

Europe Solidaire Sans Frontières > English > Asia > Philippines > The Left (Philippines) > CPP (killings) (Philippines) > **No bail for Sison under Dutch law**

No bail for Sison under Dutch law

Friday 7 September 2007, by [BALANA Cynthia](#), [BURGONIO TJ](#), [CONTRERAS Volt](#) (Date first published: 31 August 2007).

MANILA, Philippines — Self-exiled communist leader Jose Maria Sison will be indicted Friday before a court in The Hague for ordering the murder of two former comrades in the Philippines, according to the Dutch Embassy in Manila.

Ambassador Robert Vornis said Sison's arresting officer would present initial evidence for the judge to determine if there was need to extend the detention of the founding chair of the Communist Party of the Philippines (CPP) for another 14 days.

If extended, a group of judges will again decide on whether to extend it again to a maximum of 90 days.

Wim de Bruin, a spokesperson of the Public Prosecutor's Office, said that posting bail was not a possibility under Dutch laws.

"There isn't a bail procedure. The judge will on Friday decide whether Mr. Sison will stay in custody for another 14 days or release him. It's one or the other," De Bruin said.

Anita van de Haar, deputy chief of mission of the Dutch Embassy, said actual trial and the presentation of the case would commence after the 90-day period as the remand hearing was just preliminary.

Sison, 68, who has been staying in Utrecht, the Netherlands, since 1988, was arrested on Tuesday by Dutch police for allegedly ordering the execution of his former associates, Romulo Kintanar and Arturo Tabara, in 2003 and 2004. A complaint of murder has been jointly filed by the widows of the victims.

The Philippines has braced for fallout from the arrest, with the military going on red alert as Sison's supporters vowed to intensify their insurgency. Leftist groups worried about a possible crackdown and all-out war.

Sison, who has been serving as political consultant to the CPP-led National Democratic Front (NDF) in on-and-off peace talks with the Philippine government, is being held at the Scheveningen prison in The Hague. NDF chief negotiator Luis Jalandoni described the place as "formerly used by the Nazis for detaining Dutch resistance fighters."

'Good spirits'

On his third day of detention, Sison remained in "good spirits" and was allowed by his guards to take his medicine with him, his Filipino lawyer said, quoting a text message sent by Jalandoni.

Under Dutch law, Sison's initial appearance before a judge was required three to six days after his arrest.

Vornis refused to comment on the facts of the case, including the possible role of the Philippine government and authorities in bringing Sison to the Dutch justice system.

"I'm sorry to disappoint you but I'm not going to engage in a conversation on any role of the Philippines," he said.

"The Dutch legal system is such that it is equally applicable to all people within the Netherlands. We're looking at the criminal code. Even if the charges were committed in the Philippines, it's very much a Dutch criminal proceeding," he stressed.

Strategy for arrest

Sison was arrested when he was invited by the Dutch police for questioning.

"For sure, it was a strategy because the police didn't want to raid his house and arrest him there. They thought it would be more careful to invite him to the police station and arrest him there," De Bruin told a television network.

He said the Dutch police investigation started in 2006.

Sison had filed for political asylum in the 1980s but his request was rejected by the Dutch authorities. They ruled, however, that he could not be sent back to the Philippines because his life would be in danger there.

Since 2002, Sison and the CPP have been on the US and European Union (EU) lists of people and organizations aiding terrorism. His assets have been frozen and the Dutch state also blocked his pension.

Although Sison won one legal challenge against the listing, his name reappeared on a subsequent review of the list. To get that lifted he will have to file a separate legal challenge.

His Filipino lawyers and supporters appear to be treading on unfamiliar legal territory in their bid to gain even provisional freedom for him in the Netherlands.

No bail

"There is no bail under the Dutch legal system, but in general principle there are other ways to ask the court to grant him temporary liberty," lawyer Edre Olalia told the Philippine Daily Inquirer, quoting his counterpart attorneys handling the case.

