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ENGLISH EQUIVALENTS OF THE POLISH TERM "ZARZĄDCA SPADKU NIEOBJĘTEGO"

SUMMARY

The aim of this article is to present the English equivalents of the Polish term – "zarządca spadku nieobjętego" that are included in specialized Polish-English dictionaries and to assess their adequacy. The phrase "zarządca spadku nieobjętego" – typical of legal Polish and, more precisely, of succession law – may be literally translated into English as "administrator of non-acquired estate". The definitions of the Polish succession law term under analysis are presented following an explanation of the label "term" (Lukszyn and Zmarzer (2001)) and a clarification of the phenomenon of "incongruity of terms" (Šarčević (1997)). In the process of assessing their adequacy, the presence of equivalents in British law sources (in each of the three separate legal systems of England and Wales, Scotland and Northern Ireland) is checked, and, if needed, the legal definitions of equivalents are presented. The translation methods applied to the formation of equivalents are also determined. Findings lead to conclude that one of the suggested equivalents may serve as the closest functional equivalent (Šarčević (1997)) of the Polish term in question.

Key words: equivalence, succession law, term, translation technique, functional equivalent

STRESZCZENIE

Angielskie ekwiwalenty terminu „zarządca spadku nieobjętego”

Celem artykułu jest przedstawienie angielskich ekwiwalentów polskiego terminu prawa spadkowego „zarządca spadku nieobjętego”, które zostały zaproponowane w dwujęzycznych specjalistycznych słownikach polsko-angielskich oraz próba oceny ich trafności. W pierwszej części artykułu przedstawione są definicje polskiego terminu poddanego analizie, pojęcia „nieprzystawalności terminów” według Šarčević (1997) oraz „terminu” według Zmarzer i Lukszyna (2001). Podczas analizy przytacza się definicje angielskich ekwiwalentów oraz sprawdza się ich występowanie w źródłach prawa brytyjskiego (w trzech systemach prawa: Anglii i Walii, Szkocji oraz Irlandii Północnej). Następnie określa się techniki przekładowe, które zostały zastosowane podczas tworzenia omawianych ekwiwalentów. Na podstawie

badania jeden spośród analizowanych ekwiwalentów zostaje określony jako najbliższy ekwiwalent funkcjonalny zgodnie z definicją Šarčević (1997).

Słowa kluczowe: ekwiwalencja, prawo spadkowe, termin, technika tłumaczeniowa, ekwiwalent funkcjonalny

1. Introduction

One of the most commonly described semantic feature of the legal discourse is the appearance of technical vocabulary¹. Gibbons² is another scholar who underlines the appearance of technical vocabulary in the language of the law. Crystal and Davy³ also state that in the language of legal documents technicalities such as “proposal” or “life” often appear. Moreover, Mellinkoff⁴ lists “frequent use of common words with uncommon meanings” among “chief characteristics of the language of the law” (1963:11, 16–17). The usage of common words as legal terms has been described by Hager⁵ (1959 in: O’Barr 1981: 392), Gibbons⁶ and Jopek-Bosiacka⁷.

Translating legal texts from Polish into English or, more adequately from the Polish legal system into the British legal system is extremely challenging due to the differences between the two legal systems themselves. It should be emphasized that the United Kingdom of Great Britain and Northern Ireland has no unified legal system. England and Wales have one common legal system, while Scotland and Northern Ireland have separate legal systems. For operational reasons, in this article the terms used to name legal institutions of the legal systems of England and Wales, Scotland and Northern Ireland are referred to as British legal system terms. Moreover, the two legal systems under scrutiny belong to different legal traditions. Poland follows the civil law tradition, while the United Kingdom follows the tradition of common law.

Significant differences in legal systems lead to differences in legal institutions and the incongruity of legal terms thereof. The concept of “equivalence” is closely connected with the phenomenon of the “incongruity of terms”,

¹ R.P. Charrow, V. Charrow, *Making legal language understandable: psycholinguistic study of jury instructions*, “Columbia Law Review” 1979, 79, s. 1316.

² J. Gibbons, *Forensic Linguistics: An Introduction to Language in the Justice System*, Oxford 2003, s. 168.

³ D. Crystal, D. Davy, *Investigating English Style*, London and Harlow 1969, s. 211.

⁴ D. Mellinkoff, *The Language of the Law*, Boston/Toronto 1963, s. 16–17.

