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Marriage-related legal concepts in English translations of the Polish Family and Guardianship Code – translation challenges

Summary

The objective of this paper is to analyse English equivalents of Polish marriage-related legal concepts, found in Title I of the Polish Family and Guardianship Code. The first part presents the theoretical framework based on legal linguistics, comparative law and translation studies, with a special focus on functional equivalence. The analytical part explores the Polish and English marriage-related terminology. The study analyses equivalents available in two legal information services: Lex and Legalis, and embraces the legal meaning of Polish and English family law concepts, the usage of suggested terms in legal English and possible connotations with the Polish family law as such. Basing on the research, functional equivalents have been also found. The final part is dedicated to conclusions and assessment of the equivalents.

Key words: legal translation, legal concept, functional equivalence, legal linguistics, comparative law

I. Introduction

The objective of this paper is to find terms that could be used as functional English equivalents of Polish marriage-related legal concepts, found in Title I of the Polish Family and Guardianship Code. To that end, equivalents used in the translations suggested by Polish legal information services, Lex and Legalis, have been analysed. The objective is, firstly, to study the legal meaning of Polish and English family law concepts in order to draw some general conclusions on the characteristics of family law regulations. Subsequently, all the equivalents used in the study and their usage in legal English are to be analysed. On this basis, functional equivalents may be found.

Nowadays, due to the movement of persons and companies within the European Union, family affairs have become everyday legal problems. Family law norms afflict more and more foreigners residing in Poland. Residents may ask both Polish and foreign lawyers to attend to their matters. Taking into consideration that lawyers nowadays tend to use Internet resources, particularly legal information services, rather than sizeable paper law compilations, adequate translations suggested in such resources seem inevitably necessary. However, the adequacy and consistency of these translations should not be considered solid without any previous assessment.

The study embraces the analysis of legal concepts based on English Acts: The Matrimonial Causes Act 1973, The Children Act 1989 and The Family Law Act 1996, as well as the following Polish Acts: Act of 25th February 1964 Family and Guardianship Code, Act of 23rd April 1964 Civil Code, and the Supreme Court judicature. The study analyses translations available in two legal information services: Lex and Legalis. Moreover, the paper takes also into account the equivalents suggested in legal English dictionaries (Garner 1995, 1999, 2011) and English-Polish specialised dictionaries (Jaślan, J. and Jaślan, H. 1991; Łozińska-Małkiewicz 2007; Ożga 2006).

II. Functional equivalence and comparative law in legal translation

The theoretical basis of this work is related with the concepts of functional equivalence, legal linguistics and legal translation, as well as comparative law.

1. The concept of functional equivalence

Equivalence seems to be one of the most fundamental concepts in translation studies. It has been widely discussed by scholars and translators who have provided numerous definitions of the concept (e.g. Nida 1964; Nida and Taber 1982; Kielar 1988, 2003; Newmark 1988; Šarčević 1997; Harvey 2000; Reiss and Vermeer 2013; House 2015).

Generally, the above-mentioned scholars agree that equivalence is a relation between two texts: the source text and the translated text (target text). However, 'the character of the relation' has been disputable and has led to many definitions of equivalence.

The concept of equivalence was popularised by Eugene Nida with his theory of 1) formal equivalence, which is 'source-oriented' and "designed to reveal as much as possible of the form and content of the original" (Nida 1964: 165), and 2) dynamic equivalence, which is directed towards the receptor and transmitting the same meaning and intent as the source text (cf. Nida 1964: 166). Having dis-

tinguished two types of equivalence, Nida reached a conclusion that the main attention should be paid to the receptors and the effect the message produces. The translation forms (style, punctuation etc.), in turn, should not be considered so significant (Nida and Taber 1982: 22). If the receptor of translation is able to respond to the message similarly to the receptor of source text, the functional role is accomplished.

The notion of functional equivalence was later developed by numerous scientists. Peter Newmark focused on the functional aspect of equivalence, namely on 'the equivalent effect'. The scholar explained the concept of functional equivalence as producing "the same effect (or as close as possible one) on the readership of the translation as was obtained on the readership of the original" (Newmark 1988: 48). Susan Šarčević compares functional equivalence to mathematic equivalence, which says that if X and Y qualify as equivalents, they are in 'a one-to-one correspondence'. Analogously, in terms of translation, equivalents are thought to be 'of equal value' or 'the same thing' (Šarčević 1997: 234). In this regard, it is necessary to provide the 'closest natural equivalent' (Šarčević 1997: 234-235).

Apart from the advantages of functional equivalence, some authors point to the dangers of this concept. The one that opposes to considering functional equivalence as a perfect translation tool is Harvey who defines the concept as "using a referent in the TL culture whose function is similar to that of the SL referent" (Harvey 2000: 2). Harvey claims that functional equivalence is being over-used because it enables applying new terms without much difficulty. However, using this technique in a thoughtless way may lead to the production of linguistic anomalies or meaningless terminology, as well as evoking erroneous images of translated concepts (Harvey 2000: 2-3). Harvey suggests that using functional equivalents requires checking them with the use of special criteria such as back translation, for instance (Harvey 2000: 2-3).

