

# LSS and Legitimacy

**Action strategies by administrative officers as barriers for a legally certain implementation of the Swedish Disability Reform (LSS)  
- a case study of personal assistance**

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# Convention on the Rights of Persons with Disabilities (CRPD)

## **Article 19. Living independently and being included in the community**

Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community.

# CRPD Article 19 continued

(b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community.

# Why LSS? Law regulating Support and Service to Persons with Certain Functional Disabilities (1993:387)

- The Social Services Act (SoL, from 1980) was not considered sufficient to meet the needs of persons with severe disabilities.
- LSS is more favourable – a ”plus” law to SoL.
- LSS has higher ambitions: Enhancement of citizenship.
- LSS gives priority to needs: Resources must be allocated to meet needs.
- LSS shifts power to the individual: Influence (6 § LSS).

To be continued

# The values of LSS compared to those of the Social Services Act (SoL) continued

- Quality ambition: LSS good living conditions (SoL reasonable living conditions).
- Independent life: LSS independence thanks to high quality support (SoL independence from support).
- Comprehensive view: LSS considers the total needs situation (SoL puts a responsibility on the individual to use own resources).
- Continuity: For LSS continuity of support is fundamental because of life long, substantial needs.

# LSS specifies 10 support measures. Focus today is on the second measure: Personal assistance

<https://sweden.se/society/swedens-disability-policy/>

Target group for personal assistance: For persons who have considerable need of personally designed care in everyday life. The need may relate to help with dressing, managing hygiene, eating or communication with others as well as other life areas. The individual has the freedom to choose the personal assistants.

The other LSS measures: Advice and other personal support; Companion service; Contact person; Relief service; Short-term stay away from home; Short-term care for school children over 12; Living in family homes or housing with special services for children and young people; Housing with special services for adults or other specially adapted housing for adults; Daily activities

# The local investigation on legal certainty in municipal exercise of authority: Application for LSS support

(Report in Swedish, April 2017, work in progress)

- Starting point Spring 2014. Local HSO meet local politicians. They say: "We do not have any restraining guide lines." I say: "Yes you have. And I will prove it."
- Several presentations of the project process - to HSO, local politicians and bureaucrats.
- Nine cases, grown ups, with cognitive difficulties, belong to the LSS target group. They all have a "good man".
- Denials on applications for contact person, companion service, short-term stay away from home and personal assistance.
- Analysis of the administrative officers' documents concerning the exercise of authority.

# Key findings

- The administrative officers use several restraining action strategies to diminish the needs.
  - The right to the favourable LSS-support is not there.
- Applications for LSS measures are instead handled as if they are applications for SoL-support.
- Flaws in the Rule of Law.
  - Citizens' rightful interests to have needs assessed by the "plus" law are violated when Rule of Law is not upheld.
- Consequence: The goal - possibility to live like others with full participation in societal life is not realized.
- The implementation is not in line with UN CRPD Article 19.

