# Immigration detention as a routine police measure : Discretionary powers in preemptive detention of noncitizens in Finland

Könönen, Jukka

2022-09

Könönen , J 2022 , ' Immigration detention as a routine police measure : Discretionary powers in preemptive detention of noncitizens in Finland ' , Law & Society Review , vol. 56 , no. 3 , pp. 418-440 . https://doi.org/10.1111/lasr.12621

http://hdl.handle.net/10138/347714
https://doi.org/10.1111/lasr.12621

Received: 27 August 2020 | Revised: 5 May 2021 | Accepted: 12 July 2021

DOI: 10.1111/lasr.12621

ARTICLE

Law & Society REVIEW

# Immigration detention as a routine police measure: Discretionary powers in preemptive detention of noncitizens in Finland

**Jukka Könönen**

The Centre of Excellence in Law, Identity and the European Narratives, University of Helsinki, Helsinki, Finland

**Correspondence**
Jukka Könönen, Institute of Criminology and Legal Policy, University of Helsinki, Finland.
Email: jukka.kononen@helsinki.fi

**Funding information**
Academy of Finland, Grant/Award Number: 323149

**Abstract**

This article discusses how administrative practices shape immigration detention policies, addressing both administrative discretion in detention orders and their judicial supervision. Due to vaguely formulated legal criteria and ineffective ex-post judicial supervision, the authorities have considerable discretionary powers in ordering detentions for noncompliant and criminalized noncitizens. Instead of being a measure of last resort, immigration detention is used in a routine manner, with little individual assessment, for the enforcement of removals and the prevention of irregular migration, as well as extensively for crime prevention. The findings demonstrate the role of the police as the main actor in the detention system in Finland, with significant implications for the formation of detention policies.

## INTRODUCTION

Without any notice on a Friday in spring 2017, police officers detained an Afghan family—a pregnant mother, her husband, and their two underage children—in order to remove them from Finland to Afghanistan on a charter flight scheduled the next Monday. According to the family, the detention involved harsh and traumatizing treatment, including removal of one of the children from an elementary school. The family also claimed that they found out the purpose of the action only at their arrival at the detention unit instead of another reception center, as they had been told they were going. Police officers had initiated removal procedures until someone noticed the family's pending appeals against negative asylum decisions, which prohibited the implementation of removal. Consequently, they were released on Sunday. Almost 4 years later on March 1, 2021, the Päijät-Häme district court awarded 3450 euros as compensation for the family and found the acting officer guilty of violating official duties due to carelessness that resulted in "unfounded deprivation of liberty." The defense invoked a rather unconvincing argument, citing the officers'

misinterpretation of the standard abbreviation for nonenforceability in the removal listing, reading it as the opposite. Above all, this rare judgment on administrative detention practices reveals disturbing negligence by the police toward the legal grounds for detention stipulated in the Finnish Alien Act. In addition to ignoring their explicit duties to ensure the enforceability of the removal orders, the police applied the identical detention order for all the family members without consideration of alternative security measures and consultation with social workers required for detention of underage children, and incorrectly invoked new asylum applications as the grounds for detention. Moreover, the acting officer has used his superior's login credentials to confirm the detention order in the database on the grounds that it has been "an established habit" at the department.

In this article, I examine how administrative discretion shapes detention policies drawing on analysis of more than a thousand detention orders from 2016 in Finland, and my research on legal supervision of immigration detention. Finland as a northern EU Member State is an interesting site to reflect the limits of the legal regulation of immigration detention in the European context: the Finnish Alien Act stipulates the legal preconditions for detention in accordance with the EU directives, adapting formulations verbatim in many sections. While immigration detention is presented as a carefully considered and exceptional measure in governmental documents (e.g., Ministry of the Interior, 2014), administrative practices, and established habits can be a completely different matter, as demonstrated in the aforementioned case. Moreover, the governmental documents provide scant information on the actual detention practices or detained noncitizens. Migration activism (see Näre, 2020) and public debates in Finland have brought attention to the detention of vulnerable asylum seekers; for example, the detention of the Afghan family was also in the news in 2017. However, based on this research, most detention orders are issued for young males, the largest groups being Estonian and Romanian EU citizens, followed by African and Eastern European nationals, often related to irregular movement or criminal offenses. Notwithstanding the rare judgment on the procedural neglects in the detention of Afghan family, the police and the border guard possess significant discretionary powers in immigration enforcement in Finland, despite it being stipulated as the last resort in the Alien Act and subject to insufficiency of alternative security measures. Due to the indeterminate specific legal grounds for detention and an ineffective judicial review process (see Seilonen & Kmak, 2015), immigration detention can be employed on a routine basis, not only for securing the implementation of removals and controlling irregular movement but also extensively for crime prevention. Owing to the notable gap between the law and its potential implementation in immigration issues (e.g., Ellermann, 2009; Eule et al., 2019; Schuck, 2000), administrative practices can shape detention policies in a significant manner.

Immigration detention has become an elementary part of migration management in Finland and elsewhere despite the fact that administrative deprivation of liberty for preemptive purposes should be based on well-founded and exceptional grounds. Notwithstanding procedural safeguards against arbitrary detention and the establishment of legal framework for immigration detention, the law remains largely silent on how and when coercive measures should be applied (De Genova, 2017, p. 165). By providing the legal grounds for a preemptive deprivation of liberty, "the law creates powers to detain migrants" (Costello, 2015, p. 145) for the enforcing authorities, who can determine the existence of a risk of absconding and the necessity of detention in individual cases. Indeed, the immigration authorities can impose detention as an administrative security measure on a variety of noncitizens during the different phases of the migration process, from entry to removal, or in connection with immigration checks, crime control, or the asylum process, potentially resulting in diverse practices depending on the targeted noncitizens. While criminologists have highlighted the punitive nature of immigration detention (e.g., Bosworth, 2019; Hernández & García, 2014), preemptive policing provides another framework to analyze detention practices (see Weber & McCulloch, 2019). The police are the central actor in detention and removal policies in many

European countries, contributing to the prevalence of security concerns in immigration enforcement; as Weber (2013) highlights, the police are also immigration officers. Unlike criminal punishments concerning committed past acts, immigration detention operates on the horizon of risks and potential acts in the future. As an administrative security measure to prevent a risk of absconding, immigration detention "possesses the characteristics of preventive measures typically related to the exercise of police powers," as Campesi (2020, p. 3) notes. In addition to the enforcement of the law for deportable noncitizens (i.e., the implementation of removal decisions), the immigration law provides a flexible instrument for the police to preemptively control presumably dangerous or risky populations (Campesi & Fabini, 2020; Kanstroom, 2000), similar to preemptive policing targeting potential criminal offenders or public disturbances.

Due to the wide administrative discretionary powers held by immigration enforcement, it is important to examine the actual detention practices and the authorities' interpretations of the law in order to understand the different functions of immigration detention. The discussion on immigration detention has mainly drawn either on legal analysis of immigration law (e.g., Cornelisse, 2010; Costello, 2015; Wilsher, 2012) or on empirical case studies focusing on lived experiences in detention (e.g., Bosworth, 2014; Griffiths, 2013). Despite increasing interest in immigration detention among various disciplines, only a few studies have addressed the actual detention practices. Drawing on interviews with border guards, Weber and Gelsthorpe (2000) have examined discretion in detention of asylum seekers at ports of entry in the United Kingdom, demonstrating how detention practices differ due to individual officers' judgments about the credibility of the applicants and their conceptions of the law. Kmak (2018) has examined immigration practices involved in immigration detention in Finland based on the analysis of court decisions and addressed the inefficient and routine nature of the judicial review process in supervising immigration detention (Seilonen & Kmak, 2015). Reviewing detention and removal orders in Italy, Campesi and Fabini (2020) have argued that immigration detention functions as a flexible control tool to selectively manage presumably problematic populations. Vallbé et al. (2019) have analyzed pre-removal detention, using data from court proceedings in Spain to demonstrate how involved actors rely on different cues in determining the necessity of detention and how public safety concerns are intertwined with immigration detention. Notwithstanding these important contributions, the lack of comprehensive information on the operations of the detention system—such as the targeted noncitizens and the actual grounds and outcomes of detention—complicates drawing wider conclusions about immigration detention.

This article fills gaps in detention research by providing comprehensive empirical analysis of the actual application of law in ordering detention at the national level, based on investigation of detention records in Finland in 2016. The detention records provide unique data for the analysis of law in action in immigration enforcement, as they reveal both legal grounds and individual reasoning for detention orders. The literature review section focusing on administrative discretion is followed by a discussion of the legal framework for detention in Finland and the data and methods used. The empirical analysis is divided into three sections: detention orders for noncompliant noncitizens during the removal process, prevention of irregular migration, and crime prevention. In order to provide an overall view of administrative discretion in immigration detention, I address the judicial review process before discussing the wider relevance of the empirical findings. I argue that the police and the border guard possess significant discretionary powers in immigration detention in the absence of effective judicial and governmental supervision, having significant implications for the formation of detention policies. As the analysis demonstrates, immigration law provides a flexible instrument for enforcement authorities to detain noncompliant and criminalized noncitizens in a routine manner in different contexts. This article contributes to the discussion on immigration detention in particular, and administrative decision-making in general, by providing empirically driven analysis of law in action in immigration detention, addressing both administrative discretion in detention orders and their judicial supervision.

