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From Commitment To Compliance?

Norway's International Human Rights Obligations And Practice Towards Asylum Seekers.

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Declaration I, Tonje Falstad Hermansen, declare that this thesis is a result of my research investigations and findings. Sources of information other than my own have been acknowledged and a reference list has been appended. This work has not been previously submitted to any other university for award of any type of academic degree.

Signature……..

Date……

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Abstract

This dissertation examines what international human rights obligations Norway has towards asylum seekers through international treaties and conventions and its compliance with these obligations. The study applies case study methodology and through four cases it lays out some of the disputes between the Norwegian government and asylum authorities, and human rights advocates such as NGOs and lawyers.

The theoretical framework for the dissertation is compliance theory which focuses on how states move from non-compliance to compliance with international human right norms. The focus of the study is on the stage from commitment to compliance.

The analysis focuses on the scope mechanisms for producing human rights compliance and how these are applied in the context of Norwegian asylum policies and practice. It also discusses some of the challenges to human rights compliance, such as the existence of strong counter-norms, vague human rights norms and little risk associated with breaching with asylum seekers' human rights.

My findings indicate that clear breaches of international human rights are rare, but vague human rights norms allow for strict interpretations and grey-zones. Strong counter-norms connected to topics such as securitization and state sovereignty serves as counter-mechanisms to human rights advocates push for more liberal interpretations of the norms. My findings further indicate that there is little international pressure from other states to secure the human rights of asylum seekers. The findings suggest that human rights compliance is not a linear process, but one where actors participate in continuous discussions around the interpretations and implementations of the norms.

Abbreviations

AI	Amnesty International
A&P	Advokatforeningens aksjons og prosedyregruppe i utlendingsrett
ARRA	The Ethiopian Administration for Refugee and Returnee Affairs
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CM	Committee of Ministers
CoE	Council of Europe
CRC	The Convention on the Rights of the Child
CRSR	The 1951 Convention relating to the Status of Refugees
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
FRP	The Progress Party
ICCPR	International Convent on Civil and Political Rights
IOM	International Organization for Migration
IR	International Relations
JD	Ministry of Justice and Public Security
NGO	Non-governmental Organization
NOAS	Norwegian Organisation for Asylum Seekers
OHCHR	Office of the High Commissioner for Human Rights
SIS	Schengen Information System
SEIF	Aid for Immigrants and Refugees
SMR	Norwegian Centre for Human Rights
SV	The Socialist Left Party
UDI	The Norwegian Directorate of Immigration
UN	United Nations
UNE	The Immigration Appeals Board
UNICEF	The United Nations Children's Fund
UNHCR	Office of the United Nations High Commissioner for Refugees
V	The Liberal Party

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1- Introduction

Today, tens of millions of people travel across international borders on a daily basis. Their reasons for crossing are many. Some are due to travel, others to trade and some to migration. Migration comes in many forms. But not all movement is voluntary. In any given year millions of people are forced to move in order to escape political violence, war, poverty, hunger or deprivation. These people become asylum seekers, refugees or internally displaced people (IDPs). The topic of state's obligations towards these involuntary migrants has become ever more relevant following the Syrian civil war which is increasingly being referred to as the "biggest humanitarian crisis of our era" by the UN, NGOs, media and politicians (Sherlock, 2013; Melgård, 2014; Røst, 2014; Asplin, 2015). Images of migrants drowning in the Mediterranean while trying to enter Europe have sparked political debates both domestically and in the EU.

In a Norwegian context there has been heated debate around Norway's obligations towards asylum seekers. One topic which has raised particular debate has been the case of the so-called "refugee children", a group of children whose parents have had their application for asylum rejected, but who still have a strong connection to the realm after having lived many years in Norway. The debate has raged both in media and in Parliament, and even came close to causing a motion of no confidence against the Norwegian Minster of Justice in the spring of 2015. The debate was not limited to political parties, as NGOs, lawyers and the media also joined with arguments, critique and disclosures. Advokatforeningens aksjons og prosedyregruppe i utlendingsrett (A&P)(Bar Association litigation group on immigration law) published a report criticizing the current practice towards the refugee children and argued that children's rights to a greater extent should be absolute and independent (Humlen & Myhre, 2014). NGOs have participated in the debate surrounding possible solutions for the refugee children. Organizations, such as Amnesty International Norway and the Norwegian Organisation for Asylum seekers (NOAS) have criticized the Norwegian authorities' solution of a one-time amnesty for refugee children, claiming that it discriminates between children based on their parents' homeland and therefore breaches with the non-discrimination principle (Buick, 2013; NOAS, 2014b). In addition, NOAS has offered free legal aid to refugee children (NOAS, n.d.)

In 2014, the A&P published a report on the Norwegian practice within the immigration area (Humlen & Myhre, 2014). The report criticized aspects of the Norwegian practice such as

restricted access for asylum seekers to have their cases tried before courts and the practice towards refugee children. The report was a result of a seven year long project aimed at strengthening the individual asylum seeker's legal protection, by providing access to courts for trial of principle decision by UNE, and in the process conduct an effective control of UNE's proceedings, evidence and application of the law. The project included a reference group with representatives from NOAS, Amnesty International Norway, the Norwegian Helsinki Committee, Aid for Immigrants and Refugees (SEIF) and the Norwegian Centre for Human Rights (SMR).

The focus of this dissertation is closely related to International Relations field. It touches upon topics such as state sovereignty, international cooperation, international conventions and norm-adaptation. Scholarly work on migration to Europe has focused on the securitization and politicization of immigration (Huysmans, 2000; Benam, 2011). Studies show a discursive linking between immigrants and asylum seekers and challenges to the protection of national identities, security and welfare provisions (Huysmans, 2000). Asylum seekers have also increasingly been framed as an alternative route for economic immigration to Europe. This securitization has e.g. been expressed through the restrictive and control-oriented basis of the Dublin-conventions, FRONTEX and facilitation of readmission agreements (Huysmans, 2000; Benam, 2008). The security continuum connection border control, terrorism, crime and migration is moving the decision making in the area of asylum away from human rights and humanitarian field of decision-making (Huysmans, 2000) The securitization aspect has been crucial because the acceptance by the voters will legitimize taking measures that may breach the rules that would normally be binding for the securitizing actors (Benam, 2011). The topic of asylum seekers in international relations thus touches upon state sovereignty and the dilemmas between the states' right to control their borders and citizens, international cooperation and the human rights of the individual.

As a researcher there are many factors that can trigger your curiosity and spark your interest for a specific topic. Some research is inspired by a gap in theoretical frameworks, while others draw inspiration from current events. This dissertation is a result of my own interest for human rights and its place in domestic politics and international affairs. It is also a result of the current focus on and debates surrounding the situation for asylum seekers and refugees both in Norway and abroad. The ongoing debates I have mentioned have been a major contributing factor in choice of topic. My aim is to explore what place international human rights norm has in Norwegian asylum practices. My dissertation thus focuses on the current

relationship between human rights norms and asylum practices, and aims to explain why this relationship has come to be the way it is today. My hope is that the reader finds the topic as interesting as I do, and that this paper can contribute to the understanding of some of the challenges in the old, but yet relevant field of connecting the interests of a state with the human rights of the individual.

1.1-Objective

The objective of my dissertation is to study to what extent Norwegian asylum practices are in compliance with the obligations Norway has committed to through international human rights conventions. By using cases I explore if there are gaps between Norwegian asylum practice and the International conventions. Further, the dissertation aims to explain why Norway acts in compliance with or breach its international human rights obligations towards asylum seekers.

1.2-Problem statement

The dissertation will look at what international human rights obligations Norway has towards asylum seekers. Further, it questions if there are gaps between the treaties and conventions that Norway has signed and the treatment of asylum seekers in practice. These treaties are the Universal Declaration of Human Rights, the Convention on the Rights of the Child, the European Convention on Human Rights, the Convention relating to the Status of Refugees. In addition, it briefly touches' upon the obligations Norway has through the Dublin Agreements. The aim is to understand if the Norwegian practice is in compliance with the international human rights obligations, and to explain the gaps or compliance I find by applying compliance theory.

1.3- Hypothesis and Research Question

Based on the background for my choice, which was the ongoing debates around Norway's obligations towards asylum seekers and the NGOs criticism of the current practices, I expected to find elements of non-compliance with human rights norms. My hypothesis was

that these elements of non-compliance would be explained by securitization. The hypothesis was based on the literature I reviewed when deciding upon a topic for my thesis such as Lahav and Lavenex (2013) who state that "securitization of migration" has increased the political cross-pressures between market, security and human rights, and that the focus on control coincides with a fading support for human rights.

My hypothesis led me to the following research questions:

To what extent does Norway comply with international human rights obligations towards asylum seekers?

How can we explain the compliance, or non-compliance, with these obligations?

1.4-Scope

Although, in light of Norway's membership in Schengen and the Dublin agreements, it can be stated that Norway's obligations towards asylum seekers reaches beyond the borders of the national state, I have chosen to limit the scope of the dissertation to cases concerning those asylum seekers who have already accessed Norway and have had their cases tried before the Norwegian system. I have chosen to explore four cases which all contain debates about Norway's interpretation of human rights norms. By choosing these four cases I aimed to research how the current Norwegian policies affect the rights of immigrants in practice. Rather than examining the large political debates and structural changes, my aim was to see how the rights are safeguarded on a case-basis and what arguments the Norwegian authorities and the human rights advocates present when debating Norway's obligation in each case. I have chosen to focus on recent cases which I felt would give the best presentation of where the debates and practices stand today.

1.5-Conceptual framework

Before I move on to my theoretical framework I want to clarify some concepts that will be applied throughout the dissertation. Concepts can be defined differently within various disciplines, and their content may vary according to the context they are applied in. Within the topic of migration concepts can be assigned political value, and applied as a rhetorical tool for

achieving political goals. The term 'refugee' is an example of a term which is clearly defined and restricted in a legal context, but which is used as a collective term in other contexts. Therefore I hope the following section can clarify my understanding of possible ambiguous terms for the reader.

Human right norms

Human rights norms can be understood as both ideas, as in its origin from the idea of natural rights claiming that every individual has certain natural rights simply by the nature of being an individual (Uvin, 2004) and as international law expressed in conventions and treaties. In this dissertation human right norms are understood as the human rights which Norway has committed to through signing and ratifying conventions. This was chosen because the aim of the dissertation is to study the relationship between the obligations that Norway has and their compliance with these obligations. Within human rights actors can be *rights-claimants* (those who demand rights) *or rights-holders* (those who hold rights) and *duty-holders* (those obligated to fulfill rights) (Uvin, 2004). Individuals (and in some cases groups) are rights-claimants and right holders, whereas states have been the traditional duty-holder. In this dissertation the asylum seekers are the right-claimants and –holders, while the Norwegian state is the duty-holder through its obligations by the international human rights conventions. The duties held by the state can be *negative*, meaning that the state's obligation is simply to abstain from certain actions which violate human rights, and they can be *positive*, which means that the state has to promote and realize certain rights (Uvin, 2004).

Asylum seekers and refugees

An *asylum seeker* is an individual who has left his or her home country to seek protection as a refugee in a foreign country. If his claim to be a *refugee* is accepted by the national asylum system, the person is referred to as a refugee. It is up to the national asylum system to decide if the asylum seeker qualifies for international protection as a refugee. The Convention relating to the status of refugees offers a definition of who may be considered a refugee. In cases where an asylum seeker does not meet the criteria for being a refugee, he or she can still be in need of protection and be granted residence permit on humanitarian grounds.

Consideration of immigration regulation

A term frequently referred to in Norwegian asylum practices is *Consideration of immigration regulation*. The term is anchored in the Immigration Act preamble, ie § 2. The Act provides

the basis for controlling the entry, exit and stay of foreigners in the country in accordance with Norwegian immigration policy. "In accordance with Norwegian immigration policy" is understood as the description of immigration policy in white papers (UNE, 2006). The preparatory work to laws and regulations also provide guidance for interpretations.

The term does not hold a strong or common definition in Norwegian legislation. UNE has a number of times requested a clarification of the concept in law or regulation in order to better guide their application of the term in individual cases (UNE, 2006).

When immigration authorities work on individual cases, they are expected safeguard the individual applicant's legal rights as well as the State's expressed need for regulation and control. In individual cases it will be a balance between humanitarian considerations and consideration of immigration regulation.

Consideration of immigration regulation is always an argument against granting a residence permit. The term cannot be applied as an argument to grant permits, for instance if an individual is considered a resource for the community.

Consideration of immigration regulation is intended to protect the asylum system against abuse. One purpose of the consideration of immigration regulation is to assess the consequences of decisions on future immigration. This follows from the assumption that immigration to Norway would have been considerably higher if it was easy to get a permit (UNE, 2006). It follows from this that possible future "pull-factors" should be considered when assessing a case. Domestic capacity however is not one of the factors to be evaluated under the term consideration of immigration regulation.

Best interest of the child

The term *best interest of the child* is derived from the Convention on the Rights of the Child. A child in this context is a person under the age of 18. The principle of the "best interest of the child" is a part of Norwegian legislation, but also a terminology used in political discourse. It follows from the best interest of the child should be a primary consideration in all decisions involving children. The best interest of the child is formulated as a declaration of principles. It does not provide detailed guidelines for what should be considered the best interest of the child and leaves it to assessment of each individual case to determine what constitutes the best interests of the child in that particular case.

Refugee children

The term *refugee children* refers to a group of children who have been staying in Norway for several years with their families. In Norwegian debates they are known as "Asylbarn" or "lengeværende barn". The latter term refers to the fact that these children's' parents have had their application for asylum rejected, so they are not refugees by definition. It also refers to the fact that these children have stayed within the realm for many years. Many of these children have developed strong ties to the realm through school, language and network. The matter at hand in these cases is weather these children have developed strong enough ties to the realm that it should be in the "best interest of the child" to get permanent residence in Norway, and an evaluation of the possible consideration for immigration regulation connected to these cases.

1.6- Structure

The following chapter introduces the theoretical framework for the dissertation and my choice of compliance theory as framework to explain Norway's compliance with international human rights norms. Chapter three explains my epistemological and ontological stands and the research strategy applied in my study. Chapter four identifies Norway's international obligations through human rights conventions and through the Schengen- and Dublin agreements. The chapter further gives a brief introduction to the Norwegian asylum instances and their areas of responsibility. The four cases are each presented in separate chapters. My analysis in chapter nine brings together my theoretical framework and findings. The final chapter revisits my hypothesis and presents my concluding thoughts and findings.

2- Theoretical Framework

2.1- Introduction

My topic touches upon two different components within International Relations (IR), migration and international norms. After reading already existing literature on my topic and evaluating the different theoretical frameworks in IR, I reached the conclusion that constructivism was the most appropriate theoretical framework for my dissertation. When I evaluated the theories on migration in IR I found that much attention had been placed on securitization of migration. However, as my research questions are concerned with Norway's compliance with international obligations towards asylum seekers I found that a compliance theory framework was appropriate for my dissertation. Two theoretical strands have traditionally been applied in compliance theory, rational-choice theory and constructivist theory. In my dissertation I will adopt a constructivist compliance theory framework to answer my research questions. As I will elaborate on later, some also argue that the two strands of compliance theories can be combined to form an even stronger understanding of state compliance with human rights. The compliance theory framework also includes aspects of securitization, as state sovereignty and security may be factors of normative conflicts and serve as justifications for human rights violations. Compliance theory allow us to investigate under what conditions, and by which mechanisms, states move towards compliance with international human rights norms. It also offers possible explanations to why such progress halts and what responses governments may use to dismiss accusations of non-compliance.

2.2- Constructivism

The core of constructivism is that ideas define structure, which shapes a state's interests, identity and policies. Both the state and non-state actors can reproduce and reform structure. Constructivist theory thus allows us to study how human right norms are constructed and reproduced or reformed within an immigration context. Even if we accept Human Rights as inalienable, a moral attribute of persons that authorities should not contravene, this doesn't mean that they are not constructed. We still have to identify – that is, constructed – the rights and codify them in the legal system (Forsythe, 2009).

Human Right norms themselves are clear examples of what constructivist theory call a "social construct" (Schmidtz & Sikkink, 2002). Human Right norms are social categories that are created by people and which only exist because people believe that they exist and act accordingly. Socially constructed norms typically require human institutions to secure their existence (Ruddie, 1998). Constructivism focus on how ideas can define, and have the ability to transform, the organization of world politics and how they shape the identities and interests of states and determine what counts as legitimate action.

2.3- Migration in IR

Although migration is a relatively new subfield in IR, various IR theories have given attention on the securitization aspect of migration. Securitization is understood as forming a matter into one of security. International migration has been increasing steadily in every region of the world since the end of World War II (Hollifield, 2012). Migration between states is a matter of international attention, but in the field of IR international migration has not been a well-established subfield. While trade and capital flows have been considered as two pillars of globalization, migration has tended to be overlooked by scholars of International Relations (Lahav & Lavenex, 2013: Hollifield, 2012). In IR migration tends to be treated as one concept that does not distinguish between voluntary and involuntary migration. Theories and publications on migration matters tend to cover all types of migration, from work migration to refugees. Much attention has been given to the sovereign state, and how states can try to control migration flows.

Following the events of 9/11, the implications of international terror networks has shifted the attention towards risks associated with international migration. In IR this has meant a shift from the domain of "low politics" (meaning economic and social questions) to "high politics" (meaning issues pertaining to political and national security and integrity). As mentioned, one of the focuses of IR theory when it comes to migration has been securitization of migration. There is no theoretical consensus when it comes to the scope of, definition of and impact of security on international migration. (Lahav & Lavenex, 2013) According to Hollifield, migration and mobility can be threats to the security of state, and we can see a focus on the connection between migration and terrorism (Hollifield, 2012).

After the end of the Cold War migration was redefined as a security threat by national security analysts such as Samuel Huntington, who wrote about 'The Clash of Civilizations.'(Hollifield, 2012) Huntington argues that failing to control its borders is the biggest threat to US' national security (Hollifield, 2012). From the perspective of realism migration and refugee policy are matters of national security. States will open and closes their boarders according to their national interests. (Hollifield, 2012) Realist theory argues that the number of refugees a state is willing to accept depends on the relative position of states and balance of power considerations. Another point made within political realism is that every society has a limited capacity to absorb foreigners thus unlimited immigration becomes a security threat (Hollifiel, 2012). Myron Weiner pointed to the rise of xenophobia and nationalist politics in Western Europe, showing that even advanced and tolerant democracies risked being destabilized politically by increase in unwanted immigration (Hollifield, 2012).

Constructivism, however, disagrees with this realist view that state interests can be deduced from the structure of the international system and the balance of power. Instead it argues that ideas, culture and norms are equally important to interests in shaping a state's actions (Hollifield, 2012). Concepts such as national security and national interests are socially constructed concepts and thus any issue can be transformed from a "state" security issue to a "societal" security issue through discourse (Hollifield,2012) In this, debates about sovereignty and control over boarders are reduced to discussions of national identity and societal security which are fungible concepts that reflect values, morality and culture, rather than a strictly instrumental, economic calculus (Hollifield, 2012).

Gallya Lahav and Sandra Lavenex (2013) argued that "securitization of migration" has increased some political cross-pressures between market, security and human rights. In the heart of this matter is state sovereignty. States have the right and obligation to control their national borders according to the principle of sovereignty, still many aspects of migration is regulated through international norms. Immigrants are often holders of rights that enable them to become members of their host society (Hollifield, 2012). Although the right of the state to control the borders of its territory is an undisputed principle of international law it holds a few exceptions, such as the international refugee regime. Here, theories concerning the relationship between the state and it international human rights obligations come into play.

2.4- Securitization in Norway

Discussing the matter of securitization in a Norwegian context, Johansen, Uglevik and Aas (2013) explore the different instruments and techniques used by the state to control and administrate "strangers". They argue that people and states have an ambivalent relationship to strangers. This means that we can view them as friends, guests and opportunities, but we can also see them as enemies, criminals or dangers to our society. The crimmigration theory argues that the national state is built on the premise that some are on the inside, while others are on the outside. Although Human Right norms are universal, it is the national state that implements these norms in practice. Migration is treated as a matter of security by linking migration to crime and terrorism through discourse and through the legal system. Applying the term "crimmigration" Johansen et.al. argue that crime control and immigration control is increasingly tied together. They point do discursive aspects of this crimmigration by providing examples of how choice of wordings are political actions (Johansen et.al. 2013, 16). Framing immigration as a criminal matter opens up for using penalty measures that are usually reserved for criminal actions. One example is the use of prison sentences as a penalty for irregular entry. States can use exclusion of migrants without residence permit from rights such as political rights, right to employment, education and health care as a tool to force immigrants to leave the territory. Return of immigrants as a tool for immigration control has increased the past decades. Deportation cases have increased and are given high political priority as an "important crime preventing measure" (Johansen et-al., 2013, 18).

But as Johansen et.al. argues, immigrants are not without rights. Neither is Norway isolated from other states and NGOs who can also influence how "strangers" should be treated on Norwegian territory. On a daily basis there are discursive and judicial negotiations about who we should include in our definition of the Norwegian "us" (Johansen et.al. 2013) This leads us to another aspect of immigration; the negotiation between different actors on how to interpret human right obligations.

2.5- Human Rights

The rights of asylum seekers are secured through a number of international conventions and treaties. The asylum seekers have the same universal human rights as all people. Some, such as children, also have special rights secured through their own conventions.

Studies have showed that international human rights norms are not self-enforcing (Schmitz and Sikkink, 2002). In fact, accepting human rights convention can actually clarify the gap between rhetoric and (non-)action. The formal acceptance of a human rights norm by a state is often just the beginning of a process to actually implement a norm. The process of establishing human right norms is formally controlled by the state. However, non-governmental actors can play important roles in setting the agenda and by pushing for certain human rights standards, thus acquire increasing authority in shaping the direction of that process. (Schmitz & Sikkink, 2002). Looking at the evolution of international human rights norms since the late 1940s, Hans Peter Schmitz and Kathryn Sikkink (2002) argue that this process contains evidence for liberal and constructivist perspectives. UN human rights instruments and regional human rights mechanisms have been developed over the past decades. In Europe the European Court of Human Rights (ECtHR) and the European Convention on Human Rights (ECHR) have had a strong influence, providing an opportunity for individuals to have their human rights tried before a supranational court.

Forsythe (2012) separates between hard and soft law in terms of international human rights. Law that is specified in court decisions, such as the ETCH, is hard law. Soft law on the other hand is legal rules that are not the subject of such court decisions and which are non-binding. NGOs and other actors may pursuit human right standards through soft law. UN resolutions are examples of non-binding recommendations which works as authoritative guidelines. Through treaties and declarations codifying the human rights and the creation of supranational courts and monitoring bodies, such as the Office of the High Commissioner for Human Rights (OHCHR), human rights have become a matter of international governance. Forsythe stresses that all law is made in a legislative process which involves policy choice and calculation of power. Because the international human rights laws already exist, the primary issue of human rights in IR is not if they should be acknowledged as norms, but how and when to implement them. Even in well-established democracies some human rights are violated (Forsythe, 2012). Here, we can identify a dilemma between the guarantee of individual rights versus a community or central interests that may be threatened. Foresythe argues that the subject of human rights put liberalism into a realist world. He argues that it is a challenge to mesh the idea of individual human rights, based on a liberal tradition, with a state system dominated by a realist approach to IR. Even though we can see an increasing commitment to liberal values centering on individual human rights in IR, much of this is pro forma. More important than legal drafting, is the underlying political culture, political will, and political acumen. Forsythe

use the example of Europe and the ECtHR to show that even if you have liberal democracies at a national level you still need regional systems for review of the states' policies. In order to achieve truly human rights protective society's regional review is crucial (Forsythe, 2012). One indication of this is the vast amount of cases that are being brought before the ECtHR. As Forsythe treats the notion of the nation state as a social construct, the nature of "state rights" can change over time. By their own consent states can become members of legal regimes that generate diplomatic pressure to conform to human rights standards, thus restricting and revising state sovereignty in the process. Forsythe also argues that in the process of constructing rights or solving issues it can be difficult to separate the exact lines of influence, that is, which actors generated what exact influence in a given situation. But he argues that cumulative effects of both non-governmental actors and governmental actors have led to considerable change in IR.

