Broad Scope, Restrained Scrutiny: Interpreting Article 19(2) TEU

ECJ 29 July 2024, Case C-119/23, *Valančius*

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Introduction

The ruling in *Valančius*[1] is a prime example of a dynamic whereby the European Court of Justice establishes a broad scope of review for a provision, while exercising restrained scrutiny when it comes to applying its content. The case concerned whether a member state could disregard a merit-based list, compiled by a national expert group established under national law, when nominating a candidate for the EU's General Court. Mr Virgilijus Valančius, at the time a sitting judge at the General Court, challenged the Lithuanian government's decision to nominate a lower-ranked candidate for the position. The argument defended by Valančius was that the Lithuanian authorities involved in the process violated the requirements of *ability* and *independence* required by Article 254 TFEU.

The Grand Chamber of the European of Justice ruled that EU law – Article 19(2) third subparagraph TEU and Article 254 second paragraph TEU[2] – allows a member state to nominate the candidate it wants, including one who was not the

[1]ECJ 29 July 2024, Case C-119/23, *Valančius*.

[2]Judges of the Court of Justice of the EU 'shall be chosen from persons whose independence is beyond doubt' (Art. 19(2) TEU) 'and who possess the ability required for appointment to high judicial office' (Art. 254 second para. TFEU).

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best-ranked candidate by a group of experts, provided that the person fulfils the requirements provided for by EU law.

The significance of this judgment is twofold. First, the Court affirmed that national nomination procedures for judges at the Court of Justice fall within the scope of EU law, applying its case law on national judicial independence (stemming from Article 19(1) TEU) to its own members (by interpreting Article 19(2) TEU). It found that the *national* procedure for the nomination of a candidate to the office of judge at the Court of Justice is a matter of EU law, which is not obvious by reading the relevant Treaty provisions, but which is also not surprising in light of precedents on appointments for national judiciaries.[3] This is interesting, as it shows a unitary test for the requirement of independence in the courts of the EU, and an equally broad scope of application of the first two paragraphs of Article 19 TEU.

Second, while the Cour casts a broad net for the application of Article 19 TEU, it then exercises restraint as to the substantive conditions imposed by (that provision of) EU law on the member states. In *Valančius*, which is the first judgment on the merits of Article 19(2) TEU,[4] the Court interprets the scope of Article 19 TEU broadly (it found that the national procedure does fall within the scope of EU law) and shows deference to the discretion that member states enjoy in this context. This note will argue that by doing so, the Court in *Valančius* keeps refining incrementally the balance between upholding the rule of law and preserving the procedural autonomy of the member states, as it did in earlier cases on Article 19(1) TEU.

In this case note, the next section presents the factual and legal background of the case; the one after that outlines the reasoning of the Advocate General and of the Grand Chamber; and the final substantive section is dedicated to a discussion of the scope and content of Article 19(1) and (2) TEU, and how they relate to the national procedure autonomy of member states. A conclusion follows.

Factual and legal background

Virgilijus Valančius was appointed judge of the General Court in 2016. Since there was no agreement as to his re-appointment between the President of the Republic of Lithuania, the Lithuanian Government, and the Lithuanian Parliament, a call for candidatures was published in March 2021. He was

[3] *See* e.g. ECJ 20 April 2021, Case C-896/19, *Repubblika* para. 46; ECJ 2 March 2021, Case C-824/18, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)* para. 167.

[4] Previous cases involving Art. 19(2) TEU were not decided on the merits (ECJ 16 June 2021, Case C-684/20 P, *Sharpston*; ECJ 16 June 2021, Case C-685/20 P, *Sharpston*; and ECJ 19 April 2024, *Advance Pharma*). The provision was material in ECJ 27 February 2019, Case C-64/16, *Associação Sindical dos Juízes Portugueses (Portuguese Judges)*, which is discussed in the analysis below.

