ISSN 1392-3110 (Print)
ISSN 2351-6712 (Online)
Socialiniai tyrimai / Social Research. 2015. Nr. 2 (38), 52–59

Legal Regulation of Public Governance in Finland – an Illusion of Predictable Public Administration?

Niina Mäntylä[1], Laura Perttola[2], Kristian Siikavirta[3]

University of Vaasa, Public Law, Faculty of Philosophy
P.O. Box 700, FIN-65101 Vaasa, Finland
E-mail: [1]niina.mantyla@uva.fi; [2]laura.perttola@uva.fi; [3]kristian.siikavirta@uva.fi

The article has been reviewed.
Received on 2 September 2015, accepted on 9 November 2015

Abstract

Legal coherence and predictable decision-making are the cornerstones of Finnish administrative law. The aim of this research is to analyze the factors that make administrative decisions unpredictable in Finland today. Why is the challenge so significant for the authorities?

The factor analysis revealed six main features affecting predictability in the legal regulation of Finnish public governance: the increasing use of soft law, the devolution of government, deregulation, the changing role of the individual, the blurring of the division between the public and the private sector and the influence of international and EU-law.

Keywords: predictability, administrative law, decision making.

Introduction and the research questions

The aim of this research in the field of Public Law is to analyze the factors that make administrative decisions unpredictable in Finland today. What kind of challenges does unpredictability in the decision-making process present for the authorities and for individuals? Are there effective means for increasing predictability in the Finnish legal system? In this study, the authors investigate the function and the role of predictability in the legal regulation of Finnish public governance. The article formulates the features in administration and law that – from the point of view of the citizen as a client or partner of local administration – are significant for predictability especially in individual decisions.

The concept of predictability as part of legal certainty or legitimate expectation is one of the cornerstones on Finnish Administrative Law as well as EU-law (Raitio, 2003; Paunio, 2011). In analytical Legal Theory it is acknowledged that all decisions with legal effects must be both predictable and reasonable (Aarnio, 1987, 1997; Peczenik, 1989). However, current research is mostly concerned about the predictability of legal process. The legal theory on the predictability of administrative decision-making is not comprehensively formulated. This research contributes to the construction of such a theory by charting the main factors that lead to unpredictability in the decision-making process and studying the mechanisms behind this phenomenon.

The scientific approach of this research is grounded on legal dogmatics. The factor analysis of the features affecting predictability is based on interpreting and systematizing the legal norms presented in different legal sources (e.g., statutes, legislative bills and legal literature). In addition, to gain a better understanding of the social and political reality behind the norms, methods of legal policy are utilized in the analysis.

On predictability

Predictability can be seen as a component of the legal concept known as legitimate expectations. The concept protects expectations that are based on promise, established practice or legal right (see more closely e.g., Raitio, 2003; Wade and Forsyth, 2009). Another close concept is legal certainty, i.e. the individual's opportunity to plan his/her action trusting that his/her expectations will be met (Aarnio 1987, 1997; Peczenik, 1989; Paunio, 2011). Predictability brings into focus the client of public administration, namely the action of the citizen or private business.

Predictability of judicial decisions and administration in general is deeply connected to the governance indicator discussion led by World Bank researchers. It is an inherent factor in the rule of law and regulatory quality. Predictable decisions and administration improve the wealth of nations (The World Bank, 2006 and further Voigt, 2012).

Copyright © 2015 Šiauliai University Press

In general, predictability can be either objective or subjective. Objective predictability means that it is possible to say in advance that the decision is legally binding and is based on sound facts. The predictable action fulfils the legal obligations. This kind of decision or action cannot be successfully appealed in court. Subjective predictability means that the individual evaluates the decision in advance trying to figure out what the decision under law would be and taking the relevant facts into consideration.

At this point it is emphasized that the administrative decision is based on law and relevant facts. The decision maker and the client must find the rights statutes and figure out relevant facts, a task that can be cumbersome in some cases. That, of course, affects the predictability of decision-making, which is a common problem in decision-making under the rule of law.

When predictability in administration is analyzed, one has to make a distinction between different tasks and procedures in administration. Decisions, directions and orders are examples of different tasks. Procedures include different stages, such as preparation, hearing, decisions and appeals. Predictability is an issue in all these administrative tasks and procedures. For example, predictability in an administrative decision concerns the contents of the final decision and also the cost, length and general execution of the procedure.

