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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-sixth session, 18–22 November 2019

Opinion No. 84/2019 concerning Avraham Lederman, Pinhas Freiman and Mordechai Brizel (Israel)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.

2. In accordance with its methods of work (A/HRC/36/38), on 8 August 2019 the Working Group transmitted to the Government of Israel a communication concerning Avraham Lederman, Pinhas Freiman and Mordechai Brizel. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).



Submissions

Communication from the source

4. Mr. Lederman is an Israeli citizen born in 1997. He is a yeshiva student and a member of Neturei Karta.
5. Mr. Freiman is an Israeli citizen born in 1996. He is a yeshiva student and a member of Neturei Karta.
6. Mr. Brizel is an Israeli citizen born in 1998. He is a yeshiva student of Satmar Hasidism Court.
7. The source explains that Neturei Karta and Satmar Hasidism Court are ultra-orthodox, anti-Zionist communities and branches of the minority group Eida Haredith, which does not recognize the State of Israel and its institutions and views military service as a violation of one its most fundamental religious beliefs.

Arrest and detention of Mr. Lederman and Mr. Freiman

8. According to the source, Mr. Lederman and Mr. Freiman were arrested by the Israeli police on 26 October 2017 in Jerusalem, Israel, during a demonstration against the forced conscription of ultra-orthodox Jews who object to enlistment in the Israeli military on conscientious, religious and cultural grounds. Neither was shown an arrest warrant. The source specifies, however, that the law allows the police to detain or arrest a person without a warrant in certain situations. On the same day, Mr. Lederman and Mr. Freiman were transferred into the custody of the military police and the military judicial system, even though they were never in the military. The source indicates that this military detention was based on a warrant but that the warrant was not shown to the men, nor were they aware of it.¹

9. Reportedly, Mr. Lederman and Mr. Freiman were initially arrested on suspicion of blocking or obstructing traffic (sect. 490 (1) of the Penal Law). Then, once they were placed in detention, the authorities argued that the reason for their deprivation of liberty was their unauthorized absence from military service, an absence of 739 days (18 October 2015–26 October 2017) in respect of Mr. Lederman and 1,095 days (24 October 2014–25 October 2017) in respect of Mr. Freiman. The legal basis for the offence is article 94 of the Military Justice Law of 1955, according to which absence from military service is a severe offence carrying a maximum sentence of three years in prison.

10. Moreover, the source reports that, after his arrest, Mr. Lederman refused to wear the army's uniform or to be drafted. He denied the authority of his military commanders (e.g. he refused to receive orders, to salute etc.) and was put in solitary confinement. Allegedly, as a conscientious objector, he experienced inhuman treatment by the military detention authorities as he was denied basic human needs such as sunlight, bathing time, clean clothes and human contact for over two weeks. With regard to Mr. Freiman, after his arrest and transfer to the military police, he told his interrogators that he refused to enlist because the "Holy Torah" forbade him to do so. He said that he would rather die than enlist. Yet, his arguments related to religious freedom were not answered and he was kept in a military prison.

11. It is reported that, on 31 October 2017, Mr. Lederman's and Mr. Freiman's indictments were read by the military court. Their claims that they should be released for "just cause" based on religious and conscientious reasons were disregarded by the court, which, however, ordered the army to bring the two men before a committee providing advice to the Minister of Defense on matters of exemption, known as the "conscience committee". The court also ordered that Mr. Lederman and Mr. Freiman remain imprisoned until the committee agreed to see them. On 1 November 2017, the lawyer representing Mr.

¹ The military detention of Mr. Freiman was based on "an arrest request" issued by the military that was not, however, shown to him until a later stage.

Lederman and Mr. Freiman requested a meeting with the conscience committee and, on 8 November, the army approved the request without specifying a date.

12. The source explains that the trial of Mr. Lederman and Mr. Freiman was scheduled to start on 16 November 2017 but was postponed until after the two men had appeared before the conscience committee. The source submits that the committee has never examined requests for military service exemptions based on conscientious and religious objection and would apparently not have the capacity to do so. Furthermore, the committee is composed of four military personnel and an academic and serves as an integral organ of the military, thus failing to comply with the principles of independence and due process.² The source notes that the military prosecution objected to having Mr. Lederman and Mr. Freiman appear before the committee, arguing that only the army's internal recruitment administration could assess their cases and decide whether the two men were "worthy" conscientious objectors. Moreover, the military court rejected the defence's request to release Mr. Lederman and Mr. Freiman to allow them to first exhaust all available remedies before appearing in front of the committee.

