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A PARAMETER-BASED METHOD FOR TRANSLATING POLISH CONTRACT LAW TERMS INTO SPANISH

Abstract. The paper deals with problems of legal translation from Polish into Spanish. It analyses selected terms related to contracts which are regulated in the Polish Civil Code and their possible translations into Spanish. In order to find adequate translation equivalents the author applies the method of parametrisation of legal terms (along with the method of comparing parallel texts and the *skopos* theory). The parametrisation of legal terms helps to systematically characterise and compare them and thus to identify differences in the meanings of the source language and target language terms and to choose the best equivalents. It may also facilitate the selection of a technique of providing translation equivalents for non-equivalent or partially equivalent terms. Parametrisation is understood as determining for each analysed term a set of properties it shows with respect to translationally relevant parameters – one property out of each parameter. A parameter is conceived of as a set of homogeneous properties.

Keywords: legal translation, Polish-Spanish translation, parametrisation, legal terminology.

Introduction

One of the major challenges a person translating legal texts is faced with is to find, in the target language, adequate equivalents of legal terms used in the source language. To this aim, various techniques of providing equivalents for non-equivalent or partially equivalent terms can be applied (cf. e.g. Newmark 1988; Kierzkowska 2002). In this paper, a parameter-based method for analyzing legal terms and choosing adequate translation equivalents for them will be presented (cf. Bańczerowski & Matulewska 2012; Matulewska 2013) and applied to the Polish-Spanish language pair¹. To illustrate how this method works, selected terms pertaining to the area of law of obligations, more specifically, names of contractual obligations used

in the Polish Civil Code will be analysed within its framework and their possible Spanish equivalents will be considered. Other research methods applied subsidiarily in this study are:

- comparison of parallel texts²,
- the *skopos* theory (see e.g. Vermeer 2001),
- the pragmatic model for the translation of legal terms (Kierzkowska 2002: 72–123).

As proposed within Vermeer's *skopos* theory, translators should take into consideration the purpose of the translation and the character of its recipients. Depending on these factors, translators may make different decisions. A decision made for a text aimed at a more general audience, or in other words a distant recipient, in accordance with the pragmatic model for translating legal terms developed by Kierzkowska (2002: 88–89), i.e. 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, does not need to take all legal niceties into consideration. By contrast, if the translation is to be made for a close recipient, i.e. a recipient who is versed in the culture of the source text, who is a specialist, e.g. a lawyer or a business person operating in a given country for whom all legal details matter, translators should consider which aspects (manifesting themselves in their properties to be discussed below) of the term are most relevant for their purpose and this should determine the final choice of an equivalent. The parametrisation of legal terms is intended to be an instrument serving to precisely characterise both source and target language terms, to compare them systematically with respect to their properties and finally to choose an adequate term in the target language.

The corpus of the parallel texts analysed for the purpose of this study includes: the Polish Civil Code, the Spanish Civil Code, and the Galician Civil Code. In addition, selected dictionaries have been consulted.

Method of parametrisation

The units of parametrisation, which will be presented in what follows, are terms, whether belonging to the source language or the target language. Every such term shows a number of properties that are translationally relevant. For instance, the Polish term *użyczenie* 'commodate' is characterised by such properties as: 'civil law' (branch of law it pertains to), 'law of contracts' (sub-branch of law it pertains to), 'legislation' (text genre it is used in), and others. In order to provide a systematic description of legal terms, homogeneous properties, i.e. properties of the same kind and compa-

rable with one another, are grouped into sets; for example, ‘civil law’, ‘penal law’, both being names of branches of law, are grouped together into one set. These sets are called parameters. Thus, a parameter is a set of homogeneous properties. The list of parameters also includes one reflecting the meaning of a term³.

The proposed parameters should be adequate to both languages in order to make a systematic comparison between Polish and Spanish terms possible. Sometimes, however, it may be impossible to assign a property out of a given parameter to a term. Therefore, every parameter also contains a property called ‘indeterminacy’, which will be assigned to a term if it is not describable by any other property with respect to this particular parameter. Particularly, this concerns the parameter ‘Text language variety’, which is not applicable for Polish as having only one legal language variety. Consequently, Polish terms always show the property ‘indeterminacy’ with respect to this parameter. This parameter is, by contrast, relevant for Spanish, which is an official language in more than 20 countries where legal terminology can differ.

