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

Aiding Honour Killing Through Commission by Omission

Question(s) at stake:

Whether the possibility of aiding and abetting by omission in honour killing cases is recognized in case law.

Outcome of the ruling:

Aiding and abetting by omission in the commission of honour killing is possible.

Topic(s):

- Crime and Punishment under State Law

Keywords:

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

Tag(s):

- Base motives
- Aiding and abetting
- Commission by omission

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Country:

Germany

Official citation:

Regional Court Detmold, Judgement of 4 February 2013, 4 Ks -31 Js 184/12 -56-12, 4 Ks 56/12 (LG Detmold, Urteil vom 4. Februar 2013, 4 Ks -31 Js 184/12 -56-12, 4 Ks 56/12)

Link to the decision:

https://openjur.de/u/618669.html

ECLI:

ECLI:DE:LGDT:2013:0204.4KS31JS184.12.56.00

Date:

04 February 2013

Jurisdiction / Court / Chamber:

Regional Court

Remedy / Procedural stage:

First stage

Previous stages:

- None

Subsequent stages:

- Appeal on grounds of law to the Federal Court of Justice (rejected). Decision of 28 August 2013, 4 StR 268/13

Branches / Areas of law:

Criminal law

Facts:

The defendant is the father of K7, an 18-year-old Yezidi woman who fell in love with a young German-Russian man. As she knew that the Yezidi religion does not

allow marriages with non-Yezidi partners and her father would never accept him, she kept the relationship a secret for some months. Due to an unfortunate coincidence, her family became suspicious and the defendant asked her to hand over to him her mobile phone. She did so after having tried to destroy it. The defendant 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 his daughter to disclose the PIN for her email account. When she first resisted, he beat her with a stick so severely that she finally disclosed the PIN. The defendant found further confirmation of his suspicion when reading the emails. When he searched K7's room, he also found a used pregnancy test and understood that she must have had sexual intercourse with her boyfriend. The defendant was shocked. His daughter had not only ignored a tenet of the Yezidi religion, i.e., not to have premarital sex, but she had also entered into a relationship with a non-Yezidi partner! So she had brought dishonour on the whole family. He insulted and slapped her with full force. At his request, also one of his sons (A4) beat K7 so hard that she had numerous bruises all over her body. The father wanted to demonstrate to the whole family what would happen if anybody dared violate his "Yezidi patriarchal" rules again and the family accepted his behaviour. Nobody tried to help K7. The defendant then took away her purse, which also contained her ID card, driving license, and insurance cards, while barring her from leaving the house. K7 was intimidated by the maltreatment and the threats her parents had uttered. She feared 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 at a women's shelter in another town and recommended she change her identity. The defendant was beside himself with rage and felt exposed in front of the whole Yazidi community as a man who was not able to control his family. Her family made all efforts, even criminal efforts, to find her but without success. K7, however, could not give up on 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 her family home. 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 window and listened to the voices from the apartment. When she heard the voice of her sister, she immediately informed her father and four of her brothers. There were three telephone calls with her father shortly before midnight. The brothers gathered near B’s house and after a long discussion, they decided to kidnap K7 from the apartment. And so they did. Shortly after 1 o’clock, they broke into the apartment by breaking the door and the windows. 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. There were three further calls with the defendant directly after the kidnapping. After driving for a few hours, the sister and brothers of K7 stopped the car in a remote place. They let K7 leave the car and one of the brothers (A4) shot her in the head. Her corpse was found some months later. (see also CUREDI033DE007)

Ruling:

The defendant was convicted for aiding murder under specific aggravating circumstances by omission (211, 27, 13 GPC). A defendant can only be convicted for an omission if he is legally responsible for ensuring that the result caused by the omission does not occur and if the omission is equivalent to the realisation of the crime through a positive act (Section 13 GPC). According to the court, the responsibility of the defendant to avert the result did not result from his position as the victim’s father because she was already of age and did not live in his household anymore, but from the fact that he had severely mistreated her before the eyes of the family. Thus, he had demonstrated that he favoured the use of violence against the victim and had increased the risk of future violence against her. In a second step, the court described, in a very detailed way, based on the expert opinion of an anthropologist they had consulted, the dominant position of the father in a Yezidi family and came to the conclusion that, in light of all the circumstances of the case, the father could have saved the life of the victim if he had told his children on the night of the crime not to kill their sister and that he was fully aware of that. Through his silence during the night of the crime, he had

shown that he agreed to his children's plan and thus aided the commission of the crime. Under the current circumstances, his omission had to be regarded as equivalent to an active conduct. The question of whether he understood the baseness of his motives and would have been able to act accordingly, which is important in many cases of honour killings, did not play a role in this case as the defendant had been living in Germany for more than 20 years and had always strived to integrate into German society. So, the court could assume that he was fully aware of the disapproval elicited by his behaviour in the German Society and could not find any indication that he could not have been capable of acting accordingly.

