

Translation of an order of the local court of Munich

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Berlin, January 23, 2019*

Local Court of Munich

File Number: ER IV Gs 8894/18

Public Prosecution Office Munich I, 400 AR 2969/18

In the proceedings concerning a judicial decision

the local court of Munich by Local Court Judge Hanselmann, on 26 November 2018 issues the following

order

The request for a judicial decision is rejected as unfounded.

Reasons:

On 8 June, the applicant applied by email to the Public Prosecution Office Munich I for a copy of the decision of the Public Prosecution Office Munich I of 9 February 2018 imposing a regulatory fine on Airbus Defence and Space GmbH. The applicant noted that her claim for a copy of the decision was made in her function as responsible editor of the Magazine "Spotlight". By order dated 3 September 2018, the Public Prosecution Office Munich I dismissed the application for a copy of the decision. Against this dismissal, the applicant filed an "appeal".

This appeal has to be interpreted as a request for a judicial decision as solely available recourse against the dismissal. The local court of Munich – Investigative Judge – has subject-matter and local jurisdiction according to Sec. 478 I, 162 Code of Criminal Procedure (CCP). The request for a judicial decision is admissible, but is rejected as unfounded.

A claim for a copy of a decision imposing a regulatory fine cannot be based on Sec. 475 CCP. Because the decision in question is based on Sec. 130 Administrative Offences Act, the provisions of the Code of Criminal Procedure apply according to Section 46 Administrative Offences Act. Hence, Sec. 475 CCP applies in principle to a claim for a copy of a decision as a sub-category of a claim for access to the files. The Office of Public Prosecution was correct in noting that this provision does not apply to requests by the press, because state laws governing the press take precedence (Meyer-Goßner/Schmitt, Code of Criminal Procedure, 61st edition, Sec. 475 No 1a).

A claim cannot be based on Art. 4 of the Bavarian Press Law. That provision gives the press a right of information, but not a right of access to files. The claim for a copy of the decision imposing a regulatory fine is a subcategory of the right of access to files. The obligation to publish court decisions, which the Supreme Court deduced from the rule of law and the comprehensive access to justice provisions of the Basic Law in specific cases, does not apply, either. The decision to impose a regulatory fine is not a court decision. A court decision is only rendered, if in an administrative proceeding the aggrieved person files an appeal.

A claim for access to the files can be based neither directly on Art. 5 of the Basic Law nor in conjunction with Art. 4 Bavarian Press Law. The Public Prosecution Office Munich I argued correctly in its decision on which this appeal is based, that a decision to impose a regulatory fine does not constitute a generally accessible source. Only such sources would be within the scope of protection of a free press.

Finally, a claim for a copy of the decision cannot be based on the OECD Convention against Foreign Bribery. A right of access to files is not part of the provisions of the Convention.

Hanselmann
Judge of the Local Court