Table 1

Administration: tasks and procedures

Task	Procedure			
Decision	Preparation	Hearing	Decision	Appeal
Direction	Preparation	Hearing	Publication	Supervision
Order	Preparation	Hearing	Publication	Supervision
Service production	Production decision	Individual need	Execution	Feedback

Research methodology and the legal science

This study investigates the factors affecting the predictability of administration from the point of view of the citizen or client. We draw factors from the relevant written material consisting of law drafting material, social studies and academic literature, especially jurisprudential literature. The research method is analytical and theoretical in a sense that we draw key factors from our material and from the basic description of public administration tasks and procedure (see on administration and law, for example, Wade and Forsyth, 2009).

In the Nordic tradition, legal dogmatics means studying the content of legal norms and their systematization (Aarnio, 1987). This kind of study is conducted in the framework of the current legal order, and the sources of law create the main data for legal research. States have their own legal systems and they see the hierarchy and interaction between different legal sources in different ways. Nowadays, EU law and the European Convention for the Protection of Human Rights (ECHR), like other international treaties, have a significant role at domestic level (Gretchel et al., 2014).

In the Finnish legal system, the constitution and other legislation – not forgetting legal principles – are the most important national foundations for judicial decisions. Apart from these there are legislative bills and legal praxis that give more information when studying the content of the legal norm. However, the Finnish system is not as widely based on case law as many other legal systems. In the Nordic tradition also opinions of scholars (legal publications and articles) have been seen as important sources (Hollo, 2011; Husa, 2011). In this study, an approach is more theoretical and the role of legal praxis as a legal source is less significant than in pure jurisprudential study.

In addition, the key objective of the study is to gain a better understanding of the reality behind the norms. Thus, the methodology of this article is strongly based on the aspects of legal policy, such as evaluating the effectiveness of laws. The analysis of the factors that affect predictability is grounded on legal dogmatics, whereas the study of the functioning mechanisms of these factors is a question of legal policy (for the basic functions of law, see, e.g., Raz, 1979).

Softer – but unpredictable regulation?

Deregulation has been a persistent topic in the Finnish legal and political debate for the past few years. For example, one of the strategic objectives of the Government Programme is to reform operating practices by the means of digitalization, experimentation and deregulation. Also the implementation of EU regulation is the place where better regulation has been seen as an important development area. According to the Finnish Government Programme 2015, one of the key themes of the exercising influence within the EU will be less but better and lighter regulation.

A stimulus to this kind of change comes from the EU (Government Programme, 2015; European Commission, 2006).

There is also another trend in the Finnish public governance regulation that is worth highlighting: changing the regulation type from “hard law” to soft law, such as action programmes, guidelines, recommendations and resolutions. Information management in particular has increased in Finland (Stenvall and Syväjärvi, 2006). Soft law instruments are not legally binding and they are easier and faster to achieve than hard law (Abbott and Snidal, 2000). Soft law is more typical in the public governance areas where changes are quick. Environmental questions, for example, are dynamic, and regulation can quickly become outdated (Määttä, 2005).

Both, deregulation and lighter regulation, are good aims when the target is reducing unnecessary and overlapping rules. Naturally, the target is also to achieve the objectives of society at minimum cost. Especially at the EU level this point of view has been beneficial to businesses, but also citizens and workers have benefitted by avoiding the unnecessary regulatory burden (Commission Communication COM, 2014, p. 368; European Commission, 2006). However, the flip side of this kind of development has hardly been noticed: even in connection with soft law instruments, it is important to pay attention to their predictability. There is always a need to find an equal way to make decisions (Lähteenmäki-Uutela, 2010). If legal regulation (or its interpretation) does not offer the right course of action to the authorities or citizens, they turn to non-legal regulation. Because soft law is non-binding and lacking sanctions, the certainty or stability of the interpretation policy is suffering. For authorities and, above all, for citizens in such a case it is more difficult to find out the content of the norm. In addition, information management in particular requires a lot of background information, and finding and selecting sufficient professional information is not easy (Stenvall and Syväjärvi, 2006). This can result in a situation where many soft law instruments are suitable but no one is controlling the coherence of this kind of regulation. Then it is not only predictability that is suffering – even the effectiveness of the norm is unreliable.

