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The involvement of NGOs in asylum policy decision-making: The case of Estonia

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This is a draft version. Comments and feedback welcome.

Introduction

Together with the development of collaborative governance and the increased demand for partnership, cooperation and coordination in public management during the past few decades (Pollitt and Bouckaert 2017; Koebele 2018), the involvement of stakeholders in the policy decision-making process has continued to interest both researchers and practitioners. In addition to the normative democratic values of public participation (Fung 2015), instrumental benefits such as increased trust, competence and innovation potential in policy-making (Halvorsen 2003; Furlong and Kerwin 2005; Fung 2006) and a reduction of policy implementation costs (OECD 2009) have been emphasised in the literature. However, in addition to acknowledging the positive traits of public participation, there is also an understanding that the process of participatory policy-making is diffult 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 (Joldersma 1997; Wagle 2000) depending on the institutional and political context (Rowe and Frewer 2004; Cornwall, 2008; Halpin and Fraussen 2017; Ianniello et al. 2018). Taking into account that contemporary policy challenges are socially and politically complex, highly uncertain, full of contradictions and interdependence (Head 2008; Peters 2017), collaboration is essential to tackle these challenges (Head and Alford 2015, 722). Failure to work together can result in conflicts and coordination problems, leading to ineffective policy-making and implementation (Dean 2016, 7; Neshkova and Guo 2011) which can further escalate the policy challenge and have negative consequences for members of the society.

Asylum policy represents a complex and controversial policy field with a wide range of actors across governments, sectors and policy areas (Alink et al. 2001). The core contradiction and political dilemma of asylum policy lies between refugees' human rights concerns and state interests (Geuijen et al 2016, 624) which makes the decision making process more value-based than rational. On the one hand, states that have joined the 1951 Geneva Convention on the Status of Refugees have to recognise the right to asylum as a

universal human right, while, on the other hand, providing protection to asylum seekers and refugees demands substantial resources from the receiving country (Toshkov 2013, 197) and in crisis situations can pose a potential threat to the stability and security of the state (Keely 1996, 1062, Thielemann 2018, 70). As a result, a "tug-of-war between international norms and morality loosening asylum on the one hand and national interests tightening it on the other" (Steiner 2000, 7) takes place.

Asylum policy and policy-making in the European Union has been extensively researched ever since the harmonisation of asylum policy in the EU began in the late 1990s (Hatton 2005). In addition to analysing how asylum policy has developed over time (Boswell 2000; Kjaerum 2002; Hatton 2005; Helbling and Kalkum 2018, Kaunert and Leonard 2012; de Haas et al 2018; de Haas et al 2015, 26; Ripoll Servant and Trauner 2014, 1153), research has also shed light on the dynamics between different stakeholders in the policy making process on the EU level (Guiraudon 2000; Givens and Luedtke 2004; Kaunert et al. 2015; Scipioni 2015; Zaun 2017; 2016). Less emphasis has been on exploring the dynamics between stakeholders with different roles or considerations on the national level (few exceptions are e.g. Szczepanikova 2011; Mayblin 2017), especially in the actual decision-making phase. In particular, the involvement of NGOs in decision-making has thus far received very little attention on the national level (Koorneev and Kluczewska 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 thus far mainly looked at their function and activities (Kersch and Mishtal 2016; Simsa 2017; Roth et al 2018; Milan 2018; Mayblin and James 2018), but has not closely looked at their involvement in the policy-making process. Understanding the dynamics of decision-making gives an idea on the nature of the relationship between stakeholders, which is crucial to understanding asylum policy. Insights from the national level are especially important for understanding the processes on the EU level (Zaun 2018, 45), as asylum policy has remained a policy area where the trend points towards national solutions, threatening the integrity of the EU (Lavenex 2018; Givens and Luedtke 2004).

This paper will provide an in depth account of the involvement of NGOs in asylum policy decision making on the national level by analysing the case of Estonia. More specifically, the case study will follow the legislative process of amending the Estonian Act of Granting International Protection to Aliens (AGIPA) - the main act regulating the asylum system in Estonia – that proceeded from 2014 until 2016. Estonia offers a good case study as its asylum system was only established in 1997 and ever since the first asylum seekers reached its borders, volunteers and NGOs have been crucial actors by offering vital services to the target group and advocating for the latter's rights. By deconstructing and closely analysing a decision making process in its entirety, the Estonian case offers an opportunity to consider the dynamics of interaction between the government and NGOs that occur in decision-making during a sudden shift in where immediate decisions are required.

The paper first outlines the characteristics of asylum policy-making and the role of NGOs in asylum policy from a theoretical perspective. A theoretical framework is then composed by combining the nuances of asylum policy-making with the theoretical literature of NGO participation and involvement in policy-making. The framework lays out the criteria

for evaluating NGO involvement and underlines the factors that influence the involvement process in asylum policy-making. The term "policy-making" in this article will be used to refer to the process of determining policy options and making a decision on the course of action (Howlett and Giest 2013). The theoretical part is followed by a qualitative case study of Estonia. The data for the analysis was gathered through desk research and 17 in-depth interviews conducted in 2016 and 2019 with NGO representatives, ministry officials, and Government and Parliament members who were in office during the European refugee crisis.

The characteristics of asylum policy-making

Asylum policy is a multifaceted, transnational and institutionally complex policy field (Alink et al 2001), that deals with challenges stemming from the irregular movement of people (often forcibly) uprooted from their home. Reasons for seeking shelter in another country vary 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). To put it differently, people seeking international protection are "the manifestations of the problems of another country which suddenly become the problems of one's own" (Jacobsen 1996, 662).

