

The process of juridification of school inspection in Sweden¹

Agneta Hult & Christina Segerholm

Since 2008, Swedish school inspection has leaned heavily on the Education Act and Ordinance. The increasing importance of the legal framework is in this study understood as a juridification process. This study explores the shift to a more legally oriented inspection and governing and highlights the inspectorate's processes leading up to new assessment areas closely related to the Education Act, how these areas are practiced by the inspectors and how head teachers may react to them. Interviews with legal experts, managers, inspectors and head teachers as well as observations of the inspectors' school visits are used. The results indicate that within the new inspection agency in 2008, the process started with a review of research on successful schools before turning to the Education Act, and that the inspection process is sometimes perceived as more legalistic than pedagogic by head teachers. The consequences of the juridification of Swedish school inspection is discussed in relation to constitutive effects.

Keywords: Compliance, constitutive effects, juridification, school inspection.

Introduction and research interest

School inspection has for many of the European governments become an important answer to declining school performance, and Sweden is no exception. The expansion of the Standing International Conference of Inspectorates (SICI) is one sign of the increased importance put on school inspection by policy makers in Europe (Lawn & Grek 2012, Grek & Lindgren 2015).

The Swedish Schools Inspectorate (SSI), installed in 2008 by the conservative-liberal coalition government, leans heavily on the

Agneta Hult är docent vid Umeå universitet, Pedagogiska institutionen, 901 87 Umeå. E-post: agneta.hult@umu.se

Christina Segerholm är professor vid Pedagogiska institutionen, Umeå universitet, 901 87 Umeå. E-post: christina.segerholm@umu.se

Education Act and Ordinance and other steering documents when inspecting and assessing schools and governing bodies² responsible for local schools (Riksrevisionen 2013). With this new agency followed a shift from the more developmental directed inspection carried out by the National Agency for Education (NAE) to a more control-focused inspection. When analysing and comparing inspection documents from the NAE (2003-2007) and the present agency, the SSI (2008-2010), the greater importance put on judicial considerations is obvious (Lindgren, Hult, Segerholm & Rönnberg 2012). In a previous study we also analysed interviews with a fairly large number of inspectors and inspection managers at different levels at the SSI about the effects of inspection. One of the most often mentioned effects was that the awareness of and compliance with laws and regulations in the school area have risen considerably among head teachers and local politicians and officials (Hult & Segerholm 2012, Hult 2014). The legal framework therefore seems to be an increasingly important part of the governing of education in Sweden. We find that the closer to the present time we come, the greater the tendency to approach the issue of quality in schooling as a formal, legal problematic. The language used in the texts more and more takes on a legal terminology that seems to displace a more pedagogical discourse. We understand this process to be an example of “juridification”. The concept refers to a general increase in legal and regulative processes in the society (e.g., Blichner & Molander 2008, Brännström 2009).

Our interest in the present article started in the questions of how did this happen, and how did the SSI develop assessment areas to inspect originating from the Education Act. This article sets out to:

- explore and analyse the processes during 2008-2011 at the SSI leading up to the new assessment areas,
- how these areas are practiced by the inspectors, and
- how head teachers may react to them.

By exploring these processes our aim also is to highlight and discuss how juridification might influence educational practices.

School inspection research has foremost concerned effects on student performances (e.g., Altrichter & Kemethofer, 2015; Ehren et al 2015; de Wolf & Janssens, 2007). Results indicate for example that inspectorates using differentiated models evaluating both practices and outcomes at schools, are the most effective ones. Unintended consequences, such as narrowing the curriculum and teachers being discouraged from trying new teaching methods, were also reported (Ehren et al. 2015). Perryman (2006) reported on the distress felt by teachers when their school was under constant surveillance by the English inspectorate. Thrupp (1998) supports a similar claim pointing

to the “politics of blame” when school inspection is carried out without taking into consideration contextual factors for schools. School inspection as part of contemporary governing is reported in Grek and Lindgren (2015 eds.). Studies that explore the internal processes of deciding on what to inspect and how to come to decisions are however rare. Sowada (2016) reports on inspectors’ deliberations in their decision making, pointing to the centrality of different types of inspectors’ comparisons in this process. Our study is a contribution to such studies where the internal work of the inspectorates are at the fore.

In the following, we first give a short description of the Swedish Schools Inspectorate and its different commissions, then move on to a theoretical and methodological take-off for the article. The results section starts with a brief historic account of the changes of school inspection when the new agency was installed in 2008 and the law observance became the focus of inspection (regular supervision). We then turn to the description of the processes preceding the new assessment areas based on the Education Act. Our own research process started as an idea to explore how the SSI transformed parts of the Education Act to assessment areas. However, this idea turned out to be a misconception, and the processes took another path, as presented in our findings. In the concluding part of the article, we relate our findings to relevant research and concepts. Among other concepts we discuss the results in relation to juridification (e.g., Brännström 2009, Colnerud 2014a, 2014b) and the concept of constitutive effects (Dahler-Larsen 2012, 2013).

The Swedish Schools Inspectorate

Since autumn 2008 when the new inspection agency, the Swedish Schools Inspectorate, started to operate, inspection activities have increased dramatically, and the SSI now visits thousands of schools annually.

