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Case T-158/21 *Minority SafePack*: No hope for minority rights in EU law?

By Timothy Jacob-Owens and Craig Willis

The European Union (EU) has a somewhat ambivalent relationship with minority rights. According to Article 2 of the Treaty on European Union (TEU), respect for 'the rights of persons belonging to minorities' is among the EU's founding values. Article 3(3) of that Treaty also provides that the Union 'shall respect its rich cultural and linguistic diversity', as affirmed in Article 22 of the Charter of Fundamental Rights. More generally, the EU famously claims to be 'united in diversity'. But beyond these broad statements of principle, EU law offers little in the way of concrete, targeted minority rights guarantees.

For over a decade, a coalition of minority rights advocacy groups has been attempting to change this via a European Citizen's Initiative (ECI). First conceived in 2010 under the auspices of the Federal Union of European Nationalities (FUEN), the Minority SafePack Initiative (MSPI) originally consisted of a set of 11 proposals with the broad aims of enabling the members of national minorities to live in their traditional homelands, learn in their mother tongues, preserve and develop their identities and cultures, and to achieve equality. These proposals included a package of EU law reforms, among which was the adoption of a new Council Recommendation on the protection and promotion of cultural and linguistic diversity in the Union.

In January 2021, following sustained political and legal mobilisation by FUEN and others, the Commission issued a communication rejecting the MSPI, declaring that 'no additional legal act is necessary' to achieve its objectives. In November 2022, the General Court upheld that

decision. In this blog post, we discuss the background context, legal content, and broader consequences of the Court's judgment.

Context

As is well known, the ECI mechanism was introduced under the Lisbon Treaty with a view to addressing the EU's 'democratic deficit'. Article 11(4) TEU empowers groups of a million or more EU citizens 'who are nationals of a significant number of Member States' to invite the Commission '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'. A 'significant number' is defined as 'one quarter of the Member States' in Regulation 2019/788, which also sets out the ECI procedure. This requires, inter alia, that a given ECI must be registered by the Commission before the organisers can begin to collect signatures or 'statements of support'.

In 2013, the first attempt to register the MSPI was refused by the Commission on the ground that some of the proposals manifestly fell outside its powers of legislative initiative. The organisers challenged this refusal before the General Court, which annulled the decision in 2017, finding that the Commission had failed both to identify which of the proposals it considered to be outside its remit and to state the reasons for its decision (for discussion of the judgment, see here). On this basis, the Commission decided to register the MSPI, including 9 of the original 11 proposals. The Government of Romania subsequently challenged this decision, but the General Court rejected its arguments.

By April 2018, following the 12-month signature collection phase, the MSPI organisers had amassed 1,123,422 validated signatures, passing the national threshold in 11 Member States. The proposals received the support of the European Parliament, which passed a Resolution in December 2020 calling on the Commission to act on them. The MSPI was also endorsed by the German Bundestag, the Dutch House of Representatives, the Frisian parliament and the Province of Fryslân in the Netherlands, and the regional government of Trentino-Alto Adige/Südtirol in Italy, among others. By far the greatest level of support came from the Hungarian government, however, which not only spoke out in favour of the proposals, but also provided specific project funding for FUEN and intervened on behalf of the MSPI organisers in both rounds of litigation at the General Court. It is therefore perhaps no coincidence that almost half (47%) of the signatures were collected in Hungary and almost a quarter (23%) in Romania, which is home to a substantial Hungarian minority. When the Commission announced its blanket rejection of the MSPI proposals in January 2021, Hungary's ruling party Fidesz decried the decision, while opposition party Momentum speculated that the government's support had actually 'worsened Minority SafePack's chances in Brussels', in light of its position in the ongoing 'rule of law crisis'. Against this

backdrop, the MSPI organisers, again supported by Hungary, turned to the General Court once more.

Content

The General Court considered three grounds of challenge. The first of these concerned the Commission's obligation, pursuant to Article 296 TFEU and Article 15(2) of Regulation 2019/788, to give reasons for its decision to reject the MSPI proposals. In particular, the applicant pointed out that the Commission had failed to respond to all of the arguments presented in written correspondence, during a face-to-face meeting, and at a hearing of the European Parliament. However, emphasising the 'broad discretion' enjoyed by the Commission in responding to an ECI (para 21), the Court found that this was not necessary: following *One of Us*, the Commission was not under an obligation to 'specify all the relevant facts and points of law' and 'cannot therefore be required to adopt a position on each of the written and oral explanations given with regard to all of the proposals contained in an ECI' (para 26). Instead, it was sufficient that the Commission had set out the 'main reasons' for its decision, to the extent required for the applicant to determine whether it was 'well founded' and for the courts to assess its legality (para 28).

