

Part 2

Party Constitutionalism and Multiparty Democracy

Chapter 6 Political-Party Constitutionalisation in Senegal: The Challenges of Majoritarian Abuse

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1. Introduction

Senegal is recognised as a long-standing democratic country in Africa.¹ Political pluralism had been adopted before the country's independence, while the rights of political parties were enshrined in the Constitution as soon as Senegal gained independence in 1960. Political parties were given constitutional status for the first time in Senegal's Constitution of 26 August 1960.² After a period of one-party rule from 1966 to 1974, the nation returned to a system of political pluralism, albeit with restrictions on the number of authorised political parties. This limited multiparty system was first codified by Law 76-01 in 1976, which allowed for only three political parties, each representing a specific political current. Subsequent amendments to the constitution gradually expanded the number of authorised parties, with Law 78-60 in 1978 permitting a fourth party, and Law 81-17 (hereafter Law on Political Parties) establishing an unrestricted multiparty system in 1981.

However, despite these legal changes fostering political pluralism, Senegal saw the emergence of dominant parties reminiscent of the one-party systems common in many African countries. For more than 40 years following independence, the *Parti Socialiste* ruled the country. The first significant alternation of power occurred in 2000 when the *Parti Démocratique Sénégalais* (PDS), with Abdoulaye Wade as its leader, peacefully assumed the presidency after disputed elections against the incumbent, Abdou Diouf. In 2012, Macky Sall, leader of *Alliance pour la République* (APR), won the presidential election, thereby putting an end to Wade's

1 See A Stephan, "Stateness, Democracy, and Respect: Senegal in Comparative Perspective", in M Diouf (ed.), *Tolerance, Democracy and Sufis in Senegal*, New York, Columbia University Press (2013), p 205.

2 See AD Kebe, B Ba and SA Ndiaye, *Les Textes Fondamentaux de la République du Sénégal*, Dakar, L'Harmattan (2021).

presidency after 12 years in power and his attempt to run for a third term.³ Lastly, in 2024, Senegal successfully underwent a third alternation of power with the election of Bassirou Diomaye Faye of the opposition party *Patriotes Africains du Sénégal pour le Travail, l’Ethique et la Fraternité* (PASTEF) as the fifth president of Senegal.

Senegal has progressively undertaken constitutional reforms to reinforce its commitment to democratic principles. The current Constitution, adopted in 2001, acknowledges the vital role of political parties in the democratic process and seeks to clearly define their functions and responsibilities within the framework of the country’s governance. It provides in its Article 4 that

political parties and coalitions of political parties participate in the expression of suffrage within the conditions stipulated by the Constitution and the law. They play a crucial role in educating citizens, promoting their engagement in national affairs, and contributing to the management of public affairs.

Moreover, in 2016, the Constitution was amended by referendum to add a specific provision for opposition parties.⁴ According to the new Article 58, the Constitution

guarantees to the political parties which are opposed to the policy of the Government the right to oppose it. The Constitution guarantees to the opposition a status that permits it to carry out its missions. A law shall define this status and establish the rights and duties accruing to them as well as to the leader of the opposition.⁵

In recent years, there has been a notable surge in nationwide dialogues on the rights and obligations of political parties in Senegal, coinciding with escalating political tensions and social unrest. For instance, in 2019, the Electoral Code was amended to prevent the leader of the PDS from

3 AB Fall, “La Démocratie Sénégalaise à l’Épreuve de l’Alternance”, 5 (2012) *Afrilex*, <https://afrilex.u-bordeaux.fr/wp-content/uploads/2021/03/05dossfall.pdf> (accessed 5 February 2023).

4 Constitutional Law No. 2016-10, 5 April 2016, amending the Constitution 2024 of Senegal, https://www.constituteproject.org/constitution/Senegal_2016 (accessed 4 April 2024).

5 For commentary on this provision, see IM Fall, “La Réforme Constitutionnelle de Mars 2016 au Sénégal”, in IM Fall and A Sall (eds.), *Actualités de droit Public, Mélanges en l’honneur du Professeur Babacar Kanté*, Dakar, L’Harmattan (2020), p III.

participating in the presidential elections after having been condemned by a special jurisdiction that did not respect the rights of defence.⁶ During the same period, the leader of the *Takhawou Senegal* party⁷ also saw its presidential candidate excluded.⁸

More recently, in January 2021, the APR-led government intervened to stop the fundraising activities of the then opposition party PASTEF, asserting that the fundraising strategy violated the Law on Political Parties' provisions on party financing. Additionally, PASTEF's leader, Ousmane Sonko, was arrested and detained on various charges, including incitement to insurrection, endangering state security, and plotting against the authority of the state, only to be released recently following the enactment of an amnesty law.⁹ Sonko encountered numerous legal obstacles, including the lifting of his parliamentary immunity and his exclusion from the electoral register, despite a court order to reinstate him on the list. Then, in July 2023, Sonko's party was dissolved by the Minister of the Interior, marking it the first ban of a political party since Senegal embraced party pluralism. According to the minister, the dissolution was rooted in several factors, including allegations of inciting violence, undermining national security, and fostering political instability amidst increasing tensions surrounding the electoral process and political discourse. These developments have triggered a series of legal actions at both national and regional levels focusing on the constitutional rights of political parties, the freedom of expression of citizens, and their right to participate in public affairs.

Against this background, this chapter will examine the constitutional recognition of political pluralism and the legal safeguarding of political parties within institutional, political and democratic frameworks. It contends that although the establishment of political pluralism and the constitutional recognition of political parties are significant advancements, they do not sufficiently guarantee the protection of parties. Using Senegal as a case

6 See UN Human Rights Committee, *Karim Meïssa Wade c. Sénégal*, Communication No. 2783/2016, UN Doc CCPR/C/124/D/2783/2016, 22 October 2018.

7 Takhawou Senegal was formed after the breakup of the Parti Socialiste following the decision of the party's leaders to support President Macky Sall's APR in the 2019 presidential elections and not field their own candidate in these elections.

8 See "Opposition Leader Khalifa Sall and Karim Wade Barred from Senegal Presidential Race", *France 24*, 14 January 2019, <https://www.france24.com/en/20190114-senegal-opposition-leaders-khalifa-sall-karim-wade-barred-presidential-election> (accessed 10 March 2024).

9 Law No. 05-2024, adopted 6 March 2024, relating to general amnesty of the events occurring between March 2021 to February 2024.

study, the chapter argues that practical circumstances often expose how majoritarian abuse can erode the rights of political parties despite the existence of constitutional provisions. The chapter illuminates how actions taken by the APR-led government during Sall's presidency frequently encroached upon the rights of political parties.

The discussion is divided into five sections. After this introduction, section 2 provides an overview of the constitutional recognition of political parties in Senegal and their rights and duties. It examines how the Senegalese Constitution conceptualises the role of political parties in the consolidation of democracy, emphasising the need for protection and the nature of the responsibilities they assume. Section 3 focuses on gaps in the legal framework concerning the protection and regulation of political parties, while section 4 delves into the erosion of parties' rights by majoritarian abuse under Macky Sall's presidency. This section highlights the systematic administrative and parliamentary obstacles that hinder political parties' ability to express themselves freely and conduct their activities. The chapter concludes in section 5 by summarising its findings and offering recommendations for strengthening Senegal's constitutional and legal framework to ensure the protection of political parties. This section emphasises that safeguarding democratic principles and pluralism is essential for the existence of a resilient political landscape.

