




## THE RELATIVIZATION OF RES JUDICATA

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**Estevão Ferreira Brunelli<sup>1</sup> and Alexandre Barbosa Nogueira<sup>2</sup>**

### ABSTRACT

The relativization of res judicata is a highly relevant topic in Civil Procedural Law, which involves the possibility of reviewing judicial decisions that, in theory, should be final and unchangeable. The general objective of this study is to analyze the theoretical and practical foundations that support the relativization of res judicata, especially in light of the principles of legal certainty and justice. The research will be conducted using a bibliographic methodology, with the analysis of pertinent doctrines, legislation, and case law on the topic. The justification for this study arises from the growing need to balance the stability of judicial decisions with the guarantee of substantive justice, especially in situations where new evidence or supervening facts may demonstrate the injustice of a final and binding decision. The relevance of the topic lies in its current relevance, considering that the concept of res judicata, although traditionally considered absolute, has been rethought in several jurisdictions, including Brazil, given the possibility of serious errors or injustices. The legal debate on relativization aims to improve the judicial system, ensuring that the right to legal certainty does not override the fundamental right to obtain a fair decision.

**Keywords:** Res Judicata. Constitutionality. Relativization.

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<sup>1</sup> Studying Law at Unicesumar Ponta Grossa

E-mail: brunelliestevao@gmail.com

<sup>2</sup> Professor in the Undergraduate Law Program

Unicesumar de Ponta Grossa

E-mail: alexandre.nogueira.adv@gmail.com



## INTRODUCTION

The relativization of *res judicata* is a topic that has sparked extensive debate in the field of law, particularly in civil procedural law. *Res judicata*, as traditionally defined, refers to a judicial decision that can no longer be appealed, thus becoming immutable and final. However, this characteristic of immutability has been questioned, especially when it is observed that, in certain exceptional situations, maintaining *res judicata* may lead to injustices or conflict with other constitutional principles, such as human dignity, public morality, and the collective interest. In this context, the relativization of *res judicata* emerges as a proposal to soften this immutability in specific and exceptional cases, to prevent the perpetuation of decisions that may be manifestly unjust or illegal.

The general objective of this study is to analyze the theoretical and practical foundations of the relativization of *res judicata*, identifying the situations in which it has been applied or defended within the Brazilian legal system, as well as the impacts this flexibilization may have on legal certainty and the protection of fundamental rights.

The methodology adopted for this work is bibliographical research. In this regard, books, scientific articles, and specialized works by renowned authors addressing the subject will be consulted, along with journals and recent academic theses. The doctrinal research will be complemented by a jurisprudential analysis, aiming to understand how the courts have applied the concept of relativizing *res judicata* in concrete cases. Thus, the study seeks to provide a comprehensive and critical view of the subject, without losing sight of the practical aspects of the discussion.

The justification for choosing this topic is the growing relevance that the issue of relativizing *res judicata* has acquired in the current legal landscape. *Res judicata*, as a guarantee of stability in legal relationships, is a fundamental institution for maintaining social and legal order. However, the absolute immutability of *res judicata* may, in some situations, prove incompatible with constitutional principles and the very notion of justice. Judicial decisions based on fraud, error, or evident unconstitutionality are examples of situations that demand a review of *res judicata*, even if on an exceptional basis. The importance of this discussion is accentuated in the context of the Democratic State of Law, where the protection of fundamental rights and the pursuit of material justice should take precedence over mere procedural formality.

Furthermore, the debate on the relativization of *res judicata* is relevant in terms of the need to harmonize legal certainty and justice. Legal certainty, one of the pillars of the Rule of Law, requires that judicial decisions be respected and upheld, as only in this way can the predictability and stability of social and economic relations be ensured. However, when



maintaining an immutable judicial decision constitutes an affront to justice or fundamental rights, the dilemma arises: should legal certainty or the pursuit of material justice be prioritized? The answer to this question involves a careful analysis of each concrete case, which justifies the importance of this investigation.

The relevance of the topic also manifests in its influence on fundamental rights and access to justice. *Res judicata*, in its traditional sense, can, in certain circumstances, prevent the parties from obtaining adequate and effective judicial protection. Thus, the relativization of *res judicata* appears as a possible solution to guarantee access to justice in cases of blatant injustice, contributing to the effectiveness of fundamental rights and strengthening the Democratic State of Law. The jurisprudence of the superior courts, especially the Federal Supreme Court (STF), has shown that the relativization of *res judicata* is a current and highly significant topic, especially when the maintenance of a decision already finalized may represent the perpetuation of an illegality or unconstitutionality.

This research is also justified by the fact that the relativization of *res judicata* challenges traditional concepts of procedural law and requires a critical reflection on the limits of the immutability of judicial decisions. Classical doctrine, which has always valued *res judicata* as a mechanism of legal certainty, now finds itself confronted with a new perspective that considers the need to correct manifestly unjust decisions, even if already final. Such reflection is of utmost relevance for the improvement of the Brazilian legal system and for the development of jurisprudence more aligned with constitutional principles.

