

## Scope and content of Freedom of Thought Contribution of deMens.nu

**1. What do you think the content and scope of “freedom of thought” is? For example: a. What does freedom of thought protect? How far does this protection extend?**

**b. How have courts and tribunals (domestic, regional or international) interpreted and applied freedom of thought?**

*Freedom of Thought is a fundamental principle of the humanist life stance and community. It encapsulates the freedom to think, to argue and to express one’s opinion on any given subject. As such, it is a term that clusters all rights which are related to democratic participation, the public sphere and individual matters.*

- *Democratic participation: a healthy democracy implies that a society has the ability to openly discuss in which direction it would like to develop itself. In its broadest sense, from the perspective of a healthy democracy, Freedom of Thought encapsules (among others) all matters which are aimed at fair and equal access from citizens to their government, both in terms of participation and services, such as:*
  - *Antitrust laws concerning media concentration*
  - *All laws concerning voting, including those surrounding methods of political campaigning*
  - *The presence of administrative courts which hold government and all its branches accountable*
  - *The presence of all systems which strive towards making legal action available to those with limited means*
  - *Neutrality and/or plurality in civil service, both in conduct or visual expression*
- *The Public Sphere: all forms of legislation which aim to create balanced interactions between all citizens, striving to maximize their collective freedom of expression. This, from the baseline that all people are equal and thus should all have equal rights of mutual interaction. As such, following aspects need to be taken into account:*
  - *Legislation that impacts the public sphere:*
    - *Laws that define what the public sphere is;*
    - *Laws that dictate how people can and can’t interact with each other (e.g. defining and prohibiting hate speech, blasphemy laws, ...)*
  - *Laws about freedom of expression or the right to organise oneself (e.g. unions, freedom of entrepreneurship, etc.)*
- *Individual matters: in some cases the presence of laws that intervene in the most private of matters which have no impact on others or only between consenting adults could be seen as contrary to the principles of Freedom of Thought.*
  - *Laws that are aimed at penalising thought patterns or beliefs (e.g. the criminalisation of apostasy)*
  - *Laws that criminalise sexual orientation or preference (e.g. prohibition of gay marriage, re-education camps for LGBTQ+)*
  - *Laws that are intentionally structured in such a way that the practice is de facto legal but still institutionalise social stigma (e.g. sex work, abortion, assisted dying. etc.)*

*Freedom of Thought legislation protects citizens against two phenomena:*

- *Faux-Freedom of Thought measures which grant one group illegitimate privileges over another under the guise of Freedom of Thought (e.g. circumcision as a ‘legal’ exception to laws that prevent child abuse). The baseline of Freedom of Thought is comparable to Isaiah Berlin’s Two Concepts of Liberty, where one man’s liberty ends where another’s begins. As all people are equal in value, their rights must be as balanced to each other as much as possible. The best way to do this, is to interpret all Freedom of Thought legislation through the lense of fundamental and durable equality.*
- *Reductionism, forms of public policy that seem to forget that economic development should be for the betterment of mankind, not the other way around.*

*The interpretation and application of Freedom of Thought as a principle differs immensely depending on whether it's a national or international context:*

- *At a national level (Belgium), the notion of Freedom of Thought carries relatively little legal weight as other, more concrete and practical manifestations of Freedom of Thought are present. (see above)*
- *At an international level, the difference between public policy and law is less pronounced, which means Freedom of Thought works well as an umbrella term to encourage certain legal developments.*

*As Belgium is a monistic country with much of its powers delegated to the EU due to its supranational competency, the international impact of Freedom of Thought does have the potential to be significant.*

**2. What does it mean in practice to respect, protect and fulfill a freedom not to: a. disclose one's thoughts (mental privacy);**

**b. be penalized for one's thoughts; or**

**c. have one's thoughts free from coercive or non-consensual interference?**

*Indeed, it means having the right to disclose one's thought, but also to be penalised in the cases mentioned here above (negationism, incitement to violence, apology terrorism). Humanist lifestance is based on the method of free inquiry, this method of thinking invites the person to question any thought critically, so stating 'one's thought should be free from coercive or non-consensual interference', should not withhold anyone to question any thought, on the contrary, it is through confrontation of dissenting thoughts that one can broaden his or her spectrum of thinking. This element is more philosophical than legal of course.*