2. The constitutional recognition of political parties

The political landscape in Senegal is shaped by a complex interplay of rights, duties, and constitutional principles that govern the functioning of political parties. Various provisions enshrined in the Constitution aim to uphold fundamental freedoms such as the freedom of association, assembly, and demonstration, while also delineating the responsibilities incumbent upon political entities.

2.1 The rights of political parties

The foremost right is the freedom to create political parties. According to Article 4 of the Constitution of Senegal, "political parties are created freely". The same formulation is found in most French-speaking African

countries.¹⁰ The freedom to create political parties refers to the recognised ability of citizens to establish or join a political party without the authorities impeding their initiative. In concrete terms, the freedom to create political parties gives effect to the freedom of association. The creation of political parties, a driving force behind political pluralism, expresses the right of every citizen to organise, join, and participate in organisations which are intended to seek, exercise, and retain power.¹¹

In the democratisation movement, the new constitutions adopted in French-speaking regions of Africa, including Senegal, all recognised the right to freely create political parties. This right has led to an explosion in the number of political parties in Senegal, with more than 300 political formations recorded by the Ministry of the Interior for a population of 17 million inhabitants and an electoral register not exceeding seven million people.¹² During Wade's presidency from 2000 to 2012, there was a significant proliferation of political parties, with 143 parties having been established. This trend continued under President Sall's tenure from 2012 to 2024, with 111 new political parties emerging. The sheer number of parties became a logistical challenge during the 2017 parliamentary elections, when there were 47 different party lists on the ballot. As Senegal does not implement the single ballot system, the abundance of options made voting operations complex and time-consuming. To address this, the Constitutional Council issued Decision No. 5-E-2017, which allowed voters to streamline their options by selecting only five out of the 47 lists before entering the polling booth.¹³ This measure aimed to make voting easier and reduce congestion at polling stations.

Finally, during the latest elections, namely the 2024 presidential elections, the Constitutional Council received 93 declarations of candidacy from various political parties or coalitions of parties.¹⁴ Of these 93 candida-

¹⁰ For instance, Article 5 of the 1990 Constitution of Benin and Article 3 of the 1996 Constitution of Cameroon.

¹¹ JT Main, *Political Parties before the Constitution*, Chapel Hill, University of North Carolina Press (1973), p 67.

¹² A Savana, "Le Sénégal Compte 299 Partis Politiques", *Finanical Afrik*, 6 April 2018, <https://www.financialafrik.com/2018/04/06/le-senegal-compte-299-partis-politiques/> (accessed 12 March 2024).

¹³ Constitutional Council of Senegal, 14 August 2017, Decision 5-E-2017.

¹⁴ See Constitutional Council of Senegal, Decision No. 2/E/2024, 20 January 2024.

cies, only 20 were deemed admissible, which is a significant number for a presidential election.¹⁵

The Constitution of Senegal, like most constitutions in francophone African countries, recognises the freedom of assembly of political parties. According to the Senegalese Supreme Court, assembly is defined as “a temporary grouping of individuals to hear the presentation of ideas or opinions, to consult on the defense of interests”.¹⁶ This definition emphasises three points: the gathering is organised, that is, it is not fortuitous but intentional; it remains temporary; and it has a specific purpose, which is the exchange of ideas. This latter element is particularly relevant to the pluralism of political ideas. Any restriction on the freedom of assembly also constitutes a restriction on the possibilities of action of the political party, as the legal regime of assembly applies to gatherings or the exchange of ideas.

Aware of the fundamental nature of this freedom, the Supreme Court has sometimes intervened to act as a guardian of the freedom of assembly of political parties. For example, in the case of *Assane Ba and others v State of Senegal*,¹⁷ the Prefect of the Dakar department banned a sit-in in front of the Ministry of the Interior planned under the banner of the PDS (at the time an opposition party) on the grounds of disturbance to public order. The Court considered that in prohibiting the assembly envisaged by the applicants, the prefect merely invoked threats of disturbance to public order, obstruction of the free movement of persons and goods, and the risk of hindrance to the continuity of public services, without establishing an inadequacy of security forces necessary to maintain order. On this basis, the Court nullified the prohibition of the freedom of demonstration for the PDS, as the justification for such prohibition was deemed insufficient.¹⁸

¹⁵ Ibid.

¹⁶ Supreme Court of Senegal, *Assane Ba and 2 others v State of Senegal*, Decision No. 19, 23 May 2019, <https://juricaf.org/arret/SENEGAL-COURSUPREME-20190523-19> (accessed 12 March 2024).

¹⁷ Ibid.

¹⁸ See also the decision of 9 June 2016 of the Administrative Chamber of the Supreme Court, according to which the Prefect is obliged to specify the alleged risk as well as the absence of alternative measures to the ban. The Court found that the only reference to the disturbance of public order was insufficient and inadequate. See Supreme Court of Senegal, *Aa Ab AI v State of Senegal*, Decision No. 37, 9 June 2016, <https://juricaf.org/arret/SENEGAL-COURSUPREME-20160609-37> (accessed 12 March 2024). See also Supreme Court of Senegal, *Mamadou Wade v. State of Senegal*, Decision No. 29, 25 April 2024, case N° J/315/RG/23.

The freedom of demonstration, like the freedom of assembly, is also protected in Senegal. It allows citizens to gather publicly to express shared opinions through their presence and voices. This freedom includes the right to organise and participate in demonstrations in public spaces. Article 8 of the Senegalese Constitution guarantees this freedom, with laws detailing the conditions for its exercise. Political parties must declare their intentions to hold demonstrations in public spaces beforehand. Typically, party leaders in a given area submit a declaration to the relevant authority three days before the scheduled demonstration. The competent administrative body can prohibit the demonstration if the venue is unavailable, if there are risks to public order, if there is non-compliance with the law, or if there are other serious reasons. If there is no response or a reasoned refusal within 48 hours before the event, the demonstration is considered authorised.

2.2 The duties of political parties

According to Article 4 of the Senegalese Constitution, “political parties must respect the principles of national sovereignty and democracy”. This obligation reflects the intention of the constituent power to impose adherence to the values of the state on political parties. The content of such values is broad. It concerns, first, respect for the characteristics of the state: republican, secular, and democratic. Then, it covers the safeguarding of the republic’s institutions: their status, their powers, and their competences. Political parties must also respect national independence, territorial integrity, and the unity of the state, as well as public order and public freedoms.

The obligation to respect democracy raises some questions. First, what is meant by the principle of democracy? Does it cover both external and internal democracy? What makes a party internally democratic? Some scholars have compiled a list of features that characterise internal party democracy and which concern relations between party members and the structure and institutions of the party.¹⁹ These features include the ability of party members to elect the party leadership or recall it, including their ability to elect the party’s nominees to public positions; equal and proportional representation of intra-party minorities and majority-rule voting; the

¹⁹ See RH Valle, “La Democracia Interna de los Partidos Políticos”, in MP Hernandez (ed.), *Partidos Políticos: Democracia Interna y Financiamiento de Precampanas*, Doctrina Jurídica, No. 102, p 145.

ability of members to influence the party platform and agenda; the protection of party members' basic rights, including the right not to be expelled without a fair proceeding; the right to information and transparency of party management, especially fiscal accountability; freedom of speech and association within the party, especially with respect to forming factions; and the provision for independent judicial review of internal party democracy.²⁰

Senegal offers a demonstration of what Roberto Michels terms the "iron law of oligarchy", a phrase referring to the tendency for excessive power to become concentrated in the hands of party leadership.²¹ In terms of this "iron law", the party leadership arrogates ever greater powers to itself, while the power of individual members weakens, with the former becoming more suspicious of change as it concentrates on preserving its control. For example, in most political parties in Senegal, there is a conflation of the party and the figure of its leader, with the most important decisions being made not so much by the party's deliberative bodies as through the unilateral will of the leader.

