

2019 ANNUAL REPORT



**THE STRUGGLE
AGAINST APARTHEID
CONTINUES**

**PALÄSTINA
SPRICHT**
فلسطين تتحدث

**DER KAMPF GEGEN
APARTHEID GEHT
WEITER**



Protest against the Bundestag's Anti-BDS Resolution in Berlin, Germany on 28 June 2019

DEFENDING THE FUNDAMENTAL RIGHT TO FREEDOM OF EXPRESSION

COUNTERING SHRINKING SPACE FOR CIVIL SOCIETY IN EUROPE

WE MONITOR

We document, analyse and report on incidents, policies, legislation and case law related to repression of the Palestine solidarity movement in Europe.

WE DEFEND

We develop effective legal defence strategies with lawyers against disinformation, smear campaigns and discriminatory policies to protect the fundamental rights of freedom of expression and assembly.

WE EMPOWER

We provide legal advice and tools to human rights defenders who are challenging governments and corporations that are involved in Israel's violations of Palestinian human rights.

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MANDATE

Mobilize law in the service of Palestinian rights defenders.

The European Legal Support Center is the first and only organisation providing professional legal support and assistance to organisations, groups and individuals advocating for Palestinian rights in Europe.

The ELSC intervenes to end arbitrary restrictions and criminalization of peaceful advocacy and humanitarian work. It also develops legal tools and strategies to support civil society advocacy and campaigns. The Center was established in January 2019 in Amsterdam as a joint initiative of the Palestinian civil society network PNGO, the Dutch NGO The Rights Forum, and European jurists.

ELSC is committed to:

SOCIAL JUSTICE

EQUALITY

ANTI-RACISM

ELSC works with:

ACCURACY

INTEGRITY

SOLIDARITY



Radical Queer March in Berlin, Germany on 27 July 2019

THE ISSUE

Growing mobilisation of civil society against Israel's flagrant violations of international humanitarian law and Palestinian human rights has prompted an unprecedented campaign of repression, not only by Israel but also by European parliaments, governments and media.

Aimed at silencing criticism of Israel, this campaign of repression targets individuals, groups and organisations advocating for Palestinian human rights, as well as agencies, NGOs and charities providing humanitarian aid to Palestinians, including refugees and those under Israel's occupation.

The means employed by this campaign are defamation, criminalization and arbitrary restrictions of advocacy and humanitarian work. These have included:

- * Disinformation and smear campaigns raising false accusations of antisemitism and support of terrorism; restrictions on student-organized activities by academic institutions;
- * Arbitrary closure of bank accounts and denial of access to financial services by banks and providers of online platforms;
- * Governments and courts preventing public institutions and local governments from adopting socially responsible procurement or investment policies that exclude companies involved in Israel's illegal settlements and human rights abuses.

By making an exception from the freedom of expression in order to protect Israel, European states and societies contribute to the phenomenon of "shrinking space for civil society" that is being fostered worldwide by racist and far-right movements, political parties and governments.



DATABASE

The ELSC database is a core-resource for the wider community of human rights defenders as well as academics, the media and more.

The database contains documentation of incidents of defamation and repression, related legislation and jurisprudence, academic papers, reports, legal research, and casework related to the following topics:

- * Freedoms of expression and assembly, the right to boycott, the right to reputation and the principle of non-discrimination under international human rights law, EU law and the European Convention on Human Rights (ECHR);
- * EU data protection law;
- * EU anti-money laundering and counter-terrorism law;
- * Business and human rights;
- * International humanitarian law.

Created at the beginning of the year, the database is being steadily enriched as our legal team carries out research to support activists and lawyers in European countries such as The Netherlands, UK, France, Belgium, Germany, Austria, Switzerland, Italy and Spain.

COUNTRY REPORTS

We produce monitoring reports that document and analyse the challenges faced by advocates for Palestinian rights in each European country.

The first ELSC country report documenting and analysing the situation in The Netherlands will be published in 2020. It will be followed by reports about the situation in the UK and Germany.

These reports serve to raise awareness of the threats and restrictions faced by civil society, which violate fundamental rights and prevent informed public debate about Israel's flagrant violations of international law and Palestinian human rights. They will provide comprehensive information, country by country, about: the different categories of measures used to silence advocacy for Palestinian human rights, the political context that enables these attacks, and the national and international legal frameworks applicable in this context.

