

**Paris Court of Appeal**

**Paris Regional Court**

**Judgment of: 06/02/2014**

**31st Criminal Chamber 2**

**Official record: 3**

**Case number: 10260090130**

## **CRIMINAL JUDGMENT**

At the public hearing of the Paris Criminal Court on the SIXTH OF FEBRUARY TWO THOUSAND AND FOURTEEN,

**Composed of:**

Mr XXX, presiding judge, (author)

Ms XXX, non-presiding judge,

Mr XXX, non-presiding judge,

Assisted by Ms XXX, clerk,

in the presence of Ms XXX, Deputy Public Prosecutor,

the case

**BETWEEN:**

The Public Prosecutor at this Court, claimant

**CIVIL PARTY:**

The FRENCH SOUTHERN AND ANTARCTIC TERRITORIES, administrative headquarters located at RUE GABRIEL DEJEAN BP 400 97458 ST PIERRE, civil party, represented under power of attorney by Ms XXX

**AND**

**Defendant**

Name: T

Born:

Parentage not specified

Nationality: French

Occupation: Skipper

Previous convictions: None

Residing at:

Criminal status: Free

Party absent, having not been notified of the summons.

**Charged with:**

CARRYING OUT UNAUTHORIZED ACTIVITIES HAVING AT LEAST A MINOR OR TRANSITORY IMPACT ON THE ANTARCTIC ENVIRONMENT, between 4 January 2010 and 11 January 2010 on the continent of Antarctica, in the area south of 60° South Latitude,

was brought before the Court.

**PROCEEDINGS**

The defendant was summoned by the Public Prosecutor by bailiff's deed, delivered to the bailiff's office on 16/01/2014.

The defendant did not appear in court; a judgment by default shall be issued in his regard, under the provisions of Article 412, paragraph 1 of the French Code of Criminal Procedure.

He is charged with organizing or participating in an activity having at least a minor or transitory impact on the Antarctic environment, without obtaining the authorization required under Article 712-1, paragraph I of the French Environment Code, on the continent of Antarctica, in the area south of 60° South Latitude, between 4 January 2010 and 11 January 2010, in any case for a period of time not covered by prescription, specifically, organizing and participating in a sports cruise in the protected area.

Acts covered by ART.L.713-5 AL2, ART.L.712-1 §I, ART.L.711-3, ART.L.711-1, ART.L.711-2 §II, ART.L.712-3, ART.R.712-1 §I of the French Environment Code and penalized under ART.L.713-5 AL.2, AL.8 of the French Environment Code.

When the case was called, the presiding judge noted the absence of T, recalled his identity and presented the deed referring the case to the court.

The presiding judge presented the grounds for prosecution.

Ms XXX, on behalf of the FRENCH SOUTHERN AND ANTARCTIC TERRITORIES, applied for civil party status, gave her explanations and presented her claims.

The prosecuting authority presented its conclusions. The clerk recorded the proceedings.

**After deliberation, the court ruled as follows:**

On 27 January 2010, the British Foreign and Commonwealth Office informed the French Ministry of Foreign Affairs that, on 11 January 2010, two French nationals had been discovered in the hut known as "Wordie House", where they were alleged to have caused damage. This hut, which was built during the first British expeditions to the southern continent, is registered on the list of historical sites and monuments drawn up under the protocol signed on 4 October 1991 in Madrid, concerning the protection of ANTARCTICA, which was published in the Official Journal of the French Republic (*Journal Officiel*) by decree of 18 September 1998.

These two people, N and J, were sailing on two French-registered yachts: “*L’Eclipse*”, skippered by P, and “*L’Esprit d’Equipe*”, belonging to T, respectively.

No authorization had been requested, let alone granted by the French authorities, allowing these two boats to enter the area defined and protected by the Antarctic Treaty signed on 1 December 1959 and published in the Official Journal of the French Republic (*Journal Officiel*) by decree of 30 November 1961, and the Madrid Protocol.

With regard to “*L’Eclipse*”, P did not contest the lack of authorization but explained that he learnt of the requirement only two months before leaving for a round-the-world yacht trip with his family that was due to last seven years, by which time it was too late to make the necessary arrangements.

With regard to “*L’Esprit d’Equipe*”, the yacht had been used since 2006 for tourism cruises run by the company of the same name, lasting 26 days, departing from Puerto Williams in CHILE.