In what follows, a set of translationally relevant parameters is presented for the purpose of finding Spanish equivalents for Polish names of contracts⁴. Next, parametrisation of the terms to be translated is carried out, which means that for every term a set of properties that it shows with respect to the parameters – one property out of each parameter – is determined. The set of properties that are shown by a term with respect to all parameters is referred to as its parametric characterisation.

The method presented here makes it possible to compare terms inter- and intralingually in terms of properties they show with respect to particular parameters. If two terms show the same property with respect to a parameter, they are convergent with respect to it. By contrast, if they show different properties with respect to a parameter, they are said to be complementary (Matulewska 2013). The application of the method of parametrisation to Polish-Spanish legal translation will be exemplified by means of three Polish legal terms: *użyczenie*, *dożywocie* and *dzierżawa*.

Case 1: *Użyczenie*

The first step is to characterise the source language term by determining the properties it shows with respect to the parameters. The next step is to determine the closest target language equivalent. To this aim, a comparison of parallel texts is carried out. As a result, the Spanish term *comodato* is

identified in the Spanish Civil Code as a possible translation equivalent of the Polish term *użyczenie*. The parametrisation of this term allows us to determine precisely how close it is to the Polish one. Its parametric characterisation is presented in Table 1 along with that of the Polish term.

Table 1
Parametric characterisation of the Polish term *użyczenie*
and Spanish term *comodato*

Parameter	Terms	
	Polish (source language)	Spanish (target language)
	<i>użyczenie</i>	<i>comodato</i>
The author of the text	legislator	legislator
Source-text delivery form	written	written
Source-text status	binding	binding
Branch of law	civil law	civil law
Sub-branch of law	law of contracts	law of contracts
Text genre	legislation	legislation
Text sub-genre	code (national Polish Civil Code)	code (national Spanish Civil Code)
The language of the text	Polish	Spanish
Text language variety	indeterminacy	Peninsular Spanish
Lect	language for specific purposes	language for specific purposes
Sub-lect	language of law	language of law
Meaning of the term	one person (the lender) delivers to the other (the borrower) a thing so that he or she can use it for a certain time and return it (cf. art. 710 of the Polish Civil Code)	one person (the lender) delivers to the other (the borrower) a thing so that he or she can use it for a certain time and return it (cf. art. 1740 of the Spanish Civil Code)
Required form of the contract	notarised not required	notarised not required

A comparison of the two terms with respect to the parameters makes it possible to conclude that the term *comodato* is a translation equivalent which is sufficiently close to the Polish term. Both terms show the same properties – in other words, are convergent – with respect to nearly all parameters (except for obvious differences such as the language of the text). To sum up, it is a rare instance of a practically full equivalence of two terms.

Case 2: *Umowa o dożywocie*

The translation of the Polish term *umowa o dożywocie* is a more problematic case. As for possible Spanish equivalents, Polish-Spanish dictionaries suggest *mantenimiento vitalicio* (Perlin 2002: I, 229) and *vitalicio* (Komarnicki et al. 2010: 195). However, *mantenimiento vitalicio* is not used in

Spanish legal texts and therefore cannot be characterised with respect to the parameters proposed. It should not be considered as a potential translation equivalent for the Polish term. The comparison of parallel texts results in the identification of two other terms that may be taken into consideration. One is *contrato de vitalicio*, a term used in the Civil Code of Galicia (one of Spain's autonomous communities). It is also indicated in the dictionary by Komarnicki et al. (as *vitalicio*). The other term is *contrato de alimentos*, which is used in the Spanish Civil Code. The parametric characterisations of these terms are presented in Table 2.

It can be observed that the Polish term *umowa o dożywocie* and the Spanish term *contrato de vitalicio* differ from each other with respect to parameters 'Text sub-genre' and 'Meaning of the term'. Both are used in legal language and in a statutory instrument, however, while the Polish term occurs in a national civil code, the Spanish one occurs in a local one. The crucial difference lies in their 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 Spanish *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 the art. 148 of the Galician Civil Code and consist in providing the other part 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 appropriate to the local traditions, which again is the case under *umowa o dożywocie*.

As for the second potential Spanish equivalent, namely *contrato de alimentos*, it is convergent with the Polish term *umowa o dożywocie* with respect to nine parameters. Importantly, it differs from the Polish term quite significantly with respect to parameters 'Meaning of the term' and 'Required form of the contract'. As far as meaning is concerned, the meaning of *contrato de alimentos* is, to a great extent, close to the meaning of the Spanish *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 notarised document⁵.

