

Summary in English

This dissertation addresses the legal concept of censorship and related concepts such as other preventive measures. For 175 years, the Danish Constitution has contained a provision that explicitly protects against censorship and other preventive measures. In recent decades, this protection has been supplemented by the protection of freedom of expression and freedom of information under Article 10 of the European Convention on Human Rights and Article 11 of the EU Charter of Fundamental Rights. Furthermore, the emergence of digital media has challenged the regulation of freedom of expression. Any new regulatory measures concerning freedom of expression require a thorough understanding of the existing, but rarely applied, regulation of prior restraints. This project analyses the original, yet still applicable, legal provisions while considering the current digital communication environment and contextualizes them in relation to the realization of freedom of expression in the public digital space.

The dissertation is divided into five parts. The first part outlines the project's objectives and scope, providing an account of the legal doctrinal method and legal source application used. The second part describes the framework and background of the project. It examines whether the underlying rationales for the strong protection against censorship can be identified. It concludes that it must be the general principles underpinning freedom of expression that also justify the strong protection against censorship. Furthermore, the legal basis for protection against censorship and other preventive measures in Danish law is reviewed, and finally, various issues related to the exercise of freedom of expression on digital platforms are illustrated through research findings from other disciplines.

The third part is based on legal doctrinal analyses of the three rules that form the foundation for protection against censorship and other preventive measures. Section 77 of the Danish Constitution has remained largely unchanged since the adoption of the June Constitution in 1849. It outlines how the rejection of historical forms of censorship laid the foundation for and continues to define the prohibition against censorship and other preventive measures. There is an extensive amount of case law of the European Court of Human Rights (ECtHR), where the terms "censorship" and "prior restraints" are used. Based on this case law, this dissertation identifies the types of interventions that fall under these terms and the stringent requirements the Court has established for these types of interventions.

The fourth part analyses three specific measures that could be used to regulate freedom of expression without compromising the limits on prior restraints. Interim orders for the removal of

content could be used in cases where particularly protected interests are infringed. Requirements for the identification of the speaker could, in certain situations, ensure that statements are made under genuine accountability. Finally, an analysis of the possibilities of using automated filters to removing illegal content or preventing it from being published will be provided.

In the fifth part of the dissertation, it is suggested that the protection against censorship and censorship-like interventions should follow the principles and frameworks that can be derived from the case law of the European Court of Human Rights. The consequence of this would be an acceptance of the already existing state-of-affairs, where the constitutional prohibition against censorship is rarely applied. Likewise, it would mean that the theoretical distinction between formal and material freedom of expression would lose significance and relevance. The application of principles from the ECtHR would strengthen the protection against interventions in the continued publication of content, but would also enable certain types of interventions that, while currently of little practical relevance, could be used in response to the most serious infringements of other interests. Clear requirements for prior identification, and thus the ability to assign responsibility for statements, would not conflict with existing regulations and could be implemented if deemed appropriate.