

DISSOLUTION OF MARRIAGE: FUNCTIONAL APPROACH TO POLISH-ENGLISH TRANSLATION OF SELECTED COURT DOCUMENTS

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Abstract

The paper presents results of a study aimed at analysing problems that arise in Polish-English translation of selected court documents in divorce and judicial separation cases, as well as the ways of solving such problems in the light of the functional approach to translation. The methodology used includes parallel texts analysis, corpus linguistics for term extraction and comparative legal research for concept comparison. The results, including comments on specific terminological, phraseological and textual choices and a critical analysis of certain established equivalents, are presented in the form of an annotated translation. The findings also include general observations on the types and the sources of common problems encountered by both beginner and experienced translators. Finally, a need is identified for developing a more effective form of presenting results of practice-oriented research in the field of translation studies, especially with reference to legal translation, which would account for a richer knowledge component and more extensive contextual information than traditional dictionaries and term-bases.

FUNKCJONALNE PODEJŚCIE DO POLSKO-ANGIELSKIEGO PRZEKŁADU WYBRANYCH PISM PROCESOWYCH I ORZECZEŃ SĄDOWYCH W SPRAWACH ROZWODOWYCH ORAZ W SPRAWACH O ORZECZENIE SEPARACJI

Abstrakt

W artykule zaprezentowano wyniki badań, których celem była analiza problemów właściwych dla tłumaczenia z języka polskiego na język angielski wybranych pism procesowych i orzeczeń sądowych w sprawach rozwodowych oraz w sprawach o orzeczenie separacji. W ramach badań przeprowadzono m.in. analizę tekstów paralelnych, zastosowano metody właściwe dla językoznawstwa korpusowego w celu ekstrakcji jednostek terminologicznych oraz komparastykę prawniczą w celu porównawczej analizy pojęć. Wyniki, w tym uwagi dotyczące konkretnych wyborów terminologicznych i frazeologicznych oraz rozwiązań na poziomie tekstu, a także krytyczną analizę wybranych powszechnie przyjętych ekwiwalentów, przedstawiono w formie tłumaczenia z komentarzem. W artykule ujęto także wyniki obserwacji dotyczących rodzajów oraz źródeł problemów tłumaczeniowych napotykanych przez początkujących oraz doświadczonych tłumaczy. Ponadto we wnioskach wskazano na potrzebę opracowania skuteczniejszej formy prezentowania wyników ukierunkowanych praktycznie badań w dziedzinie translatoryki, w szczególności w odniesieniu do tłumaczeń prawnych i prawniczych, która – w porównaniu do tradycyjnych słowników oraz baz terminologicznych – byłaby bogatsza pod względem merytorycznym oraz zawierała szersze informacje na temat kontekstu użycia poszczególnych terminów.

Introduction

Although in the past decades we have seen changes in translation studies resulting in a shift of focus towards the target reader and a growing significance of communicative and pragmatic aspects as factors influencing a translator's decision making process, and even though these changes have also had an impact on the theory of legal translation, leading to a number of scholars pointing to the necessity for adopting the functional approach to translating legal texts, arguably there is still certain reluctance among Polish-English legal translators in this respect. This may be attributed to the fact that for centuries literal approaches used to be exclusively preferred in relation to legal translation and also nowadays there are opinions voiced that, in order to avoid introducing unintentional changes to the legal effect of the text, translators should demonstrate fidelity not just to the substance of the source text, but also to the way it is expressed.

Another reason for the continuing preference for the literal approach may be the fact that the practical aspects of legal translation remain under-researched. Arguably, there is an insufficient number of comprehensive resources guiding translators through terminological pitfalls resulting from the incongruence of legal systems, which would also account for textual and phraseological aspects of translating particular text types.

This article is based on the author's MA dissertation project (Juszkiewicz 2012) aimed at the analysis of potential problems arising in Polish-English translation of selected court documents in divorce and judicial separation cases. It sought to identify the solutions to such problems and to evaluate them in the light of the functional approach to translation, as well as to present the results of the analysis in the form aimed to be of practical value for translators.

The choice of the topic is motivated by the ongoing social changes which arguably contribute to the increased demand for Polish-English translation of divorce documents. They include a growing number of marriages between Polish citizens and foreign nationals (presumably as a result of globalisation, as well as Poland's accession to the European Union and the free movement of persons principle) and a reported increase in the number of couples filing for divorce in the past years (GUS).

Presented below are the main theoretical assumptions behind the project, an overview of the materials and methodology used, chosen specific observations in the form of an annotated translation of one of the analysed documents, as well as the general conclusions and implications for further research.

Theoretical framework

(1) Characteristics of legal translation

Regarding the distinctive features of legal translation¹, some of those discussed in the literature refer to the specific nature of legal language, others stem from extra

¹ The analysed court documents in divorce cases are related to the law by subject matter, as well as the by their communicative purpose (through performing their assigned functions in the course of legal proceedings). On these grounds a position is taken here that their translation falls within the category of legal translation and that scholarly findings presented under the 'legal translation' label apply hereto, even though they may not necessarily be described as 'prescriptive', which,

linguistic factors linked to the nature of the law itself, the way it operates and the fact that it is based on various conceptual frameworks in different legal systems.

