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**INSTITUTE OF LINGUISTICS
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www.lingualegis.amu.edu.pl

lingua.legis@gmail.com

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Pracownia Legilingwistyki

Al. Niepodległości 4, pok. 218B

61-874 Poznań, Poland

lingua.legis@gmail.com

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LEXICAL PITFALLS IN POLISH-ENGLISH LEGAL TRANSLATION: A CASE STUDY INVOLVING STUDENTS OF ENGLISH PHILOLOGY IN POLAND

Lukasz ZYGMUNT, MA, prokurator
Prokuratura Rejonowa w Garwolinie
Al. Legionów 46, 08-400 Garwolin, Poland
lukzyg@interia.pl

Abstract: The article illustrates problems which were encountered by students of the first and second year of English Philology, who had been given a task of translating from Polish into English a passage from a Supreme Court act, concerning the European Arrest Warrant execution. The author who is an active lawyer – working as a prosecutor of the District Prosecutor’s Office – analyzes almost twenty legal phrases coming from the original text and, comparing them with the official version of translation, examines the students’ versions (108 translations altogether) which are then accompanied by descriptions and comments on the mistakes made. The analyzed examples show the uniqueness of the legal language and its pitfalls as well as lexical and syntactic dilemmas which create linguistic traps for a Polish translator who is preoccupied with translation of legal texts from Polish into English or vice versa. Moreover, the discussed cases indicate the need for a highly professional training of philology students, especially in the area of ESP (English for Special Purposes).

LEKSYKALNE PUŁAPKI W POLSKO-ANGIELSKIM PRZEKŁADZIE PRAWNICZYM: STUDIUM PRZYPADKU OBEJMUJĄCE STUDENTÓW FILOLOGII ANGIELSKIEJ

Abstrakt: Artykuł ukazuje problemy jakie napotkali studenci I i II roku anglistyki, którym postawiono za zadanie przetłumaczyć z języka polskiego na angielski, fragment uchwały Sądu Najwyższego dotyczącej wykonania Europejskiego Nakazu Aresztowania. Autor – czynny zawodowo prawnik – prokurator Prokuratury Rejonowej – analizuje ok. 20 zwrotów prawniczych pochodzących z tej uchwały i, odnosząc się do oficjalnego tłumaczenia tekstu, dokonuje analizy tłumaczeń zaproponowanych przez studentów (w sumie 108 wersji) przedstawiając i opisując zaistniałe błędy. Przeanalizowane przykłady ukazują specyfikę języka prawnego i prawniczego oraz zawilości i pułapki leksykalno-syntaktyczne, jakie czyhają na polskiego tłumacza zajmującego się przekładem prawniczych tekstów z języka polskiego na język angielski lub odwrotnie. Omówione przykłady wskazują na potrzebę wysoce profesjonalnego szkolenia studentów neofilologii w zakresie przekładu tekstów specjalistycznych.

Introduction

The aim of the paper is to show the uniqueness of the legal language and its pitfalls as well as lexical and syntactic dilemmas which create linguistic traps for a Polish translator who is preoccupied with translation of legal texts from Polish into English or vice versa. Moreover, the paper's aim is to evoke and focus attention on the need for a highly professional training of philology students, especially in the area of ESP (English for Special Purposes).

The present paper illustrates the degree of linguistic competence and the translator's efficiency in the case of the examined students of English. First and second year students of English Philology at two Polish higher education institutions were asked to translate a legal text that combined both the language of law and the lawyers' language. The subject matter of the examined translation was a legal question of the Court of Appeal directed to the attention of the Supreme Court in Warsaw. The author has analyzed a total number of 108 sample translations of a Polish document into English.

The main tool of the research was the Lexical Approach in relation to comparative studies is. The adopted way of material penetration allowed for the analysis of the range of correctness evident in the use of legal terminology, functioning in the linguistic systems of Polish and English.

General remarks

Translation, by definition, is perceived as rewording of the same ideas in a different language from the original (Random House Webster's Electronic Dictionary and Thesaurus, College Edition). Plain, everyday language makes translation a plain and simple task. In the analysis of information and what it says, some of the most important questions arise in connection with the way language is used. Nevertheless, legal language, no matter whether English or Polish, cannot be considered as plain. Its intricacies in the area of syntax and lexis set off plenty of linguistic and cultural problems to be dealt with by the translator. To fully understand the notion of legal translation we have to be aware of a distinction between two types of language, namely the language of law and the lawyers' language. The first one may be defined as the language of legislative acts and it differs from the ordinary language especially in the aspect of vocabulary and stylistic (Seidler 1998, 114). The second term corresponds to the language of all categories of lawyers as well as legal scholars during the process of interpretation of legal acts and everyday legal activities e.g. litigation, constructing legal documents (Korybski 1998, 55). The way of dealing with problems and overcoming difficulties encountered in translation of a Polish legal text into English is to be presented in the further parts of the present paper.