The international asylum system that instituted the formal right to seek asylum was set up shortly after the Second World War. In 1950, the United Nations (UN) General Assembly mandated the United Nations High Commissioner for Refugees (UNHCR) to ensure protection to asylum seekers and refugees[1] and in 1951 the UN adopted the Convention Relating to the Status of Refugees[2] (Refugee Convention). The Refugee Convention, also called "the *Magna Carta* of refugees" (Grahl-Madsen 1966, 283) defines the status of refugees and stipulates the rights and obligations of the Contracting States. The international asylum system lays out three interrelated functions of asylum policy in the receiving state (Alink et al 2001, 288-89; Hardy 1994) – 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. All of 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 in order to successfully execute their tasks (Alink et al. 2001, 289).

Based on the literature, three defining characteristics of the asylum policy-making process stand out. First, as already mentioned in the introduction, asylum policy is by nature controversial. The inherent contradiction between the international right to seek asylum and the sovereign right of states to decide who enters their borders leads to the "political dilemma

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[1] UN General Assembly resolution 428 (v)*, Statute of the Office of the United Nations High Commissioner for Refugees,* 14 December 1950.
[2] UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations Treaty Series, vol. 189:137.

of law versus policy" (Alink et al. 2001, 297). It is widely argued, that the steep rise of refugees entering Europe since 1970s (Boswell 2000, Hatton 2011) led EU states to prioritize their concerns for internal security and the viability of the welfare state before human rights considerations (Kjaerum 2002; Böcker and Havinga 1998; Boswell 2000; Czaika 2016; Lavenex 2018). Although the international asylum system and the EU's legislative framework oblige member states to fulfil their humanitarian commitments, these regulations remain relatively vague (Toshkov 2013, 198; Lavenex 2018, 1203) leaving a certain level of discretion for governments on how to implement these rules (Scipioni 2017, 9). This does not mean that national governments are not interested in human rights protection, but that in exceptional and emergency circumstances, national interests often become superior and, therefore, hinder the compliance with international human rights rules (Goodwin-Gill 2001, 137; Givens and Luedtke 2004, 150).

Research by Lavenex (2001; 2018) has shown that ever since the communitarization of asylum began, asylum policy-making mode on the EU level has been transgovernmental (Wallace 2005, 87-9). The transgovernmental policy-making mode is characteristic to sensitive policy fields, where governments are reluctant to lose their discretion right to supranational bodies and cooperation with other states is often intergovernmental in nature (Wallace 2005). Based on this perspective, the decision making right belongs to member state governments, who have "the authority to legislate, access to privileged information, and control over resources" (Hardy 1994, 13) and, therefore, control asylum policy development (Bonjour et al. 2017). This power dynamic also transfers to the national level, where usually one single ministry (usually the ministry of the internal affairs) dominates asylum policy-making (Kaunert et al. 2015, 185). As security is traditionally a policy area that stays a bit hidden from the public, asylum policy-making on the national level is often "opaque" (Wallace 2005, 88; Zaun 2016) and access to the decision-making process limited (Geuijen et al. 2016, 16).

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 (Hansen 1999; Zaun 2016; 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 institutionalising the interpretation of the policy issue (Erikson 2015; Guiraudon 2017, 154). The prevailing policy frame, therefore, essentially affects how the policy field is governed - how decisions are made, who are involved in decision making and even which facts or knowledge is used (see e.g. Mayblin 2017). As mentioned, in asylum policy usually the government, more specifically the ministry of the interior (Lavenex 2001), determines how asylum policy is framed. Taking into account the sensitivity of asylum issues and the recent refugee crisis in Europe, the proponents of the opposing narrative in many EU member states are currently in a weaker position to influence or even access the decision making process (Boswell et al. 2011; Hatton 2017; Dagi 2017).

Lastly, asylum policy-making is contingent on the fluctuation of the number of asylum seekers, which makes asylum policy-making uncertain, reactive and *ad hoc* in nature (Winkler 1981, 170; Böcker and Havinga 1998, 246; Dahlvik 2018). When the number of

asylum seekers rises, the salience of the issue also increases, putting a pressure on "each of the components of asylum policy" (Alink et al. 2001, 296). High political salience mainly puts pressure on the government, to find a solution (Zaun 2017, 43). In moments of high pressure and crisis, when the issue becomes a priority for the government, the demands of the public can gain "political traction" (Hatton 2017, 468) and potentially lead to political change. For example, if we look at the asylum policy development and harmonization process in the EU, almost all substantial changes have taken place when the number of asylum seekers made an upsurge and solutions were needed to reduce the pressure.[3] As it is difficult to predict and control the fluctuations of migration flows (Alink et al. 2001, 294; Czaika and Hobolth 2016, 362), asylum policy-making tends to be reactive as opposed to having a long-term perspective (Böcker and Havinga 1998, 246).

Further, Hatton (2017, 469) has shown that if salience is high and the prevailing narrative of asylum policy is negative towards asylum seekers, political debate is activated. In this context "the increase in salience has the effect of magnifying pre-existing preferences" (Hatton 2017, 469), leading possibly to political, but also societal polarization. Givens and Luedtke (2004) and (Zaun (2016, 2017) both argue that if political salience becomes intense and there is large-scale inflow of refugees, a pattern of member states' reaction can be identified based on the capacity of the state (Givens and Luedtke 2004; Zaun 2016) and its previous experience with asylum seekers (Zaun 2016, 139). Zaun (2016) makes a distinction between older and newer EU members, and correspondingly between states with a strong or weak previous experience with asylum seekers. The difference, to simplify, lies between strong regulators trying to share their burden with neighbours and weak regulators trying to maintain the *status quo* if the number of asylum seekers quickly rises (Zaun 2018, 12). Newer member states are expected to have "more restrictive preferences /…/, as nationals have had little personal contact with foreigners" (Zaun 2018, 4).

