Between Choice and Constraint

A Socio-Legal Study of §8 of the Danish Return Act (Hjemrejseloven)

By

Helia Iravani

Master's thesis in International Relations

Submitted to The Department of Political Science

Aalborg University

Characters: 119.587

Student number: 20230694

April 2026

Abstract

This thesis examines how voluntariness is constructed and legitimised within Danish return governance through an empirical analysis of §8 of the Danish Return Act (Hjemrejseloven). While voluntary return is commonly framed as an expression of individual agency, the thesis shows how decisions are produced within institutional contexts marked by asymmetrical power relations, legal uncertainty, and constrained alternatives. Positioned within a socio-legal approach and grounded in critical realist assumptions about the layered character of social reality, the study treats voluntariness not as an individual state of mind but as an institutional accomplishment produced through organisational routines, role boundaries, and justificatory practices.

Empirically, the thesis draws on six semi-structured interviews with key actors situated across Danish return governance, including administrative implementers, a policy-level official, civil society counselling, legal practice, and research-based expertise. The analysis proceeds abductively and iteratively and is structured in two analytical moves. First, a Bourdieusian field analysis maps how institutional positions generate distinct "rules of the game" for what can count as legitimate speech about voluntariness. Second, a Foucauldian governmentality analysis examines how voluntariness is governed through techniques that structure the field of possible action.

Voluntariness under §8 is stabilised differently across institutional positions. Administrative actors tend to ground voluntariness in procedural correctness and standardised information, thereby shifting responsibility onto the rejected asylum seeker once the formal steps have been completed, while policy-oriented perspectives frame incentives as legitimate steering tools within a coherent return architecture. Rights-oriented and practice-near perspectives, by contrast, emphasise structural asymmetry and vulnerability and raise concerns that financial incentives and informational practices may erode the perceived meaningfulness of appeal rights. Taken together, the analysis argues that §8 operates through a central paradox. Although the arrangement formally preserves choice, the decision to accept return support is made under legal uncertainty and institutional asymmetry, and it is conditioned on waiving access to second-instance review in exchange for enhanced support. In this way, the Danish case illustrates how return governance can align migration control with the language of individual choice by governing through freedom rather than despite it.

Table of Contents

Chapter 1: Introduction

> *"Those who talk of equal opportunity forget that social games, including economic games, are not 'fair games'"* (Bourdieu, 2000, p. 214).

Across contemporary migration governance, voluntariness often functions as a key language of legitimation. Policy measures are frequently presented as expanding individual choice and enabling migrants to decide how to navigate administrative and legal procedures. Yet the assumption that choices are made under comparable conditions remains analytically problematic. What appears as an individual decision may be shaped by institutional arrangements, unequal power relations, and incentive structures that make certain options appear more rational than others (Bourdieu, 2000, p. 214). This tension between formal choice and structured constraint is particularly visible in the governance of return. In European migration politics, return is repeatedly framed as preferable when it can be organised as "voluntary", even though the conditions surrounding decision-making are often characterised by legal uncertainty, institutional asymmetry, and limited alternatives for those subject to return measures (Cassarino, 2008, pp. 97-98; Vedsted-Hansen, 2025, pp. 2018-2019).

In Denmark, this development has unfolded alongside a broader reorientation of asylum governance since the mid-2010s. Scholarship describes a move toward temporariness and post-entry deterrence, where protection is increasingly framed as temporary and return is positioned as an expected endpoint rather than an exception (Sandberg et al., 2025, pp. 1998-2000; Vedsted-Hansen, 2022, pp. 14-16). This shift has also been linked to the institutional and legal consolidation of return governance, including the establishment of the Danish Return Agency and the adoption of a dedicated return framework (Vedsted-Hansen, 2022, pp. 35-36).

Against this background, Section 8 of the Danish Return Act (*Hjemrejseloven*) provides a particularly revealing empirical entry point. The provision allows the Danish state to offer financial return support to rejected asylum seekers and introduces a mechanism whereby first-instance rejected asylum seekers may receive significantly higher financial support, on the condition that they withdraw their right to appeal before the Refugee Appeals Board. On its face, the arrangement appears to preserve freedom of choice: individuals may either pursue an appeal or accept financial support and depart. However, this decision is made within a context marked by asymmetries between the state and the individual, as well as uncertainty regarding

legal outcomes and future possibilities. This raises a socio-legal question about how voluntariness is constructed and legitimised within administrative practice.

Against this background, the thesis addresses the following research question:

> *How does §8 of the Danish Return Act (Hjemrejseloven) function in practice, and how is voluntariness shaped and legitimised within institutional fields and through governmental power?*

Rather than treating voluntariness as a purely individual decision, this thesis approaches it as something produced and stabilised through institutional settings, professional mandates, and governing practices. The analysis therefore treats section 8 not only as a legal rule, but as a regulatory mechanism situated at the intersection of asylum governance, administrative discretion, and individual rights. To analyse these dynamics, the thesis combines insights from Pierre Bourdieu's concept of fields with Michel Foucault's perspective on governmentality. While Bourdieu's field perspective enables an analysis of how different institutional actors articulate and justify voluntariness from distinct positions within the return system, Foucault's concept of governmentality provides a framework for examining how governing operates through freedom, responsibility, and the structuring of choice situations. Together, these perspectives allow the thesis to analyze voluntariness as both institutionally situated and produced through concrete practices of governance.

Building on a qualitative research design centred on interviews with key institutional and professional actors, the thesis examines how §8 is implemented and justified across the return system. By tracing how administrative routines, professional mandates, and legal framings structure what can count as voluntary in practice, the study analyzes how return governance can steer conduct through choice while simultaneously relocating responsibility onto the individual. In doing so, the thesis illuminates broader tensions between national objectives of migration control and the legal and ethical commitments embedded in procedural safeguards and human rights frameworks. It also contributes to wider debates in refugee studies by showing how deterrence and control increasingly operate through administrative techniques that appear neutral, choice-based, and lawful, while nevertheless structuring the conditions under which choices are made.

Chapter 2: Positioning in the Political Debate

This chapter situates the thesis within existing debates on voluntary return and clarifies the analytical problem that motivates the study. While voluntary return is widely framed as an expression of individual choice, the chapter shows that the concept remains deeply contested, particularly regarding the conditions under which such choices are made.

By reviewing both governance-oriented and legal perspectives, the chapter identifies a central gap in the literature: although voluntariness is frequently discussed, less attention has been paid to how it is produced and stabilised within concrete institutional practices. This gap forms the point of departure for the thesis and frames the analysis of §8 as an empirical site through which the relationship between choice, constraint, and governance can be examined.

Across contemporary migration governance, the return of migrants without legal residence has become a central policy priority. In many European states, return is framed as necessary for maintaining the credibility and sustainability of asylum systems, and voluntary return programmes are promoted as key instruments for achieving this objective (Cassarino, 2014). Such programmes are often presented as more humane and cost-effective alternatives to forced deportation, emphasising migrants' ability to leave through choice rather than coercion (Koser & Kuschminder, 2015, pp. 9-11).

Despite this prominence in policy discourse, the concept of voluntary return remains deeply contested within academic literature. A central point of disagreement concerns whether return decisions can meaningfully be described as voluntary when they take place under conditions characterised by legal uncertainty, restricted rights, and asymmetrical power relations (Kalir, 2017; Leerkes et al., 2017). As Black and Gent (2006) argue, return processes often involve a complex mixture of choice and constraint, complicating any clear distinction between voluntary and forced return. This tension has positioned voluntary return as a key site of debate within migration studies, where scholars diverge in their interpretations of how agency, coercion, and governance interact (Cassarino, 2014; Kalir, 2017; Leerkes et al., 2017).

Within this debate, one strand of research has emphasised voluntary return as an instrument of migration governance. From this perspective, return policies are not merely administrative responses but form part of broader strategies aimed at regulating mobility and maintaining the credibility of migration and asylum systems (Cassarino, 2014). Voluntary return programmes

thus serve a dual function: they facilitate departure through financial and logistical support while simultaneously signalling that rejected asylum claims are expected to result in exit.

However, this governance-oriented perspective has also prompted critical scrutiny of the conditions under which return decisions are made. Empirical studies suggest that participation in voluntary return programmes often occurs under conditions of prolonged uncertainty and limited perceived alternatives (Koser & Kuschminder, 2015), as well as within institutional environments characterised by various forms of pressure that shape migrants' choices (Leerkes et al., 2017). Rather than reflecting unconstrained individual choice, return decisions are shaped by policy environments that structure migrants' available options and future prospects.

Furthermore, the study focuses on decision-making under conditions of uncertainty. Research on assisted voluntary return highlights how migrants' choices are influenced by a combination of limited information, uncertainty regarding future outcomes, and broader socio-economic considerations (Koser & Kuschminder, 2015). From this perspective, return decisions emerge through complex processes shaped by incomplete information and constrained possibilities, rather than through straightforward cost-benefit calculations.

At the same time, focusing primarily on individual decision-making risks obscuring the structural conditions within which such decisions take place. Several scholars have therefore argued that voluntary return must be analysed in relation to the institutional environments that actively shape migrants' choices (Kalir, 2017; Leerkes et al., 2017). Financial incentives, restricted access to welfare, insecure legal status, and the possibility of detention or deportation may collectively produce circumstances in which return appears as the most viable option available. In this sense, "voluntariness" cannot be understood independently of the governance arrangements that structure choice.

This dynamic has been conceptualised through the notion of "soft deportation." Leerkes et al. (2017) demonstrate how states may encourage departure by making continued residence increasingly difficult, thereby reducing reliance on direct enforcement. Similarly, Kalir (2017) argues that voluntary return operates along a continuum between voluntary and forced return, where migrants' decisions are shaped by a combination of incentives and pressures embedded in migration control regimes. Taken together, these analyses suggest that voluntary return programmes operate as indirect mechanisms of migration control, shaping conduct through structured choice rather than overt coercion. While existing research has conceptualised these

dynamics at the level of policy and governance, less attention has been given to how such forms of "structured choice" are produced and enacted within specific legal and institutional arrangements.

Parallel to these sociological perspectives, legal scholarship has examined voluntariness as a normative requirement within international refugee and human rights law. From this perspective, the legitimacy of return depends not only on the presence of formal choice, but on whether decisions are made free from physical, psychological, or material pressure (Goodwin-Gill & McAdam, 2007). Legal scholars thus emphasise that the availability of options does not in itself ensure that consent can be considered valid.

This legal perspective becomes particularly salient in relation to policies that condition access to return support on the waiver of procedural safeguards, such as the right to appeal an asylum decision. While existing legal scholarships do not directly address such arrangements, it raises broader concerns about whether consent can be considered voluntary when decisions are made under conditions that involve material incentives and potential constraints. In this light, such policies prompt questions as to whether migrants are, in practice, required to relinquish legal rights in order to access financial assistance.

Taken together, existing research demonstrates that voluntary return is characterised by an inherent tension between choice and constraint, and between individual agency and structural conditioning. Existing research has largely examined voluntariness either as a matter of individual decision-making or as a feature of broader governance structures, while paying less attention to how voluntariness is produced within concrete institutional practices. However, while previous studies have provided important insights into decision-making under conditions of uncertainty, the governance of return, and the legal conditions of voluntariness, less attention has been given to how voluntariness is constructed and stabilised within concrete institutional settings where legal frameworks, administrative procedures, and professional practices intersect.

This thesis positions itself within this gap by examining how voluntariness is produced within the institutional practices of Danish return governance. Rather than approaching voluntary return primarily as a matter of individual decision-making or normative legal standards, the analysis focuses on how institutional arrangements shape and structure the conditions under which return decisions are made. By focusing on §8 of *Hjemrejseloven*, the study directs

attention to a specific regulatory mechanism in which financial support is linked to the withdrawal of appeal rights, thereby structuring the conditions under which return may come to appear as a voluntary choice.

This chapter has shown that voluntary return is characterised by a persistent tension between choice and constraint, and that existing research does not fully account for how this tension is produced in practice. While governance-oriented perspectives highlight how return is shaped by policy environments, and legal perspectives emphasise the conditions for valid consent, both approaches tend to overlook the institutional processes through which voluntariness is made meaningful in concrete settings.

By identifying this gap, the chapter establishes the analytical focus of the thesis: to examine how voluntariness is produced, stabilised, and legitimised within institutional practices. In this way, the chapter provides the conceptual foundation for analysing §8 not simply as a legal provision, but as a site where law, governance, and individual decision-making intersect.

Chapter 3: Theoretical framework

This chapter develops the theoretical framework used to analyse how voluntariness under §8 is produced, stabilised, and legitimised in practice. Rather than treating voluntariness as an individual attribute or a fixed legal standard, the thesis adopts a socio-legal perspective in which law is understood as both formal doctrine and lived practice, drawing on Dalberg-Larsen's distinction between law in books and law in action.

