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MINORITY SAFEPAK – A MILESTONE IN EU MINORITY POLICY

Abstract: The paper examines the Minority SafePack, a European Citizen's Initiative launched in 2013 that called 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. Firstly, we shall briefly describe the legal framework and the political perspective of the different EU institutions regarding the EU-level protection of national minorities. Secondly, we shall analyze the subject-matter, history, and signature collection of the Minority SafePack, its refusal by the European Commission, its achievements, including its legal and political relevance, and possible effects on the improvement of the rights of national minorities in the EU in the future. Finally, we shall explain why this initiative, and generally the protection of national minorities within the framework of the EU, is important from a Hungarian perspective, and why the EU should do more to protect the cultural and linguistic identity of national minorities, and thus, uphold national characteristics of the different regions of the EU, including those inhabited by national minorities.

Keywords: MINORITY SafePack, NATIONAL MINORITIES, IDENTITY, CULTURAL DIVERSITY, MINORITY RIGHTS.

Introduction

Even though there are some 40 million EU citizens who belong to national and linguistic minorities, the EU-level protection of national minorities has been a highly controversial issue. The European Commission ignored the calls of the European Parliament and different member states to initiate the adoption of secondary EU legislation introducing guarantees for individuals belonging to these minorities to preserve their ethnic or national, cultural and linguistic identity. The Minority SafePack is a milestone in the EU's minority policy because through this initiative, EU citizens forced the European Commission to put the issue on its agenda. Even though the Brussels-based institution refused to take any actions, the movement for the promotion of the rights of national and ethnic minorities in the EU continues. What is the general legal and political situation of national minorities in the EU? What is the Minority SafePack about? What are the biggest achievements of the initiative, its legal and political relevance, and why is it important at all to Hungary?

The protection of national minorities in the EU

Terminology

In this paper we shall focus our research on the situation of national minorities. The term “national minority” does not have any generally accepted definition enshrined in a legally binding document of international or European law. Some EU member states have precise legal definitions for their national minorities, while others have not provided such legally binding concepts. Therefore, for several reasons, there has never been a European consensus on the definition of “national minorities”. One of the reasons for this absence of definition and failure to establish an effective system of protection in Europe is that member states are demographically varied and as such, the constitutional status of national or ethnic minorities living in the territory of a member state is mainly determined by that minority's demographic position and history.¹ Accordingly, European decision makers could not find a description of the term minority which would be acceptable for all EU member states.

Notwithstanding the above, in the past few decades scholars and institutions have offered some well-described definitions. A prominent example is the definition proposed by the Parliamentary Assembly of the Council of Europe in 1993 in its Recommendation 1201/1993. In this paper, we shall rely on this definition when discussing national minorities. It states that the expression “national minority” refers to a group of persons in a state who:

¹ Vizi, Balázs (2013): Protection without Definition – Notes on the Concept of “Minority Rights” in Europe; *Minority Studies*, no. 15, 7–24.

- (a) reside on the territory of that state and are citizens thereof;
- (b) maintain longstanding, firm and lasting ties with that state;
- (c) display distinctive ethnic, cultural, religious or linguistic characteristics;
- (d) are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state; and
- (e) are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language.

Legal framework

The respect for the rights of persons belonging to minorities – which also includes national minorities – is one of the EU’s fundamental values. According to Article 2 of the Treaty on the European Union (TEU), which is often seen as the most important point of reference for protection of national minorities under EU law, “the Union is founded on the values of respect for [...] human rights, including the rights of persons belonging to minorities.” The fundamental value status, however, does not create new competences for the EU for the protection of minorities. The rights of minorities fall outside the scope of the EU as listed in Articles 3 to 6 of the Treaty on the Functioning of the European Union (TFEU), and thus, it is considered a competence of the member states.

Even though the respect for the rights of persons belonging to minorities is a fundamental value of the EU, there is no single secondary EU legal act that would provide legal guarantees for the protection of national minorities, to preserve their ethnic or national, cultural, and linguistic identity. According to Ulrike Barten, it is a “first sign of possible schizophrenia. The EU claims to be based on the respect of minority rights; however, it has no competences to protect or further the respect of minority rights”.² The lack of such legislation, however, cannot be seen as a legal issue. Gabriel Toggenburg is of the view that the Treaties provide an opportunity to adopt legal acts for the protection of national minorities.³ This statement is supported by the General Court’s judgment in case T-391/17, *Romania v. Commission*, on the registration of *Minority SafePack Initiative*. The Court found 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

² Barten, Ulrike (2016): The EU’s Lack of Commitment to Minority Protection; *Journal on Ethnopolitics and Minority Issues in Europe*, vol. 15, no. 2, 104–123. 107.

