

PART III

ACCESS TO JUSTICE AND COSTS OF LITIGATION

CHAPTER 1

INTRODUCTION

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1 THE IMPORTANCE OF GUARANTEEING ACCESS TO JUSTICE

Before the law sits a gatekeeper. To this gatekeeper comes a man from the country who asks to gain entry into the law. But the gatekeeper says that he cannot grant him entry at the moment. The man thinks about it and then asks if he will be allowed to come in sometime later on. “It is possible”, says the gatekeeper, “but not now”. [...] The man from the country has not expected such difficulties: the law should always be accessible for everyone, he thinks, but as he now looks more closely at the gatekeeper in his fur coat, at his large pointed nose and his long, thin [...] he decides that it would be better to wait until he gets permission to go inside. The gatekeeper gives him a stool and allows him to sit down at the side in front of the gate. There he sits for days and years.

Franz Kafka, *Before the Law*, 1925

- 1 No one doubts that in the almost one hundred years that have passed since Kafka wrote this parable, justice has experienced considerable progress. Nevertheless, unfortunately, it is also true that today, in many parts of the planet, there are not a few who experience their way through the courts similarly to the Kafkaesque peasant.
- 2 How are citizens of the twenty-first century positioned before the administration of justice? Legal problems are not odd to them; on the contrary, such problems are on the rise. The average citizen is going to suffer throughout their life at least one problem with legal implications. For example, according to the data from the World Justice Project, around seven out of ten citizens from most Western countries (7 in Spain; 6.8 in Germany; 7.5 in Austria; and 6.6 in the USA) experienced a conflict with legal implications in the last two years (2022/2023).¹ More than a third of these problems remain unresolved.² Either because citizens are unaware of the law or do not recognize the legal dimension of their problems, because they lack resources to litigate, or because they do not know how to access appropriate conflict resolution mechanisms. Two additional issues must be taken into consideration. Firstly, such problems are not experienced in the same way by all: people who are more vulnerable to socio-economic exclusion typically report more legal problems than other groups. Secondly, such conflicts affect them more because they are normally combined with other difficulties (social, professional, economic), so that the failure to resolve legal problems can contribute to a cycle of decline in which one problem leads to another with escalating

¹ To give other examples, in Africa: 6.9 out of 10 in Burkina Faso; 7.6 in Angola; 7.4 in Ethiopia; 7.3 in Malawi; or 7.9 in Mali. In South America, 6.9 in Brazil or 4.6 in Argentina. In Australia, 6.2. In New Zealand, 6.3, see World Justice Project, *Global Insights on Access to Justice* (Washington, D.C.: WJP, 2019) <https://worldjusticeproject.org/access-to-justice-data/#/map> accessed 21 October 2024.

² Ibid. The data is confirmed by the reports of the OECD, *Equal Access to Justice for Inclusive Growth: Putting People at the Centre* (OECD Publishing 2019) 32 <https://www.oecd.org/governance/equal-access-to-justice-for-inclusive-growth-597f5b7f-en.htm> accessed 21 October 2024.

individual and social costs and reinforces poverty and socio-economic exclusion.³ That is why the Organisation for Economic Co-operation and Development (OECD), from their legal needs surveys, concludes that ‘the inability to access legal and justice services can be both a result and a cause of poverty’.⁴

- 3 Furthermore, the data shows that the lack of effective resolution of conflicts does not exhaust its negative effects in the personal sphere of the affected citizens. It is, in fact, not only a problem concerning the violation of an individual fundamental right. It is also a public issue with high social impact and huge economic costs (in business, in lost productivity in the workplace, but even in the increase of mental health costs), hindering the growth of communities and societies, with a direct impact on their GDP, so it is a clear enhancer of poverty in the countries. For example, the estimation in Great Britain is that ‘unresolved disputes and serious legal problems may cost the economy up to GBP 3.5 billion annually (GBP 1.5 billion in costs to public services and GBP 2 billion in lost income through loss of employment)’.⁵ For this reason, in addition to the efforts made by individual states or at a supranational level, there is a strong global movement to fill this access gap and, in this context, the United Nations has set itself as an Objective of its 2030 Agenda ‘equal access to justice for all’ (Goal 16.3).⁶

