

The Involvement of NGOs in Asylum Policy Decision-Making in Estonia

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Abstract

With the shift from government to governance and the increased demand for cooperation and coordination in public management during the past few decades, governments have made efforts to improve participatory policy-making. It can be tricky to involve stakeholders across sectors with different interests, resources, and perceptions, especially if the policy issue is controversial. The aim of this paper is to analyze the interaction dynamic of the government and non-governmental organizations (NGOs) in asylum policy decision-making. The paper looks into the case of amending the legislative framework of the Estonian asylum system that was interfered with by the European migration crisis in 2015. The case highlights how the increased salience of the issue and the changing context influenced political decision-making and the way NGOs were involved. The findings show that although the context of crisis increased collaboration between the ministries and the NGOs on the policy implementation level, the involvement of NGOs in political decision-making deteriorated. The paper argues that at times when public debate on asylum policy grows more divisive, the decision-making process becomes more political, and the ability of NGOs to influence policy decisions becomes more likely through service provision rather than political debate.

Keywords: non-governmental organizations; public participation; policy-making; asylum policy

Introduction

The shift from traditional policy-making to more collaborative or participatory policy-making has meant that policies are no longer only "the preserve of policy planners and top decision makers" (Bovaird 2007, 846), but are ideally seen as outcomes of interactions, negotiations, and compromises between stakeholders. According to Rowe and Frewer (2004, 215), public participation is "the practice of consulting and involving members of the public in the agenda-setting, decision-making, and policy-forming activities of organizations or institutions responsible for policy development." The value of public participation derives from two underlying assumptions – there are several alternative solutions to one policy problem and the authorized decision-makers possess insufficient knowledge, information, competence, resources, or legitimacy (Fung 2006, 67). Thus, public participation is expected to improve the quality and legitimacy of policy decisions by consulting a wide range of stakeholders or affected parties across sectors.

Although the value of participatory policy-making is widely acknowledged, it has also been argued that the process of public participation is difficult to "get right" (Ianniello et al. 2018). Participatory policy-making requires ways to foster collaborative interactions between actors that can have conflicting perceptions, interests, and power resources depending on the institutional and political context (Cornwall 2008; Halpin and Fraussen 2017). The process becomes even more complex if we consider that the values, interests, and positions of participating actors are not static, but rather "actively constructed or constrained" during the course of public participation (Harvey 2009, 140). Failure to work together can result in disagreements and coordination problems, leading to ineffective policy-making and implementation (Neshkova and Guo 2011), which can further escalate policy problems and have negative consequences for society.

Asylum policy represents a complex and controversial policy field with a wide range of actors with different interests across governments, sectors, and policy areas (Alink et al. 2001). The core contradiction of asylum policy lies in balancing national interests, international norms, and morality (Steiner 2000), insisting on trade-offs during the policy-making process. Different actors (e.g., the government, media, NGOs, international organizations) want to protect or advance different values and interests, leading to attempts to disqualify other opinions instead of reaching a common understanding (Geuijen et al. 2017, 626). This became evident, for example, during the 2015 European migration crisis, which intensified the trend toward national solutions among the European Union (EU) member states (Lavenex 2018, 1203) and polarized political debate.

The dynamics between various stakeholders in the asylum policy-making process have been researched on the EU level (e.g., Guiraudon 2000 and 2017; Givens and Luedtke 2004; Kaunert et al. 2015; Zaun 2017), but less emphasis has been on exploring the dynamics between stakeholders with different roles and considerations on the national level (few exceptions are, e.g., Szczepanikova 2011; Mayblin 2017), especially in the decision-making phase. In particular, the involvement of NGOs in asylum policy decision-making on the national level has thus far received little attention (Korneev and Kluczevska 2018; an exception is Menz 2011), although their important role in national asylum systems has been widely acknowledged. Research on NGOs in asylum policy has mainly looked into their function and activities (Kersch and Mishtal 2016; Simsa 2017; Roth et al. 2018; Mayblin and James 2018), but has not closely considered their involvement in the legislative process.

The aim of this paper is to address this gap and provide an in-depth account of the involvement of NGOs in asylum policy decision-making on the national level during a critical period – the height of the European migration crisis of 2015. More specifically, the case study follows the legislative process of amending the Estonian Act of Granting International Protection to Aliens (AGIPA) – the main act regulating the asylum system in Estonia. This process took place from 2014 until 2016. To analyze the engagement of NGOs, three core research questions were posed: (1) What was the role of NGOs in the Estonian asylum policy system before the 2015 EU migration crisis?; (2) How did the interaction dynamic between government actors and NGOs evolve during the proceeding of the AGIPA?; and (3) What was the impact of the 2015 European migration crisis on the involvement of NGOs in the proceeding process of the AGIPA?

To answer the research questions, the paper first outlines the characteristics of asylum policy and the role of NGOs in asylum policy from a theoretical perspective and lays out the criteria

for analyzing the involvement of NGOs in the asylum policy-making context. The term "policy-making" in this article will be used to refer to the process of determining policy options and deciding on the course of action (Howlett and Giest 2013). The theoretical part is followed by a description of the Estonian context and the research methodology. Finally, an analysis and discussion are provided. The data for the analysis was gathered through desk research and 17 semi-structured interviews conducted in 2016 and 2019 with NGO representatives, civil servants, and members of the Government and Parliament in office during the 2015 European migration crisis.

By deconstructing the decision-making process, the case of the AGIPA offers an opportunity to consider the dynamics of interaction between government actors and NGOs in a context of crisis where immediate decisions are required. Understanding this dynamic provides insights into the nature of the relationship between stakeholders, which is crucial to understanding asylum policy outcomes. Insights from the national level are especially important for understanding the processes on the EU level, as asylum policy remains an area where compromises between member states are difficult to reach (Zaun 2018, 45). Estonia offers a suitable context for the case study as volunteers and NGOs have been actors in the Estonian asylum system since it was established in 1997 and the 2015 European migration crisis can be considered as the first big challenge for the Estonian system (Trei and Sarapuu 2021). The paper also contributes to the knowledge on the specifics of the asylum system in Central and Eastern European countries, which have received limited attention in literature.