Devolution as a source of unpredictability

Administration can basically be subject to either a centralized or decentralized system. Of course, there is a spectrum of choices between the far ends. In Finland, the centralized system has been illustrated by decision-making at ministerial level, binding universal directions and supervision. This was the model of operation, for example, in child day care where the size of the group of children and the number of child-minders in a group were dictated by a national rule. In the 1990’s the mandatory rule was removed. The reasoning was to give more freedom to experts and to open possibilities for local public organizations and municipalities to save money (Pihlaja and Junttila, 2001).

Some studies have been produced on the consequences of this devolution of administration (OECD, 2012; OECD, 2015). One significant result is that there are great differences in the level and quality of public services. For example, the size of a child group and the number of child-minders in a group differs considerably (Pihlaja and Junttila, 2001). This has led to unaccepted inequalities in different parts of the country.

In addition to inequality, the devolution of public administration may cause problems in predictable administration. Herbert A. Simon (1997) has argued that centralization enhances possibilities to make legally sound decisions. At the same time the cost of making decisions will rise. Respectively the devolution of public administration leads to flawed decisions and lower costs. This implies that it would be possible to find out an optimal structure of the organization in respect to centralization but that is not the aim of this paper. The idea that decentralization leads to poor decisions and lower costs can be explained, for example,by lower resources, minor experience, differencies in political and ethical values, and higher influence of private interest groups.

Active citizenship as the negotiation of rights and obligations

The Nordic welfare system is shifting from the universalist ideal of public service production towards a liberalistic notion of the individual’s responsibility for their own wellbeing (Hvinden and Johansson, 2008; Gilbert, 2002). The Finnish welfare state has been proven resilient in the economic crisis in the 1990’s and again after 2008 but, like all welfare models, it has taken a qualitative turn and the public sector is forced to function in the state on permanent austerity (Pierson, 2001).

Increasing the individual’s duties derives, on the one hand, from a demand for cost-effective public service production. On the other hand, personal responsibility is linked with freedom of choice, one of the prerequisites of a rational consumer and active citizen. Active citizenship is the administration’s response to the critic aimed at the bureaucratic and hierarchical public service system: in order to acknowledge individual needs and differences, public authority transfers the

responsibility for choice to the individual. (Newman and Tonkens, 2011). Especially in social and health services this has led to substituting hearings with planning and negotiating. This is highly problematic from the viewpoint of predictability: the outcome of negotiations cannot be predicted by the legal rights of the individual, as these rights are often more procedural than material (negotiating with limited capabilities, see Kalliomaa-Puha, 2009).

Finnish social sector legislation has gone through major changes in recent years. There has been indicated a distinctive trend of substituting subjective and other material rights with procedural rights and soft law (Kotkas, 2009). The majority of social and health services are provided within the limits of budgeted funds and not guaranteed as subjective rights (with the exceptions of child day care and comprehensive education). The Social Welfare Act (SWA, 1307/2014) and The Act on the Status and Rights of Social Welfare Clients (SCA, 812/2000) guarantee a right to the assessment of service needs and a right to plan fulfillment of these needs but municipalities have autonomy in determining the means and scope of providing services (Tuori and Kotkas, 2008). No actual freedom of choice can be guaranteed in the process as there may not be any alternatives to choose from (HE 164/2014).

When there are multiple service forms available, authorities are obligated to ensure access to information concerning varying forms of service production and fees for clients. This right is inefficiently fulfilled in Finland, according to the European Committee of Social Rights (*The Central Association of Carers in Finland v. Finland*, Complaint No. 71/2011). Even if the client has full access to all relevant information and negotiations are conducted according to legislation, they have only a partly predictable outcome, as there are numerous variables to consider. The predictability of the decision-making depends, e.g., on the client's capabilities and an ability for self-determination, help and support of relatives or trustees, evaluation methods and client criteria used by authorities.

