

## PROBLEMATICAL ASPECTS OF INDEPENDENT WORK CONTRACT FORMATION

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### Abstract

In order to conclude an independent work contract it is necessary to identify its most important features, distinguish it from other contracts and understand the essential terms. The creation of a contract is the basis for its fulfillment. A properly made independent work contract is an ensured remedy of rights and law interests for the parties of agreement. The law does not distinguish the aspects of the conclusion of an independent work contract and can be concluded in writing or orally which makes it difficult to determine and clarify the content of the contract terms. It is important to correctly identify legal aspects of independent work contracts, as this determines the rights and obligations of each party. This is often not given enough attention which can lead to complex dispute resolution procedures due to different interpretations of the contract terms. There are many examples that problems arise precisely on the basis of an improper conclusion of the contract which can turn into disputes in the courts. Most of legal disputes arise from the specifics of contract formation, professional performance of contracts and cases of termination. The more precise the definition of rights and duties and the work to be performed in the contracts, the higher their quality and the fewer legal disputes they cause.

*Keywords: independent work contract, contractor, customer, essential terms of the contract*

### Introduction

With a thriving economy and rapid development in economic activities independent work contracts become very important for the development of public relations. For these reasons the role of production, construction and renovation works performed on the basis of an independent work contract has increased in the Republic of Lithuania. The Civil Code of the Republic of Lithuania provides general legal norms regulating independent work contracts, defining the essential features, the rights and obligations of the parties and their responsibilities.

A properly executed contract serves as a means to secure the rights and legal interests of the parties, potentially avoiding long and complicated dispute resolution procedures. In court practice there are many cases related to the legal relations of the independent work contract, because during the performance of the contract disputes arise between the parties due to differing perceptions or interpretations of contract terms. Given this and in order to ensure a balance of interests between the parties and the stability of civil legal relations, it is necessary to precisely conclude a suitable contract determining its main aspects.

*The problematic situation of this research* is that legal acts do not distinguish the aspects of independent work contract formation and the contract can be concluded in written and verbal form, which makes it difficult to determine and clarify the content of the terms of the contract. Analyzing court practice several examples could be found that it is precisely based on inappropriate conclusion of the contract and problems arise that turn into disputes in the courts. Correct identification of the aspects of independent work contract formation, which determines the respective rights and obligations of the parties, is an actual problem that is not given sufficient attention.

***The object of the research*** is the problematic aspects of an independent work contract formation.

***The aims of the research*** - to analyze legal regulation and court practice of an independent work contract formation in the Republic of Lithuania and identify problematic aspects that can help to ensure that independent work contracts are concluded in a fair and transparent manner.

***Research methodology.*** The document analysis method is used to collect and analyze data. The article analyzes national legislation, relevant judicial practice related to the regulation of the formation of independent work contract and related scientific papers. The system analysis method is used to study legal norms and examine problems in judicial practice that courts face in qualifying the relations of a contract for work. The generalization method is used to summarize the analyzed research data and to present conclusions and proposals.

## **Results**

### **General characteristics and types of an independent work contract**

The main source regulating independent work contract is the Civil Code of the Republic of Lithuania. When starting to unravel the conclusion of an independent work contract, it is particularly important to clarify the concept. The concept of an independent work contract is presented in Part 1 of Article 6.644 of the Civil Code of the Republic of Lithuania, which states that in the contract one party (the contractor) undertakes to perform certain work at its own risk according to the task of the other party (the customer) and to transfer the result of this work to the customer, and the customer undertakes to accept the work performed and pay for it: "The occurrence of the customer's obligation to pay for the work is usually associated with the transfer and acceptance of the result of the work" (The Supreme Court of Lithuania 16th January 2020 ruling in civil case No. 3K -3-127-219/2020).