Characteristics of asylum policy-making

Asylum policy is a multifaceted, transnational, and institutionally complex policy field (Alink et al. 2001) that deals with the challenges stemming from the irregular movement of people (often forcibly) uprooted from their homes. Reasons for seeking shelter in another country vary and can range from fleeing armed conflicts, violence, and persecution in their home country to being forced to migrate due to natural disasters or climate change. In any case, the need for asylum arises when a state is unable to protect its citizens and provide them with their civil rights forcing people to seek protection elsewhere (Heuser 2007).

The formal right to seek asylum was instituted in 1951 when the UN Convention Relating the Status of Refugees¹ was adopted. The international asylum system lays out three interrelated functions of asylum policy for the contracting states of the Refugee Convention – the admission of asylum applications and the determination of the refugee status; the reception of asylum seekers; and the integration of people who have been granted the refugee status (Alink et al. 2001, 288–89). All these functions are performed by a plethora of actors from different domains (e.g., border control, law enforcement, and welfare), sectors (private and third sector), and governance levels (local, national, EU, and international levels) who need to cooperate to successfully execute their tasks.

The wide circle of actors and the complexity of asylum policy make the policy-making process challenging. Based on the literature, three defining characteristics of the asylum policy-making process stand out. First, asylum policy is controversial by nature. The inherent contradiction between the international right to seek asylum and the sovereign right of states to decide

¹ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations Treaty Series, vol. 189:137.

who enters their borders leads to the "political dilemma of law versus policy" (Alink et al. 2001, 297). It has been argued that in the European context, and especially in exceptional and emergency circumstances, the political interests of member states (mainly concerns related to security and the viability of the welfare state) have become superior to the legislative framework (Kjærum 2002; Lavenex 2018). Although the EU's common asylum system obliges member states to fulfill their humanitarian commitments, there are discrepancies in how these regulations are implemented on the national level (Toshkov 2013; Scipioni 2017).

Second, asylum policy is highly value-based (Baldwin et al. 2018), and consequently, the decision-making process is more dependent on the prevailing policy frame and politics than on scientific or technical knowledge (Mayblin 2017). The political competition to change the dominating policy frame in such a sensitive policy field becomes central in the decision-making process, because often the dominant policy frame eventually leads to institutionalizing the interpretation of the policy issue (Erikson 2015). The prevailing policy frame, therefore, essentially affects how the policy field is governed – how decisions are made, who is involved in decision-making, and even which facts or knowledge is used (Mayblin 2017). In EU member states, the ministry dealing with internal affairs and security usually dominates asylum policy-making (Kaunert et al. 2015). As security is traditionally a policy area that stays partly hidden from the public, asylum policy-making on the national level can become opaque (Zaun 2016).

Lastly, asylum policy-making is contingent on the fluctuation of the number of asylum seekers, which makes asylum policy-making reactive and *ad hoc* in nature (Dahlvik 2018). As it is difficult to predict and control the fluctuations of migration flows, asylum policy-making tends to lack a long-term perspective (Böcker and Havinga 1998, 246). When the number of asylum seekers rises, the pressure on each part of the asylum system also increases and governments are urged to find quick solutions (Zaun 2017, 43). In moments of high pressure and crisis, the demands of the public can gain "political traction" (Hatton 2017, 468) and potentially lead to political change.

The role of NGOs in asylum policy

NGOs started to gain relevance in the asylum policy field during the early 1990s when the conflict between national refugee policies and human right laws increasingly emerged, creating an incentive for the establishment of several humanitarian and human rights organizations in the EU (Korneev and Kluczevska 2018; Kjærum 2002). In a short period of time, NGOs became engaged at "whatever level of governance, whether it be in the delivery of grassroots protection and assistance or in the formulation of policies, standards and norms and in monitoring their implementation" (Lester 2005, 125).

NGOs are not always defined uniformly in the third-sector literature. Nevertheless, five defining features seem universal (United Nations 2018): they need to be institutionalized to some extent (formally or informally); are limited in distributing their profits; are self-governing; membership is non-compulsory for members; and are not controlled by the government. Under this definition, a vast number of organizations with different missions, activities, and funding can be classified both on the international and national levels. However, regarding their categorization, the most customary basis is the function of NGOs. Most commonly three roles are recognized: service providers, watchdogs monitoring government actions, and

representation vehicles for different groups in society (Leroux and Goerdel 2009; Anheier 2009; Enjolras et al. 2018).

These three roles are also evident in the asylum policy context. NGOs as service providers can be engaged during the entire process of asylum provision by arranging reception-related services, like accommodation, legal advice, health care, psychological support, cultural orientation, and providing integration-related services, like housing, language courses, mentoring services, and help to access education or the work market for both asylum seekers and refugees (Garkisch, Heidingsfelder and Beckmann 2017, 1853–1857; Simsa 2017; Mayblin and James 2018). By working closely with asylum seekers and refugees at the grassroots level, service-providing NGOs acquire a unique knowledge base and expertise (Chin 2017). Crisis situations have shown that service-providing NGOs often step in as "gap-fillers" because they can be more agile and adaptable compared to governments in sudden critical situations (Milan 2018).

