APPLICATION FOR ANNULMENT AND COMPENSATION

THIS APPLICATION IS FOR:

I. Partial annulment of Council Decision 2007/445/EC of June 28, 2007 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 Decisions 2006/379/EC and 2006/1008/EC (Annex 1, OJ of the EU, L 169 of 29 June 2007, pp. 58-62) insofar as that decision includes Professor Jose Maria Sison;

II. Declaration that Council Regulation (EC) No 2580/2001 of December 27, 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (Annex 2, OJ L 344 of 28/12/2001, p. 70-75) is illegal; and

III. Compensation for the applicant.

THE APPLICANT IS:

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

Represented by the following lawyers :

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Romeo T. CAPULONG, 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 ("Council")

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

SUBJECT MATTER OF THE PROCEEDINGS

The applicant respectfully requests the Court to order:

A. Partial annulment, on the basis of Article 230 of EC Treaty, of Council Decision 2007/445/EC of June 28, 2007 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 Decisions 2006/379/EC and 2006/1008/EC (OJ, L 169 of 29 June 2007, pp. 58-62) and, more specifically, order:

- Annulment of Article 1 point 1.33 which states:

  SISON, Jose Maria (a.k.a. Armando Liwanag, a.k.a. Joma, in charge of the Communist Party of the Philippines including NPA) born 8.2.1939 in Cabugao, Philippines

- Partial annulment of Article 1 point 2.7 insofar as it mentions the name of the applicant:

  Communist Party of the Philippines, including New Peoples Army (NPA), Philippines, linked to Sison Jose Maria C. (a.k.a. Armando Liwanag, a.k.a. Joma, in charge of the Communist Party of the Philippines, including NPA);

B. Declaration, on the basis of Article 241 of EC treaty, that Council Regulation (EC) No 2580/2001 of December 27, 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ L 344 of 28/12/2001, p. 70-75) is illegal;

C. Compensation of the applicant on the basis of article 235 and 288 Al 2 in an amount of 291.427,97 euros + 200, 87 euro every month until the pronouncement of the judgment by the Court, including interests from October 28, 2002 until the payment in full .

D. Order the Council to bear the costs of this suit.

SUMMARY OF PLEAS

FACTS AT THE ORIGIN OF THE APPLICATION

Background, personal circumstances and present situation of the applicant

1. The applicant, Professor Jose Maria Sison, is a 68-year-old Filipino intellectual and patriot who comes from a prominent landlord family in the Northern Luzon Province of Ilocos Sur, Philippines.

2. The applicant completed his elementary grades in a public school and his high school grades in an exclusive Catholic school for boys in Manila. He obtained the degrees of Bachelor of Arts in English Literature in 1959 with honours and Master of Arts in Comparative Literature in 1961 from the University of the Philippines, the premier state university in the country.

3. The applicant 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 over the last four decades has inspired and continues to inspire millions of Filipino people and galvanized them into a strong democratic movement for fundamental reforms in Philippine society.

4. The applicant 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 for *Prison and Beyond*, Manila Critics Circle, 1985.

4.3 Southeast Asia (SEA) WRITE Award for the Philippines for essay writing and poetry, chiefly for *Prison and Beyond*, 1986.

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, Kabataang Makabayan 30th Year, 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, 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. In 1963, he became editor of the *Progressive Review,* a highly respected periodical of Philippine economic, social, political and cultural affairs.

6. The applicant 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, Senator Benigno "Ninoy" Aquino Jr., the applicant 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 ("CPP") from December 26, 1968 to November 10, 1977, on which latter 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 November 10, 1977, the applicant ceased to be chairman of the Central Committee of the CPP.

8. Shortly after his release on March 5, 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 of the Philippines, he was preoccupied with public speaking, press interviews and duties as chair of the preparatory committee for the establishment of the legal political party, 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 the applicant suffered in prison, his illegal detention under martial law and the disappearance of his brother, the American Civil Liberties Union provided him and his family with pro bono legal counsel to file a civil case of human rights violations against Ferdinand E. Marcos in a US court in 1986. The court ruled in his favour and he won the final judgment in 1997. The Marcos estate agreed to a stipulated judgment of US $750,000. However, the award of damages remains unenforced. **(Annex 3 : American Civil Liberties Union –Southern California Docket)**

10. On August 31, 1986 the applicant left the Philippines on a global lecture tour of universities. The tour began in the Asia-Pacific region from September 1, 1986 to January 22,1987. It then moved to Europe from January 23, 1987 to the time that he applied for political asylum in the Netherlands 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 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. **(Annex 4: Article V of the Communist Party of the Philippines Constitution)**

11. In September 1988, the Philippine government arbitrarily cancelled his Philippine passport. In October 1988, the applicant requested political asylum from the Netherlands. In 1990, Amnesty International assisted and supported his asylum claim, as did the UN Office of the High Commission for Refugees in 1992.

12. In 1992 and 1995, the State Council of the Netherlands ("State Council") 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 by the Minister of Justice to exclude the applicant on the basis of Article 1 F of the Geneva Refugee Convention. As a consequence of these rulings, the applicant enjoys the protection of both the Geneva Refugee Convention and Article 3 of the European Convention on Human Rights ("ECHR.") **(Annex 5 : Raad van State, n° R02.90.4934. (J M SISON / Staatsecretaris van Justitie) ; Annex 6 : Raad van State, n° R02.93.2274. (J M SISON / Staatsecretaris van Justitie), 21/2/1995 ; Annex 7 : AMNESTY INTERNATIONAL, Over de aanvraag voor politiek asiel van prof. Jose Ma. SISON, door JCE Hoftijzer ; Annex 8: United Nations High Commissioner for Refugees Submission to the Council of State of the Netherlands for J M SISON's case).**

13. Since the applicant submitted his claim for political asylum, the military and some factions within different Philippine government administrations have brought various criminal charges for rebellion and related acts against the applicant. Each and every of these politically-motivated and false charges have been dismissed by the judicial authorities of the Government of the Republic of the Philippines ("GRP"). The latest decision was issued on July 2, 2007 by the Supreme Court of the Philippines. **(Annex 9: Resolution of the Regional Court of Makati of 4 May 2006 in case 06-452; Information of the prosecutor of 11 May 2006 in the case 06-944 before the Regional**

Court of Makati; Decision of the Supreme Court of the Philippines July, 2, 2007).

14. As far as he knows, the applicant was not the subject of any valid criminal charge before any court anywhere in the world at the time the contested decision was made.

15. Since 1990, the applicant has been the chief political consultant of the National Democratic Front of the Philippines ("NDFP") in the peace negotiations with the GRP. In that capacity, he is a signatory to all the major bilateral agreements formulated during those negotiations, starting with the 1992 Hague Joint Declaration. As NDFP chief political consultant, the applicant is protected by the NDFP – GRP Joint Agreement on Safety and Immunity Guarantees ("JASIG"), as well as related agreements, which provide that the role of consultant for a party in the peace negotiations shall at no time be considered by the other party as a criminal act.

16. In 1997 and 1999 resolutions, the European Parliament has expressed support for the NDFP – GRP peace negotiations. The governments of the Netherlands, Belgium and Norway have facilitated these negotiations. **(Annex 10 : "10 Years, 10 Agreements" (Pilgrims for Peace, Manila, October 2002)**

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

18. Historically, the Philippine government and the international community had never legally considered the applicant as a terrorist or a common criminal until recently. Philippine laws and jurisprudence recognise and adhere to the

universal doctrine of political offence and the fundamental distinctions between political offenders and common criminals.

19. Since applying for political asylum in 1998, the applicant has been preoccupied with pursuing his political asylum claim, 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 NDFP chief political consultant.

20. Based on this brief account of his life, it is clear that the applicant 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 29 years, namely from the date of his arrest on November 10, 1977, his subsequent detention and continuously until the present time. He has been precluded by the CPP's Constitution from leading the CPP as chairman for more than 20 years.

21. On August 9, 2002, the US Secretary of State designated the Communist Party of the Philippines/New People's Army (CPP/NPA) as a "foreign terrorist organisation." On August 12, 2002, the US Treasury Department, through its Office of Foreign Assets Control, listed the CPP/NPA and the applicant as terrorists and ordered the freezing of their assets. (**Annex 11 : Executive Order on Financing Terrorism, September 24, 2001 ; Annex 12: Comprehensive List of identified terrorists and groups under Executive Order 13224 issued by the Office of the coordinator of the Counterterrorism, October 23, 2002**.)

22. On August 13, 2002 the Dutch Foreign Minister issued the "sanction regulation against terrorism" listing the CPP/NPA and the applicant as the alleged Armando Liwanag, chairman of the Central Committee of the CPP and subjecting them to sanctions. (**Annex 13: Sanctieregeling terrorisme 2002, III, August 13, 2002, Staatscourant, 153**) Also on August 13, 2002, the Dutch Finance Minister ordered 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 is entitled to receive as a recognized political refugee. On September 10, 2002, the City of Utrecht terminated his social allowance, his health insurance, and his third party liability insurance, and ordered him to leave his residence, which he and his wife rent from municipal authorities. (**Annex 14 : Letter of the "Dienst Maatschappelijke Ontwikkeling" of the City of Utrecht, September 10, 2002)**

23. The actions, noted in paragraphs 21 to 22, were taken against the applicant without any evidence being put forward; without giving the applicant due notice of any evidence; and without an adequate opportunity to be heard.

24. On October 28, 2002, the Council adopted the decision 2002/848/EC by which the applicant is included in the list pertinent to Article 2§3 of Regulation 2580/ 2001. Since that time, the applicant has been maintained on this list every time the Council updates it, despite the fact that this Court annulled various Council decisions in Sison v. Council, judgment issued on July 11, 2007 (« Case T-47/03 »).

25. On May 23, 2003, the council of the municipality of Utrecht decided to terminate the monthly amount of 201,93 euros he received for his personal expenses pursuant to the regulation on asylum seekers. **(Annex 15: Decision of May 23, 2003 of the municipality of Utrecht).** The applicant appealed this decision to the local tribunal of Utrecht, which ruled against the applicant. The applicant challenged this decision before the State Council, which rejected the applicant's appeal on September 28, 2005 **(Annex 16 : Two Decisions of the State Council of September 28, 2005)**.

26 In a June 19, 2006 letter, the Dutch social security bank informed the applicant that the old age allowance that he had been granted since February 1, 2004 was cancelled retroactively. The only reason stated in the letter is a reference to article 2 of the Regulation 2580/2001 **(Annex 17: Decision of June 19, 2006 of the Dutch social security bank to cancel the pension)**. Following this decision, the applicant was ordered to pay back to the Dutch

government an amount of 4017,53 euros **(Annex 18: Decision of June 19, 2006 ordering the applicant to pay back 4017,53 euros)**.

Alleged bases and legal framework of sanction

26. On December 27, 2001, the Council 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). Article 2 of this regulation imposes sanctions upon listed persons and entities including freezing of their funds and a prohibition against the provision of financial services to them. In particular, Article 2 states:

> *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.*

27. The sanctions are extremely serious since Article 1 of the Regulation defines “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.

28. Article 2 §3 of the Regulation defines the scope of who may be listed:

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

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)

29. Also on the same day as the Regulation was adopted, the Council adopted Decision 2001/927/EC (OJ of the European Communities n° L 344 of the 28/12/2001 p. 0083 - 0084) which drew up an initial list under the terms of Article 2 § 3 of Regulation 2580/2001. On May 2, 2002, this list was 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). On June 17, 2002, the Council adopted a third decision 2002/460/EC (OJ of the European Communities, n° L 160 of the 18/06/2002, p.0026-0027) which repealed the preceding one.

30. As noted above, the US Secretary of State designated on August 9, 2002 the CPP/NPA as a "foreign terrorist organization." On August 12, 2002, the US Treasury Department, through its Office of Foreign Assets Control, listed the CPP/NPA and the applicant as terrorists and ordered the freezing of their assets. On August 13, 2002, the Dutch Foreign Minister issued the "sanction regulation against terrorism" listing the CPP/NPA and the applicant as the alleged Armando Liwanag, chairman of the Central Committee of the CPP and subjecting them to sanctions.

