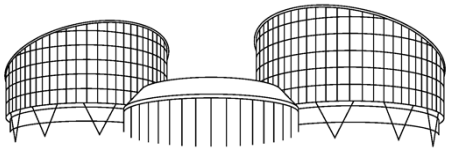

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF NEGOVANOVIĆ AND OTHERS v. SERBIA

(Applications nos. 29907/16 and 3 others – see appended list)

JUDGMENT

Art 1 P12 • Prohibition of discrimination • Discriminatory denial to blind chess players of financial awards granted to sighted players as national sporting recognition for winning similar international accolades • Margin of appreciation considerably reduced when establishing different legal treatment for people with disabilities • "Prestige" of a game or a sport not to be dependent merely on whether practised by persons with or without a disability

STRASBOURG

25 January 2022

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Negovanović and Others v. Serbia,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Jon Fridrik Kjølbro, *President,*
Carlo Ranzoni,
Aleš Pejchal,
Valeriu Griţco,
Egidijus Kūris,
Branko Lubarda,
Pauliine Koskelo, *judges,*
and Stanley Naismith, *Section Registrar,*

Having regard to:

the applications (nos. 29907/16, 30022/16, 30322/16 and 31142/16) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four Serbian nationals, Mr Branko Negovanović ("the first applicant"), Mr Sretko Avram ("the second applicant"), Mr Živa Markov ("the third applicant") and Mr Dragoljub Baretić ("the fourth applicant"), on the date indicated in the appended table;

the decision to give notice of the applications to the Serbian Government ("the Government");

the parties' observations;

Having deliberated in private on 30 November 2021,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The applications concern alleged discrimination by the respondent State against blind chess players, its own nationals, who had won medals at major international events, compared to all other Serbian athletes and chess players, with or without disabilities, who had won similar accolades, when it came to the enjoyment of certain financial benefits and awards for their achievements as well as a formal recognition thereof.

THE FACTS

2. A list of the applicants is set out in the appendix, as are the applicants' personal details, the date of introduction of their applications before the Court and the information regarding their legal counsel, respectively.

3. The Government were represented by their Agent, Ms Zorana Jadrijević Mladar.

4. The relevant facts of the case, as submitted by the parties, may be summarised as follows.

I. THE APPLICANTS' MEDALS AND THE NATIONAL SPORTING ACHIEVEMENTS RECOGNITION AND REWARDS SYSTEM

5. Between 1961 and 1992 the applicants won a number of medals for Yugoslavia, as part of the national team, at the Blind Chess Olympiads. The highest achievement of the fourth applicant, Mr Dragoljub Baretić, in this competition was a gold medal, while the highest achievements of the first, second and thirds applicants, Mr Branko Negovanović, Mr Sretko Avram and Mr Živa Markov, respectively, were silver medals.

6. In 2006 the respondent State enacted the Sporting Achievements Recognition and Rewards Decree which provided, under specified circumstances, for a national recognition and rewards system consisting of an honorary diploma, a lifetime monthly cash benefit, and a one-time cash payment (see paragraphs 24-34 below).

II. THE REQUESTS ADDRESSED TO THE ADMINISTRATIVE AUTHORITIES

7. On an unspecified date in 2007 the Serbian Chess Federation (*Šahovski savez Srbije*) recommended that a number of chess players who had won medals in international competitions, including the applicants, be formally proposed to the Government (*Vlada Republike Srbije*) by the Ministry of Education and Sport (*Ministarstvo prosvete i sporta*) as persons entitled to the national sporting recognition awards for their achievements (see paragraph 33 below).

8. Since, unlike the sighted chess players with similar accolades, the applicants had not been formally proposed as persons entitled to such recognition and awards, on 27 February 2007 the Serbian Blind Persons Federation (*Savez slepih Srbije*) sent a letter to the said ministry urging it to treat blind chess players on an equal footing compared to all other athletes and chess players, with or without disabilities, who had attained the same or similar sporting results.

9. On 30 July 2009 the Serbian Chess Federation and the applicants lodged additional requests to the same effect with the Ministry of Youth and Sport (*Ministarstvo omladine i sporta*), noting that the applicants had been discriminated against, having still not received their national sporting recognition awards. The ministry in question was also notified that, should no redress be forthcoming, an administrative dispute would be brought before the relevant courts (see paragraphs 37-42 below).

10. On 10 October 2009 the Ministry of Youth and Sport informed the applicants that they did not fulfil the legal requirements, as set out in the Sporting Achievements Recognition and Rewards Decree, in order to be granted the national sporting recognition awards and that this was why no recommendation had been made to the Government in this regard.

III. THE CIVIL PROCEEDINGS

11. On 23 October 2009 the applicants lodged a civil discrimination claim against the Republic of Serbia. The applicants alleged, *inter alia*, that they had been discriminated against and dishonoured compared to other athletes or players with similar sporting achievements. In particular, all sighted chess players had been granted the national recognition awards in question while their own requests in this respect had been ignored. The applicants therefore sought a judicial declaration that they had been discriminated against and redress for the pecuniary and non-pecuniary harm suffered in this connection (see paragraphs 35 and 36 below).

12. On 1 April 2010 the Novi Sad Court of First Instance (*Osnovni sud u Novom Sadu*) ruled in favour of the applicants and in so doing: (a) established that they had indeed been discriminated against compared to sighted chess players and Paralympic medal winners; (b) awarded each applicant 300,000 Serbian dinars (RSD), amounting to approximately 2,995 euros (EUR) at that time, on account of the mental anguish suffered in this regard and the harm caused to their honour and reputation, plus statutory interest; (c) recognised that the applicants, respectively, were entitled to an honorary diploma in recognition of their achievements and a lifetime monthly cash benefit as of 23 October 2009, consisting of accrued and future benefits, the former with statutory interest and the latter until the relevant regulations provided for such a possibility; (d) ordered that the first, second and third applicants each be paid EUR 45,000 in RSD on account of the one-time cash payment for their achievements, with applicable interest as of 23 October 2009; (e) ordered that the fourth applicant be paid EUR 60,000 in RSD on account of the said one-time cash payment, also with applicable interest as of 23 October 2009; and (f) awarded the applicants RSD 309,000 in litigation costs, amounting to approximately EUR 3,085 at that time.