NGOs as watchdogs in asylum policy aim to ensure that states comply with their international obligations to accept asylum seekers and follow the principles of non-discrimination, non-penalization, and non-refoulment that are fundamental to the Refugee Convention. The international mandate of monitoring the fulfillment of the Refugee Convention belongs to the United Nations High Commissioner for Refugees (UNHCR), but as NGOs are often more familiar with the specific national situation, the UNHCR sometimes uses the help of local NGOs to act as national norm entrepreneurs (Betts and Loescher 2014, 217). By highlighting the omissions of the government, NGOs simultaneously raise awareness about local refugee-related issues and human rights in society in general. As the willingness of governments to improve the conditions for asylum claimants also depends on the views prevailing in society, NGOs have an important role in educating the public to counteract the increasingly negative perceptions of migration (Hatton 2005).

Arguably, the most important role of NGOs is to advocate for the rights of organized members, other groups in society, and the civil society in general. Asylum seekers and refugees often belong to politically marginalized groups in the receiving country and their ability to self-organize is limited to countries with an already existing community of refugees and, concurrently, enough social capital to advocate for themselves (Jacobsen 1996). Thus, advocating for asylum seekers' rights in public debates, legal processes, and lobbying for a comprehensive asylum policy in formal policy-making processes is often the function of NGOs (Leroux and Goerdel 2009).

There are several types of advocacy activities (e.g., Cambridge and Williams 2004, 100–102), but more broadly, it is possible to distinguish between public advocacy, political advocacy, and legal advocacy in asylum policy (Garkisch et al. 2017, 1859–1860). Although public advocacy is similar to the role of maintaining universal democratic values and educating the public, political advocacy is intended to change existing policy. In political advocacy, local NGOs and the UNHCR often collaborate to steer government actions in their desired direction. Although governments can perceive the pressure from international human rights organizations as a "threat to its control over policymaking" (Jacobsen 1996, 663), national NGOs represent a more legitimate instrument for influencing the government. Local NGOs can act as "the extensions of the United Nations" on the national level (Gordenker and Weiss 1997, 447) or, on the contrary, try to find political support for anti-migration stances. Legal

advocacy is directed toward helping either individuals or a larger group to defend their rights in legal processes, for example, in determining the status of refugees or contesting these status decisions in court (Cambridge and Williams 2004).

In practice, the three functions of NGOs described above can overlap. The role of advocacy in particular can be very hard to separate from other functions (Young and Casey 2017). Increasingly, service provision and advocacy activities blend together and through the provision of services, NGOs can form their policy objectives and pursue changes in the existing policy or regulation (Hwang and Suarez 2019; Chin 2017).

Analyzing the involvement of NGOs in asylum policy-making

Several authors have argued that the more controversial an issue, the more important public participation becomes (Rowe and Watermeyer 2018; Moynihan 2003). Conflicting values, for example, between the government and civil society organizations, and unequal allocation of knowledge should arguably increase the need to discuss, share information, and negotiate to either agree on a compromise or on a lack thereof (Rowe and Watermeyer 2018). However, the discrepancy of interests, different understandings of what participation should entail, and a stark conflict in values in particular can create an incentive for the more powerful stakeholders to undermine the genuineness of public involvement to sustain control over the final decision (Wang and Wan Wart 2007). Neglecting the position of other stakeholders through an ostensible process of public participation creates additional tension and frustration between stakeholders, threatening their future collaboration as partners (Edelenbos and Klijn 2005). Considering the important role of NGOs in asylum policy systems, cooperation is necessary for the system to function properly, and failing to involve NGOs in decision-making increases the potential of uninformed or unbalanced asylum policy.

The literature on public participation is clear on the participation process being dependent on the specifics of the problem and the surrounding context (Ianniello et al. 2018). To determine why some collaborations succeed and others turn into conflicts, four important analytical variables have been suggested (Hardy and Phillips 1998; Ansell and Gash 2008): the (im) balance of formal power and critical resources between actors; the perceived discursive legitimacy of an actor; the motive to participate; and past history of interactions between stakeholders. These aspects influence whether and how NGOs are involved, but also which strategies NGOs might use to participate in decision-making (Casey 2002).

The allocation of power and resources is arguably the most important aspect of determining the relationship between stakeholders (Hardy and Phillips 1998). In the asylum policy context, the government is by default the dominant stakeholders as they are in charge of processing asylum requests and responsible for the functioning of national asylum reception systems. Even though NGOs in asylum policy often possess considerable expertise and knowledge, the trend of securitization of asylum policy in the EU has made NGO access to decision-making more difficult (Boswell et al. 2011). The distribution of power and resources is closely connected to how the policy issue is framed and which organizations have discursive legitimacy (Hardy and Phillips 1998; Mosley 2013). Discursive legitimacy refers to the ability to influence the narrative by possessing specific knowledge or skills that are perceived valuable by other stakeholders.

From the perspective of NGOs, the process of opposing policymakers to the extent of confronting the government with, for example, critical reports or demonstrations, requires resources, a supporting network, but also a certain level of autonomy (Casey 2002; Leroux and Goerdel 2009). If the NGOs are dependent on government resources (e.g., government funding for service provision), this can hinder their ability to use confrontational tactics and ultimately result in complying with the government (Casey 2002). When the imbalance of power and resources is perceived by the non-governmental actors to be perpetual, a strategy of conflict is more likely to be employed by the NGOs with the aim of significantly altering existing policy or power dynamics (Casey 2002).

The motive and incentive to participate depend on how the stakeholders perceive their ability to influence the participatory process (Ansell and Gash 2008). For example, the institutional and legislative framework around public participation processes can be a factor that either enables or hinders NGOs in having a say in decision-making. If public participation is not legally regulated or considered as a norm, policymakers can use political manoeuvring to restrict access for NGOs (Wang and Wan Wart 2007). Asylum policy ranks high on the agenda in most EU countries and the influence of right-wing populist movements has affected public opinion across Europe. Governments being under political pressure to satisfy public opinion makes it harder for NGOs advocating for refugee rights to influence decision-making. NGOs can choose not to participate if they do not perceive the participation process as genuine and might try to assert influence through other means. Service-providing NGOs can use "day-to-day" advocacy and "client-level concerns and frustrations to develop policy advocacy objectives" on the policy implementation rather than the political decision-making level (Chin 2017, 28).

