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**THE ROLE OF NGO-S IN ASYLUM POLICY-MAKING IN ESTONIA**

Master's thesis

Supervisor: Dr Külli Sarapuu

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I hereby declare that I am the sole author
of this master's thesis and it has not been
presented to any other university for examination.


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**ABSTRACT**

The involvement of civil society organisations in policy-making has been an important research topic during the last decades. The continuously rising number of refugees in the world has made NGOs important partners for the government as both service providers and sources of information. Therefore it is important that they are involved in policy-making in order to make the best decisions possible. The aim of this thesis is to, first, map the NGOs in the Estonian asylum policy field and, second, analyse their role in the Estonian asylum policy-making, taking the amendment process of the Act on Granting International Protection to Aliens as an example. The empirical findings show that although the European migration crisis has increased the participation of the NGOs in policy-making and improved the collaboration between the NGOs and the government, the involvement of the NGOs in decision-making is still formal. The NGOs are mainly used as tools for service provision and sources of information. Because of the high salience and political nature of the refugee question, it has been harder for the NGOs to participate in decision-making. In order to avoid frustration and misunderstandings between the NGOs and the government, communication during the involvement process should be improved.

**Keywords**: *non-governmental organisations; public participation; policy-making; asylum policy*

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# LIST OF ABBREVIATIONS

AGIPA – the Act on Granting International Protection to Aliens

AGIPA 81SE – Law Proposal 81SE amending the Act on Granting International Protection to Aliens and Associated Acts

AMIF – the European Union's Asylum, Migration and Integration Fund

EHRC – the Estonian Human Rights Centre

ERC – the Estonian Refugee Council

JMC – the Johannes Mihkelson Centre

NGO – non-governmental organisation

RRO – the Roundtable of Refugee Organisations

UNHCR – the United Nations High Commissioner for Refugees

# INTRODUCTION

The past two decades have seen an increasing role of civil society and non-governmental organizations (NGOs) in all stages of public policy-making. With the shift from government to governance and the growing importance of concepts like "trust", "transparency" and "openness" (Pollitt&Bouckaert 2011), governments have made efforts to improve the involvement of citizens and civil society organizations (e.g. European Union White Paper of Governance 2001; Open Government Partnership initiative). There is a wide consensus in the literature that in addition to democratic values, public participation in policy-making also provides instrumental benefits like wider evidence base for policy decisions, reduced implementation costs, potential for innovation, increased competence and higher trust in government (Furlong&Kerwin 2005; Halvorson 2003; OECD 2009; Hardy&Phillips 1998; Jenei&Kuti 2008; Wang&WanWart 2007).

Since the end of the Second World War and especially in the post-Cold War era, NGOs have become key players in asylum policy by working closely with asylum seekers and refugees on the global and national level (Lester 2005). An asylum seeker is a person who has fled his or her home and submitted a request for being recognised as a refugee but has not yet been granted the status. Asylum policy in the context of this thesis refers to the framework of procedures related to the reception of asylum seekers and the processing of their applications. It forms only one part of governments' overall refugee policy (van Selm 2005). The right of asylum is a human right based on the United Nations Declaration of Human Rights' Article 14 (UN General Assembly 1948) and in many ways asylum seekers are one of the world's most vulnerable groups of people because they are "between states" and "the only tangible right they can assert /…/ is the right to seek asylum" (Edwards 2001: 160). There have been claims that after the end of the Cold War, asylum policy in European countries has become pragmatic and state interests have become "dominant in comparison with human right protection" (Kjærum 2002, 519; also Doomernik&Bruquetas-Callejo 2016; Heuser 2008). In light of the current European migration

crisis, this has become even more evident, as the influx of refugees has caused "growing fragmentation of member states' national interests" and a decrease in solidarity which poses a threat to the underlying values of the European Union and in the Baltic States also to their security (Veebel&Markus 2015).

These developments can also be seen in Estonia, where the high salience of the issue, minimal experience of proceeding asylum applications and the governments' poor communication of decisions in this field has caused a decrease in the transparency, credibility and legitimacy of the governments' actions (*ibid.*). Because Estonia has not had a lot of experience with asylum seekers, asylum policy related matters have not been a priority and policy-making in this field has been rather *ad hoc* (Riigikontroll 2016b). However, statistics show that the number of asylum seekers entering Estonia is growing (PPA 2016) and with the intensification of the European migration crisis Estonia has also agreed to voluntarily accept refugees through resettlement and relocation programmes (Siseministeerium 2015c). In order to cope with the increasing pressure, Estonia needs to develop a sustainable and effective asylum policy. Because asylum policy is a new topic for Estonia and policy-making has been rather reactive, it is all the more important to include all the relevant stakeholders from government agencies to civil society organisations into policy-making to create a wider evidence base for the decisions. Although some studies have highlighted the relevant stakeholders in the Estonian asylum policy (IOM 2012) and analysed their role as service providers (Mätlik et al 2013), no studies have thus far provided a comprehensive look at the NGO role in this policy area.

For this reason, the aim of the thesis is to contribute to analysing the Estonian asylum policy by, first, mapping the NGO landscape and, second, analysing the role and participation of NGOs in asylum policy-making. The following research questions will be answered:

− *How many and what type of NGOs act on the Estonian asylum policy field?*
− *How have the NGOs been involved in the Estonian asylum policy-making?*
− *What is the role of the NGOs in the Estonian asylum policy?*

The object of the research is Law Proposal 81SE amending the Act on Granting International Protection to Aliens and Associated Acts (AGIPA 81SE) that was adopted by the Parliament in March 2016. The Act on Granting International Protection to Aliens (AGIPA)[1] is the most important document in the Estonian asylum system and therefore analysing the engagement of

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[1] Act of Granting International Protection to Aliens, RT I 2006, 2, 3.

the NGOs in amending this act, but also looking at their wider involvement, will help make conclusions about the overall role of the NGOs in this policy field.

The paper is divided into two main parts – theoretical framework and empirical analysis. The theoretical part, first, gives an overview of the different types of NGOs and their role in policy-making. It then looks at how NGOs are involved in policy-making, what are the aspects of an in depth involvement process and when is public involvement pragmatically reasonable. Criteria by which to analyse the public involvement process are also provided. The topic of NGO participation is then put into the context of asylum policy. The second part of the thesis is an empirical case study of Estonia which maps the active NGOs in Estonian asylum policy and analyses their involvement in policy-making based on the theoretical framework, taking the adoption of AGIPA 81SE as an example. Based on document-analysis and semi-structured interviews, the participation and involvement of the NGOs is studied. This is followed by a discussion that analyses the role of the NGOs in Estonian asylum policy.

# 1. THEORETICAL FRAMEWORK

## 1.1. Definition of NGOs

Non-governmental organizations (NGOs) (also not-for-profit, third sector and voluntary organizations) are broadly defined as civil society organizations that are separate from the government and private sector (Jenei&Kuti 2008; Newman&Clarke 2009). This definition, however, does not capture the complexity of these organizations and the relationship between NGOs, the state and the market, which has led some authors to contend that the only thing the third sector organizations have in common is "what they are *not*" (Brandsen et al 2005: 750). Despite the "fuzziness", "changeability" and often the hybridity of third sector organizations (Brandsen et al 2005), there are still some mutual characteristics used to define them (adapted from Casey 1998):

1) **Autonomy.** Being apolitical and autonomous from the government and the market can be regarded as the essence of third sector organizations – "their very *raison d'être*" (Gordenker&Weiss 1997: 444), because they are assumed to fill the area that the government is not doing and the market is not willing to do (Brandsen et al 2005). Nevertheless, with the growing importance of privatization, contracting out and NGOs becoming valuable service providers, the borders between these three sectors are not clear anymore (Brandsen&Pestoff 2008). Receiving public funding from the government has sometimes become inevitable for the survival of an NGO, although it can decrease an NGOs' autonomy (Graddy&Chen 2006).

2) **Serving the public good.** There is an unwritten agreement that NGOs are usually oriented towards voluntarily pursuing a "mutually agreed collective purpose" (Bode 2008: 61) which aims to produce or serve the public good and welfare of the people.

3) **Not profit seeking.** NGOs do not aim to seek profit and even if they do make profit "they obey the non-distribution constraint" that allows re-investment but not the distribution between members (Priller&Zimmer referred to in Jenei&Kuti 2008).

4) **Strong reliance on volunteers.** The third sector is also called the voluntary sector, because when they aim to serve and care for others without making profit, there must be a value based incentive that motivates these people to participate. Nevertheless, NGOs can still have formal employees and often hire professionals to increase their capability to, for example, participate in policy making (Gordenker&Weiss 1997).

According to Casey (1998), all these characteristics should be looked at on a continuum and not as absolute. For the sake of clarity, the definition of NGOs used in this thesis refers to all formally structured refugee and asylum seeker related non-profit organizations that are formed voluntarily and are not officially part of the government.

There have been many attempts to systemize NGOs based on their field of activity, scale of operation, funding etc. One of the most simple classifications is by the World Bank (Malena 1995), which distinguishes between operational and advocacy organizations. Operational NGOs deliver services and carry out projects while advocacy NGOs aim to defend a specific cause by raising awareness, lobbying, monitoring and carrying out activist events (*ibid.*: 14; Jenei&Kuti 2008). Advocacy NGOs, that have specific political interests and try to influence policy outcomes, can also be defined as interest groups (Beyers et al 2010: 8). In addition to more simple classifications, some authors have also constructed typologies of NGOs. Yaziji&Doh's (2009) typological matrix (Figure 1) separates NGOs based on two dimensions – who the NGO benefits and what it does.

**Figure 1. Typological matrix of NGOs**



*Source: Yaziji&Doh (2009: 5). Adapted by the author.*

Based on this typology, four types of NGOs can be described: self-benefiting, other-benefiting, advocacy and service NGOs. In self-benefitting NGOs the members act to serve mainly the interests of themselves while, contrarily, other-benefiting NGOs serve a wider array of beneficiaries and often an altruistic purpose. Similarly to the World Bank definition, advocacy NGOs either promote or defend individual or public interests and values. Service NGOs, on the other hand, aim to provide services that governments are either incapable or unwilling to provide (Yaziji&Doh 2009).

Although it is possible to distinguish NGOs based on certain characteristics, several authors agree that these organizations can also be a combination of different types and transform from one type to another. Comparing them with chameleons, Brandsen et al (2005: 760) conclude that we should accept the hybridity of these organizations and not try too hard to classify them with "idealtypes". Nevertheless distinguishing NGOs based on their characteristics and activities helps to make conclusions about the dominating form of NGOs in a specific field of policy, which in turn can help better understand their role and relationship with the government.

## 1.2. Participation of NGOs in Policy-Making

Public participation in policy-making has been a widely researched area in public administration, because of the perceived benefits of enhancing democracy, improved governance through producing better and more evidence-based decisions, increased legitimacy of government actions, active and better informed citizenry, and therefore increased trust in government (Gramberger 2001; Catt&Murphy 2003; Irvin&Stansbury 2004; Involve 2005; Wang&WanWart 2007). Public participation can broadly be defined as any kind of interaction between citizens and the government. More narrowly it refers to "the involvement of stakeholders in administrative functions and decision making, which is achieved through the availability of participation modes, participation in functions, and participation in the decision-making process" (Wang&WanWart 2007: 271). Participation in decision- and rulemaking is considered to show the "authenticity" of participation practices (*ibid.*; King et al 1998).

