IRENA SZCZEPANKOWSKA
The University of Białystok
irsz@poczta.fm

EQUIVALENCE OF ENGLISH AND POLISH LEGAL TEXTS ON THE BASIS OF SELECTED DOCUMENTS OF THE EUROPEAN UNION

Abstract. The presents article offers an analysis of selected issues concerning the equivalence of legal documents of the European Union written in English and Polish, on various levels of text organisation: orthographic (the spelling of proper names); syntactic (the preference for synthetic or analytic constructions, the use of auxiliary verbs, etc.); semantic (equivalence of modal predicates, general names, legal terms) and rhetorical (models of legislative discourse). It also discusses the problem of interference from the English-language original on the Polish version of many legislative documents of the EU. The linguistic material analysed here comes from the fiollowing documents: *Consolidated Version of the Treaty Establishing the European Atomic Energy Community* (Official Journal of the European Union C 84/1/2010); *Charter of Fundamental Rights of the European Union* (Official Journal of European Union C83/2/2010); *Consolidated version of the Treaty Establishing the European Union* (Official Journal of the European Communities C325/2002; *The Constitution of the Republic of Poland* (Dziennik Ustaw nr 78/1997).

Keywords: legal texts, English, Polish, equivalence, EU legislation.

1. INTRODUCTION

Globalisation processes on the level of economy, in particular those involving a closer political integration of states within such structures as the European Union, result, first of all, in the need for mutual adjustments of the legislation, and the establishment of a uniform set of rules to be observed by all their member states. It is not an easy task considering significant differences between the legal traditions of individual communities,

both on the normative (differences between systems of values and the resulting legal norms) and institutional level (legislative rules and techniques, organisation of jurisdiction, etc.). Such differences are primarily connected with the common law, which lies at the ground of codification in all countries. Naturally, the legal cultures of the states which belong to "European civilisation" or, to use a broader term, "western civilisation" (also referred to as "occidental" or "Euro-Atlantic") also have common foundations, such as the Greek philosophy, institutions of the Roman law and Judeo-Christian ethics (cf. Tokarczyk 2000: 12).[1]

Undoubtedly, the effectiveness of the process of integration depends on the cultural closeness between the societies. Despite some significant differences, such as the differences between legal cultures and political traditions of Eastern and Western Europe, the legal system of continental Europe (civil law) and the English and American common law, normative regulations and institutional organisations of democratic countries have a lot in common, which facilitates supranational understanding.

It needs to be emphasised here that the linguistic aspect of creating European legislation deserves special attention, in particular in the context of translation. Because all the documents issued by the institutions of the European Union have to be published in all official languages of its member states (cf. e.g. Szumowski 1998), the problem of semantic equivalence of legal texts is of utmost importance. They should be understood in the same way by all their addressees, regardless of the language they speak. It is important to note that EU documents are supposed to be written in all national languages of the Union; they are not supposed to be translated from any source language (in this way the cultural-linguistic diversity of the EU is respected, cf. Pawłowski 2004). In practice, however, as translators employed in EU institutions admit, the basic versions are written in the languages commonly used in official communication on international level, i.e. French and, increasingly, English. Versions written in other national languages are thus translations of the French or English originals. Polish documents contain clear cases of interference or even calques of the grammatical (mostly syntactic) structures of the English original, which in turn is likely to show traces of interference from French,

[1] It is also important to acknowledge the philosophical and legislative output of the Enlightenment, which is of great significance in the process of unification and regulation of the legal and judicial systems of Europe and the USA.

especially because EU law (as regards its norms and institutions) is most probably more consistent with the legal tradition of continental Europe than with the British common law. Problems may occur both on the level of equivalence of the documents written in various national languages (connected most of all with the choice of terms), and the quality of the text in the translator's native language (I have discussed such problems elsewhere – cf. Szczepankowska 2006) in relation to both standards of linguistic correctness and the terminology used in a given legal culture; the translator also needs to be familiar with certain legislative models (i.e. rules governing the structure of a legal text). As to the use of terminology, to ensure the appropriate standards of translation, translators work in close collaboration with competent legislators – specialists in different areas of law. The consistency of terminology used in legal texts is maintained with the help of the so called "translation base", i.e. a kind of electronic glossary which stores all the terms used in EU legal texts (in all the languages). Drafters of new texts use this base to see how certain notions have previously been rendered (cf. Szumowski 1998: 38), which, from a translator's perspective, is a very economical solution. However, it also results in the creation of language templates (the base contains not only specialist vocabulary and legal terminology but also the contexts in which they are used, i.e. syntactic and phraseological patterns ready to be used), which discourage translators from making individual translation efforts and improving the style of official communication.

A high degree of standardisation of legal texts is their inherent or even desirable feature, but it does not exempt their drafters (and in particular their translators) from the need to make linguistic choices: grammatical, semantic and stylistic (rhetorical). Some of the problems connected with making such linguistic choices – in particular those related to the equivalence of legal texts written in English and Polish – will be discussed here with reference to selected documents of the EU.[2]

[2] A more comprehensive account of the theoretical aspects of legal translation can be found in the works of the few Polish scholars who have dealt with the problem for many years (cf. Kielar 1973, 1977). Most of the research has been conducted during the last twenty years, as interest in legilinguistic issues increased when the Polish law and legal – or legal-administrative – language had to be adjusted to the EU model (cf. e.g.: Pieńkos 1999, 2002, Tomaszczyk [ed.] 1999, Kierzkowska 2002, Jopek-Bosiacka 2006). More studies of legal language, also in the context of translation, have been published outside Poland (e.g. Morris M [ed.] 1995, Šarčević 1997, Alcaraz and Hughes 2002).

