

THE SOUTH AFRICAN CONSTITUTIONAL COURT'S USE OF FOREIGN PRECEDENT IN MATTERS OF RELIGION: WITHOUT FEAR OR FAVOUR?

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SUMMARY

Since its establishment in 1994, the South African Constitutional Court has been quite fearless in its citation of foreign precedents in its reasoning. Compared with that of similar adjudicative institutions elsewhere, the constitutional reasoning of the South African Constitutional Court is still in its infancy, but it has nevertheless earned itself high praise among observers worldwide. The Court has in particular been commended for some ground-breaking and courageous judgments which it handed down without casting either argumentative rigour or judicial self-restraint to the winds. Since its establishment in 1994 the Constitutional Court has cited foreign cases quite extensively. Although these cases deal with all matters of the law, especially human rights issues, the Constitutional Court's use of foreign cases in the area of religion is noteworthy.

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Against this background, this contribution remarks on the propensity of the Constitutional Court to look beyond its borders to deal with issues of religion within South Africa. The ultimate question is whether the notion of transjudicialism in the case of religion is detrimental to the reputation of the South African Constitutional Court or whether it is a characteristic of a court which is confident enough that its independence will remain intact in spite of its looking elsewhere for answers.

KEYWORDS: transjudicialism; foreign precedent, comparative judicialism, *stare decisis*; foreign case law; comparative constitutionalism; Constitutional Court.