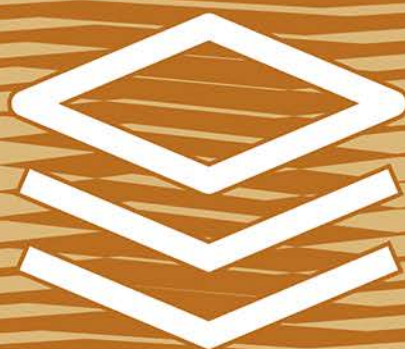


EULAWLIVE
PRESS

RES JUDICATA

IN EUROPEAN UNION LAW

A MULTI-FACETED PRINCIPLE IN
A MULTILEVEL JUDICIAL SYSTEM



ARACELI TURMO



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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.



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