³ Toggenburg, Gabriel N. (2012): The Lisbon Treaty: a rich cocktail served in an only half-full glass; *Europäisches Journal für Minderheitenfragen*, vol. 5, no. 2, 78–87. 85.; Toggenburg, Gabriel N. (2018): The European Union and the Protection of Minorities: New Dynamism via the European Citizen Initiative? *Europäisches Journal für Minderheitenfragen*, vol. 11, no. 3–4, 362–391. 389.

and linguistic diversity.⁴

The problem of the non-existent secondary legal acts on the protection of national minorities is made particularly controversial by the fact that, although the EU requires candidate states to ensure “respect for and protection of minorities” based on the Copenhagen criteria, it does not establish any guarantees for the protection of minorities in relation to its own member states. Thus, the protection of minorities within the Union is much less assured than in candidate states outside the Union. In the words of Bruno de Witte, for the EU, “concern for minorities is primarily an export product and not one for domestic consumption”.⁵ The most striking example of this controversial legal situation is Lithuania, where the legal act on minorities, adopted during the Euro-Atlantic integration, was repealed in 2010.⁶

Besides Article 2 of the TEU, there are other legal provisions that can be invoked for the protection of national minorities, like the prohibition of discrimination. Under Article 21 of the Charter of Fundamental Rights of the EU, discrimination based on belonging to a national minority is prohibited. However, the provisions of the Charter are addressed only to the institutions and bodies of the Union, and to the member states but only when they are implementing Union law. Therefore, it cannot be applied to the situations that typically affect national minorities, specifically to violations or deprivations of their rights in the member states. In addition, Article 19 of the TFEU generally provides an opportunity to combat discrimination based on protected characteristics, including “ethnic origin”. However, according to the Fundamental Rights Agency of the EU, Article 19 of the TFEU does not apply to discrimination based on belonging to national minorities.⁷ The primary sources of EU law refer to ethnic origin and belonging to a national minority separately, which implies that the two are not the same. However, there are contradicting professional positions as well.⁸

Another possible legal basis for the protection of national or ethnic, cultural and linguistic minorities under EU law is the respect for the EU’s cultural diversity.

4 Judgment of the General Court of 24 September 2019 in *Case T-391/17, Romania v European Commission*, ECLI:EU:T:2019:672, p. 56.

5 De Witte, Bruno (2000): *Politics versus Law in the EU's Approach to Ethnic Minorities*; Working Paper, 2000/4, Florence: European University Institute. Online: <http://hdl.handle.net/1814/1644> (accessed: 26 April 2023).

6 Manzinger, Krisztián (2019): A 2019-es európai parlamenti választások nemzetiségi vonatkozásai; *Kisebbségvédelem*, no. 1, 95–132. 124–125.

7 European Union Agency for Fundamental Rights (2010): *Respect and Protection of persons belonging to minorities 2008–2010*; Vienna: European Union Agency for Fundamental Rights. Online: https://fra.europa.eu/sites/default/files/fra_uploads/1769-FRA-Report-Respect-protection-minorities-2011_EN.pdf (accessed: 26 April 2023).

8 Toggenburg, Gabriel N. (2006): A Remaining Share of a New Part? The Union’s Role Vis-à-vis Minorities after the Enlargement Decade; *EUI Working Papers Law*, 2006/15. Online:

<https://cadmus.eui.eu/bitstream/handle/1814/4428/LAW%202006.15.pdf;sequence=1> (accessed: 26 April 2023). de Witte 2000: 19. Varga, Péter (2014): “Racial or Ethnic Origin” vs. “Membership of a National Minority” in EU Law; *Minority Studies*, no. 17, 135–145. 140.

Pursuant to Article 3 (3) of the TEU, the EU “shall respect its rich cultural and linguistic diversity”, while under Article 167 (1) of the TFEU, the EU “shall contribute to the flowering of the cultures of the member states, while respecting their national and regional diversity.” Even though cultural diversity is only an ancillary competence of the EU, where EU legislation can only complement member state legislation, preserving cultural diversity is a treaty-based duty of the EU, and if the member states do not adopt adequate measures in this area, the EU should do so. Even though in several EU documents, the protected value is not the right of persons belonging to the minority (given that in some member states these do not even exist), but minority languages as part of the European cultural heritage, these provisions are crucial to promote the national or ethnic identity of individuals and to help preserve the national or ethnic characteristics of certain regions of the EU.

