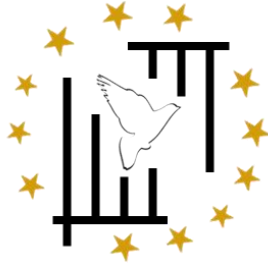


A S S E D E L



**Association Européenne
pour la Défense des Droits et des Libertés**

ASSEDEL, 11 Rue de Bruxelles 67000 Strasbourg, France,
www.assedel.org, info@assedel.org

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**Comments on the draft General Comment No. 38 on Article 22 of
the International Covenant on Civil and Political Rights (the right to
freedom of association)**

adopted on first reading at the 145th session
Submission to the Human Rights Committee – July 2026

Introduction

1. ASSEDEL, the Association Européenne pour la Défense des Droits et des Libertés, thanks the Committee and the Rapporteur for the opportunity to comment on the draft General Comment No. 38, adopted on first reading at the 145th session. ASSEDEL is a European human rights association engaged in the protection of fundamental rights and freedoms, with sustained practice before the European Court of Human Rights, including through third-party interventions, and in the monitoring of civic space and the protection of associations and human rights defenders.

2. ASSEDEL considers the draft to be a rigorous and forward-looking text. It welcomes in particular the general presumption in favour of the lawfulness of associations (para. 42), the exhaustive reading of the legitimate grounds for restriction (paras. 45 and 49), the protection of access to foreign funding and the rejection of “foreign agent” labelling (paras. 14 and 49), the treatment of the criminal legality principle as non-derogable (para. 44), and the careful articulation of negative and positive obligations, including extraterritorially (paras. 28 to 39). The comments below are confined to a focused set of points on which, in ASSEDEL’s view, the second reading could further strengthen the operational guidance offered to States. They are keyed to the paragraph numbers of the draft.

A. The qualifier “licit” and the boundary between scope and restriction (paras. 12, 42 and 51)

3. Paragraph 12 defines associations as entities that pursue “common licit goals”. ASSEDEL invites the Committee to ensure that this qualifier is not read as a threshold filter that places associations outside the protection of Article 22 by reference to the lawfulness of their aims as characterised under domestic law. Such a reading would be in tension with the presumption of lawfulness affirmed in paragraph 42 and with the principle, recognised throughout the draft, that the assessment of an association’s aims and activities belongs within the restriction analysis under Article 22(2).

4. ASSEDEL recommends that the Committee clarify that the lawfulness of an association’s purpose is assessed under Article 22(2), read with Article 5(1), and not at the threshold of scope, and that the exclusion contemplated by paragraph 51 for groups pursuing violent or anti-democratic ends, or conduct falling within Article 20, operates as an exceptional consequence of that analysis, subject to the procedural safeguards set out in paragraphs 19 and 42, rather than as an a priori denial of protection. This preserves the coherence between Section II and the restriction regime and prevents the “licit” qualifier from being instrumentalised.

B. Registration: reasonable time limits and a deemed-registration safeguard (paras. 13 and 30)

5. Paragraph 13 confirms that burdensome or onerous registration requirements do not meet Article 22 and that access to registration is itself protected, and paragraph 30 lists the arbitrary refusal to register among prohibited measures. ASSEDEL recommends that the Committee add a concrete procedural safeguard: where domestic law makes registration available or required, the competent authority must decide within a reasonable and clearly defined time limit; a refusal must be reasoned and subject to prompt and effective judicial review; and the failure of the authority to decide within the prescribed period should operate as registration by default rather than as a continuing bar to legal personality. A default rule of this kind addresses

the practice, documented in the Committee's own concluding observations, of frustrating associations through indefinite administrative inaction.

C. Dissolution and suspension: a judicial measure of last resort, with suspensive effect (paras. 8, 19, 40, 42 and 45)

6. The draft treats compulsory dissolution as an exceptional measure subject to the full requirements of Article 22(2) (para. 19) and reserves the dissolution of a political party for very serious circumstances (para. 45). ASSEDEL supports this approach and recommends that the Committee make the procedural dimension explicit, since it is at the level of procedure that dissolution most often escapes scrutiny.