NGOs usually participate in decision-making through collaboration or confrontation which represent the opposite ends of a scale (Gordenker&Weiss 1997; Casey 1998). Collaboration describes a relationship where NGOs and government actors genuinely co-operate in order to find a common solution. This can happen through regular meetings, formal consultations on

planned legislation and also through delegating service provision to NGOs. The key thing is that the government actually considers the opinion of the NGOs and sees their participation as beneficial (Lepa et al 2004). Research has shown that this is more likely when policy-makers need information, expertise and support from NGOs (Abney&Lauth 1983). According to Casey (2002: 11), collaboration is the preferred strategy for NGOs who do not seek to radically change the current policy and therefore want to "maintain a proximity to decision-makers" but also for NGOs who do not have the resources to oppose the state. For NGOs who are dependent on state funding, co-operation with the government can also turn into *complying* with the government. In the latter case, governments can use collaboration in order to control NGOs (Hardy&Phillips 1998). The opposite of collaboration is confrontation, where NGOs oppose the current state of policy and try to influence it with demonstrations, negative media coverage, critical reports and in some countries even illegal actions like blackmail and terrorism (Casey 1998: 61). A milder version of confrontation is *contestation* (Hardy&Phillips 1998), where NGOs are critical towards government actions even when they are partly dependent on government funding. The choice of these "strategies of engagement" (*ibid*: 218) depends on the political environment, the policy in question and the resources of the NGOs (Casey 1998).

But despite a certain level of hype around public participation and inclusive governance, increased participation and granting civil society organisations the right to influence decision-making may not always lead to the best results (Fung 2006). In some cases simply informing or consulting with NGOs is more suitable because of time constraints, limited amount of resources (Cornwall 2008: 276-277) and the possibility that too much power is given to interest groups that are guided by their narrow interests (Lepa et al 2004; Fung 2006). In addition, the involvement of the public in decision-making also entails increased costs (Irving&Stansbury 2004; Involve 2005; Lepa et al 2004). These costs include monetary (increased expenditures of time, staff, administration, participant's expenses), but also potential non-monetary costs (stress, uncertainty and conflict) (Involve 2005: 14). When government officials feel that the participation process is "burdensome" or ineffective, for example when the issue is technical and there is no possibility to change anything, they might involve NGOs only insomuch as is needed to seemingly comply with the regulation in force (Lepa et al 2004; Woods 2009). This, however, can create frustration among NGOs who realize that the decisions have already been made before they were involved (King et al 1998). Therefore, it has been emphasised that it is important to inform those involved about the goal of the involvement process, in order to not promise "participation on issues that cannot actually be changed" (OECD 2009: 43; Cornwall 2008). Nevertheless, even if issues are

technical and NGO influence is minimal, it is still important that the process of involvement is fair, tries to find a compromise and does not harm the relationship between stakeholders. As Wiedemann&Femers (1993: 367) put it "Public participation should be viewed as a mean, not a goal."

## 1.3. Assessing the Involvement of NGOs in Policy-Making

To assess the involvement of NGOs in decision-making we can look at the involvement methods used, the process of involvement itself and the outcome of the decisions. Because the focus of this thesis is on the involvement process, the outcome and the influence of NGOs participation will not be discussed.

Literature on public participation is rich with evaluations of different kinds of involvement methods (e.g. Rowe&Frewer 2000; Furlong&Kerwin 2005; Caddy 2005). The most common methods are provision of written comments to drafted laws, work-groups, roundtables, public hearings and direct communication between stakeholders (officially or unofficially) (Furlong&Kerwin 2005: 362). The selection of a specific involvement method is crucial to the effectiveness of the whole process, because different methods require certain sets of resources (like time, expertise) from those involved (Lepa et al 2004: 27) which should be taken into consideration. The quality or "depth" of participation has typically been measured using scales and typologies of participation. The most cited among them is Arnstein's (1969: 217) "ladder of citizen participation" which distinguishes between eight "rungs" of participation that represent the levels of citizen participation. According to Arnstein (1969), only *partnership*, *delegated power* and *citizen control* can be regarded as genuine participation, because only then is power distributed between stakeholders and citizens' have an actual possibility to influence the decision. Similarly, White (1996: 7-9) distinguishes between four types of participation – *nominal*, *instrumental*, *representative* and *transformative* – which differ based on function but also on the interests of citizens and the government. *Nominal* and *instrumental* participation are regarded by White as a display of participation where the main aim of the government is to legitimize its decisions (nominal) or use participation to increase efficiency (instrumental), while for the citizens it is mostly a cost. *Representative* and *transformative* participation move towards giving a voice to (representative) and empowering (transformative) citizens which, from the government's perspective, helps to create sustainable initiatives and empowered citizens, giving leverage to the citizens at the same time.

What Arnstein's and White's approaches have in common, is that they are normative and suggest that the final aim should be full participation with citizens having power to influence decisions. But as already mentioned, it is not always reasonable to give citizens "full control" over decisions. Among the more modern approaches, that take this into consideration, continuums ranging from one-way information sharing to active participation are now widely used to measure the extent of involving NGOs (Gramberger 2001; Lepa et al 2004; Fung 2006; IAP2 2014). For example, the International Association for Public Participation (IAP2) (2014) has developed a participation spectrum which shows what the goal of different levels of participation is and how the NGOs are engaged, in order to determine the role of NGOs in the decision-making process. They separate between 5 levels – *informing*, *consulting*, *involving*, *collaborating* and *empowering*. These levels refer to the extent to which NGOs can have a say in the decision-making process and how the government uses their suggestions. While *informing* is only a one-way communication, *consulting* with the NGOs means that their opinions are asked and feedback is given on how their input was used. On this scale, the i*nvolvement* of NGOs means that NGOs are constantly involved "throughout the process" and feedback is given on how "public input influenced the decisions". *Collaboration* is described as a continuous co-operation of government and NGOs in all phases of the decision-making process with the incorporation of the NGOs' suggestions "to the maximum extent possible". *Empowerment* allows the NGOs to make the final decision themselves (IAP2 2014).

The actual "depth" and the method of involvement of NGOs is contingent upon various influence factors. Because the interaction between NGOs and governments is essentially two-way, the ability of NGOs to participate and, on the other hand, the way NGOs are involved by the government, are affected by different factors (Figure 2). The participation of NGOs is mainly affected by their administrative capacity, access to decision-makers, affiliation to networks and perceived power (Casey 1998; Nicholson-Crotty&Nicholson-Crotty 2004; Graddy&Chen 2006). NGOs that lack in important resources like knowledge, experience and staff, are less likely to influence the final decision (Casey 1998:72-73). In addition, it has been proven that formal and informal access to decision-makers is one of the key factors affecting the potential influence of NGOs (Nicholson-Crotty&Nicholson-Crotty 2004). Consequently, if NGOs have well-developed social networks, they can "mobilize" similar views and be more efficient (Platt 2008). The perceived power of NGOs is also important, because research has shown that governments tend to offer participation opportunities to NGOs who are more "significant" than others (West 2004: 70). The involvement of NGOs from the government's perspective depends also on the available

resources, the procedural regulation in effect and the technicality and salience of the issue. When the issue in question is technical or highly salient and time is scarce, government officials will be less motivated or even unable to involve NGOs (Woods 2009; Dür&Bievre 2007). Also, if participation processes are not standardized in formal regulations and encouraged by politicians, it can cause political manoeuvring (Wang&WanWart 2007).

**Figure 2. Interaction between NGOs and the Government**
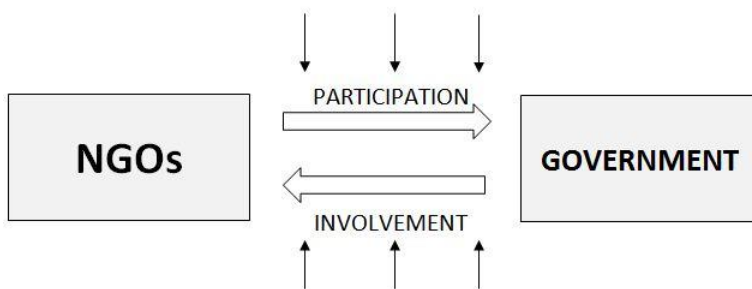


*Source: the author.*

Despite acknowledging the fact, that involvement processes are contingent upon the mentioned factors, the real value of participation is argued to be reached only when there is dialogue and continuous involvement (King et al 1998: 320). The right to make the final decision belongs to elected officials, but they should involve the public in the decision-making process in order to make better decisions and increase the legitimacy of their decisions, and also the citizens' tolerance towards other viewpoints (Halvorson 2003). Even if there is no way to find a solution that satisfies all stakeholders and NGOs are only informed or consulted with, the *process* of involvement should still be fair and acceptable. For this reason, authors have come up with criteria to measure the effectiveness of the involvement in decision-making process. For example, Wiedemann&Femers (1993) say that in order to reach a "good solution" the decision-making process should be *transparent*, allow *equal access*, requires *open-mindedness* from the decision-makers, and should grant *unconditional right* and *actual power* for those involved to explain their standpoint and have an actual chance to influence the decision. Another set of evaluation criteria, which will be used in this thesis, has been developed by Rowe&Frewer (2000) who differentiate between acceptance criteria and process criteria. According to them (*ibid.*: 11-15), acceptance criteria are:

- **Representativeness** – Public participants involved in the decision-making process should be representative of the target group that is affected by the decision.

- **Independence** – The participation process should be unbiased and no one should be pressurized.

- **Early involvement** – Governments should involve the public as soon as practicably possible.

- **Influence** – Those involved should have genuine opportunity to influence the final decision. Public involvement should not be used to legitimize decisions that have already been made.

- **Transparency** – The decision process should be traceable and essential information available.

Criteria for an effective process of involvement are (*ibid.*: 15-17):

- **Resource accessibility** – All participants should have relevant resources to take part in the involvement process. These include information, time and material resources.

- **Task definition** – The involvement process should have a clear goal and all participants should be made aware of the reason of their involvement.

- **Structured decision making** – The decision-making process should follow necessary procedures and be understandable to all those involved.

- **Cost-effectiveness** – The most suitable method for the specific policy question, participants and timeframe should be chosen.

These criteria offer an evaluation framework to analyse the involvement process, but also complement the idea that the participation and involvement of NGOs depend on different sets of factors (Figure 2) and are context and policy issue specific. Although governments have increasingly established participation related requirements that policy-makers are encouraged to follow, participation in decision-making still offers a lot of room for political manipulation (Wang&WanWart 2007). Engaging NGOs and interest groups in policy-making has become a norm for most Western countries, but practices differ substantially among governments and across policy fields.

## 1.4. Characteristics of Asylum Policy-Making in Europe

The international asylum system, that is in operation today, was set up shortly after the end of the Second World War, when the intergovernmental organisation United Nations High

Commissioner for Refugees (UNHCR) was created with a mandate to provide protection and assistance to all refugees worldwide (UNCHR 2013a)[2]. What started as a system focusing on solving the European refugee problem of people fleeing mainly from Eastern-Europe (Keely 2001), soon gained an international scope and in the end of 1970s there was a steep rise in the number of refugees from all over the world entering Europe (Steiner 2000; VanMol&deValk 2016). This process reached a peak at the end of the Cold War and the massive influx of people led to the adoption of increasingly restrictive asylum measures in European countries. According to several authors a trend of "non-arrival", "non-admission" and restrictive policies in national asylum systems emerged because of fears about internal security and the economic burden that the inflow of people in need of protection could create (Kjærum 2002; Böcker&Havinga 1998; Keely 2001; Doomernik&Bruquetas-Callejo 2016). These policies aimed to prevent or restrict (bogus) asylum seekers entering the country and make the destination country unattractive compared to neighbouring countries. Examples of these measures include visa requirements, international airport zones, seclusion of asylum applicants' accommodation centres, restriction on receiving welfare benefits and "safe third country ruling" (Kjærum 2002; Heuser 2008; Hatton 2005).

