



25 January 2022

Michael Ludwig
Bürgermeister und Landeshauptmann von Wien
Magistrat der Stadt Wien, Stadtservice Wien
Rathausstraße 2, 1010 Wien

Dear Bürgermeister Ludwig,

We have been asked by the European Legal Support Centre to write to the Municipality in the matter of the civil lawsuit filed by the Municipality against a member of BDS Austria. Our letter should be read as an adjunct to the Centre's legal opinion ("The negative impact of the 'anti BDS motion' adopted by the Vienna City Council on 27 June 2018 on the fundamental rights of freedoms of expression, association and assembly", Legal Opinion January 2022).

As Jewish groups which stand up for human rights and international law, we are deeply concerned about the allegations made by the Municipality and about their implications for the defendant's reputation and, more broadly, for freedom of speech for supporters of Palestinian rights.

A. European Jews for a Just Peace

European Jews for a Just Peace (EJJP) is a federation of 11 European Jewish peace groups campaigning in 9 countries throughout Europe against the occupation of the Palestinian Territories by Israel and in favour of a durable peace solution to the Israeli-Palestinian conflict. It was founded in 2002 out of concern for Israelis as well as for Palestinians.

We campaign both for the Palestinian right of self-determination and for Palestinian civil rights as they are systematically infringed by the Israeli occupation. We also campaign for freedom to criticise Israel while being vigilant against antisemitic speech.

We lobby European Union officials, MEPs and the member state representation offices. We issue statements as EJJP and sometimes jointly with other groups. Our member groups carry out similar work in their own countries and also engage in protest demonstrations. Our full position statement and the record of our work can be found on our website (EJJP.net).

B. The City Council motion, 27 June 2018

"No cooperation with the anti-Semitic BDS movement (Boycott, Divestment and Sanctions)"

"The City of Vienna strongly condemns the anti-Semitism spread worldwide, opposes the anti-Semitic BDS campaign, does not provide municipal premises for BDS campaigns or events, exhibitions or demonstrations that pursue the goals of BDS, does not support events that promote BDS."

C. The municipality's allegations

It is clear that the allegations made in the Municipality's lawsuit, as well as in the anti-BDS motion are erroneous. Among the accusations, the Municipality's lawsuit claims that BDS is inherently antisemitic and designates BDS Austria as a movement holding "anti-Semitic



views.” The lawsuit also accuses it of “incit[ing] hatred against the Israeli people. Israel's actions are equated with the regime of apartheid, which has strong negative connotations.” We will deal with these allegations in turn.

D. The BDS movement is a legitimate human rights movement

The BDS movement was born in 2005 from the initiative of 170 Palestinian unions, political parties, refugee networks, women’s organisations, professional associations, popular resistance committees and other Palestinian civil society bodies. Inspired by the South African anti-apartheid movement, the Palestinian BDS call urges nonviolent pressure on Israel until it complies with international law.

“BDS” stands for “Boycott, Divestment and Sanctions.” Boycott and divestment refer to actions by civil society. Boycotting concerns that of entities that are involved in the occupation or in denial of Palestinian human rights in Israel. Divesting consists in persuading financial institutions to withdraw investment from Israeli companies, and all companies involved in the denial of Palestinian human rights. Sanctions refer to actions that can be taken by governments, within the law, to apply pressure on Israel to comply with international law.

The Palestinian National BDS Committee guidelines for boycott and divestment explicitly call for action against companies and entities that “engaged in violations of Palestinian human rights” and/or “that sustain Israeli apartheid”, not against all Israeli companies and entities as affirmed by the Municipality of Vienna.¹ Beyond setting out the guidelines, BDS is not an organisation or a unified movement or strategy. Boycott and divestment activities are undertaken by a variety of groups acting legally in different ways, ranging from individual consumers and public or private companies to pension funds and government bodies.

It is therefore a justified, legal, non-violent strategy to enable civil society actors to bring pressure on the State of Israel to comply with international law. It is directed at the State of Israel, not at the Jewish population. The fact that Israel was created as a Jewish State, and is represented as such by the Israeli government, does not make it immune from civil society pressure and scrutiny if people believe that its actions are immoral or breach international law.

Over the past six years, there have been 17 rulings by courts of law in various European and North American countries that BDS advocacy is legal. (see attachment for details)

E. BDS Austria is a legitimate Palestinian support group

The allegation that BDS Austria holds “anti-Semitic views.” is completely unsupported by evidence. There is, however, evidence that BDS Austria is not antisemitic in its open letter to the University of Vienna, in February 2018, protesting against the forthcoming speech by Israeli Government Minister Ayelet Shaked. The letter refers only to Israeli policies and to the Minister because of what she does and public comments she made. It does not imply in any way that those policies or the comments come from supposed Jewish characteristics.

Supporters of Palestinian rights have the right to protest against Israeli actions and policies which they see as harming Palestinians. Equally, Jewish people have the right to be protected from antisemitic hate speech and actions. The key to balancing both sets of rights



is in the relevant articles of the European Convention on Human Rights, adopted in the European Union Charter of Fundamental Rights.² The Charter protects freedom of expression as a fundamental right in a democratic society, providing it does not discriminate against people on the basis of religion or race, or incite to racism or violence.

Distinguishing between antisemitism and legitimate criticism of Israel or Zionism has become a highly contested issue in recent years. Public authorities have to recognise that attempts to suppress criticism can masquerade as allegations of antisemitism just as easily as antisemitism can masquerade as criticism.

The simple test to make the distinction is in the language used. Criticism or protest has to be expressed clearly as being about what Israel actually does or did, or what Zionists historically actually did, and not say or imply that Jews did it as Jews, or that it comes from supposed Jewish characteristics, or that it is responsible for the ills of the world. If that test is met, then the criticism or protest has to be assumed to be legitimate.