7. ASSEDEL recommends that the General Comment state that the dissolution or suspension of an association, a foundation, a trade union or a political party may be ordered only by an independent and impartial court, following due process and on the basis of individualised evidence; that dissolution or suspension effected by executive or administrative authority, including by decree or by inclusion on an administrative list, is incompatible with Article 22; that it is a measure of last resort, admissible only where less restrictive measures would be manifestly insufficient; and that a remedy against dissolution or suspension must have suspensive effect in order to prevent irreparable harm. The requirement of a judicial decision is reflected, for trade unions, in Article 4 of ILO Convention No. 87, a Convention that the draft invokes (paras. 20 and 56); ASSEDEL recommends that the same guarantee be stated for associations generally. The case law of the European Court points in the same direction, treating dissolution as the most radical interference, admissible only on relevant and sufficient reasons and where attended by adequate procedural safeguards.¹

D. Criminalisation of association and personal culpability (Articles 15 and 22) (paras. 30, 44, 51 and 54)

8. ASSEDEL strongly supports paragraph 44, which subjects the criminalisation of associations and their members to the non-derogable criminal legality principle of Article 15, and the citation of *Alakuş v. Türkiye*. ASSEDEL recommends that the Committee develop two further dimensions of that principle, which are decisive in the cases most frequently brought against members of associations.

9. First, the temporal dimension: conduct that was lawful when performed may not be punished by reason of the subsequent prohibition, dissolution or reclassification of the association. The retroactive criminalisation of past lawful association, including membership, the payment of dues, donations, or the holding of an account with a lawfully operating institution, is incompatible with Article 15. Second, the substantive dimension: criminal liability must rest on the individual's own culpable conduct and intent, established by evidence, and may not be inferred from the mere fact of membership or from the collective or automatic attribution to members of the acts of an organisation. This requirement of personal culpability is of particular

¹ECtHR, *United Communist Party of Turkey and Others v. Turkey*, no. 19392/92, 30 January 1998; *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98 and others, 13 February 2003; *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, no. 37083/03, 8 October 2009; *Association Rhino and Others v. Switzerland*, no. 48848/07, 11 October 2011. See also *Vona v. Hungary*, already cited in the draft (fn. 145).

importance in cases of alleged accessorial or membership-based liability, where the danger of punishing protected association is greatest.

10. ASSEDEL further recommends that the Committee recognise that collateral measures imposed solely on the basis of past lawful association, such as dismissal from public or private employment, professional disqualification, or the withdrawal of licences or accreditation, are themselves interferences with Article 22 that must satisfy the restriction test. In support of these propositions the Committee may wish to refer, in addition to *Alakuş*, to the Grand Chamber judgment of the European Court in *Yalçınkaya v. Türkiye*, in which the use of lawful conduct, including trade union membership and the holding of a bank account, as the basis for a conviction for membership of an armed terrorist organisation was found to violate Articles 7 and 11 of the European Convention.²

E. “Foreign agent” and “foreign influence” laws (paras. 14 and 49)

11. ASSEDEL warmly welcomes paragraphs 14 and 49 and the citation of *Ecodefence and Others v. Russia*. ASSEDEL recommends that the Committee strengthen this passage by reference to the more recent and more comprehensive judgment of the European Court in *Kobaliya and Others v. Russia* (22 October 2024), in which the Court examined the expanded “foreign agent” framework as applied to organisations, media and individuals and found it arbitrary, stigmatising and not necessary in a democratic society, observing that the legislation bore the hallmarks of a totalitarian regime and finding violations of Articles 8, 10 and 11 of the Convention. The judgment is directly relevant to the wave of “foreign influence” and “transparency” legislation now adopted or proposed in several States, and it confirms that the stigmatising designation, and not only the attendant reporting burdens, is itself incompatible with the right.³

F. Financial exclusion through counter-terrorism-financing frameworks and bank de-risking (paras. 30, 43, 44 and 58)

12. The draft addresses the misuse of counter-terrorism and anti-money-laundering measures (paras. 30 and 44) and the designation of associations as “terrorist” for the purpose of asset freezing (para. 43), and it notes the humanitarian exemption under Security Council resolution 2664 (2022) (para. 58). ASSEDEL recommends that the Committee complete this picture by addressing financial exclusion effected through private actors. The positive obligation under Article 22 should be understood to require States to ensure that the de-risking practices of banks and financial institutions do not deprive associations of access to banking services on unsubstantiated grounds, and to provide a remedy where they do. The Committee may also wish to note the phenomenon of transnational financial exclusion, by which a designation imposed in one State is replicated through private compliance databases and results in the de-banking of an association in the State where it is lawfully established, without any decision of that State’s authorities and without an effective means of challenge.⁴

²ECtHR, *Yalçınkaya v. Türkiye* [GC], no. 15669/20, 26 September 2023.

³ECtHR, *Kobaliya and Others v. Russia*, nos. 39446/16 and 106 others, 22 October 2024.

