Application

For Partial Annulment in regard to the inclusion of Professor Jose Maria Sison of Council Decision of 12 December 2002 (2002/974/EC) implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2002/848/EC (OJ of the European Communities, n° L 337 of 13/12/2002, p.85 and 86)

THE APPLICANT IS:

Jose Maria SISON, born 8/2/1939 in Cabugao, Ilocos Sur, Philippines, whose domicile is Rooseveltlaan 778, 3526 BK Utrecht, Netherlands.

Represented by

Jan FERMON, Chaussée de Haecht 276, 1030 Bruxelles, Belgium
Antoine COMTE, Rue de Rivoli 48 bis, 75004 Paris, France
Hans Eberhard SCHULTZ, Lindenstrasse 14, 28755 Bremen, German Federal Republic
Dundar GURSES, Schoolplein 5A, 3581 PX Utrecht, Netherlands
Thomas OLSSON, Hautverkargatan 26, Box 12706, 11294 Stockholm, Sweden.
Jayson LAMCHEK, Public Interest Law Center 7836, Kaija Bldg, Makati Avenue Cor. Valdez St., Makati City Metro Manila Philippines, as correspondent lawyer in the Philippines

THE APPLICATION IS AGAINST:

THE COUNCIL OF THE EUROPEAN UNION AND THE COMMISSION OF THE EUROPEAN COMMUNITIES

In accordance with art. 44 § 2 subparagraph 2 of the Rules of Procedure of the Court, the applicant declares that he accepts notifications in the following address : by e-mail at jan.fermon@skynet.be and by fax at the n° 32/2/215.80.20.

SUBJECT MATTER OF THE PROCEEDINGS

The applicant respectfully requests the Court:

- to partially annul as specified hereafter, on the basis of art. 230 of EC Treaty, Council Decision (2002/974/EC) of 12 December 2002 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2002/848/EC (OJ of the European Communities, n° L 337 of 13/12/2002, p.85 and 86) and more specifically:
  - to annul article 1 point 1.25 of said decision which reads:

    "Article 1
    25. SISON, Jose Maria (aka Armando Liwanag, aka Joma, in charge of NPA) born 8.2.1939 in Cabugao, Philippines"
  - to annul partially article 1 point 2.14 of said decision insofar it mentions the name of the applicant
- to declare illegal, on the basis of art. 241 of EC treaty, namely COUNCIL REGULATION (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ of the European Communities, n° L 344 of 28/12/2001, p. 70-75)

- to require the Community, the Council and the European Commission to compensate the applicant on the basis of article 235 and 288 Al 2 in an amount to be fixed ex æquo et bono of not less than 100.000 euros.

- to require the respondent parties to bear the costs of suit

SUMMARY OF PLEAS

A. ACTION FOR THE PARTIAL ANNULMENT OF DECISION 2002/974/EC) (ARTICLE 230 OF EC TREATY)

1. Infringement of the EC Treaty

1.1. Plea based on failure to state reason for the challenged decision (violation of Article 253 of the EC Treaty), on patent error of judgment, and on the violation of the principle of sound administration

1.1.1. Failure to state reason for the challenged decision (violation of Article 253 of the EC Treaty)

1.1.2. Erroneous factual basis for the decision: Prof. Sison is not Armando Liwanag nor is he in charge of the NPA

1.2. Patent error of judgment and violation of the principle of sound administration

1.2.1. Prof. Sison is neither a terrorist nor is he linked to any terrorist organisation

1.3. Violation of the principle of proportionality

1.4. Plea based on the violation of the freedom of circulation of capital (Article 56 of EC Treaty)

2. Plea based on the violation of the general principles of Community law

2.1. Violation of the principles enshrined in art. 6 ECHR

2.1.1. **Violation of the** right to an impartial court (Article 6.1. ECHR)

2.1.2. Violation of the principle of presumption of innocence (Article 6.2 ECPHR)

2.1.3. Violation of the right of defence and of the right to be heard

2.2. Violation of the principle of legality (Article 7 ECHR)

2.3. Violation of the right to the freedom of expression (Article 10 ECHR)

2.4. Violation of the right of association (article 11 ECHR)

2.5. Violation of the right of ownership (article 1 of First Protocol ECHR)

B. OBJECTION ON THE GROUND OF ILLEGALITY OF REGULATION 2580/2001 OF THE COUNCIL OF DECEMBER 27, 2001 ON SPECIFIC RESTRICTIVE MEASURES DIRECTED AGAINST CERTAIN PERSONS AND ENTITIES WITH A VIEW TO COMBATING TERRORISM BASED ON ART. 241 OF THE EC TREATY

1. Incompetence of the Council (in relation to Article 60, 301 and 308 of the EC Treaty)

2. Violation of the principle of proportionality (Article 6.4 of the EU Treaty) and abuse of power

3. Misuse of power by the Council

C. CLAIMS AGAINST THE COMMUNITY, COUNCIL AND COMMISSION ON THE BASIS OF ARTICLE 235 AND 288 AL 2 OF THE EC TREATY

1. Damages suffered by the applicant

FACTS AT THE ORIGIN OF THE LITIGATION

1. Background, Personal Circumstances and Present Situation of Prof. JOSE MARIA SISON

1. The applicant, Prof. Jose Maria Sison, is a 63-year old Filipino intellectual and patriot who came from a prominent landlord family in the Northern Luzon Province of Ilocos Sur, Philippines.

2. He finished elementary grades in the public school and high school in an exclusive Catholic school for boys in Manila. He obtained the degrees of Bachelor of Arts in English Literature in 1959 with honors and Master of Arts in Comparative Literature in 1961 from the University of the Philippines, the premiere state university in the country.

3. Prof. Sison grew up at a time when Philippine society was continually in serious economic and political crisis. And like many other Filipino students and intellectuals of his student days, such crisis had a profound influence on his political outlook and social awareness at an early age. As a teacher, poet, political scientist and writer, his incisive thoughts and writings on Philippine politics and history inspired millions of Filipino masses during the last four decades and galvanized them into a strong democratic movement for fundamental reforms in Philippine society.

4. He has written extensively on Philippine history and politics, held various academic positions and headed or was an active member of several literary, journalist and cultural associations for which he received literary awards in the Philippines and in other countries including:

   4.1. Literary Achievement Award for poetry and essay writing from the writers' Union of the Philippines, 1985.

   4.2 National Book Award for Poetry (Prison and Beyond), Manila Critics Circle, 1985.

   4.3 The 1986 Southeast Asia (SEA) WRITE Award for the Philippines for essay writing and poetry, chiefly for Prison and Beyond. This is a prestigious literary award in Southeast Asia.

4.4. Special award of recognition for outstanding contribution, as selfless and humane leader, patient teacher, caring and compassionate friend and exemplary comrade to the national democratic struggle of the peasants, workers and the entire Filipino people, 26 November 1994: Kabataang Makabayan 30th Year (1964-1994).

4.5. Marcelo H. del Pilar Award bestowed by the College Editors Guild of the Philippines as the highest accolade to its most distinguished alumnus for his continued service and commitment in upholding and defending the people's rights and welfare as poet, writer, revolutionary leader, during the 29th Biennial National Student Press Congress and 56th Annual National Convention, 21-26 May 1998.

5. The applicant was a teaching fellow in English and English Literature at the University of the Philippines from 1959 to 1961 and professorial lecturer in Political Science at the Lyceum of the Philippines from 1963 to 1967. He became in 1963 editor of the *Progressive Review,* a highly respected periodical of Philippine economic, social, political and cultural affairs.

6. He came into national prominence as a patriotic and progressive leader in the 1960s as national chairman of Kabataang Makabayan (Patriotic Youth) in 1964, secretary-general of the Workers' Party in 1964 and General Secretary of the Movement for the Advancement of Nationalism. Together with President Marcos and Marcos' arch political rival, Sen. Benigno "Ninoy" Aquino Jr., Prof. Sison was one of the top three newsmakers in Philippine mainstream media from the 1960s to the 1980s, despite his youth and Left politics.

7. The applicant was chairman of the Central Committee of the Communist Party of the Philippines (hereafter CPP) from 26 December 1968 to 10 November 1977, on which date he was arrested by the dictatorial regime of Marcos. He was detained until March 5, 1986 and for more than 8 years he was subjected to various forms of physical and mental torture. Upon his arrest on 10 November 1977, Prof. Sison ceased to be chairman of the Central Committee of the CPP.

8. Shortly after his release on 5 March 1986 after the fall of Marcos, the applicant was appointed senior research fellow with the rank of associate professor at the

Asian Studies Center of the University of the Philippines. Aside from research and lecture duties at the University, he was preoccupied with public speaking, press interviews and chairing the preparatory committee for the establishment of Partido ng Bayan (People's Party). The press and various factions of the Philippine military monitored him daily. He had neither the time nor the opportunity to go underground.

9. For the torture that he had suffered in prison and the disappearance of his brother, the American Civil Liberties Union (ACLU) provided him and his family with pro bono legal counsel to file a civil case of human rights violations against Ferdinand E. Marcos in the US court in 1986. Concerning his torture and illegal detention under martial law, he won the final judgment in 1997. The Marcos estate agreed to a stipulated judgment of USD 750,000 in favour of the applicant. However, the award of damages remains unenforced. **(**Appendix **1 : American Civil Liberties Union –Southern California Docket)**

10. On 31 August 1986 the applicant left for abroad to start a global lecture tour in universities, first in the Asia-Pacific region from 1 September 1986 to 22 January 1987 and then in Europe from 23 January 1987 to the time that he applied for asylum in 1988. During the entire period of his stay abroad, from 1986 to the present, it was impossible for him to assume the position of Chairman of the Central Committee of the Communist Party of the Philippines (CPP). The CPP Constitution requires the Chairman to be present in the Philippines in order to lead the central organs and the entire CPP on a daily basis. **(Appendix 2: Article V of the Communist Party of the Philippines Constitution)**

11. He was preoccupied with lectures and conferences in various universities, a research consultancy in Utrecht University, a book contract with a US publishing firm, writing articles for various publications, solidarity activities with a broad range of European organisations and the role of consultant for the negotiating panel of the National Democratic Front of the Philippines (NDFP) in peace negotiations with the Government of the Republic of the Philippines (GRP).