Harvey's objections lead to the conclusion that providing functional equivalents should not be imprudent, but requires certain evaluation of translated texts. In this regard, one cannot omit the model of translation quality assessment suggested by House, the possible solution for the drawbacks of functional equivalence. The scholar claims that functional equivalence between the source and the target text means having a comparable function in another context (House 2015: 60, 95). However, such 'real' equivalence is not always possible since it depends, partially, on the translation type (a *covert* translation – linked to the ST culture and, hence, treated as an original text in the target culture, or an *overt* translation – "the one in which the addressees of the translation are quite

‘overtly’ not directly addressed”, cf. House 2015: 54-56). In this regard, a translator needs to seek a ‘second level functional equivalence’, i.e. equivalence at the level of language, register and genre (House 2015: 54-56). The scholar opts for evaluating translation, taking into consideration the text type, and the so-called ‘cultural filter’ (House 2015: 67-8).

Functional equivalence may be considered either a perfect method for legal translation or a misleading tool. Still, applying this concept in the evaluation of translated legal texts should be accepted providing that it involves reasonable and prudent proceeding that takes into consideration various levels of the text. In this regard, functional equivalence may enable proper comprehension of legal norms and obeying them.

2. Legal language and legal translation

The provisions containing legal concepts are formulated with the use of legal language. “Legal language is often characterized as a technical language or ‘technolect’, which is to say a language used by a specialist profession” (Mattila 2013: 1). Precisely, legislators and lawyers, while creating and interpreting legal norms, work with the use of legal language. However, not only do lawyers use legal language, but also common people need to familiarise themselves with legal provisions. Citizens should get acquainted with the norms of law since they are subjected to them. Thus, legal regulations should be clear and easy to understand. In this case, using language appropriately seems inevitable.

Secondly, legal language may be considered specialized because of its specific linguistic features: complex and unique lexicon (Cao 2007: 20), accuracy and precision of legal terminology (Mattila 2013: 87), the so-called ‘information (over)load’ (Mattila 2013: 95), and formality, impersonal written style, considerable complexity and length (Cao 2007: 21). Words of common, everyday usage, in legal contexts acquire a particular meaning. Due to its complexity, one needs to be familiar with the meaning and proper usage of legal terminology. Even an insignificant *prima facie* change, for example a change in the word order, deprives the expression of its technical character and changes the meaning.

The complexity of legal language, i. e. its exact terminology and *linguistic features like formality, impersonality, accuracy and precision*, together with the difficultness of legal regulations decide on the specialised character of translating legal texts. In this regard, linguistic analysis of the text may not seem enough – legal reasoning seems crucial.

3. Comparative law as a method of legal translation

The analysis of legal translation demonstrates that studying linguistics seems relevant, but is not sufficient. Linguistic analysis ought to be accompanied by legal research, possible on the grounds of comparative law:

Comparative law is, therefore, primarily a method of study rather than a legal body of rules.

(de Cruz 2007: 5)

In the context of legal translation, the concept of comparative law should be considered mainly as a method necessary in the translation process. The study of comparative law considered as the method might be regarded as 'effective' (Jopek-Bosiacka 2013: 112), namely fulfilling its role which is studying legal issues of the systems of different countries with the purpose of reviewing legal equivalents and presenting legal differences. Instead of concentrating on a simple classification of similarities and differences, comparative law enables analysing general characteristics of investigated regulations and reviewing correlations between them. No other method seems adequate enough to review legal issues; and hence, the use of special method in the process of translating such specific texts is highly relevant.

From among the numerous comparative law principles and methods indicated by comparatists, including all the methods presented by Tokarczyk (cf. Tokarczyk 2008: 73-79), the contextual method and the functional method have been chosen due to the fact that they provide appropriate effects in the society, namely proper comprehension of the norm.

The contextual method consists in studying diverse contexts, which guarantees the holistic perspective of studies and detailed results. In consequence, throughout the research, this method has been found most applicable in the translation of legal texts. The functional method, on the other hand, has been considered pertinent to the translation of legal concepts since it aims at the norm's acceptance in the society. The functional method rejects theoretical concepts that might not be understandable by lawyers or common people ('law in books'). Instead, it opts for 'law in action' and its practical application (Tokarczyk 2008: 77). This is the objective that seems most useful while translating the marriage law concepts.

4. Analysis method

At this point, it is necessary to explain the methodology of this research. For every legal concept, the research will include the review of two legal standings: the Polish and the English. The study will encompass both similarities and differences. In accordance with the contextual method, various contexts will be studied, e.g. logical reasoning and correlations with other branches of law such as penal law or civil law. The functional method will aim at deciding whether the equivalent is accurate and understandable by English-speaking lawyers.

