



**Organization for Security and Cooperation in Europe
Office for Democratic Institutions and Human Rights**

Submission to the Report of the Special Rapporteur on Freedom of Religion or Belief to
the General Assembly at its 76th session on Respecting, Protecting and Fulfilling the
Right to Freedom of Thought

Following the call for submission of inputs by the Special Rapporteur on Freedom of Religion or Belief, Mr. Ahmed Shaheed (hereinafter: Special Rapporteur) to the Report on Respecting, Protecting and Fulfilling the Right to Freedom of Thought for the 76th Session of the General Assembly, the Organization for Security and Cooperation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) is hereby submitting its contribution. The contribution contains input from its Panel of Experts on Freedom of Religion or Belief, which consists of independent experts from across the OSCE region.

ODIHR has been active in working to secure the right of everyone in the OSCE region to enjoy freedom of thought, conscience, religion and belief since 1997. ODIHR's Freedom of Religion or Belief Programme monitors developments and assists OSCE participating States in implementing their OSCE commitments in this field by providing expert advice, carrying out capacity building activities and creating platforms for dialogue and advocacy.

Freedom of thought is one of the OSCE's foundational principles, enshrined in the Helsinki Final Act of 1975, and since reaffirmed by OSCE participating States in numerous human dimension commitments, including Vienna 1989, Copenhagen 1990, Istanbul 1999, Bucharest 2001, Maastricht 2003, Helsinki 2008 and Kyiv 2013.¹ It is similarly protected in other international and regional human rights instruments, including Article 18 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, and Article 9 of the European Convention on Human Rights.

ODIHR commends the Special Rapporteur's decision to focus upon freedom of thought, which is often omitted from contemporary references to the right outlined in international

¹ OSCE Concluding Document of the Vienna Meeting 1986; Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990; OSCE Istanbul Document 1999; OSCE Bucharest Plan of Action for Combatting Terrorism 2011; OSCE Ministerial Council, Declaration No. 4/03 "Tolerance and Non-discrimination", Maastricht, 2 December 2003; OSCE Ministerial Council, Declaration No. 2/08 "Ministerial Declaration on the Occasion of the 60th Anniversary of the Universal Declaration of Human Rights", Helsinki, 5 December 2008; OSCE Ministerial Council, Declaration No. 3/13 "Freedom of thought, conscience, religion or belief", Kyiv, 6 December 2013.

law as ‘thought, conscience and religion’,² for example, when it is shortened to such formulae as ‘freedom of religion or belief’ or ‘religious freedom’. This ‘reminder’ of the importance of thought should lead to a richer conversation about how to advance the right in its entirety.³

Content and scope of freedom of thought

Freedom of thought is one of the few absolute human rights of the international human rights framework. When viewed together with conscience and religion, it relates to each individual’s ability to determine their own stance vis-à-vis religions or beliefs. Indeed, freedom of thought gives meaning to other rights,⁴ and can be considered as a gateway right that enables each individual to also enjoy a wide range of other human rights; without freedom of thought, rights such as freedom of expression become meaningless.

International human rights law safeguards thought, and with it each individual’s mental autonomy to reason for themselves as an important component of the human notion of self and of human wellbeing.⁵ The ability to have, hold, choose, change and express beliefs, whether religious or otherwise, without fear of reprisal, is also an important safeguard of democracy, which is one of the core values and principles of the United Nations.⁶ Interference with individuals’ minds is incompatible with the absolute protection of the *forum internum* guaranteed by freedom of thought, irrespective of the perpetrator.⁷

Three key elements of freedom of thought have been distinguished:

- the right not to reveal one’s thoughts or opinions;
- the right not to have one’s thoughts or opinions manipulated; and
- the right not to be penalised for one’s thoughts.⁸

Freedom of thought remains significantly underdeveloped in international human rights law, in part, due to an assumed impenetrability of human thought and the ambiguity surrounding what a fully developed freedom of thought could look like.

² As UN General Comment 22 notes, this “includes the freedom to hold beliefs”.

