INTERNATIONAL ARBITRATION LAW LIBRARY

FINALITY IN LITIGATION

THE LAW AND PRACTICE OF PRECLUSION – RES JUDICATA (MERGER AND ESTOPPEL), ABUSE OF PROCESS AND RECOGNITION OF FOREIGN JUDGMENTS

JACOB B. VAN DE VELDEN

Wolters Kluwer

Finality in Litigation

The Law and Practice of Preclusion – Res Judicata (Merger and Estoppel), Abuse of Process and Recognition of Foreign Judgments

Jacob B. van de Velden

Wolters Kluwer

Published by:
Kluwer Law International B.V.
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
Website: www.wolterskluwerlr.com

Sold and distributed in North, Central and South America by:
Wolters Kluwer Legal & Regulatory U.S.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@wolterskluwer.com

Sold and distributed in all other countries:
Quadrant
Rockwood House
Haywards Heath
West Sussex
RH16 3DH
United Kingdom
Email: international-customerservice@wolterkluwer.com

Printed on acid-free paper.

ISBN 978-90-411-8342-2

e-Book: ISBN 978-90-411-8343-9
web-PDF: ISBN 978-90-411-8344-6

Printed in the United Kingdom.

Table of Contents

Introduction 1
I The Problem Illustrated 6
II Methodological Approach 8
[A] Scope 10
III Terms and Definitions 11
[A] What is Finality in Litigation? 11
[1] The Implicated Public and Private Interests 12
[2] The Balance Struck Between Correctness and Repose 13
[B] Preclusion Law 14
[1] Aspects of Preclusion 16
[2] Factors of Preclusion 16
[C] Recognition of Foreign Judgments 17
[D] Conflicts of Preclusion Laws 18

PART I
Preclusion 19
Introduction 21

CHAPTER 1
England and Wales 25
Introduction 25
[A] *Interest reipublicae ut sit finis litium—Nemo debet bis vexari pro una et eadem causa* 27
[B] Aspects of Preclusion and Outline 29
[1] Advances in Doctrine 31
§1.01 The court *functus officio* 32
[A] The Court's Jurisdiction Exhausted 32
[1] Applicability of the Res Judicata Doctrine 33
[2] Slip-Rule 33
[3] Recall and Variation 34
[4] Reopening Final Appeals 34

[B] Finality on Appeal 35
§1.02 Merger *in rem judicatam* 36
[A] The Meaning of 'Merger' 40
[1] The Cause of Action Extinguished? 41
[2] The Cause of Action Ascertained and Recorded 41
[B] The Effect of Merger 42
[1] The Right of Action Exhausted 42
[2] Summary Judgment 43
[C] Nature 44
[D] Rationale 44
[E] Application 45
[1] Plea of Merger in *rem judicatam* 45
[2] Identity of the Cause of Action 46
[a] One Act of Negligence, but Two Rights Violated: *Brunsden v. Humphrey* 47
[b] *Intentional v. Unintentional Wrongdoing*: Paragon Finance 50
[c] Various Losses, but One and the Same Breach of Contract: *Conquer v. Boot* 51
[d] Different Statutory Rights Violated: *Redcar and Cleveland BC v. Bainbridge* 53
[3] No Requirement: Identity of the Parties (or Privies) 54
[a] Why Identity of the Parties Between the Prior and Future Case Is Irrelevant 55
[b] Section 34 Civil Jurisdiction and Judgments Act 1982 Contrasted 56
[F] Exceptions 57
[1] Merger 58
[2] The Merger Doctrine 58
§1.03 Estoppel *per rem judicatam* 59
[A] The Meaning of 'Estoppel' 62
[1] The Basis for Estoppel *per rem judicatam* 63
[a] The Role of the Record of Judgment 63
[2] Species of Estoppel *per rem judicatam* 64
[a] Cause of Action Estoppel 64
[b] Issue Estoppel 65
[B] The Effect of an Estoppel 67
[C] Nature 68
[D] Rationale 69
[E] Application 70
[1] Plea of Estoppel 70
[2] A Final and Conclusive Judgment of a Court of Competent Jurisdiction on the Merits of the Claim or Issue 71

