Utlendingsdirektoratet

The use of detention and alternatives to detention in the context of immigration policies – the case of Norway

National contribution to EMN study. The European Migration Network provides the main hub for gathering and spreading information in the region. The Network is supported and coordinated by the European Commission. Norway has been a member of EMN since 2010 as the only non-EU member country. The Norwegian EMN contact point (NO EMN NCP) consists of representatives of the Ministry of Justice and Public Protection, and the Norwegian Directorate of Immigration. In addition to providing and spreading comparable information on migration and asylum in Europe, it is the ambition of NO EMN NCP to bring attention to the link between Norway and the EU in these politically sensitive areas.

The report is based, in the main, on information from National Police Immigration Service (NPIS). Some of the information in the report is based on feedback from the Norwegian Organization for Asylum Seekers (NOAS) and communication with Dr. Annika Suominen, at the University of Bergen, as well as information from relevant websites and reports that had been produced. The report is written by Dobromira Ilkova Tjessem EMN coordinator at the Norwegian Directorate of Immigration, with support in quality assurance from relevant actors.

Content

Summary

This study aims to provide an overview of the legislation and practice of detention of third country nationals and its alternatives for the purpose of immigration control in Norway.

For the purpose of immigration control a third country national can be detained for reasons related mainly to: establishing his/her identity, and to enforce a decision to that s/he should leave Norway. Persons who are found to represent a threat to fundamental national interests can also be detained. As long as a third country national is deemed to fall under one of the categories listed in chapter 1 in this report, s/he can be subject to detention or one of the alternatives that will restrict his/her freedom of movement. In principal minors, families with children and pregnant women can be detained, but since 2012 the legislation introduced

stricter requirements for detention of children. Unaccompanied minors cannot be detained unless it is "absolutely necessary"[1]. The interest of the child is a primary consideration in cases of detention of children. The police shall execute a special care in cases of detention of unaccompanied minors and families[2]. The decision to impose detention or an alternative to detention is taken by the head of the local police, or a person authorized to do so by the head of the local police. Whenever detention is considered, the authorities shall consider whether an alternative will be sufficient for the purpose of the measure. It is an absolute requirement that the detained person is brought before a court at the earliest opportunity: if possible the day after the person has been detained. Norway does not practice automatic detention. The law prescribes that each case of detention should be assessed individually and on case to case bases.

A fundamental legal principal in the individual assessment is the proportionality test, laid down in section 99 in the Immigration act. The law presents a non-exhaustive list of criteria to help evaluate whether there is a risk of absconding. To decide whether the person belongs to a vulnerable group age, health condition, length of detention (if such has been decided previously), has to be considered.

Representatives for the National Police Immigration Service (NPIS), the main contributor to this report, point out that the room for discretion provided by the law can pose challenges in some cases.

Third country nationals are usually detained in a special facility (Utlendinginternat – Trandum) operated by NPIS. It is only exceptionally that third country nationals are detained in ordinary prisons for the purpose of immigration control. S/he is then kept separate from ordinary prisoners. In the specialized center families with minors are held separately from others. The center also has a high security wing.

Detainees do have a number of rights laid down in legislation, among them the right to legal advice and essential health aid.

The report reveals somewhat not yet established routines to gather detailed statistics on the matters in question and a clear need for more elaborate studies on national level on the practices and the effects of the extended use of coercion in immigration control.

Note on terminology: The provision in the Norwegian Immigration act uses the term “arrest and remand in custody” for the cases of administrative detention for the purpose of immigration control. The Immigration Act uses “foreign national” and “evade implementation of an administrative decision” for the cases of “third country national” and “risk of absconding”. There where the report quotes provisions’ formulations we have used terns as they are officially translated from Norwegian on:
http://www.regjeringen.no/en/doc/laws/acts/immigration-act.html?id=585772

[1] Section 184(2) (2) from the Criminal Procedure Act, and Section 106 (3) from the Immigration Act. See also White paper “Children who seek asylum” (2011-2012)
[2] White paper “Children who seek asylum” (2011-2012), section “Limitations to freedom of movement”

The use of detention and alternatives to detention for the purpose of immigration control

1. Categories of third country nationals that can be detained and grounds for detention

In 2012 the legal provisions stipulating use of coercive measures including detention of foreign nationals were revised[3], and the changes mirrored authorities' wish to increase the use of detention to make the return policies more effective and to safeguard the institute of asylum[4]. As a result the list of grounds for subjecting a person to detention was expanded, and the threshold for assessing the need to detain or impose another coercive measure was lowered. These legal changes came into force in March 2012. The revised Chapter 12 on Coercive measures from the Immigration Act contains sections 99 and 106 which give the general principal for use of detention and in which cases detention can apply.

