for workforce generated by employers in the open labor market. Unlike public employment services, commercial agencies operated on a fee-paying contract basis and catered mostly for employers as well as motivated individual job seekers. Gradually commercial job placement developed enough to create real competition to public employment services, including by setting up a communication system to exchange and distribute information on the labor market. In today's Russian Federation the profit produced by private recruitment services is estimated at 10 billion rubles (about 140 million US dollars) a year, while the number of vacancies filled through PEAs is just under 100 thousand a year, or 9 % of the labor market [5, p. 57]. According to ILO experts, the significant development of PEAs is related to the fast-paced labor market, the limitations of public employment services, and use of innovative tools and programs [9, p. 1].

Commercial intermediation in this sphere was expected to get a new boost after January 01, 2016 when Federal Law of May 05, 2014 No. 116-FZ entered into force and introduced new amendments to the Federal Law *On Employment in the Russian Federation*<sup>1</sup>. Article 5 formulates a new goal of the national employment policy: "to set up conditions for the development of non-governmental organizations, including private employment agencies,

---

<sup>1</sup> RF Federal Law "On Amendments to Certain Legislative Acts of Russia" of May 5, 2014 No. 116-FZ. *Collection of Legislative Acts of the Russian Federation*. 2014. No. 19. Article 2321.

which provide job placement and recruiting services, and to ensure interaction and cooperation of these with state employment offices". These amendments are associated with the concurrently introduced rules which regulate PEAs' operations on temporary personnel. All this provides legal basis for the said activities and can help the ratification of ILO Convention No. 181 *On Private Employment Agencies*. According to experts, only 7 % of PEAs provide temporary employees in Russia today [5, p. 57].

### The Legal Regulation of Contingent Labor

Contingent labor originally appeared in the USA in the 1920s when PEAs, along with their traditional functions, started to act as employers for contingent workers and lend their labor to third parties. It spread to Western Europe in the 1950s after American PEAs entered its market.

Till the 1980s, legislatures in many countries saw operations on contingent labor as aimed at evading labor and tax laws and gaining unfair advantages in business. Therefore, they banned or largely restricted this practice. In the last decades, however, globalization, increased international competition and other compelling factors facilitated the growth of new alternative forms of employment, and many countries have lifted bans on the use of contingent labor or have eased the restrictions.

It is important that ILO recognized the legitimacy of services consisting of "employing workers with a view to making them available to a third party" by adopting the *Private Employment Agencies Convention* (No. 181, 1997)<sup>1</sup>. Russia has not joined this Convention to date.

<sup>1</sup> *On Private Employment Agencies*: International Labor Organization Convention of June 19, 1997 No. 81. Access from the legal reference system "Konsul'tant Plyus".

In view of the need for the standard legal regulation of contingent labor in EU countries, the European Parliament and the European Council approved the *Directive on Temporary Agency Work* in 2008<sup>2</sup>.

The Inter-Parliamentary Assembly of the Commonwealth of Independent States (CIS) passed a Model Law *On Activities of Private Employment Agencies* by the Decree of October 28, 2010 No. 35-14<sup>3</sup>. As opposed to the above Convention and Directive, this law does not expressly provide for operations on contingent labor.

Russian experts often refer to this type of alternative labor relations as (literally) "loaned labor" (*zayomnyi trud* in Russian), which corresponds to the English "contingent labor" or "temporary employment". It is noteworthy that the terms *contingent labor* and *employee leasing* are not used in either the above Convention or EC Directive – both refer to temporary assignment of PEA's workers to a user enterprise by PEAs (in the Convention's terminology) or temporary work agencies (according to the EC Directive). The CIS Model Law on the activity of PEAs under its Art. 2 "establishes the model legal regulation for the operation of private employment agencies as non-state actors at the labor market that are engaged in filling job vacancies and recruitment as well as job placement in the country of employment". Thus, these acts govern the operation of such agencies and are not aimed at the exhaustive regulation of contingent employment practices.

<sup>2</sup> Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work. *Official Journal of the European Union*. 2008. L. 327. Pp. 9–14.

<sup>3</sup> Model Law "On Activities of Private Employment Agencies" of October 28, 2010. Access from the legal reference system "Konsul'tant Plyus".

