
Advance Edited Version

Distr.: General
19 May 2022

Original: English

Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-third session, 30 March–8 April 2022

Opinion No. 26/2022 concerning Hassan Fazali (Sweden)

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,¹ on 22 December 2021 the Working Group transmitted to the Government of Sweden a communication concerning Hassan Fazali. The Government replied to the communication on 21 February 2022. 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).

¹ A/HRC/36/38.

Submissions

Communication from the source

4. Hassan Fazali is an Afghan national, born in the Islamic Republic of Iran in 1999; he holds a Swedish national identification document. The source reports that Mr. Fazali arrived in Sweden in 2015 to seek recognition of his refugee status based on his illegal status in the Islamic Republic of Iran, which was a constant threat since he could be taken into custody and sent to the war in the Syrian Arab Republic, and because he was unable to return to Afghanistan because of the war there. At the time of the source's submission, Mr. Fazali resided at the Källered Immigration Detention Centre in Gothenburg, Sweden.

a. Background

5. According to the source, Mr. Fazali has a legally binding expulsion order, issued by the Swedish Migration Agency on 7 May 2019, and a legally binding expulsion judgment from the district court, dated 20 May 2019. The source explains that before being transferred to an immigration detention centre awaiting the implementation of the expulsion decision, Mr. Fazali was detained for approximately two months after being convicted on theft and narcotic-related charges. During the period of his detention, he reportedly converted to Christianity.

6. In this respect, the source notes that Mr. Fazali had an encounter with Christianity previously during his stay in Sweden, through a friend and a Swedish girlfriend who were Christians. He has explained that due to his health issues, drug addiction and lifestyle, he was not able to fully convert, although he felt drawn to the Christian faith. It was during the time that he was detained that he experienced a strong religious revelation and converted (see below).

b. Immigration detention

7. After completing the two-month sentence, Mr. Fazali was transferred to the Swedish Migration Agency's Detention Centre in Märsta, where he was detained under the Aliens Act (2005:716). Due to Mr. Fazali's conversion, a request to stay the enforcement of the refusal of entry and expulsion was made to the Swedish Migration Agency. Subsequently, the application was rejected by the Swedish Migration Board, however an order staying the enforcement case was issued and Mr. Fazali was granted a re-examination of the new circumstances in accordance with chapter 12, section 19b of the Aliens Act by the Migration Court on 27 September 2019. Conversion as a new circumstance was assessed while Mr. Fazali remained in the detention centre, and resulted in a rejection by the Migration Board on 8 November 2019. The decision was appealed to the Migration Court and resulted in a rejection by the Court on 31 January 2020. An appeal was subsequently made to the Migration Court of Appeal, which denied a review permit/leave to appeal on 7 February 2020. The source notes that the decision of the Migration Court therefore remains.

8. The source alleges that Mr. Fazali has been illegally deprived of his liberty for a period of 23 months. Starting from 23 August 2019, Mr. Fazali has been kept in immigration detention in various detention centres run by the Swedish Migration Agency. He was initially held at Gävla Detention Centre, and was transferred to Märsta Detention Centre and subsequently to Källered Immigration Detention Centre located in Gothenburg, Sweden.

9. According to the source, the Swedish Border Police (North)² ordered Mr. Fazali's detention. The Swedish Border Police is reportedly of the view that since there is a legally binding expulsion decision issued by the Swedish Migration Agency and a legally binding deportation judgment by a Swedish district court connected to Mr. Fazali's conviction on theft and narcotic-related charges, there is a risk that he will reoffend. The Swedish Border Police further claims that Mr. Fazali has stated that he does not want to return to Afghanistan and does not intend to cooperate with the authorities regarding the expulsion. The Swedish

² Gränspolis Nord.

Border Police reportedly did not consider supervision as an option instead of depriving Mr. Fazali of his liberty.

10. Various provisions in the Aliens Act reportedly form the legal basis for the detention of Mr. Fazali. The source refers in particular to chapter 1, section 8; chapter 10, section 1; and chapter 10, sections 4, 9, 11, 13 (2) and 17.

11. The source asserts that the crimes that Mr. Fazali had been charged with previously are related to narcotics and theft, which do not constitute serious crimes. The conviction related to narcotics was considered a minor offence and the conviction regarding theft did not involve any significant value. The source notes that Mr. Fazali is no longer abusing drugs. He has been clean since and no longer has any addiction. Notably, during the period that Mr. Fazali has been deprived of liberty, he has behaved well and abided by the rules of the detention centres. A priest who has been in regular contact with Mr. Fazali has reportedly offered him a place to stay, so that he can be under supervision instead of in detention. The police authorities, however, continued to deny Mr. Fazali this option, claiming that supervision was not a sufficient intervention measure.

12. The Swedish Border Police has reportedly consistently denied Mr. Fazali the right to be represented by the legal representative that he wished for shortly after he was brought to the first detention centre. The source notes that freedom of choice regarding legal representatives is in accordance with the law, something which is particularly respected when it comes to individuals deprived of their liberty. In this respect, the source explains that when Mr. Fazali was asked by the Swedish Border Police whether he had a lawyer in mind while he was being taken to the detention centre, Mr. Fazali did not remember the name of the lawyer he wished to request. However, shortly upon arrival at the detention centre, he gave the Swedish Border Police the name of the lawyer that he wished to represent him. Mr. Fazali's request was thus given to the Swedish Border Police at an early stage, and it was reportedly not a matter of any great cost for the State to grant him a change of legal representative to the one that he wanted. However, the Swedish Border Police rejected his request, leading him to be forced to deal with the lawyer who had been appointed for him.

13. Moreover, the source notes that even the fact that there have been many disputes between Mr. Fazali and the legal representative chosen by the Swedish Border Police which have caused Mr. Fazali to distrust the lawyer, the lack of cooperation between the two and the long absence of contact between them have not made the Swedish Border Police or the Migration Court change their decision and dismiss the lawyer from Mr. Fazali's case. Since Mr. Fazali has been in detention, he has thus reportedly practically not been represented by a lawyer representing his case in accordance with his own wishes, and Mr. Fazali maintains his belief that a disloyal lawyer is representing him.

