

# O.S. v Switzerland

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

## Asylum/ arbitrary *refoulement*

(Application no. 43987/16), 24 July 2017

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- The applicant complained under Article 3 of the European Convention about his **impending expulsion to Gambia**. He feared that, owing to his **homosexuality**, even a temporary return to Gambia would expose him to a **real risk of arbitrary detention, imprisonment and torture**.
- ILGA-Europe together with the AIRE Centre, the ECRE and the ICJ submitted that:
  - **Concealment** is probative of a subjective fear of persecution and constitutes evidence of the objective well-foundedness of that subjective fear. **Mental harm** resulting from fear of exposure to physical harm has been found by the ECtHR to constitute cruel, inhuman and degrading treatment. 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.
  - 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.