31. On October 28, 2002, the Council adopted 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 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 formulated

under Article 2 § 3 of Regulation 2580/2001. This decision drew up the fourth list adopted under the terms of Regulation 2580/2001.

32. On December 12, 2002, the Council adopted Decision 2002/974/EC repealing the previous decision 2002/848/EC. The new decision listed the applicant under Article 1, 1.25 and 2.19 in terms identical to those used in the previous decision.

33. Decision 2002/474/EC was the original contested decision in and the subject of Case T-47/03 before this Court. This decision was replaced several times by other similar decisions. On July 11, 2007, this Court annulled Council Decision 2006/379/EC of May 29, 2006 insofar as it concerned the applicant.

34. On April 23, 2007, the Council addressed a letter erroneously to Mr. Ruud Vleugel, one of the applicant's Dutch lawyers involved in proceedings in the Netherlands. Mr. Vleugel was not a representative of the applicant in Case T-47/03. In its letter, the Council announced its intention to maintain the applicant on the list. A so-called "motivation" was annexed **(Annex 19 : Letter of the Council of 23 April 2007 to Mr. Ruud Vleugel)** and stated:

> *Jose Maria Sison is the founder and leader of the Philippine Communist Party, including the New People's Army (NPA) (Philippines), which is put on the list of groups involved in terrorist acts in the meaning of Article 1, paragraph 2, of the Common Position 2001/931/CFSP. He has repeatedly advocated the use of violence for the realization of political aims and has given leadership to the NPA, which is responsible for a number of terrorist attacks in the Philippines. These acts fall under Article 1, paragraph 3, point iii, letters i) and j) of Common Position 2001/931/CFSP (hereafter "the Common Position") and have been perpetrated with the intention as meant in Article 1, paragraph 3, point iii) of the Common Position.*

The Legal Uniformity Chamber [REK, Rechtseenheidskamer] of the Court in The Hague (Netherlands) confirmed on 11 September 1997 (reg. no. AWB 97/4707 VRWET) the decision no. R02.93.2274 (RV 1995,2) of the Administrative Law Division of the Raad van State on 21 February 1995. The Administrative Law Division of the Raad van State came to the decision that the status of asylum seeker in the Netherlands was legitimately refused, because the proof was delivered that he gave leadership – or has tried to give – to the armed wing of the CPP, the NPA, which is responsible for a number of terrorist attacks in the Philippines, and because it also turned out that he maintains contacts with terrorist organizations throughout the whole world.

The Minister of Foreign Affairs and the Minister of Finance decided, through ministerial ruling ("regeling") no. DJZ/BR/749-02 of 13 August 2002 (Sanction regulation terrorism 2002 III), which was published in the Netherlands Gazette on 13 August 2002, that all means which belong to Jose Maria Sison and the Philippine Communist Party, including the Philippine New People's Army (NPA) be frozen.

The American government named Jose Maria Sison as "Specially Designated Global Terrorist" (specifically named as a world ["mondial"] terrorist person pursuant to US Executive Order 13224. This decision can be reviewed according to American law.

Thus with regards to Jose Maria Sison, decisions have been taken by authorized bodies in the meaning of Article 1, paragraph 4, of the Common Position.

The Council is convinced that the reasons to put Jose Maria Sison on the list of persons and entities to which the stated measures in Article 2, paragraphs 1 and 2 of Regulations (EC) no. 2580/2001 are applicable, remain valid.

> *On the basis of the above-mentioned points ("elementen"), the Council has decided that the measures meant in Article 2, paragraphs 1 and 2 of the Regulation (EC) no. 2580/2001 must remain applicable to Jose Maria Sison.*

35. Furthermore, the April 23, 2007 letter stated that:

> *You can address your remarks to the Council in connection with its intention to maintain your client on the above-mentioned list and its (the Council's) substantiation for it, with presentation of documents (evidence, proof), within one month from receipt of this letter*.

36. On May 22, 2007, the applicant submitted written observations to the Council through Jan Fermon, one of his representatives in Case T-47/03. **(Annex 20: Observations of the applicant to the Council of 22 May 2007).** In his observations, the applicant explained why the two Dutch decisions cited by the Council did not meet the requirements of the applicable legislation (which includes the Common position 2001/931/CFSP) and requested the Council:

- Give him an opportunity to be heard prior to the Council's decision to include or retain him on the list;
- Send a copy of his written observations and of the proceedings and judgment in Case T-47/03 to all the members of the Council and of the Coreper;
- Make these observations directly accessible to the public in electronic form and through the public register of the Council in accordance with Articles 11 and 12 of regulation nr. 1049/2001, maximum 8 days after its reception;
- Declare itself incompetent to render any decision to include Jose Maria Sison in a list related to terrorist activities, since there is no legal basis for this;

- Not to include or retain Jose Maria Sison on a list adopted on the basis of Regulation 2580/2001.

37. On June 29, 2007, the Council wrote Jan Fermon giving notification of the issuance of Decision 2007/445/EC of June 28, 2007 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 Decisions 2006/379/EC and 2006/1008/EC (OJ of the EU, L 169 of 29 June 2007, pp. 58-62). Decision 2007/445/EC is the subject of the present application ("the contested decision"). **(Annex 21: Letter of the Council to Mr. Jan Fermon of 29 June 2007 containing the motivation of the contested decision)**

38. The contested decision refers to the applicant as:

> *SISON, Jose Maria (a.k.a. Armando Liwanag, a.k.a. Joma, in charge of the Communist Party of the Philippines including NPA) born 8.2.1939 in Cabugao, Philippines (point 1.33 of the Annex concerning persons)*
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> *Communist Party of the Philippines, including New Peoples Army (NPA), Philippines, linked to Sison Jose Maria C. (a.k.a. Armando Liwanag, a.k.a. Joma, in charge of the Communist Party of the Philippines, including NPA)" (Point 2.7 of the annex concerning groups and entities).*

39. Annexed to the Council's June 29, 2007 letter was a "motivation" identical to that annexed to the Council's April 23, 2007 letter.

40. The contested decision also includes a generic statement of the Council's actions in regards to all persons and entities listed under the decision. In particular, the third paragraph of the contested decision state:

> *(3) The Council has provided all the persons, groups and entities for which this was practically possible with statements of reasons explaining the reasons why they have been listed in Decisions 2006/379/EC and 2006/1008/EC.*

Furthermore, the fifth to seventh paragraphs of the contested decision state:

> *(5) The Council has carried out a complete review of the list of persons, groups and entities to which Regulation (EC) No 2580/2001 applies, as required by Article 2(3) of that Regulation. In this regard, it has taken account of observations and documents submitted to the Council by certain persons, groups and entities concerned.*
>
> *(6) Following this review, the Council has concluded that the persons, groups and entities listed in the Annex to this Decision have been involved in terrorist acts within the meaning of Article 1(2) and (3) of Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism (5), that a decision has been taken with respect to them by a competent authority within the meaning of Article 1(4) of that Common Position, and that they should continue to be subject to the specific restrictive measures provided for in Regulation (EC) No 2580/2001.*
>
> *(7) The list of the persons, groups and entities to which Regulation (EC) No 2580/2001 applies should be updated accordingly.*

GROUNDS OF THE APPLICATION AND SUPPORTING ARGUMENTS

A. GROUNDS FOR THE PARTIAL ANNULMENT OF DECISION 2007/445/EC (ARTICLE 230 EC)

41. The scope of this Court's review of a Council decision to freeze funds is noted in paragraph 206 of the judgement in Case T-47/03 as containing the following aspects:

> *…checking that the rules governing procedure and the statement of reasons have been complied with, that the facts are materially accurate, and that there has been no manifest error of assessment of the facts or misuse of power.*

1. Plea based on the failure to state adequate reasons for the contested decision (violation of Article 253 EC), on manifest error of assessment, and on the violation of the principle of sound administration

42. Article 253 of the EC treaty outlines the Council's obligation to state reasons for any decision it takes. At paragraph 156 of the judgment in Case T-47/03, this Court found that the obligation to state reasons applies in the context of a decision to freeze funds under Regulation No 2580/2001.

43. As noted by this Court at paragraph 185 in Case T-47/03, it is well-settled that:

> *…the purpose of the obligation to state the reasons for an act adversely affecting a person is, first, to provide the person concerned with sufficient information to make it possible for him to*

determine whether the act is well founded or whether it is vitiated by an error which may permit its validity to be contested before the Community judicature and, second, to enable the latter to review the lawfulness of that act.

See also (Case C-199/99 P *Corus UK* v *Commission* [2003] ECR I-11177, paragraph 145, and Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P *Dansk Rørindustri and Others* v *Commission* [2005] ECR I-5425, paragraph 462; Case T-47/03, Sison v. Council, 11 july 2007, paragraph 185).

44. In the abovenoted April 23, 2007 letter, the Council informed the applicant about its intention to maintain him on the list and provided a statement of reasons. The applicant sent detailed observations to the Council on May 22, 2007 to underline the erroneous aspects of the statement of reasons and request the Council not to include him on the list (See Annex 34).

45. The Council sent a June 29, 2007 letter including a copy of the contested decision and the statement of reasons, which was exactly identical to those reasons presented on April 23, 2007.

The Council did not acknowledge or reply to the observations of the applicant which indicates that these were not taken into consideration at all during the process of adopting the contested decision.

The statement of reasons contained in both letters of the Council of 23 April and 29 June 2007 does not meet the requirements of the settled case-law, confirmed by the Court in the previous case of the applicant for the several reasons developed hereafter.

46. This Court found at paragraph 187 of Case T-47/03 that the statement of reasons required in a case must be appropriate to the measure and context

in which it was adopted. In particular, the Court noted that the statement of reasons must "disclose in a clear and unequivocal fashion the reasoning followed by the institution."

47. In the context of a decision to freeze funds, at paragraph 191 of Case T-47/03, this Court found that there is a distinction between the statement of reasons required when the Council is taking an initial decision to freeze funds and when the Council is taking subsequent decisions. However, in both instances, this Court found that the Council's statement of reasons must refer to each of the legal requirements of the Regulation. In addition to referencing those requirements, this Court found that the statement of reasons must provide an explanation of why the Council is exercising its discretion to list the party concerned.

48. In this case, it is the applicant's position that the Council's statement of reasons should have fulfilled the requirements for both an initial decision and a subsequent decision. Although in reality the applicant's funds remained frozen despite the favourable judgment in Case T-47/03, the initial Council decision to freeze his funds was annulled by this Court and, therefore, does not legally exist. Thus, the Council must bear the burden of meeting the legal requirements for an initial and subsequent decision.

1.1. Erroneous factual allegations of the Council

49. The statement of reasons annexed to the contested decision contains a series of unsubstantiated and unfounded allegations, without any specific reference to the evidence that could reasonably sustain such allegations. The first paragraph of the "motivation" states:

Jose Maria Sison is the founder and leader of the Philippine Communist Party, including the New People's Army (NPA) (Philippines), which is put on the list of groups involved in terrorist acts in the meaning of Article 1, paragraph 2, of the Common Position 2001/931/CFSP. He has repeatedly advocated the use of violence for the realization of political aims and has given leadership to the NPA, which is responsible for a number of terrorist attacks in the Philippines. These acts fall under Article 1, paragraph 3, point iii, letters i) and j) of Common Position 2001/931/CFSP (hereafter "the Common Position") and have been perpetrated with the intention as meant in Article 1, paragraph 3, point iii) of the Common Position.

An accumulation of unsubstantiated and – as will be demonstrated below - erroneous allegations cannot be considered as an adequate statement of reasons in law.

1.1.1. The applicant is not Armando Liwanag

50. The Council erroneously asserts that the applicant is Armando Liwanag. It does not offer any evidence for this allegation and was not able to do so either in Case T-47/03.

