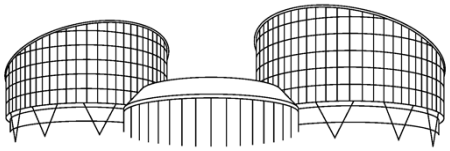

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF ARNAR HELGI LÁRUSSON v. ICELAND

(Application no. 23077/19)

JUDGMENT

Art 14 (+ Art 8) • Positive obligations • No discrimination against wheelchair user unable to access two local public buildings, given other considerable measures taken to gradually realise universal accessibility • Lack of access to two clearly-identified public buildings, playing an important role in local life, and hindering applicant's participation in cultural activities and social events, within the ambit of Art 8 • Assessment of whether State had made "necessary and appropriate adjustments", not amounting to a "disproportionate or undue burden", so as to accommodate and facilitate persons with disabilities

STRASBOURG

31 May 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 Arnar Helgi Lárusson v. Iceland,

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

Georges Ravarani, *President,*
Georgios A. Serghides,
Robert Spano,
Darian Pavli,
Andreas Zünd,
Frédéric Krenc,
Mikhail Lobov, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 23077/19) against the Republic of Iceland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Icelandic national, Mr Arnar Helgi Lárusson ("the applicant"), on 23 April 2019;

the decision to give notice to the Icelandic Government ("the Government") of the complaint concerning Articles 8 and 14 of the Convention and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 26 April 2022,

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

INTRODUCTION

1. The application concerns the lack of access for the applicant, who uses a wheelchair, to public cultural and social buildings.

THE FACTS

2. The applicant was born in 1976 and lives in Reykjanesbær. He was represented by Mr Daníel Isebarn Ágústsson, a lawyer practising in Reykjavik.

3. The Government were represented by their Agent, Mr Einar Karl Hallvarðsson, State Attorney General.

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

Domestic proceedings

5. The applicant was left permanently paralysed from the chest down following an accident in 2002 and uses a wheelchair for mobility. In 2015 he, together with an association of people with spinal injuries, brought civil proceedings challenging a lack of wheelchair access in two buildings housing

arts and cultural centres run by the applicant's municipality. They sought a declaratory judgment that would require the defendants, Reykjanesbær, the municipality in which the applicant resides, and Reykjanesbær's holding company, F., which owned one of the buildings in question, to improve accessibility in the two buildings in several specific ways.

6. The first building, *Duushús*, comprises two adjoining houses built in 1877 and 1954-70 respectively. The three-storey tall building was extensively renovated between 2006 and 2014. It houses Reykjanesbær's main arts and cultural centre. The plaintiffs demanded the installation of a wheelchair lift to enable access between the floors of the building; the installation of ramps between different galleries on the ground floor no steeper than 1:20, as required by building regulations; and changes to the threshold of the main entrance to enable wheelchair access.

7. The second building, *88 Húsið*, is a two-storey building originally built as an engine house in 1963, but has housed a youth centre run by the municipality since 2004. The plaintiffs demanded the installation of a wheelchair lift to enable access between the different floors of the building, the installation of ramps no steeper than 1:20 to enable access from the car park to the building and between the different rooms, and the creation of a disabled parking space within 25 metres of the entrance.

8. In addition, the applicant demanded that the defendants be obliged to pay him 1,000,000 Icelandic krónur (ISK – approximately 7,300 euros (EUR) at the material time) for non-pecuniary damage suffered as a result of the lack of access.

9. The plaintiffs argued that the buildings in question were not in compliance with the applicable building regulations and that this lack of access hindered the applicant, and other wheelchair users, from enjoying their private life on an equal basis with others, in violation of the Constitution, the European Convention on Human Rights ("the Convention") and the United Nations Convention on the Rights of Persons with Disabilities ("the CRPD").

10. In the domestic proceedings the applicant requested that a court-appointed assessor draw up a report concerning specific elements of the accessibility of the buildings. As regards *Duushús*, the assessor established the following: (1) that there was no lift between the floors of the building, (2) that there was a ramp between the two halls on the ground floor of the building with an incline of approximately 1:7 and a width of 96-161 cm, and (3) that there was a 51 mm high threshold at the main entrance to the building. As regards *88 Húsið*, the assessor established the following: (1) that there was no lift between the floors of the building, (2) that there was no lift or ramp between the different halls of the building, (3) that there was a ramp with an incline of approximately 1:9 between the car park and the entrance to the building, and (4) that there was no designated disabled parking space by the building's entrance.

11. The Reykjanes District Court delivered a judgment in favour of the defendants on 24 November 2016. It found that access to the two buildings was in need of improvements, but that this did not violate the applicable building regulations as both buildings had been built prior to those regulations taking effect. Nevertheless, the municipality was under a legal obligation to work towards improving wheelchair access to public buildings and institutions providing public services, and the court noted that the municipality had rolled out an initiative to improve access. In this regard, the court found that municipalities had a margin of appreciation in the prioritisation of such projects, and that the separation of powers hindered the courts from deciding that the authorities were under an obligation to take certain action in areas where the authorities had such discretion.