Among the features of legal language rendering it a “recognisable linguistic phenomenon” (Cao 2007, 20), the complexity of the lexicon, syntax, style and pragmatics (related to the performative nature of legal language, its modality and intentional vagueness) is often described (*ibidem*, 20–23). Some authors refuse to recognise the distinctiveness of legal translation on the grounds of the mentioned linguistic features of legal discourse, arguing that the prescriptive function is also present, e.g. in directions for use of medical equipment or instruction manuals (Harvey 2002, 179). This is indeed hard to deny, however, what seems to be linguistically unique and particularly important from a translator’s point of view is that the forms used to express legal speech acts are often “determined by drafting practices, not by rules of grammar” (Šarčević 2000, 137) and therefore specialist knowledge of the drafting practices in both source language and target language is required.

As regards the extra-linguistic features of legal translation, it is widely acknowledged that one of the greatest sources of difficulties it poses stems from the fact that the reality behind the language, that is the law, is not universal as in pure sciences, such as mathematics or physics (Cao 2007, 23). To the contrary, national legal systems are results of long development and reflect the countries’ history and culture. Consequently, concepts, defined as elements of knowledge representing a class of objects (Cabré 1999, 42–43), developed in different legal systems are to certain extent unsymmetrical. Following an assumption that concepts (and thus knowledge) are accessed by means of the language through terms, it is clear that incongruence of legal concepts will cause terminological problems in the translation process. It is a widely held view that “being able to compensate for terminological incongruency” is among the greatest challenges facing legal translators (Šarčević 2000, 4).

Some writers disagree that system-bound terminology is unique for legal translation. Harvey rightly indicates that, in fact, “culture-bound concepts (...) crop up in all fields of knowledge which have not been completely standardised” (2002, 180). However, it must be emphasised that, as stated by Šarčević, in legal translation it is not enough (as may be e.g. in social sciences) to simply identify the closest corresponding equivalent, but it is also crucial to compensate for any conceptual differences due to which the interpretation of the term could be altered (2000, 149). The first step, however, is to measure the degree of equivalence between the source language and the considered target language term, i.e. to analyse and compare the concepts they denote and the legal effects they cause. Šarčević proposes dividing the characteristics of legal concepts into vital (*essentialia*) and additional (*accidentalia*). Depending on the degree to which the vital and additional features of the source language and the target language concepts overlap, the author distinguishes three categories of equivalence: near, partial and non-equivalence (*ibidem*, 237–238). The information on the degree of equivalence is to provide the translator with the knowledge on whether a considered target language term could serve as a functional equivalent in a given context. One flaw may however be identified here, as in practice it often proves difficult to establish which characteristics of a concept are vital and which are just additional. Arguably, this cannot

according to some authors, would leave them outside the scope of this category (Šarčević 2000, 9; Garzone 2000, 1).

be universally agreed and stated in a dictionary, as depending on the context in which a term is used, its different characteristics may be vital.

(2) Functional approach to legal translation

As in any kind of translation, macro-level strategies in legal translation vary from source-language- to target-language-oriented ones. As regards their use, due to the normative (and thus sensitive) character of legal texts, for centuries exclusive preference was given to literal translation (Šarčević 2000, 23). However, in recent decades a legal translator has been recognised as “an active participant in legal communication” (*ibidem*, 3), no longer involved in the “process of linguistic transcoding”, but in “an act of communication in the mechanism of the law” (*ibidem*, 55). In other words, a free approach to translation has become accessible to legal translators, however, with certain implications and restrictions attached to it, which stem from the nature of legal texts.

The predominant approach to translation adopted here is the functional one. As long as the need for accurate rendering of the meaning and the legal effect associated with it is seen as crucial and cannot be denied, Schroth’s view, that in legal translation “substantive equivalence is paramount and literary quality counts for all but nothing” (1986, 57) is only partly shared. If we accept the functional approach, with its key orientation on the target reader and on the equal effect that the source text and the translation should have on their respective recipients (Trosborg 1997, 148), it follows that the reader’s perception of the text as regards its register and style must also be catered for. This may require adjustments of the style, the level of formality and the modes of expression which may (and often will) vary for the same genre across languages and cultures. As noted by Šarčević, “[d]ue to cultural and language differences, different drafting practices have developed in various jurisdictions, thus resulting in distinctive drafting styles” (2000, 167).

As regards terminology, a position taken by Weston is supported, who presents an argument in favour of using functional equivalents to translate culture bound source language expressions denoting a concept with no exact equivalents in target language, and who describes such a technique as an “ideal method of translation” (1991, 23). The author recommends the use of functional equivalents whenever possible, unless the target language term is “peculiar to the target language culture” (*ibidem*, 22). He sees word-for-word translation as obligatory if only it also yields a functional equivalent. Weston compares and evaluates a range of techniques at a translator’s command (including: transcription, a literal equivalent, a descriptive equivalent, a functional equivalent and a neologism) to conclude that “to write a natural, idiomatic form of the target language” is the translator’s “paramount duty” (*ibidem*, 24).

