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**Polish-Spanish Legal Translation:  
A Parametric Approach**

**Joanna Nowak-Michalska**

Wydawnictwo Naukowe CONTACT  
Poznań 2017



# Contents

List of abbreviations.....	9
Introduction .....	11
1. Purpose and scope of the study.....	11
2. Research methods .....	12
3. Research material.....	13
1. Parametrization .....	17
1.1. Dimensions .....	17
1.2. Hierarchization of dimensions .....	20
1.2.1. The dimension of language variety.....	21
1.2.1.1. Names of testament types.....	22
1.2.1.2. <i>Zachowek</i> ‘reserved portion, legitime’ ....	24
1.2.1.3. <i>Pozew</i> ‘petition’ and <i>pozwany</i> ‘defendant’ .....	25
1.2.1.4. <i>Strona przeciwna</i> ‘opposing party’ .....	26
1.2.1.5. <i>Postępowanie egzekucyjne</i> ‘enforcement procedure’ .....	27
1.2.2. The dimension of the territorial scope of the law’s application.....	30
1.2.3. The dimension of lect .....	34
1.2.3.1. <i>Przysposobienie</i> ‘adoption’ .....	35
1.2.3.2. <i>Zawierać umowę</i> ‘to conclude a contract’ .....	35
1.2.3.3. <i>Pełnoletni</i> ‘major’ and similar concepts .	36
1.2.3.4. <i>Wszcząć postępowanie</i> ‘to initiate proceedings’ .....	38
1.2.4. The dimension of branch of law .....	39
1.2.4.1. <i>Pełnoletni</i> ‘major’ and similar concepts in civil and criminal law.....	39
1.2.4.2. Names of the opposing parties in civil and criminal procedures .....	40
1.2.5. The dimension of text genre .....	42
1.2.6. Concluding remarks.....	44

2. Synonimy .....	45
2.1. Synonimy between terms belonging to various varieties of Spanish .....	45
2.2. Synonimy between terms belonging to various lects ....	47
2.3. Synonimy between terms belonging to the same branch of law and the same legal genre .....	49
2.3.1. <i>Śmierć</i> and <i>zgon</i> ‘death’ .....	50
2.3.2. <i>Zaginiony</i> ‘missing person’ .....	54
2.3.3. <i>Zawierać umowę</i> ‘to conclude a contract’ .....	56
2.3.4. <i>Proces cywilny</i> ‘civil lawsuit’ .....	56
2.3.5. <i>Postępowanie egzekucyjne</i> ‘enforcement procedure’ .....	58
2.3.6. <i>Aukcja</i> and <i>licytacja</i> ‘auction’ .....	59
2.4. Concluding remarks.....	61
3. Polysemy.....	63
3.1. Introductory remarks .....	63
3.2. Linguistic polysemy in Polish and Spanish.....	64
3.2.1. <i>Polecenie</i> .....	64
3.2.2. <i>Wygasać</i> .....	65
3.2.3. <i>Emancipación</i> .....	67
3.2.4. <i>Auto</i> .....	67
3.3. Legal polysemy in Polish and Spanish.....	68
3.3.1. <i>Odwolanie</i> .....	68
3.3.2. <i>Auto</i> .....	70
3.3.3. <i>Obligación</i> .....	72
3.3.4. <i>No deber</i> .....	73
3.4. Concluding remarks.....	74
4. Hyperonymy-hyponymy .....	77
4.1. <i>Użyczenie</i> ‘commodate’ and <i>pożyczka</i> ‘loan’ .....	77
4.2. <i>Najem</i> ‘lease’ and <i>dzierżawa</i> ‘tenancy’ .....	80
5. Indeterminate legal concepts and general clauses .....	85
5.1. <i>Zwyczaj miejscowy</i> ‘local custom’ .....	87
5.2. <i>Należyta staranność</i> ‘due diligence’ .....	89
6. False cognates and true cognates .....	93

7. Metaphors .....	101
7.1. <i>Termin biegnie</i> ‘the term runs’ .....	101
7.2. <i>Termin upływa</i> ‘the term ends’ .....	104
8. Euphemisms .....	107
8.1. <i>Osoba niepełnosprawna</i> ‘disabled person’ .....	107
8.2. <i>Kara pozbawienia wolności</i> ‘punishment in the form of deprivation of liberty’ .....	110
9. Relativization of translation to different recipients .....	113
9.1. <i>Osoba fizyczna</i> ‘natural person’ and <i>osoba prawna</i> ‘legal person’ .....	114
9.2. <i>Testament w formie aktu notarialnego</i> ‘notarial will’ .	117
9.3. <i>Umowa o dożywocie</i> ‘life-care contract’ .....	118
9.4. Concluding remarks .....	120
10. Translation algorithms .....	121
10.1. Introduction .....	121
10.2. Algorithm (1): <i>aukcja</i> ‘auction’ .....	122
10.3. Algorithm (2): <i>postępowanie egzekucyjne</i> ‘enforcement procedure’ .....	124
10.4. Algorithm (3): <i>stwierdzenie zgonu</i> ‘judicial ascertainment of a person’s death’ .....	127
10.5. Algorithm (4): <i>orzeczenie</i> ‘judicial ruling’ .....	129
10.6. Explanation scheme .....	131
11. Conclusion.....	133
References .....	137
List of legal acts .....	143
List of tables .....	145
Streszczenie (Summary in Polish) .....	147

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## List of abbreviations

CC	Código Civil (Spanish Civil Code)
DCG	Derecho Civil de Galicia (Civil Law of Galicia)
KC	Kodeks cywilny (Polish Civil Code)
KPC	Kodeks postępowania cywilnego (Polish Code of Civil Procedure)
KRO	Kodeks rodzinny i opiekuńczy (Polish Family and Guardianship Code)
LEC	Ley de Enjuiciamiento Civil (Spanish Civil Procedure Act)
lit.	literal translation
LJV	Ley de Jurisdicción Voluntaria (Spanish Non-contentious Jurisdiction Act)
LSP	language for special purposes
SL	source language
TL	target language



# Introduction

## 1. Purpose and scope of the study

The present study is part of a research project which comprises the following languages: Polish, Chinese, English, Greek, Hungarian, Spanish and Swedish. This part concerns the Polish-Spanish language pair. The research itself is justified by the need to better understand and describe the reality of legal texts in various languages, which, from the practical point of view, is linked to the need for a better tool for finding appropriate translation equivalents.

As far as the theoretical aspect is concerned, the particular objective of the study is to verify or falsify the method proposed in Matulewska (2013) as a means of determining appropriate translation equivalents with the use of a parametric approach, which will be applied here to the Polish-Spanish language pair. The theoretical foundations of this method have been described in detail in Bańcerowski and Matulewska (2012) and Matulewska (2013, 2017), which also contains a detailed description of the project and the application of the parametric method to the Polish-English language pair<sup>1</sup>.

In the present study dealing with translation within the Polish-Spanish language pair, it is the Polish language that is the point of departure. Since Polish-Spanish legal and economic contacts as well as Polish-Spanish linguistic and legal communication are intensifying, a need for such a study is quite evident. It should also be added that the number of dictionaries and other books which translators who translate within this language pair may resort to is limited<sup>2</sup>. Therefore, the aim of developing a trustworthy tool for the use by those who deal with

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<sup>1</sup> The results of the application of the parametric method to legal translation from Polish into Hungarian and Swedish are published in Kaczmarek (2017) and Hadryan (2017) respectively.

<sup>2</sup> As far as Polish-Spanish legal dictionaries are concerned, the choice is virtually limited to Komarnicki et al. (2006) and (2015). An introductory description of the Spanish and Polish legal systems is Supera-Markowska (2013).

translating legal texts both theoretically and practically seems fully justified.

## 2. Research method

The procedure begins by extracting a set of legal terms from the Polish corpus for which potential equivalents in the Spanish language are to be established. In order to achieve this goal, a tool is needed that makes it possible to describe and compare the terms, both intra- and interlingually, in an exact and systematic way. To this aim, the method of parametrization is used, which is the crucial component of the methodological apparatus. Apart from parametrization, other methodological instruments are applied as well, which can be understood as subsidiary means. These include: analysis of comparable (parallel) texts<sup>3</sup>, terminological analysis of the terms used in the SL and TL texts, the techniques of providing equivalents for non-equivalent or partially equivalent terminology (Newmark 1982, 1988, 1991, Kierzkowska 2002), and the idea that in the process of translation the text must be adjusted to the communicative needs of the recipient (cf. Vermeer 2001, Šarčević 2000).

Parametrization is founded on the idea that every object of description shows, or in other words is characterized by, a number of various properties. The legal and linguistic reality that is to be described can be conceived of as being characterized by a vast number of such properties, which has to be organized and systemized in some way. This is accomplished through classifying homogeneous, i.e. comparable, properties into sets, which are referred to as dimensions<sup>4</sup>. A dimension is thus conceived of as a set of homogeneous properties.

Parametrization is a tool that makes it possible to systematically compare Polish and Spanish terms that have similar meanings. The

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<sup>3</sup> Cf. Neubert 1996 and Delisle et al. 1999. Parallel (comparable) texts are understood as texts of the same genre in two languages that can be compared and used for establishing interlingual equivalents on various levels, including the terminological level.

<sup>4</sup> Dimensions may also be referred to as parameters, a term from which the name of the method, parametrization, is derived.

procedure of parametrized comparison will help to establish appropriate Spanish translation equivalents for Polish terms.

First, however, it needs to be determined which dimensions are relevant for the purpose of Polish-Spanish translation. Next, a proposal of a hierarchization of dimensions relevant for this language pair will be presented. This will make it possible to eliminate inadequate Spanish translation equivalents of the Polish terms and choose the optimal one in the smallest number of steps. The proposed hierarchy is then verified with the use of selected examples.

The study includes analyses concerning several linguistic phenomena that are inextricably linked with translation. These phenomena, sometimes quite problematic, are well known to every translator of legal texts. They include such semantic relations as: synonymy, homonymy, hyperonymy-hyponymy and false cognates (paronymy) as well as polysemy, indeterminate legal concepts, metaphorical and euphemistic expressions. The goal of considering these issues is to show how complex the legal and linguistic reality is and how challenging the task of translating legal texts can be.

The discussion of these issues and the verification of the proposed hierarchy is carried out with the use of examples of selected Polish terms for which potential Spanish translation equivalents, whether full, partial or coined, are to be established. These exemplifications are intended to show how the theory works. In addition, following the method applied in Matulewska (2017), translation directives are formulated with respect to each example under discussion.

### **3. Research material**

In order to arrive at a set of Polish terms (SL terms) for which Spanish translation equivalents (TL terms) are to be found, a corpus of comparable texts out of which to extract them is needed. The Polish component of this corpus is composed of:

- (i) the Polish Civil Code (Kodeks cywilny, KC) and
- (ii) the Polish Code of Civil Procedure (Kodeks postępowania cywilnego, KPC).

Around 2400 Polish terms (separate words as well as complex expressions) were extracted out of this corpus. Subsequently, the parametrization method was applied in order to establish their translation equivalents (selected cases are discussed in detail in the book). To this aim, the Spanish component of the corpus, composed of texts belonging to the same branch of law and the same legal genre, i.e. legislation, were analyzed. It is composed of:

- (i) Código Civil (Spanish Civil Code), henceforward: CC,
- (ii) Ley de Enjuiciamiento Civil (Spanish Civil Procedure Act), henceforward: LEC, and
- (iii) Ley de Jurisdicción Voluntaria (Spanish Non-contentious Jurisdiction Act), henceforward: LJV.

A certain asymmetry can be observed between the Polish and Spanish components of the corpus. First, two Spanish acts, LEC and LJV, correspond to one Polish code, KPC. The second difference consists in that while CC contains regulations concerning family matters, the Polish law regulates these issues in a separate instrument, the Family and Guardianship Code (Kodeks rodzinny i opiekuńczy, KRO). Since the area of law regulated in KRO does not fall within the scope of the present study, the parts of CC related to family and guardianship matters are not taken into consideration here.

At times, also other pieces of Spanish legislation which regulate specific matters in more detail have had to be consulted in search of a right Spanish translation equivalent if no potential translation equivalent could be found in the corpus (this is indicated in each such case). If no equivalent can be established on the grounds of the analysis of the corpus or other legal acts or if the equivalent established in this way is only a partial (insufficient) one, the techniques of providing equivalents are used in order to determine it or, as a last resort, an entirely new expression is coined.

It should be underlined that while the Polish language of law has only one variety, the situation of Spanish is more complex and this complexity is twofold. First, variants of this language are used in other Spanish-speaking countries and they differ, at least to a certain degree, from Peninsular Spanish (the variety of Spanish used in Spain) also as far as the language of law is concerned. Secondly, variation within the Spanish language of law also results from the existence of regional legal sub-systems within Spain itself: in particular autonomous communities,

local civil law called *derecho foral* (termed also *derecho civil propio* or *derecho civil local*) is used, which is applicable only at a local, regional level (cf. Section 1.2.2.). In the present study, neither terms used in non-Peninsular Spanish nor those employed in Spain only at a regional level will be taken into consideration except when a special problem is to be signalled or discussed. The term ‘Peninsular Spanish is used whenever it is necessary to indicate that this variety is contrasted with Spanish used in other countries.



# 1. Parametrization

## 1.1. Dimensions

As already stated in the Introduction, the parametrization of legal and linguistic reality intended in the present study is based on the idea that the units of description, viz. terms, show, or in other words are characterized by, a number of various properties which need organizing for the purpose of a systematic description. These properties are, for instance, ‘civil law system’, ‘common law system’, ‘national law’, ‘regional Galician law’, ‘regional Catalan law’ ‘legal language’, ‘vernacular language’, ‘testaments’, ‘judgments’, ‘petitions’, and many others. Some of these properties are of the same type, i.e. homogeneous, and are thus comparable with one another. Such properties are classified together into sets, called dimensions (parameters). Consequently, a dimension is conceived of as a set of homogeneous properties. Thus, the properties ‘civil law system’ and ‘common law system’ are classified together in the dimension of legal system. The properties ‘national law’, ‘regional Galician law’ and ‘regional Catalan law’ are classified together in the dimension of the territorial scope of the law’s application. The properties ‘legal language’ and ‘vernacular language’ are classified together in the dimension of lect. The properties ‘testaments’, ‘judgments’ and ‘petitions’ are classified together in the dimension of text genre, etc.

Every term subjected to parametrization is characterized by one property with respect to every dimension. For instance, the Polish term *użyczenie* ‘commodate’ is characterized by the following properties: ‘civil law system’ (with respect to the dimension of legal system), ‘civil law’ (with respect to the dimension of branch of law), ‘legislation’ (with respect to the dimension of text genre), and others which will be introduced in subsequent paragraphs. In cases in which no property can be ascribed to a given term with respect to a given dimension (this happens if a given dimension is not applicable to a particular term), the term is ascribed the property of ‘indeterminacy’, which is contained in every dimension.

After establishing the set of dimensions that are relevant for the Polish-Spanish language pair, they can be used to compare terms that have similar meanings in order to propose Spanish translation equivalents for the Polish terms. The objective of this procedure is to establish a set of dimensions which make it possible to identify relevant differences in the smallest number of steps.

In Matulewska (2013), five categories of dimensions were distinguished on the grounds of the general matter they concern. These matters are:

- (i) source-text author,
- (ii) *translandum*, *translatum*<sup>5</sup>, and text component parts,
- (iii) commission and commissioner,
- (iv) translator, and
- (v) communicative community<sup>6</sup> (Matulewska 2013: 107).

According to what this author observes in Matulewska (2017), the groups (iii) and (iv) are not taken into account in this research. The dimensions referring to the communicative community of recipients, in their turn, are taken into account to some extent only. When different types of recipients that a particular translation may have (cf. Chapter 9) are considered, the concepts proposed by Kierzkowska (2002: 88-89) in her pragmatic model for translating legal terms are used. This author distinguishes three types of recipients:

- (i) distant recipient: a recipient who is not a specialist, is not versed in the culture of the source text and has no motivation to know it better,
- (ii) close recipient: a recipient who is versed in the culture of the source text, who is a specialist, for instance, a lawyer or a business person operating in a given country, and
- (iii) self-defined recipient: a recipient who imposes his own terminological requirements on the translator.

---

<sup>5</sup> The terms *translandum* and *translatum* used by Matulewska (2013) may be interpreted as corresponding to the traditional concepts of SL term and TL term, respectively.

<sup>6</sup> For a discussion of the concept of communicative community, see Zabrocki (1963).

A distant recipient is not interested in all legal details and does not need to know them. By contrast, when translating for a close recipient the translator has to take all legal niceties into consideration and has to be more careful when choosing translation equivalents.

As regards the category ‘source-text author’ and dimensions related to this matter, it should be highlighted that the material used for the needs of the present research is limited to legislation texts, the author of which, the legislator, is an entity endowed with specialized knowledge and the knowledge how to communicate the legal issues (cf. Matulewska 2013: 108).

Thus, as observed by Matulewska in Vol. 1, the present study is focused on dimensions related to the *translandum*, *translatum*, and text component parts (p.28-29).

In the analysis of the *translandum*, *translatum* and text component parts, the terms are examined with respect to the following dimensions:

- (i) communicative situation,
- (ii) text delivery form and quality,
- (iii) text force and legal effect,
- (iv) text purpose/function,
- (v) the time of text creation,
- (vi) text language variety and variation,
- (vii) the lect (language) of the text,
- (viii) text legal system,
- (ix) the branch of law to which the text refers, and
- (x) text genre

(Matulewska 2013, 111-112).

At this point, the question about which dimensions are relevant for the Polish-Spanish language pair for the purpose of the present study needs to be raised. It can be answered by eliminating those dimensions that are obviously irrelevant. For instance, the dimension of text legal system (viii) is irrelevant because both Polish and Spanish legal systems are civil law systems, consequently, the property ‘civil law system’ characterizes every Polish and every Spanish term and no terms will ever be distinguished by virtue of this property in the present study. Other dimensions that can be considered irrelevant for the needs of the present study (although they may be important in other situations) are:

- communicative situation, because the corpus is basically restricted to pieces of legislation, all of which show the property ‘written texts for reading’,
- text delivery form and quality, because only written texts of high quality are taken into consideration in the present study,
- text force and legal effect, because only original and binding texts are taken into consideration,
- text function, because it is assumed that SL text and TL text fulfil the same function,
- time of text creation, because only valid texts are taken into consideration.

What remains are the following dimensions:

- (i) text language variety and variation (henceforward: language variety),
- (ii) the lect (language) of the text (henceforward: lect),
- (iii) the branch of law to which the text refers (henceforward: branch of law), and
- (iv) text genre.

It seems, however, that it is necessary to expand this list by adding to it another dimension, that of the territorial scope of the law’s application. This dimension is to reflect the fact that in Spain some legal regulations are applicable throughout the country whereas some others are applicable at a regional level only. By contrast, all Polish terms will always show the property ‘nationwide’ since in Poland, civil law is geographically uniform.

These five dimensions are considered relevant for the Polish-Spanish language pair in the present study – both for substantive and procedural civil law.

## **1.2. Hierarchization of dimensions**

From the practical point of view, some of the relevant dimensions can be considered more important for the translation purposes than others. Thus, one can speak of a hierarchy of dimensions, which will be discussed in more detail in the course of this chapter. The idea of the

hierarchy of dimensions consists in that the most important dimensions, i.e. those which are most likely to help the translator select a sufficient translation equivalent, are to have precedence over less important ones.

The way the hierarchization works will be illustrated with examples of Polish terms and their possible Spanish equivalents. The proposed hierarchy of the dimensions for this language pair is presented below:

1. Language variety,
2. Territorial scope of the law's application,
3. Lect,
4. Branch of law,
5. Text genre.

This hierarchy is assumed to reflect the order in which the dimensions should be used for the selection of appropriate Spanish translation equivalents for the Polish terms. However, the hierarchy is a tentative proposal and it is possible that upon applying it to an expanded set of terms it will require some modification. In the following chapters, various semantic relations and other linguistic phenomena will be analyzed and Spanish translation equivalents for the Polish terms will be looked for in the light of this hierarchization.

In the following paragraphs, the hierarchized dimensions will be discussed in detail with the intention to show that together with meaning of the term, they make it possible to choose, in a limited number of steps, a TL term which is sufficiently equivalent to the SL term.

### **1.2.1. The dimension of language variety**

When choosing an appropriate translation equivalent for a Polish term, the first relevant dimension to consider is that of language variety. This dimension, irrelevant for the Polish language, is, by contrast, relevant for Spanish, which functions as an official language in more than twenty countries. Therefore, special attention must be paid to this aspect when looking for equivalents in Spanish, since legal terms used in particular Spanish-speaking countries may differ from country to country. Since Peninsular Spanish, i.e. the Spanish language used in

Spain, is the variety that is of interest here, the equivalents should be looked for within this specific variety.

### 1.2.1.1. Names of testament types

In the case of civil law, there is a number of terms that are used with different meanings in different Spanish-speaking countries, apart from terms that are used with the same meaning. This can be illustrated by means of examples of the names of the testament types as regulated in the Spanish civil code and its Argentinian and Peruvian counterparts. The first example is the Spanish equivalent for the Polish term *testament własnoręczny* ‘holographic will, handwritten will’, which, according to Art. 949 of KC, is a testament which a testator draws up by writing it entirely by hand, signing it and affixing a date. This type of will is referred to in the same way in Spain, Argentina and Peru: *testamento ológrafo*, which, is defined in CC as follows:

Art. 678. A will shall be called holographic when the testator writes it by himself in the form and with the prerequisites set forth in article 688.

Art. 688. The holographic will may only be made by persons who are of legal age. In order to be valid, this will must be written out in full and signed by the testator, with expression of the year, month and day on which it is made. (...) <sup>7</sup>.

The Polish term *testament własnoręczny* and the Spanish term *testamento ológrafo* are convergent with respect to all essential dimensions. In consequence, the following directive can be formulated.

---

<sup>7</sup> “Art. 678. Se llama ológrafo el testamento cuando el testador lo escribe por sí mismo en la forma y con los requisitos que se determinan en el artículo 688. Art. 688. El testamento ológrafo solo podrá otorgarse por personas mayores de edad. Para que sea válido este testamento deberá estar escrito todo él y firmado por el testador, con expresión del año, mes y día en que se otorgue”.

In footnotes, the original Polish and Spanish versions of fragments quoted from the corpus are given. If not stated otherwise, the English translations of passages from CC are taken from the website of the World Intellectual Property Organization (WIPO): [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=221319](http://www.wipo.int/wipolex/en/text.jsp?file_id=221319), while those of passages from KC and KPC are taken from Lex Omega – Wolters Kluwer Polska S.A. (both accessed December, 2016).

**Directive:** If in a Polish text formulated in the language of law the term *testament własnoręczny* is used as the name for a testament entirely handwritten and signed by the testator, then it should be translated into Spanish as *testamento ológrafo*. These terms are convergent with respect to all essential dimensions: language variety, territorial scope of the law’s application, lect, branch of law, text genre, and therefore may be considered sufficiently equivalent.

By contrast, in the case of the Polish term: *testament w formie aktu notarialnego* (or *testament notarialny*) ‘notarial will’ i.e. a will, or testament made in writing before a notary, in the form of notarial act’ different terms are used in each of these three Spanish-speaking countries:

- (i) in CC, two terms are used: *testamento abierto* (lit. ‘open will’) and *testamento cerrado* (lit. ‘closed will’)<sup>8</sup>,
- (ii) in the Argentinan National Civil and Commercial Code (Código Civil y Comercial de la Nación): *testamento por acto público* ‘will through a public (notarial) act’,
- (iii) in the Peruvian Civil Code: *testamento por escritura pública* ‘will through a public (notarial) document’.

Let us examine the Peninsular Spanish term *testamento abierto*. In Art. 695 CC, it is defined as follows:

The testator shall express, orally or in writing, his last will to the Notary Public. Upon the Notary’s drafting the will in accordance with such statements, and with expression of the place, year, month, day and time of its execution, and after informing the testator about his right to read it by himself, the Notary Public shall read it out loud for the testator to declare whether it conforms to his intentions. If so, it shall be signed in the same act by the testator who is able to do so and, as the case may be, by the witnesses and other persons required to appear<sup>9</sup>.

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<sup>8</sup> In legal academic writing, a general term *testamento notarial* ‘notarial will’ is used as well.

<sup>9</sup> “El testador expresará oralmente o por escrito su última voluntad al Notario. Redactado por éste el testamento con arreglo a ella y con expresión del lugar,

A major difference between the two terms used in Spain to name testaments which require authorization by a notary public, *testamento abierto* (Art. 694-704 of CC) and *testamento cerrado* (Art. 705-715 of CC), consists in that in the case of the former, a notary – and, if required, two witnesses – know its content, whereas the latter is handed to the testator in a closed envelope and its content is only known to the testator (Art. 695-696 of CC)<sup>10</sup>. Having considered this, it can be concluded that the term *testamento abierto* is the proper functional equivalent for the Polish term *testament w formie aktu notarialnego* and the following directive may be formulated.

**Directive:** If in a Polish text formulated in the language of law the term *testament w formie aktu notarialnego* is used as the name for a testament in the form of notarial act, then it should be translated into Peninsular Spanish as *testamento abierto*. These terms are convergent with respect to all essential dimensions: language variety, territorial scope of the law’s application, lect, branch of law, text genre, and therefore may be considered sufficiently equivalent.

### 1.2.1.2. *Zachowek* ‘reserved portion, legitime’

Another example, also related to the inheritance law, concerns the Polish term *zachowek* ‘reserved portion, legitime’, i.e. the portion of property which the testator cannot dispose of, because the law has reserved it to certain heirs. It is defined in KC as follows:

Art. 991. § 1. The descendants, spouse and parents of the decedent who would be entitled to inheritance by the statute, shall be, if the entitled person is permanently unable to work or if the entitled descendant is a minor, entitled to two thirds of the value of a share in the estate which would fall to him at the

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año, mes, día y hora de su otorgamiento y advertido el testador del derecho que tiene a leerlo por sí, lo leerá el Notario en alta voz para que el testador manifieste si está conforme con su voluntad. Si lo estuviere, será firmado en el acto por el testador que pueda hacerlo y, en su caso, por los testigos y demás personas que deban concurrir”.

<sup>10</sup> The term *testamento cerrado* is also used in Argentina and Peru and is synonymous with the one used in Spain, however, the number of witnesses in Argentina is different.

statutory succession, and in other cases – half the value of this share (reserved portion [*zachowek*])<sup>11</sup>.

Its near equivalent in Spain is *legítima*, the meaning of which is presented introductorily in CC as follows:

Art. 806. The forced share of the estate (*legítima*) is the portion of property which the testator cannot dispose of, because the law has reserved it to certain heirs, who are as a result called forced heirs<sup>12</sup>.

In the Argentinian National Civil and Commercial Code, for instance, a two-word term *porción legítima* is used to refer to this concept. In the light of these facts, the following directive may be formulated.

**Directive:** If in a Polish text formulated in the language of law the term *zachowek* is used, then it should be translated into Peninsular Spanish as *legítima*. These terms are convergent with respect to all essential dimensions: language variety, territorial scope of the law's application, lect, branch of law, text genre, and therefore may be considered sufficiently equivalent.

### 1.2.1.3. *Pozew* ‘petition’ and *pozwany* ‘defendant’

Civil procedure is another branch of law where in many cases the same term is used for a given concept in different Spanish-speaking countries. This concerns, for instance, the equivalents of the Polish terms *pozew* ‘petition’ and *pozwany* ‘defendant’.

The meaning of the Polish term *pozew* is defined as:

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<sup>11</sup> “Zstępny, małżonkowi oraz rodzicom spadkodawcy, którzy byliby powołani do spadku z ustawy, należą się, jeżeli uprawniony jest trwale niezdolny do pracy albo jeżeli zstępny uprawniony jest małoletni – dwie trzecie wartości udziału spadkowego, który by mu przypadął przy dziedziczeniu ustawowym, w innych zaś wypadkach – połowa wartości tego udziału (*zachowek*)”.

<sup>12</sup> “*Legítima* es la porción de bienes de que el testador no puede disponer por haberla reservado la ley a determinados herederos, llamados por esto herederos forzosos”.

a procedural writ that contains an action, i.e. a petition addressed to a court for granting judicial protection to an exactly specified pretension, justified and substantiated by means of adducing facts (Jakubecki 2016: comm. on Art. 187 KPC, transl. JNM)<sup>13</sup>.

Its Spanish equivalent used in Spain and, for instance, Argentina and Peru, is *demanda*, a term which has the same legal meaning, which can be seen in these two definitions thereof:

a procedural act through which the right of action is exercised and a claim (*pretensión*) is fully brought (Montero Aroca et al. 2014: II, 311, transl. JNM)<sup>14</sup>.

the act that contains the request of the plaintiff (*demandante*) that determined jurisdictional protection be granted to him by means of a sentence (Ortells Ramos and Bellido Penadés 2014: 236, transl. JNM)<sup>15</sup>.