NGOs in asylum policy

The presence and importance of civil society organisations has significantly grown during the past thirty years (Enjolras et al. 2018) and, concurrently, NGOs role has increased in all stages of the policy-making process in a wide array of policy fields (Einarsson and Wijkström 2019). In asylum policy, the growth of NGOs started during the early 1990s when the conflict between national refugee policies and human right laws increasingly emerged, creating an incentive for the creation of several humanitarian and human rights organisations (Korneev and Kluczewska 2018, 55; Kjærum 2002). In a short period of time, NGOs in asylum policy became engaged at "whatever level of governance, whether it be in the delivery

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[3] For example, we can see a shift towards more restrictive policy measures during 1970s until late 1990s as a reaction to the increase of asylum seekers from third world countries (Keely 2001). In the 2000s, first CEAS directives were adopted partly and included in the *acqui* for new member states as a reaction to the fear of mass immigration from former Soviet countries (Byrne et al. 2002, 203). In 2010 a new reform round of the CEAS (Ripoll Servent and Trauner 2014) coincided with conflicts arising in the Middle East during Arab Spring and during the 2015 refugee crisis, the European Commission implemented solidarity mechanisms for the first time.

of grassroots protection and assistance or in the formulation of policies, standards and norms and in monitoring their implementation" (Lester 2005, 125).

The literature on NGOs is diverse and, therefore, NGOs are not always defined uniformly in the third sector literature. Nevertheless, five defining features seem universal (Enjolras et al. 2018; UN 2018): they need to be institutionalized to some extent (formally or informally); are limited in distributing their profit; are self-governing; membership is non-compulsory for members; and are not controlled by the government (UN 2018, 26). Under this definition, a vast amount of organisations with different missions, activities and funding can be classified both on the international and national level.

Most commonly, NGOs dealing with asylum seekers and refugees are other-benefitting organisations (Doh and Yaziji 2009, 6) meant to benefit and serve people outside the direct membership of the NGO. In some countries with a large refugee stock, the refugees themselves have formed advocacy organisations to protect their rights (see e.g. Zetter et al. 2005; Lau 2019), but due to the marginalization and precarious status of refugees in most EU countries (Lester 2005; Geuijen et al. 2016), this is not widespread. Next to the "benevolent character" on NGOs, other organisations exist that participate in the global "migration industry" and assist other actors in "migration governance" rather than help protect their human rights (Korneev and Kluczewska 2018, 61). These are often transnational organisations, which can also involve national NGOs in their programmes (Korneev and Kluczewska 2018)

In the literature, NGOs are often classified based on their function. Most commonly three roles are recognised: service providers, watchdogs monitoring government actions and representation vehicles for different groups in the society (Leroux and Goerdel 2009; Anheier 2009; Enjolras et al. 2018). Below these three roles will be examined in the asylum policy context.

NGOs as service providers

Much the same as in other areas of social welfare, NPM related reform trends and contracting out service provision (Anheier 2009, 1083; Chin 2017) has made NGOs important service providers also in asylum policy. Although it varies across countries, NGOs provide services during the whole process of asylum provision by arranging reception related services like accommodation, legal advice, health care, psychological support, cultural orientation and also providing integration related services like providing housing, language courses, mentoring service and helping to access education or the work market for both asylum seekers and refugees (Garkisch et al. 2017, 1853-57; Kersch&Mishtal 2016; Simsa 2017; Mayblin and James 2018). In addition to their role in the national asylum frameworks, in uncertain and critical situations service providing NGOs often step in as "gap-fillers", because they are considered to be more agile and adaptable compared to governments in these situations (Simsa 2017; Milan 2018). Working closely with asylum seekers and refugees on the grassroots level and interacting with them on an everyday basis, service providing NGOs acquire an unique knowledge base and expertise (Chin 2017).

NGOs as maintainers of values and norms

The "value guardian" role (Enjolras et al. 2018, 96) expresses the function of NGOs to promote democratic norms and values like solidarity, civil liberties, social accountability and trust (*Ibid.,* 98; Anheier 2009), and monitor if governments act in accordance with these norms. The dilemma between human rights and state interests in asylum policy makes this "watchdog" role of NGOs pertinent to ensure that states are complying with their international human rights obligations (Müller 2008). The international mandate to monitor the fulfilment of the Refugee Convention belongs to UNHCR, but as NGOs are more familiar with the situation on the national level, UNHCR often uses the help of local NGOs to act as national norm entrepreneurs (Betts and Loescher 2014, 217). By highlighting the wrongdoings of the government, NGOs simultaneously raise awareness about local refugee related issues and human rights in the society in general. As the willingness of governments to improve the conditions for asylum claimants also depends on the prevailing views of the society, NGOs have an important role in educating the public in order to counteract the increasingly negative perspective on migration (Hatton 2005).

NGOs as political advocators

Arguably, the most important role of NGOs *per se* is advocating for the rights of their own members, other specific groups in the society or the civil society in general. Asylum seekers and refugees are among the politically marginalised 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). In countries, that have a weak tradition in accepting refugees and only a small stock of asylum seekers or refugees, this is less likely. 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 for NGOs (Leroux and Goerdel 2009). Contrarily, in countries with a stronger tradition of accepting refugees and a developed support system, NGOs opposing pro-migrant policies can emerge and advocate against the "granting of social rights to irregular migration" (Irrera 2016, 24).