During our study the SSI was commissioned by the government to carry out: a) regular supervision of all schools and governing bodies every five years, and b) quality audits where a sample of schools are audited thematically, e.g., one school subject, or a particular area of interest like assessment in the lower grades. The SSI also handles c) complaints from individuals (e.g., concerning bullying), which is an ever increasing enterprise. For 2015, there was a total of 4035 complaints. In addition, the SSI still handles d) licences for independent schools (Skolinspektionen 2014). The basis for the SSI’s decisions are the Education Act and Ordinance, and other national

formal documents to which all schools must adhere. These laws, rules and regulations are particularly important in regular supervisions (Regeringen Utbildningsdepartementet 2011, Skolinspektionen not dated). Decisions and reports in regular supervision are made for individual schools and governing bodies focusing on issues that deviate from the requirements. A response from the governing body with a plan of how to comply with the SSI decisions has to be sent to the SSI within three months. The SSI assesses if it can accept the response and planned actions and inform the organising body of its decision. Some approvals have taken as long as two years (Segerholm & Hult 2013). From the first of July 2011, the SSI may use penalties according to the new Education Act. Fines can be imposed, and the license to operate may be withdrawn for independent schools if the organising body does not correct what is wrong. From 2011 up until 2015, the SSI has decided to impose a conditional fine or measures at the governing body's expense in 139 cases (Skolinspektionen 2015).

The SSI is organised in five regional departments, and the head management group is composed of the director general, the director of inspections, five department head managers, and the managers from central functions like communication, internal support, personnel, law, etc.

In 2015, the SSI's grant from the government was 398 million SEK (Skolinspektionen 2015). More than half of the economical resources are used for regular supervision. Put together with the resources used for investigating complaints, these two areas most influenced by law and legally trained inspectors end up with 83% of the resources (Skolinspektionen 2015). Considering that the main part of the economic resources is used for activities dominated by judicial perspectives it is interesting to explore the processes leading to a more legally based inspection further.

Theoretical approach

We draw on two main theoretical resources: the first based on the concept *juridification* (Blichner & Molander 2008, Brännström 2009, Teubner 1987), and the second on the concept *constitutive effects* (Dahler-Larsen 2010, 2013).

Brännström states that "Juridification comes about when an issue that was previously dealt with within a cultural, ethical, political, economical, or some other kind of discourse, begins to be, or to be more clearly or more often, treated as a legal matter" (Brännström 2009, p. 328). This is, to our understanding, also a description of what has

happened to education and of the process where a legal discourse more frequently becomes the key determinant instead of a pedagogical, when it comes to dispute or conflict in schools.

Blichner and Molander (2008) delineate and distinguish by five dimensions of juridification in order to clarify the meaning of the concept:

First, constitutive juridification is a process where norms constitutive for a political order are established or changed to the effect of adding to the competences of the legal system. Second, juridification is a process through which law comes to regulate an increasing number of different activities. Third, juridification is a process whereby conflicts increasingly are being solved by or with reference to law. Fourth, juridification is a process by which the legal system and the legal profession get more power as contrasted with formal authority. Finally, juridification as a legal framing is the process by which people increasingly tend to think of themselves and others as legal subjects.

The different dimensions all imply a process of expansion over time. We will not be addressing each of these dimensions of juridification, although we do think they all are part of the process of juridification of education in Sweden. They also contribute to and clarify the definition of the concept. In this study we are foremost concerned with the second dimension, the increase of activities regulated by law.

Colnerud (2014a, 2014b) discusses the ways in which the Education Act currently regulates a lot of the interpersonal relationships in school. This can be understood as juridification of the teacher profession, which leads to consequences when pedagogical, moral and ethical matters are transformed into legal ones. Teachers are liable to, instead of taking action as a colleague, when another colleague is offending a student, report the colleague to the head teacher who will send it to the governing body. Paradoxically increased detailed governing of teacher work, by reducing teachers' own and collegial responsibility, also reduces their professional responsibility (see also Green 2013, Englund & Solbrekke 2015).

With reference to the concept constitutive effects (Dahler-Larsen 2012, 2013), we understand inspection as one type of evaluative processes that influences educational practices in more profound ways than have previously been recognised. It is not only a question of inspection changing behaviour so that, for example, head teachers make sure that certain formal requirements are fulfilled (e.g., decisions properly documented). Dahler-Larsen claims that these evaluative

activities also have the power to change the ways we understand the phenomena that are evaluated/inspected. Constitutive effects seek “to capture the way tests, measurements and indicators help define the social realities of which they are a part” Dahler-Larsen 2012, p 173). The concept underlines the great influence that evaluations and inspections can have on general perceptions on the purpose of schooling and education, as well as on what makes a good teacher, student or performance.

Methods and material

In this article we used material from four interrelated research projects and used a variety of methods to collect the information.³ We were allowed to observe the whole inspection process in eleven schools in four municipalities during 2011, that is, following the inspectors’ planning of the event, visit at the schools and processing of the report. We also conducted interviews with inspectors, head teachers, and teachers in connection with the inspection. Additionally, 20 interviews were also made with head teachers who had experienced inspection after the new Education Act came into effect in 2011 (reported in Novak 2013). The interviews with head teachers and inspection managers and the observations were performed during 2011-12. Interviews with legal experts were carried out during spring 2014, except for one in spring 2013. Informed consent was applied in all interviews as well as confidentiality. The latter was sometimes difficult to observe since we expected the informants at the SSI and at the schools to know who had been interviewed. Also, some informants, like the legal experts, held positions within the SSI that for obvious reasons were easier to relate to individual informants. Hence, we are rather vague in presenting some of the sources we used, and all informants quoted in this text have been renamed. The empirical examples are selected to illustrate potential consequences but do not necessarily reflect the inspection processes in general.

In this study we have used the following (all interviews transcribed):

- Interviews with five legal experts, managers and inspectors at different levels at the SSI in which they were asked to elaborate on the role of the Education Act and Ordinance and other statutes used as a basis for inspection, and on the process of translating them into assessment areas and indicators.
- Interviews with 31 head teachers with experience from the latest inspection cycle and assessment of their school. We have selected

and analysed a small number of incidents recounted by them to exemplify how the legal statutes relate to educational practices.

- Interviews with ten inspection managers and officials at different levels of the organisation about the function of and work with school inspection.