14. The source recalls that Mr. Fazali is a Christian convert and that he has exercised his Christian faith during the whole time he has been detained. Mr. Fazali has also shared his Christian faith with other detainees from his home country, Afghanistan – they too awaiting expulsion to Afghanistan. Mr. Fazali's Christian faith has matured during the long period he has been deprived of his liberty. While in the detention centres, he has notably lived among many Muslim countrymen who have questioned his conversion and threatened his life, many of whom have been expelled to Afghanistan. During his detention, Mr. Fazali has reportedly been threatened by other inmates because of his conversion. In this respect, the source notes that threats received from another Afghan inmate caused the prison authorities to transfer Mr. Fazali to another unit due to security reasons. The source refers to an official note about this transfer. However, none of these threats reportedly caused the authorities to reassess his case and the risks to his life upon deportation.

15. Since Mr. Fazali's conversion to Christianity and the risk to his life were assessed in late 2019, and after he was subjected to new threats and many more countrymen came to know about his conversion, two new requests to stay enforcement of the refusal of entry and expulsion were made by his lawyer to the Swedish Migration Agency to re-examine Mr.

Fazali's case and make a renewed risk assessment, the latest referring to a newspaper article in which he appeared with his name and a picture of him as a convert.³

16. These requests have reportedly all been rejected by the Swedish Migration Agency, something which should be considered in breach of the principle of non-refoulement. The source asserts that removal or deportation from Sweden in the case of Mr. Fazali would constitute refoulement. The decisions of rejection were reportedly appealed to the Migration Court of Gothenburg and were rejected by the Court. The decisions of the Migration Court of Gothenburg were appealed to the Migration Court of Appeal, which, in both cases, denied a review permit/leave to appeal.

17. The source notes that the decisions of the Migration Court not to grant Mr. Fazali a new assessment and to deport him therefore remains. All domestic remedies, ordinary and extraordinary, have been exhausted. The authorities have not considered any new circumstance that has been presented and is a threat to Mr. Fazali's life and they have not offered him any adequate assessment of his case. The worsened security situation in Afghanistan was also not a sufficient reason for the Migration Court of Appeal to assess Mr. Fazali's case in its decision dated 19 July 2021.

c. Recent developments and health condition

18. In July 2021, Mr. Fazali was reportedly released from immigration detention and placed under supervision. The source submits that at the time of his release, Mr. Fazali had been subjected to alleged arbitrary detention in Sweden for 23 months. Adding the time that he spent in custody as punishment for the minor crime he was convicted for, to the 23 months he spent in detention centres awaiting deportation, he has been deprived of liberty consecutively for 27 months.

19. Shortly after Mr. Fazali's release, he was offered a place to stay at a monastery close to Uppsala in which he feels safe, although he suffers a lot from the effects caused by his lengthy and allegedly arbitrary deprivation of liberty.

20. Mr. Fazali reportedly suffers from a heart condition. While being detained, he was diagnosed with an atrial septal defect. For Mr. Fazali, this congenital condition means an illness that worsens with age, but it is not clear that it affects all his systems in his specific case. It can manifest itself in different ways – by difficulties in breathing, blue nails, failure of organs, or there can be no manifestation at all. It also manifests itself in exhaustion from the simplest physical exercise, such as walking or sitting down, which also affects Mr. Fazali mentally (the source refers to an assessment from a psychologist). If not treated, the condition could, over time, become life-threatening. The source notes that during Mr. Fazali's deprivation of liberty, his heart condition was not treated (see para. 34 below), and not even the global coronavirus disease (COVID-19) pandemic which should have put him in the groups at risk (nor his cellmate's death due to COVID-19) was sufficient reason for the police authorities to release him from detention.

21. Lastly, the source submits that Mr. Fazali still risks deportation without being offered an adequate assessment of the new circumstances in his case, and the source maintains that this would be contrary to the principle of non-refoulement. With reference to a recent medical report, the source adds that the alleged arbitrary detention that Mr. Fazali has been subjected to has had consequences for his mental and physical health.

d. Analysis of violations

22. In the light of the above, the source submits that the detention of Mr. Fazali was arbitrary according to categories I, II, III, IV and V.

i. Category I

23. According to the source, the basis for the deprivation of liberty of Mr. Fazali is authorized by domestic law. The general provision outlined in the Aliens Act (chap. 1, sect.

³ The source refers to <https://www.varldenidag.se/reportage/jag-vet-att-de-kommer-doda-mig-men-jag-ar-inte-radd/repubs!qhHa3nZ2A2YJyY5jFtjjw/>.

8) states that “the Act is to be applied so as not to limit the freedom of aliens more than is necessary in each individual case”. However, the source submits that Mr. Fazali has been deprived of his liberty for an extraordinarily long time, and that it is not proportionate in view of his health condition and the circumstances in his case. There is no time limit set for how long detention may continue.

24. Assessment must reportedly be made regarding the special circumstances in each individual case. The authorities’ assessment deciding that continued detention is necessary does not constitute a complete proportionality assessment but rather an expression of the principle of need, which is only the first step in a proportionality assessment (see MIG 2014:15). The source refers to a precedent of the Migration Court of Appeal, whereby the public reasons for a deprivation of liberty must be set in relation to what the deprivation of liberty means for the individual and there must be a reasonable balance or proportionality between the advantages for the public and the disadvantages for the individual.

