The Conviction of Nicolas Sarkozy

A Republican Reading

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France often takes pride in calling itself a Republic. Invoking the Republic has even become a political mantra, repeated across the entire political spectrum, from the far left to the far right. Yet the sheer frequency of these references has emptied the term of much of its meaning. The reactions to Nicolas Sarkozy's conviction suggest that many journalists, politicians, and citizens still struggle to grasp what it truly means to be "republican"[1]. Although the judgment of the Paris Criminal Court is particularly thorough, it has provoked widespread controversy, reopening the enduring debate on political justice in France, while also appearing as a sign of the strengthening of the republican ideal.

A reasoned judgment

Nicolas Sarkozy was prosecuted on several charges: corruption, illegal campaign financing, concealment of misappropriated Libyan public funds, and conspiracy. He was found guilty only of the latter and acquitted of the other charges. The case was complex, and the court issued a 380-page ruling concerning Sarkozy and the other defendants. In essence, the judges held that Sarkozy conspired with close associates and members of the Libyan government to prepare a corrupt pact aimed at funding his future presidential campaign. The quid pro quo for this illicit foreign funding was twofold: France's support in handling the Libyan situation and assistance in the criminal proceedings against Abdallah Senoussi, a terrorist responsible for the DC-10 bombing, which killed 170 passengers.

The court recognized that the pact ultimately never materialized: the money was never found, and perhaps never transferred. This explains the acquittals on the corruption-related charges. But under French law, conspiracy allows judges to sanction the preparation of a crime even when the crime itself is not completed (see Article 450-1 of the Penal Code). This is precisely what the judges retained: Sarkozy had evidently taken positive steps towards a future act of corruption. As for his sentence, the court imposed a five-year prison sentence with immediate enforceability (*execution provisoire*), a fine of €100,000, a five-year ban from holding public office, and a five-year disqualification from elected office, also immediately enforceable. Finally, the prison sentence is accompanied by a deferred committal order (*mandat de dépôt différé*), which means that Sarkozy has some time to put his affairs in order before serving his sentence.

A controversial judgment

In every democracy, power, including judicial power, must be subject to the scrutiny of citizens. It is therefore normal that this decision has sparked controversy. One might regret, however, the virulence and polarization of the criticisms, particularly those emanating from the political sphere, which prompted President Emmanuel Macron, the "guardian of judicial independence" (Article 64 of the French Constitution), to come to the defence of the judiciary. Moreover, in a democracy, such criticisms can never justify the death threats received by the magistrates who handed down the ruling. Above all, one might regret the imprecisions in the debates that deserve clarification.

The first debate concerns the offense of conspiracy (*association de malfaiteurs*). Although it was introduced into the Penal Code in 1893, this offense has always raised questions due to the vagueness surrounding its definition[2]. It is true that material elements such as "agreement" (*entente*) and "group-

[1] C. Laborde, *Français, encore un effort pour être républicains !*, Le Seuil, 2010.

ing" (*groupement*) are poorly defined, and the intention involved may seem ambiguous in certain cases. However, the claim that this offense punishes mere intent and lacks a material element seems overstated. Conspiracy aims to punish the preparatory acts – characterized by one or more material facts – of a crime or offense which, for whatever reason, was not carried through. The idea is to neutralize offenders without waiting for them to act. The utility of such an offense becomes evident in the context of organized crime. Should we really wait for a criminal act to be executed if evidence of its preparation accumulates? As for the material element of the offense in this case, the court identified it clearly: meetings, exchanges, the establishment of covert financing networks, etc. (see Part 3, Chapter V, Section 3, V, point 4 of the judgement).

The second debate centres around immediate enforceability (*exécution provisoire*). Immediate enforceability requires the application of penalties imposed by the judge even though the decision is not final, for instance, when the defendant lodges an appeal. Undermining both the right to an effective remedy and the presumption of innocence, this provisional enforcement remains strictly regulated: priority is given to the appeal and this form of sentence enforcement must appear necessary. In this case, the court held that immediate enforceability was "indispensable to guarantee the effectiveness of the sentence in view of the seriousness of the disturbance to public order caused by the offense" (see Part 4, II, point 6). This case has at least highlighted that immediate enforceability is a common practice in French courts (89% for sentences exceeding two years' imprisonment). It also serves as a reminder that, as the Constitutional Council has emphasized (n° 2017-752 DC of 8 September 2017), the presumption of innocence must be reconciled with the constitutional objective of safeguarding public order.

One may nonetheless note the irony of the situation: this widespread practice was promoted and encouraged by politicians – particularly on the right and far right – who are now facing its consequences. Should one lament that it applies to "white-collar" crime? Or should one see in this criticism a minimization of "crimes and offenses against the nation, the State, and public peace" to borrow the terms of Book IV of the Penal Code? It is precisely this last point that allows us to connect the case to republican philosophy.

A political judgment?

Beyond these technical considerations, another line of criticism has focused on the alleged politicization of the judiciary. The argument is familiar and can be developed along two dimensions.

