



ASSEDEL

ASSOCIATION
EUROPEENNE
POURLA DEFENSE
DES DROITS ET DES LIBERTES

STRASBOURG, 9 June 2021

**SUBMISSION OF ASSEDEL FOR THE REPORT
OF THE UNITED NATIONS SPECIAL
RAPPORTEUR ON FREEDOM OF RELIGION OR
BELIEF TO THE 76TH SESSION OF THE GENERAL
ASSEMBLY**

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ABOUT ASSEDEL

ASSEDEL (L'Association européenne pour la défense des droits et des libertés) is a Strasbourg based non-profit organization. Its objective is to disseminate, promote and defend human rights and fundamental freedoms in the spirit of the European Convention on Human Rights, both within the Council of Europe system and at the local, national, and international levels.

Our association guides and supports victims of human rights violations and submits reports to international organizations, informs the public, and publishes opinion articles about human rights violations and humanitarian issues.

OBJECTIVES OF THE SUBMISSION AND QUESTIONS ANSWERED

1. As it has been pointed out in the Special Rapporteur's "Call for input"¹, even though the right to freedom of thought is one of the foundations of pluralism in democratic societies, it is underdeveloped in theory and practice. It's also partly because the right to freedom of thought is closely linked to other fundamental rights such as freedom of expression, freedom of assembly and association. Therefore, the judicial mechanisms' attention remains on the more specific rights² which stems naturally from freedom of thought. Whereas, the better understanding of its content and scope would enhance, on the one hand, a more comprehensive application of the rights which derives from it³, and on the other hand, in the cases where the "lex specialis" is not applicable, individuals are still protected under freedom of thought as "lex generalis".
2. Also, we believe that the theory of this right can be developed with the support of current examples from a case study. We hope to achieve this goal, by stressing the importance of freedom of thought and explain undermined violations of the latter, within the context of Turkey, where the opposing thoughts are heavily oppressed.

¹ <https://www.ohchr.org/EN/Issues/FreedomReligion/Pages/freedom-of-thought.aspx>

² ECtHR, judgement of 24 November 2005, *Balsyte-Lideikiene v. Lithuania* (<http://hudoc.echr.coe.int/eng?i=001-71657>) § 3 : Article 10 constitutes a *lex specialis* in relation to Article 9, so that a separate assessment under the latter is unnecessary ; ECtHR, judgement of 18 March 2011, *Lautsi and others v. Italy* (<http://hudoc.echr.coe.int/eng?i=001-71657>) § 59 : In the field of education and teaching, Article 2 of Protocol No. 1 is basically a **lex specialis** in relation to Article 9 of the Convention.

³ ECtHR, judgement of 18 March 2011, *Lautsi and others v. Italy* (<http://hudoc.echr.coe.int/eng?i=001-71657>) § 60. "Nevertheless, that provision [Article 2 of Protocol No. 1] should be read in the light not only of the first sentence of the same Article, but also, in particular, of Article 9 of the Convention (see, for example, *Folgerø*, cited above, § 84), which guarantees freedom of thought, conscience and religion, including the freedom not to belong to a religion, and which imposes on Contracting States a "duty of neutrality and impartiality".

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3. As ASSEDEL, in order to contribute to the efforts to understand what freedom of thought encompasses, we would like to submit our observations on the following questions; **1-a, 2-b, 2-c, 3, 6, 9, 10, 11-a, 11-d, and 13.**

SUMMARY

4. ASSEDEL, by submitting this report will be examining the definition of freedom of thought, along with its scope. In doing so, ASSEDEL will try to elaborate on difficulties encountered in the field, and also shortcomings concerning the proper protection of freedom of thought.
5. Freedom of thought can be defined as containing the right to not reveal one's thoughts, the right no to be punished for holding a thought, and the right to have mental autonomy. In this submission, we will be comparing the scope and the content of existing practice. We will also make an effort to answer the questions posed by the Special Rapporteur, all while benefiting from recent violations that took place, yet undermined with regard to freedom of thought, in Turkey.
6. In the present submission, examples from Turkey will be used as a case study in order to demonstrate the relation between freedom of thought and the other rights, also with the reasons for why this right rarely gets invoked.
7. Since 2016, mass populations had been subjected to criminal investigations on account of their presumed political thoughts and opinions in Turkey. Anyone who has been considered as having or expressing certain thoughts had faced serious accusations and subsequently had been deprived of their liberty. These thoughts had been penalized under freshly invented pretexts, but the main target of the current regime remained as individuals who had unwelcomed thoughts.
8. After the failed attempt of coup d'état in 2016, hundreds of thousands of people had been prosecuted and more than 100 thousand people detained based on allegations of having opposing thoughts, which has been qualified as being affiliated with "terrorist organizations" by the government.