- Observations of eleven of the SSI inspectors' school visits, where we also have selected and analysed a number of incidents to highlight the juridification of the inspection process.

- Documents published by and about SSI were also analysed in order to elucidate the current importance of juridification in the governing of education.

As mentioned in the introduction, this study began with our wish to understand how the SSI transformed parts of the Education Act to assessment areas. When we interviewed the legal experts, a different process surfaced. So we consequently followed that trail by adding informants who had some knowledge about this. This means that some of the interviews, those undertaken in 2013 and 2014, followed a "snowballing" pattern. In writing this article we have strived the best possible account of this process and its significance in educational practice.

Changing Swedish school inspection – the linkage to the law

A short historic account will introduce the new national inspection agency and the changed school inspection in Sweden.

In the beginning of the 1990s Sweden changed the governing of compulsory education from what was called governing by rules and regulations to governing by goals/objectives (later goals/objectives and results/outcomes), simultaneously decentralised the power to allocate state grants to the municipalities, as well as the interpretation of the then new national curriculum. After that, it was realised that a new education act was needed that took these dramatic changes into account (Legal expert B). The parliamentary committee working with this commission was instructed to: "...pay particular attention to the rule of law concerning the students and their position in the education system" (Legal expert B). According to this legal expert, it was also vital to stress the rule of law since the SSI was empowered with the right to give sanctions to failing schools and education providers in the new education act (SFS 2010:800).

The official report from the committee (SOU 2007:101) and the government bill (Prop. 2007/08:50) preceding the new agency (SSI)

also stressed the importance of a school inspection that checked compliance to laws and other regulations by schools and local governing bodies in its regular supervision. The report also underlined the need of an inspection that was distinct in its assessment and message to those inspected. When the agency was launched in autumn 2008, about 200 staff members from the former section for school inspection at the National Agency of Education joined the new agency. They were foremost inspectors with an educational background. The new agency's commission, with new assignments and a sharper inspection at increased velocity, required new staff, and the Director General was quite clear about the SSI's need for inspectors with law and investigative backgrounds beside those with educational backgrounds.

There are two other competences that I think is absolutely unavoidable and one is investigative competence [...] Then there is a third competence we need and that is judicial [...] it will be more complicated judgements and also because we now have sanctions and our assessments has to be correct of course, but now we shall put injunctions that maybe have to hold in a court of law. (Director General)

The new inspectors who were recruited were people with an academic degree either in the field of law or in the social sciences or humanities. Inspector training is also organised around these three main areas of competences (Baxter & Hult 2013).

Our interviews with staff with a legal background suggest that the shift from a more educational and developmental oriented inspection to an inspection more firmly based on legal documents and control for law compliance can be detected in the removal of what was called "areas of improvement" in the reports and decisions from the previous inspection period. The new and current way to write the reports and decisions is explicitly based on pointing out failures to comply with the Education Act and Ordinance and other statutes, and references to the particular legal paragraphs are always present. When the inspectors are finishing their reports on a specific school, legal experts at the SSI scrutinise the notes of criticism to make sure that they are all referable to specific parts of the statutes.

So if we are talking about the regular supervision today, the law has a greater significance because we don't have the improvement areas there any more. So what we state there [in the reports] must be things that we claim is a violation of the law. (Legal expert A)

The earlier inspection that was part of the National Agency of Education also reported on deficiencies, but they also pointed to areas that could be improved “from a quality, an improvement perspective, a little more of a both good and bad perspective” (Legal expert A). The new inspection agency separated these two functions, and the regular supervision from now on controls for law obedience and the quality audits “still have these developmental areas” (Legal expert A). The design of the new education act (SFS 2010:800) confirmed this separation of the two functions. Regular supervision and quality audits are separate paragraphs (SFS 2010:600, ch. 26), stipulating that regular supervision be based on legislation and other statutes and quality audit be directed at assessing the quality of education in relation to the national goals. Since regular supervision is a substantial part of the SSI, legal experts influence the SSI to a large degree:

The legal experts’ influence within the agency is rather big. Since regular supervision is based on legislation, they have high impact. The general idea is that legislation is supposed to be inherently good, and the agency’s assignment in regular supervision is to make sure that legislation is observed and that there is compliance, and the idea is that that leads to something good. (Legal expert C)

It’s easier to approve of judicial comments, they have a heavier weight so to say and of course must have since they have legal basis. There are more general advices behind the pedagogical reasoning so to say, and it’s really a difference in weight. (Central officer 1)

Since the regular supervision takes its departure from legal documents, the inspection process has to be tied to important passages in these documents. How these parts are selected and developed into assessment areas and criteria will be explored in the next section.

The process of selecting and developing assessment areas

The political motives from the conservative-liberal government for the new the SSI was that it should be better at monitoring schools in order to improve educational quality and equivalence between schools, with “...the more prominent position given to results, performance and students’ academic achievements” (Rönnerberg 2012, p. 6).

According to our interviews with SSI's legal experts and central officers, the starting point for the new inspectorate was this urge to raise Swedish students' performance. A group of mainly legal and investigative experts was appointed at the SSI to develop assessment areas based on the Education Act. As this work was tedious (too slow), another solution was presented by some central officers and inspectors: instead of starting in the Education Act, they proposed a start in research on successful schools (Central Officer 2). This led the SSI to carry out a thorough research review on what areas to inspect in order to improve the students' achievements. The legal experts we interviewed claimed that this process started by identifying factors of success that had been brought forward in such research. Examples given were:

the students' development in relation to the objectives,... safe and peaceful environment, educational leadership, ...all those things. And then...when these factors were identified, one has to look at; what is expressed in the legislation about these things? (Legal expert A).