We also take a position that the realisation of equivalence at the word level is determined by its realisation at the level of a sentence, a paragraph and the whole text. As noted by Šarčević, “despite the continued emphasis on preserving the letter of the law in legal translation, the basic unit of translation is not the word but the text” (2000, 229). It follows that the objective must be to ensure that all translation units are functionally equivalent, which may require adjustments of the text’s macrostructure. Consequently, a hierarchical, “top-down” (rather than “bottom-up”) approach is adopted, whereby “interpretation is not supposed to take place from the micro-level of the word (...) but from the macro-structure of the text to the micro-unit of the word” (Trosborg 1997, 145).

To summarise, a view expressed by Šarčević that “legal translators must know exactly how far they can stretch their freedom and still respect the restraints of their profession” (2000, 3) is shared here, which can be complemented by saying that legal translators must also strive not to treat ‘the restraints of their profession’ as an excuse to “adhere slavishly to the words of the original” (Weston 1991, 24) and produce what Schroth calls a “barbaric effect” (1986, 54).

(3) Terminology

According to Cabré’s communicative theory of terminology, terminological units, rather than concepts, are the objects of terminology as a discipline (2003, 183). Central to the definition of a terminological unit is recognition of its complexity and distinction of its three dimensions: cognitive (the concept), linguistic (the term) and socio-communicative (the situation). Under this approach terminological units are perceived as dependent on specific communicative context, as “special meanings of the lexical units at a speaker’s command” that is “activated by the pragmatic characteristics of the discourse” (*ibidem*, 190). This assumption accounts for a view supported here that for the analysis of legal terms a reference must always be made to their context of use, as their meaning is not always fixed and predefined. This allows us to explain the circulation of lexical units between general and specialised discourses and the circulation of terminological units between different domains (*ibidem*, 190).

Apart from terminological units, in her work Cabré distinguishes other units which also express specialised knowledge, among them — phraseological units (*ibidem*, 183). While some phraseological units carry a certain degree of a domain-specific meaning (qualifying them as terminological units), others are devoid of such a specialised semantic load. As indicated by Kjær, they are formulaic expressions, standard and routine phrases “normally used, simply because they serve the important function of relieving lawyers from the immense burden of text production connected with the exercise of their profession” (2007, 513).

The awareness of phraseological units is considered crucial for delivering functionally equivalent translations, as they reflect the conventional usage of language and therefore serve to cater for the target text recipients, who, as argued by Trosborg, have the right to “approach the text from their own frame of reference” (1997, 157).

Materials and methodology

The choice of the materials and the methodology corresponds to the two key research aims, i.e. the identification of translation problems and the search for the appropriate solutions. Consequently, the selected materials can be divided into two main groups: (1) source language materials and (2) target language materials.

The first group, comprising a number of authentic court documents of each of the selected types (i.e. a divorce petition, a judicial separation petition and a divorce decree), allowed for the preparation of comprehensive (as regards the range of terminology and phraseology featured) sample documents that were subsequently used as source texts for annotated translation. Among source language materials there were also resources of referential value devoted to the subject matter.

The second group included parallel English documents, as well as reference materials, such as legal acts, law textbooks, law dictionaries and miscellaneous

web-sourced materials on the subject matter, some of which have become target language corpus components².

Other materials, which defy the above categorisation, were also used, including materials of a mixed nature, i.e. those which are either translations (Polish legal acts and summaries of Polish law in English, etc.) or products of terminography work, such as specialised bilingual dictionaries and term bases. Within this group a sub-group may be distinguished, comprising a number of past certified translations of the types of documents under analysis, as well as translations of similar texts conducted by beginner translators (students of Translation Studies at the University of Gdańsk). Reference to both these groups allowed for the identification and evaluation of the tendencies and practices as regards dealing with specific issues by different groups of translators.

Finally, online tools, such as discussion forums for translators, which are recognised as valuable information sources, complementary to the traditional ones and demonstrating significant potential for improving translation quality (Biel 2008, 35), were also consulted.

As regards the methodology, the following were employed on different stages of the project: (1) parallel texts analysis; (2) comparative legal research for concept comparison; and (2) text analysis tools and methods developed within corpus linguistics for term and phraseme extraction.

Annotated Polish-English translation of a divorce petition

Presented below is a proposed translation of a sample divorce petition, along with the commentaries on the choices made and translation strategies used³. In order to account for a wider range of terminology and phraseology that may be encountered in translation practice of such texts, the source text is a compilation of several authentic documents of its kind, with alternative elements marked as 1a, 1b, etc.

