



Interim measure in cases concerning transfers of Polish judges

The European Court of Human Rights has decided to indicate an **interim measure** in the cases **Leszczyńska-Furtak v. Poland** (application no. 39471/22), **Gregajtys v. Poland** (no. 39477/22) and **Piekarska-Drązek v. Poland** (no. 44068/22).

The applicants, experienced specialists in criminal law, are Polish judges of the Warsaw Court of Appeal who, until Summer 2022, adjudicated in the Criminal Division. All three have since been transferred, against their will, to the Labour and Social Security Division of that court. They allege that the transfers are a reprisal for their judicial decisions taken in application of the Court's case-law and the Court of Justice of European Union's judgments and their consistent refusal to adjudicate in panels composed of judges appointed on recommendations of the new National Council of the Judiciary (NCJ).

On 6 December 2022, the Court (Chamber of the First Section) decided to indicate to the Government of Poland, under Rule 39 of the Rules of Court, that the respondent State should suspend the effects of the decisions to transfer the applicants from the Criminal Division to the Labour and Social Security Division of the Warsaw Court of Appeal and ensure that no decision to transfer the applicants to another division of the Warsaw Court of Appeal against their will is taken until the final determination of the applicants' complaints by the Court.

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](#).

The applicants, Ewa Leszczyńska-Furtak, Ewa Gregajtys, and Marzanna Piekarska-Drązek, are Polish nationals and experienced judges in the Warsaw Court of Appeal, who, until Summer 2022, adjudicated in its Criminal Division.

In August and September 2022 they were each informed by the newly nominated Vice-President of the Warsaw Court of Appeal, Judge Przemysław W. Radzik, that they were being transferred to the Labour and Social Security Division of the Warsaw Court of Appeal.

News of the applicants' planned transfers led to widespread protest by the judiciary. Forty-nine current and 24 retired judges of the Warsaw Court of Appeal, and 30 sitting and/or retired judges of the Supreme Court published an objection, considering the transfers to be in flagrant violation of the constitutional principles of irremovability and independence of judges. The statement was further signed by over 1,000 Polish judges of all levels of jurisdiction.

The First President of the Supreme Court, Ms M. Manowska, also objected, describing the protests as justified and warning that the envisaged transfers would be detrimental to citizens seeking judicial protection in the courts. The President of the Warsaw Court of Appeal, Judge P. Schab, replied that the judges concerned had, by way of their declarations and judicial decisions, contested the legality of appointment of other judges, thus negating the constitutional order of Poland and undermining the President's role in the process of appointing judges. He affirmed that it was necessary to eliminate the possibility of them adjudicating in panels composed of more than one judge in the future, and assigning them to hear labour law and social security disputes was one way of making sure of that – civil procedures usually requiring one judge whereas criminal procedures required at least three in order to examine appeals.

Each of the three applicants lodged appeals with the NCJ but, in the meantime, their transfers to the Labour and Social Security Division became effective.

On 8 October 2022 the Deputy Disciplinary Officer for Ordinary Court Judges charged Judges Gregajtys and Piekarska-Drażek with multiple counts of disciplinary offences, accusing them, amongst other things, of questioning the legality of other judges' appointments, undermining the legitimacy of the NCJ and overstepping their office in their rulings and judgments.

On 12 October 2022 the NCJ discontinued the proceedings initiated by appeals lodged by Judges Gregajtys and Leszczyńska-Furtak and dismissed the appeal lodged by Judge Piekarska-Drażek, without providing any reasons. The NCJ's decisions are not amenable to judicial review.

Applications to the European Court were lodged by Judges Gregajtys and Leszczyńska-Furtak on 16 August 2022 and by Judge Piekarska-Drażek on 16 September 2022. All three complain under Articles 6 § 1 (right to a fair hearing) and 13 (right to an effective remedy) of the European Convention on Human Rights that they were denied the right of access to a court, since the NCJ offered no guarantees of independence from the executive. They also complain under Article 4 § 2 (prohibition of forced labour) that they were transferred to another division of their court for political reasons and against their will. Lastly, they complain under Article 8 (right to respect for private and family life) about the alleged breach of their right to respect for private life.

On 14 November 2022, the three applicants, indicating that they had already exhausted all domestic remedies, lodged a request for interim measures asking the Court to have the enforcement of the transfer decisions suspended until it had examined their complaints.

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The Government of Poland have been given notice of all three applications, with questions from the 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.