Constructivism represent a change in IR theory from how states *pursuit* their interests, to how they *define* them. (Schmitz & Sikkink, 2002). It argues that states seek to justify their behavior through communication. In doing this, they will usually appeal to the established norms of legitimate conduct (Burchill, et.al. 2009)

2.6- Compliance theory

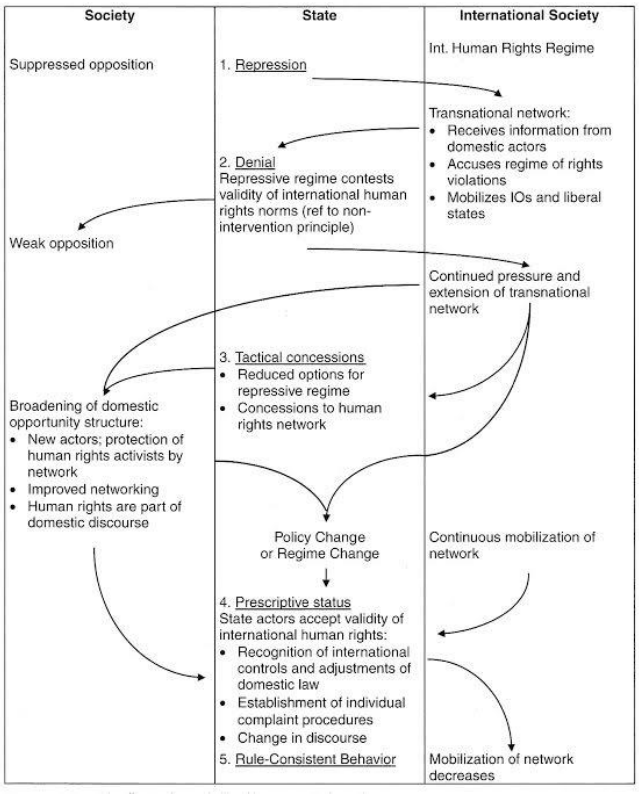
The topic of human rights is closely connected to compliance theory. Compliance theory focuses on state compliance with international law. Two main strands have developed within the typology of compliance theory; rational choice theory and constructivist theory. The main focuses of rational choice theory have been on hegemony, sanctions, incentives, and material self-interest (Bates, 2015). Constructivist approaches adds to the repertoire of theoretical explanation by arguing that states do not rely on the logic of material consequences for their actions alone but behave in accordance with the logic of appropriateness as well as material self-interests (Krook & True, 2010).Constructivist theory argues that norms are socially constructed and that we can talk of a life cycle of norms, from norm emergence to norm cascade and finally norm internalization or institutionalization.

But first of all, what does compliance with human rights norms constitute? Drawing on Risse et.al. and Kent (1999) we can think of compliance as a continuum which includes the ratification of a human right treaty, the fulfillment of reporting and other requests by a

supervisory body, the implementation of human right norms in domestic law, and final, rule-consistent behavior on the domestic level (Schmidtz & Sikkink, 2002). Compliance is defined as "sustained behavior and domestic practices that conform to the international human rights norms" (Risse et al. 2013, 10), also known as "Rule-consistent behavior". When evaluating compliance it is important to keep in mind that compliance is not just an objective measure of behavioral change, but also a subjective benchmark which increases over the years due to efforts by human rights organizations. New treaties, widening of scopes, better and more reports and data on human rights raise the bar for human rights compliance.

The five –phase model

Thomas Risse, Stephen C. Ropp and Kathryn Sikkink(1999; 2013) have proposed a five-phase spiral model of human rights to describe the process where international norms are internalized into domestic practice, and the variation in the extent to which states have internalized the human rights norms. Their book, "The power of human rights", represented a major contribution to the constructivist theory on human rights. The book was published around the 50th anniversary of the Universal Declaration of Human Rights, and aimed to evaluate the impact of the Declaration which had been embodied in diverse international agreements and treaties. The five phases building up their model are (1) a situation of domestic repression (2) initial non-governmental mobilization and governmental denial (3) tactical concession(4) prescriptive status (5) rule-consistent behavior (Risse et al. 2013; Schmitz, 2002.)



(Risse et. al, 2013)

The five-phase spiral model links the interaction between internationally operating advocacy networks, international organizations, Western states, domestic opposition groups and norm-violating governments. The theory was a result of a transatlantic cooperation expanding over more than five years with field work and workshops. They used case studies to explore the linkages between international human norms and changing human rights practices. The human right norms they chose to investigate were rights that have been adopted as universal rights, as opposed to rights associated with a particular ideology or system. They chose the rights to life, freedom from torture and arbitrary arrest and detention, and freedom from extrajudicial execution and disappearance for their study.

In "The power of human rights" western states are viewed as promoters of human rights. The study emphasized the importance of transnational networks and western states to bring about human rights change. External pressure is presented as crucial to human rights change and domestic pressure becomes increasingly important during the tactical concession phase. By pressuring from above and from below, repressing states would be pushed to open political and discursive space. Transnational advocacy networks could contribute to human rights change by reminding western states of their role as liberal democracies and urge them to act

upon this in the human rights area, and by teaching norm-violating governments about human rights norms. International organizations may also serve as teachers of these norms. The study found that the more open a society was to western ideas, the less they would deny the validity of human right norms. These states would also move faster trough the five-phase model. According to Risse et al. arguments represented one of the most powerful socializing tools for the transnational networks. Pressure from western states and international organizations could increase a state's vulnerability and thus push for human rights change, but the theory found that international advocacy networks were the main instigators for human rights change. The focus of "The power of human rights" was aimed at the stages leading to prescriptive status, assuming that reaching this stage would consequently lead to rule-consistent behavior. The study presented a socialization model theory of the stages and mechanisms through which international norms could lead to changes in state behavior, and the authors found this theory generalizable and useful to understanding the general effect of norm in international politics. However, not everyone agreed with this assumption, and the theory was later revised.

Criticism and challenges to the spiral model

"The power of human rights" was an important contribution to the understanding of how human right norms are constructed and the process of internalizing international norms to norm-violating states. But the spiral model theory also faced criticism. One part of this criticism was that the theory did not provide a truly complete or "universal" explanation of the domestic internalization of human rights among all norm-violating states. This was because the focus of the study had been on less powerful states. Thus, the usefulness of the spiral model could also be limited to these kinds of states and not be applied to more powerful states (Pace, 2001). The initial study also overlooked the challenges related to "Limited Statehood" and thus the influence of institutional capacity on compliance (Risse et al. 2013). Further, the study was criticized for "smuggling in" a hidden ideological agenda (Risse et al. 2013). Some also pointed to problems with measurement and operationalization with key variables, arguing that the application of the model did not seem to square with the empirical evidence in some of the cases. The study was also criticized for deficient treatment of human rights situations were competing norms came into play (Risse et al. 2013).

After 9/11, the five-phase spiral model faced another challenging issue. "The power of Human Rights" did not investigate norm-violation in powerful or democratic societies. The

use of torture by the USA post-9/11 was therefore a challenge to the five-phase spiral model. The green light for and the defense of the use of torture by the Bush administration represented an unforeseen backlash for the compliance with prohibition on torture. In the original study the fact that a developed country which adhered to human rights could become norm breakers was never taken into account.

Krook and True (2010) provides an alternative conceptualization of norms, arguing that the static perception found in e.g. the spiral model narrows our ability to explain why and how norms change. They suggest that the focus on the spread and institutionalization of 'human rights' in the spiral theory implies that these standards are pre-given and 'universal'. Thus, the spiral model fails to investigate how discursive challenges may alter the meaning of the norm

Building on existing constructivist theory (Meyer et al., 1997, Finnemore and Sikkink, 1998, Keck and Sikkink, Risse et al., 1999) on norm life cycles they propose that norms must be conceptualized as 'processes' rather than as 'things'. They argue that norms are work-in-progress rather than finished products. Like constructivism, their perspective acknowledges the importance of ideas in forming political relations and outcomes but ague that there is tension between the relatively static presentation of norm content as fixed, juxtaposed against a comparatively dynamic description of norm creation, diffusion and socialization. Norm contestation is thus considered to stem from counter-norms rather than from internal contradictions or dissonance.

Krook and True rejects the presumption that a norm is a commitment written into international treaties or instruments and instead argue that norms are anchored in language. By viewing the constitution of norms as an ongoing process, this approach grants agents with an active role in identifying and giving meaning to policy problems. Krook and True criticize the constructivist literature for proposing a more or less one-way process in which norms emerge and are then communicated and internalized, while relatively little attention is paid to the process of creating and continually shaping and reshaping norms. They view norms as dynamic and vague, and argue that the content of the norm may be filled in many ways varying on context and framings. Norms are continuously revised and re-revised. Opponents of a norm may insert alternative meanings that will undermine the content of the norm.

The concept of 'human rights' is an example of how norms can change over time. Arguing that the concept 'human rights' in global discussion has been recognized as a core international norm since the signing of the UDHR in 1948, the meaning of 'human rights' has still been

challenged on a later point to include women's rights, economic rights, and access to drinking water and essential medicines (Krook and True, 2010).

The revised compliance theory

In 2009, ten years after the first book, Risse et al. decided to address some of the weaknesses and new challenges that the decade had provided their initial work. They expressed a need for a fresh look at the strengths and weaknesses of their theory in light of the developments in compliance theory and in the human rights area. They saw a need to expand their workshop agenda following the development in the US post 9/11, China and the 'Arab Spring'. One of the weaknesses with the original study was that they had assumed that the same causal mechanisms which moved the process along the first stages would also move the state from commitment to compliance. The decade that followed brought evidence that the "bottleneck" was in the transition from commitment to compliance (Risse et al, 2013). The focus of their revised book was therefore on the phase from prescriptive status to rule-consistent behavior. They identified a set of scope conditions under which movement from commitment to compliance was more or less likely to occur. These are coercion, incentives, persuasion and discourse, and capacity-building.

Scope mechanisms

Coercion	Human Rights change produced by force	o Through force by external actors, e.g. humanitarian interventions, R2P o Through legal enforcement, e.g. supranational courts
Changing incentives	Human Rights change produced by sanctions and rewards	o Through discouraging human rights violations by sanctioning human rights offending states, e.g. boycott o Through encouraging human rights development through rewards, e.g. aid
Persuasion and discourse	Human Rights change produced by constructing the human rights norm as the dominant discourse	o Through presenting arguments in favor of the human rights norm
Capacity-building	Human Rights change produced by building capacity at a national/local level in cases of limited statehood	o Through mechanisms such as education, training and building up administrative capacity

(Compiled from Risse et al. 2013)

Coercion does not leave the actors much choice but to comply with the rules. Human Rights norms can be imposed through the use of force by external actors, or by legal enforcement. However, it is important to note that legal sanctions are seldom imposed on states against their will. When human rights standards are subjected to international and regional jurisdiction and treated by courts on domestic, regional or international level, legal enforcement replace the use of force. Changing incentives through sanctions and rewards is closely connected to rational-choice. Risset et al. (2013) believes that changing incentives play a more important role than coercion in moving states from commitment to compliance. The effectiveness of sanctions and rewards does however depend on a number of factors, such as the material or social vulnerability of the targeted state. Persuasion is thought of as a long lasting socialization mechanism, but pure persuasion based on "better argument" is rare in

international affairs (Risse et al. 2013). Still, discourse is believed to contribute tremendously as a mechanism leading to compliance because once human rights become a dominant discourse it will exert structural power over actors. The recognition and successful framing of gaps between commitment and actions by human rights advocates are often the starting point for further social mobilization (Risse et al. 2013). However, cases of powerful counter-discourses can undermine the assumption that human rights advocates always have the better arguments, and thus eventually would persuade its opponent. When actors possess enough social legitimacy to establish powerful counter-narratives, their social vulnerability is also reduced. Finally, capacity building focuses on cases where states may be willing, yet unable, to comply. Capacity-building through processes of social interaction towards education, training and building up administrative capacity to implement and enforce human rights law is believed to be important in cases of "limited statehood". All of these mechanisms can be complementary, additive or sequential, but may also lack complementarity, operate randomly or be subtractive (Risse et al. 2013).

The move away from a general theory

In the revised book, *The Persistent Power of Human Rights*, the aim was no longer to construct a general theory of human rights change. The original five-phase spiral model did not live up to its claim to be "generalizable across cases irrespectively of cultural, political, or economic differences between countries" (Risse et al. 1999, 6). The authors acknowledged the challenges connected to the diversity of actors involved in human rights change, such as corporations, insurgents groups and even families, and the differences in reasons behind change in different cases. Dealing with different kinds of actors and different types of human rights violations thus require different theoretical and policy approaches. The analysis also finds that enforcement, e.g. through legal instruments, may be an important tool and have a positive effect on the move from commitment to compliance (Risse et al. 2013). Particularly in relations to the new realization that democracies can also be norm-violators the authors note that the protection of human rights also requires the watchfulness of domestic actors. Human rights protection is dependent on the willingness and capability of domestic actors to demand and sustain their rights for the international community's efforts to make a difference.

Combining legal framework and constructivist theory

A part of the development that has taken place within compliance theory since "The Power of Human Rights" is that international lawyers and political scientist have become increasingly aware of each other's contributions to the understanding of human rights. One of the contributions is *Mobilizing for Human Rights* by Beth Simmons. Two of her findings – judicial action enabled by human rights treaties and popular mobilization in favor of compliance – are consistent with the spiral model (Risse et al, 2013). Legal scholars have pointed to the importance of the vagueness of international norms. These vague and flexible definitions allow for subsequent development and broad consensus. But it also allows for interpretive discretion by state actors (Risse et al. 2013). Risse et al. acknowledges the influence of these factors. In their findings they argue that human rights prosecutions are a mean of enforcement which may impose significant costs to the human rights violator. As the bottleneck has proved to be the phase from prescriptive status to rule-consistent behavior, studies have showed that event tactical commitments to human rights norms, particularly legal ones, can lead to transition when independent courts can support human rights claims against the government (Risse et al, 2013).

Courtney Hillebrecht's work ties the notion of enforcement through legal remedies together with compliance theory. In doing this she has chosen a narrower approach to compliance, focused on states' compliance with the judgements of international human rights courts (Bates, 2015). Within her approach compliance thus comes down to implementation of remedies following a finding of non-compliance. Her approach focuses on the interaction within and between domestic political institutions and civil society actors to implement remedies required by international courts. She applies quantitative research methods and case studies to examine the connections between state compliance and institutions and politics within the state. Hillebrecht (2014) notes that the ECtHR has had varied success in facilitating state compliance and evaluates under which conditions a state will comply with ECtHR's rulings. According to her findings it is "when domestic institutions are able and willing to comply with the European Court of Human Right's rulings.." that "..the rulings can usher in significant changes in states' human rights policies and practices." (Hillebrecht, 2014, 1101). Hillebrecht argues that compliance is a domestic affair where the strength of domestic institutions plays a crucial role for the compliance with rulings of international courts. E.g. Human Rights acts which incorporates human rights conventions into domestic law makes it

easier to frame compliance with ECtHR rulings as necessities required by law, as showed by the example of UK compliance with ECtHR rulings (Bates, 2015).

Discourse, justifications and excuses

When a government is accused of human rights violations it may respond with justifications or excuses (Risse et al. 2013). When governments apply justification they accept the responsibility for the act labeled as a human rights violation but reject that the act was wrong. Through discourse of state sovereignty or security states may try to justify alleged human rights violations. Although *The power of Human Rights* acknowledged the existence and power of counter-arguments, the assumption was that these were instrumental and would eventually be unmasked by human rights discourse. The spiral model did not anticipate that human rights would lose out in a democratic space due to powerful counter-discourse. A state may use discourse to win over a significant share of the population in favor of policies which repress certain groups within the state (Risse et al. 2013). Democratic states can thus prove to be a challenge to human rights advocates because their policies, even if they constitute human rights violations, are legitimated by voter approval. The original five-phase model expected the counter-strategies and contestation to take place in the early phases of the model, and did not predict political conflict over human rights after the human rights had become official state policy.

Democratic states are presumed to be social vulnerable to transnational pressure because of their identities as part of an international community of "civilized states". However, democratic states also draw upon other values such as national identities and state security. Risse et al. use the case of the Bush administration post-9/11 to illustrate how strong campaigns against the use of torture failed as the Bush administration did not feel morally vulnerable because of powerful security counter-norms such as anti-terrorism. Perceived threats may thus undermine the transnational advocacy through creation of counter-frames.

Within compliance theory the possibility of human rights advocates to frame human rights breaches and thus put them on the agenda, and to contribute to the shaping and development of the meaning of human rights norms is emphasized. However, alleged norm–violators may also try to shape the meaning of human right norms. The Bush administration used this tactic

through efforts to reinterpret the definition of torture and its obligations to the CAT and the Geneva Convention (Risse et al. 2013).

2.7- Summary

In sum, compliance theory identifies a process through which states move towards compliance with international human right norms. It also provides insight to mechanisms used by alleged human rights violators facing allegation of non-compliance and pressure to conform. The issue of security, which has been a significant focus area for IR scholars working on migration, comes into play when states justify their actions. Compliance theory has had a few decades to develop, and in that time it has faced criticism and challenges to its original assumptions. Risse et al. who made one of the most important contributions to compliance theory through the five-phase model faced some of these challenges through a revision of their original theory one decade after the release of the first book. They argued that in light of the developments that had taken place, and the complex body of actors now influencing the human rights situation, it is not possible to construct one common theory of human rights change. Instead the mechanisms at work may vary in between cases depending on the type of human rights violation and what kind of actor the human rights violator is. Throughout the development of the compliance theory framework it has expanded to include new types of human rights actors and human rights violations. A further and important lesson learned in compliance theory is that democratic states can also be norm-violators and can backlash to the phases of denial even after having signed the relevant conventions. Compliance theory now provides us with a set of scope conditions under which movement from commitment to compliance is more or less likely to occur, and with possible counter-actions by norm violating states to halt the pressure by human rights advocates. Through my cases I will draw upon these scope conditions and the possible challenges and counter-actions introduced in this section in order to explain possible compliance gaps between Norway's international human rights obligations and asylum policies and practice. Because Norway has signed the human rights treaties and conventions relevant to my cases, the focus will lie within the phase from prescriptive status and rule-consistent behavior.

3- Methodology

Social research is influenced by theory, epistemology, ontology, practical considerations and values (Bryman, 2012). In this chapter I will explain my research design and data collection and analysis, my choices of epistemological and ontological orientation and some of the ethical and practical challenges I faced in designing and conducting this research.

3.1- Research design

The objective of my dissertation is to study to what extent Norway is upholding the obligations it has committed to through international conventions related to asylum applicants. A further question is how we can explain Norway's compliance or breach with these international obligations in the treatment of asylum applicants. The study has relied upon documents and interviews with people relevant to the issues addressed in my cases. More informal conversations with people working in relevant areas have also been used as a backdrop to further my own understanding of the findings in my cases.

In my study I researched what international obligations Norway has in relation to asylum seekers. I studied the treaties and conventions that Norway has signed and if there are any gaps between these and the treatment of asylum seekers/ refugees in practice. Through investigating four cases I aim to find explanations for the compliance with or gaps between the international obligations and the policies and practice.

For this dissertation I chose to apply a case study research design. According to Yin (2014, 237) a case study is "a study that investigates a contemporary phenomenon in depth and in its real-world context". A case study method is appropriate to use when the research question asks "how" or "why" about a contemporary set of events, over which a researcher has little or no control (Yin, 2014). In my dissertation I am interested in understanding the relationship between a state's international obligations established through conventions and treaties, and *how* these influence the state's policies and practices towards asylum applicants. I want to understand *why* a state complies with or breach its international obligations. To answer this I have applied a multiple-case design. A multiple-case design is often considered more robust than a single-case study (Yin, 2014). The multiple-case design allowed me to compare my findings in the separate cases. When choosing cases for a multiple-case study it is common to use replication logic instead of a sampling logic. This means that the researcher can chose

cases expected to give similar or contrasting results. In all the cases I chose there was disagreement between the Norwegian authorities on the one side and NGOs, UNHCR and lawyers on the other side about whether or not Norwegian practice was breaching international conventions.

3.2- Qualitative research strategies

The focus of this study is how the international obligations are interpreted and if they are safeguarded in the Norwegian asylum politics and practices. The dissertation focuses on the values and interpretations which the actors give to these international obligations and explanations to why there may be gaps between the interpretations and the policies and practice. While quantitative research focus on the extent and measurement of the subject matter, qualitative research focus on the meanings, concepts, definitions, characteristics, metaphors, symbols and descriptions of the matters (Berg & Lune, 2012). Therefore, I considered qualitative research strategies to be appropriate for my dissertation.

However, quantitative research on similar topics has been conducted, such as Hillebretch (2014) study of the relationship between states compliance with the ECtHR judgments and strength of domestic institutions. This study has been used as a part of the background reading for my study.

In this dissertation I have taken a constructionist ontological orientation, with the assumption that social entities should be considered social constructions built up from the social actor's perceptions and actions. My epistemological orientation has been interpretivist. Interpretivism facilitates understanding of how and why, and allows for complexity and contextual factors (Raddon, n.d.). My choice of epistemological and ontological orientation derives from my constructivist theoretical framework and my objective to understand how actors interpret the international obligation and why gaps may occur. It is also reflected in my research strategy, where I have used qualitative research strategies. Qualitative research strategies predominantly have an interpretivist epistemological orientation and a constructionism ontological orientation (Bryman, 2012).

There are different ways to evaluate the quality of a research. In a case study a finding or conclusion is likely to be more convincing if it is based on data triangulation, building on several different sources of information (Yin, 2012). When we triangulate data the case

study's findings will be supported by more than a single source of data. In my dissertation my findings were supported by the information gathered through interviews as well as by official documents.

3.3- Data collection

From a constructionist ontological stand ".. it is the job of the social scientist to gain access to people's 'common-sense thinking' and hence to interpret their actions and their social world from their point of view." (Bryman, 2012, 30) Case study design allows us to collect data from multiple sources. Each source of evidence contains both strengths and weaknesses, and therefore it is valuable for any study to use different sources of information (Yin, 2014). For this particular study documents was chosen as a main source of information. The Conventions allows us to research what Norway's international human rights obligations are. Court documents provide insight to both court assessments of Norway's compliance with the human rights norms in question, and also the arguments provided by both Norwegian authorities and the asylum seekers and their advocates. Reports and articles published by immigration authorities, NGOs, UN special rapporteurs and human rights advocates provided insight to the interpretation by these actors of the human rights norms and Norwegian law and practice.

In addition to documents, interviews were conducted to supplement the findings in my document analysis. When selecting the possible interview objects I used purposive sampling to find actors relevant to my cases. I also used snowball sampling when my interview subjects proposed other actors who might have information of interest to my research. When doing snowball sampling it is important to be aware that the interview subject may be biased in their suggestion of referrals. However, it may also be helpful because the researcher can use the informant as a reference when requesting an interview with the next actor.

Document analysis

Documents play an explicit role in the data collection in doing case study research, but many people have been critical of the potential overreliance on documents in case studies (Yin, 2014). Yin explains that the case study researcher is a vicarious observer when it comes to documents, because the documents we review was written for another purpose other than the case study. The documentary evidence thus "reflects communication among other parties

attempting to achieve some other objectives" (Yin, 2014, 108). So, by identifying these objects and being critical in the review of document, these can be a valuable source of data. I evaluated the documents in my dissertation based on criteria and guidelines provided by Alan Bryman (2012), evaluating their credibility, representativeness, authenticity and meaning.

I analyzed court documents from Norwegian courts and the ECtHR, government whitepapers, rapports and articles from the UN, NGOs and the A&P, articles by the Immigration Appeals Board (UNE) and official correspondence between the government and the United Nations High Commissioner for Refugees (UNHCR) when collecting data about my cases. I also supplemented the findings from these documents with media articles in order to build my cases.

As mentioned earlier, the different sources of information each has its strengths and weaknesses. Yin (2014) warns that some of the challenges with documents are access and retrievability. One challenge I faced in this study was retrieving the response from the Norwegian ministry of Justice and Public Security (JD) to the Special rapporteur on the human rights of migrants. I finally gained access to the document after requesting it directly from the JD. Biases are also challenging to document analysis. One such challenge might be biased selectivity of documents (Yin, 2014). I addressed this challenge by using documents from different sources in all my cases and in my chapter on Norway's human rights obligations. I also tried to find arguments from both sides throughout my data collection, continuously searching for replies and counter arguments to statements and reports. Another weakness is reporting biases (Yin, 2014). However, as I was interested in the argumentation of the Norwegian authorities and the various human rights advocates I reviewed the documents as sources of insight to their point of view and not as straight facts. One exemption is the conventions and laws, which were reviewed as sources of facts. The strengths of documents as a source of evidence are that they are a stable source which can be reviewed repeatedly (Yin, 2014). They can also be specific and contain important details of events. Documents allow the researcher to cover a broad spectrum of events, settings and time spans (Yin, 2014). In this study the documents e.g. allowed me to gain insight in court cases stretching over several years and locations.

Interviews

As a supplement to the findings in the document analysis I conducted interviews. I wanted to make sure I found informants who were informed about the issues in my dissertation. The aim

has been to get representative and knowledgeable informants who may complement and shed light on the data from the documents. I found the informants by researching online and sending e-mails to people and institutions that were relevant to my cases. I also used snowball-sampling and contacted people who were recommended by informants because they could be of interest to my topic. UNE and UDI were chosen because of their role in implementing refugee policies. The Norwegian Ministry of Justice and Public Security was chosen for its role as policy maker. I also contacted several political parties because I wanted to get an insight into the arguments behind their political platform on immigration and refugee policies. Amnesty International and NOAS were chosen because of their work with the rights of refugees. I also contacted the Ethiopian Asylum Seekers Association in Norway because of their experiences with the MoU between Norway and Ethiopia. Finally, I had chosen the lawyers based on their connection to my cases, or because they were members of a group of lawyers who had been working in A&P and therefore had experience with and knowledge about some of the challenges within Norwegian asylum practices. In the end I was able to conduct five interviews.

