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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders.

REFERENCE: UA G/SO 218/2 Assembly & Association (2010-1) G/SO 214 (107-9) Terrorism (2005-4)
TUR 4/2011

13 October 2011

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/18, 15/15, 15/21 and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning raids that took place at the offices of the Sanliurfa province branches of the Human Rights Association (IHD), the Education and Science Workers Trade Union (Egitim-Sen) and the Health and Social Service Workers Trade Union (SES), as well as at the homes of chairpersons and executives of these organizations, which resulted in the arrest and detention of 31 human rights defenders and trade unionists.

According to the information received:

On the morning of 27 September 2011, it is reported that law enforcement agents simultaneously raided the offices of IHD, Egitim-Sen and SES as well as the homes of the executives and chairpersons of these organizations. It is alleged that a total of 31 members of these organizations were arrested during the wave of raids and are currently being detained in Urfa. The defenders are reportedly being held in a prison in the vicinity of Sanliurfa province.

Among those allegedly detained were executives, **Müslüm Kına** and **Müslüm Çiçek** of the Sanliurfa branch of the IHD along with its Chairperson **Cemal Babaoglu**; the President of the Egitim-Sen Sanliurfa branch **Halit Sahin**, as well

as former President **Sitki Dehset**; executives **Veysi Özbingöl** and **Remziye Sahin**; and union member **Yasin Öztürkoglu**. It is reported that the warrant issued by the Sanliurfa Chief Public Prosecution Office, which was presented during the raids, mentions allegations of “propaganda for an illegal organisation” and “participating in activities in line with the action and aims of the organization.”

Details of the charges brought against those arrested are still unclear as the office of the prosecutor has allegedly declared the information to be confidential under anti-terrorism legislation. However, according to the information received, they could have been charged for “being a member of an illegal organization” under article 314 of the Penal Code. During their interrogation, it is reported that they were asked about the weekly activities they have been organising related to enforced disappearances.

It is alleged that the raids and arrests may be linked to actions against the Union of Communities in Kurdistan (KCK), a Kurdish umbrella organisation that includes the outlawed Kurdistan Workers Party (PKK). Over the last two years it is reported that a number of operations against the KCK have been carried out and resulted in the detention of several human rights defenders, trade union activists, local authorities and politicians.

It has also been allegedly suggested that the raids may be connected to the Democratic Solutions Tent, a recent civil disobedience initiative launched by the Peace and Democracy Party (BDP) to achieve a peaceful solution to the situation of the Kurdish community. Since April 2011, it is reported that raids and arrests were carried out by law enforcement officials on tents set up as part of this movement, during which the tents were dismantled and materials confiscated.

The wave of arrests reportedly comes in the context of the arrest and ongoing detention of other members of IHD, such as Mr. Muharrem Erbey, Mr. Arslan Özdemir, and Ms. Roza Erdede, who were the subject of a previous communication sent by the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers; the then Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on the situation of human rights defenders; and the Independent Expert on minority issues on 6 May 2011. We acknowledge receipt of your Excellency’s Government’s response to this communication that was transmitted on 29 July 2011.

Concern is expressed regarding the physical and psychological integrity of the 31 human rights defenders and trade unionists while they remain in detention, including the persons mentioned above. Concern is further expressed that their arrest and detention may be directly linked to their legitimate and peaceful work in defence of human rights

and based on an overly broad definition of the crime of terrorism and application of anti-terrorism legislation.

While we do not wish to prejudge the accuracy of these allegations, we wish to draw your Excellency's attention to the right to physical and mental integrity of the above-mentioned persons, which is enshrined *inter alia* in the Universal Declaration on Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture (CAT).

Without expressing at this stage an opinion on the facts of the cases and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the UDHR, and articles 9 and 14 of the ICCPR.

