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Mila Đorđević
Ana Zdravković
Sava Vojnović

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EDITORIAL

MILA ĐORĐEVIĆ
Faculty of Law University of Belgrade, Belgrade, Serbia
ORCID 0000-0003-3032-5984
ANA ZDRAVKOVIĆ
Institute of Comparative Law, Belgrade, Serbia
ORCID 0000-0001-7514-8892
SAVA VOJNOVIĆ
Faculty of Law University of Belgrade, Belgrade, Serbia
ORCID 0000-0002-4425-020X

Access to justice and enforcement of rights – an introduction

Imagine walking into a courtroom for the first time in your life. You feel stressed, uncertain, and everything is at stake. Now imagine that on the other side sits an insurance company or government agency that has been in this position hundreds of times before. This contrast – between what Marc Galanter (1974) called the "one-shotter" and the "repeat player" – lies at the heart of his classic work *Why the "Haves" Come Out Ahead*. Galanter showed that courts do not operate on a level playing field: those who appear again and again develop strategies, cultivate expertise, and even shape the rules themselves, while individuals, appearing only once, must bear the full risk of an unfamiliar system. The result is not random but structural: repeat players steadily accumulate advantages, while one-shotters are left at a disadvantage. More than forty years after its publication, Galanter's argument continues to resonate: inequality before the courts is not simply about who has the better lawyer, but about how institutions themselves reward those who already know how to play the game.

Galanter's insight reminds us that access to justice cannot be understood merely through the lens of procedural guarantees, but must also take into account the broader social and institutional conditions that determine who can effectively use the law. This special issue on *Access to Justice and Enforcement of Rights* takes up precisely this challenge. The following contributions move beyond formal doctrine to explore how access is shaped by both procedural safeguards and the wider availability of forums, remedies, and support mechanisms. In what follows, the volume first situates these debates within the existing scholarship and then presents the individual contributions, each of which sheds light on different dimensions of inequality and the challenges of enforcing rights in practice.

The debates on access to justice emerged from the historical contexts of post-industrial Western countries, and the concept gained prominence in the 1960s, during the rise of the welfare state (Maranlou, 2014: 17).[1] A major turning point in the discourse was the Florence Access to Justice Project, led by Mauro Cappelletti and Bryant Garth (1981). In October 1979, a conference at the European University Institute examined the prospects for

1. For a discussion of how Hobbes and Rousseau's accounts of the social contract anticipate certain foundational concerns about institutional guarantees and the conditions under which rights can be effectively secured, see Vojnović (2022).

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further action, and participants sought to identify the most pressing issues, evaluate key insights, and assess the broader significance of what they termed the "access to justice" movement (Cappelletti, Garth, 1981: 3).

Cappelletti and Garth discuss three "waves" of access to justice. The first wave was concerned primarily with access to courts, and the emphasis was on the problems faced by poor and marginalized groups in accessing expensive legal services and complex legal systems. The second wave related to access to justice gaps that arise not predominantly because of socio-economic factors, but as a result of the nature of the problems people experience in particular contexts. For example, so-called "diffuse interests" include consumer problems, where large groups are affected by similar issues, but there are difficulties in launching individual claims and, as a result, a significant access to justice gap. The third wave, while continuing to incorporate the concerns of the first and second waves, broadened the concern of access to justice even further, so that a host of procedural innovations that might allow access to justice began to be discussed. This included alternative dispute resolution (ADR) and other means by which people might resolve their problems without accessing the courts (Garth, Cappelletti, 1981: 9-25).

While the "three waves" framework highlighted successive dimensions of the problem, debates since then have multiplied. To date, a wide range of authors have offered definitions of access to justice, and different legal systems have also employed the term in varying ways. Yet this very multiplicity of definitions points to a deeper uncertainty: persistent confusion remains about what the "problem" of access to justice actually entails. Storgaard (2023) emphasizes that research often oscillates between two diagnoses: some argue that the main barrier lies on the supply side (insufficient legal aid, underfunded services, or absent institutions), while others stress the demand side, where individuals may lack the resources, knowledge, or confidence to mobilize their rights. This tension is frequently captured in the language of a "justice gap", referring to the distance between the promise of equal justice under law and the reality of unmet needs.

