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PLAIN-LANGUAGE APPROACH IN LEGISLATIVE DRAFTING: A PERSPECTIVE FROM POLAND

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Abstract: The purpose of this research is to explore plain-language postulates reflecting on legal drafting assumptions since legal acts should be precise, clear and express with no doubts the intention of the legislator. The aim of this project is to commence discussion about improving the clarity of Polish consumer law based on selected plain-language techniques. This article agrees that the aspiration to make the law comprehensible for all subjects is an idealistic postulate. Ultimately, despite this, legislators' obligation is to make an effort to increase the intelligibility of legislation wherever it is possible.

Key words: Plain legal language, Legal Texts, Polish Consumer Law, Legal Drafting, Clarity, Simplification

PLAIN LANGUAGE W TEKSTACH PRAWNYCH – PERSPEKTYWA Z POLSKI

Abstrakt: Przedmiotem artykułu, jest omówienie ruchu „plain legal language” czyli zrozumiałej i efektywnej komunikacji w tekstach prawnych. Zaprezentowany zostanie rozwój ruchu „plain language” oraz postulat powszechnego rozumienia prawa, w odniesieniu do polskich dyrektyw redagowania tekstu prawnego. Wybrane techniki i narzędzia standardu „plain language” zostaną w formie eksperymentu zaimplementowane do ustawy konsumenckiej. Artykuł opisuje rozwiązania, które potencjalnie mogą zwiększyć komunikatywność tekstów prawnych.

Słowa kluczowe: plain legal language, teksty prawne, prawo konsumenckie, zasady techniki prawodawczej, postulat powszechnego zrozumiałości prawa

1. Introduction

For centuries, lawyers have been using a specific writing style which became too complex for unqualified users to comprehend. Those standards contain long, complex sentences; specialized jargon; archaic, inflated vocabulary and impersonal constructions. A new chapter in this field was opened by the plain-language movement, which promotes clear and effective communication. The main goal of this movement is to prepare texts which a mass audience can easily understand. This standard encourages writers to avoid jargon, redundancy, ambiguity and obscurity.

Plain-language fundamentals have been aggregated in dozens of guidelines and involve *‘planning a document, designing it, organising it, constructing sentences, choosing words and testing mass documents on typical readers* (Kimble 2006: 45). These guidelines are very dynamic and continuously expanding after being widely discussed. However, it is important to note that all of them are “user-centric”. All rules promote the use of language that the final user understands and feels comfortable with. According to plain-language guidelines, the crucial phase has been defined as the moment before writing the document, when the sender needs to perform a research about the audience, their needs, education and language competencies. The value of thinking about what suits the users leads

also to usability tests, which confirm whether the documents are comprehensible by the users. According to plain-language guidelines, readers' comprehension might be improved by linguistic changes such as writing short sentences, avoiding arcane vocabulary, using vigorous verbs and favouring the active voice. Furthermore, the plain-language framework is supported by visual and design techniques like simple typography and adding useful headings, lists or tables. These improvements are as important as linguistic changes; moreover, according to Martin Cutts, *'plain language need effective layout otherwise only half the job has been done'* (Cutts 2010: 3).

The art is to apply plain language guidelines in legal texts to encompass all the complexity of the law. Strategic concern is that the meaning of legal texts might be hard to understand especially from the perspective of the lay public. Key concern is that to comprehend legal documents, specific knowledge and language competences might be required, which are usually out of non-lawyers reach. As per Rabeea Assy *'Using the law effectively requires expertise that goes far beyond understanding the meaning of the words used to communicate it'* (Assy 2011:376).. Polish theorists of the law in many publications explored characteristics and functions of legal language and have been focused on common understanding of law postulates. The conclusion is that legislators have to face the challenge of seeking compromise between rendering the law intelligible to the unspecialized users and enhancing precision. Despite claims that sole or perfect solution might not exist, it's worth looking for solutions like plain language approach, which can address both legislators and non-lawyer's needs. The dilemma of how to implement plain language guidelines into legal texts will be explored later in this study by presenting proof of concept assumptions related to redrafting the polish consumer law.