2 CURRENT STATUS OF ACCESS TO JUSTICE

2.1 Introduction

- 4 Given the importance of access to justice, whatever its nature, definition, and legal recognition, which we will explore in detail in the next chapter, it is crucial to ensure that this right is not merely nominal but actual. All efforts made to improve the administration of justice are of little use if, in practice, citizens have difficulty opening the door, if entry is facilitated, but only in theory, as the Irish judge Sir James Matthew vividly described in the nineteenth century: ‘In England, Justice is open to all - like the Ritz Hotel’.⁷
- 5 Although many of the fundamental aspects of the right to a court have been redefined in recent years, as we will analyse in the next Chapter, its substance remains unchanged. The

³ This ‘cycle of decline’ combines health problems, affecting the work (inability/disruption), reducing the income, leading to inability to pay the rent, eviction, and homelessness.

⁴ OECD (n 2) 31–32.

⁵ Ibid 34.

⁶ UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development* (A/RES/70/1, 2015) <https://sdgs.un.org/2030agenda> accessed 21 October 2024.

⁷ Hayes explains interestingly the meaning of this quote: ‘Even in the days when we were young and innocent about these things, you did not have to be a genius to detect the logical fallacy, the contradiction in terms, the oxymoron, if you want to go up market. The Ritz was open only to those who had money - and not always then. For those not properly dressed, or with the right accent, or not knowing how much to tip the *maître d’* on the way in or the concierge on the way out, there was still no ready entrée, no particular pleasure when there and a rather poor prospect of a return visit’. M Hayes, ‘Access to justice’ (2010) 99 (393) *An Irish Quarterly Review* 29, 29.

right of access to a court means the power granted to applicants to seek remedy before a court of law. This right must be effective and be protected by all legal safeguards. This, as described by Harris, O’Boyle and Warbrick, involves both the *de facto* and *de jure* access to the courts; in other words, not only must the legal system respect and uphold it, but measures must also be taken to ensure that this fundamental right is not impaired in any way.⁸ Moreover, according to the European Court of Human Rights (ECtHR), this right extends beyond the initial action of requesting remedy before a court. Going deeper, the ECtHR has stated repeatedly that ‘the right to a court includes not only the right to institute proceedings but also the right to obtain a determination of the dispute by a court’, based on the premise that if member states were not able to guarantee the power of their courts to settle disputes by issuing a final decision, the right to a court would be ‘illusory’.⁹ It is irrefutable in both legal doctrine and practice that the right to access to justice is not absolute and may be subject to restraints imposed differently depending on the historical and legal context in which it operates.¹⁰ Thus, while all applicants have the right to apply to the courts for redress, it does not follow that such an application must always lead to court proceedings and final judgments. As affirmed by the ECtHR ‘the right of access to a court is not absolute, but may be subject to limitations; these are permitted by implication since the right of access, by its very nature, calls for regulation by the State, which enjoys a certain margin of appreciation in this regard’.¹¹ Therefore, each legal system can have a particular regime of limitation periods¹², fully compatible with the right to access, or can provide certain legal conditions or prerequisites (economic, procedural, subjective, etc) for the submission of the claims to the courts. But these state powers have to be exercised with caution: if not, applying overly severe restrictions, can, in the words of the European Court of Justice, ‘undermine the essence of this right and effectively vacate it’¹³; in the same line, the ECtHR explained that

such limitations will not be compatible with Article 6 § 1 if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see Nicolae Virgiliu Tănase

⁸ Cf D Harris, M O’Boyle and C Warbrick, *Law of the European Convention on Human Rights* (OUP 2014) 399.

⁹ *Fălie v Romania*, Case 232570/04 (ECtHR), Judgment 19 May 2015 [ECLI:CE:ECHR:2015:0519JUD002325704] para 22.

¹⁰ As stated by the European Court of Human Rights in its initial judgments in *Golder v the United Kingdom*, the right to access, ‘by its very nature calls for regulation by the State, regulation which may vary in time and place according to the needs and resources of the community and of individuals’, *Golder v the United Kingdom* (ECtHR), Judgment 21 February 1975 [ECLI:CE:ECHR:1975:0221JUD000445170] para 38. With the same words, more recently also *Jakutavicius v Lithuania*, Case 42180/19 (ECtHR), Judgment 13 February 2024 [ECLI:CE:ECHR:2024:0213JUD004218019] para 75.