25. Furthermore, the source refers to the Aliens Act, chapter 10, section 4, whereby “an alien may not be detained for investigation pursuant to section 1 (2), point 1, for more than 48 hours. In other cases, an alien who has attained the age of 18 may not be detained for more than two weeks, unless there are exceptional grounds for a longer period. If, however, a refusal-of-entry or expulsion order has been issued, the alien may be detained for at most two months unless there are exceptional grounds for a longer period.” The source notes that it is further stated in the section that even if there are such special reasons, the alien may not be detained for more than three months or, if it is probable that enforcement will take longer due to lack of cooperation from the alien or it will take time to obtain the necessary documents, longer than 12 months, and that in cases other than those referred to in the first and second paragraphs, an alien who has reached the age of 18 may not be detained for more than two weeks, unless there are special reasons for a longer period. However, the source adds that these time limits of 3 and 12 months do not apply if the alien is deported by a general court due to a crime (see MIG 2014:15).

ii. Category II

26. The source submits that as a Christian, Mr. Fazali has been discriminated against and subjected to ill-treatment while he has been detained. The State has reportedly not done enough to protect him. Märsta Detention Centre failed to file a report or to write an official note in connection with an incident where Mr. Fazali was subjected to physical abuse by other detainees, and a person working there who has a Muslim background questioned Mr. Fazali about why he left Islam and stopped talking to him. The most recent detention centre has made notes about Mr. Fazali being afraid of sleeping in his room due to threats from another detainee, writing that he slept in the computer room to feel safer. He was later moved to another section of the centre to safeguard him.

27. The source also submits that Mr. Fazali has been deprived of liberty because of the exercise of his rights guaranteed under article 14 of the Universal Declaration of Human Rights, whereby everyone has the right to seek and to enjoy in other countries asylum from persecution. The source asserts that Mr. Fazali’s detention constitutes an arbitrary deprivation of his liberty, falling within category II.

iii. Category III

28. The source submits that the international norms relating to the right to a fair trial, specifically the rights protected under articles 9 and 10 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, have not been observed in relation to Mr. Fazali’s detention. The source notes that the Human Rights Committee, in its general comment No. 35 (2014) on liberty and security of person, requires that detention must be justified as reasonable, necessary, and proportionate in the light of the circumstances and be reassessed as it extends in time.

29. According to the source, the hearings regarding Mr. Fazali’s detention with the police authorities are a show for the gallery, likewise those before the Migration Court. The source adds that the same arguments have been used since the beginning, without any reference or consideration to Mr. Fazali’s personal circumstances, such as his heart condition and the

negative effects that the lengthy deprivation of his liberty has had on his physical and psychological health.

30. The source underlines that Mr. Fazali has been held in administrative detention for almost two years. Throughout that time, he has continually asserted that he faces a real risk of harm due to his conversion if he is returned to Afghanistan. He thus has no intention of voluntarily returning to Afghanistan. The source notes that Mr. Fazali's willingness to remain in indefinite administrative detention in Sweden for almost two years, as opposed to voluntarily returning to Afghanistan, highlights his fear of return. As such, any forced return by the Government of Sweden would highly likely constitute constructive refoulement.

31. The source asserts that given the time that has elapsed and the failure to reassess the case of Mr. Fazali as it has extended in time, his detention cannot be considered as reasonable, necessary and proportionate. According to the source, the detention of Mr. Fazali constitutes an arbitrary deprivation of his liberty, falling under category III.

iv. Category IV

32. The source submits that as an asylum seeker who is subject to prolonged administrative custody, Mr. Fazali has not been guaranteed the possibility of administrative or judicial review or remedy. The source also submits that he lacks any chance of his detention being the subject of a real administrative or judicial review or remedy. His detention thus constitutes an arbitrary deprivation of his liberty, falling under category IV.

v. Category V

33. According to the source, the Swedish Migration Board and other authorities have failed to offer Mr. Fazali adequate protection by not granting him a re-examination of his case and a renewed risk assessment, after all this time that he has been kept in detention among the very people who are a threat to his life and his possible return to his country. Furthermore, the authorities' decisions to deny Mr. Fazali the right to be represented by the lawyer he wished for since an early stage also constitutes discrimination, since this would never have happened for a Swedish national who was deprived of his or her liberty, as freedom of choice regarding a lawyer is respected, especially when the person in question is deprived of his or her liberty.

34. The source recalls that Mr. Fazali suffers from a heart condition (see para. 20 above). In 2020, an ultrasound scan was provided to carry out a diagnosis of Mr. Fazali's heart, and medical experts concluded that he required an operation, the prognostic value of which was to prevent right-sided cardiac enlargement in the future. According to the source, the suggested operation is thus considered medically necessary and is the only way to prolong his life or save his life or decrease his suffering. The source notes that despite that, this treatment has been denied to him. The source refers to a medical certificate, dated 10 June 2020, where the physician gave the reasons for not providing the operation by referring to the law and the decision of the court concerning Mr. Fazali's deportation.

35. The source submits that Mr. Fazali's state of physical and mental health has been deteriorating significantly during his time in detention. His health has also been affected by the transfers and the situation with COVID-19. He has also suffered psychologically, and still does, due to the lengthy deprivation of liberty and the constant fear he has been subjected to living in a detention centre with threats against his life and the constant risk of deportation. In this respect, the source refers to two assessments by a psychologist and a psychiatrist.

36. The source considers that the denial of necessary life-saving surgery constitutes a violation of Mr. Fazali's right to life and to freedom from cruel and inhuman treatment. The source notes that the behaviour of the State should also be seen as discrimination on the basis of national origin.

37. In this respect, the source considers that the State has violated its positive obligations regarding the right to life and freedom from cruel and inhuman treatment. The source notes in order to be able to state that positive obligations have been violated, various human rights treaty bodies have developed standard assessment criteria. These criteria include the following:

- (a) The State knew or ought to have known about the risk to an applicant's life or health;
- (b) The risk to life or health is real and serious;
- (c) The positive measure in question does not constitute a disproportionate burden.⁴

38. The source notes that the duty to protect the right to life and to protect against inhuman treatment implies obligations to take measures concerning direct threats to life as well as threats that could lead to significant suffering, including such measures that are related to protection from disease and illnesses. The measures called for to address adequate conditions for protecting the right to life and freedom from inhuman treatment include access without delay by individuals to health care.⁵

39. The source submits that in Mr. Fazali's situation, the State is aware of his health-care condition and of the need for the operation. Without this operation, Mr. Fazali is likely to die, suffer, or have a short life expectancy. The source adds that the treatment that is necessary for Mr. Fazali is generally available for the Swedish population, and he is not able to access the treatment anywhere else, having being placed in detention for years. Nevertheless, the State has reportedly not provided the necessary health care for more than a year, giving as a reason for this the fact that Mr. Fazali will be deported (see para. 34 above).