There are several different types of advocacy activities (e.g. Cambridge and Williams 2004, 100-102; Mosley 2013), but more broadly a distinction between public advocacy, political advocacy and legal advocacy in asylum policy can be made (Garkisch et al. 2017, 1859-60). While public advocacy is similar to the role of maintaining universal democratic values and educating the public, then political advocacy intends to change the existing policy. Legal advocacy is directed towards helping either individuals or clients (Mayblin 2013, 213) 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 political advocacy, local NGOs and the UNHCR often collaborate in order to steer government actions into their desired direction. Therefore, the UNHCR tries to keep close contact with local NGOs (Ritchie 1995; Webb 2016). It has even been claimed that NGOs are

"the extensions of the United Nations" on the national level (Gordenker and Weiss 1997, 447). While governments can perceive the pressure from international human rights organisations as a "threat to its control over policymaking" (Jacobsen 1996, 663), national NGOs represent a more legitimate instrument for influencing the government.

In practice, all the three described functions of NGOs are often overlap. Especially the role of advocacy can be very hard to separate from other NGO roles (Young and Casey 2017). Increasingly, service provision and advocacy activities blend together and through providing services, NGOs form their policy objectives and pursue changes in the current policy or regulation (Hwang and Suarez, 2019; Chin 2017; Minkoff 2002).

Analysing the involvement of NGOs in asylum policy-making

The shift from traditional policy-making towards 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 a general definition proposed by 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 (Wagle 2000; Catt and Murphy 2003) and the "authorized set of decision makers – typically elected representatives or administrative officials – is somewhat deficient" (Fung 2006, 67; Blanco et al. 2011) in terms of possessing knowledge, information, competence, resources or legitimacy. Thus, public participation is expected to improve the quality and legitimacy of policy decisions by consulting a wide range of stakeholders or affected parties with different expertise, values and interests (Edelenbos 1999; Catt and Murphy 2003; Irvin and Stansbury 2004; Ianniello et al. 2018).

      In more simple terms, public participation is the process of collective problem solving that aims to reach a good decision (Wiedemann and Femers 1993; Edelenbos 1999). According to the general rule of any type of problem solving – the higher the number of decision-makers, the more difficult reaching a compromise becomes. The process is even more complex if we consider that the values, interests and positions of participating actors are not static, but rather "actively constructed or constrained" (Harvey 2009, 140) during the course of public participation.

      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 organisations, and unequal allocation of knowledge should arguably increase the need to discuss, share information and negotiate in order to either agree on a compromise or on a lack thereof (Rowe and Watermeyer 2018, 208). However, in reality the discrepancy of interests, different understandings of what "participation" should entail and especially a stark conflict in values

can create an incentive for the more powerful stakeholders to undermine the genuineness of the public involvement process in order to avoid discussion and control the final decision (Wang and Wan Wart 2007; Cornwall 2008).

In the case of asylum policy, this would imply fewer opportunities for migration supporting NGOs to be involved and, hence, increased potential of uninformed or unbalanced asylum policy. Neglecting the positions of other parties through an ostensible process of public participation creates additional tension and frustration between stakeholders, threatening their future collaboration as partners (Edelenbos and Klijn 2005). Taking into account the high number of actors and the substantial role of NGOs in national asylum policy systems, cooperation is necessary for the system to function. Choosing the appropriate method of participation and designing a suitable involvement process, therefore, becomes a critical issue.

A large proportion of theoretical discussions on public involvement and NGO participation in policy-making has focused on conceptualizing and evaluating the effectiveness or success of public participation (Ianniello et al. 2018). Most commonly different scales and continuums depicting the depth of participation have been proposed, according to which the most genuine form of participation would result in the involved organizations making the final decision or, in other words, "empowering" the ones involved (e.g. Arnstein 1969; White 1996). More recent works (Dean 2016; 2018; Wang and Wart 2007) contend this approach and criticize the normative assumption that all decisions are "up for grabs" (Cornwall 2008, 208; Burton 2004), arguing rather that the appropriate level of participation depends on the specifics of the problem and the surrounding context (Rowe and Frewer 2000; Fung 2006). As suggested by Dean (2016, 227) "[p]ublic participation is not necessarily in opposition to hierarchy and institutional power. It has a legitimate complementary role in such systems, and this is often how it is constructed by public organisations". Public participation processes are resource intensive, e.g. time consuming, and may not be cost-effective when an issue is merely technical (Walters 1996, Involve 2005).

Therefore, instead of analysing the outcome of participation, the importance of looking at the process of public participation is emphasised to shed light on the dynamics between the stakeholders and how this affects the decision-making process (Edelenbos and Klijn 2005, 436; Rowe and Frewer 2000). The relationship between the government and NGOs can be looked at on a scale ranging from an antagonistic state of conflict and confrontation to compliance and collaboration (Hardy and Phillips 1998; Dean 2018). In order to determine the particular characteristic of the relationship, four main analytical variables have been suggested (Hardy and Phillips 1998: Ansell and Gash 2008): the (im)balance of formal power and critical resources between the government and NGOs; the motive to participate; past history of interactions and the discursive legitimacy of how actors frame the policy problem. All of these variables, in turn, are contingent on the policy context and other influence factors characteristic to the functioning of both NGOs and the government (King et al. 1998; Platt 2008; Ianniello et al. 2018; Dean 2018).

The allocation of power and resources is arguably the most important aspect determining the relationship between different stakeholders, because this is closely connected to how the policy issue is framed and legitimized (Hardy and Phillips 1998; Casey 2002;

Mosley 2013). In asylum policy, the governments are by default the dominant stakeholder as they determine and are responsible for the functioning of national asylum reception systems. Even though NGOs in asylum policy often carry considerable expertise and knowledge on asylum issues, the trend of securitization of asylum policy in the EU has made the policy area opaque and, thus, refugee rights protecting NGOs' access to decision-making more difficult.

