



Applicants' sentencing to suspended fines for taking down French President's official portrait in town halls did not breach their right to freedom of expression

In today's **Chamber judgment**¹ in the case of [Ludes and Others v. France](#) (applications nos. 40899/22, 41621/22 and 42956/22) the European Court of Human Rights held, by a majority, that there had been:

no violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned the criminal conviction of the applicants, environmental activists, and their sentencing to suspended fines, for theft committed as a joint enterprise, after they had taken down the official portrait of the French President in several town halls and refused to return it. They had been seeking to draw attention to the State's inaction with regard to its COP21 climate-summit commitments and the fight against climate change more generally.

The Court first noted the care taken by the domestic courts to assess the proportionality of the interference in issue from the standpoint of Article 10 of the Convention, taking into account the context of the activities and the applicants' motives. In particular, it considered that the domestic courts had validly based their decisions to convict the applicants on the fact that the portraits had not been returned, after pointing out that taking them down alone would have been sufficient to convey the applicants' message.

Given both the small amount of the fines imposed and the fact that they had been suspended, the Court then concluded that the applicants' sentences, which had been among the most lenient available, had not been disproportionate to the legitimate aim pursued.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

Principal facts

The applicants are ten French nationals and one Belgian national who were born between 1958 and 1996.

They are members or sympathisers of ANV-COP21, which describes itself as "a movement of citizens who refuse to resign themselves to climate change and the social injustices it creates". The collective has adopted a strategy of non-violence that does not rule out "civil disobedience". In the present cases, the applicants took part in a protest which involved taking down the French President's official portrait in town halls. The ensuing police investigations saw their homes searched, telephones and computer hardware seized and DNA samples taken. The applicants were all subsequently convicted of theft committed as a joint enterprise.

Application no. 40899/22 (Christine Ludes and Charles Thonon)

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

On 29 July 2019 a group of about ten activists, including the two applicants, met at Lingolsheim town hall in eastern France. There, in the presence of a journalist, they took down the portrait of the President in the council chamber and replaced it with a leaflet explaining their actions. The initiative was made public by a press release and shared on social media.

The mayor lodged a complaint against persons unknown on behalf of the municipality of Lingolsheim. He then sought to resolve the matter amicably by asking for the portrait to be returned.

On 16 July 2020 the President of the Strasbourg *tribunal judiciaire* (general first-instance court) found the applicants guilty of theft committed as a joint enterprise under Article 311-4 § 1 of the Criminal Code and ordered them both to pay a fine of 300 euros (EUR). The applicants appealed against the decisions.

On 3 December 2020 the Strasbourg Criminal Court acquitted the applicants, finding that the offence had been made out but that there was no reason to hold them liable.

The public prosecutor's office appealed against that judgment. On 30 June 2021 the Colmar Court of Appeal reversed the acquittal and sentenced each of the applicants to a suspended fine of EUR 400. It held that "the defendants' reliance on the right to live in a healthy environment and France's duty of care with regard to its alleged breach of its commitments" was not grounds for exemption from criminal liability. The Court of Appeal further found that the criminal proceedings instituted against the applicants did not amount to a disproportionate interference with the exercise of their right to freedom of expression.

The applicants appealed on points of law, alleging a violation of Article 10 of the Convention.

The Court of Cassation dismissed their appeal on 18 May 2022.

Application no. 41621/22 (Pauline Boyer, Emma Chevalier, Etienne Coubard, Marion Esnault, Cécile Marchand and Félix Veve)

On 21 and 28 February 2019 the applicants, together with members of ANV-COP21, stole the President's portrait from the town halls of the 3rd, 4th and 5th *arrondissements* of Paris. They did so without covering their faces and had themselves filmed and photographed holding the portrait and displaying a banner saying, "climate, social justice, out with Macron". They then shared the photographs on social media.

The applicants were charged with theft committed as a joint enterprise.

In a judgment of 16 October 2019 the Paris Criminal Court acquitted Mr Veve of the offences committed on 28 February in the 4th *arrondissement* but found him guilty of those committed on 28 February in the 3rd and 5th *arrondissements*. It also acquitted Mr Coubard and Ms Dufour of the offences committed in the 5th *arrondissement* but found them guilty of those committed in the 3rd and 4th *arrondissements*. The other three applicants, Ms Marchand, Ms Esnault and Ms Boyer, were found guilty on the counts of theft committed as a joint enterprise.

The six applicants were ordered to pay a fine of EUR 500.

The applicants appealed. On 10 December 2020 the Paris Court of Appeal upheld the judgment as to their guilt. However, given the context of the offence, which had been "committed not from base motives but as part of a political and activist protest, by individuals with no face covering, and [had] caused minimal material damage", it altered the sentence to a suspended fine of EUR 500. It also ordered that their conviction not appear in standard criminal-record checks.

The applicants appealed on points of law, alleging a violation of Article 10 of the Convention. The Court of Cassation dismissed their appeal on 18 May 2022.

Application no. 42956/22 (Léa Chancellor, Lucie Cugerone and Anne-Marie Nguyen Khan Loi)

On 13 April 2019 the three applicants, together with three other members of ANV-COP21's Valence branch, stole the President's portrait from the wedding hall of La-Roche-de-Glun town hall. They claimed responsibility for the act in the media and on social media. An investigation was opened.

In a judgment of 13 November 2020 the Valence Criminal Court acquitted the applicants. It found that their actions had "clearly not [been] aimed at robbing the town hall of the portrait" but at raising public awareness and had thus formed part "not of a criminal endeavour, but rather of a democratic process of political protest".