Finally, the success of collaboration also depends on the previous relationship between stakeholders. Although conflicts are not necessarily a barrier to collaboration, it does affect the level of trust needed to cooperate. "A prehistory of conflict creates a vicious circle of suspicion, distrust and stereotyping." (Ansell and Gash 2008, 553). Therefore, if policymakers have previously collaborated with NGOs or perceive NGOs to be significant or trustworthy actors, they are more likely to involve NGOs in decision-making (West 2004; Halpin and Fraussen 2017; Nicholson-Crotty and Nicholson-Crotty 2004).

The Estonian context

Estonia is a small state on the eastern border of the EU, which officially regained independence from the Soviet Union in 1991. Faced with the task of building its politico-administrative system virtually from scratch after more than 50 years of Soviet occupation (Sarapuu 2012), Estonia made rapid steps toward political and economic integration with Europe. During this transformative phase, establishing a formal asylum regime was by no means a priority for the young state, but rather one of the prerequisites for becoming a member of the EU. Asylum policy regulations were included in the EU's *acquis* for new candidate countries and cooperation projects were shortly initiated to support Estonia in establishing the necessary legal framework and institutions.

Asylum policy as a separate policy field in Estonia was formally established in 1997, when the Parliament of Estonia adopted the first Refugees Act and ratified the UN Refugee Convention

(1951) and the Protocol Relating to the Status of Refugees (1967). The first refugee reception center was opened in 2000. During the same year, three people were granted refugee status for the first time. The next important juncture in the Estonian asylum policy was in 2004 when Estonia became an EU member state and, concurrently, had to adapt its asylum system to the requirements of the EU Common European Asylum System (CEAS). For this reason, the Estonian Refugees Act was replaced with the AGIPA, which continues to regulate the Estonian asylum system.

Estonia's experience with asylum seekers and refugees during the first 10 years since establishing a formal asylum regime was limited (Annex 1). Rather than becoming a popular destination country for asylum seekers, Estonia mainly served as a transit country for people trying to reach Scandinavia (Kallas 2011). The number of asylum applications only slowly started increasing after Estonia adopted the Dublin Regulation and joined the Schengen area in 2007. A steeper rise of asylum applications came in 2009 and an upward trend continued until the end of the 2015 EU migration crisis. Until 2022, Estonia remained among the three EU countries with the lowest number of asylum applicants. The Russian invasion of Ukraine in February 2022 caused an influx of Ukrainian refugees into Estonia and marked the beginning of a new chapter in the functioning of the Estonian asylum system. The long-term ramifications of the arrival of thousands of Ukrainian refugees to Estonia are still unfolding.

Estonian asylum policy-making before the 2015 EU migration crisis can be characterized as *ad hoc* without any long-term strategy (National Audit Office 2016). Because of the small number of asylum seekers, asylum policy was not a priority and, therefore, complying with the minimal requirements of the CEAS was one of the guiding principles for Estonia (Kallas 2011). Another reason behind Estonia's rather conservative line in asylum policy was the historical context of forced labor immigration during the Soviet occupation. Between 1945 and 1989, the share of immigrants in the total population increased from 3% to 38%, and in the early 1990s only two other European countries had a higher percentage of immigrants (Tammur et al. 2017). Therefore, migration policy choices stemmed from this background.

Asylum policy in Estonia primarily falls under the jurisdiction of the Ministry of the Interior (Moi) and to a lesser extent under the Ministry of Social Affairs (MoSA). The Moi, together with the Police and Border Guard Board and the Estonian Internal Security Service, is responsible for asylum policy-making and administration of the asylum applications admission and processing system. The MoSA, together with the Estonian National Social Insurance Board, is responsible for the reception and integration of asylum seekers and refugees.

The provision of everyday services for asylum seekers and refugees has mainly been delegated to the state-owned company AS Hoolekandeteenused (responsible for managing the refugee reception center since 2000), international organizations (e.g., the International Organization for Migrants), and a few NGOs. In addition to state-funded projects, the NGOs also offer voluntary support services for asylum seekers and refugees and are also the main advocates of refugee rights. To a lesser extent, local governments provide general social services for refugees after they have found a permanent living space. On the international level, the UNHCR and the EU are the most important actors. Although the UNHCR monitors the compliance of Estonian asylum policy with the international legal system, the EU provides a policy framework through the CEAS and grants resources through the Asylum, Migration, and Integration Fund.

Methodology

The case study follows the involvement of NGOs in the decision-making process during the amendment of the AGIPA – the framework document of the Estonian asylum system. More specifically, the proceedings of the *Law Proposal 81SE amending the Act on Granting International Protection to Aliens and Associated Acts* is analyzed from drafting the document in December 2014 until it was enacted in March 2016.

The analysis is based on qualitative data. The data were gathered through document analysis and stakeholder interviews. Document analysis was used to recreate the timeline and the formal proceedings of the AGIPA 81SE process, relying on memorandums, protocols of the parliamentary standing committee, transcripts of the plenary sessions of the Parliament, and media coverage. Documents were also used to gain detailed information about the structure, function, and activities of NGOs in asylum policy.

Documentary data was complemented with 17 semi-structured interviews that were conducted in two rounds within two separate research projects. In April 2016, right after the AGIPA 81SE had been enacted, 10 interviews were conducted with the stakeholders involved in the proceedings, including representatives of NGOs, civil servants from the MoI and the MoSA, and members of the Constitutional Committee of the Parliament (see Annex 2). Anonymity was promised to all interviewees to allow them to express their opinions freely. Interviewees were first asked about how they perceived the role and importance of different stakeholders in the Estonian asylum policy field. After that, the proceedings of the AGIPA were discussed in detail. Interviewees were asked to describe and assess the participation process, including the relationship between the actors, differences in views, and perceptions on the outcome of the process.

