

Marlena Pecyna

The Russian and Polish Concept of the Law of Services – A Comparative Review and Some Remarks de lege ferenda¹

I. Introduction. The main assumptions of codifications

Russian and Polish Civil Law, including Law of Services, has always developed in the framework of continental legal tradition. These codifications are based on provisions and norms of Civil Codes of European countries. The Polish Civil Code from the moment of the accession of Poland to the European Union (and before) is also based on European private law. The Russian lawmaker also takes into account the process of the Europeanization of private law² and cooperates with lawyers from different European countries, in particular with Dutch lawyers.³ A presentation of the Russian regulation of services contained in the Civil Code must be preceded by an outline of certain assumptions on which it is based upon, and related to the concept and role of the codification of the civil law, adopted by the Russian legislature. The Russian lawmaker established primarily a social purpose regarding the codification of the civil law by creating a legal framework for the legal relationships within the social market economy, but also took into account the political interest connected with the implementation of the new Civil Code, the importance of which was also symbolic (the transition from the socialist period to the free market economy).

According to the drafters of the Civil Code, it has to underpin the regulation of private law, be a result of the development of the historical-cultural-legal society, and at the same time stimulate this development.⁴ The above assumption had an impact both on the structure of the Code and its content, including a very wide scope of the application. Provisions on obligations are set out in Sections 3 and 4 of the Russian Civil Code. The general provisions for contractual obligations are considered a part of the general provisions for obligations. Special norms for contractual obligations are to be found in Section 4 “Particular Types of Obligations” of the Russian Civil Code. Each type of obligations is treated in a separate chapter. The chapters on such obligations basically have the following structure: general provisions and special provisions concerning each subtype of the type of obligation.⁵ Generally speaking, the structure of the Russian Civil Code is based on the “direction” of the regulation – from general to special norms, but in many places of special parts of the law of obligations there are special norms with references to

¹ This paper is prepared in the framework of the project of the National Center of Science – “Made in Europe – European Legal Standards of Quality for Services on the Global Competitive Market”, Project No.UMO-2012/04/A/HS5/00709 and is based partially on the paper published in *Transformacje Prawa Prywatnego*.

² See also *N. Y. Rasskazova*, Russian Law of Obligations: Structure, Positioning and Connection with Supranational Law in: *R. Schulze/F. Zoll* (eds.), *The Law of Obligations in Europe. A New Wave of Codifications*, Munich 2013, p. 139.

³ See *A. L. Makovskij*, Creation of Civil Law in Russia: 15 years of cooperation, understanding and friendship with lawyers of the Netherlands, in: *Л. Маковский*, *О кодификации гражданского права (Makovskij*, On the codification of civil law, Moscow 2010), p. 367 et seq.

⁴ See more: *M. Pecyna*, *Zarys rosyjskiej regulacji świadczenia usług (Outline of the Russian Concept of Regulation of Services)*, *Transformacje Prawa Prywatnego* 2014 (in press).

⁵ See also: *Rasskazova*, Fn. 2, p. 142.

general rules of the law of obligations or even to the general part of the Civil Code.⁶ Further, it has to be noted that the Russian Civil Code plays the role of the “*primus inter pares*” in the Russian system of sources of law (legal acts),⁷ although such a unique meaning of the Civil Code is not justified in the light of the sources of law covered in the Constitution of the Russian Federation.⁸ Another important characteristic of the provisions of the Russian Civil Code is associated with the nature of these norms. In this Code there is a certain “presumption” of an imperative nature of legal norms contained in the Civil Code. Therefore, the Russian Civil Code does not rely on the assumption of “what is not prohibited by mandatory legal norms is allowed,” but rather on an assumption according to which the law sets out a framework of freedom of action, including freedom of contract. Under the Polish Civil Code the legal provisions concerning the law of obligations are found in Book III (some aspects are also found in Book I concerning the general part of the Civil Code), and there is no formal line between the general and specific part of the law of obligations.⁹ There is no general rule concerning the character (mandatory or non-mandatory) of the provisions of the Civil Code, in particular the law of obligations. The nature of each provision depends on its interpretation and the legal aim.¹⁰ In both Codes there is a part of the law of obligations which regulates types of (special) obligations, including services, but in a different way.