Legal expert C confirmed and stressed that direction of the process:

They [the assessment areas, our clarification] are generated from what is considered important for schools in research, and then controlled that these kind of demands are supported by legislation. So the process has been going in that direction, not in the opposite. It is not the case that the process started by looking at the legislation, and thereafter picking some areas to assess randomly. Rather, factors of success have been identified first. (Legal expert C)

Another part of this step in the process was to prioritise the many areas this group found of importance from the review of research on successful schools. Around ten areas were found to be of importance to inspect:

When we had found around ten areas that we said, these are ten areas we find to be important for schools to be successful. How then can we inspect these with a starting point in the statutes? And then we calibrated our factors of success to the statutes. (Central officer 2)

There was also a need "...to develop something in order to achieve equivalent assessments since the agency is organised in regions" (Legal expert B). The "something" referred to in this quotation are documents

(memoranda) about how the inspectors should define and assess what is good enough when performing the actual inspection process and writing the report and decision. Because of its importance, constant efforts are made to make the assessments equivalent “...between the inspectors, and between the regional offices, between units, throughout the country, that is” (Central officer B). However, the inspectors’ need of support when struggling to interpret indicators or criteria could be given quite informally by e-mail, if raised by one of the regional department legal experts (Legal expert C).

A report of the work was produced and scrutinised by the chief legal adviser. The leading group and Director General also had their say:

The leading group at the SSI was very active in this work too. And there was constant feedback and comments. Because they also had their ideas about how this should be, what was important and not, and how it should be designed, and what to prioritise. (Central officer 2)

The central officer we interviewed also told us that specifications for each area were developed in order to make them more manageable for the inspectors. The assignment from the Director General was also to clearly relate all assessment areas to the legal paragraphs they were based on.

It has been a bit difficult to get a thorough description of the actual process of developing assessment areas related to the legislation and other statutes. As described above, our interviewees claimed that relying on a certain kind of research was a helpful step in this process. When we probed them to be more specific, legal expert A made this effort concerning the assessment area of educational leadership:

We think, or rather research we build on...think that it is important to have good educational leadership...and we like to have assessment indicators and an assessment area about that. And it is then necessary to move on to look at: what does the national curriculum express concerning educational leadership? What is the head teacher suppose to do? What are the responsibilities of a head teacher? And then, one has to try to, from that, develop these points for assessment and indicators. Because they to, finally, should be supported by... be able to lead back to the law. Because if we are to *demand* compliance [of the schools], you know that you have to use the law. In regular supervision, that is.

And...of course, we looked at the preparatory works [e.g. public reports from the government] preceding the actual Education Act and other statutes, to find translations to particular regulations. (Legal expert A)

Practising the assessment areas

When the assessment areas and indicators are decided by the Director General, internal memoranda at the SSI are continuously developed in order to describe and prescribe how the assessment indicators are to be used. One example is the memorandum concerning how the teachers are to write these so-called individual development plans⁴ that are required for each student, and in which the teachers assess individual students in all school subjects, how they develop, and what the school has to do to support this process (Skolinspektionen 2009). Another example is the memorandum instructing inspectors about how to communicate the results of the regular supervision to schools and governing bodies (Skolinspektionen 2011a).

These internal agency documents are very detailed and explicit and are aimed at making the inspection processes equivalent nationally as well as between different inspectors, in line with what Lindgren (2014a) has described as the “evidence based model” where:

Legitimacy is gained through comprehensive standardisation and implementation of work processes aiming at reducing the inspectors’ contextually adapted translations of educational processes as well as their personal values and ideals. (Lindgren 2014a, p. 59, our translation)

A third, rather telling example concerns school libraries. In the Education Act from 2011, a new paragraph about school libraries was decided (SFS 2010:800, 2 ch. 36§). A memorandum was prepared to help inspectors, governing bodies, and schools to understand what is considered to be a school library, or rather, how the Education Act is to be interpreted in this particular case (Skolinspektionen 2011b). After this first step of interpretation of the law into how to use the school library indicator, the inspectors themselves have to continue the interpretation process in their assessment of school practice. The following observation notes are from an internal meeting at the SSI. Discussing an inspection report, they show the need and use of these memoranda. At these meetings there is always a legal expert present, and “J” is this person.

U- Is it possible to criticise a lack of library when they have only a small corner while the municipality library is very close and they use it rather frequently?

L- I don't know if we can criticise it. The memo says... They check the memorandum.

I- In three of the village schools they had solid library, and "book-Olle" [nick name for a librarian] visited with books and talked about books.

The inspectors give example of a school having a small turning shelf, only accessible during lunch break.

U- At first I thought it was OK, but when I read the memo I got hesitant.

J- Well, I don't know...

L- We could try to write [in the report], and see what they say.

There is a long discussion about what is required to be labelled a school library, and whether or not the inspectors are to criticise it or not.

J- I feel I looked too narrowly in order to be able to say something about it.

A bit later:

L- I think we have to let it go until we know a bit more about it [school libraries], we should have looked more closely (Observation notes from quality assurance meeting at the SSI October 2011)

The interviewed legal experts are in agreement of the increased importance of legal matters over the years as they are put down in the Education Act and Ordinance and other statutes. This is particularly visible in the processes of regular supervision and in individual complaints. However, they have slightly different views on what the main motives for this was; one legal expert emphasised the rule of law and the rights of the students, while another stressed the ambition to increase students' goal attainment. The process of selecting important areas in research, connecting them to the Education Act and developing the assessment areas is no simple matter, and takes place in several steps within the SSI, but it is also apparent when the inspectors confront actual educational practices in schools.

Head teachers' reactions at the schools

When talking about the intentions with the regular supervision, it seemed quite clear to the head teachers that it to a great extent

concerns monitoring awareness of and compliance to laws and statutes.

