

The Impact of Art 6(1) of the ECHR on Private International Law

There is a substantial article by Professor James Fawcett (University of Nottingham, and co-author of Cheshire & North) in the new issue of the International & Comparative Law Quarterly on “**The Impact of Article 6(1) of the ECHR on Private International Law**” (Int Comp Law Q 2007 56: 1-48). The abstract reads:

An increasing trend in private international law cases decided by courts in the United Kingdom has been to refer to the European Convention on Human Rights and, in particular, to Article 6. This article will examine the impact of this provision on private international law. The article will go on to examine why the impact has been so limited and will put forward a new approach that takes human rights more seriously, using human rights law to identify problems and the flexibility inherent in private international law concepts to solve them.

And a small extract from the conclusion to whet your appetite:

A new approach is needed which takes human rights more seriously. A hybrid human rights/private international law approach should be adopted. The first stage of this requires the court to ascertain whether, in the circumstances of a particular case, there has been, or there is a real risk that there will be, a breach of Article 6 standards in England or abroad. Human rights jurisprudence should be used to ascertain whether there is such a breach. The second stage involves solving the human rights problem that has been identified. The English courts should act in a way that ensures that they are not in breach of Article 6 standards. In the areas of greatest risk of encountering a breach of Article 6 standards, this can be achieved by using existing private international law concepts of public policy and the demands of justice.

Those with a subscription to the Journal can download the full article from the ICLQ website.