



## **Human Rights Court rules for Pro-Palestinian BDS Activists - What does this mean for Germany?**

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**Zain Raza (ZR):** Thank you guys for tuning in today and welcome to another episode of *The Source*, where we interview researchers, policy experts, whistleblowers or former insiders. I am your host Zain Raza.

And today, we'll be talking to author, independent journalist and economist Shir Hever. Shir's last book is called *The Privatization of Israeli Security*. Shir, Welcome back to our show.

**Shir Hever (SH):** Thanks for having me Zain.

**ZR:** I want to begin this interview with the *Boycott, Divestment and Sanctions* (BDS) movement or organization. Could you talk about it? It's mission statement and what its goals are?

**SH:** Sure. So in 2005, 170 Palestinian civil society organizations came together to publish the call to boycott Israeli products and also Israeli cultural events, if they are funded by the government and universities, if they are complicit in one way or another with occupation. And this call, the BDS movement - boycott, divestment, sanctions - it has become widespread around the world. There are now literally millions of activists around the world who are supporting BDS in different ways. It's a grassroots movement. So it's very diverse and there is no leadership. There is no way for Palestinian organizations to dictate the course of the BDS movement but there is a website. It's called BDSmovement.net. I think it's a good idea for anyone interested to go to that website and read for themselves, because there are guidelines there. And the guidelines are very clear about what are the goals of the movement, when will the boycott stop.

The BDS movement has 3 mechanisms, three tools which are boycott, divestment and sanctions and they correspond to three demands: the demand to end occupation of Palestinian territory. The demand for equal rights to all citizens of the state of Israel. And the demand for the right of return of Palestinian refugees. And actually, these three demands are already embedded in international law. So if you want to make a long story short, you can say the BDS movement demands that Israel will conform with international law. People who support

it come from all over the world, including from Israel itself.

One of the ways that we know this movement has become so successful and influential is by the fact that the Israeli government is trying to fight it by passing laws to make it illegal and not very successfully, even inside Israel. They haven't successfully passed laws to completely criminalize the movement. But there's a lot of attempts to criminalize the movement outside of Israel. And which is, I think, something we're gonna talk about right now.

**ZR:** Thanks for providing that overview. Let us dive deeper into current issues that are surrounding the boycott, divestment and sanctions movement. Last year in May, the German parliament passed a statement or a law that condemns and opposes the BDS movement and equates it with anti-Semitism. Almost all parties, the Liberal Party known as the FDP, the Greens, the Social Democrats, the centrist CDU and CSU and even large segments of Die Linke or the left, as it's called, supported this. Given the confusion, what this really is, could you talk about this collective decision, whether it is a law or a statement and also what significance and implications it has?

**SH:** Right. So it's not a law. It's a statement. And that's very important to say from the start. So even though this is a regretful decision of the Bundestag, the German parliament, it has many negative repercussions. One thing it doesn't make, it doesn't make supporting the BDS movement illegal. People can still do that in Germany if they want. I'm still doing that, of course. So that's important to clarify. Now, the statement itself, you mentioned it was supported by all the parties, but that's one way to look at it. Actually the original draft of the statement came from the right wing FDP [party] the free Democratic Party, which is a right wing neoliberal party. I think it's very interesting, the party [FDP] that calls for economic freedom is the one that says people shouldn't have the right to choose which products to boycott. But then it was taken by the AfD, the alternative for Germany, the far right party, even to the right of the FDP which made an even stronger draft of that resolution. And at that moment, the other parties, especially the right to center CDU - the Christian Democratic Party - came up with another version of that declaration in order to try to find a text that everyone will agree to because they wanted to avoid a situation in which the left parties are voting against the resolution, thereby maybe implicitly saying that they think boycott is legitimate or having the idea that the only parties that support Israel are the far right parties. It is actually the case in many other European countries where only the very far right is supporting the Israeli occupation and apartheid but in Germany, it was very important for the centrist parties to say that it's not just the far right which are supporting Israel.

