

European Citizens' Initiatives for the Protection and Promotion of Rights and Interests of National Minorities

Latest Developments

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Abstract

This paper examines the latest developments in the two minority-related European Citizens' Initiatives (ECI), the Minority SafePack Initiative and the Cohesion Policy Initiative (ECI on National Minority Regions). A key theoretical question of this paper is whether the ECI can be seen as an effective tool for the protection and promotion of the rights and interests of national minorities in the EU. The paper presents the most recent judgments of the General Court and the CJEU related to these ECIs. The Courts made important statements in terms of the admissibility criteria of ECIs, as well the possibility to propose EU legislation aiming to increase the protection of persons belonging to national and linguistic minorities. The paper also investigates the experiences of the signature collection campaign of the Cohesion Policy Initiative and the current status of the Minority SafePack Initiative in the examination phase. Finally, the paper aims to set up a prognosis on the future of these ECIs, taking into consideration the Commission's latest proposal on the extension of the ECI deadlines.

Keywords: European Citizens' Initiative, national minorities, Minority SafePack, cohesion policy, participatory democracy.

1. Introduction

The Lisbon Treaty introduced the European Citizens' Initiative (ECI), a new tool of transnational participatory democracy, aiming to bring the EU closer to its citizens. Although the ECI was created to contribute to enhancing the democratic functioning of the EU through the participation of citizens in its democratic and

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political life,¹ in its practical functioning it is often seen² as a political opportunity structure.³

A key theoretical question of this paper is whether the ECI can be seen as an effective tool for the protection and promotion of rights and interests of persons belonging to national minorities. Toggenburg is of the view that the ECI “was hailed as one of the new ‘minority-friendly’ elements of the Lisbon Treaty.”⁴ However, the protection of national minorities is a sensitive question on European level. Hence, the European Commission has never set the issue of national minorities on its agenda. According to Bouza García and Greenwood, however, the advantage of the ECI over other advocacy instruments is that it can force the Commission to take a position on controversial issues that would otherwise not have been on its agenda.⁵

2. Cohesion Policy Initiative

2.1. History

In 2013, the citizens’ committee established by the Sekler National Council submitted the ECI entitled Cohesion Policy for the Equality of the Regions and the Sustainability of the Regional Cultures (‘Cohesion policy ECI’) to the European Commission. The subject-matter of the initiative is that the cohesion policy of the EU should pay special attention to regions with national, ethnic, cultural, religious or linguistic characteristics that are different than those of the surrounding regions (the organizers call these territories ‘national minority regions’).⁶ The ECI is thus often referred to as ‘ECI on national minority regions’.

The initiative was rejected by the European Commission with reference to the fact that there is no appropriate legal basis in the Treaties for adopting the respective legislation, *i.e.* the proposal falls manifestly outside the scope of the EU.⁷ Balázs Izsák and Attila Dabis, the representatives of the citizens’ committee, brought an action for the annulment of the European Commission’s decision

- 1 Recital 1 of Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens’ initiative.
- 2 Manès Weisskircher, ‘The European Citizens’ Initiative: Mobilization Strategies and Consequences’, *Political Studies*, 2019.
- 3 See Chris Rootes, ‘Political Opportunity Structures: Promise, Problems and Prospects’, *La Lettre de la maison Française d’Oxford*, No. 10, 1999; Herbert P. Kitschelt, ‘Political Opportunity Structures and Political Protest: Anti-Nuclear Movements in Four Democracies’, *British Journal of Political Science*, Vol. 16, Issue 1, 1986, pp. 57-85.
- 4 Gabriel N. Toggenburg, ‘The European Union and the Protection of Minorities: New Dynamism via the European Citizen Initiative?’, *Europäisches Journal für Minderheitenfragen*, Vol. 11, Issue 3-4, 2018, p. 389.
- 5 Luis Bouza García & Justin Greenwood, ‘What Is a Successful ECI?’, in Maximilian Conrad *et al.* (eds.), *Bridging the Gap? Opportunities and Constraints of the European Citizens’ Initiative*, Nomos, Baden-Baden, 2016, pp. 156-157.
- 6 See at https://europa.eu/citizens-initiative/initiatives/details/2019/000007_en.
- 7 Commission Decision C(2013) 4975 final.

before the General Court.⁸ The General Court issued its judgment⁹ on 10 May 2016 dismissing the plaintiffs' claims in its entirety.¹⁰ The organizers appealed against the first-instance judgment to the CJEU.

2.2. Case C-420/16 P, *Izsák and Dabis*

On 7 March 2019, the CJEU issued its second-instance judgment.¹¹ The Court set aside the judgment of the General Court of 10 May 2016 and annulled the Commission's decision of 2013 rejecting the registration of the Cohesion policy ECI.

