

(Unofficial translation from the original Dutch)

Court at The Hague

Hearing in Chambers

20 May 2008 at 10:00 a.m.

Parquet number 09/750006-06

PLEADINGS

of Atty. M. Pestman

during the procedure on the complaint

against the notice of further prosecution

of

Jose Maria SISON

Residing in Utrecht

New Pieces [of Information]

1. Upon return from vacation, I found on my desk six new folders on the Borssom case, the investigation that should lead, at least in the eyes of the public prosecutor's office, to a conviction of Sison. Sison has read these pieces [of information] with increasing astonishment and I with bewilderment.
2. From the new pieces it appears that new life shall be breathed into an old case. I mean of course the notification which Sison made with the police in Utrecht some five years ago when he learned that a Filipino "hit team" had come to The Netherlands to rob him of his life. This is for Sison an extraordinarily important by-product of this investigation which originally was directed against him and he is, by the way, extraordinarily curious to know what the Ministry of Justice will do with the new information.
3. Furthermore, it has come out that the Ministry of Justice has kept out for a long time from the dossier information that is exculpatory for Sison. Now it comes out that the Philippine authorities have carried out in the past an investigation on the death of Kintanar and in that investigation it was not Sison that is considered as the suspect, but a certain Edwin Garcia, who had nothing to do at all with Sison.

This information is unjustly kept out of the dossier, until last week, and what makes the case even worse is that the police has done nothing at all with this information. This information ought to have, of course, been “thoroughly investigated”.

4. And finally, I may not forget that the investigation which the Ministry of Justice did carry out has not brought up anything new. It is just old wine in new bags, which certainly does not justify any other conclusion than the conclusion which the Court of Appeal has already drawn in this case on 3 October 2007.
5. I shall make a review of these three subject matters in the stated sequence.

New indications in old case

6. Sison filed a notification in February 2001 in Utrecht regarding a Philippine attempt to kill him in The Netherlands.
7. It says much of the prosecution policy of the Ministry of Justice that nothing much was undertaken with that notification at that time; the only thing that I can draw from the pieces [of information] is that the intelligence services were informed about the notification. The investigation in reaction to the notification was given new life only in the Borssom case, when the Ministry of Justice realized that in the notification the person of Kintanar also came into play. It shall not be unnoticed by you [the Court] that the Ministry of Justice saw in the involvement of Kintanar in the attack an important motive for the order which Sison is supposed to have given for his liquidation.
8. The investigation in reaction to the notification did not have as aim the investigation of the attack on Sison, but was above all meant to support the very shaky evidence in the Borssom case.
9. The unintended effect of this new insidious agitation in the old case is that the proof in the old case suddenly is already complete, with in any case one still living suspect who moreover has already made a declaration of confession. I mean of course the witness Ramos who in the presence of the Dutch police confessed that he at the start of this century was in The Netherlands with the aim of killing Sison. (1) That it did not succeed then, as I draw from the pieces [of information], is not because the “hit team” changed its mind while in The Netherlands, but because things turned out here completely other than they had originally planned.
10. Now it means waiting for the Dutch request for extradition, although I can imagine that the Dutch authorities will request the Philippines to take over the

prosecution of Ramos.

11. The confession of Ramos is furthermore supported by the new declarations of Jopson-Kintanar of 21 February 2008 (2) and that of Murakami of 30 April 2007 (3) and naturally also by the February 2001 notification done by Sison; all information which he then provided to the Dutch police now appears to be correct.
12. It also arouses curiosity that the Philippine authorities, I mean especially the secret services, were aware of the intention of Kintanar to kill Sison here [in The Netherlands]. From the declaration of Ramos it can also be concluded that two Filipino "spies", agents of the secret service, were part of the above-mentioned "hit team" and that tickets and visa for Ramos were arranged by the same government agency.
13. The position of Sison that the decision to kill him was taken on the highest Philippine level now turns out not to be so improbable anymore. This position is in any case much more probable than the position that Sison supposedly gave the order to kill Kintanar.
14. These new developments in the Borssom investigation mean that Sison will ask you today to put him outside prosecution, but thereby to expressly stipulate that the investigation in the Borssom case shall be continued under another name against another suspect or suspects. Thus Sison hopes that these new developments in the Borssom investigation shall lead thereto that the Ministry of Justice and also the Nationale Recherche will take up the investigation in the Philippines with fresh courage. It fully appears that here the Dutch sovereignty has been violated and that is something which is of concern for Sison, after all Dutch sovereignty is important for him, so this must be thoroughly sorted out.