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identified as the most suitable candidate in a ranked list drafted by a group of independent experts established pursuant to the procedure foreseen by Lithuanian law. Instead of nominating Mr Valančius, however, the Lithuanian government proceeded to nominate the second candidate in the ranked list, in agreement with the two other Lithuanian institutions involved.

Mr Valančius filed an application seeking the annulment of the Lithuanian government's decision to nominate the second candidate in the list, and seeking to replace that decision with one containing his nomination instead, since he was the highest ranking candidate. This application was lodged in the Administrative Court of Vilnius (the referring court). There is more: after that second ranking candidate received an unfavourable opinion from the Article 255 Committee,[5] the Lithuanian institutions agreed to nominate the third candidate on the ranked list (Mr Kalėda). Mr Valančius applied for annulment of that nomination as well. Meanwhile, in September 2023, Mr Kalėda took office as judge of the General Court.[6]

In that context, the referring court asked a question on the interpretation of the third subparagraph of Article 19(2) TEU and the second paragraph of Article 254 TFEU, in particular concerning the impact of those provisions on the national procedures for proposing candidates for the office of Judge of the General Court. Essentially, the referring court was of the view that Article 19(1) TEU, as interpreted by the Court in *Portuguese Judges*,[7] establishes a link between judicial independence of national judges and effective judicial protection in the fields covered by EU law. It proposed the following interpretation: while Article 19(1) TEU is about national judges, the task of ensuring effective judicial protection is also incumbent on judges of the Court of Justice, for which Article 19(2) TEU also establishes a requirement of independence. The requirement of independence for judges at the Court of Justice cannot have a more limited scope than for national judges, the referring court reasoned, and so it asked whether it is possible to apply the case law on judicial independence under Article 19(1) also to the procedure for the nomination of a person to the office of judge at the Court of Justice. The referring court considered that, just as a national government cannot exercise undue influence on the selection of a national judge – lest the requirement of judicial impartiality and independence be imperilled – so that government cannot unduly interfere with the nomination of a judge to the Court of Justice.

[5]Under Art. 255 TFEU first para., this panel 'shall be set up in order to give an opinion on candidates' suitability to perform the duties of Judge and Advocate-General of the Court of Justice and the General Court before the governments of the Member States make the appointments referred to in Articles 253 and 254'.

[6]*Valančius*, *supra* n. 1, para. 25.

[7]*Portuguese Judges*, *supra* n. 4.

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The first question referred was therefore whether Article 19(2) TEU and Article 254 TFEU require that a candidate for appointment to the General Court be selected in a member state of the EU exclusively on the basis of professional ability.

The second question was whether a member state could choose someone other than the highest-ranking candidate, when the national procedure for nomination foresees the drawing of a merit lists.

The Opinion of Advocate General Emiliou and the Judgment of the European Court of Justice

Let us first consider the Opinion of Advocate General Emiliou. Contrary to what some intervening member states contended, the Advocate General considered that the Court had jurisdiction for three reasons. First, because the question referred concerned a request to interpret EU law (Article 19(2) TEU and Article 254 TFEU), which was necessary for the national court to render a judgment in a dispute pending before it. Second, because, in any case, even when exercising a national competence (such as the process of the selection, at national level, of a candidate for the Court of Justice), member states must do so with due regard to their obligations stemming from EU law. Third, because, while the Court may not have jurisdiction to review the legality of the final decision by the member states to appoint the judge, that fact is irrelevant in determining the Court's jurisdiction in a preliminary ruling on a prior, different decision (i.e. in this case, the one by the national authorities nominating a candidate).[8] The question was also admissible, despite allegations to the contrary.[9] There was still an interest in the answer, even though meanwhile a new judge had been appointed: the procedure before the national court was still pending and an answer would still be necessary, for example for a declaratory judgment.[10]

On the substance, the Advocate General noted that there is a requirement of independence for judges of the General Court, deriving from Article 19 TEU and Article 254 TFEU, which imposes procedural obligations on member states when they select candidates for such positions. This is because the process at national level is an integral component and necessary step in the overall process of selection of candidates.[11] If the independence of candidates is not guaranteed at that stage, the whole process and its outcome may be undermined.[12] Even though the

[8]Opinion of AG Emiliou, 18 April 2024, Case C-119/23, *Valančius*, paras. 23-25.
[9]Ibid., para. 29.
[10]Ibid., para. 39.
[11]Ibid., para. 52.
[12]Ibid., para. 61.

