



Limiting bureaucratic discretion? Analyzing the design and exercise of administrative judicial review in the welfare sector

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Funding information

Forskningsrådet om Hälsa, Arbetsliv och Välfärd, Grant/Award Number: 2019-01023

Abstract

This article develops a framework for understanding how the design of administrative judicial review can circumscribe the discretion of different bureaucratic actors. The framework proposes that bureaucratic discretion is limited to a great extent if courts can (i) overturn bureaucratic decisions on substantive grounds, (ii) review decisions associated with high economic costs, and (iii) issue detailed instructions for how rulings are to be implemented. Applying the framework to the Swedish case, we first show that the legislative design of the judicial review process allows administrative courts to greatly limit the discretion of senior officials and street-level bureaucrats. Second, we show that Swedish courts defer to the expertise of bureaucratic actors in the welfare sector by sparingly overturning decisions. However, when courts actually overturn decisions, they frequently limit bureaucratic discretion by issuing detailed judgments in high-cost cases, possibly undermining the conditions for good governance.

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1 | INTRODUCTION

Bureaucratic discretion is widely considered a medium through which the goals of good governance, including effective and high-quality service delivery, can be achieved (Pedersen & Pors, 2022; Rivera & Knox, 2023; Scott, 1997). However, to prevent bureaucratic actors from misusing their discretionary powers, they are frequently exposed to various control mechanisms. Previous research has made significant contributions to our understanding of how mechanisms such as accountability rules, auditing and performance measures can not only prevent the abuse of discretion but also have the undesirable effect of undermining the ability of bureaucracies to make use of their expertise and deliver policy goals (Brodkin, 2006; Rich, 2022; Wang, 2022). Increasingly, scholarly attention has been directed to another important mechanism for controlling bureaucratic discretion and protecting individual rights, namely, court review of bureaucratic decisions (Clouser McCann et al., 2021; Hirschl, 2008; Kennedy & Stobb, 2023; Turner, 2022). However, little is known about how administrative judicial review affects public sector actors (Limbocker et al., 2021), including the discretion of street-level bureaucrats and senior officials. This is surprising given the increased reliance on courts to act as regulatory watchdogs in many countries (Hirschl, 2008) and the fact that control mechanisms, such as judicial review, may undermine bureaucratic discretion and, by extension, the conditions for good governance.

We seek to contribute to the literature on how judicial review may affect bureaucratic actors in two ways. First, we make a theoretical contribution by developing an analytical framework for understanding how the design of administrative judicial review can limit the discretion of different categories of bureaucratic actors. Taking stock of previous research showing that the design of judicial review varies between countries and policy areas (Clouser McCann et al., 2021; Mejía, 2021; Shipan, 2000) and that court rulings do not impact all bureaucratic actors in the same way (Limbocker et al., 2021; Platt et al., 2010; Richardson, 2004), we provide the first systematic theory regarding whether or to what extent different types of administrative judicial review designs can be expected to circumscribe the discretion of two categories of bureaucrats with specific expertise: senior officials and street-level bureaucrats. This analytical framework, which can be used to analyze and compare courts' formal judicial review powers across countries and policy areas, consists of three parts: (i) the scope of review, whether courts can overturn official decisions on substantive grounds; (ii) the policy content of substantive review, whether courts can review cases associated with high economic costs; and (iii) the types of remedies, whether courts can specify how bureaucratic actors are to implement rulings.

Second, we make an empirical contribution to the literature and illustrate the usefulness of the framework by investigating the administrative judicial review design in Sweden and how Swedish courts exercise review in the welfare sector. By focusing on Sweden, one of the Nordic countries, we address an empirical gap in previous research. Despite scholarly interest in the ability of courts to show an appropriate degree of deference to the expertise of bureaucratic actors (Kennedy & Stobb, 2023; Lindseth, 2019; Tolley, 2003), we have limited knowledge about how courts in European states, including Nordic countries, apply their review powers and what the implications are for bureaucratic discretion. Moreover, the occurrence of individual welfare rights in many states, including Sweden, makes the welfare sector an interesting case since such rights are believed to strengthen courts at the expense of bureaucratic actors' discretion (Magnussen & Nilssen, 2013). In addition, focusing on how generalist Swedish courts scrutinize bureaucratic decisions in the welfare sector allows us to test a hypothesis derived from the literature, namely, that generalist courts usually show deference to bureaucratic expertise

(Mejía, 2021; Miller & Curry, 2013). Given the traditional deferential approach of Nordic judiciaries to the legislature (Hirschl, 2011, p. 450) and the centrality of professional expertise in the provision of welfare services (Magnussen & Nilssen, 2013), the implementation of judicial review by Swedish courts in the welfare sector constitutes a most likely case for this generalist court hypothesis to find support.

Empirically, we use the framework to analyze judicial review provisions in Swedish law, and the results show that the administrative judicial review design in Sweden allows courts to circumscribe the discretion of bureaucratic actors in the welfare sector to a high degree. Then, drawing on an original dataset of Swedish court judgments in eldercare cases (Leijon & Moberg, 2022), we show that the courts use their review powers rather sparsely: bureaucratic decisions are overturned to a low degree. However, when the courts actually overturn decisions, they use the full extent of their review powers and issue detailed judgments in high-cost cases. This finding provides only partial support for the hypothesis that generalist courts, such as Swedish administrative courts, defer to the expertise and discretion of senior officials and street-level bureaucrats in the welfare sector. These findings demonstrate the importance of including all three parts of the framework when analyzing how courts use their review powers in practice. Otherwise, we run the risk of misjudging whether or the extent to which court rulings circumscribe the discretion of bureaucratic actors. Moreover, the results indicate that the trade-off between scrutiny and discretion that the Swedish administrative courts have opted for is likely to undermine the conditions for good governance in the welfare sector.

