

**Case number:**

Up-1212/18

ECLI:

ECLI:SI:USRS:2019:Up.1212.18

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

The constitutional complaint is not a legal remedy by which one can claim violations committed by courts while establishing the state of the facts and applying material and procedural law. As the Constitutional Court has repeatedly emphasised, it is constitutionally relevant whether due to such violation the challenged decision of the court is so manifestly erroneous and lacking a well-grounded reasoning that it can be deemed arbitrary. Namely, from Article 22 of the Constitution there follows, *inter alia*, the prohibition of judicial arbitrariness. According to the established constitutional case law, this constitutional procedural safeguard is violated also when a court decision is manifestly erroneous.

The criterion of obviousness, when required by law, is reached when a statement cannot be rejected or called into question even after thorough assessment, because all the circumstances, common sense, and experience do not allow for a different conclusion without there being any need to prove or possibility to substantiate the opposite.

The challenged position of the courts does not entail a decision that cannot be rejected or called into question even after thorough assessment, as there is no possibility of reaching a different conclusion. The challenged orders therefore attributed a manifestly erroneous meaning to the criterion of assessment that according to the first paragraph of Article 140 of the Criminal Procedure Act allows punishing a counsel (for “obviously trying to stall the proceedings”).

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

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Full text:**Type of procedure:**

ustavna pritožba

Type of act:

posamični akt

Applicant:

Blaž Kovačič Mlinar, Ljubljana

Date of application:

3. 9. 2018

Date of Decision:

5. 6. 2019

Type of decision adopted:

odločba

Outcome of proceedings:

razveljavitev ali odprava

Published:

Official Gazette RS, No. 45/2019

Document:

AN03940