[a] Final and Conclusive Judgment 71
[i] No Estoppel on Appeal 72
[b] On the Merits 72
[i] The Court's Finding Must Be Necessary for the Decision 74
[c] Court of Competent Jurisdiction 75
[3] Same Parties 75
[a] Or Privies 76
[4] Same Claim or Issue 77
[a] Cause of Action Estoppel 77
[b] Issue Estoppel 78
[i] The Meaning of 'Issue' and the Identity of Issues 81
[ii] The Scope of the Issue Estoppel 82
[F] Exceptions 83
[1] Special Circumstances 84
[a] New Evidence 85
[b] Change of Law 86
[c] Prior Case of Trifling Importance 86
[d] The Interests of the Public Generally or Some Section of the Public 87
[2] Not for Errors of Law 87
§1.04 Abuse of Process 87
[A] The Meaning of 'Abuse of Process' 88
[1] A Broad, Merits-Based Approach 89
[2] The Balance to Be Struck 89
[3] The Burden of Proof 90
[B] Nature 90
[1] Residual Character of the Doctrine 91
[C] Rationale 92
[D] Effect 92
[E] Relitigation Abuse 93
[1] Attempts to Relitigate Issues Against Third Parties 93
[2] Attempts to Relitigate Issues Determined by a Judgment That Is Not Final and Conclusive 94
[F] *Henderson v. Henderson*-Abuse 95
[G] Collateral Attack-Abuse 96
Summary and Conclusions 98

CHAPTER 2
The Netherlands 101
Introduction 101
[A] *Lites finiri oportet* 102
[B] Aspects of Preclusion 104

[1] Advances in Doctrine 107
§2.01 *Leer van de bindende eindbeslissing* 109
[A] Nature 110
[B] Rationale 110
[C] Application 110
[D] Scope 112
[E] Exceptions 112
§2.02 *Grievenstelsel* 114
[A] Nature 114
[B] Rationale 115
[C] Application 116
[D] Scope 118
[1] Grounds of Public Policy 119
§2.03 *Grenzen van de rechtsstrijd na cassatie* 120
[A] Nature 121
[B] Rationale 121
[C] Application 122
[D] Scope 123
§2.04 *Gebrek aan belang* 124
[A] Nature and Rationale 125
[B] Application 126
[C] Scope 127
[1] Reassertion by Successful Claimants 127
[a] Claim Splitting 127
[b] Collective Interest Claims 129
[c] Court Approved Collective Settlements 130
[2] Reassertion by Unsuccessful Claimants 133
§2.05 *Gesloten stelsel van rechtsmiddelen* 135
[A] Meaning 137
[1] Validity and Force of Law 137
[B] Effect 138
[C] Nature 142
[D] Rationale 142
[E] Application and Scope 143
§2.06 *Afstemmingsregel* 145
[A] Nature 146
[B] Rationale 146
[C] Application 147
[D] Scope 151
[E] Exceptions 152
§2.07 *Gezag van gewijsde* 152
[A] Background 153
[1] A False Start 153
[2] Reconsideration 154

[3] Reinterpretation 156
[4] Recodification 158
[5] Parliamentary History 160
[B] Meaning 161
[1] Conclusive Effect and Force of Law 162
[a] The Roots of the Confusion 163
[2] Force of Law as Precondition for Conclusive Effect 164
[a] Application *erga omnes* and Conclusive Effect 165
[C] Nature and Rationale 166
[D] Application 166
[1] Preconditions 167
[a] A Court of Competent Jurisdiction 167
[b] Validity 167
[c] Force of Law 167
[d] A Plea of Res Judicata 168
[2] Conditions 170
[a] Finding Regarding the Claim or Issue 171
[i] Unnecessary Findings 173
[ii] Finding Not Regarding the Claim or Issue – Failure to State a Case 175
[b] In a Judgment Having Res Judicata Status – Irreversibility of the Finding 178
[c] In Another Case 179
[d] Involving the Same Claim or Issue 180
[i] Identity of Issues 180
[ii] Identity of Claims 181
[e] Between the Same Parties (or Their Privies) 183
[i] Privity 185
[E] Limitations of Scope 187
[1] Interim Judgments 187
[2] Judgments in Petition Proceedings 189
[a] Maintenance and Like Proceedings 190
[b] Insufficiently Adversarial Proceedings 191
[F] Exceptions 192
[1] A Material Change of Circumstances 192
§2.08 *Misbruik van (proces)recht* 193
[A] Effect 193
[B] Nature and Rationale 194
[C] What Amounts to an Abuse? 194
[1] Use of a Right for Another Than Its Intended Purpose 195
[2] Use of a Right That Disproportionately Affects Another's Interest 195
[3] Raising Matters Which Could and Should Have Been Raised Before 196

