CITIZENS' ACCESS TO JUSTICE IN EUROPEAN AND INTERNATIONAL HUMAN RIGHTS LAW

Florin STOICA[*]

Abstract

Access to justice is a fundamental pillar of the rule of law, enabling individuals to protect their rights, obtain remedies against unlawful acts, hold public authorities accountable, and benefit from fair procedural guarantees. This complex concept encompasses civil, criminal, and administrative law, serving both as a legal process and an indispensable tool for the exercise of other fundamental rights. But how accessible is the justice system, in reality, for citizens? What challenges persist in ensuring efficient and inclusive judicial mechanisms?

At the international level, the UN Human Rights Committee has significantly contributed to defining and developing the principles of access to justice, influencing the interpretation of norms by bodies established under international treaties. Additionally, legal instruments such as the Aarhus Convention of 1998, which guarantees access to information and public participation in environmental matters, and the Convention on the Rights of Persons with Disabilities of 2006, which aims to eliminate legal barriers for vulnerable groups, underscore the importance of this right in specific contexts. However, the question remains: are these regulations sufficient to ensure real and effective access to justice for all?

Keywords: *Fundamental principle, rule of law, individual rights, remedies, public authorities accountability, procedural guarantees, legal process, fundamental rights, judicial accessibility, justice system, effective mechanisms, inclusive justice, UN Human Rights Committee, treaty-based bodies, Aarhus Convention 1998, CRPD, legal barriers, vulnerable groups, real access, effective justice.*

1. Introduction

Access to justice is not merely a procedural gateway – it is a constitutional and supranational imperative in the European legal order. As emphasized in the Handbook on European law relating to access to justice, jointly published by the European Union Agency for Fundamental Rights and the Council of Europe, access to justice functions not only as a fundamental right in itself, but also as „an enabling and empowering tool central to making other rights a reality"[1]. The effectiveness of democratic institutions, the credibility of judicial remedies, and the legitimacy of fundamental rights protections all hinge upon the practical accessibility of justice systems.

From a normative standpoint, access to justice is enshrined in art. 6 and art. 13 ECHR, as well as in art. 47 of the Charter of Fundamental Rights of the European Union. These provisions codify the rights to a fair and public hearing, effective remedies, and legal aid. Nevertheless, a wide gap often persists between legal proclamation and operational enforcement, especially in jurisdictions still undergoing systemic transformation, such as Romania.

Despite formal constitutional recognition under art. 21 of the Romanian Constitution, access to justice in Romania remains riddled with institutional deficiencies, procedural barriers, and normative ambiguities. In this context, doctrinal voices have drawn attention to the limits of merely declarative guarantees. As Radu Chiriță notes, access to justice cannot be considered absolute and must be understood as a conditional liberty that depends on institutional functionality[2]. More critically, as Professor Augustin Fuerea points out, the implementation of European Union legal norms in Romania often reflects a „mechanical transposition", lacking systemic coordination and failing to produce substantive effects on domestic practices[3].

---

[*] PhD Candidate, Faculty of Law, „Nicolae Titulescu" University of Bucharest (e-mail: florin.stoik@gmail.com).

[1] See European Union Agency for Fundamental Rights (FRA) and Council of Europe (CoE), Handbook on European law relating to access to justice, Publications Office of the European Union, Luxembourg, 2016, p. 3.

[2] See R. Chiriță, *Paradigmele accesului la justiție. Cât de liber e accesul liber la justiție?*, 2016, available at: *https://www.juridice.ro/*, last accessed on 14.04.2025.

[3] See A. Fuerea, *Tratatul privind Uniunea Europeană. Tratatul privind funcționarea Uniunii Europene. Comentarii și explicații*, 3rd ed., Universul Juridic Publishing House, Bucharest, 2020, pp. 45-48.

This article aims to investigate the doctrinal and structural aspects of access to justice through a threefold methodology: (1) analysis of European and international legal sources; (2) comparative legal evaluation of access mechanisms in selected EU jurisdictions; and (3) contextual examination of Romanian judicial and administrative practices. Special attention will be paid to relevant case-law of the European Court of Human Rights (ECtHR), the Court of Justice of the European Union (CJEU), and United Nations human rights frameworks such as the Aarhus Convention and the Convention on the Rights of Persons with Disabilities (CRPD).

The overarching objective of this study is to offer a comprehensive, interdisciplinary framework for reconciling normative entitlements with institutional reality. In so doing, the paper proposes that access to justice must evolve from a declarative right into a functional entitlement, particularly in legal systems where historical legacies, bureaucratic inertia, and systemic exclusion continue to undermine the delivery of justice.

2. Content

2.1. Normative Foundations in European Human Rights Law: CEDO and CJUE

The European legal space is structured around two intertwined frameworks of human rights protection: the European Convention on Human Rights (ECHR), under the Council of Europe, and the Charter of Fundamental Rights of the European Union (CFR), which binds EU institutions and member states when implementing EU law. Both legal instruments articulate robust guarantees for the right of access to justice, developed through an evolving body of jurisprudence by the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU).