They come and check that we follow the laws, the statutes, the documents and the assessments that we have to. (Head teacher, Cornet school)

The intention with school inspection is of course to look into that we follow the statutes and have all our documents in order. (Head teacher, Pine tree school)

Most of the head teachers expressed that this ambition to ensure legal security is a commendable one. The importance of the new Education Act was also noticeable for the head teacher that commented on the fact that the inspectors too sometimes were insecure of how a specific part of the law should be interpreted "...this we have to check with our legal expert, we'll get back to you", as she cited the inspector" (Head teacher, Strawberry school).

We also found that the influence of other than educational approaches into the inspection process seems to have consequences for the credibility of the SSI's judgements and inspection reports. Our interviews indicate that when inspections took place with one or two inspectors with a law and/or investigative background, the head teachers often did not trust the quality of the assessment of their school. When planning for the inspection events, the SSI always tried to arrange it so that there was at least one inspector with an educational background together with one with law or investigative training. However, this is not always possible, and head teachers do react when they notice that the inspector/s do/es not have a school background. One head teacher who experienced two inspectors with respective law and investigative backgrounds summarised the inspection as: "We felt it as an inquisition more than as an inspection" (Head teacher 11J). Another head teacher described how he could detect that the inspector had a legal background:

He could not think outside of the box "This is what the law says" [citing the inspector]. And he was the one responsible for the inspection. "This is our directive" [citing again]. So he was the one of them who was the red tapist, which was clearly noticeable. (Head teacher 9J)

Another head teacher explained the problems with these inspectors lack of understanding of processes in school with the fact that "they

have not been in the situations that teachers have.” (Head teacher Willow tree school).

Occasionally the head teachers also claimed that the inspection resulted in potential problems for students due to the fact that the school was forced to change pedagogically well functioning solutions that were not in accordance with the statutes. In one school they had tried to motivate students who had learning and motivational problems by letting them use time and teacher resources at a special weekly occasion that was designated solely for the basic subjects mathematics or Swedish. The students could use that occasion for any subject they decided on, with the main purpose being to convince them to spend time in school and try to improve in some way or other. Since the national timetable dictates that this occasion should be dedicated to math or Swedish, the school was forced to change this with possible negative consequences, as the head teacher explained:

Now we have to devote rather a lot of time to determine how to give support and resources in all of the subjects, and that’s ok. But if I could have decided I would have put a lot of effort in assessment and grading in these subjects instead. Another means but the end would be the same [...]

The risk is that it undermines [the teachers’] engagement a bit, because there is a great engagement here. In essence every teacher here is really devoted to their students and their subjects. The school has been used to a high level of autonomy and when you get directed the way we are now, there is a risk for it [the school practice] getting mechanised. (Head teacher Moss school)

Another example of the conflict between the schools’ endeavour to solve pedagogical problems and the SSI’s more formalistic and juridical perspective derived from an inspector’s feedback to a head teacher after inspection. The inspector had observed that a six-year-old girl had been placed in education for children with intellectual disabilities, which in Sweden is not allowed until the age of seven (quote below from Lindgren 2014b, pp. 78-79):

Head Teacher: We think that special school is a proper environment for this child.

Inspector 1, Moss School: There is no special school for pre-school children. It is not correct to have a child in special school that is not registered.

Head Teacher: From a pedagogical point of view, it would have been wrong to place this child in a regular pre-school class – she would not have been given the pedagogical support

she needs.

Inspector 1, Moss School: Formally, it is not correct
(Feedback meeting, Moss school).

These examples illustrate how considerations concerning the educational practice in schools sometimes have to be made on judicial and not pedagogical grounds. The head teachers occasionally expressed concern about possible consequences from this, like the quote above leading to reduced teacher engagement and mechanised work. There was also a certain understanding for this kind of reaction conveyed by this officer at the SSI:

You can really think that for a certain student or a certain school it would be an excellent solution but then there is a law that says that we shall not have these kinds of excluding groups in Swedish schools. (Regional officer)

When talking to this regional officer (with an educational background) about potential conflicts between pedagogical and judicial considerations she said that she has not experienced it as conflicts, but “it might be because we are so drilled to take our departure in what the Education Act and Ordinance says”.

Discussion

Several signs indicate a more legally oriented governing policy and practice in Sweden. We first summarise these findings and then turn to what the consequences might be in schools and for educational practices.

The new inspectorate and the regular supervision based on the Education Act and other statutes and the new Education Act (SFS 2010:800), which incorporated several new areas into legislation (e.g. school libraries), are obvious signs of this, as is the SSI's mandate, according to the new Education Act, to impose fines if governing bodies and schools do not comply with the SSI's decision (cf. Hult & Lindgren 2016). Another rather obvious sign of the importance put on legal matters at the SSI is the recruitment strategy, that is, the ambition to have a force of inspectors in which a third has an educational background, a third a general investigative background and a third a legal background. The legal experts we interviewed also claimed that they were quite influential in the work at the SSI. Here we like to underline that we are certainly not negative to schools and governing bodies following the laws that are decided by the parliament. It

is however important to point out that the expansion of legislation (in the area of education) to spheres that aim at regulating professionals' activities risk generating effects that were not necessarily foreseen or desirable. It is also important to recognise that laws are not always either good or just, and are therefore occasionally adjusted to live up to new and other demands from politicians and the public.

Our interest in this study started out with our probing questions on how the paragraphs in the Education Act were translated into assessment areas to be used by the SSI inspectors when inspecting. The answers turned out to be quite another process. It seemed to be a difficult way to make the regular supervision legally based by translating the law into assessment areas, so the SSI started by reviewing research on successful schools to find assessment areas that could be related to the Education Act. Such areas could indicate and, if fulfilled, lead to better goal achievement, but could also be inspected and assessed as violating the law or not. It can be argued that the choice of research on successful schools that helped to translate the legislation into assessment areas was a result of the heavy stress from the government on increasing the level of attainment. Research on successful schools seemed to fit that urge to help raise the students' standard of knowledge. We find this an interesting example of the interplay between research, certain kinds of knowledge and politics (cf. Segerholm & Lindgren 2015). This type of use of research requires a particular sort of research that is based on assumptions and methodologies of causality in order to be logical in a national perspective where generalisations of results to large populations seems to be desired (cf. Biesta 2007).

