

DÜSSELDORF HIGHER REGIONAL COURT
ON BEHALF OF THE PEOPLE
JUDGMENT

III-2 StS 2/19

3 StE 4/19-6

Public Prosecutor General in Karlsruhe

In the criminal case

against **M. K.,**
by reason of **a war crime against property, etc.**

the Second Criminal Division of Düsseldorf Higher Regional Court (...)

on 4 December 2019

has ruled as follows:

The Accused is guilty of membership in a foreign terrorist organisation in coincidence with a war crime against property.

(...)

Provisions applied:

Section 129a, paragraph 1, number 1, Section 129b, paragraph 1, sentences 1 and 2 of the German Penal Code [StGB], Section 9, paragraph 1 of the Code of Crimes against International Law [VStGB], and Section 52 StGB.

Reasons

Preliminary notes:

Over the period of the offence from mid-September 2015 to mid-December 2015, the Accused was a member of the foreign terrorist organisation 'Islamic State', during which time she, together with the since deceased IS fighter M. D., occupied a house that had been assigned to them in order to consolidate Islamic State's territorial claim to the city of Tal Afar.

(...)

Part 1: Findings of fact

A. The personal circumstances of the Accused

(...)

B. The civil war in Iraq and Syria and the terrorist organisation 'Islamic State'

The group known as 'Islamic State' (hereinafter: IS) was and is a militant, fundamentalist Islamist organisation whose goal is – regardless of civilian casualties – to overthrow the Shiite-led government in Iraq and the Assad regime in Syria and to establish a 'caliphate' under Sharia, founded on the basis of its ideology and comprising at least the area of present-day Iraq and the historical region of 'al-Sham' (Syria, Lebanon, Jordan and Palestine).

I. Historical evolution and course of the civil war in Iraq and Syria

The origins of the terrorist organisation IS can be traced back to a group founded in 2003 by Jordanian citizen Abu Musab al-Zarqawi under the name at-Tauhid, which was renamed to 'al-Qaida in Iraq' in 2004 after al-Zarqawi swore his allegiance to the leader of al-Qaida at that time, Usama Bin Laden. It has operated as 'Islamic State in Iraq' since October 2006 with the goal of establishing its own Sunni state in Iraq, to which end it has carried out numerous attacks against politicians, security forces and the Shiite civilian population. The group came under increased pressure from 2007 onwards, however, due

to the arrival of American troops, but it was able to hold out until the US troops withdrew in late 2011.

Abu Bakr al-Baghdadi was named as the organisation's new commander in April 2010. He viewed the onset of the civil war in Syria as an opportunity to expand his organisation's influence beyond Iraq to Syria, and thus dispatched individual fighters to Syria to explore ways for the organisation to participate in the civil war. The organisation began once again to gain influence in Iraq following the withdrawal of American troops, prompting Syrian members of 'Islamic State in Iraq' to found Jabhat al-Nusra li-Ahl al-Sham (Support Front for the People of Syria) under the leadership of Abu Muhammad al-Jaulani. Over the course of 2012, the Al-Nusrah Front became one of the most important players in the Syrian civil war.

Following the onset of increasing tensions between al-Baghdadi and al-Jaulani regarding their claims to the leadership of the Al-Nusrah Front and the relationship between the two organisations, on 8 April 2013, al-Baghdadi announced the creation of the 'Islamic State of Iraq and Greater Syria' (ISIG), an Iraqi-Syrian organisation consisting of both groups, on the basis that the Al-Nusrah Front had originally emerged from the 'Islamic State of Iraq'. However, al-Jaulani publicly refused to place the Al-Nusrah Front under al-Baghdadi's leadership and sought support from Ayman al-Zawahiri, who had become the leader of al-Qaida after the death of Bin Laden and to whom he swore allegiance. In an attempt to resolve the dispute, Ayman al-Zawahiri issued a statement declaring that both organisations should operate independently of one another in their respective home country. However, al-Baghdadi insisted on ISIG's continued presence in both countries.

