



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/13941/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision and Reasons  
Promulgated**

**On 23 May 2018**

**On 14 June 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES**

**Between**

**I. J.**  
(ANONYMITY DIRECTION MADE)

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms McCallum, Counsel, instructed by Sutovic & Hartigan Solicitors  
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant came to the UK legitimately as a student on 3 May 2015. On 21 May 2016, that is a little over a year later, he claimed asylum on the basis of his sexuality, arguing that he had been attacked in Serbia in the past, having been perceived to be a homosexual, and that he did not believe

that he would be safe anywhere in Serbia to make a life in the future as an openly gay man. He argued that the Serbian authorities paid lip service to the notion of freedom of expression of an individual's sexuality and that there was a mismatch between his own experiences (and the experiences of other individuals), and the stance that was adopted by the authorities with respect to major events, permitting and indeed policing an event such as the Gay Pride marches which occurred from time to time in the capital.

2. The Respondent refused that application for asylum, taking a number of points against the credibility of the Appellant's account. One of which was her stated conclusion that she was not satisfied that he was telling the truth about his sexuality. The Appellant's appeal duly came before Judge Oliver in the First-tier Tribunal on 18 January 2017. Permission to appeal that decision was granted to the Respondent on 25 July 2017, and thus the matter came before me at Field House on 5 October 2017. By decision promulgated on 18 October 2017 I concluded that the Judge had indeed erred in law, and set aside his decision in the following terms, so that the appeal was adjourned to allow the Upper Tribunal to remake the decisions upon the asylum and Article 3 appeals.

*2) On any view his decision promulgated on 14 March 2017 is a brief one given the wealth of material that was placed before him. There are only the most brief findings of fact and very little by way of assessment of the evidence to be found in that decision. However, before me today the acceptance that the Appellant is indeed a homosexual man and in an openly gay relationship is unchallenged, notwithstanding the paucity of reasons offered for the conclusion that he was, given the number of reasons offered by the Respondent for her conclusion that he was not. Again, notwithstanding the rather curious approach taken to section 8 of the 2002 Act.*

*3) What prompted the Respondent's application for permission to appeal was instead the Judge's approach to what followed as a consequence to that finding of fact, namely the inadequacy of the Judge's assessment (such as it was) of the evidence before him in relation to the risk faced by openly gay individuals in Serbia upon the perception of their sexuality by members of the general public, and their ability to obtain any form of adequate protection from the authorities, across the entirety of the country. Indeed the relevant passage in the decision is confined to one sentence, which is to be found in the midst of paragraph 30 of that decision, the remainder of which deals with other matters. In the circumstances I am satisfied that the Judge failed to give adequate reasons for that conclusion, and indeed identify an adequate assessment of the conflicting evidence on that issue in the course of his decision and in consequence I am*

*satisfied that the decision does indeed disclose a material error of law.*

*4) The question for me then becomes what is the most practical and pragmatic way of disposing of the appeal. Both parties agreed that this is not a case that should be remitted to the First-tier for rehearing, and I agree. After some discussion both parties were agreed that the proper course for this appeal was that it should be retained in the Upper Tribunal for the remaking of the decision on the asylum appeal and Article 3 appeal - albeit not for remaking today. What is required of the Upper Tribunal is of course a nuanced decision and assessment of the conflicting relevant evidence, and neither party is in a position to address the need for that today. Indeed, on reflection, and notwithstanding the lack of any formal application yet made to permit them to do so, both parties would wish to adduce further evidence on the relevant issue. For my own part, I would venture that it may be that this is a suitable case to offer the Upper Tribunal a vehicle in which it could offer country guidance.*