In the context of Article 6.644 of the Civil Code of the Republic of Lithuania, the contract is consensual, bilateral, and remunerative. A contract is concluded to produce or transfer a certain work result or to perform other works during which the created result is transferred to the customer. The subject of the contract is a certain result of the work which has a material expression (The Supreme Court of Lithuania 31st March 2015 ruling in civil case No. Nr. 3K-3- 177-687/2015). It can be a newly made object (a house is built, a new garment is sewn, etc.), giving new properties or lost properties to an object (improving an object, repairing it, etc.) (Jurkevičius, Šidlauskienė, 2015). In all cases the contract must determine what work will be performed and what result the contractor will deliver to the customer. It should also be noted that the ownership right to the result created by the contractor passes to the customer only from the moment of handing over this result to the customer. Until then it will be considered the property of the contractor.

The subject of the contract and the contract itself are characterized by the fact that the contractor usually performs the work at his own risk and independently determines the methods of fulfilling the customer's task. This means that the risk of accidental death or failure of the contract result lies with the contractor, i.e., in such cases the contractor has no right to demand from the customer either payment for the work performed or compensation for losses. However, if the deadline for the transfer or acceptance of the results of

the work is missed, the said risk falls on the party that missed the deadline (Ambrasienė, Baranauskas, Bublienė, 2006).

An independent work contract is also characterized by the fact that the contractor has the right to use other persons (subcontractors) to fulfill his obligations if the laws or the contract do not stipulate that the contractor must perform the task himself. If subcontractors are used for the task, the contractor becomes the general contractor in relation to them. The general contractor is liable to the customer for the unfulfilled or improperly fulfilled obligations of the subcontractors, and to the subcontractors for the unfulfilled or improperly fulfilled obligations of the customer. Unless otherwise stipulated by law or contract, the customer and the subcontractor have no right to make monetary claims against each other in connection with the violation of the contracts concluded by each of them with the general contractor. If the general contractor agrees, the customer has the right to enter into contracts with other people for individual works. In this case these persons are directly responsible to the customer for the unfulfilled or improperly fulfilled contract: "If the contractor performs his duties improperly, the customer has the right not to fulfill his duty to accept the work and pay for it and vice versa (The Supreme Court of Lithuania 25th June 2020 ruling in civil case no. e3K-3-197-469/2020).

Articles 6.644 - 6.671 of the Civil Code of the Republic of Lithuania regulates the general norms of the independent work contract. Articles 6.672 - 6.680 - special norms for consumer independent work, Articles 6.681 - 6.699 – construction independent work, Articles 6.700 - 6.704 – independent work for fulfillment of projecting and survey work, Articles 6.705 - 6.706. – independent work financed from the budget of the state or municipalities. Separate types of independent work contracts are distinguished based on the specifics of the parties to the contract (e.g., in the case of a consumer independent work, the customer is a consumer (individual) who orders certain work to be performed to meet the needs of his personal, household, family business, and the contractor is a business entity engaged in a certain business), to the specifics of the subject of the contract (for example, the subject of a construction independent work contract is works related to the construction of a building or other construction works, or a contract for independent work for fulfillment of projecting and survey work, the subject of which is research or design work) or (and) specifics of execution, taking into account the specifics of the subject of the contract (e.g. construction independent work contract).

In the practice of the Supreme Court of Lithuania it is indicated how to properly qualify an independent work contract relationship, distinguishing the following main qualifying features characteristic of an independent work contract: "For the relations of the parties to be qualified as an independent work contract it is necessary to determine the following features: 1) the purpose of the independent work contract is to obtain a certain work result (Part 1 of Articles 6.644 and 6.645 of the Civil Code of the Republic of Lithuania); 2) the result of the work is obtained when the contractor works at his own risk (Part 3 of Article 6.645, Part 1 of Article 6.649) the contractor performs the work independently to achieve a certain result (Part 3 of Article 6.644 and 6.645). Since the contract obligates to create a certain work result, the norms of the Civil Code of the Republic of Lithuania governing contractual relations establish the breakdown of the risk of accidental death or failure of the materials and the result of the work to the parties (Article 6.649), the obligations of the parties related to the acceptance of the completed works (Article 6.662), work quality guarantee (Articles 6.663 – 6.666) (The Supreme Court of Lithuania 16th January 2013 ruling in civil case No. 3K-3-110/2013).