On this basis, the chapter combines Pierre Bourdieu's concept of fields with Michel Foucault's perspective on governmentality. This combination makes it possible to analyse how voluntariness is shaped across institutional positions and how it is produced through governing practices that structure the conditions under which choices are made. The chapter thus establishes the analytical lens through which the thesis examines how voluntariness comes to appear as meaningful and legitimate within Danish return governance.

3.1 Rationale and Relevance

This thesis examines voluntariness not as an inner psychological state or a purely individual choice, but as something that may be produced and stabilized within institutional settings, professional mandates, and governing practices. Rather than assuming a fixed meaning of voluntariness, the analysis asks how the same legal mechanism may be understood and articulated differently across institutional contexts.

This raises a set of analytical questions: How is voluntariness constructed across different institutional positions? How do professional mandates shape what can be recognized as a voluntary decision? And how do governing practices structure the conditions under which choice is exercised?

To address these questions, the thesis combines Pierre Bourdieu's concept of fields with Michel Foucault's perspective on governmentality.

Bourdieu's concept of fields provides a framework for analyzing how institutional and professional arenas structure what counts as legitimate knowledge, responsibility, and justification. From this perspective, the analysis asks how different actors position themselves in relation to voluntariness and how their accounts reflect the logics of the fields in which they are embedded.

Foucault's concept of governmentality provides a framework for analyzing how governing operates through the structuring of choice, responsibility, and freedom. Rather than treating voluntariness as the absence of power, this perspective makes it possible to examine how voluntariness may function as part of governing practices and as a resource for legitimizing decisions.

Together, these perspectives enable the thesis to investigate how voluntariness under §8 is both position-dependent and produced through practice. The theoretical framework thus guides the empirical analysis, which proceeds in three steps. Chapter 5 provides a historical analysis of how return governance has developed in Denmark, addressing the first part of the research question. Chapters 6 and 7 then examine how voluntariness is articulated across institutional positions and how it is produced through concrete governing practices.

3.2 Bourdieu and The Concept of Fields

This thesis draws on Pierre Bourdieu's concept of fields as a relational framework for analyzing how voluntariness may be produced, stabilized, and contested across institutional settings involved in Danish return governance. Rather than treating voluntariness as an internal attitude or a purely individual choice, the field concept provides a way of examining how what can be said, prioritized, and taken for granted may be shaped by institutional position and professional mandate. From this perspective, concepts such as choice, consent, neutrality, and legal protection are not assumed to have fixed meanings but may acquire different meanings within specific arenas where particular forms of reasoning and authority are recognized as legitimate.

In Bourdieu's sociology, a field is not simply an organization, a sector, or a profession. It is a structured social space defined by relations between positions, by what is at stake, and by struggles over legitimate ways of seeing and acting. Positions exist only in relation to other positions, and actors' perspectives are shaped by the constraints and possibilities attached to their location in this configuration (Bourdieu & Wacquant, 1992, pp. 96-97, 113-114). For the present study, this relational view makes it possible to move beyond whether informants agree or disagree about voluntariness and instead examine how their accounts may reflect institutional logics that render some concerns self-evident and others less visible.

A field also presupposes practical investment. Participation implies an orientation toward field-specific stakes and criteria of legitimacy. In institutional settings, this investment may become visible through how actors demarcate responsibilities, legitimize their actions, and disavow considerations that fall outside their mandate. Field analysis thus directs attention not primarily to subjective belief, but to the structured conditions under which justificatory moves become credible.

A key feature of field theory is relative autonomy. Fields develop internal logics that cannot be fully reduced to external demands, yet autonomy is always a matter of degree. This is especially relevant when analyzing state-related arenas, where implementation-oriented practices, policy design rationalities, and rights-oriented critique may appear distinct while simultaneously being embedded within broader hierarchies of authority and political priorities. In Bourdieusian terms, institutional arenas may stand in close relation to the state as a field of power in which struggles over the legitimate definition of public problems and authoritative knowledge are concentrated (Bourdieu, 1994, p. 16). In this thesis, relative autonomy is therefore understood

in a limited sense, referring to how legitimacy within each arena may be produced through internal criteria such as procedural neutrality, coherence of policy design, proportionality, or compliance with rights standards.

The thesis does not mobilize Bourdieu's full explanatory system of field, capital, and habitus. Habitus is not employed as an analytical category, as the study does not aim to explain the formation of dispositions over time. Instead, the focus is on how institutional positioning and mandate may shape the boundaries of legitimate speech about voluntariness in the implementation of §8. The analysis remains attentive to symbolic authority and taken-for-granted assumptions but approaches these empirically through recurring patterns in how legitimacy is articulated. Rather than operationalizing capital as a measurable resource, the analysis asks what appears to count as authoritative within each arena. Similarly, rather than coding doxa directly, the study examines what is normalized, bracketed, or treated as beyond dispute.

Operationally, fields are treated as analytically distinguishable arenas of practice rather than as pre-given macro-sociological containers. This raises a set of guiding questions for the empirical analysis: Which actors are positioned within the relevant institutional fields? What is at stake within each field? How is voluntariness articulated and limited? And which assumptions remain largely unquestioned? By mapping actors' positions and the rules of the game that structure their perspectives, the analysis can examine how different understandings of voluntariness may emerge across institutional locations.

The rules of the game are reconstructed from the interview material through recurring patterns across three dimensions. The first concerns problem definition and stakes, meaning what is treated as the central problem to be governed or safeguarded. The second concerns boundary drawing and responsibility, meaning how legitimate responsibility is delimited and what is explicitly disavowed. The third concerns legitimate knowledge and justification, meaning which forms of knowledge are treated as authoritative and which justificatory moves function as closure. Through these dimensions, interview statements are approached as position-takings shaped by the internal logic of the arena rather than as mere personal opinions.

3.3 Foucault, Governmentality, and Power Relations

This thesis employs Michel Foucault's concept of governmentality as an analytical framework for examining how voluntariness may be produced, stabilized, and legitimized through concrete governing practices. Rather than approaching voluntariness as a psychological state located in the individual, this perspective makes it possible to analyse how voluntariness may emerge as an effect of rule, becoming administratively actionable and legally defensible through institutional arrangements, rationalities, and techniques.

A governmentality perspective departs from conceptions of power as something possessed by a specific actor or institution. Instead, it directs attention to how governing is carried out through mundane practices, routines, and knowledges that shape the field of possible action (Foucault, 1991, pp. 102-103). From this perspective, the analytical focus shifts from asking whether a decision is coercive in a straightforward sense to examining how decisions may be rendered legible as voluntary under conditions characterized by legal uncertainty, vulnerability, and institutional asymmetry. Governmentality thus provides a vocabulary for analyzing how freedom and voluntariness may function as part of governing practices rather than as the absence of power.

Foucault conceptualizes governing as the conduct of conduct, meaning attempts to shape behavior by structuring possible actions and making some lines of conduct more likely than others (Foucault, 1991, p. 93). Conduct captures a double movement: subjects are led, and they are encouraged to lead themselves. Governmentality therefore concerns not only prohibition and command, but also the organization of environments, procedures, incentives, and forms of reasoning that orient individuals toward particular choices.

A key insight in Foucault's later lectures is that modern liberal and neoliberal rationalities presuppose freedom rather than eliminating it. Governing may operate by shaping the conditions under which agency is exercised, making some choices appear responsible, realistic, or self-evident while others appear less viable (Foucault, 2008, p. 144). Freedom is thus not external to power but one of its enabling conditions. This perspective raises questions about how choice situations are structured and how particular courses of action may come to appear as reasonable or self-evident.

Governmentality analysis also emphasizes rationalities of rule, meaning historically contingent ways of defining problems, setting objectives, and selecting instruments (Foucault, 2008, p. 144). Rationality does not refer to universal reason, but to coherent ways of making governing thinkable and practicable. From this perspective, the analysis can examine how voluntariness may be embedded within governing rationalities and how influence through incentives and procedures may be framed as legitimate.

A further dimension concerns the relation between power and knowledge. Governing relies on knowledges that make individuals and populations visible as objects of intervention through categories, measurements, and truths about risk, feasibility, and responsibility (Foucault, 1978, pp. 136-138). This perspective makes it possible to analyze how particular forms of knowledge may shape what is perceived as rational action and how institutional actors may maintain a posture of neutrality while contributing to the structuring of choice.

Governmentality also concerns subject formation. Governing practices constitute subjects as kinds of people with responsibilities and capacities (Foucault, 2007, pp. 102-103; Foucault, 2008, p. 144). In this thesis, this directs attention to processes of responsibilities, understood as the distribution of decision responsibility onto the subject. From this perspective, the analysis can examine how distinctions between informing and deciding may function not only as descriptions of institutional roles, but as techniques through which subjects are constituted as autonomous decision-makers.

3.4 Operationalization of The Theoretical Framework

The theoretical framework is operationalized through two connected analytical approaches that structure the empirical analysis.

First, Bourdieu's concept of fields is used to map how interviewed actors may be situated within distinct institutional and professional arenas and how these arenas may organize what counts as legitimate knowledge and acceptable justification in relation to voluntariness. The analysis examines how informants delimit responsibilities, define problems, and justify institutional practices in order to identify field-specific patterns of legitimacy. This approach

makes it possible to explore how different understandings of voluntariness may be linked to institutional position and mandate rather than to individual disagreement.

Second, Foucault's concept of governmentality is used to examine how voluntariness may be produced and stabilized through governing practices. This includes attention to proceduralizing, standardization, and documentation as possible technologies through which voluntariness may become a legal-administrative classification. It also includes an examination of responsibilities, understood as processes through which decisions may be framed as the individual's own choice, as well as attention to incentive structures and conditionality that may encourage subjects to govern themselves. In addition, the analysis considers how forms of knowledge, such as general statistics or standardized information, may contribute to shaping what appears as reasonable or rational action.

This chapter has established a theoretical framework for analysing voluntariness as an institutional and practical accomplishment rather than a given legal or individual condition. By combining a socio-legal perspective with insights from field theory and governmentality, the chapter has shown how voluntariness can be examined both as position-dependent and as produced through concrete governing practices.

This framework makes it possible to analyse how institutional actors construct and justify voluntariness, while also examining how procedures, incentives, and forms of knowledge shape the conditions under which decisions are made and recognised as voluntary. In this way, the chapter clarifies how the thesis approaches the research question by focusing on how voluntariness is produced in practice.

Chapter 4: Methodology

This chapter outlines the methodological approach used to examine how §8 of *Hjemrejseloven* functions in practice and how voluntariness is produced and legitimised within Danish return governance. Given the thesis' focus on voluntariness as an institutional and practice-based phenomenon, the study adopts a qualitative and exploratory research design that allows for close analysis of how actors understand, justify, and enact voluntariness within their professional contexts.

The chapter is grounded in a critical realist and socio-legal perspective, which makes it possible to analyse both the institutional structures shaping return governance and the practices through which these structures are enacted. On this basis, the chapter presents the research design, data production, and analytical strategy that together enable the thesis to investigate how voluntariness is constructed in practice.

4.1 Epistemological Framework

This thesis adopts a critical realist epistemological and ontological position. It examines both the institutional structures embedded in §8 and the practices through which these structures are enacted. In critical realism, social reality is understood as stratified across empirical, actual, and real levels, where underlying mechanisms shape what becomes possible and likely in practice (Fletcher, 2017, p. 183). In this thesis, mechanisms such as incentive structures, administrative routines, and institutional role boundaries are treated as real features of return governance that condition institutional practice, even when they are not explicitly articulated by actors.

At the same time, critical realism emphasizes epistemic fallibility. Empirical material is treated as mediated and partial, yet analytically valuable for developing plausible explanations of the mechanisms and conditions that structure institutional conduct (Fletcher, 2017, pp. 183, 189). Meanings and ideas are therefore not approached as subjective noise, but as socially consequential elements that shape how institutions act and justify their practices (Fletcher, 2017, p. 190).

The thesis is further grounded in a socio-legal orientation that treats law as socially operative rather than limited to doctrine. In the Danish sociology of law tradition, Dalberg-Larsen distinguishes between legal dogmatics and law in action, while emphasizing that these are not separate spheres but interconnected dimensions of the same reality (Dalberg-Larsen, 2005, p. 41). This supports an approach to §8 as both a formal legal provision and a set of institutional practices through which voluntariness is made administratively legible and defensible.

This perspective aligns with broader socio-legal scholarship that includes not only formal rules but also informal norms, processes, and institutional understandings as part of legal practice

(Creutzfeldt et al., 2016, p. 378). In this thesis, this entails analyzing practices such as standardized guidance, routinised procedures, and institutional boundary drawing as part of how law operates in everyday governance. As Silbey notes, legality often operates through taken-for-granted routines rather than through exceptional events (Silbey, 2019, p. 3), which is particularly relevant for understanding how voluntariness under §8 is stabilized through ordinary administrative practices.