By placing the documented incidents in their political and legal context, we will demonstrate how the phenomenon of "shrinking civic space" plays out at each national level. Thus, we hope to contribute to the protection of civil liberties in the face of the current trend of censorship and intimidation of European citizens who stand in solidarity with the Palestinian people.

LEGAL DEFENCE

Germany

Three victories before German Courts, ruling that denial of public spaces, based on motions that condemn the BDS movement as antisemitic, violates the constitutional rights to equality and freedom of expression and assembly.

• Oldenburg

At the end of March, only three months after the establishment of the ELSC, we celebrated our first success in court. With our German partner, Attorney Ahmed Abed, we won an appeal before the Higher Administrative Court of Lower Saxony against the denial of public space by the City of Oldenburg for public debates during the Palestine solidarity movement's 2019 Israeli Apartheid Week.

The City had refused to grant the requested space. Initially, Attorney Abed had challenged the City by bringing an "application for interim measure" before the Administrative Court of Oldenburg. On 21 March, the Court issued a controversial judgement in favour of the City, arguing that the applicant did not sufficiently demonstrate that the BDS campaign is not antisemitic.

Attorney Abed requested ELSC assistance with an urgent appeal before the Higher Administrative Court of Lower Saxony. The ELSC provided a legal memo arguing that the right to boycott Israel is perfectly lawful under art. 10 of the European Convention of Human Rights (ECHR), and a [statement](#) signed by Professor John Dugard stressing the full legitimacy of BDS.

Our argument convinced the Court that the BDS movement pursues a genuine and legitimate human rights agenda in full compliance with international law. Consequently, the Court instructed the City of Oldenburg to provide the requested rooms, and BDS Oldenburg was able to host Israeli Apartheid Week events in public space. The City was also forced to cover the plaintiff's legal cost for both proceedings.

Read the summary of the case on [Columbia Global Freedom of Expression website](#).

Israeli Apartheid Week events hold in Oldenburg-owned public venue in March 2019



“In any case, from the summary examination of the present case it cannot be determined that the applicant or the BDS campaign and the persons participating in the events undermine the free democratic basic order. Accordingly, (...) the applicant is entitled to carry out the planned events in City-owned venues.”

The Higher Administrative Court of Lower Saxony
28 March 2019



Protest against the Bundestag's Anti-BDS Resolution in Berlin, Germany on 28 June 2019

• Bonn

In September, we achieved two more victories in the Administrative Court of Cologne, this time against the City of Bonn which sought to exclude the German-Palestinian Women's Association, the Palestinian Community-Bonn and the German Palestinian Society from the City's annual cultural festival because of affiliation with the BDS movement.

In partnership with Attorney Abed, we demonstrated that the exclusion of the two associations, which was based on the City's motion entitled "No place for the anti-Semitic BDS movement in Bonn", was in breach of the rights to equality and freedom of opinion and expression.

The motion, adopted on 14 May, calls upon all municipal institutions in Bonn to deny public facilities and subsidies to BDS groups and their events, as well as to events and groups that share BDS goals.

Among the documents filed to the Cologne Court by Attorney Abed, with the support of the ELSC, was an [expert opinion](#) of the Israeli historian and philosopher Prof. Moshe Zuckermann, which explained that: "**Criticism, even harsh criticism, of Israel's policy does not question Israel's right to exist, as stated in the Bonn resolution, but rather Israel's right to pursue its repressive and human rights violating policy against the Palestinians**".

And that the portrayal of the BDS movement as antisemitic is: ***"(...) manipulative and guided by ideological interests. It is primarily the attempt to delegitimize a democratically legitimate political practice, which proves to be deeply dishonest precisely in the perfidious use of the antisemitism accusation."***

On 13 and 30 September, the Administrative Court of Cologne issued two separate decisions instructing the City of Bonn to permit participation of each of the two associations in the festival.

The Court reasoned that the exclusion of the associations on the grounds of their support for the BDS movement constitutes "unequal treatment" ("Ungleichbehandlung"), which is "not even remotely justified". The Court thus found the conduct of the City in breach of the principle of equality set out in Article 3 of the German Basic Law, and in violation of the association's right to freedom of opinion and expression under Article 5 Basic Law.