13. On 22 November 2017, Mr. Lederman and Mr. Freiman were reportedly called to an unscheduled preliminary interview with a recruitment administration officer without their lawyer being notified. The source claims that the officer had no formal qualification or understanding of claims based on conscientious objection. After addressing one question to Mr. Lederman and several questions to Mr. Freiman, including a request for him to present a document, the officer concluded that they were not suited to meet with the conscience committee and thus refused to allow them to be brought before it, contradicting the decision of the military court of 31 October 2017.

14. The source explains that the lawyer of Mr. Lederman and Mr. Freiman filed an urgent appeal on 23 November 2017 calling for the two men's immediate release. The court of appeals decided to confirm their ongoing detention but called upon the army recruitment office to hold another assessment interview. Consequently, Mr. Freiman was interviewed on 6 December 2017 and Mr. Lederman was interviewed on 12 December 2017, after which they were exempted from military service due to "bad and severe behaviour". The source argues that the reason given for the exemption carries a punitive and judgmental tone and completely disregards freedom of religion and conscientious objection considerations.

15. The exemption from military service did not, however, put an end to the criminal procedure before the military court. To the contrary, the military court found Mr. Lederman and Mr. Freiman guilty of unauthorized absence from military service on 13 and 26 December 2017 respectively. Mr. Lederman was sentenced to 32 days in detention and probation for one year; he was released on 13 December 2017, having already served time. Mr. Freiman was sentenced to 75 days in detention and probation for two years; he was released on 26 December 2017, having already served time. The source highlights that the court recognized that Mr. Freiman is part of an autonomous anti-Zionist religious community but rejected his claims related to his right to freedom of conscience and religion.

16. The source thus considers that the efforts made to exhaust domestic remedies have been ineffective because Mr. Lederman and Mr. Freiman were brought before the military justice system. In other words, the source explains, even after Mr. Lederman and Mr. Freiman were exempted from serving in the army (based on "bad behaviour"), the criminal proceedings remained within the military framework and their claims of violations of freedom of conscience were disregarded. Moreover, military courts have the authority to imprison deserters on a continuous basis as a new demand for enlistment in the army is issued at the end of every period of detention and as each instance of non-compliance with such a demand is followed by another military trial, which keeps them imprisoned.

² See also CCPR/C/ISR/CO/4, para. 23.

Arrest and detention of Mr. Brizel

17. According to the source, Mr. Brizel was arrested on 22 October 2017 at his home in Bet Shemesh during a coordinated operation by military police units to “catch defectors”. Mr. Brizel was then transferred into the custody of the military judicial system. The arrest was based on a draft order requiring Mr. Brizel to enlist in the Israeli army issued by the Israeli military recruitment administration.

18. On 23 October 2017, Mr. Brizel was reportedly brought before a “judgment officer” of the recruitment administration, which the source claims is an internal mechanism for implementing military disciplinary law. The source adds that the officer is neither a judge nor a jurist and has little if any legal knowledge or training. Also according to the source, Mr. Brizel promptly made a “just cause” argument, which was disregarded completely by the officer, who wrongly concluded that Mr. Brizel had confessed to the offence with which he had been charged. Mr. Brizel was initially sentenced to 20 days in prison, to be renewed as long as he refused to enlist.

19. Subsequently, on 26 October 2017, Mr. Brizel’s lawyer filed an appeal of the disciplinary sentencing, calling for the immediate release of his client, the cancellation of the sentence and the abolishment of the draft order or the granting of an exemption from military service. In the appeal, the lawyer stressed the obligations of Israel under the International Covenant on Civil and Political Rights and detailed Mr. Brizel’s religious beliefs as the grounds of his conscientious objection. According to the source, the recruitment administration did not respond to the appeal and Mr. Brizel served his entire sentence. During that period, the lawyer of Mr. Brizel contacted the recruitment administration, to no avail. No formal response was ever provided.

20. Mr. Brizel was released on 9 November 2017. According to the source, Mr. Brizel filed numerous complaints to different units within the military system in order to have his case examined. He still lives in daily fear of arrest due to his absence from military service.