Another similar case is that of the Polish term *pozwany*, which denotes a party against which a civil lawsuit has been initiated (cf. Knoppek 2015: 158). Its Spanish equivalent used in Spain and, for instance, in Argentina and Peru, is *demandado*, a term which has the same legal meaning: a person or persons against whom a claim (*pretensión*) is brought before a jurisdictional organ (cf. Montero Aroca et al. 2014: II, 58-59).

#### 1.2.1.4. *Strona przeciwna* ‘opposing party’

By contrast, an example of a Polish term which has different translation equivalents in different Spanish-speaking countries is *strona przeciwna*, a concept that can be defined as either of the parties viewed as opposed with respect to the other. *Strona* in a civil lawsuit refers to

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<sup>13</sup> “[Pozew jest] pismem procesowym, które zawiera powództwo, tj. skierowany do sądu wniosek o udzielenie sądowej ochrony prawnej dokładnie określönemu żądaniu, uzasadnionemu i skonkretyzowanemu przytoczonymi okolicznościami faktycznymi”.

<sup>14</sup> “(...) el acto procesal de parte por el que se ejercita el derecho de acción y se interpone completamente la pretensión”.

<sup>15</sup> “(...) el acto que contiene la petición del demandante de que se otorgue determinada tutela jurisdiccional mediante sentencia”.

either of the two participants: the one who initiates the lawsuit and the one against whom it is initiated (cf. Knoppek 2015: 158-159). The equivalent of the Polish term *strona* in Spanish is *parte*, a term which Montero Aroca et al. define as follows:

a person or persons who bring a claim before a jurisdictional organ, i.e. *demandante* or *actor*, and a person or persons against whom it is brought, i.e. *demandado*, or, in other terms: the one who seeks judicial protection and the one against whom it is sought (Montero Aroca et al. 2014: II, 58-59, transl. JNM)<sup>16</sup>.

The expression *strona przeciwna* has the following equivalents in Spanish:

- (i) *parte contraria*, used in LEC (Spain);
- (ii) *contraparte* and its synonym *parte contraria*, used in analogous codes in, for instance, Argentina and Peru.

These Polish and Spanish terms are convergent with respect to all essential dimensions. In consequence, the following directive can be formulated.

**Directive:** If in a Polish text formulated in the language of law the term *strona przeciwna* is used as the name for either of the two parties taking part in a civil procedure, then it should be translated into Peninsular Spanish as *parte contraria*. These terms are convergent with respect to all essential dimensions: language variety, territorial scope of the law's application, lect, branch of law, text genre, and therefore may be considered sufficiently equivalent.

### 1.2.1.5. *Postępowanie egzekucyjne* 'enforcement procedure'

Another example to be discussed here is the Polish term *postępowanie egzekucyjne* 'enforcement procedure', which can be defined as:

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<sup>16</sup> "(...) la persona o personas que interponen la pretensión ante el órgano jurisdiccional (demandante o actor) y la persona o personas frente a las que se interpone (demandado), o dicho de otra manera, quien pide la tutela judicial y frente a quien se pide".

a type of judicial civil procedure comprising a complex of actions related to the enforcement of a sentence. Judicial enforcement is, in its turn, the application of coercive measures by enforcement authorities in order to make the debtor render the performance indicated in the enforcement order to the creditor's benefit (Cieślak 2013: 106-107, transl. JNM)<sup>17</sup>.

One of possible Spanish translation equivalents of the Polish term *postępowanie egzekucyjne* is *proceso de ejecución*, used, for instance, in the text of LEC. It is defined as:

proceedings in which a court, in view of the exercise of the corresponding action by the entitled person, exercises its power in order to effect a physical or material change in the social reality with the aim of accommodating it to the obligation to perform imposed by the enforcement order, which consists in a judgment pronounced by a court or other facts or acts that legally confirm the existence of this obligation (Ortells Ramos 2014: 540, transl. JNM)<sup>18</sup>.

A comparison of this definition with that of the Polish term *postępowanie egzekucyjne* allows us to conclude that the Spanish term *proceso de ejecución* is its appropriate translation equivalent. However, it is not the only solution because this Spanish term has a number of synonyms. They are enumerated by Cachón Cadenas (2011: 8): *ejecución*, *ejecución procesal*, *ejecución forzosa*, *proceso de ejecución*, *procedimiento de ejecución*, *proceso ejecutivo*, *procedimiento ejecutivo* and *juicio ejecutivo*. As this author observes, these terms are used in the same sense (“indistintamente”). Out of these terms, the following are

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<sup>17</sup> “(...) rodzaj sądowego postępowania cywilnego, obejmujący zespół czynności związanych z egzekucją. Przez egzekucję sądową należy zaś rozumieć zastosowanie przez organy egzekucyjne środków przymusu w celu uzyskania od dłużnika na rzecz wierzyciela świadczenia wskazanego w tytule wykonawczym”.

<sup>18</sup> “[Proceso de ejecución es] aquel en que un tribunal, ante el ejercicio de la acción correspondiente por el legitimado, ejerce su potestad para producir un cambio físico o material en la realidad social con el fin de acomodarla al deber de prestación impuesto por un título ejecutivo, consistente en un pronunciamiento jurisdiccional de condena o en otros hechos o actos que legalmente constaten la existencia de aquel deber”.

used in legislation (LEC or LJV): *ejecución*, *ejecución forzosa*, *proceso de ejecución*, *procedimiento de ejecución*, and *procedimiento ejecutivo*. However, the term *ejecución* and the term *ejecución forzosa* can be viewed as shortened versions of a full term and should not be considered optimal translation equivalents. Finally, the terms *ejecución procesal* and *proceso ejecutivo* are not used in the analyzed pieces of legislation; their use seems to be limited to legal commentaries and academic writing. In consequence, the following terms: *proceso de ejecución*, *procedimiento de ejecución* and *procedimiento ejecutivo* remain that ought to be considered suitable translation equivalents of the Polish term *postępowanie egzekucyjne*.

It should be added that in the Spanish language used in other Spanish-speaking countries other translation equivalents are in use. In Argentina, for instance, the term used most frequently in the relevant code is *juicio ejecutivo* (cf. Art. 520-594 of the National Code of Civil and Commercial Procedure [Código Procesal Civil y Comercial de la Nación], where it is regulated). Other, synonymous terms, *procedimiento ejecutivo* and *proceso de ejecución*, are used only a few times in this code.

Considering the above observations and analyses, the following directive can be formulated.

**Directive:** If in a Polish text formulated in the language of law the term *postępowanie egzekucyjne* is used, then it should be translated into Peninsular Spanish as *proceso de ejecución*, *procedimiento de ejecución* or *procedimiento ejecutivo*. These terms are convergent with respect to all essential dimensions: language variety, territorial scope of the law's application, lect, branch of law, text genre, and therefore may be considered sufficiently equivalent.

Because of the richness of the Spanish language varieties, translators should be cautious when looking for translation equivalents in dictionaries, terminological data bases or on the Internet. This richness, which, on one hand, can cause confusion, on the other hand, may be helpful in the case of terms for which finding an equivalent is impossible and one has to resort to creating one. In such a situation, one can consider terms used in the legislation of other Spanish-speaking countries in order to use them as translation equivalents or as a suggestion on how to coin a suitable term.

## 1.2.2. The dimension of the territorial scope of the law's application

The dimension of the territorial scope of the law's application is relevant for the Polish-Spanish language pair because while CC comprises regulations concerning common<sup>19</sup> (national) civil law (Spanish *derecho civil común*), some Spanish autonomous communities also use local civil law. In Spanish, it is called *derecho civil propio* (lit. '[a region's] own civil law'), *derecho civil local* (lit. 'local civil law'), or *derecho foral* (the Spanish *foral* being an adjective of *fuero* 'a set of laws or privileges granted to a regional community'). Local civil law is in use in the following autonomous communities: Catalonia, Aragon, Galicia, Navarra, the Basque Country, Extremadura and the Balearic Islands. It should be stressed that there is no single local civil law for all these autonomous entities; each of them has its own regulations. As Albaladejo (2013a: 52) explains, local civil law used in various regions does not regulate the entire civil matter but only a part of it and its intensity is different from community to community. The applicability of common civil law can be of two types: one part of its regulations is directly binding in the entire country, including the communities which have local civil law (in this case, it is called *derecho común general* 'general common law'); the other part of its regulations is applicable in the regions with local civil law as suppletory of local law (*derecho común supletorio del foral*). To sum up, the order of precedence of laws in these regions is as follows:

- (i) general common law (*derecho común general*),
- (ii) local law (*derecho foral*), and
- (iii) common law suppletory of local law (*derecho común supletorio del foral*) (cf. Albaladejo 2013a: 52-53).

Common civil law together with local civil law are supposed to regulate the entirety of the civil matters in each autonomous entity.

For these reasons and considering that the point of departure for the present study is Peninsular Spanish and the legal system of the entire Spain, Spanish-language translation equivalents for the Polish terms

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<sup>19</sup> The English *common* is used here in a sense different from that intended in the term 'common law system' denoting a type of legal system, used for instance in the United Kingdom.

should first be looked for in Spain's nationwide legislation, especially as the terms used there may differ from those used in local laws. However, if a translator prepares a translation for a receiver from an autonomous community that has its own legal regulations, they should consider them first when looking for translation equivalents. In consequence, this dimension for the Polish-Spanish language pair would comprise the following properties:

- (i) nationwide,
- (ii) regional Galician law, regional Catalan law, regional Aragonese law, regional Navarrese law, regional Basque law, regional Extremaduran law, regional Balearic law.

Since there is only one, national law in Poland, with no regional variation, all Polish terms will show the same property, 'nationwide', with respect to this dimension. Thus, this dimension turns out to be irrelevant for Polish terms. However, its importance for the Polish-Spanish translation can be well illustrated by means of the example of the Polish term *umowa o dożywocie* 'life-care contract' and its possible Spanish translation equivalents.

*Umowa o dożywocie* can be defined as follows: the owner of an immovable property transfers the property thereof to a person (assignee), who undertakes to provide the former with subsistence for the rest of his or her life, which means that, unless agreed otherwise, he must take him in as a household member, provide him with food, clothing, home, electricity and heating, provide him with assistance and care in the case of illnesses and give him, at his own expense, a funeral appropriate to the local traditions. The required form of the contract is notarized (cf. Art. 908. § 1 of KC).

The comparison of parallel texts (in this case, not comprised in the corpus) results in the identification of two Spanish terms that may be taken into consideration. One is *contrato de vitalicio*, a term used in DCG (Ley 2/2006, de 14 de junio, de derecho civil de Galicia), the act on civil law used in Galicia, one of Spain's autonomous communities<sup>20</sup>. The other term is *contrato de alimentos*, which is used nationwide in CC. The *contrato de vitalicio* can be defined as follows: one or more

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<sup>20</sup> Although local civil laws are not taken into consideration in this study, the present term used in Galician law is discussed here as an exception in order to illustrate the complexity of legal translation into Spanish.

person undertake with respect to another person or persons to supply subsistence, according to conditions they agree, in exchange for the transfer of property of certain things or rights. The required form of the contract is notarized (cf. Art. 147 of DCG).

The *contrato de alimentos*, in turn, consists in that one of the parties undertakes to provide a person with accommodation, subsistence and assistance of all kind for all his life in exchange for the transfer of capital consisting in any class of things or rights. The contract does not need to be notarized (cf. Art.1791 of CC). The parametric characterization of these terms is presented in Table 1.

Table 1. Parametric characterization of the Polish term *umowa o dożywocie* and the Spanish terms *contrato de vitalicio* and *contrato de alimentos*.

Dimension	Terms		
	Polish term (SL)	Spanish term I (TL)	Spanish term II (TL)
	<i>umowa o dożywocie</i>	<i>contrato de vitalicio</i>	<i>contrato de alimentos</i>
Language of the text	Polish	Spanish	Spanish
Language variety	indeterminacy	Peninsular Spanish	Peninsular Spanish
Territorial scope of the law's application	nationwide	regional Galician law	nationwide
Lect	legal language	legal language	legal language
Branch of law	civil law	civil law	civil law
Text genre	legislation	legislation	legislation

Although both the Polish term *umowa o dożywocie* and the Spanish term *contrato de vitalicio* are used in legal language and, at the same time, in legislation, the former occurs in a national civil code, while the latter is used in a regional legal act regulating civil law in Galicia. The crucial difference, however, lies in their (referential) meaning: under the Polish *dożywocie* contract, the object of contract is the transfer of ownership of an immovable property in exchange for a lifetime maintenance; by contrast, under the *contrato de vitalicio*, the ownership transfer is not restricted to immovable properties as it is also allowed to

transfer ownership of other things or rights. In addition, the duties of the purchaser under *contrato de vitalicio* which are enumerated in Art. 148 of DCG and consist in providing the other party with maintenance, lodging, clothing, medical care as well as help and care (also emotional care) do not include taking them in as a household member, which is the case under the Polish *umowa o dożywocie*. In addition, the regulations concerning *contrato de vitalicio* do not mention the purchaser's duty to give the other party a funeral in accordance with local traditions, which again is the case under *umowa o dożywocie*.

As for the second potential Spanish translation equivalent, namely *contrato de alimentos*, it is convergent with the Polish term *umowa o dożywocie* with respect to all relevant dimensions. As far as the (referential) meaning is concerned, the meaning of *contrato de alimentos* is, to a great extent, close to the meaning of the *contrato de vitalicio* (the transfer of ownership may concern things of any kind or rights; there is no obligation to take the other party in as a household member and no obligation to give them a specific funeral). The discrepancy concerning the required form of the contract consists in that the form for the Spanish *contrato de alimentos* is not specified, while the Polish *umowa o dożywocie* requires a notarized document<sup>21</sup>.

To sum up, both *contrato de vitalicio* and *contrato de alimentos* differ from *umowa o dożywocie* with regard to the (referential) meaning of the term. *Contrato de vitalicio* is closer to *umowa o dożywocie* than *contrato de alimentos* as far as the requirement of notarized form is concerned. However, it is not used in the same kind of source text (local legislation) – while, arguably, it is better to translate a term occurring in a national legal act by means of a term taken from a national legal act, too, unless the translation is being made for receivers from Galicia. It is evident that neither of the two potential Spanish equivalents for *umowa o dożywocie* is a full equivalent. It is thus necessary to consider some further points. If the translation is to be made for a distant recipient, who does not need to know all the details of the contracts in question, both *contrato de vitalicio* and *contrato de alimentos* could be used, although the latter seems preferable because it occurs in a national legal text. If, by contrast, a close recipient is being addressed, none of

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<sup>21</sup> It is interesting to note that to a non-specialist the term *contrato de alimentos* might seem to refer only to nourishment, i.e. food and drink, because this is how *alimento* is generally understood and defined in authoritative Spanish dictionaries (e.g. Maldonado González 2000: 78).

the ready-made terms occurring in Spanish legal texts seem adequate enough. As a solution, the translator may consider using a descriptive equivalent in which all the relevant differences would be explained. In the case of *umowa o dożywocie*, however, such an equivalent might be too long. The differences between the two concepts can also be explained in a footnote. Another option is to add a modifier, e.g. *polaco* ‘Polish’, to create the phrase *contrato de alimentos polaco*, which would suggest that there are more or less significant differences between the Polish and Spanish contracts of this type. The following directives can thus be formulated.

**Directive:** If in a Polish text formulated in the language of law the term *umowa o dożywocie* is used, then it may be translated into Spanish for distant recipients as *contrato de alimentos*. These terms are convergent with respect to all essential dimensions: language variety, territorial scope of the law’s application, lect, branch of law, text genre, and therefore may be considered sufficiently equivalent.

**Directive:** If in a Polish text formulated in the language of law the term *umowa o dożywocie* is used, then it may be translated into Spanish for close recipients as *contrato de alimentos polaco* (a term with an explanative adjective *polaco* ‘Polish’).

**Directive:** If in a Polish text formulated in the language of law the term *umowa o dożywocie* is used, then it may be translated into Spanish for distant recipients from Galicia as *contrato de vitalicio*. These terms are convergent with respect to all essential dimensions: language variety, territorial scope of the law’s application, lect, branch of law, text genre, and therefore may be considered sufficiently equivalent.

**Directive:** If in a Polish text formulated in the language of law the term *umowa o dożywocie* is used, then it may be translated into Spanish for close recipients from Galicia as *contrato de vitalicio polaco* (a term with an explanative adjective *polaco* ‘Polish’).

### 1.2.3. The dimension of lect

The dimension of lect is important for distinguishing terms used in legal language from those used in other LSPs or in everyday speech. The

examples used here to illustrate this are the Polish terms *adopcja* ‘adoption’, *zawierać umowę* ‘to conclude a contract’, *pełnoletni* ‘major’, and *wszczęć postępowanie* ‘to initiate proceedings’.

### 1.2.3.1. *Przysposobienie* ‘adoption’

There are two synonymous terms in the Polish language which manifest two different properties with respect to the dimension of lect. These terms, both meaning ‘adoption’, are *adopcja*, a term used in colloquial language, and *przysposobienie*, a legal term used in Polish civil law, including KC. *Przysposobienie* is regulated in KRO, where one reads:

Art. 121. § 1. Adoption creates the same relationship between the adoptive parent and the adoptee as between parents and a child<sup>22</sup>.

This is also the essence of the Spanish institution of *adopción*, as defined in Art. 175-180 of CC. This word, used in both legal and colloquial lect, is the only term in this language that is a suitable equivalent for both Polish terms. In the light of these facts, the following directives can be formulated.

**Directive:** If in a Polish text formulated in the language of law the term *przysposobienie* is used, then it should be translated into Spanish as *adopción*. These terms are convergent with respect to all essential dimensions: language variety, territorial scope of the law’s application, lect, branch of law, text genre, and therefore may be considered sufficiently equivalent.

**Directive:** If in a Polish text formulated in vernacular language the term *adopcja* is used, then it should be translated into Spanish as *adopción*.

### 1.2.3.2. *Zawierać umowę* ‘to conclude a contract’

Another example is the term *zawierać umowę* ‘to conclude a contract’, which means: to undertake steps required by law to make a contract (specified in detail in Art. 66-72 KC). A contract is defined as a legal

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<sup>22</sup> “Przez przysposobienie powstaje między przysposabiającym a przysposobionym taki stosunek, jak między rodzicami a dziećmi”.

act consisting in at least two consensual declarations of will and aiming at creating, changing or terminating a civil relationship between the parties, which may consist in an obligation to render a performance (cf. Witczak and Kawałko 2015: 52).

In Spain, the same concept is regulated in Art. 1254 of CC:

A contract exists from the moment when one or several persons consent to bind themselves with respect to another or others to give something or to provide a service (transl. JNM)<sup>23</sup>.

The act of making a contract is expressed in legal Spanish by means of such expressions as *celebrar el contrato*, *perfeccionar el contrato* and *contratar*. By contrast, in colloquial Spanish, the expressions *hacer el contrato* ‘to make a contract’ and *firmar el contrato* ‘to sign a contract’ are frequently used. In this usage, the meaning of *firmar* ‘to sign’ is not limited to the act of putting one’s signature on a contract but denotes the entire action of concluding a contract. It must also be added that a contract does not need to be concluded in writing and thus does not always require a signature. In the light of these facts, the following directive can be proposed.

**Directive:** If in a Polish text formulated in the language of law the term *zawierać umowę* is used, then it should be translated into Spanish as *celebrar el contrato*, *perfeccionar el contrato* or by the verb *contratar*. These terms are convergent with respect to all essential dimensions: language variety, territorial scope of the law’s application, lect, branch of law, text genre, and therefore may be considered sufficiently equivalent.

### 1.2.3.3. *Pełnoletni* ‘major’ and similar concepts

When referring to the age of persons who attain the full legal capacity, the term *pełnoletni* is used in legal Polish (cf. Art. 10-11 of KC). A person becomes *pełnoletni* when he or she turns eighteen or gets married (Art. 10). This term is also used in the colloquial language, even though *dorosły* ‘adult’ is quite frequent in this sense. It should be noted that the term *dorosły* is also used, with the same meaning, in the Polish

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<sup>23</sup> “El contrato existe desde que una o varias personas consienten en obligarse, respecto de otra u otras, a dar alguna cosa o prestar algún servicio”.

KPC (Art. 138. § 1.) (Jakubecki 2016: comm. on Art. 138, point 1) and in the Polish Code of Administrative Procedure (Art. 43) (Kidyba 2012: comm. on Art. 10, point 10). In Polish civil law, a person under the age of eighteen is referred to by means of the term *maloletni*, which is rather not used in colloquial Polish, where *niepełnoletni* is employed instead. In the Spanish legal lect, the equivalent of the term *peñnoletni*, in the sense of “a person who is at least eighteen years old”, is *mayor de edad* (according to Art. 315 of CC)<sup>24</sup>. This term is also used in colloquial language, where, however, the adjective *adulto* is far more frequent (this usage is somewhat similar to the situation in Polish). The Spanish equivalent of the term *maloletni* is *menor (de edad)*, which is also used in colloquial language. In the light of these facts, the following directives can be formulated.

**Directive:** If in a Polish text formulated in the language of law the term *peñnoletni* is used, then it should be translated into Spanish as *mayor de edad*. These terms are convergent with respect to all essential dimensions: language variety, territorial scope of the law’s application, lect, branch of law, text genre, and therefore may be considered sufficiently equivalent.

**Directive:** If in a Polish text formulated in the language of law the term *peñnoletni* is used, then it should not be translated into Spanish as *adulto*. These terms are complementary (differ) with respect to the dimension of lect and therefore may not be considered sufficiently equivalent.

**Directive:** If in a Polish text formulated in the language of law the term *maloletni* is used, then it should be translated into Spanish as *menor*. These terms are convergent with respect to all essential dimensions: language variety, territorial scope of the law’s application, lect, branch of law, text genre, and therefore may be considered sufficiently equivalent.

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<sup>24</sup> See Section 1.2.4.1. for a discussion of the terms *mayor de edad* and *menor emancipado*.

#### 1.2.3.4. *Wszczęć postępowanie* ‘to initiate proceedings’

An example belonging to the area of the civil procedural law is the expression *wszczęć* (*wszczynać*, in the imperfective aspect) *postępowanie*, lit. ‘to initiate proceedings’, which, according to Art. 187 § 1 of KPC and Art. 506 of KPC, can be defined as the act of submitting a processal writ (*pozew* or *wniosek*) to a court which, in turn, undertakes specific procedural actions (cf. Cioch and Studzińska 2012: 195-96). A potential Spanish equivalent of this term used in the Spanish legal lect (more specifically in LEC) is *principiar*, occurring in Art. 399.1 (concerning the *juicio ordinario*, one of the two main types of the Spanish civil lawsuit). There, one reads that the lawsuit (*juicio*) commences by a *demanda* (explained in Section 1.2.1.3.). However, relevant grammatical properties of the verb *principiar* used here do not coincide with those of the Polish *wszczynać*, because the latter is transitive and the former is not (thus *principiará* would be a good equivalent for a passive form of *wszczynać* but not its active form). However, since an equivalent that would be closer to the Polish term in terms of grammar is needed, one has to look for a transitive verb denoting the beginning of the *juicio/proceso*. It can be found, for instance, in the considerations of the authors of legal commentaries on the concept of *demanda*, a document which results in what is referred to by means of the expressions *iniciar el proceso* (cf. Ortells Ramos and Bellido Penadés 2014: 236) or *incoar el proceso* (cf. Montero Aroca et al. 2014: II, 310). These two terms are also used in the corpus of LEC (e.g. *incoar* in Art. 293.1), although in some cases they have other grammatical forms (e.g. that of passive participles as in *después de iniciado un proceso* ‘‘after the process having been initiated’’, Art. 29.2). They can be considered to be appropriate translation equivalents of the Polish term *wszczęć postępowanie*.

It should also be remarked that in the colloquial lect of Spanish, by contrast, normally other verbs, like *empezar* and *comenzar* ‘to begin’, are used when referring to this action. Thus, people who are not specialists in law tend to say *empezar el proceso* or *comenzar el proceso*. Thus, the following directive can be proposed.

**Directive:** If in a Polish text formulated in the language of law the term *wszczęć* (*wszczynać*) *postępowanie* is used, then it should be translated into Spanish as *iniciar el proceso* or *incoar el proceso*. These terms are convergent with respect to all essential dimensions: language variety,

territorial scope of the law's application, lect, branch of law, text genre, and therefore may be considered sufficiently equivalent.

### 1.2.4. The dimension of branch of law

The dimension of branch of law is significant because it helps to narrow down the search for a translation equivalent to the appropriate branch of law and to minimize the problems of polysemy and synonymy.

#### 1.2.4.1. *Pełnoletni* 'major' and similar concepts in civil and criminal law

In the case of civil law, the significance of this dimension may be illustrated by means of terms used to refer to the age of a person and his or her legal capacity. In CC, the term *młodoletni* is used for a person who is under eighteen years old. When the person reaches eighteen, he or she attains the full legal capacity and is called *pełnoletni* (cf. Art. 10 of KC), the abstract noun related to this adjective being *pełnoletność*. A person can also acquire *pełnoletność* if, for important reasons, he or she gets married. In Polish criminal law, the terminology is different. There, the term *nieletni* is used in reference to a person under eighteen and the term *młodociany* for "a perpetrator who, at the time of the commission of a prohibited act has not reached the age of 21 years and has not reached the age of 24 years at the time of the trial in the first instance court" (Art. 115, § 10 of the Polish Criminal Code)<sup>25</sup>.

In Spanish, by contrast, the term *menor de edad*, or simply *menor*, is used in both civil and criminal law<sup>26</sup> to refer to a person under eighteen. If a person turns eighteen and acquires full legal capacity (*capacidad plena de obrar*), he or she is referred to as *mayor* or *mayor de edad* (the corresponding abstract noun being *mayoría de edad*) (cf. Art. 315 and 322 of CC)<sup>27</sup>. According to the Spanish civil code, it is

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<sup>25</sup> "Młodocianym jest sprawca, który w chwili popełnienia czynu zabronionego nie ukończył 21 lat i w czasie orzekania w pierwszej instancji 24 lat". English translation: [https://www.imolin.org/doc/amlid/Poland\\_Penal\\_Code1.pdf](https://www.imolin.org/doc/amlid/Poland_Penal_Code1.pdf).

<sup>26</sup> The Spanish Criminal Code is not applied with respect to *menores* because a special law, viz. the Act on Criminal Responsibility of Minors (Ley Orgánica reguladora de la responsabilidad penal de los menores), deals with persons between 14 and 18 years old.

<sup>27</sup> For respective translation directives, see Section 1.2.3.3.

also possible for a person under eighteen to acquire legal capacity by consent of his or her parents (Art. 317) or by judicial consent (Art. 321, the so-called *beneficio de la mayor edad*, lit. ‘the benefit of majority’)<sup>28</sup>. A special term is employed to refer to such a person: *menor emancipado* (the corresponding abstract noun being *emancipación*). As stated in Art. 323 of CC, “the emancipation enables a minor (*menor*) to govern his or her person and goods as if he or she is eighteen or older (*mayor*)”<sup>29</sup>. However, this legal capacity is limited as the person is unable to perform some actions, listed in a separate article. As observed by Ortiz Sánchez (2001:111), being a *menor emancipado* is an intermediate situation between the full legal capacity and minority (“una situación intermedia entre la plena capacidad y minoría de edad”).

#### **1.2.4.2. Names of the opposing parties in civil and criminal procedures**

As far as civil procedural law is concerned, the significance of the dimension of the branch of law may be illustrated by means of the examples of the names of the opposing parties. In Polish, these names used in the civil procedure are different from those used in the criminal procedure. In the civil procedure, the parties are called *powód*, i.e. the party that initiates a civil lawsuit, and *pozwany*, the party against which the lawsuit has been initiated (cf. Knoppek 2015: 158). In the criminal procedure, the analogous parties are referred to as *oskarżyciel*, i.e. the party which brings an action against another, and *oskarżony*, i.e. the party against which an action is brought. An analogous distinction is found in the Spanish language. In the civil procedure, the parties are *demandante*, i.e. “a person or persons who bring a claim (*pretensión*) before a jurisdictional organ”<sup>30</sup> and *demandado*, i.e. “a person or persons against whom it is brought”<sup>31</sup> (Montero Aroca et al. 2014: II, 58-59, transl. JNM). Their correspondent terms in the criminal procedure are *acusador* and *acusado*, respectively. Therefore, if the

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<sup>28</sup> Another concept, similar to the one existing in the Polish law, permitting a minor to acquire legal capacity by getting married, existed in Spanish civil law until 2015 and was regulated in Art. 314 of CC.

<sup>29</sup> “La emancipación habilita al menor para regir su persona y bienes como si fuera mayor”.