Therefore, the relativization of *res judicata* is a topic of great legal and social relevance, addressing central issues for the functioning of the Rule of Law, such as legal certainty, justice, and the protection of fundamental rights. This research intends to contribute to this debate by analyzing the main doctrinal and jurisprudential arguments for and against the relativization of *res judicata* and offering a critical reflection on the implications of this flexibilization for the Brazilian legal system. The methodology adopted, based on bibliographical research, will allow for a thorough and grounded analysis of the topic, providing a comprehensive and updated view of the matter.

## **OF THE RES JUDICATA**

*Res Judicata* is one of the most important institutions in procedural law, as it represents the immutability and definitiveness of judicial decisions, protecting the parties involved in a dispute from the indefinite reopening of legal discussions. It is a guarantee of stability in legal relationships, allowing the parties to trust the judicial decision as final and



unchangeable. In this sense, Liebman (1976) states that “res judicata prevents the same litigation from being reexamined after a definitive decision, providing legal certainty to the parties and society as a whole.”

In Brazil, res judicata is established in the 1988 Federal Constitution, in Article 5, item XXXVI, which states that "the law shall not prejudice acquired rights, the perfect legal act, and res judicata." The inclusion of this provision in the Constitution highlights the importance given to res judicata as a fundamental guarantee in the Rule of Law. In this regard, Dinamarco (2024) observes that the principle of res judicata, in addition to ensuring the stability of judicial decisions, also reflects the principle of legal certainty, which is essential for maintaining social and economic order.

The Brazilian Code of Civil Procedure also regulates res judicata, in Section V, particularly in Articles 502 to 508. According to these provisions, res judicata occurs when a judicial decision can no longer be appealed, becoming definitive. In this way, once a decision has become final, it cannot be altered, unless there is a legal provision that allows for its review, as occurs in rescissory actions.

According to Greco (2015), res judicata can be understood as the characteristic of immutability that the effects of a substantive law judgment acquire when no further appeals can be made in the process in which it was issued. Based on this concept, res judicata applies exclusively to judgments on the merits, as these address the substantive rights of the parties involved. Consequently, the stability of the judicial decision in the legal relationship between the parties does not extend to judgments of dismissal, where the merits are not analyzed.

For Adrião et al. (2018), res judicata is the characteristic attributed to a judicial decision that can no longer be contested by appeal, making it definitive, immutable, and uncontestable. This concept emphasizes the protective nature of res judicata, preventing judicial decisions from being continuously revised, which would generate legal uncertainty and instability in social and economic relations.

Classical doctrine and Brazilian case law have defended that res judicata is a fundamental institution for protecting legal certainty, but it must also be recognized that its absolute immutability may, in some cases, lead to the perpetuation of injustices. This happens especially in situations where the judicial decision results from error or fraud, or when there is a clear violation of constitutional principles. In this context, discussions arise regarding the possibility of relativizing res judicata in exceptional cases, to prevent the perpetuation of unjust or manifestly illegal decisions.



As Nery Junior (2017) argues, *res judicata* should not be viewed as an absolute value because, while it plays an essential role in legal certainty, it is equally important to preserve substantive justice. The author argues that, in exceptional situations, the relativization of *res judicata* is possible, especially when its maintenance would violate fundamental rights or constitutional principles. However, the relativization of *res judicata* is a subject that generates controversy in the doctrine, as some believe that relaxing this institution could undermine legal certainty and trust in judicial decisions.

Case law from the higher courts, particularly the Federal Supreme Court (STF), has reflected this tension between the legal certainty provided by *res judicata* and the need to ensure substantive justice. In some rulings, the STF has accepted the relativization of *res judicata* in exceptional cases, especially when there is evidence of fraud or a violation of constitutional norms. However, these rulings are seen as exceptions to the rule of immutability, and the application of this understanding is restricted to extremely exceptional situations.

Indeed, as Arruda Alvim (2021) notes, the relativization of *res judicata* should only be accepted in cases where maintaining the final decision would result in evident injustice or a violation of fundamental rights. The author emphasizes that the relativization of *res judicata* should be used cautiously to avoid compromising legal certainty and preventing the indiscriminate reopening of final decisions.

Although doctrine and case law recognize the importance of *res judicata* as an essential guarantee in the judicial process, the debate on its flexibility in exceptional cases has gained momentum in recent years. This debate is particularly relevant in a context where fundamental rights and the protection of human dignity are increasingly valued within the Brazilian legal system. The relativization of *res judicata*, though viewed with caution, is a way of ensuring that substantive justice prevails over procedural formalism, especially when there is a clear violation of rights or constitutional principles.

