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European Citizens Initiative and minority protection

(dissertation)

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Short introduction

Nowadays in democratic countries, it is a crucial question how the social participation can be raised.
Representative democracy presents the will of the majority and the voters can only influence politics by the elected MPs or the elections. Hence, a lot of views have no chance to be heard. By contrast, participatory democracy can supplement these deficiencies by creating other ways for minority views. Consequently, it is getting more and more inevitable to provide space for ordinary citizens to secure the legitimacy of the government. We can say that it is a common European tendency to bring the political sphere closer to the voters. For this reason, the instruments of popular initiatives and referendums were introduced.
All these receive a special attention in the European Union. Although, it was a typical economic cooperation at its initial phase, it gradually became a political actor which has a significant effect not only on the sovereignty of the Member States but also on their citizens. Thus, several politicians, experts and theorists urged the Member States to create link between the citizens and the political sphere. Besides, the issue of the so-called democratic deficit also contributed to the development of participatory democracy on European level.
One of the major steps was the direct election of the European Parliament for the first time in 1979. It was followed by the European citizenship which was introduced by the Maastricht Treaty. Its aim was to constitute a direct link between the European institutions and the citizens of the Member States to enhance the legitimacy of the European Union. Thus, it provided special rights without replacing the citizenship of the nationals such as: right to petition, participation at EP-elections, consults the European Ombudsman etc. In 2009, the Lisbon Treaty further strengthened these entitlements by adding the instrument of ECI. It enables European citizens to initiate a proposal at the Commission if 1 million signatures from 7 Member States are collected. It seemed a favourable tool to influence European politics, so several initiatives, including of minority protection subject were launched. This kind of enthusiasm anticipated success but the Commission's negative attitude questioned the application of the institution.
It was especially true for initiatives targeting minority protection which was unfortunately not surprising: it is a common belief that the EU is reluctant to this kind of issues. And it is not an accident: Member States wanted to retain control in this field arguing that it was part of their national sovereignty. Therefore, it is extremely difficult for minority communities to find a legal base in the Treaties which can be used as a reference. Most of the time, it arises whether the EU has a competence in this respect.
Nevertheless, I think that the ECI is one of the most effective tools for minority protection currently. In my dissertation, I try to prove that there are several ways to achieve these goals but we should be smart: direct approach is not a useful idea. However, the large number of national minorities and their values to the development of the Integration require a unique regulation on European level. All these must be well-founded and linked with other fields

where the EU has competence. We cannot blame always the European institutions. The success depends on us, too.

The European Citizens Initiative: origin, aims and remarks

After the failure of the Constitutional Treaty, the Lisbon Treaties entered into force in 2009 which kept most of the amendments envisaged by the planned European Constitution. One of them was the ECI which seemed a great success for the civil society and organizations who had been fighting for a real participatory tool on European level for more than 20 years[1]. Accordingly, European citizens were enabled to participate in the legislative process, although indirectly. Why is it so important? What were the reasons for the delay?

It is well-known that the European Integration began as a transnational economic cooperation. It is enough to take a glance at the following expressions: European Economic Community, European Coal and Steel Community and EURATOM. These were the 3 Communities which served as a basis of today's EU. At that time, nobody thought of the involvement of the citizens because it did not have much impact on them. It reflected in the institutional system as well. The Assembly as the predecessor of the EP was not an elected organ: its members were delegated by the Member States.

Nevertheless, the ECJ pointed out in its early rulings that the Member States created a unique cooperation by the adoption of the Founding Treaties which exceeded the level of other transnational organization by constituting a special and independent legal system. In Costa v. ENEL, the Court declared it as followings: *"By creating a Community of unlimited duration, having its own institutions, its own personality, its own legal capacity and capacity of legal representation on the international plane and, more particularly, real powers stemming from a limitation of sovereignty or a transfer of powers from the States to the Community, the Member States have limited their sovereign rights, albeit within limited fields, and have thus created a body of law which binds both their nationals and themselves[2]".*

As a result, it became obvious that the involvement of the European citizens into the European Integration was inevitable. The Assembly transformed into the EP elected by the nationals of Member States in 1979. Thus, the basis of their representation was established on European level.

In the meantime, it turned out from the second half of the twentieth century that this system could not solve every issue, especially the local ones: the citizens demanded to participate in public life not only in the elections but also in the period between them[3].

Because the role of the representative democracy is to present the will of the majority by giving opportunity to everyone's view to be formed. Despite that it does not always mean an appropriate alternative for voters to be heard. Thus, this situation required other methods which were manifested in the direct/participatory democracy. Its aim is to involve the civil society into the policy-making processes which could enhance the legitimacy of the decisions. It should be noted that it cannot replace the representative democracy. Its role is only to

[1] Pawel GLOGOWSKI & Andreas MAURER: The European Citizens' Initiative- Chances, Constraints and Limits. *Political Science Series*, Institute for Advanced Studies, Vienna, April 2013. https://www.ihs.ac.at/publications/pol/pw_134.pdf. 7.

[2] Paul CRAIG- Gráinne de BÚRCA: EU Law, Oxford University Press, 2015. 267-268.

[3] REISINGER Adrienn: Részvételi demokrácia és társadalmi részvétel- Elméleti megközelítések *[Participatory democracy and social participation- Analytical approaches]*. *Civil Szemle*, 2009/4. http://www.civilszemle.hu/downloads/cikkek/2009/21szam_2009_4_Reisinger_5-23.pdf. 5.

supplement the deficiencies of the former: both are needed for a country having a flourishing democracy[4].

Despite these facts, one can still argue why it is so necessary in a modern society or even in the European Union. Well, it is well-known that every decision is based on legitimacy. However, representative democracy cannot fulfil this criterion completely due to its nature. People can vote for political parties and MPs but they cannot influence the composition of the Parliament after the election. So, it is possible that the ruling party lost its popularity during the governance but it can still adopt measures affecting the citizens. One can state that these decisions lack societal basis, therefore their legitimacy is in tatters. Unfortunately, this system offers the next election as the only solution from this trap which is essentially independent from the voters (although they can influence the MPs to change their mind). Thus, it can result a growing frustration, political apathy in the society which could endanger the stability of the democratic system.

By contrast, direct democracy can eliminate these deficiencies by involving the civil society in the policy-making process to enhance the legitimacy of the decisions. At first, it can promote participation in public life: people can feel that they can make decisions influencing the political sphere. On the other hand, it often occurs that elected representatives put the interest of privileged elites before ordinary citizens, in addition at the expense of them. Direct democracy can counteract these tendencies by enabling referendums, popular initiatives to protect general interest. Furthermore, when citizens vote for political parties, it is a typical problem that they can only choose between different packages. Therefore, it can happen easily that a given party won the election due to its favourable economic policy but it is quite unpopular in the field of public health. In this case, direct democracy enables nationals to separate different measures based on their preferences creating balance between legislation and the civil society. Last but one, politicians also use this device to endorse their shift in policy or to authorize crucial political steps. For instance, it is quite common that countries hold referendums before joining the NATO or the EU.

Nevertheless, it has several pitfalls. First, it presumes that the voters are competent and having the information required. However, in several cases they are not. Secondly, there are certain issues which are quite complicated so that it is difficult to transform those into a question of a referendum e.g.: long term policies. Moreover, it can be used as a tool to avoid responsibility. Politicians can sometimes refer politically unpleasant issues to the public. For instance, this was the situation in the case of the British referendum leading to the Brexit. Besides, further arguments can be also mentioned against this measure such as the risk of being exploited by lobby interest or authoritarian/populist abuse[5].

All in all, we can say that direct democracy, as other political "product", has its own shortcomings but it can supplement the errors of the representative democracy.

After that, it is worth coming back to our case and examining how it influenced European politics. As we can see from the jurisprudence of the ECJ, it was inevitable to deal with the question of legitimacy and public endorsement. Unfortunately, these were far complicated on European level because of their unique structure.

The academic literature refers to these problems as democratic-deficit in the European Union. One of the crucial issues is the different level of legitimacy concerning the EP and the Council. According to Article 10 TFEU, these institutions are co-legislator whose functions

[4] SASVÁRI Nóra: Hogyan segíti a részvételt az Európai Polgári Kezdeményezés? *[How can the ECI contribute to the social participation?]*. *Civil szemle*, 2015/1.
http://www.civilszemle.hu/downloads/Civil_Szemle_2015_1_web.pdf. 63-64.

[5] Direct democracy. Institute for democracy and electoral assistance, August 2014.
http://www.constitutionnet.org/sites/default/files/direct_democracy_0.pdf. 4-7.

are based on representative democracy. The former is elected by the nationals of the Member States in contrast with the latter which is composed of the ministers of the Member States. In this context, it would be improper to assume that MPs of the Council represents a national standpoint: they can only indicate the will of their governments. As we could see, the EP has a stronger legitimacy. Despite these facts, the Council still entitled to independent legislation. Besides, several competences belong to legislative power on national level which is attached to the executive power on European level[6]. On the other hand, the structure of the EP also leaves much to be desired. First, the voting system is not harmonised, therefore the Member States determine who can vote on the European elections. Furthermore, the seats retained for Member States can be also criticised[7]. I disagree with the latter because a proportional system would diminish almost completely the role of the minor countries and the EU would be the game of the big ones. Thirdly, there are no European party lists, just national ones[8].

Thus, the citizens cannot encounter with pan-European topics. Besides, it is quite common that these elections are overwhelmingly ruled by internal politics and the composition of the EP is based on the parties of the Member States. As a result, the European identity could not develop which is regarded a fundamental factor to the legitimacy of the EU by several experts. In addition, there was no such an effective mechanism for channelling the voices of the nationals. The directly elected European Parliament could not fulfil this role: the participation rate decreased steadily in the last 30-35 years[9]. In 1979, it almost reached 62% which fell to 43% by 2009. All these are surprising because the European citizens are generally content with the state of democracy in the European Union[10].

Isn't it a contradiction? In my opinion, it clearly indicated that the Integration should have been brought closer to the voters by establishing real chance of public participation. In this context, it is worth drawing the attention to the fact that there were nearly fifty referendums on European issues. In several cases, the citizens forced the politicians to be heard. On the other hand, the elite also exploited this method to achieve its goals. Nevertheless, as Cheneval pointed out, it brings up several problems. First, it is discriminative to the citizens of other Member States because it is not a generally used measure in the EU. Besides, Member States holding such referendums have stronger basis in the negotiation. Furthermore, it could hinder or even undermine the development of the Integration. For instance, during the ratification process of the European Constitution, Netherlands and France held plebiscites which proved to be an obstacle for the adoption of the Treaty. I think it is the biggest danger of this method: only 1 Member State can block reforms. By contrast, we cannot blame people or even "backward" politicians. As Mair also stated: the European elites did not provide sufficient forums to the citizens who could not present their proposals so they refused the Union as a whole[11].

Consequently, the direct democracy in the EU had to be strengthened or the Community risked losing its credibility in the long term undermining the prospects of the Integration. For

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[6] NAVRACSICS Tibor: A demokrácia problémája az Európai Unióban *[The problem of democracy in the European Union]*. *Politikatudományi Szemle*, 1998/1.
http://www.poltudszemle.hu/szamok2/1998/1998_1szam/navracsics.pdf. 53-54.

[7] KNAPP László: A részvételi demokrácia modelljei és az Európai Unió legitimitása *[The models of participatory democracy and the legitimacy of the European Union]*. In Szoboszlai-Kiss, Katalin – Deli, Gergely (szerk.): Tanulmányok a 70 éves Bihari Mihály tiszteletére. Universitas-Győr, Győr, 2013. 283-284.

[8] KÖRÖSÉNYI András: Demokráciadeficit, föderalizmus, szuverenitás *[Democracy-deficit, federalism, sovereignty]*. *Politikatudományi Szemle*, 2004/3.
http://www.poltudszemle.hu/szamok/2004_3szam/2004_3_korosenyi.pdf. 146.

[9] KNAPP op. cit. 285-286.

[10] ANTAL Attila: Az európai közvetlen demokrácia felé *[Towards the European direct democracy]*. *Civil Szemle*, 2010/1.
http://www.civilszemle.hu/downloads/cikkek/2010/22szam_2010_1_Antal_35-56.pdf. 53.