12. The plaintiffs appealed against that judgment to the Supreme Court. In their written submissions to that court, they did not rely explicitly on the Convention, but they did refer to the submissions and legal arguments made in their civil claim (see paragraph 9 above) and relied explicitly on the principle of equality and non-discrimination. By a judgment of 25 October 2018, the Supreme Court upheld the District Court's conclusion.

13. The Supreme Court noted that the CRPD had been ratified but not incorporated into domestic law, and that therefore the plaintiffs could not rely directly on its provisions, although domestic law had to be interpreted harmoniously with the State's international legal obligations in so far as possible.

14. The Supreme Court made reference to the District Court's description of the measures taken by Reykjanesbær with respect to improving accessibility (see paragraph 11 above) and held that the municipality had complied with its legal obligation to devise a strategy for improving access to public buildings and public service institutions in accordance with the applicable legislation, which had been enacted taking into account the State's international human rights obligations, including under the CRPD. Furthermore, that strategy had been put into action by Reykjanesbær, which had taken steps to improve access to certain public buildings.

15. The Supreme Court noted that responsibility for matters relating to people with disabilities had been transferred from the State to the municipalities in 2010. Under the Constitution, municipalities had autonomy in the matters entrusted to them by law, as well as in the use of their funds. Municipalities were therefore the only entities competent to decide on the kinds of improvements which the plaintiffs had demanded, and had a wide margin of appreciation in how to prioritise the allocation of funds available to them in pursuit of their goal of improving access. The Supreme Court's reasoning did not address the Convention or the plaintiffs' arguments that the lack of access violated the principle of equality and non-discrimination.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

16. Article 65 of the Icelandic Constitution establishes a general right to equality. Article 71 establishes a right to respect for private and family life, home and correspondence. Article 76 stipulates that a right to assistance shall be guaranteed by law to anyone who needs it due to illness, disability, age, unemployment, poverty or other similar situations. Article 78 of the Constitution establishes that municipalities manage their affairs independently as laid down by law.

17. Act no. 59/1992 on the Affairs of Persons with Disabilities ("the Disabilities Act"), as applicable at the material time, stipulated that municipalities were responsible for the organisation and implementation of services for disabled people, including the quality and cost of the services (section 4). Municipalities were obligated to address mobility issues of disabled people in an organised manner, including by preparing plans for improving the accessibility of public buildings and service institutions in accordance with the provisions of the Construction Act (*mannvirkjalög*) and the Planning Act (*skipulagslög*), and the regulations made thereunder (section 34).

18. Pursuant to Temporary Provision XIII of the Disabilities Act, Parliament approved the Minister of Welfare's proposal for a parliamentary resolution on an action plan on matters concerning persons with disabilities for 2012-2014. The action plan, which referred to the CRPD and Iceland's other international human rights obligations, called for each municipality to conduct an audit of the accessibility of public buildings, traffic infrastructure and other places accessible to the public. Subsequently, a plan for improvements would be drawn up wherever needed.

II. INTERNATIONAL MATERIAL

A. Council of Europe texts

19. The Council of Europe's Disability Strategy 2017-2023, entitled "Human Rights: A reality for all", was adopted by the Committee of Ministers on 30 November 2016. It lists accessibility as one of its rights-based priority areas. It states, *inter alia*:

> "36. Accessibility challenges can be avoided or greatly diminished through intelligent and not necessarily costly applications of the universal design, which benefits everyone. In addition to necessary accessibility measures related to groups, individual barriers can further be overcome by individually tailored reasonable accommodation. Denial of reasonable accommodation as well as denial of access can constitute discrimination. Both of these concepts are defined and described in the UNCRPD (Articles 2 and 4).

> 37. Universal design and the promotion and development of affordable assistive technologies, devices and services aimed at removing existing barriers should be increasingly promoted. They need to be taken into consideration in all work within the Council of Europe and at national and local levels, including in the work of independent monitoring mechanisms."

20. In its Recommendation 1592 (2003), entitled "Towards full social inclusion of persons with disabilities", the Parliamentary Assembly stated that some of the fundamental rights contained in the Convention were still inaccessible to many people with disabilities, including the right to private and family life, and emphasised that guaranteeing access to equal political, social, economic and cultural rights should be a common political objective in the decade that followed.

21. In its Resolution 1642 (2009), entitled "Access to rights for people with disabilities and their full and active participation in society", the Parliamentary Assembly invited member States to make the environment of their societies, including social and cultural venues, genuinely accessible to people with disabilities, including by ensuring that every new structure conformed to universal design principles and removing any obstacles in public buildings and indoor and outdoor public areas.

22. In its "Recommendation Rec(2006)5 on the Council of Europe Action Plan 2006-2015 to promote the rights and full participation of people with disabilities in society", the Committee of Ministers recommended that member States integrate the principles and actions set out in the Action Plan in their policy, legislation and practice. The Action Plan stated, *inter alia*, that people with disabilities had a right to be fully integrated into society, including participating in its cultural life. It further pointed out that there was "no easy route" to attaining the goal of access and involvement in the arts and social life, that ultimately the enactment of specific legislation might be required, and that such legislation should reflect the concept of "reasonable adjustment" especially in the context of access to older buildings or historic monuments and smaller private business premises.