III. The analytical part

1. Translations of the Polish family law concepts: *wspólne pożycie*, *rozkład pożycia małżeńskiego* and *winny rozkładu pożycia*

1.1 Polish legal standing

Article 23. Spouses have equal rights and obligations in marriage. They are obliged to cohabit, help each other, remain faithful and collaborate for the benefit of the family they created by entering into marriage.

Article 56. § 1. In the case of complete and permanent breakdown of marriage, each spouse may request the court to terminate the marriage by divorce.

Article 57. § 1. When ruling on divorce, the court also rules whether and which of the spouses is at fault for breakdown of marriage.

Article 61¹. § 1. In the case of complete breakdown of marriage, each spouse may request the court issue a judgment of separation.

(the Polish Family and Guardianship Code, translated by Lex)

The cohabitation (*wspólne pożycie*) is a concept of the Polish Family and Guardianship Code (the FGC) that concerns spouses and their relationship. Throughout the FGC, there is no legal definition of the notion. The doctrine explains the cohabitation as doing one's best to create emotional, physical and economic bonds between spouses. Such a bond should unite spouses and enable reaching the goals of marriage. The cohabitation is about a harmonious relationship between the spouses, i.e. involving sincerity, loyalty, respect of the other's personality traits, recognizing the other's needs and being ready to compromise. In practice, it means maintaining equal standards of living, as well as running a household together (Pietrzykowski 2010: 288). Thus, the cohabitation definitely

constitutes a specific legal concept, and should be considered an expression of certain legal meaning, although it is not directly defined in the FGC.

In particular, the concept of cohabitation ought to be understood properly in terms of yet another concept that appears in the Polish FGC – the breakdown of marriage (*rozkład pożycia*). The breakdown of marriage appears in the Code in the forms of: *rozkład pożycia*¹, also *rozkład pożycia małżeńskiego*² (the breakdown of marriage), *zupełny i trwały rozkład pożycia*³ (complete and permanent breakdown of marriage) and *zupełny rozkład pożycia*⁴ (complete breakdown of marriage).

Under Articles 56 § 1 and 61¹ § 1, *complete and permanent breakdown of marriage* (*zupełny i trwały rozkład pożycia*) is the premise of ruling on divorce while *complete breakdown of marriage* (*zupełny rozkład pożycia*) – of separation. The doctrine consistently claims that the complete breakdown of marriage arises when all the bonds (emotional, physical and economic) have been broken whereas the permanent breakdown of marriage is a state when, taking into account principles of life experience and the circumstances of a particular case, one cannot envisage that the cohabitation will be reestablished (Pietrzykowski 2010: 537). Thus, these are two different legal concepts that refer to two different factual states. In the case of divorce, both premises are required to be accomplished while in the case of separation – only the permanent prerequisite is to be accomplished, but the complete prerequisite need not. Moreover, these are especially delicate and legally important issues since they concern divorce and separation.

Together with the concept of the breakdown of marriage, the following terms should also be considered: *[a spouse] found guilty of the breakdown of marriage* (*winny rozkładu pożycia*⁵), *[a spouse] solely responsible for the breakdown of marriage* (*wyłącznie winny rozkładu pożycia*⁶), *[a spouse] not found guilty* (*nie-winny*⁷); and a phrase: *neither of the spouses is guilty* (*żaden z małżonków nie ponosił winy*⁸). In accordance with Article 57, while ruling on divorce, the court should also rule on whether and which of the spouses is guilty of the breakdown

¹ Article 56. § 3. of the Polish Family and Guardianship Code, date of access: March 2017

² Article 21 of the Polish Family and Guardianship Code, date of access: March 2017

³ Article 56. § 1. of the Polish Family and Guardianship Code, date of access: March 2017

⁴ Article 61¹. § 1. of the Polish Family and Guardianship Code, date of access: March 2017

⁵ Article 21 of the Polish Family and Guardianship Code, date of access: March 2017

⁶ Article 56. § 3. of the Polish Family and Guardianship Code, date of access: March 2017

⁷ Article 60. § 2. of the Polish Family and Guardianship Code, date of access: March 2017

⁸ Article 57. § 2. of the Polish Family and Guardianship Code, date of access: March 2017

of marriage. The concept of guilt (*wina*) is highly characteristic of penal law. However, family law does not apply directly the regulations of the Penal Code, but the principles of guilt regulated in the Civil Code (Pietrzykowski 2010: 548), which are based on the penal understanding, but they are not equal. The concept of guilt is regulated in Article 415 of the Polish Civil Code⁹:

Article 415. A person who has inflicted damage to another person by his own fault shall be obliged to redress it.
(the Polish Civil Code, translated by Lex)

The concept of guilt is explained by The Supreme Court (Sąd Najwyższy) as a reprehensive decision of a person which refers to the wrongful act they have committed (the Judgment of the Supreme Court of 26th September 2003, file number: IV CK 32/02).

1.2 English legal standing

In the English legal system, the concept of divorce is basically found in the Matrimonial Causes Act 1973.

