11 Making the law invisible

How bureaucratic resistance makes support inaccessible

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The Swedish Act concerning Support and Service for Persons with Certain Functional Impairments (LSS) (SFS, 1993:387) is an important welfare reform which aims to create the conditions for persons with disabilities to participate in society on an equal basis. This special law is an exception to universal legislation and complements the Social Services Act, which has a lower degree of ambition. An overarching intention of the LSS is to diminish the power gap between the authorities and the individual through a strong legal rights construction. This implies appropriate support to participate in different areas of life, such as day-to-day living, education and work, culture and leisure activities, as the individual chooses. In short, the law is about having control over one's own life and the possibility to live like others (Government Bill 1992/93:159; Lewin, 1998).

This welfare reform was enacted on 1 January 1994 in Sweden. However, as this chapter will show, its implementation has been problematic, and the power gap has not diminished as intended. National authorities and governmental commissions in Sweden have pointed to problems in the performance of various measures under the act, and the relations between bureaucrats and applicants when it comes to applying for LSS supports (IVO, 2016; Socialstyrelsen, 2020). In a prior study I have shown how the needs of persons with intellectual disabilities have been diminished and distorted in administrative procedures to obtain legally certain decisions on their applications (Lewin, 2017). In this chapter I will develop this further, describing the accessibility aspect of the implementation of the LSS and the administrative behaviours encountered by persons with intellectual disability. Central to this chapter is to understand how administrative resistance to accessing support can be made visible. I will describe and discuss various materials concerning rejected applications, both for personal assistance and for LSS Contact Persons. The latter will be described in the next section.

The applicants I discuss were referred to me in my capacity as a disability rights researcher and activist as they had encountered problems in the administrative procedure when applying for support. They all experienced the administrative procedure as having become more restrictive over time, and all raised the question: 'How is it possible that I have been denied LSS support

that has been so beneficial and appropriate for me for such a long time and with no change in my needs?' As I will discuss in this chapter, the administrative procedure can be seen as documenting bureaucrats' strategies to withhold support provided by the municipal authority under the LSS.

The legal context of the Swedish LSS support

The LSS includes ten specific supports with different intentions and scope that are supposed to guarantee good living conditions and make the act appropriate for many persons with substantial disabilities. Different supports have different warrants, or normative needs, for the right to support. These can be found in both the government bill and the legal texts. The intent of the individual rights law, LSS, is to give priority to such needs. Resources must be provided, irrespective of the municipality's financial status (Government Bill 1992/93:159; Lewin, 1998). Under the LSS, persons belonging to three different categories have influence,¹ both on the administrative procedure in getting support, and in the performance of the given support. A procedural rule under the law is the right to appeal to the Administrative Court. Another is the so-called 'Lex Sarah', which regulates abuse (deviation and non-conformance with legal practice) in the administrative procedure and in the performance of support (Socialstyrelsen, 2014).

Legal certainty, encompassing both formal and material aspects, is a higher goal of all public services. The formal aspects are legality, objectivity and equal treatment. A legally certain implementation of a welfare rights law, such as the LSS, also demands predictability. To predict which needs give the right to a specific support, the applicant must know the warrants for different support measures. The principle of proportionality is also relevant, and refers to the balance of interests and a consideration of the consequences to reach an intended democratic goal. These principles are well established in the Swedish Constitution. The specific values that make up the unique value foundation of the LSS give the material aspect of legal certainty (Lewin, 2019).

At the political-administrative level, there are three prerequisites for legally certain implementation and for citizens' trust in the public service: an understanding of the significance of the reform; a will to realise the intentions of the reform; and the capacity to guarantee financial resources and the competence to realise the reform (Vedung, 2016).

Swedish municipalities are responsible for the major part of LSS implementation² and are expected to implement it within the limits of municipal self-governance, a right that is enshrined in the Constitution. Municipal routines and guidelines are interpretations of national legal intentions. The municipal political committee has overarching responsibility for the implementation of the reform. With the help of municipal bureaucrats at different levels, rights under the LSS are supposed to be transmitted to those who qualify: individuals with specific needs, i.e. people living with disabilities. Frontline bureaucrats are steered by higher administrative levels at which

cases are discussed and new legislation and policies are presented. The administrative procedure is delegated by the municipal political committee to the frontline bureaucrats and ends with a final decision which constitutes the municipal exercise of authority. The latter concept is not used in the law but signifies the municipal exercise of power to grant, or not to grant, citizens their legal rights (Warnling Conradson, 2018).