Political perspectives

Given that there are no legal obstacles to adopting EU legislation that aims to protect and promote national minority cultures in the areas of EU competence, we may assume that the lack of such legal framework is the result of a political decision. In recent decades, the European Parliament (EP) adopted numerous resolutions that urged the development of the EU legal framework on the protection of national minorities. Several of these resolutions called upon the European Commission to submit a proposal for a legal act of the Union that would provide legal guarantees to persons belonging to national or ethnic minorities. This was the exact case with the resolution on minimum standards for minorities in the EU.⁹ In this document, the European Parliament proposed a comprehensive EU protection mechanism and called on the European Commission to draw up a common framework of EU minimum standards for the protection of minorities, consisting of a Commission recommendation and a legislative proposal for a directive including clear benchmarks and sanctions. Even though the Parliament specifically called on the Commission to adopt the missing secondary legal act for the protection of national minorities, the Commission remained inactive.¹⁰ In doing so, the European Commission did not violate the law, because the resolutions of the European Parliament are non-binding, and thus their relevance is more political than legal.

The other co-legislator, the Council of the European Union (Council), never dealt with the protection of national minorities. Even if it were to do so, the protection of national minorities is a very sensitive political issue which the various member states approach very differently. On one side of this scale, as the countries with the

9 European Parliament resolution of 13 November 2018 on minimum standards for minorities in the EU. Online: https://www.europarl.europa.eu/doceo/document/TA-8-2018-0447_EN.html (accessed: 26 April 2023).

10 Manzinger, Krisztián (2020): The Question of National Minorities in the European Parliament Between 2014 and 2019: A Hungarian Perspective; *Hungarian Journal of Minority Studies*, no. 2, 7–30.

best practices, we can place the Scandinavian countries, especially Finland, as well as Austria and Hungary, while on the other side we can place France or Greece, as the worst examples in the EU. The former recognize numerous national minorities and provide them with different levels of self-determination, while the latter do not even recognize the existence of national minorities living in their territory, and therefore reject the concept of minority rights.¹¹ In addition, Bulgaria and Greece see the minorities living in their territory as a danger and a national security risk,¹² and in Estonia and Latvia, a significant number of Russian-speaking people who immigrated during the Soviet occupation, do not have Estonian or Latvian citizenship.¹³ Among the EU member states, only Luxembourg, Malta, Portugal and Ireland do not have an appreciable number of national minorities, while a significant number of national minorities live in the other 23 member states.¹⁴

The main reason for the lack of an EU guarantee system for the protection of national minorities, at least from a legal point of view, is that the European Commission had never put the protection of national minorities on its agenda until the Minority SafePack forced it to do so, even though numerous minority protection organizations and European Parliament in its resolutions have repeatedly called for it to do so. This is also the reason why, in the past few years, the advocacy activities of national minorities were increasingly directed at the European Commission.

Minority SafePack

European Citizens' Initiative

The Minority SafePack Initiative (its official name is the “Minority SafePack – one million signatures for diversity in Europe”, also referred to as the MSPI) is a European Citizens' Initiative (ECI). The ECI is a new instrument of the EU's participatory democracy that was introduced by the Lisbon Treaty. Under Article 11(4) of the TEU,

not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.

An ECI can therefore be launched in a matter that falls under the competence of the EU. Through this tool, EU citizens can influence EU policy decision-making by

11 Vogel, Sándor (2001): *Európai kisebbségvédelem. Erdélyi nemzetiségpolitikák*; Csíkszereda: Pro Print.

12 Manzinger, Krisztián and Vincze, Loránt (2017): Minority SafePack – esély az EU-s kisebbségvédelemre? *Pro Minoritate*, 2017 summer, 3–21. 15–16.

13 Manzinger 2019: 119–120.

14 Vogel 2001: 63.

initiating specific legal measures in matters that are important to them in the areas in which the European Commission is authorized to submit legislative proposals. For an ECI to be valid, two conjunctive conditions must be met: on the one hand, at least one million valid signatures of EU citizens are required, and on the other hand, a predetermined minimum number of signatures must be gathered in at least seven member states.¹⁵ After the European Commission registers the ECI, the organizers have 12 months to collect the required number of supporting signatures. Statements of support can be collected both in paper format and online. The Commission must then examine the ECI and decide in a reasoned decision whether it wishes to initiate EU legislation on the matter. In the EU, the European Commission has the exclusive right to launch the ordinary legislative process by submitting proposals for legislative acts. The ECI modulates the Commission's monopolistic role in this; if an ECI has at least one million valid statements of support, the Commission must put the matter on its agenda and decide whether to take action. The European Commission, however, is not obliged to propose a legislative act as a result of an ECI.