3. The appeal having been adjourned for directions, the Upper Tribunal declined on 21 March 2018 to accept the appeal for country guidance, and issued Directions for the future conduct of the appeal. The Appellant then took the opportunity to file further evidence in two bundles, the first paginated and indexed filed on 15 May 2018, the second indexed but unpaginated and filed by fax of 18 May 2018. Within the first bundle are the materials that were before the FtT, and, a further statement from the Appellant and his father, and, a report dated 11 May 2018 prepared by Dr Koen Slootmaeckers. In addition Ms McCallum has helpfully prepared a skeleton argument that is cross-referenced to those bundles.
4. Notwithstanding the expressed intention to do so when the appeal was last before me, or the Directions issued on 21 March 2018, the Respondent has filed no further evidence, and no skeleton argument for the appeal in response to the Appellant's evidence. It would have been helpful to have received the results of enquiries of the type that the Respondent made in LZ (homosexuals) Zimbabwe CG [2011] UKUT 487, but this step was not taken.
5. Mr Clarke accepts for the purposes of this appeal that I can and should treat Dr Slootmaeckers as a suitably qualified expert within the field in which he has offered opinion evidence. Although no request has been made for Dr Slootmaeckers to be tendered for cross-examination, the Respondent's position is however that his evidence is flawed, and that there is little weight I can attach to it as a result. I will return to that argument below.

6. Neither party proposed that I should hear further oral evidence. As both parties accept, my starting point must be the preserved findings of primary fact, as follows;
  - (i) The Appellant is homosexual [31]
  - (ii) The Appellant experienced violent attacks on three different occasions from members of the general public in his home area, as a result of his perceived sexuality [31]
  - (iii) The Appellant was sufficiently injured in each of those attacks to require medical attention - in the third he was struck with a metal truncheon
  - (iv) The Appellant received no indication from the authorities that they proposed to investigate either of these attacks when he reported each of those three attacks to the police [30]
  - (v) The Appellant acted with a degree of discretion in connection to his lifestyle, whilst living in Serbia, out of fear [31]
  - (vi) The Appellant had relished the opportunity to be more open about his sexuality whilst living in the UK, and would wish to continue to do so, but he would not do so if returned to Serbia as a result of fear of further attacks [31]
7. Ms McCallum argued that in the light of these findings the Appellant had established;
  - (i) that he was the victim of past persecution
  - (ii) that he had a subjectively well founded fear of future persecution as a result
  - (iii) that the evidence did not establish any material change for the better since 2015, and so his fear was objectively well founded too
8. Relying upon the expert evidence, and the reports now filed in evidence, Ms McCallum argued that in the absence of any rebuttal evidence from the Respondent, that there was no adequate system of state protection for homosexuals in Serbia, and that the risk of violence that the Appellant faced was country wide so that it could not be avoided by relocation.
9. Mr Clarke accepts on behalf of the Respondent that gay men in Serbia constitute a particular social group for the purposes of article 1A(2) of the Convention. He argued however, notwithstanding the preserved findings, that the Appellant had failed to establish;
  - (i) that he was the victim of past persecution,

- (ii) that he had a well founded fear of future persecution, or,
- (iii) that Serbia was unable or unwilling to discharge its duty to establish and operate a system for the protection of its citizens against persecution on account of their sexuality.

10. Mr Clarke argued that it was not disputed that the three violent attacks each constituted a criminal act under Serbian law. Whilst neither the Appellant nor any other victim of violent crime should reasonably be expected to tolerate such violence, it did not follow that the attacks that he suffered constituted "persecution" for the purposes of that term as used within article 1A(2) of the Convention. The Appellant had never suggested that he was ever attacked by state agents. Whilst the non state agent individuals who attacked him had indeed reacted to their perception of the Appellant's sexuality, his own account of the attacks, and of the actions of his attackers, meant that his attackers had taken steps to hide their identities from him or any other witnesses. Thus it followed that they feared identification, and, in consequence the potential for reaction and retribution by the state through arrest, prosecution, and, punishment. Thus the Appellant's evidence (even at its highest) did not establish that his attackers believed that they could act with impunity, or, that their actions would be condoned by the state. There is plainly significant force in this argument.

11. Mr Clarke went on to argue, given the Appellant's inability to identify his attackers, that there was little that the police could be expected to do, and thus nothing should be inferred as to the state attitude from the failure to identify the attackers and prosecute them. In my judgement there is less force in each limb of this argument. It is far from unknown for the victims of criminals to be unable to identify those responsible to the police, but an effective police force does not refuse to respond at all in such circumstances. An effective police force will take some steps to investigate a reported crime, although no doubt the resources available to be devoted to such an investigation, and thus its depth and width will vary both from country to country, and between different types of crime, depending upon local and national priorities. Thus the steps taken to investigate will necessarily vary, but an outright refusal to investigate may be indicative of a general state attitude. The mere failure to identify a criminal will not however, of itself, indicate a lack of state protection; even in the most heavily policed societies the police are not always able to identify the perpetrators of some offences.