II. Services within the structure of the special part of the law of obligations

First of all, I would like to pay attention to the special part of the law of obligations (Section 4 of the Law of Obligations) which includes some of their 100 types and sub-types.¹¹ The system of special obligations (types of contracts) in the Russian Civil Code comprises four main groups: contracts for the transfer of property (including contracts for the use of property), contracts for performance of “work” (*facere*), service contracts, and contracts for the creation of an organisation (e.g. partnership contracts).¹² The main

⁶ In a certain sense, the structure of the Russian Civil Code reminds of the structure of the Draft Common Frame of Reference and the Dutch Civil Code, but we have to remember that the provisions of the Russian Civil Code are more detailed.

⁷ See art. 3 (2), under which other statutes should be consistent with the regulation of the Civil Code.

⁸ See: *М.И. Брагинский*, в: *М.И. Брагинский/В.В. Витрянский*, Договорное право. Книга первая. Общие положения (*Braginskij*, in: *Braginskij/Vitrianskij*, Contract Law. Book No. 1. General Provisions), Moscow 2001, p. 37-44.

⁹ See also *M. Romanowski*, Position of the Law of Obligations in Polish Law in the Context of a Reform of the European Law of Obligations in: *R. Schulze/F. Zoll* (eds.), *The Law of Obligations in Europe. A New Wave of Codifications*, Munich 2013, p. 67-68.

¹⁰ See for example *Z. Radwański/M. Zieliński*, in: *M. Saffan* (ed.), *System Prawa Prywatnego. Tom 1. Prawo Cywilne – część ogólna* (System of Private Law. Volume 1, Civil Law – General Part), Warsaw 2007, p. 323.

¹¹ See *Д.А. Медведев*, *Новый гражданский кодекс Российской Федерации: вопросы кодификации* (*Medvedev*, *The New Civil Code of the Russian Federation: Questions of the Codification*, in: *Medvedev* (ed.), *The Codification of the Russian Private Law*), Moscow 2008, p. 13; *M. Pecyna/F. Zoll*, *Założenia projektu struktury części szczególnej zobowiązań. W poszukiwaniu nowego modelu* (Assumptions of the Proposal for the Structure of the Special Part of the Law of Obligations. Towards the New Model), *Transformacje Prawa Prywatnego* no. 1/2012, p. 37-38.

¹² Compare: *N. Y. Rasskazova*, Fn. 2, p. 144, who believes that under the Russian Civil Code the group of contracts for performance of work should be named as a separate groups of contracts from services contracts.

criterion for the selection of types of obligations is the object of the obligation/contract.¹³ Service contracts or contracts for performance of work are therefore a separate group of obligations for this purpose, which consists in performing work/services by one person to the benefit of another person in order to achieve the respective economic results.¹⁴ The type of service contracts is regulated by Chapter 39 of Section 4 of the Russian Civil Code “Payable services”. The provisions of this Chapter are applicable to telecom, treatment, educational, consulting, information and advice, travel and other services (as states art. 779 (2) of the Russian Civil Code). This regulation is not exhaustive.¹⁵

In the special part of the law of obligations there is also a separate part of other named contracts which can be generally called service contracts, or contracts for performance of work, in particular: processing¹⁶, research, experimental – design and technological work,¹⁷ transport of people,¹⁸ transport of goods,¹⁹ financial/banking services,²⁰ mandate,²¹ and trust.²² These special obligations are included in the general category of services; however, they are excluded from the scope of the general regulation of services. The Russian lawmaker applied the technique of references to the regulation of processing²³ and consumer processing²⁴ as to norms applicable to services insofar as these norms are not in contradiction with the special regulation of service contracts,²⁵ or with the character of the object of the service contract. The processing contract serves as a model for the contract type²⁶ for the regulation of services in the Russian Civil Code.

The structure of the special part of obligations in the Polish Civil Code does not follow the concept of completeness and coherence.²⁷ Chapters XI to XIV are organized around the sales contract which plays a relevant role regarding the general principles for other types of contracts (for example for the contract of processing in the case of the liability of the provider for defects of goods manufactured or produced). The next contract which serves as a model (as in the Russian Civil Code) for other contracts is the processing contract, which is, for example, the model for the construction contract. Under the Polish Civil Code the processing contract is defined broadly²⁸ and this regulation

¹³ See *Ю.В. Романец, Система договоров в гражданском праве России (Romanec, The System of Contracts in Civil Law of Russia)*, Moscow 2001, p. 83 and seq.

