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Tvångsmedelsanvändning mot barn i asylprocessen

Intresseavvägningar och rättighetskydd

Martina Reinius Derlén

Akademisk avhandling

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Författare

Martina Reinius Derlén

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Tvångsmedelsanvändning mot barn i asylprocessen: Intresseavvägningar och rättighetsskydd

Sammanfattning

Asylum-seeking children may be subjected to various forms of coercive measures during the Swedish asylum process. At an early stage, children's fingerprints and photographs are taken and stored in central databases. Where there is doubt as to whether an applicant is a minor, they may be asked to consent to a medical age assessment. In the final stages of the asylum process, children may be deprived of their liberty and placed in detention pending the enforcement of a removal decision.

This thesis examines the legal regulation of these measures. In recent years, there has been an increased focus on children's rights. At the same time, migration and asylum policies have become more restrictive. It is therefore of significance whether the legislator primarily views asylum-seeking children as children or as migrants. The thesis analyses the legal challenges arising from the use of coercive measures against asylum-seeking children, in light of the competing interests underlying this area of law, the fundamental rights issues at stake, and the ways in which legislation is shaped by the legislator's perception of asylum-seeking children.

The analysis demonstrates, inter alia, that the perception of asylum seekers is characterised by suspicion and by a perceived need on the part of the state to minimise the risk of abuse of the asylum system through control and coercive measures. While asylum-seeking children are recognised as vulnerable and therefore deserving of protection — something that is to some extent reflected in the regulatory framework — the imperative of control persists. This control is, however, increasingly framed as being in the best interests of the child. The findings indicate that children's rights are increasingly invoked by the legislator as a justification for the use of such measures, rather than as a constraint upon them.

Nyckelord: asylprocess; barnets bästa; tvångsmedel; migrationsrätt; barnrätt; utlänningslag; asyl- och migrationspakten

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