When I conducted the interviews I was interested in the interviewees' experiences with the cases they had worked on. My interviews were semi-structured and were "shorter case study interviews", meaning that length of the interviews was no longer than an hour. This was because of the availability of the interviewees, who took time out of their job schedule for the interview.

I conducted interviews either face to face, or by telephone when the interviewee was located in another city. In the cases when I met with the interviewees I let them chose the time and place for the interview. I made an interview guide with a list of questions and points I wanted to cover, but I kept the structure fairly open to leave room for a great deal of leeway in how to reply. I chose this type of interviews because I was interested in the interviewees' point of view and wanted to get rich and detailed answers.

Some of the weaknesses connected to interviews as a source of evidence is inaccuracies due to poor recall, reflexivity and response bias (Yin, 2014). My main interest in the interviews were the respondents' (and the respective organization or position they represented) argumentations. Thus, the aim of the interview was again not simple facts, but their perception of norms and cases. In my experience from the interviews I conducted the respondents were straightforward about it when they were unsure about anything, e.g. if they

recalled something correctly. Other weaknesses with interviews can be poorly articulated questions (Yin, 2014) and the inexperience of the interviewer (Bryman, 2012). All of my respondents allowed me to contact them again for follow-up questions if I wanted to confirm my understanding of the information they had provided or if I had follow-up questions. But interviews also have strengths as sources of information. Interviews allow us to focus directly on the case study topics and provide insight to explanations and personal views (Yin, 2014). The interviews I conducted provided me with good insight in the respondents' perceptions and opinions on the human rights norms and Norwegian practices investigated in this dissertation.

3.4- Analysis

Yin (2014) suggests that a case study should be conducted through six steps; plan, design, prepare, collect and share. For my analysis I followed a spiralling research approach inspired by Berg and Lune (2012) (see illustration). The spiralling research approach expects the researcher to move back and forth between the different steps and revise during the whole study process. When conducting my study I revised my theoretical framework, research design and analysis continuously as I gained new information and insight. I analysed my findings continuously during the process and returned to the data collection stage as new questions emerged in light of my findings and analysis. In my analysis of interview data I followed the standard set of analytical activities described by Berg and Lune (2012, 352). I converted my interview notes into written texts immediately after the interview was done in order to secure a fresh memory of the details. In my final analysis I analyzed the material from interviews and written sources by sorting the material by categories, and then identified patterns. The patterns I found was then evaluated in the light of the theoretical framework and the findings from already existing research on the topic. According to Yin (2014) doing pattern matching is one of the keys to securing internal validity for the case study. In my analysis I extracted different argumentations for and against Norwegian compliance with the international human rights norms and sorted the argumentations into categories, addressing different aspects of the theoretical framework.

3.5- Challenges and ethical considerations

As part of my data collection I used semi-structured interviews. The informants were informed about my research intention and gave an informed consent. For some of the interviewees the topic was of a sensitive nature. If requested the interviews were kept anonymous.

As all social research is a coming-together of what is ideal and what is feasible, I expected to face some limitations in my data collection. One of the challenges I faced during my data collection was to schedule interviews with officials and politicians. I requested information and interviews with UNE and UDI, as well as the Norwegian Ministry of Justice and Public Security, the Norwegian Ministry of Foreign Affairs and several Norwegian Political Parties. My requests were either declined due to lack of time or left unanswered. I faced the same challenges when attempting to get first-hand information and interviews with lawyers working with asylum cases In the end, after having contacted several lawyers of interest to my cases, was able to get one interview with a lawyer working on one of the cases covered in my dissertation.

The interviews I conducted were mainly in Norwegian. I was therefore faced with the challenge to translate the information given by my interview objects without changing the meaning of their statements. I faced a similar challenge when translating documents. Many of the documents I used in my thesis were written in Norwegian, and I had to make sure I translated them without changing the meaning of the text. This was particularly challenging in connection with juridical documents as I have no prior education within legal terminology. I made the best effort I could to make sure the translations were correct by consulting legal dictionaries and consulting with a jurist when I was in doubt.

4- Norway's international obligations and asylum policy

4.1- Introduction

In the following sections I will present the international conventions which Norway has signed and ratified, and which are relevant to Norwegian asylum politics and to my dissertation. I will also give a brief introduction to the instances responsible for the implementation of asylum policies in Norway. The Universal Declaration of Human Rights was adopted in 1948. The norms embedded in the Declaration have served as fundamental norms of human rights, which should be respected and protected by all. The Convention is not part of binding international law, however "its acceptance by all countries around the world gives great moral weight to the fundamental principle that all human beings, rich and poor, strong and weak, male and female, of all races and religions, are to be treated equally and with respect" (UNICEF, 2014a) Furthermore, it is fundament for binding international and regional human rights treaties, customary international law, general principles, regional agreements and domestic law. Together with the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the Universal Declaration of Human Rights forms The International Bill of Human Rights. International treaties and customary law form the backbone of international human rights law. Other instruments, such as declarations, guidelines and principles contribute to the understanding, implementation and development of international human rights law. International human rights law lays down the obligations which the states must respect. The states assume their obligation to respect, protect and fulfill these human rights when they become parties to the international treaties. The obligation to respect, to protect and fulfill means that "States must refrain from interfering with or curtailing the enjoyment of human rights", that the States are required to "protect individuals and groups against human rights abuses" and that "States must take positive action to facilitate the enjoyment of basic human rights" (OHCHR, n.d,a). Through the ratification of these international treaties the Governments must take upon themselves to put into place domestic measures and legislation which is compatible with their obligation and duties under the treaties. It is this domestic legal system which provides the principal legal protection of the human rights as laid down in international treaties. To ensure that States fulfill their human rights obligations mechanisms and procedures for individual and group complaints are available at the regional and international levels (UN, n.d.) In relation to this dissertation the conventions that are relevant and which will be presented are

the CRSR, the CRC, the ECHR and the CAT. The mechanisms to ensure that Norway fulfills the obligations which are presented in the dissertation are the UNHCR and the ECtHR.

Some of the Conventions are overlapping. For example Article 3 of the ECHR and Article 3 of the CAT, which both prohibit returning persons to areas where they may be subjected to torture (*non-refoulment*).

4.2- The 1951 Convention relating to the Status of Refugees (CRSR)

The 1951 Convention relating to the Status of Refugees (CRSR) is a legal document which defines who is a refugee, their rights and the legal obligations of states. The 1951 Convention is a key legal document, referred to as the Magna Carta of international refugee law, to which signatory states are bound. Norway signed the Convention on 28 July 1951 and ratified it on 23 March 1953 (UNTC, n.d.). The CRSR came in the wake of the World War II, as a response to the large number of refugees who wandered aimlessly across the European continent in the years following the war. The 1951 Convention was inspired by the 1933 Refugee Convention and the 1948 Universal Declaration of Human Rights. The signatory states did not want to 'sign a blank check', and the scope of the Deceleration was therefore mainly limited to refugees within Europe and to events occurring before 1 January 1951 (Wilkinson, 2001) The CRSR was intended to be a temporary scheme, as it was hoped and expected that the refugee issue would be solved within a short time period.

According to article 1 A of the 1951 Convention as modified by the 1967 Protocol (which deleted the geographic and temporal limitations), a refugee is a person who

'(.....)owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country ; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.' (UNHR, n.d.)

The CRSR also secures certain rights to refugees, such as access to courts, elementary education and public assistance. The CRSR protects the refugees who for various reasons lack the proper documentation, and therefore entered the host community in an unlawful manner,

from being punished as long as they present themselves to the authorities without delay and can show a good cause for their illegal entry or presence. This protection is founded in Article 31 (1), which reads

The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

(OHCHR, n.d.c)

The CRSR states that refugees should not be returned to countries where they fear persecution. It also makes explicit the obligations of the refugees to respect the laws and regulations of their host country. The Convention conditions when someone is not covered by the Convention, such as people who have committed war crimes, in its 'exclusion clause'. The cessation clauses specify when the Convention ceases to apply.

Although some articles of the CRSR are absolute, others are open for interpretation. In addition, the Convention is silent on a number of issues. This has led to debates among governments, scholars and the UNHCR regarding how to interpret and implement the Convention.

The 1951 Convention has been criticized for being outdated and irrelevant (Wilkinson, 2001). Part of the reason is that new issues which were not considered by the original creators of the document, such as gender-based persecution, have become major problems. New issues such as climate change may lead to refugee flows, but these are not covered by the Convention. However, the UNHCR states that "the Convention has shown extraordinary longevity and flexibility in meeting known and unforeseen challenges" (Wilkinson, 2001, 2)

The CRSR does not define the term 'persecution', and this lack of definition opens for interpretations and grey-zones. Some governments argue that this has changed since the Convention was established, and that people who are fleeing civil wars, generalized violence or human rights abuses in large numbers are not fleeing persecution per se. (Wilkinson, 2001,) The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status paragraph 50 states that

'There is no universally accepted definition of "persecution", and various attempts to formulate such a definition have met with little success. From Article 33 of the 1951 Convention, it may be inferred that a threat to life or freedom on account of race, religion, nationality, political opinion or membership of a particular social group is always persecution. Other serious violations of human rights--for the same reasons--would also constitute persecution.' (UNHCR, 2011)

Paragraph 51 further states that

'Whether other prejudicial actions or threats would amount to persecution will depend on the circumstances of each case, including the subjective element to which reference has been made in the preceding paragraphs. The subjective character of fear of persecution requires an evaluation of the opinions and feelings of the person concerned. It is also in the light of such opinions and feelings that any actual or anticipated measures against him must necessarily be viewed. Due to variations in the psychological make-up of individuals and in the circumstances of each case, interpretations of what amounts to persecution are bound to vary.' (UNHCR, 2011)

Finally, paragraph 52 states that

'In addition, an applicant may have been subjected to various measures not in themselves amounting to persecution (e.g. discrimination in different forms), in some cases combined with other adverse factors (e.g. general atmosphere of insecurity in the country of origin). In such situations, the various elements involved may, if taken together, produce an effect on the mind of the applicant that can reasonably justify a claim to well-founded fear of persecution on "cumulative grounds". Needless to say, it is not possible to lay down a general rule as to what cumulative reasons can give rise to a valid claim to refugee status. This will necessarily depend on all the circumstances, including the particular geographical, historical and ethnological context.' (UNHCR, 2011)

Another term open for definition is 'agents of persecution'. When the1951 Convention was established, 'agents of persecution' were generally assumed to be states, and therefore a few states insist that people fleeing from oppression from non-state actors do not hold the right to protection under the Convention. Other states choose to interpret it in such a way that refugee status should be granted to asylum seekers if the state tolerates, is complicit in or cannot prevent the persecution by non-state actors. The UNHCR and the ECtHR have both stated that

the origin of the persecution is a less factor in determining the refugee status of asylum seekers.

In the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status paragraph 65 states that although persecution is normally related to actions by the state authorities, it can also emanate from sections of the population that do not respect the laws of the country. If the authorities knowledgably tolerate discriminatory or offensive acts by sections of the population, or if they refuse or prove unable to offer effective protection against these acts, then it can be considered persecution.

The ECtHR has ruled that it is a violation of the ECHR to return asylum seekers to situations in which they could face persecution regardless the origin of the persecution" (Wilkinson, 2001).

The CRSR signatories are not obliged to give permanent asylum to all asylum seekers. The UNHCR's "preferred" solution is voluntary returns of refugees to their countries of origin, but this is under the condition that the state permits safe return.

Another matter of discussion regarding the CRSR is whether it is applicable sole to individuals or if it also applies to groups of people. Although some argue that due to the wording "the term 'refugee' shall apply to any person who" the Convention should be interpreted as referring to individuals only, humanitarian jurists say that nothing in the definition implies that it refers sole to individuals (Wilkinson, 2001). They further emphasize that during the time of the drafting intended beneficiaries of the Convention were large groups of people displaced by World War II.

The parties to the CRSR and/or the Protocol are obliged to carry out its provisions and it is the host governments that are primarily responsible for protecting refugees. The UNHCR has a monitoring role and intervenes if necessary to ensure that bona fide refugees are granted asylum and are not forcibly returned to countries where their lives may be in danger.

The interpretation of the CRSR in Norwegian law and practice

According to UNE the Norwegian practice in the question of who are entitled to the status of and protection as a refugee is governed by the UN Convention of 1951 and Protocol of 1967 relating to the Status of Refugees (UNE, 2010b) The CRSR contains a definition of refugee

concept in Article 1 and a number of provisions on refugees' rights and obligations in Articles 2-34. The most important of these, according to UNE, is Article 33, which gives refugees the right to protection from persecution. Article 33 states that

1. No Contracting State shall expel or return (" refouler ") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

(OHCHR, n.d.c)

UNE specifies that although who qualifies as a refugee through convention is defined by CRSR, who is ultimately covered by the term is not fixed once and for all. The refugee concept can change over time and is interpreted differently in different states. Norwegian authorities consider this question on the basis of interpretations of the Convention and Norwegian legislation. UNE also clarifies that although all people have the right to seek asylum, the states are not obliged to provide asylum. But they have an obligation not to return refugees to areas where they risk persecution.

In Norway, the right to asylum regulated in the Immigration Act § 28. The Act provides refugees in Norway or at the Norwegian border, the right to asylum in Norway if they qualify under CRSR Article 1 A. Individuals who fail to meet these conditions may nonetheless be entitled for refugee status and asylum under § 28 first paragraph b, if there is a real danger of death, torture or other inhuman or degrading treatment or punishment upon return to their home country (UNE, 2010b).

One of the requirements to be considered as a refugee by the Convention and the Immigration Act is that the person risks "persecution". "Persecution" is defined in the Immigration Act as actions or measures that individually, or because of recurrence, constitutes a serious violation of fundamental human rights. According to UNE (2010b), their own practice shows that serious acts of violence and threats to life are understood as persecution. It is difficult to clarify what falls within or outside the concept of persecution. This is often the result of a

comprehensive assessment of the discrimination or harassment a person is exposed to and an overall assessment of all relevant abuses and human rights violations in a particular case. What a person can be expected to endure is also a part of this assessment. Health and age is assessed when considering whether abuse is serious enough to be considered as abuse.

UNE states there has been a development in this field, where the practice has developed toward a more comprehensive understanding of human rights, and where serious violations of these rights are made relevant in the assessments. The understanding of "persecution" in the Immigration Act § 29 reflects this (UNE, 2010b).

To be considered a refugee by the CRSR and the Immigration Act § 28 first paragraph a, it is a requirement that the persecution is related to the applicant's "race, religion, nationality, membership in a particular social group or political opinion." If the persecution is not related to such matters, however, it is sufficient that the lack of effective protection from domestic authorities relating to these matters. The Convention does not protect against abuse that are not related to these matters, such as random acts of crime.

An important aspect of the assessment of asylum applications is a fear of persecution. The CRSR and the Immigration Act requires that the fear is "well-founded", i.e. fear must also be justified on the basis of an objective assessment. The assessment of the fear of persecution is forward-looking and should not compensate for past injustices (UNE, 2010b). The assessment is based on whether the applicant risk persecution upon return to their home country, and this may change after they have applied for asylum. How real the risk of persecution is, and the nature and extent of the prosecution, is assessed. There must be a comprehensive evaluation of all general and individual risks. The human rights situation in the applicant's home country plays an important role for UNE in the assessment. UNE collect information about the situation from various sources and make their own travels to assess the situation. An asylum seeker's presumed future behavior is also considered. UNE must also consider evidence claim, adapted to the specific situation, and the probability basis for application for asylum. According to UNE, any doubt should be weighed in favor of the asylum applicant if the applicant appears to be generally credible.

The risk of persecution may also occur after the asylum seeker has come to Norway. Then the applicant becomes thus refugee "sur place". Such hazards may arise, for example if the asylum seeker in Norway exercises regime critical activity against his or her country of origin. In such cases, the applicant is granted refugee status as a general rule under the Immigration

Act § 28 fourth paragraph. But in these cases it must be determined whether there should be exemptions from the general rule if the need for protection is due to actions are punishable under Norwegian law, or if it appears most likely that the main purpose of the actions has been to achieve a residence permit (UNE, 2010b).

The CRSR article 33 requires states not to return refugees to areas where they risk persecution, but does not constitute an obstacle to return refugees to safe areas. Norway practices a "first asylum country" rule. This rule implies that asylum seekers can be returned to the first safe country of asylum they have stayed in. This is also part of the Schengen Agreement and the Dublin Regulation, which Norway is a part of. In the Dublin Regulation it's the Member State issuing a visa, which first receive an application for asylum or which the foreign national has previously stayed in, which is responsible for processing the application for asylum. The responsibility may in some cases be transferred to another Member State, if the asylum seeker has a stronger connection to this country. In Norwegian practice the applicant's situation must be unique and there must be very compelling reasons for the application to be processed in Norway.

The CRSR art.1 C and the Immigration Act § 37 provides rules about cessation of refugee status. Although the CRSR allows for cessation in some cases, it is in practice uncommon that granted asylum is revoked in Norway e.g. because conditions in the country of origin have improved (UNE, 2010b).

Convention art. 1 D-F and the Immigration Act § 31 also have rules about exclusion of people from refugee status. But the Immigration Act § 73, the Torture Convention Article 3 and the European Human Rights Article 3 provides an absolute protection against return to areas where an applicant risk torture and inhuman treatment, even if the exclusion conditions are met. Consequently the Norwegian practice has given people the right to stay in Norway even though they meet the criteria for exclusion from refugee status (UNE, 2010b).

The supervision of the implementation of the CRSR

The United Nations High Commissioner for Refugees was given the task of supervising international conventions providing for the protection of refugees, and the Convention is a basic statute guiding the UNHCR's work.

The High Commissioner for Refugees is the leader of the office of the High Commissioner for Refugees, also known as the United Nations Refugee Agency (UNHCR). The Office of the United Nations High Commissioner for Refugees was established on December 14, 1950 by the United Nations General Assembly. Its emergence in the wake of World War II was aimed at assisting Europeans who found themselves displaced by the war. The UNHCR was given a three-year mandate to complete its work and then disband (UNHCR, n.d.). However, in the years following new refugee crises arose, and the UNHCR continued its mandate to this day. Norway is a member state of the UNHCR, but member states are not formally obligated to follow the recommendations made by the High Commissioner.

Beate Slydal from Amnesty International (interview 08.10.2014) stated that even though the member states are not formally obliged to follow the recommendations by the UNHCR, it is implicit that they should follow them. She explained that the recommendations made by the UNHCR are not based on assumptions, and failing to follow them may undermine the institution. However, it is first and foremost the people affected by the asylum policies that face consequences if states do not follow the recommendations. Individuals may risk refoulment to dangerous states, while Norway risk very little by choosing not to comply. The system of the CRSR is based on mutual trust and Amnesty International thinks that states as a minimum should follow the CRSR and the recommendations by the UNHCR. According to Andre Møkkelgjerd from NOAS (interview 11.11.2014) Norway can emphasize that UNHCR recommendations are weighty arguments in cases where it is advantageous for them. But at the same time Norway can point to the fact that the recommendations are not legally binding in cases where they do not wish to follow them. Møkkelgjerd further stated that it is important to remember that Norway interpret the UNHCR statements.

4.3- The Convention on the Rights of the Child (CRC)

The Convention on the Rights of the Child (CRC) is an international treaty which protects the rights of children. Although children already had the same general human rights as all other humans, world leaders recognized that people under 18 years old often need special care and protection and decided that children needed a special convention (UNCEF, 2014b). The text of the CRC was adopted by the UN Generally Assembly on 20 November 1989. The CRC came into force on 2 September 1990. The CRC covers a wide range of civil, political, economic, social and cultural rights. The CRC draws heavily from the International Bill of

Human Rights (UNICEF, 2014a). Through the CRC Governments are obliged to recognize the full spectrum of human rights for all children and have to consider the children in policy decisions and to amend and create laws and to fully implement the CRC (UNICEF, 2014c). The CRC is the UN convention which has the broadest international support and it represents a crucial common basis for working with and for children on a global scale.

The United Nations Committee on the Rights of the Child monitors the states implementation of the CRC. States submit reports to the Committee which, on the basis of these reports and subsequent sessions and discussions, prepares a report with the concerns and recommendations it has regarding the individual state. These recommendations are not legally binding, so the extent to which states comply with the CRC ultimately depends on the individual state's ability and willingness (UNE, 2010a). States interpret the CRC based on their understanding of the wording of articles. Several of the Convention's articles are vague and imprecise. In several cases there is a lack of a court decision or an appeal body that has interpreted the wording of the Convention. Therefore, there may be uncertainty about the actual content of several articles. In cases where the preparatory work to help with the interpretation is lacking it can be challenging for national courts to interpret the Convention. According to the Vienna Convention a convention shall be interpreted in the context of its object and purpose. This means that the best interest of the child principle should be applied where one interprets Article 22 which deals with the protection of Asylum Seekers and Refugee children. In addition the UN committee on the rights of the child publishes "general comments" on articles or topics of particular importance. These are not legally binding but intended to govern and guide the interpretation of these articles (UNE, 2010a).

The Committee has identified four international convention provisions to which the principles are of general or overarching importance, which means that the four principles are important for the understanding of the whole convention. These four principles are:

The best interests principle in Article 3. 1

The principle of non-discrimination in Article 2

The right to life and development in Article 6

The principle of the child's right to be heard in Article 12

(Store Norske Leksikon, n.d.)

Norway ratified the CRC in 1991 and it was made a part of Norwegian Law in 2003 through the Human Rights Act §2 nr.4. According to the Immigration Act § 3 the Act shall be applied in accordance with international rules by which Norway is bound by, meaning that the Immigration Act must be in accordance with the CRC (UNE, 2010a). In the Norwegian context much attention has been given to the importance of the CRC's principle of the best interests of the child, e.g. in cases of the refugee children whose applications have been rejected but who have lived in Norway for so many years that it might be in their best interest to get a residence permit. This principle has also been applied by the Council of Europe Court of Human Rights (ECHR) in several court decisions (UNE, 2010a). The guiding principles of the CRC states that

The best interests of children must be the primary concern in making decisions that may affect them. All adults should do what is best for children. When adults make decisions, they should think about how their decisions will affect children. This particularly applies to budget, policy and law makers.

(UNICEF, n.d.c)

This principle does not provide detailed guidelines for what should be considered the best interest of the child. This must therefore be determined specifically in each case after an overall assessment (UNE, 2010a). UNE points out that article 3 of the CRC states that the best interest of the child shall be "a" primary concern and not "the" Primary concern. The CRC Article 3, 1 states that

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

(OHCHR, n.d.b)

UNE refers to the preparatory work of the CRC and that "a" was deliberately chosen over "the" and states that the choice of the words "a" and "primary" opens up for other concerns to be relevant as well. One of these concerns is immigration regulation. According to UNE (2010a) the wording is an expression of the recognition that there are situations where competing legal interests or interests of society have equal justification, or even greater justification than the child's interests. Even though the best interests of the child should be an important consideration, other considerations can be both relevant and crucial and therefore

there is no guarantee that the best interests of the child will always be crucial to the outcome in decisions concerning the child. In reference to immigration law this means that it is legitimate to emphasizing immigration regulation considerations and immigration control. Both the Norwegian Supreme Court and subordinate courts have pointed out that the Convention requires a proportionality assessment of considerations where the child's best interests must be included (UNE, 2010a) What constitutes the child's best interest in each individual case is also considered a judgment call (UNE, 2010a).

One important consequence of the CRC is that the child should be considered as an individual, and not only as an extension of its parents. The child's own grounds for asylum, protection needs and experiences must thus be considered. Children may in some cases be granted a residence permit in cases even if the situation is not so severe that an adult would receive residence permission in the same situation. In assessing humanitarian considerations the child's connection to the realm shall be given weight.

CRC Article 2 states that States shall respect and ensure the rights of the CRC for every child within its jurisdiction, and the obligation to ensure the rights shall be exercised without discrimination of any kind. In relation to this one can raise the discussions about whether Norwegian authorities shall be deemed obliged to ensuring a child's rights under the CRC permission to enter and stay in Norway, for example if a child's living conditions in its home country is so poor that it must considered a violation of the CRC. UNE point out that the conditions which the child lives under in its home country will primarily be a matter and a responsibility for that state. Poverty, hunger and deprivation is widespread in many parts of the world, and it has not been conventional practice that such matters in itself suggests that a state is obliged to receive another country's citizen solely based on the assumption that this will provide them a better future . Children's living conditions in their home country is not a direct and immediate result of a rejection of an application for a residence permit in Norway (UNE, 2010a). UNE points to international law which states that it is up to the state's sovereignty to regulate entry into and residence in the state for individuals who are not citizens of the state.