Lavenex (2001) even claims that there was an overall change of how asylum policy was framed. Instead of human rights concerns that predominated the asylum system after WW II, the transgovernmental co-operation in asylum matters that emerged at the end of 1980s, caused the securitization of asylum which according to Lavenex (2001: 860) "was framed as a side issue of the single market project, with co-operation occurring only insofar as it was deemed necessary to safeguard internal security". Wallace (2005) has defined this co-operation form as "intensive transgovernmentalist" policy mode and it continues to partly characterize asylum policy making in the EU even today.[3] The characteristics of intensive transgovernmentalism are (among others)

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[2] Although this thesis is focused on asylum policy and asylum seekers without an acknowledged refugee status, most NGOs and international organisations dealing with forced migrants do not differentiate between legal statuses' when it comes to providing help. While they do recognize that refugee status can only be granted to people who have a well-founded fear of persecution based on the definition of the 1951 Geneva Refugee Convention, their mission statements are often directed towards all people who are uprooted from their homes (see e.g. UNHCR 2013; ICMC 2016; ECRE 2016).

[3] The European asylum system has gone through a lot of institutional changes since the Amsterdam Treaty which tried to communitarize the area of Justice and Home Affairs – qualified majority voting and, after the Lisbon Treaty, ordinary legislative procedure in decision-making were introduced. This means that asylum policy has moved towards the supranational level, but still remains a very sensitive issue for member states, touching „the very core of national sovereignty" (Bendel, 2011: 371; Bache et al 2011; Uçarer 2013). The political developments today (e.g. the UK threatening to leave the EU) in relation to the currently ongoing migration crisis only confirm that intensive transgovernmentalism is still used.

the involvement of only the most important national policy-makers[4] and the "opaqueness of the process, to national parliaments and citizens" (*ibid*: 88). Because migration and therefore asylum policy is directly related to the sovereignty of governments to decide who enters its borders (Bendel 2011), we can expect that governments can be reluctant to "entrust" civil society organisations to decide on matters related to internal security. Internal security is traditionally a policy area that stays a bit hidden from the public. This indicates that it can be hard for NGOs to get involved in asylum policy-making.

In addition, asylum policy-making is rather contradictory or even a constant "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). This can also be seen in practice – governments are motivated to offer protection to asylum seekers and EU standards are being improved (UNHCR 2013b; Zaun 2015), but on the other hand, states are trying to minimize their burden by adopting legislation and implementation standards that would decrease their asylum recognition rate (Toshkov 2014). Because of the administration, societal and care related expenses that accompany asylum seekers, EU states prefer to maintain their *status quo* of asylum policy while negotiating on the EU level (Zaun 2015). In negotiations Zaun (2015) distinguishes between older and newer members, and correspondingly between states with a stronger or a weaker tradition of receiving refugees. The difference lies in that strong regulators "negotiate anticipated domestic changes into the directives" while weak regulators use the EU level policy-making as a way to avert "the political costs of doing so domestically" and shift the "blame" on the EU (*ibid.*: 15). Either way, the public debate on this matter is avoided, if possible, turning policy-making into a more closed process (*ibid*). Because asylum policy ranks high on the agenda in most of the European countries today and public opinion is influenced by the emergence of right wing populist movements across Europe (Hatton 2005, Zaun 2015), governments are under pressure to satisfy the public, making it hard for refugee rights advocating NGOs to participate in decision-making.


## 1.5. NGO Roles in Asylum Policy

The importance of civil society organisations has grown significantly during the last few decades (Lagerspetz et al 2000; Jenei&Kuti 2008) and public administration reforms moving towards the

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[4] The most influential actors in this area are usually ministries of interior, while the importance of ministries of foreign and social affairs in asylum mattes has decreased (Wallace 2005: 868).

concept of "governance" (Pollitt&Bouckaert 2011) have transformed the functions of civil society organizations. NGOs are now considered important as service delivery vehicles, at a time where welfare states are faced with constant pressure to do more with fewer resources (Newman&Clarke 2009; Jenei&Kuti 2008); participants in policy-making; "watchdogs" of government actions and a place where citizens are empowered and educated (Jenei&Kuti 2008; Malena&Heinrich 2007; Casey 1998). This can also be seen in asylum policy, where NGOs are 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). The growth of refugee NGOs can partly be explained with the emergence of the restrictive policies described above, because the conflict between refugee policies and human right laws (Kjærum 2002) has been an incentive for the creation of a number of humanitarian and human rights organisations. The latter characterize a significant amount of refugee organisations and their activities (Lester 2005). Consequently, based on the typology brought out in subchapter 1.1., refugee NGOs are most commonly other-benefitting service or advocacy organisations. But how do refugee NGOs participate in asylum policy and what are their roles? Based on the literature, it is possible to bring out three most important roles (Casey 1998; Winkler 1981).[5]

**NGOs as service providers.** NGOs have become important service providers for asylum seekers both on the international and national level. Although it varies across countries, NGOs participate in arranging reception related services like support person and mentoring service, cultural orientation, language courses, psychological support, legal advising and other community based services (ICMC 2013). This is especially evident in countries that are engaged in the UNHCR's resettlement programme[6], because it is commonly described as being tripartite in nature – comprising of the UNHCR, the destination state and NGOs (Papadopoulou et al 2013: 21). If the state and NGOs work together to accept the asylum seeker or refugee, provide support services and later help integrate the newcomers into society, we can talk about co-producing, or more precisely, a mode of co-producing – co-managing services for asylum seekers (Brandsen&Pestoff 2008; Brandsen&Van Hout 2008). According to Brandsen&Pestoff (2008) co-management differs from co-production insofar as the receivers of service (asylum seekers) do not participate in providing the service, but only the state and the NGOs collaborate

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[5] Casey (1998) and Winkler (1981) bring out four roles, but the author synthesized them into three main categories.
[6] Resettlement refers to the process where UNHCR acknowledged refugees are transferred from the host country to a third destination country, which agrees to accept them. The resettlement of refugees can only happen based on the agreement between UNHCR and the receiving country (UNHCR 2011).

in producing and providing the service. In co-management the NGOs and the government need to constantly exchange information and interact with each other in order to solve or forestall difficulties and adapt the service to fit the receivers (Brandsen&Van Hout 2008). When the NGOs are the main providers of services for asylum seekers and interact with them on an everyday basis, we can presume that the government would be especially interested in collaborating with these NGOs. Because third sector organisations are more flexible than the government (Gordenker&Weiss 1997), it is also possible for them to produce innovative services (Casey 1998) and are, therefore, also valuable partners for governments. Providing effective services and engaging asylum seekers in activities immediately after they have applied for protection is vital, because research has shown that staying in secluded accommodation for a long time severely "hinders refugees' ability to regain the resources they need to integrate in the labour market once their asylum request has been granted" (Bakker et al 2013: 435). The danger of only focusing on providing services is that it can transform NGOs into quasi-market like organisations that do not deal with anything else.

**NGOs as maintainers of values and norms.** Asylum policy and migration policy in general, represent a policy area where decision-making is more dependent on the ideology and the prevailing values of the society than on scientific or technical considerations (Hansen 1999; Zaun 2015). As seen in subchapter 1.4., there has been a shift in European governments stance during the past decades towards focusing more on national interests than international human rights regulations, creating an implementation gap between international norms and state practice (Hansen 1999 & 2008). Because asylum seekers are very often the most marginal group of people in the host country – they usually lack in vital resources like language proficiency, monetary funds and social capital and it can be hard for them to advocate for themselves (Jacobsen 1996) – it is easy for governments to slightly deter from formal international legal commitments in practice, in order to serve national interests. But as Edwards (2007: 181) puts it "The danger is that loss of rights by the most vulnerable can be incremental and so hardly noticed." Therefore it is important to have some kind of monitoring mechanism in place that follows asylum matters in the state and advocates for the fulfilment of democratic values and norms. Although UNHCR has this obligation, it does not have national offices in all European countries and therefore often uses the help of local NGOs (Loescher 2014). This "watchdog" role of the NGOs (Malena&Heinrich 2007; Müller 2008) is important because one the one hand it controls government actions and brings out wrongdoings, but on the other hand also raises awareness about refugee related issues and human rights in general. Because the willingness of

governments to improve the situation of asylum claimants also partly depends on the views of the people (not just the officials), NGOs have an important role of educating the public about asylum seekers related issues to counteract the common negative media coverage of migrants (Hatton 2005).

**NGOs as political actors.** As discussed above, asylum seekers usually belong to the politically most marginal group of people, and therefore one of the main roles of NGOs is to serve as an intermediary between the asylum seekers and the state (Winkler 1981). Although asylum seekers and refugees can self-organize, it is limited to larger countries where there already is a community of refugees and enough social capital to organize. In countries that have a weak tradition in accepting refugees and only a small number of asylum applicants, this is less likely. Thus, advocating for asylum seekers rights in public debates and lobbying for comprehensive asylum policy in formal policy-making is needed from NGOs in order to represent the perspective of asylum seekers in decision-making. Because of the recent populist political developments and growing scepticism towards immigration in Europe (Collett 2014: 5) this kind of NGO activity usually takes a confrontational stance and therefore requires NGOs to have the capacity to deal with the costs of opposing the government (Casey 1998). UNHCR can be an important partner for NGOs dealing with advocacy, because national level NGOs might be more effective at steering government actions in the desired direction. Therefore UNHCR tries to keep close contact with local NGOs and offers them information and consultations (Ritchie 1995). In some ways, refugee NGOs have become the "extensions of the United Nations" on a national level (Gordenker&Weiss 1997: 447), because when governments might perceive the pressure of international human rights organisations as a "threat to its control over policymaking" (Jacobsen 1996: 663), national NGOs represent a legitimate instrument for influencing the government. In his extensive research on NGOs, Casey (1998: 52) argues that although it is possible to distinguish between the different roles of NGOs, it is "hard to separate the political role of NGOs from the other roles – or political NGOs from non-political – as almost all organizations take on some policy role". Even when an NGO is only focused on providing services, any attempt on trying to change the service can be considered as an attempt to influence policy-making, even if indirectly (*ibid.*: 59).

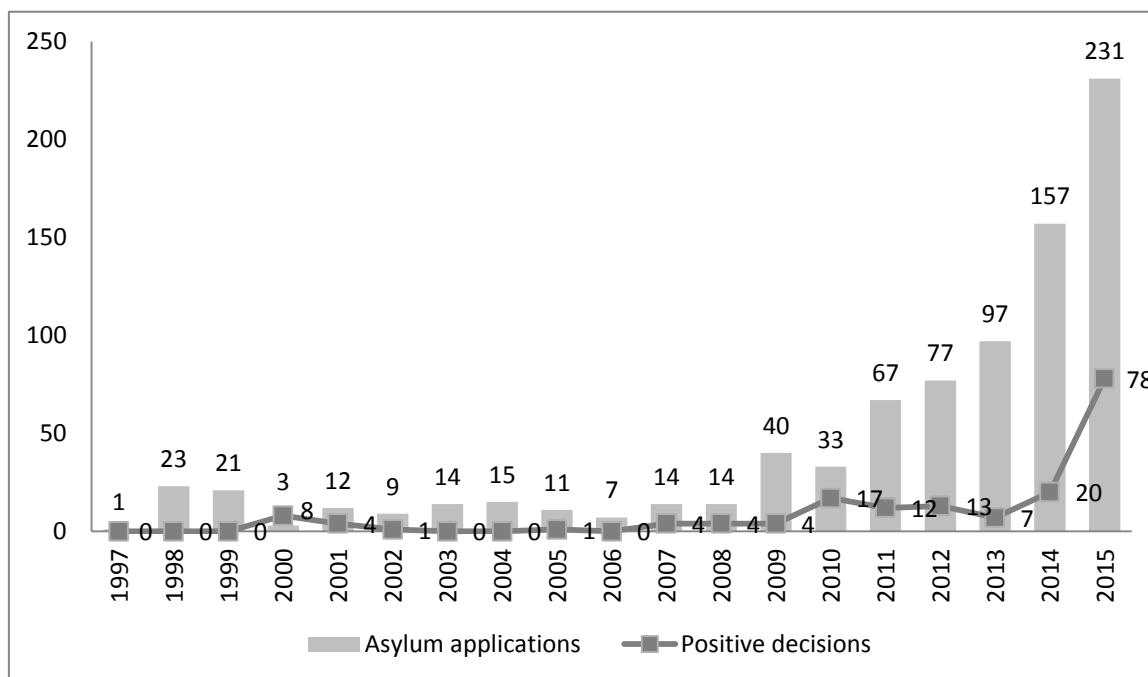## 2.  THE CASE OF THE ESTONIAN ASYLUM POLICY

### 2.1. The Estonian Asylum Policy

Estonia has been a part of the international asylum system since 1997 when the Estonian Parliament adopted its first Act on Refugees[7] and acceded to the United Nations' 1951 Convention relating to the Status of Refugees and its New York Protocol of 1967. Estonia's experience with asylum applicants during these 20 years has been modest. Since 1997, Estonia has received a total of only 846 applications and protection has been granted to 172 applicants (PPA 2016). Even in the midst of the global refugee crisis, Estonia received merely 231 applications during 2015, while 1 322 190 applications were submitted to the EU in total (Eurostat 2016a). Although Estonia is a border country, it is not a popular destination country for asylum seekers and has been more important as a „transit country" for asylum seekers trying to reach Scandinavia (Kallas 2011; Mätlik et al. 2013). This development was mainly caused by Estonia adopting the Dublin regulation[8] and joining the Schengen area in 2007 after which the number of application submissions slowly started to rise (Kallas 2011). A steeper rise in the amount of asylum applications came in 2009 and since 2011 there has been a continuous increase of applications (Figure 3), although Estonia still remains among the EU countries with the lowest number of asylum applicants (Eurostat 2016a).

