

Res judicata in the free movement of judgements

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The EU-EN₄s project - an overview

16 Partner institutions

- Faculty of law, University of Maribor, Slovenia
- Institute for Comparative Law at the Faculty of Law in Ljubljana, Slovenia
- Chamber of Notaries of Slovenia
- CEPRIS, Slovenia
- University of Rijeka, Faculty of Law, Croatia
- University of Graz, Austria
- Masaryk University, Faculty of Law, the Czech Republic
- University of Wrocław, Poland
- Mykolas Romeris University, Lithuania
- Portucalense University, Portugal
- Boleo Global sl, Spain
- Leibniz University of Hannover, Germany
- University of Maastricht, the Netherlands
- Uppsala University, Sweden
- UCLan Cyprus
- University of Tirana, Albania

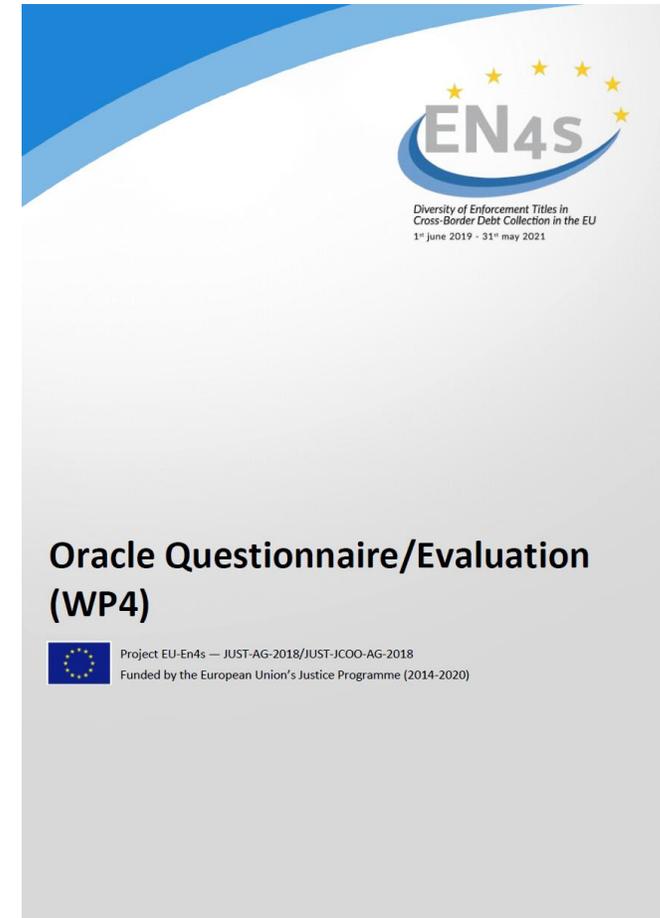
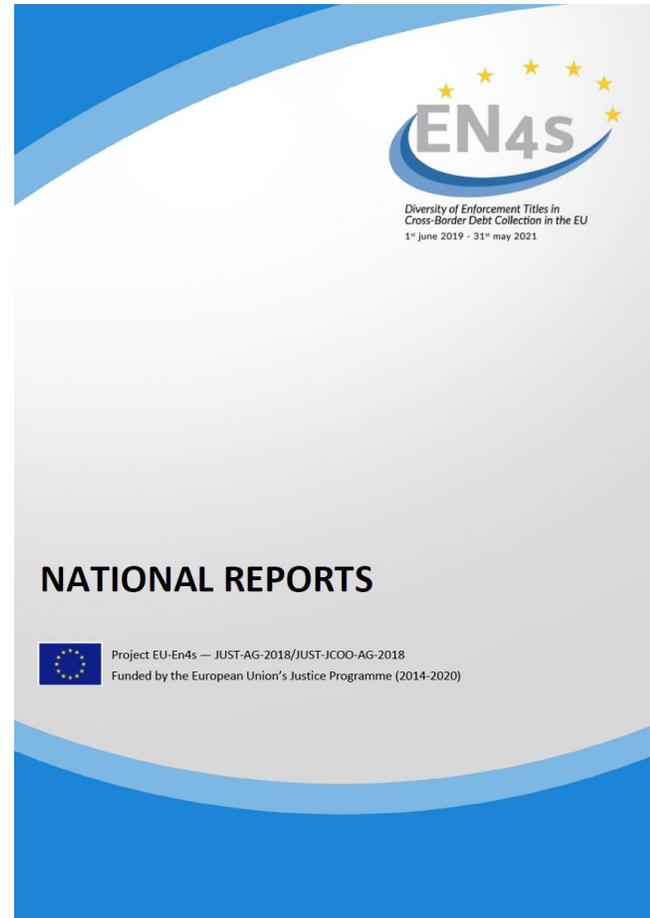
Research goal

The research will contribute to a better understanding of differences in the **structure, content and effects** of judgements in individual Member States.