In response to these judgements, the City of Bonn lifted its unlawful ban and invited to the Festival the associations it had previously sought to exclude. The City even invited the German-Palestinian Society, although the Court had ruled that this association could be excluded because it did not meet the general criteria of regular presence and activity in the Bonn region that is required under the City's policy for participation in the festival.

“The [anti-BDS] motions of the Bonn City Council, as well as the motions of the parliament of North-Rhine Westphalia (20 September 2018) and the German Bundestag (17 May 2019), don’t constitute legislative acts, but are political resolutions or expressions of political will. These motions alone cannot justify, from any legal perspective, the restriction of an existing legal right.”

The Administrative Court of Cologne
13 September 2019

Spain

In December, an important first victory in court was achieved with ELSC assistance by the lawyers defending the right of the City of Cadiz to endorse the BDS movement’s “Apartheid Free Zones Campaign”.

In a motion adopted on 12 August 2016, the Cadiz City Council declared Cadiz a city free of Israeli apartheid and committed to abstain from procurement and cooperation with companies and institutions complicit in Israel’s violations of Palestinian human rights. Based on this motion, the City Council decided in September 2017 to cancel an Israeli embassy-sponsored film festival in a city-owned venue. In response, the pro-Israel law-fare organisation ACOM filed a complaint with the Cadiz Administrative Court, asking for the annulment of the motion. The court of first instance decided in favour of ACOM and the case is now pending before the court of appeal. In addition, ACOM filed a criminal complaint against the members of the City Council, arguing that they had committed a hate crime by cancelling the film festival.

The ELSC assisted the lawyers of the City Council with a legal memo arguing that the State’s obligations to not recognize or assist an unlawful situation created through grave violations of international law are widely acknowledged by the United Nations, as well as by international and European tribunals. Being an intermediary organ of the State under international law, City Councils are thus fully legitimated, competent, and even required to act in compliance with these obligations.

In its judgment of 16 December 2019 in the case of ACOM’s hate crime complaint, the Court concluded that the City Council had no way of knowing that its anti-apartheid motion could be deemed illegal, in light of the fact that other Spanish cities were participating in the campaign and because the Spanish Parliament had adopted a motion recognizing the right of citizens to support the BDS movement. The Court also concluded that the Spanish hate crime code is not applicable to the cancellation of the Israeli-embassy sponsored film cycle, because it was carried out to promote human rights and fair trade, and there was no expression of hatred, antisemitism or discrimination based on Israeli nationality. Accordingly, ACOM’s hate crime complaint was dismissed.

“In light of the above, it can be considered that the cancellation of the Israeli film cycle does neither have antisemitic or exclusionary motives on the ground of nationality, nor does it contravene the basic principles of peaceful coexistence and human dignity. For these reasons [...] the claims of abuse of office and incitement to hatred are manifestly unfounded”

Criminal Court of Cadiz
16 December 2019

LEGAL SUPPORT OF CIVIL SOCIETY CAMPAIGNS

ELSC has taken up legal research in support of advocacy and strategic litigation against corporations and public institutions involved in Israel's flagrant violations of Palestinian human rights.

The European Citizens Initiative

A European Citizens Initiative (ECI) is an EU mechanism that allows EU citizens to directly request legislation from the European Commission upon the collection of one million signatures. The ELSC has provided legal research support to a citizen's committee that seeks to register an ECI requesting a legal act of the Commission that will prohibit trade with illegal settlements in occupied territories (such as for example Western Sahara and Palestine).

The ECI argues that, in order to ensure compliance of the EU and its Members with EU law and international law, and to preserve the integrity of the EU market, the Commission can and should promote a legal act that outlaws the import and export of goods and services from and to illegal settlements in occupied territories.

The Commission rejected registration of the ECI, arguing that the proposed initiative is not within its competence because it concerns "restrictive measures" (sanctions), which are the sole competence of the European Council (member states) under EU law. The citizen's committee decided to appeal the Commission's refusal stressing on the fact that the ban of the settlement products is a trade measure and not a sanction. Following a successful crowdfunding campaign, the appeal was filed with the Court of Justice of the EU in November.