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assessment is for the referring court to make, the Advocate General took the view that the Lithuanian procedure at issue was not such as to undermine the integrity of the whole process. First, all the people included in the ranked list fulfilled the requirement of independence. Second, the procedure took place in accordance to pre-established law. Third, the requirement under EU law is not to select the 'best placed' candidate, but only to select a candidate who is competent and independent.[13]

The Court reached a similar conclusion. The Grand Chamber found that it had jurisdiction because the national procedure at issue was the first stage of the appointment procedure governed by Article 19(2) TEU. The decision by the Lithuanian authorities falls, 'on that basis', i.e. because it is the first stage of the appointment procedure governed by the third subparagraph of Article 19(2) TEU and the second paragraph of Article 254 TFEU, within the scope of those provisions.[14] The question was also admissible because there was a dispute still pending, and the referring court believed an answer would still be necessary despite the post of judge at the General Court having been filled during the preliminary ruling procedure.

The Court recalled, at the outset, that the requirements of independence (mandated by Article 19(2) TEU third subparagraph, and Article 254 TFEU second subparagraph) forms part of the essence of the right to effective judicial protection and to a fair trial, and that it gives expression to the value of the rule of law. It consists of independence *sensu stricto* and impartiality.[15] The selection process of a judge is linked both to its independence and to the requirement of a tribunal previously established by law.[16] That process is undermined if the 'irregularity is of such a kind and of such gravity that it creates a real risk that other branches of the State, in particular the executive, could exercise undue discretion undermining the integrity of the outcome of the appointment process'.[17]

The Treaties leave it to the member states to decide how to carry out the selection of candidates who satisfy the necessary requirements. There are no irregularities, on the requirement of independence, in the Lithuanian process at issue in the main proceedings. Involvement of the other branches is not itself enough to cast doubt on the irregularity of the procedure.[18] The Article 255 Committee will also verify the requirements of the candidates and may ask the government to send additional information for that purpose.[19] The governments of the member states also monitor the observance of the requirement of independence,

[13]Ibid., paras. 69-71.
[14]*Valančius*, *supra* n. 1, para. 30.
[15]Ibid., para. 48.
[16]Ibid., para. 50.
[17]Ibid., para. 52.
[18]Ibid., para. 56.
[19]Ibid., para. 58.

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when they appoint the candidate to the role of judge.[20] The Court therefore concluded that Article 19(2) TEU (third subparagraph) and Article 254 TFEU do not preclude a decision such as that of the Lithuanian government, provided the candidate selected satisfies the requirements of ability and independence.

Analysis

The analysis section argues that it is unsurprising that the Court found that the national procedure for the selection of a candidate to be appointed as judge at the General Court falls within the scope of Article 19 TEU. At the same time, while the scope of application is extensive, the intensity of review is not: member states enjoy significant regulatory autonomy, because the threshold to find a violation of Article 19 TEU is very high. In the case law on Article 19(1) TEU, and now in *Valančius* concerning Article 19(2) TEU, the Court strikes the right balance between the obligations stemming from Article 19 TEU and the autonomy retained by the member states.

The scope of Article 19 TEU

After the decision in *Portuguese Judges*, the scope of application of Article 19(1) TEU is almost limitless.[21] This can be observed in the case law on the jurisdiction of the Court – where the provision is read as conferring very broad jurisdiction – and on judicial independence.

Concerning the Court's jurisdiction, as a general rule the Court ensures judicial review for all EU acts.[22] As a matter of principle, an act attributable to the EU *must* be reviewable by the Court.[23] Possibly, there are exceptions (e.g. for decisions directly relating to the Union's strategic or political choices in Common Foreign and Security Policy[24]), but these must be interpreted narrowly.[25]

[20]Ibid., para. 62.