In the United States “contingent worker” is an umbrella-term for independent contractors, leased employees, and temporary or seasonal workers. An independent contractor is a worker who is considered to be self-employed or is a freelancer, i.e. not subject to the direct control of the employer in relation to the method or means of doing the assigned task; a leased employee is an employee “rented” by the recipient of services through a recruitment agency; the main feature of temporary (or seasonal) workers, compared to “leased” workers, is that the former unlike the latter are engaged on a short-term (or seasonal) basis [14, pp. 255, 256, 279–281; 16, pp. 1390, 1391, 1404, 1418, 1419, 1427]. According to the Department of Labor, in 2005 nearly 4,5 million employees in the United States, which is 3,6 % of the work force, were engaged in temporary work; as of 2005, there were over ten million independent contractors, comprising 8,4 % of the labor force [14, pp. 253, 254].

Contingent labor can be regarded as a variety of outsourcing, which is generally defined as passing peripheral functions or a number of interrelated functions and production activities of a certain company to another organization (an outsourcer), and the implementation of these functions by the latter on the instructions of the former in conformity with the contract signed by the parties.

Globalization of the world economy has intensified the use of outsourcing almost all over the world and in many areas of business. However, many countries, including Russia, avoid binding this type of relationships to any specific contractual structures or introducing any specific legal regulation of outsourcing because of its varied and complex nature. At the same time some aspects of the latter are governed by special legislation, different in different countries – financial, antitrust, labor, etc. [8; 10; 11, pp. 211–214; 13]. In this regard, we can conclude that, while this practice is so varied and is getting even more popular, excessive administrative barriers that limit outsourcing may have an adverse affect on the development of the national economy as a whole.

## **Contingent Labor in Modern Russia: Current State of Legal Regulation**

Russian businessmen are looking for new workforce management techniques in an effort to optimize their staff expenses. One of the popular techniques used in recent years is the provision of personnel contract. This agreement is not provided for in the Russian Civil Code but it is not forbidden either, so it could be made under the principle of freedom of contract contained in paragraph 1, Art. 1, Art. 421 of the RF Civil Code<sup>1</sup>.

Despite the development of contingent labor market in Russia, which began in the 1990s, the Russian legal system lacked special regulation in this field until 2016. Only a number of articles in the RF Tax Code<sup>2</sup> mention services for provision of employees (paragraph 1, Art. 148, subparagraph 19, paragraph 1, Art. 264, paragraph 7, Art. 306, and others).

Today outsourcing is widely used in the IT-sphere (IT-outsourcing), which includes maintenance of accountant and inventory control programs, computers, office equipment, local nets, etc. [1, pp. 219, 225–325]. This personnel management technique is popular among small businesses, which deem it more cost-effective than employing full-time lawyers, consultants and book-keepers.

This broad approach to outsourcing also covers services of private security companies or construction services provided by a contractor for the benefit of a client. The examples above show that “outsourcing” is an umbrella-term and can be applied to a wide variety of economic relations, which makes it too vague and less acceptable for the purposes of legal regulation.

---

<sup>1</sup> Civil Code of the Russian Federation. Part One. No. 51-FZ of November 30, 1994. *Collection of Legislative Acts of the Russian Federation*. 1994. No. 32. Art. 3301.

<sup>2</sup> Tax Code of the Russian Federation. Part One. No. 146-FZ of July 31, 1998. *Collection of Legislative Acts of the Russian Federation*. 1998. No. 31. Art. 3824; Tax Code of the Russian Federation. Part Two. No. 117-FZ of August 5, 2000. *Collection of Legislative Acts of the Russian Federation*. 2000. No. 32. Art. 3340.

In Russian legal literature, there are justified calls to make a distinction between an outsourcing agreement and a contract for the provision of employees [1, pp. 147–158, 289; 2, pp. 97–105] (for cases when the subject-matter of the former is not reduced to the subject-matter of the latter, of course). The Russian legislator had this consideration in mind when they introduced rules on contracts for the temporary provision of employees to be observed by PEAs into the law *On Employment in the Russian Federation*<sup>1</sup>.