The remainder of the article is organized as follows. The first section presents previous research on bureaucratic actors and courts. The second section develops a framework for analyzing the impact of judicial review on bureaucratic discretion, which is then applied to the Swedish case in the third section. The fourth section presents the materials and methods for investigating how Swedish courts exercise judicial review. The fifth section presents the empirical findings, and the concluding section discusses the implications of the findings.

2 | PUBLIC SECTOR ACTORS AND COURT RULINGS

Bureaucratic discretion is considered a prerequisite for achieving effective and high-quality service delivery, as well as citizen satisfaction (Pedersen & Pors, 2022; Rivera & Knox, 2023; Scott, 1997). By delegating decision-making authority to bureaucratic actors, legislators can benefit from bureaucrats' expertise in the implementation process (Turner, 2022). Senior officials in public agencies can typically decide how to implement policies without detailed governmental control, for instance, by planning overall agency activities (Scott, 1997) and managing contingencies that occur in the provision of public services (Klemsdal et al., 2022). At the street level, bureaucrats exercise discretion when deciding what actions are most appropriate to achieve policy goals in a specific situation (Lipsky, 2010). Ideally, discretion should lead to effective and nonpoliticized implementation of public policy. However, it may also have undesirable effects, such as policy drift (Bawn, 1995) and differential substantive outcomes among individuals with similar needs (Scott, 1997). To protect individuals from such arbitrary administrative practices, legislators may introduce individual rights that can be upheld by courts if bureaucratic actors fail to fulfill them (Magnussen & Banasiak, 2013). In summary, a legislator who wishes to protect the rights of individuals and/or deter bureaucratic actors from making policy choices that run counter to the legislator's preferences can instruct courts to review whether the bureaucratic actors' decisions are lawful (Turner, 2022).

We know that the legislative design of judicial review of bureaucratic action can vary (Clouser McCann et al., 2021) and that the scope of review may affect bureaucratic policy-making (Turner, 2022). However, there is a lack of theoretical propositions regarding whether and, if so, how different designs of judicial review circumscribe the discretion of actors working in the public sector and how different types of courts exercise review. To initiate such theorizing, we first build on insights from the literature on how court rulings influence bureaucracy (Limbocker et al., 2021; Platt et al., 2010). The insight we derive from this literature concerns the importance of distinguishing between different categories of bureaucratic actors, specifically senior officials who are responsible for the creation of agency policy and street-level bureaucrats who are to implement the policy. Platt et al. (2010) argue that depending on the actors' position in the organization and tasks, court judgments will likely have different consequences for their day-to-day work. Previous research further suggests that senior officials are likely to be directly influenced by individual court rulings when developing agency policy (Richardson, 2004). Judicial review is also important for street-level bureaucrats concerned with the daily implementation of agency policy; however, the impact of a judgment can be more diffuse (see also Sossin, 2004). In summary, when theorizing about how the judicial review design impacts the discretion of public administration, we will consider how it may circumscribe the discretion of both the senior officials who create policy and the street-level bureaucrats who implement policy.

Second, regarding how courts can be expected to exercise judicial review, we draw on the literature that focuses on the extent to which different types of courts can be expected to show deference to the expertise of regulatory agencies when reviewing their decisions (De Somer et al., 2022; Kennedy & Stobb, 2023; Lindseth, 2019; Miller & Curry, 2013). The main takeaway from this literature is that whether the legislator entrusts generalist or specialized courts to scrutinize administrative decision-making is likely to result in different applications of judicial review. Previous research shows that generalist courts that lack extralegal expertise, such as the Administrative Court in the United Kingdom, have been reluctant to review the technical aspects of regulatory agencies' decisions (De Somer et al., 2022; Mejía, 2021). By showing deference to public administrations' expertise and scientific assessments, generalist courts avoid becoming "regulators in second instance" for which they lack qualifications (De Somer et al., 2022, p. 333). In contrast, specialized courts, which have expertise in the policy decisions under review, are unlikely to show deference to public agencies (Miller & Curry, 2013). For instance, specialized courts composed of experts in law and economics have been shown to profoundly review the substance of agency decisions (De Somer et al., 2022).

3 | BUREAUCRATIC DISCRETION AND JUDICIAL REVIEW: DEVELOPING A FRAMEWORK

We draw upon previous research to develop an analytical framework for understanding how variations in the institutional design of courts' administrative review powers (regarding official decisions directed at individuals) and the type of court involved may result in different degrees of discretion for two key categories of bureaucratic actors: senior officials, such as managers and budget holders, and street-level bureaucrats, such as social workers and other professionals. In some systems, political bodies make decisions in individual cases concerning access to welfare. However, such decisions are often delegated to the bureaucracy, and the framework is therefore tailored to nonelected bureaucrats with certain expertise.