The matter of "refugee children" has been very relevant to the application of the CRC in Norway. Beate Ekeløve-Slydal explained that in the case of the debate surrounding the rights of these children, Amnesty International Norway had requested to make a stand on the matter and participate in the debate even though Amnesty International did not have a stance in this

particular matter. Thus, Amnesty Norway's stand in this debate represents the national chapter, and they keep the organization informed about their work and stands in the debate. Ekeløve-Slydal explained that the jurisprudence within human rights is dynamic and changing as society changes. The matter of the refugee children is relatively new in this context and therefore there is no certainty in how the CRC should be interpreted in this matter. The development in the year to come will thus set precedence. Amnesty Norway believes that in such cases Norway can look at other countries' courts interpretations and decisions, as well as any decisions by the ECtHR in Strasbourg as a reference for interpretation. Norway is not obligated to follow these Interpretations and decisions, but they can serve as a reference point.

Amnesty Norway has worked on this topic for a long time and has been critical towards the political solutions to the questions surrounding these children. One of the aspects Amnesty Norway has criticized is the Government proposal that only refugee children with parents from states which Norway has readmission agreements with will get a residence permit. Amnesty Norway believes that this is systematic discrimination against children in the same situation. Amnesty Norway's position is that all children who have been in Norway for four years or more and who has their own connection to Norway and through kindergarten and school should obtain a residence permit. Another aspect Amnesty Norway has been critical of is that children are punished for their parents' actions. E.g. if the parents have not collaborated with Norwegian authorities to disclose their nationality. Ekeløve-Slydal explained that Amnesty supports the principle that all countries have the duty and the right to control its citizens, but believes that children are not to blame for their parents' actions. The practice elsewhere in society is that children cannot be held responsible for their parents' actions. Amnesty Norway believes that this should be the practice for refugee children as well. If parents are to be punished for their actions, Amnesty Norway's stand is that this should happen in a way that does not compromise the child.

Andre Møkkelgjerd also emphasized that the CRC is unclear in terms of what interests of the child entails. In the case of the refugee children, one can deform opinion about the weighting of children's best up against other considerations. This is a matter of discretionary provisions. Møkkelgjerd explained that NOAS, as well as UNE and UDI, were critical to the governmental proposal of a "one time solution" to give an amnesty to some of the refugee children. Møkkelgjerd stated that this solution is contrary to the nondiscrimination principle which is found in several conventions.

In 2011, an optional additional protocol to the CRC was adopted. This protocol establishes the right of appeal to the United Nations Committee on the Rights of the Child for individual children or groups of children who believe that their rights under the Convention have been violated. The protocol gives the United Nations Committee on the Rights of the Child the authority to deal with questions about the breach of the Convention, provided that all domestic remedies have been exhausted. Norway has not signed this additional protocol. However, individuals in Norway may bring their case to the European Court of Human Rights if their rights under the ECHR are breached. When cases are brought to the European Court of Human Rights the CRC and its articles protecting the rights of the child may complement the ECHR (UNE, 2010a).

4.4- The European Convention on Human Rights (ECHR)

The Convention for the Protection of Human Rights and Fundamental Freedoms, better known as the European Convention on Human Rights (ECHR), was signed on 4 November 1950 and entered into force on 3 September 1953 as the first instrument to give effect and binding force to certain of the rights stated in the Universal Declaration of Human Rights (CoE, n.d.a) Through the ECHR the Council of Europe's (CoE) 47 member states are obliged to ensure all persons the rights and freedoms set forth in the Convention (SMR, 2015a). The ECHR was also the first treaty to establish a supranational organ, a court with the mandate to challenge decisions taken by national courts, to ensure that the States Parties fulfilled their undertakings. This meant that Human rights for the first time *de facto* gained precedence over national legislation and practice and this represented a milestone in the development of international law (CoE, n.d.a) The European Court of Human Rights (ECtHR) in Strasbourg provides an opportunity for individuals, group of individuals, companies and NGOs to appeal their case provided that they have tried it at all court levels in their home country (CoE, n.d.a) For the individual asylum seeker the rights secured in the ECHR will often be of great importance because the person can get his or her case tested before the European Court of Human Rights if they are violated by signatory state to the ECHR. The ECHR Article 46, paragraph 1, states that the high contracting parties undertake to abide by the final judgments of the European Court of Human Rights in any case to which they are parties (CM, 2004a). The Committee of Ministers (CM) is responsible for supervising the execution of this obligation (CM, 2000). According to recommendations by the Committee of Ministers (CM)

the member states should also make further efforts to give full effect to the ECHR, "in particular through a continuous adaptation of national standards in accordance with those of the Convention, in the light of the case-law of the Court" (CM, 2004a). The CM further recommended that member states ensured the adaptation of laws and administrative practice as quickly as possible, to prevent violations of the ECHR.

It is first and foremost the national authorities that are responsible for the protection of the rights and freedoms guaranteed by the ECHR (CM, 2004b). The ECHR, shall be and is, therefore an integral part of the domestic legal system of the member states. The member states should provide for education on the principles inspiring the Convention, the standards that it contains and the case-law deriving from them in both university education and professional training to ensure that the ECHR standards are implemented on a national level. This means that personnel in sectors responsible for law enforcement and/or personnel working with persons deprived of their liberty, as well as personnel working with immigration services should be provided initial and continuous professional training in a manner that takes account of their specific need. The education in the principles given by the ECHR is intended as a preventive measure (CM, 2004b).

The ECHR is not static, but is evolving through the interpretations of its provisions by the ECtHR, and through adding new protocols and rights. Case-law before the ECtHR has extended the rights afforded and applied them to situations that were not foreseeable when the ECHR was adopted (CoE, 2014).

The ECHR and Norwegian asylum policies

Between and 2014 40 cases involving Norway has been tried before the ECtHR. In 27 cases the ECtHR has found one or more violations of the ECHR. In 12 cases the ECtHR found no violations with the ECHR. One case, the case of B and Others v. Norway from 2014, was rejected (ECtHR, n.d; SMR, 2015b).

In particular, The ECHR protects the right to life, the right to a fair hearing, the right to respect for private and family life, freedom of expression, freedom of thought, conscience and religion, and the protection of property (CoE, n.d.b) The Convention prohibits torture and inhuman or degrading treatment or punishment, slavery and forced labor, death penalty, arbitrary and unlawful detention, and discrimination in the enjoyment of the rights and

freedoms set out in the ECHR. The right to respect for private and family right is of particular interest to Norwegian asylum politics and practice. Article 8 of the ECHR states that

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

(ECtHR, 2013)

Concerning how Article 8 is interpreted by UNE when they treat asylum cases, UNE states that ECHR Article 8 on the right to a private and family life instructs that an assessment of necessity and proportionality is to be carried out. When cases concerning children within the grounds of ECHR Article 8 are treated, the principle of the best interest of the child should, as stated in the CRC, be included as a factor in this assessment. UNE states that in this way, children can have their rights fulfilled in practice (UNE, 2010a)

Another article of interest is Article 13, which is relevant to the case of Norway's readmission agreement with Ethiopia. The Article states that

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

(CoE, n.d.c, 13)

In the case of B and others v. Norway (ECtHR, 2014) the complainants argued that Norway breached this article because Norwegian domestic legislation did not make available any remedy with automatic suspensive effect against the proposed collective deportation of Ethiopian nationals. They also argued that the proposed collective expulsion constituted a violation of Article 4 of Protocol No. 4, which states that " Collective expulsion of aliens is prohibited" (CoE, n.d.c, 35).

Another Article of particular interest is Article 3, which states that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment" (CoE, n.d.c, 4). This article has been disputed in relation to Norwegian return policies, inter alia in the case of the readmission agreement between Norwegian and Ethiopian authorities. UNE (2010b) states that ECHR Article 3, together with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) Article 3 and the Immigration Act §73, provides an absolute protection against return to areas where they risk torture and inhuman treatment, even in cases where conditions for exclusion are met.

The principle of "*non-refoulment*" also entails a right not to return people to states who do not respect the "*non-refoulment*" principle. This means that European states should never return asylum applicants to the first European state they entered, as instructed by the Dublin II Regulation, if they then risk being sent back to a state where they can be subjected to torture. In a Court Case in the ECtHR (M.S.S v. Belgium and Greece no. 30696/9) the Court found that the return of an Afghan asylum applicant from Belgium to Greece was in violation of Article 3 and Article 13. The ECtHR found that the applicant was subjected to degrading treatment by the Greek authorities, and that he risked being returned to Afghanistan without a real assessment of the asylum application. The Court Case also had consequences for asylum practices in Norway. UNE stopped the return of asylum applicants to Greece, who they had formerly returned asylum applicants to despite recommendations from the UNHCR and NGOs. UNE (2011) stated that judgment of the ECHR contained a number of general considerations on asylum procedures, reception centers and living conditions in Greece, which were of importance for both Norway and other European countries.

4.5- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) was adopted by the General Assembly of the United Nations on 10 December 1984 and entered into force on 26 June 1987. Norway signed the CAT on 4 February 1985, and ratified it the following year.

Article 3 of the CAT states that

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

(OHCHR, n.d.d.)

Implementation of the CAT is monitored by the Committee against Torture (OHCHR, n.d.e.) The Committee has a reporting procedure and issues concerns and general comments. Committee can also consider individual complaints that rights under the Convention have been violated, undertake inquiries, and consider inter-state complaints. The recommendations by the Committee are not legally binding.

4.6- The Schengen Agreement and the Dublin Regulations

In addition to the human rights obligations, Norway has undertaken obligations through the Schengen Agreement and the Dublin Regulations.

The Schengen area and cooperation are founded on the Schengen Agreement of 1985 and incorporated into the European Union (EU) legal framework by the Treaty of Amsterdam of 1997. The signatory states to the Schengen agreement have agreed to abolish all internal borders in lieu of a single external border. Within this territory there shall be free movement of people, and common rules and procedures shall be applied with regard to visas for short stays, asylum requests and border controls. The signatory states cooperate and coordinate between police services and judicial authorities to guarantee security within the Schengen area (EU, 2009).

The Dublin III Regulations was established in 2013 and entered into force on 1 January 2014, replacing the 2003 Dublin II Regulations and the previous 1990 Dublin Convention. The objective of the Dublin Regulations is to quickly identify the Member State responsible for

examining an asylum application, and to prevent abuse of asylum procedures (EU, 2011). The Regulation established the criteria that only one Member State is responsible for treating an asylum application and provides the criteria and mechanisms for determining which Member State is responsible for examining an asylum application lodged in one of the Member States by a third-country national. The Dublin III Regulations are based on the same objectives as the previous regulations, but introduced a deadline of two months to solicit in cases where a fingerprint is identified by the fingerprint database Eurodac. It also stated that unaccompanied minor asylum seekers who have siblings or close relatives who can take care of the applicant in a Member State should get their application processed in that country. The Dublin III Regulation is intended to ensure asylum seekers a safe and effective asylum process to greater extent than the Dublin II Regulation, and ensure them information about the consequences of leaving the state if they do not have some kind of connection to another Member State, as well as inform them of criteria in Dublin III Regulation (UDI, n.d.b)

Through its participation in these agreements Norway has a responsibility to prevent irregular entry into the Schengen area. Norway must inter alia not issue visas to persons who are registered in the Schengen Information System (SIS) for the purpose of refusing entry or who is considered a threat to Norway or other Schengen countries public policy, internal security, public health or international relations (UNE, 2012a).

4.7- Asylum policies in Norway

Immigration to Norway is regulated through immigration law. The Norwegian Parliament approves the Immigration Act as well as the main principles for the regulation of immigration through white papers. Other laws relevant to the regulation of Norwegian immigration policy are the Nationality Act, which regulates how people become Norwegian citizens and how Norwegian citizenship can be lost, the Public Administration Act, which regulates procedures when decisions are made in the public administration, and especially the rights under proceeding, and the Human Rights Act, which ensures the safeguarding of human rights in Norwegian law and its precedence over Norwegian laws in cases of dispute (Regjeringen, 2007a, 2007b, 2014). Several provisions of the Immigration Act delegate authority to The JD. The JD e.g. has authority to provide guidelines on resettlement refugees. The JD also has budgetary responsibility for the UDI and the UNE.

Asylum instances

The first instance for asylum cases in Norway is the Norwegian Directorate of Immigration (UDI). UDI interviews all persons who seek asylum in Norway and manages the selection of resettlement refugees. UDI makes first instance decisions in most types of cases and also serves as a body of appeals for decisions made by the police or embassies. The JD may instruct UDI on legal interpretation and discretion, and on matters involving the interests of national security and foreign policy considerations. If an applicant appeals against a decision made by UDI the complaint is sent to UNE for assessment. The JD may also decide that a decision by UDI in favor of an applicant shall be assessed by UNE.

UNE is a political independent administrative body. This means that the JD cannot instruct UNE about legal interpretation, the exercise of discretion or decision of individual cases. Exceptions are made in cases involving the interests of national security or foreign policy considerations. The JD may also instruct UNE on the priority of cases, and on organizational and administrative matters. The JD's ability to influence UNE takes place through legislation and regulations. The JD may decide that a decision by UNE shall be tried in court. UNE cooperates with the JD on making the regulatory framework as clear as possible, e.g. through consultations. They also cooperate on the annual letter from the Ministry, which, inter alia, indicates the UNE's goals and priorities. UNE keeps the Ministry informed about important ongoing issues and provide statements regarding professional issues upon request from the Ministry (UNE, 2012b) UNE assess if the appealed decision from the UDI is in accordance with the Immigration Act. UNE also handles appeals of their own decisions. Cases that don't contain significant questions of doubt may by law be decided by a board leader, or by the Secretariat in routine cases. All cases containing substantial doubt questions are settled by a board composed of a board leader along with two board members who are laypersons. Cases of principle relevance, cases with significant social or economic consequences and cases in areas where there are tendencies to be different practices, may be decided by a Grand Board (UNE, 2014). The Grand Board consists of three Board leaders and four Board members, of which two are appointed on the recommendation of humanitarian organizations. Decisions made by the UNE Grand Board has precedent effect for subsequent similar cases in UDI and UNE (UNE, 2014)

The Norwegian police also hold important tasks within immigration control. The police register the applications for asylum and receive applications for initial permits, renewed

permits and residence permits from foreigners who reside in Norway. The police have the authority to make decisions regarding the deportation of foreigners who don't meet the conditions for entering the country. The police are further responsible for the deportation of foreigners who refuse to leave the country voluntarily (UNE, 2012b)

Partisan influence

When addressing asylum policies in Norway it is important to take into account the possible influence of party politics. I addressed this topic during my interviews with Beate Ekeløv-Slydal and Andre Møkkelgjerd. When asked about their experiences with the effect of changing governments on their respective organizations' work, they did not feel that changes in government had a significant impact on the situation. They experienced the effect as mainly being a matter of rhetoric. Amnesty International had not found any significant differences between the governments in regards to a more or less humane asylum politics (Interview with Beate Ekeløve-Slydal, 08.10.2014). Andre Møkkelgjerd (Interview 11.11.2014) explained that out of the political parties in Norway is only the Progress Party (FRP) that talks about making big changes to the asylum practices. The reason for this is that it is difficult to make big changes due to the CRSR. Therefore, it is difficult to make Norwegian asylum policy stricter than it is at present without withdrawing from the Convention.

Frøy Gudbrandsen (2010) has analyzed the partisan impact on refugee immigration to Norway. Scholars have reached diverged conclusions as to the state's ability to control migration and on the validity of partisan theory in general (Gudbrandsen, 2010). Some argue that globalization has decreased governments' ability to constrain immigrations. Governments are also constrained by informal norms and binding conventions, e.g. human rights conventions, that dictates who and on what grounds people should be granted resident permits. International cooperation on immigration may also waken state autonomy. Gudbrandsen notes that the Norwegian government holds a potential for stronger immigration control than most other industrialized countries due to Norway's geographical position. Several empirical studies have concluded that states hold the capacity to control migration. Gudbrandsen refers to a study by Bakke (2004) which showed that measures to reduce immigration from Somalia to Norway in 2003 had an effect on the immigration to the point that even the announcement of a policy change had an immediate effect on policy change. Gudbrandsen's study showed that Norwegian parties take distinct positions on refugee

migration. The effect of these positions is reflected in the number of approved refugee applications, with visible effects of more restrictive Conservative governments compared to Centre and Labour Governments. Based on the parties' manifestos Gudbrandsen expected that Centre governments would be more liberal than Labour governments, but there were no significant differences between the two.

4.8- Summary

In sum, the human rights obligations towards asylum seekers are secured through four conventions. They all have monitoring bodies, but only cases brought before the ECtHR result in legally binding decisions. In addition, Norway has international obligations through its membership in Schengen and the Dublin agreements.

International human rights law, through international treaties and customary law, lays down the obligations which the states must respect, protect and fulfill. Other instruments, such as declarations, guidelines and principles further add to the understanding, implementation and development of these international human rights law. The treaties and conventions relevant for Norway's obligations towards asylum seekers are the CRSR, the CRC, the ECHR and the CAT. The CRSR defines the criteria for being recognized as a refugee and secures certain rights for people who fall under this category. Some of the articles in the CRSR are absolute, while other articles and terms such as the definition of persecution are open for interpretation. The UNHC however, contributes to the understanding of these norms through recommendations and monitoring. Comments from the UNHCR should be followed and respected, but are not legally binding for the states. Amnesty International and NOAS emphasize the importance of these recommendations, but they are not always followed by immigration authorities. In Norway, the right to asylum is regulated by the Immigration Act § 28. Norwegian immigration authorities interprets the concepts of refugees as one that can change over time and also points out that the state is not obliged to provide asylum, only to refrain from returning refugees to areas where they risk persecution.

The CRC protects the special needs of children. The child's right to be considered in policy decisions, the right to be considered as an individual and the priority of the child's best interest in cases concerning them are secured through the convention. The monitoring body for the implementation of the CRC is the United Nations Committee on the Rights of the

Child, and like the UNHCR, their recommendations and general comments are not binding. An optional additional protocol which gives the United Nations Committee on the Rights of the Child the authority to deal with questions concerning possible breaches of the Convention was established in 2011, but Norway did not sign the protocol.

The CAT secures the asylum seekers right to non-refoulment. The implementation of the CAT is monitored by the Committee against Torture, but the recommendations by the Committee are not legally binding.

The rights secured through the ECHR are different from the rights secured through the CRSR, CRC and CAT because the asylum seekers can try their case before the ECtHR. Thus, disputes over the interpretation of articles of the ECHR can be settled by a binding court decision. Decision by the ECtHR has precedence in similar cases.

Through the Schengen Agreement and the Dublin Regulations Norway is obliged to prevent irregular entry into the Schengen area. The Dublin Regulations regulate which state is responsible for treating an asylum application. Through this agreement Norway should return asylum seekers to the first Dublin state they were registered in, unless it violates the principle of non-refoulment.

5- The case of Butt vs. Norway

Case background

Abbas and Fozia Butt are brother and sister from Pakistan who came to Norway in 1989. They arrived with their mother, and were three and four years old. The siblings attended kindergarten in Norway, and learned to speak Norwegian (Riaz & Christensen, 2011). The siblings were granted a residence permit in February 1992 on the ground of strong humanitarian considerations (section 8(2) of the former 1988 Immigration Act (ECtHR, 2013). During the summer of 1992 the mother returned to Pakistan with her children, where the children lived first with their grandparents, and then with their father and his wife, before they returned again with their mother to Norway in early 1995-1996. After Abbas and Fozia returned to Norway, they attended school, participated in leisure activities and made Norwegian friends (Riaz & Christensen, 2011)

On 2 August 1995, while the siblings and their mother stayed in Pakistan, the UDI granted them a settlement permit. However, the UDI was unaware of the family's stay in Pakistan from 1992, which was revealed in an investigation by the immigration authorities in 1996, after their father had applied for, and been refused, a family reunification visa. Due to the fact that the siblings had a father in Pakistan, and had lived and attended school there (from 1992-96), the authorities concluded that they had strong ties to the country. In 1999 the siblings' and their mother's settlement permit was withdrawn by the UNE, and were refused further settlement in Norway. The basis for the decision was that the settlement permit had been granted on the basis of false information provided by the mother about her and her children's residence in Norway (ECtHR, 2013). The decision was upheld by the Ministry of Justice and several requests for reconsideration were rejected, and the siblings were apprehended at school in 2001 with an intention to deport them back to Pakistan. (ECtHR, 2013; Briseid,2012)

However the police decided not to deport the children, because they considered that it would be inappropriate to deport them without their mother. According to court documents the siblings did not have contact with their family in Pakistan, nor with their mother who had disappeared around the turn of the year 2000-2001 (ECtHR, 2013). Therefore, Fozia and Abbas lived with their uncle and aunt in Norway.

The conviction of Abbas Butt

In 2003 Abbas Butt was convicted of several offenses, including unprovoked physical assault, and sentenced to seventy-five days imprisonment. In the light of these offences, the Immigration Appeals Board decided to deport him indefinitely in 2005. They based the decision upon section 29(1)(c) of the 1988 Immigration Act, as he had been convicted for an offence punishable by more than three months' imprisonment (ECtHR, 2013).

In June that same year the Butt siblings challenged the validity of the 1999 decision to withdraw their settlement permit in the Oslo City Court. Abbas Butt also challenged the decision by the Immigration Appeals Board to have him deported, and in October 2005 the Court upheld the previous decision.

Meanwhile, Abbas and Fozia Butt did not have contact with their mother. However, in 2004 they regained contact with her when she was hospitalized in Norway. She was deported to Pakistan in 2005 and died in August 2007 (ECtHR, 2013).

The case in the Borgating High Court and The Immigration Appeals Board

In 2006 the Butt siblings' case was brought before the Borgating High Court, which upheld the 1999 decision to withdraw their settlement permit. The Borgating High Court also upheld the decision against Abbas Butt from 2005. It was observed that the defendants had resided unlawfully in Norway for three years when the settlement permit was revoked in 1999. Moreover, at the time of their unlawful residence they had close relatives in Pakistan, including their father, whom they had lived with for periods only a few years before (ECtHR, 2013). The siblings then tried to appeal to the Supreme Court, but their leave to appeal was rejected by the Appeals Leave Committee of the Supreme Court in 2007.

Later that same year, in August, the Immigration Appeals Board, in two separate decisions, rejected the Butt siblings' requests for modification of the decision from 1999 revoking their settlement and residence permit and the Board's decision from 2005 to deport Abbas indefinitely from Norway (ECtHR, 2013) The Board stated that "such modification was not warranted either by strong humanitarian considerations or a strong attachment to Norway (section 8 (2) of the former 1988 Immigration Act)" (ECtHR, 2013) The Board observed that the siblings didn't hold a residence permit since 1999. Therefore, any links

established after that should carry little weight. The Board also observed that the siblings had close family living in Pakistan.

The case before the Oslo City Court

On February 4, 2008, the Oslo City Court judged against the Immigration Appeals Board's decision from August 2007, and disagreed with the Board's assessment that the siblings lacked special attachment to Norway. The City Court stated Abbas and Fozia had lived in Norway during major parts of their childhood and the entirety of their adolescence. In regards to the question of what weight should be attached to their residence in Norway since the siblings had been obliged to leave the country in 1999, the City Court observed that it was impossible for the applicants to obtain the necessary travel documents before they reached the age of majority in 2003 and 2004. Therefore the unlawful character of their sojourn had to be disregarded. The City Court also observed that the siblings could not be said to have escaped implementation of the deportation, because of the decision on 3 May 2001 not to implement the deportation. Neither had any active steps been taken to implement the decision to deport the siblings to Pakistan, with the exception of the apprehension in May 2001. The City Court observed that the Butt siblings' residence in Norway since 1999 ought to carry a significant weight in the assessment of whether they had a special attachment to Norway (ECtHR, 2013) The siblings had close relatives in Norway whom they had lived with since 2001, and had gone to school in Norway, made friends in Norway and were mastering the Norwegian language. The City Court found that the ties between the siblings and Pakistan had almost ceased because they could not read or write Urdu, and had no contact with their father in Pakistan since 1996. In light of this, the City Court concluded that Abbas and Fozia Butt had special ties to Norway and that the Immigration Appeals Board's decisions of August 2007 were to be quashed**.** The Board ought to take as a premise that the Butts had strong attachment to Norway and that it was empowered under the Immigration Act to grant them a residence permit when making a new assessment of the case (ECtHR, 2013).

The Norwegian state's appeal

The State appealed the judgment by the Oslo City Court to the Borgarting High Court, which overturned the City Court's ruling by a judgment of November 2008 and upheld the Immigration Appeals Board's refusal of August 2007 as being lawful (ECtHR, 2013)

Even though The High Court found it clear that the refusal to grant the Butt siblings residence permits constituted an interference with the siblings' rights under paragraph 1 of Article 8 of the ECHR, they found that it was justified under paragraph 2. The central question asked in this process was whether the measure was "necessary in a democratic society".

