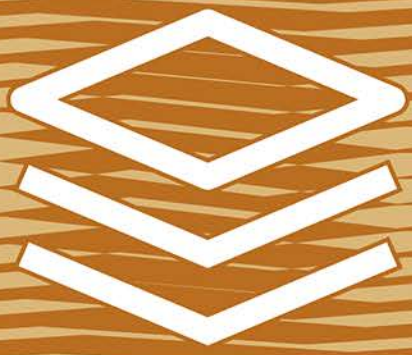
EU LAW LIVE
PRESS

RES JUDICATA
IN EUROPEAN UNION LAW
A MULTI-FACETED PRINCIPLE IN A MULTILEVEL JUDICIAL SYSTEM

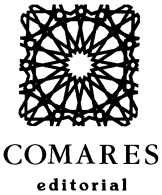


ARACELI TURMO

RES JUDICATA
IN EUROPEAN UNION LAW
A MULTI-FACETED PRINCIPLE IN A MULTILEVEL JUDICIAL SYSTEM

ARACELI TURMO

EU LAW LIVE
PRESS



EU Law Live Press is part of EU Law Live, promoting quality legal analysis and information in all relevant fields of the European Union's legal order

© Araceli Turmo
© EU Law Live S.L.

All rights reserved. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of EU Law Live S.L. You may not circulate this book in any other format and you must impose the same condition on any acquirer

First published in 2022
Printed in Granada, Spain
Designed by Javier López

ISBN: 978-84-123589-3-3 / 978-84-1369-474-0
Depósito Legal: Gr. 1670/2022

© EU LAW LIVE S.L.
María de Molina 41, 28006
Madrid (Spain)
http://www.eulawlive.com
E-mail: info@eulawlive.com

© Editorial Comares, S.L.
Polígono Juncaril, C/ Baza, parcela 208
18220 Albolote (Granada)
http://www.comares.com
E-mail: libreriacomares@comares.com

Fotocomposición, impresión y encuadernación: COMARES

RES JUDICATA
IN EUROPEAN UNION LAW
A MULTI-FACETED PRINCIPLE IN A MULTILEVEL JUDICIAL SYSTEM

CONTENTS

ACKNOWLEDGEMENTS . . . . . p. ix

LIST OF ABBREVIATIONS . . . . . p. xi

A NOTE ON TRANSLATION . . . . . p. xiii

CHAPTER 1. Introduction . . . . . p. 1
1.1. A short introduction to res judicata . . . . . p. 1
1.2. Introduction to the following chapters . . . . . p. 7

Chapter 2. The Specific Nature of Res Judicata in the EU Legal System . . . . . p. 11
2.1. The sources and origins of res judicata in EU law . . . . . p. 11
2.2. The nature of res judicata in EU law . . . . . p. 18
2.3. The scope of res judicata in EU law . . . . . p. 20

Chapter 3. The Constitutional Basis for Res Judicata in EU Law . . . . . p. 27
3.1. Legal certainty: res judicata as a guarantee for stability within the legal system . . . . . p. 28
3.1.1. Legal certainty as the basis for the EU's doctrine of res judicata . . . . . p. 28
3.1.2. Legal certainty and the EU law rules protecting res judicata . . . . . p. 31
3.2. Fundamental rights: res judicata as a guarantee for the rights of litigants . . . . . p. 35
3.2.1. Res judicata as a tool to ensure the judicial protection of litigants . . . . . p. 35
3.2.2. Res judicata and effective judicial protection in EU law . . . . . p. 38
3.2.3. Res judicata and ne bis in idem . . . . . p. 41

Chapter 4. National Res Judicata in the Judicial System of the EU . . . . . p. 45
4.1. National res judicata in the EU judicial system . . . . . p. 46
4.1.1. National res judicata in the preliminary reference procedure . . . . . p. 46
4.1.2. National res judicata and the enforcement of EU law . . . . . p. 49

4.2. National res judicata and exceptions to procedural autonomy . . . . . p. 53
4.2.1. A recognition of the importance of res judicata in national legal orders . . . . . p. 54
4.2.2. Restrictions of res judicata justified by effectiveness . . . . . p. 60