40. Therefore, the source submits that the absence of care is motivated by Mr. Fazali's migration status, his national origin, and no other reasons. The source finds that not providing Mr. Fazali with the necessary care violates important human rights principles, such as the principle of equality and human dignity, enshrined in article 1 of the Universal Declaration of Human Rights, the right to life under article 6 of the Covenant and article 3 of the Universal Declaration of Human Rights, and the right to freedom from inhuman and degrading treatment under article 7 of the Covenant and article 5 of the Universal Declaration of Human Rights.

Response from the Government

41. On 22 December 2021, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 21 February 2022, detailed information about the current situation of Mr. Fazali and to clarify the legal provisions justifying his detention, as well as its compatibility with the obligations of Sweden under international human rights law, and in particular with regard to the treaties ratified by the State.

42. On 21 February 2022, the Government submitted its reply, in which it states that Mr. Fazali applied for asylum in Sweden on 11 November 2015. The Swedish Migration Agency dismissed his asylum application on 13 October 2017, since he had been registered as having absconded on 10 October 2017.

43. The Government notes that on 5 November 2017, Mr. Fazali was convicted of theft and a minor drug offence. He was sentenced to juvenile detention.

44. Mr. Fazali applied afresh for asylum on 22 November 2017. The Swedish Migration Agency rejected his application and decided on 25 June 2018 to expel him to Afghanistan. The decision was appealed to the Migration Court, which on 29 March 2019 rejected the appeal. On 7 May 2019, the Migration Court of Appeal refused leave to appeal and the decision to expel him became final and non-appealable.

45. On 20 May 2019, a Swedish district court convicted Mr. Fazali on three counts of theft, a drug offence, and a minor drug offence. The court sentenced him to imprisonment for two months and ordered his expulsion under chapter 8a, section 1, of the Aliens Act. The expulsion order was combined with ban on re-entering Sweden. Since there was considered

⁴ The source refers to *Toussaint v. Canada* (CCPR/C/123/D/2348/2014), para. 11.3; Human Rights Committee, general comment No. 36 (2019); and European Court of Human Rights, *Fernandes de Oliveira v. Portugal* (application No. 78103/14), judgment of 31 January 2019.

⁵ The source refers to Human Rights Committee general comment No. 36 (2019), para. 26.

to be a risk that he would relapse into crime if set free or would otherwise evade the enforcement of the sentence or the expulsion order, the court decided that he would remain in custody until the prison sentence could be enforced, but only for as long as until he would have been released if the judgment was enforced or until the expulsion order became final or was able to be enforced.

46. The judgment was appealed to a Court of Appeal, which on 12 July 2019 upheld the district court judgment. The Court of Appeal held that because of the risk of Mr. Fazali evading enforcement of the expulsion order, he should remain in custody until the expulsion order became final or until it was able to be enforced. The judgment was not appealed against within the prescribed time limit. On 8 November 2019, however, the Supreme Court granted Mr. Fazali's application for restoration of expired time to appeal the judgment of the Court of Appeal. The Supreme Court decided on 9 January 2020 to refuse Mr. Fazali leave to appeal.

47. On 27 September 2019, a migration court granted him a new examination of the issue of a residence permit under chapter 12, section 19 (b), of the Aliens Act. After a new examination of Mr. Fazali's stated need for international protection, the Swedish Migration Agency decided on 8 November 2019 to reject his application for a residence permit and held that there was no reason to reconsider the expulsion order. A migration court decided to reject the appeal on 31 January 2020 and the Migration Court of Appeal decided on 7 February 2020 not to grant Mr. Fazali leave to appeal.

48. On 22 March 2021, the Swedish Migration Agency decided to reject a new application from Mr. Fazali for a residence permit pursuant to chapter 12, section 18, or a new examination of the issue of a residence permit under chapter 12, section 19, of the Aliens Act. On 11 May 2021, a migration court decided to reject his appeal. The Migration Court of Appeal decided on 1 July 2021 not to grant him leave to appeal.

49. Due to the prevailing security situation in Afghanistan, the Swedish Migration Agency decided on 16 July 2021 to suspend all enforcements of deportation orders to Afghanistan until further notice. On 23 July 2021, the Swedish Migration Agency also put a halt to decision-making in cases concerning Afghanistan.

50. Against this background, the Swedish Police Authority found in a decision on 21 July 2021, with regard to the principle of proportionality, that detaining Mr. Fazali was no longer a proportionate measure, and thus decided to release him from detention, to instead be placed under supervision.

51. The Swedish Migration Agency decided on 23 November 2021 to grant an application from Mr. Fazali to stay the enforcement of his expulsion order under chapter 12, section 13, of the Aliens Act.

The detention proceedings

52. The Swedish Migration Agency decided on 14 May 2019 to detain Mr. Fazali for the purpose of preparing or implementing the enforcement of the expulsion order under chapter 10, section 1 (3), of the Aliens Act. This decision was never enforced, as Mr. Fazali, on 8 May 2019, had been remanded in custody on suspicion of committing criminal offences.

53. On 13 August 2019, the Swedish Police Authority decided to detain him under chapter 10, section 1, compared with chapter 10, section 13 (3), of the Aliens Act. The reason for the decision was the preparation and implementation of the expulsion order in accordance with chapter 8a, section 1, of the Aliens Act. There was considered to be a risk that Mr. Fazali would evade enforcement of the expulsion order if he were not detained. Supervision was not considered to be a sufficient measure. Furthermore, since Mr. Fazali had reportedly been convicted of repeated offences for which he had been sentenced to prison, it was considered to be a risk that he would continue to engage in criminal activities in Sweden if not detained.