The ECtHR has interpreted art. 6(1) ECHR – which guarantees the right to a fair trial before an independent and impartial tribunal established by law – as comprising several essential components: access to a court, the principle of equality of arms, legal aid where necessary, and the enforceability of final judgments. This interpretation was first crystallized in *Golder v. United Kingdom*, where the Court held that access to a court is a precondition for the enjoyment of the right to a fair trial[4]. The shift from formalist interpretations to substantive ones was further deepened in *Airey v. Ireland*, where the Court ruled that in civil matters, legal aid may be required to prevent access to justice from becoming merely theoretical[5]. These early decisions laid the groundwork for an increasingly functionalist view of justice, emphasizing the need for concrete accessibility.

This evolution continued in cases such as *Steel and Morris v. United Kingdom*, where the imbalance of resources between a private litigant and a large corporation raised serious concerns about equality of arms, and *Scordino v. Italy*, which addressed unreasonable delays in judicial proceedings[6]. In these and subsequent rulings, the Court emphasized that justice must be „practical and effective, not theoretical or illusory”[7], thus anchoring access to justice in both procedural and substantive dimensions.

Art. 13 ECHR, though often underexamined in comparison to art. 6, has gained prominence, particularly in situations involving systemic dysfunctions in national legal systems. It guarantees the right to an effective remedy before a national authority in cases of violations of Convention rights. Its importance has been highlighted in contexts such as inadequate conditions of detention, ineffective asylum procedures, or environmental degradation, where national remedies often fail to meet the standard of effectiveness required under the Convention[8].

In parallel, within the EU legal order, art. 47 CFR sets out a comprehensive right to an effective remedy and to a fair and public hearing within a reasonable time by an independent and impartial tribunal. It also guarantees legal aid „to those who lack sufficient resources”, thereby explicitly affirming the socio-economic component of access to justice[9]. The CJEU has affirmed the direct effect of art. 47 and its primacy over conflicting national provisions. In *DEB v. Germany*, the Court held that legal persons may also benefit from legal aid if denying such assistance would undermine the principle of equality of arms or materially impede access to justice[10].

---

[4] See ECtHR, *Golder v. United Kingdom*, app. no. 4451/70, judgment from 21.02.1975.

[5] See ECtHR, *Airey v. Ireland*, app. no. 6289/73, judgment from 09.10.1979.

[6] See ECtHR, *Steel and Morris v. United Kingdom*, app. no. 68416/01, judgment from 15.02.2005; *Scordino v. Italy*, app. no. 36813/97, judgment from 29.03.2006.

[7] See ECtHR, *Bellet v. France*, app. no. 23805/94, judgment from 04.12.1995.

[8] See ECtHR, *Kudla v. Poland*, app. no. 30210/96, judgment from 26.10.2000.

[9] See Charter of Fundamental Rights of the European Union, art. 47.

[10] See CJEU, *DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH v. Germany*, Case C-279/09, judgment from 22.12.2010.

The Court's concern with procedural effectiveness has also been apparent in judgments such as *Otis and Others and Unibet v. Justitiekanslern*, where the CJEU emphasized that effective judicial protection is a general principle of EU law and an essential precondition for ensuring the autonomy of the EU legal order[11]. Access to justice thus transcends its function as an individual entitlement, acquiring a systemic character that reinforces the rule of law within the Union.

Although the ECHR and the CFR emerge from distinct institutional frameworks, their jurisprudential trajectories increasingly converge. As observed in academic commentary and judicial discourse alike, the two systems interact not in competition but in complementarity. According to Koen Lenaerts, the CFR was not designed to duplicate the Convention but to build upon it, especially in areas such as data protection, consumer rights, and asylum procedures, thereby enhancing the accessibility and scope of protection for EU citizens[12]. This synergy has given rise to what is often described as a multi-level system of constitutional protection, in which access to justice is reinforced through overlapping guarantees across jurisdictions[13].

2.2. Romania and the Implementation Gap: Constitutional Guarantees v. Systemic Constraints

The right of access to justice is enshrined as a fundamental constitutional principle in Romania. Art. 21 of the Romanian Constitution guarantees „free access to justice" and explicitly prohibits any legal provision from limiting this right. Moreover, it imposes an obligation on the judiciary to ensure that cases are settled fairly and within a reasonable timeframe[14]. However, despite this robust legal guarantee, the practical enforcement of access to justice remains impaired by systemic constraints that reflect a broader post-communist legacy of institutional formalism and bureaucratic inertia.

One of the most prominent areas where this gap is manifest is the public legal aid system. GO no. 51/2008 was adopted to bring national procedures in line with EU requirements on legal assistance in civil and administrative cases[15]. Theoretically, this framework allows financially vulnerable individuals to access representation, procedural guidance, and exemption from certain costs. In practice, however, implementation has been hindered by insufficient funding, limited public awareness, and bureaucratic burdens. Reports from the Ministry of Justice reveal that a substantial number of eligible applicants either do not apply or abandon the process due to opaque requirements and inconsistent decisions issued by local courts[16].

