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Governing Unnoticed:

Depoliticized Cutbacks on Personal Assistance

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Abstract

For more than a decade, the Swedish personal assistance act has been subject to extensive cutbacks. More and more people have lost assistance whilst fewer are granted allowances. These cutbacks have transpired without any parliamentary decisions limiting the scope of the legislation. As such, the government claim to have no part in the development, holding the cutbacks to be the result only of administrative court rulings and government agency interpretations. According to the government, discretionary power over the personal assistance act has transferred, from political representatives to independent courts and agencies. The scholarly literature on juridification, the theoretical field describing this type of development, generally share the governments' assertion regarding the implications of juridification: as political reforms are changed because of court rulings and government agencies' interpretations, elected political representatives are rendered powerless whereas the discretion of bureaucrats is increased. Accordingly, juridification is described as a zero-sum game where the forfeited power of political institutions is gained by independent agencies. In this thesis, I challenge these assumptions.

By analyzing the development of the assistance reform between 2005 through 2017, interpreting government letters of appropriation, investigations, court rulings, and government agency reports, I suggest that the government is not rendered powerless in the governing of the personal assistance act. Rather, by governing the juridification process itself, politicians can govern through juridification. I conclude that the government should not be perceived as disconnected from the austerities of the assistance reform but as a governing actor, utilizing juridification as a political technology. Moreover, given these findings, I challenge the prevailing understanding of juridification as a zero-sum game, transferring power away from democratically elected politicians. Instead I propose that juridification must also be recognized as a tool of governance. Juridification, then, does not infer a zero-sum power transfer but opens up for alternative ways of governing policies in the modern welfare state.

Keywords: personal assistance, depoliticization, juridification, rule of law, governance
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1 Depoliticization of LSS through Juridification

During the past ten years, users provided personal assistance through the 'Support and Service for Certain Disabilities' (henceforth LSS) Act (1993:383) have witnessed a rapid austerity of how the law is interpreted and acted upon. Due to several court rulings changing how the law is interpreted as well as additional legal specifications from enforcing government agency, the Swedish Social Insurance Agency (henceforth the SSIA), many users have received limited benefits, whilst others are left without personal assistance completely. The ratio of rejected applications are currently at an all-time high and the number of users covered has gone down for the first time since the law was implemented in 1994 (SIR 2017:4). The situation has emerged without any political decisions or change to the law's wording. On the face of it, the LSS-act is very much the same as it was before the cutbacks began. However, since 2007 we can see a rapid and steady decrease, both in terms of rate and number of granted applications, and a rapid and steady increase in the share of rejected applications. (Brennan et al. 2016) Faced with criticism that the intentions of LSS-act are foregone and that the reform is being dismantled, the government has responded that they have no discretionary power to hinder the development, which, according to them, is the result of administrative court's rulings and SSIA interpretations. (Regnér 2016) It thus appears as the development and future of this major social welfare reform hinges upon the discretion and interpretation of courts and SSIA bureaucrats, leaving the political representatives in parliament and government powerless. The LSS reform has seemingly ventured into the juridical and bureaucratic sphere, rendering the field depoliticized.

In the academic literature, this type of depoliticization, where traditional political actors and institutions forfeit discretionary power over formerly political areas to politically independent institutions, is labeled juridification. Often asserting that juridification presents one of the greatest threats to modern democracy, plenty of scholarly attention has been directed towards the phenomena. According to the literature, this threat to democracy is a consequence of the of transfer power, from democratically elected political representatives, to the discretion of courts and bureaucrats. Through juridification, it is argued, democratic influence over policies is substituted for juridical and bureaucratic review and discretion. (Blichner & Molander 2008; Randeria 2007; Ferejohn 2002; Habermas 1987; Loick 2014; Mouffe 2002; Hirschl 2008; Magnussen & Banasiak 2013; Brännström 2009; Fransson 2016; In this thesis I challenge the prevailing notion that depoliticization and juridification necessarily entail the transfer of power away from political representatives and suggest that governments can govern through juridification. Consequently,

juridification, I propose, can be understood as a tool for state governance. By drawing on previous studies and empirical findings, I showcase how the juridification of LSS and the personal assistance act, to a large extent, is the result of a shifting conception of the rule of law. This is coupled with an increased emphasis on coherence, uniformity, and transparency in the administration of assistance applications, and a decreased emphasis on achieving the underlying social-political goals of the legislation. I will demonstrate how state governance is made possible through juridification by developing and utilizing a formal understanding of the rule of law. I thus contend that juridification should not only be perceived as the transfer of power away from government, but also as a tool of government. As such, I suggest that current scholarly descriptions of governance in relation to juridification and depoliticization do not provide sufficient account of power-relations in modern welfare societies.

2 Understanding Depoliticization through the Assistance Reform and Vice Versa

I have two main reasons for conducting this study. The first is empirical and driven by curiosity to understand what has happened with LSS and the assistance reform. There are few academic studies mapping recent years' development of LSS and the personal assistance act. Given the severity of the situation as well as the magnitude of the reform, both in terms of resources allocated and the welfare it provides, this empirical gap needs to be addressed. Therefore, by mapping the development leading up to today's situation, I seek to contribute to understanding what has happened.

When I started the empirical investigation, it became evident that the assistance reform to some extent had become juridified. The government's position were that recent time's cutbacks had been beyond the control and discretionary power of the government. The situation, they claimed, was solely the result of administrative court rulings and interpretations made by the SSIA. (Regnér 2018)

This led me to the second reason of the study, namely the theoretical aspect of this case. In the academic literature mapping and analyzing juridification processes and consequences, there is a consensus holding that juridification necessarily infers a transfer of power: from government, to courts and government agencies. According to the literature, juridification limits the discretionary power of political representatives and transfers it to independent institutions beyond political control or influence. Consequently, juridification is described as a zero-sum game where the power lost in the one end, inevitably ends up in another. (Hirschl 2008; Blichner & Molander 2008) By applying a different perspective on power, shifting focus from power as a stable property, possessed by institutions, to perceiving power as something fluctuating in the practices of the institutions, I challenge the predominant perspective on power and governance in relation to juridification. The second reason for conducting this study is, therefore, through the case of LSS and the personal assistance act, to contribute to a more multilayered understanding of what juridification is and, especially, what juridification entails in terms of power and governance.

This thesis is thus intended to work on two levels of abstraction. The lower level is constituted by the empirical study of the austerity of LSS and especially the personal assistance act. The higher level is developed by applying the theoretical framework onto the case-study, thereby indicating something is missing and what that something might be. There is no internal hierarchy between the two research interests. Rather, I consider the two aspects co-dependent. The empirical study guides the development of the theoretical framework, and the theoretical framework

provides understanding of the empirical case. The same logic applies to the two research questions stemming from the research interests formulated above:

(1) How can we understand the last ten years austerity of the assistance reform which has transpired without direct political interference or action?

(2) What does the juridification of the assistance reform entail in terms of government discretion, power, and governance?

3 Depoliticization, Juridification and the Rule of Law – Towards a Theoretical Framework

Theoretically, I approach the two research questions by analyzing the development of the assistance reform as a case of *depoliticization*. Depoliticization is regarded as an umbrella-concept under which related theoretical perspectives are brought in to contribute to a more conceptually narrow and analytically precise study. As such, this chapter elaborates on how *juridification* can be perceived and utilized as a specific form of depoliticization. Juridification, in turn, I suggest, can be studied in relation to shifted perception and application *of the rule of law*.

In summary, this chapter begins with a depiction of how depoliticization is conceptualized and used in academic literature. This is followed by an account of how juridification relates to depoliticization, how the concept is utilized in the academic literature, and how it relates to governance and power. Lastly, I develop on the rule of law-concept and suggest how it can be used to study juridification and thus also depoliticization.

3.1 Depoliticization

Over the last two decades, an increasing amount of scholarly work has been focused on the abstract, yet evident development referred to as depoliticization. As the name suggests, depoliticization refers to the general processes and tendencies where democratic political institutions and elected politicians loose influence and discretionary power over traditionally political issues, fields, and discourses. This in favor of increasing influence of international organizations, NGOs, co-operations, independent agencies and courts (Shapiro & Sweet 2002; Hay 2007; Sweet 2000; Nyberg 2017)

According to the definition deployed by Flinders and Wood, depoliticization is "the denial of political contingency and the transfer of functions away from elected politicians" (2014:135). As proposed by the broad nature of this definition, depoliticization seems yet to be coherently encircled by the academic literature. According to Flinders and Wood, depoliticization has emerged "as an increasingly visible but strangely nebulous concept" (2014:135), referring to the suspicion that *something* has changed: *something* in terms of the relationship between the citizens and the state, *something* in how the role of elected politicians has been marginalized, and

something about the imposition of technocratic impartial and just rule. Depoliticization seeks to point to and explain these *somethings*. Flinders and Wood sum up the concepts as "a system of describing the manifold transformation of contemporary democracy" (2014:137).

Still wide and elusive in its application, attempts have been made to define the outer limits of the concept, partly by categorizing its theoretical and empirical use in the academic literature. Among these are Foster and colleagues (2014), who discuss the theoretical basis of the concept. They hold that depoliticization does not entail the end of politics or the creation of a space free from politic. Rather, they, as most scholars, perceive depoliticization as the transfer of politics. As such, the depoliticization of one field necessitates, to some degree, the politicization of another. The concept itself thus infer a narrow conception of politics, referring mainly to traditional political actors, such as elected politicians, governments, parliaments, and government agencies. Consequently, depoliticization assumes the transfer of power in relation to these traditional political actors. (Flinders & Buller 2006:296)

This transfer of power, gathered under the umbrella term depoliticization, have been used and studied in a wide array of processes, fields and contexts. Stone Sweet discusses depoliticization in relation to the development of constitutional law (2000), others perceive the concept as a process of development and liberalization, granting citizens and markets more freedom in relation to the state, whilst other examines depoliticization as a matter of decreasing political participation and as a result of distrust towards politicians and government institutions. (Hay 2007; Ferejohn 2002)

Foster and colleagues (2014) seek to bring order to these scattered applications and understandings by categorizing the concept under two main definitions. The first category deals with depoliticization as a deliberate governmental tool for statecraft:

> These types of governmental definitions are concerned, primarily, with the reassignment of blame, responsibility and the transaction costs of policymaking via a variety of different methods and strategies. […] They refer to de-politicisation specifically as a tool of government and one which relates primarily to the deliberate exercise of statecraft and attempts at crisis avoidance. (Foster et al 2014:227)

Depoliticization according this definition is thus mainly understood as different strategies employed to govern from a distance. Flinders and Buller describe this type of depoliticization as a "defensive risk management technique", used to push away sensitive topics and thereby not getting the blamed for the consequences. (2006:297; Hirschl 2008:19) Accordingly, depoliticization is as a deliberative tactic, for example utilized to install seemingly independent departments and government bodies, implementing precise laws and rules limiting the discretion of politicians once in place.

The second category is wider than the first in its approach. If depoliticization in the former definition is mainly conceived as a deliberate governing tool, employed to avoid blame and conflict, the second is concerned with the plethora of possible processes and consequences in-between the polar opposites 'depoliticization' and 'politicization. Often, studies exploring this space are normative in nature, developing

upon the risks and consequences in term of legitimacy, representation, transparency and democracy in relation to 'depoliticization' and 'politization'. (Foster et al 2014:227; Hay 2007; Hirschl 2008) Consequently, studies focusing on the democratic aspects of depoliticization generally conceive of it as problematic. In their view, depoliticization entails a transfer of power, from democratic institutions and actors, to non-democratic actors such as courts, technocrats, multinational corporations, non-governmental organization, and interest groups. Depoliticization, these studies argue, cripple state power and influence, lending less discretion to elected representatives in favor of non-state actors. Accordingly, depoliticization is often equated with de-democratization. (Foster et al. 2014:228; Fawcett & Marsh 2014; Randeria 2007)

To summarize, in both categories, depoliticization is perceived as implying transfer of power. In the first view, this transfer is used to deflect blame and attention and thereby gain legitimacy in the long run. Power is thus intentionally transferred to other institutions. The second definition regards depoliticization as power transfer not necessarily intentionally initialized by political representatives. Rather, depoliticization is generally ascribed broad and procedural explanations, such as globalization, liberalization, and marketization.

3.1.1 Depoliticization as Juridification

This theoretical categorization of the perception of power and intent in relation to depoliticization is valuable for the purposes of this thesis as it helps teasing out how to make use of the depoliticization concept, whilst also exposing insufficiencies and gaps in the literature. However, depoliticization remains theoretically nebulous and general in its application. Therefore, to achieve more theoretical precision, as well as better analytical support for my empirical studies, I utilize a specific form of depoliticization, namely juridification. As such, the theoretical foundations and categorizations applicable to depoliticization also apply to juridification.