Making inspections more legally based involves processes in many steps as we have shown in our examples, and it includes several actors within the SSI. The process can be described as a chain that includes:

- selecting research results on successful schools that could be turned into “descriptors” of what is needed to raise student performance;
- searching for paragraphs in the Education Act and other statutes expressing assessable parts of such “descriptors”;
- developing these parts into assessment areas and instructions to be used in inspection; and finally
- the inspectors interpreting instructions expressing these areas when inspecting schools and governing bodies.

At the “other end”, before an inspection process starts, head teachers, teachers and governing bodies interpret the quite visible assessment areas displayed on SSI's website. After inspection, the report and the criticism they receive have to be developed into adjustments for the school. Finally,

they formulate their plans and efforts to comply into texts that have to be approved of by the inspectors.

Even though the intention was to make the assessments as objective and as thoroughly based on “hard” evidence as possible, there was room for shifts and different interpretations along the way (Sowada 2016). In our observations and interviews with inspectors and legal experts, the ones with a legal background seemed to have a rather different outlook on inspection compared to the inspectors with an educational background. Not surprisingly tensions surfaced between a legalistic perspective relating matters to the law and other statutes, and views starting from the kind of pedagogical solution required to an educational problem. These reported differences between legal experts and educationally trained inspectors are also supported by results from an electronic survey study directed to all inspectors at the SSI, although the response rate (34%) was a bit low to establish any stable patterns (Johansson 2012).

The legalistic approach expressed by the law inspectors also seemed to have consequences for the credibility of the SSI’s judgements and inspection reports in the eyes of head teachers and teachers. Our interviews indicate that when inspections took place with one or two inspectors with a law background, the head teachers often did not trust the quality of the assessment of their school. This kind of credibility problem has earlier been noted in England, and in 2012, the English inspectorate, Ofsted, changed its directions for recruiting inspectors in quite the opposite direction compared to the SSI (Baxter & Hult 2013). They recruited in-service school leaders from good or outstanding schools in the hope of enhancing the credibility of their judgements and that the school leaders with the ability to speak the same language as those being inspected will effect school improvement. Scotland’s inspectorate has also tried to enhance the inspectors’ credibility by training them in social skills and ways to communicate without disempowering professionals at schools (Baxter, Grek & Segerholm 2015)

One obvious and concrete effect of the juridification process is the presently necessary duty for teachers and head teachers to document ever more from the school practice, student conflicts and student development. It has become a necessity for schools to prove their compliance to the statutes by handing in all kinds of plans and documents, and also in case of complaints from either students/parents or the SSI, they have to prove what steps the school has taken in specific cases. Michael Power (2013) elaborates in a working paper on the routine production of documents as *audit trails* shaped by institutional demands for accountability and manifesting larger performance

regimes. Power argues that this is “what organizations do to themselves in the name of ideals of better governance and performance. This is the real audit society” (p. 49). It is manifested as a self-inspection that has to be produced for a possible future audit or complaint. This defensive documentation means an increasing and partly different workload for teachers and head teachers and can also be discussed in terms of constitutive effects (Dahler-Larsen 2012, 2013). The concept refers to how changed school policy and practices affect our ways of perceiving school, teachers and students. The expectations from at least some instances on how teachers should perform their work seems with reference to the above described documentation demands to be changing. All the way from the government, the SSI, the local governing body and also from parents, there are expectations on an ever-increasing documentation of students’ behaviour and academic accomplishments, and of problematic situations. Such expectations can be interpreted as constitutive effects and may reflect a shift in what it means to be a teacher and how notions of what the teaching work entails are changing.

Another way of discussing constitutive effects is offered in Brännström’s (2009) analysis of juridification and the case of patients in relation to doctors, when she points to the risk of moral considerations being replaced by judicial and that the sensitivity to moral dilemmas may deteriorate. When referring to the changed school practice this could imply, as one of the head teachers feared, a mechanised work where school personnel first have to relate to the statutes and the pedagogical concerns have to give in to the legalistic. These kinds of changes in the teacher profession has also been interpreted in terms of reduced teacher discretion and professional responsibility (e.g., Colnerud 2014a, 2014b, Englund & Solbrekke 2015, Engström 2013, Green 2011). Teachers daily have to make complicated judgements (comp. Lipsky’s 2010 concept “street-level bureaucrats”) and are supposed to act in line with professional ethics and moral values in exerting their own discretion. The more detailed steering of teachers’ work, the less space for their own professional judgement and responsibility (Colnerud 2014a). Teachers’ professional responsibility will not develop through detailed instructions, “the more someone is tied down by specific instructions [...]the less they can be held responsible to see to it that things go well generally within their sphere of responsibility” (Green 2011, p. 91). Once again, we do not consider schools and governing bodies complying to laws and regulations a negative thing, but it is important to study and discuss all consequences!