## **Independent work contract parties, form of conclusion and meaning of content elements**

Based on Part 1 of Article 6.644 of the Civil Code of the Republic of Lithuania, given the concept of the independent work contract, it can be stated that the parties of the contract are the contractor and the customer, who are not bound by subordination or other ownership relationships. The general rule is that both the customer and the contractor can be any subject of civil law - both an individual and a legal entity. In the case of individual contracts, the parties may have certain specific requirements. For example, in the case of a consumer independent work contract, the contractor is only a person engaged in a certain business (entrepreneur), and the customer is only an individual - the consumer. In the case of a construction independent work contract, the contractor can be an individual or legal entity that has the right to engage in construction activities (Republic of Lithuania Law on Construction, 1996). The parties are not bound by employment, subordination, or other dependent relationships (Dambrauskienė, Marcijonas, Monkevičius, 2004).

Article 6.159 of the Civil Code of the Republic of Lithuania stipulates that it is necessary to reach an agreement between the parties for the contract to be valid, but in cases established by law, the form of the contract is also necessary. A properly concluded and formalized contract makes it possible to unequivocally resolve the rights and obligations of the parties, as well as issues of material responsibility. Independent work contracts are concluded by the general rules for the conclusion of transactions (Articles 1.69 - 1.77 of the Civil Code of the Republic of Lithuania), usually in writing. Part 1 of Article 6.662 indicates that the acceptance of completed works is formalized by an act by which the customer confirms acceptance without reservations or with reservations, and the contractor - after handing over the completed works.

The Civil Code of the Republic of Lithuania determines the following forms of concluding contracts: 1) by conclusive actions; 2) oral; 3) simple written; 4) notarial. The conclusion of an independent work contract in any form acceptable to the parties and its proof is confirmed by the practice of the Supreme Court of Lithuania: "The concept of an independent work contract is established in Part 1 of Article 6.644 of the Civil Code of the Republic of Lithuania, which stipulates that in a contract one party (the contractor) undertakes to perform certain work at its own risk according to the other's party's (customer's) task and transfer the result of this work to the customer, and the customer undertakes to accept the completed work and pay for it. The law does not establish a mandatory written form for the contract for construction independent work, therefore, as the will of the parties to the transaction, it can be expressed (made) verbally, in writing, by action, or in another form of expression of will (e.g. by conclusive actions), when the person's behavior shows his will to make a transaction (Part 1 of Article 1.64, Article 1.71 of the Civil Code of the Republic of Lithuania). A person's will can be assumed considering the specific circumstances of the conclusion of the transaction (Part 2 of Article 1.64). This means that, when deciding who ordered the independent contract work, it is important to determine the actual actions of the persons involved in the transaction and to properly qualify them (Jurkevičius, Kemežytė, 2013). On their basis, the person's will and desire to conclude or not to conclude a contract must be determined. According to the general rule established in Part 5 of Article 6.193 of the Civil Code of the Republic of Lithuania, the factual circumstances related to the conclusion and execution of the contract, as well as other actions of the parties, are important for the interpretation of the contract, because the actual actions of the parties are significant to determine the real intentions of the parties" (The Supreme Court of Lithuania

22nd June 2010 ruling in civil case No. 3K-3-288/2010; 10th July 2010 ruling in civil case No. 3K-3 323/2010).

