

No end to US drone strikes via Germany

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We are not naive. And yet my organization, ECCHR, and London human rights group Reprieve decided to take legal action against the German government on Germany's role in US drone strikes. The claim was submitted by Yemeni citizen Faisal bin Ali Jaber and two of his relatives to the Administrative Court in Cologne.

At an oral hearing on Wednesday the Court decided to dismiss the claim – but did not find it to be inadmissible.

The details: Like lots of military attacks, drone strikes are problematic for a range of reasons. The main issues concern the large distance between the target and the person directing the attack as well as the drones' supposedly surgical accuracy. This criticism might sometimes seem overly caught up in modern trends, as though regular bombings and rocket strikes weren't similarly worrying. International law, including international humanitarian law, the Geneva Conventions and their Additional Protocols were all created by states, which were reluctant to impose many restrictions on the military means at their disposal. This is why international humanitarian law permits much more than seems to us to be "humane". New, stricter laws are not on the horizon. So far, so bad.

The consequences: attacks using bombs, rockets and drones are not as widely forbidden as you would think and are indeed desired by many – even where there are civilian victims. See for instance the bombing ordered by a Colonel in the German army in Kunduz, Afghanistan in autumn 2009.

But in our view drone strikes carried out outside of conflict zones are nothing but extrajudicial targeted killings, i.e. the implementation of death sentences without any trial. This is also the view taken by most German and European international law experts. That's why we felt we would have good chances taking a Yemen case to a German administrative court.

Unlike criminal or civil proceedings, this kind of case doesn't require us to prove German complicity – though there is evidence to support this contention. The US air base Ramstein is the central point of US drone strikes. Without Ramstein, these attacks would not be possible. The base is part of a modern, complex, specialized system with a host of actors in different locations. With this case we wanted to invert the burden of proof. It's not the claimants that have to prove that Germany is actively involved in US drone strikes. Instead German authorities are under an obligation to protect individuals – including people living in Yemen – from suffering harm caused by breaches of international law involving Germany.

In publicly subjecting the claim to legal scrutiny the Administrative Court of Cologne has become the first German court to address these legal questions. The case was held to be admissible and our submissions found to be plausible. But then the Court said: the German government has discretion on questions of foreign policy and can therefore decide itself what measures it takes and how far it goes. On this basis the Court declined to grant our request: to forbid the use of Ramstein for the purposes of drone strikes. Not terribly satisfactory, as is often the case with legal action challenging military

action. But it does provide a foundation for further action. The three claimants can lodge an appeal against the decision and the case may be considered by another court.

The exchange of diplomatic notes has to date proven to be a wholly unsuitable tool. There needs to be a public debate on whether Germany is really doing enough to prevent violations of international law and the murder of innocent people. The question will be decided through politics – and it's up to us all to influence the debate.

One thing is for sure: we at ECCHR and the claimants from Yemen will continue our work on this. We aim to make full use of the gap in the door left open by this week's decision from Cologne.