Notes

1. This is a revision of a paper presented at the European Conference for Educational Research (ECER), Network 23, Porto Portugal, September 2-5, 2014. We use data and acknowledge support from a number of interrelated projects. These projects are: Umeå University for financing the project Juridicering av skolans styrmedel (Juridification as a mode of governing education), Agneta Hult). The Swedish Research Council, financing the two projects Governing by Inspection (no 2009-5770, Segerholm, Forsberg, Lindgren, Rönnerberg) also co-financed by MidSweden University, Umeå University and the British part financed by the Economic and Social Research Council (ESRC) in the UK, and The Swedish Research Council for financing Swedish national school inspections: Introducing centralized instruments for governing in a decentralised context (no 2007-3579, Rönnerberg). The authors further acknowledges Umeå University for financing the project Inspecting the 'Market': Education at the Intersection of Marketisation and Central State Control (no 223-514-09, Rönnerberg, Lindgren).
2. The SSI inspects both individual schools and the governing bodies that organise school activities. The governing bodies are either municipal school boards or independent school boards or companies (often big concerns and sometimes nonprofit organisations based on a specific pedagogical idea, like Montessori).
3. See footnote 1, listing the projects.
4. Such plans are now obligatory for grades 1-5 compared to grades 1-9 when we collected our information.

References

- Altrichter, Herbert & Kemethofer, David (2015): Does accountability pressure through school inspections promote school improvement? *School Effectiveness and School Improvement* 26 (1), 32–56.
- Baxter, Jacqueline & Hult, Agneta (2013): Different systems, different identities: school inspectors in England and Sweden a comparative study. Paper presented at the European Conference of Educational Research (ECER), Network: 11. Educational Improvement and Quality Assurance. Istanbul, Turkey, September 10-13, 2013.
- Baxter, Jacqueline; Grek, Sotiria & Segerholm, Christina (2015): Regulatory frameworks: Shifting frameworks, shifting criteria. In Sotiria Grek & Joakim Lindgren (Eds.) *Governing by Inspection* pp. 74-95. London: Routledge.
- Biesta, Gert (2007): Why “what works” won’t work: Evidence-based practice and the democratic deficit in educational research. *Educational Theory* 57 (1), 1–22.

- Blichner, Lars C. & Molander, Anders (2008): Mapping juridification. *European Law Journal* 14 (1), 36–54.
- Brännström, Leila (2009): *Förrättsligande: en studie av rättens risker och möjligheter med fokus på patientens ställning*. [Juridification: a study of the hazards and potentials of law, focusing on the legal position of the patient in health care]. Lund: Bokbox förlag.
- Colnerud, Gunnel (2014a): Skolans juridifiering-Om styrning av lärarprofessionen. [Juridification of school- About governing of the teacher profession]. *Skola och Samhälle*. <http://www.skolaochsamhalle.se/?s=colnerud> [Downloaded 20 February, 2014].
- Colnerud, Gunnel (2014b): Lärares yrkesetiska dilemman och den ökande juridifieringen i Sverige. [Teachers' ethical dilemmas and the juridification of the Swedish school]. *Etikk i praksis* 8 (2), 22–30.
- Dahler-Larsen, Peter (2012): Constitutive effects as a social accomplishment: A qualitative study of the political in testing. *Education Inquiry* 13 (2), 171–186.
- Dahler-Larsen, Peter (2013): Constitutive effects of performance indicators. *Public Management Review*, DOI:10.1080/14719037.2013.770058.
- De Wolf, Inge & Janssens, Frans (2007): Effects and side effects of inspections and accountability in education: an overview of empirical studies. *Oxford Review of Education* 33 (3), 379–396.
- Ehren, Melanie C.M.; Gustafsson, Jan-Erik; Altrichter, Herbert; Skedsmo, Guri; Kemethofer, David & Huber, Stephan G. (2015): Comparing effects and side effects of different school inspection systems across Europe. *Comparative Education* 51 (3), 375–400.
- Englund, Tomas & Solbrekke, Tone D. (2015): Om innebörder i lärarprofessionalism. [On the meaning of teacher professionalism]. *Pedagogisk Forskning i Sverige* 29 (2-3), 169–194.
- Engström, Mattias (2013): Anmäld- Skolpersonals upplevelser och organisatoriska lärprocesser vid anmälningsärenden till Barn- och Elevombudsmannen. [Reported- School personnel experiences and organisational learning processes after complaints]. Specialistutbildning. Sveriges Psykologförbund.
- Green, Jane (2011): *Education, Professionalism and the Quest for Accountability- Hitting the target but missing the point*. New York: Routledge.

- Hult, Agneta (2014): Granskningens verkningar – Inspektörer om inspektionen. [Inspection effects-Inspectors about inspection]. *Utbildning & Demokrati* 23 (1), 107–122.
- Hult, Agneta & Segerholm, Christina (2012): Inspection effects through the eyes of the inspectors: Swedish notions. Paper presented at the European Conference for Educational Research, Network 23 Symposium “Governing by Inspection (ii): National Developments”, Cádiz, September 17-20, 2012.
- Hult, Agneta & Lindgren, Joakim (2016): Med lagen som rättesnöre- kunskapsformer i lärares arbete mot kränkande behandling [Judging by the (law)book: Knowledge forms in teachers’ work against degrading behaviour]. *Utbildning & Demokrati* 25 (1), 73–93.
- Johansson, Ida (2012): Skolinspektörers uppfattningar om sitt arbete – en enkätstudie om inspektion som styrning. [School inspectors’ conceptions of their work – a survey study on inspection and governing]. Master thesis. Utbildningsvetenskapliga rapporter 2012:2. Härnösand: Institutionen för utbildningsvetenskap, Mittuniversitetet [MidSweden University]. Accessible at http://www.miun.se/Global/Institutioner/UTV/Rapportserie/ Utbildningsvetenskapliga_studier_2012-2.pdf
- Lawn, Martin & Grek, Sotiria (2012): *Europeanizing Education. Governing a new policy space*. Oxford: Symposion Books.
- Lindgren, Joakim (2014a): Grund grund för bedömning? Dilemman i “inspektionsträsket”. [Shallow ground for judgement? Dilemmas in the “inspection swamp”]. *Utbildning & Demokrati* 23 (1), 58–83.
- Lindgren, Joakim (2014b): Seeing like an inspector: High Modernism and Mêtis in Swedish school inspection. *Sisyphus* 2 (1), 63–86.
- Lindgren, Joakim, Hult, Agneta, Segerholm, Christina & Rönnberg, Linda (2012): Mediating school inspection – Key dimensions and keywords in agency text production 2003–2010. *Education Inquiry* 3 (4), 569–590.
- Lipsky, Michael (2010): *Street-level Bureaucracy: Dilemmas of the Individual in Public Services*. 30th anniversary expanded ed. New York: Russell Sage Foundation.
- Novak, Judit (2013): De styrdas röster – rektorers berättelser om Skolinspektionens regelbundna tillsyn. [Voices of the governed – head teachers’ stories about the Swedish Schools Inspectorate’s regular supervision]. Master thesis. Utbildningsvetenskapliga studier 2013:1. Härnösand: Institutionen för