„Free movement of judgements“

Main Deliverables

- National Reports (on substance and effects & structure)



Ancillary Deliverables

Glossary



Project EU-En4s — JUST-AG-2018/JUST-JCOO-AG-2018
Funded by the European Union's Justice Programme (2014-2020)



Enforcement titles in national legal orders of Member states

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Project EU-En4s — JUST-AG-2018/JUST-JCOO-AG-2018
Funded by the European Union's Justice Programme (2014-2020)



| | | |
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| Slovenia | Claim Enforcement and Security Act (CESA) – slo.: <i>Zakon o izvršbi in zavarovanju</i> (Art. 17 and 18 of CESA) | <p>An enforcement title under Art. 17 of CESA is:</p> <ol style="list-style-type: none">1. An enforceable court decision:<ul style="list-style-type: none">– A judgment;– An arbitration award;– A decree, a payment or another order from court or arbitration;– A court settlement (concluded before a court);2. An enforceable notarial deed;3. Another enforceable decision or a document which is by law, ratified and published international treaty or in the Republic of Slovenia directly applicable legal act of the European union (henceforth EU) specified as enforcement title. <p>Enforceable decisions rendered in civil procedure are (Art. 18 of CESA):</p> <ul style="list-style-type: none">– Condemnatory judgment and condemnatory decree, rendered in contentious civil proceedings or in procedures before specialised courts;– Condemnatory decree, rendered in non-contentious civil procedures;– Condemnatory decree, rendered in enforcement procedure |
|-----------------|--|--|

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Ancillary Deliverables

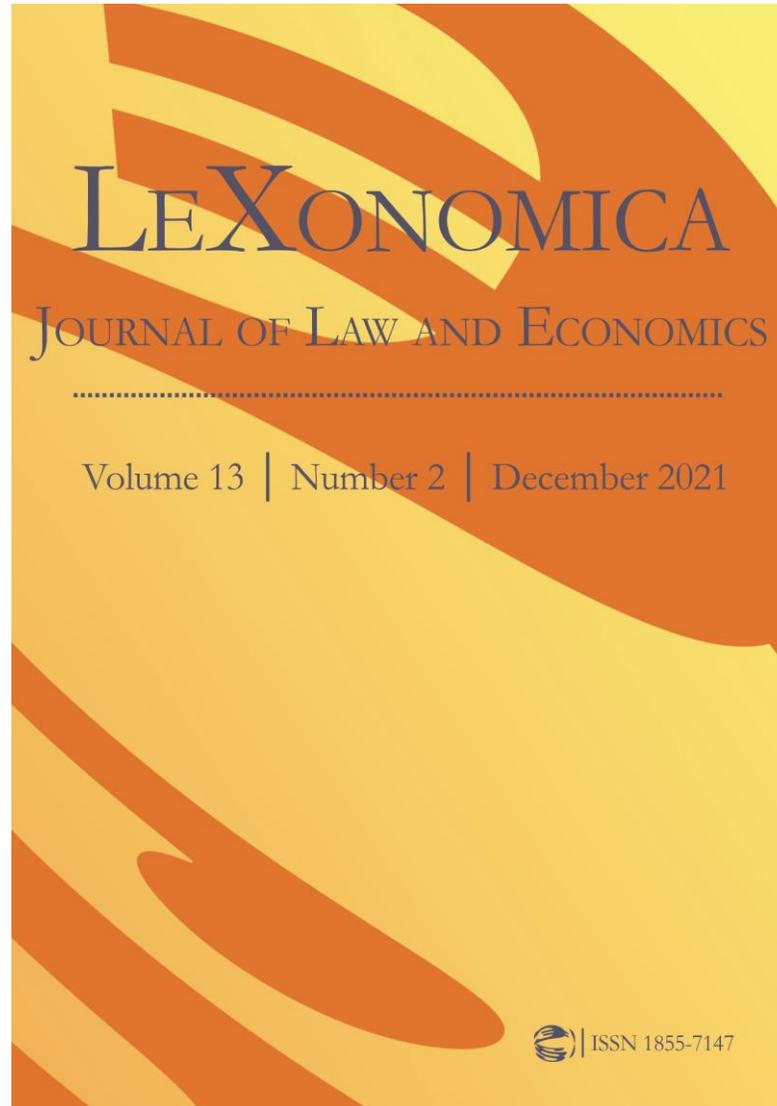
Manual



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Scientific and
Expert Articles