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9. Considering the fact that the incidences that occurred after 2016 are not still discussed or assessed under freedom of thought, ASSEDEL argues that this right is undermined both in practice and in theory. For instance, no violation allegation had been brought before the European Court of Human Rights within the framework of freedom of thought, conscience, and religion. Even the mere fact of not complaining about it before jurisdictions shows that the justiciability of the freedom of thought still needs to be improved.
 10. As explained under this report, ASSEDEL argues that freedom of thought violations are undermined, as they have been committed by means of measures that are principally related to other fundamental rights, such as freedom of expression. ASSEDEL also believes that the justiciability of freedom of thought should be promoted.

OBSERVATIONS

This chapter includes our answers to the questions asked by the Special Rapporteur, in the following order;

11. With regard to **question 1 (a)**⁴ which interrogates the scope of freedom of thought, we find it appropriate to frame this freedom according to related events occurring in Turkey. Violations of freedom of thought can be gathered under the following situations, according to our case study.
 - i) First, regarding the right to not to be punished for thought, we consider that the systematic prosecution of people who are deemed as having thoughts so-called Gulenist, the intensity of the violations has reached a threshold that freedom of thought should also be assessed, along with other fundamental rights.

We believe that a pattern had been formed by authorities for oppressing certain thoughts without having any actual sign of its manifestation. Even though the alleged "offenders" do not show any

⁴ What does freedom of thought encompass?

kind of manifestation of their thoughts, they are being prosecuted on the basis of assumptions with unjustified and arbitrary pretexts. Anything can be invoked against people in order to incriminate them⁵. For instance, being member of a syndicate is interpreted as having such thoughts, and it is punishable under the current regime.

Thus, we argue that the mere fact of being persecuted for allegedly having so-called Gulenist thoughts, in the pretext of grounds that are procured only for oppressing dissidents, requires distinct freedom of thought examination. Consequently, freedom of thought should also be taken into account in case of systematic and continuing persecution cases, where there is no actual sign of manifestation that can be related to thought.

- ii)** Secondly, we argue that the same conclusion is also valid for the cases where the individuals had been subjected to interferences for manifesting their thoughts through their choices or compartments.

In Turkey, people are also prosecuted for their behaviors and for their conducts that can be reasonably related to their thoughts. This includes being subscribed to allegedly Gulen-affiliated newspapers or TV channels, choosing certain private schools for their children, etc. For the same reasons explained in the previous part, such orientated and systematic criminal prosecutions, which initially take place on the account of freedom of thought, require a distinct assessment of these rights.

- iii)** Thirdly, we find freedom of thought immature especially for the chilling effect conception and dilemma situations where individuals choose not to be punished over the enjoyment of their freedom of thought.

In this regard, we submit that the prosecution of people, and particularly the journalists, would have a chilling effect on those who

⁵ <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/turkey/>

wish to exercise this right, and make them refrain from acting in conformity with their thoughts, with the fear of being accused. We find these aspects valuable to understand why the penalization of thoughts should also be assessed under freedom of thought in similar cases.

iv) Lastly, under this question, we submit that the importance of the process of thought forming and the influencing environmental factors should be stressed.

Concerning this aspect, several examples of violations can be pulled out from our case study country. In Turkey, the significant regression of freedom of press and freedom of expression had caused a great diminution on freedom of thought. When the means of observing and accessing thoughts get drastically weakened, freedom of thought would be also damaged.