## DISCRETIONARY POWERS IN IMMIGRATION DETENTION

Discretion plays an important role in the smooth functioning of complex societies, as the implementation of legislation always requires a certain "labour of interpretation" (Graeber, 2016) and choices between different possible measures when making decisions in individual cases. In his seminal study on street-level bureaucracy, Lipsky (1980) highlighted how low-level public employees' substantial discretionary authority and case-by-case interpretations, together with inadequate resources and indeterminate guidelines, result in practices that differ from public policy objectives. The concept of discretionary power has been discussed already since the 1960s, particularly in police research (e.g., Goldstein, 1960). In their everyday work, police officers constantly need to make decisions—such as whether to search, arrest or seek prosecution—that involve interpretation of the law and decisions of a "quasi-judicial nature" (Vanagunas, 1974). This wide discretionary power, combined with the difficulties in monitoring rather autonomous police work, also creates space for discriminatory practices and abuses of power. Nevertheless, discretion is a necessary part of all decision-making due to the imperfection of legislation in regulating all potential cases; in a way, discretion is a vanishing mediator between the letter of law and individual decisions. Discretion often remains unconscious among the authorities: "retreat from discretion" (Lempert, 1992) is an important feature of decision-making, as exercised discretion is overlooked in routine work practices that rely on implications and typifications presented as following the law. The various state actors can develop their own legal consciousness based on only the selected parts of legislation or their perceived meaning of the law, resulting in what Schuck (2000) has called the "law in their minds." While the authorities can interpret legislation in favor of the object of decision-making, administrative discretion always involves an exercise of power (see Gelsthorpe & Padfield, 2003). Because the neutral view on the application of law risks depoliticizing the exercise of power by the authorities involved in decision-making, discretion can be defined, as Pratt (2005, p. 20) suggests, as "an active form of governmental power rather than a residual space created by law."

Similar to laws regulating police work, immigration law constitutes another area of legislation characterized by wide discretionary powers, considering the often complex nature of immigration cases and the lack of detailed legal criteria (Ellermann, 2009; Eule et al., 2019; Pratt, 2005; Schuck, 2000). Several important studies have addressed the types of discretion involved in the decision-making on immigration cases, whether concerning visa applications (Alpes & Spire, 2014), deportation cases (Ellermann, 2009), or the adjudication of asylum claims (Miaz, 2017). Administrative discretion plays an even more substantial role in immigration detention: as a preemptive discretionary security measure, detention orders are based on the state authorities' estimations of noncitizens' compliance and risk of absconding, therefore anticipating their potential behavior in the future. In principle, elements of individual assessment procedures include the possibility to grant alternatives to detention, proportionality assessment, and vulnerability considerations (European Migration Network, 2014, p. 22). In addition to a "personal dimension" concerning highly subjective estimations of the character and social reliability of noncitizens, detention orders encompass a "procedural dimension" concerning practical assessments about removability in individual cases (Weber & Gelsthorpe, 2000, pp. 55–61). Notwithstanding clear grounds for detention (e.g., demonstrated violations of alternative security measures), detention orders involve selection and interpretation of the relevant information concerning noncitizens' individual circumstances and their respective immigration cases. In practice, the authorities often rely on informal indicators in estimating the necessity of detention; noncitizens' social reliability, previous noncompliant behavior and criminal records, as well as authorities' conceptions of assumed "dangerous" migrant groups, can be used to justify detention (Campesi & Fabini, 2020). As Broeders (2010, p. 172) has suggested, immigration detention can become "a policy of risk management not of individual offenders, but of categories of people considered to be dangerous."

Administrative and judicial discretion in individual cases takes place in the national legal framework. In addition to legislative discretion by national legislators when determining detention criteria, policy makers also exercise discretion in defining application guidelines, setting priorities and

allocating resources to different state institutions to pursue policy objectives, or even deliberately delegating politically controversial decisions to the lower-level state authorities (see Eule et al., 2019; van der Woude & van der Leun, 2017). In the EU context, the Return Directive has introduced several procedural safeguards to control detention (including principles of necessity, proportionality, brevity, nonarbitrariness, lawfulness, access to legal aid, and judicial review). Despite establishing detention as a last measure if less coercive measures cannot be applied effectively, the EU Return Directive fails to provide strong protective measures against arbitrary detention due to a lack of concrete criteria for detention, as well as definitive procedures and deadlines for reviewing detention orders (see Majcher, 2013; Mitsilegas, 2015). Furthermore, the EU Member States can adapt the Directives in their national legislations with some variations within the minimal requirements, as well as add other additional grounds for detention. These mainly concern a risk of absconding during the removal process and establishing identity, but also include threats to national security and the public order, and, in some countries, prevention of criminal offenses. In EU Member States, the criteria used for a risk of absconding have covered both demonstrated noncompliance with the immigration regulations, including lack of cooperation with the authorities and verbal objection to removal, and more general risk indicators, such as a lack of identity documents or fixed residence (European Migration Network, 2014). Due to the legislative and administrative discretion exercised by national policy makers, detention policies vary considerably among the EU Member States.

Considering that administrative detention imposes severe restrictions on fundamental human rights and causes distress and anxiety for detained noncitizens (e.g., Griffiths, 2013), the judiciary has a significant responsibility in adjudicating the necessity of detention. According to the European Union Agency for Fundamental Rights (2010, p. 40), "The right to judicial review is a 'cornerstone' guarantee to prevent arbitrary detention." Similarly, Wilsher (2012) calls for a statutory system of review of the merits of detention and emphasis on the proportionality principle as a solution against arbitrary detention. As judges can revoke detention orders and issue immediate release or a bail, the judicial review process affects detention policies by confirming or repealing the administrative practices. Yet, the judicial review process forms another level of discretion in society, as immigration judges exercise judicial discretion in adjudicating the proportionality of detention orders (Stefanelli, 2020). For example, based on her study of immigration bail hearings in the United States, Ryo (2016) has argued that the lack of legal representation and detainees' criminal history are significant factors in authorizing the extension of detention (see also Vallbé et al., 2019). Furthermore, the judicial supervision of immigration detention can in practice represent a mere formality, which focuses only on abstract legal grounds without addressing the proportionality of detention in individual cases (see Könönen, 2017; Seilonen & Kmak, 2015). Alternatively, as Campesi (2014, p. 162) writes, the incorporation of legal frameworks to regulate detention may have "produced a mere proceduralization of the legal guarantees against arbitrary detention whose result has been to disguise police arbitrariness with a façade of legality." Depending on the level of scrutiny and allocated resources, the judicial review process can legitimize arbitrary detention and police practices as well, resulting in little accountability for the authorities.

The wide discretionary powers of the enforcement authorities can shape detention policies, depending on legal and political frameworks and supervision of administrative practices, explaining the gaps between the law in books and law in action. In the absence of well-established legal frameworks and ineffective judicial supervision, immigration authorities may have relative autonomy in implementing the legislation. Institutional settings entail particular "organizational horizons" for administrative decision-making (e.g., Emerson & Paley, 1992; Feldman, 1992); the central role of the police contributes to concerns with security, crime prevention, and public order being associated with immigration detention. As Eule and his collegues (2019, p. 64) write, "The discretionary practices of street-level officials do not necessarily follow a 'national' policy logic: rather, they are influenced by what is practically possible, feasible, comfortable or in line with the values and beliefs of enforcement agents." While immigration detention is usually connected to the tightening of immigration policies and the consequent "deportation turn" (Gibney, 2008), the enforcement of removal decisions does not explain the detention practices completely. For example, Leerkes and

Broeders (2010) have suggested that immigration detention in the Netherlands also serves informal functions in deterring illegal residence, controlling pauperism, and symbolically asserting state control. Similarly, immigration detention in Italy has been transformed into an instrument of crime prevention and "social defense" to target the problematic population segments in urban areas outside the legal framework of criminal law (Campesi & Fabini, 2020). Immigration law provides the police with additional administrative measures, not only to enforce immigration decisions but also to enforce the social order, which is an integral part of police work (e.g., Fassin, 2013). As an administrative preemptive measure, therefore, immigration detention can be used to control noncitizens even beyond statutory boundaries.

## THE IMMIGRATION DETENTION SYSTEM IN FINLAND

In Finland, the first detention unit was only established in 2002, in a former prison in Helsinki, before moving to the 40-place Metsälä detention unit in Helsinki in 2005. A second detention unit was opened in Konnunsuo near the Russian border in 2014; its initial capacity of 30 places has been increased to 70 during recent years. However, deportable noncitizens were held in police facilities in the past, and they are still used for immigration detention if the detention units are full or detention takes place at a distance. The expansion of the detention units to their current capacity of 110 places can be linked to the so-called "refugee crisis" in 2015 and the arrival of a record number of 32,476 asylum seekers in Finland—almost nine times more than in 2014 (3651). Yet, the number of detention orders has not increased significantly during recent years. In spite of the fact that a large share of removal decisions are based on negative asylum decisions, the detention of rejected asylum seekers from Afghanistan and Iraq—the two main nationalities of asylum applicants in Finland—has remained relatively low because of the complications in enforcing removals. In 2016, the police implemented or controlled 6657 removals, yet these largely involved voluntary returns without coercive measures: more than half concerned returning Iraqi citizens, with the other main groups being citizens from Afghanistan, Estonia, Russia, Romania, and Albania. The number of enforced removals has been around 500 annually, including also voluntary returns implemented by charter flights: 1617 escorted removals in 2016 mostly covered return flights for asylum seekers (see European Migration Network, 2017). In turn, the largest groups of detained noncitizens in 2016 were Estonian and Romanian EU citizens, followed by Gambian, Iraqi, Russian, and Moroccan citizens (Table 1). Notwithstanding deficiencies and overlaps in immigration statistics, both East European and African nationals were overrepresented in immigration detention, although their detention was often intertwined with irregular movement and crime prevention (as is discussed later on). Moreover, the majority of removals from detention were implemented to other EU Member States, often with short detention times (see Könönen, 2020). While the maximum detention time is 12 months in Finland, based on the analysis of the detention records, the majority of detentions lasted less than 3 days, with the average detention time being around 15 days in 2016.

