

# The Impact of the European Convention on Human Rights on Private International Law

Louwrens R. Kiestra

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# Preface

In this book interaction between the rights guaranteed in the European Convention on Human Rights (ECHR) and private international law has been analysed by examining the case law of the European Court of Human Rights (the Court) in Strasbourg and selected national courts. In doing so the book has focused on the impact of the ECHR on all three of the main questions of private international law: jurisdiction, the applicable law and the recognition and enforcement of foreign judgments. First, a concise introduction to both private international law and the ECHR has been provided. Next, an important preliminary question has been answered: what is the meaning of Article 1 ECHR for private international law? Thereafter, the impact of the ECHR on the three main issues of private international law has been examined in depth. It has been demonstrated in this book that the impact of the ECHR on private international law is indeed considerable, and that its impact in some areas of private international law is still somewhat underestimated.

This book is based on the research which I mostly carried out at Amsterdam University's Amsterdam Center for International Law (ACIL) during the period 2008–2013. A small part of the research was carried out at the Swiss Institute for Comparative Law. I would like to thank the staff of the Institute for their hospitality.

This research was made possible by the Netherlands Organization for Scientific Research (NWO). It was part of the VICI project on 'The emerging international constitutional order—the implications of hierarchy in international law for coherence and legitimacy of international decision making.' I am grateful to Erika de Wet for giving me the opportunity to be a part of this research project, which allowed me to combine two of my favourite subjects of law.

An older—and abbreviated—version of chapter 4 of this book is based on a presentation delivered at the Colloquium 'The Impact of the European Convention on Human Rights on Private International Law', organized by the University of Amsterdam on 12 November 2010. This presentation was first published in the journal *Nederlands Internationaal Privaatrecht (NIPR)*. My thanks are extended to all the participants at the conference, who provided me with useful commentary.

Many other people have contributed—either directly or indirectly—to this book. I would like to thank, first of all, Jannet Pontier, and Marieke Oderkerk, who helped to guide my research together with Erika de Wet. I would also like to thank Prof. Gerards, Prof. Van Hoek, Prof. Kinsch, Dr. Mak, and Prof. Nollkaemper for their comments on an earlier version of the manuscript.

This book has certainly also benefited from my many discussions on international law—and other miscellaneous subjects—with my former colleagues at the University of Amsterdam, and particularly my colleagues at the Amsterdam Center for International Law. My thanks go out to all of them. I would like to single out my long-time room-mates Lisa Clarke and Stephan Hollenberg, as well as the next-door neighbours Christina Eckes and Jure Vidmar. In no small part thanks to you, it was always a pleasure to work in Amsterdam. Special thanks are also extended to José Visser and Eric Breuker, who were always there for our VICI group.

I would also like to thank my family and friends who have demonstrated so much patience. I would like to specifically thank David van Bommel and Peep Schaepman for being there during my hour of need. And, of course, special thanks to my parents, who have always supported all my endeavours. Lastly, my thanks go out to the one whose patience and understanding I have tested to the full during the past few years: my loved one, Eeke. The book is finally complete, my dear.

The research in this book was largely completed in the spring of 2013. However, since then new literature has been added and the case law of the Court in Strasbourg has been updated until the end of 2013.

Maastricht, June 2014

Louwrens R. Kiestra

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