23. Article 15 of the revised European Social Charter, which Iceland has signed but not ratified, is set out in *Béláné Nagy v. Hungary* ([GC], no. 53080/13, § 35, 13 December 2016).

B. United Nations texts

24. Article 27 of the Universal Declaration of Human Rights stipulates:

> "1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
>
> ..."

25. The relevant parts of the United Nations Convention on the Rights of Persons with Disabilities ("the CRPD"), which Iceland has ratified, are set

out in *Guberina v. Croatia* (no. 23682/13, § 34, 22 March 2016). The following provisions are also particularly relevant to the present case:

Article 2
Definitions

"For the purposes of the present Convention:

...

'Reasonable accommodation' means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;

...

Article 9
Accessibility

...

2. States Parties shall also take appropriate measures:

a) To develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;

b) To ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;

...

e) ..., to facilitate accessibility to buildings and other facilities open to the public;

...

Article 30
Participation in cultural life, recreation, leisure and sport

1. States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:

...

c) Enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance.

...

5. With a view to enabling persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities, States Parties shall take appropriate measures:

...

c) To ensure that persons with disabilities have access to sporting, recreational and tourism venues;

..."

26. In its General Comment No. 2 (2014) on Article 9: Accessibility, 22 May 2014, UN Doc. CRPD/C/GC/2, the CRPD Committee noted the following:

"1. Accessibility is a precondition for persons with disabilities to live independently and participate fully and equally in society. Without access to the physical environment, to transportation, to information and communication, including information and communications technologies and systems, and to other facilities and services open or provided to the public, persons with disabilities would not have equal opportunities for participation in their respective societies ...

...

13. ... It is important that accessibility is addressed in all its complexity, encompassing the physical environment, transportation, information and communication, and services. The focus is no longer on legal personality and the public or private nature of those who own buildings, transport infrastructure, vehicles, information and communication, and services. As long as goods, products and services are open or provided to the public, they must be accessible to all, regardless of whether they are owned and/or provided by a public authority or a private enterprise. Persons with disabilities should have equal access to all goods, products and services that are open or provided to the public in a manner that ensures their effective and equal access and respects their dignity. This approach stems from the prohibition against discrimination; denial of access should be considered to constitute a discriminatory act, regardless of whether the perpetrator is a public or private entity ..."

27. In its General Comment No. 6 (2018) on equality and non-discrimination, 26 April 2018, UN Doc. CRPD/C/GC/6 the CRPD Committee noted the following:

"40. Accessibility is a precondition and a means to achieve de facto equality for all persons with disabilities. For persons with disabilities to effectively participate in the community, States parties must address accessibility of the built environment, public transport, as well as information and communication services, which must be available and usable for all persons with disabilities on an equal basis with others ...

41. As noted above, accessibility and reasonable accommodations are two distinct concepts of equality laws and policies:

(a) Accessibility duties relate to groups and must be implemented gradually but unconditionally;

(b) Reasonable accommodation duties, on the other hand, are individualized, apply immediately to all rights and may be limited by disproportionality.

42. Because the gradual realization of accessibility in the built environment, public transportation and information and communication services may take time, reasonable accommodation may be used as a means to provide access to an individual in the meantime, as it is an immediate duty. The Committee calls upon States parties to be guided by its general comment No. 2 (2014) on accessibility."

THE LAW

I. PRELIMINARY REMARKS

28. The present case concerns the lack of access for the applicant, who uses a wheelchair, to two particular public cultural and social buildings. The Court has hitherto had a few occasions to address issues relating to access to buildings and other public facilities and its implications for private life (see *Botta v. Italy*, 24 February 1998, *Reports of Judgments and Decisions* 1998-I; *Zehnalová and Zehnal v. the Czech Republic* (dec.), no. 38621/97, ECHR 2002-V; *Glaisen v. Switzerland* (dec.), no. 40447/13, 25 June 2019; and *Neagu v. Romania* (dec.), no. 49651/16, 29 January 2019). The Commission has addressed accessibility issues in the context of the right to education (see *McIntyre v. the United Kingdom* (dec.), no. 29046/95, 21 October 1998), and the Court has in a similar vein addressed issues relating to accommodation for people with disabilities in education (see *Enver Şahin v. Turkey*, no. 23065/12, 30 January 2018; *G.L. v. Italy*, no. 59751/15, 10 September 2020; and *Çam v. Turkey*, no. 51500/08, 23 February 2016). The Court has also examined complaints relating to access to polling stations in relation to the right to vote (see *Toplak and Mrak v. Slovenia*, nos. 34591/19 and 42545/19, 26 October 2021, and *Mółka v. Poland* (dec.), no. 56550/00, 11 April 2006) and accommodation of housing requirements (see *Guberina*, cited above).

II. ACCESSIBILITY OF THE BUILDINGS

29. As a preliminary point, the Court notes that the actual accessibility of the buildings in question is disputed between the parties.