1.1.2 The applicant is not the leader or the head of the "CPP, including the NPA"

51. The applicant denies that he is the leader or the head of the CPP because it is materially impossible to direct a political party from his situation of exile for more than 20 years. Since his arrest by the Marcos regime on November 10, 1977, he has not been the CPP chairman for a continuous period of more than 29 years.

52. Furthermore, 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 charge of its National Operational Command and is not linked in any material or operational way with him.

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

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

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

56. Moreover, during this time, he was a senior research fellow with the rank of associate professor at the Asian Studies Center of the University of the Philippines. He was preoccupied with delivering a series of ten written lectures on the Philippine crisis and responses of the social movement. He chaired numerous meetings of the preparatory committee that established the legal political party, People's Party. He had daily public speaking engagements and press interviews.

57. From September 1986 to September 1988, the applicant was on a global lecture tour, primarily to universities. He was in the Asia-Pacific region (specifically Australia, New Zealand, Thailand, Japan, Hong Kong and India) from September 1986 to January 1987. Subsequently, he visited 20 West European countries. In 26 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

58. The applicant was in Japan in November 1986 when 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 main target of the plan. In his absence, the military kidnapped, murdered and mutilated the labour leader Rolando Olalia, chairman of the People’s Party that the applicant helped to establish

59. In September 1988, the Philippines government, under pressure from some military factions, arbitrarily cancelled his passport.

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

61. Since 1988, the applicant has lived in exile in the Netherlands. 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 NDFP in its peace negotiations with the GRP.

62. Under section 4 of Article V of the Constitution of the CPP, 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. (**Annex 4: Article V of the CPP Constitution; Annex 22: National Democratic Front of the Philippines, National Council, Memorandum, 27 October 2002)**

63. For more than 29 years, including more than eight years of imprisonment with five years in solitary confinement under maximum security (1977 to 1986) and more than 20 years of exile (1986 to the present), the applicant was not in any position to serve and 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 the CPP Constitution.

The Council's allegation that the applicant leads the CPP and NPA is erroneous and is not supported by any evidence. As this error of fact is a main part of the Council's statement of reasons, it undermines the validity and legality of the contested decision. The motivation is thus not adequate on that point.

1.1.3 The Council misrepresents the applicant as "an advocate of violence," despite his role in the NDFP – GRP peace process

64. As noted above, the applicant has served as the chief political consultant of the NDFP in the peace negotiations with the GRP since 1990. He has played

a significant and key role in those negotiations. In his capacity as chief political consultant, he is a signatory to all the major bilateral agreements forged during the negotiations. Moreover, his participation was critical to the formulation of the landmark 1992 Hague Joint Declaration. The Hague Declaration is considered by the parties to the negotiations and the Filipino people as the foundational document that gave birth to the ongoing peace negotiations. It continues to guide the bilateral talks on the basis of mutual recognition and respect for the principles and organizational integrity of both parties. During the historic 1992 meeting of the GRP and the NDFP in the Hague, the applicant's participation facilitated both parties to resolve the impasse on the difficult issue of framework of the peace negotiations and agree on a compromise formulation.(**Annex 10 : "10 Years, 10 Agreements" (Pilgrims for Peace, Manila, October 2002**).

65. The Hague Declaration outlines that the objective of the peace negotiations is to resolve the roots of the armed conflict and to attain a just and lasting peace. As chief political consultant to the NDFP, the applicant agrees with that objective and seeks to uphold the Filipino people's aspirations and right to a just and lasting peace. The Council's misrepresentation of the applicant as an "advocate of violence" is in direct contradiction with his role in the peace process. Moreover, there is no evidence supporting the Council's misrepresentation.

66. As a scholar and an analyst of the society, the applicant has defended the right of the Filipino people to stand up against tyranny (e. g. the Marcos dictatorship), such a right is fully recognised in international law and by various international human rights instruments, including the Universal Declaration of Human Rights.

1.1.4 The applicant never gave any instructions to alleged "terrorist attacks of the NPA

67. As noted above, the applicant is not the leader of the NPA. The Council's allegation that he gave "instructions" to the NPA relating to "terrorist actions" to be undertaken by this organisation is totally unsubstantiated and unfounded.

68. All these erroneous statements in the April 23, 2007 and June 29. 2007 letters of the Council form a infringement to the duty to state adequate reasons and also a patent error of assessment of the facts contained in the decisions it cited.

1.2. The Council misinterprets the Dutch judicial decisions concerning the applicant

69. The Council made a totally incorrect assessment of the content and consequences of the two Dutch court decisions cited in its statement of reasons. In particular, the Court decisions are erroneously cited as advancing certain propositions:

> *"The Legal Uniformity Chamber [Rechtseenheidskamer, REK] of the District Court in The Hague (Netherlands) confirmed on 11 September 1997 (reg. no. AWB 97/4707 VRWET) decision no. R02.93.2274 (RV 1995, 2) of the Administrative Law Division of the Council of State on 21 February 1995.*"

and :

The [State Council] came to the decision that the status of asylum seeker in the Netherlands was legitimately refused, because the proof was delivered that he gave leadership – or has tried to give – to the armed wing of the CPP, the NPA, which is responsible for a great number of terrorist attacks in the Philippines, and because it also turned out that he maintains contacts with terrorist organizations throughout the whole world.

Both of the Council allegations in this cited paragraph are in total contradiction with the content of these decisions.

1.2.1. The REK did not "confirm" the decision of the State Council, with an exception of a point in favour of the applicant

70. The REK could not "confirm" the State Council decision because the issue before the REK was completely different from the issue before the State Council.

71. The question in law before the State Council was whether or not the Dutch Minister of Justice could apply to the applicant the provision of Article 1 F of the Geneva Refugee Convention (the so-called exclusion clause). The State Council determined that the Dutch minister could not do so. Furthermore, the State Council recognised the refugee status of the applicant under Article 1 A of the Geneva Refugee Convention.

72. The REK considered a totally different legal question. The question before the REK was whether the Dutch Minister of Justice could legally refuse to admit the applicant as a recognised refugee in the Netherlands – in other words, could the Dutch Minister legally refuse to grant him a residence permit on considerations of general interest although he had been recognised as a refugee. It is clear that it is an erroneous assessment of the facts for the

Council to conclude that the REK "confirmed" the decision of the State Council.

73. The only point on which the REK "confirmed" the decision of the State Council is a point that is in favour of the applicant **(See Annex 23: Decision of the REK of 11 September 1997)**. The REK indeed stated that:

On the basis of this decision [Raad van State 21 February 1995] it must be accepted as established in law, that the provision of Article 1F of the Refugee Convention cannot be used against the plaintiff, that the plaintiff has a well-grounded fear of persecution in the meaning of Article 1A of the Refugee Convention…

74. Aside from its ruling noted above, the REK further stated that the applicant

"*has a well-founded fear of persecution within the meaning of Article 1 A of that Convention* [1] *and Article 15 of the Aliens Act and Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) [which] prevents the plaintiff from being removed, directly or indirectly, to his country of origin*."

1.2.2. The Dutch courts did not conclude that the applicant was responsible for terrorist activities in the Philippines

75. The legal issue before the Hague District Court ("REK") did not in any way involve whether the applicant was involved in terrorism or in any other type of criminal actions.

76. The general scope of the decision of the REK is explicitly stated in paragraph II (7) as, "The purpose of this action is to determine whether the disputed

[1] the Geneva Convention relating to the Status of Refugee of 28 July 1951 (note of the applicant).

decision (of the Minister o Justice), insofar as it refuses the plaintiff admission as a refugee and the granting of the residency permit, can be upheld."

77. The narrow issue before the REK was whether the Minister had the discretionary power to refuse to admit the applicant – although he was recognised as a refugee by the 1995 decision of the State Council – or the discretionary power to refuse to grant him residence "*for important reasons arising from the pubic interest.*"

78. The REK concluded that the Dutch Minister of Justice had the discretion to refuse to admit the applicant as a refugee and to grant a residence permit on considerations of the public interest. It is beyond doubt that the concept of "*general interest*" is not automatically equivalent to "*committing or facilitating an act of terrorism.*" The concept of the general interest is much wider in scope than the latter notion, which remains vague and undefined even in international law and in the Community jurisprudence.

79. Moreover, the applicant emphasizes that the Minister, as quoted in the REK decision, did not claim that the applicant poses a risk to public security but referred only to "*important interest of the State of Netherlands, namely the integrity and credibility of the Netherlands as sovereign state, notably with regard to its responsibilities towards other states.*" (**Annex 23: Decision of the REK of 11 September 1997**).

80. Similarly, the legal issue before the State Council was not whether the applicant was involved in terrorism or in any other type of criminal actions. In that case, the State Council recognized that the applicant is a political refugee under Article 1A of the Geneva Refugee Convention. Also, the State Council nullified the decision of the Dutch Minister of Justice that the applicant should be excluded under Article 1F of the Geneva Refugee Convention. Moreover, the State Council affirmed the applicant is protected by Article 3 of the ECHR for the applicant and must be admitted as a refugee and granted a permit to reside in the Netherlands if there is no other country to which he can transfer without violating Article 3 of the ECHR.

81. In fact, in dealing with the weight of the evidence (which the applicant notes were seen by the Court but never disclosed to him), the State Council found that the materials from the Dutch secret service were *"not sufficient evidence for the fundamental judgment that Jose Maria Sison to that extent has given direction and carries responsibilities for such activities that it can be held that there are serious reasons to suppose that the appellant … has carried out those mentioned crimes".*

82. The fundamental issue of whether or not the applicant has committed or facilitated acts of terrorism or has been implicated in such acts has never been an issue before, much less addressed in passing by, any court or competent authority, including the State Council and the REK.

83. Neither of the two Dutch court decisions cited by the Council addressed or made any factual findings about the involvement of the applicant in any act of terrorism.

84. The two decisions decided on whether the Dutch Minister of Justice could

- Exclude the applicant from the protection he is entitled to receive as a refugee under art. 1(A) of the Geneva Convention and apply to him the exclusion clause of art. 1(F) applicable to persons that have committed war crimes, crimes against humanity or acts contrary to the aims of the United Nations.
- Refuse residence status to the applicant on grounds of overriding public interest

On the first question the two courts identically and categorically said that art. 1(F) could not be applied to the applicant and recognised him as a refugee under art. 1(A) of the Geneva Convention.

On the second question, the Rechtbank however said that the Minister could take the decision to refuse residence status *"on considerations of overriding public interests"* as long as he is not deported to a country

where he is put at risk of ill treatment in violation of Article 3 of ECHR and where his physical integrity might be in danger.

No factual finding, conclusion or ruling was taken by the State Council or by the REK to make the applicant liable or culpable for any act of terrorism.

85. Thus, the Council's conclusion of its June 29, 2007 letter is diametrically opposed to the judicial decisions it refers to.

Such a patent factual error and misinterpretation in a statement of reasons makes it totally inadequate and consequently illegal as regards Article 253 EC and must be considered also as a manifest error of assessment.

1.2.3. The applicant's alleged contacts with terrorist organizations

86. In its June 29, 2007 letter, the Council alleges that the applicant "*maintains contacts with terrorist organizations throughout the whole world*". It should be noted that the REK decision, in a very peripheral point, merely refers to "*indications of personal contacts between the appellant and representatives of terrorist organisations*" (**Annex 23, paragraph 11**). This cannot be considered a ruling, even in obiter, of the REK. Such a vague and unfounded insinuation cannot be regarded as "*serious and credible evidence or clues or a condemnation for acts of terrorism*" which is required by Article 1, Point 4 of the Regulation.

87. In fact, the REK could not and did not overturn the State Council's ruling that the information from secret service agencies were *"not sufficient evidence for the fundamental judgment that Jose Maria Sison to that extent has given direction and carries responsibilities for such activities*

that it can be held that there are serious reasons to suppose that the appellant … has carried out those mentioned crimes".