¹¹ *Bîzdîga v The Republic of Moldova*, Case 15646/18 (ECtHR), Judgment 17 October 2023 [ECLI:CE:ECHR:2023:1017JUD001564618] para 40.

¹² *Jann-Zwicker and Jann v Switzerland*, Case 4976/2020 (ECtHR), Judgment 13 February 2024 [ECLI:CE:ECHR:2024:0213JUD000497620].

¹³ *Alasini and others v Telecom Italia* (CJEU), Judgment 18 March 2010, [ECLI:EU:C:2010:146].

cited above, § 195, with further references; see also *Grzęda*, cited above, § 343, with further references).¹⁴

- 6 Therefore, as shown by Cappelletti¹⁵, the first step in determining the effectiveness of the right to a court is to identify the barriers to be overcome in order to analyse whether these are appropriate and proportional to the aim sought. Below, we will attempt to identify the most significant barriers to accessing justice.

2.2 Current Barriers to Access to Justice

- 7 What makes justice less accessible in the twenty-first century? Without claiming to be exhaustive, based on our global research on this issue, we consider that the most significant barriers to accessing justice today are as follows:
- a) Lack of information about legal issues.
 - b) Lack of understanding and accessibility to the justice system.
 - c) Inequalities in access to justice, that are particularly detrimental to the most vulnerable parties.
 - d) Procedural barriers.
 - e) Growing litigation and overloaded courts.
 - f) Financial limitations.
- 8 In this chapter we will briefly outline these essential difficulties in access to justice, trying in the next chapter to point out the current trends that seek to mitigate them.

2.2.1 Lack of Legal Information

- 9 As affirmed recently by the European Commission for the Efficiency of Justice (CEPEJ), 'getting correct and sufficient information is essential to guarantee an effective access to justice'.¹⁶ In this regard, two aspects are of particular concern:
- 10 Firstly, lack of general information on legal issues. Citizens often do not even know whether an issue has legal relevance or not. They often ignore necessary information about the way to begin the judicial path (eg, about 'the work and competences of courts,

¹⁴ *Bîzdîga v The Republic of Moldova* (n 11).

¹⁵ Cf M Cappelletti and B Garth, 'Access to justice: the newest wave in the movement to make rights effective' (1978) 27 *Buffalo Law Review* 186.

¹⁶ CEPEJ, 'European Judicial systems CEPEJ Evaluation Report', Part 1, 2022 Evaluation cycle (2020 data), 104.

the nature of the judicial proceedings, roles of the different professionals involved in the procedures, legal representation, possibilities of legal aid, rights and obligations of individuals, information on how to start a procedure, on timeframes of judicial proceedings, expected costs and duration, relevant legislation, case-law, etc.¹⁷) or the steps that have to be taken during its development (about the phases of which the procedure consists, the hearings planned, the deadlines envisaged, etc). In this sense, the lack of information concerning the legal channels to be followed to apply for protection from the court and the procedural requirements to be met to both initiate and conduct proceedings clearly constitutes a major barrier to applicants seeking to exercise their right to a court. The European Court of Human Rights has often been called upon to rule in this regard and has made its position abundantly clear. Member States must provide applicants with ‘a clear, practical opportunity to challenge an act that is an interference with his rights’.¹⁸

- 11 Although information may have been lacking even before initiating proceedings, the biggest concerns refer to defects in communicating court decrees to the parties during the proceedings. This concern has been repeatedly expressed by the European Courts. For example, the ECtHR has pointed out that, although no specific notification system is provided in Art 6 ECHR¹⁹, it is its task to determine, in each case, whether a failure in communication or information regarding the judicial channels to be followed by the parties has occurred in order to prevent a violation of their right to a court. Such right would be ‘illusory if [the parties] were to be kept in the dark about the developments in the proceedings and the court’s decisions on the claim, especially when such decisions are of the nature to bar further examination’.²⁰ It is common knowledge that the right to a fair trial, together with the prevalence of the principle of contradiction ‘requires that the parties to a criminal or civil trial have the opportunity to have knowledge of and comment on all evidence adduced or observations filed by the opposing party with a view to influencing the court’s decision’.²¹ Therefore, failure to make court documents available to the parties prevents them from effectively defending their claim. In this regard, the European Court recognized that ‘the right of access included the right to receive appropriate notification of judicial decision, particularly when the possibility of

