

QUESTIONS AND ANSWERS _____

Three Yemenis sue Germany and the US

Since 2002, the US has been using targeted drone attacks to kill people suspected of being involved in terrorism. Others often die in the process – in Afghanistan, Pakistan, Somalia and in Yemen.

In the summer of 2012, three members of the bin Ali Jaber family were killed in a drone attack in Yemen. Many of the survivors have been traumatized ever since. The family members, who were never accused of any link to terrorism, had in fact been active against al-Qaida in the region.

The US military base Ramstein in Germany played an important role in the attack. The US uses Ramstein to pass data on to the drones via satellite. Part of the operations team evaluates the real-time drone pictures and assists the pilots in the targeted killings. The German government rejects any responsibility for the death of civilians in US drone strikes.

ECCHR and the international human rights organization Reprieve are assisting the bin Ali Jaber family in taking legal action. In October 2014, three members of the family instituted [proceedings at Cologne's Administrative Court](#), suing the German government as represented by the Ministry of Defense.

On 27 May 2015, a hearing was held at the Administrative Court in Cologne. The court held that the case was admissible, and confirmed that Ramstein plays an important role in the US drone war. The court found however that Germany is not obliged to prevent the US from using the military base for drone strikes. The claimants appealed this decision to the Higher Administrative Court of Nordrhein-Westfalen in Münster in August 2015. ECCHR and Reprieve are continuing to provide legal advice and research in this case.

I. General

I.1. Why the legal action?

The use of armed drones is more than just another means of warfare. Through its drone program, the US repeatedly violates human rights and international law. Many strikes take place outside of armed conflicts and thus violate the right to life. This is the case in Yemen, where the US carries out targeted killings of people suspected of being terrorists. Drone strikes are not as accurate as is claimed and often result in the deaths of the “wrong” person and of innocent civilians; as such even when used in armed conflict drone strikes will in many cases violate international humanitarian law.

Germany assists US drone strikes by providing relevant information and by granting broad permissions for US military bases on German territory. The US military basis Ramstein in Rheinland-Pfalz plays a central role in US drone strikes; all relevant data for the combat drones passes through Ramstein.

Germany is in violation of its constitutional and human rights obligation to protect life because it has failed to take appropriate measures to prevent the US from using its bases and facilities on German territory in drone strikes. The German government must put a halt to the use of Ramstein for drone attacks – otherwise it is complicit in the death of innocent people.

I.2. What are the plaintiffs expecting from this case?

The bin Ali Jaber family has suffered a deep personal loss. But not only that: to this day they and many other Yemenis live in constant fear of further drone attacks. They want to end the unlawful and devastating US drone attacks in Yemen.

The bin Ali Jaber family is calling on Germany to take legal and political responsibility for the US drone war in Yemen and to prohibit the use of Ramstein for this purpose.

Claimants Faisal bin Ali Jaber, Ahmed Saeed bin Ali Jaber and Khaled Mohamed bin Ali Jaber have already achieved one goal with their lawsuit: for the first time, the victims of drone attacks have been heard by a court in Germany. No matter how the case continues: the lawsuit taken by these three Yemenis is contributing to the long overdue political debate on Germany’s role in US drone strikes.

The plaintiffs are aware that it may take several years of proceedings before a final judgment is handed down.

I.3. What are the plaintiffs asking for?

The claimants are asking Germany to stop assisting in US drone strikes. The German government must prevent the use of Ramstein for drone attacks, especially the attacks on the claimants' village and homeland in Yemen.

I.4. Legally, what shared responsibility does Germany have for the US drone war?

Several documents and witness statements prove that the US military base at Ramstein in Germany plays a central role in US drone strikes. By failing to prevent the use of Ramstein for such strikes, the German government bears part of the responsibility for the unlawful use of drones.

The transfer of data that is used to control the drones occurs via Ramstein. First, fiber optic cables route data from the US, where the drone pilots are stationed, to Ramstein. From there, it travels via satellite to the drones in the relevant operational area. Similarly, data coming from the drones, including real-time surveillance photographs, is routed back to the operations teams through Ramstein. The curvature of the earth means it is not possible to establish a direct connection between the US and the drones flying in Yemen and neighboring countries. The only US satellite relay station within the range of the operational areas is in Ramstein. US drone attacks are thus not possible without Ramstein.

In addition, Ramstein hosts one of five data centers where enormous amounts of data are collected, assessed and passed on to the drone operation teams. This makes Ramstein the biggest hub for the global drone program outside the US.

I.5. What is the legal assessment of the drone attacks?

First, one has to differentiate between attacks in regions of ongoing armed conflict, as in Afghanistan, and those that take place outside such a conflict, like those carried out in Yemen in the context of counter-terrorism operations.

