EUROPEAN CENTER FOR CONSTITUTIONAL AND HUMAN RIGHTS

ECCHR

QUESTIONS & ANSWERS _____

ITALY'S ROLE IN THE US DRONE PROGRAM

1. Why Sigonella?

The Sigonella Air Base in Sicily is of strategic importance for US drone operations, in particular in Libya and other North African countries. Based on a – publicly undisclosed – agreement between Rome and Washington, it is understood that the US can operate armed drones from Sigonella subject to formal authorization by the Italian Commander. This could make Italy directly involved in drone attacks.

2. What is the goal of the judicial complaint in Italy?

ECCHR is seeking to obtain more information about the actual use of armed drones located in Sigonella and in particular the role played by Italy in US drone operations overseas.

3. What is the legal basis for accessing documents?

Under Article 5 of Legislative Decree No. 33/2013, as amended in 2016, everyone is entitled to request access to any documents held by the public administration; a denial is possible but limited to exceptional cases set out in Article 5-bis. It is a general principle of administrative law that a comprehensive justification must be provided for any such denials.

4. What is ECCHR requesting?

In April 2017, ECCHR filed three requests to the Naval Air Commander of Sigonella, the Ministry of Defense and the Presidency of the Council of Ministries and received either no response or a denial of access. ECCHR had requested access to relevant information on Sigonella, including the costs of the air base, the number of remotely piloted aircraft located at Sigonella, the number of personnel employed there, and the number and scope of authorizations given by the Italian Commander to the US Commander for extraterritorial operations carried out by armed drones.

5. What can be done in case of denial of access to information or no response?

A public administration body must respond to a request for information within 30 days; if it fails to do so, or denies access, according to Article 5 Paragraph 7 of Legislative Decree 33/2013 the applicant can file a request to a higher authority ("*Responsabile della prevenzione della corruzione e della trasparenza*") within the administration to have the decision reviewed within a maximum of 20 days. This authority denied ECCHR's requests for review in this case. ECCHR then filed a complaint to the administrative tribunal (TAR) and ultimately appealed to the Italian Supreme Administrative Court.

6. On which basis was the complaint brought before the regional administrative tribunal?

Measures taken by administrative authorities can generally be challenged at the regional administrative tribunal (Tribunale Amministrativo Regionale, TAR) in Rome. In July 2017, ECCHR filed a judicial complaint to the TAR regarding the denial of access, on the basis that insufficient reasons were given for the decision. In particular, Italian authorities failed to properly justify why the publication of the requested documents would endanger Italy's defense or security interests or international relations and failed to properly consider the right to be informed about issues that are extremely relevant for public interest.

7. What was the judicial response so far?

In December 2017, TAR dismissed ECCHR's complaint on procedural grounds, stating that the complaint was inadmissible due to a failure to notify the US government as a possible party in the case. ECCHR appealed this decision before the Supreme Administrative Court, which referred the case back to the regional court in October 2019.

ECCHR then resumed the case at TAR, complying with the Supreme Administrative Court's procedural request, but TAR dismissed the request again on procedural grounds, claiming the notification was not presented in time. ECCHR successfully appealed the decision once again: in February 2021, the Supreme Administrative Court held that ECCHR had carried out the necessary steps in due time, and nullified TAR's judgment for the second time.

ECCHR has since resumed the case at TAR.