12. In relation to the police report of the first attack, what the Appellant described as having occurred was not simply being turned away by the police station [WS #36-7]. On his account in his witness statement details were taken of the crime he reported, and he was not simply turned away. A record of the incident was made. Thus he resiled from the position he had taken at interview [Q175-6]. His evidence does not demonstrate a refusal to investigate this attack.
13. In relation to the police report of the second attack, the Appellant again accepts that the police seemed willing to listen to him, and again took his details [WS #46]. Thus again he accepted that a record of the incident was made. Thus he again resiled from the position he had taken at interview [Q182]. His evidence does not demonstrate a refusal to investigate this attack.
14. In relation to the police report of the third attack the Appellant said in his witness statement that although he did not report that he was gay, the officers he spoke to refused to take him seriously and refused to write anything down. He inferred that they knew he was gay, as a result of discussion of the two previous reports, and he concluded that it was as a result of his sexuality they were not prepared to listen to him. Thus details of the incident were not taken [WS #50]. The Appellant explained that he had no choice but to return each time to the same police station, because crimes have to be reported to the local police station, and if he tried to report elsewhere he would simply be referred back to his local police station [WS #51].
15. Whether a national police force is effective or not, is not to be measured against the standards of the response that might be expected within the UK. If there had been a refusal to act at all upon any of the reports of such homophobic violence that the Appellant had made on three different occasions to the same police station, it could have been at least indicative of a culture prevalent at that time, amongst the officers stationed at that police station, that would condone such acts. However that was not what the Appellant described as having occurred in his witness statement. There was no refusal to act in relation to the first or second attacks – only the third. On each occasion he saw different police officers.
16. Mr Clarke also argued that the Appellant's own evidence did not disclose an unwillingness on the part of the authorities in general to act in response to his reports of homophobic attacks upon him. The Appellant had only ever reported the three attacks to one police station. He had made no attempt to report the attacks to a different police station, and so his

evidence did not disclose a general unwillingness to act across the police force generally, even if it did suggest that the officers stationed at one particular police station were unwilling to do so.

17. Moreover, save for the three violent attacks, which Mr Clarke argued were isolated criminal events (despite the fact that they had occurred over an eight month period; 3.8.13, 17.11.13, and 18.3.14) the Appellant had not described at interview experiencing any other problems as a result of his sexuality. The highest his case could be otherwise put was that people had been rude about him to his sister [WS #53] – it was only after the interview that he had suggested that he had himself received verbal homophobic abuse in the street from strangers [WS #54], although he gave no details of the frequency or content of this experience, and it is unclear why he would be identified as homosexual and so targeted by a stranger. If this was a real problem, one could also have expected the Appellant to have mentioned it at interview. Thus Mr Clarke argued the Appellant had not established that he faced a real risk upon return to Serbia of experiencing state sponsored, or state condoned, discrimination in his day to day life, or, employment.

#### Dr Sloodmaeckers

18. Turning to the report of Dr Sloodmaeckers, Mr Clarke argued that the author's approach to the appeal demonstrated two major errors. First, he had failed to place his opinions within the proper context of a Serbian population estimated to be 7.5m. Mr Clarke suggested that on a 1:10 ratio, that should indicate a population of some 750,000 who would be gay. In any event, there must be a significant gay population within Belgrade itself in order to generate the level of activities occurring within Gay Pride week. Second, by concentrating upon past attitudes the author had failed to give proper credit to the Serbian authorities for the steps that they had undoubtedly taken since 2013 to address homophobic attitudes within the population.
19. There is plainly some force in the first criticism because Dr Sloodmaeckers has not addressed within his report the likely size of the gay community either within the Serbian population as a whole, or, within Belgrade itself. Nor has his report engaged with the evidence that is before me, which indicates the scale of the public activities currently undertaken in Belgrade during Gay Pride week (over 50 public activities and events), or the number of public activities

undertaken by the gay community in Belgrade during the year.

