

E.S. v. Spain

[Case Law](#), [Safety](#), [Asylum](#), [European Court of Human Rights](#), [Spain](#), [Strategic Litigation](#)

Asylum

(Application no. 13273/16), 16 January 2017

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- The applicant feared that, owing to his **homosexuality**, his return to **Senegal** would expose him to a real risk of treatment contrary to Articles 2 and 3 of the Convention.
- ILGA-Europe together with the AIRE Centre, ECRE, HDT and the ICJ submitted the following:
 - **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. **Concealment** is probative of a subjective fear of persecution and 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 **arbitrary refoulement** and thus violates Article 3.
 - The **criminalization of consensual same-sex sexual relations** in Senegal fosters a climate of state-sanctioned homophobia, resulting in abuse, discrimination and violence by state and non-state actors. It enables, encourages and contributes to the persecutory environment that exists in Senegal and exposes LGBT individuals to **real risks of persecutory harm**.