The High Court considered it important that the siblings were aware that their temporary stay in Norway was unauthorized and would have understood that they did not possess a residence permit when they were apprehended in early May 2001. In their explanation the siblings explained that they had been unaware until they were apprehended in 2001 that their residence status was reliable. They also told the court that their mother had gone underground at around the turn of the year 2000-2001 and that they did not have contact with her or know where she was until the summer 2005. The High Court found the siblings' statement hardly probable, pointing to evidence that the police in fact had found their mother's handbag with her passport at her brother's home.

The Court also noted that there was reason to assume that during the years after 2001 the police did not expect the siblings to leave the country on their own. Nor that they would not be deported without their mother who could not be found. Fozia and Abbas were not in the position to leave Norway as they did not possessed Pakistani passports and Norwegian authorities had done nothing to arrange for them to obtain such passports. Because Fozia and Abbas could reasonably perceive the authorities did not expect them to travel to Pakistan on their own, it was difficult to ascribe any responsibility to them for not having taken steps to leave Norway while the mother had gone into hiding. However, after reaching the age of majority, their choice to stay in Norway had been something for which they ought to bear the risk and responsibility (ECtHR, 2013).

The siblings were not deported along with their mother when she was deported in 2005 because the main hearing in the siblings' case had been scheduled for later that year. Therefore the immigration authorities had decided to give them the opportunity to attend the hearing (ECtHR, 2013).

Generally speaking there were strong immigration policy considerations in favor of identifying children with the conduct of their parents to avoid parents exploiting the situation of their children to secure a residence permit for themselves and their children. In the present case there existed no such risk as the siblings had reached the age of majority and their mother was dead (ECtHR, 2013)

Similar to the City court, the High Court also found that the siblings had developed a strong personal and social attachment to Norway through their education, upbringing, language skills, family ties, friends, social network and work. However the High Court found that the siblings also had certain links to their country of origin, though the Court acknowledged that they might encounter social and professional difficulties upon return to Pakistan.

The Court observed that in the experience of the Immigration Appeals Board, it was rare that one was confronted with cases where the duration of the unlawful stay had been nearly as long as in the Butt siblings' case. Therefore it could be questioned whether general immigration policy considerations, which normally carried weight in such cases of unlawful residence, would be sufficiently weighted to regard the refusal of residence as being "necessary in a democratic society" under paragraph 2 of Article 8.

In the end the High Court arrived at the conclusion that the refusal of residence had not been unlawful as being contrary to Article 8 of the ECHR. The Court attached significant weight to the fact that the Fozia and Abbas' strong attachment to Norway had been established during unlawful residence in the country, that they still had links to Pakistan. Furthermore, the court found that they had relatively good possibilities for settling in Pakistan. The special circumstances regarding the background to the siblings' continuing residence in Norway for so many years was not regarded as "exceptional circumstances" in the sense that this criterion had been applied by the European Court in its case-law (ECtHR, 2013)

The siblings' first application to the ECtHR and their church asylum

On 7 January 2008 the siblings lodged their first application under the ECHR, complaining that their deportation to Pakistan would be a violation of Articles 3 and 8. The siblings also requested an interim measure to stay their deportation under Rule 39 of the Rules of Court (ECtHR, 2013). On 8 January 2008 the request was refused and they did not pursue the application.

A leave to appeal was filed but it was refused by the Appeals Leave Committee of the Supreme Court on 25 February 2009 because they found that such leave was not warranted by the importance of the decision for other cases or by any other considerations (ECtHR, 2013)

After the final decision in 2009 that the siblings were deported from Norway, they sought refuge in Holmlia Church in Oslo in April that same year. Here Abbas and Fozia spent 15 months in church asylum while waiting for the case to come up in Strasbourg. (Church of Norway : 2012) In June 2010 the siblings were able to leave the church asylum, after they were informed that the Appeals Board had deferred the decision to send them out of Norway.

The Case in Strasbourg

The Butt siblings sent an application to the Court in Strasbourg in August 2009. Their application was accepted by the Court, and the trial took place in 2012. On December 4 2012 the Court judged in favor of the siblings.

Relevant domestic and international law

In the case of Abbas and Fozia Butt both Norwegian domestic law and the human rights under the European Convention for the Protection of Human Rights and Fundamental Freedoms are essential to their case.

The Immigration Appeals Board decision on the 31st of August 2007 relied notably on section 8, second sub-paragraph, of the 1988 Immigration Act (subsequently replaced by a new Immigration Act in 2008, which entered into force on 1 January 2010). Section 8 read:

"Any foreign national has on application the right to a work permit or a residence permit in accordance with the following rules:

1) Subsistence and housing must be ensured in accordance with further rules laid down in regulations issued by the King.

2) The conditions for work and residence permits laid down in regulations pursuant to section 5, second paragraph, must be fulfilled.

3) There must not be circumstances which would constitute a ground pursuant to other provisions of this Act for refusing the foreign national leave to enter the realm, to reside or to work there.

Even if these requirements are not fulfilled a work or a residence permit may be granted if warranted by strong humanitarian considerations, or if a foreign national has a special attachment to Norway. The King may issue regulations containing further rules."

(ECtHR, 2013)

When the siblings brought their case to Strasbourg they complained that their deportation to Pakistan would entail an interference with their rights under Article 8 of the EHRC that would be disproportionate and not "necessary in a democratic society".

The Butt siblings' arguments

In the application to the Court in Strasbourg the siblings alleged that deporting them from Norway to Pakistan would entail a violation of their rights under Article 8 of the ECHR. The siblings argued that their family- and private-life links had been formed in a situation where they had not been aware of any precariousness as to their immigration status. Throughout the first ten years of their residence in Norway (omitting the three and a half years spent in Pakistan) their residence had been lawful because of the residence permit (ECtHR, 2013). They argued that the revocation of their settlement permit in 1999 was due to reasons beyond their control. In 2001, after they became aware of the problems pertaining to their immigration status, the Norwegian authorities had refrained from implementing their deportation, thus accepting their stay in the country. The siblings had no opportunity to obtain the passports or tickets they needed to leave Norway on their own before they turned 18.

The siblings also argued that they had developed their ties to Norway as children, not as adults (ECtHR, 2013). The siblings had lived with their uncle and his family in Oslo and established a "family life" which should be protected by article 8. The siblings was dependent upon their uncle and aunt's family up until they reached the age of majority, and then continued to be dependent on them after that due to the lack of any work permit. The siblings also developed very strong ties with their uncle in lack of their own father. The siblings' argued that their education had been adapted to Norwegian conditions and demand. In

addition their cultural upbringing has been based in Norway and this was also where they had their social network. They were both well integrated in Norway and used the Norwegian language as their daily language (ECtHR, 2013).

The siblings stated that they had weak ties to Pakistan, and that they had no contact with their father. They described their father as being violent and having problems with alcohol abuse, and stated that he was the reason why their mother had left Pakistan with them. They also stated that they had been very young when they stayed in Pakistan and had not formed ties to the country. I addition they argued that they had poor knowledge of Urdu and that the society and culture was alien and inaccessible to them (ECtHR, 2013).

The siblings disputed that the case touched upon issues of significance for immigration control. They also stated that their stay in Norway had not been illegal to the extent as alleged by the Government, because they were children during that time and should not be assessed in accordance with the same standards as adults when it came to their prior appreciation of their own immigration status and expectations of future residence (ECtHR, 2013).

Based on this they argued that their ties to Norway were particularly strong and being forced to return to Pakistan would constitute a disproportionate interference with their Article 8 rights.

In regard to Abbas Butt criminal convictions they argued that they dated far back in time, to a period when Abbas was a minor. They argued that the sentence of seventy five days' imprisonment did not signify that the offences were amongst the most serious crimes. Also, Abbas had not reoffended since the convictions. And they argued that based on this the criminal convictions could not constitute a decisive factor (ECtHR, 2013).

The Norwegian Government's arguments

The Norwegian government, on the other hand, argued that the siblings' stay in Norway represented a peripheral establishment of a "private life" within the meaning of that term. They were young when they arrived in Norway and had lived in Pakistan between 1992 and 1996, returning to Norway at the age of eleven and ten. Even though the case-law held that a non-national's stay in a Contracting State might amount to the establishment of "private life", this only applied to "settled migrants", Fozia and Abbas however could not be regarded as

“settled migrants” because their stay in Norway had never rested on a formal decision of permanent residency (ECtHR, 2013). The residence permit granted to them in 1992 had only been temporary. The settlement permit issued in1995 had been granted on false grounds as the immigration authorities had been unaware of the siblings stay in Pakistan (ECtHR, 2013) Based on this the Government argued that "it ought to be concluded that the applicants’ “private life” interests were on the margins of what Article 8 was intended to protect." (ECtHR, 2013)

The Government argued that the Butt siblings had not forged personal, social and economic ties in Norway to the extent that their forced removal to their country of origin would represent an encroachment of their “private life” interests, and contested that the applicants’ deportation constituted an interference with their “family life” within the meaning of Article 8 § 1 of the ECHR. The Government argued that the existence of “family life” ought to be determined “in the light of the position when the exclusion order became final”, namely at a time when they were both adults. Their mother had died before the 2007 decision by the Immigration Appeals board. The Government further argued that although Fozia and Abbas had family in Norway “relationships between adult relatives do not necessarily attract the protection of Article 8 without further elements of dependency involving more than the normal emotional ties”. (ECtHR, 2013) In order for the siblings relationship to their Norwegian relatives to constitute “family life” there had to be “elements of dependency” suggesting such a conclusion, which was not the case here according to the Government. (ECtHR, 2013) The Government argued that the relationship between siblings and their Norwegian relatives did not fall under the criteria for a “family life” within the meaning of Article 8 § 1(ECtHR, 2013).

In the event that the Court decided that Article 8 was applicable in this case, the Government invited it to approach the case as one involving Norway’s positive rather than negative obligations under Article 8 (ECtHR, 2013) The Government emphasized the High Court’s judgment from 2008, which stated that the siblings’ ties to Norway were not strong enough to grant them permission to stay in Norway, and that no major obstacles prevented them from living in Pakistan. The Government also emphasized immigration control as an issue, arguing that the siblings refused to abide by the decisions of the immigration authorities that they should return to Pakistan. Furthermore, they had confronted the Norwegian authorities with a fait accompli which they had to be held responsible for and that Abbas' criminal record meant that considerations of public order weighing in favor of exclusion and would not constitute a

violation of Norway's positive obligations under Article 8 of the ECHR. The Government argued that if the Court were to decided that the case as one of interference with the siblings' rights under paragraph 1 of Article 8, then that all the conditions in paragraph 2 of the Article had been fulfilled (ECtHR, 2013)

In sum, the Norwegian government could not see that the present case revealed any "most exceptional circumstances" that would make expelling the siblings back to Pakistan incompatible with Article 8 (ECtHR, 2013).

The Court's assessment

The Court stated that it was obvious that Fozia and Abbas had developed strong personal and social attachments to Norway, and saw no reason to doubt that they had such "family life" and "private life" in Norway as fall within the scope of protection of Article 8 of the ECHR. The Court thus rejected the Government's suggestion that the private- and family life interests at stake were at the margin of the Article 8.

The Court agreed with the Government in that the siblings could not be viewed as "settled migrants" as this notion has been used in the case-law, because their entitlement to residence in Norway ceased when they left for Pakistan and then returned and lived in Norway with a permit granted on the basis of false information. Following their return to Norway in 1996, their stay was in reality unlawful even though their settlement permit was not revoked until 1999.

The court observed that the siblings' family and private life in Norway was created at a time when their mother was aware that their immigration status in the country was such that the persistence of that family life was uncertain. Thus, the removal of the applicants would be incompatible with Article 8 only in exceptional circumstances.

The Court asserted whether such exceptional circumstances existed in this case. It observed that the need to identify children with the conduct of their parents could not always be a decisive factor, and found that in the Butt case there was no risk of exploitation as the siblings had reached the age of majority, and their mother had passed (ECtHR, 2013). The Court also observed that there was a long time period between 1996, when the authorities learned about the siblings' and their mother's stay in Pakistan, and the revocation of the permit in 1999.

The Court observed that Fozia and Abbas were unaware about their residence status until 2001, and that it appeared that their family- and social ties in Norway had already been formed by the time they learned that the persistence of those ties would be uncertain (ECtHR, 2013). Thus, until 2001, they cannot be accused of having confronted the authorities with a fait accompli. The Court agreed with the High Court's assessment that until they reached the age of majority the siblings could reasonably believe that the authorities did not expect them to leave the country on their own. As the authorities did not make any attempt to deport them with their mother in 2005, and because a hearing later in the same month went in their favor, the Court found no reason to doubt that siblings could have maintained the same understanding after they reached the age of majority.

The Court further observed that with time Fozia and Abbas had developed strong family- and private life ties to Norway, but did not have particularly strong ties to Pakistan due to their young age during and the relative short duration of their stay there.

In reference to the Government's argument that Abbas Butt's exclusion would not be incompatible with Article 8 due to his criminal conviction, the Court noted that a long period of time had passed since the conviction and he had not reoffended. Therefore the Court did not consider that this should carry significant weight in his case.

The Court concluded that the circumstances of the present case were indeed exceptional and that deporting Fozia and Abbas Butt from Norway would entail a violation of Article 8 of the ECHR.

Fozia and Abbas Butt obtained a permanent residence permit in Norway. Later that same month the Norwegian Ministry of Justice declared that they would not appeal the verdict.

6- The Neda Ibrahim Case

Introduction

Neda Ibrahim and her family are asylum seekers from Jordan who were forced to return to Jordan in 2013, after having lived in Norway for ten years. Neda was two years old when she arrived in Norway with her parents and younger brother. The parents claimed to be Palestinians from Iraq. It was later revealed that the family came from Jordan. The family has four children, and the two youngest are born in Norway. The family has had their application for asylum in Norway rejected on five occasions. The first rejection was made by the UDI in November 2004 on the ground that the applicants' identities and affiliation to Iraq was not adequately substantiated (Oslo Tingrett, 2013). The UDI's decision was upheld by the UNE in separate decisions in 2006, 2008, 2010 and 2011. The final rejection of their application was brought to court, and in November of 2013 the Oslo District Court ruled against the UNE's decision to reject the application. However, the UNE decided to deport the family in December that same year. The family's lawyer Arild Humlen brought the case to Oslo District Court in September 2014, suing the UNE for misuse of authority. The family lost the case. The case has received great media attention in Norway, and is known as the "Neda case", named after the family's eldest daughter.

The family has decided to appeal the case, and they are at present waiting for the case to be tried before the Court of Appeal.

Background

Neda Ibrahim lived in Dale asylum seeker reception center in Sandnes, Norway, with her parents Said and Romah and younger siblings Nael, Dima and Zoher. The family arrived in Norway in 2003 an applied for asylum, stating that they were Palestinians from Iraq. That application was rejected by the UDI in November 2004 on the grounds that the identity and ties to Iraq were not sufficiently substantiated. (Oslo Tingrett, 2013) The family was given until 17 December 2004 to leave Norway. The family decided to appeal against the rejection. UNE assessed the appealed and upheld the rejection on 4th of May 2006. The parents filed reversal of the decision on 13th of September 2006. In addition, they filed for suspension of the case because of the children's residence time in Norway. UNE suspended the case on 26th of September 2006 and the departure requirement was revoked. UNE rejected the petition for

reversal on the 4th of December 2007, and as a consequence the family now had a deadline of 25th of February 2008 to leave Norway. The parents filed reversal of the decision, but UNE refused the family's request on 17th of December 2008. The family filed reversal again, but this request was rejected by the UNE on 12th ofApril 2010. The parents then filed reversal again. UNE rejected the petition 6th of June 2011 (Oslo Tingrett, 2013).

In May 2012 the UNE decided to deport the family and report them in the Schengen Information System (SIS). In September 2012 the parents applied again for reversal and for deferred implementation. UNE decided to reject the request for deferred implementation on 22nd of January 2013. The parents applied once again for deferred implementation on 22nd of March 2013, but UNE decided on 19th of April 2013 to maintain their previous decisions. On 26th of March 2013, the family was sent a notice of deportation from the police.

The deportation

In 2013 it was decided that the family should be deported due to the conclusion that the parents had provided incorrect information when seeking asylum (Sandelson & Chauhan, 2013). The conclusion came after the police had discovered Said and Romah's passports during a police raid on 21 March 2013. Said and Romah acknowledged that they were Jordanian citizens during a questioning following the search (Oslo Tingrett, 2013). The family was deported in June 2013. According to news reports the police broke into the family's residence at Dale asylum seeker reception center in Sandnes, after first having rung the doorbells and knocked on the windows (Sandelson & Chauhan, 2013). The family was taken to the airport by immigration officers and put on a plane to Amman in Jordan.

The case before the Oslo District Court

The family decided to sue the UNE because they believed that the UNE's decision of 19th of April 2013 was incorrect. The court received the lawsuit April 30, 2013. UNE delivered a reply on the 30th of May 2013. The hearing was held on the 30th and 31st of October 2013. Because the family had been deported, Mr. and Mrs. Ibrahim and Neda gave their testimonies via phone calls from the Norwegian Embassy in Amman. Two of Neda and Nael's teachers, as well as Neda and Nael physician testified in court. An expert witness from Landinfo (The

Norwegian Country of Origin Information Centre) testified about the conditions in Jordan. The claim of the plaintiffs' side was that forced dispatch of Neda, Nael, Dima and Zoher Ibrahim was a violation of ECHR Article 8 and therefore in breach of the Human Rights Act § 3 (Oslo Tingrett, 2013).

The Family's arguments

The Family's claim was that the UNE had applied an incorrect understanding and weighting of concern for the best interest of the child (Oslo Tingrett, 2013). The family argued that the application of the law was obviously wrong. The UNE's decision of the 19th of April 2013 refers to previous decisions regarding the children's connection to Norway and states that the connection was "sustained", while the family claimed that children's connection had been strengthened since UNE's decision of June 2011. They argued that the UNE had not taken this into account when assessing the weighing of the consideration of children's best interests against consideration of immigration regulation. In contrast, it appeared from the UNE's decision that the immigration control considerations weighed heavier after Said and Romah's passports were found. They also argued that the UNE had not made any individual assessment of the children. The UNE had thus not considered Nael's health conditions when assessing his best interests. Nael is diagnosed with ADHD, severe language disorder and major concentration difficulties (Abc Nyheter, 2014). Nael diagnoses were not mentioned in the UNE's remarks. The family believed that it was insufficient that it was stated in the decision that UNE had received health data, as the UNE had not taken notice of the transition from behavior problems to medical issues.(Oslo Tingrett, 2013) They noted that the UNE had no prognosis for Nael's health development. There had not been sufficient expertise on children in the considerations the UNE has undertaken in relation to health and resettlement.

The Family argued that the UNE nor had considered Jordan's unique situation due to the influx of refugees from Syria. The UNE had to make a broad and future oriented evaluation of what the Ibrahim children would face when returning to Jordan. Because the weighting of the best interests of the children was incorrect, this meant that the weighing in relations to immigration control considerations was also incorrect (Oslo Tingrett, 2013)

They also argued that the UN Children's Committee General Comment no. 14 of the 24th of May 2013 expands the courts testing facility in relation to the Supreme Court in plenary judgments handed down in 2012 (Oslo Tingrett, 2013).

The family argued that the assessment was contrary to the Public Administration act § 17. The deportation was a violation of children's right to privacy by the ECHR Article 8. The expulsion was not a disproportionate means with regard to the children's long stay in Norway. The decision of 19th of April 2013 was thus unreasonable. They further argued that the government could have used use other sanctions targeted the parents who provided false identity, and thereby avoided punishing the children for their parents actions (Oslo Tingrett, 2013).

The UNE's arguments

The defendants argued that the matter in dispute was the balance between the child's best interests and immigration regulation considerations. CRC Article 3 contains no material norm, and therefore children do not have an automatic right to a residence permit after having stayed for a given period in the country (Oslo Tingrett, 2013)

The defendants also argued that the plenary judgments of 2012 established the scope of judicial review, and that the Supreme Court had emphasized in the plenary judgments that judicial review of the UNE's assessment of the child's best interests are stricter requirements for justification. The Court would control the justification made by the UNE.

UNE argued that their application of the law was built on the basis of the plenary judgments. UNE had considered that the child's best interests were a primary consideration for the case. UNE assessed the children's attachment to Norway per April 2013 and concluded that considerations of the best interest of the child isolated from other considerations suggested that residence on humanitarian grounds should be granted (Oslo Tingrett, 2013).

The submitted documents which were attached the last request for conversion was considered in the UNE's assessment. Nael's health issues had been an issue for UNE from the second request for conversion, and UNE considered it properly assessed. UNE argued that their description of the subject matter shows that it is not overlooked, and that the subject matter is included in the UNE's assessment (Oslo Tingrett, 2013)

The UNE argued that conditions in Jordan were properly assessed. The assessment was based on the Landinfo report from 2009.

UNE believed that their application of the law was correct. They stated that they had made a proper evaluation and assessment of the child's best interest up against the opposing considerations (Oslo Tingrett, 2013)

The Courts assessment

The court assessed the validity of the UNE's decision. The court based the assessment on the Immigration Act § 38, which regulates access to residency on humanitarian grounds, and on the UN CRC. The court emphasized that the third paragraph of § 38 follows that considerations of the child's best "shall" be emphasized as a "fundamental concerns", while the fourth paragraph stated that emphasize "may" be placed on immigration regulation. This is supplemented further by the Immigration Regulations § 8-5, which determines that in the assessment of strong humanitarian considerations under § 38, the child's connection to the country shall be given particular emphasis. The CRC Article 3.1 is implemented in both § 38 and the regulations § 8-5. CRC is also generally incorporated into Norwegian law, cf. Human Rights Act § 2 no. 4, and shall by conflict take precedence over provisions in other legislation, cf. Act § 3. This also follows the Immigration Act § 3. (Oslo Tingrett, 2013)

The court held that UNE had made the decision based on a correct interpretation of the Immigration Act § 38. In the decision the UNE explained the immigration control considerations concerning the case. A new development in the case following the previous refusal of June 2011 was the parent's passport had been found and it was therefore discovered that the parents had presented false identities to the authorities. In the UNE's decision, it appears that this has had an impact on the UNE's weighing between the interests of the child and the immigration control considerations (Oslo Tingrett, 2013)

Although the UNE in their assessment refers to the Immigration Regulations § 8-1, ref. Immigration Act § 38, which states that there should be an assessment of the applicant's individual situation, it is evident in the decision that the four children in the family are treated as one. The Court held that this was unfortunate in view of the difference in the age of the children. However, the decision refers to previous rejections where a brief description of each child's age, length of residence, day care and schooling in Norway is provided.

Nael's health issues are dealt with in the refusals from 2008 and 2010, but not in the refusal of 2011. The Court assumed that no new information on this matter had been attached to the request for conversion, so that reference to the earlier refusal was therefore sufficient. Nael's physician had sent a specialist declaration of 26th of June 2012 , and additional information on 4 December 2012, in which Nael's health problems and treatment needs were presented to the UNE. Yet in the UNE's comments in the refusal of the last request for conversion from 2013 there were no was assessment of the medical issues or the need for treatment (Oslo Tingrett, 2013). The Court considered that the UNE's assessment of the children's best interests was exactly the same as in rejection of 6th of June 2011. The Court held that the lack of assessment of Nael health problems and special needs, together with UNE's declaration that the children's further period of residence of one year and ten months "maintained their ties to Norway", showed that the weight of concern had reached a ceiling (Oslo Tingrett, 2013)

Regarding the balance between the child's best interests and immigration regulation the Court referred to earlier decisions in similar cases, and concluded on the basis of these that the UNE was obligated to consider matters that may affect the balance between the best interests of the child and consideration of immigration regulation. The Court further stated that it must be clear from the decision that such assessments have been made. Even though the UNE in the decision informs that they are aware of the information and that the UNE assumes that the children's best interests are a primary consideration, this does not substantiate that this information is considered and emphasized in the balance between the best interests of the child and immigration regulation considerations. The court concluded that the weight of the best interests of Nael was affected by the new information about his health conditions, and therefore it must be stated in UNE's decision that the information has affected the weighing between the two considerations. UNE's decision of the 11th of April 2013 did not meet the requirements for justification. This deficiency may have affected the balance between the best interests of Nael and the immigration control considerations. The court held that this in itself was enough to state that the decision was invalid, but that the absence was compounded by the observation that the additional residence time of one year and ten months did not seem to have been emphasized for any of the children. UNE's refusal was therefore invalid, ref. Public Administration § 41 (Oslo Tingrett, 2013)

The court also considered whether Article 8 of the ECHR was violated, and compared the Neda Ibrahim case to the Butt case. The court concluded that equally exceptional circumstances, to which the Court had referred to in the Butt case, did not exist in relation to

Neda, Nael, Dima or Zoher. The application for asylum and application for reversal were processed within a reasonable time, they have been followed up by an order to leave the country voluntarily, then through an deportation decision. The children's emotional and social ties were primarily related to the parents, who they returned to Jordan together with. The parents have strong ties to the area they are returned to through family ties and former residence in Ibrid. The period of residence in Norway for all children was far shorter than was the case in the case of Butt siblings. The court therefore concluded that the children's rights under the ECHR Article 8 were not violated.