Resolution of the Supreme Court and its translation

The text chosen for the students to translate into English was an official document stemming from the Polish Supreme Court, namely Resolution of the Supreme Court of the Republic of Poland of July 20, 2006 (Ref. File No I KZP 21/06), concerning the execution of the European Arrest Warrant issued by the Belgian judicial authority against Adam G., a Polish juvenile living temporarily in Belgium but with permanent

residence in Poland, who was suspected of murder to facilitate robbery of a Belgian citizen committed jointly with a second person on April 12, 2006 in Brussels. This sort of offence in Belgium is penalised with a life long detention sentence. Due mainly to the differences between the Belgian and Polish procedure of dealing with the juvenile offenders accused of committing most serious crimes, not wanted to be accused of infringing the suspect's rights, the Court of Appeal in Warsaw presented the Supreme Court with two legal questions as follows:

I. „czy zawarte w dyspozycji art. 607 k § 1 k.p.k. sformułowanie dotyczące przekazania z terytorium Rzeczypospolitej Polskiej osoby ściganej europejskim nakazem aresztowania „w celu przeprowadzenia przeciwko niej postępowania karnego” (podkr. SA) winno być interpretowane ściśle z jego brzmieniem, co oznaczałoby przekazanie wyłącznie bezpośrednio do przeprowadzenia postępowania karnego, czy też dopuszczalna jest szeroka interpretacja pojęcia „w celu przeprowadzenia postępowania karnego” (podkr. SA) oznaczająca możliwość przekazania osoby ściganej europejskim nakazem aresztowania do innego postępowania niż postępowanie karne w państwie wydania europejskiego nakazu aresztowania, zmierzającego bezpośrednio do stworzenia warunków formalno-prawnych do przeprowadzenia postępowania karnego, które to warunki uzależnione są od wydania uznaniowej decyzji przez sądowy organ tego państwa, w szczególności, gdy decyzja ta ma ustanowić, że osoba ścigana, będąca nieletnim w rozumieniu prawa państwa wydania europejskiego nakazu aresztowania, odpowiadać będzie w tym państwie za popełniony czyn wyczerpujący znamiona przestępstwa w postępowaniu karnym”;

II. „czy odmowa wykonania europejskiego nakazu aresztowania przez sąd polski dopuszczalna jest wyłącznie w przypadku zaistnienia przesłanek określonych w dyspozycji art. 607 p k.p.k. (bezwzględne przesłanki odmowy) i art. 607 r § 1 k.p.k. (względne przesłanki odmowy), czy też odmowa taka możliwa jest także na skutek innych przyczyn, np. stwierdzenia przez sąd polski braku przesłanek określonych w dyspozycji art. 607 k § 1 k.p.k.”

(http://www.sn.pl/orzecznictwo/uzasadnienia/ik/I-KZP-0021_06.pdf).

“I. whether the expression included in the disposition of Article 607 k § 1 of Criminal Code Proceedings concerning surrendering a person for whom a European arrest warrant had been issued “for the purposes of conducting against the person criminal prosecution” (underlined by the Court of Appeal) should be interpreted literally, which would mean surrendering directly for conducting criminal prosecution, or whether a wider interpretation is admissible “for the purposes of conducting criminal prosecution” (underlined by the Court of Appeal), providing the option to surrender the person concerned by a European arrest warrant for other than criminal prosecution in the State issuing the European arrest warrant leading directly to establishing formal and legal conditions for criminal prosecution, which conditions are pending on issuing a discretionary decision by the judicial authorities of that State, and in particular when the decision is to determine that the requested person as an juvenile under the law of the State issuing the European arrest warrant, is to bear responsibility in that State for the act committed meeting the premises of crime in criminal prosecution,

II. whether refusal to execute the European arrest warrant by Polish judicial authorities is admissible solely pending on premises given in the disposition of Article 607 p of Criminal Code Proceedings (absolute premises for refusal) and

Article 607 r § 1 of Criminal Code Proceedings (relative premises for refusal), or whether such refusal is also admissible due to other reasons, e.g. statement by Polish judicial authorities of failure to satisfy premises stipulated in the disposition of Article 607 k § 1 of Criminal Code Proceedings.”
(http://www.sn.pl/english/orzecznictwo/uzasadnienia/I-KZP-21_06en.pdf)

On July 20, 2006 the Supreme Court - Criminal Chamber, passed a resolution providing a reply to those questions. The students were ordered to translate the heading of the resolution and the first legal question it contained, i.e. one sentence consisting of seventeen lines of text in the original text and take into account the original outlook of the text.

Dunin-Dudkowska (2006, 157–158) stresses the importance of adequate and thorough translation of legal terms:

“Legal norms must not be translated into a foreign language without taking into consideration the fact that they were worked out by other and for other recipients who think differently and live in a different socio-cultural environment. Legal texts possess a unique semantic character. They do not contain synonyms, homonyms and redundancy. What matters in legal texts exclusively is their literal meaning but not their symbolic sense. A given legal text must have only one precise meaning assigned, which permits the decisive consideration of the fact” (transl L.Z.).

To what degree precision and adequacy in legal translation count can be vividly shown by the analysis of the way in which the below presented terms have been used by the examined students in their translations.