1 Divorce on breakdown of marriage.

(1) Subject to section 3 below, a petition for divorce may be presented to the court by either party to a marriage on the ground that the marriage has broken down irretrievably.

(2) The court hearing a petition for divorce shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the court of one or more of the following facts, that is to say—

- (a) that the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;
- (b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;
- (c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;
- (d) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition (hereafter in this Act referred to as “two years’ separation”) and the respondent consents to a decree being granted;

⁹ <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19640160093>, date of access: April 2017.

(e) that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition (hereafter in this Act referred to as “five years’ separation”).

(3) On a petition for divorce it shall be the duty of the court to inquire, so far as it reasonably can, into the facts alleged by the petitioner and into any facts alleged by the respondent.

(4) If the court is satisfied on the evidence of any such fact as is mentioned in subsection (2) above, then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to [F2 section 5] below, grant a decree of divorce. (Article 1, the Matrimonial Causes Act 1973)¹⁰

The English family law distinguishes marriage from a civil partnership on the ground of the Civil Partnership Act 2004. The Act encompasses the regulation of dissolution, as ‘divorce’ is called in the case of civil partnerships (Norrie 2009: 61). The principles of the divorce are regulated in Article 1 (1) of the above-mentioned Matrimonial Causes Act which expresses the ground for divorce: “[...] a petition for divorce may be presented to the court by either party to a marriage on the ground that the marriage has broken down irretrievably”.

Since the expression *the irretrievable breakdown of marriage* may not seem clear, the ground’s interpretation needs to be defined. Article 1 (2) provides some categories of matrimonial offences that may be recognised as the irretrievable breakdown of marriage. These are: (1) adultery, (2) certain behaviour by the respondent, (3) desertion and (4) living apart for certain time – two years if the respondent consents to the divorce or (5) five years without the consent. First three categories are fault-based whereas the rest is not connected with the concept of fault. The concepts of fault appeal to the judicial ruling on divorce and not to the mutual consent of the spouses (Harris-Short and Miles 2011: 294). The obligation to prove the fact by the petitioner also confirms such an approach to the concept of divorce. However, upon *Pheasant vs Pheasant*, the non-fault concepts imply that “in the clearest of cases, the breakdown of marriage is not a justiciable issue” (Harris-Short and Miles 2011: 294, quoting *Pheasant vs Pheasant* 1972).

English scholars dispute about the legal character of divorce – whether it is fault or no-fault. Basically, the divorce is considered a means to provide justice – the aim is to adjudicate on right and wrong and then make the wrongdoing face responsibility (Harris-Short and Miles 2011: 288). The doctrine understands

¹⁰ <http://www.legislation.gov.uk/ukpga/1973/18/part/I>, date of access: May 2017.

such a regulation as a contractual feature of marriage – “the guilty party’s breach excusing the other from continued performance of the contract and entitling that party to some form of compensation” (Harris-Short and Miles 2011: 289). Thus, the English understanding of the divorce differs from the Polish one under which the court does rule on the guilt of the breakdown.

The wording of Article 1 (2) of the Matrimonial Causes Act 1973 –

The court hearing a petition for divorce shall not hold the marriage to have broken down indicates irretrievably unless the petitioner satisfies the court of one or more of the following facts [...] (the Matrimonial Causes Act 1973)¹¹

– indicates that the catalogue of prerequisites is complete, namely that there is no other ground on which the divorce may be ruled. This feature makes it different from the Polish divorce regulation that is more general and limits to the premise of the complete and permanent breakdown of marriage (*zupełny i trwały rozkład pożycia*) without providing any further subcategories. At the same time, the Polish FGC distinguishes two different grounds of the breakdown of marriage whereas English law – only one.

Finally, English family law regulates broader types of relationships (marriages, civil partnerships, cohabitants), including same-sex marriages while the Polish FGC does not concern such estates.

1.3 Translations of the term: *wspólne pożycie*

Article	The Polish Family and Guardianship Code (FGC)	The Polish FGC translated by Lex	The Polish FGC translated by Legalis
23	Małżonkowie mają równe prawa i obowiązki w małżeństwie. Są obowiązani do wspólnego pożycia , do wzajemnej pomocy i wierności oraz do współdziałania dla dobra rodziny, którą przez swój związek założyli.	Spouses have equal rights and obligations in marriage. They are obliged to cohabit , help each other, remain faithful and collaborate for the benefit of the family they created by entering into marriage.	Spouses have equal rights and obligations in marriage. They are obliged to live together , assist each other and remain faithful, and to work together for the good of the family their marriage has created.

¹¹ <http://www.legislation.gov.uk/ukpga/1973/18/part/I>, date of access: May 2017.