² With a view to retrieving from the target language a range of potential linguistic solutions to the identified translation problems and to create an easily-accessible collection of phraseological choices at a translator's command, a target-language corpus was assembled and analysed with the use of a number of corpus analysis tools (a description of which, however, remains outside the scope of this article). As a result, a target-language glossary was delivered, featuring the key terms for the domain along with the lexical clusters in which they tend to appear, phraseological units they form, prepositions they take and, if considered appropriate, also along with sample sentences showing their specific context of use. With such an emphasis, it was assumed that the outcome would be of substantial referential value for legal translators (as well as legal drafters), particularly non-native English speakers, who, regardless of being advanced language users, are reported to find the correct use of prepositions and collocations challenging (Bowker and Pearson 2002, 34).

³ Owing to the limited size of the research, the findings are mainly directed at British (European) readers, whose primary frame of reference is the legal system of England and Wales.

Divorce petition

Warszawa, 18 września 2009 r.

Do
Sądu Okręgowego
Wydział Cywilny
w Poznaniu

Powódka: Katarzyna
Grześkowiak,
zam. w Poznaniu, ul. Nowa 3/5

Pozwany: Grzegorz
Grześkowiak,
zam. w Poznaniu, ul. Nowa 3/5

Pozew o rozwód

Wnoszę o:

1a) rozwiązanie małżeństwa Katarzyny Grześkowiak z pozwanym Grzegorzem Grześkowiakiem, zawartego w dniu 15 października 1987 r. w Urzędzie Stanu Cywilnego w Poznaniu — nr aktu małżeństwa: 222/87 — przez rozwód z winy pozwanego;

1b) rozwiązanie małżeństwa Katarzyny Grześkowiak z pozwanym Grzegorzem Grześkowiakiem, zawartego w dniu 15 października 1987 r. w Urzędzie Stanu Cywilnego w Poznaniu — nr aktu małżeństwa 222/87 — przez rozwód bez orzekania o winie;

2a) powierzenie powódce Katarzynie Grześkowiak wykonywania władzy rodzicielskiej nad wspólnym dzieckiem stron – Alicją, urodzoną w dniu 1 listopada 1994 r. w Poznaniu;

2b) powierzenie obojgu rodzicom wykonywanie władzy rodzicielskiej

Warsaw, 18 September 2009

In¹
the Regional Court [*Sąd*
Okręgowy]
in Poznań
Civil Division

BETWEEN¹:

Petitioner: Katarzyna
Grześkowiak, residing in Poznań
at ul. Nowa 3/5

AND¹

Respondent: Grzegorz
Grześkowiak, residing in Poznań
at ul. Nowa 3/5

Petition for divorce

I pray that:

1a) the marriage between Katarzyna Grześkowiak and the Respondent, Grzegorz Grześkowiak, solemnised on 15 October 1987 at the Register Office [*Urząd Stanu Cywilnego*] in Poznań — marriage certificate number: 222/87 — be dissolved through divorce and the Respondent be found at fault²;

1b) the marriage between Katarzyna Grześkowiak and the Respondent, Grzegorz Grześkowiak, solemnised on 15 October 1987 at the Register Office [*Urząd Stanu Cywilnego*] in Poznań — marriage certificate number 222/87 — be dissolved through divorce on a no-fault basis²;

2a) primary parental responsibility³ in relation to the child of the parties, Alicja, born on 1 November 1994 in Poznań, be awarded to the Petitioner, Katarzyna Grześkowiak;

2b) shared parental responsibility³ in relation to the minor daughter of the

<p>nad małoletnią córką stron Alicją Grześkowiak, ur. 1 listopada 1994 r., oraz ustalenie, że jej miejscem zamieszkania jest miejsce zamieszkania matki;</p> <p>2c) zawieszenie pozwanemu władzy rodzicielskiej nad małoletnią córką stron Alicją Grześkowiak w okresie jego pobytu w zakładzie karnym;</p>	<p>parties, Alicja Grześkowiak, born on 1 November 1994, be awarded to both parents and a <u>residence order</u>⁴ be made in favour of the mother;</p> <p>2c) the Respondent's <u>parental responsibility</u>³ in relation to the minor daughter of the parties, Alicja Grześkowiak, be suspended during his prison term;</p>
<p>3a) zobowiązanie pozwanego do ponoszenia kosztów utrzymania i wychowania dziecka stron, Alicji Grześkowiak, w wysokości 900 zł miesięcznie;</p> <p>3b) zobowiązanie obojga rodziców do ponoszenia kosztów związanych z utrzymaniem i wychowaniem małoletniej córki i w ramach udziału ojca w tych kosztach zasądzenie od pozwanego Grzegorza Grześkowiaka na rzecz powódki Katarzyny Grześkowiak alimentów w kwocie po 700 zł miesięcznie, płatnych do rąk Katarzyny Grześkowiak jako ustawowej przedstawicielki małoletniej – do dnia dziesiątego każdego miesiąca, poczynając od uprawomocnienia się wyroku, z ustawowymi odsetkami w razie uchybienia terminowi płatności każdej raty;</p>	<p>3a) the Respondent be ordered to pay <u>child maintenance</u>⁵ of PLN 900 per month for the child of the parties, Alicja Grześkowiak;</p> <p>3b) the parents be ordered jointly to cover the costs of <u>maintenance</u>⁵ of their minor daughter and the father be ordered to contribute to these costs through <u>periodical payments</u>⁵ of PLN 700 per month, due as of the date that the divorce decree becomes final and binding, and payable directly to the Petitioner, Katarzyna Grześkowiak, as a legal representative of the minor, by the 10th day of each month, with statutory interest charged in case of default on each payment;</p>
<p>4a) zasądzenie od pozwanego na rzecz powódki kosztów procesu według norm przepisanych;</p> <p>4b) zasądzenie od pozwanego na rzecz powódki kwoty 4500 zł tytułem zwrotu kosztów postępowania.</p>	<p>4a) the Respondent be ordered to pay the Petitioner's <u>legal costs</u>⁶ pursuant to the applicable provisions of law;</p> <p>4b) the Respondent be ordered to pay the Petitioner PLN 4500 as reimbursement of <u>legal costs</u>⁶.</p>
<p>Ponadto wnoszę o:</p> <p>5) powierzenie dziecka stron – Alicji Grześkowiak na czas trwania procesu powódce Katarzynie Grześkowiak i zobowiązanie pozwanego Grzegorza</p>	<p>Moreover I pray that:</p> <p>5) for the period of the proceedings, <u>custody</u>³ over the child of the parties⁷, Alicja Grześkowiak, be awarded to the Petitioner, Katarzyna</p>

