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# On the Criminal Prosecution of “Honor Killings” in Austria



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This paper investigates the phenomenon of “honor killings” and other, similar, cases of homicide committed for reasons of honor. A special subcategory of homicide in terms of underlying motivation, honor killings have recently attracted increasing public attention due to some high-profile cases and their portrayal in the media (especially in Germany). Such honor killings have their origins in a particular view of gender roles and the particular way of life that characterizes some small communities, which are shaped by traditionalist and patriarchal values. The paper clarifies the ambiguous concept of honor killing and discusses how it differs from other types of homicide rooted in a similar tradition (such as blood feud). These clarifications are followed by an introduction to the fundamental aspects of the phenomenon, and a discussion of the prevalence of honor killings (which, due to migration flows, has reached global dimensions). Subsequently, I challenge the untenable claim that honor killings are religiously motivated. The second part of the paper focuses on the assessment of such cases of homicide in Austrian criminal law, with special regard to the question of whether honor killings and similar acts should always be subject to Section 75 of the Austrian Criminal Code (murder) or, alternatively, whether Section 76 of the Criminal Code (manslaughter) might be applicable to homicides committed with the aim of restoring individual or family honor. In this context, I rely on rulings issued by the Austrian Supreme Court of Justice to illustrate the handling of homicides committed for reasons of honor in Austrian case law.

## 1. THE CONCEPT OF HONOR KILLING

Honor killing denotes homicide committed against (mostly female) family members by relatives or other closely associated persons with the intent of restoring the honor of the family (on the somewhat ambiguous nature of the concept, see Oberwittler/Kasselt 2011, 12 et seq.; Valerius 2011, 61). This type of homicide has recently been attracting considerable public attention in Austria, in part due to some high-profile cases in neighboring

countries such as the 2005 case of Hatun Sürücü in Berlin. In addition, honor killings raise a number of issues relevant under criminal law, most notably the fact that offenders are embedded in exotic value systems that are alien to European culture. Moreover, they also beg the question of how the criminal justice system should treat offenders whose actions are guided by moral standards different from our own. Although such crimes barely ever qualify as honorable, relevant literature mostly uses the expression honor killings

to describe them. Policymakers in Europe and around the globe have identified honor killings as a very serious problem, as evidenced by several recommendations of the Council of Europe (issued in 2000, 2002, and 2003) as well as by the fact that the European Commission has funded a number of projects aimed at combating this type of crime (Volz 2004, 82 et seqq.). The 2000 UNFPA State of the World Population report concluded that, on a global scale, approximately 5,000 women and girls fall victim to honor killings each year. However, since honor killings are often disguised as accidents or suicides (Böhmecke 2004, 10; *ibid.*, 12; Izol 2003, 17; Tellenbach 2003, 78), the actual number, including unreported cases, might be significantly higher.

## 2. FUNDAMENTAL ASPECTS OF HONOR KILLINGS

Honor killings are a global phenomenon; they are not limited to specific regions of the world, nor are they associated with any specific religious denomination (Antes 2004, 20; *ibid.*, 21). Rather, they are based upon a complex understanding of honor and rooted in a particular culture and tradition shaped to a large extent by social structures, and a lifestyle characterized by the extended family as the most important social unit, with such extended families forced to interact with each other in order to be able to survive. Countries with a relatively high incidence of honor killings include Pakistan, Jordan, Turkey, Syria, Lebanon, Brazil, Ecuador and India and, within Europe, Italy and Germany (Böhmecke 2004, 13). The fact that some of these states are overwhelmingly Muslim should not lead to the erroneous conclusion that Islam encourages, or even condones, such behavior. Those who use the widely cited Quran verse 24:2 on sexual intercourse between unmarried men