<sup>30</sup> “(...) la persona o personas que interponen la pretensión ante el órgano jurisdiccional (...)”.

<sup>31</sup> “(...) la persona o personas frente a las que se interpone (...)”.

dimension of branch of law is considered, the Spanish equivalents of the Polish terms are as follows:

Pol. <i>powód</i>	–	Sp. <i>demandante</i> ,
Pol. <i>pozwany</i>	–	Sp. <i>demandado</i> ,
Pol. <i>oskarżyciel</i>	–	Sp. <i>acusador</i> ,
Pol. <i>oskarżony</i>	–	Sp. <i>acusado</i> .

In consequence, the following directives can be proposed.

**Directive:** If in a Polish text formulated in the language of law the term *powód* is used, then it should be translated into Spanish as *demandante*. These terms are convergent with respect to all essential dimensions: language variety, territorial scope of the law's application, lect, branch of law, text genre, and therefore may be considered sufficiently equivalent.

**Directive:** If in a Polish text formulated in the language of law the term *pozwany* is used, then it should be translated into Spanish as *demandado*. These terms are convergent with respect to all essential dimensions: language variety, territorial scope of the law's application, lect, branch of law, text genre, and therefore may be considered sufficiently equivalent.

**Directive:** If in a Polish text formulated in the language of law the term *oskarżyciel* is used, then it should be translated into Spanish as *acusador*. These terms are convergent with respect to all essential dimensions: language variety, lect, branch of law, text genre, and therefore may be considered sufficiently equivalent.

**Directive:** If in a Polish text formulated in the language of law the term *oskarżony* is used, then it should be translated into Spanish as *acusado*. These terms are convergent with respect to all essential dimensions: language variety, lect, branch of law, text genre, and therefore may be considered sufficiently equivalent.

### 1.2.5. The dimension of text genre

The dimension of text genre reflects the fact that legal terminology is inextricably linked to the genre of the text (this is also true for grammatical features and micro- and macrostructure of a given text). This is why any investigation of legal terminology (or other features of legal texts) should always be relativized to a particular legal text genre (cf. Alcaraz Varó and Hughes 2000a: 130-135; 2000b: 101-152, Borja Albi 2007, Zieliński 1999). As far as the dimension of text genre is concerned, both Poland and Spain have continental legal systems and their legal regulations are enshrined in legislation. As it was mentioned in the introduction, both Poland and Spain have civil codes (KC in Poland, CC in Spain) and codes of civil procedure (KPC in Poland, LEC and LJV in Spain). Whenever an equivalent for a Polish term cannot be found in a Spanish code, it should also be looked for in other, more detailed pieces of legislation. This can be exemplified by means of the term *znak towarowy* ‘trademark’ occurring in KC, for which an equivalent must be looked for in other, more detailed Spanish pieces of legislation. The term *znak towarowy* is defined in the Polish law (Art. 120.1. of the Act of Industrial Property Right [Prawo własności przemysłowej]) as follows:

A trademark (*znak towarowy*) can be any sign that can be represented graphically if it can serve for distinguishing goods of an enterprise from another’s (transl. JNM)<sup>32</sup>.

The Spanish term *marca*, which can be used as a translation equivalent of this Polish term, is defined in Spanish law (Art. 4.1 of the Act on Trademarks [Ley de Marcas]) as follows:

A trademark (*marca*) is understood as any sign susceptible of graphic representation that serves for distinguishing products or

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<sup>32</sup> “Znakiem towarowym może być każde oznaczenie, które można przedstawić w sposób graficzny, jeżeli oznaczenie takie nadaje się do odróżnienia towarów jednego przedsiębiorstwa od towarów innego przedsiębiorstwa”.

services of an enterprise from another's on the market (transl. JNM)<sup>33</sup>.

The definition of the Spanish term *marca* is nearly identical to that of the Polish *znak towarowy*, which makes it a very good translation equivalent for it and allows us to formulate the following directive.

**Directive:** If in a Polish text formulated in the language of law the term *znak towarowy* is used, then it should be translated into Spanish as *marca*. These terms are convergent with respect to all essential dimensions: language variety, territorial scope of the law's application, lect, branch of law, text genre, and therefore may be considered sufficiently equivalent.

Potential yet often inadequate equivalents can also be found in texts of other genres, especially if the translator looks for them in sources other than parallel texts. The dimension of text genre helps to eliminate such inadequate equivalents. Two pertinent examples related to the Polish terms analyzed in previous paragraphs will be mentioned here. In Section 1.2.1.1., dedicated to the types of testament, the Polish term *testament w formie aktu notarialnego* 'notarial will' and its possible Spanish equivalents that can be found in the civil codes of Spain, Argentina and Peru were analyzed. Apart from them, however, one can also come across the term *testamento notarial*, which is used in these countries in academic writing and legal commentaries as well as in vernacular language. The application of the dimension of text genre helps to eliminate this inadequate expression. The case of the Polish term *postępowanie egzekucyjne* 'enforcement procedure', discussed above in Section 1.2.1.5., is similar. A number of expressions can be found in Spanish that have a meaning close to it and could thus be considered to be its translation equivalents. Two of them, however, are not fully adequate, namely *ejecución procesal* and *proceso ejecutivo*, because they do not occur in the examined codes but can only be found in legal commentaries and academic writing. Such incorrect equivalents are eliminated thanks to the use of the dimension of text genre.

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<sup>33</sup> "Se entiende por marca todo signo susceptible de representación gráfica que sirva para distinguir en el mercado los productos o servicios de una empresa de los de otras".

### **1.2.6. Concluding remarks**

The hierarchization of dimensions proposed in this chapter is supposed to reflect the order in which the dimensions should be used for the selection of appropriate Spanish translation equivalents for the Polish terms, as illustrated by means of a number of examples. The hierarchization, reflecting the specificity of the Polish-Spanish language pair, has been devised for the needs of translation within this particular language pair (in accordance with the initial assumptions). In the case of the remaining language pairs, a different set of relevant dimensions as well as a different hierarchy of them would need to be proposed. In the following chapters, the hierarchy will be verified with the use of selected Polish terms for which Spanish translation equivalents need to be found. These examples will involve various semantic relations, such as synonymy, homonymy, hyperonymy-hyponymy and paronymy (false cognates) as well as other linguistic phenomena such as polysemy, indeterminate legal concepts, metaphorical expressions and, finally, euphemisms. Dealing with these relations and phenomena is inherent in the process of translation and can be problematic for translators of legal texts.

## 2. Synonymy

As far as legal texts are concerned, synonymy, understood here as a relation that binds terms having the same or almost the same referential meaning, is considered a problematic phenomenon and a potential risk factor in the translation process. For the sake of clarity, a legal concept should be referred to by means of one term only, which is not the case whenever synonyms are used. Synonymy can result from the existence of a number of varieties of Spanish, that is to say a legal concept may be termed in different ways in various varieties of this language. It can also be observed between words that belong to various lects (general language, legal language, business language, etc) or even to various branches of law. These types of synonymy can be eliminated through the application of the proposed parameters. However, in the process of legal translation from Polish into Spanish, the problem of intralingual synonymy can still be found within one lect (legal language), one branch of law (civil law) and even one legal genre (legislation). In what follows, relevant examples are adduced and discussed.

### 2.1. Synonymy between terms belonging to various varieties of Spanish

As mentioned in Section 1.2. devoted to the hierarchy of dimensions, Spanish functions as an official language in more than twenty countries. Therefore, a translator of legal texts has to be careful when looking for translation equivalents because different sources (dictionaries, data bases, etc) may suggest synonymous terms which are employed in different countries and therefore should not be used interchangeably. Since the point of reference in this project is Peninsular Spanish, this type of synonymy may be avoided thanks to parametrization, in which the dimension of language variety helps to eliminate inappropriate equivalents. This is illustrated in the table below showing the parametric characterization of the Polish term *strona przeciwna* and its Spanish equivalents *parte contraria* and *contraparte*, all meaning either

of the two parties taking part in a civil procedure. (This example has been also used in Section 1.2.1.4. where definitions and an appropriate translation directive can be found).

Table 2. Parametric characterization of the Polish term *strona przeciwna* and the Spanish terms *parte contraria* and *contraparte*.

Dimension	Terms		
	Polish term (SL)	Spanish term I (TL)	Spanish term II (TL)
	<i>strona przeciwna</i>	<i>parte contraria</i>	<i>contraparte</i> <sup>34</sup>
Language of the text	Polish	Spanish	Spanish
Language variety	indeterminacy	Peninsular Spanish	Argentinian Spanish
Territorial scope of the law's application	nationwide	nationwide	nationwide
Lect	legal language	legal language	legal language
Branch of law	civil law	civil law	civil law
Text genre	legislation	legislation	legislation

These terms are convergent with respect to almost all dimensions, however, they are complementary with respect to the dimension of language variety. This dimension makes it possible to choose *parte contraria* as the right translation equivalent for a text to be translated into Peninsular Spanish and eliminate terms used in other Spanish-speaking countries.

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<sup>34</sup> In the Argentinian Código Civil y Comercial de la Nación and Código Procesal Civil y Comercial de la Nación, the term *parte contraria* is also employed, synonymously with *contraparte*.

## 2.2. Synonymy between terms belonging to various lects

A number of terms have the same meaning but belong to various lects, for example, the language of law, another LSP or vernacular language. This type of synonymy can be eliminated thanks to parametrization, in which the dimension of lect is crucial. An example of this type concerns the expression *odrzuć spadek*, lit. ‘to reject the inheritance’, which means “to carry out a juristic act of declaring (declaration of will) that one does not accept the inheritance to which one is entitled” (regulated in Art. 1012-1024 of KC and Art. 988-1009 of CC). When looking for an equivalent for the Polish term, two terms can be found in CC: *repudiar la herencia*, which is used on a regular basis in this legal act, and *renunciar la herencia*, used less often (e.g. art. 890, 1002). As Albaladejo (2013b: 93-94) explains,

The acceptance or repudiation [of an inheritance – JNM] (*aceptación o repudiación*) are juristic (legal) acts that consist in manifesting one’s will (Art. 988 of CC) of becoming or not becoming an heir. These acts are unilateral (...), irrevocable (...) and indivisible (transl. JNM)<sup>35</sup>.

Lasarte (2014: 281) defines this concept as follows:

(...) the repudiation [of an inheritance – JNM] (*repudiación*) means that a person entitled to inherit declares their repudiation of the condition of an heir. (...) After the declaration of repudiation, the person entitled to inherit loses, definitively and incontrovertibly, the possibility to acquire the inheritance (transl. JNM)<sup>36</sup>.

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<sup>35</sup> “La aceptación o repudiación son negocios jurídicos consistentes en manifestar la libre voluntad (C.c., art 988) de ser o no heredero. Son negocios: unilaterales (...), irrevocables, (...) indivisibles”.

<sup>36</sup> “(...) la repudiación significa que el llamado a la herencia manifiesta su rechazo a la condición de heredero. (...) Una vez manifestada la repudiación, el llamado a la herencia pierde de forma definitiva e incontrovertible la posibilidad de adquirirla”.

The two Spanish expressions are convergent with the Polish term *odrzućć spadek* with respect to the dimension of lect as they belong to legal lect and can both be considered its appropriate equivalents. There is another synonymous Spanish expression, *rechazar la herencia*, which, however, is typical of vernacular language (and is complementary with the Polish term with respect to the dimension of lect) and therefore should not be considered an appropriate equivalent for the purpose of legal translation. Table 3 shows the parametric characterization of these three terms.

Table 3. Parametric characterization of the Polish term *odrzućć spadek* and the Spanish terms *repudiar la herencia/renunciar la herencia* and *rechazar la herencia*.

Dimension	Terms		
	Polish term (SL)	Spanish terms I and II (TL)	Spanish term III (TL)
	<i>odrzućć spadek</i>	<i>repudiar la herencia/renunciar la herencia</i>	<i>rechazar la herencia</i>
Language of the text	Polish	Spanish	Spanish
Language variety	indeterminacy	Peninsular Spanish	Peninsular Spanish
Territorial scope of the law's application	nationwide	nationwide	nationwide
Lect	legal language	legal language	vernacular language
Branch of law	civil law	civil law	civil law
Text genre	legislation	legislation	legislation

In view of the above considerations, the following directive can be formulated.

**Directive:** If in a Polish text formulated in the language of law the term *odrzućć spadek* is used, then it should be translated into Spanish as *repudiar la herencia* or *renunciar la herencia*. These terms are convergent with respect to all essential dimensions: language variety,

territorial scope of the law's application, lect, branch of law, text genre, and therefore may be considered sufficiently equivalent.

### **2.3. Synonymy between terms belonging to the same branch of law and the same legal genre**

Synonymy in legal texts may entail the lack of clarity and make the interpretation of legal regulations difficult. For this reason, the use of synonyms in legal texts has been criticized by most scholars dealing with the language of law. Synonymy in the Spanish language of law has been the object of interest of such authors as: Alcaraz Varó and Hughes (2002: 96), Ortiz Sánchez and Pérez Pino (2008), Iturralde Sesma (1989) and Hernández Gil (1989). The latter holds a particular view on this issue; he claims that CC is a consistent whole despite the occurrence of a number of synonyms in its text. He argues that in some cases this phenomenon is due to the authors' intention to use a diversified language and to avoid repetition rather than to editorial sloppiness (Hernández Gil 1989: 376-377 and 393).

The issue of synonyms that can be found in the recent version of LEC is addressed in the introduction (*Exposición de motivos*) by its authors. They explain that the primordial aim of the modification of this law and its language has been to make this language as accessible as possible to the citizens without violating the principles of the legislative technique. It is for this reason that they have decided to maintain synonymous terms referring to one concept or phenomenon if one of them is used in general language. What is more, in their view, maintaining different terms for the same realities (“mantener diversidades expresivas para las mismas realidades”) is not an inconvenience but quite the contrary. As a result, for example, both terms, *juicio* and *proceso* (explained in Section 2.3.4.) are still used in this code as synonyms<sup>37</sup>.

Synonymy between terms belonging to the same branch of law and the same legal genre (here, legislation) is a special challenge for

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<sup>37</sup> Some authors, however, differentiate between these two terms. For instance, Montero Aroca et al. (2014: I, 228) observe that “it cannot be claimed that *juicio* denotes *proceso* or *procedimiento*; it rather refers to the action of judging (*la acción de juzgar*)”.

translators who are looking for appropriate equivalents for terms to be translated. They need to decide whether potential translation equivalents are convergent with respect to all relevant dimensions, have the same or almost the same referential meaning and are interchangeable. Some terms are only apparent synonyms. However, even if some terms are considered to be synonyms, this does not necessarily mean that they can be used interchangeably in any context. Phraseological properties of words cannot be ignored in the language of law, which contains many set phrases (collocations and complex terms) that should be translated as wholes rather than word by word. In such cases, special attention must be paid to the use of appropriate terms in a given set phrase (phraseological expression).

In the corpus examined for the needs of the present study, a significant number of instances of synonymous Spanish terms have been encountered when looking for equivalents for Polish terms to be translated. In what follows, several examples of such terms occurring in the substantive and procedural civil law as well as their phraseology will be discussed.

### **2.3.1. *Śmierć* and *zgon* ‘death’**

Whenever the text of KC refers to a person’s death, no synonyms are used. Synonymy, however, can be found in passages referring to it in KPC. As far as Spanish is concerned, it can be encountered in CC, LEC and LJV. This will be illustrated with selected examples.

In KC, the termination of a person’s life is referred to by means of the term *śmierć* ‘death’. KPC uses, apart from this noun, a synonymous, although more formal, term *zgon* ‘decease, demise’, which occurs, for instance, in expressions referring to the procedure related to *stwierdzenie zgonu osoby* ‘judicial ascertainment of a person’s death’.

The functional equivalents of the Polish terms *śmierć* and *zgon* used in CC are *muerte* and *fallecimiento*. A third possible equivalent is *defunción*, the use of which, however, is restricted to the expression *certificado de defunción* ‘death certificate’ (an expression occurring also in Art. 381 of the Rules for the Civil Registry Law [Reglamento de la Ley del Registro Civil]). In the Polish equivalent of this term, *akt zgonu*, the noun *zgon* is used rather than *death*. As far as Spanish civil procedure is concerned, LEC uses three synonymous terms denoting

death: *fallecimiento*, *defunción* and *muerte*. In LJV, in its turn, two synonyms, *fallecimiento* and *muerte*, are employed. The latter word, it should be noted, is also used in general Spanish language. This synonymy of terms denoting a person’s death is illustrated in Table 4.

Table 4. The synonymy of terms referring to a person’s death in the analyzed pieces of Polish and Spanish legislation.

Polish legislation		Spanish legislation		
KC	KPC	CC	LEC	LJV
<i>śmierć</i>	<i>śmierć,</i> <i>zgon</i>	<i>muerte,</i> <i>fallecimiento</i>	<i>muerte,</i> <i>fallecimiento,</i> <i>defunción</i>	<i>muerte,</i> <i>fallecimiento</i>

Although these terms are synonymous, they cannot be used interchangeably in any context. Phraseology is crucial at this point since many legal set phrases allow only one particular terms to the exclusion of others. In what follows, examples of such expressions are discussed.

Apart from the procedure of *uznanie za zmarłego*, lit. ‘declaring a person dead’, the Polish civil procedure law knows the institution of *stwierdzenie zgonu* ‘judicial ascertainment of death’. As observed in Jakubecki (2016: Commentary on Art. 526 KPC):

The aim of the procedure for declaring a person dead (*uznanie za zmarłego*) is the acknowledgement that a missing person (i.e. a person of whom it is not known if he or she is still alive) has died” (transl. JNM)<sup>38</sup>.

Conditions for this procedure are described in Art. 29-32 of KC. By contrast,

the procedure for judicial ascertainment of death (*stwierdzenie zgonu*) is initiated when two premises co-occur: 1) no certificate of death has been issued and 2) the death of a person is beyond doubt. (...). A person’s death is “beyond doubt” if the circumstances of a particular case make it justified to be fully convinced of a person’s death (for instance, there are witnesses

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<sup>38</sup> “Celem postępowania o uznanie za zmarłego jest uznanie, że zaginiony (a więc człowiek, o którym nie wiadomo, czy pozostaje przy życiu) zmarł”.

thereof), and the time and location of this death are known (Jakubecki 2016: Commentary on Art. 535 KPC, transl. JNM)<sup>39</sup>.

In Spain, the aim of the procedure for declaring a person dead is the same as in Poland: the acknowledgement that a missing person has died. It is described in Art. 193-197 of CC and the corresponding procedure is regulated in Art. 74-76 of LJV. The appropriate functional Spanish equivalent of the Polish expression *uznanie za zmarłego*, lit. ‘declaring a person dead’ is *declaración de fallecimiento* – these two legal institutions do not differ significantly in their content. As far as the term *postępowanie o uznanie za zmarłego* is concerned, i.e. the procedure leading to *uznanie za zmarłego*, no term can be found in CC, LEC or LJV that might serve as a suitable translation equivalent for it. A fitting candidate, *procedimiento de declaración de fallecimiento*, occurs, however, in the “Boletín Oficial de Estado”, the official gazette of the Government of Spain (núm. 290, 5 December 2006, p. 13481). In view of the aforesaid, the following directives can be formulated.

**Directive:** If in a Polish text formulated in the language of law the term *uznanie za zmarłego* is used, then it should be translated into Spanish as *declaración de fallecimiento*. These terms are convergent with respect to the dimensions of language variety, territorial scope of the law’s application, lect, branch of law and text genre, and therefore may be considered sufficiently equivalent.

**Directive:** If in a Polish text formulated in the language of law the term *postępowanie o uznanie za zmarłego* is used, then it should be translated into Spanish as *procedimiento de declaración de fallecimiento*. These terms are convergent with respect to the dimensions of language variety and branch of law and, therefore, may be considered sufficiently equivalent.

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<sup>39</sup> “Postępowanie o stwierdzenie zgonu podlega wszczęciu przy kumulatywnym istnieniu dwóch przesłanek: 1) niesporządzenia aktu zgonu i 2) niewątpliwej śmierci danej osoby. (...) Śmierć jest «niewątpliwa», gdy okoliczności konkretnego wypadku uzasadniają pełne przekonanie o zgonie określonej osoby (np. istnieją świadkowie zgonu), a czas i miejsce zgonu są znane”.

Since the Spanish law does not distinguish a separate procedure for the judicial ascertainment of death (*stwierdzenie zgonu*), no appropriate equivalent for this concept could be found in parallel Spanish texts. Other sources needed to be consulted and, thus, legal regulations concerning this issue in other Spanish-speaking countries were examined. The analysis has shown that this legal concept is also present in the Chilean law. In consequence, an appropriate translation equivalent, *comprobación judicial de la muerte*, can be found in the Chilean Civil Code.

Since the term *stwierdzenie zgonu* has no equivalent in the analyzed Spanish codes, it is obvious that the term *postępowanie o stwierdzenie zgonu*, i.e. the related procedure, does not have one either. It was also impossible to find it in other sources, such as legal commentaries or the legislation of other Spanish-speaking countries. It was thus necessary to coin a new one: *procedimiento de comprobación judicial de la muerte*. In consequence, the following directives can be formulated.

**Directive:** If in a Polish text formulated in the language of law the term *stwierdzenie zgonu* is used, for which an equivalent in Peninsular Spanish cannot be found, then it may be translated into Spanish as *comprobación judicial de la muerte*. These terms are complementary with respect to the dimension of language variety but they are convergent with respect to the dimensions of lect, branch of law and text genre, and therefore may be considered sufficiently equivalent.

**Directive:** If in a Polish text formulated in the language of law the term *postępowanie o stwierdzenie zgonu* is used, for which an equivalent in Spanish cannot be found, then it may be translated into Spanish as a coined term *procedimiento de comprobación judicial de la muerte*.

In KC, the expression *domniemana śmierć*, lit. ‘the presumed death’, is used twice (Art. 31) to refer to the concept of the presumption of death of a missing person, on which the procedure for declaring a person dead is based. In the pieces of Spanish legislation analyzed for the needs of this study, no expression can be found that might serve as a translation equivalent for this term<sup>40</sup> because, in CC, which regulates

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<sup>40</sup> An apparent candidate, the phrase *presunción de muerte* used in Art. 34 of CC, is not a suitable one because it refers to the ‘presumption of death’, i.e. the

this matter, it is referred to by means of a phrase worded in a different manner: (*la fecha a partir de la cual*) *se entienda sucedida la muerte* “(the date on which) it is understood that the death has occurred” (Art. 195). In consequence, a Spanish equivalent must be looked for in other sources. It is found in legal academic writing (e.g. in Albaladejo 2013a: 244) in the phrase *presunta muerte*.

Finally, a brief comparison will be made here of how a deceased person is referred to in the Polish and Spanish codes under analysis. In KC and KPC the term *zmarły* is used. Its functional Spanish equivalents used in CC, LEC and LJV are the terms *difunto* and *fallecido*. In Art. 33 of CC, which concerns the issue of persons who died at the same time, the past active participle *muerto* is used: *personas (...) muertas al mismo tiempo*.

### 2.3.2. *Zaginiony* ‘missing person’

Another term to be discussed here is *zaginiony* ‘missing person’, used in KC. The term itself is not defined in the code, its definition can be found in legal commentaries: “*Zaginiony* is a person about whom it is not known whether he or she is alive or not” (Książak and Pyziak-Szafnicka 2014: Commentary on Art. 29 of KC, transl. JNM)<sup>41</sup>. In Polish, the problem of synonymy does not exist in this case, even if vernacular Polish is taken into consideration as well. By contrast, in CC, two potential Spanish equivalents can be found. These terms are *ausente* (used often in CC, cf. título VIII ‘De la ausencia’), and *desaparecido* (used several times there). However, these terms turn out to be apparent synonyms as they designate two legally different situations that are not distinguished in Polish law by means of two different terms.

The term *desaparecido* is used in Spanish civil law to denote a situation that is not formalized legally in which a person in question has disappeared from his or her domicile or last place of residence and there is no notice about him or her (cf. Albaladejo 2013a: 236). As stated in Art. 181 of CC, it is possible to appoint a defensor for the *desaparecido*. *Desaparecido* is used in this meaning in general Spanish as well. By

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judicial operation of presuming the death, with the judge as subject, rather than the death itself, with the missing person as subject.

<sup>41</sup> “Zaginionym jest osoba, w przypadku której nie wiadomo, czy żyje, czy też zmarła”.

contrast, *ausencia legal* (the person characterized by this state being called *ausente*) is a situation in which the disappearance is acknowledged legally and has certain legal consequences. It is described in Art. 183 of CC:

Art. 183. A person who has disappeared from his domicile or last place of residence shall be deemed to be under a situation of legal absence:

1. After one year has elapsed from the last news of him, or, in the absence thereof, from his disappearance, if he has not left an attorney with powers of administration over all his property.
2. After three years have elapsed, if he has empowered someone to the administration of all his property (...) (translation modified by JNM)<sup>42</sup>.

The procedure for *declaración de ausencia*, i.e. declaring a person missing, is a voluntary jurisdiction procedure regulated by LJV in Chapter IX, *De la declaración de ausencia y fallecimiento*, ('Declaring a person disappeared or dead'). In the course of this procedure, a representative of a missing person is named (*nombramiento de representante del ausente*).

It should be remarked here that in general Spanish the term *ausente*, lit. 'absent', is used to refer to a person who is absent at a given moment at some place, for instance at work, at school etc. According to the DRAE dictionary, it is synonymous with *desaparecido* but only in the language of law.

In conclusion, when translating the Polish legal term *zaginiony* into legal Spanish, the term *desaparecido* should be used rather than *ausente*, as the latter connotes the specific legal institution inexistent in Polish law. The above considerations can be summarized in the following directive.

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<sup>42</sup> "Se considerará en situación de ausencia legal al desaparecido de su domicilio o de su última residencia:

Primero. Pasado un año desde las últimas noticias o a falta de éstas desde su desaparición, si no hubiese dejado apoderado con facultades de administración de todos sus bienes.

Segundo. Pasados tres años, si hubiese dejado encomendada por apoderamiento la administración de todos sus bienes".

**Directive:** If in a Polish text formulated in the language of law the term *zaginiony* is used, then it should be translated into Spanish as *desaparecido*. These terms are convergent with respect to the dimensions of language variety, territorial scope of the law's application, lect, branch of law and text genre, and therefore may be considered sufficiently equivalent.

### **2.3.3. Zawierać umowę ‘to conclude a contract’**

Another example illustrating synonymy in the Spanish language of law concerns the Spanish translation equivalents of the Polish term *zawierać umowę* ‘to conclude a contract’ (for a detailed description and definition see Section 1.2.3.2.). It is, at the same time, another instance of a set phrase in the language of law. The term *umowa* ‘contract’ has its equivalent in the Spanish term *contrato*, but the entire expression *zawierać umowę* can be expressed in legal Spanish by means of any of the synonymous expressions: *celebrar el contrato*, *perfeccionar el contrato* or simply the verb *contratar*. In the light of these facts, the following directive may be formulated.

**Directive:** If in a Polish text formulated in the language of law the term *zawierać umowę* ‘to conclude a contract’ is used, then it may be translated into Spanish as *celebrar el contrato* or *perfeccionar el contrato* or by the verb *contratar*. These terms are convergent with respect to the dimensions of language variety, territorial scope of the law's application, lect, branch of law and text genre, and therefore may be considered sufficiently equivalent.

### **2.3.4. Proces cywilny ‘civil lawsuit’**

As observed at the beginning of this section, the issue of synonymy occurring in LEC has been addressed by the authors of this legal act themselves. Synonymy affects concepts that are fundamental for this law, which will be illustrated in what follows. The concept of a civil lawsuit, called *proces (cywilny)* or *postępowanie procesowe (cywilne)* in Polish, is referred to in Spanish by means of two synonymous terms: *proceso* and *juicio*, as observed in the introduction to LEC. The Polish term *proces* can be defined as follows:

In a lawsuit (*proces*), a court hears a legal dispute between opposing parties and decides on rights and duties that result from this contention (Zieliński 2010: 4; transl. JNM)<sup>43</sup>.

The Spanish terms, *juicio* and *proceso*, are not defined in the codes under analysis. Their definition can be found in legal commentaries. A definition given in de la Oliva Santos et al. (2013: 190) reads as follows:

(...) a lawsuit (*proceso*) is a *juridically regulated series or succession of acts* (of the jurisdictional organ, of particular juridical subjects or other organs of the State that might not be jurisdictional) *aiming at the application or realization of law in a specific case* (transl. JNM)<sup>44</sup>.

