

Additional Comments

1. In its decision of 13 September 2007 the council chamber of the court in The Hague dismissed the 7 September 2007 appeal of the O.V. to extend the detention of the suspect for complicity or inciting to the commission of murder and attempted murder.
2. The Public Prosecution Service filed an appeal on this 13 September 2007 decision.
3. On 24 September 2007 the appeal and additional police report was submitted. The appeal enumerates the grounds why the decision of the court should be quashed and order the further detention of the suspect. Since your court and the counsel have taken knowledge of the contents of the appeal, I want to just give some additional observations.
4. First off, it must be postulated whether provisional detention must be applied with this decision, there ought to be a preliminary examination of the outlined facts and circumstances. These must be looked at of course, however, ahead to the eventual research for the terechtzitting, but the test is not the proof but which forms the serious objections. Corstens asserts (in his book "Het Nederlands strafprocesrecht", 4 druk, p 373) that there should be more than just the suspicion in the sense of art. 27 Sv. There must be a strong suspicion upon which to base an order for temporary custody. Wedzinga in a commentary ("Strafvordering, Tekst & Commentaar") m.i. goes further; he asserts that for the application of temporary custody it must probably be that the suspect has committed the punishable act. Reijntes (Melai) does not agree with this idea: It is an unacceptable simplification to compare (make similar) "serious accusations" with the probability that the suspect shall be convicted. Indeed no temporary custody must be applied whenever there no conviction is seen; but it is definitely not the case that they must remain out of the way as soon as serious account must be made with the possibility that the suspect shall later be made acquitted or released from prosecution. Serious accusation must be based on 'facts or circumstances'. The difference between "bare suspicion" and "serious accusation" is difficult to concretize. A sharp borderline is absent. Moreover it is in so far about rekbare concepts, that whenever application of one to in appearance lesser ingrijpend means of enforcement XXX. In short, the higher the importance of investigation the less may the objection (bezwaren) be; but also: the greater the importance of the suspect, the more serious should the accusation (bezwaren) against him. To the general requirement of a redeloke suspicion they however add very little. They are nothing less than an instructienorm through which the attorney general and the judge/court are pressured [op het hart gedrukt] and not lightly to apply temporary custody. The court does not only examine whether enough has been brought against the suspect to defend the further taking away of freedom; he weighs what the suspect [belast, af tegen wat voorheen lijkt to pleiten. In judging the materials at hand he thus makes a similar weighing as the judge later in the final investigation. He must, ofschoon the real worth of what is presented will only be relevant upon further investigation, make a temporary judgment about their realiteitsgehalte and raise for example the question whether the statements of witness against him are trustworthy. XXX And finally the judge in case the case is not yet finished must ask how big is the chance that more evidence against the suspect will be found (Reijntes/Melai)
5. According to the court it is certain that (I cite): "the concerned facts have been committed in the Philippines. Also it appears to the court that the given facts have something to do with the dispute within the CPP and that the decision to implement these facts came from within the party structure of the CPP, whereby other persons as well as other and party agencies have been involved. The question that has to be answered is in what way the suspect has been involved, if ever he was, as accomplice in therein." The court considers further that there are a lot of indications to support the point of view that the accused is involved in the CC of the CPP and its military arm the NPA. The file, according to the court, also contains indications that the suspect still plays a prominent role in the (underground) activities of CC, the CPP and

the NPA and does not negate the justified assumptions that the suspect has had a leading role during the period concerned ... the file offers insufficient concrete evidence to suspect that the accused in the Netherlands had a conscious and close cooperation with those who committed the crime in the Philippines."

6. Paying attention to the earlier considerations with regard to the role and status of the accused, the standpoint of the court that there is not enough evidence ("aanknopingspunten" = starting points) is incomprehensible. By considering that there ought to be sufficient concrete evidence, it appears that the court is giving more weight to the concept of "serious objections" than what the law requires.

"Daderschap" (dader = the person who committed a crime; commission of the crime)

7. Additionally, an incorrect (too restricted) explanation has been given to the terms complicity and incitement whereas the court has failed wrongfully to give a ruling on functional daderschap.

8. Serious objections vs complicity: The first question that the court asks itself is whether the accused was involved as an accomplice. Complicity can also be construed when the one accomplice organized and planned the crime and afterwards ordered the other accomplice to carry out the crime in his absence. It can also happen that only those who have organized the crime without the actual participation in its commission are considered accomplices. The commission of crime, in these cases, is therefore explained as to include not only the actual commission, but the order to commit the crime For further information, jurisprudence, I would like refer to the appeal memorandum.

The dossier contains the following facts and circumstances:

"On de meeting of 17 and 18 January 2003, Leo Velasco primarily said that KINTANAR should be liquidated because it was an order from Armando Liwanag."