20. Whilst Dr Slootmaeckers has relied heavily upon the results of some polls [cf #13], he has not identified the numbers who were polled, or how those polls were conducted. The methodology behind the sampling, and the questioning employed, is entirely unexplained. Nor has he made any effort to distinguish between the responses provided by the different categories of person either within the general population, or, within the LGBT community, who did respond to these polls. Mr Clarke may have been putting it too highly when he criticised as completely worthless the polling evidence, as a statistical sampling exercise, but I accept the force in the criticism. Any assumptions drawn by Dr Slootmaeckers from these polls (such as that they revealed “the tip of the iceberg”), must be seen in their proper context.
21. There is in my judgement less force in the second criticism. It is in my judgement important to understand the historical context in order to understand why homophobic attitudes are said to be so widespread and deeply entrenched within the Serbian population. As Dr Slootmaeckers explains (and there is no evidence from the Respondent to rebut this opinion) homophobia was a key part of the nationalist movement, so that homosexuals were identified as enemies of the state, and a threat to both the state itself and the moral structure of Serbian society. Nationalism continues to dominate Serbian politics and society, and so in his opinion homophobic rhetoric continues to be a key part of the public message of both politicians and the leadership of the Serbian Orthodox Church. That Church has enjoyed a resurgence in influence as part of the nationalist movement, and its leadership has also used homophobic language to align the Church with that movement and so gain influence. The net result was that homophobia was seen in Serbia as patriotic, because homosexuality was seen as a threat to the existence of the emerging nation state. Dr Slootmaeckers argues that whilst homosexuality was decriminalised in 1994, homophobic attitudes actually became more entrenched within the general public after the war, because that was the stance promoted by both nationalist politicians and church leaders. Given the evidence that is before me I see no reason not to accept that this is an accurate reflection of the historical context. I have more concern however as to whether this remains an accurate picture.
22. In my judgement it is within this context that the evidence concerning Gay Pride events in Belgrade should be considered. The first Gay Pride Parade in Belgrade was held in 2001, but the participants were physically attacked by a group



of individuals who appear to have formed as a mob with the specific intention of breaking it up, estimated by Dr Sloodmaeckers to be about a thousand strong. There is no evidence before me to indicate the number of participants in the Parade on this occasion, and the source of Dr Sloodmaeckers' estimate of the size of the mob is also unclear. It is not in dispute however that such a violent mob did form. Unsurprisingly the fifty police officers who were on duty at the Parade were unable to deal with the situation that developed. Although the officers on duty were criticised by some commentators quoted by Dr Sloodmaeckers as effectively standing aside from protecting the participants in the Parade from the mob, it is clear that the authorities completely lost control of the event, and the area in which it was being held, and it is not at all clear to me that the criticisms of the officers on duty he quotes are justified.

23. An attempt to hold a Gay Pride event in 2004 was abandoned as a result of threats of violence that the police said they were unable to counter. The next attempt to hold a Gay Pride event was in 2009 following the adoption in Serbia of anti-discrimination legislation. The event was cancelled however at the last minute when the police again said they were unable to protect the participants. In the lead up to cancellation the event and its organisers had faced widespread intimidation and public threats of violence.
24. In 2010 the second Gay Pride Parade did take place in Belgrade, an event that was attended by EU officials, and other international diplomats. This event, and its participants, were physically attacked by a group of individuals who, the sources appear to agree, had formed specifically to break it up. On this occasion the mob was estimated to be about six to eight thousand strong. Although the authorities had themselves deployed thousands of police in anticipation of violence, they again found themselves well outnumbered, and again lost control of the mob, and the area in which the event was taking place. Indeed the evidence suggests that there was a widespread loss of control in the face of the riot that developed. Whilst the authorities were largely able to protect the participants in the event from the rioters; the police, and the city of Belgrade itself, became instead the targets for the rioters. Petrol bombs were used, and there was widespread looting, with damage estimated at in excess of E1m, and with 140 people injured.
25. In 2011, 2012, and 2013 the Gay Pride Parade events that were planned were cancelled shortly before they were scheduled to take place, with the authorities again citing the threat of violence as the reason for doing so.

