



This translation has been prepared for the European Center for Constitutional and Human Rights, which has been supporting the claimants in this case. The [original German text](#) of the press release can be found on the website of the Higher Administrative Court for the State of North Rhine-Westphalia.

## 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 granting the claimant's requests, the Higher Administrative Court obliged the Federal Republic of Germany to establish 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 according to their knowledge not been investigated by independent agencies. A lawsuit directed against the United States of America was rejected by a US court without an 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 lawsuit. The appeal has now had partial success.

The President of the 4<sup>th</sup> Senate [of the Higher Administrative Court] set out the reasoning in the oral pronouncement of judgment: with regard to the life of the plaintiffs, Germany has an obligation to protect, which it has so far not sufficiently fulfilled. An obligation to protect exists for the state in the case of threat to the fundamental right to life also in foreign matters if a sufficiently close relationship to the German state exists. This is given in this case because the plaintiffs rightfully fear risk to life and limb due to US drone operations using facilities at the Ramstein Air Base that contravene international law.

There are weighty and real indications, which are known to the defendant 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 partly 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 prove the central role in particular 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 previous assumption that there are no indications of violations of German law or international law by the USA in their activities in Germany is based on an insufficient investigation of the facts and is ultimately not legally sustainable. The government is therefore obliged to address 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 according to international law. However, targeted military force, including by means of armed drone operations, is only permissible if the requirements of humanitarian international law and international human rights protection are observed.

In Yemen, a non-international armed conflict is ongoing between Al-Qaida in the Arabian Peninsula (AQAP) on one side and on the other side the Yemeni government, which has requested support from the USA among others. This conflict has not yet ended at least at present. According to the humanitarian international law that therefore applies, 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 their continued or continuous function lies in the direct participation in hostilities ("continuous combat function"). If this is the case, they may be targeted even if they are not currently directly participating in the hostilities.

Following evaluation of all public declarations from the US administration that are available to the Senate, there are doubts whether the general operations practice for attacks, including those in Yemen, meets the requirements of this principle of distinction in humanitarian international law. Because all forces “associated” with Al-Qaida are considered in a blanket fashion to be participants in a worldwide armed conflict, even if the time and location of a possible attack are still uncertain, it remains uncertain whether direct armed attacks in Yemen are limited to permitted military targets. After all, arbitrary killing is prohibited under international human rights treaties, even in armed conflict. According to the jurisprudence of the International Court of Justice, a killing is not arbitrary if it is directed against a legitimate military target within the framework of an armed conflict and the attack avoids disproportionately high numbers of civilian victims. On several past occasions, there was no clarification of whether this was the case, even where there were specific indications that civilians could have been specifically targeted. Furthermore, according to the jurisprudence of the European Court of Human Rights and Germany’s Federal Constitutional Court, the ban on 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 has authorized a potential appeal to Germany’s Federal Administrative Court.

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