and women or the practice of stoning adulterers (which is rooted in Jewish tradition and incorporated into Sharia law through Hadith literature), to argue that honor killings draw their legitimacy from Islamic law or Islam (cf. Antes 2004, 19; *ibid.*, 20, which does not adopt a clear position), misconstrue the origins of the phenomenon. In fact, honor killings occur in patriarchal and traditionalist communities of any and all denominations (Antes 2004, 20; *ibid.*, 21; for more unequivocal positions see Thibaut 2004, 37; Valerius 2011, 62). According to the moral code of tribally organized societies, the individual behavior of any single family member has repercussions for the honor of their entire family (Sahin 2003, 55). Regarded as the upholders and guardians of family honor (Antes 2004, 16), male family members are expected to impose sanctions on those guilty of any misconduct (Izol 2003, 14; *ibid.*, 15). As such, honor killings are directly connected to patriarchal social structures, in which men have unlimited power as heads of the family and represent their families in the public realm, whereas women have a subordinated role in the family hierarchy (Akgün 2004, 72; Antes 2004, 16; Böhmecke 2004, 11; *ibid.*, 13; Izol 2003, 14; *ibid.*, 15; Valerius 2011, 62; *ibid.*, 63). Women are required to ensure that their sexual purity (called *ird* in Arabic) remains intact, since any violation of women's sexual purity has a negative impact on *sharaf*, i.e., the honor (dignity) of the entire family, which is primarily associated with men (Antes 2004, 17; *ibid.*, 18). Whenever a (mostly female) family member tarnishes the honor of the family by committing a sexual transgression, the entire extended family is subjected to social ostracism unless and until the purity of their *sharaf* is restored.

In this way, the community places the blame on male family members for not

having been sufficiently protective of a family member and demands that the honor of the family be restored; otherwise, the extended family is forced to the margins of society and must leave the community. As a last resort, restoring family honor may involve killing one's own daughter, sister, or spouse (Izol 2003, 15). Honor killings committed by husbands are less common than those committed by fathers, brothers, or cousins. The reason for this is that, presumably due to blood ties, the community's opprobrium is mostly directed against the spouse's original family, which is thought to be primarily responsible for making amends (cf. Antes 2004, 18), whereas husbands have the option of dissociating themselves from their wives by divorcing them or by breaking off contact with them (Antes 2004, 18; Tellenbach 2003, 77). When families come into a new environment with which they are unacquainted and thus perceive as unsettling (such as when they migrate to another country), they initially tend to create a shared anchor (i.e., frame of reference) by displaying a strong attachment to traditional social structures and behavioral patterns characteristic of their home community (Göhl 2004, 65; Sahin 2003, 50). This excessive emphasis on the community and, concomitantly, the fear of losing one's group identity thus often serve as the only mechanisms for maintaining group cohesion in an unfamiliar environment. If the given community has conserved some of its archaic moral values, this situation can result in killing an individual community member for the sake of preserving the community. In this context, any state legislation that might be inconsistent with the traditional tribal moral code is deemed irrelevant from a normative perspective.

However, applicable national criminal law often plays a role in the selection of offenders, with communities seeking to

minimize losses for the group as a whole in the event of a conviction by selecting a family member of the appropriate age.

There is a wide range of different behaviors that might constitute a violation of *ird* and, as a result, of *sharaf*, including "illicit" relationships with members of the other sex, extramarital pregnancies, or simply leaving one's home without a male escort (Göztepe 2008, 16; *ibid.*, 17; Sahin 2003, 56; Tellenbach 2003, 77). When the "violation of honor" stems from the fact that a woman has been raped by a member of her own family, this might lead to a shocking cost/benefit assessment. Although the responsibility for tarnishing the honor of the victim's family (as well as of their own) lies with the (almost exclusively male) rapists, declaring a blood feud against the perpetrator as a way of restoring the honor of the victim's family usually results in an arduous and, in terms of lives lost, costly struggle. The reason for this is that killing a male member of another family tends to trigger a long series of mutual retaliations. It might therefore seem more straightforward and cost efficient to erase the disgrace by killing the rape victim, who was unable to protect herself and was insufficiently protected by her family (Holzer-Özgüven 2004, 43 fn 15; Valerius 2011, 63). Although this practice of offsetting human lives against each other is nothing short of horrendous, it nevertheless illustrates the basic attitudes that characterize strongly patriarchal communities engaging in honor killings.