It should, however, be noted that the depoliticization literature and the juridification literature are usually not overlapping (Exceptions include Randeria (2007) and Flinders & Buller (2006). I think there are at least two reasons for this which I in abstract account for before moving on to explain juridification and why I think it could be used in relation to depoliticization.

The first reason might come down too concept definitions and limitations. Some depoliticization scholars would categorize the institutions involved in juridification as political, why the internal dynamic of power between government, parliament, government agencies, and courts, does not imply depoliticization, as this usually infer a transfer or transformation of power to somewhere outside their perception of the political. (Flinders & Wood 2014:152-154) I do not think a specific and robust definition of the 'political' is necessary for a theoretical application of the depoliticization literature. For my purposes, in this context, I apply theories on depoliticization to understand the relationship between three institutions; the government, a government agency, and the administrative courts. Some might object

that this relationship does not involve depoliticization, as all three institutions are within their perceptional realm of the 'political'. What is political and not political will always be debatable, elusive and dynamic, why it, I hold, cannot be a defining or excluding aspect for the application of the concept. Therefore, to delve on what is, was, or isn't political dilute focus from interesting aspect of depoliticization, namely the study of the changing dynamics of power in relation to government. As such, I will treat depoliticization at its core and perceive the concept as a way to understand mainly political institutional power dynamics.

Secondly, juridification is not synonymous with depoliticization. Hence, where we find depoliticization, we do not necessarily find juridification. There are surely instances where juridification is politicizing. The non-linear relationship between the two concepts might refrain scholars from using them in tandem. However, juridification as well as depoliticization are broad concepts, covering a wide array of mechanisms and processes, why it would be unreasonably limiting to conclude that because certain aspects of juridification are politicizing rather than depoliticizing, the two concepts are irreconcilable.

Consequently, my claim is not that juridification share all aspects of depoliticization, or vice versa, but rather that there are aspects of juridification which can benefit from drawing on understandings from the depoliticization literature. As stated by Flinders and Bullers:

> [d]espite the challenges of research methods, frameworks and boundaries, depoliticisation, carefully employed, offers fertile conceptual territory in which to expand our knowledge and understanding of contemporary governance processes. This is because depoliticisation is most closely associated with the (re)distribution and understanding of power in modern societies. (Flinders & Buller 2006:314)

As made clear by the authors, the limits of what is to be included in depoliticization are not definitive, but it is undoubtedly so that it revolves around modern-day governance processes. Considering this, I think it is fruitful to understand juridification as a matter of depoliticization, since they both deal with (re)distribution of power and governance in relation to traditional political institutions. Flinders and Buller (2006:312) share this conception and categorize what they call 'judicial depoliticization' as a subcategory to depoliticization, and concludes that the same processes, mechanism, and tactics may well apply to both concepts.

Analytically then, I do not view juridification as conceptually distinct from depoliticization. Rather, juridification should here be perceived as a special form of depoliticization. Subsequently, using the concept juridification limits the scope of implications, causes, processes, and consequences involved since it specifically targets only a limited part of the scope encompassed by the general depoliticization-literature.

3.2 Juridification

Having briefly clarified my intentions with utilizing both depoliticization and juridification as well as the relation between the concepts, I now turn to explore juridification. This will be done by first elaborating on its previous use and theoretical implications, where after I map its usage in a Nordic judicial context, as well as determining how I will perceive and use it in this thesis.

3.2.1 What is Juridification?

Juridification is often understood as 'the expansion of juridical power', the move towards objective technocratic reliance and governance, or as general tendency where traditional national political issues are decided through courts, bureaucrats, and international tribunals. (Blichner & Molander 2008) Often used as a minimum definition, Jürgen Habermas conceives of juridification as a process characterized by two main features: horizontal expansion and vertical density. Horizontal expansion refers to juridification where law and legal norms spread to new previously unregulated areas and thus come to explicitly regulate additional aspects of social life. (Blichner & Molander 2008:42; Fransson 2016:40; Brännström 2009:248)

Juridification in relation to an increase in vertical density, on the other hand, refers to the additional specification of existing legal norms and acts. As legal norms are clarified, specified, and developed so to be more discernible and directly applicable in additional situations, for example through court rulings, government intervention, or interpretation of enforcing government agencies, vertical juridification takes place. Consequently, through formalized and specified judicial norms and standards, vertical juridification juridify aspects of social life previously not explicitly specified and therefore subject interpretation or discretion. (Blichner & Molander 2008:42; Hirschl 2008:4)

It is not always clear which are the causes and which are the consequences of juridification. Often, the scholarly literature makes no distinction between the two but perceive juridification as a process on a spectrum. This entails that the process is understood as juridification, and the consequences are described as *more* juridification. Juridification is thus usually depicted as a process and a result. This ties into the general perception of juridification as a spectrum, rather than a binary state where there either is juridification, or there is not. A modern state will always be juridified to some extent, why increasing juridification refers to an increase and not the start of juridification.

3.2.2 Why Juridification?

As previously described, the depoliticization literature has been roughly divided into two main analytical categories. In the first category, depoliticization is conceived as a deliberative tactic, utilized by governments to avoid blame and distance themselves from contagious political issues. The second category describe depoliticization more as a structurally generated process, where power gradually is transferred from

political institutions to other entities. My contestation is that similar categorization can be made for the juridification literature.

Starting with the first category, Hirschl describes multiple ways in which juridification has been conceived of as a deliberate political strategy. (2008:19-21) Similar to Flinders and Buller (2006), Hirschl shows how governments delegate policymaking authority and discretion to avoid responsibility and blame for sensitive political issues:

> [i]f the delegation of powers can increase credit or legitimacy, and/or reduce the blame placed on the politician as a result of the delegated body's policy decision, then such delegation can benefit the politician. […] [T]he judicialization of politics is largely a function of concrete choices, interests, or strategic considerations by self-interested political stakeholders. (Hirschl 2008:19)

Johannesson (2017:190) has described such technics in relation to the Swedish asylum processes, showing how the government distanced itself from the harshly criticized rejection of asylum applicants by handing over responsibility and discretionary power to asylum courts. By doing so, the government handed over the "hot potato" to the judiciary, thereby evading media scrutiny and public disapproval. Hirsch continues with describing instances where juridification is actively instigated by political actors to achieve certain ends, could it be to enforce controversial legislation, thwart or hinder political opposition and policy proposals, or as a tool used by civil interest groups to exercise political influence through courts. Signifying for these tactics is that they are deliberative and actively instigated to achieve certain political ends. (Hirschl 2008:21; Randeria 2007)

With regards to governance, this view implies that the juridification process itself is a direct result of political governance, which, as a result, leaves the governor with less discretionary power than before. According to this view, the juridification of a political area is perceived as a tradeoff, where political influence over one are is substituted for legitimacy gains or blame defection, for example. Consequently, juridification is understood as a transfer of power from one political entity to another.

This type of intentional politically instigated juridification process described by Hirschl (2008), Flinders and Buller (2006), and Johannesson (2017) is however not the dominant perspective on the processes of juridification. A widely applied view is that the processes driving juridification cannot usually be traced back to a specific deliberate actor, actively initiating the process. Conversely, many scholars depict juridification as the result of broad, structural mechanisms and developments. Habermas (1987) links the development of juridification to the emergence of the modern welfare state. Similarly, Weber understood juridification as a natural consequence of the modern bureaucratic state where individual rights, the rule of law, and administrative impartiality conquered subjective arbitrariness. (Magnussen & Banasiak 2013:326; Brännström 2009:34) Others ascribe the ever-increasing juridification to public distrust and disinterest in politics. Whereas politics and politicians are perceived as self-interested and bias, courts and bureaucrats are regarded as objective and impartial. (Hay 2007) Furthermore, the late 20th-century

surge of new democracies, the global proliferation of human rights discourses and practices are regarded as tokens of juridification. Globalization and the increasing influence of international organizations and treaties are described as instigators of this developments. This as international courts, such as the EU Court, legal treaties, and human rights agreements, often override national legal norms and acts. (Nyberg 2017; Johannesson 2017:59; Brännström 2009; Ferejohn 2002:42; Sweet 2000) Moreover, international treaties and legal norms, originating from for example the World Bank, the World Trade Organization or the United Nations, can have a substantial impact over national judiciary. (Blichner & Molander 2008:37; Hirschl 2008:5) As such, juridification is often assigned structural explanations, ascribing recent developments to phenomena associated with globalization and internationalization.

3.2.3 Swedish Juridification

In a Swedish welfare context, the juridification of politics is usually described in terms of the second category and can be divided into two main processes driving the development.

The first perceives juridification primarily as a result of globalization and especially EU legal integration, where Swedish politics and legislation, ever since entering the Union, have had to subject to the rulings of the EU court. (Nyström 2017; Brännström 2009)

The second category draws upon structural social, economic, and 'discursive' factors to explain the development. Marketization and privatization of welfare services, the increasing incorporation of vague human rights acts in Swedish social welfare legislation, and increasing bureaucracy are depicted as driving forces. (Lindblom 2004; Brännström 2009; Runesdotter 2016) Accordingly, Sanna Fransson analyses the consequences of judicialization in relation to a change towards a discourse of rights, focusing on free choice of schools. Fransson concludes that the strengthened influence of courts limits the legislators' governance capacity. Juridification moreover, Fransson argues, erodes the rule of law, which further threatens core democratic values such as legitimacy, predictability and, substantial justice. (Fransson 2016). Caroline Runesdotter (2016) also analyzes the consequences of the juridification of Swedish schools and concludes that the increased focus on formal rights and specified rules, alters the pedagogical logic, forcing school personal to follow bureaucratic goals and rules rather than directly responding to the need of the student.

Laila Brännström (2009) develops upon juridification to study the development of Swedish Health Care acts during the late 20th century. Since around the 1990s, the political has become increasingly juridicialized, she holds. Brännström suggests that this development is mainly explained by the increasing influence of global conventions and international law, forcing politicians into the margin of political discretionary power. But, Brännström holds, juridification is also the result of:

> "the use of legislative techniques with framework laws and general rules of law, greater elements of basic human rights incorporated into national laws, which require judicial review in order to be concretely acted upon". (2009:157)

The consequences of juridification, Brännström argues, entails a move towards a more Weberian bureaucratic and formal discourse, where the legislative and bureaucratic bodies of government strive for generalizability of legal norms and their applications. This, in turn, limits the space for professional discretion and the consideration of human rights, generalize and labels the individual's specific circumstances to comply with specified norms and rules, and undermine the underlying political goals of policies. (2009:238)

Brännström concludes that the juridification of Swedish politics and governance have had substantial impact and is in many ways clearly visible in contemporary governance; the number of legal norms superseding political decisions have increased; disputes formerly handled by government agencies have transferred to the administrative courts; relationships are now to a higher degree specified through laws or other legal sources. (Brännström 2009:312)

3.3 Juridification and the Transfer of Power

As evident from the wide range of processes described as driving mechanisms of juridification, juridification is studied from many different angles. What these different perspectives have in common, however, is the perception that juridification gradually transfer power from political entities to autonomous institutions and agents. This is an important similarity. Juridification is commonly understood as interlinked with transfer of power. Be it a transfer from national governments to national courts and bureaucracies, or a transfer from national governments to international organizations. Through juridification, political influence and discretion is understood to transfer from political representatives to courts and government agencies. Scholarly work focusing on governance and democracy in relation to juridification generally describe the transfer of power related to juridification as a "zero-sum game". Accordingly, they claim, as the judiciary gains power, the political institutions lose it (Magnussen & Bansiak 2013:339; Blichner & Molander 2008:45; Hirschl 2011:21; Lindblom 2004:238-239,258; Ferejohn 2002:44-45; Fransson 2016; Brännström 2009; Johansson 2011). As held by Blichner and Molander:

> law's expansion and differentiation [herein described in terms of horizontal and vertical juridification] is often seen to increase the interpretative power of the legal system at the expense of democracy in general and the legislature in particular. (2008:48)

As such, increasing juridification is perceived as a threat to democratic values and institutions, rendering elected political representatives powerless, as the influence of

autonomous agencies and courts grow. Accordingly, the Swedish legal scholar Joakim Nergelius claims that it "may be seen as symptomatic for judicialisation [sic!] that courts get more powers at the expense of political institution" (2001:83). Legal scholar Per Henrik Lindblom agrees, holding that "increase in power on the one end often implies a decrease on the other" (2004:238). He describes the power-transfers related to juridification as a competition between the three state powers. As courts increase their power, executive agencies seek to regain influence lost by usurping power from the legislator. Consequently, according to Lindblom 2004:258) and others, as juridification progresses, power is transferred from the legislator to government agencies and courts. (Brännström 2009:310, 312; Blichner & Molander 2008:42; Ferejohn 2002:62; Hirschl 2011:21; Magnussen & Bansiak 2013:327)

3.3.1 Juridification and the Rule of Law

My contestation is that the implications of juridification in relation to state governance, discretion and power seem to be lacking. The prevalent view that the juridification of politics entails a direct transfer of power, where the result is described as a zero-sum-game, must be critically assessed and empirically tested. One way to study the process of juridification and thereby analyze its consequences for governance and power, is to study the understating and implementation of the different aspects of the rule of law.