Protecting the individual's best interest in decision-making

To balance the somewhat unpredictable methods of governance in social service decision-making, municipal authorities are obligated to prioritize the best interest of the client (on the concept of the best interest in social law see, e.g., Breen, 2002) and to promote the client's right to self-determination (SCA, section 8). Access to service need assessment and service planning is a core element in protecting self-determination of social welfare clients as the service plan must be formulated in a mutual understanding with the client (SCA, section 7). The parliamentary ombudsman of Finland has found several shortcomings regarding municipal authorities' duty to make service plans (see, e.g., The Parliamentary ombudsman of Finland, decisions 4132/4/12 and 2855/2010). When the plan is properly formulated, there remains the question of its legal binding. The service plan must include a professional assessment of the client's need for services and a proposal of the best way of responding to those needs (SWA, section 39). However, there is no regulation on the legal binding of the document. According to the Government Bill on the Social Welfare Act, social welfare should be based on co-planning between the client and professional staff as much as possible (HE 164/2014). From the client's viewpoint, such vague expressions may raise false expectations. In special legislation there are some specific norms for limiting municipal autonomy in service provision; for example, in care for older people the sufficiency of services must be assessed according to the service plan (Act on Care Services for the Elderly to Ensure High Standard of Quality Nationwide, 980/2012, section 18). As other client groups have no similar legal protection, this is problematic regarding the principal of equality.

Determining the concepts of the client's best interest and the right to self-determination in legislation has been aimed at strengthening clients' fundamental and human rights (HE 137/1999). It is unclear, however, how this has affected the predictability of individual decisions in Finnish social welfare. The individual has the right – or rather the obligation – to be active within the limits of their capacities. Nevertheless, the procedural rights protected by the structures of active citizenship are no guarantee of fulfilling material social rights. It has been shown in recent studies that, for example, the level of income is a major source of inequality in care for older people (Mathew Puthenparambil, Kröger and Van Aerschot, 2015).

The private sector and predictability of service quality

Also the blurring of strict separation between the public and the private sector affects predictability. For example, privatization of welfare services is a significant trend in Finland as throughout Europe (Willner, 2003). In Finland, municipalities have a duty to organize these services but nowadays they increasingly purchase them from external sources. Municipality (or a federation of municipalities if they co-operate) is still responsible for quality of services (The Parliamentary ombudsman of

Finland, decisions 1218/4/11, 1901/2/12 and 1932–1945/2/12). Supervision, instead, can be the responsibility of the private actor itself, or even clients are expected to oversee that the private actor fulfils legal requirements. The new administrative innovation for that has been a self-monitoring plan and the use of this instrument has expanded from private social care service providers even to the public sector (HE 164/2014). This kind of supervision is more coincidental and it will affect the predictability of service quality. Kotkas also writes that self-monitoring does not seem to function without constant regulations, instructions, monitoring and supervision from Valvira[1] (Kotkas, 2015). It is not clear in the content of the plan what is required. If even this is unclear, how is it possible to presume that clients or providers themselves can supervise it?

In this context, human and fundamental rights function as restraints for privatization (Kotkas, 2015). Human and fundamental rights can be seen also as restraints for unpredictability because of their stable role. They qualify the minimum standard. According to the Finnish Constitution (section 124) "a public administrative task may be delegated to others than public authorities… if basic rights and liberties, legal remedies and other requirements of good governance are not endangered[2]". The legal remedies and even good governance increasingly presume that the citizen is able to function and to be active to get legal protection and better services. Instead, human and fundamental rights are the tool, which can help hold predictability in the middle of reforms and give stability even to those citizen groups that are not able to demand their rights and benefits (The Parliamentary Ombudsman of Finland, decision 1901/2/12 and 1932–1945/2/12).

International and EU influences on administration

International agreements between EU states and multinational legislation like EU law influence national law and public administration. The first influence on predictability comes from changes in national law. These changes are quite neutral concerning predictability because administration must obey law, whatever is the origin of law. However, the nature of the origin has some differing implications because the development of law differs between these two origins. International development may have unpredictable impacts on national law that is based, for example, on EU directives. Their interpretation at the Union Court may have unforeseen effects.

Over-regulation is another possible influence that multinational legislation sets on national administration. From the point of view of local administrative decision maker it is cumbersome that one must comply with both the international treaties and national law at the same time. For example, local procurement agencies must, according to Finnish Public Procurement Law (348/2007, section 94), apply Finnish law and WTO rules on public procurement (Agreement on Government Procurement, GPA).

Conclusions

Legal coherence and predictable decision-making are the cornerstones of Finnish administrative law. According to the analysis of this study, the key challenges affecting predictability are deregulation and the increasing use of soft law, the devolution of government, the changing role of the individual and the blurring of strict separation between the public and the private sector.