ISIG was subsequently able to gain further ground in Syria. Al-Baghdadi also proceeded to take action against the Al-Nusrah Front, gradually taking control of their bases in the east and north of the country. The second half of 2013 onwards saw considerable tensions and armed conflicts between ISIG and other groups in Syria. In July 2013, members of ISIG assassinated a prominent commander of the Free Syrian Army (FSA), followed by other important commanders of non-jihadist organisations. A number of foreign fighters joined ISIG, including the Jaish al-Muhajirin wal Ansar ('Brigade of Emigrants and Supporters', JAMWA). Founded in the summer of 2012, JAMWA is a jihadist group of Chechen fighters under the leadership of Abu Umar al-Shishani, which viewed armed struggle as a key religious duty. On 21 November 2013, al-Shishani declared that JAMWA was joining ISIG. The organisation was also able to entice a number of fighters away from

Junud al Sham, which included up to three dozen jihadists originally from Germany. Junud al Sham was also a 'Chechen' organisation, under the leadership of Murad Margoshwili, using the alias Muslim Abu Walid, which operated in the north of the coastal Latakia Governate and in Aleppo. Over the course of 2013, Junud al Sham recruited numerous foreign fighters, including several dozen who had emigrated from Germany and many of whom previously belonged to the organisation 'Millatu Ibrahim', which had been banned in Germany.

In December 2013, the assassination of an Ahrar al-Sham commander triggered an open military confrontation between ISIG and the 'Islamic Front', which emerged in November 2013 as a coalition between Ahrar al-Sham and a number of FSA groups, among others. Confrontations between ISIG, which insisted on maintaining its own presence in Syria, and the Al-Nusra Front continued to escalate at the beginning of 2014, resulting in Ayman al-Zawahiri announcing ISIG's expulsion from al-Qaida in January 2014. This eventually resulted in armed confrontations between the Al-Nusra Front and ISIG in Syria from March 2014 onwards.

ISIG was able to record significant territorial gains in Iraq. On 10 June 2014, ISIG was able to occupy Iraq's second-largest city, Mosul, the capital of the Nineveh Governorate. Tal Afar was brought under ISIG control on 16 June 2014. ISIG units advanced in other areas of western and north-western Iraq, stopping just short of Baghdad, and also attacked the area controlled by the Kurdistan Regional Government to the west, north and east of Mosul. The Iraqi Government was at that time unable to exercise state authority in insurgent-occupied governorates. Riding the wave of these successes, al-Baghdadi proclaimed the so-called caliphate on 29 June 2014 and renamed ISIG to 'Islamic State' (IS). At the same time, ISIG/IS gained ground in Syria. In June and July 2014, it succeeded in driving the Al-Nusra Front from its last positions in the east of the country, out of the Deir ez-Zor Governorate and the south of Al-Hasakah. In August 2014, a heavily armed IS combat unit captured Tabqa airbase in the Province of Raqqqa following a lengthy battle. IS was thus able to acquire extensive weaponry, such as heavy weapons, tanks and surface-to-air missiles. This success also gave IS control of the Raqqqa region. From September onwards, IS turned its attention to capturing the city of Kobani (Ayn al-Arab in Arabic). This offensive, which resulted in significant casualties, ultimately collapsed at the end of January 2015 due to the resistance put forward by Kurdish forces,

with support from the Global Coalition to Defeat ISIS and, particularly, American air strikes. IS recorded a military victory in May 2015 with the capture of Palmyra, located in the Homs Governate, Syria.

IS came under increased military pressure due to air strikes carried out by the USA and its allies on IS territory in Iraq from August 2014 and in Syria from September 2014, resulting in their being pushed further and further back from 2015 onwards. Iraqi troops were able to reclaim a number of cities in Iraq, including the city of Tikrit in March 2015, the city of Ramadi in December 2015/January 2016, and the city of Fallujah on 17 June 2016. In Syria, the Government successfully reclaimed areas of its country with military support from the Russian Federation and the Islamic Republic of Iran. At the beginning of March 2017, al-Baghdadi announced that IS had been defeated in north-western Iraq and ordered its fighters to withdraw into the Syrian and Iraqi mountains. The city of Mosul and the city of Tal Afar were finally reclaimed by the Iraqi Army in July 2017 and September 2017, respectively. IS was driven out of its Syrian stronghold in Raqqa on 17 October 2017. By the end of 2017, most of IS's last remaining strongholds had been reclaimed by Syrian Government troops.