Keeping out pieces exculpatory for Sison

15. The astonishment of Sison now gives way to my bewilderment because it has come out that the Ministry of Justice has kept information exculpatory for Sison for a long time out of the view of the judge and also the defense.
16. In the new folders I have found a declaration of Jopson-Kintanar of 1 May 2007 (4). This declaration was not yet known by Sison and it also was a surprise to me. The same is true of the second interrogation of Murakami of 30 April 2007 (5); I have already mentioned this declaration.
17. From these declarations, it appears not only that the aforementioned Garcia was at one time a suspect in the investigation by Philippine authorities on the death of

Kintanar, but also that the investigating team in April 2007 already established this as a fact. This is four or five months before the arrest of Sison, at a time when the machine of the Borsoom investigation was in high gear. The investigating team then was still a long way from concluding the hearings on this case, take for example the hearings on the three so-called star witnesses: Cruz, Alonzo and Pabalan.

18. Why is this important information never added to the dossier? And why are the three star witnesses never asked about Garcia? And why are they, during the hearings, never shown a photo that I have in my dossier of Garcia posing in full summer get up with sunglasses?

19. The prosecutor may explain why the judge, the court, and also the defense were never informed about this already existing suspicion towards Garcia and why nothing at all was done with the information.

20. Journalism has, for this, an appropriate ironic expression: you don't want to destroy a good scoop through verification. Sison can't help thinking that this information is deliberately kept under the "police cap" in order to prevent the Borssom case from being totally quashed at an early stage.

21. I already used the word "curiosity arousing" ["pikant"]. I am forced to do that again, because this Garcia not only seems to have played a role in the attack on Kintanar, but also on Sison. Garcia, as I have mentioned earlier, is supposed to also have taken part in the hit team that in 2000 or 2001 and roamed around in the Netherlands with the aim of liquidating Sison for being an irritating problem to the Philippine authorities.

22. And that is indeed an extremely surprising development in the Borssom investigation, especially when one considers the Philippine intelligence services, and as I conservatively formulate it, appear to have played a role in the preparation of the failed attack against Sison. The assertion that there are links between Garcia and the intelligence services in the Philippines is a safe position.. This case begins to spread a sickening odour..

23. Would this not explain why the investigation against Garcia in the Philippines has resulted in nothing? Perhaps, his being recognized by two policemen who were by chance present was a 'mistake', which was not foreseen in the plan. Anyway, that recognition was not intended. I am beginning to understand why the Dutch investigating team suddenly did not receive any positive response from the Philippine authorities when it asked for more information about the role of Garcia in the attacks, or attempts thereto against Sison and Kintanar..

24. I also do not understand why the Philippine authorities suddenly could no longer

trace Garcia, while there is in fact much known about him. Murakami also provided extensive information about him: he would even after the death of Kintanar maintain further contact with Murakami, his employer.

25. It is not for me now to speculate on the precise background of the events in 2000, 2001 and 2003, but it does begin to appear that the Dutch authorities, and I mean especially the Ministry of Justice, have allowed themselves in this case to be misused by the Philippine authorities in the latter's already decades-long crusade against Sison, whereby The Netherlands cannot hide behind its customary naivete. Here there is namely conscious information, which is exculpatory for the client and damaging for the Philippine authorities, which is withdrawn from the judgment of the judge.

26. In a certain sense, the prosecutor should be grateful to Sison for filing the current complaint against the notice of further prosecution. The Ministry of Justice has interest therein, for more than just one reason, that this case disappear in the dustbin as soon as possible.

27. At the hearing, the Public Prosecutor's Office should be directly going for a non-admissibility.

Old wine in new bags

28. And that brings me then to my last point.

29. I have naturally looked through the dossier with Sison, seeking information which could throw new light on the decision of the Court of Appeal to which I already referred. This exercise turned out to be a great disappointment.

30. Just as a reminder: the Court of Appeal arrived at the conclusion that the serious complaints against Sison did not exist because, briefly stated, there was no proof at all that brought Sison directly in connection with the murders committed in the Philippines against Tabara and Kintanar. The Court of Appeal came to that conclusion in October 2007, despite the fact that the dossier contained "numerous indications" that Sison though not in the role of chairman had fulfilled a prominent role within the CPP. The Court of Appeal correctly remarked then that that says nothing about Sison's "direct criminal involvement" in the alleged actions.

31. Now: the new dossier repeats and rearranges the information which the Court of Appeal already had in October 2007 and adds new information only to subordinate points. The investigation which has lasted a further seven months after the decision of the Court of Appeal has not led to any refreshing insight, certainly not towards proof of Sison's direct criminal involvement in the alleged actions.