Grześkowiaka do płacenia kwoty 600 zł miesięcznie do dnia 10 każdego miesiąca do rąk powódki, na pokrycie kosztów utrzymania i wychowania dziecka;	Grześkowiak, and that the Respondent be ordered to pay child maintenance of PLN 600 per month, payable by the 10 th day of each month, directly to the Petitioner;
6) zwolnienie powódki od kosztów sądowych.	6) <u>court fee remission</u> ⁶ be granted to the Petitioner.

Annotations:

¹ The words: *IN*, *BETWEEN* and *and* are elements which do not formally correspond to the source text. As long as *In* can be regarded as a functional translation of *Do*, the other two lack any lexical correspondents in the source text, thus require explanation.

Through the study of a number of parallel documents, these words have been identified as elements contributing to the functional equivalence at the text level. Picture 1 below shows a typical structure of an English document initiating court proceedings in a civil case.

<u>IN THE MANCHESTER COUNTY COURT</u>		
<u>BETWEEN</u>		Case No. TR123456
Claimant	JANE LARKIN	
Defendant	EMMA WHITE <u>and</u>	
PARTICULARS OF CLAIM		
1. On 20th January 2008, the Claimant visited the premises occupied by the Defendant		
...		

Picture 1. Particulars of claim. Source: <http://www.ukessays.com/lpc/civil-litigation/particulars-of-claim.php>

It is argued that adjusting the textual frame of the Polish document accordingly is desirable in order to enable the reader to access the text from a more familiar perspective.

² **at fault, on a no-fault basis**

The phrases *rozwód z winy pozwanego* and *rozwód bez orzekania o winie* constitute translation problems resulting from the differences in the way that a divorce process is regulated under the Polish and the English law. Pursuant to s.56 and s.57 of the Polish Family and Guardianship Code⁴ (KRO), complete and irretrievable breakdown of a marriage (*całkowity i trwały rozkład pożycia*) provides a single and only ground for divorce. If the court is satisfied that this condition is met, it also needs to rule

⁴ Ustawa z dnia 25 lutego 1964 r. Kodeks rodzinny i opiekuńczy. Dz.U. z 1964 r. Nr 9, poz. 59.

on whether and which of the spouses is at fault for the breakdown (which could include none, one or both parties). However, upon a joint request of the parties, the court does not rule on the issue of fault at all⁵. The possible outcomes of divorce proceedings in which a divorce is granted are summarised below:

<i>rozwód z winy obojga małżonków</i>	divorce with fault attributed to both spouses
<i>rozwód z wyłącznej winy jednego małżonka</i>	divorce with fault attributed to one spouse
<i>rozwód bez orzekania o winie</i>	no-fault divorce
<i>rozwód z orzekaniem o winie</i>	divorce with attribution of fault

Table 1. Possible outcomes of court proceedings ending in divorce being granted

Consequently, following a divorce, the parties may be referred to as:

<i>małżonek wyłącznie winny</i>	party solely at fault
<i>małżonek niewinny</i>	innocent party
<i>małżonek, który nie został uznany za wyłącznie winnego</i>	party not found to be solely at fault

Table 2. Parties to a divorce case following the granting of divorce

Rozwód bez orzekania o winie has been translated as a *no-fault divorce*, and as an analysis of dictionary entries (Pieńkos, Kienzler, Myrczek), as well as a number of past court translations suggest, it can be regarded as an established equivalent. However, a question may be rightfully asked whether the differences between the Polish concept and what is understood in common law by a no-fault divorce are not too significant for the terms to be used as equivalents.