28 § 1	Jeżeli jeden z małżonków pozostających we wspólnym pożyciu nie spełnia ciężącego na nim obowiązku przyczyniania się do zaspokajania potrzeb rodziny, sąd może nakazać, ażeby wynagrodzenie za pracę albo inne należności przypadające temu małżonkowi były w całości lub w części wypłacane do rąk drugiego małżonka.	If one of the cohabiting spouses does not perform his or her obligation to support the needs of the family, the court may order that the whole or a portion of his or her remuneration for work or other receivables be paid to person of the other spouse.	If one of the cohabiting spouses does not perform the obligation to contribute towards satisfying the needs of the family, the court may order that all or part of the remuneration from work or other receivables of that spouse be paid to the other spouse.
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Lex uses the following terms: *co-habiting*, *cohabiting* and *to cohabit* relating to *wspólne pożycie*. These are verb forms of the noun – *cohabitation*. Quoting Joel P. Bishop, Garner defines *matrimonial cohabitation* as “the living together of a man and a woman ostensibly as husband and wife” (Garner 2011: 170). *Cohabitation* is a common form in the dictionaries of legal English as an equivalent for the Polish concept (Jaślan and Jaślan 1991: 128; Ożga 2006: 107), altogether with such expressions as *żyć we wspólnocie* and *żyć jak mąż i żona* for (to) *cohabit* (Jaślan and Jaślan 1991: 128; Ożga 2006: 107) and *współżyć ze sobą* (Jaślan and Jaślan 1991: 128). All this leads to a conclusion that legal English provides two features of *cohabitation*: the relationship concerns only husband and wife, and relates to their factual living together. Thus, using this term as an equivalent for the Polish term *wspólne pożycie* seems adequate.

Legalis uses three different terms relating to *wspólne pożycie*. These are: *to live together*, also in the form of *living together* or *the life together*, *matrimonial life* and *cohabiting*. The former, *to live together*, does not appear in the English Family Law Act 1996, not even among the concepts defined in the dictionaries of legal English. As discussed above in the Garner’s definition (1995: 167), this term is used only as a defining element and not a legal term itself (cohabitation should involve living together, but has also some other components like emotional relationship etc.). Thus, considering the expression *living together* as an equivalent of Polish legal terms is doubtful.

Moreover, the lack of consistency in the Legalis translation ought to be underlined. Legalis uses different terms for the same concept. For example in Article 28, two terms are used: *cohabiting* in the first section and *living together*

in the second one. The use of two different terms relating to the same concept may cause misunderstanding for readers, especially if the terms appear in the same Article.

All things considered, the expression *living together* should not be regarded as a functional equivalent of the Polish term *wspólne pożycie* since this term encompasses only the part of the legal definition of the discussed concept, i.e. factual residing at one place.

1.4 Translations of the term: *rozkład pożycia*

Article	The Polish Family and Guardianship Code (FGC)	The Polish FGC translated by Lex	The Polish FGC translated by Legalis
56 § 1	Jeżeli między małżonkami nastąpił zupełny i trwały rozkład pożycia , każdy z małżonków może żądać, ażeby sąd rozwiązał małżeństwo przez rozwód.	In the case of complete and permanent breakdown of marriage , each spouse may request the court to terminate the marriage by divorce.	If there has been an irretrievable and complete breakdown of matrimonial life between the spouses, either spouse may request the court to order the marriage dissolved by divorce.
61 ¹ § 1	Jeżeli między małżonkami nastąpił zupełny rozkład pożycia , każdy z małżonków może żądać, ażeby sąd orzekł separację.	In the case of complete breakdown of marriage , each spouse may request the court issue a judgment of separation.	If there has been an irretrievable and complete breakdown of matrimonial life between the spouses, either spouse may demand the court to issue a separation order.
60 § 3	[...] Jednakże gdy zobowiązanym jest małżonek rozwiedziony, który nie został uznany za winnego rozkładu pożycia , obowiązek ten wygasa także z upływem pięciu lat od orzeczenia rozwodu [...]	[...] However, if the obligor was not considered at fault for breakdown of marriage , the obligation expires after the lapse of five years of the divorce [...]	[...] However, if the divorced spouse obliged to pay maintenance was not found guilty of fault in the breakdown of the life together , the obligation also ceases five years after the ruling on divorce [...]

Regarding *rozkład pożycia*, Lex uses consequently the expression *the breakdown of marriage*. Garner defines *breakdown* as a failure or a subdivision (Garner 1995: 117). The English-Polish dictionaries give *rozkład pożycia małżeńskiego* as

an equivalent of *the breakdown of marriage*. Legally, this concept does not affect a legal status of marriage unless divorce or separation has been ruled. Hence, the Polish concept of breakdown of marriage (*rozkład pożycia*) should be differentiated from the void marriage (*unieważnienie*) or the termination of marriage (*ustanie*), which change a legal status of a marriage. The breakdown of marriage solely – without an appropriate court's decision – does not change the legal status of spouses. The distinction should be clearly made in the translation. Taking into consideration the common usage of *the breakdown of marriage*, this term seems the most appropriate functional equivalent of the Polish term *rozkład pożycia małżeńskiego*.

