Max Planck Institute
for Social Anthropology
Department 'Law & Anthropology'

The Role of Value Conceptions of an Imported Bridegroom Who Kills His "Westernized" Wife

Question(s) at stake:

Whether the subjective requirements for establishing the presence of base motives are fulfilled in the case of an Anatolian husband who kills his "Westernized" wife.

Outcome of the ruling:

Referral to the lower court to examine the existence of base motives under consideration of the remarks of the Federal Court of Justice

Topic(s):

- Crime and Punishment under State Law

Keywords:

- Gender related violence
- Homicide
- Honour crimes
- Violence against women
- Aggravating circumstances

Tag(s):

- Base motives

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Country:

Germany

Official citation:

Federal Court of Justice, Judgment of 28 January 2004, 2 StR 452/03 (BGH, Urteil vom 28. Januar 2004, 2 StR 452/03)

Link to the decision:

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&Datum=2004-1&nr=28621&pos=27&anz=241

ECLI:

No ECLI number / ECLI number unknown

Date:

28 January 2004

Jurisdiction / Court / Chamber:

Federal Court of Justice (Bundesgerichtshof, BGH)

Remedy / Procedural stage:

Appeal on points of law

Previous stages:

- Regional Court Frankfurt , Judgment of 13 May 2003, 5/21 Ks 3340 Js 232029/02

Subsequent stages:

- Regional Court Frankfurt

Branches / Areas of law:

Criminal law

Facts:

The defendant is a young man who grew up in Turkey and came to Germany in February 2002 to marry his cousin, who had been born in Germany and had until then spent her whole life there. After a short period of harmony, the conflict between the couple became more and more severe as the husband was jealous and moreover he was rooted in the morals and values of his homeland. He expected his wife to obey him in every regard. On the evening of 16 October 2002, the wife refused to accompany him to the Turkish consulate in order to prolong his residence permit, as she wanted him to return to Turkey. The husband reacted with rage. He understood that his wife would not change her opinion, that his marriage had failed, and that he would have to return to Turkey, which he regarded as a loss of his honour. He drew a knife and stabbed her 48 times until she died a few minutes later.

The Frankfurt Regional Court sentenced him for murder (Section 212 German Penal Code). The private accessory prosecutors appealed the judgment claiming a conviction for murder under specific aggravating circumstances (Section 211 German Penal Code).

Ruling:

The appeal of the private accessory prosecutors was granted. A conviction for murder under specific aggravating circumstances according to Section 211 requires the existence of one of the aggravating circumstances in the catalogue of Section 211. In the present case, the aggravating circumstance of base motives came into consideration. Base motives are motives that are morally at the lowest level. Consequently, they are seen as significantly more reprehensible than murder and therefore particularly despicable. The assessment of a motive has to be grounded in the ideas of the German legal community. Only in very exceptional cases – e.g., when the perpetrator, due to his cultural background, is not able to understand the circumstances that lead to the assessment that base motives exist or if he is not able to act appropriately for intellectual or volitional reasons – the crime is punishable as murder.

The Federal Court of Justice approved of the reasoning of the Regional Court in terms of the objective component of the base motives but not the Regional Court`s rejection of the existence of the subjective component. According to the Federal Court of Justice, this was caused by mixing the two elements of the subjective side, namely knowledge (i.e., the awareness of the existence) of the factual circumstances that account for the baseness of the motives and the capability to intellectually control the emotions when carrying out the crime. These elements should be discussed separately. As the Federal Court of Justice missed sufficient explanations on both elements, it quashed the judgment and referred the case to another division of Frankfurt Regional Court, adding some remarks indicating that it held it probable that both of the subjective requirements for base motives were fulfilled.

