

Distinguished legal scholars.
Ladies and gentlemen.

I have repeatedly – most recently in opening the autumn session of parliament – stressed that Estonia has returned to Europe.

We no longer need to follow rules established in our regard by others. From now on, we take part in setting those rules.

We are also past the point where we laboured night and day to re-establish the government and constitutional system. It is time to set new objectives, where, instead of a quantum of legislation, we deal with its quality – the content and the direct and indirect effects.

The EU *acquis communautaire* serves the freedom of choice of society's members, increasing their well-being and improving their quality of life.

There are many ways of defining quality of life, but the standard one is that people have enough time and money for satisfying their basic needs and pursuing their interests.

Quality of life also means a functioning educational and healthcare system, safe streets and functional infrastructure.

Besides all that, I think quality of life also means the triumph of determinism and rationality over chance and chaos; the belief that decisions are always made based on the best considerations and that the background for decisions is clear for everyone affected by the decisions.

This logically leads to the conclusion that, as quality of life improves in Estonia, we should not reach for a new piece of legislation as a first resort whenever some problem comes up.

Just as the wrong medicine can cause a new disease rather than curing the condition being treated, an ill-conceived legal instrument can do harm instead of good. Sometimes side effects of a medicine are such that non-intervention is the wisest course.

The Bolsheviks defined law as the will of the ruling class. But could it be that, today, law is first and foremost the will of the governing coalition?

Sometimes it seems that we have gone that route.

I believe that law should never become merely the expression of the intent of anyone, not even of the majority. Instead of this function – or at the least, in addition to it – law should create balance between different interests, seek justice, be aimed at the wellbeing of generations both present and future.

When legislation becomes a weapon in a short-term political battle, we will find ourselves getting away from the foundations of a state governed by the rule of law. If we do dissociate ourselves from these principles, we will find our society will develop down less stable avenues, with dark twists and turns. And by doing so, we will diminish Estonia's competitiveness as well.

For these reasons, I am very glad that you have chosen ex ante and ex post analysis of the economic impact of legislation as the main topic of this year's event.

Dear legal scholars.

A lawyer is not a legislator. Direct responsibility for legislation is borne by members of

parliament elected by the people. But you, esteemed legal scholars, shoulder a large amount of the responsibility. This is true in both the entrepreneurial sphere and, more narrowly, government.

We can say that legal scholars have done their utmost to create a good, stimulating economic environment – and thereby improve quality of life -- only if the following is self-evident and beyond doubt:

- an honest justice system characterized by great expertise,
- high calibre and availability of legal services,
- quality of the work of notaries, trustees in bankruptcy and bailiffs,
- strength and independence of the prosecutor's office, tax board and other agencies in preventing and detecting corruption and economic crimes;
- care in legislative drafting
- and the high quality of education in the field of law

It is therefore my hope that no one who administers justice, such as a judge, would be guilty of an act of corruption, and that those who, in an era of lower hiring standards, accidentally strayed into the profession have by now strayed back out.

The position of judge should be open only to outstanding people in their field – those who have passed the judge's examination impeccably and whose honesty is beyond doubt.

The requirement of great intellect and ethics does not, of course, only apply to judges, but to all who hold the fate of others in their hands, from policemen walking their beat to the president.

Ladies and gentlemen.

Having analyzed legislation for close to four years in the role of head of state, I would like to share a few observations with you.

Without going into politics today, I would like to talk about unvirtuous legislative drafting, which includes intentional dilution of the meaning of the Constitution and deliberate disregard for the

Constitution.

I stress: unvirtuous legislative drafting is not predominant in Estonia. But unfortunately even a few cases are too many.

Precisely this, I think, is an appropriate forum to address this topic – critically, but not in too gloomy a tone.

Every law undergoes legal expert analysis in the drafting stage. It seems to me that lawyers have sometimes refrained from saying what is necessary. Or, more likely, they have been ignored.

It is not possible to plan economic activity properly if there is a lack of clarity about rights, responsibilities and possibilities. Changes to the rules of the game must be a rare exception, and when the rules are changed, they must be weighed with extreme thoroughness.

Of course, there can never be perfect legal certainty. A state based on the rule of law is by its very nature more complicated and dynamic a phenomenon than a football match, where the rules cannot be changed even if both the players and spectators see the need as obvious.

What Estonia does not need, however, is obfuscation of legal language and or the initiating of legislative amendments just because someone wants to go down in history as a reformer.

Also deserving of condemnation are subsidies that are granted under expedited procedure and without sufficient public discussion; these hit the taxpayer right in the pocketbook. One example of what I am referring to is the subsidies established for renewable energy, which there is now a desire to reduce.

First, such vacillation is not fair to the business community; second, this experiment has proved to be unjustifiably expensive for the consumer.

A more malignant form of unvirtuous legislative drafting is manifested when the legislator passes the buck intentionally to the President, Chancellor of Justice or court and adopts unconstitutional legislation for the sake of pandering to the public.

Those who hired the members of parliament– the people – should consider punishing such disrespect much more severely from now on. Acting in this way is devastating to the health of a state governed by the rule of law.

Dear friends,

Together, we must think about how to restore the practice of keeping one's word and being forthright to its place of honour in society's constellation of values.

No doubt you all remember how multiple laws with completely disparate aims and scope of application were bundled so as to avoid discussion.

The constant tug of war between the state and certain local governments forces us to ask whether the parties realize that this is not a game.

Suspending and contesting public procurements is more of a rule than an exception in the case of major contracts.

More and more often, we hear news of how the prices of all staple goods rise in nearly all stores practically overnight.

Is this market economy, or is it an economy of back-room deals? Are Estonia's legal framework, Consumer Protection Board and the Competition Authority well enough equipped with the implements of the rule of law to prevent such manipulation?

What I want to say here is that while interest groups in some fields may complain that there are too many regulations, we certainly have fields where legal norms or supervisory mechanisms do not operate in the desired fashion.

Ladies and gentlemen.

These questions and topics bring us back to what I said at the outset. As I see it, law and real life should not be two different things in a country that is based on the rule of law.

If a law is in force, that law must be obeyed. If a law has not had the desired legal effect, the unconditional solution is not always a new law.

Perhaps the problem lies in the fact that those who implement the legislation have not done a proper reading of the text. Implementing legislation takes training and experience.

Experience comes when legislation is allowed to be lasting, when administrative and judicial practice develops and analysis of these areas is conducted. And it comes when our universities educating young specialists to serve as good lawyers in Estonia.

To avoid the semblance of dispensing platitudes and engaging in unconstructive criticism, I have one specific suggestion.

What would happen if, say, three years after a piece of legislation entered into force, it were subjected to interdisciplinary analysis on its actual effect on society? This would entail analysis of statistics. The implementing authorities and addressees would be surveyed. If necessary, court rulings could be examined.

Such research could be conducted by, alongside ministries and think tanks, by the University of

Tartu and other public universities. Such projects could receive research grant funding as well.

The outcome of the analysis is clear: statutes which are not needed, do not work or cannot work, or which are directly injurious or set double standards, could, I think, be decisively repealed.

A state based on the rule of law, like a good car, needs regular maintenance, tune-ups and replacement of worn-out parts.

In general, that should be enough. It is not necessary to buy a new car or rebuild the existing one.

On that positive note, I would like to wish you productive discussions. Thank you for listening.