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Press Release
Higher Administrative Court for the State of North Rhine-Westphalia
19.3.2019

US Drone Operations in Yemen: Plaintiffs Achieve Partial Success

In a judgment from today partially sustaining the claimant's requests, the Higher Administrative Court obliged the Federal Republic of Germany to assure itself by means of suitable measures whether the use of Ramstein Air Base by the United States of America for operations with armed drones at the residential address of the plaintiffs in Yemen complies with international law. If necessary, the Federal Republic of Germany will have to work with the United States of America towards compliance with international law. Insofar as the plaintiffs have requested a ban on the use of Ramstein Air Base for armed drone operations the court has rejected the lawsuit.

The plaintiffs state that they lost close relatives in a drone strike in the province of Hadramaut in 2012. They doubt the legality of this attack, which has to their knowledge not been investigated by independent entities. A lawsuit against the United States of America was rejected by a US court without any assessment of the legality of the attack. Due to the primary importance of Ramstein Air Base, which is located in Germany, for ongoing American drone operations including those in Yemen, the plaintiffs, who are concerned about their safety, have taken the Federal Republic of Germany to court to prohibit the use of the Air Base for such operations by taking suitable measures. The Cologne Administrative Court rejected the action. The appeal has now been partially successful.

The President of the 4th Senate [*of the Higher Administrative Court*] set out the reasoning in the oral pronouncement of the judgment: Germany has a positive constitutional obligation to protect the lives of the plaintiffs, which it has so far not sufficiently fulfilled. The state has a positive constitutional obligation to protect in cases of foreign threats to the fundamental right to life if there is a sufficiently close relationship to the German state. This is given in this case because the plaintiffs rightfully fear risks to life and limb due to US drone operations that contravene international law and that use facilities at the Ramstein Air Base. There are weighty indications, which are known to the respondent or are in any case common knowledge, that the USA, by using technical facilities at Ramstein Air Base and its own personnel stationed there, is conducting armed drone operations in the home region of the plaintiffs in Yemen that at least

in some cases violate international law. As a result, the plaintiffs' right to life is unlawfully endangered. The findings of the German parliament's NSA investigation committee and the official information available to the court show in particular the central role of the satellite relay station in Ramstein for ongoing operations with armed US drones, including in Yemen.

The question of whether armed drone operations in Yemen are permitted by international law is not a political question but a legal question. According to Germany's Basic Law (*Grundgesetz*), the Senate is obliged to assess whether US drone operations in the plaintiffs' home country are consistent with international law. The German Federal Government's present assumption that there are no indications of violations of German or international law by the USA through the USA's activities in Germany is based on an insufficient investigation of the facts and is ultimately not legally sustainable. The government is therefore obliged to look into existing doubts by taking measures that it deems suitable. The use of armed US drones in Yemen that are used in agreement with the Yemeni government is currently not prohibited in general. In particular, armed drones are not prohibited weapons under international law. However, targeted military force, including by means of armed drone operations, is only permissible if the requirements of international humanitarian law and international human rights protection are observed.

In Yemen, a non-international armed conflict is currently still ongoing between Al-Qaida in the Arabian Peninsula (AQAP) on one side and on the other side the Yemeni government, which is supported at the Yemeni government's request by the USA and others. According to the therefore applicable international humanitarian law, attacks may generally only be directed against combatants from the armed group involved in the conflict as well as against other persons who participate directly in the hostilities. Whether somebody is a combatant of a conflict party depends on whether his continued or continuous function lies in the direct participation in hostilities ("continuous combat function"). If this is the case, he may be targeted even if he is currently not directly participating in hostilities.

Following evaluation of all public declarations from the US administration that are available to the Senate, there are doubts whether the general operational practice for attacks, including those in Yemen, meets the requirements of the international humanitarian law principle of distinction. Because all forces "associated" with Al-Qaida are considered extensively to be participants in a worldwide armed conflict, even if the time and location of a possible attack are still uncertain, it remains unclear whether direct armed attacks in Yemen are limited to permitted military targets. Any arbitrary killing is also prohibited under international human rights law, even in armed conflict. According to the jurisprudence of the International Court of Justice, a killing is not arbitrary if within the framework of an armed conflict it is directed against a legitimate military target and avoids disproportionately high numbers of civilian casualties. On several past occasions, there was no clarification of whether this was the case, even where there were specific indications that civilians might have been specifically targeted. Furthermore, according to the jurisprudence of the European Court of Human Rights and

Germany's Federal Constitutional Court, the prohibition of arbitrary killing requires that effective official investigations are conducted if persons are killed due to the use of force in particular by representatives of the state. The German Federal Government, according to its representatives in the oral proceedings, does not know whether in these kinds of cases the US authorities have performed or permitted independent investigations beyond purely internal situation evaluations. No further information on this emerged in the course of the ongoing proceedings.

Due to the general importance of the legal matter, the Senate allows an appeal to Germany's Federal Administrative Court.

Docket No: 4 A 1361/15 (VG Köln 3 K 5625/14)