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[7] RT I 1997, 19, 306

[8] According to the Dublin regulation the obligation of examining an asylum application belongs to the Member State from where the asylum seeker entered the EU. – Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person. The Dublin regulation was adopted in Estonia with AGIPA in 2006 (RT I 2006, 2, 3).

**Figure 3. Total number of asylum applications and positive decisions during 1997-2015[9]**



*Source: Estonian Police and Border Guard Board (2016); MTÜ Eesti Pagulasabi (2015)*

It is possible to distinguish two important junctures in the development of Estonian asylum policy – joining the EU in 2004 and the sudden growth of applications in 2009 which brought the issue of asylum seekers in Estonia on the agenda. Before joining the European Union, Estonia had already formed its asylum policy in line with the EU's asylum regulations, because the adoption of the "EU asylum *acquis*" was an important part in the accession negotiations (Thielemann&El-Enany 2005). In 2004, Estonia had to completely harmonize its asylum regulations with the first stage of the EU's Common European Asylum System (CEAS).[10] For that purpose, in 2006 Estonia replaced its old Act on Refugees with AGIPA[11] that regulates Estonian asylum policy today. In addition, joining the EU made it possible for Estonia to apply for funding from the European Refugee Fund to improve asylum related services and infrastructure (Siseministeerium 2016). The year 2004 also marked the opening of the International Organization for Migration's (IOM) Estonian mission in Tallinn which has helped to educate central and local government officials, but also the wider public about forced migration related issues (IOM 2016).

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[9] The total number of asylum applications includes reoccurring applications.

[10] The CEAS aims to ensure minimum standards in Member States' asylum systems in order to „guarantee high standards of protection for refugees" and „be fair and effective throughout the EU and impervious to abuse" (European Commission 2016; for the development of CEAS see e.g. Plender 2008; Peers 2013).

[11] RT I 2006, 2, 3

The next period of change came with the sudden, almost threefold increase of asylum applications to Estonia in 2009 which sparked public discussions and started to shed light on the shortcomings of the reception process and the asylum policy as a whole. Based on a number of studies ordered by the Ministry of Interior during 2010-2013 (Roots&Kallas 2011; Kaldur&Kallas 2011; Mätlik et al 2013) it became evident that there were instances where in practice Estonia had failed to comply with EU rules, because of faulty adoption of EU legislation, strict interpretation of the regulations and poor quality of support services offered to asylum seekers. One of the main problems at that time was the secluded location of the asylum seeker's reception centre in Illuka. The limited availability and uneven quality of Estonian language courses, health care services, psychological help, translator services and free-time activities was criticised (Kaldur&Kallas 2011; Mätlik et al 2013; Toodo 2011; Õiguskantsler 2010). In addition, there were cases where asylum seekers were sent back from the border without proper applications processing (UN Committee Against Torture 2013) or placed in detention centres without a valid cause (Säär 2014a).

These developments, along with the efforts made by NGOs to raise public awareness (EIK 2012), livened up the public debate on asylum seekers in Estonia. Starting from 2013, Estonia began amending the AGIPA because of the recasting of CEAS directives during 2008-2013 (see European Commission 2008; Peers 2013). The CEAS comprises of five legal instruments: the qualification Directive 2011/95/EU[12], the asylum procedures Directive 2013/32/EU[13], the reception conditions Directive 2013/33/EU[14], the Dublin Regulation No 604/2013 [15] and the EURODAC Regulation No 603/2013[16]. In 2014, the asylum seekers reception centre was moved to Vao village which improved the reception conditions, availability of services and received approval from the NGOs (Säär 2014b; MTÜ Eesti Pagulasabi 2015). In 2015, after continuing pressure from NGOs (Janson&Kallas 2013; Pagulasorganisatsioonide Ümarlaud 2014; Säär 2015), the Estonian government lowered the minimum time required before asylum seekers

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[12] Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.
[13] Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.
[14] Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.
[15] Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.
[16] Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice.

could enter the Estonian labour force before the final decision about their application had been made. This marked the first time when a more favourable decision towards asylum seekers was introduced into the AGIPA. Besides that, Estonia has only adopted the minimum standards required by EU regulation (Männi 2014).

Overall, the Estonian asylum policy has been conservative because of the conservative political stance on immigration policy since Estonia regained its independence (Maasing 2011: 7). In addition, low awareness and negative public opinion (Saar Poll OÜ 2010; Saar Poll OÜ 2014)[17] have also had an impact on asylum policy development in Estonia. The base of Estonia's immigration policy is to "prevent the entrance of foreigners to Estonia who threaten public order, internal safety or social and cultural activities" (Siseministeerium 2014: 39). Proof of a strict asylum policy can also be noted by looking at the recognition rate (i.e. the share of positive decisions from all applications) of asylum applications (Toshkov 2014). Even when the amount of applications has risen, the number of positive decisions has remained low (Figure 3). In 2015, Estonian recognition rate was 31% compared to the EU average of 59% (Eurostat 2016b). The NGOs have criticised the Estonian asylum policy for being too strict and not in accordance with international regulations (MTÜ Eesti Pagulasabi 2015). Policy-making in this field has been criticized as being guided by "decisions made in Brussels" (Kallas 2011) and made on an *ad hoc* basis without a clear strategy (Riigikontroll 2016). However, the war in Ukraine and the inflow of refugees into the EU made asylum policy a hot topic in Estonia. In May 2015, Estonia agreed to accept 550 refugees through resettlement and relocation (Siseministeerium 2015c). The latter combined with increasing numbers of asylum seekers during the last 5 years has put Estonia into a situation where it needs to be able to make decisions that will guarantee a sustainable asylum and refugee policy that takes into account the conditions in Estonian while at the same time obeys international human rights regulations.

## 2.2. Research Methodology

This thesis is a qualitative case study that aims to analyse the role of NGOs in asylum policy by looking at how NGOs were involved in the development and proceedings phase of the Law Proposal 81SE amending the Act on Granting International Protection to Aliens and Associated Acts. These two phases of involvement are looked at separately because there is evidence that

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[17] According to a survey conducted in 2014, people living in Estonia perceived the Estonian asylum policy as strict (51%), but at the same time wished it was even stricter (69%) (Saar Poll OÜ 2014).

there are differences in how Estonian government agencies and the Parliament committees involve interest groups (Praxis&MTÜ Balti Uuringute Instituut 2010; Jemmer 2014). The involvement of NGOs is analysed based on the theoretical framework. The focus is on the characteristics and function of NGOs, how they are perceived by the state and how the process of involvement is conducted, taking the AGIPA 81SE as an example. Based on the empirical analysis, conclusions are made about the role of NGOs in the Estonian asylum policy.

Data for the empirical analysis was collected through document analysis and semi-structured interviews. Document analysis was used to gather detailed information about the activities, projects, funding and network membership of NGOs involved in the Estonian asylum policy. In addition, the analysis of government development strategies, explanatory notes of the AGIPA 81SE, the Parliament's Constitutional Committee's protocols, and studies about involvement practices in Estonia helped provide background information for conducting semi-structured interviews with relevant stakeholders in the formulation of AGIPA 81SE. Nine interviews in total (the list of interviews can be found in Appendix 1) were conducted with representatives of the most active refugee NGOs; officials from the Ministry of the Interior and Ministry of Social Affairs, who were involved in drafting AGIPA 81SE; and with the members of the Constitutional Committee who participated in discussing AGIPA 81SE in the Parliament. From the 11 Constitutional Committee members only 8 were present in one or more of the meetings dealing with AGIPA 81SE. From that group, three members with different party affiliation were interviewed, including the Deputy Chairman and the presenter of the Draft Law in the plenary sessions. In addition, a Committee official involved in processing AGIPA 81SE was interviewed to gain another perspective. Interviews with the NGO representatives and Ministry officials lasted around one hour, interviews with Committee members around 30 minutes. One interview was conducted using Skype. Interviews were used to gather both exploratory information about the role of NGOs in Estonian asylum policy and also more specific data about the process of their involvement. All interviews were semi-structured, to provide leeway in the discussions (see interview topics and questions in Appendix 2).

As AGIPA 81SE was adopted by the Parliament on 16 March 2016, all the interviewees had recent memories of the process and could provide accurate information. The use of qualitative methods allowed to give an in-depth view of the perceptions of different stakeholders and therefore make assumptions about the real role the NGOs play in the decision-making process and what factors affect their influence. Qualitative research methods are sometimes criticized for their subjectivity, because interviewees "may consciously or unconsciously misrepresent a

situation" (Dür 2008: 563). To eliminate this restriction, the author tried to gain the perspective of both sides in order to not make conclusions based on a single perspective.

## 2.3. NGOs in the Estonian Asylum Policy Field

Because of Estonia's lack of experience in receiving asylum applications and the small number of applicants during the past 19 years, there are only a few NGOs that are active in the Estonian asylum policy field. Most of the interviewees claimed that although there are some recently created NGOs that deal with refugee and asylum matters (*MTÜ Pagula*) and some NGOs who have a wider focus but have been involved in asylum related projects (*MTÜ Mondo, MTÜ Sõbralik Eesti*), currently the most important NGOs are **the Estonian Refugee Council** (*MTÜ Eesti Pagulasabi*), **the Estonian Human Rights Centre** (*Eesti Inimõiguste Keskus*) and **Johannes Mihkelson Centre** (*Johannes Mihkelsoni Keskus*). For this reason, the following empirical analysis will only focus on these three organisations. All factual information on NGOs has been gathered through interviews with NGO representatives if not cited otherwise. A table presenting the most important information about these organisations can be found in Appendix 3.