¹⁷ “European Judicial systems CEPEJ Evaluation Report”, Part 1, 2022 Evaluation cycle (2020 data), p. 104.

¹⁸ *F.E. v France* (ECtHR), 30 October 1998, 38212/97 and *De la Pradelle v France* (ECtHR), 16 December 1992, 12964/82. In this sense, in *Gankin and other v. Russia*, the ECtHR sustained that: ‘Whenever an oral hearing is to be held, the parties have the right to attend it and to make oral submissions, choose another way of participating in the proceedings, for example by appointing a representative, or ask for an adjournment. For the effective exercise of these rights, the parties must be informed of the date and place of the hearing sufficiently in advance to have adequate time to make arrangements to attend it, to retain and instruct a representative, or to inform the court of their decision not to attend’.

¹⁹ *Bogonos v Russia* (ECtHR), Decision of 5 February 2004, 68798/01 [ECLI:CE:ECHR:2004:0205DEC006879801].

²⁰ *Sukhorubchenko v Russia* (ECtHR), Decision of 10 February 2005, 69315/01 [ECLI:CE:ECHR:2004:0115DEC006931501].

²¹ *Lobo Machado v Portugal* (ECtHR), Judgment of 20 February 1996 [ECLI:CE:ECHR:1996:0220JUD001576489].

challenging the decision rests on receiving such information'.²² In the same line, the European Court of Justice has affirmed that the lack of appropriate notification constitutes a violation of the right of effective protection and, therefore, of the access to justice.²³

- 12 Secondly, lack of relevant data regarding the matter at issue, especially when one of the parties has little information to be able to raise the dispute. To mitigate these cases of *information asymmetry* we will study how different mechanisms to facilitate access to sources of evidence have been making their way in different legal systems.

2.2.2 Lack of Understanding and Accessibility to the Justice System

- 13 Citizens perceive the judiciary as a space that is alien and cryptic to them. We will now analyse three key factors to determine the extent to which they contribute to this general perception of the remoteness of justice: the language used in court, the design of the courts and their organization.

2.2.2.1 Legal Language

- 14 There is no doubt that one of the most difficult barriers for laymen to overcome is the understanding of legal language, in particular for certain groups, such as minors or disabled. It is not, however, a question of adopting a basic and simple language, nor eradicating legal language, under the umbrella of a sort of movement similar to that which, in 1793, in the midst of the French Revolution, led to the suppression of the Schools of Law. Technicalities and legal language should be used and, in fact, are essential in many contexts, but it is necessary to ensure that the texts are more understandable to the public. An example of minimum standards in this regard is found in the European Judges' Advisory Council on the Quality of Judicial Decisions (2008):

²² *Sukhorubchenko v Russia* (n 20); *Hennings v Germany* (ECtHR), Judgment of 16 December 1992 [ECLI:CE:ECHR:1992:1216JUD001212986]; *Milulová v Slovakia* (ECtHR), Judgment of 6 December 2005, 64001/00 [ECLI:CE:ECHR:2005:1206JUD00640010]. In the same sense, more recently, in *Klopstra v Spain*, the Court provided that: 'In the instant case, the Court observes that, once the applicant learned of the foreclosure proceedings, he and Ms CVK firstly lodged an action for the annulment of proceedings, which was the only remedy available for challenging the validity of the notification in the proceedings. The first-instance court dismissed their claim, by stating in very broad terms that the requirements for annulment had not been met. Then, they lodged an amparo appeal with the Constitutional Court, which was declared inadmissible owing to the lack of special constitutional significance, despite the fact that the public prosecutor attached to the Constitutional Court had lodged a *suplica* appeal. It follows that the applicant's attempts to obtain a fresh examination of the case did not result in any real opportunity to have a new trial. The foregoing considerations are sufficient to enable the Court to conclude that the requisite steps were not taken to inform the applicant of the proceedings against him and that he was not given an opportunity to appear at a new trial, despite the fact that he had not waived his right to be present (*Dilipak and Karakaya v. Turkey*, cited above, § 94) Judgment of 19 January 2021'.