Investigation documents are compiled by frontline bureaucrats using a flow scheme with a number of different steps: (1) information gathering, (2) assessment of expressed needs, (3) comparing expressed needs with normative needs (the warrants for the right to different supports), and (4) compilation and communication of materials to the applicant before the final decision. In all these steps the frontline bureaucrat can communicate information from the investigation to the applicant for control and to express an opinion on the foundation of the final decision, that is, the exercise of authority (Socialstyrelsen, 2014, 2015 & 2016).

Under the Administrative Procedure Act (SFS, 2017: 900) the citizen has the right to put two fundamental demands on the authority: to get information about how the case is handled, and to influence its handling. This gives the citizen a strong right to participate in and influence the administrative procedure. The interests and duties of the citizen are clearly stated in the act's legal rules on service and communication: Under §6 the authority shall help the person to manage his or her interests. But the applicant also has the duty under §23 to provide certificates that can prove the disabilities and needs at issue. Under §25 the authority shall communicate all material of importance for the final decision. The individual shall only in exceptional cases have to take his or her case further to court (Government Bill 2016/17:180; see also Warnling Conradson, 2018). The United Nations Convention on the Rights for Persons with Disabilities (CRPD) (UN, 2008), is not included in Swedish law but is to be considered when implementing LSS (Swedish Agency for Participation, 2021; see also Funktionsrätt Sverige, 2021).

The text of the LSS and the Administrative Procedure Act does not always clearly show what is right or wrong, or which actions can be accepted within the limits of legal certainty. When the text does not give clear answers, administrative ethics can guide frontline bureaucrats so that their actions are according to the intentions of these acts and other norms. Administrative work is about choices and weighing the interests of all involved parties. In a sense, the bureaucrat is supposed to understand the construction of the whole democratic system (cf. Lundquist, 1988).

There is usually room for interpretation within the limits of the law, which can be generous or restrictive, depending on whose interests are promoted or threatened. A certain degree of caution must thus be employed when interpreting the wording of the text in applying the law. Considerations about the actual individual circumstances and consequences of the decision must also be made. Common legal principles and the facts of the individual case may be important as sources of law, as long as they are situated within the framework

of the political intention of the law (cf. Lundquist 1987, 1988 & 1998; Erlandsson, 2018; Lind & Fridström Montoya, 2018).

Here, it is useful to understand what a *Contact Person* under the LSS is, as the concept is widely used in health and care. Under the LSS, the Contact Person is a specific support which can complement LSS Living Support and Service when a person feels socially isolated and needs somebody outside the staff network. The purpose of this should be elaborated, as it is widely misunderstood, and there is no clear legal praxis for it as yet, to my knowledge.³ Certainly, the intention and scope of LSS Support and Service in Daily Living is broad. Many areas of life other than personal and home care are involved, and may be fruitfully compared to the more limited ambition of home services provided under the Social Services Act (Socialstyrelsen, 2016). Participation in leisure and culture activities is specifically mentioned in the text of the LSS for this support, and mostly refers to opportunities to take part in collectively arranged activities. The self-evident good personal treatment that can be expected from staff must always be there when it comes to the performance of LSS support. But professional support should *not* be included when a frontline bureaucrat considers whether an applicant is socially isolated. To counteract deep loneliness, a non-professional contact, a human being is needed, and the life area concerned is Social Interactions and Relations (Socialstyrelsen, 2016). The primary intention (the warrant) of the LSS Contact Person is to fill this need for non-professional contact – a fellow human being who can be a friend, not a professional. Contact with such a fellow human being also provides a possibility to fill the secondary intention of the support: to experience leisure and culture activities (Government Bill 1992/93:159).