Taken together, critical realism and a socio-legal perspective provide the epistemological foundation for analyzing §8 as a legal arrangement whose effects are produced through institutional practices, and for developing explanations that connect situated accounts to the conditions shaping return governance.

4.2 Research Design and Strategy

The study adopts an exploratory research design and a qualitative approach. An exploratory design is appropriate where a phenomenon is insufficiently mapped, as it allows for an open and investigative orientation in which patterns, tensions, and institutional logics can be identified from the empirical material rather than treated as predefined variables (Swedberg, 2020, pp. 17-18). The aim is therefore to examine how §8 operates in practice and how voluntariness is articulated and justified across institutional contexts, rather than to measure the prevalence of specific outcomes.

A qualitative strategy is employed to enable close analysis of institutional practices and the meanings through which legal arrangements are interpreted and implemented (Moser & Korstjens, 2017, pp. 10-11). This approach facilitates attention to how actors reason, justify, and make sense of §8 within their institutional settings. In line with the critical realist framework, empirical material is treated as situated and partial, yet analytically valuable for developing explanations of the mechanisms and conditions shaping institutional conduct (Fletcher, 2017, pp. 183, 189).

The study further adopts an abductive and iterative analytical strategy. Abduction involves developing plausible interpretations through a continuous movement between empirical observations and theoretical concepts, particularly where the material reveals tensions or

patterns that are not immediately explained by existing frameworks (Timmermans & Tavory, 2012, p. 171). The analysis therefore proceeds through iterative engagement with empirical material, where interpretations are refined as new questions emerge. Revisiting the material is central to this process, as it enables the identification of patterns that may not be initially apparent (Timmermans & Tavory, 2012, pp. 177-178).

4.3 Sampling and Recruitment Strategy

The empirical material consists of six interviews with actors positioned at different institutional sites central to the formulation, implementation, and evaluation of §8. Participants were selected through purposive sampling, meaning that inclusion was based on their capacity to provide information-rich accounts relevant to the research question rather than statistical representativeness. More specifically, the study follows an expert sampling rationale, where participants were chosen based on their professional proximity to §8 in roles related to policy design, administrative implementation, legal assessment, or rights-based counselling (Palinkas et al., 2015, p. 534).

The sample was constructed to capture variation across interrelated institutional positions, allowing for insight into how §8 is approached from different organizational perspectives, including both state-based and external actors (Palinkas et al., 2015, pp. 533-534).

Recruitment was conducted through direct email contact using publicly available organizational information, supplemented by professional networks to identify relevant entry points. Invitations outlined the purpose of the study, voluntary participation, and confidentiality procedures.

4.4 Introducing Informants

The study draws on six interviews with participants occupying different professional and institutional positions in the governance, implementation, and evaluation of §8. To ensure confidentiality, participants are presented by role and organizational location rather than by name.

The sample includes two caseworkers from the Danish Return Agency working with return support administration and guidance during the reflection period. Their accounts reflect day-to-day case handling and communication with rejected asylum seekers, including the use of templates, procedural sequencing, and standardized information.

The study also includes a ministry-level official from the Ministry of Immigration and Integration, who has contributed to legislative work on the return framework and has prior experience from the Refugee Appeals Board. This interview provides insight into policy rationales and how §8 is positioned within the broader return framework.

In addition, a practitioner from the Danish Refugee Council with a legal background contributes a practice-near perspective based on experience with counselling and legal support for rejected asylum seekers. This perspective focuses on communication, trust, and how return measures are understood in practice.

To capture legal and rights-based perspectives, the material includes an interview with a human rights lawyer with experience in litigation and advisory work. The study also includes a legal scholar from Aalborg University specializing in international law, human rights, and asylum law, with particular expertise in consent and the conditions for valid waiver of rights. Finally, the material includes a PhD researcher with a juridical background, focusing on broader ethical and structural conditions related to consent, including the role of incentives and institutional asymmetries.

Together, these roles provide a basis for examining how voluntariness is articulated across different institutional positions.

4.5 Interview Procedure and Transcription

Data were generated through semi-structured qualitative interviews conducted either online or in person, depending on participant availability. Semi-structured interviews allow for a balance between thematic structure and openness, enabling participants to elaborate on issues in their own terms while ensuring coverage of core topics (Gill et al., 2008, pp. 291-292; DiCicco Bloom & Crabtree, 2006, pp. 314-315).

Three interview guides were developed to reflect the different institutional positions of participants. One guide focused on administrative implementation, addressing how §8 is operationalized in practice, including procedures, guidance, and communication during the reflection period. A second guide targeted policy-level perspectives, focusing on legislative rationales and the intended functioning of §8. A third guide addressed external actors, including legal and rights-based perspectives, with a focus on consent, rights waivers, and the boundaries of voluntariness. Across all guides, recurring themes such as voluntariness, decision-making, and the relationship between incentives and appeal rights were maintained to support comparison (Young et al., 2018, p. 12).

Interviews lasted between 45 and 75 minutes and were audio recorded with participants' consent. Recordings were transcribed using a meaning-oriented approach rather than verbatim transcription. This approach prioritizes substantive content and participants' reasoning while omitting detailed interactional features that are not central to the analytical focus (Oliver et al., 2005, pp. 1274-1275). As transcription is an analytical decision, the level of detail was aligned with the study's focus on institutional practices and legitimacy claims rather than micro-linguistic features (Tessier, 2012, p. 448).

The transcription process involved selective attention to segments relevant to voluntariness, consent, appeal rights, incentive structures, and institutional practices. Recordings were revisited where interpretive uncertainty arose. This approach is consistent with qualitative research that prioritizes analytical relevance while acknowledging the interpretive role of the researcher in the transcription process (Hill et al., 2022, pp. 2-3).

4.6 Reflections on Data Processing, Quality, and Ethics

Ethical considerations focused on informed consent, confidentiality, and the risk of identifiability in a small national field. Participants received information about the purpose of the study, voluntary participation, and the use of anonymized quotations, and consented to audio recording. Anonymity was ensured by referring to participants through institutional roles rather than names. This approach addresses the risk of deductive disclosure, where individuals may be identifiable through contextual details despite anonymization (Kaiser, 2009, pp. 1632-1634). Quotations were therefore screened for identifying information, and non-essential

contextual details were generalized. Audio files and transcripts were stored securely and accessible only to the researcher, with deletion planned in accordance with participant information (Sanjari et al., 2014, pp. 3-4).

Quality and rigour were addressed through credibility, transparency, and reflexivity. Credibility was supported through systematic comparison across institutional positions and by grounding interpretations in empirical excerpts. Transparency was ensured by clearly documenting analytical choices, while reflexivity involved treating interview accounts as position-bound perspectives and remaining attentive to the influence of theoretical assumptions on interpretation (Noble & Smith, 2015, pp. 34-35; Sanjari et al., 2014, p. 2).

The study has several limitations. The sample consists of six expert interviews, which supports analytical depth but limits claims about generalizability. In addition, the use of meaning-oriented transcription involves selectivity and may reduce access to interactional nuance, although it preserves substantive content relevant to the research focus (Hill et al., 2022, pp. 2-3; Tessier, 2012, p. 448). The findings should therefore be understood as contextually grounded interpretations of institutional practices rather than as measures of prevalence.

4.7 Analysis Strategy

The analysis followed an abductive and iterative coding process, involving a continuous movement between empirical material and theoretical concepts. Abductive analysis aims to develop plausible interpretations by engaging with empirical patterns and tensions rather than applying a fixed analytical template (Timmermans & Tavory, 2012, pp. 171, 177-178). In practice, this involved iterative cycles of reading, coding, and re-reading, where initial categories were refined and tested across interviews.

Coding was organized around voluntariness as a sensitizing concept. Rather than defining voluntariness in advance, the concept was used to guide attention to how voluntariness was articulated, justified, and delimited in the material (Blumer, 1954, pp. 7-8). This included both explicit definitions and the justification practices and boundary work through which voluntariness was made meaningful.

The analysis proceeded in two steps. The first step involved field-oriented coding aimed at identifying how institutional positions shape perspectives on voluntariness. Interviews were coded across three dimensions: (1) problem definitions and stakes, (2) boundary drawing and responsibility, and (3) forms of legitimate knowledge and justification. This approach makes it possible to examine how different institutional positions' structure what is considered relevant, legitimate, or outside mandate (Emirbayer & Johnson, 2008, pp. 6-7; Lamont & Molnár, 2002, p. 168).

The second step involved governmentality-oriented coding, focusing on how voluntariness is shaped through governing practices. Coding focused on four clusters: (1) proceduralizing and documentation, (2) standardization and neutrality claims, (3) responsibilities, and (4) incentive structures and forms of knowledge. This approach directs attention to how practices and techniques may structure the conditions under which decisions are made and understood (Rose et al., 2006, pp. 84-86).

Across both steps, coding was conducted in a reflexive thematic manner, where codes were developed and revised through ongoing engagement with the data rather than applied as fixed categories (Braun & Clarke, 2019, pp. 592-593). Earlier transcripts were revisited as new analytical insights emerged, allowing interpretations to be refined throughout the process.

This chapter has outlined the methodological foundation of the thesis and demonstrated how the chosen research design, data material, and analytical strategy support an examination of voluntariness as a practice-based and institutional phenomenon. By combining a qualitative approach with a critical realist and socio-legal perspective, the chapter has clarified how the study moves beyond formal legal definitions to analyse how voluntariness is produced, interpreted, and legitimised in concrete settings.

In this way, the chapter establishes the methodological basis for analysing how §8 operates in practice and how institutional actors contribute to shaping what can be recognised as voluntary return.

Chapter 5: Towards The Paradigm Shift

This chapter situates §8 of *Hjemrejseloven* within the broader transformation of Danish asylum governance in order to clarify the conditions under which voluntariness becomes meaningful in practice. Rather than treating §8 as an isolated legal provision, the chapter approaches it as part of a longer trajectory in which asylum governance has shifted from a primary focus on protection toward increasing emphasis on control, conditionality, and return.

The purpose of the chapter is therefore to show how this transformation has restructured the institutional and political context in which return decisions are made. By tracing key developments from the 1983 Aliens Act to the emergence of return governance as a central policy objective, the chapter demonstrates how the conditions for "voluntary" return have been shaped over time. In doing so, it provides the analytical background necessary for understanding how voluntariness under §8 is produced within a governance framework that increasingly operates through structured choice.

5.1 From Protection to A Framework Enabling Return

The adoption of the 1983 Aliens Act marked a significant reorientation in Danish asylum governance. The reform is widely described as reflecting a strong commitment to international refugee protection, embedding principles derived from the UN Refugee Convention and the European Convention on Human Rights (Vedsted-Hansen, 2022, p. 3). In this period, asylum governance was primarily organised around protection and procedural safeguards, rather than return as a policy objective.

The 1983 framework also strengthened the legal position of refugees through rights-based provisions. It granted de facto refugees a right to residence and expanded access to family reunification by embedding it in statutory law (Bøegh-Lervang & Madum, 2011, pp. 1-2).

However, while the framework was protection-oriented, it also established the legal and administrative infrastructure through which later restrictive reforms could be implemented. As such, it provided the institutional foundation for subsequent shifts toward control, conditionality, and eventually return (Vedsted-Hansen, 2022, p. 3).

5.2 Procedural Differentiation and The Emergence of Control

During the mid-1980s, Danish asylum governance began to incorporate more explicit forms of procedural differentiation. A key development was the introduction of accelerated procedures for applications considered "manifestly unfounded", allowing certain claims to be processed outside the ordinary asylum procedure (Lov nr. 574 af 19. december 1985).

While presented as a technical adjustment aimed at efficiency, this reform marked an important shift in how asylum cases were governed. It introduced early categorisation as a structuring feature of the asylum process, where initial assessments increasingly determined both the form and tempo of case handling. In this way, asylum governance began to rely more systematically on procedural sorting as a means of managing applications.

This development has been identified as part of a broader shift toward more control-oriented forms of asylum governance. Accelerated procedures for "manifestly unfounded" claims function as instruments for reducing time and resources spent on selected cases, thereby contributing to the administrative management of asylum systems (Vedsted-Hansen, 2025, p. 4).

From the late 1980s and through the 1990s, asylum policy was further shaped by growing political attention to system capacity and sustainability. Immigration and asylum increasingly became salient political issues and were progressively framed in terms of control and governance capacity rather than protection alone (Green-Pedersen & Krogstrup, 2008, pp. 611-613).

Taken together, these developments indicate a gradual shift in which asylum governance became more oriented toward administrative control and system management. This shift is significant for the present analysis, as it marks an early move toward governing asylum through procedural structuring, an approach that later becomes central to the organisation of return.

5.3 Restrictive Asylum Governance tn the 2000s

In the early 2000s, Danish migration governance became increasingly characterised by restrictive and conditional forms of regulation. While many of these reforms were formally situated outside the asylum procedure itself, they contributed to a broader shift in how access to rights and legal status was governed.