²³ *Hypotecni banka* (CJEU), Judgment 17 November 2021 [ECLI:EU:C:2011:745].

any judicial decision must be intelligible, written in clear and simple language, an essential condition for it to be understood by the parties and by the public. This requires a coherent structure of the decision and the articulation of the argumentation in a clear style accessible to all.²⁴

15 We will approach this issue in detail in the following Chapter.

2.2.2.2 Design of Courts

16 The design of judicial spaces is not neutral to citizens since it conditions the way they face the courts and, therefore, it could help or hinder their access to justice in reality. In turn, the way in which judicial spaces are designed is also a reflection of the values that Justice wants to transmit to the users of justice at each moment and in each place. This has been happening since time immemorial. Let us think about the importance of the great Roman basilicas in the heart of their forums. More recently, when the extension of the Bordeaux courthouse was designed in 1992, Richard Rogers, its architect, wanted to convey to the public a positive perception of the accessibility of the French judicial system and, therefore, decided to cover the building with glass to symbolize the transparency and openness of justice.

17 As we will analyse in detail in the following Chapter, these considerations are not only relevant for the design of face-to-face court proceedings, but also for the growing field of online court proceedings, which has gained more and more ground after the COVID-19 pandemic.

2.2.2.3 Organization of Courts

18 Citizens are also not indifferent to the organization of the courts. As can be seen from the latest CEPEJ report about the countries comprised in the Council of Europe, there has been a general trend in recent years towards specialization of the courts of first instance and a general reduction in the number of general courts of this type.²⁵ Although this change is generally justified in view of the growing complexity of law and litigation, it is no less true that it may often lead to the disappearance of many courts that are closer to citizens, making it more difficult for them to have effective access to justice. Or, even a little further on, some of these reforms are really due to economic reasons to reduce court and staff costs or to try to make justice more *effective*, without paying enough attention to the citizens' needs.

²⁴ Consultative Council of European Judges, *Opinion n 11 on the quality of judicial decisions* (30 June 2008) <https://www.coe.int/en/web/ccje/opinion-n-11-on-the-quality-of-judicial-decisions> accessed 21 October 2024.

²⁵ Very interesting and detailed information in this regard can be found in the 'European Judicial systems CEPEJ Evaluation Report' (n 16), 99 ff.

2.2.3 Inequalities in Access to Justice, Particularly Detrimental to the Most Vulnerable Parties

19 As indicated at the beginning of this Chapter, unfortunately, the path to access to justice is still difficult for certain social groups that can be identified as *vulnerable*. As we will see in the following Chapter, depending on the nature of the conflict or where it has occurred, we may find different categories of vulnerable parties. Traditionally, the poor, the indigenous, the elderly, the illiterate, the disabled or those discriminated against based on religion, gender, race, or origin have made this category. In recent years, new social groups must be considered, such as consumers or, even, in some cases, SMEs and the middle class.

2.2.4 Procedural Barriers

20 To regulate the conditions for access to the court, legislators design legal procedures according to different parameters (diverse national legal traditions, principles, judicial organization, etc). The design is not, however, irrelevant to citizens, particularly if it results in barriers or limitations that prevent them from being able to bring their legal issues to court, thus impeding their effective access to justice. Let us think, for example, of the setting of very short deadlines for carrying out procedural actions, or the imposition of excessive conditions for the admission of the claim or for the filing of appeals, etc. In this context, supranational courts and institutions have required proportionality in the configuration of procedural formalities by each Member State (for example, in not few cases by the ECtHR).²⁶ In recent years, at least in the European Union, the consideration of procedural rules as a possible obstacle to access to justice has taken a step further. For example, in certain areas of qualified protection, some procedural rules – that do not constitute per se barriers to access to justice – are deemed

