

# Judicial Independence & National Judges in the Recent Case Law of the Court of Justice

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*Judicial independence did not only become more visible in the recent case law of the Court of justice but has also been analysed as a systemic parameter of the Union. This article discusses a sample of three cases, Associação Sindical dos Juízes Portugueses, Achmea, and L.M., to assess the notion of judicial independence as applying regarding the national judges in the judicial system of the Union. Judicial independence, as a notion of EU law, is primarily a constitutional requirement presumably deferent to Member States' standards and pursuing the proper functioning of the Union's judicial system, namely its effectiveness. However, the recent case law testifies the emergence of a common EU standard of judicial independence, which does not only apply as a minimum standard throughout the Union but also affects the national legal orders. Ultimately, the analyses of the paper point out a curious harmony regarding judicial independence between the principles of effectiveness of Union law and of effective judicial protection under that law without clarifying their articulation.*

**Keywords:** Judicial Independence, Effective Judicial Protection, Rule of law, Structural Requirement, effectiveness, common standard, Judicial System of the Union, Constitutionalization of the EU.

*'La Communauté [...] est une Communauté de droit'*<sup>1</sup>

*'L'Union est une Union de droit'*<sup>2</sup>

The phrasing of the Court of justice could not be clearer: the guarantee of independence is inherent in the task of adjudication and is required not only at EU level but also at the level of the Member States in respect of their domestic courts.<sup>3</sup> The first part of the statement, namely the inherence of independence in the task of adjudication is rather classical.<sup>4</sup> However, the second part, consecrating the dual character of

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<sup>1</sup> Judgment of the Court of 23 Apr. 1986, *Les Verts*, C-294/83, EU:C:1986:166, para. 23.

<sup>2</sup> Judgment of the Court (Grand Chamber) of 27 Feb. 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117 (hereinafter *Trade Union of Portuguese Judges*), para. 31.

<sup>3</sup> *Ibid.*, para. 42.

<sup>4</sup> Judgment of the Court (Grand Chamber) of 19 Sept. 2016, *Wilson*, C-506/04, EU:C:2006:587, para. 49.

the requirement for both Union and domestic courts, is one of the recent touches on the impressionist canvas of judicial independence under Union law.

Judicial independence, as a legal concept, refers to the principle excluding any improper influence on the judiciary from the other branches of government, or from private interests. The guarantee of independence is further understood as a main component of effective judicial protection, which forms a general principle of EU law stemming from the constitutional traditions common to the Member States and from the European Convention of Human Rights (hereinafter the ECHR).

Despite not being an express condition of the Copenhagen criteria, judicial independence is vital for the accession process of aspiring Member States.<sup>5</sup> However, after accession Union law does not provide yet for any monitoring mechanism to preserve judicial independence of national courts. The understanding of judicial independence as an axiomatic principle, not necessitating specific mentioning or monitoring and only able to be protected a posteriori via the highly exceptional mechanism of Article 7 of the Treaty on the European Union (hereinafter TEU), presented its limits and invited to reaction only recently.<sup>6</sup> In a comparable way, the case law of the Court of justice, if it did not ignore the guarantee of independence of the judiciary, has not been directly confronted to that point in the past. However, the development of EU law especially with the introduction of the European Arrest Warrant (hereinafter EAW) mechanism and the effects of some extra-legal developments such as the economic crisis and the rise of illiberal policies in the territory of the Union precipitated the direct assessment of the guarantee of independence by the Court of justice.

The present contribution focuses on the relation between the legal notion of judicial independence under EU law and the national judge, an integral part of the judicial system of the Union. The case law of reference will be limited to *Trade union of Portuguese Judges*,<sup>7</sup> *Achmea*,<sup>8</sup> and *L.M.*<sup>9</sup> Three cases delivered at Grand Chamber under the preliminary ruling procedure of Article 267 of the Treaty on the Functioning of the European Union (hereinafter TFEU) and forming a consistent line of case law regarding effective judicial protection in general but also specifically regarding judicial independence and the shaping of the Union's judicial

<sup>5</sup> Art. 49, para. 1, TEU reads as follows: 'Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. [...]'. See also Open Society Institute, *Judicial independence in the EU accession process*, in *Monitoring the EU Accession Process: Judicial Independence* 13–69 (Central European University Press 2001).

<sup>6</sup> Sergio CARRERA & Valsamis MITSILEGAS, *Upholding the Rule of Law by Scrutinising Judicial Independence* 1–7 (Centre for European Policy Studies Commentaries 2017); See also Communication of the European Commission of 24 Oct. 2017, COM(2017)650, on *An agenda for a more united, stronger and more democratic Europe* 12–13.

<sup>7</sup> *Trade Union of Portuguese Judges*, *supra* n. 2.

<sup>8</sup> Judgment of the Court (Grand Chamber) of 6 Mar. 2018, *Achmea BV*, C-284/16, EU:C:2018:158 (hereinafter *Achmea*).

<sup>9</sup> Judgment of the Court (Grand Chamber) of 25 July 2018, *L.M.*, C-216/18 PPU, EU:C:2018:586.

system. Before proceeding to the substantive analysis of the subject matter, it is useful to have a brief overview of the case law of reference.

*Trade union of Portuguese Judges* is a case related to the temporary reduction, by virtue of a Portuguese law, of the remuneration of series of office holders and employees performing duties in the public sector, including judges. Those temporary reductions formed part of a general plan to eliminate the excessive budget deficit of Portugal adopted in the context of the EU financial assistance to that Member State. The Trade union of Portuguese judges, acting on behalf of some of its members, specifically the judges of the Tribunal de Contas, brought an action before the competent national court, the Supremo Tribunal Administrativo, seeking the annulment of those temporary budgetary measures. The contention of the Trade union has been that the budgetary measures infringed the principle of judicial independence, enshrined in both the Portuguese constitution and EU law. Against this background, the Supremo Tribunal Administrativo decided to refer a preliminary question to the Court of justice. The aim was to assess whether 'the principle of judicial independence, enshrined in the second subparagraph of Article 19, paragraph 1, TEU, in Article 47 of the [Charter] and in the case-law of the Court of Justice'<sup>10</sup> precludes budgetary measures, as those challenged in the main proceedings, affecting the judiciary. The Court, ruled that the principle of judicial independence is not infringed by the measures at issue since they were part of general measures applying to all members of the national public administration, not only judges, and because they were temporary in nature. In its reasoning, the Court stressed the importance of effective judicial protection under EU law and provided an overview of the content of the guarantee of independence under that law.