Legalis translates *rozkład pożycia* as *the breakdown of matrimonial life* and *the breakdown of the life together*. In comparison to Lex, the translation of Legalis is closer to the original expression and in consequence, more accurate. This is because it links the breakdown with matrimonial life or life together, and not with the marriage itself. However, as stated above, the English legal terminology tends to use the form *the breakdown of marriage* which seems to be appropriate in this context.

The Polish FGC gives two main features that may be attributed to the breakdown of marriage. These are: *zupelny* and *trwały*. Lex translates *zupelny* as *complete* and *trwały* as *permanent*. Neither of them appears in English-Polish dictionaries in the context of marriage law. The reason lies probably in the fact that English regulations do not distinguish features of the breakdown of marriage while Polish ones do recognize the difference between them. Since English provisions use only the term *irretrievable*, translators could use it as an equivalent for one of Polish terms. However, as the meaning of *irretrievable* is not explained legally, the best choice seems to be introducing certain terminology that would be congruent for Polish terms.

In accordance with English-Polish dictionaries, *complete* is understood as *zupelny* (Jaślan and Jaślan 1991: 141; Ożga 2006: 120), *kompletny* (Jaślan and Jaślan 1991: 141; Ożga 2006: 120; Łozińska-Małkiewicz 2007: 229) or *całkowity* (Jaślan and Jaślan 1991: 141; Ożga 2006: 120). Hence, *complete* reflects the meaning of the Polish adjective, namely that the breakdown involves all bonds of relationship.

In legal English, *permanent* is used for such expressions like *permanent disability*, *permanent injunction*, *permanent injury* or *permanent nuisance* to refer to the persistency of certain states (Garner 1999: 1160). For *permanent*, the English-Polish dictionaries provide such equivalents as: *stały* (Jaślan and Jaślan 1991: 450; Ożga 2006: 512; Łozińska-Małkiewicz 2007: 698), *trwały* (Jaślan and

Jaślan 1991: 450; Ożga 2006: 512) or *nieustanny* (Jaślan and Jaślan 1991: 450; Ożga 2006: 512). All of them relate to the characteristics of a permanent state, not susceptible to change. Altogether, the terms *complete* and *permanent* seem to be functionally equivalent in this context.

Legalis provides the following equivalents: *irretrievable* (*zupełny*) and *complete* (*trwały*). *Irretrievable breakdown of the marriage* is understood as “a ground for divorce that is based on incompatibility between marriage partners and that is used in many states as the sole ground of no-fault divorce” (Garner 1999: 835). The Matrimonial Causes Act 1973 mentions the term *irretrievable breakdown of the marriage* as a premise to petition for divorce. Thus, this term may be used in the similar context as the Polish equivalent, although the meaning is not totally identical since the concepts are regulated differently (which was already discussed). According to the dictionaries, *irretrievable* may stand for *nieodwracalny* (Ożga 2006: 76), *bezpowrotnie stracony*, *nie do naprawienia* (Jaślan and Jaślan 1991: 342) or in the exemplary phrase *the marriage was irretrievably broken down* – *małżeństwo rozpadło się w sposób nieodwracalny* (Łozińska-Mańkiewicz 2007: 530).

The sequence of Article 56 § 1 and § 2 in Polish original version is *zupełny* and then *trwały* while in the Legalis’ translation first appears *irretrievable* and then *complete*. Thus, the sequence of the translation has been reversed. Article 56 concerns the divorce, which for its materialization requires aspects of the breakdown itself – the completeness and permanence that should be fulfilled in order to rule on marriage. The breakdown of marriage is also a premise of separation regulated in Article 61¹ of the FGC, but in this case only the completeness shall be fulfilled. However, the Legalis translation has not limited them only to that premise, but uses the same construction (*an irretrievable and complete breakdown of matrimonial life*) as in the case of divorce. This results in the change of the legal standing.

1.5 Translations of the terms: *winny rozkład pożycia, wyłącznie winny rozkładu pożycia, niewinny (rozkładu pożycia)*

The court’s ruling on divorce involves not only stating on whether the breakdown of marriage has taken place, but also which of the spouses has contributed to such situation. In the Polish legal system, under Articles 56 § 3, 57 § 1, 60 § 2 and 61³ § 2 of the FGC, there are four possible rulings, translated by Lex as follows: *responsible for breakdown of marriage* (*winny rozkładu pożycia*), *solely responsible for breakdown of marriage* or *solely at fault for breakdown of marriage* (*wyłącznie winny rozkładu pożycia*), *not considered at fault for breakdown of*

marriage (niewinny) and *neither spouse was at fault (żaden z małżonków nie ponosi winy)*.