II. Organisational and management structure and procedures

1. Abu Bakr al-Baghdadi headed 'Islamic State in Iraq and Greater Syria' and then 'Islamic State'. He assumed the ideological leadership of the hierarchically structured organisation. The wider leadership circle included his deputy and two commanders, one for Syria and one for Iraq. A shura council also acted as the decision-making body for fundamental issues, such as the succession of the emir/caliph. There were also committees ('councils') on religious and military matters, security, intelligence, finance, supervision of provincial administration, and media. Each 'province' of the 'Islamic State', roughly corresponding to the state administrative districts, was assigned a commander who reported to Abu Bakr al-Baghdadi. The top management level consisted predominantly of Iraqis and Syrians. A rudimentary administration and an independent judicial system were set up in each captured territory. A well-developed secret service was also established, which was organised in parallel with other structures within the organisation.

The organisation's goal was to establish its own idea of an authoritarian Islamic state in Iraq, Syria and neighbouring countries, overcoming national borders. Its other goals included the capture of Jerusalem and the physical extermination of the Shiites and Alevis and other religious minorities in its territory, such as the Yazidis.

The number of fighters grew rapidly in 2013 to around 10 000 to 20 000 men and, despite some setbacks, increased even further thereafter. A number of members of the Al-Nusra Front and other groups joined 'Islamic State in Iraq and Greater Syria'. There was also a strong inflow of foreign fighters, particularly after the caliphate had been declared. The organisation provided its fighters with supplies required for day-to-day life and a salary. In 2013 and 2014, the organisation was financed through oil sales, local taxes and protection money, spoils of war, ransom money, and foreign donations.

Paralleling the logo of the Iraqi al-Qaida group, the identifying mark of 'Islamic State (in Iraq and Greater Syria)' comprised the text 'There is no god but Allah' in white Kufic script, with the Seal of Muhammad underneath in white, which features the words 'Muhammad, messenger of God' on a black background, sometimes accompanied by the organisation's name. Its public relations work is multilingual and carried out using modern media, particularly through its own media centres. This work is concerned with demonstrating the group's power, thereby intimidating opponents, recruiting followers, and emphasising its claim to statehood. To this end, it published countless videos on the internet featuring brutal executions, during which victims' throats were cut and their heads removed live on camera, for example. On 7 June 2014, for example, an electronic magazine, including a German-language version, was published on the platforms 'Twitter' and 'Facebook' showing the killing of a number of men.

In the second half of 2014, IS published videos showing the beheading of a total of five western hostages (Foley, Sotloff, Haines, Henning and Kassig). Two videos showing the beheading of the hostages Yukawa and Goto followed at the beginning of 2015.

2. In addition to these types of acts, the organisation sought to further its agenda by carrying out a large number of attacks, including on civilians, and taking part in various different conflicts in both Syria and Iraq in 2013 and 2014. It had at its disposal assault rifles ('Kalashnikovs'), bazookas and captured weapons, such as mortars and smaller rockets through to tanks. Attacks were often directed against other groups of insurgents, with the

aim of capturing areas held by them. The Syrian regime was also targeted, however. The following is merely an example:

Prominent members of opposing groups were targeted and killed. In August 2013, units of 'Islamic State in Iraq and Greater Syria' took part in an offensive involving several insurgent groups against Alevi villages in Syria's coastal mountains. The attackers committed a wide range of atrocities during this offensive, including the slaughter of more than 100 civilians. In that same month, the organisation participated in the capture of Menagh Military Air Base, near Azaz. In January 2014, more than 30 people, mostly women and children, were killed as a result of a car bomb targeting the forces of the 'Free Syrian Army'. At the beginning of June 2014, the organisation launched an offensive in northern Iraq, capturing the city of Mosul and executing hundreds of Shiite prisoners. After the Iraqi city of Tikrit was captured in June 2014, hundreds of Iraqi soldiers were taken prisoner, driven away, and then shot. In August 2014, units of 'Islamic State' captured the Syrian Army's military airport in al-Tapqa and killed hundreds of government soldiers who had been taken prisoner.