The most illustrative case is the choice of the candidate for the 2024 presidential elections by the ruling APR. President Sall, the party's leader and unable to run for a third term, chose Amadou Ba as the APR's candidate not through a congress or a deliberative body of the party in accordance with its statutes. This caused frustration among other party leaders, who claimed to have more legitimacy than the chosen candidate, and led to some of them resigning from the party and running for the presidential elections by creating a new political party. The same can be said of the how PASTEF's presidential candidate was determined. Party leader Sonko, having been convicted in court,²² chose Faye as the party's candidate without this choice being made in accordance with the internal democratic principles of political parties.

As becomes clear from these examples, political parties in Senegal operate on basis of the unilateral will of a party leader, which is contrary to the requirements of democracy that should be observed in the internal gov-

20 Ibid.

21 See also C Grewe and H Ruiz-Fabri, *Droits Constitutionnels Européens*, Presse Universitaire de France (1995), pp 230–231; B Manin, *Principes du Gouvernement Représentatif*, Paris, Calmann-Lévy (1995), pp 279–299; K Lawson, "Partis Politiques et Groupes d'intérêt", 79 (1996) *Pouvoirs*, pp 37–45.

22 See section 4.2.2 for further discussion.

ernance of political parties. Whereas the Senegalese Constitution mandates that political parties must uphold the principles of national sovereignty and democracy, there is an evident lack of mechanisms for the robust enforcement of intra-party democracy. Currently, the provision largely remains symbolic, as there is no institutionalised oversight body or legal framework tasked with monitoring and ensuring democratic governance within parties.²³ Efforts to address this could involve establishing regulatory guidelines that enforce transparency and participatory decision-making processes within party structures, as demonstrated by the example of Kenya's Political Parties Act of 2011.²⁴ Additionally, reforms could include the creation of an independent authority to oversee and audit intra-party elections and candidate selection, thereby aligning political-party operations more closely with democratic ideals.

In addition to the obligation to respect national sovereignty and democracy, political parties in Senegal are also prohibited from identifying with "a race, ethnicity, sex, sect, language, or religion" pursuant to Article 4 of the Constitution. Such a prohibition is particularly significant in Africa, where constitutionalism has sought early on to consolidate the idea of the nation and combat national particularisms. The prohibition against identifying with an ethnicity naturally aims to combat the tendency for a political party to anchor itself exclusively in the ethnicity of its leader and to use ethnic particularities as a political platform.²⁵ However, despite this constitutional prohibition, ethnic voting and discourse have become increasingly prevalent in recent elections in Senegal, largely as a strategy employed by party leaders. This trend began with former President Abdoulaye Wade of the PDS, who leveraged his affiliation with the Mouride brotherhood as a tool for political mobilisation during the 2007 elections. Similarly, President Sall strategically utilised his dual ethnic identity (as a Hal Pular by origin and Serer by adoption) to rally votes. This tactic contributed to significant support for the APR in regions such as Hal Pular-dominated

23 Law No. 81-17 of 6 May 1981 on parties reiterates that "in accordance with the Constitution, the statutes of a political party must include a commitment to respect the principles of national sovereignty and democracy", without specifying in concrete terms what the requirements are in terms of democracy within the party.

24 On intra-party democracy in Kenya, see B Bwire, "Intra-Party Democracy and the Chasm between Political Parties and Democratisation in Kenya", in this volume.

25 For a comparative analysis of the widespread prohibition of ethnic parties in African constitutions, see J Socher and CM Fombad, "Prohibition of Ethnic Political Parties and Constitutionalism in Sub-Saharan Africa", in C Fombad, N Steytler and Y Fessha (eds.), *Ethnicity and Constitutionalism in Africa*, forthcoming.

Fouta (93.32 per cent) and Serer-dominated Fatick (80 per cent) during the 2019 presidential elections.

Sonko's emergence as the leader of PASTEF has also intensified debates on ethnicity within Senegal's political landscape. His identity as a politician from the Casamance region attracted significant regional support during the 2019 presidential elections and the 2021 local and legislative elections, where his coalition won multiple polls. His election as mayor of Ziguinchor, a major city in Casamance, underscores this support. However, members of the APR and their allies interpreted Sonko's speeches as promoting ethnic division and potentially exacerbating regional conflict. This reflects ongoing tension around the constitutional prohibition of ethnic parties and the broader issue of ethnicity in Senegal's political dynamics.

The same analysis can be applied to the prohibition against identifying a political party with a religion. Respect for secularism indeed implies the banishment of any political party of religious allegiance. Any political formation that aims to establish a regime based on religion and theocratic in nature, or whose discourse questions the separation between temporal power and spiritual power, should be dissolved or refused legalisation. However, the reality of political life shows a lack of rigour in the enforcement of such prohibition.

As a case in point, two parties in Senegal have been founded by religious leaders without their explicitly affirming the religious character of the parties. These are the *Parti pour la Vérité et la Démocratie* and the *Parti pour l'Unité et le Rassemblement*. The fact that they were created by religious leaders has raised debate about their constitutionality, albeit without the question being brought before the courts. The administration did not refuse to grant registration to these parties because nothing in their statutes suggests that they are parties identifying with a religion. However, it is clear that membership in a religious brotherhood is a criterion for party membership. Furthermore, during the 2000 presidential elections, several candidates openly expressed their desire to implement a political project inspired by Islam – even to place the Muslim religion as a mode of governance in case of victory – without being sanctioned either by the government or by the courts. Thus, even though it is prohibited for a party to identify with a religion, the increasing activism of political leaders in the political field calls for a rethinking of the requirement of the principle of secularism enshrined in the Senegalese Constitution.

3. The gaps in the legal framework

In the realm of Senegalese politics, the issues of political-party financing and the status of the leader of the opposition have emerged as critical points of contention, particularly in the light of recent constitutional reforms and political developments. The intricate relationship between political parties and financial support, both domestically and internationally, underscores the challenges facing democratic processes in Senegal. Additionally, the establishment and delineation of the leader of the opposition's role within the political landscape has sparked debates regarding the most appropriate criteria for selection and representation.

3.1 Political-party financing

If there is a cancer that plagues democracies, it is the issue of political-party financing.²⁶ In France, the model of inspiration of many African franco-phone countries, the intertwining of politics and “business” has often been problematic due to meticulous regulation. It is enough to recall the most publicised case of the last decade: the alleged Libyan financing of Nicolas Sarkozy's campaign, which led to his indictment.²⁷

Senegal's Law on Political Parties defines the modalities of financing political parties and establishing control of their accounts. Financing may come from the state or the private sector. While state funding, commonly referred to as direct public financing, does not raise particular issues, private sector funding raises several concerns for various reasons. Under

26 See I Teguh and AGP Sari, “Political Party Financing Regulation and Gaps for Corporate Donations: Case of the Developing Countries”, 13 (2024) *Journal of Governance and Regulation*, p 29.