13. Following an appeal lodged by the defendant, on 5 July 2011 the Novi Sad Appeals Court (*Apelacioni sud u Novom Sadu*) quashed the impugned judgment and ordered a retrial as regards the ruling described under points (a) and (b) in paragraph 12 above. Concerning the ruling described under points (c), (d) and (e), however, the appellate court rejected the applicants' claims as inadmissible, being of the view that they involved issues of an administrative nature which could not be adjudicated by a civil court (see paragraph 40 below).

14. On 14 November 2011 the Novi Sad Court of First Instance ruled partly in favour of the applicants. Specifically, it (a) established, once again, that they had been discriminated against compared to sighted chess players and Paralympic medal winners; (b) awarded each applicant RSD 500,000, amounting to approximately EUR 4,870 at that time, on account of the mental anguish suffered in this connection and the harm caused to their honour and reputation, plus statutory interest; and (c) ordered that the applicants be paid

RSD 405,000 in litigation costs, amounting to approximately EUR 3,945 at that time.

15. Following a further appeal lodged by the defendant, on 14 June 2012 the Novi Sad Appeals Court reversed the impugned judgment and ruled fully against the applicants. The appellate court noted, *inter alia*, that the Blind Chess Olympiad had not been among the competitions listed in the Sporting Achievements Recognition and Rewards Decree. There had hence been no discrimination when the Ministry of Youth and Sports had merely informed the applicants thereof. Furthermore, the State had had the prerogative to select the competitions which it deemed most important based on the popularity of the sport in question, its significance internationally, and the country's "realistic financial resources". The Novi Sad Appeals Court lastly stated that, in any event, the applicants could have made use of the administrative disputes procedure but had failed to do so (see paragraph 9 above).

16. On 5 September 2012 the Chief Public Prosecutor's Office (*Republičko javno tužilaštvo*) refused to lodge, on the applicants' behalf, a request for the protection of legality (*zahtev za zaštitu zakonitosti*) with the Supreme Court of Cassation (*Vrhovni kasacioni sud*).

17. On 6 March 2013 the Supreme Court of Cassation dismissed the applicants' appeal on points of law (*revizija*). Just like the Novi Sad Appeals Court before it, this court noted that the Blind Chess Olympiad had not been among the competitions listed in the relevant regulations and that the applicants had thus not been entitled to the national sporting recognition awards in question. Moreover, there had been no evidence that any other blind chess players had ever received those very awards, meaning that there had also been no differential treatment among the blind chess players themselves.

IV. THE CONSTITUTIONAL COURT

18. On 8 May 2013 the applicants lodged an appeal with the Constitutional Court (*Ustavni sud*).

19. On 17 December 2015 the Constitutional Court noted that, according to the impugned decisions rendered by the civil courts, the applicants had not suffered discrimination since their medals had been won in the course of competitions which had not been listed in the Sporting Achievements Recognition and Rewards Decree. Furthermore, the Constitutional Court stated that it had itself already rejected, on 9 July 2013, a motion challenging the constitutionality and legality of the said decree.

V. OTHER RELEVANT FACTS

20. On 29 October 2014 the International Chess Federation (*Fédération Internationale des Échecs*), also referred to as the World Chess Federation or

FIDE by its French acronym, sent a letter to the Serbian Chess Federation. The letter reads as follows:

> "The International Braille Chess Association (IBCA) is an integral part of the World Chess Federation ... The results achieved by the members of the IBCA on worldwide and European championships are also official results of the FIDE.
>
> Blind chess players have the same chess titles, which are obtained in the same manner as the ones obtained by healthy chess players. Furthermore, blind chess players are listed on the registration and rating lists of the FIDE together with healthy chess players, and based on the results achieved at the IBCA competitions, which are a part of the competing system of FIDE.
>
> Every blind chess player as well as every healthy one has his or her own registration and identification number, based on which ... [he or she] ... can be located on the registration and rating list of FIDE.
>
> The World Chess Olympiad, held as part of the competing system of the FIDE, includes chess [O]lympics for the healthy as well as for the blind (the Blind Chess Olympiad).
>
> It is the same with other European and worldwide tournaments organised by the FIDE – they include tournaments for both the healthy and the blind chess players.
>
> This opinion is issued at the request of the Serbian Chess Federation for the purpose of exercising the right of the blind chess players to obtain national sports acknowledgments issued by the Republic of Serbia in the same way healthy chess players do. As mentioned before, FIDE treats both groups of chess players as equals – they are entitled to the same titles and ratings and have the same rights."

21. In a letter lacking a date, addressed to the Ministry of Youth and Sport, the IBCA stated, *inter alia*, that the applicants had won medals in Blind Chess Olympiads. The IBCA further noted that their association was "a rightful member of FIDE" and that blind chess players were, based on their results, "on the single official list of FIDE together with chess players without sight impairment". Lastly, "in accordance with the basic postulates of ethics and fair-play in sports" the IBCA requested the ministry not to discriminate against blind chess players when it came to formally recognising their achievements.

22. In their submissions lodged with the domestic authorities, the applicants maintained, *inter alia*, that of all the medal winners and champions over the years, a total of some 400 persons including sighted chess players, only blind chess players had been denied their national sporting recognition awards.

23. As of today and despite repeated efforts to do so, chess is still not included at the Olympic Games or the Paralympic Games organized by the International Olympic Committee and the International Paralympic Committee respectively.

RELEVANT LEGAL FRAMEWORK

I. THE SPORTING ACHIEVEMENTS RECOGNITION AND REWARDS DECREE (*UREDBA O NACIONALNIM PRIZNANJIMA I NAGRADAMA ZA POSEBAN DOPRINOS RAZVOJU I AFIRMACJI SPORTA*, PUBLISHED IN THE OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA – OG RS – NOS. 65/06 AND 06/07)

24. Article 2 § 1 provided that athletes and players, nationals of the Republic of Serbia, who had won a medal, as members of the national team of Yugoslavia or of the State Union of Serbia and Montenegro or the national team of the Republic of Serbia, at the Olympic Games, the Paralympic Games, the Chess Olympiad, or at a world or a European championship in an Olympic sport, or who had been world record holders in such a discipline, as well as their coaches if they too were nationals of the Republic of Serbia, were all entitled to a "national sporting recognition award" (*nacionalono sportsko priznanje*).

25. Article 2 § 2, *inter alia*, defined the national sporting recognition award as consisting of an honorary diploma and a lifetime monthly cash benefit.

