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To Punish or to Prevent? Legal Regulation of the Problem of "Honour"-Related Violence in Europe and the Middle East

Abstract

The problem of "honour"-related (or "honour"-based) violence is a phenomenon that crosses the boundaries of countries, cultures, and religions. This kind of violence usually tends to be associated with various countries and regions of the Middle East – Jordan, Lebanon, Palestine, Iraqi Kurdistan. In Europe, this issue appeared in public debates only at the beginning of the 21st century, limited to the context of migration. Such categorisation has resulted in the politicisation of "honour"-related violence, manifested in the strong dependence of actions taken by the state on such factors as the political line of the ruling party or public feeling. The aim of this article is to answer the question about the legal regulation of "honour"-related violence in selected countries of the Middle East and Europe: Lebanon, Jordan, Iraqi Kurdistan, the United Kingdom, the Netherlands, and Germany. This will make it possible to identify the means and methods of combating this problem and indicate whether the context of migration determines the solutions applied in practice. The subject of the analysis will be the legal regulation and the judicial decisions, as well as the activity of various public and non-governmental institutions that are involved in the prevention of this problem. The results of the analysis lead to a reflection on the question as to whether criminal law is really the most effective instrument of solving the problem in question. The matter at issue fits into a wider context of the question of use of law-based instruments in order to achieve certain aims of public policies.

Keywords: honour-based violence, honour killings, cultural defence, law and migration

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Introduction

The nature of the phenomenon of "honour"-based violence is a subject of a long--lasting discussion taking place on both academic and governmental grounds. In Resolution 1681 of the Parliamentary Assembly of the Council of Europe, "honour"--based violence has been defined as "all forms of violence against women and girls in the name of traditional codes of honour are considered to be so-called 'honour crimes' and constitute a serious violation of fundamental human rights".[2] The quoted definition is rather general and does not offer an answer to the question of what "traditional codes of honour" are and why they become a motif for certain acts. The concepts that can be found in scientific publications are much more complex in terms of the number of factors describing the phenomenon. "Honour"-based violence tends to be defined, among others, as violence against women and girls,[3] as a problem resulting from specific social roles, different for women and men,[4] or as a certain category of acts motivated by the cultural background of their perpetrators.[5]

In Western European countries the discussed problem first appeared in the public debate in the early 21st century, as a phenomenon occurring in specific ethnic minorities, unknown to the culture of the host societies. Such a categorisation has resulted in the politicisation of "honour"-based violence, manifested in the strong dependence of actions taken by the state on such factors as the political line of the ruling party or public feeling.

The problem is, however, not limited to a specific geographic area. Outside Western Europe, instances of "honour"-based violence have been documented in

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2 Resolution 1681 of the Parliamentary Assembly of the Council of Europe, *Urgent need to combat so-called "honour crimes"*, 2009.

3 The Resolution referred to above can be one such an example. Such an approach is not substantiated in the statistical data for "honour"-based violence. There were 6 men and 7 women who fell victim to honour killing in 2015 in the Netherlands. *Terugblik Op 2015. Jaarverslag van Het Landelijk Expertise Centrum Eer Gerelateerd Geweld*, Hague 2016, p. 28.

4 For instance: R. Reddy, *Domestic Violence or Cultural Tradition? Approaches to 'Honour Killing' as Species and Subspecies in English Legal Practice*, [in:] A.K. Gill, C. Strange, K. Roberts (eds.), *Honour' Killing & Violence. Theory, Policy & Practice*, London 2014, pp. 27–45.

5 Such a method of conceptualisation of "honour"-based violence is ascribed e.g. to the activities of German public authorities. S.K. Ercan, *Same Problem, Different Solutions: The Case of 'Honour Killing' In Germany and Britain*, [in:] A.K. Gill, C. Strange, K. Roberts (eds.), op. cit., pp. 201–206.

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Middle Eastern and South Asian countries, including: Pakistan,[6] Jordan,[7] Lebanon,[8] Iraq (especially in the area of Kurdistan),[9] and Palestine.[10] "Honour"-based violence is also encountered in South America.[11]

The aim of this article is to answer the question about the legal regulation of "honour"-related violence in selected countries of the Middle East and Europe: Lebanon, Jordan, Iraqi Kurdistan, the United Kingdom, the Netherlands, and Germany. Issues such as reports of acts classified by public authorities and courts as instances of "honour"-based violence or the possibility to reconstruct a given jurisprudence and legal regulation regarding the issue in question were among the selection criteria of the countries to be analysed. What is more, there have been reports of cases of "honour"-based violence committed by perpetrators from the said Middle Eastern countries – especially from Iraqi Kurdistan – in the United Kingdom, the Netherlands, and Germany alike.[12]

This will make it possible to identify the means and methods of combating this problem in reference to law and indicate if the context of migration determines the solutions applied in practice. The answer to the main research question will be preceded by an analysis of specific issues such as: whether the notion of "honour"--based violence, used in reference to a given category of acts committed both in Europe and other parts of the world refers to an analogical phenomenon, whether any of the countries under analysis has decided to earmark the "honour"-based analysis as a separate type of crime, or whether the declared motivation of the intention to regain lost honour in any of the examined jurisdictions is considered a sufficient reason to mitigate one's punishment. The answer to the last research question is especially important because the potential confirmation of such a state of affairs

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6 J.A. Cohan, *Honor Killings and the Cultural Defense*, "California Western International Law Journal" 2010, 2, pp. 211–219.