Table 1: The most important legal terminology used in the translated excerpt of the Supreme Court’s Resolution.

	Polish version	English version
1.	Przewodniczący	Chairman
2.	Sąd Najwyższy	Supreme Court
3.	Sędziowie	Judges
4.	Prokurator Prokuratury Krajowej	prosecutor of the National Prosecutor’s Office
5.	kodeks postępowania karnego (k.p.k.)	Criminal Code Proceedings
6.	Sąd Apelacyjny	Court of Appeal
7.	Postanowienie	decision
8.	zagadnienie prawne	legal question
9.	zasadnicza wykładnia ustawy	fundamental interpretation of the act
10.	przekazanie	surrendering
11.	Europejski Nakaz Aresztowania	European arrest warrant

12.	przeprowadzić	conduct
13.	postępowanie karne	criminal prosecution
14.	warunki formalno-prawne	formal and legal conditions
15.	organ sądowy	judicial authorities
16.	Nieletni	Juvenile
17.	znamiona przestępstwa	premises of crime

The chosen text clearly shows that textual conventions in the source language are often culture-dependent and may not correspond to conventions in the target culture²³. The notion of culture is of great importance and the translator must bear in mind that legal cultures and systems differ and these differences must be reflected in translation as it may frequently occur that the source text was composed by a person belonging to one legal culture while the target text is read by someone belonging to another legal system. Tokarczyk (2000, 109–152) shows connections between law, religion and morality and distinguishes, besides legal cultures of common law and statutory law, legal cultures of Judaism, Christianity, Islam, Confucianism, Hinduism, and Animism. Linguistic structures that are often found in the source language have no direct equivalent structures in the target language²⁴. The translator, therefore, has to find target language structures with the same functions as those in the source language. The examples below show how the sample group managed to fulfil the task:

Chairman

Surprisingly, the translation of the first term, that did not present a considerable challenge, produced so many variants, though the words *chairman* and *chairperson* were most commonly used. The term *chairman*, as used in the official translation, means: “*the presiding officer of a meeting, committee, etc., or the head of a board or department.*” It is not exclusively a legal term and the institution of chairman is common in many different countries.

It seems that many students tried to examine the cultural aspect of translation and looked for some equivalents rooted in the Anglo-Saxon legal culture like Lord Chief Justice, Chancellor or Honour Judge which, regardless of the effort, cannot be considered as direct equivalents of the word “*Przewodniczący*” as used in the context of the Supreme Court. Interestingly, a few people used expressions like *Chief Justice* or *Mr*

²³ Cf. Nielsen (2010, 23–35) who pointed out that translators may find it helpful to identify conventions in the microstructure of source texts. This is, however, only a first step towards producing translations that conform to the conventions in the target-language culture without changing the substantive contents of the source texts.

²⁴ Cf. Zweigert & Kötz’s (1998, 40 et seq.) thesis: the *praesumptio similitudinis* according to which there is a presumption of similarity of practical legal results amongst different legal systems. Otherwise dissimilar legal notions are actually the legal equivalents in different legal systems e.g. private title insurance companies in the USA do what the public Land Registry does in Germany. The two structures are wholly different but are functional legal equivalents.

Chief Justice, but failed to consequently describe other members of the court as Justices.

Two grievous mistakes occurred: terms *foreman* and *President of the Jury* have been used. They can be treated as synonyms and denote *a juror who leads jury proceedings and speaks to the court on the entire jury's behalf*.

The other term was *director*. A dictionary definition says that it is *a person who runs or manages a business, company or corporation, often as a member of a board of directors, with a fiduciary duty to direct its affairs in the best interest of both the business and its shareholders. Leader in the English legal meaning is Queen's Counsel or any barrister who is the senior of two counsels appearing for the same party* (Oxford 1994, 225).

One person decided that the term *Prime Minister* would be most suitable. It is hard to tell whether Justice Paprzycki (the Chairman) would mind, but for better or for worse Polish Constitution establishes separation of judicial and executive powers.

Two other terms are worth mentioning: *Chairperson* as a more politically correct version of *chairman*, as it does not describe the person's sex, and *Presiding judge*. It seems that the second term would be most suitable for the translation in question as it conveys the idea that the chairperson is at the same time a judge. The verb *to preside* means *to occupy the place of authority or control, as in an assembly or meeting; act as president or chairperson* and can frequently be found in legal register.

Table 2: Official version and students' equivalents of the term "Przewodniczący".

Official version:	Students' equivalents:
Ad 1. Chairman	Chairperson; Chairman; The Honour Judge; President of the Jury; Lord Chief Justice; President; Head chairman; Presiding judge; Chancellor; Director; Chief Justice; Leader; Foreman; Chair; Mr Chief Justice;

The Supreme Court

This term has only one lexical equivalent (though in Britain the House of Lords is the highest court) and most students were able to introduce it properly.

About a quarter of the students used the term High Court (which denotes a British court but of a lower instance), probably also due to the fact, that in Polish proceedings, while addressing the judge "Your Honour" the phrase "*Wysoki Sądzie*" is being used, which some people literally translate as *High Court*. Whatever was the

reason, the term *High Court* clearly does not express the idea of this particular court being the highest instance in the whole country.