54. Since transport for Mr. Fazali from the institution in Härnösand, where he was being held, to a detention centre in Gävle could not be arranged immediately, it was considered necessary for technical transport reasons to place him in a correctional institution, remand centre or police arrest facility, albeit for a maximum of three days, under chapter 10, section 20 (3), of the Aliens Act. Upon arriving at the detention centre on 14 August 2019, Mr. Fazali

was informed about, with the help of an interpreter, and stated that he had understood, the rights and obligations he had as a detainee, and the rules that applied in the detention facilities of the Swedish Migration Agency. Mr. Fazali was also given the opportunity to inform the staff of any particular support he was in need of, and of how he felt about the detention and the enforcement of the expulsion order. Mr. Fazali informed the staff about his heart problem and the medical care that he had received in Sweden. He stated that he did not want to leave Sweden and that he did not know if he would cooperate in the enforcement of the expulsion order. A suicide screening was also carried out on him on the same day.

55. Mr. Fazali appealed against the Swedish Police Authority's decision on detention and claimed, *inter alia*, that he no longer used drugs, that he had a Swedish girlfriend, that he wanted to study in Sweden, and that, if released from detention, he would not engage in criminal activities. After an oral hearing, a migration court rejected his appeal on 2 October 2019. The court noted that he had been convicted of repeated offences and expelled in a judgment that had become final. The fact that Mr. Fazali had been granted an examination of his application to reverse the expulsion order was deemed to constitute a temporary impediment to the enforcement of the expulsion order (cf. Migration Court of Appeal guiding judgments MIG 2014:13 and MIG 2015:10). It was further noted that the Swedish Police Authority had stated that travel documents for Mr. Fazali had been issued, and why the Police Authority was ready to enforce the expulsion order if it became enforceable again. In an assessment on the proportionality, the court concluded that the reasons for keeping him in detention outweighed the harm that the measure entailed. Supervision was not considered to be a sufficient measure to counteract the risks. Upon appeal, the Migration Court of Appeal decided on 25 October 2019 not to grant Mr. Fazali leave to appeal.

56. On 10 October 2019, the Swedish Police Authority held an oral hearing with Mr. Fazali prior to a re-examination of the detention order, in accordance with chapter 10, sections 1, 4, 9 and 11, of the Aliens Act. The hearing was held over the telephone with Mr. Fazali, his public counsel, and an interpreter who Mr. Fazali said that he understood. The Swedish Police Authority found that continued detention was a proportionate measure.

57. On 11 October 2019, the Swedish Migration Agency made a decision on the detention of Mr. Fazali, which was, however, overturned by a migration court on 5 November 2019 since the Swedish Police Authority was considered to be the responsible authority for his detention. The Swedish Migration Agency appealed against the judgment and the Migration Court of Appeal decided on 2 December 2019 to grant leave to appeal. In a guiding judgment (MIG 2020:6), the Migration Court of Appeal rejected the appeal.

58. Furthermore, the judgment by the Supreme Court of 8 November 2019, on the restoration of expired time, had a direct effect on the decision to detain Mr. Fazali, since the expulsion order, on which the decision was based, had ceased to be final. However, the Court of Appeal had held in its judgment on 12 July 2019 that he should remain in custody until the decision on expulsion became final or was enforced. As it was no longer a question of enforcement of a final expulsion order, the Swedish Police Authority decided on 22 November 2019 to revoke its previous decision on the detention of Mr. Fazali. He was, however, transported to a detention centre in accordance with the Court of Appeal judgment of 12 July 2019. The expulsion order became final on 9 January 2020. At this time, the Swedish Border Police executed a dormant detention decision from 5 December 2019 and Mr. Fazali was transported to a Swedish Migration Agency detention centre in Gävle. The Swedish Police Authority thereafter held regular hearings with him on the question of continued detention, until he was released from detention in accordance with the decision on 21 July 2021.

Relevant domestic law and case law

59. The Government explains that relevant domestic provisions regarding the detention of asylum seekers and other categories of migrants are found in the Aliens Act, of 2005.⁶ A decision by Swedish authorities to place an asylum seeker in detention must thus be based

⁶ Utlänningslag 2005:716.

on the provisions in this Act. In this context, the Government notes that several domestic provisions are based on European Union legislation, inter alia the Return Directive.⁷

60. The Aliens Act is to be applied so as not to limit the freedom of aliens more than is necessary in each individual case. According to the case law of the Swedish Supreme Administrative Court and the Migration Court of Appeal, this principle of necessity is supplemented by a principle of proportionality, which is generally applicable to Swedish authorities.⁸

61. An alien who is being held in detention must be kept in premises that have been specially arranged for this purpose. The Swedish Migration Agency is responsible for such premises. However, the Swedish Migration Agency may order that an alien who is being held in detention is to be placed in a correctional institution, remand centre or police arrest facility if, inter alia, the alien has been expelled on account of a criminal offence.

Government's observations on the allegations

62. In relation to the allegation that Mr. Fazali has been illegally deprived of his liberty for an extensive period of time, the Government initially holds that he has been detained in accordance with relevant procedural provisions in the Aliens Act. The Government notes that it does not appear to be contested that the decisions by domestic authorities and courts were taken in accordance with the relevant procedural provisions of the Aliens Act.

63. As accounted for above, if an alien is expelled as a result of a criminal offence, such as Mr. Fazali, there is no absolute time limit for detention under the Aliens Act. The detention order was regularly re-examined by the Swedish Police Authority, and the subsequent decisions for continuation of detention were subject to appeal. The Government emphasizes that a periodic judicial review provides an important safeguard against arbitrariness of the detention order. The Government also holds that the applicable domestic legislation is sufficiently accessible and precise and cannot in itself give rise to concerns about the risk of arbitrariness of a detention.

64. In relation to the allegations that Mr. Fazali was not represented by a legal representative of his own choosing after he was brought to the first detention centre, and that he distrusted his lawyer and there were many disputes between them, the Government notes that he was appointed a public counsel by the Swedish Police Authority on 13 August 2019. He was released from detention on 22 November 2019. When he was detained again on 9 January 2020, he was on his own request appointed the same public counsel as before. He subsequently requested to be appointed another legal counsel, since he claimed to have mixed up the assignments for which the counsel was to be appointed for.

