

Culture (and religion) in constitutional adjudication

SUMMARY

The faculty of law of the Potchefstroom University for Christian Higher Education in corroboration with the Konrad-Adenauer-Stiftung embarked on a study on Politics, Socio-Economic Issues and Culture in Constitutional Adjudication. The aim of the project is twofold. The first aim is to analyse the influence of political, socio-economic and cultural considerations on the constitutional court's interpretation and application of the Bill of Rights. The second aim is to develop practical guidelines (based on the findings during the analysing process) for South African courts confronted with issues of a political, socio-economic and cultural nature. This article is concerned with initiating discussions of the decisions of the constitutional court with regard to cultural and religious rights.

Before we can explore the role of political, socio-economic and cultural (and religious) rights in the decisions of the constitutional court it is important to discuss a few preliminary issues. In this article the meaning of culture and religion within the South African context receives some attention. Secondly, some preliminary comments regarding constitutional protection of culturally and religiously based rights will be made.

We are well aware that this is a daunting task, not only in view of the seemingly abysmal gap between the applicable constitutional rights and values enshrined in the 1996 Constitution that, in some instances over centuries, brought about customs and practices within "traditional" communities which, seemingly, infringe on certain constitutional values and rights.