The oldest of the three organisations is **Johannes Mihkelson Centre** (JMC), a non-profit organisation that was created in 1993, but has been dealing with asylum seekers and refugees only for the past 7 years. Currently the main function of the JMC in asylum policy is to provide a combined support person service to people who have already received refugee status. A combined service means that in addition to qualified support persons who help refugees with administrative issues and provide support in initial integration, there are also translators and psychologists that refugees can turn to. There are about 30 support persons working for the JMC who all receive an allowance for their work. The service is provided on a project basis and is funded by the European Union's Asylum, Migration and Integration Fund (AMIF) and the Ministry of the Interior. This means that JMC is in regular contact with the Ministry of the Interior through the project's steering committee's meetings and by having to present regular financial and activity reports to the Ministry. But as the support person service is in essence a social service, the JMC has even stronger co-operation with the Ministry of Social (Interview A). The project is coordinated by a project manager and an assistant who are permanent employees of the JMC. Currently there are 5 employees in total, but this differs according to how many projects the NGO is managing. The JMC belongs to the SOLIDAR network and the Baltic Sea Network on Migration Issues (Appendix 3)

**Estonian Human Rights Centre** (EHRC) is a foundation that was formally created in 2010 and from that same year it has been dealing with asylum seekers and refugees. The main aim of the EHRC is to stand for human rights and equal treatment in general (Interview C). The EHRC has been running a number of projects in relation to asylum seekers. During 2011-2015, the EHRC provided project-based legal aid to asylum seekers which was funded by the European Refugees Fund (ERF) and the Ministry of the Interior (EIK 2016a). In 2012-2013, the EHCR conducted a public awareness raising campaign on asylum seekers and refugees during which on-line debates and university courses were organised. In addition to their activities, the EHCR together with the Estonian Refugee Council has made efforts to improve their advocacy skills and increase administrative competency to participate in asylum policy-making (EIK 2016a). The EHRC also publishes yearly reports on the human rights situation in Estonia that have a separate section on the situation of asylum seekers and refugees in Estonia.[18] Currently the EHCR is monitoring the asylum application processing procedure and legal counselling of applicants in co-operation with the UNHCR (EIK 2016b). The EHRC belongs to a number of networks (Appendix 3). There are around 12 permanent employees working in the EHRC and also a network of volunteers.

The third organisation, **Estonian Refugee Council** (ERC), is the only non-profit organisation in this field whose sole target group are asylum seekers and refugees. Since 2010, when the ERC became active, it has been the key advocating organisation for refugees and asylum seekers by reacting to government actions and decisions and at the same time proactively emphasising problems (Interview B). The latter has been done, by publishing reports and articles and presenting formal letters to the government. Since 2015, the ERC has set out to publish a yearbook on the Estonian asylum system in order to monitor the current situation (MTÜ Eesti Pagulasabi 2015). In addition, the ERC also provides support person service for refugees, however, in comparison with the EHCR, it is provided on a voluntary basis. Similarly to the EHRC, most of the Estonian Refugee Council's activities are project-based. The ERC has been the only one of the three NGOs who has knowingly avoided receiving funding from the Ministries of the Interior and Social Affairs[19]. Reasons for this have been the difficult relationship between the NGO and the Ministry of the Interior in the past and the high level of bureaucracy related to using these funds (Interview B). The activities conducted by the ERC have included projects for developing the capacity to offer humanitarian help, public awareness projects on refugees and racism, and preparing schools for supporting students with a refugee

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[18] Available: http://humanrights.ee/inimoiguste-aruanne-2/
[19] It has still received government funding through the National Foundation of Civil Society and for humanitarian missions from the Ministry of Foreign Affairs (Interview B).

background (MTÜ Eesti Pagulasabi 2016). Currently the largest part of their activities is directed towards offering humanitarian help to refugees outside of Estonia – in Ukraine, Lebanon and Turkey. However, in addition to project-based activities, the ERC also provides everyday support to asylum seekers and refugees, and organises events for both the target group and also for the wider public in order to raise awareness. The ERC has high network affiliation (Appendix 3) and is in regular contact with the UNHCR (Interview B). There are about 8 employees working in the ERC from whom three are working outside of Estonia. All of the employees, except the chairman of the board, are working part-time.

Together the three NGOs form the Roundtable of Refugee Organisations (RRO) that was jointly founded in 2013. The RRO is a co-operation network that aims to improve the Estonian asylum system through service development, promoting integration, raising public awareness, advocating for asylum seekers and participating in policy-making (Pagulasorganisatsioonide Ümarlaud 2013). According to the interviews, the ERC is usually the one who drafts the proposals and submissions of the RRO and represents them (Interview A, B and C). Although the JMC is also a member and occasionally comments on the proposals of the roundtable, it mostly considers itself to be a service providing partner for the government and therefore their role in RRO is mainly to help amplify the voices of the ERC and the EHRC (Interview A).


### 2.3.1. Common Characteristics of the NGOs

Although currently all three NGOs have a slightly different function, it is still possible to bring out some common characteristics. First, all three NGOs are *other-benefitting hybrid organisations* that provide services and advocate for refugees' simultaneously. Because of the small number of refugees in Estonia and the latters' lack of interest in government activities (Interview B), none of the NGOs have asylum seekers or refugees as members and do not involve them when formulating formal positions. Second, when looking at their size and administrative capacity, it could be said that compared to the average NGO in Estonia, all three NGO are well-developed and professionalised, although smaller than the Estonian average (Rikmann et al 2014). The largest of the three is the EHRC which has the biggest budget (EIK 2015) and is also the only one with a written development strategy. Interviewed government officials and politicians also perceived the EHRC to be the most competent of the three NGOs mainly because of their higher level of legal knowledge (Interview D and H). But the ERC is also gaining importance and in 2015 its budget increased multiple times (Interview B). Third, all

three NGOs under analysis largely depend on project-based funding, that sets limits to how they can use their resources and hinders their ability to react to sudden changes (Puurmann 2004). None of the NGOs under analysis are involved with the government through strategic partnership and do not receive activity support. Nevertheless, all the NGOs assessed their financial situation as sustainable (Interview A, B, C). Fourth, all the NGOs belong to the list of non-profit associations, foundations and religious associations benefitting from income tax incentives, which represent the organisations in Estonia that are considered serving the public good and therefore are *not-profit seeking* (Rikmann et al 2010). Both the ERC and the EHRC emphasised that although they advocate for refugee rights, they stand for human rights and equality in general (Interview B and C).

Fifth, the sources of funding for the NGOs are mainly the Estonian government or EU funds. To a lesser extent the ERC and the EHRC also receive funding from volunteers and other international organisations. It was stated during the interviews, that because of the small size of Estonia and the shortage of private sector funders, it would be hard to remain active without any government funding (Interview C) and receiving funds from the government has not threatened their *autonomy* or prevented them from criticising the government when needed (Interview A). In addition, the EHRC said that they try to avoid direct confrontation with political parties in order to stay apolitical (Interview C). Another common characteristic for the JMC, the ERC and the EHRC is their *high network affiliation* on both the international and national level. All three NGOs belong to international networks that are useful for gaining information, guidelines and support in order to formulate positions, shed light on government malpractices, be more efficient in advocacy and to help develop services. For example, it was brought out by NGOs and politicians that in some asylum policy matters the NGOs even have more information about European developments than government officials (Interview C and G). In addition, the ERC and the EHRC are *closely connected* with the UNHCR (Interview B and C). According to the ERC's representative, the Estonian Refugee Council consults with the UNHCR prior forming comments on government proposals, but while the UNHCR is focused more on the legal aspects, the ERC emphasises social aspects based on the Estonian practice (Interview B).

All three NGOs also have wide social networks on the national level (Figure 4). The RRO has regular quarterly meetings, but members are also constantly in touch with each other in their daily work. The NGOs all belong to the Estonian Roundtable for Development Cooperation and the EHRC also belongs to the Estonian Civil Society Organisations Union. From the government's side, the most important partners for the NGOs are the Ministry of the Interior and

Ministry of Social Affairs (Interviews A, B and C). All the NGO interviewees claimed that they had personal contacts in the Ministry of the Interior, Ministry of Social Affairs and also in the Parliament. Communication with the ministries was frequent and *both formal and informal*. One interviewee even said that because of frequent interaction, sometimes it is even hard to receive a formal answer from the Ministries (Interview C). Other important partners for the NGOs, mainly in service provision (Interview A), are the Police and Border Guard Board, AS Hoolekandeteenused and local governments. Official from the Ministry of Social Affairs stated that because of the small circle of organisations and people dealing with asylum matters in Estonia, "everyone knows everyone" (Interview D). This means that the NGOs have good *access to decision-makers*.

**Figure 4. Organisations in the Estonian asylum policy.**
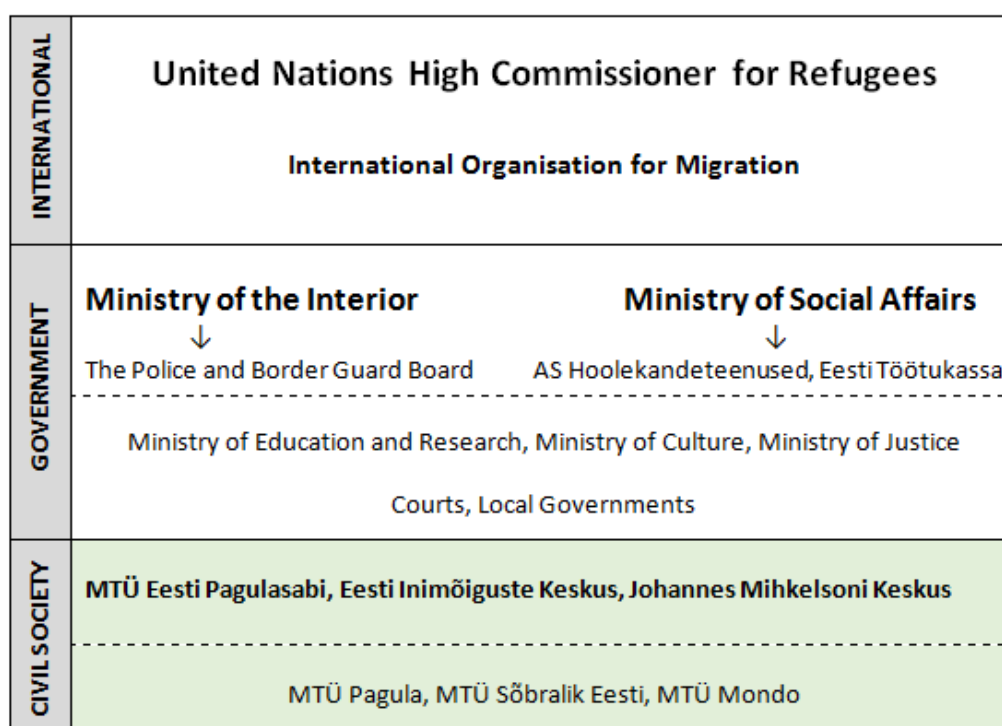


*Source: Interviews, IOM 2011. Compiled by the author.*

## 2.4. NGOs Participation in the Estonian Asylum Policy

Based on the empirical data, it is possible to distinguish between two periods of NGO participation in the Estonian asylum policy – before and after the European migration crisis that started in 2015. The Estonian asylum policy before the crisis followed the conservative stance described in subchapter 2.1. Because it was not a priority for the government, the initiative for

change always came from the NGOs (Interview B). The main participation methods used by the NGOs were formal letters, analytical reports and negative media coverage when necessary, although the interviewees claimed that turning to the media is used as a last resort (Interview B and C). Communication and meetings between the government and the NGOs at that time were only project related (EHRC, JMC) and more for sharing information than discussing issues. Because the European Refugee Council was not involved with the government in service provision and did not meet on a regular basis, then at times their relationship with the Ministry of the Interior even turned to *confrontation*. The reason for this was the difference in how the ERC and the Ministry of the Interior saw asylum questions – while the Ministry of the Interior followed a strict conservative line, the ERC supported more beneficial regulation towards asylum seekers and refugees (Interview B and E). The NGO representative even described their relationship with the Ministry before 2015 as "antagonistic" (Interview B). While the relationship between the NGOs and the Ministry of Social Affairs had always been pleasant and constructive (Interview B), the NGOs claimed that before the migration crisis, the Ministry of the Interior was "closed", "acting on its own" and did not involve NGOs in policy-making (Interview B and C).

In some ways the participation strategy of the Johannes Mihkelson Centre has been an exception, because their strategy was always participation through *collaboration* and more narrowly service provision. The interviewee expressed the opinion that through service provision they have had more influence on asylum policy than through advocacy. Bringing the example of the asylum seekers right to work, they claimed that "proving why it is necessary through working with clients is better than just expressing statements" (Interview A). But it is still possible to distinguish between the two periods. Before 2015, the development of support person service was largely left into the hands of the JMC and almost no efforts were made to measure the actual effectiveness of the service and therefore NGOs lacked government input on what aspects should be improved. With setting up the resettlement and relocation programmes this practice changed and the Ministry of Social Affairs has become an important partner in co-designing the service (Interview A).