7 R. Abu Hassan, L. Welchman, *Changing the Rules? Developments of 'Crimes of Honour' in Jordan* [in:] S. Hossein, L. Welchman (eds.), *'Honour'. Crimes, Paradigms, And Violence Against Women*, London 2005, pp. 199–208.

8 D. Hoyek, R.R. Sidawi, A.A. Mrad, *Murders of Women in Lebanon: 'Crimes of Honour' Between Reality and the Law*, [in:] S. Hossein, L. Welchman (eds.), op. cit., pp. 111–136.

9 G. Hague, A.K. Gill, N. Begikhani, *'Honour'-based violence and Kurdish communities: Moving towards action and change in Iraqi Kurdistan and the UK*, "Journal of Gender Studies" 2013, 4, pp. 383–396.

10 M. Hasan, *The politics of honor: patriarchy, the state and the murder of women in the name of family honor*, "Journal of Israeli History" 2002, 1–2, pp. 1–37.

11 S. Pimentel, V. Pandjiarjian, J. Belloque, *The 'Legitimate Defence of Honour', or Murder with Impunity? A Critical Study of Legislation and Case Law in Latin America*, [in:] S. Hossein, L. Welchman (eds.), op. cit., pp. 245–262.

12 On account of no detailed statistical data concerning "honour"-based violence available, it is impossible to give exact figures. The analysed data comes from police reports, for instance: *Terugblik Op 2015...*

would prove that a given category of behaviours – classified as "honour"-based violence – can be considered legally acceptable. The value added to the performed analysis will be an attempt to answer the question of whether there are factors that may contribute to the increase of the range of the problem, occurring in the countries subject to analysis, regardless of the context of migration or the culture dominant in a given territory. It shall be stressed that the matter at issue fits into a wider context of the question of use of law-based instruments in order to achieve certain aims of public policies.

Legal regulation of "honour"-based violence in Middle Eastern countries. Examples of Lebanon, Jordan, and Iraqi Kurdistan

Analyses of the body of judicial decisions are a special source of information about the perpetrators and the victims of acts of "honour"-based violence. Apart from the possibility to reconstruct a given jurisdiction, such analyses make it possible to answer the questions about the age, sex, area of residence, and even the level of education or social status of the parties to the proceedings.

Such an analysis was carried out by Danielle Hoyek, Rafif Rida Sidawi, and Amira Abou Mrad. The authors of the research, published in 2005,[13] analysed the problem of crimes of honour in Lebanese law. They argued that despite the tremendous changes that had taken place in the situation of women in the Lebanese society over the years, the family relationships still remained (to a smaller or greater extent, depending on e.g. the region or the social status of a given family) marked with relics of the old social order – patriarchy. The patriarchalism of the society also is also shown in courts' reaction to honour-motivated crimes. In this context it is assumed that the regulation referring in particular to honour as a motive behind an offender's actions was Article 562 of the Lebanon Penal Code,[14] which made it possible to extraordinarily mitigate the punishment of an offender who found his spouse, sister, ascendants or descendants committing adultery or in a situation of unlawful sexual intercourse, and killed or harmed one or both of partners.

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13 D. Hoyek, R.R. Sidawi, A.A. Mrad, op. cit. All information about the research carried out by these authors, presented in the further part of the text, comes from this publication.

14 *Lebanon: Law Reform Targets 'Honor' Crimes. Lebanese Laws Need Further Overhaul to Curb Gender-Based Violence*, https://www.hrw.org/news/2011/08/11/lebanon-law-reform-targets-honor-crimes (access: 12.11.2017).

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In the times preceding the codification of law in Lebanon, the article related to killing or harming persons caught *in flagrante delicto* in its original shape[15] was transplanted from the Ottoman law (Article 188), in force in the region until 1943. Importantly enough, the content of the said article comes from the French Penal Code of 1810 (Article 324). In France, the said article was effective until 1975. Its counterpart, Article 562 of the Lebanese Penal Code, went through a long series of legislative amendments until it was eventually abolished in 2011.

According to the first version, in force until 1999, an offender could have their punishment cancelled in certain circumstances. Article 562, formulated in such a manner, met with criticism of lawyers and activists fighting for women's rights, which was based on claims for equality of the sexes, stressing the negative effects of the regulation on the prevention of the prohibited acts at issue. Thanks to their involvement, as well as Lebanon's ratification of international law acts referring to women's rights, the provision was amended in 1999 in that the option to refrain from imposing a punishment was substituted with an option of extraordinary mitigation thereof.