In its judgment the Court recalls that the General Court, after laying the burden of proof on the appellants to ascertain whether Articles 174 to 178 TFEU could serve as legal bases for the ECI, found that the appellants had not provided evidence that the implementation of the EU cohesion policy endangered the specific characteristics of national minority regions. According to the General Court, the appellants had also not proved that the specific ethnic, cultural, religious or linguistic characteristics of national minority regions could be regarded as a severe and permanent demographic handicap within the meaning of Article 174(3) TFEU.¹² The Court found that, by reasoning in that way, the General Court erred in law because in the registration phase, the Commission must restrict its examination to whether from an objective point of view, such measures envisaged in the abstract could be adopted on the basis of the Treaties.¹³ Therefore, the CJEU arrived at the conclusion that the General Court wrongly transferred the burden of proof to the appellants, and therefore it set aside the contested judgment of the General Court without deeming it necessary to consider any of the grounds of appeal.¹⁴

Thus, the Court reiterated its position on the protection of the purpose of the ECI, its user-friendliness and accessibility by EU citizens. Moreover, the Court provided a clear indication of the depth of the examination the Commission is to conduct when deciding on the registration of an ECI, significantly promoting compliance with the objective of the user-friendliness of the ECI. On the other hand, the judgment gives less guidance as to the substance of the case, since the Court did not deem it necessary to examine the appellants' pleas on the merits.

8 Romania, Slovakia and Greece joined the defendant as intervener, while Hungary supported the applicant organizers. Non-Member State intervention was submitted to the applicant's side: Covasna (Romania), Debród (Slovakia), Basque national party Euzko Alderdi Jeltzalea – Partido Nacionalista Vasco (EAJ-PNV, Spain) and Bretagne réunie company (France). The latter Non-Member State applications for intervention were dismissed by the Court and thus their arguments were disregarded in the course of the judgment.

9 Judgment of 10 May 2016, *Case T-529/13, Izsák and Dabis v. Commission*, ECLI:EU:T:2016:282.

10 See Balázs Tárnok, 'The Szekler National Council's European Citizens' Initiative for the Equality of the Regions and Sustainability of the Regional Cultures at the Court of Justice of the European Union', *Hungarian Yearbook of International Law and European Law*, Vol. 4 (2016), pp. 489-505.

11 Judgment of 7 March 2019, *Case C-420/16 P, Izsák and Dabis v. Commission*, ECLI:EU:C:2019:177.

12 Id. paras. 57-59.

13 Id. paras. 60-62.

14 Id. para. 73.

Although the Court did not consider it necessary to examine the substance of the pleas, it made a substantive finding as to the possible link between the disadvantages listed in Article 174 TFEU and the specific characteristics of national minority regions. On the one hand, the Court accepted the Advocate General's view¹⁵ that the list of regions under Article 174(3) TFEU "which suffer from severe and permanent natural or demographic handicaps" is, as evidenced by the use in that provision of the expressions "among the regions concerned" and "such as", indicative, not exhaustive.¹⁶ The Court thereby corrected the implicit error in the judgment at first instance. On the other hand, however, the Court also held that the General Court was right to conclude that "the specific ethnic, cultural, religious or linguistic characteristics of national minority regions cannot be regarded as systematically constituting a handicap for economic development in relation to the surrounding regions."¹⁷ However, the Court failed to support this finding in its judgment with any reasoning. This position is particularly counterproductive in light of the fact that the Court did not consider it necessary to examine the merits any of the pleas in law. Thus, the Court made an unsubstantiated statement, without any specific reasoning, in a question which was crucial to both the first and second instance proceedings. It is not clear what led the Court to this conclusion, but it is to be feared that this unfounded statement may serve as a political reference for rejecting minority protection efforts of similar substance.

2.3. *Case T-495/19, Romania v. Commission*

As a result of this judgment, with its new decision,¹⁸ the Commission registered the ECI on national minority regions. On 8 July 2019, Romania brought an action for the annulment of the Commission's decision to register the Cohesion Policy ECI.¹⁹ Romania argued that there is no legal basis in the Treaties enabling the Commission to submit a proposal for a legal act of the Union as intended by the organizers, thus, as such, the registration of the ECI should have been refused. According to Romania, the Commission also breached its obligation to state reasons under Article 296(2) TFEU.

In light of the fact that in this case Romania virtually reiterated its argumentation submitted against the Commission's decision on the registration of the Minority SafePack Initiative, where the General Court, in its judgment of

15 Opinion of Advocate General Mengozzi delivered on 4 October 2018, *Case C-420/16 P, Izsák and Dabis v. Commission*, ECLI:EU:C:2018:816, para. 49.

16 *Case C-420/16 P, Izsák and Dabis v. Commission*, para. 69.

17 *Id.* para. 70.

18 Commission Decision (EU) 2019/721 of 30 April 2019 on the proposed citizens' initiative entitled 'Cohesion policy for the equality of the regions and sustainability of the regional cultures' [notified under document COM(2019) 3304].

19 *Case T-495/19, Romania v. Commission*, Action brought on 8 July 2019, paras. 64-65. The case is currently pending before the General Court.

24 September 2019, dismissed Romania's application, we are of the view that the General Court must refuse the applicants action in this case as well.²⁰

2.4. Signature Collection Campaign

The one-year-long signature collection period started on 7 May 2019, thus, the original deadline, under the provisions of the ECI regulation, was 7 May 2020. Although by the end of the signature collection period the organizers managed to collect at least one million statements of support,²¹ the condition of seven Member States has not been met. However, in view of the Commission's proposal on the prolongation of the signature collection periods of the ECIs affected by the coronavirus pandemic by six months, we cannot consider this ECI to be closed yet, and there is a real chance that the organizers will be able to reach the threshold in the missing four Member States.