Honor killings are almost never committed spontaneously; at least when it comes to typical cases, the crime itself is usually preceded by a lengthy planning phase, sometimes with the involvement of female family members (Böhmecke 2004, 11). Families often respond to behaviors perceived as violations of their *sharaf* by convening a so-called family council in

order to determine a course of action, sometimes including the selection of the future offender (Böhmecke 2004, 11; Izol 2003, 16; Tellenbach 2003, 87). In this respect, families tend to act strategically by selecting young male family members (Izol 2003, 8; *ibid.*, 16; o.w.<sup>1</sup>. Valerius 2011, 65 with regard to honor killings in Germany), in order to minimize the cost of imprisonment for the family if investigations into the crime are successful and the family member is convicted. In most cases, the family council makes very detailed plans (including timing, weapon, alibi, selection of the offender[s], etc.), and maintains complete silence once the act has been committed (Izol 2003, 17). Obviously, the fact that family members are mostly reluctant to make any relevant statement makes police investigations into such crimes extremely burdensome.

### 3. INCIDENCE OF HONOR KILLINGS IN AUSTRIA

Unlike in Germany, the number of honor killings reported in the media and the number of suspects subject to relevant criminal proceedings in Austria have remained very small. The records contained in the Federal Legal Information System (Rechtsinformationssystem des Bundes, RIS) include only a few cases of homicide in which honor is explicitly mentioned as a significant or decisive motive for committing the crime. In fact, the Austrian court records do not contain a single instance of a typical honor killing committed following a family council decision.<sup>2</sup>

### 4. RELEVANT PROVISIONS OF AUSTRIAN CRIMINAL LAW

What is the correct legal classification of honor killings under the applicable Austrian criminal law? Should they always be subject to Section 75 of the Austrian Criminal Code (Strafgesetzbuch, StGB),

or is there a legal possibility to charge offenders with a lesser offense included under Section 76 StGB (Moos 2002, Section 76, marginal no. 3)? The distinction between the “basic offense” (Grunddelikt) of murder (Section 75 StGB, punishable with imprisonment of ten to twenty years or lifelong imprisonment) and manslaughter under Section 76 StGB is based exclusively on differences in terms of the level of culpability (Kienapfel/Schroll 2003, Section 76, marginal no. 3; Moos 2002 Section 76, marginal nos. 5, 9, 26 et seqq.). Offenders are charged with manslaughter (punishable with imprisonment of five to ten years) rather than murder if it can be established that they acted upon reasonable provocation and in the heat of passion (i.e., on impulse). If all conditions defined in Section 76 StGB are fulfilled, the offender’s mental functions at the time of committing the offense and, concomitantly, their personal responsibility, are automatically considered diminished in accordance with Section 34 para. 1 item 1 StGB (Moos 2002, Section 76, marginal no. 17). The requirement of spontaneity established in Section 76 StGB (“in the heat of passion”) means that, in order for the lesser included offense of manslaughter to apply, the offender must not have had a firm and irreversible intent to kill before the onset of the impulse and the act must have been committed immediately upon the offender being reasonably provoked into a heat of passion (Kienapfel/Schroll 2003, Section 76 Rn 18; Lewisch 1999, 19 in reference to Moos 2002, Section 76, marginal no. 21, 23: “The act of killing must occur over the duration and as a result of the impulse”).

