

Berlin State Prosecutor's Office

Generalstaatsanwaltschaft Berlin
Elßholzstraße 30 - 33 • 10781 Berlin

Lawyers Jakob & Kollegen
Lawyer Simon G. Jakob
Bergheimer Str. 49
69115 Heidelberg

Received by Jakob & Kollegen

2nd Feb. 2012

Reference (please always quote):

121 Zs 3294/11

Your reference: 00133 -11

Dear Lawyer Jakob,

With regard to your complaint of 24th November 2011 against the decision of the Berlin Public Prosecutor's Office of 19th October 2011 in the preliminary proceedings against Dr. Angela Merkel and others on the grounds of accusations of breach of trust - 222 Js 4404 / 11 - I hereby inform you::

After examination of the facts, I find myself unable to order, contrary to the contested decision, that investigations be instituted. The Berlin Public Prosecutor's Office has discontinued the procedure on correct grounds. Your complaint submission is not such as to justify a different decision.

I would also like to note:

The Berlin Public Prosecutor's Office rightly did not indicate to you any further legal recourse in the contested decision, because in accordance with § 172 Para. 1 Sentence 2 StPO, the applicant must only be notified of the possibility of contesting the decision and the relevant period, if he is also the injured party.

Contrary to your opinion, you are not the injured party in the sense of § 172 Para. 1 Sentence 1 StPO. Your legal rights have not been directly infringed by the actions in question (see Meyer-Goßner, StPO, 54. Aufl., § 172 Rdnr. 9 and 10 m.w.N.). Nor is this changed by the fact that you are a taxpayer, because in order to be the injured party, it is not

sufficient that the applicant has only been affected by the action to the same extent as any other citizen (see Meyer-Goßner, a.a.O. Rdnr. 10; KG decision of 10th August 2011 - 3 Ws 406/11 -). This is the case here.

As you have already been informed under file ref. 1 Zs 1944 / 11, the Federal Constitutional Court has also restricted the freedom of action of the Government referred to in the contested decision in matters of public relations during election campaigns (see BVerfGE 44, 125, 149 ff. and BVerfGE 60, 230, 243 ff.). The public relations work of the Government accordingly comes to an end where the campaigning begins. Regardless of the question of whether the letter of which you complain can be considered as public relations work of the Government or as advertising for the coalition parties, there is no apparent connection with any election campaign taking place at the time of publication. From the constitutional point of view therefore, the Government was not prevented at the time of publication from advertising for itself and thus at the same time also its supporting parties. I can therefore find in the applicable regulations no restrictions on the public relations work of the Government which would justify regarding the matter in question as a “breach of duty” in the sense of § 266 StGB.

I cannot therefore comply with your complaint.

Yours respectfully

Engholm

Public Prosecutor

Certified

Signed

Judiciary

Enz