The currently known results²² of the signature collection campaign, especially the non-completion of the condition to gather the minimum number of statements of support in seven different Member States by the end of the one-year-long signature collection period, can be traced back to several reasons. Firstly, public attention was drawn to the initiative too late. At the beginning of February 2020, nine months after the start of the signature collection, only about 60,000 statements of support were collected in support of the initiative.²³ In February the collection of signatures received new impetus among Hungarian communities,²⁴ as a result of which the number of online signatures started to grow rapidly, gathering approx. 150,000 signatures within a single month. However, the restrictions applied by the Member States in course of the fight against the coronavirus pandemic has broken this positive trend. At the same time, in the middle of the coronavirus crisis the collection of signatures received another great impetus in mid-April with the launch of the *Írdalá.hu* (IamSigning.com) online platforms. The organizers successfully shifted the focus of the campaign to the online sphere, primarily using social media platforms. The signature collection achieved an unprecedented growth of statements of support²⁵ in the last week of the collection period. On the last day of the

20 Romania has appealed against the first instance judgment of the General Court on the registration of the Minority SafePack Initiative. The case is still pending (*see below*).

21 While approx. 250,000 signatures were gathered on paper forms, 1,008,966 citizens supported the initiative online by the deadline.

22 The manuscript of this paper was finalized on 25 May 2020.

23 *See e.g.* 'Infostart.hu: Nagyon rosszul áll a székely aláírásgyűjtés szénája', 7 February 2020, at <https://infostart.hu/kulfold/2020/02/07/nagyon-rosszul-all-a-szekely-alairasgyujtes-szenaja>.

24 In February and March, a number of political actors and public figures signed the initiative, and various local municipalities supported the initiative. At the end of February, the Hungarian Parliament also passed a resolution calling on Hungarian people living in Hungary and the neighboring countries to support the initiative.

25 The server of the European Commission powering the signature collection website of the ECI collapsed several times during the last few days. As the Commission itself admitted, they have never seen so many supporters at once, not in any initiative. *See e.g.* 'Tizezernyi aláírás veszhetett oda az Európai Bizottság miatt', at www.magyarhirlap.hu/kulfold/20200506-tizezernyi-alairas-veszhetett-oda-az-europai-bizottsag-miatt.

signature collection period almost two hundred thousand citizens supported the initiative online.²⁶

The second reason of not completing the condition of seven Member States is the lack of a European network,²⁷ which is generally considered a necessary prerequisite for a successful ECI.²⁸ The extraordinary growth of online statements of support shown above is a result of the successful online campaign in Hungary and among the Hungarian community living in Romania. The initiative was supported almost exclusively by Hungarian communities.²⁹ Thus, the organizers were not able to mobilize non-Hungarian national minorities and the inhabitants of European national minority regions to support the initiative.

Thirdly, the initiative lacked the necessary financial resources. According to the official information page of the initiative, it did not receive any financial support at all.³⁰ By comparison, the MSPI, according to the information provided on its official page,³¹ received a total of 348,500 Euros from the Federal Union of European Nationalities (FUEN), which was the supporting organization of the initiative. The lack of financial resources is another possible reason of not conducting a Europe-wide campaign.

Finally, in course of the fight against the coronavirus, all Member States applied different measures restricting the movement of their citizens which rendered the signature collection on paper impossible. Moreover, the coronavirus had a negative effect on the promotion of the ECI as well, as it diverted public attention from the initiative. Although the impact of the coronavirus pandemic on the initiative is undeniable, it affected only the last two and a half months of the signature collection campaign.³² It is therefore less possible to assume that the coronavirus crisis caused the cumbersome progress of the initiative. On the other hand, the intensive campaign started only in February. Thus, the virus and the restrictive measures applied by the Member States hit the campaign in its most active and effective period, in the middle of a progressive rise of supporting

26 Number of online statements of support: 23 April: less than 294,000; 2 May: 400,000; 4 May: 530,000; 6 May: 800,000; 7 May (after the signature collection website stopped receiving online statements of support): 1,008,966.

27 On the reach of ECIs across borders, see Justin Greenwood & Katja Tuokko, *The European Citizens' Initiative: The Territorial Extension of a European Political Public Sphere?*, European Politics and Society, 2016.

28 Luis Bouza Garcia, 'New Rules, New Players? The ECI as a Source of Competition and Contention in the European Public Sphere', *Perspectives on European Politics and Society*, Vol. 13, Issue 3, 2012, p. 346.

29 If we do not take into account the statements of support coming from Hungary, Slovakia and Romania, where the initiative was mainly supported by Hungarian people, it is clear that only 26,000 signatures came from the other 24 Member States. The 1,008,966 online signatures are distributed as follows: Hungary: 786,528; Romania: 169,047; Slovakia: 26,996; the other 24 EU Member States: 26,381.