Some students tried to communicate this idea by translating “*Sąd Najwyższy*” as *Highest Court of Law*. In this case, adding the word “law” was unnecessary as firstly, the whole text was concerned with legal issues and did not concern matters connected with e.g. the royal court or any marked horizontal area within which a game is played like a court of tennis. Secondly, as stated above, this term has only one lexical equivalent. One student introduced the term *Court of Justice*, probably to stress the fact that in her opinion lower instance courts in Poland lack justice, and thus, justice can only be served at the final instance. On the other hand, the European Court of Justice exists and the EU member states are bound by its legal decisions.

One person translated “*Sąd Najwyższy*” as... *National Party*. It cannot be doubted that the Supreme Court and the Polish long forgotten pre-war nationalist party “*Stronnictwo Narodowe*” share the same abbreviation - “*S.N.*” but it is terrifying that the person in question did not have any second thoughts.

Table 3: Official version and students’ equivalents of the term “*Sąd Najwyższy*”.

Ad. 2. Supreme Court	Supreme Court; High Court; Highest Court of Law; Court of Justice;
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Judges

First of all, the term *judge*, as correct lexically as it may be, is used in the English legal language to denote only lower instance judges and cannot be used in connection with the Supreme Court. Those jurists who sit in the Supreme Court are called *Justices* in order to emphasise their high rank, experience, power and importance, although the mission of both judges and Justices is to deliver justice. Only a few students were able to spot this difference, but mostly applied the term *judge*. As their justification, it has to be admitted that in the Polish legal language only one term functions to describe the whole profession, i.e. *sędzia* and it was indeed an uneasy task as even the Supreme Court’s translator used the word “judge”.

An interesting attempt was at the term *Puisne judges* used by a few students. Though this British term describes junior judges in rank, as opposed to the term denoting the Supreme Court’s seniors, but at least a few students tried to find some equivalent, though clearly not being familiar with the idea of the British (and Polish) court system.

One person used the term *adjudicators* which could be at best translated into Polish as ‘*osądzacze*’. Another egregious error was mistaking judges (Justices) with Juries (a group of persons selected by law and sworn to examine the evidence in a case and render a verdict to a court). This example shows how the lack of knowledge of the legal culture of a different country leads to serious misinterpretations. A general and thus vague term like *members* was also used, probably as the last resort for a person totally unfamiliar with legal register.

The word *array* remains a mystery when it comes to legal context. None of its

ordinary definitions matches the idea of judge. After a thorough search, the only legal context for the term was found in Oxford's Dictionary of Law (1994, 58–59) under the definition “*challenge to jury*”. The expression “*to challenge jury to the array*” describes the situation in which “*the whole panel is challenged by alleging some irregularity in the summoning of the jury (e.g. bias or partiality on the part of the jury summoning officer).*”

Table 4: Official version and students' equivalents of the term “*Sędziowie*”.

<p>Ad. 3. Judges</p>	<p>judges; Puisne judges; Justices; Arrays; Members; adjudicators; Juries;</p>
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Prosecutor of the National Prosecutor's Office

As it was predicted, this point was most troublesome and caused most misinterpretations. The main problem lies in the fact that the continental idea of the prosecution's office differs from the Anglo-Saxon one, though the role remains largely the same, i.e. prosecutor is *an attorney who prosecutes criminal cases on behalf of the state* (Blackwell 2004, 243).

Most students were aware of the fact that the prosecution is conducted in the name of the state and by officials appointed by the state, so they tried to express it in the process of translation. As a result adjectives and nouns like *public, state, country, domestic, national*, or even *central, internal* and *native* were used.

In the case of the term “*prokurator Prokuratury Krajowej*” the word “*krajowy*”, which can be expressed by many English equivalents, shows both the high rank of the prosecutor in question as well as the fact that this prosecutor's office covers the whole territory of Poland. That is why *national* is considered as probably the best equivalent.

Attorney General means *an attorney who serves as the head of the Department of Justice and chief legal adviser to the President and represents the United States in legal matters; each state has its own attorney general who performs the same functions at the state level* (Blackwell 2004, 24). In Poland, this term (used interchangeably with General Prosecutor) was at the time the Supreme Court's resolution was issued, attributed to the Minister of Justice who was also responsible for prosecution policy. In 2010, fundamental changes in the functional model of the Public Prosecution Service in Poland were introduced as the statute of October 9, 2009, amending the Prosecution Act and some other statutes (Journal of Laws nr 178, position 1375), came into force on March 31, 2010. The most important changes were the separation of function of the Prosecutor General from the Ministry of Justice and replacement of the National Prosecution (or National Prosecutor's Office) with the Prosecution General.

A few examined students used the term *procurator*. It is closest in spelling and pronunciation to the Polish term “*prokurator*” but its English meaning (derived from

Latin) is similar to an agent or a proxy and describes *a person who acts on someone else's behalf*.

