



## Judge's inability to effectively challenge decision to transfer him between divisions of the same court against his will breached the Convention

In today's Chamber judgment<sup>1</sup> in the case of [Biliński v. Poland](#) (application no. 13278/20), the European Court of Human Rights held, unanimously, that there had been a violation of Article 6 § 1 (access to court) of the European Convention on Human Rights.

The case concerned the decision to transfer Mr Biliński, a judge, between two divisions of the same court, against his will, and his subsequent appeal against that decision.

The Court found, in particular, that a judge's right to protection against arbitrary transfers between different courts also applied to arbitrary transfers between divisions of the same court dealing with different areas of law. Taking into account, among other things, the fact that Mr Biliński had been criticised by politicians for his rulings in politically sensitive cases and that his transfer had been ordered by a judge who had previously served under the then Minister of Justice as a seconded judge and had been appointed to the post of president of the applicant's court by him, it was legitimate for Mr Biliński to suspect that there had been an element of arbitrariness in his transfer.

The decision to transfer Mr Biliński had not been reviewed by a body exercising judicial functions or by an ordinary court and, as such, his right of access to a court had been impaired.

### Principal facts

The applicant, Łukasz Biliński, is a Polish national who was born in 1977 and lives in Warsaw.

In 2016 Mr Biliński was appointed as a district court judge assigned to a criminal division of the Warsaw-Śródmieście District Court, where he dealt exclusively with administrative offences. His rulings attracted significant media and public interest, and politicians from the ruling party publicly criticised them.

In March 2019 the Minister of Justice abolished the division of the district court where Mr Biliński was assigned and on 27 June 2019 the President of the District Court, Judge Mitera, informed Mr Biliński that he would be provisionally transferred to another criminal division of the court, pending an opinion by the Board of the Warsaw Regional Court. On 3 July 2019 Judge Mitera decided to transfer Mr Biliński to the Family Division. The decision gave no legal grounds for the transfer.

On 10 July 2019 Mr Biliński lodged an appeal with the National Council of the Judiciary ("the NCJ") against the transfer decision.

On 22 July 2019 the President of the Warsaw Regional Court annulled the decisions of 27 June and 3 July 2019 on Mr Biliński's transfer. She found that those administrative actions had been taken without obtaining the mandatory opinion of the Board of the Regional Court, and as such had been unlawful. That decision was communicated to the President of the District Court.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

On 25 July 2019 the NCJ dismissed Mr Biliński's appeal against the transfer decision, but gave no reasons.

At the time of the lodging of the most recent submissions before the Court, the applicant was still assigned to the Family Division.

## Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (access to court), the applicant complained, in particular, that he had been deprived of an effective review of his involuntary transfer by an independent and impartial body.

The application was lodged with the European Court of Human Rights on 23 November 2019.

Judgment was given by a Chamber of seven judges, composed as follows:

Ivana Jelić (Montenegro), *President*,

Erik Wennerström (Sweden),

Raffaele Sabato (Italy),

Davor Derenčinović (Croatia),

Alain Chablais (Liechtenstein),

Artūrs Kučs (Latvia),

Anna Adamska-Gallant (Poland),

and also Ilse Freiwirth, *Section Registrar*.

## Decision of the Court

As to the admissibility of the case and in considering whether Article 6 applied to the proceedings concerning Mr Biliński's transfer, the Court observed that national law did not give the President of the District Court complete freedom to transfer Mr Biliński against his will and to do so without providing reasons. Referring to its own case-law and to that of the Court of Justice of the European Union, the Court considered that, in order to protect judicial independence, the safeguards that applied to involuntary transfers of members of the judiciary between two different courts, also applied to involuntary transfers between two divisions of the same court dealing with different areas of law.

In determining whether there was legitimate cause for Mr Biliński to suspect that there had been an element of arbitrariness in his transfer, the Court concluded that there was. Among other things, Mr Biliński had given rulings in several cases attracting public attention and criticism and the President of the District Court, Judge Mitera, who had previously served under the then Minister of Justice as a seconded judge, had proceeded with Mr Biliński's transfer notwithstanding the fact that the Board of the Warsaw Regional Court had not yet given its opinion on the transfer request.

Judges would be unable to uphold the rule of law and give effect to the Convention if national law deprived them of the guarantees of the Convention Articles on matters directly affecting their individual independence and impartiality.

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As to the merits of the case, the main issue was the lack of review, by an independent and impartial body, of the transfer decision.

Where Article 6 § 1 was applied to proceedings affecting the conditions of employment of a judge, the Convention required, at a minimum, one of two things: either the professional bodies entrusted with determining such matters themselves satisfied the requirements of Article 6, or, if they did not,