In an initial letter that was neither dated nor signed, C claimed, on behalf of the company managing “*L’Esprit d’Equipe*”, that the boat had received authorization from the Chilean authorities. Then, in an email dated 14 April 2010, she seemed to acknowledge that no request for authorization had been made.

In any event, the Chilean authorities specified, in an email dated 30 April 2010, that the authorizations they issue concern only the sailing of vessels and do not give permission to carry out an activity in the protected area of ANTARCTICA.

Article 8 of the Madrid Protocol distinguishes between three types of activity: those having less than a minor or transitory impact, those having a minor or transitory impact, and those having more than a minor or transitory impact. Article L.712-1 of the French Environment Code stipulates that activities having at least a minor or transitory impact on the Antarctic environment require authorization, whereas all other activities must be declared in advance. Furthermore, Article L.712-2 of the Code stipulates that for an activity requiring authorization, this authorization must be based on a prior evaluation of the environmental impact of the activity which confirms its compatibility with environmental protection.

Article L.173-1 of the French Environment Code penalizes the exercise of an activity without the authorization required under Article L.712-1 of the Code. It is therefore necessary to identify which category the tourism activity of the yacht in question falls under.

Article R.712-3 indicates that the activities which must be declared in advance are listed in a ministerial decree. The decree of 29 January 2009, established pursuant to this Article, mentions only scientific and para-scientific activities. It can therefore be concluded that tourism activities must be authorized rather than declared in advance.

T, who indicated, when he was heard by the authorities of the French Southern and Antarctic Territories, that he was perfectly aware of the legislation that applied in this regard, explained that he had not requested authorization because the detour via ANTARCTICA was not part of the initial plan, but was the result of a last-minute request, by which point it was too late to request the appropriate authorization. This explanation is not very credible, since a document attached to the procedure shows that the initial cruise route included the Ukrainian base Vernadsky.

T is therefore guilty of the charges levelled against him and should be convicted.

He has never been convicted. Yet the acts of which he is accused constitute a significant threat to the environmental balance of a particularly sensitive area of the planet. They were committed in the context of a lucrative commercial activity, by a person who has been sailing for years and should be particularly aware of the importance of preserving the environment and respecting the protective legislation in this field. A sufficiently deterrent sentence should therefore be handed down, in order to highlight the importance of respecting this legislation, even as the size and climate of the area make it extremely difficult for the authorities of the various States Parties to the Antarctic Treaty to monitor it.

### **ON THESE GROUNDS**

The court, ruling publicly, at first instance, and

after due adversarial proceeding, as regards the FRENCH SOUTHERN AND ANTARCTIC TERRITORIES, civil party,

by default, as regards T, defendant.

### **ON THE PUBLIC PROCEEDINGS:**

Declares T guilty of the charges brought against him;

For the UNAUTHORIZED EXERCISE OF AN ACTIVITY HAVING AT LEAST A MINOR OR TRANSITORY IMPACT ON THE ANTARCTIC ENVIRONMENT, between 4 January 2010 and 11 January 2010 on the Antarctic continent, in the area south of 60° South Latitude,

Sentences T to a fine of ten thousand euros (€10,000);

Under Article 1018 A of the French General Tax Code, this decision is subject to a fixed court fee of €90, which is payable by T;

The defendant is informed that if he pays the fine and the fixed court fee within one month of the date on which he is notified of the judgment, the total sum payable is reduced by 20%.

**ON THE CIVIL PROCEEDINGS:**

Accepts the application made for civil party status by the FRENCH SOUTHERN AND ANTARCTIC TERRITORIES;

Sentences T to pay the FRENCH SOUTHERN AND ANTARCTIC TERRITORIES, civil party, the sum of one euro (€1) in damages;

Dismisses the additional claims made by the FRENCH SOUTHERN AND ANTARCTIC TERRITORIES;

Informs the defendant that the civil party, which is not eligible to apply to the Crime Victim Compensation Commission (CIVI), may refer the case to the Damages Recovery Assistance Service for Crime Victims (SARVI) if he does not pay the damages to which he has been sentenced within two months, starting from the day on which the decision becomes definitive.

This judgment was signed by the presiding judge and the clerk.

CLERK

PRESIDING JUDGE

*[signature of clerk]*

*[signature of presiding judge]*