With only a remote link to judicial independence but with great significance regarding the characteristics of the judicial system of the Union, the *Achmea* case emerged regarding the dispute settlement mechanism provided for in a bilateral investment treaty (hereinafter BIT) between the Netherlands and Slovakia, concluded before the accession of the latter to the Union. According to that BIT, disputes between one Contracting State and an investor from the other Contracting State must be settled amicably or, in default, before an arbitral tribunal. Such a dispute aroused between Achmea, a subsidiary of a Netherlands insurance group offering private sickness insurance services, and Slovakia. An arbitral award was pronounced against Slovakia who challenged it for violation of several provisions of the TFEU. The German judge, who was competent according to the arbitral settlement, before rendering its judgment on the compatibility of the dispute settlement mechanism with EU law stayed

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<sup>10</sup> Trade Union of Portuguese Judges, *supra* n. 2, para. 18.

the proceedings and referred three preliminary questions to the Court of justice. The Court ruled that the arbitration clause is not compatible with Articles 344 and 267 TFEU<sup>11</sup> because it removes from the mechanism of judicial review of EU law disputes which may relate to the application or interpretation of that law. More specifically, while the arbitral tribunal provided for in the BIT may be called to interpret or to apply EU law, it does not comply with the requirements of the Union's mechanism of judicial cooperation. At the one hand, the arbitral tribunal cannot be classified as a 'court or tribunal' in the sense of EU law and thus be enabled to refer a preliminary question to the Court of justice. At the other hand, its award cannot be subject to a full judicial review by a court or tribunal in the sense of EU law.

The *L.M.* case relates to the controversial reforms of the judiciary in Poland<sup>12</sup> and concerns the exceptional circumstances, developed in *Aranyosi*,<sup>13</sup> able to lead to the postponing or even the non-execution of a EAW. Concretely, *L.M.* challenged before the High Court of Ireland the execution

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<sup>11</sup> Art. 267 TFEU reads as follows: '*The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning: (a) the interpretation of the Treaties; (b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union; Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon. Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court. If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay*'. Art. 344 TFEU reads as follows: '*Member States undertake not to submit a dispute concerning the interpretation or application of the Treaties to any method of settlement other than those provided for therein*'.

<sup>12</sup> The targeted reforms are controversial in that they involve a risk of politicization of the Supreme Court and the National Council of the Judiciary. The law on the Supreme Court institutes an extraordinary remedy for those who consider themselves victims of unfair judgments over the last twenty years to seek a review of these decisions and the establishment of a disciplinary chamber to judge magistrates who have violated the law. In addition to that, it notably lowers the age of retirement of judges from 70 to 65 and invests the head of state with the power to grant exemptions on a case-by-case basis. The law on the National Council of the Judiciary provides that the fifteen members of this institution, guarantor of the independence of judges, will no longer be elected by the judiciary but by the lower house of the Parliament. These reforms follow some other controversial reforms. The latter have led to the election of the 5 members of the Constitutional Court by the lower house of the Parliament after contested procedures and to the lowering of the retirement age of ordinary judges. They have led to the discretionary power of the Minister of Justice for the possible extension of the mandates and the appointment or dismissal of the presidents of the courts and tribunals.

In the aftermath of the Order of the Court concerning the claim of the European Commission for infringement of Arts 19 TEU and 47 of the Charter by Poland because of the lowering of the retirement age of the judges of the Supreme Court (C-619/18R), the Polish government has suspended the entry into force of the challenged law.

<sup>13</sup> Judgment of the Court (Grand Chamber) of 5 Apr. 2016, *Aranyosi*, C-404/15 and C-659/15 PPU, EU:C:2016:198.

of the EAWs emitted against him by the Polish judicial authorities. The High Court, based on the reasoned proposal of the European Commission adopted pursuant to Article 7, paragraph 1, TEU<sup>14</sup> and the findings of the Venice commission,<sup>15</sup> concluded that the Polish judicial reforms were in violation of the rule of law. As a result, the execution of the European Arrest Warrant could lead to the violation of L.M.'s fundamental right to effective judicial protection since judicial independence in Poland was considered compromised. Against that background, the High Court decided to refer two preliminary questions to the Court of Justice to clarify how exceptional circumstances should operate in such a configuration. The first question concerned the assessment of the risk of violation of a fundamental right, ground able to form an exceptional circumstance within the meaning of *Aranyosi*, and more specifically whether this assessment should be operated in a specific and precise manner despite having cogent evidence of the violation of the rule of law by the Member State issuing the warrant. The second question concerned the extent of the obligation for judicial cooperation between the executing and issuing judicial authorities of the European Arrest Warrant at stake, before concluding to the existence of a risk of violation of a fundamental right able to lead to the postponing or even the non-execution of such a warrant. The Court ruled that the executing judicial authority must determine both specifically and precisely and in the light of the information provided by the issuing Member State whether there are substantial grounds for believing that that person will run a risk of violation of his fundamental right to a fair trial if he is surrendered to that Member State. In its reasoning, the Court stressed that judicial independence forms part of the essence of the fundamental right to a fair trial and that a real risk of violation is thus capable of permitting the executing judicial authority to refrain, by way of exception, from giving effect to the EAW.<sup>16</sup>

Those three cases, forming the sample for the following analyses, point out the functions of the independence of the judiciary, first as a constitutional requirement of the Union (1) and second as a common EU standard (2).

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<sup>14</sup> Art. 7, para. 1, TEU reads as follows: 'On a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission, the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of the values referred to in Art. 2. Before making such a determination, the Council shall hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure. The Council shall regularly verify that the grounds on which such a determination was made continue to apply'.

<sup>15</sup> Venice Commission is the common name for the European Commission for Democracy through Law, an advisory body of the Council of Europe. This Commission especially produces opinions and studies on recent developments with a constitutional interest.