³ Marco Ventura, forthcoming, “The formula ‘freedom of religion or belief’ in the laboratory of the European Union”, *Studia Prawa Wyznaniowego*, Vol. 23-2020

⁴ Martin Scheinin (1992) “Article 18” in Asbjorn Eide et al, Eds., *The Universal Declaration of Human Rights: A Commentary*, pp. 263-264.

⁵ David Harutyunyan & Lilit Yeremyan (2020) “Freedom of thought: Legal protection from manipulation” *Wisdom*, Vol. 14, No. 1, p. 131; Thomas Metzinger (2013) “The myth of cognitive agency: subpersonal thinking as a cyclically recurring loss of mental autonomy” *Frontiers in Psychology*, Vol. 4, Art. 931.

⁶ Simon McCarthy-Jones (2019) “The Autonomous Mind: The Right to Freedom of Thought in the Twenty-First Century” *Frontiers in Artificial Intelligence*, Vol. 2, Art. 19, p. 1.

⁷ The design of social media to be addictive is the subject of extensive research and falls beyond the scope of this submission. However, it has profound implication for second-order mental actions. Daria J. Kuss & Mark D. Griffiths (2017) “Social Networking Sites and Addiction: Ten Lessons Learned” *Int J Environ Res Public Health*, Vol. 14, No. 3. ; Eben Moglen, [“Keynote at re:publica 2019”](#)

⁸ Bart Vermeulen (2006) “Article 9” in P. van Dijk, F. van Hoof, A. van Rijn and L. Zwaak (eds), *Theory and Practice of the European Convention on Human Rights*, 4th ed. p.752.

In defining the scope of freedom of thought, it is important to recognise the two orders of mental actions that international human rights law should seek to protect: i) thoughts, desires or impulses that emerge from within an individual and may be acted on unconsciously; and, ii) the processing of such thoughts, desires or impulses to determine their authenticity and consistency with an individual's values and goals.⁹ This distinction is important as both orders of mental action need to be protected.

It is worth noting that AI and Big Data systems increasingly collect, analyse and process significant quantities of personal data relating to the thoughts and beliefs of individuals, and attach predictions and automated decisions to such data collection. This has implications for both orders of mental action, and has led some experts to predict “a world in which it will be possible to decode people's mental processes and directly manipulate the brain mechanisms underlying their intentions, emotions and decisions.”¹⁰

For mental autonomy, humans need mental privacy. If individuals cannot hold private thoughts, then there will be increasing pressures towards conformity, self-censorship and groupthink that will impair mental autonomy.¹¹ The scope of individual privacy is thereby diminishing.

This is concerning for the other parts of the right to freedom of thought, conscience, religion or belief. Given the sensitivity that can accompany, for example, such issues as conversion, thought privacy is needed for individuals to be able to process their thoughts and to question and/or ‘choose’ a religion, belief or lack thereof.

In the context of thought, conscience, religion or belief, there are also serious implications surrounding what is considered thought or a manifestation thereof. The former has absolute protection, but the latter can be restricted under certain circumstances. As a result, the question arises whether freedom of thought only protects those thoughts that take place in the ‘forum internum’, but which are not expressed or acted upon.¹²

The Special Rapporteur should therefore consider, in his assessment on the scope of thought, the legal implications of accepting that certain objects qualify as ‘extended’ thought, in such cases where: i) an object “is a constant in the person's life and they will rarely take action without consulting it”¹³; ii) the information from this object is directly and easily available; and, iii) upon retrieving information from this object, the information is automatically endorsed.¹⁴ Within this framework, certain objects can be deemed to constitute thought and, therefore, to enjoy absolute protection.

The approach of extending thought to include objects would seem to be supported by the jurisprudence of the European Court of Human Rights (ECtHR), which in *Georgian Labour Party v. Georgia* ruled that “an intention to vote for a specific party is essentially

⁹ Harry G. Frankfurt (1971) “Freedom of the will and the concept of a person” *The Journal of Philosophy* Vol. 68, No. 1, pp. 5-20; McCarthy-Jones (n4) p. 4.