This is reflected in the fact that the field of access to justice research remains dominated by legal scholarship (Storgaard, 2023). For the most part, the concept has been tied to the quality of legal procedures and their outcomes, the accessibility of courts and other state institutions, and the persistent problem of the high cost of justice (Maranlou, 2014: 17). Much of this literature places emphasis on legal procedures and the outcomes of legal aid, often raising critical questions about government funding for legal assistance. The concept has also been employed as a measure of institutional performance, where access to justice is seen as part of evaluating how effectively courts and other state bodies deliver legal outcomes (Spaić, Đorđević, 2024; Spaić, Đorđević, 2022). In these accounts, access to justice is largely equated with access to legal assistance, remedies, and the legal system itself. Cornford underscores this procedural orientation, arguing that "because access to justice is access to legal justice it is not to be confused with justice in a more general sense" (Cornford, 2016: 34). He accordingly defines it as "a right of equal access to legal assistance for every citizen" (Cornford, 2016: 39). Along similar lines, Mullen emphasizes that access to justice concerns the availability of effective legal remedies to address wrongs, holding that individuals have access to justice when they

are able to vindicate their rights and advance their legally recognized interests (Mullen, 2016: 70). Writing specifically on consumers, Wrbka (2012: 2) develops a comparable definition: "the concept of access to justice embodies the ideal that everybody, regardless of his or her capabilities, should have the chance to enjoy the protection and enforcement of his or her rights by the use of law and the legal system".

In legal texts, the concept of access to justice is understood in a similar way: primarily as a procedural guarantee connected to fair trial provisions, the right to be heard by a competent tribunal, the availability of free legal aid, and adequate legal representation in criminal proceedings. This understanding is reflected in binding international instruments. The International Covenant on Civil and Political Rights recognizes access to justice through Article 2, which obliges states to provide an effective remedy for rights violations, and Article 14, which enshrines equality before courts and tribunals alongside minimum fair trial guarantees. Likewise, the European Convention on Human Rights secures the principle through Article 6, guaranteeing the right to a fair and public hearing by an independent tribunal, and Article 13, ensuring the right to an effective remedy before national authorities. Particularly relevant in this regard is also the jurisprudence of the European Court of Human Rights, which has clarified states' obligations through autonomous legal concepts that are indispensable for understanding, *inter alia*, Article 6 guarantees (Popović, Zdravković, 2023: 902-904). Beyond these treaty-based rights, access to justice has also been incorporated into *soft law* instruments such as the UN Guiding Principles on Business and Human Rights, which extend the obligation to provide remedies to contexts involving corporate human rights abuses. Finally, within the European Union, Article 47 of the EU Charter of Fundamental Rights explicitly formulates the right to an effective remedy and to a fair trial, combining elements of both the Covenant and the Convention while also shaping access to justice in EU-specific fields such as consumer protection, competition law, and asylum.

These models of access to justice share a fundamental flaw: they were developed with only well-established legal systems in mind and presuppose the availability of sufficient legal rights. Maranlou (2014) critiques these frameworks as distinctly Western concepts of justice – models that focus on how legal rules, assumed to be just, can be realized by those subject to the law. In this view, law and justice are often treated as synonymous, and access to justice is frequently reduced to access to the legal system for the purpose of obtaining legal redress. Such an approach assumes that existing legal systems already provide the necessary substantive rights, framing access to justice primarily as a matter of procedural guarantees. Courts and legal systems are presumed to be inherently just, leaving little space to question the adequacy of the substantive rights themselves. Yet this assumption does not necessarily hold true, even in developed democracies. Barriers to justice may arise not only from procedural obstacles but also from the absence or insufficiency of substantive rights.

A second problem with this approach is its reductive nature in relation to how people actually experience legal and social problems and the ways they choose (or choose not) to address them. As Nylund (2014: 327) has argued, equating access to justice with access to courts does not meet people's needs. By placing an emphasis on legal rights, this framework makes

individuals more vulnerable, as they become dependent on professional legal advice for problem-solving. In practice, access to justice is not delivered by lawyers and courts alone but is often facilitated by grassroots organizations, community actors, charities, local organizers, and social networks (Ramsay, 2003: 37).

