



ELSC

European Legal Support Center

**2020
YEAR-IN-REVIEW**





Palestine Solidarity Demonstration, London, United Kingdom, May 2021 © Jess Hurd/PSC

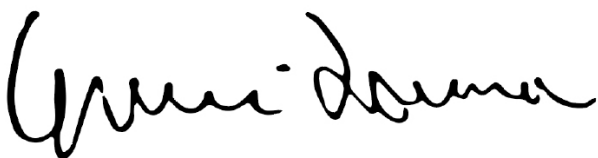
Message from the Director

2020 was a challenging year for us all. With the onset of the COVID-19 pandemic, our work had to adapt to a new reality. It is humbling, therefore, to see the growth and successes of the ELSC team. In only our second year of operation, we were able to welcome a second full-time staff member, our Communication and Media Officer, alongside an exceptional legal support team made up of 16 consultants, trainees and interns. With the support and dedication of our team, we were able to conduct extensive monitoring activities in The Netherlands and UK, provide legal support and assistance in 39 cases across 11 European countries, as well as empower Palestinian rights activists in advocacy campaigns and strategic litigation.

Alongside our casework, we launched the ELSC's website (elsc.support) and social media channels. Our growing mailing list, new and old partnerships and communication and outreach work enabled us to connect with and extend our legal support services to wider communities. The public presence of our work has helped us ensure that the issues of repression, shrinking space and censorship experienced by the Palestine solidarity movement are visible, showing activists that they are not alone in their struggle. In 2020, we were also pleased to receive the [landmark Baldassi v. France judgement](#) issued by the European Court of Human Rights and we are proud that Ghislain Poissonier, a member of our advisory board, was part of the legal team supporting the plaintiffs. The ruling concluded that calling for a boycott of goods from Israel is protected by the right to freedom of expression and cannot be considered incitement to discrimination. This judgement, binding on all European states, set an important precedent supporting our work and affirming the right to boycott.

Whilst it is exciting to see the growth and development of the ELSC, the growth of our caseload demonstrates the scale of repression faced by Palestinian rights activists. In this regard, the legal assistance we provided in 2020 highlighted the wide array of tactics employed to suppress advocacy for Palestinian rights, and the chilling effect, including self-censorship and restriction of civic space, of these tactics on fundamental rights, democracy and the rule of law in many European countries. It also highlighted the importance of responding effectively to diverse legal and political contexts and the complex interplay of national, European and international frameworks.

As we move forward with our work in 2021, in times of growing global mobilization for Palestinian rights, we hope to continue our work in support of the movement. Yet, the ELSC's work is only possible thanks to the manifold engagement of our friends, including our partner organisations around the world, institutional donors and individuals who have provided generous donations. For this, I and the ELSC team are deeply grateful.



Giovanni Fassina
ELSC Programme Director

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March for Palestine, London, United Kingdom, 15 May 2021 © Ehimetalor Akhere Unuabona

Monitor

Throughout 2020, the ELSC [monitored](#) the repression of Palestinian rights advocacy across Europe, expanding our legal database on key issues and topics including freedom of expression, the right to boycott, and academic freedom. Our work focused in particular on documenting and analysing incidents and consequences of attacks on advocates for Palestinian Rights in the United Kingdom and the Netherlands, and on the preparation of country reports that will serve to raise awareness and push back against unlawful restrictions of fundamental rights and civic space in these two countries.

Incidents in The Netherlands

In The Netherlands, as of 31 December 2020, we recorded 76 incidents of repression. The predominant targets of attacks were civil society organisations (33 incidents), followed by Dutch political parties (14 incidents) and individual politicians and diplomats (6 incidents). We also found that 62% of all attacks (47 incidents) relied on

unfounded and inflammatory allegations of antisemitism, most of which referred to the controversial IHRA Working Definition of Antisemitism; whilst 29% (22 incidents) were based on allegations of support of terrorism that lacked impartial and credible evidence.

Incidents in the United Kingdom

In the UK, we completed systematic documentation of incidents of repression of advocacy for Palestinian rights, with a

focus on universities, faculty, students and academic freedom. This process was still ongoing by the end of 2020.