The second ground of challenge was the claim that the Commission had breached the principle of equal treatment under Article 9 TEU by giving the MSPI organisers fewer opportunities to meet and discuss their proposals than the organisers of the ultimately successful 'End the Cage Age' ECI. The applicant argued that Article 9 TEU should be understood as guaranteeing 'a level playing field for all ECIs', with the consequence that 'all ECIs should have the same opportunity to be brought to the attention of the Commission' (para 34). Again, the General Court was unpersuaded: the Commission was 'not required to organise an identical number of meetings with the organisers of every ECI' (para 39) and was instead entitled to consider that it was already 'sufficiently informed' and that 'further meetings were not necessary' (para 40). On the Court's view, the equal treatment of EU citizens therefore does not entail an equal right of access to Commission officials for the purposes of promoting an ECI.

The final ground of challenge targeted the substance of the Commission's decision to reject the MSPI proposals, focusing on several alleged manifest errors of assessment. From the outset, the General Court emphasised the 'broad discretion' enjoyed by the Commission and its own 'limited' powers of judicial review (para 52) in this context: the decision could only be overturned if there was sufficient evidence to show that the Commission's position was 'implausible' (para 53). This proved too high a bar for the applicants to reach. Despite a detailed set of arguments to the contrary, the General Court consistently found in favour of

the Commission's view that various existing instruments and initiatives were sufficient to achieve the objectives of the MSPI proposals. For instance, the Court agreed with the Commission that a new Council Recommendation on the protection and promotion of cultural and linguistic diversity in the Union was unnecessary, given the existence of other (tangentially) related EU documents, such as the EU Roma strategic framework for equality, inclusion and participation 2020-2030, as well as the Council of Europe's European Charter for Regional or Minority Languages and the UNESCO Convention for the Protection and Promotion of the Diversity of Cultural Expressions. For the Court, it was sufficient that these various instruments were 'capable of contributing, even if only in part, to the achievement of the objective pursued' (e.g. para 74) or were at least 'not manifestly unrelated to' that objective (e.g. para 63).

Consequences

At its root, notwithstanding its legal basis and regulation, the ECI is a political mechanism. In *Puppinck*, the Court of Justice emphasised that its 'particular added value […] resides not in certainty of outcome, but in the possibilities and opportunities that it creates for Union citizens to initiate debate on policy within the EU institutions' (para 70). The most recent MSPI judgment of the General Court highlights the dominant role of the Commission in this process, as reflected in its wide discretion concerning the level access to officials afforded to the organisers of a given ECI and the extent to which it chooses to respond to their arguments when justifying its decision. Furthermore, the substance of that justification is subject to very limited judicial scrutiny, given the General Court's reliance on 'plausibility' as the standard for review. The fate of the MSPI campaign demonstrates that, even with significant transnational political backing (albeit perhaps partially counterproductive given the wider politics of the rule of law crisis), the Commission still holds (virtually) all the cards.

Is this therefore the end of the line for minority rights law-making in the EU? From a legal perspective, there is no obvious barrier to implementing the MSPI's legislative proposals. Certainly, the Commission's claim that the existence of other international minority rights instruments renders any EU law-making in this area superfluous hardly seems dispositive of the issue: substantive overlap with existing international human rights treaties, notably the European Convention on Human Rights, did not preclude the creation of the Charter of Fundamental Rights, for example. Responding to the General Court's judgment, FUEN president Loránt Vincze indicated that there 'is a strong possibility' that the MSPI organisers will attempt to break the political deadlock via further litigation, in the form of an appeal to the Court of Justice. The Court of Justice's earlier case law is far from promising in this regard: in *Puppinck*, the Court ultimately upheld the Commission's blanket rejection of legislative proposals advanced by the One of Us ECI. Nonetheless, the MSPI organisers remain undeterred: in Vincze's words, 'the quest for minority rights in the EU will continue'.