2. THE SPELLING OF PROPER NAMES IN DIFFERENT LANGUAGE VERSIONS OF EU DOCUMENTS

Legal texts are governed by the same orthographic and morpho-syntactic rules as other types of text; they also need to follow the rules of correctness established in a given language community, both in terms of traditional usage and conscious efforts at language codification aimed at preserving linguistic culture. While drafting legal texts, it is important to bear in mind the differences between language systems and editing conventions of various languages, such as Polish and English, in order to avoid using calques of morphological structures and syntactic or phraseological patterns of a foreign language, or adjusting punctuation and spelling to foreign rules. In the case of the documents drafted in official languages of the European Union, such interference is likely to take place because of the requirement that all language versions of the same text should be equivalent. This may result in using English editorial conventions in Polish documents, e.g. those concerning the use of small and capital letters.

Legal texts often contain names of institutions, European and local authorities, as well as names of various types of documents, which have different spellings in English and Polish. General rules concerning the spelling of proper names are usually insufficient to determine how some of the ones used in the English version of a document should be spelled in Polish. It is often difficult to decide whether a given name should be spelled with a small or a capital letter. Compare the following English and Polish spellings:

(1) Eng. *European Community* – Pol. *Wspólnota Europejska*,

(2) Eng. *Member States* – Pol. *Państwa Członkowskie*,

(3) Eng. *Authority's Management Board* – Pol. *Zarząd Urzędu*,

(4) Eng. *Advisory Forum* – Pol. *forum doradcze*,

(5) Eng. *Court of Justice of the European Union* – Pol. *Trybunał Sprawiedliwości Unii Europejskiej*.

As for the names of institutions, names of countries or supranational political bodies, their spelling is not particularly problematic – Polish and

English rules are in agreement here – all full forms in a multiword name are spelled with a capital letter. However, in Polish (unlike in English) this rule does not apply to the spelling of common names, even if they are used to name offices or political bodies. Thus, it is difficult to explain why the expression *Państwa Członkowskie* (cf. (2) above) is capitalised in Polish. In accordance with Polish rules, both elements should be spelled with small letters, as is the case with *forum doradcze* (4) (its English equivalent is capitalised).

The use of small and capital letters in names of documents (legislative acts and other official texts) is more problematic, and equivalence between different language versions is rarely possible here, compare:

(6) Eng. *European Convention for the Protection of Human Rights and Fundamental Freedoms* – Pol. *(europejska) Konwencja o ochronie praw człowieka i podstawowych wolności*,

(7) Eng. *Charter of Fundamental Rights of the European Union* – Pol. *Karta praw podstawowych Unii Europejskiej*,

(8) Eng. *Treaty establishing the European Atomic Energy Community* – Pol. *Traktat ustanawiający Europejską Wspólnotę Energii Atomowej*,

(9) Eng. *Social Charters* – Pol. *Karty Społeczne (UE)*.

The rule observed in Polish texts is that the first element of the title (i.e. the proper name of the text) is capitalised, while the other elements are spelled with small letters (unless the are constituents of the proper names used in the title). This rule also applies to titles of legal documents, e.g. *Polski kodeks karny*, *Ustawa o języku polskim*, *Ustawa o świadczeniu usług drogą elektroniczną*, etc. Conventionally, titles of such legal acts appear in other legal documents without quotation marks or italics, which are usually used with titles quoted in academic and journalistic texts. Thus, the convention used brings the spelling of titles of legal acts close to the spelling of the names of institutions, which is why all the words used in such titles are sometimes capitalised. Traditionally, all the words used in the titles of documents which are of particular importance to a given community are capitalised in Polish, e.g. *Deklaracja Praw Człowieka i Obywatela*, *Konstytucja 3 Maja*. The common use of capital letters in the titles of documents may also be attributed to interference from English, e.g. in *Karty Społeczne (UE)*, see (9) above, and *Traktat Rzymski*, in particular in the case

of the short versions of the titles, e.g. using the name of the city where the act was proclaimed, e.g. *Traktat konstytuujący Unię Europejską*, is referred to as *Traktat z Maastricht* (1992). In English versions of EU documents, the word *treaty* is also capitalised. The Polish translator can choose between the following equivalents of *the Treaty of Lisbon*: *Traktat z Lizbony / traktat z Lizbony / Traktat lizboński / traktat lizboński / Traktat Lizboński*. The Polish spelling conventions allow the forms *traktat z Lizbony* and *traktat lizboński* (compare such established spellings as: *traktat wersalski, statuty nieszawskie*, etc.), however, in the texts analysed here, the translators appear to have opted for the English pattern, rendering *the Treaty of Lisbon* as *Traktat z Lizbony* and *Traktat Lizboński*. Because such shortened versions of titles have become more frequent than their full names, the use of the capital letter in the word *traktat* can be justified, however, there is no explanation for the use of capital letters in the spelling of adjectives derived from names of cities.

