



International
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L. López Guerra
President
Third Section
European Court of Human Rights
Council of Europe
F-67075 Strasbourg CEDEX
France

16 November 2016

Dear President,

Re: *E.S. v. Spain*, Application No. 13273/16, request for permission to intervene

This request for leave to intervene is presented on behalf of the AIRE Centre (Advice on Individual Rights in Europe), the European Council on Refugees and Exiles (ECRE), the Human Dignity Trust (HDT), the International Commission of Jurists (ICJ) and ILGA-EUROPE (European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association), hereafter "the proposed interveners".

The proposed interveners seek leave from the Court to make written submissions in the case of *E.S. v. Spain* (No. 13273/16), pursuant to Article 36 § 2 of the European Convention on Human Rights (the Convention) read in conjunction with Rule 44 § 3.a of the Rules of the European Court of Human Rights (ECtHR), following the communication of the case on 31 August 2015 to the Respondent government.

The address for correspondence in relation to this matter is the International Commission of Jurists, PO Box 91, 33 Rue des Bains, CH-1211 Geneva 8, Switzerland; fax number +41 22 979 3801.

The proposed interveners

The AIRE Centre is a non-governmental organisation based in the United Kingdom whose mission is to promote awareness of European human rights law and assist vulnerable and marginalised individuals in asserting them. The organisation has been involved in over 100 cases before the European Court of Human Rights in the past 20 years and has developed a particular practice in immigration and asylum cases. The AIRE Centre has represented applicants in numerous expulsion cases before the court (e.g. *D v the United Kingdom*, *N.A. v the United Kingdom*, *T.I. v the United Kingdom*) and has been granted permission to intervene in several cases involving the treatment of those seeking international protection from expulsion (e.g. *Chahal v the United Kingdom*, *Saadi v the United Kingdom*, *Ramzy v the Netherlands*, *Mamtkulov v Turkey*, *Hirsi Jamaa and others v Italy*, *Sharifi v Greece and Italy*, *MSS v Belgium and Greece*, *Tarakhel v Switzerland* and *Sh.D and Others v Greece* most recently).

The **European Council on Refugees and Exiles (ECRE)** is an international alliance of 90 NGO across Europe working together to protect and advance the rights of refugees, asylum seekers and displaced persons. Their mission is to promote the establishment of fair and humane European asylum policies and practices in

accordance with international human rights law. ECRE engages in legal research and training on the application and interpretation of EU asylum law, the EU Charter of Fundamental Rights (CFR) and relevant international human rights instruments, including the 1951 Refugee Convention and the European Convention on Human Rights. Noteworthy in this regard has been ECRE's publication, along with the Dutch Council of Refugees, on the application of the Charter to EU Asylum law. Of particular relevance for the Court's determination in the present case has been the joint third party intervention by ECRE in *FG v Sweden* (No. 43611/11). In addition ECRE has been a third party intervener, alongside others, in the cases of *ShD v Greece* (No. 14165/16), *OM v Hungary* (No. 9912/15), *Tarakhel v Switzerland* (No. 29217/12), *Bilalova v Poland* (No. 23685/14), *ND and NT v Spain* (No. 8675/15 and No. 8697/15), and *Khlaifia and others v Italy* (No. 16483/12).

The **Human Dignity Trust** (HDT, www.humandignitytrust.org), founded in 2010, is a legal charity based in London, England, that supports legal challenges to laws criminalising and persecuting LGBT people, wherever those laws exist in the world. Its patrons are eminent jurists from around the world, including former Chief Justices and Attorneys-General, and it is supported by a global legal panel comprising 23 international law firms as well as leading Queen's Counsel and other senior barristers. The HDT provides *pro bono* technical legal assistance to local lawyers and human rights defenders in applying international human rights law and comparative constitutional law in strategic litigation to decriminalise homosexuality and end persecution of LGBT people. It also carries out research and produces publications relevant to the issue of criminalisation of homosexuality and its impacts.

The **International Commission of Jurists** (ICJ, www.icj.org) is an international non-governmental organization (NGO) working to advance understanding and respect for the rule of law as well as the protection of human rights throughout the world. It was set up in 1952 and has its headquarters in Geneva, Switzerland. It is made up of some 60 eminent jurists representing different justice systems throughout the world and has national sections and affiliated organizations in all regions of the world. The ICJ holds consultative status at the Council of Europe, the United Nations Economic and Social Council, the United Nations Educational, Scientific and Cultural Organization and the African Union. The ICJ also cooperates with various bodies of the Organization of American States and the Inter-Parliamentary Union. Alone and jointly with other NGOs, the ICJ has intervened in numerous cases before the European Court of Human Rights and domestic courts, including of particular relevance to the Court's determination of the present case, in *F.G. v. Sweden* (No. 43611/11) and *A.T. v. Sweden* (No. 78701/14), *M.E. v. Sweden* (No. 71398/12), jointly with others, and in *M.B. v. Spain* (No. 15109/15) and *A.N. v. France* (No. 12956/15).

ILGA EUROPE (the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association: <http://www.ilga-europe.org>), founded in 1996 and based in Brussels, seeks to defend at European level the human rights of those who face discrimination on the grounds of sexual orientation, gender identity, or gender expression, and sex characteristics. It was granted consultative status with the Council of Europe in 1998 and with the United Nations Economic and Social Council in 2006. Its membership consists of over 400 non-governmental organizations across the Council of Europe countries. ILGA-Europe has frequently intervened before the Court, including, of most relevance for purposes of this case, the joint submission in the cases *A.T. v. Sweden* (No. 78701/14), *A.E. v. Finland* (No. 30953/11), *M.E. v. Sweden* (No. 71398/12), and *M.B. v. Spain* (No. 15109/15).

Scope of the proposed intervention

The proposed interveners consider that this case raises critical questions about the obligations of Contracting Parties under Articles 2 and 3 of the Convention, and seeks the Court's permission to make submissions principally on the following:

1. the *non-refoulement* obligations of Contracting Parties under the Convention in view of the criminalization of consensual same-sex sexual conduct in Senegal; and
2. the relevance of the 1951 UN Convention relating to the Status of Refugees, as amended by its 1967 Protocol, and of the EU asylum *acquis* and the EU Charter of Fundamental Rights to the determination of the scope and content of *non-refoulement* obligations under the Convention.

The proposed interveners consider that their collective expertise in international law and in the law of both European legal orders, in particular in relation to asylum, will assist the Court in its consideration of the issues raised by this case.

Finally, in light of the forthcoming decision of this Court in the case of *M.B. v. Spain* (No. 15109/15), and given the relevance of such decision to the determination of the present case and considered that some of the proposed interveners made third-party submissions to the Court in that case, the proposed interveners respectfully request that, should the Court decide to grant them leave to intervene in the present case, the return deadline for their eventual submissions be set at a date of the Court's convenience allowing for proper consideration of its eventual ruling in *M.B. v. Spain*. Should the Court be minded not to accede to this request, the proposed interveners would nonetheless be grateful for a return date no earlier than mid-January 2017 in view of the forthcoming end-of-the-year holiday period.

Yours faithfully,



Ian Seiderman
Legal and Policy Director
International Commission of Jurists also on behalf of the AIRE Centre, ECRE,
ILGA-Europe and HDT

Cc.: Stephen Phillips
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Third Section
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