The public prosecutor's office appealed. On 27 October 2021 the Grenoble Court of Appeal reversed the judgment and convicted the applicants of theft committed as a joint enterprise, sentencing them to a suspended fine of EUR 200.

The applicants appealed on points of law, alleging a violation of Article 10 of the Convention. The Court of Cassation dismissed their appeal on 18 May 2022.

Complaints, procedure and composition of the Court

Having regard to the similar subject matter of the applications, the Court considered it appropriate to examine them together in a single judgment.

The applicants relied on Article 10 (freedom of expression) to argue that their convictions for theft committed as a joint enterprise amounted to a disproportionate interference with the exercise of their right to freedom of expression.

The applications were lodged with the European Court of Human Rights on 19, 22 and 23 August 2022.

Judgment was given by a Chamber of seven judges, composed as follows:

María Elósegui (Spain), *President*,
 Mattias Guyomar (France),
 Gilberto Felici (San Marino),
 Andreas Zünd (Switzerland),
 Diana Sârcu (the Republic of Moldova),
 Kateřina Šimáčková (the Czech Republic),
 Mykola Gnatovskyy (Ukraine),

and also Martina Keller, *Deputy Section Registrar*.

Decision of the Court

Article 10

The Court first noted that the applicants' convictions had been based on the fact that the offence of theft had been made out, with the aggravating circumstance that it had been committed as a joint enterprise.

Second, the President's portraits had been taken down and misappropriated as part of political and activist activities, in line with the positions of the ANV-COP21 movement and in the context of a nationwide climate protest.

Third, the Court reiterated that it did not have to express an opinion on the constituent elements of the offence of theft committed as a joint enterprise. It was in the first place for the national authorities, in particular the courts, to interpret and apply domestic law.

Fourth, in the light of those considerations, the Court had to examine whether the domestic courts had given relevant and sufficient reasons.

The Court noted that the Courts of Appeal had based their decisions to convict the applicants, firstly, on the theft committed as a joint enterprise of the President's portraits and the failure return them and, secondly, on the damage caused to property "in a public place which [had] symbolic value". They had thus relied on "the joint-enterprise circumstance ... which [had been] made out in substance, since the acts had been committed by several people, including the accused". They had further relied on the fact that "the acts [had] not merely involve[d] the taking down of the President's portrait without authorisation but its fraudulent removal, constituting the offence of theft with the aggravating circumstance of having been committed as a joint enterprise".

They had also taken into account the refusal to return the portraits.

The Court of Cassation, in its three judgments of 18 May 2022, had upheld the convictions delivered by the Courts of Appeal. It had noted that the accused's actions had been carried out as part of activist activities and could be regarded as "expression" within the meaning of Article 10 of the Convention. However, it had been in a position to satisfy itself that the convictions had not been disproportionate in view, firstly, of the symbolic value of the President's portrait and the applicants' refusal to return it until their demands had been met and, secondly, of the circumstance that the theft had been committed as a joint enterprise. The Court concluded from this that the domestic courts had performed their review by way of an analysis encompassing all the elements bearing on the context in which the actions in dispute had taken place, along with the applicants' motives.

The Court considered that the domestic courts had been able to validly take into account the symbolic impact of the actions in question, both to establish the existence of a connection between those actions and the applicants' exercise of their freedom of expression on a matter of public interest, and to assess the actual impact of the actions, beyond the low material value of the misappropriated property. Moreover, in a decision delivered after the judgments in the present cases, such consideration of the "symbolic value of the portrait", among the various criteria established in its case-law, had led the Court of Cassation to adopt a different solution, upholding the accused's acquittal.

As regards the failure to return the portraits, the Court noted that the applicants, in applications nos. 40899/22 and 42956/22, had expressly characterised their actions as a "temporary requisition", which they would bring to an end only once their demands had been met. The domestic courts had considered that the fact that the applicants had kept the portraits, after they had taken them down, had been such as to make the impact of their actions ambiguous and to cast doubt on whether or not the damage could be reversed. The Court considered that the domestic courts had drawn a distinction between, on the one hand, the taking down of the portraits, which in itself had sufficed to clearly convey the applicants' message and could not have been the subject of a criminal sanction in its own right without disregarding the requirements of Article 10 and, on the other hand, the subsequent appropriation of the portraits, which had constituted the offence of theft. In doing so, they had based their decisions to convict the applicants on reasons that appeared, in the specific circumstances of the cases, both "relevant" and "sufficient".

The applicants' activist activities had been based on the intentional commission of an ordinary offence. Accordingly, the institution of criminal proceedings and subsequent investigative measures complained of had to be regarded, in the present cases, not as having a chilling effect on the expression of their message but, on the contrary, as forming an integral part of their communication strategy.

The Court noted both the care taken by the domestic courts to assess proportionality from the standpoint of Article 10 of the Convention, and the subsequent developments in the Court of Cassation's case-law. It thus saw no compelling reason, in the circumstances of the cases, to depart from the domestic courts' assessment, which appeared neither arbitrary nor manifestly unreasonable.

Lastly, as regards the nature and severity of the penalties imposed, the Court considered that the domestic courts had chosen particularly lenient sanctions, taking into account the nature and context

of the conduct in question. Given both the small amount of the fines imposed and the fact that they had been suspended, the Court was of the view that the applicants' sentences, which had been among the most lenient available, had not been disproportionate to the legitimate aim pursued.

Noting the developments in the case-law of the domestic criminal courts, the Court concluded that the national authorities had not overstepped the margin of appreciation afforded to the respondent State. Accordingly, it found that there had been no violation of Article 10 of the Convention.

Separate opinion

Judges Zünd and Šimáčková expressed a joint dissenting opinion, which is annexed to the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.