

Case C-824/18**Corrigendum to the request for a preliminary ruling****Date lodged:**

16 January [2019]

Referring court:

Naczelny Sąd Administracyjny
(Supreme Administrative Court, Poland)

Date of the decision to refer:

21 November 2018

Appellants:

AB and Others

Other party to the proceedings:

Krajowa Rada Sądownictwa
(National Council of the Judiciary, Poland)

Case C-824/18

Warsaw, 15 January 2019

Dear colleagues,

Further to our correspondence of 14 January 2019, in which you drew attention to the need to resolve doubts, indicated therein, relating to the second question in Case C-824/18, we hereby provide clarification, as follows:

I. In relation to the proposal to replace the words contained in the second question with the words which you have highlighted in red, namely the words ‘istnieje’, ‘przy czym’ and ‘a jednocześnie’, that proposal must be regarded as reasonable, a fortiori in view of the fact that the words referred to above are equivalent to the replaced words, which means that they in no way alter the essence of the question or the intention of the referring court.

II. However, in relation to the issue of the negative contained in the second question and the translators' doubts arising in that context, and the proposal to resolve those doubts via a rewording of the last part of the second question, which would consist in the insertion of the words 'przy założeniu' ('on the assumption that'), which would precede the part of the sentence starting with the words '... a sytuacja, gdy skład organu Państwa Członkowskiego mającego stać na straży niezależności sądów i niezawisłości sędziów ...' ('... a situation in which the composition of the body in a Member State whose purpose is to safeguard the independence of the judiciary ...'), and in the deletion of the word 'nie' ('not') contained in the last part of the second question, we provide the following clarification:

In our view, the use of the negative in the part of the sentence at issue should not give rise to doubts, a fortiori in view of the fact that it is not, after all, a declarative sentence, but an interrogative sentence, which means that, in that specific context, the use of the negative was and is essential to the content of the question.

The second question, as a whole and in relation to the specific issues raised therein, thus concerns, inter alia, the following issue:

'Should Article 2 TEU, in conjunction with the third sentence of Article 4(3) and Article 6(1) TEU, in conjunction with Articles 15(1) and 20, in conjunction with Articles 21(1) and 52(1), of the Charter of Fundamental Rights, in conjunction with Articles 2(1), 2(2) [Or. 2] (a) and 3(1)(a) of Council Directive 2000/78/EC and the third paragraph of Article 267 TFEU, be interpreted as meaning that

... a situation¹ in which the composition of the body in a Member State whose purpose is to safeguard the independence of the judiciary (the National Council of the Judiciary), and before which the procedure concerning service in the office of judge of the Supreme Court takes place, is designed in such a way that representatives of the judiciary in that body are elected by the legislature [undermines] the principle of institutional balance?'

The doubts arising in that context were set out in paragraphs 24 to 28 of the grounds of the order for reference. In paragraph [26], doubt was directly expressed concerning whether the solution adopted in national law in relation to that issue '... does not, in the context of the consequences stemming from Article 6 TEU, undermine the principle of institutional balance ...'.

Thus, since the sentence in relation to which translation doubts have been raised in the correspondence referred to above is not a declarative sentence, but a sentence in which a question has been expressed in relation to doubts concerning the risk of an undermining of the principle of institutional balance, it is not possible to

¹ Translator's note: in the English version of the original question, the word 'nie' was taken into account by using the expression '... does not a situation ...' (see the last part of the last paragraph of this section), but this expression has been omitted here so that the question as cited makes sense.

supplement it, as you have proposed, by using the words ‘przy założeniu’ (‘on the assumption that’). Indeed, in the second question, the (suggested) assumptions were not expressed, but in the context of the legal solutions put forward and the doubts accompanying those solutions, a question was expressed regarding, inter alia, the following issue: ‘... does not a situation in which the composition of the body in a Member State whose purpose is to safeguard the independence of the judiciary (the National Council of the Judiciary), and before which the procedure concerning service in the office of judge of the Supreme Court takes place, is designed in such a way that representatives of the judiciary in that body are elected by the legislature undermine the principle of institutional balance?’

III. We trust that our explanations are clear, comprehensible and sufficient.

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