

??Djokovic saga sets dangerous legal precedent in Australia ??

Mike Head**19 January 2022**

By invoking sweeping discretionary ministerial powers to cancel the visa of tennis star Novak Djokovic last week, the Australian government created a dangerous precedent for political deportations.

When a rapidly-convened Full Federal Court unanimously dismissed Djokovic's legal challenge last Sunday, it upheld the power of federal governments—whether Liberal-National Coalition or Labor—to deport anyone, including political activists, refugees and poor immigrants, designated as a “risk” to “good order” in Australia.

As the WSWS has documented in detail, the two-week saga during which the government twice revoked Djokovic's visa was saturated with political hypocrisy.

Had the Coalition government and its Victorian state Labor Party counterpart had their way, Djokovic would have headlined the Australian Open, making the COVID-19 super-spreading event as lucrative as possible. Both governments gave him the go ahead to fly into Australia, knowing that he was a widely-publicised opponent of vaccination and his entry violated a ban on unvaccinated arrivals into the country.

All was going according to plan until Djokovic boasted on Instagram that he had received an “exemption” and was flying to Melbourne. This triggered popular opposition because it was another blatant case of the subordination of public health to corporate interests, amid a sky-rocketing pandemic surge.

After initially declaring on national television that Djokovic's entry was entirely a matter for the state Labor government, Prime Minister Scott Morrison switched tune overnight. He declared that Djokovic was blocked at Melbourne airport because “rules are rules” when it comes to “border protection.”

Djokovic won an initial court victory, however, on the grounds that Border Force officers denied him procedural fairness in barring his lawful entry at Melbourne airport

because of his lack of proof of a medical exemption.

Morrison's crisis-wracked government then prevaricated for three days before revoking his visa, now on a different basis, after being confronted by further public outrage.

Immigration Minister Alex Hawke cancelled the visa under section 116 of the Migration Act, but not because Djokovic had breached the vaccination rule. Instead, Hawke declared that the tennis player might endanger the “good order of the Australian community” because his presence in the country might encourage “anti-vaccination sentiment” and “civil unrest.”

Morrison lied about the affair on Monday, claiming that Djokovic was removed because he had failed to comply with “the rules” for vaccination to enter Australia. The prime minister told 2GB radio: “It's as simple as that.”

In reality, the government twisted and turned to avoid deporting Djokovic for non-vaccination, because that would have opened up discussion on the government's own record, and that of the entire “National Cabinet” of federal, state and territory government leaders. They have all dismantled public safety measures to satisfy the profit demands of the corporate elite, letting loose the Omicron-fuelled disaster.

Hawke actually said he assumed that Djokovic “currently has a medical reason not to be vaccinated” but that “does not ultimately affect my reasoning on health and good order.”

Djokovic was a “negligible risk to those around him.” But it was “in the public interest” to remove him because he was “perceived by some as a talisman of a community of anti-vaccine sentiment.”

In other words, Djokovic was deported not for saying or doing anything, or breaching any rule or law, but because other people might engage in political “unrest” if he remained in the country.

This sets a sweeping precedent for cancelling visas on

the basis of political views. It could be invoked against socialist opponents of the criminal “live with the virus” policies, and other left-wing opponents of the corporate and political establishment.

As legal experts pointed out, anti-war or environmental activists could be barred from the country. Australian Lawyers Alliance spokesperson Greg Barns commented: “If, for example, a high-profile visitor to Australia expressed negative views about the Australia-US alliance, would the government ban this person because this view may encourage people to protest at Pine Gap [joint US-Australian base]?”

True to its own record of deportations and anti-refugee “border protection” policies, the Labor Party opposition backed the government’s decision, while criticising it for not making it earlier.

The anti-democratic and arbitrary character of the Migration Act sections involved was strengthened by amendments in 2014. Morrison was immigration and border protection minister at that time, but the Labor Party vehemently backed the changes.

Under section 133C (3) of the Migration Act, a minister can personally cancel a visa, without providing any procedural fairness, if the minister is “satisfied” it is in the “public interest.”

Under section 116 (1)(e), the minister can do so if the person’s presence in Australia “is or may be, or would or might be, a risk” to “the health, safety or good order of the Australian community or a segment of the Australian community.”

Another section, 501, not utilised against Djokovic, provides similar powers to cancel or deny visas to people deemed “likely” to “incite discord.”

Such vague language—“public interest,” “risk” and “good order”—is designed to make the minister’s decisions virtually impossible to legally challenge.

To succeed, a person would have to prove that the decision was “irrational” or “so unreasonable that no reasonable decision maker could have made it” or was for an “improper purpose” or had no evidence whatsoever to justify it.

Djokovic had a top-flight legal team, unlike most people, and they advanced such arguments. The court quickly dismissed the application, effectively clearing the way for wider use of the ministerial powers in the future.

Civil liberties and refugee organisations voiced alarm at the outcome. Liberty Victoria president Michael Stanton warned: “It can and will be used in the future to justify the suppression of legitimate political expression because

others might engage in unrest.”

Liberty Victoria said thousands of visa cancellations had been summarily made since 2014 and are often legally defective but carry severe consequences for those affected, including separation from family, indefinite detention and forcible return to harm.

A 2019 parliamentary committee report said 39,450 visas were cancelled under section 116 from 2013–14 to 2017–18. Another 1,839 non-citizens had their visas cancelled or refused under section 501 in 2016–17.

In a joint submission, the Visa Cancellations Working Group, the Asylum Seeker Resource Centre, and the Refugee Advice and Casework Centre said: “At the airport, people are given as little as 10 minutes to respond if their visa is being considered for cancellation, often after a long flight or at irregular hours. They are not given access to legal advice or other support. As a result, visa cancellations made under a veil of secrecy remain unchallenged, and visa holders are summarily removed from the country and barred from re-entry.”

Others, including asylum seekers, are imprisoned under the system of mandatory immigration detention, first imposed by the Keating Labor government in 1992. Some have been detained for many years in poor conditions, either in remote offshore camps or in hotel “Alternative Places of Detention,” such as that in which Djokovic was kept for a few days.

Djokovic was treated with kid gloves compared to the brutal treatment of asylum seekers. Yet his case highlights the reactionary nature of Australia’s bipartisan “border protection” laws and regime, and their potential for politically repressive use.



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