

Australian court overturns government cancellation of Novak Djokovic's visa

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In a hearing yesterday, the Federal Court overruled the Australian government's cancellation of a visa for Novak Djokovic. The world number one tennis player was released from a federal government hotel, where he had been confined since last Thursday, and will compete in the Australian Open later this month.

Djokovic is able, not only to enter the country, but to pursue his incredibly lucrative sporting activities, despite a strict ban on international arrivals who are unvaccinated.

The governments and sporting bodies involved have done what they can to make the visa saga as murky and confusing as possible since it began last week. But essentially, Djokovic has obtained a visa in circumstances that would not apply to anyone else, ensuring that the Australian Open, one of the country's top money-making sporting events, can proceed without disruption amid a massive surge of the pandemic in Australia and around the world.

The circus began on Tuesday last week, when Djokovic posted on Instagram that he was departing for Australia, having received an "exemption permission." The federal Liberal-National government, the Victorian state Labor government and Tennis Australia all declared that the mystery exemption had been the subject of a "rigorous process" and was above board.

The popular reaction to Djokovic's travel plans was very different. Hundreds of thousands of posts on social media condemned the exemption, noting the implausibility that Djokovic fit the limited and medically-severe criteria.

Many pointed out his record of right-wing, anti-vaccine and anti-science statements, and the role of a charity tournament he organised in June, 2020, in helping to spread COVID across the Balkans. The main strains of the popular sentiment were anger over one set of rules applying to celebrities and the ultra-wealthy and another to everyone else, and hostility to the latest flagrant

subordination of public health to corporate interests.

The governments involved are all in a deepening political crisis. Their "reopening of the economy" has produced an unprecedented surge of the pandemic, with hundreds of thousands of infections and the hospitals on the brink of collapse. Fearful of any expression of popular opposition, they shifted tack, putting away the red carpet for Djokovic's arrival and placing in its stead hostile agents from Border Force.

Prime Minister Scott Morrison discovered that the exemption had not been as "rigorous" as he had claimed less than 24-hours earlier. Djokovic's visa was cancelled. Federal authorities confirmed that the grounds of the exemption, an infection in the previous six months, did not permit an unvaccinated traveller to enter Australia. Djokovic was sent to the federal government's Park Hotel in Melbourne pending his court appeal.

Immigration and refugee lawyers have noted that in their field, the wheels of justice turn exceedingly slowly, and the eventual outcome is often not favourable. Some of the refugees at Park Hotel, where Djokovic spent several days, have been imprisoned at the rundown facility and others like it for nine or more years in a perpetual legal limbo.

But in this case, justice moved at lightning speed. A full hearing was scheduled for Monday, ensuring that judgement would be passed in time for the Australian Open draw on Wednesday.

Those hoping for greater clarity on the exemption process were left disappointed. Djokovic won on a technicality. The judge deemed the actions of Border Force unreasonable. After a lengthy flight, Djokovic had been kept at the airport, repeatedly woken throughout the night, with demands that he immediately provide additional documentation. Border Force is notorious for wielding its draconian powers unrestrained, even against Australian citizens returning from abroad.

Home Affairs Minister Karen Andrews consented to the judgement and agreed that the government would pay Djokovic's legal costs, which could be as high as \$250,000. Such an outcome would be unthinkable if the case concerned a refugee or a poor immigrant. The government can still deploy extraordinary powers to unilaterally cancel Djokovic's visa. Given that he would be banned from entering Australia for three years, casting future Australian Opens in doubt, this is unlikely.

Meanwhile, the story of the visa has grown stranger and stranger. Documents presented to the court show that Djokovic applied for and was granted a visa on November 18. There is no indication that this was accompanied by an exemption application, and the COVID infection that he would subsequently invoke did not occur until a month later.

Last year, Tennis Australia, together with the Victorian Labor government, established a review panel to adjudicate applications from players for vaccine exemptions. Given that Tennis Australia is a corporation, and not the federal government, it would appear that this process involved only permission to play in the tournament, not permission to enter the country.

Leaked letters to and from Tennis Australia only heighten the confusion, however, with some seemingly suggesting that the federal government offloaded the responsibility for assessing Australian Open visa exemptions to its Victorian state counterpart.

In any event, the review panel set December 10 as the cutoff for exemption applications. According to Djokovic, it was not until December 16 that he took a PCR test. The documents he presented to the court claim that he received the result that evening.

Photos on social media show the tennis player at public events on December 16 and 17, raising questions at least as to why he got the COVID-19 test. He is pictured maskless and in close proximity to children, including on December 17, i.e., the day after his purported result.

The Tennis Australia review panel granted the exemption, despite it being submitted more than a week after the cut-off. By this point, Tennis Australia had allegedly been informed by relevant federal authorities that prior infection was not grounds for exemption.

This is not new. As former immigration lawyer Michael Todd has explained, it is clearly listed in government advice that: "There are only 3 reasons for a medical exemption 1. You tried the first vaccine and had a bad reaction 2. You have a medical condition like a bad heart 3. You have valid psychological fear of vaccination."

Further, the relevant government website "states a list of conditions that are 'not valid reasons for an immunisation medical exemption.' 'Previous infection with the same pathogen' is on this list."

Whether all the details ever become clear, the takeaway is that the Australian Open must and will proceed, whether its star players adhere to minimal public health requirements, or anything else. The tournament is being held under conditions in which daily infections in Victoria are around 40,000, the ambulance service is repeatedly issuing "code reds" signalling that demand is greater than capacity, and the hospitals are in their worst crisis in one hundred years.

Most immediately, the determination to press ahead with a mass super-spreading event is because there are immense financial stakes involved. Tennis Australia reported revenue of \$446 million for the 2020 financial year. The next year, it was the recipient of \$4.5 million in federal government funds via the JobKeeper wage subsidy. The Victorian Labor government spent \$1.5 billion building the Melbourne Park facility where the Open is held.

Top spectator seats for the tournament are being advertised at \$15,000 a head. Djokovic, if he wins the Open, will receive \$4.4 million, and \$2.2 million if he loses in the final. His current wealth is estimated at \$220 million, with corporate sponsorships far exceeding tournament winnings.

The resumption of mass sporting events is one aspect of the "new normal" that governments are ushering in, as they instruct the population to "live with the virus." The Open will proceed, with its most important matches attended primarily by the wealthy, as nurses and doctors are worked to the brink of collapse, hundreds of thousands are infected, and the hospital wards fill up.

Workers and young people must reject this horrific "new normal." Instead, they should fight for the global elimination of the virus, which requires a direct struggle against all the capitalist governments and the massive corporations they represent.



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