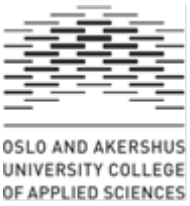

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Refugees in the Norwegian welfare state:

Marginalized when unfit for labour market participation?

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Abstract

The aim of this thesis is to shed light on some challenges facing the Norwegian welfare state associated with accommodating for refugees with poor health. It might also provide knowledge to policy makers on local and national level when deciding on refugee and welfare services.

Many refugees with health problems end up as long-term social assistance recipients, and it seems that they get less usage of support through the National Insurance Scheme. This study investigates how the Norwegian universal welfare state accommodates for refugees when health problems hinder their participation in the introduction programme, and thus make them dependent on social welfare support. The study also examines the types of measures offered to refugees above 55 years old, who are excluded from the right to participate in the introduction programme. Finally the study investigates whether the increased share with refugee status versus humanitarian grounds has had any effect on the access to rights within the National Insurance Scheme.

The study is based on a literature review. In addition it is reviewing selected cases processed in the National Insurance Court, and looks into the factors affecting the decisions on health related benefits. Furthermore, it assesses the findings from these endeavours against the tenets of the Discrimination Act and discusses possible effects on marginalization and social citizenship for those affected.

The main observation is that case processing resources are wasted due to weaknesses in the case preparations. It also reveals examples of insufficient use of interpreters in the health services. These factors substantiates that social assistance will be the main source of income for long periods before the majority are recognized with rights within the frames of the National Insurance Scheme. The thesis concludes with four suggestions for policy and service improvements.

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Oslo 15. September 2013
Kristin Øren

Content

1. Introduction

In Norway, as well as the rest of Europe, the issue of labour market integration of refugees versus welfare dependency is an everlasting topic in both media, among scholars and the political debate (Brochman and Hagelund 2011; Hagelund and Kavli 2009; Brochman og Rogstad 1996; Wikan 1995). Critics argue that the number of refugees getting residence in Norway is far too high and that society is unable to integrate them into the mainstream society. A Norwegian Official Report argues that there are two conflicting answers on the results of integration efforts in Norway. Present knowledge and available statistics show that the results are not bad, while surveys in the population, media and public debate show a different picture; a large share of the population think that the integration does not go particularly well (NOU 2011:14, 21).

In a literature review on the debate on immigration and the welfare state among scholars in Norway, it was found that main attention is on activating 'passive' immigrants into the labour market. Successful language and work training are considered to be essential for both integration and sustaining the welfare system. The author found there is a need for further studies concerning those who are unable to work due to health problems or social concerns, and mentions persons with refugee background and traumatic experiences from war and persecution as a particular relevant group (Nilsen 2008).

The fact that the majority of refugees have relatively low level of qualifications, or qualifications unfit for the Norwegian labour market, have made this group more reliant on social assistance. To meet this challenge, and contribute to easier and speedier integration into Norwegian society and financial independency, in 2003, the authorities established a two-year introduction programme for adult immigrants below the age of 55. For those included in the target group, the Introduction Act has provided increased rights with regard to receive a tailored qualifying programme, and reports so far indicate that the transition to work is faster and higher than before the introduction programme, but the uncertainty about the long term effects of the scheme is big (NOU 2001:20, 30; Enes 2012).

According to reports from Statistics Norway, an average of ten per cent of the participants quit the programme due to health problems (Enes 2012, 4). The fate for those not included in the programme, or those who quit due to health problems, is a remaining question.

Since January 2010 we have witnessed an increase in the number of asylum applicants getting protection or asylum and less getting residency on humanitarian grounds. This is due to a change in the Immigration Act and Immigration Regulations. An important change is that all asylum applicants, whom have been entitled to protection, will be given refugee status. In 2001 only 2 per cent of the asylum applicants were granted protection and accordingly refugee status, in 2009 the number was 36 per cent and in 2010 it was 84 per cent (udi.no).

Immigrants getting residency based on a need for protection and subsequently refugee status, are treated more favourably than those getting residency based on humanitarian reasons when assessed for rights in the National Insurance Scheme (NIS). One should therefore expect an increase in the number of immigrants applying for and being granted subsistence benefits through the NIS.

The establishing of NAV reorganized the welfare services in a way so that decisions on pensions and some other benefits are now done in specialized units without direct contact with the clients. It could be questioned whether this has made it more difficult for certain groups of immigrants to voice their needs, or bring up the information needed, for NAV to process applications in a fair and professional manner.

1.1. Objectives and research questions

This thesis investigates how a universal welfare state like the Norwegian, is providing welfare services to refugees above the age of 55 and those who quit the introduction programme due to health problems, and how they are secured income to cover their subsistence.

This study reviews a selected number of published cases that were rejected from income support through the NIS, in order to collect information about the decisive factors that form the basis for their refusal. Furthermore, it assesses the validity of these decisive factors against the tenets of

the Discrimination Act and discusses possible consequences for marginalization and social exclusion for those affected.

This study attempts to answer the following research questions:

1. Which factors are applicable when refugees are considered not to fulfill the conditions for income support through the National Insurance Scheme?
2. How have recent changes in the Immigration Act affected refugees' access to subsistence allowances through the National Insurance Scheme?

1.2. Further structure of the thesis

Section 2 has some background for the study and information on refugees in Norway and the Norwegian welfare system. Section 3 presents theories used when discussing the findings and definitions of key concepts used in the paper. In section 4 it is a description of the research method and design used in order to answer the research questions as well as notes on certain challenges and limitations. Section 5 has a review of key policy papers and previous relevant research. Section 6 has three examples from the National Insurance Court, aiming to shed light on the arguments used when rejected applications for disability pension or work assessment allowance are reviewed and reversed. Section 7 has a discussion of the findings and relates to theory and previous research in an attempt to answer the research questions. Finally, section 8 concludes and provides suggestions to measures that could facilitate more equal services and better governance.

2. Background of the study

In order to put these questions into a broader context and enable the reader to follow the author's analysis and discussions in section 7, the following section will provide some information about refugees and related public services in the Norwegian welfare state.

2.1. Refugees in Norway

The number of refugees coming to Norway every year varies with governmental immigration policy and shifting global crises. In 2012, 6130 persons were granted residency after asking for protection, and in addition 1055 resettlement refugees were received (udi.no).

As of January 1st 2012, 163500 persons with refugee background made up 30 per cent of all immigrants in Norway or 3.3 per cent of the total population. The refugee population is relatively young, only 6,3 per cent belong to the age group 60 years and above, and 46 per cent have been residents in Norway for less than 10 years. Of the total refugee population, 63 per cent have Norwegian citizenship (ssb.no).

Resettlement refugees, also called quota refugees or UN refugees, are all granted refugee status. These are refugees who stay in another country where he or she cannot be granted permanent residence or be safe, and are therefore resettled in a third country. Norway is receiving approximately 1000 resettlement refugees annually. But the majority of persons with refugee background in Norway have not been granted refugee status, they have been given residency on humanitarian grounds. This gives the same right to stay and work in Norway, and the same right to attend introduction programme. But there are some differences when it comes to rights through the Norwegian State Education Loan Fund and the NIS. As mentioned in the introduction, there has been a recent change in this policy. Asylum seekers with 'positive answer' on their application are today mainly getting refugee status, and according to UDI's annual report 2012 this share is now 88 per cent.[1]

Family members, whom are reunified with a person granted protection or refugee status, can apply to get a Norwegian travel document and accordingly get a derived refugee status after arrival to Norway[2]. If those who arrive Norway with their homeland passport are not informed about this option, they might not consider this possibility. However, some might not be interested in having a Norwegian travel document, as it cannot be used for travels in their home country. Regarding access to services like the introduction programme, this issue is without relevance. But groups, who want to enter high school, or primary school if they are not eligible for high school,

[1] http://www.udi.no/arsrapport2012/Statistikk/Tabell-17-Vedtak-om-beskyttelse-asyl-2003-2012-/ (Last accessed 17. July 2013)
[2] http://www.udiregelverk.no/no/rettskilder/udi-rundskriv/rs-2010-072/ (Last accessed 17. July 2013)

will not get refugee scholarship through the Norwegian State Educational Loan Fund without refugee status[3]. And again, they will have less favourable rights though the NIS.