3. THE SYNTACTIC STRUCTURE OF ENGLISH AND POLISH TEXTS

The clarity and intelligibility of an utterance largely depends on the appropriate choice of syntactic structures within a given linguistic code.[3] Syntactic errors disturb the precision of texts and may lead to ambiguities, which should be avoided in legislative documents. Therefore, the choices of linguistic structures with a noun as the central element – synthetic or analytic – made by Polish drafters often raise doubts. In the case of the former, the relation between the modified and the modifier is morphologically marked (by means of an appropriate inflectional form or an adjectival affix), in the case of the latter, it is marked by a preposition (e.g. *w celu, odnośnie do, względem, na podstawie...*) or participles (*dotyczący czego, wiążący się z czym, zawarty w czym, związany z czym...*). English, being a positional language, is more analytic than inflectional languages like

[3] The problem of intelligibility of official and legal texts to an average reader has been studied by many European legislators and linguists whose interdisciplinary co-operation aims at improving the style of such texts (cf. Wagner and Cacciaguidi-Fahy [eds.] 2008). So far, this co-operation has not been very fruitful on the Polish ground, where discussions concentrate on other problems connected with legal language – cf. Malinowska (ed.) 2004; the linguistic guide for lawyers by Jadacka (2002) is a rather isolated phenomenon.

Polish, which allow the choice of synthetic structures. Attempts at the precision of translation result in the choice of analytic structures used in the English version, hence the common use of such constructions as *traktat z Lizbony* (Eng. *Treaty of Lisbon*) instead of *traktat lizboński*. The structure with an adjective sometimes turns out to be imprecise in Polish, e.g. the phrase *the Community priorities* unambiguously specifies what priorities are meant, while the Polish translation *wspólnotowe priorytety* is not as clear. The position of adjectival modifiers is also problematic, and some expressions, such as *wspólnotowe priorytety*, are clearly calques of the English original: in Polish, adjectives denoting a class of things are used in the post-positive position while in the analysed documents they often precede nouns. The correct ordering is thus *priorytety/wartości wspólnotowe*, compare *wspólne wartości/priorytety* (Eng. *common values/priorities*).

In the case of synthetic constructions with a noun modified by another noun in the genitive case, an additional indication of the relation between the two nouns seems necessary, e.g. the expression *kryterium kompetencji* can be understood as a criterion used to evaluate somebody's competence or a competence which serves as a criterion of evaluation. Likewise, *referencje organizacji* can be interpreted as 'references issued by a given organisation' or 'references concerning a given organisation'. A similar ambiguity appears in the translation of the following sentence from one of the EU acts (EURATOM):

(10) *As soon as an application for a patent or a utility model relating to a specifically nuclear subject is filed with a Member State, that State shall ask the applicant to agree that the contents of the application be communicated to the Commission forthwith.*

The Polish translation is:

(11) *Niezwłocznie po wpłynięciu wniosku o patent lub wzór użytkowy z zakresu ściśle jądrowego w Państwie Członkowskim, Państwo to zwraca się z prośbą do wnioskodawcy o zgodę na bezzwłoczne przekazanie treści wniosku Komisji.* (art. 16)

One possible meaning of this sentence is that the applicant must agree for the contents of the Commission's application (*treści wniosku Komisji*) to be communicated to a Member State, and another, that the contents of the application (*treści wniosku*) are to be communicated by a Member

State to the Commission (where 'to the Commission' is equivalent to the genitive form 'Komisji').

Ambiguities found in the Polish version result from the choice of the nominal (synthetic) style of writing laden with multiple nominal structures. In English, the same meanings are rendered by verbal constructions, which express relations between sentence elements more precisely. The document quoted above (as well as other Polish texts) is written in a formal style, using long sentences containing very few finite forms of verbs, which makes it difficult to understand. Incorrect word order and punctuation errors additionally increase this difficulty.

Another important issue is the choice of auxiliary expressions, also called 'supporting': Pol. *wspierające* (cf. Pieńkos 1999: 42) – verbal, nominal, adjectival, adverbial or pronominal. It is an important indication of the linguistic competence of a legislator, often underestimated by translator training institutions, where teaching typically focuses on legal terminology (Pieńkos 1999: 42–43), which is easily found in lexicographic sources. Translators working for EU institutions may also seek the support of legal theorists if they have problems with the choice of appropriate terms. Therefore, it is not surprising that phraseological and syntactic errors are more frequent than terminological problems. The choice of appropriate auxiliary verbs poses significant problems and many wrong collocations become templates.

It is enough to examine one document (EURATOM) to find the following clumsy expressions: *podejmować środki w celu...* (instead of: *stosować/wdrażać/wykorzystywać środki* or *podejmować działania*); *przyjąć przepisy* (instead of: *uchwalić przepisy*); *wykonywać prawo do czegoś* (instead of: *korzystać z prawa do czegoś*), *użytkować informacje/wyniki/środki/wynalazki...* (instead of: *korzystać z informacji/wyników, stosować wynalazki, używać środków*, etc.), *postanawiają ustanowić* (instead of: *ustanawiają*), *dokonać zaniechania czegoś* (instead of: *zaniechać czego*). Such expressions are often calques from English (compare: *take measures, make the right to sth, make use of sth*).

