Dictatorship of the Court vs. Will of the People?

Marine Le Pen's Embezzlement Conviction

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On March 31st, French politician Marine Le Pen was convicted by the *Tribunal correctionnel de Paris* – along with eight former EU parliamentarians and twelve parliamentary assistants – for embezzlement of public funds. She was sentenced to a fine of € 100,000 and four years in prison. Two years of the prison sentence are not suspended, but "*aménageable*", meaning that the sentence can be carried out at home with an electronic ankle tag. Particularly severe and politically explosive: the sentence of ineligibility to run for office for five years – effective immediately. This means that the three-time presidential candidate (2012, 2017, 2022) of the reactionary rightwing party Rassemblement National (RN) could lose her 4th chance to be a candidate in the 2027 French presidential elections.

The political impact of this ruling is substantial as the focus shifted almost immediately to the question of whether the rule of law was endangering democracy. From the beginning of the trial, the right-wing politician had not tired of claiming that "they" (meaning "the system") wanted her "political death". After the ruling, Le Pen added another hyperbolic layer: "The system has dropped an atomic bomb". Since then, the RN incessantly gathered outrage, calling out the "tyranny of judges", explained that the verdict "reveals their fear that we are on the point of winning the election", put a petition online and called for protests against the verdict. On Sunday, about 7,000 people in Paris took to the streets for the RN, while 5,000 attended the left-wing rival, according to the police.

Outrage is a precious political currency, and the far-right movement did invest massively in the victim narrative of its leader. But after a week, maybe it's time to dial down the drama and take a closer look at "the scandal".

Spoiler alert: There is no "political death" that might be the fault of a court – if anything, it was a (easily avoidable) suicide. And contrary to what Mr. Trump suggests in his most recent post ("FREE MARINE LE PEN!") – nobody is in jail.

How it began

The criminal proceedings leading to this verdict were initiated in 2015 by then-President of the European Parliament, Martin Schulz (SPD), who referred the case to OLAF, the European Anti-Fraud Office. The trial focused on allegations of fraud and misappropriation of public funds spanning twelve years. Between 2004 and 2016, Le Pen and her co-defendants allegedly diverted millions of EU funds to benefit their party Rassemblement National (formerly named Front National until 2018). The Paris court ruled that parliamentary assistants of the far-right party were paid for their duties in the European Parliament but actually worked for the party in Paris. Some had reportedly never even met their assigned officials in Brussels.

The prosecution emphasized the systemic nature of the embezzlement, meticulously outlining an "organized system" of fund misappropriation, with Marine Le Pen at its helm. The argument of the defense – that different categories of parliamentary assistants exist and that not all need to be physically present in Brussels – failed to convince the court. The claim that European politics benefited from party work conducted in Paris appeared especially cynical, given that the party had previously advocated for "Frexit" (France's exit from the EU).

But the judges did not engage with the question whether French courts have the authority to determine the scope of an EU parliamentarian's work or on which location contracts should be executed. The court also

was unimpressed by the assertion that it is a widespread practice to use EU parliamentary assistants for national tasks, as can be seen in a number of other examples, not least the "affaire MoDem" involving French Prime Minister François Bayrou. The argument "everyone does it that way" is, in fact, rarely justifying.

The key legal question is whether fake contracts without any activity linked to the deputy's mandate were issued with the European Parliament to fund a party facing severe financial difficulties (to the extent that it famously took out a multimillion-euro loan from Russia in 2014).

The damages, now estimated at € 2.9 million, were met with harsh penalties, closely following the prosecution's requests from November 13, 2024.

The ban on Le Pen's running for office

Contrary to the widely shared assumption beforehand, the legal basis for Le Pen's immediate disqualification from running for office was not – as we can now read in the recently leaked reasons for the verdict – found in the *Loi Sapin II*. Under this law – which came into force on December 11, 2016 – Art. 432-17 *Code Pénal* was changed so that courts no longer have discretion in deciding whether to revoke passive voting rights; the measure is mandatory to combat corruption. However, the applicability of the *Loi Sapin II* was disputed from the beginning, because all of Le Pen's actions were completed before December 11, 2016. The court did not resort to legal maneuvering to include the period in question and apply the automatic provision from *Loi Sapin II* but instead relied on the long-established norm and practice of imposing the ancillary penalty of ineligibility under Article 131-26-1 of the *Code Pénal* as a discretionary decision.