However, it must be remarked that these two Spanish terms are not always interchangeable as their use has some phraseological restrictions. For instance, the two main types of civil process are normally referred to as *juicio ordinario* ‘ordinary proceedings’ and *juicio verbal* ‘verbal proceedings’<sup>45</sup> in LEC; only two occurrences of the term *proceso ordinario* can be found in this legal act, while the expression *proceso verbal* is never used there. In addition, some authors point out that *juicio* and *proceso* cannot be equated as synonyms. For instance, Montero Aroca et al. (2014: I, 228) stress that it cannot be claimed that *juicio* denotes *proceso* (or *procedimiento*) because the former refers to the act of judging (*la acción de juzgar*). Similarly, de

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<sup>43</sup> “W procesie sąd rozpoznaje spór prawny występujący między dwiema stronami i rozstrzyga o wynikających z tego sporu prawach i obowiązkach stron”.

<sup>44</sup> “(...) el proceso es *una serie o sucesión jurídicamente regulada de actos* (del órgano jurisdiccional, de sujetos jurídicos particulares o de otros órganos del Estado, que no sean jurisdiccionales) *tendientes a la aplicación o realización del Derecho en un caso concreto*”.

<sup>45</sup> The differences between them can be summarized in the following manner: “On the one hand, ordinary proceedings [*juicio ordinario*] start with a separate, independent motion called preliminary hearing [*audiencia previa*] to resolve pre-judiciary issues (documents, evidence to be accepted, etc), while in the verbal proceedings [*juicio verbal*] all steps take place at the same judicial event. On the other hand, the claim of the plaintiff is contested in written terms in the ordinary proceeding, while in the verbal proceedings is replied to orally (Casanovas et. al. 2009: 201).

la Oliva Santos et al. (2013) argue that these two terms, although used as synonyms by both lawyers and lay people, have different meanings. *Proceso*, they explain, is a series or succession of acts (*serie o sucesión de actos*), while *juicio* is the act or the effect of judging (*la acción o efecto de juzgar*). It cannot, however, be said that *juicio* refers only to the final act of *proceso*, because it is necessary to judge, i.e. to make a number of judgments, from the very beginning of the *proceso* (2013: 192-193).

Taking into consideration the above observations and the reservations with respect to the synonymy of these two terms made by scholars, the following directive can be formulated.

**Directive:** If in a Polish text formulated in the language of law the term *proces* (*cywilny*) is used, then it should be translated into Spanish as *proceso* (*civil*). These terms are convergent with respect to the dimensions of language variety, territorial scope of the law's application, lect, branch of law and text genre, and therefore may be considered sufficiently equivalent.

### **2.3.5. *Postępowanie egzekucyjne* 'enforcement procedure'**

Another instance of synonymy concerns the Spanish equivalents of the Polish term *postępowanie egzekucyjne* 'enforcement procedure', introduced in Section 1.2.1.5. In the pieces of Spanish legislation under analysis, this meaning is expressed by means of three synonymous terms:

- (i) *proceso de ejecución* (used eighteen times in LEC),
- (ii) *procedimiento ejecutivo*, an expression in which the modifier related to enforcement is an adjective (used three times in LEC),
- (iii) *procedimiento de ejecución*, an expression in which the modifier is a prepositional phrase (used nine times in LEC).

For a corresponding translation directive, see Section 1.2.1.5.

### 2.3.6. *Aukcja* and *licytacja* ‘auction’

The next instance of synonymy to be discussed here concerns the translation equivalents of the Polish term *aukcja* ‘auction’. One of its definitions reads as follows:

An auction (*aukcja*) consists in that the participants of the auction make bids orally and the organizer of the auction chooses the most advantageous offer. In practice, bids are made by the participants successively, i.e. a participant of the auction willing to bid makes an offer that is more advantageous than the one of his or her predecessor’s (Habryn-Chojnacka [n.d.], transl. JNM)<sup>46</sup>.

First, it should be remarked that the term *aukcja*, which is used in KC, has a synonym that is used in KPC, viz. *licytacja* (cf. Żak 2003). A suitable Spanish translation equivalent for both of these terms appears to be the term *subasta*, which is used normally in CC, LEC and LJV. It is defined by Albaladejo, first in the context of the sales contract, in the following way:

A sales contract is made by means of an auction (*subasta*), or in other words: a thing that is to be sold is auctioned (*se subasta*), if, after previous announcement, the person entitled to dispose of this thing offers it for sale for whoever pays a higher price (Albaladejo 2011a: 539, transl. JNM)<sup>47</sup>.

Having explained the meaning of *subasta* in the context of the sales contract, Albaladejo observes that although this is the most frequent application of this procedure, it is also employed in many other situations:

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<sup>46</sup> “Aukcja polega na tym, że uczestnicy aukcji (licytanci) składają ustnie oferty, a organizator aukcji dokonuje wyboru oferty najkorzystniejszej. W praktyce oferty zgłaszane są przez licytantów po kolei, tzn. chcący licytować uczestnik aukcji zgłasza ofertę korzystniejszą niż jego poprzednik. Licytant związany jest złożoną przez siebie ofertą tak długo, dopóki inny uczestnik aukcji nie złoży oferty korzystniejszej”.

<sup>47</sup> “La compraventa tiene lugar mediante subasta, es decir, se subasta la cosa que se trata de vender, cuando, previo anuncio, quien puede disponer de ella la ofrece en venta al que pague un precio mayor”.

For instance, *arrendamiento* [‘lease’ or ‘tenancy’, cf. Section 4.2. – JNM] being awarded to whoever offers *the highest rent* or the provision of services being awarded to whoever offers them at a *lower price* (because the objective is to make a given contract not by virtue of the highest value but by virtue of the value that is most advantageous to the person organizing the auction). (Albaladejo 2011a: 539, transl. JNM)<sup>48</sup>.

The definitions of the Polish *aukcja* and Spanish *subasta* both highlight the aspect of the most advantageous offer. In consequence, it can be said that the Spanish term *subasta* is an appropriate translation equivalent of the Polish term *aukcja*.

It should be observed here that in three instances in LEC and in two instances in LJV<sup>49</sup>, another Spanish term, *licitación*, is used in a way that might suggest that this term is, at least in some instances, synonymous with *subasta*. This, as it seems, can be inferred from occurrences in which these two terms are used fully synonymously and interchangeably: thus, one finds *objeto de subasta* (Art. 668.2 of LEC and 74.1 of LJV) and *objeto de licitación* (648.5<sup>a</sup> and 668.3 of LEC), both expressions referring to the object of auction, i.e. being sold by way of a *subasta*. However, the term *licitación* is used only occasionally, which suggests that translators that need to translate the Polish term *aukcja* or *licytacja* into Spanish should opt for *subasta*.

If the term *licytacja* is used in the phrase *sprzedać w drodze licytacji* (e.g. in Art. 904<sup>1</sup>. § 1. of KPC), the meaning of which is ‘to sell at an auction, to auction’, the whole can be translated into Spanish by means of the verb *subastar*, which has the same meaning and is used, for instance, in Art. 646.2. of LEC: *los bienes a subastar* ‘goods to be auctioned’.

Thus, the following directives can be proposed.

**Directive:** If in a Polish text formulated in the language of law the term *aukcja* or the term *licytacja* is used, then it should be translated into

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<sup>48</sup> “Por ejemplo, arrendamiento a quien ofrezca *renta más elevada*, ejecución de servicios a quien los ofrezca por un *precio inferior* (pues se trata siempre de celebrar el contrato que sea, no por la cifra más alta, sino por la más ventajosa para quien promueve la subasta”.

<sup>49</sup> Also in one instance in CC, which, however, represents a different sub-branch of law.

Spanish as *subasta*. These terms are convergent with respect to the dimensions of language variety, territorial scope of the law's application, lect, branch of law and text genre, and therefore may be considered sufficiently equivalent.

**Directive:** If in a Polish text formulated in the language of law the term *sprzedać w drodze licytacji* is used, then it can be translated into Spanish as *subastar*. These terms are convergent with respect to the dimensions of language variety, territorial scope of the law's application, lect, branch of law and text genre, and therefore may be considered sufficiently equivalent.

## 2.4. Concluding remarks

Although it is generally accepted that synonymy should be avoided in legal language because it causes ambiguity, it is quite a common phenomenon in this LSP and constitutes a challenge for legal translators. As the discussion in the previous sections has shown, synonymy can result from the fact that there are several varieties of Spanish; it can also bind words belonging to various lects, e.g. legal language and vernacular language or different LSPs. These types of synonymy can be eliminated in translation by applying the proposed dimensions. However, synonymous terms also occur intralingually, in texts belonging to the same lect, branch of law and the same legal genre (legislation). This type of synonymy seems to be most difficult to deal with for translators. Not only have they to arrive at detailed knowledge of the meanings of such terms to be able to decide whether terms that seem synonymous have the same or nearly the same referential meaning or synonymy is only apparent, but they also have to be aware of phraseological properties of these words. Since numerous set phrases are used in the language of law, special attention must be paid to the use of appropriate terms in a given collocation (phraseological expression).



### 3. Polysemy

#### 3.1. Introductory remarks

The term ‘polysemy’ comes from Greek *polys* ‘much’ and *sēma* ‘sign’ and means that a word, or another linguistic unit, has more than one meaning. Polysemy is a frequent phenomenon in any language and, in fact, it is easier to find polysemous words than a word that has only one meaning.

Polysemy is a phenomenon related to homonymy. The difference between polysemy and homonymy lies in that in the case of the former, it is possible for the language users to establish a semantic link between particular meanings, whereas in the case of the latter such a semantic relationship is impossible to establish (Nyckees 1998: 194).

In the present study, use is made of the distinction proposed by Sourieux and Lerat (1975: 94-96), who differentiate between linguistic polysemy and legal polysemy. Linguistic polysemy means that terms that are a part of general (vernacular) language or some LSP also have a specifically legal meaning<sup>50</sup>. Legal polysemy, in turn, means that a word has different meanings within the domain of law<sup>51</sup>. Examples of these relations will be given in subsequent paragraphs of this chapter.

Polysemy may be considered a problem for readers as well as legal, and not only legal, translators because being faced with a polysemous word they may find it difficult to determine which of the word’s meanings was intended by the author. This happens if polysemy occurs in the source text.

As far as polysemy in the target language is concerned, it seems that it becomes problematic if the translator wants the text to be as unambiguous as possible. Then, he or she may attempt to avoid polysemous words and opt for clear, unequivocal expressions. This

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<sup>50</sup> “(...) il s’agit ici des termes qui appartiennent à la langue commune ou à d’autres langues de spécialité mais qui ont une acceptation spécifiquement juridique” (Sourieux and Lerat 1975: 94).

<sup>51</sup> “On entendra par là [polysémie juridique – JNM] le statut sémantique de mots qui ont plusieurs sens au sein même du droit” (Sourieux and Lerat 1975: 96).

obviously concerns translators dealing with legal texts. In this case, however, the choice of vocabulary is rather limited as it is governed by terminological constraints, or in other words, the translator is not free to opt for a less polysemous word if an adequate translation equivalent of a legal term shows some degree of polysemy. In what follows, polysemy in Polish and Spanish is exemplified. First, examples of linguistic polysemy and then those of legal polysemy are discussed.

## 3.2. Linguistic polysemy in Polish and Spanish

A number of clearly polysemous words occur in KC and KPC. In the following sections, the cases of the noun *polecenie* and the verb *wygasać* are discussed. Then two examples of linguistic polysemy in Spanish are examined: the nouns *emancipación* and *auto*.

### 3.2.1. *Polecenie*<sup>52</sup>

The term *polecenie* is used in KC and refers to the right (e.g. of a donating party or testator) to impose on a person (e.g. the benefiting party – in the case of donation – or an heir or a legatee) “the obligation of specific action or refraining from action without making anyone a creditor” (Art. 982 of KC)<sup>53</sup>. This word, however, has a different meaning in the Polish language used in bureaucratic and official relations, in which it means:

a person’s oral or written utterance through which another person who stands lower in a hierarchy is ordered to perform a specific action (Dubisz 2004, s.v. *polecenie*, transl. JNM)<sup>54</sup>.

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<sup>52</sup> Since the meanings of the polysemous terms under discussion are too numerous to be given in English translation in the headings, they are introduced in the course of the text instead.

<sup>53</sup> “włożyć (...) obowiązek oznaczonego działania lub zaniechania, nie czyniąc nikogo wierzycielem”.

<sup>54</sup> “urz. «czyjaś ustna lub pisemna wypowiedź nakazująca komuś niżej postawionemu w hierarchii wykonanie jakiejś czynności»”.

An obvious example of the use of *polecenie* with this meaning is *polecenie służbowe*. It denotes an official order from one's superior in the Polish language of administration, which may be considered a kind of LSP. It can be observed that the legal and administrative meanings of this term are bound by a semantic link of obliging someone to act in a specific way.

As for the Spanish translation equivalent for *polecenie*, the text of CC contains the expressions *donación con causa onerosa* 'donation with an onerous cause' (Art. 622) and *donación onerosa* 'onerous donation' (Art. 626 and 638) which denote a type of donation with which the imposing of the obligation of specific action is linked. However, the idea of imposition itself is not referred to by means of any specific term. Legal commentaries speak of other terms used to refer to this type of donation: *donación modal* 'modal donation' and *donación con carga* 'donation with a charge' (e.g. Albaladejo 2011a: 607). In this source, the act of imposing the obligation is referred to as *imponer una carga* 'to impose an obligation'. In view of these considerations, it can be claimed that the Polish legal term *polecenie* has no obvious direct Spanish translation equivalent. It seems that the word *imposición de una carga* 'the imposition of an obligation', i.e. the verbal noun of *imponer una carga*, could be used in this function. One could also think of other, more literal equivalents, like *encargo* 'order' or *encomienda* 'idem'. In consequence, the following directive may be formulated.

**Directive:** If in a Polish text formulated in the language of law the term *polecenie* is used, for which a direct equivalent in Spanish cannot be found, then it may be translated into Spanish as *imposición de una carga*, which is used in legal commentaries and has a descriptive character. These two terms are complementary with respect to the dimension of lect and text genre but they are convergent with respect to the dimension of language variety and branch of law and therefore may be considered sufficiently equivalent.

### 3.2.2. *Wygasać*

An example of a Polish polysemous term, showing linguistic polysemy, used in KPC is the verb *wygasać*. In vernacular language, this verb means, on the most concrete level, 'to go out' (in reference to a fire or

light), but also, figuratively, ‘to die down’ (in reference to an epidemic or feelings). In the language of historiography, which can be considered a LSP, this verb has another meaning, viz. “to cease to exist due to extinction” (Dubisz 2004, s.v., transl. JNM)<sup>55</sup> and is used when speaking about families and dynasties. In the legal language it means ‘to run out, to expire; to cease to be valid or in force’ and is used, for instance, with such nouns as *prawa* ‘rights’, *zobowiązanie* ‘obligation’ or *roszczenie* ‘action, claim’. For instance:

(...) of the rights that expired (*wygasły*) according to the division scheme (...) (Art. 1003. § 1. of KC)<sup>56</sup>.

The Spanish term that should be used as a translation equivalent is, as the analysis of parallel texts (KPC and LEC, but also CC) shows, the verb *extinguirse*, which is polysemous as well. Similarly to the Polish *wygasnąć*, it means, on the most concrete level, ‘to go out’ (in reference to a fire or light), but also ‘to die down’ (in reference to an epidemic or feelings). When used in legal language, the verb *wygasnąć* means ‘to run out’, ‘to expire’; ‘to cease to be valid or in force’ and functions as predicate of such nouns as *derechos* ‘rights’, *obligación* ‘obligation’ or *acción* ‘action, claim’. For instance:

The rights of use and habitation shall expire (*se extinguen*) (...) (Art. 529 of CC)<sup>57</sup>.

Having considered this, the following directive can be formulated.

**Directive:** If in a Polish text formulated in the language of law the term *wygasnąć* is used with the meaning: ‘to run out’, ‘to expire’; ‘to cease to be valid or in force’, then it should be translated into Spanish as *extinguirse*. These terms are convergent with respect to the dimensions of language variety, territorial scope of the law’s application, lect, branch of law and text genre, and therefore may be considered sufficiently equivalent.

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<sup>55</sup> “przestać istnieć z powodu wymarcia”.

<sup>56</sup> “(...) praw, które wygasły według planu podziału (...)”.

<sup>57</sup> “Los derechos de uso y habitación se extinguen (...)”.

### 3.2.3. *Emancipación*

As the case of *extinguirse* has already demonstrated, instances of linguistic polysemy can also be found in Spanish. The term *emancipación* is another clear example. In legal Spanish, it refers to the act of acquiring a determined legal capacity, which comes about through attaining the age of 18 or is granted by those who exercise parental authority or by a court (cf. Art. 314 of CC; for an outline of the meaning of this term, see Section 1.2.4.1.). Apart from this legal meaning, *emancipación* also means liberating oneself from other types of subordination or dependence, both in vernacular language and in the language of politics and sociology, e.g. *la emancipación de la mujer* ‘women’s emancipation’.

### 3.2.4. *Auto*

An example of a word that shows linguistic polysemy and occurs in LEC is *auto*. In the legal meaning, this term names one of the types of rulings made by judges and courts (*resolución*), distinct from *providencias* and *sentencias* (regulated in Art. 206. 1.2<sup>a</sup> of LEC). In the language of literary studies, an *auto* refers to “a short form of Spanish dramatic literature, usually concerning religious topics, in which biblical or allegorical characters frequently occur” (Maldonado González 2000: 183, s.v., transl. JNM)<sup>58</sup>. Both acceptations of this term, legal and literary, derive from *acto*, which, in its turn, comes from Latin *actum* ‘thing done; record’. However, it is not certain if an ordinary user of Spanish would be able to establish a semantic link between these two meanings of *auto* and if, in consequence, one is faced with a case of polysemy, rather than homonymy. A clear relation of homonymy obtains between *auto* in the legal sense and *auto* in the vernacular language, in which it means ‘car’ and is synonymous with the far more frequently used word *coche* (see Section 3.3.2. for the discussion of the term *auto(s)* as an instance of legal polysemy in Spanish).

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<sup>58</sup> “En literatura, breve composición dramática, generalmente de tema religioso, en la que suelen intervenir personajes bíblicos o alegóricos”.

### 3.3. Legal polysemy in Polish and Spanish

Instances of legal polysemy are less frequent than those of linguistic polysemy because authors of legal texts know very well that terms used in the language of law should be as little ambiguous as possible, which would not be possible if a great number of terms showing legal polysemy were used. However, despite the commandment of using unequivocal expressions, terms showing legal polysemy can be found in any of the Polish and Spanish code which make up the corpus.

#### 3.3.1. *Odwołanie*

Legal polysemy in Polish will be illustrated by means of the word *odwołanie*. In KC, it has the meaning ‘revocation’, i.e. the act of declaring something to be no longer valid or operative, and is used, for instance, in the following collocations: *odwołanie (...) oświadczenia* ‘revocation of (...) a declaration’ (Art. 61), *odwołanie darowizny* ‘revocation of the donation’ (Art. 900) or *odwołanie testamentu* ‘revocation of the testament’ (Art. 946). In this sense, it has its Spanish translation equivalent in the word *revocación* (used, for instance, in the phrase *la revocación del testamento* ‘revocation of the testament’ in Art. 737 of CC).

In KPC, apart from being used in this meaning (*o odwołaniu takiej zgody* ‘about the revocation of this consent’, Art. 589 § 3), the term *odwołanie* is used in two other, different senses. The first one is ‘dismissal’, i.e. the cessation of the state of being appointed to a function. *Odwołanie* in this sense is used, for instance, in the following expressions: *odmowa ustanowienia adwokata lub radcy prawnego lub ich odwołanie* ‘the refusal to appoint a barrister or legal adviser or their dismissal’ (Art. 394. § 1., pt. 1), *odwołanie zarządcy* ‘the administrator’s dismissal’ (Art. 616), or *odwołania (...) arbitra* ‘the arbitrator’s dismissal’ (Art. Art. 1171. § 3). Its Spanish translation equivalent is the expression *revocación del nombramiento*.

The second meaning of the term *odwołanie* used in KPC is the most frequent one in this code. It is: “an appeal lodged against an administrative decision (before a higher administrative instance or the court)”. Two examples of expressions in which this word is used in this sense are: *odwołanie od decyzji Prezesa Urzędu* ‘appeal against the decisions of the President of the Office’ (Art. 479<sup>71</sup>) or *odwołanie od*

*decyzji organu rentowego* ‘appeal against a decision of a pension authority’ (Art. 477<sup>9</sup> § 2<sup>1</sup>). If *odwołanie* is lodged before a higher administrative instance, then it may be translated into Spanish as *recurso de alzada*, which is a type of appeal lodged before a higher instance within administrative procedure<sup>59</sup>. If, in turn, this appeal is lodged before a court, then its Spanish equivalent is *recurso contencioso-administrativo*, which is a type of appeal concerning acts that exhaust the administrative remedies<sup>60</sup>.

The word *odwołanie* is also used in more than one sense in vernacular language. It means, for instance, ‘the act of calling somebody aside’ (verbal noun of the verb *odwołać*) and ‘reference (to something)’. Thus, apart from showing legal polysemy, the word *odwołanie* displays linguistic polysemy as well. That one is faced here with a case of polysemy rather than homonymy can be demonstrated by the fact that a semantic link can be established between all the meanings of this word: a general idea of (re)directing something or someone (back) to another point or place. The polysemy of this term is represented in Table 5.

Table 5. The polysemy of the Polish term *odwołanie*.

Type of polysemy	Meanings of the Polish term <i>odwołanie</i>
Legal polysemy	1. ‘revocation’
	2. ‘dismissal’
	3. ‘appeal’
Linguistic polysemy	4. ‘calling sb aside’
	5. ‘reference to sth’

**Directive:** If in a Polish text formulated in the language of law the term *odwołanie* is used with the meaning ‘revocation’ (of an act), then it should be translated into Spanish as *revocación*. These terms are convergent with respect to the dimensions of language variety,

<sup>59</sup> Regulated in Art. 114. and ff. of the Legal Rules for Public Administration and General Administrative Procedure (Ley de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común).

<sup>60</sup> Regulated in Art. 25 of the Contentious Administrative Jurisdiction Act (Ley reguladora de la Jurisdicción Contencioso-administrativa).

territorial scope of the law's application, lect, branch of law and text genre, and therefore may be considered sufficiently equivalent.

**Directive:** If in a Polish text formulated in the language of law the term *odwołanie* is used with the meaning 'dismissal' (the cessation of the state of being appointed to a function), then it may be translated into Spanish as *revocación del nombramiento*. These terms are convergent with respect to the dimensions of language variety, territorial scope of the law's application, lect, branch of law and text genre, and therefore may be considered sufficiently equivalent.

**Directive:** If in a Polish text formulated in the language of law the term *odwołanie* is used with the meaning 'appeal lodged against an administrative decision before a higher administrative instance', then it may be translated into Spanish as *recurso de alzada*. These terms are convergent with respect to the dimensions of language variety, territorial scope of the law's application, lect, branch of law and text genre, and therefore may be considered sufficiently equivalent.

**Directive:** If in a Polish text formulated in the language of law the term *odwołanie* is used with the meaning 'appeal lodged against an administrative decision before the court', then it may be translated into Spanish as *recurso contencioso-administrativo*. These terms are convergent with respect to the dimensions of language variety, territorial scope of the law's application, lect, branch of law and text genre, and therefore may be considered sufficiently equivalent.

### 3.3.2. *Auto*

In what follows, selected examples of legal polysemy in Spanish are discussed. The existence of this phenomenon has been signalled by scholars concerned with the Spanish language of law, for instance by Hernández Gil (1989: 376-377) or Iturralde Sesma (1989: 49). Polysemy may also concern conjunctions, viz. *o* 'or' and *y* 'and', a fact observed by Alcaraz Varó and Hughes (2002b: 112-113).

Below, examples of polysemous nouns and their discussion are examined. Then, examples of polysemy in verbs follow, accompanied by a discussion of this issue.

First, the case of the term *auto* (which served, in the previous paragraphs, as an example of a word showing linguistic polysemy) will be dealt with. This word has two meanings in both LEC and LJV. One of them has been introduced above as a type of ruling made by judges and courts. It is found, for instance, in Art. 206.2a of LEC (in the plural form):

*Autos* shall be pronounced when appeals against *providencias* or *decretos* are decided (...) (transl. JNM)<sup>61</sup>.

A different meaning of *autos* is intended in Art. 140.1. of LEC:

(...) the obtaining of simple copies of letters and documents that are included in the *autos* (proceedings) (...) (transl. JNM)<sup>62</sup>.

In the latter case, the meaning of this term is “documentation that constitutes and brings together the totality of judicial proceedings” (Toribios Fuentes 2012: 276)<sup>63</sup>. It should be observed here, though, that the word *autos* in this sense is a *plurale tantum*, while *auto* in the sense of a ruling may be singular or plural. Polysemy, for this reason, can be observed only if the latter is plural<sup>64</sup>.

The polysemy and homonymy of this term is represented in Table 6.

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<sup>61</sup> “Se dictarán autos cuando se decidan recursos contra providencias o decretos (...)”

<sup>62</sup> “(...) la obtención de copias simples de escritos y documentos que consten en los autos (...)”.

<sup>63</sup> “la documentación que conforme y recoja la totalidad de las actuaciones judiciales”.

<sup>64</sup> The two different legal meanings of the term *auto(s)* may be found in one sentence:

“Art. 95. 1. El tribunal competente decidirá por medio de **auto**, en el plazo de veinte días, a la vista de los antecedentes que consten en los **autos** y de las alegaciones escritas de las partes, si se hubieran presentado” (emphasis JNM).

‘The competent court shall decide by means of an **auto**, within twenty days, having made themselves acquainted with the record that is included in the **autos** (proceedings) and with the written allegations of the parties, if they have been presented’ (transl. JNM).

Table 6. The polysemy and homonymy of the Spanish term *auto(s)*.

Type of polysemy or homonymy	Meanings of the Spanish term <i>auto(s)</i>
Legal polysemy	1. ‘type of judicial ruling’
	2. ‘proceedings (documentation)’
Linguistic polysemy	3. ‘literary form’
Homonymy	4. ‘car’

### 3.3.3. *Obligación*

Another instance of legal polysemy that can be encountered in the texts of CC, LEC and LJV is the term *obligación*. It has two legal meanings, one of which belongs to the fundamental vocabulary of civil law and is defined as follows:

(...) obligation (*obligación*) means a legal link between two (or more) persons by virtue of which one of them (debtor) has to carry out a certain performance to the benefit of the other (creditor) in order to satisfy some interest of theirs that deserves [legal] protection. The creditor, in turn, has a corresponding power (...) to claim and to be able to demand the realization of this performance (Albaladejo 2011a: 15, transl. JNM)<sup>65</sup>.

The term *obligación* is used in this sense in Art. 356 of CC:

The person who collects the profits has an obligation (*obligación*) to pay the expenses incurred by a third party for their production, collection and preservation<sup>66</sup> (transl. JNM).

<sup>65</sup> “(...) *obligación* significa vínculo jurídico que liga a dos (o más) personas, en virtud del cual una de ellas (deudor) queda sujeta a realizar una prestación (un cierto comportamiento) a favor de la otra (acreedor), para la satisfacción de un interés de éste digno de protección; y a éste mismo (acreedor) le compete un correspondiente poder (...) para pretender y poder exigir tal prestación”.

<sup>66</sup> “El que percibe los frutos tiene la obligación de abonar los gastos hechos por un tercero para su producción, recolección y conservación”.

The other legal meaning of *obligación* can be defined as follows:

Bonds (*obligaciones*) are negotiable securities (...) integrated in one series and representing proportional parts of a debt that the issuing society contracts with respect to the holders, by virtue of which it guarantees its repayment when it is due plus interest, in a regular form, as remuneration (...) (Banegas Ochovo 1997: 199, transl. JNM)<sup>67</sup>.

In this sense, the term *obligaciones* is used (in plural, which is the most frequent grammatical form of this term) in the following phrase of LJV (Art. 65.2.):

This does not apply to shares, bonds (*obligaciones*) and other securities that are negotiable on the secondary market (...) (transl. JNM)<sup>68</sup>.

As for a common semantic feature shared by the two meanings of *obligación*, it is quite evident that it is the link<sup>69</sup>, or relationship, between the two parties consisting in one party's duty to carry out a specific performance (e.g. to repay a debt) in favour of the other.

### 3.3.4. *No deber*

Legal polysemy in Spanish may also be a feature of verbs, more specifically, those which convey the meaning of deontic modality. The case described here (from Nowak-Michalska 2012: 250-251) is rather exceptional but it deserves attention because it may generate ambiguity. The verb in question is the negated future form of *deber*, i.e. *no deberá(n)*, which, depending on the context, may convey the deontic

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<sup>67</sup> “Las obligaciones son valores negociables (...) integrantes de una misma serie, que representan una parte alícuota de un crédito que la sociedad emisora contrae con los obligacionistas, garantizando de esta forma el pago de éste a su vencimiento más un interés de forma regular como remuneración (...)”.