The aim of the Minority SafePack¹⁶

The Minority SafePack was initiated by the Federal Union of European Nationalities (FUEN), the Democratic Alliance of Hungarians in Romania (DAHR), the South Tyrol People's Party (SVP), and the Youth of European Nations (YEN) at the FUEN's 2012 Congress. The MSPI was submitted to the European Commission by its organizers in 2013.¹⁷ The MSPI itself and the European campaign was coordinated and managed by the FUEN, the main advocate and the largest umbrella organization of Europe's national minorities, nationalities, and language groups.¹⁸

The MSPI called 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.¹⁹ The MSPI as a package of originally 11 proposals including policy actions in the areas of regional and minority languages, education and culture, regional policy, participation, equality, audiovisual and other media content, and regional (state) support.

15 Specific number defined by Annex II of the Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens' initiative. OJ L 130, 17/5/2019, p. 55–81. (ECI regulation).

16 Tárnok, Balázs (2023): *Mire elég egymillió aláírás?* Budapest: Ludovika.

17 Members of the organizing committee: Hans Heinrich Hansen (Denmark), Kelemen Hunor (Romania), Karl Heinz Lambertz (Belgium), Jannewietske Annie De Vries (Netherlands), Valentin Inzko (Austria), Alois Durnwalder (Italy) and Anke Spoorendonk.

18 It currently unites over 100 member organizations from 36 European countries, with new members joining every year. The current president of the organization is Loránt Vincze, an ethnic Hungarian Romanian citizen, MEP of the party of ethnic Hungarians in Romania, the Democratic Alliance of Hungarians in Romania (DAHR). See more: www.fuen.org (accessed: 27 April 2023).

19 https://europa.eu/citizens-initiative/initiatives/details/2017/000004_en (accessed: 27 April 2023).

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. 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 judgment of 3 February 2017,²⁰ approved the claims of the applicants and annulled the contested decision.²¹ This was the first time ever that 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; the Commission registered 9 out of its 11 proposals.²²

The registered proposals of the package were:

1. a recommendation of the Council “on the protection and promotion of cultural and linguistic diversity in the Union”;
2. a proposal for a decision or a regulation to adapt “funding programmes so that they become accessible for small regional and minority language communities”;
3. a proposal for a decision or a regulation to create a centre for linguistic diversity that will strengthen awareness of the importance of regional and minority languages, promote diversity at all levels and be financed mainly by the European Union;
4. a proposal for a regulation to adapt the common provisions relating to EU regional funds in such a way that the protection of minorities and the promotion of cultural and linguistic diversity are included therein as thematic objectives;
5. a proposal for a regulation to amend the regulation relating to the Horizon 2020 programme for the purposes of improving research on the added value that national minorities and cultural and linguistic diversity may bring to social and economic development in regions of the EU;
6. a proposal for a directive, regulation or decision strengthening the place within the EU of citizens belonging to a national minority, with the aim of ensuring that their legitimate concerns are taken into consideration in the election of Members of the EP;
7. proposals for effective measures to address discrimination and to promote equal treatment, including national minorities, in particular through a revision of existing Council directives on the subject of equal treatment;
8. a proposal for the amendment of Directive audiovisual media services, for

20 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.

21 Tárnok, Balázs (2017): 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, no. 1, 79–94.

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

the purpose of ensuring the freedom to provide services and the reception of audiovisual content in regions where national minorities reside; and

9. *a proposal for a regulation or a proposal for a decision with a view to the block exemption of projects promoting national minorities and their culture.*

The signature collection campaign

Starting from 3 April 2017, the organizers had one year to collect the necessary one million statements of support. The Europe-wide signature collection campaign was coordinated by the FUEN and started immediately after the registration of the MSPI. In the different member states the local campaign has been coordinated by the FUEN's local member organizations and partners.