Article	The Polish Family and Guardianship Code (FGC)	The Polish FGC translated by Lex	The Polish FGC translated by Legalis
56 § 3	Rozwód nie jest również dopuszczalny, jeżeli żąda go małżonek wyłącznie winny rozkładu pożycia [...]	Divorce is also not allowed if requested by the spouse who is solely responsible for breakdown of marriage [...]	A divorce is not permitted, if it has been requested by the spouse who is the sole guilty party for the breakdown [...]
57 § 1	Orzekając rozwód sąd orzeka także, czy i który z małżonków ponosi winę rozkładu pożycia .	When ruling on divorce, the court also rules whether and which of the spouses is at fault for breakdown of marriage .	In its ruling on divorce, the court rules on whether and which spouse is at fault for the breakdown .
60 § 2	Jeżeli jeden z małżonków został uznany za wyłącznie winnego rozkładu pożycia , a rozwód pociąga za sobą istotne pogorszenie sytuacji materialnej małżonka niewinnego , sąd na żądanie małżonka niewinnego może orzec, że małżonek wyłącznie winny obowiązany jest przyczyniać się w odpowiednim zakresie do zaspokajania usprawiedliwionych potrzeb małżonka niewinnego , chociażby ten nie znajdował się w niedostatku.	If one spouse was considered solely at fault for breakdown of marriage and the divorce causes major deterioration of the financial situation of the other spouse , the court, at the request of that other spouse , may order the spouse at fault to support the reasonable needs of the other spouse, even if that other spouse does not suffer insufficiency of means.	If one spouse has been found guilty of the exclusive fault in the breakdown of the life together and the divorce results in a significant deterioration in the standard of living of the innocent spouse , then the court, at the motion of the innocent spouse , may decide that the guilty spouse is obliged to contribute as far as appropriate to satisfy the justified needs of the innocent spouse , even though not without means.
61 ³ § 2	[...] W tym wypadku następują skutki takie, jak gdyby żaden z małżonków nie ponosił winy .	[...] In this case, the consequences are the same as if neither spouse was at fault .	[...] In this case, the effects are as if neither of the spouses is guilty .

Two main terms are used in the translations: *responsible* and *at fault*.

Formerly, **at fault** meant *in error, mistaken*. The older English-Polish dictionary translates *fault* as *wada, usterka, defekt, brak, wina, błąd, omyłka* and *at fault* as *w błędzie* (Jaślan and Jaślan 1991: 271). Originally, the term *fault* meant “in error, mistaken” or even “perplexed, puzzled” (Garner 2011: 91). In this regard, the term would not be congruent with the Polish term meaning that a spouse has not fulfilled obligations arising from their marriage which led to its breakdown. In modern legal English however, it has a meaning of being “responsible for a wrong committed; blameworthy” (Garner 2011: 91), which seems more adequate in the family law context.

Indeed, a discussion among scholars on the legal character of divorce concerns its being ‘fault’ or ‘no-fault’. The 21st century Polish-English dictionary gives many equivalents for *fault* such as: *wina, niedociągnięcie, błąd, brak* and *omyłka* (Ożga 2006: 246). This way, another meaning of the term is added, namely the one according to which someone committed wrong, not because of their misunderstanding, but because of their own negligence. Altogether, the term *fault* does not seem a formal equivalent of the studied Polish concept. However, due to the fact that English-speaking scholars use this term in the context of divorce, the term *fault* should be considered a functional equivalent of the Polish concept called ‘winny rozkładu pożycia’.

In the criminal contexts, the term **responsibility** is an equivalent for (1) guilt or (2) mental fitness to answer in court for one’s actions (Garner 2011: 781). This is the term usually used in the context of obligations and contracts, meaning “liability to be made to account or pay” (Garner 2011: 781). The English-Polish dictionary provides the following equivalents: *responsibility* – *odpowiedzialność* and *odpowiedzialny* – *responsible* (Ożga 2006: 625-6). The dictionary gives numerous examples of use in none of which appears the equivalent *wina*, but only *odpowiedzialność* (Jaślan and Jaślan 1991: 525; Ożga 2006: 625-6; Łozińska-Małkiewicz 2007: 839-740). In the Polish legal terminology, the most common context of responsibility (*odpowiedzialność*) would be connected with obligations, meaning consequences a debtor has to take because of the non-fulfilment of a contract. In the Family Law Act 1996, an expression *parental responsibility* is used four times. In accordance with the Children Act 1989, *parental responsibility* means “all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property”. Thus, it is doubtful whether the term *responsibility* may be a functional equivalent used while translating regulations of marriage law.

Legalis provides the following equivalents: **guilty of the breakdown of the life together** and **at fault for the breakdown** (*winny rozkładu pożycia*), **the sole**

guilty party for the breakdown or guilty of the exclusive fault in the breakdown of the life together (wyłącznie winny rozkładu pożycia), innocent (niewinny), neither of the spouses is guilty (żaden z małżonków nie ponosił winy).

