

Legal argumentation based on foreign law An example from case law of the South African Constitutional Court

Andrea Lollini, University of Bologna (Italy), Dipartimento di Politica, istituzioni, storia, Facoltà di Scienze Politiche

Abstract

This article aims to make some introductory remarks concerning the phenomenon of the circulation of 'foreign law' between constitutional courts. A convenient setting for some considerations regarding this legal phenomenon is the South African constitutional jurisprudence, since Section 39 of the 1996 Constitution enables the Constitutional Court to 'consider foreign law' when interpreting the *Bill of Rights*. This provision has led to the wide use of foreign jurisprudence and legislation, as well as *extra-systemic* parameters, that have formed the basis for models of legal argumentation. The article explores what appears to be a recurring 'patterns' of legal argumentation based on foreign law used by the Court which has been defined 'probative importation'.

Keywords

South African Constitutional Court; dialogue between judges; legal argumentation; foreign law; comparative constitutional law

[full text](#) [back](#)

ISSN 1871-515X