Although the signature collection period began on April 3, 2017, the campaign in Hungary only started in late December, after the Hungarian Parliament unanimously adopted a supporting resolution on the MSPI,²³ and the Hungarian Standing Conference (MÁÉRT), an annual meeting of the political leaders of the ethnic Hungarian communities living beyond the borders of Hungary, invited the Rákóczi Association to participate in the signature collection campaign in Hungary.²⁴ The Rákóczi Association is an NGO in Hungary with 31,000 members and more than 600 local branches that focus on preserving Hungarian national identity in the Carpathian Basin.²⁵ The importance of the Rákóczi Association in coordinating the Hungarian signature collection campaign lies in the fact that it is an independent NGO which has been active in preserving Hungarian identity in the region for the past three decades, and is not attached to any of the political parties in Hungary. In addition to the local branches and partners of the Rákóczi Association, several civil organizations and churches also joined the collection of signatures. A special element of the campaign was the involvement of the Hungarian postal services (Magyar Posta); from January 2018, the signature form and the free reply envelope for its return became available at all post offices in Hungary.

The MSPI created a broad social coalition in Hungary, which is well illustrated by the number of signatures collected. In recent years, a clear political consensus has emerged among political actors in Hungary regarding the protection of national minorities and especially Hungarians across the border. Accordingly, the organizers customized the Hungarian signature collection campaign with national elements, and the main message of the campaign was the protection of Hungarians outside of Hungary. During the campaign, the Rákóczi Association gave the initiative a Hungarian name ("National Minority Protection Initiative" – *Nemzeti*

²³ Decision 24/2017. (X. 31.) of the Hungarian Parliament on the support of the Minority SafePack Initiative

²⁴ <https://bgazrt.hu/wp-content/uploads/2019/03/19.-A-MÁÉRT-XVI.-ülésének-Zárónyilatkozata-2017.11.10..pdf> (accessed: 28 April 2023).

²⁵ www.rakocziszovetseg.org (accessed: 28 April 2023).

Kisebbségvédelmi Kezdeményezés) in parallel with the original name (Minority SafePack). The organization also created its own visual design, in which national motifs dominated. Thus, while FUEN emphasized the protection of all European national minorities in the European communication of the initiative, the organizers of the campaign in Hungary paid more attention to the support of Hungarians across the border.²⁶

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

After the successful signature collection, the proposal was submitted²⁷ to the Commission only one and a half years later, in January 2020.²⁸ As a general rule, the European Commission would have six months to examine the proposal and decide whether it wishes to take measures and/or submit a proposal for the legal act of the Union as a result of the MSPI. The coronavirus pandemic, however, significantly subverted this scenario and the official deadline was prolonged. Consequently, the European Commission issued its communication on the proposal on 14 January 2021.

In 2020, the organizers of the MSPI obtained the support of the Bundestag, the Hungarian Parliament, the lower chamber of the Dutch parliament, many regional parliaments, and the European Parliament, too, which adopted a supporting resolution in December 2020 with an overwhelming majority.²⁹

The refusal of the Minority SafePack

26 The author of this article was the coordinator of the Hungarian signature collection campaign. See: Tárnok, Balázs (2019): A Minority SafePack európai polgári kezdeményezés és a magyarországi aláírásgyűjtés tapasztalatai; *Létünk*, vol. 49, no. 2, 131–148.

27 *The Signatures for the Minority SafePack Initiative Have Been Registered Online at the European Commission*; www.fuen.org/en/article/The-signatures-for-the-Minority-SafePack-Initiative-have-been-registered-online-at-the-European-Commission (accessed: 27 April 2023).

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

29 European Parliament resolution of 17 December 2020 on the European Citizens' Initiative 'Minority SafePack – one million signatures for diversity in Europe' (2020/2846(RSP)). Online: https://www.europarl.europa.eu/doceo/document/TA-9-2020-0370_EN.html (accessed: 27 April 2023).

Despite all the support demonstrated by the organizers of the MSPI, the European Commission decided to reject the package in its entirety in January 2021 and decided not to initiate legal acts of the Union with respect to any of the nine proposals of the package.³⁰ The Commission examined the nine proposals of the MSPI and concluded for each proposal that the current legislation provides an appropriate legal framework, and thus, no additional legal act is necessary. Thus, the Commission did not state that there were legal obstacles to put forward appropriate proposals matching the organizers' request, but argued that the existing EU legal framework is appropriate. The Commission made it clear that it did not intend to do anything to protect national minorities at the EU level, and thus, to preserve its cultural diversity, including the autochthonous European languages, cultures and national characteristics that are part of Europe's cultural heritage.