30 See at https://europa.eu/citizens-initiative/initiatives/details/2019/000007_en.

31 See at <https://ec.europa.eu/citizens-initiative/public/initiatives/open/details/2017/000004>.

32 In early March, that is ten months after the start of the signature collection, only around 200,000 signatories supported the initiative online. We do not have any reliable data on the statements of support collected on paper, but as the organizers did not provide any information on this issue, we have to assume a low number of offline signatures.

signatures. Moreover, the travel restrictions made it impossible for organizers to travel around Europe and build their network. Accordingly, in early April the organizers requested the Commission to extend the period for the collection of statements of support by at least six months.³³ The ECI dedicated NGO The ECI Campaign has also appealed to the European Commission to extend the deadline for ongoing ECIs due to coronavirus.³⁴

On 20 May 2020, the European Commission adopted a proposal for a Regulation allowing for the extension of the deadline available for the collection, verification and examination phases applicable to the ECIs.³⁵ Regarding the collection phase in particular, the Commission proposed an extension of six months for the ECIs whose signature collection was ongoing on the day COVID-19 was declared a pandemic by WHO (11 March 2020).³⁶ If and when the European Parliament and the Council adopt the text of the proposal, the signature collection of the Cohesion Policy Initiative will restart for another six months. Therefore, the organizers of the initiative will have the chance to reach the minimum number of statements of support from the missing four Member States. Taking into consideration that the organizers have already collected approximately 1,25 million statements of support, there is a realistic chance that this second condition of the successful signature collection will also be met, as it is easier to persuade European partners to join a 'winning case'. The organizers, also taking into account the experiences of the Minority SafePack Initiative, may focus only on four small Member States with a large number of people belonging to a national minority (e.g. Croatia, Latvia, Lithuania, Slovenia), but may also target large Member States as well which are key players in European politics (Italy, Spain, Germany). Reaching the threshold for the minimum number of signatures in more Member States, and thus involving more national minority regions in the initiative, would strengthen its European character and enhance its legitimacy.

33 See 'Aláírásgyűjtés a nemzeti régiók védelmében: az SZNT a határidő meghosszabbítását kérte', 8 April 2020, at www.maszol.ro/index.php/belfold/124953-alairasgy-jtes-a-nemzeti-regiok-vedelmeben-az-sznt-a-hatarid-meghosszabbitasat-kerte.

34 'The ECI Campaign: Call for Extension of Deadline for Ongoing ECIs due to Corona Virus', at http://citizens-initiative.eu/call-for-extension-of-deadline-for-ongoing-ecis-due-to-corona-virus/?fbclid=IwAR3rFgKau2SNcpiSC8s3-KMr1PACXNfOg_ZTJcS51jcbkzcjwriIEe2eO4.

35 European Commission, *Proposal for a Regulation of the European Parliament and of the Council Laying Down Temporary Measures Concerning the Time Limits for the Collection, Verification and Examination Stages Provided for in Regulation (EU) 2019/788 on the European Citizens' Initiative in View of the COVID-19 Outbreak*, Brussels, 20 May 2020, COM(2020) 221 final.

36 According to the proposal, the Commission may also prolong the collection period of the ECIs concerned if the majority of Member States, or a number of Member States representing more than 35% of the Union population, have in place such measures or in case of a new outbreak requiring Member States to reinstall such measures, which affect initiatives to the same extent. The authorization is limited in time (only extensions of three months, with a maximum total collection period of 24 months). See 'Minority SafePack: New Deadlines Set for Public Hearing and Commission Communication', 20 May 2020, at www.fuen.org/en/article/Minority-SafePack-new-deadlines-set-for-public-hearing-and-Commission-communication.

3. Minority SafePack Initiative

3.1. History

In 2013, the ‘Minority SafePack – one million signatures for diversity in Europe’ ECI (Minority SafePack Initiative, MSPI) was submitted to the European Commission. The aim of the proposal was to call upon the EU to improve the protection of persons belonging to national and linguistic minorities and strengthen the cultural and linguistic diversity in the EU.³⁷ The European Commission refused to register the initiative on the grounds that some of its proposals fell manifestly outside the powers of the Commission to submit a proposal for the adoption of a legal act of the Union for the purpose of implementing the Treaties of the EU.³⁸ As a result, the organizers could not even start collecting signatures for the MSPI. The decision of the Commission was challenged by the organizers before the General Court. The General Court, with its judgment³⁹ of 3 February 2017, approved the claims of the applicants and annulled the contested decision.⁴⁰ This was the first time ever the claims of the organizers of an ECI were approved by the CJEU in relation to the rejection of the registration of an ECI. Consequently, the Commission, with its new decision, partially registered the MSPI.⁴¹

3.2. Case T-391/17, Romania v. Commission

On 28 June 2017, Romania brought an action before the General Court for the annulment of the Commission’s decision to register the MSPI. On 24 September 2019, the General Court issued its judgment⁴² dismissing the applicant’s action, upholding the Commission’s decision to register the initiative.⁴³

In its application Romania argued that the proposed ECI is in fact solely focused on enhancing the protection of the rights of persons belonging to national and linguistic minorities, and thus, its registration would violate the principle of conferral of powers. Furthermore, Romania claimed that the legal bases indicated could not serve as a legitimate legal basis for the proposed ECI. In

37 The objectives pursued by the MSPI consist of calling upon the EU “to adopt a set of legal acts to improve the protection of persons belonging to national and linguistic minorities and strengthen cultural and linguistic diversity in the Union” and that those acts “shall include policy actions in the areas of regional and minority languages, education and culture, regional policy, participation, equality, audiovisual and other media content, and also regional (state) support”. See at https://europa.eu/citizens-initiative/initiatives/details/2017/000004_en.