The refugees who were settled in the recession period at the end of the eighties and early nineties are the ones that have had the greatest difficulty in entering the labour market. Even three or four years after the settlement, less than 30 per cent were employed or self-employed. Refugees arriving later had however a more rapid transition into the labour market, and in 1999 a share of 46.9 per cent of male and 36.5 per cent of the female refugees were employed in the regular labour market (NOU 2001:20, 30).

2.2. Municipal refugee services

The refugee services are organized in various ways in different municipalities, mainly ranging from separate specialized units, part of adult education unit, or within the NAV (Norwegian Labour and Welfare Administration). In 2011 it was reported that 44 per cent of the municipalities have chosen to organize the refugee services or parts of it, as the introduction programme, inside the NAV office (NOU 2011:14, 225).

Newly arrived refugees are provided income to cover their subsistence mainly through means-tested social assistance. Some municipal councils have decided to pay a so-called 'waiting benefit' as an alternative in the period from settlement to the start of the introduction programme. The introduction programme should be offered to the target group within three months.

2.3. Introduction programme

The introduction programme was established in September 2003 as an arrangement that the municipalities could decide themselves whether they would offer to the target group, but since 1. September 2004 they have been required by the state to do so. The target group is immigrants who have been granted residence permit in Norway due to the need of protection or on humanitarian grounds, and their families. In addition, participation is limited to the age group between 18-55. The target group has both the right and a duty to complete such programme if they are in need of basic qualifications to enter the labour market. The programme involves

[3] http://www.lanekassen.no/Hovedmeny/Stipend-og-lan/vg/Flyktningstipend/ (Last accessed 29. July 2012)

tuition in Norwegian language and social studies and activities preparing for regular education or attachment to the labour market (imdi.no). Ninety per cent of the participants attended Norwegian language course during 2011 and thirty four per cent participated in a language practice, spending parts of the week in a workplace to get hands-on language practice (ssb.no).

The programme can and shall be individually tailored. This should ease participation for persons with poor health or huge caregiving responsibilities. As example could be mentioned the possibility to include treatment, therapy and other activities aiming to improve the health situation, as well as parental meetings in schools and kindergartens. In spite of this, a limited number of refugees are viewed as not being capable of participating in such a programme due to poor health, and in addition to this, a substantial number of refugees are having unpaid leave from the programme due to health and social problems. According to reports from Statistics Norway, an average of ten per cent of the participants quit the programme due to health problems. During such leave, the majority end up on means-tested social assistance to cover their basic subsistence needs while undertaking medical treatment or counselling (Enes 2012, 4).

The refugees above the age of 55 do neither have the right nor an obligation to participate in the introduction programme, but according to chapter 2 in the Introduction Act the municipality is free to offer the programme to other immigrants than those defined as having right and obligation. Refugees above the age of 55 are mentioned as a possible group alongside with refugees settled in the municipality without special agreement between the municipality and the state. According to information from Statistics Norway, one can see that 1 per cent of those participating in the introduction programme in 2012, were above 55 years old, but there are reasons to believe that most of them started before the age of 55 and thus were in the target group. It is not known how big share this constitutes from this age group. The majority in this age group will be offered Norwegian language tuition and "retired" on means-tested social assistance until the age of 67 when they can apply for old age pension or supplementary benefit through the NIS.

The introduction programme has rules largely corresponding to those in the regular labour market, but the only option is full time participation. In case of sickness it is possible to deliver a self-certificate of absence for maximum three days four times a year, or a doctors certificate for

longer periods. A participant can be granted leave for one year in case of sickness supported by a doctor's certificate [4]. Participation in such programme gives the right to receive a taxable introduction benefit equivalent to twice National insurance basic amount (G)[5], which by May 2013 is 170490 Norwegian kroner. The idea behind this payment is to create an alternative to social assistance allowance. However, this amount is not sufficient to cover housing and subsistence for bigger families and people living in urban areas with high rents. If they do not get part time jobs beside the introduction programme, they will still depend on supplementary social assistance allowance. A report from Statistics Norway shows that from the 4500 persons that received introduction benefit the whole year of 2011, nearly 800 or 18 per cent received social assistance allowance in addition for at least six months. This share is increasing compared to previous years.

2.4. The New Norwegian Labour and Welfare Service (NAV)

Before 2006 the welfare services in Norway were divided in three separate administrative bodies; municipal social services, national labour services and national insurance scheme services. Recently the three systems were merged in NAV. A coherent labour and welfare administration was said to be decisive in order to get more people included in the labour market and reduce the number on welfare benefits. This new administration should be comprehensive and simplify and customize the services to users' needs (St.prp. nr 46, 5).

2.5. Norway's benefit system

The benefit system of Norway constitutes two types of provisions, a national compulsory social insurance and pension scheme introduced in 1967, and social assistance that is part of the municipal social services.

Means-tested social assistance allowance is the society's financial safety net and should ensure that everyone has enough to cover the basic subsistence. This assistance is meant to be temporary and should contribute to the recipient becoming financially independent. It is regulated in the 'Act on social services in the Labour and Welfare Administration' (lovdata.no). In order to receive financial assistance, all other options for support must have been considered, such as

[4] http://www.imdi.no/Documents/Retningslinjer/Regler_for_fravaer_engelsk.pdf (accessed 29. July 2012)
[5] The Government does regulation of the G annually.

through work or the NIS, use of savings or reduction of expenses. The amount of financial assistance received, is evaluated individually and according to the needs, but usually within the frames of the national guidelines (nav.no).

NIS is, among other things, supposed to ensure sufficient income subsistence for people whose earning ability is temporary or permanently impaired. As a general rule you are member of the NIS if you are residing in Norway. §2-16 in the National Insurance Act (lovdata.no) is detailing the rights for different benefits and pensions for asylum applicants, and those whom are granted residency on humanitarian grounds. It emphasizes that the membership period should be counted from the day the membership as asylum seeker started, and not from the day residency in Norway was approved, when considering applications for benefits to disabled, single parents, surviving spouse and children, and retirement pension.

With regard to the topic for this thesis, the most relevant chapters are § 11 on work assessment allowance, which also covers asylum applicants and § 12 on disability pension. In order to receive a full basic pension, it requires 40 years of membership in the NIS; 10 years of membership until the age of 67 will give 10/40 of a full basic pension and will for most persons not be sufficient to cover their subsistence. This has less consequences for those granted protection or asylum, as they will be covered by the more favourable regulations regarding refugees. For refugees previous membership is not required, and they can be considered for work assessment allowance or disability pension from the date of being granted refugee status if other requirements are met.

Regarding work assessment allowance[6] (chapter 11 in the National Insurance Act), it is a requirement that the ability to work has been impaired by at least fifty per cent due to an illness or injury. The central question is not how much the overall health has been weakened, but to which extent the ability to participate in income-generating work has been affected.

There are two alternative membership conditions for work assessment allowance. First; the person must have been a member of the NIS for at least three years immediately before he or she put forward demands for work assessment allowance. Second; the person must have been a

[6] Before 1. March 2010: vocational rehabilitation benefit, rehabilitation benefit and temporary disability benefit

member of the NIS for at least one year immediately before he or she put forward demands for work assessment allowance, and in that year he or she must have been employable. It is then no condition that the person has actually been at work during this period; it is sufficient that the person has been physically and mentally able to perform regular paid work. Exemptions may be made in case of work related injuries.

Requirements for disability pension are as follows; the wage earning capacity must be impaired by at least 50 per cent due to a permanent illness or injury. It is also a requirement that the illness or injury is the main reason for the impaired wage earning capacity. In addition the person must have undergone appropriate medical treatment as well as individualized and appropriate employment schemes to possibly improve the wage earning capacity. If it is obvious that the wage earning capacity cannot be improved, the last requirement is omitted.

A person with residency on humanitarian grounds and who gets his wage earning capacity reduced with at least 50 per cent before three years of membership in the NIS, will never have the right for a disability pension in Norway unless the case is occupational injury.

The NIS is also ensuring income in old age, and if there are no accumulated pension rights one can start drawing a retirement pension the month after turning 67. As a main rule you must have been member of the NIS for at least three years prior to applying for a pension, but exemptions are made for persons with refugee status.