On March 24, 2021, the organizers of the MSPI filed an application at the General Court of the EU requesting the annulment of the European Commission's decision on the initiative. On 9 November 2022, the General Court rejected the application.³¹ According to the General Court, "the action already taken by the European Union to emphasize the importance of regional or minority languages and to promote cultural and linguistic diversity is sufficient to achieve the objectives of that initiative."³²

The organizers argued that the Commission had failed to provide sufficient reasoning for its decision and had thus violated the law. Even though the Commission is not obliged to submit a proposal for a legislative act following a successful ECI, adequate justification must be provided if the Commission decides not to submit a legal proposal. In its judgment, the General Court found that the Commission had clearly and sufficiently explained the legal and political reasons for which it decided to reject the initiative.³³

The organizers also argued that the Commission committed a manifest error of assessment as regards the examination of four proposals of the package, namely the first (Council recommendation for the protection of cultural and linguistic diversity), third (linguistic diversity center), sixth (equal treatment between stateless persons and EU citizens) and the eighth proposal (abolition of geo-blocking). The General Court examined the merits of the Commission's responses to these

30 Tárnok, Balázs (2021): The European Commission turned its back on national and linguistic minorities; Europe Strategy Research Institute, University of Public Service, January 20, 2021;

<https://eustrat.uni-nke.hu/hirek/2021/01/20/the-european-commission-turned-its-back-on-national-and-linguistic-minorities> (accessed: 27 April 2023).

31 Judgment of the General Court of 9 November 2022 in Case T158/21, Citizens' Committee of the European Citizens' Initiative 'Minority SafePack – one million signatures for diversity in Europe' v. European Commission. ECLI:EU:T:2022:696.

32 *The General Court confirms the Commission communication refusing to take the action requested in the European citizens' initiative 'Minority SafePack – one million signatures for diversity in Europe'*; <https://curia.europa.eu/jcms/upload/docs/application/pdf/2022-11/cp220179en.pdf> (accessed: 27 April 2023).

33 Judgment in Case T158/21, p. 23.

proposals and concluded that the European Commission did not make an error of assessment when it rejected these proposals.

In its challenged communication, the European Commission referred to the Council of Europe several times, arguing that the existence of its documents and institutions are sufficient to achieve the objectives of the initiative. This was the case, for example, when the organizers required a recommendation of the Council of the EU on the protection of cultural and linguistic diversity. The General Court ruled that – even though the EU itself and several of its member states are not party to the European Charter for Regional or Minority Languages of the Council of Europe – the EU regularly refers to the Charter as the legal instrument defining the guidelines for the promotion and protection of regional and minority languages, and thus, such references are capable of contributing to the attainment of the objectives pursued by the initiative.³⁴ Among EU member states, however, Belgium, Bulgaria, Estonia, France, Italy, Latvia, Lithuania, Malta, Greece, Ireland and Portugal did not sign or ratify the Charter. Therefore, it is not clear on what basis the General Court concluded that purely political references to the Charter, which has no binding effect on almost half of the EU's member states, can promote the protection of cultural and linguistic diversity in the EU.

On 23 January 2023, the organizers of the MSPI filed an appeal with the Court of Justice of the European Union in the context of the annulment proceedings brought by the MSPI against the European Commission. Thus, proceedings are underway at the second instance court.³⁵

Relevance of the Minority SafePack

Legal and political effects of the Minority SafePack on the EU minority policy

The European Commission, which has the exclusive right to initiate EU legislation, has never before dealt with the protection of national and linguistic minorities. The historical significance of the MSPI lies in the fact that, through the successful signature collection, citizens have forced the Commission to put the

³⁴ Judgment in Case T158/21, p. 55.

³⁵ Appeal brought on 21 January 2023 by Citizens' Committee of the European Citizens' Initiative "Minority SafePack – one million signatures for diversity in Europe" against the judgment of the General Court (Eighth Chamber) delivered on 9 November 2022 in Case T-158/21, *Minority SafePack – one million signatures for diversity in Europe v Commission* (Case C-26/23 P). Tárnok, Balázs (2023): The fight for minority rights in the EU continues at the Court of Justice; *Ludovika*, January 25, 2023;

<https://www.ludovika.hu/en/blogs/the-daily-european/2023/01/25/the-fight-for-minority-rights-in-the-eu-continues-at-the-court-of-justice/> (accessed: 27 April 2023).

issue on its agenda. However, this seems to be the “glass ceiling” of EU participatory democracy in terms of grassroots movements. The organizers, with the support of EU citizens, have been able to influence EU decision-making up to this point. Beyond this, however, it is only up to the Commission to decide on the ECI.