Defend

In 2020, the ELSC provided legal assistance in 39 cases of individuals, groups and organisations facing repression of Palestinian rights advocacy in 10 European countries including the Austria, Belgium, Germany, The Netherlands, Italy, Norway, Spain, Sweden, Switzerland, UK. Examples of our work included assisting students and academics in campus disciplinary proceedings for inflammatory allegation of antisemitism. In 23 of these cases, we supported litigation or legal defence outside of courts by working with our network of lawyers and partner organisations, and preparing legal opinions, memos and submissions.

Challenging German anti-BDS motions as unconstitutional

ELSC support of strategic lawsuits against the anti-BDS motions adopted in Germany, which conflate support of legitimate Boycott, Divestment and Sanctions (BDS) campaigns for ending Israel's oppression of the Palestinian people with antisemitism, was a key area of ELSC legal defence in 2020 and resulted in a first important court decision.

Adopted since 2016 by German political parties, cities, states and the federal parliament (Bundestag), these motions falsely claim that the Palestinian civil society-led BDS movement would target individuals, businesses and institutions because of their Jewish identity and condemn the movement as antisemitic, usually with reference to the controversial IHRA definition.

In practice, these motions, which have no legal force, have resulted in individuals, groups and associations perceived as supporting BDS being banned from public events and denied access to public spaces and online platforms.

In previous lawsuits, including cases supported by the ELSC, German administrative courts had confirmed that the denial of use of public facilities, when based solely on the sweeping allegations of antisemitism in these anti-BDS motions, violates the constitutional rights, foremost the rights to freedom of expression and assembly.

Throughout 2020, the ELSC worked with German attorney Ahmed Abed on a novel approach, challenging anti-BDS motions directly as unconstitutional.

On 22 September 2020, the Constitutional Court of North-Rhine Westphalia (NRW) delivered its [judgement](#) in a first-ever constitutional complaint brought against a 2018 anti-BDS motion of the NRW Parliament by two associations represented by attorney Abed and supported by the ELSC.

Although the Court dismissed the complaint on procedural grounds, it laid the foundation for future constitutional challenges of anti-BDS motions by concluding that:

- The Parliamentary motion is suitable for judicial review notwithstanding its non-legally binding nature;
- The complainants are “largely affected by the motion in their fundamental rights” and, thus, they are “entitled to file complaints against the Parliamentary motion”;
- The motion may infringe the complainants’ constitutional rights, in particular their right to freedom of association;
- The complainants are to exhaust all available procedures before turning to the constitutional court; the complainants must first bring the claim before administrative courts.

“As far as the complainants are directly concerned, there is also the possibility of a violation of their rights under the state constitution. Without further examination, it cannot be excluded a priori and from every conceivable point of view that Parliament has in any case infringed the complainants’ right to freedom of association under Article 4(1) of the state constitution in conjunction with Article 9(1) of the Basic Law by designating the BDS movement as ‘antisemitic’, by referring to conceivable historical parallels with the boycott of Jewish businesses under the Nazi regime and by condemning the call for a boycott.”

Constitutional Court of North-Rhine Westphalia

In pursuit of the same novel approach, campaigners of the [Bundestag 3 for Palestine](#) (BT3P), represented by attorney Abed and [supported](#) by the ELSC, filed in May 2020 a complaint against the German federal parliament (Bundestag) with the Berlin Administrative Court, requesting the nullification of the Bundestag’s anti-BDS motion of May 17, 2019.

BT3P’s complaint argues that the motion, although non-legally binding, has law-like effect, resulting in defamation of human rights activists as antisemitic and in violation of the constitutional rights to freedom of expression and assembly. In support of the lawsuit, the ELSC solicited a legal opinion signed by four renowned scholars of international law affirming the

incompatibility of the Bundestag’s motion with European and international human rights standards. At the end of 2020, the Court’s decision in this case was still pending.