Supplemental benefit[7] was introduced in 2006 to guarantee a minimum income for persons above 67 years of age and who have lived in Norway too short time to get a full basic retirement pension. Before 2006 this group had to rely on social assistance allowance as their main source of income.

[7] http://www.nav.no/Pensjon/Supplerende+stønad (Last accessed 29. July 2012)

3. Theory and key concepts

This section will provide a theoretical framework for the following literature review and analysis. Various concepts are used, and they are interlinked. Accordingly the key concepts should be given their operational definitions and understanding in the context of this thesis.

3.1. Theory on social exclusion and marginalization

Social inclusion is supposed to strengthen the bond between the citizens of the state, while social exclusion makes the opposite. Social exclusion characterizes the processes that keep certain people out of mainstream society and could be seen as a substitute for, or complementary to poverty. While poverty is understood as a condition, social exclusion is understood as a process. Poverty refers to a vertical social stratification where poor are at the bottom, while social exclusion refers more to horizontal stratification which means that the socially excluded are the outsiders and the mainstream are the insiders. The critical variable when it comes to poverty is resources, while the critical variable for social exclusion is discrimination. In terms of citizenship, socially excluded are either not granted social rights or are not able to exercise such rights (Fitzpatrick et al 2006, 1250-52).

Sen (2000) places social exclusion in the general perspective of capability failure. He also refers to Adam Smith, who already in 1776 talked about ”the ability to appear in public without shame” or to have the capacity to live a minimum decent life. Sen further claims that there are many reasons to value not being excluded from social relations, and to keep dignity will ease the participation in the community life.

Within the public sphere, it can also be identified processes of marginalization, and the traditional view of the welfare state as an institution of integration should be modified. (Fitzpatrick et al 2006, 1254). Fitzpatrick quotes Jordan (1996, 68) saying, ”the ’Americanization’ of European welfare states consists mainly of a division into two clubs, a social-insurance club for those in secured and adequately paid employment, and a social assistance club for the rest”.

Marginalization could be viewed as a more intermediate position between exclusion and integration and is a more dynamic concept. Galaasen (2011, 24) refers to Knut Halvorsen when defining marginalization as a ”condition of incomplete social integration, and it can be more or

less advanced on various areas of society" and is thus a multidimensional phenomenon. Weak or no attachment to the labour market, lack of Norwegian language skills and general understanding of the cultural and social setting are all factors increasing the tendency of becoming marginalized.

3.2. Theory on social citizenship

The interest in theories on citizenship has been sparked by increased globalization and migration. Kymlicka and Norman (1994) argued twenty years ago that the health and stability of a modern democracy depends on more than its 'basic structure', but also on the qualities and attitudes of its citizens. This should give increased demands for a theory on citizenship that focuses on the identity and conduct of individual citizens, including their responsibilities, loyalties and roles. Fitzpatrick et al (2006, 158) defines citizenship as membership in a national political community, and citizenship rights are expressed in national laws. Only human rights are above this national context and give an international and moral framework to politics.

But citizenship is also including the feeling of belonging to a community and generates a link between the individual and the particular community as explained by T H Marshall in his frequently cited essay "Citizenship and the Social Class" from 1949. According to Marshall, citizenship is a status granted to all the members of a community. It is a complex and multidimensional phenomenon. He analysed the development of citizenship as a development of civil, then political, and then social rights, broadly assigned to the eighteenth, nineteenth and twentieth centuries respectively (Fitzpatrick et al 2006, 156). According to Marshall, the social dimension of citizenship can be understood as a minimum level of equality for all the individuals within the society, which can be achieved through the usage of public policies. Social element comprises of rights to economic welfare and security, rights to share to the full in the social heritage and to live a civilized life according to the standards prevailing in the society (Dwyer 2004, 40). If any of these rights are withheld or violated, people will be marginalized and unable to participate.

Marshall's conception of citizenship-as-rights is referred to as 'passive' or 'private' citizenship, as its emphasis on passive entitlements and the absence of any obligation will create a dependency culture (Kymlicka and Norman 1994). Furthermore it is referred to the New Right's model of citizenship that emphasizes on fulfilling certain obligations as a precondition to be

accepted as a full member of society, as this is supposed to encourage people to become self-reliant and less dependent on social transfers. However, the claim that the availability of a generous welfare state is resulting in the rise of an unemployed welfare underclass is said to ignore the global economic restructuring. To prove the opposite, and support the idea of an extensive welfare state, the example of the Scandinavian welfare states, with their low unemployment rates, are used. Kymlicka and Norman refers to both Fierlbeck, and Hoover and Plant, when saying that cutting welfare benefits has not got the disadvantaged back on their feet, it has only expanded the underclass, making the working poor and the unemployed unable to participate in the new economy of the New Right.

For the purpose of this thesis, Marshall's concept of citizenship as a feeling of belonging to a community and linking between the individual and the particular community, will be used when discussing the findings in section 7.

3.3. Welfare state

The concept of welfare is defined as "the state or condition of being well, good fortune, happiness or well-being, thriving or successful progress in life, prosperity" in the Oxford English Dictionary. These are contestable concepts depending on context. Fitzpatrick et al (2006, 1514) refers to Maslow pyramid of physiological needs, security needs, need for love, need for respect and esteem and need for self-fulfilment. The core elements might be divided in two groups; socio-economic and personal, legal and political. The socio-economic needs refer to command over relatively sufficient amount of resources and access to non-stigmatizing services, while the second group concerns individual freedom and legal rights, including the right to not be discriminated against on grounds of class, race, gender, sexuality, age and the right to equal opportunities guarantied by law (Fitzpatrick et al (2006, 1514).

In all societies the family and individuals have vital welfare responsibilities. The same applies to the voluntary sector and religious groupings. The market system is also a dynamic source of welfare, and offers choice and an alternative to state provided services for those willing and able to pay. In the twentieth century the state has become a major welfare provider in most societies. Esping-Andersen (1990) describes in his *Three Worlds of Welfare Capitalism,* three types of welfare regimes corresponding to the main politico-ideological strands of our time; social

democracy, liberalism and corporatism or conservatism. Depending on welfare regime typology, the response from family, market and state will differ, but there will be elements from all, to a greater or lesser extent, in most states.

The urbanization and industrialization have however led to a weakening of traditional bonds like family and neighbours, and today's Norway is characterized as a social democratic type of welfare regime where the state has taken a strong stance towards equal opportunities and redistribution of wealth. This is viewed as being in the interest of the whole society, not only the disadvantaged, but even more privileged groups are sharing the interest of reallocating risks (Fitzpatrick et al 2006, 1545). The financing of the Norwegian welfare state has mainly followed a non-contributory path, paid for through tax revenues. This has made it possible to incorporate recipients outside the labour force, regardless of their ability to contribute towards the cost of the programmes (Lødemel 1997, 260).

3.4. Social policy

In this study the term 'social policy' refers to policies used by the government for welfare and social protection. The word 'policy' refers to the principles that govern actions directed towards given ends (Titmuss 1974, 139[8]). Titmuss said that whatever definition we end up with, it will heavily involve moral and political values. The concept involves both the measures and the end results, and implies changing systems and behaviour; it is both action- and problem-oriented. But the concept of policy is only meaningful if there is a belief that we can affect change in some form or another. The collective 'we' is then referring to the action of government in expressing the 'general will' of the people, but this 'general will' is of course subject of debate.

3.5. Welfare dependency

In social policy, dependency usually refers to a situation where individuals rely on welfare benefits or to a social reliance on welfare agencies (Fitzpatrick 2006, 287). The stigma of relying on welfare benefits differs somehow between the various welfare regime typologies, but also in a social democratic welfare state there is a notion of the deserving and non-deserving recipient. Recipients of work related benefits, such as retirement pension, are not perceived as dependent,

[8] http://rszarf.ips.uw.edu.pl/welfare-state/titmuss.pdf (Last accessed 30. July. 2012).

having earned their rights to benefits through their participation in the labour market. Recipients of means-tested social assistance are more likely to be perceived as receiving something for nothing and are viewed as a burden on the society (Fitzpatrick et al 2006, 288).

