



Denying blind chess players benefits and awards for sporting merits was discriminatory

In today's **Chamber** judgment¹ in the case of [Negovanović and Others v. Serbia](#) (application no. 29907/16 and 3 others) the European Court of Human Rights held, by a majority of five votes to two, that there had been:

a violation of Article 1 of Protocol No. 12 (general prohibition of discrimination) to the European Convention on Human Rights.

The case concerned alleged discrimination by the Serbian authorities against blind chess players, its own nationals, who had won medals at major international events, notably in the Blind Chess Olympiad. Unlike other Serbian athletes with disabilities and sighted chess players who had attained the same or similar sporting results, the applicants had been denied certain financial benefits and awards for their achievements as well as formal recognition through an honorary diploma which, they alleged, had had a negative effect on their reputations.

The Court found that, while it was legitimate for the Serbian authorities to focus on the highest sporting achievements and the most important competitions in its award system, there was no objective and reasonable justification for treating the applicants differently on the basis of their disability.

Principal facts

The applicants, Branko Negovanović, Sretko Avram, Živa Markov and Dragoljub Baretić are Serbian nationals who were born between 1936 and 1955 and live in Novi Sad (Serbia).

Between 1961 and 1992 the four men won a number of medals for Yugoslavia, as part of the national team, at the Blind Chess Olympiads. Mr Baretić's highest achievement was a gold medal, while the others won silver medals.

In 2006 Serbia introduced the Sporting Achievements Recognition and Rewards Decree which provided for a national recognition and rewards system consisting of an honorary diploma, a lifetime monthly cash benefit, and a one-off cash payment. In 2007 the Serbian Chess Federation recommended that a number of chess players who had won medals in international competitions, including the applicants, be formally proposed for the national sporting recognition awards. However, unlike the sighted chess players with similar sporting achievements, the applicants were not formally proposed to the Government by the Ministry of Education and Sport.

In February 2007 the Serbian Blind Persons Federation wrote to the ministry urging it to treat blind chess players on an equal footing with all other athletes and chess players, with or without disabilities, who had attained the same or similar sporting results. In July 2009 the Serbian Chess Federation and the applicants lodged additional requests with the Ministry of Youth and Sport. Three months later, the ministry informed the applicants that they did not fulfil the legal

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.

requirements set out in the Sporting Achievements Recognition and Rewards Decree, and that was why they had not been recommended.

The blind chess players immediately lodged a civil discrimination claim against the Republic of Serbia, seeking both recognition of discrimination and compensation. The first-instance court ruled in their favour in April 2010, awarding them damages, recognising that they were entitled to an honorary diploma and a lifetime monthly cash benefit and ordering that they receive one-off cash payments for their achievements. However, the judgment was quashed on appeal in July 2011 and a retrial ordered. Moreover, the claims regarding the honorary diploma, lifetime monthly cash benefit and one-off cash payment were ruled as inadmissible, as the appeals court considered that they involved issues of an administrative nature which could not be decided on by a civil court.

Four months later, the first-instance court ruled once more in favour of the four men, establishing again that they had been discriminated against and awarding each of them 500,000 Serbian dinars (RSD) (approximately 4,870 euros (EUR)) in compensation plus RSD 405,000 (approximately EUR 3,945) in litigation costs. However, that judgment was reversed in turn in June 2012, with the appeals court ruling fully against them, stating that the Blind Chess Olympiad had not been one of the competitions listed in the Sporting Achievements Recognition and Rewards Decree and, in any event, they could have made use of the administrative disputes procedure but had not done so.

In March 2013 the Supreme Court of Cassation dismissed their appeal on points of law, noting that the Blind Chess Olympiad was not one of the competitions listed in the regulations for the national sporting recognitions awards and that no other blind chess players had received the awards, which meant that there had been no difference in treatment between the blind chess players themselves.