A central development was the tightening of family reunification rules, including the introduction of the so-called 24-year rule in 2002, which imposed age and additional requirements as conditions for family life (Rytter, 2010, pp. 307-309). Similarly, the attachment requirement linked access to family reunification to administrative assessments of applicants' connection to Denmark, thereby introducing evaluative criteria into the regulation of legal rights (Rytter, 2010, pp. 309-311; Jeholm & Bissenbakker, 2019, pp. 481-483).

Restrictive governance was also expressed through welfare policy. Reduced benefit levels for newly arrived immigrants functioned not only as a domestic welfare reform but also as a migration-relevant instrument affecting incentives and conditions for residence (Agersnap et al., 2020). More broadly, access to social protection became increasingly structured through differentiated eligibility criteria, linking welfare governance to migration control (Goul Andersen, 2007, pp. 257-260).

Taken together, these developments indicate a shift toward governing through conditionality, where access to rights was increasingly mediated by administrative criteria and behavioural expectations. While the asylum framework formally remained intact, the surrounding governance environment became more restrictive and conditional. This is significant for the present analysis, as it illustrates how governance through conditional access and structured eligibility emerged prior to, and later informs, the organisation of return policies.

5.4 Temporariness and The "Danish Paradigm Shift"

A more far-reaching reorientation of Danish asylum governance unfolded in the years following the 2015 refugee arrivals in Europe. During this period, Denmark introduced a distinct temporary protection status in section 7(3) of the Aliens Act, explicitly framing protection as short-term and increasingly aligned with return as an expected outcome (Vedsted-

Hansen, 2022, pp. 14-15). In Vedsted-Hansen's analysis, the introduction of section 7(3) forms part of a broader shift toward making protection more temporary and more closely connected to the prospect of return once conditions in the country of origin are deemed to have changed (Vedsted-Hansen, 2022, pp. 14-16).

One concrete implication of this turn toward temporariness concerned family life. The 2015 amendments introduced significant restrictions on access to family reunification for beneficiaries of section 7(3), including a rule that postponed access to family reunification for up to three years (Act No. 102 of 3 February 2016 amending the Danish Aliens Act [Lov nr. 102 af 3. februar 2016]). This waiting period was subsequently reduced to two years in 2017 through further amendments to the Danish Aliens Act (Act No. 436 of 9 May 2017 [Lov nr. 436 af 9. maj 2017]). The initial restriction gave rise to substantial legal and human rights concerns, particularly in relation to the protection of family life under Article 8 of the European Convention on Human Rights, as highlighted in both legal scholarship and international monitoring reports (Vedsted-Hansen, 2022, p. 14; Council of Europe Commissioner for Human Rights, 2017).

These developments illustrate how temporariness was operationalised through differentiated access to rights, where the possibility of family life became conditional upon duration of stay and legal status. At the same time, they reveal the legal tensions inherent in such measures, as restrictive policies were adjusted in response to human rights concerns.

Temporariness was further reinforced through changes to the legal conditions for revocation. As Vedsted-Hansen emphasises, the 2015 amendments not only introduced a temporary protection status but also expanded the scope of revocation by lowering the threshold for withdrawing residence permits for certain categories of refugees (Vedsted-Hansen, 2022, pp. 16-17). This aligned revocation practices more closely with the logic of temporary protection.

These developments were consolidated politically and legally in 2019. Vedsted-Hansen describes this reform as the formal articulation of the "paradigm shift", implying a quasi-mandatory application of revocation once conditions in the country of origin were assessed to have improved sufficiently (Vedsted-Hansen, 2022, pp. 37-38). In this sense, the 2019 reform can be understood as the culmination of a broader transformation in which asylum residence increasingly became conditional, temporary, and oriented toward return rather than long-term integration (Vedsted-Hansen, 2022, p. 37).

5.5 The Rise of Return Governance

As refugee protection in Denmark became increasingly framed as temporary, return gradually emerged as a more central political and administrative objective. A key concern in this period was the continued presence of rejected asylum seekers without legal residence. Official figures show that 1,155 rejected asylum seekers were registered in return position (*udsendelsesposition*) at the end of 2020, declining to approximately 330 by November 2024 (Udlændingestyrelsen et al., 2024).

Figure 1 illustrates this development of the number of rejected asylum seekers in *udsendelsesposition* in the period from 2020 to 2024.

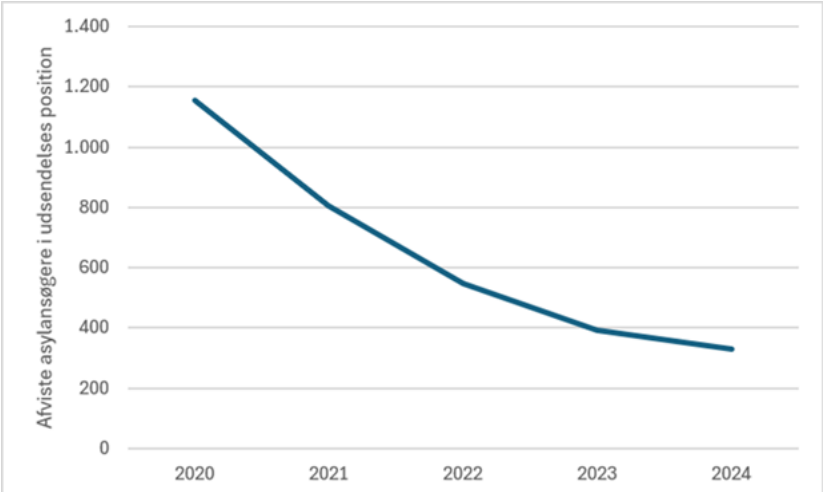


Figure 1: Number of rejected asylum seekers in udsendelsesposition, 2020-2024

In parallel, return governance was institutionalised through organisational reform. In April 2020, the Danish government established a dedicated Return Agency (*Hjemrejsestyrelsen*), tasked with coordinating and supporting the departure of individuals without lawful residence (Udlændinge- og Integrationsministeriet, 2020).

The creation of a specialised authority marked a shift toward treating return as a distinct policy domain with its own administrative structures and operational logic.

Taken together, these developments indicate a broader restructuring of asylum governance in which return became an increasingly central organising principle. This shift is significant for

the present analysis, as it reflects a move toward governing not only through admission and protection, but through the active organisation and management of departure.

5.6 Hjemrejseloven And §8

Hjemrejseloven was adopted in May 2021 as a consolidated legal framework regulating the return of foreign nationals without lawful residence in Denmark. The Act was presented as a step toward a more coherent and coordinated return policy and entered into force on 1 June 2021 (Udlændinge- og Integrationsministeriet, 2021). In legal terms, it gathers and systematises provisions on return-related obligations, control measures, and support schemes within a single statutory framework, thereby institutionalising return governance as a distinct policy area (Hjemrejseloven, 2021).

Within this framework, §8 establishes the possibility of providing return support to individuals who cooperate with departure. The provision is central to this thesis because it links access to return support to the procedural situation of rejected asylum seekers and introduces a structured decision point shortly after a first-instance refusal. Under the Danish asylum procedure, a case is normally referred to the Refugee Appeals Board after a 14-day period unless the applicant withdraws the appeal. During this period, applicants are invited to a guidance interview with *Hjemrejsestyrelsen* (Bekendtgørelse om hjemrejsestøtte, 2021, §4).

In this context, §8 introduces a specific mechanism whereby rejected asylum seekers may receive additional financial support if they choose to withdraw their appeal within the reflection period and instead cooperate with return (Bekendtgørelse om hjemrejsestøtte, 2021, §4). The decision to accept return support thus simultaneously becomes a decision about whether to maintain access to second-instance review.

Officially, this arrangement is framed as support for voluntary and orderly departure, contributing to the objective that foreign nationals without a right to stay leave Denmark. At the same time, it creates a distinctive procedural setting for analysing voluntariness. By linking financial incentives to the waiver of appeal rights, §8 structures the conditions under which return may be accepted, making it a particularly relevant site for examining how voluntariness is produced in practice.

From a historical perspective, §8 does not appear as an isolated legal innovation, but as part of a broader trajectory in Danish asylum governance characterised by increasing procedural differentiation, conditionality, and a shift toward temporariness. Across these developments, return has evolved from an administrative consequence of rejection into a central and institutionalised governance objective. This transformation is analytically significant because it highlights how return is not simply implemented, but actively organised through legal, administrative, and political developments that structure the conditions under which departure becomes expected and rational. Voluntariness must therefore be understood within this broader context, where choices are shaped by institutional arrangements that make certain outcomes appear more viable than others. The chapter thus shows that the conditions under which §8 operates are historically produced, and that voluntariness cannot be understood independently of the governance framework in which it is embedded.

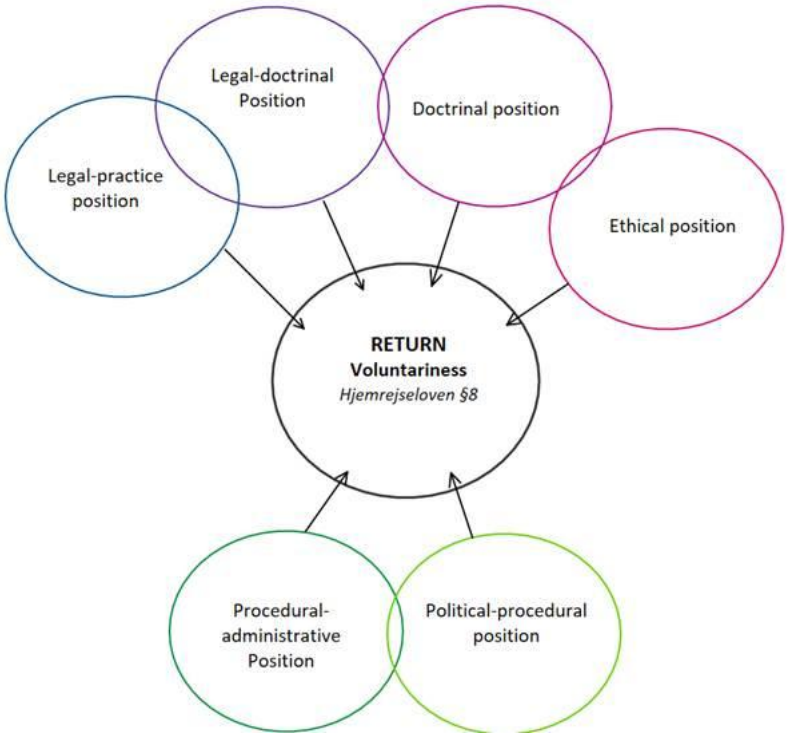
Chapter 6: A Field Analysis

This chapter analyses how voluntariness under §8 is constructed and legitimised across different institutional positions within Danish return governance. Drawing on Pierre Bourdieu's concept of fields, the analysis approaches the empirical material as position-takings within a shared relational space, where actors define what counts as a voluntary decision, allocate responsibility, and establish criteria of legitimacy.

The purpose of the chapter is to show that voluntariness does not have a single or fixed meaning, but is shaped by institutional location, professional mandate, and proximity to state authority. By analysing how different actors articulate and justify voluntariness, the chapter identifies competing logics of legitimacy and reveals how these shape what can be recognised as voluntary in practice.

The analysis proceeds by reconstructing six institutional positions and examining how each position defines voluntariness, what it treats as relevant or irrelevant, and how it justifies its claims. Taken together, this provides a relational mapping of the return field and establishes how voluntariness is produced, stabilised, and contested across institutional contexts.

Figure 1 provides an overview of the six institutional positions analysed in the chapter, illustrating how they cluster around different logics of legitimacy and relations to state authority. The figure serves as an orienting heuristic for understanding how voluntariness is constructed across the field.



6.1 Procedural-Administrative Position: Standardisation and Procedural Legitimacy

The Danish Return Agency occupies a central bureaucratic position within the return field. As the authority responsible for implementing §8 of *Hjemrejseloven* in practice, it operates at the point where legal and political decisions are translated into concrete administrative procedures. This institutional proximity to state authority fundamentally shapes how voluntariness is constructed and stabilised.

From the procedural-administrative position, voluntariness is defined primarily as a condition secured through correct procedure. Caseworkers emphasise that their role is not to influence outcomes, but to ensure that rejected asylum seekers are informed about their options following a rejection. As one caseworker states:

> *"Our task is to inform them about the possibilities, the decision itself is theirs"* (Interview 2, p 8.)

This formulation performs an important boundary-drawing move within the return field. Responsibility for the final decision is individualised, while the structural conditions under which the decision is made are bracketed. Voluntariness becomes equated with the provision of information and the formal availability of choice, rather than with an assessment of whether the surrounding circumstances enable genuinely free decision-making.

Standardisation plays a central role in securing legitimacy within this position. The mandatory guidance interview during the reflection period follows a predefined template designed to ensure uniformity. As one interviewee explains:

> *"We follow a detailed template where the same points are explained each time"* (Interview 2, p. 3).