1.1 Categories of third country nationals that can be detained.

- Applicants for international protection in ordinary procedures,
- Applicants for international protection in fast-track (accelerated) procedures,
- Applicants for international protection subject to Dublin procedures ,
- Rejected applicants for international protection,
- Rejected family reunification applicants,
- Other rejected applicants for residence permits on basis other than family reunification,
- Persons detained at the border to prevent illegal entry (e.g. airport transit zone),
- Persons found to be illegally present on the territory of the (Member) State who have not applied for international protection and are not (yet) subject to a return decision,
- Persons who have been issued a return decision,
- Other categories.

1.2 List of grounds for detention according the Immigration Act

- Not cooperating in clarifying own identity,
- There are specific grounds to suspect that,
- The person has given a false identity,
- In case there are specific grounds for suspecting that the foreign national will evade the implementation of an administrative decision that s/he is obliged to leave the realm,

[3] Prop. 138 L (2010-2011) proposed legislative enactment for changes in the Immigration Act (expanded access to detention, etc.).
[4] Ibid.

- If there is a significant risk that the foreign national will evade the implementation of an administrative decision to transfer him/her to another European country in accordance with the Dublin Convention, cf. Section 32 fourth paragraph,

- When the foreign national fails to comply with the obligation to report to the police or an order to stay in a specific place under Section 105 first paragraph letter (c)[5], and the case of the foreign national has not been finally decided or a time limit for leaving Norway has not yet expired

- When an administrative decision regarding expulsion has been made and the decision is final or a deferral of implementation has not been granted in connection with an appeal, cj Section 90 from the Immigration act, and measures have been adopted in respect of the foreign national with a view to removal (refoulement). It is a condition that the foreign national has been expelled on account of being sentenced for a crime and that there is a risk, in view of his/her circumstances, that s/he will commit new criminal offences,

- For not doing what is necessary to fulfill his or her obligation to get a valid travel document, and the purpose is to bring the foreign national to the foreign service mission of the country concerned so that s/he can be issued a travel document,

- When in transit in a Norwegian airport, with a view to removal (refoulement).

- When there is a decision that a foreigner is a threat to fundamental national interests, and action is being taken against the foreigner with a view to remove him from the realm.

1.3 Detention of persons belonging to vulnerable groups

Persons belonging to vulnerable categories can be detained on the same grounds as others. However, section 106 in the Immigration act refers to the Criminal Procedure Act, Sections 174 and 184, which set stricter requirements for arrest and remand in custody of unaccompanied minors. It is stipulated that they shall not be arrested unless" strictly required" and hold in custody unless it is "absolutely necessary". This provision also applies to detention under the Immigration Act. Family members are detained together. The specialized centre for detention of immigrants (Trandum)[6] has a separate wing for women, families and a separate wing for unaccompanied minors. The reported practice is that women, families with children and unaccompanied minors are kept in separately[7]. In some cases, unaccompanied minors at higher age had had shorter stays in custody before transfer to the Immigration detention center[8]. This is mainly because they have been arrested on suspicion of criminal offenses unrelated to their immigration case. The preparatory works to the revised chapter on coercive measures in the Immigration act give a guidance that detention of families with children should take place primarily when quick removal can be expected. If it turns out that removal cannot take place the day after the detention, the family is expected to be released from the detention center even before the automatic judicial review procedure has started[9]. In practice the policy might vary.