First, an individual dimension: one of the judges who handed down the decision belonged to a union and had previously protested statements made by Sarkozy while he was President. It is true that in France, the status of magistrates differs from that in other countries. A magistrate may also serve as a local elected official or be a member of a political party. This can raise concerns about judicial impartiality. Yet union membership is meant to protect judges' labour rights and does not in itself undermine impartiality. In addition, a magistrate has the duty to recuse themselves if they believe they are biased, and the defence lawyer may also request recusal. Finally, in cases, like this one, where offenses carry more than five years of imprisonment, rulings are issued by a panel of three judges. In truth, blaming the judiciary is often a way to avoid facing the facts.

Along the same lines, some critics have extended this into a collective accusation: that the entire judiciary is politicized and hostile toward right-wing politicians. This echoes the "Trumpization" of public debate: dismissing unfavourable judicial outcomes as partisan attacks. In this regard, the criticisms directed at the decision under discussion are reminiscent of those voiced after Marine Le Pen's conviction last March. If we follow this logic, it will become impossible to try political figures at all, which would be a problematic dead end. In truth, while the claim of politicized justice is disheartening, it raises a fundamental question of principle: can politicians be judged, and if so, how? Should one imagine a special court partly composed of politicians? France already

[2] C. André, *Droit pénal spécial*, 7e ed., Dalloz, 2024, pp. 531-535

has such an institution: the Court of Justice of the Republic, which tries ministers for crimes and offenses committed in the exercise of their duties. This court is composed of three magistrates and twelve parliamentarians. It is also widely criticized[3], as it tends to impose lenient sentences in what appears to be political backscratching.

Another line of critique is that this judgment constitutes further evidence of the "judicialization of politics" – the idea that the political process is increasingly constrained by judges. This interpretation is misleading. A distinction must be drawn between two different cases. The first concerns the criminalization of political responsibility, as with the proceedings brought against former Prime Minister Édouard Philippe, and former health ministers Agnès Buzyn and Olivier Véran for their handling of the Covid-19 crisis. This drift is indeed questionable, since the judiciary is not well placed to evaluate strictly political decisions. The Sarkozy case, however, is of an entirely different nature. Here, the court was not judging political choices, but criminal acts carried out through political office yet unrelated to its functions. The point was not to prosecute a politician for making a political decision, but to judge someone who betrayed their office for personal gain. In this perspective, ordinary criminal law applies.

The true meaning of the Republic

At a deeper level, the case exemplifies republican philosophy. At its core lies civic virtue: the ability to distinguish the public good from private interests. When leaders confuse the two, the political system itself becomes corrupted. The distinctive feature of republican philosophy, particularly in its modern form, is its claim that virtue must be institutionalized.[4] Modern republicanism emphasizes that virtue should not depend solely on individual conscience but be reinforced by institutions.

In this respect, France experienced a genuine "republican moment" in the mid-2010s, following a series of scandals. Several laws were adopted to strengthen standards of probity for political leaders: the creation of a High Authority for Transparency in Public Life (*Haute autorité pour la transparence de la vie publique*), obligations to declare interests and assets, and so forth[5]. Within this republican framework, the judiciary plays a fundamental role in reinforcing governing virtue: it is one of the guardians of the integrity and the authenticity of political deliberation[6], by preventing the diversion of democracy for the benefit of a few. Authentic republican deliberation presupposes that collective decisions emerge from a fair and transparent process, where all voices can be heard and public reasoning is not distorted by private interests. The courts contribute to this authenticity by ensuring that the procedural conditions of debate are respected, protecting the deliberative process itself from manipulation or exclusion. Republicanism thus advocates state interference in order to prevent social domination and, ultimately, to guarantee the freedom and equality of all. The same logic applies to the regulation of political party and campaign financing, which likewise seeks to preserve the fairness and authenticity of democratic competition. Far from endangering the Republic, this decision serves as a reminder that judges are indispensable – not to replace political decision-making, but to ensure it is conducted in the public interest.

After Louis XVI, condemned for high treason, and Philippe Pétain, condemned for "treason and collusion with the enemy", Nicolas Sarkozy will be the third French head of state in history to serve a prison sentence.[7] The ruling of the Paris Criminal Court is therefore indisputably historic. It does not signal the rise of political justice in France; rather, it strengthens the republican ideal at the heart of the Fifth Republic.

[3] For a comprehensive work on the subject, see: C. Guérin-Bargues, *Juger les politiques ? La Cour de justice de la République*, Dalloz, 2017

[4] J.-F. Spitz, *La liberté politique : essai de généalogie conceptuelle*, PUF, 1995, pp. 210-212 ; P. Pettit, *Républicanisme : une théorie de la liberté et du gouvernement*, Gallimard, 2004, p. 293-308.

[5] See : Loi organique n° 2013-906 du 11 octobre 2013 relative à la transparence de la vie publique ; Loi n° 2013-907 du 11 octobre 2013 relative à la transparence de la vie publique ; Loi n° 2016-1691 du 9 décembre 2016 relative à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique; Loi n° 2017-1339 du 15 septembre 2017 pour la confiance dans la vie politique.

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[6] T. Carrère, *La démocratie constitutionnelle à l'épreuve du républicanisme. Sur la dualité philosophique du constitutionnalisme moderne*, Mare&Martin, 2025, pp. 605-671.
[7] President Jacques Chirac had been sentenced to a suspended prison term and thus never saw the inside of a cell.