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HUMAN RIGHTS CHALLENGES FOR AN EXIT CENTRE ON LINDHOLM ISLAND

Setting up an exit centre for deported foreign nationals on an uninhabited island raises a number of human-rights challenges. Foreign nationals with no prospect of leaving Denmark within a foreseeable future may not be deprived of their liberty. However, long-term restrictions on their freedom of movement and right to privacy can, with time become uproportional and also develop into degrading treatment, which is illegal pursuant to the European Convention on Human Rights.

According to the agreement on the Danish state budget for 2019 an exit centre is to be established on the island of Lindholm in Stege Bugt. Establishment of an exit centre on Lindholm raises a number of human-rights issues.

LIMITS FOR DEPRIVATION OF LIBERTY

Denmark may restrict residents' freedom of movement and privacy, but the conditions on Lindholm may not be so restrictive that they amount to deprivation of liberty. To deprive foreign nationals with no real opportunity to leave Denmark within the foreseeable future of their liberty is in conflict with Article 5 of the European Convention on Human Rights. The majority of residents on Lindholm will be foreign nationals whom Denmark is prevented from deporting due to legal or practical obstacles.

Whether the circumstances correspond to deprivation of liberty depends on the extent of restrictions on residents' freedom of movement and other freedoms. As a general

rule, the government has considerable latitude to restrict freedom of movement and privacy without this necessarily being deprivation of liberty. Deprivation of liberty is based on a specific assessment of the individual situation. Therefore, on the basis of the agreement on the Danish state budget alone, it is not possible to assess whether the conditions on Lindholm will correspond to deprivation of liberty.

The following will be important considerations in an assessment of whether the conditions on Lindholm correspond to deprivation of liberty:

- How limited is the residents' freedom of movement in practice?
- Who can residents have social contact with?
- What is the extent of control and surveillance for residents?
- Can residents be sanctioned if they do not comply with their obligations?
- How long will they have to live on the island?

RIGHT TO FREEDOM OF MOVEMENT

A person who is lawfully in Denmark has the right to freedom of movement. Today, people on tolerated stay are considered as having lawful residence in Denmark. It is possible to restrict the freedom of movement, but after some years there is a risk that this intervention could become disproportional.

RIGHT TO PRIVACY

Being imposed residence and reporting obligations is an infringement on foreign nationals' right to privacy. The right to privacy applies even if a foreign national does not have lawful residence in Denmark. The right to privacy sets a limit for how long a foreign national can be forced to live on Lindholm. In most cases, the right to privacy will provide the same protection against having to stay on Lindholm for a long time as the right to freedom of movement.

DEGRADING TREATMENT

After having visited the current accommodation at Kærshovedgård, in May 2018 the Danish Parliamentary Ombudsman stated that the conditions for foreign nationals granted tolerated stay were very stressful and restrictive for basic quality of life. The conditions on Lindholm are likely to be more restrictive. Therefore, there is a

greater risk that, particularly for vulnerable foreign nationals, the situation may develop into degrading treatment, which is illegal

RESIDENTS ON LINDHOLM

Two groups are to be moved from the Kærshovedgård exit centre to Lindholm:

- People on tolerated stay: These are foreign nationals who have served their prison sentence and have been convicted to expulsion, but cannot be deported because they risk torture or the death penalty in their home country. Therefore, there is a legal obstacle to deportation, and there is no prospect of their being able to travel to their home country.
- Deported foreign nationals who have served their prison sentence, but where the actual conditions prevent them from being deported. For instance, this could be because their home country refuses to receive them.

Two groups will live on Lindholm in future:

- Foreign fighters: People who have lost their residence permits as a result of presumed support for terrorist activities abroad. They need not have committed a criminal offence.
- Rejected asylum-seekers who have been convicted for violation of the Criminal Code etc.

pursuant to Article 3 of the European Convention on Human Rights.