<sup>16</sup> L.M., *supra* n. 9, paras 48 and 59.

## 1 A CONSTITUTIONAL REQUIREMENT OF THE UNION

The recent case law of the Court of justice addresses the independence of the judiciary as a condition for the mechanisms of judicial cooperation (1.1) as well as a structural obligation under the principle of effective judicial protection (1.2).

### 1.1 A STRUCTURAL PREREQUISITE FOR THE MECHANISMS OF JUDICIAL COOPERATION

Both the procedure for a preliminary ruling and the EAW mechanism rely on the independence of the judicial bodies cooperating. Indeed, only a court or a tribunal of a Member State may ask the Court of justice for a preliminary ruling and the definition of court or tribunal comports the requirement of independence (1.1[a]). As far as the EAW mechanism is concerned, the independence of the judiciary constitutes its premiss (1.1[b]).

#### 1.1[a] *The Definition of ‘Court or Tribunal’ Within the Meaning of Article 267 TFEU*

According to settled case law ‘the factors to be taken into account in assessing whether a body is a “court or tribunal” include, inter alia, whether the body is established by law, whether it is permanent, whether its jurisdiction is compulsory, whether its procedure is inter partes, whether it applies rules of law and whether it is independent’.<sup>17</sup> Concerning more specifically the latter, the Court expressly recalled in *Trade union of Portuguese judges* the conditional relation between independence and the preliminary ruling mechanism. According to the wording of the Court, the guarantee of independence is ‘in particular, essential to the proper working of the judicial cooperation system embodied by the preliminary ruling mechanism under Article 267 TFEU, in that [...] that mechanism may be activated only by a body responsible for applying EU law which satisfies, inter alia, that criterion of independence’.<sup>18</sup>

The *Achmea* case adds a systemic perspective to the qualification of a judicial body as a court or tribunal within the meaning of Article 267 TFEU. Indeed, a body qualified as a court or tribunal in the sense of EU law is ‘situated within the judicial system of the EU’.<sup>19</sup> A combined analysis of those cases leads to the conclusion that every organ qualified as a court or tribunal under EU law, and thus situated within its judicial system, satisfies the criterion of independence. Formulated differently, any organ not satisfying the criterion of independence

<sup>17</sup> *Trade union of Portuguese judges*, *supra* n. 2, para. 38.

<sup>18</sup> *Ibid.*, para. 43. See also L.M., *supra* n. 9, para. 54.

<sup>19</sup> *Achmea*, *supra* n. 8, para. 43.

and thus not qualified as a court or tribunal can only be situated outside the judicial system of the Union.

If the exclusionary approach regarding non-independent organs aligns with the high level of trust required among the participants in a judicial mechanism such as the one in Article 267 TFEU, its virtues are solely preventive and not curative. To take a hypothetical example, in configurations of judicial reforms affecting the degree of independence of bodies dealing with questions on the application or interpretation of EU law, the sole exclusion of those bodies from the preliminary ruling mechanism indeed avoids the interference of non-independent bodies but with a cost: the restriction of the perimeter of the preliminary ruling mechanism. This is liable to affect the correct interpretation or application of EU law, or to formulate it differently, the full effectiveness of EU law. However, the previous criticism departs from the underlying idea that EU law, and more specifically the Court of Justice, has a mandate to preserve judicial independence in the Member States, what is unclear. Even in the case of existence of such a mandate it is dubious whether the preliminary ruling mechanism is the adequate procedure to fulfil it.

Despite the limits of the criterion of judicial independence as part of the definition of a court or tribunal, *Trade union of Portuguese judges* and *Achmea* stress the significance of that criterion for the preliminary ruling mechanism as it stands. The *L.M.* case underlines its significance regarding a newer mechanism of judicial cooperation under EU law, the EAW mechanism.

#### 1.1[b] *The Premiss of the European Arrest Warrant Mechanism*

Judicial cooperation under the mechanism of the EAW is not conditioned by the notion of a court or tribunal, as it is the case for the preliminary ruling mechanism, but it is conditioned by the concept of a 'judicial authority'. This is indeed the term used by the Framework Decision 2002/584<sup>20</sup> instituting and governing the EAW. In *L.M.* the Court focuses on the objective of that Framework Decision, namely ensuring the free movement of judicial decisions in criminal matters in the Area of freedom, security and justice, to conclude to the essential character of the independence of judicial authorities regarding the mechanism of the EAW.<sup>21</sup>

The approach appears very close to the one of *Trade union of Portuguese judges* concerning the notion of court or tribunal. Indeed, the Court relates the mechanism of judicial cooperation to an autonomous notion of Union law, which is conditioned by the independence of the body concerned.

<sup>20</sup> Council Framework Decision of 13 June 2002, 2002/584/JHA, on the European arrest warrant and the surrender procedures between Member States.

<sup>21</sup> *L.M.*, *supra* n. 9, para. 55.

However, the wording of the Court appears much stronger regarding the importance of judicial independence under the mechanism of the EAW. Despite the essential character of the notion under both mechanisms, the Court refers to judicial independence as a criterion or as a factor when defining the notion of court or tribunal. At the same time, it qualifies it as a precondition under the EAW mechanism. The specific features of the Framework Decision could be at the origin of this difference, at least in terms of the choice of wording adopted. To that extent, the Court observes that the Framework Decision is ‘founded on the principle that decisions relating to European Arrest Warrants are attended by all the guarantees appropriate for judicial decisions’.<sup>22</sup> Thus, ‘not only the decision on executing a EAW, but also the decision on issuing such a warrant, must be taken by a judicial authority that meets the requirements inherent in effective judicial protection – Including the guarantee of independence –’.<sup>23</sup>

Interestingly enough, in *L.M.* the Court recalls that the requirement of judicial independence is not merely a matter of EU law, but it is also an obligation under the ECHR and under national law.<sup>24</sup> Further, the Court recalls that the mechanism of the EAW is founded on the ‘high level of trust between Member States’<sup>25</sup> and that trust is itself founded ‘on the premiss that the criminal courts of the other Member States [...] meet the requirements of effective judicial protection, which include, in particular, the independence and impartiality of those courts’.<sup>26</sup>

Given the functioning of the EAW, based on a succession of judicial decisions, the consequence of the lack of independence would not be limited to the exclusion of a body from participating in that mechanism of judicial cooperation. It will affect the conformity with Union law of the already issued judicial decision of that body. Indeed, since the premiss of judicial independence is one of the very first foundational elements of the EAW mechanism, then the logical effect of the premiss being compromised is that any act adopted on such a premiss is vitiated and, at least in principle, legally invalid.