26. Article 2 § 2 (1) provided, *inter alia*, that the monthly cash benefit was to be in the amount of three average net salaries in the Republic of Serbia for the month of December of the previous year for a gold medal won at the Olympic Games, the Paralympic Games or the Chess Olympiad.

27. Article 2 § 2 (2) provided, *inter alia*, that the monthly cash benefit was to be in the amount of two and a half average net salaries in the Republic of Serbia for the month of December of the previous year for a silver medal won at the Olympic Games, the Paralympic Games or the Chess Olympiad.

28. Article 2 §§ 3 and 4 provided that the national sporting recognition award could be bestowed upon the same athlete or coach only once and that it was to be formally presented on the National Day of the Republic of Serbia.

29. Article 3 provided, *inter alia*, that athletes and players, nationals of the Republic of Serbia, who had won a medal, as members of the national team of the Republic of Serbia, at the Olympic Games, the Paralympic Games, the Chess Olympiad, or at a world or a European championship in an Olympic sport or chess, were also entitled to a one-time cash payment in accordance with the decree.

30. Article 4 § 1 specified that for a medal won in a team sport at the Olympic Games, the Paralympic Games or the Chess Olympiad the team in question would be paid EUR 400,000 in RSD for a gold medal, EUR 350,000 in RSD for a silver medal, and EUR 300,000 in RSD for a bronze medal.

31. Article 4 § 2 provided, *inter alia*, that for a medal won at the Olympic Games or the Paralympic Games in individual sports athletes were personally

entitled to a one-time cash payment in the amount of 15% of the sums mentioned in Article 4 § 1 above.

32. Article 4 §§ 4 and 5 provided that for a medal won at the Olympic Games or the Paralympic Games by a team the one-time cash payment was to be adjusted taking into account the size of the team itself. It also set out the exact calculation method for so doing.

33. Article 7 provided, *inter alia*, that the national sporting recognition awards referred to in Article 2 § 2 of this decree, as well as the one-time cash payment, were to be granted by the Government on the proposal of the ministry in charge of sports and that an athlete or player would be entitled to receive the lifetime monthly cash benefit upon reaching the age of 35.

34. In 2009 this decree was repealed and replaced by another decree regulating the same subject matter. Other decrees on the issue and their amendments were enacted in 2013, 2015, 2016, 2017 and 2019. The decree of 2009, *inter alia*, specified that athletes and players who had won a medal prior to 15 April 2009 would be entitled to the recognition and rewards as provided in the earlier regulations, that is in the decree summarised in paragraphs 24-33 above.

II. THE PROHIBITION OF DISCRIMINATION ACT (*ZAKON O ZABRANI DISKRIMINACIJE*, PUBLISHED IN OG RS NO. 22/09)

35. Article 43 sets out the various forms of judicial redress available to victims of discrimination, including on the basis of disability. They include injunctive and declaratory relief, such as the recognition of the discrimination suffered and its prohibition in the future, as well as compensation for any pecuniary and non-pecuniary damage. The publication in the media of a civil court's judgment rendered in this context may also be ordered.

36. This Act entered into force on 7 April 2009 and has since then been amended once, in 2021.

III. THE GENERAL ADMINISTRATIVE PROCEEDINGS ACT (*ZAKON O OPŠTEM UPRAVNOM POSTUPKU*; PUBLISHED IN THE OFFICIAL GAZETTE OF THE FEDERAL REPUBLIC OF YUGOSLAVIA – OG FRY – NOS. 33/97 AND 31/01)

37. Article 208 § 1 provided, *inter alia*, that in simple matters an administrative body was obliged to issue a decision within one month as of when the claimant had lodged his or her request. In all other cases, the administrative body was to render a decision within two months thereof.

38. Article 208 § 2 enabled the claimant whose request had not been decided within the periods established in the previous paragraph to lodge an appeal as if his or her request had been denied. Where an appeal was not

allowed, the claimant had the right to directly initiate an administrative dispute before a relevant court of law.

39. This Act was subsequently amended, in 2010, and was ultimately repealed and replaced by other legislation enacted in 2016.

IV. THE ADMINISTRATIVE DISPUTES ACT (*ZAKON O UPRAVNIM SPOROVIMA*; PUBLISHED IN OG FRY NO. 46/96)

40. Article 6 provided that an administrative dispute could only be brought against an "administrative act", which was an act/decision adopted by a State body in the determination of one's rights and obligations concerning "an administrative matter". Article 9 § 1, however, provided, *inter alia*, that an administrative dispute could not be instituted in respect of matters where "judicial redress" was "secured outside [of the context] of an administrative dispute".

41. Articles 8 and 24 provided, *inter alia*, that a claimant who had lodged a request with an administrative body would have the right to bring an administrative dispute before a court of law in the following situations:

(a) Where an appellate body failed to issue a decision upon his or her appeal within sixty days, or indeed a shorter deadline if so provided by law, the claimant could repeat the request and if the appellate body declined to rule within an additional period of seven days the claimant could institute an administrative dispute.

(b) In accordance with, *mutatis mutandis*, the conditions set out under (a) above, where a first instance administrative body failed to issue a decision and there was no right to an appeal, the claimant could directly institute an administrative dispute.

(c) Where a first instance administrative body failed to issue a decision upon the claimant's request within sixty days, or indeed a shorter deadline if so provided by law, as regards matters where an appeal was not excluded, the claimant had the right to lodge the said request with the appellate administrative body. Where that body rendered a decision, the claimant had the right to institute an administrative dispute against it, and where it failed to rule the claimant could institute an administrative dispute in accordance with, *mutatis mutandis*, the conditions set out under (a) above.

42. This Act was repealed and replaced by other legislation on 30 December 2009.

THE LAW

I. JOINDER OF THE APPLICATIONS

43. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATIONS OF ARTICLE 1 OF PROTOCOL NO. 12

A. Scope of the case

44. The applicants are blind chess players and Serbian nationals who had won medals for Yugoslavia internationally, notably in the Blind Chess Olympiad. They complained that they had been discriminated against by the Serbian authorities by being denied certain financial awards, i.e. a lifetime monthly cash benefit as well as a one-time cash payment (see paragraphs 24-33 above), unlike all other athletes and chess players, including sighted chess players or other athletes or players with disabilities, who had won similar international accolades.

45. The applicants furthermore complained that as part of the above-alleged discrimination, including the failure of the Serbian authorities to formally recognise their achievements through an honorary diploma (see paragraph 25 above), they had suffered adverse consequences to their reputations respectively.