21. Reportedly, on 16 November 2017 Mr. Brizel’s lawyer filed a complaint with the office of the Military Advocate General, again requesting the nullification of Mr. Brizel’s disciplinary sentence, given that the recruitment administration had failed to answer his appeal, and compensation for his client’s time in detention. The Military Advocate General agreed to formally revoke Mr. Brizel’s disciplinary sentence (citing procedural reasons to explain the unanswered appeal) but stated that since Mr. Brizel still refused to enlist he was regarded as a criminal defector who was under threat of further arrest and detention (and thus ineligible for compensation).

22. According to the source, on 29 November 2017 the recruitment administration sent a letter to Mr. Brizel notifying him that his absence from military service was unauthorized and constituted a severe offence with criminal implications. Again, no reference was made to Mr. Brizel’s conscientious objection claims or to the violations of his human rights.

23. Reportedly, on 28 December 2017 Mr. Brizel’s lawyer forwarded the appeal to exempt his client from military service to the office of the Minister for Public Security of Israel, who has the authority to exempt Mr. Brizel from enlistment or to order his enlistment, and to the office of the Commissioner for Soldiers’ Complaints, which has the authority to question all the offices mentioned above. On 14 January 2018, Mr. Brizel’s lawyer forwarded the appeal for exemption from military service to the Manpower Directorate. Despite these efforts, the military offices have not yet addressed Mr. Brizel’s claims that he should be exempted on the grounds of conscientious objection and Mr. Brizel remains – having no other choice – in a state of lawlessness.

24. The source explains that, on 10 May 2018, in other words almost five months after the complaint was made, the Commissioner for Soldiers’ Complaints answered Mr. Brizel’s lawyer. The Commissioner upheld the army’s position that Mr. Brizel must first go through the entire enlistment process, including by undergoing an invasive medical procedure, formally enlisting and becoming a soldier, wearing military uniforms and taking the military oath, before his case could be transferred to the conscience committee. According to the source, all of those steps breach Mr. Brizel’s rights and beliefs as stated in the present document, thus rendering Mr. Brizel’s right to conscientious objection obsolete.

25. The source indicates that, as a result of the foregoing and since the army refuses to allow him to appear before the conscience committee, Mr. Brizel retains the status of military defector. He is unable to leave the country and is under constant fear of being arrested.

Analysis

26. The source explains that the ultra-orthodox group Eida Haredith, of which Neturei Karta is a branch, is self-organizing. It administers its own social and legal institutions, has distinct customs and religious rules, as well as a distinct culture, and functions as separately as possible from the State. As such, it does not participate in Israeli elections, has no parliamentary representation and refuses to receive subsidies or governmental financial support of any kind.

27. Reportedly, Eida Haredith and the communities that are part of it object to Jewish individuals taking any political and military power and therefore see the Zionist project of establishing a Jewish state through coercion as contradictory to the fundamental oaths of Judaism. Furthermore, they perceive their moral role as immanently in contradiction with the use of force. Hence, service in the Israeli military is a violation of their principles. In fact, the prohibition on enlisting in any military service and participating in war is considered so fundamental that it may be preferable to die than to violate it.

28. Furthermore, the source indicates that, while military service in Israel is formally mandatory, it has been the policy of the Government not to enlist members of communities that are structurally alienated from the Zionist project, such as the Arab citizens of Israel and the members of the ultra-orthodox communities. However, in recent years, greater efforts have allegedly been made to force certain segments of the population that are not in line with the Government to enlist. Strict measures are allegedly being implemented to enlist the ultra-orthodox population, alongside a mechanism that enables some of them to postpone their military service until they have been completely released from duty. However, the youth of Eida Haredith, including Neturei Karta, are not recognized under this mechanism and refuse to ask for a postponement, as it requires members to declare that they are willing to enlist at a later stage.

29. The source claims that Eida Haredith, including Neturei Karta, has become one of the most vulnerable groups to be targeted for conscription. The three individuals cited in the present opinion are just some of the many members of these ultra-orthodox communities who have been considered as deserters, sanctioned for not enlisting and forced to live in hiding, under constant threat of losing their status as yeshiva students and under fear of imprisonment.

30. With regard to human rights violations, the source claims that the three individuals refuse to participate in the armed forces as they perceive such participation as a violation and desecration of their religious principles. According to the source, the army acknowledged as much: on the release form for Mr. Freiman, it is stated that he is a member of an ultra-orthodox community rejecting enlistment. The three individuals' objection to military service is protected by the right to freedom of thought, conscience and religion, enshrined in article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights.