In conclusion, *res judicata* is a central institution in Brazilian procedural law, representing the guarantee of immutability and definitiveness of judicial decisions. Its importance lies in protecting legal certainty and the stability of social and economic relations. However, doctrine and case law have acknowledged that, in exceptional cases, the immutability of *res judicata* can be relativized to prevent the perpetuation of injustices or manifestly illegal decisions. The balance between legal certainty and substantive justice is the great challenge posed by *res judicata* in the Brazilian legal system, and the debate on this issue continues to evolve as new issues and concrete cases are brought before the courts.



## MATERIAL RES JUDICATA

Material Res Judicata is one of the central concepts in civil procedural law, responsible for ensuring the stability of judicial decisions and ensuring that, once a conflict has been decided, it cannot be judicially revisited. According to Article 502 of the Brazilian Code of Civil Procedure, material res judicata occurs when a judgment on the merits becomes final, making it immutable and indisputable, binding both the parties and the judiciary, and preventing the same issue from being reviewed. This legal phenomenon aims to preserve legal certainty, social peace, and trust in the justice system, which is essential for consolidating the Rule of Law.

The concept of material res judicata traces back to ancient notions of stability and security in legal relationships. According to Theodoro Junior (2024), res judicata is the condition that gives a judgment a definitive character, making it unalterable and unquestionable, with no possibility of being reviewed by appeal or any other form of challenge. Therefore, material res judicata prevents the rediscussion of the same litigation under the same terms, ensuring that the outcome of a judicial proceeding is final. This immutability is important not only to protect the interests of the parties involved but also to safeguard the judiciary from an overload of repetitive and unnecessary actions, contributing to its efficiency and speed.

Brazilian procedural doctrine offers rich reflections on the importance of material res judicata in the legal system. Dinamarco (2024) argues that material res judicata represents an "instrumentalization of justice," with the essential role of stabilizing social relationships. It guarantees the parties and society that a judicially resolved conflict will not be reconsidered.

The distinction between formal res judicata and material res judicata is crucial for understanding the depth of this institution. While formal res judicata is limited to the procedural effects, preventing the rediscussion of the process within the same procedure, material res judicata transcends the limits of the specific process, radiating effects beyond it, making the content of the decision immutable in any judicial sphere. According to Nery Junior (2017), material res judicata encompasses the legal relationship of substantive law that has been resolved in the process, such that the decision becomes final when it can no longer be altered, even if other processes address the same subject.

However, material res judicata is not an absolute institution, and Brazilian law provides some exceptions that allow for the re-examination of a matter, even after it has become final. The rescissory action, provided for in Article 966 of the Code of Civil Procedure, is the main mechanism that allows for the invalidation of material res judicata in

cases of blatant judicial error, fraud, or manifest illegality. According to Didier Jr. (2016), the rescissory action is an extraordinary remedy aimed at annulling a judgment on the merits that has already become final when there are serious defects, such as the evident violation of a legal norm. Although an exceptional measure, the existence of the rescissory action demonstrates that material *res judicata*, while immutable, can be reviewed in exceptional circumstances to ensure that justice prevails over procedural formalities.

Material *res judicata* is closely related to the notion of legal certainty, one of the pillars of the Democratic Rule of Law. According to Marinoni and Arenhart (2017), legal certainty is an essential value for the proper functioning of the justice system, ensuring that individuals can trust judicial decisions and adjust their behavior based on the law that has been definitively established by the state. Without material *res judicata*, it would be difficult to ensure this trust in judicial decisions, and society would be subjected to constant instability, with decisions being continually reviewed or disregarded.

Furthermore, material *res judicata* also plays a significant role in preserving procedural economy. Preventing the indefinite rediscussion of claims contributes to the rationalization of the judiciary's resources and avoids the multiplication of lawsuits on the same topic. In this regard, Arruda Alvim (2021) highlights that material *res judicata* is a mechanism of procedural rationalization aimed at preventing the waste of time and resources on the reanalysis of already decided matters, allowing the judiciary to focus its efforts on new claims. This function of optimizing procedural resources is essential for ensuring the efficiency of the justice system and ensuring that society's needs are met quickly and effectively.

The immutability of material *res judicata*, however, should be viewed in light of its compatibility with other constitutional principles. Contemporary doctrine has discussed the relativization of *res judicata* in situations where its maintenance would represent an affront to fundamental rights or the principle of substantive justice. In this regard, Barroso (2024) asserts that *res judicata* should not be used as a shield to perpetuate injustices or protect decisions that violate fundamental rights. The flexibilization of material *res judicata*, although still viewed cautiously by the courts, reflects the search for a balance between legal certainty and justice—two essential and often conflicting values.

In conclusion, material *res judicata* is a fundamental institution in procedural law, ensuring the stability of judicial decisions and legal certainty. However, its immutability is not absolute, as mechanisms such as the rescissory action allow for its revision in exceptional cases. The preservation of material *res judicata* is essential for trust in the

justice system and for protecting the parties involved in litigation, but it must always be balanced with the protection of fundamental rights and the pursuit of substantive justice.