[5] Section 105 from the Immigration act threats the question of alternatives to detention, letter c threats the question of when the foreigner is an asylum seeker or has an illegal residence and have been sentenced for a criminal offense or taken in the act for the performance of a criminal offense, which could lead to greater punishment than imprisonment for six months

[6] Section 107 in the Immigration act regulates the specialized detention center Trandum, called for " holding center"

[7] Section 4 in Regulations relating to holding centres: relevant provision in the Regulations relating to holding centers states that "As long as there is capacity, vulnerable persons will be kept separately from others", text in Norwegian at http://lovdata.no/dokument/SF/forskrift/2009-12-23-1890

[8] White paper « Childern seeking asylum (2011-2012) section 9.6.

[9] Prop. 138 L (2010-2011) page 54

1.4 Detention of persons who cannot be removed and/or given a tolerated stay

If the objective conditions to detain a foreign national are met, the key issue will be whether detention is a disproportionate measure and therefore the foreign national shall be released, see the Immigration act section 99 first paragraph. Whether detention is disproportionate, the authorities will decide by weighting the prospective timeframe for conduction an effective removal against the burden the detention poses on the foreign national. In case the detention period exceeding 12 weeks, it must objectively exist "special reasons", see the Immigration act Section 106, fourth paragraph. Moreover, the detention period cannot exceed 18 weeks, unless the foreign national is subject to expulsion as a result of a criminal offence sentence or a special sanction, see the Immigration act Section 106, fourth paragraph, last sentence.[10]

2. Criteria for placement of third-country nationals in detention. Assessment procedures.

Any case of a foreign national, who is arrested and remanded in custody after the Immigration act, is subject to individual assessment. There has to be specific grounds for suspecting that the foreign national will evade the implementation of an administrative decision that the foreign national should leave the realm, that s/he is not cooperating in establishing his or her identity or that there is suspicion that the foreign national has given a false identity. The Immigration act Section 106 first paragraph sets out the grounds for detaining and remanding a foreign national in custody. Furthermore, the Immigration act Section 106 letter (a) specifies the factors that are relevant in the assessment of whether a risk of evasion exists. If the conditions for remanding a foreign national in custody have been met, an assessment must be made of whether remand in custody is a disproportionate intervention, cf. the Immigration Act Section 99. Arrest and remand in custody after the Immigration act shall be decided by a person authorised by the head of the local police if not the head of the local police. The police must, at the earliest opportunity, and if possible on the day following the detention bring him/her before the courts. All individual assessments shall address whether alternatives to detention can be used and whether a decision for detention is a proportionate measure.

Norway does not undertake interviews that have focus on the detention ground before taking the actual decision to detain for the purpose of immigration control. The Immigration act does not stipulate explicitly that the person has a right to be informed of the reasons for detention. Section 106 refers to section 174-191 of the Criminal Procedure Act, and that those provisions shall apply “insofar as appropriate”. The decision to detain is presented to the court and a detainee has the right to a legal representation[11]. Both the detainee and the legal representative are physically present before the court and the detainee has the right to be heard[12]. Subsequent hearings may take place over a videoconference link with at the presence limited

[10] Immigration Act Section 106, cf. Section 99
[11] Section 92 (4) Immigration Act
[12] Section 185(4) Criminal Procedure Act

to the detainee and the legal representative present in a specialized room in the detention center[13]. According to the Immigration act, Section 99 first paragraph, coercive measures, including remand in custody, may not be applied when doing so would constitute a disproportionate intervention in light of the nature of the case and other factors. In the assessment of whether remand in custody is a disproportionate intervention, consideration will be given, among other things, to factors, such as health and age, and the length of the period in remand.

When considering whether there is a ground for detention, an assessment shall always be made of whether any alternatives to detention can be used, such as an obligation to report or an order to stay in a specific place, [14] A decision to arrest and remand a foreign national in custody shall be taken by the head of the local police or a person authorised by the head of the local police.[15] A decision to detain a foreign national shall be made by the head of the local police or a person authorised by the him or her. If the police wish to detain the arrested person, they must, at the earliest opportunity, and if possible on the day following the arrest, bring the case before the courts. The main challenge is to make a discretionary assessment of the many different factors that are relevant for assessing whether detain is the proportionate measure.