Besides analysing judicial independence as a condition for judicial cooperation, both under the preliminary ruling and the EAW mechanisms, the recent case law elevates that notion to a structural obligation of Union law.

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<sup>22</sup> *Ibid.*, para. 56.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*, para. 57.

<sup>25</sup> *Ibid.*, para. 58.

<sup>26</sup> *Ibid.*



## 1.2 A STRUCTURAL OBLIGATION UNDER THE PRINCIPLE OF EFFECTIVE JUDICIAL PROTECTION

The independence of the judiciary, because of its indivisible link with the principle of effective judicial protection, manifests a structural obligation of Member States under Article 19, paragraph 1, subparagraph 2, TEU (1.2[a]) and becomes a component of the full effectiveness of Union law (1.2[b]).

### 1.2[a] *The Structural Obligation Under Article 19 TEU*

The reformulation<sup>27</sup> of the preliminary question in *Trade Union of Portuguese judges* to assess the conformity of the challenged measures only regarding Article 19, paragraph 1, TEU is a hint of the inclusion of judicial independence in that provision. It is also a hint of the autonomous and judicial character of Article 19, paragraph 1, TEU in the sense that it is not a mere institutional provision and it does not require a combined analysis with another provision to be invoked. Further, the Court pointed out, in that case, that article 19, paragraph 1, subparagraph 2 is a concrete manifestation of the duty of loyalty<sup>28</sup> and that the material scope of that provision is not limited to the sole implementation of EU law, referred to in Article 51, paragraph 1 of the Charter, but concerns all fields covered by Union law.<sup>29</sup>

After recalling the moral foundations of the Union, founded on values, and the prominent importance of the rule of law,<sup>30</sup> *Trade Union of Portuguese judges* reveals for the first time that Article 19 TEU ‘gives concrete expression to the value of the rule of law stated in Article 2 TEU’.<sup>31</sup> It further restates the joint responsibility of the Court of justice and of national courts and tribunals ‘for ensuring judicial review in the EU legal order’.<sup>32</sup> Formulated in clearer terms, since Article 19 TEU, concrete expression of the rule of law, contains the requirement of judicial independence, then the latter is a concrete expression of the rule of law as well.

Furthermore, judicial independence is an obligation for Member States. Indeed, judicial independence is part of the broader obligation of effective judicial protection under EU law, which stems notably from the principle of sincere cooperation.<sup>33</sup> This obligation is not only guaranteed under the broad scope of

<sup>27</sup> *Trade union of Portuguese judges*, *supra* n. 2, para. 27.

<sup>28</sup> *Ibid.*, para. 34.

<sup>29</sup> *Ibid.*, para. 29.

<sup>30</sup> *Ibid.*, paras 30 and 31.

<sup>31</sup> *Ibid.*, para. 32.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*, para. 34.

application of the second subparagraph of Article 19, paragraph 1, TEU.<sup>34</sup> It forms also part of a general principle of EU law embodying the constitutional traditions common to the Member States.<sup>35</sup>

The statement in *Trade Union of Portuguese judges* that the ‘very existence of effective judicial review designed to ensure compliance with EU law is of the essence of the rule of law’<sup>36</sup> presents a double interest. Firstly, it points out that effective judicial review, and thus judicial independence, is not only a concrete expression of the rule of law but it forms part of its very essence. Secondly, the meaning of ‘compliance with EU law’ appears to exceed the sole compliance with substantive provisions and to include particularly the EU standards regarding, for instance, effective judicial review. In other terms, what is required to comply with the essence of the rule of law, as a matter of Union law, is not the observance of any standards of effective judicial review and judicial independence but the compliance with the Union’s standards.

*Achmea* clarifies the modalities of fulfilling the structural obligation under Article 19, paragraph 1, TEU regarding the criteria for defining a body as a court or tribunal. Indeed, the Court points out that the obligation of Member States to provide effective judicial protection, and *a fortiori* judicial independence, may be fulfilled indirectly, through the review of the decision of a body not satisfying the standards of Union law by a judicial body of a Member State satisfying those standards.<sup>37</sup> However, in terms of efficiency and sound administration of justice, the expediency of such a double review is uncertain.

In addition to the analysis of judicial independence as a structural obligation under Article 19, paragraph 1, subparagraph 2, TEU, the recent case law points out the direct relation between judicial independence and the effectiveness of Union law.

#### 1.2[b] *A Component of the Full Effectiveness of Union Law*

Judicial independence appears as a component of the full effectiveness of Union law regarding its function under both the mechanism of Article 267 TFEU and the EAW mechanism.

<sup>34</sup> Para. 29 of *Trade Union of Portuguese Judges*, *supra* n. 2, ‘[...] points out that as regards the material scope of the second subparagraph of Art. 19(1) TEU, that provision relates to “the fields covered by Union law”, irrespective of whether the Member States are implementing Union law, within the meaning of Art. 51(1) of the Charter’.

<sup>35</sup> Para. 35 of *Trade Union of Portuguese Judges*, *supra* n. 3, mentions Arts 6 and 13 of the ECHR as illustrations of those common constitutional traditions and describes Art. 47 of the Charter as their reaffirmation.

<sup>36</sup> *Trade Union of Portuguese Judges*, *supra* n. 2, para. 36.

<sup>37</sup> *Achmea*, *supra* n. 8, para. 50.