- utbildningsvetenskap, Mittuniversitetet [MidSweden University]. Accessible at http://www.miun.se/Global/Institutioner/UTV/Rapportserie/Utbildningsvetenskapliga_studier_2013-1.pdf
- Perryman, Jane (2006): Panoptic performativity and school inspection regimes: disciplinary mechanisms and life under special measures. *Journal of Education Policy* 21 (2), 147-161.
- Power, Michael (2013): Organizations and audit trails. Working paper presented at The Swedish Evaluation Society's (SVUF) conference in Stockholm, 13-15 November 2013.
- Prop. 2007/08:50: Nya Skolmyndigheter. [New National Agencies for Education]. <http://www.regeringen.se/content/1/c6/09/77/74/94df3259.pdf> [Downloaded June 6, 2014.]
- Regeringen Utbildningsdepartementet (2011): Regleringsbrev för budgetåret 2011 avseende Statens skolinspektion. Regeringsbeslut 1:46. [Appropriation directions for the Swedish Schools Inspectorate budget year 2011]. Accessible at <http://www.esv.se/statsliggaren/regleringsbrev/?RBID=13665> [Downloaded, August 30, 2016.]
- Riksrevisionen (2013): *Statens tillsyn över skolan – bidrar den till förbättrade kunskapsresultat? RIR 2013:16*. [Swedish National Audit Office: National supervision of education – does it improve students' knowledge?]. Stockholm: Riksrevisionens publikationsservice. Accessible at www.riksrevisionen.se
- Rönberg, Linda (2012): Justifying the need for control. Motives for Swedish national school inspection during two governments. *Scandinavian Journal of Educational Research*, DOI:10.1080/00313831.2012.732605
- Segerholm, Christina & Hult Agneta (2013): Learning from inspection. Two Swedish case narratives. Paper presented as part of the symposium "Governing by inspection: school inspection as brokering and mediating work", Network 23, at the European Conference for Educational Research, Istanbul, September 9-13, 2013.
- Segerholm, Christina & Lindgren, Joakim (2015): Evidence-based governing? The role of educational research in the work of the Swedish Schools Inspectorate. Paper presented at the Nordic Educational Research Association's conference in Gothenburgh, 4-6 March, 2015.
- SFS 2011:185: Skolförordning. [Education Ordinance]. http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Skolforordning-2011185_sfs-2011-185/ [Downloaded March 23, 2015.]

- SFS 2010: 800: Skollag. [Education Act]. www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Skollag-2010800_sfs-2010-800/ [Downloaded March 23, 2015.]
- Skolinspektionen (2009): Individuella utvecklingsplaner med skriftliga omdömen. [Individual development plans with written assessments]. PM 2009-06-02. Stockholm: Skolinspektionen.
- Skolinspektionen (2011a): Utdrag ur processbeskrivningen. Kommunikation av resultat efter tillsyn. [Part of process description. Communication of results after regular supervision]. PM 2011-09-16. Stockholm: Skolinspektionen.
- Skolinspektionen (2011b): Skolbibliotek. Informationsblad 2011-09-30. <http://www.skolinspektionen.se/Documents/vagledning/infoblad-skolbibliotek.pdf> [Downloaded June 13, 2010.]
- Skolinspektionen (2015): Årsredovisning 2015. Dnr 10-2015:8723. [Annual report to the government 2015]. Stockholm: Skolinspektionen, <https://skolinspektionen.se/globalassets/publikationssok/regeringsrapporter/arsredovisningar/arsredovisning2015.pdf> [Downloaded August 31, 2016.]
- Skolinspektionen (not dated): Årsredovisning 2011. [Annual report to the government 2011]. Dnr 10-2011:6465. Stockholm: Skolinspektionen, <http://www.skolinspektionen.se> [Downloaded June 25, 2012.]
- SOU 2007:101: *Tydlig och öppen. Förslag till en stärkt skolinspektion.* [Clear and open. Suggestions for a sharper school inspection]. Stockholm: Fritzes. <http://www.regeringen.se/content/1/c6/09/41/51/bdd8bef9.pdf> [Downloaded May 2012.]
- Sowada, Moritz G. (2016): Orders of worth: On the evaluation work of school inspection teams. Paper presented at the European Conference for Educational Research in Dublin, 22-26 August, 2016.
- Teubner, Gunter (1987): Juridification- Concepts, Aspects, Limits and Solutions. In Teubner, Gunther (Ed.), *Juridification of Social Spheres: A Comparative Analysis in the areas of Labor, Corporate Antitrust and Social Welfare Law.* Berlin: Walter de Gruyter & Co., 3–48.
- Thrupp, Martin (1998): Exploring the politics of blame: School inspection and its contestation in New Zealand and England. *Comparative Education* 34 (2), 195–209.
- Vetenskapsrådet (2011): God forskningssed. [Good research tradition]. Vetenskapsrådets rapportserie 1:2011. Stockholm: Vetenskapsrådet.