Through this emphasis on consistency and equal treatment, legitimacy is grounded in neutrality and procedural correctness. The uniform template functions as a technology of objectivity: by ensuring that all individuals receive identical information, the administration demonstrates fairness. At the same time, this standardisation limits the scope for individualised assessment, reinforcing a depersonalised understanding of voluntariness.

The interviews reveal an awareness among caseworkers of the asymmetrical conditions under which these interactions take place. Rejected asylum seekers may be distressed, disoriented, or firmly focused on appealing the decision. As one caseworker observes:

> *"[…] they sit and stare into space […] there may be concern that they do not fully understand what it actually involves […]"* (Interview 2 pp. 5, 8).

This suggests that individuals are not fully present in the conversation and may still be processing the rejection.

Yet within the procedural-administrative position, recognition of emotional or cognitive asymmetry does not alter the underlying logic. The institutional obligation to conduct the interview and complete the procedural steps remains decisive. The legitimacy of the process

rests on whether the formal requirements have been fulfilled, not on whether the individual is in a position to meaningfully process the information.

What counts as legitimate knowledge within this position is similarly delimited. Caseworkers explicitly distance themselves from evaluating the merits of individual asylum claims or predicting appeal outcomes, describing such assessments as beyond their mandate. Instead, they rely on aggregated statistics and general information incorporated into the template. These figures are presented as neutral background knowledge rather than as personalised prognoses. In doing so, the administration maintains a distinction between information and advice, thereby safeguarding its claim to neutrality.

Return support under §8 is likewise framed as a conditional administrative instrument rather than as a right. Detailed requirements concerning reintegration plans, documentation, and timelines are emphasised. Sustainability and accountability function as key criteria of legitimacy, reflecting an administrative rationality oriented towards responsible resource management. Although caseworkers acknowledge that these requirements may be difficult to grasp for individuals in vulnerable situations, the conditions themselves remain non-negotiable.

Within the return field, the procedural-administrative position thus stabilises a particular definition of legitimate state conduct. Influence is neither explicitly denied nor foregrounded; instead, it is rendered irrelevant so long as the information process has been correctly executed. Voluntariness is constructed as compliance with procedural standards, and responsibility for the decision is located with the individual once those standards have been met.

In this way, the procedural-administrative position contributes to defining the rules of the game in the return field: a decision is considered voluntary if it follows a formally correct process within the existing legal framework. Broader questions concerning structural pressure, economic necessity, or power asymmetry remain external to the evaluative criteria that secure legitimacy within this position.

6.2 Political-procedural Position: Governance, Coherence, and Legitimate Influence

The representative from the Ministry of Immigration and Integration occupies a strategic position within the return field. Unlike the procedural-administrative position, which focuses on implementation, this position is concerned with policy design, legal coherence, and the systemic defensibility of §8. Its proximity to legislative authority shapes how voluntariness is framed and justified.

From the political-administrative position, §8 is articulated not as an isolated measure, but as part of a broader and coherent return architecture. As C explains:

> *"This is not something that simply appears in front of the individual […] there is, in practice, a continuous thread throughout the process"* (Interview 1, p. 1).

This emphasis on coherence performs an important legitimising function. By situating §8 within a continuous procedural trajectory, the potential rupture introduced by the reflection period and the waiver of appeal rights is softened. Voluntariness is constructed as embedded in an already structured process rather than as a critical decision point marked by heightened asymmetry.

A central feature of this position is its explicit acknowledgement that economic incentives influence behaviour. C notes that the size and timing of the financial support "will clearly have an impact." However, influence is not framed as problematic per se. Instead, it is understood as an expected and legitimate instrument of governance. Within this position, the decisive question is not whether influence exists, but whether it can be justified within a framework of legality and proportionality.

This reflects a specific construction of voluntariness within the return field. Rather than being defined by the absence of pressure, voluntariness is defined by the presence of procedural safeguards and legal review mechanisms. The reflection period and the possibility of appeal are treated as structural guarantees that secure legitimacy, even where incentives are designed to steer decisions.

C further emphasises that accepting return support is not determinative in subsequent proceedings:

> *"It will never be decisive on its own, but it will form part of the basis for the board's assessment, and it may be something the board questions"* (Interview 1, p. 4).

Here, responsibility for safeguarding voluntariness is distributed across institutional layers. The Refugee Appeals Board becomes a corrective mechanism capable of detecting and addressing potential irregularities. In this way, legitimacy is located in systemic checks and balances rather than in the elimination of structural influence at the moment of decision.

What counts as relevant knowledge within the political-administrative position is therefore primarily legal and systemic. C reflects on the fourteen-day reflection period as an unusual construction in comparative legal terms. Yet this observation does not lead to a critique of its potential coercive effects. Instead, it functions as a delimitation of acceptable policy design: as long as the arrangement can be defended within the broader legal framework, it remains legitimate.

The political-administrative position thus contributes to stabilising a governance-oriented definition of voluntariness within the return field. Economic incentives are framed as rational steering tools; vulnerability is acknowledged at a general level but managed through institutional safeguards; and legitimacy is secured through proportionality and legal defensibility.

In relational terms, this position differs from the procedural-administrative position not by denying influence, but by normalising it. Where the administrative position individualises responsibility after correct information has been given, the political-administrative position justifies influence as an inherent and acceptable feature of migration governance. Structural asymmetry between state and individual is not foregrounded as a problem; rather, it is embedded within a legally regulated system designed to withstand scrutiny.

Within the return field, this position therefore plays a central role in defining the outer boundaries of legitimate steering. A decision is considered voluntary not because it is free from inducement, but because the inducement is legally authorised, proportionate, and institutionally reviewable.

6.3 Doctrinal Position: Normative Thresholds and State Responsibility

The doctrinal position within the return field is represented by Jesper Lindholm, J, whose analysis is grounded in international refugee law and human rights standards. From this position, voluntariness is not treated as a procedural label or a governance tool, but as a substantively demanding legal threshold that must be satisfied for consent to be considered valid.

A central feature of the doctrinal position is the insistence that formal classification does not exhaust legal evaluation. As J notes:

> *"Maybe one feels pressured by one or two factors, but it is, in principle, considered a voluntary decision. And that is where the nature of consent comes into play […] which should be assessed, but which I do not believe actually is"* (Interview 6, p. 5).

This statement directly challenges the procedural construction of voluntariness identified in the administrative position. Where the procedural-administrative logic equates voluntariness with the completion of correct information procedures, the doctrinal position reframes voluntariness as a question of substantive validity. The decisive issue is not whether a decision is formally categorised as voluntary, but whether the surrounding conditions undermine the freedom required for legally valid consent.

A key rule within the doctrinal position is the primacy of individualised assessment. J emphasises:

> *"The mere existence of a system that, in general, may appear unproblematic if implemented correctly is not sufficient […] One must examine the individual concrete circumstances"* (Interview 6, p. 5).

Here, systemic coherence and procedural safeguards are rendered insufficient. The focus shifts from institutional design to the concrete situation of the individual. This move redistributes evaluative authority: legitimacy cannot be secured solely through well-designed structures, but must be continuously reassessed in relation to actual lived conditions.

The doctrinal position is particularly critical of the linkage between financial support and waiver of appeal rights. As J explains:

> *"Linking financial support directly to the waiver of an appeal has major consequences […] because it signals that the individual receives money in exchange for abandoning the possibility of remaining in Denmark"* (Interview 6, pp. 16-17).

This formulation reframes the arrangement as an exchange relation between state and individual. Within the return field, this is analytically significant. What appears from the political-administrative position as legitimate steering is here reconstructed as a potentially problematic transaction that alters the nature of consent. The economic incentive does not merely influence; it transforms the legal meaning of the decision by introducing a conditionality that may undermine its voluntariness.

Central to this position is the allocation of responsibility. J stresses that ensuring the validity of consent is a positive obligation of the state:

> *"Power relations are always crucial to consider, and responsibility lies with the state"* (Interview 6, p. 17).

In contrast to the procedural-administrative position, where responsibility is individualised once information is provided, the doctrinal position locates responsibility structurally. The existence of asymmetrical power relations is not treated as a background condition but as a legally relevant factor that intensifies the state's obligations.

Vulnerability is therefore not an incidental consideration, but a legally decisive one. Trauma, mental health, social isolation, and uncertainty are not merely contextual features; they shape the capacity to consent. Within this position, voluntariness cannot be detached from material and psychological conditions. A formally available choice may still fail to meet the doctrinal threshold if structural pressure compromises autonomy.

Within the return field, the doctrinal position thus destabilises governance-oriented and procedural definitions of voluntariness. It introduces a normative benchmark that is external to administrative rationality and policy effectiveness. Voluntariness is constructed not as compliance with procedure or proportional steering, but as a legally protected condition

requiring absence of undue pressure, individualised assessment, and heightened state responsibility.

In relational terms, the doctrinal position shifts the stakes of the field. The struggle is no longer merely over how to implement or justify §8, but over the criteria by which voluntariness itself should be evaluated. By insisting on substantive validity rather than procedural sufficiency, this position challenges the boundaries of what counts as legitimate influence within the return regime.

6.4 Ethical Position: Structural Conditions and The Production of Consent

The ethical position within the return field is represented by the PhD researcher, whose analysis moves beyond doctrinal legality and focuses on the broader structural and material conditions under which consent is produced. While sharing certain concerns with the doctrinal position, this perspective shifts the analytical emphasis from legal validity to structural coercion and systemic power.

From the ethical position, §8 is not approached primarily as a legal provision to be interpreted, but as part of a wider governance strategy embedded in migration control. The arrangement is situated within what is described as a broader policy of "planned destitution", where social and economic pressure function as tools to induce return. In this framing, voluntariness cannot be assessed in isolation from the surrounding regime of uncertainty, deprivation, and restricted rights.

A central feature of this position is its insistence that consent is shaped by cumulative structural conditions. Even where procedural safeguards formally exist, the surrounding context may undermine meaningful autonomy. As expressed:

> *"Fourteen days is nothing when you are asked to make a potentially life-threatening decision"* (Interview 4, p. 6).

This statement shifts attention away from formal legality and toward temporal and existential pressure. The reflection period, which from a political-administrative perspective functions as a safeguard, is here reframed as potentially inadequate in light of the gravity of the decision.

Voluntariness is thus analysed not as a moment of isolated choice, but as a decision produced within a compressed and asymmetrical temporal structure.

The ethical position further problematises the linkage between financial incentives and waiver of appeal rights by situating it within broader material vulnerability. Where the doctrinal position emphasises the legal consequences of exchange, the ethical position foregrounds the lived reality of economic precarity. When individuals face detention, limited access to work, or prolonged uncertainty, financial support may operate less as an incentive and more as a form of pressure embedded in structural deprivation.

In this perspective, the decisive question is not merely whether the state has fulfilled its positive legal obligations, but whether the surrounding regime creates conditions under which refusal becomes practically untenable. Voluntariness is therefore conceptualised as deeply relational and materially conditioned. The boundary between influence and coercion becomes blurred when basic needs and existential security are at stake.

The ethical position is also critical of cost-benefit rationality in the regulation of fundamental rights. Framing §8 primarily in terms of administrative efficiency or economic sustainability risks subordinating procedural guarantees to governance objectives. Within this logic, appeal rights appear as negotiable instruments rather than as safeguards of protection. The ethical critique thus exposes how economic reasoning may reshape the hierarchy between state interests and individual rights.

In relational terms within the return field, the ethical position radicalises the concerns raised by the doctrinal position. Where the doctrinal perspective asks whether consent satisfies a legal threshold, the ethical perspective asks how consent is produced in the first place. The focus shifts from compliance with standards to the power relations that structure the field itself.

By foregrounding structural coercion, vulnerability, and the cumulative effects of legal and non-legal pressures, the ethical position destabilises both the procedural-administrative and the political-administrative constructions of voluntariness. It challenges the assumption that influence becomes legitimate simply because it is legally authorised or procedurally regulated. Instead, it directs attention to the material and institutional conditions that shape what appears as a choice.

Within the return field, this position thus redefines the stake. The struggle is not only over the legal validity of consent, but over the conditions under which consent can meaningfully be said to exist. Voluntariness is constructed as fragile, context-dependent, and inseparable from the broader architecture of migration governance.

6.5 Legal-Doctrinal Position: Access to Justice and Practical Safeguards

The legal-doctrinal position within the return field is represented by the human rights lawyer, M whose perspective combines doctrinal reasoning with practical engagement in individual cases. Unlike the doctrinal position analysed in section 5.3, which primarily articulates normative thresholds at a structural level, the legal-doctrinal position is anchored in concrete litigation, legal counselling, and the day-to-day defence of procedural rights.