It is very important to determine the moment of conclusion of the contract since contractual rights and obligations arise from it for the parties, and the legal consequences are different than in the case of pre-contractual relations, during which fewer losses are usually incurred as a result of the main contract not being concluded than in the case of non-performance of the contract in the case of contractual relations. According to the classical doctrine of contract law, a contract is concluded by making an offer and accepting an acceptance (Bolzanus, 2007). Independent work contracts are characterized by their complexity, and during the agreement, the boundary between offer and acceptance often disappears, because the parties repeatedly exchange their offers, often quickly correct them, and such an agreement is reached during a long process. Courts and legal doctrine dictate that contracts require offer and acceptance, but contract practice itself suggests otherwise. For example, a simple way to create a contract is for two parties to sign a document together. If the signatures are applied simultaneously (or their processes overlap), there is no communication queue sequence; there are only joint actions that create a contract. The same goes for the handshake, which is perhaps an even more common way to indicate agreement. In such cases, there is no discrete, identifiable sequence of offer and acceptance (Bayern, 2015).

The elements of the content of the contract are the circumstances necessary to consider the contract as existing and valid. The Civil Code of the Republic of Lithuania states that the content of the contract is the system of the entire set of conditions of the concluded contract (Vitkevičius, 1997). The terms of the contract are determined by the agreement of the parties, but for the contract to be considered concluded, the parties must agree on its essential terms, i.e., the subject of the contract. Which terms are essential, and which are not essential depending on the type of contract, its nature, the will of the parties and the law (Bakanas, 2003). Therefore, in the independent work contract, the parties must agree on the nature of the work to be performed and the desired result. An essential condition of the independent work contract is the agreement of the parties on the terms of contract execution, i.e., the contract must specify the beginning and end of the work performance, and intermediate terms may also be agreed upon.

The contract price is not considered an essential condition of the contract, except for some types of contracts, such as a construction contract or contract works financed from the state or municipal budget. The Supreme Court of Lithuania calls it compensability: "Essential terms of an independent work contract - agreement on the task to be performed by one party to the contract, and compensability - the obligation of the other party to pay for the work performed (services provided). From the obligation of the contracting party to perform a certain task (fulfill the order) directly follows its responsibility for the result of the work (its proper quality)" (The Supreme Court of Lithuania 23rd November 2018 ruling in civil case No. 3K-3-451-695/2018).

However, the parties may agree that the price is an essential condition of the contract. If the parties agree that the price is considered an essential condition of the contract, until then the contract will be considered invalid: "The mutual relations between the parties to the contract and the negotiations regarding the price, as well as the relations between the parties regulated by the law, lead to the fact that the price is to be considered an essential condition of the contract of consumption, due to which the contract was not concluded and did not enter into force without an agreement" (The Supreme Court of Lithuania 26th June 2009 ruling in civil case No. 3K -3-299/2009).

So, in the independent work contract, it is necessary to clearly define the task of the work, the price of the work performed, and the deadlines for the transfer of the work results (Beale, 2002). Optional contract conditions are not essential. They are defined not by law, but by the parties themselves. They are not automatically included in the construction contract as common conditions. The absence of these conditions does not make a contract invalid, and they become important only when included in the contract (Podvezko, Mitkus, Trinkūnienė, 2010).

### **Exclusion from similar contracts**

In court practice, sometimes difficulties arise when distinguishing one contract from another due to their similarity. Part 1 of Article 6.154 of the Civil Code of the Republic of Lithuania indicates that a contract is an agreement between two or more persons to create, change or terminate civil legal relations when one or more persons undertake to perform certain actions (or refrain from performing certain actions) to another person or persons, and the latter acquires the right of claim. The purpose of all contracts is to achieve a certain result, whether tangible or intangible. The contract has common features with labor, purchase-sale contracts, service contracts, as they are quite similar. Nevertheless, each of them has certain specific features. An independent work contract is similar to an employment contract in which one party also performs certain work for the other party and the latter pays for it.

An independent work contract and an employment contract are similar in content, but at the same time, these contracts differ in several features. Firstly, the party to the employment contract is the employer - a person for whose benefit and to whom, being subordinate to the employment contract, another party – an individual - undertook to perform the work function for payment (The Labour Code of the Republic of Lithuania, 2016). Only in cases where the employment contract is concluded between individuals for the performance of service work, the employer is an individual. Meanwhile, the independent work contract parties could be both legal entities and natural persons.