Table 5: Official version and students' equivalents of the term "*Prokurator Prokuratury Krajowej*".

Ad. 4. prosecutor of the National Prosecutor's Office	prosecutor of the Public; General Prosecutor; Public Prosecutor of Public National Prosecutor's Office; Prosecutor of the state prosecution' prosecutor of the National Prosecutor's Office; Public Prosecutor; Prosecutor of national prosecutor's office; General Public Prosecutor; Public Prosecutor General; Attorney General of Public Prosecutor's Office; State Public Prosecutor; Prosecutor of the Country Public Prosecutor's Office; Prosecutor of Domestic Prosecutor's Office; Central Prosecutor; Native Public Prosecutor; Prosecutor of the Internal Prosecutor's Office; Procurator;
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Code of Criminal Proceedings/Procedure

As expected, students of English philology do not necessarily have direct knowledge of both foreign and domestic legal systems and their terms. That is why it did not make any difference to many of them whether *k.p.k.* (*kodeks postępowania karnego*) should be translated as *Penal Code* (i.e. the codification of criminal law) or *Code of Criminal Proceedings/Procedure* (i.e. the codification of the rules governing the criminal procedure). Some students left empty spaces, some translated only the abbreviation, changing the Polish letter "k" into the English "c", without any explanation. Furthermore, the misunderstanding of the abbreviation *k.p.k.* led one person to translate it as *the code of canon law*. This example must be considered as an egregious mistake because the whole text was dealing with the matters of criminal law and not the Church. A similar example is the expression used by another student - *code of practice*. This term (correctly *code of practices*) is not a penal phrase but describes rules of conduct of a trade organisation or company, etc.

One person decided to translate the term "*prawo*" as *right*. It could be considered as the case of Kade's facultative equivalence²⁵, because the Polish term

²⁵ Kade (1968, 79 et seq.), studying the notion of equivalence in translation distinguishes four types of equivalence:

prawo could be translated as *right* provided it should denote the direction. In a text concerned with legal matters the choice of the correct equivalent must be doubtless.

Finally, it has to be emphasised that the phrase *Criminal Code Proceedings* used in the official English version of the text must also be considered as inappropriate because the word order does not reflect the English word order. Re-translated into Polish, this phrase would sound as *karny kodeks postępowania*, which would not correspond to a genuine Polish legal term.

Table 6: Official version and students' equivalents of the term "*kodeks postępowania karnego (k.p.k.)*".

Ad. 5. Criminal Code Proceedings	Penal Code; Code of Penal Proceedings; Code of Penal Procedure; Criminal Code Proceedings; (...); penal right code; Code of the penal law; k.p.k. – c.p.c. code of practise; punitive proceeding codex; code of canon law;
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Court of Appeal

Court of Appeal appeared to present little challenge during translation since courts of appeal exist probably in all legal systems around the world. The name is commonly shared because the idea of granting the defendant the right of having his case reheard belongs to the fundamental human rights in democratic states – even Saddam Hussain's lawyers were allowed to appeal against the capital punishment sentence, though the appeal was not successful and did not change his fate.

A few students used rather uncommon and obscure terminology, namely: *Appellate Court*. One person decided to emphasise the fact that that particular court deals with appeals against sentences in criminal cases, and as a result he created a term unknown to the Polish judiciary (i.e. *Court of Criminal Appeal*).

A few translations opted for *District Court* as the courts fulfilling the idea of

(a) Totale Äquivalenz (total equivalence) – ideal correspondence between both languages, that can usually be found in standardised specialised terminology. e.g. die Marktforschung (German) – market research (English)

(b) Fakultative Äquivalenz (facultative equivalence) – a one to many correspondence between the source language words and those of the target language, e.g. napięcie (Polish) tension, voltage, suspense, stress, pressure (English).

(c) Approximative Äquivalenz (approximating equivalence) accounts for one to part of one correspondence, e.g. niebo (Polish) sky/heaven (English),

(d) Null-Äquivalenz (zero equivalence) lack of equivalent in the target language, usually in the case of culture bound lexical items, cf.: bigos (Polish), pub (English).

second instance courts. Unfortunately, although District Courts adjudicate appeals against the sentences of Local Courts as first instance courts, it is not enough to consider them equal in hierarchy to the Courts of Appeal. In the Polish legal system, District Courts are inferior to Courts of Appeal, and treating them as one in translation leads to serious misinterpretations.

Table 7: Official version and students' equivalents of the term "*Sąd Apelacyjny*".

Ad. 6. Court of Appeal	Appeal Court; Court of appeal; Court of Appeal; Appellate Court; Administrative Court; Court of Criminal Appeal; District Court;
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Decision

Evaluating different varieties of the term, the word *decision* seems the best option and this term was most widely used by the students in their translations. The term itself is similar to the Polish "*decyzja*". It means a *conclusion reached after considering facts and applicable law if necessary; a judicial determination or judgement*. The term *ruling* could also be taken for the idea of *judge's or court's of law authoritative statement*.