The Russian economy has developed another form of contingent labor employment, which is often referred to as outstaffing. Despite the fact this word does not exist in English, it became popular in the countries of ex-USSR in the 1990-s. Outstaffing is the practice when a company discharges some of its workers, gets them employed by another company (or other companies) and leases their labor back for the functions they used to perform [6, p. 24]. Outstaffing is the least desirable (if not harmful) form of employment. In fact, it is often a way for companies to avoid paying taxes and duties. In reality it is not so much of a human resources management technique or alternative labor practice but legal abuse on the part of the corporate employer and taxpayer [7, pp. 145–147, 149–153]. Therefore, it requires a considerable technical legislative expertise to ban outstaffing without outlawing contingent labor as such.

Russia has passed the law *On Amendments to some Russian Federation Legal Acts*, known and referred to below as Federal Law of May 05, 2014 No. 116, which regulates temporary provision of personnel and determines the legal status of PEAs. It is noteworthy that the draft law was introduced to the State Duma of the Federal Assembly of the RF in November 2010 and initially it suggested a total ban on all forms of contingent labor.

Federal Law of May 05, 2014 legalized the relations that arise out of the contract for the provi-

sion of temporary personnel between the user company and (as a general rule) PEA, the latter being defined as a company registered in the territory of the RF and accredited “to conduct this kind of activity by the authorized federal body”.

“This kind of activity” is defined as “temporary assignment by the employer (referred to below as a “seconding party”) of its employees upon their consent to a private or legal person who does not employ these workers (referred to below as a “user enterprise”) to perform certain services for, under the control and management of the user enterprise”.

It also defines the contract for the provision of employees as a contract “under which the contractor temporarily assigns its workers, with their consent, to the user enterprise to perform certain work to the benefit, under the control and management of the user enterprise, while the user enterprise undertakes to pay for the labor provision services and use this workforce in accordance with the job descriptions contained in the employment agreements between these workers and the contractor”. As it can be seen from the above, the legislator has modeled the personnel provision contract after the fee-based services contract, having made it a special subtype of the latter, which is generally in line with the current state of legal theory in Russia and law enforcement practices [1, p. 299; 3, p. 44; 7, pp. 148–149].

According to Federal Law of May 05, 2014, provision of personnel services do not need to be licensed, but PEAs engaged in these operations need to be accredited by the Federal Labor and Employment Service (RF Government Resolution No. 1165 of 29.10.2015)<sup>2</sup>. The abovementioned ILO Convention on PEAs and the EU Directive renders licensing optional; the issue is left for the national legislation to settle. The CIS Model Law on PEAs specifies that “PEAs are required

<sup>1</sup> RF Federal Law “On Employment in the Russian Federation” of April 19, 1991 No. 1032-1. *Collection of Legislative Acts of the Russian Federation*. 1996. No. 17. Art. 1915.

<sup>2</sup> On the Rules for Accrediting Private Employment Agencies to Provide Employees: RF Government Resolution of October 29, 2015 No. 1165. *Collection of Legislative Acts of the Russian Federation*. 2015. No. 45. Art. 6255.

to refer to the authorized federal government department to obtain the license provided for in the national legislation of the country where they are registered in order to perform their labor market services” (Article 4, Paragraph 3). Though in Russia accreditation is state-controlled, it is aimed at ensuring that PEAs comply with the obligatory criteria established by the law *On Employment in the Russian Federation*, such as:

a) the minimum start-up capital required is 1 million rubles (about 14 thousand US dollars; compare, for example, to the minimum capital requirement for a Limited Liability Company of 10 thousand rubles (about 140 dollars), which is 100 times less);

b) no debts to the Russian Federation’s budget system;

c) the PEA’s head is required to have a university degree and at least 2 years of experience in recruitment and employment services in the RF during the last 3 years;

d) the PEA’s head is required to have no prior criminal record and convictions for violent or economic crimes.

Federal Law of May 05, 2014 introduced some reasonable limitations on the provision of personnel contracts to paragraphs 12 and 13 of Article 18.1 of the law *On Employment in the Russian Federation*. These contracts cannot be used to replace employees of the user enterprise who are on strike or to perform work in workplaces with harmful working conditions of degree 3 and 4 or hazardous conditions according to the current legislation. The list of these limitations can be extended by special legislation, but as of now it does not exist<sup>1</sup>.