From August 2014 onwards, IS conducted a large-scale military offensive against Yazidis in northern Iraq. Overnight from 2 to 3 August 2014, hundreds of IS fighters attacked the population living in the Sinjar Mountains in northwestern Iraq, which mainly consisted of Yazidi Kurds. By 5 August 2014, IS was able to surround the Sinjar Mountains and occupy the surrounding Yazidi villages. IS established checkpoints at strategically important locations. It also deployed mobile patrols with support from parts of the Arab population. Nevertheless, around 200 000 people were able to flee the region. A further 35 000 to 50 000 Yazidis fled into the besieged Sinjar Mountains, where they were forced to endure high temperatures without food, water or medicine. From 11 August 2014 onwards, the Yazidis were able to leave the Sinjar Mountains through a corridor liberated by YPG forces, the Peshmerga and Yazidi militia, with air support from US troops. IS executed any Yazidi men taken prisoner who refused to convert to Islam. Women and young girls were enslaved and forced to act as sex slaves or domestic staff. Young boys were forced to attend religious schools for religious conversion. According to information provided by the Kurdistan Regional Government, 6 386 Yazidis were kidnapped and up to a further 5 500 were killed.

III. The situation and intensity of the conflict in the Nineveh Governorate in 2015

The Governorate, capital Nineveh, is located in northwestern Iraq. It borders Syria in the north-west and the Kurdistan Region in the north (Dohuk) and east (Erbil). To the south are the Governorates of Salah ad Din and Anbar. Areas of the Nineveh Governorate were regarded as controversial even prior to IS's expansion because they were under Kurdish influence, particularly in the Sinjar Mountains. Starting in early 2015, the Nineveh Governorate was subject to the greatest degree of territorial control by IS, compared to the Governorates of Anbar and Salah ad Din, located to the south. There were nevertheless non-stop skirmishes throughout 2015, not merely limited to air strikes from the international coalition, but instead primarily fought by Kurdish Peshmerga fighters. Peshmerga forces were able to reclaim Rabia on the Syrian border and Zumar in the north-east of Tal Afar as early as the end of 2014. In 2015, the international coalition led more than 13 000 air and artillery strikes against IS throughout the whole of Iraq.

The international coalition attacked IS positions and similar targets in Nineveh a total of 158 times in January 2015. The Mosul area saw 94 attacks, with 38 occurring in the Tal Afar area. In the second half of January 2015, the Kurdish militia were able to reclaim an area of approximately 480 km² in Sinjar – in the west of the Governorate – and around Mosul. Approximately 5 000 Peshmerga fighters were deployed. On 21 January 2015, Peshmerga attacked IS positions in Kisik close to Tal Afar and in Tal al Khidhir. In Ayadir, north of Tal Afar, air strikes killed 22 IS members. On 24 January 2015, skirmishes took place between IS and the Peshmerga east of Kisik, at Eski Mosul, and also, on the following day, to the southeast of Mosul, where, according to the Peshmerga, thousands of IS fighters were killed.

The international coalition carried out 49 air strikes in the Mosul area and 46 in the Tal Afar area during February 2015. At the beginning of February 2015, Iraqi news stations reported that IS had executed 23 of its own fighters after they fled from the front following skirmishes to the north-east of Tal Afar. On 26 February 2015, the Peshmerga – with US support – attacked IS positions on the Iraq-Syrian border close to Rabia and pushed IS back towards the interior of the country.

A total of 63 air strikes were carried out in the Mosul area and 20 in the Tal Afar area during March 2015. IS attacked the Peshmerga in Sinjar on 5 March 2015 using suicide

bombers and a car bomb, among other weapons. The attack failed and air strikes requested from the international coalition killed 13 IS members. A total of 13 IS fighters were killed on 23 March 2015 following attacks by combat aircraft to the east of Mosul, in Bashiqa.

The international coalition carried out 60 air strikes in the Mosul area and 32 air strikes in the Tal Afar area during April 2015. The civilian death toll increased during April, with between 227 and 301 civilians killed. There were also conflicts between IS and the Arab/Sunni tribes. On 26 April 2015, with the help of reinforcements requested from Mosul, IS transported 2 500 Yazidi prisoners to Tal Afar. There, up to 700 Yazidi men and boys were separated from the rest of the group. According to reports from the UN, up to 400 Yazidi men were killed in Ayadhiya and Zumar on 27 April 2015.

A total of 79 air strikes were carried out in the Mosul area and 47 in the Tal Afar area during May 2015. It is also estimated that approximately 168 to 175 civilians were killed. On 21 May 2015, the Iraqi Air Force destroyed an oil refinery operated by IS. An air strike carried out on Abu Maria on 26 May 2015 killed 21 IS fighters.