Despite the tendency to associate Article 562 with honour-based acts, the said legal basis was not applied in any court case analysed in the course of the studies in question. The authors analysed the files of 25 cases from 1998–2003, where offenders committed the acts they were charged with, with the aim of defending their honour. In 15 cases the offenders were sentenced pursuant to Article 549,[16] in 7 cases – pursuant to Article 547,[17] in 2 cases – based on Article 554,[18] and in 1 case – on the basis of Article 553[19] of the Lebanese Penal Code.

In most cases, judges refused to apply Article 193 of the Lebanese Penal Code, according to which the penalty could be mitigated if the crime was "honour"-motivated. In cases where judgements referred to that provision, courts mitigating the penalty considered the relationship between the victim and the offender, and the social situation of the victim as well.

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15 The original form of the said regulation provided for a possibility to completely refrain from inflicting punishment on persons who killed, harmed, or assaulted persons caught *in flagrante delicto*. Such a version was adopted in the French Penal Code.

16 The provision in question provided for the death penalty for those guilty of acts of voluntary manslaughter committed in specific circumstances.

17 According to this article, offenders were subject to 15 to 20 years of hard labour.

18 In this case, offenders were sentenced for a disturbance of the functioning of a bodily organ or causing a health disorder lasting longer than 10 days.

19 Article 553 of the Lebanese Penal Code referred to cases of inciting the victim to commit suicide or abetting and aiding the victim in committing suicide. It provided for an immediate custodial sentence of a maximum of 10 years if the act of suicide was committed.

It was more common to apply Article 253, under which the court is able to mitigate the penalty if the committed prohibited act was justified by the circumstances of a given case. For instance, the said article was applied in a case in which a brother killed his sister because she got pregnant out of wedlock. According to the justification, the circumstances substantiating the mitigation of the penalty included – among others – the social customs adopted in the region the offender was from.

The passed sentences involved 2 to 7 years for cases where no compensation was claimed, and from 4.5 year of hard labour to the death penalty for other cases. In 78% of cases the declared motivation of the offenders was "to clear their name of shame" or "the victim's misbehaviour". In the majority of cases the offenders were men. The victims in all of the analysed cases were women.

Although a question about the representativeness of the study for the entire Lebanese society and the full spectrum of cases dealing with "honour"-based violence suggests itself, the studies in question lead to a conclusion that the risk of occurrence of "honour"-based violence is higher among people of lower social status. In some regions of the country the number of acts of "honour"-based violence was incommensurably greater than in others. These were usually poorer, less urbanised regions. This leads to the conclusion that factors such as poverty or a low level of education may contribute to regarding honour as a regulator of social relationships and, at the same time, a supreme value whose undermining involves certain sanctions.

The second of the Middle Eastern countries under analysis is Jordan. This country has a similar legal regulation in effect, making it possible to refrain from inflicting punishment if the offender caught his wife or another female member of his family in the act of adultery or extramarital sex.[20] A legislative amendment was introduced in 2001, substituting the possibility to refrain from inflicting punishment with an option to mitigate the offender's liability, with a view to apply the provision to cases where the killed or harmed person was the offender's wife.[21] Also in this case Article 340 of the Jordanian Penal Code, introducing the regulation in question, is applied rarely as the basis for judgements issued in cases concerning "honour"-based violence.[22] In most cases, the line of defence aimed at mitigating

[20] Article 340 of the Jordanian Penal Code. Also in this case it necessary to look for sources of the regulation at issue in the Ottoman law and the French Penal Code of 1810 (L. Abu Odeh, *Honor Killings and the Construction of Gender in Arab Societies*, "American Journal of Comparative Law" 2010, 4, pp. 911–952.

[21] R. Abu Hassan, L. Welchman, op. cit., p. 202.

[22] Ibidem, p. 203.

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the penalty under Article 98, according to which "whoever commits a crime while in a state of rage which is the result of an unjustifiable and dangerous act committed by the victim, benefits from a mitigating excuse".[23] It was common to see judicial decisions argue that the conditions to apply the article in question were not met in the case of premeditated murder, where such an act required the offender to make preparations for, think through, and consider the consequences of the act.[24] The "unjustifiable and dangerous" behaviour of victims was understood as having an extramarital affair, adultery, prostitution, and escape from the family home.[25]

Thanks to the engagement of NGOs and activists fighting for women's rights, in 2009, Jordan's Minister of Justice appointed a special tribunal functioning with the country's Criminal Court, whose mission was to decide in cases involving "honour"-based violence.[26] The sentences passed by the tribunal were stricter than those pronounced by other courts in practice up to that point.[27]

The public debate on "honour"-related violence in Jordan intensified in 2016, after 5 cases of "honour" killing committed within a single week came to light.[28] In 2016, there were over 50% more reports of cases of "honour" killing than a year before (17 cases in 2015, 26 cases from January to October 2016).[29] As a result, in December 2016, Iftaa Department, dealing with religious matters, issued a fatwa prohibiting killing women in the name of honour, stressing the inconsistency of such acts with the teaching of Islam.[30] 2017 saw legislative works taking place, aiming at introducing amendments to the said Article 98 of the Jordanian Penal Code, with an objective to make it impossible to apply the article in question to offenders guilty of "honour"-based violence.[31] Furthermore, the regulation that

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23 Ibidem, p. 204.