The current legal framework for immigration detention in Finland has been in force since 2015, when the government introduced stricter grounds for the detention of minors, as well as some specifications concerning less coercive security measures and the detention of asylum seekers due to adaptation of the EU Reception Directive in the Finnish Alien Act (2004/301). The government proposal for changing the Alien Act (Council of State, 2014, p. 6) highlighted the role of detention as a measure of last resort, underlining "the primary recourse to less stringent security measures than detention" in reference to the proportionality principle enshrined in the Alien Act (Sec. 5). Detention orders require consideration of three sections in the Alien Act: first, the general grounds for security measures; secondly, the application of less coercive security measures; and thirdly, the specific grounds for detention. The general grounds for imposing security measures on noncitizens, provided that they are "necessary and proportional," relate either to processing the legal preconditions for entry or residence, or the preparation or enforcement of removal decisions (Sec. 117a). The less

coercive security measures or the so-called alternative security measures include periodically reporting (Sec. 118) at the police station, border guard station or reception center; "other responsibilities" (Sec. 119), such as surrendering travel documents or tickets to the authorities; and ordering a deposit (Sec. 120) to cover subsistence and return expenses. A new security measure, the residency obligation (Sec. 120a) for asylum seekers to report and reside at a designated reception center, was introduced in 2017. If the aforementioned security measures are insufficient, detention can be ordered on the basis of individual assessment on the following "specific grounds" (Sec. 121):

1. Given the personal or other circumstances concerning the alien, there is a well-founded reason to assume that the person would hide, escape or otherwise severely impede the decision-making concerning his/her immigration case or the implementation of his/her removal decision;
2. Detention is necessary for identifying the alien;
3. The alien has committed, or is suspected of committing, a crime, and detention is necessary for the preparation or the implementation of a removal decision;
4. The alien has reapplied for asylum during detention mainly for the purpose of delaying or disturbing the implementation of a removal decision;
5. Detention is based on Council Regulation Article 28 on determining the responsible state (of processing the asylum application); or
6. Given the personal or other circumstances concerning the alien, there is a well-founded reason to assume that the person would pose a threat to national security.

The specific grounds for detention follow the formulations from the EU directives, except for crime-related detentions; the Return Directive (Art. 2.2b) leaves it up to Member States to decide whether to apply the procedures for foreign offenders. Despite introducing the last three specific grounds for detention, the legislative amendment did not change the legal framework for detention in a significant way. Instead of stipulating the legal grounds for detention in a more rigorous manner, the specific grounds for detention remain open to interpretation, as they employ formulations such as "a well-founded reason to assume" and "necessary" without any substantial criteria. In fact, the most concrete specific grounds for reapplication for asylum concerns the *extension* of detention. According to the EU Return Handbook (European Commission, 2017, p. 11), "Member States must base their assessment whether there is a risk of absconding or not on objective criteria fixed in national legislation."[1] However, the Finnish Alien Act fails to provide clear criteria for a risk of absconding—or a *danger* of absconding, if literally translated—other than giving two examples (Sec. 121a): the demonstrated insufficiency of the applied alternative security measures and a change of residency without informing the authorities. While the failure to follow alternative security measures provides demonstrable criteria, the change of residence is a controversial indicator of a risk of absconding, even if the Alien Act obligates noncitizens to inform the authorities of changes in their contact information. The legal framework for imposing preemptive security measures applies to all noncitizens, irrespective of the grounds for removal, as the Alien Act does not stipulate special provisions for detention of vulnerable groups, except for minors. However, the Alien Act (Sec. 122) only forbids detention of unaccompanied minors under 15 years of age and limits detention of unaccompanied minors to a maximum of 72 h, requiring that the person has received an enforceable removal decision. Moreover, detention of accompanied minors can only be ordered to maintain family connection between the child and his or her guardian, subject to a hearing for the unaccompanied minor and a social worker. Notwithstanding being a main public topic of criticism alongside detention of asylum seekers, the numbers of underage detainees have been low, mainly covering accompanied minors.

According to the Finnish Alien Act, commanding police officers and senior border guards have the competence to order detention for noncitizens, although in practice they confirm detention orders made by acting officers in the electronic database. In Finland, there is no separate

[1]Underlining in the original.

immigration police force, and immigration affairs are the responsibility of assigned officers at the local police departments. Additionally, the Helsinki police department is in charge of coordinating removals at the national level. Despite the rather perfunctory detention criteria, explicit national guidelines for immigration detention do not exist. The main documents on the application of the law are governmental proposals for amendments in legislation, yet the one for the current legal framework for immigration detention does not discuss the detention process in any detail (Council of State, 2014). Furthermore, the National Police Board supervising local police work has not introduced any detailed guidelines for detention "because the Alien Act regulates it in detail" (email communication with the National Police Board 3/21/2017). The 30-page police removal handbook includes only a half-page paragraph on security measures, which enumerates the aforementioned sections and declares: "once the general conditions are met, the investigator-in-charge will consider which precautionary measure is the most appropriate in the individual case" (National Police Board, 2019, p. 25). Both the police and border guard are institutionally under the Ministry of the Interior, which participates in the preparation of legislation on internal and border security. Curiously, the governmental documents present immigration detention as a carefully considered last resort, which is applied only in the absence of alternative measures (e.g., Ministry of the Interior, 2014), based in all probability on the information provided by the police.

In Finland, mandatory judicial supervision concerns only the initial detention orders that are to be reviewed at the district court without delay and at the latest on the fourth day of detention; thereafter, detention orders are reviewed at the earliest within 14 days, by request. The court hearings are limited to a procedural review of the legal grounds for detention, as the district courts do not have the jurisdiction to intervene in pending immigration decisions; consequently, the judge either confirms the extension of detention or orders an immediate release if no sufficient grounds for detention exist. The previous research has demonstrated the ineffective and superficial nature of the judicial review process (Könönen, 2017; Seilonen & Kmak, 2015). The district courts review detention orders under the coercive measures section, which can contribute to affliating immigration detention with criminal matters: the same judges arbitrate pre-trial criminal custody issues, often scheduled even in the same court sessions. Detainees are entitled to free legal aid during detention, limited to the judicial review process that is organized as a remote hearing through a video link; detainees, together with their legal representative and an interpreter, participate in the hearing from the detention units. The ex-post judicial review process, together with often short detention times, underline the importance of examining the administrative detention practices.

## THE DATA AND METHODS

This article draws on analysis of detention records, covering the detention orders issued in the calendar year of 2016. After completing my ethnographic research in the two detention units—consisting of 300 h of fieldwork and over 100 informal interviews with detainees—I made official research permit applications to the police and the border guard to obtain the detention records, in order to get an overall view of the detention practices and detained noncitizens. After a lengthy process, I received the detention records extracted from the electronic database, including information recorded on the issuance of detention orders, as well as an entry for free-form arguments related to processing of the case until the implantation of removal. The analysis of the detention records required a commitment to confidentiality and the requirement to use the data solely for research purposes, following ethical guidelines. Due to the wider focus on administrative discretion and the requirement of anonymity, I discuss the detention orders only on a general level, without examining individual cases in detail. Additionally, the section focusing on the judicial review process draws on my fieldwork at the Helsinki and Imatra district courts, which supervise the Metsälä and Konnunsuo detention units respectively, where I followed 112 detention hearings during 21 visits. I also interviewed lawyers ($N = 7$) representing detainees and requested all the release decisions ($N = 15$) from

the two district courts issued in 2016 in order to get a comprehensive view of the judicial supervision of the detention practices.[2]

I analyzed the detention records in two phases. First, I carried out a statistical review of the applied legal grounds for detention, covering both "general grounds" and "specific grounds" as stipulated in the Finnish Alien Act, and the application of alternative security measures, based on the analysis of the respective written sections in the detention format (Table 1). The general grounds for detention were usually well established, as a majority of detainees had an enforceable removal decision: 89% of the detention orders concerned pre-removal detention and only 11% processing of the entry and residency requirements, although sometimes involving both general grounds. The individual reasoning for the general grounds usually included short descriptions of the preparation of removal, for example, based on a negative asylum decision, a criminal offense, or an effectual entry ban. The analysis of the applied specific grounds for detention proved rather uninformative, because the detention orders often included more than one specific grounds or the same grounds were invoked for a variety of cases without a clear logic, expect for the crime-related detention orders. Indeed, almost 90 percent of the detention orders invoked the first and most indeterminate specific grounds, related to a "well-founded reason to assume" that the person would escape or otherwise impede the processing or implementing of immigration decisions, covering the whole range of immigration cases, from rejected asylum seekers and irregular migrants to deportable EU citizens and long-term residents, either alone or in various combinations with the other specific grounds. Examining the detention orders by different immigration categories proved to be complicated as well, because the detention records did not include a separate entry for the detainees' legal status or grounds for removal (even several grounds can be involved, due to the complexity of immigration cases). The initial grounds for detention can also change during detention, from processing entry or resident requirements to preparation of a removal decision.

In the second phase of analysis, I focused on the written individual reasoning supplementing the general and specific legal grounds of detention, applying thematic analysis to categorize typical indicators used in the detention orders to argue for the necessity of detention and a risk of absconding (Table 2). The analyzed detention orders rarely involved a detailed individual assessment of a risk of absconding other than references to the detainees' verbal objection to removal, their previous behavior (related to preceding immigration and asylum history, criminal offenses, or negligence with police orders) and circumstantial factors (such as a lack of accommodations or an absence of social ties). Notwithstanding some detailed detention orders, individual reasoning usually consisted of a few sentences, referring to one or more indicators for claiming necessity of detention; sometimes a general sentence—such as "the overall situation of the person has been considered in assessing the need for detention"—followed the short description of the grounds for removal. As demonstrated in previous research, decision-making in complex matters involves simplifications and categorizations accumulated in the everyday work routines in the institution (see Herzfeld, 1992; Lipsky, 1980). The lack of official guidelines and the limited time to issue detention orders explain common reliance on simplified strategies, or what is called "heuristics" (Ryo, 2016; Vallbé et al., 2019). The used indicators for justifying detention orders were largely equivalent to the findings from the similar studies elsewhere (Campesi & Fabini, 2020; Weber & Gelsthorpe, 2000) as well as "frequently used criteria in national law" for a risk of absconding in other EU Member States (European Commission, 2017, pp. 11–12; European Migration Network, 2014, p. 23).

The following sections focus on a more general level on detention orders issued in connection with the removal process, prevention of irregular migration, and crime prevention. Notwithstanding overlaps and inconsistencies in the applied legal grounds as well as the accompanying reasoning, analyzed detention orders followed similar patterns depending on the context of apprehension. While detained noncitizens included some older individuals, most detainees were young males: the average age of detainees was around 30 years old. The detained women were a minority ($N = 123$), being

[2]For more information about the fieldwork, see Könönen, 2021b.