[11] KNAPP op. cit. 286-288.

this reason, the European legislator gave up the obsolete "market citizens" concept and introduced the legal term of Union citizenship by the adoption of the Maastricht Treaty. Thus, the nationals of the Member States ceased to exist as mere economic characters: they were conferred with political rights and duties (Article 20 TFEU). Nevertheless, it does not mean that Union citizenship can replace Member State citizenship; instead it supplements the former to accomplish the provisions of the Treaties. According to various experts, it can contribute to the development of a future European society or even to the federalisation of the EU[12].

Maybe these expectations are possible but after the introduction of a new device, it takes time to be recognised and accepted by the public. All these were also true in our case. It was clear that the aim of the legislator was to enhance further the role of direct democracy in the EU by conferring citizens with the following rights:

- Right to petition to the EP
- Apply to the European Ombudsman
- Address the institutions and advisory bodies of the Union an any of the Treaty languages and to obtain a reply in the same language

However, these provisions still did not provide sufficient influence on the nationals of the Member States. Despite establishing direct link with the institutions, there were still some deficiencies. For instance, only individual measures were possible to be taken and their features seemed weak from certain aspects.

On one hand, the nature of the Ombudsman's procedure did not allow to adopt legally binding acts because its function was to mark the problematic fields or to give opinions. Thus, these acts could not be challenged before Courts. On the other hand, the petition did not guarantee any outcome. It provided only a platform for the citizens to express their case to the EP. Although, it established an effective feedback regarding the application of the European law to eliminate discrepancies in the legal system[13].

All these meant that the nationals of the Member States still could not initiate measures of general scope which would have made them equal to the co-legislators of the EU who could ask the Commission by simple majority to put forward a proposal (although the COM is not obliged to act). Thus, they could feel being treated inferior in the European Integration. In this context, I already mentioned that the role of EU referendum became almost unquestionable: by leaving no other possibility to channel their voice, it was the only way for the citizens to be heard. Here, it is not necessary to repeat myself about the pitfalls of this tool.

These concerns were also noticed by the European legislator who saw a chance in this regard. In the light of these facts, it was not surprising that the Constitutional Treaty established the ECI as a new entitlement of Union citizenship. Despite it did not enter into effect due to the refusal on referendum by France and Netherlands, it was put into the Lisbon Treaties in unaltered form. As we can see, a typical state measure appeared on European level. One can argue why the legislator did not seize the opportunity to introduce an EU-wide referendum mechanism. In my opinion, it seems to be reasonable from a certain point of view because it could make similar governmental efforts senseless. Nevertheless, it would have raised several concerns. First, Member States could interpret this step as a violation of their sovereignty. Furthermore, it would have been difficult to draft a unified regulation due to the various methods used by Member States. Finally, we also had to take into consideration that some issues had absolutely different judgement in the EU. For instance, citizens of Central European states would not be interested in holding a referendum concerning fishery which would entail lower turnouts undermining the legitimacy of these initiatives.

[12] OSZTOVITS András: EU-jog *[EU Law]*, HVGORAC, Budapest, 2012. 338.
[13] OSZTOVITS op. cit. 350-354.

Therefore, the legislator chose popular initiatives as a device for enhancing public participation in EU matters. According to the academic literature, it can be direct or indirect. The former enables voters to decide certain issues on referendums while the other one obliges the Parliament to hold a debate on the question proposed by the citizens[14]. The Lisbon Treaties favoured the latter due to the unique structure of the EU. Because nor the EP, nor the Council are eligible to put forward a proposal, it is the exclusive right of the Commission. Thus, the nationals of the Member States have to submit their initiatives to the Commission who functions as a filter in this process: it is not obliged to act, even if the proposal fulfilled the criteria[15].

Despite all these, it was overwhelmingly welcomed by the experts, politicians and the European institutions. As Jürgen Meyer, the "father" of ECI, featured: its aim is *"to bring Europe closer to the people, as Laeken recommended. It represents a large step in the democratisation of the Union. It will extend the existing right of petition to a right of the citizens to present legislative proposals to the Commission of the EU[16]"*. The Commission emphasised that *"it will add a new dimension to European democracy, complement the set of rights related to the citizenship of the Union and increase the public debate around European politics, helping to build a genuine European public space. Its implementation will reinforce citizens' and organised civil society's involvement in the shaping of EU policies[17]"*. The Commission's standpoint shows similarities to Warleigh who argued that *"the formal granting of such ability to citizens, acting collectively, would be unparalleled in the history of international organisations and would thus have potentially enormous significance[18]"*. All these indicated that the introduction of the ECI was surrounded by great expectations. Many hoped that it could solve one of the most crucial long existing problems of the EU: the so-called democratic deficit.

In the light of these, I will analyse the procedure and conditions of ECI by considering the remarks and critics made by the European institutions, advisory bodies, experts and the civil society. As I mentioned before, it is a new instrument inserted in unaltered form from the Constitutional Treaty to the Lisbon Treaties. Primary law sets out the framework which is specified by Regulation No. 211/2011. According to Article 11(4) 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"*. In accordance with that, Article 24 TFEU prescribes that the procedures and conditions must be approved by an ordinary legislative procedure. Besides, several other provisions of the primary law confirm its place in the Treaties. For instance, Article 1 TEU declares that the decisions must be made as close to the citizens as possible. Furthermore, Article 10(3) TEU supplements it by ensuring civic involvement in EU policies. Article 11 TEU went further: European institutions are obliged to provide consultation, transparency and openness to the citizens and civil organizations.

All these indicate that the ECI lies on clear legal basis. Thus, I agree with the standpoint of those in principle who saw it as a suitable to channel the will of the public[19]. Nevertheless, we

[14] ANTAL op. cit. 36.
[15] BAKÓ Beáta: Kikerülhető jogalkotás - Az európai polgári kezdeményezés jelene és jövője *[Evitable law-making- Present and future of the ECI]*. http://www.jogiforum.hu/hirek/31635
[16] GLOGOWSKI & MAURER op. cit. 7.
[17] Green paper on a European Citizens' Initiative. European Commission, 2009. http://ec.europa.eu/dgs/secretariat_general/citizens_initiative/docs/com_2009_622_en.pdf
[18] GLOGOWSKI & MAURER op. cit. 9.
[19] GÖRÖG Dóra: Elemző sorok az európai polgári kezdeményezésről *[Short analysis on the ECI]*. In Doktori Műhelytanulmányok 2015, Széchényi István Egyetem, Állam- és Jogtudományi Doktori iskola, Győr, 2015. 60.

will see that certain provisions of the adopted regulation caused serious misunderstandings and disputes.

Coming to the details of the procedure, only natural persons with Union citizenship can launch an initiative. Further requirement is that they must be eligible to participate in European elections. Organizations cannot be initiators but they can act as promoters. In this context, it is worth mentioning that the Green Paper of the Commission did not contain this limitation. Attila Antal noted that it could be important to the European civil sphere[20]. In my opinion, the latter provision was incorporated into the regulation to avoid the abuse of various lobby groups. As Péter Téglás also pointed out, there was an initial fear that the ECI could be an effective tool in the hands of these groups. However, it has been not confirmed till now. According to various authors, there are more efficient and cheaper ways to influence European policy. Furthermore, it takes a lot of time to go through with an initiative[21]. It is much easier for them to build strong connections to the representatives of the EP or the members of the Commission.

Before launching an ECI, the organisers must set up a citizens committee consisting of 7 persons from different Member States regarding their residence. Besides, they have to designate a representative and a deputy as contact persons to provide suitable link between the European institutions and the committee. It should be noted that representatives of the EP cannot be counted to the minimum number required for a committee. In my opinion, this stipulation, like the former, tries to exclude the possibility of political influence on initiatives because the real aim is to maintain an effective tool for the citizens. In this regard, only a suspected political influence can ruin the credibility of this new instrument. Nevertheless, it will be worth looking at the other side. What are the safeguards of neutrality in the case of the Commission?

In the next step, the organisers must register their initiative at the Commission by forwarding the relevant data, including the subject matter, in one of the official languages of the EU. After a successful registration process, they can do it in other official languages, although it is the initiators' duty to bear the expenses incurred regarding translation. In this context, they drew the attention to the fact that it is very bureaucratic and not very user-friendly on the EC website. In addition, the Body does not provide sufficient assistance, just simply rejects or approves the translations. Besides, the process is also hindered by the different forms used for collecting statements of support. According to various calculations, 40 forms are needed to run an EU-wide campaign[22].

Returning to the necessary information, three issues should be mentioned:

- Subject matter of the initiative
- Financing of the initiative
- Complementary information

From these, it is worth starting with last one. If we look at the Annex II of the Regulation, we would not think it can cause any problem: it serves as a background to the initiative. Nevertheless, the Commission in the Minority Safepack case treated it as an only indicative tool which did not constitute the integral part of the submitted material. On the contrary, the General Court stated in Izsák and Dabis v. Commission that the Body was obliged to take into consideration every information available regardless it was in the interest of the organisers or

[20] ANTAL op. cit. 50-51.

[21] Peter TEGLAS: The European citizens' initiative (un) successful tool of deliberative democracy; present state and future perspectives. http://ecit-foundation.eu/wp-content/uploads/2015/11/Peter_Tegas_The_European_Citizens_Initiative_2015.pdf. 4.

[22] ECI Support Centre response to the European Ombudsman own inquiry into the functioning of the European citizens' initiative (ECI) 01/9/2013/TN. 31.03.2014. https://www.democracy-international.org/sites/default/files/PDF/Publications/eci_support_centre_response_to_the_european_ombudsman_own_inquiry_into_the_functioning_of_the_european_citizens_initiative.pdf

not[23]. All these endanger legal certainty and place the initiators into an unusual status: more information can be detrimental to their aims. In my opinion, a firm stance on this issue by the ECJ is inevitable.
It is also an important question what conditions must be fulfilled and what the organisers can request in their registration claim. Relating to the latter, citizens can hope the acceptance of those initiatives which subject matter is in the competence of the Commission conferred by the Treaties. Accordingly, they can request measures related to exclusive competence, shared competence and competence only to act to support, coordinate or supplement Member State action. It also should be mentioned that the type of legal act must comply with the category of competence applying to the subject matter concerned. Thus, it is a key factor whether the organisers can mark the appropriate legal base for their initiative. If not, the registration will be automatically dismissed by the Commission.
Another issue is the scope of the term "legal act". According to Article 288 TFEU, it also contains legislative and non-legislative measures, such as recommendations and opinions. In my opinion, it can be useful for the citizens because it increases the chance of approval and can still influence European policies[24].
Further question is whether the organisers can request the amendment of the Treaties through an ECI. If we look at Article 11(4) TEU literally, it seems to be out of the Regulation's scope: *…." for the purpose of implementing the Treaties"*. This assumption was also confirmed by the Commission in the initiative "My vote against nuclear power" stating *"the legal bases of the TEU and the TFEU cannot be interpreted as giving the Commission the possibility to propose a legal act that would have the effect of modifying/repealing provisions of primary law"*. By contrast, several authors are on the opposite point of view. As M. Dougan says, Article 11(4) TEU does not exclude ECIs requesting for the amendment of the Treaties because Article 2 and 3 TEU setting the values and the objectives of the EU could underpin these claims[25]. Thus, it will be interesting to see the standpoint of the ECJ how it will decide on this issue.
Returning to the registration process, the submitted initiative must meet the following criteria (Article 4(2) of Regulation No 211/2011):

- The citizens committee is formed and the contact persons are designated
- The proposed initiative does not fall manifestly outside the competence of the Commission
- The proposed initiative is not manifestly abusive, frivolous or vexatious
- It is not manifestly contrary the values listed in Article 2 TEU

One of the most typical failures of the proposals was that they fell out of the scope of the Commission. According to various statistics, 40% of the initiatives were refused for this reason. This problem can be traced back to the fact that the organisers lack the legal knowledge to submit an appropriate application[26]. On the other hand, the regulation does not explain the content and the scope of the term "manifestly falling outside". We can use only the interpretation of the Commission which analyses the expression as the following:

- Outside: there are no Treaty provisions which can be served as a legal basis for legal act related to the subject matter of the ECI
- Manifestly: if the conclusion does not depend on factual circumstances.