Another round of interviews was conducted in 2019, which involved the representatives of the same organizations and additionally two members of the Government in office during the 2015 crisis as well as a representative of the UNHCR. This time, the interviews centered more on how the 2015 EU migration crisis unfolded in Estonia. The interviewees were asked how the events of the crisis changed collaboration practices and the roles of stakeholders. The possibility of analyzing the relationship dynamics in hindsight gave the interviewees a wider perspective on the topic. Data gathered from the interviews in 2016 and 2019 was used to analyze the role of NGOs in the Estonian asylum policy system and helped to dissect the process of policymaking during a critical period.

NGOs in the Estonian asylum system

Because of the small scale of the Estonian asylum system, there were mainly three NGOs that were either primarily or partly focused on assisting asylum seekers and refugees until the 2015 EU migration crisis (the Estonian Refugee Council, Johannes Mihkelson Center, and the Estonian Human Rights Centre; see Table 1). In fact, the first volunteers emerged right after the first asylum seekers arrived in Estonia in the late 1990s to help applicants with legal advice. As the number of asylum seekers increased and resources from the EU's Refugee Fund became available for Estonia in 2009, formal organizations began their activities. For example, the founders of the Estonian Refugee Council first came together in 2000, but the organization was revived and its statute renewed in 2010 (*Interview E*).

Table 1. NGOs in the Estonian asylum policy field

NGO	Founding year/active in asylum policy	Employees/volunteers	Role in the Estonian asylum system	Main funders as of 2016
Johannes Mihkelson Centre (JMC)	1993/2009	Only contractual employees	1) Service provision 2) Advocacy	Ministry of the Interior, Ministry of Social Affairs, AMIF
Estonian Refugee Council (ERC)	2000/2010	Employees + network of volunteers, including voluntary support persons	1-2) Advocacy and service provision 3) Monitoring	Ministry of Foreign Affairs, U.S. Embassy, National Foundation of Civil Society + donations
Estonian Human Rights Centre (EHRC)	2007/2010	Employees + volunteers	1) Monitoring 2) Advocacy 3) Service provision	UNHCR, Ministry of Social Affairs + donations

Source: Organisations' websites, interviews. Compiled by the author.

The three NGOs have had different roles throughout their existence offering legal counsel to asylum seekers (ERC, EHRC), providing support person services for refugees (JMC, ERC), or advocating for the rights of asylum seekers and refugees (ERC, EHRC). Although at times some activities overlapped (e.g., the support person service), the NGOs were constantly in touch with each other and coordinated their work with the target group. All the NGOs financed their activities through project-based funding, but this did not lead to much competition between them at the time. In 2013, the three NGOs and the UNHCR Northern European Office jointly established an official cooperation network – the Roundtable of Refugee Organizations (RRO). The aim of the RRO was to share information and to amplify their voices when advocating for the interests of asylum seekers and refugees (*Interviews A, B, and E*).

The NGO representatives interpreted their role in the Estonian asylum system primarily through their functions, which also affected how they cooperated with the government. The JMC representatives saw their organization mainly as a service-providing partner for the government and tried to influence policy decisions by arguing their position through client cases (*Interviews A and J*). The ERC and EHRC representatives, on the other hand, saw their NGOs first and foremost as advocates for the target group, but also for human rights in general (*Interviews B and E*). This was expressed by one NGO representative: "We also represent the human rights perspective in legislative processes. The Ministry of the Interior represents an internal security perspective. We must be there to balance the scale" (*Interview E*). For this reason, ERC and EHRC were more active in openly and publicly criticizing the government and contesting policy choices. Government actors mainly perceived the NGOs as partners in service provision and sources of expert knowledge (*Interviews C, I, and O*). Because civil servants from the ministries did not have any direct contact with the target group, NGOs were perceived as an important source of knowledge about the experience of refugees in Estonia.

The case of the amendment of AGIPA

In the late 2000s, the second phase of the EU CEAS was initiated to further harmonize common standards in asylum policy and increase solidarity between member states (European Commission 2008). The reform entailed recasting the existing legislative framework. Between 2011 and 2013, five recast directives were adopted by the European Parliament and a 2-year deadline was set for member states to harmonize their legislation with the new directives. Estonia started this process in 2013 and by 2014 had two recast directives (the asylum procedures (2013/32/EU) and the reception (2013/33/EU) directive) left to integrate into Estonian legislation.

The Estonian MoI saw the harmonization process mainly as a technical change to existing legal framework (Siseministeerium 2015a). The Ministry prepared the draft document (AGIPA8ISE) that consisted of the required amendments of the two directives. The MoSA, especially in relation to the reception directive, provided input and the draft law was circulated for coordination and feedback with other ministries, agencies and NGOs in December 2014. The NGOs presented their amendment proposals jointly through the RRO (Pagulasorganisatsioonide Ümarlaud 2015).

From the NGO's perspective, the recast directives were a positive development because they further clarified and improved the procedures and regulations of application processing and reception of asylum seekers (*Interview E*). Because the directives were minimum standard directives, the suggestions of the NGOs only targeted the parts where Estonia had to choose whether to implement the minimum requirements or opt for higher standards. According to the interviewed ministry official, the feedback gained from the NGOs was very "thankworthy" and was incorporated as much as possible (*Interview I*).