A total of 71 air strikes were carried out in the Mosul area and 68 in the Tal Afar area during June 2015. The Iraq Body Count database estimated that 272 to 339 civilians were killed. The coalition attacked a convoy to the south of Mosul on 9 June 2015, killing 18 IS fighters. On 15 June 2015, IS attacked Peshmerga positions in Kisik and Eski Mosul using artillery and car bombs, resulting in the deaths of at least 22 of the attackers. The Peshmerga repelled an attack on Sinjar on 18 June 2015. On 24 June 2015, coalition air strikes in Qayyarah, in the south of the Governorate, killed more than 40 IS fighters.

During July 2015, the international coalition carried out 64 air strikes on Mosul. A total of 28 IS fighters were killed on 14 July 2015 during one of these strikes. A further 28 air strikes were carried out in the Tal Afar area during that same month. One of these strikes killed nine IS fighters on 6 July 2015. The death toll for civilians killed during hostilities and executions is estimated at between 341 and 345. A total of 53 employees of the Independent Electoral Commission in Mosul were abducted on 24 July 2015, with 28 of them being killed by IS the following day.

There were increasing numbers of attacks in Qayyarah, to the south of Mosul, during August 2015. The international coalition carried out 77 air strikes in the Mosul area, killing around 80 IS fighters during the period from 3 August to 5 August 2016 alone. There were 32 air strikes in the Tal Afar area during that same month. Around 30 IS fighters were killed on 10 August 2015 during one of these strikes. The Iraq Body Count observatory estimates that, due to reports of mass executions, an exceptionally high number of civilians (between 736 and 1 037) were killed during the month of August. On 18 August 2015, the UN reported that 18 under-age IS fighters had been executed in Mosul after they had fled from the front in Anbar.

There were 87 air strikes in the Mosul area during September 2015, with 30 IS fighters being killed during one of these strikes on 3 September. There were also 19 air strikes in the Tal Afar area. Iraq Body Count estimated the number of civilian casualties to be between 483 and 522. On 23 September 2015, IS executed 25 former members of the security forces in Mosul due to their alleged cooperation with the government.

A total of 233 air strikes were carried out in the Nineveh Governorate during October 2015, 43 in the Mosul area and 44 in the Tal Afar area. Around 14 IS fighters were killed during one strike on the Hassan Qoi district of Tal Afar. Civilian casualties were estimated at between 313 and 319. Two air strikes carried out by the international coalition on 24 October 2015 destroyed a car bomb workshop and 19 IS positions in Mosul. On 25 October 2015, IS fighters attacked the Peshmerga headquarters located in Ismail Bek, in Sinjar.

The international coalition carried out 280 air strikes during November 2015, 49 in the Mosul area and 19 in the Tal Afar area. The number of civilian casualties was estimated to be between 344 and 366. The Kurdish Peshmerga launched an offensive in Sinjar involving 7 500 fighters and with air support from the international coalition. Between 12 November and 14 November 2015, there were local skirmishes close to Mosul, in Sinjar, Makhmur, Zummar, Bashiqa and Eski Mosul.

Of the 256 air strikes carried out in total by the international coalition during December 2015, 167 were in the Mosul area and 21 in the Tal Afar area. On 16 December 2015, IS launched a counter-offensive to the east and north of Mosul. Around 300 IS fighters were

deployed as part of four coordinated attacks targeting exclusively Peshmerga positions. Car bombs and mortars were used. Between seven and 18 Peshmerga fighters were killed during the skirmishes. At least 180 IS fighters were killed in connection with air strikes carried out by the international coalition.

C. Radicalisation of the Accused prior to her departure

(...)

The Accused had met the jihadist M. D. from ..., who was at that time likely residing in Turkey, on the internet during October 2014, (...) M. D. (...) participated in the armed conflict in Syria.

D. Departure to Turkey and the Accused's integration in and membership of the terror organisation

I. Departure to Turkey

After the Accused had wed the like-minded jihadist M. D. via Skype in an Islamic faith marriage on 25 January 2015, on 5 February 2015 the Accused took her son Y. S. – without the consent of the witness M. S., with whom she held joint rights of custody – to Istanbul from ... airport, and from there by plane on to Kayseri, where M. D. was waiting for her. Both parties had planned from the outset to travel on to the so-called caliphate (...). To this end, and with the agreement of the Accused, M. D. organised his journey with the Accused and her son Y. S. with IS representatives. (...) With the aid of smugglers who had been paid by IS, the Accused travelled from Gaziantep to Syria on 19 March 2015. (...)

