Juridification and social citizenship in the welfare state: Framework for a new research project

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Presentation overview

- Brief introduction to the research project ("Juridification and social citizenship in the Norwegian welfare state")
- Background and key concepts
- Research design
  - Case studies and cross-cutting themes
- Cross-cutting themes related to juridification
  - Democracy, international law, professionalism, cultural diversity
- Example from Norway (healthcare for illegal immigrants?)
Participants

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- **Siri Gloppen** (Department of comparative politics/Christian Michelsen Institute (CMI))
- Roberto Gargarella (Buenos Aires University/CMI)
- Anne-Mette Magnussen (Bergen University College)
- Even Nilssen (Uni Rokkan Centre/Bergen University College)
- Ingrid Rindal Lundeberg (Uni Rokkan Centre)
- Kristian Mjåland (Uni Rokkan Centre)
- Tine Eidsvaag (Faculty of Law, University of Bergen)
- Katja Jansen Fredriksen (Faculty of Law, University of Bergen)
- Alice Kjellevold (University of Stavanger)
- Hugo Stokke (CMI)
Norwegian institutions

- University of Bergen
  - Faculty of Law
  - Faculty of Social Sciences/Department of comparative politics
- Christian Michelsen Institute (CMI)
- Bergen University College
- Stein Rokkan Centre for Social Studies (Uni Rokkan Centre)
- University of Stavanger
International partners

- Silke Bothfeld (Hochschule Bremen, Germany)
- Pilar Domingo (Overseas Development Institute, UK)
- Jackie Dugard (University of Witwatersrand, South-Africa)
- Octavio Ferraz (Warwick University, UK)
- Varun Gauri (World Bank)
- Kirsten Ketscher (University of Copenhagen, Denmark)
- Wibo van Rossum (Utrecht University, the Netherlands)
Basic research topic

- Normative and empirical analysis of the nature, extent and consequences of juridification processes in Norway
  - Focus on groups vulnerable to social marginalization or exclusion
  - How do different legal regimes impact on their rights, participation and social citizenship?
  - What kind of legal regimes are chosen in different social fields, and why?
Juridification (various forms)

- Far-reaching processes of juridification in Norwegian society
  - Increased use of legal sources and regulations in the welfare sector (legislation, complaint procedures, international law and human rights...)
    - Individual rights, guarantees (“reintegration guarantee”)
    - Regulation of the labour market
    - Collective agreements
    - Intersectional/cross-cutting regulation, public reforms
    - Anti-discrimination law
    - Human rights law
    - EU directives
    - Rights coupled with duties (work, social welfare)
    - Legislation with discretionary or open-ended regulations
The Norwegian welfare state

- Highly regulated and financed over public budgets
- High taxes (Robin Hood?)
- Professional expertise
- Social rights
  - **Universal benefits** (education, health care, social security, pensions, work related rights...)
  - **Special programmes** for groups at risk of marginalization (unemployed persons, immigrants, young prisoners, single mothers...)

- Increasing influence of international law and human rights
- Increasing cultural diversity
Research questions

• What kind of new legal instruments are in use in various social fields?
• What are the consequences of these for
  – Public management/government?
  – Professional discretion and responsibility?
  – Individual status and rights?
  – Vulnerable groups´ possibilities of social inclusion and participation (social citizenship)?
Methods

- Empirical analysis (political science, sociology)
- Normative analysis (political science, law, political and legal theory)
- An interdisciplinary project
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Objectives

• Contribute to an interdisciplinary and empirically based analysis of processes of juridification in the welfare state
  – Welfare, work, migration, health care

• Explore how new forms of juridification change the terms of social citizenship for vulnerable groups
  – People outside the labour market due to impairment, sickness or injury; convicted persons; muslim immigrants; patients; temporary agency workers
Secondary objectives

- Explore different kinds of juridification processes, including de-regulation
- Explore the use of individual rights and duties in order to reach socio-political goals
- Explore the influence of international regulations and monitoring bodies for national processes of juridification (human rights, EU-law, ILO…)
- Explore the relationship between juridification and democracy
- Explore the consequences of juridification for professional power, discretion and intersectional co-operation
- How and to what extent do national regulations take into account the increasing cultural diversity of Norwegian society?
Juridification and democracy

• How does increased use of legal instruments influence on democratic processes, and to what extent are affected groups in control with regard to their own situation and options (participation)?

• How do individual rights influence on political or community based negotiations, goals and priorities?
Juridification and international law

- How do international regulations influence on national changes, e.g. legal developments?
- To what extent is the status and position of vulnerable groups strengthened by the incorporation of international instruments in Norwegian law, e.g. human rights and EU directives?
Juridification and the role of professionals

- In the realization of socio-political goals
- In the implementation of welfare state law
  - General goal-oriented legislation
    - Are the rights of citizens increasingly being determined by the judgment of health- and social professions?
    - Does the increased professional involvement result in extensive variations in individual rights and duties?
  - Rights oriented legislation
    - Is the scope of professional discretion too limited?
Example: Access to health care for illegal immigrants?

- Emergency treatment?
- Primary health care?
- Specialist treatment in hospitals?

- Patient Rights Act and related regulations are not clear on the extent of state obligations, and to which extent non-citizens must pay for treatment
Right to health

• "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”

ICESCR, Article 12 (1)

Part of Norwegian law (Human Rights Act)

• "The States Parties … undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

ICESCR, Art 2 (2)
ICESCR Committee (2000)

• ”In particular, States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services”.

General Comment No. 14 (2000), para. 34.
Human rights, democracy and professional judgement

• The global discourse on the human right to health influences national law and democratic processes

• National law not clarified
  – How should the law be formulated? Based on which principles and values? Equal access for all, despite legal status? Different treatment of illegal immigrants?

• Professionals and hospitals respond differently to illegal immigrants
  – Unpredictable situation for this group
    • May lead to bad health outcomes
    • A violation of the human right to health?