A few months later, the proceedings of the AGIPA 8ISE took a turn. Reports of the inflow of refugees to the EU made asylum-related matters politically highly salient in Estonia.² In May 2015, the Estonian government decided to accept 550 refugees through the EU's resettlement and relocation program (Siseministeerium 2015b). This decision was a major deviation from the traditionally conservative line of Estonian asylum policy. The government's poor communication of its decisions created tensions in society (Veebel and Markus 2015). Asylum policy became an important topic in national news and political debates. Similarly to other European states, populist political forces used the momentum to gain popularity, leading to anti-migration demonstrations and the spread of negative opinions about asylum seekers among the Estonian population (Säär 2017).

Agreeing to accept 550 refugees – more than double the number of refugees received since 1997 – forced the Estonian government not only to improve the existing capacity of its asylum system, but also to construct a new model for determining the status and integration of refugees arriving under the EU's migration scheme (Trei and Sarapuu 2021). As a result, in the fall of 2015, the MoI launched a regular meeting for all government actors and NGOs to share information and find solutions to practical issues with regard to the relocated refugees. One of the ministry officials said: "We saw that we needed the knowledge from the NGOs and their contribution because we do not have enough resources to do it alone." (*Interview I*). The openness of the government to cooperate with other stakeholders did not go unnoticed by

² Based on Eurobarometer surveys, the salience of immigration as a policy issue increased by 21.5% in 2015 compared to 2013. The Eurobarometer survey measured the salience of immigration policy as an issue by asking the respondents what were the two most important issues facing the country (Hatton 2017).

the NGOs. "Starting from the year 2015, we sat at the table more like partners" (*Interview M*). It was expressed that the relations between the NGOs and the ministries became more informal and constructive on issues relating to service provision and service design for refugees.

In parallel with the practical changes to the asylum system, the legislative framework also had to be adapted. As the proceedings of the AGIPA 8ISE were ongoing, the necessary changes relating to the resettlement and relocation scheme were simply added by the MoI to the existing draft document in the Fall of 2015. The deadline for adopting the CEAS recast directives had already passed in July 2015 and the government was under pressure to pass the AGIPA 8ISE in the Parliament. Therefore, several changes were added by the political leadership in ministries and even though the need to involve the NGOs in these discussions was felt by the civil servants, the time constraints and political pressure did not allow it (*Interview C*). In September 2015, the proceeding of the AGIPA 8ISE moved to the Parliament and the Parliament's Constitutional Committee continued with the proceeding process.³

Aware of the new version of the AGIPA 8ISE, the NGOs and the UNHCR provided additional comments and amendment proposals to the Constitutional Committee and were invited to present their arguments at a Committee meeting. According to the NGOs, the meeting was merely an opportunity to introduce their suggestions, but not a place for substantive debates as the expectation of the Committee was that the formal public participation process had already been completed (*Interview E*). The attitude of the Committee members toward the NGOs was somewhat critical. One ministry official explained: "I wouldn't say that the criticism was targeted towards the organisations, but rather towards the fact that we had a migration crisis and we did not want to introduce any favourable conditions for refugees" (*Interview I*). The views of the interviewed Committee members concurred with this sentiment. One of them even explicitly stated that the "NGOs' representatives did not correspond with the mood of the political parties, the Parliament and the public opinion. They did not seem trustworthy" and that the overall motivation of NGOs in asylum policy was to increase their work opportunities (*Interview G*).

In addition, the Committee heard the input from other stakeholders (e.g., the ministries, courts, the Chancellor of Justice) and all political parties represented in the Parliament were able to suggest changes to the draft law. Altogether, nearly 80 amendment proposals were made during the period from October until December 2015. Only after the Committee had received all suggestions from stakeholders did political deliberations begin. For the next three months, the government coalition parties met in workgroups to find an ideological compromise before continuing with the deliberations of the AGIPA 8ISE in the Constitutional Committee. The main points of discussions concerned where and how to process asylum applications received through the relocation and resettlement schemes (in the initial host country or in Estonia); how to stipulate the obligation to learn the Estonian language; and what level of social aid was necessary for refugees to start their new life in Estonia (Constitutional Committee, Protocols No. 27 and No. 29). An agreement on the final version of AGIPA8ISE was concluded between political parties in late February 2016.

Compared to the first draft, the final version had gone through significant changes, especially during political discussions in the Parliament (*Interviews I and F*). The draft law passed the

3 The Estonian legislative process determines that once the draft law reaches the Parliament, one of the parliamentary committees is assigned to deliberate on the document. The assigned committee has discretion to involve any expert or stakeholder. The draft law must pass through three rounds of voting in the plenary meetings of the Parliament. If the law proposal passes, the President of the Republic of Estonia finally signs and proclaims the act.