The right of PEAs and some other companies to lease their employees to third parties is also provided for in Chapter 53.1 of the RF Labor Code<sup>2</sup>.

---

<sup>1</sup> Imposition of such additional limitations will be possible by means of special federal laws (Paragraph 4 Article 18.1 of the RF Federal Law “On Employment in the Russian Federation”). These laws have not been adopted yet.

<sup>2</sup> Labor Code of the Russian Federation of December 30, 2001 No. 197-FZ. *Collection of Legislative Acts of the Russian Federation*. 2002. No. 1. Part 1. Art. 6255.

According to it, this type of PEA’s activities is subject to the following limitations. First of all, PEAs can make provision of personnel contracts with private entrepreneurs or companies only to provide them personnel “for clearly temporary activities (up to nine months) arising from the increase in production or range of services” (part 5 of Art. 341.2 of the RF Labor Code (LC)). This requirement is not technically made as a general rule, but it can effectively be recognized as such, and there are some exceptions to the rule. For example, PEAs may enter into contracts to provide individual entrepreneurs or companies with personnel “to perform work of temporarily absent regular employees who keep their jobs under the labor laws and other legislation, collective agreements, local regulations and employment contracts”. In this case, rigorous time constraints are not justified. Importantly, the ILO Convention on PEAs and the EU Directive do not specify the maximum term allowed for the provision of personnel contracts concluded between PEAs and user enterprises. Many countries that had similar restrictions (such as Germany and the Netherlands) canceled them after a while [4, pp. 74, 83].

The legislation on contingent labor rightfully establishes the principle of equal treatment: “The conditions of remuneration under the employment contract with the personnel seconded to a user enterprise under the provision of personnel contract cannot be worse than the conditions of remuneration for employees of this user enterprise who perform the same functions and have the same qualifications” (part 2, Art. 341.1 of the RF Labor Code). Meanwhile, it should be mentioned that the EU Directive principle of equal treatment formulated in Art. 5 is more detailed and flexible, and it applies not only to conditions of remuneration but also to the “basic working and employment conditions”, which include wages *inter alia* under Art. 3.

Under the Russian law, PEAs are not allowed to resort to special tax regimes in order to prevent legal abuse in the field of tax and labor relations. Probably, this ban aims to disadvantage the use of

contingent labor to reduce taxes or expenditure on the social welfare of employees.

Abroad contingent labor includes self-employed workers or freelancers along with seconded personnel. With the spread of this form of alternative employment, there appear numerous problems of securing legal rights and interests of these employees as well as the tax revenues of the government [11; 14, pp. 254, 255, 281–283; 16, pp. 1404–1430]. Russian law enforcement agencies are familiar with the difficulties associated with the qualification of relations arising from civil law services contracts that are based on the use of labor and are in fact in the domain of labor law regulation. At the same time, work of freelancers in Russia is regulated by the separate chapter of the Labor Code and is disconnected with PEAs. The relevant chapter 49.1 *On the Regulation of the Labor of Remote Employees* was introduced into the RF LC in 2013 and came into force in April of the same year. This means that this regulation was enacted almost three years before the legalization of PEAs' activities in the temporary provision of personnel, but after two years spent on the development and discussion of the temporary employment regulation.

#### **Contradictions between Russian and International Regulation on PEA**

A detailed analysis demonstrates that Russian and international legislations do not coincide in a number of aspects of regulation. We presume that these legislative differences can explain why ILO Convention No. 181 has not been ratified in Russia to date.

For one, the Russian legislator offers a definition of PEA which does not follow the international approach. Art. 1 of ILO Convention No. 181 defines PEA as “any natural or legal person, independent of the public authorities, which provides one or more of the following labor market services:

a) services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships which may arise therefrom;

b) services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person (referred to below as a "user enterprise") which assigns their tasks and supervises the execution of these tasks;

c) other services relating to jobseeking, determined by the competent authority after consulting

the most representative employers and workers organizations, such as the provision of information, that do not set out to match specific offers of and applications for employment”.