Regarding the former, beyond pointing out the conditional relationship between the notion of court or tribunal and the participation to the judicial system of the Union, *Achmea* stresses the objective of this mechanism of judicial cooperation, which is to ensure the full effectiveness of Union law.<sup>38</sup> The systemic analysis of the preliminary ruling procedure in *Achmea* combined with the functions of judicial independence in the EU legal system becomes particularly insightful for the assessment of judicial independence as a component of the full effectiveness of Union law. Before analysing the procedure of Article 267 TFEU as a particular and fundamental mechanism of the Union's judicial system,<sup>39</sup> the Court refers to the double joint duty of Article 19 TEU.<sup>40</sup> A joint duty in that both the Court of Justice and the national courts and tribunals are concerned with its enforcement. A double duty in that what needs to be ensured is both the full application of Union law in all Member States and the judicial protection of the rights of individuals under that law. In that regard, *Achmea* does not only confirm the effective guarantee of the rights of individuals under Union law as one of the foundational objectives of the preliminary ruling procedure. It relates that foundational objective with the legal notion of court or tribunal and *a fortiori* the test of independence. In other words, judicial independence does not only condition the participation to the mechanism for a preliminary ruling, but because of that mechanism being a concrete manifestation of the double joint duty of Article 19 TEU, judicial independence conditions the full effectiveness of Union law and the effective protection of rights of individuals under that law.

Judicial independence equally forms a component of full effectiveness of Union law regarding the EAW mechanism. In *L.M.* the Court pointed out that a judicial authority within the sense of this mechanism of judicial cooperation is essentially characterized by independence.<sup>41</sup> Further, by elevating judicial independence to a premiss of the EAW mechanism,<sup>42</sup> and thus applying it as a legal requirement for both the decision of emission and the decision of execution, the court linked the full effect of that mechanism to judicial independence.<sup>43</sup> In other words, judicial independence, as a constitutional requirement of Union law affects the application of another part of Union law, the EAW mechanism. Therefore, the

<sup>38</sup> *Achmea*, *supra* n. 8, para. 43.

<sup>39</sup> *Ibid.*, para. 37.

<sup>40</sup> *Ibid.*, para. 36.

<sup>41</sup> *L.M.*, *supra* n. 9, para. 55.

<sup>42</sup> *Ibid.*, para. 58.

<sup>43</sup> The existence of a presumption of conformity with the required standard of judicial independence does not alter the link with the European arrest warrant mechanism. If this presumption can only be automatically rebutted with the high threshold of a decision of the European Council pursuant to Art. 7, para. 2, TEU, the possibility of assessing, in all other configurations, on a case by case basis still stresses the conditional function of judicial independence in that mechanism. See specifically *L.M.*, *supra* n. 10, paras 69 to 73.

pursuance of full effectiveness of Union law regarding the notion of judicial independence in the Area of freedom, security and justice, despite the apparent oxymoron, lies precisely in the possibility to limit the effects of the EAW mechanism in favour of judicial independence.

Judicial independence further appears as a component of the full effectiveness of Union law from a theoretical perspective. Indeed, the principle of effective judicial protection, original source of judicial independence under Union law, constitutes a concrete expression of the principle of effectiveness of EU law.<sup>44</sup> Therefore, judicial independence as a specific guarantee of effective judicial protection under Union law becomes also a specific guarantee of the full effectiveness of that law. To formulate it differently, in the judicial system of the *Union de droit*, pursuing the full effectiveness of Union law requires effective judicial protection, which as a notion of EU law requires judicial independence.

In addition to its broad function as a constitutional requirement of the Union, judicial independence equally appears in the case law of reference as a common constitutional standard under EU law.

## 2 A COMMON CONSTITUTIONAL STANDARD UNDER UNION LAW

The recent case law is not only insightful regarding the Union standard of judicial independence (2.1), consequence of the constitutional requirement, but also provides clarifications regarding the effects of the existence of such a standard on the entire judicial system of the Union (2.2).

### 2.1 THE LEGAL EXISTENCE OF THE COMMON STANDARD

Despite emanating from a general principle of EU law, the content of the common standard of judicial independence (2.2[b]) is defined by reference to Article 47 of the Charter (2.1[a]).

#### 2.1[a] *The Fundamental Right Under Article 47 of the Charter*

In *Trade union of Portuguese judges*, the Court points out that Article 47 of the Charter is a reaffirmation of the general principle of effective judicial protection,<sup>45</sup> and that, in order for that protection to be ensured, judicial independence is

<sup>44</sup> Opinion of Advocate General Kokott of 22 Jan. 2009, *Mellor*, C-75/08, EU:C:2009:32, para. 28: '[...] A specific expression of the principle of effectiveness is the principle of effective legal protection [...]'].

<sup>45</sup> *Trade union of Portuguese judges*, *supra* n. 2, para. 35.

essential.<sup>46</sup> This statement confirms and deepens the direct link between Article 47 of the Charter and the ‘obligation imposed on the Member States’ under Article 19, paragraph 1, subparagraph 2, TEU, pointed out in *Berlioz*.<sup>47</sup> The Court further stresses that the wording of the second subparagraph of Article 47, which refers to the access to an independent tribunal, implicates judicial independence ‘as one of the requirements linked to the fundamental right to an effective remedy’.<sup>48</sup> Thus, judicial independence under Union law is part of the fundamental right to an effective remedy enshrined in Article 47 of the Charter.

In *L.M.*, the court restates the essential character of judicial independence regarding the fundamental right to an effective remedy,<sup>49</sup> but creates some inconsistency as to the very qualification of judicial independence. Indeed, despite the initial qualification of judicial independence as a requirement linked to the fundamental right to an effective remedy, when assessing the existence of a real risk of violation of a fundamental right in the sense of *Aranyosi*,<sup>50</sup> the Court refers to the ‘fundamental right to an independent tribunal’,<sup>51</sup> suggesting that judicial independence is a separate fundamental right. In addition, the Court rules that a violation of the fundamental right to an independent tribunal leads *ipso facto* to the violation ‘of the essence of [the] fundamental right to a fair trial’<sup>52</sup> guaranteed by the second paragraph of Article 47. Therefore, the Court analyses judicial independence both as a separate fundamental right, without explicitly mentioning its source, and as a component of the very essence of the fundamental right to a fair trial guaranteed by the second paragraph of Article 47.