12. After the Philippine government cancelled his Philippine passport in September 1988, the applicant requested asylum from the Netherlands with the support of

Amnesty International in 1990 and the UN Office of the High Commission for Refugees in 1992. In 1992 and 1995, the Council of State of the Netherlands determined that: "on the basis of the facts made known to the Afdeling, the appellant has valid reasons to fear persecution and therefore must be considered a refugee in the sense of Article I (A), under 2 of the treaty". The State Council nullified the decision of exclusion taken against him by the Minister of Justice on the basis of art. 1 F of the Geneva Refugee Convention. He enjoys the protection of both the Refugee Convention and art. 3 of the ECHR. **(**Appendix **3 : Raad van State, n° R02.90.4934. (J M SISON / Staatsecretaris van Justitie) ;** Appendix **4 : Raad van State, n° R02.93.2274. (J M SISON / Staatsecretaris van Justitie), 21/2/1995 ;** Appendix **5 : AMNESTY INTERNATIONAL, Over de aanvraag voor politiek asiel van prof. Jose Ma. SISON, door JCE Hoftijzer ;** Appendix **6: United Nations High Commissioner for Refugees Submission to the Council of State of the Netherlands for J M SISON's case).**

13. On 20 April 1998, the Philippine government through the Secretary of Justice issued a certification that there were no pending criminal cases against him. The certification mentions the dismissal of the subversion case against him due to the repeal of the anti-subversion law in 1992. It also mentions the dismissal of the 1991 charge of multiple murder in connection with the 1971 Plaza Miranda bombing as a charge based on pure speculation. **(**Appendix **7 : Certification of the Department of Justice, April 20, 1998**). Earlier, the Office of the City Prosecutor of Manila similarly issued a clearance to Prof. Sison. (**Appendix 8: Resolution of the Office of the City Prosecutor Manila, March 2, 1994**) Prof. Sison is not the subject of any valid criminal charge before any court anywhere in the world. Recently, however, the administration of Philippine President Gloria Macapagal-Arroyo has embarked on a campaign to persecute and criminalize the applicant by belatedly filing baseless criminal charges against him.

14. Since 1990, the applicant has been the chief political consultant of the National Democratic Front of the Philippines in the peace negotiations with the government. He is as witness a signatory in all the major bilateral agreements since the Joint Declaration of The Hague of 1992. As NDFP chief political consultant, he is covered by the GRP-NDFP Joint Agreement on Safety and

Immunity Guarantees (JASIG) as well as related agreements thereto, which provide that the role of consultant on any side in the peace negotiations shall at no time be considered by the other side as a criminal act. In its resolutions in 1997 and 1999, the European Parliament has supported the peace negotiations. The governments of The Netherlands, Belgium and Norway have facilitated these negotiations. (**A**ppendix **9 : "10 Years, 10 Agreements" (Pilgrims for Peace, Manila, October 2002)**)

15. The Filipino people and the international community regardless of political beliefs and social class support the GRP-NDFP peace negotiations. The GRP and the NDFP as parties in the on-going civil war in the Philippines and in the peace negotiations mutually agreed to resolve the roots of the armed conflict and to attain a just and lasting peace in The Hague Joint Declaration, a landmark agreement entered into in The Hague, the Netherlands on 1 September 1992**.**

16. Historically, the Philippine government and the international community have never considered Prof. Sison as a terrorist or a common criminal. Philippine laws and jurisprudence recognise and adhere to the universal doctrine of political offence and the fundamental distinctions between political offenders and common criminals.

17. Based on the foregoing brief account of his life, Prof. Sison has been cut off physically and organizationally from leading or even participating in the on-going civil war in the Philippines for a period of more than 25 long years now, that is: from the date of his arrest and prolonged detention on 10 November 1977 continuously until the present time.

18. The US Secretary of State designated on 9 August 2002 the Communist Party of the Philippines/New People's Army (CPP/NPA) as a "foreign terrorist organisation". The US Treasury Department, particularly its Office of Foreign Assets Control, listed on 12 August 2002 the CPP/NPA and the applicant as terrorists and ordered the freezing of their assets. (**Appendix 10 : Executive Order on Financing Terrorism, September 24, 2001 ; Appendix 11:**

Comprehensive List of identified terrorists and groups under Executive Order 13224 issued by the Office of the coordinator of the Counterterrorism, October 23, 2002.)

19. The Dutch Foreign Minister issued on 13 August 2002 the "sanction regulation against terrorism" listing the NPA/CPP and the applicant as the alleged Armando Liwanag, chairman of the CC of the CPP and as subject to sanctions. (**Appendix 12: Sanctieregeling terrorisme 2002, III, August 13, 2002, Staatscourant, 153**) The Dutch Finance Minister ordered on 13 August 2002 and subsequently put into effect the freezing of the applicant's postal joint bank account with his wife, Julieta de Lima, and the termination of the social benefits that he had received as a client of the pertinent Dutch welfare and refugee agencies. By letter sent on September 10, 2002, the City of Utrecht cut his social allowance, his health insurance, and his third party liability insurance, and ordered him to leave the house, rented by the local authorities. (**Appendix 13 : Letter of the "Dienst Maatschappelijke Ontwikkeling" of the City of Utrecht, September 10, 2002)**

The actions taken against the applicant under the preceding paragraphs 18 and 19 have been done without any evidence being put forward and without giving the applicant due notice and the opportunity to be heard.

20. On October 9, 2002, his social allowance and his health and legal responsibility insurance were restored for humanitarian reasons after a decision of the Dutch Finance Minister. The social allowance was limited to 201,93 euros a month. The local authorities however never resumed the payment of the rent. (Appendix 14 : **Letter of the "Dienst Maatschappelijke Ontwikkeling" of the City of Utrecht, October 9, 2002)**

21. On December 13, 2002, the applicant was informed by the social services of the City of Utrecht that they stopped again paying his social allowance and his insurance. (Appendix 15 : **Letter of the "Dienst Maatschappelijke Ontwikkeling" of the City of Utrecht, December 13, 2002)**

22. Late January 2003, the Foreign Affairs Secretary of the Philippines, Blas OPLE, said: “Once there is a peace agreement, I will request to the EU, the United States and other countries to delist (the rebels) as terrorists. If they sign, they will no longer be terrorists”. (**Appendix 16: “Reds must sign peace accord to get off terror list--Ople”, Agence France-Presse, February, 1, 2003 (http://www.inq7.net/brk/2003/feb/01/brkpol_12-1.htm)**

2. Alleged Bases of Sanction

1. On December 27, 2001, the Council of the European Union adopted Council regulation 2580/2001 on specific restrictive measures against certain persons and entities with a view to combating terrorism (OJ of the European Communities, n° L 344 of the 28/12/2001, p. 70-75). This regulation (in Article 2 thereof) imposes sanctions which includes: freezing of funds and prohibiting the rendering of financial services**:**

« *1. Except as permitted under Articles 5 and 6:*

(a) all funds, other financial assets and economic resources belonging to, or owned or held by, a natural or legal person, group or entity included in the list referred to in paragraph 3 shall be frozen;

(b) no funds, other financial assets and economic resources shall be made available, directly or indirectly, to, or for the benefit of, a natural or legal person, group or entity included in the list referred to in paragraph 3.

2. Except as permitted under Articles 5 and 6, it shall be prohibited to provide financial services to, or for the benefit of, a natural or legal person, group or entity included in the list referred to in paragraph 3. »

The sanctions are very serious since Article 1 of the regulation defines the notions of financial assets and economic resources so broadly**.**

« For the purpose of this Regulation, the following definitions shall apply:

1. 'Funds, other financial assets and economic resources' means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers' cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit.

2. 'Freezing of funds, other financial assets and economic resources' means the prevention of any move, transfer, alteration, use of or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used, including portfolio management. »

Under article 2 §3, " *the Council, ruling unanimously, draws up, revises and modifies the list of persons and entities to which this regulation applies (...) This list mentions:*

"i) natural persons committing or attempting to commit an act of terrorism, participating in or facilitating the commission of any act of terrorism;

ii) legal persons, groups or entities committing or attempting to commit, participating in or facilitating the commission of any act of terrorism;

iii) legal persons, groups or entities owned or controlled by one or more natural or legal persons, groups or entities referred to in point i) and ii); or

iv) natural legal persons, groups or entities acting on behalf of or at the direction of one or more natural or legal persons, groups or entities referred to in point i) and ii) "

The same day, the Council adopts the decision 2001/927/EC (OJ of the European Communities n° L 344 of the 28/12/2001 p. 0083 - 0084) which draws up a first list under the terms of art. 2 § 3 of Regulation 2580/2001. May 2, 2002, this list is repealed and replaced by decision 2002/334/EC of (OJ of the European Communities n° L 116 of the 03/05/2002 p. 0033 - 0034). June 17, 2002, the Council adopts a third decision 2002/460/EC (OJ of the European Communities, n° L 160 of the 18/06/2002, p.0026-0027) which repeals the preceding one.