24 Ibidem.

25 Ibidem, p. 205.

26 Human Rights Watch, *Letter to Jordan's Minister of Justice on "Honor" Crimes*, https://www.hrw.org/news/2009/08/10/letter-jordans-minister-justice-honor-crimes (access: 12.11.2017).

27 *Jordan Says 'Honour Killing' is Against Islam*, https://www.thenational.ae/world/jordan-says-honour-killing-is-against-islam-1.203182 (access: 12.11.2017).

28 *Recorded 'Honor' Killings on the Rise in Jordan. Alarm Grows With 26 Murders So Far This Year*, https://www.hrw.org/news/2016/10/27/recorded-honor-killings-rise-jordan (access: 12.11.2017).

29 Ibidem.

30 *Jordan Says 'Honour Killing' is Against Islam...*, op. cit. Iftaa The Department issues fatwas – written opinions of experts specialising in Muslim law, aiming to solve questions regarding different social issues. The legal significance of a fatwa may be compared to the authority of judgements passed by the Supreme Court.

31 *MPs Approve Amendments to Controversial Article 98*, http://www.jordantimes.com/news/local/mps-approve-amendments-controversial-article-98 (access: 12.11.2017).

made it possible to refrain from inflicting a penalty upon rapists escaping justice by marrying the victims of rape was removed.[32]

Studies carried out among the youth of Amman show that also in this region the likelihood of approval of "honour"-based violence is higher among people of a lower social status, with a poorer education, and with a general inclination to morally neutralise violence.[33]

To summarise this part of the analysis, "honour"-based violence in Jordan is a more common problem than in the case of Lebanon, as covered in the previous part of the article. The efforts made by activists and politicians contribute to various activities undertaken to counteract the phenomenon. The fact that the figures representing killing committed to regain one's honour have grown considerably in recent years does not have to mean that the actual number of committed acts has changed. This may be a result of a growing social disapproval of the perpetrators of such crimes, leading to a better detectability of such cases. It will, however, take time and require a systematic monitoring of statistics over the years to see how the issue is settled. If this is possible at all.

The third of the analysed Middle Eastern countries is Iraqi Kurdistan. The legal situation of the region is changing dynamically.[34] Since it is difficult to determine the further course of development of the situation, it is important to stress that the discussion presented in the following part of the article is valid as of the time when the article was written.

In 2004, Nazand Begikhani carried out a field study concerning "honour"-based violence in Kurdistan. The study included interviews with judges, politicians, lawyers, policemen, and women's rights activists. She also analysed a body of official documents, legal acts, and court judgements.[35] Based on the studies she carried out, it should be made clear that the law applied in Kurdistan features similar regulations to those found in force in Lebanon and Jordan. Kurdistan is also a country where those who kill their wives or other female family members caught in the act of adultery or discovered to have an extramarital sexual relationship can expect to have their punishment mitigated. Other regulations provide for an option to

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32 *Jordan Bans Rapists from Escaping Justice by Marrying Victim*, https://www.theguardian.com/global-development/2017/aug/02/jordan-bans-rapists-from-escaping-justice-by-marrying-victim (access: 12.11.2017).

33 M. Eisner, L. Ghuneim, *Honor Killing Attitudes Amongst Adolescents in Amman, Jordan*, "Aggressive Behavior" 2013, 5, pp. 405–417.

34 *Haider al-Abadi Vows to Use Law to Control Kurds*, http://www.aljazeera.com/news/2017/09/haider-al-abadi-vows-law-control-kurds-170928110702735.html (access: 13.11.2017).

35 N. Begikhani, *Honour-Based Violence Among the Kurds: the Case of Iraqi Kurdistan*, [in:] S. Hossein, L. Welchman (eds.), op. cit., pp. 209–229.

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mitigate the offender's punishment if the motive of the committed crime was related to honour.[36]

In 2007, after the case of "honour" killing of Du'a Khalil was publicised in the international arena, Kurdistan's government took a range of measures aimed at counteracting "honour"-related violence.[37] One of such measures involved carrying out a series of studies in 2008–2010 with the aim of analysing the practice and the policy of counteracting "honour"-based violence in Kurdish communities in Kurdistan and the United Kingdom.[38]

The findings of the analysis showed that despite the social transformation that had taken place especially in urbanised areas, honour still functioned as the regulator of social relationships in Kurdistan, affecting the situation of Kurdish women.[39] A woman behaving against the socially accepted standards can dishonour her family. It is then the mission of the entire collective to regain the lost honour. Although there are no exact figures for the scale of "honour"-related violence in Kurdistan, the findings of the said studies helped the authors reach a conclusion that the phenomenon is very common. It is possible, though, to see actions aimed at counteracting the problem in question, such as the trend to call such acts "dishonourable".[40] The authors of the studies did not decide if the scale of the problem depended on factors such as poverty or a low level of education.