This expansive approach of the Court regarding judicial independence testifies the solemnity of that notion under EU law but also raises questions as to the relationship between the scope of application of the Charter and the scope of application of general principles of Union law. To that extent, it needs to be recalled that the mere analysis of the independence of the judiciary as part of the essence of the fundamental right to a fair trial, enshrined in Article 47 of the Charter, provides the highest possible standard since it neutralizes any potential limitation under Article 52, paragraph 1 of the Charter.<sup>53</sup> Therefore, put aside the

<sup>46</sup> *Ibid.*, para. 41.

<sup>47</sup> Judgment of the Court (Grand Chamber) of 16 May 2017, *Berlioz*, C-682/15, EU:C:2017:373, para. 44.

<sup>48</sup> *Ibid.*

<sup>49</sup> *L.M.*, *supra* n. 9, para. 53.

<sup>50</sup> *Ibid.*, para. 59.

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*

<sup>53</sup> Art. 52, para. 1 of the Charter reads as follows: ‘Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others’.

configuration of an indelicate formulation or of a typo repeated in all the linguistic versions of the case, referring for the first time to a fundamental right to an independent tribunal was a drafting choice of the Court. Even if the following points of *L.M.* make disappear this fundamental right behind Article 47 of the Charter, the issue of its source remains pending. It is most probable that the source of the fundamental right to an independent tribunal lies in the general principle of effective judicial protection, which draws inspiration from the common constitutional traditions of the Member States but also from the ECHR. Further, and irrespective of the issue of the source, the issue of the reasons leading the Court to introduce such a fundamental right equally remains subject to further elucidation. A plausible scenario is that the Court considers a general principle relating to judicial independence as having either a different scope of application or a broader content than Article 47 of the Charter.

A thorough assessment of the common standard of judicial independence requires examining the different stages in the reasoning of the Court in *L.M.* before referring to the ‘standard of protection’<sup>54</sup> of Article 47 of the Charter for the assessment of an exceptional circumstance in the sense of *Aranjosi*. Before referring to the Union standard, the Court pointed out the existence of equivalent requirements under the ECHR and under national constitution law, in their respective fields of application.<sup>55</sup> Therefore, the Court did not only underline that judicial independence forms, at least part of, a fundamental right under Union law, but that its content is to be found in that law. In other terms, as a matter of Union law, judicial independence is not to be evaluated through national or international standards.

Despite the fundamental significance of the existence of a common standard in the Union system, its content is only defined in rather broad terms leaving space for flexibility in case of judicial control.

#### 2.1[b] *The Content of the Common Union Standard*

*Trade union of Portuguese judges* restates that the ‘concept of independence’,<sup>56</sup> under Union law, presupposes the autonomous exercise of judicial functions. Such an autonomy relates to the absence of hierarchical constraints, of any form of subordination and of receiving orders or instructions.<sup>57</sup> It also depends on the protection ‘against external interventions or pressure liable to impair the

<sup>54</sup> *L.M.*, *supra* n. 9, para. 62.

<sup>55</sup> *Ibid.*, para. 57.

<sup>56</sup> *Trade Union of Portuguese Judges*, *supra* n. 3, para. 44.

<sup>57</sup> *Ibid.*

independent judgment [of the members of the body concerned] and to influence their decisions'.<sup>58</sup> The Court further stresses a parallel between the protection against removal from office, which is 'a guarantee essential to judicial independence'<sup>59</sup> and the receipt of a level of remuneration commensurate with the importance of the functions carried out.

In *L.M.* the Court refers to the common 'standard of protection of the fundamental right that is guaranteed by the second paragraph of Article 47 of the Charter'.<sup>60</sup> Under the Union standard, judicial independence 'forms part of the essence of [the right to a fair trial]',<sup>61</sup> it is 'inherent in the task of adjudication and has two aspects'.<sup>62</sup> The one is external in nature while the other is internal.

The external aspect covers essentially the autonomous exercise of the judicial function in a systemic fashion and concerning those who have the task of adjudicating, as defined in *Trade union of Portuguese judges*.<sup>63</sup> Indeed, this first aspect of judicial independence requires 'certain guarantees appropriate for protecting the person of those who have the task of adjudicating in a dispute'.<sup>64</sup> The Court provides two illustrations, namely the guarantees against removal from office and the receipt of a level of remuneration commensurate with the importance of the functions.<sup>65</sup> It is worth mentioning that despite the subject of the 'essential liberty'<sup>66</sup> related to the first aspect of judicial independence being those who have the task of adjudicating, the procedural guarantees aim not to preserve the liberty of the adjudicators as such, but to exclude any influence on the adjudicating process. Therefore, the essential liberty of the adjudicators is merely functional and ultimately serves the parties. Those guarantees allow a rather abstract control of independence, in the sense that even without regard to any specific fact, the assessment can be carried out through the sole examination of the relevant national provisions.

The second aspect, internal, is linked to impartiality. It seeks to ensure the appropriate distance of the judge from both the parties and their respective interests.<sup>67</sup> More explicitly, the Court recalls the requirement of 'strict application of the rule of law'<sup>68</sup> with full objectivity and absence of any interest in the outcome. Contrasting with the guarantees under the first aspect of judicial

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*, para. 45.

<sup>60</sup> *L.M.*, *supra* n. 9, para. 62.

<sup>61</sup> *Ibid.*, para. 63.

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*, para. 64.

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*, para. 65.

<sup>68</sup> *Ibid.*

independence, the guarantees of impartiality are more specific and thus require a concrete assessment of the facts.

