

## **Council Chamber of The Hague District Court**

Hearing of 7 September 2007 at 09:30

Parketnumber 09/650006-06

### **Pleading of**

**Mr. V. L. Koppe**

### **In the case of**

**Jose Maria Sison**

Now residing in PI Haaglanden, Location Scheveningen at The Hague

1. The demand of the prosecutor should in the first place be rejected because the grave accusations are not evident. And further the grounds for prolonging the temporary detention are also not evident. If you would throw out these defenses, then I request from you that you in any case temporarily suspend the temporary detention of Sison.

### **Context**

2. To have a good understanding of this case as well as the demand of the prosecutor, it is necessary to very briefly review the background.

3. In January 2005 the Philippine authorities, as the dossier shows, visited the Netherlands to attempt to convince us that Sison needed to be extradited. On that occasion the Minister of Foreign Affairs of the Philippines handed over a thick parcel of documents. Because we have no extradition treaty with the Philippines, for which we have little or maybe even no trust in that country, it was quickly decided, or so I understood from the documents, to just take over the criminal prosecution.

4. It is important to note that without this “extradition request” from the Philippines, Sison would never have been the object of a criminal investigation.

5. With regards to the prosecution it must be further noted that this is not a case of taking over the criminal persecution, at least not literally, because the Philippine authorities after the “turnover” proceeded just the same to prosecute Sison for exactly the same acts for which he is now being kept in temporary detention: the alleged murder of Kintanar, Tabara and Ong.

6. During the arraignment a copy of a verdict of the Supreme Court in Manila dated 2 July 2007 was submitted, which shows that the justice department in the Philippines continued to prosecute

Sison among others and also that the Supreme Court eventually decided to “dismiss” the case. I am submitting again a copy of that verdict of the Supreme Court and a copy of the original charge (productions 1 and 2).

7. Of importance especially is the argument of the Supreme Court which foremost states that there is insufficient evidence to pursue the prosecution (the Philippine equivalent of absence of serious suspicion) and furthermore notes that the prosecution of Sison and the other suspects is politically motivated and that also for that reason further prosecution of Sison is excluded.

8. You will understand that the justice department in the Philippines has taken note with some pleasure that Sison is now locked up in the Netherlands, for acts which he cannot anymore be prosecuted in the Philippines. Sison’s prosecution in the Netherlands is thus at the very least controversial, if only because many of the evidence that was set aside by the Supreme Court in Manila, have again surfaced in the Dutch criminal case.

9. In the substantive treatment of the case we will extensively return to the special background of the case, like what was just presented in summary. In any case, there are some fundamental “hooks and eyes” to the prosecution in the Netherlands, a fact which in my opinion should not be lost sight of when judging whether the temporary detention should continue.

### **Serious suspicions**

10. This brings me to the serious suspicions; in our opinion these are completely absent.

11. Sison is now in temporary detention for the co-participation if not the incitement of three murders. That it will be difficult for the justice department to prove these charges seems evident to me, if only because Sison has been staying in the Netherlands already for twenty years and the alleged murders would have been committed on the other side of the world, in the Philippines.

12. For co-committing as well as for incitement it is needed – in short – that Sison has done something to promote these alleged murders.

13. For co-participation is needed, as you undoubtedly know, conscious cooperation and common execution. And for incitement, the form of participation on which the justice department especially relies, as it would appear from the press release, the suspect can only be convicted if it is proven that he has done one of the means of incitement listed in article 47 of the penal code. Besides it must also be proven that there is intent; intent in inciting and intent in all aspects of the incited offence.

14. In a careful reading of the dossier it stands out that – quite apart from the question of the trustworthiness of all these witnesses offered by the Philippine authorities – there is not a single evidence of any relevant criminal act by Sison. There is, in other words, no proof of the conscious cooperation between Sison and the people who would have committed the murders of Kintanar, Tabara and Ong; and there is also not a single evidence that Sison used one of the necessary methods of incitement needed for a conviction, not to mention anymore the required intent.

15. Even if we assume that the witnesses are saying the truth, that all testimonies are reliable and thus may be used as evidence, then we come no further than the conclusion that Sison in the past possibly may have used the pseudonym Armando Liwanag and that until 1992, 1993 he probably played a prominent role in the Central Committee of the Communist Party of the Philippines. For the necessary serious suspicions this conclusion is however completely insufficient.

16. Of any *concrete* involvement of Sison with the alleged murders of Kintanar and Tabara, in whatever form of participation, every proof, as it happens, is missing in this dossier.

17. Very briefly the proposition of the justice department can be summarized as follows: Sison is in the eyes of the justice department criminally responsible for the deaths of Kintanar and Tabara because he heads or headed the communist party which is responsible for their deaths, even though it's not clear when and by whom exactly the order for it was given.

18. The whole file breathes in fact the spirit of article 51 of the penal code. As the supposed leader of the communist party of the Philippines Sison must, as we make out from the dossier, be held responsible for everything that members of that party do or that happens in the name of that party. In fact he is being accused that he did not take the necessary steps to prevent Kintanar and Tabara from being murdered, while he had authority to intervene and be reasonably held for it.

19. Sison is being prosecuted and is now in temporary detention, exclusively and only because of his presumed *function* within the communist party of the Philippines, not because there is proof of any concrete involvement with the alleged criminal act. He is thus clearly being viewed as the functional culprit and not so much the co-participant or the inciter.

20. Because the Communist Party of the Philippines and the New People's Army are not legal persons in the sense of article 51 of the penal code and that article by the way is not the charge, the demand of the prosecutor must be rejected. The serious suspicions for the accused acts are lacking.