As suggested by the scholarly literature, juridification is closely associated with the expansion of law. Vertical juridification specifically relates to the process where existing norms and legislations are further specified and clarified to coherently differentiate between different situations. In the scholarly literature, vertical juridification is often described as the dominating force of the legal development of the welfare state. The post-WWII surge in 'vague' social law, protecting human rights and reallocating resources, gained prominence in national legislation and required judicial review to be concretely acted upon. As such, administrative courts and government agencies were given the discretionary power to interpret and further specify the legislations. (Blichner & Molander 2008:42-43; Hirschl 2008:42; Brännström 2009:157) A consequence of this development is that especially social law undergoes vertical juridification. This as broad social-political goals are specified and clarified to be more easily applied by the bureaucracy.

This type of vertical juridification is closely related to the formal aspects of the rule of law, also described as *formal legality*. However, in the academic literature, the rule of law is usually understood as a concept consisting of two conflicting components: *formal legality* and *material legality*.

3.3.2 Formal and Material Legality and Juridification

Formal legality is in many ways the foundation of the modern liberal legal state. It refers to the bearing principles that everyone is equal under the law. That the legal and political system is just, unbiased and rule according to the law. Judges and bureaucrats have a constitutional obligation to be objective, nonpartisan and lawful in their processes. (Lewin 2017; Bäckman 2013:49) According to Lennart Erlandsson (2009:39), formal legality includes three main interlinked features; predictability, legal equality, and transparency. Formal legality thereby serves to establish predictability for actors interacting with institutions. This necessitates that all similar cases are treated equally, that there are limited regional or individual differences in the application of the legislation, and that the application process is transparent and open form scrutiny. This entails the application of the legislation must be coherent, uniform, and thus provide limited room of discretion for the individual caseworker. (Fransson 2016:38; Bendz 2010:7; Bäckman 2013:48)

Material legality refers to the more substantial aspects of legal authority and finds application predominantly in welfare-related policy areas. It adds to formal legality by inferring that norms and legislations should not only be interpreted in accordance with their formal wording but also adhere to the underlying political intentions and with regards to the needs of the legal subjects and how these relates to the social-political goals. (Lewin 2017) Material legality thus adds to the principles the rule of law by aiming towards a legal system where not only the legal procedures are predictable, coherent, and transparent, but the result of the application process is ethically just and reflect the underlying political goals. The function of material legality is to ensure efficiency in relation to the social goals of a policy. (Bendz 2010:9; Bäckman 2013:73-74)

However, obtaining material legality requires case-by-case review, that context-sensitive legal applications are conducted where caseworkers are required to use discretion. This is an obvious threat to predictability, uniformity, coherency, and predictability, and therefore to formal legality. There is thus a dilemmic relationship between these two components of the rule of law. When emphasis is put on the formal aspects of the rule of law, juridification often progresses. This since formal legality implies the necessity of uniformity, coherence and transparency the in application of a certain act, which spawns the need for legal specification and standardization. Material legality on the other hand, emphasizes goal achievement and an application following the social-political goals of the act. Therefore, as formal legality gains prominence over material legality in bureaucratic and government discourse and application, less discretion to independently apply the law in accordance with its social-political goals is granted the individual caseworker. Such development is thus in line with what Habermas labeled vertical juridification: through court rulings and government agency specifications and clarifications, previously undefined aspects are juridified. Therefore, as formal legality gain prominence in juridical and political discourse and application, juridification is likely to progress, due to the implicit perceived importance of clarity, juridical equality, and transparency, following with formal legality. To reach such standards, acts, norms, and laws need to be specified by courts, legislators, and government agencies, which leads to vertical juridification. (Johansson 2011:203)

Exploring the tension between formal and material legality can thus, as Susanna Johansson (2011) and others suggest (see Magnussen & Basiak 2013:325; Gustafsson 2002:364; Blichner & Molander 2008:38; Fransson 2016:40), be one way of analyzing the processes driving juridification. For these authors, a move towards a more formal understanding and application of the rule of law can be understood as correlated with further juridification.

3.4 The Rule of Law in Swedish Welfare Administration

The dilemmic relationship between core aspects of the legal welfare state, actualized by formal contra material legality, has been an issue of Swedish political debate and governance for the most part of the twentieth century. (Bendz 2010) The tension is often concretized in areas of social law. This as social law, such as LSS and the personal assistance act, is designed to achieve certain social-political goals rather than specifying certain actions and procedures. Social law, therefore, is often constructed as framework legislations to be flexible and fulfill the specific needs of the individual included within the frame of the law. (Bäckman 2013:73-74; Gustafsson 2002:391-392) This, to some extent, make social framework law incompatible with a completely formal application of the rule of law, emphasizing high degrees of predictability and uniformity. This inherent conflict means that governments, institutions, and organizations must balance the contradicting principles incorporated under rule of law. (Bendz 2010:6) Several studies have shown that the applied balance has shifted over the years. (see Gustafsson 2002; Johannesson 2017; Bendz 2010; Brännström 2009)

3.4.1 The Rule of Law and the SSIA

Anna Bendz have studied the development of the rule of law in relation to the SSIA and the Swedish parliament from the 1960's until the mid-2000. Her analysis shows that the tradeoff between formal and material legality has been an ever-pressing concern during the development of the SSIA and have in many ways formed the organizational structure of the agency. (Bendz 2010:6)

During the 1960's, the SSIA underwent substantial organizational and structural reforms. Prior to these, the SSIA local offices had been more or less independent private social insurance organizations to which one actively had to join to be covered. However, with the expansion of the social welfare state, the government sought to ensure that no one fell outside social insurance net. The independent SSIA agencies were brought into government control and became part of the national social insurance system. However, the government fund it beneficial to let the local

agencies maintain a large portion of discretion and independence. This would enhance the capability for the local caseworkers to "apply the social insurance in accordance with its material intentions." (Bendz 2010:18) Bendz concludes that the 1960's reforms had the intentions to better achieve social-political goals which best was done by adhering to the material aspects of the rule of law, in the form of discretion for the individual caseworker, as well as local independence. (Bendz 2010:19)

Adherence to material legality dominated bureaucratic and administrative welfare reforms also during the 1970's and the first half of the 1980's. Realization of political goals were the main priority for the SSIA and several steps were taken to do so. Centrally enforced rules, guidelines, and detailed governance were reduced to let local caseworkers use their discretion to accomplish the overarching social-political goals. (Brännström 2009:200; Bendz 2010:24-26) Decentralization of the social insurance system was perceived as a way to achieve materially correct decisions, adaptable to the specific circumstances. Bendz holds that the reforms during the 1970's and 80's further shifted the balance towards values closely associated with material legality. (Bendz 2010:31)

However, during the late 80's and early 90's, the balance between material and formal legality was shifted. Legal scholar Håkan Gustafsson holds that during this time, the strong liberal state returned, affecting the general conception of the rule of law. Not only with regards to the SSIA, but also in the general legal and political discourse and application;

> it is evident that the formal understanding of the rule of law becomes ever more present in academic legal debates, and marks a return from a material to a formal understanding of the rule of law. (2002:354)

In social welfare administration the return of formal legality can be exemplified by the 1996/97 Social Security Committee report, stating that the social insurance was a national system why the state needed to be in control of the system "in order to guarantee economic efficiency, and legal certainty and uniformity in the application of the system." (Bendz 2010:34) The committee furthermore held that a bearing principle of the social insurance system was that the "insured is treated fairly, not only with regards to the material appropriateness of the application, but also so that the same rules are applied in the same way, regardless of local agency" (Bendz 2010:34). The reasoning of the Social Security Committee was, according to Bendz, denotative of the shift towards more emphasis on formal legality, returning in the 1990's. (2010:34)

The reforms of the SSIA during this decade followed the logics of the Committee, leading to a more centralized steering in order to achieve higher level of uniformity across the local agencies. Local discrepancies and caseworker discretion were conceived as problematic, threatening the rule of law, which now, primarily, was understood as formal legality. The reasoning leading up to the reforms signaled that the main objective of the SSIA was to achieve formal legality, such as predictability, uniformity, and transparency. This in contrast to previous focus which had been to

ensure applications corresponding with aspects associated with material legality, such as efficiency in relation to achieving the underlying political intentions of the applied legislation. (Bentz 2010:36-37)

The focus on formal legality continued to shape the reforms of the SSIA also in the next millennia. The government sought to further centralize the SSIA and minimize local and individual differences in application. This prompted a complete reformation of the SSIA. All independent local social insurance agencies were admitted by the one centrally governed agency, the SSIA. The central agency would control all local offices so to achieve complete uniformity and coherent interpretation with regards to the applications of social insurances. (Bendz 2010:43)

Bendz concludes that during the centralizing reforms of the 1990's and the 2000's, the rule of law concepts explicitly refers to uniformity and equal legal treatment. According to Bendz, to reach the underlying goals of the policies applied is thus subordinate to the objectives of formal legality. (2010:47)

3.4.2 Formal Legality and Juridification

The return to a formal understanding and application of the rule of law can be perceived as closely related with processes of vertical juridification. Vertical juridification takes place when the legal acts, norms, and rules in a field densifies. As the SSIA became increasingly centralized to erase local differences in application, rules, guides, and norms were implemented to make central steering possible and limit the discretion of the individual caseworker. To some extent, a shift towards a more formal application of the rule of law drives vertical juridification. It seems as the shift towards formal legality is simultaneous with the juridification process of Swedish social-politics. This supports the proposition that vertical juridification can be studied by analyzing the perception and application of the rule of law.

3.5 Summary

In this chapter I have sought to suggest that the personal assistance act can be perceived as a case of depoliticization, thereby situation the development is a general trend where political areas presumably venture into the control typically apolitical actors. In the case of personal assistance, these acts are usually depicted a courts and government agency. As such, the depoliticization of the assistance act can more narrowly be categorized as juridification, as it specially addresses this type of development, involving courts and government agencies. To follow the processes leading to the juridification of a political field, several scholars have proposed to study how the rule of law-concept is understood and applied by relevant actors. This as a formal perception of the concept often entails juridification whereas a material

understanding usually dampens juridification.

As such, by studying the understanding of the rule of law as connected with the juridification process, I can tease out underlying mechanism which has led to the juridification of the assistance reform and thus also how the cutbacks can be explained. Theoretically then, by applying this perspective, we can study how the reform have become depoliticized and what this entails in terms of power and governance.

4 Approaching Juridification and Cutbacks

4.1 Interpretative Policy Analysis

This thesis is intended to operate on two co-constitutive levels of abstraction; the development of the personal assistance act is interpreted through the analytical lens of juridification and the theoretical understanding of juridification is developed with the help of the empirical analysis.

It is therefore imperative that the methodological tools assist and contribute to this dual approach. I thus utilize an abductive approach, allowing for a mutual communication between the empirical case and the theoretical perspectives. (Erlandsson 2014:91) As suggested by Klaus Krippendorff (2013:86), an abductive approach seeks to interpret the empirical material through a theoretical framework. Hence, abduction not only reveals implicit aspects and meanings of the material but also surfaces the theoretically general in the specific case. For this thesis, this approach entails that the case of personal assistance is studied by interpreting the implicit meaning and understanding of the actors involved in the development. This by applying the theoretical framework of juridification and the duality of the rule of law. Based on the interpretation of the case, the abductive method furthermore allows for more general theoretical suggestions to be made.

This methodological approach appeals to what is often labelled 'interpretative policy analysis', which, according to Hendrik Wagenaar "acts on the assumption that the general is folded into the particular" (2007:433). Following this logic, to understand the general, in this case the implications of juridification, we must interpret the meaning of concrete observable actions and events, coming from concrete actors. (Wagenaar 2007:432)

According to Wagenaar, "[i]nterpretative approaches to political studies focus on meanings that shape actions and institutions, and the ways in which they do so" (2011:3). Meaning is a key concept since it captures the essential contestation that the meaning people attach to social phenomenon or concepts is not only perceptional, but "constitutive of political actions, governing institutions, and public policies" (Wagenaar 2011:4). Consequently, meaning influences and constitutes *practice*. As such, practice "expresses the insight that knowledge, knowledge application and knowledge creation cannot be separated from action: that acting is the high road to

knowing. (Hajer & Wagenaar 2003:20)

Accordingly, understanding (knowledge) and meaning are closely related to and constitutive of practice. Therefore, to understand practice, one must analyze its underlying components: the understanding and meaning of the practice. Consequently, this view holds that the object of study ought not to be explicit actions of the institutions and actors, but the meanings and understandings constituting their practices and actions. As such, to study the development and governance of the assistance reform, one should not only study the explicit actions of the actors involved. Rather, in accordance with interpretative policy analysis, one must study the meanings and understandings constituting the actions of the actors.