[23] TÁRNOK Balázs: A Minority SafePack európai polgári kezdeményezés az Európai Unió Bírósága előtt [*Minority Safepack before the European Court*]. *Pázmány Law Working Papers*, 2016/31. 10.
[24] The European Citizens' Initiative registration: Falling at the first hurdle? ECAS Brussels, December 2014. http://www.ecas.org/wp-content/uploads/2014/12/ECI-report_ECAS-2014_1.pdf. 9-10.
[25] Franklin DEHOUSSE: The European Citizens' Initiative: Next big thing or new false good idea? *Egmont Paper 59*, July 2013, Academia Press. http://aei.pitt.edu/43286/1/ep59.pdf. 23-24.
[26] European Citizens' Initiative- First lessons of implementation. Directorate-General for internal policies, Policy department, Citizens' rights and Constitutional affairs, 2014. 28.

As we can see, this kind of interpretation could be difficult for initiators. In addition, the ECJ did not approve its own standpoint[27]. Hence, all these can lead to arbitrary decisions such as in the Minority Safepack case or the Izsák-Dabis v. Commission. Here, the Commission's standpoint seemed to be incoherent because it stated the manifest error after an in-depth scrutiny. In this regard, Balázs Tárnok emphasised that the Body was both a mentor and a judge in the case which indicated a conflict of interests.
Further questions were raised in this context, such as the partial registration. The wording of the regulation says that the Commission must dismiss the initiative if the conditions required are not fulfilled. Nevertheless, it did not mention the latter opportunity. Thus, it should mean that those parts of the initiative complying with the competence of the Union cannot be refused: these are not packages. Supporting his view, Balázs Tárnok referred to the jurisprudence of the ECJ regarding the partial annulment of legal acts. Accordingly, it is only possible if the relevant elements can be separated from each other without changing the substantial content of the act concerned[28]. Unfortunately, it was not confirmed by the General Court in the Minority Safepack case. Moreover, the Body also held that the resolution of the Commission would have made the submission of a new ECI more difficult just like the accomplishment of the aims regarding the encouragement of citizens' participation and to make the EU more accessible[29].
Like the admissibility criteria, the organisers often face financial problems. Because these data are essential already in the registration process, it is worth looking at the question in detail. According to various surveys, several factors can make an initiative expensive, such as the staff, translation, communication etc. If you want to run a successful campaign, you must count with 1 euro a signature, so min. 1 million euro is needed to have a chance. Besides, the citizens' committee cannot open a bank account due to the lack of legal entity. Thus, the ECI Support Centre urges the EU to set up a reimbursement system to facilitate the more effective participation of the citizens[30]. By contrast, a study drafted by the EP dismissed this opportunity for two reasons:

- There is less need for financial help in case of a successful initiative
- Reimbursement linked to stages would entail higher costs because of the verifications at different levels

As a result, the best option would be the EU operating grants which are open for every organisation pursuing an aim of general European interest or an objective that forms part of an EU policy. In addition, there would be no need to amend the EU law. If the following system continues, we must count with the exploitation of ECI by lobby groups who have more resources than average EU citizens[31].
Based on these, we can see that there are several hurdles even before the collection of signatures. If the Commission rejects the registration of the claim, it must inform the organisers concerning the reasons and the possible remedies. Otherwise, they can start to gather signatures and simultaneously the Body must set up a contact point whose tasks are information and assistance. In this context, several questions can arise. As we will see later, it

[27] The European Citizens' Initiative registration: Falling at the first hurdle? ECAS Brussels, December 2014. http://www.ecas.org/wp-content/uploads/2014/12/ECI-report_ECAS-2014_1.pdf. 10-11.
[28] TÁRNOK op. cit. 7-10.
[29] T-646/13- *Bürgerauschuss für die Bürgerinitiative Minority SafePack- one million signatures for diversity in Europe v. Commission.* {8}-{34}.
[30] ECI Support Centre response to the European Ombudsman own inquiry into the functioning of the European citizens' initiative (ECI) 01/9/2013/TN. 31.03.2014. https://www.democracy-international.org/sites/default/files/PDF/Publications/eci_support_centre_response_to_the_european_ombudsman_own_inquiry_into_the_functioning_of_the_european_citizens_initiative.pdf
[31] European Citizens' Initiative- First lessons of implementation. Directorate-General for internal policies, Policy department, Citizens' rights and Constitutional affairs, 2014. 22-24.

is also the Commission's duty to decide whether it propose a legal act or not. Consequently, it is both the mentor and the judge in each case which raises concerns over its neutrality.
Thus, it is not surprising that several solutions were drafted to ease this conflict.
Even before the introduction of this instrument, the Manifest of Salzburg (2009) urged the legislator to create a European Citizen Initiative Office as an advisory body during the procedure which could be also responsible for the electronic network of the initiative[32].
Like others, Péter Téglás also mentions that there is a need for a qualified and independent civil society helpdesk which would provide not only legal assistance but also training courses (Citizens' Initiative Centre). Besides, it is also important that it cannot be under the control of European institutions. The participation of civil organisations in the system would ensure plurality and objectivity. The main tasks of the Centre would be the following:

- Share best practices and other's experience
- Provide legal, IT and linguistic support[33]

Finally, it is worth emphasising the proposal of ECAS which would establish an ECI Officer like the Hearing Officer in competition law. The officer could serve as a mediator between the European institutions and the organisers to maintain dialogue, resolve disputes and to give assistance in the identification of legal bases[34].
All these indicate that the controversial role of the Commission in the procedure should be solved to facilitate the participation of citizens in the European dialogue. Hence, I also share the idea to separate the tasks of the Body.
Returning to the procedure of ECI, the next step is to collect the signatures required in 12 months either on paper or in electronic form. According to the Regulation, it must be minimum 1 million coming from at least 7 Member States of the EU (1/4 of the Member States). It should be noted that there are thresholds for every country which must be fulfilled by the organisers. These numbers are based on the numbers of the MPs in the EP multiplied by 750. Compared to the forms of direct democracy existed in the Member States, we can say that it is quite lenient, especially for the required number of signatures: it is only 0,2% of the EU's population[35]. Nevertheless, there were huge debates over these numbers which can be indicated by the Green Paper of the Commission. The draft of the current regulation was also rendered by Article 11(4) TEU stating the 1 million signatories must be the citizens of a significant number of the Member States. A lower threshold could threaten the aims of ECI by letting particular issues to be raised. By contrast, a higher one would ensure that only European issues would be on the table.
Besides, it was a crucial question whether 1/3 or ¼ of the Member States were required. The former was suggested by the Commission, the latter by the EP. Both proposals were criticised by civil organisations considering them too high criteria[36]. In my opinion, the later approved regulation by the ¼ criterion can be justified: irrelevant or frivolous initiatives must be avoided. In addition, only few stakeholders saw it as an obstacle. On the contrary, many urged to remove "the minimum number of signatures per Member State" criterion, either by removing the threshold or by making it proportional to the national population of a given Member State[37].
Furthermore, there were other remarks and critics regarding the signatories and the available time.

[32] ANTAL op. cit. 43.
[33] TEGLAS op. cit. 13-14.
[34] The European Citizens' Initiative registration: Falling at the first hurdle? ECAS Brussels, December 2014. http://www.ecas.org/wp-content/uploads/2014/12/ECI-report_ECAS-2014_1.pdf. 18.
[35] GLOGOWSKI & MAURER op. cit. 12.
[36] ANTAL op. cit. 46-48.
[37] European Citizens' Initiative- First lessons of implementation. Directorate-General for internal policies, Policy department, Citizens' rights and Constitutional affairs, 2014. 44.

In the case of the former, the regulation is the same as for organisers:

- Only natural persons of Union citizenship
- Eligible to participate in the EP elections

In this context, two objections can be made. First, according to some experts, the ECI should be extended to citizens of third countries and to legal persons[38]. On the other hand, the minimum age limit for participation also should be reduced to 16 years. All these would enhance the European identity and public participation among the younger generation. Here, it is worth mentioning that in the recent past the EP called on the Commission in its resolution to amend the ECI regulation in favour of lowering the age limit[39]. In my opinion, it is a difficult issue because the new signatories would be rather teenagers who have little experience or knowledge regarding the topics raised by a given initiative. Therefore, they can be easily influenced by external actors. Nevertheless, the guarantees of the system would offset the negative effect of this. Thus, it would be worth introducing that proposal.

Concerning the limit for collecting signatures, the ECAS suggested increasing that period, at least to 18-24 months. In this respect, Nóra Sasvári says that it would almost double the length of the procedure which is already 21 months in total. By contrast, it would make sense to insert a 3 months long preparation time before starting the gathering. All these can be justified by the fact that most organisers could not start their campaign after the successful registration[40].

As I mentioned before, organisers can collect statement of support on paper or in electronic form. In the case of the latter, they can use their own system or the Commission's one. If they choose their own system, it must be verified by the competent state authority in 3 months. After that, the authorities concerned issue certificates verifying the valid number of statement of support from a given Member State. It is also accepted by other Member States as well.

Like other phases of the procedure, the regulation raises questions. For instance, if the organisers do not choose the Commission's online system, it is difficult for them to find a suitable service provider. In addition, it costs a lot of money and all the statements must be verified by state authorities[41]. Besides, it could take 1-3 months to set it up which is a significant time in the campaign for success: it can cause the failure of an ECI[42]. On the other hand, the Commission's system also does not offer solution in every case. Despite the promises of the regulation, it is not very user-friendly:

- Long installation process
- Advanced IT-skills are needed
- ECI website is not sufficiently developed[43]

Furthermore, it also causes several difficulties that there is no harmonisation regarding the forms of the declarations. As the Commission's Green Paper stated, there was no aim to unify the regulations of the Member States. Instead, the target was to ensure a minimum level of guarantees[44]. Therefore, it is not surprising that there are 26 different types of statements. In this respect, the requirement of personal ID number was criticised most. Although, it is used in 18 Member States, it can decrease the willingness of citizens to participate in an initiative

[38] SASVÁRI op. cit. 73.
[39] TEGLAS op. cit. 17-19.
[40] SASVÁRI op. cit. 73.
[41] TEGLAS op. cit. 14.
[42] ECI Support Centre response to the European Ombudsman own inquiry into the functioning of the European citizens' initiative (ECI) 01/9/2013/TN. 31.03.2014. https://www.democracy-international.org/sites/default/files/PDF/Publications/eci_support_centre_response_to_the_european_ombudsman_own_inquiry_into_the_functioning_of_the_european_citizens_initiative.pdf
[43] DEHOUSSE op. cit. 23.
[44] ANTAL op. cit. 49.

because they are often reluctant to give these data[45]. According to the 2011 Eurobarometer survey on "Attitudes on data protection and electronic identity in the European Union", 70% of the Europeans surveyed expressed concern that their personal data may be used for purposes other than that for which it was collected[46].
Returning to the procedure, if the requirements stipulated in the Regulation are fulfilled, the organisers can submit their initiative to the Commission with the relevant support and funding information attached. These data will be published in the register along with the initiative concerned. The Body must receive the initiators on an appropriate level to let them to be expressed in detail. Simultaneously, it is possible to hold a public hearing in the EP with the institutions, organs, offices concerned. The Commission also shall be represented on an appropriate level. Finally, it draws its legal and political conclusions on the issue. It must also inform the organisers whether it initiates a proposal or not (max. 3 months).
All these, as I indicated before, raise concern about the neutrality of the Body. Namely, it can easily refuse to act. Besides, I find it weird that the Commission draws also its political conclusions. In my opinion, it gives opportunity to ignore the sensitive issues, such as minority protection which can weaken the legitimacy of the European institutions towards the citizens. Therefore, it should be removed from the text in the case of a revision[47].
Summarizing this chapter, the ECI is a new instrument of direct democracy aiming to enhance the legitimacy of the European Union. As I mentioned before, the gap between the citizens and the institutions had to be abolished. In this respect, the ECI has a potential to become an effective tool. However, its deficiencies should be reviewed as soon as possible. As several data show, it started to lose its popularity: 22 initiatives were registered in 2012 which decreased to 8 in 2014 and to 3 in 2015[48]. By contrast, according to a survey conducted by Eurobarometer in 2013, the European citizens considered ECI as an important tool which can help them to be heard. Furthermore, in the recent years more than 6 million citizens supported the initiatives and 70% was made in online form. Unfortunately, most of them could not fulfil the 1 million signatures threshold[49].
Therefore, it is one of the most crucial questions currently that how we can solve these discrepancies incurred. In our case, it is getting increased attention: traditional minorities have very few opportunities to forward their issues to the European institutions, it is one of them. In the next chapters, I will introduce this.