3.6. Stigma

Fitzpatrick et al (2006,1361) describe stigma as a socially constructed, negatively valued differentness. The differentness can be physical, but also connected to social status differences as being long-term recipient of social assistance allowances, or belonging to a particular group as being immigrant, refugee or other characteristics regarded as inferior by dominant groups. Stigmas depend on socialized values and preferences and are often unstated norms.

Being dependent on means-tested social assistance allowances for longer periods is burdening, the recipients need to document their needs and reveal their privacy. This contrasts social insurance programmes, as those are based on previous contributions and seen as 'entitled rights' and consequently not stigmatizing (Fitzpatrick et al 2006, 1363; Lødemel 1997, 269).

If this stigma legitimizes less access to opportunities that allow an individual or a group to develop their potential, or causes restrictions in physical or social mobility, it can be labelled as discrimination (Fitzpatrick et al 2006, 1362). From a social policy perspective it can be useful to analyse institutional discrimination of particular social groups, in this case refugees.

3.7. Discrimination

In this study I use the definition on discrimination as it appears in the Norwegian legislation's 'Act on Prohibition against Discrimination'. It differs between direct and indirect discrimination Direct discrimination means that the purpose or effect of an act or omission is such that a person of certain ethnicity, national origin, descent, skin colour, language, religion or belief, or are treated less favourably than others in a corresponding situation. When any apparently neutral provision, practice, act or omission puts a person, as mentioned above, at a particular disadvantage compared with other persons, it is defined as indirect discrimination. Differential treatment that is necessary in order to achieve a legitimate aim, and which does not involve a disproportionate intervention in relation to the person or persons so treated is not regarded as discrimination pursuant to the present Act (lovdata.no).

4. Research methods and design.

Qualitative methods are used in order to answer the research questions in this study. Qualitative methods are based on theories on human experiences or phenomenology and human interpretation or hermeneutics and are, as such, contrasting the natural sciences. Qualitative methods are more about words than numbers and are used when you want to get particular insight into a given condition or situation. Information synthesized from selected literature or case studies might neither be accurate, correct nor even representative as the researcher might be drawn towards the odd or unusual. But qualitative methods are useful when determining the meaning people give to their lives and actions (Chambliss and Schutt 2010, 244-245).

The data are drawn from published cases in the National Insurance Court. I decided to search for cases in the period from 2011 and used following search words: *arbeidsavklaringspenger + flyktning* and *uførepensjon + flyktning.* The first search made 10 hits, the second 30 hits. When reading through the summaries, I searched to find cases with repealed decisions in order to get the argumentation from both parties.

Together with the selected literature this is used to draw more general conclusions and can thus be described as inductive research (Chambliss and Schutt 2010, 28-29). The analyses, and the very point of departure of the present study, are also informed by my own experiences, working since 1998 in the municipal refugee services and in a local NAV office. However, all inferences are based on the forms of data and literature mentioned in this section.

This study has an exploratory research design. Exploratory research tries to find out how people manage in the setting under question, what meaning the circumstances gives to their actions and what issues concern them (Chambliss and Schutt 2010, 10). By examining relevant documents and outcome of practices, I will attempt to answer the research questions, but without explaining the causations.

This study is based on document analysis and literature review. Search and review of literature is a critical evaluation, analyses and synthesis of existing knowledge, according to Hart (2008, 153). This is due to the need for evaluation and extraction of different kinds of information from

the readings, as well as being able to show the relationship that exists between different studies and how these relate to own research (Hart 2008, 153).

I started the search for relevant documents on welfare policies and immigration and integration (parliamentary reports/white papers, propositions and official Norwegian reports), by accessing homepages for related governmental bodies in Norway responsible for the policy implementation in their field. I have also searched on homepages for various Norwegian research institutes that are publishing reports on the immigrant population and social welfare. Through these pages I came across other references that became relevant for this study. In search for articles, Google Scholar and BIBSYS have been used. The following key words were used in English: *refugees and welfare state, refugees and welfare dependency, social exclusion, marginalization, immigration and welfare state, Norway and Scandinavia* were used in different combinations. In order to access books and articles published in Norwegian language, the following search words were used: *flyktninger og velferdsstaten, innvandring og velferdsstaten, konsekvenser, utfordringer, sosialhjelp, trygdeytelser, marginalisering, sosial inkludering +ekskludering.*

The analyses, and the very point of departure of the present study, are informed by my own experiences from more than 15 years as a nurse and social worker in refugee services, both within and outside the local NAV office. My experience can of course not be used as evidence, or in any way claim to be representative or typical for its kind, but it can give a glimpse behind the scene as suggested by Gidley (2004, 252).

To do research in your own working environment can be challenging. It is a risk of being selective in a way that supports your previous knowledge and understanding, or neglect what is different from own experience. Interpretation of findings will most likely be based on own perspectives, but having the insider knowledge can also increase the possibility of detecting the relevant information needed to collect knowledge, which again could improve the services. Being an insider can provide a particular good basis for understanding the topics of study (Thagaard 2003, 181).

Myself being part of the system that is targeted in this study, and at the same time having the intention to improve the services provided, could justify to label this study as action research. Action research is a method intended to develop critical knowledge, and at its best, provide

people with a better understanding of their own situation. As such, it is a political action or action policy and is not neutral. The analysis of findings must be followed by action in order to change or improve possible unfavourable conditions. (Dalland 2003, 57-58). Action research can also diminish the distance between science and practical work, which is a matter of concern.

5. Review of key policy papers and relevant research

5.1. The UN refugee Convention and refugee protection in a global perspective

The 1951 UN Refugee Convention and its 1967 Protocol are cornerstones of the international refugee protection system. The Convention is created as a human right instrument to protect refugees from persecution and their refoulment and guarantee their wider rights. By 2011, a total of 148 countries had ratified the 1951 Convention and/or its 1967 Protocol, but more than 40 per cent of refugees under UNHCR's mandate were hosted by states that had not ratified these human rights instruments. Norway ratified the UN 1951 Convention in 1952, but can even so choose weather to follow its recommendations or not.

Chapter 4 in the 1951 Convention is stating that the contracting states should treat refugees whom are lawfully staying in their territory as favourable as possible, and under no circumstances less favourably than the nationals, when it comes to rationing, housing, public education, public relief, labour legislation and social security. Both signatory and non-signatory states offer very different types of protection to refugees, some states offer full entitlements and enjoyment of social and economical rights while others maintain legal reservations to key entitlement foreseen in this Convention and Protocol.

Forced migration needs to be viewed and addressed in different ways from regular migration. This applies on the global scene as well as in the Norwegian context. UNHCR (United Nation High Commissioner for Refugees) has for more than sixty years been responsible for ensuring international protection for refugees in cooperation with states. The number of refugees of concern for UNHCR was 10.4 millions at the beginning of 2012. Most people flee conflict situations in countries such as Afghanistan, Eritrea, Iraq and Somalia, and nearby countries are confronted with the largest influx of displaced people (UNHCR 2012)

5.2. Norway's policy of inclusion of the immigrant population

"Norway intends to be the most inclusive society in the world". The Minister of Labour and Social Inclusion, Bjarne Håkon Hansen, wrote this statement in the preface of the 'Action plan for integration and social inclusion of the immigrant population' that was published in 2006. Furthermore we should strive to achieve equal opportunities and work for a tolerant and diverse society.

This action plan came as a tool to fight social exclusion and help to monitor the success, or lack of success, of the inclusion efforts done. Even if the majority of immigrants participate in society on equal basis with others, it was recognition of the fact that in general the immigrant populations have poorer living conditions than the average population. Unemployment among immigrants is more than three times higher than for the general population, and particularly non-western immigrants are over-represented in households with persistently low incomes. This creates difficult living conditions and affects whole families. Children of the less advantaged immigrants as a group have lower performance in primary school than other children, which has major consequences for their further education and opportunities in life. (Royal Norwegian Ministry of Labour and Social Inclusion 2006)

The White paper *En helhetlig integreringspolitikk – Mangfold og fellesskap* (A comprehensive integration policy – Diversity and coexistence) from 2012 is the most recent policy paper on integration. It is emphasizing that Norway will not develop into a society where people with immigrant background have poorer living conditions and participate less in society than the rest of the population and it says that labour participation is the key to participation and economic independence. Human rights and democratic principles constitute the basis of the Norwegian law and the Norwegian welfare model should continue to be based on solidarity with those who are more disadvantaged. In order to keep the welfare model, public welfare programmes must constantly evolve in line with population changes. Society must take into account the diversity of the population and the authorities must ensure that everyone has equal public services. Public services and social institutions must in many cases be organized in new ways. Everyone should be given the chance to participate in employment, democracy and civil society, regardless of gender or background (Meld. St.6 (2012-2013), 7-8).