This conception of power and governance is a departure from much of the previous work on juridification, where power often described as a zero-sum game, where to loss of power in one institution by necessity entails gains of power in another. Shifting focus from action to the constitution of practice, changes the target of analysis. Approaching juridification with the tools provided by interpretative policy analysis allows for an analysis beyond this rigid perception of governing and power. As such, this perspective opens up for analyzing not only the explicit actions leading to the cutbacks of the assistance reform, but more importantly, the understandings and meanings making the actions viable.

4.2 The Case of Personal Assistance

Have laid out the methodological underpinnings of this study, I now turn to address why I think LSS and the personal assistance act are appropriate cases of study. The personal assistance act is part of the wider LSS legislation and I will in this study focus especially on the development of the personal assistance act.

First, the personal assistance act has merit as a typical and interesting case of juridification in a Swedish welfare legislation context. Understanding the development and governance of the personal assistance act can therefore contribute to a better understanding of juridification as theoretical concepts and its effects on welfare governance.

There are numerous factors making the assistance reform a typical case of juridification; the act was developed and implemented during the period when many claim juridification took off. It furthermore exhibits many of the characteristics the academic literature describes as especially susceptible to juridification; it is based upon the idea of human rights; it is a frame law, focusing on goal achievement rather than on precisely formulated measures; and, it is a social welfare law. Together, according to pervious research, these factors make for a perfect storm of juridification. (Brännström 2009; Blichner & Molander 2008) As such, the case of the personal assistance act has the potential to tell us something more general about modern-day welfare governance in juridified fields.

Secondly, the Personal Assistance Act is not only a typical case of a juridified welfare legislation. It is also a typical case of a Swedish welfare legislation. LSS and the personal assistance act are framework laws, consciously leaving room for interpretation of the specific application of the acts. Frame-work legislations are often deliberately constructed to open for discretion in the application of the specific case. This as the legislator have difficulty constructing all-encompassing legal texts, taking the specific circumstances of every situation and every individual case into account. (Erlandsson 2014:30) Some of the founding and goal-related concepts of the personal assistance act are thus deliberatively vague. Framework law furthermore allows for the legislator to stipulate the overarching social-political goals, whilst government agencies and administrative courts interpret the specific applications. (Brännström 2009:194; Gustafsson 2002:291)

More un-common, however, is that the personal assistance act allows for private providers. When the act was enforced in 1994, a key aspect was to promote independence and autonomy for the users. This should be achieved by letting the individual user dispose of the allowances granted. The user could thus use the allowances to purchase assistance from any type of provider, be they in private or municipal regime. In the early years of the reform, this did not spark much political or media attention. However, as more and more users chose private assistance providers and reports on fraud and overuse gained great attention the profit interest of the private companies came to be perceived as a problem needed to be controlled and regulated. (Altermark & Nilsson 2017; Näsman 2016)

As such, the personal assistance act is in many ways a typical example of a framework-legislation, sharing similar features with other Swedish welfare legislations. However, the legislation differs in the regard that it allows for private providers, which, as we shall see, affects how the reform have been perceived and governed.

Thirdly, the assistance reform is topical and for many people an urgent and important legislation, having fundamental impact for their daily lives. To me this is not to be undervalued as a reason for selection. In and by itself, I find it truly interesting to analyze the practices making it viable to dismantle a major welfare reform without parliamentary or governmental decisions. Given the impact the assistance reform has in many people's lives, understanding why and how it develops and changes is important for the future of the act and for how similar legislations are to be constructed and governed.

My contention is thus that the personal assistance act makes a good case to study, not least since it has interesting implications on both a theoretical and on an empirical level. Yet, the conclusion it is a suitable case does not infer it must be the only case. However, given the limited time and space of this thesis, I think it overbearing to conduct two (or more) independent empirical case studies. As stated by Wagenaar, interpretative policy analysis is a "painstaking and systematic process", where the researcher through "the careful and precise registering of the concrete behavior of concrete actors […] hope to arrive at an interpretation that makes what was initially opaque, in the final analysis (more) senseful" (Wagenaar 2011:21-22). Interpretative policy analysis thus relies on depth and precision more than width and

overview. My contention is therefore that what is lost in generalizability is made up for by paying close attention to the complexities and subtleties of the practices in the one case.

4.3 Material and Timeframe

When engaged in interpretative policy analysis, the object of analysis is practice. This infers that the material interpreted in this study must be a representation of such practices. In this thesis, I explore how the understanding, meaning, and application of rule of law have developed and how this relates to juridification and the development of the personal assistance act. What I look for, specifically, is therefore material that can contribute to unpacking the meaning ascribed to rule of law and how it shapes the practices of the actors involved in the governing of the personal assistance act. According to Dvora Yanow, the situated understanding and meaning of a political institution is found in the practices of the institutions studied. Therefore, interpretative policy analysis is concerned with studying:

> legislative and agency texts and physical objects and acts and practices emanating for the institution studied. All of these expressions are to be conceived of as analogues of meaning. (Yanow 2003:232)

Document, reports, statements, guidelines, investigations, etcetera, are therefore to be conceived of as "real" expression of meaning at a particular time, in a particular context. Following from interpretive analysis, these sources of material are to be taken seriously and are not isolated document, generated by isolated individuals on isolated context. Rather, material stemming from the actors studied is to be perceived as the result of the institutional culture, of its vested understandings, meanings, and practices. (Yanow 2003:232)

Accordingly, I will interpret the material stemming from the actors involved in the governance of the assistance reform. To establish which material is relevant I will abstract describe the LSS-legislation, how it is governed, formed, and changed.

The LSS-legislation is a rights-based framework law, lending the specific applications and extent of the service broadly defined. This leaves the responsible agency, the SSIA, to interpret the intentions of the legislation, decide who is eligible, how many hours of personal assistance the user requires to conform to the law's boundaries and intentions, etcetera. If the user does not agree with the assessment of the SSIA, the case may have to be resolved by the administrative courts, where the rulings of the Supreme Administrative Court (SAC) are precedent. Also, the SSIA can take cases to court to force a precedent ruling clarifying and specifying concepts or aspects of the legislation. It is thus ultimately the administrative courts that stipulate how the SSIA should interpret and apply the legislation. Influential court rulings are thus part of the material interpreted. However, being the responsible independent government agency, the SSIA also possess discretionary power when it

comes to applying the act. (Erlandsson 2014)

First, the SSIA interpret the rulings of the administrative courts, so that these can be abstracted from the specific case and applied into a general context. These interpretations often come as 'legal positions', to which all caseworkers are expected to adhere. 'Legal positions' are independent interpretations as a court ruling essentially only addresses the specific circumstances up for trial, whereas the general 'legal position' of the SSIA must provide guidance for all similar cases and circumstances. Consequently, the 'legal positions' employed by the SSIA are by necessity interpretations of courts' rulings and not direct implementations. (Näsman 2016:24)

Secondly, when no precedent court rulings provide guidance in interpreting the legislation, the SSIA can produce internal guides and manuals, assisting the caseworkers in how certain situations should be assessed. The SSIA also produces independent 'legal positions' on areas not yet clarified by court rulings. (Erlandsson 2014:39-40)

Given the independence of Swedish government agencies, the government cannot directly govern the interpretations and applications made by the SSIA. The government can, however, guide the focus and goals of the SSIA. This is mainly done through the yearly Government Letter of Appropriation (GLA), in which the government stipulate the goals and focus areas of the SSIA for the upcoming year. At the end of the year, in the SSIA yearbook, the agency responds by describing which measures have been taken to meet the goals of the letter of approbation. If the government or the SSIA want a certain reform or policy area to be further analyzed and developed, investigations seeking to bring clarity and guidance, can be initiated. Such investigations are thereafter often used to guide the work and focus of the SSIA.

Briefly mapped in the above are the official administrative ways in which the LSS and the Personal Assistance Act are governed. By interpreting the meaning and knowledge in relation to the rule of law embedded in the material, I will develop an understanding of how the legislation has been juridified and governed. To gain more comprehensive access to the reasoning behind certain practices I will also include public statements and interviews from involved actors.

4.3.1 Time constraints

Special attention will be directed to material from the period between 2005 and 2017. This for several reasons. First, 2005 is the first year of the new centralized SSIA organizational structure. This entails such a profound change that the time before this restructuring is in many ways complete separated from the time after. Prior to 2005, the decentralization of the SSIA organization did not allow for central governance of the agency, neighed from the government or of the agency itself. The centralization of 2005 however made central governance possible, which was one of the main reasons for the reorganization. 2005 is thereby also the first year the government issues a Letter of Appropriation to the SSIA, and the first year the ISSA

respond to that letter in their yearbook. Moreover, 2005 can be said to mark the beginning of the stricter application of the personal assistance act. Prior to 2005, most changes in the application had meant that scope of people included in the act was widened and that more people gained access to the reform.

4.4 Summary

Detailed analysis of the process of juridification in relation to the rule of law opens the study of how the juridification process was governed, which mechanisms of powers were at work, and how they transferred and transform during the process. By interpreting the understanding and meaning forming the conception of the rule of law and its application, I can approach an understanding of how the legislation has been governed and what has led to the cutbacks. As such, by studying the process of juridification of the assistance reform through the lens of material contra formal legality, I can explore an alternative way to understanding governance in relation to juridification.

5 The Development of the Personal Assistance Act

5.1 LSS and the Personal Assistance Act

The LSS-law was implemented January first, 1994. It requires of all Swedish municipalities to provide "certain support and service" to people with permanent and severe physical and psychological. Providing personal assistance is one such 'certain support and service'. The personal assistance act is thus a sub-category to the LSS-law (LSS 1993:387) The underlying social-political goals of legislation are to "promote equality in living conditions and full participation in public life […]. The goal is to provide the individual the opportunity to live like others" (§5 1993:387). Paragraph seven develops on the goals of the ten measures and stipulates that "through the measures, the individuals covered shall be assured good living conditions […] and enhance their ability to live an independent life" (§7 1993:387). Personal assistance is eligible for those who "because of severe and lasting disabilities need help with their personal hygiene, meals, getting dressed and undressed, communicating with others or other assistance requiring thorough knowledge about the disabled" (§9a 1993:387). These help-needs are referred to as 'basic needs'. Personal assistance is granted for individuals estimated to require assistance with basic needs for a minimum of twenty hours per week. Twenty hours is thus the threshold below which individuals must rely on other forms of support and allowances. (Näsman 2016:15)

5.1.1 Cutbacks on Personal Assistance

One year after the personal assistance act was implemented, it covered about 6 100 recipients. On average they were granted approximately 67 hours of personal assistance per week. More than ten years later, in 2005, some 13 000 people were eligible to an average of 100 hours per week. According to estimations made by the SSIA, about 50 percent of the surge was explained by a general increase in population and by two major changes to the personal assistance act and its application. The first change was due to a Supreme Administrative Court ruling from 1996, which determined that the basic need 'requiring in-depth knowledge about the

disabled', should include '*active supervision*'. This ruling resulted in a surge in the user population, especially among children now becoming eligible for personal assistance. The second change came in 2001 when the act, through a parliamentary decision, was changed to remove the upper age limit, thereby also providing personal assistance for people over the age of 65. The other half of the surge was explained by more applicants and a rise in the average number of hours granted per user. (SIR 2015:13, p.7)

If the first ten years of the reform was signified by an increasing number of users, hours, and applicants, the last twelve tell a different story. In 2005, the number of people losing personal assistance due to insufficient basic needs were 53. In 2017, 473 people lost their assistance for the same reason. In 2005, 33 percent of all applications for personal assistance were rejected by the SSIA. During the first six months of 2017, more than 83 percent of all applications were rejected. Furthermore, from a steady increase in recipients between 1994 and 2015, recipient numbers for the first time began to decline in 2016. As of 2017, 14 886 people were eligible for personal assistance, compared with 16 119 in 2016. Also for the first time, in 2017, the average number of hours of personal assistance granted by the SSIA were declining. (Assistanskoll.se Statistics)

5.1.2 The Debate on Personal Assistance

Before starting the analysis of how the personal assistance act have developed, I will in abstract describe the political and media debate surrounding the personal assistance act during this time.

