

PÁMÁNY PÉTER CATHOLIC UNIVERSITY
DOCTORAL SCHOOL OF LAW AND POLITICAL SCIENCES

**The European Citizens' Initiative with special regard to the protection and
promotion of the rights and interests of national minorities**

Summary of PhD dissertation

Balázs Tárnok

Supervisor:

Dr. Petra Lea Láncoş, associate professor

Submitted: 31 August, 2020

Budapest
2020

Contents

I.	Brief summary of the research objectives	3
II.	Structure of the thesis, brief description of the research method	5
III.	Summary of the new scientific results of the doctoral dissertation	8
IV.	List of publications related to the area of research	13

I. Brief summary of the research objectives

The subject matter of my doctoral thesis is the European Citizens' Initiative (ECI) with special regard to the protection of autochthonous minorities. The aim of the thesis is to explore whether the ECI, as a new instrument of participatory democracy in the European Union (EU), can be considered an effective tool for the protection of rights of persons belonging to national minorities, the development of the legal framework of EU minority protection, and the promotion of the political interests of minority communities, in particular to change the current political perception characterized by the rejection of the protection of national and linguistic minorities in the EU.

Respect for, and protection of national minorities is an important matter from a Hungarian perspective. As a result of the Treaty of Trianon, Hungary lost almost two-thirds of its territory, and thus, millions of Hungarian people became citizens of other states due to border-shifting. Accordingly, bearing responsibility for the fate of Hungarians living beyond the kinstate's borders is an integral part of our national identity and constitutional traditions.

The externalization of minority rights claims, that is the involvement of international fora, such as the EU, in addition to demanding minority rights by the representatives and activists of the given national minority in their particular host state or through bilateral agreements concluded by and between the kinstate and the host state of such national minority, is crucial for the promotion of the interests of national minorities.

The question may arise as to why the thesis examines the protection of minorities within the framework of the EU, and why it does not deal with other international organizations, such as the Council of Europe. The Council of Europe's minority protection system, which emerged in the 1990s, lacks the compelling power that would hold governments accountable for these norms and guarantee their implementation. The EU's advantage over other international organizations is that the EU may adopt mandatory and enforceable provisions for the protection of national minorities, which could be a real solution to the problems of minorities at the Member State level as well.

Although we know of many ways to assert minority interests through promoting EU legislation on the protection of national minorities, the thesis explicitly examines the ECI, as an instrument of EU democracy. The dissertation was inspired by the two ECIs for the protection and promotion of rights and interests of national minorities, the *Minority SafePack Initiative (MSPI)* and the Cohesion Policy ECI, also known as *ECI on National Regions*. The author of this thesis contributed to the implementation of both initiatives as a practicing lawyer. Furthermore, the author is a member of the Hungarian community living in Slovakia, thus, this research was also inspired by his commitment to promote the interests of Hungarians living beyond the borders of Hungary.

The international framework of the protection of national minorities has been comprehensively presented by many well-known scholars. Accordingly, the main mission of

this dissertation is not to provide one more summary on the protection of minorities in the EU. The thesis intends to use the findings of these researches to briefly present the current EU legal framework on minority rights, the provisions of EU law that can be invoked for the purposes of minority protection, and to explore the possibilities of developing the current legal framework for the benefit of national minorities.

Similarly to the protection of rights of persons belonging to minorities, a rich scale of scholarly literature is available on the ECI as well. So far, however, only a few scholars studied the possibilities of using the ECI for the purposes of minority protection, but as of yet, no comprehensive work has been published on this topic, neither domestically nor internationally. This thesis attempts to provide a comprehensive description of this research subject.

The first major research question of the thesis is whether the current legal framework of the EU is suitable for the effective protection of national minorities. I assume that the EU legal framework is weak in this respect. Although respect for the rights of persons belonging to minorities has been a declared fundamental value of the EU since the entry into force of the Treaty of Lisbon, in practice it does not have a significant impact. Therefore, the thesis is based on the approach that the development of the EU legal framework for the protection of national minorities is necessary. The current legal framework, based almost exclusively on the aforementioned fundamental value to respect the rights of persons belonging to minorities, lacks specific and enforceable provisions on the protection of national minorities, and thus, cannot be adequately employed for such purposes. However, in case respect for the rights of national minorities cannot be implemented in practice, we may speak of a violation of the EU's fundamental values.