2. As aforementioned, the US Secretary of State designated on 9 August 2002 the Communist Party of the Philippines/New People's Army (CPP/NPA) as a "foreign terrorist organization". The US Treasury Department, particularly its Office of Foreign Assets Control, listed on 12 August 2002 the CPP/NPA and the applicant as targets for asset freeze. The Dutch Foreign Minister issued on 13 August 2002 the "sanction regulation against terrorism" listing the NPA/CPP and the applicant as the alleged Armando Liwanag, chairman of the CC of the CPP as subject to sanctions

3. October 28, 2002, the Council adopts the decision 2002/848/EC by which Mr. Jose Maria SISON as a natural **person (Article 1, 1.9. « SISON, Jose Maria (aka Armando Liwanag, aka Joma, in charge of NPA) born 8.2.1939 in Cabugao, Philippines »)** and the New People's Army (NPA), as a group or entity presumed erroneously to be linked to the applicant **(Article 1, 2. 13. « New Peoples Army (NPA), Philippines, linked to Sison Jose Maria C. (aka Armando Liwanag, aka Joma, in charge of NPA »)**, are included in the list pertinent to art. 2 § 3 of Regulation 2580/2001. This decision draws up the fourth list adopted under the terms of Regulation 2580/2001.

4. December 12, 2002, the Council adopted the decision 2002/974/EC repealing the previous decision 2002/848/EC. The new decision mentions the applicant under art. 1, 1.25 and 2.19 in identical terms as the previous decision. This is the act being contested insofar as it includes Prof. Jose Maria Sison in the list and thereby violates his democratic rights and interests.

5. This Application is being filed within the reglementary period provided for in Article 230 of the EC Treaty in relation to Article 20 of the EC Statute of the Court of Justice, which provides that:

   Any natural or legal person may, under the same conditions, institute proceedings against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former.

   The proceedings provided for in this Article shall be instituted within two (2) months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

6. Thus, considering that Council Decision 2002/974/EC in question was issued on 12 December 2002 and later published in the Official Journal of the European Communities on 13 December 2002, the Applicant effectively has until 12 February 2003 within which to file the instant Application.

GROUNDS OF THE APPLICATION

AND ARGUMENTS IN SUPPORT THEREOF

-

A. ACTION FOR THE PARTIAL ANNULMENT OF DECISION 2002/974/EC) (ARTICLE 230 OF EC TREATY)

There is no doubt about the fact that Prof. J.-M. SISON as a natural person is individually and directly affected by the contested decision. His own name appears twice in the decision and his own bank account is still frozen by the Dutch government by operation of the Council decision.

His personal and direct interest in the application as contemplated by the fourth paragraph of article 230 EC cannot be denied.

1. Infringement of the EC Treaty

1.1. Plea based on failure to state reason for the challenged decision (violation of Article 253 of the EC Treaty), on patent error of judgment, and on the violation of the principle of sound administration

1.1.1. Failure to state reason for the challenged decision (violation of Article 253 of the EC Treaty)

The second consideration of the contested decision reads as follows: *"It is desirable to adopt an updated list of persons, groups and entities to which the aforementioned regulation applies"*.

The act does not contain any other element which in the first place would explain the reasons which led the Council to draw up this list such as it is presented. This laconic formula makes it absolutely impossible to know the general criteria which the author of the decision used for drawing up the list. It makes it even less

possible to check how these criteria were applied concretely with regard to the applicant to justify his designation on this list.

The obligation to state the reason for the decision of the Community, guaranteed by article 253 of the EC Treaty, has as its double objective to permit on the one hand, the interested parties to know the justifications of the measures taken in order to defend their rights and, on the other hand, for the Community judge to exercise his control over the legality of the decision (see, in particular, ruling of Court of 14 February 1990, Delacre e.a./Commission, C-350/88, Rec. p. I-395, point 15, and ruling of Court of 5 March 1997, WWF UK/Commission, T-105/95, Rec. p. II-313, point 66). None of these objectives is fulfilled in this fashion.

By the decision under challenge, the applicant is subject to some serious sanction (freezing of assets and prohibition of financial services) and defamation which is aimed at arousing public hatred and poses grave danger to the life and physical integrity of the applicant, stigmatisation in the eyes of the public (being identified with supposedly terrorist organisations), the only explanation being, the fact that the Council regards it as "desirable".

On October 31, 2002, the applicant’s counsel made an application for access to all the documents used by the Council before deciding the contested decision. On December 11, 2002, the General Secretary of the European Council refused totally to allow the applicant to have access to these documents, which are classified as “CONFIDENTIEL UE”. (**Appendix 17 : Decision of the Secretary of the European Council, December 11, 2002)**

A confirmatory application was introduced. By decision of January 21, 2003 the Council rejected this confirmatory application. (**Appendix 18: Council Decision, January 21, 2003)**

After the decision issued on December 13, 2002, the applicant’s counsel made a new application for access to the documents on which this new decision was based. This access was also denied by the Secretary of the European Council

(**Appendix 19: Council Decision (Access to documents), February 3, 2003**). A confirmatory application was introduced on the same day.

Thus, neither the applicant nor the Court is informed of the reasons for the decision contested.

1.1.2. Erroneous factual basis for the decision: Prof. Sison is not Armando Liwanag nor is he in charge of the NPA

- Moreover, the decision under challenge introduces the applicant under the alias of Armando Liwanag, chairman of the Central Committee of the Communist Party of the Philippines (point 1.9 and point 2. 13 of article 1), which is an error.

  Armando Liwanag cannot be the applicant because it is materially impossible to direct a political party in the applicant's situation of exile for more than 16 years. He has been separated from the position of CPP chairman for a continuous period of more than 25 years, including more than 8 years of imprisonment under maximum security.

  As aforesaid, the applicant was elected Chairman of the Central Committee of the Communist Party of the Philippines at its Congress of Re-establishment on 26 December 1968. The applicant held that position until he was arrested on 10 November 1977 by the Marcos dictatorship and subsequently detained until Marcos fell from power in l986. From 1977 to 1986, the applicant was always under maximum-security detention and for more than five years the applicant was in solitary confinement.

  It is of public knowledge that the applicant lost his position as Chairman of the Central Committee of the CPP on 10 November 1977 and that Rodolfo Salas assumed said position that the applicant had vacated as a result of his arrest and detention.

From his release from prison on 5 March 1986 until his departure for Australia on 31 August 1986, the applicant was kept constantly under surveillance by some factions of the military forces and had therefore no opportunity to be involved in any type of clandestine action.

He was appointed senior fellow with the rank of associate professor at the Asian Studies Center of the University of the Philippines. He was preoccupied with a series of ten written lectures on the Philippine crisis and responses of the social movement. He chaired the many meetings of the preparatory committee that established the People's Party. He had daily public speaking engagements and press interviews.

From September 1986 to September 1988, he was preoccupied with a lecture tour mainly in universities. He was in the Asia-Pacific region (Australia, New Zealand, Thailand, Japan, Hongkong and India) from September 1986 to January 1987. Subsequently, he visited twenty West European countries. In twenty-six countries, he went to some 80 universities. He held meetings of various sizes with overseas Filipinos and trade unions and visited the offices of various institutions and organisations.

While the applicant was still in Japan in November 1986, the Enrile faction of the Armed Forces of the Philippines (AFP) carried out its operational plan, "God Save the Queen", to kill "communist suspects". The applicant was a target of the plan. In his absence, the military kidnapped, murdered and mutilated the labor leader Rolando Olalia, chairman of the People's Party that the applicant had helped to establish.

In September 1988 the government of the Philippines, under pressure from some military factions, cancelled the passport of the applicant.

For the above mentioned reasons the applicant could not return to the Philippines and was forced to apply for asylum in the Netherlands in October 1988.

For more than 25 years already, including more than eight years of imprisonment (1977 to 1986) under conditions of maximum security and more than 16 years of exile (1986 to the present), the applicant has not been in any position to be elected as Chairman of the Central Committee of the CPP and to perform the functions of leading the central organs and entirety of the CPP on a daily basis and of presiding over the plenary meetings of the CPP Central Committee, as required by various provisions of Article V of the CPP Constitution.

During his detention (of which 5 years in solitary confinement) the applicant could play no active role in the leadership of the CPP.

On his release he was very actively involved in academic activities and in the establishment of a legal political party, the People's Party, and could therefore not take any active position within the CPP.

After his departure from the Philippines the applicant travelled for several years in different areas of the world.

Since 1988 he has lived in exile in the Netherlands. Since he filed his application for political asylum in October 1988 and slowed down on university lecture tours, he has been preoccupied with research and writing, promoting Philippine studies, commenting on Philippine affairs, publishing books and articles, attending activities in the Filipino community, working and campaigning for his asylum and serving as consultant of the National Democratic Front of the Philippines (NDFP) in its peace negotiations with the Government of the Republic of the Philippines.

These various situations and activities in which the applicant was engaged since his release in 1986 are incompatible with the daily leadership of a clandestine party as the CPP.

Under section 4 of Article V of the Constitution of the Communist Party of the Philippines, the Chairman of the Central Committee must be in the Philippines on a daily basis in order to be able to lead the meetings and work of the Political Bureau and Executive Committee of the Secretariat and others central organs.

Under section 6 of the same Article, the Chairman of the Central Committee must be able to preside over the plenum of the Central Committee once every six months. (**Appendix 2: Article V of the CPP Constitution; Appendix 20: National Democratic Front of the Philippines, National Council, Memorandum, 27 October 2002**)

Based on the foregoing points, Prof. Jose Maria Sison who has been continuously away from the Philippines since 1986, more than 16 years ago, cannot be Armando Liwanag, chairman of the Central Committee of the CPP.

- The decision also states erroneously that Prof. Sison is "in charge of the NPA"

  The applicant denies that he is “in charge of the NPA” or that the NPA is "linked to” him. It is publicly known that the NPA is in the charge of the National Operational Command and is not linked in any operational way with the applicant. He is more than 25 years removed from the CPP and the NPA and, as political consultant, he deals with the NDFP Negotiating Panel.

1.2. Patent error of judgment and violation of the principle of sound administration

1.2.1. Prof. Sison is neither a terrorist nor is he linked to any terrorist organisation

- Prof. Sison is a respected intellectual and progressive activist opposed to terrorism. He has never intended, participated, supported, advocated nor facilitated any act of terrorism. To this day, he has never been charged before any court with the heinous crime of terrorism.

