

## **THE RIGHT OF DISABLED PERSONS TO ACCESS TO PRIVATE PLACES OPEN TO THE PUBLIC IN THE EUROPEAN CONVENTION OF HUMAN RIGHTS**

The European Court of Human Rights has rejected a complaint of disability discrimination lodged by a person on wheelchair to whom was denied the access to a cinema to see a given film in Geneva because of safety reason concerning his disability (*Glaisen v. Switzerland*). The complaint relied on Articles 8, 10 and 14 of the European Convention of Human Rights (ECHR). The Court affirmed that none of the aforementioned Articles can be invoked because (i) the denial of the right of access was limited to a specific cinema, and (ii) the notion of discrimination existing in Suisse law did not violate the ECHR because positive obligation to remove physical barriers does not apply to buildings opened to the public constructed before the Swiss Discrimination Act (2004). Pointing out that under UN Convention of the rights of persons with disability (CRPD) access to a cinema is considered as a cultural activity, the Court decision has created a misalignment between ECHR and CRDP introducing some (significant) limitations to the right to access of disabled persons to places open to the public. In this context, CRPD plays a crucial role in prohibiting all kind of juridical and factual discrimination, without distinction between access to public or private places, as the latter is an essential precondition to the full and effective enjoyment of all human rights (civil, political, economic, social and cultural). In the concluding remarks, the paper points out that the Court decision may "legitimate" Member States of the Council of Europe to disability discrimination by laws (or practices) and/or to delay the removal physical barriers, thus lowering the level of protection of disabled persons also in European Union law.