Minority protection in the European Union

In the previous chapter we could see that the ECI-with all of its deficiencies-constituted a channel for the European citizens which could offset the long-standing issue of democratic deficit in the EU. Besides, this relatively new instrument can create opportunity for traditional minorities as well. They only have to justify the provisions in their initiative that these do not fall outside the competence of the EU.
At first sight, it does not seem to be more difficult than for other initiators. But that is not true. As I mentioned before, the Commission is generally reluctant to deal with initiatives which is proved by data. Several organisers already failed during the registration process. All these are

[45] TEGLAS op. cit. 15-17.
[46] European Citizens' Initiative- First lessons of implementation. Directorate-General for internal policies, Policy department, Citizens' rights and Constitutional affairs, 2014. 39.
[47] KNAPP op. cit. 288-289.
[48] TEGLAS op. cit. 11.
[49] SASVÁRI op. cit. 71.

especially true for those targeting sensitive questions. In addition, the Commission draws its political conclusions in the final phase of the procedure. Therefore, it can simply ignore these issues because it has discretionary right whether it puts forward a proposal or not.
Unfortunately, minority protection "complies" with these conditions. Its main reason is that the Member States have still decisive role in the EU decision-making procedure and they want to retain their control in this field. Thus, the Community has limited competence to act compared to transnational organisations such as OSCE or the Council of Europe. According to many authors, it is unlikely that it will become a serious minority actor[50].
On the contrary, traditional minorities account for more than 10% of the EU's population[51]. These communities can be found in several Member States, sometimes irrespective of the national borders such as Basques in Spain and France. Furthermore, unsolved ethnic conflicts can undermine the stability of the Community endangering the achieved results of the European Integration and giving chance for external forces to intervene. All these would justify a coherent minority protection system.
Despite these facts, the EU has a very ambivalent approach to the issue. As Balázs Vizi pointed out, it was already questionable whether the slogan of the EU (Unity in diversity) reflected to only the Member States or also to the minorities living in them. Besides, certain people would expect a firm stance on minority protection while others even doubt the legitimacy of such a policy arguing that the EU was not created for that purpose. Nonetheless, these contradictions are not an accidental: it was a long process with several different stages. In its initial form, it was just a pure economic cooperation between the Member States who did not envisage minority protection as a distant aim of the Integration. The main goals were the lasting peace, prospering economy and political stability which could be achieved through the common market. Even the human rights were not an important issue for a long time. Thus, it was not surprising that many argued against dealing with the sensitive question of traditional minorities. Nevertheless, the development of the EU overwrote these assumptions because it had to face directly these issues. Especially the dissolution of the Soviet Union and the Yugoslav war forced the EU to revaluate its role in this field.
Based on these, the following areas can cover more or lessly minority issues: enlargement policy, cultural policy, social inclusion, antidiscrimination[52] and regional policy[53]. During the next pages, I will analyze the appearance of minority rights as the following:

- Primary law
- Secondary law
- European institutions, especially the EP
- Instruments for minority purpose

Several experts, civil organizations welcomed the introduction of these rights into the primary law. After many years, the Founding Treaties recognised them as the fundamental values of the EU. As Article 2 TEU stipulates: *"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the*

[50] Ulrike BARTEN: The EU's Lack of Commitment to Minority Protection. *Journal on Ethnopolitics and Minority Issues in Europe* Vol 15, No 2, 2016, 104-123.
http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2016/Barten.pdf. 104.
[51] EPLÉNYI Kata: A nemzeti kisebbségek védelme az Európai Unióban *[Protection of national minorities in the European Union]*. *Létünk*, 2013/különszám, 44–54.
http://epa.oszk.hu/00900/00997/00028/pdf/EPA00997_letunk_2013_k_044-054.pdf. 44.
[52] VIZI Balázs: Európai Kaleidoszkóp-Az Európai Unió és a kisebbségek *[European Kaleidoscope- The European Union and the national minorities]*. Föld-rész könyvsorozat, L'Harmattan, 2013. 12-15.
[53] BODÓ Barna-TORÓ Tibor: Kisebbségpolitika és az Európai Unió *[Policy towards national minorities and the European Union]*. Egyetemi jegyzet, 2011. http://et.sapientia.ro/admin/data/file/20141216/kisebbsagpolitika-jegyzet.pdf. 122.

Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail". Simultaneously, Article 6 TEU made the Charter of Fundamental Rights legally binding.
Consequently, one can argue that the legal bases of minority protection are created. On the contrary, the EU has still no express competence. In the Lisbon Treaties, every competence is clearly defined and none of them deals with this issue. Besides, in the sense of Article 4 TEU, the EU can act in those areas where an authorisation was made by the Member States. Therefore, it is extremely difficult to approve a proposal regarding traditional minorities[54]. These values do not mean authorisation for legislation, instead they must be interpreted within the existing competences[55].
Returning to Article 2 TEU, it is worth analysing the expression "persons belonging to minorities". If we look at it carefully, we will see that it can cause several problems for the interpretation. First, it is unclear what the extent of "minority" is. It can be national, linguistic, traditional, immigrant or sexual[56]. Besides, Balázs Vizi adds that EU nationals living in other Member States or even persons without citizenship can also refer to this article. In my opinion, all these can easily result that the issue of traditional minorities will be pushed into the background[57]. As Kata Eplényi[58] points out, the notion of minority has a different meaning in Western Europe which can cause misunderstandings in the European Union or in the EP.
But it is not accidental. The question of the former community is settled in these countries: either by creating territorial and personal autonomy for them or they are already assimilated into the majority. Simultaneously, the issue of various immigrant groups means a continuous challenge to the governments: integration, social situation, prevention of radicalization etc. It is not surprising that the different minority groups are mixed.
Nevertheless, it disables to solve these problems. In my opinion, it is inevitable to constitute a suitable notion to avoid the misinterpretations. In this context, Tihamér Czika notes that it is unlikely to use the practice of the Council of Europe or the OSCE where the existence of minorities is a mere fact and there is no need for a clear definition[59]. Furthermore, it also makes the situation more difficult that there is no generally accepted terminology even in the international law.
On the other hand, it speaks only about individual rights (persons belonging to minorities) fitting to the general concept of international documents. Therefore, it seems to be unlikely for traditional minorities to invoke it regarding collective rights[60]. In this respect, it is worth mentioning the disputes concerning the Constitutional Treaties where the Member States refused to insert "rights of national minorities" into the Treaties. According to several Member States, it would have meant that the EU accepted the concept of collective rights which-in their view-undermined their sovereignty[61]. Thus, this provision can contribute to the adoption of positive measures in the field of antidiscrimination[62].
Article 2 TEU strongly sticks to Article 7 TEU enabling the EU to impose sanctions on those states where the fundamental rights are violated. The procedure can be divided into 2 parts:

[54] BARTEN op. cit. 107.
[55] CZIKA Tihamér: A kisebbségi jogok kérdése az EU-jogban Lisszabon után *[Question of minority rights in the European law after Lisbon]*. *Scientia iuris*, 2011/3. szám.
http://jog.sapientia.ro/data/tudomanyos/Periodikak/scientia-iuris/2011-3/hu7-Czika.pdf. 100.
[56] CZIKA op. cit. 100.
[57] VIZI op. cit. 64-66.
[58] EPLÉNYI op. cit. 45-46.
[59] CZIKA op. cit. 101.
[60] CZIKA op. cit. 100.
[61] VIZI op. cit. 59-62.
[62] CZIKA op. cit. 100.

prevention and hard measures. Based on the latter, the European Council can hold unanimously the infringement of the values listed in Article 2, and then it can adopt sanctions with qualified majority including the suspension of voting rights of the Member State concerned[63].

As we can see, all these are very distant possibilities: it is hardly imaginable that Member States would support such a procedure because it would create a precedent for the future. Moreover, serious violations must be existed before these steps can be taken. In addition, these conditions would be hardly fulfilled regarding minority issues: the EU institutions are quite reluctant to criticise states in this respect. On the other hand, this article does not constitute the right to individual complaints[64].

In the light of these, Tihamér Czika emphasises the role of the ECJ: in certain cases, concerning minority issues, the Body can use Article 2 TEU as a reference[65]. All these seem to be a distant opportunity for the parties concerned. Then why were these provisions put into the Treaties?

The answer is in the changing attitude of the EU towards minority protection. As I mentioned before, the European Integration was a pure economic cooperation in its initial phase which slowly transformed into its current form. It is especially true in our case.

From the middle of the '80s, the EU started to promote human rights in its foreign trade policy. Later, in the early '90s, the minority protection also appeared. All these can be traced back to 2 factors. Firstly, the dissolution of the Soviet Union and the brake-up of Yugoslavia drew the attention to the risks of ethnic conflicts: suddenly, the Community had to deal with issues which were deemed to be "obsolete". The neighbourhood of the EU suffered from serious turmoils endangering the stability. Thus, it had to be active to contribute to the reconciliation process. In this context, it is worth mentioning the Badinter Committee set up regarding the brake-up of Yugoslavia and the European Stability Pact. The former drafted a resolution on the minority rights which later contributed to the principles of the new Eastern European states' recognition adopted by the foreign ministers of the Member States. The latter tried to solve the disputes between postcommunist countries by ensuring the good neighbourly relations, the recognition of borders and minority protection.

Nevertheless, not these facts led to the appearance of minority rights in the Founding Treaties. The main reason was the planned Eastern enlargement of the EU. The fall of the Soviet bloc enabled the creation of a unified Europe. Besides, these new democracies also wanted to join[66]. Simultaneously, it was a common belief in the West that the Eastern European countries were more nationalist and the bases of democracy are weaker than in the Western states[67]. Thus, it seemed to be a legitimate aim to prescribe stricter conditions for accession than before. Based on all these, the Copenhagen criteria were approved in 1993.

It comprises the following requirements:

- rule of law and parliamentary democracy
- protection of human and minority rights
- operating market economy capable of bearing the pressure of the competition in the internal market
- law harmonisation, adoption of EU law

[63] OSZTOVITS op. cit. 248-249.
[64] VIZI op. cit. 59-62.
[65] CZIKA op. cit. 100.
[66] VIZI op. cit. 20-27, 31-35, 87-96.
[67] NAGY Noémi: Kettős mérce az Európai Unió kisebbségvédelmi politikájában *[Double standard in the policy of minority protection in the European Union]*.
http://www.nytud.hu/oszt/tobbnyelvuseg/nagyn/publ/kettos_merce.pdf. 6.

- the EU shall be suitable for the accession of new countries without losing the impetus of the integration

However, the old Member States did not regard minority protection as a commitment to them. Hence, the Founding Treaties did not contain a single reference to this issue for a long time.
All these indicated the rule of the so-called double standard in the EU. This situation changed significantly after the Lisbon Treaties entered into effect: the reference to minority rights appeared in the primary law but without constituting normative commitment. Nevertheless, the EU regarded minority protection as a political device which could contribute to the enforcement of its interest[68].
In respect of our topic, it is worth emphasising Article 10 TFEU along with Article 19 TFEU (former Article 13 TEC) which constituted the legal base for anti-discrimination measures in the EU. As the former stipulates: *"In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation"*. All these indicate that the EU took a firm stance on the prohibition of discrimination. Balázs Vizi emphasises that it is more than pure prohibition: the provision concerned prescribes the legislator and the law enforcer to fight against it[69]. According to Article 19 TFEU: *"...the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation"*.
As we can see, it does not mention linguistic or national minorities: just only racial or ethnic[70]. Thus, the EU does not have competence regarding these issues. It seems to be especially true after the Lisbon Treaties made the Charter of Fundamental Rights legally binding. Article 21 of the Charter explicitly contains these categories[71]. Noémi Nagy also shares this view and she stresses that this article can supplement the special provisions concerning minority protection but it cannot replace them. At first, the prohibition of discrimination is a general human rights principle focusing on everybody. On the contrary, minority rights' target is well-defined and separable group. Moreover, the aim of the former is to ensure equal treatment while the latter requires further state support to preserve the identity of a given community. Thirdly, minority rights can be collective rights in contrast with the prohibition of discrimination[72]. Nevertheless, it can enable the European legislators to adopt confirmatory measures creating equality of opportunity[73]. All these indicate again how difficult is to regulate minority protection on EU level.
Despite these facts, these articles gave a chance to adopt antidiscrimination directives, namely the Employment directive (Council 2000/78/EC) and Racial directive (Council 2000/43/EC). In our case, the latter is the influential because it extends the action against racial and ethnic discrimination to several areas such as education, health care etc. Besides, its provisions are applicable not only to public authorities but also in private relations. Despite focusing on equal treatment, it is the most effective tool in the hands of ethnic minorities. It is not an accidental: it enables states to adopt measures with positive discrimination even if it is not a commitment[74]. In my view, by implementing the directive, Member States can prefer various ethnic groups indirectly contributing to the preservation of their national consciousness.