Now, this resolution [had a] very complex process [on] how it was passed. We have to look at the Germany-Israeli Congress that happens every year. It happened in Frankfurt in 2018 in November and it's still possible to watch that Congress on YouTube and you can see the German official in charge of anti-Semitism, Dr. Felix Klein, sitting with the representatives of the Israeli Ministry of Strategic Affairs, which is the ministry in charge of fighting BDS and they're trying to plot together a plan on how to fight the BDS movement and they're

trying to say [that] it's not even a movement. And maybe we should try to frame it as if it's a conspiracy of some kind. They failed to make that framing. But they say in that meeting that it's very important to try to promote legislation. The problem is [that] this legislation would be completely unconstitutional. The German constitution doesn't allow you to shut down a civil society, grassroots movements which are about human rights and international law just because they happen to be inconvenient for an apartheid state that has a good relationship with the German government. So what they did is they only released the draft of that resolution to the parliament about three days before the vote. Most members of the parliament never read it and the parties invoked party loyalty, meaning that even if in certain parties, especially in the Green Party [&] the left party [Die Linke], many members of that party were very critical that at least those who bothered to read it and thought this resolution does not represent their values, they were [still] forced to vote for it. And I think if the leaders of these parties really thought that this is the opinion of the members of the parliament, they wouldn't invoke party loyalty. I think they realized that they are promoting a piece of legislation that is very, very problematic and controversial.

What makes it controversial is the fact that it equates the BDS movement with anti-Semitism based on a psychological idea, based on an association, they say, "because we in the parliament are reminded of the Nazi slogan, don't buy from Jews, we condemn the BDS movement." But why is it the fault of the BDS movement what are the memories or the associations of the members of the parliament? You see this is a serious problem.

And one of the main arguments of the pro-Israeli organizations when they accuse the critics of Israel of anti-Semitism is [that] they say [that] the worst kind of anti-Semitism or the most common kind of anti-Semitism is to equate the policies of the Israeli government with the Nazi era. This is an argument that doesn't say [that] the state of Israel is holy and can never do wrong. It just says that if you say there is a comparison between the level of brutality and violence conducted by the Israeli military and what the Nazis did during the Second World War, then you're an anti-Semite because you've demonized what the Israelis are doing. But wait a second. If you say the BDS movement, which is actually a human rights movement, is comparable to Nazi Germany you're doing two things: one, you are absolutely demonizing the human rights activists and you are comparing them - the Nazi politics with human rights politics and that in itself should not be permissible. Remember, there are many Jewish activists who support BDS all over the world. So you can also say, yes, that's also anti-Semitic to say these Jews are actually Nazis. It's a case of blaming the victim. And the second thing, you're letting the Nazis off the hook. To look at history and say, "When I see what the Nazis did, the genocide, the atrocities committed against Jews and also against other groups this is pretty much what a group of human rights activists want to do by taking a protest against an occupation and distributing fliers or putting some signs up." That's nothing less than Holocaust denial. So I think the resolution of the Bundestag is terrible.

And it was criticized by Germans. It was criticized by Israelis. It was criticized by Jews from all over the world. I think a lot of members of parliament regret voting for it. I think it's a

very dark spot on the record of the German Bundestag. And later a German newspaper, *Der Spiegel*, did a special report and showed that the Israeli lobby groups were promising some of the members of the parliament to contribute money to their political campaigns, if they voted in favor. So the German members of parliament found that very offensive and corrupt and illegal and they actually came to the newspapers and said we were offered that and we rejected the money. But just the fact that the newspaper *Der Spiegel* reported it caused another wave of accusations from the Israeli lobby groups and their supporters, they said, you can't say anything about the Israeli lobby and you're not allowed to say that they have been corrupted, that they pushed the parliament to support that because that would also be anti-Semitic. But, you know, these are facts. This is what happened. And *Der Spiegel*, the newspaper, actually did not bow down and they published a statement that they stand by their research and their investigation.

**ZR:** Let us move to a more international level by that I mean [towards] the European level. Earlier this month, a European [human] rights court overturned a French ruling in favor of BDS activists who were convicted by the French court system after they staged a protest outside a supermarket in a small town known as Illzach in 2009 - [Hopefully] I'm pronouncing that right. You could correct me on that if I didn't pronounce it right. Could you first provide us with some more context and details on this case and thereafter talk about why the European Human Rights Court overturned the French [court] ruling?

**SH:** Yeah. So I think it's useful to look at it from the point of view of the Israeli Ministry of Strategic Affairs, from the Israeli lobby point of view, because the Israeli lobby is working in many different countries in many different ways. I think they consider Germany to be a very easy country to operate with because the German government keeps repeating that they are unconditionally supportive of the Israeli government no matter what they do. It's a bit more tricky in other countries. But the one problem that the Israeli lobby has when functioning in democratic countries is that no democratic country can actually pass a law against BDS.