The framework builds upon three elements of the design of the courts' review powers: (i) scope of review, (ii) policy content, and (iii) types of remedies. Starting with the *scope of review*, it is common to distinguish between procedural and substantive judicial review types (De Somer et al., 2022; Lindseth, 2019; Turner, 2022). Courts with the mandate to review the procedural aspects of a bureaucratic decision consider whether the decision maker has the legal authority to make the decision and whether the decision-making process complies with the principles of procedural fairness (Hirschl, 2008). In contrast, courts that can review official decisions on substantive grounds (merit-based review) have the power to determine whether the very content of a decision is correct and meets the substantive requirements (De Somer et al., 2022). Previous research shows that the design and exercise of judicial review vary both between countries and between policy areas (Clouser McCann et al., 2021). Some courts, such as Finnish administrative courts, primarily review the procedural legality of administrative action in many sectors (Mäenpää, 2019), while Swedish administrative courts mainly exercise substantive review (Wenander, 2019).

We propose that the substantive review scope limits bureaucratic discretion to a greater extent than does procedural review. First, substantive judicial review may limit the discretion of street-level bureaucrats by challenging their ability to make "correct" decisions. For example, a bureaucrat working at a public agency finds that a company has failed to abide by environmental regulations. If courts can review this decision on substantive grounds and conclude that the company has lived up to the legal requirements, it is suggested that the decision-making discretion of the street-level bureaucrat is circumscribed in this specific case (De Somer et al., 2022). Second, substantial judicial review may also limit the discretion of senior officials, such as managers, regarding their control of resource allocation (Platt et al., 2010). For example, a healthcare agency may decide not to offer a specific treatment to a patient based on the argument that the treatment is not cost-efficient. A court reviewing the substance of this decision may conclude that the agency must provide the treatment to the patient. Such a ruling can require senior officials to change the agency's budget priorities to make the treatment available to all eligible patients (Hawkins & Alvarez Rosete, 2019).

Compared to substantive judicial review, review on procedural grounds is deemed to have a more limited influence on bureaucratic actors' discretion since it does not challenge the content of an official decision, only its procedural aspects. A court ruling that overturns an official decision on procedural grounds may still have some implications for the discretion of bureaucratic actors. For instance, if the court finds that the agency must change the structure of its decision-making procedure to comply with the law, this type of procedural review can be considered to limit the discretion of senior officials, as it affects how they organize the agency's internal procedures. However, we argue that, on average, courts that have the mandate to review decisions on substantive rather than procedural grounds may circumscribe the discretion of both senior officials and street-level bureaucrats to a greater extent. Substantial review allows courts to scrutinize the expertise of senior officials and street-level bureaucrats. According to theories on delegation, legislators delegate power to bureaucratic actors to exploit their policy-relevant expertise (Turner, 2022). When legislators expose senior officials and street-level bureaucrats to not only procedural but also substantive judicial review, the core of their function, namely, providing expert knowledge, is questioned.

The second part of the framework is the *policy content* under review: what types of policy issues are covered by the courts' review powers, and which ones are precluded? The legislator may determine that certain administrative actions and decisions are not reviewable by the courts (Lindseth, 2019). Entire policy sectors or specific decisions within a sector may thus be

precluded from undergoing judicial review. For instance, studies show that the U.S. Congress, when passing statutes, can include detailed provisions designating whether agencies should be exposed to judicial review (Clouser McCann et al., 2021). As discussed above, judicial review generally limits the discretion of bureaucratic actors. However, the extent to which discretion is limited is likely to differ depending on the type of issue that courts are allowed to review. Using the concept of preclusion, we argue that the ability of judicial review to limit bureaucratic actors' discretion will be more pronounced if courts are mandated to review official decisions that are, if overturned, associated with high economic costs for these actors compared to if such decisions are precluded from review. For example, certain social benefits and healthcare services are more costly than others (Ettelt, 2020). If courts have the mandate to overturn official decisions on substantive grounds and grant individuals access to expensive health or social care services, this is expected to increase the costs for agencies, effectively limiting the discretion of senior officials such as budget holders and managers.

Apart from limiting senior officials' control over budgetary funds, courts' power to review and overturn decisions concerning high economic costs also has indirect implications for the discretion of street-level bureaucrats. A court ruling that results in increased costs for a public agency may require the agency to change its budgeting priorities and allocate resources to one service area at the expense of another (Platt et al., 2010). These types of changes or cutbacks may limit the discretion of street-level bureaucrats since what they find to be the most suitable way to prioritize the use of resources may conflict with the court's ruling. In summary, if the legislative design of the judicial review process permits courts to review bureaucratic decisions associated with high economic costs for bureaucratic actors, then the discretion of senior officials and street-level bureaucrats is more greatly limited than if such matters are precluded from review.

The third part of the framework concerns *the types of remedies* that are at the courts' disposal if they find that an official decision is unlawful. In this article, the focus is on the types of remedies in which courts are allowed not only to overturn an official decision found to be unlawful and reinstate the status quo but also to replace the original decision with a new one (Shipan, 2000). For instance, administrative courts in Austria have the mandate to substitute the original agency decision with a new one (Storr, 2021). The important question is then whether courts have the mandate to deliver detailed rulings, that is, rulings in which they specify how the new decisions are to be implemented by the bureaucratic actors.