[68] VIZI op. cit. 92-96.
[69] VIZI op. cit. 46.
[70] CZIKA op. cit. 103.
[71] VIZI op. cit. 39.
[72] NAGY op. cit. 12.
[73] VIZI op. cit. 39.
[74] VIZI op. cit. 40.

By contrast, the Charter of Fundamental Rights defines the protective attributes more wide-ranging than the earlier analysed Article 19 TFEU. However, it does not create new competences for the EU, as Article 51 states: *"The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law"*. It constitutes legal basis for a claim before the Court if the implementation of national or the adopted legal instruments violate the rights listed in the Charter[75]. Nevertheless, it cannot replace Article 19 TFEU; its aim is to present in a unified form the following documents: Article 14 European Convention on Human Rights, the Founding Treaties and the Article 11 Convention on human rights and biomedicine[76].

In respect of the minority protection, Article 21 and 22 are relevant. The former uses the notion "national minority" in an EU document for the first time. Hajnalka Juhász emphasises that it contains concrete prohibitions and protected attributes. In her view, it can be a useful device in the hands of the minorities regarding linguistic discrimination[77]. Furthermore, an action can be brought before the Court in the case of violations. It will be interesting to see how the Body will interpret the notion.

Many envisaged Article 22 as an effective tool concerning minority protection. Accordingly, *"the Union shall respect cultural, religious and linguistic diversity"*. However, this provision is quite general to use it as a reference. One can argue easily that it applies to only the Member States[78]. In my opinion, it highlights again the fact that the governments are unwilling to deal with minority issues: they would retain this field under their entire control. In contrast with Balázs Vizi, Tihamér Czika sees the article different: it constitutes a fundamental right giving reference for the use of minority languages in the EU. In this context, he mentions the Catalans, the Welsh and the Scots. As we can see, there can be several interpretations of a given provision. Thus, it will be crucial for the minority communities how the Court will consider these articles.

Regarding the Charter, it is worth mentioning the role of the Fundamental Rights Agency. Although it is not a typical institute for that purpose, it can serve their interest through the enforcement of equal treatment. Simultaneously, it is laid down in its regulation that its function sticks to the Charter. Besides, the regulation itself also mentions minorities but as it appears in Article 2 TFEU: *"persons belonging to minorities"*. Thus, its approach is broader than the notion in the Charter pushing the issue of traditional minorities in to the background[79]. In this context, the 2011 report should be noted which also dealt with EU citizens residing to another EU country. As a result, it can fulfil a limited role. All these become obvious if we look at the competences of the institution:

- mainly advisory, analysing and researching functions
- it cannot adopt resolutions
- it cannot receive individual complaints[80]

On the other hand, taking into consideration the fact that minority protection is a marginal field of EU law, it is guidance for both the Member States and the parties concerned. The latter can draw attention on their situation which can be forwarded to the European institutions.

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[75] CZIKA op. cit. 103-104.
[76] VIZI op. cit. 42.
[77] JUHÁSZ Hajnalka: A nyelvi jogok helyzete az Európai Unióban: korlátok és lehetőségek *[The situation of linguistic rights in the European Union: limits and possibilities]*.
http://bgazrt.hu/_files/NPKI/oktatas/Tervesztes%20es%20hatartalanitas%20(2).pdf. 55.
[78] VIZI op. cit. 41-43.
[79] CZIKA op. cit. 105-106.
[80] VIZI op. cit. 43-44.

Summarizing this section, it seems to be clear that there is no direct tool for enforcing minority rights. The respective articles are often political declarations or apply to the implementation of EU law constituting no competence for legislation. Are we doomed? No. As Ulrike Barten emphasises, we just have to know how to refer to the Treaties. In her view, only detours can lead us to success. Based on these, the following areas can be mentioned:

- culture
- language
- education
- economic, social and territorial cohesion

Unfortunately, none of them falls under the exclusive competence of the EU. In my opinion, the most promising field is the economic, social and territorial cohesion for two reasons. First, it is among the shared competences and according to Article "(2) TFEU the primacy is given to the EU: the Member States lose competence on those areas where the EU legislates. Secondly, it is common that regions with large minority communities lag behind other regions. For instance, territories of Hungary's neighbours populated by Hungarians often face economic discrimination. Therefore, it seems to be an effective tool for catching up. Nevertheless, the target of regional policy is based on economic criteria rather than ethnic one. The main goal is to prevent depopulation in less developed regions which serves the interest of the entire EU because of cross-border effects[81]. Besides, the Member States can freely define their administrative structure, the EU cannot intervene (Article 4(2) TEU). Thus, a given Member State can divide territories inhabited by national minorities (see Romania, Slovakia).

Despite these facts, I still think that it can be an escape: regional policy contributes to the prosperity of the entire region regardless of its citizens' nationality decreasing the resistance from the side of the majority.

By contrast, Ulrike Barten regards the Committee of the Regions as a better chance of improving participation. In this context, 2 objections can be made:

- it does not have legally binding decisions, just consultation and opinions
- if a certain minority is not represented on regional or local level, it is precluded from being a member[82]

Finally, it should be noted that area of language, education and culture are in the competence of the Member States (Article 6 TFEU), the EU can only support, coordinate or supplement.

It is apparent that these are sensitive issues for the states correlating their constitutional identity. Thus, it is not surprising that the EU has little room for manoeuvre in those fields. Nevertheless, they are also vital for national minorities to preserve their identity. However, there are several efforts in the Union aiming to promote or support cultural-linguistic diversity. It is especially true for regional languages which are the target of this policy. Besides, the following programs should be named: Culture 2000, Media Plus, Network to Promote Linguistic Diversity[83]. All these indicate well that the EU can still act despite its limited competence.

After that, it is worth coming to the attitude of the European institutions concerning minority protection. In this regard, I will analyse the following ones: European Commission, ECJ and the European Parliament. In my opinion, it is a crucial question how these institutions see this issue because their repulsive behaviour can encourage Member States to ignore minority aspects. As we could see so far, it is a very embarrassing or even dangerous area for the EU. Thus, it is not surprising that the given institutions are careful.

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[81] SZABÓ Marcel- LÁNCOS Petra Lea- GYENEY Laura: Uniós szakpolitikák *[Union policies]*, Szent István Társulat, Budapest, 2013. 194-196.

[82] BARTEN op. cit. 108-109.

[83] VIZI op. cit. 41.

In this respect, the role of the Commission is the most ambivalent one. In 2009, there was a political debate in the EP over minority protection. Several MPs, mostly Hungarians, urged the Body to put forward proposals. They also emphasised the fact while other groups threatened by discrimination had better opportunities to protect themselves, the case of traditional minorities were lack of effective EU law regulation. By contrast, the vice-president of the Commission excluded the possibility of future actions: the EU had no competence in this field, so it is the duty of the Member States to provide adequate protection including the forms of autonomy for the communities concerned. Simultaneously, Kata Eplényi notes that the Commission handles minority protection in the field of culture and education, instead of the fundamental rights. The latter would be more favourable. Besides, the Body tries to rebilateralize the question fitting to the development of the international community's concept[84]. In my opinion, this approach is clearly in favour of the Member States who consider it as home affairs constituting a piece of their sovereignty.

Nevertheless, the Body has a key position in the accession process: it must scrutinize whether the conditions are fulfilled by the candidate. In this respect, the role of state reports should be emphasised. Unfortunately, the Commission focused primary on the implementation of the acquis during the Eastern enlargement, minority rights were handled less strictly which has two reasons.

Firstly, the Body lacked the sufficient legal expertise in this area and the situations were also different country by country. Thus, it could not use a general scheme during the accession period. Secondly, the minority protection was pushed into the background: results achieved in other fields could not be overridden.

In the light of all these, the following discrepancies seem to be understandable:

- selectivity
- reports could be featured by inconsequence
- reports often influenced by political considerations

Romani people and the Russians in the Baltic States were emphasised while other minorities such as Hungarians in the neighbouring countries were pushed into the background. It again turned out that the Commission tried to avoid dealing with sensitive issues: certain minority groups can increase frictions between future Member States. On the other hand, the social exclusion of the Romani people and their potential willingness of immigration also justified the action of the Body.

Furthermore, the reports usually concentrated on formal measures adopted by the states instead of the scrutiny on the factual application of minority laws. Mostly, they were quite positive despite the lack of progress in a given country. For instance, the report (1999) on Romania showed the development of the conditions regarding the use of Hungarian language without providing any data or information. Besides, their structure did not enable to follow changes in the situation of the respective minorities year by year. Finally, the political-economic aspects always overrode minority ones. Thus, it excluded the possibility to document serious violations in the state reports. All these indicated the fact that technicality was in focus on lower levels but the Commission usually favoured political considerations.

Consequently, it is not surprising that the EU could not achieve long lasting results in the field of minority protection. Although, it forced the abolishment of several restrictive measures in the candidate states during the enlargement process, it could not prevent the adoption of anti-minority laws after the accession.

In this respect, the Baltic States are a good example. It is well-known that these countries have a large Russophone community due to the settling policy of the Soviet Union. After gaining independence, it evoked tensions with the majority. Simultaneously, the respective

[84] EPLÉNYI op. cit. 48.

governments introduced harsh measures such as language law, citizenship law which were detrimental to the Russian minority. On the contrary, the Commission tried to combat these legislative tendencies by demanding the proper application of the standards set out by the Council of Europe and the OSCE. Due to these efforts, the Baltic States eased restrictions on naturalization and language laws. Nevertheless, after entering the EU, these processes stuck and reversed. For instance, 17% of Latvia's population did not have Latvian citizenship in 2008 while these numbers were 9% in Estonia. Besides, the Estonian government amended the language law in 2007 so that it was extended to almost every segment of the public life and to several parts of the private sphere[85].

Thus, we can see that minority groups could not count on the Commission very much: it was rather incompetent or even reluctant to handle their complaints.

In the light of these, it is worth looking at the ECJ. One can argue that this should be the institution which shows openness to minority protection. At first sight, it seems to be a reasonable idea. It is well-known that the Body with its evolutive approach contributed to the development of human rights in the EU despite clear legal provisions. By contrast, it was not so active in the area of minority protection. Nevertheless, there were some cases which touched upon linguistic aspects so the Court had to take a stance. In this respect, it focused on the free movement of persons and the cultural interest of a given state. In the Mutsch and Bickel/Franz cases, it emphasised that other EU nationals were also entitled to use their mother tongue in the criminal proceedings if the given state measure enabled it for its own citizens in the same language. However, it does not mean that the Court tried to protect minorities: it ensured only the equality of EU citizens. Besides, it acknowledged the legitimacy of positive measures towards them without any discrimination between EU nationals.

Furthermore, it accepted those state measures (Groener, Angonese) which prescribed the knowledge of a given language, even it was only a regional one. On the other hand, it drew the attention to the fact that all these could not be disproportionate. It held in the Angonese case that the command in a given language could not be linked to a certificate obtained in the province (South Tyrol) concerned[86]. Later, the Body extended it in the Ruffer judgement to civil proceedings also applying the Bickel/Franz formula: if Member States provide certain linguistic rights to their nationals, they must enable it to other EU citizens as well. According to various experts, the decision of the ECJ in Ruffer case indicates that this requirement is not limited to judicial proceedings: it should be applied to any rights granted to linguistic minorities by Member States[87].