[21]M. Bonelli and M. Claes, 'Judicial Serendipity: How Portuguese Judges Came to the Rescue of the Polish Judiciary: ECJ 27 February 2018, Case C-64/16,*Associação Sindical Dos Juízes Portugueses*', 14 *EuConst* (2018) p. 622 'the Court stretched the reach of EU law to an extreme, bringing virtually the entire national judicial organisation under its purview'; P. Martín Rodríguez, 'Poland Before the Court of Justice: Limitless or Limited Case Law on Art. 19 TEU?', 5 *European Papers* (2020) p. 331 at p. 337.

[22]ECJ 3 September 2008, Case C-402/05, *Kadi I*, para. 326 and Case C-584/10 P, *Kadi II*, para. 97.

[23]ECJ Opinion 2/13 para. 163.

[24]ECJ 10 September 2024, Joined Cases C-29/22 P and C-44/22 P, *KS and KD* para. 116; Opinion 2/13 para. 252.

[25]ECJ 24 June 2014, Case C-658/11, *European Parliament* v *Council (Mauritius)* para. 70.

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Concerning the requirement of judicial independence, the case law also entails that Article 19(1) TEU, in this expansive application, is the very source of a unified concept of judicial independence that applies to EU courts and to national courts alike.[26] By giving 'concrete expression' to the rule of law,[27] Article 19 (and *nota bene*: the whole of Article 19, not a specific paragraph thereof[28]) establishes a rule that governs all judicial bodies operating within the EU legal order, because the guarantee of independence, which is deemed 'inherent in the task of adjudication',[29] cannot be different for national and EU courts. This standard, as the Advocate General argued in *Valančius*, necessitates the existence of both *ex ante* and *ex post* rules to safeguard a judge's actual and apparent independence, thereby creating a coherent framework for judicial protection across the entire Union.

It is therefore unsurprising that, contrary to what some of the intervening governments maintained, Article 19(2) TEU (in conjunction with Article 254 TFEU) was found to be applicable even to the national stage of the appointment procedure. While predictable on the basis of the case law, this finding is not entirely borne by a literal reading of either of those two articles. They say nothing about national procedures for the selection of candidates, so there is an argument to be made that the Treaties do not cover that stage and were not meant to be applied to it. To be clear, even after *Valančius* it is not Article 19(2) TEU which regulates the national procedure: that is a matter for the member states. But in doing so, they must comply with their obligations stemming from EU law.

In any case, this finding on the scope of Article 19 TEU, and the existence of this unified standard, does not entail that Article 19 TEU is a strict limit to national procedural autonomy. While the scope is almost limitless, its content is not as far reaching into the sovereign choices made by member states. This statement is unpacked in the next section.

The substance of Article 19: what does it prohibit?

There are many judgments on the content of Article 19(1) second subparagraph TEU. Although some may disagree that this is a correct characterisation of that case law, Advocate General Bobek wrote in *Getin Noble Bank* that 'the threshold

[26] *Portuguese Judges*, *supra* n. 4, para. 42.

[27] Ibid., para. 32.

[28] ECJ 5 June 2023, Case C-204/21, *Commission* v *Poland (Independence and private life of judges)*, para. 69 and the case law cited.

[29] The phrase appears first in ECJ 19 September 2006, Case C-506/04, *Wilson* para. 49 and was repeated *inter alia* in *Commission* v *Poland (Independence and private life of judges)*, *supra* n. 28, para. 354 and *Repubblika*, *supra* n. 3, para. 51; ECJ 25 July 2018, Case C-216/18 PPU, *LM* para. 63; *Portuguese Judges*, *supra* n. 4, para. 42.