26. In 2014 the Gay Pride Parade event did take place, with 7,000 police on duty. There were no major incidents. The event has since taken place annually, albeit with heavy security measures, and there have been no major incidents. That evidence plainly represents a very significant improvement, particularly when the news reports relied upon by the Appellant identify the parade itself in 2017 as only one event held during a "Pride Week" that encompasses over fifty events, including the International Conference on hate crimes and hate rhetoric [C 97-100]. Moreover it is noteworthy that the Serbian authorities were sufficiently confident of public attitudes that only 500 police were on duty for the 2017 parade. That confidence appears to have been well placed, since no incidents were reported [C104].
27. Whether or not this was a response to criticisms that had been raised by the EU, it is therefore plain that a major effort has been made to ensure that Gay Pride events can take place within Belgrade annually in safety. Those events are not limited to one day per annum, in which there is a heavily policed parade. Quite clearly the events that now take place in safety go well beyond that. There is a week of over 50 events to celebrate Gay Pride, and a further event three months later. I accept that the evidence before me is focused upon Belgrade, and that there is no indication as to whether similar events take place outside the capital.
28. Whilst the perceived need to provide 7,000 police officers to police the 2014 Gay Pride parade within the capital suggests a very serious concern over what might otherwise occur in their absence, and of course the event had not taken place in previous years because of the violence that occurred when it was last held in 2010, it is in my judgement also indicative of a real political will, and a real commitment of state resources, which should not be under-estimated.
29. Unsurprisingly the parties were divided upon whether the political will was to provide a message in 2014 for a domestic, or a foreign audience - although the reality must be that any message(s) were directed at both. In my judgement the immediate short term message to the domestic audience was self evident. "Do not disrupt the event", and, "any attempt to do so will be crushed". There was however in my judgement undoubtedly a wider longer term message to the domestic audience promoting tolerance. The foreign audience were clearly being told that there was now the political will to change attitudes within Serbian society, and to refuse to condone homophobia. The real issue, as both representatives appear to agree, is therefore whether or not that wider political message to the foreign audience is yet the reality.

30. In the period 2014-2018, away from the Gay Pride Parade event, Dr Sloommaeckers has recorded very few homophobic attacks as having taken place. In 2014 - one [C124 #25]. In 2015 - three [C125 #27-8]. In 2016 - two [C125 #29-30]. In 2017 and 2018 - none. On the other hand he reports that the NGO *Da Se Zna* (formed to record instances of LGBT hate crimes) has received reports of 20 unspecified hate crimes, 2 incidences of discrimination, and 5 instances of hate speech, in the period January-November 2017. From another source I note that this NGO had received over 70 reports of hate crimes against LGBT persons in the eighteen months since its formation [C98], which I take to include the period referred to by Dr Sloommaeckers. These figures appear to me to be low given the size of the population, and sit uneasily with the opinions offered by Dr Sloommaeckers.
31. It is also relevant to note that in June 2017 Serbia's President appointed an openly lesbian Prime Minister; Ana Brnabic. Dr Sloommaeckers considers this to be simply a cynical politically strategic step by the President (who was the previous Prime Minister). He notes that the appointment was by way of a reshuffle taken without an election, and suggests that it was a step taken in order to seek to mislead the international community into accepting Serbia as a progressive liberal LGBT friendly country [C128 #40-3]. That stance appears to me to belittle Ms Brnabic's skills, and, to ignore the fact that she must have been elected in the first place in order to be available for appointment. In short this opinion strikes me as partisan, and lacking a properly objective assessment of the evidence. If attitudes within Serbia were in truth as simple and as vehemently homophobic as Dr Sloommaeckers suggests, then I find it very difficult to see how such an appointment would be politically possible.
32. In addition to the opinions of Dr Sloommaeckers, the Appellant relied upon a number of other internationally produced reports in evidence. I am satisfied that the principal reports, and the most reliable, appear to me to be; (i) Being LGBT in Serbia, USAID 2017 ["2017 USAID"] [C44], (ii) the Serbia 2017 Human Rights Report, ["2017 HR"] [C101], (iii) the ECRI report on Serbia, 16 May 2017 ["2017 ECRI"], and, (iv) the European Commission report dated 17 April 2018; Commission Staff Working Document, Serbia 2018 ["2018 EC"]. I consider it surprising that Dr Sloommaeckers has made only very limited reference to their content.
33. 2017 USAID reported that whilst the authorities had made important efforts to strengthen the position of LGBT people in Serbia, there was still a need for stronger political support to promote respect for their rights. A survey of public