These difficulties are compounded in rural or underserved regions, where there is a notable shortage of qualified legal professionals willing to accept publicly funded assignments. As a result, the fairness and quality of legal representation vary considerably. This situation conflicts with the established ECtHR case-law, which holds that the right of access to a court includes access to legal representation „where the interests of justice so require"[17].

A second structural obstacle is Romania's procedural rigidity. The Civil Procedure Code adopted in 2013 aimed to modernize legal practice, yet it remains steeped in formalism. The procedural system continues to penalize litigants – especially those who are self-represented – for minor technical errors. Judges maintain wide discretionary powers over evidentiary admissibility, procedural deadlines, and standing. While judicial discretion can promote flexibility in theory, in practice it often leads to inconsistency and unpredictability, particularly for litigants lacking legal expertise. This rigid approach reinforces exclusion and contradicts the principle of proportionality enshrined in art. 47 CFR[18].

The Romanian Constitutional Court has occasionally acted as a corrective mechanism, declaring various legal limitations on judicial review unconstitutional. In CCR dec. no. 562/2016, the Court invalidated provisions restricting access to fiscal justice, holding that these violated the principle of proportionality and the right to an effective remedy[19]. The decision reaffirmed that access to justice must remain functional even in technical fields such as administrative and tax law. However, these interventions are sporadic and often reactive, lacking

---

[11] See CJEU, *Otis and Others*, Case C-199/11, judgment from 06.11.2012; *Unibet v. Justitiekanslern*, Case C-432/05, judgment from 13.03.2007.

[12] See K. Lenaerts, *The Rule of Law and the Coherence of the Judicial System of the European Union*, in Common Market Law Review, vol. 44, 2007, pp. 1625-1659.

[13] See T. Capeta, *European Union and Multi-level Access to Justice*, in European Law Review, vol. 47, 2022, pp. 127-146.

[14] See The Constitution of Romania, Article 21, available at: *https://www.constitutiaromaniei.ro/art-21-accesul-liber-la-justitie/* [last accessed 14 April 2025]

[15] See GO no. 51/2008 regarding public legal aid in civil proceedings, published in the Official Gazette of Romania no. 327/25.04.2008.

[16] See Ministry of Justice, Annual Reports on Legal Aid Implementation, Bucharest, 2022–2023, available at: *https://www.just.ro* [last accessed 14 April 2025].

[17] See ECtHR, *Case Airey v. Ireland*, app. no. 6289/73, judgment from 09.10.1979, para. 24.

[18] See Charter of Fundamental Rights of the European Union, art. 47, OJ C 364/18.12.2000.

[19] See CCR dec. no. 562/2016, published in Official Gazette of Romania no. 853/2016.

broader integration into the jurisprudence of lower courts. Consequently, lower-level judges tend to apply Constitutional Court rulings narrowly, avoiding broader legal interpretations that might strengthen systemic access.

Moreover, institutional stakeholders charged with the development and training of the judiciary – such as the Superior Council of Magistracy (CSM) and the National Institute of Magistracy (INM) – have taken steps to integrate access to justice as a subject of professional education. Nonetheless, external evaluations have shown that this training remains largely theoretical. It rarely addresses concrete obstacles such as regional disparities, the impact of socio-economic inequality, or procedural complexity. This reflects a wider trend in the Romanian legal system: alignment with EU standards in form, but not in substance[20].

The result is a structurally dualist system. On the one hand, the Romanian legal framework formally complies with both national constitutional principles and European standards. On the other hand, enforcement remains fragmented and contingent. Access to justice is often more declarative than operational, particularly for disadvantaged groups such as those living in remote areas, persons with disabilities, or those facing linguistic or economic barriers. The constitutional commitment is real – but it remains largely unrealized in the daily functioning of the justice system.

2.3. Thematic Dimensions – Vulnerable Groups and Emerging Frontiers

Access to justice is not a uniform legal entitlement but a layered constitutional obligation that must be interpreted through the lens of contextual vulnerability. Contemporary human rights instruments demand that legal systems evolve from abstract legalism toward differentiated procedural guarantees, which account for the particular barriers experienced by marginalized groups. As Radu Chiriță has emphasized, the classical construction of access to justice as a formal individual liberty must be reconciled with the structural inequalities that compromise its effective realization in practice[21].

Persons with Disabilities – Structural and Procedural Barriers. The most coherent international articulation of differentiated access is enshrined in the Convention on the Rights of Persons with Disabilities (CRPD). Romania ratified the CRPD by Law no. 8/2016, thereby accepting the binding obligation under art. 13 to ensure that persons with disabilities have effective access to justice, including through procedural accommodations such as simplified language, accessible environments, and trained legal personnel[22]. While domestic norms incorporate these provisions, implementation remains uneven. Reports confirm that many court facilities in rural Romania remain inaccessible, and judicial staff receive minimal training on procedural accommodation[23]. The FRA Handbook highlights that procedural fairness is rendered illusory when persons with cognitive or sensory impairments cannot participate fully and equally in proceedings[24].