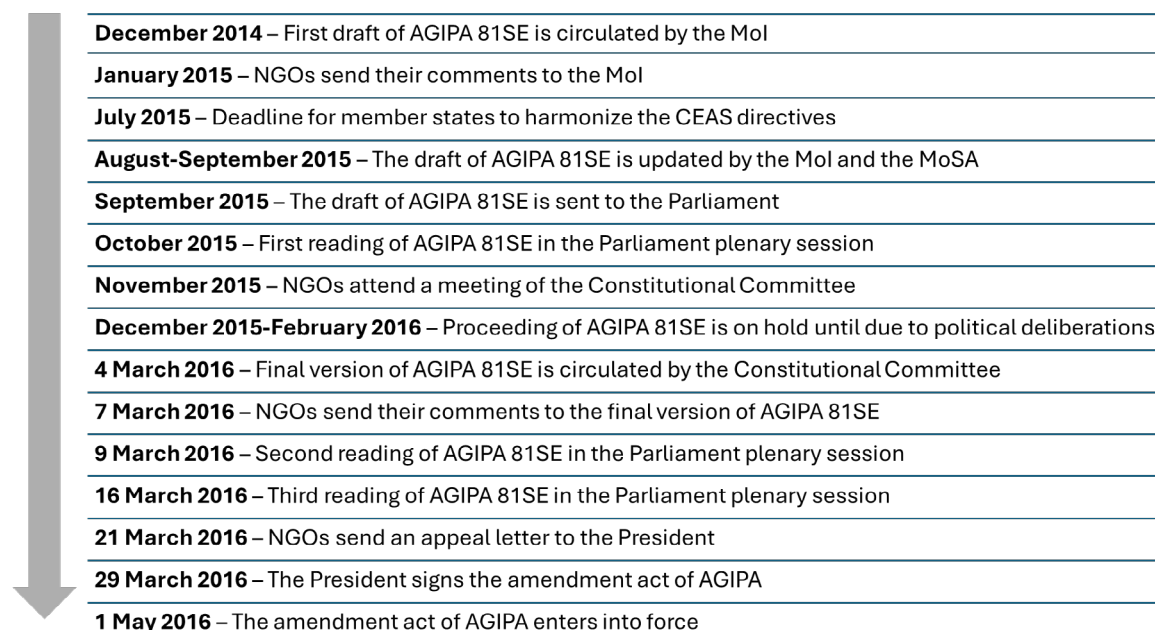
second reading in the plenary session of the Parliament on 9th of March 2016. The legislative amendment was eventually supported by five out of the six political parties represented in the Parliament at the time (Parliamentary proceedings 16.03.2016). The Constitutional Committee representative even stated at the plenary session that the AGIPA 81SE was "a good example of co-operation" and the final version of the draft law was "in the best possible form we could achieve with our current knowledge" (Parliamentary proceedings 09.03.2016).

But not everyone was satisfied. The bulk of the political compromises were reached in working groups behind closed doors, which made it impossible for outside stakeholders to follow the discussions and to participate. Representatives of the NGOs claimed that the political compromises reached by the Committee were "the most problematic part of the whole amendment process" and several changes were not in accordance with the international asylum regulation (*Interview E*). One of the main criticisms of the NGOs targeted the added obligation for refugees to take Estonian language courses and a clause that stipulated Estonian language proficiency as a requirement for extending the refugee status in the future. From the perspective of the NGOs, the right to receive international protection should only be decided based on the actual need for protection rather than individual language skills. Because NGOs received the final version of the AGIPA 81SE only two days before the final vote in the Parliament, there was no time left to discuss any further comments by the NGOs.

This was the reason why NGOs decided to go public and criticized the Constitutional Committee of the Parliament in the media for "bad legislative practices" and "no involvement or public debate about the important changes made during the second reading in the Parliament" (EIK 2016, 3). From the perspective of the Committee, this claim was considered an overstatement because the NGOs were given an opportunity to present their suggestions and, therefore, were nominally involved in the decision-making process. Most of the interviewees from the Committee expressed that making the final decision was the prerogative of politicians and constantly informing the NGOs about political decisions was not necessary (*Interviews H, D, and F*). One of the Committee members stated: "If someone thinks public participation means that they get to sit in on all Committee meetings and decide what the Constitutional Committee decides, then I cannot agree with that. Drafting a law is still a democratic process that has to happen through voting" (*Interview D*).

As a final option, the NGOs sent an appeal letter to the President to prevent the AGIPA 81SE from being enacted and continue discussions in the Parliament (Pagulasorganisatsioonide Ümarlaud 2016). The President did not accept their appeal and the AGIPA 81SE entered into force in March 2016. The full timeline of proceedings of the AGIPA 81SE is summarized in Figure 1.

Figure 1. Timeline of the proceedings of AGIPA 81SE



Source: compiled by the author.

Discussion

The case study of the amendment process of the AGIPA in Estonia offers crucial insights about how a change in context can influence the relationship dynamic and involvement of NGOs in asylum policy-making. First, the 2015 EU migration crisis and the Estonian Government's decision to accept refugees through the European migration scheme altered the power dynamics between the stakeholders in the Estonian asylum system. Right from the beginning of the crisis in 2015, Estonian Government members took a clear position, seeing the crisis as a shared European problem where Estonia must give a helping hand. This position was maintained throughout the crisis and led to important developments in the asylum system. The decision to accept 550 refugees meant that Estonia was facing a practical problem of unforeseen magnitude and NGOs had the resources (knowledge, employees) needed to find the solutions. As NGOs became to be seen as indispensable partners, the decision to accept refugees legitimized the NGOs and their expertise in the eyes of civil servants. Instead of having total control over matters relating to migration, NGOs became a necessary partner to ensure the reception and integration of relocated persons. Concurrently, the collaboration between civil servants and NGOs improved.

Second, several interviews highlighted that a change had occurred in how administrative actors, especially officials in national security organizations (the Mol, the Police and Border Guard Board) perceived refugees and asylum seekers as a policy problem. Instead of the restricted focus on asylum as mostly an internal security issue, the social aspects and the need for social support of asylum seekers became more recognized. One ministry official said: "There was increasing awareness that if an asylum seeker has nowhere to live while his/her application is being processed, or we do not have a reception center where people could

feel safe or satisfied, then the same person is not going to cooperate with the police. These two aspects need to go hand in hand" (*Interview O*). The migration crisis, therefore, had an effect on how the issue of asylum policy was perceived on the policy implementation level.

Third, the shift in perception on the policy implementation level was more immediate than on the policy-making level. The political discussions in the Parliament during the proceedings of the AGIPA 81SE largely followed old patterns and frames. The public's negative reaction toward being "forced" to accept refugees solidified the existing narrative of asylum seekers as a threat to security and burdensome for the welfare system. Therefore, for parliamentarians and politicians, the decision-making process during the proceedings of the AGIPA revolved more around finding a political compromise that would "calm down society" (Parliamentary proceedings 09.03.2016) rather than solving a practical problem in cooperation with all stakeholders. It was important for the politicians to prove to the Estonian public that no special treatment would be given to refugees. For example, the final text of the AGIPA 81SE included a declarative clause that asylum seekers and refugees are "required to observe the constitutional order of Estonia and to comply with the legislation of Estonia"⁴ although this is required from all people residing in Estonia regardless of their status. It was important for political decision-makers to display continued governmental control over matters related to migration, which was the reason why the involvement of NGOs in the legislative process remained mere tokenism.