Despite these progressive steps, Balázs Vizi points out that the Court is not suitable to handle these issues based on the relevant EU Treaties[88]. In my opinion, the recent judgements can pave the way to a more favourable approach if the Body uses its evolutive interpretation as it did in human rights. Nevertheless, the revision of the Treaties is inevitable to the development of an effective judicial protection. I wonder whether it is possible.

Last but one, we must examine the role of the EP and its attitude towards minorities. In this respect, it is worth emphasising that the EP is the only institution of the EU which is directly elected by the nationals of the Member States. It has the opportunity to represent their interest[89]. Besides, its competence is still limited in the decision-making process decreasing its political responsibility which enables to deal with sensitive questions. Thus, it is not

[85] VIZI op. cit. 98-111.
[86] VIZI op. cit. 44-45, 83-85.
[87] STEEVE Peers: Minority languages and court proceedings: the possibilities and limits of EU law. http://eulawanalysis.blogspot.hu/2014/03/minority-languages-and-court.html
[88] VIZI op. cit. 44-45.
[89] EPLÉNYI op. cit. 49.

surprising that the EP is the most active institution concerning minority protection such as the adoption several resolutions and yearly reports[90]. The latter comprises documents regarding fundamental rights, human rights and state reports (candidate countries). However, the resolutions clearly indicated the changing importance of minority issues, so we should focus on them in the following.

Firstly, they mainly deal with the use of minority languages and minority protection. Generally, we can divide them into 2 groups: those adopted before 2004 and those adopted after 2004. The former urges stronger measures while the formulations of the latter are softer and try to avoid sensitive questions[91]. Another way of categorization is the differentiation between linguistic rights and country-specific reports. In respect of the latter, it is worth stressing that the EP analysed several times Serbia, Romania and Kosovo. Among others, it adopted 2 resolutions on Vojvodina defending the multiethnic character of the region[92] and condemning the harassment of minorities[93]. In my opinion, it was especially important because local Hungarians were often beaten at that time. In addition, Serbian governments after the fall of the Milosevic regime set the accession to the EU as a strategic goal. Therefore, the negative reports on the situation of minorities could endanger this effort. Hence, the activism of the EP also contributed to the decrease in ethnic violence.

Coming back to the content and the strength of the documents, we can see a clear decline. In the '80s and the '90s, they were more resourceful and also critical to the Member States. They aimed to represent minority issues in international context avoiding bilaterization. Besides, some of them referred to collective rights or even autonomy[94]. For instance, Alfons Goppel initiated the codification of a separate charter for minority rights. Although it did not succeed, it indicated the activism and positive attitude of the MPs to the question. All these lasted n the next years. In 1987, the Kujpers resolution promoted the extension of the use of minority languages in the field of public media and the cultural, economic and social life. Among others, it stressed the importance of state measures concerning bilingual place and street names. Furthermore, it noted that the adequate financial means were inevitable to ensure these rights. In 1994, another document pointed out that positive discrimination was the only way for linguistic minorities to preserve their identity. Thus, it urged the Member States to adopt measures on education, justice, administration, media and cultural life. Besides, it called upon them to ratify the European Charter for Regional or Minority Languages. Finally, these measures had to be applied to non-autochon and dispersed communities also.

Just before the Eastern enlargement, the EP adopted in 2003 the Ebner resolution which asked the Commission to examine the situation of linguistic rights in the EU and to insert regional and minority languages to the respective programs. Furthermore, it urged the establishment of the European Agency for Linguistic Diversity and Language learning.

In the light of these, it seemed that the EU, particularly the EP, was interested in the extension of minority rights recognising the fact that a stable and prosperous Europe could not be achieved without the effective protection of them. In my opinion, it was not groundless: the tendencies clearly indicated the growing importance of the issue and the upcoming enlargement also justified that. In addition, after the accession of the new Member States, the EP again approved a document based on the report of Claude Moraes. It regarded the cultural

[90] VIZI op. cit. 29.
[91] EPLÉNYI op. cit. 49.
[92] European Parliament resolution on the defence of multi-ethnicity in Vojvodina. http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+P6-RC-2005-0518+0+DOC+XML+V0//EN&language=en
[93] European Parliament resolution on the harassment of minorities in Vojvodina. http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+P6-RC-2004-0045+0+DOC+XML+V0//EN
[94] EPLÉNYI op. cit. 49.

and linguistic diversity of the Union as a value. Besides, it tried to deal with the long lasting double standard concerning the Copenhagen criteria. In this respect, it envisaged the protection of minorities as a part of the Union policies including the adoption of a notion for national minority based on the Recommendation 1201/1993 of the Council of Europe. Finally, it suggested the following:

- public participation of minorities and fight against discrimination
- distinction between the different types of minority groups
- the use of Treaty articles concerned to the enforcement of Framework Convention for the Protection of National Minorities, especially in the field of culture, research, education and freedom of speech[95]

I think it should be welcomed that the resolution recognised the significance of distinction between immigrants and autochon groups. Many pointed out mixing different notions could be an obstacle to an effective minority protection because each one has different interests, possibilities and aims. Besides, it is worth mentioning the intention to eliminate double standard in the EU: how can we expect respect of minority rights from candidate states if we are not bound by those norms? In addition, this situation still exists nowadays and there is no intention currently to change that.

Nevertheless, it was not followed by further steps; instead we can observe decay in the number of adopted resolutions related to this issue. It seems to be surprising because the percentage of minorities increased due to the ethnic diversity of the new members. Isn't it a contradiction? Maybe but the political sensitivity of these questions also grew and as we could see, the role of the Member States in the decision-making process of the EU is still decisive. Thus, it became much easier for counterparties to prevent those initiatives which seemed to endanger their sovereignty or nation-building.

Consequently, the activism of the EP disappeared. From the recent period, the Resolution on the protection of endangered European languages (2013) should be mentioned. However, it only deals with endangered languages and not minority languages in general. Thus, its usefulness is quite questionable[96].

In the light of these, one could doubt the role of the EP. From this perspective, it is vital that it has a separate intergroup dedicated to this issue. The Minority intergroup established in 1983, initially focused on the promotion of linguistic minorities and languages[97]. Its activism contributed to the draft of several resolutions adopted by the EP. As we could see, it is considerably difficult to bring up sensitive issues before European forum, especially ethnic ones. Therefore, it plays an important role to ensure a platform to the respective communities where their problems can be discussed. It also creates link between politicians, international organisations, the academy and minorities concerned[98]. Furthermore, it is both the device of political pressure and forum for debates. Thus, it organises several programs, conferences and meetings with European Commissioners and minority leaders. In this respect, it worth mentioning that it tries to face directly minority issues. For this reason, it often takes part in fact-finding mission such as the study on the situation of Carinthian Slovenes in 2006.

In order to bring up issues effectively before the public, they aim at finding a common standpoint which they can represent before their factions and also on the session of the parliamentary committee. Besides, they try to convince MPs from other factions as well. Thus, it is quite common that certain representatives of a given Member State form various kinds of cooperation with other Member States' representatives. Finally, it indicates their

[95] VIZI op. cit. 27-31, 35-37.
[96] EPLÉNYI op. cit. 49-50.
[97] VIZI op. cit. 27.
[98] EPLÉNYI op. cit. 50-51.

determination that they send different types of documents to the parties concerned: the institutions of the EU, members of the respective national governments[99].

After the Eastern enlargement, its activity strengthened due to the growing number of potential issues in the new Member States and thanks to the leading role of the Hungarian MPs[100]. Under the presidency of Csaba Tabajdi (2004-2009), it comprises 58 MPs from almost all factions of the EP and 13 were Hungarian out of them. In this period, it focused on the following areas:

- enforcement of minority rights
- the use of regional and minority languages
- best practices of the European autonomies
- higher education of minorities[101]

After the EP-elections in 2009, Kinga Gál took the presidency. Under her leadership, the Minority Intergroup aimed at strengthening further its connections to other international organisations such as OSCE, MIDAS, FUEN and ECMI. Besides, it tried to introduce minority issues on horizontal topics: bilingual inscriptions, minority media and education. Furthermore, questions related to Hungarians in Vojvodina were twice on the agenda in the parliamentary term 2009-2014 (accession of Serbia, Hungarian National Council)[102].

As I mentioned before, its lobby-power significantly increased after the Eastern enlargement. Thanks to that, it adopted the Manifest of Strasbourg in 2014 after 10 years of codification defining the fundamental rights of national minorities. In this respect, Csaba Tabajdi said that it could be a reference for a future European minority rights protection system. He urged the Commission to adopt a similar document to the Roma Strategy[103].

Nowadays, it is not surprising that it deals with situations of minority communities outside the EU as well. In the recent past, it focused on the negative tendencies in Ukraine, especially the planned amendments of the Language Law and the Law on education. In connection with that, Kinga Gál drew the attention that they could influence the Commission to bring it up on the negotiations with Ukraine. In addition, they organised a conference with the title *"Mother tongue or state language"* to raise public awareness. Several MPs participated on this venue such as Herbert Dorfmann from South Tyrol and Hungarian MPs from the neighbouring countries. The participants drew the attention of the Ukrainian government to the fact that its policy would have an effect to the EU-Ukraine relationship if they tried to ignore the European Parliament[104].

On the basis of these, we can agree with Kinga Gál that the Minority Intergroup is now stronger than ever before. Today it became one of the largest and most active intergroup having 65 MPs from 21 Member States and consisting all of the political factions of the EP[105].

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[99] BRUCKER Balázs: Az Európai Parlament Nemzeti Kisebbségügyi Intergroupjának szerepe a kisebbségi érdekek érvényesítésében (2004-2009) *[The role of Minority Intergroup in the enforcement of minority interests (2004-2009)]*. In A kisebbségek geopolitikája, VIII. Magyar Politikai Földrajzi Konferencia, Pécs, 2014, 88-96. , http://foldrajz.ttk.pte.hu/files/intezet/publi/MPFK_8_718e.pdf. 88-96

[100] Balázs VIZI: Political Participation of Minorities in the International Arena: Opportunities and Procedures in a European Context. http://real.mtak.hu/31900/1/Volume_Thucydides_vs_Kant_in_Our_Time_BalazsVIZI_u.pdf. 122

[101] BRUCKER op. cit. 91-93.

[102] EPLÉNYI op. cit. 50.

[103] Kisebbségi alapjogok - Az EP kisebbségügyi munkacsoportja elfogadta Strasbourgi Manifesztumot *[Fundamental rights of minorities- The Minority Intergroup of the EP approved the Manifest of Strasbourg]*. http://www.jogiforum.hu/hirek/31655

[104] Az Európai Parlament kiáll az ukrajnai kisebbségek jogaiért. *[The European Parliament supports the rights of national minorities in the Ukraine]* http://karpataljalap.net/?q=2017/03/08/az-europai-parlament-kiall-az-ukrajnai-kisebbsegek-jogaiert

[105] Európai Parlament: A Kisebbségi Munkacsoport erősebb, mint valaha, Gál Kinga sajtóközleménye *[European Parliament: The Minority Intergroup is stronger than ever, Kinga Gál's press release]*.

Before closing this chapter, we have to speak briefly about the right to petition which is also connected to the EP and has minority aspects. As we could see earlier, it differentiates very much from the ECI: while the subject of the latter is a measure of general scope, the former always aims at individual measures. Nevertheless, it has several advantages. First of all, it can be lodged individually or collectively, the latter is called mass petition. Secondly, the scope of entitled persons is wider than in the ECI: not only EU nationals but also legal persons having a seat in the territory of the EU can initiate such a procedure. In addition, non-EU natural and legal persons also have this opportunity in certain cases. Thirdly, the criteria of admissibility are less strict than in the case of ECI as well. The fulfilment of the following requirements is enough:

- direct concern of the applicant
- the case must fall within the EU's fields of activity

Both criteria are interpreted widely by the Committee of Petitions: only the pure national cases are regarded as inadmissible. On the contrary, the procedure does not guarantee concrete result for the applicant, just the fact that the petition concerned is handled in accordance with the procedural rules. In addition, it can take a lot of time: the general duration is approximately 1 year. On the other hand, it serves as a feedback for the European institutions pointing out the deficiencies of the European law.