¹⁴ See *Romanec*, Fn. 13, p. 112 and seq., who also presents many problems associated with the separation of one group of contracts from another.

¹⁵ The regulation of service contract is criticized in Russian doctrine. See for example: *Rasskazova*, Fn. 2, p. 145.

¹⁶ Chapter 37 of the second part of the Russian Civil Code.

¹⁷ Chapter 38.

¹⁸ Chapter 40.

¹⁹ Chapter 41.

²⁰ Chapter 44 and 45.

²¹ Chapter 50.

²² Chapter 53.

²³ Art. 702 – 729 of the Russian Civil Code.

²⁴ Art. 730- 739 of the Russian Civil Code.

²⁵ Art. 779 – 782 of the Russian Civil Code.

²⁶ This term is cited from: *R. Schulze, Changes in the Law of Obligations in Europe* in: R. Schulze, F. Zoll (eds.), *The Law of Obligations in Europe. A New Wave of Codifications*, Munich 2013, p. 23.

²⁷ See *M. Sośniak, Zagadnienia typologii i systematyki umów obligacyjnych (Questions of typology and systematics of contracts)*, *Prace Naukowe Uniwersytetu Śląskiego w Katowicach*, no. 1113, p. 69 et seq.

²⁸ Art. 627 of the Polish Civil Code.

can also be applied to contracts for performance of work with some result, even where the content differs significantly from the former. Therefore it turns out to be very difficult to distinguish this type of contract from other contracts pertaining to the general category of services.²⁹

That is why the general systems of the processing contract and the service contract have a common scope as to their application, although these are not neighboring groups of rules.

From a comparative perspective on which this paper is based, it is important that under the Polish Civil Code there is also a model for the regulation of service contracts, namely the regulation of the mandate contract. The service contract in the special part of the law of obligations has only one special rule in art. 750 of the Polish Civil Code which references the rules on mandate contracts³⁰ for contracts which are not regulated by other special provisions. Taking into account the definition of the mandate contract it is clear that under this contract the agent is authorized by the principal to conclude a contract or other juridical act.³¹ By applying this regulation of the mandate contract to services the category of mandate is opened for services which are not defined precisely. The mandate in the Polish Civil Code is the model regulation or a type of general rules governing very different legal relationships.

III. Main aspects of the regulation of services

1. Special provisions on service contracts

Under the definition of a service contract in the Russian Civil Code, the service provider undertakes to supply a service to the other party, i.e. to perform some actions or to perform some activity in exchange for the price. The content of the service provider's obligation is a payable performance of the service (some actions or work), the result of which is not separated from them, i.e. these actions or work are at the same time the result of the obligation, and the result is not a circumstance separated from this work.³² The service provider is liable for the proper performance of actions or activities, but is not liable for the result which is not part of the service and which therefore does not form any part of its obligation.³³ The regulation of service contracts in Chapter 39 is very limited. It concerns three issues: performance of service by the service provider personally,³⁴ payment of the price for the service rendered,³⁵ and the right to terminate the con-

²⁹ See also: *Pecyna/Zoll*, Fn. 11, p. 29. Cf. also: *J. Pisuliński*, W sprawie sytematyki części szczegółowej prawa zobowiązań (głos w dyskusji) (In case of systematics of the Special Part of the Law of Obligations (Voice in the Debate)), *Transformacje Prawa Prywatnego* no. 1/2012, p. 18.

³⁰ Art. 734 – 749 of the Polish Civil Code.

³¹ See *P. Machnikowski*, in: *E. Gniewek/P. Machnikowski* (eds.), *Kodeks cywilny. Komentarz* (The Civil Code. Commentary), Warsaw 2013, p. 1264.

³² Cf. *Romanec*, Fn. 13, p. 396, and the literature cited in note no. 1 on p. 397. See also: *М.И. Брагинский/В.В. Витрянский*, *Договорное право. Книга третья. Договоры о выполнении работ и оказании услуг* (*Braginskij/Vitrjanskij*, *Contract Law. Book III. Contracts for work and services*), Moscow 2002, p. 215.

³³ See *Romanec*, Fn. 13, p. 403, *Braginskij/Vitrjanskij*, Fn. 32, p. 217 (these Authors distinguish an effect of the service as a circumstance beyond the service provider's obligation from the result which is the content of the obligation to achieve the result).