30. The Court reiterates that where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them. In this regard, the Court notes that the domestic courts considered it established that there was at least some lack of access to both buildings at the material time (see paragraph 11 above). Moreover, it is clear from the court-appointed assessor's report that accessibility was not ensured to the standard required by the building regulations at the time, including concerning threshold heights and ramp slopes (see paragraph 10 above).

31. The Court's assessment will therefore proceed on the same basis as that of the findings made by the domestic courts that the accessibility of both buildings was insufficient. Moreover, as will be explained below (see paragraph 63 below), although subsequent improvements to accessibility are not decisive for the Court's assessment, it will have some regard to these improvements in its assessment of the matter.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION, READ IN CONJUNCTION WITH ARTICLE 8

32. The applicant complained of a violation of his right under Article 14 of the Convention, in conjunction with Article 8. The provisions, in so far as relevant, read as follows:

Article 8

"1. Everyone has the right to respect for his private ... life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as ... or other status."

A. Admissibility

1. Exhaustion of domestic remedies

(a) The parties' submissions

33. The Government submitted that the complaint was inadmissible for failure to exhaust domestic remedies as the applicant had insufficiently raised his rights under the Convention at national level, instead relying primarily on the CRPD.

34. The applicant disagreed, submitting that his written submissions to the Reykjanes District Court had sufficiently invoked the Convention rights under which he was now complaining to the Court.

(b) The Court's assessment

35. Article 35 § 1 of the Convention requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 71, 25 March 2014). In making use of such a remedy, the applicant must raise the complaint, if not explicitly by referring to the Convention, then "at least in substance". This means that the applicant must raise legal arguments to the same or like effect on the basis of domestic law, in order to give the national courts the opportunity to redress the alleged breach (see *Hanan v. Germany* [GC], no. 4871/16, § 148, 16 February 2021).

36. The Court notes that the applicant referred explicitly to the Convention in his written submissions to the Reykjanes District Court, as well

as to his right to enjoyment of private and family life and his wish to have access, on an equal basis with other residents of the municipality, to the buildings in question. His written submissions to the Supreme Court referred to the submissions before the District Court and explicitly relied on his equal right to enjoy the services provided in the buildings in question. Although the written submissions to the Supreme Court did not explicitly refer to the relevant provisions of the Convention, it is clear that the applicant invoked in substance the rights on which he is now relying at both levels of jurisdiction sufficiently to allow the national courts the opportunity to address his complaints.

37. The complaint is therefore not inadmissible for failure to exhaust domestic remedies.

2. Applicability of Article 14 of the Convention taken in conjunction with Article 8

(a) The parties' submissions

38. The Government submitted that the issue of accessibility to the buildings in question did not fall under the scope of the term "private life" within the meaning of Article 8, and that Article 14 could not therefore apply in the case. The Government submitted that there could be no conceivable link between the measures which the applicant had urged the respondent State to take and his private life. They further submitted that the lack of access had not prevented him from leading his life in a manner which respected his right to personal development. In this regard, the Government insisted that the buildings in question were partially accessible to the applicant, and that he also had general access to cultural events in his region. Therefore, in their view, the matter under consideration did not come within the scope of the applicant's "private life".

39. The applicant contested the Government's submissions. He submitted that his access to the buildings had a significant impact on his inclusion in, or exclusion from, the cultural and social life of his local community. He argued that no similar cultural or social venues in the municipality were accessible to him. He submitted that the public authorities sponsored, at least in part, the activities and events in the two buildings for the very purpose of allowing local residents to further their personal development and relationships, and that he had demonstrated his real and individual interest in participating in these services and activities. This, he maintained, was evidenced by the domestic courts granting him *locus standi*, thereby acknowledging that he had a direct, individual and legally protected interest in the subject matter.

(b) The Court's assessment

40. The Court reiterates that Article 14 of the Convention complements the other substantive provisions of the Convention and its Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. However, the application of Article 14 does not necessarily presuppose the violation of one of the substantive rights guaranteed by the Convention, and to this extent it is autonomous. A measure which in itself is in conformity with the requirements of the Article enshrining the right or freedom in question may, however, infringe that Article when read in conjunction with Article 14 for the reason that it is of a discriminatory nature. Accordingly, for Article 14 to become applicable, it is enough that the facts of the case fall "within the ambit" of another substantive provision of the Convention or its Protocols (see, among many other authorities, *Khamtokhu and Aksenchik v. Russia* [GC], nos. 60367/08 and 961/11, § 53, 24 January 2017, and *Fabris v. France* [GC], no. 16574/08, § 47, ECHR 2013 (extracts)).

41. In this connection, the Court has on many occasions held that the notion of "private life" within the meaning of Article 8 is a broad concept which does not lend itself to exhaustive definition. It covers the physical and psychological integrity of a person and, to a certain extent, the right to establish and develop relationships with other human beings. It can sometimes embrace aspects of an individual's physical and social identity and the right to "personal development" or the right to self-determination (see *Paradiso and Campanelli v. Italy* [GC], no. 25358/12, § 159, 24 January 2017).