On the other hand, I also assume that the political will to change the current legal framework is still lacking on the part of both the Member States and the EU institutions. Although there are Member States that explicitly support the protection of national minorities, several Member States have traditionally defined themselves in opposition to the issue. The situation is similarly ambiguous with when it comes to the EU institutions. The thesis also assumes that this political approach of the Member States and EU institutions, which so far rejected to address the issues of national minorities, can be changed by appropriate lobbying. Political advocacy and the promotion of the political interests of national minorities is therefore an issue of crucial importance.

With regard to the development of the EU legal framework for the protection of national minorities, I rely on the assumption that the Treaties provide a possible legal basis for this. On the other hand, I believe that the ECI may be able to stimulate change both by raising awareness to the issue at EU level and by contributing to the codification of specific legal standards on the protection of national minorities.

II. Structure of the thesis, brief description of the research method

The first major part of the thesis studies the legal and political framework for the protection of minorities in the EU. Firstly, I examine the concept of national minorities. I discuss the aspects of a possible definition, as well as the criterion for drawing a distinction between the different types of ethnic minorities. Secondly, I describe the current provisions of EU law on the protection of minorities. In this context I analyze EU primary law documents, the sources of secondary EU law and the lack thereof, as well as the case-law of the Court of Justice of the European Union. Next, I present the political efforts and activities of EU institutions to provide for a wider protection of national minorities. In doing so, I pay particular attention to the European Parliament's reports and resolutions.

In the second part of the thesis I study the ECI, as an instrument of EU participatory democracy. In this part, I describe the characteristics of this tool and examine the ECI in the context of citizen participation, comparing it to other civic participation tools (popular initiatives, petitions, public consultation). I provide insight into the historical background, operation and requirements of the ECI. Nevertheless, the thesis does not aim to discuss the theoretical issues of direct, deliberative and participatory democracy. I pay distinguished attention to the two-step examination of ECIs, in particular, to the difficulties encountered during the registration phase, the notion of "manifestly falling 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", the Commission's changing practice in the course of the admissibility check of ECIs and the follow-up phase of successful initiatives. Subsequently, I analyze in detail the revision of the regulation on ECI which took place between 2017 and 2019. In the course of this, I study the operational difficulties of the ECI, the relevant proposals to the amendment of the regulation elaborated by EU institutions and academics, as well as the new features of the revised regulation. Although the new regulation seems to address the difficulties encountered in recent years, several other problems can be identified, which are likely to affect the effective functioning of this instrument in the future.

In this part of the thesis I also examine the role of civil society organizations in the ECI procedure. In this context, I also discuss what is needed for an ECI to be successful. My assumption is that, although inviting the European Commission to submit a proposal for a legal act of the Union through ECI is an individual right of EU citizens, in practice this instrument requires the participation of different organizations. My hypothesis is that civil society is essential to the success of citizens' initiatives, and civil society organizations are indispensable actors in the functioning of this new legal instrument. I assume that those ECIs are capable of collecting the required one-million signatures from seven different Member States which are, on the one hand, backed by large organizations with a European network, and, on the other hand, organize nationally focused campaigns centered in at least one or two Member States. I therefore predict that both the European network and the concentration of the signature

collection campaign in the leading Member States are essential requirements. In addition, the initiative must be adequately funded, as European signature collection is a costly undertaking, and even NGOs with an extensive European network can only succeed if the necessary financial resources are available for a European-wide campaign.

In the third part of the thesis I present how the organizers of the *MSPI* and the *ECI on National Regions* used the instrument of ECI for the protection and promotion of rights and interests of national minorities. I describe the background of the initiatives, their main goals and exact proposals, the proceedings before the General Court and the Court of Justice of the European Union. I provide insight into the signature collection campaigns undertaken by the organizers, as well as to the follow-up phase of these the ECIs and their possible results. Despite certain differences between the two cases, I seek to apply uniform assessment criteria to both cases.

