# CUREDI033DE011

## Question(s) at stake:

Whether the assumption that the perpetrator in an honour killing case had carried out the decision of a family council should play a role in sentencing.

## Outcome of the ruling:

The fact that the 20-year-old perpetrator did not decide and plan the execution of the crime but executed the decision of a family council was taken into consideration in his favour when fixing his punishment.

## Topic(s):

- Crime and Punishment under State Law

## Keywords:

- Homicide
- Honour crimes
- Sentencing

## Tag(s):

- Lebanese Kurds
- Family council
- Base motives

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Germany

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Regional Court Hagen , Criminal Division with lay judges, Judgment of 19 January 2010, 52 KLs 400 Js 552/08 -9/09 (LG Hagen, Schwurgericht, Urteil vom 19. Januar 2010, 52 KLs 400 Js 552/08 -9/09)

**Link to the decision:**

https://openjur.de/u/603137.html

**ECLI:**

ECLI:DE:LGHA:2010:0119.52KLS400JS552.08.00

**Date:**

19 January 2010

**Jurisdiction / Court / Chamber:**

Regional Court Hagen, Criminal Division with lay judges (Landgericht Hagen Schwurgericht)

**Remedy / Procedural stage:**

First stage

**Previous stages:**

- None

**Subsequent stages:**

- Federal Court of Justice, Judgement of the 4th Criminal Division of 04 November 2010, 4 StR 481/10) (BGH, Urteil vom 04. November 2010, 4 StR 481/10)

**Branches / Areas of law:**

Criminal law

## Facts:

The victim, Iptehal, was a young woman and a member of a Mhallami family. In the view of her family, she had a Western lifestyle: she wore fashionable and figure-hugging dresses; met with female friends, but also with male friends; and above all, she was not willing to let her family decide whom she should marry. This behaviour was very much criticized by her family. After the death of her father, who had always protected her, she felt threatened by her family so much that she fled to a women's shelter. But as she was very much attached to her family, after some time she tried to re-establish contact with her mother and other family members. Nonetheless, she was afraid that her elder brother and other family members might kill her to restore the honour of the family. On 31 August 2008, she was invited by her mother to her home and they went to the town centre together. The following night, she was brought to a car park on the highway. It could not be established whether she was brought there by her 20-year-old cousin E, the defendant, and met her uncle Hussein L at the car park or whether all three of them went to the car park in the same car. At the car park, the defendant held on to her legs, pinning her to the ground, while her uncle Hussein L shot her twice in the head.
The uncle fled abroad, while the cousin had to stand trial.

## Ruling:

Based on a very meticulous assessment of the evidence, the division concluded that the defendant and Hussein L had killed the victim together. As they had both acted to restore the honour of their family, a base motive was present, which meant that the crime had to be regarded as murder under specific aggravating circumstances and not only as murder. When sentencing, the division took into consideration several factors that worked in favour of the defendant including the fact that the decision to kill Iptehal had been taken by a family council, and that the defendant had been neither the prime decision-maker nor planner in the crime. The defendant was a young adult under 21 years. The court applied adult criminal law to him, but with the mitigation of Article 106 of the Juvenile Courts Act. Therefore, he was sentenced to 14 years instead of lifelong imprisonment.

His appeal on points of law was dismissed by the Federal Court of Justice.

## Main quotations on cultural or religious diversity:

“In this period or immediately before, at a time and under circumstances that could not be determined in detail, several members of the B, B and L family clan most likely decided to kill Iptehal. The reason for this decision lay in the fact that in the view of her family members who participated in handing down the death sentence, Iptehal had violated the honour of her family in an unacceptable way and brought shame on them through her permissive ‘Western’ way of, and attitude to, life, and was not ready or able to change her behaviour. It was obvious that according to the ideas of the involved persons, Iptehal should be killed before the religious month of fasting, Ramadan, 1 September 2008, because the crime did not appear possible during this month.” (para. 26)

“Within the ongoing planning and preparations for the execution of the killing plan, the decision was also made under unknown circumstances, that and how Iptehal was to be killed by the directly executing L and Ezzedin B. This was a plan of action, in any case by L and Ezzedin B, probably jointly by other family members. (para. 27)

“It is very likely that not only the defendant and separately prosecuted Hussein L wanted to kill her cousin and niece Iptehal and planned and prepared the crime, but that the killing was committed on the basis of the decision of a family council, because the Western lifestyle of the victim and in particular the liberty to choose her partner herself, a liberty she had already claimed and enforced for herself in the past, could not be reconciled with the traditional concept of honour of the defendant and L, as well as the entire family, the more so as Iptehal had already gravely offended her family through her relationship with Eyup L, particularly against the background of the fact that no marriage took place after the "abduction", and now further dishonour was threatened by the repeated escape to the women’s shelter as well as her already concretized plans to rent her own flat which would have enabled her to largely escape the family’s control and to cultivate male acquaintances undisturbed and to further dishonour the family.”

