

for Fundamental Rights considers the right of access to justice “not only a right in itself, but an enabling right in that it allows individuals to enforce their substantive rights and obtain a remedy when these rights are violated.”³¹

8. The European Court of Human Rights (ECtHR) has developed general principles in claims of violations of the right to a fair trial and the right to an effective remedy as constituting the right of access to justice. One is the principle that the European Convention on Human Rights is intended to guarantee “not rights that are theoretical or illusory but rights that are practical and effective.”³² In applying this principle, it has held that the right to a fair trial is not effective “unless the requests and observations of the parties are truly ‘heard,’ that is to say, properly examined by the tribunal”³³ and unless judgments are adequately reasoned, as required by the nature of the decision and the circumstances of the case.³⁴ Another is the principle that the right of access to a court guaranteed by Article 6 (1) of the European Convention on Human Rights is not absolute, but may be subject to limitations. The state enjoys a certain *margin of appreciation* in regulating the right. However, the limitations (a) must not “restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired;” (b) must be in pursuit of a legitimate aim; and (c) must show “a reasonable relationship of proportionality between the means employed and the aim sought to be achieved.”³⁵ Specific to civil claims, the European Court of Human Rights has declared it inconsistent with the rule of law and the basic principle of Article 6 (1) “if a State could, without restraint or control by the Convention enforcement bodies, remove from the jurisdiction of the courts a whole range of civil claims or confer immunities from civil liability on categories of persons.”³⁶
9. The UNDP has defined access to justice as “the ability of people to seek and obtain a remedy through formal or informal institutions of justice and in conformity with human rights standards.”³⁷ Accordingly, its conceptual framework for access to justice includes the following components:
 - (a) *a normative framework*, consisting of “laws, procedures and administrative structures in place and understood by claim holders and duty bearers;”
 - (b) *legal awareness*, which means that “claim holders are aware of the law and their rights under it and know what to do in case of a grievance;”

30. Arts. 2 (3) & 14; European Union Agency for Fundamental Rights 2011.

31. European Union Agency for Fundamental Rights 2011.

32. *Sabeh El Leil v. France*, no. 34869/05, 29 June 2011, citing *Ait-Mouhoub v. France*, 28 October 1998, § 52, Reports 1998-VIII; *Ajdaric v. Croatia*, no. 20883/09, 13 Dec. 2011, citing *Artico v. Italy*, 13 May 1980, § 33, Series A no. 37.

33. *Ajdaric v. Croatia*, no. 20883/09, 13 Dec. 2011, citing *Dulaurans v. France*, no. 34553/97, § 33, 21 March 2000; *Donadzé v. Georgia*, no. 74644/01, §§ 32 and 35, 7 March 2006; and *Dima v. Romania*, no. 58472/00, § 34, 16 November 2006.

34. *Ajdaric v. Croatia*, no. 20883/09, 13 Dec. 2011, citing *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I.

35. *Sabeh El Leil v. France*, no. 34869/05, 29 June 2011, citing *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 59, ECHR 1999-I; *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 98, ECHR 2001-V; *Fogarty v. the United Kingdom* ([GC], no. 37112/97, § 33, ECHR 2001-XI; *Cudak v. Lithuania* ([GC], no. 15869/02, §§ 55, ECHR 2010-).

36. *abeh El Leil v. France*, no. 34869/05, 29 June 2011, citing *Fayed v. the United Kingdom*, 21 September 1994, § 65, Series A no. 294-B.

37. UNDP 2005, p. 5.