46. These complaints were communicated to the Government under Article 14 of the Convention, read in conjunction with Article 8 thereof and Article 1 of Protocol No. 1, as well as under Article 1 of Protocol No. 12.

47. Having regard to the substance of the applicants' complaints and the relevant context, however, the Court, which is the master of the characterisation to be given in law to the facts of any case before it (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, ECHR 2018), is of the opinion that all of the complaints in the present case should be examined from the standpoint of Article 1 of Protocol No. 12 only (see, *mutatis mutandis*, *Napotnik v. Romania*, no. 33139/13, § 52, 20 October 2020). That provision reads as follows:

> "1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
>
> 2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."

B. As regards the applicants' complaints that they had been discriminated against by being denied certain financial awards (see paragraph 44 above)

1. Admissibility

(a) The Court's jurisdiction *ratione materiae*

48. The Government argued that since the Blind Chess Olympiad had not been among the competitions listed in the Sporting Achievements

Recognition and Rewards Decree, the applicants had consequently not been entitled to acquire any pecuniary benefits in this connection.

49. The applicants maintained that they should have been granted the same awards as all other athletes and players, including sighted chess players, with similar international accolades.

50. At the outset, the Court reiterates that as the question of applicability is an issue of its jurisdiction *ratione materiae*, the general rule of dealing with applications should be respected and the relevant analysis should be carried out at the admissibility stage unless there is a particular reason to join this question to the merits (see *Denisov v. Ukraine* [GC], no. 76639/11, § 93, 25 September 2018). No such particular reason exists in the present case, and the issue of the applicability of Article 1 of Protocol No. 12 therefore falls to be examined at the admissibility stage.

51. The Court reiterates that whereas Article 14 of the Convention prohibits discrimination in the enjoyment of "the rights and freedoms set forth in [the] Convention", Article 1 of Protocol No. 12 introduces a general prohibition of discrimination (see *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, § 53, ECHR 2009, and *Baralija v. Bosnia and Herzegovina*, no. 30100/18, § 45, 29 October 2019).

52. It is important to note that Article 1 of Protocol No. 12 extends the scope of protection to not only "any right set forth by law", as the text of paragraph 1 might suggest, but beyond that. This follows in particular from paragraph 2, which further provides that no one may be discriminated against by a public authority (see *Savez crkava "Riječ života" and Others v. Croatia*, no. 7798/08, § 104, 9 December 2010, and *Napotnik*, cited above, § 55). According to the Explanatory Report on Article 1 of Protocol No. 12, the scope of protection of that provision concerns four categories of cases in particular where a person is discriminated against:

> "i. in the enjoyment of any right specifically granted to an individual under national law;
>
> ii. in the enjoyment of a right which may be inferred from a clear obligation of a public authority under national law, that is, where a public authority is under an obligation under national law to behave in a particular manner;
>
> iii. by a public authority in the exercise of discretionary power (for example, granting certain subsidies);
>
> iv. by any other act or omission by a public authority (for example, the behaviour of law enforcement officers when controlling a riot)."

The Explanatory Report further clarifies that:

> "... it was considered unnecessary to specify which of these four elements are covered by the first paragraph of Article 1 and which by the second. The two paragraphs are complementary and their combined effect is that all four elements are covered by Article 1. It should also be borne in mind that the distinctions between the respective categories i-iv are not clear-cut and that domestic legal systems may have different approaches as to which case comes under which category."

53. Therefore, in order to determine whether Article 1 of Protocol No. 12 is applicable, the Court must establish whether the applicants' complaints fall within one of the four categories mentioned in the Explanatory Report (see *Savez crkava "Riječ života" and Others*, cited above, § 105, and *Napotnik*, cited above, § 56).

54. In this connection, the Court notes that the domestic law (see paragraphs 24-32 above), as interpreted by the national courts (see paragraphs 15, 17 and 19 above), provided that only chess players who had won medals at the Chess Olympiad, otherwise organised for sighted chess players only, were entitled to certain financial awards, thus effectively disqualifying all other chess players including those who, such as the applicants, had won their medals at the Blind Chess Olympiad. It follows that the Serbian authorities, when deciding to enact such legislation, clearly exercised their discretionary power in such a way as to treat differently the sighted and the blind chess players despite them winning similar international accolades. Consequently, the Court cannot but conclude that the applicants' complaints fall under category (iii) of potential discrimination as envisaged by the Explanatory Report (see paragraph 52 above).

55. In view of the foregoing, Article 1 of Protocol No. 12 is applicable to the facts of the applicants' complaints and the Government's implicit objection in this regard must be rejected.

(b) Exhaustion of domestic remedies

(i) The parties submissions

56. The Government maintained that the applicants had failed to make use of an existing and effective domestic remedy. In particular, and as noted by the domestic civil courts themselves, the applicants should have properly brought an administrative dispute with respect to their complaints relating to the national sporting recognition awards (see paragraphs 13, 15 and 37-42 above). Moreover, the Government pointed out that the applicants had clearly been aware of this avenue of redress but had, for some reason, decided not to pursue it (see paragraph 9 above).

57. The applicants submitted that they had complied with the exhaustion requirement, particularly since their complaints had concerned discrimination and they had brought an anti-discrimination civil lawsuit in this regard (see paragraph 35 above).

(ii) The Court's assessment

(α) Relevant principles

58. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring a case against a State before the Court to firstly use the remedies provided by the national legal system. Consequently, States are dispensed from answering

for their acts before an international body before they have had an opportunity to put matters right domestically (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 70, 25 March 2014).

59. The obligation to exhaust domestic remedies therefore requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see *Vučković and Others*, cited above, § 71).

60. To be effective, a remedy must likewise be capable of remedying directly the impugned state of affairs and must offer reasonable prospects of success (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004, and *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II). However, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress (see, for example, *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 70, 17 September 2009, and *Vučković and Others*, cited above, § 74).

61. An applicant's failure to make use of an available domestic remedy or to make proper use of it (that is to say by bringing a complaint at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law) will result in an application being declared inadmissible before this Court (see *Vučković and Others*, cited above, § 72).