32. I found seven new witnesses in the dossier, in the order of appearance, these

are Butalid, the witness B, Pernia, Almendral, Faminiano, Giwaynan and witness A. All these witnesses have less to mention than the witnesses already earlier interrogated and presented by the Ministry of Justice.

33. The biggest portion by far of these witnesses had already left the party, if they had at all been a part of it, at the moment that the facts in the charges were supposed to have been committed. One of the witnesses, Almendral, himself declared that already in 1976 he had turned his back to the CPP, a part of his declaration which moreover is missing in the summary which was given in the official report (7).

34. Special mention is deserved naturally by the two anonymous witnesses, because the fact that the Ministry of Justice says that only one witness wants to make his testimony anonymously creates certain expectations.

35. I can be brief regarding witnesses A and B. If this case should have come to further prosecution, than Sison would not have taken the trouble to even call these witnesses, for the simple reason that they have really nothing interesting to present. Witness A only declares having heard it said, which is not surprising because he had already left the party in 1992. Witness B declares briefly and concisely that he bade farewell to the party in 1993 and for that reason has no knowledge of events within the party after that date. In a word, it does not surprise me that the judge-commissioner did not want to take the trouble to call these witnesses through the procedure of Art. 226a e.v. Sv.

36. And finally it should not be left unmentioned, and that is my last remark in relation to the "new" witnesses, that Faminiano notes that Armando Liwanag died in 2001 or 2002 in a hospital in Manila.

37. The digital seized materials in this case contain, so I have understood, 6.3 million items. And that is quite an electronic mountain which the Ministry of Justice has climbed and has, after all, not led to new prospects.

38. The only thing in this context that is worth mentioning is an article which appeared in the Philippine press some months after the death of Kintanar. A draft of this article is found in one of the computers that was supposed to have been found in Sison's home. From this fact nothing relevant can be drawn, at least not for the question which you today must look into. Even if you should start with considering that Sison may have been involved in drafting that article, it cannot naturally be concluded that Sison thus has given the order for the killing of Kintanar or in any way in a criminally relevant manner has been involved therein.

39. Then the NFI-report is here further worth mentioning. Inasfar as I have understood this report, the research of the NFI which started on 15 September and thus

has lasted for eight months, has delivered nothing that is worth adding to the dossier. Some items are said to have been decoded and a number have not at all been deciphered. Whatever, on the content of these items we have to guess, because nothing contentwise appears to have been added to the dossier, although I do not rule out that the prosecutors might at the last moment magically bring out a rabbit from their top hats. As long as the rabbit does not appear, the conclusion must ring out that this prying by the NFI has not delivered the saving proof, the smoking gun, which the public prosecutor's office had hoped for. Furthermore, I can carefully let the client know that "enciphering" appears to work, if in this mountain of items it is already enciphered, for it is obvious that the NFI cannot decipher it. I can very well imagine the wish of the NDF (National Democratic Front) and the persons who work for it, to be able to communicate confidentially with others.

40. The Dutch government is the last authority which I would want to allow to look into my affairs, even if it were only because the AIVD (General Intelligence and Security Service) cooperates with the Philippine "services", the same services which in 2000 and 2001 had targeted Sison. That there must be communications in confidence you may perhaps imagine when I tell you that Sison just came back from Oslo, where he negotiates with the Philippine government under the supervision of the Norwegians concerning the for years already ongoing conflict between the progressive opposition, united in the NDF, and the regime. That the Dutch government, through this justicial investigation, confiscations and attempts to crack confidential items and correspondence, torpedoes that nascent and extremely laborious peace process is actually extraordinarily offensive.

41. Now the public prosecutor will undoubtedly cry out that the NFI has not yet by any means finished its doctoring, that there is still so much to investigate and to decipher. I would believe that, and I cannot completely rule out lucky shots. But as the time passes, I already said: the NFI has already lost eight months, it is becoming more improbable that this investigation will still deliver something for the public prosecutor. If Sison would really have given the order to kill Kintanar and Tabara, then it would have turned up in one or another way from the confiscations and the investigation. But all efforts of the ministry of justice have delivered nothing until now. It is time to put an end to this.

The request

42. I repeat the request as I did that on 23 January 2008 at the end of the notice of objection which I formulated, whereby I expressly made the remark that I do not request you anymore to set a date to the prosecutor, as meant in Art. 253 paragraph 2 Sv. This dossier simply does not justify any new delay. I request you to place Sison now (and not later) outside prosecution and in your decision to take up a consideration in

accordance with my earlier presented remark: the closing of the case against Sison may not lead thereto, that also the investigation into the assassination attempts plotted against him in 2000 and 2001 is broken off. That would indeed be a pity after all the trouble; moreover, it appears to me to be a clear-cut case ready for resolution.