Previous research (Spriggs, 1997; Staton & Romero, 2019; Staton & Vanberg, 2008) has suggested that court rulings that do not clearly articulate how public agencies are to change their prior decisions provide leeway for these actors to interpret the contents of these rulings in ways that suit them. Conversely, judgments that provide detailed instructions regarding the actions that the agency should take are expected to increase compliance with court rulings. Building on this logic, we propose that courts that have the mandate to provide detailed instructions in the judgment regarding how the verdict should be implemented can circumscribe the discretion of bureaucratic actors to a greater extent than courts that lack this mandate. An example of a detailed remedy is the maximum cost threshold for healthcare coverage determinations established by the Swiss Federal Court (Levy, 2022).

In the case of detailed types of remedies, the discretion of senior officials is reduced since a ruling that is very specific in terms of how it should be implemented leaves less room for adjustment of the implementation to the public agencies' internal context, including the resources they have at their disposal. Moreover, the discretion of street-level bureaucrats is also reduced since they will have limited ability to adapt the implementation of the ruling on the

basis of their professional judgment. Thus, this detailed type of remedy may challenge established professional practices, as well as implementation and budget priorities that have been carefully selected (Platt et al., 2010). Conversely, undetailed judgments usually provide bureaucratic actors with a wider zone of discretion since they have a choice regarding *how* to implement the court rulings. All else being equal, if courts give senior officials and street-level bureaucrats little or no leeway regarding the implementation of judgments, the discretion of these actors is reduced in terms of the ability to control the implementation of the judgment and the allocation of budgetary funds, as well as the use of professional judgment.

3.1 | Four types of substantive judicial review designs

While each of the three elements of judicial review included in the framework is important, it is necessary to consider how they relate to each other to fully understand how the variation in the design of the courts' review powers matters for the discretion of bureaucratic actors. Regarding the scope of review, we concluded that substantive review, on average, limits the discretion of senior officials and street-level bureaucrats in terms of their capacity as experts to a greater extent than does procedural review. However, the policy issues covered by substantive review and the forms of judgment available to the courts can vary: are courts allowed to review the substance of decisions on issues that, if overturned, have negative economic impacts, and can they specify how the rulings should be implemented? As Table 1 shows, by combining policy content and types of remedies, we identify four substantive judicial review designs.

If the substantive judicial review powers are designed to only apply to issues that have minor economic implications (to preclude issues that have major economic implications) and if the only remedy available for courts that find official decisions unlawful is to overturn them without being able to specify how the ruling should be implemented (Table 1, combination 1), the discretion of both senior officials and street-level bureaucrats is considered limited to a low degree. In contrast, the type of judicial review procedure that invites courts to review economically costly issues and allows courts to describe in detail how their rulings are to be implemented (Table 1, combination 4) limits the discretion of both categories of actors to a high degree.

Combinations (2) and (3) illustrate situations in which the discretion of the actors is limited to a high degree in one of the two aspects. Although both of these combinations suggest that the discretion of the actors is circumscribed to a lesser degree than in combination (4) and to a greater degree than in combination (1), it can be argued that the discretion of street-level bureaucrats is limited to a greater degree in combination (2) and that the discretion of senior officials is circumscribed to a greater degree in combination (3). The reason for this is that the courts' right to review high-cost issues arguably impacts senior officials (managers and budget

TABLE 1 Four substantive judicial review designs and their implications for the discretion of senior officials and street-level bureaucrats.

	Types of remedies: Undetailed	Types of remedies: Detailed
Policy content: Precluding review of high cost issues	1. Limiting the discretion of all actors to a low degree	2. Limiting the discretion of street level bureaucrats to a high degree
Policy content: Allowing review of high cost issues	3. Limiting the discretion of senior officials to a high degree	4. Limiting the discretion of all actors to a high degree

holders)—who are responsible for resource allocation—more directly than street-level bureaucrats (professionals such as doctors or caseworkers). Conversely, judicial review procedures that allow courts to formulate detailed instructions for how public agencies are to implement rulings have more tangible implications for the discretion of street-level bureaucrats than they do for senior officials, at least in the short run.

3.2 | Substantive judicial review and court type

A final aspect to consider is whether the court assigned to conduct a substantive review is a generalist or a specialized court. Previous research has suggested that generalist courts, that is, courts that lack extralegal expertise, show a high degree of deference to agency decisions and are less inclined to review the technical assessments made by expert agencies (De Somer et al., 2022; Mejia, 2021; Miller & Curry, 2013). We therefore propose that if a generalist court is entrusted with exercising a substantive review, it will show deference to bureaucratic decision-making (i.e., the generalist court hypothesis). For instance, if the legislator has opted for combination (4) in Table 1, generalist courts that review high-cost cases in substance will seldom issue detailed rulings. In contrast, specialized courts with expertise in the policy decisions under review (De Somer et al., 2022) are expected to apply their substantive review powers and issue detailed rulings even in high-cost cases. All else being equal, we expect that generalist courts that are entrusted with performing substantive judicial review will limit the discretion of senior officials and street-level bureaucrats to a low degree.