Despite the active involvement of NGOs and governmental institutions alike, the sentences passed in the period when the studies were carried out were lenient, and many cases ended in acquittal or the court refraining from inflicting punishment upon the offender.[41] A number of legislative amendments have been made since 2000. Their aim has been to remove regulations making it possible to significantly mitigate the punishment inflicted in cases of "honour"-based killing. Unfortunately, the process if implementation of the changes made in the judicial practice has been very slow.[42]

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36 Ibidem, p. 212.

37 G. Hague, A.K. Gill, N. Begikhani, op. cit., p. 386.

38 Ibidem.

39 The findings are described in the publication quoted in the footnote above.

40 Anthony Appiah dubbed such a method of fighting "honour"-based violence "collective shaming". Cf.: A. Appiah, *The Honor Code: How Moral Revolutions Happen*, New York 2010.

41 G. Hague, A.K. Gill, N. Begikhani, op. cit., p. 390.

42 Ibidem.

Legal regulation of "honour"-based violence in Western European countries. Examples of the Netherlands, the United Kingdom, and Germany

In the countries covered so far, "honour"-based violence has been considered as an issue concerning entire societies, to a smaller or greater extent. As I have already mentioned, in Western European countries, "honour"-based violence is conceptualised as a problem regarding mainly those coming from ethnic minorities. Even if the definitions in use are neutral in terms of the culture of offenders, the said regularity can be seen at the stage of the application of law and of the implementation of government strategies.

In the United Kingdom, "honour"-related violence appeared in the public debate after the cases of "honour" killing of Heshu Yones, Banaz Mahmod or Tulay Goren were brought into the public eye. Initial attempts to prevent "honour"-based violence were made within the existing structures designed to counteract domestic violence. Such a solution had an ideological (an intention to prevent the stigmatisation of members of ethnic minorities) and economic (it could hypothetically make it possible to reduce the costs that would result from creating new structures) justification.

After many irregularities in the police's handling of the case of Banaz Mahmod in 2006, many analyses and reports stressed the necessity to take certain cultural factors, influencing the motivation of perpetrators of acts of "honour"-based violence, into consideration. But there was no decision to introduce a separate legal regulation referring directly to prohibited acts committed on the grounds of honour.[43] As a rule, "honour"-based violence was still categorised as violence mainly (but not only) against women and girls. It was (and is) much affected by the activity of NGOs such as IKWRO,[44] who are actively involved in the decision-making processes as experts and lobbyists campaigning for certain solutions.

While it was possible to see a tendency in the judgements passed by British courts to accept cultural defence through culture in cases concerning "honour"--based violence at first,[45] leading to a mitigation of the offenders' punishments, such as judicial practice was quickly departed from. The liability of persons committing prohibited acts that can be categorised as "honour"-based violence is judged

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43 Such a regulation was introduced in relation to forced marriage and mutilation of female sexual organs.

44 Iranian and Kurdish Women's Rights Organization.

45 M. Grzyb, *Przestępstwa motywowane kulturowo. Aspekty kryminologiczne i prawnokarne*, Warszawa 2016, p. 151.

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on the basis of legal acts referring to particular types of crimes against life and health (killing, forced suicide, assault and battery, torture, mutilation, threats, etc.). A frequent line of defence of offenders involved declarations that a given act was committed in reaction to provocation (understood as a state of rage justified by certain circumstances). Approving of such argumentation would serve as grounds to qualify such an act as a homicide, not a murder, which would translate into a mitigated penalty.[46] Whether it was possible to decide on justifying a given act by its circumstances on the grounds of a given case depended on a decision whether the culture and beliefs of the offenders could be taken into account in determining whether they actually were in a state of provocation.

At first, the judicial decisions made by British courts were not uniform in this respect.[47] In some cases, courts took the culture of offenders into account as one of the factors affecting the decision whether the state of rage leading to committing a given act could be explained by the circumstances of a given case.[48] In other cases, the evidentiary proceedings involved issues related to the offender's culture as proof of the homogeneity of a given community in relation to the adopted and common standards of behaviour, especially the role of honour and intolerance to extramarital sexual relationships.[49] In some cases, the courts pointed to the necessity to balance the requirements stemming from cultural diversity and the provision of protection to the individual exposed to violence.[50] At present, the fact that an act was committed to protect or regain lost honour is not taken into consideration as circumstances mitigating the possible punishment.

