Enforcing the Law of Democracy

On the Marine Le Pen Ineligibility Judgment and Its Implications

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It was a political bombshell. On Monday, 31 March 2025, Marine Le Pen, leader of the far-right party *Rassemblement National* (National Rally) in France, was convicted of misappropriation of public funds in the so-called "parliamentary assistants" case. She was sentenced by the Paris Criminal Court to four years of imprisonment, including two years to be served, a fine of 100,000 euros, and a five-year period of ineligibility to hold public office immediately enforceable.

This unprecedented judgment jeopardizes the very possibility for the leading candidate in the upcoming 2027 presidential election to run for office. While neither Marine Le Pen nor the broader public appeared surprised by the conviction itself, given the underlying facts of the case, two elements of the ruling proved entirely unexpected. The first was the imposition of the additional sanction of a ban on standing for public office. The second, and even more striking, was the immediate enforceability of this sanction, despite the pending appeal.

We argue that the judgment is marked by an unusual degree of judicial creativity, particularly in its underlying conception of democracy, which may be understood through the lens of militant democracy. Although it does not constitute a political judgment in the traditional, partisan sense, its constitutional and symbolic significance is substantial—and the backlash it has provoked against the judiciary is a cause for concern.

Penalty Effectiveness and the Risk of Recidivism: the Justification behind Immediate Enforcement

Fully aware of the unprecedented stakes and the inevitable criticism, and placed in a particularly difficult position, the panel of three judges delivered a notably detailed and extensive ruling—departing from the conventional brevity and formalism typical of civil law judgments grounded in legal syllogism and deductive reasoning.

It is important to note, however, that in this particular instance, a special motivation was also legally required. At the time the offenses were committed—prior to the enactment of the December 2016 law—ineligibility was not a mandatory penalty, as it is under current legislation. Today, the law imposes ineligibility without the need for judicial justification in cases involving breaches of the integrity of public officials, among other crimes (though not automatic in all cases).

In Marine Le Pen's case, the five-year ban from holding public office constituted an additional and discretionary penalty. Consequently, the Court was obliged to provide a detailed justification. This requirement was readily met, given the gravity of the offenses. The case revealed a long-standing, organized scheme involving 24 MPs over a period of 11 consecutive years, resulting in the misappropriation of nearly three million euros.

What was most unexpected in the ruling was not the ineligibility sanction itself, but rather its immediate enforceability. This aspect represents the core of the controversy surrounding the decision. Immediate enforceability constitutes an exception to the general principle in French criminal law, whereby penalties are typically enforced only once all avenues of appeal have been exhausted. This exception was introduced into French law primarily as a response to systemic delays within the judicial process.

In practice, waiting for a conviction to become final before enforcement often results in sanctions being applied several years after the underlying offenses. The French Constitutional Council therefore

authorizes immediate enforceability in certain circumstances, provided that judges carefully assess two key criteria: the risk of reoffending and the need to preserve the penalty's effectiveness and meaning.

With respect to the former, the Paris Court subtly inferred this risk from Marine Le Pen's very personality and her defense strategy: considering her "*lack of acknowledgment of the facts*" and even her "*claimed impunity*," the judges found no assurance that she would not repeat the offenses. Specifically, there was no guarantee that she would refrain, during the presidential race, from employing the same illegal methods to enrich and advantage her party, thereby undermining equality among political competitors. Ultimately, Marine le Pen has not only betrayed the trust of EU citizens and French voters; she and her party have also broken the rules of democratic competition.

Having established the risk of recidivism, the judges still had to demonstrate why immediate enforceability was essential to maintaining the penalty's effectiveness. In line with established French jurisprudence, the Paris Court highlighted that without such immediate enforcement, the ban from running for public office would effectively become meaningless, as the elections would likely occur before the conviction could become final. In other words, absent immediate enforceability, a person convicted of extremely serious offenses at first instance—and perhaps definitively, subsequently— could potentially stand or even be elected to the country's highest office. In the event of a victory, Le Pen would benefit from presidential immunity for the duration of her term.