The problem of deregulation and soft law is that, if legal regulation does not set the right course of action to the authorities or citizens, this need moves on to non-legal regulation. Especially for citizens it is then more difficult to find out the content of the norm. In addition, deregulation may result in great differences across the levels and quality of public services. In Finland, an unacceptable inequality among citizens in different parts of the country has occurred in, e.g., child day care. Inequality is also one risk in the devolution of public administration. Another problematic consequence of decentralization is that it may lead to poor or flawed decisions.

Procedural rights protected by the structures of governance and active citizenship are no guarantee of fulfilling material social rights. Client negotiations and assessments in social services have only partly predictable outcomes as there are numerous variables to consider. When the role of the private sector has increased in service production and also in self-monitoring, supervision has become more coincidental and that will affect the predictability of service quality. In the middle of administrative reforms, human and fundamental rights function as restraints for privatization.

In the field of international and EU law, the main challenges derive from incoherence of the sources of law. At domestic level, it is then more difficult and time-consuming to find out the content

[1] "Valvira is a national agency operating under the Ministry of Social Affairs and Health, charged with the supervision of the social and health care, alcohol and environmental health sectors" (http://www.valvira.fi/web/en/valvira).

[2] In addition, the Finnish Constitution (section 124) circumscribes that, however, a task involving significant exercise of public powers cannot be delegated to the private sector.

or the degree of validity of the norm. Over-regulation is another possible influence that multinational legislation sets on national administration, e.g., in the field of public procurement.

Predictable public administration has its challenges but instruments to promote legal certainty are available. Human and fundamental rights, better access to information and pursuing coherence of regulation in a more systematic way, for example, may prohibit predictability from drifting away to illusion.

