

Judgment of 30th September 2002, [K 41/01](#)
**STATUS OF MEDAL WINNERS OF PARALYMPIC GAMES
FOR ATHLETES WITH DISABILITIES**

Type of proceedings: Abstract review Initiator: Commissioner for Citizens' Rights	Composition of Tribunal: 5-judge panel	Dissenting opinions: 0
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Legal provisions under review	Basis of review
Omission of the Paralympic Games medal winners within the statutory definition of the category of persons entitled to a permanent cash benefit after abandoning their sports career [Physical Culture Act 1996: Article 28a(1) insofar as it does not cover athletes with disabilities who have won medals at the Paralympic Games]	Principle of social justice Principle of equality [Constitution: Articles 2 and 32]

The Physical Culture Act 1996 provides that Polish Olympic medal winners, having attained the age of 35 and having abandoned their sports career, are entitled to a permanent cash benefit (a kind of pension in consideration of sports accomplishments achieved at the expense of a professional career) fixed at the level of the average national salary. This cash benefit is financed by the State budget. Only medallists of the “classic” summer and winter Olympics are entitled to this benefit and there is no corresponding right for medal winners of Paralympic Games organized for athletes with disabilities. The Commissioner for Citizens' Rights, in his application to the Constitutional Tribunal, alleged that the omission of this latter category of sportsmen amounted to unlawful discrimination and, as such, infringed Article 32 of the Constitution. The Tribunal did not uphold the claim.

RULING

The challenged law conforms to Articles 2 and 32 of the Constitution.

PRINCIPAL REASONS FOR THE RULING

1. It is necessary to distinguish between a legal lacuna, which may not serve as the basis of a constitutional challenge before this Tribunal, and discrimination, which is prohibited by Article 32 of the Constitution, whereby a certain class of persons are excluded from the application of a particular law despite the fact that, by virtue of those persons possessing identical (legally significant) characteristics to a class of persons to whom the law in question was explicitly addressed, their equal treatment may be justified. Only in the latter situation is this Tribunal entitled to exercise its functions as a “negative legislator”.

2. The Constitution contains no provision which could be construed as requiring, in relation to public authority benefits granted to athletes, identical treatment of all athletes, in particular, equal treatment of disabled athletes and other sportsmen.
3. The assertion that Article 28a(1) of the Physical Culture Act 1996 (the Olympic medal winners' right to a State-funded cash benefits) amounts to unconstitutional discrimination of the athletes with disabilities, would have to be based on a comparison of the features of those persons covered by this provision and other persons omitted from the scope of the provision, where such a comparison led to the conclusion that any such differentiation was arbitrary or irrational. However, the comparison in question does not provide the basis for such a conclusion. It is a fact that disabled participants in the Paralympic Games are also representatives of Poland and help to promote the country. Nevertheless, although great sporting achievements and the prestige associated with such achievements are a necessary element in obtaining the financial benefits offered by the challenged Act, they are not sufficient in themselves to ensure entitlement to such benefits. Other groups of persons also fall outside the ambit of the Act, such as those having won different categories of medals at European or World championships, or those having won medals in non-Olympic disciplines etc. The decision to limit the group of beneficiaries under the Act to those having won medals at the Olympic games was taken as a result of parliamentary debate, which recognised the Olympics as the most recognised and important sporting event. It is erroneous to argue that Olympic events for the disabled and those for able-bodied persons are qualitatively identical. It is also inappropriate to argue that disabled persons are required to make a bigger effort; the Act in question is based on outcome (i.e. the winning of an Olympic medal) and the level of effort is not a relevant criterion. The *ratio legis* of Article 28a of the Physical Culture Act 1996 is also relevant: the financial benefits provided by the Act were intended to represent a form of compensation for outstanding sportsmen who are no longer active sports contestants and who, having devoted a period of life to achieve remarkable results, were unable to build a professional career.
4. In proceedings before the Constitutional Tribunal any claim alleging an infringement of the principle of social justice, contained in Article 2 of the Constitution, should always be formulated with reference to some other constitutional norm and not merely in the abstract.
5. Since it has not been possible in the existing proceedings to confirm the allegations of discrimination and thereby prove an infringement of Article 32 of the Constitution, it should be acknowledged that there is also nothing to indicate an infringement of the principle of social justice contained in Article 2.

Provisions of the Constitution

Art. 2. The Republic of Poland shall be a democratic state governed by the rule of law and implementing the principles of social justice.

Art. 32. 1. All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities.
2. No one shall be discriminated against in political, social or economic life for any reason whatsoever.