

Administrative court postpones deportation of genocide opponent Shane O'Brien but the Berlin4 remain in danger

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Last week, the Berlin Administrative Court granted an urgent appeal by Shane O'Brien to temporarily postpone his planned deportation. O'Brien, an Irish citizen, and three other activists—known as the Berlin4—were due to be deported on April 21 due to their expressions of solidarity with Palestine.

The Berlin Immigration Office (LEA) had issued a decision at the beginning of March to revoke O'Brien's freedom of movement within the EU and to impose a re-entry and residence ban for Germany. Both were to be enforced immediately. This has now been halted pending a decision on an appeal against the LEA decision itself. The court's ruling, however, is not binding for the other individuals concerned, as their cases are being heard by other chambers.

The court's ruling clearly shows how democratic rights are being trampled underfoot in the proceedings against O'Brien and the other three activists. The court declared that it had "serious doubts about the material legality" of the LEA decision, which had "already failed to adequately fulfil its duty of clarification" in the proceedings.

For example, the LEA's case file on O'Brien had only contained a draft criminal warrant from the Berlin public prosecutor's office on the charge of insulting behaviour, two criminal complaints relating to the occupation of the Presidium of Berlin's Free University and a summary report from the Berlin state Criminal Investigation Bureau (LKA) on 17 ongoing criminal proceedings. The LEA had not even requested the investigation files from the public prosecutor's office—even though the LEA report cited by the LEA itself stated: "In order to make a final assessment, it is essential to request the investigation files from the

public prosecutor's office."

The court concluded that the documents cited by the LEA were "unsuitable for forming a judicial conviction that the applicant committed the offences of which he is accused." The LKA report "simply reproduces police allegations of offences."

The Berlin Administrative Court also pointed to considerable shortcomings in the LEA's other allegations against O'Brien. In the case of the most serious accusation—involved in the occupation of the Presidium of the Free University—it is not clear from the documents to what extent O'Brien was actually involved. The alleged "acts of violence" in connection with the occupation are not attributed to the four activists individually. The LKA's assessment of the occupation as a serious breach of the peace is also contested: in the case of the occupation of Humboldt University, no charges were even brought for this alleged offence.

With regard to the other charges against O'Brien, the court criticised the fact that the LEA had not sufficiently examined whether the individual acts constituted a concrete threat to public safety and order within the meaning of the Freedom of Movement Act. In seven instances, this was not the case; at best, they could be considered as part of the official discretionary assessment. With regard to the accusation that O'Brien had shouted "From the river to the sea," the court referred to the unresolved legal situation regarding this.

The questionable legality of the LEA decision was already clear even before the court ruling. The LEA itself had initially refused to issue the deportation orders as there were no convictions. It only changed its position when the Interior Administration of the Berlin

Senate (state executive) intervened.

Franz Mayer, professor of constitutional and European law at Bielefeld University, remarked on Twitter: “The real scandal is who ordered this BLATANTLY illegal measure anyway??? There is serious suspicion of Trumpism.” In his view, this was so obviously unlawful, particularly with regard to EU citizens, that the administrative court would not refer the matter to the European Court of Justice (ECJ).

However, it would be a false and dangerous illusion to believe that the risk of deportations has been averted with the Administrative Court decision or that this general attack on democratic rights can be fended off with the help of the courts in general. While the Administrative Court found that freedom of movement in the EU cannot be withdrawn on the basis of an early stage of investigation that does not allow for individual attribution of offences, it also found that, in principle, deprivation of liberty was possible without a criminal conviction.

A spokeswoman for the Interior Administration has already announced that “as soon as this is possible without jeopardising the investigation,” they would request the criminal case files “in order to be able to substantiate the allegations even more.”

Last Monday’s meeting of the Berlin state Interior Affairs Committee, which dealt with the planned deportations, also made it clear that politicians and the judiciary should not be relied upon to fend off such deportations. State Secretary for Internal Affairs Christian Hochgrebe (Social Democratic Party, SPD) repeatedly emphasised that the case concerned the “legal field of immigration and residence law” and not criminal law, and that the presumption of innocence, for example, did not apply. This “simply does not belong here,” said Hochgrebe. Furthermore, this was “how we always proceed when it comes to returns.”

When asked by a member of the state assembly how it came about that the LEA initially did not want to issue a decision because there was no evidence of any public danger, Hochgrebe simply replied: “That is not our legal opinion, and that is why the decision was made the way it was.”

To summarise, this means that basic rights, such as the presumption of innocence, do not apply to people without a German passport. They do not have to have been convicted of a criminal offence in order to be

deported, but it is sufficient if they represent a “danger” according to the “legal opinion” of the interior senator (state minister). In the case of the Berlin4, people are to be deported solely on the basis of their political views.

If this attack goes through, it will not only be directed against people without a German passport, but against all workers. The ruling class is returning to its old authoritarian methods and Nazi jurisprudence of “thought crimes.” This development is ultimately rooted in the crisis of capitalism and cannot be stopped by putting pressure on politicians, or the courts, but only by mobilising the working class on the basis of a socialist programme.

The IYSSE and other groups are organising a rally in defence of the Berlin4 this Thursday, April 17 at noon in front of the main building of Humboldt University. Come along to protest with us against the deportations and to discuss what needs to be done to stop war and dictatorship.



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