But in France, there is already a preexisting law that says that calling for discrimination or inciting for discrimination is illegal. The way that this law is phrased in the French system - [it is] focusing on racial discrimination or religious based discrimination. So if you have a kind of roundabout logic where you say "the state of Israel represents Jews, all the Jews in the world are somehow connected to the state of Israel and any attack on the state of Israel is attack on Jews", then any call to boycott the state of Israel could be considered incitement to discrimination. That's a very, very problematic interpretation of the law. Of course, most Jews of the world would be .... no not "would be" but are extremely opposed to that interpretation, because it's like saying, well, the Islamic State is calling itself a representative of all Muslims, so anyone who criticizes the Islamic State is an Islamophobe. I think that is a very offensive statement to say against Muslims and for the same reason Jews find it extremely offensive when people say that you can use that French law against activists who protest the state of Israel and didn't say anything about Jews whatsoever.

So yes, there are many different activists in France. There are thousands of BDS activists in France, and they have actually achieved a lot of success in their campaigning. One of the biggest corporations of France is called *Orange*. In 2016, *Orange* - a telecommunication company - decided to stop all economic ties with Israel. And that was clearly a political statement by *Orange*. In Israel it caused a shock because it happened to be that *Orange* was the biggest provider of cell phones and telecommunication services in the country. And *Orange* did that through a local cooperation with an Israeli company called *Partner* - a partner of *Orange*. Without *Orange Partner* stayed partnerless. So that doesn't mean that anyone in Israel was not able to buy a cell phone. Everybody still had their cell phones. Everything continued to work. So it didn't affect people in that way, but it did affect people when they look at their phone. And it still has the old *Orange* sticker on it and they remember actually this corporation said that they would rather not do business with the country involved in violations of international law on such a large scale. That's the victory of the French activists.

The interesting thing is that the French prosecution, when they wanted to apply this law against BDS activists as a way to show their solidarity or their support for the Israeli government. They chose out of these thousands of activists, a small group of activists who were active not just in 2009 also in 2010 in distributing fliers calling for a boycott of Israeli goods. I think one of the reasons they chose them is that if you look at the names of the people who are accused, you see several names that sound Muslim or Arab. Two of these activists are actually not French nationals, but immigrants, one from Afghanistan, one from Morocco. So they basically said, let's try to make the BDS movement look as if it's a Muslim movement or an Arab movement. That's not the first time this happened in France. When there were massive demonstrations against the Israeli invasion of Gaza of 2008-2009, there was a demonstration in Paris with hundreds of thousands of participants against that war, against the bombardment of Gaza. But if you looked at the demonstration in the news, you only saw a tiny part of that demonstration where people were wearing kufis or had other kind of Muslim look. And that's the only thing that made it to the news, even though 99% of the people marching there were not wearing kufis. So that's I think, one of the reasons why the French legal system has exposed their own embedded racism in choosing this particular group of people. And they were convicted of incitement to discrimination in a French court. They appealed and their appeal failed. And they had to pay a fine of about 1000 Euros to the French authorities. And then [had to pay] 1000 Euros - each of the convicted 11 activists - to 3 pro-Israeli lobby organizations that organized the lawsuit against them. So you have pro-Israel lobby organizations operating in France promoting Israeli politics and they would be given compensation because these activists were convicted of inciting to discriminate against Israel, not against Jews. That needs to be clear.

So these activists then appealed to the European Human Rights Court, which also happens to be in France, in Strasbourg, but it applies to all of Europe. And the court reversed that decision completely and said that they were wrongfully convicted, wrongfully accused. The

BDS movement is not anti-Semitic. The BDS movement is not incitement to discrimination. These activists did not incite for discrimination. They should not pay any fine and in fact, the French government has to compensate them. Each one of them [has to be compensated] by about twenty 27,000 Euros.. So that's a very big victory. Now, there's, of course, a chance that the French government will appeal and go to the European Supreme Court. That will be the last instance of that debate. I think it's very likely that they will lose if they do that, because the legal standing of the BDS movement is very strong. So there is a good chance the French authorities will not even try to make an appeal.

**ZR:** Just quickly, on what grounds did the European Human Rights Court overturn this [French court] ruling? On what basis?

**SH:** Well, of course, it's on the basis of freedom of speech. In 2016, the vice president of the European Union, Federica Mogherini, was asked whether the BDS movement is allowed. And she said that officially the position of the European Union is not to support BDS, but according to the European laws and freedom of speech, everyone has a right to promote BDS. So that's an official policy of the European Union and the court didn't actually need grounds why they needed to rule otherwise. What they said is that the grounds of the French court to rule against freedom of speech were opposed to basic European law.