References

1. Aarnio, A. (1987). *The Rational as Reasonable.* Dordrecht: Kluwer.
2. Aarnio, A. (1997). *Reason and Authority, A Treatise on Legal Justification*. Dordrecht: Kluwer.
3. Abbott, K.W. & Snidal, D. (2000) Hard and Soft Law in International Governance. *International Organization* Vol. 54: 3, pp.421–456.
4. The Act on Care Services for the Elderly to Ensure High Standard of Quality Nationwide (980/2012). Available (in Finnish) at: http://www.finlex.fi/fi/laki/ajantasa/2012/20120980.
5. The Act on the Status and Rights of Social Welfare Clients (812/2000). Available ()at: https://www.finlex.fi/fi/laki/ajantasa/2000/20000812 (in Finnish).
6. Breen, C. (2002). *The Standard of the Best Interest of the Child. A Western Tradition in International and Comparative Law*. Dordrecht: Kluwer.
7. Commission communication COM(2014)368. Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook. European Commission, 18.6.2014.
8. The Constitution of Finland (731/1999). Available at: http://www.finlex.fi/fi/laki/ kaannokset/1999/en19990731.pdf.
9. European Commission (2006). Better Regulation. Simply explained. Available at: http://ec.europa.eu/smart-regulation/better_regulation/documents/brochure/brochure_en.pdf.
10. European Committee of Social Rights (ECSR), *The Central Association of Carers in Finland v. Finland,* Complaint No. 71/2011, Decision on the merits of 21 April 2013.
11. Gilbert, N. (2002). *Transformation of the Welfare State: The Silent Surrender of Public Responsibility*. Oxford, Oxford University Press.
12. Government Programme (2015). Finland, a land of solutions. Strategic programme of Prime minister Juha Sipilä's government, 29 May 2015. Available at: http://valtioneuvosto.fi/documents/10184/1427398/Ratkaisujen+ Suomi_EN_YHDISTETTY_netti.pdf/8d2e1a66-e24a-4073-8303-ee3127fbfcac.
13. Gretchel, A., Levamo, T.-M., Kiilakoski, T., Laine, S., Mäntylä, N., Pleyers, G., Raisio, H. (2014). *Youth Participation: Good Practices in Different Forms of Regional and Local Democracy*. Helsinki: Finnish Youth Research Network.
14. HE 137/1999 vp. Hallituksen esitys Eduskunnalle laeiksi sosiaalihuollon asiakkaan asemasta ja oikeuksista sekä sosiaalihuoltolain muuttamisesta ja eräiksi niihin liittyviksi laeiksi (Government proposal). Available at: http://www.finlex.fi/fi/esitykset/he/1999/19990137.
15. HE 164/2014 vp. Hallituksen esitys eduskunnalle sosiaalihuoltolaiksi ja eräiksi siihen liittyviksi laeiksi (Government proposal). Available at: https://www.finlex.fi/fi/esitykset/he/2014/20140164.
16. Hollo, E. J. (2011). *Studies on the Finnish legal system*. Edilex.
17. Husa, J. (2011). *The stories we tell ourselves – about Nordic law in specific*. Edilex.
18. Hvinden, B., Johansson, H. (2008). Conclusions: remaking social citizenship in the Nordic welfare states. In Hvinden, B.,Johansson, H. (Eds.), *Citizenship in Nordic Welfare States: Dynamics of choice, duties and participation in a changing Europe* (216–225). London: Routledge.
19. Kalliomaa-Puha, L. (2009). Contracts as usual? Pros and cons of the social sector client contracts. *JFT (Tidskrift utgiven av Juridiska Föreningen i Finland)* 3–4, pp. 343–350.
20. Kotkas, T. (2009). Terveyden ja sosiaalisen turvallisuuden hallinnointi 2000-luvun Suomessa – menettelylliset oikeudet ja aktiivinen kansalaisuus. *Lakimies*; 2, pp. 207–225.
21. Kotkas, T. (2015). From official supervision to self-monitoring: Privatizing supervision of private social care services in Finland. *Social Policy & Administration* [in print].
22. Lähteenmäki-Uutela, A. (2010). *Foodstuffs and Medicines as Legal Categories in the EU and China – Functional Foods as a Borderline Case*. Turku: University of Turku, Faculty of Mathematics and Natural Sciences, Biochemistry and Food Chemistry.
23. Mathew Puthenparambil, J., Kröger, T., Van Aerschot, L. (2015). Users of home-care services in a Nordic welfare state under marketisation: the rich, the poor and the sick. *Health & Social Care in the Community*. Available at: http://dx.doi.org/10.1111/hsc.12245.
24. Määttä, T. (2005). Soft law kansallisen oikeuden oikeuslähteenä – Tutkimus oikeudellisen ratkaisun normipremissin muodostamisen perusteista ympäristöoikeudessa // *Oikeustiede- Jurisprudentia* 2005 XXXVII, pp. 337–359.
25. Newman, J., Tonkens, E. (2011). Responsibility, choice and participation. In Newman, J., Tonkens, E. (Eds.), *Participation, Responsibility and Choice – Summoning the Active Citizen in Western European Welfare States* (179–200). Amsterdam: Amsterdam University Press.
26. OECD (2012). OECD Economic Surveys: Finland 2012. OECD Publishing.
27. OECD (2015). OECD Reviews of Health Systems: Finland. OECD Publishing.
28. The Parliamentary ombudsman of Finland, decision 2855/2010. Available at: http://www.eduskunta.fi/triphome/bin/thw.cgi/trip/?${APPL}=ereo-