Drafting legal texts is connected with problems which also occur while writing other types of texts. Numerous language traps which drafters may fall into have already been addressed by linguists (cf. Jadacka 2002). The aim of the present paper is to highlight some of the difficulties which are specifically connected with drafting Polish versions of those legislative texts which have originally been written in English.

4. THE EQUIVALENCE OF LEGAL TEXTS ON THE SEMANTIC LEVEL

The normative value of legislative acts is expressed by modal (deontic) predicates, such as the English *shall*, *may*, *has the right*, and the Polish *powinien*, *ma prawo*, *może*, etc. Problems with their choice and use are connected with both the syntactic and semantic levels of language. Expressing the legislator's intention (modality) is the primary function of legislative texts, however, achieving the perfect parallel between different linguistic versions may be difficult. Modality is not only marked explicitly by means of modal and performative verbs, whose range and use differ across languages (and types of texts), but also implicitly via the meanings of predicates, the syntactic structures of sentences, and verb morphology (tense and mood).

In English, a legal regulation usually takes the form of a sentence containing the modal verb *shall* (*shall not*), which expresses "the obligatory nature of the law"; it has the imperative value but carries no implication of reference to the future (Kielar 1977: 38). Polish legislative texts usually consist of declarative sentences in the present tense which contain no modal expressions. The normative value of such sentences is realised contextually; it results from the conventional interpretation of such texts in the context of a legislative act (cf. Szczepankowska 2008a).

Let us compare the following regulations found in the English and Polish versions of the *Charter of Fundamental Rights of the European Union* (Pol. *Karta praw podstawowych Unii Europejskiej*: KPPUE), paying attention to the ways of expressing modality (emphasis mine I.Sz.):

(12) *Compliance with these rules shall be subject to control by an independent authority. // Przestrzeganie tych zasad podlega kontroli niezależnego organu.* (art. 8, p. 3)

(13) *The Union shall respect cultural, religious and linguistic diversity. // Unia szanuje różnorodność kulturową, religijną i językową.* (art. 22)

(14) *Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity. // Dzieci mają prawo do takiej ochrony i opieki, jaka jest konieczna dla ich dobra. Mogą one swobodnie wyrażać swoje poglądy. Poglądy te są brane pod uwagę w sprawach, które ich dotyczą, stosownie do ich wieku i stopnia dojrzałości.* (art. 24, p. 1)

(15) *No one shall be condemned to the death penalty, or executed. // Nikt nie może być skazany na karę śmierci ani poddany jej wykonaniu.* (art. 2, p. 2)

(16) *The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex. // Zasada równości nie stanowi przeszkody w utrzymywaniu lub przyjmowaniu środków zapewniających specyficzne korzyści dla osób [!] płci niedostatecznie reprezentowanej.* (art. 23)

(17) *Everyone has the right to life. // Każdy ma prawo do życia.* (art. 2, p. 1)

(18) *Human dignity is inviolable. It must be respected and protected. // Godność człowieka jest nienaruszalna. Musi być szanowana i chroniona.* (art. 1)

(19) *In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. // We wszystkich działaniach dotyczących dzieci, zarówno podejmowanych przez władze publiczne, jak i instytucje prywatne, należy przede wszystkim uwzględnić najlepszy interes dziecka.* (art. 24, p. 2)

(20) *Trafficking in human beings is prohibited // Handel ludźmi jest zakazany* (art. 5, p. 3)

As a general exponent of normativity, the English predicate *shall* may accompany other exponents of the sender's intention (see 12, 14), i.e. expressions of obligation and the right to sth, which do not involve any additional modalisator (eg. *shall be the obligation – jest obowiązkiem*; *shall have the right to – ma prawo do*; *shall be free of – jest wolny od*); in its negative form, the predicate *shall* has a greater illocutionary force than in the positive form, and is often translated into Polish by means of a modal verb, e.g. *nie może* (15). In the Constitution of the Republic of Poland (*Konstytucja Rzeczypospolitej Polskiej*, henceforth KRP) from 1997, there are such modal expressions of obligation as *jest obowiązany/powinien/należy*, which are rendered in English with the predicate *shall*, e.g. *Każdy jest obowiązany szanować wolności i prawa innych // Everyone shall respect the freedoms and rights of others.* (art. 31); *Każdy pozbawiony wolności powinien być traktowany w sposób humanitarny // Anyone deprived of liberty shall be treated in a humane manner* (art. 41, p. 4).

In the fragments of KPPUE quoted above (18, 19), obligation is more frequently expressed by the modal verb *must*, which corresponds to the

Polish *musi* or *należy*. The verb *musieć* rarely appears in legislative texts originally written in Polish, because of its associations with colloquial language, where it is used to express the duties and responsibilities of interlocutors rather than legal obligation. The rather frequent use of this predicate in Polish versions of EU documents results from the interference of the English *must*. The English translation of the Polish Constitution from 1997 quoted above contains very few occurrences of *must* used as a counterpart of the Polish predicates of obligation, which probably results from the infrequent use of *musieć* in the Polish original. This example shows that interference operates both ways, so while analysing equivalence of legal documents it is important to know the source and the target language of the document.