42. In the context of accessibility, the Court has held that Article 8 of the Convention comes into play only in exceptional cases, where the applicant's lack of access to public buildings and buildings open to the public affects his or her 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 (see *Zehnalová and Zehnal*, cited above).

43. The Court notes that in the cases of *Botta*, *Zehnalová and Zehnal* and *Glaisen* (all cited above), it found that the lack of wheelchair access of which the applicants complained did not fall within the ambit of private life and therefore held that Article 14, read in conjunction with Article 8, was inapplicable. In *Botta*, the applicant complained that the respondent State had failed to take action to enable him to access a particular private beach in a municipality distant from his normal place of residence. The Court held that the matter concerned interpersonal relations of such broad and indeterminate scope that there could be no conceivable direct link between the measures the State had been urged to take in order to make good the omissions of the private bathing establishments and the applicant's private life. In *Zehnalová and Zehnal*, the applicants complained that their municipality had failed to act to ensure access for the first applicant to 174 buildings which were either

public or open to the public. The Court recognised that States might have a positive obligation to ensure access to public buildings or buildings open to the public if a lack of access affected a 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. However, noting the large number of buildings identified by the applicants, the Court found that they had failed to give precise details of the obstacles created by the lack of access, and that the first applicant had failed to demonstrate a special link between the lack of access and her private life. In *Glaisen*, the applicant complained that he had been unable to access a particular privately owned and operated cinema. The Court found that, considering that only around 10 to 12% of films had been exclusively screened in the cinema in question, and that other local cinemas had been accessible to the applicant, the matter had not affected his life in such a way as to interfere with his right to personal development or to establish and develop relationships. The Court furthermore notes that in *Neagu*, cited above, the Court held that, even assuming that Article 8 was applicable to the applicant's complaints about obstruction of access to her residential building, her application was manifestly ill-founded.

44. In the present case, however, the Court considers the situation should be distinguished from that in the above-mentioned cases. Unlike the situation in *Botta*, the accessibility issue in the present case concerns buildings owned and/or operated by and located in the applicant's own municipality. Unlike the situation in *Zehnalová and Zehnal*, the applicant has identified a small, clearly defined number of buildings where access is lacking and explained how the lack of access to each of those buildings has affected his life (see paragraph 39 above). Unlike the situation in *Glaisen*, the present case does not concern merely one of several similar, privately run cultural venues. *Duushús* is, by the Government's own description, the municipality's "main arts and cultural centre", and it is not evident that the applicant could access similar cultural and social events and services at other venues in his municipality. According to questionnaires completed by the directors of *Duushús* and *88 Húsið* and submitted by the Government, no other buildings in the municipality were available which had an equivalent purpose. Admittedly, *88 Húsið* is primarily aimed at children and teenagers, but it is nevertheless a public building whose hall is rented out for activities and events, including those which can be attended by parents.

45. The applicant here has thus clearly identified two particular buildings which are publicly owned and/or operated and which appear to play an important role in local life in his municipality, which is home to fewer than 20,000 inhabitants. According to the applicant, the lack of access to *Duushús* has hindered his participation in a substantial part of the cultural activities that his community has to offer, and the lack of access at *88 Húsið* has

hindered him from attending birthday parties and other social events with his children (see paragraph 48 below).

46. The Court is conscious of the importance of enabling people with disabilities to fully integrate into society and participate in the life of the community, which has been emphasised by the Council of Europe and has led to significant developments in European and international standards. As noted by the CRPD Committee (see paragraph 27 above), accessibility is a precondition for people with disabilities to live independently and participate fully and equally in society. Without access to the physical environment and to other facilities and services open or provided to the public, people with disabilities would not have equal opportunities for participation in their respective societies. Against this background, and in the light of the circumstances of the case, the Court is satisfied that the matter at issue was liable to affect the applicant's right to personal development and right to establish and develop relationships with other human beings and the outside world. Consequently, the matter under consideration falls within the ambit of "private life" within the meaning of Article 8 of the Convention. It follows that Article 14, taken together with Article 8, is applicable.

(c) Conclusions as to the admissibility

47. In the light of the above, the complaint is neither inadmissible for failure to exhaust domestic remedies nor manifestly ill-founded or inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

48. The applicant submitted that the lack of accessibility to the two buildings had hindered his personal development and right to establish and develop relationships with his community. Due to the lack of access to *Duushús*, he was unable to attend cultural events, art exhibitions, concerts and other events taking place there. As this was the primary location for such events in the municipality, this had severely hindered the applicant's participation in society and put him on an uneven footing with other inhabitants of the municipality. As regards the lack of access to *88 Húsið*, although the applicant acknowledged that its activities were primarily aimed at children and young people, the premises were frequently rented out for birthday parties and other similar events. The lack of access, in his view, had prevented him from accompanying his children to such events, which other parents were able to do.

49. The applicant further submitted that the test which the Court should apply was not whether the State was obligated to overcome *de facto* discrimination due to a lack of wheelchair accessibility, but rather whether it was free in the first place to offer cultural services which, by virtue of where they were offered, were not accessible to wheelchair users. This, the applicant submitted, placed a lesser burden on the State, not requiring it to remedy any lack of accessibility in private establishments, but merely to refrain from offering public services in inaccessible buildings.