**ZR:** Let us take this case and return back to Germany. Given that a precedent has been set by the European Human Rights Court, which you just mentioned, of the overturning of the French ruling. What impact does it have on what we talked about earlier in regards to the German government's statement that BDS equals to anti-Semitism, and especially [while] considering the fact that the German government is very adamant about Europeanism - sharing common values and justice? What implication does it have on their [Bundestag] statement? Free speech and BDS activism?

**SH:** Well, the thing is, I don't think that the direct impact will be on the decision of the Bundestag. Maybe it's already regretting that decision. Maybe they will withdraw it at some point as a symbolic gesture. But the way that German politics works is that they will probably only withdraw it when it's already too late. They will wait until there's a Palestinian state or Israel will become a democracy where everyone has equal rights. And then they will say, "oh, you know, you remember that 20 years ago we supported apartheid and opposed freedom of speech. That was a mistake. Let's correct that." But they won't do that in time to make a difference.

And I think that's maybe a broader discussion for us to have at some other time about the German political system's love affair with guilt and the desire to have the opportunity to apologize for something by doing something wrong first. But it does have an effect on what's happening now in a lot of German cities. First and foremost is Munich, your city, where the municipality passed the resolution that any BDS group will not be allowed to have any events in state owned or city owned rooms or halls. Right now, when we're still under restrictions

because of COVID19 that's not extremely relevant. But on the broader scale, this is very relevant. Many events have been canceled because municipalities are not just denying the right of BDS groups to have events, as any other group can have, but also to deny having a discussion about BDS, have any event where BDS is discussed. I personally had an event that was supposed to take place in Bonn and my event was not even about BDS, but because the organizers who invited me happened to support BDS, I was disinvited and was not allowed to speak in a building that was owned by the Bonn municipality. This is, of course, a restriction of freedom of speech. And in several of these cities, especially in Munich, there is an appeal to the Supreme Court of Germany, the Supreme Court in Karlsruhe, against that resolution of the city, saying "the city does not have the right to decide which political opinions can be expressed in the city or even in buildings owned by the city". That transgresses the right of the municipal government to control opinions and texts that will be spoken in their buildings. And that appeal takes time. It takes money. But now the European Human Rights Court has made a ruling, which is very clear. about how freedom of speech can be, or more importantly, cannot be restricted in the name of fighting BDS. And I think the judges in Karlsruhe will have to realize that there is a hierarchy and the jurisdiction works that the European Human Rights Court is above the German Supreme Court. So they will have to make a ruling based on that precedent that gives activists in Germany a shot in the arm and a very strong hope that things are going to change and that groups will be able to operate openly and speak freely about what BDS is.

I want to say for me personally, this is very important because I think it's not just an issue of whether BDS will succeed or not. Trying to shut down these meetings and censor BDS is not going to make the BDS movement weaker, maybe even the opposite. It will make the outrage against Israeli apartheid and colonialism even worse. The problem is that it turns that outrage into a very ignorant outrage. People will respond emotionally, feeling that they've been silenced, indeed, they are being silenced. But then they don't actually have the opportunity to learn more on what are the facts. And the whole point, I think, of the BDS movement is to make it very clear that what is at stake here are not the people who commit crimes, but the crimes themselves. The BDS movement is never called to punish Israel for colonialism or apartheid. It's not a punishment. It's a way to put political pressure to end the injustice. Meaning that if an Israeli soldier murders a Palestinian, we're not going to say, "oh, well, you committed murder, so we're not going to buy your products. We're going to boycott your avocados." That makes no sense legally or morally in any way. But in order to make sure that no more Palestinians are murdered, we have to tell the Israelis. We are watching. We are filming. We are publishing information. And there are consequences in the sense that there will be outrage, there will be protest. The protest takes the form of boycotts. It's a symbolic issue. It's not going to stop the Israeli economy, but it's something that touches the Israeli consciousness very strongly. And that's why it's so important to have that discussion and not to try to censor it.

**ZR:** Dr. Shir Hever, economist, journalist and author, thank you so much for joining us

today.

**SH:** Thank you, Zain.

**ZR:** And thank you guys for tuning in today. We talked to Shir last week. So if you missed that part of the interview which talks about Israel's upcoming annexation plans, be sure to check out the link in the description of this video. And also once you're done watching it, don't forget to donate and subscribe to our channel so we can continue to produce independent nonprofit news and analysis. I am your host Zain Raza. See you guys next time!

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