12. Even though the proceedings initiated seem to be carried out for different reasons, they mainly aim freedom of thought. And people face detention for allegedly having so-called Gulenist and opposing thoughts. Therefore, the accusation of individuals at a very large scale on account of their thoughts must also be scrutinized in the light of freedom of thought.
13. With regard to **question 2 (b)**⁶ which interrogates the meaning of being penalized for one's thought; we stress the importance of criminal proceedings initiated for attributed thoughts, as well as for thoughts manifested with all means. As explained under the previous question, ASSEDEL submits that in case of large-scale persecutions initially originating from freedom of thought, this right should not be undermined compared to the invoked reasons by authorities and compared to the other fundamental rights related. In this sense, both jurisdictions and victims should also discuss freedom of thought.

⁶ What does it mean in practice to respect, protect and fulfill a freedom not to be penalized for one's thoughts?

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14. With regard to **question 2 (c)**⁷ which interrogates means of interferences and coercive measures, it can be said that “*Without recognition of the importance of freedom from fear, the fulfillment of many human rights is compromised, particularly physical security*”⁸. The most effective and common form of interference with freedom of thought arises from the self-imposed restraint on ideas, because of the threat of adverse consequences such as limitation imposed on the enjoyment of other fundamental rights like right to liberty⁹, right of equal opportunity¹⁰ or right to privacy.¹¹
 15. The power of the State as the protector of public security, can turn itself into a source of persecution. To illustrate, in the aftermath of the coup attempt in Turkey, enjoyment of several fundamental rights has been considered as grounds for the accusation of being terrorist and attempting to overthrow the constitutional order. Several dissidents were compelled to renounce their political or other opinions with the fear of persecution.
 16. Thus, the negative obligation on the part of the State not to interfere with freedom of thought is to be combined with the positive obligation to

⁷ What does it mean in practice to respect, protect and fulfill a freedom not to have one's thoughts free from coercive or other interference?

⁸ SPIEGELMAN, James, *The International and Comparative Law Quarterly*, Vol. 59, No. 3 (JULY 2010), pp. 543-570 (28 pages), Published By: Cambridge University Press

⁹ Right to liberty and security of person which is set out in article 9(1) of the ICCPR reads: “*Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law*”.

¹⁰ Article 26 of the ICCPR reads: “*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, and religion, political or other opinion.*”

¹¹ The Fourth Amendment of the constitution of the United States reference to the right ‘to be secure in their persons’ appears in a provision expressly directed to ‘unreasonable searches and seizures’ See eg, Rubenfeld, J, ‘The Right of Privacy’ (1989) 102 *Harvard Law Review* 737 CrossRefGoogle ScholarOpenURL query; WJ Cuddihy, *The Fourth Amendment: Origins and Original Meaning* 602–1791 (OUP, Oxford, 2009).

prevent disinformation incite hatred and violence against certain convictions, political or other opinions¹². The latter will be elaborated on under questions 10 and 11.

17. With regard to **question 3**¹³ that concerns the relationship between article 18 of ICCPR and other fundamental rights, we put an emphasis on the coexistence of these rights and consider that freedom of thought should not be undermined comparing to them, as explained above.
18. With regard to **question 6**¹⁴ which interrogates the relation of *forum externum* and *forum internum* aspects of freedom of thought, ASSEDEL would like to submit that these concepts should not be detached in mass persecution cases, originally arising from freedom of thought, especially regarding the penalization of thoughts. In other words, along with forms of manifestation that are generally assessed under other fundamental rights such as freedom of expression, freedom of thought should not be overlooked. For instance, an individual sanctioned for subscribing to a magazine that cannot be related to any crime whatsoever, yet allegedly affiliated to thoughts Gulenist, should be able to claim his or her freedom of thought since it is the main reason in the first place that he or she had been prosecuted.
19. With regard to **question 9**¹⁵ which interrogates evidentiary challenges for proving a violation of freedom of thought, ASSEDEL would like to contribute

¹² E-paper Heinrich Böll Foundation "Companion to Democracy #3 Misinformation, Disinformation, Malinformation: Causes, Trends, and Their Influence on Democracy", August 2020. https://ps.boell.org/sites/default/files/importedFiles/2020/09/30/200825_E-Paper3_ENG.pdf

¹³ How and to what extent do other fundamental rights and freedoms (including but not limited to freedom of conscience, and freedom of religion or belief in Article 18 of the ICCPR, and the rights to privacy (Article 17 of the ICCPR), opinion and expression (Article 19 of the ICCPR)) either depend upon, support or otherwise relate to freedom of thought?