It is interesting to observe that in *L.M.* the Court points out that '[t]hose guarantees [...] require'<sup>69</sup> specific rules 'in order to dispel any reasonable doubt in the minds of individuals as to the imperviousness of that body to external factors and its neutrality with respect to the interests before it'.<sup>70</sup> If the phrasing comes from *Wilson*,<sup>71</sup> the number of guarantees provided is more significant here. Further, the use of the verb 'require' in the original language of the case is ambiguous in that it could refer either to an obligation stemming from the two previous aspects of judicial independence or to an assumption conditioning those two aspects. The French version of *L.M.* employs the verb 'postuler', which suggests that 'require' refers to a condition rather than a mere obligation.<sup>72</sup> Such an analysis is not neutral regarding the content of judicial independence under the common Union standard. Indeed, if dispelling any reasonable doubt as to the independence of the judiciary is a condition of its two classic aspects, then the requirement of rules as a specific guarantee analysed separately and after the formal presentation of the two aspects,<sup>73</sup> may describe a third aspect of judicial independence, subjective and organic in nature. Such an additional aspect would be organic since the rules required, as specific guarantees, do not aim to preserve the persons subject to the adjudicating powers of the body but the framework in which the adjudicators carry out their tasks. The reference of the Court to the rules governing the composition of the body as well as the appointment, length of service and grounds for abstention, rejection and dismissal of its members,<sup>74</sup> despite appearing as an additional list of guarantees of the external aspect, is therefore different. To that extent, the guarantee under the external aspect against removal from the office is not identical to the guarantee of having rules governing the dismissal of the members of an adjudicatory body. The former focuses to the very fact of removing an adjudicator from its functions while the latter focuses on the existence of rules governing such a removal.<sup>75</sup> In addition and concerning that specific point, the Court underlined the importance of express legislative rules in case of removal.<sup>76</sup> The rigidity of the guarantees provided for this 'aspect' of

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<sup>69</sup> *Ibid.*, para. 66.

<sup>70</sup> *Ibid.*

<sup>71</sup> *Wilson*, *supra* n. 4, para. 53.

<sup>72</sup> Given that the formulation comes from *Wilson* it is relevant to mention that the original language of that case was French.

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*



judicial independence render the assessment of independence on that ground much easier compared to the previous two.

The importance of the existence of rules under the Union standard is also manifest regarding the ‘disciplinary regime governing those who have the task of adjudicating in a dispute’.<sup>77</sup> In that regard, the Court stresses the objective of the Union standard to prevent disciplinary measures ‘being used as a system of political control of the content of judicial decisions’.<sup>78</sup> Thus, the Union standard requires review of both the rules relating to disciplinary offences and penalties and the decisions of the disciplinary bodies. Further, the disciplinary body shall be itself independent and the entire procedure shall safeguard the rights enshrined in Articles 47 and 48 of the Charter.<sup>79</sup> Schematically, in addition to the requirement of express legislative rules, the Union standard requires an extra layer of independence relating not to the body at stake but to the review of the disciplinary measures applying to that body.

If the confirmation of the emergence of a third aspect of judicial independence under the common Union standard requires additional case law to be confirmed, the effects of the common standard of judicial independence on the judicial system of the Union, are already established regarding the case law of reference.

## 2.2 THE EFFECTS OF THE COMMON STANDARD ON THE UNION’S JUDICIAL SYSTEM

The common standard of judicial independence not only conditions mutual trust and the very observance of the rule of law (2.2[a]), but also affects the national legal orders (2.2[b]).

### 2.2[a] *The Cornerstone of Mutual Trust and the Rule of Law*

In the case law of reference, the Court points out the relation between judicial independence and mutual trust by reference to the common value of the rule of law enshrined in Article 2 TEU.

In general terms, the standard of judicial independence under EU law is tantamount to conformity with the specific rights concretising it. It is formalized through a cyclical logic, departing from the initial premiss of respect of the structural values of the Union and the concrete derived rights. Mutual trust emanating from the sharing of values is not only assimilated to conformity with Union law, as concrete implementation of those structural values through specific

<sup>77</sup> *Ibid.*, para. 67.

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*

provisions such as Article 19 TEU, but it is also absolute under that law. Absolute in the sense that Union law offers no derogation to mutual trust: either Member States respect Union law and act according to the principle of mutual trust or at least one Member State violates at least one structural value of that law and thus vitiates the initial premiss conditioning the very existence of mutual trust in its own regard.

Concretely, the first step of that analysis commences from the fact that European Union is founded on common values and especially the rule of law.<sup>80</sup> Judicial independence, as part of the essence of the fundamental right to a fair trial becomes a double guarantee of the rule of law, with ‘cardinal importance’<sup>81</sup> for the legal system of the Union. Indeed, judicial independence guarantee both ‘that all the rights which individuals derive from EU law will be protected and that the values common to the Member States set out in Article 2 TEU, in particular the value of the rule of law, will be safeguarded’.<sup>82</sup> In other words, since judicial independence forms part of the very essence of the fundamental right to a fair trial, it conditions the safeguarding of the rule of law. Subsequently, the Court recalls the ‘fundamental premiss’<sup>83</sup> for mutual trust between Member States and between their courts and tribunals, which is precisely the sharing of common values.<sup>84</sup> It results from the foregoing that since the sharing of the values, in particular the value of the rule of law, is a fundamental premiss of the mutual trust between the courts and tribunals of the Member States and since the rule of law depends from judicial independence, then mutual trust equally depends from judicial independence.

The significance of that conclusion is not merely theoretical but has concrete consequences. As the Court pointed out in *L.M.* regarding the systemic function of judicial independence in the area of freedom, security and justice, both the principle of mutual trust and the principle of mutual recognition, itself based on mutual trust, aim to allowing an area without internal borders to be created and maintained.<sup>85</sup> Constructing an argument *a contrario*, the lack of judicial independence, as understood under the Union standard, would lead to, and justify, the absence of mutual trust and consequently it would impede the creation and maintaining of an area without internal borders. Thus, the constitutional objective of the Union to establish and maintain an Area of freedom, security and justice without internal borders is conditioned by judicial independence and that

<sup>80</sup> Trade Union of Portuguese Judges, *supra* n. 2, para. 30; *L.M.*, *supra* n. 9, para. 49.

<sup>81</sup> *L.M.*, *supra* n. 9, para. 48.

<sup>82</sup> *Ibid.*

<sup>83</sup> Trade Union of Portuguese Judges, *supra* n. 2, para. 30; Achmea, *supra* n. 8, para. 34; *L.M.*, *supra* n. 9, para. 35.

<sup>84</sup> *Ibid.*

<sup>85</sup> *L.M.*, *supra* n. 9, para. 36.

conditional relation is legally transposed at the first step of the mechanism of mutual trust.