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for a breach of this provision is rather high':[30] that threshold is only met for 'breaches of a certain seriousness and/or of a systemic nature'.[31] In *Miasto Łowicz*, Advocate General Tanchev had previously argued that 'in the context of judicial independence, the second subparagraph of Article 19(1) TEU is confined to structural breaches which compromise the essence of judicial independence'.[32] It has been remarked that the systemic nature test proposed by the Advocate General is not 'a limitation of the substantive scope of Article 19(1), second paragraph, but rather ... a substantive threshold for its breach'.[33] Admittedly, the Court never explicitly adopts or dismisses the systemic nature test[34] – but the one proposed by Advocates General is an authoritative and plausible understanding of the workings of Article 19(1) TEU.

We now know that Article 19(2) TEU requires that the candidate selected by the member state at national level be competent and independent. The national procedure is incompatible with Article 19(2) TEU only when it is tainted by an 'irregularity ... of such a kind and of such gravity that it creates a real risk that other branches of the State, in particular the executive, could exercise undue discretion undermining the integrity of the outcome of the appointment process'.[35] This is *at least* the same threshold that is necessary for a breach of Article 19(1) TEU, based on the plausible understanding of the case law as referred above. The breach needs to be serious,[36] but it also needs to have a special kind of systemic consequences: special because it requires a risk for the separation of powers (whereas Article 19(1) concerns systemic risks, that is confined just to

[30]Opinion of Advocate General Bobek in Case C-132/20, *Getin Noble Bank*, para. 38.

[31]Ibid., para. 39. *See also* Opinion of AG Bobek in Cases C-748/19 to C-754/19, *Prokuratura Rajowa*, para. 148: 'By *gravity and systemic nature*, I do not mean to say that, to fall foul of that provision, a problem must necessarily arise in a significant number of cases, or affect large parts of the national judicial system. The crucial issue is rather whether the (one-off or recurring) problem brought to the attention of the Court is likely to threaten the proper functioning of the national judicial system, thereby jeopardising the capacity of the Member State in question to provide sufficient remedies to the individuals'.

[32]Opinion of AG Tanchev in Joined Cases C-558/18 and C-563/18, *Miasto Łowicz*, para. 125; but *see* the retraction in Opinion of AG Tanchev in Case C-824/18, *AB and Others (Appointment of Judges to the Supreme Court – Actions)*, para. 90.

[33]S. Prechal, 'Article 19 TEU and National Courts: A New Role for the Principle of Effective Judicial Protection?' *REALaw.blog*, 29 November 2022, https://wp.me/pcQ0x2-wL, visited 12 January 2026.

[34]S. Prechal, 'Article 19 TEU and National Courts: A New Role for the Principle of Effective Judicial Protection?', in M. Bonelli et al. (eds.), *Article 47 of the EU Charter and Effective Judicial Protection, Volume 1. The Court of Justice's Perspective* (Hart Publishing 2022) p. 21.

[35]*Valančius*, *supra* n. 1, para. 52.

[36]'Not every irregularity that may be committed during the process for the appointment of a judge necessarily casts doubt on the independence of that judge': Opinion in *Valančius*, *supra* n. 8, para. 73.

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the judiciary[37]). This reading of Article 19(2) TEU arguably establishes an even higher threshold – because it is more specific – than the one required to establish a violation of Article 19(1) TEU. Article 19(2) TEU, in requiring an irregularity that creates a risk for undue interference in the judiciary *by other branches* of the state, concerns a narrower set of factual circumstances in which a violation of 'a certain seriousness and/or of a systemic nature' (Advocate General Bobek's systemic nature test) may be found.

Since, on my reading of the judgment under analysis, Article 19(2) TEU requires a higher threshold (because it concerns fewer circumstances) for the violation than Article 19(1) TEU, I said in the introduction that *Valančius* adds a further element of definition to the balance between judicial independence (and the rule of law) and national procedural autonomy, as it emerged from the previous case law on Article 19. The following paragraph is based on the reasoning that the relationship between the first two paragraphs of Article 19 TEU is one of identity as to their scope of application (that is, the broad one that follows *Portuguese Judges*) for the requirement of judicial independence. This reasoning is supported by the interpretation of Article 19 TEU as a unitary provision that 'jointly entrusts the Court of Justice of the European Union and the national courts with the task of ensuring judicial review in the EU legal order'.[38]

