Three Blood Revengers and One Victim

Question(s) at stake:

Whether the motive of vendetta is a base motive according to German law.

Outcome of the ruling:

The motive of vendetta is to be regarded as base (niedrig) if preserving or restoring family honour was the exclusive motive of the crime and not accompanied by other emotions, such as rage or grief over the recent loss of a close relative, which in themselves are not caused by a base attitude (niedrige Gesinnung).

Topic(s):

- Crime and Punishment under State Law

Keywords:

- Homicide
- Revenge / Vendetta / Feud
- Aggravating circumstances

Tag(s):

- Base motives

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Date:

10 January 2006

Jurisdiction / Court / Chamber:

Federal Court of Justice (Bundesgerichtshof, BGH)

Remedy / Procedural stage:

Appeal on points of law

Previous stages:

- Regional Court Göttingen

Subsequent stages:

- Regional Court Göttingen

Branches / Areas of law:

Criminal law

Facts:

The K and G families, who both come from the Turkish Kurdish regions and belong to the Yezidi religion, had been in a blood feud. In 1998, a reconciliation meeting took place in the presence of the spiritual leader of the Yezidis in Germany. After

this meeting, Ham G visited HK at his home at HK's express invitation. After Ham G had said goodbye and while trying to drive away, he was shot dead from behind in his car. Though it was not until 2003 that the judiciary would solve the case, the G family was convinced all along that HK had been the mastermind of the crime despite the reconciliation that had just taken place.

Afraid of revenge, HK sold his business and moved from the Saarland to Göttingen in Lower Saxony. On the day of the crime in the summer of 2003, three members of the G family, the son BG, the nephew Has G and Han G, the widow of Ham G came to Göttingen to visit the wife of HK in hospital. They thought that HK was absent for some days but then they saw him by chance near the hospital and spontaneously decided to follow him in their car and kill him. The nine-year-old son of HK told his father that a car was constantly following them and when HK arrived at his house, he told his son and his five-year-old granddaughter to leave the car and directly enter the house. When he parked his car, he was shot by Has G, the nephew of Ham G, who was in the passenger seat of the car driven by BG, the son of Ham G. The Regional Court convicted them both for murder under specific aggravating circumstances as they had acted out of base motives, namely vendetta, and the widow as an accessory to murder under specific aggravating circumstances. The Federal Court of Justice had to decide about the appeal on points of law.

Ruling:

The Federal Court of Justice quashed the judgment of the Regional Court. It stated that a homicide motivated by vendetta has to be punished for murder under specific aggravating circumstances because vendetta is to be regarded as a base motive. The assessment of a motive has to be based on the ideas of the German legal community. Only in very exceptional cases – e.g., if the perpetrator due to his cultural background is not able to understand the circumstances that lead to the assessment of the existence of base motives or if he is not able to act accordingly for intellectual or volitional reasons – can the crime be punishable as murder (as opposed to murder under specific aggravating circumstances).

However, vendetta in this sense is only established if the act is committed exclusively to restore one's honour – and the family's honour – but not if the act was (also) committed out of pain from, and grief over, the death of a close person.

BG, as the eldest son, had been responsible for his mother and five siblings since he was 20 years old. The family was also living in dire economic conditions due to thedeath of the father. BG was convinced that HK was personally responsible for his father's death and was also very much affected emotionally. Therefore, the court denied the presence of base motives in the case of BG because it assumed that he had not acted only to restore his honour and the honour of his family, and hence punished him for murder. Has G, the nephew of Ham G, on the other hand, was far less affected by the death of Ham G due to their more distant relationship, their physical distance, as well as their economic independence from one another. Therefore, the court assumed in his case that he had acted solely to restore the family honour, i.e., with a base motive, and therefore confirmed the conviction for murder under specific aggravating circumstances. Regarding the widow, the Court stated that she was a very simple person who had remained very much captive to the traditional ideas of her homeland and could not understand why the killing of HK had to be regarded as rooted in base motives. Therefore, she had only to be punished as an accessory to murder and not to murder under specific aggravating circumstances.