The term ***guilty*** is generally associated with criminal cases. In civil contexts, only the most noted legal writers use this term (Garner 2011: 400). Although the term is used by lawyers, it is not necessarily used by legislators: the term ***guilty*** does not appear in the Family Law Act 1996. The English-Polish dictionary of 1991 associates ***guilt*** with ***wina*** and ***guilty*** with ***winny*** (Jaślan and Jaślan 1991: 303). The modern dictionary connotes ***guilt*** with ***wina***, ***poczucie winy*** and ***guilty*** with ***winny*** (Ożga 2006: 291). Thus, ***guilty*** may be treated as a functional equivalent of the Polish term ***winny***, characteristic of the criminal law. Nevertheless, many branches of law, including civil or criminal law, establish their own definitions of the concepts of guilt (***wina***). Indeed, this concept has its roots in the criminal law, but Polish civil law also establishes its own regulations regarding this concept and applies this definition in the civil cases. All things considered, the term ***guilty*** may be a formal equivalent of the Polish concept called 'wina', but the use of this term requires the assumption that a receptor will be able to distinguish two bases of Polish guilt, i.e. arising from civil law and criminal law.

Both terms ***guilty*** and ***faulty*** seem to be of similar meaning. However, the translation of Article 60 § 1, 2 and 3 ***not found guilty of the exclusive fault in the breakdown of the life together (nie został uznany za wyłącznie winnego rozkładu pożycia)*** sounds tautological. The translation consists of two terms of identical meaning, i.e. ***guilty*** and ***fault***. Instead, it would be sufficient to translate Polish ***uznany*** as ***considered/found/judged (exclusively guilty)*** in order to omit such a redundant tautology.

IV. Conclusions

This paper demonstrates that, due to the use of family law concepts by the receptors-professionals, i.e. English-speaking lawyers, translation equivalents need to be functional. Functional equivalents are easily understandable and interpretable while translation based on functional equivalence guarantees the accuracy and precision of the legal language.

The study on the Polish marriage-related terms resulted in the following compilations of equivalents.

Term	Equivalent by Lex	Equivalent by Legalis	Functional equivalent
wspólne pożycie	cohabitation	1) cohabitation 2) living together 3) matrimonial life	cohabitation
rozkład pożycia	the breakdown of marriage	1) the breakdown of matrimonial life 2) the breakdown of the life together	the breakdown of marriage
zupelny i trwały rozkład pożycia	complete and permanent breakdown of marriage	irretrievable and complete breakdown of matrimonial life	complete and permanent breakdown of marriage
winny rozkładu pożycia	responsible for breakdown of marriage	1) guilty of the breakdown of the life together 2) at fault for the breakdown	at fault for the breakdown
wyłącznie winny rozkładu pożycia	1) solely responsible for breakdown of marriage 2) solely at fault for breakdown of marriage	1) the sole guilty party for the breakdown 2) guilty of the exclusive fault in the breakdown of the life together	solely at fault for breakdown of marriage
niewinny (rozkładu pożycia)	neither spouse was at fault	neither of the spouses is guilty	neither spouse was at fault

Due to the fact that the concept of cohabitation is regulated in both Polish and English legal systems and that these regulations are similar, the term *cohabitation* seems to be an optimal functional equivalent of the Polish term *wspólne pożycie*. Moreover, this is the only term encompassing the entire definition of the Polish concept, and not only the factual 'living together' at one place.

Taking into consideration the fact that the English family law mentions only 'the irretrievable' feature of breakdown of marriage, translating the Polish terms *zupelny* and *trwały* as *irretrievable and complete* may seem tautological or unclear for an English-speaking audience. The translator should maintain the distinction between these two terms and provide some functional equivalents. In this regard, *complete and permanent breakdown of marriage* prove to be the most accurate terms because of their clear-cut meaning.

By virtue of the fact that the term *at fault* is commonly used by English-speaking lawyers in the context of divorce, it should be considered a functional equivalent of the Polish term *winny*. This is not a literal translation

like in the case of *guilty*, which might be classified as a formal equivalent. Nevertheless, the term *at fault* guarantees functionality, i.e. its unequivocal interpretation, among the English-speaking lawyers.

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STRESZCZENIE

Przedmiotem niniejszego artykułu jest analiza angielskich ekwiwalentów instytucji prawnych z zakresu prawa małżeńskiego uregulowanych w Tytule I polskiego Kodeksu rodzinnego i opiekuńczego. W części teoretycznej przedstawiono zagadnienia teoretyczne związane z jurslingwistyką, prawem porównawczym oraz przekładoznawstwem, ze szczególnym uwzględnieniem ekwiwalencji funkcjonalnej. W części praktycznej zbadano polskie i angielskie instytucje prawne z zakresu prawa małżeńskiego. Analizie poddano ekwiwalenty użyte w tłumaczeniach dostępnych w dwóch internetowych systemach informacji prawnej: Lex i Legalis. Zbadano uregulowanie polskich i angielskich instytucji z zakresu prawa rodzinnego, zastosowanie użytych terminów w prawie angielskim oraz możliwe powiązania z polskimi instytucjami prawa rodzinnego. Na tej podstawie okre-

ślona została funkcjonalność użytych terminów. Trzecia część została poświęcona wnioskowi i ocenie użytych ekwiwalentów.

Słowa kluczowe: tłumaczenie prawnicze, instytucja prawna, ekwiwalencja funkcjonalna, juryslingwistyka, prawo porównawcze

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