## FORMAL OR PROCEDURAL RES JUDICATA

Formal *res judicata*, also known as procedural *res judicata*, is an essential concept in procedural law, serving to provide security and stability to judicial decisions. Unlike material *res judicata*, which pertains to the merits of the case, formal *res judicata* refers to the immutability of the decision within the procedural scope, without considering the substance of the dispute. When a final decision achieves formal *res judicata*, it means that regardless of whether the decision on the merits is just or unjust, it can no longer be altered within the same proceeding, thereby consolidating the definitive closure of the procedural controversy.

To understand formal *res judicata*, it is crucial to remember that, in the Brazilian legal system, the closure of a case without an analysis of the merits can also generate permanent legal effects. Jurists Adrião et al. (2018), in their seminal work on the subject, explain that formal *res judicata* pertains to the procedural resolution of the dispute, signifying that the decision can no longer be appealed, even if it did not address the merits of the matter. In other words, even if a decision does not deal with the merits of the case but addresses procedural issues, it may still become immutable and irreversible, preventing the same matter from being revisited within the same proceeding.

To better illustrate this distinction, it is important to note that formal *res judicata* can occur in terminative decisions, which conclude the process without addressing the merits. Arruda Alvim (2021) highlights that in decisions that dismiss the case without adjudicating the merits—such as those based on lack of standing, prescription, or lapse of time—what occurs is formal *res judicata* because the substance of the dispute has not been resolved. In such cases, there is no judgment on the rights claimed by the parties, but rather a decision based on procedural requirements, such as the lack of standing of the parties or the inadequacy of the chosen legal avenue.

Formal *res judicata* also plays a crucial role in safeguarding legal certainty. By preventing procedural issues from being endlessly debated, it ensures the stability of judicial proceedings, allowing the process to be definitively concluded. According to Câmara (2024), in some cases provided for in procedural law, even if the judgment is terminative, it will not be possible to file the same claim again unless the defect that led to the dismissal is corrected. Article 486, §1 of the Brazilian Code of Civil Procedure mentions situations such as *lis pendens* (Article 485, V), rejection of the initial petition (Article 485, I), lack of procedural prerequisites (Article 485, IV), absence of "condition of action" (Article





485, VI), or the existence of an arbitration agreement or a decision by an arbitral tribunal recognizing its jurisdiction (Article 485, VII). In these cases, the terminative judgment possesses stronger stability than other instances of dismissal without a judgment on the merits, and filing a new lawsuit will only be permitted if the obstacle to adjudicating the merits is overcome.

Formal *res judicata* refers to the stability achieved by certain terminative judgments that, upon becoming unappealable, do not decide the merits of the case. However, not all such judgments enjoy this stability.

It is important to mention that, unlike material *res judicata*, which binds future legal actions regarding the same merits, formal *res judicata* does not prevent a new action from being filed on the same cause of action, provided that the procedural obstacles leading to the previous dismissal are resolved. In this regard, Didier Jr. (2016) observes that formal *res judicata* does not prevent a party from filing a new lawsuit after overcoming the procedural defects that resulted in the dismissal of the prior case without a decision on the merits. This demonstrates that, although formal *res judicata* is immutable within the proceeding in which it was declared, it does not have the same extensive reach as material *res judicata*.

It is also essential to understand the constitutional foundation of formal *res judicata* in the Brazilian legal system. Article 5, item XXXVI, of the Federal Constitution of 1988 establishes that "the law shall not prejudice a vested right, a perfectly legal act, and *res judicata*." This provision protects both formal and material *res judicata*, ensuring that judicial decisions are respected and that the legal process achieves its purpose. As explained by Nery Junior (2017), the principle of *res judicata*, enshrined among fundamental rights and guarantees, reflects the need to ensure legal certainty by guaranteeing the immutability of procedural decisions.

Formal *res judicata*, therefore, is an institution that plays a fundamental role in stabilizing procedural decisions, ensuring that once a decision becomes final, the procedural issue cannot be reopened within the same proceeding. It serves as a guarantee that protects the legal system from the perpetuation of disputes, enabling the process to have a definitive conclusion regarding procedural matters. Although it does not directly impact the merits of the case, formal *res judicata* prevents the same process from being endlessly debated through appeals or new judicial provocations.

Thus, the study of formal *res judicata* reveals its importance for the structure of Brazilian civil procedure, especially in terms of legal certainty and social pacification. By preventing the reopening of concluded procedural discussions, formal *res judicata* fulfills an



essential function for the proper functioning of justice. As aptly noted by Theodoro Junior (2024), formal *res judicata* is essential for ensuring the stability of judicial decisions, preventing the process from being reopened procedurally once it has become final. This contributes to order and predictability in legal relations.