2. Progress towards plain-language in legislative drafting

Plain language standards have been already implemented in many documents from governance, administrative, business and legal area. For better understanding of the matter, examples of plain language

standard implementations from selected countries are presented below.

In Poland, there are a number of projects in businesses, like banking or insurance, where the plain language guidelines play a vital role. Pleas for clarity also resound in the Ministry of Finance's initiatives where, together with the Tax Administration, they are seeking new ways to improve written communications with the citizens to boost tax revenues at very low cost. According to the studies, the results can be achieved by rewriting official letters by applying behavioural science. Straightforward language along with clear and direct information about key facts also plays a vital role in reducing complexity. Researchers' findings prove that revised correspondence is much more effective than standard documents and consequently leads to increased revenue from tax collection (Hernandez et al 2017:6). These initiatives from diverse areas lead to the conclusion that plain language is becoming more and more popular in Poland and is being highly appreciated, by both the authors of the texts as well as the readers.

Another example of plain-language legislation is the Plain Writing Act of 2010, which President Obama signed into law on 13 October 2010. The purpose of this Act is to *'improve the effectiveness and accountability of Federal agencies to the public by promoting clear Government communication that the public can understand and use'* (Public Law 111 – Oct. 13, 2010 124 Stat. 2851). The next legislative initiative was implemented in New Zealand. The purpose of this Act is to improve the effectiveness and accountability of New Zealand's governmental organisations by requiring them to communicate clearly with the public.

Apart from legislative acts which regulate plain-language postulates, it is worth mentioning examples which provide information on how plain-language standards might be implemented in common law. One example of the practical use of plain language comes from New Zealand legislative drafting. The Income Tax Act from 1976 had been simplified by adopting the plain-language approach, including re-organisation of the structure, organising the materials from general to specific, changes in terminology and usage of tables to aggregate content. The Income Tax Act 2007, which received Royal assent on 1 November 2007, represents the fourth and final stage of the re-writing of the income tax legislation using plain drafting techniques. The bill was introduced

on 15 November 2006 and had its first reading on 23 November. From this point of view, another interesting example is a demonstrative project conducted by Martin Cutts, who decided to redraft an Act of Parliament about Timesharing. The results of this experiment have been widely discussed, including feedback from parliamentary office members who were responsible for the original version of this Act. In his publications, Martin Cutts emphasizes that the incentive to launch this initiative was not to show the errors of the parliamentary office staff who created the Timeshare Act. What is more, it has been pointed out that they had a very difficult task to perform, taking into account the circumstances of law-making, such as a structured legislative process, limited time or the need for numerous consultations. As Martin Cutts wrote *'The project does not seek to belittle the considerable skills of the parliamentary counsel, who do a difficult job under trying circumstances'* (Cutts 1993: 6). Martin Cutts' intention, however, was not to push through his work, "The Clearer Timeshare Act", as the one that should absolutely replace the original Act. The key value of this exercise was to indicate the need for changes that must be introduced into legal texts. The specific example shows how this should be done and the direction in which the legal text changes should be implemented. The debate between the promoters of simple language, the members of the Parliamentary Council and representatives of the government on the possibilities of simplifying legal texts is also a significant milestone for the entire plain language movement

3. Legislative drafting in Poland

Discussion about the clarity of legal texts has been present in the Polish legal environment for several decades, including assumptions in the field of theory and legal philosophy. The scope of these achievements is related to a common understanding of law, clarity and communicativeness. Many postulates reflect basic plain-language rules like the focusing-on-audience approach. Knowledge of legal norms is a prerequisite for the effective impact of law on social life. Receiving a message from the legislator 'in an adequate manner' empowers citizens to make real use of their rights

and comply with their obligations (Zieliński 2012: 51). Pleas for achieving this goal resound in publications by increasing the communicative nature of the legal system manifesting itself in *'formulating legal provisions in such a way that the broadest possible circle of interested persons can determine on their basis who, under what circumstances and what should be done'* (Zieliński 2012: 51)'.

