

Administrative Reforms and the Rule of Law: Case-Law Analysis as an Inspiration for the Slovene Reorganisation of Social Work Centres

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<https://doi.org/10.31297/hkju.20.4.1>

UDK 35.07:364-3(497.4)

Original scientific paper / izvorni znanstveni rad

Received / primljeno: 01. 07. 2020.

Accepted / prihvaćeno: 01. 09. 2020.

Administrative reforms often aim to implement a public governance model suitable for a particular task, but they frequently lack empirical basis. This paper analyses the rel-

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evant case law following the decisions of social work centres in Slovenia in order to gain insight into the lawfulness of their work as grounds for their reorganisation. An analysis has been conducted of 213 higher court judgments issued over the past five years and the findings show that case law regarding social work centre cases at the highest courts in Slovenia is rather consistent, but reveals some gaps to be bridged in the future, e.g. the recognition of participative procedural standards and more flexible organisation. The case law in question shows that field legislation can be more principle-oriented and related reforms can be carried out in Slovene social work centres and beyond.

Keywords: social work centres, Slovenia, administrative procedures, case-law, rule of law, reorganisation.

1. Introduction

Public administration (PA) is one of the most comprehensive and substantial societal subsystems. As such, it functions as an aggregate of various administrative bodies organised both within and outside the state administration as holders of public authority, which guarantees their professional and apolitical conduct. These bodies mainly differ in organisational, financial, institutional, and other features, based on their dual competence of providing public services and support to citizens as parties, but also issuing authoritative individual acts/decisions in administrative procedures (Kovač, 2006). Examples of such public sector institutions are social work centres (SWCs) – social care and welfare organisations with a primary and central role in the system of social protection which provide diverse tasks and services to individuals, families, and communities in need and distress (Žnidar, Rape Žiberna & Rihtar, 2020, p. 150). For several decades there were 62 SWCs in Slovenia, but since the reorganisation of 2018 there have been 16 regional entities with further local units across the country. SWCs are established and financed by the government as public institutions, pursuing their tasks, among other things, as holders of public authority with powers delegated to them by the state in order to perform specific authoritative tasks in a more professional and efficient manner. Besides performing tasks as holders of public authority, SWCs pursue services of social prevention, first social assistance, personal assistance, support for victims of crime, cri-

sis accommodation, and the like.¹ This paper investigates SWCs in their role as holders of public authority.

The work of SWCs is substantively and procedurally framed by sector-specific legislation and the subsidiary application of the General Administrative Procedure Act (GAPA).² Applying the GAPA and implementing specific rules only if the sector requires a reasonable deviation in relation to the GAPA reflects the principle of the equal protection of rights regardless of the administrative field, as stipulated by art. 22 of the Slovene Constitution.

As is the case with other administrative systems and types of bodies, Slovene SWCs are subject to continuous change and discussions about improving their work, the lawfulness of their decisions, and the effectiveness of their organisation. In view of this, public administration reforms (PAR) are seen as attempts to reorganise administrative institutions, specifically SWCs, by changing their structural arrangements and procedures.³ These goals have also been part of the governmental reorganisation introduced in Slovenia by the reform of 2018. The strategic documents that served as the basis for the reorganisation include the Resolution on the National Social Assistance Programme 2013–2020,⁴ the Act Amending the Social Assistance Act⁵ and associated implementing acts, e.g. the 2017 Decree Determining Social Work Centres, and the Seats and Territorial Jurisdictions Thereof, and Determining the Units and Areas of Operation of Social Work Centres. Consequently, SWCs were formally reorganised in October of 2018, when political rather than professional reasons were put forward. As the reform of 2018 lacked the necessary empirical grounds, the analysis described in this paper intends to provide some additional

¹ See art. 49. of the Social Assistance Act. In Slovene: *Zakon o socialnem varstvu, ZSV*. Official Gazette of the RS, No. 54/92 and amendments.

² In Slovene: *Zakon o splošnem upravnem postopku, ZUP*. Official Gazette of the RS, No. 80/99 and amendments. The GAPA applies not only in classical authoritative single-case decision-making, such as deciding upon social transfers, but also *mutatis mutandis* in any authoritative issues grounded in public law where a specific law does not pursue specific procedural rules.

³ More in Egeberg & Trondal, 2018; Greve et al., 2019; Kickert & Van der Meer (2011) – reform is defined as a continuous process of sequential events, a series of accommodations, adjustments and adaptations; an ongoing accumulation of small, slow and gradual changes, with certain more or less important “crucial events”, but not one single, radical, one-off change moment. Because each reform involves different stakeholders and has a significant impact on them, it has to be carefully planned, implemented and evaluated.

⁴ Official Gazette of the RS, No. 39/13 (*ReNPSV13-20*).

⁵ The amendment on SWC reorganisation, known as ZSV-H, is published in the Official Gazette of the RS, No. 54/17.

data-based grounds to either justify or reject certain specific elements of the reform. Namely, the reorganisation of 2018 has yet to be evaluated, but we wish to offer an objective criterion of the rule of law (RoL) for this, as revealed through the case-law analysis of SWC procedures and acts challenged before the courts. We believe that such case-law analysis can provide valuable insight into procedural and organisational issues that are not optimally regulated. Therefore, the results of the study can serve to improve these elements. Certainly, the phenomenon of SWC reorganisation is complex and has not been holistically evaluated yet, though some scholars have made efforts to address it.⁶ Prior research (Žnidar, Rape Žiberna & Rihtar, 2020) shows that the reorganisation did not primarily result in a change of social benefit procedures. Nevertheless, those issues should not be overlooked, because interviewees have pointed out the importance of the changes regarding issues of financial social support and speculated that transferring some tasks to a specialised unit might prove a good solution. Therefore, a case-law analysis in conjunction with lawfulness and the reorganisation of Slovene SWCs seems useful.