*Conditioning through controlled automated content exposure (as explained above) could be regarded as a transgression of the principle laid out in question 2.c. The legal relevance of this argument largely depends on the evolutions concerning the notions of digital public space. Should social media ever be categorised as such, a case could be made that they are in contravention of existing regulations to protect freedom of speech.*

**3. How do you think other fundamental rights and freedoms (such as freedom of conscience, freedom of religion or belief, and rights to privacy, opinion and expression) depend upon, support or otherwise relate to freedom of thought? This may include where freedom of religion or belief is conceptualized as a matter of individual thought.**

*As aforementioned, these fundamental rights are all mutually interdependent and a useful set of measures to come to forms of personal freedom that are universal, scalable, durable and non-discriminative. One set provides you with the basic rights to act/express yourself with a maximum degree of freedom whilst the other provides you with a few defensive measures against the incursions of other parties.*

*If any one of the rights mentioned above are reduced to (almost) non-existence, it is impossible to attain the societal climate in which we could label freedom of speech or Freedom of Thought a success.*

**4. Is there a difference between "freedom of thought" and either "freedom of belief" or "freedom of opinion"? If so, what is the distinction?**

*Yes and no. These terms mostly overlap in meaning but stem from different socio-cultural backgrounds which mean whilst they contain similar subconcepts the relative importance of these subconcepts amongst each other might vary.*

*For example: one could argue that Freedom of Thought could be interpreted as a levy against non-scalable, non-durable incursions by third parties whilst Freedom of Opinion has a stronger notion of freedom by interaction with others. Yet Freedom of Opinion (or Belief) also has the levy-trait, whilst Freedom of Thought also has the interactive trait.*

Furthermore, in their narrow, formal meaning these could be seen as three entirely different concepts. Freedom of Thought can refer to an internalised process of reflection (*internum*) which should be able to take place without disproportionate incursions. Freedom of Belief is often quoted when referring to certain religious practices and can thus be more far reaching than belief itself. Freedom of Opinion (*externum*) may be interpreted as the sole process of being unhindered in expressing your thoughts to other parties.

**5. What is the relationship between the *forum externum* of a rights-holder (e.g. manifestations of one's religion or belief, or one's expression) and freedom of thought (*forum internum*)? Would violations or limitations of the former affect the latter?**

*At a societal level, a resounding yes. Daniel Kahneman's works on thought patterns are extremely relevant here. There is an immediate and mutual interaction between *forum externum* and *forum internum*, both at a conscious and subconscious level.*

*At a legal level, the answer is again a resounding yes. Freedom of thought can only be exercised in an environment where freedom of expression exists. Ideas can be discovered or created. If institutions in power, be they private or public in nature, use their position to block the free discovery of ideas through interaction with others, they essentially block out the principle of contradiction. This means that they cannot be considered democratic in nature. We can find the basis of this principle in the legal case-history of states that strives towards real democratic participation, specifically in how they try to balance the use of the public sphere.*

**6. Do certain self-expressions (e.g. writing in one's diary, digital footprint or non-verbal expression) ever constitute "thought" in and of themselves? If so, how and under what conditions?**

*They are manifestations of the internal thought process, but fall squarely within the principles of freedom of expression once their existence interacts with others.*

### Laws and policies

**1. How could freedom of thought be protected in law and policy? It is worth noting that rights-holders may have different levels of cognitive development or functions.**

*Freedom of Thought thrives if following conditions are met:*

- *Free and continuous interactions with and between people who possess a different frame of reference (access to dissenting opinions). For this access to be successful, it must:*
  - o *happen continuously: occasional exposure mostly means that interactions become clashes, which work counterproductive and cause a double-down effect; [F11]*
  - o *be unplanned in content; [F12]*
  - o *happen in a sphere of mutual understanding [F13]*
- *Free access to qualitative content: qualitative content could be seen as:*
  - o *Not blatantly false [FA4]*
  - o *Parallel between proportionality and quantity: as consumption of information is limited by the rules of time and space, overexposure on one matter means underexposure of another. Drown-out tactics are often intentionally deployed by (geo)political players to ensure perception remains in their favour. As such quantity is a form of quality on its own [FA5]*
- *A non-contentious relationship between citizens, their government and their mutual interaction*