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THE CONCEPT OF RES JUDICATA IN THE
COMMON LAW SYSTEM WITH EMPHASIS ON
CYPRIOT AND UK PERSPECTIVES

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international
litigation

Abstract The doctrine of res judicata is an important feature in many common law systems, most notably formulated in English law. This paper examines its rationale, purpose and scope under common law, with a focus on the cause of action estoppel and issue estoppel, before looking at its application in the legal system of the Republic of Cyprus. Cyprus owes much of its legal system to common law and thus possesses many similarities to the English formulation of the doctrine.

Activities

- Kick-off Meeting (Maribor)
- National Workshops
- Expert Meeting (UCLan Cyprus)
- 2 International Conferences (Slovenia)
- Final Expert Meeting (Albania)



Further information

- Project website (<https://www.pf.um.si/en/acj/projects/prog-eu-en4s/>)
- Facebook (www.facebook.com/EUEN4S)
- Twitter (<https://twitter.com/En4sEu>)
- Blog (<http://blog.pf.um.si/>)
- Flyers and Brochures



IT Deliverables

- Oracle
- Prospects of automated enforcement proceedings
- Interest Calculator

Slovenia: Judgement

ABOUT FAQ HELP

JUDGEMENT
IN THE NAME OF THE PEOPLE

District Court in Maribor, represented by District Court judge Janez Novak,
in litigation between the plaintiffs: CLAIMANT, Slovenska 123, Maribor represented
by the attorney Odvetnik from Ljubljana and the defendants: 1. DEFENDANT GMBH
VILLACH, Neuerstr. 123, Graz, Austria, represented by the attorney Anwalt from
Vienna, 2. SECOND DEFENDANT, Rechtsstr. 13, Berlin, Germany represented by
the Anwalt from München,

for the payment of damages,
after the public main hearing of 31 January 2016,
on 29 April 2018 (after the proclamation of judgement was withheld)

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The selected text is part of the Judgement's introduction. It is crucial for the determination of Parties to the dispute. As evidenced by the above text, two Parties were co-litigants, joined as defendants. This is further reflected in the **ordering part** where the Parties have been condemned. Identification is provided via names and address of Parties and their lawyers. Any and all persons outside the scope of the selected paragraph are not Parties to the dispute and cannot be compelled to take or suffer action on its basis.

← Return to MS selection

Judgements and their effects

- Constitutive/dispositive effects (create, cancel, modify)
- Procedural (res judicata, enforceability)
- Evidential/Factual (Judgement is an instrument presumed to be faithful; it confirms that a claim is judicial)

Res judicata - the continental approach

- Formal *res judicata*
- Material/Substantive *res judicata*

- Positive *res judicata*
- Negative *res judicata*
- Binding effects
- Preclusive effects

Extension of effects

- Judgment of the Court; 4 February 1988; Horst Ludwig Martin Hoffmann v Adelheid Krieg; in Case 145/86

A foreign judgment which has been recognized by virtue of Article 26 of the Convention must in principle have the same effects in the State in which enforcement is sought as it does in the State in which the judgment was given;

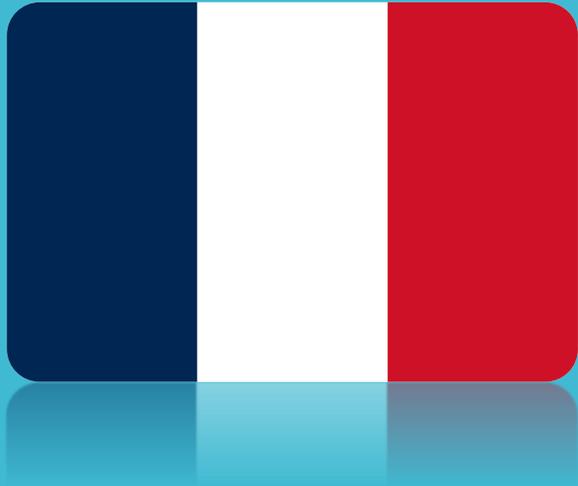
Later: Gothaer

National models

- French
- German
- Italian



- “two-part” (*zweigliedrige*) theory, which is concurrently used to determine the subject-matter of the dispute (*Streitgegenstand*).
- The relief sought (*Antrag*) + the circumstances from which the claimant derives his right (*Lebenssachverhalt*).
- Operative part (*Tenor*) is the only part of the judgement that becomes *res judicata* („A is liable to pay the amount of 200 EUR).
- Factual findings, legal qualifications and determinations on preliminary legal questions.
- (*Zwischenfeststellungsklage*).
- The identification of objective dimensions should therefore not be confused with the scope of binding and preclusive effects
- “one-part” (*eingliedrige*) theory,
- “three-part” (*dreigliedrige*) theories
- Similar models in Austria, Slovenia and Croatia.