[4] Developments Regarding Interim Proceedings 197
§2.09 Interface and Delineation 199
[A] *Leer van de bindende eindbeslissing:* Finality Within the Same Instance 199
[B] *Grievenstelsel:* Finality on Appeal 201
[C] *Grenzen aan de rechtsstrijd na cassatie:* Finality after a Successful Cassation Appeal 202
[D] *Gebrek aan belang:* The Lack of a Sufficient Interest in a Claim (the Reassertion of Causes of Action) 202
[E] *Gesloten stelsel van rechtsmiddelen:* Collateral Attacks on Judgments 204
[F] *Afstemmingsregel:* Finality in Interim Proceedings after Judgment in Main Proceedings 207
[G] *Gezag van gewijsde:* Finality in Succeeding Cases (the Contradiction of Judicial Findings) 208
[H] *Misbruik van (proces)recht:* Abuse of Right (Including Abuse of Process) 209
Summary and Conclusions 209

Concluding Remarks 213
[A] General Observations 214
[B] Three Paradigmatic Situations 215
[C] The Finality of a Judgment 215
[D] Finality Within a Case 217
[E] Finality in Another Case 218
[1] Claim Preclusion 219
[2] Issue Preclusion 220
[3] Wider Preclusion 221

PART II
Foreign Judgments 223
Introduction 225
I Recognition of Foreign Judgments 228
II Recognition and Preclusion 228
III Preclusion by Foreign Judgments 230

CHAPTER 3
Recognition of Foreign Judgments 231
Introduction 231
§3.01 England and Wales 233
[A] Why English Courts Recognise Foreign Judgments 233
[1] The Limited Sphere of Validity and Force of Judgments 233
[a] Judgments from Other Jurisdictions Within the UK 234

[i] The Constitutional Principle 234
[ii] Recognition and Enforcement Within the UK 235
[b] Development of a Legal Framework 237
[i] The Obligation to Recognise Foreign Judgments 237
[ii] Comity As Recognition Rationale? 239
[2] The Rationale for Foreign Judgment Recognition 242
[a] Justice 244
[b] Finality 245
[3] The Current Legal Framework 246
[a] Persistent Conceptual Issues 248
[B] Recognition: The Doctrine of Obligation 249
[1] The Old Approach: Foreign Judgments As Evidence 251
[2] The Current Approach: Judgments of Courts of Competent Jurisdiction Create Legal Obligations 251
[a] Faith and Credit to Foreign Judgments 252
[b] Restatement: *Godard v. Gray and Schibsby v. Westenholz* 253
[3] Precondition: Jurisdiction by English Standards 253
[a] The Irrelevance of Foreign Jurisdictional Principles 255
[b] Against This Background: The Nature of the Obligation 255
[i] The Types of 'Obligation' Enforceable 257
[4] Conditions: The Obligation Was Imposed Finally and Conclusively in Proceedings Where the Merits Were Open to Contention by the Defendant 261
[a] The Obligation Was Imposed Finally and Conclusively 261
[b] The Obligation Was Imposed in Proceedings Where the Merits Were Open to Contention by the Defendant 262
[5] Exceptions 264
[a] Matters That Negate the Obligation 264
[b] Matters That Justify a Failure to Comply with the Obligation 264
§3.02 The Netherlands 265
[A] Introduction 265
[1] Background 267
[a] The Dutch Republic: Reciprocity (Enforcement by Pareatis) 269
[i] The Condition of Jurisdiction and Early Public Policy 271