The main purpose of this article is to provide an analysis of objectively gathered judicial decisions of higher courts addressing first instance decisions of SWCs in their four main domains – determined by the substantive laws covering their functions – for the period from 2015 to 2019. This will provide us with insight into the state of the art of lawfulness and broader RoL in Slovene SWCs in order to design proposals for further improvements of their work, while also taking into account the need to implement other principles of good public governance, such as participation, transparency, and efficiency. We believe that the design of the organisational structure should follow the definition of the functions of a particular body, not the other way around.⁷ Two main hypotheses were designed and verified within the scope of our research:

H1: Lawfulness as a core principle of the RoL is a dominant principle determining how SWCs function in relation to parties when issuing authoritative administrative acts.

H2: Guaranteeing the RoL elements of lawfulness, i.e. substantive non-arbitrariness and equality, and procedural fair trial should be the key guideline of any SWC reorganisation.

⁶ See Rape Žiberna et al., 2019; Rape Žiberna et al., 2020; Žnidar, Rape Žiberna and Rihtar, 2020.

⁷ More in Kovač, 2006; Drucker, 2001, Management Challenges for the 21st Century.

The structure of the paper is as follows. First, the introductory chapters provide an insight into the functions of Slovene SWCs, how they are regulated, the understanding and importance of pursuing the RoL within SWCs, and the institutions watching over the implementation of the RoL in the case of SWCs. Second, the methodology of the research is described, taking into account that case-law analysis is a key source when it comes to identifying the meaning and state of the art of lawfulness within SWCs. Results of the relevant case-law analysis (213 decisions in total, 167 of which were issued by the Higher Labour and Social Court) over the last five years are presented and discussed by verifying the initial two hypotheses. Finally, conclusions are drawn regarding the key directions for minor yet necessary improvements to the legal framework of administrative procedures conducted by SWCs and for a more holistic reform thereof.

2. Administrative Procedures as a Form of Issuing SWC Decisions Within the RoL

Administrative procedure is generally seen as an instrument that ensures the protection of the rights of individuals on the one hand, and the implementation of public interest as defined by law on the other. Balancing these two goals is the ultimate purpose of PA, ensuring that authoritative decisions are legally based and sound (Kovač, 2020) and comply with the principle of the RoL, which, amongst other things, limits the possible arbitrariness of authoritative decision-making (May & Winchester, 2018). From a procedural point of view, there are standards of accessible, clear, and predictable legislation, equality before the law, limited discretion, and the executive that is supervised by means of judicial and democratic parliamentary review, while substantive aspects are also closely related to this because fair procedure is part of any adopted rule or decision.⁸ As defined by the Venice Commission (2016), the RoL is conceptualised by six main elements: legality of regulatory process, legal certainty, prohibition of arbitrariness, independent and effective judicial review, fair

⁸ For details, see May and Winchester (2018, pp. 8, 37 and related) who follow Bingham's thin/procedural and thick/substantive definition of the rule of law. The "thick" definition of the RoL comprises four characteristics in addition to the four listed above, i.e. protection of fundamental human rights, effective resolution of disputes, fair trial, and international compliance.

trial, and equality before the law. The RoL is the umbrella principle in PA that “encompasses a substantial number of other principles, most of them having their own independent existence” (Janderová, 2019) in pursuing the ideal of good governance and representing a fundamental premise of contemporary democracies in general. This also applies vice-versa in that the procedural dimensions of the RoL, in combination with the concepts of good public governance and good administration, are reflected in particular through legality or lawfulness as one of the core principles of administrative law and PA in Europe (Galetta et al., 2015, pp. 17ff; cf. Statskontoret, 2005, p. 23; Herweijer, 2007). According to the principle of the RoL, any action of administrative authorities must be based on law; competent bodies must act (only) in accordance with the law and apply the rules and procedures laid down in legislation. The principle of legality or lawfulness as a corollary to the RoL requires that actions of the administration occur under and within the law; any limitation of the exercise of rights must be provided by law and the essence of those rights must be respected. With regard to SWC competences and tasks, the following criteria are the most relevant in analysing case law as applied in further analysis:

- (i) lawful measures based on a specific legal act, including *non-arbitrariness* and *equality*;
- (ii) fair trial with the right to be heard, reasoning of decisions, and other rights of defence.

Considering that the authoritative decisions of SWCs affect the most intimate aspects and fundamental values of an individual's life, such as family, safety, dignity, and equality, any irregularity, inconsistency or misuse of power can be seen as injustice or even repression, rather than a mere error. According to the findings of Žnidar and his colleagues (2020, pp. 156–157), in order to fulfil those expectations in administrative procedures SWCs should follow the concept of original working assistance projects that necessarily include home visits and joint planning of collaboration, support, and assistance. Lawfulness, in its procedural as well as substantive dimension from a bottom-up perspective, is hence a crucial means to ensure such outcomes in decision-making procedures conducted by SWCs. Besides the horizontal dimension, lawfulness in administrative practice of SWCs is also implemented vertically, by bonding with (at least) two other RoL sub-principles (Mavčič, 2009) – the right to appeal and use other legal remedies (art. 25 of the Slovene Constitution) and judicial review of administrative acts (art. 157 of the Slovene Constitution). Lawfulness in SWC practice manifests itself, first and foremost, in the

boundaries of SWC powers, defined by hard law. They can and have to act *ex officio*, i.e. conduct inquiries, gather evidence, and take action in accordance with the tasks entrusted to them. For lawfulness to work in practice, it is implemented by means of administrative procedures. According to Rusch (2014), “the legal doctrine of the lawful administrative act rests upon the notion of the act having been shaped according to established doctrine.” Furthermore, for SWCs to work lawfully, their discretion, when mandated, must be exercised within the limitations of hard law rules. In this context, administrative discretion can be seen as a means of delivery of administrative services to the people. Several academics (Kelly, 1994; Sandfort, 2000; Sowa & Selden, 2003; May & Winchester, 2018) have studied the impact of the discretion of social service bureaucracies used by street-level bureaucrats in the delivery of services to the parties.