The second trial before the Oslo District Court

The decision from Oslo City Court revoked the UNE's decision not to change the earlier decision to deport the family. The judgment meant that the UNE had to reassess the family's last application for reversal and that the UNE had to make an assessment of new health information related to Nael's case (Dagbladet, 2013a). In December 2013 it was announced that the UNE had passed a new decision which stated that the family did not receive asylum or residence on humanitarian grounds in Norway. Director of UNE, Ingunn-Sofie Aursnes, stated that the children's connection to Norway, health conditions, care situation and assumptions for return were included in the assessments that the UNE had made, but the UNE had concluded that the immigration regulation considerations weigh heavier in this case (Dagbladet, 2013b). The family's lawyer sued the UNE for abuse of authority. The case was heard in the Oslo District Court from the 8th to the 10th of September 2014 (Aftenposten, 2014). The decision was handed down on the 30th of September 2014. The verdict rejected the claim of breach of ECHR Article 3 and Article 8 and the UNE was acquitted of abuse of authority. The judgment stated that the balance between the best interests of the child and immigration regulation considerations is a political weighing incumbent to UNE's discretion. The Court cannot overrule the weighing, but make sure the interests of the child are properly assessed and weighed against immigration regulation considerations (Søndeland, 2014). The court held that the children's attachment to Norway was assessed on the return date, and that the children's health conditions, health care and return situation in Jordan was assessed on the basis of the return date, and that any new knowledge on the time of the decision was taken into account. This was according to the court a proper starting point for the assessment (Søndeland, 2014). The Court also noted that the UNE decisions have established that it is in

the children's best interest to stay in Norway, and that the children's best interests are a primary consideration. The Court said that UNE thus used the correct interpretation of the Immigration Act § 38. UNE had also assumed that the children themselves want to stay in Norway, according to the Court. The Court also found that proper health assessments were undertaken (Søndeland, 2014). The judgment stated that the immigration regulation considerations which the UNE had emphasized were central, and based on facts. The court could not overrule the balance between the immigration regulation considerations and best interests of the child. The court did not find that there were any deficiencies in the UNE's discretion which could cause the UNE's decision to be invalid (Søndeland, 2014)

Bjørn Lyster, the head of communications in UNE, stated after the verdict that the verdict shows that the best interests of the child was properly assessed by the UNE. The UNE believed that the interests of the child in isolation suggested that they should be allowed to stay in Norway, but that other considerations weighed heavier in this case. The UNE decided to put emphasis on the case that the parents had lied about who they were and where they came from for years before getting caught. The UNE has both a right and duty to make such tradeoffs, according to Lyster (Søndeland, 2014).

Following the decision by the Oslo district court in 2014 the family decided to appeal the verdict. They are currently residing in Jordan and awaiting the next trial of the case which is scheduled for the 13th of October 2015 (Nesvik, 2015).

7- The case of impunity for irregular entry

Introduction

According to Article 31 (1) of the Refugee Convention, asylum seekers shall be exempted from penalization for irregular entry given that certain requirements are met. In Norway, however, this has not been the case. In 2014 A Cameroonian asylum seeker who had been sentenced to prison for trying to enter Norway with a fake Portuguese residence card appealed his sentence before the Norwegian Supreme Court. While treating his case, the Supreme Court assessed the Norwegian translation and interpretation of Article 31 (1). The trial came a few months after NOAS published a report analyzing the breach between the CSR Article 31 (1) and Norwegian domestic law and practice. NOAS also participated in the court case before the Norwegian Supreme Court. The Cameroonian asylum seeker won the case against the Norwegian authorities. As a consequence of the Supreme Court's decision the Norwegian Director of Public Prosecution issued an amendment to the guidelines ordering the police to cease their practice of criminalizing asylum seekers who do not 'immediately' admit they have used false identity papers. The decision and the amendment to the police guidelines did not have immediate consequences for the Norwegian practice, and did not exempt asylum seekers who had already been sentenced to prison for irregular entry from imprisonment. However in December 2014, after the lack of action following the case drew media attention, the Director of Public Prosecutions decided to suspend all imprisonment of asylum seekers who have entered Norway with fake documents. The Director also requested an investigation of how many asylum seekers may have been wrongfully convicted for irregular entry.

The case of impunity for irregular entry before the Supreme Court

In June 2014 a case concerning penalization of asylum seekers who enter Norway with fake identification papers was tried before the Supreme Court. The case concerned an asylum applicant who was convicted of forgery after he presented a false document in the passport control on entry into Norway. The question in the case concerned whether he had fulfilled a condition of impunity in Article 31 (1).

"A's" arrival in Norway

The asylum applicant, referred to in the case as "A", is a Cameroonian citizen who left Cameroon in 2012 because he is gay and was in danger because of his sexual orientation (Norges Høyesterett, 2014) He was chased and beaten, and imprisoned for two months. He first went to Nigeria, but could not stay there. He then got an opportunity to travel to Russia, but he could not seek asylum there because it is illegal to be gay in Russia. In Russia "A" was subjected to racism and harassment because of his sexual orientation. "A" then wanted to travel to France or Belgium because he speaks French. However, since he was forced to leave Russia quickly he bought the first and cheapest ticket he could find and ended up in Norway. While "A" stayed in Russia, he ordered a fake Portuguese residence card on the internet. He arrived at Oslo Airport Gardermoen on 17 September 2013 from Moscow, and presented the fake Portuguese residence card along with his Cameroonian passport to the passport control. "A" was taken aside for further examination and he informed during this questioning that he sought protection in Norway. The display of the fake residence card led to him being put under indictment for violation of Penal Code § 182 on forgery (Norges Høyesterett, 2014)

The conviction and first appeal

"A" was convicted in Øvre Romerike District Court on 1 October 2013 for violation of the Penal Code § 182. He was sentenced to sixty days in prison and had the Portuguese residence card revoked. "A" appealed to the Court of Appeal. He appealed against the court's application of the law and the procedures. The argument behind the appeal was that the application of law was a breach with the CRSR Article 31 (1).

"A" was convicted before immigration authorities had settled whether or not "A" fulfilled the requirements for protection under the Convention. It was also argued in the appeal that the term stating that the refugee "immediately" should present himself to the authorities to enjoy impunity under the provision, was interpreted to strictly by the court. It was also argued that Article 31 (1) entails impunity for refugees in transit and that Norway was a transit country for "A". The Summary Conclusions of the Expert Roundtable organized by the United Nations High Commissioner for Refugees in 2001(quoted in Linha & Møkkelgjerd, 2014, 32) states that Article 31 (1) of the CRSR applies to

persons who have briefly transited other countries or who are unable to find effective protection in the first country or countries to which they flee. The drafters only intended that immunity from penalty should not apply to refugees who found asylum, or who were settled, temporarily or permanently, in another country.

"A" also claimed discrimination compared to those who dispose of false documents before they leave the plane. The procedural appeal was not further substantiated (Norges Høyesterett, 2014). The Court of Appeal refused leave to appeal insofar concerned the arguments about transit and unfair discrimination and the procedural appeal. The rest of the appeal was tried before the Eidsivating Court of Appeal. The appeal was rejected on 12 December 2013 (Norges Høyesterett, 2014).

The second appeal

"A" appealed Court of Appeal application of the law to the Supreme Court. In the appeal it was argued that the Article 31 (1) prevents judgment for offenses in connection with entering a country before the immigration authorities have reached a decision regarding the asylum application. "A" argued that the Court of Appeal's interpretation of the requirement in Article 31 (1) of the refugee to "immediately" should present themselves for the authorities was too narrow. On the 25 March 2014 the Supreme Court Appeals Committee decided to treat the appeal as regards to the condition "immediately presents himself to the authorities." The rest of the appeal was rejected (Norges Høyesterett, 2014)

The Supreme Court's ruling

The Supreme Court passed its judgment on 24 June 2014. The judgment stated that seen in isolation it was clear that "A" has violated Penal Code § 182, but that question was whether he had to be acquitted because of the ban in CSR Article 31 (1) to punish refugees for illegal entry and residence. The Court of Appeal had found that the requirements for impunity were not met. The issue in the case before the Supreme Court was therefore whether the Court of Appeal has assumed a correct understanding of the term "immediately presents himself to the authorities." The Supreme Court found that t the word "immediately" (straks), which is used in the Norwegian translation, was not good translation of the phrase "without delay" and "sans

délai", from the English-language and French-language version of the Convention respectively (Norges Høyesterett, 2014). The English and French expressions give more leeway than the word "immediately" (straks) is usually perceived to give in Norwegian (Norges Høyesterett, 2014). The purpose behind Article 31 (1) and the CRSR was to protect refuges, and this purpose implies that the authorities must make an individual assessment in each case to decide if the term "without delay" has been met. The assessment has to consider not only what kind of situation the refugee objectively have been in, but also how the refugee, from their preconditions, had reason to perceive their situation (Norges Høyesterett, 2014). The Court quoted the UNHCR's 1999 guidelines regarding "Applicable Criteria and Standards relating to the Detention of Asylum Seekers", which imply that a refugee may be protected by Article 31 (1) even if he or she first disclose their need for asylum and their actions after being stopped by immigration authorities.

The quote reads as follows

[G]iven the special situation of asylum-seekers, in particular the effects of trauma, language problems, lack of information, previous experiences which often result in a suspicion of those in authority, feelings of insecurity, and the fact that these and other circumstances may vary enormously from one asylum-seeker to another, there is no time limit which can be mechanically applied or associated with the expression 'without delay.

(Norges Høyesterett, 2014)

The Court further stated that another argument for an individualized understanding of "without delay" was the close link between this term and the term "good cause". It must be considered whether the person had good cause for their actions.

Article 31 (1) is not explicitly made a part of the Norwegian Immigration Act, but the Immigration Act § 93 first paragraph contains a rule that an application for protection under § 28, ie as a refugee, shall be made "without undue delay" (uten ugrunnet opphold) (Høyesterett, 2014). The preparatory work for § 93 subsection shows that the provision is partly based on CSR Article 31 (1) and the requirement there about presenting oneself to authorities "without delay" is understood as a requirement that refugees must present themselves without "unfounded" delay (ugrunnet opphold). The Court found that in this context the word "unfounded" (ugrunnet) implies recognition that the time aspect in question must be considered individually (Norges Høyesterett, 2014). The premises in the Court of

Appeal verdict was consistent with the Supreme Court's assessment of Article 31 (1) as the Court of Appeal showed that it was aware that "immediately" (straks) was not necessarily a good translation of "without delay", and in that it assumed that it in the application of Article 31 (1) must be made a specific assessment of the term 'without delay' in the circumstances of the individual case. Regarding the application of law the Court of Appeal stated that in its view considerations of immigration regulation was also relevant. The application should not be opened up for a practice where people can try to enter Norway by displaying fake documents, and then then apply for asylum when it is clear that the attempted illegal entry will not succeed, thus avoiding penalty. The purpose of Article 31 (1) is to ensure impunity for refugees so that they can get to a safe country. Therefore, the Court of Appeal argued, presenting false documents to Norwegian authorities on entry to Norway stands in a position other than use of false documents during flight (Norges Høyesterett, 2014). Based on this argument, and that the Court of Appeal by this expressed that it did not take a position on whether an application for asylum always had to be expressed in the passport control in order for Article 31 (1) to be applied, the Supreme Court found that the Court of Appeal had based the specific application of the law on a too strict interpretation of the norm (Norges Høyesterett, 2014).

Although, objectively, there is no reason for a refugee who comes to Norway to refrain from seeking asylum at the border, the Supreme Court pointed to the High Commissioner's guidelines on how refugees may experience the situation at border crossings. The Supreme Court also argued that not all countries follow the same guidelines as Norway and process asylum claims from those who are stopped in passport controls. The fear of one's own legal position if one fails to pass the border and thus enter the country also had to be considered. The Supreme Court considered that this was a genuine fear (Høyesterett, 2014).

Based on the description from the District Court decisions about the happenings when "A" arrived in Norway, the Supreme Court found that "A" had reported himself "without delay" as the court interpreted the term. "A" applied for asylum before the border control was concluded. Therefore, the Court held that conditions of impunity were fulfilled. The High Court ruling was therefore repealed.

The breach between international conventions and Norwegian practice

The court case took place a few months after NOAS had published a report which concluded that the Norwegian practice of penalizing asylum seekers for irregular entry was a direct violation of the Refugee Convention article 31. The report found that "asylum seekers who enter Norway in an irregular manner are often penalised with fines, imprisonment or both" (Linha & Møkkelgjerd, 2014, 8). This constitutes a breach with Article 31 (1) of the Refugee Convention which exempts asylum seekers from such penalization under certain requirements.

Asylum seekers are often forced to rely on irregular documentation and smugglers to gain access to asylum procedures in a country of refugee, as few countries are willing to issue visas to asylum seekers (NOAS, 2014a). Irregular documentation may also be necessary for the asylum seeker in order to leave their country of origin, for example if they are political refugees fleeing prosecution. The need for irregular documentation was acknowledged by the founders of the CRSR, which was written in the aftermath of the WW2. Article 31 (1) applies to all asylum seekers regardless of whether the refugee status determination procedure has been completed or not (NOAS, 2014a, 28). The Vienna Convention of the Laws of Treaties (VCLT) provides guidelines for interpreting the Article and states that the terms of a treaty must be interpreted "in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose" (Linha & Møkkelgjerd, 2014, 29 ; UN, 1980). The VCLT also allows reliance on supplementary sources for interpretation, including the preparatory work of the treaty and the circumstances of its conclusion.

Ambiguous terms related to Article 31 (1)

Article 31 (1) contains some key terms that can be ambiguous. The preparatory work leading up to the adoption of the Convention can clarify the following ambiguous terms; "penalties", "Illegal entry or presence", "coming directly", "without delay" and "good cause".

Penalties: The term 'penalties' covers measures impose with a punitive intent such as prosecution, fine and imprisonment. "Detention for administrative purposes is permitted if it meets the necessity test of Article 31 (2) and is in compliance with other human rights

obligations" (Linha & Møkkelgjerd, 2014, 30). An expulsion does not in itself constitute a penalty under article 31 of the Refugee Convention (Linha & Møkkelgjerd, 2014).

Illegal entry or presence: Drawing on Guy S. Goodwin-Gil, the term includes "arriving or securing entry through the use of false or falsified documents, the use of other deception, clandestine entry, for example, as a stowaway, and entry into State territory with the assistance of smugglers or traffickers" (Linha & Møkkelgjerd, 2014, 30)

Coming directly: Some countries have a strict interpretation of this term. As a consequence asylum seekers may only be exempted from penalization if they seek refuge in the first safe country. Such a strict interpretation is incorrect and cannot be based on the ordinary meaning of the term 'directly' which implies "movement in a direct line of motion and urgency in sense of time, and does not exclude traveling through several countries on the way to a country of refuge" (Linha & Møkkelgjerd, 2014, 30).

The Summary Conclusions of the Expert Roundtable organized by the United Nations High Commissioner for Refugees in 2001(quoted in Linha & Møkkelgjerd, 2014, 32) states that "[r]efugees are not required to have come directly from territories where their life or freedom was threatened.".

In terms of context to the interpretation of this term this can be found in Article 31(2), which guarantees freedom of movement, and Article 33, which prohibits refoulment. An asylum seeker is entitled to benefit from the protection of these provisions no matter how he or she reached the country of refuge (Linha & Møkkelgjerd, 2014). The preamble of the CRSR refers to the heavy burden the granting of asylum may place on some countries. It recognizes that the only solution to this is international cooperation, and therefore contracting states should not disrupt passage to a state willing to accept an asylum seeker, through penalizing the asylum seekers. Disrupting passage would be contrary to the object and purpose of the Convention, whose preamble refer to the "profound concern for refugees" and whose objective is to "assure refugees the widest possible exercise of[...] fundamental rights and freedoms" (Linha & Møkkelgjerd, 2014).

Without delay: The Article 31 requires the asylum seekers to present themselves to authorities without delay. This indicates that the asylum seeker must present themselves to the authorities voluntarily and within a reasonable time period. If an individual is arrested before he or she could reasonably be expected to seek asylum and there is no evidence of bad faith, he or she

should not be denied the benefit of Article 31. In some cases there might be good reasons for not contacting the nearest frontier control to apply for asylum, such as fear for one's life or refoulment. It should also be considered in the asylum seekers' favor that it cannot be required that he or she is aware of the exact wording of Article 31 (1) (Linha & Møkkelgjerd, 2014)

Good cause: According to Guy S. Goodwin-Gill, a good cause may be constituted by worries on the part of the refugee or asylum seeker, lack of knowledge about procedures, or by actions undertaken on the instructions or advice of a third party (Linha & Møkkelgjerd, 2014).

Norwegian law and practice

In Norwegian domestic law asylum seekers are not exempted from penalization for illegal entry or presents, and therefore Article 31 (1) is not a part of Norwegian domestic legislation. The Norwegian Immigration Act and the Penal Code penalize illegal entry and presents without exempting asylum seekers, but it is required in these legislations that their provisions must be applied in accordance with binding international law. According to Article 108 (2) (a) of the Immigration Act, arriving in Norway without a valid travel document is punishable with a fine or imprisonment. However, the last paragraph of Article 108 states that a violation of penal provisions "shall only lead to prosecution when required in the public interest" (Linha & Møkkelgjerd, 2014, 61). Article 8 (3) of the Immigration Act state that the Directorate of Immigration has the authority to "exempt a foreign national from the passport requirement or accept a document other than that which follows from the general provisions" (Linha & Møkkelgjerd, 2014, 61). Article 9 (1) of the Immigration Act exempts asylum seekers from normal visa requirements (Linha & Møkkelgjerd, 2014).

To arrive in Norway with false documentation is punishable under Article 182 of the penal code. To use personal documents belonging to someone else, and trying to pass as that person, is punishable under Article 166 of the Penal Code.

Norwegian law recognizes the defense of necessity (nødrett) under Article 47 of the Norwegian Penal Code. The Article states that

No person may be punished for any act that he has committed in order to save someone's person or property from an otherwise unavoidable danger when the circumstances justified

him in regarding this danger as particularly significant in relation to the damage that might be caused by his act.

(Linha & Møkkelgjerd, 2014, 62)

Norwegian literature on criminal law has concluded that the defense of necessity is not a practical defense in cases regulated by Articles 166 and 182 of the Penal Code. However, in a district court case from 2011, which concerned a Ugandan asylum seekers' attempt to leave Norway with a falsified passport to avoid being deported to Uganda, the defense of necessity was accepted. In 1995, the Supreme Court has acknowledged the possibility of defense of necessity in cases involving illegal entry or presence (Rt-1995-1218). The Court has referred to the preparatory works of the old Immigration Act, where the obligation to exempt asylum seekers from penalization imposed by Article 31 (1) of the Refugee Convention would also follow from the application of the defense of necessity (Linha & Møkkelgjerd, 2014). NOAS' report found that this was not followed up in practice and that asylum seekers who arrive to Norway in an irregular manner are often penalized in breach with Article 31 (1) of the CSR.

Why does Norwegian practice contravene the CRSR?

In the 2014 report Linha and Møkkelgjerd concluded that the reasons behind the breach between the Article 31 and Norwegian practice were twofold. One issue was that the relevant authorities were not sufficiently aware of the international obligations. Neither Article 31 (1) of the CRSR nor the guidelines issued by the Director of Public Prosecutions were well known among the police. According to defense attorneys working at Øvre Romerike District Court, responsible for cases from Gardermoen airport, the attorneys were not familiar with Article 31 (1) (Linha & Møkkelgjerd, 2014)

Another profound issue was that the existing guidelines on this subject did not interpret the provision in compliance with the customary rules of treaty interpretation in the Vienna Convention on the Law of Treaties (VLCT). Terms like "coming directly" and "without delay" were misinterpreted. Guidelines issued to the police in 2008 by the Director of Public Prosecution mentioned, with reference to Article 31 (1), that "a criminal procedure for illegal entry or presence shall not be initiated against a refugee who has come directly to Norway as the first safe country" (Linha & Møkkelgjerd, 2014, 64) This notion on "first safe country" is inconsistent with the rest of the treaty's terms, as well as its object, purpose and preparatory

work, and the VLCT. In the Norwegian translation of Article 31 (1), the term "immediately" (straks) is used instead of "without delay". In a decision from 1995, concerning a Sri Lankan asylum seeker who entered Norway with false documentation, it was implied by the Supreme Court that an asylum seeker should apply for asylum directly at the border. This changed after the enactment of the new Immigration Act. The law no longer requires that an application for asylum is lodged immediately, but rather "without undue delay" (Linha & Møkkelgjerd, 2014). The preparatory work for the new Immigration Act acknowledges the possibility that an asylum may apply for asylum also after having crossed the border, but does not mention penalization nor offer any guidance to when to exempt asylum seekers from penalization. In practice, asylum seekers are given very little time to report themselves to authorities and seek asylum. An asylum seeker may also be arrested before having a chance to voluntary present him- or herself before the authorities. In Norway, the practice has been that the asylum seeker must invoke asylum and admit that the documents are fake before passing the passport control (NOAS, 2014a).

The consequences of the Supreme Court's ruling on Norwegian practice

Following the Supreme Court's ruling in the case of "A" the Norwegian Director of Public Prosecution issued an amendment to the guidelines for the police, ordering the police to cease their practice of criminalizing asylum seekers who do not 'immediately' admit they have used false identity papers. The revised guidelines protect asylum seekers from prosecution if they 'without undue delay' admit to using false documents to enter the territory, as well as exempting refugees who have made necessary stops in other safe countries before reaching Norway from prosecution (ECRE, 2014) The addition of the word "unfounded" (ugrunnet) to the guidelines requires that, in each individual case of delay, the police must consider circumstances of the individual (ECRE, 2014).

The Supreme Court's ruling and the revised guidelines did not immediately have an effect on the Norwegian practice. During my interview with Andre Møkkelgjerd on the 11th of November 2014, he explained that it was still unclear what the consequences of the ruling was, and if the practice still continued. He also explained that subsequently no political initiative or actions were taken to rectify the miscarriage of justice committed in earlier cases where asylum seekers had been penalized for irregular entry. Later, in December 2014, it was revealed by the media that the practice of penalizing asylum seekers continued despite the

ruling and following amendments. Several asylum seekers were summoned to serve time in prison, even though the Supreme Court had decided that this practice was illegal (Gjellan, Johansen & Senel, 2014a). The UN Special Rapporteur on arbitrary detention, Mads Andenæs, stated that the principles of the Supreme Court's ruling should also apply to refugees who were sentenced to prison before the new guidelines came. He argued that the Director of Public Prosecutions had to create policies that would prevent these individuals from being imprisoned (Gjellan et al, 2014a). The Director of Public Prosecution replied that they did not see the need for new policies (Gjellan et al, 2014a). However, only a few days after the continued practice was revealed, the Director of Public Prosecutions decided to suspend all imprisonment of asylum seekers who have entered Norway with fake documents (Gjellan, Johansen & Senel, 2014b). The Criminal Cases Review Commission was given the task to evaluate some cases, and if the commission believes that the refugees may be wrongly convicted Court shall consider their case once more. Public prosecutor Anders Blix Gundersen stated that equality considerations and the rule of law considerations were the reasons why they chose to address these cases (Gjellan et al, 2014b). Director of Public Prosecutions stated that they did not have an overview of the number asylum seekers that might have been wrongfully convicted, and that they are now asking the prosecution authority to investigate whether more refugees may have been wrongfully convicted (Gjellan et al, 2014b).

8- The case of Norway's readmission agreement with Ethiopia

Introduction

On 26 January 2012, Norwegian and Ethiopian authorities signed a Memorandum of Understanding (MoU), which was an agreement of readmission of Ethiopian nationals residing irregularly in Norway. In the MoU, the Ethiopian government agreed to facilitate voluntary and forced return of these Ethiopian nationals (Eide, 2014). The Ethiopian Administration for Refugee and Returnee Affairs (ARRA) would be responsible for the implementation of the return and reintegration program (OHCHR, 2012). Norwegian authorities, on their hand, committed themselves to submit return applications for the returnees to the Ethiopian Ministry of Foreign Affairs and to the National Intelligence and Security Service/Immigration, as well as to share as much information as possible about the returnees with the Ethiopian authorities. Norway also committed themselves to pay ARRA 26 000 NOK plus administrative costs for each returnee returned to Ethiopia (OHCHR, 2012). Norway had sought a readmission agreement with Ethiopia for 20 years, and the MoU opened up for the return of more than 700 Ethiopians whose asylum applications had been rejected (Eide, 2014). The aim for the Norwegian government was to increase the number of both voluntary and forced returns to Ethiopia, as well as a decrease in the number of Ethiopian asylum seekers coming into the country (Eide, 2014). The number of Ethiopian asylum seekers returning to Ethiopia from Norway and other western countries, either voluntarily of by force, has been low (NOAS, 2012). The MoU separates itself from previous readmission agreements Norway has made because previous agreements have provided that personal information concerning the content of asylum applications would not be disclosed. Also, in previous agreements the receiving countries has obligated themselves to protect the returnees against harassment, threats, persecution, discrimination and criminal prosecution. In the past it has also been the task of IOM (the International Organization for Migration) or UNHCR to manage reintegration programs (OHCHR, 2012). The MoU is not a legally binding document.