## **Grounds**

21. The grounds being put forward for the temporary detention are: the risk of flight, the twelve-year basis, the chance of recurrence and finally in the interest of the investigation. I shall tackle these briefly one by one.

22. As argument for the risk of flight Sison finds it extremely difficult to accept. Sison has been staying in the Netherlands for the past twenty years in a judicial vacuum, which you most likely are aware of. He was the first refugee to get the so-called Sison-status, whereby on the one hand no asylum can be granted and on the other hand the person involved cannot be deported because that threatens to violate article 3 of the ECHR. Sison cannot be deported, as the Dutch government has again recently acknowledged. I submit as evidence a short letter that I received from the asylum lawyer of Sison, which contains an explanation of the special status that Sison has had for the past twenty years (**production 3**).

23. In short: danger of flight is not present, for the simple reason that the alternative, a possible violation of article 3 of the ECHR, is always much worse than the punishment which eventually awaits him in the Netherlands.

24. I assume that we don't have to pay much attention to recent jurisprudence of the ECHR regarding our twelve-year basis. The viewpoint is that the suspect, pending trial, should be able to await the trial in freedom. One can speak of an assault or shock on the rule of law if there are concrete indications that the release of the suspect will actually lead to a disturbance of the public order (see also Supreme Court, 21 March 2006, NJ 2006, 246).

25. This is not about recent acts, it is about murders that would have been committed in 2003 and 2004, that have not led in the Netherlands – and this is more important – to any disturbance. Even forcefully I would dare to assert that no one has ever remained sleepless for one night in the Netherlands for the death or murders of Kintanar and Tabara. For that same reason the release of Sison will of course not lead to any disturbance of the public order; concrete indications for it are totally lacking.

26. To be clear: Sison acknowledges that his release will most likely lead to commotion in the Philippines. Apart from the fact that also for this there no concrete indications are presented, I do not think that this can be a consideration for the prolongation of the temporary detention. In this framework it is not about the public order in the Philippines, but that of the Netherlands.

27. Also with the arguments presented for the repetition of the offence Sison has got serious objections.

28. If I understand it correctly the judge-commissioner, and by extension also the prosecutor, deems the chance of recurrence present, because Sison would have committed the acts

“by means of a well organized party structure, of which can be assumed that this structure is still operational and again can be operational in the Philippines and possibly also in the Netherlands and from this operation also possibly new criminal acts can spring forth”.

In this argumentation I count twice the words “can”, once “could” and furthermore twice the word “possible”. The judge-commissioner uses here a lot of leeway and I think that here it is not about concrete indications or circumstances; in fact it is about nothing more than speculation.

29. Finally the interest of the investigation. It is supposed that Sison, through or from the “structure” alleged to be led by him, can intervene in the continuing police investigation and that also he could “hamper” it. These arguments have also raised Sison's eyebrows.

30. Firstly we must observe that a lot of work has already been done by the police, already more than one and a half years of investigation in the Netherlands and especially in the Philippines. It is unclear to Sison which investigation he could still frustrate. Which witnesses in this case must still be heard? And how can Sison hamper the interview of these witnesses?

31. From the file I can determine that all important witnesses are located in the Philippines and also that most can count on the protection of the Philippine army or the Philippine intelligence service. Remarkable is that almost all the witnesses were heard in an American airbase or the American embassy, not the places where Sison can be considered to be able to exercise much influence, not even through the earlier mentioned structure of which he would be part of.

32. Sison has hardly any clue which witnesses the justice department would still want to interview. Because he does not know who then can be he can also not influence their testimonies, and even if he could, he realizes very well that he should not do so, because that could in the end only disadvantageously influence his case.

33. Last undoubtedly in excess: that the police have still to investigate the confiscated goods and things, can of course never be a reason to prolong the temporary detention on the grounds of the interest of the investigation.

34. In short: also the grounds for the prolongation of the temporary detention are not present, the request is thus that for these reasons the demand of the officer of justice should be turned down.

#### Suspension

35. If your court does not like to go to immediate rejection of the demand, then I request you subsidiarily to at least suspend the temporary detention of Sison.

36. The health of Sison is extremely fragile. Sison is suffering from a huge number of ailments, which given his advanced age is not surprising. On the occasion of the hearing at the detention a copy is furnished of a medical statement written by the doctor of Sison. Because the defense does not know whether or not you are familiar with this statement I present this to you again today just to be safe (**production 4**).

37. Sison knows and understands of course that in the prison medical care is also available, although practice shows that medical care inside prison is always lesser than outside prison. The problem here is that precisely detention poses an unpredictable risk factor for Sison. Even good medical care cannot prevent that the medical situation of Sison shall further deteriorate.

38. With all this you should not forget that this is not the first time that Sison is imprisoned. He spent almost ten years in the seventies and the eighties in a Philippine jail, a long time of which in complete isolation, the Philippine equivalent of our restrictions. I shall not go in further detail, but it will not surprise you that Sison was then also tortured and spent years shackled to a wall like in a medieval dungeon. Sison thus does not have fond memories of his stay in a Philippine

jail. His current detention is also very heavy for him. Sison told us that he is sleeping badly, if he sleeps at all, and that he is being plagued by nightmares, nightmares that we should actually spare him.

39. I request you thus subsidiarily to suspend the temporary detention of Sison, while awaiting the substantive treatment of this case and I assume that you are not surprised that I expect that this substantive treatment will take a while before this commences; it will take months, if not years before this case is actually presented to the court.###