In the justification required for the discretionary imposition of this ancillary penalty, the court nevertheless extensively referred to the *Loi Sapin II*: This legislative reform of 2016 was driven by a tax fraud scandal involving a left-wing politician, the "Cahuzac affair." In response, the law aimed to restore public trust through greater transparency. It might be interesting to note that at the time, Marine Le Pen not only did not oppose the *Loi Sapin II* – on the contrary, she called for a "lifetime ineligibility" of convicted politicians.

At the heart of the so-called "scandal" for many is likely the issue of immediate enforcement ("*inéligibilité avec exécution immédiate*") under Article 471 al. 4 of the *Code de Procédure Pénale*. The law allows criminal courts to issue interim orders to prevent an appeal from having a suspensive effect. In particular, the legal consequence of ineligibility can be declared immediately effective, with no separate legal remedy available against it.

The legislature leaves it to the trial court to assess whether immediate enforcement is appropriate and, after a proportionality review, to reach a discretionary decision.

In this case, the court emphasized two key arguments. First, on grounds of specific crime prevention, it focused on the risk of recidivism ("*risques de récidive*"): someone willing to do anything to ensure their party's survival might also do so to become president. The counterargument that Le Pen is no longer an EU parliamentarian and thus unlikely to reoffend did not convince the court. Additionally, the risk of recidivism was based in the obstructive trial strategy, not acknowledging the facts or her errors that showed in total a complete disregard for the rules of the European Parliament, the laws of the French Republic, and previous judicial decisions, adhering only to its own principles. For the court, it reflected a lack of democratic understanding of political office and its responsibilities (see pp. 40 et seq. of the leaked judgment).

Secondly, the court highlighted the risk of severe public disorder ("*trouble majeur à l'ordre public*"). Contrary to the narrative of RN, the risk of public disorder was not linked to the fact that Marine Le Pen was running for the highest office, but based in the court's role to ensure that elected officials, like all citizens before the law, do not receive special treatment that would undermine the public's trust in political life. A presidential candidate with a well-founded first-instance conviction for political corruption could severely damage public confidence in democratic institutions (see p. 45).

Nothing in this argument stands out from established French judicial practice. Immediate enforcement was ordered in 4% of cases involving ineligibility as an ancillary penalty last year. That may sound low, but it still amounted to 639 people in the same situation as Marine Le Pen. In addition, the French Constitutional Council ruled on March 28th that it was constitutional to revoke passive voting rights without suspensive effect in a regional case involving a convicted municipal councilor. The rationale was there also to protect public trust in elected officials, as corruption and abuse of office undermine democratic integrity.

To sum up: The order for immediate effect is certainly unusual from a German perspective, and one could reasonably criticize the fact that criminal law allows for immediate enforcement without any form of interim legal protection. However, this does not make the ruling a scandal but rather calls into question a long-standing legal norm.

In this particular case, it should also be considered whether – conversely – the greater risk is that candidacy for office could be used as a powerful way into impunity. A glance across the Atlantic and at the Mueller investigation makes it clear that this is not an implausible concern.

The Dilemma of Modern Democracies

Le Pen's conviction underscores a fundamental dilemma in modern democracies: To what extent can a criminal trial influence democratic processes by disqualifying a politician from office? Can we judge politicians without being political?

Despite the straightforward application of the law, the accusation persists that judicial proceedings have preempted democratic decision-making. Le Pen has portrayed the trial as politically motivated, stating: "*C'est ma mort politique qu'on réclame*" – "They are demanding my political death." Kremlin spokesman Dmitry Peskov quickly echoed this sentiment, claiming democratic norms had been violated.

The challenge with allegations of "political trials" is that judicial authorities always deny political motives, while defendants invariably claim them. And of course, this holds true: We should never assume we are entirely safe from political influence in the judiciary. A basic commitment to the rule of law requires constant effort to uphold judicial independence and critically reflect on any allegations of bias.

But there are indicators we can rely on: Were procedural rights upheld? Was the application of the law well-reasoned? Are there avenues for appeal? Are there precedents?

And ultimately, one thing must be clear: Just because a trial is conducted against a politician and ends with a sanction does not make it a political trial. That's simply the rule of law in action. Leading politicians such as Alain Juppé and François Fillon have also been stripped of passive voting rights, with devastating effects on their careers. This well-established legal practice now also applies to Le Pen. That is the essence of the rule of law – it applies to everyone, including those who by the way have long criticized a judiciary they claimed was too lenient.