The “triple-identity” test of “*parties, cause et objet*”.

- “*cause et objet*” - the same legal grounds and the same relief.
- Under French law (480 CPC) only the operative part (*dispositif*) is covered by *res judicata*.
- the Cour de cassation has introduced uncertainty.
- *motifs decisifs*, which are reasons indispensable for understanding the operative part.

Similar “triple identity tests” are found in **Belgium and Luxembourg**.

Bulgaria seems to also subscribe to the triple identity test; however, uncertainty dwindles over the parts of the judgement endowed with *res judicata*.

- main “motives”, i.e. motives justifying the operative part determining the decision, also enter into force.

Spain - certain modalities and many issues open to interpretation.

- the specific relief sought (*petitum*), and the foundation of that relief (a combination of legally relevant elements that substantiate the claim, i.e. *causa petendi*).
- Legal and factual issues which could have been raised, but were not
- Not only the operative part that is covered, but also other points of the legal and factual findings.
- Only the legally relevant facts, those that identify and individualise the *causa petendi* of the specific claim are covered by *res judicata* effects (*ratio decidendi*).



- general wording of Article 2909 Codice civile.
- subject matter of the case as set out in the relief sought (*petitum*) and the *causa petendi* (the factual and legal basis on which the relief is sought).
- Prejudicial issues (*questione pregiudiziale*) subject to a specific claim do not have *res judicata* effect,
- *antecedenti logici necessari della decisione* do have (implicit) *res judicata* effect
- operative part of the judgement has binding and preclusive effects, together with closely connected reasons.



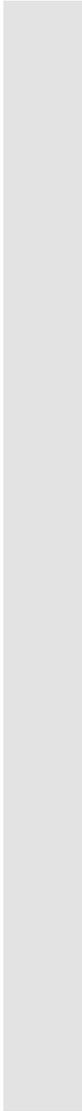
Operative/ordering part (*tenor*)



Operative/ordering part (*tenor*)



„Decisive reasons/preliminary issues“



Gothaer C-456/11

German claimants which filed an action against a German defendant in a Belgian court.

Claimants were bound by a jurisdiction clause, which provided that Icelandic courts have exclusive jurisdiction.

The Belgian judgment became *res judicata*. The claimants then instituted proceedings before German courts

Under the theory of extension of effects, any such effect should be reviewed under Belgian law.

The CJEU – BU Ia is a “*sui generis*” system.”

This reasoning was based on the principle of mutual trust, the need for enforcing common rules of jurisdiction and the prohibition of reviewing the jurisdiction of the Belgian courts.

res judicata under EU law does not attach only to the operative part of the judgment in question, but also attaches to the *ratio decidendi* of that judgment, which provides the necessary underpinning for the operative part and is inseparable from it.

Derivatives

A person domiciled in a Member State may be sued in another Member State... in matters relating to a contract, in the courts for the place of performance of the obligation in question

- Dispute in Member State A on the jurisdictional grounds of Article 7(1)(b) Bla
- the court declines jurisdiction because it considers that the place of performance is in Member State B
- the courts of Member State B should be bound by that determination,
- courts in other Member States should reject jurisdiction

Doppelrelevanten Tatsachen

- Court in Member State B should not be precluded from finding no valid contract or tort committed

Non- applicability

- Insurance, employment, consumer contracts

Further examination

- It is now possible for a national court that does not have jurisdiction to essentially establish a binding referral of a dispute by means of a “procedural judgment” (*Prozessurteil*).
- The CJEU has departed from its long-lasting Hoffman Krieg paradigm.

Further reading: Matthias Klöpfer, Unionsautonome Rechtskraft klageabweisender Prozessurteile – Paradigmenwechsel im Europäischen Zivilverfahrensrecht, GPR, 12 (2015)

Konstantinos D. Voulgarakis, Reflections on the scope of “EU res judicata” in the context of Regulation 1215/2012, Journal of Private International Law, 16:3

Elisa Torralba-Mendiola and Elena Rodríguez-Pineau, Two’s company, three’s a crowd: jurisdiction, recognition and res judicata in the European union, Journal of Private International Law, 10:3

Thank you