<sup>68</sup> “Se exceptúa el caso de que se trate de acciones, obligaciones u otros títulos admitidos a negociación en mercado secundario (...)”.

<sup>69</sup> This is also visible in the etymology of this word, which comes from Latin *obligatio*, and this ultimately from *ligare* ‘to tie’.

meaning of either prohibitivity or immunity (i.e. the absence of obligation). Prohibitivity is illustrated in Art. 1283 of CC:

Irrespective of the generality of the terms of a contract, it must not (*no deberán*) be understood to comprise things and cases different from those with respect to which the interested parties proposed to contract (transl. JNM)<sup>70</sup>.

The same verb is used with immunitive meaning in Art. 527 of CC:

If he should only collect a part of the profits or live in a part of the house, he does not have to (*no deberá*) contribute anything, provided that (...) (transl. JNM)<sup>71</sup>.

The semantic link between the two meanings is the idea of ‘duty’ conveyed by the verb *deber*. Polysemy results from the use of negation in this case.

### 3.4. Concluding remarks

In this chapter, the relations of polysemy and homonymy, a closely related concept, have been examined. The discussed examples of terms related to civil law and civil procedure were divided into two categories depending on the type of polysemy, which can be linguistic or legal (some terms belong to both of them). Instances of polysemous terms in Polish and their possible Spanish equivalents were discussed and, in addition, some polysemous Spanish terms were examined. When polysemy occurs in the source text, it may be problematic for translators to determine which one of a word’s meanings was intended by the author. It can be especially difficult in the case of legal polysemy, which can occur even in texts belonging to the same branch of law and genre, as the example of the Polish term *odwołanie* shows. However, linguistic

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<sup>70</sup> “Cualquiera que sea la generalidad de los términos de un contrato, no deberán entenderse comprendidos en él cosas distintas y casos diferentes de aquellos sobre que los interesados se propusieron contratar”

<sup>71</sup> “Si sólo percibiera parte de los frutos o habitara parte de la casa, no deberá contribuir con nada, siempre que (...)”.

polysemy can be problematic as well because terms related to other LSPs or the vernacular language can also be used in legal texts. Polysemy in the target text may cause difficulties for translators unaware of all meanings of a term, especially when a term has more than one meaning related to legal language and other meanings related to vernacular language or some LSP, as was the case of the Spanish term *auto*.



## 4. Hyperonymy-hyponymy

Full synonymy is a rare phenomenon to find, both intra- and interlingually. Usually, when one is dealing with two terms that may be deemed translation equivalents, their scopes of reference are not the same. For instance, in general (non-legal language), the Polish word *ptak* ‘bird’ is not fully synonymous with the Spanish *pájaro*, which usually refers to smaller birds, because the scope of reference (understood as all entities that can be referred to by means of this term) of *ptak* is larger than that of *pájaro*. The Polish *ptak* is thus a hyperonym of the Spanish *pájaro*, which, in turn, is its hyponym. This phenomenon is not limited to nouns but concerns other parts of speech as well. One can also speak of hyperonymy-hyponymy of larger linguistic units, such as phrases and sentences. For instance, the English verb *to go* is a hyperonym of the Polish verbs *iść* ‘to walk, to go on foot’ and *jechać* ‘to go (e.g. by car)’. Instances of this relation can also be found in LSPs, including the language of law. This will be illustrated by means of two examples taken from Polish and Spanish terminology concerning civil law and civil procedure.

### 4.1. *Użyczenie* ‘commodate’ and *pożyczka* ‘loan’

Although what the present study is concerned with is translation from Polish into Spanish, hyperonymy-hyponymy relations in Spanish will be presented first. In CC (Art. 1740), the concept of *préstamo* is divided into *comodato* ‘commodate, or loan for use’ and (*simple*) *préstamo* ‘loan’. *Comodato* is a contract according to which one of the parties delivers to the other

(...) a non-fungible thing so that the other may use it for a certain time and return it (...) <sup>72</sup>.

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<sup>72</sup> “(...) cosa no fungible para que use de ella por cierto tiempo y se la devuelva (...)”.

(*Simple*) *préstamo*, in turn, is a contract according to which one of the parties delivers to the other

(...) money or another fungible thing, under the condition to return the same amount of the thing, and of the same kind and quality (...) <sup>73</sup>.

The term *préstamo* is thus a hyperonym of the terms *comodato* and (*simple*) *préstamo* (which both are its co-hyponyms).

The relations between the Polish equivalents of these terms are different. Polish has easily identifiable equivalents of *comodato* and (*simple*) *préstamo*, which are *użyczenie* and *pożyczka*, respectively, defined in the following way in KC:

Art. 710. By the contract of loan for use (*użyczenie*) the lender for use undertakes to allow the borrower for use to gratuitously use the thing given to the latter for this purpose for a definite or an indefinite period of time <sup>74</sup>.

Art. 720. § 1. By the contract of loan (*pożyczka*) the lender undertakes to transfer to the borrower the ownership of a specified amount of money or of things specified as to their kind only, and the borrower undertakes to return the same amount of money or the same amount of things of the same kind and of the same quality <sup>75</sup>.

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<sup>73</sup>“(…) dinero u otra cosa fungible, con condición de devolver otro tanto de la misma especie y calidad (...)”.

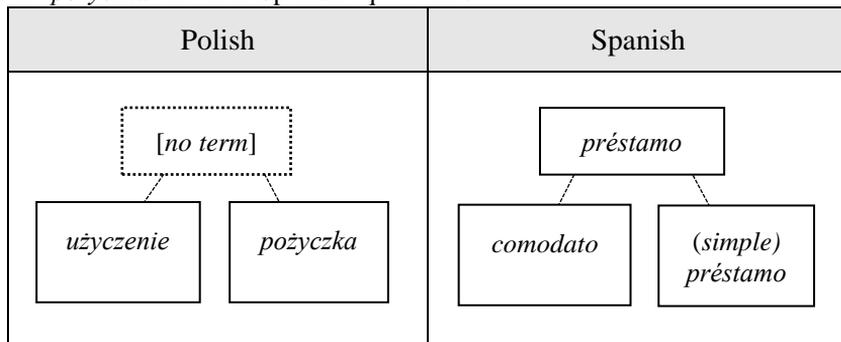
*Comodato* is also known in Spanish legal literature under the term *préstamo de uso*, while *simple préstamo* is also known under the terms *préstamo de consumo* and *mutuo*. However, these terms are not used in the texts of the corpus analyzed for the purpose of this study and will not be considered here.

<sup>74</sup>“Przez umowę użyczenia użyczający zobowiązuje się zezwolić biorącemu, przez czas oznaczony lub nieoznaczony, na bezpłatne używanie oddanej mu w tym celu rzeczy”.

<sup>75</sup>“Przez umowę pożyczki dający pożyczkę zobowiązuje się przenieść na własność biorącego określoną ilość pieniędzy albo rzeczy oznaczonych tylko co do gatunku, a biorący zobowiązuje się zwrócić tę samą ilość pieniędzy albo tę samą ilość rzeczy tego samego gatunku i tej samej jakości”.

However, there is no one-word Polish equivalent for the Spanish hyperonymous term *préstamo*. Polish has only equivalents for the two hyponymous terms. This terminological situation is represented in Diagram 1.

Diagram 1. Hyperonymy-hyponymy relations of the Polish terms *użyczenie* and *pożyczka* and their Spanish equivalents.



This situation entails consequences for translation. When translating from Polish into Spanish, i.e. into a language which, in this particular case, is richer in relevant terminology, no difficulty is encountered and every term can be quite easily translated (however, one must remember that when translating the term *pożyczka* into Spanish, one should use the phrase *simple préstamo* rather than *préstamo*). By contrast, when translating from Spanish into Polish, i.e. into a language in which, in this case, relevant terminology is less rich, a problem arises of how to translate the hyperonymous general term *préstamo*. In such a case, translators can render *préstamo* into Polish by means of a syntagm *pożyczka albo użyczenie* ‘commodate or loan’. Another solution to this problem, if the context makes it clear which type of *préstamo* is being spoken of, is to use one of the hyponymous terms, *użyczenie* or *pożyczka*. In consequence, the following directives can be formulated.

**Directive:** If in a Polish text formulated in the language of law the term *użyczenie* ‘commodate’ is used, then it should be translated into Spanish as *comodato*. These two terms are convergent with respect to all essential dimensions: language variety, territorial scope of the law’s application, lect, branch of law, text genre, and therefore may be considered sufficiently equivalent.

**Directive:** If in a Polish text formulated in the language of law the term *pożyczka* ‘loan’ is used, then it should be translated into Spanish as *simple préstamo*. These two terms are convergent with respect to all essential dimensions: language variety, territorial scope of the law’s application, lect, branch of law, text genre, and therefore may be considered sufficiently equivalent.

**Directive:** If in a Spanish text formulated in the language of law the term *préstamo* is used, for which one-word equivalent in Polish cannot be found, then it may be translated into Polish as a coined term *pożyczka albo użyczenie* ‘commodate or loan’ or if the context makes it clear which type of *préstamo* is being spoken of, then it may be translated by one of the hyponymous terms, *użyczenie* or *pożyczka*.

## 4.2. *Najem* ‘lease’ and *dzierżawa* ‘tenancy’

Another problem related to the phenomenon of hyperonymy-hyponymy in Polish-Spanish translation concerns the translation of the Polish terms *najem* ‘lease’ and *dzierżawa* ‘tenancy’. These two terms have the following legal definitions in KC:

Art. 659. § 1. By the contract of lease (*najem*) the lessor undertakes to give to the lessee the thing for use for a definite or an indefinite period of time and the lessee undertakes to pay the lessor the agreed rent<sup>76</sup>.

Art. 693. § 1. By the contract of tenancy (*dzierżawa*) the landlord undertakes to give to the tenant a thing for use and collection of profits for a definite or an indefinite period of time and the tenant undertakes to pay to the landlord the rent agreed on<sup>77</sup>.

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<sup>76</sup> “Przez umowę najmu wynajmujący zobowiązuje się oddać najemcy rzecz do używania przez czas oznaczony lub nieoznaczony, a najemca zobowiązuje się płacić wynajmującemu umówiony czynsz”.

<sup>77</sup> “Przez umowę dzierżawy wydzierżawiający zobowiązuje się oddać dzierżawcy rzecz do używania i pobierania pożytków przez czas oznaczony lub nieoznaczony, a dzierżawca zobowiązuje się płacić wydzierżawiającemu umówiony czynsz”.

The fundamental difference between these two types of contract in Polish civil law consists in that according to the contract of *najem* it is not allowed to collect the profits from the thing, while according to the contract of *dzierżawa* this is permitted. There is no one-word hyperonym for these two terms in Polish.

The conceptual and terminological situation is different in the Spanish language of law. It has only one term, *arrendamiento* ‘lease or tenancy’ (less frequently called *arriendo*), which is defined in the following articles.

Art. 1542. A lease may be of things, works or services.

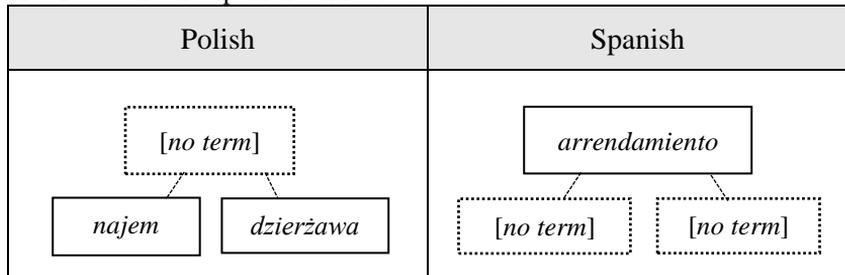
Art. 1543. In a lease of things, one of the parties undertakes to give to the other the enjoyment or use of a thing for a specific time and at a certain price.

Art. 1544. In the lease of works or services, one of the parties undertakes to execute a work or provide a service to the other for a certain price<sup>78</sup>.

In what follows, only the first type of lease distinguished in Spanish civil law, i.e. lease of things defined in Art. 1543, will be dealt with.

A comparison of the meanings of the Polish and Spanish terms makes it possible to represent their semantic relations in Diagram 2.

Diagram 2. Hyperonymy-hyponymy relations of the Polish terms *najem* and *dzierżawa* and the Spanish term *arrendamiento*



<sup>78</sup> “Art. 1542. El arrendamiento puede ser de cosas, o de obras o servicios.

Art. 1543. En el arrendamiento de cosas, una de las partes se obliga a dar a la otra el goce o uso de una cosa por tiempo determinado y precio cierto.

Art. 1544. En el arrendamiento de obras o servicios, una de las partes se obliga a ejecutar una obra o a prestar a la otra un servicio por precio cierto”.

The two Polish terms have no one-word hyperonymous term that would denote their common *genus proximum*. These terms have no direct translation equivalents in Spanish as only the term *arrendamiento* is used there, which should be considered a hyperonym with respect to the Polish *najem* and *dzierżawa* and has no hyponyms that might serve as translation equivalents for the Polish terms. Leaving aside the differences in meaning described above, the Polish terms *najem* and *dzierżawa* and the Spanish term *arrendamiento* are convergent with respect to all crucial dimensions: language variety, territorial scope of the law's application, lect, branch of law, text genre. This situation has the following consequences for the choices made by translators. When translating the Polish term *najem* into Spanish, one can use its hyperonym *arrendamiento* if the context clearly indicates that this contract does not allow the collection of profits. The Polish term *dzierżawa*, in turn, can be translated as *arrendamiento* if the context clearly indicates that this contract does allow the collection of profits. Another solution is to render *najem* into Spanish as a descriptive equivalent, e.g. as a syntagm *arrendamiento de uso*, i.e. 'arrendamiento with the right to use' and the term *dzierżawa* as a syntagm *arrendamiento de uso y disfrute*, i.e. 'arrendamiento with the right to use and to collect profits'. These descriptive equivalents can be found in legal commentaries and academic writing (e.g. Albaladejo 2011b: 251).

**Directive:** If in a Polish text formulated in the language of law the term *najem* 'lease' is used, then it may be translated into Spanish as *arrendamiento* if the context clearly indicates that this contract does not allow the collection of profits or it may be translated as a syntagm *arrendamiento de uso*, i.e. 'arrendamiento with the right to use', which is a descriptive equivalent.

**Directive:** If in a Polish text formulated in the language of law the term *dzierżawa* 'tenancy' is used, then it may be translated into Spanish as *arrendamiento* if the context clearly indicates that this contract allows the collection of profits or as a syntagm *arrendamiento de uso y disfrute*, i.e. 'arrendamiento with the right to use and to collect profits', which is a descriptive equivalent.

The relation of hyperonymy-hyponymy is not difficult to find in any lect, both intra- and interlingually. As the above discussion of some examples has shown, its examination may lead to identifying interesting semantic relationships in the vocabulary of the language of law. Legal translators should be aware of them in order to be able to properly render ST terms into TL. In the case of legal translation prepared for distant recipients for whom it is not necessary to explain in detail semantic differences between particular terms, a hyperonymous or a hyponymous term may sometimes be used as a translation equivalent. By contrast, in the case of legal translation prepared for close recipients, hyperonyms or hyponyms should not be used without modification or further explanation. In such cases, translators may introduce a descriptive equivalent or use a hyperonym or a hyponym with a short explanation or a definition.



## 5. Indeterminate legal concepts and general clauses<sup>79</sup>

It could seem obvious that legal texts should be as precise as possible and free of ambiguity. However, achieving a complete precision and specifying all circumstances that are legally relevant is not only impossible but also, in many cases, undesirable. Therefore, indeterminate legal concepts and general clauses are sometimes used in legal texts. These linguistic means (provided for in the Polish 2002 Regulation of the Prime Minister on Rules for Legislative Technique [Rozporządzenie Prezesa Rady Ministrów w sprawie “Zasad techniki prawodawczej”].) aim at ensuring a flexibility of normative texts. Their chief function is to make it possible to adjust legal regulations to social and economical circumstances that change constantly and to provide for individual cases in the process of the application of law. As observed by Zieliński (1999: 59), when creating law, there is always oscillation between the extreme of the law’s certainty and the extreme of its flexibility.

Polish authors dealing with this issue distinguish between *zwroty nieostre* ‘indeterminate concepts’ (lit. ‘vague expressions’) and *klauzule generalne* ‘general clauses’. Spanish authors, as observed by García Salgado (2003: 106-107), tend to use the terms *conceptos vagos* or *conceptos indeterminados* ‘vague concepts’ or ‘indeterminate concepts’ and *cláusulas generales* ‘general clauses’ interchangeably, i.e. as synonyms, the latter being less frequent. García Salgado disapproves of this practice and points to semantic differences between these terms. For spatial considerations, various theoretical approaches to the distinctions between them cannot be described here and only major points will be indicated in this respect. Law theoreticians who define indeterminate concepts frequently refer to Ziemiński, according to whom an expression is an indeterminate concept (*nazwa nieostra*) if one is unable to tell if an object is or is not a designate of a given term even though one is well familiarized with the properties of the former

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<sup>79</sup> The English term *general clause* is to be understood in the sense of the German *Generalklausel*, not as a synonym of *general contract terms*.

(Ziemiński 1999: 34). Generally speaking, some entities referred to by means of an indeterminate concept can be said with certainty to be their designates and some others can be said with certainty not to be their designates, while yet another group may be dubious in this respect. Zieliński (2002: 168) remarks that indeterminate concepts can occur together with concrete or abstract names. In the latter case, the indeterminacy increases and interpretation of a given term becomes more difficult. It has been postulated that when determining the meaning of an indeterminate concept, one should rely on meanings described in dictionaries of the Polish language rather than on one's own language intuition (Choduń et al. 2013: 35).

A general clause is a semantically indeterminate expression, used in a legal regulation, that refers to extralegal, generally-oriented value criteria and has its exact content determined in the process of the application of law (Leszczyński 1986: 14)<sup>80</sup>. What is important here is the referral to the extralegal reality, more specifically, to a certain system of judgements or extralegal rules of conduct based on certain values (moral, social, religious) acknowledged in a given society (cf. for instance, Wronkowska 2005: 30 and Choduń et al. 2013: 30). Safjan (1990: 51-52) observes that the function of general clauses is to unite the general and individual interest and to implement the postulate of the law's certainty with the necessary "flexibility of judgements in the process of lawmaking" (transl. JNM). General clauses play a special role in civil law. Safjan underscores that their use in this branch of law is linked to the essence of the interpretation of civil law, which is more flexible and more prone to value judgements than interpretation in other branches of law. Civil law, which regulates activities related to the people's everyday life, has to refer to universal values and traditions which are important in a particular society.

In some legal regulations, general clauses are combined with indeterminate concepts, e.g. *ważny interes strony* 'an important interest of a party' or *ważny interes publiczny* 'an important public interest'. Therefore, expressions of this kind require a two-layered interpretation which involves referring to judgements (general clauses) and determining the degree of a property (indeterminate concepts) (Choduń et al. 2013: 31).

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<sup>80</sup> For a discussion of indeterminate concepts and general clauses in the Polish and Spanish language of law see Nowak-Michalska (2016).

Indeterminate concepts and general clauses are a challenge for those who interpret – and translate – legal regulations. Not only should translators of such texts maintain the non-explicitness intended by the legislator in their translations but also take into consideration expressions that are in use in the legal tradition of the TL when determining an appropriate translation equivalent.

This section contains a discussion of two Polish expressions and their possible Spanish translation equivalents that have been arrived at through the application of the parametrization method. These two expressions are: the general clause *zwyczaj miejscowy* ‘local custom’, and the indeterminate concept *należyta staranność* ‘due diligence’. The hierarchy of the proposed relevant dimensions can help translators to establish a TL expression that corresponds, to a lesser or greater extent, to the SL term. However, because of their imprecise meaning, translating such expressions is not an easy task and their sense is subject to interpretation in a given cultural setting. This is linked to the fact that various countries and societies have various legal traditions, interpretative practices and jurisdictions as well as various dominant systems of moral and religious values as well as standards of other type.

### **5.1. *Zwyczaj miejscowy* ‘local custom’**

The Polish expression *zwyczaj miejscowy* ‘local custom’ is used, for instance, in Art. 287 of KC:

The scope of land servitude and the manner of its exercise shall, in the absence of other data, be determined according to the principles of community coexistence while taking local customs into account<sup>81</sup>.

This expression is an example of a general clause, not defined in KC. It is understood as a practice of behaviour that is generally accepted in particular relations, in a particular historical moment and in a particular milieu (Dadańska 2012). In order to ascertain the existence

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<sup>81</sup> “Zakres służebności gruntowej i sposób jej wykonywania oznacza się, w braku innych danych, według zasad współżycia społecznego przy uwzględnieniu zwyczajów miejscowych”.

of a custom, it is necessary for the following factors to co-occur: a practice of behaviour is established in a given social group; this practice has been confirmed through an appropriately long time of its use; a conviction about the need to accept, or to submit, to this rule of behaviour is dominant in the social group (Dadańska 2012).

As a result of the application of the proposed hierarchy of dimensions, the quest for an equivalent is narrowed down, at the very beginning, to CC, in which five similar general clauses can be found: *costumbre del lugar* ‘custom of the place’ (e.g. Art. 485, 570, 591, 1520), *costumbre local* ‘local custom’ (e.g. Art. 587), *costumbre de la tierra* ‘custom of the land’ (e.g. Art. 1579), *costumbre del pueblo* ‘custom of the village’ (e.g. Art. 1578) and *costumbre del país* ‘custom of the country/region’ (e.g. Art. 1287). The synonymy of these expressions was observed by, for instance, Albaladejo and Díaz Alabart (1992: 144-115). As these authors remark, local customs in CC are also referred to by means of the term *uso*, e.g. in Art. 571 (*usos locales* ‘local uses’) and Art. 590 (*usos del lugar* ‘uses of the place). However, as they point out, although *use* is used as a synonym of *costumbre* in the text of CC, these two terms must be distinguished because *uso* refers to practices of behaviour that lack the feature of *opinio iuris sive necessitatis*, i.e. the conviction about the need to accept, or to submit to, this rule of behaviour.

In the light of the above considerations, a conclusion can be drawn that the five synonymous expressions containing the term *costumbre* are appropriate translation equivalents for the Polish expression *zwyczaj miejscowy*. These expressions are convergent with respect to all relevant dimensions, which is presented in Table 7.

In consequence, the following directive can be formulated.

**Directive:** If in a Polish text formulated in the language of law the term *zwyczaj miejscowy* is used, then it should be translated into Spanish as *costumbre del lugar*, *costumbre local*, *costumbre de la tierra*, *costumbre del pueblo*, or *costumbre del país*. These terms are convergent with respect to the dimensions of language variety, territorial scope of the law’s application, lect, branch of law and text genre, and therefore may be considered sufficiently equivalent.

Table 7. Parametric characterization of the Polish term *zwyczaj miejscowy* and its Spanish equivalents.

Dimension	Terms	
	Polish term (SL)	Spanish terms (TL)
	<i>zwyczaj miejscowy</i>	<ol style="list-style-type: none"> <li>1. <i>costumbre del lugar</i></li> <li>2. <i>costumbre local</i></li> <li>3. <i>costumbre de la tierra</i></li> <li>4. <i>costumbre del pueblo</i></li> <li>5. <i>costumbre del país</i></li> </ol>
Language variety	indeterminacy	Peninsular Spanish
Territorial scope of the law's application	nationwide	nationwide
Lect	legal language	legal language
Branch of law	civil law	civil law
Text genre	legislation	legislation
Text sub-genre	code	code

## 5.2. *Należyta staranność* 'due diligence'

An example of an indeterminate concept that will be discussed here in the context of Polish-Spanish legal translation is *należyta staranność* 'due diligence' (a concept examined at length in Sośniak 1980). It is defined in Art. 355 of KC as follows:

§ 1. The debtor shall be obliged to show diligence which is generally required in the relations of a given kind (due diligence [*należyta staranność*]).

§ 2. The debtor's due diligence within the scope of his economic activity shall be specified while taking into account the professional character of that activity<sup>82</sup>.

<sup>82</sup> "Dłużnik obowiązany jest do staranności ogólnie wymaganej w stosunkach danego rodzaju (*należyta staranność*)".

After analyzing the text of CC, it can be claimed that the Polish term *należyta staranność* can be translated into Spanish by means of the expression *diligencia de un buen padre de familia* or *diligencia propia de un buen padre de familia*. In a word-for-word translation, the Spanish expression means ‘the diligence of a good father of a family’ but it should not be interpreted literally. The expression *buen padre de familia* is a calque of the Latin expression *bonus pater familias*, a concept of Roman law defined as follows:

The average type of an honest, prudent (*prudens*) and industrious (*diligens, studiosus*) man (father of a family), whose behavior in relations with other citizens is given as a pattern of an upright man and may be required from any one. Acting contrary to what a *bonus pater familias* would do in a given situation may serve as a basis for measuring his culpability and liability in a specific case (Berger 2004 [1953]: 377)<sup>83</sup>.

This expression is used, for instance, in Art. 1094:

The person obliged to give something is also obliged to preserve it with the diligence of an orderly paterfamilias<sup>84</sup>.

It is convergent with the Polish expression *należyta staranność* with respect to all relevant dimensions, which is presented in Table 8.

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§ 2. Należyta staranność dłużnika w zakresie prowadzonej przez niego działalności gospodarczej określa się przy uwzględnieniu zawodowego charakteru tej działalności”.

<sup>83</sup> This concept is or was used also in some other national legal systems. In France, the concept of *bon père de famille* was in use until 2014, when a reform replaced it by phrases referring to the property of *raisonnable* ‘reasonable’, because *bon père de famille* was considered patriarchal and incomprehensible (Tomás Martínez 2015: 58-65). In Spain, there has been no similar political or juridical debate aiming at such a solution (Tomás Martínez 2015: 59).

<sup>84</sup> “El obligado a dar alguna cosa lo está también a conservarla con la diligencia propia de un buen padre de familia”.

Table 8. Parametric characterization of the Polish term *należyta staranność* and the Spanish term *diligencia de un buen padre de familia*.

Dimension	Terms	
	Polish term (SL)	Spanish term (TL)
	<i>należyta staranność</i>	<i>diligencia de un buen padre de familia</i>
Language variety	indeterminacy	Peninsular Spanish
Territorial scope of the law's application	nationwide	nationwide
Lect	legal language	legal language
Branch of law	civil law	civil law
Text genre	legislation	legislation
Text sub-genre	code	code

*Diligencia de un buen padre de familia* does not seem to be the only possible translation equivalent of *należyta staranność*. In Art. 1908, another possible equivalent, the expression *debida diligencia*, is used:

Likewise, the owners shall be liable for damages caused: 1. By the explosion of machines which have not been taken care of with due diligence (*debida diligencia*), and by the inflammation of explosive substances which have not been put in a safe and suitable place<sup>85</sup>.

However, the phrase *debida diligencia* is used only once in CC (and once in LEC, Art. 627.1), while phrases referring to the concept of *buen padre de familia* are used eleven times in CC and, as de Heredia de Onís (1984 :80) observes, a number of other articles in which this term is not explicitly mentioned cross-refer to articles where it is. As a consequence, translators who need to translate the Polish expression *należyta staranność* into Spanish have to choose between *debida diligencia*, which is a more literal counterpart of the source language

<sup>85</sup> “Igualmente responderán los propietarios de los daños causados:

1.º Por la explosión de máquinas que no hubiesen sido cuidadas con la debida diligencia, y la inflamación de sustancias explosivas que no estuviesen colocadas en lugar seguro y adecuado”.

term but is used rather exceptionally, and *diligencia de un buen padre de familia*, which is used quite regularly in CC but is far from being a literal counterpart of the Polish term. The latter term seems a better equivalent because, apart from conveying the corresponding meaning, it is used in Spanish legal tradition on a regular basis. As a consequence, the following directive can be formulated.

**Directive:** If in a Polish text formulated in the language of law the term *należyta staranność* is used, then it should be translated into Spanish as *diligencia de un buen padre de familia* (or *diligencia propia de un buen padre de familia*). These terms are convergent with respect to the dimensions of language variety, territorial scope of the law's application, lect, branch of law and text genre, and therefore may be considered sufficiently equivalent.

The above paragraphs can be summed up by saying that indeterminate concepts and general clauses should be rendered in the target language by means of indeterminate concepts and general clauses, too. In the case of the Polish expressions discussed above, it was possible to find their Spanish translation equivalents that are correspondingly indeterminate phrases used in Spanish legislation. If such terms cannot be found in such texts, appropriate expressions characterized by the right degree of indeterminacy in TL should be created by the translator.