Our work challenging the negative environment for Palestinian rights advocates in Germany was further featured in a 2020 [documentary](#) titled “Censoring Palestine: The Weaponisation Of Anti-Semitism”. Giovanni Fassina, ELSC Programme Director, is interviewed at several points during the documentary about the legitimacy of the BDS movement and the dangerous conflation of antisemitism with critics of Israel’s policy.

European Jews for a Just Peace vs European Commission

At the European institutional level, the ELSC provided assistance throughout 2020 to the umbrella organisation, European Jews for a Just Peace (EJJP) to challenge their exclusion from the European Commission's "Working Group on Combating Antisemitism".

The Commission had set up the Working Group to assist EU Member States in the implementation of the Council Declaration on the Fight against Antisemitism of December 6, 2018. In addition to EU Member States, the Commission invited the participation of organisations representing Jewish communities in Member States, other "Jewish umbrella organisations" and experts, many of whom are known for their role as promoters of the controversial IHRA definition that equates criticism of the State of Israel with antisemitism. The EJJP, which constitutes the first and only Europe-wide

umbrella organisation of Jewish groups and organisations that advocate for Palestinian human rights and reject the flawed IHRA definition, was denied admission to the Working Group by the Commission.

With the assistance of the ELSC, the EJJP submitted a complaint to the EU Ombudsman, arguing that the Commission was responsible for maladministration, lack of transparency and failure to ensure objectivity when it refused to admit the EJJP to the Working Group. In its complaint, the EJJP also requests the Ombudsman to open an inquiry into their exclusion, and to provide access to all information available to the participants in the Working Group meetings. The Ombudsman is expected to reply to the complaint in September 2021.



A victory over meritless hate crime charges in Spain

The attempt of an Israeli government-aligned lawfare group to criminalize a call for boycott of Palestine solidarity activists failed, when the Provincial Court of Valencia accepted the appeal of the defendants, which was led by local lawyer Laia Serra and assisted by the ELSC. The Court [acknowledged](#) that criticism of Zionism and Israeli Government's practices upon the Palestinians does not constitute incitement of hatred and definitively dismissed the case.

Since 2016, the lawfare group had pursued charges against eight activists under the Spanish criminal code, alleging that they had committed a hate crime against the Jewish US American singer Matisyahu by calling on the 2015 Rototom Sunsplash Festival to cancel his performance because of his support for Israel's army and military operations against Palestinians in the occupied Gaza Strip.

In its ruling, the Court of Valencia referred extensively to the European Court of Human Rights' landmark decision in *Baldassi and others vs. France* (July 2020). Accordingly, the Court acknowledged that criticism of Zionism and Israel's practices against Palestinians does not constitute a hate crime motivated by discrimination or hatred against Jews or Israelis on grounds of their religious, ethnic or national identity.

The Court also concluded that objecting to the singer's participation in a festival that is committed to human rights, due to his personal support of certain practices of the State of Israel, is a legitimate form of exercise of the right to freedom of expression.

"For more than 4 years, they have tried to exhaust us and demobilise us but not only have they not succeeded, they have brought us closer than ever before"

Rototom Activists following the pronouncement of the Judgement



support
LGBTQI* Palestinians
Boycott Israel
#BDS

PRIDE in
ISRAEL
JEWISH
LESBIAN
FOR A FREE
PALESTINE

QUEERS* FOR
A FREE
PALESTINE

END ISRAELI
OCCUPATION
QUEERS* FOR
A FREE
PALESTINE

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Berlin Radical Queer March in Berlin, Germany on 27 July 2019 © Hamodi Badarne for Palästina Spricht

Empower

The ELSC seeks to empower campaigns for Palestinian rights through supportive legal research and strategic litigation.

Socially responsible public procurement

In 2020, we [supported](#) civil society groups and organizations campaigning in the Netherlands, UK and Spain for the exclusion of Construcciones y Auxiliar de Ferrocarriles (CAF), a company headquartered in the Basque Country, from public tenders and contracts due its involvement in human rights abuses in the Occupied Palestinian Territory (OPT).