Despite the fact that SWC tasks include both counselling and social prevention, as well as execution of authoritative powers delegated by the state, it is this last that requires both the following of hard law rules set by the state and at the same time a direct personal interaction with people, using modern concepts and methods of social work. Godec, Horvat, Pirnat, Šturm and Trpin (1993, pp. 68–71) claim that the executive function of PA covers not only the implementation of statutory rules, but also its upgrades and most needed changes (known as the regulatory feedback loop), thus distinguishing between the executive and the curative function of PA. Such a distinction largely applies to SWCs, emerging from the premise that the curative function represents the functioning of public authorities being close to people as a form of street-level bureaucracy. There is an ongoing debate in Slovenia on the suitability of delegating authoritative public functions to SWCs, claiming that their preventive and counselling roles are, or at least potentially could be, in conflict with the authoritative role of decision-making in administrative procedures (Kovač, p. 323), and consequently those tasks should mainly be delegated to the courts or in the case of some tasks to other holders of public authority with competences close to the social welfare system.⁹ On the other hand, Leskovšek (2017, p. 37) claims that the dilemma between control and support has been irrelevant for a long time because modern social work delivers the techniques and concepts to overcome such double roles, which enable professionals to manage the power that derives from their mandate. How-

⁹ Such as the Employment Service of the Republic of Slovenia (RS), Pension and Disability Insurance Institute of RS, administrative units, or housing funds (see Žnidar, Rape Žiberna & Rihtar, 2020; cf. Kovač, 2006).

ever, in administrative procedures SWCs implement decisions regarding rights arising from public funds (child benefits, financial social assistance, income supplement for the elderly or disabled, kindergarten payment subsidies, school meal subsidies, apartment rent subsidies, health insurance payments, exemption from payment for institutional care, and family benefits). Prior to April 2019, when those competences were delegated to the courts, SWCs also made decisions with regard to the following family issues: the removal of a child from the parents, placing a child in an institution, foster care, adoption, and guardianship. With clearly defined and formally standardised procedures based on legality and the protection of public interest, and consequently a relatively rigid and hierarchical organisational structure compared to other social care and welfare organisations, SWCs seem to be the prototypical representatives of the Neo-Weberian State, particularly by striving to follow the principles of openness and transparency, accountability, responsibility, inter-institutional networking, and result-focusing, which constitute the “neo” elements of the traditional Weberian *Rechtsstaat*, tailored to provide adequate answers to the multiple specifics and challenges of contemporary reality (more in Lynn, 2008; Rusch, 2014). Every task executed by administrative bodies, not only the authoritative ones, should be done in accordance with the law.

Lawfulness is one of the principles of good public governance that has grown or diminished in importance either from a historical perspective (i.e. in the context of the development of different public governance models) or according to the type of PA bodies in which a specific governance principle prevails. The historical perspective is reflected in the administrative tradition, i.e. the pattern of the style and substance of PA in a country or a group of countries which can be seen as a composition of both ideas and structures (Painter & Peters, 2010, pp. 6ff). The development of key public governance models runs mainly in line with the formation of specific administrative traditions. The most developed models are the (Neo-)Weberian, the (post) New Public Management, and Good Governance or New Good Public Governance Models.¹⁰ Each of these is characterised by a set of different principles. Lawfulness, as one of the key postulates of administrative systems in Central Europe, is the most important in the (Neo-)Weberian sense.

¹⁰ Including submodels such as Digital Era Governance, Collaborative Governance, Network Governance, New Public Service, Intelligent Governance, and other alternative/hybrid models (Bevir, ed., 2011; cf. Kovač & Sever, 2015; OECD, 2017; May & Winchester, 2018, pp. 187ff; Tomažević, 2019).

Control over administrative action as a safeguard for the implementation of the RoL represents a crucial dimension of lawfulness in contemporary democracies, regardless of the prevailing governance model. Administrative procedures and the resulting individual administrative acts delivered by SWCs are subject to review by administrative and judicial bodies. Hence first instance administrative decisions can be reviewed in appellate procedures at the sectoral Ministry of Labour, Family, Social Affairs and Equal Opportunities (Ministry), while legally completed decisions of the Ministry can be challenged in two different judicial procedures, depending on the nature of decision. Decisions involving social rights (social and family benefits, scholarships, and the like) are challenged at the first instance at the Labour and Social Court and at the second instance at the Higher Labour and Social Court (HSC). Disputes of administrative nature fall under the competence of the Administrative Court (AC, with the status of a higher court of the first instance). Judgements of the HSC and AC can eventually be challenged at the Supreme Court (SC) as the highest court in the judicial hierarchy.¹¹ According to Kovač (2011; cf. Rusch, 2014), administrative actions should be understood as part of wider administrative processes, as a system of consciously directed social interactions, i.e. normative actions based on values and transformation from *sein* to *sollen* (“how it is” versus “how it should be”). However, there is and should be a distinction between the administrative and the judicial phase, whereby the former is conducted by civil servants and the latter by judges, making sure that administrative procedures are conducted within a broader legal framework.

3. Research Framework on the RoL in the Context of SWC Operations and Organisation

3.1. Case Law as a Source for Lawfulness and the RoL

There are several different quantitative and qualitative methods that can be used to analyse the implementation and manifestation of the RoL, legality or lawfulness in PA practice, both substantively and in terms of

¹¹ Considering that the Constitutional Court, as *de facto* the highest court in RS, holds a *sui generis* position, distinct from regular judicial hierarchy in RS. This court is also competent for social affairs, yet mainly when challenging sectoral legislation as not being compliant with higher acts, and individually when an applicant claims a breach of constitutional rights through a constitutional complaint.

specific procedural sub-elements of the RoL. Considering our hypotheses, case-law analysis seems to be the optimal method to study lawfulness based on its recent chronological development. Case law – as the outcome of judicial review – is in fact perceived as an indicator of the (non) lawfulness of administrative procedures. In Slovenia and other countries belonging to the continental European legal framework, case law is not a formal or primary legal source; nevertheless, it is highly important for a uniform application of the law.