2.1 Assessment criteria in case of risk of absconding or in case that the third-country national avoids or hampers the preparation of a return or removal process

Any attempt to evade the implementation of an administrative decision requiring him/her to leave the realm is relevant. This is assessed in each individual case[16]. To determine whether there is a risk of evasion, an overall assessment must be carried out in which weight may be given to whether, among other things that:

If:

- The foreign national has failed to implement an administrative decision requiring the him/her to leave the realm; this includes not complying with the deadline,

- The foreign national has explicitly refused to leave the realm

- There is a decision to expel the foreign national from the realm,

- The foreign national has been sentenced for a crime or a special sanction ,

- The foreign national has not cooperated in resolving doubts about his/her identity,

- The foreign national is avoiding or complicating preparations for removal (refoulement),

[13] "Detention of asylum seekers" report by Norwegian organisation for asylum seekers (NOAS), page 83.
[14] Immigration Act Sections 99 and 105; see Section 106 second paragraph.
[15] Immigration Act Section 106 third paragraph.
[16] Immigration Act Section 106 first paragraph letter (b), risk of evasion.

- The foreign national has given false information to Norwegian authorities in connection with his/her application for a permit,

- The foreign national has failed to give notification of a change of place of residence, see Section 19 second paragraph from the Immigration act,

- The foreign national is responsible for serious disturbances of the peace at a residential centre for asylum seekers etc. [17]

- Weight may also be given to the general experience relating to evasion by foreign nationals[18]

2.2 Assessment criteria in case where required in order to protect national security or public order

The Immigration Act Section 130 contains separate provisions for coercive measures that can be applied in cases where the foreign national is found to pose a threat to fundamental national interest - when there is a decision that a foreigner is a threat to fundamental national interests, and action is being taken against the foreigner with a view to remove him from the realm. The National Police Immigration Service currently has little experience of applying this provision, and it is therefore difficult to make any concrete statements about the assessments made on this basis.

2.3 Other ground(s) and the respective criteria/indicators considered in the assessment

-The foreign national is not cooperating on clarifying his or her identity[19]

- There are specific grounds for suspecting that the foreign national has given a false identity[20]

- Relevant factors in the assessment are whether the foreign national has provided differing information about his/her identity, whether he/she has contributed to obtaining or has obtained valid travel documents, whether he/she is from a country where obtaining travel documents is regarded as easy,

- An administrative decision regarding expulsion has been made on the grounds of a criminal offence,[21] In such cases, an assessment must also be made of whether there is a risk of repetition of the offence, [22]

[17] Immigration Act Section 106 letter (a) sets out factors that are relevant in the assessment of whether a risk of evasion exists.

[18] Section 106 a(2) Immigration act
[19] Section 21 or Section 83 of the Immigration Act
[20] Immigration Act Section 106 first paragraph letter (a
[21] Immigration Act Section 106 first paragraph letter (d)
[22] Immigration Act Section 106 first paragraph letter (d) second sentence.

- The foreign national does not do what is necessary to fulfil his or her obligation to procure a valid travel document, and the purpose is to bring the foreign national to the foreign service mission of the country concerned so that he or she can be issued a travel document, [23]

- The foreign national is in transit in a Norwegian airport, with a view to removal (refoulement), [24]

3. Types of detention facilities and conditions of detention

There is one Immigration detention centre – called also holding center (Trandum). It is not classified as a prison. It is situated within an hour to the city of Oslo and close to Oslo airport (Gardermoen).[25]

A foreign national who is detained remanded in custody pursuant to the Immigration Act shall as a general rule be placed in a holding centre for foreign nationals. The holding centres are not under the authority of the correctional service, but are administered by the police[26]. The centre has constant overview over the availability of available capacity in the centre, thus preventing over-booking. Third country nationals detained on the basis of the Immigration act may be placed in a prison if there is a lack of available capacity at the Immigration detention centre. In a report looking into the relationship between relevant provisions of the Criminal Procedure Act and the Immigration Act a conversation with a representative of Hordaland police district is reported which indicates that sometimes the long distance to the Immigration detention center can result in that a foreigner is detained in an ordinary prison before transferred to the detention center.[27]

In the preparatory text to the Immigration act it says that a detainee after the immigration law can be placed in an ordinary prison when there is a reason to believe that establishing his/her identity will be time consuming, or if there is an indication that a person will pose a threat to the " peace, security and order" in a holding place. However the text underlines that a detainee after the immigration law should be kept separate from ordinary prisoners.[28] Weather those foreign nationals detained administratively are kept separately from convicted prisoners there is no systematic information available on how this is implemented.