**TABLE 1** Applied legal grounds for detention orders in accordance with the Alien Act in 2016

| | Detention orders | | | Alternative measures | | General grounds | | Specific grounds | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Citizenship | Total | Police | Border guard | Applied | Insufficient | Entry or residency | Removal process | Immigration enforcement | Identification | Criminal offenses | Reapplication for asylum | Dublin Regulation | National security |
| **Estonia** | 172 | 168 | 4 | 0 | 1 | 8 | 168 | 152 | 6 | 107 | 0 | 0 | 7 |
| **Romania** | 126 | 124 | 2 | 0 | 0 | 6 | 124 | 97 | 1 | 117 | 0 | 0 | 6 |
| **Gambia** | 66 | 53 | 13 | 1 | 1 | 10 | 56 | 62 | 8 | 30 | 1 | 4 | 1 |
| **Iraq** | 63 | 53 | 8 | 2 | 15 | 9 | 58 | 57 | 2 | 8 | 2 | 13 | 1 |
| **Russia** | 48 | 47 | 1 | 0 | 2 | 4 | 45 | 45 | 1 | 29 | 0 | 0 | 0 |
| **Morocco** | 41 | 34 | 7 | 2 | 9 | 9 | 34 | 38 | 12 | 9 | 0 | 1 | 0 |
| **India** | 37 | 3 | 33 | 1 | 28 | 28 | 26 | 35 | 0 | 4 | 0 | 0 | 0 |
| **Somalia** | 36 | 33 | 3 | 2 | 10 | 1 | 33 | 36 | 2 | 1 | 2 | 2 | 0 |
| **Afghanistan** | 36 | 36 | 0 | 1 | 8 | 3 | 34 | 36 | 0 | 2 | 2 | 5 | 0 |
| **Belarus** | 36 | 34 | 0 | 0 | 6 | 3 | 32 | 30 | 3 | 25 | 0 | 0 | 0 |
| **Nigeria** | 35 | 21 | 11 | 1 | 6 | 9 | 29 | 33 | 8 | 9 | 0 | 5 | 0 |
| **Algeria** | 29 | 26 | 3 | 2 | 4 | 6 | 25 | 26 | 7 | 12 | 1 | 1 | 0 |
| **Stateless** | 29 | 29 | 0 | 0 | 1 | 3 | 27 | 25 | 2 | 23 | 0 | 0 | 1 |
| **Turkey** | 21 | 19 | 2 | 3 | 5 | 3 | 18 | 21 | 1 | 7 | 0 | 0 | 1 |
| **Albania** | 18 | 14 | 4 | 2 | 1 | 4 | 16 | 18 | 0 | 4 | 0 | 0 | 0 |
| **Senegal** | 16 | 13 | 3 | 0 | 1 | 3 | 14 | 14 | 2 | 11 | 0 | 0 | 0 |
| **Latvia** | 14 | 14 | 0 | 0 | 0 | 1 | 11 | 11 | 1 | 7 | 0 | 0 | 1 |
| **Cameroon** | 12 | 11 | 1 | 1 | 1 | 5 | 7 | 10 | 4 | 3 | 1 | 0 | 0 |
| **Tunisia** | 11 | 9 | 2 | 0 | 1 | 4 | 9 | 11 | 0 | 3 | 0 | 0 | 0 |
| **Kosovo** | 11 | 11 | 0 | 0 | 1 | 2 | 11 | 11 | 1 | 0 | 0 | 0 | 0 |
| **Total** | 1059 | 942 | 117 | 23 | 124 | 172 | 940 | 951 | 86 | 490 | 11 | 38 | 20 |

**TABLE 2** Indicators used in individual reasoning for the necessity of detention

| | |
|---|---|
| Criminal offenses | 342 |
| Lack of address or accommodation | 309 |
| Effectual entry ban | 239 |
| Disappeared | 195 |
| Lack of social ties | 155 |
| Verbal objection to removal | 129 |
| Absence of identity documents | 92 |
| Previous asylum history | 75 |
| Criminal sentence | 75 |
| Removal logistics | 58 |
| Criminal history | 56 |
| Crime prevention | 55 |
| Illegal residency | 48 |
| Use of fraudulent identity documents | 37 |
| Providing false identity | 35 |
| Unwillingness to voluntary return | 35 |
| Suspicious behavior | 34 |
| Absence of funds | 33 |
| Departure from the country (incoming Dublin transfer) | 30 |
| Attempted departure during asylum process | 30 |
| Threat to public order | 29 |
| Failure to appear at the removal hearing | 29 |
| Active resistance | 26 |
| Violations of noncustodial measures | 23 |
| Unconfirmed identity | 22 |
| Noncooperative attitude | 21 |
| Absence of entry requirements | 21 |
| Threat of self-harm | 20 |
| Failure to return voluntarily | 20 |

mainly from Romania, Somalia, Nigeria, and Russia. The most detained nationalities covered a variety of cases, from rejected asylum applicants to criminal deportees, although the detention of Eastern European nationals, in particular, were related to criminal offenses or violations of an entry ban. While African nationalities were likewise overrepresented in detention, their detention was often intertwined with crime control and irregular movement (including the Dublin system). The extent of racialized practices in immigration detention remains difficult to estimate based on the data, as the reasoning for detention orders did not differ among the nationalities in similar cases. Moreover, racialized and discriminatory conceptions are also attached to white East European nationals (e.g., Krivonos, 2019). Campesi and Fabini (2020, p. 67) have similarly observed that "law enforcement agencies are somewhat able to neutralize 'race' in their reasoning on migrants' 'dangerousness'" in immigration detention practices in Italy. Nevertheless, ethnic profiling and racialized practices in crime control targeting foreign offenders or otherwise marginalized groups can reflect on the detention practices.

While the detention records covering a 1-year period and over 1000 decisions provide a representative sample for analysis of law in action in immigration detention, there are a few reservations for the analysis. The detention records were not complete, as some information was missing due to

haste and human errors. Due to several detention orders for the same persons, mainly Estonians but other Eastern Europeans and African nationals as well, who were detained again when returning to Finland after the removal, some used indicators might be overrepresented in individual reasoning (Table 2). However, the detention orders for the same persons were not identical and involved different legal grounds and individual reasoning, for example, concerning new criminal offenses. Despite repeated detention of noncitizens subject to an entry ban, violations of entry bans were not systematically recorded in detention orders. Moreover, it is possible that not all short-term pre-removal detentions were recorded, for example, in the case of Estonian and Russian citizens, whose removals can be implemented during the same day. The majority of detention orders in 2016 were issued in the Helsinki area, but the detention practices did not differ considerably across the country or between the authorities, although the border guard usually tended to be more detailed in writing detention orders, compared to the police.

## ENFORCING REMOVALS OF NONCOMPLIANT NONCITIZENS

Immigration detention was employed mainly to enforce removal decisions, as implied by the distribution between the general legal grounds for detention and the predominant use of the first specific grounds (Sec. 121.1) concerning the preparation or implementation of immigration decisions (Table 1). In practice, all deportable noncitizens objecting to removal or refusing to return voluntarily can be detained. In Finland, noncitizens can usually receive 30 days' time for self-organized voluntary departure after a removal decision, or they can apply for the assisted voluntary return system, excluding crime-related removals. If noncitizens do not cooperate in the removal process, the authorities should consider the less coercive security measures before detention. Based on the analysis of the detention records, only 23 detention orders resulted from a failure to follow noncustodial measures. In practice, reporting seemed to be the only alternative security measure applied, although usually the authorities preemptively confiscate travel documents from asylum seekers for the duration of the asylum process. Additionally, 124 detention orders mentioned the insufficiency of the alternative security measures, with a sentence such as "the use of the other security measures has been considered but found to be insufficient in this case." The detention records do not include the cases when the authorities used discretion in favor of the noncitizen and thus refrained from ordering detention, or only issued a reporting order. While the lack of statistics complicates estimation of the overall application of less coercive measures prior to detention, scarce application of alternative security measures together with cursory individual reasoning in detention orders indicate the role of detention as a preferable security measure in immigration enforcement.

In addition to personal dimension concerning noncitizens' compliance, detention orders also involve procedural discretion on removability (Weber & Gelsthorpe, 2000), in particular, in the detention of rejected asylum seekers. The share of detained rejected asylum seekers from Iraq and Afghanistan was considerably low, as their removals remain difficult to implement due to a lack of readmission agreements. Of the almost 100 detained Afghan and Iraqi citizens in 2016, a majority were removed to other EU Member States under the Dublin Regulation and only 19 were removed to their country of citizenship. Instead, rejected asylum seekers (e.g., from Balkan or South Asian countries) face a higher risk of pre-removal detention due to their de facto removability. Similarly, most detained Africa nationals were removed to other EU Member States, whether due to their previous asylum applications or to an already obtained residence permit (usually in Italy or Spain). Removal is not an event but a process (Hasselberg, 2016), which involves often lengthy negotiations with the deportable noncitizens as well as the receiving countries. In particular, removals to African or Middle Eastern countries require lengthy planning and communication with officials from several countries, including confirmation of the identity of detainee, acquisition of travel documents and transit visas, and acceptance upon readmission in the receiving country. Based on the analysis of detention records, some detention orders were issued for the implementation of pre-planned

removal flights, invoking complicated travel arrangements as part of the reasoning for the necessity of detention. Nevertheless, the detention of asylum seekers involves an arbitrary element in that it is not possible to detain all noncompliant individuals due to a lack of resources and the difficulties of enforcing removals. Therefore, immigration detention can have a deterrent effect, not so much concerning unauthorized migration but to put pressure on deportable noncitizens to return voluntarily (see Könönen, 2021a; Leerkes & Kox, 2017).

In Finland, detention of asylum seekers was mainly based on the Dublin procedure. Although the respective specific grounds (Sec. 121.5) were invoked only 38 times, more than 100 detention orders concerned Dublin transfers, demonstrating inconsistent application of the legal grounds for detention. Additionally, 30 detention orders were based on Dublin transfers back to Finland when the person had managed to leave the country, only to be caught in another EU Member State. The Dublin Regulation defines the country in charge of processing the asylum application among the signatory European countries based on registered asylum applications or other factors (e.g., issued visas). The Finnish Alien Act refers explicitly to Article 28 of the Dublin III Regulation, "Detention for the purpose of transfer," which states that "Member States shall not hold a person in detention for the sole reason that he or she is subject to the procedure established by this Regulation." However, the detention records implied that detention for a Dublin transfer is a common practice (also Eule et al., 2019, p. 64), manifested in the references to "the standard procedure." In addition to objection to removal, detention orders for Dublin transfers usually invoked detainees' previous asylum histories as grounds for detention, often explicating their noncompliant behavior after rejected asylum applications from previous years in Finland or other EU Member States, even without information on whether the person objected to the transfer. Therefore, repeated asylum applications and previous irregular movement around Europe become an indicator of their future noncompliance, irrespective of their current situation.