⁴See FATF Recommendation 8 on non-profit organisations and the Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on access to resources, A/HRC/53/38/Add.4 (2023).

G. Strategic lawsuits against public participation (paras. 30, 35 and 39)

13. ASSEDEL welcomes the reference to “strategic litigation against public participation” in paragraph 30 and the positive obligation in paragraph 35 to address hostile actions emanating from private actors. ASSEDEL recommends that the Committee identify, as emerging best practice on this point, the two European instruments adopted in 2024, namely Recommendation CM/Rec(2024)2 of the Committee of Ministers of the Council of Europe of 5 April 2024 on countering the use of SLAPPs and Directive (EU) 2024/1069 of 11 April 2024, both of which set out procedural safeguards, including the early dismissal of manifestly unfounded claims and the allocation of costs, capable of protecting associations and their members against abusive proceedings. A reference of this kind would give States concrete guidance on the operationalisation of the positive obligation recognised in paragraph 35.⁵

H. States of emergency: the prohibition of irreversible measures (paras. 19 and 52 to 56)

14. ASSEDEL supports the treatment of emergencies in Section VI, and in particular the affirmation that the criminal legality principle and the related judicial guarantees are non-derogable (para. 54) and that derogating measures must be strictly limited in duration, geographical coverage and material scope (para. 55). ASSEDEL recommends that the Committee add that, since a derogation is by definition temporary and must be limited to what is strictly required by the exigencies of the situation, no measure adopted on the basis of a derogation from Article 22 may produce permanent or irreversible effects, in particular the permanent dissolution of an association or the irreversible confiscation of its assets. A measure of that kind extinguishes rather than suspends the right and therefore exceeds the temporal logic of Article 4. This clarification connects Section VI to the treatment of dissolution in paragraph 19 and reflects the position of the ILO supervisory bodies that the guarantee against administrative dissolution in Article 4 of ILO Convention No. 87 applies even during a state of emergency.

I. Associations as indispensable vehicles for collective interests, including before courts (paras. 2, 3 and 13)

15. Paragraphs 2 and 3 situate freedom of association within the network of rights that it facilitates, including environmental protection, and paragraph 13 affirms the protection of informal and unregistered associations. ASSEDEL invites the Committee to make explicit a corollary that follows from these paragraphs, namely that the standing of associations to act, including before judicial and quasi-judicial bodies, in defence of the collective interests of their members forms part of the protection of Article 22. The recognition by the European Court, in *Verein KlimaSeniorinnen Schweiz v. Switzerland*, of the standing of an association to bring a claim that the individual applicants were not themselves entitled to bring, which the draft already cites at paragraph 3, illustrates the indispensable role of associations as vehicles through which collective and diffuse interests are vindicated. An express statement to this effect would reinforce the instrumental dimension of the right that the draft rightly emphasises.⁶

⁵Council of Europe, Committee of Ministers, Recommendation CM/Rec(2024)2 on countering the use of strategic lawsuits against public participation (SLAPPs), 5 April 2024; Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024.

⁶ECtHR, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], no. 53600/20, 9 April 2024.

J. The independence of the legal profession and associations of lawyers (paras. 12, 30 and 32)

16. ASSEDEL welcomes the express inclusion of bar associations and legal aid organisations within the scope of Article 22 (para. 12), the prohibition of the criminalisation of legal aid associations (para. 30), and the protection of lawyers against transnational repression (para. 32). Given the central role of an independent legal profession in the protection of all other Covenant rights, ASSEDEL recommends that the Committee state that interference with the self-governance of associations of lawyers, including their dissolution or restructuring, the imposition of officials upon them, or the harassment or prosecution of their members on account of the discharge of their professional functions, engages Article 22 and must satisfy its requirements. The Committee may wish to read this guidance in harmony with the United Nations Basic Principles on the Role of Lawyers, in particular the principles concerning the freedom of lawyers to form and join self-governing professional associations.

Conclusion

17. ASSEDEL reiterates its appreciation for a draft that already provides precise and protective guidance. The recommendations above are offered to reinforce the operational dimension of that guidance at the points where, in ASSEDEL's experience, the right to freedom of association is most often defeated in practice: the procedure for dissolution, the criminalisation of association, financial exclusion, abusive litigation, and the conduct of States during emergencies. ASSEDEL remains at the disposal of the Committee and the Rapporteur for any further information that may assist the second reading.

*ASSEDEL, Association Européenne pour la Défense des Droits et des Libertés
Strasbourg, July 2026*