## 6. False cognates and true cognates

False cognates are pairs of terms used in two different languages that are (nearly) homophonous and/or (nearly) homographic but have different meanings. Examples from general language include: English *sympathetic* versus Polish *sympatyczny* ‘nice, pleasant’; English *pathetic* versus Polish *patetyczny* ‘pompous’. Normally, they are convergent in terms of their etymology but they diverge with respect to their meanings, which result from different semantic changes they have undergone historically. A significant number of such false cognates involving legal language (more specifically, the language of civil law) can be found for the Polish-Spanish language pair. In both languages, these units are of Latin origin (only such instances have been found in the course of the analysis), yet their presence in either of these two languages is due to different reasons. In Spanish, which is a Romance language, they have been inherited in the process of its historical development or coined in more recent time according to its grammatical and derivational system. By contrast, in Polish, these terms are loanwords taken over from Western European languages (German, French), or much less often, directly from Latin.

Cases in which both the Polish and Spanish terms of a false cognate pair belong to the vocabulary of civil law are rare. This is, for instance, the case of the Polish *sentencja* and Spanish *sentencia*, both deriving from the Latin word *sententia* ‘feeling, opinion, sentence’. The Polish *sentencja* denotes the written part of a legal judgment comprising the disposition (cf. Cioch and Studzińska 2012: 282). By contrast, the Spanish term *sentencia* refers to the judgment as a whole (cf. Montero Aroca 2014: I, 325-326) and thus corresponds to the Polish term *wyrok* which can be defined as follows “A sentence (*wyrok*) refers to a court’s ruling which decides on the merits of the case” (Cioch and Studzińska 2012: 282, transl. JNM)<sup>86</sup>. In consequence, the following translation directives may be formulated.

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<sup>86</sup> “Wyrok jest to orzeczenie sądu rozstrzygające sprawę merytorycznie (co do istoty sprawy)”.

**Directive:** If in a Polish text formulated in the language of law the term *sentencja* is used, then it should not be translated into Spanish as *sentencia*. These terms are convergent with respect to the dimensions of language variety, territorial scope of the law's application, lect, branch of law, text genre and share their etymology but they diverge with respect to their meanings due to their historical evolution and therefore may not be considered sufficiently equivalent.

**Directive:** If in a Spanish text formulated in the language of law the term *sentencia* is used, then it should be translated into Polish as *wyrok*. These terms are convergent with respect to the dimensions of language variety, territorial scope of the law's application, lect, branch of law and text genre and therefore may be considered sufficiently equivalent.

There are also pairs in which one term belongs to the vocabulary of civil law while the other one is part of the domain of another branch of law. At this moment, the dimension of branch of law helps to avoid a potential mistranslation. An example of this type is the pair composed of the Spanish *resolución* and Polish *rezolucja*. The Spanish term means 'decision, ruling of a civil court' (cf. Montero Aroca 2014: I, 325), and should be translated into Polish as *orzeczenie (sądowe)*, which can be defined as a civil court's decision that concern the merits of the case or formalities (cf. Knoppek 2015: 384). The Polish term, *rezolucja*, in turn, means 'resolution', and is mainly used in the context of international law; for instance, the term *rezolucja* refers in Polish to resolutions adopted by the United Nations, never to rulings issued by Polish courts. In consequence the following translation directives may be formulated.

**Directive:** If in a Spanish text formulated in the language of law the term *resolución* is used, then it should not be translated into Polish as *rezolucja*. These terms are complementary with respect to the dimension of branch of law and diverge in respect to their meanings and therefore may not be considered sufficiently equivalent.

**Directive:** If in a Spanish text formulated in the language of law the term *resolución* is used, then it should be translated into Polish as *orzeczenie*. These terms are convergent with respect to the dimensions of language variety, territorial scope of the law's application, lect,

branch of law and text genre, and therefore may be considered sufficiently equivalent.

The corpus contains more false cognate pairs in which it is the Spanish term that belongs to the language of civil law, the Polish term being a lexeme of general language. The relatively large frequency of such pairs in these texts is due to the fact that has been referred to above: in Spanish, these terms are elements of its Romance vocabulary inherited from Latin, while in Polish they are loanwords of Latin origin. Examples are given in Table 9 (for CC) and Table 10 (for LEC).

Table 9. Examples of false cognates involving Spanish terms used in CC.

Spanish term (legal meaning)	Polish false cognate (non-legal meaning)	Proper Polish translation of the Spanish term
<i>acción</i> 'action'	<i>akcja</i> 'action; campaign'	<i>powództwo, roszczenie</i>
<i>posesión</i> 'possession'	<i>posesja</i> 'estate, property'	<i>posiadanie</i>
<i>condición</i> 'condition'	<i>kondycja</i> 'shape, condition'	<i>warunek</i>
<i>celebrar (un contrato)</i> 'to sign, to make (a contract)'	<i>celebrować</i> 'to celebrate (a mass); to make a ritual (out of something)'	<i>zawrzeć/zawierać (umowę)</i>
<i>persona</i> 'person'	<i>persona</i> 'personage'	<i>osoba</i>

In consequence, the following translation directives may be formulated.

**Directive:** If in a Spanish text formulated in the language of law the term *acción* is used, then it should not be translated into Polish as *akcja*. These terms are complementary with respect to the dimension of lect and diverge in respect to their meanings and therefore may not be considered sufficiently equivalent.

**Directive:** If in a Spanish text formulated in the language of law the term *acción* is used, then it should be translated into Polish as *powództwo, roszczenie*. These terms are convergent with respect to the dimensions of language variety, territorial scope of the law's

application, lect, branch of law and text genre, and therefore may be considered sufficiently equivalent.

**Directive:** If in a Spanish text formulated in the language of law the term *posesión* is used, then it should not be translated into Polish as *posesja*. These terms are complementary with respect to the dimension of lect and diverge in respect to their meanings and therefore may not be considered sufficiently equivalent.

**Directive:** If in a Spanish text formulated in the language of law the term *posesión* is used, then it should be translated into Polish as *posiadanie*. These terms are convergent with respect to the dimensions of language variety, territorial scope of the law's application, lect, branch of law and text genre and therefore may be considered sufficiently equivalent.

**Directive:** If in a Spanish text formulated in the language of law the term *condición* is used, then it should not be translated into Polish as *kondycja*. These terms are complementary with respect to the dimension of lect and diverge in respect to their meanings and therefore may not be considered sufficiently equivalent.

**Directive:** If in a Spanish text formulated in the language of law the term *condición* is used, then it should be translated into Polish as *warunek*. These terms are convergent with respect to the dimensions of language variety, territorial scope of the law's application, lect, branch of law and text genre, and therefore may be considered sufficiently equivalent.

**Directive:** If in a Spanish text formulated in the language of law the term *celebrar (un contrato)* is used, then it should not be translated into Polish as *celebrować*. These terms are complementary with respect to the dimension of lect and diverge in respect to their meanings and therefore may not be considered sufficiently equivalent.

**Directive:** If in a Spanish text formulated in the language of law the term *celebrar (un contrato)* is used, then it should be translated into Polish as *zawrzeć/zawierać (umowę)*. These terms are convergent with respect to the dimensions of language variety, territorial scope of the

law's application, lect, branch of law and text genre, and therefore may be considered sufficiently equivalent.

**Directive:** If in a Spanish text formulated in the language of law the term *persona* is used, then it should not be translated into Polish as *persona*. These terms are complementary with respect to the dimension of lect and diverge in respect to their meanings and therefore may not be considered sufficiently equivalent.

**Directive:** If in a Spanish text formulated in the language of law the term *persona* is used, then it should be translated into Polish as *osoba*. These terms are convergent with respect to the dimensions of language variety, territorial scope of the law's application, lect, branch of law and text genre, and therefore may be considered sufficiently equivalent.

Table 10. Examples of false cognates involving Spanish terms used in LEC.

Spanish term (legal meaning)	Polish false cognate (non-legal meaning)	Proper Polish translation of the Spanish term
<i>audiencia</i> 'hearing'	<i>audiencja</i> 'audience'	<i>rozprawa</i>
<i>rebeldía</i> 'contumacy'	<i>rebelia</i> 'rebellion'	<i>niestawiennictwo</i>
<i>prueba</i> 'evidence, proof'	<i>próba</i> 'test, trial'	<i>dowód</i>

**Directive:** If in a Spanish text formulated in the language of law the term *audiencia* is used, then it should not be translated into Polish as *audiencja*. These terms are complementary with respect to the dimension of lect and diverge in respect to their meanings and therefore may not be considered sufficiently equivalent.

**Directive:** If in a Spanish text formulated in the language of law the term *audiencia* is used, then it should be translated into Polish as *rozprawa*. These terms are convergent with respect to the dimensions of language variety, territorial scope of the law's application, lect, branch of law and text genre, and therefore may be considered sufficiently equivalent.

**Directive:** If in a Spanish text formulated in the language of law the term *rebeldía* is used, then it should not be translated into Polish as *rebelia*. These terms are complementary with respect to the dimension of lect and diverge in respect to their meanings and therefore may not be considered sufficiently equivalent.

**Directive:** If in a Spanish text formulated in the language of law the term *rebeldía* is used, then it should be translated into Polish as *niestawiennictwo*. These terms are convergent with respect to the dimensions of language variety, territorial scope of the law’s application, lect, branch of law and text genre, and therefore may be considered sufficiently equivalent.

**Directive:** If in a Spanish text formulated in the language of law the term *prueba* is used, then it should not be translated into Polish as *próba*. These terms are complementary with respect to the dimension of lect and diverge in respect to their meanings and therefore may not be considered sufficiently equivalent.

**Directive:** If in a Spanish text formulated in the language of law the term *prueba* is used, then it should be translated into Polish as *dowód*. These terms are convergent with respect to the dimensions of language variety, territorial scope of the law’s application, lect, branch of law and text genre, and therefore may be considered sufficiently equivalent.

Pairs with the Polish term belonging to the language of law are significantly less frequent. Examples are given in Table 11.

Table 11. Examples of false cognates involving Polish terms used in KC and KPC.

Polish term (legal meaning)	Spanish false cognate (non-legal meaning or usage)	Proper Spanish translation of the Polish term
<i>aukcja</i> <sup>87</sup> ‘auction’ (used in KC)	<i>aucción</i> ‘auction’	<i>subasta</i>
<i>konkurencja</i> ‘competition’ (used in KPC)	<i>concurrencia</i> ‘concurrence’	<i>competición</i>

<sup>87</sup> For a detailed discussion of this term see Sections 2.3.6. and 10.2.

In what follows, translation directives are formulated.

**Directive:** If in a Polish text formulated in the language of law the term *aukcja* is used, then it should not be translated into Spanish as *aucción*. These terms are complementary with respect to the dimension of lect and therefore may not be considered sufficiently equivalent.

**Directive:** If in a Polish text formulated in the language of law the term *aukcja* is used, then it should be translated into Polish as *subasta*. These terms are convergent with respect to the dimensions of language variety, territorial scope of the law's application, lect, branch of law and text genre, and therefore may be considered sufficiently equivalent.

**Directive:** If in a Polish text formulated in the language of law the term *konkurencja* is used, then it should not be translated into Spanish as *concurrentia*. These terms are complementary with respect to the dimension of lect and diverge in respect to their meanings and therefore may not be considered sufficiently equivalent.

**Directive:** If in a Polish text formulated in the language of law the term *konkurencja* is used, then it should be translated into Polish as *competición*. These terms are convergent with respect to the dimensions of language variety, territorial scope of the law's application, lect, branch of law and text genre, and therefore may be considered sufficiently equivalent.

Apart from false cognates, a number of true cognates can be found in the texts of the Polish and Spanish civil codes and codes of civil procedure. This means that the Spanish cognate of a Polish term can be used as a translation equivalent of the latter. Examples of this phenomenon include the following pairs given in Table 12 (for KC and CC) and Table 13 (for KPC and LEC).

Table 12. Examples of true cognates in KC and CC.

Polish term	Spanish term	English translation
<i>termin</i>	<i>término</i>	'date (legal meaning)'
<i>oferta</i>	<i>oferta</i>	'offer'
<i>solidarny</i>	<i>solidario</i>	'joint (e.g. debtor)'
<i>renta</i>	<i>renta</i>	'pension'

Table 13. Examples of true cognates in KPC and LEC.

<b>Polish term</b>	<b>Spanish term</b>	<b>English translation</b>
<i>proces</i>	<i>proceso</i>	‘lawsuit, process, trial’
<i>interwienient</i>	<i>interveniente</i>	‘intervenor’
<i>kuratela</i>	<i>curatela</i>	‘guardianship’
<i>notariusz</i>	<i>notario</i>	‘notary public’
<i>testament</i>	<i>testamento</i>	‘will, testament’
<i>egzekucja</i>	<i>ejecución</i>	‘execution, enforcement proceedings’
<i>alimenty</i>	<i>alimentos</i>	‘maintenance, alimony’

To conclude, it is obvious that the existence of false cognates is a trap that translators should beware of. Phonetic or graphic similarity between two terms, based on a common etymology, may mislead an inadvertent translator into selecting an inappropriate term as a translation equivalent. The ability to identify and avoid such false cognates is one of the fundamental skills of a good translator.

## 7. Metaphors

Metaphor will be understood here as defined within the framework of conceptual metaphor theory developed by cognitive semanticists (cf. Lakoff and Johnson 1980). According to this approach, a metaphor consists in referring to a certain domain, termed ‘target domain’, i.e. the topic one wants to speak of, by means of lexical means typically (i.e. as far as their literal meaning is concerned) associated with another domain, termed ‘source domain’. Metaphorical expressions are often not used in isolation but tend to be based on patterns. For instance, if discussion is metaphorically conceived of as a war or a battle, it is characterized by its corresponding military elements: it can be lost or won, adversaries attack one another, etc.

Metaphors are considered to be a common phenomenon in everyday language by cognitive semanticists and as such they may also be frequently found in the language of law. In this chapter, two metaphors and their possible Spanish equivalents will be discussed, namely the expression *termin biegnie* ‘the term runs’ and *termin upływa* ‘the term ends’ (lit. ‘the term flows away’).

### 7.1. *Termin biegnie* ‘the term runs’

The metaphorical expression *termin biegnie (od)* ‘the term runs (from)’, also phrased as *termin zaczyna bieć (od)* ‘the term commences to run (from)’, is used in KC and KPC to refer to the day from which a period of time is counted. The noun *termin*, according to the definition given by Dubisz (2004, s.v.), means “time set for performing an action or fulfilling some conditions”<sup>88</sup>. The expression in question contains the noun *termin* ‘term, period’ as the subject of the verb *biegnie* ‘(it) runs’.

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<sup>88</sup> “czas wyznaczony na wykonanie jakiejś czynności, na dopełnienie jakichś warunków”. Another meaning of this word given in this dictionary, “a particular day or month in which something is due to take place” (“konkretny dzień lub miesiąc, w którym coś ma nastąpić”), is not relevant for the present considerations.

In its most literal meaning, this verb refers to the quick movement of living creatures, such as some animals and humans, by means of paws or legs. Metaphorically, it is used in reference to the flow or current of rivers, streams etc; one can say, for instance, *Strumień biegnął ku rzece* ‘The stream ran towards the river’ (Dubisz 2004, s.v.). Thus, the flowing water (target domain) is metaphorized as a quickly moving animal (source domain). Another target domain that uses this source domain refers to the lapsing time to be counted in legal relations<sup>89</sup>. Such a metaphorical expression is used, for example, in Art. 581 § 1 of KC, where one reads:

(...) the period of guarantee shall run (*biegnie*) anew from the moment of delivering the thing free from defects or the delivery of the repaired thing<sup>90</sup>.

In order to find an adequate translation equivalent for this expression, the proposed hierarchy of dimensions has been applied, which resulted in identifying four possible equivalents in CC. Three of them use the same metaphor as the Polish expression (present indicative forms are given even if other forms are used in CC):

- (i) *el tiempo corre (de/desde)* ‘the period runs (from)’, e.g. Art. 1970 of CC; also phrased as *el tiempo empieza a correr* ‘the period commences to run’, e.g. Art. 1301 of CC,
- (ii) *el plazo corre (de/desde)* ‘idem’, e.g. Art. 1806 of CC; also phrased as *el plazo empieza a correr* ‘the period commences to run’, e.g. Art. 1806 of CC,
- (iii) *el término corre (de/desde)* ‘idem’, e.g. art. 1972 of CC.

In these Spanish expressions, three synonymous nouns *tiempo*, *plazo*, and *término* are used as subjects of the verb *correr* ‘to run’. This verb, like its Polish counterpart *biec*, refers to the quick movement of some living creatures by means of paws or legs. It can also be used to speak of the current or flow of a river. In addition, it may denote the movement of air (cf. definitions in the DRAE dictionary). In consequence, it can

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<sup>89</sup> Another possible interpretation is to assume that the target domain of the flowing water has become the source domain for the reference to the lapsing time.

<sup>90</sup> “(...) termin gwarancji biegnie na nowo od chwili dostarczenia rzeczy wolnej od wad lub zwrócenia rzeczy naprawionej”.

be said that these Spanish translation equivalents of the Polish metaphorical expression are its literal translations.

In CC, another, non-metaphorical synonymous equivalents of the Polish expression can be found, namely:

- (i) *el plazo (se) contará (desde)* ‘the period shall be counted (from)’, e.g. Art. 137 of CC,
- (ii) *el tiempo (se) contará (desde)* ‘idem’, e.g. Art. 538 of CC,
- (iii) *el término (se) contará (desde)* ‘idem’, e.g. Art. 1638 of CC.

In these Spanish expressions, three synonymous nouns *tiempo*, *plazo*, and *término* function as subjects of the verb *contar* ‘to count’ (used in these expressions in the future tense). An analogous non-metaphorical expression, *termin liczy się od* ‘the period shall be counted from’, is also used in Polish, in KPC, e.g. in Art. 357 § 3. In Table 14, the parametric characterization of the Polish expression and its possible Spanish equivalents is presented.

Table 14. Parametric characterization of the Polish term *termin biegnie* and its Spanish equivalents.

Dimension	Terms	
	Polish term (SL)	Spanish terms (TL)
	<i>termin biegnie</i>	<ol style="list-style-type: none"> <li>1. <i>el tiempo corre (de/desde)</i></li> <li>2. <i>el plazo corre (de/desde)</i></li> <li>3. <i>el término corre (de/desde)</i></li> <li>4. <i>el plazo (se) contará (desde)</i></li> <li>5. <i>el tiempo (se) contará (desde)</i></li> <li>6. <i>el término (se) contará (desde)</i></li> </ol>
Language variety	indeterminacy	Peninsular Spanish
Territorial scope of the law’s application	nationwide	nationwide
Lect	legal language	legal language
Branch of law	civil law	civil law
Text genre	legislation	legislation

To sum up the above considerations, in the Spanish language, metaphorical expressions can be found that are analogous to those used in Polish. However, in Spanish, greater synonymy can be observed because in the metaphorical expression that corresponds to the Polish one three synonymous nouns meaning ‘term, period’ can be used: *tiempo*, *plazo*, and *término*. Other translation equivalents that can be used in Spanish are non-metaphorical expressions: *el plazo contará (de/desde)*, *el tiempo (se) contará (desde)*, *el término (se) contará (desde)* – all of them occur in CC. Also in this case, Spanish is characterised by greater synonymy because of the use of three synonymous nouns meaning ‘term, period’. Having made the above observations, the following directive can be formulated.

**Directive:** If in a Polish text formulated in the language of law the expression *termin biegnie* is used, then it may be translated into Spanish as *el tiempo corre*, *el plazo corre*, *el término corre*, *el plazo (se) contará*, *el tiempo (se) contará (desde)* or *el término (se) contará (desde)*. These terms are convergent with respect to the dimensions of language variety, territorial scope of the law’s application, lect, branch of law and text genre, and therefore may be considered sufficiently equivalent.

## 7.2. *Termin upływa* ‘the term ends’

The second metaphor that will be discussed here is another expression containing the term *termin* used in KC, namely *termin upływa* ‘the term ends’. This expression refers to the termination of a particular period set for performing an action or fulfilling some conditions. The noun *termin* ‘term, period’ is used here as subject of the verb *upływa*. This verb, in its literal meaning (one of the meanings given in the dictionary by Doroszewski 1958-69), is defined as “said of water: to flow away”<sup>91</sup>. Used in a metaphorical sense, it means: ‘to end’, for example, in Art. 112 of KC.

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<sup>91</sup> “o wodzie: płynąc oddalić się, spłynąć”. This meaning is qualified as ‘dated’ in the dictionary but this fact does not invalidate the statements made here.

However, in the case of calculating the age of a natural person, the time period shall end (*upływa*) as of the commencement of the last day<sup>92</sup>.

An analysis of relevant Spanish acts makes it possible to identify a potential Spanish translation equivalent of this expression, *el plazo expira*, which is a metaphorical phrase, too, yet based on another source domain. The noun *plazo* ‘term, period’ is the subject of the verb *expira*, which, in its literal meaning, is a euphemism for ‘to die’, if said of a human being. In the metaphorical sense, it means ‘to end, to terminate’ and refers to periods of time (for instance, in Art. 5 of CC). The Polish expression and the proposed Spanish equivalent are convergent with respect to all relevant dimensions, which is presented in Table 15.

Table 15. Parametric characterization of the Polish term *termin upływa* and its Spanish equivalent *el plazo expira*.

Dimension	Terms	
	Polish term (SL)	Spanish terms (TL)
	<i>termin upływa</i>	<i>el plazo expira</i>
Language variety	indeterminacy	Peninsular Spanish
Territorial scope of the law’s application	nationwide	nationwide
Lect	legal language	legal language
Branch of law	civil law	civil law
Text genre	legislation	legislation

Having considered this, the following directive can be formulated.

**Directive:** If in a Polish text formulated in the language of law the expression *termin upływa* is used, then it may be translated into Spanish as *el plazo expira*. These terms are convergent with respect to the dimensions of language variety, territorial scope of the law’s

<sup>92</sup> “Jednakże przy obliczaniu wieku osoby fizycznej termin upływa z początkiem ostatniego dnia”.

application, lect, branch of law and text genre, and therefore may be considered sufficiently equivalent.

Both Polish metaphors analyzed above are based on the same pattern: the passage of time is referred to by means of the vocabulary typically used to refer to the flow of water (although in the case of the verb *biec* 'to run', the source domain can also be identified on a more literal level, viz. in the quick movement of living creatures by means of paws or legs).

Metaphors are a common phenomenon not only in literary texts or vernacular language but also in texts formulated in language for specific purposes. In legal texts, too, numerous metaphorical expressions can be found. In the process of translation, they may sometimes be rendered as metaphorical equivalents but these do not have to be based on the same source domain. Obviously, it is also possible that an adequate equivalent does not have a metaphorical character.

## 8. Euphemisms

Euphemisms are expressions substituted for ones that are considered offensive or unpleasant. As such, they refer to a particular thing or phenomenon in an indirect, sometimes vague way or give it a milder name. Euphemisms can also be found in legal language, which is supposed to be neutral and free of emotion-laden expressions. Then, they often refer to sex, diseases, death, addictions and crimes. However, legal texts do not contain many euphemisms; as far as the Polish codes are concerned, they are most numerous in the Criminal Code (Kodeks karny) and Petty Offences Code (Kodeks wykroczeń) (Leśniak 2011: 123). As observed by Leśniak, the most numerous group of euphemisms in pieces of Polish legislation (*ustawy*) examined by her, including the Act on Upbringing in Sobriety and Counteracting Alcoholism, refers to drinking alcohol, getting drunk and various degrees of the state of intoxication (2011: 126). This author remarks that the legislator does not use euphemisms consistently and often employs synonymous expressions to denote the same concepts, which results in the lack of clarity and in incomprehensibility of legal texts (2011: 128). In the Polish part of the corpus examined for the needs of the present study, i.e. KC and KPC, few euphemisms can be found. Among them, no euphemisms denoting the abuse of alcohol occur, which is referred to by means of *pijaństwo* ‘drunkenness’ (Art. 13 of KC), a term that is not softened in any way. In the present chapter, two euphemisms used in KC will be discussed: *osoba niepełnosprawna* ‘disabled person’ and *kara pozbawiona wolności* ‘punishment in the form of deprivation of liberty’.

### 8.1. *Osoba niepełnosprawna* ‘disabled person’

The first euphemism to be discussed here refers to persons who have a physical, psychological or mental impairment. In current legal acts, the term *osoba niepełnosprawna* ‘disabled person’ is used rather than, for instance, *inwalida* ‘invalid’ or the pejorative term *kaleka* ‘cripple’. This

euphemism has replaced the term *osoba ułomna* that had been in use in earlier legal regulations. The term *osoba ułomna* itself had been, at a time, considered an euphemism, today, however, it is interpreted by many as a pejorative expression, possibly due to the fact that *ułomny* means not only ‘disabled’ but also ‘imperfect’, for instance, in the phrase *ułomna natura ludzka* ‘the imperfect human nature’. Pertinent changes were introduced to KC and KRO through an amendment in 2007. The case of *osoba niepełnosprawna* is used as an example by Leśniak to indicate the current tendency to replace some expressions employed in legal texts by euphemistic ones. She observes that the justification of the 2007 amendment consisted in that the expression *osoba ułomna* can be construed as pejorative in view of the more and more frequent use of the objectivized term *osoba niepełnosprawna* (Leśniak 2011: 127). It seems that this process is linked to a growing social awareness on one hand and to political correctness and striving to use neutral (inclusive) language that does not discriminate against particular groups on the other. It should be remarked that changes of this type are often accompanied by a social discussion in which various attitudes towards the pejorative or discriminating character of particular words or its absence, in both legal and general language, are voiced.

The term *niepełnosprawność* ‘disability’ is defined in the Act on Occupational and Social Rehabilitation and Employment of the Disabled (Ustawa o rehabilitacji zawodowej i społecznej oraz zatrudnianiu osób niepełnosprawnych). According to its Art. 2 (10), *niepełnosprawność* is a permanent or temporary inability to perform social roles resulting from a permanent or prolonged disturbance of the efficiency of a person’s body, in particular if it makes them unfit for work. In KPC, this term is used consistently. By contrast, it does not occur in KC, where the term *ułomność* is employed (once, in Art. 7644).

In Spanish, the situation looks quite similar. Expressions that had been in use at an earlier time begin to be construed as pejorative and are replaced with euphemisms. When searching for an appropriate translation equivalent for the Polish term *osoba niepełnosprawna*, it is crucial not only to examine relevant comparable texts, i.e. CC, LEC and LJV, but first and foremost to be familiar with the Act on Personal Autonomy Promotion and Care for Dependent Persons (Ley de Promoción de la Autonomía Personal y Atención a las personas en situación de dependencia). This legal act contains a regulation according to which the term *persona(s) con discapacidad*, lit. ‘person(s) with disability’ must be used in normative texts created by public

administration instead of the formerly used *minusválido(s)* and *persona(s) con minusvalía* (both derived from Latin *minus* ‘less’ and *validus* ‘strong’). The latter terms had been introduced into legal usage in 1986 to replace yet other legal terms, considered very offensive nowadays: *subnormal*, for ‘disabled person’, and *subnormalidad*, for ‘disability’.

After analyzing the texts of CC, LEC and LJV, it can be concluded that they have generally been adapted to the regulation presented above and that the term *persona(s) con discapacidad* is used there on a regular basis. In CC, however, nouns indicating more specific categories of people are used together with the general term *persona* ‘person’, e.g. *menores con discapacidad* ‘disabled minors’ (lit. ‘minors with a disability’) and *legitimarios con discapacidad* ‘disabled forced heirs’ (lit. ‘forced heirs with a disability’). Art. 822 of CC contains the sole occurrence of another term, *legitimario discapacitado* ‘a disabled forced heir’. Table 16 shows the parametric characterization of the Polish term under consideration and its proposed Spanish translation equivalent.

Table 16. Parametric characterization of the Polish term *osoba niepełnosprawna* and its Spanish equivalent *persona con discapacidad*.

Dimension	Terms	
	Polish term (SL)	Spanish terms (TL)
	<i>osoba niepełnosprawna</i>	<i>persona con discapacidad</i>
Language variety	indeterminacy	Peninsular Spanish
Territorial scope of the law’s application	nationwide	nationwide
Lect	legal language	legal language
Branch of law	civil law	civil law
Text genre	legislation	legislation

In the light of the above considerations, the following directive can be formulated.

**Directive:** If in a Polish text formulated in the language of law the expression *osoba niepełnosprawna* is used, then it should be translated into Spanish as *persona con discapacidad*. These terms are convergent with respect to the dimensions of language variety, territorial scope of the law's application, lect, branch of law and text genre, and therefore may be considered sufficiently equivalent.