From this position, §8 of *Hjemrejseloven* is approached through a dual lens. On the one hand, the arrangement is not rejected outright. As noted:

> *"If a person is offered a sum of money to return, they are, in that sense, better off than under the previous legal framework where such compensation did not exist"* (Interview 3, p. 1).

This acknowledgment reflects an awareness of practical realities. Return support can, in certain cases, function as a meaningful opportunity for reintegration. The legal-doctrinal position therefore does not equate influence with illegitimacy per se.

On the other hand, the linkage between financial support and waiver of appeal rights raises serious concerns. The central issue becomes whether economic incentives risk undermining effective access to justice. As expressed:

> *"It would be problematic if individuals 'feel economically pressured to give up their right to appeal [...]'"* (Interview 3, p. 2).

Here, voluntariness is evaluated in relation to procedural rights. The decisive criterion is not whether influence exists, but whether influence compromises meaningful access to appeal. The right to appeal must remain practically exercisable, not merely formally available.

In contrast to the procedural-administrative position, which individualises responsibility once information has been provided, the legal-doctrinal position emphasises the need for independent and loyal guidance. Informed consent requires more than standardised information; it presupposes access to qualified legal advice capable of clarifying prospects, risks, and consequences. The more vulnerable the individual, the stronger the obligation on authorities to ensure that decisions are genuinely informed.

Within this position, vulnerability functions as a practical intensifier of procedural safeguards. Rather than being treated as a general systemic feature, it becomes case-specific and operational: individuals with trauma, limited language skills, or uncertain legal understanding may require heightened protection to ensure that their waiver of appeal is meaningful.

Importantly, the legal-doctrinal position accepts that legislation is designed to influence behaviour. As M notes:

> *"[...] it is precisely intended to influence, and influence is not necessarily negative"* (Interview 3, p. 3).

This formulation positions the debate within a spectrum rather than a binary. Influence is recognised as inherent to governance, but the threshold between legitimate steering and unlawful coercion becomes decisive. Within the return field, the role of M is to monitor and contest cases where that threshold may be crossed.

Relationally, the legal-doctrinal position occupies an intermediate space within the return field. It does not fundamentally challenge the existence of §8 as a governance instrument, as the ethical position tends to do. Nor does it rely primarily on abstract normative critique, as in the doctrinal position. Instead, it operates within the legal framework, testing its limits through individual cases and emphasising the practical enforceability of rights.

Within the return field, this position therefore contributes to defining the operational boundary of voluntariness. A decision may be legally authorised and procedurally correct, yet still problematic if economic pressure or inadequate guidance undermines effective access to justice. Voluntariness is thus constructed as inseparable from the practical availability of legal remedies and the capacity to exercise them without undue pressure.

In this way, the legal-doctrinal position reinforces the central stake of the return field: who determines when influence crosses into coercion? By insisting on meaningful appeal rights and concrete safeguards, this position narrows the space within which economic steering can be considered legitimate.

6.6 Legal-Practice Position: Trust, Communication, and Perceived Fairness

The legal-practice position within the return field is represented by the Danish Refugee Council (DRC), D which operates at the intersection of legal counselling, practical guidance, and rights-based advocacy. Unlike the legal-doctrinal position analysed in section 5.5, which engages primarily through litigation and formal procedural safeguards, the legal-practice position is embedded in everyday interactions with asylum seekers navigating the system.

From this position, §8 of *Hjemrejseloven* is not rejected as such. Voluntary return and reintegration support are recognised as long-standing and potentially humane components of asylum systems. Return support can enable individuals who have received a final rejection to leave in a dignified and prepared manner. In this respect, the legal-practice position does not fundamentally contest the existence of the instrument.

However, the central concern within this position is not formal legality, but trust in the asylum system and in the meaningfulness of appeal rights. The risk identified is that the combination of a reflection period and enhanced financial incentives may signal to rejected asylum seekers that appealing is futile. Even if appeal rights formally remain intact, their perceived value may erode.

Within the return field, this shift in focus is analytically significant. Where the procedural-administrative position equates voluntariness with correct information, and the political-administrative position with legal defensibility, the legal-practice position foregrounds perception. Voluntariness is understood as dependent not only on formal rights, but on whether individuals experience those rights as accessible and worthwhile.

The presentation of general recognition statistics illustrates this dynamic. While intended as neutral information, such figures may be interpreted as implicit signals about the likelihood of success. Even without explicit pressure, communication can shape expectations and thereby

influence decisions. The legal-practice position thus highlights how influence may operate subtly through framing rather than through overt coercion.

A further concern relates to the additional financial bonus linked to the waiver of appeal. Although individuals can formally decline the offer, the perception that refusal might negatively affect their case can undermine confidence in the system. Voluntariness, in this view, becomes fragile: it depends on a relational environment in which individuals trust that exercising their rights will not entail hidden consequences.

In contrast to the ethical position, which emphasises structural coercion, the legal-practice position focuses on communicative dynamics. The decisive question is not only whether material conditions exert pressure, but whether institutional practices maintain neutrality and credibility. Rights must not only exist in law; they must be perceived as real and enforceable.

Relationally within the return field, this position occupies a space external to state authority but closely connected to its effects. It does not design policy or implement procedures, yet it observes how these are experienced by individuals. Its contribution to the field lies in drawing attention to the gap between formal safeguards and lived perception.

Within this position, voluntariness is therefore constructed as contingent upon trust, clarity, and the absence of implicit signalling. Influence becomes problematic not only when it crosses a legal threshold of coercion, but when it subtly reshapes how individuals interpret their prospects. By foregrounding perception and relational dynamics, the legal-practice position expands the field's understanding of how consent is produced and stabilised.

In this way, the legal-practice position reinforces the central stake of the return field: the struggle over what counts as legitimate influence. It demonstrates that legitimacy is not secured solely through procedure or legal proportionality, but also through communicative integrity and institutional trust.

6.7 Voluntariness Across Positions

This chapter has shown that voluntariness under §8 does not constitute a stable or unified concept, but emerges as a relational and contested category shaped by institutional position,

professional mandate, and normative orientation. Different actors stabilise voluntariness through distinct logics of legitimacy, reflecting their roles within the return system and their proximity to state authority.

Across these positions, a central pattern becomes visible. Voluntariness is not defined by the absence of influence, but by the conditions under which influence is rendered acceptable. While administrative and policy-oriented positions ground voluntariness in procedure, coherence, and legal defensibility, rights-oriented and practice-based positions problematise the conditions under which decisions are made, emphasising vulnerability, access to justice, and lived perception.

The chapter thus demonstrates that the core struggle within the return field is not whether voluntariness exists, but how it is defined, justified, and made credible. Voluntariness operates as a key category through which governance is legitimised, while simultaneously remaining contested when viewed from positions that foreground structural asymmetry and the conditions of consent.

Chapter 7: An Analysis of §8 in Practice

Building on the field analysis in the previous chapter, this chapter examines how voluntariness under §8 is produced in practice through concrete governing arrangements. Rather than focusing on how voluntariness is articulated across institutional positions, the analysis shifts attention to how it is operationalised through procedures, incentives, and forms of guidance.

Using a governmentality perspective, the chapter analyses how return governance works through freedom, responsibility, and structured choice. The aim is to show how voluntariness is not simply present or absent, but actively produced as an administrative and legal outcome. In doing so, the chapter examines how institutional practices make certain decisions appear reasonable, legitimate, and voluntary, while simultaneously shaping the conditions under which those decisions are made.

7.1 Voluntariness as Procedural Compliance

Building on the field-based analysis developed in the previous chapter, this section examines how voluntariness under §8 is produced within the administrative field as a procedural condition. Rather than being assessed as a substantive or experiential state, voluntariness is constructed as a legal-administrative classification that follows from compliance with predefined procedures. Within this field, the question is not whether individuals experience their decision as free, but whether the correct steps have been followed.

The administrative field, represented by the Danish Return Agency, is characterised by a strong emphasis on procedural correctness, standardisation, and documentation. Caseworkers repeatedly describe their role as limited to the provision of information, while the responsibility for the decision itself is explicitly placed on the individual. As one caseworker formulates it:

> *"Our task is to inform them about the possibilities, the decision itself is theirs"* (Interview 2, p. 8).

This distinction between informing and deciding constitutes a central rule of the game within the administrative field. By drawing a sharp boundary between institutional obligation and individual choice, the agency secures its own legitimacy while simultaneously transferring responsibility for the outcome to the asylum seeker. From a socio-legal perspective, this illustrates how voluntariness is inferred from the fulfilment of institutional duties rather than evaluated as a substantive condition of free consent.

Importantly, this articulation is not incidental. Variations of the same formulation recur throughout the interview material, functioning as a stabilising mantra within the field. The repeated emphasis on "our duty" and "their decision" normalises a specific allocation of responsibility, where the institution's role is rendered neutral and technical, while the individual is positioned as the autonomous decision-maker. Governmentality helps clarify how such repetition functions as a technique of governance: freedom is not opposed to institutional power, but mobilised as its primary legitimating resource.

Voluntariness is further produced and stabilised through highly standardised administrative practices. Guidance interviews are mandatory, time-limited, and conducted using detailed templates designed to ensure uniformity across cases. As one caseworker explains:

> *"It is a very detailed template where we explain the support, and I think the advantage of having the meeting at our office is that we can also explain in more depth what kind of support they can receive"* (Interview 2, p. 3).

Another caseworker emphasises the same point more succinctly:

> *"We go through the same points every time, so everyone receives the same information"* (Interview 2, p. 3).

Within the administrative field, standardisation is mobilised as a guarantee of neutrality, fairness, and equal treatment. Procedural equality is treated as sufficient to uphold voluntariness, regardless of differences in individuals' emotional state, legal understanding, or capacity to process information. From this perspective, fairness is equated with sameness, and deviation from the template is implicitly framed as a potential threat to legitimacy.

However, the interview material also reveals an acute awareness among caseworkers of the asymmetrical conditions under which these procedures are carried out. Several caseworkers describe how rejected asylum seekers often arrive at the guidance interview in a state of shock, distress, or cognitive overload following the rejection of their asylum claim. As one interviewee notes:

> *"Some are clearly not really present in the conversation - they are still processing the rejection"* (Interview 2, p. 4).

Another caseworker similarly describes encounters with individuals whose primary concern is not return support, but fear for their lives:

> *"It is challenging when you sit with a person who fears for their life… I've heard so many times: 'It's not the money I'm here for, it's my life that is in danger'"* (Interview 2, p. 6).

These statements reveal a tension at the heart of the administrative practice. On the one hand, caseworkers recognise vulnerability, fear, and emotional distress as defining features of the encounter. On the other hand, these factors do not alter the structure or assessment of voluntariness. The obligation to complete the guidance interview within the allotted timeframe and according to the prescribed template remains unchanged.

From a governmentality perspective, this illustrates how procedural rationalities operate by bracketing off contextual and experiential dimensions of choice. Vulnerability is acknowledged, but treated as external to the assessment of voluntariness. The individual is addressed as an autonomous subject regardless of their actual capacity to exercise autonomy in the moment. Voluntariness thus becomes a function of procedure rather than of lived possibility.

This logic is reinforced by how caseworkers describe the practical aim of the guidance interview. Even when it is acknowledged that very few individuals actually withdraw their appeal following the interview, the institutional task remains the same. As one caseworker observes:

> *"I haven't had many conversations where they actually withdraw"* (Interview 2, p. 4).

Despite this, the focus of the interview continues to centre on explaining the support scheme under §8 in detail. This highlights how voluntariness functions as a formal possibility that must be institutionally upheld, regardless of how rarely it is exercised in practice. From a socio-legal perspective, this underscores the gap between formal legal categories and empirical realities.

The procedural construction of voluntariness is ultimately condensed into a recurring institutional formulation:

> *"Our duty is to inform them, and then they have to make the decision themselves"* (Interview 2, p. 8).

This statement encapsulates what can be understood as a legal-administrative fiction of voluntariness. Once information has been provided in accordance with institutional standards, consent is presumed to be voluntary, irrespective of the broader power relations, vulnerabilities, or constraints shaping the decision. Responsibility for the outcome is individualised, while the institutional conditions under which consent is produced remain largely unexamined.

Taken together, the section shows that voluntariness in the administrative field is primarily produced as a procedural classification rather than evaluated as a substantive condition of free choice. Standardisation, time-limited interviews, and the repeated boundary between informing and deciding stabilise the rejected asylum seeker as a formally autonomous subject once the

institution has completed its duties. In this way, voluntariness functions as a governing technology that allows steering to be exercised through information delivery and procedural form, while locating responsibility for the decision with the individual and bracketing the unequal conditions under which the decision is formed.

7.2 Voluntariness as Responsible and Incentivised Self-Governance

Where voluntariness in the administrative field is primarily stabilised through procedure, the political-administrative field articulates voluntariness under §8 as an element of responsible self-governance. From this position, voluntariness is not merely a legal requirement attached to individual decisions, but a governing principle embedded within a broader return architecture designed to promote orderly, predictable, and manageable outcomes.

