



## NEWS REPORT

**Update of flash report nr:** 1089 and 1206

**Date:** 24 November 2014

**Expert:** Neža Kogovšek Šalamon

**Title:** Supreme Court overturned the decision of High Court on the Homophobic Crime Case

**Country:** Slovenia

**Context**

**Issue at stake:** Supreme Court overturned the decision of the High Court which confirmed the first instance judgement convicting three for homophobic crime.

**Ground of discrimination:** Sexual orientation

**Source:** National court decision

**Field:** Other (hate crime)

**Legislative provisions:** Article 297, paras. IV and I, of the Criminal Code

### Content

**Case:** On 25 June 2009 a group of perpetrators attacked the Open Café in Ljubljana which was known as gay-friendly. During the attack one man suffered several bodily injuries. Three of the perpetrators were identified and prosecuted. The District Criminal Court in Ljubljana (first instance court) found the three defendants guilty as accomplices to a crime of public incitement of hatred, violence or intolerance. Each defendant was sanctioned to 1 year and six months of imprisonment. The High Court Ljubljana deciding upon the defendants' appeals confirmed the content of the first instance judgment, but decreased the sentences to seven months imprisonment for two defendants and to five months for the third defendant. One of the defendants filed a request for protection of legality (a legal remedy provided for in Slovenian law) to the Supreme Court, which on 24 July 2014 overturned the decision of the High Court and remanded the case to the first instance court. The decision became public on 29 October 2014.

The judgment was overturned since, according to the Supreme Court, the criminal procedure started on the basis of unjustified retention of a DNA sample of one of the defendants (based on which the defendants were identified), therefore the request for protection of legality was upheld. This decision followed a decision of the Constitutional Court (no. U-I-312/2011 of 13 February 2014) which found that the provision of the Police Act under which the perpetrators were identified was unconstitutional.

### **Internet link source and additional information:**

<http://www.sodnapraksa.si/?doc-2012032113068168>