Secondly, the party performing the work under the contract is financially and organizationally independent, not subject to the customer and independent from him. This means that the customer and the contractor do not have a relationship of subordination and dependence, but this feature does not contradict the right of the customer to give instructions to the contractor. The opposite is the case when working under an employment contract: when an employee is subordinate to the employer, he works in obedience to the established internal procedure; the property needed for his work belongs to the company, and he is not materially responsible for accidental damage or destruction of the item.

Thirdly, the subject of the contract is a certain material result of the work performed - a new or repaired item, a constructed or repaired building, etc. The subject of the employment contract is the function of the work, but not the result of the work. In practice, several problems arise when participants in civil transactions, in order to achieve the highest income at the lowest cost, sometimes abuse the law or at least seek to take advantage of a loophole in the legal regulation by concluding a contract instead of an employment contract, although the actual terms of the contract's content are more in line with the characteristics of a work contract than an independent work contract. In this way, the employer seeks to avoid paying social insurance contributions (Vasarienė, 2002).

Therefore, in certain cases, disputes arose in practice about the separation of the independent work contract from the contract for service. In practice, many problems arise

when trying to distinguish between independent work contracts and contracts for service due to the ability of the parties to agree on a specific result of the contract of service. However, an independent work contract differs from the types of contracts of service in that the subject of this contract is the result of a certain work, while the subject of services is intangible services that are not related to the creation of a material object. In the case of an independent work contract, one or another material object is always created, which plays the most significant role in the case of this contract.

In the case of a contract for service, the most important are the actions performed - the services provided, when no material result is created. For example, in the practice of the Supreme Court of Lithuania, the distinction between independent work contract and contract for service has been developed: "Although both independent work contracts and contracts for service are concluded for the performance of actions, the most important distinguishing feature of these groups of contracts is that, according to the contracts for service to be compensated, the obligation is to carefully (carefully) perform a certain activities (actions), and according to the independent work contract, an obligation is made to create or achieve a certain work result and transfer it, as a separate object or a certain part of it, to another party. In other words, in the former case, the obligation is to exert a certain amount of careful effort in the performance of the act, and in the latter case, to exert a certain amount of effort and achieve a certain result. The applicable responsibility also depends on this: if an obligation is made to make efforts in the performance of a certain activity, then the debtor of such an obligation is responsible for inappropriate efforts (negligent activity), but will not be responsible for the fact that a specific result was not created, because he did not have such an obligation. If the obligation is due to the result, then the liability will be applied precisely for the absence of the result.

When distinguishing between independent work contracts and contracts for service, it is important to determine whether the parties have agreed to perform work that will create or produce an object that is separate from the actions themselves, has an independent value that could be independently transferred to the customer (contract), or whether a certain activity was agreed upon, the result of which provision of services cannot be separated from the actions themselves" (the Supreme Court of Lithuania 5th December 2012 ruling in civil case No. 3K3-543/2012; 16th January 2013 ruling in civil case No. 3K-3-110/2013; 11th April 2014 ruling in civil case no. 3K-3-201/2014).

Thus, independent work contract and contract for service are delimited according to the subject of the contract: the subject of the independent work contract consists of the result of a certain work, which plays the most important role in the case of this contract, and services - services of an intangible nature, usually not related to the creation of a tangible object, i.e. i.e. what matters are the actions taken. The main cutoff criterion is whether the borrower is paid just for being active or just for a certain result (Beale, 2010).