27 The case involves allegations that Muammar Gaddafi's regime secretly financed Nicolas Sarkozy's 2007 presidential campaign to the amount of about USD 50 million. In the wake of these claims, French authorities launched investigations into potential corruption and foreign influence in politics. In 2021, Sarkozy was indicted on charges of corruption and influence-peddling related to the case, which he denied, asserting that the allegations were politically motivated. The scandal highlights concerns about transparency in political financing in France. See R Dupre, “Sarkozy to Face Trial over Suspected Libyan Financing of 2007 Presidential Campaign”, *Le Monde*, 26 August 2023, https://www.lemonde.fr/en/france/article/2023/08/26/sarkozy-to-face-trial-over-suspected-libyan-financing-of-2007-presidential-campaign_6109763_7.html (accessed 4 April 2024).

current Senegalese law, private contributions constitute the main source of financing for political parties. Article 3 of the Law on Political Parties lists the different sources of income for political parties, including membership fees and donations exclusively from national members and supporters.". Article 4(1) prohibits the direct or indirect receipt of subsidies from abroad or foreigners established in Senegal. The prohibition of foreign funding is aimed at ensuring the independence of parties seeking or holding power, and consequently, preserving the sovereignty of states.²⁸

However, the existing legislation is insufficiently developed to combat covert financing. Consequently, efforts to combat corruption and promote effective public governance tend to be superficial, as they are often undermined by a system of impunity that safeguards certain special interests. It is therefore necessary to establish a clear and transparent regime for private contributions. Unfortunately, Senegal's current legal framework is characterised by ambiguity. For example, while natural persons or legal entities (whether public or private) of foreign nationality cannot allocate sums of money to political parties, they retain their full legal capacity to make in-kind contributions, such as goods, services, or facilities. For instance, a foreign company might supply campaign materials such as banners and posters, or offer advertising services that enhance a party's visibility. Additionally, foreign individuals could provide logistical support, such as organising rallies or events.

These in-kind contributions can significantly bolster a party's campaign efforts by reducing expenses and enhancing their outreach, ultimately helping to sustain and strengthen their political presence. As noted by Babacar Gueye:

[P]olitical parties publicly and with impunity receive support from abroad or from foreigners established in Senegal in the form of in-kind donations and the provision of free services. Such practices punctuate Senegal's political life and even intensify as each election approaches.²⁹

Furthermore, the prohibition on the direct or indirect receipt of subsidies from abroad remains ambiguous. Are Senegalese citizens residing abroad affected by this prohibition? This is the nub of the issue raised by the so-

28 B Gueye, "La Réglementation du Financement des Élections au Sénégal", 25 (1995) *Revue de droit Africain EDJA*, p 50.

29 Ibid.

called “Nemekou tour” on the occasion of the 2024 presidential elections.³⁰ PASTEF launched a fundraising campaign, called the “Nemekou tour”, allowing it to raise FCFA 125 million in just 48 hours, with the majority of contributions coming from the Senegalese diaspora.³¹ The Minister of the Interior, through a statement, considered such a campaign to be a violation of Article 4 of the Law on Political Parties prohibiting political-party financing from abroad.³² PASTEF was therefore ordered to stop the campaign under threat of dissolution.

This reaction from the minister sparked debate on what should be understood by funds coming from abroad. In the minister’s interpretation, this also includes Senegalese residents abroad. In other words, the law would allow nationals residing in Senegal to contribute to political-party financing, but such a possibility is prohibited for Senegalese citizens residing abroad. Such an interpretation creates discrimination among Senegalese citizens based on whether they reside in Senegal or abroad. It would have been interesting to bring this question before the Supreme Court to shed light on the interpretation of the prohibition of funding from abroad in the Law on Political Parties. However, in this case, PASTEF stopped its fundraising campaign and did not appeal to the administrative judge for possible clarification.

This case proves that the legal framework on private financing of political parties needs to be reviewed and updated. Overall, it would be necessary to reconsider the absolute nature of the prohibition on contributions from abroad or foreigners living in the countries concerned. In practice, foreign foundations or other institutions are involved in political debates by financially supporting certain political parties. So why not align the law with these realities by allowing and incorporating this type of funding into a framework that combines transparency and equal treatment of political parties? States could then create a fund to assist political parties, which

30 M Soumaré, “Senegal, le Financement des Partis Politiques, un Sujet Tabou”, *Jeune Afrique*, 8 January 2021, <https://www.jeuneafrique.com/1100750/politique/senegal-le-financement-des-partis-politiques-un-sujet-tabou/> (accessed 4 April 2024).

31 See Sud Quotidien, “Levée de fonds pour le Nemekou Tour: Sonko Mobilise 333 Millions”, *Sud Quotidien*, 16 January 2023, <https://www.sudquotidien.sn/levee-de-fonds-pour-le-nemekou-tour-sonko-mobilise-333-millions/> (accessed 4 April 2024).

32 Dakaractu, “Levée de Fonds pour le Nemekou Tour: PASTEF menacé de dissolution”, *Dakaractu*, https://www.dakaractu.com/Levee-de-fonds-NEMMEEKU-TOUR-Pastef-menace-de-dissolution-par-le-Ministre-de-l-Interieur_a198221.html (accessed 4 April 2024).

would be funded, among other sources, by foreign contributions. Alternatively, they could take into account the freedom of choice of partners by allowing and subjecting foreign individuals or entities' contributions to a cap.³³

Regarding the public funding of political parties, this is an issue which has been raised repeatedly but never resolved. The Law on Political Parties mentions public financing but provides no indication of its actual implementation. During the 2016 constitutional amendment, the addition “the rules under which political parties operate and benefit from public financing are determined by law” was inserted in Article 4 of the Constitution. However, such a law has not yet been enacted, leaving a sense of incompleteness as regards the issue of public funding of political parties. Currently, no mechanism exists in Senegal to establish a state fund for the financing of political parties, which is unusual in view of the many democracies that provide public financial support. In the absence of government funding, political parties, especially opposition parties, rely primarily on private donations from individuals and businesses, membership fees, and fundraising activities. The law’s silence on certain aspects of the modalities of political-party financing leaves the door open to covert financing.³⁴

3.2 The Leader of the Opposition

Since the 2016 constitutional amendment, Senegal has opted to recognise the position of the Leader of the Opposition alongside a directly elected executive President.³⁵ However, the Senegalese Constitution does not provide detailed provisions on this matter; it simply stipulates that an organic law will define the status, rights, and duties of the Leader of the Opposition.³⁶ To date, no organic law has been adopted concerning this issue. However,

33 El H Mbodji, “Le Financement des Campagnes Électorales et des Partis Politiques dans les États Africains Francophones”, in *Les Actes du Symposium International sur les Pratiques de la Démocratie, des Droits et Libertés dans l'espace Francophone*, Bamako, October 2000, 3 ème réunion préparatoire “Les élections – Paris 25–27”, April 2000, p 9, www.francophonie.org/bamako (accessed 30 December 2024).

34 Ibid.

35 As is the case in Madagascar, Niger, Burkina Faso, Seychelles, Uganda, Zambia and Zimbabwe.

36 See Article 58 of the Constitution (2001).

through a national dialogue initiated by then President Macky Sall,³⁷ the topic was raised, and a draft organic law was proposed (though not yet approved by Parliament).

The proposed text specifies that the Leader of the Opposition is the candidate who comes second in the presidential election. Consequently, the status of the Leader of the Opposition would be determined by presidential rather than legislative elections. As a result, the mandate of the Leader of the Opposition aligns with that of the President. The Leader of the Opposition loses this status, apart from electoral defeat, in the event of resignation, permanent impediment, or death. According to the proposed law, the Leader of the Opposition enjoys the following rights: the right to media coverage of events related to the fulfillment of his or her mission; the right to reply to messages and/or other media interventions by the President or the Prime Minister; the right to be invited to all official state ceremonies and to be treated with the respect and honors due to his or her rank; the right to be part of delegations accompanying the President during domestic or international trips; the right to be involved in welcoming distinguished guests of the state; the right to be consulted or received in audience by the head of state whenever necessary on all national or international affairs; the right to be entrusted with specific national or international missions by the President; and the right to be treated as a president of an institution. Moreover, the Leader of the Opposition must refrain from resorting to violence in his or her activities, and is subject to complying with the obligations imposed on political parties by the Constitution.

