

TOPIC 1A)

LEGISLATIVE QUALITY AND SIMPLIFYING LEGISLATION IN EUROPEAN
DEMOCRACY

Rapporteur: Speaker Luciano Violante, Chamber of Deputies, Italy

Speaker Luciano Violante (Chamber of Deputies, Italy) introduced the topic and began with the assertion that parliaments were created to make laws, and that it is precisely the law which is at risk of becoming the area in which parliaments have the most difficulty and where they are in danger of losing their role.

The quantity, complexity and intelligibility of legislation, the time taken to approve each law and the difficulties of enforcement are dramatic problems facing the law makers and are recognised by organisations such as the IMF, the World Bank and the OECD. These problems are also rooted in the process of globalisation, which began with the fall of the Berlin Wall, and which poses a challenge, not a threat, to democracies.

This topic was discussed at the Conference of Speakers held in Helsinki, and a working party was set up, co-ordinated by Speaker Luciano Violante, and also comprising Speakers Laurent Fabius, Gil-Robles, Almeida Santos, Raymond Langendries, Rita Süssmuth, Trillo-Figueroa, Riitta Uosukainen, Heinz Fischer and Wolfgang Thierse. These have been two years of very thorough work, with a common working method, respecting the differences between the various participants. In December 1998 a meeting was held in Rome in order to finalise the text which is today presented to the Conference, and we now need to reflect to on this question on the basis of this information.

The phenomenon which is the complexity of laws is caused by a number of factors. Some cannot be eliminated, as they are the result of the complexity of the modern world. Others, which derive from the untidiness of the system of laws, could be eliminated, and the working party has identified the following factors which could be eradicated: over-use of the law, excessive detail in legislation, difficulty in distinguishing questions which “merit” a law, insufficient attention to co-ordination with the legislation in force, a progressive crisis in hierarchical levels and in the rules for the prevalence of different sources of law, and lack of co-ordination between centres with regulatory powers, both within the European Union and within Member States.

In the context therefore of inter-institutional co-operation, the real need for legislation should be ascertained, something we may call the “zero option”, meaning that laws should only be made when absolutely necessary. There should also be a high degree of political commitment and adaptation to the new institutions, such as public administration, unions, citizens. Finally, the lack of clarity in legal relations must be avoided, because each new intervention creates a moment of disorder.

Parliaments should obtain the information needed from governments, as well as organising major programmes for simplification. Each new legislative initiative should provide all the information as to the best solution and to its necessity. The rational use of time should also be factor to be taken into account, as parliamentary processes need time. Hence the absolute need for government legislative programmes, in order to define a schedule for parliamentary work.

The hierarchy of sources of law, which has been altered by community rules, should also be defined. Parliaments should therefore take the role of co-ordinators of democratic institutions, such as the government, the judicial authorities, etc.. For instance, Speaker Violante cited the inter-institutional agreement between the Commission, the European Parliament and the Council as a useful tool for this type of co-operation.

Speaker Violante concluded his speech by outlining the main proposals for improving the quality of legislation:

- ② legislation only when it has been shown to be necessary (zero option);
- ② minimum and maximum periods for assessing draft laws, to stop the system coming to a standstill;
- ② there should be government legislative programmes;
- ② ensure the quality of the legislative process through submission of an analysis of the consequences of the law, to be assessed by a parliamentary body;
- ② systematic monitoring of the effects of the existing law/regulations;
- ② ensure that clear hierarchical relations are preserved between different sources of law;
- ② design tools for parliamentary control of the effectiveness and transparency of the government's and the public administration's legislative/regulatory activity;
- ② establish principles for co-operation between institutions, as has been done in the European Union.

He therefore proposed that this text be used by the Speakers in order to provide their respective parliaments with better information, that the question of legislative quality be permanently included on the agenda of the conferences of speakers and that information be shared with other parliaments interested in the question, such as those of the United States, Canada, Australia and New Zealand.

Speaker Frank Swaelen (Senate, Belgium) congratulated Speaker Violante on the clarity of his report, and then reported to the Conference on the system used in Belgium, where the Senate plays an important role. On 21 January 1999 a legislation assessment office was created at the Senate, for reasons which concern all present.

This office conducts an *ex ante* assessment of draft legislation and an *ex post* assessment in the light of the considerations of a text approved by the Senate itself, on the basis of criteria such as legal watertightness, the principles of equality and subsidiarity, clarity of purpose, and the exigencies of enforceability, efficiency, effectiveness and proportionality. This preparatory assessment is the sole prerogative of the Senators, given that the Senate is a chamber of reflection.

Speaker Swaelen explained that the office had no powers of initiative, and only assessed draft legislation which had already been published, on the request of the Senators or the parliamentary groups. The office is independent from the

committees, meaning that they may consult it, and is comprised of jurists and other experts.