In addition to theoretical achievements, plain-language postulates have already been already reflected in "Principles of Legal Technique" from 2002 (Wronkowska, Zieliński 1997: 199), which regulates how acts should be prepared in Poland. One of the elementary principles states that the law should be precise and understandable for the reader¹. Another rule stipulates avoiding long, excessively complex sentences², which corresponds to the plain-language standard that specifies short and simple sentences. Article 8 promotes avoiding legal jargon by giving consent for using specialist terminology only when it is necessary to fulfil the precision requirement. Moreover, Polish regulation directly advocates using terms in their basic and commonly accepted meanings³. From practical perspective, implementation of all the postulates might be challenging, taking into account the legal language specificity and complex legislative process, which put tremendous deadline pressure on legislators. Undoubtedly, the process of rewriting such texts requires a lot more commitment and effort, sometimes making the task almost impossible. The challenge is even greater because the results of the use of plain-language techniques in legal texts provoke criticism all over the world. Martin Cutts responds to criticism by writing about Clarifying Eurolaw: *'Directives may never be written in the plainest of plain language, but they should at least be understandable to reasonably literate, motivated people who are prepared to make an effort'* (Cutts 2001: 3).

With regard to those findings, this article agrees that the aspiration to make the law comprehensible for all subjects

¹ Art.6, Principles of legislative technique of June 20, 2002 (Journal of Laws 2016, no.283).

² Art.7, Principles of legislative technique of June 20, 2002 (Journal of Laws 2016, no.283).

³ Art.8, Principles of legislative technique of June 20, 2002 (Journal of Laws 2016, no.283).

is an idealistic postulate. Ultimately, despite this, legislators' obligation is to make an effort to increase the intelligibility of legislation wherever it is possible, taking into consideration all aspects of complex legal language.

4. Plain language approach in the Polish Consumer Act

The intention of the author of this study is to conduct an experiment on implementation of plain-language techniques into Polish consumer law. The Polish Consumer Act came into force in December 2014; therefore, its exemplifying current example of legislative drafting in Poland⁴. Moreover, consumer law has an impact on a wide and diverse group of readers in their everyday lives, for example, regulating how consumers might return a product and get a refund. Without a doubt, this area of law should be as straightforward as possible; readers must be able to understand it without having to seek professional legal advice. The project of consumer law revision should be seen as an experiment which will explore the plain-language framework and polish the principles of legal technique. The first project phase involved the implementation of specific tools to clarify the language and increase the usability of the consumer law. In the case of linguistic changes, the author has been focused on reducing the length of sentences, using simple and common vocabulary, using shorter and simpler sentences, using natural grammatical structures and favouring verbs over nouns. All linguistic changes were preceded by an analysis of the original meaning and legislators' intention. Furthermore, Polish consumer law has been changed visually by typography improvements like using headings and tables, wider spaces and margins, highlighting techniques and division into sections and subtitles.

Despite the fact that legal language is incredibly complex, intelligibility of legislation might be achieved by plain language guidelines, which should be implemented into legal texts in reasonable way. The plain-language standard '*is not an absolute*' (Cutts 2010:

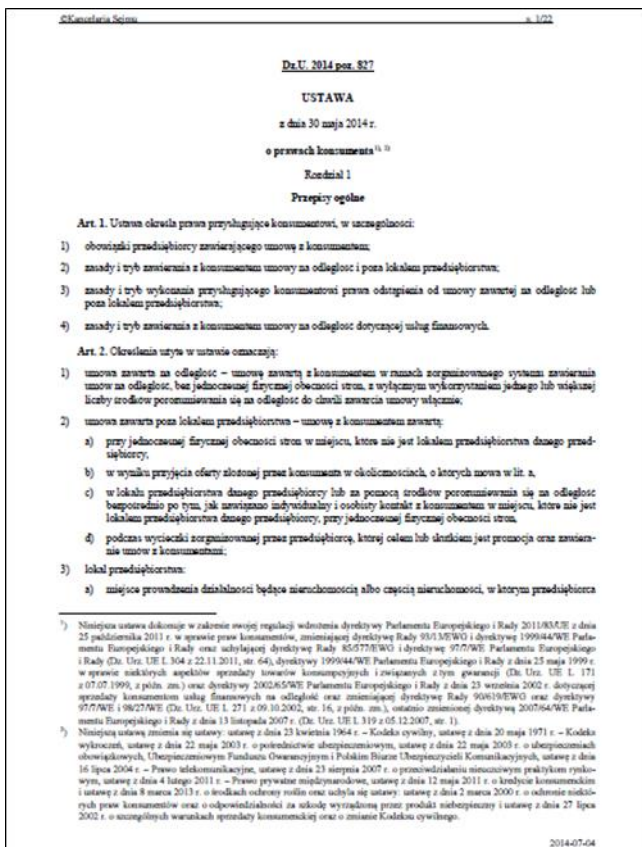
⁴ Consumer Rights Act of May 30, 2014, (Journal of Laws 2014, No 827).

XII) and sometimes authors have to seeking compromises between precision and clarity. When discussion about converting from legalese to plain language turns to the concrete example, it is important to be aware of the risks and limitations, however *'risk is worth it, and writers should not be dissuaded'* (Kimbale 2006: 38). The following examples will present which plain-language guidelines have been applied and modified into Polish consumer law and why

According to plain language guidelines, the text must address different audiences separately. In the case of legal texts, fulfilment of this rule is difficult to adopt, because legal acts laws regulate different areas of expertise and govern the lives of many citizens who have different levels of education, language competences and experience. However, there is no doubt that some specific groups of law have to be comprehensible and clear for lay people who must be able to understand their rights and obligations sufficiently for "ordinary" circumstances, as indicated by Rabeea Assy, *'clearly, certain areas of law might be simple enough to be approached without legal advice like instructions concerning how to return a product and get a refund might be examples in point'* (Assy 2011: 382). With regard to the spoken approach, it is worth following to the trends of the plain-language movement where many re-writing projects include tax or consumer law. In light of this, Polish consumer law might offer a good starting point for a concrete example of the implementation plain-language guidelines into legal texts. Moreover, the assumption regarding the addressee of the consumer law is that the users are educated, motivated and prepared to make an effort during reading about their rights and obligations.

Further consideration deals with visual aspects and tools such as main pages and tables of contents. According to the author of this study, the first impression might have a very strong impact on users' attitudes and willingness to obtain knowledge about their rights and obligations. Therefore, the main page of the original consumer act should be rebuilt and improved to increase the overall effectiveness of the legislation. Below there is an comparison of the main page of both versions.

Picture 1: Original Consumer Rights Act – Main Page.