What can the Committee of Petitions do? If the claim regarded as admissible, it can choose from the following option:

- draft a motion/report/resolution
- forward the petition to other parliamentary committee or to the European Commission for further measures
- forward it to the European Ombudsman
- send it to other organs (national, international or European)[106]

In the light of these, it seems to be clear that it can be a suitable tool for the European citizens to address the institutions by their problems. As a consequence, the Committee of Petitions faced several types of cases such as environmental protection, freedom of services, recognition of diplomas and antidiscrimination[107].

In the recent period, it became very active and receptive to minority issues thanks to Pál Csáky, the vice-president of the institution. For instance, on the last session held on 4th May, it dealt with different aspects of violations on the field of linguistic rights, administrative abuses, deprivation of citizenship etc. In connection with the latter, Ágoston Korom emphasised that the Slovak citizenship law had several discrepancies contravening the European law. In this respect, the following ones should be mentioned:

- no justification enabling judicial review
- limited prospects on the labour market
- loss of entitlement to social insurance
- limited possibility of opening a bank account

Besides, it is worth mentioning the educational reform in Lithuania which standardized the requirements of school leaving exam of Lithuanian language. It is a typical example of indirect discrimination: minority students fall out from the state subsidized higher education and the forced Lithuanization of the education cause identity problems.

The Opole case in Poland indicates how easily the administrative abuse can diminish linguistic rights. Here, the local government ignored the plebiscites of the German minority

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http://www.vajma.info/cikk/kulfold/52969/Europai-Parlament-A-Kisebbsegi-Munkacsoport-erosebb--mint-valaha.html

[106] OSZTOVITS op. cit. 353-354.

[107] A kisebbségi jogok európai parlamenti érvényesítése *[The enforcement of minority rights in the European Parliament]*. http://felvidek.ma/2017/01/a-kisebbsegi-jogok-europai-parlamenti-ervenyesitese/

and incorporated the partially German-speaking villages into the city of Opole causing the loss of these rights. Despite its clear unconstitutionality, the Constitutional Court could not annul the decision of the local government due to its malfunction.
On the basis of these, it seems that petitions ensure a suitable platform for minority issues. But does it solve the problems incurred? Well, it sends a strong message to the complained country placing under political pressure. All these can terminate violations such as in the case of the bilingual railway stations in Slovakia or the multilingual city signs in Cluj Napoca/Kolozsvár[108].
In my opinion, it serves as an appropriate supplement to the ECI. Nevertheless, in the case of the latter, the legitimacy is stronger and measures of general scope seem to be more effective for minority groups than individual measures. However, the future can change this, especially if the discrepancies of ECI are not solved.
Summarizing the chapter, it is difficult for minority groups to use European law as a reference because Member States still try to retain control in this field fearing their sovereignty. Despite these facts, there are several detours hided in the system. The question is how we can find them and how we should use them. In the next chapter, I try to prove that the ECI also offers similar possibilities.

ECI as a tool for minority protection

In the previous chapters, we could see that the instrument had several discrepancies despite aiming to channel the voices of citizens. I drew the attention to the fact that without adequate reforms it could lose its initial popularity and its role to eliminate the gap between the elite and the nationals. Besides, I pointed out also that the EU had limited competence on minority protection. The Integration started as a pure economic cooperation and the Member States hardly thought of that, even as a distant aim. Thus, still nowadays, they want to retain control in this field.
In these circumstances, one can ask whether the ECI can be used for that purpose. The question is not an accidental: apparently, almost everything is against an EU regulation. Nevertheless, two initiatives of minority subject were submitted to the Commission from which the DAHR-FUEN one was registered after the General Court annulled the Commission's previous decision[109]. All these do not mean that the proposal will be put into legal form: the Body has still discretionary right to initiate a legislative procedure or not. Hence, it is questionable whether the ECI is an effective tool for minority protection. For this reason, it is worth examining the issue from the following perspectives:

- procedural
- content

As we could see earlier, there are several hurdles in the system for the organisers. This time, I will only focus on those which can be connected to our case. In this respect, I have to emphasise that I do not think primarily they are anti-minority provisions in the Regulation: it rather derives from the rigidity of the procedure and the special role of the Commission which affect initiatives of minority subject more unfavourably than others. By contrast, these facts

[108] European Parliament eMeeting for Committees.
http://www.emeeting.europarl.europa.eu/committees/agenda/201705/PETI/PETI(2017)0503_1P/sitt-4458879
[109] Az Európai Unió Törvényszékének ítélete a Minority SafePack európai polgári kezdeményezés ügyében *[Judgement of the General Court in the Minority Safepack case]*.
http://bgazrt.hu/_files/NPKI/ELEMZ%C3%89SEK/MinSafePack.pdf

can disable such efforts, so it is necessary to take them into consideration to avoid future failures.

First of all, we should look at the number of required signatures. According to the previously analysed Regulation, minimum 1 million out of 7 Member States are needed. In this context, various surveys put the number of minorities at 40 million in the European Union. It also should be noted that there are more than 60 regional languages along with the 23 official ones[110]. On the basis of these, I do not think it is impossible to collect the required amount. On one hand, it is easily imaginable that there is solidarity between national or ethnic minorities living in different or even in the same Member States. For instance, the Polish and Russian minority ran a common list in the local elections of Vilnius in 2011[111]. It seems to be especially remarkable due to the historical harms between the 2 nations. However, the special situation overwrote these factors and the common list performed better as if they would have participated separately. Another example is the FUEN which is an umbrella organisation aiming to represent minorities in Europe. It initiated jointly with DAHR an ECI to establish a coherent minority protection system in the EU. On its Congress in Cluj Napoca/Kolozsvár, several members of the FUEN held lectures such as Hungarians, Catalans, Sorbs, South Tyroleans etc[112]. All these indicate that the parties concerned can be united in favour of common goals setting aside borders, political affiliation or even historical harms. Therefore, the respective organisers can count on solidarity which is a decisive factor in my view. On the other hand, is the requirement of 7 Member States an obstacle?

Before the Eastern enlargement, there was only one Member State (Spain) which had more than 10% of minority-language speaker. After the accession of the new countries in 3 stages, it completely changed: more than half of them had at least 10% of minority population. It was especially true for the Baltic States (e.g.: Latvia-40%, mostly Russians), Slovakia, Romania and Bulgaria[113].

Consequently, it is much easier to run such a campaign than ever before. In my opinion, these tendencies will continue by the further enlargements in the Balkans. However, as I mentioned before, the minimum number of signatures per Member State could be hindrance for organisers. It is especially true in our case. Firstly, the number of potential signatories is mostly limited ethnically. Therefore, an effective mobilization is much more needed than in other initiatives. Secondly, it demands further efforts to exceed those minimum numbers due to particular minorities. For instance, in the case of Slovenia, the limit of 5250 signatories (see Annex I of the Regulation) seems to be high because of the ethnic structure of the country. Thus, I agree with those who urge to remove this barrier from the procedure. As we saw, it could be a decisive factor in certain issues.

During the analysis of the ECI regulation in the second chapter, it arose whether the organisers could request the amendment of the Treaties. Despite the literal interpretation and the objections of the Commission, several authors stated that the organisers might lodge such an initiative. All these deserve special attention in the case of minority issues. The Commission stated in the 2 relevant initiatives (Minority Safepack, Cohesion policy for the equality of the regions and sustainability of the regional cultures) that they fell manifestly

[110] GÖRÖG op. cit. 63.

[111] Election victory for Polish minority in Lithuania. http://www.radiopolsha.pl/6/7/Artykul/11792

[112] Kisebbségről és innovációról a FUEN kongresszusán – kik azok a szorbok? *[About minorities and innovation on the FUEN Congress- who are the sorbs?]* http://www.maszol.ro/index.php/belfold/80993-kisebbsegr-l-es-innovaciorol-a-fuen-kongresszusan-kik-azok-a-szorbok

[113] Nelu BRADEAN-EBINGER: EUROMOSAIC: Kisebbségi és regionális nyelvek az EU-ban *[Minority and regional languages in the European Union]*. *Délkelet Európa – South East Europe International Relations Quarterly* Vol. 2. No. 2. (Summer 2011/2 nyár). 1-9.

outside the framework of its competence[114]. Such an argument is not surprising: we could see in the previous chapter that it was difficult to find legal bases for this purpose. Therefore, it seems to be a reasonable solution at first sight. Is it really? On one hand, we have to take into account the reasons in favour and against increasing EU competence in this area. In this context, it is worth mentioning that the factual number of minorities (50-70 million) is equivalent of the population of the United Kingdom. Besides, most of the Member States are signatories to several international agreements dealing with this question such as the Framework Convention for the Protection of National Minorities. In contrast with this argument, it is possible that other groups with the same size would exploit this opportunity without proving the need of protection. Therefore, the suspicion and scepsis of the EU is understandable. Another argument in favour of widening EU's scope is the fact that it affects everyday life of its citizens. It is well-known that certain groups have special needs such as national and ethnic minorities. Furthermore, the common values of the EU also listed these rights, so the protection of minorities is inevitable. However, the competences in this area are still limited despite the long-lasting lobby of these groups: can the EU provide effective mechanism? Finally, the OSCE and the Council of Europe are well ahead of the EU by taking into consideration their activism, competences and attitude. Simultaneously, the EU is much more than international organisation: it is a supranational actor affecting more and more the sovereignty of the Member States. Thus, it should contribute to a coherent minority protection system leaving behind the label *"missing piece"*. By contrast, the Member States are still the lords of the Treaties: the EU institutions cannot amend them on their own. As a result, it is up to the states whether they extend these rights or not[115]. Finally, the ECJ also did not form its standpoint on this issue.

Thus, I agree with Ulrike Barten that it is only a hypothetical option: *"... no general treaty revision is in sight at the moment, general state reluctance and sovereignty issues makes this a less than likely possibility[116]"*.

In the light of these, I would rather rely on the evolutive approach of the ECJ. One can ask how it would be an effective tool for us. According to the academic literature, minority rights are part of human rights. In the case of the latter, the Court gradually shaped the current regime without an explicit authorization or reference in the initial Founding Treaties. In this context, it is worth mentioning George Arestis who described it as the following: *"The emphasis was on the creation and consolidation of the common market establishing the free movement of persons, of services, of goods and of capital. Neither the initial Treaties, nor the jurisprudence of the Court made any reference to the protection of human rights in the process of the creation of the common market[117]"*.

Nevertheless, when will the Court change its attitude to minority issues? As we saw in its jurisprudence, it tried to avoid the sensitive questions and only focused on the 4 freedoms of the EU. But despite its careful approach, it could deliver favourable rulings.

It took place similarly in the case of human rights: between 1958 and 1970, it refused them stating the lack of competence in this area[118]. Then, it made suddenly a shift towards the recognition of these rights in the Stauder judgement acknowledging them enshrined in the general principles of Community law. Later, the Court extended the concept involving the constitutional traditions of the Member States (Internationale Handelsgesellschaft) and

[114] European Citizens Initiative: a legal (political) instrument for advocating the protection of national minorities in the European Union? http://bgazrt.hu/_files/NPKI/ELEMZ%C3%89SEK/eu%20citizens.pdf
[115] BARTEN op. cit. 110-113.
[116] BARTEN op. cit. 114.
[117] George ARESTIS: Fundamental rights in the EU: three years after Lisbon, the Luxembourg perspective. *Cooperative Research Paper*, 02/2013. 2.
[118] OSZTOVITS op. cit. 242.

international treaties of human rights subject signed by the Member States (Nold). All these were incorporated into the primary law only in 1992 by the adoption of the Maastricht Treaty. The current regime was established by the Charter of Fundamental Rights which was made legally binding by the Lisbon Treaty[119].

In my opinion, it sheds light on 2 things. First of all, the Court exceeded the pure economic concept of the Community admitting its effect to the citizens. Secondly, by constituting the Union's human rights system, it touched upon sensitive issues regarding the Member States. In this respect, it is enough to refer to the judgements of the German Constitutional Court, namely Solange I and II. These rulings indicated well how difficult was to recognise the supremacy of EU law in the field of human rights.