The detention orders issued in connection with the removal process were related to either demonstrated noncompliance or verbal objection to removal, covering a variety of different nationalities. Negligence of police orders after receiving an enforceable removal decision and, in particular, disappearance before the agreed upon date of removal in the case of controlled exit demonstrated the necessity of detention. Almost 200 detention orders concerned noncitizens who had disappeared, including undocumented migrants and noncitizens intentionally avoiding the police but also unreachable persons and asylum seekers not obliged to stay at the reception center. The police usually ordered a warrant for disappeared or otherwise unreachable noncitizens, who were often caught and detained after some weeks or months—sometimes returning to the reception center or arriving at the police station on their own initiative. Excluding a few exceptions, detention orders involved little discretion in favor of noncitizens concerning possible explanations for their failure to follow police orders. Pre-removal hearings or other meetings with the police can be a stressful or even intimidating situation, in particular, for rejected asylum seekers awaiting removal to precarious or even dangerous circumstances. The police also appeared to interpret deportable noncitizens' new asylum or residence permit applications as an attempt to disturb immigration enforcement. Indeed, reapplications for asylum upon notification of a negative asylum decision or in connection with apprehension of absconding person were considered as grounds for detention, although respective specific grounds (Sec. 121.4) were invoked in the initial detention orders only 11 times. In particular, detention orders for noncitizens with pending residence permit decisions seemed unwarranted, if not implying discriminatory attitudes, given the rather minimal risk of absconding due to the possibility of obtaining a residence permit.

Pre-removal detentions also involved subjective estimations on the risk of absconding upon notification of a removal decision or in separately organized pre-removal hearings. In some detention orders, a short summary of the removal decision was followed by a sentence such as "the person strongly opposes the removal" or "the person does not want to return voluntarily," often without further elaboration. Likewise, the police interpreted "inactivity" toward voluntary departure or delays in presenting travel tickets as an indicator of hampering the removal process, thus resulting in

detention. Some detention orders involved highly subjective discretion concerning a noncooperative attitude or "suspicious" behavior—for example, interest in the date of removal—as an indicator of a risk of absconding. Furthermore, detention orders involved little considerations of vulnerability; instead, even a threat of self-harm or self-destructive behavior was used to justify detention. Although some noncitizens expressed their intentions to resist the removal by any means, only a minority of detention orders reported detainees' active resistance toward authorities, such as an attempted escape. However, objecting to removal as such does not necessarily mean the person would hamper the removal process: most removals from detention were implemented as a controlled exit (i.e., escorting the person to the airport or harbor), instead of police escorts to the destination country. Moreover, some detainees agreed to return via the assisted voluntary return system. Irrespective of individuals' attitudes toward removal, detention appeared as an established practice in connection with irregular migration and crime prevention in particular.

## PREVENTION OF IRREGULAR MIGRATION IN FINLAND AND BEYOND

Immigration detention is related to prevention of irregular migration both directly and indirectly: while only 48 detention orders explicitly mentioned "illegal residency" in the reasoning for detention, immigration detention as a preemptive security measure targets noncitizens who are assumed to become undocumented migrants otherwise. Prevention of irregular migration relates directly to detention orders issued at the border for noncitizens who do not meet entry requirements, whether due to a lack of visa, suspected fraudulent documents or other reasons. Although the border guard issued only a minority of detention orders (112 in total), the police also made detention orders at the border based on advance information from other countries or upon the border guard's request. Detention orders issued at the airport or harbors pertained to several West African nationals who were preemptively detained on arrival because of a lack of return ticket and insufficient funds for the visit, indicating a risk of irregular migration despite fulfilling the entry criterion due to their legal residency status in other EU Member States. Strict policies on unauthorized entry also concerned asylum seekers who did not immediately submit applications upon arrival and were detained on the basis of illegal entry. In addition to regulating the entry to the country, immigration detention is used for controlling *exit* to the other European states. The border guard issued detention orders at the Helsinki-Vantaa airport for some transit passengers attempting to continue traveling to other countries without valid visas—including noncitizens willing to return to their countries of citizenship. Almost a fifth of the detention orders issued by the border guard were for South Asian asylum seekers, who attempted to depart from the country during the asylum process only to be caught at the northern border-crossing site on their way to Sweden. In this case, the same detention order was used for the detention of 17 Indian citizens, which raises questions of the required individual assessment, notwithstanding similar grounds for detention.

The border controls are extended inside the national territory as well (Aliverti, 2020; Weber, 2013). Policing internal borders is highly dependent upon discretionary powers (van der Woude & van der Leun, 2017); there are no apparent criteria for detention of noncitizens for identification and establishing entry and residency requirements in the urban space. The provision to present identity documents and prove identity "considerably increases the risk of racial profiling of visible minorities" (ECRI, 2013, p. 8). Most detention orders for identification were for North and West African nationals, although they usually involved other grounds as well. According to recent research, the police practice ethnic profiling in Finland in connection with immigration checks, crime control, police patrols and traffic control (Keskinen et al., 2018). In 2016, the police conducted several operations to detect undocumented migrants in Helsinki, resulting in detention orders for dozens of noncitizens who were unable to prove their identity or legal residency status. While migrants assumed to be "deviant" face higher apprehension risks in urban space (Leerkes et al., 2012) and ethnic profiling targeting African nationals and other racialized groups can

consequently increase their risk of detention, the authorities seemed to have strict policies regarding all irregular migrants. Indeed, the police also searched for irregular migrants at known addresses in Finland, resulting in the detention of some Western citizens as well (e.g., from the United States). Notwithstanding detention orders for noncitizens who had provided false identity or used fraudulent identity documents in order to mislead the authorities, the authorities regarded a lack of official identification documents, or otherwise unconfirmed identity, as an indicator of unreliability and a risk of absconding, thus justifying detention as a pre-emptive measure.

The role of immigration detention in the prevention of irregular migration was evident also in the detention orders based on violations of an effectual entry ban, often intertwined with crime control or traffic control. In particular, Estonian citizens subject to a national entry ban to Finland had been detained and consequently removed from Finland even several times during the same year. The entry ban also illegalizes EU citizens' movement and residence, consequently rendering them detainable and deportable when apprehended. Despite its peripheral location in Northern Europe, Finland is a part of the Schengen Area and the common European space of mobility. In addition to Estonians, many other detained noncitizens had an enforceable entry ban, whether concerning only Finland or the whole Schengen Area. The entry ban is issued nationally for EU citizens and third-country nationals (i.e., non-EU citizens) with legal residency status in an EU Member State; otherwise, it applies to the whole Schengen Area. Entry bans are recorded in the Schengen Information System, constituting digital borders that can be actualized at entry points or as immigration checks in the urban space (see Brouwer, 2008). The "deterrent effect" of immigration detention (see Leerkes & Kox, 2017) for mobile populations in the Schengen Area seemed rather nonexistent; some detained EU citizens removed from Finland had come back even the same day. The violation of the entry ban was criminalized in Finland only in 2018 with a maximum imprisonment of 1 year, which could change the proceedings for repeated offenders of the entry ban (in particular, Estonian citizens).

In addition to noncompliance and violations of immigration regulations, detention orders usually relied on general indicators for the necessity of detention instead of a clear individual assessment for a risk of absconding. Detention orders often referred to a lack of official residence or address in Finland in the reasoning for detention (not the change of residence mentioned in the Alien Act as an indicator of a risk of absconding). Almost 300 detention orders included a sentence such as "the person does not have an official residence in Finland" or "the person could not present an address or a place to be reached." However, a known address did not prevent detention, as several detained noncitizens lived with their Finnish partners or family members. A lack of address was often combined with the standard phrase concerning the absence of social ties in Finland, sometimes with an explicit reference to a lack of employment or family ties. However, the same reasoning was applied to persons who had been in Finland for years and had even applied for a residence permit based on social ties (i.e., family reasons). Then again, in some cases having "strong social ties" was used to argue for a risk of absconding, demonstrating flexibility in justifying detention. Nevertheless, many of the indicators used to argue for the necessity of detention—a lack of address or accommodation, an absence of social ties in the country, unconfirmed identity or absence of funds—implied a conception of risk of the presence of unidentified and mobile noncitizens for the public order, rather than demonstrating a risk of absconding as such.

## IMMIGRATION DETENTION AS CRIME PREVENTION

Immigration detention in Finland is connected to crime control: around half of the detention orders were related to the implementation or preparation of removals based on suspected or committed criminal offenses (Sec. 121.3), primarily targeting Eastern European nationals and, to a lesser extent, West and North African nationals. In practice, detention orders for EU citizens concerned the enforcement of removal decisions issued due to committed criminal offenses, or consequent

violations of an entry ban. However, the detention orders invoking the crime-related specific grounds included also immigration violations, which usually resulted in a police decision of a fine. More importantly, the invoked suspected offenses among third-country nationals were mainly based on police reports or summary penal orders issued in quick proceedings by the prosecuting authority instead of a criminal sentence. According to the detention records, the main categories of suspected or committed criminal offenses by detainees were crimes against property, drug offenses, and, to a lesser extent, traffic violations, and public order disturbances. Only a minority of detention orders mentioned violent crimes or other serious offenses, which had led to criminal sentences prior to detention. Moreover, crime-related detention orders usually enumerated the suspected offenses without consideration of alternative security measures, or individual assessment of the risk of absconding without anything other than references to the lack of permanent residence and nonexisting social ties. The police used criminal activities as an indicator of the unreliability of the person, invoking even criminal charges from previous years or presenting minor misdemeanors as a security issue; sometimes, detention orders tend to frame foreign offenders as "dangerous individuals" (Foucault, 2004) by referring to persistent criminal behavior or a criminal past instead of specific offenses.