³⁴ Art. 780 of the Russian Civil Code.

³⁵ Art. 781 of the Russian Civil Code.

tract.^{36, 37} Under the Polish Civil Code, as it was mentioned above, there is no special regulation of service *sensu stricto*. There is one article³⁸ which refers to the rules concerning mandate contracts which are applicable to services accordingly.

2. The guiding model of a contract type for the law of services

a) Contract of processing as a guiding model type of contract in the RCC

As indicated above, the main type of obligation the regulation of which is also applicable to services is “processing.” Under the contract of processing the service provider undertakes to perform some work and achieve a result which forms an independent content of the service provider’s obligation from the obligation to perform some work.³⁹ Under the definition of the processing contract,⁴⁰ the processor undertakes to manufacture or produce an object or perform another work and to transfer its results to the client. The processor should determine the manner of performance of his obligation and perform the work from his own materials, unless otherwise stipulated by the contract.

The processor is responsible for the quality and absence of rights of third parties regarding these materials and equipment supplied by him. The Russian Code also regulates the distribution of risks between the parties stating that the risk of accidental destruction or damage to materials, equipment, assets used for the performance of the contract shall be borne by the party that has extended them, and the risk of accidental destruction or accidental damage to the result of performed work shall be borne by the processor till time of the acceptance of it by the client, unless otherwise stipulated by the Code (not by the contract). In the event of default in delivery or acceptance of the result the risk mentioned above shall be borne by the party who is in default.

The Russian Civil Code also regulates in detail the relation between the general contractor (the processor) and subcontractors stating that in general the first one is liable to the client for damage caused by the subcontractor’s participation in the performance of the obligation. On the other hand the client and the subcontractor shall not have the right to raise claims to each other relating to the breach of the contracts concluded by each of them with the general contractor. The important regulation concerns the price for the work. First of all the parties are entitled to indicate the price or the method of calculation of the price in the contract, but if there is no such term in the contract the price shall be indicated in accordance with the general rule of the law of obligation,⁴¹ under which (if the contract or the law does not regulate the price) the performance of the contract shall be remunerated by the price which is usually paid under comparable circumstances for a similar kind of work or services. If there is a need for additional work and, therefore, a substantial excess of the price of the work estimated approximately, the processor is obliged to warn the customer in due time accordingly. The client who does not agree to the change of the price has a right to terminate the contract. In this event the processor is entitled to payment of the price of the work performed. If the processor did not warn the client about the circumstances mentioned above, he shall be obliged to fulfil the contract

³⁶ Art. 782 of the Russian Civil Code.

³⁷ See more: *Pecyna*, Fn. 4.

³⁸ Art. 750 of the Polish Civil Code.

³⁹ See: *Braginskij/Vitrjanskij*, Fn. 32, p. 7 et seq.

⁴⁰ Art. 703 of the Russian Civil Code.

⁴¹ Art. 424 (3) of the Russian Civil Code.

(perform the obligation including additional work) and has the right to the payment of the price specified in the contract. If, however, the processor's actual expenses prove to be less than those reckoned in the estimation of the price for work, the processor shall retain the right to the payment for work at the price stipulated in the contract, unless the client proves that such saving obtained by the processor has influenced the quality of the performed work or the result of it, unless the contract stipulates the distribution of the saving obtained by the processor among the parties thereto.

In principle the price is to be paid after the final delivery of the results of work, provided that the work has been performed properly and in time, if the contract does not provide for preliminary payment for the fulfilled work or of its particular stages. The client has the right to control and verify the progress and quality of work performed by the processor at any time, while not interfering in its activity. If the processor does not start to perform the work or performs it so slowly that it is obviously impossible to finish it within the agreed time, the client may terminate the contract and claim damages. If it becomes obvious during the performance of the work that it will not be performed properly the client is entitled to appoint a reasonable time for the cure of the performance by the processor, and in the event of default of this requirement by the processor, the client may terminate the contract or entrust another person with the correction of the work at the expense of the processor and claim damages.