- *'No damage, no crime'-principle: if an action does not physically hurt people, nor damage the environment or property, do not criminalize it. [NCR6] Nuances:*
  - *Verbally facilitating the contravention of the 'no damage, no crime'-principle by co—co-conspiring can still be criminalised through complicity (e.g. being the organizer of a bank robbery without participating yourself, incitement [through fraud], etc.)*
  - *Non-criminalisation does not equal endorsement. It simply means that criminalisation is not labelled an appropriate tool. Civil proceedings (e.g. the payment of damages when convicted of slander) or simply allowing the person to be called out for their opinion by their peers could be more effective depending on the situation.*

*Hence, there are straightforward legal and policy measures that could be implemented:*

- *Reduce the amount of laws that regulate free speech to an absolute minimum according to the principle above [NCR6]*
  - *Ending blasphemy laws*
  - *Introduction of marriage equality*
  - *Fair and neutral legal frameworks concerning self determination (e.g. abortion, assisted dying) [F11, F13]*
- *Criminalize intentional misinformation and hold platforms which spread misinformation through non-intervention legally accountable [FA4]*
  - *Platforms such as Wikipedia and OkCupid have successfully mobilised their own user communities in quality control by setting up peer-control systems ('by the user, for the user')*
  - *It would still mean users are free in voicing their opinion. Only when they present themselves as objective (e.g. news organisations, governmental institutions, etc.) and their ill intent can be proven -which is hard to do- could measures be taken.*
  - *A nuanced approach could imply that unknowing parties which structure content for the user might not be criminally liable, but could still face civil proceedings and be fined and/or pay damages*
- *Formalize the right of access to dissent: echochambers cause a variety of issues (e.g. radicalisation, depression, etc.) because they condition users to become stable sources of revenue through inductive exposure. The content users are presented with is based on their previous behaviour and causes a self-affirming effect that severely hinders Freedom of Thought. Platforms are unwilling to take adequate measures themselves because no strategy has been discovered that does not cut into their revenue models. This means they can only stay competitive if they all have to function within a level-playing field where they all have to adhere to the same rules. Possible solutions could be:*
  - *Dumbing down the datasets these platforms use by limiting the personal information they are allowed to use to personalize content on their site [F12]*
  - *Stimulating practices of empathy and citizenship as educational goals and teaching children to form their own balanced group dynamic and social norms from an early age [F13]*
  - *Increasing the legal age of access to social media platforms until the most essential stages in their development have been concluded [F13]*
  - *Prohibit the collection of data for commercial purposes under the age of 18 [F12] [F13]*

**2. Does the State take any measures to facilitate an environment that is conducive for freedom of thought? If so, what has the effect been? Such measures may occur within various contexts, including media, technology and education sectors.**

*Belgium has deployed many measures to ensure a climate of Freedom of Thought which include but are not limited to:*

- **Freedom of education:** *it is possible to create private schooling, which can still be partially publicly funded. However, private schools are often organised within a religious context and do not respect the (non-)religious views of their students. Students are often forced to learn Catholicism (Rooms-Katholieke Godsdienst) as there are not enough schools for children to choose schooling that suits their lifestance. The fact that these schools are often largely funded by public means, is a form of discrimination as no measures of proportionality are deployed.*
- **Diversification of press:** *State Media still exist. However, it is possible for private news agencies to be founded and contend with each other. The biggest concern is that the threshold for starting news agencies is relatively high as it requires significant investments.*
- **Reforms in recognition of religious communities:** *Belgium officially recognizes seven (soon eight) religious communities. To be recognised as such, they need a minimum amount of followers. Once they are recognised, they are eligible for public funding. However, the procedure they must go through is political, not legal in nature. As such, recognition does not mean access to the same rights as other communities. Large and arbitrary differences in funding exist. Most recently, the Flemish Regional Government has started a process to harmonize the recognition of local religious communities (which is still different from the aforementioned national procedure in seat of Federal Government).*
- **Public funding for special interest groups:** *the Belgian state recognizes that some groups are structurally more vulnerable than others. As such, it has created numerous instances which are used to bridge the gap between government and parts of Belgian society government cannot reach directly. It also created various human rights institutions which are aimed at promoting and protecting certain rights (e.g. the Institute for Equality between Men and Women)*