II. Integration and membership by the end of August 2015

The Accused was integrated into the terror organisation at the latest upon her arrival in IS territory on 19 March 2015 (...).

III. Membership from September 2015 onwards, war crimes against property

The Accused was eventually relocated with her son and M. D. to Tal Afar at the end of August 2015, as M. D. had managed to be transferred to a different battalion. As the

family had initially been assigned to an Uzbek battalion and was living in a village with a predominantly Uzbek population, M. D. transferred to a Turkish IS battalion after approximately 10 days. As a result of this transfer, M. D., the Accused and her son were, at the latest from mid-September 2015 onwards, provided with a house and garden by the organisation in a different settlement – located outside of Tal Afar – named Hassan Qoi, the exact location of which could not be established. This house had been occupied by Iraqi Shiite military personnel after being abandoned by its legal owners, who had fled or been displaced by approaching IS troops. IS took charge of the house and allocated it to M. D. and the Accused, who, upon occupying it, suspected the above circumstances to be likely and, at the very least, condoned them, as they were at the least indifferent to the fate of the Shiite population as enemies of IS and welcomed the forced displacement of Shiites by IS. They took joint possession of the house in order – as was the organisation’s intention – to consolidate IS’s territorial claim and make it difficult for opposing military forces to reclaim it. M. D. was deployed near to Tal Afar as a member of a Turkish battalion, as part of combat operations aimed at securing the border, while the Accused initially took care of the household. Unlike in Mosul, the Turkish battalion had set up an office in Hassan Qoi, where an emir distributed money in the form of a salary of no more than around USD 100.

As the Accused was unsatisfied with the house that had been provided, but primarily with the hostile attitude of the Turkish families, she asked for permission from M. D. at the earliest on 1 December 2015 to return to Mosul. It cannot be ruled out that the Accused left the house on or around 21 October 2015 to live with neighbouring families. However, she left some of her and M. D.’s possessions in the house they had been allocated, as she did not wish to fully abandon the house and assumed that their possessions would be safe there and all village residents – be they native Turkmens or members of the Turkish battalion – would respect their claim to the property they had been allocated.

M. D. returned to the village for a short time on 1 or 2 December 2015 after a 40-day deployment. Following a discussion with M. D., he allowed the Accused to return to Mosul, while M. D. – who had likely already been promoted to emir – would stay with the battalion in Tal Afar. The Accused packed a few possessions for herself and her son and was able to travel to Mosul with an ambulance transport on the day of M. D.’s return, as described above. She left other possessions behind in the house they had been allocated. The Accused took this action to pressurise M. D. into changing their circumstances or, at the very least, to find accommodation that was – in the Accused’s view – more appropriate.

In fact, during the Accused's stay in Mosul, M. D. informed her that he had found and cleared a new house for the family and that he would return from service on 19 December 2015. However, this ceased to be the case when M. D. was killed by a drone attack 1 or 2 days before the above date. A few days after the Accused had received word in Mosul of M. D.'s death on or around 20 December 2015, she returned to Tal Afar for around 2 days with the help of a member of M. D.'s battalion in order to collect her own and a few of M. D.'s possessions from the house that they had been allocated. The Accused then relinquished possession of the house that she and M. D. had been allocated in Hassan Qoi. During her stay in the village of Hassan Qoi following the death of M. D., the Accused received a one-off payment of USD 1 000 from IS, which was paid to her by the battalion's administrative unit.

IV. Beginning of departure efforts and departure from IS territory

(...)

V. Offences outside of the court's duty to consider the facts

(...)

Part 2: Assessment of evidence

A. Overview of testimonial conduct and content

The Accused made comprehensive, detailed statements during the main proceedings in relation to her personal history.

(...) She had only become aware of the fact that the house had been previously occupied by Shiites at a later date, after she and Y. S. had gone to stay with neighbours, leaving behind some of her own and M. D.'s possessions. She also had doubts as to the veracity of this information. (...) She had never occupied the house as she did not want it. She would have rather rented a house than live there. (...)