The MoU refers to people's right to leave and return to their country of origin as given by Artice 13 (2) of the 1948 Universal Declaration of Human Rights, in Article 12 (2) and 12 (4) of the 1966 international covenant on civil and political rights, the 1951 Refugee Convention and the 1967 Protocol. (UDI, n.d.a)

The Norwegian Governments arguments

In Norway, the MoU was presented by the Government as a milestone in their work to increase the number of bilateral agreements on readmission (Eide, 2014). In 2012, shortly after the agreement was signed, the Undersecretary of the Ministry of Justice, Paul K. Lønseth, stated that they were very happy that they had arranged an agreement that promoted returns to Ethiopia (Justis-og beredskapsdepartementet, 2012). He also stated that the readmission agreement was the first of its kind between Ethiopia and a European state, and that they were pleased with continuing to establish more readmission agreements (Pedersen, Carlsen & Døvik, 2012) He further stated that this was a positive agreement for Norway and he hoped it would be frequently used by the police and immigration authorities. He argued that it is important for Norway to be able to return individuals who have been denied asylum application by force in order for Norway to control and regulate its immigration policies. He stated that it would not be sustainable for Norway to grant residence to all who came from non-democratic countries. In a press release on the Norwegian Government's public website, the MoU is described as an agreement which facilitates safe and dignified returns to Ethiopia for citizens of Ethiopia (Justis- og beredskapsdepartementet, 2012).

Criticisms of the MoU

Although the Norwegian government presented the readmission agreement as a positive agreement and a milestone in their work to increase the number of bilateral agreements on readmission, the MoU faced criticism from many other actors. Among these was the UN Special Rapporteur on the Human Rights of Migrants, François Crépeau. The Special Rapporteur pointed out that the MoU did not guarantee that the returnees would be safe from harassment, threats, persecution, discrimination or criminal investigation upon return to Ethiopia. With reference to the International Convent on Civil and Political Rights (ICCPR) he reminded the Norwegian government that the rights guaranteed by this convent was not limited to citizens of the State, but applied to all individuals. He stressed the importance of Article 7 of the ICCPR which states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation" (OHCHR, 2012, 3; UN, 1976, 175). In reference to this he stressed the Norwegian government's obligation to protect the physical and mental integrity of all people within its borders and jurisdiction. The Special

Rapporteur expressed concern about Ethiopia's "..routine use of torture by police, prison officers and other members of the security forces, as well as the military, in particular against political dissidents and opposition party members..", as reported by the Committee against Torture in 2010 (OHCHR, 2012, 3). He reminded the Norwegian Government about their obligation to *non-refoulment* of a person to a state where there is substantial reason to be concerned that the individual may be subjected to torture, as enshrined in Article 3 of the CAT. In addition, he pointed to the government's obligation of *non-refoulment* through the 1951 Convention Relating to the Status of Refugees article 33. In addition, the Special Rapporteur expressed concern for the interest of the children affected by the MoU and reminded the Norwegian government of their obligation under the CRC to hold the best interest of the child as a primary consideration. He pointed out that the MoU "did not seem to take into account the particular protection measures that should be put in place for children" and referred to the concern expressed by the Committee on the Rights of the Child in 2010 that the principle of the best interest of the child was not yet applied in all areas concerning children in Norway, such as immigration cases (OHCHR, 2012, 3-4). The Special Rapporteur urged the Norwegian Government to "take all necessary measures to guarantee that the rights and freedoms of Ethiopians nationals at risk of forced return are respected" (OHCHR, 2012, 4).

The MoU also faced criticism from NGOs working on the rights of refugees. Amnesty International is not against all returns of rejected asylum seekers to Ethiopia in principle, but asked the Norwegian Government to take caution before returning particularly vulnerable groups such as members of particular political parties to Ethiopia. The organization held a petition asking the Norwegian Authorities to "reconsider the need for protection of those Ethiopians who belong to particularly vulnerable groups" and " provide permanent residence permits to families with children who have stayed long term in Norway, and where the children through kindergarten and/or school have developed a strong affiliation to Norway" (Ekeløve-Slydal, 2013) In the petition the organization reminded the Norwegian authorities that they have a responsibility to ensure that no one is returned to a state where they risk being subjected to torture or other serious human rights violations.

Another organization critical of the MoU was NOAS. NOAS published a report about the readmission agreement, *13 months of sunshine*? in 2012. The aim of the report was to contribute to the best possible information about the situation in Ethiopia and the content and consequences of the readmission agreement, and to illuminate issues which NOAS believed

the Norwegian authorities should ask both the Ethiopian authorities and themselves when assessing the individual Ethiopian asylum seeker's issue (NOAS, 2012a). According NOAS' report the human rights situation in Ethiopia is a cause for concern. Members of the opposition and journalists are prosecuted and imprisoned. A new anti-terrorism law enacted in 2009 has led to many journalists, bloggers and opposition members being accused of terrorist activities. Especially young members and grassroots members are targeted by the government. The report found that there is considerable uncertainty in regards to how the Ethiopian authorities will act towards returnees who have been critical towards the authorities. NOAS had interviewed opposition leaders who believed that it was likely that dissidents who returned to Ethiopia would face reactions after some time, and that the charges against them would likely be camouflaged. Several sources believed that dissidents sent back to Ethiopia would be subjected to fabricated accusations and false testimony (NOAS, 2012a). As no opposition members had been returned to Ethiopia before, it was not possible to know what would happen to these people upon return to Ethiopia. But many of the sources NOAS talked to believed that Ethiopians who were active in Ethiopian opposition parties in Norway risked imprisonment and torture if they were returned to Ethiopia (NOAS, 2012a). NOAS also found risks related to the return of LGBT persons who are in danger of being subjected to abuse from both the government and private individuals in Ethiopia as homosexuality is both illegal and punishable in Ethiopia (NOAS, 2012a).

NOAS also expressed concern about the possible consequences of the MoU in the media following the signing of the readmission agreement. Ann-Magrit Austenå, Secretary General of NOAS, stated that the government rather than making efforts to resolve the situation for many of the Ethiopian families with children, chose a tough line and opted to return them to a country where the state of condition has become worse (Pedersen et.al, 2012). NOAS stated that hastily deporting Ethiopian children by force, before the planned white paper on displaced children was presented, would be the opposite of applying the principle of the best interest of the child (NOAS, 2012b). NOAS believed government prioritization of forced return of Ethiopian children with connection to the realm concerned central provisions of the CRC, particularly the principle of the best interests of the child in Article 3 (NOAS, 2012b).

NOAS has expressed concern that Ethiopians will be persecuted, imprisoned and tortured if they are forcibly sent to Ethiopia as a result of the readmission agreement. NOAS consider Ethiopia as an authoritarian regime that uses substantial resources to persecute and imprison their opponents (NOAS, 2012b). They further stated that this will have consequences for

many of those who now risk being sent back and who have been active in the political opposition while they have stayed in Norway. Ethiopia uses large sums to monitor opposition members, even abroad. There is great uncertainty about what these people will face in Ethiopia. NOAS stressed that Ethiopia is the African country that most journalists are fleeing from and that authorities have introduced an anti-terror act forcing human rights organizations to reduce their activities (NOAS, 2012b). NOAS pointed out that many opposition members who have stayed in Norway have not had their case reconsidered in light of the deterioration of the human rights situation and the persecution of opponents of the regime and the liberation movements in Ethiopia. NOAS requested that humanitarian considerations were considered and that the Ethiopians connection to Norway was emphasized in new assessments. Many Ethiopians have lived several years in Norway and have established close ties to the realm, which should be evaluated according to the Immigration Act § 38 (NOAS, 2012b).

The MoU also received criticism from Norwegian politician and political parties. One of these was the Liberal party (V), which questioned the safety of the returned Ethiopians from human rights violations. The Party's leader, Trine Skrei Grande, expressed concern over the legal protection of Ethiopian refugees who risked being sent back. The concern was based on reports of arbitrary detention, killings and torture, and the "negative democratic development" in the country (Venstre, 2012). Skrei Grande questioned why the MoU was different from the readmission agreements Norway had made with other countries in regards to the sharing of information about the asylum seekers, and referred to the Refugee Convention which obliges Norwegian authorities not to disclose sensitive personal information to their home country while an asylum application is pending. The Public Administration Act (forvaltningsloven) states that Norwegian authorities have to respect general confidentiality of sensitive personal information even after rejecting an asylum seekers application for protection (Venstre, 2012). Minister Grete Faremo responded to the criticism and said that the information that was given was not sensitive (Venstre, 2012).

The political party the Socialist Left Party (SV), which was a part of the government at the time of the signing of the MoU, was skeptical to the consequences allowing forced returns of to Ethiopia might have for the children of Ethiopian families which had stayed in Norway for many years. The party's spokesperson on immigration policies, Heikki Holmås, called for new regulations for these "refugee children" to secure that these families were not forcibly returned to Ethiopia (Hellesnes, 2012).

The Ethiopian Asylum Seeker Association, an association established in 2005 to work for the interests of Ethiopian Asylum seekers receding in Norway, has also criticized the MoU. The Association arranges demonstrations and writes letters to the Norwegian government concerning the case of Ethiopian asylum seekers. The Association has held demonstrations against the readmission agreement. The PR responsible for the Association, Jonas Tameru, explained that even though no one has been sent back by force yet, they are still worried because they can never be sure that it will not happen (Interview, 09.09.2014) He stated that Ethiopian nationals feel that they are being pressured to leave "voluntary". Their lives in Norway are difficult because they no longer have the right to work and many are living in hiding. Some are also put in Trandum detention center. According to Tameru, the Norwegian Government accuses the asylum seekers from Ethiopia of seeking asylum for economic, rather than political reasons. Tameru explained that The Ethiopian Asylum Seeker Association does not have an overview of the Ethiopians who are leaving voluntarily and that they don't have any contact with those who return to Ethiopia. He further explained that for people who are not opposing the Ethiopian government it is no problem to return to Ethiopia and live a good life there. Tameru stated that the relationship between Norway and Ethiopia is influenced by economic interests, and mentioned the presents of Yara International ASA, a Norwegian Chemical company, in Ethiopia as an important economic factor. He stated that Norway has big economic interests in Ethiopia, and therefore is careful about criticizing the Ethiopian Government. He referred to an incident in 2007, where Norwegian Embassy staff members were forced to leave Ethiopia under the accusation of "Interference in internal affairs" (NOAS, 2012). Prior to the incident the Norwegian Government had been more critical to the Ethiopian Government, and had documented human rights violations during the riots in 2005. The decision to expel the diplomats was repealed in 2008. After the incident the cooperation between Norway and Ethiopia increasingly focused on business development, and human rights seem to become a less central topic (NOAS, 2012). Tameru explained that the voices of regular people living in Ethiopia is not heard because they do not have the power over foreign investors and governments like the Ethiopian Government has.

Response to the criticism

The Norwegian Ministry of Justice and Public Security answered the letter from Special Rapporteur on the human rights of migrants on 25 May 2012. The letter started by addressing

points which they wanted to clarify. The letter explained that according to Norwegian legislation, foreign nationals without legal stay shall leave Norway voluntarily. Voluntary departure is the preferred solution and the MoU is primarily an agreement on voluntary return. Ethiopian nationals who choose to apply for assisted voluntary return to Ethiopia received financial support from Norway. According to the letter there was an increase in the number of Ethiopian nationals who applied for voluntary assisted returns through the IOM in 2012 compared to the previous year. The letter explained the definition of a refugee and the principle of *non-refoulment* as expressed by §28 of the Norwegian Immigration Act. It further stated that Immigration authorities always consider granting a residence permit on the grounds of strong humanitarian considerations or a particular connection with Norway if the applicant does not fulfill the requirements in §28 . They referred to § 38 of the Immigration Act which underscores that the best interest of the child is a fundamental consideration in such assessments. They further referred to Norway's obligations under the Human Rights Act, stating that " In case of discrepancy, the provisions of the Human Rights Act take precedence over other Norwegian legislation"(Aass & Pettersen, 2012, 2). § 3 of the Immigration Act which states that the Act shall be applied in accordance with international provisions which Norway is bound by when these are intended to strengthen the position of the individual. The Norwegian Human Rights Act also entails several international human rights instruments, including the ECHR, the International Covenant on Civil and Political Rights and the CRC(Ass & Pettersen, 2012).

The letter proceeded to answering the questions raised by the UN Special Rapporteur. In reference to the question of how the Norwegian government planned on monitoring how ARRA spends the money it receives for the implementation of the Return and Reintegration Program the Ministry of Justice and Public Security replied that the implementation of the MoU would be monitored by a Steering Committee consisting of representatives from both parties. The Norwegian Embassy in Ethiopia would be monitoring the implementation of the program closely. The letter further explained that the Return and Reintegration Program is funded over the yearly budget proposal from the Ministry of Justice and Public Security to the Norwegian Parliament and that they would consider whether to continue these programs on a yearly basis.

In response to the question of what the role of the National Intelligence and Security Services in the return and reintegration process would be, the Ministry answered that the Ethiopian Government had appointed the National Intelligence and Security Services as the responsible

authority for verifying the identity and nationality of individuals covered by the MoU. The means of evidence of identity/nationality was listed in the MoU. The Ministry also specified that no information about an asylum seeker is shared with the country of origin's authorities until the asylum seeker had been given a final rejection of his or her application and it had been established that she or he is not in need of protection. According to the JD the Norwegian authorities would not reveal information that may place a person at risk of persecution. The content of the asylum claims will never be shared. (Aass & Pettersen, 2012)

They further explained, in response to the question of how the Government would ensure that the authorities in Ethiopia comply with the absolute prohibition of torture vis-a-vis the returnees, that persons at risk of persecution, death penalty, torture or other inhuman or degrading treatment or punishment are granted asylum and will under no circumstance be returned to the country of origin. The protection claim will be processed by the UDI and UNE. The UDI and UNE use Landinfo and UNHCR to get country of origin information. The JD stated that the UDI and UNE are well informed about the human rights situation in the country through the use of these sources of information. The letter further referred to the UNHCR Regional Office for the Baltic Nordic Countries which had expressed that the number of Ethiopians who receive protection in Norway was relatively high compared to other European countries. Based on this the JD stated that the UNHCR did not have reasons to support the Ethiopians claim that their cases have not been assessed properly. Because of this they had uttered that the Ethiopians who have received a final rejection of their asylum application should return to Ethiopia voluntarily (Aass & Pettersen, 2012)

The UN Special rapporteur had further questioned what measures the Government had taken or intended to take to ensure an individual assessment of all Ethiopian nationals subjected to forced return. In the letter the Ministry explained that all applications are subjected to a careful assessment on individual merit, in accordance with Norwegian law and international obligations, by the UDI and the UNE respectively. The applicant may at any time present new information and evidence relevant for determining the protection need and the applicant has the right of legal counsel free of charge during the appeal process. New information and changing circumstances may also be used to petition the UNE to reverse a final decision.

The UN Special Rapporteur asked what measures the Government taken or intended to take to ensure an evaluation of the best interests of the child in relation to each Ethiopian child who may be subjected to forced return. The Ministry replied that the best interest of the child is a

primary consideration in all cases concerning children and that this applies to all stages of the asylum procedure. The Norwegian legislation provides children above the age of seven, and younger children who are capable to form their own point of view, with the right to be informed and the opportunity to be heard before a decision is made in cases concerning them. These conversations are intended enlighten the situation of the child, and decide whether the child is in need of protection.

The Directorate of Immigration established a unit with special competence on children in 2009 to handle all cases concerning unaccompanied minors. The Unit may also handle certain cases regarding accompanied children. In the written decisions the considerations made in the assessment of the best interest of the child shall be made visible, unless it is deemed unnecessary (Aass & Pettersen, 2012). Both the UDI and the UNE's officers shall have competence in international human rights law, including the CRC.

The letter stated that the Norwegian government is committed to maintaining an efficient asylum processing system in accordance with its international obligations. The letter explained that the median processing time in the first instance is 106 days for families with children but that many Ethiopians have stayed on in Norway for years after the final negative decision by the UNE, among them families. The letter stated that particular importance shall be attached to the children's connection with the realm in accordance with Section 8-5 of the Immigration Regulations, but pointed out that importance may also be attached to considerations of immigration regulation.

Regarding the Special Rapporteur's reference to concerns by the Committee on the Rights of the Child that "the principle of the primary consideration of the best interest of the child is not yet applied in all areas (...) such as (.. .) immigration cases." the letter points out that the Norwegian Immigration Act of 2008 entered into force I January 2010 and that the new Immigration Act was thus not the topic of the Committee's remark. The JD explained that the new legislation and its amendments reinforces, highlights and strengthens the principle of the best interest of the child (Aass & Pettersen, 2012).

In reference to the concern of the Special Rapporteur relating to possible separation of child and parent the JD stated that it was not familiar with the 46 cases specifically referred by the Special Rapporteur. They did however find that it was reason to presume that these families did not arrive in Norway as a family unit, but established a family life in Norway and pointed

out that in such situations, the granting of residence permits will be considered according to the legislation concerning family reunification.

The lawsuit against Norway

Shortly after Norway and Ethiopia signed the MoU, a group of Ethiopian nationals filed a case against the Norwegian State and the JD for breaching with Norwegian law. The group consisting of 340 persons were Ethiopian nationals who had deportation orders against them and were living in hiding in fear of being deported. Their reason for filing a lawsuit against the Norwegian government was that they believed that people who could be returned to Ethiopia as a result of the MoU would be in great danger, and that this constituted a breach with the Norwegian Immigration Act (Oppedal, 2012). Attorney Bjørn Inge Waage, from the Norwegian law firm which represents the Ethiopian nationals, explained that the case was filed as a class action before the Oslo City Court on 1 April 2012 (Interview, 26.01.2015) Waage explained that the background for the class action was that the group was nearly homogeneous in terms of cases. All the Ethiopians had asylum cases that were connected to the Ethiopian regime. Instead of putting pressure on the court with over 300 individual case matters they chose to file it as one case. Waage explained that the class action was filed because they believe that the Norwegian Government was not fulfilling its obligations and that Norway has interpreted the laws wrongfully in the applicants' individual cases. A portion of the lawsuit also involved the readmission agreement. They considered the Government's discretion in the assessment of the readmission agreement as lacking. Waage used the example of Ethiopia's new Anti-Terrorism Act, and how this law was not a part of this assessment. One observation is that, according to the readmission agreement, the Norwegian authorities will provide all details about the applicant to the Ethiopian authorities. This information can put the person in danger upon return to Ethiopia. Waage explained that the reason why these court cases are anonymous and take place behind closed doors is because of the dangers connected to the Ethiopian regime. Waage further explained that the applicants presents the reason for their asylum application during the trials and this is information that the Ethiopian government should not gain access to .Their argument is that that the readmission agreement puts people at risk and that it constitutes a breach with Norway's international obligations and the Norwegian Immigration Act §73 and §28 (Interview, 26.01.2015)

§28 of the Norwegian Immigration Act regulate residence permits for foreigners who need protection (asylum). §28 states that

A foreigner who is in the realm or at the Norwegian border, shall on application be recognized as a refugee if the foreigner a) have a well-founded fear of persecution based on ethnicity, ancestry, color, religion, nationality, membership in a particular social group or political opinion and is unable, or owing to such fear is unwilling to, to invoke his homeland protection, cf. refugee Convention 28 July 1951 Article 1 A and protocol 31 January 1967, or b) without falling under subparagraph a still stands in real danger of being subjected to the death penalty, torture or other inhuman or degrading treatment or punishment by returning to their homeland. §73 provides absolute protection against refoulement and thus protects foreign nationals from being sent to an area where he or she would be in a situation referred to in § 28

(UDI, 2015).

The Lawyers representing the Ethiopians requested the court to find that "the Immigration Appeal Board's decisions on the plaintiffs' lack of protection needs upon return to Ethiopia would be found invalid" (ECtHR, 2014).

The class action was dismissed by a decision of the City Court on the 15th of June 2012. The class action was dismissed on procedural grounds, as the Court found that the representatives failed to specify the claim and to identify the decisions they sought to have declared unlawful. The case was appeal the Borgarting High Court which, in its decision on the 3rd of October 2012, agreed with the City Court. Borgarting High Court stated that the conditions for a joint law suit had not been met in the present case and that the question of whether deportation would be prevented by the Immigration Act or the ECHR would require an individual assessment for each applicant. The High Court advised the representative to choose a few trial cases to proceed with, arguing that if a temporary injunction would be granted for any of the applicants it had to be assumed that the State would treat other applicants who were in the same situation accordingly. The High Court's decision was appealed to the Supreme Court but dismissed by the Appeal Committee of the Supreme Court on the 6th of December 2012 (ECtHR, 2014).

On the 2nd of April 2013 a group of 354 Ethiopian nationals lodged an application to the ECtHR. The application of 343 of them was declared inadmissible on the 10th of December

2013. The remaining eleven applicants were first registered under separate application numbers, before the Court, in accordance with Rule 42 § 1 of the Rules of Court, decided to join the applications (ECtHR, 2014). Waage explained that they did not know why these specific eleven applicants were chosen from the 354 applicants who lodged the first application. The complaints made by the applicants were that they would be at risk of ill-treatment upon return to Ethiopia, in breach with ECHR Article 3. A number of the applicants also stated that their expulsion would entail an interference with their private life as they had formed attachments to Norway, thus representing a breach with Article 8 of the ECHR. The applicants further complained that they would be subjected to collective expulsion to Ethiopia in violation of Article 4 of Protocol No. 4. They also complained that there had been a breach with ECHR Article 13 since no remedy with automatic suspensive effect against the proposed collective expulsion was available to them under domestic law (ECtHR, 2014).

The Norwegian government, in their written observations, argued that the applications should be declared inadmissible for failure to exhaust domestic remedies. The Government noted that the applicants had not applied for legal aid nor taken any steps to initiate judicial proceedings concerning their grievances and that that there were no special circumstances which could dispense them from their normal obligation to exhaust domestic remedies (ECtHR, 2014). The Government informed the Court that nine applicants had been granted legal aid in Norway and had brought their proceedings before the City Court, while one applicant decided to withdraw her appeal against the Oslo City Court decision and had thus chosen not to exhaust domestic remedies. The applicants' representatives, on the other side, argued that by lodging a class action before the domestic courts the applicants had exhausted domestic remedies in Norway. They further stated that there was no effective remedy in Norway which had an automatic suspensive effect and that the practice for granting legal aid in asylum cases was very restrictive. The applicants, who had very low income, could therefore not initiate individual judicial proceedings without such aid. The applications was rejected by the ECtHR under Article 35 §§ 1 and 4 of the ECHR for failure to exhaust domestic remedies (ECtHR, 2014).

Nine of the applicants who got their case rejected for failure to exhaust domestic remedies are bringing their case before the Oslo City Court in May 2015. These were initially filed as individual cases, but the Attorney General of Norway requested that the cases should be unified because of their many similarities. The nine individual cases have individual considerations, such as health, family, etc. But they also have many similarities and many of

the same witnesses, such as country experts, would therefore have been needed to attend each case if they were tried individually. The case before the Oslo City Court is scheduled to start on 11 May 2015.

Consequences of the MoU in practice

In practice the MoU has been difficult to carry out. One reason is that the Ethiopian government is not willing to accept returnees without proper documentation. One of the reasons for this is that it can be difficult to assess whether an asylum seeker is Ethiopian or Eritrean, and the Ethiopian authorities does not wish to accept people who they are not positive are Ethiopian nationals. Jonas Tameru from the Ethiopian Asylum Seekers Association stated that it is Ethiopia who is holding back on putting the MoU into force. The Ethiopian government refuses to accept the returnees because they don't have the proper documents and the Norwegian government is constrained by law from sharing sensitive information, such as the asylum seekers' fingerprints, with states outside of Europe (Interview, 09.09.14). Tameru stated that the Ethiopian government fears demonstrations similar to the Arabic Spring and therefore hesitates to accept a large number of people back at one time. Tameru explained that the Ethiopians living abroad has learned about democracy and have made connections abroad. They can therefore represent a challenge to the Ethiopian government who will have difficulties controlling them. According to numbers from the National Police Immigration Service and the UDI from March 2014, only one Ethiopian had been forcibly returned, while 119 Ethiopians had chosen to return voluntarily (Bjåen, 2014).

