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Sincerely believing in freedom

A reconstruction and comparison of the interpretation of the freedom of religion and belief on the Canadian Supreme Court, the South African Constitutional Court and the European Court of Human Rights

F.H.K. THEISSEN

“There are as many paths to God, as there are souls in this world”. So goes an old Sufi wisdom. Those who believe – including those who believe divergently and those who disbelieve – can clash in daily life with others who believe or disbelieve differently. They can come into conflict with laws and regulations that are contrary to their beliefs, or with state institutions that disturb, interfere with or obstruct their lives based on those beliefs. When these conflicts reach the courts, they are adjudicated under the freedom of religion and belief. Sometimes, similar cases lead to different outcomes in different jurisdictions.

The notion that judicial interpretation matters for human rights is almost uncontested. This study is interested in the standard interpretations of the freedom of religion and belief by the Supreme Court of Canada (SCC), the Constitutional Court of South Africa (CCSA), and the European Court of Human Rights (ECtHR). From each of these Courts, 15 cases were selected and systematically analyzed to reconstruct the standard interpretations. They have been compared to find similarities and differences, in terms of optimal protection of believers. The study also analyses and compares the standard interpretations from the perspective of Cass R. Sunstein’s judicial minimalism. The ultimate goal is to find best practices for optimal protection of believers in the judicial interpretation of the freedom of religion and belief and to enable possible judicial borrowing.

This is a volume in the series of the Meijers Research Institute and Graduate School of the Leiden Law School of Leiden University. This study is part of the Law School’s research programme ‘Effective Protection of Fundamental Rights in a pluralist world’.

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