⁵ J. Hager, *Let’s Simplify the legal language*, “Rocky Mountain Law Review” 1959, 32, s. 74–86 [w:] O’Barr, *The language of the law*, C.A. Ferguson, S.B. Heath (red.), *Language in the USA*, New York 1981, s. 392.

⁶ J. Gibbons, op. cit., s. 44–46.

⁷ A. Jopek-Bosiacka, *Przekład prawny i sądowy*, Warszawa 2008, s. 59.

i.e. the non-coincidence of their semantic fields. Legal terminology characteristic of different legal systems is to a large extent conceptually incongruent⁸. As Šarčević argues: "Because of the inherent incongruence of the terminology of different legal systems, natural equivalents of the target legal system that are identical to their source terms at the conceptual level cannot be used but the closest natural equivalent (the equivalent that most accurately conveys the legal sense of the source term and leads to desired results) can be chosen"⁹. Thus the aim of this article is to present the English equivalents of the Polish legal term "zarządca spadku nieobjętego" and to assess the adequacy of its English equivalents recorded in bilingual Polish-English dictionaries. Furthermore, the translation methods applied to the formation of the equivalents will be determined.

2. Methodology

The term "zarządca spadku nieobjętego" is assumed to be a "term" in accordance with the definition by Lukszyn and Zamrzer: "a word (a phrase) of a conventionally determined, strictly defined conceptual structure, as a rule monosemic and uninterpretable, of an emotional character, able to create systems" (translated by A. Kizińska)¹⁰. The term under analysis is an "actual term" according to the typology of terms devised by Morawski¹¹ who distinguishes "legal terms" from "actual terms". A "legal term" is a term occurring in "teksty prawne", all the application criteria of which are defined by the law and expressed by legal definitions (...). By contrast, an "actual term" is a term the application criteria of which are not formulated in "tekst prawny"¹². "Tekst prawny" is a text of the sources of law¹³. The term "zarządca spadku nieobjętego" does not appear in the texts of the sources of the Polish law (statutes, ordinances etc.) but in its doctrine. However, the term "zarząd spadku nieobjętego" does appear and is discussed in the Polish Code of Civil Procedure (Art. 666–668)¹⁴.

⁸ S. Šarčević, *New Approach to Legal Translation*, The Hague 1997, s. 278.

⁹ *Ibidem* s. 234–235.

¹⁰ J. Lukszyn, W. Zamrzer, *Teoretyczne podstawy terminologii*, Warszawa 2001, s. 9.

¹¹ L. Morawski, *O pewnym rozumieniu prawa i faktu oraz o niektórych jego zastosowaniach* "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1980, 1, s. 187.

¹² *Ibidem*.

¹³ T. Gizbert-Studnicki, *Język prawny z perspektywy socjolingwistycznej*, "Zeszyty Naukowe Uniwersytetu Jagiellońskiego – Prace z nauk politycznych" 1986, 26, s. 34.

¹⁴ Ustawa z dnia 17 listopada 1964 – Kodeks Postępowania Cywilnego (Polish Code of Civil Procedure).

As mentioned above, due to the non-coincidence of the semantic fields of legal terminology translators must choose the closest natural equivalent of the source term, the equivalent that most accurately conveys the legal sense thereof¹⁵. The term “functional equivalent” is defined in translation studies in different ways¹⁶. In this article the definition by Šarčević is adopted, namely, “a term designating a concept or institution of the target legal system having the same function as a particular concept of the source legal system”¹⁷.

The first stage of the research involves citing the definition of the Polish legal term analyzed and listing its equivalents suggested in Polish-English dictionaries (*Polsko-angielski słownik terminów prawnych Polterm z definicjam*; *Dictionary of Law Terms: Polish-English*; *Polsko-angielski słownik prawniczy*; *Słownik prawny polsko-angielski*). Next, if any appear in English monolingual law dictionaries, the definitions of the suggested English equivalents are presented. The definition of the Polish term comes from a commentary on the Polish Code of Civil Procedure¹⁸. The cited definitions of English terms appear in English law dictionaries. It must be stated, however, that not in all dictionaries is it stated which specific legal system they refer to, namely England and Wales, Scotland or Northern Ireland. The comparison between the definitions of the Polish term and their English equivalents is indispensable to state whether the functions of the institutions to which a given term and its equivalent refer are the same, i.e. whether a given equivalent constitutes a functional equivalent of the term.