The beginning of the European migration crisis and the adoption of the European Agenda on Migration in May 2015 (European Commission 2015) marked a clear shift in the Estonian government's (at least the coalition's) political rhetoric on asylum policy, mainly that Estonia will accept refugees through the quota system and make efforts to integrate them. In order to prepare the Estonian asylum system for resettled and relocated refugees, ministries showed

initiative of involving the NGOs in meetings, discussions and seminars (Interview B and D). One of the biggest changes has been the initiation of monthly meetings for all social partners and government agencies in asylum policy, organised by the Ministry of the Interior since fall 2015. These meetings include a very wide circle of organisations and although they are mainly for exchanging information (Interview B and E), the meetings are perceived as being open and "very constructive" by the NGOs (Interview A and C). The interviewee from the Ministry of the Interior stated that before the migration crisis, the views of NGOs and the Ministry of the Interior were "very different", but since 2015 the occasional problems that emerge are "not so much opposition, but rather an information closure" (Interview E). According to the official from the Ministry of Social Affairs, the extent of communication with the NGOs is tight and although "it is always possible to do things differently" they communicate with NGOs more than in any other field of activity (Interview D). At the same time, two of the three NGOs feel that even though communication has become more frequent, it should increase even more (Interview C) and be more substantive (Interview A). It was brought out that in some ways the Ministry of the Interior still sees asylum matters only through the perspective of internal security and that the increase in communication has not necessarily meant that the ideas of the NGOs are more accepted (Interview A).

## 2.5. Involvement of the NGOs in the Drafting Phase of AGIPA 81SE

The elaboration of the Law Proposal 81SE amending the Act on Granting International Protection to Aliens and Associated Acts (AGIPA 81SE) began in 2013 when the recast asylum procedures and reception directives (2013/32/EU and 2013/33/EU respectively) were announced in the Official Journal of the European Union (Interview E) (see the timeline of the elaboration of AGIPA 81SE in Appendix 4). Initially the main aim of the AGIPA 81SE was to harmonize Estonian legislation with the EU legislation and it was meant to be a technical change with only a few places for discretion (Siseministeerium 2015b; Interview B and D). The draft of AGIPA 81SE was developed in the Ministry of the Interior, although the Ministry of Social Affairs was responsible for harmonizing clauses related to the reception directive. The NGOs were invited to make amendment proposals for the clean version of the law proposal when AGIPA 81SE was sent for the ministerial coordination round (Interview E). According to the NGOs, they did not receive any information about what kind of input was needed from them and were able to make comments as they saw fit (Interview B).

The amendment proposals of all three NGOs were presented through the RRO and were mainly related to processing of asylum applications. For example, the NGOs questioned the need for accelerated processing procedures[20] and the way the concept of a safe third country was assessed during application proceedings. They also emphasised that the detention of asylum seekers should only happen when it is absolutely necessary and proposed to set up an independent border monitoring of asylum procedures (Pagulasorganisatsioonide Ümarlaud 2015a). The nature of their suggestions was rather technical and the aim was not to completely alter AGIPA 81SE, but to specify clauses so the regulation could not be interpreted to the detriment of the asylum seekers and all applications would be processed fairly. According to the Ministry of the Interior, the feedback gained from the NGOs was very "thankworthy" and were incorporated as much as possible (Interview E). Half of the proposals of the NGOs were accepted partially and other suggestions were rejected mainly because of procedural reasons[21]. The NGOs received feedback on how their proposals were approved. According to ERC, there were many great amendments that were adopted with the directives and overall the involvement process on the ministerial level was in accordance with all the rules, although very formal (Interview B). There were no meetings between the NGOs and the ministries and communication happened via the internet. The interviewee from the Ministry of the Interior said that the involvement process of AGIPA 81SE followed the established involvement procedures of the Ministry.

Although the coordination round of AGIPA 81SE was in spring 2015 and the deadline for adopting the directives into Estonian legislation was in July 2015, developments related to the migration crisis forced the Ministries of the Interior and Social Affairs to make last minute changes before AGIPA 81SE was sent to the Parliament (Appendix 4). According to the official of the Ministry of Social Affairs, the changes came from the highest levels of the ministry and were motivated by political reasons on the national level, but also by pressures coming from the EU to "tighten the screws" and add more responsibilities to the newly arriving asylum seekers (Interview D). The interviewee stated that although there was a need to involve the NGOs in these discussions, political pressure was high and time scarce, which meant that there was not enough time to even show the last version to outside partners (*ibid.*). The added changes were related to the arriving resettled and relocated refugees and included clauses that would give the Government the right to decide on resettlement and relocation related matters and make Estonian

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[20] Accelerated processing is used when there are clear reasons to believe that an application is unfounded. AGIPA, § 20, RT I, 06.04.2016, 2.

[21] For example, one NGO proposal was related to the right of family reunification which is mainly stipulated in the Aliens Act and Family Law Act and therefore were not considered to be relevant in the proceedings of AGIPA 81SE (Siseministeerium 2015a).

language courses compulsory to all refugees (Parliament recording 14.10.15). Nevertheless, when AGIPA 81SE finally reached the Parliament, the Minister of the Interior stated that the amendment act was still "90% about harmonizing European Union's directives" (Parliament recording 14.10.15).

## 2.6. Involvement of the NGOs in the Parliament Proceedings of AGIPA 81SE

After AGIPA 81SE reached the Parliament, the Constitutional Committee was made responsible for proceeding the law proposal (timeline of Parliament proceedings in Appendix 4). Because the topic of refugees was extremely sensitive, the discussions in the Constitutional Committee's sessions lasted altogether for six months, with six Committee meetings between the first and the second reading. According to a Committee member this was more than usual (Interview H). During the first AGIPA 81SE meeting, the ministries introduced the law proposal and the Committee sent it to the plenary session for the first reading. After AGIPA 81SE passed the first reading, the RRO presented their proposals to the Committee (Interview F). Although some of their comments concurred with the proposals presented to the Ministry of the Interior, there were also new suggestions related to the obligation of providing information and legal aid to asylum seekers on the border, and clarifications about how the accelerated process should be conducted. The RRO also said that in case the government wanted to make Estonian language courses obligatory, these should be free of charge (Pagulasorganisatsioonide Ümarlaud 2015b: 5). Similarly to the ministerial level, the RRO's proposals were mainly technical and made suggestions on how to improve the wording of specific clauses so they could be clearly understood (*ibid*). Based on their suggestions, it could be said that the main aim of the NGOs was to ensure that all asylum seekers had the right to fair processing of their application by competent officials who would base their decisions on individual claims. The representatives from the RRO and the UNHCR had the chance to represent their position in a separate Committee meeting.

One Committee member admitted that the involvement of the NGOs in this particular matter can be described as very formal because of the highly political nature of this question, the novelty of the refugee question in Estonia and therefore the lack of experience of the NGOs in dealing with refugees and advocating for their rights (Interview G). It was stated that the main aim of involving the NGOs was to get information about the possible conflicts that AGIPA 81SE might have with international regulations and also to ask about their practical experience (Interview G).

Only one member stated that it was important to involve NGOs because they present the views of the target group (Interview G). The official from the Ministry of the Interior said that it was possible to sense that the Committee was rather critical towards the proposals of the NGOs. The somewhat negative attitude towards refugee NGOs also became evident from one interviewed Committee member, who stated that in their opinion the main aim of refugee NGOs was to find ways to increase their funding from the government (Interview I). Because the topic of refugees was *very salient* at that time due to heightened media coverage and the pressure of asylum seekers was perceived to be increasing, the Committee was reluctant to accept any proposals that would ease the criteria of granting refugee status and create more favourable norms than the EU directives required (Interview E).

Shortly after meeting with the NGOs, the proceeding of AGIPA 81SE in the Committee was put on hold because of political differences that came to light when the Committee started to deliberate the amendment proposals of the Parliament parties. For three months coalition parties met in workgroups in order to find ideological compromises between themselves before continuing with deliberations in the Committee (Interview G). According to the Committee protocols, the main argument points were about where (in the host country or in Estonia) and how to process asylum applications received through relocation and resettlement schemes; how to stipulate the obligation to learn the Estonian language and how big should be the social aid for refugees starting a new life in Estonia (Constitutional Committee, protocols No. 27 and No. 29). When the Committee met again in February, the final decisions about all the proposals were made. Altogether, there were nearly 80 amendment proposals for AGIPA 81SE (Constitutional Committee 2016), which means that compared to the first draft, AGIPA 81SE went through a lot of changes. It could be said that the underlying consideration of the Committee was to protect national interests and ensure that asylum seekers and refugees would be treated equally with Estonian citizens, without special treatment. The political deliberations were successful, because AGIPA 81SE was eventually supported by five out of six Parliament parties (Parliament recording 16.03.2016). The chairman of the Constitutional Committee stated that AGIPA 81SE was "a good example of co-operation" and the Committee presenter added that the final version was "in the best possible form we could achieve with our current knowledge" (Parliament recording 09.03.16).

But not all stakeholders were that satisfied. The representative from the ERC said that the political compromises reached by the Committee were "the most problematic part of the whole process" (Interview B). According to the ERC and the EHRC, some of these changes were not in

accordance with international laws, because they created possibilities for officials to reject applications without examining them in detail and made the right to receive international protection partly dependable on how well the refugee had integrated into the society (Pagulasorganisatsioonide Ümarlaud 2016). For example, according to clause 83 of the final version of AGIPA (Constitutional Committee 2016b) the required level of language proficiency would be taken as a basis for deciding whether to extend the period of protection for refugees[22]. But according to the RRO, the right to receive protection should only be decided based on the actual *need* for protection (Interview B). All these changes were included after the NGOs met with the Committee and they only received the final version of AGIPA 81SE two days before the second reading. Both the ERC and the EHCR immediately sent new comments to the Committee, but by that time it was too late for the Committee to discuss them. (Interview H).

The latter was the reason why the NGO's turned to the media and criticised the Constitutional Committee for not involving them (Delfi 2016). The EHRC claimed that the proceeding of AGIPA 81SE in the Committee was a case of "bad legislative practice, because there was no involvement or public debate about the important changes made during the second reading in the Parliament" (EIK 2016e: 3). From the perspective of the Committee this claim was an overstatement, because in reality the RRO had the chance to make their proposals and were involved. Majority of the interviewees from the committee stated that it is questionable whether it was necessary to constantly inform the NGOs about political decisions, because in the end it was the prerogative of the Committee to decide on matters as they saw fit (Interview F and H). One Committee member said that the NGOs were involved exactly like any other interest group and there was nothing that could have been done differently (Interview H). After the act passed the third reading and was sent to the President for promulgation, the NGOs sent an appeal letter to the President as a last resort. They highlighted problems that in their opinion were against international norms and suggested that further discussions should be conducted (Pagulasorganisatsioonide Ümarlaud 2016). The President did not accept their appeal and signed the act.

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[22] In the previous version it was only stated that when refugees do not have the required proficiency after 2 years, it was possible to demand back the cost of the language courses (Siseministeerium 2015d).

## 2.7. Discussion

Several conclusions about the role of NGOs in the Estonian asylum policy can be made when analysing the empirical findings based on the theoretical framework.