In the second European country, the Netherlands, cases of "honour"-based violence are classified as culturally motivated crimes.[51] The judgements passed in such cases in the 1970s and 1980s were relatively lenient, and offenders could expect to have their punishment mitigated on account of a specific motive for their actions, which courts interpreted as related to certain norms and standards of behaviour, originating from the cultures of particular communities.[52] For example,

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46 R. Reddy, *Gender, Culture and the Law: Approaches to 'Honour Crimes' in the UK*, "Feminist Legal Studies" 2008, 3, p. 313.

47 Ibidem, p. 314.

48 For instance: judgement in case R v. Shabir Hussain, Newcastle Crown Court, 28 July 1998.

49 Judgement in case R v. Faqir Mohammed, Manchester Crown Court, 18 July 2002. Cf.: R. Reddy, Gender, Culture and the Law... op. cit., p. 316.

50 Ibidem, p. 318.

51 M. Siesling, J. Ten Voorde, *Paradox of Cultural Differences in Dutch Criminal Law*, [in:] M.-C. Foblets, A.D. Renteln (eds.), *Multicultural Jurisprudence: Comparative Perspectives on the Cultural Defence*, Portland 2009, p. 160.

52 Ibidem, p. 162.

in 1977, the Supreme Court of the Netherlands sentenced an offender found guilty of an act of killing, committed according to the offender's declaration with the intention to regain lost honour, to 6 years of absolute incarceration, where the maximum possible penalty was life imprisonment.[53]

Such a tendency could be connected with the fact that in that period – until as late as the 1990s – motivating certain behaviour with culture was not considered a problem but an alternative method to solve disputes.[54] What is more, judges tended to pronounce more lenient sentences in cases where – according to them – defendants could be described as "primitive" or "archaic".[55] Such arguments became a line of defence, where defendants were portrayed as backward persons, unaware of social transformation, unable to act rationally.[56]

The following years brought about a breakthrough. The judgements passed in similar cases in the later period – at the turn of the 20th and 21st centuries – were much more severe. This also concerned cases classified as concerning "honour"--based violence. The change was manifested in a case from 1999, where the defendant – the husband of the killed victim – was sentenced to 15 years of imprisonment, and his motives were considered unacceptable and groundless. It was found that a more lenient punishment would have a negative impact on the general prevention with regard to cases of such nature.[57]

The present-day judgements are similar in terms of the problems to adjudications made in analogous cases, where prohibited acts are not committed to regain one's lost honour.[58] "Honour"-based violence was not considered, however, a separate type of prohibited acts, and the Dutch law does not offer a legal definition of the problem at issue. In 2004, the government developed a working definition of "honour"-based violence, neutral in terms of the culture and sex of its perpetrators and victims.[59] But despite its apparent neutrality, statistics show that the condition of the ethnic origin of offenders remains relevant at the level of imple-

53 Ibidem, p. 163. Supreme Court of the Netherlands' judgement of 1 February 1977, NJ 1977, 563.

54 Ibidem, p. 164.

55 An example is a judgement passed by the District Court in Amelo on 31 May 1994 (not published), where the court stated directly that the defendant found guilty of killing lived and acted in "an archaic state of mind". Ibidem, p. 165.

56 Ibidem. There is no doubt that such a discourse is characterised by orientalism and a "us"–"them" dichotomy.

57 Ibidem, p. 164. District Court of Dordrecht's judgement of 30 December 1999, LJN AA4019.

58 Expert interview with J. Janssen, Hague, April 2016.

59 J. Janssen, *Your Honour or Your Life? An exploration of Honour Cases for Police Officers and Other Professionals*, Hague 2009, p. 78.

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mentation of the policy in practice.[60] Studies carried out in 2005 showed that in the Netherlands those found guilty of acts of "honour"-related violence also had a relatively low social and economic status. This made them highly dependent on the communities they were part of.[61]

The legal acts in force in another European country – Germany – give no definition of "honour killing" or "cultural defence" either. A factor distinguishing various judgements made in cases of killing motivated by an intention to regain one's lost honour is the possible classification of the act as an offence committed for base motives.[62]

According to a judgement of the Federal Court of Justice of Germany, such a category of offences includes crimes committed with the offender driven by motives deserving special condemnation, characterised by the lowest moral standards.[63] When judging the motivation, the court shall take such factors as the offender's culture or background into account.

The interpretation of the notion of "base motives" paved the way for defence strategies which aimed at proving that in certain communities – where the offenders came from – resorting to violence to restore one's honour was not only far from a base motive, but something expected and required in the light of a given culture or religion. This made it possible to mitigate the punishment imposed in some cases of honour killing, where it was decided that the offender's behaviour was determined by his culture, which made it impossible to classify the motives behind the committed crimes as deserving particular condemnation.[64] The offenders' motivation was considered taking factors such as the length of a given offender's stay in Germany into account. A frequently used argument was that a given person (offender) was not aware that the act of killing committed in the circumstances of their case was not approved in the host community.