Only a few other expressions were introduced, namely *resolution* and *reference*, which cannot be accepted. *Resolution* means a *formal expression of the opinion or intended course of action of a legislative body or other group arrived through a vote* and is a proper term for the judgment passed by the Supreme Court. *Reference* is either a citation or an act of referring a matter to another body. In both cases it cannot be used as an equivalent of the process of the court's decision making.

Table 8: Official version and students' equivalents of the term "*postanowienie*".

Ad. 7. decision	decision; resolution; ruling; reference;
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Legal question

The exact Polish term was "*zagadnienie*", so *legal issue* could have been considered as the term closest in meaning. On the other hand, it does not fully reflect the idea, i.e. that the lower instance court, being unable to deal with a difficult legal problem that requires the fundamental interpretation of the law, turns to the Supreme Court for such an interpretation (colloquially speaking "asks for help"). We may compare this, to some extent, with the idea of precedent because the Supreme Court explains the legal provisions that caused problems in interpretation and its decision is binding.

The term *legislation issue* was improperly introduced as the Supreme Court does not deal with matters of legislative character. There is no doubt that in Poland the

legislative power lies in the hands of the Parliament and is legally controlled, in accordance with the Constitution, by the Constitutional Tribunal.

Table 9: Official version and students' equivalents of the term "zagadnienie prawne".

Ad. 8. legal question	legal problem; law question; legal issue; legal question; law's issue; question of law; legal act; legislation issue;
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Fundamental interpretation of the act

Most students opted for the correct adjective *fundamental* meaning *far-reaching and thoroughgoing in effect* and the noun *interpretation*. Some other adjectives being used were *essential*, *cardinal*, *elemental* and *principal*. The main problem with the translation of this phrase was how to translate the noun "ustawa" in the Polish legal fixed phrase "zasadnicza wykładnia ustawy". In this case, the noun should be attached to an abstract meaning and thus the term *law* is the best option, because the Supreme Court does not limit its interpretation to only one legal act, but examines the provisions in question in accordance to the whole system of criminal law. It is only worth mentioning that the term *bill*, traditionally improperly used as a synonym of the term *act*, is limited in meaning to the draft of a proposed law.

Table 10: Official version and students' equivalents of the term "zasadnicza wykładnia ustawy".

Ad. 9. fundamental interpretation of the act	principal interpretation of law; fundamental act interpretation; fundamental exponent of a statute; fundamental interpretation of the act; fundamental interpretation of the bill; fundamental interpretation of the law; constitution; elemental supplementation of statute; essential interpretation of statute; fundamental commentary; cardinal interpretation of the law; essential construction of the act;
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European arrest warrant & surrendering

Expression 10 will be discussed together with 11 below, as both are connected with the issuing of the European Arrest Warrant (EAW/EUAW).

The only correct term is European Arrest Warrant written with capital letter as

it is the proper name²⁶. Many students used the term *writ* which belongs to legal English terminology but is a court's command aimed at a particular person ordering that person to do a particular act whereas EAW is directed at the judicial authorities of the Member States.

The United Kingdom Home Office has defined it as “*common arrest and **surrender** warrant designed to provide efficient and effective justice within the EU, whilst protecting the rights of defendants and victims.*” The EAW is a means to increase the speed of extradition within the EU but it cannot be treated as a synonym of extradition. One person explained the procedure of EAW as “being hunted by the EAW.”

Table 11: Official version and students' equivalents of the term “*przekazanie*”.

Ad. 10. surrendering	transferring; extradition; handover; surrendering; expedition; delivery; transference; pass; assignment; delivery;
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Table 12: Official version and students' equivalents of the term “*Europejski Nakaz Aresztowania*”.

Ad. 11. European arrest warrant	European order of arrest; European arrest warrant; European warrant for arrest; European warrant of arrest; European writ; European detention order; European Bench-warrant; order of arrest European precept of apprehension; European penal warrant;
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To conduct

To conduct prosecution is a fixed legal phrase and should not be translated in any other way, with totally inappropriate verbs like e.g. *make, lead, maintain*. It is also possible to use phrasal verbs *carry out* or *carry on* in this context though they sound rather colloquial (and the translated document was a Resolution of the Supreme Court).

Table 13: Official version and students' equivalents of the term “*przeprowadzić*”.

²⁶ Cf. <http://www.eurowarrant.net>

Ad. 12. conduct	carry out; execute; conduct; lead; maintain; take; make; trial;
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Criminal prosecution

To correctly translate this term, at least a basic understanding of both source and target legal systems is needed, especially of the criminal procedure, in order to be able to distinguish between the seemingly synonymous terms of *criminal prosecution* and *criminal proceedings*. The second one is the umbrella term and includes the stages of investigation, prosecution and, finally, sentencing (punishment). Unfortunately, the interchanging use of these terms causes fatal problems in the administration of international justice. Even translations of the European Arrest Warrants produced by Polish sworn translators are not free from such mistakes. The problem is that if we use the term criminal prosecution we denote the early stage of the criminal proceedings. Therefore, it is illogical to translate that the person was sentenced and convicted to imprisonment during the stage of criminal prosecution. In such cases, British judicial authorities usually turn the Polish EAW down and demand explanation how it is possible that a person who is wanted for criminal prosecution (i.e. he is a fugitive from justice and did not stand trial) was sentenced to imprisonment. Such translations lead to the conclusion that Poland follows some kind of medieval (or even more archaic) code of criminal proceedings where the rights of the defendant are nonexistent.