The decision to appoint the candidate who comes second in presidential elections as the Leader of the Opposition has been contested by PASTEF leaders. They have consistently argued that the Leader of the Opposition should be selected from the most representative opposition parliamentary group in Parliament. In essence, they maintain that the Leader of the Opposition should be chosen by the largest party in Parliament, excluding the President's party. This practice is followed in several countries such as Kenya, Madagascar, or Zambia.³⁸ Now that PASTEF has come to power, it

³⁷ See the conclusions of the national dialogue (“Code électoral, Ousmane Sonko, Troisième Mandat: la Commission du Dialogue National Sénégalais rend ses Conclusions”), RFI, 23 June 2023, <https://www.rfi.fr/fr/afrique/20230623-code-%C3%A9lectoral-ousmane-sonko-troisi%C3%A8me-mandat-la-commission-du-dialogue-national-%C3%A9-%C3%A9galais-rend-ses-conclusions> (accessed 4 April 2024).

³⁸ E Bulmer, *Opposition and Legislative Minorities: Constitutional Roles, Rights and Recognition*, International IDEA Constitution-Building Primer 22, Stockholm, Inter-

proposes reopening discussions on the organic law concerning the status of the Leader of the Opposition.

4. Majoritarian abuse and the erosion of the rights of political parties

The erosion of the rights of political parties in Senegal is a troubling phenomenon that raises significant concerns about the state of democracy in the country. Majoritarian abuse, characterised by the use of legal and administrative mechanisms to weaken or dissolve opposition parties, threatens political pluralism and the democratic process. This section looks at two critical aspects of this issue: the dissolution of the PASTEF political party, and the violation of the right to participate in elections.

4.1 The dissolution of PASTEF

The Law on Political Parties outlines the circumstances under which political parties may be dissolved. According to Article 4(1), political parties must submit declarations and deposits to the Minister of the Interior, who is obligated to issue a receipt. These declarations involve reporting promptly on any changes to the party's statutes, while financial statements for each year must be deposited by no later than 31 January. These financial statements should demonstrate that the party's resources come exclusively from contributions, donations, bequests from national members and sympathisers, and profits generated from organised events. The failure to comply with these provisions can serve as justification for the dissolution of a political party.

Article 4 of the Law on Political Parties specifies further grounds for dissolution. For instance, a party may face dissolution if it receives subsidies, directly or indirectly, from abroad or from foreign entities within Senegal. Dissolution may also occur if the party, through its actions or public positions, blatantly disregards its constitutional obligations. These obligations include upholding the republican, secular, and democratic nature of the state; respecting the status, powers, and competencies of state institutions; and safeguarding national independence, territorial integrity, and state unity; as well as preserving public order and freedoms. According

national Institute for Democracy and Electoral Assistance (2021) (accessed 4 April 2024).

to the Law, dissolution is officially pronounced by decree following a report from the Minister of the Interior.

The provision was invoked to dissolve PASTEF in 2023.³⁹ President Macky Sall issued a decree justifying the dissolution on the basis of the party's failure to comply with Article 4 of the Constitution and Article 4 of the Law on Political Parties. According to the Ministry of Interior's report, PASTEF's leader, Sonko, frequently incited his supporters to participate in insurrectionary movements through press statements. These calls were widely heeded, resulting in serious disturbances of public order in March 2021 and again in June 2023, disturbances that led to numerous deaths and injuries, as well as the ransacking and looting of public and private property. According to Human Rights Watch, the government's decision to dissolve PASTEF violates the freedom of expression, association, peaceful assembly, and democratic participation.⁴⁰

Against this background, Sonko, arguing that the decision to dissolve his party was arbitrary and in violation of the freedom of assembly, filed a petition before the ECOWAS Court of Justice.⁴¹ Before the Court, Sonko argued that the dissolution of PASTEF, without a court decision, constituted a violation of the right to a fair trial. However, the ECOWAS Court limited its analysis to Senegalese law concerning political parties, which recognises the authority of the government to dissolve a political party by decree. According to the Court, there is no need for a judicial decision to effect dissolution as long as the law permits the President to take such action, and hence the Court could not supersede national authorities.

This decision was surprising given the regional and universal requirements for democracy and respect for human rights. The decision to dissolve a political party is a serious act with detrimental consequences for democracy and pluralism. Consequently, leaving the power to dissolve a political party in the hands of the President, who is also the leader of a ruling party, raises concerns about potential conflicts of interest. The

³⁹ The last political party to be dissolved in the country was the African Independence Party, in 1960. Since then, even during the Abdou Diouf era (1981–2000) and Abdoulaye Wade (2000–2012), no party has suffered this fate.

⁴⁰ I Allegrozzi, "Senegalese Government Dissolves Opposition Party", *Human Rights Watch*, 1 August 2023, <https://www.hrw.org/news/2023/08/01/senegalese-government-dissolves-opposition-party-cuts-internet> (accessed 23 March 2024).

⁴¹ ECOWAS Court of Justice, *Ousmane Sonko v Republic of Senegal*, Judgement No. ECW/CCJ/JUD/42/23, 17 November 2023.

intervention of a judge in making such a decision should be established as a procedural rule to avoid the risk of arbitrariness.

The issue of the dissolution of PASTEF subsequently went before the Senegalese Constitutional Council at the time of the publication of the final list of candidates for the presidential election.⁴² Faced with manoeuvres by the government aimed at preventing PASTEF from fielding a candidate, the party took the strategy of devising a backup plan in case the candidacy of leader Sonko was rejected. Thus, Sonko designated the secretary-general of his party, Bassirou Diomaye Faye, as the candidate. Before the Constitutional Council, the candidate of the ruling party contested the validity of Faye's candidacy, arguing that he came from a dissolved political entity and therefore could not exercise the rights attached to membership of a political party.⁴³ The Constitutional Council rejected this request on the grounds that "the investiture of a candidate in the presidential election, even supported by a party or coalition of political parties, is not subject to membership in these entities".⁴⁴ Indeed, the candidacy of Faye was supported by a coalition of parties, as allowed by the Constitution,⁴⁵ and not formally by the dissolved PASTEF party. Therefore, the freedom to run for office allows a person to be a candidate of a party or coalition of parties without being a member of the party that supports their candidacy. This liberal interpretation by the Constitutional Council echoes the position of the African Court on Human and Peoples' Rights regarding the issue of the prohibition of independent candidates.⁴⁶

The decision to dissolve a political party is a grave and significant action, one often signaling potential democratic backsliding within a nation. While laws providing for dissolution are not inherently undemocratic, the specific grounds for such actions are crucial. When a government resorts to dissolving a political party, it raises concerns about the state of democracy and the protection of fundamental rights and freedoms, particularly if those

42 Constitutional Council, decision 2/E/2024, 20 January 2024, para 77.

43 See paragraph 77.

44 See paragraph 79.

45 The Senegalese political landscape is characterised by major coalitions, especially in electoral cycles, a fact which is true for both the ruling presidential majority as well as the opposition. As a result, political parties that would usually have no prospects of getting a candidate elected often manage to have their candidates elected thanks to coalitions.