Methods as a disability rights researcher and activist

This chapter is based on material from administrative procedures concerning five individuals who made applications for LSS support that I helped with as a disability rights activist. The source material comprises prescriptions and handbooks from the National Board of Health and Social Care, policies from the municipality, and documents concerning frontline bureaucrats' investigations. The material also includes complaints from the five individuals, two appeals and verdicts of the Administrative Court and, finally, the mail communication between the bureaucrats and myself. All persons involved are anonymised and their characteristics are mixed up to further anonymise them.

I have analysed the data by looking at its content (Kuckartz, 2019) and identified themes relating to the behaviour of the bureaucrats in the administrative procedure. I will discuss these themes in relation to the legal context. In doing so, I pay particular regard in LSS to Lex Sarah – a law that states that the staff are obliged to report misconduct in elderly care and care for people with disabilities – and, in the Administrative Procedure Act to §6 on service duties, and §25 on the communication process.

Methodologically, this study is based on participatory research (Starrin, 2005). The applicants were referred to me in my capacity as a disability rights researcher and activist. I helped them complete the application procedure for support on a no-fee basis, as an advisor or trustee, and they were all informed about my double role as a no-fee agent in their contacts with the administration and as a researcher. The applicants also participated in communications with bureaucrats concerning complaints to the municipality and appeals to the Administrative Court, and we went through the content of the correspondence with the bureaucrats together. The applicants made comments and additions to my proposals and agreed to all the steps I took to further their applications for complaints or appeals. All materials concerning the applicants – investigations, complaints, appeals and verdicts – were shared with me. The applicants (or, in two cases, the trustees) signed a document permitting me to use the anonymised documentation on their participation for this chapter. The applicants did not participate in the analysis or in writing this chapter.

Static needs, varying decisions

The needs of the persons who contacted me as a disability rights activist are described in the frontline bureaucrats' investigations. All had made complaints on the administrative procedure to the municipality and two had appealed to the Administrative Court. All had received appropriate long-term support and then lost it, although their needs had not changed. All applicants have intellectual disabilities and disorders: they cannot be 'cured', and their needs will not disappear.

The strategy to give time-limited decisions generally constitutes a major problem for persons with intellectual disabilities and disorders. To guarantee social security, such decisions should not be time limited. The new Administrative Procedure Act does not address this. It is suggested that this problem can be solved in LSS and other relevant special laws (Government Bill 2016/17:180; Bäckman, 2018). As the use of time-limited decisions concerns the exercise of authority and not the administrative procedure, it is only commented on briefly, in connection with one of the cases.

Three of the persons I worked with had lost long-term appropriate support in their daily living. Their needs had not changed, and they wanted to have LSS Personal Assistance again. The other two felt very lonely and wanted to again have an LSS Contact Person, which is, as described earlier, a form of non-professional support.

Among the first three, one application for continued municipal Personal Assistance under LSS was denied in the autumn of 2019. The applicant's trustee lodged a complaint regarding the administrative procedure to the municipal scheme for opinions and complaints, but it was not handled according to the municipal policy. A superior bureaucrat informed the trustee that it would be better to appeal to the Administrative Court. The trustee felt forced to do so and the original complaint was attached to the appeal. It was

denied in the spring of 2020, stating that no certificate was provided to prove the applicant's needs. The trustee had expected that the political committee would allow his adult child continued right to support that had been granted him for such a long time as it was clear that there was no change in needs. This reasoning was rejected by the court as not relevant, as the applicant's support had been time-limited.

The second person had also lost her right to LSS Personal Assistance which she had had for a long time. Apart from an intellectual disability, the applicant had substantial physical disabilities following a major stroke. She appealed to the Administrative Court and was denied. She was told that she had not provided a certificate proving her right to LSS support. Instead she was given traditional home service under the Social Services Act, with punctual practical support. However, this did not function well in her experience.

The third person also needed substantial care and support in her daily life and lost her longstanding appropriate support. She did not consider the support she was now provided under the Social Services Act as meeting her needs. There was no flexibility due to the strict schedule, and the new staff were a problem as she could not relate to them and make herself understood. She felt isolated, frustrated and worried.

