

Working Group on Arbitrary Detention

REFERENCE: WGAD/2019/ISR/OPN

13 February 2020

Dear Sir,

I would like to refer to the 86th session of the Working Group on Arbitrary Detention, during which the Working Group adopted several Opinions on cases of deprivation of liberty submitted to it.

In accordance with paragraph 18 of the Working Group's revised methods of work, I am sending to you, attached herewith, the text of Opinion No. 84/2019 (Israel) adopted on 22 November 2019, regarding a case submitted by you.

In conformity with its revised methods of work, the Working Group transmits its Opinions to the source of the petitions forty-eight hours after having transmitted it to the relevant Government.

This Opinion will be published on the website of the Working Group and reflected in its annual report to the Human Rights Council. In the meanwhile, we would encourage you to treat the information given to you by the Working Group on this matter with discretion.

Yours sincerely,



Lucie Viersma
Secretary
Working Group on Arbitrary Detention

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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. **Avraham Lederman** is an Israeli citizen born in 1997. Mr. Lederman is a Yeshiva student and a member of Neturei Karta.
5. **Pinhas Freiman** is an Israeli citizen born in 1996. Mr. Freiman is a Yeshiva student and a member of Neturei Karta.
6. **Mordechai Brizel** is an Israeli citizen born in 1998. Mr. Brizel 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, branches of the minority “Eida Haredith”, which does not recognize the State of Israel and its institutions and perceives the 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 on 26 October 2017 in Jerusalem, Israel, during a demonstration against the forced conscription of ultra-Orthodox Jews to the Israeli military, based on conscientious, religious and cultural grounds. They were both arrested by the Israeli police, which did not show a warrant. The source specifies however that the law enables the police to detain or arrest a person without a warrant in certain situations. On the same day, they were transferred to the custody of the military police and the military judicial system, even though they never were in the military. The source indicates that this subsequent military detention was based on a warrant. However, this warrant was not shown to them nor were they aware of it.¹
9. Reportedly, the reason for the arrest of Mr. Lederman and Mr. Freiman was initially found in a suspicion of blocking or obstructing traffic (pursuant to article 490 (1) of the Penal Law). Then, once in detention, the authorities argued that the reason for the deprivation of liberty of Mr. Lederman and Mr. Freiman was their unauthorized absence from military service, respectively of 739 days (from 18 October 2015 to 26 October 2017) and of 1095 days (from 24 October 2014 to 25 October 2017). The legal basis of this offense is article 94 of the Military Justice Law of 1955, which is a severe offense with 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 and to take any part in the drafting process at the military detention base. 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 inhumane treatment by the military detention authorities as he was denied basic human needs, such as sunlight, bathing time, change of clothes and human relations 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” forbids him to do so. He said that he would rather die than to 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 and Mr. Freiman’s indictment was read to the military court. Their release claims for “just cause” based on religious and conscientious reasons were disregarded by the court, albeit it ordered the army to bring them before an Advisory Committee to the Minister of Defense on Matters of Exemption, publicly known as the “Conscience Committee”. Afterwards, the Court ordered that Mr. Lederman and Mr. Freiman remain imprisoned until the Committee would agree to meet them. On 1 November 2017, Mr. Lederman and Mr. Freiman’s lawyer requested to schedule the meeting

¹ With regard to the warrant concerning Mr. Freiman, the military detention was based on a warrant (literally: “an arrest request”) which was issued by the military, but was not shown to him until a later stage.

with the Conscience Committee, and on 8 November, the army approved the request without specifying a date.

12. The source explains that Mr. Lederman and Mr. Freiman's trial was scheduled to start on 16 November 2017 but it was postponed until their appearance before the Conscience Committee. With regard to this Committee, the source submits that it has never examined conscientious and religious exemptions requests and would apparently not have the capacity to do so. Furthermore, it is composed of four military personnel and a member of the Israeli Academia. It thus serves as an inherent organ of the military and fails to comply with principles of independence and due process.² The source further notes that the military prosecution objected to have Mr. Lederman and Mr. Freiman appear before the Committee, arguing only the army's inner recruitment administration can assess his case and decide whether they are "worthy consciences objector[s]". Moreover, the military tribunal rejected the defense's request to release Mr. Lederman and Mr. Freiman from detention in order to allow them to first exhaust all proceedings before the Committee.

13. Reportedly, on 22 November 2017, Mr. Lederman and Mr. Freiman were called to an unscheduled preliminary interview with a Recruitment Administration Officer without notification to their lawyer. The source claims that this officer has no formal qualification or understanding of the analysis of claims based on conscientious objection. After asking one question to Mr. Lederman, and several ones to Mr. Freiman, including a request to present a document, the officer concluded that they were not suited to meet with the Committee and thus refused to allow them to meet the Conscience Committee, breaching the decision of the military tribunal of 31 October 2017.