The argumentative dimension as the crucial quality of judicial decisions from a bottom-up perspective reflects the condition of administrative decisions made by SWCs and the state of implementation of the RoL, in particular its sub-principle of lawfulness, deriving from the authoritative position of SWCs in the PA system. “To establish the lawfulness of a given administrative decision (we should) examine the limits of the jurisdiction of the administrative authority and interpret the statutes which confer the powers used by the administrative authority” (Herweijer, 2007, p. 18). In other words, SWC actions should be predictable and non-discriminatory, fair and reasoned, while unlawful decisions should be submitted to the scrutiny of the courts. Case-law analysis seems to be a key method in common law traditions to determine not only what law is, but also to observe how it is reflected in society. In continental legal traditions this method can also be quite useful considering its scope, particularly in PA as part of the executive branch of the state, vertically from policy-making to street-level bureaucracy. Analysing its content brings the rigour of social science to understanding case law, creating a distinctly legal form of empiricism (Hall & Wright, 2008, p. 64). According to Rusch (2014), the creation of rules and principles of administrative decision-making has often been the result of the jurisprudence of the courts and, consequently, efficiency in delivering public services is legitimate if it falls within the procedural and entitlement parameters set down by law. For the Slovene PA as an example of the *legislator-centred* tradition with a very detailed GAPA, a formalist, almost court-like approach to administration, viewed as a mere executant of the law (Statskontoret, 2005, p. 75), should be a requirement of every administrative reform’s *ex ante* and *ex post* evaluation. Furthermore, as Janderová (2019) claims, in post-Communist countries with the legacy of extreme legal formalism, case-law analysis should not be conducted (only) by means of a linguistic and textual approach. In this context, the perspective of teleological argumentation with the implementation of legal principles in case law is necessary. From this integrative perspective, analytic studies of case law as an independent variable can be

carried out, with the aim of determining the influence of case law on other social and economic conditions (Hall & Wright, 2008, p. 86), such as the intersection of law and organisational theories in the case of this paper.

3.2. Research Design to Identify RoL Elements in SWC Acts

As an interdisciplinary and integrative science, PA uses the methodology of both quantitative and qualitative paradigms, based on the recognition that one-sided perspectives do not provide holistically verifiable conclusions. Consequently, for the purposes of this paper and regarding our hypotheses, case-law analysis was carried out using a mixed method approach, specifically the explanatory sequential design within mixed method designs (see Creswell & Plano, 2011). Furthermore, case-law analysis, in addition to other legal methods “... allows the researcher to deal with larger numbers of cases, which provides a truer measure of broad patterns of case-law ... and helps to sort out the interaction of multiple factors that bear on an outcome in the legal system” (Hall & Wright, 2008, p. 65).

In the first phase, data was gathered from the SC case-law database “sodnaprakska.si” for the period from 2015 to 2019. A five-year period was chosen because it is long enough for long-term trends in case law to be observed and detected, while case law itself remains up-to-date and applicable. Based on the keyword “CSD”, which stands for SWC and is widely used among the Slovene general and professional public, 409 judicial decisions of the HSC and AC were found. Out of these,¹² 213 concerned first instance decisions of SWCs and were hence suitable for further analysis in terms of our hypotheses. The selected decisions were classified according to the following parameters: (a) year of the decision; (b) substantive law applicable according to the field of the decision; (c) the nature of the violation claimed by the applicant (procedural, substantive or factual); (d) success of the lawsuit (granted or denied); (e) type of court; and (f) determining whether the dispute was taken to the SC and its success there. The next step was to conduct a quantitative analysis on the basis of parameters, i.e. variables, and a further qualitative analysis

¹² There are several reasons why these 196 out of 409 cases were excluded, but mainly because an appeal to the HSC is related to first instance procedural acts and not substantive judgments. In many cases the SWC was a party or its representative (e.g. guardian of non-competent persons), while judicial review was initiated in relation to other bodies' decisions.

was conducted on the basis of the empirical results. The research method chosen was content analysis. Consequently, in the predominant qualitative phase significant factors of the case law in the analysed period were explained from the perspective of lawfulness. Special consideration was extended to all unexpected and outstanding factors, starting with the general frequency distribution of the variables, analysis of the dispute success rate, and detailed review of HSC decisions, because AC decisions were found to be less suitable for further analysis. Finally, SC decisions were taken into consideration by means of a classical analysis of each successful revision as an important precedent for further SWC practice.

4. Results of Case-Law Analysis regarding Lawfulness of SWC Administrative Decisions

In the empirical phase the collected data were statistically analysed to emphasise the main case-law characteristics from the twofold perspective of substantive and procedural lawfulness. As initially put, the judgments were analysed regarding substantive issues, particularly legal grounds for a decision and non-arbitrary and equal application of substantive law, as well as in accordance with the principal four fields of SWC work based on four main legal acts,¹³ while procedural issues addressed the principles and rights related to due process or fair trial.

At first glance, unstable trends are revealed by the variables presented in Table 1, although there are some constants, such as the fact that two thirds of the breaches claimed were of substantive nature and only one third referred to unfair trial. The year 2019 seems to be particularly specific for Slovene case law regarding SWC decisions. A possible reason is the delegation of competences regarding decisions on family issues from SWCs to courts in 2019, which still remains to be evaluated systematically. The number of disputes decided by the AC and the HSC dropped dramatically, while no decisions at all were dealt with at the SC. Approximately one fifth of the cases was conducted at the AC and the rest at the HSC (roughly 40 per year). Around 10% of these were further disputed at the SC. Over the

¹³ These are the Social Assistance Payments Act, Official Gazette of the RS, No. 61/10 and amendments; Exercise of Rights from Public Funds Act, Official Gazette of the RS, No. 62/10 and amendments; Parental Protection and Family Benefits Act, Official Gazette of the RS, No. 26/14 and amendments; Social Assistance Act.

5-year period in question a downward yet unstable trend was noted in the number of granted lawsuits, with the exception of 2016. Nevertheless, approximately 20% of lawsuits, appeals, and revisions were granted.