Main quotations on cultural or religious diversity:

"[T]he criteria for the assessment of a motivation have to be based on the ideas 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 legal community." (para. 39)

"As a rule, a homicide motivated by vendetta is to be regarded as particularly reprehensive and socially reckless, because the perpetrator puts himself above the legal order and above another human being as the executor of a death sentence imposed [(on the victim)] by him and his family in order to restore his

honour and the honour of his family […] As a rule, a base motive can easily be assumed in ‘blood revenge’ cases, whereby the violation of a code of honour alone is considered worthy of death or a member of a clan is killed in retaliation for the behaviour of another clan member for which he is not personally to blame. Also, killing as retaliation for behaviour considered dishonourable, which in turn did not result in the killing or at least serious injury of another person, will normally be considered base. On the other hand, a differentiated view is required in particular if the ‘blood revenge’ – as in this case – is retaliation against someone who, for his part, is comprehensibly considered guilty of killing another person.” (para. 41)

“In general, the designation of a motive as ‘vendetta’ must not replace the necessary differentiated examination of the actual event […] In the case of general motives to kill such as rage, anger, hatred or despair, there can be a danger that they are wrongly assigned to an act of blood revenge that is to be assessed as base as a matter of course, although the baseness would have to be denied by the standard of the domestic value system”. (para. 42)

“Particularly in case of a loss of close relatives through an act of violence, killings motivated by revenge are not to be assessed without further ado as murder under specific aggravating circumstances for base motives []. If the perpetrator has acted out of personal motives due to severe grievance by killing a relative particularly close to him, this form of ‘vigilante justice’ is by no means condoned […] However, the offence cannot be classified as particularly reprehensible only because the perpetrator comes from a cultural area where the aspect of ‘blood revenge’ is still relevant today […] It must therefore be discerned whether the accused actually acted solely out of an obviously unacceptable motive of ‘blood revenge’, and thus out of base motives, or out of a special stressful situation as a result of the loss of his essential caregiver or out of similar motives that are not base per se.” (para. 43)

“According to these criteria, there is no reliable basis for the assumption of base motives of defendants BG and Han G – BG is the oldest son of Ham G, who had been killed in a particularly infamous way. Since he was 20 years old, he had

been the head of the family who had to take care of his mother and his five brothers and sisters. He was convinced – as was Han G – that HK was responsible for this attack as he had persuaded Ham G coaxing to go to the crime scene after a reconciliation ceremony. In spite of the time that has elapsed since, the suffering caused by the crime was still evident in the family of the victim, who also lives together in cramped economic conditions as a result of the crime. The killing of Ham G was a constant topic of conversation and particularly Han G was still strongly affected by it emotionally. The crime has remained unpunished until now. The concrete decision to kill H K arose spontaneously following an accidental meeting at a hospital in Göttingen. In view of these special circumstances, the district court's assessment that the accused B and Han G had also acted solely out of a motive of 'blood revenge', which is to be regarded as base, lacks a sustainable basis." (para. 45)

"Due to his far greater spatial, familiar, and economic distance from the death of Ham G, the relationship between the cause (*Anlass*) and the crime in the case of Has G appears to be despicable and thus base to a far greater extent than in the case of murder." (para. 47)

"The findings of the criminal division with lay judges ('*Schwurgericht*') also suggest that the defendant Han G, brought up in a rural family, illiterate, and speaking very little German was particularly bound to her culture to a degree that she could not understand the significance of the determining evaluation aspects leading to the baseness of Has G's act of killing." (para. 53)

Main legal texts quoted in the decision:

- Section 211 German Penal Code

Cases cited in the decision:

- Federal Court of Justice, Judgment of 28 August 1979, 1 StR 282/79 (BGH Urteil vom 28. August 1979 – 1 StR 282/79)
- Federal Court of Justice StV 1998, 130 (BGH StV 1998, 130)

- Federal Court of Justice StV 2001,228,229 (BGH StV 2001,228,229)
- Federal Court of Justice Judgment of 24 June 1998, 3 StR 219/98 (BGH Urt. vom 24. Juni 1998, 3 StR 219/98).
- Federal Court of Justice, Order of 23 March 2004, 4 StR 466/03 and 9/04 (BGH Beschluss vom 23. März 2004 – 4 StR 466/03 und 9/04).
- Federal Court of Justice NStZ 2004, 34(BGH NStZ 2004, 34).
- BGHR StGB § 211 para 2 niedrige Beweggründe, 16, 18, 22, 23, 28, 30, 32, 36,41.