First, looking at the main functions of the active NGOs in the Estonian asylum policy field, it can be said that there is an internal distribution of roles between the three NGOs and all three roles mentioned in the theoretical part are represented. While the JMC is mostly a service providing organisations, the EHRC currently acts as a "watchdog" and the ERC could be regarded as the most political of the three, although advocacy is not its main activity. However, the function of the NGOs largely depends on the project they are currently conducting and as Casey (1998) highlighted, it is hard to separate their political role from their other activities. All three NGOs advocate for the rights of asylum seekers and refugees voluntarily and according to the interviewees, try to stand for human rights and equality in general (Interview B and C). This could also be seen, when analysing their participation in the proceedings of AGIPA 81SE. Most of the comments made by the Roundtable of Refugee Organisations were technical suggestions aimed to ensure the fair processing of asylum applications. Although there were some ideological differences between the NGOs and government actors on what could and should be considered as legitimate reason for refusing to grant asylum, then in reality the NGOs did not directly oppose the content of the directives or even the suggestions of the Parliament parties, but rather *how* these were incorporated into the Estonian legislation. During the proceedings of AGIPA, the RRO did propose to shorten the time period when asylum seekers were allowed to enter the Estonian labour market (Pagulasorganisatsioonide Ümarlaud 2015b), which can be considered as an attempt to protect the specific interests of refugees, but in their last appeal letter to the President, they only pointed out problems related to the processing as important flaws according to their opinion (Pagulasorganisatsioonide Ümarlaud 2016). Therefore we could say that from their own perspective, the role of the NGOs in the proceeding of AGIPA 81SE was to *maintain values and norms* which coincides with the role of the UNHCR. Taking this finding and the tight communication between the ERC, the EHCR and the UNHCR into account, it could even be said that in the policy-making process, the NGOs in some ways act like the "extensions" of the UNHCR.

From the government's perspective, the role of the NGOs in asylum policy and policy-making is somewhat different. As mentioned, there was a certain convergence of views between the NGOs and the Ministries of the Interior and Social Affairs after the migration crisis started and Estonia

finally agreed to accept refugees through resettlement and relocation. While before the crisis there was *contestation* and at times even *conflict* between the NGOs and the Ministry of the Interior, then at the time of the analysis both sides described their relationship as constructive *collaboration*. The reasons for this have been the change in the political rhetoric of the government and the realization that in order to set up a viable reception system for resettled and relocated refugees, the Estonian government needs the help of the NGOs as service providers and sources of information. Although it was stated that the NGOs sometimes struggled with generalizing certain problems (Interview D), their micro perspective and expert knowledge have become an important source of feedback on government initiatives (Interview E). In addition, according to one interview, the government even uses the information gained from the NGOs support persons as a tool to ensure internal safety (Interview A). Another important factor in improving the relationship between the NGOs and the ministries was the initiation of monthly meetings for social partners which created a joint information space for all stakeholders and a platform for sharing problems.

The involvement of the NGOs in the elaboration of AGIPA 81SE on the ministerial level confirms the abovementioned tendencies. It can be said that according to the IAP2 (2014), the NGOs were *involved*, because they had the opportunity to influence the outcome and received feedback on their inputs, but the right to decide remained in the hands of the officials and the NGOs were not involved in all stages of the law proposal formulation (e.g. the last minute changes). Based on White's (1996) typology, the involvement of the NGOs was therefore *instrumental*, because the expert knowledge and technical comments of the RRO were highly valued by the Ministry of the Interior and were incorporated as much as possible (Interview E), but for the NGOs the involvement process was more of a cost. Overall, the involvement of the NGOs on the ministerial level complied with the criteria brought out in the theoretical part. At that moment, AGIPA 81SE was still mainly about harmonizing the recast EU directives with the Estonian legislation and therefore the process was considered suitable by both parties. As the content of AGIPA 81SE changed, the process of involving the NGOs also transformed.

The intensification of the migration crisis during 2015 increased concerns among the public and turned the question of asylum seekers into a *highly salient* and *political* issue. This created a situation where AGIPA 81SE turned into an instrument to prepare Estonia for receiving refugees through resettlement and relocation. During the six months when AGIPA 81SE was discussed in the Constitutional Committee it underwent several fundamental changes as a result of political compromises. It can be said, that the nature of these changes was to ensure the protection of

national interests and internal security, and to discourage or even restrict (bogus) asylum claimants from entering the country. Because asylum related matters are very political and even more so in a crisis situation, it was at times more important for the Constitutional Committee members to reach a political agreement and "calm the society" (Andres Herkel, Parliament recoding 09.03.16) than focus on the interests of the target group or the suggestions made by the NGOs and the UNHCR. As the theoretical findings indicated, the *opaqueness* of the process (caused by political deliberations outside the Committee meetings) and high salience made it harder for the NGOs to influence decision-making. In addition, the NGOs were not perceived as very *significant* actors, because of their short experience with refugees (Interview G). Therefore, the involvement of the NGOs on the Parliamentary level was only *nominal* and the NGOs did not have a genuine opportunity to influence the final decision. But although the meeting with the RRO representative was only a formality, several interviewees mentioned the Good Practice of Involvement (2011) when talking about the involvement process, which indicates that there is at least knowledge of its existence and the legal environment encourages involvement.

A problem that stood out through the process was that the Committee struggled to communicate with the NGOs by not explaining the goal of the involvement process, not providing information about the interim decisions and not providing feedback. This seemed to create a misunderstanding about the concept of involvement which culminated with the NGOs frustratingly turning to the media. The NGOs felt they should have had a bigger role in the decision-making process and were not involved enough, because they were not involved throughout the political deliberations. At the same time, the Committee members stated that by providing the NGOs with an opportunity to present their views at the beginning of the process, the Committee had fulfilled their obligation and in the end it was the legitimate right of the elected officials to make the decision. The reason behind this misunderstanding could be that the NGOs perceived themselves as maintainers of values or as "watchdogs" in the policy-making process and therefore felt they had the right to be kept up to date during the whole process with an opportunity to make comments on the final decision. But the politicians saw them more as advocators for an interest group and did not perceive the usefulness of the NGOs' input as the ministries did. Nevertheless, it was expressed during the interviews that the role of NGOs in Estonian asylum policy was steadily growing (Interview E) and the voices of the NGOs in policy-making could be considered more important when their experience, expertise and capacity grows, and the number of refugees in Estonia rises (Interview G).

## CONCLUSION

Public participation and the involvement of interest groups into policy-making have been high on the agenda for governments since the shift from government towards governance started in the late 1990s. NGOs have become important partners for government. This is especially the case in asylum policy, where NGOs have three main roles – service provision, monitoring of government practices and advocating for the rights of refugees. Because of their close contact with refugees, they represent a viable source of information that could help governments make better decisions in the light of the growing migration crisis in Europe. The involvement practices differ substantially between governments and among policy fields. Because asylum policy is considered to affect the sovereignty of states, research has shown that asylum policy-making tends to be opaque and hard for the public to influence. But in order to reach a well thought through decision, it is important to involve stakeholders and focus on making evidence-based decisions.

There has been a lot of research on public participation and the involvement of interest groups. Although it is not always practical to include the public in every little technical decision, interest groups should have the right to be involved in decisions that directly affect them. The authenticity of participation ranges from one-way information sharing towards genuine participation which gives an opportunity for the interest groups to have a dialogue with the government and a possibility to actually influence the final decision. An effective public involvement process should be transparent, allow equal access to stakeholders and make it possible for interest groups to explain their point of view.

The aim of this thesis was to analyse the role of the NGOs in asylum policy-making in Estonia by taking the adoption process of the AGIPA 81SE as an example. Using qualitative research methods, an empirical analysis about the involvement of NGOs in the elaboration and Parliament

proceeding phase was conducted. The findings show that the NGOs in the Estonian asylum policy are mainly other-benefitting hybrid organisations that are characterised by small size, dependence of project-based funding but at the same time are highly networked and relatively professional compared to the average Estonian NGO. There are currently only three important NGOs in asylum policy – Johannes Mihkelson Center, the Estonian Refugee Council and the Estonian Human Rights Centre. Based on their current function, there is an internal distribution of roles between the three NGOs, although all of them are also active in advocacy.

The findings of the case study showed that there have been two periods of NGO participation in the Estonian asylum policy-making. Before the European migration crisis started, there was a confrontation between the NGOs and the government's strict conservative asylum policy, but since Estonia agreed to participate in the resettlement and relocation scheme, the views of the NGOs and the Ministry of the Interior have somewhat converged. Nevertheless, from the government's perspective, the role of the NGOs has remained the same. The ministries perceive the NGOs as important service providers and a good source of information for decision-making. But the usefulness of the NGOs input is not considered to be the same on the Parliament level. Politicians do not perceive the NGOs as powerful actors in decision-making and see the NGOs more as advocators. Because asylum policy related decisions are extremely political, reaching a political compromise was considered to be more important than the meaningful involvement of interest groups.

These tendencies have created an ambivalent relationship between the NGOs and the government. In setting up the reception system for resettled and relocated refugees, the NGOs are considered extremely important and the relationship between the NGOs and the ministries has become constructive. On the other hand, in decision-making the role of the NGOs is more modest and their involvement is rather formal. Because the NGOs themselves see their role in policy-making as protectors of equality and human rights, they are not satisfied with only nominal involvement and want a bigger role in policy-making. But at a time where Estonia is faced with receiving more refugees during the next couple of years than have been accepted during the last 20 years, it is essential that misunderstandings between the stakeholders are avoided and all stakeholders co-operated towards a common goal. In order to prevent frustration among the NGOs, communication between decision-makers and the NGOs on the Parliamentary level should be improved. The co-operation of NGOs and the government in dealing with the pressure of increased forced migration is essential to effectively tackle this situation.

# SUMMARY IN ESTONIAN

**Vabaühenduste roll Eesti rahvusvahelise kaitse poliitika kujundamises**

Euroopa migratsioonikriis on muutnud rahvusvahelise kaitse poliitika Euroopa Liidu (EL) liikmesriikides üheks kõige aktuaalsemaks ja kriitilisemaks valdkonnaks. Suureneva pagulaste survega toimetulekuks koostas Euroopa Komisjon 2015. aastal EL-i rändekava (European Commission 2015) ning Eesti nõustus osalema ümberasustamis- ja ümberpaigutamis-programmides (Siseministeerium 2015c). Eesti vähene varasem kokkupuude asüülitaotlejatega on aga põhjustanud olukorra, kus rahvusvahelise kaitse poliitika kujundamine on senini toimunud juhtumipõhiselt ning pikaajaline strateegia suureneva arvu pagulastega toimetulekuks puudub (Riigikontroll 2016). Efektiivse pagulaspoliitika kujundamisel on aga oluline, et otsused oleksid põhjalikult läbimõeldud ning tõestuspõhised. Seega on tähtis, et kõik osapooled panustaksid otsustusprotsessi.

Kolmanda sektori organisatsioonide kaasamine poliitika kujundamisesse on viimasel paaril aastakümnel muutunud üheks uuritavamaks valdkonnaks avalikus halduses ning vabaühenduste kaasamist nähakse kui võimalust suurendada riigi otsuste legitiimsust ja kvaliteeti ning kodanike usaldust riigi vastu. Eestis pole vabaühenduste osalemist rahvusvahelise kaitse poliitikas varasemalt uuritud ning seetõttu on käesoleva magistritöö eesmärk kaardistada Eesti asüülipoliitika valdkonnas tegutsevad vabaühendused ning analüüsida nende rolli asüülipoliitika kujundamises. Magistritöö uurimisobjektiks on „Välismaalasele rahvusvahelise kaitse andmise seaduse ja sellega seonduvalt teiste seaduste muutmise seaduse eelnõu 81SE" (VRKS 81SE) ja selle menetlemine ministeeriumi ning parlamendi tasemel.