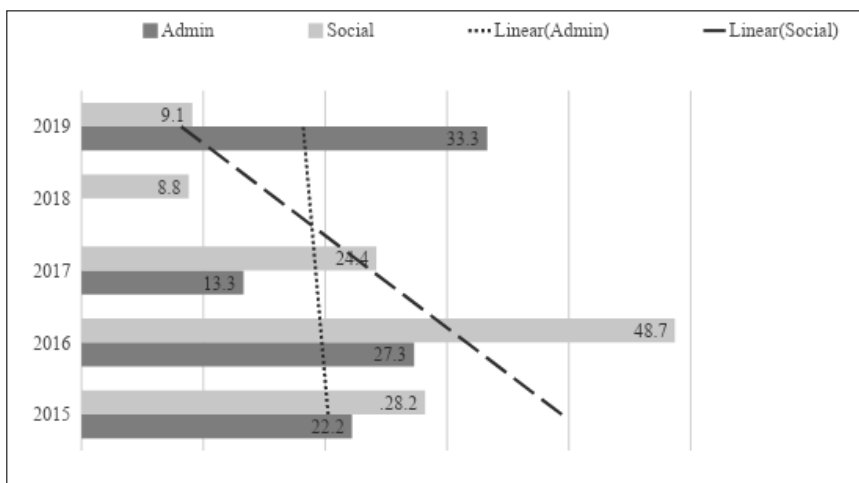
Table 1. *Frequency distribution of the selected variables in the judgments concerning SWC administrative decisions at the AC, HSC and SC in the period 2015–2019*

Variable Year	No. at AC & HSC	AC % v HSC	Procedural %	Substantive %	Factual %	Granted %	Pursued at SC %	Granted at SC %
2015	48	19	13.5	76.0	10.5	25	17	12
2016	50	22	22.0	66.0	12.0	48	16	50
2017	48	31	29.2	54.2	16.6	23	8	0
2018	42	19	28.5	62.0	9.5	7	7	33
2019*	25	12	24.0	72.0	4.0	12	0	0
Average	All 213	21	23	66	11	23	9.6	19.2

*Figures in bold indicate deviations in various variables.
 Source: own research.

The success ratio of lawsuits at both courts (AC and HSC) was analysed in the next phase. With plaintiffs winning almost half of the cases at the HSC, the year 2016 stands out significantly again, not to mention that two out of four positive decisions of the SC were issued in 2016 as well. In the vast majority of these disputes, misapplication or incomplete application of substantive law was established. The success rate at the AC was lower over the whole period under analysis, with no positive decisions in 2018 and one third of granted applications in 2019. Given only three decisions in that year of which one was in favour of the plaintiff, each decision makes a large difference in the overall success rate. In order to determine the reason for such a result, Figure 1 presents the trend lines for both courts by year. The trends differ insofar as there is a rather constant descending line at the HSC, but an undescended line at the AC, without an evident or logical explanation.

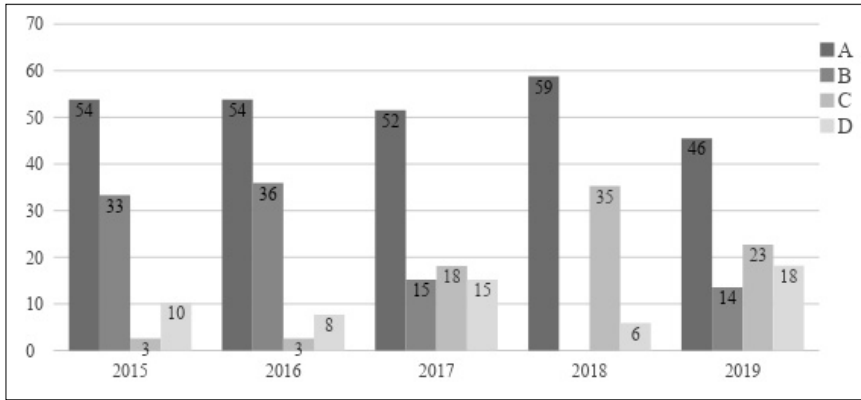
Figure 1. Disputes with a granted lawsuit or appeal in % by year and court with a trend line



Source: own research.

HSC judgments were examined further because they represent almost 80% of all cases and had been scrutinised already by the lower social court (see Figure 2, regarding 167 judgments in the last five years). Decisions were classified into four categories based on substantive law and the (sub-) field predominant in the cases challenged at court. Here, with half of all cases annually, the Social Assistance Payments Act dominates strongly, which shows its lack of clarity and the intention to strive for non-arbitrariness. Instead, discretion and non-uniform decisions have been quite common in all recent years. In view of this, in relation to the Social Assistance Payments Act, the plaintiffs invoke legal breaches in decision-making that disregard their specific personal circumstances, followed by claims of unlawful use of the discretion right. However, a comparison with the Exercise of Rights from Public Funds Act, amended to mitigate the weakness of the earlier law, shows that this is not an inevitable result. This act also deals with social transfers and had previously posed a problem, but judicial disputes in the respective period of last five years decreased significantly. This can indeed be attributed to its improvements. It entered into force in 2012, continuing to cause dilemmas, but the longer the law was in force the less it became disputed, which indicates that SWCs do understand the provisions of the law and issue their decisions in compliance therewith, above all taking into account its equal interpretation.

Figure 2. Legal basis and field regarding HSC judgments (n=167) in % by year



*Legend of substantive laws/fields): A – Social Assistance Payments Act; B – Exercise of Rights from Public Funds Act; C – Parental Protection and Family Benefits Act; D – Social Assistance Act.

Source: own research.

Considering the plaintiffs' success rate regarding their substantive matter, the analysis shows an ongoing decline in success throughout the period, reaching an all-time low in 2019 when all cases were denied, with the exception of the Social Assistance Payments Act (Table 2). Considering the cases derived from the Social Assistance Payments Act, the content analysis of the relevant judgments generally shows a changing trend in terms of the nature of disputes. This can be observed in the shift from the majority of cases addressing the implementation of cogent and explicit hard law rules in the beginning of the period under consideration, towards filling legal vacuums and rule-making with teleological interpretations halfway through and, finally, dealing predominantly with issues of decision-making on the basis of administrative discretion. Although half of the disputes based on the Exercise of Rights from Public Funds Act in 2015 and 2016 were granted, none were granted in the following years. The reason for the 100% success rate of the disputes based on the Parental Protection and Family Benefits Act in 2015 is to be found in the fact that there was only one dispute and it was decided in favour of the plaintiff.