Ever since the act was implemented in 1994, the cost of the reform has been subject for debate. From the get-go, more people than calculated became eligible for more time than calculated. (SII 2015:9) Up until 2016, both average hours granted and people eligible, rose continuously. In 1995 the personal assistance act cost the state about 3 700 million SEK. In 2015, the costs had risen to approximately 29 700 million (the figures refer to fixed costs, not accounting for inflation etcetera). (Assistanskoll.se Statistics)

Throughout the years, the cost development has spawned political attention and several investigations have been launched to explain and suggest measures to dampen the rising costs. The first of such investigations was appointed already in 1995 and suggested reforms allegedly saving up to 900 million SEK. (Näsman 2016:22) The next major investigation with similar objectives was the 'Assistance Committee', which was initiated in 2004. The committee found that part of the personal assistance allowances ended up being used for unintended purposes and that the risk of fraud and overuse in the system was impendent. (Näsman 2016:22; SOU 2007:73, p.45-46)

These findings became the starting point for many investigations to come, seeking to determine the extent of fraud and over-use related to personal assistance allowances, and how to effectively counter it. Several investigations found that the rate of fraud and overuse were especially prevalent within personal assistance. (FUT

2007:7; SSIA 2009, 2010; ESV 2011:11; SOU 2012:6; Dir 2016:40) In the media debate, the responsible ministers have often proposed that approximately ten to twelve percent of the total cost of the personal assistance allowances are due to fraud and over-use. (Altermark & Nilsson 2017:26-29) I will not develop on the soundness of these figures or how they came about, but content to say that it is within this conceptual realm, holding that the assistance reform to be especially afflicted by fraud and overuse, policies are made and measures are taken.

5.2 Regional Differences, Legal Clarifications and Cost Development - 2005 – 2008

In the first two government letters of appropriation to the newly established and centralized SSIA, issued for 2005 and 2006, the instructions regarding disability politics were to enhance "the quality of the support and service for girls, boys, women, and men with disabilities". It was furthermore stated that the goal was to strengthen the core values of the LSS-reform, namely participation and autonomy for people with disability. (GLA 2005:5; 2006:6) The SSIA did not respond directly to these goals in the corresponding yearbooks but sufficed to state that the ongoing centralization and re-organization of the agency were starting to show intended results, thereby "simplifying central governing and creating possibility for a more coherent application of laws and rules" (SSIA 2005:3). According to the SSIA, this was especially evident regarding measures taken to reduce sick leave, which had been successful. (SSIA 2005:3)

According to the 2006 yearbook, similar measures were also required for the personal assistance act. This as regional differences in time allowance were understood as caused by ambiguities in the wording of the legislation, not clearly defining how to coherently assess and calculate user needs and time allowance. According to the SSIA, the ambiguities created excessive room for caseworker discretion and interpretation, damaging uniformity. The new centralized organization of the SSIA were, however, according to the SSIA, well suited for "strengthening uniformity through clearer guidelines to the caseworkers" (SSIA 2006:69).

Accordingly, in 2006 and 2007, the SSIA imposed several new legal positions, set out to clarify aspects of the personal assistance act previously left for discretion. (SSIA 2006:69) The new legal positions meant stricter interpretation on time granted for basic needs (help with meals, getting dressed, and personal hygiene), as well as narrower definitions of what constituted basic needs. According to the SSIA, the new interpretations came as a response to the problem that the concept basic needs previously had been interpreted differently by different caseworkers. (SIR 2015:13, 46) In an interview, the operation manager of the SSIA at the time, stated that the work towards more coherent applications, which these legal positions were a result of, was started in 2005 when the SSIA was merged into one centrally governed agency. (Assistanskoll.se 2010) The consequences of the new legal positions showed

effects already in 2007 when the SSIA reported a noticeable decline in the approval rates of personal assistance allowances. According to a SSIA report (SIR 2015:13), this decline in approval rates was a direct consequence of the new legal positions enforced by the SSIA in 2006 and in 2007, making less people meet the requirement of 20 hours of basic needs per week

In the early years of the centralized SSIA, clarity, uniformity and limited caseworker discretion, seem to have been closely associated with the perceived need for centralized governance and formal legality. It thus seems as the general description of the development of the SSIA, increasingly emphasizing the need for strengthened formal legality, also applied to the assistance reform. Formal legality was conceived the main objective, why individual caseworker discretion and deviations were to be restrained. Accordingly, creating national coherence in application and limiting local independence were described as the main objective of the new SSIA organization.

The SSIA's efforts to further strengthen formal legality by limiting the room of discretion and legal interpretation for the individual caseworker continued in 2007. The focus was heightened by 2007's letter of appropriation, in which the government extended to goals related to the personal assistance act:

> [t]here have been considerable differences between different regions with regards to average hours of assistance granted ever since the implementation of the personal assistance act in 1994. […] The SSIA shall account for these differences and present actions to limit them. The SSIA shall also assess if the actions are effective and sufficient in reducing the differences. The SSIA shall also analyze in which way the discrepancies affect the cost development of personal assistance. (GLA 2007)

In 2006, the government had also given additional directives to a government investigation, which had been initiated in 2004 with the objective to review the assistance reform. The additional directive ordered the investigator to "analyze the causes of the cost development and present action which can dampen and stabilize the development" (Dir. 2006:68).

As evident by the 2007 letter of appropriation and the 2006 government directive, the government portrayed two major problems with the assistance reform. The first was depicted as issues related to insufficient formal legality. It was conceived as problematic that there are regional differences in the application of the personal assistance act. The second problem, manifested through the additional directive, as well as through several political statements of the time, was the rising costs of the reform, (See Lundström 2011:115-116; Johnson 2010:222) Given the formulation of the 2007 letter of appropriation, however, it seems as the government suspected that these two problem areas were correlated and therefore wanted the SSIA to analyze what effect regional differences in application had for cost development.

The government investigation's answer to this query was clear. According to the investigation, there were two main alternatives to dampen the cost development. Either, by, for example, instilling lower age limits or maximum hour caps, the government could politically change the scope of the reform. Or, the cost could be dampened through measures "making the individual need assessment clearer, more

coherent, and in some cases more restrictive" (SOU 2008:77, p.414).

Making the application of the legislation more coherent by clarifying and specifying its extent, thereby limiting caseworker discretion, was thus understood as a means of cost reduction. Accordingly, the analysis of the government investigation directly linked the strengthening of the formal aspects of the rule of law with dampening of costs. In the 2007 yearbook, the SSIA drew similar conclusions, holding strengthened formal legality to be closely connected to reduced costs:

> If all regions followed the assessment of the median region for women and men of different ages, the costs for personal assistance would be approximately 6000 million SEK lower in 2007. A contributing factor to the spread between the regions has been the former decentralization of the SSIA. The new organization of the SSIA however, […] increases the prospects for improved steering and increases the possibility of uniformity between regions. (SSIA 2007:72)

It is clear from this statement that formal legality in terms of uniformity, coherence in application, and clarified assessment criteria are assumed to lower costs. There thus seemed to have been a widespread conception, subscribed to by both the SSIA and the government investigation that, in the case of assistance allowances, strengthened of formal legality was correlated with cutbacks.

5.3 Rising Costs, Uniformity and Scientific Assessment Instruments – 2009 – 2013

5.3.1 Supreme Court Ruling

In 2009, some two years after the SSIA's clarifications on basic needs, came the next major change to the application of the assistance reform. This because of a Supreme Administrative Court ruling. By further restricting the scope of how basic needs were to be defined and calculated, this precedential ruling cemented and further specified the SSIA's independent legal positions from 2006 and 2007. Through the court ruling, it was determined that only 'needs of special integrity' should constitute basic needs. (SAC 2009) For example, preparing, cooking, or cutting meals would no longer be considered basic needs. Only assistance with the action of moving food from plate to mouth would constitute a basic need. Similar logic was applied to dressing, where now only 'integrity sensitive' parts should be assessed as basic needs. Putting on outerwear, for example, did no longer constitute a basic need. (SSIA 2015:13) These new interpretations resulted in many people no longer reaching the threshold of at least 20 hours of basic needs per week and therefore lost personal assistance through LSS. (ISF 2016:16)

This court ruling, as well as the SSIA's previous legal positions, are examples of

vertical juridification. The LSS-legislation only mentions assistance with 'meals' and 'dressing', 'personal hygiene', etcetera as basic needs. The SSIA and the Supreme Administrative Court, however, specified the political intentions of the reform to cover only certain aspects of these activities. The application of the act was thereby changed, not as a result of political decision making, but because of bureaucratic interpretation. Vertical juridification had thus taken place.

5.3.2 The SSIA Acts against Inconsistencies

The 2010 SSIA yearbook described how the agency had taken continuous measures to analyze the rising cost of the assistance reform. An investigation was launched to find out how to explain the cost increase. Additionally, to further strengthen what was referred to as "quality and rule of law", the SSIA prepared "a scientific assessment instrument". This instrument would assist the caseworkers in making uniform assessments of personal assistance allowances. The origin to the development of the 'scientific assessment instrument' was however not the SSIA's but the government's. The measure followed from a special government directive from 2008, requiring the SSIA to develop and implement the instrument by 2011. (GLA NBHW 2008) However, in their response, with regards to strengthen uniformity, equality in result, and other aspects of formal legality, the SSIA noted that such goals to some extent contradicted the intentions of the assistance reform:

> the assistance reform intend to provide people with severe disabilities the opportunity of autonomy and to influence her own life. These goals affect the possibility of creating general rules on how to conduct individual assessments. (SSIA 2010:74)

The quote exemplifies the dilemmic relationship between formal and material legality. The SSIA acknowledged that the strengthening of uniformity and the restriction of caseworker discretion, be it through legal positions, guidelines, or 'scientific assessment instruments', to some extent conflicted with the material social-political goals of the assistance reform.

However, in the SSIA yearbook from the following year, the material aspects of the reform were no longer mentioned. The formal aspects were, however, expanded on to great length. For example, under the headline "*Ongoing Actions to Strengthen the Rule of Law and Uniformity in Assessment*", five measures were described:

(1) "creating new national guidelines",
(2) "strengthen uniformity in the assessment of the basic needs", analyzing and counteracting "regional differences in allowances",
(3) "introducing the requirement of a permit to provide personal assistance",
(1) "standardizing the medical assessment", and
(2) "implementing the before mentioned 'scientific assessment instrument". (SSIA 2011:88-89)

In an interview from 2011 with a senior executive at the SSIA, it was stated that all the above-mentioned efforts were specifically intended to steer applications towards uniformity and coherence. (Assistanskoll.se 2011) Accordingly, in their efforts to strengthen the rule of law, which was the stated objective of the measures undertaken, only measures related to formal legality were listed. It thus seems as the SSIA's understanding of the rule of law primarily referred to as formal legality, in the SSIA yearbook expressed in terms the need for coherency, uniformity, standardization, and centralized control and governance.

According to the SSIA, the heightened attention to uniformity and the rule of law, exemplified through the five action areas, was partly a response to the government's 2011 letter of appropriation, tasking the SSIA to "ensure uniform application and that the result application does not depend on the region" (GLA 2011:4; Assistanskoll.se 2011).

5.3.3 The Government and Strengthened Uniformity

In the 2012 letter of appropriation, the government continued to direct focus towards strengthening formal legality. This by tasking the SSIA to "enhance uniformity in relation to assessment and payment of personal assistance allowances" (GLA 2012:2). In the 2012 yearbook, the SSIA stated that, due to the government's task, the personal assistance allowances had been a special focus for the agency. To accomplish the task, the SSIA, among other measures, drafted new regulations, prepared a new legal position, and a legal overview. New guidelines were developed to further assist and standardize the caseworkers' assessments. (SSIA 2012)

Despite these efforts, the agency concluded that regional discrepancies still were a problem and that further measures were necessary to fully comply with the task of the government letter of appropriation. (SSIA 2012:8) A measure that could be further improved, according to the SSIA, was a more widespread and consistent application of the before mentioned 'scientific assessment instrument'. As a standardized tool limits the individual caseworker's discretion, the instrument would further the possibilities for more coherent assessments, the agency concluded. It moreover enabled clear and standardized documentation of the basis of the assessment, which, according to the SSIA was important to assure transparency in the application process. (SSIA 2012:99)

Nonetheless, the assessment instrument received heavy critique from users and interest groups, as it was said to be offensive and violate the personal integrity of the user. This as the instrument comprised a 91-pages document where every detail of the user's life is to be accounted for in great detail. Assessment of food intake alone covered 16 pages. The critics furthermore held that the instrument threatened the stated intentions of the LSS reform with regards to creating the possibility to live like others, independence, autonomy etcetera. This as it measured the users' activities down to seconds, thereby limiting the possibility for spontaneity and change of wants and needs. (Assistanskoll.se 2010b; Assistanskoll.se 2010c)

The debate on the "scientific assessment instrument" again highlights the dilemmic relation between formal and material legality. The SSIA's strive for coherence, uniformity, and transparency, according to the critiques, compromised the material goals of the act. This measure thus shows the focus of the SSIA was to strengthen formal legality, perhaps in this case, at the expense of material aspects.

