

Inability of wheelchair user to access specific cinema in Geneva did not breach Convention prohibition of discrimination

In its decision in the case of [Glaisen v. Switzerland](#) (application no. 40477/13) the European Court of Human Rights has by a majority declared the application inadmissible. The decision is final.

The applicant, who is paraplegic, uses a wheelchair. His complaint concerned his inability to gain access to a cinema in Geneva.

The Court was of the view that Article 8 (right to respect for private and family life) could not be construed as requiring access to a specific cinema to see a given film in a situation where access to other cinemas in the vicinity was possible.

Principal facts

The applicant, Marc Glaisen, is a Swiss national who was born in 1966 and lives in Geneva (Switzerland). He has been paraplegic since 1987.

On 4 October 2008 Mr Glaisen went on his own to the Pathé Rialto cinema in Geneva to see a film which was not being shown in any other cinema in the city. As the building housing the cinema was not adapted to wheelchair users, the applicant was refused access. The operating company relied on internal safety instructions, turning him away before he could even buy a ticket.

On 28 September 2009, arguing that he had been the victim of discrimination, Mr Glaisen brought proceedings against that company. His appeals were rejected by the Court of First Instance of the Canton of Geneva on 15 September 2011, then by the Civil Division of the Court of Justice and lastly by the Federal Court.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 19 June 2013.

Relying in particular on Articles 14 (prohibition of discrimination) and 8 (right to respect for private and family life), the applicant complained that the refusal of access to the cinema on account of his disability had not been characterised as discrimination by the Swiss courts.

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

Georgios A. Serghides (Cyprus), *President*,
Helen Keller (Switzerland),
Dmitry Dedov (Russia),
Branko Lubarda (Serbia),
Alena Poláčková (Slovakia),
María Elósegui (Spain),
Erik Wennerström (Sweden),

and also Fatoş Aracı, *Deputy Section Registrar*.

Decision of the Court

Article 14 in conjunction with Article 8

As to the protection against discrimination, the Court reiterated that Article 14 merely complemented the other clauses of the Convention and Protocols thereto.

As regards the rights of disabled people and in the circumstances of the present case, the Court found pertinent one of the principles of the 2006 UN Convention on the Rights of Persons with Disabilities, namely that of “[f]ull and effective participation and inclusion in society” (Article 3 (c)). It nevertheless reiterated that Article 8 of the Convention only applied in such circumstances to exceptional cases where a lack of access to public buildings and buildings open to the public affected the person’s life in such a way as to interfere with his or her right to personal development and right to establish and develop relationships with other human beings and the outside world.

Pointing out that it was necessary to take account of the specificities of the case at hand, particularly the applicant’s social and family situation, the Court did not overlook the fact that for Mr Glaisen, who was paraplegic, the importance of going to the cinema was not just to see a film, that he might be able to watch at home instead, but also involved exchanges with others. Moreover, Mr Glaisen, who could not take part in many other leisure activities on account of his disability, saw himself as an avid cinema-goer, and this was not questioned by the Government.

However, the Court took the view that Article 8 could not be construed as requiring access to a specific cinema to see a given film in a situation where access to other cinemas in the vicinity was possible. The Court indeed noted that in the surrounding area there were other cinemas adapted to Mr Glaisen’s needs, and that he therefore generally had access to his local cinemas.

The Court thus concluded that the refusal to allow Mr Glaisen to enter the cinema to see a specific film had not affected his life in such a way as to interfere with his right to personal development or to establish and develop relationships with other human beings and the outside world.

The Court reiterated that States were afforded a broad margin of appreciation in situations where they had to strike a balance between competing private and public interests or between different Convention rights. Similarly, domestic courts had to give detailed reasons for their decisions, in particular to allow the Court to exercise its European scrutiny.

As to the applicable domestic legislation, the Court observed that one of the aims of the Federal Law of 13 December 2002 on the elimination of inequalities affecting disabled persons (LHand) was to create the conditions for disabled persons to be able to participate in social life, especially by helping them to be autonomous in making contact with others. Section 6 of the law sought to prevent serious practices of segregation whereby disabled people might be excluded from certain activities for fear that their very presence would disturb the tranquillity and social habits of other customers. In addition, Article 2 of the ordinance of 19 November 2003 on the elimination of inequalities affecting disabled people (OHand) defined as discrimination any difference in treatment which was “particularly marked and entailing serious inequality, with the intention or consequence of degrading or marginalising a disabled person”.

In the present case, the Court was of the view that the Federal Court had given sufficient reasons to explain why the situation faced by Mr Glaisen was not serious enough to fall within the notion of discrimination. The Court thus saw no cause to go against the findings of the Federal Court, which had held that the Convention did not oblige Switzerland to adopt, in its domestic legislation, a concept of discrimination of the kind sought by Mr Glaisen. It followed that he was not entitled to rely on Article 8 of the Convention.

Article 10

The Court found that Article 10 of the Convention, more specifically the right to receive information, did not go so far as to enable Mr Glaisen to gain access to the cinema showing the film he wished to watch.

The decision is available only in French.

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Press contacts

echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Denis Lambert (tel: + 33 3 90 21 41 09)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Inci Ertekin (tel: + 33 3 90 21 55 30)

Patrick Lannin (tel: + 33 3 90 21 44 18)

Somi Nikol (tel: + 33 3 90 21 64 25)

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