Fourth, before the 2015 EU migration crisis, NGOs described their relationship with the MoI as merely symbolic and at times even prone to conflict or antagonistic. Because asylum policy followed the "minimum program" and the policy issue was not considered a priority (*Interview Q*), cooperation with NGOs was symbolic. As the need for cooperation on the policy implementation level increased during the crisis, the relationship with NGOs improved and, consequently, changed the incentive of NGOs to engage in policy-making. One NGO representative explained:

"The fact that government agencies listen more and seek solutions is a change. Advocacy is always a question of strategies. Now that the relationship is more constructive, we haven't used the more extreme or more public methods, because there is another way, an easier way. Dissecting problems publicly is not our first choice. And now that we have other options on the table, we use these options more." (Interview M)

This sentiment shows that as the perspectives of government agencies and NGOs started to converge, the dynamic between the actors on the policy implementation level became less antagonistic. At the same time, the political sensitivity of asylum matters meant that on the policy-making level, which is more public, the dynamic remained confrontational.

Finally, the findings of this study demonstrate that even though Estonia's asylum policy ensued from and was heavily influenced by the Soviet legacy of forced migration, the Estonia's stance of adhering to the principle of EU-solidarity was considered more important by the Estonian Government at the time. One interviewed Government member stated: "There were no questions or doubts in the Government coalition whether we should participate [in the EU's resettlement scheme] or not. Of course, you can try to fight back and, for example, Slovakia fought back for a very long time, but what good does it do? What good does it do?" (*Interview*

4 Act on Granting International Protection to Aliens. RTI 2006, 2, 3. §11 and §74¹.

P). The Estonian political parties that formed the Government considered the potential risk of not being perceived as legitimate partners for other EU member states more important than following decade-long conservative principles in Estonia's asylum policy-making.

Conclusion

Analyzing the involvement of NGOs in asylum policy-making by focusing on a specific decision process offers an in-depth understanding of the relationship dynamics between stakeholders. Several conclusions can be made based on the case of the AGIPA proceedings during the 2015 EU migration crisis. First of all, the context of crisis changed the power dynamics between the government and NGOs. Before the 2015 migration crisis, the relationship between NGOs and government actors was symbolic and at times even antagonistic, because of Estonia's conservative migration policy. The Estonian Government's decision to accept refugees through the EU's resettlement scheme forced policy implementers to cooperate with NGOs to tackle the upcoming challenge. The discursive legitimacy of NGOs increased and civil servants began to perceive NGOs as partners rather than mere sources of information.

Despite these shifts in the Estonian asylum policy system, the power dynamics on the political decision-making level remained the same. The 2015 migration crisis exacerbated the existing collectively perceived vulnerability of the Estonian society. Therefore, addressing the fears of society and sending the right messages to the public was one of the primary motives for parliamentary politicians. NGOs were perceived as an interest group rather than significant actors and legitimate sources of information. As a result, a kind of ambivalent situation emerged during the proceedings of the AGIPA where NGOs became important partners on the policy implementation level, but were only nominally involved on the legislative level.

These findings indicate that even when the need for cooperation and coordination is theoretically vital to tackling multidimensional and complex policy problems, then when the salience of the issue increases, it is less likely that a wide circle of stakeholders will be involved in the rule-making process. From the perspective of NGOs, the possibility of engaging in and influencing asylum policy becomes more likely through service provision and on the policy implementation level, rather than through political debates. As put by Maynard-Moody and Herbert (1989, 139) "administrative policy making is less public" and because asylum policy is usually a publicly sensitive issue, it is more likely that NGOs will have better access to asylum policy decision-making through the policy implementation level.

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ANNEX 1

The number of asylum applications and positive decisions between 1997 and 2023. The data includes both refugees and receivers of temporary protection.

Year	Asylum applications	Positive decisions
1997	1	0
1998	23	0
1999	21	0
2000	3	8
2001	15	4
2002	9	1
2003	14	0
2004	15	0
2005	11	1
2006	7	0
2007	14	4
2008	14	4
2009	40	4
2010	33	17
2011	67	11
2012	77	13
2013	97	7
2014	157	20
2015	231	78
2016	260	154
2017	487	120
2018	107	35
2019	127	50
2020	49	26
2021	80	46
2022	2941	2106
2023	3984	3917

Source: The Estonian Police and Border Guard Board, 2024.

ANNEX 2

List of interviewees

Interview	Institution	Date of interview
Interview A	Johannes Mihkelson Center	5 April 2016
Interview B	Estonian Human Rights Centre	7 April 2016
Interview C	Ministry official	7 April 2016
Interview D	Member of Parliament, Constitutional Committee	7 April 2016
Interview E	Estonian Refugee Council	8 April 2016
Interview F	Civil servant, Constitutional Committee	13 April 2016
Interview G	Member of Parliament, Constitutional Committee	13 April 2016
Interview H	Member of Parliament, Constitutional Committee	13 April 2016
Interview I	Ministry official	19 April 2016
Interview J	Johannes Mihkelson Center	21 March 2019
Interview K	Estonian Human Rights Centre	22 March 2019
Interview L	UNHCR Northern Europe	26 March 2019
Interview M	Estonian Refugee Council	28 March 2019
Interview N	Member of Government during 2015–2016	11 October 2019
Interview O	Ministry official	11 October 2019
Interview P	Member of Government during 2015–2016	16 October 2019
Interview Q	Ministry official	25 October 2019

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