The evaluation of these initiatives at the time of the submission of this doctoral dissertation (August 31, 2020) cannot be complete. Although the *MSPI* successfully gathered the necessary number of signatures in April 2018, due to its late submission to the Commission and the restrictions applied by Member States during the coronavirus pandemic, the initiative has not yet been examined by EU institutions. As the ECI deadlines have been extended owing to the coronavirus pandemic, the collection of signatures for the *ECI on National Regions* is currently ongoing. Although nearly 1.3 million statements of support have been collected for the initiative as of yet, only three Member States have so far met the minimum number of required signatures, so it remains questionable whether the collection of signatures will be successful.

In the fourth part of the thesis I attempt to answer the following questions:

- i) should the ECI be considered primarily as an instrument for enhancing democracy or rather as a tool to promote political interests in the EU;
- ii) can the ECI be considered an effective advocacy tool;
- iii) to what extent can the ECI be used to protect national minorities?

I hypothesize that, although the ECI is generally perceived as a tool to enhance democracy in the EU by bridging the gap between EU citizens and institutions, and to reduce the democracy deficit of the Union, it is rather used as an advocacy tool by groups of citizens and organized interest groups to promote certain political interests of a given community. The thesis therefore assumes that the ECI is primarily a political advocacy tool and in practice it cannot really contribute to the improvement of democracy in the Union. At the same time, the dissertation does not undertake a comprehensive analysis of the problems related to the democracy, democracy deficit or the European Public Sphere. Although these questions are closely related to the ECI, their research is beyond the remit of this thesis.

A key question of the thesis is whether the ECI can be considered an effective advocacy tool. In examining the effectiveness of the ECI as a political advocacy tool, I consider three

aspects: the public awareness of the ECI, the notion of 'successful ECI' and the 'price-quality ratio' of the instrument.

At the end of the thesis I summarize the results of the research. I try to answer whether the ECI can really be used for the protection and promotion of rights and interests of persons belonging to national minorities in the European Union.

III. Summary of the new scientific results of the doctoral dissertation

The dissertation was based on two important assumptions that were proven during the research. On the one hand, I found that the EU has no specific competence in the ambit of the protection of national minorities, and thus, no direct means of protecting minority rights. Furthermore, the currently applicable provisions of primary EU law on the rights of persons belonging to minorities have an overly general wording. Although respect for the rights of persons belonging to minorities has been declared a fundamental value of the EU with the Treaty of Lisbon, in practice it does not have a significant impact on the situation of national minorities. Therefore, I have taken the view that it is necessary to develop the legal framework of the EU in terms of minority protection.

On the other hand, I have also shown that the protection of autochthonous minorities in Europe lacks the necessary political support of EU institutions and Member States as well. Although the European Parliament has adopted a number of resolutions on the protection of minorities in recent decades, these can be seen as a political rather than a legal basis. In contrast, the Commission, which has the exclusive right to kick off the EU legislative process, has never set the protection of national minorities on its agenda. The position of Member States is also crucial as in the Council they have a decisive word in the EU legislative procedure. However, several Member States have traditionally opposed the protection of national minorities in the EU.

My hypothesis is that, firstly, the EU is equipped with constitutional resources that allow for the development of EU secondary law that protects persons belonging to national minorities, and, secondly, the currently dominant policy approach rejecting the need for the EU level protection of national minorities may be successfully challenged. In the dissertation I sought to answer whether the ECI can be a suitable tool for these purposes. To this end I analyzed the ECI, as the tool of EU participatory democracy, and the two ECIs on the protection and promotion of rights and interests of national minorities, the *MSPI* and the *ECI on National Regions*.