**3. How does the State create an environment for open robust debate and dialogue, including through a free and open Internet and media, consistent with the rights to freedom of expression and freedom of religion or belief? How does this relate to freedom of thought?**

*Interfaith dialogue is encouraged through its system of official recognition and initiatives are present at all levels of Government. Common initiatives sometimes occur and can be regarded as a modest success.*

*However, much work still lies ahead:*

- *See answers on question 1 of this section.*
- *Political parties play a very ambiguous in creating an open debate as their political strategies clash with their policy goals. Monopolising forms of political truth happens on a daily basis and polarisation is on the increase.*
- *Whilst there is widespread consensus about the negative impact of social media and the culture of immediacy, Belgian representative bodies have been extremely reluctant in taking action. This is partially because they are not the suitable level of government to deal with this issue (only the EU or the US could take adequate measures due to their scale) and partially because they are still looking for what measures would be adequate and still be democratic.*
- *Non-religious groups are not always included in interfaith dialogues whilst being (very) large in size.*

**4. How could the law assess whether attempts to unduly affect one's freedom of thought are impermissible under international human rights law? What principles or factors could be considered?**

*Without the recognition of the fundamental principle of equality regardless of arbitrary traits, international human rights law can be a major threat to itself. Variations of the clause of 'freedom of religion' in international treaties are routinely used to undermine other fundamental rights (e.g. the right of physical integrity, violated by the practices of circumcision) or to create non-scalable situations in which privileges are claimed in a way that they are not sharable (e.g. blocking off streets for sessions of public prayer, chastity police, private police/courts, etc.)*

*The current situation implies that there are so many treaties written in broad wording that they can be used both in favour and against themselves depending on who refers to them and in what context.*

*So for the law to be able to assess attempts, it would need to be able to distil legal priorities from all the different treaty clauses which interact with each other.*

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

*See answer 4 for the existing challenges regarding international treaties and their relative importance. Furthermore, insufficient attention is given to the role of digital platforms. Service providers are currently not responsible enough for the content they disseminate through their channels. Misinformation and echochambers create forms of reality in which it is impossible for any form of Freedom of Thought to credibly exist.*

**Experiences of undue pressure on freedom of thought**

**1. Can you provide any information about any specific incidents or general trends where individuals may have been subject to undue pressure on their freedom of thought in your region? This may involve State or non-State actors and occur offline or online.**

*Most recently, one of our top virologists had to go into hiding with his family because a soldier deserted, stole heavy weaponry, created an IED and wanted 'to end the dictatorship of the government and the virologists'. It is concerning that the gunman has garnered a lot of public support. Hostilities between supporters of different political factions are also on the increase.*

**2. How common are these incidents? Are particular groups of people targeted based on their characteristics, such as religion or belief, gender or ethnic background?**

*Tensions are rising between urban and rural context. One, being more mono-ethnic and the other being more diverse. Migrants are being targeted, as well as public figures who voice their criticism towards the far right and far left.*

**3. What is the effect of national security, counter violent extremism and "public interest" measures on freedom of thought in your region? How does this occur? How are political prisoners / dissidents at large treated?**

*There are two trends which are worth mentioning, although it must be said that Belgium does not have any political prisoners. Those in prison with extreme political views have been convicted for crimes that cause both physical (lethal) damage to people and/or property.*

*Firstly, the government has been dealing with the phenomenon of foreign fighters to theatres of war in Syria, Libya or Ukraine. Religious-political networks have been actively and successfully recruiting fighters. In part this is because Belgium has concentrated areas which are impoverished, have limited public services and provide people with limited perspective. It remains to be seen whether Belgium's long-term strategies in the war on terror will bear fruit. Police militarisation has increased the gap between police and citizens.*

*Secondly, the government has been relatively tolerant towards a vocal and militant anti-vax movement. It choose to work with intermediary organisations in an effort to upscale vaccination with success. It is still facing an uphill battle against misinformation practices which occur intentionally and are being supported by people (and states) with significant means.*