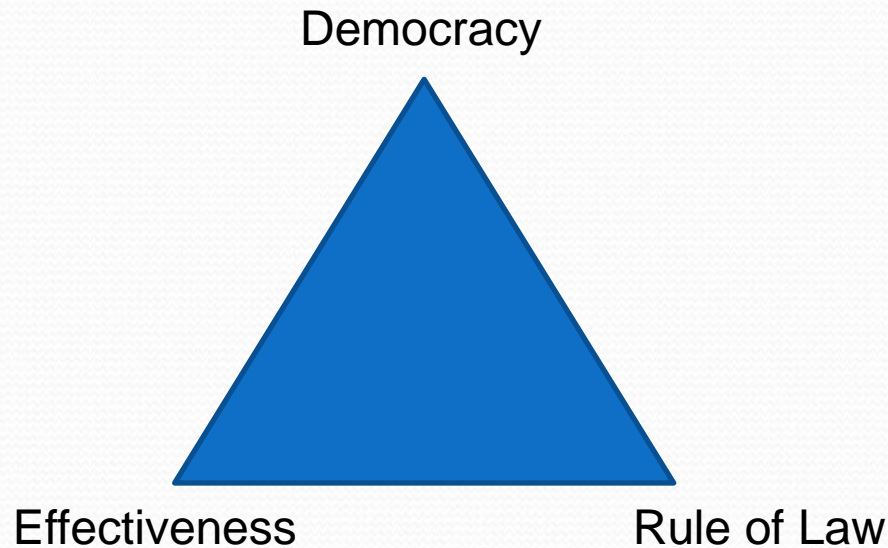


# More about the action strategies

- Through different restraining *action strategies*, needs are diminished or changed, the quality concept good living conditions is used in an incorrect way, the opinions of the individuals and the professionals are not interpreted in an objective way etc. The application for LSS-support is denied as there is no right to LSS-support.
  - Several action strategies can be used in the same document
  - Page up and page down with expressed needs. Then, in the motivation for denial the strategies turn up.
- Needs are not assessed in accordance with the LSS values, expressed in 5, 6, 7 §§ as well as in the preceding political documents.
- We have a legitimacy problem.

# Legitimacy triangle – demands on the public service

(See for example Norén Bretzer, 2014)



- Legitimacy: Citizens' experience of trust in the public service.

# Analysis in a bureaucratic ethics perspective

Important concepts:

- Parliamentary steering chain
  - Implementing actors at different levels
    - Municipality level: politicians, bureaucrats, administrative officers, citizens with disabilities
- Rule of Law: Substantial and procedural legal certainty
  - LSS values (in the Government Bill 1992/93:159) together with other welfare state goals and principles constitute the so called *substantial legal certainty*.

To be continued

# Procedural legal certainty

- Procedural legal certainty is required for all legal application.
- The local investigation shows that the overarching principle – the *legality principle* is threatened in all nine cases.
- So is the *objectivity principle*, the *impartiality principle* and the *predictability principle*.
- The applicability of the *equality principle* can be questioned.
  - Is it applicable to a "hyperindividualistic" law such as LSS? Circumstances are seldom the same.

# The case history of personal assistance

- One of the nine cases in the local investigation: A middle-aged person receives a severe stroke in 2012.
- Severe cognitive and communicative difficulties as well as physical impairments. Non-functioning SoL-support. Several near-accidents. Constrained participation in societal life to a minimum. Repeated complaints by a very frustrated "good man".
- Appeal to the local Administrative Court.

To be continued

# Findings: The substantial legal certainty is threatened

LSS values are absent in the administrative officer's documents:

- No sign of *individual influence* on needs assessment. Expressed needs are ignored.
- Absence of a *comprehensive view on needs* leads to very restrictive needs assessment.
- *Good living conditions* are not mentioned as a goal.
- No possibility to *participate in societal life*.
- No possibility to *live an independent life as others* with the help of a high quality life that LSS guarantees.

## Findings: The procedural legal certainty is threatened

- *Objectivity* is threatened when the voices of the good man and professionals are ignored concerning the *assessment of needs*. Only the voice of a staff person is heard when *assessing the quality of already given support* to meet needs (SoL).
- *Impartiality* can also be questioned (is the administrative officer loyal to the municipality interest to limit costs?)
- In this case the *equal treatment principle* is relevant and is threatened: The extent of *basic needs* is assessed in a very varied way – at the same time period – by two different actors:
  - The administrative officer finds basic needs to be just over 2 hours a week; The Swedish Social Insurance Agency assesses the basic needs to almost 16 hours.