A very important aspect of the Russian regulation of processing concerns the processor's obligation to warn the client in certain events.⁴² The processor is obliged to warn the client without delay and to suspend the work before receiving the client's directions in the event of the discovery of the unsuitability or the improper quality of the client's materials, equipment, technical documents or the object delivered for processing, possible consequences of the implementation of the client's directions, other circumstances beyond the processor's control which endanger the utility of the results of work being performed or make it impossible to finish this work on time. If the processor fails to warn the client accordingly or continues work without waiting for the expiry of the date fixed in the contract or in the absence of such term, without waiting for the expiry of the reasonable period for the reply by the client, the processor has no right to refer to these circumstances in the event of appropriate claims of the client. If the client fails to replace unfit or substandard materials, equipment, technical documents or the object transferred for processing or does not change the directions given to the processor within reasonable time, the latter is entitled to terminate the contract and claim damages resulting from the termination of the contract. The client may (unless otherwise stipulated by the contract) terminate the contract at any time paying to the processor a part of the agreed price in proportion to the work performed prior to receiving the client's notice of termination. In this case the client is also obliged to pay damages caused by the termination of contract, but limited to the difference between the agreed price and the price received by the processor for the performed work.

The Russian Civil Code very broadly regulates the fact of acceptance of the work by the client.⁴³ The client is obliged to inspect the result of the work with the processor's participation and to accept the performed work or to inform the processor about the defects of the result of the work. The client who accepted the work without inspecting it properly shall be deprived of the right to refer to the shortcomings in the work which could be ascertained in the usual method of its acceptance, unless otherwise stipulated by the contract. The client who discovered some defects after the acceptance of the work, which could not be identified by the usual method of acceptance, is obliged to inform the

⁴² Art. 716 of the Russian Civil Code.

⁴³ Art. 720 of the Russian Civil Code.

processor about such defects within reasonable time. The processor is liable for the quality of the work performed. This quality shall correspond to the terms of the contract or, in the absence or in the event of incompleteness of these terms, to the requirements usually reasonable with respect to the appropriate work.

If the processor is a business he shall further perform the work in compliance with statutory requirements or other legal acts.⁴⁴ In the event of failure of the obligation by the processor, including failures resulting from improper quality of work when defects make the (result of) the work unsuitable for use, envisaged by the contract or in the absence of the relevant term for the usual use, the client has the right, unless otherwise stipulated by the law, to demand from the processor the following actions at his choice: cure of defects within the reasonable time, reduction of the price, reimbursement of the client's expenses incurred in the elimination of defects (if the client has such right⁴⁵). The processor has the right to perform the work anew instead of the repair and pay damages to the client for loss caused by the delay in the performance of the obligation; in this event, the client is obliged to return the first result of the work to the processor, if such return is possible according to the nature of the work.

If the processor did not cure the obligation within the reasonable time or if the defects are substantial and unrecoverable, the client is entitled to terminate the contract and claim damages. These are – in very brief description – the main aspects of the Russian regulation of the processing contract which under the Russian Civil Code is the guiding model of contract type for other types, including services. As it was mentioned above this is the only principle because in the Russian Civil Code the regulation follows a very casuistic and detailed pattern which in many places turns out to be contradictory.⁴⁶

b) Mandate contract as a guiding model type of contract in the PCC

Under Polish law, services are regulated by reference to the rules concerning the mandate contract. In addition, there is a separate regulation on processing⁴⁷ (which is based on the regulation of the sales contract in some aspects), and on construction. The mandate's regulation is rather limited and concerns only the main aspects (main rights and obligations of the parties). There is no definition of service in the Polish Civil Code. Several rules on the mandate contract apply to service contracts. The first one is the principle of the payable character of the agent's (service provider's) obligation.⁴⁸ If there is no applicable tariff of the price and the contract does not stipulate the price, the principal (the client) is obliged to pay the price corresponding to the work performed. The price shall be paid after the performance of the obligation by the service provider, unless the contract or special norm stipulate otherwise.

⁴⁴ Under art. 721 (3) of the Russian Civil Code, the processor may assume under the contract the obligation of fulfilling the work that meets the requirements for quality higher than the requirements made obligatory for the parties.

⁴⁵ Under art. 397 of the Russian Civil Code.

⁴⁶ See more: *Rasskazova*, Fn. 2, p. 145.