Even though the European Commission rejected the MSPI in January 2021, this does not mean that the proposal cannot have legal effect in the future. Regardless of the Commission’s decision, if an ECI managed to successfully thematize its goals in the European Union, it can exert political pressure on decision-makers and thus eventually achieve its goals. In the case of the *Stop Vivisection* ECI,³⁶ for example, although the European Commission refused to submit a proposal for a legislative act, the initiative generated a lively political debate and scientific discourse as well, at the European level, the organizers managed to secure wide media coverage for the initiative, which eventually contributed to promoting and protecting animal welfare in the EU.³⁷ With the MSPI, the protection of national minorities not only appeared on the European Commission’s agenda, but also became a significant topic in the different EU member states. The MSPI became a widely recognized brand in Europe, and as such, a crucial point of reference in the EU when it comes to the protection of national minorities. In this capacity, the MSPI became a milestone of the EU’s minority policy.

Furthermore, even though the European Commission refused to submit a legislative proposal in accordance with an ECI, that does not necessarily mean that the proposal is buried forever, as the Commission may want to take up the initiative again years after rejecting it. This happened in the case of the *Right2Water* ECI.³⁸ The European Commission first rejected the initiative, just as the MSPI, but six years later it submitted a legislative proposal in the scope of the initiative, also citing the will of EU citizens demonstrated in the course of the signature collection. This scenario is thus also possible in the case of the protection of national minorities and the MSPI.

Why the EU-level minority protection and the MSPI is crucial for Hungary?

After WW I, Hungary lost almost 70% of its territories, and consequently, huge Hungarian communities became citizens of other countries. Due to this, there are still significant Hungarian minority groups living in the countries neighboring Hungary: some 2 million individuals who are ethnic Hungarians and/or speak

36 *Stop Vivisection*; https://europa.eu/citizens-initiative/initiatives/details/2012/000007_en (accessed: 27 April 2023).

37 Menache, Andre (2016): The European Citizens’ Stop Vivisection Initiative and the Revision of Directive 2010/63/EU; *Alternatives to Laboratory Animals*, vol. 44, no. 4, 383–390. 386.

38 *Water and sanitation are a human right! Water is a public good, not a commodity!*; https://europa.eu/citizens-initiative/initiatives/details/2012/000003_en (accessed: 27 April 2023).

Hungarian as a native language. Also from an EU perspective, the most important communities of ethnic Hungarians outside Hungary are in Romania and Slovakia (EU member states), and in Serbia and Ukraine (EU candidate countries). Under Article D) of the Fundamental Law of Hungary, the country's constitution,

Hungary shall bear responsibility for the fate of Hungarians living beyond its borders, shall facilitate the survival and development of their communities, shall support their efforts to preserve their Hungarian identity, the effective use of their individual and collective rights, the establishment of their community self-governments, and their prosperity in their native lands.

Therefore, Hungary standing up for the rights of ethnic Hungarians living beyond its borders can also be interpreted as its constitutional obligation.

Since the democratic transition, Hungary became one of the most prominent advocates of the rights of national minorities domestically, internationally and in the European public and political spheres. Hungary was trying to show positive examples for the neighboring countries, also providing political justification for its support of Hungarian minorities.³⁹ In the course of this, the Act on the Rights of National and Ethnic Minorities was adopted in 1993, providing several rights for the listed 13 minorities,⁴⁰ which fall under the scope of the Act. The act established the system of minority self-governments, recognized the right to cultural autonomy of minorities living in Hungary on the basis of collective rights and guaranteed several rights for national minorities.⁴¹

Why do we need EU-level minority protection at all?⁴²

In terms of protecting the rights and promoting the interests of national minorities, three main spheres may be identified: domestic, kin-state (bilateral) relations, and the role of international (multilateral) organizations. By the domestic sphere, we mean that the national minority in question should advocate for its own interests within its state of residence. Both political and civic actors should aim to improve the domestic legal framework applicable to national minority groups and stand up against any violations of minority rights which may occur. Representing the interests of national minorities by their kin-states in bilateral relations with the

39 Schöpflin, György (2000): *Nations, Identity, Power: the new politics of Europe*; London: Hurst. 375.

40 Bulgarian, Gipsy (Roma), Greek, Croatian, Polish, German, Slovak, Slovenian, Ukrainian, Armenian, Romanian, Rosin and Serb.

41 In 2011 the act from 1993 was repealed by the Act CLXXIX of 2011 on the rights of National Minorities, which maintains the rights of national and ethnic communities.