The limits of equating access to justice with access to courts are also visible in how people actually experience problems. Felstiner, Abel, and Sarat's seminal article *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming…* (1981) conceptualizes the path from injury to legal action as a sequence of hurdles: *naming* the injury, *blaming* someone for it, and *claiming* a remedy. Only when a claim is made and rejected does the possibility of formal adjudication arise. Most disputes, however, dissolve before reaching this point. From the standpoint of access to justice, the lesson is clear: rights enforcement is not only blocked by court procedures or costs, but also by the complex social and cultural processes through which individuals interpret harm, assign responsibility, and decide whether to mobilize the law at all. This perspective highlights that access to justice is deeply shaped by everyday experiences, perceptions of fairness, and broader trust in institutions, and that these factors play a decisive role in determining which grievances are transformed into legal claims and which remain silent or unresolved. After all, a considerable part of issues related to access to justice cannot be disentangled from the challenges of structural discrimination, which represents one of the most pressing concerns and, much like structural discrimination itself, can be regarded as one of the "wicked problems" of the international community (Matijević, Zdravković, 2024: 18).

Taken together, these critiques reveal that access to justice cannot be reduced to formal procedures or court access alone, but must be understood as a complex process shaped by substantive rights, social dynamics, and institutional contexts. Given that citizens should always retain the capacity to judge the legitimacy of a particular legal and political regime (Vojnović, 2023: 155), it is clear that access to justice serves as a critical mechanism for addressing structural deficiencies in legal systems, empowering individuals to challenge institutional shortcomings and pursue effective remedies.

Building on this line of critique, recent scholarship has highlighted that, despite decades of debate, access to justice remains an unsettled and evolving field. Asbjørn Storgaard (2023) shows that while the agenda has broadened beyond traditional legal scholarship, it is still heavily dominated by structural and procedural concerns. His review identifies five directions for the future: clarifying the conceptual problem of access to justice, adopting more multidisciplinary perspectives, committing to evidence-based and empirical approaches, engaging with a wider variety of social realities, and enhancing the quality of research through qualitative depth. These calls for renewal point to the importance of moving beyond procedural guarantees toward a richer, socio-legal understanding of how justice is accessed and rights are enforced. The contributions gathered in this special issue respond to this challenge by combining doctrinal, empirical, and theoretical insights.

The first paper in this special issue, *Factors Undermining the Efficiency of Justice in the Legal System of Serbia* by Stevan Lilić and Nada Živanović, examines the multiple constitutional, institutional, procedural, and social obstacles that weaken the Serbian judiciary and compromise the rule of law. Drawing on legal analysis and case studies, the authors identify political influence, the abuse of functions, inconsistencies between laws and the Constitution, lack of resources, and overburdened courts as central factors eroding judicial efficiency. They highlight the ambiguous criteria for appointing "prominent lawyers" to judicial bodies, the contested role of the President of the Republic, and the Constitutional Court's handling of the controversial lithium mining "Jadar" case as emblematic of systemic shortcomings. In addition, they situate judicial inefficiency within a broader socio-political context, marked by public protests and declining trust in institutions. Their analysis underlines that without addressing these structural weaknesses, access to justice in Serbia cannot be meaningfully realized, showing how institutional design and political accountability are inseparable from the effective enforcement of rights.

The second paper, *Reframing Judicial Appointments: Rule of Law as a Constraint on Political Manipulation* by Teodora Miljojković, addresses the political abuse of judicial appointment procedures and its implications for judicial independence. The paper situates these practices within broader theoretical debates on the rule of law and argues that formal legality alone cannot prevent manipulation when reforms are driven by hidden political motives. Engaging with comparative case law of the ECtHR and the CJEU, Miljojković demonstrates how the erosion of institutional safeguards can occur through ostensibly lawful measures. Her analysis reframes the rule of law as a justificatory principle rather than a procedural checklist, emphasizing that the legitimacy of judicial reform depends on the quality of public reasoning and the absence of arbitrariness. By exposing how such structural manipulations weaken judicial independence, Miljojković's analysis underscores that access to justice ultimately depends on the integrity of institutions tasked with upholding it—reminding us that without independent courts, the enforcement of rights remains a fragile promise.