The second stage of the research involves checking whether or not the equivalent in question appears in the texts of the sources of the British law. The texts of the sources of the British law are the texts of statutes available in the *Legislation.gov.uk* database, which “carries most types of legislation and their accompanying explanatory documents” (<http://www.legislation.gov.uk>). Finally, on the basis of the data acquired via the first two research stages, it is possible to detect the most accurate functional equivalent of the Polish term under investigation among those recorded in the literature and determine the translation techniques applied to the formation of all equivalents that appear in Polish-English dictionaries. The translation technique is here understood in accordance with the definition provided by Hejwowski: “the choice of a given solution of a given problem encountered while translating and the translation solution itself that may be directly assessed in the target text”¹⁹. All the equivalents considered are

¹⁵ S. Šarčević, *op.cit.*, s. 234–235.

¹⁶ K. Reiss, H. Vermeer H., *Grundlegung einer allgemeinen Translationstheorie*, Tübingen 1984, s. 125.

¹⁷ *Ibidem*, s. 234–235.

¹⁸ B. Kordasiewicz, *System Prawa Prywatnego. Prawo spadkowe*, Warszawa 2015, s. 204–209.

¹⁹ K. Hejwowski, *Kognitywno-komunikacyjna teoria przekładu*, Warszawa 2007, s. 76.

recorded in the Polish-English specialized legal dictionaries listed in the bibliography (*Polsko-angielski słownik terminów prawnych Polterm z definicjami; Dictionary of Law Terms: Polish-English; Polsko-angielski słownik prawniczy; Słownik prawny polsko-angielski*).

3. Research

With regard to the definitions of the Polish legal term "zarządca spadku nieobjętego", which may be literally translated as "administrator of non-acquired estate", it should first of all be stated that the term mentioned names an entity appointed by the court in order to protect and manage the whole estate – not only specific items of the estate that are protected under the regulations concerning the institution of the "zabezpieczenie spadku". The entity appointed is often the court itself²⁰.

The law of England and Wales provides five main terms naming persons appointed to administer the estate of a deceased person. The so-called "personal representatives" are divided into "executors" and "administrators"²¹. "Executors" may be appointed by the testator in his/her will (expressed, implied or, in the case of a settled land, statutory). The court has the power to appoint a substituted personal representative in place of all or any of the existing personal representatives. As from the date of appointment, the substituted personal representative becomes the executor if he/she is appointed to act with one or more existing executors, otherwise he/she becomes an administrator²². "Administrators" are persons to whom the court has granted letters of administration, and they may be appointed by the court exclusively in the case of intestate succession or in the situation where an "executor" appointed in the testament cannot or does not want to accept this office²³. With regard to new functional equivalents of the term under analysis that have not been yet published, first it should be stated that in the British legal system "an administrator is appointed not by the testator, but the court"²⁴, while an executor or more executors may be appointed in a will; they administer the testator's estate after his death²⁵. The English term "administrator" is defined as follows: "one appointed by the

²⁰ B. Kordasiewicz, *System Prawa Prywatnego. Prawo spadkowe*, Warszawa 2015, s. 204–209.

²¹ R. Kerridge, A.H.R. Brierley, *Parry and Kerridge: The Law Succession*, London 2009, s. 399.

²² *Ibidem*, s. 399–410.

²³ *Ibidem*, s. 411–415.

²⁴ P. Birks, *English Private Law*, Oxford 2000, s. 577.

²⁵ *Ibidem*.

court to manage the property of a deceased person in the absence of an executor" (*Dictionary of Law*²⁶) and "he, to whom the property of a person dying intestate, or without executors appointed, accepting or surviving, is committed by the Probate Court" (*Jowitt's Dictionary of English Law*²⁷).

4. English equivalents

Table 1 below lists the English equivalents of the term "zarządca spadku" and its abbreviated form "zarządca" recorded in Polish-English legal dictionaries.

