



Interim measure in cases concerning charges brought against Polish judges

The European Court of Human Rights has decided to indicate an **interim measure** in the cases **Synakiewicz v. Poland** (application no. 46453/21), **Niklas-Bibik v. Poland** (no. 8687/22), **Piekarska-Drażek v. Poland** (no. 8076/22) and **Hetnarowicz-Sikora v. Poland** (no. 9988/22).

The applicants are Polish judges, actively involved in the work of judicial associations. They all risk suspension for having applied, in their judicial decisions, the European Court's case-law and the rulings of the Court of Justice of the European Union relating, in particular, to the Disciplinary Chamber of the Supreme Court and the National Council of the Judiciary (NCJ).

On 22 March 2022, the Court decided to indicate to the Government of Poland, under Rule 39 of the Rules of Court, that they should give it and the applicants 72 hours' notice of the date of any hearing (*rozprawa*) or *in camera* session (*posiedzenie*) scheduled in the applicants' cases before the Disciplinary Chamber of the Supreme Court.

The Court rejected the remainder of the applicants' requests for interim measures.

Measures under Rule 39 of the [Rules of Court](#) are decided in connection with proceedings before the Court, without prejudging any subsequent decisions on the admissibility or merits of the case. The Court grants such requests only on an exceptional basis, when the applicants would otherwise face a real risk of irreversible harm. For further information, see [the factsheet on interim measures](#) and interim measures issued recently in the case of [Wróbel v. Poland](#) (no. 6904/22).

The applicants, Adam Synakiewicz, Agnieszka Niklas-Bibik, Marzanna Anna Piekarska-Drażek and Joanna Marta Hetnarowicz-Sikora, are Polish nationals and judges in the Częstochowa Regional Court, the Słupsk Regional Court, the Warsaw Court of Appeal and the Słupsk District Court respectively.

In their judicial decisions, the four judges have been applying the European Court's case-law and the rulings of the Court of Justice of the European Union relating, in particular, to the Disciplinary Chamber of the Supreme Court and holding that the National Council of the Judiciary's lack of independence compromised the legitimacy of a court composed of judges appointed on its recommendation¹. As a result, they have each been charged by the deputy disciplinary representative for judges of ordinary courts (*Zastępca Rzecznika Dyscyplinarnego Sędziów Sądów Powszechnych*), with the same disciplinary offence of having committed "*acts or omissions which may prevent or significantly obstruct the functioning of judicial authority*" and "*actions that question the existence of the official relationship of a judge, the effectiveness of his or her appointment or the constitutional authority of the Republic of Poland*". They also face charges involving the criminal offence of abuse of power (liable to a sentence of imprisonment of up to three years).

In all cases, on various dates, orders for an "immediate break" in the applicants' judicial functions (*natychmiastowa przerwa w czynnościach służbowych*) were issued for a period of one month on the basis of the Act on the Organisation of Ordinary Courts. As regards Ms Piekarska-Drażek and Ms Hetnarowicz-Sikora, the orders were given after the applicants were charged with disciplinary offences. In case of Ms Niklas-Bibik and Mr Synakiewicz, the "immediate break" was ordered before the disciplinary charges were pressed. After 30 days, the applicants were each able to resume their

¹ Judgments of the European Court and the Court of Justice of the European Union (CJEU) in cases concerning various aspects of the reorganisation of the Polish judicial system initiated in 2017. See, for example, [Reczkowicz v. Poland](#) (no. 43447/19) of July 2021.

official duties. However, the Disciplinary Chamber may at any time issue a resolution suspending the applicants' judicial functions until the final rulings in their cases have been given.

Suspension of a judge's judicial functions "automatically" results in a 25-50% reduction of his/her salary. Resolutions on suspension may be given at an *in camera* session rather than at a public hearing, and notification is not necessarily given beforehand. The proceedings against the applicants are being conducted before the Disciplinary Chamber of the Supreme Court. No other body may review the Disciplinary Chamber's resolutions, and no cassation appeal against the final decision will be available. If the applicants are suspended, the suspension will be immediately enforceable, an appeal to the second-instance Disciplinary Chamber having no suspensive effect (section 131(4) of the 2001 Act (as amended in 2019)).

The judges lodged their requests for interim measures with the European Court in February 2022. They asked, among other things, to have suspended the ongoing actions against them in the Disciplinary Chamber of the Supreme Court until the Government fully implemented the order of the Court of Justice of the European Union of 14 July 2021 (case no. C-204/21R) and the judgment of that court of 15 July 2021 (case no. C-791/19) or appointed a panel of the Supreme Court judges recommended by the NCJ operating before 6 March 2018 to hear their cases. They argued that their cases will be heard by the Disciplinary Chamber of the Supreme Court, thus denying them the right to be heard by a "tribunal established by law", and allege that there is a serious risk that carrying out the proceedings before the Disciplinary Chamber will lead to their suspension. Moreover, they allege that the ordering of an immediate break in their professional duties has created a chilling effect, negatively impacting judicial independence in Poland. They rely in particular on Articles 6 § 1 (right to a fair hearing) and 8 (right to respect for private and family life) of the European Convention on Human Rights.

On 22 March 2022 the Court decided to indicate to the Government of Poland, under Rule 39 of the Rules of Court, that they should give it and the applicants at least 72 hours' notice of the date of any hearing (*rozprawa*) or *in camera* session (*posiedzenie*) scheduled in the applicants' cases before the Disciplinary Chamber of the Supreme Court.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.