

Court of Appeal of LYON
Court of First Instance of LYON

Judgement dated: FEBRUARY 16, 2019

7th criminal court

Draft n°:

Public prosecutor's office n°: 19168000015

Pleaded on SEPTEMBER 2, 2019

Deliberated on SEPTEMBER 16, 2019

CRIMINAL COURT JUDGEMENT

At the public hearing of the criminal court of Lyon on SEPTEMBER THE SIXTEENTH, TWO THOUSAND AND NINETEEN,

comprising Mr. Marc-Emmanuel GOUNOT, Vice-President, President of the Criminal Court appointed as the sole judge in accordance with the provisions of article 398 paragraph 3 of the French code of criminal procedure,

assisted by Mr. Jérôme BRAVIN, court clerk,

in the presence of Mr. Pierre LAUZERAL, vice public prosecutor,

the Court, pronouncing its judgement, after discussions which took place during the hearing of SEPTEMBER THE SECOND, TWO THOUSAND AND NINETEEN, during which the court was composed as follows:

Mr. Marc-Emmanuel GOUNOT, Vice-President,

Assisted by Mr. Dominique BRISET, court clerk,

in the presence of Mrs. Rozenn HUON, vice public prosecutor,

in the case between:

This court's PUBLIC PROSECUTOR, as plaintiff

AND:

DEFENDANT:

Name: **Fanny DELAHALLE**



Parents: Christian DELAHALLE and Marie-Claire FENETRE

Nationality: French

[REDACTED]

[REDACTED]

Criminal status: free

Appearing in court, assisted by Maître Thomas FOURREY, lawyer at the LYON bar (lawyer identification number 390),

Defendant accused of:

GANG ROBBERY, committed on February 21, 2019 in LYON, 2nd district

DEFENDANT:

Name: **Pierre GOINVIC**

[REDACTED]

Parents: Gérard GOINVIC and Martine CHEVALLIER

Nationality: French

[REDACTED]

[REDACTED]

Criminal status: free

Appearing in court, assisted by Maître Thomas FOURREY, lawyer at the LYON bar (lawyer identification number 390),

Defendant accused of:

GANG ROBBERY, committed on February 21, 2019 in LYON, 2nd district

WITNESSES:

Mrs. **Cécile DUFLOT**

[REDACTED]

[REDACTED]

Mr. **Wolfgang CRAMER,**

[REDACTED]

[REDACTED]

DEBATE

When the public hearing of the case was held, the President duly noted the presence and identity of Fanny DELAHALLE and Pierre GOINVIC and referred to the writ initiating the proceedings.

The President informed the defendants of their right, during the debates, to make declarations and answer the questions asked of them or to remain silent.

The President invited the witnesses to withdraw to the room set aside for them.

The President opened the proceedings, questioned the defendants present concerning the facts and heard their declarations.

He then proceeded to question the witnesses separately, without the other parties present, in accordance with the provisions of articles 444 to 457 of the French code of criminal procedure.

Cécile DUFLOT and Wolfgang CRAMER took the oath and their deposition was heard.

The Public Prosecutor's case was heard.

The arguments put forward by Maître Thomas FOURREY, counsel for Fanny DELAHALLE and Pierre GOINVIC, were heard.

The defendants were invited to speak last.

The court clerk took notes on the course of the discussions.

At the end of the hearing held on September 2, 2019, the Court informed the parties present or duly represented that the judgement would be handed down on September 16, 2019 at 2 p.m.

On this date, pronouncing its judgement in accordance with the law, the President read out the decision.

The Court deliberated and reached its decision in accordance with the law and in these terms:

On February 26, 2019 Fanny DELAHALLE was served a summons to appear at the hearing of September 2, 2019 by an agent or office of the French criminal investigation department following instructions from the Public Prosecutor's office and was informed of her right to be assisted by a lawyer. In accordance with article 390-1 of the French code of criminal procedure, this is considered as a summons served in person.

Fanny DELAHALLE attended the hearing with her counsel; as such, the judgement will be issued on an adversarial basis.

She is accused:

on February 21, 2019 in LYON (2nd district), and in any case in the territory of France and during a period which is not yet time-barred, of having fraudulently removed the portrait of the President of the Republic from the townhall of the 2nd district of Lyon, having acted in collusion with other parties, which actions are covered by articles 311-4 1° and 311-1 of the French criminal code and sanctioned by article 311-4, 311-14 1°, 2°, 3°, 4° and 6° of the French criminal code.

On March 12, 2019 Pierre GOINVIC was served a summons to appear at the hearing of September 2, 2019 by an agent or office of the French criminal investigation department following instructions from the Public Prosecutor's office and was informed of her right to be assisted by a lawyer. In accordance with article 390-1 of the French code of criminal procedure, this is considered as a summons served in person.

Pierre GOINVIC attended the hearing with his counsel; as such, the judgement will be issued on an adversarial basis.