31. The source argues that the three individuals' detention is also an institutional assault on members of religious and cultural minority groups and is therefore in contradiction with article 22 of the Universal Declaration of Human Rights and article 27 of the Covenant.

32. Moreover, the source alleges that the three individuals' rights to liberty and freedom from arbitrary detention and inhuman treatment, enshrined in articles 3, 5 and 9 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant, have also been infringed. In fact, in the military prison, Mr. Lederman and Mr. Brizel were requested to obey orders and act as soldiers, in violation of their core beliefs. This was allegedly done as a punitive measure for their refusal to wear a uniform. Mr. Lederman was held in solitary confinement while in remand and underwent harsh, degrading and inhuman treatment. For over two weeks, he was illegally deprived of his basic rights and elementary needs, such as being able to shower or change his clothes. He was also deprived of his rights to leave his

cell for an hour a day and to receive telephone calls and visits. It took two complaints by his family to the Commissioner for Soldiers' Complaints for the situation to be amended and to have the military follow its own orders regarding prisoners' confinement.

33. The source argues that Mr. Lederman and Mr. Freiman were not tried in accordance with international norms on a fair and impartial trial, as stipulated in article 10 of the Universal Declaration of Human Rights and article 14 of the Covenant. For example, while the cases of Mr. Lederman and Mr. Freiman should have been handled by the civilian judicial system and under the Military Service Law (1986), Mr. Lederman and Mr. Freiman were tried before a military court and according to martial law. Their attorney argued that the conscription order that had been issued in their absence was void and that the military court therefore had no jurisdiction over the matter, but these arguments were rejected. In the case of Mr. Lederman, it was rejected despite the fact that the military judge who had ordered his remand on 9 November 2017 had admitted that there were flaws in the process.

34. The source also alleges the violation of the same rights with regard to Mr. Brizel. Indeed, Mr. Brizel was tried before a military officer and under military disciplinary law. He was affectively denied any due process as the criminal charges against him were determined by an inner mechanism of the military recruitment administration, the same organization responsible for his arrest. As in the cases of Mr. Lederman and Mr. Freiman, Mr. Brizel's lawyer argued that the conscription order, which was issued in the absence of Mr. Brizel, was void and that the military officer therefore had no jurisdiction over the matter, as the conscription order was sent by "special authorization" requiring discretion.

35. In addition, the source argues that article 94 of the Military Justice Law, under which the three individuals were indicted and remanded for the offence of "unauthorized absence from military service", includes the possibility of mounting a defence by proving "just cause" for such absence. During several hearings, the lawyer of the three individuals argued that the right to freedom of conscience and religion and the attempt to coerce his clients into serving in the military against the basic principles of their communities' teachings constitute "just cause" and that his clients should therefore be released immediately and that the charges against them should be dropped. The source explains, however, that in the case of Mr. Lederman the military court arbitrarily dismissed that argument by claiming that no evidence had been found to support the claim that Mr. Lederman was a member of Neturei Karta and that, even if such evidence had been found, Mr. Lederman was obliged to follow the military's framework for obtaining an exemption. In the case of Mr. Brizel too the argument was disregarded. The recruitment administration gave a laconic answer according to which Mr. Brizel's membership in Satmar did not constitute "just cause" and disregarding the arguments on conscientious objection.

36. The source concludes that, by doing so, the military court disregarded its obligation to examine the argument of "just cause" in good faith, acting against international criminal law norms and effectively condemning the three individuals to a vicious cycle of imprisonment.

Response from the Government

37. On 8 August 2019, the Working Group transmitted the allegations made by the source to the Government through its regular communication procedure. The Working Group requested the Government to provide, by 7 October 2019, detailed information about the situation of Mr. Lederman, Mr. Freiman and Mr. Brizel and any comments on the source's allegations. Moreover, the Working Group called upon the Government to ensure the three men's physical and mental integrity.

38. The Working Group regrets that it did not receive a response from the Government to that communication, nor did the Government request an extension of the time limit for its reply, as provided for in the Working Group's methods of work.

Discussion

39. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

40. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

Category I

41. The Working Group will first consider whether there have been violations under category I, which concerns deprivation of liberty without any legal basis being invoked.