[ii] In the Absence of Reciprocity: The Action on the Judgment 271
[b] French Influence : *révision au fond* (Enforcement by Exequatur) 272
[i] *Holker v. Parker* 272
[ii] The End of French Influence: The Period 1811–1838 275
[iii] The Treatment of French Judgments: Prelude of a Dutch Approach to Foreign Judgments 275
[c] The Dutch Codification of 1838 (Article 431 Rv): The abolition of *révision au fond* (Enforcement Exceptionally by Exequatur) 276
[i] Legislative History 278
[ii] Subsequent Amendment 280
[iii] Early Comment on Article 431 Rv 281
[iv] Early Practice 283
[v] Modern Commentary 284
[B] Why Dutch Courts Recognise Foreign Judgments 289
[1] The Limited Sphere of Validity and Force of Judgments 290
[a] The Link of Article 431 Rv and Territoriality 292
[i] Article 431(1) Rv: The Prohibition of Execution 294
[ii] Judgments That Do Not Require Execution 295
[b] Judgments from Other Parts of the Kingdom (Aruba, Curaçao and Sint Maarten) 296
[c] The Development of a Legal Framework 297
[2] The Rationale for Foreign Judgment Recognition 298
[3] The Current Legal Framework 299
[a] The Enforcement Regime 300
[C] Recognition 301
[1] A Doctrine of Good Faith? 303
[2] A Single Doctrine of Recognition 305
[3] The Precondition: Jurisdiction Based on Internationally Acceptable Grounds 307
[4] The Exception: Public Policy 307
§3.03 The Brussels and Lugano Regime 308
[A] Why Member States Mutually Recognise Judgments 313
[B] Recognition: The Doctrine of Automatic Local Validity 314
[1] Condition: A Judgment Covered by the Regime 315
[2] Exceptions: Rebutting the Presumption in Favour of Recognition 316
[3] Implications of the Brussels I Recast 317
Summary and Conclusions 318

CHAPTER 4
Preclusion by Foreign Judgments 321
Introduction 321
§4.01 England and Wales 322
[A] The Finality of a Foreign Judgment 324
[1] Allegations of Fraud 325
[2] The Role of the Act of State Doctrine 326
[B] Finality in Another Case 326
[1] Claim Preclusion 326
[a] Reassertion: Section 34 of the Civil Jurisdiction and Judgments Act 1982 326
[i] Nature and Rationale 329
[ii] Effect 329
[iii] Conditions 329
[iv] Application: The Indian Grace 331
[b] Contradiction: Cause of Action Estoppel 332
[i] The Cautious *lex fori* Approach: Basis and Elements 333
[ii] Equal Treatment of Foreign and Domestic Judgments 333
[iii] Good Sense: The Need to Take Account of Foreign Preclusion Law 334
[iv] Pleading Foreign Law 335
[v] Cause of Action Estoppel 336
[2] Issue Preclusion 338
[a] Identity of Parties (or their Privies): Carl Zeiss 338
[b] On the Merits; Identity of Issues: The Sennar 339
[c] Preclusion of the Issue of Fraud in the Procurement of a Foreign Judgment; Identity of Parties: House of Spring Gardens (No.2) 340
[d] The Finding Necessary for the Decision; Twin Ratio Problems: Good Challenger Navegante 342
[e] The Court Actually Determined the Issue: *Naraji v. Shelbourne* 344
[f] Identity of the Issues: *Yukos* 344
[3] Wider Preclusion 345
[a] Relitigation-Abuse 346
[i] Foreign Interlocutory Judgments Subject to Appeal Invoked Against a Defendant in a Claim for Mareva-Type Relief 346
[b] *Henderson v. Henderson*-abuse 347
§4.02 The Netherlands 348
[A] The Finality of a Foreign Judgment 349
[B] Finality in Another Case 350

[1] Claim Preclusion 350
[a] Reassertion 350
[b] Contradiction 351
[i] Brussels and Lugano Regime 351
[ii] International Agreements 351
[iii] Specific Domestic Statutes 354
[iv] Common Law 354
[2] Issue Preclusion 358
[3] Wider Preclusion 358
Summary and Conclusions 359

Concluding Remarks 363
I General Observations 363
II Two Distinct Problems 363
III Recognition of Foreign Judgments 363
[A] Why Courts Recognise Foreign Judgments 364
[1] The Root Cause: Territoriality 364
[2] Recognition Rationale: Finality and Justice 365
IV Preclusion by Foreign Judgments 365
[A] The Finality of a Judgment 366
[B] Finality in Another Case 366
[1] Claim Preclusion 366
[2] Issue Preclusion 367
[3] Wider Preclusion 367

PART III
Harmonisation, Choice of Law, and a Suggested Approach 369
Introduction 371

CHAPTER 5
The Harmonisation of Preclusion Law 373
Introduction 373
[A] Comparative Perspective 375
§5.01 The Finality of a Judgment 376
[A] Exclusion of Collateral Attack on Judgments 377
[1] Infringements of EU Law 379
§5.02 Finality in Another Case 380
[A] Claim Preclusion: Reassertion 380
[1] The Scope of Preclusion 383
[2] Issue Preclusion: Issues That Go to the Effectiveness of the Brussels and Lugano Regime 384
[3] The Scope of Preclusion 388
[a] Final Judgments Only? 388
[b] Findings Regarding Jurisdiction Only? 389