4 | APPLYING THE FRAMEWORK: THE REVIEW POWERS OF SWEDISH ADMINISTRATIVE COURTS IN THE WELFARE SECTOR

We illustrate the usefulness of our framework by investigating the design of administrative judicial review in Sweden and how Swedish courts conduct review. First, we study the administrative judicial review design in the Swedish welfare sector, specifically in the area of eldercare. This choice of policy is suitable since both senior officials and street-level bureaucrats are involved in decision-making procedures regarding individuals' access to eldercare. The provision of eldercare services in Sweden is organized through 290 local governments and financed mainly through local income taxes (Blomqvist & Winblad, 2022a). All citizens and legal residents aged 65 and over have the right to services that guarantee a “reasonable standard of living” (The Social Service Act, 2001: 453). The operative management of eldercare services is carried out by local government administrations, where senior officials such as managers are responsible for the budgeting and planning of municipal eldercare, and street-level bureaucrats such as social workers investigate the applicants' physical and psychosocial life situations to assess what types of care services, if any, are needed. Formally, political representatives on local welfare committees are responsible for the eldercare sector, including eligibility decisions regarding access to services. In practice, however, decision-making power is delegated to social workers and their managers. Individuals who have been denied access to eldercare services have the right to appeal decisions to administrative courts (The Administrative Procedure Act, 2017: 900, para. 40–42) without having to pay any fees as a part of the appeal procedure (National Board of Health and Welfare, 2002).

Applying the framework to the design of administrative judicial review processes in the Swedish welfare sector, we find that, regarding the scope of review, once an appeal has been lodged, the Swedish administrative courts are entrusted to review the appealed decision based on its merits (Ahlbäck Öberg & Wockelberg, 2015). Regarding the policy content under review, the courts are allowed to review all types of decisions directed to individuals concerning access to eldercare. Regarding the types of remedies, the courts may change decisions in substance and replace them with new decisions that specify in detail how the bureaucratic actors should implement the judgment (Wenander, 2019). These features show that the legislative design of substantive administrative judicial review largely corresponds to combination 4 in Table 1, suggesting that the Swedish administrative courts have the power to greatly limit the discretion of both senior officials and street-level bureaucrats. Regarding court type, Swedish administrative courts are generalist courts since they have no particular extralegal expertise.¹ Official decisions directed to individuals can be appealed to administrative courts as a general principle, meaning that these courts hear appeals from a wide range of policy sectors, such as migration, taxation, and social care.

Second, we use the framework as a starting point for analyzing how generalist Swedish administrative courts use their review powers and its implications for the discretion of senior officials and street-level bureaucrats in the welfare sector. Previous research has shown that generalist courts usually show deference to the technical expertise of independent regulatory agencies, such as telecommunication regulators (Mejia, 2021) and patent boards (Miller & Curry, 2013). In this study, we investigate whether generalist courts also defer to the expertise of welfare professionals. We argue that there are two reasons why judicial reviews of bureaucratic decisions in the Swedish welfare sector should be considered a likely case for supporting the “generalist court hypothesis.” First, good governance in the welfare sector, such as high-quality service delivery, is seen as dependent on professionals whose expertise ensures that medical care and social services are organized in accordance with scientific knowledge (Blomqvist & Winblad, 2022b; Kamp, 2016). Second, the universalistic Swedish welfare state has a long tradition of entrusting welfare professionals (social workers and their managers) with discretion (Brante, 2013; Svensson & Åström, 2013). Taken together, the central role played by professional expertise in the welfare sector is expected to make generalist courts unlikely to challenge bureaucratic decisions.

Applying the predictions of the generalist court hypothesis to each of the three parts of the framework, the generalist Swedish courts are expected to come closer to showing full deference (i.e., not limiting bureaucratic discretion) to the expertise of senior officials and street-level bureaucrats than to showing no deference. Specifically, we expect the Swedish administrative courts to overturn decisions on access to eldercare on substantive grounds to a low degree (scope of review), and to the extent that the courts overturn decisions, they are expected to overturn high-cost decisions to a low degree (policy content). Finally, the courts are expected to deliver detailed rulings to a low degree (types of remedies).

5 | MATERIALS AND METHODS

To systematically study how courts exercise administrative judicial review and its implications for the discretion of local government actors in the welfare sector, this study uses an original dataset (Leijon & Moberg, 2022) consisting of all court judgments ($N = 1831$) regarding access to eldercare services from Sweden's 12 administrative courts (first instance) between January 2019

and June 2020. The units of analysis in the dataset are the individual claims made by a party to appeal a decision. The complete judgments were downloaded from a law database.²

Each individual claim was coded with regard to the three parts of the analytical framework. First, regarding the scope of review, we want to know the extent to which courts make use of their substantive review powers and overrule local governments' decisions. We measure this aspect by the variable "overturn," which takes the value of 1 if the court overturns the local government's original decision on substantive grounds and grants the individual access to eldercare services and 0 if the court upholds the original decision and rejects the individual's claim. Information regarding the content of the judgment was obtained by reading each judgment, specifically the subsections Judgment of the Administrative court (*Förvaltningsrättens avgörande*) and Reasons for the Judgment (*Skälen för avgörandet*).