We supported campaigners with legal briefs explaining that it is lawful for public contractors to exclude a business enterprise from a tender if it is involved in economic activities that maintain or facilitate grave violations of international humanitarian and/or human rights law, because the latter amounts to “grave professional misconduct”, a ground for exclusion from public procurement under domestic EU law.

Corporate respect of human rights

In a step towards corporate accountability for ongoing human rights abuses in the OPT, the United Nations High Commissioner for Human Rights (OHCHR) released in February 2020 a database of businesses involved in Israel’s illegal settlements in the occupied West Bank, including East Jerusalem. 112 businesses are named in the database; 94 of them are domiciled in Israel and 18 in six other countries.

(CAF) be included in the UN database. The report argued that CAF should be included due to its role in expanding and operating Israel’s Jerusalem Light Rail (JLR), a tram network that entrenches Israel’s illegal settlements in occupied Jerusalem. In 2016 and 2017, the UN Human Rights Council deemed the JLR “in clear violation of international law and relevant United Nations resolutions.”

Since the UN Human Rights Council has instructed the OHCHR to update this database periodically, the ELSC and Cairo Institute for Human Rights, together with 30 human rights organisations, networks and trade unions from Palestine and Europe, submitted in December 2020 a report to the OHCHR in Geneva, requesting that Construcciones y Auxiliar de Ferrocarriles

“It is indisputable that CAF, through its involvement in the extension and maintenance of the JLR system: a) directly facilitates the existence and the expansion of the Israeli settlements in occupied and annexed East Jerusalem, thereby playing an essential role in maintaining the situation of international unlawfulness marked by serious breaches of IHL and IHRL by the State of Israel; b) did not carry out a proper human rights due diligence process, infringing its own Code of Conduct and Corporate Social Responsibility Policy, and also international standards by omitting to address the negative humanitarian and human rights impact of the JLR.”

ELSC Legal Brief

Partners

Our primary partners are the civil society organisations and networks that support the Palestinian people and advocate for their rights in Europe and beyond. The ELSC has also established cooperation with academic institutions, NGOs and law firms from different national jurisdictions across Europe. Our partners include War on Want, Euromed Rights, The Rights Forum, SOMO, Cairo Institute for Human Rights, Reclaim, Global Legal Action Network (GLAN), Amnesty International UK, Lawyers for Palestinian Human Rights (LPHR), Rights Defenders in Europe, the Palestinian NGO Network in Palestine and Palestine Legal and the Center for Constitutional Rights in the United States.

We consider these partnerships to be a major achievement. They are a valuable source of expertise and human resources for the implementation of our ambitious program. With these partnerships, we have also made defence and support of Palestinian rights a matter of concern for institutions that have had no previous engagement with Palestine or the Palestine solidarity movement.

We take this opportunity to express our sincere and heartfelt gratitude to The Rights Forum and A Different Jewish Voice (EAJG) for their active contribution, and Access Now for their valued expertise. We also would like to acknowledge Berlin-based lawyer Ahmed Abed and Laia Serra for their significant involvement and work supporting our mission.

Funding

Our special thanks go to our private and institutional donors.

The second year of operation of the ELSC was made possible by individuals who provided generous seed funding because they understand and support our mission.

Our Team

STAFF

Giovanni Fassina
Programme Director

Alice Garcia
Advocacy and Communication Officer

Sam Gaunt
Development Officer

Klaas Van De Beek
Admin & Finance Consultant

STEERING COMMITTEE

Gerard Jonkman
Director of The Rights Forum
Amsterdam, The Netherlands

Ingrid Jaradat
Palestinian NGO Network (PNGO)
Bethlehem, Palestine

Tom Moerenhout
Legal Scholar, Adjunct Assistant Professor at
Columbia University's School of International
and Public Affairs, New York, USA