ILO experts see PEAs as service companies which carry out contractual operations under the civil law and on a fee-paying basis in the interests of private persons or companies and contribute to facilitating employment and recruitment by filling vacancies [15, p. 11]. This reveals another drastic difference between Russian and international regulation. In Russia PEAs engaged in their typical intermediary activities do not act in the name of either employer or employee and do not represent either of the parties. They take into account the interests of both parties and facilitate employment agreements between them, with the only exception of PEA operations in the provision of temporary personnel provided for in the law since 2016.

Therefore, the legislation should vest PEAs with the right to provide intermediary services such as job placement and others not connected with provision of personnel. PEAs can be required state accreditation and compliance with some criteria if they choose to be engaged in the provision of personnel activities, as is the case with the necessity to obtain a license to arrange job placement abroad (in Russia this rule is set in the Resolution of the RF Government of October 09, 2012 No. 1022 *On Approval of Licensing Rules of Activities Associated with Provision of Employment Services in the Russian Federation and Job-Placement Abroad*)<sup>1</sup>. The law should assume that PEAs can be, and are, engaged in a variety of activities and can have various organizational forms: staffing companies, labor exchanges, recruitment agencies, employment agencies, temporary and overseas job placement services. All of them comply with the ILO Convention definition and can be referred to as PEAs.

ILO Convention No. 181, unlike the Russian legislation, does not specify the maximum term for the provision of temporary personnel contracts. By introducing this restriction, the Russian legislator probably tries to prevent outstaffing and temporary employment turning into the permanent one, with the workers' labor rights reduced and legal interests defeated. As we have stated above, the lack of

<sup>1</sup> On Approval of Licensing Rules for Activities Associated with Provision of Employment Services in the Russian Federation and Job-Placement Abroad: Government Decision of October 8, 2012 No. 1022. *Collection of Legislative Acts of the Russian Federation*. 2012. No. 42. Art. 5713.

rigorous requirements as to the duration of contracts for the temporary provision of personnel does not imply that these restrictions cannot be introduced at the national level.

At the same time, the principle of equal treatment should have been extended to be applicable to all work and employment conditions relevant for temporary employees.

The most burning issue of the Russian legislation on PEA is the lack of prohibition to charge fees for PEAs' services to workers. Introduction of this ban today might damage the market share of PEAs, which is still underdeveloped and less competitive compared to the state employment services.

### **International Legal Regulation on PEAs and Contingent Labor as Source for Improving Russian Legislation**

The issue of payment for PEAs' services remains pertinent, especially in the countries which have not ratified ILO Convention No. 181 (see the list of 21 countries which ratified this Convention in *Guide to Private Employment Agencies* [4, p. 2]) and are not obliged to follow the rule not to charge workers for job placement services. Some countries have legislative prohibition of fee-charging to the unemployed (for example, in Germany this rule applies to everybody, except sportsmen, artists, models, etc.). Given the importance of assistance for most vulnerable social groups in the labor market, governments can establish and pay PEAs benefits for job placement of the unemployed from these groups (long-term unemployed, the youth, etc.) as is the case in Australia, for example.

It is still unclear how PAE can cooperate with the respective government services and how they can share the market. This issue does not get enough attention in Russia, and the analysis of international practices can be useful here. For example, the US government policy to promote cooperation has resulted in the balanced market where private and state employment agencies have equal shares, and has contributed to the higher quality of PEAs' services. In France and the Netherlands public employment agencies refer individual clients to PEAs after they exhaust their own resources and still fail to offer the unemployed a suitable job. In Lithuania public services exchange

information with PEAs; PEAs get informed on the current labor market situation and its dynamics. In Poland public and private agencies organize job fairs and exchange unpopular vacancies. In Slovakia there is a list of PAE which can be found in every public employee agency and on a special web-site [12].

It is important to develop public-private partnership in the area of employment and recruitment services, which is called for by experts. It will facilitate information exchange, help in producing joint forecasts and analytics on the labor market situation. It makes sense to distribute functions, giving its due to the flexibility of PEAs and their ability to fill non-standard vacancies, and to the administrative resources of the public employment services to resort to the welfare systems and provide employment for socially vulnerable groups.