Within this field, represented by the Ministry of Immigration and Integration (UIM), voluntariness is framed as part of a coherent and continuous process rather than as an isolated choice triggered by rejection. As the UIM representative emphasises:

> *"This is not something that suddenly appears when you receive a rejection - there is a red thread running through the entire process"* (Interview 1, p. 1).

By situating §8 within a longer procedural trajectory, voluntariness is normalised as an expected and rational response to a clarified legal situation. From a governmentality perspective, this reflects a liberal rationality of rule in which governance operates by aligning individual conduct with institutional objectives through expectations of responsibility and foresight. Individuals are addressed as subjects capable of recognising their legal position and acting accordingly.

Crucially, this articulation does not deny the existence of pressure or hardship. On the contrary, the UIM representative explicitly acknowledges the precarious situation faced by rejected asylum seekers, describing the pressure associated with returning without resources:

> *"There is enormous pressure… coming home without money"* (Interview 1, p. 3).

However, rather than undermining voluntariness, this pressure is reframed as precisely what makes return support meaningful. Financial assistance and in-kind support are presented as mechanisms for restoring dignity and enabling responsible decision-making:

> *"The money and the in-kind support also become a way to regain some dignity"* (Interview 1, p. 3).

Here, voluntariness is discursively aligned with care and benevolence. The state appears not as coercive, but as supportive, offering individuals the means to act responsibly in a difficult situation. Governmentality helps clarify how such framings operate: rather than negating freedom, they mobilise it by presenting certain choices as morally appropriate and self-evident.

At the same time, the political-administrative field openly acknowledges that the design of §8 is intended to influence behaviour. As the UIM representative states:

> *"The size of the amount and the timing of when the offer is made will clearly have an impact on the decision that is taken"* (Interview 1, p. 3).

Importantly, this influence is not problematised as coercive. Instead, it is framed as an expected and legitimate effect of policy design. Voluntariness is thus constructed as compatible with behavioural steering, provided that individuals formally retain the possibility to choose otherwise. From within this field, influence becomes a neutral technical feature rather than a normative concern.

This governing rationality is translated into concrete practice within the administrative field through the conditional design of return support and the communicative framing of guidance interviews. Caseworkers describe how access to support under §8 is contingent upon compliance with specific requirements, particularly in relation to reintegration planning and in-kind support. As one caseworker explains:

> *"Our experience is that the money is spent very quickly if it is paid out directly… whereas if it goes through a partner, then a reintegration plan is made"* (Interview 2, p. 4).

From a socio-legal perspective, this conditionality is analytically significant. While individuals remain formally free to accept or decline the offer, the content of the choice is shaped by

institutional judgments about what constitutes responsible and acceptable behaviour. Voluntariness is preserved at the formal level, yet substantively circumscribed by administrative expectations embedded in the support scheme.

The production of responsible self-governance is further reinforced through how caseworkers describe their communicative role during guidance interviews. Rather than presenting support as a neutral option, they emphasise the need to actively frame it as attractive:

> *"It requires that during the conversation you sit and explain why this support is attractive, instead of just saying you can get support or not"* (Interview 2, p. 4).

This illustrates how voluntariness is not merely facilitated, but actively produced through discursive practices aimed at shaping individual preferences and calculations. Through a governmentality lens, such practices can be understood as techniques of governing through choice, where individuals are encouraged to internalise institutional rationalities and govern themselves accordingly.

The administrative field thus operationalises the political-administrative logic of responsible self-governance by addressing individuals as rational subjects capable of weighing costs and benefits, even under conditions of legal uncertainty and vulnerability. The existence of formal safeguards, such as the fourteen-day reflection period and the possibility of withdrawing consent, further stabilises voluntariness as a defensible category:

> *"Even if you accept the offer within the reflection period, you can still regret it… you are allowed to change your mind"* (Interview 1, p. 4).

From within the dominant field logics, these safeguards are treated as sufficient to neutralise concerns about pressure. Voluntariness is upheld through reference to legal form rather than experiential reality.

Across fields, voluntariness therefore emerges as a form of conditional freedom. Individuals are free to choose, but only within a structured incentive landscape that rewards compliance and renders certain choices more rational and attractive than others. This becomes particularly visible when contrasted with perspectives from the civil society field. The representative from the Danish Refugee Council observes:

> *"Many do not experience that they actually have a choice - they experience that there is only one realistic option"* (Interview 5, pp. 2-3).

This perception is closely linked to material conditions of precarity:

> *"When you are without residence, without work and without prospects, economic support matters enormously"* (Interview 5, p. 3).

From a governmentality perspective, this highlights how freedom operates as a governing resource. Individuals are not forced to choose to return, but the structure of their situation makes certain choices overwhelmingly more rational than others. Voluntariness is thus preserved formally, while being strategically shaped in practice.

Taken together, the analysis demonstrates that voluntariness under §8 operates as a governed form of responsible and incentivised self-governance. Whereas the administrative field stabilises voluntariness through procedural compliance, this section shows how voluntariness is also shaped through the incentive design, the way the scheme is framed in interaction, and the conditional access to resources built into return support. Individuals are thus not only informed about options, but addressed as subjects who are expected to weigh those options "responsibly", while the legal classification of the decision as voluntary remains institutionally intact.

From within the administrative and political-administrative fields, this construction appears legitimate and necessary because influence is treated as an unavoidable and acceptable feature of governance. Voluntariness therefore functions not only as a procedural condition but as a mechanism for aligning individual conduct with institutional objectives, by rendering cooperation with return a rational and defensible course of action.

However, when viewed from positions attentive to vulnerability and power asymmetry, voluntariness increasingly appears as conditional and strategically produced. Formal choice remains, yet the surrounding incentive landscape and material insecurity can make certain outcomes more compelling than others. This tension illustrates how governance through freedom works by structuring the conditions of decision-making, and it sets the stage for the subsequent analysis of consent and the limits of choice under asymmetrical power relations.

7.3 Voluntariness, Consent, and the Limits of Choice

While the preceding sections have demonstrated how voluntariness under §8 is produced through procedural compliance and incentivised self-governance, this section examines the limits of voluntariness when analysed as consent given under fundamentally asymmetrical power relations. Drawing primarily on interviews conducted within the legal-academic, legal practice, and civil society fields, the analysis foregrounds how voluntariness becomes legally and normatively fragile when it entails the waiver of fundamental procedural safeguards.

Across these fields, voluntariness is not understood as a formal condition satisfied by the mere presence of choice. Rather, it is conceptualised as a substantively demanding requirement that depends on the conditions under which consent is produced. In contrast to the administrative and political-administrative fields, where voluntariness is stabilised through procedure, incentives, and policy coherence, these actors emphasise legal uncertainty, vulnerability, and structural power asymmetries between the state and the individual.

A central concern articulated within the legal-academic field relates to the timing of the offer of return support under §8. J problematises the assumption that consent can be meaningfully given following a first-instance rejection, highlighting that such decisions are frequently overturned on appeal:

> *"If you choose to return after the first instance, you have also indicated yourself that you do not expect to be persecuted… and there I dare say that they are not always right in the concrete decisions they make"* (Interview 6, p. 3).

He emphasises that the second-instance review exists precisely to correct these errors:

> *"They are fortunately often corrected in the second instance. And that is why it is particularly problematic that one is offered - and accepts - return already after the first instance"* (Interview 6, p. 3).

From a socio-legal perspective, this critique challenges the assumption that voluntariness can be detached from the procedural safeguards designed to protect against wrongful decisions. Consent given at a stage marked by acknowledged legal uncertainty raises questions about whether the formal classification of voluntariness adequately captures the substantive conditions of choice.

Importantly, actors within the legal field do not frame §8 as an instance of overt coercion. Instead, they describe it as a subtler form of pressure embedded within an unequal relationship of authority. J captures this ambiguity when asked whether the arrangement constitutes pressure:

> *"I don't know if you can call it pressure, but it is at least an approach from the authorities about an opportunity"* (Interview 6, p. 4).

This formulation is analytically significant. Rather than opposing freedom and power, it highlights how consent may be shaped through offers extended by an authority whose decisions already delimit the individual's legal horizon. From a governmentality perspective, this illustrates how power operates through the structuring of opportunities rather than through prohibition or force.

The legal problem, as articulated by J, lies not in the formal absence of choice, but in the lack of substantive assessment of voluntariness:

> *"Voluntariness as a requirement in these situations should be assessed, but I do not think it is"* (Interview 6, p. 5).

Here, voluntariness appears as a binary legal category rather than as a context-sensitive evaluation. Once consent is expressed, it is treated as valid, regardless of the cumulative pressures that may have shaped the decision. This gap between formal requirement and practical assessment reveals what can be understood as a legal-administrative fiction of consent.

J further clarifies the legal standards applicable to such situations by outlining the criteria for valid consent:

> *"It must be voluntary. It must be given on an informed basis… Voluntariness must be clear and unequivocal, and the clarity must correspond to the intensity of the intervention"* (Interview 6, p. 10).

Given that consent under §8 entails relinquishing access to second-instance review in asylum cases, the threshold for voluntariness must necessarily be high. From this perspective, the

combination of legal uncertainty, temporal pressure, and economic incentives raises serious doubts as to whether this threshold is consistently met in practice.

Similar concerns are articulated within the human rights legal practice field. The lawyer, M, describes his immediate reaction upon encountering the legislation:

> *"When you read it, you think: can you really waive your right to appeal and then get a bag of money for it?"* (Interview 3, pp. 1-2).

He emphasises that such arrangements are particularly problematic when applied to individuals who may lack knowledge of their legal prospects:

> *"It can be particularly problematic in situations involving very vulnerable people who are not aware of their chances of having the case overturned at the Refugee Appeals Board"* (Interview 3, p. 2).

From this position, voluntariness cannot be presumed simply because a formal choice exists. Instead, the legitimacy of consent depends on the presence of thorough, loyal guidance and, in some cases, access to independent legal advice. As M stresses:

> *"For this legislation to work in practice, it is absolutely crucial that there is thorough guidance offered to rejected asylum seekers"* (Interview 3, p. 2).

He further warns against scenarios in which short-term economic relief overshadows long-term legal consequences:

> *"It must not be such a vulnerable person that you 'wet your pants' and then get 20,000 kroner to keep warm for a while. We must not end up in that situation"* (Interview 3, p. 2).

This metaphor vividly illustrates the risk that economic necessity may eclipse legal judgment, thereby hollowing out the substantive meaning of consent.

The civil society field reinforces this critique by foregrounding how voluntariness is experienced in practice. The representative from the Danish Refugee Council, D notes that many rejected asylum seekers perceive the choice offered under §8 as illusory:

> *"Many do not experience that they actually have a choice - they experience that there is only one realistic option"* (Interview 5, pp. 2-3).

This perception is closely linked to material conditions of precarity:

> *"When you are without residence, without work and without prospects, economic support matters enormously"* (Interview 5, p. 3).

From a socio-legal perspective, this underscores how formally equal choices may produce unequal effects when embedded within asymmetrical social relations. Consent is produced within a structured exchange characterised by dependency, uncertainty, and limited alternatives.

Across these field positions, voluntariness emerges as conditional consent: formally voluntary, yet substantively shaped by legal uncertainty, vulnerability, and incentive-based governance. Governmentality helps conceptualise this dynamic by showing how freedom itself becomes a technique of power. Individuals are invited to choose, but the structure of the choice situation renders certain options overwhelmingly more rational, necessary, and normal than others.

Rather than negating autonomy, §8 presupposes and mobilises it. Voluntariness functions as a key legitimating concept that reconciles governance objectives with the formal ideal of individual choice. However, when consent entails the waiver of fundamental procedural safeguards, the limits of this arrangement become visible. Voluntariness remains legally operative, yet normatively fragile.

Taken together, the section shows that the limits of voluntariness under §8 are structurally produced through the interaction of legal design, administrative procedures, and incentive-based governing rationalities. While voluntariness is rendered valid through procedural classification, the conditions that shape the capacity to consent are not assessed in a way that is sensitive to the individual case. As a result, voluntariness remains administratively workable, yet becomes normatively fragile when the decision includes waiving second-instance review under uncertainty and dependence. Voluntariness therefore functions at once as a governing technique and as the site where governing through freedom exposes its legal and normative vulnerabilities.

7.4 Governing Voluntariness in Practice

This chapter has examined how voluntariness under §8 is produced through concrete governing practices. Rather than appearing as an inherent feature of individual decision-making, voluntariness emerges through administrative procedures, incentive structures, and institutional rationalities that organise how decisions are made and understood.

The analysis has shown how voluntariness is stabilised through procedural compliance and further shaped through incentive-based arrangements that encourage individuals to act in ways aligned with institutional expectations. In this way, voluntariness is not simply enabled, but structured through the conditions under which choices are presented and acted upon.