Article 19(2) TEU was applicable (in combination with Article 254 TFEU) but in *Valančius* its content does not goes so far as to make the national procedure contrary to EU law. Reasoning by analogy, one could find *Repubblika* to be an example of a similar mechanism for Article 19(1) second subparagraph TEU. Following the broad scope of application of the provision after *Portuguese Judges*, *Repubblika* finds the selection procedure for national judges in the circumstances of the case to be compatible with Article 19(1) TEU. It can therefore be contrasted with previous decisions where national measures were found to be in breach of Article 19(1) second subparagraph TEU.[39] Leaving aside Article 19 TEU, a more striking example is that of the relationship between *Cassis de Dijon* and *Dassonville*, or between *O and Others* and *Zambrano*. In *Dassonville*, and in *Ruiz Zambrano*, the Court made a pronouncement of principle, finding for a very broad *scope of application* of a provision (Article 34 TFEU, and Article 20 TFEU, respectively). In *Cassis de Dijon*, and *O and Others* the Court instead is cautious innbsp;limiting the *substantive requirements* that those provisions – albeit

[37]Opinion in *Miasto Łowicz*, *supra* n. 32, para. 125: 'such a structural breach [of the second subpara. of Art. 19(1) TEU] occurs when it impacts on an entire tier of the judiciary'.

[38]*Valančius*, *supra* n. 1, para. 48.

[39]Such as, *inter alia*, ECJ 15 July 2021, Case C-791/19, *Commission* v *Poland (Régime disciplinaire des juges)*.

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applicable – impose on the member states. In particular, in *O and Others*, the Court gave some more guidance to national courts on how to apply the *Zambrano* rule, thus clarifying that the earlier ruling did not confer an automatically applicable right to reside to the non-EU parent of an EU child.[40] In *Cassis de Dijon*, the Court introduced derogations that member states may rely upon to justify a behaviour that is caught by (a broad interpretation of) a Treaty provision.[41] The 'breadth' of the provision is confirmed, its 'depth' is weakened, or the threshold for its violation is higher. *Valančius* follows a similar pattern.[42] They are all instances of the stone-by-stone approach by the Court,[43] of first casting a wide net then adjusting it incrementally. In this way, based on concrete circumstances of each case, each judgment adds a new, carefully placed stone, gradually constructing a detailed and robust edifice of case law that defines the precise contours of a rule that was initially declared in a somewhat broad fashion. The result is similar: attracting many factual situations under the scope of EU law (interpreted broadly), while leaving discretion to member states as to the substance, leaving them, that is, regulatory autonomy but bringing it within the Court's jurisdiction.[44]

So, in a general manner, one of the question that the case law raises is whether, with these broad interpretations, the Court does respect the powers assigned to it under the Treaties. Or should the Court not interpret EU law so broadly – regardless of the degree of discretion it grants to member states?

[40]The Court explained that factors of relevance – for the purposes of determining whether a refusal to grant a right of residence to a third-country national parent of a child who is a Union citizen means that that child is deprived of the genuine enjoyment of the substance of the rights conferred on him by that status – include the question of who has custody of the child and whether that child is legally, financially or emotionally dependent on the third-country national parent.

[41]ECJ 20 February 1979, Case C-120/78, *Rewe Zentral (Cassis de Dijon)* para. 8.

[42]If one wanted to keep finding analogies, it would be more accurate to say that *Valančius* and *Portuguese Judges* each follow a similar pattern to ECJ 18 June 1991, Case C-260/89, *ERT*, para. 43. All these judgments find a broad scope of application of a norm (for fundamental rights in general, in *ERT*), but do not find a violation of that norm in the specific case.

[43]K. Lenaerts, 'EU Citizenship and the European Court of Justice's "Stone-by-Stone" Approach', 1 *International Comparative Jurisprudence* (2015) p. 1.