Main quotations on cultural or religious diversity:

- "In fact, the defendant was still deeply rooted in the religious convictions and traditional behaviours of his homeland even after more than two decades in Germany. The defendant always strived to maintain his belief and his traditions also in Germany. The family life of family F was accordingly determined by Yezidi patriarchal values." (para. 12)
- "Though there was a clear discrepancy between the traditional Yezidi-patriarchal ideas of the defendant and the modern society in the Federal Republic of Germany and its individualistic and liberal orientation, which was presented to them every day in school or working life, the children of the defendant did not dare to question the value of their father." (para. 13)
- "She had disclosed the whole affair – which was nobody's business outside the family – to the police and, moreover, she had made a complaint against him. Thus, she had made known publicly that she no longer recognized his authority as head of the family. The defendant understood that the dishonourable behaviour of his daughter could not be kept secret any longer. He was exposed in front of the whole Yezidi community. The defendant could not and did not want to accept that." (para. 27)

- “Firstly, the defendant in his capacity as head of the family and undisputed authority could decide about the life of K7. Her future lay in his hands. Secondly, the honour of the defendant had been most severely violated by K7’s behaviour.” (para. 69)

Main legal texts quoted in the decision:

- Section 13 para 1, 27 para. 1, 211 GPC

Cases cited in the decision:

- LG Detmold 4 KS 31 Js 1086/11-10/12

Commentary

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In honour killing cases, it is usually very difficult to prove the involvement of family members other than the person who executed the crime directly. Therefore, they are often never brought before trial. This is one of the few cases in which a court had to deal with the participation of the father of the family. It could not be proven that he instigated his children to commit the crime. This is the case in many crimes since instigation mostly does not leave behind any traces. The court, therefore, examined whether he could be punished for aiding them. It was proven that there had been a number of telephone communications on the night of the crime, namely when his children had detected her sister and shortly after they had kidnapped her. The court did not examine whether he had actively aided his children – e.g., by encouraging them to kill their sister – since the same problem of provability would have arisen. They saw his aid in the fact that he had obviously not hindered them from committing the crime, i.e., an omission. According to Section 13 GPC, a person is to be punished for such a commission by omission if s(he) has the responsibility to act and if the omission has the same significance for the commission of the crime as an active conduct. The court did not base the father’s responsibility for his daughter on a close

family bond – which according to other voices might have been possible and should have been examined by the court (Engelmann 2013: 356–357) – but on a previously endangering behaviour (*Ingerenz*): already at an earlier stage he had used brute force against her and had shown his approval when other family members also acted this way. He had thus assured his children that he would agree to their killing of their sister, thereby increasing the danger to her life.

Nor did the court discuss whether the father, too, could have been punished as an accomplice. The problem of whether such an omission is to be considered complicity or aiding is highly controversial in Germany. There are three views on this. One of them denies the possibility of punishing complicity because an omission never has the same significance in committing the crime as the active conduct. The second opinion prefers complicity because, without the omission, the crime could either not be committed or could only be committed with greater difficulty. A third opinion holds that the answer depends on the significance of the omission under the present circumstances (see Engelmann 2013: 359). According to Engelmann (2013: 359), the dominant position of the father has to be taken into consideration: he has to decide all important issues in a Yezidi family. Against his will the crime would not have been committed. Therefore, there would have been good reasons to also punish the father as an accomplice. In a similar case, the father was punished as an accomplice (see CUREDI033DE021).

The mother of K7 was not punished for participation in murder under specific aggravating circumstances. However, for her conduct in the weeks before the crime, she was issued a summary penalty order for bodily harm, unlawful imprisonment, and using threats or force to cause a person to carry out, suffer, or omit an act.

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

Specific legal publications addressing the case

- 2013. “Arzu Ö.s Mutter wegen gefährlicher Körperverletzung verurteilt”. *Der Spiegel*, available at <https://www.spiegel.de/panorama/justiz/arzu-oe-s-

mutter-wegen-gefaehrlicher-koerperverletzung-verurteilt-a-911259.html> accessed 27 February 2022.

- Engelmann, Björn. 2013. “Strafbare Beteiligung zum Ehrenmord – Zugleich Besprechung von LG Detmold, Urteil vom 4.2.2013, 4 Ks-31 Js 184/12 -56/12 (Fall ‘Arzu Ö’)”. *HRRS* 9: 351–361.

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 und 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 Legal 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.

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