



QUESTIONS & ANSWERS _____

ITALY'S ROLE IN THE US DRONE PROGRAM

The Sigonella airbase in Sicily, Italy, is considered to be of strategic importance for US drone operations, in particular in North Africa. 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 would make Italy directly involved in drone attacks.

ECCHR has filed requests under Italy's 2016 Freedom of Information Act (FOIA) seeking access to information on the legal framework regulating the presence and use of US drones at and from Sigonella. The Italian authorities either failed to respond or denied access to the requested information. In July 2017, ECCHR filed a judicial complaint to the administrative tribunal in Rome (TAR) to obtain access to the documents. In December 2018, the TAR declared the complaint inadmissible on procedural grounds. In March 2018, ECCHR appealed this decision to the Supreme Administrative Court (*Consiglio di Stato*).

1. Why Sigonella?

The Sigonella airbase 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 n. 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 airbase, 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 par. 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 (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. Why was the complaint dismissed by the TAR?

In December 2017, the TAR dismissed ECCHR’s complaint on procedural – not substantial – grounds. In particular, the TAR found that the complaint was inadmissible due to the failure to notify possible counterparts of the complaint. These counterparts were generically identified by the administrative judge as “the Government of the United States of America.” In March 2018, ECCHR filed an appeal against the decision of the TAR before the *Consiglio di Stato* (Supreme Administrative Court).

8. What can the *Consiglio di Stato* do now?

The appeal to the *Consiglio di Stato* was filed by ECCHR in March 2018 and a decision is expected to be delivered within months. That court could either reverse the TAR decision and affirm that the complaint was admissible and should be considered on its merits or confirm the TAR decision holding that, because of the failure to notify the complaint to other counterparts (namely “the Government of the United States of America”), the complaint was inadmissible. In the latter case, ECCHR could either file another complaint and notify potential counterparts or decide to bring the issue to the European Court of Human Rights.

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European Center for Constitutional and Human Rights (ECCHR)