## **8.2. *Kara pozbawienia wolności* 'punishment in the form of deprivation of liberty'**

The second euphemism that will be dealt with here is the Polish phrase *kara pozbawienia wolności* 'punishment in the form of deprivation of liberty' (lit. 'punishment of deprivation of liberty'), an expression that is less direct than the phrase *kara więzienia* used in the colloquial language. In the latter lect type, a number of other expressions denoting incarceration are obviously used as well but they need not be considered here. The expression *kara pozbawienia wolności* is a term typically used in criminal law, however, it also occurs in KPC. However, it is not as obviously euphemistic as the expression *osoba niepełnosprawna* discussed above. Its euphemistic character may be debatable for some, but, arguably, it is likely to be construed as less direct and therefore milder than *kara więzienia*.

An examination of CC makes it possible to find a potential Spanish translation equivalent of this euphemism, namely *pena privativa de libertad*, an expression which happens to be a very close translation of the Polish one. This Spanish term is also used in LJV, but not in LEC. It also occurs several times in the Spanish Criminal Code, as a synonym of the much more frequent *pena de prisión*. The latter expression, in turn, is a very close translation of the Polish *kara więzienia*. Table 17 shows the parametric characterization of the expressions in question.

Table 17. Parametric characterization of the Polish terms *kara pozbawienia wolności* and *kara więzienia* and the Spanish terms *pena privativa de libertad* and *pena de prisión*.

Dimension	Terms			
	Polish term I (SL)	Polish term II (SL)	Spanish term I (TL)	Spanish term II (TL)
	<i>kara pozbawienia wolności</i>	<i>kara więzienia</i>	<i>pena privativa de libertad</i>	<i>pena de prisión</i>
Language variety	indeterminacy	indeterminacy	Peninsular Spanish	Peninsular Spanish
Territorial scope of the law's application	nationwide	indeterminacy	nationwide	nationwide
Lect	legal language	vernacular language	legal language	legal language
Branch of law	civil law criminal law	indeterminacy	civil law criminal law	criminal law
Text genre	legislation	indeterminacy	legislation	legislation

The above considerations can be summed up as follows. As shown in Table 17, two terms, *pena privativa de libertad* and *pena de prisión*, can serve as Spanish translation equivalents of the Polish expression *kara pozbawienia wolności* used in the legal lect. They both have the same meaning as the Polish term, however, only *pena privativa de libertad* has the same euphemistic character; *pena de prisión* would rather correspond to the more direct expression *kara więzienia*, used in colloquial Polish. Both Spanish expressions are convergent with the Polish *kara pozbawienia wolności* with respect to the dimensions of lect and text genre. The expression *pena privativa de libertad* is also convergent with it with respect to the dimension of branch of law, whereas *pena de prisión* is only partly convergent with it because its use is restricted to criminal law. Consequently, the appropriate translation equivalent of the expression *kara pozbawienia wolności*, if it is used within the scope of civil law or if its indirect character is to be maintained, is the expression *pena privativa de libertad*. By contrast, if

the text to be translated into Spanish concerns criminal law, *pena de prisión* appears to be a better translation. In the light of the above considerations, the following directive can be proposed.

**Directive:** If in a Polish text formulated in the language of civil law the expression *kara pozbawienia wolności* is used, then it may be translated into Spanish as *pena privativa de libertad*. These terms are convergent with respect to the dimensions of language variety, territorial scope of the law's application, lect, branch of law and text genre, and therefore may be considered sufficiently equivalent.

If a text to be translated belongs to the area of criminal law, then the expression *kara pozbawienia wolności* may be translated into Spanish as *pena de prisión*. These terms are convergent with respect to the dimensions of language variety, territorial scope of the law's application, lect, branch of law and text genre, and therefore may be considered sufficiently equivalent.

As the analysis of the corpus has shown, euphemisms, although they do occur in the language of law, are quite infrequent there. Some of the euphemisms occurring in KC are not exclusive to civil law, but are rather typical of other branches of law. This is, for instance, the case of *kara pozbawienia wolności*.

As shown in the discussion of the expression *osoba niepełnosprawna*, some euphemisms used in the language of law (and in the general language as well) become 'outdated' in some way. This concerns both Polish and Spanish. With the course of time and due to a growing social awareness and striving to use a language that does not discriminate against particular groups, euphemisms that are in current use begin to be construed as insufficient or even pejorative. Therefore, other, milder or more neutral expressions are proposed that are to replace them. Sometimes, these proposals take the form of legal regulations according to which a given expression must be used in legal acts and substituted for terms that have been in use before. It is important for legal translators to have good knowledge of these regulations since merely consulting parallel texts may not be sufficient to find a clear answer to the question about the right translation equivalent due to the fact that such texts are not always amended in a consistent way.

## **9. Relativization of translation to different recipients**

As demonstrated in the previous chapters, in order to find adequate equivalents in the process of Polish-Spanish legal translation, a parameter-based method has been applied and a hierarchy of dimensions proposed. This procedure makes it possible to choose the most suitable translation equivalent in the smallest number of steps. Translators should always take into consideration the purpose of their translation and the character of its recipients. Depending on these factors, different decisions can be made. As observed in Section 1.1., Kierzkowska in her pragmatic model for translating legal terms (2002: 88-89) distinguishes three types of recipients: distant recipient, close recipient and self-defined recipient. This distinction, however, is rather general while in practice, translators are faced with more potential types of recipients (belonging to different communicative communities). In the case of preparing a translation (and, especially, when interpreting) for a person who does not have any knowledge of the law, it may be necessary to provide a simplified explanation of key terms used in the text to be translated. A recipient of this kind may have problems understanding legal texts or misunderstand them if he or she interprets some words in accordance with their colloquial meaning. In this chapter, several terms and their possible translation equivalents (some of which have been explained in more detail in previous sections) are presented in order to illustrate the problem of relativizing, or adjusting, the translation to various types of recipients.

In the case of Spanish, which is used as an official language in more than twenty countries, the first and most important factor for a legal translator to consider is which Spanish-speaking country the recipient of the translation is from. As it was stated in the previous chapters, particular terms used in civil law (as well as in other branches of law) may be different in different Spanish-speaking countries. The translator should not be misled by the fact that a number of terms is the same in Spain and in other Spanish-speaking countries. When looking for adequate translation equivalents, the translator should in each case analyze relevant parallel texts from the corresponding country. This

method is, however, rather time-consuming while translators, in practice, tend to have only very limited time to carry out their translations.

### **9.1. *Osoba fizyczna* ‘natural person’ and *osoba prawna* ‘legal person’**

The first example involves two Polish terms, *osoba fizyczna* and *osoba prawna*, and their translation equivalents that are used in Spain and selected Spanish-speaking countries: Mexico, Venezuela, Colombia and Argentina.

The term *osoba fizyczna* is not defined in KC. Its definition has to be looked for in legal commentaries. One of them defines it in the following way:

A natural person (*osoba fizyczna*) is every human being who has legal capacity, i.e. every human being from the moment of his or her birth. The concept of natural person has been introduced in order to differentiate it from that of legal person; it is thus a person that exists in a physical and tangible manner rather than being merely a certain legal construct (Książak 2014, transl. JNM)<sup>93</sup>.

The term *osoba prawna*, in turn, is defined in Art. 33 of KC:

The State Treasury and the organizational entities in which specific provisions vest legal personality shall be legal persons (*osoby prawne*)<sup>94</sup>.

Apart from the State Treasury, the category of legal persons includes, among other entities, enterprises such as limited companies

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<sup>93</sup> “Osobą fizyczną jest każdy człowiek, który ma zdolność prawną, czyli każdy człowiek od chwili urodzenia. Pojęcie osoby fizycznej zostało stworzone dla odróżnienia pojęcia osoby prawnej; jest to zatem osoba, która istnieje fizycznie, namacalnie, nie jest zaś jedynie pewną konstrukcją prawną”.

<sup>94</sup> “Osobami prawnymi są Skarb Państwa i jednostki organizacyjne, którym przepisy szczególne przyznają osobowość prawną”.

and joint-stock companies, foundations, cooperatives, trade unions, universities etc (Sobolewski 2014).

These concepts have their direct equivalents in Spanish civil law, although CC does not provide their definitions. One can, however, resort to those given in legal commentaries and academic writing, according to which the *persona física*, or *persona natural*, is every human being from the moment of his or her birth until the moment of his or her death (e.g. Albaladejo 2013a: 143-144) and the *persona jurídica* is any “organization of human beings that aims at achieving a certain goal and that the law accepts as a member of the community by granting it legal capacity” (Albaladejo 2013a: 259)<sup>95</sup>. Additionally, in Art. 35 of CC one reads that legal persons (*personas jurídicas*) are:

1. Corporations, associations and foundations of public interest recognised by the law. (...) 2. Associations of private interest, whether civil, commercial or industrial, to which the law grants legal personality independent of that of each member<sup>96</sup>.

In Table 18, translation equivalents of the terms under discussion are presented as used in the above-mentioned countries for the two following recipient types<sup>97</sup>:

- (i) lawyers or specialists (close recipients),
- (ii) non-specialists (distant recipients), who do not have any knowledge about the law.

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<sup>95</sup> “Organización humana encaminada a la consecución de un fin a la que el Derecho acepta como miembro de la Comunidad, otorgándole capacidad jurídica”.

<sup>96</sup> “1º Las corporaciones, asociaciones y fundaciones de interés público reconocidas por la ley. (...). 2º Las asociaciones de interés particular, sean civiles, mercantiles o industriales, a las que la ley conceda personalidad propia, independiente de la de cada uno de los asociados”.

<sup>97</sup> The equivalents have been identified through analyzing the civil codes of these countries. In the case of Argentina, it is the Código Civil y Comercial de la Nación (the National Civil and Commercial Code). In the case of Spain, also the texts of LEC and LJV have been taken into consideration, in conformity with the initial assumptions.

Table 18. Relativized Spanish translation equivalents of the terms *osoba fizyczna* and *osoba prawna*.

<b>Type of recipient</b>	<b>Spanish translation equivalents of the term <i>osoba fizyczna</i></b>	<b>Spanish translation equivalents of the term <i>osoba prawna</i></b>
Lawyers or specialists (close recipients) in Spain	<i>persona física</i> or <i>persona natural</i>	<i>persona jurídica</i>
Lawyers or specialists (close recipients) in Mexico	<i>persona física</i>	<i>persona moral</i>
Lawyers or specialists (close recipients) in Venezuela	<i>persona natural</i>	<i>persona jurídica</i>
Lawyers or specialists (close recipients) in Columbia	<i>persona natural</i>	<i>persona jurídica</i>
Lawyers or specialists (close recipients) in Argentina	<i>persona humana</i>	<i>persona jurídica</i>
Non-specialists (distant recipients) who do not have any knowledge about the law in Spain, Mexico, Venezuela, Columbia and Argentina	additional simplified explanation of the legal meaning	additional simplified explanation of the legal meaning

As shown in the table, three different translation equivalents of the Polish term *osoba fizyczna* are in use in various Spanish-speaking countries. In Spain, two synonymous terms are used: *persona natural* (in CC) and *persona física* (in LEC and LJV). In Mexico, the term *persona física* is employed, in Venezuela and Columbia this concept is referred to by means of the expression *persona natural* whereas in Argentina it is called *persona humana*. It can be noted here that the two adjectives *natural* and *físico* have the same basic dictionary meaning, i.e. ‘natural, physical’, but differ in their etymologies: *natural* comes from Latin, whereas the origin of *físico* is Greek.

The Polish term *osoba prawna* has its translation equivalent in *persona jurídica* in Spain, Argentina, Venezuela, and Colombia. In Mexico, by contrast, a different term is used: *persona moral*. It could be remarked that for a non-specialist recipient, who has no knowledge

of the law or legal terminology, the concepts of *osoba fizyczna* ‘natural person’ and *osoba prawna* ‘legal person’ can be incomprehensible and therefore a simplified explanation in plain language may be needed in the process of translation, particularly in oral translation (interpreting). It is especially important because some adjectives used in these expressions have a different meaning when occurring in non-legal contexts, which may be misleading to lay recipients. Thus, the Spanish term *persona jurídica* ‘legal person’ may be erroneously interpreted by a lay person as referring to people who are related to law professionally, such as barristers, judges, legal advisers, etc. The term *persona moral* ‘idem’, in turn, used in Mexico, denotes a moral person when used in non-legal contexts, i.e. a person who behaves in a moral, ethical way. The term *persona natural* used in Columbia and Venezuela, if interpreted in accordance with the semantics of the colloquial language, can be understood as referring to a person who behaves in a natural, unaffected manner. Finally, the adjective *humano*, used in the Argentinian legal term *persona humana*, means, in non-legal contexts, not only ‘human’, i.e. relating to or characteristic of people, but also ‘humane’, i.e. having compassion or consideration for other people.

In the cases discussed above, the adjectives modifying the noun *persona* are polysemous. Since this polysemy may be misleading for lay people, in order to avoid confusion, additional explanation in plain language may be needed in legal translation involving this type of recipients.

## **9.2. Testament w formie aktu notarialnego ‘notarial will’**

As far as the Polish term *testament w formie aktu notarialnego* (or *testament notarialny*) ‘notarial will’ i.e. a will, or testament, made in writing before a notary is concerned, a more detailed discussion of it as well as corresponding translation directives were presented in Section 1.2.1.1. This section deals with the relativization of its translation to different types of recipients, as presented in Table 19.

Table 19. Relativized Spanish translation equivalents of the term *testament w formie aktu notarialnego*.

Type of recipient	Term in TL (Spanish)
Lawyers or specialists (close recipients) in Spain	<i>testamento abierto</i> , lit. ‘open will’
Lawyers or specialists (close recipients) in Argentina	<i>testamento por acto público</i> ‘will through a public (notarial) act’
Lawyers or specialists (close recipients) in Peru	<i>testamento por escritura pública</i> ‘will through a public (notarial) document’
Lawyers in non-official communication (incl. legal academic writing) or non-specialists (distant recipients) in Spain, Argentina and Peru	<i>testamento notarial</i>
Non-specialists who have no knowledge of the law	additional simplified explanation of the legal meaning

As shown in the table, when translating the term *testament w formie aktu notarialnego*, equivalents relativized to recipients from different Spanish-speaking countries should be used. What is more, yet another term (the same in each of these countries) is often used to refer to this type of will in legal academic writing and is common in vernacular language. In the case of translation (or interpretation) made for a lay person, an additional simplified explanation of legal meaning of the term may be needed.

### 9.3. *Umowa o dożywocie* ‘life-care contract’

The third example which will be discussed here is the Polish term *umowa o dożywocie* ‘life-care contract’. This term was discussed in detail together with its possible Spanish equivalents in Section 1.2.2. The present section deals with the relativization of its translation to different types of recipients, which is summarized in Table 20.

Table 20. Relativized Spanish translation equivalents of the term *umowa o dożywocie*.

Type of recipient	Term in TL (Spanish)
Distant recipients, who do not need to know all differences between the Polish and Spanish terms in Spain	<i>contrato de alimentos</i>
Lawyers or specialists (close recipients) in Spain	<i>contrato de alimentos polaco</i> or a descriptive equivalent / additional explanation in which all relevant differences are indicated
Distant recipients, who do not need to know all differences between the Polish and Spanish terms in Galicia	<i>contrato de vitalicio</i>
Lawyers or specialists (close recipients) in Galicia	<i>contrato de vitalicio polaco</i> or a descriptive equivalent / additional explanation in which all relevant differences are indicated
Non-specialists (distant recipients) who do not have any knowledge of the law	additional simplified explanation of the legal meaning

The Polish term *umowa o dożywocie* has no exact equivalent in Spanish. There are two possible Spanish equivalents that can be taken into consideration: *contrato de alimentos*, used in CC, and *contrato de vitalicio*, which is used in DCG, the local civil law (*derecho foral*) of Galicia. As explained in more detail in Section 1.2.2., these two legal concepts differ in some aspects. The differences may be unimportant to distant recipients, but they can be quite relevant from the point of view of lawyers or other specialists. Moreover, the term used in CC seems to be an adequate equivalent when translating for general Spanish recipients, but if the translation is to be made for recipients from Galicia, the term used in DCG might be considered more suitable. Thus, the term *contrato de alimentos* can be chosen when translating for distant recipients from Spain in general and the term *contrato de vitalicio* can be used when translating for distant recipients from Galicia. However, if the translation is made for lawyers or other specialists interested in all legal niceties, in both situations the Spanish name of the contract could be preceded by the adjective *polaco* ‘Polish’

to suggest that there are differences between the Polish and Spanish contracts of this type. It is also possible for translators to avail themselves of some descriptive equivalent, which, however, can be too long in this case; they can also add some additional explanation in which all relevant differences would be explained. In the case of a recipient who has no knowledge about such contracts, it may be necessary to provide a simplified explanation of the meaning of this legal term; this should be done especially if the text is translated orally (interpreted).

#### **9.4. Concluding remarks**

The examples adduced and discussed in the previous sections represent merely a part of the complex legal and linguistic reality. It is also obvious that the presented solutions cannot be exhaustive since other possibilities of translating specific items may surface if yet other factors are taken into consideration. Thus, the proposal put forth here should be considered an illustrative and simplified representation of the way some translation decisions are to be made rather than a comprehensive model of the entire translation process.

It should also be underlined that an assumption has been made which is not always reflected in real life situations, namely, that recipients in the exemplary situations are end recipients of the translated texts. In reality, however, this is not always the case because a text translated for one recipient, for instance a private person such as a defendant in court who, knowing very little or nothing of the law, is a distant recipient, may be easily redirected to his or her lawyer, who is a close recipient. For this reason, it has to be stressed that oversimplifying in translation can lead to undesirable situations, including serious semantic loss. In extreme situations, a technical term, when rephrased in a way intended to make things clearer to a lay person, may become incomprehensible to specialists accustomed to the use of exact and well-established expressions.

Since it is impossible for the translator to predict where a given text is going to end up, sometimes he or she is forced to make difficult decisions. In such uncertain situations, however, equivalents for close recipients should be recommended.

## 10. Translation algorithms

### 10.1. Introduction

In this chapter, a translation algorithm (following Matulewska 2013: 239 and 2017: 119-121) will be presented and tested for the purpose of Polish-Spanish legal translation. The translation algorithm consists in a series of detailed steps that should be taken to carry out a successful legal translation, from the starting point of determining a potential SL unit meaning to the ending point of selecting an optimal equivalent in TL. It shows how the application of the proposed relevant dimensions helps to eliminate inadequate equivalents from the set of all potential target text translative equivalents. Normally, such an operation is carried out by experienced translators intuitively. However, the algorithm makes a less experienced translator aware of the complexity of the legal translation and enables a systematic description of important factors that should be taken into account during this process. The four examples discussed below show various semantic relations between legal terms considered in the context of translation. They concern Polish terms related to both civil substantive and procedural law. Three of them, *aukcja* ‘auction’, *postępowanie egzekucyjne* ‘enforcement procedure’ and *stwierdzenie zgonu* ‘judicial ascertainment of a person’s death’, have already been discussed in this book, while a new one, *orzeczenie* ‘judicial ruling’, will be introduced in this section. The translation algorithm is composed of the following steps (after Matulewska 2017: 119):

1. Determining the potential source text unit meaning
2. The source text unit meaning interpretation/calculation
3. Establishing the set of all potential target text equivalents
4. The calculation of the meaning of potential target text equivalents
5. Determining filters eliminating incorrect meanings
6. Choosing an optimal equivalent or coining such an equivalent
7. The monitoring stage

## 10.2. Algorithm (1): *aukcja* ‘auction’

The Polish term *aukcja* is used, for instance, in the following context:

KC, Art. 70<sup>1</sup>. § 1. A contract may be concluded by way of an auction (*aukcja*) or a tender<sup>98</sup>.

### 1. Determining the potential source text unit meaning

The meaning of the term *aukcja* has been introduced in Section 2.3.6.

### 2. The source text unit meaning interpretation/calculation

Since the term is monosemous, the potential meaning is determined to be the correct one.

### 3. Establishing the set of all potential target text equivalents

The set of possible equivalents in Spanish for the term *aukcja*:

- (i) *aucción*,
- (ii) *almoneda*,
- (iii) *subasta*,
- (iv) *licitación*.

### 4. The calculation of the meaning of potential target text equivalents

These terms are now characterized with respect to the crucial dimensions in order for an optimal equivalent to be selected. Their parametric characterization is presented in Table 21.

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<sup>98</sup> “Umowa może być zawarta w drodze aukcji albo przetargu”.

Table 21. Parametric characterization of the Polish term *aukcja* and the Spanish terms *aucción*, *almoneda*, *subasta* and *licitación*.

Dimension	Terms				
	Polish term (SL)	Spanish term I (TL)	Spanish term II (TL)	Spanish term III (TL)	Spanish term IV (TL)
	<i>aukcja</i>	<i>aucción</i>	<i>almoneda</i>	<i>subasta</i>	<i>licitación</i>
Language variety	indeterminacy	Peninsular Spanish	Peninsular Spanish	Peninsular Spanish	Peninsular Spanish
Territorial scope of the law's application	nationwide	nationwide	nationwide	nationwide	nationwide
Lect	legal language	vernacular language	vernacular language	legal language	legal language
Branch of law	civil law	civil law	civil law	civil law	civil law
Text genre	legislation	legislation	legislation	legislation	legislation

The term *aucción* shares with the Polish term *aukcja* its etymology (both derive from the Latin *auctio*) and the general meaning. However, the Spanish term is not used in legal texts, thus, it is complementary with the Polish term with respect to the dimension of lect. In addition, it is a dated word and despite being listed in the DRAE dictionary, it is out of use now (Mateo 1999: 17).

The term *almoneda*, which replaced the Old Castillian word *aucción*, has the same meaning (cf. the definition in the DRAE dictionary) but again it is complementary with the Polish term *aukcja* with respect to the dimension of lect, as it is not used in the legal language.

The meaning of the term *subasta* has been introduced in Section 2.3.6. The word is used in legislation (CC and LEC) and forms part of the legal vocabulary used in Spain, which means that with respect to the dimension of language variety it has the required property 'Peninsular Spanish'. The term is convergent with the Polish term *aukcja* with respect to all crucial dimensions.

The term *licitación* has been discussed in Section 2.3.6. There, it was observed that although it is, at times, used synonymously with the term *subasta*, its use is rather isolated. Thus, although it is

convergent with respect to all the crucial dimensions listed above with the term *aukcja*, it is not its most suitable translation equivalent.

## **5. Determining filters eliminating incorrect meanings**

In the present case, filters for eliminating incorrect meanings are primarily based on the dimension of lect. This makes it possible to eliminate the terms *aucción* and *almoneda*. In selecting the best equivalent from among the two remaining terms, *subasta* and *licitación*, which are convergent with respect to all relevant dimensions, the criterion of the frequency of use can be applied: the term *licitación* is used in rather isolated cases, therefore the term *subasta* should be deemed a better equivalent.

## **6. Choosing an optimal equivalent or coining such an equivalent and the monitoring stage**

The comparison of the calculated meaning of the source text unit *aukcja* with the meaning of the target text term *subasta* enables us to decide that this term is an optimal translation equivalent.

### **10.3. Algorithm (2): *postępowanie egzekucyjne* 'enforcement procedure'**

#### **1. Determining the potential source text unit meaning**

The meaning of the Polish term *postępowanie egzekucyjne* has been introduced in Section 1.2.1.5.

#### **Step 2. The source text unit meaning interpretation/calculation**

Since the term is monosemous, the potential meaning is determined to be the correct one.

#### **3. Establishing the set of all potential target text equivalents**

The set of possible equivalents in Spanish for the term *postępowanie egzekucyjne*:

- (i) *ejecución*,
- (ii) *ejecución procesal*,
- (iii) *ejecución forzosa*,
- (iv) *proceso de ejecución*,
- (v) *procedimiento de ejecución*,
- (vi) *proceso ejecutivo*,
- (vii) *procedimiento ejecutivo*,
- (viii) *juicio ejecutivo*.

#### **4. The calculation of the meaning of potential target text equivalents**

As observed by Cachón Cadenas (2011: 8), the terms (i)-(viii) are synonymous, i.e. have the same meaning, as introduced in Section 1.2.1.5.

The first term, *ejecución*, may be considered to be a shortened version of a full term created by way of metonymy, i.e. the name referring to the goal of the procedure is used to name the procedure itself. For this reason, it should not be considered an optimal translation equivalent. The same can be said of the expression *ejecución forzosa* (lit. ‘forced execution’), which for this reason, should not be deemed an optimal translation equivalent either.

The terms *ejecución procesal* and *proceso ejecutivo* are used in Spain when referring to legal reality but not in legislation. Thus, they are convergent with the Polish *postępowanie egzekucyjne* with respect to the dimension of branch of law to which the text refers but at the same time they are complementary with it with respect to the dimension of text genre.

The term *juicio ejecutivo*, in its turn, is used in the Argentinian Code of Civil Procedure. Thus, it is convergent with the Polish term with respect to the crucial dimensions such as lect, branch of law and genre. However, the property it shows with respect to the dimension of language variety, viz. Argentinian Spanish, eliminates it from further considerations.

The results of the above considerations are summarized in Table 22 (not including the two terms that are considered to be the shortened version of a full term – *ejecución* and *ejecución forzosa*).

Table 22. Parametric characterization of the Polish term *postępowanie egzekucyjne* and its Spanish translation equivalents.

Dimension	Terms			
	Polish term (SL)	Spanish terms I-II (TL)	Spanish term III (TL)	Spanish terms IV-VI (TL)
	<i>postępowanie egzekucyjne</i>	I. <i>ejecución procesal</i> II. <i>proceso ejecutivo</i>	III. <i>juicio ejecutivo</i>	IV. <i>proceso de ejecución</i> V. <i>procedimiento de ejecución</i> V. <i>procedimiento ejecutivo</i>
Language variety	indeterminacy	Peninsular Spanish	Argentinian Spanish	Peninsular Spanish
Territorial scope of the law's application	nationwide	nationwide	nationwide	nationwide
Lect	legal language	legal language	legal language	legal language
Branch of law	civil law	civil law	civil law	civil law
Text genre	legislation	legal commentaries and academic writing	legislation	legislation

## 5. Determining filters eliminating incorrect meanings

The filters for eliminating incorrect meanings are based on the dimensions of language variety and text genre. They make it possible to eliminate the three terms: *ejecución procesal*, *proceso ejecutivo* and *juicio ejecutivo*. Two other terms, namely *ejecución* and *ejecución forzosa*, are eliminated for another reason: because they are merely shortened versions of the full term.

## 6. Choosing an optimal equivalent or coining such an equivalent

Application of the previous steps results in identifying a number of suitable equivalents which are convergent with the Polish term in

respect to all relevant dimensions and form part of the Peninsular Spanish vocabulary:

- (i) *proceso de ejecución*,
- (ii) *procedimiento de ejecución*,
- (iii) *procedimiento ejecutivo*.

## **7. Monitoring stage**

The comparison of the calculated meaning of the source text unit *postępowanie egzekucyjne* with the meaning of the three equivalents listed above enables us to decide that each of them is an optimal translation equivalent for recipients in Spain.

## **10.4. Algorithm (3): *stwierdzenie zgonu* ‘judicial ascertainment of a person’s death’**

### **1. Determining the potential source text unit meaning**

The meaning of the Polish legal term *stwierdzenie zgonu* ‘judicial ascertainment of a person’s death’, which refers to a procedure regulated in KPC, has been introduced in Section 2.3.1.

This term, however, has also another meaning, which can be misleading for translators. This second meaning of *stwierdzenie zgonu* is ‘pronouncing a person’s death’ on the grounds of a postmortem examination by a health official who subsequently makes out a statement of death (*karta zgonu*). These measures are specified by other regulations, namely by the Act on Cemeteries and Burial (Ustawa o cmentarzach i chowaniu zmarłych) and by the Regulation of the Minister of Health and Social Welfare on Pronouncing a Person’s Death and its Causes (Rozporządzenie Ministra Zdrowia i Opieki Społecznej w sprawie stwierdzenia zgonu i jego przyczyny). The term *stwierdzenie zgonu* is also used in this sense in the vernacular language as well as in the language of medicine.

## **2. The source text unit meaning interpretation/calculation**

Since the term under analysis is polysemous, the crucial factor that a translator has to consider is the context in which the term is used. In the case of *stwierdzenie zgonu*, the situation is more complex as both meanings of this term occur in legal texts that represent the same genre (i.e. legislation) and belong to the same branch of law (civil law). What is being looked for here is a Spanish equivalent for this term used in the sense of the procedure of ‘judicial ascertainment of a person’s death’ regulated in KPC.

## **3. Establishing the set of all potential target text equivalents**

No possible equivalents in Spanish for the term *stwierdzenie zgonu* can be found in pieces of Spanish legislation or legal academic writing since an analogous legal institution is not known in Spanish civil law. In such a case, a translator needs to look for a possible equivalent somewhere else or coin it. To this aim, he or she can resort to the legislation of other Spanish-speaking countries. A relevant procedure is regulated, for instance, in the Chilean Civil Code (Art. 95-97). The heading of the relevant section in this act refers to this procedure as *comprobación judicial de la muerte*, which in this case may be taken into consideration as a potential translation equivalent.