Dutch Campaigners

* Concerned by the participation in public tenders of Israeli companies implicated in Israel's illegal settlements and human rights abuses, activists contacted the ELSC. By the end of 2019, our team has started researching the legal grounds for the exclusion of Egged Group and its subsidiaries from public transport tendering in The Netherlands under international, EU and Dutch law.

* ELSC is preparing a legal memo on the mislabelling of illegal Israeli settlement products in EU markets in the light of the recent decision of the Court of Justice of the EU in the case "Psagot" which affirmed the principle of proper labelling of such goods. By analysing the positive and negative aspects of this ruling, we are investigating ways for improving consumer information about the illegality of the Israeli settlements and for extending the labelling obligation beyond goods to services, including advertisement of tourism offers in illegal settlements in the occupied Palestinian territory.

WORKSHOPS

ELSC organised three legal workshops and a seminar for Palestine solidarity committees and student campaigners held in Amsterdam, Utrecht and Berlin.



We foster better protection of human rights by means of workshops across European cities for 15 to 20 people at a time. The aim is to develop our network and empower campaigners by interacting directly, presenting the legal work we carry out with our partners, and providing practical support.



PARTNERSHIPS

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 that have committed to support the implementation of our strategic plan, although their mission and work is not specifically about the Palestinian people.

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 **Pro Bono Connect** and **The Public Interest Litigation Project (PILP)** for their significant contribution to the growth of our network of legal practitioners in The Netherlands.

FUNDING

Our special thanks go to our donors.

The first 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
Coordinator
Full time

Klaas Van De Beek
Admin & Finance Officer
Part time Consultant

Steering Committee

Jan Keulen
Director of The Rights Forum, January - June 2019
Amsterdam, The Netherlands

Gerard Jonkman
Director of The Rights Forum as of July 2019
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

Interns, Guest Researchers, Volunteers

We would like to extend our appreciation to our guest researchers and interns for going above and beyond with the dedication for their work. Their commitment, professionalism and work ethics have enabled us to reach major milestones.

Emma Broholm
Lorenzo Durante Viola
Beatrice Fantolino
Luka Fischer
Marco Lettera
Andrea Longo
Carlo Mazzoleni
Emma Morgan
Aletta de Savornin Lohman

We address our special warm thanks to retired barrister, John Nicholson, for his precious and valuable assistance.

ADVISORY BOARD

Members are 12 renowned jurists and scholars from diverse European countries, who support Palestinian rights and provide professional assistance to civil society-led advocacy.

Valentina Azarova

Legal Scholar and Practitioner
Visiting Professor 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)

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President of the Supreme Court of Cassation in Roma
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Professor in International Criminal Law, University of Milan

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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

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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, more support for the movement, more justice and accountability.

We accept bank transfers, checks, charitable gift annuities, memorial gifts, and legacy gifts. Donations to Dutch non-profits may be tax-deductible according to your country Tax law. You can make a gift today at:

communication.elsc@rightsforum.org

Subscribe to our newsletter

We are currently designing our first website and planning to launch it in September 2020. In the meantime, you can receive our updates by signing up for our newsletter [here!](#) Feel free to share our news with your friends and network.

Intern

Frequently, the ELSC offers in-office traineeships with flexible schedules and a stipend to graduated students based in European countries.

These positions offer an opportunity for gaining practical knowledge about interactions between law and collective political action, and for contributing to rights-based social change.

Volunteer

Each individual has a unique set of skills and abilities that the ELSC could use for the defence of fundamental rights.

Please let us know how you would like to be involved at:

communication.elsc@rightsforum.org.

REPORT AN INCIDENT

A variety of tactics is being used to silence those who support Palestinian rights: from denial of public space and online platforms, smear campaigns, closure of financial accounts to enforcing the adoption of anti BDS motions that falsely declare the Palestine solidarity movement as antisemitic. The ELSC is determined to challenge these measures through legal actions.

Contact us if you or your group, association, NGO, foundation, have been intimidated, slandered, censored or banned from speaking out or carrying out solidarity actions, or if you have questions about your rights at:

elsc@rightsforum.org.



Berlin Radical Queer March in Berlin, Germany on 27 July 2019.

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Page 8: Israeli Apartheid Week - Oldenbug

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