To investigate the second aspect, policy content, we focus on the extent to which courts overturn official decisions associated with high economic costs for local governments. According to official statistics from 2020, it is generally twice as expensive for the local government to provide nursing home care (2111 SEK person/day) than for them to provide home care services (830 SEK person/day) (Larsen & Svensson, 2021, p. 43). We therefore assume that the negative economic impact on local governments' budgets is greater when courts grant individuals access to nursing home care (with around-the-clock care) than when they grant home care services. By extension, the discretion of managers and budget holders is limited to a greater extent if courts overturn decisions concerning nursing home care than if they overturn decisions concerning home care services. The variable "nursing home" takes a value of 1 if the party to an appeal has requested a place at a nursing home and 0 if the party has requested home care services. Information about the type of subject matter is found under the heading Subject Matter in the case at hand (*Sakfråga i målet*).

The third aspect is the types of remedies. If a court delivers a detailed ruling rather than an undetailed ruling, the actors in the local government administration have less leeway regarding implementing the ruling. The courts' use of detailed rulings is measured by the variable "Detailed." This variable takes a value of 0 if the judgment is not detailed. This is operationalized as a judgment in which the court overturns the local government's decision and establishes that the party appealing it needs eldercare. However, the exact type of care or its scope is left for the local government actors to decide. In contrast, the variable takes a value of 1 if the court, to a high degree, specifies how its ruling is to be implemented by the local government. A detailed judgment is operationalized as a judgment in which the court overturns the local government's decision and replaces it with a new decision that specifies the exact type or scope of the eldercare service granted. Examples of detailed rulings include when courts have i) overturned the local government's decision and ruled that an individual should be granted cleaning services for a certain number of hours/month and ii) decided that the applicant should be granted a place at a nursing home. In these examples, the courts make independent assessments of the individual's need and what type of eldercare service s/he is entitled to, thereby limiting the discretion of managers and budget holders as well as street-level bureaucrats regarding the implementation of the ruling. Information regarding the types of remedies was obtained by reading the subsection Judgment of the Administrative Court (*Förvaltningsrättens avgörande*) in each judgment. Descriptive statistics for each variable can be found in Table A1 in the Appendix.

6 | RESULTS

How do Swedish administrative courts exercise judicial review in the welfare sector? Regarding the scope of review, the results show that the courts overturned 23% (424) of the local authorities' decisions on substantive grounds. In the remaining 76% (1391) of the cases, the courts upheld the original decisions to deny the individuals access to the requested eldercare services. We interpret this finding as support for the expectation that generalist courts show deference to the expertise and discretion of senior officials and street-level bureaucrats by overturning official decisions, that is, the Swedish administrative courts come closer to the ideal-typical position of showing full deference (no overturned decisions) than no deference (all decisions overturned). Does this result mean that the Swedish courts are more likely to defer to experts than other courts? Although previous research has explored variations in the level of deference between generalist and specialist courts (De Somer et al., 2022; Mejía, 2021; Miller & Curry, 2013), it is difficult to draw conclusions regarding courts' level of deference across countries based on their share of overturned cases. For instance, how easy it is to access courts (Clouser McCann et al., 2021) and the success of prelitigation resolution strategies may influence the number and types of cases brought before the courts and, by extension, the share of overturned decisions. Moreover, the character of different policy areas, such as the intensity of individual rights in some welfare sectors (Magnussen & Nilssen, 2013), suggests that comparisons across policy areas may also be misleading.

With regard to policy content, we investigated whether Swedish administrative courts make use of their review power to overturn decisions that are associated with high economic costs for the local government. As the framework suggests, if high-cost decisions are overturned, they are expected to directly limit the discretion of senior officials, such as budget holders and managers, while the impact on street-level bureaucrats, such as social workers, is more indirect. According to official statistics, nursing home care is the costliest type of eldercare for local governments in Sweden (National Board of Health and Welfare, 2002). The theoretical expectation was, therefore, that the Swedish courts would defer to the expertise and discretion of bureaucratic actors by overturning decisions regarding access to nursing home care to a low degree. Initially, the result appears to be contrary to expectations. The findings show that the most commonly overturned type of decision concerns nursing home care; in 77% of the 424 overturned decisions, the courts grant individuals a place in a nursing home. However, in relation to the total number of appealed decisions concerning nursing home care, the share of overturned decisions is fairly low and, thus, in line with expectations: out of the 1254 appealed decisions in which the local governments had denied individuals access to nursing home care, the courts overturned 26% (327). Nevertheless, when comparing the share of overturned decisions in high-cost cases (nursing home) to the share of overturned decisions in low-cost cases (home care service), the findings show that the courts were more likely to overturn the local governments' decisions in economically costly cases. As Table 2 shows, the courts overturned the original decisions in 26% of the cases concerning access to nursing home care. In comparison, decisions concerning home care services were overturned in only 17% of the cases. This difference of 9% points is statistically significant ($p < 0.01$; see Table A2 in the Appendix).

Taken together, while the majority of the decisions Swedish courts overturn concern high-cost decisions and while these high-cost decisions are overturned to a greater extent than low-cost decisions, the share of appealed high-cost decisions that are overturned is low (26%). The findings thus lend partial support to the theoretical expectation by showing that the courts come

TABLE 2 The relationship between the type of judgment and the case type.

	Local government decision upheld	Local government decision overturned	
Home care services	83% (480)	17% (97)	100% (577)
Nursing home	74% (927)	26% (327)	100% (1254)
Difference in percentage points	-9	+9	
Number of observations	1407	424	1831

closer to showing full deference than no deference to the expertise of local government bureaucrats in high-cost cases.