A parallel on the semantic level of the text is not only achieved by means of an appropriate choice of terminology, but also vocabulary belonging to the general lexicon of a language. In legal texts, particularly those of importance to the general public, such as constitutions, international treatises, etc., the general lexicon conveys most of the meaning. It is, for example, the case with names of values protected by the law. In such acts as the *Charter of Fundamental Rights of the European Union*, the values are first listed in the preamble, and then in the titles of those parts of the act which concern specific rights and responsibilities resulting from the adopted system of values. Although it may seem that within the European cultural space the system of values is rather uniform, and such Polish words as *godność, wolność, równość, solidarność* have their counterparts in English: *dignity, freedom, equality, solidarity*, their range, hierarchy and meaning change over time and space. All the values quoted above do appear in the preamble to KPPUE, but the discussions during which the set of values was established revealed differences between national traditions and legal cultures among EU member states. The well known French formula of *liberty, equality, fraternity* (Fr. *liberté, egalité, fraternité*) from the Declaration of the Rights of Man and of the Citizen has been modified in the Charter: possibly under the influence of the Polish idea of *solidarność*, *solidarity* has replaced *fraternity*, a concept which now sounds too patriarchal; *dignity* has been added to the original triad, possibly in connection with the Christian notion of "the dignity of the human person" emphasised by John Paul II in his encyclicals.

Charter of Fundamental Rights of the European Union does not contain references to any particular religion, neither does the project of the con-

stitution of the European Union. Thus, the Polish translator's decision to render *spiritual heritage* as *duchowo-religijne dziedzictwo* in the preamble to the Charter was probably motivated by the desire to account for the axiological sensitivity and cultural background of the target audience (i.e. "connotative equivalence", as it is referred to in translation theory – cf. Kierzkowska 2002: 95). The addition of the adjective *religijne* ('religious') in the Polish version of the document probably results from the translator's conviction that for Poles spirituality is inseparably connected with religion. Linguists who have analysed the meanings of words denoting values in various languages emphasise cross-cultural differences between the words which are given as equivalents in dictionaries (cf. Wierzbicka 1999). The lack of complete correlation between Polish and English in this respect is already visible on the level of categorisation: the semantic field of the Polish *wolność* is covered by two English words (which have different connotations than *wolność*): *liberty* and *freedom*. It is not always easy for the translator to determine which of the two should be used in a given context. The latter can also be rendered in Polish as *swoboda* in some contexts, in particular when it is used in the plural and has a more specific reference (compare *prawa i swobody obywatelskie*). However, in EU documents, the plural form *wolności* is preferred as the equivalent of the Eng. *freedoms*. There seems to be a universal tendency (attested in various national languages) to pluralise some terms in legal texts: words which belong to the category of *singularia tantum*, in particular names of abstract terms (such as the Pol. *wolność* and *ryzyko*). Not all such forms sound natural in Polish (e.g. it would be difficult to accept the plural forms of such terms as *godność* and *solidarność*), which is why their meanings often undergo specialisation and depart from their basic singular form. The plural form *wolności* has a long tradition in Polish, even though until the 18th century it was used as a synonym of *przywileje* (Lat. *privilegia*, *libertates*). This connotation is no longer the prevalent one, neither in the case of the Eng. *freedoms* nor the Pol. *wolności* – both words usually refer to various kinds (areas) of freedom: personal, religious, civil, etc. The tendency to overuse plural forms of abstract nouns in legal texts may result from the desire to make the texts economical: instead of the rather lengthy phrases *różne obszary realizowania wolności/ryzyka/władzy*, drafters prefer to use *wolności*, *ryzyka*, *władze*, etc. There seem to be no significant differences in the use of such forms between different language versions of EU documents. The template seems to be universal, with

a considerable degree of morpho-semantic parallelism between different versions of the texts.

As already mentioned, the most important criterion of equivalence with reference to different language versions of legal texts is the choice of terms designating legal concepts. In the case of English and Polish texts, the main problem concerns the incompatibility of the legal systems, particularly because English is the language of legislation in many countries, and there are many functional varieties of legal English. Dictionaries often list terms used in different varieties without any information about the system in which a particular term is used, its frequency and range of uses in legal texts. Therefore, dictionaries should only be used as additional aids in specialist translation. Multi-language encyclopaedic dictionaries give various equivalents of the Polish term *prawo rzeczowe* (Fr. *droit de choses*, Germ. *Sachenrecht*): *law as to real property and chattels real, law of real property, law of things* (source: Euroleksykon). In legal texts we also find such equivalents of the plural form of the term as *rights in things, property rights, rights in rem* (the latter being a hybrid based on the Latin *ius in rem*). Theoretically, such polylexis should not be found in terminological systems, but it is fairly common, particularly in English. Synonymy of this kind is also found in Polish (e.g. *nieruchomość, mienie/dobra/rzeczy nieruchome*); and often involves terms of different origins (mostly native and Latin), e.g. *kontrakt* and *umowa, uchwała* and *rezolucja, rozporządzenie* and *dyrektywa, ugoda* and *konsensus, pełnomocnictwo* and *plenipotencja*, etc. In such cases drafters of EU documents usually give preference for native terms. Terms of foreign origin are used if they are internationalisms which sound similar in other languages, mostly English. Such words are usually less likely to acquire colloquial connotations, which native words often have, in particular those of wide currency. However, internationalisms often have the character of false friends, e.g. such Polish terms as *referencje, ekspertyza* and *egzekucja* are narrower in scope than the English *references, expertise, execution*, which sometimes leads to misunderstandings in translation (for a broader discussion see Szczepankowska 2006).