## THE LIMITS OF RES JUDICATA

The limits of *res judicata* have been widely debated in legal doctrine, particularly due to the tension between the legal certainty provided by the immutability of decisions and the need for substantive justice. *Res judicata*, in essence, seeks to ensure the stability of legal relations, preventing parties involved in a dispute from having to reopen matters already definitively decided by the judiciary. However, this immutability is not absolute, as there are specific limits regarding the subject matter, the parties, and the temporal scope. These limits reflect the pursuit of a balance between legal certainty and justice and are extensively discussed in Brazilian doctrine by renowned jurists.

Regarding the limits concerning the subject matter, it is understood that *res judicata* encompasses only what was effectively decided by the judge, not extending to issues that were not subject to judicial examination. In this sense, Adrião et al. (2018) emphasize that *res judicata* does not apply to the reasoning of the decision but rather to its dispositive portion, meaning the part of the decision that resolves the main issue in dispute. They point out that the binding effect of a judicial decision is restricted to the content of what was decided in the dispositive section of the judgment that resolves the dispute.

This limitation of the subject matter is essential to ensure that *res judicata* does not affect merely argumentative aspects or issues that were not contested between the parties. In this context, Câmara (2024) adds that *res judicata* does not cover issues that could have been discussed but were, in fact, not addressed, leaving such matters open for discussion in a potential new lawsuit. Thus, *res judicata* is limited to what has been expressly decided, excluding any incidental or accessory issues.

Another relevant aspect concerns the subjective limits of *res judicata*, that is, who are the parties affected by the effects of a judicial decision that has become final. The general rule, provided in Article 506 of the Brazilian Code of Civil Procedure, establishes that *res judicata* is binding only on the parties who participated in the proceedings, without prejudice to third parties who were not involved in the legal relationship. In this sense, Marinoni and Arenhart (2017) affirm that *res judicata* has *inter partes* effects, binding exclusively the individuals who participated in the procedural legal relationship, without affecting those who were not parties to the process. This limitation is a fundamental

guarantee of due process, ensuring that only the parties who had the opportunity to express themselves and exercise their right to defense are bound by the decision.

However, there are exceptions to the general rule, such as in collective actions, where *res judicata* may produce *ultra partes* or *erga omnes* effects, depending on the nature of the right being protected. According to Didier Jr. (2016), in collective actions, *res judicata* may transcend conventional subjective limits, encompassing the entire collectivity or a specific group of people, depending on the scope of the right addressed in the action.

Regarding subjective limits, it is also important to mention the distinction between the main parties and interested third parties. While *res judicata* directly binds the main parties, third parties with a legal interest in the dispute may, in certain situations, be indirectly affected by the decision. In this regard, Greco (2015) points out that the effects of *res judicata* may, in specific situations, extend to third parties who, although not formally parties to the process, have a legal connection to the subject matter. This occurs, for example, in cases of necessary joinder of parties.

The temporal limit of *res judicata* is also a highly relevant aspect. Traditionally, *res judicata* is seen as an immutable and perpetual institution, meaning that once a decision becomes final, it cannot be modified unless there are exceptional situations provided by law. However, there is an increasing doctrinal discussion about the relativization of *res judicata*, especially in cases of unconstitutional or fraudulent decisions. Delore (2013) highlights that in certain exceptional situations, where there is genuine repugnance toward maintaining the decision in the legal system—generally involving concepts such as morality, dignity, and other principles guaranteed by the Constitution—it is acceptable to revise such "repugnant" decisions, even in the presence of *res judicata* and after the deadline for rescission actions has passed. Similarly, Câmara (2024) argues that the inviolability of *res judicata* should not be considered an absolute value and should be flexible in exceptional situations requiring the correction of the decision.

Thus, the limits of *res judicata* are essential for understanding its scope and for protecting principles such as legal certainty and due process. While the subject matter of *res judicata* is restricted to what was effectively decided in the dispositive portion of the judgment, its subjective limits ensure that its effects reach only the parties involved in the dispute, except for exceptions provided by law. Additionally, the temporal limit of *res judicata*, although generally regarded as absolute, may be relativized in exceptional cases where maintaining the decision would represent an affront to justice or fundamental rights. Therefore, *res judicata* should not be understood as an immutable institution in all cases but



should always be interpreted in harmony with constitutional principles and the pursuit of substantive justice.

## ON THE RELATIVIZATION OF RES JUDICATA

The relativization of res judicata has been a topic of frequent debate in Brazilian doctrine and jurisprudence. This concept, which opposes the immutability traditionally attributed to judicial decisions, suggests that, in certain circumstances, res judicata can be made more flexible or revised. Among the main arguments that support relativization are the need to adapt judicial decisions to the Constitution and the protection of fundamental rights, which may be harmed if a decision that has already become final is upheld, even if it is blatantly unconstitutional or unfair.