Magistritöö koosneb kahest osast – teoreetilisest raamistikust ning empiirilisest juhtumianalüüsist. Teoreetilises raamistikus antakse kõigepealt ülevaade erinevat tüüpi vabaühendustest ning nende osalemisstrateegiatest. Vabaühenduste kaasamise sügavus võib ulatuda ühepoolsest informeerimisest kuni otsuse tegemise delegeerimiseni kolmanda sektori organisatsioonidele. Kaasamise edukus ning õigete kaasamismeetodite valik sõltub kontekstist ning seetõttu peab kaasamise hindamisel arvestama ka mitmete mõjufaktoritega. Efektiivse ja õiglase kaasamisprotsessi hindamiseks loob teoreetiline osa erinevaid kaasamistüpoloogiaid ja kriteeriumeid kasutades raamistiku kaasamisprotsessi analüüsimiseks. Seejärel pannakse vabaühenduste kaasamise temaatika asüülipoliitika konteksti ning tuuakse välja vabaühenduste kolm suuremat rolli asüülipoliitikas, milleks on teenuste pakkumine, valitsustegevuse monitooring ja huvikaitse.

Magistritöö empiiriline osa on kvalitatiivne juhtumianalüüs, mis kasutab empiiriliste andmete kogumiseks dokumendianalüüsi ja poolstruktureerituid intervjuusid. Empiiriline uurimus jaguneb kolmeks osaks. Esmalt kaardistatakse kõige olulisemad vabaühendused Eesti rahvusvahelise kaitse poliitikas, analüüsitakse nende peamisi omadusi ning antakse ülevaade nende senisest osalemisest rahvusvahelise kaitse poliitikas. Seejärel analüüsitakse vabaühenduste kaasamist poliitika kujundamisesse eelnõu 81SE näitel, vaadeldes nii eelnõu koostamisetappi ministeeriumis kui ka menetlemist Riigikogu põhiseaduskomisjonis. Empiirilisele analüüsile järgneb diskussioon, mis arutleb vabaühenduste rolli üle Eesti asüülipoliitika kujundamises.

Hetkel on Eesti rahvusvahelise kaitse poliitika kujundamises aktiivsed kolm tähtsamat vabaühendust – Johannes Mihkelsoni Keskus, MTÜ Eesti Pagulasabi ja SA Eesti Inimõiguste Keskus. Kuigi kõigil kolmel organisatsioonil on üksteisest veidi erinev funktsioon, on nende organisatsioonide puhul tegemist hübriidorganisatsioonidega, kelle tegevus sõltub projektipõhisest rahastusest. Lisaks oma põhitegevusele, on kõik kolm vabaühendust aktiivsed ka asüülitaotlejate ja pagulaste huvikaitses läbi Pagulasorganisatsioonide Ümarlaua tegevuse. Empiirilise analüüsi põhjal võib vabaühenduste kaasamises eristada perioode enne ja pärast Euroopa migratsioonikriisi algust. Enne 2015. aastat oli vabaühenduste ja riigi omavaheline suhtlus vaadete erinevuse tõttu kohati vastandlik, kuid pärast Eesti nõusolekut ümberasustamis- ja ümberpaigutamisprogrammides osalemiseks on toimunud suhete lähenemine. Koostöö vabaühenduste ja Sise- ning Sotsiaalministeeriumi vahel on muutunud regulaarseks ning osapooled hindavad seda konstruktiivseks.

Analüüsides vabaühenduste kaasamist VRKS-i muutmise eelnõu 81SE näitel, selgub aga, et vabaühenduste kaasamine eelnõue erinevatesse menetlusetapidesse on erinev. Kui ministeeriumi tasemel peeti vabaühenduste kommentaare oluliseks sisendiks, siis Riigikogu põhiseaduskomisjonis oli organisatsioonide kaasamine formaalne ning tähtsamaks kujunes poliitilise kompromissi leidmine. Kuigi algselt oli eelnõu 81SE eesmärgiks EL-i direktiivide harmoneerimine Eesti õigusega, siis poliitiliste kokkulepete tulemusena muudeti eelnõus mitmeid sisulisi aspekte, millesse vabaühendusi ei kaasatud. See aga tekitas vabaühendustes pahameelt ning ajendas neid avalikult lõplikku eelnõud ning põhiseaduskomisjoni tegevust kritiseerima.

Empiirilise analüüsi järeldustena toob magistritöö autor välja, et kuigi pärast Euroopa migratsioonikriisi algust on toimunud vabaühenduste ja riigi vaheliste suhete lähenemine, siis vabaühenduste roll on jäänud samaks. Ministeeriumites nähakse vabaühendusi eelkõige kui teenusepakkujaid ja partnereid ümberasustamis- ja ümberpaigutamisprogrammide sisse seadmisel ning poliitika kujundamises on vabaühendused vaid informatsiooniallikaks. Parlamendi tasemel nähakse vabaühendusi kui huvigruppe ning pagulastega tegelemise lühikese kogemuse tõttu ei peeta nende rolli otsuste tegemisel eriti suureks. Pagulasorganisatsioonid ise aga näevad enda rolli kui inimõiguste eest seisjad ning seetõttu eeldavad otsustusprotsessis osalemisel põhjalikumat kaasamist. Kuna asüülipoliitika küsimuste üle otsustamine on loomuldasa rohkem väärtustepõhine, on ka otsuste tegemine sügavalt poliitiline küsimus. See on aga tekitanud vabaühenduste ja riigi vahel ambivalentse suhte, kus asüülipoliitika elluviimises nähakse vabaühenduste suurt rolli, kuid otsustusprotsessis on nende roll marginaalne. Ajahetkel, mil Eesti valmistub paari aasta jooksul vastu võtma rohkem pagulasi kui viimase 20 aasta jooksul, on aga oluline, et osapoolte vahel poleks arusaamatusi ning pikaajaliste lahenduste saavutamiseks lähtutaks lisaks poliitilistele kaalutlustele ka tõenduspõhisele infole. Pagulaskriisiga toimetulemiseks on osapoolte omavaheline koostöö hädavajalik.

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## APPENDIX 1 – LIST OF INTERVIEWS

**All interviews were conducted by the author.**

**Interview A** – Project Manager of Asylum Seekers and Refugee Support Person Service project, Johannes Mihkelson Centre. Audio recording. 5 April 2016.

**Interview B** – Chairman of the Board, Estonian Refugee Council. Skype interview, audio recording. 8 April 2016.

**Interview C** – Manager, Estonian Human Rights Centre. Audio recording. 7 April 2016.

**Interview D** – Head of International Protection Policy, Ministry of Social Affairs. Audio recording. 7 April 2016

**Interview E** – Adviser, Citizenship and Migration Policy Department, Ministry of Interior. Audio recording. 19 April 2016.

**Interview F** – Adviser, the Constitutional Committee of Estonian Parliament. Audio recording. 13 April 2016

**Interview G** – Member of the Constitutional Committee of Estonian Parliament. Author's notes. 13 April 2016.

**Interview H** – Member of the Constitutional Committee of Estonian Parliament. Audio recording. 7 April 2016

**Interview I** – Member of the Constitutional Committee of the Estonian Parliament. Author's notes. 13 April 2016.

## APPENDIX 2 – INTERVIEW TOPICS AND QUESTIONS

**NGOs in Estonian Asylum Policy**

1. Who are the main stakeholders in the Estonian asylum policy?
2. What is the role of NGOs in asylum policy in Estonia?
3. What are the main functions of NGOs?
4. Who are the main funders of NGOs?
5. How would you assess the administrative, financial and legal competency of these organisations?
6. In your opinion, is there a sharp difference on how NGOs and the state see asylum matters and problems?
7. How would you describe the relationship between the government and the NGOs?

**The Involvement of NGOs in the development phase of AGIPA 81SE**

1. What were the incentives for starting AGIPA 81SE?
2. On what basis was the involvement process conducted? How were the involved parties chosen?
3. In what phase were NGOs involved?
4. What kinds of participation methods were used?
5. What was the aim of involving NGOs?
6. Did everybody have access to relevant information?
7. How much political influence (national and European Union level) was involved in developing AGIPA 81SE?
8. How did the migration crisis affect the development of AGIPA 81SE
9. Can the involvement of NGOs be forfeited for pragmatic reasons?
10. In Your opinion, was the involvement process successful? What could have been done differently?

**The Involvement of NGOs in the proceedings of AGIPA 81SE in the Estonian Parliament**

1. How were NGOs involved in the proceedings of AGIPA 81SE in the Constitutional Committee meetings?
2. On what basis was the involvement process conducted? How were the involved parties chosen?
3. What was the aim of involving NGOs?
4. Did everybody have access to relevant information?
5. How did the sensitivity of the issue affect the proceedings of AGIPA in the Constitutional Committee meetings?
6. Can the involvement of NGOs be forfeited for pragmatic reasons?
7. In Your opinion, was the involvement process successful? What could have been done differently?

## APPENDIX 3 – NGO-S IN THE ESTONIAN ASYLUM POLICY

| NGO | Type of NGO | Founding year | Number of employees | Volunteers | Function (order of priority) | Main funders (as of 2016) | List of income tax incentives | International network membership[23] |
|---|---|---|---|---|---|---|---|---|
| **Johannes Mihkelson Centre** | Non-profit organization | 1993 | 4 full-time 1 part-time | No | 1) Service provision 2) Advocacy | Project-based funding. Main funders: Ministry of Interior, Ministry of Social Affairs, AMIF | Since 2002 | SOLIDAR, Baltic Sea Network on Migration Issues |
| **Estonian Refugee Council** | Non-profit organization | (2000) 2010[24] | 1 full-time 7 part-time | Voluntary support persons + voluntary network | 1) Advocacy 2) Service provision 3) Monitoring | Project-based funding. Main funders: Ministry of Foreign Affairs, U.S. Embassy, National Foundation of Civil Society + donations | Since 2015 | ECRE, ENAR, IDC |
| **Estonian Human Rights Centre** | Foundation | 2010 | 7 full-time, 5 part-time | Voluntary network | 1) Monitoring 2) Advocacy 3) Service provision | Project-based Funding. Main funders: UNHCR, Ministry of Social Affairs + donations | Since 2011 | ECRE, ELENA, ENAR, JUSTICIA, IDC |

*Source: Organisation's websites, interviews A-C. Compiled by the author.*

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[23] Social justice advancement network SOLIDAR, European Council of Refugees and Exile (ECRE), European Legal Network on Asylum (ELENA), European Network Against Racism (ENAR), JUSTICIA European Rights Network, International Detention Coalition (IDC).

[24] Estonian Refugee Council was formed in 2000, but was inactive until it was revived and its statute renewed in 2010 (Interview B).

# APPENDIX 4 - TIMELINE OF THE PROCEEDINGS OF AGIPA 81SE

**Development of AGIPA at the ministerial level:**

**2013**
Recast Directives are announced in the Official Journal of the EU and the Ministry of Interior starts developing the draft for harmonization

**December 2014**
AGIPA 81SE draft is sent to the NGOs for comments

**January 2015**
NGOs send their comments

**April 2015**
NGOs receive feedback

**20 July 2015**
Deadline for harmonizing directives

**August/September 2015**
Changes relating to resettlement and relocation are added

**September 2015**
AGIPA 81SE is sent to the Parliament

*Source: Compiled by the author*

**Proceeding of AGIPA 81SE in the Parliament and the Constitutional Committee:**



**29 Sept. 2015**

AGIPA is introduced in the CC[1]

**14 Oct. 2015**

**First Reading** in the plenary session passed

**Constitutional Committee meetings:**

**11. Nov.2015 —** *no NGO attendance*

**24 Nov. 2015 —** **NGOs attend the meeting**

**8 Dec. 2015 —** *no NGO attendance*

**Dec.-Feb. —** **political deliberations outside of CC**

**23 Feb. 2016 —***no NGO attendance*

**7 March 2016 —** *no NGO attendance*

**7 and 9 March[2] 2016**

The NGOs send new comments on their own initiative

**9 March 2016**

**Second Reading** in the plenary session passed

**16 March 2016**

AGIPA 81SE is adopted after the **third reading** in the plenary session

**21 March 2016**

ROR sends an appeal letter to the President

**29 March 2016**

**The President signs the Act**

[1] *CC – Constitutional Committee*
[2] *ERC sent their comments on the 7th and EHRC on the 9th of March.*

*Source: Compiled by the author.*