14. The source further explains that Mr. Lederman and Mr. Freiman's lawyer filed an urgent appeal on 23 November 2017, calling for their immediate release after the army's refusal to allow them to meet the Conscience Committee. The Appeal Court decision confirmed their ongoing arrest but called upon the army recruitment office to hold another assessment interview. Respectively, on 6 and 12 December 2017, the recruitment office conducted an interview with Mr. Freiman and with Mr. Lederman. Afterwards, they were exempted from military service due to "bad and severe behaviour". Allegedly, the cause for the exemption carries a punitive and judgmental tone, and completely disregards freedom of religion and conscientious considerations.

15. Reportedly, this exemption from the military did not terminate the criminal procedure at the military tribunal. To the contrary, the military tribunal found Mr. Lederman and Mr. Freiman guilty of unauthorized absence from military service on 13 December 2017 and on 26 December 2017 respectively. Mr. Lederman was sentenced to 32 days in detention and probation for one year. Mr. Lederman was released on 13 December 2017. Mr. Freiman was sentenced to 75 days in detention and probation for two years. He was released on 26 December 2017. The source highlights that the Court has recognized that Mr. Freiman is part of an autonomous anti-Zionist religious community; yet, it rejected his claims related to his right to freedom of conscience and religion.

16. The source thus considers that exhausting domestic remedies has been ineffective because of their subordination before the military justice system. In other words, the source explains that, even after Mr. Lederman and Mr. Freiman were exempted from the army (based on "bad behaviour"), the criminal proceedings remained within the military framework and their claims of violation of freedom of conscience were disregarded. Moreover, the source explains that the military court has the authority to imprison a deserter continuously as, at the end of any incarceration, a new demand to enlist to the army is issued, followed by another military trial which keeps him imprisoned.

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 (known as "defectors catchers") by military police units. He was then transferred to the military judicial system. The arrest was based on

² The source refers to the concluding observations on the fourth periodic report of Israel, CCPR/C/ISR/CO/4, para. 23, 2014.

a draft order for Mr. Brizel that required him to enlist to the Israeli military, 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. The source claims that this administration is an internal mechanism of Military Disciplinary Law; the officer is not a judge or a jurist, and has little to no legal knowledge or training. According to the source, Mr. Brizel promptly claimed his “just cause” argument, but it was disregarded completely by the officer who wrongly concluded that Mr. Brizel confessed to the offence. Mr. Brizel was then sentenced to 20 days in prison, as a first segment to a renewable period as long as he refused to enlist.

19. After what, on 26 October 2017, the lawyer of Mr. Brizel filed an appeal of the disciplinary sentencing, calling for his immediate release and cancellation of this sentencing, and for the abolishment of his draft order or granting an exemption from military service to him. In the appeal, he stressed Israel's obligation in accordance with the International Covenant on Civil and Political Rights (the “Covenant”), and detailed Mr. Brizel’s religious beliefs as his ground to conscientious objection. According to the source, the recruitment administration has not responded to the appeal, and Mr. Brizel served his entire sentence period. During that period of time, the lawyer of Mr. Brizel contacted the recruitment administration, but to no avail and no formal response was ever provided.

20. Mr. Brizel was released on 9 November 2017. According to the source, Mr. Brizel filed thereafter 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 the military service.

21. Reportedly, on 16 November 2017, the lawyer of Mr. Brizel filed a complaint with the office of the Military Advocate General, requesting the nullification of Mr. Brizel's disciplinary sentence as the recruitment administration failed to answer his appeal, and a compensation for his time in detention. The military Advocate General agreed to formally revoke Mr. Brizel's disciplinary sentence (citing procedural reasoning of his unanswered appeal), but stated that as he still refuses to enlist, he is regarded as a criminal defector who is under threat of further arrest and detention (and thus is 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, there was no reference to his conscientious objection claims or to his human rights violations.

23. Reportedly, on 28 December 2017, the lawyer of Mr. Brizel forwarded the appeal to exempt him from military service to the office of the Minister of Security of Israel, as he holds the formal authority to exempt or enlist him, and to the office of the Commissioner of Soldiers' Complaints (as it has the authority to question all the different offices mentioned above). On 14 January 2018, the lawyer of Mr. Brizel forwarded the appeal to exempt him from military service to the Manpower Directorate General. Yet, the military offices have not addressed Mr. Brizel's claims of conscientious exemption and he remains – having no other choice - in a state of lawlessness.