During the research I came to the conclusion that these initiatives, and thus the ECI itself, could actually contribute to the development of the legal framework of the EU on the protection of national minorities. On the one hand, the General Court, in its judgment in Case T-391/17, *Romania v Commission*, on the registration of the of *MSPI*, concluded that there was nothing to prevent the Commission from submitting 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. The Court had made similar but less significant findings earlier with regard to the protection of minorities in the EU. In the *Bickel/Franz case*, for example, it found that the protection of a minority may constitute a legitimate aim. However, in Case T-391/17, *Romania v Commission*, the General Court essentially paved the way for EU

legislation on the protection of linguistic minorities and provided an important reference point for future arguments regarding the Commission's powers in this respect. This finding is also historic because it annulled the earlier prevailing view that the Commission had no legal basis to initiate legislation for the protection of such minorities. In terms of the legal framework of the EU on the protection of persons belonging to national minorities, one of the most important developments of the *ECI on National Regions* is that the Court of Justice of the European Union consistently used the concept of 'national minority region', making the term a reference point of EU law.

On the other hand, with regard to their contribution to the EU's legal protection system, none of the initiatives can be considered a closed chapter. Thus, the analysis of these initiatives in terms of their capacity to develop the rights of persons belonging to national minorities cannot be complete. Until the submission of this dissertation (August 31, 2020), the Commission has not yet published its communication on the *MSPI*, so we do not know yet the Commission's legal and political conclusions on the proposals or whether it will submit proposals for legal acts of the Union. The signature collection of the *ECI on National Regions* is still ongoing, thus, it could also lead to EU legislation.

Another key finding of the thesis is that these ECIs can actually contribute to easing the political objection of the EU institutions and the Member States against the protection of national minorities on EU level. 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 forced the Commission to address the issue of the protection of autochthonous minorities. The European Commission has never set the protection of national minorities on its agenda before. In addition, the support of more than 1,1 million EU citizens generally gives strong legitimacy to the protection of national minorities at EU level. However, this does not mean that the Commission's policy approach has changed. I will only get an exact answer to this question when the Commission responds in substance to the proposals presented by the organizers of the *MSPI*. Moreover, the initiative may also have the potential to positively influence the position of Member States as well. The Federal Union of European Nationalities (FUEN), as the supporting organization of the *MSPI*, has recently been very active in lobbying for the initiative. They approached representatives of several Member State governments to obtain their support for the proposals submitted under the *MSPI* in the event that the Commission initiates legislation at a later stage.

The measurable impact of the *ECI on National Regions* in terms of the promotion of interests cannot yet be properly assessed due to the ongoing signature collection. However, regardless of the outcome of the collection of statements of support, the initiative opened an important chapter in the protection of national minorities at EU policy level. If the collection of signatures is successful, it can give another impetus to minority protection advocacy processes. Furthermore, we cannot ignore the impact of the *MSPI* on this initiative, as both

initiatives focus on the protection on national minorities. However, if the organizers do not manage to collect the necessary statements of support from at least seven different Member States, the organizers have a number of opportunities to keep the topic on the agenda, both in the European Parliament and in the Member States concerned.

In the second part of the dissertation I discussed the role of civil society in the ECI procedure, as well as the conditions necessary for an ECI to be successful. I have come to the conclusion that, although inviting the Commission to submit a proposal for a legal act of the Union through the vehicle of the ECI is an individual right of EU citizens, in practice this instrument requires the contribution of different organizations both at European and national level. In recent years civil society organizations have become indispensable actors of the EU decision-making process. Civil society organizations provide a direct link between EU citizens and institutions, they channel citizens' views into the EU decision-making mechanism, and through this contribution they deliver expertise to EU decision-making bodies. The main finding of this chapter is that the involvement of NGOs is essential for the success of ECIs. This is supported both by the views of scholars studying the ECI and the result of empirical research on the subject. Concerning the involvement of NGOs in the ECI process, I found that the ECI has not become a tool for Brussels-based lobby groups as it did not primarily mobilize actors close to the EU institutions in the 'Brussels bubble', but introduced new actors to EU processes.

Furthermore, I came to the conclusion that those ECIs can collect the required one-million signatures from seven different Member States which, on the one hand, are backed by large organizations with a European network, and, on the other hand, can concentrate the collection of signatures in one or two Member States where the number of statements of support will be exceptionally high. Therefore, the European network and the concentration of the signature collection campaign to the leading Member States proved to be essential requirements. In addition, the initiative needs to be adequately funded. These findings were also confirmed by the two minority-related ECIs examined in detail. The difference between the outcomes of the two initiatives can be traced back to the existence and absence of these factors.