In that regard, judicial independence, as fundamental premiss for mutual trust, is the key for the obligation of Member States 'to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law'.<sup>86</sup> This obligation of Member States results in the exclusion of requiring the observance of a higher level of national protection of fundamental rights from another Member State but also in the presumption of conformity, without any check, by a Member State with the Union's standards.<sup>87</sup> However, the absence of judicial independence in one Member State undermines that double obligation for all the other Member States. Therefore, the absence of judicial independence within the sense of the common Union standard leads to what the Court qualified as exceptional circumstances, allowing not acting according to the mutual trust principle.<sup>88</sup> In other words, conforming to the common standard of judicial independence is the norm under EU law and any deviation from that norm leads to the application of an exceptional legal regime, different from the normal legal regime under EU law and aiming to restore the constitutional normality according to the Union standards.

The analysis of the standard of judicial independence as a cornerstone of mutual trust and the rule of law, and thus as an inherent condition for the normal application of Union law, not only stresses the constitutional character of the notion but also points out its national ramifications.

## 2.2[b] *The National Ramifications of Judicial Independence*

The combination of the constitutional requirement of judicial independence with the emergence of a basic common standard under Union law affects in different manners the national legal orders.

The first effect of judicial independence, as a Union notion, on the national legal orders refers to an indirect recalling in the recent case law of the foundational constraints weighting on Member States because of their membership to the Union. To that extent, it is insightful to consider the internal aspect of the *Union de droit*, expressly recognized for the first time in *Trade Union of Portuguese Judges* and consisting in the obligation for Member States, as a matter of Union law, to allow individuals legally challenging any *national* measure relating to the application to them of an EU act.<sup>89</sup> Indeed, the reference to the Union as a 'Union based

<sup>86</sup> *Ibid.*

<sup>87</sup> *Ibid.*, para. 37.

<sup>88</sup> *Ibid.*, paras 36 and 37.

<sup>89</sup> *Trade Union of Portuguese Judges*, *supra* n. 2, para. 31; *L.M.*, *supra* n. 10, para. 49.

on the rule of law<sup>90</sup>; to sustain such an obligation of Member States, in addition to the specific legal provisions consecrating such an obligation, namely Article 19 TEU, appears redundant. Except if it reveals something more or, at least, something else than the concrete provisions, namely that the obligations regarding judicial independence, as a common standard, are not the mere result of some legal texts but they are concrete results of a broader constitutional requirement touching the origins of the Union. In simpler terms, that the Union was built to operate only with Member States satisfying some minimal political characteristics within the sense of Article 49 TEU.

The second effect on the national legal orders relates to the joint duty<sup>91</sup> of national courts and of the Court of Justice consisting of guaranteeing the correct interpretation and application of Union law, as well as its full effectiveness, which requires judicial independence.<sup>92</sup> The relation between that joint mission and the common standard of judicial independence results from the analysis of the different mechanisms of judicial cooperation under Union law.<sup>93</sup> To that extent, judicial independence is more than a condition for a national judge to participate to the different mechanisms of judicial cooperation but it is also part of its mission stemming from Union law. In *L.M.* this joint mission becomes also a shared mission among the judges of the Member States in that the European office of the national judge in litigations on the execution of a EAW, allow it to assess the independence of its emitting counterpart,<sup>94</sup> and it requires establishing a cooperation between them for that assessment.<sup>95</sup>

The third effect relates to the concrete enforcement of the two previous but focuses on the prominent place of the national constitutional and legal framework, and more specifically on the place of the national legislator. Indeed, various elements of the Union's standard of judicial independence depend from the national legislative and constitutional framework. Therefore, the fulfilment of the constitutional requirement of judicial independence, as a matter of Union law, overpasses the sole judiciary and directly affects all the constitutional branches of Member States. Such an overarching effect relates directly to the prominent place of the duty of loyalty in the legal system of the Union.<sup>96</sup>

The last effect is specific to the EAW mechanism and concerns the possibility to assess the validity of a national act of issuance vis-à-vis the common standard of judicial independence by the executing national judge and not the one of the

<sup>90</sup> *Ibid.*

<sup>91</sup> Trade Union of Portuguese Judges, *supra* n. 2, para. 33.

<sup>92</sup> *Ibid.*, para. 37; *L.M.*, *supra* n. 9, para. 52.

<sup>93</sup> *L.M.*, *supra* n. 9, paras 54 and 55.

<sup>94</sup> *Ibid.*, paras 61, 79 and operative part.

<sup>95</sup> *Ibid.*, paras 76 to 78.

<sup>96</sup> Trade Union of Portuguese Judges, *supra* n. 2, paras 32 to 34.

emitting Member State. *L.M.* refers to the ‘principle that decisions relating to EAWs are attended by all the guarantees appropriate for judicial decisions’.<sup>97</sup> This principle is the consequence of the premiss that Member States respect the fundamental rights and values of the Union and is therefore a mere presumption, able to be rebutted. *L.M.* points out that this presumption applies to all ‘decisions relating to European arrest warrants’,<sup>98</sup> both decisions on the issue and the execution. Thus, the lack of independence of the body having emitted a EAW deprives it from the benefit of that presumption. When combining this extremely classical analysis with the concrete mechanism of the EAW, some questions arise regarding the exclusivity of national judges to assess the conformity with Union law of national acts implementing that law, as it is the case for the issuance of a EAW. More precisely, the possibility for the executing judge of the warrant to conclude to the existence of exceptional circumstances relating to the lack of judicial independence, what constitutes a violation of Union law,<sup>99</sup> emphasizes that judges of a Member State other than the one having emitted the decision may control its conformity vis-à-vis the Union standards. In other words, is a decision relating to the emission, or even the execution of a EAW, of hybrid nature, in that the assessment of its conformity vis-à-vis Union law is potentially left to the judges of any Member State?

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<sup>97</sup> *L.M.*, *supra* n. 9, para. 56.

<sup>98</sup> *Ibid.*

<sup>99</sup> *Ibid.*, paras 47, 48, 50, 53 and case law cited. *See also supra* Part I.I.B, Part I.II.A and Part II.II.A.

