

Gynnande besluts negativa rättskraft och rättssäkerhet

– för människor med funktionsnedsättning inom
rättsområdena SoL och LSS



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av

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Abstract

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A principle of legitimate expectations exists in a number of countries and legal systems. This thesis examines the implications of the principle and its application on a municipal level and in the administrative courts in a Swedish context. The aim of the thesis is to examine whether persons with disabilities are ensured legal certainty, through the principle of legitimate expectations, after they have received a formal legal decision about support in their every day life according to the Social Services Act (2001:453), SoL or according to The Act Concerning Support and Service for Person with Certain Functional Impairments (1993:387), LSS.

The Swedish principle of legitimate expectations implicates that a favorable decision may not be changed or revoked after the individual has received notice of the decision. This applies even if it subsequently turns out that the decision is found to be incorrect. The authorities have to stand by their decisions. The individual can feel secure that the decision may not be reversed or altered and he/she are therefore free to plan and adjust his/hers life in accordance with the decision. However Supreme Administrative Court case law has formulated three exceptions from the principle. Exceptions may be made when 1) a decision is provided with a revocation statement; 2) imperative security reasons require modification or revocation; 3) the individual has obtained the decision by false information. In addition Supreme Administrative Court case law also provides an exception that applies specifically to favorable non time-limited decisions under SoL and LSS.

In this thesis the concept of legal certainty requires fulfillment of both procedural and substantial requirements. Furthermore it is concluded that the principle of legitimate expectations can be described as a guarantee for legal certainty from a theoretical point of view. However, the examination of the application of the principle shows how the municipalities have rather ample opportunities to make exceptions with the use of statements of revocation. Additional opportunities to make exceptions or circumvent the principle have also developed in practice. The relatively large possibility to make exceptions from the principle and the extended ways to circumvent the same means that it is difficult for the principle to fulfill the procedural requirements linked to the concept of legal certainty. The application of the principle also leads to social insecurity for persons with disabilities that have been granted support in every day life in accordance with SoL and LSS.

Previous research has concluded that persons with disabilities are faced with legal problems within the areas of SoL and LSS. This thesis shows that persons with disabilities are faced with additional problems due to lack of legal certainty. The image of the legal problems within SoL and LSS needs to be complemented with the problem that the individual is in fact not guaranteed the support and service that he/she has been granted. He/she can not feel confident that the favorable decision will prevail.

Keywords: principle of legitimate expectations, legal certainty, favorable decision, persons with disabilities, the Social Services Act, the Act Concerning Support and Service for Persons with Certain Functional Impairments, administrative law, social law.

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