The crime-related detention orders demonstrate the convergence of criminal law and immigration law enforcement practices (Stumpf, 2006), yet the two laws provide two different instruments for the police to enforce the social order. In the case of foreign offenders, the police use discretion whether to approach the situation as a criminal case or an immigration case (van der Woude & van der Leun, 2017). While the police can hold individuals suspected of minor offenses for the maximum of 24 h based on the Coercive Measures Act, the Alien Act enables them to continue to detain foreign offenders for the preparation or implementation of the removal decision, regardless of the charges or pending criminal trial. Notwithstanding that some detainees had committed serious offenses and served prison sentences, many third-country nationals were suspected or prosecuted of minor property or drug offenses, which would normally lead only to a fine or no prosecution. For example, the police had very strict practices regarding drug offenses, often involving West Africans, who had been caught in possession of a small amount of cannabis for purported sale. While the Finnish Immigration Service makes removal decisions regarding noncitizens who have obtained a residence permit in Finland and for all EU citizens representing a threat to public order and security, the police can make a removal decision for third-country nationals based on even minor suspected offenses, provided that the person has been in Finland for less than three months and the accompanying entry ban is no more than two years. While in accordance with the law, such crime-related detention and removal decisions are problematic from the perspective of equal and fair proceedings because of the excessive administrative sanctions facing foreign offenders based on the Alien Act, compared with criminal proceedings (see Zedner, 2013). Indeed, crime-related detentions involve "discriminatory provisions" in that a noncitizen accused of an offense or under investigation "may be deported before proceedings against him or her commence" (ECRI, 2013, p. 42). Similarly, pre-removal immigration detention constituted an additional period of incarceration for foreign offenders who had served criminal sentences.

In addition to securing the removal of foreign offenders, immigration detention is intertwined with the objective of crime prevention: immigration law provides an administrative instrument to sanction noncitizens outside of criminal proceedings (Campesi, 2020). In fact, crime prevention was an explicit grounds for immigration detention in the Finnish Alien Act before the legislative change in 2015: according to the past formulation, a noncitizen could be detained if "there are reasonable grounds to believe that he/she will commit an offence in Finland." Accordingly, immigration detention was used to prevent criminal activity before the implementation of removal after criminal custody was ended, for example, because of a suspended prison sentence (Council of State, 2014, p. 28). As Kmak (2018) has pointed out, the future criminality of a noncitizen, based on mere suspicion of potential criminal behavior, justified immigration detention as a preemptive administrative security measure. Despite the change in the formulation of the specific grounds of action in question, crime-

related detention orders were still often motivated by crime prevention rather than by appealing to a risk of absconding during the removal proceedings. While the preparation of the removal justifies detention under the immigration law, pre-emption of criminal activities were often explicitly highlighted in detention orders, as demonstrated in formulations indicating that the person would continue to commit crimes while free, or that there were reasons to assume the person would commit new crimes while staying in Finland, unless detained.

The emphasis on security concerns in detention orders is not surprising, considering the role of police in crime control and, more generally, in enforcing the social order (see Fassin, 2013). In Finland, the police regard irregular migration as a significant security issue, demonstrated in the action plan for the prevention of illegal immigration, which enumerates the following as "recognized risks related to illegal residents": social exclusion, criminal activities, gray economy, new crime phenomena, extremist activities, deterioration of the security situation, and a burden on social and health services (National Police Board, 2017, p. 12). Indeed, some detention orders for foreign offenders explicitly referred to a threat to the public order in their reasoning. The application of the specific grounds related to national security (Sec. 121.6)—whose introduction was motivated by an "unexpected phenomenon, such as the fight against terrorism" (Council of State, 2014, p. 29)—for Estonian and Romanian citizens due to repeated criminal offenses or violations of an entry ban also indicate a conception among the police of foreign offenders as a particular security threat. While Member States are not allowed to use immigration detention for public order reasons or the purposes of removal as a form of "light imprisonment" (The European Commission, 2017, p. 78), based on analysis of the detention records, immigration detention seems to be an additional—if not substitutive—instrument in crime prevention and securing the public order.

## JUDICIAL SUPERVISION ON ADMINISTRATIVE DISCRETION

In order to get a comprehensive overview of administrative discretion in immigration detention, it is necessary to take into account judicial supervision of the decision-making and the consequent judicial discretion. Indeed, the ineffective and superficial judicial review process explains the wide discretionary powers of the enforcement authorities regarding immigration detention in Finland. Despite having the jurisdiction to intervene in unnecessary detention, judges instead refrained from using their power of judicial discretion, as rigorous scrutiny of the proportionality and necessity of detention orders was a rare exception in the monitored hearings (see also Seilonen & Kmak, 2015). The court hearings often lasted less than 10 min, including the time for technical issues, translation, and compensation for the legal representatives. The Helsinki and Imatra District Courts, which are in charge of the legal supervision of the Metsälä and Konnunsuo detention units, released only 15 detainees in almost 1500 organized detention hearings in 2016; in other words, the courts confirmed the extension of detention in almost 99% of the hearings. Of the 112 monitored hearings, only one resulted in release, for a man whose children were at risk of being taken into state custody because of his detention. The other release orders in 2016 mainly covered detainees with pending asylum or residence permit applications and vulnerable migrants—including one family—whose detention was considered unnecessary and without a demonstrated risk of absconding. Judicial discretion at the court hearings appeared inconsistent in that detention was extended for noncitizens who likewise had pending applications or were detained without clear individual grounds. Consequently, the district courts confirmed a low threshold for detention, although they could have released a number of detainees by insisting on the use of alternative security measures prior to detention, individual assessment, and requiring concrete demonstration of a risk of absconding. Moreover, the release decisions were often accompanied by a reporting order, inverting the logic in the Alien Act: the reporting order became an ex-post security measure rather than a prior measure, as stipulated in the law.

Due to the punitive nature of the deprivation of liberty, the court should ideally start with a presumption favoring release: "the burden to support detention should be firmly on the government" (Wilsher, 2012, p. 344). In the court hearings, however, the police or the border guard usually just stated their demand for the extension for detention based on the initial detention order, sometimes providing updates on the removal process. The police often highlighted the suspected or past criminal offenses, or other previous noncompliant behavior, as an indicator of the unreliability of the detainee, to such an extent that the review process resembled pre-trial criminal custody hearings. However, the police rarely needed to present any substantial demonstrations of a risk of absconding: in unclear and contested situations, the judges favored the police account simply because it was provided "under official duty." Detainees objecting to the detention order usually did not dispute the general grounds for detention—in particular, when they had an enforceable removal decision—but did disagree with the assumed risk of absconding and the specific grounds for detention. Consequently, legal representatives often argued that the person did not intend to hamper the decision-making process but would only use the legal recourses to appeal the removal decision. They also provided an address and contact information for where the detainee could be reached, or suggested that the reporting order would be a sufficient security measure in the case. However, legal representatives did use varying levels of effort to defend their clients during monitored hearings, and sometimes they did not challenge the police with any real determination, causing frustration among detainees. Some legal representatives met their clients for the first time just before the hearing, or were even familiarized with the case during the hearing when representing their colleagues' clients. Nevertheless, even a well-prepared defense did not seem to affect the outcome. The interviewed lawyers were frustrated with the superficial nature of the hearings, calling it "a rubber stamp," "a theater," and "a joke," expressing their suspicions that the few release decisions are issued only for the sake of statistics (Könönen, 2017).

The key principle in reviewing detention orders should be proportionality (Stefanelli, 2020, p. 17). However, the proportionality of detention or the consideration of alternative security measures were not discussed at the court hearings, despite the court decisions' standard conclusions that detention did not limit the detainees' rights more than necessary. In addition to criminal records (Vallbé et al., 2019), existence of an enforceable removal decision appeared as a key factor in the extension of detention at the court hearings, irrespective of the demonstration of progress toward preparation of removal. In around half of the monitored hearings, the respondents did not object to the extension of detention. This was usually the case among detainees who had only temporarily been in Finland and were about to return to other EU Member States or nearby areas, or Estonian citizens subject to an entry ban. Awareness of the chance of release being improbable contributed to detainees' acceptance of detention. For noncompliant detainees, detention can become an instrument to pressure them to cooperate with the police and, ultimately, to agree to leave the country (see Leerkes & Kox, 2017). The punitive aspect of immigration detention was manifested in cases where detention was extended despite removal turning out to be nonenforceable, contradicting the Finnish Alien Act as well as the Return Directive. For example, one judge confirmed the extension of detention for a detainee who had been held for almost 11 months, in spite of the police indicating that they would be unable to implement the removal within the maximum detention time of 12 months.

Despite the severity of administrative detention and the requirement of judicial review, a considerable number of short-term detention orders are not necessarily supervised at all, due to delays in organizing the hearings, creating space for an abuse of discretion. Short-term detentions can end in removal before the mandatory judicial review, organized at the latest within 96 h; based on the analysis of the detention records, a majority of all detentions in 2016 lasted less than 72 h and more than quarter less than 24 h. However, the police and the border guard can revoke their detention orders and release detainees on their own initiative due to changes in their legal situation, or if the detention order turned out to be unnecessary in the first place. Compared to the 15 detainees released by the district courts, the police and the border guard released 122 detainees. The police release decisions mainly concerned asylum seekers whose applications or appeals against negative asylum decisions

were being taken for substantial processing in Finland, or the administrative court had issued an implementation ban on removal. Some detention orders for identification or determination of the entry and residency requirements were issued for noncitizens who did have legal residence status in Finland or were asylum applicants. A few detainees—mainly Eastern European nationals—suspected of minor offenses were released because of insufficient grounds for a removal decision. Due to the delays in organizing the court hearings and the ineffective judicial review process, the police and the border guard had little accountability concerning the detention practices.