  All his life as an intellectual authority on Marxism and social revolution, as patriotic and progressive leader, as a professor of literature and political science and as a poet, he has held on to the conviction that the people and

only the people in their sovereignty can change their social conditions in a conscious and organised way for their own betterment either through reforms or revolution and has always condemned terrorism because it is a vile attack on the lives and property of the people, be this the terrorism of the state or of small reactionary groups of whatever cult.

He has often spoken and written against terrorism in the Philippines and abroad. He has condemned the Plaza Miranda bombing of 1971 and the subsequent acts of the Marcos regime to impose a fascist dictatorship in the Philippines. He has condemned terrorist acts of such CIA-created groups as the military renegade RAM, pseudoreligious cults and the Abu Sayyaf.

He has expressed sympathy for the victims of the 11 September 2001 attacks, condemned as terrorists the perpetrators and also warned against the use of these attacks by the US as license for wars of aggression and repression of the people. (**Appendix 21: Jose Maria Sison, "Sympathy for the Victims at WTC and Condemnation of Terrorism," Press Statement of 18 September 2001**.)

Sison has always emphasized the need for the progressive movement in the Philippines to uphold, defend and promote human rights. (See, e.g., his message to the 1995 Congress of KARAPATAN, the largest human rights organization in the Philippines annexed herein as **Appendix 22: Jose Maria Sison, "Strengthen the Alliance for Human Rights in the National-Democratic Movement" (International Network for Philippine Studies, Utrecht, August 1995**)

It is therefore outrageous that Prof. Sison should be labelled a terrorist under the rubric of official acts of the UN Security Council and of the US and European governments, issued in connection with the September 2001 attacks.

- Prof. Sison is a key figure in the negotiations to achieve a peaceful resolution to the armed conflict in the Philippines. Since 1990, he played a very important role in the peace negotiations with the government of the

Philippines on behalf of the Democratic National Front of the Philippines **(Appendix 9 : "10 Years, 10 Agreements" (Pilgrims for Peace, Manila, October 2002)**

When he was invited by the NDFP representative Luis Jalandoni to become the NDFP political consultant in the exploratory stage of the peace negotiations with the GRP, Prof. Sison accepted the invitation in the belief that he could help in the effort to seek a just and lasting peace in the Philippines through peace negotiations. Thereafter, he has co-signed as witness all the major agreements between the NDFP and the GRP. Thus, many of the most respected political and religious leaders have made public statements that he is a peacemaker and not a terrorist.

As NDFP Chief Political Consultant, the applicant encouraged the NDFP Negotiating Panel to push the NDFP to make the unilateral Declaration of Undertaking to Apply the Geneva Conventions and Protocol I in 1996 (**Appendix 23: July 1996, NDFP Declaration Undertaking to apply the Geneva Conventions of 1949 and Protocol I of 1977) .**

He also vigorously helped in the forging of the GRP-NDFP Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law. **(Appendix 9, p 55-71: Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL), March 16, 1998 in "10 Years, 10 Agreements" (Pilgrims for Peace, Manila, October 2002)**On several occasions, he helped the negotiating panels or special representatives of the GRP and the NDFP to agree on temporary cease-fire agreements during the Yuletide and New Year holidays and on the safe and orderly release of prisoners of war in co-operation with the International Committee of the Red Cross.

These acts – all motivated by humanitarian considerations, the protection of the civilians and civilian communities and even combatants, and the promotion of human rights – are all incompatible with charges of terrorism.

He is thus a peace militant and not a terrorist, as attested to by the declarations of Philippines Independent Church Supreme Bishop Tomas Millamena, Vice-President of the Philippines Teofisto Guingona, and the Speaker of the House of Representatives Jose de Venecia. **(Appendix 24: film "Terreur of willekeur ?" by Kor Al for the Dutch TV, 15 October 2002)** Catholic bishop Julio X. Labayen made a statement defending his democratic rights and recognising the positive role of Prof. Sison in the GRP-NDFP peace negotiations (**Appendix 25:**: **"Open Letter to the European Churches", by Bishop-Prelate of Infanta Julio X. Labayen, member of Ecumenical Bishops Forum.)**

In 1992 and 1995, the Council of State of the Netherlands determined that: " on the basis of the facts made known to the Afdeling, the appellant has valid reasons to fear persecution and therefore must be considered a refugee in the sense of Article I (A), under 2 of the treaty". The Council of State annulled the decision of exclusion taken against him by the Minister of Justice on the basis of art. 1 F of said Geneva Refugee Convention. He enjoys the protection of both the Refugee Convention and Article 3 of the ECHR. **(**Appendix **3 : Raad van State, n° R02.90.4934. (J M SISON / Staatsecretaris van Justitie) ;** Appendix **4 : Raad van State, n° R02.93.2274. (J M SISON / Staatsecretaris van Justitie), 21/2/1995.)**

In the process of the asylum application, Amnesty International and the UNHCR pleaded in favor of the applicant. **(**Appendix **5: AMNESTY INTERNATIONAL, Over de aanvraag voor politiek asiel van prof. Jose Ma. SISON, door JCE Hoftijzer ;** Appendix **6: United Nations High Commissioner for Refugees Submission to the Council of State of the Netherlands for J M SISON's case).**

- As pointed out above, Prof. Sison has no pending valid criminal charges anywhere in the world. He has thus not been sentenced a fortiori by any court

for anything. There is thus no objective element that allows him to be associated with a terrorist organisation or activity.

On 20 April 1998, the Secretary of Justice of the Philippine government confirmed that there were no pending criminal cases against him since the repeal of the anti-subversion law (A**ppendix 7 : Certification of the Department of Justice, April 20, 1998**). Earlier, the Office of the City Prosecutor of Manila similarly issued a clearance to Prof. Sison. (**Appendix 8: Resolution of the Office of the City Prosecutor Manila, March 2, 1994**)

In an answer to a parliamentary question by a member of Parliament of the Socialistische partij on 16 August 2002, the Minister of External Affairs of the Netherlands, Mr. De Hoop Scheffer confirmed that the office of the Public Prosecutor had concluded that there is no basis even to start a criminal investigation against the applicant. (**Appendix 26 : Tweede Kamer der Staten-Generaal, Vergaderjaar 2002–2003,** ***Aanhangsel van de Handelingen*****, pp. 297-298**)

- Furthermore the applicant refers to the attached legal opinion on the legitimacy under international law of the national and social liberation struggle waged in the Philippines. (**Appendix 27: Legal opinion on status of national liberation movements and their use of armed force in international law, November 17, 2002**) Such struggle, involving broad popular masses, cannot be considered as "terrorism". Although the contribution of the applicant to the people's movement in the Philippines is actually limited to his role as chief political consultant of the NDFP in the peace negotiations and as political analyst and commentator, he considers that the Council commits a patent error by labelling legitimate organisations or individuals involved in the struggle of the Filipino people as "terrorists".

No matter how insistent is the claim of the Council that the applicant is in charge of the NPA and the NPA is linked to him, there are three publicly

known facts which debunk the claims that the NPA is a terrorist organisation and that there is a guilt by association between the NPA and the applicant, to wit:

1) By the political and legal presumption of the GRP, the actions of the NPA fall within its jurisdiction and are subject to the appropriate charge of rebellion and not terrorism, which does not exist in the laws and jurisprudence of the GRP.

2) In the GRP-NDFP peace negotiations, the applicant enjoys safety and immunity guarantees and furthermore benefits from the 1997 and 1999 resolutions of the European Parliament on the Philippines and from the facilitation of specific European governments. In two resolutions, the European Parliament strongly endorsed and supported the GRP-NDFP peace negotiations. (**Appendix 28: Resolution of the European Parliament n° B4-0601, 0645 and 0686/97 of 17 July 1997. Appendix 29: Resolution of the European Parliament n° B4-1096, 1106, 1147, 1158, and 1160/98 of 14 January 1999.**)

3) Under premise No. 11 of the Council framework decision on combating terrorism of June, 13, 2002, it is provided that "Actions by armed forces during periods of armed conflict, which are governed by international humanitarian law within the meaning of these terms under that law, and, inasmuch as they are governed by other rules of international law, actions by the armed forces of a State in the exercise of their official duties are not governed by this Framework Decision." The actions by the armed forces of the GRP and NDFP in an armed conflict are governed by international humanitarian law (Geneva Conventions and its Protocols). Hence, they are not governed by the

aforesaid Council Framework Decision. The Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law of the GRP and NDFP, among others, confirms that the aforesaid armed conflict is governed by international humanitarian law.

All told, the name of the applicant can in no case be associated with terrorism and terrorist organisations. However, the Council of Ministers of the European Union is wrongly doing exactly the opposite.

The European council is thus committing a patent error of judgment in qualifying the applicant as a terrorist.

1.3. Violation of the principle of proportionality

The regulation 2580/2001 on which the challenged decision is founded envisages (Article 2) that " *all the funds held by, in possession of or pertaining to a natural or legal person, a group or an entity included in the list pertinent to paragraph 3 (...), other financial assets and economic resources must not be put, directly or indirectly, at the disposition or utilisation for the benefit of natural or legal persons, groups or entities included in the list pertinent to paragraph 3.*"

Such a provision involves the loss of free disposition and a total dispossession of all the financial assets of the applicant. He can no longer make the least use of the entirety of his assets.

Excluding the applicant from all bank- and financial services deprives him from the possibility to obtain effective compensation for the violation of his basic human rights by the Marcos-regime as granted to him by a US court as well as from the possibility to benefit from an income from lectures and publishing books and articles and from possible regular employment as a teacher.

The freezing of Prof Sison's joint bank account with his wife and the termination of social benefits from the Dutch state agencies deprive him of basic necessities and violate

his basic human right to life. The termination of said benefits should never be done for an undefined period of time under the pretext of antiterrorism.