The last two persons each wanted an LSS Contact Person. One was a woman with a traumatic background and several psychiatric illnesses as well as mild intellectual disability and disorder. She had no relatives and experienced difficulties in making friends. She often did not feel at ease with the staff at the group home where she lived. She had two LSS supports: Living Support and Service and Daily Activities. A third LSS support, the Contact Person, was withdrawn in the autumn of 2019. The reason for this was that the applicant was not considered socially isolated: she was in permanent and continuous contact with group home staff. Her complaint was about the omission of relevant warrants for the right to a LSS Contact Person: a non-professional support by a person with great engagement and interest in other human beings (Government Bill 1992/93:159).

The last person had Down's syndrome, was socially isolated and needed a LSS Contact Person. Like the other person, he used to have this form of LSS support earlier, someone he had liked and whom he wanted to meet again regularly. He also had Living Support and Service and Daily Activities. This person only had one contact outside the staff network, was very isolated, and could not make friends. A complaint had been made on the same grounds as the former person. His trustee took his case to the Administrative Court. The case is not yet concluded (March 2021).

Complaints to the municipal system

The administrative procedure for all five persons led to complaints by the applicants which were lodged in the municipal scheme for opinions and complaints. Two appeals to the local Administrative Court concluded with a denial. Before and after the municipal exercise of authority there were email

communications between the superior bureaucrats, who were responsible for the respective cases, and myself. These concerned the policy for handling complaints as appeals, and their practice in doing so. There were routine answers to the complaints from the superior bureaucrats, with somewhat varied content. Some examples, from different cases, are given below:

(1)

Permission to lodge comments has been given in connection with the communication procedure. If the decision of the investigation is a rejection or partial rejection of the application, the decision may be appealed.

(2)

There are no limitations in the guidelines of the municipal authority as to which complaints can be lodged, or in which areas. The authority has judged that the complaints go under the Administrative Procedure Act.

(3)

We do not handle complaints on the administrative procedure. They are referred to the Administrative Court.

(4)

The administration of complaints is primarily intended as an instrument for other types of standpoints, for instance concerning questions of treatment or actions that may lead to a deviation report under Lex Sarah [to the municipality or the Health and Care Inspectorate, IVO]. Standpoints that concern assessments or the content of decisions should not be administered as complaints as there is already a scheme for administration – namely through trial in court. Sometimes a lodged document may contain standpoints both on the assessment of a case and on the design of the administrative procedure. In such cases, it may be appropriate to handle the case both as an appeal and as a complaint concerning a certain part.

(my translation)

One superior bureaucrat commented on this tendency to refer complainants to the Administrative Court by quoting the Parliamentary Ombudsmen (JO, 1999/2000)⁴ that '[t]he authority must be very generous with the interpretation of what can be an appeal'. This bureaucrat also saw a problem when a person turned to the municipal authority how a document should be interpreted:

That could be experienced as pressure from the authority not to complain. It is a difficult balancing act, and different persons naturally think differently about this question. But the most favourable still is that a process in court is started during the period of appeal, expressing discontent with a decision. Not to do this would mean that the person loses the possibility to appeal a decision.

(*my translation*)

What can be learnt about bureaucrats' administrative behaviours?

The administrative procedure may be discussed both from a purely legalistic view – is the behaviour of the bureaucrats legally certain? – and from the point of view of administrative ethics when the wording of the law cannot cover all situations. When analysing the material it is possible to find similar themes and patterns for all five applicants. I choose to consider these as strategies, as they seem to be routinely used. They concern the administrative style – the frontline bureaucrats' behaviour – in personal meetings and contacts with the applicants and myself.

The first step in an investigation is to gather information on an applicant's expressed needs. This is usually done through personal contacts and meetings. Applicants complained of great frustration, of not being seen or listened to, and that the frontline bureaucrat did not understand the difficulties in daily life caused by their cognitive disabilities. The applicants did not feel informed or helped by the frontline bureaucrat about navigating the administrative procedure, which certificates were needed and the warrants for a positive decision to get support. They did not feel they had any influence on the administrative procedure. This *strategy to withhold information and help* has the consequence that the applicant's needs are diminished. This strategy also leaves room for a tendency to steer applicants towards the Social Services Act – that is, a *strategy to steer towards traditional home services* despite the inappropriateness of the support for persons with intellectual disabilities and disorders.