¹⁰ Rafael Yuste, Sara Goering et al. (2017). “Four ethical priorities for neurotechnologies and AI” *Nature* No. 551, p. 161.

¹¹ *Ibid.* p. 6

¹² Bublitz (n7) p. 2

¹³ Andy Clark & David Chalmers (1998) “The extended mind” *Analysis*, Vol. 58, No. 1, pp. 7-19; as quoted in McCarthy-Jones (n4) p. 4.

¹⁴ *Ibid.*

a thought confined to the *forum internum* of a voter,”¹⁵ from which it could be reasoned that the (un)cast ballot paper itself constitutes thought.

Given that “thought” is an absolutely protected *forum internum*, any expansion of this right has significant implications. Extending the protection from the individual to, for example, religious texts (that are a constant in peoples’ lives, without which individuals may not act, and which they may automatically endorse), questions arise as to what exactly should be absolutely protected. The answers to such questions could have both intended and unintended effects on the protection of freedom of thought, conscience, religion or belief, as well as for freedom of expression, in light of discussions surrounding blasphemy and defamation laws, which the UN Special Rapporteur has considered in previous reports.¹⁶

Freedom of thought and security

The OSCE concept of security is comprehensive, co-operative, and understands equal and indivisible human rights as part and parcel of human security. The three complementary dimensions of the OSCE’s approach to security (politico-military, economic and environmental, and human) are each viewed as equally important.¹⁷ In their human dimension commitments, OSCE participating states have explicitly linked freedom of thought and security,¹⁸ emphasised the protection of private and family life in electronic communications, and established that “any improper or arbitrary intrusion by the State in the realm of the individual [...] would be harmful to any democratic society.”¹⁹ OSCE participating States have also expressed concern about the security risks of using information and communication technologies with malicious intent.²⁰ Attempts to break the *forum internum* and/ or manipulate thoughts not only presents a real threat to freedom of thought, but also to other rights.²¹

Practices and policies with undue influence on "freedom of thought"

While the Special Rapporteur will likely cover commonly recognised forms of violations of freedom of thought, such as the manipulation of educational materials,²² we would like

¹⁵ European Court of Human Rights (2008) *Georgian Labour Party v. Georgia*, Application 9103/04.

¹⁶ For example see: UN Special Rapporteur on Freedom of Religion or Belief (2019) Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, A/HRC/40/58.

¹⁷ OSCE ODIHR “Freedom of Religion or Belief: Policy Guidance” (2019) p. 9.

¹⁸ OSCE Ministerial Council, Declaration No. 3/13 “Freedom of thought, conscience, religion or belief”, Kyiv, 6 December 2013.

¹⁹ Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 1991, para. 24.

²⁰ OSCE Ministerial Council, Declaration 5/17 “Enhancing OSCE Efforts to Reduce the Risks of Conflict Stemming from the Use of Information and Communication Technologies”, Vienna, 8 December 2017.

²¹ Human Rights Watch (2020) [“China: Big Data Program Targets Xinjiang’s Muslims”](#).

²² Other options could include, for example, organised or oppressive indoctrination, forced conversion therapies for LGBTQ+ and religious individuals, torture, and the use of mind control techniques or drugs without consent. The OSCE’s 1989 Concluding Document of the Vienna Follow Up Meeting, contains a commitment to “protect individuals from any psychiatric or other medical practices that violate human rights and fundamental freedoms and take effective measures to prevent and punish such practices”. There

to discuss the far-reaching implications of the use of Big Data to profile individuals. This often occurs without their informed consent, to micro-target advertisements to them, in ways that could be considered to exploit mental vulnerabilities by impairing consumer's rights to be free from manipulation.²³

When considering whether there has been a violation of freedom of thought, one main consideration should be the power imbalances between the parties, as developed in ECtHR jurisprudence.²⁴ Power imbalance could be applied to freedom of thought considerations in the field of technology since actors with access to the personal data of unwitting individuals can be deemed to have 'improper access' to their minds. Additionally, in societies where the Internet has become ubiquitous, "individuals may feel they have no choice but to surrender their data for behaviour-reading, in exchange for services [...] This suggests a coercive element."²⁵