Such case law was objected to by activists, academics, and politicians, such as Necla Kelek.[65] They argued that such an approach led to a legitimisation of sex

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60 For instance, according to statistical data published by the National Centre for Expertise on Honour Based Violence, the vast majority of cases analysed by the institution concerned people from Turkey, Morocco, Iraq or Afghanistan. *Terugblik Op 2015...*, p. 28.

61 M. Siesling, J. Ten Voorde, op. cit., p. 161.

62 Depending on such a division, a given act would be considered as an aggravated (§211) or a non-aggravated (§212) homicide.

63 S. Maier, *Honor Killings and the Cultural Defense in Germany*, [in:] M.-C. Foblets, A.D. Renteln (eds.), op. cit., p. 240.

64 Ibidem, pp. 240–241.

65 Necla Kelek is a German sociologists and feminist. She comes from Turkey, and is the author of such books as *Chaos der Kulturen: Die Debatte um Islam und Integration*, Köln 2012.

inequality and to unequal treatment of people from ethnic minorities. In fact, it led to differentiating the victim's situation depending on whether the defendant's line of defence referred to "culturally"-inspired motives or whether there were no declarations of such a motivation.

When analysing court judgements passed until 2004, one can notice that it was quite common to see the line of defence turn to cultural defence as the motivation behind the offender's actions. Researchers from the Max Planck Institute, dealing with the issue of court judgements passed in cases of honour killing, analysed 78 judgements from the period 1996–2005.[66] According to their findings, the vast majority of offenders can be classified as underclass, poorly educated, poorly qualified or unemployed. Acting upon motivation deserving condemnation was attributed to 32 offenders out of 87 found guilty of homicide. In 15 cases, the courts decided that the motive inspiring the offenders' actions – an intention to regain lost honour – was a sufficient reason to reduce their criminal liability. Importantly enough, the defendants' declaration of the intention to regain their lost honour did not lead to their acquittal in any of the cases in question.

On 28 January 2004, the Federal Court of Justice of Germany passed a ground-breaking judgement where it rejected an option to resort to cultural defence in honour killing cases. The court argued that the standard to judge acts of such nature should be values and beliefs of the majority of the German society, not of a certain ethnic minority that did not fully accept the ethical and legal values reflected in the German law.[67] This line of argumentation was expressed in later court judgements, e.g. one passed in the case of the killing of Hatun Sürücü, where the maximum possible punishment was imposed on the offenders.

Another important thing is the regularity observed also in the case of Germany, i.e. the lower the social-economic status of a family, combined with poor integration with the host community, the higher the likelihood that honour is the supreme value in a given environment. This entails the risk of "honour"-based violence occurring in the event an individual behaves against what is regarded as honourable.[68]

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66 D. Oberwittler, J. Kasselt, *Honour Killings in Germany (Executive Summary)*, 2011, https://www.mpicc.de/files/pdf1/honourkillingsgermany_execsummary.pdf (access: 27.11.2017).

67 S. Maier, op. cit., p. 243. Federal Court of Justice of Germany' judgement of 28 January 2004, 2StR 452/03.

68 Ibidem, p. 238. Such a conclusion also comes from the discussed studies carried out by the Max Planck Institute.

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Conclusions

Based on the conducted analysis, it appears that the notion of "honour"-based violence, although defined differently, refers to a similar problem in each of the countries covered in the analysis. In the case of both the Middle East and Western Europe, "honour"-based violence in law and court practice is seen as a negative phenomenon, and the special motivation behind the offenders' actions – as a rule – is not a reason to justify mitigation of the imposed punishment. While those found guilty of "honour"-based violence in Jordan, Lebanon or Iraqi Kurdistan could expect to have their sentences commuted or to see courts refrain from inflicting punishment upon them at first, the judicial practice of today is starting to take a different course. In some European countries, courts used to accept cultural defence as the line of defence of the defendants, considering their motives as extenuating circumstances. But such practice was soon abandoned, and the judgements made in cases classified as concerning "honour"-based violence are often stricter than those passed in cases relating to analogous crimes – but classified outside the category in question.

Conceiving "honour"-related violence as a problem common mostly to people from ethnic minorities, unknown to host societies, results in a number of consequences. Most of all, in countries such as Germany, it led to the stigmatisation of members of ethnic minorities in the public debate, and to the spread of a discourse on the existence of "parallel communities". It made it easier to depict immigrants as "backward" people, adhering to "barbaric traditions".[69]

In each European country subject to analysis, it resulted in the politicisation of the problem and making it conditional – among others – on the adopted integration policy, the attitude to ethnic minorities and the growing number of immigrants, the public feeling or the political line of the ruling party. These factors combined decided whether "honour"-based violence became – at a given time – a subject of interest of government institutions, who took – or refrained from taking – measures to counteract the problem at issue.