apaa&${BASE}=ereoapaa&${THWIDS}=0.32/1441180712_17342&${TRIPPIFE}=PDF.pdf.
29. The Parliamentary ombudsman of Finland, decision 1218/4/11. Available at: http://www.eduskunta.fi/ eoaratkaisut/eoah+1218/2011.
30. The Parliamentary ombudsman of Finland, decisions 1901/2/12 and 1932–1945/2/12. Available at: http://www.eduskunta.fi/triphome/bin/thw.cgi/trip/?${APPL}=ereoapaa&${BASE}=ereoapaa&${THWIDS}=0.34/1440967534_23241&${TRIPPIFE}=PDF.pdf.
31. The Parliamentary ombudsman of Finland, decision 4132/4/12. Available at: http://www.eduskunta.fi/triphome/bin/thw.cgi/trip/?${APPL}=ereoapaa&${BASE}=ereoapaa&${THWIDS}=0.54/1441180554_16751&${TRIPPIFE}=PDF.pdf.
32. Paunio, E. (2011). *Beyond Words, The European Court of Justice and Legal Certainty in Multilingual EU Law*. Helsinki: Unigrafia.
33. Peczenik, A. (1989). *On Law and Reason*. Dordrecht: Kluwer.
34. Pierson, P. (2001). *The New Politics of the Welfare State*. Oxford: Oxford University Press.
35. Pihlaja, P., Junttila, N. (2001). Julkishallinnon hajauttaminen – miltä päiväkodin lapsiryhmät näyttävät muutosten jälkeen. Lastentarhanopettajaliiton moniste 1/2001. Available at: http://www.lastentarha.fi/cs/ltol/Esitteet.
36. Public Procurement Law (348/2007). Available at: https://www.finlex.fi/fi/laki/kaannokset/2007/en20070348.pdf.
37. Raz, J. (1979). *The authority of law: Essays on law and morality*. Oxford: Clarendon Press.
38. Simon, H. A. (1997). *Administrative Behavior. A Study of Decision-Making Processes in Administrative Organizations* (4 ed.). New York: Free Press.
39. The Social Welfare Act (1307/2014). Available at: https://www.finlex.fi/fi/laki/ajantasa/2014/20141301 (in Finnish).
40. Stenvall J. & Syväjärvi A. (2006). *Onks tietoo? Valtion informaatio-ohjaus kuntien hyvinvointitehtävissä*. Valtiovarainministeriö, tutkimukset ja selvitykset 3/2006. Available (with an English abstract0 at: http://ministryoffinance.fi/vm/fi/03_tiedotteet_ja_puheet/01_tiedotteet/20060308Hyvaein/100663.pdf.
41. Tuori, K., Kotkas, T. (2008). *Sosiaalioikeus* (4ed.). Helsinki: Talentum Media.
42. Wade, H.W.R., Forsyth, C.F. (2009). *Administrative Law* (10 ed.). Oxford: Oxford University Press.
43. Willner, J. (2003). Privatisation and public ownership in Finland. CESifo Working Paper Series No. 1012. Available at: http://ssrn.com/abstract=436607.
44. Voigt, S. (2012). How to Measure the Rule of Law? // *Kyklos*, Vol. 65:2, May 2012, pp. 262–284.
45. The World Bank (2006). *Where is the Wealth of Nations? Measuring Capital for the 21st Century*. Washington D.C: The World Bank.

Mäntylä, N., Perttola, L., Siikavirta, K.

Die gesetzliche Regelung der Staatsführung in Finnland – die Illusion einer vorhersehbaren öffentlichen Verwaltung?

Zusammenfassung

Ziel dieser Untersuchung ist es, die Faktoren zu analysieren, die die administrativen Entscheidungen im heutigen Finnland unvorhersehbar machen. Warum ist dieses Problem so bedeutend für die Behörden? In dieser Studie untersuchen die Autoren die Funktion und die Rolle der Vorhersehbarkeit in Bezug auf die gesetzliche Regelung der Staatsführung in Finnland. Dieser Artikel beschreibt die Merkmale in der Verwaltung und im Gesetz, die – aus der Sicht der Bürger als Kunden oder Partner der lokalen Verwaltung – für die Vorhersehbarkeit, insbesondere von individuellen Entscheidungen, von Bedeutung sind.

In der nordischen Tradition bedeutet juristische Dogmatik die Untersuchung des Inhalts von Rechtsnormen und deren Systematisierung. Diese Art von Studie wird im Rahmen der gegenwärtigen Rechtsordnung durchgeführt, und die Rechtsquellen bilden das hauptsächliche Material für die juristische Untersuchung. Im finnischen Rechtssystem sind das Grundgesetz und andere Gesetzgebung – nicht zu vergessen die Rechtsgrundsätze - die wichtigsten nationalen Grundlagen für juristische Entscheidungen. Darüber hinaus gibt es Gesetzesvorlagen und die Rechtspraxis, die mehr Informationen für die Untersuchung der Rechtsnorm liefern. Das finnische System basiert jedoch nicht so sehr auf Präzedenzrecht wie viele andere Rechtssysteme. In der nordischen Tradition werden auch Ansichten von Wissenschaftlern (juristische Publikationen und Artikel) als wichtige Quellen angesehen. In dieser Studie ist der Ansatz eher theoretischer Art, und die Rolle der Rechtspraxis als Rechtsquelle ist weniger bedeutend als sonst. Darüber hinaus ist das Hauptziel dieser Studie, ein besseres Verständnis für die Realität hinter den Normen zu entwickeln, und die Methodik dieses Artikels basiert sehr stark auf Aspekten der Rechtspolitik.