Environmental Justice – Access to Legal Standing and Remedies. Environmental justice represents a different, yet equally vital, thematic frontier. The Aarhus Convention, to which Romania is a party, mandates public participation and access to environmental information and remedies without the need to demonstrate individual harm. Yet, Romanian courts have frequently interpreted standing restrictively, denying NGOs the right to challenge acts with diffuse environmental impact unless they demonstrate a localized or personal interest[25]. This practice contradicts the participatory logic of the Aarhus system and has been criticized in national doctrine and by the Compliance Committee of the Convention[26]. Furthermore, the lack of public legal aid schemes in environmental litigation erects financial barriers for community actors, especially in ecologically vulnerable or economically disadvantaged regions.

Digitalization – Efficiency or Exclusion? While e-justice platforms such as ECRIS V and the e-dosar portal promise to modernize procedural access, their design has failed to ensure universal usability. As documented by the FRA in its digital rights report, elderly persons, Roma communities, and residents of rural or remote areas in Romania face structural digital exclusion due to low internet access, lack of digital literacy, and the absence of

[20] See European Commission, 2023 Rule of Law Report – Country Chapter on Romania, Brussels, 2023, pp. 9-11, available at: *https://commission.europa.eu*, last accessed on 14.04.2025.

[21] See R. Chiriță, *op. cit*.

[22] See art. 13 CRPD, New York, 2006; ratified by Romania through Law no. 8/2016.

[23] See European Union Agency for Fundamental Rights (FRA), Fundamental Rights Report 2023 – Country chapter: Romania, Publications Office of the EU, p. 162.

[24] See FRA & Council of Europe, Handbook on European Law Relating to Access to Justice, Luxembourg, 2016, pp. 101-104.

[25] See United Nations Economic Commission for Europe (UNECE), Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters, 1998; see also Committee Findings on Romania, 2022.

[26] See FRA, *Access to Justice in Environmental Matters*, Vienna, 2020, available at: *https://fra.europa.eu*.

multilingual or audio-visual support[27]. The rapid push toward digitalization during the COVID-19 pandemic exacerbated these gaps, turning technological innovation into a new form of procedural marginalization. In line with European guidelines, digital justice must not be designed for the „average user," but for the least digitally empowered, or else it risks becoming a system of „automated exclusion"[28].

Linguistic and Cultural Minorities – Procedural Invisibility. Although interpretation rights are guaranteed in criminal cases under art. 6(3)(e) ECHR, there are no systematic guarantees for interpretation in civil and administrative proceedings. This disproportionately affects Roma litigants, who often face both linguistic exclusion and cultural barriers within the justice system. A 2020 FRA comparative study found that Roma individuals in Romania experience lower rates of legal representation and higher rates of procedural abandonment due to institutional distrust and communication breakdowns[29]. These challenges demand not only translation services but also culturally competent legal support and inclusive procedural cultures.

Designing Inclusive Justice – From Formal Equality to Substantive Participation. Ensuring access for vulnerable groups requires not only institutional reform but doctrinal reorientation. As Professor Corneliu Bîrsan rightly notes, accessibility and effectiveness are not accidental features of a justice system but necessary attributes of legality under art. 6 ECHR and art. 21 of the Romanian Constitution[30]. A rights-based approach to access must include proportional procedural obligations, adapted forms of participation, and alternative support infrastructures – such as community legal clinics, mobile legal aid units, and user-centered platforms for digital procedures.

Such transformations also reshape the state's role: from a neutral adjudicator to an affirmative facilitator. Access to justice becomes relational – not merely a right to be left alone, but a right to be included and empowered. From participatory budgeting for legal aid to advisory boards for court modernization, institutional pluralism becomes the normative idea

2.4. Structural Inequalities and Institutional Fragmentation

Although Romania has formally aligned its legal system with European standards, deep structural inequalities continue to compromise the meaningful realization of access to justice. These deficiencies are not simply the result of outdated norms or isolated legislative gaps, but stem from long-standing systemic imbalances, including territorial disparities, inconsistent jurisprudence, and limited procedural accessibility. Together, these weaknesses create a dual system in which access to justice is formally guaranteed but practically undermined for significant portions of the population.

One of the most visible structural shortcomings is the territorial inequality in the distribution of legal services and infrastructure. While courts in urban centers benefit from qualified personnel, digital platforms, and funding stability, courts in rural and small communities operate under persistent logistical constraints. According to recent reports, courts located in peripheral regions often lack even basic IT infrastructure or updated procedural tools, and judicial personnel are insufficient in number and unevenly trained. Legal aid schemes – although available by law – remain largely concentrated in metropolitan areas, leaving rural and marginalized populations exposed to significant barriers in accessing representation or information. These disparities lead to prolonged delays in filing, case processing, and access to expert evidence, which in turn deter participation in justice proceedings and reinforce exclusion from the legal process. Public legal aid is formally available under GO no. 51/2008, but empirical data show that its territorial deployment is fragmented and non-operational outside of regional centers. The European Union Agency for Fundamental Rights and the Council of Europe have emphasized that the right to a fair trial must be „practical and effective", not merely theoretical, especially when it concerns disadvantaged individuals who depend on institutional support to enforce their rights[31].