NGO participation research has shown that policy-makers are more likely to collaborate and involve NGOs if the latter can provide needed information or support (Abney and Lauth 1983), the NGOs are perceived to be "significant" or "prominent" actors (West 2004, 70; Halpin and Fraussen 2017, 726; Bryce 2009) or if they have previously collaborated with the NGOs (Nicholson-Crotty and Nicholson-Crotty 2004; Ansell and Gash 2008). Involvement of other stakeholders is also dependent on the perceived cost-effectiveness of participation (Ansell and Gash 2008) and the institutional framework around public participation in policy-making (Ianniello et al 2018). For example, if public participation is not legally regulated or considered as a norm, policy-makers can use political manoeuvring in order to restrict access to decision-making (Wang and Wan Wart 2007). This is often the case, if policy-makers and the NGOs have conflicting views, but policy-makers do not want to engage in confrontation (Hardy and Phillips 1998; Casey 2002). In asylum policy, this can be expected to happen when the salience of asylum policy increases and the public demands a solution. Because asylum policy ranks high on the agenda in most EU countries and public opinion is increasingly influenced by the emergence of right-wing populist movements across Europe (Zaun 2015), governments are under political pressure to satisfy the public, making it harder for refugee rights advocating NGOs to participate in decision-making (Dür and de Bievre 2007).

From the NGOs perspective, opposing policy-makers to the extent of confronting the government with e.g. demonstrations, boycotting or critical reports, requires important resources, like high administrative capacity, supporting network relations, but also a certain level of autonomy (Casey 2002; Hasenfeld 2005; Nicholson-Crotty and Nicholson-Crotty 2004; Leroux and Goerdel 2009). If, for example, the NGOs are mainly service providers and depend on government funding, this can hinder their confrontational tactics and rather result in complying with the government (Casey 2002; Mosley 2011). Service providing NGOs can resort to using "day-to-day" advocacy and "client-level concerns and frustrations to develop policy advocacy objectives" on the administrative rather than political level (Chin 2017, 28). A strategy of confrontation and conflict is used more likely when the imbalance of power and resources is static and the NGOs aim to significantly alter the current policy or power dynamics (Casey 2002). NGOs can also choose not to participate if they do not perceive the participation process as genuine (Renn 1993; Roth et al. 2018). Concurrently, the power-dynamic between policy-makers and NGOs is dependent on a plethora of contextual factors and the process of participation evolves over time (White 1996), creating a diversity of decision-making modes (Bode and Brandsen 2014) which affect the relationship between NGOs and the government.

The Estonian case: Background

Shortly after Estonia regained its independence from the Soviet Union in 1991, the small state on the Eastern border of the EU began its transformation into a democratic state. 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 towards political and economic integration with Europe. Establishing a formal asylum regime was by no means a priority for the young state, but rather a prerequisite for becoming a member of the European Union (Byrne et al. 2002; Trei and Sarapuu 2021). From the perspective of Western European states, the collapse of the Soviet Union created a potential threat of a mass inflow of asylum seekers moving from post-Soviet states towards Western welfare states. Therefore, building a functioning asylym system that conformed to international regulations in the "Baltic route" became one of the aims for neighbouring Scandinavian countries and the EU in general. Asylum policy regulations were included into the EU's *acquis* for new candidate countries (Lavenex 2002) and cooperation projects assisting with establishing the necessary legal framework, structures and institutions were shortly set up to assist Estonia.

Asylum policy as a separate policy field in Estonia was formally established in 1997, when the Estonian Parliament adopted the first Refugees Act and ratified the United Nations Convention relating the Status of Refugees (1951) and the Protocol Relating to the Status of Refugees (1967). The first refugee reception centre was opened in 2000 and during the same year, for the first time, refugee status was granted for three people (Figure 1). The next important juncture in Estonian asylum policy emerged in 2004 when Estonia became an EU member state and, concurrently, had to adapt its asylum system according to the requirements of the Common European Asylum System (Ripoll Servent and Trauner 2014). For this reason, the Estonian Refugees Act was replaced with a renewed legal document, the Act of Granting International Protection to Aliens (AGIPA), which continues to regulate the Estonian asylum system today.

Estonia's experience with asylum seekers and refugees during the last 20 years has been modest (Figure 1). Rather than becoming a popular destination country for asylum seekers, Estonia has mainly served as a "transit country" for people trying to reach Scandinavia (Kallas 2011). Initially, after establishing a formal asylum regime, the number of asylum applications remained rather low and only slowly started to rise after Estonia adopted the Dublin regulation and joined the Schengen area in 2007. A steeper rise of asylum applications came in 2009, and since 2011 there has been a continuous increase of asylum seekers reaching Estonia (Figure 1). Nevertheless, Estonia remains among the three EU countries with the lowest number of asylum applicants during the past decade (Eurostat 2019).