office holders indicated there remained a high tolerance of discrimination against sexual minorities and prejudice towards those living with HIV. LGBT people are discriminated against in the workplace, although there is little data available. Legislation has been in place since 2009 to prohibit such discrimination, and so whilst judicial remedies are available, these are said to be often ineffective in practice. Whilst the Pride Parade enjoyed political and institutional support, nearly 90% of respondents to a 2015 survey were opposed to it.

34. 2017 HR reported that although the law prohibits discrimination based on sexual orientation and gender identity, violence and discrimination against members of the LGBT community were serious problems. An activist reported that 72% of the LGBT community were exposed to verbal intimidation and 26% sexual violence because of their sexuality. In the five years 2012-7 police data showed only 45 cases of hate crimes against LGBT persons were reported. Thus the majority of attacks were never resolved and perpetrators went unidentified and unpunished, with NGOs claiming this resulted from a lack of political will.
35. 2017 ECRI reported that its reports are produced on a five year cycle, as an analysis of information gathered from a variety of written sources, and discussion with governmental and non governmental sources, rather than by enquiry or testimony. The report then stated that since December 2010 progress has been made in a number of fields, having improved protection against hate crime by making racist trans or homophobic motivation an aggravating circumstance. Hate speech is explicitly criminalised. In 2012 a racist and homophobic organisation was disbanded by the Constitutional Court. The High Technology Crime Department is reportedly increasingly focused on cyber hate speech, and several police units have officers designated as contact persons for LGBT persons. Whilst these developments are welcomed, ECRI noted that some issues continued to give rise to concern. Thus police are not always open to receiving LGBT complaints, and the application of the legislation against hate speech and violent hate crime is inefficient, with no decisive action against the activities of racist and homophobic hooligan groups. High levels of homophobic and transphobic violence regularly become visible at LGBT pride parades, and LGBT persons face high levels of prejudice, with security a daily concern for them. A considerable proportion of the prevalent discrimination is committed by civil servants.
36. 2018 EC reported Pride events taking place in both June and September 2017, without incidents, with the latter being attended by the Prime Minister and other government representatives [28]. Anti discrimination training has been

given to the police, and efforts are ongoing to improve communication with the LGBT community. However the situation reportedly remained difficult and activities in the action plan for the national anti-discrimination strategy were behind schedule. There had been a slight increase in violence towards LGBT persons. Investigation prosecution and penalties for attacks are often inadequate. Centralised official data on hate crimes are still lacking. Stronger visible political commitment to promote social inclusion and respect for the rights of LGBT persons was needed.

### Conclusions

37. In my judgement it is plain that the evidence presents a rather more nuanced picture than that offered by Dr Sloodmaeckers, who appears to have adopted more of the role of advocate, than that of the independent and objective analyst. His evidence is not without value, but I consider the reports referred to in paragraph 28 above are more reliable, and more independently and objectively written.
38. I am satisfied that the evidence as to conditions within Serbia for the LGBT community up to 2014 is consistent with the Appellant's description of his own experiences. I do not understand the Respondent to argue to the contrary.
39. Having reminded myself of their Lordships analysis in HJ (Iran) [2010] UKSC 31 I am satisfied that the physical harm the Appellant suffered in Serbia was of a nature that he could not reasonably be expected to tolerate it, and as physical harm this went well beyond mere social disapproval as a reaction to his sexuality. I contrast that with the position in relation to the discrimination he says he suffered. At interview he identified none directed to himself, later he identified abuse passed to his sister, and thus to him indirectly. Only after the interview did he suggest he had experienced any direct verbal abuse, but gave no real details of this. He did not identify any occasions on which he had directly experienced homophobic discrimination.
40. I accept the Appellant's unchallenged evidence that it was not open to him to seek to report a hate crime of the type that he suffered to a police station other than his local one. Thus he would simply have been referred back to his local police station if he had tried to do so.
41. The Appellant's own evidence does not demonstrate a complete unwillingness on the part of the officers staffing his local police station to accept a report of a homophobic crime (since such a report was accepted from him for each of the first two attacks). The inability to identify his assailants in