In common law tradition, a no-fault divorce is defined as one in which “the parties are not required to prove fault or grounds beyond a showing of the irretrievable breakdown of the marriage or irreconcilable differences” (Garner 2004, 516). Clearly, this definition covers all types of divorce provided for by the Polish law, where the element of fault is not among the necessary grounds for divorce and allocating the fault is a duty of the court (unless the parties request that this issue not be considered at all), not the spouse seeking dissolution. A *no-fault divorce*, as used to translate *rozwód bez orzekania o winie*, may lead to a wrong conclusion that the other types of divorce in Poland are fault-based. However, the vital characteristics of the two terms (*essentialia*), as defined by Šarčević (2000, 237–238), overlap, therefore a *no-fault divorce* can be accepted as a functional equivalent or *rozwód bez orzekania o winie*.

Rozwód z orzekaniem o winie is not a term used by the Polish lawmaker but it frequently appears in the Polish legal discourse and refers to both *rozwód z winy jednego małżonka* and *rozwód z winy obojga małżonków*. Rather controversially, it

⁵ What is more, if there are no minor children of the marriage and the respondent supports the divorce petition, the court may, under s. 442 of the Polish Code of Civil Procedure (*Ustawa z dnia 17 listopada 1964 r. Kodeks postępowania cywilnego. Dz.U. z 1964 r. Nr 43, poz. 296*), make a ruling based solely on the statements of the parties, which makes the Polish regulations relatively liberal and, in certain circumstances, a divorce relatively easy to obtain.

tends to get translated as a *fault-based divorce*, e.g. in the IATE term base (IATE ID: 3537464).

Black's Law Dictionary defines a *fault divorce* as one granted to a spouse on the basis of some proven wrongful act by the other spouse (Garner 2004, 515). The law of England and Wales provides an example of such a solution, where, under s.1(1) of the Matrimonial Causes Act 1973, each party to a marriage may present a petition for divorce on the ground that the marriage has broken down irretrievably. However, irretrievable breakdown of the marriage may only be evidenced by one of the following facts, referred to in s.1(2) thereof: adultery, unreasonable behaviour, desertion (all three are fault-based) or sufficiently long separation (no-fault).

Consequently, it is argued that the defining features of a fault-based divorce under common law do not correspond to the essential features of *rozwód z orzekaniem o winie* under the Polish law, which should still be described as a no-fault one, as the lack of fault on the part of either of the spouses does not prevent the divorce⁶. Therefore, alternative descriptive equivalents have been suggested, as presented in Table 1 above. They are an attempt to avoid the risk of activating the wrong kinds of associations on the part of the reader and to remain clear with regard to the meaning. Admittedly, the terms coined are stylistically less appealing than the short *fault-based divorce*. However, the greatest difficulty in this respect arises when one tries to express these concepts in a nominal form — in the text of the petition this problem has been avoided by the use of passive voice and a neat construction: *to be found at fault*.

³ parental responsibility, custody, ⁴ residence order

Under s.95(1) of KRO, *władza rodzicielska* refers to the “rights and duties of the parents to exercise care over the person and the property of the child and the child’s upbringing, respecting his/her dignity and rights”⁷. There seems to be strong preference among Polish translators for literal equivalents of this term, such as *parental authority* or *parental power*, as indicated *inter alia* by past court translations and discussions at specialist Internet translation forums. This is believed to be a consequence of many translation resources, i.e. dictionaries (Myrczek, Ożga, Pieńkos) and the above quoted translation of KRO, opting only for those literal equivalents. Among the materials referred to, the EU term base (IATE) is the only one adopting a functionally oriented approach in this case, by showing preference for the term *parental responsibility*⁸ (IATE ID: 3537435). Arguably, this should be the favoured option for the European audience.

⁶ What might prevent it, however, is fault found solely on the part of the petitioner: in these cases a divorce is not granted if opposed by the innocent party (unless there are important reasons to rule otherwise); the distribution of fault also affects the rights and obligations of the parties following a divorce.

⁷ Translation: Faulkner, Nicholas (2010). *Kodeks rodzinny i opiekuńczy. The Family and Guardianship Code*. Warszawa: Wydawnictwo C.H. Beck.

⁸ IATE also lists the term *parental authority* under *władza rodzicielska* (IATE ID: 778128). However, preference is given to the functional equivalent, directly sourced from the English legal system, as explained in the notes accompanying the entry. The fact is worth noting, as it contradicts (or perhaps is an exception to) the general tendency of the EU terminology to be detached from the particular legal systems of the Member States.

In the UK, under s.3(1) of the Children Act 1989, parental responsibility refers to all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property. Clearly, the concepts referred to under the Polish and English law overlap to a significant extent. Therefore, employing the term *parental authority* in the translation, while there is a close functional equivalent available, is found hard to support. Arguably, apart from sounding odd or foreign, the literal equivalent in this case also carries certain negative connotations, activating the archaic concept of superiority and subordination in family relations and thus potentially misleading the reader as to the actual understanding of the term under the Polish law.