Tabel 1. **Conditions of detention**

Conditions of detention	**Statistics and/or comments**
Please provide any statistics on the average available surface area per detainee (in square meters)	Each person has his / her own room. Aprx. 9 m2. Detainees have access to a living room, an

[23] Immigration Act Section 106 first paragraph letter (e)

[24] Immigration Act section 106 first paragraph letter (f)

[25] Section 107 Immigration Act

[26] Regulations relating to holding centres: http://lovdata.no/dokument/SF/forskrift/2009-12-23-1890)

[27] "Forholdet mellom straffeprosesslovens og utlendingslovens regler om fengsling og andre tvangsmidler» professor Erling Johannes Husabø and postdoktor Annika Elisabet Suominen, Universitetet i Bergen, Page 10, first paragraf, text only in Norwegian

[28] Ot.prop.nr. 75 (2006-2007) page 448

	exercise yard and an activity centre during daytime.
Please provide any statistics on the average number of detainees placed in one room per detention facility.	Those detained, except family members, get their own room. Family rooms can accommodate 4 adults and one minor (5 individuals). If a family has more than 5 individuals, more rooms are used.
Are families accommodated in separate facilities?	Yes, families have their own wing.
Can children be placed separately from their parents? (e.g. in a childcare facility). Under what circumstances might this happen?	Only if the minor arrives without parents or other family members.
Are single women separated from single men?	Yes.
Are unaccompanied minors separated from adults?	Yes.
Do detainees have access to outdoor space? If yes, how often?	*Yes. At least three times a day, to an exercise yard or playground.*
Are detainees allowed to have visitors? If yes, which visitors are allowed (for example, family members, legal representatives, etc.) and how often?	Yes, detainees are allowed to have visitors. Friends and family may visit twice a week. Legal representatives may visit every day.
Are detainees allowed contact with the outside world via telephone, mail, e-mail, internet? If yes, are in- and/or out-coming messages screened in any way?	*The use of mobile phones is not allowed.* Detainees may use a fixed line telephone on a daily basis. E-mail is not yet implemented. Messages / calls are only screened if authorized by an administrative decision made by police lawyer or court order.
Are education programmes provided (e.g. school courses for minors and language classes for adults)?	No
Do detainees have access to leisure activities? If yes, which leisure activities are provided in the detention facility? And if yes, how often?	Yes. Exercise yard or activity centre (gymnasium, sports centre, tv – game, internet, volleyball, football, badminton).
Can persons in detention leave the facility and if yes, under what conditions? Can persons move freely within facility or are their movements restricted to some parts/rooms of the facility?	The detention centre is a closed facility. They may leave only when released by a police lawyer or by court order. Within the facility movements are restricted to the wing in which the person is placed.
Are detainees entitled to legal advice / assistance? If yes, is it free of charge?	Yes to both questions[29]
Are detainees entitled to language support (translation / interpretation services)? If yes, is it free of charge?	Yes to both questions
Is medical care available to detainees inside the facilities? Is emergency care covered only or are other types of medical care included?	Medical care is available inside the facility. Medical care does not include non – essential aid. All foreigners are entitled to "essential health care" and the police must ensure that the

[29] They are entitled to free legal advice at the stage of bringing the decision for detention to the court.

	detainee can receive health care which he is entitled under the Patients' Rights Act. If health professionals refer to additional treatment the police are obliged to facilitate this[30]
Are there special arrangements for persons belonging to vulnerable groups? Please describe.	Such persons are supervised better or are placed in different wings for their own safety.
Are there special arrangements for persons considered to be security risks for others and/or themselves? Please describe.	Yes. Persons considered to be a security risk are placed in a special security wing.