To investigate whether or the extent to which courts specify how their rulings are to be implemented (types of remedies), the analysis is limited to the 424 judgments in which the courts overturned the local governments' decisions and granted individuals access to eldercare. Here, we are interested in the extent to which the courts specify what type of eldercare service the individual is entitled to. If the judgment is detailed in this regard, less discretion is given to the local government actors. The theoretical expectation was that Swedish administrative courts would defer to bureaucratic actors by delivering a low share of detailed rulings. However, this expectation is not supported by the findings. Instead, the courts come closer to showing no deference than to showing full deference. In close to 80% (335) of the cases in which the courts overturned the local government decision, they specify how their rulings are to be implemented regarding what type of eldercare service the individual is entitled to. This result shows that Swedish administrative courts indeed exploit their formal power to replace the original decisions with new, detailed decisions that leave little room for social workers to maneuver.

Finally, we analyze the two parts of the framework, "policy content" and "types of remedies," together. Table 3 shows the distribution of the 424 cases in which the courts overturned local government decisions.

Given that the Swedish administrative courts are generalist courts, we expected their exercise of judicial review to most closely correspond to combination 1 in Table 3 (limiting the discretion of all bureaucratic actors to a low degree). However, the results do not support this expectation. In fact, combination 1 is the least common combination, with only 7% of the observations. Instead, the single most common court behavior regarding overturned decisions is to limit the discretion of local government actors to a high degree. In 63% of the cases in the category of overturned decisions, the courts issued detailed rulings regarding issues with high economic costs for the bureaucracy (combination 4). The share of cases that mainly limit the discretion of senior officials (managers and budget holders) is 14% (combination 3), while the share of cases that mainly limit the discretion of street-level bureaucrats (social workers) is 16% (combination 2).

In light of these results, we conclude that the low share of overturned decisions suggests that Swedish administrative courts generally show deference to the discretion of local government bureaucrats. However, when courts actually decide to overturn official decisions made by local governments, they do not hesitate to use the full extent of their review powers. This finding suggests that the courts limit not only the discretion of senior officials, such as budget holders and managers, but also that of street-level bureaucrats, such as social workers.

TABLE 3 Swedish administrative courts exercise of substantive judicial review in eldercare cases (overturn decisions).

	Type of remedy: Undetailed ruling	Type of remedy: Detailed ruling
Policy content: Low cost issues	1. Limiting discretion to a low degree 7% (30)	2. Limiting the discretion of street-level bureaucrats to a high degree 16% (67)
Policy content: High cost issues	3. Limiting the discretion of senior officials to a high degree 14% (59)	4. Limiting discretion of all actors to a high degree 63% (268)

Note: Total number of observations: 424.

7 | CONCLUDING DISCUSSION

This article set out to explore how administrative judicial review affects bureaucratic discretion. First, we developed an analytical framework for understanding how the legislative design of judicial review can be expected to limit the discretion of two categories of bureaucratic actors: senior officials and street-level bureaucrats. The framework proposes that bureaucratic discretion is limited to a high extent if courts have the power to i) overturn official decisions on substantive grounds (scope of review), ii) review decisions associated with high economic costs (policy content), and iii) issue detailed instructions for how rulings are to be implemented (types of remedies). Regarding the court type, if the legislator entrusts a generalist court to exercise substantive review, it is expected that the court will defer to bureaucratic expertise, that is, limit bureaucratic discretion to a low degree.

Second, we illustrated how the framework can be used in empirical analysis. Applying the framework to the case of legislative design of judicial review in the Swedish welfare sector, we show that generalist Swedish administrative courts have the power to limit the discretion of both senior officials and street-level bureaucrats to a great extent. The analytical framework was then used as a starting point for answering the questions of how Swedish administrative courts exercise judicial review in the welfare sector and how their actions may condition the discretion of different bureaucratic actors. Regarding the scope of review, we found support for the hypothesis that generalist courts defer to bureaucratic expertise. The Swedish administrative courts overturn a low share of local government decisions, suggesting that they show deference to the expertise of bureaucratic actors, thus limiting their discretion to a low extent.

However, the picture changes when turning to the analysis of policy content and, in particular, the types of remedies. Regarding the policy content under review, the findings support the theoretical expectation by showing that the courts come closer to showing full deference than no deference to the local governments' expertise in high-cost decisions. But while the share of appealed high-cost decisions that are overturned is low, the majority of the decisions Swedish courts overturn are associated with high costs, and these decisions are overturned to a greater extent than low-cost decisions. Regarding the types of remedies, the findings are clearly contrary to expectations. Instead of giving bureaucratic actors discretion to implement judgments, Swedish administrative courts almost always issue detailed rulings. Hence, the courts come closer to showing no deference than full deference to the expertise of bureaucratic actors in this regard. Moreover, the single most common court behavior regarding overturned decisions is to limit the discretion of local government actors to a high degree by issuing detailed rulings in high-cost cases. The fact that courts issue such detailed judgments has also been identified by Levy (2022) in a study of how the Swiss Federal Court sets limits on access to healthcare by specifying a maximum cost threshold.