38 C(2013) 5969 final.

39 Judgment of 3 February 2017, *Case T-646/13, Minority SafePack – one million signatures for diversity in Europe v. Commission (Minority SafePack v. Commission)*, ECLI:EU:T:2017:59.

40 See Balázs Tárnok, ‘European Minorities Win a Battle in Luxembourg. The Judgment of the General Court in the Case Minority SafePack European Citizens’ Initiative’, *Journal on Ethnopolitics and Minority Issues in Europe*, Vol. 16, Issue 1, 2017, pp. 79-94.

41 Commission Decision (EU) 2017/652 of 29 March 2017 on the proposed citizens’ initiative entitled ‘Minority SafePack – one million signatures for diversity in Europe’.

42 Judgment of 24 September 2019, *Case T-391/17, Romania v. Commission*, ECLI:EU:T:2019:672.

43 Romania has appealed against the judgment at first instance. *Case C-899/19 P, Romania v. Commission* (currently pending).

its judgment, the General Court, just like in its judgment in *Izsák and Dabis*, focuses on the protection of the purpose of the ECI, its user-friendliness and accessibility by EU citizens. The General Court recalled its findings in *Izsák and Dabis* and underlined that at the registration phase the Commission must restrict itself to examining whether from an objective point of view, measures envisaged in the abstract could be adopted on the basis of the Treaties.⁴⁴

As regards the substantive examination of the pleas in law, the proposed ECI aims not only to respect the rights of national and linguistic minorities, but also to strengthen cultural and linguistic diversity in the Union.⁴⁵ On the other hand, the General Court examined whether the Commission had correctly established that the nine proposals registered with the contested decision do not manifestly fall outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties. In that regard, the General Court found that it does not follow from the contested decision that the Commission acknowledged a general legislative power for the Union to protect the rights of persons belonging to national minorities.⁴⁶ However, the Court also found that there was nothing to prevent the Commission from submitting a proposal for specific acts that aim to complement the Union's actions, in the areas of its competence, in order to ensure the respect the values set out in Article 2 TEU or the cultural and linguistic diversity set out in Article 3(3).⁴⁷ The General Court, therefore, found that the Commission did not make an error of assessment when it partially registered the MSPI.

With regard to partial registration, the General Court refers to the intent expressed by the initiators in the 'saving clause' attached to the proposal. In this clause the initiators expected each proposal to be examined on its own merits; and if one of the proposals is deemed to be inadmissible, this should have no effect on the other proposals made. Therefore, according to the General Court, the partial registration of the proposal cannot lead to a change in the subject-matter of the proposal, but, on the contrary, corresponds to the wish expressed by the organizers themselves.⁴⁸ In case of the MSPI, as mentioned earlier, while the Commission in its decision of 2013 refusing to register the proposal was still on the opinion that an ECI could not be partially registered, in its decision of 2017 it decided to register the initiative partially without the General Court even explicitly addressing the matter of partial registration. However, in the case *T-391/17, Romania v. Commission*, the General Court made a clear statement on the substance of partial registration. Moreover, the possibility of partial registration has since been incorporated into the new ECI regulation.⁴⁹

44 *Case T-391/17, Romania v. Commission*, para. 42; *Case C-420/16 P, Izsák and Dabis v. Commission*, para. 62.

45 *Case T-391/17, Romania v. Commission*, para. 47.

46 *Id.* para. 53.

47 *Id.* para. 56.

48 *Id.* para. 58.

49 The revised ECI Regulation, that is Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens' initiative ('new ECI Regulation'), entered into force on 1 January 2020.

The main finding of the judgment is that the Commission may register a proposal for specific acts that aim to complement the Union's action, in the areas of its competence, in order to increase the protection of persons belonging to national and linguistic minorities and to support the Union's cultural and linguistic diversity. This is not explicitly stated in any of the legal sources of EU law and has so far not been declared by the Court either. Thus, in this respect, the judgment can certainly be considered as a milestone in the protection of national minorities within the framework of EU law. It is important to note, however, that the Commission may submit a proposal for a legislative act only in areas which are complementary to the Union's actions and which fall within its competence. Consequently, the judgment cannot be interpreted as creating new competences or designating tasks for the Union with regard to the protection of national minorities. At the same time, this paragraph of the judgment will be a very important reference point for protecting and promoting the rights and interests of persons belonging to national minorities.

3.3. Signature Collection Campaign and the Follow-Up Phase

Starting from 3 April 2017, the organizers had one year to collect the necessary one million statements of support, with respect to the registered 9 proposals, from at least seven different Member States.