Figure 1. Total number of asylum applications and positive decisions during 1997-2019[4]
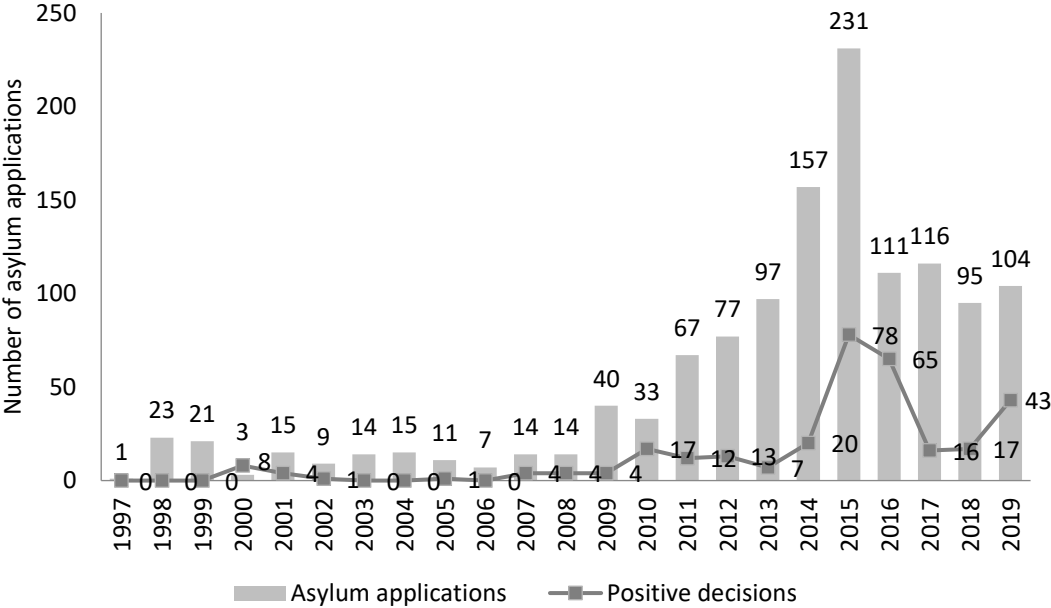
Due to the modest volume of asylum seekers and refugees, the scale of Estonian asylum policy and the circle of stakeholders has also been limited (Trei and Sarapuu 2021). Since 1997, asylum policy mainly belongs under the jurisdiction of the Ministry of the Interior and to a lesser extent to the Ministry of Social Affairs. Together with its agencies, the Police and Border Guard Board and the Estonian Internal Security Service, the Ministry of the Interior is responsible for asylum policy making, and organising the admission and determination of asylum applications. The Ministry of Social Affairs together with the Estonian National Social Insurance Board is responsible for the reception and integration of asylum seekers and refugees. On the international level, the UNHCR and the European Union are the most essential actors. While the UNHCR supervises the compliance of Estonian asylum policy with the international legal system, the European Union through CEAS provides policy frameworks and provides resources through the Asylum, Migration and Integration Fund.

The provision of every-day services for asylum seekers and refugees has been delegated to the state-owned company AS Hoolekandeteenused (responsible for administrating the refugee reception centre since 2000), international organisatsions (e.g. the International Organisation for Migrants) and local NGOs. In addition to state funded projects, the NGOs also offer voluntary support services for asylum seekers and refugees and are also the main advocators of refugee's rights. In fact, the first volunteers emerged right after first asylum seekers had arrived to Estonia and helped applicants with legal advice. As the number of asylum seekers increased and resources from the EU's Refugee Fund became available to Estonia in 2009, formalised organisations began their activities. Because of the small scale of

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[4] The annual total number of asylum applications includes reoccurring applications.

the Estonian asylum system, there have been only three NGOs in Estonia that have either primarily or partly focused on assisting asylum seekers and refugees (Table 1). The three NGOs have had different roles throughout their existence from offering support person services for refugees (JMC, ERC), offering legal counsil (EHRC) or advocating for the rights of asylum seekers and refugees through raising public awareness or publishing reports. In 2013, the three organisations together with UNHCR[5] joined forces to establish a Roundtable of Refugee Organisations (RRO) as a cooperation network of organisations that aim to improve the Estonian asylum system through service development, raising awareness and participation in the policy making process (RRO 2013).

Table 1. NGOs in the Estonian asylum policy field

NGO	Type of NGO	Founding year/active in asylum policy	Role in asylum policy (order of priority)	Main funders (as of 2016)
Johannes Mihkelson Centre (JMC)	Non-profit organization	1993/2009	1) Service provision 2) Advocacy	Project-based funding. Main funders: Ministry of the Interior, Ministry of Social Affairs, AMIF
Estonian Refugee Council (ERC)	Non-profit organization	2000/2010	1-2) Advocacy 1-2) Service provision 3) Monitoring	Project-based funding. Main funders: Ministry of Foreign Affairs, U.S. Embassy, National Foundation of Civil Society + donations
Estonian Human Rights Centre (EHRC)	Foundation	2010	1) Monitoring 2) Advocacy 3) Service provision	Project-based Funding. Main funders: UNHCR, Ministry of Social Affairs + donations

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

Estonia's modest experience with asylum seekers and a rather small circle of actors has also manifested itself in asylum policy making. Estonian asylum policy making has been characterised as *ad hoc* without any long-term strategy (Riigikontroll 2016). Because of the small scale, asylum policy has not been a priority and, therefore, complying with the minimal requirements of the CEAS has been one of the guiding principals for Estonia (Kallas 2011). An additional explanation behind Estonia's conservative line in asylum policy is the historical sensitivity towards immigration in general due to forced mass labour immigration during the Soviet Union.[6] Therefore, the topic of providing international protection to asylum seekers has been primarily framed from a security perspective with the Ministry of the Interior dominating the policy field. As a result, the relationship between the ministry and NGOs has

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[5] The UNHCR Representation for Northern Europe

[6] Between 1945 and 1989, the share of non-ethnic Estonians in the total population increased from 3% to 38%.

mainly stayed contractual and NGOs criticism of Estonia's conservative asylum policy has had negative effect on cooperation.