62. The Court has, however, also frequently underlined the need to apply the exhaustion rule with some degree of flexibility and without excessive formalism (ibid., § 76, with further references). For example, where more than one potentially effective remedy is available, the applicant is only required to use one remedy of his or her own choosing (see, among many other authorities, *Micallef v. Malta* [GC], no. 17056/06, § 58, ECHR 2009; *Nada v. Switzerland* [GC], no. 10593/08, § 142, ECHR 2012; *Göthlin v. Sweden*, no. 8307/11, § 45, 16 October 2014; and *O'Keeffe v. Ireland* [GC], no. 35810/09, §§ 109-111, ECHR 2014 (extracts)). Also, it would, for example, be unduly formalistic to require the applicants to exercise a remedy which even the highest court of their country would not oblige them to exhaust (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, §§ 117 and 118, ECHR 2007-IV).

63. With respect to legal systems which provide constitutional protection for fundamental human rights and freedoms, such as the one in Serbia, it is incumbent on the aggrieved individual to test the extent of that protection (see *Vinčić and Others v. Serbia*, nos. 44698/06 and 30 others, § 51, 1 December 2009).

64. As regards the burden of proof, it is up to the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one,

available in theory and in practice at the relevant time. Once this burden has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see and *Vučković and Others*, cited above, § 77, with further references).

(β) Application of these principles to the present case

65. Turning to the present case, the Court notes that, as stated by the applicants themselves, the very substance of their complaints concerned allegations of discrimination (see paragraphs 44 and 57 above). In those circumstances it cannot be deemed unreasonable for them to have sought redress on the basis of the national anti-discrimination legislation, which specifically provided for various forms of injunctive and/or declaratory relief to victims of such treatment, as well as compensation for any pecuniary and non-pecuniary damage suffered (see paragraph 35 above; see also, *mutatis mutandis*, *Vučković and Others*, cited above, § 78).

66. Furthermore, an administrative dispute would not have offered, in the very specific circumstances of the present case, a more reasonable prospect of success, compared to the civil lawsuit (see paragraphs 60 and 62 above). The Government, for their part, provided no relevant domestic case-law showing that any other claimants had ever obtained redress through this legal avenue in respect of discrimination-related claims brought in connection with the sporting recognition awards system (see paragraph 64 above).

67. The applicants lastly, albeit unsuccessfully, tested the extent of the protection for fundamental human rights and freedoms afforded by the Constitutional Court, it being noted that as of 7 August 2008 a constitutional appeal has, in principle, been considered by the Court as an effective domestic remedy within the meaning of Article 35 § 1 of the Convention (see *Vučković and Others*, cited above, § 61). The Constitutional Court was thus given an opportunity to expand this protection by way of interpretation (see paragraph 63 above; see also *Vučković and Others*, cited above, § 84, with further references) but held that there had been no discrimination in the present case. In so doing, however, it did not reject the applicants' complaints on the grounds that they had not properly exhausted any other, prior, effective legal avenue, including the administrative dispute proceedings, as it could have done (see paragraph 19 above). It would hence also be unduly formalistic for the Court to now hold otherwise (see paragraph 62 above *in fine*; see also, *mutatis mutandis*, *Dragan Petrović v. Serbia*, no. 75229/10, §§ 55 and 57, 14 April 2020).

68. In view of the foregoing, the Government's objection as to the non-exhaustion of domestic remedies, within the meaning of Article 35 § 1 of the Convention, must be rejected.

(c) As regards other grounds of inadmissibility

69. The Court notes that the applicants' complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

(a) Submissions by the parties

70. The applicants essentially reaffirmed their complaints as set out in paragraph 44 above. They further maintained that the respondent State had continued to discriminate against blind chess players on the basis of their sensory impairment notwithstanding their undisputed sporting achievements.

71. The Government submitted that the applicants had not suffered any discrimination in the present case. The Sporting Achievements Recognition and Rewards Decree had pursued certain objectives, notably the recognition of only the highest sporting achievements in the most important competitions. In deciding which sports should be included, a number of criteria had been employed: (i) the popularity of the sport and its tradition in Serbia; (ii) the sport's significance internationally; (iii) its contribution to the "development and affirmation" of the country's reputation; (iv) the need to distinguish between "Olympic and non-Olympic sports"; and (v) the country's budgetary constraints.

72. The Government further pointed out that although chess was not an Olympic sport, the International Olympic Committee had recognised FIDE as the supreme body responsible for the advancement of chess. FIDE had also adopted the rules of the game and had organised chess Olympiads, world championships and other competitions under its auspices. Chess had therefore been included among the sports listed in the Sporting Achievements Recognition and Rewards Decree, but not the Blind Chess Olympiad as such. In this connection, the Government stated that there had also been many other important competitions which had not been included based on the above-mentioned criteria. Among others, for example, amateurs, junior athletes and veterans had all been excluded. Most notably, even though the Serbian national youth team (the under 20s) had won the 2015 FIFA World Cup in football, which had been a major success in the Serbian context and a feat which had delighted the entire nation, the members of this team had not been eligible to receive any national sporting recognition awards.

73. The Government lastly endorsed the reasoning of the Supreme Court of Cassation and that of the Constitutional Court, including reasons to the effect that there had been no evidence that any other blind chess players had ever received the national recognition awards in question, the implication being that all blind chess players had thus been treated equally (see paragraphs 17 and 19 above).

(b) The Court's assessment

(i) Relevant principles

74. Notwithstanding the difference in scope between Article 14 of the Convention and Article 1 of Protocol No. 12, the meaning of the notion of "discrimination" in Article 1 of Protocol No. 12 was intended to be identical to that in Article 14 (see paragraphs 18 and 19 of the Explanatory Report to Protocol No. 12). In applying the same term under Article 1 of Protocol No. 12, the Court therefore sees no reason to depart from the established interpretation of "discrimination" (see *Sejdić and Finci*, cited above, § 55, and *Napotnik*, cited above, § 69).

75. It can further be inferred that, in principle, the same standards developed by the Court in its case-law concerning the protection afforded by Article 14 are applicable to cases brought under Article 1 of Protocol No. 12 (see, for example, *Napotnik*, cited above, § 70).

76. In this vein, the Court reiterates that only differences in treatment based on an identifiable characteristic, or "status", are capable of amounting to discrimination within the meaning of Article 14 (see *Fábián v. Hungary* [GC], no. 78117/13, § 113, 5 September 2017), which includes discrimination based on disability (see, for example, *Glor v. Switzerland*, no. 13444/04, § 80, ECHR 2009). Moreover, in order for an issue to arise under Article 14, there must be a difference in the treatment of persons in analogous, or relevantly similar, situations (see *Molla Sali v. Greece* [GC], no. 20452/14, § 133, 19 December 2018). Such a difference in treatment is discriminatory if it has no objective and reasonable justification, or in other words, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised (ibid., § 135).