relation to the first two attacks, begs the question of what investigation was conducted; but there is no direct evidence to suggest that an investigation was, or was not, conducted. The Appellant has simply assumed there was none. The response to his attempt to report the third attack was, I accept, quite different. That response indicated an unwillingness on the part of the officers then present to accept the report, or, to commit any resource to its investigation, as a homophobic response.

42. I am not satisfied that conditions outside Belgrade would be any better than those within Belgrade, and indeed the likelihood would be that they would be worse as Dr Sloomaeckers suggests. The evidence before me does not allow me to be satisfied that his opinion is in this respect at least, flawed. I am not satisfied that significantly less violence, and significantly less discrimination, takes place in rural Serbia in comparison to Belgrade; there is no evidence before me that would permit such a finding. Indeed experience would suggest that one could expect a migration of those who accepted their homosexuality from a rural to an urban environment.
43. The three homophobic attacks experienced by the Appellant either inflicted serious harm, or, they constituted a real threat of serious harm. The Appellant plainly has a subjectively well founded fear that in the event of return to Serbia he would experience further attacks of this nature. The reliable objective evidence does not indicate a significant improvement in the threat of day to day homophobic violence, since 2014, and so in my judgement the Appellant's fear is also objectively well founded. In so saying I accept that the position of those attending a Gay Pride event would appear to have improved very significantly since 2014, as a result of political attention to the event, and the resources committed to the policing of such an event by the state. I contrast that with the evidence concerning day to day violence, away from such an event.
44. I accept that homosexuality is not criminalised. I accept that not only are violent attacks criminal offences, but that if they are shown to be homophobically motivated, then the criminal law formally treats that motivation as an aggravating feature to the seriousness of the offence. I am satisfied therefore that a state mechanism does exist for the detection, prosecution, and punishment of criminal offences in general, and homophobic violence in particular.
45. I am satisfied that the appointment of Ms Brnabic as Prime Minister has rather more significance than Dr Sloomaeckers suggests. Such an appointment would have

been completely unacceptable to the electorate, to fellow politicians, and to the leaders of the Serbian Orthodox Church if his opinions were entirely valid.

46. Whilst steps have been taken to improve police attitudes to homosexuality by training police officers, and appointing to some police stations LGBT liaison officers, the evidence as analysed by credible international observers does not yet demonstrate that there is a real willingness by the state to use the existing legislation to real effect to seek to stamp out the prevalence of homophobic violence. The figures for prosecutions of hate crimes speak for themselves – they are plainly wholly inconsistent with the levels of day to day violence that these reports accept occur.
47. I accept therefore that if one views the evidence in the round it is plain that attitudes within Serbia are changing, and changing far faster than Dr Sloodmaeckers has been prepared to acknowledge. On the other hand I am not satisfied that the position has yet been reached in which I can be satisfied that adequate state protection from homophobic violence is in reality afforded to an individual member of the LGBT community; Horvath [2001] 1 AC 489. For the reasons given above I am not satisfied that internal relocation would avoid the risk faced by the Appellant upon return to Serbia.
48. Accordingly having set aside Judge Oliver’s decision upon the asylum and Article 3 appeal on 5 October 2017, I remake that decision so as to allow the appeal on those grounds. Judge Oliver’s decision to dismiss the Article 8 appeal was however unchallenged, and as a result it was confirmed on 5 October 2017.

## DECISION

The appeal is allowed on asylum and Article 3 grounds.

Deputy Upper Tribunal Judge JM Holmes  
Dated 31 May 2018

### **Direction regarding anonymity - Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Signed

Deputy Upper Tribunal Judge JM Holmes

Dated 31 May 2018