

## Contents

		1	age ix x			
	Table of cases					
		aties, Conventions, Declarations and Statutes	xxxii			
	Rep	orts and other documentary sources	xxxvi			
Int	rodu	action: aim, scope and method	1			
Pa	rt I:	The theoretical foundations of media freedom	11			
1	The rationales for freedom of expression					
		Why is speech protected?	13			
	1.2	How is speech protected?	21			
2	Theory of media freedom					
		General objections	24			
	2.2	Public discourse theory as the rationale for media freedom	28			
		2.2.1 The media's significance for public discourse	29			
		2.2.2 Rules of civility as limitations to media freedom	33			
		2.2.3 The media's contribution to public discourse	36			
		2.2.3.1 The extent to which a publication pertains to a matter	27			
		of public concern 2.2.3.2 The media's conduct	37 44			
		2.2.3.3 The media's good faith	44			
	23	The relationship between media freedom and freedom of expression	48			
	2.5	2.3.1 Media freedom as a derivative right: the 'media speech privilege'	48			
		2.3.2 Media freedom as an independent right: the institutional	10			
		protection of the media	51			
	2.4	Freedom of the media as a fundamental right				
Pa	rt II	: General rules on media freedom	55			
3	Beneficiaries of media freedom: who is 'the media'?					
	3.1	The media as 'authors' of information and ideas				
	3.2	The media as mass media	60			
	3.3	Media freedom as journalistic freedom	61			
	3.4	Conclusion	66			



## vi Contents

4			ent of media freedom: media speech privileges and					
	inst	nstitutional protection of the media						
	4.1	The p	rotection of 'media speech'	69				
		4.1.1	· · · · · · · · · · · · · · · · · · ·	70				
		4.1.2	Right to impart information and ideas	71				
			Means and form of expression	76				
		4.1.4	The right not to publish	79				
			4.1.4.1 Obligation to publish a reply or an apology	79				
			4.1.4.2 Obligation of speech intermediaries to grant access					
			to media infrastructure	81				
			The right to receive information and ideas	82				
	4.2		a freedom beyond 'media speech': the institutional protection of	84				
		the media						
		4.2.1	Defensive rights	85				
			4.2.1.1 Independence of the media	85				
			4.2.1.2 Protection of journalistic research and investigation	86				
			4.2.1.3 Protection of journalistic sources	87				
			4.2.1.4 Protection against interception of communication,	0.1				
			surveillance, search and seizure and arrests	91				
			Entitlements of the media	92				
		4.2.3	<u> </u>	95				
		4.2.4	Non-discrimination	101				
5	Th		on of an 'interference' with media freedom	102				
	5.1		e obligated addressee of media freedom					
	5.2	2 Manifestation of an interference						
		5.2.1	Interference with media freedom as a defensive right					
			(status negativus)	103				
		5.2.2						
			(status positivus)	105				
		5.2.3						
			of privacy and defamation law	105				
6	Just	tificati	on of an interference with media freedom	110				
	6.1 The requirements for a justification							
		6.1.1	Prescribed, or provided, by law (principle of legality)	112				
		6.1.2	The pursuit of a legitimate aim (principle of legitimacy)	115				
		6.1.3	The principle of proportionality	117				
	6.2	The d	etermination of the width of the margin of appreciation and the					
		of judicial review	118					
	6.3	The a	pplication of the principle of proportionality	123				
		6.3.1	Suitability to achieve the aim	124				
		6.3.2	No less intrusive means available: necessity or 'pressing					
			social need'	124				
		6.3.3	Balancing the conflicting rights and interests:					
			'proportionality sensu stricto' or 'proportionality in a					
			narrower sense'	125				
			6.3.3.1 Per se disproportionate interferences	128				
			6 3 3 1 1 Prior restraints	129				



		Cont	ents			vii
				6.3.3.1.2	Licensing and regulation of journalists	
					and media companies	131
				6.3.3.1.3	Criminal sanctions	138
			6.3.3.2	Determin	ation of the competing principles in	
				relative te	rms	139
				6.3.3.2.1	The weight attached to the legitimate aim pursued	140
				6.3.3.2.2	The weight attached to the exercise of media freedom: the media's contribution to public	
					discourse	141
			6.3.3.3		ation of the conflicting interests	
				_	lternative means	142
					Alternative ways of publication	143
				6.3.3.3.2	Alternative ways of interference	144
	. •	T 0	• • •		. 1. 6. 1	1 45
Pa		_			ns to media freedom	145
7					ellectual property as 'rights of others'	147
	7.1		-	of 'persona		147
	7.2	-		argin of app		152
	7.3		_	_	exercise between media freedom	152
		-	ersonality	_	manage on institution making the statement	153
		7.3.1 7.3.2	_		person or institution making the statement victim of the statement and their activities	154 155
		1.3.2	7.3.2.1	Public fig		155
				-	d the judiciary	161
				Private pe	· · · · · · · · · · · · · · · · · · ·	163
		733		_	of the person concerned	163
		1.5.5			private lives from public attention	163
					the public scene	164
		7.3.4		_	m and veracity of the publication	165
			7.3.4.1	Factual st		167
				7.3.4.1.1		
					media freedom and the right to privacy	168
				7.3.4.1.2	Knowingly false statements of fact	180
				7.3.4.1.3	Statements that turn out to be untrue or	
					cannot be proven to be true	180
			7.3.4.2	Value jud	gments	186
			7.3.4.3	No right t	to prior notification	188
		7.3.5	Summa	ry		189
	7.4	Intelle	ctual pro	perty and o	ther exclusive rights	189
8	Threats to public order interests: national security, territorial					
	inte	integrity, public safety and prevention of disorder and crime				
	8.1					
	8.2 Legal framework					196
	8.3	Princi				198
		8.3.1	Publicat	tion of third	l-party statements	199
		8.3.2	Alleged	advocacy o	f illegal action by the media itself	200



V111	Contents			
		ate secrets tion of the media tion of whistle-blowers	203 203 210	
9	The protection of health and morals 9.1 'Health' 9.2 'Morals'			
10	Maintaining the authority and impartiality of the judiciary 10.1 The concepts of 'authority' and 'impartiality' of the judiciary 10.2 In particular: restrictions on court reporting			
11		**	223 224 227 230 230 233	
12	Religiously offensive pu 12.1 Limitations to religiou 12.2 Margin of appreciation 12.3 Balancing freedom of	sly offensive publications	241 242 244 246	
13	Restrictions on comme 13.1 When are publications 13.2 Restrictions on adverti 13.3 Restrictions of publica	'commercial'?	249 250 252 255	
14	Media pluralism  14.1 The relationship between media freedom and media pluralism  14.2 Policy areas of media pluralism  14.2.1 Competition policy  14.2.2 Public broadcasting and media subsidies  14.2.3 Internal pluralism			
Co	onclusion: tenets of a Me	edia Freedom Principle	268	
	Bibliography Index		271 284	