Table 14: Official version and students' equivalents of the term "*postępowanie karne*".

Ad. 13. criminal prosecution	penal proceedings; penalty proceedings; criminal prosecution; penal procedure; criminal proceedings; court procedure; criminal action; legal proceedings; criminal charge;
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Formal and legal conditions

Term 14 did not cause any special problems although one person decided to translate "*formalne*" as *administrative*, probably without checking in the dictionary that *administrative* means *of or pertaining to administration; executive*.

Requirements cannot be considered appropriate as its closest Polish meaning is "*wymagania*." *Official* was used as a synonym of *formal* and *lawful* as a synonym of *legal*.

Table 15: Official version and students' equivalents of the term "warunki formalno-prawne".

Ad. 14. formal and legal conditions	formal and legal conditions; formal-law conditions; formal and lawful conditions; legal-formal conditions; formal and legal requirements; official-legal conditions; legal and administrative conditions;
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Judicial authorities

In this case (15) it is important to use a general phrase like judicial authorities (plural), because both the author of the source text and the translator are usually unaware what kind of organs deal with the matter in question in the target legal culture. It is often the case that the same matter is heard in one country by a Local Court in other by a District Court and in another by administrative authorities. That is why translations like *court organ*, *Court*, *court of justice* (probably suggesting existence of a court of injustice) or *magistrates* are more or less mistakes. One person used the expression *Body Court* (written with capital letters) which in reality does not convey any idea and the closest dictionary entry is body count.

Table 16: Official version and students' equivalents of the term "organ sądowy".

Ad. 15. judicial authorities	court organ; judicial authority; judicial authorities; judicial body; criminal justice body; Court of justice/court of justice; Court; Body Court; magistrates;
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Juvenile

Juvenile is the only possible term in this context, as it is the only term rooted in the criminal law. *Under-age* and its variants, including the incorrect one "underage" are rather not being utilised within the legal field.

Minor is a civil legal term and has a different meaning i.e. someone who is younger than eighteen years of age. According to the Polish Civil Code, the age of majority is attained at the first moment of the eighteenth birthday (Myrczek 2005, 3), whereas criminal responsibility starts in Poland with the first moment of the seventeenth birthday (in case of some more severe offences – with the fifteenth). *Adolescent* is also a legal term but denotes a type of juvenile (in the English sense of the term), i.e. a teenager being of the age thirteen through nineteen, and *pupil* is an educational term and does not have any application in the legal lexicon of penal law.

Table 17: Official version and students' equivalents of the term "nieletni".

Ad. 16. juvenile	under-age; under age; juvenile; minor; underage; adolescent; pupil;
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Premises of crime

One of the trickiest and most difficult to translate terms was "znamiona przestępstwa" as it is an example of a legal jargon. The most commonly used and correct translation is *premises of crime*. Most students were not familiar with the term though correctly decoded the idea it conveys, i.e. characteristics of an offence that lead to the criminal persecution of the offender. As shown above, many variations occurred, some represented the idea of translating *verbum ad verbo*, others tried to describe the term using ordinary words.

Table 18: Official version and students' equivalents of the term "znamiona przestępstwa".

Ad. 17. premises of crime	hallmarks of the offence; characteristics of offence; characteristic of a crime; qualified enough as an offence; premises of crime; account for an offence; responsible for actions; regarded as an offence; signs of crime; act recognised as a crime; act which at law is count as a crime; described as a crime; trait of crime; comprehensive crimes; features of a criminal offence; said to be a crime; features of criminal offence; badges of crime; indication of a crime; hallmarks of the crime; stigma of crime;
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Concluding remarks

The clash of two language systems always gives birth to controversies in the sphere of lexis and syntax, which usually results in semantic ambiguity and misunderstanding. Misinterpretation and thus misunderstanding can readily close the whole channel

through which information is sent, which, in turn, may cause significant real problems of cognition. The problem of misinterpretation and misunderstanding of English legal terminology by Polish users of English was the core element of the present exposition. Having analyzed 108 sample translations of a Polish document into English rendered by first and second year students of English Philology at two Polish higher education institutions, the following conclusions can be drawn:

- (i) The students' socio-linguistic and cultural competence, requiring some basic knowledge of the cultural, social, and legal background of Great Britain and the United States is inadequate. The examined students displayed a great deficit in socio-linguistic competence with reference to the English legal jargon since the majority of them was not able to convey the message.
- (ii) It appeared that pragmatic competence within its socio-linguistic domain, and especially in relation to cultural and professional references was very limited in the case of the examined students. They were not able to compare adequately and thus find functional English legi-linguistic equivalences to Polish legal institutions. For example, the institution of jury and its verdict was wrongly identified with the sentencing by a judge and penal law was identified with criminal procedure.
- (iii) The above-presented examples give evidence not only of socio-linguistic competence deficiency but they also point to the students' inadequate training in the use of dictionaries. Mixing up the position of Justice with the position of Prime Minister or decision with reference is really alarming since the lexical and socio-cultural problems appear with the students of English Philology, many of them in their second year of the three-year programme of studies, even though it would have to be recognised that such students may not have been given the intellectual tools to translate in a more effective way than they did in the case study in question. Therefore, one recommends that school and university authorities reconsider curricula, especially those which neglect the teaching in relation to the effective use of dictionaries.
- (iv) Moreover, organizational competence of the research students, especially in the domain of grammar, calls for improvement and thorough consideration. In many cases syntax was violated and the used vocabulary was entirely wrong. For example, **penal right code*; **hunted by the European Arrest Warrant*; **Mr Chief Justice*, or **delivery*.
- (v) The aforementioned examples testify to the students' inability to create a cohesive text in legal English. As our analysis and observation show, the subjects' organizational competence, and especially their textual competence is far below the level expected to be represented by a student of English Philology. Some of the translated texts bear witness of misinterpretation and misunderstanding.
- (vi) Examining 17 principal legal terms used in the Polish text and their equivalents in English as created by the observed and tested translators, it appeared that they worked out 169 term versions! Some terms had fewer number of equivalents than others, ranging from 6 (*postanowienie* - decision) to 21 (*znamiona przestępstwa* - premises of crime) and their number can only point to inadequacy of translation

- and thus to inadequacy in the translators' training.
- (vii) A thorough analysis and discussion over the problems and materials presented in the present paper make us cognizant of the difficulty of legal translation. Moreover, we realise that translation is, as a matter of fact, a demanding process especially if it refers to translation of texts for rather specific and highly specialised purposes. Hence, not only should listening, speaking, reading, and writing be considered as skills but the list ought to be expanded by translation as a special purpose skill which requires special training.

Taking into account all foregoing conclusions, we receive quite a clear image of what legal translation is, and what kind of competence is required from the professionally prepared translator. Besides, we also get a relatively clear picture of the teaching/learning process designed for the students of English Philology and especially their results in the translation test. The obtained results, in general, call for certain verification and modification of the contemporary three-year-programmes of studies offered by the majority of higher education institutions in Poland and designed for students of English.

Since demand for translators is ever-increasing, much must be done to change the educational system and curricula to make college and university graduates better prepared for the translator's job. The carried out research studies showed that the knowledge of the legal system and culture of the target language users, demonstrated by the subjects, was insufficient. The subjects' legal and linguistic competence was generally too low to transform ideas and forms without violating proper communication. Inadequate results in translation, as demonstrated by the subjects, only underscore the validity of the adopted proposition of this analysis.

Bibliography

- Blackwell, Amy, Hackney. 2004. *The Essential Dictionary of Law*. New York: Barnes & Noble Books
- Collin, Peter Hodgeson, Bartnicki, K. 2001. *Słownik Prawa*. Warszawa: Peter Collin Publishing.
- Dunin-Dudkowska, Anna. 2006. Tłumaczenie prawnicze jako akt komunikacji. In J. Mazur, M. Rzeszutko-Iwan eds. *Teksty kultury. Oblicza komunikacji*, 151–160. Lublin: UMCS.
- Garner, Bryan, A., ed. 2000. *A Handbook of Criminal Law Terms*. St Paul: West Group.
- Kade, Otto. 1968. *Zufall und Gesetzmäßigkeit in der Übersetzung*. Leipzig: VEB Verlag.
- Korybski, Andrzej and Antoni Pieniążek. 1998. *Wstęp do Prawoznawstwa*. Lublin: Morpol.
- Martin, Elizabeth, A., ed. 1994. *A Dictionary of Law*. Oxford: Oxford University Press.
- Myrczek, Ewa. 2005. *Lexicon of Law Terms*. Warszawa: C.H. Beck.
- Nielsen, Sandro. 2010. *Translational Creativity: Translating Genre Conventions in Statutes*. Vertimo Studijos 3.
- Random House Webster's Electronic Dictionary and Thesaurus*. 1992. College Edition.
- Resolution of the Supreme Court of the Republic of Poland of 20 July 2006 (I KZP 21/06). http://www.sn.pl/english/orzecznictwo/uzasadnienia/I-KZP-21_06en.pdf
- Seidler, Leopold Grzegorz, Henryk Groszyk, Jan Malarczyk, and Antoni Pieniążek. 1998. *Wstęp do nauki o państwie i prawie*. Lublin: Morpol.
- Statute of October 9, 2009, amending the Prosecution Act and some other statutes (Journal of Laws nr 178, position 1375).
- Tokarczyk, Roman. 2000. *Komparatystyka prawnicza*. Kraków: Kantor Wydawniczy Zakamycze.
- Zweigert, Konrad, Kötz Hein. 1998. *An Introduction to Comparative Law*. Oxford: Oxford University Press.