Since honor killings described above are often planned in advance, it must be assumed that the offender’s irreversible intent to kill is already present once they submit themselves to the decision of the family council and, consequently, well before

any impulse might occur (see Kienapfel/Schroll 2003, Section 76, marginal no. 22; Lewisch 1999, 19 in reference to EvBl 1987/13). Although unemotional and premeditated behavior does not necessarily exclude the applicability of Section 76 StGB, it is still considered a strong indication that Section 76 might not be applicable (cf. Bertel/Schwaighofer 2010 Section 76, marginal no. 2; Mayerhofer 1980, 294; Moos 2002 Section 76 marginal, no. 22), as is a systematic use of particular methods of killing<sup>3</sup> in order to ensure successful completion of the crime. The fact that willful acts of murder within the family are often associated with some degree of emotional involvement or conflict does not mean that such acts should, *prima facie*, be considered manslaughter (Moos 2002, Section 76 marginal no. 17). In a typical honor killing setup, the inapplicability of Section 76 StGB to the direct offender can often be determined without even assessing whether they were reasonably provoked into a heat of passion, provided that a firm intent to kill was already present before any impulse could have occurred. (It should be noted that such impulses do not necessarily occur; the offender might commit the crime in cold blood, without any upsurge of emotion or, if present, the intensity of the impulse might not be strong enough to qualify as heat of passion.) Considering that the presence of extenuating factors and, concomitantly, the applicability of Section 76 is determined solely on the basis of the level of culpability as an individual trait, instigating offenders (*Bestimmungstäter*) and assisting offenders (*Beitragstäter*) (variants 1 and 2 of Section 12 StGB) are barely eligible for mitigation under Section 76 StGB. Since Section 76 codifies a special offense (*Sonderdelikt*) subject to Section 14 para. 2 StGB, each person involved must fulfill the requirements defined in Section 76 individually,

i.e., his or her motive for committing or otherwise contributing to the offense must have emerged due to and over the course of a heat of passion that they experienced. Whether family members that take a systematic approach (i.e., convene a family council, discuss every detail of committing the offense, coldly premeditate possible consequences of the offense, and find an appropriate offender) to honor killings ever fulfill these requirements is very questionable (Moos 2002, Section 76, marginal no. 57).

However, even if the presence and spontaneous nature of an irresistible impulse could be established in some specific case of honor killing, the requirement of reasonable provocation would still exclude the applicability of Section 76. No matter how irresistible the impulse leading to and persisting over the course of committing the crime, the chargeable offense is always murder (rather than manslaughter) if the provocation does not qualify as reasonable. Austrian criminal law uses the definition of culpability set forth in Section 32 para. 2 clause 2 StGB to specify the scope and requirements of the reasonableness standard (Moos 2002, Section 76, marginal no. 29). As such, the decisive questions are to what extent the offense was committed due to “the offender’s hostile or indifferent attitudes towards legally protected values” and “to what extent the offense is attributable to external circumstances or motives that might reasonably affect a person endorsing the same legally protected values” (cf. also Moos 2002, Section 76, marginal no. 29). In order to establish the reasonableness of the impulse (including its so-called “causal irresistibility”, i.e., its magnitude relative to its cause<sup>4</sup> [see also Lewisch 1999, 17; *ibid.*, 18]), one needs to ask the following question. Given the facts of the case (including its cause and prehistory), can it be reasonably assumed that the so-called “fictitious

person of reference” defined at the end of Section 32 para. 2 clause 2 StGB, i.e., a hypothetical person that has the same individual social, psychological, and physical traits as the actual offender (including age, ethnicity, physical characteristics, qualifications, occupation, and intelligence) but who endorses legal values (i.e., is characterized by an average level of compliance with legal norms) would have experienced a similar impulse (ELP<sup>5</sup> and PO<sup>6</sup>; cf. only Kienapfel/Schroll 2003, Section 76 marginal no. 26; Moos 2002, Section 76, marginal no. 33). This practice hence constitutes a relatively objective test of the reasonableness of the impulse (rather than the reasonableness of the act itself), and, at the same time, assesses reasonableness under a standard that contains both objective and individuated elements<sup>7</sup> (Moos 2002, Section 76, marginal no. 33). Whereas compliance with legal norms is evaluated using an objectivized standard (Lewisch 1999, 18), the person of reference must, in terms of all their individual traits, be identical to the offender.<sup>8</sup> Under the aspect of legal ethics, the impulse must be morally reasonable in relation to the event that triggers it<sup>9</sup> (Kienapfel/Schroll 2003, Section 76, marginal no. 29 including examples; Moos 2002, Section 76, marginal no. 31) and must not constitute an excessive response<sup>10</sup>; otherwise the offender must be charged with murder. When it comes to willful homicide committed against a family member with the aim of protecting or restoring family honor, there is no agreement in the relevant Austrian literature about the issue of considering cultural and community attitudes within the offender’s ethnic group, religious sect, or other social group in the context of the reasonableness test under Section 76 StGB (cf. Moos 2002, Section 76, marginal no. 36). Some authors (Kienapfel/Schroll 2003, Section 76, marginal no. 26)