42. The present case concerns the deprivation of liberty of three individuals for their refusal to enlist for compulsory military service on the grounds of conscientious objection and religious belief. This is not contested by the Government. In its opinion No. 40/2018, the Working Group stated the principles relating to the right to conscientious objection to performing military service, drawing upon its own legal analysis and jurisprudence, as well as that of the Human Rights Committee and other human rights mechanisms.³ In particular, the Working Group emphasized that its approach to the issue had evolved over time to a more progressive view that treats the detention of a conscientious objector as a violation per se of article 18 (1) of the Covenant. That is, the Working Group strongly considers that the right to conscientious objection to military service is an absolutely protected right to hold a belief under article 18 (1) of the Covenant, which cannot be restricted by States.⁴

43. The Working Group has in the past found that detention pursuant to a law that is inconsistent with international human rights law lacks legal basis and is therefore arbitrary.⁵ The Working Group has further held that detention pursuant to a law that criminalizes conscientious objection to military service lacks a legal basis.⁶ In the case at hand, the deprivation of liberty of the three individuals amount per se to a violation of article 18 (1) of the Covenant and, as such, has no legal basis.

44. The Working Group therefore considers that the deprivation of liberty of Mr. Lederman, Mr. Freiman and Mr. Brizel lacks a legal basis and is thus arbitrary, falling under category I.

Category II

45. In the present case, the Working Group considers that it stems from the facts, which are not contested by the Government, that the deprivation of liberty of Mr. Lederman, Mr. Freiman and Mr. Brizel is the direct result of their genuinely held religious beliefs and conscience as ultra-orthodox Haredi Jews, which have led them to refuse to enlist in the military service. Accordingly, the Working Group finds that their deprivation of liberty violates the right to hold or adopt a religion or belief under article 18 of the Universal Declaration of Human Rights and article 18 (1) of the Covenant. Unlike the right to manifest one's religious belief, the protected right to hold or adopt a religion or belief is not subject to the limitations set out under article 18 (3) of the Covenant. There can be no limitation or possible justification under the Covenant for forcing a person to perform military service, as to do so would completely undermine the right to freedom of thought, conscience and religion enshrined in article 18 (1) of the Covenant.⁷

46. Moreover, the Working Group notes that, under the current practice, Haredi youths are legally exempted from military service by means of continuous applications for deferments, which require them to declare their willingness, against their faith, to serve at a later time. This creates a conundrum for Mr. Lederman, Mr. Freiman and Mr. Brizel and

³ See also opinion No. 69/2018, para. 19, and A/HRC/42/39, paras. 59–64.

⁴ See *Kim et al. v. Republic of Korea* (CCPR/C/112/D/2179/2012). Several members of the Committee expressed dissenting views on this point.

⁵ See, e.g., opinions No. 4/2019, para. 49, No. 69/2018, para. 21, No. 40/2018, para. 45, No. 43/2018, para. 34, and No. 14/2017, para. 49.

⁶ See opinions No. 69/2018, para. 21, No. 40/2018, para. 45, and No. 43/2017, para. 34.

⁷ See opinion No. 69/2018, para. 20, and A/HRC/42/39, paras. 59–64.

their co-religionists: they have either to compromise their absolute right to hold a belief of their choice or face deprivation of liberty.

47. The Working Group is therefore of the opinion that the deprivation of liberty of Mr. Lederman, Mr. Freiman and Mr. Brizel is arbitrary, falling within category II, as it violates article 18 of the Universal Declaration of Human Rights and article 18 (1) of the Covenant.

48. The Working Group refers the present case to the Special Rapporteur on freedom of religion or belief for appropriate action.

Category III

49. Given its finding that the deprivation of liberty of Mr. Lederman, Mr. Freiman and Mr. Brizel is arbitrary under category II, the Working Group wishes to emphasize that in such circumstances no trial should take place. However, as the trials have taken place, the Working Group will now consider whether the alleged violations of the right to a fair trial and due process were grave enough to give their deprivation of liberty an arbitrary character.

50. The Working Group recalls its jurisprudence in respect of the Government's power to bring multiple criminal or disciplinary actions against conscientious objectors in perpetuity for their repeated refusal to follow new enlistment orders, in theory and in practice.⁸ The Government's explanation that each new refusal constitutes a new offence did not convince the Working Group in 2003 and is no more persuasive today.⁹ Although Mr. Lederman, Mr. Freiman and Mr. Brizel have been released, they still face the prospect of future deprivation of liberty as a result of new summons issued following their refusal to obey enlistment orders. Such deprivation of liberty would be doubly arbitrary for lack of a legal basis because it both violates the principle of *non bis in idem* guaranteed by article 14 (7) of the Covenant and penalizes military conscientious objectors.¹⁰

51. The Working Group also considers that holding proceedings before a committee providing advice to the Minister of Defense on matters of exemption, the above-mentioned conscience committee, which in practice decides whether a conscientious objector will be deprived of his or her liberty by the military authorities for being a deserter, fails to meet the minimum standards of due process and fairness. The cursory treatment given to the claims of conscientious objection made by Mr. Lederman and Mr. Freiman by the conscience committee, which is composed of four military personnel and one academic, attest to this failure.