5.4 Fraud, Overuse and the Rule of Law – 2014 – 2015

As demonstrated in several letters of appropriation, the SSIA's ongoing strive to strengthen formal legality seemed to be shared by the government. So also in 2014's letter of appropriation where the government expanded the tasks in an additional 'government decision-document'. The expanded tasks covered three improvement areas, all encompassed under the overarching objective to "advance measures to achieve greater control and strengthen the rule of law in the assessments of personal assistance allowances" (MHSA 2014). The three areas included:

(1) measures to combat fraud and overuse,
(2) measures to limit regional differences in personal assistance application, and
(3) analyze how to improve the uniformity and coherence of medical assessments, used in the application process.

As all three areas imply more standardized procedures, more rigorous control instances, more centralized governance, and less caseworker discretion, the three areas clearly related to measures targeting the strengthening of formal legality. (MHSA 2014) Accordingly, given the substance of the measures proposed to strengthen the rule of law, the government here expressed an understanding of the concept adhering its formal aspects.

In response to the extended government tasks, the SSIA published a specific report, more extensively addressing the areas of improvement. In the report, the agency continued to develop on measures taken to expand control, accuracy, and standardization in the application process. This to reduce "incorrect payments" and to enhance national conformity. In response to the third improvement area, the SSIA conducted an in-depth analysis of how to standardize and expand the use medical assessments in the application process. By developing more precise and comprehensive medical assessment tools, filled out by medical teams of doctors, physiotherapists, psychologists, speech therapists, etcetera, the SSIA held that the application process would be more uniform, transparent and objective, and thus contribute to the strengthening of the rule of law. (SSIA Report 2014:13-22) With standardized medical assessment tools, the SSIA caseworker would gain access to precise and clinical assessments of the users' abilities and disabilities, the SSIA argued. (SSIA Report 2015:13)

These measures, corresponding to the government's task to enhance and advance

medical assessments in the personal assistance application, further strengthened the formal aspects of the rule of law, and further limited the material aspects. This by reducing caseworker discretion and by strengthening the value ascribed to the medical assessments tool in the application process, as opposed adhering to the needs as described by the assistance user. As need assessments conducted by the SSIA became further standardized and medicalized, the underlying intentions of the legislation, to strengthen self-determination and autonomy of the user were thus increasingly devalued in order to strengthen the rule of law, understood in terms of formal legality.

The 2015 letter of appropriation tasked the SSIA to continue to focus on the three areas of improvement stipulated in the 2014 additional letter of appropriation. (GLA 2015:8) It furthermore highlighted the ongoing debate on fraud and overuse being especially prevalent in personal assistance. The first sentence of the section describing the goals for the assistance stated that "[t]he SSIA shall ensure sufficient control over personal assistance allowances to counteract overuse" (GLA 2015:2). This objective constituted the baseline for the focus of the assistance reform. Consequently, to effectively combat overuse, the government tasked the SSIA to enhance control over allowance payments by making the application process more "uniform and systematic" (GLA 2015:6). The government stated that taking measures strengthening coherence and uniformity, and limiting regional differences in allowances would "strengthen the rule of law in the application process, so that the correct decision and the correct payment are issued" (GLA 2015:2).

As such, in the 2015 letter of appropriation, the government again tasked the SSIA to take further measures making the application process more uniform, more systematized, and less dependent on the discretion of the individual caseworker. This would, according the government, strengthen the rule of law and thereby also increase control and limit overuse.

In the 2015 yearbook, the SSIA declared to have taken measures corresponding with the government task to "strengthen the rule of law in the application process". The SSIA interpreted this task as ensuring "justice in outcome", which, according to the agency had been the main focus during the year. According to the agency, "justice in outcome" implied coherence, uniformity, predictability, and that the outcome of an application is completely independent of the individual caseworker. (SSIA 2014:27, 2015:124; SIR 2012:11) "Justice in outcome", as understood by the SSIA, thus directly correspond with what herein is referred to as formal legality. Accordingly, given the focus on "justice in outcome", the SSIA seemingly subscribed to the government's conception on the importance on focusing on the formal aspects of the rule of law.

5.4.1 Limiting Discretion

A consequence of taking measures strengthening formal legality and thus a coherent and systematic application processes, is limited room for discretion. Discretion leads to discrepancies in application and is thereby not compatible with coherency and

"justice in outcome". In 2015, the SSIA expressed this conclusion by declaring that an area of special importance was increased uniformity and that "discretion in combination with insufficient guidance have negative effects on uniformity" (SSIA 2015:28-29). This was also the conclusion of a government issued investigation, conducted by the supervisory government agency 'The Social Insurance Inspectorate' (SII). In 2014, the government tasked the SII to "identify shortcomings in current legislation and application regarding assistance benefits" (SII 2015:9, p. 12). In summary, the SII concluded that the personal assistance legislation was:

> ambiguous, one problem being that key concepts, such as *participation*, *independence* and *living as others* which are often emphasized as embodying the aim of the legislation in Assistance Benefit have not been defined in the law or legislative history. As a result, when evaluating entitlement to personal assistance, it is difficult for the SSIA to make a *coherent, transparent assessment adhering to the rule of law*. […] Owing to this, the number of hours applied for is to a high extent granted. As a consequence, the granted hours per week for personal assistance (on average) *have increased* each year since the law was introduced. (SII 2015:9, p.13, my italics)

The investigation thus drew two main conclusions regarding the problems with the assistance legislation. First, the undefined key concepts of the legislation hindered formal legality as it limited coherence and lead to inadequate transparency. This as the ambiguous concepts created space for interpretation and discretion for the individual caseworker. According to the report, these problems spurred the second issue: the rising costs of the reform. The rising cost were, the report argued, a direct consequence of the unspecified nature of the key concepts, rendering application result incoherent. Evidently, strengthened formal legality was understood as corresponding with dampened costs, whilst material legality in terms of caseworker discretion and adherence to underlying political goals were perceived leading to rising costs. Same conclusions were draw in a report drafted by the SSIA in 2015. The report held that "[t]here seem to be a relation between undefined regulations and the cost development within the assistance between" (SIR 2015:13, p.23). In addition, the SSIA agreed with the SII regarding the risks associated with the rule of law brought about by the undefined and ambiguous key concepts. (SIR 2015:13, p.21-22)

To address the problems identified in the reports and to respond to the government letter of appropriation, the SSIA launched a rigorous action-package. To make the assessment of the so-called 'parent responsibility' more coherent and standardized, the agency developed a court case review, a new legal position and an updated guide for the caseworkers. (SSIA 2015:63) The SSIA furthermore issued a new guide, standardizing and clarifying the assessment process and time calculations, developed a new coherent model for benefit assessment, and introduced a new 'need assessment instrument'. All these measures had the explicit goal to strengthen the rule of law by enhancing coherency, transparency and decrease differences in application between caseworkers. (SSIA 2015:148)

Evidently, the measures taken to strengthen the rule of law all corresponded with formal aspects of legality, why it seems as when the rule of law, almost exclusively, were understood as formal legality. Consequently, as the measures taken further

specified the interpretation and application of the legislation, thereby specifying aspects previously interpretable, the reform was further juridified.

Another major development juridifying the personal assistance act came in June 2015 when the Supreme Administrative Court issued a court ruling regarding the basic need 'active supervision'. Until then, 'active supervision' had constituted a basic need for all types of disabilities. However, the court ruling meant that only people with 'mental disabilities' were to be granted assistance for 'active supervision'. (SSIA 2015:13) The new interpretation resulted in many users losing their assistance between 2014 and 2015. Consequently, the approval rate for personal assistance applications decreased drastically. Especially children were declined assistance due to the ruling. This as children with, for example, difficulties breathing, requiring supervision large portions of the day, did not meet the requisite of twenty hours of basic needs per week and thereby lost their assistance allowance. (SIR 2016:5, p.58)

5.5 "Break the Development" – 2016-2017

Despite plummeting approval rates, which continued in 2016, the costs of the assistance reform continued to increase. Since 2005, the average number of hours of assistance granted per week had risen from 99 to 127, as of January 2016. During the same period, the total costs of the reform had gone up from 14 335 million SEK per year, to 29 774 million SEK at the end of 2015. (Assistanskoll.se Statistics)

For a long time, the government had expressed worry regarding the cost development and had over the years instigated several investigations and tasked the SSIA to account for the increasing costs. Despite efforts to account for the rising costs, a gap remained which could not be explained by any of the investigations or the SSIA. Several investigations, as well as government statements, ascribed the development to extensive fraud, private assistance providers overusing the system to maximize profits, and to ambiguous legislation leaving ample room for discretion in the application. As such, the fact that the cost development could not be fully explained left the SSIA and the government to assume that the rising cost stemmed from "incorrect payments" (Altermark 2017:108, 115-17; Begler & Lender 2016).

At the end of 2015, the political debate on personal assistance was primarily focused on rising costs, fraud, overuse, and private companies seeking to exploit the vaguely defined personal assistance legislation. Furthermore, in October 2015, during the midst of the refugee crisis, in an interview, the Minister of Treasures, Magdalena Andersson, declared that "the cost development in areas of rising costs, such as sick leave allowances and personal assistance allowances, must be dampened" (Assistanskoll.se 2015).

It is within this context the government in the 2016 Letter of Appropriation tasks the SSIA to "break the development of hours granted within the personal assistance act" (GLA 2016:1). The task thus compelled the SSIA to find ways to restrict assistance allowances. However, the government issued no instructions on how cost

reductions were to be made. The responsible minister, Åsa Regnér, refused to make any suggestions on how to "break the development", holding such instructions would imply ministerial and thus be unconstitutional. (Assistanskoll.se 2016a)

Despite not containing any specific instruction on how to dampen costs, the 2016 letter of apparition came with additional tasks guiding the focus of the SSIA. In addition to what at this point must be considered yearly mantras to enhance coherence in application, ensure lawful and qualitative application, and extended measures to combat overuse, the government in 2016 granted the SSIA extra resources for a strengthened legal representative. (GLA 2016) The extra resources were to be used to:

> based on the need for precedent rulings, provide more guiding court rulings in areas of large caseworker discretion and where the decisions have significant economic consequences for individuals and the public. The correct person shall receive the correct compensation. Overuse shall be counteracted. (GLA 2016)

Accordingly, through the strengthened legal representative, the government tasked the SSIA to, more extensively than before, force court rulings to clarify and specify concepts and areas of the legislation open to caseworker discretion and interpretation. This to ensure that the 'correct' and lawful decision was taken every time, independent of the caseworker. Consequently, the government explicitly tasked the SSIA to further juridify the assistance reform through court rulings.

In 2016, responding to the government's letter of appropriation, the SSIA took extensive measures to dampen the cost development and further juridify the reform by "clarify the legal application". Except for measures targeting administrative and procedural reforms, these included:

(1) revised guides clarifying and specifying how to interpret and act on the legislation,
(2) a new guide clarifying the SSIA's interpretation of the Supreme Administrative Court ruling on active supervision, and
(3) an independent legal position specifying the interpretation of "good living-conditions", constitutes one of the underlying social-political goals stated in the legislation.
(SSIA Legal Position 2016:09; SSIA 2016:131)

Notably, these measures were supposed to "break the development of hours granted" as well as "clarify the legal application". The SSIA therefore seemed to understand the two objectives as correlated. Correspondingly, vertical juridification, according to the SSIA, implied dampened cost development. Moreover, in the summer of 2016, the SSIA began to interpret and apply a Supreme Administrative Court ruling from 2012 regarding 'self-care'. According to the new legal interpretation, the SSIA concluded that 'self-care' should never constitute a basic need. (ISF 2016:16)

To shortly summarize the ruling, it examined a case where an autistic girl with a

connective tissue disease causing pain. To relive the pain, she was given hot baths and massage. The court ruled that this treatment was to be perceived as health-care under the 'health-care act', rather than 'self-care' and could principally thereof not be considered in the assessment of personal assistance. However, the court stressed that health-care could be considered 'self-care' and thereby constitute basis for needs other than 'basic needs' and thereby grant personal assistance. This was also the interpretation of the SSIA being implemented in the summer of 2016. 'Self-care' would no longer constitute a 'basic need', which it had previously. (SAC 2012; ISF 2016:16)

In the updated legal guidelines where the new interpretations were stated, the SSIA listed activities that were to be considered 'self-care' or 'health care' and thereby never could constitute a 'basic need'. The activities included, for example, assistance with gavage, assistance with breathing support appliances, suction of mucus from the oral cavity or a tracheal cannula, and change of ostomy pouch. In the SSIA's 2016 application of the 2012 court ruling, needs such as breathing and feeding did not constitute basic needs as they now became specified as 'self-care'. (ISF 2016:16, p.43)

After the announcement that the SSIA would start to interpret the ruling from 2012, critiques argued that, considering the timing of the new legal application, it came in response to the government's task to dampen the cost of the assistance reform. The SSIA strongly refuted these claims and stressed that the new legal application was part of a process to clarify areas and concepts of the legislation. This to achieve greater coherences and uniformity in application. (Assistanskoll.se 2016c) The new and specified interpretation meant that many users lost personal assistance and that more applications were rejected, as they no longer passed the threshold of a minimum of 20 hours of basic need per week. (ISF 2016:16, p.39)

Whether the specification the legislations were done in response to dampen costs or to strengthen coherences, the SSIA's measures shows that discretion is understood as correlated with cost increase. This notion was again forwarded in a SSIA report from 2016 where it was stated that "several government investigations and other reports have pointed out that un-clarities in the legislation probably contribute to the cost increases" (SSIA 2016:11, p. 6). The SSIA thus undoubtedly perceived legislative ambiguities as related to cost increases, in addition to it weakening coherency in application.