## CONCLUSION

In this article, drawing on analysis of detention records from 2016 in Finland, I have discussed the significance of administrative discretion in ordering detention. Although the Finnish Alien Act stipulates less coercive measures prior to detention and detention orders are subject to both general and specific legal grounds, as well as individual assessment, detention orders usually included only a brief description of the reasoning for detention and lacked consideration of the alternative security measures. Instead of a detailed individual assessment of a risk of absconding, the authorities relied on standard indicators in their reasoning for the necessity of detention, such as objection to removal, criminal offenses, unconfirmed identity, lack of social ties and accommodation (Table 2). Due to the indeterminate legal framework open to interpretation and the lack of an effective judicial review process, the authorities can use detention as a preemptive measure for different purposes: in addition to the enforcement of removals and prevention of irregular migration, immigration detention was employed extensively for crime prevention. Notwithstanding the low threshold for detention, de facto removability shapes immigration detention practices, explaining the low share of detained asylum seekers, in particular, from Iraq and Afghanistan. In fact, many of the detained asylum seekers were awaiting transfer to another EU Member State under the Dublin Regulation. Instead, the share of detained African and Eastern European nationals were disproportionately high, being largely intertwined with the control of irregular migration and crime prevention. While ethnic profiling and racialized practices targeting foreign offenders contribute to overrepresentation of certain nationalities in immigration detention, the conceived risks justifying the detention orders were more generally connected with safeguarding the public order from socially marginalized and presumed dangerous mobile populations (also Campesi & Fabini, 2020). While the empirical analysis presented in this article is limited to Finland and the detention practices as well as the institutional arrangements vary across the countries, the findings have a wider relevance for the discussion on immigration detention, pointing to the need for future research on the respective issues.

First, due to the wide discretionary powers of the state authorities in immigration issues, the analysis of the law provides only limited analytical value to comprehend the actual detention practices, which can target a whole range of noncitizens, including EU citizens, in different phases of the migration process, or in connection with crime control. As detention practices may serve several different objectives depending on the targeted noncitizens, it is important to pay attention to which noncitizens are detained, on what grounds and with what outcomes in order to better understand the operation of immigration detention. Notwithstanding well-grounded concerns surrounding the detention of vulnerable groups such as asylum seekers, immigration detention as a preemptive security measure might be intertwined with crime control in a more extensive manner than assumed in Europe, as indicated also in research conducted in Italy (Campesi & Fabini, 2020) and Spain (Vallbé et al., 2019). While only some European countries—for example, Germany, Norway, Sweden, and the United Kingdom—have introduced a legal ground for detention related to "Reasonable grounds to believe that the person will commit a crime/offence" (European Migration Network, 2014, p. 15), other legal grounds can be used for the detention of deportable foreign offenders as well. Notwithstanding the EU acquis limits on the regulation of the detention of third-country nationals, the findings of this research point to the extensive application of the same coercive measures for EU citizens,

whose situations remain largely absent in the discussion on immigration detention. Due to the precursory legal framework, the immigration authorities can employ immigration detention for their own intended purposes, resulting in overrepresentation of presumed risk groups in detention, such as foreign offenders.

Secondly, the presented analysis of the law in action demonstrates the insufficiency of legal regulation and procedural safeguards in preventing unnecessary detention (see Stefanelli, 2020; Wilsher, 2012). In the analyzed detention orders, the consideration of the proportionality principle and the necessity of detention became a matter of mere statements, often without any concrete demonstration of a risk of absconding. Moreover, detention orders and court decisions included direct formulations from the Alien Act, resulting in a peculiar tautological form of argumentation. In this repetitive and circular reference to the Alien Act, the law itself threatens to become an empty form without substance. The systematic negligence of alternative security measures in the analyzed detention records and cursory reasoning for detention orders indicates that the police only consider detention as a sufficient instrument for immigration enforcement. For the authorities, immigration detention is an obvious solution to enforce removals or manage assumed security threats, compared with alternative security measures that contain a possibility of absconding. Immigration detention as a preemptive security measure involves a self-justifying logic; after all, detention always prevents an assumed risk of absconding or other unwanted behavior, irrespective of how detained noncitizens may have actually acted (see Costello, 2015). In theory, the current legal framework in Finland could provide an effective means to protect noncitizens if applied carefully and supervised in a rigorous manner. Substantive judicial reviews of detention orders at district courts—insistence on the priority of alternative security measures, individual assessment, and clear demonstration of a risk of absconding—would result in the release of a number of detainees, as well as force the authorities to change detention practices, consequently raising the threshold for detention. In practice, the police have little accountability on detention practices due to the insufficient judicial supervision, accounting only for procedural supervision of the legal grounds for detention; moreover, a significant share of short-term detentions remain completely outside judicial supervision because of delays in organizing court hearings. Ultimately, prohibition of detention other than for clearly defined exceptional purposes based on demonstrated violations of objective criteria—in other words, limiting the scope of administrative discretion—might be the most viable way to prevent unwarranted detention, as long as ending administrative detention is not a feasible option.

Finally, there is a need for future research to examine the potential effects of law in action and administrative discretion for detention policies beyond the policy objectives and legal frameworks. Notwithstanding the discretion involved in all immigration issues (e.g., Eule et al., 2019) at different levels—including the EU and national legislators, immigration administration, and the judiciary—administrative discretion among the enforcing officers is highlighted in immigration detention due to its preemptive nature based on assumed future behavior. In addition to unnecessary detentions and a possible abuse of power, the combination of an indeterminate legal framework open to interpretation and ex-post judicial supervision—or nonexistent supervision in the case of short-term detentions—leaves space for the enforcing authorities to exercise discretion as "an active form of governmental power" (Pratt, 2005, p. 20), with implications for the formation of detention policies. Indeed, based on this research, the police and their interpretation of the law largely determine the detention policies in Finland in the absence of effective judicial supervision and detailed guidelines. Furthermore, governmental documents and legislative proposals concerning immigration detention are built on an idealized conception of detention as a carefully considered measure of last resort, based on information provided by the police. The significant role of the police in immigration detention policies raises questions about the separation of powers: in addition to administrative practices implemented without proper judicial supervision, the executive branch can also affect the legislation by providing information of the state of affairs and making statements on the legislative amendments. As Agamben (2011, p. 264) writes, "The real problem, the central mystery of politics, is not

sovereignty, but government; it is not God but the angel; it is not the king, but the ministry; it is not the law, but the police—that is to say, the governmental machine that they form and support." Following this claim, "the real problem" and "the central mystery" in immigration detention might well be the police – and other enforcing auhorities – and their significant discretionary powers that form and support "the governmental machine" of immigration enforcement.

## ACKNOWLEDGMENT

The author would like to thank anonymous reviewers, and Markus Himanen, Magdalena Kmak, and Aino Korvensyrjä for their comments and feedback on the manuscript.

## ORCID

*Jukka Könönen* https://orcid.org/0000-0002-4843-7741

## REFERENCES

Agamben, Giorgio. 2011. *The Kingdom and the Glory: For a Theological Genealogy of Economy and Government*. Stanford: Stanford University Press.

Aliverti, Ana. 2020. "Introduction: Special Issue on 'Policing, Migration and National Identity." *Theoretical Criminology* 24(1): 3–7.

Alpes, Jill, and Alexis Spire. 2014. "Dealing with Law in Migration Control: The Powers of Street-Level Bureaucrats at French Consulates." *Social & Legal Studies* 23(2): 261–74.

Bosworth, Mary. 2014. *Inside Immigration Detention*. Oxford: Oxford University Press.

Bosworth, Mary. 2019. "Immigration Detention, Punishment and the Transformation of Justice." *Social & Legal Studies* 28(1): 81–99.

Broeders, Dennis. 2010. "Return to Sender? Administrative Detention of Irregular Migrants in Germany and The Netherlands." *Punishment & Society* 12(2): 169–86.

Brouwer, Evelien. 2008. *Digital Borders and Real Rights. Effective Remedies for Third-Country Nationals in the Schengen Information System*. New York: Springer.

Campesi, Giuseppe. 2014. "Immigrant Detention and the Double Logic of Securitization in Italy." In *The EU, Migration and the Politics of Administrative Detention*, edited by Michela Ceccorulli and Nicola Labanca, 145–65. Abingdon: Routledge.

Campesi, Giuseppe. 2020. "Genealogies of Immigration Detention: Migration Control and the Shifting Boundaries between the 'Penal' and the 'Preventive' State." *Social & Legal Studies* 29(4): 527–48.

Campesi, Giuseppe, and Giulia Fabini. 2020. "Immigration Detention as Social Defence: Policing 'Dangerous Mobility' in Italy." *Theoretical Criminology* 24(1): 50–70.

Cornelisse, Galina. 2010. *Immigration Detention and Human Rights: Rethinking Territorial Sovereignty*. Leiden: Brill.

Costello, Cathryn. 2015. "Immigration Detention: The Grounds beneath our Feet." *Current Legal Problems* 68(1): 143–77.

Council of State. 2014. *Hallituksen esitys eduskunnalle laeiksi ulkomaalaislain sekä säilöön otettujen ulkomaalaisten kohtelusta ja säilöönottoyksiköstä annetun lain muuttamisesta*. HE 172/2014 vp. [Government proposal to the Parliament for changing the Alien Act and the law on the treatment of detained foreigners and the detention unit].

De Genova, Nicholas. 2017. "The Economy of Detainability: Theorizing Migrant Detention." In *The Economy of Detainability: Theorizing Migrant Detention. In Challenging Immigration Detention. Academics, Activists and Policy-Makers*, edited by Michael J. Flynn and Matthew B. Flynn, 160–70. Cheltenham: Edward Elgar Publishing.

Ellermann, Antje. 2009. *States against Migrants: Deportation in Germany and the United States*. Cambridge: Cambridge University Press.

Emerson, Robert M., and Blair Paley. 1992. "Organizational Horizons and Complaint Filing." In *The Uses of Discretion*, edited by Keith Hawkins, 231–48. Oxford: Clarendon Press.

Eule, Tobias, Lisa Marie Borrelli, Annika Lindberg, and Anna Wyss. 2019. *Migrants before the Law: Contested Migration Control in Europe*. London: Palgrave Macmillan.