⁴⁷ In the Polish doctrine, there is a view according to which a processing does not belong to the term of services in the meaning of art. 750 of the Polish Civil Code. See: *L. Ogiegło*, *Usługi jako przedmiot stosunków obligacyjnych* (Services as an object of obligations), Katowice 1989, p. 185 et seq. But there is also a justified view which pays attention to the difficulties associated with the qualification of a particular contract as one or another type of contract. See: *P. Machnikowski*, in: *Gniewek/Machnikowski*, Fn. 31, p. 1281.

⁴⁸ Art. 735 of the Polish Civil Code.

If the service provider is a business (a person who professionally performs a service of some kind) or declared himself ready to perform action of a given kind, its silence to the offer made by the client constitutes acceptance of the offer. In this event, if the service provider does not want to accept the offer, he shall inform the client without delay that the service provider does not accept the offer. There is an assumption that the service provider shall perform the obligation in accordance to directions given by the client, but there is also a broad exception. The service provider may perform the service not taking into account the direction of the client concerning the manner of performing the service without the previous consent of the client, if there is no possibility to receive such consent and there are justified reasons to assume that the client would have agreed to the change of this manner had the client known of the present circumstances.

In principle, the service provider shall perform the service personally, but may entrust a third party with the performance if this results from the contract, custom or if so required in the given circumstances. In this event, the service provider has a duty to inform the client without delay about the third party and its place of residence. This notification is a condition for the limitation of the liability of the service provider towards the third party, because if the service provider informed the client about the mentioned above circumstances, he is only liable for the lack of due diligence in the choice of this third party, but not for the non-performance of obligation. The substitute is responsible for the performance of service also to the client. In the event of the service provider's liability for the performance of obligation by the third party, they are liable jointly and severally. There is also a broader scope of the risk of the service provider for the accidental destruction of a client's object if the service provider entrusts a third party with the performance of the service not being authorized. The service provider is also responsible for such accidental loss or damage, unless it would have occurred even if the service provider had performed the service personally. The client is entitled to terminate the contract any time. However the client is obliged to reimburse the service provider for expenses which the service provider made for the purpose of performing the service properly. If the service is payable the client shall pay a part of the price in proportion to its acts performed by him. If the client terminated the contract without important reason the service provider is entitled to damages. Further, the service provider can terminate the contract at any time; if, however, the service is payable and the termination was made without important reason, the client is entitled to damages. The rule concerning the right to terminate the contract for important reason is mandatory for both parties. The provision under which each party may terminate the contract at any time should be limited in its application, because there are types of services where the interest of the client should prevail.⁴⁹ It is a simple observation that the existing regulation of the service contract is a quite accidental solution, without taking into account the requirements of the modern market.

IV. The RCC in transition and the perspective of the proposal of the Polish law of services in the draft of the new PCC

It is common for the Russian and Polish civil law that currently both are subject to recodifications. Russian lawyers and politicians are working on the development of the existing Civil Code on the ground of the "Concept of development of civil law of the Russian Federation" which was prepared in 2009.⁵⁰ This concept has brought the Draft of

⁴⁹ See also *Machnikowski*, Fn. 31, p. 1282.

⁵⁰ See also: *Rasskazova*, Fn. 2, p. 140.

the Federal Law on amendments to the first, second, third and fourth parts of the Civil Code and to some legal acts of the Russian Federation⁵¹ concerning all parts of the Russian Civil Code and providing profound changes in many fundamental provisions and parts of the Code, but nevertheless it is apparent that this Draft is still a Russian approach to the civil regulation.⁵² Some parts of this draft were enacted as statutes.⁵³ The above mentioned draft no. N 47538-6 is still subject of the legislative work and will probably be adopted partially in 2014 or 2015. The main legal source of the regulation of services in Russia is a subject of an ample reform, not only of special rules concerning services but first of all of other, general rules of the law of obligations and general provisions of the Russian Civil Code which are applicable to the service contract as well. Also the draft of the new Polish Civil Code, including the law of services, is a work in progress.^{54, 55} The work on the draft of the law of services in the new Polish Civil Code is still being continued.

In my capacity as member of a working group of the Codification Commission, at this stage I would like to present merely some general assumptions of the future draft.⁵⁶ The main objective of the proposal is a complete and comprehensive regulation of services, i.e. in the framework of the regulation of a group of contracts under which the main constitutive feature is the obligation to perform work. The working group takes into account the rules of the Draft Common Frame of Reference, Common European Sales Law, other legal systems (for example German, Italian, Dutch, Swiss, Russian, American, the law of Quebec, Austrian) and commercial rules such as FIDIC.