50. Furthermore, the applicant emphasised that the domestic courts had failed to engage in an exercise of balancing the relevant rights and assessing the sufficiency of the measures taken. Instead, the Supreme Court's conclusion had been based solely on its finding that the municipality alone was competent to decide how to prioritise its funds in this regard.

(b) The Government

51. The Government submitted that the applicant had not suffered discrimination contrary to Article 14 as reasonable accommodation measures had been taken to enable him to enjoy his rights on an equal basis with others. They further submitted that obligations to ensure accessibility were of a gradual nature and that the State had fulfilled these obligations by putting in place initiatives to improve access (see paragraph 18 above) and beginning to implement these initiatives. The Supreme Court's finding, that the municipality alone was competent under the Constitution to decide on accessibility projects and improvements and had to be afforded room to manoeuvre in the prioritisation of funds, bore scrutiny because prioritising accessibility projects was inevitable and Reykjanesbær's plans for improvements had been extensive and already partially implemented.

52. The Government noted that Reykjanesbær had, in 2012, commissioned an audit of its public and publicly accessible buildings. Subsequently, a plan for improvements had been drawn up. In 2014, a budget of ISK 24 million had been allocated to improving accessibility. A further ISK 2 million had been allocated to accessibility improvements in 2015 and the municipality had planned to allocate ISK 10 million in 2016, but no information on the actual allocation in 2016 was submitted. The Government further submitted that due to the need to prioritise funds available for accessibility improvements, priority was given to improvements in administrative buildings, schools, sports halls and other educational facilities. Moreover, the Government emphasised that the buildings in question were protected under legislation on cultural heritage due to their age, and that any improvements had to respect their integrity and history.

53. The Government contended that the two buildings in question were not the only cultural and social venues in the municipality and submitted an overview of the other public and private cultural and social buildings in the municipality containing photographs of the entrances to the buildings and

assertions that many of them had "very good access" for wheelchairs. They argued that the applicant thus had other opportunities to enjoy his private life and participate in his community than those provided in the two buildings.

54. The Government submitted that the applicant had not demonstrated his need to use the two buildings on a daily basis to exercise his right to personal development and right to develop and maintain relationships with other members of his local community. Overall, the conclusion of the Supreme Court had constituted a fair balance between the general interest of the municipality on the one hand, and the applicant's interest in enjoying "perfect accessibility" to the two buildings in question on the other.

2. The Court's assessment

(a) General principles

55. The Court reiterates that "discrimination" means treating differently, without an objective and reasonable justification, people in relevantly similar situations, and that a difference in treatment is devoid of any "objective and reasonable justification" where it does not pursue a "legitimate aim" or there is no "reasonable relationship of proportionality between the means employed and the aim sought to be realised" (see *Enver Şahin v. Turkey*, no. 23065/12, § 54, 30 January 2018).

56. However, the Court reiterates that this is not the only facet of the prohibition of discrimination under Article 14. The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently people whose situations are significantly different (see *J.D. and A. v. the United Kingdom*, nos. 32949/17 and 34614/17, § 84, 24 October 2019, with further references, notably *Thlimmenos v. Greece* [GC], no. 34369/97, § 44, ECHR 2000-IV). In this context, a certain threshold is required in order for the Court to find that the difference in circumstances is significant. For this threshold to be reached, a measure must produce a particularly prejudicial impact on certain people as a result of a protected ground, attaching to their situation and in light of the ground of discrimination invoked (see *Ádám and Others v. Romania*, nos. 81114/17 and 5 others, § 87, 13 October 2020, and *Napotnik v. Romania*, no. 33139/13, § 73, 20 October 2020). As the effective enjoyment of many of the Convention rights by people with disabilities may require the adoption of various positive measures by the relevant State authorities (see *Mółka v. Poland* (dec.), no. 56550/00, ECHR 2006-IV), this threshold of significance must likewise be attained when an applicant alleges the existence of discrimination due to a lack of positive measures by the respondent State (see *Toplak and Mrak*, cited above, § 111).

57. The Court also notes that the Convention should, as far as possible, be interpreted in harmony with other rules of international law of which it forms

part (see *Enver Şahin*, cited above, § 53), and that therefore the provisions regarding the rights of people with disabilities set out in the CRPD should, along with other relevant material (see paragraphs 25-27 above), be taken into consideration. The Court observes, in this connection, that in its General Comment No. 2 the CRPD Committee noted that the denial of access of people with disabilities to, *inter alia*, facilities and services open to the public should be viewed within the context of discrimination (see paragraph 26 above and *Toplak and Mrak*, cited above, § 112). The Court itself has previously held there to be a European and worldwide consensus on the need to protect people with disabilities from discriminatory treatment (see *Glor v. Switzerland*, no. 13444/04, § 53, ECHR 2009).