Coming back to the question of minority protection, similar steps must be taken. On one hand, by the Eastern enlargement, the share of minority population significantly increased. Future enlargements will surely reinforce this tendency: just look at the ethnic map of the Balkan countries. Besides, the ethnic tensions, different movements and security concerns (see the Ukrainian crisis in the neighbourhood of the EU!) should urge the Court to reconsider its attitude. Maybe the first sign of change is the judgement in the Minority Safepack case where the Body annulled for the first time the decision of the Commission. However, it was delivered by the General Court, not by the ECJ. Here, the Commission refused to register the initiative despite the organisers emphasised that the possibility of partial recognition was clearly marked in the document. By contrast, the Commission treated the initiative as a package which had to be accepted or dismissed as a whole[120]. In this respect, the General Court stated that the reasoning of the Commission was manifestly inadequate. It also failed to identify which proposals fell outside its competence and the reasons for that. As a result, the organisers did not have enough information to understand the decision of the Body and they were prevented from resubmitting the ECI. However, as Anastasia Karatzia notes, the general Court did not form its standpoint on the partial recognition of the initiative[121]. Thus, the Commission can still ignore sensitive issues by this method. But the decision can also indicate a moderate shift in the existing jurisprudence.

It could be also disadvantageous for minority aspirations that the Commission has discretionary right in the final phase of the ECI procedure whether it put forward a proposal or not. In addition, it is accompanied by the political considerations drawn by the Body. All these can entail reluctance in sensitive issues, such as minority protection. If we look at the decisions made in the two relevant initiatives, it seems to be clear. As I mentioned before, Member States usually insist on retaining this policy area under their control stating that it is part of their sovereignty. Thus, there is a political pressure towards the Commission not to act. It is especially true in our case. For instance, several Member States interpleaded into the proceedings on the side of the Commission: Romania and Slovakia in both cases, Greece in the Izsák-Dabis v. Commission[122]. After the favourable decision of the Court, Romania did not give up disabling minority initiatives. In the recent past, the FUEN held its Congress in Cluj Napoca/Kolozsvár to celebrate the success of the registration and to prepare for the collection of the required number of signatures. As Hunor Kelemen, the president of DAHR mentioned, the Romanian diplomacy tried everything to minimize the venue: none of the official representatives of the country participated, neither the Romanian president, nor the Romanian Foreign Ministry and the government did not send a message to the guests.

[119] ARESTIS op. cit. 2-3.
[120] TÁRNOK op. cit. 1-11.
[121] Anastasia KARATZIA: European Citizens' Initiative: General Court rules on the Commission's obligation to give reasons for refusing to register proposals. http://eulawanalysis.blogspot.hu/2017/02/european-citizens-initiative-general.html
[122] T-529/13- *Izsák-Dabis v. Commission*

Besides, they accused the Minority Safepack that it was a tool for ethnic separatism endangering the territorial integrity of Romania[123]. Furthermore, several Romanian authors accused even the vice-President of the Commission, Frans Timmermans that his Body openly supported separatism. The Russian card was also brought up arguing that the FUEN was just a puppet of Russia and Hungary. According to this logic, the plan is simple: facilitation of the EU's disintegration[124].
We can see that Member States, especially with significant minority population, are against a European regulation on the issue.
Fortunately, the European institutions are about to change their attitude towards minority protection. Nowadays, the Committee of Petitions deals with several similar cases such as the beforementioned Slovak citizenship law, multilingual city signs in Cluj Napoca/Kolozsvár etc. Moreover, the vice-President of the Commission, Frans Timmermans promised the revision of the current regime[125]. It also should be mentioned that the President of the EP supports the Minority Safepack initiative by stating: *"Europe is primary about the citizens, not the Member States; there can be no first- and second-class citizens in Europe*[126]*"*. Hopefully, all these could offset or even eliminate the political considerations of the Commission giving chance to sensitive issues.
As we could see, even the procedure itself could mean hurdles for organisers. Nevertheless, the real pitfalls are in the judgement of the content by the Commission.
Is minority protection a legitimate purpose regarding ECI? First of all, several articles can be invoked in the Lisbon Treaties such as 2 TEU, 3(3) TEU etc. Persons belonging to minorities are among the values of the EU. Secondly, ECI is a tool for channelling the voices of the citizens to strengthen the legitimacy of the EU and to ease democratic deficit. According to various statistics, the most common topics are the following:

- international
- constitutional
- communication
- justice
- environmental
- animal rights
- social rights
- transport[127]

It indicates that the nationals saw it as an alternative to the traditional methods. In this respect, I think the topic of minority protection is justifiable: sizeable group with special needs, cultural-linguistic diversity etc. How did experts value the opportunity? Before its entry into force, Tihamér Czika noted that such an initiative would have fallen even before the registration. The only chance is to use the protection of regional and minority languages as a reference. Otherwise, it would be a device of political pressure, nothing else. The president of

[123] Élesen bírálta Bukarest kisebbségpolitikáját az RMDSZ a kolozsvári FUEN-kongresszuson *[DAHR heavily criticised the minority policy of Bucharest on the FUEN Congress]*. https://kronika.ro/erdelyi-hirek/bukarest-kisebbsegpolitikajat-biralta-az-rmdsz-a-kolozsvari-fuen-kongresszuson
[124] Ciprian PLAIASU: Az Európai Bizottság váratlan ajándékban részesíti az európai szeparatistákat *[The European Commission gives an unexpected gift to the European separatists]*.
http://foter.ro/cikk/20170331_az_europai_bizottsag_varatlan_ajandekban_reszesiti_az_europai_szeparatista_mozgalmakat
[125] CSÁKY: jó lenne még ebben a ciklusban áttörést elérni a kisebbségvédelem terén *[It would be good to accomplish a breakthrough in the field of minority protection]*.
http://www.hirek.sk/belfold/20170505072908/Csaky-jo-lenne-meg-ebben-a-ciklusban-attorest-elerni-a-kisebbsegvedelem-teren.html
[126] MÓZES László: Európa és a kisebbségek *[Europe and the national minorities]*.
http://www.3szek.ro/load/cikk/102095/europa_es_a_kisebbsegek
[127] TEGLAS op. cit. 20.

the Minority Intergroup, Kinga Gál also shared this opinion because we could find the most common points in this.[128]
After 6 years of the adoption of the regulation, knowing also the jurisprudence, we are in a better position. In order to find the limits of the organisers, we should look at the relevant initiatives briefly focusing on the proposed regulation. For this reason, we will use Minority Safepack as a sample due to the success of registration. Besides, it is worth evoking Ulrike Barten who named the following areas as reference for minority protection:

- culture
- language
- education
- economic, social and territorial cohesion

Unfortunately, none of them falls under exclusive competence and only the last one is among the shared competence. Thus, organisers have limited possibilities to fight for an EU-wide regulation.
Coming back to the case of Minority Safepack, it initiated a set of proposals to improve the protection of persons belonging to national and linguistic minorities and to strengthen cultural and linguistic diversity in the Union in the areas of regional and minority languages, education and culture, regional policy, participation, equality, audiovisual and other media content, regional (state) support[129].
Most of the proposals were among the complementary competence and the recommended tools were mainly regulations and directives[130]. In my opinion, it means that the initiators were aware of the general reluctance of European forums. Hence, they tried to put together a draft without placing too much burden on Member States to avoid refusal. It seems that the strategy succeeded: the General Court gave green light to the initiative and finally, the Commission only refused 2 proposals during the registration.
Looking at the regulation, it is worth mentioning the planned amendment of regional funds considering the protection of minorities and the promotion of cultural and linguistic diversity. All these can favourably contribute to the preservation of identities of different groups.
By contrast, I found it interesting why the Commission refuted the creation of minority platform based on the Committee of the Regions. On one hand, it would have enabled small communities to pursue a dialogue with the European institutions. On the other hand, it would have ensured an effective feedback on every field of EU law by decreasing future tensions[131].
In this respect, Ulrike Barten has also the same view because Committee of the Regions does not offer possibility for those minorities which do not have representation on regional or local level of their respective Member States[132]. Thus, she advocates the establishment of the Committee of Minorities which would have the same competence as the former institution: giving opinions and consultation[133].
Finally, it should be mentioned that the Commission also refused the proposal on the revision of existing Council directives on equal treatment by inserting minority rights[134]. In this context, it is worth referring to Balázs Vizi who pointed out that the relevant legal basis,

[128] CZIKA op. cit. 106-112.
[129] Minority Safepack Initiative.
https://www.fuen.org/fileadmin/user_upload/downloads/MSPI_ENGL_Official_Document.pdf
[130] Annex – Full list of the 11 proposals of the 'Minority Safepack' Citizens' Initiative.
http://europa.eu/rapid/press-release_IP-17-776_en.htm
[131] Minority Safepack Initiative.
https://www.fuen.org/fileadmin/user_upload/downloads/MSPI_ENGL_Official_Document.pdf. 7-9
[132] BARTEN op. cit. 108-109.
[133] BARTEN op. cit. 114.
[134] Minority Safepack Initiative.
https://www.fuen.org/fileadmin/user_upload/downloads/MSPI_ENGL_Official_Document.pdf.

Article 19 TFEU did not give authorization to adopt measures on national or linguistic minorities, just only for racial or ethnic one. This standpoint was confirmed by Article 22 Charter of Fundamental Rights. Unfortunately, the latter does not give authorization to adopt such measures, although its list contains national minorities[135].

By contrast, *The cohesion policy for the equality of regions and the sustainability of regional cultures'* initiative raised several sensitive issues. In this case, the organisers directly and firmly targeted the shared competences of the EU. It is important because where the EU legislated; there the Member States cannot act unless the EU gives up that area (pre-emption). I think it is the most promising field for minority protection due to the limited competence of Member States.

The main goal of the initiative was that the cohesion policy had to pay attention to those regions which could be differentiated from the surrounding regions by their national, ethnic, cultural, religious and linguistic characteristic (national regions). Thus, these must be defined by legal instrument. Besides, the cohesion policy of the EU cannot violate the principal of cultural diversity by the ill-treatment of them. Moreover, they have additional economic potential which can contribute to the performance of the respective Member State and the whole EU[136]. The organisers underpinned their proposal by the following legal bases:

- Article 4 TFEU
- Article 174 TFEU
- NUTS Regulation 1059/2003/EC
- Article 2 TEU and Article 167 TFEU
- Article 19 TFEU[137]

I think the prevention is an important perspective: it is common, especially in the new Member States that the governments concerned try to neglect or even discriminate regions populated by minorities. However, the prescription of the establishment of these regions contradicts Article 4(2) TEU which says that the EU must respect the constitutional structure of the Member States. It was also confirmed by the General Court. Thus, I would have relied exclusively on the NUTS Regulation and focused on the negative commitment of the respective governments: no discrimination is allowed by the creation of development regions.

On the other hand, the Court also refused the reference to Article 174 TEU. Although it accepted the reasoning of the organisers regarding the existence of ethnic, cultural, religious or linguistic features but the Body pointed out that they forgot to justify how the features of national regions could mean disadvantage[138]. In my opinion, the judgement is still promising because the list of the article is not exhaustive, so it can be supplemented by the relevant provisions.

Finally, is the ECI an effective tool for minority protection? Well, it is still difficult to answer the question properly. It seems that proposals belonging to complementary competences have good chance to meet the requirements of the European forums. However, issues of shared competences are a completely different story: the discretionary right of the Commission or the Court can overturn minority aspects. As a result, the decision of the ECJ will be crucial in the Izsák-Dabis v. Commission appeal. Besides, the final fate of Minority Safepack also has to be

[135] VIZI op. cit. 38-40.

[136] Európai polgári kezdeményezés a nemzeti régiók védelmére *[ECI for the protection of national regions]*. http://sznt.sic.hu/hu-sic/index.php?option=com_content&view=article&id=542%3A-europai-polgari-kezdemenyezes-a-regiok-egyenlosegeert-es-a-regionalis-kulturak-fenntarthatosagaert&catid=17%3Anemzetkoezi-dokumentumok&Itemid=23&lang=fa

[137] GÖRÖG op. cit. 63-65.

[138] Az Európai Unió Törvényszéke 50/16. sz. sajtóközlemény *[Press release no. 50/16 of the General Court]*. Luxembourg, 10th may 2016. https://curia.europa.eu/jcms/upload/docs/application/pdf/2016-05/cp160050hu.pdf

taken into account. In case of negative outcomes, the whole system must be reviewed. But this is the future. All we can do now is to wait. What do you think?

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