²⁶ For example, in *Szwagrún-Baurycza v Poland* (ECtHR), Judgment of 24 October 2006 [ECLI:CE:ECHR:2006:1024JUD004118702], it considered that a violation of Article 6.1 had occurred because the applicant has to bear on their shoulders an unfair burden in the course of the proceedings due to the court's insistence that the claimant may provide the identities and addresses of those potentially interested in the outcome of the case. More recently, regarding excessive requisites to appeal on cassation, Case *Willems and Gorjon v. Belgium* (ECtHR), Judgment of 21 September 2021, 74029/16 [ECLI:CE:ECHR:2021:0921JUD007420916], in which the Court affirmed: 'that court, in penalising them in this way for their procedural error, had upset the requisite fair balance between, on the one hand, the legitimate concern to ensure compliance with the formal procedure for lodging an appeal on points of law and, on the other, the right of access to a court, and had thus been excessively formalistic with regard to the procedural requirements for the admissibility of such appeals'. The FRA Report on Access to Justice also refers to certain EU countries that include excessive procedural demands in their procedural laws, The European Union Agency for Fundamental Rights, *Access to justice in Europe: an overview of challenges and opportunities* (2010) 43 https://fra.europa.eu/sites/default/files/fra_uploads/1520-report-access-to-justice_EN.pdf accessed 21 October 2024.

as restrictive of a comprehensive protection to certain groups of society (as it is the case of consumers). We will elaborate on this issue in the next Chapter.

2.2.5 Growing Complex Litigation and Overloaded Courts

- 21 Class actions, mass litigation, competition law macro-proceedings, bankruptcy proceedings. These are just some of the examples of cases that have flooded the courts in the last decades, both at the national and cross-border level (especially in the first instance²⁷). As has been remarked by the Council of Europe, as we are in a time of ‘the constant adoption of new legislation, whether at the international, European or domestic level, and changing case-law and doctrine are making legal science increasingly vast and complex’, making it ‘difficult for the judge to master all these fields, while at the same time society and litigants demand more and more professionalism and efficiency from the courts’.²⁸ In this context, measures as specialization of the courts have to be taken to tackle this new panorama.²⁹ The implementation of information and communication technology (ICT) is also being used as an escape route to face with such challenges.

2.2.6 Financial Limitations

- 22 One of the most common barriers faced by applicants seeking redress in court is the high cost of bringing legal actions. Legal proceedings involve many different costs (lawyers’ fees, experts’ expenses, travels, translations, etc), including the court fees payable in some countries. Wary of incurring excessive legal expenses and aware of the deadline criterion, many claimants decide not to exercise their rights before a court of law, restraining their access to justice. Therefore, states are responsible to ensure that applicants do not have to bear disproportionate costs, and that those who can prove their lack of financial resources are not prevented from seeking redress but are provided with legal aid.

3 CONTENT OF PART III

- 23 Having all these concerns in mind, Part III is dedicated to the following two topics: access to justice and costs of litigation. If one takes a closer look at the interplay between the two, it becomes apparent that they are closely interrelated. Access to justice inevitably leads to transaction costs in connection with the operation of the courts, the taking of evidence, and the litigation activities of the parties. The state must therefore answer the question of where the required funds are to come from, who ultimately has to bear the

²⁷ On efficiency of first instance courts, *European Judicial systems CEPEJ Evaluation Report*, 2022, Part 1, 127.

²⁸ CCJE, *Opinion (2012) no 15 of the Consultative Council of European Judges on the specialisation of judges*, 5 to 6 November 2012.

²⁹ CCJE, *Opinion (2012) no 15*, 5-6 November 2012, available at <https://rm.coe.int/16807477d9>.

costs, and how to settle cost issues without provoking unwanted further litigation over litigation costs.