The Brazilian legal system provides for some situations in which res judicata can be relativized. One of the most discussed hypotheses involves decisions that contravene the Constitution of the Republic. In this sense, Marinoni and Arenhart (2017) argue that res judicata, despite guaranteeing the stability of judicial decisions, cannot override the Constitution and fundamental rights. They state that if a final judicial decision blatantly contradicts constitutional principles, its maintenance may imply the perpetuation of an injustice. This view is widely shared by other scholars who see relativization as a way to prevent the rigidity of res judicata from perpetuating inequity.

Another relevant field in which the relativization of res judicata applies involves paternity investigation actions judged before the popularization of DNA testing. With the advancement of technology and the emergence of DNA testing as a highly accurate tool for determining parentage, many decisions handed down without this test began to be questioned. In this context, in the judgment of Extraordinary Appeal 363,889, which formed Theme 392<sup>3</sup>, The Supreme Federal Court has acknowledged that res judicata can be relativized in cases involving paternity investigations, particularly when the absence of a DNA test results in a decision whose effects would violate fundamental principles enshrined in the Constitution.

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<sup>3</sup> STF- TEMA 392, Tese: Tese: I - É possível a repositura de ação de investigação de paternidade, quando anterior demanda idêntica, entre as mesmas partes, foi julgada improcedente, por falta de provas, em razão da parte interessada não dispor de condições econômicas para realizar o exame de DNA e o Estado não ter custeado a produção dessa prova; II - Deve ser relativizada a coisa julgada estabelecida em ações de investigação de paternidade em que não foi possível determinar-se a efetiva existência de vínculo genético a unir as partes, em decorrência da não realização do exame de DNA, meio de prova que pode fornecer segurança quase absoluta quanto à existência de tal vínculo. Disponível em: <https://portal.stf.jus.br/jurisprudenciaRepercussao/verAndamentoProcesso.asp?incidente=2072456&numeroProcesso=363889&classeProcesso=RE&numeroTema=392>. Acesso em: 17 out. 2024.



Regarding this, Soares and Carabelli (2019) explain that the reevaluation of the merit of declaratory paternity actions was allowed, especially in cases where the original ruling relied on insufficient or absent evidence compared to the unequivocal proof provided by DNA testing. These technological advancements ensure greater accuracy in laboratory results, aiming to prevent the Judiciary from validating glaring injustices. This review of already-decided issues reflects a social evolution and the resulting legal maturity required to address more complex demands. Such an exception is crucial, ensuring that biological truth prevails over outdated judicial decisions based on weak or insufficient evidence.

In civil procedure, the most prominent exception to *res judicata* is the rescissory action. This mechanism allows the modification of a judgment already considered final, provided it is filed within two years. Rescissory actions are exceptional and aim to correct decisions containing severe defects, such as violations of the Constitution, infraconstitutional legislation, or judicial corruption. Adrião et al. (2018) emphasize that the rescissory action does not violate *res judicata* but rather reaffirms it by addressing judgments that disregard legal or constitutional norms. The primary goal of this tool is to prevent the perpetuation of unjust decisions incompatible with the legal system.

Another significant exception pertains to continuing legal relationships, which involve obligations that renew over time, such as alimony payments. Article 505, I, of the Brazilian Code of Civil Procedure (CPC) allows a new case to be filed to adjust the terms of a previous ruling if there is a change in the factual circumstances that originally justified the decision, such as changes in the financial capacity of one of the parties. Dinamarco (2024) notes that the mutability of continuing legal relationships supports the flexibility of *res judicata*, as maintaining the original decision may prove unjust given new developments. The law acknowledges that *res judicata*, in these cases, cannot be absolute since factual realities can change substantially over time.

A striking example reinforcing this idea is the review of alimony payments. When a significant change occurs in the financial capability of the payer or recipient, a new action can be filed to modify the terms of the original ruling. This flexibility aims to prevent the perpetuation of a decision that, due to new facts, has become inadequate or unjust. Didier Jr. (2016) observes that the possibility of revising rulings related to continuing legal relationships reflects the understanding that reality is dynamic and that the law must adapt to these changes. From this perspective, the concept of relativizing *res judicata* extends to situations where changing circumstances justify revisiting the judicial decision.

Another critical aspect of *res judicata* relativization involves addressing material or calculation errors in judicial decisions. According to the CPC, such errors are not covered



by *res judicata* and can be corrected at any time, whether initiated by the court or requested by the parties. These errors, which may include omissions regarding co-litigants or mistakes in the names of the parties, do not affect the essence of the judicial decision but only formal details that do not compromise the judgment's merit. Marinoni and Arenhart (2017) clarify that correcting material errors does not constitute a violation of *res judicata* but is a necessary technical adjustment to ensure the accuracy of judicial decisions. Therefore, the ability to rectify such errors reinforces the understanding that *res judicata* is not an absolute barrier to modifying decisions, provided the changes do not affect the substantive content of the ruling.

The relativization of *res judicata* has been defended in exceptional situations where the rigidity of immutability may compromise constitutional principles or substantive justice. Legal doctrine and jurisprudence have acknowledged that while *res judicata* is essential for ensuring the stability of judicial decisions and legal certainty, circumstances exist where its flexibility is necessary to prevent the perpetuation of injustices or violations of fundamental rights.

