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## **The slow road to justice: Sison case returns to Court in ongoing challenge to EU terrorist blacklist**

Luxembourg, 30 April 2009: Lawyers for Mr. Jose Maria Sison, a Philippine exile resident in the Netherlands, are returning to the EU Courts of Justice to once again seek his removal from the European Union's 'terrorist blacklist'. Interested parties are invited to attend the oral hearing in Luxembourg this Thursday.

### **Background to the case**

Mr. Sison first appeared on the EU terrorist list in October 2002 alongside the 'New People's Army' (NPA), the armed wing of the Communist Party of the Philippines. Mr. Sison was neither notified of his inclusion in the EU terrorist list, nor given any further explanation of the EU member states' decision to include him. Mr. Sison, who is now 70-years-old, did not even know that he had been listed as an alleged 'international terrorist' until his bank card was rejected in a Dutch supermarket when he tried to pay for his groceries – a result of the freezing of assets that accompanies the EU 'proscription' regime (in this case the 'assets' amount to a monthly allowance of 200 euros that Mr. Sison receives pursuant Dutch regulations on asylum-seekers). This was the beginning of a Kafkaesque journey that has become all too familiar.

On 11 July 2007, the EU's Court of First Instance ruled that the EU Council had acted unlawfully in including Mr. Sison in the terrorist list because of its failure to provide him with any reasoning or allow him any chance to respond to the allegations, finding a clear breach of his right to a fair trial as guaranteed by Article 6 the European Convention on Human Rights. Although the Court annulled the Decision and associated Regulation including Mr. Sison in the terrorist list, the EU Council (comprised of all the EU member state governments) responded by adopting new legislation maintaining him in the list. To address the Court's 'fair trial' demands, Mr. Sison and others on the list would now receive a 'statement of reasons' explaining the EU Council's decisions. The affected parties would also have the chance to respond to the 'statement of reasons', though this 'appeal' is limited in the first instance to representations to the secret EU Council Working Party that took the decision in the first place. In this case and others the EU did not even acknowledge or respond to these representations, so de-listing must once again be sought at the EU Courts.

The 'statement of reasons' provided to Mr. Sison allege that he is the 'leader' of the Philippines' Communist Party (CPP) and the NPA. It is well known that Mr. Sison was a founder member of the CPP and that he was imprisoned in the Philippines on these grounds by the Marcos regime from 1977 to 1986, before his ongoing exile. Mr. Sison has long since denied leading either the Party or the NPA and at no point has any evidence substantiating the EU's allegations been provided to his lawyers. Nor have lawyers for the Dutch government provided any evidence whatsoever to suggest that Mr. Sison has provided a single euro in financial support for acts of terrorism, which is the stated purpose of the EU's asset-freezing regime.

### **The legal arguments**

EU law requires any Council decision to include a group or individual on the EU terrorist list to be based on a 'decision taken by a competent authority' concerning the investigation, attempt to commit or commission of terrorist acts. This decision must in turn be based on 'credible evidence'.

The ‘statement of reasons’ provided to Mr. Sison refer to proceedings in the Netherlands during the 1990s related to his asylum application; to the post 9/11 decision of the government of the USA to name him as a ‘Specially Designated Global Terrorist’ under Executive Order 13224; to the subsequent decision of the Dutch Ministry of Foreign Affairs to freeze his assets pursuant to financial sanctions regulations; and to a Dutch criminal investigation into allegations of incitement to murder initiated in 2007. Lawyers for Mr. Sison contend that none of these proceedings or decisions amount to a ‘competent decision’ and that the EU Council continues to rely on an accumulation of erroneous and unsubstantiated allegations that cannot be considered an adequate basis in law to freeze Mr. Sison’s assets or deprive him of his fundamental rights.

Specifically, it is argued that Mr. Sison is not the leader or head of the CPP or the NPA; that the Dutch courts did not conclude that the applicant was responsible for terrorist activity in the Philippines following the Dutch State’s use of its discretionary powers to deny Mr. Sison full refugee status; that the governments of the USA and Netherlands are executive rather than judicial bodies that have taken political decisions based on unsubstantiated allegations; and that the Dutch criminal investigation has now been closed having found no evidence of criminal conduct (the same charges have also been finally rejected in the Philippines as ‘politically motivated’).

Counsel for Mr. Sison also argues that the EU terrorist list breaches the principle of ‘proportionality’ (a fundamental principle of ‘community law’ that should limit action taken by the EU’s institutions to that necessary to achieve the objectives of the Treaties – in this case a credible counter-terrorist financing policy) and constitutes an ongoing breach of the fundamental rights to due process in a fair trial (specifically the right to access an impartial tribunal; violation of the principle of the presumption of innocence; and violation of the right to mount a defence).