Another significant obstacle lies in the fragmentation of Romanian jurisprudence. Courts of first instance and appellate courts regularly diverge in their interpretation of procedural conditions such as admissibility, locus

[27]See FRA, *Your Rights Matter: Digitalisation and Fundamental Rights*, Vienna, 2022, pp. 23-26.

[28]See FRA, *Digitalisation and access to justice: risks of exclusion*, Vienna, 2023.

[29] See FRA, *Roma and the Justice System – Comparative Report*, Vienna, 2020.

[30] See C. Bîrsan, M. Livescu, *Efectivitatea dreptului de acces la justiție în materie civilă*, 2016, available at: *https://www.unbr.ro/revista-avocatul*, last accessed on 14.04.2025.

[31] See European Union Agency for Fundamental Rights and Council of Europe, Handbook on European Law Relating to Access to Justice, Publications Office of the European Union, Luxembourg, 2016, pp. 15-17, 102-108.

standi, and burden of proof. Without a centralized platform to consolidate and publish case-law systematically, the resulting unpredictability frustrates legal certainty and discourages prospective litigants from initiating claims. The High Court of Cassation and Justice occasionally intervenes through extraordinary appeals or preliminary questions, but these mechanisms are reserved for exceptional cases and lack the systemic breadth needed to harmonize lower court jurisprudence. As Professor Corneliu Bîrsan has emphasized, the principle of legal certainty is indispensable to the concept of access to justice, and its absence renders procedural guarantees ineffective and arbitrary in practice[32].

The administrative culture of Romanian courts further limits access. Despite notable efforts to modernize procedural tools – such as the expansion of the ECRIS system or the introduction of e-dosar platforms – user access remains highly technical, fragmented, and poorly documented. Websites of many courts are not regularly updated, case-tracking tools are inconsistently functional, and most procedural guidance is written in legalistic language incomprehensible to laypersons. In administrative litigation, decisions frequently lack sufficient reasoning or use formulaic expressions that obscure the legal basis of judgments. Audio recording of hearings – a standard practice in many European jurisdictions remains rare in Romania, which negatively affects the transparency and retrievability of oral arguments and judicial reasoning. These limitations have been documented in both the CEPEJ evaluations and the annual EU Justice Scoreboard, which consistently identify Romania's judicial system as lagging in clarity, public communication, and institutional accountability[33].

The Romanian state has acknowledged these shortcomings in its recent policy documents. The Justice Strategy 2022-2026 and the updated National Anti-Corruption Strategy both include commitments to improving procedural accessibility and reinforcing the integrity of legal institutions. However, independent monitoring bodies such as GRECO and CEPEJ have criticized the lack of funding, operational planning, and cross-sectoral coordination necessary to translate these goals into practice. Reforms remain mostly formal, disconnected from daily institutional practice, and often contingent upon short-term political interests. The perception of politicization – particularly in high-profile administrative and anti-corruption proceedings – continues to erode public trust in the fairness of judicial processes. This lack of confidence, whether or not grounded in actual procedural bias, discourages the use of judicial remedies, especially among vulnerable populations and in contentious domains such as environmental disputes or public procurement review[34].

Ultimately, Romania's justice system operates under a structural dualism: one that affirms access in law but restricts it in fact. As Professor Radu Chiriță notes, formal access to courts is meaningless unless supported by coherent jurisprudence, intelligible procedures, and institutional responsiveness[35]. Procedural reforms must go beyond surface-level digitalization or legislative formalism and address the relational and functional dimensions of justice. What is required is a reorientation toward procedural inclusion: simplified language in all institutional communications, mobile legal aid units for remote regions, court staff trained in communication with unrepresented parties, and publicly accessible jurisprudence platforms. Judicial institutions must be reengineered to meet not only the normative standard of fairness, but also the operational requirement of comprehensibility and equity.

This vision echoes Mauro Cappelletti's seminal insight that „formal justice without functional justice is a denial of justice"[36]. The Romanian legal order will remain incomplete in its constitutional and European commitments until access to justice becomes a tangible and equitable entitlement across all social, geographic, and institutional dimensions.

2.5. Doctrinal Innovation and Strategic Pathways

The contemporary doctrinal landscape of access to justice reflects a significant epistemological shift – from rigid, proceduralist definitions centered on institutional formality to functional models emphasizing practical usability, systemic responsiveness, and participatory inclusion. In this evolving paradigm, access to justice is no longer reducible to the theoretical availability of courts or formal procedural entitlements. It must be understood as a holistic concept that integrates the individual's experience of engaging with legal institutions,

[32] See C. Bîrsan, M. Livescu, *op. cit*.

[33] See European Commission, EU Justice Scoreboard 2023, Brussels, 2023, pp. 78–81; CEPEJ, Evaluation Report on European Judicial Systems, Council of Europe, 2022.

[34] GRECO, Fourth Evaluation Round – Corruption Prevention in Romania, Strasbourg, Council of Europe, 2022; European Commission, Rule of Law Report – Country Chapter on Romania, Brussels, 2023.

[35] See R. Chiriță, *op. cit*.

[36] See M. Cappelletti, *The Judicial Process in Comparative Perspective*, Clarendon Press, Oxford, 1989, p. 45.

the inclusiveness of procedural design, and the institutional willingness to facilitate, rather than obstruct, meaningful participation.

