

B and C v Switzerland

[Case Law](#), [Legal Protection](#), [Safety](#), [Asylum](#), [European Court of Human Rights](#), [Switzerland](#)

Asylum/ arbitrary refoulement

(Application no. 889/19), 18 December 2019

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- The applicant is a national of Gambia. He is in registered same-sex partnership with a Swiss national. The applicant complains about the refusal of a residence permit and his **impending expulsion to Gambia where he would face a risk of being subjected to treatment in breach of Article 3 of the Convention.**
- ILGA-Europe together with the European Council on Refugees and Exiles (ECRE) and the International Commission of Jurists (ICJ) submitted the following:
 - **Criminalization of consensual same-sex sexual conduct** is incompatible with international human rights standards and is discriminatory. Besides, the absence of data on the implementation of criminal law may in itself be evidence of oppression and threats suffered by LGBTI persons.
 - **Concealment** constitutes evidence of the objective well-foundedness of a subjective fear of persecution. Requiring **coerced concealment** of someone's same-sex sexual orientation – as a way, purportedly, to mitigate the real risk of their being exposed to Article 3 prohibited treatment – constitutes **pain and suffering** amounting to proscribed treatment under Article 3 even if temporary. **Mental harm** resulting from fear of exposure to physical harm has been found by the ECtHR to constitute cruel, inhuman and degrading treatment. According to refugee law, in some cases psychological harm is persecutory.
 - Enforcing removals on the basis that the individuals concerned would be expected to conceal their sexual orientation would constitute **arbitrary refoulement** and thus violate Article 3 ECHR.
 - In Gambia, **consensual same-sex sexual activity** can give rise to a number of very serious **criminal offences**, with penalties ranging from seven years to imprisonment for life. In turn, the criminalization of consensual same-sex sexual relations fosters a climate of state-sanctioned homophobia, resulting in abuse, discrimination and violence by state and non-state actors. The mere existence of laws that criminalize consensual same-sex sexual conduct enables, encourages and contributes to the persecutory environment that exists in Gambia and exposes LGBT individuals to real risks of persecutory harm.