## **4. The calculation of the meaning of potential target text equivalents**

This procedure provided for in the Chilean Civil Code is applied when a person disappears under circumstances that make his or her death certain, even though the body cannot be found. The procedure consists in that the judge may, on request of any interested party, pronounce the person’s death confirmed with regard to the civil effects.

## **5-6. Determining filters eliminating incorrect meanings and choosing an optimal equivalent or coining such an equivalent**

A comparison of the Chilean procedure of *comprobación judicial de la muerte* with the Polish *stwierdzenie zgonu* makes it possible to claim that this non-Peninsular Spanish term is an adequate translation equivalent of the source term from the point of view of the referential

meaning. It is also convergent with the Polish term with respect to the crucial dimensions. It shows the property ‘Chilean Spanish’ with respect to the dimension of language variety but still is a suitable candidate for a translation equivalent because no possible equivalent can be found in Peninsular Spanish.

## 7. Monitoring stage

The comparison of the calculated meaning of the source text unit *stwierdzenie zgonu* with the meaning of the target text equivalent *comprobación judicial de la muerte* makes it possible to decide that this Chilean Spanish term is an optimal translation equivalent.

## 10.5. Algorithm (4): *orzeczenie* ‘judicial ruling’

### 1-2. Determining the potential source text unit meaning and its interpretation/calculation

This term is used, for instance, in the following context (Art. 108. § 1. of KPC):

The court decides on the costs in every ruling (*orzeczenie*) that terminates a case in a given instance (transl. JNM)<sup>99</sup>.

The Polish term *orzeczenie* is polysemous (linguistic polysemy) as it has the following meanings:

- (i) the act of pronouncing a judgement, an opinion,
- (ii) the part (syntactic function) of a sentence that supplies information about the action or state of its subject; predicate,
- (iii) an opinion or decision issued by a competent institution,
- (iv) a decision issued by a court<sup>100</sup>.

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<sup>99</sup> “Sąd rozstrzyga o kosztach w każdym orzeczeniu kończącym sprawę w instancji”.

<sup>100</sup> In KPC, it is used in meanings 3. (e.g. in Art. 477<sup>10</sup> § 1) and 4. (passim).

The meaning of this term has to be determined primarily on the basis of the context in which it is used. In contexts that correspond to the one presented above in Art. 108. § 1. of KPC, the calculated meaning of the term is “the form under which court’s decisions are externalized” (cf. Gapska 2010: 168).

### 3. Establishing the set of all potential target text equivalents

A possible equivalent for this term in Peninsular Spanish is *resolución*.

### 4. The calculation of the meaning of potential target text equivalents

A definition of *resolución* can be found for instance in a sentence of the Spanish Supreme Court (STS 333/206, of 15 February, cited here from Zárata Conde (2016: 804): “(...) judicial acts are termed *resoluciones* (...)”<sup>101</sup> (cf. also Montero Aroca et al. 2014: I, 325).

### 5. Determining filters eliminating incorrect meanings

The term *resolución* is the only potential target text equivalent that can be taken into consideration as a translation equivalent for the term *orzeczenie*. It is convergent with the SL term in respect to all relevant dimensions, as presented in the table below, and has a corresponding referential meaning. Thus, there are no meanings that need to be filtered out. The above considerations are summarized in Table 23.

Table 23. Parametric characterization of the Polish term *orzeczenie* and the Spanish term *resolución*.

Dimension	Terms	
	Polish term (SL)	Spanish term (TL)
	<i>orzeczenie</i>	<i>resolución</i>
Language variety	indeterminacy	Peninsular Spanish
Territorial scope of the law’s application	nationwide	nationwide
Lect	legal language	legal language
Branch of law	civil law	civil law
Text genre	legislation	legislation

<sup>101</sup> “(...) los actos judiciales se denominan resoluciones” (...).

## 6-7. Choosing an optimal equivalent or coining such an equivalent and monitoring stage

The comparison of the calculated meaning of the source text unit *orzeczenie* with the meaning of the target text term *resolución* enables us to decide that this term is an optimal translation equivalent.

## 10.6. Explanation scheme

Following Matulewska (2013), the explanation scheme presented below is to illustrate the intuitive decision-making process as far as translative decisions are concerned in the light of the theoretical foundations presented by this author.

The scheme has the following structure:

- (i) question which is to be answered,
- (ii) explanans (at least one general statement and at least one singular statement), and
- (iii) explanandum (Matulewska 2013: 102).

The application of the scheme for the purpose of Spanish-Polish legilinguistic translation may be as follows:

*Question:* Why does the Polish expression *użyczenie*<sup>102</sup> in sentence S of text T<sub>i</sub> of genre G translate as the Spanish *préstamo de uso* in the corresponding text T<sub>j</sub> of genre G for the recipients of communicate community C<sub>j</sub>?

where:

- G – genre
- M – meaning
- X – significator
- P – significator
- L<sub>i</sub> – the source language – Polish
- T<sub>i</sub> – the source text in Polish

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<sup>102</sup> For a discussion of the meaning of this term, see Section 4.1.

- $C_i$  – the communicative community operating in Polish legal reality
- $L_j$  – the target language – Spanish
- $T_j$  – the target text to be produced in Spanish
- $C_j$  – the communicative community operating in Spanish legal reality
- $C_{j1}$  and  $C_{j2}$  – two different communicative communities operating in Spanish legal reality

*General statement:* If signifier X, conveying meaning M in translatable text  $T_i$  of genre G in language  $L_i$ , and intended for recipients of community  $C_i$  is bound by the relation of sufficient equivalence with signifier P with respect to M for translatable text  $T_j$  of genre G in language  $L_j$ , and intended for recipients of community  $C_j$ , then X translates as P in  $T_j$ .

*Singular statement 1:* The Polish expression *użyczenie* signifies meaning M in text  $T_i$  of genre G for recipient community  $C_{j1}$ .

*Singular statement 2:* The closest homonyms of the Polish expression *użyczenie* in translatable text  $T_i$  with respect to M, for the corresponding translatable text  $T_j$  of genre G are  $Y_1$  (*préstamo*) for recipient community  $C_{j1}$  (communicative community of distant recipients who are to use the translatable text in non-legal communication e.g. in every day conversations) and  $Y_2$  (*préstamo de uso*) for recipient community  $C_{j2}$  (communicative community of close recipients who are to use the translatable text in legal communication, e.g. before courts in Poland).

*Explanandum:* The Polish expression *użyczenie* in sentence S of text  $T_i$  of genre G translates as the Spanish *préstamo de uso* in the corresponding text  $T_j$  of genre G for the recipients of communicate community  $C_{j2}$ .

## 11. Conclusion

At this point, the discussion of the method of arriving at appropriate translation equivalents with the use of the parametric approach based on the theory of legilinguistic translatology comprised in the present book can be summed up. Since this volume discusses the application of this method to the Polish-Spanish translation of legal terms, conclusions concerning legal translation in this particular language pair are provided.

A number of Polish legal terms and their Spanish equivalents were analyzed and discussed in the light of such semantic relations as (intra-lingual) synonymy, (inter-lingual) hyperonymy-hyponymy and paronymy (false cognates) as well as other translation-related phenomena such as polysemy, indeterminate clauses, metaphors and euphemisms. It seems that it can be concluded, on the grounds of this analysis, that the proposed relevant dimensions turned out to be well-chosen and that the proposed hierarchy of these dimensions can be considered justified as far as both substantive and procedural civil law are concerned. However, some additional conclusions and reservations will be made here.

The choice of relevant dimensions seems to be appropriate, yet it is necessary to note that other dimensions can also be important if different factors are taken into consideration. For instance, the dimension of the time of the text creation was not included into the proposed hierarchy because an assumption had been made initially that only valid texts are of interest. It is, however, quite obvious that, generally, this dimension is by all means relevant to translators who look for translation equivalents because they must verify if the terminology they employ is valid, i.e. is used in valid legal acts (otherwise, they need to look for them in some specific types of texts if they translate, for instance, historical texts). This dimension could also be useful in theoretical investigations, for instance when conducting a diachronic study of the evolution of terms denoting a particular legal concept.

The analysis of intra-lingual synonymy obtaining between Spanish terms on one hand and between Polish terms on the other has made it possible to conclude that this relation is relatively frequent in

the language of Spanish civil law. This conclusion is also corroborated by scholars studying Spanish legal language. This state of affairs results in additional difficulties that translators of legal texts have to cope with since they need to spend more time and concentration to decide if some particular terms are really synonymous or if the synonymy is only apparent. They also have to take legal phraseology into consideration and make sure if a particular term can be used in a given collocation or set phrase. In certain cases, if the analysis leads to the conclusion that a number of terms are synonymous with one another and can be used interchangeably in some contexts, it may turn out that they differ significantly as far as their frequency of use is concerned. This is, for instance, the case of the terms *subasta* and *licitación*. Therefore, it seems justified to introduce, in further research, the dimension of frequency of use which would help translators to decide which one of the terms should be chosen on the grounds of being more frequently used than the other in legal texts of a given legal genre. This dimension could contain such properties as: ‘frequent’ and ‘infrequent’, if possible with numeral values (for instance, ‘infrequent: from X to Y times’ and ‘frequent: more than X times’). Tools employed in corpus linguistics could be used in order to determine these values.

The two dimensions which occupy the top positions in the proposed hierarchy, viz. language variety and territorial scope of the law’s application, are closely linked to the specific status of the Spanish language. First, it is an official language in more than twenty countries. Secondly, in Spain itself, regional legal systems exist in some autonomous communities apart from national (common) law. In these regions, the national law has partial application, in specified matters, while other civil matters are regulated by regional law. However, in cases for which regional law provides no special regulations, national (common) law is used as a suppletory system. In consequence, the dimension of language variety makes it possible to eliminate expressions which should not be used when translating for a recipient in Spain and the dimension of territorial scope of the law’s application helps to differentiate between terms used nationwide and those employed only in particular regions.

The remaining relevant dimensions that have been considered within the parametrization, viz. those of branch of law and text genre, are crucial for the elimination of incorrect equivalents in the process of translation, yet their translation-related relevance is not restricted to Spanish. They are also important for other languages investigated

within the framework of the project and should be taken into account by translators working with these languages. The dimension of branch of law enables us to eliminate terms that have different meanings depending on the branch of law they refer to. The dimension of text genre, in turn, makes it possible to narrow down the search for equivalents to texts of the same genre.

The method applied in the present study enables a systematic description of the terms under scrutiny, both inter- and intralingually. Such a description, in turn, makes it possible to systematically compare SL terms with their potential translation equivalents in many respects. The translation algorithm presented in Chapter 10, i.e. a step-by-step representation of the process of arriving at the right translation equivalents, is based on this method together with the application of the proposed hierarchy of relevant dimensions. In this manner, incorrect terms and expressions that must not be used as translation equivalents can be eliminated from the translators' considerations and the right equivalents can be selected in the smallest possible number of steps. The method makes it easier to analyze the process of taking the right decisions by translators and to present factors that should be taken into consideration in the translators' work.

It should be remarked that the proposed method, being rather time-consuming if applied in real-life situations, is not suitable as a practical tool for translators, who normally only have a limited period of time at their disposal when carrying out a commissioned translation. More importantly, translators, especially properly trained and experienced ones, make most of their decisions intuitively rather than consciously carrying out every step of the decision-making process described in this study.

Nevertheless, this method, being essentially one of a theoretical nature, can also be applied in practice, in teaching legal translation, and be of importance to young translators, who more often than not are unaware of the need to consider so many aspects when translating legal texts. This is particularly helpful in the case of language pairs for which there are no reliable materials for translators to consult or for which available materials are insufficient because they are, for instance, too general. This concerns the Polish-Spanish language pair, analyzed in the present work.

Since the method of parametrization makes it possible to systematically describe the SL and TL terms as well as to systematically compare them, it can also be helpful to lexicographers when elaborating

legal dictionaries, especially thematic dictionaries and dictionaries devoted to particular branches of law. The method could also improve developing terminological data bases and computer programs assisting legal translation.

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## List of legal acts

(All acts with subsequent changes)

### Poland

Rozporządzenie Ministra Zdrowia i Opieki Społecznej z dnia 3 sierpnia 1961 r. w sprawie stwierdzenia zgonu i jego przyczyny (Regulation of the Minister of Health and Social Welfare on Pronouncing a Person's Death and its Causes).

Rozporządzenie Prezesa Rady Ministrów z dnia 20 czerwca 2002 r. w sprawie "Zasad techniki prawodawczej" (Regulation of the Prime Minister on Rules for Legislative Technique).

Ustawa z dnia 31 stycznia 1959 r. o cmentarzach i chowaniu zmarłych (Act on Cemeteries and Burial).

Ustawa z dnia 23 kwietnia 1964 r. Kodeks cywilny (Civil Code).

Ustawa z dnia 17 listopada 1964 r. Kodeks postępowania cywilnego (Code of Civil Procedure).

Ustawa z dnia 6 czerwca 1997 r. Kodeks karny (Criminal Code).

Ustawa z dnia 27 sierpnia 1997 r. o rehabilitacji zawodowej i społecznej oraz zatrudnianiu osób niepełnosprawnych (Act on Occupational and Social Rehabilitation and Employment of the Disabled).

Ustawa z dnia 30 czerwca 2000 r. Prawo własności przemysłowej (Act of Industrial Property Right).

### Spain

Real Decreto de 24 de julio de 1889. Código Civil (Civil Code).

Decreto de 14 de noviembre de 1958 por el que se aprueba el Reglamento de la Ley del Registro Civil (Rules for the Civil Registry Law).

Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común (Legal Rules for Public Administration and General Administrative Procedure).

Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal (Criminal Code).

- Ley 29/1998, de 13 de julio, reguladora de la Jurisdicción Contencioso-administrativa (Contentious Administrative Jurisdiction Act).
- Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil (Civil Procedure Act).
- Ley Orgánica 5/2000, de 12 de enero, reguladora de la Responsabilidad Penal de los Menores (Act on Criminal Responsibility of Minors).
- Ley 17/2001, de 7 de diciembre, de Marcas (Act on Trademarks).
- Ley 2/2006, de 14 de junio, de derecho civil de Galicia (Civil Law of Galicia).
- Ley 39/2006, de 14 de diciembre, de Promoción de la Autonomía Personal y Atención a las personas en situación de dependencia (Act on Personal Autonomy Promotion and Care for Dependent Persons)
- Ley 15/2015, de 2 de julio, de la Jurisdicción Voluntaria (Non-contentious Jurisdiction Act).

### **Other countries**

- Código Civil y Comercial de la Nación, aprobado por ley 26.994, promulgado según decreto 1795/2014 (Argentinian Civil and Commercial Code).
- Código Procesal Civil y Comercial de la Nación, aprobado por ley 17.454 (Argentinian Code of Civil and Commercial Procedure).
- Código Civil de la República de Chile, Ley de 14 de diciembre de 1855 (Chilean Civil Code).
- Ley 84 de 1873 de 31 de mayo de 1873 Código Civil de los Estados Unidos de Colombia (Colombian Civil Code).
- Decreto Legislativo N° 295 – Código Civil (Peruvian Civil Code).
- Código Civil Federal – Nuevo Código publicado en el Diario Oficial de la Federación en cuatro partes los días 26 de mayo, 14 de julio, 3 y 31 de agosto de 1928 (Mexican Civil Code).
- Código Civil de Venezuela, Gaceta N° 2.990 Extraordinaria del 26 de Julio de 1982 (Venezuelan Civil Code)

## List of tables

1. Parametric characterization of the Polish term <i>umowa o dożywocie</i> and the Spanish terms <i>contrato de vitalicio</i> and <i>contrato de alimentos</i> .	page 32
2. Parametric characterization of the Polish term <i>strona przeciwna</i> and the Spanish terms <i>parte contraria</i> and <i>contraparte</i> .	46
3. Parametric characterization of the Polish term <i>odrzuć spadek</i> and the Spanish terms <i>repudiar la herencia/renunciar la herencia</i> and <i>rechazar la herencia</i> .	48
4. The synonymy of terms referring to a person's death in the analyzed pieces of Polish and Spanish legislation.	51
5. The polysemy of the Polish term <i>odwołanie</i> .	69
6. The polysemy and homonymy of the Spanish term <i>auto(s)</i> .	72
7. Parametric characterization of the Polish term <i>zwyczaj miejscowy</i> and its Spanish equivalents.	89
8. Parametric characterization of the Polish term <i>należyta staranność</i> and the Spanish term <i>diligencia de un buen padre de familia</i> .	91
9. Examples of false cognates involving Spanish terms used in CC.	95
10. Examples of false cognates involving Spanish terms used in LEC.	97
11. Examples of false cognates involving Polish terms used in KC and KPC.	98
12. Examples of true cognates in KC and CC.	99
13. Examples of true cognates in KPC and LEC.	100

14.	Parametric characterization of the Polish term <i>termin biegnie</i> and its Spanish equivalents.	103
15.	Parametric characterization of the Polish term <i>termin upływa</i> and its Spanish equivalent <i>el plazo expira</i> .	105
16.	Parametric characterization of the Polish term <i>osoba niepełnosprawna</i> and its Spanish equivalent <i>persona con discapacidad</i> .	109
17.	Parametric characterization of the Polish terms <i>kara pozbawienia wolności</i> and <i>kara więzienia</i> and the Spanish terms <i>pena privativa de libertad</i> and <i>pena de prisión</i> .	111
18.	Relativized Spanish translation equivalents of the terms <i>osoba fizyczna</i> and <i>osoba prawna</i> .	116
19.	Relativized Spanish translation equivalents of the term <i>testament w formie aktu notarialnego</i> .	118
20.	Relativized Spanish translation equivalents of the term <i>umowa o dożywocie</i> .	119
21.	Parametric characterization of the Polish term <i>aukcja</i> and the Spanish terms <i>aucción</i> , <i>almoneda</i> , <i>subasta</i> and <i>licitación</i> .	123
22.	Parametric characterization of the Polish term <i>postępowanie egzekucyjne</i> and its Spanish translation equivalents.	126
23.	Parametric characterization of the Polish term <i>orzeczenie</i> and the Spanish term <i>resolución</i> .	130

## Streszczenie (Summary in Polish)

### **Polsko-hiszański przekład prawny: ujęcie parametryczne**

W pracy przedstawiono wyniki badań weryfikujących zastosowanie metody parametrycznej – proponowanej w Bańczerowski i Matulewska (2012) oraz Matulewska (2013) – mające na celu ustalenie ekwiwalentów przekładowych w tłumaczeniu prawnym z zakresu prawa cywilnego materialnego i procesowego w parze językowej polsko-hiszańskiej. Praca stanowi część projektu badawczego, który obejmował ponadto następujące pary językowe: polsko-angielską, polsko-chińską, polsko-grecką, polsko-szwedzką i polsko-węgierską. W ramach projektu wyekscerpowano z Kodeksu cywilnego i Kodeksu postępowania cywilnego około 2400 terminów polskich, a następnie zidentyfikowano w hiszańskich tekstach porównywalnych ich ekwiwalenty przekładowe. Ograniczono się przy tym do odmiany języka hiszańskiego używanej w Hiszpanii. W pracy zawarto analizę wybranych terminów polskich i ich możliwych ekwiwalentów przekładowych na język hiszański. Korpus tekstów hiszańskich tworzą teksty następujących hiszańskich aktów prawnych: Código Civil (Kodeks cywilny), Ley de Enjuiciamiento Civil (Ustawa o postępowaniu cywilnym) i Ley de Jurisdicción Voluntaria (Ustawa o postępowaniu nieprocesowym). W przypadkach, w których zidentyfikowanie odpowiedniego ekwiwalentu tłumaczeniowego w wymienionych aktach prawnych okazało się niemożliwe, zakres poszukiwań rozszerzono o ustawy bardziej szczegółowe, a w dalszej kolejności o komentarze prawnicze i opracowania akademickie.

Podstawowym narzędziem zastosowanym w pracy, służącym do systematycznego, zarówno intra-, jak i interlingwalnego porównania terminów, jest metoda parametryczna. Każda jednostka opisu, czyli każdy analizowany termin prawny, wykazuje zbiór określonych cech, które wymagają usystematyzowania. W tym celu cechy homogeniczne, tj. tego samego rodzaju, a zatem porównywalne, grupowane są w zbiory zwane wymiarami (parametrami). Każdemu opisywanemu terminowi przyporządkowywana jest jedna cecha względem każdego wymiaru. Zastosowanie metody parametrycznej umożliwia systematyczne porównanie terminów polskich i hiszańskich, a w konsekwencji

ustalenie odpowiednich ekwiwalentów przekładowych. Oprócz metody parametrycznej do potrzeb przeprowadzenia badania wykorzystano także analizę tekstów porównywalnych (paralelnych), analizę znaczeń terminów języka źródłowego i języka docelowego oraz techniki zapewniania ekwiwalentów dla terminów bezekwiwalentowych lub częściowo ekwiwalentnych.

Rozdział drugi zawiera propozycję wymiarów relewantnych dla tłumaczeń prawnych z języka polskiego na język hiszpański oraz ich hierarchizacji, która przedstawia się w następujący sposób:

1. *Odmiana języka.*
2. *Zasięg terytorialny obowiązywania prawa.*
3. *Lekt.*
4. *Gałąź prawa.*
5. *Gatunek tekstu.*

Zastosowanie wymiarów w procesie tłumaczenia ma na celu wyeliminowanie niewłaściwych ekwiwalentów hiszpańskich oraz wybór optymalnego ekwiwalentu w jak najmniejszej liczbie kroków. Ilustrują to przykłady dotyczące prawa cywilnego materialnego oraz procesowego. Dla każdego omawianego przykładu sformułowano odpowiednią dyrektywę translacyjną.

Wymiar *Odmiana języka* jest istotny z tego względu, że język hiszpański jest językiem urzędowym w ponad dwudziestu państwach, a terminologia stosowana w aktach prawnych jest niekiedy różna w poszczególnych krajach hiszpańskojęzycznych. Wymiar ten pozwala zawęzić poszukiwania do odpowiedniego kraju hiszpańskojęzycznego.

Wymiar *Zasięg terytorialny obowiązywania prawa* jest relewantny dla przekładu polsko-hiszpańskiego, ponieważ oprócz przepisów prawa cywilnego obowiązujących na terenie całej Hiszpanii w niektórych jej wspólnotach autonomicznych funkcjonuje prawo cywilne lokalne (*derecho foral*). Terminologia używana w prawie obowiązującym na terenie całego kraju różni się niekiedy od stosowanej w aktach prawnych obowiązujących lokalnie.

Wymiar *Lekt* pozwala odgraniczyć terminy stosowane w języku prawa od używanych w innych językach specjalistycznych lub w języku potocznym.

Wymiar *Gałąź prawa* pozwala rozróżnić terminy ze względu na gałąź prawa, w ramach której funkcjonują.

Wymiar *Gatunek tekstu* pozwala zawęzić poszukiwania ekwiwalentów do tekstów tego samego gatunku. W niniejszej pracy gatunkiem tym jest ustawa (wyłączone zostają zatem umowy, testamenty itd.).

W kolejnych rozdziałach zaproponowana hierarchia wymiarów wykorzystana jest do przeprowadzenia analizy wybranych terminów polskich i ich ekwiwalentów hiszpańskich.

Rozdział drugi poświęcony jest relacji synonimii zachodzącej między terminami prawnymi, zarówno w języku polskim, jak hiszpańskim. Szczególną uwagę poświęcono synonimii w języku hiszpańskim jako docelowym, może ona bowiem powodować trudności tłumaczeniowe. Jak wykazała analiza terminologiczna korpusu, synonimia w języku prawa cywilnego jest zjawiskiem stosunkowo częstym w języku hiszpańskim. W kolejnych podrozdziałach omawia się różne rodzaje synonimii: synonimię między terminami hiszpańskimi stosowanymi w różnych krajach hiszpańskojęzycznych, synonimię między terminami należącymi do różnych lektów oraz synonimię między terminami należącymi do tej samej gałęzi prawa i tego samego gatunku tekstu (ustawy). Ten ostatni typ synonimii sprawia największą trudności w procesie przekładu. Omawiane przykłady wskazują, że szczególną uwagę należy w tym kontekście zwrócić na frazeologię języka prawa. Sam fakt, że dane terminy są synonimiczne, nie oznacza bowiem, że mogą być użyte przez tłumacza wymiennie w każdym kontekście.

W rozdziale trzecim omawia się zjawisko polisemii. Za Sourieux i Lerat (1975) dzieli się ją na polisemię językową (cechuje ona wyrazy posiadające inne znaczenia w języku ogólnym lub specjalistycznym, a inne w prawnym) oraz polisemię prawną (cechuje ona wyrazy posiadające różne znaczenia w języku prawnym).

Rozdział czwarty poświęcony jest relacji hiperonimii-hiponimii zachodzącej między badanymi terminami, zarówno inter-, jak intralingwalnie. Rozważa się w nim niektóre konsekwencje, jakie relacja ta niesie dla procesu tłumaczenia.

W rozdziale piątym omówione są zagadnienia związane z występowaniem w tekstach prawnych zwrotów nieostrych i klauzul generalnych. Zwraca się uwagę na trudności tłumaczeniowe, jakie może powodować ich użycie.

Rozdział szósty poświęcony jest zjawisku tzw. fałszywych i prawdziwych przyjaciół polsko-hiszpańskich i hiszpańsko-polskich występującemu w badanych tekstach.

W rozdziale siódmym omawia się – z zastosowaniem koncepcji metafory konceptualnej Lakoffa i Johnsona (1980) – dwa przykłady metafory w języku prawnym dotyczące pojęcia „termin” (*termin biegnie* i *termin upływa*). Rozważa się także ich możliwe ekwiwalenty w języku hiszpańskim.

Tematem rozdziału ósmego są eufemizmy, które – jak wykazała analiza tekstów korpusu – występują w prawie cywilnym rzadko. Część z nich, na przykład termin *kara pozbawienia wolności*, choć występuje w tekstach badanego korpusu, jest charakterystyczna raczej dla innych gałęzi prawa. Na przykładzie terminu *osoba niepełnosprawna* i jego hiszpańskiego ekwiwalentu przekładowego omawia się zjawisko dezaktualizowania się pewnych określeń eufemistycznych: wraz ze wzrostem świadomości społecznej przestaje się uważać je za wystarczające i zastępuje innymi, w założeniu bardziej neutralnymi.

Rozdział dziewiąty poświęcony jest zagadnieniu konieczności dostosowania przekładu do potrzeb komunikacyjnych odbiorcy. Zwraca się uwagę na specyfikę języka hiszpańskiego i konieczność wyboru ekwiwalentu przekładowego odpowiedniego dla odbiorców z różnych krajów hiszpańskojęzycznych czy też zamieszkujących różne regiony autonomiczne Hiszpanii. W analizie posłużono się w pewnej mierze zaproponowanym przez Kierzkowską (2002) podziałem odbiorców na odbiorców bliskich, dalekich i samookreślonych.

W rozdziale dziesiątym przedstawia się – na czterech przykładach – algorytm translacyjny bazujący na metodzie parametrycznej i proponowanej hierarchii wymiarów. Ma on na celu zilustrowanie krok po kroku procesu tłumaczenia i podejmowania decyzji przez tłumacza, poczynając od określenia znaczenia terminu w języku źródłowym, a kończąc na ustaleniu optymalnego ekwiwalentu w języku docelowym.

Rozdział dziesiąty stanowi podsumowanie rozważań zawartych w pracy. Wykazano w niej, że przy założeniach przyjętych na wstępie proponowana hierarchia wymiarów jest odpowiednia dla tłumaczeń tekstów prawnych z zakresu prawa cywilnego materialnego i procesowego z języka polskiego na język hiszpański. Na podstawie analizy relacji synonimii stwierdzono, że w dalszych badaniach zasadne mogłoby być rozważenie poszerzenia listy wymiarów relewantnych o wymiar *Częstość występowania terminu*.

Zastosowanie metody parametrycznej w tłumaczeniu prawnym pozwala na systematyczne porównanie terminów języka źródłowego z ich potencjalnymi ekwiwalentami w języku docelowym. Umożliwia

także dokładne prześledzenie czynników, które tłumacz musi wziąć pod uwagę w procesie tłumaczenia, i w ten sposób ilustruje złożoność procesu przekładu tekstów prawnych. Metoda ta może zatem znaleźć zastosowanie na przykład w dydaktyce przekładu lub w opracowywaniu słowników specjalistycznych. Jest ona jednak zbyt czasochłonna, by była stosowana w codziennej pracy tłumacza, który zwykle dysponuje ograniczonym czasem na wykonanie przekładu, a ponadto – jeśli mamy do czynienia z tłumaczem sprawnym i doświadczonym – większość decyzji opisanych w algorytmie translacyjnym podejmuje intuicyjnie.



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