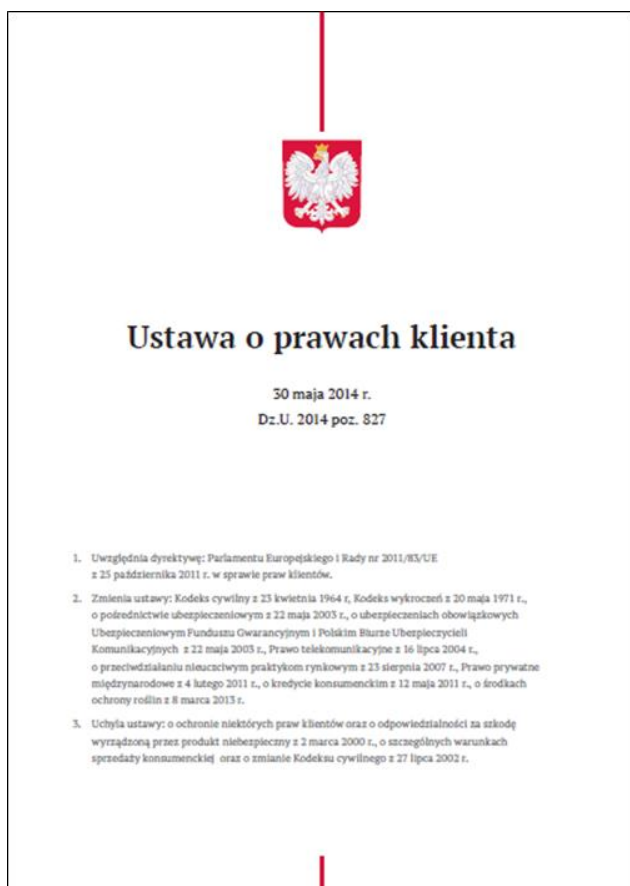


On the first page of the original act, there is a lot of information including: act number, type, enacted date, title and content which consists of the first articles from chapter one. In addition, on the main page, legislators placed references which indicate the directives of the European Parliament and a list of acts that were amended or repealed. Undoubtedly, all these elements are important and must be presented; however, it is worth considering whether the order of the information is appropriate from the users' perspective. By drawing attention to key information, it is hard to justify why the title of the act, which defines the regulated scope, is only in the fourth position. This is the most important information for users and should be placed at the beginning, before the act number or enacted date.

Referrals are an obligatory part of the act and their content plays a vital role, but the presentation of the referrals does not encourage the user to read this part. In the reviewed document, referrals are grouped and presented in a clearer layout.

In the revised version, the main page offers an introduction and contains all the required information, presented in a different order to the original version. Moreover, the author refrains from presenting articles from the first chapter and focuses only on information that is valuable for users during their first time reading the act.

Picture 2: Revised version – Main Page.



Another way to support users in comprehending important information easily might be the implementation of a Citizen Summary, which has been introduced in revising the timeshare act project. As Martin Cutts notes, '*It would not have the force of law but would spell out the main points of the legislation*' (Cutts 2000: 8). Another plain-language guideline encourages the use of reader-centred structure of the document. One of the specific rules recommends organizing material so that readers can grasp the important information early and navigate through the document easily (Cutts 2010: 135). To address this need in legislative drafting, it is worth implementing a table of contents, which, when well-prepared, would make it easier for reader to get an overview of the act, navigate the entire document and help them find the information they need. In Polish legislative drafting, there is no such construction as table of contents; therefore, this proposal might be a perceived as controversial. Ultimately, despite this potential criticism, the author of this study strongly believes that a table of contents should be an obligatory part of all legal acts in Poland.

Picture 3: Revised version – Table of contents.

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2	_____

5. Conclusion

The ultimate goal of the Polish consumer law revision is to trigger discussion about Polish legislative drafting and seek possibilities to improve clarity of law for non-qualified users. The discussion is based on concrete examples, is in legislators' interests and will be valuable for citizens as well. Even potential criticism of plain-language guidelines' implementation into legal text can bring added value for common understanding of law postulate fulfilment.

The author agrees with M. Cutts, who wrote that *'revised documents are never better or clearer until users' performance proves*

it' (Cutts 1993, 6). Regarding Polish Consumer Act usability tests will be conducted in the near future with non-specialized users and users with a legal background. Feedback will be analysed and all insights will complement theoretical discussions. Those findings, which will be discussed in separate publication should indicate which plain language guidelines address legislators' and non-qualified users' needs and which parts of the rewritten and restructured document are unacceptable. The conclusions reached as a result of the research might be useful in exploring potential solutions for clearing up Polish legislative drafting, where feasible.

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