4 Availability and practical organization of alternatives to detention

The Norwegian Immigration Act does not differentiate between categories of third country nationals whether alternatives to remand in custody shall be applied. Each individual case is subject to a concrete assessment of whether the conditions for detention or alternatives are met. The Immigration act, Sections 104 and 105 stipulate when there is a basis for applying alternatives to remand in custody. The Immigration act's provisions relating to an obligation to report, with an order to stay in a specific place and permitting seizures represent an exhaustive list of the grounds for applying coercive measures: The challenge lies in the assessment of whether the various grounds for a measure are met, as the assessment often has to be discretionary.

Table 2. Alternatives to detention

Reporting obligations (e.g. reporting to the policy or immigration authorities at regular intervals)	Third-country nationals subject to reporting obligations a required to report regularly to the police. The third-countr national can reside at an address of his/her own choice s/he can be accommodated in an open reception centre.[31]
Obligation to surrender a passport or a travel document	The police can seize any travel documents, tickets or oth material items that may serve to clarify or document foreign national's identity[32], This measure can be combine with other coercive measures.
Residence requirements (e.g. residing at a particular address)	An obligation to stay in a specific place may be imposed o a foreign national. [33]This may be at a private address or in a open reception centre.

[30] Section 5 from the Regulations for holding centeres
[31] Immigration Act Section 105, Section 18-2 (3) Immigration Regulations
[32] Immigration Act Section 104 first and second paragraphs.
[33] Immigration Act Section 105, Section 18-2 (3) Immigration Regulations.

If the foreign national fails to comply with the obligation to report or with an order to stay in a specific place, the foreign national can be arrested and a petition submitted for him/her to be remanded in custody [34]. Failure to comply with an order relating to an obligation to report is a criminal offence [35].

5. Assessment procedures and criteria used for the placement of third-country nationals in alternatives to detention

In the assessment of whether the conditions to detain the foreign national are met, the authorities will always implicitly consider alternatives to detention, see the Immigration act, Section 106, second paragraph, in addition to the consideration of weather the measure is proportionate, see the Immigration act, Section 99 first paragraph. No distinction is made between the different categories of third-country nationals when considering whether alternatives to remand in custody can be applied. In the latter assessment the foreign national's age and health condition will be taken into consideration. When considering whether an alternative to detention is applicable, will the authorities also looked into the risk for absconding and whether the foreigner has previously stayed at a known address. The economic cost of the decision to choose at the very end, could be a factor in the overall assessment. Foreigner's age and health are factors to be considered as well. The head of local police or a person authorised by him/her shall decide whether to impose alternatives to remand in custody[36].

The police will in all cases make an individual assessment whether to apply an alternative to detention and whether detention is necessary and proportionate. If the person is being detained by the court, the police will always be able to release him/her and decide on an alternative to detention. The court will always consider whether an alternative to detention is sufficient in a detention case. The court may impose alternatives to detention.

The foreign national may demand to bring before the court the question of whether the conditions for imposing the obligation to report and a specific place of abode are fulfilled, and whether there are grounds for upholding the order[37].

6. Effectives of detention and alternatives to detention as a means to obtain better return and protection claim assessment policies.

Norway has no statistical data or evaluation on whether the eeffectiveness in reaching decisions on applications for international protection and decisions regarding the immigration status of persons subject to return has been influenced by the legislative changes from 2012.

[34] the Immigration Act Section 106 first paragraph, cf. third paragraph.

[35] Immigration Act Section 108 second paragraph letter (a).

[36] Immigration Act Section 105 second paragraph.
[37] Immigration Act Section 105 second paragraph.

Table 3. Costs of detention

P ***Applicable year 2013***	*Detention*
Total costs	*NNOK mill 118,2/ Euro 14.3 mill/*
Staffing costs	*NNOK mill 87,2/ Euro10.5 mill*
Medical costs	*NNOK mill 1,5/ Euro 0.2 mill*
Food and accommodation costs	*NNOK mill 8,8/ Euro 1.1 mill*
Legal assistance	*NNOK ca 8100,-/ Euro 1000.-*
Other costs (This could include any additional costs that do not fall into the categories above e.g. costs of technical tools for administering alternatives to detention, such as electronic tagging).	*NNOK mill 20/ Euro 2.4 mill* *Rent, cleaning, energy, maintenance of buildings and interior*

6.1 Respect for fundamental rights

The Norwegian Organisation for Asylum Seekers (NOAS) has recently published a report on detention of asylum seekers, see: http://www.noas.no/wp-content/uploads/2014/02/Detention-of-asylum-seekers_web.pdf. It looks at Norwegian legislation and practice, and its degree of compliance with international obligations. NOAS reports that after their report's release the Director of Public Prosecutions had initiated evaluation of existing guidelines on imprisoning and fining foreign nationals for among some other acts, not complying with order to register, and live at a designated place. However this revision is pending due to expected outcome in a case before the High court.