52. In this regard, the Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers for appropriate action.

53. The Working Group is of the view that Mr. Lederman's ill-treatment, which included holding him in prolonged solitary confinement and denying him showers or changes of clothing, as well as the possibility to receive telephone calls and visits, undermined his ability to defend himself and hindered his ability to exercise his due process and fair trial rights in violation of article 14 (3) (b) of the Covenant.

54. The Working Group finds that the treatment of Mr. Lederman, Mr. Freiman and Mr. Brizel by the military criminal and disciplinary bodies violates articles 10 and 11 (1) of the Universal Declaration of Human Rights and articles 9 and 14 (3) (b) of the Covenant.

55. Given the above, the Working Group concludes that the violations of the right to a fair trial and due process are of such gravity as to give the deprivation of liberty of Mr. Lederman, Mr. Freiman and Mr. Brizel an arbitrary character that falls within category III.

⁸ See opinion No. 24/2003, paras. 28–30.

⁹ See also opinion No. 36/1999, paras. 8–10.

¹⁰ See also CCPR/C/ISR/CO/4, para. 23, and A/HRC/42/39, paras. 59–64.

Category V

56. The Working Group will now examine whether the deprivation of liberty of Mr. Lederman, Mr. Freiman and Mr. Brizel constitutes discrimination under international law with respect to category V.

57. The Working Group notes that the Government has moved in recent years to restrict the exemptions from military service granted through deferments to the ultra-orthodox Haredi Jews, who do not recognize the State of Israel because of their historical anti-Zionist, anti-secular stance and therefore do not participate in elections. This trend has meant that Haredi Jews have found themselves at a disadvantage when seeking to secure exemptions, which tend to be granted to other, more numerous, ultra-orthodox groups that do take part in electoral politics through political parties.

58. In the Working Group's view, the granting of deferments based on "quotas" for each religious community through political trading, rather than on individualized assessments of conscientious objectors, naturally results in the discriminatory negation of the right to conscientious objection of the Haredi Jews, who neither recognize nor take part in such political processes because of their religious views and historical origin. The deprivation of liberty of Mr. Lederman, Mr. Freiman and Mr. Brizel by the military authorities demonstrate the consequence and is the outcome of this discriminatory practice.

59. For these reasons, the Working Group considers that the deprivation of liberty of Mr. Lederman, Mr. Freiman and Mr. Brizel constitutes a violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant on the grounds of discrimination based on religion and political or other opinion that aims at or can result in ignoring the equality of human beings. Their deprivation of liberty therefore falls under category V.

Disposition

60. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Avraham Lederman, Pinhas Freiman and Mordechai Brizel, being in contravention of articles 2, 3, 7, 10, 11 (1) and 18 of the Universal Declaration of Human Rights and articles 2 (1), 9, 14 (3) (b), 18 (1) and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

61. The Working Group requests the Government of Israel to take the steps necessary to remedy the situation of Mr. Lederman, Mr. Freiman and Mr. Brizel without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the Covenant.

62. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to accord Mr. Lederman, Mr. Freiman and Mr. Brizel an enforceable right to compensation and other reparations, in accordance with international law.

63. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Lederman, Mr. Freiman and Mr. Brizel and to take appropriate measures against those responsible for the violation of their rights.

64. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the independence of judges and lawyers for appropriate action.

65. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

Follow-up procedure

66. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Lederman, Mr. Freiman and Mr. Brizel remain at liberty;
- (b) Whether compensation or other reparations have been made to Mr. Lederman, Mr. Freiman and Mr. Brizel;
- (c) Whether an investigation has been conducted into the violation of the rights of Mr. Lederman, Mr. Freiman and Mr. Brizel and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Israel with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

67. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

68. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

69. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.¹¹

[Adopted on 22 November 2019]

¹¹ Human Rights Council resolution 42/22, paras. 3 and 7.