Frontline bureaucrats usually presented applicants' needs correctly in the second step of the investigation, the assessment of expressed needs. In one case, however, a telephone contact that conveyed points of view that the applicant found important was noted, but facts that were important for the final decision were not documented. A complaint was lodged but not handled. The result was a final decision allowing insufficient support. The formal demand objectivity was not met, and the applicant's needs were diminished. This is an example of a *strategy to withhold relevant facts to diminish the needs of an applicant*.

The strategy to diminish needs was also used in the third step of the investigation. In this step the frontline bureaucrat relates an applicant's expressed needs to normative needs and makes an assessment of the right to support. The normative needs, or the warrants for the right to support, are

described in LSS and the LSS Government Bill. The needs can be distorted when there is *a strategy to omit important warrants*.

As mentioned earlier, in the fourth step, all materials needed for the final decision should be compiled and communicated to the applicant. But the law does not give examples of materials that should be communicated. My findings show that warrants for different LSS supports were not always documented and communicated. This was evident in the two cases that applied for an LSS Contact Person. The argument for a denial in the exercise of authority was that the support given by LSS Support and Service in Daily Living staff was sufficient to create good living conditions. The applicants' needs were thus distorted and they were denied the right to LSS Contact Persons.

When applicants made comments in the communication step – which they did in all five cases – these were only attached to the investigation, without being commented on or argued against and, most importantly, without effect on the exercise of authority. The *strategy not to consider the points of view of the applicant* means that the final decision was regularly taken without any possibility for the applicant to influence the assessment, and there was no predictability as to what the result of the exercise of authority would be. The refusal to consider critiques and questions was very frustrating for applicants. They experienced power abuse; they could not use their legal right to influence the foundation of the final decision.

If an applicant is not satisfied with the communicated assessment and the other steps of the administrative procedure, they can lodge a complaint to the municipal authority. Under Lex Sarah, this complaint must be handled in a specific way. This was not done in any of the cases studied. There is thus a *strategy to not handle complaints according to municipal policy*. The routine email response from all higher bureaucrats was, as quoted earlier, that the complaints did not concern the administrative procedure. Instead, *a strategy to refer complaints to the Administrative Court* was invariably used.

Two applicants felt forced to go to the Administrative Court while the others withdrew appeals that had 'mistakenly' been sent to the court. In the former two cases, two important and useful points were made by the court. First, the court pointed out that its task is to conduct a substantive examination. The court is not a supervisory authority like the Health and Social Care Inspectorate or the Parliamentary Ombudsmen. Complaints regarding the administrative procedure should be handled by the responsible authority, that is, the municipality or the national supervisory authorities. Second, under the Administrative Procedure Act, the applicant has the duty to provide certificates or other information to make it likely that the warrants for the right to support are fulfilled. This was in fact known to some of us, but we relied on the strengthened service duty under the new Administrative Procedure Act: that frontline bureaucrats would help the applicant manage his or her interests and make it possible to influence the administrative procedure by providing sufficient information to prove his or her need. As noted earlier, one superior bureaucrat interpreted complaints as appeals to the Administrative

Court and referred to a statement of the Parliamentary Ombudsmen about being generous in interpreting what can be an appeal. The applicant then felt forced to appeal.

Thus, frontline bureaucrats employ a variety of strategies and practices that diminish and distort the needs of the applicants. Superior bureaucrats do not handle complaints in a legally certain way. All complaints were closed with referrals to the Administrative Court.

Bureaucratic strategies and their consequences

All the strategies identified in the previous section have negative consequences for applicants. They threaten access to LSS support and are not in line with the citizen focus of the LSS and the Administrative Procedure Act; moreover, they hinder applicants' access to a range of settings and contexts since these persons need personal support to navigate in society. This suggests that the law is made invisible by bureaucratic resistance.

Strategies that diminish or distort the needs of the applicant can be difficult to uncover for an applicant or trustee who has not read the appropriate bills, legal texts and handbooks. The power gap between the frontline bureaucrat and the applicant becomes clear. This calls into question the competence of frontline bureaucrats: do they know the intentions and content of different forms of support, or do they not wish to comply with the law? In either case, the consequence is that the foundation for the final decision is incomplete, and the exercise of authority rests on legally uncertain ground.