Outside of armed conflicts, targeted killings using drones are legally categorized as murder, for which there are no legal justifications. In the US, presidential policy guidelines on drone strikes have put in place a framework that is clearly in violation of human rights, specifically of the prohibition on arbitrarily depriving people of their right to life.

Even in armed conflicts, attacks may only be directed at people who are actively participating in the hostilities. Not every member of a conflict party may be lawfully targeted. The US disregards this principle of international humanitarian

law. In its policies and in practice, the US adopts a much broader understanding of who may be a legitimate military target.

The fundamental principle of international humanitarian law is to protect civilians in all circumstances.

II. Legal Aspects

II.1. What is at issue in the lawsuit?

The plaintiffs are suing Germany under administrative law. In a legal action for performance, they are demanding that Germany abide by its constitutional responsibility to protect their right to life under Article 2 of the German Basic Law, or constitution (*Grundgesetz* – “GG”). The plaintiffs fall under the protection of the German Basic Law because they are directly and negatively affected by Germany’s actions, namely the fact that Germany is actively allowing the use of Ramstein and is not preventing the unlawful acts there.

II.2. What is the basis of the claim?

The plaintiffs base their claim against Germany on the right to life and physical integrity. Article 2 and 25 of the Basic Law require that the German government prevent violations of international law on German territory (Article 2 Para. 2 sentence 1 GG; Article 2 Para. 2 sentence 1 together with Article 25 GG).

II.3. Why was the suit brought before Cologne’s Administrative Court?

The lawsuit is against the German government represented in this case by the German Defense Ministry. The Defense Ministry is based in Bonn and so Cologne’s administrative court had jurisdiction over the initial complaint. When this court rejected the complaint in May 2015, the claimants appealed to the Higher Administrative Court for Nordrhein-Westfalen in Münster.

II.4. Why did the Cologne Administrative Court reject the complaint?

The Court agreed that the claim was admissible since the German Basic Law obliges Germany to protect the lives of non-Germans abroad where these persons are affected by the actions of German authorities. But the judges, unwilling to adjudicate on foreign policy, granted the German government extremely broad discretion on the matter, effectively freeing the state from any court oversight on this issue.

II.5. What happens next?

In August 2015, the three claimants appealed the decision of the Cologne Administrative Court to the Higher Administrative Court for Nordrhein-Westfalen in Münster. The oral hearing will take place on 14 March 2019.

II.6. What is the basis of the appeal?

The appeal is based in part on the argument that the German government's discretion is limited by the unlawfulness of US drone strikes in Yemen and the grave danger posed to the claimants by these strikes. Their aim is to establish that Germany is under a legal obligation to take effective measures against the use of the US military base Ramstein for future drone strikes over their home region in Yemen.

II.7 Who is representing the claimants?

Sönke Hilbrans from the law firm [dka Rechtsanwälte Fachanwälte](#) in Berlin is representing Faisal bin Ali Jaber, Ahmed Saeed bin Ali Jaber and Khaled Mohamed bin Ali Jaber and has filed the lawsuit in their name.

III. ECCHR's role

III.1. What role does ECCHR have in the lawsuit?

Since 2010, ECCHR has worked on legal questions concerning drone attacks around the world. We worked with the NGO Reprieve, which has been working on Yemen for several years, to legally analyze the drone attacks in Yemen and to prepare the lawsuit filed by the bin Ali Jaber family in October 2014 in Cologne.

At the appeal stage, ECCHR staff continue to undertake research and analysis to assist the claimants as they seek to exercise their rights. ECCHR will also be represented by a member of staff at the oral hearing.

For several years, ECCHR staff have been examining the question of liability for drone attacks and analyzing possible legal steps. In 2013, ECCHR submitted a [comprehensive submission](#) in the context of criminal investigations into the killing by drone of a German national in Pakistan and worked with an eyewitness to create a 3D simulation of the drone attack.

Human rights violations in the global fight against terrorism are also an integral part of the [ECCHR's work on investigations in Spain and France into torture at Guantánamo Bay, as well as on torture at CIA black sites.](#)

III.2. Why didn't ECCHR sue in its own name?

Under German law, NGOs are generally not permitted to file lawsuits in their own name. Only persons whose rights have directly been violated have standing before the courts.

III.3. What is the goal of this legal action?

Human rights apply universally. The US repeatedly violates fundamental human rights in the context of their global fight against terrorism. In Yemen, no civilians would be killed in drone attacks if Germany prevented the use of German territory for the strikes.

In all of its work, ECCHR seeks to enforce the law in order to challenge injustice. The goal in this case is to ensure the German government ends its support of US activities that violate international law and ends its role in the deaths of innocent people in drone strikes.

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