He is accused:

on February 21, 2019 in LYON (2nd district), and in any case in the territory of France and during a period which is not yet time-barred, of having fraudulently removed the portrait of the President of the Republic from the townhall of the 2nd district of Lyon, having acted in collusion with other parties, which actions are covered by articles 311-4 1° and 311-1 of the French criminal code and sanctioned by article 311-4, 311-14 1°, 2°, 3°, 4° and 6° of the French criminal code.

ON THE STATE ACTION:

Whereas on Thursday, February 21, 2019, during the school holidays, just before 10 o'clock, a group of 10 or 20 persons entered the townhall in Lyon's second district, filmed by the television cameras called in for the occasion; a small part of the group presented themselves at the reception

and declared that they were climate defenders who were part of the “Association Non Violente COP 21”, a non-violent association, whereas most of the group were in the wedding room, the door to which was closed but not locked, in which there was a glass framed 50 cm x 70 cm photograph of the President of the Republic; whereas the national police force, informed by the townhall staff at the latest at 10h10, went directly to the townhall to discover that the group of intruders had already left the townhall, taking the portrait with them; whereas a complaint was then filed for gang robbery by the general manager of the Lyon 2nd district townhall;

Whereas the police investigations carried out on social networks made it possible to identify a “TWITTER” account in the name of “Alternatiba ANV Rhône” showing a woman in and in front of the Lyon 2nd district townhall, holding up the stolen portrait with the caption “Fanny Delahalle, Collectif Action Non Violente – COP 21”; whereas enquiries made with the telephone operators made it possible to locate a person with the same name, known to the police and residing in VAUGNERAY; whereas a “FACEBOOK” account in the name of “Fanny Dlhle” which seemed to correspond to the same person included as a friend a certain Pierre GOINVIC, known to the police and residing in the 9th district of Lyon, whose photo corresponded with a photo of one of the participants of the theft taken from the same sites;

Whereas on February 22 Pierre GOINVIC answered the police summons but not the investigators’ questions, merely acknowledging that he was a member, in charge of event coordination and logistics, of the “Collectif Alternatiba Rhône” which attempts to promote ways to combat climate change, but not of the “Collectif ANV – COP 21” which appears to have the same objective; whereas he kept the keys to the “Alternatiba” bar situated in the 1st district of Lyon which he willingly handed over to the police; whereas a banner which read “climat, justice sociale sortons Macron” (climate, social justice, out with Macron) was found there corresponding precisely to the one photographed and filmed at the site of the portrait theft, as well as various materials belonging to the “Collectif Action Non Violente – COP 21” or to “Alternatiba”; whereas the defendant also allowed the police free access to his telephone, where a message was found dated February 21 congratulating him for this morning’s “stunt”.

Whereas on February 26 Fanny Delahalle adopted the same position as her co-defendant, not answering the investigators’ questions except to explain the relative confidentiality of her place of residence, a wooden mobile home currently parked on someone’s land; whereas the raid carried out there brought to light a manual for non-violent combat and a paper with handwritten notes indicating “climate crisis”, “Macron policy not equal to the challenge”, “out with Macron”, “2nd district townhall” and “show the reality of the void”;

Whereas the defendants presented themselves at the hearing as ordinary militants from an unspecified group, who had decided symbolically to remove the portrait of the President of the Republic in order to demand from the State not anyone’s resignation but concrete action in favour of the climate; whereas they did not wish to participate in returning the object that was being kept in a secret place, which they intended to wave about during various manifestations, in particular during the last meeting of the G7 heads of state for which other portraits had also been “unhung”; whereas Fanny Delahalle refuted any plan to cause a diversion at the townhall reception to make access to the wedding room easier and Pierre Goinvic admitted to having personally taken away the portrait as

suggested by the video-surveillance footage of the street on February 21, showing a man heading away from the townhall with a package under his arm in the same shape as the portrait;

Whereas the testimony of Cécile Duflot, former minister and militant ecologist, indicates that the Paris agreement of 2015 to limit climate deregulation has not been respected in France due to lack of political will, that the heads of several associations filed action with the French Council of State in March 2019 for State failures and that only the President of the Republic could order measures of the amplitude required by the urgency of the situation; whereas Wolfgang CRAMER, a global ecology scientist, underlines the necessity of a rapid change in our civilisation in order to maintain, below the 2°c provided by this agreement as of the date of its conclusion, an increase in the temperature of the atmosphere whose climatic effects have already been visible throughout the world for several years;

Whereas the defendants refer to this testimony to explain that the use of legal channels and the warnings from the scientific experts have not provided sufficient leverage and that they believe that they must resort to acts of “non-violent civil disobedience” in order to make people aware of the need for a change in policy; whereas through their lawyer’s pleadings, supporting written briefs and official documents, they plead for acquittal in the name of a state of necessity which renders legitimate a criminal offence that is in proportion to the need to stave off a serious and imminent danger, as the defendants have no other option available to them than to face the authorities with a measured reaction; whereas the public prosecutor rejected this argument, seeing no link between the criminal offence committed and the legitimately defended cause, and asked that each defendant be sentenced to pay a fine of 500 euros;