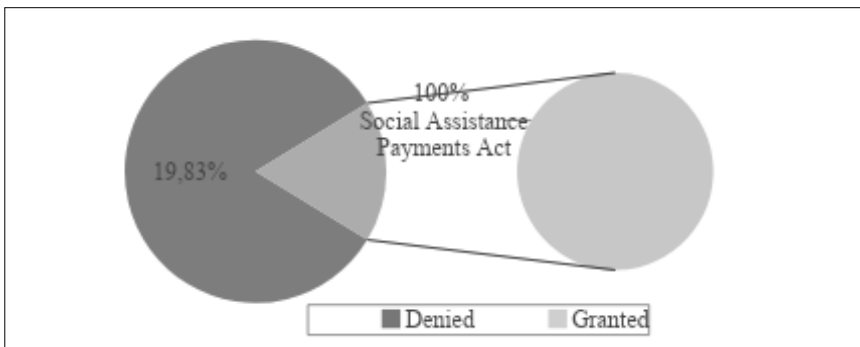
Table 2. Case success rate by field of HSC decisions in % by year

Law	Year				
	2015	2016	2017	2018	2019
A: Social Assistance Payments Act	10	52	12	10	20
B: Exercise of Rights from Public Funds Act	54	50	0	0	0
C: Parental Protection and Family Benefits Act	100	0	17	8	0
D: Social Assistance Act	20	0	20	0	0

Source: own research.

Finally, as demonstrated in Figure 3, in 2015–2019 there were 23 disputes at the SC. The four that were granted were grounded on the substance of the Social Assistance Payments Act, tackling substantive and procedural lawfulness.

Figure 3. SC judgments in 2015–2019 (n=23)



Source: own research.

SC case no. VIII Ips 310/2015 of 9 February 2016 addressed the issue of retroactive interference in legally final administrative decisions. SWC retroactively changed the decision on financial social assistance based on new information regarding the income of the party and demanded the repayment of unduly received funds. The courts of first and second instance claimed that such a decision would be legally justified only in the case of extraordinary legal remedies under the GAPA, which was not the case. The SC ruled that besides substantive rules, the Social Assistance Payments Act contains procedural provisions that are *lex specialis* in relation to the GAPA, hence, retroactivity was permissible. In case no. VIII

Ips 216/2016 of 24 January 2017, the SC ruled that monetary damages recognised by the European Court of Human Rights should be taken into account as an individual's income when deciding on the right to financial social assistance. Furthermore, the question of income taken into account was addressed by SC judgment no. VIII Ips 298/2016 of 18 August 2016, in which the court ruled that the SWC had breached rules by considering the party's disability pension both as his periodic income and bank account savings, although the disability pension should only be taken into account once, as periodic income. Such precedential decisions on how to interpret hard law rules at the first administrative instance contribute to reducing the problem of fairness of administrative decisions. According to Rusch (2014), PA has a stake in the procedure when it acts as decision-maker but must protect the public interest and simultaneously the rights of the individual. Lastly, in case no. VIII Ips 112/2018 of 16 April 2019, the issue of notification of administrative decisions was argued. Because the individual administrative act could not be served to the party, the SWC applied the fiction of notification of the decision according to the law, which was confirmed by all lower instance authorities. Nonetheless, the SC ruled that merely complying with the statutory provisions was not sufficient, finding that the party did not have a home mailbox at the notification address and therefore the fiction of notification at that address could not be established. The obligation of notification is recognised in many EU member states; however, it is regulated in different ways. In fact, only in a few countries does legislation cover situations in which notifications cannot be made and Slovenia is one of these (more in Statskontoret, 2005, pp. 48–51).

5. Discussion

Considering authoritative SWC tasks, which are performed mainly through administrative procedures in Slovenia, and their regional (re)organisation that should support the access of the parties to SWCs, recent case-law analysis shows several gaps. These are, however, inadmissible when striving for lawfulness and the RoL, both in procedural and (even less so) in substantive terms. Especially when the organisational structure of administrative authorities has undergone reform, as was the case with Slovene SWCs in 2018 to enable full recognition of good governance and the Neo-Weberian model, lessons learned from case-law should be seen as crucial input for data-based decision-making.

As can be seen in Table 1, the cases considered vary considerably, but on average some general conclusions can be drawn. First, as expected and as is evident from comparative studies conducted in other countries and areas (cf. Kovač, 2015; Koprić et al., 2016), substantive issues far exceed procedural ones. This seems to be true mainly in the case of unclear laws (e.g. regarding what income is to be taken into account) and questions of equal interpretation thereof. Considering that substantive laws, new laws, or significant amendments to existing laws under consideration largely entered into force in the era of the global economic crisis in 2010–2012, the case-law analysis of HSC judgments shows that the lawfulness of the institutions enforced as part of political efforts to reduce public expenditure and diminish PA was regularly subject to judicial review. Though it can be seen that new social legislation was determined by the reduction of public spending as a result of the economic crisis, the new laws had been drafted and adopted before the crisis started, and the crisis was used just as an argument to justify the fundamental changes to the concepts of the welfare state in Slovenia, which increased control and conditionality, as well as tightened access to social rights by transferring the responsibility for material distress from structural causes to individual ones (Hrvatín, 2013; Smolej et al., 2013; cf. Dremelj et al., 2013). Substantive laws adopted and amended after 2010 are still not being consistently interpreted. According to Dremelj and his colleagues (2013; cf. Rape Žiberna et al., 2020), reasons for this should be ascribed to the incapability of the Ministry to provide precise and consistent interpretations, rather than SWCs themselves.

Yet, in spite of the recently growing discretion in some of these laws, which is seen as a possible problem for lawfulness, non-arbitrariness, and equality, it can be established that the longer a law is being applied, the fewer difficulties there are in the implementation of statutory rules because the interpretation of the purposes, values, and goals this law aims to achieve becomes more important than before. Lawful administrative discretion that, according to Sowa and Selden (2003), has a direct impact on active representation in administrative bodies, seems to be the cornerstone of RoL implementation in SWC practice. As demonstrated in Table 2, although the scope of judicial review is more or less constantly high, though not in relation to the overall number of SWC cases, the ratio of successful disputes, with the exception of 2016, has remained quite low. For instance, in 2016 SWCs worked on 1,439,006 administrative matters and in the same period they received 17,193 appeals (Ministry of Public Administration, 2016, pp. 23–25). Compared to these figures, the 50

cases discussed before the court in 2016 seem trivial, but not in relation to each individual situation of every plaintiff nor regarding the possibility of discussing legally significant questions for the development of SWC administrative practice. Moreover, a significant decrease in disputes concerning the rights under the Exercise of Rights from Public Funds Act can be detected after 2016 (Figure 2). The same goes for the success of disputes (seen in Table 2): they declined from half of the disputes being granted in 2015 and 2016 to none at all afterwards. In other words, despite the fact that administrative decisions are in general legally correct, the parties in SWC procedures do not perceive them as fair and legitimate.