5.3. Refugees' participation in local and national welfare system.

There are several reports describing that immigrants are more dependent on social assistance and that refugees in particular are in this situation (Ekhaugen 2005, Hirsch 2010, Løwe 2011). In 2008 the share of recipients of social assistance among refugees was 26 per cent compared to 8 per cent among the total immigrant population and 3 per cent among the whole population. However, this is a decline from 1999-2002 and 2005 when the share was respectively 40 per cent and 36 per cent (Hirsch 2010). This can mainly be explained by the fact that since September 2004 the majority of refugees in the age group between 18-55 were participating in the introduction programme and received introduction benefit. The results should neither be interpreted as evidence that refugees are more "inclined" to seek social assistance than others. Social assistance has for a long time been the alternative for refugees as well as other immigrants on the margins of the labour market, and who are not eligible for benefits through the NIS.

Statistics Norway has annually been publishing a monitor for the introduction scheme, 'Monitor for introduksjonsordningen', covering the period from 2005. The aim of the monitor is to follow cohorts of people who finish the programme over a longer period and to measure the development in the years ahead. It has main emphasis on participation in the labour market, but also reports on social welfare usage. It shows that one year after completing or interrupting the introduction programme, a share of 1-3 per cent receive health related benefits through the NIS, while 8-10 per cent are on means-tested social assistance allowances. The high share of no registration might consist of participant who went back to the introduction programme after a period of sick leave or parental leave. The majority in this group are women.

Table 1: People ending the introduction programme in 2005-2010. Status in November the following year, number and per cent.

	2005-cohort Status Nov 2006	2006-cohort Status Nov 2007	2007-cohort Status Nov 2008	2008-cohort Status Nov 2009	2009-cohort Status Nov 2010	2010-cohort Status Nov 2011
Number	2 261	3 131	2 833	2 607	2 678	3 370
Total	100	100	100	100	100	100
Employed/education	58	66	63	57	55	54
Registered unemployed/on labour market programmes	13	10	13	16	13	13
Other or no registration	29	24	24	27	32	33
Of whom:						
Disability/rehabilitation/ work assessment allowance	**1**	**1**	**0**	**:**	**3**	**2**
Only social assistance allowance	**8**	**6**	**6**	**6**	**10**	**9**
No registration	20	17	18	21	19	22

Source: Statistics Norway

Table 2: People ending the introduction programme in 2005-2010. Status in November 2011, per cent.

	2005-cohort Status Nov 2011	2006-cohort Status Nov 2011	2007-cohort Status Nov 2011	2008-cohort Status Nov 2011	2009-cohort Status Nov 2011	2010-cohort Status Nov 2011
Total	100	100	100	100	100	100
Employed/education	57	60	59	60	58	54
Registered unemployed/on labour market programmes	11	11	11	11	11	13
Other or no registration	33	29	30	30	31	33
Of whom:						
Disability/rehabilitation/ work assessment allowance	**8**	**6**	**6**	**4**	**3**	**2**
Only social assistance allowance	**6**	**6**	**6**	**7**	**9**	**9**
No registration	18	17	18	18	20	22

Source: Statistics Norway

Table 2 shows the situation for all cohorts by November 2011. The numbers show that the share on social assistance allowances is more or less the same, while the percentage on health related benefits through the NIS has increased to 6-8 for the oldest cohorts and 3-4 for the 2008-2009

cohort. It is still a relatively high share without any registration, approximately 19 per cent. The oldest cohorts are not likely to have participants back in the introduction meme. These might be dependent of a spouse with income from employment. But they might as well be dependent of a spouse on social assistance allowances as this usually is registered on one family member.

Both Ekhagen (2005) and Løwe (2011) point out that refugees have less utilization of disability pension and work assessment allowance (previously medical or vocational rehabilitation), both as newcomers and after several years. This is in contrast to what could be expected. Many studies show that war-wounded refugees have high prevalence of psychiatric symptoms; a Swedish study shows that 50 per cent of the participants were diagnosed with PTSD. Many suffered from poor physical health as well, and 73 per cent were reporting chronic pain and were extensive users of medical care (Hermansson et al 2002). Reference is made to a similar study in Norway (Lavik et al 1996).

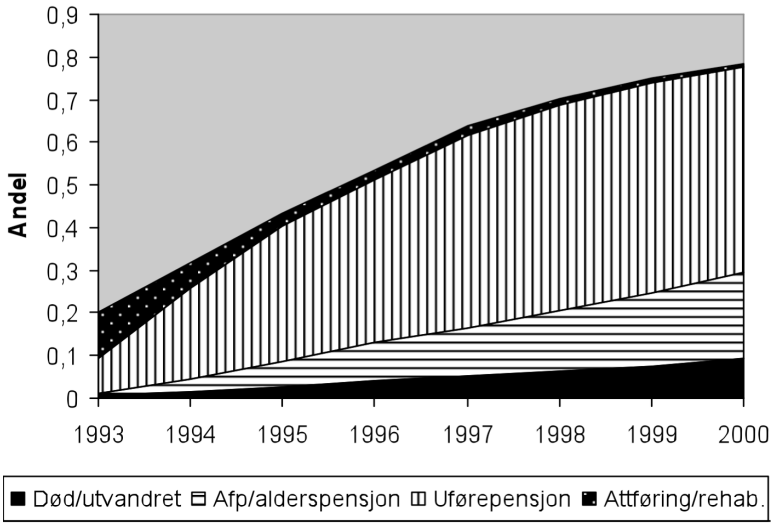
5.4. Social inequality in sickness

In a Norwegian report on functional capacity among long-term recipients of social assistance it was found that this group differs from the general population in many areas. The proportion of young people was higher, lower level of education and many living in single households. The connection to the labour market was relatively weak and many had major physical health problems. But the proportion with mental health problems was particularly striking compared to what is found among the working population and disability pensioners (van der Wel 2005, 107).

Galaasen et al. (2009) made a survey on those who were rejected disability pension in 1993 and followed them to see how their life situation evolved in a 6- 7-year follow-up. They found that women were more often rejected than men, and those with least income and non-western backgrounds more often rejected than those with higher income and no immigrant background. The rejection rate was about the same at all educational levels. In most cases it was just a delay in the transition to permanent pension benefits, see figure 5.1. Only a limited number went back to normal work, and their income was very low. It is then reasonable to assume that many of those were either supported by family or on social assistance allowance. Galaasen and his colleagues suggested further investigation on the potential socio-economic gain of this postponement when

also considered increased processing effort for NAV and costs of treatment and rehabilitation.

Figure 1: Social insurance status until 2000 for those who were rejected in 1993; dead / emigrated per year, cumulative transition to early retirement / pension, cumulative transition to disability and new annual cases of medical or vocational rehabilitation. N = 3327.



Source: Galaasen et al (2009)

Galaasen (2011) has been investigating if non-western immigrants are more inclined to apply for disability pension than the general population and if such background has any importance for the outcome of the application. The period covered is from 1998-2004. He found that non-western immigrants in Norway had a significant higher propensity to apply for disability pension compared with the general population, despite the fact that immigrants are a younger population. Furthermore, he found that non-western immigrants also have more than three times higher chance of being refused. Weak attachment to the labour market, low education and poor financial situation are all factors that increases the propensity to apply for disability pension. Factors that increased propensity of refusal would be young age, living in Oslo and surrounding area, prior marginalization in the labour market, short time of residency in Norway and old age at arrival in Norway. Although this study does not have any health data, and this makes it difficult to draw clear conclusions, he suggests that there might be other explanations than just health problems causing these results. Some applications among immigrants may primarily be economically motivated as immigrants are overrepresented among social clients, and it is also reasonable to believe that some of these applications have their justification in the labour market situation, and thus ends in rejection.