77. Moreover, in cases concerning a complaint under Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1, although the latter provision does not, for example, include the right to receive a social security payment of any kind, if a State does decide to create a benefits scheme, it must do so in a manner which is compatible with Article 14 (see, for example, *Stummer v. Austria* [GC], no. 37452/02, § 83, ECHR 2011, and *Fábián*, cited above, § 117, both with further references).

78. The Contracting States also enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment. The scope of this margin will vary according to the circumstances, the subject matter and its background (see, for example, *Stummer*, cited above, § 88). In cases concerning disability, the States' margin of appreciation in establishing different legal treatment for people with disabilities has been deemed as reduced considerably (see *Glor*, cited above, § 84).

79. Referring in particular to Recommendation 1592 (2003) towards full social inclusion of people with disabilities, adopted by the Parliamentary Assembly of the Council of Europe on 29 January 2003, and the United Nations Convention on the Rights of Persons with Disabilities, adopted on 13 December 2006, the Court has opined that there was a European and worldwide consensus on the need to protect people with disabilities from discriminatory treatment (see *Glor*, cited above, § 53). This included an obligation for the States to ensure "reasonable accommodation" to allow persons with disabilities the opportunity to fully realise their rights, and a failure to do so amounted to discrimination (see, among other authorities, *Enver Şahin v. Turkey*, no. 23065/12, §§ 67-69, 30 January 2018; *Çam v. Turkey*, no. 51500/08, §§ 65-67, 23 February 2016; and *G.L. v. Italy*, no. 59751/15, §§ 60-66, 10 September 2020).

80. As to the burden of proof, the Court has held that once the applicant has demonstrated a difference in treatment, it is for the Government to show that the difference in treatment was justified (see, for example, *Molla Sali*, cited above, § 137, and *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 85, ECHR 2013 (extracts)).

(ii) Application of these principles to the present case

(α) Whether there was a difference in treatment

81. The Court notes that the complaints in question concern the respondent State's decision not to provide the applicants with at least one financial benefit, i.e. the lifetime monthly cash benefit, which they would have received had they won medals in competitions as sighted rather than blind chess players. In particular, this benefit was to be paid to sighted chess players for winning medals in the Chess Olympiad but not to blind chess players for winning medals in the Blind Chess Olympiad, the former competition having been listed in the decree but the latter competition not having been specifically mentioned therein (see paragraphs 24 and 25 above). The situation with the one-time cash payment, however, seems less clear since Article 3 of the decree referred only to persons who had won medals for Serbia rather than both Serbia and Yugoslavia (compare and contrast paragraphs 24 and 29 above; at the same time, however, see also paragraph 12 above in support of an affirmative position on the issue expressed by the Novi Sad Court of First Instance on 1 April 2010).

82. The applicants were thus at least partly treated differently based on a ground of distinction covered by Article 1 of Protocol No. 12, namely their disability (see, *mutatis mutandis*, paragraphs 75 and 76 above).

(β) Whether the two groups of persons were in comparable situations

83. In view of the above, the applicants as blind chess players who had won their medals at the Blind Chess Olympiad, on the one hand, and the

sighted chess players who had won their medals at the Chess Olympiad, on the other, must, in the Court's opinion, be seen as two groups of persons engaging in the same activity, i.e. playing chess, and, furthermore, as two groups whose members had attained some of the highest international accolades.

84. It follows that the blind chess players and the sighted chess players, in the context of the present case and within the meaning of the Court's case-law have to be deemed as two groups of persons in analogous or relevantly similar situations (see paragraphs 75 and 76 above).

(γ) Whether there was an objective and reasonable justification

85. The Government argued that the Sporting Achievements Recognition and Rewards Decree had pursued a justified objective, specifically the recognition of only the highest sporting achievements in the most important competitions. The exact relevant criteria referred to by the Government have been set out in paragraph 71 above.

86. In this context, the Court reiterates at the outset that although Article 1 of Protocol No. 12 does not include the right to receive payment of a benefit of any kind, if a State does decide to create a particular benefit, it must do so in a manner which is compatible with this provision (see paragraphs 75 and 77 above). In other words and in the context of the present case, since the respondent State decided to set up a sporting achievements recognition and rewards system it had to do so in such a way as to comply with Article 1 of Protocol No. 12.

87. Furthermore, while it was obviously legitimate for the Serbian authorities to focus on the highest sporting achievements and the most important competitions, the Court notes that the Government have not shown why the undoubtedly high accolades won by the applicants, as blind chess players, would have been less "popular" or "internationally significant" than similar medals won by sighted chess players (see paragraph 80 above). Indeed, in its letter addressed to the Ministry of Youth and Sport, the IBCA itself stated, *inter alia*, that blind chess players were, based on their results, "on the single official list of FIDE together with chess players without sight impairment" and requested that they be treated "in accordance with the basic postulates of ethics and fair-play in sports" (see paragraph 21 above). In any event, it is, in the Court's view, inconceivable that the "prestige" of a game or a sport as such, including for example some of the most popular sports such as football, basketball or tennis, should depend merely on whether it is practised by persons with or without a disability. Indeed, the Court notes that the decree itself placed the Olympics and the Paralympics on an equal footing and thus regarded the achievements of disabled sportsmen and sportswomen in the sports concerned as meriting equal recognition.

88. Also, in terms of the contribution of chess to the "development and affirmation" of the country's reputation, equal treatment of blind and sighted

chess players for similar achievements, in Serbian legislation as well as in practice, could only have served to enhance the country's reputation abroad and promote inclusiveness domestically.

89. The Government likewise attempted to distinguish between Olympic and non-Olympic sports but this distinction is of no relevance in the present context since neither the Chess Olympiad for sighted chess players, which was among the listed competitions in the decree, nor the Blind Chess Olympiad for blind chess players, which was not included in the same decree, were part of the Olympic or Paralympic Games organised by the International Olympic Committee and International Paralympic Committee respectively (see paragraph 23 above).

90. As regards the budgetary constraints referred to by the Government, the Court notes that, apparently, of all the medal winners and champions over the years, that is a total of some 400 persons including sighted chess players, only blind chess players had been denied their national sporting recognition awards (see paragraph 22 above). Adding the four applicants to this number, therefore, clearly could not have undermined the country's financial stability, particularly since there is also no suggestion that winning a medal at the Blind Chess Olympiad is, generally speaking, an easily attainable achievement capable of giving rise to many future entitlements.

