

AWARE: Seminar on the European Arrest Warrant and Conditions of Detention

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Report

Rhianon Williams

On 24 to 26 October 2019, the Higher Regional Court of Appeal (*Oberlandesgericht*) in Bremen/Germany, together with the Bremen Ministry of Justice and Constitution, held a three-day seminar as part of an EU Justice Programme-funded series of three seminars looking at use of the European Arrest Warrant (EAW AWARE). The seminar in Bremen was attended by 38 European judicial and legal practitioners and academics from eight EU Member States.

The purpose of the seminar series is to incorporate different perspectives stemming from practitioner experience in order to address the challenges of EAW implementation and policy: decision-making information, use of existing provisions in national law, and informal judicial cooperation. A particular focus is on the obligations of the executing Member State courts to examine the detention conditions in the issuing Member States, alongside broader issues involving the protection of human rights of the requested person.

Following a welcome from Secretary of State for Justice for the Federal State of Bremen, *Björn Tschöpe*, practitioners heard from *Daniel Burdach* from the Registry of the European Court of Human Rights (ECtHR) regarding the ECtHR's rulings on the standards for prison detention conditions under the European Convention of Human Rights. Raising awareness among national executing judges for existing tools and the ECtHR's benchmark criteria are key goals of the EAW AWARE seminars. Mr. *Burdach* presented a detailed review of cases pertaining to the major problems of overcrowding and inappropriate detention facilities; he concluded by listing existing resources on the ECtHR factsheets and on the HUDOC database. In the afternoon session, Dr. *Klaus Schromek*, Presiding Judge at the Bremen Higher Regional Court of Appeal, provided European practitioners with broader context on criminal procedure in Germany. His colleague Dr. *Ole Böger* focused on the relevance of human rights protection in application of the EAW in the case law of European and domestic courts. He highlighted that both the European Court of Justice (ECJ) – especially in the *Aranyosi and Căldăraru* case (C-404/15), which had been initiated by a referral for a preliminary decision by the Bremen Higher Regional Court of Appeal – and the German Federal Constitutional Court require the courts of the executing Member States to ensure the human rights protection of the requested person in the issuing Member State. Dr. *Böger* also discussed remaining issues concerning the precise scope and content of these duties on the part of the executing Member States' courts, also referring to practical solutions for the future, e.g., enhanced databases and the facilitation of closer co-operation between judicial authorities of the issuing and executing Member States.

AUTHOR

Rhianon Williams

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The first day of the seminar was concluded by Dr. *Ralf Riegel*, Head of the International Criminal Law Division at the German Federal Ministry of Justice and Consumer Protection, who led an engaging debate on the need for reform of the national and the international basis in EAW proceedings. Dr. *Riegel* tackled practical concerns of EAW proceedings both in the issuing state (such as use of a central EAW authority) and in the executing state (for instance, at which point and under what conditions representation by legal counsel should be organised).

Bearing in mind this focus on detention conditions, participants made onsite visits to both Bremen Correctional Facility and Bremen Secure Treatment Unit of the Psychiatric Treatment Centre. They heard first-hand accounts from staff, and the visits fueled the discussion that detention conditions are not to be understood as either an “east vs. west” issue or as the fault of unwilling regimes. Instead, improved conditions depend on investment and the capacity for renovation, and improvements must often accommodate changing factors such as new demographics. All this within the uniquely challenging requirements of a secure environment. The onsite visits ultimately led to a better understanding of the human rights relevance of detention conditions, with a particular emphasis on the need for open communication between the relevant authorities – in the European spirit of mutual trust and cooperation.

Additional afternoon sessions were conducted, according to a prioritised agenda, including the following:

- Analysis of the German *Puigdemont* case and its reception in Spain (Mr. *Florentino Ruiz Yamuza*, Judge in Huelva/Spain);
- Rejection of surrender and problems/practice in relation to the enforcement of foreign sentences in Germany (Mr. *Christian Schierholt*, Chief Senior Public Prosecutor, Celle/Germany);
- Extradition and Fair Trial, focusing on the ECJ’s judgment in “LM” (C-216/18) and its reception in EU Member States from a comparative law perspective (Mr. *Thomas Wahl*, Senior Researcher at the Max Planck Institute for Foreign and International Criminal Law, Freiburg/Germany);
- The perspective of suspects and lawyers on extradition proceedings, with a focus on possibilities for avoiding detention (Dr. *Anna Oehmichen*, defence lawyer from Knierim & Kollegen, Mainz/Germany).

By bringing users of the EAW tool together with such a diverse, practical agenda, these seminars are designed to support, discuss, and build mutual trust and recognition of decisions between neighbouring European judiciaries and to promote consistent use of European bodies. The second seminar will take place in Bucharest/Romania from 23 to 27 March 2020 and the third in Lisbon/Portugal from 28 September to 2 October 2020. Persons and institutions interested in the material developed during EAW AWARE are warmly encouraged to get in touch with *Rhianon Williams* (rhianon.williams@justiz.bremen.de).

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