GUEST RESEARCHERS, INTERNS, CONSULTANTS

Silvia Angelini

Matteo Bertoldi

Yeshe Carta

Lavinia Cupello

Andreina De Leo

Beatrice Fantolino

Daan de Grefte

Eda Gulsen

Thomas Hofland

Nazli Kayam

Andrea Longo

Carlo Mazzoleni

Nadia Quinn Sciascia

Brando Ranalli

Allard de Rooi

Giulia Rossi

Aletta de Savornin Lohman

Nadia Silhi Chahin

Serena Zanirato

Advisory Board

Valentina Azarova

Legal Scholar and Practitioner
Research Fellow at Manchester International
Law Centre (MILC)
Legal Advisor to the Global Legal Action
Network (GLAN)

Eric David

Professor Emeritus in International Law,
Université Libre de Bruxelles (ULB)

Xavier Dupré De Boulois

Professor in Public Law, Université Paris I -
Panthéon Sorbonne

Domenico Gallo

President of the Second section (civil) of the
Court of Cassation in Roma
Former Senator

Triestino Mariniello

Senior Lecturer in Law at Liverpool John
Moore's University; member of the Legal
Team representing Gaza Victims before the
ICC.

Mazen Masri

Senior Lecturer in law at the City Law School,
City University London
Qualified lawyer, former legal advisor to the
Palestine Liberation Organization (PLO)

Chantal Meloni

Professor in International Criminal Law,
University of Milan

Karma Nabulsi

Professor in Politics and International
Relations, University of Oxford
Former Adviser to the Palestine Liberation
Organization (PLO)

Norman Paech

Professor Emeritus in Political Science and
Public Law, University of Hamburg
Former Member of the German Parliament
on behalf of Die Linke

Gilberto Pagani

Former President of AED-EDL (European
Democratic Lawyers) and of Legal Team
Italia
Practicing Human Rights Lawyer, Milan

Ghislain Poissonnier

Judge in France
Legal adviser to French diplomatic missions
in Kosovo, Palestine, Congo, Thailand,
Afghanistan and Guinea

Fanny Michaela Reisin

Former President of the International League
for Human Rights - FIDH Germany
Co-Founder and former Executive Board
Member of the Jewish Voice for a Just Peace
in Near East - EJJP Germany

Frederiek de Vlaming

Director Nuhanovic Foundation, Centre for
War Reparations
Senior Researcher, Amsterdam Center for
International Law, University of Amsterdam

Liesbeth Zegveld

Professor in Public International Law,
University of Amsterdam
Practicing Human Rights Lawyer

Support us!

YOU HAVE A ROLE TO PLAY: DONATE. ACT. SHARE.

DONATE The ELSC is a non-profit organisation. Donations and grants allow us to be sustainable and independent. They enable us to plan, leverage, and allocate resources in a way that means more hope for our clients, and more support for the movement.

Donations to Dutch non-profits may be tax-deductible according to your country tax law. You can make a one-time or monthly gift today via our website. If you would like more information on a tax deductible donation, please contact fundraiser@elsc.support.

FOLLOW US Receive monthly updates from the ELSC on the defence of Palestinian rights advocacy throughout Europe by [subscribing](#) to our newsletter. Feel free to share our news with your friends and network. ELSC is now on [LinkedIn](#), [Twitter](#) and [Facebook](#).

TRAINEESHIPS The ELSC offers in-office traineeships with flexible schedules and a stipend to graduate students based in European countries. These positions offer an opportunity to gain practical knowledge about the interactions between law and collective political action, and for contributing to rights-based social change.

ELSC is specifically seeking bachelor or master students writing thesis on topics related to our work such as freedom of expression, principles of anti-discrimination under EU law and ECHR, data protection law, EU counter terrorism legislation and business and human rights. [Find more details on our website](#)

REPORT AN INCIDENT A variety of tactics is being used to silence those who support Palestinian rights: from smear campaigns falsely accusing of antisemitism or ties to terrorism, to the implementation of restrictive policies.

The ELSC is determined to expose these tactics and challenge them through legal actions. The reported incidents are compiled in a database that enable drawing the broader picture of the attacks faced by Palestinian rights defenders. The database will be included in our website next year.

If you believe you, your group, NGO, association, foundation or otherwise has been intimidated, slandered, censored or banned from speaking out or carrying out solidarity actions, or if you have questions about your rights please complete the [incident form](#) on our website.

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