In its fourth part, the thesis attempted to answer the central questions of the research, namely, to what extent and under what conditions the ECI be may considered an effective tool to promote the interests of national minorities in the EU. Although the ECI was created to bridge the gap between EU citizens and institutions, it cannot fulfill this task. On the one hand, it has not been able to solve the EU's democracy deficit and it has not brought its citizens closer to the Union. The ECI has left the Commission's monopoly position in the legislative process untouched as there is nothing to force the Commission to comply, even partially, with the proposals made by successful initiatives after gathering the support of over one-million EU citizens. By not taking any action in case of three ECIs successfully gathering the necessary

signatures, the Commission, in contrast to the aim of the ECI, would just further widen the gap between EU citizens and institutions instead of closing it. Therefore, I concluded that the instrument has political rather than legal relevance. For this reason, I have further examined the ECI as a ‘Political Opportunity Structure’ of the EU.

The efficiency of the ECI, as a policy advocacy tool, is negatively affected both by the lack of citizen awareness surrounding the instrument and the fact that the formal requirements of the ECI are not proportionate to its potential legal effects. Both of these factors can significantly reduce the ECI’s advocacy potential as it drives EU citizens and their representative organizations to resort to other means to enforce their political interests. The primary political advocacy power of the ECI lies mainly in its ability to effectively thematize certain issues at European level. In addition, the ECI’s advantage compared to other advocacy tools and opportunities is that, on the one hand, it can force the Commission to take a position on contentious issues that would not otherwise have been on the agenda, and, on the other hand, it can also raise issues that are traditionally considered to be the responsibility of the Member States to the level of EU policy.

The ECI may be a suitable tool to thematize certain issues on Member State level as well, and thus, to promote national legislation on the matter. In terms of the ‘added value’ of the ECI I concluded that not only those initiatives can be considered ‘successful’ which successfully completed the whole lifecycle of the ECI process (i.e. ending with the submission of a proposal for a legal act of the Union). Those initiatives that failed the process at some point, for instance not collecting the necessary number of statements of support, might also be successful from a practical point of view, if they trigger the desired political or legal developments at European or national level.

The main conclusion of the dissertation is that the ECI, as an instrument of participatory democracy in the EU, may be a suitable tool for the protection and promotion of rights and interests of persons belonging to national minorities. This is also confirmed by the two ECIs examined. These initiatives represent a major step forward in the protection of minorities in the EU, therefore, I can conclude that the organizers of these ECIs have effectively used this tool to protect and promote the rights and interests of national minorities.

Nevertheless, it is debatable how useful the ECI can be in the future for such purposes, as this future capability depends to a large extent on the Commission’s response to the *MSPI*. If the Commission categorically rejects initiating EU legislation, it may well be of a negative impact on the protection of national minorities in the EU. Such a rejection, based on legal or political conclusions, may deter EU citizens, civil and political actors from launching minority protection initiatives and may provide a basis for both the EU institutions and the Member States to refuse to set the extension of the EU minority protection system on the political agenda. What is certain is that the *MSPI* will finally make the Commission present its legal and political conclusions on the substance of the proposals, but it is not yet clear whether this will

open up new opportunities for the protection of national minorities in the EU or render the issue irrelevant for many years to come.

The protection of national minorities is an extremely sensitive political issue. However, the European Union, as a community based on certain fundamental values, must not turn a blind eye to the problems arising due to the inadequate EU regulation on the protection of national minorities. The lack of a minimum set of EU rules, which can be interpreted as a yardstick, can give rise to anti-minority manifestations in the Member States, which jeopardize the faith in European integration and the trust in the European Union as a supranational entity. The Union should therefore act not only for the sake of the human dignity of persons belonging to national minorities, but also to protect the Union's character of a community based on values and its political stability.