46 See African Court on Human and Peoples' Rights, *Tanganyika Law Society v Tanzania*, App. Nos. 9/2011, II/2011, Judgement, 14 June 2013.

grounds are vague or prone to abuse. Dissolving a party is not merely a matter of administrative procedure; it represents a limitation on political pluralism and the freedom of association, both of which are essential pillars of democracy.⁴⁷

Such actions can be particularly concerning when they are applied inconsistently or seen as targeting specific groups. The dissolution of a party often points to democratic regression, reflecting a weakening of democratic norms, institutions, and principles. Thus, it underscores the need for robust mechanisms to safeguard political freedoms, ensure the rule of law, and uphold democratic principles, including the freedoms of expression, assembly, and association. Balancing the prohibition of potentially divisive ethnic and religious parties with the need to protect political pluralism is essential to maintaining a stable and inclusive democracy. Without such safeguards, the democratic fabric of a society risks being eroded, posing a threat to political stability, social cohesion, and ultimately, the legitimacy of the government itself.⁴⁸

4.2 The violation of the right to participate in elections

Another notable trend observed during President Macky Sall's tenure is the use of the judicial system to restrict political parties and leaders from participating in elections. This was evident in the 2019 presidential elections with the absence of candidates from two significant opposition parties, the PDS, led by Karim Wade, and Takhawu Senegal, represented by Khalifa Sall. Similarly, in the 2024 presidential elections, the PDS candidate was again barred from contesting, as was PASTEF's preferred candidate, Sonko.

4.2.1 The electoral exclusion of PDS and Takhawu Senegal leaders (2019)

The exclusion of Wade as the PDS's presidential candidate was based on a conviction on charges of illicit enrichment and corruption.⁴⁹ The charges

47 T Ayres and B Batasuna, "The Dissolution of Political Parties under the European Convention of Human Rights", 27 (2004) *International and Comparative Law Review*, pp 99–113.

48 T Ginsburg and AZ Hu, *How to Save a Constitutional Democracy*, Chicago, University of Chicago Press (2018), p 182.

49 Decision No. 8/CREI, 29 December 2014.

stemmed from his time serving as a minister in the government of his father, former President Abdoulaye Wade. The trial took place before the *Cour de Répression de l'Enrichissement Illicite* (CREI), which had been established in 1981⁵⁰ but remained inactive until it was activated for this case.⁵¹ The CREI found Wade guilty of illegally amassing wealth while in office, leading to his conviction and subsequent sentencing to a lengthy prison term.

The legal proceedings were highly contentious, with Wade's supporters alleging political motivations behind the charges and raising concerns about the fairness and impartiality of the trial. His legal saga attracted international attention, with human rights organisations and legal bodies highlighting various irregularities in his trial. Both the ECOWAS Court of Justice⁵² and the United Nations Human Rights Committee⁵³ identified serious violations in these legal proceedings, including infringements of the right to a fair trial, the presumption of innocence, and access to legal representation.⁵⁴

Despite these concerns raised by international bodies, Wade was sentenced to six years in prison, but his conviction was not accompanied by a judicial decision pronouncing the loss of his civil and political rights. However, the Electoral Code stipulates that anyone sentenced to more than five years is not eligible to be registered on the electoral roll and is thus not able to exercise his or her right to vote. In compliance with this provision,

50 Law No. 1981/54 of 10 July 1981 establishing the CREI (Cour de Repression de l'Enrichissement Illicite). See International Federation for Human Rights, "Senegal: CREI a Special Court which Does not Guarantee the Right to a Fair Trial", *International Federation for Human Rights*, 25 June 2014, <https://www.fidh.org/en/region/Africa/senegal/15634-senegal-crei-a-special-court-which-does-not-guarantee-the-right-to-a-fair> (accessed 22 March 2024).

51 The Senegalese parliament recently passed a law abolishing the CREI and replacing it with a financial judicial pool comprising a specialised public prosecutor's office for financial crime, staffed by specialised magistrates. This is Law No. 2023-14 of August 2, 2023, amending Law No. 65-61 of July 21, 1965, concerning the Code of Criminal Procedure, <http://news.adakar.com/documents/docs/Journal-Officiel.pdf> (accessed 22 March 2024).

52 ECOWAS Court of Justice, *Abdoulye Baldé and others v Senegal* No. ECW/CCJ/JUD/04/13, Judgement, 22 February 2013.

53 Human Right Committee, *Karim Meissa Wade v Senegal* Case No. CCPR/C/124/D/2783/2016.

54 See I Kane, "The Impact of the United Nations Human Rights Treaties on the Domestic Level in Senegal", in C Heyns, F Viljoen, and R Murray (eds.), *The Impact of the United Nations Human Rights Treaties on the Domestic Level: Twenty Years*, Leiden, Boston, Brill Nijhoff (2024), pp 1003–1076.

public authorities refused to register Wade's name on the electoral roll. Yet the law remained silent on his eligibility, specifically his right to stand for elections.

Faced with this ambiguity, the ruling party initiated an amendment to the Electoral Code in 2018,⁵⁵ which many viewed as a manoeuvre aimed at excluding the PDS candidate from the presidential elections.⁵⁶ This amendment directly linked candidacy eligibility to voter registration status, essentially requiring aspiring candidates to be registered voters. The timing of the legal change, coupled with the APR's legislative majority, raised concerns among opposition parties and civil society about potential changes of electoral laws to disadvantage certain candidates or political groups.

Believing that his right to participate in public affairs had been violated, Wade initiated an action before the ECOWAS Court. The Court issued a decision on 4 March 2019 dismissing Wade's request and deeming the restriction on the right to vote and the right to stand for elections as lawful, legitimate, and necessary.⁵⁷ However, this case clearly demonstrates how a ruling party can utilise its majority to enact electoral code reforms aimed at preventing an opposition party from fielding a candidate in presidential elections.

In the case of the exclusion of Takhawu Senegal's presidential candidate, Khalifa Sall, he faced legal challenges stemming from his time as the mayor of Senegal's capital, Dakar. Sall was accused of embezzlement and mismanagement of public funds designated for the city's development projects, and sentenced to five years in prison.⁵⁸ Although he was a member of the National Assembly and thus benefited from parliamentary immunity, the presidential majority voted swiftly (it was unprecedented in its speed) to lift this immunity and compel him to face the justice system as the 2019 presidential elections approached. These charges against him resulted in a highly

55 Law No. 2018-22 of 4 July 2018 amending the Law No. 2017-12 of 18 January 2017 concerning the Electoral Code of the Republic of Senegal, https://dge.sn/sites/default/files/2019-01/CODE%20ELECTORAL%202018_0.pdf (accessed 22 March 2024).

56 See M Timeira, M Diongue, and O Thim, "L'élection Présidentielle de Février 2019 au Sénégal: Entre Renouveau de l'échiquier Politique et Percée du Vote Régionaliste", *EchoGeo*, 2019, <http://journals.openedition.org/echogeo/18183> (accessed 22 March 2024); El HSA Diallo, "L'élection Présidentielle de 2019: le PDS et BBY", in El HSA Diallo (ed.), *Sciences et confréries soufies au Sénégal*, Leiden, Koninklijke Brill NV (2022), https://doi.org/10.1163/9789004503212_008 (accessed 22 March 2024).

57 ECOWAS Court of Justice, *Karim Wade v Republic of Senegal* Judgement No. ECW/CCJ/JUD/13/19, 4 March 2019.

58 Court of Appeal, Judgement No. 168, 16 May 2017.

publicised trial before Senegalese courts, during which Sall consistently asserted his innocence and contended that the accusations were politically motivated.