During 2016, the government received massive critique for the formulation in the letter of appropriation to 'break the development of hours granted'. The responsible minister claimed that the government's intentions never were to cut down assistance allowances for those "actually needing it". Instead, she held, the task was intended to make sure that less "incorrect decisions" were made and that fraud and overuse were repressed. (Regnér 2016; Regnér 2018) However, given the critique, in the 2017 letter of appropriation, the task to 'break the development' was erased. Despite this, the government still held that assistance allowances had to be limited.

Indicatively, in 2016, the government issued a government investigation with the mission to address two of the main issued associated with the assistance reform. One of focus areas contained directives for the investigation to finds ways to cut down on costs on the assistance reform. The second main area of focus was to clarify and

specify the legislation. Especially founding concepts such as "good living-conditions" and "the right to live like others", needed to be further defined, according to the government's directives (Dir 2016:40, p.16, 18). However, in the directives, the two objectives were not perceived as independent of each other. Rather, and as indicated previously, specification and clarification were conceived as means to limit the number of users and thereby reduce costs. Accordingly, the government directed the investigation to:

> [S]uggest how to restrict personal assistance with regards to number of users and/or number of hours. It may mean to more precisely and clearer define when and for what assistance should be granted, for example by further specify concepts such as "other personal needs". (Dir 2016:40, p.22)

The directive further indicates that the government understood formal legality, described in terms of coherences, specification, and predictability, as closely related to cost reduction.

5.6 Summary of the Development

To summarize the last thirteen years of the assistance reform, the legal application of the legislation has become increasingly specified and standardized. This directly resulting from several major court rulings, stricter SSIA guidelines, standardizing the application procedure, and more specified legal interpretations, further limiting caseworker discretion. The overall result is a reform where now only 17 percent of all applications are granted assistance, compared to circa 75 percent ten years ago. In 2005, only 53 people lost assistance due to falling under the 20 hours threshold. In 2015 that number was 146 people and in 2017, 473 people lost their assistance after not meeting the sharpened requirements. (Assistanskoll.se 2017) The government have repeatedly claimed they have no part in the cutbacks of the assistance reform. According to them, the cutbacks are solely caused by court rulings and SSIA interpretations, over which the government has no control. (Regnér 2018)

However, as of November 2017 the government pulled the emergency breaks, declaring that no further reassessments regarding personal assistance were to be conducted until the submission of the government investigation. This decision came after a Supreme Court ruling in the summer of 2017, which, according to the SSIA, would undermine the whole reform and force even more people out of the reform. This is where the reform is now. In a state of complete standstill, awaiting the results of the government investigation.

6 Juridification, Rule of Law, and Governance

This second part of the analysis consolidates the development sketched in the first section. As such, the first section analyzes the development of the assistance reform in terms of juridification. The second section brings together and analyses what the material reveals in terms of formal contra material legality and how the rule of law concept have developed. Thirdly, I suggest an alternative way of understanding of how juridification and the perception of the rule of law relates to governance and power. By doing so, I indicate how the cutbacks of the assistance reform have been governed.

6.1 Juridicalization of Personal Assistance

My interpretation of the material shows that, in tandem with the conceptual progression towards formal legality, the assistance reform has become increasingly juridified. The overarching focus on coherency, standardized applications, and transparency have spawned measures vertically juridifying the legislation. Consequently, large amounts of standardized guidelines have been drafted, clarifying legal positions have been produced, and previously open concepts have been defined and specified.

An illustrative example of this juridification process is the SSIA internal guidelines aimed to assist the caseworkers in the application process. The first version of the guideline covered 157 pages. The 2010 version comprised 189 pages, whereas the 2017 edition encompasses 209 pages of clarified guidelines and specifications. (SSIA Guideline 2005; 2010; 2017) Caseworker discretion has thus been decreased during this time, allowing less room for case-contextual interpretations in accordance with the social-political goals of the legislation. Instead, through vertical juridification, coherence and uniformity has been strengthened.

Except for juridification processes lead by measures taken by the SSIA, several court rulings have further pushed the development. In this analysis, I have only described a few or the many court rulings further specifying the applications of the personal assistance legislation. The ones I have mentioned are however usually depicted as the most crucial, having severe impact for how the legislation is interpreted and applied. (Näsman 2016; SIR 2017:4) However, court rulings are usually not applied directly. Rather, the actual application of court rulings ultimately

depends upon the interpretation of the SSIA. As with the case of the 2012 Administrative Court ruling regarding "self-care", the court took precedent stance in declaring "self-care" was not to be considered basic need. It did not, however, specify what was to be considered "self-care". This was first specified in the SSIA's legal interpretation of the ruling, issued in 2016. According to several legal experts, including the independent government agency the Social Insurance Inspectorate, the legal interpretation of the SSIA was more categorical and extensive than the court ruling suggested. (ISF 2016:16, p.38, 39; Assistanskoll.se 2016b) Moreover, the SSIA did not interpret or apply the result until four years after the ruling. As such, juridification following court rulings are not necessarily the direct result of court rulings but happens in relation with the SSIA and their legal interpretation.

In summary, it is evident that the personal assistance act has undergone a process of vertical juridification. During the period studied, vertical juridification, in terms of more specified legal applications, more extensive caseworkers' guidelines, and precedential court rulings, have progressed. These findings correspond with what Brännström and others (see Lindblom 2004:237; Fransson 2016) have described as a structural trend of juridification of Swedish welfare legislation and application, leading general, goal oriented frame-legislation to become increasingly specified through legal norms implemented by courts and government agencies. (2009:157)

6.2 Formal contra Material Legality

The analysis has shown that development depicted by Bendz (2010) and others (Fransson 2016; Johansson 2011) has continued. My interpretation suggests that a formal understanding of the rule of law has become increasingly prevalent. As such, I hold that the meaning and knowledge attached to the concept has shifted towards formal legality. This is manifested not least by the ways the reform is descried, which problems are defined, which solutions are portrayed as viable to those problems, and which measures have been taken.

6.2.1 The SSIA and the Meaning of Rule of Law

In 2010, the SSIA described the inherent contradiction in the relation between material contra formal legality. This as the SSIA inferred that an increasing specification of assessment criteria could reduce the discretion of the individual caseworker and thus damage adherence to the underlying social-political goals of the legislation. (SSIA 2010:74) However, as times went by, the discussions regarding formal contra material legality became less frequent. Between 2010 and 2017, the vast majority of the material studied refer solely to a conception of the rule of law corresponding with formal legality. The material aspects of the concept were generally described as problematic. Discretion, legal and conceptual interpretation,

and incoherencies were depicted as having excursively negative impact on the rule of law. The material thus infers that the SSIA, with regards to the personal assistance act, valued measures enforcing formal legality. Similar conclusions are drawn by Erlandsson (2014:46-47), holding that SSIA caseworkers primarily follow standardized guidelines and seek to categories all cases and situation so they fit in their internal manuals and legal guides. Consequently, he argues, adherence to the specific context and the individual need of the applicant, and thereby the underlying goals of the personal assistance legislation, is often bypassed for a more literal interpretation of the legislation. Erlandsson concludes that caseworkers make decisions regarding welfare benefits which is characterized by "standardization and large degrees of detailed control" (Erlandsson 2014:51).

My interpretation is that the SSIA, both in their application and development process, increasingly have come to perceive the rule of law as primarily implying formal legality. As such, in relation to interpretative policy analysis, I hold that the practices of the SSIA, formed by the meaning and understanding of the organization, are reflective of this perception of the rule of law, stressing practices aimed to strengthen coherency, uniformity and transparency.

6.2.2 The Government and the Meaning of Rule of Law

With regards to the government, it seems their conception of the rule of law in many have been similar to the SSIA's. My contestation is thus that also the government have progressed to more predominately understand formal legality as the main concern and primary substance of the rule of law.

The government's letters of appropriation between of 2005 and 2006, as well as those between 2008 and 2010, did not task the SSIA to take any special measures towards strengthening formal legality. Rather, they tasked the SSIA to strengthen the rights for disabled, thereby appealing to the underlying social-political goals of the legislation. However, in a legislative proposal from 2009, the government asked the parliament to give the SSIA the responsibility to oversee and implement measures to strengthen uniformity in personal assistance allowances. This legislative proposal had been developed in response to several government investigations and reports, declaring that the regional differences in personal assistance allowances, allegedly resulting in both rising costs and legitimacy issues, were likely due to the vagueness of founding concepts and others unclarified regarding the application of the legislation. (SOU 2008:77, p.43; ESV 2011:11, p.126; SSIA Report 2011)

Although the government during this period, to a limited extend, tasked the SSIA to take measures towards formal legality, the general perception of the government was clearly that the personal assistance act was problematically vague, resulting in rising costs and incoherencies in the application process. Accordingly, in 2011, the government tasked the SSIA to "ensure uniform application and that the result application does not depend on the region". (GLA 2011) In contrast to the letters of appropriation from 2005 and 2006, none of letters after 2010 tasked the SSIA to pay

special attention to the social-political goals of the reform. On the contrary, every letter of appropriation onwards explicitly tasked the SSIA to take measures necessitating strengthened formal legality, often expressed in term of enhanced uniformity and coherence in applications, and minimizing regional discrepancies. These issues would, according to the government, be resolved by further clarifying the legislation and more specifically guide caseworker through the application process.

A demonstrative example of this logic is found in the 2016 letter of appropriation, granting the SSIA extra resources for a strengthened legal representative to "provide more guiding court rulings in areas of large caseworker discretion", so that the "[t]he correct person receive the correct compensation" (GLA 2016:7). My interpretation is that this statement is based on meaning and understanding associating the rule of law primarily with formal legality. This as the rationale embedded is the statement would not be compatible with a material perception of the rule of law. In a conceptual realm where material legality is perceived a vital aspect of the rule of law, the 'correctness' of a decision depends on the individual need of the applicant and the caseworker's interpretation of those needs in relation to the intentions of the legislation. The correct decision would imply a result relative to the specific context of the case, the caseworker's interoperation of the intentions of the legislation in relation to the needs of the user, etcetera. Consequently, it is my contestation that the government articulated a formal understanding of legality, where 'correctness' ultimately referred to uniform application of the legislation, minimizing caseworker discretion to eradicate differences in interpretation and application. According to my interpretation, this was the understanding constituting the practices of the government throughout the material analyzed.

As described, the focus of the SSIA and the government has, since around the late 1980's, increasingly, shifted towards formal legality, partly evidenced by the complete centralization of the whole agency. My analysis shows that that formal legality is continuously understood as highly desirable, whereas values associated with material legality are perceived as problematic and illegitimate. The knowledge and meaning ascribed to the values of the rule of law thus seem to have shifted. From previously balancing both formal and material legality, to more and more perceiving only formal legality as desirable.

6.3 Governing with the Rule of Law, through juridicalization

As the analysis has shown, the assistance reform has become increasingly juridified and that this development has been interlinked with the government and the SSIA progressively perceiving and applying the rule of law in terms of formal legality, rather than material legality. The question then is: how does this development and changes in understanding and meaning relate to the governance and cutbacks of the

assistance reform? According to the literature, as well as the government, the juridification of the assistance reform should imply a transfer of power away from the government, to the SSIA and the administrative courts. Based on the analysis, I will in the following scrutinize this conception.

