

Communicating legislation and making it more accessible to a broader public

Clear Writing for Europe Conference in Brussels on 5 December

Remarks by Prof Ülle Madise, Chancellor of Justice of Estonia

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Mrs Chair, Ladies and Gentlemen,

I am really delighted to acknowledge, that the **clear writing** and simplification of administrative language, the clear message movement is gaining strength all over Europe. In member states as well as in the European institutions.

Commission policies directed to good law drafting help to make EU better. As I first saw Clear Writing booklets in all official languages I was positively surprised. Excellent tips! Instead of sentence like „A recommendation was made by the European Parliament that consideration be given by the Member States to a simplification of the procedure“ we could say clearly: „The European Parliament recommended that the Member States consider simplifying the procedure“.

IATE terminology database, eTranslation, Interinstitutional Style Guide – I would like to thank the Commission for this great work. DGT Estonian Language Department has showcased the Commission initiatives in Estonia: on seminars and conferences, in publications. F.e two weeks ago Mr Heiki Pisuke gave an excellent presentation in Estonian Academy of Sciences.

Clarity of communication shows respect towards the citizens. It is an important element of good administration.

That is why I serve as one of the leaders of Estonian clear language movement. You might wonder who the Chancellor of Justice is.

The Chancellor of Justice is an independent constitutional institution in Estonia. It unites the tasks of a classical ombudsman with the constitutional review of legislation.

The Estonian constitution states that the official language is Estonian, the principles of good administration shall be followed, and legislation shall be accessible.

But as it has been tested hundreds of times during my tenure, which started in 2015, one of the most important tasks of the Chancellor of Justice is simply helping people to understand and explain the meaning of the laws and other legally binding acts to the people.

Ladies and Gentlemen,

I would like to share a true story from Estonia. This story was published this autumn in Estonian weekly newspaper and illustrates why clear writing is needed.

Quote:

In early August a family from the mid-Estonian countryside received a letter from the local government the message of which they could not understand.

Soon the letter looked rather shabby, as people in trouble asked everybody who came to read it.

Alas, no-one could understand the main point: will the municipality give them money for renovating their toilet or not. Halfway through the letter, the impression was building up as if the money was granted. But later it seemed as if their application was declined.

The final paragraph of the letter stated that if the family disagreed with the decision, they could send a plea to the Tallinn Administrative Court. „Court, why court!? “ worried the landlady. „Do they really want to arrest our son? “ The letter was indeed addressed to their son.

The lady grabbed the phone and told the local government officials, that she was Estonian and asked to send the letters in plain Estonian to her. Not confusing numbers of paragraphs from the laws.

Curiously enough, the civil servant on the phone did not manage to explain the plot of the letter to the lady even during the phone call.

A senior terminologist at the Institute of Estonian Language – the main body dealing with language and terminology questions in Estonia - , who later analysed the letter, found it breaking all the clear language principles: the letter started with a full page of endless references, after what a contradictory decision was declared. Although the application met the funding criteria, it still could not be funded because of the scarce local budget. The terminologist concluded, that the municipal government’s answer was „no“.

But let’s get back to our family at their farm. An official was sent to explain the decision. Two more letters were written by the civil servants. To tell, that the family would probably get the money, although initially they would not.

So far so good, at least the things are moving – sighed the family in relief. The letters are carefully preserved, of course, due to the important stamp in the upper right corner of the paper: restricted access for the next 75 years!

End of quote and story.

I do not know your experience in your countries but in Estonia some public officials had a strong belief that a legal or official text shall be sophisticated.

Dear friends,

This is exactly the reason why I cherish my current position. I am a die-hard opponent of the view that official or legal language must be some kind of secret code for only lawyers to understand.

Vice versa – it should be prohibited to create artificial barriers between the state and citizens with the tools of language.

Our aim is to solve – and where possible – to prevent the problems, not simply to deal with them. People should understand the laws. It is their right as taxpayers and citizens to understand rulings of the court, letters from the tax office, from their local community, etc.

To encourage the parliament, government boards, municipalities and other institutions and officials to write clearly we had to start from reforming our own work. Immediately after I assumed my current position I declared clear writing, clear message as a principle in my institution.

One might ask – was it easy to change the way of doing things and writing letters differently and clearly? The answer is „no“.

It took a lot of effort and time and training, even arguments and some resistance. The truth is, that it is easier to compose a long and messy report or official statement full of unreadable technical and professional slang than to make shorter but clear statements straight to the point. To be brief, you have to know the topic and take responsibility for every word. And yes – it takes more time and craftsmanship which comes only while practicing and through self-doubt and –criticism.

The essential ingredient of every reform and change is leading by example. This kind of changes start from the top. Setting the values of every organisation and ways of doing things and then consistently reminding them during the everyday work process is the only possible way to get new and different things done. That is not only my experience, other institutions have reported the same.

You can't do this alone, you have to convert key-personnel first, and soon others will follow.

Although we all employ educated people with master's or even doctorate degrees, the art of clear writing is all but absent from present day universities. So, it could be useful to hire professional language and text editors.

And now, let us have a look at actual legal? norms, their language. The principle of clarity of legislation and administrative acts means, that an individual understands the messages from public authorities, and acts upon them accordingly.

This means, that an individual understands his/her rights and obligations. This is most important in cases when breaking a rule brings sanctions or even punishment.

The European Court of Human Rights found in *Sunday Times v. United Kingdom* (26.04.1979, 6538/74, p. 49) that the law must be sufficiently accessible: the person must be able to perceive the applicable norm adequately.

I am proud to introduce Riigi Teataja – The Official Gazette – a database of all the laws.

[Slide 2 & short online presentation]

It is technically accessible (at least for everybody with the internet connection). But what about this:

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A different problem arises from discussions at international and multilateral organisations when the results or compromises are cast in the form of treaties, declarations or other acts.

Maybe some of you here remember the United Nations Global Compact for Migration, which was discussed several Member States and approved by United Nations a year ago. It was stated

throughout the text, that it was neither a treaty nor a legally binding document. However, there was a lot of confusion. Do phrases like „legally non-binding“ and „non-legally binding“ mean one and the same?

Ladies and Gentlemen

Research is going on in several Member States on “Eurolect”, what is it (a new dialect, language version,?), how does it influence our mother tongue? Probably we all have heard ironic statements about so-called Eurospeak or /eurojargon – a way of combining words and phrases or rephrasing them in a new, complicated and confusing way. Would it be possible to talk about EU policies in a clearer language? F.e The Green Deal – it is in our all best interests to communicate it with clear words – words that have meaning for everyone.

However, there are good examples, good legal texts. Take our, Estonian Constitution of 1992. Easy and simple language. Short sentences. Some lawyers, my colleagues complain, that it is far too short and simple and therefore our Constitution lacks solemnity and complexity.

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We do have The Comments of the Constitution. In print (1000+ pages) and also online, free for all to read and think, use and implement. The meaning of every word and phrase, legal term and comma are thoroughly explained by our leading experts and practitioners of constitutional law. There are also links to relevant court decisions and international treaties from which our norms derive.

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I do not believe that clear language that respects human dignity would deprive lawyers and officials of their job.

The German legal philosopher Rudolf von Jhering once rightly said: The legislator must think like a philosopher, but talk like a peasant.

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Aitäh! Merci! Thank you!