Some CIS countries have more flexible and less formal legal regulation on PEAs operations. For example, Republic of Kazakhstan Law No. 149 *On Employment of Population*<sup>1</sup> defines PEA as a private person or legal entity which assists people in gaining employment and which is registered in accordance with the national laws. This law also establishes the legal status of PEAs.

Although Kazakhstan, like Russia, has not ratified ILO Convention No. 181, and PEAs practices are not devoid of imperfections or even violations of law, the way the legislator has determined the basic rights and responsibilities of PEAs, demonstrates the interest of the government towards this market player and efforts to make respective activities better provided for in the law.

The Law of Ukraine *On Employment of Population* (amended by Law No. 1221-VII of April 17, 2014)<sup>2</sup> is another positive example of legal regulation of employment mediation services. Article 36 determines that these services include assistance in finding vacancies, job placement, recruitment of personnel matching the employer's requirements (including those from abroad) performed under contracts with these potential employers. The list of agencies and entities that

---

<sup>1</sup> Gazette of the Parliament of the Republic of Kazakhstan. 2001. No. 3. Art. 18.

<sup>2</sup> Gazette of Verkhovna Rada. 2013. No. 24. Art. 243.

perform employment intermediary services and entities that recruit professionals with the view of making them available to other employers in Ukraine is compiled and updated by the central executive body responsible for the national employment and migration policy, subject to compliance with regulations issued by the Cabinet of Ministers. In addition, the Ukrainian law (unlike Kazakhstan and the RF laws) specifies that fees for employment assistance are charged to the employer, not the employee, except cases when the employee is placed abroad and only after duly accepting the services.

It is suggested that the best practices of other countries in legal regulation on PEAs should be taken into consideration when considering improvements to the respective Russian legislation.

### Conclusions

Since ILO and its conventions and recommendations have the key role in establishing standards in this sphere of economy, their ratification will provide the comprehensive legislative approach to the activities of PEAs and will favor the development of alternative forms of employment in the RF, without damaging regular and traditional practices.

As for the recommendations for improving Russian legislation, we deem it necessary to amend the definition of PEA in the RF Law *On Employment in the Russian Federation*. The vague nature of this definition can be explained by its location in the article which deals with a specific type of PEAs' operations, and not among the general notions. Therefore, the definition of PEA should be moved to Chapter 1 and given a new article (Art. 7.3). The new definition should follow the terminology of ILO Convention No.181. It is also a good idea for the law to specify the basic rights and responsibilities of PEAs as well as forms of their interaction with the public employment service.

In general, Federal Law of May 05, 2014 is a useful addition to the labor legislation. The Russian economy has long been in need for a legal framework for the provision of temporary personnel services, which de facto had been performed since the 1990s under the principle of freedom of contract. Direct legal regulation of PEAs' activities, devoid of excessive administrative barriers, but subject to the effective control aimed at securing rights and interests of workers, including via self-regulation mechanisms, can have a profound positive effect on the development of labor market and new progressive types of labor relationships in Russia.