Main quotations on cultural or religious diversity:

- “When examining this [*explanation of the editor: the presence of base motives*] the Regional Court was right not to focus on the origin of the perpetrator from a foreign culture; in the overall assessment of whether a motive of killing has to be evaluated as base, this does not matter […] Apart from the circumstances of the crime, this overall assessment also extends to the living conditions of the perpetrator and his personality. According to the opinion of the division, already held earlier, the objective criterion for the assessment of a motive has to be based on the views of the German legal community in which the defendant is living and standing trial, not on the ideas of an ethnic group that does not feel fully attached to the moral and legal values of the German community.” (p. 7)
- “The considerations of the Regional Court, however, that led it to deny the existence of the subjective requirements for the existence of base motives do not stand up to legal review” (p.8)
- “This reasoning leads to the concern that the Regional Court erroneously mixed the two subjective parts of this element, namely the knowledge (i.e.,

the awareness of the existence) of the factual circumstances that account for the baseness of the motives and the part of capability to intellectually control the possible emotions during the crime." (p. 9)

- "It is not sufficiently substantiated in the reasoning that the defendant was so deeply rooted in his Anatolian ideas that he was unable to understand the German assessment of his motive as base [...] The judgment does not contain any statements on whether the defendant could consider himself entitled of constantly abusing and finally killing his wife according to Anatolian values." (para. 19)

Main legal texts quoted in the decision:

- Sections 211, 212 German Penal Code

Cases cited in the decision:

- Federal Court of Justice, Judgment of 27 November 1979, 5 StR 711/79 (BGH, Urteil vom 27.11.1979, 5 StR 711/79 (distancing)
- Federal Court of Justice, Judgment of 26 June 1997, 4 StR 180/97 (BGH, Urteil vom 26.6.1997, 4 StR 180/97).

Commentary

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Base motives are one of the circumstances that allow homicide to be qualified as murder under specific aggravating circumstances. They consist of an objective part and a subjective part. The objective part comprises the factual circumstances of the case that account for the baseness of the motives. The subjective part requires that the perpetrator knows the facts that make for a base motive and s(he) must be able to control his or her emotions intellectually and willfully. German jurisprudence went historically through three phases with regard to how to consider different perceptions of law from the standpoint of a person rooted in

a different legal context (see in detail CUREDI033DE003). The last phase of jurisprudence, which holds true today, requires the objective criteria for the assessment of a motive to be “based on the views of the German legal community,

not on the ideas of an ethnic group that does not recognize the moral and legal values of the German community.” Only in exceptional cases can such ideas play a role in the assessment of the subjective part, namely if the perpetrator, due to this origin, could not have been aware of the circumstances that account for the baseness of his motivation or if he could not control the emotions that determine his actions neither intellectually nor wilfully (for details, see CUREDI033DE003).

In the present case, the Regional Court had stated: “It has to be assumed that the defendant acted out of rage and fury against his wife based on his foreign sociocultural value conceptions…Therefore the division could not convince themselves to a sufficient degree that the defendant could intellectually dominate his emotions [so that he could] understand the absolute disproportion between the cause and the crime, i.e., whether he was aware of the circumstances that rendered his motives base motives at the moment of the commission of the crime.” Thus, according to the Federal Court of Justice, the Regional Court had mixed up the assessment of the knowledge of the factual circumstances that account for the baseness of the motives and the capability to intellectually control the possible emotions during the crime. However, both must be evaluated separately.

Regarding the knowledge of the circumstances that made the motives base, the Federal Court of Justice states that the fact that the perpetrator had often threatened his wife with killing her because of her behaviour indicates that he understood the motives that led him to commit the crime. The fact that his family had explained to him the position of a woman in Germany and had even threatened to denounce him to the police if he did not change his behaviour towards his wife shows that he could have understood how his motive would be evaluated in Germany. Furthermore, it is noteworthy that the Federal Court of Justice required a statement in the new judgment on whether the abuse and

killing of one's wife would be justifiable according to the values of the defendant's homeland. One of the reasons for this isthe fact that the perpetrator even denied to his parents that he had committed the crime. This probably led the court to assume (but not explicitly state) that the crime would not have been approved even in the value system of his home country.

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

General legal literature on the topic that may not be directly connected to 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 Amalyse 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*. Berlin: Regener.

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