

Summary

Human Rights in Choice of Law

1. Human rights do not affect private international law, understood as choice of (foreign) law.
2. Conversely, the protection of the "cultural identity of a person" is neither the objective nor the fundamental justification of private international law.
3. With relation to choice of law, the European Convention on Human Rights serves as a rather liberal standard of review. At present, the German rules on choice of law do not interfere with the European Convention or any other international instrument on human rights.
4. The evolution of many new connecting factors is, however, due to the improved protection of human rights. This is the most significant relationship between choice of law and human rights. The international dialogue on human rights has been particularly helpful in the process of drafting international conventions on private international law. In this respect, the law regarding international marriages and parental custody can be regarded as the most obvious examples.
5. The protection of human rights demands a formulation of the ordre-public clause which assures the consideration of human rights in cases in which a domestic court will hold that foreign law is applicable. The standard of protection must follow the conventions ratified by the Federal Republic of Germany, regardless of whether the foreign state has ratified them or not.
6. The European Convention on Human Rights is not a source of private international law.