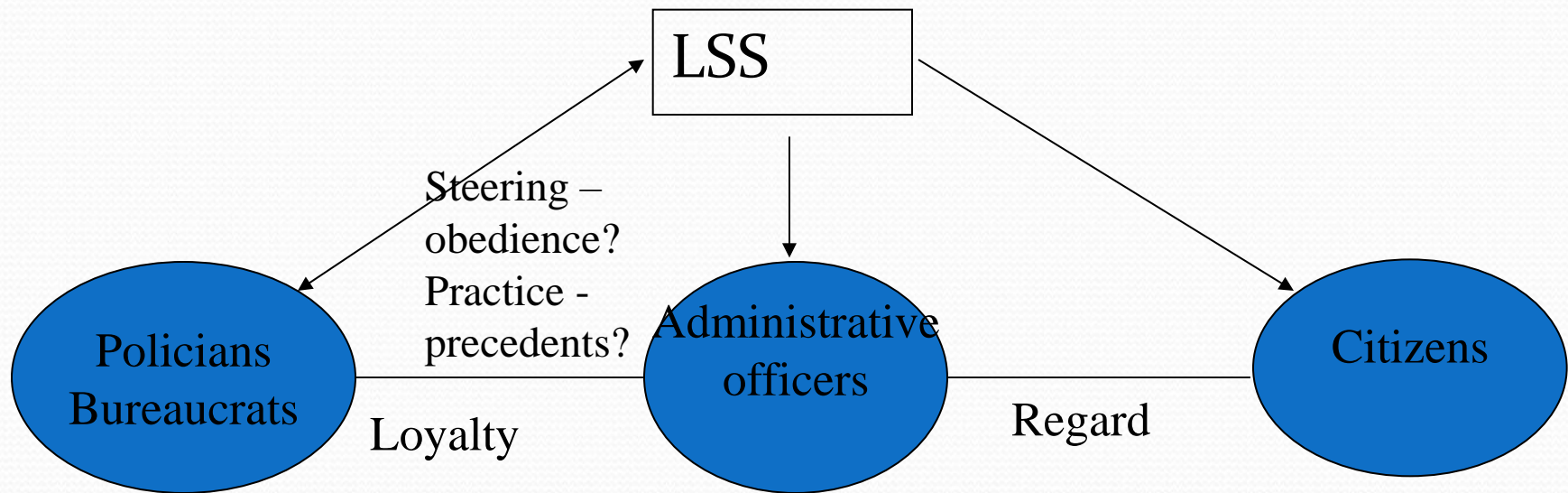
# A happy end: From confinement in the home to participation in societal life

- The Administrative Court finds the municipal decision unlawful and *consents to the appeal. The legality principle had been violated.* The court stresses that a comprehensive needs assessment must be made.
- After two years of struggle this citizen has a life with dignity:
  - Now ample LSS support to meet needs and wishes.
  - Possibility to take part in societal life.
  - No longer confinement in the home with a non-functioning SoL-support.
  - A life in line with UN CRPD Article 19.



# Relation law – politicians – bureaucrats – administrative officers – citizens

(Inspired by Lennart Lundquist, 1988. The parliamentary steering chain; Conditions for realizing political reforms understanding, will, capacity).



# Hopes for the future

- *Local* politicians must not *abdicate*. Do the right thing from the beginning. Take on the responsibility to steer the bureaucrats for a legally secure exercise of authority.
- *Bureaucratic inertia* and *path dependence* must be overcome. "We have always worked like this"; Routines; guide lines that are not in line with LSS. Reliance on established practice – not on legally certain implementation of the reform.
- *Citizen participation*. Individuals' possibility to influence needs assessment and consequently the decision on support measure. 6 § LSS must be implemented.
- *The importance of biopsychosocial approach in needs assessment*: participation is the fundamental concept. The WHO ICF (International Classification of Functioning, Disability and Health).
- *Citizens as lobbyists and voters*. Necessary for legitimacy of the exercise of authority to increase knowledge of the intention and content of the LSS and their legal rights to support. Empowerment. Citizens can also influence politics by voting for the political party that they believe will consider their interests.
- *National initiatives: The National Board of Health and Social Welfare*. Effective information to the municipalities to use their handbooks for the implementation of LSS, quality indicators etc. Possibility to discuss the precedents' relation to the political intentions with LSS?
- *More national initiatives*: The new LSS commission; Tillitsdelegationen (to enhance trust in public service).