



## CASE REPORT \_\_\_\_\_

### **The US airbase Sigonella in Sicily**

#### **Freedom of Information litigation on drones at Sigonella**

US military drones are stationed at and take off from Sigonella to conduct operations involving the use of force in other countries, specifically in Libya and other North African countries. However, agreements between Rome and Washington on the presence of armed and non-armed US drones at the Italian military base of Sigonella and rules on their use have not been made public. The lack of transparency is a cause for great concern.

In March 2017, ECCHR filed three requests to access information regarding, in particular, the legal framework regulating the presence and use of US (armed and non-armed) drones in and from Sigonella. The requests were filed according to Italy's Freedom of Information Act (FOIA) which entitles "everyone" to "access data and documents held by public administrations."

The three requests were addressed to the Ministry of Defense, the Presidency of the Council of Ministries and the Naval Air Commander of Sigonella. In each case the authorities either denied the request or failed to respond. In May 2017, ECCHR filed an internal appeal to have the denial reviewed but in June 2017 the public administration for the second time denied access, citing state secrets and possible prejudice to Italy's defense and security interests and international relations.

In response, in July 2017, ECCHR filed a complaint to the Tribunale Amministrativo Regionale (TAR, an administrative court) in Rome, which, in December of that year dismissed the complaint on procedural grounds (without any decision on the merits). In particular, the TAR found that the complaint was inadmissible due to lack of notification to "the Government of the United States of America," which it argued had a counter-interest in the request.

Against this decision, in March 2018, ECCHR filed a complaint before the Consiglio di Stato (Italy's Supreme Administrative Court), rejecting the interpretation given by the TAR, in particular on the need to notify a counterpart in FOIA litigations; ECCHR also highlighted thoroughly the importance of transparency on such vital decisions at the core of Italian government and its policy on fundamental rights (including the right to life and the limits of the lawful recourse to lethal force).

The Consiglio di Stato referred the case back to the regional court still reaffirming the procedural obligations for ECCHR (the notification to the USA), which ECCHR complied with, when the case was resumed in December 2019. Despite ECCHR's best efforts to fulfill the notification duties, the US rejected the notification claiming, "it would infringe upon the sovereignty or security of the State."

In July 2020, the TAR once again dismissed ECCHR's request on procedural grounds, stating that the notification to the US government was not presented in time, thus accepting the objection to admissibility presented by the Italian Ministry of Defence.

In October 2020, ECCHR appealed this decision in front of the Consiglio di Stato, arguing, inter alia, that the TAR erred in its interpretation of the relevant terms for the notification of the resumption of proceedings. The appeal was successful and, in February 2021, the Consiglio di Stato nullified the TAR's second judgement, stating that ECCHR complied with the prescribed notification terms. Accordingly, ECCHR resumed the case in front of the TAR. In June 2022, the TAR Lazio finally issued a decision on the merits of the case, granting partial access to the requested documents.

ECCHR was granted access to four Technical Accords (signed in 2010, 2014, 2017 and 2021) between Italy and the United States, which set out general guidelines for the operation of drones in Sigonella. ECCHR was, at the same time, denied access to other requested documents, containing more detailed procedures of drone operations in the base, which were deemed to be state secrets or otherwise classified.

This decision confirms ECCHR's original belief that not all documents relating to the operation of drones from Sigonella were state secrets or classified and reinforces its commitment to have transparency ensured.

### **The US drone program and European countries' role**

In the context of the so-called global "war on terror," launched in the immediate aftermath of the 11 September 2001 attacks, the use of Remotely Piloted Aircrafts (RPA), commonly known as drones, has become a tactic relied on by the US to kill suspected terrorists overseas, including outside areas of active hostilities.

The program, which began under President George W. Bush, expanded greatly under President Barack Obama. Since taking office in January 2017, President Donald Trump's administration has set some alarming trends with regard to the use of armed drones. The US program raises serious concerns with regard to its compliance with international law and, in particular, international human rights law, international humanitarian law (*jus in bello*) and the law governing the use of inter-state force (*jus ad bellum*).

European countries have been playing a key role in the US drone program of targeted killings overseas, which risks making them complicit in violations of international law and/or in criminal conduct. There is mounting evidence that a number of European countries, including the United Kingdom, Germany, the Netherlands, Denmark and Italy are involved in various ways in the US drone program.

These countries play a key role in the chain that leads to each US drone strike, by sharing intelligence with the US, making military infrastructures available to the US – as in the case of Italy and, specifically, through Sigonella – or otherwise providing aid and assistance in US operations.

### **Italy's role in the US drone program**

Because of its location at the heart of the Mediterranean Sea, the Sigonella Naval Air Base in Sicily, Italy, has always been of strategic importance for Italy and its NATO allies. Over the last few years, the “hub of the Med” has grown in importance in particular for US drone operations in North Africa (and specifically in Libya) as part of its counter-terrorism operations.

In February 2016, the [Wall Street Journal](#) revealed that a still publicly undisclosed agreement between Italy and the US had been signed allowing US armed drones based in Sigonella to be deployed in Libya, and more broadly in North Africa, against Islamic State (IS). According to public statements from members of the Italian government at the time, Italy would have consented to US drone operations from Sigonella under two conditions, namely that (a) US armed drones be used only for defensive operations, and (b), that Italy have the authority to approve US operations on a case-by-case basis. However, even prior to that, it is alleged that Italy and the US concluded a secret agreement for the permanent deployment at Sigonella of US drones for intelligence, surveillance and reconnaissance (ISR) operations.

It is also documented that, between the end of 2012 and the beginning of 2013, in order to address the increasing instability in North Africa and in the Sahel region, Italy granted the US temporal permission for the deployment at Sigonella of additional (armable) US drones to be used in ISR operations.

At the end of 2017, the construction of the Uas SatCom Relay Pads and Facility – located in the Sigonella base – was completed. The asset aims at supporting communications and US drone operations and would work as a connecting station to facilities that operate with drones in the rest of the world. In particular, the system will support the transmission of all necessary data operating as a de facto “twin station” of the US base of [Ramstein, Germany](#).

### **The legal framework for the US presence in Sigonella**

US military presence in the military base of Sigonella is based on the 1949 North Atlantic Treaty, the 1951 NATO SOFA Convention, the 1954 Bilateral Infrastructure Agreement (BIA), the 1995 Memorandum of Understanding (“Shell Agreement”) and the 2006 Technical Arrangement on Sigonella (and its subsequent integrations in 2010, 2014, 2017 and 2021, to which ECCHR has been given access in 2022).

According to the 2006 Technical Arrangement: the base is “placed under the Italian command” but the US Commander has “full military command over US personnel, equipment and

operations;” the US Commander has the obligation to “notify in advance the Italian Commander of all significant US activities” (meaning all activities which are not routine activities); the Italian Commander has the obligation to “advise the US Commander if he believes US activities do not respect applicable Italian law” as well as to “intervene to have the US Commander immediately interrupt US activities which clearly endanger life or public health and which do not respect Italian law;” and, finally, “[p]ermanent increases of the operational component and relative support shall be authorized by the Italian National Authorities.” This kind of legal duty imposed on the Italian commander could make Italy complicit in the US drone program and in US drone strikes carried out from Italian military bases in Libya and North Africa.

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