In light of these findings, we conclude that Swedish administrative courts generally show deference to the discretion of bureaucratic actors in the local government by overturning a fairly low share of decisions. However, when courts actually overturn decisions, they use the full extent of their review powers. This means that the generalist court hypothesis only found support in one regard (share of overturned cases) out of three. We consider this to be an unexpected result considering the central role of professionals, such as social workers, in the welfare sector and the traditional deferential approach of Nordic judiciaries to the legislature. While further studies are needed to understand how generalist courts behave when they are reviewing decisions made by bureaucrats in the welfare sector, we would expect courts in other Nordic countries to exhibit behavior similar to that of Swedish courts because of the countries' institutional similarities (Hirschl, 2011). However, what these results clearly underscore is that unless all three parts of the framework are included in the analysis, we run the risk of misjudging whether or the extent to which courts defer to the discretion of bureaucratic actors.

These findings have important implications for the discussion of how judicial review influences bureaucratic actors' ability to resolve complex tasks and thereby achieve policy goals. Previous research emphasizes that courts that exercise judicial review are entrusted with striking a balance between scrutinizing the actions of bureaucratic actors to protect individual rights and showing deference to these actors' expertise (De Somer et al., 2022; Lindseth, 2019; Tolley, 2003). How have the Swedish administrative courts taken on this challenge? On the one hand, the Swedish courts' actions as a whole can be interpreted as a way of finding a balance between judicial scrutiny and showing deference to agency expertise. The courts show a high degree of deference to the discretion of bureaucratic actors by overturning few decisions, and when the courts do find that the rights of the individual have not been fulfilled, they show a low degree of deference to senior officials and street-level bureaucrats' expertise by circumscribing their control over the implementation of judgments.

On the other hand, in the context of welfare, showing little deference to bureaucratic actors regarding the implementation of judgments can instead destabilize the balance between scrutiny and deference. Street-level bureaucrats who have discretion are believed to be indispensable for resolving complex tasks involving vulnerable citizens (Pedersen & Pors, 2022). Good governance in the welfare sector, such as high-quality service delivery, has traditionally been seen as dependent on street-level bureaucrats' professional judgment. For instance, welfare professionals are expected to exercise discretion based on professional training and experience, thereby allocating and providing social services in accordance with scientific knowledge (Blomqvist & Winblad, 2022b; Kamp, 2016). If courts do not provide street-level bureaucrats with leeway in terms of implementing rulings, their ability to use their professional judgment to adapt the rulings to specific cases is limited. This situation may lead to the goals of high-quality service delivery and client responsiveness not being achieved. From this perspective, the balance between scrutiny and deference that the Swedish administrative courts have opted for may undermine the goals of good governance in the welfare sector. Moreover, since the organization of eldercare services in Sweden is the responsibility of local governments and ultimately political representatives, the findings suggest that administrative courts' actions may limit local politicians' ability to adjust eldercare services to local priorities and, by extension, restrict local self-government (for a discussion on how judicial review impacts the autonomy of local government, see Platt et al., 2010; Magnussen & Banasiak, 2013).

While much has been written about judicial review, we know comparatively little about how this review influences administrative procedures and the people working in the public sector (Limbocker et al., 2021). The empirical analysis in this study is limited to the Swedish welfare

sector, and future research should therefore investigate the framework's applicability in other countries. While this study has focused on three core elements of judicial review design, other aspects, such as admissibility and standing (Clouser McCann et al., 2021; Lindseth, 2019), may also provide important insights into how judicial review limits bureaucratic discretion. Finally, judicial review is but one accountability mechanism among others for controlling bureaucratic discretion (Brodtkin, 2006; Rich, 2022). Other aspects worth exploring include how the design of judicial review works together with legislative oversight and the writing of detailed statutes.

ACKNOWLEDGMENTS

We gratefully acknowledge support for this study from The Swedish Research Council for Health, Working Life and Welfare, grant number (2019-01023). We are grateful to Maria Ekstrand and Isolde Tengbjer Jobarteh for providing excellent research assistance, as well as to the three anonymous reviewers for their helpful comments.

CONFLICT OF INTEREST STATEMENT

No potential conflict of interest was reported by the authors.

DATA AVAILABILITY STATEMENT

The data that support the findings of this study are available from the corresponding author upon request. The data is not publicly available due to privacy and ethical restrictions. Pre-reserved DOI: <https://doi.org/10.6084/m9.figshare.22126769>.

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ENDNOTES

¹ Although Swedish administrative courts can appoint independent experts (The Administrative Court Procedure Act (1971:291), very few are appointed in eldercare cases.

² <https://www.infotorg.se/>.

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How to cite this article: Leijon, K., & Moberg, L. (2025). Limiting bureaucratic discretion? Analyzing the design and exercise of administrative judicial review in the welfare sector. *Governance*, e12891. <https://doi.org/10.1111/gove.12891>

APPENDIX A

TABLE A1 Variables—Descriptive statistics.

	N	Mean	Sd	Min	Max
Overturn	1831	0.2315	0.4219	0	1
Nursing home	1831	0.6848	0.4646	0	1
Detailed	424	0.7900	0.4077	0	1

TABLE A2 Correlations between the type of judgment and type of case (nursing home) (linear regression).

Nursing home	0.093*** (0.021)
Constant	0.168*** (0.018)
Observations	1831
Adjusted R^2	0.009

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.