

# Redaksioneel

---

In the recent judgement of *Print Media South Africa v Minister of Home Affairs* 2012 6 SA 443 (CC) the Constitutional Court had to decide on a difficult question of the constitutionality of certain provisions in the Films and Publications Act 65 of 1996 (the Act), which were inserted by the Films and Publications Amendment Act 3 of 2009. The Act would have required publishers to submit certain publications for prior approval to the Film and Publication Board, failing which they could incur criminal liability. In a majority judgement delivered by Skweyiya J the court came to the conclusion that these provisions, requiring this type of prior submittal of material, would indeed unlawfully limit the constitutional right to freedom of expression guaranteed in section 16 of the Constitution of the Republic of South Africa, 1996, which is such an important part of democracy. The minority judgment delivered by Van der Westhuizen J, dissented on one aspect relating to the role of the Film and Publication Board, but concurred with the majority that the impugned provisions of the Act are unconstitutional.

Hierdie uitspraak is van groot belang, nie alleen vir diegene wat direk by die saak betrokke was nie, maar ook vir enige ander uitgewer en redaksie. Dit herbevestig die belang van vryheid van uitdrukking in enige demokratiese bestel. Artikel 16 waarborg nie alleen die reg op vryheid van uitdrukking nie, maar verwys ook uitdruklik na vryheid van die pers en ander media, asook akademiese vryheid en vryheid van wetenskaplike navorsing. Uit die aard van die saak is die uitspraak in *Print Media* dus ook vir akademiese vaktydskrifte van groot belang, veral omdat die doel van akademiese regspublicasies is om met 'n kritiese oog deel te neem aan 'n debat aangaande ons samelewing en die vraag of die reg voldoen aan die verwagtinge en behoeftes van daardie samelewing.

The provisions of the Act on which the Constitutional Court had to adjudicate, could also have impacted on academic law journals and in some cases have required that academic journals be submitted to the Film and Publication Board for approval prior to publication, which could have severely impacted on academic freedom. The Constitutional Court held that the exemptions which applied in respect of *bona fide* newspapers, should also apply to magazines, but the court declined to define what kind of publication would be considered to be a magazine for the purposes of the exemptions. The *Oxford Dictionary* defines “magazine” as “a periodical publication containing articles and illustrations, often on a particular subject or aimed at a particular readership”. If one accepts this definition, academic journals should also be included in the scope of the judgment and therefore the same exemptions should also apply to academic journals.

**Prof Steve Cornelius**  
Redakteur

**EW Aukema-Heymans**  
Assistentredakteur