Furthermore, in 2015 and 2016 many disputes were initiated regarding the application of the new Exercise of Rights from Public Funds Act, adopted in 2010 but implemented in 2012 due to the lengthy process of establishing basic implementation conditions, including securing the necessary computer software, which the Ministry was responsible for (Dremelj et al., 2013; cf. Rape Žiberna et al., 2020). These proceedings are usually rather simple, but disputes arose from the new expectations of the beneficiaries and the changed conditions that had been presented to the public in political discourse as a result of austerity measures in public expenditure. After some years, convergent court rulings contributed to a uniform application of the law, which was an added value not only legally, but in a broader social and societal sense as well (cf. Hall & Wright, 2008; Rusch, 2014). In the future, greater attention will be required to conduct these matters efficiently, within a reasonable length of time and through automatic data exchange. In view of this, the question of SWC organisation is not so relevant because digitalised proceedings can foster all good governance principles while simultaneously preventing their mutual conflict.¹⁴ However, there are some progress options, such as establishing a special central service to deal with dilemmas more specifically and guarantee equal and fair decision-making. In this context, administrative procedures should be recognised not only as a guarantee of the protection of parties' rights, but as a modern business process (cf. Kovač, 2011; Koprić et al., 2016).

¹⁴ According to the SWC reorganisation strategy and supporting materials of 2018, one of the steps should be the introduction of an informative account of social transfers (as a prefilled tax return) to be issued to beneficiaries with repetitive rights (such as child benefits), but the line ministry does not take the necessary measures and even delays the implementation of already adopted laws with no apparent reason, as the result of a formalistic mentality disguised as concern for (formal) legality.

Of special importance are (only) four (but at the highest level) granted revisions/appeals at the SC that show an interplay of both substantive and procedural lawfulness in order to implement the overall concepts of the RoL and good governance (cf. Venice, 2016; May & Winchester, 2018). Namely, these cases address clear regulation with a non-arbitrary and equal interpretation of the conditions for social assistance and the use of legal remedies with specific sectoral regulation versus uniform standards under the GAPA. In this case impartial judicial review ensures a lawful interpretation of hard law rules set by the legislative branch of government (cf. Janderová, 2019).

Cases at higher social and administrative courts concerned relatively complex legal issues of substantive nature, while unlawful decisions of procedural nature represented quite simple tasks of dealing with application form rules. SWCs conduct proceedings based on substantive laws and the GAPA, but the former often introduce specific procedural rules that derogate joint GAPA guarantees. In some sense, the above results tell us that SWCs have reached a sufficiently high level of procedural lawfulness, which can most probably be attributed to the long tradition of GAPA application in the PA and SWCs, despite problems with specific regulation in *leges speciales*.¹⁵ It is also necessary to expose the procedural guarantees that have been reduced by these laws, such as the diminished right to be heard, fiction of notification replacing personal delivery, a broader set of legal remedies *ex officio*, lower standards of individual reasoning of decisions, unclear proportionality, fewer parties at proceedings, and so on. In this regard, case law has confirmed the criticisms expressed previously – when legal drafts have been in the public debate – that interventions of sectoral regulations into the positions of the parties to the proceedings, which were inconsistent with the GAPA and consequently with the Slovene Constitution, were not necessary or justified (Kovač, 2011, p. 205). Moreover, one can clearly see that procedural elements of the RoL significantly contribute to social dialogue with the parties and their inclusion in terms of good governance, despite the hierarchical position of the PA (see Tomažević, 2019). Issuing decisions in administrative procedure in this manner may enable the parties to reach catharsis and accept even unfavourable decisions without lowering their trust in authorities. As Trpin (in Godec et al., 1993, p. 132) claims, lawfulness, defined as an ideal of

¹⁵ The presently valid GAPA (with 325 articles) has been in force in Slovenia since 2000, but prior to that very similar Yugoslav and Austrian laws were applied in this area going back to 1925 (more in Kovač, 2011; cf. Koprić et al., 2016).

“equality under the law”, has certainly played a historic role in citizen rights protection, but these days PA needs legality as well as the consensus of those it addresses for its legitimacy.

For a comprehensive interpretation of the findings in our analysis, the role of the sectorial ministry as the provider of fundamental means for SWCs to act lawfully should not be omitted. As a representative of the executive branch of the state and social policy designer that proposed the new social legislature to the legislator, as well the institution that exercises founding rights over SWCs, the Ministry led and monitored the whole implementation process of new social legislation in the period 2010–2012 and beyond. Therefore, as many analyses point out (Dremelj et al., 2013; Smolej et al., 2013; Hrvatin, 2013) reasons for the incorrect implementation of hard law rules should be attributed to the unclear and inadequate directions of the Ministry, as well as to the unsuitable computer software managed by the Ministry, rather to the SWCs themselves, even though SWCs conduct administrative procedures and decide on administrative cases independently, in accordance with the GAPA.

Overall, our initial hypotheses are confirmed. Firstly, lawfulness is a dominant principle determining the functioning of SWCs in relation to the parties when issuing authoritative administrative acts, but with the understanding that lawfulness should be viewed in a sociological and philosophical sense, not only in a formally legally correct sense. However, SWCs (as holders of public authority) are authoritative entities and superior to parties, so their competences must be legally regulated and limited to disable or minimise misuse of power. Consequently, allowing judicial review of SWC decisions will continue to be important, despite a perhaps obviously low success rate at higher courts, as established in some subfields in the previous section. Secondly, the legislature should always take lawfulness as the key guideline for any reorganisation (of SWCs or other administrative bodies). However, the organisational structure should reflect the nature of relations and procedures (see Kovač, 2006), meaning that more comprehensive matters require more accessible units to enable social workers to deal with people directly, while more standardised matters should be rationalised and led rather centrally and digitally (cf. Rape Žiberna et al., 2020; Žnidar, Rape Žiberna & Rihtar, 2020). Reforms should be carried out at least in parallel, as the organisational and functional dimensions interact. Namely, the type of organisational structure should be determined by the results that the organisation must achieve; i.e. mission dictates strategy and strategy dictates structure. Hence an individual organisational structure is suitable for certain tasks in certain

situations at a certain time. Of course, the organisation of any administrative authority is bound by law when unilaterally deciding upon parties' rights and the obligation to provide legal certainty, equality, and justice as pursued by international and constitutional principles (cf. Galetta et. al, 2015; Venice, 2016).