Table 1. English equivalents of "zarządca spadku" and "zarządca" in Polish-English legal dictionaries

Polish-English legal dictionary	English equivalent(s)
Borkowski ²⁸	not found
Myrczek-Kadłubicka ²⁹	zarządca – court supervisor, administrator; zarządca spadku – administrator of the estate
<i>Słownik prawny polsko-angielski</i> ³⁰	zarządca – manager, administrator, receiver
Pieńkos ³¹	zarządca spadku – trustee; zarządca – administrator, manager, receiver, executor

For the term "zarządca spadku", which presumably constitutes the synonym of "zarządca spadku nieobjętego", the equivalents "administrator of the estate" and "trustee" are suggested. The term "trustee" is provided by the monolingual dictionary (*A Dictionary of Law*), its definition, however, does not refer to succession law. Moreover, the term "trusteeship" is defined as "a relationship different from executorship. Therefore if a testator appoints A to be executor and trustee of his will, and A renounces the executorship he remains trustee unless he executes a disclaimer of the office" (*Jowitt's Dictionary of English Law*).

²⁶ *Dictionary of Law*, Oxford 2003.

²⁷ *Jowitt's Dictionary of English Law*, London 1959.

²⁸ T. Borkowski, *Polsko-angielski słownik terminów prawnych Polterm z definicjami*, Warszawa 2011.

²⁹ E. Myrczek-Kadłubicka, *Dictionary of Law Terms, Polish-English*, Warszawa 2013.

³⁰ *Słownik prawny polsko-angielski*, Warszawa, Wrocław, Kraków, Gdańsk, Łódź 1986.

³¹ J. Pieńkos, *Polsko-angielski słownik prawniczy*, Kraków 2002.

On the basis of the definition above it should be stated that the main functions of a trustee and an executor differ. The term "administrator of the estate" does not appear in legal dictionaries or sources of the British law.

It should be emphasized that the term "zarządca" is defined in the Polish language dictionary (*Słownik Języka Polskiego*) in a very general way, namely "a person that manages something"³². Therefore Polish-English specialized legal dictionaries should presumably include not only one general entry for "zarządca" but also more detailed phrasal entries that would name specific legal institutions of the Polish law and of which the word "zarządca" is indeed an element. More detailed entries suggested include "zarządca nieruchomości" and "zarządca masy upadłościowej". The distinction between the abovementioned Polish terms is additionally justified by the lack of "zarządca" entry in *Encyklopedia prawa*, the encyclopaedia of the Polish law³³.

For the term "zarządca" the following equivalents are suggested in Polish-English dictionaries: "manager", "court supervisor", "administrator", "receiver" and "executor". The equivalent "court supervisor" neither appears in the English legal dictionaries [*A Dictionary of Law* (2003); *Curzon, L. Dictionary of Law*³⁴; *Jowitt's Dictionary of English Law*; *The Law Student's Dictionary*³⁵] nor in the sources of the British law, namely *Legislation.gov.uk*. In *A Dictionary of Law* the word "executor" is defined as follows: "A person appointed by a will to administer the testator's estate. A deceased person's property is vested in his executors, who are empowered to deal with it as directed by a will from the time of the testator's death". According to the above cited definitions the English term "administrator", the term under analysis names a legal institution similar to the Polish "zarządca majątku nieobjętego" as they both refer to a person managing a deceased person's property under a decision of a court, while an "executor" administers the estate under the provisions of a will.

The term "receiver" is polysemous; indeed *A Dictionary of Law* provides two definitions: 1) "a person appointed by the court to preserve and protect property that is at risk, to enable another person to obtain the benefit of rights over the property or to obtain payment of a debt if the common-law remedy is inadequate; 2) a person appointed under the terms of a debenture or by the court to realize assets charged and apply the proceeds for the benefit of those entitled." On the basis of the above definitions it may be stated that the term "receiver" does not name a succession law institution.

³² <http://sjp.pwn.pl/szukaj/zarz%C4%85dca.html> 20 June 2016.

³³ U. Kalina-Prasznic, *Encyklopedia prawa*, Warszawa 2007.

³⁴ L. Curzon, *Dictionary of Law*, New York 2002.

³⁵ J.E. Penner, *The Law Student's Dictionary*, Oxford 2008.

It should be underlined that according to *The Law Student's Dictionary*, the definition of the equivalent, "manager" is included in the definition of "receiver", which is set out as follows: "a receiver may also be appointed manager if there is a business to be carried on temporarily". Thus, it may be assumed that a receiver may serve at the same time as a manager.