A Creative Judgment: the "irreparable harm to democratic public order"

By contrast, U.S. election law makes it notoriously difficult to disqualify candidates from seeking public office. The U.S. Constitution imposes minimal qualification requirements for presidential candidates, and whether individual states have the authority to assess or enforce these requirements has been the subject of extensive scholarly debate. Notably, a felony conviction does not constitute grounds for disqualification. Even the most extreme disqualification mechanism—Section 3 of the Fourteenth Amendment, which targets individuals involved in insurrection—was deemed unenforceable by states acting unilaterally, following the U.S. Supreme Court's ruling in Trump v. Anderson.

In stark contrast, the Paris Court considered it inconceivable that a candidate convicted and declared ineligible could nonetheless stand for election pending appeal. In a notably creative legal move, the judges introduced and relied upon the emergent concept of "*democratic* public order" to justify immediate enforceability. This concept was invoked to articulate the irreparable harm that would result from allowing a convicted individual, found guilty of serious financial misconduct, to run and possibly win the presidency—an outcome viewed as incompatible with the integrity of democratic institutions and the rule of law.

The emergence of the concept of "democratic public order" in this judgment is particularly significant—and arguably troubling. While it pursues a progressive objective—safeguarding democratic integrity—it does so by invoking the traditionally conservative and security-oriented notion of *public order*. Firmly rooted in French administrative law, *ordre public* has long encompassed both tangible elements, such as public safety, and intangible ones, including human dignity. The Constitutional Council has recognized the protection of public order as a constitutionally legitimate objective. In particular, when reviewing the constitutionality of mandatory ineligibility, it affirmed that such a sanction *"contributes to reinforcing the requirement of integrity and exemplarity among elected officials."* Still, the Council recently reaffirmed the necessity for the courts to assess "*the proportionality of the interference that this measure is likely to cause with the exercise of an ongoing mandate and with the preservation of the voter's freedom*".

In the Le Pen case, the judges appear acutely aware that their decision, rendered in the context of a presidential election, would entail a serious restriction on the freedom of political choice for the ten million voters who supported Marine Le Pen. Yet it was precisely because presidential elections represent a critical juncture in the life of the Republic that the

Court deemed the potential disruption to democratic public order—should a convicted candidate be permitted to run—as not only substantial but *irreparable*. In invoking this newly articulated principle, the Paris Court may have been seeking to develop a jurisprudential basis for evaluating the proportionality of restrictions on electoral rights. By framing the immediate enforceability of ineligibility as a necessary measure to preserve democratic legitimacy, the Court anchors its reasoning in a broader normative defense of constitutional democracy.

As such, the creation of the concept of democratic public order may also be interpreted through the lens of militant democracy theories. Rooted in the idea that certain democratic freedoms—such as freedom of expression or political participation—may need to be legally restricted to safeguard democracy against internal threats, militant democracy offers a compelling framework for understanding (but also criticizing) the Paris Court's approach. From this perspective, the judges' decision to establish a newly articulated concept can be seen as an effort to defend the democratic order from actors perceived to undermine its foundational values.

Yet, on the other hand, does this legal innovation not also risk signaling a problematic form of judicial activism or "government by judges"? Within the context of French constitutional culture, such a characterization carries significant weight. Judges on the bench—professional magistrates appointed through a career judiciary and constitutionally independent of the executive—are not expected to assume a politicized role. Indeed, Article 64 of the French Constitution frames the judiciary not as a coequal *power* (*pouvoir*) alongside the executive and legislature, but merely as an *authority* (*autorité*).

The central question repeatedly raised by this decision remains: was this, in essence, a political judgment?

Was it a Political Judgement?

The answer to this seemingly simple question ultimately depends on how one understands the meaning and scope of the *political*. Two interpretations emerge.

If by "political" one refers to a partisan judgment —that is, a decision reflecting the judges' personal or ideological opposition to the National Rally's platform —then the answer must be resolutely negative. Unlike decisions grounded in moral or policy assessments of government action—such as those evaluating the French state's response to the COVID-19 crisis—the ruling at issue falls squarely within the penal domain. It does not address the content of the politician's political program, nor does it concern her current status as a sitting Member of Parliament. Instead, it involves the straightforward application of criminal laws that were democratically enacted—including with the support of the very party whose member was prosecuted.