Administrative reforms as one of the trademarks of contemporary administrations (Koprić et al., 2016) pursue declared goals, often operationalised as working better and costing less, in various ways and considering multiple principles (see Pollitt & Bouckaert, 2017). Nevertheless, with regard to the type of administrative bodies, specific governance principles are more dominant than others – e.g. more formal lawfulness and efficiency prevail in more mechanistically organised administrative bodies, such as the police, army, fiscal administration, and administrative units, whereas participation, transparency, equity/inclusiveness, consensus orientation, and the like can be found in more organically organised systems, such as local communities, ministries, institutes, agencies, healthcare, and education. According to Greve and his colleagues (2019), these principles represent key reform trends when a specific administration decides to implement a reform: e.g. privatisation, agencification and contracting out are typical for New Public Management reforms, whilst others characterise other public governance models, e.g. digital government, transparency, citizen participation and collaboration are typical of New Public Governance reforms. Reforming the PA does not imply that the traditional (Weberian bureaucratic) principles, such as lawfulness, responsiveness, and others become obsolete, but they are more likely to be supplemented with modern ones.

6. Conclusion

The RoL is the cornerstone and the umbrella principle of good administration, encompassing substantive and procedural lawfulness, and it should be followed in any reform towards the ideal of good governance. As the state of the RoL can be analysed by its manifestation through the principle of lawfulness, case-law analysis has been conducted in this paper in order to assess the impact of the degree of lawfulness on administrative reforms in general and the (re)organisation of SWCs in particular. As authoritative administrative bodies that need to deliver adequate answers to delicate and sensitive real-life situations of individuals who are frequently

excluded and underprivileged, lawfulness should be the way for SWCs to deal with the not infrequently contradictory tasks of dominant administrative decision-making and provide partnership-oriented support to parties by means of empowering them. In this regard, lawfulness should be understood broadly, not only in terms of its formal and substantive dimensions, but in constant interrelation between legality and legitimacy, as the analysed case-law in this paper suggests. Moving beyond strictly legalistic bureaucracies to a holistic understanding of PA, lawfulness is a crucial principle for ensuring the execution of SWC tasks in coherence with the basic SWC mission of providing sources for the improvement of the standard of living for people in need. Therefore, an interdisciplinary perspective towards the principle of the RoL should be applied, as shown in this case, at the intersection of law, PA, and organisational theory. Findings on lawfulness in SWC practice should lead to organisational reforms to ensure better implementation of this key principle for its future operations.

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ADMINISTRATIVE REFORMS AND THE RULE OF LAW: CASE-LAW ANALYSIS AS AN INSPIRATION FOR THE SLOVENE REORGANISATION OF SOCIAL WORK CENTRES IN SLOVENIA

Summary

Designing a public governance model suitable for a particular task often lacks an empirical basis for change and the criteria for evaluation. Hence, the paper analyses the case law following from the decisions of social work centres (SWC) in Slovenia in order to gain insight in the lawfulness of their work as a key component of the rule of law and thus pinpoint the optimal framework for improvements. Using quantitative and qualitative analyses of 213 higher court judgments issued in the course of five years, the paper examines, by means of content analysis, which elements of the rule of law are the most problematic in practice. There is special emphasis on lawfulness and equality in substantive terms and on fair trial in procedural terms. The case law following from the SWC cases in the highest courts in Slovenia is quite consistent, but it does reveal certain gaps. These gaps need to be bridged on both regulatory and implementation levels in terms of clearer and yet not too rigid rules, recognition of participative procedural standards, and more flexible organisation. The case law thus indicates options for legislative changes and administrative reforms of the Slovene welfare system and beyond.

Keywords: social work centres, Slovenia, administrative procedures, case-law, the rule of law, reorganisation, administrative reforms

UPRAVNE REFORME I VLADAVINA PRAVA:
ANALIZA SUDSKE PRAKSE KAO INSPIRACIJA ZA
REORGANIZACIJU CENTARA ZA SOCIJALNU SKRB U SLOVENIJI

Sažetak

Oblikovanje modela javnog upravljanja prikladnog za određeni zadatak često nema empirijsku osnovu za promjene i njihovu evaluaciju. U radu se stoga analizira sudska praksa nastala u vezi rješenja centara za socijalnu skrb (CZSS) u Sloveniji kako bi se dobio uvid u zakonitost njihovog rada kao ključnu komponentu vladavine prava, a time i optimalni okvir za predlaganje poboljšanja. Kvantitativna i kvalitativna analiza sadržaja 213 presuda viših sudova donesenih u razdoblju od pet godina omogućila je utvrđivanje najproblematičnijih elemenata vladavine prava u praksi tih centara, pri čemu se posebno ističu zakonitost i jednakost u materijalnom te pošteno suđenje u proceduralnom smislu. Sudska praksa u slučajevima koji su nastali povodom rješenja CZSS prilično je dosljedna, ali otkriva određene nedostatke. Njih treba otkloniti na razini pravne regulacije i u samoj praksi, prvenstveno u vidu donošenja jasnijih, ali ne previše krutih pravila, uvođenja sudioničkih proceduralnih standarda i fleksibilnije organizacije. Sudska praksa na taj način indicira opcije za promjene zakonodavstva i upravne reforme ne samo u slovenskom sustavu socijalne zaštite nego i općenito.

Ključne riječi: centri za socijalnu skrb, Slovenija, upravni postupci, sudska praksa, vladavina prava, reorganizacija, upravne reforme