65. It follows from section 5 of the Public Counsel Act (1996:1620) and section 26 of the Legal Aid Act (1996:1619) that a person appointed a public counsel can apply for and be granted a new public counsel if there are special reasons justifying the dismissal of the public counsel already appointed for him or her. Such special reasons can be profound disagreements between the counsel and the plaintiff. The reasons for such disagreements should also be considered. Economic reasons, however, argue in favour of a restrictive application of the provision. The Swedish Police Authority decided on 31 January 2020 to deny the request from Mr. Fazali for a new public counsel, since no such special reasons could be found. The appointed public counsel thereafter participated at all the oral hearings prior to the regular re-examinations of the detention order, and Mr. Fazali, with the assistance of a public counsel, during regular oral hearings held before the Swedish Police Authority, had the opportunity to submit evidence and explain his reasons why he should no longer be detained.

66. In response to the allegation that Mr. Fazali was convicted of criminal offences in Sweden that could not all be considered serious crimes, the Government notes that the legal basis for his detention was to prepare and implement the enforcement of an expulsion order

⁷ Council of the European Union, Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008.

⁸ The Government refers to relevant domestic jurisprudence, including RÅ 2003 not. 87, RÅ 2005 ref. 60, RÅ 2006 ref. 5, RÅ 2010 not. 7 and MIG 2014:15.

issued by a general court on account of repeated criminal offences that he had been convicted of and also admitted being guilty of. Considering that he had been convicted of criminal offences for which he had been sentenced to prison, the domestic authorities and courts assessed that there was a risk that, if not detained, he would pursue criminal activities in Sweden or go into hiding. The measure of supervision was hence not considered sufficient to enforce the expulsion order.

67. It reportedly follows from the case files that actions with a view to enforcing Mr. Fazali's expulsion order were taken by the Swedish authorities throughout the period of his detention. However, Mr. Fazali did not cooperate with the Swedish Police Authority in this regard. Among other things, he refused to sign a consent form for a voluntary return. Furthermore, by refusing to consent to a coronavirus disease (COVID-19) antigen test, required for travelling, a planned enforcement of the expulsion order had to be cancelled. His continued refusal to take the test clearly showed that he would not facilitate the enforcement of the expulsion order. Thus, it was considered that there was a risk that, if not detained, he would evade enforcement of the expulsion order, and abscond. Mr. Fazali was hence given the opportunity to limit his time in detention by cooperating with the Swedish Police Authority. The difficulties that arose in implementing the expulsion order on account of the spread of COVID-19 was not considered to be a permanent impediment to enforcement of the expulsion order. Thus, it was considered that throughout the detention period there was a realistic possibility of enforcing the expulsion order.

68. In relation to the allegation that the detention of Mr. Fazali was not a proportionate measure considering his state of health and the circumstances in his case, the Government emphasizes that the Aliens Act is to be applied so as not to limit the freedom of aliens more than is necessary in each individual case (chap. 1, sect. 8). When assessing whether the detention of Mr. Fazali could be regarded as disproportionate, the national authorities considered the time that he had been detained, his unwillingness to facilitate the enforcement of his expulsion order and the fact that he had had access to medical treatment both within and outside the detention centre. It reportedly is recorded in the case files that Mr. Fazali was transported from the detention centre on several occasions for hospital care. The Government emphasizes that it follows from chapter 11, section 5, of the Aliens Act that a detainee is to have access to health care to the same extent as a person who has applied for a residence permit in accordance with chapter 4, section 2 or 2a, of the Aliens Act, even if the alien has not applied for such a permit. Due consideration was hence paid to his state of health. Due consideration was furthermore given to the fact that Mr. Fazali, while in detention, had ceased his drug abuse.

69. The Government notes the allegations that Mr. Fazali was threatened by other detainees during his detention because of his conversion from Islam to Christianity, that threats received from another Afghan detainee caused the prison authorities to transfer him to another unit for security reasons, and that none of these threats reportedly caused the authorities to reassess his case and the risks to his life upon deportation.

70. As regards Mr. Fazali's stated religious affiliation, the Government notes that, upon application, he was granted a new examination under chapter 12, section 19b, of the Aliens Act. The Swedish Migration Agency thus held a new investigation of the stated risks that he could face if expelled to Afghanistan. A migration court furthermore held an oral hearing. During this new examination, Mr. Fazali was represented by an appointed public counsel. However, he was not considered to have plausibly demonstrated that he had converted from Islam to Christianity based on genuine religious conviction. Furthermore, he was not considered to risk having such an opinion be attributed to him in Afghanistan.

71. As regards the allegation that the Swedish authorities did not do enough to protect Mr. Fazali from discrimination and ill-treatment while he was in detention, the Government notes that Mr. Fazali was transferred to another holding unit for security reasons after he had been threatened by another detainee. Furthermore, the Government holds that there is no evidence of Mr. Fazali being the subject of any government-sanctioned discrimination on account of his origin, race or religion or other factors, or of such ill-treatment during his period of detention.

Summary

72. The Government holds that the detention of Mr. Fazali could not be considered to constitute any kind of misuse of power by the Swedish authorities. The legal basis for his detention was to prepare and implement the enforcement of an expulsion order issued by a general court on account of criminal offences that he had been convicted of. This purpose has remained valid throughout the entire period of the detention, as shown by the measures taken to enforce the expulsion. The detention order was furthermore regularly re-examined and the subsequent decisions on continued detention were subject to appeal to relevant courts.

73. Mr. Fazali was, during the whole detention period, assigned a public counsel, and he had a statutory opportunity to request a new public counsel to be appointed. The national authorities assessed whether the detention order was proportionate and whether the measure of supervision would be sufficient to enforce Mr. Fazali's expulsion order. Due consideration was taken of his state of health. He was offered health care both within and outside the detention centre. Furthermore, it was evident that he was unwilling to cooperate in the enforcement of his expulsion order. There is no support for the assertion that the length of the detention can in any way be linked to any kind of negligence by the Swedish authorities concerning actions taken to enforce the expulsion order. The Government thus holds that the detention of Mr. Fazali at the time was a reasonable, necessary and proportionate measure. He has not been arbitrarily deprived of his liberty and the submissions of the source are not substantiated.