Galaasen (2011, 25) is using the term 'applicant competency' and suggest that lack of applicant competency affects the outcome of an application for disability pension negatively. Minimal cultural and social understanding, not knowing the rules and regulations, and communication problems, are all obstacles when non-western immigrants are trying to realize their rights in a complicated welfare bureaucracy (Galaasen 2011, 25).

They might also face difficulties when meeting the medical and health care system, often expressing themselves in a way that will not be understood by the doctor. Even a professional interpreter cannot change that, but in too many consultations there is no professional interpreter present. A recent report shows that 88 per cent of interpreters used in Oslo hospitals are without formal qualifications (Linnestad and Buzungu, 2012). Unfortunately, many health professionals have the perception that it is "the patient who needs an interpreter," but without a common language for communication, the health care professional will not be able to gather and convey information (Linnestad and Buzunga, 2012). It takes time to learn how to be a patient in Norway; without understanding the codes, and no common language of communication, it is likely that the outcome of any health assessment will be of less quality than required for an application for disability pension.

6. Examples from the National Insurance Court

The National Insurance Court should promote rule of law on the social security area by ensuring a competent and independent review of decisions in this field. Although this court do not have command authority on NAV, their rulings are important when it comes to understand how laws and regulations should be interpreted, and rulings from this court are generally viewed as a source of law in the field of social insurance justice. The court publishes summaries of rulings that are considered of principal importance and thus contributes to increased competence in the case processing (www.trygderetten.no).

In order to find which factors are applicable when refugees are considered not to fulfill the conditions for income support through the National Insurance Scheme, the following three selected cases from the National Insurance Court can be used as examples.

First example is a resettlement refugee who came to Norway in 2008, 54 years old (appeal no 11/01664). At arrival he was already diagnosed with arteriosclerosis in one leg, diabetes 2 with ophthalmic complications, hypertension and pain in one leg from a fracture caused by a car accident in 2003. He had surgery in his leg in 2009 in order to improve the circulation, but a doctors' report from 23.06.10 indicates that his patient did not feel any improvement, and now the main problem is pain in his thigh and pelvis. This might also be due to arthrosis in the hip and he has been referred to an orthopaedic specialist for evaluation. He has anxiety and depression and possibly PTSD resulting from torture and abuse.

He has taken part in the introduction programme for one year and a half, but had lots of absences even though the programme can be flexible and allows to include measures aiming to improve the health situation. As mentioned, the introduction programme does not allow part time participation and it should include labour market measures. His contact person in the programme has obviously concluded that he was unable to participate in labour market activities, and based on that asked to get a doctor's certificate. However, the doctor refused to issue such a certificate because in his opinion one should avoid to remove all economic incentives to attend language tuition. In other words, the justification for not issuing a doctor's certificate was not based on medical considerations, but mainly on the doctor's assumption that his patient would then not make efforts to learn Norwegian language without economic incentives.

The appeal body in NAV concludes that he has not completed the medical investigations and treatment aiming to improve his health. He is still waiting to be assessed for surgery in his hip and has been referred to physiotherapy. He is also hoping to get some activities through the public health nurse in the refugee services in order to alleviate his anxiety and depression. Since he still is under treatment, NAV says it is not substantiated that he has permanently lost at least 50 per cent of his wage earning capacity. Due to this conclusion, the appeal body did not find any reason to consider weather other conditions are met and it is neither possible to consider if he should apply for work assessment allowance. Based on this, the appeal body upholds the refusal.

The National Insurance Court disagrees with the appeal body in NAV and says that it is obvious that he needs further medical follow up for his different health problems. Their assessment is that such follow up is important to prevent further deterioration or complications, but will less likely

improve his wage earning capacity. The court says that even if he is under treatment it is not substantiated that this will improve his wage earning capacity, and then the requirement about appropriate treatment, as stated in National Insurance Act § 12-5, must be regarded as fulfilled. However, the court states that it is not inappropriate to undergo vocational rehabilitation even though the person will have certain limitations regarding mobility and will need mental health support. In addition it must be assessed if the persons medical conditions have resulted in a permanent disability to such degree that this constitutes the main reason to his reduced wage earning capacity, ref. National Insurance Act § 12-6. This will give a basis for considering whether the person fulfills the requirement of reduced wage earning capacity as described in the National Insurance Act § 12-7. The appeal has subsequently reversed the previous decision and the case is returned for new evaluation and decision in NAV.

According to regulations in the Introduction Act[9] a participant is entitled to apply for leave of absence without introduction benefit for a period of up to one year in case of prolonged illness. If he does not have rights to health related benefits in the NIS, he would probably be given means-tested social assistance to cover his subsistence during that period. But if the doctor is not supporting such absence with necessary documentation, it will be difficult or impossible to start an application process for benefits through NIS, and he risks to become a long-term recipient of means-tested social assistance.

Illegal absence without a doctor's certificate will give deduction in the introduction benefit and it will usually not be compensated with social assistance allowance due to its subsidiary nature[10]. If this actual person loses the introduction benefit, he has probably no choice but applying for social assistance. It is then up to the local NAV office to decide if this can be granted. If he had supporting documentation from his doctor, it would be possible to start the process of applying for work assessment allowance and he could have a combination of language tuition and medical follow up in his activity plan.

The second example is a man with refugee status in Norway since 1979 (appeal no. 11/00147). Today he is 64 years old. At the age of 60 he applied for disability pension. The application was turned down and the appeal body in NAV upheld this decision. The appeal was then forwarded to

[9] http://www.lovdata.no/for/sf/bl/tl-20030718-0973-002.html#2-5 (Last accessed 05.September 2013)
[10] See § 18, http://www.lovdata.no/all/hl-20091218-131.html (Last accessed 5. September 2013)

the National Insurance Court.

This person has been working as a welder in a vocational rehabilitation centre from 1984-2008. Since 2006 he has been on sick leave and he received sickness benefit for one year, then rehabilitation benefit and vocational rehabilitation benefit. In 2007 he had surgical treatment for bilateral carpal tunnel syndrome. This disease had developed over years, and led to reduced strength in both wrists. In addition he had pain after a sequel in one elbow and chronic obstructive pulmonary disease. A specialist in neurology writes in a report that ” in ’principle’ he is treated for the entrapment in his wrists, but he has rest symptoms as reduced strength. Main problem now is pain in left shoulder, partly in the neck, and headache. But he is mainly characterized by longstanding heavy physical work with strain related ailments in both arms”. Further on he states that the treatment is completed even if the ailments are considered to be permanent, and that there could be some rest capacity for types of work without physical strain. The specialist does not see any reason for vocational rehabilitation. He also writes that he cannot state for sure there are no other reasons than purely medical affecting his work capacity, but this part of the evaluation is difficult due to language barrier. The primary doctor writes however that if it is a request to have undergone vocational rehabilitation before assessing disability pension, such rehabilitation should be done with minimum strain on his hands and reduced working hours. It is imperative that he is not put in a situation that will aggravate his condition. A senior orthopaedic specialist concludes that since the degenerative changes in his arms have developed over time, there is no gain in surgical treatment. After two years on sick leave, and no improvement, it is not likely that he will ever get back to work.

During the last period of vocational rehabilitation in 2008, he was attending labour market measures in a sheltered work centre for a period of sixty days, four hours a day. A report from the centre says that he worked well in spite of pain and reduced coordination in right hand. But they assume that a combination of age, health problems and language barriers will make it impossible for him to attend regular work for the time being. They recommend measures without physical strain, with reduced working hours and limited need for Norwegian language skills.

The appeal body in NAV has based its decision on following: The person has real ailments and is probably not able to work in physical straining jobs, but it is not substantiated that the wage

earning capacity is reduced with more than 50 per cent for all types of jobs. Sixty days of vocational rehabilitation cannot be considered sufficient in order to decide on a permanent disability pension. The hindrance for attending a health-adapted work is a combination of heath problems and language difficulties. Thus the appeal body concludes that the person should be further mapped through a combination of labour market measures and Norwegian language tuition. Based on this, the requirement in the National Insurance Act §12-5 on vocational rehabilitation cannot be considered as fulfilled.