9- Analysis

The theoretical starting point for my dissertation explores how human rights norms sometimes stagnate between the commitment phase and the compliance phase. Previous studies have indicated that there is a gap between human rights commitment and human rights compliance. While it was long assumed that committing to human rights norms through signing and ratification of conventions and implementation of human rights norms in domestic legislation would consequently lead to compliance, this assumption has later been challenged in many contexts. The reasons for the compliance gaps may be many and varied. Four scope measures to overcome the compliance gap have been suggested by scholars of compliance theory. On the other hand, failed states, strong counter-norms or vague human rights norms have all been presented as possible explanations for states failing to comply with the norms they have committed to. The cases analyzed in compliance theory have become increasingly varied in terms of types of states and human rights norms. One of the conclusions reached by Risse et al (2013) was that although scope mechanisms could be identified, it was not possible to develop one theory which explained all human rights change in every context. In my analysis I will discuss how these scope measures and challenges for overcoming the compliance gap relates to the cases in my dissertation.

9.1- Human rights norms and the interpretation of obligations

Even if HR are thought to be inalienable, a moral attribute of persons that authorities should not contravene, rights still have to be identified – that is, constructed – by human beings and codified in the legal system.

(Forsythe, 2012, 3)

My theoretical approach assumes that human rights norms are socially constructed. They do not describe the world as it is, but an idea of how the world should be. Human rights are thus utopian and ideological and represent goals for states to aspire to. Neither are they a finished product. The interpretations of human rights instruments are continuously developing as new cases and unforeseen situations challenge the meaning and practice of human rights. Thus, how a human right norm should be interpreted is continuously being debated and developed. The human rights articles in international human rights conventions tend to be vague. As a result more states can agree on the conventions and thus sign and ratify them. However, the

reason why more states agree on vague articles is that they can interpret them in a way that best suits them. These vague norms open up for discussions on the content of the norms amongst the duty-holding states and human rights advocates. In addition, human rights conventions are products of their time, and new challenges and cases can question the original scope and meaning of an article. This is also the case in Norway. As explained by Beate Ekeløve-Slydal, the jurisprudence within human rights is dynamic and changing. Within compliance theory it has increasingly been recognized that different actors may give different content to a norm. They may try to interpret and shape the norm to their interest. This process, described as a norm-cascade by Krook and True, may redefine the internal content of the norm. When important concepts, such as prosecution, are not defined it provides an opportunity for different interpretations and grey zones.

The matter of the refugee children also illustrates the work-in-progress nature of norms as it is a relatively new matter without clear guidelines for the interpretation under the CRC. As explained by Møkkelgjerd the human rights advocates can deform opinion about the weighting of children's best interests up against other considerations in the case of refugee children. This is clearly illustrated by the cases of Butt vs Norway and the Neda Ibrahim case, where the connection to the realm and rights under article 8, as well as Nael's health condition, were considered up against the need for immigration regulation considerations.

Rather than arguing that Norwegian politics and practices constitute clear breaks with international human right norms, the findings suggest that Norway chooses a narrow and strict interpretation of its obligations. When NGOs criticize the Norway's human rights practice the matter is often how the human right should be interpreted rather than a clear human rights violation. Both Andre Møkkelgjerd and Beate Ekeløve-Slydal explained how it is rare that the organizations point to clear-cut breaches, and that they rather challenge the interpretation and the narrow approaches. NOAS, Amnesty International and the A&P all describe the Norwegian regulations as being at the limit of what the international agreements permit. To introduce stricter rules for refugee children will be in violation of CRC (Humlen & Myhre, 2014) and asylum policy cannot be stricter without breaking with CRSR (Møkkelgjerd).

In some cases, however, clear breaches with international human rights obligations can be pointed out. That was the case with the impunity for irregular entry where the NGO NOAS pointed out clear breaches with article 31 (1) of the Refugee Convention. The term without delay had been translated to immediately, and the practice breached with the intention of the

convention which was to protect refugees. Thus, this case illustrates the importance of the preparatory works for understanding a human rights article. Although the articles may be vague and thus invite different interpretations, the human right should always be interpreted in line with the intention behind the convention. The VCLT allows states to rely on supplementary sources for interpretation such as preparatory work and as this case illustrates these can be crucial for the compliance with the intention behind the human rights norm.

Risse et al. (1999) described a fairly linear model of human rights change from repression to rule-consistent behavior. However, in the years following the assumptions in spiral model was challenged by cases, such as the case of torture by the US military, which showed that even when a state had committed to a human rights norm and had reached the rule-consistent phase it could backlash into a norm-violating phase. In addition, the spiral model was based on an objective measure of behavioral change. But compliance is also a subjective benchmark which changes and increases over the years due to efforts by human rights advocates. Thus, new treaties, widening of scopes, better and more reports and data on human rights will raise the bar of for human rights compliance. The ECHR provides a perfect example of this as the ECHR is not static but evolves as case-law tried before the ECtHR extends the rights afforded in the ECHR and applied them to situations that were not foreseeable when the ECHR was first adopted. Since norms are developing this also means that a state that reaches the rule-consistent phase can be a norm violator again if the benchmark for what a human rights norm entails develops and changes through case-law or efforts by human rights advocates. This means that human rights compliance is not a linear process but one where occasional backlash and changing benchmarks for rule-consistent behavior will lead the governments back to a phase of non-compliance.

To sum up, the findings in my study show that we cannot take for granted that all actors interpret the human rights norms the same way. In some cases such as for irregular entry an interpretation may breach with the intention of the human rights norm. In other cases, new issues challenge the interpretation of a norm. My interviews and cases suggest that human rights advocates rarely accuse Norway of clear human rights breaches but rather try to influence the interpretation of the norm and get the Norwegian authorities to conform to their standards of norm compliance. In the following paragraphs I will analyze some of the scope mechanisms human rights advocates apply when working to influence the Norwegian authorities' interpretation and practice of a norm, and some of the factors that may hamper these efforts.

9.2- Scope mechanisms

Studies have showed that international human rights norms are not self-enforcing (Schmitz and Sikkink, 2002). As discussed in the previous section, the duty-holders and human rights advocates may disagree upon what obligations the duty-holder has under an article or convention. Compliance theory (Risse et al. 2013) has identified four scope mechanisms that can push a state towards fulfilling its human rights obligations. Out of the four coercion and persuasion and discourse are relevant to Norwegian obligations towards asylum seekers. I argue that capacity-building and changing incentives are less relevant because capacity building is typically aimed at cases of limited statehood, and because Norway is not under sanctions, nor threatened by sanctions, because of its human rights policies. Neither is Norway under pressure to change its practice towards asylum seekers through promise of rewards such as aid. As I will discuss later, the relationship between Norway and other states when it comes to obligations towards asylum seekers is closely connected to the Schengen and Dublin agreements.

In the process of constructing rights or solving issues it can be difficult to separate the exact lines of influence (Forsythe, 2012). Constructivist approaches argue that states do not rely on the logic of material consequences for their actions alone but behave in accordance with the logic of appropriateness as well as material self-interests. Changes towards rule-consistent behavior can be achieved through hard law (connected to coercion) and soft law (connected to persuasions and discourse).

When human rights change is pursued through coercion the duty-holder is not left with much choice but to comply with the rules. States can accept international or regional jurisdiction and thereby have the human rights standards treated by domestic, regional or international courts. Court rulings are legally binding and thus a mean of coercion. However, it is important to note that legal sanctions are seldom imposed on states against their will. Norway is a signatory to the ECHR and the ECtHR can therefore make judgements in cases concerning Norway's interpretation of the human rights in the ECHR. On the other hand, Norway chose not to sign the 2011 optional protocol to the CRC which would have allowed individuals to test Norway's interpretation of the CRC. For coercion through legal means to be an effective mechanism for human rights change it requires states to acknowledge the court and to willingly comply with the court decisions. Forsythe (2012) argues that in order to achieve a truly human rights protective society's regional review is crucial even for liberal democracies.

The ECtHR has been an important mechanism for individual asylum seekers because it allows them to test the state's interpretation of their rights. The cases can be tested before the domestic courts, but the courts cannot evaluate UNE's decisions in terms of the weight given to different considerations. Furthermore, the asylum seekers access to Courts is restricted as this is costly and the practice for granting legal aid in asylum cases is restrictive. In the case of Butt vs. Norway the decision by the ECtHR meant that the siblings could stay in Norway. In addition, the decision provides precedence for other similar cases to be evaluated up against. In the Neda Ibrahim case the siblings' case was evaluated with reference to the Butt siblings' case, but the resulting conclusions were that the case did not have the same exceptional circumstances as the ECtHR found in the Butt siblings' case. The state is not obliged to follow decisions by the ECtHR in cases others than the ones they are a party to. However, the decisions can serve as guidelines for interpretation of similar cases. In some cases of particular importance, such as the decision against Belgium and Greece to stop the return of asylum seekers to Greece, Norway has changed their practice as a result of the ECtHR decision.

When UNE consider the cases of asylum-seekers they must make discretionary assessments of the case and the weighting of considerations. Because the domestic courts are not permitted to overrule discretionary assessments they cannot change UNE's decision. Their decisions are limited to requesting that UNE to reconsider the case if the Court find a procedural error. Decisions by the Supreme Court shall provide precedence in similar cases. However, the findings in the case of impunity for irregular entry suggest that the state can refrain from changing the practice in spite of Supreme Court decisions. The case shows that the ruling did not have immediate effect on the practice of imprisoning asylum seekers for irregular entry. It was only after the media revealed that the practice had not changed following the Court decision that the Director of Public Prosecutions decided to suspend all imprisonment of asylum seekers who have entered Norway with fake documents and to have a commission evaluating cases to investigate whether asylum seekers had been wrongfully convicted. This indicates that court decisions is not always sufficient to create a change in practice, and that watchfulness of domestic actors is required to make sure that immigration authorities protect and respect human rights norms. This is also what Risse et al (2013) found in their study in relations to the realization that democracies can be human rights violators.

Domestic actors, as well as international human rights advocates, can promote human rights change through soft law. Soft law is non-binding and related to discourse and persuasion.

Within compliance theory persuasion is thought of as a long lasting socialization mechanism (Risse et al, 2013). The recognition and successful framing of gaps between commitment and actions by human rights advocates can lead to further social mobilization. Both NGOs and UN monitoring bodies have criticized and made recommendations to Norway regarding their human rights obligations towards asylum seekers. But because these recommendations are not legally binding the extent to which states follow up on them will ultimately depend on the individual state's ability and willingness. In the case of the readmission agreement with Ethiopia Norway received criticism from both domestic human rights advocates and the UN special rapporteur on the human rights of migrants. Although the immigration authorities decided to address these issues by answering the criticism in the media and in a letter to the UN special rapporteur, the criticism did not change the readmission agreement. Norway is free to follow, and emphasize the importance of, recommendations by UN monitoring bodies in cases where it is advantageous for them. But at the same time the recommendations are not legally binding in cases where Norway does not wish to follow them, and there will be no consequences for Norway if they refrain from following these recommendations.

The spiral theory (Risse et al. 1999) emphasized the importance of pressure from other states to bring about human rights change. However, the spiral theory assumed that liberal democratic states would pressure norm-violating states to comply with human rights norms. In relation to other states Norway has taken upon itself to secure Europe's external borders through the Schengen-agreement and the Dublin-conventions. The signatory states to the Dublin-conventions cooperate to guarantee security within the Schengen area. Through participation in these agreements Norway thus has a responsibility to prevent irregular entry into the Schengen area. This means that rather than expecting pressure from other states to soften the interpretation of asylum seekers' human rights, Norway has a responsibility towards other states to guarantee security by practicing a strict immigration control.

Beate Ekeløve-Slydal explained during our interview that Norway risk very little if they do not comply with the human rights of asylum seekers. This also sums up my findings pretty well. But as compliance theory assumes that states care about logic of appropriateness as the logic of material consequences, further explanations are needed to understand why Norway does not simply follow the recommendations by human rights advocates. This leads me to the final part of my analysis, the importance of counter-norms.

9.3- Justifications

Democratic states are presumed to be more social vulnerable to transnational pressure because of their identities as part of an international community of "civilized states". But democratic states also draw upon other values such as national identities and state security. Perceived threats may thus undermine the transnational advocacy through creation of powerful counter-discourse. When actors possess enough social legitimacy to establish powerful counter-narratives, their social vulnerability is also reduced.

One of the important lessons learned within compliance theory is that democracies can also be human rights offenders. In fact, the democratic state may use discourse to win over a significant share of the population in favor of policies which repress certain groups within the state (Risse et al. 2013). Democratic states can thus prove a challenge to human rights advocates, because these policies will then be legitimated by voter approval. And even more importantly, that the human rights advocates does not always win the debates on how to interpret a norm. The vague and flexible definitions of human rights conventions allow for interpretive discretion by state actors (Risse et al. 2013). Change based on best argument is not always the case in international relations and neither in norm debates. One important aspect of this is the existence of justifications and counter-norms. Although a state accept the validity of a human rights norm it can still argue that other considerations are equally or more important. Risse et. al. (2013) found this in the case on the Bush administrations' justification of torture, where they argued that it was an important mechanism to combat terrorism. We can also find such counter-norms in the Norwegian context, with emphasis on the importance of state sovereignty and consideration of immigration regulation. Further, the case of the Bush administration showed that a state can try to alter the meaning of the norm. In the U.S. case this was an attempt to redefine the meaning of torture to argue that the methods used during questioning of terror suspects could not fall under this category. In Norway, the debate has been around the content of human rights articles such as article 8 of the ECHR such as in the case of Butt vs. Norway. Other areas of such debate are based around safe returns. Although Norway accept their obligations not to return asylum seekers to places where they might be in danger of persecution, torture or death, there can be disagreement on whether a country is safe or not. This has been the case with the readmission agreement between Norway end Ethiopia, where human rights advocates have expressed concern that some of the asylum seekers may

be in risk of persecution and torture upon return, while Norwegian authorities have stated that the protection claim has been assessed properly for each of the asylum seekers and that it would therefore be safe to return for those who had this claim rejected. The Neda Ibrahim case also illustrates this dispute, as UNE claimed that Jordan was a safe country based on a Landinfo report from 2009, while the family's advocates claimed that UNE did not take into consideration the changes in the region following the war in Syria.

It is a common assumption between human rights activists and human rights scholars that states want to be liked. Thus, a state which is criticized for breaching with human rights obligations would like to defend itself. States can justify their behavior through communication of counter-norms, normally appealing to already established norms of legitimate conducts. Security and state-sovereignty are two well-established and internationally recognized norms which states often turn to. The state's right to control its border is deeply embedded in international law and international relations. The state does not only have the right to, but is obligated to protect its borders. One counter-norm presented by the Norwegian government and the asylum authorities is consideration of immigration regulation. The term is clearly connected to boarder control and state-sovereignty. The term has both a discursive and an instrumental significance. The term can only be applied as an argument to reject an application, and never as an argument to grant someone a residence permit. Embedded in the term is an assumption that the state needs to protect itself from possible future immigration waves. It is thus a mechanism to ensure that the decision made in one case will not lead to an increase in future immigration. The term is vaguely defined and in practice it is the case workers who have to assess the consideration of immigration regulation in each case, ie what possible future consequences granting an asylums seeker residence permit might have.

Discussions around consideration of immigration regulation are a discussion about the crossing between the state's right to control its border and individuals' right to protection. In the discussion we can identify a dilemma between the guarantee of individual rights versus a community or central interests that is perceived as threatened. As argued by Gallya Lahav and Sandra Lavenex (2013) suchs "securitization of migration" has increased some political cross-pressures between state sovereignty, security and human rights. States have the right and obligation to control their national borders according to the principle of sovereignty. The crimmigration theory (Johansen et al. 2013) adds to this securitization aspect by arguing that the national state is built on the premise that some "us" are on the inside, while others "they"

are on the outside. So even though human rights norms are universal, the state can link migration to crime or terrorism through discourse and through the legal system and thus defend strict immigration control measures by appealing to the security aspect and need to control immigration. One example of a discursive measure is the political priority of deportation of immigrants as an "important crime preventing measure".

The discussion about who the definition of "us" entails also touches upon another important counter-norm, namely which state is responsible for an asylum seekers' human rights. Although people who are recognized as refugees have their rights secured by the CRSR, many fall short of this category and may be considered to be entitled to protection under humanitarian considerations. However, a counter-norm to this is that the human rights of the asylum seeker are primarily the responsibility of the home country. UNE points to this argument in connection to the cases concerning refugee children arguing that poverty, hunger and deprivation is widespread in many parts of the world but it is not conventional practice that such matters in itself suggests that a state is obliged to receive another country's citizen. A child living conditions in their home country is the responsibility of that county and not a result of a rejection of an application for a residence permit in Norway. This argumentation is also used in the case of readmission agreements. Norway further argues that it would not be sustainable for them to grant residence permits to everyone who comes from non-democratic states.

As mentioned the counter-norm "consideration of immigration regulation" holds instrumental as well as discursive functions. Immigration authorities and human rights advocates have widely debated the weighing of these considerations up against consideration in favor of the asylum applicant, such as the best interest of the child. In this discussion UNE refers to the preparatory work of the CRC and that "a" was deliberately chosen over "the", stating that this opens up for other concerns to be relevant in addition to the best interest of the child. When arguing that the best interest of the child should be *a* primary consideration and not *the* primary consideration, this opens up for assessment in each individual case. UNE argues that the wording expresses recognition that there are situations where competing legal interests or interests of society have equal justification, or even greater justification than the child's interest. UNE also refers to the Norwegian Supreme Court and subordinate courts which have pointed out that the CRC requires a proportionality assessment of considerations where the child's best interests must be included (UNE, 2010a). Thus, the consideration of the best interest of the child must only be included, and is not considered as a decisive argument. The

case workers can therefore chose to emphasize other concerns, in most cases consideration of immigration regulation, without this constituting a direct breach with the CRC. In both the Butt siblings' case and the Neda Ibrahim case UNE has argued that consideration of immigration regulation had to weight heavier than the best interest of the children in the cases. The argumentation was primarily connected to the actions of their parents and an assumption that granting residence permits to these two families could lead to other parents using their children to gain residency.

Norwegian immigration authorities argue the importance of identifying children with their parents for consideration of immigration regulation purposes to avoid situations where parents exploit their children to get residence permits, However, the human rights advocates and the CRC argues for identifying children as subjects of their own. In general, children should never be held responsible for the actions of their parents. One important consequence of the CRC was that the child should be considered as an individual and that child's own grounds for asylum, protection needs and experiences must thus be considered. However, as illustrated by the Butt case and the Neda Ibrahim case consideration of immigration regulation serves a strong counter-norm to these arguments both in discourse and when assessing the children's need for protection.

With reference to the ECHR Article 8 on the right to a private and family life, UNE states that this article instructs that an assessment of necessity and proportionality is to be carried out. When cases concerning children within the grounds of ECHR Article 8 are treated, the principle of the best interest of the child should be included as a factor in this assessment. Again, the argumentation is that the consideration of the best interest of the child should be a part of the assessment, and not have decisive weight over counter-arguments such as immigration regulation.

The report by the A&P argues that under these assessments similar cases are treated differently and that UNE has too much leeway in its assessment of the different considerations. They argue that this prevents the core values of the CRC from being realized. In general the human rights advocates points to the underlying values and intentions behind the conventions and argue that these must be considered in favor of the asylum seekers who they were created to protect.

In sum, collective protection and the state's right to protect its borders serves as strong counter-norms to the human rights advocates argumentation in favor of a more liberal asylum

policy and practice. By referring to established international norms such as state sovereignty and security the state, and by trying to shape how vague norms should be interpreted, becomes less vulnerable to criticism against its human rights practice. The consequence of this is that the core mechanisms of persuasion and discourse become less effective. Risse et al. (2013) revision of the power of human rights showed that human rights advocates are less likely to win based on "best argumentation" alone because of strong counter-norms, and the findings in my cases suggest that this is also the case in Norwegian asylum policy and practice.

10. Conclusion

Although NGOs are critical towards aspects of Norwegian asylum politics, it is rare that they point to clear breaches with international human rights obligations. Rather, they are engaging in debates over how Norway's obligations should be interpreted and advocating for the Norwegian governments and immigration authorities' interpretations and practice to be less strict. Human rights norms are not static but develop over time. Thus, the understanding of what obligations a state has as a signatory of a treaty will also change. Both the state and human rights advocates such as NGOs will try to shape the norm as it develops. Particularly important to the development of the understanding of a norm is court cases. A case brought before the ECtHR or Supreme Court will set precedence in similar cases. My findings thus lead me to revise my initial hypothesis that there are breaches between Norwegian obligations and compliance. My study did find examples where Norway was criticized of violating its human rights obligations. The Norwegian practice of penalizing asylum seekers for irregular entry was considered a clear breach with the intention and wording of the Article 31 (1) of the Refugee Convention by both NOAS and the Norwegian Supreme Court. However, the findings in my other cases, as well as my interviews, implied that such clear-cut breaches are rare. To answer my first research question, to what extent Norway complies with international human rights obligations towards asylum seekers, my findings thus suggest that Norway practices a strict interpretation of the human rights conventions. Although accusations of clear-cut violations are rare, the human rights advocates emphasize that Norwegian policy and practice is close to the limit of how strict they can be before they will constitute breaches with the human rights conventions which Norway is a part of. The human rights advocates therefore advocates in favour of a softening of the asylum policies and practices.

This lead me to the second part of my research question, how to explain Norway's compliance or non-compliance with human rights obligations. Having established in my findings that clear breaches are rare, and that there are grey-zones and different interpretations of human rights obligations; how can we explain Norway's strict interpretation of the human right norms? Human rights advocates will after all try to push for a softer interpretation of these norms. One indication can be found in the limits of the scope mechanisms. First of all, Norway is not pressured by other states to soften their approach to these norms. Quite contrary, Norway is expected through the membership in the Schengen- and Dublin-agreements to help protect Europe's external borders. Coercion is limited as the international

or regional courts do not have the power to force state to comply with their decisions. Although my findings suggest that Norway follows court decisions by the ECtHR, only a few cases reach this level. Most cases are tried before the domestic courts who cannot overrule discretionary assessments. In sum, Norway risk very little by interpreting the norms strictly. Persuasions and argumentations is another scope mechanism which is assumed to bring about human rights change. However, the findings in my cases suggest that criticism and recommendations by domestic and international human rights advocates does not create human rights change unless Norway finds the recommendations beneficial. One possible explanation for this is the existence of strong counter-norms. My findings support the compliance theory's view of counter-norms as an effective blocking factor between human rights commitment and human rights compliance. Strong counter-norms, especially when they are backed up by a large proportion of the population, make the state less vulnerable for criticism from human rights advocates. In Norway, consideration of migration regulation serves as a strong counter argument. This entails a conflict between the individual's rights and the state's right and obligations. Consideration of immigration regulation is a strong counter-norm as it refers to a state's undisputed right and obligation to control its territory. The counter-norm is connected to security issues such as crime and terrorism, and to state sovereignty. The state does not reject the importance of the human rights norm but can argue that other considerations are equally or more important. Alternatively, Norwegian authorities can debate the content of a norm or reject the claim that their actions violate the norm. E.g. Norway can accept the non-refoulment norm, but can argue that the receiving county is safe and that an asylum seeker will not be in danger upon return. Cases of powerful counter-discourses can undermine the notion that human rights advocates always have the better arguments and thus eventually would persuade its opponent to comply with their interpretation and standards for human rights fulfillment. Regarding the second part of my hypothesis I thus find that securitization is a part of the explanation for the strict interpretation as it serves as a powerful counter-norm to a more liberal interpretation of the human rights obligations.

As human rights obligations are vague and dynamic Norway could have chosen a liberal interpretation of the human rights norms. The observation that Norway instead has chosen a strict interpretation of its obligations indicates that Norway wants to limit the number of asylum seekers who gets residence in Norway. Human rights advocates criticize this strict interpretation and claims that Norway is on the borderline of its obligations and cannot

implement stricter policies and practice without breaching with its human rights obligations. However, my findings suggest that accusations of clear breaches are rare and that human rights advocates rather participate in debates around the interpretations of norms and on weighing of considerations. Norway carries few risks by not complying with the interpretations of human rights advocates, and also has strong counter-norms to the human rights norms presented by the human rights advocates. These findings show that the progress from norm commitment to rule-compliance is not linear. Different actors will insert different standards to the human rights norms, and new issues and cases pushes the original scopes of the human rights obligations and engage the different actors in discussions around how to apply the human right norms to the new situations. This reflects the ideological nature of human rights as standards to reach for and not mere reflections of the reality of the current situation.

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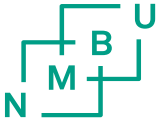
List of respondents:

Jonas Tameru. Jonas Tameru is the PR-responsible for the Ethiopian Asylumseeker Association in Norway. The interview was conducted 09.09.2014.

Beate Ekeløve-Slydal. Beate Ekeløve-Slydal is a political advisor for Amnesty International Norway, and the AI Norway's expert on asylum and refugee issues. The interview was conducted 08.10.2014.

Andre Møkkelgjerd. Andre Mækkelgjerd is a legal adviser for NOAS. He has policy-development work and legal aid for asylum seekers as his main areas of responsibility. The interview was conducted 11.11. 2014.

Bjørn Inge Waage. Bjørn Inge Waage is a lawyer at the law firm Endresen Brygfjeld Torall AS. The law firm represents the Ethiopian nationals who filed a class action against Norway. The interview was conducted 26.01.2015.



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