The initiative was signed by 1,32 million EU citizens by 3 April 2018. After the verification of the signatures in the Member States, the official result of the signature collection was published by the organizers in July 2018. According to this, 1,128,385 statements of support were verified in the EU, reaching the minimum threshold in 11 Member States (Hungary, Romania, Italy, Slovakia, Spain, Bulgaria, Lithuania, Croatia, Denmark, Latvia and Slovenia).⁵⁰ However, the proposal was submitted⁵¹ to the Commission only one and a half years later, in January 2020. This was possible because there was no deadline specified for the submission of successful ECIs to the Commission in the former ECI regulation applicable at that time.⁵² In June 2018, the General Assembly of the FUEN authorized the FUEN Presidency to find the proper timing for the submission of the MSPI to the European Commission.⁵³

The second phase of the initiative is ahead of the EU institutions. On 5 February 2020, the representatives of the European Commission met the MSPI delegation to allow them to explain in detail the objectives of the initiative. The

50 In Hungary 527,686, in Romania 254,871, while in Slovakia 63,272 signatures have been verified. In these countries mostly the Hungarian communities collected the signatures, therefore, the success of the initiative can be considered as a significant success of the Hungarian communities in the Carpathian Basin.

51 See 'The Signatures for the Minority SafePack Initiative Have Been Registered Online at the European Commission', 10 January 2020, at www.fuen.org/en/article/The-signatures-for-the-Minority-SafePack-Initiative-have-been-registered-online-at-the-European-Commission.

52 Regulation (EU) No. 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative.

53 See 'FUEN Congress 2018: European Minorities Want a Pact with the Majority', 23 June 2018, at www.fuen.org/en/article/FUEN-Congress-2018-European-minorities-want-a-pact-with-the-majority.

legislative proposals elaborated by the legal experts of the MSPI were also presented to the Commission.⁵⁴ Under Article 11(4) TEU, the Commission shall not be forced to submit a proposal for a legal act of the Union. However, pursuant to the ECI regulation, the Commission, within six months of the submission of the initiative, shall set out in a communication its legal and political conclusions on the proposed ECI, the action it intends to take, if any.⁵⁵ The European Parliament also has certain duties and rights in the follow-up phase of a successful ECI. Within three months of the submission of the initiative, the group of organizers shall be given the opportunity to present the initiative at a public hearing held by the European Parliament.⁵⁶ Pursuant to the January 2019 amendment of the Rules of Procedure of the European Parliament,⁵⁷ the Parliament shall also hold a debate on the given ECI following the public hearing and may also wind up the debate with a resolution. Furthermore, following the Commission's communication setting out its legal and political conclusions on a specific ECI, the European Parliament shall assess the actions taken by the Commission as a result of such communication. In the event that the Commission fails to submit an appropriate proposal on the given ECI, the Parliament may hold another plenary debate on the matter and may also decide to exercise the right conferred on it by Article 225 TFEU,⁵⁸ that is to request the Commission to submit any appropriate proposal on matters in which it considers that a Union act is required for the purpose of implementing the Treaties.

However, this scenario has been significantly subverted by the coronavirus pandemic. The European Parliament suspended or canceled virtually all of its external events from the beginning of March. As a result, the public hearing on the MSPI, scheduled for 23 March, has been postponed, just like the plenary debate, initially scheduled for 22 April. At the same time, the emergency situation will affect the Commission's communication on the initiative as well. As emphasized earlier, the Commission shall publish its communication on the merits of the initiative within six months of the publication of the initiative in its register and after the public hearing.⁵⁹ This provision, therefore sets out two conjunctive conditions which may contradict each other, as demonstrated in this specific case. Under the first condition, the Commission would have to publish its communication by 10 July 2020, however, the public hearing on MSPI might not happen before that date due to the restrictions of the European Parliament applied in course of the fight against the coronavirus. The organizers informed

54 See 'Fruitful Discussions at the Presentation of the Minority SafePack Initiative to the European Commission', 05 February 2020, at www.fuen.org/hu/article/Fruitful-discussions-at-the-presentation-of-the-Minority-SafePack-Initiative-to-the-European-Commission.

55 Article 15(2) of the ECI regulation.

56 *Id.* Article 14(2).

57 European Parliament decision of 31 January 2019 on amendments to Parliament's Rules of Procedure affecting Chapters 1 and 4 of Title I; Chapter 3 of Title V; Chapters 4 and 5 of Title VII; Chapter 1 of Title VIII; Title XII; Title XIV and Annex II [2018/2170(REG)].

58 Article 222(8) and (9) of the Rules of Procedure of the European Parliament, 9th parliamentary term, December 2019.

59 Article 15(2) of the ECI regulation.

the Commission that, given the extraordinary circumstances, they would agree to an extension of the deadline for the Commission's reply to September 2020 or later.⁶⁰ The Commission, in its proposal on the extension of the deadlines of the ECI procedures,⁶¹ proposed an extension to the examination phase of the MSPI as well. According to the proposal, the European Parliament shall organize the public hearing of the initiative "as soon as the public health situation in the Member State concerned makes it possible to do so." In case of such delay, which is the case in the MSPI, the Commission shall adopt its communication setting out its legal and political conclusions on the initiative within three months after the public hearing. It is still uncertain, when the public health situation will make it possible to organize the public hearing on the MSPI, but MEP Loránt Vincze, the appointed *rapporteur* for the extension of ECI deadlines, is of the view that this may happen in October 2020, the earliest.⁶² Consequently, the Commission's communication on the proposals presented in February 2020 is not expected until early 2021.