Wolfgang Kaleck, ECCHR General Secretary and a member of Mr. Sison’s legal defence team comments:

*‘The right to a fair trial is the heartbeat of the European justice system and must never be dispensed with on the say so of the executive. There is no evidence to justify the freezing of our client’s assets or his ongoing designation as an international terrorist. The only place to deal with such serious allegations is a proper criminal proceeding in which full weight is given to the consideration of the facts and the pleas of both defence and prosecution. In the absence of such proceedings in the past seven years, the presumption of innocence must prevail and fundamental rights must be restored.’*

Ben Hayes, legal advisor to the ECCHR comments:

*‘While public attention is rightly focused on Guantanamo Bay and the extraction of evidence through extraordinary rendition and torture, the issue of terrorist blacklisting by the international community raises the same set of deeply disturbing questions about the conduct of the so-called ‘war on terror’. The need for a radical overhaul of the entire blacklisting regime has long been self-evident. European citizens will be far from impressed by the irony of a system designed to prevent terrorist financing if ultimately it results in the taxpayer compensating those caught-up in it. Yet this is precisely the path upon which the EU Council’s intransigence is leading us with every passing case.’*

## Notes for editors

- 1) Jan Fermon of Progress Lawyers Network acts as Counsel for Jose Maria Sison in the EU Court proceedings. The legal team is comprised of Dundar Gurses (Netherlands), Wolfgang Kaleck and Hans Eberhard Schultz (Germany), Antoine Comte (France) and Romeo T. Capulong (Philippines).
- 2) The governments of the Netherlands and the United Kingdom together with the European Commission have intervened in the proceedings in support of the Council of the EU.
- 3) For further information concerning Thursday's hearing please call Jan Fermon on +32-475-441-896. For further information concerning the terrorism lists issue please call Ben Hayes of ECCHR on +49-304-004-8590.
- 4) The ECCHR! is an independent, non-profit organisation based in Berlin. For more information see <http://www.ecchr.eu/>.

## Chronology of proceedings

October 2002 – Sison added to EU terrorist list

February 2003 – Sison's lawyers challenge listing at EU Courts (case T-47/03)

March/April 2003 – Sison's lawyers challenge EU Council's refusal to grant access to documents relating to the decision to include him in the list (cases T-110/03 and T-150/03)

April 2005 – EU Court of First Instance dismisses access to documents cases, ruling that persons included on EU terrorist list do not have the right to documents concerning the EU; lawyers submit appeal

February 2007 – EU Court of Justice upholds earlier decision in access to documents case (C-266/05)

July 2007 – EU Court of First Instance annuls EU Council Decision to include Mr. Sison in the terrorist list (case T-47/03); EU adopts fresh legislation maintaining Mr. Sison in the list

September 2007 – Lawyers for Mr. Sison submit fresh challenge to EU Court (case T-341/07)

30 April 2009 – Hearing in case T-341/07

## Documentation

### Judgment in case T-47/03

[http://ecchr.eu/index.php/home\\_en/articles/home.html?file=tl\\_files/Dokumente/EU%20Court%20judgment%20of%20July%202007%20in%20Sison%20v.%20Council%20of%20the%20European%20Union.pdf](http://ecchr.eu/index.php/home_en/articles/home.html?file=tl_files/Dokumente/EU%20Court%20judgment%20of%20July%202007%20in%20Sison%20v.%20Council%20of%20the%20European%20Union.pdf)

### Report of Court *rapporteur* for hearing in case T-341/07

[http://ecchr.eu/index.php/home\\_en/articles/home.html?file=tl\\_files/Dokumente/Report%20of%20Court%20rapporteur%20for%20hearing%20in%20new%20case%20%28T-34107%29.pdf](http://ecchr.eu/index.php/home_en/articles/home.html?file=tl_files/Dokumente/Report%20of%20Court%20rapporteur%20for%20hearing%20in%20new%20case%20%28T-34107%29.pdf)

### Abbreviated defence application in case T-341/07

[http://ecchr.eu/index.php/home\\_en/articles/home.html?file=tl\\_files/Dokumente/Abbreviated%20defence%20application%20in%20new%20case%20%28T-34107%29.pdf](http://ecchr.eu/index.php/home_en/articles/home.html?file=tl_files/Dokumente/Abbreviated%20defence%20application%20in%20new%20case%20%28T-34107%29.pdf)