

# S.A.C. v UK

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

## Arbitrary refoulement

(Application no. 31428/18), 28 February 2019

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## Communicated case:

- The applicant in this case complained that he that he would face a real risk of serious and irreversible harm under **Article 3** of the Convention if he were to **return to Bangladesh as a gay/bisexual man**.
- ILGA-Europe together with the ICJ (International Commission of Jurists) and the UK Lesbian and Gay Immigration Group (UKLGIG) submitted the following:
  - There is a consistent approach in the case-law relating to Bangladesh as a country where imputation, suspicion, discovery or identification of someone's sexual orientation or identity as LGBT is likely to give rise to a **real risk of serious harm**.
  - According to the ECtHR, treatment which is grounded upon a predisposed bias on the part of a heterosexual majority against a homosexual minority may, in principle, fall within the scope of Article 3. Under refugee law, **prosecution may amount to persecution** if the criminal law is enforced or punishment meted out in a disproportionate or discriminatory manner.
  - **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.