



European Science Foundation  
Research on the Legislative Process

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**Alessandro Pizzorusso (Ed.)**

# Law in the Making

**A Comparative Survey**



**Springer-Verlag**

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With Contributions by

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With a Foreword by Stig Strömholm

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## European Science Foundation Research on the Legislative Process

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<sup>1</sup> E. Deutsch, H.-L. Schreiber (eds), *Medical Responsibility in Western Europe, Research Study of the European Science Foundation*, Springer, Berlin Heidelberg New York 1985

A. Viandier, *Recherche de légistique comparée, Fondation Européenne de la Science, Le processus législatif*, Springer, Berlin Heidelberg New York 1988

## Foreword

The present volume presents a part of the results of a research project launched by the European Science Foundation (ESF) in 1977. Tribute should be paid to the late Professor Aleck Chloros, Judge in the Court of the European Community, whose belief in the European ideal and enthusiasm for European cooperation and the comparative study of legal problems made him an eloquent advocate of a large-scale ESF venture into the field of comparative law. Judge Chloros had envisaged the creation of a permanent, sizable and well-equipped European institute for comparative legal studies. The successive working parties convoked by the Executive Council of the ESF, which I had the honour of chairing from the beginning, came to the conclusion that this ambitious vision could not be realized immediately; the financial situation of the member organizations of the ESF also deteriorated, making a cautious approach a necessary virtue. The solution ultimately adopted by the last of the working parties – the Ad Hoc Committee for Comparative Law – and submitted to the General Assembly of the ESF in 1979 called for the launching of four pilot projects. In November 1980, the Assembly approved detailed plans for two of these projects. The first of these – dealing with medical responsibility – has already been presented in an impressive volume (E. Deutsch and H.-L. Schreiber, editors, *Medical Responsibility in Western Europe*. Berlin, Heidelberg, New York, Tokyo 1985, Springer-Verlag, 867 pp.); another volume is forthcoming.

A topic which loomed large from the beginning in the discussions of the Ad Hoc Committee and later the Steering Committee set up to monitor the projects was *legislation*, or more precisely the legislative process through all its stages, from the first political initiative until the promulgation of the text.

It would hardly seem necessary to explain at length *why* the legislative process aroused and arouses such keen interest among comparative lawyers.

It is said that when the wise Zaleukos, upon the urgent demand of his strife-weary compatriots – the Epizephyrian Lochri

in Southwestern Italy – carried out an important law reform, he laid down the rule that whoever proposed an amendment of his laws should submit the proposal to the city assembly with a rope round his neck. If the proposal was carried, the rope was duly removed; in the opposite event, the city hangman brought the noose to work. So, the chronicle says, the Epizephyrian Lochri lived in peace for a long time.

Zaleukos' way of securing internal stability and peace sometimes comes to the mind of lawyers. In fact, the proliferation of new laws has become, increasingly, a serious problem with numerous aspects. Most obvious, of course, is the difficulty of making and keeping lawyers and the public at large informed about new enactments quickly and reliably. Equally obvious is the need for avoiding inconsistencies and contradictions in the growing body of statutory rules. Further, and perhaps more important, the mass production of enactments on various constitutional levels is bound to create new attitudes to the "law", whatever may have been the prevailing views in the past: Laws are tools; they are designed to meet arising needs, they are used and they are thrown away when no longer useful ...

Any serious discussion of the problem of over-legislation calls for precise and broad knowledge of the chain of events by which the enormous mass of provisions is born: the legislative process.

When discussing the possibility of an in-depth study of that process as an ESF-project, the Steering Committee for comparative law came to the conclusion that it would really be too much for a project of this kind – necessarily limited both by the available funds and by the available number of years – to cover the whole complicated sequence, the more so since the Committee insisted on a broad, if possible pluridisciplinary approach, and particularly upon a discussion, to the extent it was feasible, of sociological and politological aspects. This is why the Committee proposed, and the ESF decided, that the study be divided into two: the one conducted by Professor Alessandro Pizzorusso, Director of the Institute of Comparative Law of the University of Florence, the other by Professor Alain Viandier, of the University of Caen.

The two projects were launched in 1981. It was agreed that Professor Pizzorusso's study would represent, as I put it in the final report to the ESF, a window through which a number of highly competent lawyers look at politics, and reflect upon the way in which, today, two branches of the social sciences – law and political science – meet. This, it would seem, is the originality of the Pizzorusso study, which is published in the present volume. Another aspect, which is particularly emphasized, is the traditional question whether *codification* in the classical sense remains a viable method for legislative work.

The volume resulting from the Viandier study, published in French by the same publisher and essentially at the same time, represents the project leader's personal work based upon, *i. a.*, a questionnaire of some fifty-five questions, which were sent to a score of experts. At the centre of the Viandier study, we find the *statutory text* – principally in private and public law – considered as a *source of law* and as an *object of interpretation*. This means, obviously, that the chosen aspects are different from those examined by Professor Pizzorusso. If the latter opens a window upon politics, Professor Viandier's research opens upon the function of statutes as the lawyer's daily tools.

In the present volume, Professor Pizzorusso has preferred to present his work in the form of a collection of specialized chapters, while also taking the international and comparative aspects into account; at the basis of the work, national reports from a number of European countries were prepared. The volume begins with an introductory chapter by the project leader himself.

It has been felt that this method of presentation has the advantage of maintaining, as it were, the specific national "local colour" of the legal systems concerned – a colour which is essential for understanding the background of legislative work in the countries covered. For this, a price has to be paid. Thus the volume does not offer, and does not pretend to offer, systematic completeness. Some interesting developments have had to be left out. Specialized areas, e.g. penal law with its characteristic special features, could not be fully taken into account. On the other hand, the freedom of choice between countries and topics which is characteristic of the Pizzorusso study allows emphasis upon leading ideas and trends of development<sup>1</sup>.

It should be stressed, finally, that Professors Pizzorusso and Viandier, while entirely independent in their work and in the choice of methods and collaborators, have cooperated closely so as to avoid overlapping. The two volumes should be seen as two distinct but coordinated attempts to deal with one of the most serious problems of contemporary legal science.

Uppsala, December 1987

S. Strömholm

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<sup>1</sup> For further information on how the research was carried out, see Annex I.



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