88. The applicant denies having or having had any personal contacts with any representative of terrorist organisations and which could be considered in any way as participation in or facilitating an act of terrorism. The applicant calls attention to the fact that he was never shown any evidence whatsoever regarding his alleged personal contacts and neither was he given any opportunity to controvert them. The REK stated this consideration on the basis of materials from intelligence and security services that the applicant could not even examine and contest **(Annex 23, paragraph 6).** He could not properly defend himself because he did not know what the court took into account in rendering such decision. Such a procedure also contravenes Article 6 of the ECHR in the same way as the contested Council decision (ECHR, *Lüdi v Switzerland*, 15 June 1992; ECHR, *Barberà, Messegué, Jabardo v. Spain*, 6 December 1988, paragraph 89).

89. Granting *arguendo* that the applicant could have met a member of an organisation considered as terrorist by international authorities, this does not *per se* prove that he would himself have participated in or facilitated an act of terrorism. Otherwise, all peace negotiators – including many state leaders pursuing peace negotiations with such persons – should be included on the list.

90. Moreover, the applicant submits that mere contacts with alleged terrorist organizations does not meet the legal requirements of Article 1, Point 4 of the Regulation. The legal requirement is a "decision taken by a competent authority" concerning investigation, attempt to commit or commission of terrorist acts.

1.3. None of the four decisions cited by the Council meets the criteria required by Regulation 2580/2001 and Common Position 931/2001

91. The Council concludes its statement of reasons with the following paragraph:

> "*The Minister of Foreign Affairs and the Minister of Finance decided, through ministerial ruling ("regeling") no. DJZ/BR/749-02 of 13 August 2002 (Sanction regulation terrorism 2002 III), which was published in the Netherlands Gazette on 13 August 2002, that all means which belong to Jose Maria Sison and the Philippine Communist Party, including the Philippine New People's Army (NPA) be frozen.*
>
> *The American government named Jose Maria Sison as "Specially Designated Global Terrorist" (specifically named as a world ["mondial"] terrorist person pursuant to US Executive Order 13224. This decision can be reviewed according to American law.*
>
> *Thus with regards to Jose Maria Sison, decisions have been taken by authorized bodies in the meaning of Article 1, paragraph 4, of the Common Position*".

92. The Council therefore seems to refer to four "*decisions (which) have been taken by authorized bodies in the meaning of Article 1, paragraph 4, of the Common Position":*

- September 11, 1997 decision of the Hague District Court ("REK")
- February 21, 1995 decision of the Dutch State Council
- August 13, 2002 decision of the Dutch Minister of Foreign Affairs and the Dutch Minister of Finance
- Decision of the United States government to label the applicant as a *"Specially Designated Global Terrorist"* pursuant to US Executive Order 13224.

93. Article 1, Point 4 of the Regulation requires the Council to draw up the list based on "*precise information or material in the relevant file which indicates that a decision has been taken by a competent authority in respect of the persons…concerned*." A 'competent authority' is defined as a judicial authority or an equivalent competent authority where judicial authorities have no competence in this area.

94. Both US and Dutch executive decisions must patently not be considered as taken by "competent authorities" because these are adopted by executive and non- judicial bodies.

The applicant will develop hereafter why none of these decisions meets the requirements of the pertinent legislation and refers to this argumentation.

At this stage, it should be already noted that by alleging that these four decisions had been taken by "*authorized bodies in the meaning of Article 1, paragraph 4, of the Common Position"*, the Council develops a statement of reasons obviously based on an error in law which cannot be considered as an adequate statement of reasons.

1.4.The statement of reasons of the letter of 29 June 2007 is not "actual and specific"

95. As this Court stated: "*the statement of reasons for an initial decision to freeze funds must at least make actual and specific reference to each of the aspects referred to in paragraph 163 above (= "precise information or material in the relevant file which indicates that a decision has been taken by a competent authority in respect of the persons, groups or entities concerned, irrespective of whether it concerns the instigation of investigations or prosecution for a terrorist act, an attempt to perpetrate, participate in or facilitate such an act*

based on serious and credible evidence or clues, or conviction for such actions", note of the applicant*) and also, where applicable, to the aspects referred to in paragraphs 172 and 173 above (= "information or evidence communicated to (the Council) by representatives of the Member States without having been assessed by the competent national authority",* note of the applicant*), and state the reasons why the Council considers, in the exercise of its discretion, that such a measure must be taken in respect of the party concerned. Moreover, the statement of reasons for a subsequent decision to freeze funds must, subject to the same reservations, state the actual and specific reasons why the Council considers, following re-examination, that the freezing of the funds of the party concerned remains justified*." (Case T-47/03, paragraph 198)

96. This Court also held that "*inasmuch as the Council intended to base the decision originally challenged on the factors referred to in paragraph 211 above, the statement of reasons given for that decision ought to have mentioned, at the very least, the judgments of the Raad van State of 1992 and 1995 and the decision of the Rechtbank of 1997 and, subject to their possibly being of a confidential nature, to have indicated the main reasons why the Council took the view, in the exercise of its discretion, that the applicant was to be the subject of such a decision on the basis of those judgments and that decision. Moreover, in stating the reasons for the subsequent decisions to freeze funds, the Council ought, subject to the same reservations, to have indicated the main reasons why, after re-examination, it considered that there were still grounds for the freezing of the applicant's funds*." (Case T-47/03, paragraph 217)

The statement of reasons of the contested decision should have fulfilled both conditions of an initial decision and of a subsequent decision.

97. First it should be noted that the Council did not make a specific reference to each of the aspects of the definition of the Common position 931/2001 but only provided general assertions and wrong deductions from the decisions it cited.

In addition to this, the Council did not explain why the freezing of the applicant's funds should remain justified 10 years after the decision of the REK, 12 years after the last decision of the Council of State which are quoted in its letter, which referred to facts even more ancient.

The Council does not explain why the freezing of the applicant's funds should contribute, in a concrete manner, to the combat of terrorism. It does not provide any evidence to reasonably demonstrate that the applicant could use his funds to perpetrate or facilitate terrorist acts in the future.

The statements of reasons is completely lacking on this key point. There is thus no link between the purpose of the contested decision (freezing funds to avoid future terrorists acts), and the statement of reasons provided by the Council before adopting the contested decision.

98. As a consequence of the contested decision, the applicant is subject to serious sanctions (freezing of assets and prohibition of financial services) and defamation which is aimed at arousing public hatred and poses grave danger to his life and physical integrity, stigmatisation in the eyes of the public (being identified with supposedly terrorist organisations), without any convincing explanation about the actual risk he could represent for public security and especially, the actual risk of providing financial support for terrorist activities.

It follows that the Council infringed its obligation to state reasons, as interpreted by the case-law.

2. Patent error of assessment and violation of the principle of sound administration

2.1 The applicant is not a terrorist nor is he linked to any terrorist organization

99. The applicant 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 a patriotic and progressive leader, as a professor of literature and political science and as a poet, the applicant 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. He 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 Reform the Armed Forces Movement (RAM), pseudo-religious cults and the Abu Sayyaf.

100. The applicant expressed sympathy for the victims of the September 11, 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. (**Annex 24: Jose Maria Sison, "Sympathy for the Victims at WTC and Condemnation of Terrorism," Press Statement of 18 September 2001).**

101. The applicant has always emphasized the need for the progressive movement in the Philippines to uphold, defend and promote human rights. (**Annex 25: Jose Maria Sison, "Strengthen the Alliance for Human Rights in the National-Democratic Movement" (International Network for Philippine Studies, Utrecht, August 1995)**

102. It is therefore outrageous that the applicant should be labelled a terrorist under the alleged rubric of official acts of the US and European governments, issued in connection with the September 2001 attacks.

2.2. Prof. Sison has played a key role in the peace process for the Philippines

103. The applicant is a key figure in the negotiations to achieve a peaceful resolution to the armed conflict in the Philippines. Since 1990, he has played a very important role in the peace negotiations with the Government of the Republic of the Philippines on behalf of the National democratic Front of the Phillipines **(Annex 10 : "10 Years, 10 Agreements", Pilgrims for Peace, Manila, October 2002)**

When he was invited by NDFP representative Luis Jalandoni to become the NDFP chief political consultant in the exploratory stage of the peace negotiations with the GRP, the applicant 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.

104. 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 (**Annex 26: July 1996, NDFP Declaration Undertaking to apply the Geneva Conventions of 1949 and Protocol I of 1977) .**

105. The applicant also vigorously helped in the forging of the NDFP – GRP Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law. **(Annex 10, 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).**

106. On several occasions, the applicant helped the negotiating panels and special representatives of the GRP and the NDFP to agree on temporary cease-fire agreements during the Yuletide and New Year holidays and to agree on the safe and orderly release of prisoners of war in co-operation with the International Committee of the Red Cross.

107. These acts of the applicant were solely motivated by humanitarian considerations – namely the protection of the civilians, civilian communities and even combatants – and by the desire to promote human rights. As such, his actions and beliefs are incompatible with terrorism.

108. The applicant should be considered a peace militant and not a terrorist, as attested to by the declarations of Philippines Independent Church Supreme Bishop Tomas Millamena, former Vice-President of the Philippines Teofisto Guingona, and the Speaker of the House of Representatives Jose de Venecia. **(Annex 27: film "Terreur of willekeur ?" by Kor Al for the Dutch TV, 15 October 2002)** Moreover, Catholic Bishop Julio X. Labayen and many other prominent figures of the Philippines made statements defending his democratic rights and recognising the positive role of the applicant in the

GRP-NDFP peace negotiations (**Annex 28: "Open Letter to the European Churches", by Bishop-Prelate of Infanta Julio X. Labayen, member of Ecumenical Bishops Forum; Annex 29: Statement of SELDA, The *Samahan ng mga Ex-Detainees Laban sa Detensyon at para sa Amnestiya* (Society of Ex-Political Detainees for Liberation from Detention and for Amnesty); Annex 30: Statement of Senator LOREN LEGARDA, majority floor leader in the Philippine Senate; Annex 31: Statement of BISHOP DEOGRACIAS S. INIGUEZ; Annex 32: Statement of BISHOP JULIO X. LABAYEN; Annex 33: Statement of the National Council of Churches in the Philippines (NCCP) and Letter of 4 July 2003 from MS. SHARON ROSE JOY RUIZ-DUREMDES, General Secretary of the NCCP to Gloria Macapagal Arroyo, President of the Republic of the Philippines ; Annex 34: Statement of Most Rev. Tomas MILLAMENA, Supreme Bishop of Iglesia Filipina Independiente; Annex 35: Statement of Dr. Francisco NEMENZO, President of the University of the Philippines (UP); Annex 36: Statement of Luis TEODORO, professor of journalism at the University of the Philippines (U.P.); Annex 37: Statement of Jose Aguila GRAPILON, former National President of the Integrated Bar of the Philippines (IBP) 1997-1999**).**

109. In 1992 and 1995, the State Council 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 annulled the decision of exclusion taken against the applicant by the Minister of Justice on the basis of art. 1 F of said Geneva Refugee Convention. Thus, the applicant enjoys the protection of both the Refugee Convention and Article 3 of the ECHR. **(Annex 5 : Raad van State, n° R02.90.4934. (J M SISON / Staatsecretaris van Justitie) ; Annex 6 : 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 favour of the applicant. **(Annex 7: AMNESTY**

INTERNATIONAL, Over de aanvraag voor politiek asiel van prof. Jose Ma. SISON, door JCE Hoftijzer ; Annex 8: United Nations High Commissioner for Refugees Submission to the Council of State of the Netherlands for J M SISON's case).

2.3. The conflict in the Philippines is erroneously labelled as a problem of "terrorism" while it is to be considered under international law as an internal armed conflict ruled by the laws of war and international humanitarian law.

110. The applicant draws the attention of the Court to the point of view of the NDFP as developed in its intervention in the case T- 47/03 arguing in law and in fact that the activities of the NPA should be considered as actions taken in the framework of an internal armed conflict as defined by international law. Thus, the applicant submits that the Council erroneously labels the ongoing civil war in the Philippines as terrorism.

