



Non-compliance with interim measure in Polish judiciary cases

The Polish Government has recently informed the Registry of the Court that the [interim measure indicated by the European Court of Human Rights on 6 December 2022](#) under Rule 39 of the Rules of Court 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) will not be respected. The Government referred to a statement by the President of the Warsaw Court of Appeal finding that there were no factual or legal grounds for doing so and pointing to a Constitutional Court judgment of March 2022 questioning the authority of the European Court to intervene in cases concerning the judiciary. This is the first time that Poland has refused to comply with a Rule 39 interim measure in such cases.

Since January 2022, the Court has received a total of 60 requests for interim measures from Polish judges in 29 cases concerning the independence of the Polish judiciary. They can be grouped into three main categories: lifting of immunity; suspension from judicial functions; transfer against will to other posts. Requests in 17 of the cases have been granted or partly granted – press releases concerning some of these are listed below.

There are currently 323 applications pending before the Court which raise issues relating to various aspects of the reorganisation of the judicial system in Poland under laws that mainly entered into force in 2017 and 2018.

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 in the three cases concerned are experienced specialists in criminal law and Polish judges of the Warsaw Court of Appeal who, until summer 2022, adjudicated in the Criminal Division but who were transferred, against their will, to the Labour and Social Security Division of that court. They allege that their transfers – which led to widespread protest by the judiciary – were a reprisal for applying the European Court's case-law and the Court of Justice of the European Union's judgments in their judicial decisions and their consistent refusal to adjudicate in panels composed of judges appointed on recommendations of the new National Council of the Judiciary (NCJ).

The interim measure in these three cases indicated to the Government of Poland 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 until the final determination of the applicants' complaints by the European Court. It also indicated that it should ensure that no decision to transfer the applicants to another division of the Warsaw Court of Appeal against their will was taken in the meantime.

In his statement of 13 December 2022, the President of the Warsaw Court of Appeal, Judge Schab, states that the interim measure is not binding, does not constitute a judgment, and that a judgment of 10 March 2022 (case no. K 7/21) of the Constitutional Court of Poland ruled that Article 6 § 1 of the Convention was incompatible with Article 188(1) and (2) and Article 190(1) of the Constitution of Poland, in so far as it authorised the European Court to assess the compliance of laws concerning the organisation of the judiciary, the jurisdiction of courts, and the organisation, activities, work procedures and method of election of members of the National Council of the Judiciary. He states that, as the Constitutional Court judgment is binding on the President of the Warsaw Court of Appeal, the enforcement of the interim measure would be in breach of Polish law.

Previous press releases issued by the Court concerning requests for interim measures from Polish judges concerning the independence of the Polish judiciary

[Interim measures in the case of Polish Supreme Court judge's immunity](#) (08.02.22)

[Interim measure in cases concerning charges brought against Polish judges](#) (24.03.22)

[Interim measure in case concerning charges brought against Kraków Regional Court judge for applying the European Court's case-law](#) (31.03.22)

[Interim measures in another case of Polish Supreme Court judge's immunity](#) (14.04.22)

[Notice given of case involving lifting of Polish Supreme Court judge's immunity](#) (20.04.22)

[Interim measures in case of Polish military judge's immunity](#) (12.07.22)

[Interim measures amended in cases concerning judges' immunity](#) (10.08.22)

[Interim measures amended in three more cases concerning disciplinary proceedings against judges](#) (17.08.22)

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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.