The practical consequences of the decision are extremely harsh and cannot be justified by the avowed objectives of the Regulation to combat the financing of terrorism.

1.4. Plea based on the violation of the freedom of circulation of capital (Article 56 of EC Treaty)

Article 56 of EC Treaty prohibits "*any restriction on the movements of capital between the Member States and between Member States and third countries*".

Article 58 stipulates that this does not carry nor attain the right of Member States: to take measures justified by reasons of public law and order or public security" but that these "*must not constitute a means of arbitrary discrimination nor a disguised restriction on freedom of movement, circulation of capital and payments as defined by article 56* ".

The freezing of assets of the applicant aimed at by the list of the decision under challenge definitely causes a serious restriction on the movement of capital between Member States.

For the Court, law and order and public security can be invoked only in the event of real and sufficiently serious threat, affecting a fundamental interest of society (see, in this direction, Rutili rulings, October 28, 1975, C-36/75, Rec. p. 1219, point 28; Calfa, January 19, 1999, C-348/96, Rec. p. I-11, point 21). Moreover, any person struck by a restrictive measure based on such dispensation must be able to enjoy a ground for appeal (see, in this direction, ruling of October 15, 1987, Heylens e.a., 222/86, Rec. p. 4097, items 14 and 15). These restrictive measures on the free circulation of capital can be justified by reasons dependent on law and order and on public security only if they are necessary for the protection of interests that they intend to guarantee and only insofar as these objectives can be attained through less restrictive measures (CJCE, 14 December 1995, Sanz of Lera e.a., C-163/94, C-165/94 and C-250/94, Rec. p. I-4821, point 23)

Thus, the Council does not invoke any concrete threat affecting public order and security to take strongly restrictive measures. The simple invocation to combat terrorism is not enough to prevent all circulation of capital of the applicant.

After his release the applicant filed a case in US courts against the Marcos estate.

The US federal courts found Marcos liable for human rights violations and for exemplary and compensatory damages. The applicant won the final judgment in 1997. The Marcos estate agreed to the stipulated judgement of USD 750,000. However, the award of damages remains unenforced and becomes subject to being blocked now by the inclusion of the applicant in the list of terrorists.

2. <u>Plea based on the violation of the general principles of Community law</u>

Art. 6 of the Treaty of the EU lays out:

" *1. The Union is founded on the principles of liberty, democracy, respect of human right and fundamental freedoms and the rule of law, principles which are common to the Member States.*

2. The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on November 4, 1950, and as they result from constitutional traditions common to the Member States, as general principles of Community law "

According to well established principles, fundamental rights are integral to the general principles of law for which the Community judge ensures respect (see, in particular, opinion of Court 2/94, of March 28, 1996, Rec. p. I-1759, point 33, and Kremzow ruling of May 29, 1997, Rec.1997, p.I-2629, point 14). For this purpose, the Court and the Tribunal take as a starting point the constitutional traditions common to the Member States as indications provided by the international agencies concerning the protection of the human right to which the Member States co-operated and adhered. The ECHR assumed, in this respect, a particular significance (judgments of the Court of May 15, 1986, Johnston, 222/84, Rec. p. 1651, point 18, and Kremzow, above mentioned, point 14). As the Court also specified, it follows that measures incompatible with the respect of human rights thus recognised and guaranteed could not be allowed in the Community (see particularly, stop of June 18, 1991, ERT, C-260/89, Rec. p. I-2925, point 41).

The erroneous inclusion of the person of Prof. Jose Maria Sison in the list of "terrorists" by virtue of COUNCIL DECISION 2002/848/EC violates his individual human rights and fundamental freedoms as embodied in the European Convention on the Protection of Human Rights and Fundamental Freedoms.

2.1. Violation of the principles enshrined in art. 6 ECHR

Article 6 of the ECHR explicitly provides as follows:

1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

2) Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3) Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) *to have the free assistance of an interpreter if he cannot understand or speak the language used in court.*

2.1.1. Right to an impartial court (Article 6.1. ECHR)

The requirements of fairness imposed on member states by this article apply to civil and criminal litigation. Article 6, taken as a whole, has been held to ensure not only a fair trial once litigation is under way but to impose an obligation on states to ensure access to justice (*Golder v United Kingdom* (1979) 1 EHRR 524:

The Community legislation recognises the fundamental principle of respect for the rights of defence like that of a right to a fair trial (see judgements of the Court of December 17, 1998, Baustahlgewebe / Commission, C-185/95 P, point 21, and of March 28, 2000, Krombach, C-7/98, Rec. p. I-1935, point 26).

It is appropriate to recall that, under the terms of article 6, paragraph 1, of the ECHR, any person is entitled to the right that his cause be heard fairly, publicly and within a reasonable time, by an independent and impartial court, established by law, which shall decide either contestations on rights and obligations of a civil character, or the cogency of all charges in penal matters directed against him. [1]

---

[1] Art. 14.3 of the international covenant relating to civil and political rights states:

" Any person accused of a criminal infringement has the right, in full equality, to at least the following guarantees:

a) To be informed, as soon as possible, in a language which he understands and in a detailed way, of the nature and the reasons for the charge brought against him;

b) To have the time and the facilities necessary to the preparation of his defence and to communicate with the counsel of his choice;

c) To be judged without undue delay;

d) To be present at the trial and to defend himself or to have the assistance of an attorney of his choice; if he does not have an attorney, to be informed of his right to have one, and, each time the interest of justice requires it, to be officially assigned an attorney, without expense, if he does not have the means of paying;

e) to question or have questioned the witnesses for the prosecution and to obtain the appearance and the questioning of the witnesses for the defence under the same conditions as the witnesses for the prosecution;

f) to be assisted by an interpreter free of charge if he does not understand or does not speak the language employed at the hearing;

g) Not to be forced to testify against oneself or to acknowledge oneself as guilty"

Under art. 2, § 3 of regulation 2580/2001, the list modified by the challenged decision mentions:

" i) natural persons committing or attempting to commit an act of terrorism, participating in or facilitating the commission of any act of terrorism;

ii) legal persons, groups or entities committing or attempting to commit, participating in or facilitating the commission of any act of terrorism;

iii) legal persons, groups or entities owned or controlled by one or more natural or legal persons, groups or entities referred to in point i) and ii); or

iv) natural legal persons, groups or entities acting on behalf of or at the direction of one or more natural or legal persons, groups or entities referred to in point i) and ii) "

The inclusion of the applicant in the list modified by the challenged decision is tantamount to an "accusation in a criminal charge" within the meaning of these provisions. In this respect, it is appropriate to recall that the requirement of a jurisdictional control arises from a constitutional tradition common to the Member States and is found in articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ruling of 3 December 1992, Oleificio Borelli/Commission, C-97/91, Rec. p. I-6313, point 14, and of 11 January 2001, Kofisa Italia, C-1/99, Rec. p. I-207, point 46, and Siples, C-226/99, Rec. p. I-277).

The eminent place that the right to a fair trial occupies in a democratic society (see in particular ECHR, Airey, October 9, 1979, pp. 12-13, § 24) must result in opting for a "material " design, and not a " formal " one, for the "accusation " pertinent to article 6 § 1. It is a question of looking beyond appearances and of analysing realities of the procedure in litigation.(ECHR, Deweer, February 5, 1980)

For the European Court of Humans Rights, three criteria determine the existence of a “criminal charge": the legal qualification of the litigious infringement in national law, the

nature of this charge, and the nature and degree of severity of the sanctions. These three criteria are fulfilled with the registration of the persons as referred to in the list. There is not any doubt that the sphere in which the challenged decision fits, namely the fight against terrorism, forms integral part of the penal matter. The proof of this penal nature in European law is reinforced by the adoption by the Council of the European Union of the framework decision of 13 June 2002 relating to the fight against terrorism (Official Journal of the E.C. n° L 164 of 22/06/2002 p. 0003 - 0007) which defines, in a vague manner, the incriminating acts . The nature of the infringement does not allow additional hesitation since " persons, groups or entities are aimed at making or trying to make an act of terrorism, participating in such an act or facilitating its realisation ". As for the degree of severity of the sanction, it is also fulfilled. Indeed, the freezing of the assets such as it is envisaged is comparable to a total deprivation and for an unspecified duration of the right of ownership of the groupings concerned.

The applicant has been registered on the list in a unilateral manner by the Council and incurs from this fact the risk of being inflicted with the sanctions already mentioned. A penalty is thus being applied without any judicial decision having been taken under the terms of a fair trial. It goes without saying that the Council cannot in any case be compared to an impartial judicial organ.

The challenged decision of the Council inflicts pain to the applicant without any jurisdictional control and by doing this, violate the right to an impartial court recognised by art. 6 ECHR.

2.1.2. Violation of the principle of presumption of innocence (Article 6.2 ECPHR)

The principle that anyone who is accused of a penal offence shall be considered innocent until proven guilty is established in Article 6 (2) of the Council of Europe's European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which provides that:

"Everyone charged with a criminal offence shall be presumed innocent until proven guilty according to law." [2]

The presumption of innocence applies to individuals who are suspected of or accused of having committed a crime, and it grants citizens general protection from being singled out by the authorities as criminals before their guilt has been established in a court of law.

In this case, the inclusion of Professor Jose Maria Sison in the Council Decision of 12 December 2002 (2002/974/EC) may be considered a breach of his right to presumption of innocence. It should be noted that Professor Sison has not been charged for any valid criminal offence nor any civil suit. Thus, the statements and pronouncements of representatives of the member states t*hat may form a basis for drawing conclusions about the guilt of the accused person* violates the applicant's right to presumption of innocence.

An attack on the presumption of innocence can emanate not only from a judge or a court but also from other public authorities. (EPCHR Allenet of Ribaumont C France, January 23 1995).