Table 2

Parametric characterisations of the Polish term *umowa o dożywocie* and the Spanish terms *contrato de vitalicio* and *contrato de alimentos*

Parameter	Terms		
	Polish term (source language)	Spanish term 1 (target language)	Spanish term 2 (target language)
	<i>umowa o dożywocie</i>	<i>contrato de vitalicio</i>	<i>contrato de alimentos</i>
The author of the text	legislator	legislator	legislator
Text delivery form	written	written	written
Text status	binding	binding	binding
Branch of law	civil law	civil law	civil law
Sub-branch of law	law of contracts	law of contracts	law of contracts
Text genre	legislation	legislation	legislation
Text sub-genre	code (national Polish Civil Code)	code (local – Galician Civil Code)	code (national Spanish Civil Code)
The language of the text	Polish	Spanish	Spanish
Text language variety	indeterminacy	Peninsular Spanish	Peninsular Spanish
Lect	language for specific purposes	language for specific purposes	language for specific purposes
Sub-lect	language of law	language of law	language of law
Meaning of the term	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 (cf. art. 908. § 1 of the Polish Civil Code)	one or more 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 (cf. art. 147 of Galician Civil Code)	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 (cf. art.1791 of the Spanish Civil Code)
Required form of the contract	notarised	notarised	notarised not required

To sum up, both *contrato de vitalicio* and *contrato de alimentos* differ from *umowa o dożywocie* as regards the parameter ‘Meaning of the term’. *Contrato de vitalicio* is closer to *umowa o dożywocie* than *contrato de alimentos* as far as the requirement of notarised form is concerned. However,

it is not used in the same kind of source text (local statutory instrument) – and, 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. As we can see, neither of the two potential Spanish equivalents for *umowa o dożywocie* is a full equivalent. Therefore, it is necessary to consider some further points. If the translation is to be made for a distant recipient, both *contrato de vitalicio* and *contrato de alimentos* could be used, however, the latter seems preferable because it occurs in a national legal text. If, by contrast, a close recipient is being addressed, none of the ready-made terms occurring in Spanish legal texts seem adequate enough in the case of *umowa o dożywocie*. 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.

Case 3: *Dzierżawa*

Another term the translation of which will be discussed in the light of the method proposed is the Polish term *dzierżawa*. The analysis of the Polish and Spanish Civil Codes results in the identification of the term *arrendamiento* (art. 1543 of the Spanish Civil Code) as a possible translation equivalent. The properties shown by the Polish and Spanish terms with respect to the parameters are given in Table 3.

It can be observed that the two terms are convergent with respect to most parameters except the parameter ‘Meaning of the term’. The main difference between Polish *dzierżawa* and Spanish *arrendamiento* consists in that while the former gives the right to use *and* to acquire fruits (conjunction), the latter, according to the tenor of the relevant passage of the text, which reads *el goce o uso*, gives the right to acquire fruits (*goce*) *or* to use (*uso*). Albaladejo remarks that this legal definition is not clear as it may entail misunderstandings (2011a: 251). Therefore, he prefers to say that *arrendamiento* gives either the right to use (*el uso*) or to use and acquire fruits (*uso y el goce*). Thus, according to this approach, the Spanish conjunction *o* is understood as conveying the meaning of inclusive disjunction⁶. Albaladejo says, consequently, that there exist two types of *arrendamiento*: *arrendamiento de uso* and *arrendamiento de uso y disfrute* (*disfrute*

Table 3

**Parametric characterisations of the Polish term *dzierżawa*
and the Spanish term *arrendamiento***

	Terms	
	Polish term (target language)	Spanish term (target language)
	<i>dzierżawa</i>	<i>arrendamiento</i>
The author of the source text	legislator	legislator
Source-text delivery form	written	written
Source-text status	binding	binding
Branch of law	civil law	civil law
Sub-branch of law	law of contracts	law of contracts
Text genre	legislation	legislation
Sub-genre	code (national Polish Civil Code)	code (national Spanish Civil Code)
The language of the text	Polish	Spanish
Source-text language variety	indeterminacy	Peninsular Spanish
Lect	language for specific purposes	language for specific purposes
Sub-lect	language of law	language of law
Meaning of the term	one party undertakes to give to the other a thing for use and acquisition of fruits for a limited or unlimited period of time and the other party undertakes to pay an agreed rent (cf. art. 693 § 1. of the Polish Civil Code)	one party undertakes to give to the other a thing for use or the acquisition of fruits for a limited period of time and at a certain price (cf. art. 1543 of the Spanish Civil Code)
Required form of the contract	notarised not required	notarised not required