24. The source further explains that, on 10 May 2018, thus almost five months after the complaint was raised, the Commissioner of Soldiers' Complaints answered Mr. Brizel's lawyer. The Commissioner accepted the army's position that Mr. Brizel must first go through the entire enlistment process (including invasive medical process, formally enlisting and becoming a soldier, wearing military uniforms and taking the military oath and more) before his case could be transferred to the Conscience Committee. All of these steps contradict his rights and beliefs as stated in this document, thus, according to the source, rendering his right to conscientious objection obsolete.

25. The source indicates that, as a result, Mr. Brizel has remained in the status of a military defector as the army refuses to allow him to appear before the Conscience Committee. He is unable to leave the country and is under constant and daily fear of being arrested.

Analysis

26. The source explains that Neturei Karta and Eida Haredith ultra-Orthodox communities are self-organizing. They administer their own social and legal institutions, have distinct customs, culture and religious rules, and function as separately as possible from the State. As such, they do not participate in Israeli elections, have no parliamentary representation and refuse to receive subsidies or governmental financial support of any kind.

27. Reportedly, these communities object to any taking of political and military power by Jewish individuals, and therefore see the Zionist project of establishing a Jewish state with coercive power, as contradictory to the fundamental oaths of Judaism. Furthermore, they perceive their moral role as immanently contradicting the use of force. Hence, service in the Israeli military is a violation of their principles. In fact, the prohibition of conscripting to any military and participation at war is considered so fundamental, that one may rather die than violate.

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 members of the ultra-Orthodox communities. However, it is alleged that, in recent years, efforts have increased to enforce conscription of segments of the population which are not in line with the Government. Allegedly, strict measures are implemented to enlist the ultra-Orthodox population, alongside a mechanism which enables some of them to postpone their military service until a complete release. However, the youth of the Eida Haredith and Neturei Karta are not recognized under this mechanism, and refuse to ask for a postponement, as it requires one to declare willingness to conscript at a later stage.

29. As a result, the source claims that they have become one of the most vulnerable groups to be targeted. The three individuals are one of many of these communities who have been considered as deserters, sanctioned for it and forced to live in hiding, under constant threat of losing their status as Yeshiva students and under the fear of imprisonment.

30. With regard to human rights violations, the source claims that the three individuals' principles (as explained above) reject the participation in armed forces and perceive it as a violation and desecration of their religion. According to the source, the army acknowledged this reality as the release form of Mr. Freiman stated that he is a member of an ultra-Orthodox community rejecting enlistment. Therefore, their objection to military service is protected by human rights law under the freedom of thought, conscience and religion, as enshrined in article 18 of the Universal Declaration of Human Rights and article 18 of the Covenant.

31. The source argues that the three individuals' detention is also an institutional assault on a member of a religious and cultural minority group, 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 inhumane treatment, in accordance with articles 3, 5, 9 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant were also infringed. In fact, in the military prison, the Mr. Lederman and Mr. Brizel were requested to obey orders and act as soldiers, in violation of their core beliefs. This was allegedly a punitive measure for their refusal to wear a uniform. Mr. Lederman was also held in remand in solitary confinement and undergoing harsh, degrading and inhumane treatment. For over two weeks, he was illegally deprived of basic rights and elementary needs such as being able to shower or change clothes. He was also deprived of his rights to leave their cell for an hour a day, and to receive phone calls and visits. It took two complaints by his family to the Soldiers' Complaints Commissioner in order to amend this and have the military follow its own orders regarding prisoners' confinement.

33. The source also argues that the Mr. Lederman and Mr. Freiman were not tried in accordance with international norms of a fair and impartial trial, as stipulated in article 10 of the Universal Declaration of Human Rights and article 14 of the Covenant. First, while their case should have been handled by the civil judicial system and under the Military Service Law (1986), Mr. Lederman and Mr. Freiman were tried before a military tribunal and according to martial law. Their attorney argued that the conscription order which was issued

in their absence was void and thus the military tribunal had no jurisdiction over the matter, but these claims were rejected. In the case of Mr. Lederman, this rejection occurred despite the fact that the military judge who ordered his remand on 9 November 2017, admitted that some flaws had been made 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 his criminal charges were determined by an inner mechanism of the Military recruitment administration, the same organization responsible for his arrest. As for 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 thus the military officer has no jurisdiction over the matter, as his conscription order was sent under "special authorization" that requires 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 offense of "unauthorized absence from military service" includes a defence of proving "just cause" for such absence. During their several detention hearings, the lawyer of the three individuals had argued that their freedom of conscious and religion, as well as the attempt to coerce them into serving in the military against the basic principles of their community's teachings, constitute "just cause" and therefore should lead to their immediate release and abandonment of the charges against them. However, the source explains that, in the case of Mr. Lederman, the military tribunal arbitrarily dismissed this argument by claiming that no evidence was found to support the claim that Mr. Lederman was a member of Neturei Karta, yet even if he did, he must have followed the military's framework for exemption. In the case of Mr. Brizel, the argument was also disregarded and the recruitment administration gave a laconic answer that Mr. Brizel membership in Satman is not a "just cause", disregarded the arguments on conscientious objection.