What's still possible?

Le Pen has announced her intention to appeal. Following the strong reactions in the media and public discourse, the appellate court (*cour d'appel*) has now announced a decision by summer 2026 – an unusual move, but a strategically smart one. Le Pen now knows the *calendrier judiciaire* – the timeline of the appeal – but not its outcome.

The hypothesis that she will be a candidate in 2027 is, at this point, still not the most likely one.

A potential appeal to the Court de cassation (*pourvoi en cassation*) could, in the best-case scenario, be resolved within six months. With the presidential elections scheduled for mid-April 2027, that would leave about five to six months remaining. However, the chances of overturning the verdict before the presidential election are slim. The problem for Marine Le Pen is that there's truly no guarantee the court of appeals will reach a different conclusion than the trial court. In theory, however, there are three – maybe four – possible outcomes:

First option: She is acquitted on appeal. But given the well-documented system in question, that's going to be a tough outcome to achieve.

Second and most favorable option: The Court of Appeal reduces the ineligibility period to 1.5 or 2 years. Since that period begins running from the date of the trial court's decision, it would expire in time for her to meet the eligibility requirements for candidacy.

Third option: The trial court's verdict is upheld – and the chances that the appellate judges will *not* impose ineligibility are slim, since under existing case law, the loss of eligibility to run for office is typically imposed in similar cases.

A very last resort could be the proposal by far-right MP Éric Ciotti, leader of the Union of the Right for the Republic (UDR). According to his – apparently already drafted – bill, Articles 131-26-2 of the *Code pénal* and 471 paragraph 4 of the *Code de procédure pénale* would be amended to exclude the immediate enforcement of the ineligibility sanction.

If this new law passes before the appeal decision, it would be applied immediately under Article 112-2 of the *Code pénal*, and Le Pen could run for office. Even if the "*Loi Ciotti*" were to come into force only after the appellate judgment, the established jurisprudence of the *Conseil constitutionnel* strongly suggests that such a law – which is more favorable to the convicted person – would apply retroactively.

The chances of such a plot twist are not zero, given the current parliamentary majorities – and it would no doubt delight the bill's author himself, as Éric Ciotti is currently under investigation for the embezzlement of public funds. *Honi soit qui mal y pense*.

Where the Law Ends…

In the meantime, speculation about the "Plan B" like "B"ardella for the far-right RN is growing. The 29-year-old Jordan Bardella is viewed by some as a pragmatic alternative to Le Pen. Certain segments of the French economic elite, including billionaire Vincent Bolloré and his media empire CNews, consider Bardella a more business-friendly and consensus-oriented option.

Though the party currently denies Bardella's candidacy, the real democratic challenge lies in dealing with the less wrinkled faces of the far-right movement. And the humbling truth is: There is no perfect formula for how to deal with the far right.

The strategic question of whether showing restraint demonstrates exceptional fairness – and in doing so ultimately strengthens the democratic system and the rule of law – seems, at least when looking at the United States, not convincing. What's clear is that the martyr narrative – of sidelining a political opponent – can always take hold and serve to energize extremist camps. On the other hand, that cannot stop us from applying the law.

So – as Andrew Weissmann reminded us – where the law ends, challenges begin: In a polarized society influenced by far-right positions, the challenge is not just to apply the law correctly – it is also to counter narratives that undermine the rule of law. So let's begin by explaining: No one is in jail, no one's "political death" was caused by a court, Marine Le Pen is not Navalny and if you really feel the need to quote the German pastor Martin Niemöller ("…and I did not speak out – because I was not …"[1]) – as some cynically did in this context – consider introducing "first they came for the rule of law" and think of the judges – bound by confidentiality, unable to respond to the current outcry, quietly continuing their work… now, however, under police protection.

[1] "First they came for the socialist, and I did not speak out – because I was not a socialist. Then they came for the trade unionists, and I did not speak out – because I was not a trade unionist. Then they came for the Jews, and I did not speak out – because I was not a Jew. Then they came for me – and there was no one left to speak for me." This famous quote circulates in various versions and is attributed to different sources, see: Niemöller, Was würde Jesus dazu sagen?", Frankfurt 1986.

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