111. 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. (**Annex 38: Legal opinion on status of national liberation movements and their use of armed force in international law, November 17, 2002**) Such struggle, involving broad and popular participation of the people, 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 manifest error of assessment of the facts by labelling legitimate organisations or individuals involved in the struggle of the Filipino people as "terrorists."

112. It should be recalled that 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. (**Annex 39: Resolution of the European Parliament n° B4-0601, 0645 and 0686/97 of 17 July 1997. Annex 40: Resolution of the European Parliament n° B4-1096, 1106, 1147, 1158, and 1160/98 of 14 January 1999.**)

113. 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.*"

114. International humanitarian law, specifically the Geneva Conventions and its Protocols, governs the actions by the armed forces of the NDFP and GRP as an internal armed conflict. Therefore, the Council Framework Decision does not govern the actions. The Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law, among other instruments, also confirms that international humanitarian law governs the internal armed conflict in the Philippines.

2.4 No condemnation for any crime or minor offence, no pending valid criminal charges anywhere in the world at the time when the decision was taken

115. As noted above, the applicant was cleared several times of politically-motivated criminal charges in the Philippines, particularly:

- In 1986, two charges of subversion and rebellion were nullified through the dissolution of the military commissions as organs of repression.
- In 1992, the charge of rebellion which led to the cancellation of his Philippine passport, was nullified by the repeal of the anti-subversion law.
- In 1994, the Office of the City Prosecutor of Manila issued a clearance about other baseless charges. (**Annex 41: Resolution of the Office of the City Prosecutor Manila, March 2, 1994**)
- In 1998, the Philippines Secretary of Justice officially certified that there were no pending criminal cases against the applicant. He mentioned the dismissal of the subversion case against the applicant due to the repeal of the anti-subversion law in 1992 and also mentioned the dismissal of the 1991 charge of multiple murder in connection with the 1971 Plaza Miranda bombing as a charge based on pure speculation. **(Annex 42 : Certification of the Department of Justice, April 20, 1998)**
- In 2003, the Department of Justice filed a complaint against the applicant for the June 2001 killing of the intelligence officer Colonel Rodolfo Aguinaldo. Through counsel, the applicant succeeded in having the complaint archived because of its patent falsity and political motivation and because of the lack of Philippine jurisdiction over him in light of Philippine and international law.
- In 2005, the Philippine authorities filed baseless charges of common crimes (such as murder, robbery, kidnapping and the like) against him in connection with incidents ascribed to the NPA in various parts of the Philippines. The purported facts alleged to support the charge of rebellion covered the entire period from the founding of the Communist Party of the Philippines on December 26, 1968 to the filing of the charge on April 21, 2006. On July 2, 2007, the Supreme Court of the

> Philippines issued a judgment nullifying the omnibus charge of rebellion and all the supposed evidence from 1968 to 2006, finding in favour of the applicant and his 50 other co-accused. The Supreme Court of the Philippines ordered the Regional Court of Makati to dismiss the two rebellion cases against the applicant because of "*the obvious involvement of political considerations in the actuations of respondent Secretary of Justice and respondent prosecutors*. …*We cannot emphasize too strongly that prosecutors should not allow, and should avoid, giving the impression that their noble office is being used or prostituted, wittingly or unwittingly, for political ends, or other purposes alien to, or subversive of, the basic and fundamental objective of observing the interest of justice even-handedly … "* **(Annex 9: Information filed against the applicant and others to the Makati Court followed by Decision of the Supreme Court of the Philippines, July 2, 2007)**

116. As part of its ruling, the Supreme Court of the Philippines found all accusations of any nature (rebellion, subversion, common crimes, murder) charged against the applicant from 1986 to the present time as baseless and politically motivated. Thus, it flows as a consequence of that decision that the alleged evidence cited in that case cannot be used again against the applicant to support any new charge. The Solicitor General of the Philippines has publicly admitted that the value of the state's stock of purported evidence has been wiped out.

117. In an answer to a parliamentary question by a member of Parliament of the Socialistische partij on August 16, 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 was no basis even to start a criminal investigation against the applicant. (**Annex 43 : Tweede Kamer der Staten-**

Generaal, Vergaderjaar 2002–2003, *Aanhangsel van de Handelingen*, pp. 297-298)

118. As far as he knows, the applicant was not the subject of any valid criminal charge before any court anywhere in the world at the time the contested decision was made.

119. On August 28, 2007, however the applicant was arrested by Dutch police. The investigation conducted against him is for his alleged role in three murders committed in the Philippines in 2003 and 2004. According to the Dutch public prosecutor the applicant is being charged with inciting to commit these murders.

Firstly, the Council in the contested decision did not even mention these alleged facts or the existence of an investigation into these alleged facts.

Secondly, the applicant denies that he has anything to do with these killings and views them as false charges, which are part of the continuing effort by the Philippine, US and Dutch governments to malign him as a “terrorist” and a “criminal.”

Secondly, the alleged facts happened in 2003 and 2004 while the applicant has been continuously included in the list since 2002, prior to the facts that are under investigation in the Netherlands.

Thirdly, the alleged involvement of the applicant in these murders was one of the facts submitted to the Supreme Court of the Philippines in the framework of the omnibus charge brought against the applicant by the Philippine National Police. Given that these alleged facts were included in the scope of the omnibus charge – which covered a long period from 1968 to 2006 – and given that the Supreme Court of the Philippine’s dismissal of the rebellion charge as politically motivated covers all accusations from that period, it is untenable that the same alleged facts are now the subject of Dutch criminal proceedings.

120. In light of the above, particularly the ruling of the Supreme Court of the Philippines, the contested decision is not based on any new evidence and is undermined by a series of manifest error of assessment of facts. The contested decision must, therefore, be annulled.

3. Violation of Article 2(3) of Regulation 2580/2001/EC and of Article 1(4) of Common Position 2001/931/CFSP

121. According to article 2(3) of Regulation 2580/2001/EC, the Council, acting unanimously, is to establish, review and amend the list of persons, groups and entities to which the regulation applies, in accordance with the provisions laid down in Article 1(4), (5) and (6) of Common Position 2001/931.

Article 1(4) of Common Position 2001/931 states that '*the list in the Annex shall be drawn up on the basis of precise information or material in the relevant file which indicates that a decision has been taken by a competent authority in respect of the persons, groups and entities concerned, irrespective of whether it concerns the instigation of investigations or prosecution for a terrorist act, an attempt to perpetrate, participate in or facilitate such an act based on serious and credible evidence or clues, or condemnation for such deeds*'.

Article 1(4) of Common Position 2001/931 states: '*"competent authority" shall mean a judicial authority, or, where judicial authorities have no competence in the area covered by this paragraph, an equivalent competent authority in that area*'.

The legal requirements of the common position 2001/931 and of the Regulation 25801/2001 to include the applicant on the list are not met.

122. Art. 1(4) of common position 2001/931 and art. 2(3) of regulation 2580/2001 sets the basic legal requirements that must be met to allow the Council to include a person in the list.

These requirements are multiple. "*The list shall be drawn up*", says the text

a. On the basis of precise information or material

b. That a decision has been taken by a competent authority in respect of the persons concerned

c. Concerns instigation of investigations or prosecution

d. For a terrorist act, an attempt to perpetrate, participate in or facilitate such an act

e. Based on serious and credible evidence or clues or condemnation for such deeds

These are very strict conditions and the Council did not comply with any of them in the contested decision.

3.1. No precise information or material presented by the Council

123. As developed above, the factual allegations presented by the Council are merely erroneous and baseless allegations and thus do not comply with the requirements of "*precise information or material*".

3.2. The Dutch decisions cited by the Council have nothing to do with "*investigations or prosecution for a terrorist act*"

124. The State Council in 1995 and the REK in 1997 had no competence whatsoever to instigate or investigate or prosecute a terrorist act or an attempt to perpetrate, participate in or facilitate such an act. In that sense, although they are judicial authorities, they cannot be considered as "competent authorities" pursuant to the relevant provisions.

125. The allegations concerning contacts of the applicant with terrorist organisations do not meet the legal conditions set out by the community law to include a person in the list. The text of article 1(4) of the Common position does not foresee that "contacts" with terrorist organisations are sufficient. The legal requirement is an investigation or a conviction for *"a terrorist act, an*

attempt to perpetrate, participate in or facilitate such an act". Mere contacts are not mentioned as a legal basis for including someone in the list.

3.3. Dutch and US executive decisions cannot offer a legal ground for the inclusion of Jose Maria Sison in the list

126. In its letter, the Council also refers to the decision of the government of the Netherlands published in the Staatscourant August 13, 2002, and to the US decision following the US Executive Order 13224.

127. Both these decisions cannot be considered as "*decision taken by a competent authority in respect of the persons concerned"* in accordance with the Common Position 2001/931. These decisions were adopted by executive bodies and not by a "*judicial or equivalent*" authority, as required by the legal instrument and the case law. The Court of First Instance of the EC considers that: "'*Competent authority' is understood to mean a judicial authority, or, where judicial authorities have no jurisdiction in the relevant area, an equivalent competent authority in that area.*" (Case T 228/02, Organisation des Modjahedines du peuple d'Iran (OMPI) v. Council, Judgment of 12 December 2006).

128. With regard to the US decision, the Council adds: "*This decision can be reviewed according to American law".* The mere fact that a judicial authority can review the US decision does not make it a "judicial decision." Moreover, the fact that the applicant did not yet challenge this decision in the US is precisely due to his lack of financial means to do so, which in turn is a direct consequence of his listing by the Council and cannot be interpreted as agreement with the US government decision.

129. In conclusion, it is demonstrated that none of the requirements of art. 1(4) of common position 2001/931 and art. 2(3) of regulation 2580/2001 are met in the present case.

The contested decision thus patently violates these provisions.

4. Violation of the principle of proportionality

130. The purpose of the contested decision and of the Regulation 2580/2001 is to adopt measures needed at the Community level and to complement *"administrative and judicial procedures regarding terrorist organisations in the European Union and third countries…to combat any form of financing for terrorist activities*" (2d and 6th recitals of Regulation 2580/2001).

131. For more than 5 years, the applicant has been unable to make any use of any portion of his assets because of the impact of the previously contested decisions. The Council does not bring any evidence that can reasonably lead to the conclusion that the applicant could use a single cent for the perpetration of terrorist acts. During the hearing of May 31, 2006 in Case T-47/03, the representative of the Dutch government, in response to questions from this Court, admitted that no suspect transactions had been observed on the applicant's bank account of the applicant **(Annex 44 : Bank statements of the frozen joint account of the applicant and his wife from 3 January 2002 to 10 October 2002).** The expenses recorded by the bank statements, showed that the frozen funds were used only for essential human needs. The Council does not show the necessity of the extraordinary measures to mitigate the alleged risk the applicant represents if he would have access to his financial assets. Nothing in the contested decision or in the Council's June 29, 2007 letter justifies such an extraordinary measure "*complementary to administrative and judicial procedures regarding terrorist organisations*."

132. Excluding the applicant from all financial services deprives him from the possibility to obtain enforcement of the US court judgment granting him effective compensation for the violation of his basic human rights by the Marcos regime. The applicant is also denied the possibility of earning income from lectures and publishing books and articles and from potential income from regular employment as a teacher.

133. The freezing of the applicant's joint bank account with his wife and the termination of social benefits by Dutch state agencies deprive him of access

to basic necessities and violate his basic human right to life. Moreover, in light of humanitarian considerations, the freezing of his social benefits should not be done for an undefined period of time, as is the situation in this case. The pretext of anti-terrorism measures cannot override humanitarian considerations, as the practical and real consequences of the contested decision are extremely harsh. These harsh consequences cannot be justified by the stated objectives of the Regulation to combat the financing of terrorism.

134. In the absence of any demonstrable link between the Council's extraordinary sanction against the applicant for almost 5 years and the alleged risk that the applicant will finance terrorist activities, the contested decision patently infringes the principle of proportionality.

