

OPINION No. 2/1998 (UNITED ARAB EMIRATES)

Communication addressed to the Government on 11 July 1997

Concerning: Elie Dib Ghaled

The State is not a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established pursuant to resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended pursuant to resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.
2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.
3. (Same text as paragraph 3 of Opinion 1/1998.)
4. In the light of the allegations made the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source and received its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto, as well as the observations made by the source.
5. The communication, of which a summary was addressed to the Government, concerns Elie Dib Ghaled, a Christian Lebanese national. He was reportedly arrested and detained on 5 December 1995 by United Arab Emirates (UAE) law-enforcement officials at the Intercontinental Hotel in al-'Ain in Abu Dhabi, where he worked as a restaurant manager. The source reports that UAE law-enforcement officials took Elie Dib Ghaleb to his residence and searched for his marriage certificate. Reportedly, when they found it, they arrested him. He was then detained until 29 October 1996 when a *Shari'a* court in al-'Ain tried and sentenced him, allegedly because of his marriage, as a Christian, to a Muslim woman from the UAE. In fact, under *Shari'a* law, a Muslim woman is not allowed to marry a non-Muslim man unless he converts to Islam, therefore such marriage is considered null and void and Elie Dib Ghaleb was sentenced to 99 lashes and one year imprisonment for fornication.
6. In its reply dated 4 September 1997, the Government notes that the provisions of the *Shari'a*, the Constitution and the law apply to all offences committed in the territory of the UAE; no distinction is made between accused persons on the grounds of their religion or their nationality. In the present case, the Department of Public Prosecutions referred the two accused persons, Ms. Muna Salih Muhammed (a UAE national, 23 years old) and Mr. Elie Dib Ghaled (a Lebanese national, 28 years old), to the *Shari'a* Criminal Court at al-'Ain, pursuant to the provisions of Federal Act No.35 of 1992 promulgating the Code of Criminal Procedure, on the charge of committing the punishable offence of fornication. The Court examined the facts of the case, heard the statements and the representatives of the defendant and, after

carefully weighing the evidence, found him guilty as charged. However, the sentence was remitted by the Court in view of Elie Dib Ghaled's recent conversion to Islam. But for having contracted an invalid marriage, another punishable offence, he was sentenced to one year in prison and 99 lashes; moreover, the contract of marriage with the first defendant (Muna Salih Muhammed) was declared null and void. The proceedings against the latter were suspended until her arrest. According to the Government, Elie Dib Ghaled was also found guilty of having violated the personal rights of the guardian (the father) of the first defendant, by inciting his Muslim daughter to contract an invalid marriage. The Court annulled the marriage owing to Mr. Ghaled's failure to obtain the guardian's approval thereof.

7. The Government's reply does not indicate the date of conviction, whether the sentence was appealed, whether Ms. Muna Salih Muhammed was eventually arrested, whether Mr. Ghaled was released or whether corporal punishment was carried out on him. Nor does the Government's reply solve the contradiction between the imposition of a one-year prison term as of 5 December 1995 and his continued detention at the time of the Government's reply, dated 4 September 1997.

8. The comments of the source indicate that the judgment of the Shari'a Court at al-'Ain was pronounced on 28 October 1996 and that Elie Dib Ghaled was released on 31 July 1997. According to the source, the continued detention of Mr. Ghaled between 5 December 1996, the date on which he completed his year of detention, and 31 July 1997, the date of his eventual release, had no basis in law.

9. As Mr. Elie Dib Ghaled has been released and the Working Group does not have any information on the possible detention of Ms. Muna Salih Muhammed, it could, in accordance with working methods, file the case without pronouncing itself on the arbitrary character of the detention of the released individual. But the Working Group deems it appropriate to make a finding on the arbitrary or non-arbitrary character of Mr. Ghaled's detention.

10. The Government emphasizes that in the case of Mr. Elie Dib Ghaled and all other cases of individuals brought before the courts, the Shari'a, the Constitution and other applicable laws are applied on the territory of the UAE, without distinction as to religion or nationality of the accused. Article 2.1 of the Universal Declaration of Human Rights lays down that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind such as, inter alia, sex or religion. One of the rights guaranteed by the Declaration is the right of adult individuals, under article 16.1, to marry without any limitation as to race, nationality or religion. The judicial prosecution of an individual for fornication and for having contracted matrimony with another person of a different religion, and for having concluded a marriage deemed null and void under domestic law is, in the Working Group's opinion, contrary to the principles enshrined in articles 2.1 and 16.1 of the Declaration. It is also contrary to article 18 of the Declaration, to the extent that the spouses have invoked the religious character of their marriage.

11. In other words, the marriage concluded in the present case was based on the free will of the two spouses. The case of Elie Dib Ghaled is all the more serious given that he married in Lebanon, where the marriage of persons of different belief and faith is entirely compatible with domestic legislation.

12. Article 7 of the Declaration guarantees equality before the law without any discrimination, as well as equal protection before the law against any discrimination. In the present case, the differentiation between the legal status of individuals and the application of different standards of legal protection for adults of different religions who married of their own free will amounts to a violation of article 7.

13. Lastly, the Working Group considers that the indictment and prosecution of Elie Dib Ghaled and his spouse for fornication, independently of the charge that they contracted an illegal marriage, represents an arbitrary interference with the right to privacy of the individuals concerned, and amounts to a violation of article 12 of the Universal Declaration of Human Rights.

14. In the case of Elie Dib Ghaled, who was sentenced to a one-year prison term, the violation of articles 7 and 12 of the Declaration entails a further violation of article 9 thereof, pursuant to which no one shall be subjected to arbitrary arrest or detention.

15. Elie Dib Ghaled was released on 31 July 1997. His detention after 5 December 1996, date on which his prison term of one year was fully served, until 31 July 1997 was clearly devoid of any legal basis. The Government itself concedes that the pre-trial detention of Elie Dib Ghaled was set off against the prison term to which he was sentenced on 28 October 1996.

16. In the light of the above, the Working Group renders the following opinion:

The deprivation of the liberty of Elie Dib Ghaled from 5 December 1995 to 5 December 1996 is arbitrary, as it contravenes articles 2(1), 5, 7, 9, 12, 16 and 18 of the Universal Declaration of Human Rights, and falls within Category II of the categories applicable to the consideration of cases submitted to the Working Group.

The deprivation of the liberty of Elie Dib Ghaled from 5 December 1996 to 31 July 1997 is arbitrary because it is in violation of article 9 of the Universal Declaration of Human Rights, manifestly cannot be justified on any legal basis and falls within Category I of the categories applicable to the consideration of cases submitted to the Working Group.

Insofar as the corporal punishment to which Mr. Ghaled was sentenced is concerned, the Working Group refers the matter to the Special Rapporteur on Torture of the Commission on Human Rights.

17. As a consequence of the above opinion, the Working Group requests the Government of the United Arab Emirates to take the necessary steps to remedy the situation of Elie Dib Ghaled and his wife, to study the possibility of amending its legislation so as to bring it into line with the provisions of the Universal Declaration and to take appropriate initiatives with a view to becoming a party to the International Covenant on Civil and Political Rights.

Adopted on 13 May 1998.