The principle of presumption of innocence is considered ignored if a decision concerning the accused reflects the sentiment that he is guilty, even though his culpability has not been previously legally established. It is enough, even in the absence of formal report, as motivation that the authority regards the interested party as culpable (ECHR, ruling Minelli C Suisse3 of March 25, 1983, series A n° 62, p. 18, par. 37).

---

[2] The principle that anyone who is accused of a penal offence shall be considered innocent until proven guilty is a fundamental principle in any state with a just legal system. It is also an important part of universal human rights law, and is laid down in Article 11 of the United Nations Universal Declaration on Human Rights (December 10, 1948), to wit:

"Everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defence."

The wording of Article 14 (2) of the United Nations International Convention on Civil and Political Rights (December 14, 1966) is almost identical:

"Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law."

The members of the European Union are signatories to these conventions. Hence, the member states are bound both politically and legally by the international principles of law that anyone accused of a penal offence shall be presumed innocent until proven guilty.

Specifically, the sanctions provided for by regulation 2580/2001 are applied to the applicant by the simple fact of his inscription on the list. It has never been proven that the applicant has violated legal provisions; in addition it has never proceeded to the examination of the reality of an alleged violation of juridical norms before the inscription on the list. However, the Council of the European Union in the challenged decision considers already guilty the applicant as "*persons, groups or entities committing or attempting to commit, participating in or facilitating the commission of any act of terrorism*".

The characterization of the applicant as a "*person[] xxx committing or attempting to commit, participating in or facilitating the commission of any act of terrorism*" is being taken as a fact by a key institution of the European Union which enjoys a significant authority and unquestionable prestige. Moreover, this assertion is set in an act which immediately has the force of law in all the countries of the Union.

Let us consider the hypothesis in which the applicant could, in the future, be the object of charges on the basis of national law transposing the framework decision of June 13, 2002 relating to the fight against terrorism. In this framework decision, the same institution (the Council) defines in an extremely broad manner, acts of terrorism. How could the judges disregard the fact that the Council, the decisions of which the judges must apply and interpret, already consider the applicant a terrorist? It seems inconceivable that stigmatisation of the applicant, in an official act, is without influence on the sentiments of the judges who would have to rule on the culpability of the applicant targeted by the list. An impartial and dispassionate judgement would be impossible in this case. In this direction, the decision to register Prof. Sison on the list is a serious violation of the principle of the presumption of innocence.

2.1.3. Violation of the right of defence and of the right to be heard

The phrase due process embodies society's basic notions of legal fairness. The right to due process involves not only the question of fair procedures or procedural due process but also the question of legal fairness or legislation that unfairly affects people. At a minimum, due process means that a citizen who will be affected by a government

decision must be given notice of what government plans to do and have a chance to comment on the action.

In issuing the litigious decision, the Council has violated the rights of defence.

In effect, the sanctions have been inflicted on the applicant without his being previously heard or being enabled to defend himself and without the acts imposing these sanctions being subjected to the slightest jurisdictional control.

No Community institution has informed the applicant of the eventual possibility of his inclusion on the list modified by the challenged decision. Prof. Sison has never been contacted to present his points of view in connection with such a measure, much less to introduce witnesses for the defence.

As stated above access to the file and documents was denied to the applicant.

The Community legislation recognises the fundamental principle of the respect of the rights of defence like that of a right to a fair trial (see judgements of the Court Baustahlgewebe / Commission, mentioned above, point 21, and of March 28, 2000, Krombach, C-7/98, Rec. p. I-1935, point 26).

In the contested sphere, it emerges from well established principles that the right of access to the file is itself closely related to the principle of respect of the rights of defence. In effect, access to the file concerns the procedural guarantees aimed at protecting the right to be heard (rulings of the Court of December 18, 1992, Cimenteries CBR e.a./Commission, T-10/92, T-11/92, T-12/92 and T-15/92, Rec. p. II-2667, point 38, and of June 29, 1995, ICI/Commission, T-36/91, Rec. p. II-1847, point 69).

It violates the rights of defence and the principle of sound administration for the respondents to use secret dossiers as the basis for a decision, which imputes to the applicant the grave charge of terrorism and imposes heavy penalties without any kind of prior hearing.

The principle of respect of the right of defence requires that any person in opposition to any decision can make known his point of view. (see ruling of the Commission /Lisrestal, of 24 October 1996, Rec.1996, p.I-5373, point 21)

The interested party must be able to make known its point of view on the relevance of the facts, but also to give an opinion, at the very least, on the documents retained by the Community institution (rulings of November 21, 1991, Technische Universität München / Hauptzollamt München-Mitte, Rec.1991, p.I-5469, point 25)

Though these guarantees relate to companies which can incur fines which cannot exceed 10 % of their sales turnover, they must thus necessarily be respected when the stakes apply sanctions much more serious such as the total freezing of applicant's bank account, and the prevention of all political and social activity. None of these guarantees have been observed with regard to the applicant.

2.2. Violation of the principle of legality (Article 7 ECHR)

The fundamental "principles of legality" are enshrined in the maxim *nullum crimen sine lege, nulla poena sine lege*, and also contain another fundamental principle of criminal law: *the prohibition of ex post facto criminal laws and its derivative rule of non-retroactive application of criminal laws and criminal sanctions*. A corollary is the requirement of specificity and the prohibition of ambiguity in criminal legislation. (Vincent Sautenet, Essex University, Crimes Against Humanity in International Law, 1999, cited in Crimes Against Humanity and Principle of Legality: What Could the Potential Offender Expect?)

The prohibition against ex post facto laws or violation of the principle of legality is expressly provided in the following:

Article 7.1 of the ECHR:

"No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed." [3]

---

[3] Similarly, Article 15.1 of the International Covenant on Civil and Political Rights (ICCPR) of 16 December 1966 reads:

The point of departure for any appreciation of the existence of punishment consists in determining if the measure in question is imposed following a judgement for an "infringement ". Other elements can be considered to be relevant in this respect: the nature and the goal of the measure in question, its qualification in national law, the procedures associated with its adoption and its execution, as well as its gravity.

The measures provided for by regulation 2580/2001 are of such gravity that they amount to a punishment. The confiscation of goods is likewise a punishment within the meaning of the ECHR (ECHR, Phillips C United Kingdom, July 5, 2001, n° 51).

Under the terms of the principle of legality, any punishment has a legislative base, and therefore must be decided by an assembly of representatives of the nation. The creation of these penal measures by simple Council Decision absolutely does not answer this condition.

Likewise, the principle of legality of the incrimination is not respected. The Article 1st 4) of Regulation 2580/2001 defines " an act of terrorism ", key notion of the incrimination contained in art. 2 of the same regulation, by simple reference to the article 1st § 3 of common position 2001/931/PESC. The legal base, which defines the incrimination, rests on a common position, an act non-constraining by nature and not being able to have any direct effect since, under article 15 of the EU Treaty, " those define the position of the Union on a particular question of a geographical or thematic nature".

The Court has judged in this respect that a sanction, even of non-penal nature, can be inflicted only if it rests on a clear and unambiguous legal basis. In addition, it is a well established principle that the provisions of Community legislation must be in conformity with the principle of proportionality (see ruling of the 27juin 1990, Maizena / Hauptzollamt Krefeld, Rec.1990, p.I-2587, point 15).

2.3. Violation of the right to the freedom of expression (Article 10 ECHR)

No one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offense was committed. If, subsequent to the commission of the offense, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

According to the well established principles of the Court, fundamental rights constitute an integral part of the general principles of law of which the Court ensures the respect and that freedom of expression, enshrined in article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, appears in a number of these general principles (see ruling of 28 October 1992, Ter Voort, C-219/91, Rec. p. I-5485, point 34 and 35).

The protection of the opinions and freedom to express them constitutes one of the objectives of the right of association and right to assembly enshrined in article 11 (ECHR, Young, James and Webster C United Kingdom of August 13, 1981, series A n° 44, p. 23, § 57, and Vogt C Germany of September 26, 1995, series A n° 323, p. 30, § 64*)*

According to art. 19.2 of the UN Charter, the right to the freedom of expression "includes the freedom to seek, receive and spread information and ideas of all kinds, without consideration of borders, in an oral, written, printed or artistic form, or by any other means of its choice ". It goes without saying that the exercise of this right is practically impossible if the financial means of the people in question are confiscated.

It is well to note that the activities of the applicant are within the range of "freedom of expression". Given that the applicant is a writer, teacher and consultant, his inclusion in the questioned list would significantly curtail such freedom.

More specifically the freezing of Prof. Sison's bank account and prohibition of financial services and constraints on his freedom of movement due to the terrorist listing make his role as chief political consultant of the NDFP nearly impossible. The freedom of expression is guaranteed to the GRP and NDFP negotiators, consultants, staffers and supporters under the terms of the GRP-NDFP Joint Agreement on Safety and Immunity Guarantees`.

Consequently, the contested act of the Community flagrantly violates the general principle of freedom of expression.

2.4. Violation of the right of association (article 11 ECHR)

According to article 11 par. 1 (Article 11-1) of ECHR, " any person has the right to assemble peacefully and the right of association, including the right to found with others trade unions and to affiliate oneself with trade unions for the defence of his interests ".

The right of association relates not only to the right to found a political party, but also guarantees, once it is founded, to its right to undertake its political activities freely. The Court of Justice of the European Community must protect not theoretical or illusory rights, but concrete and effective ones (ECHR, Artico c. Italy of 13 May 1980, serie A n° 37, p. 16, § 33) But the right enshrined in article 11 is revealed as patently theoretical and illusory if it covers only the foundation of an association, and if the authorities can at once put an end to its existence by some financial measures of retaliation.

The freezing of financial assets and prohibition to receive financial and related services (insurance...) of the applicant would certainly prevent him from carrying out a series of activities (meetings...) essential to the existence of his political activities without which the freedom of association does not exist other than in a theoretical way.