6.3.1 Constituting the Rule of Law

As showcased by Bendz (2010) and others (Brännström 2009; Fransson 2016), the development towards a formal understanding of the rule of law, often resulting in juridification, has been an ongoing process since the late 1980's. Therefore, it is no surprise that the development has continued and that the SSIA and political actors progressively have come to understand formal legality as desirable and material legality as problematic. From the centralization of 2005 and for a few years onwards, my interpretation is that the SSIA considered it an overarching goal to strengthen formal legality in relation to material legality. This independent of government letters and tasks. However, the tradeoff between formal and material legality is a balance-act, more of the former usually implies less of the latter and vice versa.

My interpretation of the material is that the SSIA was aware of the tradeoff and sought to keep a balance between the two components. This is demonstrated by the 2010 yearbook. Therein the SSIA concludes that the social-political goals of the assistance reform, such as autonomy and influence over one's life, limit the possibilities to construct specified rules and guides for how to conduct individual assessment. This conclusion came as a response to the government's task to construct a 'scientific instrument' to reduce differences in application and make the assessment process more coherent. (SSIA 2010:73-74) My interpretation is that the SSIA perceived the rule of law as a balance between formal and material legality, and that both components had merit in the application of the legislation.

However, in none of the yearbooks to come does the SSIA ever acknowledge this balance and tradeoff again. On the contrary, in the 2011 yearbook, the SSIA accounted for several measures taken to strengthen coherency and reduce differences in application, thereby increasingly shifting balance towards formal legality. These measures were, according to the SSIA, a consequence of the governments task to "ensure uniform application and that the result application does not depend on the region" (GLA 2011; Assistanskoll.se 2011).

My interpretation of these events is that the SSIA, influenced by the government's explicit focus on coherency and uniformity, shifted their conception of the desirable balance between formal and material legality. In every letter of appropriation to come, the government tasked the SSIA to take measures aimed to strengthen formal legality. The SSIA, in turn, responded by doing just that, without again discussing the tradeoff between formal and material legality.

As such, I suggest that the meaning and understanding the SSIA ascribed the rule of law-concept, over the years, have been further pushed towards perceiving formal legality valuable. This by government tasks and propositions, continuously holding that formal legality is to be enhanced and that material legality is harmful and

problematic. My contestation is therefore that the meaning and understanding attributed to the rule of law through government's tasks and statements, have constituted the practices of the SSIA. As a result, the agency has come to increasingly share the government's concepts of the rule of law as ultimately referring to formal legality.

This is further illustrated in the 2015 yearbook where the SSIA responded to the government's task to "strengthen the rule of law in the application process" by taking extensive measures to ensure "justice in outcome". As previously stated, the meaning and understanding ascribed to "justice in outcome" seem to have been directly corresponding with the values of formal legality, seeking to achieve coherency, uniformity, predictability, and assessment results independent of the individual caseworker. (SSIA 2014:27; SSIA 2015:124; SIR 2012:11) My interpretation is that the SSIA perceived the task to "strengthen the rule of law" as equated with enhancing formal legality. Therefore, to comply with the government's intentions, the SSIA took measures they thought corresponded with the government's understanding of the rule of law concept, namely formal legality.

This example is demonstrative of how the government, over the years, has conveyed a meaning and understanding of the rule of law-concept, leading the SSIA to strive for an application process corresponding primarily with values of formal legality, thereby disregarding material legality. As such, the government have been constitutive of the SSIA's understanding and meaning of the rule of law, and have thereby also been constitutive of the practices of the agency. This has shaped and molded the SSIA to take measures adhering to formal legality, thereby further driving vertical juridification.

As held by Wagenaar (2011:4), meaning and understanding is constitutive of practice. Accordingly, I suggest that the government's understanding and meaning ascribed to the rule of law-concept have constituted also the SSIA understanding of the concept. Consequently, it has also constituted SSIA practice in terms of measures taken, thereby further driving the process of vertical juridification. So, how does this conclusion relate to governance and the cutbacks of the assistance reform?

6.3.2 Governing with the Rule of Law

As the analysis of the material demonstrates, the cost development of the assistance reform has frequently been described as connect with deficiencies in formal legality and too much emphasis on material legality. In 2007, the SSIA (2007:72) concluded that about 6000 million SEK could be saved if uniformity and coherency was strengthened. Approximately six months later, a government investigation proposed that the costs of the assistance reform could be damped by "making the individual need assessment clearer, more coherent, and in some cases more restrictive" (SOU 2008:77, p.414). In the 2015, the Social Insurance Inspectorate concluded that the "ambiguous" nature of some of the key concepts of the assistance legislation made it difficult for the SSIA "to make a coherent, transparent assessment". Consequently, the report stated, the granted hours for personal assistance "have increased each year

since the law was introduced" (SII 2015:9, p.13). The report thus linked the lack of coherency and transparency, i.e. insufficient formal legality, to cost increase. It thereby also subscribed to the understanding of further specification and clarification of the legislation, i.e. vertical juridification, as a means to lower costs. Similar undertandings were expressed in an SSIA report from 2016 stating that "several government investigations and other reports have pointed out that un-clarities in the legislation probably contribute to the cost increases" (SSIA 2016:11, p. 6). The government also explicitly adhered to this conception in a directive to a government investigation. The government there tasked the investigation to "suggest how to restrict personal assistance with regards to number of users and/or number of hours. It may mean to more precisely and clearer define when and for what assistance should be granted, for example by further specify concepts such as "other personal needs." (Dir 2016:40, p.22)

Evidently, there has been a widespread perception among experts and actors that unspecified concepts and applications, leaving room for caseworker discretion, drives the cost development. Accordingly, my interpretation is that the prevalent meaning and knowledge, within the government as well as the SSIA, have been that unspecified legal application, incoherencies, caseworker discretion, and other aspect related to material legality, are correlated with cost increases. Consequently, this understanding thus also infers that vertical juridification is correlated with cost decreases.

As held by Hajer and Wagenaar (2003), to understand practice and thus power, we must dig out and interpret the meaning and understanding constitutive of practice. Given the prevalent meaning and understating holding that increased vertical juridification is correlated with cost decrease, the government tasking SSIA to increase vertical juridification by strengthening coherency and uniformity, limiting discrepancy and caseworker discretion, implementing medical assessment tools, granting extra funds to clarify legal concepts, etcetera, should not be perceived as apolitical or disconnected from the cutbacks of the assistance reform.

By inferring meaning and understanding to the rule of law-concept so that it progressively came to signify and value formal legality, the government essentially steered the SSIA to take measures driving the personal assistance act towards increased vertical juridification. As juridification was understood as leading to reduced costs, guiding the development towards increased juridification, I hold, must be conceived of as governmental governance towards austerity.

Therefore, I suggest, to properly unpack the governance of the reform, we must understand the government's constitution of meaning and knowledge as the constitution of practice and therefor as expressions of discretion and power. This challenge both the government and the juridification literature, holding that juridification renders political actors powerless. However, by constituting the desirable perception and application of the rule of law, lending the SSIA to take measures further juridifying the reform, my analysis suggests that the government in fact govern through juridification. As such, juridicalization does not necessarily lead to lessened governmental power and discretion. Rather, the juridicalization process itself is a display of power and discretion.

Therefore, as oppose the juridicalization literature and government statements, I suggest that juridicalization does not necessarily infer the transfer of discretionary power away from government. Even though the cutbacks of the reform, on the face of it are the direct consequence of court rulings, SSIA interpretations and specifications, I have shown how these actions have been constituted by the government's meaning and understanding. By perceiving power and discretion not only as direct rulings and actions but also as the constitution of certain practices, I hold that the government have governed the austerity of the assistance reform. This not by taking any political decisions or change to the law's wording or intentions but by constituting practices inevitably leading to juridification. The juridification of the assistance reform, therefore, ought not to be understood as the transfer of power away from government, to the SSIA and administrative courts, but as an expression of government power. As such, juridification, in this case, should not be perceived as a zero-sum game. The juridification of the reform has indeed given courts and the SSIA power to interpret and apply the legislation, but not at the cost of government discretion, still constituting the conceptual limits for how the legislation is to be interpreted and applied.

7 Discussion and Conclusions

To summarize what the analysis has gathered with regards to the research questions, I draw two main conclusions.

First, the cutbacks of the assistance reform can largely be understood as a result of an increasing perception of the rule of law equated to formal legality, which has driven the development towards further vertical juridification. The development is concretized by the SSIA developing more clarifying legal interpretations, publishing specifying caseworker guidelines, crafting standardized assessment tools and procedures, forcing precedent court rulings to define concepts and norms previously susceptible for discretionary interoperation and an overall commitment to making the legal application of the reform coherent, standardized and transparent. The juridification process has furthermore been driven by court rulings not necessarily instigated by the SSIA, but still in its application leading to more restricted assessments.

Aggregated, these juridifying practices have led to today's situation where fewer are granted personal assistance, fewer hours of assistance are accepted, and more people loose assistance as they no longer reach the threshold of twenty hours of basic needs per week. Consequently, the cutbacks of the assistance reform have occurred without direct political ruling or decision-making. Ultimately, the cutbacks on the reform has been the result of bureaucratic applications and actions. According to scholarly literature and government rhetoric, this suggest that the juridification of the reform has rendered the government and the parliament increasingly powerless. Consequently, the reform, they argue, has become increasingly depoliticized as discretionary power has been transferred from politicians to courts and bureaucrats.

My second main conclusion however, with regards to what the juridification of the assistance reform entails in terms of power and governance, suggests that the bureaucratic applications and actions leading to cutbacks, did not take place in a vacuum. Rather, the cutbacks were constituted by meanings and understandings holding juridifying measures to be desirable and necessary, whilst also suggesting that the opposite, namely context-specific interpretation and discretion adhering to the underlying social-political goals of the legislation, were undesirable and problematic. I hold that the government have been part of constituting this perception, ultimately leading to cutbacks.

The conclusion that the government's constitution of SSIA practice should be regarded as governance, discretion, and politics, is further strengthened by the prevailing understating that juridification and cutbacks are correlated. The constitution of SSIA's meaning and understanding necessitating juridification must therefore, I hold, be regarded as political power and discretion. The government

thereby governed the reform, not through direct actions or decisions, but through the juridification process itself. Therefore, I hold that have power not been transferred, despite increased juridification. Power and discretion over the assistance reform have not been transferred, it has been transformed. Instead of utilizing power through direct political decisions and legislative change, the government have utilized power to constitute the actions of an independent government agency. Accordingly, in the case of the personal assistance act, juridification has not lead to depoliticization as it has not transferred power and direction away from political actors. It has merely changed how power is utilized.

7.1 Further Research

In this thesis I have shown that in the case of the assistance reform, juridification has not transferred power away from the government. Rather, the government have governed through constituting the practices leading to juridification of the reform. I have thereby, in opposition to both government rhetoric and scholarly literature, shown that juridification does not necessarily infer the transfer of power away from political actors. However, I can herein only draw conclusions based on the findings of the particular case of personal assistance. I cannot say anything about whether this dynamic and mode of governance is prevalent also in other juridified reforms and policy fields. Although this would not be surprising given the similarities the assistance reform share with other Swedish welfare legislations, additional studies would have to be conducted to make stronger general claims.

Moreover, this study does not suppose or deduct whether the governmental governance of the assistance reform has been a deliberative tactic or not. To deduce whether a certain practice is intended to reach a certain goal is in many ways a fruitless endeavor. As we can cannot, hold, separate between what stems from discursive structures and what was deliberative tactics, we cannot deductively trace the 'true' origin of an idea or action. The structure will always, to some degree, be constitutive of the tactics, and vice versa. As forwarded, the understanding of rule of law as formal legality, spawning juridification, has been broad structural development since the 1980's. As held by Habermas (1987:356-363), the juridification of polices is in many ways a built in mechanism of modern bureaucracy. Therefore, to claim that the government's constitution of the understanding and meaning of the rule of law as formal legality have been solely a deliberate political tactic would be to neglect structural discursive tendencies which to various degrees constitute the meaning and understanding of all actors. However, regardless the degree of deliberation of governmental governance involved in the cutbacks of the assistance reform, it is to be regarded as displays power. As forwarded by Wagenaar (2011:4), power is embedded within practices and actions, irrespective of explicit motives and tactics.

Conversely, I have in this thesis analyzed the mechanisms and logics of governance and not the intentions of governance. Accordingly, to answer questions regarding the degree of intentionality of the cutbacks of the assistance reform, other

types of studies would have to be conducted, posing different questions, and using different methodological perspectives. Here, I suffice to suggest that the government, deliberatively or not, have governed the cutbacks.

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