BDS Austria has passed that test. It has to be accepted as not being antisemitic unless evidence is produced to the contrary.

F. BDS Austria lawfully criticises the State of Israel's policies

The lawsuit states: "They obviously stir up hatred against the entire population of this country {Israel}. Their campaigns and events are therefore likely to incite hatred against the Israeli population."

In an Orwellian twist of language, the Council seeks to blame BDS Austria, and presumably BDS groups in general, for inciting antisemitism. In order for that to be true, Israeli policies would have to be blameless, i.e. not to be belligerently occupying East Jerusalem the West Bank and Gaza, not preventing Palestinians from exercising their right to self-determination, and not repressing Palestinian resistance with lethal force. In that scenario, the Palestinians in the occupied territories would have no cause to resist Israeli hegemony and BDS would be unjustified.

That narrative, of course, is patently false. What the Council has called "incite(ing) hatred against the Israeli population." is in fact raising public awareness of Israel's illegal policies and increasing opposition to them.

The United Nations Security Council and the International Court of Justice have, between them, clearly confirmed many times that Israel is belligerently occupying the territories, that the whole settlement enterprise is therefore illegal under international law, and that the Palestinians do have the right to self-determination in all of the territories.

Principally:

Security Council Resolution 242, passed after the 1967 war is the seminal text demanding that Israel withdraw from the territories and emphasising the inadmissibility of acquiring territory by force.³

SCR 338 authorised the ceasefire after the 1972 war and demanded implementation of Resolution 242 "in all of its parts"⁴.



SCR 478, in 1980, refused to recognise Israel's purported annexation of East Jerusalem, declared the Israeli law of annexation null and void, and determined that Israel's act was a violation of international law.⁵

The International Court of Justice Advisory Opinion on the “Legal Consequences Of The Construction Of A Wall In The Occupied Palestinian Territory”, in 2004, determined that the separation wall was illegal in international law at all points where it passed through East Jerusalem and the West Bank, and also reaffirmed that all Israeli settlements in the West Bank, and all Israeli settlements in East Jerusalem (called “Neighbourhoods”) were in breach of international law.⁶

SCR 2334, in 2016, “reaffirmed that Israel’s establishment of settlements in Palestinian territory occupied since 1967, including East Jerusalem, had no legal validity, constituting a flagrant violation under international law and a major obstacle to the vision of two States living side-by-side in peace and security, within internationally recognized borders.” It also “Reiterates its demand that Israel immediately and completely cease all settlement activities in the occupied Palestinian territory, including East Jerusalem, and that it fully respect all of its legal obligations in this regard”.⁷

G. BDS Austria justifiably says Israel practices apartheid

The lawsuit states: “The defendant's movement incites hatred against the Israeli people. Israel's actions are equated with the regime of apartheid, which has strong negative connotations.” The Council appears to think the mere act of comparing Israel to apartheid is antisemitic because apartheid has “strong negative connotations”.

Whether apartheid is a fair description of Israel’s policies is a question of objective comparison with the terms of the Crime of Apartheid as defined in the International Convention on the Suppression and Punishment of the Crime of Apartheid.⁸

Human Rights Watch and the Israeli human rights NGO Yesh Din have recently produced legally-based reports concluding that Israeli has created an apartheid regime in the West Bank. The Israeli NGO B'tselem has gone further, arguing that Israel has created a single apartheid regime throughout Israel, East Jerusalem and the West Bank.⁹

The many specific Israeli measures, regulations and laws that have created these situations are described in the reports.⁴

H. Conclusion

Accordingly, we urge the Municipality to desist from this meritless claim brought against BDS Austria in order to silence their voice. As a State institution, we ask you to stand alongside those who respect the law and to desist from your lawsuit, which constitutes an unjustified attack on the fundamental right to freedom of expression.

Yours sincerely,

Dror Feiler, Chair, Chair of EJJ, Judar for Israelisk-Palestinsk Fred (Stockholm)

Arthur Goodman, Parliamentary and Diplomatic Officer , JFJFP (London)



Footnotes

1. BDS principles, <https://bdsmovement.net/what-is-bds>
2. [European Union Charter of Fundamental Rights](https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights_en), https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights_en
3. Security Council Resolution 242, <http://unscr.com/en/resolutions/242>
4. SCR 338, <http://unscr.com/en/resolutions/338>
5. SCR 478, <http://unscr.com/en/resolutions/478>
6. The International Court of Justice, *Advisory Opinion on the "Legal Consequences Of The Construction Of A Wall In The Occupied Palestinian Territory*, <https://www.icj-cij.org/en/case/131>
7. SCR 2334, <https://www.un.org/press/en/2016/sc12657.doc.htm>
8. The International Convention on the Suppression and Punishment of the Crime of Apartheid, https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.10_International%20Convention%20on%20the%20Suppression%20and%20Punishment%20of%20the%20Crime%20of%20Apartheid.pdf
9. [Human Rights Watch, *A Threshold Crossed*](https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution)
<https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution>
- [Yesh Din, *The Occupation of the West Bank and the Crime of Apartheid: Legal Opinion*](https://www.yesh-din.org/en/the-occupation-of-the-west-bank-and-the-crime-of-apartheid-legal-opinion/),
<https://www.yesh-din.org/en/the-occupation-of-the-west-bank-and-the-crime-of-apartheid-legal-opinion/>
- [B'tselem, *A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid*](https://www.btselem.org/publications/fulltext/202101_this_is_apartheid) https://www.btselem.org/publications/fulltext/202101_this_is_apartheid