Moreover, the extremely broad definition given by the regulation (1st Article) with the concept of " funds " ("to have of any nature (...), acquired by certain means that are") could allow the authorities concerned to criminalize the actions of solidarity organised for the benefit of certain targeted organisations or individuals . The funds " should not be put, directly or indirectly, at the disposition of nor used for the benefit of natural or legal persons, groups or entities included in the list concerned ". Such a vague formulation, carries in it an attack on the right of each citizen to give financial support to the person or association of his choice.

2.5. Violation of the right of ownership (article 1 of First Protocol ECHR)

Article 1 of the first protocol additional to the European Convention for Human Rights stipulates that " any natural or legal person has the right with respect to his goods. No one can be deprived of his property except for the public good and in the condition envisaged by the law and the general principles of international law. "

The exercise of fundamental rights such as the right of property can be subject to restriction, provided that those answer to the objectives of general interest pursued by the Community and do not constitute disproportionate and intolerable intervention , bringing attack on the foundation of the rights guaranteed (see the ruling of Court of 11 July 1989, Schräder HS Kraftfutter, 265/87, Rec. p. 2237, point 15, and the jurisprudence quoted).

The regulation 2580/2001 on which the challenged decision is founded envisages (Article 2) that *" all the funds held by, in possession of or pertaining to a natural or legal person, a group or an entity included in the list pertinent to paragraph 3 (...), other financial assets and economic resources must not be put, directly or indirectly, at the disposition or utilization for the benefit of natural or legal persons, groups or entities included in the list pertinent to paragraph 3."*

Such a provision involves the loss of free disposition and a total dispossession of all the financial assets of the applicant. He can no longer make the least use of the entirety of his assets.

In addition this total dispossession intervenes without any limitation in time. Such a measure taken for an unspecified duration is comparable without any doubt to a disproportionate and intolerable intervention attacking the very foundation of the right to property.

The freezing of Prof Sison's joint bank account with his wife and the termination of social benefits from the Dutch State agencies has deprived him of basic necessities and violates his basic human right to life.

B. OBJECTION ON THE GROUND OF ILLEGALITY OF REGULATION 2580/2001 OF THE COUNCIL OF DECEMBER 27, 2001 ON SPECIFIC RESTRICTIVE MEASURES DIRECTED AGAINST CERTAIN PERSONS AND ENTITIES WITH A VIEW TO COMBATING TERRORISM BASED ON ART. 241 OF THE EC TREATY

In order to obtain the cancellation of a decision which concerns a party directly and individually, a party may, by right granted under Article 241 of the EC Treaty, contest the validity of previous institutional acts constituting the legal base of the challenged decision. If such a party does not institute proceedings directed against these acts under the terms of Article 230 of the EC Treaty, then he is deemed to have waived his right to demand the cancellation thereof (ruling of 6 March 1979, Simmenthal/Commission, 92/78, Rec. p. 777, point 39, and TWD Textilwerke Deggendorf, point 23).

The applicant finds himself in exactly the situation envisaged by article 241 as interpreted by the Court of Justice, with regard to the regulation 2580/2001 which constitutes the legal base of the challenged decision. Before this decision was issued, it was impossible for him to challenge the regulation on the basis of article 230 of the EU Treaty, for lack of individual interest.

1. Incompetence of the Council (in relation to Article 60, 301 and 308 of the EC Treaty

The legal bases on which the Council claims to rely in issuing the subject regulation are articles 60, 301 and 308 of the EC Treaty. As will be shown below, the alleged legal bases for Regulation 2580/2001 (Arts. 60, 301, 308 of the EC Treaty) are not sufficient or do not explicitly authorize the Council to issue such a regulation as Regulation 2580/2001.

Under article 301 EC Treaty:

"When a common position or common action adopted by virtue of the provisions of the treaty on the European Union relative to foreign policy and common security envisages an action of the Community ***aiming at stopping or reducing, in whole or in***

***part, the economic relations with one or more third country** , the Council, in accordance with majority ruling on the proposal of the Commission, takes the necessary urgent measures.*" (underscoring by the applicant)

Article 60, paragraph 1, EC provides:

"*If, in the cases under consideration in article 301, an action of the Community is considered to be necessary, the Council, in accordance with the procedure envisaged in article 301, can take, **with regard to third countries concerned**, the necessary urgent measures with regard to the movements of capital and payments.*" (underscoring by the applicant)

Article 301 empowers the Council to take " necessary urgent measures" with a quite particular aim: a Community action "aiming at stopping or at reducing, in whole or in part, economic relations with one or more third country ". However, the object and the goal of the subject regulation are completely alien to this formulation since it aims at the freezing of funds and the prohibition of delivery of financial services, inside the Community, to individuals or to organisations and not to Non-member states.

Article 60 does not authorise, in the context laid down by article 301, the Council to take measures with regard to individuals. The measures provided for by this present regulation exceed the authority conferred on the Council by this provision. Consideration 14 of the subject regulation refers to "persons and entities having links or relations with third countries". In any case, these "entities and persons " cannot be compared to third countries. The Council could not thus legitimately draw its authority from this provision.

Article 301, and article 60 which is a particular application, cannot thus be regarded as relevant legal bases of the challenged regulation.

Art. 308 of the EC Treaty reads as follows: “If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures.”

It is clear from the text of Art. 308 of the EC Treaty that the broad power of action assigned to the Council can only be exercised to fulfil an objective of the Community

when no specific provision exists in the treaty treating of the matter sought to be accomplished. This article is designed only to allow the Council not to be paralysed by the absence of explicit treaty provisions to execute clear Community objectives. The article does not make it possible for the Council, even under the pretext of insuring effectiveness of Community action, to exercise powers inconsistent with its fundamental nature as an executive body, which would entail a modification of the treaty itself.

However, art. 2 § 3 of regulation 2580/2001 gives to the Council the capacity to establish, unilaterally and without any objective criterion, the list of people and groups allegedly linked to terrorist acts and to which sanctions of a penal nature will apply. By doing this, the regulation assigns to the Council a function judicial in nature, which is not envisioned in the treaty. The nature of the institution is somewhat upset: the Council, which is already equipped with broad executive capabilities, is assigned a share of the judicial power. It appears unlikely that the authors of the treaty, while inserting article 308, wanted such a development especially if it results in the nullification of the procedural guarantees provided in the constitutional traditions common to the Member States and the European Convention of Human Rights. Such an evolution towards an unprecedented concentration of powers is also unlikely to redress the enormous democratic deficit from which the European Union suffers and which the authorities claim to want to cure.

On October 24, 2002, the European Parliament expressed “doubts that effective co-ordination of a European anti-terrorism policy is possible under the present structure of the Union” and urged the Convention on the Future of Europe to create “the necessary legal basis to allow the EU to freeze assets and cut off funds of persons, groups and entities of the EU involved in terrorists acts and included in the EU list.” (**Appendix 30: “Combating terrorism”, European Parliament Resolution on “Assessment of and prospects for the EU strategy on terrorism one year after 11 September 2001”, October 24, 2002, point 36, P5_TA-PROV (2002) 0518**) This resolution confirms that the Council had no authority to make the challenged regulation.

Article 308 of the EC Treaty has thus not been either a relevant legal base for the regulation. This provision thus was obviously diverted from its objective by the Council.

As in the above the applicant has shown the incompetence of the Council in adopting the challenged regulation.

2.Violation of the principle of proportionality (Article 6.4 of the EU Treaty) and of the principle of legal certainty

Under the terms of article 6.4 of the Treaty on European Union, the means employed by the Community institutions must be in correspondence with the aims in view. One can admit that the aim of regulation 2580/2001 and the challenged decision (the fight against terrorism) may require exceptional means. However, as the Secretary General of the United Nations said, "We should not allow the fight against terrorism to serve as a pretext to repress the opposition or legitimate dissent". (Kofi Annan, " It is necessary to protect those rights that are threatened, as a direct consequence of terrorism or in the name of counter-terrorism ", speech before the UN Commission of Human Rights, 58th session, 12 April 2002).

Article 2 § 3 of the regulation confers on the Council the discretionary power to designate persons, groups or entities as terrorists by simple decision. By this instrumentality, the Council, creator of the infringements as a legislative power, becomes also the pseudo-judicial body which can designate arbitrarily and without any guarantee inherent in a judicial process, the persons guilty of these infringements. The Council assigns itself a mission which traditionally concerns the judiciary. Such a concentration of powers violates the principle of separation of the functions of investigation and judgement forming an integral part of the State principles guaranteed by the constitutional traditions of all the Member States. Because they run against the common constitutional traditions of the Member States, and in particular the principle of separation of powers, the means employed are completely disproportionate to the objective pursued.

Specifically, the same institution (the Council) defines an infringement as a legislative power (common position 2001/931/pesc and Article 2 of regulation 2580/2001) and unilaterally finds the applicant guilty upon whom it applies punishment, a function which should vest, in a State governed by the rule of law, to a judicial organ. Such

accumulation of powers in the hands of the Council and its arbitrary use such as that which arises from the defect of motivation in the challenged decision is completely contrary to the principle of Community law enshrined in article 6 of the EU Treaty.

Such a discretionary power is a serious infringement of the principle of legal certainty and the applicant's case demonstrates that he could be listed as a terrorist without any official notification or explanation, despite his several applications for access to documents.

3. Misuse of power by the Council

As the Court has repeatedly held, a measure is vitiated by misuse of powers only if it appears on the basis of objective, relevant and consistent evidence to have been taken with the exclusive or main purpose of achieving an end other than that stated or evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case (Case C-331/88 *Fedesa and Others* [1990] ECR I-4023, paragraph 24; Case C-156/93 *Parliament* v *Commission* [1995] ECR I-2019, paragraph 31; and Case C-48/96 P *Windpark Groothusen* v *Commission* [1998] ECR I-2873, paragraph 52, and Case C-110/97 *Netherlands* v *Council* [2001] ECR I-8763, paragraph 137).