simply argue that such extraneous attitudes should be taken into consideration, whereas others (Moos 2002, Section 76, marginal no. 36) claim that an impulse rooted in foreign moral traditions should only be considered reasonable if the Austrian legal community has the ability to show at least some degree of moral understanding of the given moral tradition. According to Moos, this moral understanding is only present for moral traditions not fundamentally at odds with Austria’s moral values, but not for “exotic emotional and mental settings in which practices like blood feud or avenging attacks on someone’s honor by killing are rooted, since we lack the ability to empathize with the values that justify such extreme responses” (Moos 2002, Section 76, marginal no. 36). Accordingly, Moos assumes that there is an *ordre public* underlying criminal law that constitutes “a tolerance limit of a multicultural society” with regard to the reasonableness standard under Section 76 (Moos 2002, Section 76 marginal no. 36). I believe that the latter approach is preferable. The requirement that the impulse should be reasonable is not entirely objective, i.e., it has to take into consideration the characteristics of the offender (including their embeddedness in a social milieu shaped by different values); however, values like honor and its protection, which are completely extrinsic to the (not precisely defined) set of values appertaining to Austrian law cannot be used as extenuating factors under Section 76 StGB. Rather, an honor killing qualifies as murder committed for base motives under Section 33 item 5 StGB, which constitutes a special aggravating circumstance.

## 5. RELEVANT JURISPRUDENCE OF THE SUPREME COURT OF JUSTICE

Thankfully, the number of honor killings and other related cases decided by the

Austrian Supreme Court of Justice (Oberster Gerichtshof, OGH) has been limited. However, I was able to identify four cases in which the offenders were (partly) motivated by reasons of honor. In this section, I offer a brief review of these four cases to illustrate the relevant case law of the Supreme Court, although one should not speak of an established line of jurisprudence due to the limited number of relevant cases. At the same time, these cases are sufficient to elucidate some tendencies in terms of the legal classification of such offenses in the jurisprudence of the OGH. In this context, it should be noted that with the exception of the second case, the OGH has not had any typical honor killing cases to decide, because the cases referred to above seemed to be motivated by the offenders' personal, rather than, family honor. However, all four cases analyzed were rooted in a distinctive understanding of honor very different from the one usually accepted in Austria and therefore, based on the similarity of the underlying motives, it seems to be justified to use these cases to draw conclusions regarding some tendencies inherent to the approach that the Supreme Court takes to the legal assessment of such criminal acts.

The first case, decided by the OGH in 1982, concerned the attempted willful killing of a wife by her husband by running her over with a vehicle.

The OGH classified this offense as attempted manslaughter (Sections 15 and 76 StGB), accepting the argument put forward by the defendant, an immigrant of Turkish origin, that he had been reasonably provoked into a heat of passion.<sup>11</sup> The most surprising aspect of the case is not that the Court agreed with the reasonableness argument. The wife had been involved in an extramarital affair. Relying on the somewhat rudimentary definition of the fictitious person of reference prevail-