The National Insurance Court came to a different conclusion than the appeal body in NAV. The court is also considering the same health problems and Norwegian language problem, but states that the person has been functioning in a sheltered work environment his whole working life in Norway without achieving regular work. Further vocational rehabilitation does not seem expedient, and is unlikely to end up with regular work. Considering his age and work experience, a sheltered work environment will be the most appropriate as he can work according to his ability and be financially secured with a disability pension. The appealed decision was reversed and disability pension approved.

Third example is a 40 years old man with refugee status in Norway since 1997. His application for temporary disability benefit was rejected in September 2009 (before the new legislation from 1. March 2010), and the appeal body in NAV upheld the decision in June 2010. The appeal was then forwarded to the National Insurance Court in August 2010 (appeal no 11/00631).

This man is recorded with a long history of imprisonment, torture and abuse. After his escape, he spent seven years in a UN refugee camp before arrival to Norway. Medical reports provide following diagnosis: Depression, PTSD, personality disorders and mental imbalance adjustment reaction, pains in the back and knees. He is suffering from isolation, powerlessness, resignation/passivity and immensity as well as psychosomatic ailments resulting from adjustment problems and traumatic war experiences. He has tried different courses and had a few short-term employments, but none have been carried out properly.

In 2007 he was refused vocational rehabilitation, justified by the assumption that his opportunities for choice of occupation was not significantly curtailed in spite of his physical limitations. At this time the case had no evidence of his mental health problems, despite the fact

that he since 2006 had been under therapy with a psychiatrist. The psychiatrist is considering his patient to be 100 per cent occupationally disabled. The therapy is improving his daily functioning, but does not seem to improve his wage earning capacity. In the period June 2008 - November 2009 he was receiving rehabilitation benefit.

The appeal body in NAV has following conclusion: It is not possible to consider if occupational or wage earning capacity is reduced with at least 50 per cent as long as conditions in the National Insurance Act § 12-5 on proper treatment is not fulfilled. The documentation is not sufficient and the reports are not particularly detailed. It does not seem to exist a treatment plan for the physical and mental problems aiming to increase the occupational capacity, and even if there is no requirement that treatment is fulfilled, it must be substantiated that the person is adequately well investigated. The condition on vocational rehabilitation is neither considered to be fulfilled as there is no evidence that individually tailored work has been tried out. A reduction in the work capacity should be mapped in relation to any occupation, but his does not require a successful vocational rehabilitation. At this point it is not substantiated that vocational rehabilitation is inappropriate. However, it is important that the person will be properly mapped and treated in order to assess a possible vocational rehabilitation. If one later find that the conditions to grant disability pension are fulfilled, it is necessary to consider the membership conditions in the NIS §12-2. As there is no date for disability at this time, it is not possible to make this assessment.

The National Insurance Court made a different assessment and conclusion. The court finds that vocational rehabilitation at this point seems inappropriate based on the available medical documentation. In the light of the above, the court concluded that the terms of the National Insurance Act former § 12-5 and 12-6 are met. His ability to perform paid work must be considered permanently reduced by 100 per cent, and then follows the same Act former § 12-11 that granted full temporary disability benefits or disability pension. However, it cannot be ruled out any kind of physical and/or psychological improvement in term of further therapy and facilitation, and the Court therefore finds that temporary disability is properly defined, according to former § 12-9 in the National Insurance Act.

Furthermore the court comments on the appeal body in NAV's note about the need to consider if membership conditions are met before determination on a possibly disability date. The court

points out that with the available documentation on his refugee status from the Norwegian Directorate of Immigration, he is fulfilling the membership criteria.

7. Analysis and discussion

The very point of departure in the present study is informed by my own professional experiences, and it is possible to claim that the selection of cases from the National Insurance Court was done in a way to support my own pre-understanding. The selected cases reveals that the use of discretion when assessing the applications can give various results. If I had chosen other cases where the decisions from the appeal body in NAV were confirmed by the National Insurance Court, the exercise of discretion would not differ that much. Only one of the selected cases had dropped out of the introduction programme, the other two came to Norway before the establishment of this programme.

The three cases had refugee status, and as such fulfilling the membership criteria as stated in the National Insurance Act § 12-2. However, it seems that NAV had the impression that case 3 had residency on humanitarian grounds since they pointed out the need for considering the membership conditions if a date for disability would be needed at a later point. As pointed out earlier, a person with refugee status will fulfill the membership condition even if he was disabled before arrival to Norway.

This case was rejected an application for vocational rehabilitation in 2007, 10 years after arrival to Norway, based on the assumption that his wage earning capacity is not reduced. In 2009 NAV rejects an application for temporary disability benefit because he is not properly examined and treated or mapped with regard to a reduction in the work capacity in relation to any occupation. At this point it was attached new information about his health situation. The case presentation does not have any information on how this person has been covering his subsistence other than one year of receiving rehabilitation benefit, but it is very likely that he has received means-tested social assistance for most of the period in Norway.

Argument for rejection on disability pension is mainly that appropriate treatment or vocational rehabilitation has not been fulfilled. Then the case should be converted to an application for work assessment allowance. If the activity plan has emphasis on appropriate treatment aiming to

improve the health, and subsequently the wage earning capacity, it is usually approved. On the other hand, if the activity plan is mainly concentrating on vocational rehabilitation, the application for work assessment allowance might be rejected due to lack of Norwegian language skills, or as it is often written: ”cannot benefit from work-related measures due to lack of language skills”. Then the applicant will be referred to Norwegian language tuition, and the alternative means to cover the subsistence would probably be social assistance.

The selected cases have no information about the starting point of the application process, but since the three have had follow-up in a refugee service or a local NAV office, it is likely that a caseworker or programme advisor, with previous knowledge of the person’s work and wage earning capacity, has been advising to apply for health related benefits through NIS. The application will then be based on a critical evaluation of the applicant’s situation as well as laws and regulations ruling the area of income support for those who cannot support themselves through wage income.

One could question if the contact person in the local office has been able to convey the mapping and assessments done prior to the application, or if this information is not considered as very trustworthy or valuable in the case processing. This last might be due to an assumption that these contact persons are biased, or just have an interest in reducing the municipal spending’s on social assistance allowances.

My own experience corresponds with, as Galaasen points out, "low applicant competency”. It needs skills to benefit from the health and social services on equal footing with the majority population. Minimal cultural and social understanding, as well as not knowing the rules and regulations, makes cooperation with health and welfare services challenging. Underuse of interpreters, or use of unprofessional interpreters, will also add strain to the cooperation because of misunderstandings and possibly growth of mistrust. This will often result in reduced quality in a medical report that should support an application for work assessment allowance or disability pension. If then the documentation from the doctor or other agencies is counteracting such an application, it will be a waste of case processing resources, cause reduced trust in ”the system” and add further strain to the cooperation. Those who will decide on such applications are not meeting the applicant, and it is then of utmost importance that the attached documentation is of

good quality and reflects the real situation. If not, it will most likely be rejected, or, in best case, returned with a request for additional information.

As documented in Galaasen (2009), most cases that were rejected disability pension in 1993, just had a delay in the transition to permanent social security benefits with the consequence of additional years of case-processing and alternative income support. It is reasonable to argue that both administrative and human resources could be spent in a more appropriate and efficient way. Galaasen argued that ”low applicant competency” was having a negative effect on the outcome of an application for health related benefits. However, there are also reasons to believe that the guidance and preparatory proceedings offered in the local NAV office could be of better quality, and this is an even larger challenge with regard to the legal rights of the applicants. In addition it seems to waste a lot of administrative resources as cases are sent back and forth due to deficient informed applications.

It is timely to ask why refugees have less utilization of disability pension and work assessment allowance when several studies show that war-wounded refugees have high prevalence of psychiatric symptoms as well as poor physical health. Table 1 in section 5 also shows that from the 10 per cent who quit the introduction programme due to health problems, only 0-3 per cent were registered with health related benefits the following year, and the share on social assistance were ranging from 6-10 per cent. It is probably too early to see any significant effects from the changes in the Immigration Act, but for the coming years it should be expected that a higher share of those quitting the programme due to health problems would be on work assessment allowance or disability benefit through the NIS one year after and less on social assistance. Thus, based on this literature review, it is not possible to conclude on the second research question.