36. In doing so, the source concludes that the military tribunal 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 current situation of Messrs. Lederman, Freiman and Brizel and any comments on the source's allegations. Moreover, the Working Group called upon the Government to ensure Messrs. Lederman, Freiman and Brizel'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 (see 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 objection to the compulsory military service on conscientious and religious grounds. 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 mechanisms³. 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 criminalized conscientious objection to military service lacked a legal basis.⁶ In the case at hand, the deprivation of liberty of the three individuals amount to a *per se* violation of article 18(1) and, as such, has no legal basis.

44. The Working Group therefore considers that Messrs. Lederman, Freiman and Brizel's deprivation of liberty lacks a legal basis and are thus arbitrary, falling under category I.

Category II

45. In the present case, the Working Group considers that it stems out from the facts, which are not contested by the Government, that Messrs. Lederman, Freiman and Brizel's deprivation of liberty is the direct result of their genuinely held religious and conscientious beliefs as ultra-Orthodox Haredi Jews in refusing to enlist in the military service. Accordingly, as developed above, 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 manifestation of religious belief, the protected right to hold or adopt a religion or belief is not subject to limitation 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 in article 18 (1) of the Covenant.⁷

46. Moreover, the Working Group notes that, under the current practice, the Haredi youths are legally granted exemption from the military service by means of continuous applications for deferments which require them to declare willingness, against their faith, to serve at a later time. This creates a conundrum for Messrs. Lederman, Freiman and Brizel and their co-religionists: they have to either 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 Messrs. Lederman, Freiman and Brizel's deprivation of liberty is arbitrary, falling within category II, as it violates articles 18 of the Universal Declaration of Human Rights and article 18 (1) of the Covenant.

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

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 provided 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; No. 14/2017, para. 49.

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

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

Category III

49. Given its finding that Messrs. Lederman, Freiman and Brizel's deprivation of liberty 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, so that it falls within category III.

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

51. The Working Group also considers that the proceedings before an Advisory Committee to the Minister of Defense on Matters of Exemption, or a "Conscience Committee", whose determination in practice decides whether a conscientious objector will be deprived of his liberty by the military authorities as a deserter, fail to meet the minimum standards of due process and fairness. The cursory treatment of Messrs. Lederman and Freiman's claims of conscientious objection by a "Conscience Committee", composed of four military personnel and an academic, attest to this failure.

52. In this regard, the Working Group refers the present case to Special Rapporteur on the Independence of Judges and Lawyers for appropriate action.

53. The Working Group also expresses its view that Mr. Lederman's ill-treatment, including prolonged solitary confinement, denial of shower or change clothes, phone calls and visits, undermined his ability to defend himself and hindered his exercise of the due process and fair trial rights. This is a violation of article 14 (3) (b) of the Covenant.

54. The Working Group therefore finds that Messrs. Lederman, Freiman and Brizel's treatment by the military criminal and disciplinary bodies violates articles 10 and 11 (1) of the Universal Declaration of Human Rights, and articles 9, 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 minor's deprivation of liberty an arbitrary character that falls within category III.

Category V

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

57. The Working Group notes that, as the Government has moved in recent years to restrict exemptions from the military service granted through deferments to the ultra-Orthodox Jews, the 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 the elections, have found themselves unable to secure the dwindling slot of deferments taken by other more numerous ultra-Orthodox groups, who do take part in electoral politics through their own 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 individualized assessment of

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.

conscientious objectors naturally results in the discriminatory negation of the right to conscientious objection of the Haredi Jews, who neither recognizes nor takes part in such political process because of their religious views and historical origin. Messrs. Lederman, Freiman and Brizel's deprivation of liberty by the military authorities demonstrate the consequence of this discriminatory practice and outcome.

59. For these reasons, the Working Group considers that Messrs. Lederman, Freiman and Brizel's deprivation of liberty 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 their religion and political or other opinion that aims towards 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 Messrs. Lederman, Freiman and 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 International Covenant on Civil and Political Rights.

62. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to accord Messrs. Lederman, Freiman and 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 Messrs. Lederman, Freiman and 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: (a) Special Rapporteur on freedom of religion or belief, and (b) 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 Messrs. Lederman, Freiman and Brizel remain at liberty;
- (b) Whether compensation or other reparations have been made to Messrs. Lederman, Freiman and Brizel;
- (c) Whether an investigation has been conducted into the violation of Messrs. Lederman, Freiman and Brizel's rights 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 See Human Rights Council resolution 42/22, paras. 3 and 7.