Further comments from the source

74. On 21 February 2022, the Government's reply was transmitted to the source for further comments. In its response of 14 March 2022, the source states that the comments by the State do not change the fact that Mr. Fazali has been subjected to arbitrary detention. Neither do the comments by the State change the fact that removal or deportation from Sweden in Mr. Fazali's case would constitute refoulement. The source adds that the harmful consequences of the deprivation of liberty on Mr. Fazali's psychological and physical health, the failure to offer him adequate health care and releasing him during the pandemic, subjecting him to double punishment, and furthering the expulsion plans without offering him an adequate assessment despite the threats against his life, and the discriminatory treatment of him during the process, evidently demonstrate the arbitrariness and disproportionality of the State's actions against him.

Discussion

75. The Working Group thanks the source and the Government for their submissions.

76. In determining whether Mr. Fazali's deprivation of liberty was arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a prima facie case for breach of the international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.⁹

77. As a preliminary issue, the Working Group observes that Mr. Fazali was released on 21 July 2021, and it is not contested that he is no longer detained. However, the source has submitted that he was arbitrarily detained for 23 months, and the Working Group shall therefore proceed to examine the submission.

Category III

78. The Working Group observes that the submissions concerning the detention of Mr. Fazali have two strands: the proceedings concerning his actual deprivation of liberty and his asylum status proceedings. While interlinked, these proceedings nevertheless concern two separate legal issues and the Working Group notes that only the former, namely the detention of Mr. Fazali, falls under its mandate. It refers the case to the Special Rapporteur on the

⁹ A/HRC/19/57, para. 68.

human rights of migrants for further consideration, especially in relation to the submissions concerning Mr. Fazali's asylum claim and the allegations of the possible breach of non-refoulement obligations by Sweden.

79. Turning to the detention of Mr. Fazali, the Working Group observes that according to the Government, Mr. Fazali applied for asylum in Sweden in November 2015. There is no indication that he was detained then, although his asylum application was unsuccessful some two years later. In fact, Mr. Fazali was first detained in the criminal justice context in 2017 and then again in 2019. The Working Group notes that both the source and the Government agree that although he was imprisoned on these two occasions, the offences were minor.

80. These two instances are also not the reason for the case being brought before the Working Group. Rather, the Working Group is being asked to assess the detention of Mr. Fazali, which occurred after his second term of imprisonment, when he was detained on the basis of a decision by the Swedish Police Authority dated 13 August 2019. This detention was based on a valid expulsion order, as it was considered that if Mr. Fazali was not detained, he would evade enforcement of the order. Although Mr. Fazali was able to appeal against this decision to the court, his appeal was unsuccessful, and he remained in immigration detention until 22 November 2019, when he was released. He was subsequently detained again on 9 January 2020 and remained in detention for the same reasons until 21 July 2021.

81. The Working Group recalls that it is not addressing Mr. Fazali's criminal detention. Against this background, not all parts of article 14 of the Covenant are applicable to non-criminal proceedings. However, as the Human Rights Committee has noted, insofar as domestic law entrusts a judicial body with the task of deciding about expulsions or deportations, the guarantee of equality of all persons before the courts and tribunals as enshrined in article 14 (1) of the Covenant and the principles of impartiality, fairness and equality of arms implicit in this guarantee are applicable.¹⁰

82. Moreover, the Working Group has found that in cases involving excessive length of detention, the individual shall enjoy the same guarantees as in criminal cases, including those under article 14 of the Covenant, even if the detention is qualified as administrative.¹¹ Mr. Fazali was detained for nearly two years, and the Working Group considers that this detention was punitive in nature. In making this determination, the Working Group also notes that at least some of that time he spent in what the Government has described as a "correctional institution", which was necessary for "technical transport reasons". The Working Group rejects this as a justification and recalls that those detained in the context of migration proceedings should not be held in facilities designated for the criminal justice context.¹²

83. Therefore, the Working Group will consider whether the detention of Mr. Fazali met the requirements of article 14 of the Covenant and other relevant provisions. In this regard, the Working Group observes that he was entitled to have his detention reviewed by an independent and impartial tribunal. However, it was the Swedish Police Authority which ordered his detention, and which periodically reviewed it. It was only when Mr. Fazali appealed the decision of the Swedish Police Authority that he was able to appear before a court. The Working Group considers that this violated Mr. Fazali's rights under article 14 (1) of the Covenant.

84. Moreover, the Swedish Police Authority was also the body which considered Mr. Fazali's request to appoint a lawyer of his choice and which denied this request. Mr. Fazali thus had to appear before the Swedish Police Authority with the public lawyer, which the source has submitted and the Government has failed to rebut, did not represent his interests fully (see para. 13 above). While Mr. Fazali was able to appeal the decisions of the Swedish Police Authority to a court, he had to do so with the assistance of a lawyer whom he clearly did not trust. However, as the Working Group has noted, migrants and asylum seekers in detention must have the right to prompt and effective legal assistance to be able to challenge

¹⁰ Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 62.

¹¹ Opinions No. 31/2017, No. 73/2018, No. 12/2020 and No. 49/2020.

¹² See the Working Group's revised deliberation No. 5 (A/HRC/39/45, annex), para. 44.

the necessity and proportionality of their detention.¹³ The Working Group therefore finds a breach of article 14 (3) (d) of the Covenant as well as a breach of the fundamental principle of equality of arms embodied in article 14 (1) of the Covenant.

85. Finally, the Working Group recalls that article 13 of the Covenant entitles aliens lawfully present in the territory of a State to challenge an expulsion order against them. While Mr. Fazali did indeed challenge his expulsion order, the Working Group considers that the challenges noted above regarding the legal assistance of his choice impeded his ability to exercise this right effectively. The Working Group therefore finds a violation of this right also.