In three of the cases discussed in this chapter, the warrants for qualification for LSS support in ordinary living seem to have been changed without informing the applicants. No changes in needs had occurred since these applicants first received support, between ten and 20 years earlier. The support had previously been extended after each decision period. The predictability of the decision – an important formal requirement for legal certainty – was absent. The consequence was that the applicants lost a long-time appropriate support and were offered home services under the Social Services Act which they could not really use.

Thus, inappropriate support, or no support at all, is the consequence of the strategies to prevent access to support. It can also be argued that the proportionality principle is not respected in the consideration of the consequences of the exercise of authority. My suspicion, which I cannot support from this empirical data and can only submit as a hypothesis, is that demands from the administration to hold to budgets is given priority over legal certainty in Sweden. There also seem to be cooperation problems at a higher level in the municipalities, i.e. between local politicians. The LSS includes a legal requirement to cooperate with other relevant authorities such as healthcare services. This is obviously not done when it comes to the will of the Habilitation of the Region⁵ to provide certificates regarding an applicant's functioning.

The strategy to withhold information in the fourth step (related to compilation and communication) before the exercise of authority, is crucial for the invisibility of the law. When relevant information about needs assessment and the relevance for the actual LSS warrants is not provided, there is no possibility for the applicant to influence that important step. And their needs may not be fully described. This implies problems with legality and objectivity.

Comments from the applicants may be added at this stage, but are not attended to and contested. The exercise of authority is thus founded on a legally uncertain administrative procedure which prevents access to support. The consequence is a restrictive exercise of authority and inadequate support under the less ambitious Social Services Act. The bureaucrats can hardly, from my perspective, be seen as guardians of democracy. Again, the law that was supposed to diminish the power gap between the welfare state and the individual is made invisible.

Both on the individual and the societal level, legality and openness about the administrative procedure is an important demand of citizens to be able to trust the administration and to find it legitimate. Here, researchers use the concept of the *legitimacy triangle*. The corners represent three demands on the public administration: democracy (as expressed in the LSS and Administrative Procedure Act), cost-effectiveness (when the municipalities make budget priorities), and legal certainty (that persons with disabilities get their legal rights) (Lewin, 2009; Norén Bretzer, 2014). Ideally all three values are fulfilled. Many different interests compete when realising the LSS reform. The municipal political committees express a wish to follow the law but may, in practice, prioritise cost effectiveness, to keep within their budget. The administration may want to be loyal to the power – the local political committee – by following experienced demands to hold the budget. This means less and cheaper support. More concretely that means the less ambitious support under the Social Services Act (a reasonable living level) instead of support under the LSS with the aim to give good living conditions. For persons with disabilities and needs that do not change this is experienced as a serious restriction of welfare.

The overarching strategy not to give applicants the possibility to influence the administrative procedure seems legally uncertain and detrimental. If the bureaucrats do not obey the special rights law – LSS with Lex Sarah – people with certain impairments are unable to access good living conditions. A lack of respect for the citizen focus of the Administrative Procedure Act probably makes matters worse, both for the administrative procedure and the exercise of authority. The fundamental value of maintaining a legally certain implementation of the regulation is systematically neglected. The Administrative Court gave the two applicants whose appeals it heard a hard lesson: they should be more competent than bureaucrats in knowing the warrants of the support, and that they are supposed to provide certificates to prove their needs even when these needs are constant and have remained unchanged for years.

Even when no legal rule can be said to be broken, there is a serious ethical problem with the strategy of presumed consent when it comes to routine referral to the Administrative Court. There is an evident power relation between the municipal authority and the person with disability, which the values of free will and autonomy fostered by the LSS and assisted by the Administrative Procedure Act are supposed to equalise. In this perspective, expressed will – real consent – must be obtained. After all, who knows the interests of the individual better than the person at issue? Are such patronising attitudes acceptable, or do they constitute an abuse of power in connection with LSS implementation? The values of respect for individual integrity, will, and influence seem to be made invisible.

Conclusions: a circle of resistance

The aim of this study is to answer certain questions raised by the applicants I worked with. Has the implementation of the support become more restrictive, in spite of the fact that accessibility to appropriate support is a precondition for participation in society? Are the bureaucrats of the study in compliance with the law? And how can resistance to accessing LSS support be described?