### References

1. *Anikin B. A., Rudaya I. L. Outsourcing i autstaffing: vysokie tekhnologii menedzhmenta* [Outsourcing and Outstaffing: High Technologies of Management]. Moscow, 2009. 320 p. (In Russ.).
2. *Vitko V. S., Tsaturyan E. A. Yuridicheskaya priroda dogovorov outsorcinga i autstaffinga* [The Legal Nature of Contracts of Outsourcing and Outstaffing]. Moscow, 2012. 128 p. (In Russ.).
3. *Kiselev I., Karabel'nikov B., Cherkasova E., et al. Kontsepsiya pravovogo regulirovaniya zaemnogo truda* [The Concept of the Legal Regulation of Contingent Labor]. *Khozyaystvo i pravo – Business and Law*. 2004. No. 3. Pp. 40–48. (In Russ.).
4. *Krivoy Ya. V. Pravovoe regulirovanie zaemnogo truda* [The Legal Regulation of Contingent Labor]. Gomel, 2007. 160 p. (In Russ.).
5. *Maslova I. Instituty rossiyskogo rynka truda v mekhanizme regulirovaniya protsessov zanyatosti* [The Institutes of the Russian Labor Market in the Mechanism of Employment Processes Regulation]. *Vestnik Instituta ekonomiki Rossiyskoy akademii nauk – Vestnik Instituta ekonomiki Rossiyskoy akademii nauk*. 2013. No. 5. Pp. 39–66. (In Russ.).
6. *Nurtdinova A. Zaemnyj trud: osobennosti organizatsii i vozmozhnosti pravovogo regulirovaniya* [Contingent Labor: Features of Organization and Capabilities of Legal Regulation]. *Khozyaystvo i pravo – Business and Law*. 2004. No. 9. Pp. 22–30. (In Russ.).
7. *Chukreev A. A. Dogovor o predostavlenii personala: sushchnost' i dobrosovestnost' ispol'zovaniya v sfere nalogovykh pravootnosheniy* [The Secondment Contract: the Essence and Conscientious Use in the Field of Tax Legal Relations]. *Sudebnaya praktika v Zapadnoy Sibiri – Judicial practice in Western Siberia*. 2012. No. 4. Pp. 142–153. (In Russ.).
8. *Arribas Sanchez B., Lund S. Spain. Getting the Deal Through – Outsourcing 2016*. London: Law Business Research Ltd, 2015. Pp. 68–72. Available at: [http://www.mmmm.es/ficheros/publicaciones/GTDT\\_Oursourcing\\_2016\\_SL-BAS\\_021115.pdf](http://www.mmmm.es/ficheros/publicaciones/GTDT_Oursourcing_2016_SL-BAS_021115.pdf) (accessed 30.12.2016) (In Eng.).
9. *Guide to Private Employment Agencies – Regulation, Monitoring and Enforcement*. Geneva: International Labour Office, 2007. 111 p. (In Eng.).
10. *Halonon S. Finland. Getting the Deal Through – Outsourcing 2015*. London: Law Business Research Ltd, 2014. Pp. 32–36. Available at:

- [http://www.dittmar.fi/sites/default/files/2014\\_10\\_GTDT\\_Oustourcing2015\\_fin.pdf](http://www.dittmar.fi/sites/default/files/2014_10_GTDT_Oustourcing2015_fin.pdf) (accessed 30.12.2016) (In Eng.).
11. *Hira R. & Hira A.* Outsourcing America: what's behind our national crisis and how we can reclaim American jobs. New York: American Management Association, 2005. 236 p. (In Eng.).
  12. *Public-Private Partnerships in Employment Services.* Skills Working Paper No. 17. Geneva: International Labour Office, 2003. 29 p. (In Eng.).
  13. *Russell W. T., Nelson J. E., Garrote N. E., Zottola A. J., Ontiveros G. M. & Kolstad C. K.* United States. Getting the Deal Through – Outsourcing 2014. London: Law Business Research Ltd, 2013. Pp. 124–129. Available at: [https://www.venable.com/files/Publication/c9cf0f24-ac7c-48b1-8771-e4857c372180/Presentation/PublicationAttachment/27d8f4a6-9c7e-49e4-84d6-133a933fe797/Getting\\_the\\_Deal\\_Through\\_Outourcing\\_2014\\_US\\_Chapter.pdf](https://www.venable.com/files/Publication/c9cf0f24-ac7c-48b1-8771-e4857c372180/Presentation/PublicationAttachment/27d8f4a6-9c7e-49e4-84d6-133a933fe797/Getting_the_Deal_Through_Outourcing_2014_US_Chapter.pdf) (accessed 30.12.2016) (In Eng.).
  14. *Stone K. V. W.* Legal Protections for Atypical Employees: Employment Law for Workers without Workplaces and Employees without Employers. *Berkeley Journal of Employment & Labor Law*. 2006. Vol. 27. Issue 2. Pp. 251–286. (In Eng.).
  15. *The Role of Private Employment Agencies in the Functioning of Labour Markets.* 81st Session. Report VI. Geneva: International Labour Office, 1994. 93 p. (In Eng.).
  16. *Zanglein J., Stabile S.* Erisa litigation. 3rd ed. Arlington: BNA Books, 2008. 1664 p. (In Eng.).
  - мики Российской академии наук. 2013. № 5. С. 39–66.
  6. *Нуртдинова А.* Заемный труд: особенности организации и возможности правового регулирования // *Хозяйство и право*. 2004. № 9. С. 22–30.
  7. *Чукреев А. А.* Договор о предоставлении персонала: сущность и добросовестность использования в сфере налоговых правоотношений // *Судебная практика в Западной Сибири*. 2012. № 4. С. 142–153.
  8. *Arribas Sanchez B., Lund S.* Spain. Getting the Deal Through – Outsourcing 2016. London: Law Business Research Ltd, 2015. P. 68–72. URL: [http://www.mmmm.es/ficheros/publicaciones/GTDT\\_Oustourcing\\_2016\\_SL-BAS\\_02\\_1115.pdf](http://www.mmmm.es/ficheros/publicaciones/GTDT_Oustourcing_2016_SL-BAS_02_1115.pdf) (дата обращения: 30.12.2016).
  9. *Guide to Private Employment Agencies – Regulation, Monitoring and Enforcement.* Geneva: International Labour Office, 2007. 111 p.
  10. *Halonen S.* Finland. Getting the Deal Through – Outsourcing 2015. L.: Law Business Research Ltd, 2014. P. 32–36. URL: [http://www.dittmar.fi/sites/default/files/2014\\_10\\_GTDT\\_Oustourcing2015\\_fin.pdf](http://www.dittmar.fi/sites/default/files/2014_10_GTDT_Oustourcing2015_fin.pdf) (дата обращения: 30.12.2016).
  11. *Hira R., Hira A.* Outsourcing America: What's Behind Our National Crisis and How We Can Reclaim American Jobs. N. Y.: American Management Association, 2005. 236 p.
  12. *Public-Private Partnerships in Employment Services.* Skills Working Paper № 17. Geneva: International Labour Office, 2003. 29 p.
  13. *Russell W. T., Nelson J. E., Garrote N. E., Zottola A. J., Ontiveros G. M., Kolstad C. K.* United States. Getting the Deal Through – Outsourcing 2014. L.: Law Business Research Ltd, 2013. P. 124–129. URL: [https://www.venable.com/files/Publication/c9cf0f24-ac7c-48b1-8771-e4857c372180/Presentation/PublicationAttachment/27d8f4a6-9c7e-49e4-84d6-133a933fe797/Getting\\_the\\_Deal\\_Through\\_Outourcing\\_2014\\_US\\_Chapter.pdf](https://www.venable.com/files/Publication/c9cf0f24-ac7c-48b1-8771-e4857c372180/Presentation/PublicationAttachment/27d8f4a6-9c7e-49e4-84d6-133a933fe797/Getting_the_Deal_Through_Outourcing_2014_US_Chapter.pdf) (дата обращения: 30.12.2016).
  14. *Stone K. V. W.* Legal Protections for Atypical Employees: Employment Law for Workers without Workplaces and Employees without Employers // *Berkeley Journal of Employment & Labor Law*. 2006. Vol. 27, Issue 2. P. 251–286.
  15. *The Role of Private Employment Agencies in the Functioning of Labour Markets.* 81st Session. Report VI. Geneva: International Labour Office, 1994. 93 p.
- Zanglein J., Stabile S.* Erisa litigation. 3rd ed. Arlington: BNA Books, 2008. 1664 p.

#### References in Russian

1. *Аникин Б. А., Рудая И. Л.* Аутсорсинг и аутстаффинг: высокие технологии менеджмента. М.: ИНФРА-М, 2009. 320 с.
2. *Витко В. С., Цатурян Е. А.* Юридическая природа договоров аутсорсинга и аутстаффинга. М.: Статут, 2012. 128 с.
3. *Киселев И., Карабельников Б., Черкасова Э., Кукса С., Юдкин В., Леонов А., Свечкаренко В.* Концепция правового регулирования заемного труда // *Хозяйство и право*. 2004. № 3. С. 40–48.
4. *Кривой Я. В.* Правовое регулирование заемного труда. Гомель: Изд. Е. А. Ковалева, 2007. 160 с.
5. *Маслова И.* Институты российского рынка труда в механизме регулирования процессов занятости // *Вестник Института эконо-*