4. The Relevance of New Developments

4.1. Judicial Protection for the ECI as the Participatory Tool of the EU

The Court appeared to be the defender of the ECI's accessibility as the participatory tool of EU law. In the initial years, the European Commission applied the rules on the registration of the proposed ECIs very strictly.⁶³ It considered a number of proposals⁶⁴ to fall manifestly outside the framework of its powers to submit a proposal for a legal act for the purpose of implementing the Treaties. However, as it was later found by the CJEU, in several cases the Commission applied the law incorrectly when it rejected these ECIs.⁶⁵ This was

60 Loránt Vincze, 'Minority SafePack Advice to Ongoing Initiatives: Adapt to the New Setting' *European Citizens' Initiative Forum*, 05 May 2020, at https://europa.eu/citizens-initiative-forum/index.php/blog/minority-safepack-advice-ongoing-initiatives-adapt-new-setting_en.

61 COM(2020) 221 final.

62 See 'A kisebbségpolitika békepolitika – Vincze Lóránt az európai kisebbségeket összefogó aláírásgyűjtések jövőjéről (PS-Interjú)', 24 May 2020, at <https://pestisracok.hu/a-kisebbségpolitika-bekepolitika-vincze-lorant-az-europai-kisebbségeket-osszefogó-alairasgyujtesek-jovojerol-ps-interju/>.

63 Irmgard Anglmayer, *Implementation of the European Citizens' Initiative. The Experience of the First Three Years*, European Parliamentary Research Service, Ex-Post Impact Assessment Unit, 2015, p. 14; European Commission: Report on the application of Regulation (EU) No. 211/2011 on the citizens' initiative. Brussels, 31 March 2015, COM(2015) 145 final; James Organ, 'Decommissioning Direct Democracy? A Critical Analysis of Commission Decision-Making on the Legal Admissibility of European Citizens' Initiative Proposals', *European Constitutional Law Review*, 2014/10.

64 In the first three years, from 2012 to 2015, the Commission received 51 requests for the registration of proposed ECIs, but 20 of them were rejected due to competence problems. See Report from the Commission to the European Parliament and the Council, *Report on the Application of Regulation (EU) No. 211/2011 on the Citizens' Initiative*, COM(2015) 145 final, Brussels, 31 March 2015.

65 *Case T-646/13, Minority SafePack v. Commission*; *Case C-420/16 P, Izsák and Dabis v. Commission*; *Case T-754/14, Michael Efler v. European Commission*, ECLI:EU:T:2017:323.

also the case for both of the ECIs on the protection and promotion of rights and interests of national minorities which we highlighted in this paper. Although the ECI regulation stipulated that the procedures and conditions required for the ECI should be clear, simple, user-friendly and proportionate to the nature of the citizens' initiative so as to encourage participation by citizens and to make the Union more accessible,⁶⁶ these requirements have not been in place for years. The strict interpretation of the admissibility conditions by the Commission in the early years have undermined the effectiveness of this democratic tool,⁶⁷ as such, ultimately jeopardizing the main purpose of the ECI as well, that is to bring the citizens closer to the Union.

In the case of MSPI, the General Court upheld the applicants' action because the Commission failed to state reasons supporting its decision. The judgment directly contributed to the democratization of the functioning of ECIs. However, the indirect effects of the judgment were even more significant. On the one hand, the Commission started to apply the partial registration of ECIs after this case, and, on the other hand, it was the first ECI in which the organizers won a lawsuit against the Commission before the CJEU.

In the case of the Cohesion policy ECI the Court made some statements of crucial importance in terms of the admissibility check. The Court ruled that in the registration phase the Commission shall examine only whether from an objective point of view the proposed measures in the abstract could be adopted on the basis of the Treaties. Thus, the Court provided some but certainly not a complete clarification for how the controversial term "manifestly falls outside the framework of the Commission's powers to submit a proposal" should be interpreted. Earlier, the Commission had relied on the indefinite meaning of this term for dismissing several ECIs, creating an arbitrary practice in the registration of ECIs.⁶⁸ However, with this finding the Court finally addressed the depth of analysis the Commission has to conduct in the course of the admissibility check of ECIs. This finding may not provide a detailed interpretation of the given term, but it can definitely be considered an important yardstick of the admissibility check of ECIs.⁶⁹

In both cases the Court delivered judgments in favor of the ECI organizers, reinforcing the user-friendliness of the tool and made it clear that the "principle

66 Recital 2 of Regulation No. 211/2011.

67 Luis Bouza Garcia, 'Anticipating the Attitudes of European Civil Society Organisations to the European Citizens' Initiative (ECI): Which Public Sphere May it Promote?', in Luis Bouza García *et al.* (eds.), 'Papers Prepared for the European Citizens' Initiative – A First Assessment Organised by the European General Studies' Programme of the College of Europe, Bruges, 25 January 2011', *Bruges Political Research Paper*, No. 24, February 2012, p. 46.

