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

The Illuminated Background of an Honour Killing

Question(s) at stake:

Whether honour killing amounts to murder under specific aggravating circumstances.

Outcome of the ruling:

Honour killing amounts to murder under specific aggravating circumstances because the preservation of one's honour is regarded as a base motive.

Topic(s):

- Crime and Punishment under State Law

Keywords:

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

Tag(s):

- Base motives
- Yezidi

Author(s):

- Tellenbach, Silvia (Max Planck Institute for the Study of Crime, Security and Law, Freiburg, Germany)

Country:

Germany

Official citation:

Regional Court Detmold, Judgement of 16 May 2012, 4 Ks 31 Js 1086/11 – 10/12 (LG Detmold, Urteil vom 16. Mai 2012, 4 Ks 31 Js 1086/11 -10/12)

Link to the decision:

https://openjur.de/u/455376.html

ECLI:

ECLI:DE:LGDT:2012:0516.4KS31JS1086.11.10.00

Date:

16 May 2012

Jurisdiction / Court / Chamber:

Regional Court Detmold

Remedy / Procedural stage:

First stage

Previous stages:

- None

Subsequent stages:

- Appeal on points of law for A2 and A4 (rejected)

Branches / Areas of law:

Criminal law

Facts:

K7, an 18-year-old woman, who was a member of a Yezidi family from Turkey who immigrated to Germany in 1985, fell in love with a young German-Russian man who worked at the same bakery as she did. As the Yezidi religion does not allow its followers to marry with non-Yezidi partners, she knew very well that her family

would never accept him and therefore she kept the relationship secret for some months. Due to an unfortunate coincidence, her family became suspicious and her father asked her to hand over to him her mobile phone. She did so after having tried to destroy it. The father succeeded in making it work again and understood from the stored messages that his daughter did indeed have a boyfriend. He got furious and asked her daughter to disclose the password needed to access her e-mails. When she first resisted, he beat her with a stick so hard that she finally disclosed the password and the family found further confirmation of their suspicion upon reading the emails. When the father searched the room of K7, he also found a used pregnancy test and understood that she must have had sexual intercourse with her boyfriend. The father was shocked. His daughter had not only ignored the Yezidi religion's prohibition against premarital sex, but she had also had relations with a non-Yezidi partner! So she had brought dishonour to the whole family. He insulted and slapped her. At his request, one of his sons (A4) beat K7 severely. The father then took away her purse from her, which also contained her ID card, driving license, and insurance cards and prohibited her from leaving the house. K7 was intimidated by the maltreatment and the threats her parents had uttered. She feared that she would be forced into marriage in Turkey or even killed if she did not comply with the demands of her parents. Therefore some days later she escaped from the house and went to the police. The policemen understood that she was in real danger. They organized her stay in a women's shelter in another town and recommended she change her identity. Her family made all efforts, even criminal efforts, to find her but without success. K7, however, could not cut ties with her boyfriend and continued to meet with him secretly. About two months after her flight, she spent the weekend with her boyfriend in his apartment not far from the house of her family. Her eldest sister, who always thought that K7 had remained in contact with her boyfriend B, went to B's house late in the night, waited under B's windows and listened to the voices from the apartment. When she heard the voice of her sister, she immediately informed four of her brothers. After a long discussion, they decided to kidnap K7 from the apartment. And so they did. They broke into the apartment by breaking the door and the windows and, against her

fierce resistance, they carried K7 out of the apartment and put her into a car. The sister (A1) and two brothers (A2 and A4) drove off with her. The other two brothers, A3 and A5, left in another car. After some hours of driving, the sister and the brothers of K7 stopped the car in a secluded place. They let K7 leave the car and one of the brothers, A4, shot her in the head. The dead body was found some months later.

Ruling:

A4 was convicted of murder under specific aggravating circumstances and hostage-taking (211, 239 b German Penal Code). His siblings, A1 and A2, were convicted of aiding murder under specific aggravating circumstances (Section 211, 27 German Penal Code) and for taking hostages (Section 239bGerman Penal Code). His brothers A3 and A5 were convicted of hostage-taking (Section 239 b German Pnal Code). In addition to police investigations and A3's confessions, the court made extensive use of the expert opinion of a specialized psychologist about the values and family structure in the Yezidi community.

The court stated that A4 had killed his sister out of base motives. He had committed the crime because she had had a sexual relationship with a non-Yezidi man and had made a complaint against their father. In the eyes of her family, she had thus dishonoured them and A4 killed his sister to restore the honour of the family. Thus, he gave preference to the honour of his family over the right to life of his sister, to whom he denied the right to self-determination. Though A4 considered his crime just and important within the context of Yezidi-patriarchal values, this circumstance could not exonerate him because the criterion for the assessment of a motive is based on the concepts of the legal community in the Federal Republic of Germany – which do not approve on such circumstances – and not on religious and cultural values that differ from them. The question of whether the subjective part of base motives present, did not arise in this case. A4 was born, and had grown up, in Germany and was familiar with the values of German society. In light of his personality, as well as his living conditions, he could have freed himself from his father's value conceptions and acted accordingly.