Commentary

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When homicide is intended to preserve or restore family honour, it is said to have been out of base motives (*niedrige Beweggründe*) and changes murder to murder under specific aggravating circumstances (see for details CUREDI033DE003). Homicide based on the motive of vendetta is one of the two crimes (the other is honour killing) in which the motivation of preserving family honour plays a decisive role.

In the present case, the Federal Court of Justice focuses on the concept of vendetta as a base motive. According to the court, the base motive of vendetta exists only if the crime is exclusively aimed at restoring the family honour. Base motives have to beruled out if the crime is committed out of motives such as rage, sorrow, hate, despair, or thirst for revenge, which in themselves do not result from a base attitude (*niedrige Gesinnung*) but from the justified feeling of having suffered grave injustice and having an obvious reason also according to the German order of values.

This judgment is a confirmation of the judgment of 7 October 1994 (CUREDI033DE003). A continuation of this case law is found, e.g., in LG Essen 5.GrSK 8.12.16, 25 KLs 70 J 203/16 33/16.

In the present case, the son, widow, and nephew of A – who had been killed in a blood feud – met, by chance, B, a member of the other family whom they thought

was personally responsible for the death of their family member and spontaneously decided to kill him. The prior instance judgment had convicted all three defendants for murder under specific aggravating circumstances or accessory to murder under specific aggravating circumstances. The Federal Court of Justice, however, stated that the son and widow of A were still emotionally much affected by the death of A and acted upon these emotions and not exclusively to protect their family honour. They could, therefore, not be punished for murder under specific aggravating circumstances or – in the case of the widow – for accessory to murder under specific aggravating circumstances, but only for murder and accessory to murder. The nephew of A, however, according to the court, had had a greater emotional, physical, and economic distance from A and had only acted in order to protect their family honour. In his case, the court accepted the existence of base motives and confirmed the judgment of the previous instance that had punished him for murder under specific aggravating circumstances (Section 211 of the German Penal Code).

Remarkably, this differentiation is very similar to the differentiation made by the Turkish Court of Cassation in vendetta cases. The motive of vendetta is one of the circumstances in the Turkish criminal code that turn murder into murder under specific aggravating circumstances (art. 82 j Turkish Criminal Code) and, according to the settled case law of the Turkish Court of Cassation, the motive of vendetta must have been the sole motive for the crime. If it is mixed with sorrow, rage, or similar motives, it is not sufficient for basing a conviction for murder under specific aggravating circumstances on the motive of vendetta (Gökcan and Artuç 2021: 3011–3018).

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

Specific legal publications addressing the case

- Küper, Wilfried. 2006. "'Blutrache', 'Heimtücke' und Beteiligung am Mord". *JuristenZeitung* 61 (12): 608–613.

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

- Baumeister, Werner. 2007. *Ehrenmorde – Blutrache und ähnliche Delinquenz in der Praxis bundesdeutscher Strafjustiz.* Münster u.a.; Waxmann.
- Gökcan, Hasan Tahsin and Artuç, Mustafa, 2021. *Yorumlu Uygulamalı Türk Ceza Kanunu Şerhi*. Ankara: Adalet.
- Krais, Julia. 2009. *Blutrache und Strafrecht. Einfluss des Blutrachemotivs auf Unrecht, Schuld und Strafzumessung*. Hamburg: Dr. Kovač.
- Kudlich, Hans and Ilker Tepe. 2008. "Das Tötungsmotiv 'Blutrache' im deutschen und im türkischen Strafrecht". *Goltdammer's Archiv für Strafrecht* 155 (2): 92–103.
- Nehm, Kay. 2005. "Blutrache – Ein Niedriger Beweggrund?". In Jörg Arnold, Björn Burkhardt, Walter Gropp, Günter Heine, Hans-Georg Koch, Otto Lagodny, Walter Perron and Susanne Walther (eds), *Menschengerechtes Strafrecht: Festschrift für Albin Eser zum 70. Geburtstag*, 419–429. München: C.H. Beck.
- Varol, Kadir. 2016. *Ehre-Ehrenmord-Blutrache – eine dogmatische Untersuchung zum deutschen und türkischen Strafrecht*. Hamburg: Dr. Kovač.

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