Drafters-translators are fully aware of the advantages of the so called functional translation, i.e. translation whose primary aim is comprehensibility combined with grammatical and stylistic accuracy. In this type of translation it is important to choose terms which have an analogous function (i.e. which designate institutions of the same kind) in the legal discourse of the source and target language (cf. Šarčević 1997: 236,

Pieńkos 2002: 109–110, Kierzkowska 2002: 59). However, this strategy is not always used; sometimes translators opt for the consistency with the original at the cost of stylistic and terminological innovations, which often results from the conviction that the integration of the legal systems of EU member states and unification of the nomenclature used in official communication is more important than respecting differences between individual nations and their languages. Translators sometimes try to reconcile these two strategies, which may lead to inconsistencies and confusion in the applications of some rules. Functional translation favours the use of connotative equivalents, e.g. the Polish term *pomocniczość* instead of *subsydiarność* (Eng. *subsidiarity*). On the other hand, the incompatibility of legal systems and the desire to standardise terminology of EU documents often results in what in translation studies is referred to as "denotative equivalence" (Kierzkowska 2002: 95), i.e. copying terms from the source language of a document. When it is difficult to find exact equivalents in the target language, translators look for "neutral equivalents", i.e. they use general terms (or descriptive names) which are the closest in meaning to the word used in the foreign language. Sometimes a structure of the original term is copied (e.g. Pol. *wzór użytkowy* – Eng. *utility model*), or a word is borrowed in an assimilated form (e.g. Pol. *sublicencja*, *patent*, *arbitraż*); some words are left unchanged as quotations (e.g. Eng. *impeachment*, *leasing*, Fr. *laissez-passer*, etc.).

Mutual borrowings of terminology and structural calques (in the case of Polish, the transfer is unidirectional, i.e. the Polish legal language borrows foreign terms, usually from English, sometimes also from French or German, but it is not the source of borrowings for other languages) are an economical way of unifying terminology in the process of integrating the legal systems of EU member states on the terminological and institutional levels. This is an aim which is clearly defined in the legal acts of the EU, such as EURATOM (see art. 8: *It* [a Joint Nuclear Research Centre – I. Sz.] *shall also ensure that a uniform nuclear terminology and a standard system of measurements are established*).

5. EQUIVALENCE ON THE LEVEL OF STYLE AND LEGAL DISCOURSE MARKERS

A legal text always represents a certain genre of speech (e.g. a decree or a constitution) which operates by specific schemata or has, to use van

Dijk's (1977) term, a certain "superstructure", i.e. a global structure characteristic of a certain type of text. The structural and stylistic make-up of a text is determined by its pragmatic function (communication purpose). The structural and stylistic variants of specific types of legal texts are historically conditioned and do not depend on individual choices of their drafters; their style is determined by the communicative convention current at a given time, and the common knowledge of the discourse participants, which enables them to communicate within a certain legal culture (cf. also Szczepankowska 2012).

Conventions connected with the genre and style of a legal text go beyond the boundaries of national cultures and ethnic languages. The system of communication rules used in legal discourse forms a specific semiotic code functioning above the language systems in which certain texts are drafted.

In the European tradition, which makes use of rhetorical patterns, until the 16th century, and in Poland even longer than that (until the 18th century), the structure of a legal text resembled the structure of a court verdict (cf. also Szczepankowska 2008). Rather than describing a specific case brought to court, the act describes the circumstances of the so called hypothesis of a legal norm ('If S takes place...'), and the court verdict takes the form of a directive addressed at a general audience ('X should do P'). A sentence consisting of a hypothesis and a directive was often realised in a metatextual and performative form (e.g. Eng. *We establish...*, Pol. *Ja stanowię, że...*). It was often preceded by a justification (explaining the reason or motive) of the act in question. The persuasive function of the text was realised by means of references to the general rules of law, morality, the Christian faith, social custom, which were called to justify certain decisions; pragmatic motives were provided as well.

Examples of discursive forms of texts can be found in medieval German law (Magdeburg and Saxon law). A similar structure was adopted in royal edicts of the kings of France and England, and The Habeas Corpus Act of 1679; the same pattern is found in the regulations of the Polish Constitution of the 3rd May, 1791. This specific style can be explained with reference to the origins of a legal act (which is secondary to a court decree) and the universal stylistic convention which had been in use in Europe until the 18th century: a convention derived from the theory of logic and rhetoric, which required a justification of a verdict (*genus iudiciale* was also used in the process of making law).

This convention has changed with time. Certain elements of a standard legal norm – a justification (statement of reasons), a performative (modal) formula and a conditional sentence containing a hypothesis and instructions – could be omitted in some acts creating a legal norm because the addressee was able to interpolate these elements by means of a conventional semantic-pragmatic implicature. A more important consequence of this change is the modern impersonal style of legal regulations. The use of a performative formula, sometimes with modal verbs (e.g. Eng. *We order*, Pol. *nakazujemy*), involved identifying the sender of the text (e.g. *We, King – my, król*); the omission of an expression identifying the sender, combined with the use of impersonal directives (Eng. *is ordered/prohibited*, Pol. *jest nakazane/zakazane*) makes it possible to conceal the lawmaker's identity, thus leaving the impression that the whole responsibility for carrying out the regulations falls on their addressees, while the legislator remains unspecified and inaccessible, even if his existence is implied by such formulas as the Polish *zapewnia się* ('it is guaranteed') or *Rzeczpospolita Polska gwarantuje* ('The Republic of Poland guarantees'). Compare:

