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Greg Rinckey speaks with the Air Force Times on a unique death penalty case and the impact of Germany's laws regarding it.

For Germans, death penalty is concern in U.S. airman's murder trial

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By Kristin Davis

Petty Officer 2nd Class Dmitry Chepusov was declared dead Dec. 14 in Kaiserslautern, Germany, after being found unresponsive in the passenger seat of a vehicle driven by Air Force Staff Sgt. Sean Oliver, according to police.

Nearly a week after German police discovered the lifeless body of a U.S. sailor inside a car in Kaiserslautern Dec. 14; the remains were turned over to the U.S. armed forces regional medical examiner. The body had been washed, erasing any potential DNA evidence. German authorities had also kept a portion of the suspected strangling victim's throat — pending assurances from the U.S. military that it would not seek the death penalty against the alleged killer, Stars and Stripes reported July 23. Germany, like much of the rest of Europe, outlawed capital punishment decades ago. A German municipal police spokeswoman said in an email it is typical for Germany to withhold investigative evidence until the U.S. military agrees it will not pursue the death penalty. But Geoffrey Corn, a retired Army judge advocate general who served from 2001 to 2003 as chief of international law in Germany for United States Army Europe, said the maneuver marks a significant change in behavior. "It is not unusual for them [Germany prosecutors] to say we will give you the evidence but you have to take him home. They don't want a capital trial on their territory. It is unusual to actually interfere with the ability to prosecute," said Corn, a South Texas College law professor. No decision has been made whether to seek a death sentence against Air Force Staff Sgt. Sean Oliver, who is charged with the premeditated murder of Navy Petty Officer 2nd Class Dmitry Chepusov. The investigating officer who presided over Oliver's Article 32 hearing July 18 at Ramstein Air Base, Germany, will recommend whether to send the case to court-martial and, if so, whether it should be a capital case, base spokesman Juan Melendez said in an email to Air Force Times. Lt. Gen. Darryl Roberson, 3rd Air Force commander and court-martial convening authority, will make the final decision. The NATO Status of Forces Agreement gives the U.S. primary jurisdiction over the case because both the victim and the accused are U.S. service members, Corn said. The agreement also requires mutual assistance and cooperation between the two countries. "It doesn't look like Germany has breached that obligation," he said. But "they are using a below-the-surface tactic. They are saying 'you get to prosecute but

we're not going to give you the essential evidence.' "Missing evidence

Oliver was pulled over by Kaiserslautern police for driving erratically Dec. 14. Chepusov was unresponsive in the passenger seat. A German autopsy determined Chepusov died from "force to the neck," Stars and Stripes reported. German authorities charged Oliver with manslaughter before handing the suspect over to the U.S. military. German authorities did not turn over all of evidence because U.S. officials said the death penalty was being considered against Oliver, a senior prosecutor for the city of Kaiserslautern told the newspaper. That evidence included Chepusov's tongue and a small neck bone that can be fractured during strangulation, Army Maj. Dori Mitchell Franco, armed forces regional medical examiner, testified at Oliver's July 18 hearing, according to the newspaper. Without it, Franco said, she could not say with certainty how Chepusov died, although his injuries appeared consistent with strangulation. The Germans also washed the body after performing their own autopsy, which Franco testified made it impossible to collect any DNA evidence, Mendelez said. Chepusov's fingers were covered in fingerprint ink. "I think it's speculative to say whether that was intentional or negligent. I don't know how they handle a corpse. Maybe it was accidental," Corn said. "It would be a very, very serious accusation to say German authorities deliberately handled it to destroy evidence. It would also create a very, very interesting issue for the defense if this guy goes to trial by court-martial. If they think the evidence is destroyed and they can show it was destroyed deliberately, then they are going to argue the government shouldn't be able to prosecute." German prosecutors could not be reached for comment. The case

The Air Force announced in March it had charged Oliver with premeditated murder, an offense that carries a possible death penalty under the Uniform Code of Military Justice. Meanwhile, the Army charged Spec. Cody Kramer, Oliver's friend and co-worker at American Forces Network Europe, as an accomplice. Kramer is accused of knowing days in advance that Oliver planned to murder Chepusov — who also worked at AFN — and helped Oliver carry out and cover up the crime. Oliver was having an affair with the victim's wife, Karla Alejandra Zolezzi, at the time of the murder, according to testimony during Kramer's March Article 32 hearing covered by Stars and Stripes. Oliver allegedly decided to kill Chepusov after the sailor threatened to report the affair to their chain of command, which would have upended the airman's military career and his relationship with Zolezzi, prosecutors contended. Three days before Chepusov was killed, Oliver met with Zolezzi, Kramer and Air Force Staff Sgt. Thomas Skinkle at a Kaiserslautern restaurant, where they discussed Chepusov's life insurance policy, Skinkle testified. Zolezzi stood to receive a \$400,000 payout upon her husband's death. A day after the meeting, Kramer posted a cartoon on Facebook depicting a love triangle that ended in murder, the prosecution said. Two days later, Oliver allegedly assaulted and strangled Chepusov in Skinkle's kitchen. At least three other people were in Skinkle's apartment at the time: Kramer, Skinkle and Air Force Staff Sgt. Shao-Lung Ping. Skinkle testified he was passed out drunk at the time. Ping claimed he heard the commotion in the kitchen and tried to leave but was waylaid by Kramer, who insisted he stay and watch music videos on YouTube. Ping testified he left only after he heard Oliver tell Kramer the sailor was dead. Kramer's defense contended Oliver acted alone, pointing to a sworn statement in which Oliver allegedly admitted as much. U.S.-German relations

U.S. military lawyers assigned to Germany over the decades have routinely dealt with issues of concurrent jurisdiction and law enforcement cooperation, Corn said. "It's been a historical high point of U.S.-German military relations. It's always worked really, really well," he said. As chief of international law for U.S. Army Europe from 2001 to 2003, Corn said, he often had German lawyers working in his office. "That's how close the coordination was. Whenever we had something like this, it just kind of went without saying these issues would be resolved professionally and amicably." Which makes the Oliver case "troubling," he said. "It's easy to speculate this may be one of the manifestations of the apparently chilling relationship that's

been going on.”The discovery of two U.S. spies in Germany — which prompted the July ouster of the CIA station chief in Berlin — followed news last year that the NSA was conducting mass surveillance of German citizens. Still, the countries have maintained they remain close allies.As long as German prosecutors hold onto vital evidence, “it’s a break for the defense,” said Greg Rinckey, a former Army judge advocate and now a managing partner for the law firm of Tully Rinckey.But the situation is likely to resolve itself, Rinckey said. “I don’t think the government is going to seek the death penalty. The Germans will turn over the evidence and they will be able to proceed. They can prove their case and get a conviction.”