..... (missing line)

and how the order to carry it out is given; thereby it becomes clear that it is an order from the NPA, the CPP and the abovementioned CC. All declare that the CC is actually Liwanag/Sison. Their reason for this knowledge is that they have always heard and observed this within the organisation (order with logo of the CC). In addition, an issue of Ang Bayan, published by the NPA/ CPP, explained in details why the victims had been killed. This is also the explanation given by Grace Cabactulan: the responsibility for the assassinations in 2003 and in 2004, was claimed in Ang Bayan by the CPP/NPA. She says further how the CPP was/is organized, that Sison was/is the chair of the CPP (additional court chamber pv. p. 232) and is directly responsible for the NPA (p. 233). Berroya (p. 260 e.v.) declares that Sison is Liwanag and that he is also chair of the CC of the CPP. In addition, the testimony of Realiza is also important. I would like to point to p. 189 of the additional police report. It is about a document wherein it is stated that Liwanag is the chair of the CC of the CPP. This information has been found in a diskette in Sison's residence. The document is dated 13 March 2002.

Furthermore I want to point to the declaration of Veronica Tabara: (I cite) She explains: "because my husband was a member of the Central Committee, he was also tried by the "people's court" of the Central Committee. The members of this people's court were members who had remained faithful to Jose Maria Sison. (...) It is party policy that the sentence must be decided unanimously. Sison is a member of the Central Committee and therefore must have also voted, aside from his personal motives to punish those who question his documents (1st hearing). "Making the list and deciding who should be killed lies with Jose Maria Sison"

(2nd hearing).

One of the hitmen, namely Cruz, corroborates when he said the following: this declaration confirms when he puts the following:

"It started in 1996. Orders to liquidate people were issued. A distinction was made between assassinating leaders, important persons, and liquidating people without status and authority. With regard to killing leaders, important persons, the order to battle was based on a list. This list originates from the Central Committee. This list is announced by the regional secretary to all members of the party. "

9. I deem the abovementioned facts and circumstances sufficient enough for adopting serious objections to close and conscious cooperation in the sense of complicity as has been outlined. Which interpretation of the concept complicity can be eventually considered proven (?), will become clear from the further research and the end research.

10. Should your court think however that there are insufficient serious objections to complicity, then it should also be looked into whether objections exists for Sison's incitement of these facts. The court is considering to rule that there are insufficient starting points (evidence, connection). It thus reads the declarations of the widows and the hitmen that these no longer imply than mere assumption (I am reading the decision of the court so that, in view of these witnesses, there is only a premise of assumption) that the killings were carried out on orders of the CC of the CPP and that the order originated from the accused being chairman. I infer that it is deemed that the declaration of the widows and the hitmen lacks solid foundation. As has been pleaded earlier, this is however not correct. The widows as well as the hitmen have a solid knowledge of the organization that they were once part of, and this is also clear in their testimonies. Likewise, the hitmen also heard it from other members of the party that the killings were to be carried out on orders of the CC of the CPP.

11. The dossier also contains many publications and witnesses' testimonies that explains how the CPP is organized, how "deserters" are handled and how big is the influence of the chair of the CPP. The authority of the (chairman) of the party is enormous. Counter-arguments are not tolerated. I am pointing herewith to the so-called "fax attacks", the "Declaration of Undertaking...", the so-called "Benz documents" and the testimonies of Guevarra and Quitariano. Illustrative in this connection is the testimony of Grace who explained the manner in which Tony Cabardo was expelled from the party. Sison indeed decided over life and death: this can also be gleaned from the documents confiscated in his house. A Mrs. Obillo was begging for her husband's release (p. 131) and there is an email written by Sison that talked about the release of POWs.

12. We might not be able to find a direct order to kill Kintanar and Tabara, paying attention to the described structure and style of work of the CPP. A further investigation should of course be conducted on this. But in the face of the information (from the evidences at hand), a conclusion that the accused was an accomplice as chairman can be arrived at. There is absolutely no information that points to somebody else as the one who gave the order, and also suspected himself, by invoking his right to remain silent, can give no insight into the accusation against him.

13. There have also been sufficient serious objections to functional daderschap. One chooses for an approach of the facts and circumstances with Sison as functional dader then serious objections will have have to be adopted wherein Sison is the one who let others to carry out the facts and did not prevent their commission. It seems to me that based on what has been already put forward above also produces serious objections for the functional daderschap. (malabo na ang translation na ito.)

14. Grounds for temporary detention

I would like to refer what has been incorporated in the appeal document and the explanation of the LP to the court.

15. I am requesting you to quash the decision of the court and recommend the detention of Sison for 90 days.