As far as the allegations of "propaganda for an illegal organisation" and "participating in activities in line with the action and aims of the organisation" against the abovementioned individuals are concerned, we would like to draw your Excellency's Government's attention to the report on his mission to Turkey of the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/4/26/Add.2), in which it was stated that the Turkish "Anti-Terror Act is drafted in a way that allows for an overly broad application of the term terrorism." (ibid., para. 14). This observation also relates to the definition of a "terrorist offender" which does not require that the person must have committed a serious violent crime, but rather be "any member of an organization, founded to attain the aims defined in article 1 [of the Anti-Terror Act], who commits a crime in furtherance of these aims ... or any member of such an organization, even if he does not commit such a crime" (para. 1) and also persons who commit (any) crime in the name of such an organization, without being a member (para. 2)." (ibid., at para. 15). As stated by the former Special Rapporteur in his letter following up on his country mission addressed to your Excellency's Government on 27 June 2011, to which a reply has unfortunately not been received as yet, "[t]he designation as terrorist organisation and the appeal procedure against such designation remain unclear, thereby also rendering the notion of membership in a terrorist organisation lack distinctive force."

We would like to stress that the principle of legality in criminal law, enshrined in several international human rights instruments, such as article 15 of the ICCPR, and made non-derogable in times of public emergency, implies that the requirement of criminal liability is limited to clear and precise provisions in the law, so as to respect the principle of certainty of the law and ensure that it is not subject to interpretation which would broaden the scope of the proscribed conduct. In our view, at the national level, the specificity of terrorist crimes is usually defined by the presence of two cumulative conditions: (1) The means used, which can be described as deadly or otherwise serious violence against members of the general population or segments of it, or the taking of hostages; and (2) the intent, which is to cause fear among the population or to compel the

government or an international organization to doing or refraining from doing something, usually in the advancement of a political, religious or ideological cause. It is only when these two conditions are fulfilled that an act may be criminalized as terrorist.

In this context, we would like to appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of association, as recognized in article 22 of the ICCPR, which provides that "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests".

Concerning allegations received indicating that the arrest and detention of the mentioned human rights defenders and trade unionists may be directly linked to their legitimate and peaceful work in defence of human rights and based on an overly broad definition of the crime of terrorism and application of anti-terrorism legislation, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice."

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 6, point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems; and

- article 12, paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts

of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

We would also like to draw to your Excellency's Government's attention the report of the Special Representative of the Secretary General on human rights defenders following an official mission to Turkey from 11-20 October 2004. After her visit, the Special Representative stated that she had been impressed by the depth and the pace of legal reforms in the field of freedom of expression, assembly and association (E/CN.4/2005/101/Add.3, para. 107). However, she made recommendations to the Government to continue reviewing its laws to ensure full compliance with international human rights standards and in particular to further review its laws regulating trade unions and collective bargaining to ensure that defenders can freely engage in the defence of social and labour rights and to revise the law so that civil servants can freely engage in civil actions and trade union activities (E/CN.4/2005/101/Add.3, para. 111).

The Special Representative also noted her disturbance by the continued perception of human rights defenders as potential threats to the State (E/CN.4/2005/101/Add.3, para. 116). She stated her belief that a dialogue between Government and human rights organisations is critical to transforming the environment of mutual suspicion. In this respect, she called on both Government and NGOs to engage in a constructive dialogue (E/CN.4/2005/101/Add.3, para. 117).

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the 31 human rights defenders and trade unionists are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with the above international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of these cases accurate?
2. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to these cases. If no inquiries have taken place, or if they have been inconclusive, please explain why.

3. Please provide full details of any legal basis for the arrest and subsequent detention of the 31 members of Human Rights Association (IHD), the Education and Science Workers Trade Union (Egitim-Sen) and the Health and Social Service Workers Trade Union (SES) mentioned above, as well as the details of the charges, if any, brought against them.
4. In connection with the above, please explain how the arrest and detention of the abovementioned persons are compatible with international norms and standards as stated, inter alia, in the UDHR, the ICCPR, and the Declaration on human rights defenders.
5. Please provide details of any protective measures put in place to ensure the physical and psychological integrity of the 31 individuals mentioned while in detention, including Müslüm Kina, Müslüm Çiçek, Cemal Babaoglu, Halit Sahin, Sitki Dehset, Veysi Özbingöl, Remziye Sahin, Yasin Öztürkoglu.
6. Please indicate whether and how the requirements of the principle of legality have been observed in relation to the definition of the crime of terrorism that has reportedly formed the basis of the arrests of the abovementioned individuals.
7. How does your Excellency's Government qualify an organization as terrorist and illegal? Are there any procedures in place to appeal such a designation?

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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