Early legal doctrine traditionally approached access to justice through the lens of adjudicative minimalism. Rights such as access to a court, equality of arms, or legal standing were interpreted as self-sufficient guarantees, unaffected by external factors such as socio-economic vulnerability, linguistic exclusion, or cognitive limitation. However, this positivist framework failed to accommodate the lived realities of legal users, especially those situated outside dominant cultural, economic, or institutional networks. In response, comparative legal scholarship and European jurisprudence have undergone a conceptual transformation, recasting access to justice as a foundational condition for the realization of all other rights.

A pivotal turning point in this evolution was provided by Mauro Cappelletti, whose comparative research in the 1970s and 1980s identified access to justice as the most basic human right in any legal system purporting to uphold the rule of law. Cappelletti rejected the notion that legal protection could be reduced to formal codification or abstract entitlement. Instead, he argued that true access to justice requires not only the existence of legal remedies but the operational means to use them effectively. He emphasized that formal procedural guarantees without institutional coordination, legal aid, and user assistance constitute an illusion of justice – particularly for the poor, the disabled, or the uneducated. Cappelletti's insistence on the need to „democratize legal access" remains acutely relevant for post-transition systems like Romania, where procedural orthodoxy often conceals structural exclusion.

Building upon Cappelletti's foundations, contemporary legal theorists have developed dynamic models that view access to justice as a responsive and evolving standard. Tamara Capeta, for example, argues that access to justice must be understood as a „moving standard" that adapts to technological innovations, user diversity, and social expectations. Her framework posits that a legal system that allows procedural entry but fails to guide users through its complexities – due to inaccessible language, inadequate digital tools, or opaque institutional behavior – cannot be deemed just[37]. Similarly, Koen Lenaerts highlights the centrality of access to justice within the EU legal order. For Lenaerts, the Charter of Fundamental Rights, particularly art. 47, operationalizes access not merely as a civil liberty but as a system-wide safeguard of Union autonomy and the coherence of legal protection. He contends that rights-based litigation in fields like migration, digital privacy, or consumer protection depends not only on doctrinal recognition but also on functional institutional design[38].

These theoretical advancements have profound implications for national jurisdictions, particularly those like Romania that face structural inertia and procedural fragmentation. While Romania has formally harmonized its legislation with EU standards, empirical evidence and doctrinal commentary suggest a significant disjunction between de jure guarantees and de facto outcomes. As Radu Chiriță observes, procedural rigidity in the Romanian justice system continues to function as a barrier to participation, especially for legally untrained users[39]. Legal language remains highly formalistic, public guidance is limited or outdated, and procedural forms are designed around institutional convenience rather than user comprehension. Even where legal aid is technically available, access mechanisms are often difficult to navigate without expert assistance – an irony in a system meant to facilitate independent access to remedies.

Furthermore, institutional behavior remains steeped in hierarchical formality. Judicial practice is still largely framed around case throughput and formal legal consistency rather than litigant experience or accessibility. Despite efforts to digitize case management systems (*e.g.*, ECRIS V, dosar electronic), the absence of user-centered interfaces, multilingual support, or proactive outreach strategies severely limits the democratizing potential of these tools. In this context, doctrinal innovation must translate into practical strategies for institutional transformation – through training, performance evaluation, and service redesign.

Augustin Fuerea offers a valuable doctrinal bridge between EU-level norms and national implementation. In his commentary on art. 19 TEU and 47 of the Charter, Professor Fuerea underlines that access to justice must be guaranteed not only as a principle but through institutional arrangements that ensure real enforceability. He emphasizes that Romanian institutions must align structurally and procedurally with the jurisprudence of the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR), particularly

[37] T. Capeta, *Access to Justice as a Moving Standard*, in Croatian Yearbook of European Law and Policy, vol. 15, 2019, pp. 87-109.

[38] K. Lenaerts, *The Rule of Law and the Coherence of the EU Legal Order*, in Common Market Law Review, vol. 41(3), 2004, pp. 575-599.

[39] R. Chiriță, *op. cit*.

when it comes to procedural safeguards, legal assistance, and the right to an effective remedy[40]. Professor Fuerea's analysis situates access to justice not merely as a normative expectation, but as a governance imperative rooted in supranational legal commitments.

From this standpoint, reform efforts must be guided by institutional reflexivity. Courts and administrative authorities must cultivate the capacity to assess their own accessibility – both in legal and experiential terms. This requires structural tools such as accessibility audits, user surveys, transparency dashboards, and regular publication of performance indicators that include not only caseload but user feedback and satisfaction. More importantly, reform must embed cultural change: legal professionals must be trained to view justice not merely as dispute adjudication but as an essential public service whose legitimacy derives from inclusivity and intelligibility.

This reconceptualization also mandates a shift in policy infrastructure. Legal empowerment is not the exclusive task of the judiciary but a shared responsibility across the public administration, academia, local governance, civil society, and legal professions. Strategic planning for access to justice must involve communication experts, designers, technologists, and policy analysts. Without this multi-actor coordination, institutional inertia will continue to neutralize reform. In particular, civil society must be positioned as both beneficiary and co-producer of justice, with formal roles in monitoring, advising, and co-designing procedural innovations.