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

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

Article 58 does not authorize Member States to violate the above prohibition for reasons of public law and order or public security. In fact, such measures could be considered as "*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 definitely causes a serious restriction on the movement of capital between Member States.

In case-law, an exception to the prohibition for reasons of law and order and public security can be invoked only in the event of a 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 affected by a restrictive measure invoked on

grounds of law and order and public security must have access to and be able to exercise his right to appeal or for judicial oversight (see, in this direction, ruling of October 15, 1987, Heylens e.a., 222/86, Rec. p. 4097, items 14 and 15). Restrictive measures on the free circulation of capital can only be justified for reasons of law and order and for 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)

136. In his case against the dictator Marcos, 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 US $750,000. However, the award of damages remains unenforced and now is subject to being frozen due to the contested decision.

137. In its contested decision, the Council failed to invoke any concrete threat affecting public order and security or a risk of financing terrorist activities if the resources and assets of the applicant were at his disposal. Thus, the strongly restrictive measures against the applicant are not justified. The mere invocation that the measures are necessary to combat terrorism is not enough to prevent all circulation of capital of the applicant and to overcome the prohibition in Article 56.

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

138. Article 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.

139. 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 courts take as a starting point the constitutional traditions common to the Member States as indicators provided by the international agencies concerning the protection of the human rights to which the Member States co-operate and adhere. The European Court of Human Rights assumes, 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 found, it follows that measures incompatible with recognized and guaranteed human rights cannot 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 applicant in the list of “terrorists” by virtue of the contested decision violates his individual human rights and fundamental freedoms as embodied in the European Convention on the Protection of Human Rights and Fundamental Freedoms.

6.1. Violation of the principle of due process enshrined in art. 6 ECHR

140. 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.

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

141. The requirements of fairness imposed on member states by Article 6 apply to both civil and criminal litigation. Article 6, taken as a whole, has been held to require a fair trial not only 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 includes the 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 disputes about rights and obligations of a civil character, or the cogency of all charges in penal matters directed against him. [2]

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[2] 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"

142. 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) "

143. The inclusion of the applicant in the list through the contested decision is tantamount to an "accusation in a criminal charge" within the meaning of these provisions. Many authors share this point of view (See: Symeon Karagiannis, *Certains comportements récents du conseil de sécurité des Nations Unies en matière de droits de l'homme A propos de la question des « listes noires » du Comité des sanctions* as Annex to D. Marty, « UN Security Council black lists Introductory memorandum", Committee on Legal Affairs and Human Rights of the Council of Europe, 19 March 2007; Iain CAMERON, *The European Convention on Human Rights, Due Process and United Nations Security Council Counter-Terrorism Sanctions*, Report to the Council of Europe, 6 February 2006, p. 10; Thomas BIERSTECKER, Sue ECKERT, *Strengthening Targeted Sanctions Through Clear and Fair Procedures,* White Paper prepared by the Watson Institute Targeted Sanctions Project, Brown University, Providence (Rhode Island), 30 March 2006, p. 12; Bardo FASSBENDER, *Targeted Sanctions and Due Process*, Study commissioned by the United Nations Office of Legal Affairs, 20 March 2006.) In this respect, it is appropriate to recall that the requirement of 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).

144. For the European Court of Humans Rights, three criteria determine the existence of a “criminal charge": (i) the legal qualification of the litigious infringement in national law; (ii) the nature of this charge; and (iii) the nature and degree of severity of the sanctions. These three criteria are met when a decision is taken by the Council to include a person on the list and freeze his assets. There is no doubt that the sphere in which the challenged decision fits, namely the fight against terrorism, forms an integral part of penal matters. The proof of the penal nature of these measures in European law is reinforced by the adoption by the Council of the European Union of the framework decision of June 13, 2002 relating to the fight against terrorism (Official Journal of the E.C. n° L 164 of 22/06/2002 p. 0003 - 0007). This framework decision defines, in a vague manner, the incriminating acts. The nature of the infringement is clear 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* ". The degree of severity of the sanction is also fulfilled. Indeed, the freezing of the assets is comparable to a total deprivation of access to the basic necessities and right to life for an unspecified duration, as it nullifies the right of listed persons to ownership of any future assets or economic resources.

145. The applicant was registered on the list in a unilateral manner by the Council and is 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 be compared to an impartial judicial organ.

The contested decision inflicts severe damages to the applicant without any judicial oversight and thus, there is a violation of the right to an impartial court recognised by art. 6 ECHR.

6.1.2. Violation of the principle of presumption of innocence (Article 6.2 ECHR)

146. 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.*" [3]

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.

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[3] 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.

147. In this case, the inclusion of the applicant in the list contained in the contested decision can be considered a breach of his right to presumption of innocence. It should be recalled that, at the time of the contested decision, the applicant has not been charged for any specific act of terrorism and neither has he faced any valid charge of criminal offence nor any civil suit. Thus, the statements and pronouncements of representatives of the member states that allegedly form the basis for drawing conclusions about the guilt of the accused person violates the applicant's right to presumption of innocence.

148. An attack on the presumption of innocence can emanate not only from a judge or a court but also from other public authorities. (ECtHR 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 (ECtHR, ruling Minelli C Suisse3 of March 25, 1983, series A n° 62, p. 18, par. 37).

149. Specifically, the sanctions provided for by regulation 2580/2001 are applied to the applicant by the simple fact of his inclusion on the list. It has never been proven that the applicant has violated any legal provisions of the Regulation. However, the Council of the European Union in the challenged decision already considers the applicant guilty of being a "*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 significant authority and unquestionable prestige. Moreover, this assertion is codified in legislation that immediately has the force of law in all the countries of the Union.

150. According to Amnesty International, "*The case of the Philippine national Mr Jose-Maria Sison illustrates how the decision and procedure to include an individual in the list of terrorist organisations can violate elementary basic rights, including the right to presumption of innocence, the right to due process and the right to defence*". **(Annex 45: Amnesty International Response to the European Commission Green Paper on The Presumption of Innocence, COM(2006) 174 final, June 2006, p 7)**

151. Amnesty international recalls that "*the right to presumption of innocence also applies after acquittal when public authorities should refrain from implying that the person may have been guilty. If a person is acquitted of a criminal offence by final judgement of a court, the judgement is binding on all state authorities. Therefore, the public authorities, particularly prosecutors and the police, should refrain from implying that the person may have been guilty, so as not to undermine the presumption of innocence, respect for the judgements of a court and the rule of law*"(**Annex 45, p 8).**

All the decisions of the Philippines court, including the highest court of that country the Supreme Court of the Philippines, have cleared the applicant of all charges against him. The Dutch State Council considers that the applicant was not responsible for any of the crimes he was accused of by the Dutch State Secretary of justice. These judgements are binding on all public authorities, including the Council.

By adopting the contested decision, the Council "*has concluded that the persons, groups and entities listed in the Annex to this Decision have been involved in terrorist acts*" (sixth recital of the contested decision). This constitutes a patent disrespect of the cited binding judicial decisions and, thus, constitutes an infringement of the principle of presumption of innocence.

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

152. The Community legislation recognises the fundamental principle of respect of the rights of defence including the 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).

153. 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)

154. As stated by this Court, "*the general principle of observance of the rights of the defence requires, unless this is precluded by overriding considerations concerning the security of the Community or its Member States, or the conduct of their international relations, that the evidence adduced against the party concerned, as identified in paragraph 173 above, should be notified to it, in so far as possible, either concomitantly with or as soon as possible after the adoption of an initial decision to freeze funds. Subject to the same reservations, any subsequent decision to freeze funds must, as a rule, be*

preceded by notification of any new incriminating evidence and a hearing." (Case T-47/03, paragraph 184)

155. The Council did well offer to the applicant the opportunity to make known his view by the observations he made in his May 27, 2007 letter. However, this opportunity does not comply at all with the requirements of a fair trial for the following reasons.

6.1.3.1. No incriminating evidence

156. The applicant has received no incriminating evidence from the Council before or after the adoption of the contested decision. The Council merely makes general assertions, namely that the applicant is the present leader of the CPP, he leads the NPA that is perpetrating terrorist attacks, he advocates the use of violence, and he has contacts with terrorist organisations. None of these assertions are based on incriminating evidence.

6.1.3.2. No hearing

157. The Council gave the applicant no opportunity to be heard in any manner, despite his request for a hearing in his May 22, 2007 observations. According to case law and the general principles underlying the rights of defence, the applicant should have been heard by the Council, in person and with the assistance of his counsel, to be able to effectively exercise his right to defense. A full hearing of the Council should afford the applicant the opportunity to know and test the evidence against him, point out errors of fact and law, make submissions on legal analysis and interpretation and make submissions about the applicability of the law to his specific case.

6.1.3.3. The decision was already made by the Council when it communicated its "intention" and motivation to the applicant on April 23, 2007

158. The wording of the Council's April 23, 2007 letter very clearly shows that a decision to maintain the applicant on the list had already been taken. This decision was made before the applicant was able to make his observations as the letter states that:

> *The Council has established that the reasons why (Jose Maria Sison) is placed on the list … are still valid… The Council is convinced that the reasons for putting Jose Maria Sison on the list …remain valid. On the basis of the above-mentioned fundamental points, the Council has decided that the measures meant in Article 2, paragraphs 1 and 2 of the Regulation (EC) no. 2580/2001 must remain applicable to Jose Maria Sison.*

Moreover, the applicant notes that this formulation is identical to the June 29, 2007 decision.

6.1.3.4. The Council had no intention to submit its decision to the least contradiction

159. The applicant submits that the tone of the Council's April 23, 2007 letter appeared that his inclusion on the list was a foregone conclusion. Although the Council stated that he could submit his observations, those observations were totally ignored by the Council. Not a single word of the "motivation" was changed between April and June 2007 to address the applicant's concerns about patent errors or to address any substantive points or evidence noted by the applicant in his observations.

160. The applicant submits that the Council's attitude of dismissal of the rights of the applicant demonstrates that the Council had no intention of submitting its decision to even an elementary form of challenge or contradiction, but merely advised the applicant in a formalistic manner about its decision. In this way the Council merely pretends to comply with the requirements of providing a statement of reason as set forth by this Court in its previous decision. In reality the Council circumvents the substance of the decision of the Court.

161. After judicial decisions ruling the Council's attitude illegal (Case T-228/02 OMPI of December 12, 2006 and Case T-47/03), the Council adopted a very formal mechanism which only gives the appearance of respect for right of defence but does not actually respect the spirit or content of that right.

162. The fact that the Council did not answer at all the applicant's observations is an infringement of its obligation to state reasons and his right of defence.

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

163. The fundamental "principles of legality" are enshrined in the maxim *nullum crimen sine lege, nulla poena sine lege*. There is also 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?)

164. 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." [4]

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.

165. 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 basis and, therefore, must be decided by an assembly of representatives of a nation. The creation of these penal measures by simple Council Decision absolutely does not meet this requirement.

166. Likewise, the principle of legality of the incrimination is not respected. The Article 1st 4) of Regulation 2580/2001 defines " an act of terrorism," a key notion of the incrimination contained in art. 2 of the same regulation, by

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

> 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.

simple reference to the article 1st § 3 of common position 2001/931/PESC. The legal basis, which defines the incrimination, rests on a common position, an act non-constraining by nature and not having 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 imposed 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 27 June 1990, Maizena / Hauptzollamt Krefeld, Rec.1990, p.I-2587, point 15).

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

167. 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 opinions and the freedom to express them constitutes one of the objectives of the right of association and the 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 frozen.

168. It is clear 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 list significantly curtails such freedom.

More specifically the freezing of the applicant’s bank account and prohibition against him receiving financial services and constraints on his freedom of movement due to the listing make his role as chief political consultant of the NDFP nearly impossible. Freedom of expression is guaranteed to the GRP and NDFP negotiators, consultants, staff and supporters under the terms of the NDFP – GRP Joint Agreement on Safety and Immunity Guarantees`.