A legal definition of the issue in question has not been adopted in any of the countries. The category of "honour"-based violence is neither clear nor lucid, especially in Europe. The only factor that differentiates such acts from cases of a different nature is often the ethnic background of the victim and the offender. Another factor that determines whether a given case is classified as concerning "honour"--based violence is, apart from ethnicity, the vocabulary used by both the victims

[69] S.A. Ercan, op. cit., pp. 201–206.

and the offenders, or the declared motive.[70] A similar tendency to base the classification of a given act on offenders' declaration can be seen in the discussed Middle Eastern countries. It increases the risk of a possibility that if the offender's motive to act to regain lost or tarnished honour is considered a mitigating circumstance, the line of defence will argue that a given act may be regarded as an instance of "honour"-based violence, regardless of the actual motivation.

What makes the policies adopted in the Middle Eastern and Western European countries and applied to the matter at issue is that in Europe, culture has become a certain lens through which cases where at least one party – usually the offender – came from an ethnic minority have been looked at. This may lead to many inconsistencies in court proceedings. First, it is easy to imagine a situation where a given act – not marked with traits of "honour"-based violence – is considered such only because the offender comes from a particular ethnic group. On the other hand, especially in the event in which the cultural defence is an acceptable strategy, it may lead to the abuse of "cultural defence"-related arguments in order to conceal the offender's true motives.

The described approach is characterised by a reification of culture, which is treated here as a homogeneous whole, with easily marked boundaries. This is especially visible when a culture is portrayed in an essentialist manner, depicted as a "property" of particular ethnic groups, different from the culture of the host society.[71] In the case of "honour"-based violence, values of certain ethnic groups are pictured as fundamentally contrary to the values of the dominant culture.[72] This deepens the "us"–"them" dichotomy, making societies increasingly polarised.

Such a depiction of culture and ethnicity may contribute to the use of criminal law as the main tool to solve certain social issues.[73] By adopting such a strategy, the state bases its actions almost exclusively on toughening the criminal liability of perpetrators of acts of a particular type. However, practice and the current experience of the examined countries show that the problem in question lies outside the spectrum of matters where criminal-law instruments could be the most effective measures to achieve the intended goal.

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70 J. Janssen, op. cit., p. 80.

71 B.C. Oude Breuil, *Dealing with the Ethnic Other in Criminal Law Practice: a Case Study from the Netherlands*, [in:] M.-C. Foblets, A.D. Renteln (eds.), op. cit., pp. 292–295.

72 More on the notion of "dominant culture": J. van Broeck, *Cultural Defence and Culturally Motivated Crimes (Cultural Offences)*, "European Journal of Crime, Criminal Law and Criminal Justice" 2001, 1, pp. 1–32.

73 More on different aspects related to the interculturality of criminal law, also in the context of punishment as a message to society, see: B. Wojciechowski, *Interkulturowe prawo karne*, Toruń 2009.

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The problem of "honour"-based violence affects minorities within minorities, not entire communities. Also, the phenomenon is marginal in each of the countries subject to analysis. Both in the Middle East and Western Europe, instances of "honour"-based violence have been reported to occur mostly among excluded people, of a lower social and economic status. It is important to bear in mind, in this context, that the risk of exclusion is much greater in the case of immigration.

A conclusion that can be drawn from the above is that it is possible to reduce the scale of the problem by making it easier for people from groups particularly exposed to the risk of the occurrence of "honour"-based violence to access, for instance, the labour market or education services, to pursue education, and to take a range of other measures aiming at preventing their social exclusion. In this perspective, criminal-law instruments shall serve only an auxiliary – not a dominant – function of the state.

Of course, such a regularity could result from a generally increased tolerance for delinquent behaviour among particular individuals.[74] But this does not change the fact that taking the above measures could translate into a minimisation of the scale of the problem also in a broader perspective.

The observation remains valid not only in relation to Europe and to the problem of integration policy but also to Middle Eastern countries. Importantly enough, case of "honour" killing have also been reported in Poland. As for our country right now, the problem is incidental, but it is possible that the will change in an indefinite future.[75] The conclusions resulting from the presented analysis, especially those concerning the impact of an individual's exclusion and marginalisation on the probability of committing an act of "honour"-based violence, offer valuable insights to those who may face the challenge of developing a strategy to counteract the problem in question.

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74 The issue of the impact of a general trend of moral neutralisation of violence on an individual's attitude to "honour"-based violence has been analysed by M. Eisner and L. Ghuneim, op. cit.

75 On the necessity to work out a standpoint of the Polish doctrine of criminal law in relation to issues related to the possible increase in cultural diversity – more in e.g. J. Bojarski, M. Leciak, *Polskie interkulturowe prawo karne (?) – niektóre aspekty tzw. obrony przez kulturę*, [in:] A. Adamski, J. Bojarski, P. Chrzczonowicz, M. Leciak (eds.), *Nauki penalne wobec szybkich przemian socjokulturowych. Księga jubileuszowa Profesora Mariana Filara*, Vol. I, Toruń 2012, pp. 75–96.