ing at the time, the OGH held that an extramarital affair can lead to a critical psychological state and an irresistible impulse, since the "average person [...] would feel aggrieved due to his spouse's infidelity and humiliated in front of his peers". Even more strikingly, however, the defendant filed a motion to secure an expert report "regarding the socio-cultural background of his act in order to provide evidence that a woman engaging in an extramarital affair had to expect severe sanctions to be imposed upon her under the Turkish/Muslim code of honor". This motion, rejected by the Court, is referred to in the ruling.<sup>12</sup> The OGH found that the motion was unlikely to have any substantive impact on the facts of the case and the evidence presented to the jury.<sup>13</sup> However, had the relevant legal norms been consistently applied, further inquiries into the background of the defendant's act (including the underlying motives), to which the defendant himself directed the Court's attention, could, or even should, have resulted in a different interpretation of the facts and to the exclusion of the applicability of Section 76 StGB to the case. The reasonableness of the affect would probably have been called into question if an expert had confirmed the defendant's views of the socio-cultural background of the act and, concomitantly, that the defendant's behavior was due to his embeddedness in a specific cultural tradition. The reason for this is that, no matter how irresistible the impulse, it cannot be deemed reasonable if the Austrian legal system is unable to exhibit the slightest degree of moral understanding of the act (see Section 4). This might very well be the case when reasons of honor, which qualify as base motives<sup>14</sup> constitute the primary reason for the attempted killing of a spouse. The defendant was therefore lucky that the OGH rejected his motion and based its ruling upon the

general requirements governing the application of Section 76 StGB, which, at the time, were yet to be sufficiently refined. The Court sentenced the defendant, who had admitted to committing the crime, to five years of imprisonment, recognizing the fact that “his mentality had been shaped by a foreign lifestyle” as an extenuating circumstance.<sup>15</sup> In fact, the defendant’s sentence remained at the lower limit of the sentencing range set forth in Section 76 StGB.

In 1993, another case involving an honor killing reached the docket of the OGH. This time, the Supreme Court decided the case under Section 75 StGB and sentenced each of the four defendants to imprisonment, with terms ranging from nine years and eight months to twenty years.<sup>16</sup> In line with the typical setup, several family members were involved in the honor killing; the offender was under the age of 21 years and, as a young adult, was automatically eligible for mandatory mitigation; the act was initiated by the head of the family, who acted as a driving force behind the murder; the offender received verbal and physical assistance from the instigator’s spouse and a further member of the family; and the fact that the female murder victim abandoned the future offender, to whom her hand had been promised in marriage, and his family was established as the reason for committing the murder.<sup>17</sup> In its ruling, the Court maintained that the fact that the defendants had a different cultural background with other mores and traditions – upon which the defense relied in an attempt to make the killing of the victim appear more comprehensible, arguing that she had abandoned her fiancé and his family – did not constitute sufficient grounds to mitigate the “wrongful character (of the crime) or (the defendants’) level of culpability”.<sup>18</sup>

In another case decided in 1997, the OGH ruled, under application of the

reasonableness test, that the defendant was unable to prove the reasonable nature of the impulse and therefore determined that the crime should be classified as an offense under Sections 15 and 75 StGB. This was not a typical case of honor killing but had many similar characteristics. The offender attempted to kill his former life partner with three gunshots after she rejected his sexual advances and enraged him with verbal insults, including calling him a son of a bitch. The Court rejected the argument that the impulse was reasonable, holding that “an impulse of the severity with which it manifested itself in the present case [...] is reprehensible under the moral standards prevailing in Austria [...] and, as such, cannot be considered reasonable [...] even if one were to consider the insults egregious and, from the point of view of (foreign) family values, unacceptable”.<sup>19</sup> The defendant was sentenced to imprisonment for fourteen years under Sections 15 and 75 StGB.

In its ruling in case no. 14 Os 149/04 from 2005, the OGH also found that the defendant’s motives were similar to those typical of honor killings. Following a general discussion of the reasonableness standard, the Court reasoned that “even under consideration of the offender’s Turkish and Muslim cultural background”, it cannot be deemed reasonable that a man who has already been divorced would, without any further identifiable reason, be provoked into such a heat of passion “solely due to the fact that his wife, married to him in a second marriage, had submitted a petition for divorce approximately a month earlier”.<sup>20</sup>