(21) *The arts and scientific research shall be free of constraint. Academic freedom shall be respected. // Sztuka i badania naukowe są wolne od ograniczeń. Wolność akademicka jest szanowana.* (KPPUE, art. 13)

A sentence without a modalisator (preferred in Polish) in the indicative mood ('X does P'/'P exists') gives the appearance of the factuality of an event (unquestionable necessity). As a result of the lack of formulas explicating the sender's activities (performatives), modal predicates used in modern legislative texts, such as *shall*, *may* (Pol. *może*, *powinien*) lose their directive (volitional) meaning. They function as expressions of objective necessity/possibility, existing independently of the subjects' will. This style of drafting legal acts was adopted in the European tradition during the Enlightenment; it was connected with the development of the rules of legislative technique, in particular with the conviction that the legislator should not state the reasons for the norms introduced.

Since the 19th century, the common rule *lex iubeat, non suadeat, non doceat, non laudat* has been rigorously used in European acts of law, e.g. in The Napoleonic Code, whose style significantly influenced the Polish legislative technique. The lack of any justifications of the laws introduced – on the level of the text – obliterates the audience's conviction about the

instrumental function of the law as a norm which represents the superior value of justice. The law itself begins to be perceived as an expression of the superlative value. The need to appeal to the higher rights and motives of the legislative activity manifests itself in the practice of preceding important legal acts with a preamble, whose form is often the effect of animated social discussions.

However, this need is fulfilled outside the main text of the legislative act, and a preamble usually has little normative value. In Polish legislation, preambles are given a lot of attention, even though this tendency is in conflict with one of the current rules of legislative technique, which says that an act of law should only contain information which serves to express legal norms, omitting any appeals, postulates, recommendations, admonitions or justifications (cf. ZTP, section I, ch. 1 §11). This rule is not strictly observed in relation to all types of legal regulations. The practice of justifying court verdicts and various administrative decisions has been part of the legislative tradition for a long time. Perhaps it is more difficult and less necessary to provide the motives of more general norms introduced by the legislator. On the other hand, one may argue that such anti-persuasive restrictions are in conflict with the general rules of a democratic state, whose citizens have the right to know the motives of the decisions taken by the authorities.

Because attitudes towards the practice of providing the reasons on which the introduced laws are based vary across the legislative traditions and current legislative practices of the EU member states, attempts have been made to regulate and unify the structure of EU documents in this respect. The problem has already been addressed in *the Treaty Establishing the European Union* (cf. TEEC, art. 253), which puts an obligation on the member states to give the reasons for the newly drafted acts of law. Regulations, directives, and decisions of the European Parliament, Council and Commission must specify the reasons on which they are based. The absence of such an explanation may cause an act to become invalid. Legislative institutions of the EU have published a practical guide for people involved in the drafting of legislation; instructions concerning the statements of reasons on which legal acts are based are also included there (cf. JPGEU, 10.2). The guide explains that the purpose of such statements is "to enable any person concerned to ascertain the circumstances in which the enacting institution exercised its powers as regards the act in question, ... to give the parties to a dispute the opportunity to defend

their interests and to enable the Community judicature to exercise its power of review" (JPGEU, 10.2). Drafting instructions also concern the structure of a legislative act, the order of its elements, the content of the statements of reasons and their order, separation of the statements from the enacting terms, etc. (cf. JPGEU, point 7). A preamble, which contains the statement of reasons on which a legal act is based, is an integral part of all normative texts of the European Union. Extensive preambles are found not only in general acts (constitutions), but also in all other legislative acts of the EU. Considerable attention is also paid to the use of structural and stylistic templates by administrative and judicial institutions. The aim of the template is to facilitate the comprehension of the texts (cf. Lötscher 2008).

On the level of international legal discourse, the local diversity of communicative patterns is not usually respected. Being part of international political organisms involves the adoption of a number of uniform regulations by their member states, and, what follows, also the adoption of a certain system of values, and models of public discourse which reflect those values. Awareness of the similarities and differences between the legal cultures of European nations, in particular in the axiological and linguistic sense, should be the object of interdisciplinary research. Its findings could contribute to achieving the desirable equivalence of different language versions of legal texts on all levels of text organisation.[4]

LIST OF THE SOURCES QUOTED WITH ABBREVIATIONS

Euroleksykon – Jerzy Pieńkos, *Euroleksykon terminologiczny międzynarodowych stosunków gospodarczych, prawnych i politycznych polsko-angielsko-francusko-niemiecki*, Warszawa–Poznań 2002.

EURATOM – *Wersja skonsolidowana Traktatu ustanawiającego Europejską Wspólnotę Energii Atomowej*, Dziennik Urzędowy UE C 84/1/2010; *Consolidated Version of the Treaty Establishing the European Atomic Energy Community*, *Official* Journal of the European Union C 84/1/2010).

JPGEU – *Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of legislation within the Community institutions.* Luxembourg: Office for Official Publications of the European Communities, 2003. (at: http://publications.europa.eu/code, 11.10.2009).

[4] The article has originally been written in Polish. English translation by Agata Rozumko.