58. The States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify different treatment (see *Vallianatos and Others* v. Greece [GC], nos. 29381/09 and 32684/09, § 76, ECHR 2013, and *Toplak and Mrak*, cited above, § 113). The scope of the margin of appreciation will vary according to the circumstances, the subject matter and its background, but the final decision as to the observance of the Convention's requirements rests with the Court (see *Biao v. Denmark* [GC], no. 38590/10, § 93, 24 May 2016). A wide margin is usually allowed to the State when it comes to general measures of economic or social strategy (ibid.). The Court considers that when a claim is made concerning a lack of access of public buildings within the context of the right to respect for private and family life, a similarly wide margin of appreciation should be afforded to the State. However, since the Convention is first and foremost a system for the protection of human rights, the Court must have regard to the changing conditions in Contracting States and respond, for example, to any emerging consensus as to the standards to be achieved (see *Enver Şahin*, § 55, and *Glor*, § 75, both cited above).

59. In previous cases concerning the rights of people with disabilities, the Court, referring to the CRPD, has found that Article 14 of the Convention has to be read in the light of the requirements of those texts regarding "reasonable accommodation" – understood as "necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case" – which people with disabilities are entitled to expect in order to ensure "the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms" (Article 2 of the CRPD, see paragraph 25 above). Such reasonable accommodation helps to correct factual inequalities which are unjustified and which therefore amount to discrimination (see *Çam*, § 65, and *Toplak and Mrak*, § 114, both cited above). The Court finds that these considerations apply equally to the participation of people with disabilities in social and cultural life. It notes, in this regard, that Article 30 of the CRPD explicitly requires the States Parties to guarantee to people with disabilities the opportunity to take part on an equal basis with others in cultural life (see paragraph 25 above).

(b) Application of these principles to the present case

(i) Establishing the framework of the assessment

60. At the outset, the Court considers that the present case should be considered from the viewpoint of whether or not the national authorities complied with their positive obligation to take appropriate measures to enable the applicant, whose mobility is impaired due to disability, to exercise his right to private life on an equal basis with others. Therefore, and taking account of the facts of the present case, the Court makes clear that for this assessment the test to be applied is limited to examining whether the State made "necessary and appropriate modifications and adjustments" to accommodate and facilitate persons with disabilities, like the applicant, which, at the same time, did not impose "a disproportionate or undue burden" on the State (see paragraph 59 above).

61. As established above, the Court considers that the lack of accessibility in the buildings in question was liable to affect the applicant's right to personal development and right to establish and develop relationships with other human beings and the outside world (see paragraphs 44-46 above). As the Court held in *Guberina* (cited above, § 92), by adhering to the requirements set out in the CRPD the respondent State undertook to take its relevant principles into consideration, such as reasonable accommodation, accessibility and non-discrimination against people with disabilities with regard to their full and equal participation in all aspects of social life (see paragraphs 25-27 above). The Court will therefore proceed to assess whether the respondent State has fulfilled its duty to accommodate the applicant, as a person with disabilities, in order to correct factual inequalities, applying the test as outlined above (see paragraph 60).

(ii) The Court's analysis

62. The Court observes that the domestic courts, in their judgments in the applicant's case, did not explicitly recognise and assess the rights and interests of the applicant at stake, instead deciding the case primarily on the grounds of the discretion granted to the municipalities in allocating their funds and prioritising their projects. As a result, the Court does not, in its assessment of the merits of the case, benefit from a prior assessment by the national courts of the balancing of the competing interests and whether sufficient steps had been taken to accommodate the accessibility needs of people with disabilities, including the applicant.

63. Nevertheless, taking account of the nature and limited scope of its assessment, as described above, and the State's wide margin of appreciation, (see paragraphs 58-59 above), the Court is not convinced that the lack of access to the buildings in question amounted to a discriminatory failure by the respondent State to take sufficient measures to correct factual inequalities in order to enable the applicant to exercise his right to private life on an equal

basis with others. The Court notes, in this regard, that considerable efforts seem to have been made to improve accessibility of public buildings and buildings with public functions in Reykjanesbær following the parliamentary resolution of 2011 (see paragraph 18 above). In deciding on those improvements, the municipality prioritised improving accessibility to educational and sports facilities, which is neither an arbitrary nor unreasonable strategy of prioritisation, also considering the emphasis which the Court has placed on access to education and educational facilities in its case-law (see *Enver Sahin* and *Çam*, both cited above). Further accessibility improvements which have since been made, although not decisive for the assessment of the present case (see paragraph 31 above), nevertheless demonstrate a general commitment to work towards the gradual realisation of universal access in line with the relevant international materials (see paragraphs 22 and 27 above). The Court thus accepts that, in the circumstances of the present case, imposing on the State a requirement under the Convention to put in place further measures would have amounted to imposing a "disproportionate or undue burden" on it within the context of its positive obligations established by the Court's case-law (see paragraph 59 above) to reasonably accommodate the applicant.