86. Consequently, the Working Group finds a breach of articles 8 and 10 of the Universal Declaration of Human Rights and articles 13, 14 (1) and 14 (3) (d) of the Covenant. Noting that these violations had direct implications for Mr. Fazali remaining in detention, the Working Group considers that his detention was arbitrary under category III.

Category IV

87. The Working Group recalls that detention falls under category IV when asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy. In the present case, it is not disputed that Mr. Fazali was detained due to a valid expulsion order against him. However, the source argues that this detention was a disproportionate measure and that the Government failed to consider alternatives to detention. The Government, however, insists that the detention of Mr. Fazali was deemed proportionate by the Swedish Police Authority and the court that reviewed his detention.

88. The Working Group also recalls that detention in the course of immigration proceedings must be an exceptional measure of last resort, and to ensure this, alternatives to detention must be considered.¹⁴ In the present case, the Working Group considers that the Government has failed to show that alternatives to detention were duly considered. Thus, while the Government has argued that the detention of Mr. Fazali was proportionate, it has not explained why other, less restrictive measures could not have been applied. For example, the source has argued that a priest, who had been in regular contact with Mr. Fazali, offered him a place to stay, which would have enabled supervision instead of detention. While this was put to the Government, it chose not to address the submission nor to explain why this was not deemed sufficient.

89. The Working Group further notes that Mr. Fazali had indeed been imprisoned in the criminal justice context twice, but these were two minor crimes two years apart and, as such, the Working Group struggles to accept the characterization by the Government that Mr. Fazali was sentenced for “repeated offences”.

90. Furthermore, the Working Group notes that Mr. Fazali was ultimately released under supervision on 21 July 2021, following the decision of the Swedish Migration Agency to suspend all enforcement of deportations to Afghanistan due to the prevailing security situation there. This makes it clear that alternatives to Mr. Fazali’s detention were in fact possible but the authorities chose not to apply them.

91. Finally, the Working Group is mindful of the Government’s submission that the Aliens Act does not set a time limit for detention in cases such as Mr. Fazali’s. While the Working Group understands that there have been recent changes in the applicable legal framework with the amendments to the Aliens Act in July 2021,¹⁵ it recalls in relation to the

¹³ United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Persons Deprived of Their Liberty to Bring Proceedings Before a Court, principle 21 (A/HRC/30/37, annex, paras. 42–43); see also opinion No. 49/2020.

¹⁴ A/HRC/13/30, para. 59; E/CN.4/1999/63/Add.3, para. 33; A/HRC/19/57/Add.3, para. 68 (f); A/HRC/27/48/Add.2, para. 124; and A/HRC/30/36/Add.1, para. 81; see also opinion No. 49/2020.

¹⁵ CAT/C/SWE/CO/8, para. 18.

situation of Mr. Fazali that indefinite detention of individuals in the course of migration proceedings cannot be justified and is arbitrary.¹⁶

92. Noting all of the above, the Working Group concludes that the remedies afforded to Mr. Fazali were not effective, and in breach of article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant. It therefore concludes that his detention was arbitrary under category IV. In making this finding, the Working Group particularly notes the concluding observations of the Committee against Torture in respect of Sweden, of 2021, in which the Committee expressed its concern that detention in the immigration context in Sweden was not used as a measure of last resort and for the shortest possible time.¹⁷

Category V

93. Finally, by the Government's own admission, Mr. Fazali was subjected to de facto indefinite detention because of his irregular migratory status and his two previous criminal convictions for minor offences. It is clear to the Working Group that if it had not been for these two criminal convictions, combined with the ongoing asylum proceedings, the nearly two-year detention of Mr. Fazali would not have been legal under the provisions of the Aliens Act at the time. In other words, if Mr. Fazali was not an asylum seeker, he would not have been subjected to further detention following his imprisonment. Equally, if he had not had two imprisonments imposed for the minor offences, once again, as an asylum seeker he would not have been subjected to the detention which the Working Group has been asked to consider.

94. The Working Group concludes that Mr. Fazali's detention was based on discrimination on the basis of his status as an asylum seeker who had a criminal conviction, in violation of article 26 of the Covenant. The detention of Mr. Fazali therefore was arbitrary and falls under category V also.

Concluding remarks

95. The Working Group is concerned at the very serious allegations concerning the lack of appropriate treatment provided to Mr. Fazali for his health condition and recalls that all persons detained must be treated with humanity. Although Mr. Fazali is no longer detained, the Working Group considers that the Government is still bound by this obligation, noting the time that Mr. Fazali spent in detention as well as the findings in the present case. The Working Group refers the case to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, for appropriate action.

96. The Working Group also refers the case to the Special Rapporteur on the situation of human rights in Afghanistan, for appropriate action.

Disposition

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

The deprivation of liberty of Hassan Fazali, being in contravention of articles 2, 8 and 10 of the Universal Declaration of Human Rights and articles 2, 13, 14 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories III, IV and V.

98. The Working Group requests the Government of Sweden to take the steps necessary to remedy the situation of Mr. Fazali 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.

¹⁶ See the Working Group's revised deliberation No. 5 (A/HRC/39/45, annex), para. 26; see also A/HRC/13/30, para. 63; and opinions No. 42/2017 and No. 28/2017.

¹⁷ CAT/C/SWE/CO/8, paras. 17 and 20.

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

100. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Hassan Fazali and to take appropriate measures against those responsible for the violation of his rights.

101. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to (a) the Special Rapporteur on the human rights of migrants, (b) the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and (c) the Special Rapporteur on the situation of human rights in Afghanistan, for appropriate action.

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

Follow-up procedure

103. 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 compensation or other reparations have been made to Mr. Fazali;
- (b) Whether an investigation has been conducted into the violation of Mr. Fazali's rights and, if so, the outcome of the investigation;
- (c) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Sweden with its international obligations in line with the present opinion;
- (d) Whether any other action has been taken to implement the present opinion.

104. 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.

105. 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.

106. 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.¹⁸

[Adopted on 5 April 2022]

¹⁸ Human Rights Council resolution 42/22, paras. 3 and 7.