- 24 In principle, it is within the state's margin of appreciation to determine what a cost-efficient procedural framework should look like and to what extent the taxpayer or rather the parties should bear the cost burden. This is acceptable, since, at least theoretically, access to justice can be guaranteed in very different ways, eg, by an oral hearing before a panel of judges in the presence of parties and lawyers, but also by a simplified summary online procedure. In civil and commercial matters, it must also be taken into account that neither the plaintiff nor the defendant has unlimited financial resources. Thus, not only in the interest of the functioning of its court system, but also in the interest of the defendant, the state can deliberately charge court fees and create a certain cost risk in order to discourage plaintiffs from hastily taking legal action or bringing vexatious lawsuits.
- 25 However, it is to be considered that different groups of parties have very different degrees of ability, on the one hand, to assert their position in a particular procedural setting and, on the other hand, to finance litigation that proves necessary. Without the advice of a lawyer, individuals can hardly assess how promising their position is and whether a judicial or an extrajudicial dispute resolution is more appropriate. Furthermore, the mere risk of having to bear all or part of the costs of litigation in the event of defeat, or possibly even regardless of the outcome of the lawsuit, can deter even a well-advised and justifiably optimistic party from filing or defending a claim. Consequently, the state's margin of appreciation has its limit where the cost efficiency of the procedural regime undermines access to justice. The supposedly more technical rules on costs and funding must therefore be measured above all by whether they are consistent with the fundamental right of access to justice: Not only justice delayed, but also justice *overpriced* is justice denied.
- 26 These few introductory remarks should recall that cost efficiency is an important factor, but by no means the only one, since it can be in conflict with procedural justice. Analysing the ways in which this conflict is balanced in the legal systems under study is a core question of our task. All these issues are addressed in six chapters, grouped in two blocks:

3.1 Access to justice

- 27 Chapter 2 ('Access to Justice as a Fundamental Right') will address the recognition of this right in different legal systems, examining whether it is a guarantee of constitutional nature or not, and if it deserves universal or supranational protection. It covers its definition, essential content, and new current trends in access to justice at the national and international levels. Chapter 3 ('Particular Aspects of Access to Justice') will analyse in detail the different rights that this essential guarantee encompasses (in particular,

access to an oral hearing, access to appellate courts, and access to legal advice and representation) and current trends in different countries.

3.2 Costs of litigation

- 28 The next four chapters are devoted to the costs of litigation and the ways how different countries address this issue of paramount importance in practice that normally receives rather less attention from procedural doctrine. Four topics are covered: must cost efficiency work as a procedural principle, and, if yes, what does this imply (Chapter 4: 'Cost Efficiency as a Guiding Principle')? Who must bear the litigation costs and what are the different cost allocation options (Chapter 5: 'Cost Allocation')? And finally, how can access to justice be funded, analysing in how far states provide legal aid and services (Chapter 6: 'Public Funding') and how relevant private instruments are in this respect (Chapter 7: 'Private Funding').

ABBREVIATIONS AND ACRONYMS

Art	Article/Articles
CCJE	Consultative Council of European Judges
CEPEJ	<i>Conseil de l'Europe Commission européenne pour l'efficacité de la justice</i> (Council of Europe European Commission for the efficiency of justice)
cf	<i>confer</i> (compare)
ch	chapter
CJEU	Court of Justice of the European Union
ECLI	European Case Law Identifier
ECTHR	European Court of Human Rights
ed	editor/editors
edn	edition/editions
eg	<i>exempli gratia</i> (for example)
etc	et cetera
EU	European Union
EUR	Euro
ff	following
fn	footnote (external, ie, in other chapters or in citations)
GBP	British Pound
ibid	<i>ibidem</i> (in the same place)
ICT	Information and Communication Technologies
ie	<i>id est</i> (that is)
n	footnote (internal, ie, within the same chapter)
no	number/numbers
OECD	Organisation for Economic Co-operation and Development
para	paragraph/paragraphs
pt	part
Sec	Section/Sections
SMEs	Small and Medium-sized Enterprises
supp	supplement/supplements
trans/tr	translated, translation/translator
UK	United Kingdom
US / USA	United States of America
v	versus
vol	volume/volumes

CASES

International/Supranational

Fălie v Romania, Case 232570/04 (ECtHR), Judgment 19 May 2015 [ECLI:CE:ECHR:2015:0519JUD002325704].

Gankin and other v Russia (ECtHR), Judgment 31 May 2016 [ECLI:CE:ECHR:2016:0531JUD00024300].

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