The personal impression that the defendant created led the court of first instance to the opinion that the motive for the crime was the defendant’s inability to “reconcile with his personal honor the fact that his spouse contradicted him over the course

of their marriage and ultimately even filed for divorce”, rather than his jealousy.<sup>21</sup> The OGH affirmed the sentence imposed upon the defendant by the jury of the Vienna Regional Court for Criminal Matters (i.e., lifelong imprisonment).<sup>22</sup> The general tendency that emerges from the analysis of the jurisprudence of the Austrian Supreme Court regarding criminal cases involving honor killings or similar criminal acts that do not fully correspond to the definition of honor killings is that foreign concepts of morality that consider the honor of the family or the individual to be superior to another individual’s right to life do not qualify as sufficient grounds for finding the defendant guilty of a lesser included offense when it comes to assessing the reasonableness of the impulse under Section 76, nor do they serve as an extenuating factor in the case of offenses subject to Section 75 StGB. Hence, the reluctance of the Court to apply Section 76 StGB to such offenses is perfectly justified; due to the application of a corrective instrument relying on the requirement of moral understandability of the causal relationship between the impulse and the

event that triggers it, cases almost never live up to the reasonableness standard even if one assumes that the impulse was sufficiently irresistible.

### CONCLUDING REMARKS

The Austrian justice system, or at least its highest level, generally classifies honor killings as murders in the legal sense of the term, convicting offenders under Section 75 StGB. In accordance with the requirements established and continually refined in the relevant legal literature and jurisprudence, there are no grounds for the application of Section 76 StGB to such cases, especially considering the generally restrictive application of Section 76 StGB by the Austrian judiciary (Moos 2002, Section 76, marginal no. 2). When it comes to honor killings, this practice seems completely justified both under the aspect of legal doctrine and relevant case law. Any code of honor that regards human lives as a secondary priority exhibits a contemptuous attitude towards the right to life, which qualifies as a base motive under Section 33 item 5 StGB.

<sup>1</sup> *o.v.* = *opposing view*.

<sup>2</sup> *But see the second case addressed in Section 5 (OGH 10/07/1993, 12 Os 143/93).*

<sup>3</sup> *OGH 12/12/1991, 15 Os 141/91.*

<sup>4</sup> *OGH 09/21/1999, 14 Os 111/99; OGH 02/13/2008, 13 Os 6/08v.*

<sup>5</sup> *ELP* = *Established Legal Precedent*.

*RIS-RS 0092173; RIS-RS 0092259; RIS-RS 0092087.*

<sup>6</sup> *PO* = *Prevailing Opinion*.

<sup>7</sup> *Since OGH 09/22/1994, 12 Os 104/94 ELP; see also RIS-RS 0092271.*

<sup>8</sup> *Since OGH 12 Os 83/85, JBl 1986, 261 (emphases in the original) ELP.*

<sup>9</sup> ELP see only OGH 09/21/1999, 14 Os 111/99; OGH 12 Os 163/99, ÖJZ-LSK 2000/136; RIS-RS 0092130; RIS-RS 0092115.

<sup>10</sup> See OGH 07/14/2011, 11 Os 82/11k; OGH 06/28/2012, 11 Os 63/12t.

<sup>11</sup> OGH 08/17/1982, 9 Os 95/82.

<sup>12</sup> OGH 08/17/1982, 9 Os 95/82.

<sup>13</sup> OGH 08/17/1982, 9 Os 95/82.

<sup>14</sup> See also OGH 10/07/1993, 12 Os 143/93.

<sup>15</sup> OGH 08/17/1992, 9 Os 95/82.

<sup>16</sup> OGH 10/07/1993, 12 Os 143/93.

<sup>17</sup> OGH 10/07/1993, 12 Os 143/93.

<sup>18</sup> OGH 10/07/1993, 12 Os 143/93.

<sup>19</sup> OGH 14 Os 130/97, EvBl 1998/72.

<sup>20</sup> OGH 04/05/2005, 14 Os 149/04.

<sup>21</sup> OGH 04/05/2005, 14 Os 149/04.

<sup>22</sup> OGH 04/05/2005, 14 Os 149/04.

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