‘the right to acquire fruits’ is synonymous with *goce*). If we follow Albaladejo’s explanation, then the Spanish term *arrendamiento* is too broad as it also refers to what in the Polish legal language is denoted by means of the term *najem*. Within the contract of *najem*, the party is only entitled to use a thing, without acquiring its fruits. Therefore, when translating the Polish term *dzierżawa*, Spanish *arrendamiento* must be specified so as to make it clear that the acquisition of fruits is included in its meaning. Thus, *dzierżawa* may be translated into Spanish as *arrendamiento de uso y disfrute* (while *najem* may be translated as *arrendamiento de uso*). Albaladejo (2001a: 251; 2001b: 628) observes that these two concepts are present in the Spanish civil law but, in contrast to legal systems of some other countries, they are not treated separately there.

Another possible term that might seem to be a potential equivalent for Polish *dzierżawa* (and *najem*) is *alquiler*. Its dictionary definition is: ‘Uso, durante cierto tiempo, de algo que es propiedad ajena, a cambio de pago de una cantidad de dinero fijada de antemano’ [‘The use, for a certain time,

of a thing that is someone else's property, in exchange for a sum of money agreed in advance'] (Maldonado González 2000: 84). This term, however, is not a legal term and should not be considered as a potential translation equivalent if other, more suitable terms can be used.

Conclusions

As it has been shown above, the method of parametrisation of legal terms (along with the method of comparing parallel texts and the *skopos* theory) can be very useful in the process of translation of legal terms. The first necessary step to take is to find potential equivalents in the target language. The method of comparing parallel texts seems to be the best option, especially in the case of Polish-Spanish translation, as there are few reliable sources (e.g. dictionaries) that can be consulted. In order to choose the best translation equivalents for legal terms, it is necessary to characterise the source language and target language terms in a systematic way, compare them intra- and interlingually and thus to identify differences in their meanings. The method of parametrisation can be used to achieve this goal. Finally, when deciding which equivalent is the most suitable, translators should take into consideration the purpose of the translation and the character of its recipients and, if necessary, consider applying one of the techniques of providing equivalents for non-equivalent or partially equivalent terms.

NOTES

¹ The research has been financed from the research grant no. DEC-2012/07/E/HS2/00678, titled Parametrisation of lexicological translatology in the scope of civil law and civil procedure awarded by the National Science Centre of the Republic of Poland (Sonata Bis Program).

² A parallel text can be defined as follows: "A text that treats the same or a closely related topic in the same subject field and that serves as a source for the ⟨mots justes⟩ and ⟨terms⟩ that should ideally be incorporated into the ⟨target text⟩ to ensure collocational ⟨cohesion⟩" (Delisle et al. 1999: 166) or according to the French version of the definition: "⟨Texte⟩ en ⟨langue d'arrivée⟩ qui appartient au même genre que le ⟨texte de départ⟩ ou qui traite d'un sujet connexe et duquel le ⟨traducteur⟩ extrait les ⟨termes⟩, expressions ou connaissances thématiques dont il a besoin pour effectuer sa ⟨traduction⟩" (Delisle et al. 1999: 81).

³ Since the meaning of a legal term is a complex entity, only the crucial features of its content that make it possible to differentiate it from other terms will be taken into consideration here.

⁴ The general framework of this method, illustrated here with examples for the Polish-Spanish language pair, has been developed within the project indicated in footnote 1 (involving Polish and six other languages).

⁵ 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 defined in the authoritative Spanish dictionaries (e.g. Maldonado González 2000: 78). However, in Spanish legal language (used in both Galician and Spanish Civil Law) the term *alimentos* is understood in a special sense, as including nourishment, accomodation, clothing, medical assistance etc.

⁶ Albaladejo observes that if the contracting parties do not stipulate which of the two types of arrendamiento is meant in the contract, one should follow the common understanding according to which the type normally depends on whether the object produces fruits or not (2011b: 628).

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