When he appears before a judge commissioner on Friday, Sison will be invoking a recent Philippine jurisprudence, among others, to get himself off a non-bailable case of inciting to murders and avoid life imprisonment, his lawyers said.

Rebellion case ruling

They are banking on a June 2007 Supreme Court ruling dismissing a rebellion case against Sison and 50 others to quash the charges he is facing in the Netherlands. The rebellion case includes the allegations of murder that Sison is now accused of inciting.

"We believe this will be useful in convincing the Netherlands court that the evidence is insufficient to link Joma Sison to the killings," lawyer Romeo Capulong said in a phone interview. Sison's Filipino defense panel, headed by Capulong, was set to transmit a legal memorandum on the ruling to his European lawyers last night.

To invoke SC ruling

Capulong said Sison and his European lawyers could invoke the Supreme Court decision for his defense, and hoped that the court would “take this into account.”

“Any foreign court should take into account the fact that the case against Sison had been rejected and repudiated, and should likewise be rejected and repudiated in The Netherlands,” he said.

By dismissing the case on June 1, the Supreme Court declared the evidence against Sison and his co-accused as insufficient to establish probable cause to warrant the filing of a case of rebellion, according to Capulong. The pieces of evidence included the affidavits of the widows of Kintanar and Tabara, and 390 other documents, he said.

Recycled evidence

“The evidence can no longer be recycled in The Netherlands or anywhere else against Sison because the Supreme Court said so,” Capulong said. “This is the judgment of the Supreme Court.”

But even assuming that the murders were committed in furtherance of rebellion, these could not be made a subject matter of a separate prosecution for common crimes, Capulong asserted.

“The acts allegedly committed in furtherance of rebellion are deemed absorbed in rebellion,” he said, citing the Doctrine of Political Offense. “So under the Philippine law, Sison can only be prosecuted for rebellion, but not for murder.”

Sison’s arrest has all but justified the expected escalation of hostilities between the government and communist rebels, Jalandoni said in a strongly worded statement. It provoked, if not justified, the armed conflict considering that Sison was the NDF peace panel’s chief political consultant, he said.

“This abominable action taken by the Dutch and Philippine governments against Professor Sison ... is a casus belli and will practically kill the GRP-NDF peace negotiations,” Jalandoni said.

Jalandoni alleged that the Arroyo administration had conspired with Dutch authorities to arrest Sison as a way of forcing the NDF into “capitulation.”

The NDF had earlier rejected the government’s invitation to resume peace talks stalled in 2004 under the condition of a nationwide ceasefire. Instead, it wanted the government to first settle “prejudicial questions” such as the rampant extrajudicial killings, inclusion of the communist movement in the US and EU lists of terrorists, and indemnification of human rights victims.

‘Weakened’ NPA

Executive Secretary Eduardo Ermita Thursday admitted that the inclusion of Sison on the US and EU lists had prompted the Dutch government to go after the criminal liabilities of the communist founder.

“It helped because why will the Dutch government pursue the case? How did they develop the case? It is their own initiative. The Netherlands is very powerful, stable,” said Ermita.

He also said that the arrest of Sison had rendered “weak” the more than 7,000 members of the New People’s Army, the armed wing of the CPP, although they “continued to be a major threat to our national security.”

Congress’ inquiry

Two militant lawmakers Thursday called for a congressional inquiry into the arrest, its impact on other Filipinos in political exile, and the Arroyo administration's alleged role in the incident.

"The arrest of Professor Sison and the probable violations of his and his colleagues' rights as political refugees or exiles is a cause for concern to many other Filipinos who, from the time of the Marcos dictatorship to the present, have fled the country to seek shelter from political persecution and threat of state-perpetrated arbitrary arrests, torture, extrajudicial killings and enforced disappearances," according to the resolution filed by Bayan Muna party-list Representatives Satur Ocampo and Teodoro Casiño.

P.S.

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