Being sick and without work capacity, and ending up on means-tested social assistance allowance to cover your subsistence, will in most cases increase the feeling of being an outsider, without value for your society. As a refugee accepted for residency in Norway, and with the notion of having arrived to a country that respects people regardless of the individual’s functional ability, he or she might not be prepared for this situation. Some immigrants with refugee background even got their residency due to the fact that they are sick, and it is assessed that returning to the home country would further endanger their health. Then to offer social assistance, which in

principle should be a temporary support, and is stigmatizing if it lasts for a long period, will probably increase the notion of refugees not being integrated into the society, and being a burden for the taxpayers. This again might lead to less willingness in the various municipalities to receive refugees, as this is a voluntary task.

From the findings in this study it is not possible to say that the legislation on work assessment allowance and disability pension is discriminating refugees or immigrants with residency on humanitarian grounds. Ethnic Norwegians, who have been living abroad without membership in the NIS, are in the same situation as an immigrant with residency on humanitarian grounds. The case is that immigrants with refugee status are treated more favourably than others spending years abroad. However, the implementation of the policies is to a large extent carried out in the public services by so-called street-level bureaucrats (Lipsky 1980), and when professional guidelines and policies are insufficient as a guidance for the individual decision, the bureaucrat need to rely on their individual norms (Eriksen 2001). Eriksen points out that the combination of discretion and lack of transparency in decision-making can represent a significant democratic deficit. In the case of NAV, it is however fortunate that appeals going to the National Insurance Court are published anonymously, and thus gives the public possibility to look into the case processing.

When a doctor refuses to write a medical certificate based on his assumption that this will remove the motivation to attend Norwegian language tuition, it is a highly normative decision, and not based on medical considerations. When NAV is refusing an application for work assessment allowance due to lack of Norwegian language skills, it could be said that newly arrived immigrants are given a particular disadvantage compared with other persons. If different treatment is necessary in order to achieve a legitimate aim, it is not defined as discrimination according to the legislation, but it is difficult to see that lack of Norwegian language skills could be an acceptable argument to keep refugees out from possible rights the NIS.

In the light of Norway's policy of inclusion of the immigrant population, it seems strange that healthy refugees above the age of 55 are not given the right to participate in the introduction programme. In this case the decisive factor when assessing entry conditions to the programme is age, not the potential or capacity for labour market participation. In this way it will be planned for

twelve years of dependence on social assistance allowance, if not given place in other programmes targeting those on social assistance. To deprive a refugee from the right to participate in an introduction programme does not seem appropriate. However, many refugees above this age will be assessed as not being able to enter the labour market through participation in an introduction programme. But for those who could benefit from such participation, they should be offered participation on equal terms as those below 55. In this case it is difficult to see any justification for having age limit on 55 when the early retirement age is 62, and from my point of view it could be labelled as direct discrimination. Ask (2011, 204) refers to a study where refugees above the age of 55 were interviewed. Some expressed relief that they were not required to participate in the introduction programme, while others regarded this as a signal that they are not considered as full citizens.

A recent Official Norwegian Report concludes that the future of the welfare state will depend on the type of new arrivals of immigrants, the resources they bring and to which extent they are integrated in Norwegian working life and society (NOU 2011:7, 9). This is likely to be true. But independent of all efforts done, there will be a number of refugees who are not able to participate in the labour market due to ill health, and it does not seem reasonable to blame those for the challenges facing the welfare state. If those refugees are refused financial support through the NIS, they will get social assistance. The level of support will not differ much, if any, but the money will be drawn from different budgets. It is not a question of poverty, but more a question of not being full member of the society in all areas, or marginalization. Unequal access to resources, capabilities and rights, drive this marginalization, and maintain and even strengthen the ill health.

Deprived people will have difficulties taking part in the community life. The stigma of feeling (being) excluded could lead to withdrawal, sometimes self-imposed, from the society and increase the feeling of being an outsider. At its worst, this can lead to development of parallel societies, and the insiders, or host country in the case of immigrants, will be viewed as the enemy even though this country gave protection from war and persecution.

The Norwegian Government policy papers on inclusion are ambitious and has a clear goal on fighting exclusion and make sure that everyone will be given the chance to participate in the

society on equal footing, regardless of national or other background. According to Human Development Index 2013[11], Norway is still the best country to live in, and third best to be born in. Being marginalized in such environments is very visible, and moral attitudes from both public discussions and public servants are adding to the burden of ill health. The feeling of shame is a heavy burden, especially when your biggest wish is to be healthy and able to contribute to the society. The ties to the new society will be weakened, and it will be easier to relate to others in the same situation and withdraw from the majority society in order to avoid the stigma.

The citizenship discourse is strongly tied to participation in the labour market and paying taxes as well as participation in the political and civil society. When loosing to the demands in the labour market, it is even more important to be met with respect and recognition in order to participate in the civil society with dignity. Being sick and denied welfare services through the NIS, gives the impression that it is more a question of will than ability that keeps the person on the margins as a long-term recipient of social assistance. Most refugees will however wish to apply for Norwegian citizenship after staying the required time in the country as having a Norwegian passport make life easier in many ways. But the broader concept of citizenship, making you feel that this is your country, does not come with a Norwegian passport alone.

Ending up as a long-term social assistance recipient in NAV, has also other implications than just marginalization or social exclusion. Beside the stigma attached, the social assistance is conditioned upon staying in that particular municipality and moving to another district, if so want, will be almost impossible the first five years as long as the municipality receives integration grant for the particular person. The receipt of social assistance allowance will also counteract any possibility of family reunification, if relevant, for those with residency on humanitarian grounds.

8. Conclusion and suggestions for further action

People with refugee background have not been granted residency in Norway to contribute to growth and economic development and should be received according to our obligations to the

[11] Human Development Index is a measurement of a country's ability to give people opportunities to improve their living conditions. http://hdr.undp.org/en/reports/

Convention and Protocol relating to the status of refugees (UNHCR). Politicians, scholars and media are emphasizing the challenges attached to the welfare dependency among immigrants, and refugees in particular, but that should not reduce efforts to provide the most appropriate services or benefit for those in need. The sustainability of the welfare state will not be altered by a number of refugees who drop out from the introduction programme due to poor health and are not fit for the labour market. To include refugees above the age of 55 in the target group for the introduction programme, could however give a positive contribution to the welfare state.

The first suggestion for policy change would therefor be to let the Introduction Act include refugees up to the age of 62 or 65 in the target group. This will also be an appropriate measure to remove the present discrimination.

Furthermore it is a need to initiate cooperation between the introduction programme and NAV at an earlier stage with regard to participants who are at risk of dropping out from the programme due to health problems. Before terminating the programme, it should have been performed a written assessment of the work capacity as required before applying for work assessment allowance as well as a self-assessment by the participant. It is then possible to jointly agree on how to proceed, and one could avoid wasting time and case processing resources. This can be done independently of whether the refugee services are within or outside the local NAV office.

It also seems reasonable to introduce a "disability benefit", equivalent to Supplemental benefit, for those who have lost their wage-earning capacity due to illness or accident, and have less than 40 years membership in the NIS, and not refugee status. This will benefit a bigger group than people with residency on humanitarian grounds, if not limited. It will increase the possibility for those to manage without applying for supplemental social assistance, and NAV would save some case processing resources.

Last, but not least, it is imperative to get a legislation that clarifies the responsibility regarding use of interpreters in public services when there is no common language for communication. This is a necessity in order to facilitate equal services and good governance.

The globalization and increased migration, forced or voluntary, has certainly given new challenges to most public services, and the welfare state in particular. This development will not

be reversed, and the future nation-building will benefit if services are better customized to the population diversity.

Refugees getting residency in Norway can in many ways be looked upon as survivors. The majority have been living through a combination of war and persecution as well as socio-economic deprivation, and arrive with health profiles typical of those in their previous environments. It is good reason to ask whether health problems are given sufficient attention in the work with refugees.

Norway, as a host country for refugees, needs to realize that a certain share of the refugees who are accepted for residency, will never be able to participate in the labour force due to their health situation and past experiences. This does not need to be viewed as a failure of the integration measures done, but more as something that should be safeguarded by other means. As a consequence of this, it is a need for clear policies on how to provide for those refugees. For the benefit of all, such policies should have space for positive recognition and enable refugees to keep their dignity as insiders in the local communities.

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