5. Findings

With reference to the above definitions, the English term "administrator" may be singled out as the closest functional equivalent of the Polish term "zarządca spadku nieobjętego", as both the English term "administrator" and the Polish term under analysis name a succession law institution that makes it possible to manage a deceased person's property by virtue of a court's decision/appointment. Moreover, it may be relatively hazardous to use the equivalent "receiver" or "manager" in Polish-English translation as the English terms do not appear in succession law handbooks³⁶ and their definition shows no reference to succession law. The equivalent "executor" does constitute a functional equivalent according to the definition provided by Šarčević as both the Polish term and the mentioned English equivalent refer to a person who is entitled to manage the estate of a deceased but the mentioned power arises from a different source: in the case of "zarządca spadku nieobjętego" it is a court's decision, while, in the case of "executor" it is a will drafted by a testator. Thus, it may be concluded that the Polish term is not fully congruent with the English term, but they may still be viewed as functional equivalents since their main function is the same.

6. Translation techniques

As stated above the equivalents "administrator" and "executor" constitute functional equivalents of the Polish term "zarządca spadku nieobjętego" as all three terms name a person who is in charge of managing a deceased's person estate. Moreover, the English equivalents appear in the sources of the British law that refer to succession law.

The equivalent "court supervisor" does appear in the sources of the British law but does not refer to succession law institutions. Moreover, this equivalent does not appear in legal dictionaries. The pre-modifying element of the

³⁶ R. Kerridge and A.H.R. Brierley, *op.cit.*

phrase, namely "court" (used as an attributive) probably indicates that the "supervisor" is appointed by the court, thus the equivalent was probably created as a descriptive equivalent, defined by Hejwowski as: "a technique that involves replacing a term with a description or definition and as a result it may be used as long as a given element [or term] appears in the text only once and does not play any significant role therein" (translated by A. Kizińska)³⁷. The assumption that a descriptive equivalent was implemented in this case may be confirmed by the fact that according to *Powerthesaurus* (an online thesaurus)³⁸ the element "supervisor" constitutes a synonym of the word "administrator".

The phrase "administrator of estate" may be considered a functional equivalent of "zarządca spadku nieobjętego" only in part, as it includes the element "administrator". What is more, the post-modifying prepositional phrase "of estate" describes the mentioned functional equivalent providing the recipient with the information that a person named by this term manages the property of a deceased person – see the definition of "estate" provided by *A Dictionary of Law*, namely "assets of a deceased person".

The equivalents "manager", "receiver" and "trustee" were possibly created using the so-called "complete semantic shift" technique³⁹ as they appear in different areas of law and not specifically in succession law. This translation technique involves "using in the target text a phrase of the target language that appears in the texts of the sources of law of the target language and the meaning of which is completely different from the meaning of a phrase of the source language that appears in the texts of the sources of law of the source language. The result of the application of this technique is the complete change of the meaning of the target language phrase in the target language"⁴⁰.

7. Conclusions

On the basis of the above findings, it may be stated that the closest English functional equivalent for the Polish term "zarządca nieobjętego spadku" is "administrator" as both terms in the two languages under scrutiny refer to a person managing a deceased person's property under a decision of a court. In addition it may be suggested that translators apply the equivalent "administrator of the

³⁷ K. Hejwowski, *op.cit.*, s. 82.

³⁸ <https://www.powerthesaurus.org/administrator> 21 June 2016.

³⁹ A. Kizińska, *Ekwiwalencja w tłumaczeniu tekstów prawnych i prawniczych. Polskie i brytyjskie prawo spadkowe*, Warszawa 2015, s. 245.

⁴⁰ A. Kizińska, *op.cit.*

estate”, as it also provides the information about the object being administered. This additional piece of information may be particularly useful for laypeople who do not know the meaning of the Polish legal term. The equivalent “executor” is still a functional equivalent but not the closest one, as it refers to a person appointed to administer a deceased person’s estate but under the provisions of a will – not by virtue of a court’s decision. The descriptive equivalent “court supervisor” does not appear in the sources of the British law: as a consequence, it is very likely for a recipient of the text in which this equivalent is used to become aware of the fact that the term denotes a legal institution of a legal system different from the target one. “Trustee”, “receiver” and “manager” have completely different meanings if compared to the Polish term under analysis; consequently using them in translation may reveal hazardous.

Furthermore, a useful recommendation for the editors of specialized legal dictionaries would be to consider including a certain number of separate entries that would name specific legal institutions in the case where a Polish term is polysemous and does constitute an element of other legal terms. Finally, it should be concluded that finding the most accurate equivalent in the translation of legal terms is a time-consuming process due to the high terminological incongruity between legal systems.

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