The third contribution, *Free legal aid as instrument of the right to access to justice: the basic notions of the legal concept, the history of its development and its implementation in Serbia* by Milica Novaković, examines free legal aid (FLA) as one of the central mechanisms for ensuring the right to access to justice. The paper traces the historical development of free legal aid in Europe and situates Serbia's late adoption of this instrument in 2019 within that broader context. Novaković shows that, despite its constitutional recognition and the adoption of the Law on Free Legal Aid, the Serbian system remains only partially functional: the restrictive exclusion of NGOs as providers, insufficient institutional capacity in local governments, and lack of public awareness undermine its effectiveness. At the same time, the expansion of beneficiaries to include not only the poor but also socially vulnerable groups demonstrates the potential of free legal aid to enhance equality before the law. The analysis highlights both the promise and the shortcomings of Serbia's approach, offering a case study that speaks directly to the theme of this special issue by illustrating how the enforcement of rights depends not only on formal guarantees, but on the capacity of legal

systems to create meaningful, accessible, and sustainable mechanisms for those who need them most.

The fourth paper, *Co-Ownership and Joint Use of Digital Assets: Legal Implications and Disputes Among Co-Owners in the Digital Sphere* by Darko Stevanović, addresses the growing legal challenges surrounding digital assets, particularly when multiple parties share rights of access and control. The paper highlights the absence of clear statutory frameworks and the difficulty of applying traditional property law to intangible resources such as cryptocurrencies, NFTs, and other digital goods. By focusing on conflicts among co-owners and the need for effective legal mechanisms to regulate "control" over digital assets, Stevanović shows how unresolved disputes in this field risk leaving individuals without meaningful remedies. Although rooted in property law, Stevanović's contribution demonstrates that equitable participation in the digital sphere and the availability of remedies in digital conflicts are increasingly central to how rights are protected and enforced in contemporary societies.

The following paper, *Evolution of Eminent Domain Rules Through Cases Decided in Front of the Supreme Court of the United States of America* by Jelisaveta Boljanović Gutović, explores how judicial practice has shaped one of the most sensitive areas of property law: the state's power to limit private ownership for public purposes. By examining landmark U.S. Supreme Court cases on eminent domain, Boljanović Gutović shows how courts have balanced the right to property with broader societal interests, while also redefining what counts as fair compensation and public use. This analysis highlights the close relationship between doctrinal shifts in eminent domain and individuals' ability to access justice when fundamental rights such as property are restricted, thereby extending the discussion of remedies and enforcement of rights from the digital sphere to classic constitutional guarantees.

The following paper, *Revocation of an Assurance of Naturalisation through the CJEU's Lens – Story of JY v. Wiener Landesregierung* by Vasilije Marković, shifts the focus from property to citizenship, but once again highlights how access to justice depends on effective remedies against state overreach. His analysis of the JY case illustrates how the EU Court of Justice approaches situations where the exercise of state power over naturalisation may disproportionately undermine individual rights, producing consequences as severe as statelessness. Through analysis of the JY case, Marković shows how the CJEU cautiously advanced proportionality review without dismantling national discretion over nationality. By highlighting the Court's reliance on proportionality and the growing Europeanisation of nationality law, Marković's paper complements the preceding discussions on property and digital assets, showing that across diverse contexts, be it ownership of land, intangible assets, or citizenship, the challenge remains how to secure effective enforcement of rights against state and institutional power.

Finally, Petar Mitrović's contribution, *Moral Human Rights, Atypical Humans, and the Under-Inclusiveness Objection*, brings the discussion to the philosophical foundations of rights themselves. While the preceding papers showed how rights may be undermined in practice (through unclear property regimes, expansive state powers of expropriation, or restrictive

nationality policies), Mitrović asks a prior question: who is considered a right-holder in the first place? By analyzing the problem of so-called "marginal humans" and the under-inclusiveness objection, his argument highlights that access to justice presupposes not only the existence of legal remedies but also the recognition of every human being as a rights-holder. Without such a foundation, even well-developed legal frameworks may exclude those deemed "atypical". In dialogue with the preceding papers on property, nationality, and citizenship, his contribution underscores that the most basic question for any legal system is who is recognized as having rights at all.

The courtroom scene evoked in Galanter's analysis at the beginning of this introduction reminds us that the struggle for access to justice is not only about rules and procedures, but about the imbalance of resources, knowledge, and recognition. The contributions in this issue extend that insight across domains: from Serbia's judiciary to digital ownership, from property expropriation to EU citizenship, and finally to the very foundations of moral human rights. Together, they suggest that the true test of a legal system lies not in how it treats those who are already repeat players, but in whether it allows one-shotters to vindicate their rights on equal terms.

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