European Commission. 2017. *Return Handbook*. https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/return_handbook_en.pdf

European Commission against Racism and Intolerance (ECRI). 2013. *ECRI Report on Finland* https://rm.coe.int/fourth-report-on-finland/16808b5714

European Migration Network. 2014. "The Use of Detention and Alternatives to Detention in the Context of Immigration Policies." In *Synthesis Report for the EMN Focused Study 2014*. Brussels: European Commission.

European Migration Network. 2017. Key Figures on Immigration 2016. http://www.emn.fi/files/1527/Tilastokatsaus_2016_EN_netti.pdf

European Union Agency for Fundamental Rights. 2010. *Detention of Third-Country Nationals in Return Procedures*. Wien: European Union Agency for Fundamental Rights.

Fassin, Didier. 2013. *Enforcing Order: An Ethnography of Urban Policing*. Cambridge: Polity Press.

Feldman, Martha. 1992. "Social Limits to Discretion: An Organizational Perspective." In *The Uses of Discretion*, edited by Keith Hawkins, 163–84. Oxford: Clarendon Press.
Foucault, Michel. 2004. "About the Concept of the "Dangerous Individual" in 19th-Century Legal Psychiatry." In *Power: The Essential Works of Michel Foucault 1954–1984*, edited by James D. Faubion. New York: The New Press.
Gelsthorpe, Loraine, and Nicola Padfield. 2003. "Introduction." In *Exercising Discretion: Decision-Making in the Criminal Justice System and beyond*, edited by Loraine Gelsthorpe and Nicola Padfield, 1–28. Cullompton: Willan Publishing.
Gibney, Matthew J. 2008. "Asylum and the Expansion of Deportation in the United Kingdom." *Government and Opposition* 43(2): 146–67.
Goldstein, Joseph. 1960. "Police Discretion Not to Invoke the Criminal Process. Low Visibility Decisions in the Administration of Justice." *The Yale Law Journal* 69(4): 543–94.
Graeber, David. 2016. *The Utopia of Rules: On Technology, Stupidity, and the Secret Joys of Bureaucracy*. New York: Melville House.
Griffiths, Melanie. 2013. "Living with Uncertainty: Indefinite Immigration Detention." *Journal of Legal Anthropology* 1(3): 263–86.
Hasselberg, Ines. 2016. *Enduring Uncertainty: Deportation, Punishment and Everyday Life*. New York: Berghahn Books.
Hernández, César, and Cuauhtémoc García. 2014. "Immigration Detention as Punishment." *UCLA Law Review* 61(5): 1346–414.
Herzfeld, Michael. 1992. *The Social Production of Indifference. Exploring the Symbolic Roots of the Western Bureaucracy*. Chicago: University of Chicago Press.
Kanstroom, Daniel. 2000. "Immigration Law as Social Control." In *Civil Penalties, Social Consequences*, edited by Christopher Mele and Teresa A. Miller, 161–84. New York: Routledge.
Keskinen, Suvi, Alemanji Aminkeng Atabong, Markus Himanen, Antti Kivijärvi, Uyi Osazee, Nirosha Pöyhölä, and Venla Rousku. 2018. *The Stopped – Ethnic Profiling in Finland*. Helsinki: The Swedish School of Social Science, University of Helsinki.
Kmak, Magdalena. 2018. "Crimmigration and Othering in the Finnish Law and Practice of Immigration Detention." *No Foundations: An Interdisciplinary Journal of Law and Justice* 15: 1–22.
Könönen, Jukka. 2017. "Remote Justice: The Im-Potentiality of the Law in Judicial Reviews of Immigrant Detention in Finland." *Materiali per una Storia della Cultura Giuridica* 47(2): 573–88.
Könönen, Jukka. 2020. "Legal Geographies of Irregular Migration: An Outlook on Immigration Detention." *Population, Space and Place* 26(5): e2340. https://doi.org/10.1002/psp.2340.
Könönen, Jukka. 2021a. "The Waiting Game: Immigration Detention as the Waiting Room of Immigration Law." *Migration Studies* 9: 721–39.
Könönen, Jukka. 2021b. "The Absent Presence of the Deportation Apparatus: Methodological Challenges in the Production of Knowledge on Immigration Detention." *Social Anthropology* 29: 619–34.
Krivonos, Daria. 2019. *Migrations on the Edge of Whiteness: Young Russian-Speaking Migrants in Helsinki*. Finland. Helsinki: University of Helsinki.
Leerkes, Arjen, and Dennis Broeders. 2010. "Deportable and Not So Deportable: Formal and Informal Functions of Administrative Immigration Detention." In *The Social, Political and Historical Contours of Deportation*, edited by Bridget Anderson, Matthew J. Gibney, and Emanuela Paoletti, 79–104. New York: Springer.
Leerkes, Arjen, and Mieke Kox. 2017. "Pressured into a Preference to Leave? A Study on the "Specific" Deterrent Effects and Perceived Legitimacy of Immigration Detention." *Law and Society Review* 4: 895–929.
Leerkes, Arjen, Monica Varsanyi, and Godfried Engbersen. 2012. "Local Limits to Migration Control: Practices of Selective Migration Policing in a Restrictive National Policy Context." *Police Quarterly* 15(4): 446–75.
Lempert, Richard. 1992. "Discretion in a Behavioural Perspective: The Case of a Public Housing Eviction Board." In *The Uses of Discretion*, edited by Keith Hawkins, 185–230. Oxford: Clarendon Press.
Lipsky, Michael. 1980. "Street-Level Bureaucracy: Dilemmas of the Individual in Public Services." In *Street-Level Bureaucracy: Dilemmas of the Individual in Public Service*. New York: Russell Sage Foundation.
Majcher, Izabella. 2013. "The European Union Returns Directive: Does it Prevent Arbitrary Detention?" *Oxford Monitor of Forced Migration* 3(2): 23–31.
Miaz, Jonathan. 2017. "From the Law to the Decision: The Social and Legal Conditions of Asylum Adjudication in Switzerland." *European Policy Analysis* 3(2): 372–96.
Ministry of the Interior. 2014. *Selvitys Säilöönoton Vaihtoehdoista [Report on Alternatives to detention]*. Helsinki: Ministry of the Interior.
Mitsilegas, Valsamis. 2015. *Criminalisation of Migration in Europe. Challenges for Human Rights and the Rule of Law*. New York: Springer.
Näre, Lena. 2020. "'Finland Kills with a Pen' – Asylum seekers' Protest against Bureaucratic Violence as Politics of Human Rights." *Citizenship Studies* 24(8): 979–93.
National Police Board. 2017. *Laittoman maahantulon ja maassa oleskelun vastainen toimintaohjelma 2017–2020. [Action Plan for the Prevention of Illegal Immigration and Residence 2017–2020]*. Helsinki: National Police Board.
National Police Board. 2019. Käännyttämistä ja maasta karkottamista koskevan päätöksen täytäntöönpano. [Implementation of expulsion and deportation decisions.] Available by request.

Pratt, Anna. 2005. *Securing Borders: Detention and Deportation in Canada*. Vancouver: UBC Press.
Ryo, Emily. 2016. "Detained: A Study of Immigration Bond Hearings." *Law and Society Review* 50(1): 117–53.
Schuck, Peter H. 2000. "Law and the Study of Migration." In *Migration Theory: Talking across Disciplines*, edited by Caroline Brettell and James Frank Hollifield, 187–204. New York: Routledge.
Seilonen, Aleksi, and Magdalena Kmak. 2015. *Administrative Detention of Migrants in the District Court of Helsinki*. Helsinki: University of Helsinki.
Stefanelli, Justine. 2020. *Judicial Review of Immigration Detention in the UK, US and EU: From Principles to Practice*. Oxford: Hart Publishing.
Stumpf, Juliet. 2006. "The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power." *The American University Law Review* 56: 367–420.
Vallbé, Joan-Josep, Markus González-Beilfuss, and Barak Kalir. 2019. "Across the Sloping Meadow Floor: An Empirical Analysis of Preremoval Detention of Noncitizens." *Law and Society Review* 53(3): 740–63.
van der Woude, Maartje, and Joanne van der Leun. 2017. "Crimmigration Checks in the Internal Border Areas of the EU: Finding the Discretion that Matters." *European Journal of Criminology* 14(1): 27–45.
Vanagunas, Stanley. 1974. "Toward Checks and Balances of Police Authority." *Marquette Law Review* 57(3): 505–14.
Weber, Leanne. 2013. *Policing Non-Citizens*. Abingdon: Routledge.
Weber, Leanne, and Loraine Gelsthorpe. 2000. *Deciding to Detain: How Decisions to Detain Asylum Seekers Are Made at Ports of Entry*. Cambridge: Institute of Criminology, University of Cambridge.
Weber, Leanne, and Jude McCulloch. 2019. "Penal Power and Border Control: Which Thesis? Sovereignty, Governmentality, or the Pre-Emptive State?" *Punishment & Society* 21(4): 496–514.
Wilsher, Daniel. 2012. *Immigration Detention: Law, History, Politics*. Cambridge: Cambridge University Press.
Zedner, Lucia. 2013. "Is the Criminal Law Only for Citizens? A Problem at the Borders of Punishment." In *The Borders of Punishment: Migration, Citizenship, and Social Exclusion*, edited by Katja Franko Aas and Mary Bosworth, 40–57. Oxford: Oxford University Press.

## STATUTES AND CASES CITED

Directive 2008/115/EC of the European Parliament and of the Council of December 16, 2008 on common standards and procedures in Member States for returning illegally-staying third-country nationals.
The Finnish Alien Act. Ulkomaalaislaki 30.4.2004/301.
Päijät-Häme District Court. Decision 21/109074 (1/3/2021).

## AUTHOR BIOGRAPHY

**Jukka Könönen** is a social scientist who works as a senior researcher at the Institute for Criminology and Legal Policy at the University of Helsinki. He has conducted mixed-methods research on immigration controls, detention and deportation regimes, and irregular migration. His current research focuses on crimmigration practices on removals of foreign offenders and the significance of preventive police powers in immigration enforcement.

**How to cite this article:** Könönen, Jukka. 2022. "Immigration Detention as a Routine Police Measure: Discretionary Powers in Preemptive Detention of Noncitizens in Finland." *Law & Society Review* 56(3): 418–440. https://doi.org/10.1111/lasr.12621