(para. 35)

“Based on the objective findings with regard to the motivation of the crime, the division is convinced that Iptehal was killed by the defendant and his uncle Hussein L. because of her lifestyle, which was regarded as a violation of family honour. On the basis of [his] complicity in the crimes, the division draws the certain conclusion that the defendant shared this motivation, which is at the lowest level. The division is also convinced that the defendant could understand this assessment. Though the defendant had come to Germany rather late and had initially been ignorant of the [German] language, he could successfully graduate from school without major problems. In E he had also friends and acquaintances outside his own cultural sphere and also from his good command of the language – of which the division could make sure during the trial – it may be concluded that he has sufficient contact to Germans and the German culture to be able to become familiar with the values of the German legal community and that he also did so.” (para. 145)

“In the context of the concrete sentencing, the division took into consideration in favour of the defendant that he has no criminal record until now and that he had made a smaller contribution to the crime than his accomplice. Indoing so, the division assumed, in favour of the defendant, that the killing of Iptehal was committed based on a family council decision and that he was not the decisive author of the decision to commit the crime an the plan to commit the crime.” (para. 167)

## Main legal texts quoted in the decision:

- Sections 211, 25 para. 1 German Penal
- Sections 1, 105, 106 Youth Courts Act

## Cases cited in the decision:

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## Commentary

### Dynamics within the Family in a Case of Honour Killing

This case is an honour killing case unlike most honour killing cases in Germany, which typically involve an immigrant family from Turkey. Here, the case involves a large Mhallami family who immigrated from Lebanon and Syria: the al Zains. It shows that even in families in which honour killings may happen, there may be very different opinions on how to react when a family member violates the traditional codes of conduct. As long as the father of the late victim was alive, he protected his daughter. He declined the request of his brother (one of the perpetrators to be), to kill Iptehal because of her Western way of life and emphasized that it was up to him as the head of the family to decide how to react to rumours of others about his family. His position was strong enough to prevent any attack on his daughter. But soon after his death, the situation changed. As the victim did not abandon her Western way of life, she was treated with contempt by her family. She felt threatened by them, particularly by her elder brother, and feared for her life.

In this case, the question at stake was not whether the motive of restoring the family honour was a base motive – this was stated without discussion. What makes the case remarkable for the CUREDI project is the importance the court gave to the existence of a family council decision. As the court division explained in its August 2008 judgment, a number of family members had travelled from abroad to the region where the victim and her family lived. On the night of the crime, numerous mobile phone calls between family members had been recorded. These were the main arguments used by the court to assume a decision had been made by the family council to kill Iptehal. In its sentence, the court considered in his favour that the defendant had was merely carrying out the decision of a family council and that, consequently, he had been neither the author of the decision to kill Iptehal nor the person who had planned the crime. But in the end, having balanced the arguments pro and contra the defendant, the court sentenced him to 14 years in prison, which is a punishment at the upper end of permissible punishments for young adults (Section 105, Youth Court Act).

The court rightly assumed that the defendant had not acted alone. The uncle, Hussein L, who had fled abroad immediately after the commission of the crime,

was arrested in Finland two years later and was extradited to Germany. A second proceeding was commenced, in which not only Hussein L was accused of murder under specific aggravating circumstances but also Hüseyin, a younger brother of the victim, who had been 16 years old when his sister was killed and had confessed to complicity in the crime. Hussein L was sentenced to life imprisonment for murder under specific aggravating circumstances, while Hüseyin was sentenced to six and a half years in prison (LG Hagen, 15.07.2013 – 52 KLs 400 Js 552/08 – 11/09). Notably, the elder brother of the victim, of whom the victim had been particularly afraid, appears not to have played any role in the commission of this crime, even though in such cases, it is the older brother who is typically the first person who tries to uphold the family honour.

## Literature related to the main issue(s) at stake:

### General legal literature on the topic that may not be directly connected with the case


- Burmeister, Jonathan. 2011. *Die schuldangemessene Bewertung von Ehrenmorden im deutschen Strafrecht –Differenzierte Schuldmerkmale auf Tatbestandsebene bei sonstigen niedrigen Beweggründen*. Frankfurt u.a.: Lang.
- Çakır-Ceylan, Esma. 2011. *Gewalt im Namen der Ehre – Eine Untersuchung über Gewalttaten in Deutschland und der Türkei unter besonderer Betrachtung der Rechtsentwicklung in der Türkei.* Frankfurt u.a.: Lang.
- Elyafi-Schulz, Senan. 2012. *Das Phänomen des "Ehrenmordes" – Eine rechtliche Untersuchung unter Berücksichtigung der Täter – und Opferperspektive.* Marburg: Tectum.
- Erbil, Bahar. 2008. *Toleranz für Ehrenmörder?* Berlin: Logos.
- Grünewald, Anette. 2010. "Tötungen aus Gründen der Ehre". *Neue Zeitschrift für Strafrecht* 30 (1): 1–9.
- Kasselt, Julia. 2016. *Ehre im Spiegel der Justiz – eine Untersuchung zur Praxis der deutschen Schwurgerichte im Umgang mit dem Phänomen der Ehrenmorde*. Berlin/Freiburg: Duncker&Humblot/ Max-Planck-Institut für

ausländisches und internationales Strafrecht.

- Kasselt, Julia and Dietrich Oberwittler. 2014. “Die richterliche Bewertung von Ehrenmorden in Deutschland: Eine empirische Analyse der Sanktionspraxis im Zeitraum 1996 bis 2005”. *Monatsschrift für Kriminologie und Strafrechtsreform* 97 (3): 203–223.
- Oberwittler, Dietrich and Julia Kasselt. 2011. *Ehrenmorde in Deutschland 1996-2005.* Köln: Luchterhand.
- Schorn, Martin. 2014. *Mord aus niedrigen Beweggründen bei fremden soziokulturellen Wertvorstellungen*. Baden-Baden: Nomos.

**General literature on the topic from other disciplines**

- Bodendieck-Engels, Hildegard. 2013. *“Ehrenmord” vor deutschen Gerichten – eine anthropologische Untersuchung von Strafprozessen*. Hamburg: Dr. Kovač.
- Kızılhan, Jan Ilhan. 2012. *“Ehrenmorde”. Der unmögliche Versuch einer Erklärung. Hintergründe – Analysen – Fallbeispiele.* 2nd ed. Berlin: Regener.

## Disclaimer

The translation of the cited parts of this decision is the author’s responsibility.

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