Despite his defence's efforts, Sall was convicted and handed a prison sentence. Similar to Karim Wade, Sall's conviction led to the loss of his civil rights, including the right to vote and stand for election. Consequently, he was automatically disqualified from participating in the elections as a candidate. Sall's supporters and international observers, as well as the ECOWAS Court, questioned the fairness of the legal proceedings against him, citing allegations of procedural irregularities and political interference in the judicial process.⁵⁹ In its ruling, the Court noted that the right to legal representation was not respected at the outset of the proceedings, undermining the integrity of the trial. However, the Senegalese courts upheld the verdict, effectively preventing Sall from running in the elections due to his conviction and loss of civil rights.

The two examples illustrate how a ruling party can use its presidential majority in parliament to prevent an opposition party from fielding a presidential candidate. In the case of Wade, a swift amendment to the Electoral Code prevented the PDS from having a candidate; in Sall's case, an accelerated vote to lift his parliamentary immunity prevented his party from having a candidate.

4.2.2 The electoral exclusion of PDS and PASTEF leaders (2024)

In the 2024 presidential elections, two notable cases raised concerns: the repeated exclusion of Wade of the PDS, and the exclusion of Sonko, the leader of PASTEF. This time around, Wade's exclusion from the presidential elections was based on allegations of dual citizenship, given that Article 28 of the Constitution stipulates that a presidential candidate must exclusively hold Senegalese nationality.⁶⁰ Another candidate, Thierno Alassane Sall, filed a petition before the Constitutional Council, arguing that Wade's

59 See ECOWAS Court of Justice, *Khalifa Sall and others v Senegal* No. ECW/CCJ/JUD/17/18, Judgement, 29 June 2018, https://www.eods.eu/elex/uploads/5cac54d46382c-K%20Sall%20ECW_CCJ_JUD_17_18.pdf (accessed 22 March 2024).

60 See also Article L.121 of the Electoral Code, which states that "the candidate's declaration must be accompanied by a sworn statement in which the candidate declares that they exclusively hold Senegalese nationality".

candidacy should be declared inadmissible due to the exclusive-nationality requirement.

In his defence, Wade presented a certificate from the Consul at the Embassy of France in Doha, affirming his declaration of loss of French nationality in October 2023. He also provided a copy of a decree indicating the termination of his allegiance to France, which was published in the Official Journal of the French Republic in January 2024. However, in its Decision No. 2/E/2024, the Senegalese Constitutional Council deemed the attestation insufficient to establish the loss of French nationality.⁶¹ The Council emphasised that the decree's effect is not retroactive and that the material date for consideration was 21 December 2023, the date of the candidacy deposit.⁶² On that day, Wade made a false sworn statement regarding the loss of French nationality, as the decree's publication in January 2024 marked its effective date.⁶³

In response, Wade and other PDS leaders publicly accused two members of the Constitutional Council of corruption and bias in favour of the candidate of the incumbent president's party, Prime Minister Amadou Ba. The PDS, as one of the minority parties in the National Assembly, called for the establishment of a parliamentary commission of inquiry, as provided for by the National Assembly's internal rules,⁶⁴ to investigate the corruption allegations against the two judges. Surprisingly, this initiative received support from the ruling party, arguing that it provided an opportunity to clarify the situation and protect its candidate against corruption allegations. However, other opposition parties saw it as a strategy by the APR to support the postponement of what appeared would be a challenging election for it.⁶⁵ Consequently, a parliamentary commission of inquiry was established. This action led to the postponement of the presidential elections, initially scheduled for 25 February 2024; the elections were held eventually on 24 March

⁶¹ Constitutional Council of Senegal, *List of Candidates for 2024 Presidential Elections*, Decision No. 2/E/2024, 20 January 2024.

⁶² *Ibid*, paragraph 89.

⁶³ *Ibid*.

⁶⁴ Organic Law No. 2002-20 of 15 May 2002 Relating to the Internal Rule of the National Assembly, <https://ceracle.com/wp-content/uploads/2020/08/R%C3%A8glement-interieur-de-lAssembl%C3%A9e-nationale-du-S%C3%A9n%C3%A9gal-texte-consolid%C3%A9.pdf> (accessed 26 March 2024).

⁶⁵ AK Diop, "Democratic Backsliding in Senegal: A Legal Analysis of the Postponement of Presidential Elections", *African Network of Constitutional Lawyers*, 9 February 2024, <https://ancl-radc.org.za/blog/democratic-backsliding-in-senegal-a-legal-analysis-of-the-postponement-of-presidential-elections> (accessed 21 March 2024).

2024 after the Constitutional Council had declared the postponement unconstitutional.⁶⁶

As regards Sonko, his exclusion as the presidential candidate of the dissolved PASTEF arose from a combination of events that demonstrate the practice of majoritarian abuse. Sonko's candidacy faced numerous obstacles, including the mobilisation of the parliamentary majority to amend the electoral code, arguments regarding a criminal conviction, and administrative practices that defy the rule of law. Judicially, too, Sonko encountered a series of legal actions aimed at rendering him ineligible for the presidential elections.

First, he was prosecuted for committing rape in connection with the highly publicised “Sweet Beauty” affair.⁶⁷ This case triggered a series of violent protests that resulted in several deaths, with Sonko's supporters alleging that it was a manoeuvre by President Sall to eliminate a political opponent. In addition to this legal procedure, a member of the APR-led government initiated a defamation lawsuit against Sonko. This legal action resulted in Sonko's conviction to six months' suspended imprisonment.⁶⁸ Furthermore, another seemingly trivial matter led to Sonko's arrest. In July 2023, five months before the elections, he was arrested for allegedly stealing a mobile phone.

66 Constitution Council of Senegal, Decision No. 1/C/2024, 15 February 2024, <https://droit-et-politique-en-africaine.info/la-decision-du-15-fevrier-2024-du-conseil-constitutionnel-la-constitution-rien-que-la-constitution-et-toute-la-constitution> (accessed 22 March 2024). See also JL Correa and AK Diop, “La décision 1/C/2024 du Conseil Constitutionnel Sénégalais: Analyse Furtive d'une Décision Attendue”, *African Network of Constitutional Lawyers*, 22 February 2024, <https://ancl-radc.org.za/blog/la-decision-1-c-2024-du-conseil-constitutionnel-senegalais-analyse-furtive-dune-decision-attendue> (accessed 25 March 2024).

67 The “Sweet Beauty” affair involved allegations made by Adji Sarr, a former employee of a beauty salon, who accused Ousmane Sonko of rape and making death threats against her in early 2021. The case gained significant media attention and quickly escalated into a political controversy, as Sonko, a prominent opposition leader and presidential candidate, claimed that the charges were politically motivated and intended to undermine his candidacy. The accusations led to his prosecution, with Sonko's supporters alleging that the government was using the legal system to eliminate political rivals. The affair sparked widespread protests and public demonstrations in Senegal, highlighting deep divisions within the country regarding political power and judicial independence. See Senegalese Feminist Network, “In Senegal Women's Bodies are Weaponised as Political Objects in Electoral Debate”, *Africa is a Country*, 28 June 2023, <https://africasacountry.com/2023/06/sweet-beauty> (accessed 25 March 2025).