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

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

169. 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 that party is established, to the right to undertake its political activities freely. The Court of Justice of the European Community must protect not just theoretical or illusory rights, but concrete and effective ones (ECtHR, 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 founding of an association, and if the authorities can at once put an end to its existence by financial measures of retaliation.

170. The freezing of financial assets and prohibition against receiving financial and related services (insurance, etc.) certainly prevents the applicant from

carrying out a series of activities 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) to the concept of "funds" allows 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 within it an attack on the right of each citizen to give financial support to the person or association of his choice.

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

171. 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.* "

172. According to the European Court of Human Rights, the right of property protected by Article 1 of Protocol No. 1 includes social benefits (even non contributory benefits) such as the allowance (See EctHR *Gaygusuz v. Austria* of 16 September 1996; and also ECtHR Koua Poirrez v. France of 30 September 2003, 36-37).

The Dutch social security bank cancelled the old age allowance of the applicant only as a result of the decision taken on the basis of the Regulation 2580/2001, as stated in the June 19, 2006 decision.

The contested decision and the Regulation 2580/2001 have infringed very concretely on the rights of property of the applicant.

173. 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).

174. The regulation 2580/2001 on which the contested decision is founded envisages in 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 any use of a portion of or the entirety of his assets.

In addition, this total dispossession is not subject to any time limitation. Such a measure taken for an unspecified duration is undoubtedly comparable to a disproportionate and intolerable intervention attacking the very foundation of the right to property.

The freezing of the applicant'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.

7. Misuse of power by the Council

175. 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).

176. 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.

The applicant has already outlined above how the Council did not even seriously allege that he could finance terrorist activities if his assets were made available to him.

177. 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. In 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". (**Annex 46: "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**)

178. Such declarations show that the main purpose of the listing of the applicant as a terrorist is to put pressure on the NDFP in the peace negotiations. The Government of the Republic of the Philippines is actually attempting to force the NDFP to sign a capitulation agreement. This is the clearest evidence that the contested decision was adopted with the main purpose of achieving an end other than that stated. There is absolutely no doubt about the misuse of powers of the Council by adopting the contested decision and also the Regulation 2580/2001 EC.

179. The website of the Dutch foreign ministry is very clear in that perspective. Its shows beyond any doubt that purely diplomatic reasons are the underlying reasons for the listing: maintaining beneficial political and economic relations with the present corrupt and repressive regime in the Philippines and pleasing its protector in Washington.

Immediately after mentioning the extensive trade relations and the fact that the Netherlands is one of the major investors in the Philippines with more than 150 companies present, the Dutch Foreign Ministry states:

> *"The only burden for the Dutch-Philippine relations is comprised of the stay of the leadership of the Communist resistance in Utrecht. Peace talks between the Philippine government and the resistance leadership, which formerly were facilitated by the Netherlands, now take place in Norway. Only back-door talks are still held in the Netherlands. In this way, the Netherlands maintains a hands-off policy. The most prominent leader of the resistance, Jose Maria Sison, has been denied political asylum in the Netherlands. He has an appeal going on at the European Court for Human Rights. The Philippines has welcomed the measures taken by the Netherlands, among others, upon an American request, to freeze the assets of Mr. Sison, the Philippine Communist Party (CPP) and its armed wing, the New People's Army".* (**See: Annex 47: pp. 7-8 of the country report on the Philippines, updated September 2007, under the heading: 4.1 "Betrekkingen met Nederland" Relations with the Netherlands).**

What happened in fact is that the Minister of Justice of the Netherlands for obvious diplomatic reasons did not want the applicant in the Netherlands and tried to get rid of him by invoking vague speculations of the secret services, kept secret and never submitted to any form of scrutiny or challenge by the applicant. Two courts in three decisions said that the Minister could not do so because he did not present *serious and credible evidence* for his allegations.

180. The fact that the inclusion of the applicant on the list and the implementation of harsh sanctions on him are politically-motivated and intended to put political pressure on him and on the progressive movement in the Philippines to accept the proposals of the GRP in the framework of the peace negotiations is evidenced by the above statement of former Foreign Affairs secretary Blas Ople and is also substantiated by recent statements made by Javier Solana and the British ambassador in the Philippines.

181. In an interview with the *Philippine Star,* M. Solana said that in order to be de-listed from the EU list the CPP-NPA and the applicant would have to show proof that the nature of the aforementioned organisations has changed. He stated *"The time has arrived to get into the peace process."* (**Annex 48: Philippine Star CPP-NPA terror tag stays, August 2, 2007**).

182. The British ambassador to the Philippines, M. Peter Beckingham, is reported to have made a similar statement: "*we are saying is that we would be delighted-- we in the UK and the European Union -- that in due course, we would be able to remove that tag. (...) So we hope this could be possible and eventually there would be a ceasefire. Too many people have been killed on both sides…[yet] we continue to maintain that the CPP-NPA is a terrorist organization. But we hope that in due course, we can remove that [label],(…) A ceasefire there will be extremely welcome to Great Britain and to countries of Europe, and we discussed this with your government recently*" **(Annex 49 : "UK envoy: Investors want peace between gov't, rebels", Inquirer, August 8, 2007).**

183. Both statements leave no doubt that the terrorist listing of the applicant is being used as a tool of EU diplomacy to pressure him and the progressive movement to accept the conditions set by the Government of the Philippines for the peace negotiations.

Regulation 2580/2001 EC is supposedly aimed at combating terrorism by stopping the financing of terrorism, not facilitating the diplomatic and foreign policy objectives of the EU or one of its member states.

By including the applicant on the list without any factual or legal justification, the Council commits a patent misuse of powers

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

184. 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 basis 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 basis 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.

185. The applicant is of course aware that this Court in Case T-47 rejected his complaint alleging that the Community lacked competence to adopt Regulation No 2580/2001.

This Court's decision on this point refers to the decisions taken in relation to Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban,

and repealing Council Regulation (EC) No 467/2001 (OJ 2001 L 139, p. 9), which was at issue in the cases giving rise to the judgments in *Yusuf* and *Kadi*.

186. The applicant, however, maintains his arguments as developed in case T-47 and submits respectfully to the Court that the reasoning followed in the *Yusuf* and *Kadi* cases cannot be applied to Regulation No 2580/2001.

> In the Yusuf and Kadi cases, the UN Security Council not only imposed upon the members of the international community an obligation to take steps to freeze assets and funds of individuals and organisations involved in terrorist activities but also designated the entities to which such measures should apply.
>
> That situation is fundamentally different from the one concerning the implementation of Security Council Resolution 1373. While the latter resolution does impose an obligation formulated in general terms to UN member states to freeze "funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled by such persons, and of persons and entities acting on behalf of, or at the direction of, such persons and entities," there are no listed entities to which those measures are to be applied.

187. While it has been argued in the *Yusuf* and *Kadi* cases that the EU was under the obligation to take measures against these particular individuals because the Security Council had nominally designated them, it can be argued that on the basis of Security Council Resolution 1373 the Council could take measures in general terms to support and coordinate the implementation of the resolution by the EU member states but had no

competence and jurisdiction to itself establish a list of persons and entities to which the sanctions applied.

Indeed by establishing such a list the EU Council has taken up a judicial function for which there is no legal basis in the EU treaty.

1. Incompetence of the Council (in relation to Article 7.1, 60, 301 and 308 of the EC Treaty

188. Article 7.1 of the EC Treaty states: "*Each institution shall act within the limits of the powers conferred upon it by this Treaty*".

189. The legal basis on which the Council claims to rely on in issuing the subject regulation are articles 60, 301 and 308 of the EC Treaty. As will be shown below, the alleged legal basis for Regulation 2580/2001 (Arts. 60, 301, 308 of the EC Treaty) is not sufficient and does 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 of that article, cannot thus be regarded as relevant legal basis for the challenged regulation.

190. 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 addressing 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 authorize the Council, even under the pretext of ensuring 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.

191. However, art. 2 § 3 of regulation 2580/2001 gives 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.

192. 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." (**Annex 50: "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 is not a relevant legal basis for the regulation. The objective of this provision was obviously violated by the Council.

As shown above, the Council was incompetent to adopt the challenged regulation.

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

193. 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).

194. 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 instrument, 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 function that traditionally concerns the judiciary. Such a concentration of powers violates the principle of separation of the functions of investigation and judgement which forms 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 defects in the

contested 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.

C. CLAIMS AGAINST THE COMMUNITY, COUNCIL ON THE BASIS OF ARTICLES 235 EC AND 288.2 EC

195. It is settled case-law that, in order for the Community to incur non-contractual liability under the second paragraph of Article 288 EC for the unlawful conduct of its institutions, a number of conditions must be satisfied: (i) the institutions' conduct must be unlawful; (ii) actual damage must have been sustained; and (iii) there must be a causal link between the conduct and the damage pleaded. (Case T-69/00 *FIAMM and FIAMM Technologies* v *Council and Commission* [2005] ECR II-5393, paragraph 85, and the case-law cited)

196. In Case T-47/03, this Court dismissed the claim of the applicant for damages reasoning that, "*for neither the fact and extent of the damage alleged… nor the existence of a causal link between that damage and the instances of material unlawfulness pleaded in support of that claim.*" (paragraph 243)

197. In the present case, the applicant submits that the above legal requirements are met with regard to the contested decision but also with regard to the decision annulled by the Court in Case T-47/03.

Since the court's judgment in Case T-47/03 had a retroactive effect and annulled the first contested decision as if it never existed, the applicant should have been placed in the same legal situation as he was before the first contested decision was adopted. Consequently, the applicant is now able to claim damages caused by the current contested decision and also caused by all the former decisions annulled by this Court (See mutatis mutandis, T-166/04, judgement of 31 January 2007).

The damage suffered by the applicant is a consequence of the illegality of the contested decision and of all the similar decisions adopted by the Council.

1. Unlawful conduct of the Council

198. In the circumstances of Case T- 47/03, the Court considered that the breach of the applicant's rights of defence was sufficiently serious for the Community to incur liability (Case T-47/03, 240). The applicant submits that this Court must come to the same conclusion in the present case. The failure to follow the procedure outlined in the Regulation, the violation of the applicant's right of defence, the violation of the obligation to state reasons, facts in the contested decision are not materially accurate, the Council made manifest errors in their assessment of facts and the violation of the fundamental rights of the applicant noted above are sufficiently serious breaches to incur liability of the Council.

In addition, the Council infringed Article 233 EC because it did not adopt any positive measure to comply with the July, 11, 2007 judgment in Case T-47/03.

2. Actual damage

199. The damages suffered by the applicant are of four kinds.

2.1. Damages linked to the refusal of the Council to comply with the July 11, 2007 judgment in Case T-47/03

200. It is settled case-law that an institution whose act has been annuled is required to have regard not only to operative part of the judgment, but also to the grounds which led to the judgment and constitute its essential basis, insofar as they are necessary to determine the exact meaning of what is stated in the operative portion of the judgment. It is those grounds which, on the one hand, identify the precise provision found to be illegal and, on the other, indicate the specific reasons which underlie the finding of illegality

contained in the operative part and which the institution concerned must take into account when replacing the annuled measure (Judgment of the Court of 26 April 1988 in the Case C- 97, 193, 99 and 215/86, ECR, 1988, p 02181**;** Judgment of 9 June 1983, Verzyck/Commission, 225/82, Rec. p. 1991, pt 19; Judgment of the Court of 5 december 2002, Hoyer/Commission, T-119/99, Rec p. I-A-239 and II-1185, point 36 ; Judgment of 27 June 1991, Valverde Mordt/Cour de justice, T-156/89, Rec. II-407, pt 150 ; Judgement De Nil Impens/Conseil, T-91/95, Rec. I-A-327 et II-959, pt 34).

The applicant submitted above that the Council utterly failed to address the grounds underlying the Court's annulment of the first contested decisions and subsequent decisions in Case T-47/03.