Indeed, the legal framework underpinning the judgment reflects a broader political consensus aimed at the moralization of public life. The legislation in question was not only endorsed by a parliamentary majority, but was also supported by the National Rally itself. Notably, Marine Le Pen personally advocated for even more severe penalties—such as lifetime bans from public office—during the 2013 parliamentary debates.

If, however, the term *political* is understood in the broader sense of expressing a conception of democracy, then the judgment undeniably carries political weight. It asserts the importance of applying the law as provided by *"The legislator, having spoken through the voice of the representatives of the sovereign people"*. Citing the principle of equality before the law, the court adds that elected officials are not entitled to any immunity when it comes to violations of criminal law.

This line of reasoning directly challenges the defense's argument that the democratic legitimacy of the ballot box should prevail over the authority of unelected judges. In response, the court asserts that the proposal to defer sanction to a future electoral contest—in which the people could hypothetically choose to reject the candidate—*"amounts to claiming a privilege or immunity arising from the status of being an elected official or candidate, in violation of the principle of equality before the law."*

Such reasoning, unexpected in both tone and scope, reveals another sense in which the ruling is political—not in terms of partisan alignment or judicial overreach, but in its constitutional and symbolic dimension. The judgment reflects a clear awareness of its broader democratic implications, and even admits the "*necessary humility*" of a first instance Court. While acknowledging the political stakes of excluding Marine Le Pen from the 2027 presidential race, it firmly reminds the public that its ruling is rendered – like all rulings – "in the name of the French people." Yet crucially, the people referenced here are not a numerical majority or electoral faction, but the constitutional sovereign in whose name both law and justice are pronounced.

By anticipating critiques that the judgment undermines democracy, the court instead reaffirms a conception of constitutional democracy—one in which the rule of law, judicial independence, and equality before the law take precedence over majoritarian claims.

Reactions to the Judgment and the Specter of Illiberalism

The global reactions to the decision, however, reveal a more troubling dynamic. Campaigns such as "#JeSuisMarine" launched by Hungarian Prime Minister Viktor Orbán, accusations of violation of democratic norms coming from the Kremlin, and claims of judicial abuse by Elon Musk and President Trump highlight the emergence of a rhetoric aimed at delegitimizing judicial institutions in favor of elected authorities. While one may debate whether the timing or substance of the decision was politically opportune—a question ultimately beyond the scope of legal reasoning—the more pressing concern lies in the environment of intimidation and personal attacks directed at judges. Instances of doxxing, in which personal addresses of judges have been shared online, underscore a disturbing trend. These actions mirror those seen in other contexts, such as threats against jurors in the United States and the political capture of courts in Hungary and Poland, and contribute to a climate that might ultimately undermine judicial independence.

In liberal democracies, the rule of law relies not only on the judiciary's formal independence but also on the respect it commands from elected officials and the public. When that respect is eroded—through delegitimizing rhetoric, intimidation, or personal attacks—it signals the onset of democratic backsliding. The current case offers a telling illustration. In order to uphold the rule of law—specifically, the right to a two-tier judicial process—the judicial timetable has been deliberately expedited. In a recent press release, the Paris Court of Appeal announced that the appeal trial would take place in 2026. This timeline ensures that the appellate decision—which could potentially lift Marine Le Pen's ineligibility—will be issued well before the 2027 presidential campaign.

This acceleration does not reflect a reactionary adjustment to political pressure, as clarified by the Paris Prosecutor General. Rather, it had been anticipated months in advance—not because the outcome was predetermined, as conspiracy theories allege—but because, given the unprecedented nature of the case, an appeal was virtually certain and the democratic stakes particularly high.

Only certain aspects of what remains, at its core, a technical issue of criminal law have been presented here—an issue that may well be subject to criticism on other grounds. However, if illiberalism is to be located in this case, it lies not in the conduct of the judiciary—which has acted within its institutional mandate and procedural safeguards—but in the reactions the decision has provoked, and what these reactions may signal in an era increasingly marked by constitutional populism and attacks on the rule of law.

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