The four men lodged an appeal with the Constitutional Court. Despite support for them from the International Chess Federation which treated blind and sighted chess players as equals, in December 2015 the Constitutional Court found that they had not suffered discrimination since their medals had not been won in competitions listed in the Sporting Achievements Recognition and Rewards Decree.

Complaints, procedure and composition of the Court

The blind chess players complained that they had been discriminated against by the Serbian authorities by being denied certain financial awards, namely a lifetime monthly cash benefit as well as a one-off cash payment, unlike all other athletes (with or without a disability) and sighted chess players who had won similar international accolades. They furthermore complained that their reputations had suffered because they had not received an honorary diploma. These complaints were communicated to the Government under Article 14 (prohibition of discrimination), read in conjunction with Article 8 (right to respect for private and family life) and Article 1 of Protocol No. 1 (protection of property), as well as under Article 1 of Protocol No. 12 (general prohibition of discrimination).

The applications were lodged with the European Court of Human Rights on 19 May 2016. Given the similar subject matter, the Court examined the applications jointly in a single judgment.

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

Jon Fridrik **Kjølbro** (Denmark), *President*,
Carlo **Ranzoni** (Liechtenstein),
Aleš **Pejchal** (the Czech Republic),
Valeriu **Grițco** (Republic of Moldova),
Egidijus **Kūris** (Lithuania),
Branko **Lubarda** (Serbia),
Pauliine **Koskelo** (Finland),

and also Stanley Naismith, Section Registrar.

Decision of the Court

The Court ultimately examined the complaints from the standpoint of Article 1 of Protocol No. 12 only.

It rejected the Government's objection as to the non-exhaustion of domestic remedies, noting that the complaints concerned allegations of discrimination and that it was not unreasonable for the blind chess players to have sought redress on the basis of the national anti-discrimination legislation, which specifically provided for various forms of relief to victims of such treatment as well as compensation for any pecuniary and non-pecuniary damage suffered. An administrative dispute would not have offered a more reasonable prospect of success. Moreover, the Constitutional Court had not rejected their complaints on the grounds that they had not properly exhausted other legal avenues.

The Court has already held that States have considerably little leeway ("margin of appreciation") in establishing different legal treatment for people with disabilities. Recommendations adopted by the Parliamentary Assembly of the Council of Europe and the United Nations Convention on the Rights of Persons with Disabilities highlight the need to protect people with disabilities from discriminatory treatment. Since the Serbian authorities had decided to set up a sporting achievements recognition and rewards system, they had to do so in such a way as to comply with Article 1 of Protocol No. 12.

While it was legitimate for the Serbian authorities to focus on the highest sporting achievements and the most important competitions in its award system, they had not shown why the high accolades won by the applicants, as blind chess players, were less significant than similar medals won by sighted chess players. The prestige of a game or a sport should not depend on whether it is practised by persons with or without a disability. Indeed, the Court noted that the decree itself had placed the Olympics and the Paralympics on an equal footing and thus regarded the achievements of disabled sportsmen and sportswomen as meriting equal recognition. Moreover, the distinction between Olympic and non-Olympic sports which had been used as an argument by the Serbian Government was of no relevance since the Chess Olympiad for sighted chess players, which was among the listed competitions in the decree, was neither part of the Olympic nor the Paralympic Games.

The Court concluded that there was no objective and reasonable justification for treating the blind chess players differently on the basis of their disability. There had accordingly been a violation of Article 1 of Protocol No. 12.

Just satisfaction (Article 41)

The Court held that Serbia was to pay each applicant 4,500 euros (EUR) in respect of non-pecuniary damage. As regards pecuniary damage, they were to be paid the accrued and any future financial benefits and/or awards which they would have been entitled to had their medals been won at the Chess Olympiad for sighted chess players.

Separate opinions

Judges Kjølbros and Koskelo expressed a joint dissenting opinion, which is annexed to the judgment.

The judgment is available only in English.

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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.