[44]This way of proceeding has attracted criticism. *See*, recently, V. Vėlyvytė, *Judicial Authority in EU Internal Market Law: Implications for the Balance of Competences and Powers* (Hart Publishing 2022) p. 242 : 'the book argued that the Court often exercises that capacity – through the interpretation of free movement law – in a way that is not consistent with the constitutional principles that govern the allocation of competences and powers in the EU'; on Art. 19(1) specifically, *see* the discussion in Bonelli and Claes, *supra* n. 21, p. 639-640; P.R. Polak, 'The Evolving Narrative of the Court on the Rule of Law in the EU and Potential Future Directions', *Revista de Derecho Comunitario Europeo* (2024), p. 174: '[a] continuously expanding body of jurisprudence on the rule of law would naturally raise ever growing concerns for the Member States' national identities protected by Article 4(2) TEU'.

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These are bigger questions than I can answer, but I shall nonetheless attempt with a narrower version of this question, that is with reference to the cases on judicial independence, of which *Valančius* is an instance. In this area, the task of the Court is, as Sara Iglesias Sánchez wrote:

> to reconcile the control of the essential limits of the principle of judicial independence, its normative definition at EU level as a principle that is 'justiciable' before the [Court of Justice], and the institutional and procedural autonomy of member states in an area closely related to their institutional and constitutional identity.[45]

The discretion left to member states in the national procedure

The case law recognises that the member states remain sovereign in how they decide to structure their judicial architecture, including the processes for the selection of judges, while providing them with some substantive standards for desirable practices.[46] Member states have an obligation of result, not of means.[47] It is not for the Court, but only for member states, to decide what institutional models and what mechanisms work for the appointment of the judiciary. If there is an irregularity, the Court will intervene only when it is serious: for example, when it is grave enough to raise reasonable doubts as to the imperviousness of a court to external factors;[48] or of such gravity that it creates 'a real risk that other branches of the State, in particular the executive, could exercise undue discretion undermining the integrity of the outcome of the appointment process'.[49] This is how the Court balances procedural autonomy, which is an aspect of national identity (Article 4(2) TEU 'implies that those States enjoy a certain degree of discretion in implementing the principles of the rule of law'[50]) with the requirements of the rule of law.

In my opinion, this is a reasonable balance. It safeguards the value of the rule of law without forcing an arbitrary standard on member states. It eschews the imposition of a monolithic judicial model that may not align with the historical organisation or juridical culture of a member state, and it does not require the

[45] *See* in these terms, S. Iglesias Sánchez, 'La Independencia Judicial Como Principio Constitucional En La UE: Los Límites Del Control Por El Tribunal de Justicia de La UE', *Teoría y Realidad Constitucional* (2022) p. 489-490 (author's own translation).

[46] ECJ 6 October 2021, Case C-487/19, *W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)* paras. 147-149 and the case law cited; *Repubblika*, *supra* n. 3, paras. 70-72; ECJ 9 July 2020, Case C-272/19, *Land Hessen*, paras. 54-56.

[47] ECJ 16 February 2022, Case C-157/21, *Poland* v *Parliament and Council (Budget conditionality regulation)*, para. 265.

[48] *W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)*, *supra* n. 46, para. 109.

[49] *Valančius*, *supra* n. 1, para. 52.

[50] Opinion in *Valančius*, *supra* n. 8, para. 56.

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exercise of granular oversight by the Court over the procedural minutiae of national systems, but it still articulates standards that act as a safety net that guarantees the outcome of an independent judiciary.

The decision in *Valančius* is an illustration of this approach. Provided that the candidate meets the (substantive) requirement mandated by EU law (i.e. competence and independence), *peu importe* how the candidate was (procedurally) selected. Can a member state set up a group of independent experts and then ignore it completely, i.e. by choosing someone who was not in the merit list? Even though this is not what happened in the case, my reading of *Valančius* is that the answer to this hypothetical question should be 'yes', provided of course that the candidate who is ultimately proposed by the member state meets the requirements mandated by EU law. *Incidenter tantum*, if the answer was in the negative, it would discourage the use of any such formal procedure, because a member state may prefer not to be bound by it. The judgment, instead, leaves intact the national mechanisms and does not remove incentives, for member states' nominating authorities, to their use or establishment. It does, perhaps, remove the incentive for individuals to participate in such procedures, which might ultimately be non-binding (this being a matter of national law) on the nominating authority.