[c] Preclusion by Foreign Judgments Only? 391
§5.03 Limits of European Preclusion Law 391
[A] Constitutional Limits 391
[1] Procedural Autonomy 394
§5.04 Remaining Scope for Divergence 395
[A] The Scope of Claim and Issue Preclusion 397
[B] Wider Preclusion 397
[C] Third State Judgments 397
Summary and Conclusions 398

CHAPTER 6
Choice of Preclusion Law 399
Introduction 399
§6.01 The European Approach 401
[A] The Hoffmann Principle 401
[1] Significance 402
[a] The English Approach: The *Cautious lex fori* Approach 403
[b] The Dutch Approach: Law of the Rendering Court 403
[c] Limitation of Effects under Apostolides? 406
[2] Scope 408
[3] Public Policy 408
[a] Underpreclusion 411
[i] Too Little Preclusive Effect under the Law of the Rendering State 412
[ii] A Judgment Deprived of Its Preclusive Effect under Domestic Law 413
[b] Overpreclusion 413
[i] Effects That Would Exceed the Limits of the Jurisdiction of the Judgment-Rendering Court 414
[B] Preclusion Process 415
§6.02 Comparative Perspective: US Full Faith & Credit 416
[A] Due Process 418
[B] Foreign Judgments: The American Law Institute – Recognition and Enforcement of Foreign Judgments – Analysis and Proposed Federal Statute 419
§6.03 A Suggested Approach 421
[A] Statement of Principle 421
[1] Particular Features of Conflicts of Preclusion Laws 423
[a] The Problem Arises after Recognition of the Underlying Judgment 423
[b] Finality in Litigation is a Common Value and Goal 424

[B] Devising a Choice of Law Approach 424
[1] Characterisation of the Issues: An Autonomous International View 427
[2] Proposed Conflicts-Rules 428
[a] Claim and Issue Preclusion 428
[i] Public Policy Exception 429
[b] Wider Preclusion 430
[c] Preclusion Procedure 430
[3] Recap and Assessment 431
[a] Common Law Approaches 431
[i] Assessment 432
[b] The European Approach 434
[i] Assessment 435
[C] Applying the Applicable Law: The Principle of Functional Equivalence 435
[D] Jurisdiction to Determine a Claim or Issue with Finality 437
[E] Comparison with the ALI Proposed Federal Statute, §4 on Claim and Issue Preclusion 441
[1] The Principle: The Law of the Judgment-Rendering State 441
[2] Exceptions 442
[3] Wider Preclusion 443
Summary and Conclusions 446
Concluding Remarks 449
Summary 451
Bibliography 461
Table of Cases 477
Table of Legislation 501
Index 519

Introduction

Courts have long recognised the need for 'finality in litigation' – the principle that in the private and public interest in legal certainty and a proper administration of justice there should be an end to litigation and matters conclusively determined by a court of competent jurisdiction should not, save for exceptional circumstances, be reopened.

Finality in litigation is a 'principle' in the sense that finality in litigation is a value that, though not a rule of law, provides the rationale for rules of law ('preclusion law').[1] The principle is 'general' in that most (if not all) legal systems based on the rule of law – municipal, international and supranational systems alike – recognise the value of finality in litigation.[2] Consequently, finality in litigation is rightly characterised as a *general principle of law* – a principle of law common to all legal systems 'internationally as nationally', as the International Court of Justice (ICJ) put it in the *Genocide case*.[3] In that limited sense, the CJEU in *Kapferer* also reiterated 'the importance, both for the Community legal order and national legal systems, of the principle of res judicata'.[4] (Conversely, unlike suggestions of some to the contrary, the mere fact that finality in litigation is a general principle of law does not make it a general principle of international law (in the sense of binding upon States).)[5]