Chapter 5. Res Judicata as a Basis for Inadmissibility . . . . . p. 65
5.1. Preclusion: the traditional function of res judicata . . . . . p. 66
5.1.1. The introduction of the negative function as the core of res judicata in EU law . . . . . p. 66
5.1.2. The identification of res judicata within the decisions of EU Courts . . . . . p. 68
5.1.3. The procedural conditions for the enforcement of the objection of res judicata before EU Courts . . . . . p. 73
5.1.4. Other manifestations of the negative function of res judicata before EU Courts . . . . . p. 76
5.2. The three criteria of identity . . . . . p. 78
5.2.1. The first requirement: identical parties . . . . . p. 79
5.2.2. The second and third requirements: identical disputes . . . . . p. 83

Chapter 6. Res Judicata as a Form of Evidence . . . . . p. 89
6.1. The varied functions of res judicata in EU procedural law . . . . . p. 89
6.1.1. To ensure the stability of legal relationships . . . . . p. 90
6.1.2. To manage relations between legal orders . . . . . p. 93
6.2. Pleas based on violations of res judicata . . . . . p. 96
6.3. Res judicata and exceptional review procedures . . . . . p. 100
6.3.1. The revision of judgments . . . . . p. 100
6.3.2. Third-party proceedings . . . . . p. 103

Chapter 7. Res Judicata and Judicial Review . . . . . p. 107
7.1. The concept of ‘absolute’ res judicata in EU law . . . . . p. 108
7.2. The extended scope of res judicata of annulment judgments . . . . . p. 110
7.2.1. The scope of absolute res judicata in EU law . . . . . p. 110
7.2.2. Res judicata and the dismissal of actions for annulment . . . . . p. 117
7.3. Res judicata and objections of illegality . . . . . p. 121

Chapter 8. Res Judicata and Preliminary References . . . . . p. 127
8.1. The role of res judicata in preliminary references as a multilevel procedure . . . . . p. 128
8.2. Res judicata and the impact of preliminary rulings on other courts . . . . . p. 133

9. CONCLUDING REMARKS . . . . . p. 139

TABLE OF CASE LAW . . . . . p. 145
1. COURT OF JUSTICE . . . . . p. 145
2. ADVOCATE GENERAL OPINIONS AND VIEWS . . . . . p. 158

3. GENERAL COURT . . . . . p. 163
4. CIVIL SERVICE TRIBUNAL . . . . . p. 172

BIBLIOGRAPHY . . . . . p. 175

ACKNOWLEDGEMENTS

This book is predominantly based on the research and findings made for my PhD dissertation, supervised by Fabrice Picod at the Université Panthéon-Assas (Paris 2) and published, in French, by Bruylant in 2017. I wish to express, once again, my most sincere gratitude to Professor Picod for his invaluable advice and support throughout and after my PhD, as well as to my colleagues at Panthéon-Assas and at the Université de Genève and Université Paris-Est Créteil where I completed my dissertation. I also wish to thank Nantes Université, where I now work as *maîtresse de conférences*, and my research unit, *Droit et changement social*, which have been wonderfully supportive environments to conduct research and construct projects in European Union law. I am particularly grateful to my colleagues Carole Billet and Jean-Christophe Barbato whose kindness and enthusiasm made me feel at home at Nantes Université from the start.

This book was written in part during my stay as a visiting professor at the Scuola Superiore Sant'Anna, Pisa, in 2022. The stay was made possible by funding received from the Pays de la Loire region and Nantes Université for my research project on the construction of European judicial standards, as part of the 'Étoiles montantes en Pays de la Loire' programme which provides generous support to early career scholars. I am truly grateful to the region and the University, as well as to the Scuola, for having provided me with this opportunity. My most sincere thanks to Giuseppe Martinico, who supported my application and gave me a wonderful welcome in Pisa, as well as to the other colleagues from Sant'Anna, the Università di Pisa and the Università di Siena, in particular Giacomo Delledonne, Paolo Addis, Francesca Episcopo and Chiara Angiolini. Being able to discuss my research with you and to receive your invaluable comments made my time in Pisa an irreplaceable, as well as immensely enjoyable, experience.

Last but not least, I wish to give my most heartfelt thanks to EU Law Live Press, and to my friends and colleagues Daniel Sarmiento and Xavier Groussot for their keen interest in my research on the topic of res judicata and their enthusiastic support for this project. Without your encouragements, this book would probably not have been written. I truly appreciate your help and your feedback and I look forward to many other opportunities to collaborate in the future.

