



Western Norway
University of
Applied Sciences

Right to hospital care and prioritisation from a law and politics perspective – experiences from Norway and Denmark

Henriette Sinding Aasen, Mette Hartlev and
Anne-Mette Magnussen

**“Right to Hospital Care and Prioritisation from
a Law and Politics Perspective – the Experiences
of Norway and Denmark”**

**(Henriette Sinding Aasen, Mette Hartlev
and Anne-Mette Magnussen),
European Journal of Social Security,
vol 17 No. 4, 2015, pp. 409-436.**

The 6th Conference of the European Association of Health
law, at the University of Bergen, 28 - 29 September 2017.

Context and background

- › Nordic universal healthcare systems based on solidarity
- › Tendency: Juridification and individualisation of rights
- › Challenges related to prioritization, waiting time and access to care – drivers of increased juridification



Law and politics – the relationship

- › Reflects a century old discussion about the appropriate relationship between law and politics
- › Concerns the proper use of legal instruments and bodies in addressing social challenges
- › Tends to be an intensely normative and ideological discussion
- › By focussing on the relationship between law and politics we are able to address these questions in a more explorative and empirical manner

A way to conceptualise the Relationship between Law and Democratic Politics

- › Modern societies can be described as consisting of several partly autonomous and legitimate spheres of political life
- › Central, basic and closely related features of modern western democracies
- › Based on human rights, democratic procedures and principles and values of the Rechtsstaat
- › But, law and politics have distinct institutional characteristics

- › Law: Binding norms

- › Politics: Democratic decision making- many different and often contradictory interests
 - › Law is an important political tool

RELATIONSHIPS BETWEEN LAW AND POLITICS

LAW

STRENGTHENED

WEAKENED

STRENGTHENED

**A. POLITICAL
JURIDIFICATION**

**C. POLITICATION OF
THE
LAW**

POLITICS

**B. JURIDIFICATION OF
THE POLITICAL**

D. HYBRIDIZATION

WEAKENED

STRENGTHENED	A. POLITICAL JURIDIFICATION	C. POLITICATION OF THE LAW
WEAKENED	B. JURIDIFICATION OF THE POLITICAL	D. HYBRIDIZATION

Main questions

- › How do legal regulations affect the relationship and interplay between law, politics and professional discretion in Norway and Denmark?
- › To which extent does the legal right to hospital care in N and D strengthen the legislator's ability to make binding decisions about individual rights and prioritization?
- › To which extent does a legal right to hospital care strengthen the political goal of securing equal access?
- › Are there any differences between N and D when it comes to individual rights and space for political and professional discretion?

Right to hospital care in Norway and Denmark

- › Both countries:
 - › Equal access to healthcare is a political goal
 - › Individual right to hospital care

Norway

- › Patient- and Users´ Rights Act Section 2-1 b:

«The patient is entitled to receive necessary healthcare from the specialist health service.» The right only applies if the patient can be expected to benefit from the healthcare and the costs are reasonable in relation to the effect of the measure (forskrift)

- › Detailed and binding prioritization regulation supplements the Act concerning “necessary” and expected benefit
- › Right dependent on professional judgment
- › Strong politically motivated juridification (binding on politicians and doctors)

Denmark

- › The Healthcare Act Section 7:

«Persons residing in the country have a right to the healthcare regulated by the Act.»

- › The Act does not outline the content and limitations of individual rights, which will depend on political and professional decisions
- › Politicization/professionalization of law (rights depend on political /professional decisions)

Access to hospital care: Broader context

- › Legal, political and professional aspects
 - › Delimitations of the right (by detailed regulations in Norway, by political/professional judgment in Denmark)
 - › Cost efficiency considerations (more hidden in the Danish regulation)
 - › Content of the right (more general in Denmark)
 - › Waiting time (individually decided in Norway, more standardized in Denmark)

Conclusion (1)

- › Higher level of juridification in Norway, and a more individualistic regulative approach
- › The Danish regulation is more general and standardized
- › Regulations in both countries depend on medical discretion for its implementation
- › Wide scope for political discretion in both countries

Conclusion (2)

- › Individual rights are highly politicized and «weak» in both countries
- › The Danish regulation seems more «policy-friendly», providing politicians more space for administrative direction and steering
- › Despite some differences in the legal regulation, we did not find major differences in patient security and predictability concerning access to hospital care in N and D

How we proceed to gain more knowledge about implications of legal regulations

Vignette survey: Denmark and Norway

A vignette is a hypothetical situation, to which research participants respond. In our case the vignettes are formulated as two references with related questions. By answering the questions the cardiologists reveal their perceptions, values, social norms or impressions of events.

- › The study aims at studying similarities and variations in the assessments that doctors make when handling references to the specialist health service in Norway and Denmark. The survey is a vignette survey consisting of two vignettes. The vignettes are designed as a reference and related questions.
- › We will study how cardiologists in both countries assess patient needs for health care from the specialist health service and what time limits they set for treatment / investigation.
- › We are very interested in expanding our Nordic / European cooperation to gain more knowledge about:
 - › how different countries regulate access to specialized health care
 - › the relationship between professional discretion and legal regulation