Whereas the investigation and the confessions obtained during the hearing have shown that the act of theft was effectively committed; that the defendants effectively deliberately removed a highly symbolic object of value belonging to the commune of Lyon while operating in a large, determined group, which was intended to dissuade the staff present from resisting; whereas the operation was prepared through agreement between the participants as to the choice of the objective and the date and on the way the event would be portrayed via the media; whereas the hardening of the defendants’ stance can be inferred from their refusal to return the property and their open intention to use it in the near future to defend their cause;

Whereas, nonetheless, climate change is a constant fact which seriously affects the future of humanity by provoking natural cataclysms which the poorest countries will not be able to afford to guard themselves against, leading to violent conflicts between populations, but also the future of our flora and fauna by modifying their living conditions without allowing species the time to adapt and evolve; whereas France is committed on an international scale and domestic scale, essentially according to three indicators, to comply with the objectives which appeared to the government undoubtedly as insufficient but at the least necessary to limit, to an extent that is bearable for life on earth, inevitable climate change, but that the elements submitted by the defence show that these objectives will not be achieved;

Whereas, according to these elements, firstly the annual greenhouse gas carbon emissions limit of 442MtCO₂eq for the period 2015 to 2018 such as defined by decree n°2015/842 was exceeded by 72MtCO₂eq in December 2018 according to the revised National Strategy “Low Carbon” plan; and secondly, according to the report by the General Commission for sustainable development dated October 2018, the share of renewable energies in the gross end consumption of energy amounted to

16.3% in 2017 whereas the annual trajectory between 2005 and 2020 resulting from a national action plan in favour of renewable energies handed to the European Commission in 2010 planned for a rate of 19.5% so as to reach the objective of 23% in 2020 as fixed by the European Directive 2009/28; whereas thirdly EUROSTAT measured an end consumption of energy of 147.1 Mtoe in 2017 which is higher than the trajectory of 139.9 Mtoe planned in application of the European directive 2012/27 and will not make it possible to reach the 2020 objective of 131.4 Mtoe;

Whereas, faced with the State's failure to comply with objectives which could be perceived as minimal in a vital domain, the means of expression of the citizens in a democratic country cannot be limited to voting at electoral times but other forms of participation must be invented within the framework of our duty of critical vigilance; whereas messages addressed to the government may thus be disseminated via rallies in relation to which the organisers and the authorities must try to limit the disruption of public order which could be caused by a sudden affluence of people whose immediate intentions are uncertain; whereas in this case the gathering of ten to twenty persons, even if not declared to the prefecture in advance, entering a building used for the for administration of the public and the local area, for a few minutes, with no aggression and without hiding the reason for the action, is clearly pacific and likely to cause a very modest disruption of public order;

Whereas, as regards the portrait which the protesters saw fit to take away with them, the commune of Lyon intended it to be placed on public display, as a symbol of the State by virtue of the powers entrusted by the constitution of the 5th Republic to the President of the Republic; whereas such powers, combined with election by direct universal suffrage, introduced a special relation between this authority and the citizens who are entitled to keep watch over national policy without being able to question this authority individually, in view in particular of their number and the protection of the person in question; whereas in the mind of the citizens who are deeply involved with a special general interest cause, the unauthorised unchanging and removal of this portrait with the exclusive aim of defending this cause, which was not preceded or accompanied by any form of reprehensible action, far from being considered as a mere physical object violation, must be interpreted as the necessary substitute for the impossible dialogue between the President of the Republic and the people;

Whereas the conservation of this portrait, which underlines the deliberateness of its removal, was certainly not a necessary follow-up to the form of appeal addressed to the President of the Republic, faced with the serious, current and imminent danger, to take adapted financial and regulatory measures or at least realise his powerlessness; whereas this conservation nonetheless reflects a legitimate reason since the use of the portrait appears to be limited to showing it in the name of the said cause during public demonstrations, thus avoiding the multiplication of intrusions into municipal premises for the purposes of reiterating the same actions; whereas the failure by the commune of Lyon to initiate civil proceedings casts a doubt on its desire to retrieve its property, no sanction must be imposed due to lack of use of an object whose replacement value moreover is negligible; which has no investment value and which is unassignable;

FOR THESE REASONS

The Court, ruling publicly, as an appealable decision and in the presence of the parties Fanny DELAHALLE and Pierre GOINVIC,

ON THE STATE ACTION:

ACQUITS Fanny DELAHALLE

ACQUITS Pierre GOINVIC

This judgement having been signed by the President and the court clerk.

The Court Clerk

The President

Uncertified translation - GPF