Whether in paternity investigations conducted before DNA testing, in continuing legal relationships, or in cases involving material errors, the relativization of *res judicata* arises as a legal solution to reconcile legal certainty with justice and equity.

## THE UNCONSTITUTIONAL RES JUDICATA

The issue of unconstitutional *res judicata* has stood out in the legal arena as one of the most controversial topics in procedural and constitutional law. *Res judicata* is traditionally seen as a guarantee of legal certainty, since it protects a final court decision, granting it stability and preventing it from being revisited indefinitely. However, the debate on the relativization of this guarantee, especially when the final court decision is shown to be contrary to the Constitution, raises important questions about justice, legal certainty, and the limits of the immutability of *res judicata*.

The 1988 Federal Constitution, in its article 5, item XXXVI, establishes that "the law shall not prejudice the acquired right, the perfectly legal act and the *res judicata*". This provision, in essence, aims to protect already consolidated court decisions, ensuring that they cannot be modified by the retroactive application of a new law. However, while legal certainty is guaranteed by *res judicata*, there are situations in which a court decision proves to be unconstitutional, generating a conflict between two fundamental values: legal certainty and substantive justice. In this sense, doctrine and case law have discussed the possibility of relativizing *res judicata* in cases of unconstitutionality, a phenomenon that some jurists



consider necessary so that the court decision does not perpetuate a violation of the Constitution.

According to Prado (2019), an unconstitutional *res judicata* cannot be maintained, since upholding a decision that contravenes the Constitution violates the fundamental principles of the State. For this author, *res judicata*, when it proves to be incompatible with constitutional values, such as human dignity, the principle of equality, or other fundamental rights, cannot be treated as intangible and must be reviewed. This view is echoed in part of the doctrine, which defends the prevalence of constitutional values over the rigidity of *res judicata*, especially when its content is manifestly unconstitutional.

However, this understanding comes up against a difficulty imposed by the Constitution itself, which prevents the creation of a new law that has the power to affect final and binding judicial decisions. As Mendes (2023) mentions, the 1988 Constitution prohibits the retroactivity of laws to the detriment of *res judicata*, creating a significant obstacle to the relativization thesis. Even so, the author recognizes that, in some exceptional cases, it is possible to question the validity of a judicial decision through instruments such as a rescission action or a declaration of nullity, especially when the decision directly contradicts the Constitution. In this sense, the Supreme Federal Court (STF) has faced the issue of unconstitutional *res judicata* in several judgments. This position reflects a growing trend in Brazilian jurisprudence to admit the relativization of *res judicata* in cases of clear affront to the Constitution. On the other hand, part of the doctrine is reluctant to admit such flexibility, as it understands that legal certainty would be seriously undermined. For Nery Junior (2017), *res judicata* is one of the pillars of legal certainty, and its relativization, even in the name of justice, must be accepted with extreme caution. Otherwise, there is a risk of generating intolerable instability in the legal system. According to the author, the review of judicial decisions that have already become final should be exceptional, limited only to situations in which there is no other way to correct a serious injustice, such as in the case of fraud or procedural fraud. Furthermore, it is necessary to consider the position of Barroso (2024), who defends a middle ground between the absolute intangibility of *res judicata* and its complete flexibility. For this author, the relativization of *res judicata* should be considered only in confidential situations, in which the content of the decision violates fundamental rights or the Constitution. He also argues that the immutability of *res judicata* cannot serve as a shield for manifestly unfair or unconstitutional decisions, but warns of the risks of an indiscriminate application of this thesis, which could generate legal uncertainty. Therefore, the discussion on unconstitutional *res judicata* involves a delicate balancing act between legal certainty, an essential principle for the stability of social relations, and substantive



justice, which must prevail in cases of flagrant unconstitutionality. The majority of legal doctrine recognizes that, although *res judicata* is a fundamental value, there are situations in which its maintenance may perpetuate injustice and illegality, thus requiring a review of the decision. However, this relativization must be handled with caution, so as not to weaken confidence in judicial decisions.

Procedural instruments for reviewing unconstitutional *res judicata*, such as rescissory actions, declaratory actions for nullity, and motions to enforce the decision, have been used for this purpose. For example, rescissory actions are applicable when it is found that the decision was made based on a rule that was later declared unconstitutional by the STF. However, it is important to highlight that these mechanisms can only be used in very specific cases, under penalty of compromising legal certainty.

Therefore, the issue of unconstitutional *res judicata* brings to light one of the most complex dilemmas in contemporary law: the balance between legal certainty and justice. Brazilian doctrine and jurisprudence have advanced towards admitting the relativization of *res judicata* in exceptional cases, but always with due caution, in order to preserve the integrity of the legal system.