⁵¹ Draft no. N 47538-6, <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=PRJ;n=94778;div=PRJ;dst=100003;rnd=0.6447286319481211>.

⁵² See *Rasskazova*, Fn. 2, p. 140, who considers that this Draft does not jeopardize the general logic of the Russian civil legislation or the structure of the Civil Code.

⁵³ Act of 2.7.2013 no. N 187-FZ (entered into force on 1.8.2013, <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=148497;div=LAW;dst=100003;rnd=0.8514828469374644>); act of 23.07.2013 no. N 222-FZ (entered into force on 3.08.2013, available on: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=149668;div=LAW;dst=100002;rnd=0.6136057668451922>), act of 7.5.2013 no. N 100-FZ (entered into force on 1.9.2013 with some exclusions: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=145981;div=LAW;dst=100002;rnd=0.020700319415675294>), act of 23.7.2014 no. N 223-FZ (entered into force on 23.7.2013, available on: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=149669;div=LAW;dst=100002;rnd=0.6968.757309144167>), act of 30.9.2013 no. N 260-FZ (entered into force 1.11.2013, available on: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=152471;div=LAW;dst=100002;rnd=0.42665359289308513>), act of 2.12.2013 no. N 345-FZ (entered into force 14.12.2013, available on: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=155137;div=LAW;dst=100002;rnd=0.36106133600359397>), act of 11.2.2013 no. N 8-FZ (entered into force on 12.2.2013, available on: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=141997;div=LAW;dst=100002;rnd=0.3510923142462353>), act of 30.12.2013 no. N 302-FZ (entered into force on 1.3.2013, available on: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=142950;div=LAW;dst=100002;rnd=0.9628910715673341>), act of 28.6.2013 no. N 134-FZ (entered into force on 30.6.2013, available on: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=148268;div=LAW;dst=100002;rnd=0.09307221622888023>).

⁵⁴ See also *F. Zoll*, Contract Law in the Draft of the New Polish Civil Code: Formation of Contract, Performance and Non – Performance of Obligations in: Fn. 2, p. 93 and the literature cited in notes no. 1 and 2.

⁵⁵ Till this moment the Polish Codification Commission of the Civil Law which is responsible for drafting the legislation concerning the private law has adopted the structure of the general part of the law of obligations and the working groups work on the revision of rules of the general part of the law obligation and the revision of rules of general part of the Civil Code. There are some working groups who are working on the draft on special rules of the law of obligations, including the group who is working on the law of services. The structure of the special part of the law of obligations has not yet been accepted.

⁵⁶ The Polish proposal of the regulation of the law of services will be subject of another paper.

The draft concerns services as an obligation to skill and care and an obligation to achieve a result. The proposal includes two parts of the law of services: general and special. In the general part there are rules concerning the scope of the application, the service provider's and the client's pre-contractual duty to warn the client, the obligation of the service provider to perform a service with skill and care, or to achieve a result and the relation between them, the problem of materials needed for the performance of the service, directions by the client, unilateral change of the contract, termination of the contract by the client (at any time and as a remedy for the non-performance of the obligation by service provider).

The special part of the law of services includes special provisions to the general rules of the law of services or the general part of the law of obligations. This part focuses rather on the content of the obligation of the service provider, and not on types of contracts. At this stage this regulation includes provisions concerning a material or immaterial object, design, information and advice. Further, a proposal has been prepared regarding the regulation of treatment, which has been submitted for discussion in the working group. This is "still the begging – and not the end" of the scope of the regulation, and the work on it. It is planned to include the "mandate" in the regulation of services as well as franchising, distributions; however, this is still an open question regarding transport, telecommunication and financial services. The process of the work on this part of the new codification is not yet complete.

The discussion on the structure and on the content of the new Polish Civil Code is still open as well as the debate revolving around the need of the new codification (there is a group of lawyers in Poland who are opposing the codification). The Polish draft is not as advanced as the Russian reform of the Civil Code, but if we take into consideration the number and frequency of amendments to the Russian civil law in the last years it is possible that in the future there will be, indeed, an occasion for a common discussion of the next Russian reform of the Civil Code and the Polish draft of the new Civil Code.