Economic accessibility remains another critical axis. The cost of justice – both financial and cognitive – must be mitigated through targeted interventions: increased public funding for legal aid, simplified claims procedures, proportional court fees, and multilingual self-help resources. Systems like participatory budgeting in legal aid and regional access equity assessments can support this shift. Procedural simplification, when done without compromising legal certainty, can reduce unnecessary gatekeeping and foster a culture of access rather than restriction.

Ultimately, access to justice must no longer be treated as an auxiliary principle, secondary to efficiency or legal consistency. It must be positioned at the center of institutional design, democratic reform, and rights-based governance. Its realization is not simply a matter of fulfilling treaty obligations or meeting international benchmarks. Rather, it is the defining characteristic of a legal system that aspires to legitimacy and inclusion. A judiciary that is only accessible to those fluent in its logic or language is not democratic – it is administrative. And a democracy whose courts speak unequally to its people risks forfeiting not only legitimacy but cohesion.

In this context, access to justice assumes a dual function: as a gateway to all other rights and as a barometer of democratic health. Only when justice institutions engage with the diversity of their users – across age, income, ability, geography, and linguistic competence – can they truly fulfill their constitutional and moral mandate.

3. Conclusions

Access to justice today is not a marginal concern of legal systems, but a central pillar of institutional quality and democratic resilience. This study has demonstrated that the efficacy of legal rights and protections depends not solely on their formal enshrinement in constitutional or international texts, but on the ability of legal institutions to transform these guarantees into accessible, understandable, and enforceable realities. The principle of access to justice, though universally affirmed in legal doctrine and multilateral commitments, often remains elusive in practice – particularly for those facing structural disadvantages in navigating legal environments.

One of the central findings of this research is that access to justice must be approached as a multidimensional phenomenon. It involves not only procedural capacity – the ability to file a claim or appeal – but also informational, financial, linguistic, cognitive, and spatial dimensions. Legal entitlements are rendered meaningless when individuals are unable to understand procedures, afford representation, or access physical or digital court infrastructure. Barriers such as geographic disparities, excessive formalism, or opaque communication do not merely inconvenience users; they systemically exclude vulnerable populations from their rights. Without institutional mechanisms to mitigate these asymmetries, justice becomes stratified, available only to those already equipped to access it.

This perspective demands a redefinition of access to justice through a functional lens. Justice cannot be assumed to exist simply because a court is formally open or a right is formally declared. Legal institutions must adopt positive obligations – not only to refrain from impeding access but to actively enable it. These obligations

[40] A. Fuerea, *op. cit.*, pp. 194-198.

include simplifying procedures, improving user guidance, expanding legal aid, investing in inclusive technology, and designing public communication that does not assume legal literacy. Justice must be made visible, approachable, and usable by all, not only those familiar with legal formalities or economically able to afford counsel.

In light of this, the concept of legal access evolves into a standard of performance, one that must be measured through the real experiences of legal system users. Justice institutions must be evaluated not by the volume of cases they process or the number of laws they uphold, but by the inclusiveness and equity of their interactions with the public. This requires a shift in institutional mindset – from a model focused on output and control to one centered on responsiveness, transparency, and adaptability.

From a policy standpoint, this study suggests the need for strategic reforms that prioritize systemic accessibility. These may include the implementation of plain-language initiatives in court communication, regional deployment of legal aid teams, user-centered digital platforms, and participatory mechanisms that involve community input in institutional design. Institutions should be required to perform accessibility audits, collect structured user feedback, and adapt their services accordingly. Justice systems must move away from presuming user familiarity with legal procedure and embrace a model that treats litigants as citizens in need of support – not adversaries or administrative obstacles.

The economic dimension of access to justice is equally vital. Procedural guarantees are of little value when litigants are unable to afford court fees, legal representation, or even transportation to judicial venues. Financial accessibility must be addressed not only through legal aid, but through court fee reduction policies, transparent cost structures, and mechanisms for proportional relief. Digital exclusion also requires immediate attention: online access to procedures must be accompanied by digital literacy support and offline alternatives for those without connectivity or technological resources.

Another key takeaway from this study is that ensuring access to justice is not the exclusive responsibility of the judiciary. It must involve coordinated action by ministries, bar associations, local governments, civil society organizations, and technology providers. Cross-sectoral collaboration is essential to creating a justice system that reflects the complexity of modern society. Policies concerning legal education, civic awareness, social inclusion, and administrative efficiency all contribute to shaping how accessible justice actually is in everyday practice.

Looking ahead, further research is needed to better understand how different population groups experience the justice system and where the greatest barriers exist. Data collection must go beyond procedural statistics and include indicators of user comprehension, satisfaction, procedural duration, and the incidence of unmet legal needs. Justice systems must be studied not only from the perspective of doctrine, but as social institutions embedded in the realities of inequality, exclusion, and systemic inertia.