1. G Fitzmaurice, 'The General Principles of International Law Considered from the Standpoint of the Rule of Law' (1957) Recueil des cours 1, 7.
2. *See* text to n. 49. cf. *Pious Fund of the Californias (USA v. Mexico, 1902)* GG Wilson, *The Hague Arbitration Cases* (Ginn, Boston & London 1915) 2 ('this rule applies not only to judgments of tribunals created by the State, but equally to arbitral awards rendered within the limits of the jurisdiction established by compromise; considering that this same principle should, for an even stronger reason, be applied to international arbitration ... .').
3. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* ('*Genocide Case*') (Judgment) [2007] ICJ 43 [116].
4. Case C-234/04 *Rosmarie Kapferer v. Schlank & Schick GmbH* ('*Kapferer*') [2006] ECR I-2585 [20].
5. cf. G Schwarzenberger, 'The Fundamental Principles of International Law' (1955) 87 Recueil des cours 191, 205. But *see* B Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (Stephens & Sons, London 1953) 336ff, who refers, for instance, to *Interpretation of Judgments Nos 7 and 8 (Germany v. Poland)* [1927] PCIJ Rep Series A No 13, 27 (Anzilotti, dissenting) ('It appears to me that if there be a case in which it is legitimate to have recourse, in the absence of conventions and custom, to 'the general principles of law recognised by civilised nations,' mentioned in No. 3 of Article 38 of the Statute, that case is assuredly the present one. Not without reason was the binding effect of *res judicata* expressly

The need for finality clearly extends beyond borders; as one English judge put it, '[i]t would be impossible to carry on the business of the world if Courts refused to act upon what had been done by other Courts of competent jurisdiction'.[6] Similarly, Juenger, a well-known commentator, observed that '[t]o retry cases which have been authoritatively decided violates fundamental tenets of judicial economy. [...] Such duplication is not only wasteful; it punishes private litigants and exacts a toll from international commerce.'[7] However, national borders diminish the principle's efficacy.[8] This has two main causes.

The first cause for this diminished efficacy of the principle of finality in litigation in cross-border cases is that, despite the general acceptance of the need for finality in litigation, significant divergences exist between preclusion laws through which the principle of finality in litigation is implemented.[9] The preclusive effects of judgments therefore differ from one legal system to another. This 'conflict of preclusion laws' causes both inefficiency and injustice. Inefficiency results from uncertainty as to the risk of relitigation abroad. Parties involved in litigation are unable to clearly predict the preclusive effects that a judgment will have throughout the world, from one legal system to another. This information deficit leads to inefficient court strategies and decisions.

Injustice results either from a failure to impose finality in litigation after the rendition of justice or from imposition of finality absent a prior, adequate opportunity to litigate.[10] The concern of injustice due to finality being imposed absent a prior, adequate opportunity to litigate, is felt most acutely among legal systems that share fundamental rules of justice such as Article 6(1) of the European Convention on Human Rights and Fundamental Freedoms[11] ('ECHR'). Article 6(1) ECHR can be violated not only by a failure to impose finality,[12] but also by the imposition of finality in circumstances where a party had no prior, adequate opportunity to litigate.[13,14] This

---

mentioned by the Committee of Jurists entrusted with the preparation of a plan for the establishment of a Permanent Court of International Justice, amongst the principles included in the abovementioned Article (Minutes, p.335).').

6. (1872-73) LR 15 Eq 383, 386 (James LJ). *See* FT Piggott, *Foreign judgments: their effects in the English Court* (Stevens and Sons, London 1879) 28.
7. FK Juenger, 'The Recognition of Money Judgments in Civil and Commercial Matters' (1988) 36 The American Journal of Comparative Law 1, 4.
8. *Ibid.*
9. *See*, for instance, R Stürner, 'Rechtskraft in Europa' inr Geimer (ed), *Wege Zur Globalisierung de Rechts: Festschrift für Rolf A Schütze zum 65 Geburtstag* (Beck, München 1999) 912 et seq.
10. cf. AT von Mehren and DT Trautman, 'Recognition of Foreign Adjudications: A Survey and A Suggested Approach' (1968) 81 Harvard Law Review 1601, 1603.
11. Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 221.
12. *See Roşca v. Moldova* App No 6267/02 [25] (EctHR, 22 March 2005) ('it is the State's *responsibility* to organise the legal system in such a way as to identify related proceedings and where necessary to join them or prohibit further institution of new proceedings related to the same matter, in order to circumvent reviewing final adjudications treated as an appeal in disguise, in the ambit of parallel sets of proceedings ....') (emphasis added). *See further* text to Chapter 6 n. 74 and, specifically, n. 82.
13. *See*, in this specific context, *Ferenčíková v. Slovakia* App No 39912/09 (ECtHR, 25 September 2012) [50] ('the right to a fair hearing, as guaranteed by Article 6 § 1 of the Convention, must be construed in the light of the principle of the rule of law, which requires that all litigants should