201. With regard to the quantum of damages, the refusal by a Community institution or body to comply with a judgment of the Court of First Instance involves non-material damage for the party who has obtained a judgment in his favour. Moral damages were set at 25,000 euros in a case concerning the uncertainty of the professional future of an applicant after an illegal dismissal (See jugement of 12 december 2000, Hautem/BEI, T-11/00, Rec. p. II-4019, pt 43; Jugement of 31 January 2007 in the Case T-166/04, C / Commission, pt 49). In the present case, the refusal of the Council to de-list the applicant and to provide him a procedure that respects all the guarantees of due process, causes him a more significant degree of prejudice than in the cited case.

202. In addition, the conduct of the Council gives the applicant the impression that his efforts to challenge the first contested decision in Case T-47/03 were done in vain, and that it is nearly impossible to benefit from an effective remedy against the unlawful decisions of the Council.

Consequently, the applicant submits that the non-material damage caused to him in the present case directly related to the failure of the Council to respect the community rules of law should be set at 75.000 euros.

2.2. Damages linked to the freezing of his funds, termination of social benefits and the impossibility of earning income

203. The applicant suffers grave prejudice to his economic situation as a direct result of the contested decision:

- Freezing of his financial assets, in particular his bank account.

- Any financial institution or insurance agency is prohibited from providing him services.

- Termination of his social security benefits (a monthly amount of 201 € from November 2002 to the date of the judgment).

- Prejudicial impact on his ability to enforce the judgment of a US court in the case he successfully pursued as a victim of human rights violations against the Marcos regime; blocking of his income as an author, lecturer and speaker; and prejudicial impact on his ability to claim his portion as heir of the estates of his parents and unmarried siblings, which estates are now in the process of being distributed amongst the heirs.

- Inability to give lectures at universities for any honorariums. This causes significant economic damages but also critical moral damages because the applicant is not allowed to be recognised as an intellectual and lecturer.

204. In the case of a civil servant who was illegally deprived of promotion, the Court granted an amount of 15.000 euros as moral damages (Case T-166/04, judgement of 31 January 2007). In the present case, the applicant is not merely deprived of a promotion, but he is deprived of any potential income from his intellectual work. The moral damage suffered as a consequence should be set at 50.000 euros.

205. As stated above, the Dutch social security bank cancelled with retroactive effect the old age allowance of the applicant and ordered him to pay back an amount of 4017,53 euros merely because of the existence of the Regulation 2580/2001 and the list established by the Council **(Annex 17: Decision of**

June 19, 2006 of the Dutch social security bank to cancel the pension; Annex 18: Decision of June 19, 2006 ordering the applicant to pay back 4017,53 euros).

The depravation of the applicant's "possession" within the meaning of Article 1 of Protocol No. 1 ECHR (See EctHR *Gaygusuz* and Koua Poirrez abovementioned) was the direct effect of the illegal conduct of the Council, as stated by the Dutch decision.

The damages in that connection are:

- 4017,53 euros at the date of June 19, 2006
- 2410,44 euros from June 2006 to September 2007 (200, 87 a month)
- 200, 87 euros each month until the deliverance of the judgement of the Court

The Damages linked to the freezing of the applicant's funds, the termination of his social benefits and the impossibility of earning income should be evaluated to 56427,97 euros (increased by 200, 87 euros a month until the deliverance of the judgement of the Court).

206. Although the US and Dutch national decisions to freeze the applicant's funds are not repealed, this does not negate the direct link between the contested decision and the damages suffered by the applicant. The Dutch decision to maintain the freezing of his funds cites the contested decision as authority for its sanctions. Therefore, the contested decision must be considered as the direct cause of the freezing of the applicant's funds and of the termination of his social benefits.

2.3. Damages linked to stigmatisation and the violation of the presumption of innocence

207. By adopting the contested decision, the applicant suffered the following damages:

- Being libeled, slandered and stigmatised as a "terrorist" in official instruments, in the press and in the court of public opinion.

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

- Moral and emotional distress and damage due to defamation.

- The alleged association to terrorism gives a pretext to the Dutch government to refuse him a work permit.

- The slander negatively influences possible employers likely to engage him and strongly discourages institutions and professional contacts to enter into professional relations with him.

- His inclusion on the contested list seriously jeopardizes his role as NDFP chief political consultant in the peace negotiations and, therefore, threatens the entire peace process itself. Of course, on this latter point, the Council shares liability with other authorities (the Dutch, US and Philippines governments). However, it cannot be denied that the stigmatisation by the Council causes supplementary and specific damages to the applicant, specifically:

- Publication in the Official Journal of the European Union where the applicant is linked to terrorism and considered as being involved in terrorist activities.

- Press statements of the Dutch and the UK embassies around the adoption of the contested decision and linked to the July 11, 2007 judgment of this Court **(Annex 49"UK envoy: Investors want peace between gov't, rebels", Inquirer, August 8, 2007; Annex 51: "Joma**

Sison still on EU terror list Dutch embassy", The Inquirer, July 13, 2007.)

- Declarations of the general secretary of the Council about the contested decision in the Philippine press **(Annex 48: Philippine Star "CPP-NPA terror tag stays").**

208. Given the breach of the applicant's right of defence, the annulment of the contested decision will not constitute adequate compensation for the damage caused by the false public stigmatisation by the Council because that annulment will not retroactively eliminate the non-material damage already suffered by the applicant because of the stigmatisation (See Case T-307/01, 10 June 2004, §110). The applicant has suffered specific damages as a direct consequence of the illegal conduct of the Council. The mere fact that the US and Dutch national authorities have also listed the applicant do not undermine this conclusion. The perception of the applicant by the European public is considerably affected by the Council's decisions whether or not the US and Dutch decisions exist. The contested decision taken by the Council gave a level of credibility and wider publicity to the decisions of the US and Dutch governments.

209. The amount of this kind of moral damages is difficult to determine with precision because the damage is, of course, irreparable in nature. In Case F-23/05, the Court allowed ex aequo et bono 15,000 euros to a civil servant for a wrong accusation of financial abuse made by the Commission, which led to one press article in *Le Monde* (See Judgment of the Civil Service Tribunal in Case F-23/05 of 2 May 2007). In the present case, the applicant was subjected to a much graver accusation and his name appeared in no less than 13 Council Decisions and Council Common positions[5]. The inclusion of

[5] List of the Council decisions containing the name of the applicant:
- Decision 2002/848/EC of 28 October 2002 implementing Article 2(3) of Regulation (EC) No 2580/2001 and repealing Decision 2002/460/EC (OJ 2002 L 295, p. 12)
- Decision 2002/974/EC of 12 December 2002 implementing Article 2(3) of Regulation (EC) No 2580/2001 and repealing Decision 2002/848/EC (OJ 2002 L 337, p. 85)

the applicant in those lists led to many press articles in Europe, the US and the Philippines, unfairly associating him with terrorism**.** The applicant considers he should be granted 50,000 euros under this head of damage.

210. Considering the specific damage linked to the repercussions of these contested decisions in the press and by diverse means (public statements of the Council and of his General Secretary, M. Solana), the applicant observes that in another case, where the European Court of Human Rights found a breach of the principle of the presumption of innocence, the award granted totalled 50,000 euros. In that case, the specific damage was caused by the declaration of the French Minister of Justice (ECtHR Allenet of Ribaumont C France, January 23, 1995). Taking into consideration the several publications and official declarations of EU officials about him, the applicant considers that 100,000 euros should be granted under this head of damage as adequate compensation.

The Damages linked to stigmatisation and the violation of the presumption of innocence of the applicant should thus be evaluated at 150.000 euros.

- Council Decision 2003/480/EC of 27 June 2003 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2002/974 (OJ 2003 L 160, p. 81)
- Council Decision 2003/646/EC of 12 September 2003 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2003/480 (OJ 2003 L 229, p. 22)
- Council Decision 2003/902/EC of 22 December 2003 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2003/646 (OJ 2003 L 340, p. 63)
- Council Decision 2004/306/EC of 2 April 2004 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2003/902 (OJ 2004 L 99, p. 28)
- Council Decision 2005/221/CFSP of 14 March 2005 implementing Article 2(3) of Regulation (EC) No 2580/2001 and repealing Decision 2004/306/EC (OJ 2005 L 69, p. 64)
- Council Decision 2005/428/CFSP of 6 June 2005 implementing Article 2(3) of Regulation (EC) No 2580/2001 and repealing Decision 2005/221/CFSP (OJ 2005 L 144, p. 59)
- Council Decision 2005/722/EC of 17 October 2005 implementing Article 2(3) of Regulation (EC) No 2580/2001 and repealing Decision 2005/428/CFSP (OJ 2005 L 272, p. 15)
- Council Decision 2005/848/EC of 29 November 2005 implementing Article 2(3) of Regulation (EC) No 2580/2001 and repealing Decision 2005/722/EC (OJ 2005 L 314, p. 46)
- Council Decision 2005/930/EC of 21 December 2005 implementing Article 2(3) of Regulation (EC) No 2580/2001 and repealing Decision 2005/848/EC (OJ 2005 L 340, p. 64)
- Council Decision 2006/379/EC of 29 May 2006 implementing Article 2(3) of Regulation (EC) No 2580/2001 and repealing Decision 2005/930 (OJ 2006 L 144, p. 21).
- Council Decision 2007/445/EC of 28 June 2007implementing 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 Decisions 2006/379/EC and 2006/1008/EC (OJ of the EU, L 169 of 29 June 2007, pp. 58-62)

2.4. Damages linked to the violations of his fundamental rights

211. Since he was put on the list contained in the contested decision, the applicant suffered undue constraints on his freedom of movement and increased surveillance on his person. He also suffered from orders to border police and customs authorities to hinder or hamper his passage as if he were a common criminal.

The applicant submits that this head of the damages should be set at 10,000 euros.

3. Total evaluation of the damage and request for interests

212. The total amount of the damage is:

- 2.1.: 75,000 euros
- 2.2: 56427,97 euros (+ 200, 87 euros a month until the deliverance of the judgement of the Court).
- 2.3.: 150,000 euros
- 2.4.: 10,000 euros

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Total: 291.427,97 euros + 200, 87 € every month since June 2006 to the judgment by the Court.

213. It is clear from the case-law that compensation for loss in the context of non-contractual liability is intended so far as possible to provide restitution for the victim. Accordingly, where the conditions for non-contractual liability are met, the adverse consequences of a lapse of time between the occurrence of the actionable event and the date of payment of compensation cannot be disregarded inasmuch as the effects of inflation must be taken into account (see Case C-308/87 *Grifoni* v *EAEC* [1994] ECR I-341, paragraph 40, C-37/90 *Mulder and Others* v *Council and Commission* [1992] ECR I-3061, paragraphs 32 to 34).

214. The applicant requests the Court to order the Community to pay interests compensating inflation from the publication of the first decision including him in the contested list on October 28, 2002 and default interest from the date of delivery of the judgment until payment in full. The interest rate to be applied shall be two points above the rate set by the European Central Bank for its main refinancing operations as applicable during the period in question.

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 2007/445/EC of 28 June 2007implementing 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 Decisions 2006/379/EC and 2006/1008/EC and more specifically:
  - to annul article 1 point 1.33 of said decision which reads:

    " SISON, Jose Maria (a.k.a. Armando Liwanag, a.k.a. Joma, in charge of the Communist Party of the Philippines including NPA) born 8.2.1939 in Cabugao, Philippines"

  - to annul partially article 1 point 2.7 of said decision insofar it mentions the name of the applicant : "*Communist Party of the Philippines, including New Peoples Army (NPA), Philippines, linked to Sison Jose Maria C. (a.k.a. Armando Liwanag, a.k.a. Joma, in charge of the Communist Party of the Philippines, including NPA)*"

- 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 order the Community to compensate the applicant on the basis of article 235 and 288 Al 2 in an amount to be fixed at 291.427,97 euros + 200, 87 euro every month until pronouncement of the judgment of the Court, including interests from October 28, 2002 until the payment in full .

- To require the Council to bear the costs of suit.

Brussels, September, 2007.

For the applicant,

His counsels,

ANNEXES