

CASE REPORT _____

US drone strikes: The killing of Giovanni Lo Porto in Pakistan

On 15 January 2015, Italian citizen Giovanni Lo Porto was killed by a drone strike carried out by the CIA in the district of Shawal, North Waziristan, Pakistan. The strike was directed against a compound linked to al Qaeda where Lo Porto was being held as a hostage, along with US citizen Warren Weinstein. Lo Porto had been kidnapped by an armed commando of jihadists linked to al Qaeda in 2012, while working for the German NGO *Welthungerhilfe* in Punjab, Pakistan.

Giovanni Lo Porto and Warren Weinstein were victims of a targeted killing operation conducted by means of armed drone in what is known as a signature strike.

The deaths of Lo Porto and Weinstein were acknowledged on 23 April 2015 by the then President of the United States Barack Obama. During a [press conference](#), Obama explained that “[b]ased on information and intelligence we have obtained, we believe that a US counterterrorism operation targeting an al Qaeda compound in the Afghanistan-Pakistan border region accidentally killed Warren and Giovanni this past January.” As President and as Commander-in-Chief, Obama took “full responsibility for all [US] counterterrorism operations, including the one that inadvertently took the lives of Warren and Giovanni”, offered his “deepest apologies to the families” and promised “a full review of what happened.” On the same occasion, Obama explained that “[o]ur initial assessment indicates that this operation was fully consistent with the guidelines under which we conduct counterterrorism efforts in the region [...]”

In July 2016, Lo Porto’s family received a donation of 1,185,000 euro from the United States, in what it described an *ex gratia* payment made in memory of the deceased. The US said the payment implied neither the recognition of any US responsibility nor “the consent by the United States of America to the exercise of the jurisdiction of the Italian courts in disputes, if any, directly or indirectly connected with this instrument or to a waiver to sovereign or personal immunity.”

The criminal proceedings in Italy

Following the kidnapping of Lo Porto in January 2012, the *Procura della Repubblica* at the *Tribunale di Roma* launched a criminal investigation for kidnapping for terrorist purposes (Article 289-bis of the Italian criminal code). After Obama announced the death of Lo Porto in April 2015, the proceedings continued with a view to the crimes of murder (Article 575) and manslaughter (Article 589).

On 29 May 2017, the *Pubblico Ministero* (public prosecutor) requested that the criminal proceedings be closed. The prosecutor argued that it would have been impossible to carry out further investigations for the kidnapping for terrorist purposes (due to the long period of time since the commission of the offence) and that the claims of murder and manslaughter would have been unsustainable in courts. This last consideration derived, according to the prosecutor, from the “operative environmental context (of war)” since the armed attack by means of drone was carried out in the context of “counter-terrorism actions put in place in a zone of intense and permanent conflict between the American military forces and the terrorist fringes”. More precisely, of a “real war action between the opposing factions,” the killing of a person who, under international humanitarian law, qualifies as a civilian would be classified as a collateral victim (or “collateral damage”) and, as such, the killing would not be fall under Articles 575 and 589 of the Italian criminal code.

On 3 July 2017, lawyers for the family of Giovanni Lo Porto formally challenged the request for the criminal proceeding to be closed. This legal step was supported by an ECCHR expert opinion on the “Legal Framework of the Operations by Armed Drones Carried Out by the United States of America in the Territory of Pakistan.”

On 2 March 2018, the *Giudice per le Indagini Preliminari* (GIP) of the *Tribunale di Roma*, with an ordinance according to Article 409 § 4 of the Italian code of criminal procedure, ordered the prosecutor to conduct further investigations, including a formal rogatory request to obtain from the US authorities all the documents concerning the operation that killed Giovanni Lo Porto. The judge questioned – as ECCHR had done in its expert opinion (see below) – whether the activities conducted by the US in Pakistan and, in particular, the operation that caused the death of Lo Porto, were linked to an armed conflict.

The role of ECCHR in the Lo Porto case

In the context of the criminal investigation into the kidnapping and, later, the killing of Giovanni Lo Porto, ECCHR issued a legal opinion concerning the “Legal Framework of the Operations by Armed Drones Carried Out by the United States of America in the Territory of Pakistan.”

ECCHR’s filing focuses on the “analysis of the nature of the armed conflict that allegedly existed in Pakistan, at the time of the events between the United States of America and terrorist groups

operating there” and seeks to “contribute to the criminal proceeding [...] by providing useful elements to correctly frame, from the legal point of view, the situation in Pakistan at the time.”

The opinion argues that, contrary to the official narrative, the activities conducted by the US in Pakistan and, in particular, the operation that caused the death of Giovanni Lo Porto, are not linked to the conduct of hostilities in the context of an (international or non-international) armed conflict. As a consequence, at the international level, international human rights law applies (and not also international humanitarian law). At the domestic level (in Italy as well as in the US and Pakistan), criminal law applies and the conduct of drones operators and their superiors may be criminally relevant, without benefiting from any exonerating circumstances linked to the conduct of hostilities.

ECCHR stressed that the entity responsible for the operations conducted by means of armed drones in Pakistan is not the US military apparatus, but the CIA, which is a civil intelligence service. As such, an attack conducted by means of armed drone by the CIA, like the one which caused the death of Giovanni Lo Porto, does not qualify as an act linked to the conduct of hostilities. It follows that the members of the CIA who, during these operations, committed a criminally relevant act may be subjected to criminal jurisdiction.

Correct as of: May 2018

European Center for Constitutional and Human Rights (ECCHR)