## CONCLUSION

The relativization of *res judicata* is a topic that prompts extensive debate in the legal realm, especially regarding the tension between two essential values of the Democratic Rule of Law: legal certainty and justice. Addressing this subject requires recognizing that *res judicata*, by its very nature, was designed as a mechanism to protect the stability of judicial decisions, providing the parties involved with the assurance that, once all appeals are exhausted, the matter can no longer be contested. However, the notion that this immutability must be absolute has gradually been questioned, particularly when there are indications that the judicial decision rendered contradicts constitutional principles or fundamental rights.

The relativization of *res judicata*, therefore, emerges as an attempt to balance the rigidity of this guarantee with the need to correct potential injustices consolidated through judicial decisions. In this context, many jurists perceive relativization not as a denial of the principle of legal certainty but as an exceptional tool aimed at preserving substantive justice. While legal certainty is a fundamental value for ensuring predictability and stability in social relations, it should not, in extreme circumstances, outweigh the need to prevent the legal system from perpetuating inequitable or manifestly unconstitutional decisions.



The argument supporting the relativization of *res judicata* rests on the premise that justice cannot be sacrificed at the altar of absolute legal certainty. The immutability of judicial decisions should indeed be safeguarded, but this protection must not become a shield preventing the correction of decisions that violate the Constitution or fundamental principles of law. In such cases, *res judicata* would be relativized in favor of greater justice, recognizing that the original decision, while formally valid, is substantively unconstitutional or unjust.

The complexity of this discussion, however, lies in the limits and conditions under which *res judicata* might be relativized. Allowing unrestricted relativization could create a scenario of even greater legal uncertainty, as any judicial decision, no matter how consolidated, could be continuously challenged, thereby undermining confidence in the judiciary's decisions. For this reason, the dominant doctrine argues that relativization of *res judicata* should only be admitted in exceptional circumstances, where there is a clear affront to the Constitution or fundamental rights, and when no other effective means exist to correct the injustice.

Another aspect worth attention in this debate is the impact that relativizing *res judicata* may have on the balance of powers. By revisiting a decision that has already achieved finality, the judiciary would, in a sense, be exercising control over itself, potentially generating institutional tensions. However, this form of control is neither new nor unprecedented, as the legal system already provides mechanisms, such as rescissory actions, that allow for the reexamination of final decisions under certain conditions. What relativization proposes is the expansion of these mechanisms, particularly in cases of decisions that contradict the Constitution.

The recognition of unconstitutional *res judicata* has been one of the main arguments used to justify relativization. The central thesis is that, although a judicial decision has achieved finality, if its content is manifestly unconstitutional, it should not be immutable. The Constitution, as the supreme norm of the legal system, must prevail over any decision that contravenes it. In this scenario, *res judicata* would be relativized in the name of constitutional supremacy, ensuring that decisions violating constitutional precepts cannot endure indefinitely.

On the other hand, some argue that relativizing *res judicata*, even when restricted to cases of unconstitutionality, still poses risks to legal certainty and the judiciary's legitimacy. Trust in judicial decisions is a fundamental element for social cohesion, and allowing the review of final decisions could erode this trust, especially if relativization is not properly regulated and applied in exceptional circumstances. Thus, extreme caution is required in



applying relativization to ensure that it is used only in situations warranting such a drastic measure, thereby avoiding the trivialization of this mechanism.

Legislators and the judiciary, therefore, face the challenge of striking a balance between preserving legal certainty and correcting unjust decisions. This balance must be built on clear and objective criteria, limiting the relativization of *res judicata* to exceptional cases without compromising the stability of judicial decisions and trust in institutions.

The relativization of *res judicata* also prompts reflection on the role of law in society. Law should not be seen as an end in itself but as an instrument to achieve justice and equity. In this sense, the absolute immutability of judicial decisions, when confronted with unconstitutionality or injustice, can be questioned in light of the overarching principles governing the legal system. Legal certainty, as essential as it is, cannot justify perpetuating a decision that violates fundamental rights or constitutional principles.

Finally, the relativization of *res judicata* should not be viewed as a threat to legal certainty but as an exceptional measure to correct injustices. It is an attempt to balance two fundamental values that may sometimes conflict: security and justice. The debate over relativizing *res judicata* must therefore be conducted cautiously and responsibly, ensuring that this measure is applied only in situations that genuinely justify its use, without undermining confidence in judicial decisions and the stability of the legal system.

In conclusion, the relativization of *res judicata* presents itself as an issue of paramount importance in contemporary law, requiring careful and measured analysis. The possibility of revising decisions that have already achieved finality, while necessary in some cases, must be handled sparingly to avoid compromising legal certainty and the stability of social relations. At the same time, the importance of ensuring that the legal system does not perpetuate injustices, especially those violating the Constitution or fundamental rights, cannot be overlooked. The challenge, therefore, lies in finding a balance that enables the correction of unjust decisions without undermining the integrity and reliability of the legal system.



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