Finally, access to justice must be elevated as a core democratic metric. It should be part of institutional self-assessment, performance evaluation, and public reporting. Justice systems that operate behind closed doors, using inaccessible language or maintaining rigid formalisms, lose credibility in the eyes of the public. In contrast, systems that communicate clearly, adapt flexibly, and hold themselves accountable build trust and legitimacy.

In conclusion, access to justice must be recognized not as an auxiliary right but as the condition for the realization of all others. It is a test of how the law reaches people – not just in theory, but in practice. A legal system that is unable or unwilling to adapt to its users cannot claim to uphold the rule of law. Only when the experience of justice is equitable, inclusive, and meaningful for all can the foundational promise of constitutional democracy be fulfilled. This is not only a legal goal – it is a social and moral imperative.

References

- Bîrsan, C., Livescu, M., *Efectivitatea dreptului de acces la justiție în materie civilă*, 2016, *https://www.unbr.ro/revista-avocatul*;
- Capeta, T., *Access to Justice as a Moving Standard*, in Croatian Yearbook of European Law and Policy, vol. 15, 2019;
- Capeta, T., *European Union and Multi-level Access to Justice*, in European Law Review, vol. 47, 2022;
- Cappelletti, M., *The Judicial Process in Comparative Perspective*, Clarendon Press, Oxford, 1989;
- Charter of Fundamental Rights of the European Union, art. 47, OJ C 364/18.12.2000;
- Charter of Fundamental Rights of the European Union, art. 47;
- Chiriță, R., *Paradigmele accesului la justiție. Cât de liber e accesul liber la justiție?*, 2016, *https://www.juridice.ro/*;
- CJEU, *DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH v. Germany*, Case C-279/09, judgment from 22.12.2010;

- CJEU, *Otis and Others*, Case C-199/11, judgment from 6 November 2012; *Unibet v. Justitiekanslern*, Case C-432/05, judgment from 13.03.2007;
- CCR dec. no. 562/2016, published in the Official Gazette of Romania no. 853/2016;
- Convention on the Rights of Persons with Disabilities (CRPD), art. 13, New York, 2006; ratified by Romania through Law no. 8/2016.
- ECtHR, *Airey v. Ireland*, app. no. 6289/73, judgment from 09.10.1979;
- ECtHR, *Bellet v. France*, app. no. 23805/94, judgment from 04.12.1995;
- ECtHR, *Golder v. United Kingdom*, app. no. 4451/70, judgment from 21.02.1975;
- ECtHR, *Kudla v. Poland*, app. no. 30210/96, judgment from 26.10.2000;
- ECtHR, *Steel and Morris v. United Kingdom*, app. no. 68416/01, judgment from 15.02.2005; *Scordino v. Italy*, app. no. 36813/97, judgment from 29.03.2006;
- European Commission, 2023 Rule of Law Report – Country Chapter on Romania, Brussels, 2023, pp. 9–11, https://commission.europa.eu;
- European Commission, EU Justice Scoreboard 2023, Brussels, 2023, pp. 78–81; CEPEJ, Evaluation Report on European Judicial Systems, Council of Europe, 2022;
- European Union Agency for Fundamental Rights (FRA) and Council of Europe (CoE), Handbook on European Law Relating to Access to Justice, Publications Office of the European Union, Luxembourg, 2016;
- European Union Agency for Fundamental Rights (FRA), Access to Justice in Environmental Matters, Vienna, 2020, https://fra.europa.eu;
- European Union Agency for Fundamental Rights (FRA), Digitalisation and Access to Justice: Risks of Exclusion, Vienna, 2023;
- European Union Agency for Fundamental Rights (FRA), Fundamental Rights Report 2023 – Country Chapter: Romania, Publications Office of the EU;
- European Union Agency for Fundamental Rights (FRA), Roma and the Justice System – Comparative Report, Vienna, 2020;
- European Union Agency for Fundamental Rights (FRA), Your Rights Matter: Digitalisation and Fundamental Rights, Vienna, 2022;
- Fuerea, A., *Tratatul privind Uniunea Europeană. Tratatul privind funcționarea Uniunii Europene. Comentarii și explicații*, 3rd ed., Universul Juridic Publishing House, Bucharest, 2020;
- GO no. 51/2008 regarding public legal aid in civil proceedings, published in the Official Gazette of Romania no. 327/25.04.2008;
- GRECO, Fourth Evaluation Round – Corruption Prevention in Romania, Strasbourg, Council of Europe, 2022; European Commission, Rule of Law Report – Country Chapter on Romania, Brussels, 2023;
- Lenaerts, K., *The Rule of Law and the Coherence of the EU Legal Order*, in Common Market Law Review, vol. 41(3), 2004;
- Lenaerts, K., *The Rule of Law and the Coherence of the Judicial System of the European Union*, in Common Market Law Review, vol. 44, 2007;
- Ministry of Justice, Annual Reports on Legal Aid Implementation, Bucharest, 2022-2023, https://www.just.ro;
- The Constitution of Romania, art. 21, *https://www.constitutiaromaniei.ro/art-21-accesul-liber-la-justitie/*;
- United Nations Economic Commission for Europe (UNECE), Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters, 1998; Committee Findings on Romania, 2022;