91. Lastly, the Court considers that the Government's submissions to the effect that there was no evidence that any other blind chess players had ever received the national recognition awards in question (see paragraph 73 above) are of no relevance in terms of the difference in treatment between sighted and blind chess players when it comes to their sporting recognition entitlements.

(δ) Conclusion

92. In view of the foregoing and notwithstanding the State's margin of appreciation, the Court cannot but conclude that there was no "objective and reasonable justification" for the differential treatment of the applicants merely on the basis of their disability, it being understood that the said margin is reduced considerably in this particular context (see paragraphs 75 and 78 above). There has accordingly been a violation of Article 1 of Protocol No. 12.

C. As regards the applicants' complaints that as part of the above-established discrimination, as well as the failure of the Serbian authorities to formally recognise their achievements through an honorary diploma, they had suffered adverse consequences to their reputations respectively (see paragraph 45 above)

93. Having regard to the facts of the case and the submissions of the parties, as well as its findings as set out in paragraphs 81-92 above, the Court

considers that it is not necessary to further examine either the admissibility or the merits of these complaints under Article 1 of Protocol No. 12 (see, for example and *mutatis mutandis*, *Kaos GL v. Turkey*, no. 4982/07, § 65, 22 November 2016, and *Aktiva DOO v. Serbia*, no. 23079/11, § 89, 19 January 2021).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

94. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

95. The applicants referred to the judgments rendered by the Novi Sad Court of First Instance on 1 April 2010 and 14 November 2011 respectively, notably the redress afforded therein for the pecuniary and non-pecuniary damage allegedly suffered (see paragraphs 12 and 14 above), and added that "blind chess players [should] also have the right to a cash reward as well as [a] regular monthly income" for their achievements.

96. The Government contested these claims.

97. The Court considers that the applicants have certainly suffered some non-pecuniary damage. Having regard to the nature of the violation found in the present case and making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards each applicant EUR 4,500 in this connection, plus any tax that may be chargeable on that amount.

98. Concerning the pecuniary damage, the Government must pay each applicant the accrued and any future financial benefits and/or awards to which he would have been entitled had he been a sighed chess player who had won, for Yugoslavia, a relevant medal at the Chess Olympiad for sighted chess players (see paragraphs 24-34 above), together with the applicable domestic statutory interest as regards the accrued benefits and/or awards only (see, *mutatis mutandis*, *Grudić v. Serbia*, no. 31925/08, § 92, 17 April 2012).

B. Costs and expenses

99. The applicant claimed no costs or expenses. Accordingly, the Court makes no award under this head.

C. Default interest

100. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Decides*, unanimously, to join the applications;

2. *Declares*, unanimously, the complaints under Article 1 of Protocol No. 12, as regards allegations that the applicants have been discriminated against by being denied certain financial awards, admissible;

3. *Holds*, by five votes to two, that there has been a violation of Article 1 of Protocol No. 12 in this respect;

4. *Holds*, unanimously, that there is no need to examine the admissibility or the merits of the remaining complaints under Article 1 of Protocol No. 12;

5. *Holds*, by five votes to two,
   (a) that the respondent State is to pay each applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that the respondent State shall pay each applicant, on account of the pecuniary damage suffered, the accrued and any future financial benefits and/or awards to which he would have been entitled had he been a sighted chess player who had won, for Yugoslavia, a relevant medal at the Chess Olympiad for sighted chess players, together with the applicable domestic statutory interest regarding the accrued benefits and/or awards only;
   (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the amount referred to under (a) above at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses*, unanimously, the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 25 January 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith Registrar	Jon Fridrik Kjølbro President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinion of judges Kjølbro and Koskelo are annexed to this judgment.

J.F.K.
S.H.N.

JOINT DISSENTING OPINION OF JUDGES KJØLBRO AND KOSKELO

1. We have, regrettably, been unable to agree with the conclusion reached by the majority of the Chamber, to the effect that there has been a violation of Article 1 of Protocol No. 12 in the present case. In our view, the approach taken by the majority reveals a series of flaws in the analysis. This is a matter of concern which extends beyond the instant case, since weaknesses in the methodology followed risk creating a wider problem in cases raising issues of alleged discrimination.

2. The applicants claim that they are victims of discrimination on the grounds of disability in that, as Serbian winners of medals in the "Blind Chess Olympiad", they have not been awarded the same financial benefits as those awarded by the respondent State to Serbian winners of medals in certain other international sports competitions.

3. We agree that Article 1 of Protocol No. 12 can be considered *applicable* in this case. Indeed, this is the only provision of the Convention under which the present complaints could possibly be admissible, as the circumstances do not give rise to any "possession" capable of bringing the case within the ambit of Article 14 in conjunction of Article 1 of Protocol No. 1.

4. Under Article 1 of Protocol No. 12, which provides for a wider scope of protection, any right set forth by law shall be secured without discrimination on any of the enumerated grounds (paragraph 1 of that provision). Furthermore, paragraph 2 prohibits discrimination by any public authority on any of the grounds set out in paragraph 1. The applicants consider that their exclusion from the financial awards provided for under the relevant decrees (see paragraphs 24-34 of the judgment) amounted to prohibited discrimination on the grounds of their disability. The question therefore arises whether indeed the treatment of the applicants in the present context gives rise to discrimination as prohibited under Article 1 of Protocol No. 12.

5. We recall that the Explanatory Report on this provision (cited in paragraph 52 of the judgment) sets out four categories of situations where prohibited discrimination may arise, namely:

> "i. in the enjoyment of any right specifically granted to an individual under national law;
>
> ii. in the enjoyment of a right which may be inferred from a clear obligation of a public authority under national law, that is, where a public authority is under an obligation under national law to behave in a particular manner;
>
> iii. by a public authority in the exercise of discretionary power (for example, granting certain subsidies);
>
> iv. by any other act or omission by a public authority (for example, the behaviour of law enforcement officers when controlling a riot)."

6. The majority consider that the present case falls within the third category, namely the exercise of discretionary power. We note that the impugned discretionary power was exercised in the present case in the context, and at the level, of the Government's statutory regulation of sporting awards, to be granted from public funds. Thus, the present case does not concern the exercise of discretion delegated to the administrative authorities but the exercise of discretion at the statutory level. While this point would not render Article 1 of Protocol No. 12 inapplicable, it must in our view be taken into account in the further assessment of whether the treatment of the applicants, which was in accordance with the impugned statutory framework, amounts to discrimination prohibited under this Convention provision.