68 *The European Citizens' Initiative Registration: Falling at the First Hurdle? Analysis of the Registration Requirements and the 'Subject Matters' of the Rejected ECIs*, ECAS Brussels, December 2014, p. 4.

69 Others may be on the view that with this finding the Court did not clarify the substantive interpretation of the term but rather focused on the procedural approach that the Commission should take, as required by the duty to give reasons, strengthening the Commission's duty to give more benefit of doubt to organizers than before.

of participatory democracy is the normative yardstick against which the interpretation of the legal framework is measured.”⁷⁰

4.2. *Developments in the Protection of the Right of Persons Belonging to National Minorities*

In addition to strengthening the user-friendliness of the ECI and its accessibility by Union citizens, both cases contributed to the evolution of the rights of persons belonging to national minorities. In its judgment in *Case T-391/17, Romania v. European Commission*, on the registration of the MSPI, the Court underlined that the Commission may, within its own sphere of competence, propose legislation aiming to increase the protection of persons belonging to national and linguistic minorities and to support the Union’s cultural and linguistic diversity. In doing so, the Court provided an important reference point for future arguments regarding the Commission’s powers to initiate legislation on the protection of national minorities, annulling the previously prevailing view that the Commission had no legal basis to initiate legislation in this matter.

In terms of the legal framework of the EU on the protection of persons belonging to national minorities, an important development of the Cohesion Policy Initiative is that the CJEU consistently used the concept of ‘national minority region’, making the term a reference point of EU law. Some would say this new approach is one of the biggest novelties of this initiative from a legal point of view.⁷¹

4.3. *Developments in the Promotion of Interests of Persons Belonging to National Minorities*

A crucial question is, from a theoretical point of view, whether these ECIs will be able to have a tangible impact on the protection of national minorities in the EU. The MSPI is already of historic importance in terms of minority advocacy. The organizers successfully gathered over one-million statements of support, and thus, citizens have urged the Commission to address the protection of autochthonous national minorities. The European Commission, which has the exclusive right to submit a proposal for a legal act of the Union, has never put the protection of national minorities on its agenda before. In addition, the support of more than 1,1 million EU citizens gives strong legitimacy for the protection of national minorities at EU level.

The Cohesion Policy Initiative, as the Commission proposed the extension of the signature collection period, cannot yet be considered a closed chapter. Although at the moment the initiative may be considered an ECI that had failed to fulfil the necessary conditions of a successful initiative from a legal point of view, it is likely that the organizers will have the chance to meet the currently missing requirement of reaching the minimum number of statements of support

70 Natassa Athanasiadou, ‘The European Citizens’ Initiative: Lost in Admissibility?’, *Maastricht Journal of European and Comparative Law*, Vol. 26, Issue 2, 2019, p. 269.

71 Vivien Benda *et al.*, ‘A közvetlen demokrácia európai útjai, különös tekintettel az európai polgári kezdeményezésre’, *Kisebbségvédelem*, 2019/1, p. 93.

in seven Member States. If this happens, the Commission will have to put the subject matter of the ECI to its agenda. In any case, the ECI has highlighted an important deficiency in the implementation of the cohesion policy of the EU and provided a new approach of crucial importance in the protection of autochthonous national minority communities living in regions with special cultural characteristics in the Member States. Therefore, if somehow the above mentioned scenario would not prevail, the organizers and representatives of national minority regions still have a number of possibilities to keep the issue on the political agenda both in the European Parliament and in the Member States concerned. On EU level, the organizers, by means of advocacy, may bring their concerns to the competent committees of the Parliament aiming to propose an own-initiative report requesting the Commission to submit a legislative proposal under Article 225 TFEU.

5. Conclusion

Gabriel Toggenburg is of the view that these two initiatives are instructive for the potential of the ECI as a tool for protecting and promoting interests of persons belonging to national minorities.⁷² As shown above, the two presented ECIs have undoubtedly achieved remarkable success both in terms of the development of the rights of person belonging to national minorities and the promotion of political interests of national minorities in the EU. One of the major legal developments related to the MSPI is the ruling of the General Court in case *T-391/17, Romania v. Commission*. The Court found that the Commission may, within its own sphere of competence, propose legislation aiming to increase the protection of persons belonging to national and linguistic minorities and to support the Union's cultural and linguistic diversity.

The Minority SafePack Initiative is worth our attention not only for successfully challenging the Commission's political agenda but also for its potential to be a game-changer initiative in the EU's minority protection system. Given that the MSPI is a package of nine proposals, the Commission will have to show how far it wants to go in the implementation of the proposed actions. Secondly, the fact that the Commission is under political pressure to restore the trust of citizens in the institution of the ECI, and generally in the democratic functioning of the Union, this could also have a positive effect on the outcome of the MSPI. Shortly after the entry into force of the revised ECI regulation,⁷³ it would be particularly important to finally have an initiative that results in proposals for legal acts of the Union in line with the will of the organizers elaborated in the given ECI.

⁷² Toggenburg 2018, p. 376.

⁷³ The revised regulation is applied from 1 January 2020.