Methodology

The case study follows the involvement of NGOs into the decision-making process during the amendment of the Estonian Act on Granting International Protection to Aliens (AGIPA) – the framing document of the Estonian asylum system. More specifically the proceeding of the *Law Proposal 81SE amending the Act on Granting International Protection to Aliens and Associated Acts* is analysed since it was drafted in December 2014 until it entered into force in May 2016. The Estonian legislative process is generally divided into two phases – preparing the draft law on the executive level (usually in the respective ministry) and deliberating the proposal on the legislative level. Before the initial draft is sent to the Parliament for three rounds of discussions, the draft law and an explanatory memorandum is published in the Estonian Law Proposals Information System, where other government bodies and the public can comment and suggest changes. During the Parliament deliberations, the draft is mainly discussed and altered in a Parliamentary committee. The Parliamentary committee has discretion to involve any expert or stakeholder to introduce their comments and suggestions about the draft law. The draft law has to go through three rounds of voting in the Parliament plenary meetings. If the law proposal is accepted, the Estonian President finally signs and proclaims the act. In this paper, the involvement of NGOs is analysed on both the administrative and political level in order to understand the dynamics between the actors.

The analysis in this paper is based on qualitative data. The data was gathered through document analysis and 17 in-depth interviews. Document analysis was used to recreate the timeline and the formal proceeding process of AGIPA 81SE relying on memorandums, documents, parliament standing committee protocols, transcripts of the parliament plenary sessions and media coverage of the amendment process. Documents were also used to gain detailed information about the structure, function and activities of NGOs in the Estonian asylum system. Secondary data was complemented with 17 semi-structured interview that were conducted in two rounds within two separate research projects. In the spring of 2016, right after AGIPA 81SE had been adopted into legislation, 10 interviews were conducted with stakeholders involved in the proceedings process, including NGO representatives, Ministry officials and members of the Parliament that belonged to the committee responsible for deliberating the proposal. These interviews focused specifically on the public participation process during the proceedings process of AGIPA81. During 2019, seven additional interviews were conducted with the same NGO representatives and additionally with service providing agencies in the asylum policy field, Ministry officials and two Members of the Government in office during the European refugee crisis in 2015-2016. The second round of interviews centred around how the refugee crisis unfolded in Estonia. During all of the interviews, the role of different actors in the Estonian asylum system and their cooperation practices were also discussed.

Involvement of NGOs in the proceedings of AGIPA 81SE

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

For Estonia, the harmonisation process was considered mainly as a technical change to the existing legal framework (Siseministeerium, 2015a). The Ministry of the Interior prepared the draft document AGIPA81SE that consisted of the required amendments of the two directives. The Ministry of Social Affairs, especially in relation to the reception directive, provided input and the draft law was made public for comments and suggestions in early spring 2015. In addition to coordinating the draft law with other ministries, the Ministry of the Interior also invited the NGOs to provide feedback. The NGOs presented their amendment proposals jointly through the Roundtable of Refugee Organisations (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 the reception of asylum seekers. Therefore, their suggestions were technical and mainly intended to ensure that the Estonian government would not interpret the EU regulations to the detriment of asylum seekers. According to the interviewed representatives from the ministries, the feedback gained from the NGOs was very "thankworthy" and was incorporated as much as possible. Both the ministries and the NGOs stated that the involvement process on the ministerial level was in accordance with the established public participation procedures, although the NGOs found the process to be very formal. Although the NGOs were notified about which of their proposals were approved and why, no face-to-face meetings were conducted.

A few months later, the proceedings of AGIPA81SE took a turn. Reports of the inflow of refugees into the EU combined with people feeling the war in Ukraine made asylum related matter politically highly salient in Estonia (Hatton 2017).[7] In May 2015, the Estonian government voluntarily agreed to accept 550 refugees through the EU's resettlement and relocation programme (Siseministeerium 2015b) which added even more fuel to the debate on refugees. This decision was a clear deviation from the traditionally conservative asylum policy and the government's poor communication of its decisions created further tensions in society (Veebel and Markus 2015). Asylum policy became an important topic on the national news agenda and political debates. Similarly to other European states, populist political forces

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[7] Based on Eurobarameter surveys, the salience of immigration as a policy issue increased by 21.5 percentage points in 2015 compared to 2013. The Eurobarometer survey measured the salience of immigration policy as an issue by asking the respondent what were the two most important issues facing the country (Hatton 2017).

used the momentum to gain popularity, leading to anti-migration demonstrations and a highly negative opinion of 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 to not only improve the existing capacity of its asylum system, but also construct a new model for determining the status and integration of refugees arriving under the EU's migration scheme (Valdaru 2017; Trei and Sarapuu 2021). On the administrative level, regular meetings with social partners and relevant government agencies were quickly initiated in order to share information and find solutions to practical issues. In parallel with practical changes, the legislative framework of the asylum system also had to be altered. As the proceedings of AGIPA81SE was already in motion, the necessary changes relating to the resettlement and relocation scheme were simply added to AGIPA81SE in fall 2015. The deadline for adopting the CEAS recast directives had already passed in July 2015 and the government was under pressure to pass AGIPA81SE in the Parliament. Therefore, several changes were introduced by the top level of the ministries and even though the need to involve the NGOs in these discussions was felt on the administrative level, the time constraints and political pressure did not allow it.

In the fall of 2015, the proceeding of AGIPA81SE continued on the political level. Aware of the new version of AGIPA81SE, the RRO and UNHCR provided additional comments and amendment proposals to the Parliamentary committee and were invited to present their arguments during a committee meeting. Additionally, the parliament committee gathered input from the Ministry of the Interior and the Ministry of Social Affairs, and all parliament parties were able to suggest changes for the final version of AGIPA81SE. Altogether, nearly 80 amendment proposals were made. After the committee received all suggestions and comments, the real discussions began. In fact, according to the interviewees, the involvement of the NGOs in this particular matter was a formality because of the highly political nature of the issue, the novelty of the refugee question in Estonia and, therefore, the perceived lack of experience of the Estonian NGOs dealing with asylum seekers and refugees. There was even a somewhat critical attitude towards the NGOs, because politicians were reluctant to accept any proposals that would create more favourable norms than the EU directives requires. Rather, the political compromise aimed towards finding a balance between "conservative attitudes in the society and a chance to use the whole situation for the sake of cementing Estonia's adherence to the principle of pan-EU solidarity" (Yatsyk 2018, 806).