Die Vorhersehbarkeit kann als eine Komponente einer Rechtsauffassung angesehen werden, die als legitime Erwartungen bekannt ist. Diese Auffassung schützt die Erwartungen, die auf Versprechen, etablierter Praxis oder Rechtsansprüchen beruhen. Eine andere Auffassung, die dieser nahe kommt, ist die Rechtssicherheit, d. h. die Möglichkeit des Individuums, sein Handeln im Vertrauen darauf zu planen, dass seinen Erwartungen entsprochen wird. Die Vorhersehbarkeit rückt den Kunden der Staatsverwaltung, und zwar das Handeln des Bürgers oder die private Geschäftstätigkeit, in den Mittelpunkt.

Bei der Analyse der Vorhersehbarkeit in der Verwaltung muss zwischen verschiedenen Aufgaben und Verfahren in der Verwaltung unterschieden werden. Beschlüsse, Vorschriften und Anweisungen sind Beispiele für die verschiedenen Aufgaben. Verfahren umfassen verschiedene Phasen, so z. B. die Vorbereitung, die Anhörung, die Entscheidung und die Berufung. Die Vorhersehbarkeit ist ein Aspekt bei all diesen administrativen Aufgaben und Verfahren. Die Vorhersehbarkeit bei einer administrativen Entscheidung betrifft den Inhalt der endgültigen Entscheidung sowie die Kosten, die Länge und die generelle Durchführung des Verfahrens.

Laut der Analyse dieser Untersuchung sind die zentralen Probleme im Hinblick auf die Vorhersehbarkeit die Deregulierung und die vermehrte Anwendung des *soft law* (des faktischen Rechts), die Befugnisübertragung, die wechselnde Rolle des Individuums und die Aufhebung der strikten Trennung zwischen dem öffentlichen und dem privaten Sektor.

Das Problem der Deregulierung und des *soft law* (faktischen Rechts) besteht darin, dass es bei Bedarf zu einer nicht- gesetzlichen Regelung kommt, und zwar dann, wenn das Gesetz nicht den richtigen Kurs für das Handeln der Behörden oder der Bürger vorgibt. Besonders für die Bürger ist es dann schwieriger, den Inhalt der Norm herauszufinden. Darüber hinaus kann die Deregulierung dazu führen, dass es große Unterschiede im Niveau und in der Qualität der öffentlichen Dienstleistungen gibt. In Finnland gab es z. B. in der Kinderbetreuung eine nicht zu akzeptierende Ungleichheit zwischen Bürgern in unterschiedlichen Teilen des Landes. Ungleichheit ist auch ein Risiko bei der Befugnisübertragung in der Staatsverwaltung. Eine weitere problematische Folge der Dezentralisierung ist, dass sie zu dürftigen oder mangelhaften Entscheidungen führt.

Die Verfahrensrechte, die durch die Strukturen der Staatsführung als aktive Bürgerschaft geschützt sind, sind keine Garantie für die Erfüllung materieller sozialer Rechte. Die Verhandlungen und Beurteilungen der Kunden im Bereich der sozialen Dienstleistungen haben nur teilweise vorhersehbare Resultate, da zahlreiche Variablen berücksichtigt werden müssen. Während die Rolle des privaten Sektors in der Bereitstellung von Dienstleistungen und auch in der Selbstkontrolle zugenommen hat, ist die Überwachung zufälliger geworden, und dies beeinträchtigt die Vorhersehbarkeit der Qualität der Dienstleistungen. Mitten in den administrativen Reformen schützen die Menschen- und Grundrechte vor Privatisierung.

Im Bereich des internationalen und des EU-Rechts besteht das Hauptproblem in der Inkohärenz der Rechtsquellen. Auf einheimischem Niveau ist es schwieriger und zeitintensiver, den Inhalt oder den Grad der Gültigkeit der Norm herauszufinden. Die Überregulierung ist ein andere mögliche Folge der Koexistenz von multinationaler Gesetzgebung und nationaler Verwaltung, z. B. im Bereich der öffentlichen Auftragsvergabe.

Eine vorhersehbare öffentliche Verwaltung birgt ihre Herausforderungen in sich, aber es stehen neue Instrumente zur Verfügung, um die Rechtssicherheit zu fördern. Die Menschen- und Grundrechte z. B. können verhindern, dass die Vorhersehbarkeit in eine Illusion abdriftet.

Schlüsselbegriffe: Vorhersehbarkeit, Verwaltungsrecht, Beschlussfassung.