At the same time, the chapter has highlighted how this construction becomes more complex when viewed in relation to legal uncertainty, vulnerability, and unequal conditions of decision-making. While voluntariness remains a central category within the system, its meaning and implications vary depending on how the conditions of choice are taken into account.

Taken together, the chapter demonstrates how voluntariness operates as a key organising principle within return governance, while also revealing tensions in how it is enacted and understood across different contexts.

Chapter 8: Conclusion

This thesis has examined how §8 of *Hjemrejseloven* operates in practice and how voluntariness is produced, stabilised, and contested within Danish return governance. Rather than treating voluntariness as an individual attribute or a fixed legal standard, the analysis has shown that voluntariness is best understood as an institutional and political accomplishment, shaped through the interaction of legal frameworks, administrative practices, and governing rationalities.

The central finding of the thesis is that voluntariness under §8 does not refer to the absence of power, but to a specific way of organising, distributing, and legitimising it within return governance. Across the analysis, voluntariness emerges as a category that allows governance to operate through freedom. Individuals are formally positioned as autonomous decision-makers, yet the conditions under which decisions are made are structured through procedures, incentives, and institutional asymmetries that shape what appears as reasonable or possible.

This points to a broader transformation in return governance. §8 is not simply a support scheme, but reflects a mode of governing in which responsibility is increasingly individualised while the state retains control over the conditions of choice. In this sense, the provision can be understood as part of a liberal form of governance that seeks to manage freedom rather than restrict it directly. Freedom is not removed, but organised in ways that align individual conduct with policy objectives. In this way, §8 illustrates a broader form of governance in which freedom is not opposed to control, but becomes a central mechanism through which control is exercised.

From a socio-legal perspective, the thesis demonstrates how law operates not only through formal rules, but through everyday practices that render certain decisions legally and administratively legible as voluntary. Voluntariness becomes stabilised through proceduralisation, documentation, and standardised communication, which together produce a version of reality in which decisions can be recognised as free, even under conditions marked by uncertainty and asymmetry. This highlights how legality is enacted in practice and how legal categories acquire meaning through institutional routines.

At the same time, the analysis reveals that this construction of voluntariness is inherently unstable. While it is workable within administrative and policy-oriented rationalities, it

becomes contested when viewed from perspectives that foreground vulnerability, consent, and access to justice. This tension is captured in the central paradox identified in the thesis: §8 formally preserves choice, yet links enhanced support to the waiver of procedural safeguards under conditions that may challenge the meaningfulness of that choice.

This paradox is not an anomaly, but a constitutive feature of contemporary return governance. It illustrates how migration control can be aligned with the language of individual agency, not despite the presence of power, but through it. Voluntariness thus functions as a key technology of governance that bridges legal legitimacy, political objectives, and administrative practice.

The contribution of this thesis is to show that voluntariness is not a precondition of return governance, but an outcome of it, produced through the interaction of legal frameworks, institutional practices, and governing rationalities. By combining a field analytical perspective with a governmentality approach, the study demonstrates how different institutional positions stabilise voluntariness through distinct criteria of legitimacy, while also showing how these constructions are embedded in broader rationalities of governing through freedom.

In this way, the thesis contributes to socio-legal and migration scholarship by providing an empirically grounded account of how legal categories such as voluntariness are shaped within institutional contexts and by illustrating how contemporary governance operates through the structuring of choice. Understanding §8 therefore requires moving beyond the legal framework alone and recognising the political and institutional conditions that make voluntariness both possible and contestable.

Ultimately, the analysis shows that voluntariness under §8 is not simply a question of individual choice, but a reflection of how the state governs return by organising the conditions under which choices are made.

References

Agersnap, O., Jensen, A. S., & Kleven, H. (2020). The welfare magnet hypothesis: Evidence from an immigrant welfare scheme in Denmark. *American Economic Review: Insights*, 2(4), 527-542.

Bekendtgørelse om hjemrejsestøtte, nr. 1861 af 23. september 2021 (Executive Order on Return Support).

Black, R., & Gent, S. (2006). Sustainable return in post-conflict contexts. *International Migration*, 44(3), 15-38. https://www.academia.edu/21295720/Sustainable_Return_in_Post_conflict_Contexts_retours_durables_au_lendemain_dun_conflit_retorno_sostenible_en_contextos_posconflictos

Blumer, H. (1954). What is wrong with social theory? *American Sociological Review, 19*(1), 3-10.

Bourdieu, P. (1994). Rethinking the state: Genesis and structure of the bureaucratic field. *Sociological Theory*, 12(1), 1-18. https://doi.org/10.2307/202032

Bourdieu, P. (2000). Pascalian meditations (R. Nice, Trans.). Polity Press. (Original work published 1997).

Bourdieu, P., & Wacquant, L. J. D. (1992). *An invitation to reflexive sociology*. University of Chicago Press.

Braun, V., & Clarke, V. (2019). Reflecting on reflexive thematic analysis. *Qualitative Research in Sport, Exercise and Health, 11*(4), 589-597.

Bøegh-Lervang, M., & Madum, L. (2011). Dobbeltspillet. Politik, 14(4). https://doi.org/10.7146/politik.v14i4.27496

Cassarino, J.-P. (2008). The conditions of modern return migrants. *International Journal on Multicultural Societies*, 10(2), 95-105.

Council of Europe Commissioner for Human Rights. (2017). *Report following the visit to Denmark from 22 to 24 November 2016*

Creutzfeldt, N., Kubal, A., & Pirie, F. (2016). Introduction: Exploring the comparative in socio-legal studies. *International Journal of Law in Context, 12*(4), 377-389.

Dalberg-Larsen, J. (2005). *Ret, retfærdighed og samfund: En introduktion til rets- og retssociologi*. Jurist- og Økonomforbundets Forlag.

DiCicco-Bloom, B., & Crabtree, B. F. (2006). The qualitative research interview. *Medical Education, 40*(4), 314-321.

Emirbayer, M., & Johnson, V. (2008). Bourdieu and organizational analysis. *Theory and Society, 37*(1), 1-44.

Fletcher, A. J. (2017). Applying critical realism in qualitative research: Methodology meets method. *International Journal of Social Research Methodology*, 20(2), 181-194. https://doi.org/10.1080/13645579.2016.1144401

Foucault, M. (1978). *The history of sexuality: Volume 1: An introduction* (R. Hurley, Trans.). Pantheon Books. (Original work published 1976).

Foucault, M. (1991). Governmentality. In G. Burchell, C. Gordon, & P. Miller (Eds.), *The Foucault effect: Studies in governmentality* (pp. 87-104). University of Chicago Press.

Foucault, M. (2007). *Security, territory, population: Lectures at the Collège de France, 1977-1978* (M. Senellart, Ed.; G. Burchell, Trans.). Palgrave Macmillan. (Original lectures delivered 1977-1978).

Foucault, M. (2008). *The birth of biopolitics: Lectures at the Collège de France, 1978-1979* (M. Senellart, Ed.; G. Burchell, Trans.). Palgrave Macmillan. (Original lectures delivered 1978-1979).

Gill, P., Stewart, K., Treasure, E., & Chadwick, B. (2008). Methods of data collection in qualitative research: Interviews and focus groups. *British Dental Journal, 204*(6), 291-295.

Goul Andersen, J. (2007). Restricting access to social protection for immigrants in the Danish welfare state. *Benefits: A Journal of Poverty and Social Justice*, 15(3), 257-269.

Green-Pedersen, C., & Krogstrup, J. (2008). Immigration as a political issue in Denmark and Sweden: How party competition shapes political agendas. *European Journal of Political Research*, 47(5), 610-634.

Hill, Z., Tawiah-Agyemang, C., Kirkwood, B., & Kendall, C. (2022). Are verbatim transcripts necessary in applied qualitative research? Experiences from two community-based intervention trials in Ghana. *Emerging Themes in Epidemiology, 19*(5), 1-8.

Jeholm, S., & Bissenbakker, M. (2019). Documenting attachment: Affective border control in applications for family reunification. *Nordic Journal of Migration Research*, 9(4), 480-496

Kaiser, K. (2009). Protecting respondent confidentiality in qualitative research. *Qualitative Health Research, 19*(11), 1632-1641.

Koser, K., & Kuschminder, K. (2015). *Comparative research on the assisted voluntary return and reintegration of migrants*. International Organization for Migration. https://www.iom.int/sites/g/files/tmzbdl486/files/migrated_files/What-We-Do/docs/AVRR-Research-final.pdf

Lamont, M., & Molnár, V. (2002). The study of boundaries in the social sciences. *Annual Review of Sociology, 28*, 167-195.

Lov nr. 102 af 3. februar 2016 om ændring af udlændingeloven.

Lov nr. 436 af 9. maj 2017 om ændring af udlændingeloven (Act No. 436 of 9 May 2017 amending the Danish Aliens Act).

Lov nr. 574 af 19. december 1985 om ændring af udlændingeloven

Lov om hjemrejse for udlændinge uden lovligt ophold (hjemrejseloven), lov nr. 982 af 26. maj 2020.

Moser, A., & Korstjens, I. (2017). Series: Practical guidance to qualitative research. Part 3: Sampling, data collection and analysis. *European Journal of General Practice*, 23(1), 9-18. https://doi.org/10.1080/13814788.2017.1375091

Noble, H., & Smith, J. (2015). Issues of validity and reliability in qualitative research. *Evidence-Based Nursing, 18*(2), 34-35.

Oliver, D. G., Serovich, J. M., & Mason, T. L. (2005). Constraints and opportunities with interview transcription: Towards reflection in qualitative research. *Social Forces, 84*(2), 1273-1289.

Palinkas, L. A., Horwitz, S. M., Green, C. A., Wisdom, J. P., Duan, N., & Hoagwood, K. (2015). Purposeful sampling for qualitative data collection and analysis in mixed method implementation research. *Administration and Policy in Mental Health and Mental Health Services Research, 42*(5), 533-544.

Rose, N., O'Malley, P., & Valverde, M. (2006). Governmentality. *Annual Review of Law and Social Science, 2*, 83-104.

Rytter, M. (2010). Family reunification and the limits of immigration control. *Ethnic and Racial Studies*, 33(2), 301-322.

Sandberg, M., Schultz, J., & Kohl, K. S. (2025). The temporary turn in asylum: A new agenda for researching the politics of deterrence in practice. *Journal of Ethnic and Migration Studies*, 51(8), 1997-2014. https://doi.org/10.1080/1369183X.2024.2441594

Sanjari, M., Bahramnezhad, F., Khoshnava Fomani, F., Shooghi, M., & Cheraghi, M. A. (2014). Ethical challenges of researchers in qualitative studies: The necessity to develop a specific guideline. *Journal of Medical Ethics and History of Medicine*, 7, 14.

Silbey, S. S. (2019). The everyday work of studying the law in everyday life. *Annual Review of Law and Social Science, 15*, 1-18.

Swedberg, R. (2020). Exploratory research. In C. Elman, J. Gerring, & J. Mahoney (Eds.), *The production of knowledge*(pp. 17-41). Cambridge University Press.

Tessier, S. (2012). From field notes, to transcripts, to tape recordings: Evolution or combination? *International Journal of Qualitative Methods, 11*(4), 446-460.

Timmermans, S., & Tavory, I. (2012). Theory construction in qualitative research: From grounded theory to abductive analysis. *Sociological Theory, 30*(3), 167-186.

Udlændinge- og Integrationsministeriet. (2020, April 15). Regeringen opretter ny Hjemrejsestyrelse. https://uim.dk/nyhedsarkiv/2020/april/regeringen-opretter-ny-hjemrejsestyrelse/

Udlændingestyrelsen, Styrelsen for International Rekruttering og Integration, Hjemrejsestyrelsen, & Udlændinge- og Integrationsministeriet. (2024). *Tal og fakta på udlændingeområdet 2024*. https://us.dk/tal-og-statistik/tal-og-fakta/

United Nations. (1951). *Convention relating to the status of refugees*.

Vedsted-Hansen, J. (2022). *Refugees as future returnees? Anatomy of the paradigm shift towards temporary protection in Denmark*. Chr. Michelsen Institute. https://www.cmi.no/publications/file/8567-refugees-as-future-returnees-anatomy-of-the-paradigm-shift-towards-temporary-protection-in-denmark.pdf

Vedsted-Hansen, J. (2025). European governance of deterrence and containment. A legal perspective on novelties in European and Danish asylum policy. *Journal of Ethnic and Migration Studies*, *51*(8), 2015-2032. https://doi.org/10.1080/1369183X.2024.2441599

Young, J. C., Rose, D. C., Mumby, H. S., Benitez-Capistros, F., Derrick, C. J., Finch, T., Garcia, C., Home, C., Marwaha, E., Morgans, C., Parkinson, S., Shah, J., Wilson, K. A., & Mukherjee, N. (2018). A methodological guide to using and reporting on interviews in conservation science research. *Methods in Ecology and Evolution, 9*(1), 10-19.