64. Therefore, in conclusion, the Court finds that the respondent State and Reykjanesbær took considerable measures to assess and address accessibility needs in public buildings, within the confines of the available budget and having regard to the cultural heritage protection of the buildings in question (see paragraphs 51-52 above). The Court reiterates that the scope of its assessment was limited to whether the respondent State had complied with its positive obligations by taking sufficient measures to correct factual inequalities impacting the applicant's equal enjoyment of his right to private life. In the light of the above and considering the measures already undertaken, the Court concludes that the applicant was not discriminated against in the enjoyment of his right to respect for private life.

65. There has, accordingly, been no violation of Article 14 read in conjunction with Article 8 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaint concerning Article 14 in conjunction with Article 8 admissible;

2. *Holds*, by six votes to one, that there has been no violation of Article 14 in conjunction with Article 8 of the Convention.

Done in English, and notified in writing on 31 May 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Georges Ravarani President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Zünd is annexed to this judgment.

G.R.
O.C.

DISSENTING OPINION OF JUDGE ZÜND

1. While I am in full agreement with the applicability of Article 14 in conjunction with Article 8 to the case at hand, I am unable to share the majority's view that there has been no violation of these provisions.

2. The applicant, who is paralysed from the chest down and uses a wheelchair, has been unable to obtain access to two public buildings, one of them housing the municipality's main arts and cultural centre, the other a youth centre, in which the hall is rented out for activities and events (see paragraphs 6, 7, 44 and 48 of the judgment). The applicant is therefore prevented from participating in the main cultural and social events of the municipality (see paragraph 48).

3. The lack of access to public buildings, within the context of the right to respect for private life, violates the prohibition of discrimination when the authorities do not comply with their positive obligation to take appropriate measures to enable the applicant to take part on an equal basis with others in cultural and social life (see paragraphs 59 and 60 of the judgment). This positive obligation is violated when the State refrains from making the "necessary and appropriate modifications and adjustments" to accommodate and facilitate persons with disabilities, without imposing "a disproportionate or undue burden" on the State (see paragraph 60).

4. Admittedly, it takes time to draw up plans and continually to improve wheelchair access to public buildings. For this reason, a wide margin of appreciation is afforded to the State (see paragraph 58 of the judgment), which is nonetheless subject to the Court's scrutiny. The Court's review presupposes that the necessary adaptations of the buildings are planned and that the associated costs are calculated or estimated. Moreover, the Government should indicate whether and in what time frame the necessary improvements may be achieved. Without such a basis, it is impossible to state whether or not the margin of appreciation, even a wide one, has been violated.

5. It should also be reiterated that the domestic courts must provide sufficiently detailed reasons for their decisions, not least to enable the Court to carry out the European supervision entrusted to it (see among others, *X v. Latvia* [GC], no. 27853/09, § 107, ECHR 2013, and *El Ghatet v. Switzerland*, no. 56971/10, § 47, 8 November 2016). This entails a thorough assessment of the applicant's personal circumstances, a careful balancing of the competing interests and taking into account of the criteria set out in its case-law (see *Ndidi v. the United Kingdom*, no. 41215/14, § 76, 14 September 2017).

6. Turning to the present case, in the domestic proceedings a report concerning specific elements of the buildings' accessibility was drawn up (see paragraph § 10 of the judgment). But neither the domestic courts nor the Government have given reasons why an improvement of the situation has not yet taken place or by what date such an improvement is planned. Likewise,

no information has been given on the costs required, nor are the potential costs related to the available public funds and the municipality's financial possibilities.

7. In the domestic proceedings the courts referred to the separation of powers and held that the municipalities were the only authorities with competence to decide on improvements to access to the buildings (see paragraphs 11 and 15 of the judgment). In the area of Convention rights, and in particular requirements for autonomous and non-discriminatory access to public buildings for people with disabilities, such a blanket referral to other authorities without any assessment by the courts themselves is insufficient (see, in contrast, *Glaisen v. Switzerland* ((dec.), no. 40447/13, § 53, 25 June 2019), where the Court considered that the Federal Supreme Court had set out sufficient grounds explaining why the situation faced by the applicant had not been serious enough to fall within the concept of discrimination). As such, the domestic courts' finding violates Article 14 in conjunction with Article 8 on procedural grounds alone.

8. Moreover, there are good reasons to assume that the respondent State did not take sufficient measures to remedy the tangible structural causes of inequality, in order to enable the applicant to exercise his right to private life on an equal basis with others. One of the buildings was "extensively renovated" between 2006 and 2014 (see paragraph 6 of the judgment). No explanation whatsoever is provided as to why, on that occasion, access for disabled people was not improved. Furthermore, several years have passed since the applicant brought civil proceedings in 2015 to challenge the lack of wheelchair access. Although the municipality gave priority to improving accessibility to educational and sports facilities (see paragraph 63), there would have been enough time also to improve access to the public buildings housing arts and cultural centres, which can in any event be described as similarly important (see, *mutatis mutandis*, *Glaisen*, cited above, § 48, where the Court did not rule out the possibility that for the applicant, who was paraplegic, the importance of going to the cinema was not confined merely to seeing a film that he could instead have watched at home, but also involved exchanges with other people).

9 It is for these reasons that I have voted to find a violation of Article 14 in conjunction with Article 8.