For the next three months, the government coalition parties met in workgroups in order to find an ideological compromise before continuing with deliberations of AGIPA81SE in the parliamentary committee. The main points of discussions were about where (in the host country or in Estonia) and how to process asylum applications received through the relocation and resettlement schemes; 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 AGIPA81SE was finally reached in February 2016. Compared to the first draft, the final version had gone through significant changes, especially during the political discussions in the Parliament. AGIPA81SE was eventually supported by five out of the six Parliament parties at the time (Parliament verbatim report 16.03.2016). It was even stated at the plenary session

that AGIPA81SE 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" (Parliament verbatim report 09.03.2016).

But not everyone was that satisfied. The bulk of the political compromises were reached in working groups behind closed doors, which made it impossible for outside stakeholders to participate. Representatives of the NGOs claimed that the political compromises reached by the Parliament Committee were "the most problematic part of the whole amendment process" and several changes were not in accordance with international asylum regulation. One of the NGO's main criticism targeted the added requirement of obligatory 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 skills. Because the NGOs received the final version of AGIPA81SE only two days before the final vote in the Parliament, there was no time left to discuss any further comments by the NGOs.

The latter was the reason for why the NGOs turned to the media and publicly criticised the Parliament Committee for "bad legislative practice" 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 as an overstatement, because the NGOs were given an opportunity to present their suggestions and, therefore, were involved in the decision making process. Most of the interviewees form the Committee expressed that the final decision was the prerogative of the politicians and constantly informing the NGOs about political decisions was not necessary. As a final effort, the NGOs sent an appeal letter to the President to stop the legislative process and conduct further discussions (Pagulasorganisatsioonide Ümarlaud 2016). The President did not accept their appeal and AGIPA 81SE entered into force in March 2016.

Discussion

The proceeding process of AGIPA81SE offers interesting insights about the involvement of NGOs into Estonian asylum policy decision making. First, even though NGOs "access" to decision making on the administrative level was slightly better than on the political level, their involvement was mainly instrumental. The motive to involve NGOs was either the need to gain additional information or seen as merely a procedural obligation. It could be argued, that the main explanation behind this lies in how the three key actors – the ministries, politicians and NGOs – perceived the role of NGOs. From the perspective of the administrative level, NGOs were mainly seen as service providers and a source for information. This became even more evident once the Estonian government decided to participate in the EU's relocation and resettlement programme. Before the refugee crisis the relationship between the Ministry of the Interior and NGOs was either neutral or even conflictual. Asylum policy was not a priority for the government before the crisis and a conservative line was followed, which made it difficult for the NGOs to participate in policy making. However, when the need to adapt the existing asylum system in order to receive additional refugees became apparent there was a clear shift

and a certain convergence of views between the NGOs and the Ministries of the Interior and Social Affairs. An understanding emerged on the policy implementation level that in order to set up a viable reception system, the skills, knowledge base and capacity of the NGOs as service providers was crucial. Monthly meetings were initiated to exchange information and offer a regular platform of communication.

The NGOs saw themselves as maintainers of human rights values or even as "watchdogs" of the decision-making process. Therefore, they felt they had to be kept in the loop during the whole proceeding process of AGIPA81SE. Not being able to be part of the political debate and participate in the final phase of the decision making only nominally was extremely frustrating to the NGOs and eventually led to open criticism and conflict. On the political level, the frustration of the NGOs was not understood, because the political level perceived NGOs mainly as an interest group with only a narrow aim to advocate for the target group. Therefore, the NGOs were not considered as significant actors or legitimate sources of information. The difference in perceptions eventually led to a rather schizophrenic situation where on the administrative level NGOs became important partners, but were not considered relevant on the political level.

The analysis of the proceedings of AGIPA81SE also highlight very well the value-based nature of asylum policy and the internal dilemma between national interests and human rights, especially if the salience is high. On the political level, the decision making revolved around finding a political compromise that would "calm the society" (Parliament verbatim report, 09.03.2016) rather than focus on the technicalities. The political tensions, public debates and the emergent polarization in the society only solidified the already existing narrative of seeing asylum seekers and refugees as a security issue. As a result, there was no willingness to change or adapt the narrative, which further explains the unwillingness to involve the NGOs.

Conclusion

Few preliminary conclusions can be made based on the analysis of the Estonian case. First, analysing the involvement of stakeholders into asylum policy decision making by focusing on a specific decision process offers an in depth understanding about the relationship between the actors. Merely looking at the end result of the asylum policy making process might not paint the entire picture. For example, the Estonian case showed an ambivalent relationship between the state and the NGOs. While on the administrative level NGOs were considered as instrumental partners, then on the political level the relationship was conflictual.

Second, it might be argued that because of the sensitivity of asylum policy, especially if the salience is high, there is a tendency on the political level to solidify the dominant narrative and make declarations that might not be actually implemented in practice. This also indicates that from the perspective of NGOs, the ability to influence asylum policy might be more likely through policy implementation and service provision rather than through political debates. As put by Maynard-Moody and Herbert (1989, 139) "administrative policy making is less public" which in the Estonian case actually benefitted NGOs as the administrative level

perceived the NGOs as instrumental partners.

Third, even though theoretically the need for cooperation and coordination is vital in order to tackle multidimensional and complex policy problems, then if the policy question is highly sensitive and politically loaded, it is less likely that a wide circle of stakeholders will be involved in decision making.

Acknowledgements

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