## **Conclusions**

The main legal act that codifies the legal norms governing the conclusion of independent work contract is the Civil Code of the Republic of Lithuania. The purpose of the independent work contract is to obtain a certain work result, which is obtained by the contractor working at his own risk and independently. In other words, an independent work contract is an undertaking to achieve a result, and until the work result, which is the subject of the contract, is achieved, it will not be considered that the contractor's obligation has been fulfilled properly. The content of a contract is defined as a system of terms of a

concluded contract. Considering all the norms, it can be stated that in order for a contract to be valid, the parties must agree on its essential terms - the subject of the contract and the terms of performance of the work. The subject of the contract is what the parties to the contract agreed on - a certain work result, which can be manifested in both the creation of a new thing or other work result, and the improvement, modification of an existing object (giving new properties to an existing object). The subject of an independent work contract is usually the creation of a material result. If the parties do not agree on the subject of the contract, the contract is considered not concluded. The terms of performance of an independent work contract (start and end of work) are set by agreement of the parties. The price, if the parties do not agree otherwise, is not an essential term of the contract. The content of the contract consists of the entire system of terms that prove the rights and obligations of the parties (contractor and customer). The precise definition of the terms of the contract directly affects the characteristics of the rights and obligations arising from the obligation and their performance. Analyzing the legal acts governing the independent work contract, no imperative requirement for the form of the contract for work is found, so that means that the contract for work can be concluded in any form acceptable to the parties. The general rules for the form of contracts apply to the conclusion of an independent work contract. The Civil Code of the Republic of Lithuania establishes the following forms of contracts: oral, simple written, notarial and by conclusive actions.

The elements of a contract are the circumstances necessary for a contract to exist and be valid. Regardless of the form of the independent work contract, the elements of the contract arise from the evidence in the case and the parties' explanations, according to which it is determined what scope of work and price the parties agreed on with this contract. The elements of the contract are the subject of the contract (result), the agreed price of the work and the terms of execution of the contract. The essential elements of a contract for work are an agreement on the task (order) that one party to the contract (contractor) will have to fulfill, and compensation - the commitment of the other party to the contract (customer) to pay for the work performed. The liability of the party to the contract for performing a certain task (fulfilling an order) directly follows from its liability for the result of the work (its proper quality). Based on examples from court practice, contractors and customers should avoid providing only oral information in order to protect themselves from unfounded claims. The more accurate the definition of rights and obligations, the work performed in contracts for work, the more qualitative they are and the less legal disputes they raise. In order to protect their interests in disputes in construction relations, the contract should be concluded in writing, as this makes it easier to prove not only the fact of the conclusion of the contract, but also helps to determine its content, as the submission of the relevant written document is presumed that the rights and obligations of the parties, essential conditions and mentioned facts are complete and accurate.

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**Rangos sutarties sudarymo problematika**

*Santrauka*

Prieš sudarant rangos sutartį, būtina nustatyti jos svarbiausius požymius, atskirti nuo kitų sutarčių, suvokti esmines sąlygas. Rangos sutarties sudarymas yra esminis jos įgyvendinimo pagrindas. Tinkamai sudaryta rangos sutartis yra užtikrinta šalių teisių ir teisėtų interesų apsauga. Įstatymai neišskiria rangos sutarties sudarymo aspektų, sutartis gali būti sudaroma rašytine ir žodine forma, todėl tai apsunkina sutarties sąlygų turinio nustatymą ir išaiškinimą. Teisingas rangos sutarties teisinių aspektų nustatymas yra svarbus, nes jis lemia kiekvienos šalies teises ir pareigas. Tam dažnai neskiriama pakankamai dėmesio, o tai gali lemti sudėtingas ginčų sprendimo procedūras dėl skirtingo sutarties sąlygų aiškinimo. Teismų praktikoje daug pavyzdžių, kurie parodo, jog netinkamo sutarties sudarymo pagrindu kyla daugiausiai problemų, kurios pereina į ginčus teismuose. Dauguma teisinių ginčų kyla dėl sutarties sudarymo specifikos, sutarčių vykdymo ir nutraukimo atvejų. Kuo tiksliau sudaromose rangos sutartyse apibrėžiamos teisės ir pareigos, atliktini darbai, tuo aukštesnė jų kokybė ir tuo mažesnė teisinių ginčų tikimybė ateityje.

*Raktažodžiai: rangos sutartis, rangovas, užsakovas, esminės sutarties sąlygos*