As far as the issue of parental responsibility is concerned, mention should also be made of a potentially confusing term *custody*, defined by *Black's Law Dictionary* as “the care, control and maintenance of a child awarded by a court to a responsible adult” which, in divorce or separation proceedings between the parents is “usually awarded to one of them” (Garner 2004, 412). It follows that *custody* seems to be the American equivalent of *parental responsibility* and functionally correspond to *władza rodzicielska*. Although the intended target audience considered here is European and it is assumed that its primary frame of reference is the English legal system, we refer to the term *custody*, as it is also used in the European context, however, with a somewhat different meaning.

According to *Oxford Dictionary of Law*, the term *custody* was in use in England until the introduction of Children Act 1989, when it was replaced by *parental responsibility* (Martin 2003, 132). For this reason it is used in such sense in some older documents, as well as in informal or semi-legal texts⁹ (which may also be a result of American influence); otherwise, it is a term featured in criminal law. However, *custody* is also recognised by the European Union and translated as *piecza nad dzieckiem* (IATE ID: 773368), which, according to the above quoted s.95 of KRO, is one of the elements of *władza rodzicielska*. Following an analysis of several other provisions of the Code (96(2), 100(1), 112¹(1), 120¹(2) and 158), it is argued that the term *piecza* refers to being able to decide about a child's whereabouts and being under a duty to provide care to that child; there is also an element of temporality involved. It thus appears to have a narrower semantic scope than *parental responsibility* but wider than just *residence*, which is why it is considered fit to express the concept of *powierzenie dziecka na czas trwania procesu*. However, if one wished to use only current British terminology, *residence*, denoting “the place in which a person has his home” (Martin 2003, 430), could also be supported as a transparent enough functional equivalent, with an assumption that the duty of care is implied when a residence order is granted.

⁵ **child maintenance, periodical payments**

The issue of maintenance is closely related to parental responsibility. Under the Polish law, parents must provide for their children, i.e. cover the costs of their *utrzymanie* and *wychowanie*. The consulted translation of KRO lacks consistency

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For example: www.childsupportlaws.co.uk and http://news.bbc.co.uk/2/hi/uk_news/2048681.stm.

regarding the equivalents of these terms — the following combinations can be found: *living and educating* (s.58), *welfare and upbringing* (s.103), *subsistence and education* (s.128), *maintenance and upbringing* (s.140) and *the child's upkeep* (s.98). It is argued that for the purpose of a divorce petition none of these is ideal: except for the last one, they are all word-for-word translations, not functioning as stable lexical combinations in the target language and, as there is a functional equivalent available, they arguably bear the mark of 'translationese'. The last example listed, *the child's upkeep*, appears to be a step in the right direction; however, it is too general. According to *Oxford Dictionary of Law*, the amount that a non-resident parent (i.e. one who does not live with the child concerned) must pay as a contribution to the upkeep of his or her child is referred to under the English law as *child support maintenance* or *child maintenance* (Martin 2003, 79–80).

A reference to an American term *alimony* must be made here, which is a false friend of a similarly sounding Polish one: *alimenty*. Alimony refers to a "court ordered allowance that one spouse pays to the other spouse for maintenance and support while they are separated, while they are involved in a matrimonial lawsuit, or after they are divorced" (Garner 2004, 80). In the UK the term *alimony* was used in a similar way but has been replaced with *maintenance* or *financial provision*. The risk, however, is connected with the broad understanding of *obowiązek alimentacyjny* under the Polish law, where it refers to the maintenance obligation between parents and children, siblings, other relatives, as well as former spouses (s.128 of KRO). It is therefore important not to mistranslate *alimenty na dziecko* (child maintenance) as *alimony*, which should be reserved to the maintenance obligation between spouses — not necessarily "na żonę" (to the wife) as suggested by Ożga and Pieńkos.

This annotation also concerns another term used as the translation of *alimenty*, namely *periodical payments*. In this context it is considered fit, as under the English law child maintenance may be provided in various ways (e.g. as a lump sum of money or property adjustments) and monthly payments are just one of them. This is an example of how the meaning of terms is dependent on the situational configuration: used out of context, *periodical payments* could refer to a number of hypothetical situations, as well as *alimenty* do not tend to be translated as *periodical payments* in dictionaries. Indeed, both these terms cover broad semantic areas; however, in the given context the functionally essential elements of their meaning overlap.

6 legal costs, court fee remission

Before remarks are made regarding the term *court fee remission*, disambiguation is needed between commonly confused terms, i.e. *koszty postępowania* (*koszty procesu*) and *koszty sądowe*. Generally, the first ones refer to all the necessary costs borne by the parties in order to start and win the case — they correspond to *legal costs* under the English law (often shortened to *costs*) which amount to solicitor's costs, counsel's and experts' fees, other charges, expenses and disbursements, including court fees (Sime 2009, 561). Under both legal systems, the general principle regarding the payment of legal costs is that the losing party pays the costs of the winning party.