LIST OF ABBREVIATIONS

cit.	cited
CJEU	Court of Justice of the European Union
ECSC	European Coal and Steel Community
EEC	European Economic Community
et seq.	and the following
EU	European Union
EUIPO	European Union Intellectual Property Office
ibid.	ibidem
para./paras	paragraph/paragraphs
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union

A NOTE ON TRANSLATION

Although the concept of res judicata will be familiar to all lawyers trained in European legal systems, the principles, rules and doctrines constructed over time in different national traditions do vary significantly. The most striking contrast is probably that between civil law traditions, on which the rules introduced in EU procedural law are based, and the common law approach to res judicata. The English vocabulary employed in this book is therefore not at all that of English procedural law and very few references will be made to the common law doctrine of res judicata. The use of English to describe procedural mechanisms which are largely foreign to the judicial systems which use that language poses significant challenges.

In an effort to be as accurate and consistent as possible, the book attempts to use the English vocabulary found in the publications of the EU Courts themselves. However, this approach does not avoid all difficulties. First, because res judicata often operates as a bar to admissibility and is discussed in the context of procedural issues in disputes which are otherwise of little import, many of the decisions discussed in the book have not been translated into English. A significant number are only available in French and/or the language of the proceedings. This is an issue for much of the case law cited in the book, although explicit mentions of the absence of an English translation are only made when it is relevant for the matters being discussed. Second, even when a translation is published, the EU Courts' own services have sometimes found it difficult to transcribe the legal concepts employed into the English versions of the text. This applies to many terms used in EU procedural law, however it is particularly the case here. Sometimes the mention of res judicata is present in the original French and other language versions but disappears from the English language text.[1] In other cases, a change in the terminology used by the Courts in French will not be adequately translated or appear only later in the English versions of the judgments.[2] For this reason, much of the work carried out in preparation for this book was done in French

[1] One of the most important precedents on the issue translates 'rules, with the authority of res judicata' (*tranche, avec l'autorité de la chose jugée*) into 'conclusively determines a question…': Order of the Court of Justice of 5 March 1986, *Wünsche Handelsgesellschaft GmbH & Co. v Germany* (C-69/85, EU:C:1986:104), para. 13; a more recent order inexplicably translates the now well-established concept of *autorité de la chose jugée* into 'authority of the judgment delivered': Order of the General Court of 13 September 2016, *EDF Luminus v European Parliament* (T-384/15, EU:T:2016:512), para. 45.

[2] For example, the change in the terms describing the elements of the test applicable to objections of inadmissibility based on res judicata, which happened in 1996, was not reproduced in the English version of the judgment and only appeared a few months later in this language. See below, chapter 4, p. 71.

and the reader will occasionally be referred to the French legal terminology employed by the EU Courts. Comments on translation and references to the French versions of judgments are made throughout the book whenever it is necessary to better understand the legal issues being discussed.

The concept of res judicata was introduced into European Community law very early on by the European Court of Justice and it remains an essential component both of EU procedural law and of the interactions between national procedural systems and EU law. It is a fascinating example of the influence of comparative law on the ECJ and of this institution's normative powers. It is also at the heart of many conflicts with national courts, as EU law requires restrictions to national understandings of the scope of rules ensuring the finality of judicial decisions. Several recent judgments of the ECJ demonstrate that the issue remains important but also that litigants - and sometimes the Court itself - are not sufficiently aware of the rules established in the case law. A well-known and fundamental characteristic of any procedural system, this concept remains under-studied in EU law.

This book aims to provide practitioners and scholars with a detailed analysis of the nature, forms and functions of res judicata in the EU legal order, both as it applies within EU procedural law and with regard to EU law's impact on domestic rules. It includes a systematic presentation of the EU Courts' case law, explains the detailed procedural rules constructed by the Courts and suggests interpretations or clarifications where the rules are less well-established. It puts EU law into perspective through a comparative analysis, delving into the sources of the terminology and types of reasoning used by the Courts. The book also explains the distinction and relationship between res judicata and concepts such as the finality of judgments, ne bis in idem or precedent in EU law. It hopes to provide a reference point on the topic of res judicata in EU law, but also to be a starting point for further analysis and discussions on an important aspect of the EU judicial system.

ISBN 978-84-1369-474-0

9 788413 694740

DESIGN BY JAVIER LÓPEZ

www.comares.com

EULAWLIVE PRESS

www.eulawlive.com