7. According to the Court's established scheme of analysis, the first issue for consideration is whether the applicants were in a *relevantly similar situation* to the categories of persons entitled to the financial awards in question.

8. As the Court has previously held, a difference in treatment may raise an issue from the point of view of the prohibition of discrimination only if the persons subjected to such different treatment are in a relevantly similar situation, taking into account the elements that characterise their circumstances in the particular context. The elements which characterise different situations, and determine their comparability, in turn, must be assessed in the light of the subject matter and purpose of the measure which makes the distinction in question (see *Fábián v. Hungary* [GC], no. 78117/13, § 121, 5 September 2017).

9. In the present case, the subject matter of the measure concerns the recognition by the Government, through specific financial awards, of sporting achievements attained by Serbian nationals in certain competitions at the highest global levels. A measure of this nature is, from the outset, inherently selective and discretionary in terms of the competitions that might be selected for inclusion in such a scheme. Presumably, factors such as the extent of global and national participation in the relevant disciplines, the competitive level entailed, the public attention attracted by these competitions and the associated contribution of medal winners to the country's profile and glory all play a role. It may be observed that in the impugned Serbian scheme, both Olympic and Paralympic sports are included without restriction, whereas, for instance, disciplines such as cricket, polo, bowling, darts, or ballroom dancing are not included. This state of affairs indicates that the selection criteria in terms of the disciplines for inclusion in the scheme, or exclusion from it, were not linked to the characteristics of the persons engaged in the various sports but rather to other factors, related to the disciplines and the status of the competitions themselves. In any event, it is clear that the participants' disability has not as such served as a criterion for the distinctions made in the selection of eligible competitions, as all Paralympic sports disciplines have been included.

10. Thus, it seems clear that the scope of the impugned scheme of awards for sporting achievements has not been defined by reference to the participants and their specific characteristics but by reference to the status of the disciplines and the competitions themselves. Therefore, we consider that in the light of the nature, subject matter and purpose of the measure, the applicants cannot be held to be in a relevantly similar situation to those in the comparator group who may qualify for the financial awards in question.

11. Similarly, regarding the *ground for the impugned difference* in treatment, given that the scheme has been defined with reference to a selection of sports disciplines and competitions and not in terms of distinctions between those participating in them, it cannot in our view be said that the usual test has been met. We would recall that, according to the Court's established case-law, the relevant test is whether, but for the condition of entitlement about which the applicant complains, he or she would have had a right, enforceable under domestic law, to receive the benefit in question (see *Fábián*, cited above, § 117). In the present case, the crucial reason why the applicants were not awarded the benefits in question was not that they were blind, but rather that the competitions in which they won their medals were not among those listed for the awards in question, a situation which affected not only them but also any medal winners in any competition that was not included in the scheme.

12. As regards the further analysis to which the majority have proceeded, we note that they have not specifically addressed the question of whether the difference in treatment pursued a legitimate aim, although this is a standard element of the assessment in a case where, as held by the majority, the requirement of a difference in treatment between persons in relevantly similar situations, based on a prohibited ground, has been met. We note that the Government have argued that the chosen policy of awarding recognition only for the highest sporting achievements in the most important competitions pursued a legitimate aim. In our view, in a context such as the present one, which concerns a domestic policy in an inherently selective and discretionary field, it would be difficult for the Court to condemn the aim as illegitimate. In this regard, we underline again that the selection or exclusion of the eligible competitions was not made on the basis of distinctions relating to the participants' characteristics, but by reference to the disciplines and the status of the competitions in question.

13. We also note with concern that, in their assessment of whether there was an objective and reasonable justification for the difference in treatment, the majority do not engage in any discussion of the scope of the margin of appreciation to be afforded to the States in a context such as the present one. In our view, the questions of whether and how nations should recognise and reward world-class achievements in the field of sport and how they should define the categories of disciplines or competitions in which the winners may be eligible for particular awards or benefits in this respect do not belong

among those matters where it is appropriate for the Court to exercise any strict supervision and dictate outcomes. A wide margin should therefore be left to the States in such policies.

14. Even if, contrary to our analysis above, it were held that the requirement of comparability of situations was satisfied and that the ground for the difference in treatment lay in the applicants' disability, we note that the eligible competitions were essentially defined by reference to medals won or world records held in Olympic or Paralympic sports disciplines (see paragraph 24 of the present judgment). In our view, given the wide margin of appreciation that should apply in this context, the scope of the impugned measure in terms of the competitions that were included, and those which were consequently left out, was based on a sufficiently objective and reasonable justification.

15. In sum, the approach taken by the majority in the present case is not only methodologically flawed but also difficult to defend from the perspective of the Court's role as an international judicial body. The expansive thrust adopted by the majority is particularly anomalous in the light of the fact that a Chamber of the same Section has very recently found itself compelled, due to the prevailing lack of necessary resources, to abstain from examining large volumes of very serious complaints concerning the core rights protected under Article 5 of the Convention (see *Turan and Others v. Turkey*, nos. 75805/16 and 426 others, 23 November 2021).

16. As a final remark, we would like to stress that our opinion in this case has nothing to do with our personal views concerning the applicants' achievements and merits as blind chess players. We fully acknowledge the special challenges they have had to overcome in attaining their outstanding success in this field and we sincerely respect their achievements, which we hold in high regard. For the purposes of our legal and judicial assessment, however, such personal opinions and sympathies cannot, and should not, be decisive.

17. For the reasons set out above, we consider that Article 1 of Protocol No. 12 has not been violated in this case.

APPENDIX

List of cases

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	29907/16	Negovanović v. Serbia	19/05/2016	**Branko NEGOVANOVIĆ** 1937 Novi Sad Serbian	Milina DORIĆ
2.	30022/16	Avram v. Serbia	19/05/2016	**Sretko AVRAM** 1947 Novi Sad Serbian	Milina DORIĆ
3.	30322/16	Markov v. Serbia	19/05/2016	**Živa MARKOV** 1955 Novi Sad Serbian	Milina DORIĆ
4.	31142/16	Baretić v. Serbia	19/05/2016	**Dragoljub BARETIĆ** 1936 Novi Sad Serbian	Milina DORIĆ