

OPINION No. 16/2002 (UNITED ARAB EMIRATES)

Communication addressed to the Government on 16 August 2002.

Concerning: George Atkinson, a British citizen, businessman and landscape engineer.

The State has not ratified the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 15/2002.)
2. The Working Group conveys its appreciation to the Government for having provided the requisite information.
3. (Same text as paragraph 3 of opinion No. 15/2002.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The reply of the Government was forwarded to the source, which provided the Working Group with its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case.
5. According to the source, George Atkinson, a British citizen, born on 16 May 1951, a businessman and landscape engineer, was arrested on 1 March 1997 in Dubai shortly before he was due to return to the United Kingdom. Only on 5 April 1998, was he charged with having paid unlawful commissions to a certain Stephen Trutch, who at the time was working as an engineer for Sheikh Mohammed. Mr. Atkinson, who had been involved in the building of three golf courses and other landscaping activities between 1982 and 1993, denied the charges.
6. On several occasions, judges ordered his release on bail, but their orders were not implemented. Instead, his detention was extended on several occasions, although it should not have been extended more than three times, in accordance with the relevant legal provisions that would have been applicable to his case.
7. On 17 September 1998, the Working Group on Arbitrary Detention issued opinion No. 17/1998 (United Arab Emirates). At that time, the Working Group considered that the deprivation of liberty of Mr. Atkinson was arbitrary, as it was in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and principles 36 to 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and fell into category III of the categories applicable to cases submitted to the Working Group (see E/CN.4/1999/63/Add.1).
8. Despite the opinion issued by the Working Group, Mr. Atkinson was finally sentenced in February 1999 to a term of imprisonment of six years and to pay compensation of Dh 7,820,144. On 28 February 2000, he completed half of his sentence and one year later, on 28 February 2001, two thirds of his sentence (i.e. four years of effective imprisonment). On 28 February 2002, he had spent five years in custody, or three quarters of his sentence, plus an additional period of six months. According to the source, the relevant laws and customs in Dubai provide for the discretionary release of a prisoner at any time after he/she has served half of the sentence, and for mandatory release after he or she has served three quarters of the sentence provided that he or she has demonstrated good behaviour while in custody and was not determined to be a danger to

the national security or to the public. The source further alleges that the prison records conclusively prove that prison authorities concurred that Mr. Atkinson had fulfilled these criteria.

9. However, Mr. Atkinson was requested to pay an “outstanding compensation order” of Dh 99,822 - a substantial amount - by the same court which had sentenced him. Officials repeatedly assured him that if he paid this amount he would be released. On 19 March 2002, he paid the exact sum of Dh 99, 822 to the court and was provided with a receipt. On the same day, the prison authorities wrote to the Attorney-General confirming that Mr. Atkinson had completed his sentence, had paid “all outstanding financial penalties” and requested his release and the return of his passport, so that he could be deported. On 15 June 2002, Mr. Atkinson’s records at the Attorney-General’s Office (Ref. 1462-97) showed that his case had been concluded and his file closed. However, he was not released.

10. The source further reports that Mr. Atkinson has never been a threat to the public order and his alleged crimes did not involve violence, nor were they serious crimes such as drug trafficking. Other prisoners convicted of crimes such as murder, rape, robbery and very serious financial crimes and given harsher sentences than his (including the death penalty and life imprisonment) have been released early as a result of the above-mentioned provisions of Dubai’s domestic law.

11. In its reply dated 13 November 2002, the Government stated that following his conviction by the Dubai Criminal Court on 13 December 1998, Mr. Atkinson was sentenced to six years’ imprisonment and ordered to pay Dh 7,820,144, consisting of a fine of Dh 7,720,322 (about £1.3 million) and compensation of Dh 99,822 (about £16,000). Emirates law provides for the release of a prisoner after he has served three quarters of his sentence provided the prisoner is of reformed character.

12. As of the date on which Mr. Atkinson had completed serving three quarters of his prison sentence (31 August 2001), he had not paid any of the amount ordered by the court despite his substantial assets, which was considered to be an obviously obstructive decision. Accordingly, no determination was made to reduce his sentence. However, in his letter of 12 November 2000 to the Amir of Dubai seeking clemency, Mr. Atkinson stated that he had assets available to him, totalling some Dh 7,695,600. Mr. Atkinson’s lawyer was told that his client would have to provide an up-to-date, detailed and truthful list of all his assets and those of his immediate family, as well as those he had transferred to others since his arrest in March 1997.

13. Mr. Atkinson did not provide that information, but on 19 March 2002 he paid Dh 99,822 towards the amount adjudged. The law states that if an amount paid by a convicted person is insufficient to cover the total amounts ordered, the payment shall be applied first towards payment of the fine and then towards payment of the compensation.

14. In case of non-payment of monies ordered by the court, the law provides for additional days (up to a maximum of six months) to be added to the sentence. Owing to the size of the amount ordered by the court, the additional period in Mr. Atkinson’s case would be the full six months. In the view of the Government, the additional period starts on 1 March 2003 at the end of the full six-years term of imprisonment and will end on 31 August 2003.

15. The Government added that the matter would be given consideration if Mr. Atkinson would, as requested, provide a truthful statement of his assets. Alternatively, he can pay the outstanding amount of the fine and the compensation ordered by the court.
16. In its response to the Government's reply, the source reiterated the allegations which, according to the source, made the detention of Mr. Atkinson arbitrary.
17. It appears from the above that the communication raises the question of the interpretation of a domestic regulation concerning procedures for the execution of a custodial sentence and, in particular, on the right to early release. The source invokes the violation of domestic legislation to support the claim that the continued detention of Mr. Atkinson after 28 February 2002 is arbitrary.
18. The Working Group recalls that, in accordance with its methods of work and mandate, it may be called upon to examine domestic legislation in order to ensure that the law of the country has been applied and, if so, to verify whether this law is in conformity with international standards. In the case in point, in which it is a question not of the implementation but of the interpretation of a piece of domestic legislation dealing with early release, the Working Group considers that the file as it stands does not contain the information it would need to reach a decision. The Working Group nevertheless wishes to point out that if a convicted prisoner who meets the requirements for conditional or early release is deprived of the opportunity to claim his or her rights or is wrongly kept in detention, his or her continued detention can be considered as tantamount to arbitrary detention.
19. In the light of the above, the Working Group renders the following opinion:

With regard to the detention of George Atkinson from the date of his arrest to that of his sentencing on 13 December 1999, the Working Group stresses that it was of an arbitrary nature, in accordance with the Working Group's opinion No. 17/1998, adopted on 17 September 1998 (see E/CN.4/1999/63/Add.1). In that opinion, the Working Group also requested the Government to remedy the situation, in accordance with the standards and principles set forth in the Universal Declaration of Human Rights.

In this respect, the Working Group recalls that the Commission on Human Rights, in its resolution 1997/50, requested Governments to take account of the Working Group's 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 took. The Working Group regrets that the Government did not take account of the recommendation that it should remedy the situation.

With regard to the present period of detention, dating from the sentence handed down on 13 December 1999, the Working Group considers that it does not have sufficient information to give an opinion on whether the continued detention is of an arbitrary nature, which would involve interpreting a domestic regulation on the granting of early release.

Adopted on 29 November 2002