My cases show that in Sweden today, people may lose LSS support that they have had for a long time without their needs changing. This makes it easy to answer the first question: the implementation of the support is indeed more restrictive. High-quality LSS support is replaced by punctual home service under the Social Services Act, with its lower ambition and large staff groups. Such support can hardly be said to be appropriate for persons with intellectual disabilities and disorders.

The answer to the second question, i.e. whether bureaucrats are in compliance with the law, is no. The implementation of LSS legislation, with its strong emphasis on individual influence, the special rules under Lex Sarah and the Administrative Procedure Act, which has signalled a move from an authority focus towards a citizen focus, shows several examples of legal uncertainty.

When it comes to the third question, about how best to describe resistance to access to LSS support, I have found a number of strategies in my data that diminish and distort the needs of applicants. It is evident that frontline bureaucrats have a different view than the law of what material should be communicated to the applicant for information and control. The applicants' lack of information and influence means that the exercise of authority is based on a legally uncertain foundation for decision. Bureaucrats use their power over the applicant so that the right to support is lost. The democratic demands on the administration – the upper vertex of the legitimacy triangle – is neglected when there is no legal certainty. An appropriate support, based on the high ambition of the LSS, has been abandoned for a weaker support under the Social Service Act. The solidarity for the weakest citizens expressed in the special rights law is set aside, without an admission that LSS values are on their way out.

The reflections in this chapter emerge from a relatively small body of material. I cannot show that other municipalities also use a legally uncertain administrative procedure before the exercise of authority where the support is lost. Hopefully future research and reports from the national supervisory authorities will show if the situation is the same in other municipalities, if there are changing trends over time, and if they apply only to certain citizens. If so, the responsibility lies at the national level to enforce legal certainty in the administrative procedure to restore trust in public services.

What will the applicants do now? They have started anew in what can be described as a bureaucratic circle of resistance to granting them LSS support. Here the applicant moves along the circle through the different steps of the administrative procedure – both of the investigations by the frontline bureaucrats as well as the complaints on that procedure. Supervisory national authorities will probably be approached again in spite of the fact that those have little legal power. The Administrative Court will probably also be turned to. The hope is then that the court will find the experienced problems of the applicants to be matters that should and can be handled by the court and not the municipal authority or the national supervisory authorities. And even come to the conclusion that the applicants' needs give them the right to LSS support.

Notes

- 1 The three LSS categories are: those who have intellectual disabilities or autism, or who have a condition resembling autism; those who have considerable and permanent mental impairment following brain damage received as an adult, as a result of external force or physical illness; and those with some other lasting physical or mental impairment that is clearly not due to normal aging, if such impairments are substantial and cause considerable difficulties in daily life and consequently, an extensive need for support and service.
- 2 The Swedish Social Insurance Agency (SSIA) is responsible for assessing needs and financing part of the LSS Personal Assistance support. The agency has governmental steering and its organisation and decision-making differs from that of the municipalities.

The right to personal assistance in Sweden is becoming increasingly circumscribed due to governmental cost-cutting goals and political rhetoric that questions the legitimacy of the right to personal assistance (Altermark, 2018). The goals to cut spending are turned into practice by street-level bureaucrats, making up a reality in which now only 15% of first-time applicants are granted personal assistance from the SSIA (SSIA, 2018). Gunilla Järkestig Berggren, Ulla Melin Emilsson and Ann-Sofie Bergman discuss the discretion of frontline bureaucrats and how restrictive strategies result in limited implementation. During the time period from 2008 to 2017, the personal assistance granted by the municipalities increased from 3500 to 4900 persons (National Board of Health and Welfare, 2018) (Järkestig Berggren et al., 2019: 11–12; see also Lewin, 2018).

- 3 At time of writing (February 2021) a relevant case, 6714–19, with unlimited time duration, was yet to be tried by the Supreme Administrative Court (HFD, 2020).

- 4 The Parliamentary Ombudsmen are appointed by the Swedish Riksdag to ensure that public authorities and their staff comply with the laws and other statutes concerning their actions.
- 5 The Region is the other local organisation apart from the municipality in the Swedish welfare system.

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