Koszty sądowe, although covering a wider range of expenses than English court fees (for example, in Poland they include experts' fee), appear to be their closest functional equivalent, also because certain categories of persons may not have to pay them. *Zwolnienie z kosztów sądowych* tends to be translated as *exemption from court*

fees (Kienzler, Ożga). However, in the UK court fee exemption defines a situation in which someone does not have to pay court fees by law¹⁰. This is not the case in the petition above, where an application is made and a decision is to be taken by the court. Therefore the term *court fee remission* seems more fit, as it applies to situations where people “do not pay ... court fee because the court has decided that if they paid it, they would **suffer financial hardship**”¹¹. This corresponds to the grounds for court fee remission under the Polish law, provided in s.102(1) of the Act of 28 July 2005 on Court Fees in Civil Cases¹², which reads that:

Zwolnienia od kosztów sądowych może się domagać osoba fizyczna, jeżeli złoży oświadczenie, z którego wynika, że nie jest w stanie ich ponieść bez uszczerbku utrzymania koniecznego dla siebie i rodziny.

Consequently, the term *court fee exemption* should be reserved to the cases where one is not required to pay court fees by law (*ustawowe zwolnienie z kosztów sądowych*), e.g. in petitions for determination of paternity (*ustalenie ojcostwa*).

Conclusions

The above annotated translation of a divorce petition is only a fraction of the empirical part of the research conducted. The conclusions, however, are based on the analysis as a whole and draw also on the parts not included in this article due to its limited size.

As regards the first research question, i.e.: ‘What problems are likely to emerge in Polish-English translation of court documents in divorce and judicial separation cases?’, it can be concluded that they are mainly of a terminological and a phraseological nature. As for the problems of a textual nature, they sometimes arise as a result of differences in the macrostructure of the parallel English documents. On the other hand, the register and the level of formality of these documents can be regarded as close enough to the source language texts to assume that few major difficulties for translators arise on these grounds.

With respect to the analysed terminology, it can be stated that as regards the substantive-law terms, there is a significant degree of similarity between the Polish and the English legal systems. However, certain established equivalents may be questioned, either on the grounds of their conceptual incongruence with the source language terms, or due to existence of better-suited alternatives.

Finding functional equivalents of the procedural terms, on the other hand, proves more challenging. This can be attributed to the significant differences in the way that the Polish and English conceptual systems are structured, as well as to the proliferation of English terminology in the language of the legal procedure.

¹⁰ Guide “Court fees – Do I have to pay them?": hmctsformfinder.justice.gov.uk/courtfinder/forms/ex160a-eng.pdf [access: 1 May 2012].

¹¹ *Ibidem*.

¹² *Ustawa z dnia 28 lipca 2005 r. o kosztach sądowych w sprawach cywilnych. Dz.U. z 2005 r. Nr 167, poz. 1398.*

Unlike under the Polish law, under the legal system of England and Wales there are separate statutes governing the rules of civil and family proceedings¹³, which vary in the way that certain corresponding concepts are termed. Additionally, within the scope of each of these procedures, different terms for the same concepts exist as a result of the recent reforms in England that modernised the language of the law, so that many obscure terms have been replaced with plain English ones. Inevitably, however, the old words and phrases are still in use and it is common to encounter a rather confusing mix of the old and the new (Malleon 2007, 99), both in authentic documents and in reference materials.

Another complicating factor is linked to the historical development of the English legal procedure, during which separate terminology was used for proceedings before chancery courts and for cases tried before common law courts, both of which are still in use today (e.g. *decree* and *judgement*). Different terminology used in other English-speaking countries, notably the United States, also adds to the confusion, especially as legal dictionaries do not tend to make references to the geographical distribution of terms or their context of use (which would often be simply impossible, given their limited size). As a result, the translations by both professional translators and the students of translation studies analysed for the purpose of the research demonstrate some inconsistency in their use of terminology. In addition, the students tend to have significantly more problems with achieving readability due to unidiomatic or even ungrammatical use of the language (which, in turn, seems to result from their overreliance on source-language oriented strategies).

As regards the implications for further research, it can be claimed that although the corpus-derived glossaries of terms and phrasemes can serve as valuable translation resources by providing a wide range of linguistic solutions that form the tissue of a naturally-sounding text and which are hard to retrieve from any other resources not specifically aimed at translators, and although the form of an annotated translation seems particularly suitable for presenting extensive contextualised comments on specific translation problems, there is a need for a more comprehensive form of presenting the results of practice-oriented research in translation studies. Arguably, thematic purpose-built resources combining the advantages of terminological and phraseological glossaries with a much richer and more systematically structured knowledge component, providing comparative information on conceptual systems in various jurisdictions, as well as highlighting the essential elements of concepts depending on their context of use, would be a tool that could significantly aid the legal translator's decision making process.

¹³ Civil Procedure Rules 1998 and Family Procedure Rules 2010.

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List of pictures and tables:

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Table 1: Possible outcomes of court proceedings ending in divorce being granted.

Table 2: Parties to a divorce case following the granting of divorce.