His siblings aided him by supporting him emotionally. As the judgment explains, he would never have shot his sister if he had not felt the expectation and support of his siblings, who were present at the crime scene. As to the existence of base motives in the case of A1 and A2, the same reasoning holds true in the case of A1.

Brothers A3 and A5 were only convicted of hostage-taking.

The appeals of A2 and A3 on points of law were rejected by the Federal Court of Justice.

Main quotations on cultural or religious diversity:

- “His daughter dared ignore the commandment of the Yezidi religion, known to her, not to have premarital sex, and what is even more, with a non-Yezidi partner. So she had brought dishonour on him and the whole family.” (para. 52)
- “When the father became aware of K7’s flight on 1 September 2011 and was informed through the police summons that his daughter had made a criminal complaint against him and her brother A4, his world fell apart. Through her relationship with a German, she not only ignored one of the most important rules of the Yezidi tradition, but she obviously did not have respect for her father as the head of the family anymore. Thus, she disregarded all the values that were important for her father and shaped his life.” (para. 96)
- “A4 killed his sister out of base motives. In the general assessment, the motives that induced him to [commit] the crime are on the deepest level and particularly despicable. There is no understanding whatsoever of the motives that led him to commit the crime. The overall assessment of all the internal and external factors lead to the result that A4 killed K7 because she had had a sexual relationship with a non-Yezidi man and had made a complaint against their father. In this way, she had dishonoured the family and disgraced her parents and siblings. A4 killed his sister to restore the honour of the family. Thus he gave preference to the honour of his family over the

right to life of his sister to whom he denied the right to self-determination. It does not transmit a softer image of his crime that A4 regarded his crime as just and important within Yezidi patriarchal values because, as a rule, the criterion for the assessment of a motive is based on the concepts of the legal community in the Federal Republic of Germany. Religious and cultural value conceptions that differ from them cannot exonerate the perpetrator if s/he grew up – as did A4 – in the Federal Republic of Germany and is familiar with the criteria that are relevant in this country. In the light of his personality as well as his living conditions, he could have freed himself from the value conceptions of his father." (para. 226)

Main legal texts quoted in the decision:

- Sections 211, 239 b, 27, 52 German Penal Code

Cases cited in the decision:

- None

Commentary

The Illuminated Background of an Honour Killing

This case is unusual for two reasons. Firstly, brother A3 confessed to the crime and gave the court valuable information about the commission of the crime. This is very seldom in honour killing cases. Normally, investigators meet a "wall of silence" in the family and the whole community. Secondly, the court consulted an expert who presented very detailed information on the structure and values of the Yezidi community. This expert is only referred to as SV 3 in the judgement, but media reports show that he was Jan Ilhan Kızılhan, a specialized psychologist of Kurdish origin who has published on honour killings, among other things. He explained to the court the basic structures of Yezidi society that were important for understanding the situation. These include the prohibition of marriage with a non-Yezidi as well as the strictly patriarchal family system in which the father is

the head whom all family members have to obey. He must control the family in terms of adherence to values and norms and punish them if they transgress. For women, these norms include sexual abstinence before marriage. A violation of this tenet means a loss of honour for the whole family. It also means disrespect towards the father and shows the father's lack of authority, since he was unable to prevent the violation. The loss of honour is decisively intensified when it becomes known in the Yezidi community. The violation of honour is, as it were, akin to a physical attack, which can therefore ideally only be compensated for with a physical attack on the violator of honour.

So, the court could solve the crime extensively and assess all the circumstances of the crime in light of the expert’s report. The judgment stands out for the very diligent way this was done. Also, the father of the family was brought before trial in a separate proceeding (CUREDI033DE008).

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

Specific legal publications addressing the case

- 2012. “Geschwister zu langen Haftstrafen verurteilt”. *WDR*, available at <https://www1.wdr.de/archiv/arzuoe136.html> accessed 27 February 2022.
- 2016. “BGH lehnt Revision ab”. *Westfalen-Blatt*, available <https://www.westfalen-blatt.de/owl/kreis-lippe/detmold/bgh-lehnt-revision-ab-1653017 > accessed 27 February 2022.

General legal literature on the topic that may not directly be 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.

CC BY ND

This case-law comment is licensed under a Creative Commons Attribution-NoDerivatives 4.0 International License (CC BY-ND 4.0) .

You may share this material, provided that appropriate credit is given. No derivatives or adaptations of this material are permitted.

Suggested citation of this case-law comment:

Tellenbach, Silvia (2023): The Illuminated Background of an Honour Killing, Department of Law and Anthropology, Max Planck Institute for Social Anthropology, Halle (Saale), Germany, CUREDI033DE007, https://doi.org/10.48509/CUREDI033DE007.