In the context of procedures for the appointment to the role of judge at the Court of Justice of the European Union, a reflection on the Article 255 Committee is also in order. One may cast doubt on the compatibility with Article 19(2) TEU (as interpreted by the Court) of how the Article 255 panel has, in practice, interpreted the text of Article 255 TFEU.[51]

The Article 255 panel holds a crucial position in the appointment of judges and Advocates General to the Court. While the final decision rests with the member states' governments, the panel's non-binding opinion effectively functions as a *de facto* veto. The panel is entrusted with assessing candidates against the Treaties' high standards of competence and independence. Yet, in practice, the panel may introduce or prioritise criteria that extend beyond its mandate in the Treaties or in the Council Decision on its operation.[52] A notable example is the emphasis on a candidate's extensive experience, such as a requirement of 20 years in a senior judicial or legal position, which is merely a preference of the panel itself. Although not rigidly applied (it can be compensated by some other qualities), this introduces a criterion for evaluation that is not

[51]G. Amato et al., 'Selecting EU Judges: the Role of the 255 Committee According to the Treaty', *EU Law Live*, 23 September 2024, https://eulawlive.com/op-ed-selecting-eu-judges-the-role-of-the-255-committee-according-to-the-treaty/, visited 12 January 2026.

[52]Council Decision 2010/124/EU of 25 February 2010 relating to the operating rules of the panel provided for in Article 255 of the Treaty on the Functioning of the European Union.

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mandated by the Treaties when a candidate is rejected solely on the basis of lacking it.[53] There is perhaps some irony in the fact that the Court, which requires national judicial systems to adhere to stringent standards of independence, has its own judicial appointments vetted by a panel that may apply criteria that are not mandated by the EU Treaties themselves.

Conclusion

The Grand Chamber's judgment in *Valančius* confirms the broad scope of Article 19 TEU that was developed in earlier case law, while at the same time showing a restrained approach as to the substantive limits placed on the member states. The Court held that the national procedure for the nomination of a candidate for the General Court falls within the scope of EU law, in line with the case law stemming from *Portuguese Judges*, thereby affirming the unitary nature of the requirement of judicial independence under Article 19 TEU. At the same time, the threshold for a breach of Article 19(2) TEU is high: an irregularity must be of such a kind and of such gravity as to create a real risk of undue influence by other branches of the state.

The point to take from this is therefore twofold. First, *Valančius* contributes to refining the balance between the member states' obligation to respect the rule of law on the one hand, and their procedural autonomy – and indeed national identity – on the other. Second, while the scope of Article 19(2) TEU is extensive, the discretion of the member states in structuring their national procedures for the selection of judges of the Court of Justice of the European Union is significant, provided that the candidate fulfils the requirements of ability and independence required by EU law. The judgment thus adds another point in the Court's incremental, stone-by-stone approach to the construction of a coherent framework for judicial independence in the EU legal order, both for national courts and for the Court of Justice of the EU in Luxembourg.

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[53]J. Weiler; 'Who Will Judge the Judges Who Judge the Judges? The Curious Case of Gonçalo Manoel de Vilhena de Almeida Ribeiro', *EU Law Live*, 20 September 2024, https://eulawlive.com/who-will-judge-the-judges-who-judge-the-judges-the-curious-case-of-goncalo-manoel-de-vilhena-de-almeida-ribeiro-by-joseph-h-h-weiler/, visited 12 January 2026: 'The Committee rewrote the Treaty. In effect, they added a requirement for appointment … apart from the fact that this number of 20 years experience has been plucked out of thin air, it introduces, *ex nihilo* a new formal requirement for service on the Court.'

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