Deputy Speaker Maria van der Hoeven (Second Chamber, Holland) considered the conclusions presented by Speaker Violante to be very important. She then recalled the latest data from Eurobarometer, which does not point to the quality of legislation as one of the priority of the citizens, although it doubtless has a clear impact on their everyday lives. She therefore agreed that this be a permanent topic on the conference agenda.

The quality of legislation should be measured from a qualitative point of view, in terms of execution, studies, research, cost effectiveness and also in terms of the language and wording used in the text. There are rules in Holland on this last point, and similar rules should be established in Europe. Steps should also be taken to achieve greater transparency, with a clear definition of the hierarchy of European laws and regulations, a question which the last Intergovernmental Conference failed to resolve. This, she concluded, could help to reduce the scepticism of European citizens.

Speaker Heinz Fischer (Nationalrat, Austria) paid tribute to the excellent work of the Working Party and said that he would be informing the deputies in his parliament of the contents of the report. The complexity of legislation is a fact which needs to be taken seriously, and improvements should be made on various aspects. However, some of the public's demands were clearly impracticable – in the modern world it is unrealistic to think of codifying laws in the style of the Hammurabi Code.

Legislation is by its very nature complex and not simple as it was at the beginning of the twentieth century. Over-regulation should be avoided, but we have to demonstrate the role of legislation in a modern society, where regulations have to be established for situations which are by their very nature complex. Moreover, the regulations issued by ministries have a clear tendency to be unclear, as the civil servants who draw up proposed texts are anonymous.

Secretary-General Ole Stig Andersen (Denmark), who spoke in the absence of the Danish Speaker, said that there had been an important debate on this question in the Folketinget. Despite the progress made, there is still much to be done, given that the Government is trying to control the legislative process. The Folketinget is seeking to improve the quality of legislation, and the Government should participate in this effort, given that the Government is responsible for presenting 80% of the new laws.

Speaker Almeida Santos (Portugal) congratulated Speaker Luciano Violante on the excellent work carried out, and summarised the questions raised in the course of the debate, referring to both the quantity and quality of laws. He considered that the work should be kept up, and that the Working Party should continue with its activities.

Speaker Almeida Santos argued that the origin of the crisis in the law lay on the crisis of the State and the crisis of values, as a result of widespread disobedience to the law and the crisis in the actual teaching of law. Democracy has its weak points, and given that power is associated with votes, it is also associated with the need to please, which does not always make for good governance. Other problems are the strong pressures from lobbies, laws for which no detailed regulations are issued (given that they are abandoned once they leave the parliaments) and defective wording.

Speaker Almeida Santos then informed the conference that he had presented a proposal for setting up a specialist commission to monitor new legislation. This proposal has yet to be approved by the Assembly of the Republic, probably because of deputies' misgivings as to the existence of such a commission. Many laws are unnecessary and the fact that certain deputies in Portugal lack an appropriate background means that the laws are sometimes of poor quality. Only around 10% of the deputies in Portugal are jurists. Also, competition between legislative powers in Portugal tends to complicate the situation. In conclusion he said that to legislate was very important, and it was not something which could be done quickly. For this reason he called for general European legislation on this subject.

Lord Tordoff (House of Lords, United Kingdom) cited the problems of committee proceedings in Europe and also the confusion between law and regulation in the United Kingdom. In the House of Lords there is a committee which monitors the enforcement of legislation, and the Government is required to inform the chamber of all the secondary legislation it may approve. However, he argued that the lack of regulation should also be avoided, citing the case of BSE. As to the quality of parliamentary representatives, he pointed out that the Lords are not paid and that there are excellent deputies.

Speaker Gottfried Jaud (Bundesrat, Austria) said he had little hope that the situation could be changed, although he agreed that many laws were unnecessary. Parliaments could not afford to lose prestige, and should avoid the overwhelming majority of draft laws coming from governments, a fact for which they are responsible.

After the debate, **Speaker Almeida Santos** announced that he would include the proposals presented by Speaker Violante in the Conclusions of the Presidency.

Speaker Heinz Fischer (Nationalrat, Austria) asked whether it was a good idea to make this a permanent topic at the conference, given that it would occupy too much of the agenda. He therefore disagreed with this proposal.

Speaker Luciano Violante (Chamber of Deputies, Italy) accepted this criticism and agreed that the topic be scheduled only for the next conference to be held in Rome in 2000. The debate being over, he referred to the interest of the Danish, Belgian and British experiences which had been presented. He also maintained that it was possible to eliminate complexity, and agreed with the working method proposed by Speaker Fischer. The terms of the problems are, on the other hand,

continuously being changed, meaning that at the Rome Conference the best approach could be decided on for resolving these questions, and called for more countries to join the Working Party.