

**Case number:**

Up-1084/16

ECLI:

ECLI:SI:USRS:2019:Up.1084.16

Challenged act:**Operative provisions:****Abstract:**

The complainant, as a subsidiary prosecutor, was a party to proceedings within the meaning of the eighth indent in conjunction with the seventh indent of Article 144 of the Criminal Procedure Act. Considering her position in the criminal proceedings, she was entitled to be informed of the filed request for the protection of legality. Therefore, the Supreme Court should have served on her the request for the protection of legality filed by the supreme state prosecutor and enabled her to state a position thereon. As it failed to do so, the Supreme Court deprived the complainant of the possibility to participate in the proceedings and thereby violated her right to make a statement determined by Article 22 of the Constitution. The Constitutional Court may merely issue a declaratory decision if it establishes that in criminal proceedings the constitutionally protected fundamental procedural guarantees of the subsidiary prosecutor were violated. It cannot, however, interfere with a final judgment of acquittal or with proceedings that have been dismissed with finality.

Thesaurus:**Legal basis:****Cases joined:**

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Full text:**Type of procedure:**

ustavna pritožba

Type of act:

posamični akt

Applicant:

Špela Mlakar, Ljubljana

Date of application:

29. 12. 2016

Date of Decision:

25. 6. 2019

Type of decision adopted:

odločba

Outcome of proceedings:

ugotovitev kršitve človekove pravice

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