**4. What is the effect of technological developments and practices (including digital surveillance and data collection practices, use of algorithms and activities of digital technology companies, including social media companies) on freedom of thought in your region? How does this occur?**

*See answers S5 and L1. Their impact is significant and they are conditioning in behaviours of self-affirmation. Social media companies' uninvolved involvement in the content managed on their platforms has created a breeding ground for radicalisation and a wide variety of mental health issues.*

**5. What is the relationship between certain practices and policies that infringe upon intellectual freedom (including of academia, artists and the media) and freedom of thought in your region?**

*There is a relatively broad Freedom of Thought in academia, press and art sector. The presence of 'publish or perish'-practices (as is internationally common) has created a form of inflation in academia which is self-harming. The overestimation of mapped knowledge is linked to polarisation as low-quality papers are used to explain phenomena that did not occur so they can be used to justify public policies which are disproportional, non-sensical and cause more harm than good.*

*The current system facilitates the camouflage of ulterior political motives.*

**6. What is the effect (if any) of the following on freedom of thought in your region:**

- a. misinformation / disinformation; or**
- b. proselytism.**

See answers above. Disinformation is being analysed in depth by security services. The EU EPRS service brought out a well build report on this matter summarizing answers to the question.

[https://www.europarl.europa.eu/RegData/etudes/STUD/2021/653633/EXPO\\_STU\(2021\)653633\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/653633/EXPO_STU(2021)653633_EN.pdf)

Through the public eye proselytism is limited. However, some trends are worth noting:

- An evermore assertive evangelist movement
- Intervention by foreign powers in migrant communities (e.g. the Turkish Diyanet-system, Saudi agents, etc.)

## Current Responses and Best Practice

**1. What good practices have States and other stakeholders (including the UN, international organisations, the media, technology companies and civil society (including actors of all faiths and none)) taken to date to effectively promote and protect freedom of thought? This may include (i) monitoring and reporting, (ii) efforts to promote freedom of thought, such as interfaith dialogues, delivering training to police, security forces and teachers; and (iii) victim support. What has the effect been?**

*Interfaith-dialogue is promising, especially at local levels: the more issue-based these initiatives are, the more concrete their results. They can be a potent tool in combating polarisation in local neighbourhoods. Dialogue at the higher levels is often more philosophical and hazy in nature. Its main return is that it can function as a symbol within religious hierarchy and show local parishes that coexistence is part of their faith/belief.*

*Diversity training in police schools: works when part of the essential curriculum. Police should understand the communities they patrol so that the community itself sees the police as an ally in keeping their neighbourhoods safe.*

*Sustainable development of basic needs: of all measures deployed, none are more supportive of Freedom of Thought than ensuring that people have access to all the basic necessities. Following the principle of the hierarchy of needs, then and only then, will they be open for cognitive and social development.*

**2. What steps could be taken to ensure that an individual's freedom of thought is not unduly affected by the certain practices and policies discussed today? These recommendations could be directed to States or other relevant stakeholders.**

*See answer L4. The baseline of all Freedom of Thought measures should be that all people are free and equal. As such they should always have access to the same rights.*

*Should a state decide on installing a system of privileges, it should always work according to the principles of: proportionality, legitimacy and legality.*

*These principles also imply that privileges are given based on qualitative criteria (e.g. possessing criteria X, Y and Z) any and all citizens can fall under. Categorical criteria (e.g. belonging to a certain group) can undermine the principle of equality.*

**3. How can the Special Rapporteur ensure a gender-perspective when analysing Freedom of Thought, in addition to considering how other intersectional factors impact upon enjoyment of the freedom, such as religion or belief, age, disability, race, ethnicity or other protected status?**

*Most major religions are patriarchal in nature. The only way the Special Rapporteur can ensure a gender-perspective when analysing Freedom of Thought is by questioning those directly impacted by policies. An issue-oriented approach where the SR contacts organisations in the field (rather than representative organisations) will yield the strongest results.*

*In practice, this could mean reaching out to the Polish organisations currently fighting against the national ban on abortion, or the LGBTQI+ organisations in the American Midwest, or the (secret) Ex-Muslim groups in the Middle East. The 'nothing about us, without us'-method will be both effective and legitimate.*