KPPUE – *Karta praw podstawowych Unii Europejskiej*, Dziennik Urzędowy UE C83/2/2010; *Charter of Fundamental Rights of the European Union*, Official Journal of European Union C83/2/2010.

KRP – *Konstytucja Rzeczypospolitej Polskiej* [and the English version: *The Constitution of the Republic of Poland*], Dziennik Ustaw nr 78/1997.

TEEU – *Consolidated version of the Treaty Establishing the European Union*, Official Journal of the European Communities C325/2002.
(at: http://eur.lex.europa.eu/en/ treaties, 11.10.2009)

ZTP – *Rozporządzenie Prezesa Rady Ministrów z dnia 20 czerwca 2002 r. w sprawie "Zasad techniki prawodawczej"*, Dziennik Ustaw nr 100/2002.

REFERENCES

Alcaraz, Enrique and Brian Hughes. 2002. *Legal Translation Explained*. Manchester: St. Jerome Publishing.

van Dijk, Teun A. 1977. *Text and Context. Explorations in the Semantics and Pragmatics of Discourse*. London: Longman.

Jadacka, Hanna. 2002. *Poradnik językowy dla prawników*. Warszawa: Wydawnictwo Naukowe Semper.

Jopek-Bosiacka, Anna. 2006. *Przekład prawny i sądowy*. Warszawa: Wydawnictwo Naukowe PWN.

Kielar, Barbara Z. 1973. *Angielskie ekwiwalenty polskich terminów prawno-ustrojowych*. Warszawa: Wydawnictwa Uniwersytetu Warszawskiego.

Kielar, Barbara Z. 1977. *Language of the Law in the Aspect of Translation*. Warszawa: Wydawnictwa Uniwersytetu Warszawskiego.

Kierzkowska, Danuta. 2002. *Tłumaczenie prawnicze*. Warszawa: Wydawnictwo TEPIS.

Lötscher, Andreas. 2008. "Conceptual and textual structure in legislative texts", in: Wagner A. and S. Cacciaguidi-Fahy (eds.). 2008. *Obscurity and Clarity in the Law. Prospects and Challenges*. Aldershot: Ashgate Publishing, 129–150.

Malinowska, Ewa (ed.). 2004. *Język – prawo – społeczeństwo*. Opole: Wydawnictwo Uniwersytetu Opolskiego.

Morris, Marshall (ed.). 1995. *Translation and the Law*. Amsterdam/Philadelphia: John Benjamins Publishing Company.

Pawłowski, Adam. 2004. "Język w konstytucjach wybranych państw europejskich". *Poradnik Językowy* 4, 10–25.

Pieńkos, Jerzy. 1999. *Podstawy juryslingwistyki. Język w prawie – prawo w języku*. Warszawa: Oficyna Prawnicza Muza S.A.

Pieńkos, Jerzy. 2002. *Podstawy przekładoznawstwa – Od teorii do praktyki*, Kraków: Kantor Wydawniczy Zakamycze.

Szczepankowska, Irena. 2006. "Problemy z tłumaczeniem na język polski tekstów oficjalnych (na materiale dokumentów publikowanych w Dzienniku Urzędowym Unii Europejskiej)". *Poradnik Językowy* 7, 3–15.

Szczepankowska, Irena. 2008. "Wpływ intencji perswazyjnej nadawcy na styl dawnej i współczesnej wypowiedzi prawodawczej w języku polskim", in: I. Szczepankowska (ed.). 2008. *Styl a semantyka*. Białystok: Wydawnictwo UwB, 411–426.

Szczepankowska, Irena. 2008a. "O modalności i negacji w wypowiedziach dyrektywnych – logiczne i pragmatyczne aspekty analizy semantycznej", in: M. T. Lizisowa (ed.). 2008. *Język w urzędach i sądach II*, Kraków: Wydawnictwo Collegium Columbinum, 19–29.

Szczepankowska, Irena. 2012. "The directive and persuasive style of a legislative speech act and the transformations thereof (illustrated with the Polish legal discourse)", in: V. K. Bhatia, Ch. A. Hafner, L. Miller, A. Wagner (eds.). 2012. *Transparency, Power and Control. Perspectives on Legal Communications*. Furnham (Surrey): Ashgate Publishing, 51–66.

Szumowski, Andrzej. 1998. "Kwestie językowe integracji europejskiej", in: W. Miodunka (ed.). 1998. *Edukacja językowa Polaków*. Kraków: Wydawnictwo UN-O.

Šarčević, Susan. 1997. *New Approach to Legal Translation*. The Hague: Kluwer Law International.

Tokarczyk, Roman. 2000. "Kultura prawa europejskiego". *Studia Europejskie* 1, 11–26.

Tomaszczyk, Jerzy (ed.). 1999. *Aspects of Legal Language and Legal Translation*. Łódź: Łódź University Press.

Wagner, Anne and Sophie Cacciaguidi-Fahy (eds.). 2008. *Obscurity and Clarity in the Law. Prospects and Challenges*, Aldershot: Ashgate Publishing.

Wierzbicka, Anna. 1999. *Wolność – libertas – freedeom – svoboda. Uniwersalne ideały czy specyficzne dla danej kultury jednostki leksykalne?*, in: A. Wierzbicka, *Język – umysł – kultura*, selected papers edited by J. Bartmiński, Warszawa: PWN, 490–521.