According to the contested regulation, the European Council can list a person or an organisation as a terrorist, and thus inflict on them heavy sanctions as the freezing of all their assets, only because the ministers of the 15 members states find it «desirable».

Without this regulation, such sanctions could be meted out only after criminal prosecution, in which all the human rights of the accused described above must be observed.

It is obvious that the proceedings to list so called terrorist persons and entities by the Council have one precise purpose: to evade the procedure specifically prescribed by the general principles of the Community Law (mainly the principle of fair trial of the article 6 ECHR) that normally operates in criminal cases in all democratic countries.

In the applicant’s case, it seems that the Council used his authority for diplomatic reasons to put pressure on certain groups under the pretext of combating terrorism. Late January 2003, the Foreign Affairs Secretary of the Philippines, Blas OPLE, said: “Once there is a peace agreement, I will request to the EU, the United States and other countries to delist (the rebels) as terrorists. If they sign, they will no longer be terrorists”. (**Appendix 16: “Reds must sign peace accord to get off terror list: Ople”, Agence France-Presse, February, 1, 2003 (http://www.inq7.net/brk/2003/feb/01/brkpol_12-1.htm**)

C. CLAIMS AGAINST THE COMMUNITY, COUNCIL AND COMMISSION ON THE BASIS OF ARTICLE 235 AND 288 AL 2 OF THE EC TREATY

1. Damages suffered by the applicant

According to article 288 Al 2 of the EC Treaty, " As regards non-contractual responsibility, the Community must repair, in accordance with the general principles common to the rights of the Member States, the damage caused by its institutions or its agents in the performance of their duty ".

The damages suffered by Prof. Sison following the challenged acts are as follows:

1) Freezing of his financial assets, in particular of his bank account

2) Interdiction for any financial institution or insurance agency to provide him services.

3) Cutting of his social security benefits under the pretext of anti-terrorism.

4) Prejudicing payments that are due to him as a victim of human rights violations under the Marcos regime, as author of books and articles, as lecturer and speaker and as heir to the estates of his parents and unmarried siblings, which are now in the process of being divided among the heirs.

5) Undue constraints on his freedom of movement.

6) Increased surveillance on his person and orders to border police and customs authorities to hinder or hamper his passage as if he were a criminal.

7) Being libelled, slandered and stigmatised as " terrorist " in official instruments, in the press and in the court of public opinion.

8) Serious endangerment of his personal security and physical integrity by the threats and risks arising from demonization and stigmatisation as " terrorist " .

9) Moral and emotional distress and damage due to defamation.

10) This official association to terrorism gives a pretext to the Dutch government to refuse a work permit to him.

11) This slandering negatively influences the possible employers likely to engage him and strongly discourages institutions and professional contacts to enter in relation to him.

12) His inclusion on the challenged list seriously puts in danger his role (NDFP chief political consultant) in the peace negotiations on behalf of the National Democratic Front of the Philippines and therefore, threatens the entire peace process itself.

PRONOUNCEMENT

By these means,

the applicant requests the honourable Court, to receive this appeal and:

- to partially annul as specified hereafter, on the basis of art. 230 of EC Treaty, Council Decision (2002/974/EC) of 12 December 2002 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2002/848/EC (OJ of the European Communities, n° L 337 of 13/12/2002, p.85 and 86) and more specifically:
    - to annul article 1 point 1.25 of said decision which reads:

      "Article 1
      25. SISON, Jose Maria (aka Armando Liwanag, aka Joma, in charge of NPA) born 8.2.1939 in Cabugao, Philippines"
    - to annul partially article 1 point 2.14 of said decision insofar it mentions the name of the applicant
- to declare illegal, on the basis of art. 241 of EC treaty, COUNCIL REGULATION (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ of the European Communities, n° L 344 of 28/12/2001, p. 70-75)

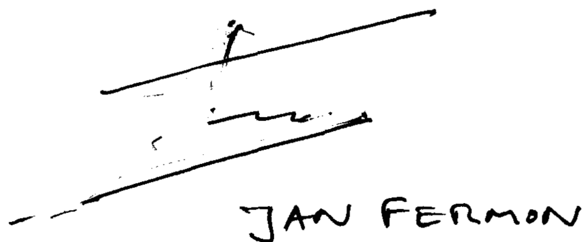
- To require the Community to compensate the applicant on the basis of article 235 and 288 Al 2 in an amount to be fixed ex æquo et bono of not less than 100.000 euros.

- To require the respondent parties to bear the costs of suit.

Brussels, February 6, 2003.

For the applicant,

His counsels,



JAN FERMON

<u>Inventory of Appendix</u>

A.1: Council Decision (2002/974/EC) of 12 December 2002 implementing Article 2(3) of and repealing Decision 2002/848/EC (OJ of the European Communities, n° L 337 of 13/12/2002, p.85 and 86)

A.2: Council Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ of the European Communities, n° L 344 of 28/12/2001, p. 70-75)

1 : American Civil Liberties Union –Southern California Docket, 2 p. (mentioned p 8, § 9)

2 : Article V of the Communist Party of the Philippines Constitution, 2 p. (mentioned p 8, § 10 and p 21)

3 : Raad van State, n° R02.90.4934. (J M SISON v. Staatsecretaris van Justitie), 11 p. (mentioned p 9, § 12 and p 24)

4 : Raad van State, n° R02.93.2274. (J M SISON v. Staatsecretaris van Justitie), 21/2/1995, 14 p. (mentioned p 9, § 12 and 24)

5 : AMNESTY INTERNATIONAL, Over de aanvraag voor politiek asiel van prof. Jose Ma. SISON, door JCE Hoftijzer, 11 p. (mentioned p 9, § 12 and p 24)

6 : United Nations High Commissioner for Refugees Submission to the Council of State of the Netherlands for J M SISON's case, 5 p. (mentioned p 7, § 12 and p 24)

7 : Certification of the Department of Justice, April 20, 1998, 1 p. (mentioned p 9, § 13 and p 25)

8 : Resolution of the Office of the City Prosecutor Manila, March 2, 1994, 2 p. (and 2 p. for the translation) (mentioned p 9, § 13 and p 25)

9 : 10 Years Agreements in the peace negotiations between the Government of the Republic of the Philippines (GRP) and the National Democratic Front of the Philippines (NDFP), 100 p (A 5 size) . (mentioned p 10, § 14 and p 23 at two times)

10 : Executive Order on Financing Terrorism, September 24, 2001, 7 p. (mentioned p 10, § 18)

11: Comprehensive List of identified terrorists and groups under Executive Order 13224 issued by the Office of the coordinator of the Counterterrorism, October 23, 2002, 5 p. (mentioned p 10, § 18)

12 : Sanctieregeling terrorisme, 2002, III, August 13, 2002, Staatscourant, 153, 2p. (mentioned p 11 § 19)

13 : Letter of the "Dienst Maatschappelijke Ontwikkeling" of the City of Utrecht, Septembre 10, 2002, 2 p. (mentioned p 11, § 19)

14 : Letter of the "Dienst Maatschappelijke Ontwikkeling" of the City of Utrecht, October 9, 2002, 2 p. (mentioned p 11, § 20)

15 : Letter of the "Dienst Maatschappelijke Ontwikkeling" of the City of Utrecht, December 13, 2002, 1 p. (mentioned p 11, § 21)

16: "Reds must sign peace accord to get off terror list: Ople", Agence France-Presse, February, 1, 2003 (http://www.inq7.net/brk/2003/feb/01/brkpol_12-1.htm), 2 p. (mentioned p 12, § 22 and p 47)

17 : Decision of the Secretary of the European Council (Access to documents), December 11, 2002, 2 p. (mentioned p 17)

18 : Council Decision (Access to documents), January 21, 2003, 3 p. (mentioned p 17)

19 : Decision of the Secretary of the European Council (Access to documents), February, 3, 2003, 2 p. (mentioned p 18)

20 : National Democratic Front of the Philippines, National Council, Memorandum, 27 October 2002, 3 p. (mentioned p 21)

21: Jose Maria Sison, "Sympathy for the Victims at WTC and Condemnation of Terrorism," Press Statement of 18 September 2001, 3 p. (mentioned p 22)

22: Jose Maria Sison, "Strengthen the Alliance for Human Rights in the National-Democratic Movement" (International Network for Philippine Studies, Utrecht, August 1995), 26 p. (A 5 size) (mentioned p 22)

23: July 1996, NDFP Declaration Undertaking to apply the Geneva Conventions of 1949 and Protocol I of 1977), 7 p. (mentioned p 23)

24: CD-rom : Film "Terreur of willekeur ?" by Kor Al, 15 October 2002. (mentioned p 24)

25: "Open Letter to the European Churches", by Bishop-Prelate of Infanta Julio X. Labayen, member of Ecumenical Bishops Forum, 1 p. (mentioned p 24)

26 : Tweede Kamer der Staten-Generaal, Vergaderjaar 2002–2003, *Aanhangsel van de Handelingen*, pp. 297-298, August 16, 2002, 2 p. (mentioned p 25)

27: Legal Opinion on status of national liberation movements and their use of armed force in international law, November 17, 2002, 73 p. (mentioned p 25)

28 : Resolution of the European Parliament n° B4-0601, 0645 and 0686/97 of 17 July 1997, 1 p. (mentioned p 26, point 2)

29 : Resolution of the European Parliament n° B4-1096, 1106, 1147, 1158, and 1160/98 of 14 January 1999, 1 p. (mentioned p 26, point 2)

30 : “Combating terrorism”, European Parliament Resolution on “Assessment of and prospects for the EU strategy on terrorism one year after 11 September 2001”, October 24, 2002 (P5_TA-PROV (2002) 0518), 10 p. (mentioned p 44)