42 Tárnok, Balázs (2022): Protection of the Rights and Promotion of the Interests of National Minorities in a New Era; *Hungarian Conservative*, vol. 2, no. 6, 14–21.

territorial state is also an important aspect. This is obviously an important sphere of action for Hungarians living abroad, given that Hungarian constitutional traditions imply a close attention to ethnic Hungarians living in the neighbouring countries. The third sphere is the international one that is the externalization of national minority claims. This means placing minority claims and the ongoing violations of minority rights on the agenda of international organizations such as the UN, the Council of Europe, the OSCE, or the European Union.⁴³

Hungarians living in the countries neighbouring Hungary have learned over the past three decades that it is best not to rely only on the goodwill of their state of residence. Apparently, the time has not yet come for these states to see their national minorities as an asset to their country and, accordingly, to provide adequate guarantees to preserve their language and identity. Hungarians living abroad have also learned that they cannot fully rely on Hungary, as their kin-state's ability to defend their interests is limited. While bilateral relations might be exceptionally good between the current government of Hungary and the state where Hungarian minority communities live, such relations may change quickly with the change of political preferences. Therefore, national minorities need long-term legal guarantees. These guarantees are truly effective if they are international, and there is international pressure towards the territorial states to respect these guarantees. These experiences also show that national minorities' demands must also be voiced in the international sphere. In this sphere, the law of the European Union is crucial.

Conclusions

The respect for the rights of persons belonging to minorities is a fundamental value of the EU, and yet, in practice it does not have a significant impact. The current legal framework lacks specific and enforceable provisions on the protection of national minorities. The lack of a minimum set of EU rules also allows the Member States to adopt legislation depriving the earlier acquired rights of national minorities. This can give rise to anti-minority manifestations in the Member States, which may jeopardize the political stability of the Union, too.

The MSPI aimed to give a partial solution for this controversy by calling upon the EU to adopt a set of legal acts to improve the protection of persons belonging to national and linguistic minorities in the Union. It was supported by 1,123,422 EU citizens, numerous national and regional parliaments and the European Parliament as well. Despite this, the European Commission refused to initiate EU legislation with respect to any of the nine proposals of the package.

The protection of national minorities is indeed a sensitive political issue in Europe. However, the EU, as a community based on certain fundamental values,

43 Waterbury, Myra A. (2018): Friends in High Places? The Externalisation of Hungarian Minority Rights Claims; In: Bíró, Anna-Mária and Lantos Swett, Katrina (eds.): *The Noble Banner of Human Rights. Essays in Memory of Tom Lantos*; Leiden–Boston: Brill Nijhoff, 150–182.

must not turn a blind eye to these challenges faced by its citizens. If it ignores the voice of citizens who seek better protection for national and linguistic minorities and greater cultural and linguistic diversity in the Union, the European Commission is acting contrary to its obligations under the Treaties to ensure that Europe's cultural heritage is safeguarded. The language, culture and national characteristics of national minorities are part of Europe's cultural heritage. Ignoring the challenges that these communities face each day could lead to the eventual disappearance of regional cultures and national minority identities in Europe.



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МАЊИНСКИ „СИГУРНОСНИ ПАКЕТ” – ПРЕКРЕТНИЦА У МАЊИНСКОЈ ПОЛИТИЦИ ЕУ

Апстракт: У раду се испитује мањински „сигурносни пакет”, Европска грађанска иницијатива покренута 2013. године која је позвала ЕУ да усвоји сет правних аката за унапређење заштите припадника националних и језичких мањина и јачање културне и језичке разноликости у Унији. Најпре ћемо укратко описати правни оквир и политичку перспективу различитих институција ЕУ у погледу заштите националних мањина на нивоу ЕУ. Друго, анализираћемо садржај, историју и прикупљање потписа мањинског „сигурносног пакета”, његово одбијање од стране Европске комисије, његова достигнућа, укључујући његову правну и политичку релевантност, и могуће ефекте на унапређење права националних мањина у ЕУ у будућности. На крају ћемо објаснити зашто је ова иницијатива, и генерално заштита националних мањина у оквиру ЕУ, важна из мађарске перспективе и зашто би ЕУ требало да учини више на заштити културног и језичког идентитета националних мањина а, самим тим, и подржавању националних карактеристика различитих региона ЕУ, укључујући и оне у којима живе националне мањине.

Кључне речи: МАЊИНСКИ „СИГУРНОСНИ ПАКЕТ”, НАЦИОНАЛНЕ МАЊИНЕ, ИДЕНТИТЕТ, КУЛТУРНА РАЗНОЛИКОСТ, ПРАВА МАЊИНА.