The ability to pry into an individual's thoughts through the analysis of metadata -given up wittingly or unwittingly-, including the capacity to predict reactions and spur emotions, provides state and non-state actors with new tools that have capacity for mass manipulation, and profiling.²⁶ Whilst future security threats are hard to predict, they should include emerging technologies such as, for example, cognitive enhancement technologies.²⁷

In the area of religion or belief, the Special Rapporteur should also consider the issue of "improper proselytism", when religious expressions or actions aimed at influencing religious beliefs, affiliation or the identity of another person are accompanied by, for example, coercion, fraud, or exerting 'improper' pressure on people in distress or in need.²⁸

Recommendations:

ODIHR encourages the Special Rapporteur to:

Use this report to focus on 'thought' as part of the forum internum, and to foster discussion on the impact of 'thought' being violated upon conscience, religion, belief, and the wider human rights framework;

Consider the security dimension of freedom of thought violations;

are also challenges to freedom of thought from coerced psychiatric interventions, where it might be hard to reconcile medical necessity with the absolute protection that freedom of thought enjoys. Please refer to Bublitz (n. 7 p. 10) for a discussion of this issue.

²³ Bublitz (n7) p. 12.

²⁴ See for example, *Larissis and Others v. Greece*, 1998

²⁵ *McCarthy-Jones* (n4) p. 7.

²⁶ Human Rights Watch (2020) "[China: Big Data Program Targets Xinjiang's Muslims](#)".

²⁷ Neal Ungerleider (2012) "[DARPA's Cybernetic Binoculars Tap Soldiers' Brains to Spot Threats](#)," *Fast Company*; Matthew Cox (2019) "[Pentagon Report Predicts Rise of Machine-Enhanced Super Soldiers](#)," *Military.com*.

²⁸ See: ECtHR, *Kokkinakis v. Greece*.

Discuss the implications of extending the scope of ‘thought’ to objects.

ODIHR encourages the United Nations and other multilateral institutions engaged in the promotion and protection of freedom of thought, conscience, religion and belief to:

Invite civil society to engage in discussions around freedom of thought, to ensure that diverse perspectives are considered. Echoing the recommendations from the OSCE Supplementary Human Dimension Meeting (3) in 2020²⁹, civil society should be given the tools and the access to contribute meaningfully to this debate, especially relating to new technologies;

Intensify their work on drafting and promoting guidelines to States on all aspects of the right outlined in Article 18 UDHR, including thought;

Provide guidance to States with regard to legislation regarding the use of Big Data and AI systems in order to prevent their use for the manipulation of decision-making processes with a specific outcome in mind;³⁰

Help increase awareness on freedom of thought and the challenges it faces.

ODIHR encourages States to:

Ensure that law enforcement, security officials, and other public officials are provided with the relevant training and guidance to prevent and respond to possible violations of freedom of thought;³¹

Provide incentives for companies to protect freedom of thought in the development of new technologies. This should include technical measures such as privacy-by-design systems, or the introduction of “friction factors”³², and non-technical measures, such as legislation to protect and advance mental autonomy;

Agree to take the action necessary to ensure the freedom of the individual to profess and practise, alone or in community with others, religion or belief acting in accordance with the dictates of their own conscience;³³

Ensure that converts are protected from violence, harassment, intimidation or discrimination, so that they are free to fully exercise their freedom of thought, conscience, religion or belief;³⁴

²⁹ 9 November 2020, 15:00 - 10 November 2020, https://www.osce.org/odihr/shdm_3_2020

³⁰ Harutyunyan & Yeremyan (n2) p. 142.

³¹ OSCE ODIHR “Freedom of Religion or Belief: Policy Guidance” (2019)

³² McCarthy-Jones (n4) p. 12.

³³ As OSCE participating States committed themselves to at Madrid (1983)

³⁴ OSCE ODIHR “Freedom of Religion or Belief: Policy Guidance” (2019)

Establish or maintain dialogue with as wide a range of faith-based actors as possible to understand the challenges that they could face in this area.