IV. List of publications related to the area of research

1. TÁRNOK Balázs: Az őshonos nemzeti közösségek helyzetének védelme és előmozdításának lehetőségei az Európai Unióban, különös tekintettel a szlovákiai magyarság és az európai kisebbségek nyelvhasználati jogaira. In: Dr. TAMÁS Csaba Gergely (szerk.): *Magyarország és a közép-európai térség az Európai Unióban, Díjnyertes pályázatok 2014.* Országgyűlés Hivatala, 2016.
2. TÁRNOK Balázs: Régi és új kisebbségek Európában – A migrációs válság lehetséges hatásai az őshonos/hagyományos és a bevándorló kisebbségek jogaira. *A kisebbségek jövője a globalizálódó világban – tanulmánykötet*, Magyar ENSZ Társaság, 2016.
3. TÁRNOK, Balázs: 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. In: Marcel SZABÓ – Petra Lea LÁNCOS – Réka VARGA (eds.): *Hungarian Yearbook of International Law and European Law 2016*, Eleven Publishing, The Hague, 2016.
4. TÁRNOK Balázs: Az Európai Törvényszék ítélete a Székely Nemzeti Tanács európai polgári kezdeményezése ügyében. *Jogesetek Magyarázata*, 2016/4. szám, 2016.
5. LÁNCOS, Petra Lea – TÁRNOK, Balázs: Regional Policy. In: SZABÓ, Marcel – LÁNCOS, Petra Lea – GYENEY, Laura – DEBISSO, Kinga (eds.): *Union Policies*. Eleven International Publishing, 2016.
6. TÁRNOK, Balázs: 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*, European Centre for Minority Issues, Vol 16, No 1, 2017.
7. TÁRNOK Balázs: A Törvényszék ítélete a Minority SafePack kontra Bizottság ügyben. *Jogesetek Magyarázata*, 2017/1-2. szám, 2017.
8. VARGA Péter – TÁRNOK Balázs: Európai polgári kezdeményezések a nemzeti kisebbségek védelmében, *Kisebbségi Szemle*, 2017/3. sz.
9. TÁRNOK Balázs: Bevezető – Jelentések a nemzeti kisebbségek jogainak védelméről az Európa Tanácsban és az Európai Parlamentben, *Kisebbségi Szemle*, 2018/1.
10. VARGA, Péter – TÁRNOK, Balázs: European Citizens' Initiative s for the Protection of National Minorities. *Hungarian Journal of Minority Studies*, Vol. II, 2018.

11. TÁRNOK Balázs: A diszkrimináció tilalma és az egyenlő bánásmód elve az Európai Unióban. In: SZABÓ Marcel – LÁNCOS Petra Lea – GYENEY Laura – DEBISSO Kinga (szerk.): *Az Európai Unió jogi fundamentumai*. Pázmány Press: Budapest, 2018.
12. TÁRNOK Balázs: A Minority SafePack európai polgári kezdeményezés és a magyarországi aláírásgyűjtés tapasztalatai. *Létiünk folyóirat*, 2019/2. szám, 2019.
13. TÁRNOK Balázs – WÁGNER Tamás: A nemzeti kisebbségek védelme az Európai Unióban. In: SZABÓ Marcel, LÁNCOS Petra Lea és GYENEY Laura (szerk.): *Uniós szakpolitikák*. Pázmány Press, Budapest, 2019.
14. TÁRNOK Balázs: Az európai polgári kezdeményezés működési nehézségei és az európai polgári kezdeményezésről szóló rendelet felülvizsgálata. *Iustum Aequum Salutare*, XVI. évf., 2. szám, 2020.
15. TÁRNOK Balázs: A koronavírus hatása a kisebbségvédelmi tárgyú európai polgári kezdeményezésekre. *Rendszerváltó Archívum*, 2020/2 – Trianon 100, Rendszerváltás Történeti Kutató Intézet és Archívum, V. évf., 2. szám
16. TÁRNOK Balázs: A civil szervezetek szerepe az európai polgári kezdeményezésekben, különös tekintettel a nemzeti kisebbségek jog- és érdekvédelmével kapcsolatos kezdeményezésekre. *Kisebbségvédelem*, forthcoming.
17. TÁRNOK, Balázs: European Citizens' Initiative s for the Protection and Promotion of Rights and Interests of National Minorities – Latest Developments. In: *Hungarian Yearbook of International Law and European Law 2020*, Eleven Publishing, The Hague. Forthcoming.