¹⁴ What is the relationship between the *forum externum* of a rights-holder (e.g. manifestations of one's religion or belief, or expression) and freedom of thought (part of one's *forum internum*)?

¹⁵ Are there evidentiary challenges for proving a violation of freedom of thought? If so, what are they and how could they be overcome?

to the report within the framework of mentioned hypothesis, mass persecution on the grounds of having thoughts and manifesting them in different manners. We consider that when a pattern of violations, which can be principally associated with this right, appears an overall assessment. A case-by-case examination would not reflect the pattern but an examination in entirety of cases would permit to conclude to violation of freedom of thought.

20. With regard to **question 10** and **11**¹⁶, we submit that the oppression and the influence on freedom of thought are caused by disinformation, which overwhelms the public with deliberately misleading information¹⁷. Such a method is used to label and stigmatize opponents and in certain cases, it constitutes a part of an overall strategy to distort and manipulate public opinion.
21. In the doctrine it has been named as "cognitive liberty" or "the right to mental self-determination"¹⁸. It is that internal aspect that is now under threat. Freedom of thought includes the freedom from indoctrination or influence on our conscious or subconscious mind through manipulation. Particularly, the children are more vulnerable against regarding the dis/misinformation, and they should be preserved against any kind of indoctrination. But despite the apparent strength of protection contained in the right¹⁹, little has been done to develop the legislative and regulatory

¹⁶ Do certain practices and policies have undue influence on "freedom of thought"? If so, which ones, why and in what circumstances? This may occur in various contexts – whether offline or online, involving State or non-State actors – such as in media and technology, healthcare, national security and education sectors. What is the effect (if any) of the following on freedom of thought: misinformation / disinformation?

¹⁷ ALEGRE, Susie, « *Rethinking Freedom of Thought for the 21st Century* », European Human Rights Law Review, Issue , 2017 Thomson Reuters (Professional) UK Limited and Contributors. <https://www.doughtystreet.co.uk/sites/default/files/media/document/Rethinking%20Freedom%20of%20Thought%20for%20the%2021st.pdf>

¹⁸ See http://www.cognitiveliberty.org/proj_neuro.html .

¹⁹ KTISTAKIS, Yannis "The protection of forum internum under article 9 of the ECHR", The European Convention on Human Rights, a living instrument : essays in honour of Christos L. Rozakis, 285 "Right to freedom of thought contains two strands, one on the right to hold a belief and the other on the right to manifest that belief. The right to deeply hold any belief (whether religious or not) (Forum internum) has absolute protection."

frameworks to ensure that enjoyment of the right to freedom of thought is real and effective in a modern context²⁰.

22. With regard to **question 13**²¹, we believe that the States must refrain from unduly interfering with the freedoms which are closely linked to freedom of thought. And the individuals should exercise their fundamental rights enshrined in articles 12, 19, 21, 22, 25 without any fear of persecution. It must fulfill its positive obligations impartially by adopting clear legal instruments, to hold liable the responsible of disinformation. Lastly, the governments must observe even more closely the exercise of the freedom of thought by the minorities (political, ethnic, religious groups).
23. We, ASSEDEL, are honored to bring to the attention of the Special Rapporteur on Freedom of Religion or Belief the above-mentioned issues.

ASSEDEL

STRASBOURG, 9 June 2021

²⁰ ALEGRE, Susie, « *Rethinking Freedom of Thought for the 21st Century* », European Human Rights Law Review, Issue, 2017 Thomson Reuters (Professional) UK Limited and Contributors. <https://www.doughtystreet.co.uk/sites/default/files/media/document/Rethinking%20Freedom%20of%20Thought%20for%20the%2021st.pdf>

²¹ What steps could States take to ensure that an individual's freedom of thought is not unduly affected by certain practices and policies?