Furthermore, a report[38] by professor Erling Johannes Husabø and postdoktor Annika Elisabet Suominen, from the University of Bergen looks into the relationship between the Criminal Procedure Act and the Immigration Act in terms of use of detention and other coercive measures.
http://www.regjeringen.no/pages/37906622/Fengsling_etter_utlendingsloven250412.pdf.

Both reports comment on the newly introduced threshold in assessing the grounds for subjecting a third country national to detention and alternatives to detention. Following the legislative change in 2012, the new wording of sections 105 (b) and 106 (1) (a) and (b) uses as a standard of proof " specific grounds for suspicion " which replaced previous "substantial

[38] Availalable only in Norwegian. "Forholdet mellom straffeprosesslovens og utlendingslovens regler om fengsling og andre tvangsmidler» by professor Erling Johannes Husabø and postdoktor Annika Elisabet Suominen, Universitetet i Bergen

ground for suspicion" and no longer requires preponderance of the evidence.[39] The background for this change, including some other changes of the legal framework that regulates detention and alternatives to detention for the purpose of immigration control, was according the Ministry of Justice " increasing the effectiveness of return policies", improve the work with establishing of identity, and in the long run safeguard the institute of asylum and the right of free movement.[40]

For more general overview of the link between immigration control and crime prevention consult the publication:, Katja Franko Aas, Nicolay B. Johansen, Thomas Ugelvik (eds.), *Krimmigrasjon? Den nye kontrollen av de fremmede' (Crimmigration?* (The new controls of strangers? Universitetsforlaget, Oslo 2013.

7. Statistic

Statistics on the duration of detention are only available for the first 8 months of 2013, and they are not available according to the requested categories in EMN template. Nevertheless, they can be used to throw some light on the durations for those who completed their detention during that period: Included in the statistics are all foreigners released from detention during that period. The average duration of detention for all persons released during the first 8 months of 2013 was 8,5 days, but as the median duration was just above 1 day some of the persons released must have been detained for much longer. Note, however, that foreigners expelled from the country following a period of imprisonment after having been sentenced for a crime, are included in these statistics, but only with the period they were detained to execute the forced return to their country of origin. For them the average detention period was just less than 2 days, and the median detention time just less than one day. The longest periods of detention were for persons without satisfactory identity determination, usually because they lacked credible documentation of identity. For them the average period of detention was between 22 and 26 days, and the median period about 10 days. This large difference between the average and the median duration indicates that for some individuals the period of detention had been much longer than the average. For a group that includes both persons subject to a Dublin transfer and persons that were to be returned to their country of origin by force (but not including criminals) the average period of detention was a little more than 8 days and the median period was a little more than 1 day. Again the large difference between the average and the median indicates that for some individuals the period of detention had been much longer than the average.

Concluding remarks

It is difficult to conclude on whether the revised provisions on coercive measures in the Immigration Act have by the date this text is written positively affected the national return policy and contributed to better safeguarding the institute of asylum, including contributing to

[39] « Detention of asylum seekers» NOAS, page 74.
[40] Prop. 138 (2010-2011) pp.25-26

establishing identity in immigration cases where clearly needed. This is partially due to provisions' short "lived" life, but also due to lack of comprehensive evaluations and data on the issue. This observation is particularly relevant for the topic of use of alternatives to detention, an area that might need better focused and more systematized study.

Whether subjecting a foreign national to administrative detention might in some cases be a rather difficult assessment exercise and therefore principles as proportionality, automatic judicial review, implicit assessment of alternatives to detention, and stricter standards for detaining unaccompanied minors have a fundamental value in resolving it.