68 Court of Appeal of Dakar, No. 137, Judgement, 8 May 2023.

Subsequently, he was remanded in custody on various charges, including theft with violence, conspiracy to commit a terrorist act, dissemination of false news, endangering the lives of others, financing of terrorism, provocation of armed and unarmed gatherings, complicity in manslaughter, acts likely to compromise public security and cause political unrest, money laundering, attacks on state security, and manslaughter or unintentional injury.⁶⁹

Following these convictions, the government refused to register Sonko on the electoral lists, maintaining that he had lost the rights associated with the status of a voter.⁷⁰ Sonko, arguing that the convictions against him were not final and that he had therefore had not lost his status as a voter, decided to challenge the government's refusal before Senegalese courts. An initial action was taken before the Ziguinchor Tribunal, which ruled in his favour, demanding his registration on the electoral lists.⁷¹ The Minister of the Interior refused, however, to execute the decision, arguing that since Sonko's residence is in Dakar (despite his being the mayor of Ziguinchor), it was the Dakar Tribunal that was competent, not that of Ziguinchor. The matter was brought before the Dakar Tribunal, which upheld the decision of the Ziguinchor Tribunal and required the administration to reinstate Sonko on the electoral lists.⁷² Once again, the government refused to execute the decision, stating that it had appealed it to the Supreme Court.

Faced with the Interior Ministry's refusal, Sonko requested that the General Directorate of Elections (DGE)⁷³ provide him with the sponsorship collection forms in accordance with the Constitution and the Electoral

69 See "Au Sénégal l'opposant Ousmane Sonko a été arrêté", *Le Monde Afrique Senegal*, 28 July 2023, https://www.lemonde.fr/afrique/article/2023/07/28/au-senegal-l-oppo sant-ousmane-sonko-a-ete-arrete-selon-des-membres-de-son-parti_6183778_3212.htm (accessed 28 March 2024).

70 In terms of Article L. 30 of the Electoral Code, a candidate who is not registered on the electoral lists cannot be eligible.

71 See T Ollivier, "Au Sénégal la justice relance Ousmane Sonko dans la course à la présidence", *Le Monde Afrique Senegal*, 13 October 2023, https://www.lemonde.fr/afrique/article/2023/10/13/au-senegal-la-justice-relance-ousmane-sonko-dans-la-course -a-la-presidence_6194222_3212.html (accessed 28 March 2024).

72 See DF Roland, "Le Juge de Dakar Confirme le Juge de Ziguinchor", *Enquête Plus*, 19 December 2023, <https://www.enqueteplus.com/content/vers-l%80%99independ ance-de-la-sen-justice-le-juge-de-dakar-confirme-le-juge-de-ziguinchor> (accessed 28 March 2024).

73 The Direction Générale des Elections (DGE) is responsible for organising national and local elections as well as referendums. See <https://dge.sn/fr> (accessed 28 March 2024).

Code. The DGE refused to comply with the request on the grounds that his name was not on the electoral lists, so he could not claim candidate status. Meanwhile, Sonko sent his representatives to the Deposit and Consignment Fund (CDC)⁷⁴ to deposit the FCFA 30 million bond required of presidential candidates. The CDC refused to accept the bond deposit, citing the absence of the person's name on the electoral lists despite the court decision in Sonko's favour.⁷⁵

From the above, it is evident that the government refused to execute a judicial decision ordering the reinstatement of Sonko on the electoral lists. Indeed, various administrative structures are controlled by the ruling party. The Constitutional Council, in its decision 2/E/2014, acknowledged that Sonko faced a series of arbitrary administrative obstacles preventing his registration on the electoral lists and provision of sponsorship collection forms and a receipt for depositing the bond.⁷⁶ The Council found that these shortcomings were not attributable to Sonko and held the government responsible.⁷⁷ However, the Council rejected Sonko's candidacy because his defamation conviction became final with the Supreme Court's ruling a few days before the final publication of the list of presidential candidates.⁷⁸ In accordance with the recently amended Electoral Code, a definitive conviction, even with a suspended sentence, of more than six months prevents registration on the electoral lists.⁷⁹ The Supreme Court, having confirmed Sonko's conviction to six months suspended for defamation, thereby established Sonko's ineligibility for the presidential elections.

74 The CDC is responsible for managing deposits and safeguarding the assets belonging to organisations and funds held therein or requested to be held therein; for receiving administrative and judicial deposits as well as bonds; and for managing services related to the cash or funds whose management is entrusted to it. See <https://cdc.sn/presentation/> (accessed 28 March 2024).

75 See SA Ndiaye and MS Sané, "De la Recevabilité de la Candidature de Monsieur Ousmane Sonko: La Valeur Juridique Superfétatoire de l'attestation de la Caisse de Dépôt et de Consignation", *PressAfrik*, 16 January 2024, https://www.pressafrik.com/De-la-recevabilite-de-la-candidature-de-Monsieur-Ousmane-SONKO-La-valeur-juridique-superfetatoire-de-l-Attestation-de-la_a267309.html (accessed 28 March 2024).

76 Constitutional Council of Senegal, Decision No. 2/E/2024, paragraph 16.

77 *Ibid.*

78 *Ibid.*, paragraph 18.

79 The previous electoral code stipulated that a definitive conviction resulting in a sentence of more than five years could disqualify an individual from being registered on the electoral lists. However, this provision was amended in July 2023, just before the 2024 elections, to reduce the disqualification period to six months for any definitive conviction, even if it included a suspended sentence.

Thus, a series of administrative and politico-judicial obstacles prevented his candidacy in the presidential elections. However, as described earlier, his backup option, Bassirou Diomaye Faye was elected with 54 per cent of the vote, thereby allowing an opposition party, albeit dissolved, to win the presidential elections.⁸⁰

5. Conclusion

The journey to political pluralism in Senegal is a testament to the nation's commitment to democracy, yet it also reveals the challenges inherent in safeguarding the rights of political parties. While the constitutional recognition of political parties has been a crucial step in fostering a democratic environment, legal provisions alone are insufficient to protect these rights in practice. President Sall's government has demonstrated how majoritarian abuse can undermine the democratic process through the strategic use of legal and administrative measures to weaken opposition parties. The dissolution of PASTEF, the exclusion of opposition leaders from elections, and the broader pattern of judicial and legislative obstructions highlight the vulnerabilities within Senegal's political system. Furthermore, the rise of ethnic and religious parties poses additional challenges to political pluralism, often complicating the landscape of governance and representation. In addition, issues of party financing remain a significant concern, as inadequate regulations enable corrupt practices and the undue influence of money in politics. The lack of intra-party democracy fails to prevent the personalisation of party politics, a state of affairs where power becomes concentrated in the hands of a few and undermines broader democratic engagement. As has been shown, the capture of state structures by a ruling party can exacerbate these issues, creating an uneven playing field that threatens fair competition.

To address these issues, it is imperative that Senegal strengthen its legal framework to provide more robust protections for political parties. This includes ensuring fair and transparent electoral processes, safeguarding the rights of opposition parties, and preventing the misuse of legal mechanisms for political gain. Moreover, the role of civil society, international organisations, and regional bodies such as ECOWAS is crucial in holding the government accountable and advocating for reforms that enhance democratic governance. While Senegal has made significant strides in establishing

⁸⁰ See Constitutional Council of Senegal, Decision No. 7/E/2024, 29 March 2024.

political pluralism, the recent erosion of political-party rights underlines the need for continual vigilance and reform. Protecting the constitutional rights of political parties is essential not only for the health of Senegal's democracy but also for setting a precedent for other countries in the region. The path forward requires a commitment to legal as well as practical measures which ensure that all political parties can operate freely and fairly and thus strengthen the democratic fabric of Senegal.

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