

Exclusion of the right to receive compensation at an increased rate for overtime (re border guards); complete deprivation of the said compensation (re border guards eligible for special duty allowances)

K 17/19

Ref. No. <https://trybunal.gov.pl/s/k-17-19>K 17/19 (/s/k-17-19)

JUDGMENT IN THE NAME OF THE REPUBLIC OF POLAND

Warsaw, 28 November 2023

The Constitutional Tribunal, composed of:

Mariusz Muszyński – Presiding Judge
Stanisław Piotrowicz
Piotr Pszczółkowski – Judge Rapporteur
Bartłomiej Sochański
Jakub Stelina,

having considered, at a sitting in camera on 28 November 2023 – in accordance with Article 92(1)(1) of the Act of 30 November 2016 on the Organisation of the Constitutional Tribunal and the Mode of Proceedings Before the Constitutional Tribunal (Journal of Laws – Dz. U. of 2019, item 2393) – the application of the Independent Self-Governing Trade Union of the Border Guard, lodged with the Constitutional Tribunal to consider the conformity of:

(1) Article 37(3) of the Act of 12 October 1990 on the Border Guard (Journal of Laws – Dz. U. of 2017, item 2365, as amended) – insofar as, in compensation for overtime, it grants a border guard an equivalent off-duty period – with Article 4(2) of the European Social Charter, done at Turin on 18 October 1961 (Journal of Laws – Dz. U. of 1999, No. 8, item 67, as amended),

(2) Article 37(3a) of the Act referred to in point 1 with Article 4(2) of the European Social Charter,

adjudicates as follows:

Article 37(3) of the Act of 12 October 1990 on the Border Guard (Journal of Laws – Dz. U. of 2023, item 1080, as amended) – **insofar as it comprises the wording ‘an equivalent off-duty period’ and does not grant a border guard a longer off-duty period in compensation for his/her service in excess of normal hours of duty specified in Article 37(2) of the said Act – is inconsistent with Article 4, para 1, point 2, of the European Social Charter, done at Turin on 18 October 1961** (Journal of Laws – Dz. U. of 1999, No. 8, item 67, as amended).

Moreover, the Tribunal decides:

to discontinue the proceedings as to the remainder.

The ruling was unanimous.

Mariusz Muszyński
Stanisław Piotrowicz
Piotr Pszczółkowski
Bartłomiej Sochański
Jakub Stelina

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