B. In relation to her personal circumstances

(...)

C. In relation to the civil war in Iraq and Syria, the terror organisation IS, and the intensity of the conflict in the Nineveh Governorate

(...)

The findings relating to the situation and intensity of the conflict in the Nineveh Governorate in 2015 are based on the coherent and plausible statements made by the judicial expert Dr K., who explained the region's geographical position to the Senate using a map.

(...)

D. In relation to the assessment of evidence relating to the radicalisation and alleged crimes

(...)

I. In relation to the radicalisation of the Accused prior to her departure

(...)

II. In relation to her departure to Turkey

(...)

III. In relation to her integration and membership by the end of August 2015

(...)

IV. In relation to her membership from September 2015 onwards, war crimes against property

(...) Contrary to the Accused's testimonial in the main proceedings, the Senate is convinced that the house occupied by the Accused was formerly the residence of Shiite military personnel, as is apparent from the Accused's hearing with federal police officers on 13 July 2018. At the beginning of the hearing, she had, on her own initiative, detailed her belief that Shiite military officers had previously lived in the village who had then fled or been forced to flee. At a later point in the hearing, in response to being asked to clarify how she – the Accused – felt having lived in a house previously occupied by members of the Shiite community who had been displaced, she stated that there were Christian families who had lived in the Islamic State as People of the Book while respecting their rights

and obligations. This would not have included Shiites. These people had all belonged to the military. Acts of violence were committed against Sunnis in Tal Afar in 2004 and 2007. Sunni families were displaced, Sunnis were tortured, and Sunni women were raped. She was not upset by this, as the Shiite families that fled before IS had been the families of generals and/or soldiers.

From this, the Senate was able to safely conclude that the house used by the Accused and M. D. had previously been the property of a family of Shiite military personnel. (...)

V. In relation to the beginning of departure efforts and the departure from IS territory

(...)

VI. In relation to offences outside of the court's duty to consider the facts

(...)

VII. In relation to mens rea

(...) The fact that, when occupying the house in Hassan Qoi in Tal Afar, the Accused had considered it at least possible that the house had previously belonged to Shiites who had already fled, is also apparent from the objective findings, the conclusions drawn therefrom, and the circumstances previously described above during the assessment of evidence in relation to Points I. to IV. The Accused was aware that, unlike the People of the Book (of which she only mentioned Christians), the Shiites could not live in the Islamic State and had to flee. She explained this to officials of the Federal Criminal Police Office on 13 July 2018. It is also clear from the Accused's ideology, which coincides with that of IS, and further statements made that she condoned the forced displacement of Shiites and the forced displacement, murder or enslavement of other minorities, such as the Yazidi. Considering the methods employed by IS, the Accused was aware that the houses that IS allocated to its fighters and their families had belonged to members of the Shiite or Yazidi religious community who had been displaced by IS.

Part 3: Legal analysis

I. It was found that, by occupying the house in Tal Afar in the period from mid-September 2015 to mid-December 2015, the Accused is guilty of a war crime against property pursuant to Section 9, paragraph 1 VStGB in coincidence with membership in a foreign terrorist organisation pursuant to Sections 129b, 129a, paragraph 1, sentence 1 StGB.

1. a) The applicability of the VStGB to the present case is clear from Section 1, paragraph 1 VStGB. Based on the findings, the Senate confirms the existence of an armed conflict in Iraq and in the Nineveh Governorate and, for the period of time in question, makes the assumption that, despite the intervention of an international coalition, the conflict remained a non-international one, as the international players' participation in the conflict occurred at the request and on behalf of Iraq.

In order to distinguish from mere civil unrest, tensions, riots, isolated acts of violence and similar acts, the armed confrontations must exceed a certain level of intensity and the non-governmental groups involved must show a minimum level of organisational structure. According to the Senate's findings, it was not just the Nineveh Governorate that saw fighting between the Iraqi Government and armed opposition groups, particularly IS, during 2015, but rather the country as a whole. As has been stated, the government and the international coalition used heavy weapons, such as aircraft and artillery, to support ground units from the Peshmerga and the Iraqi military. After making considerable territorial gains during 2014, IS constructed semi-governmental structures in the territory it occupied and was readily able to carry out large-scale, coordinated operations. IS also had training facilities for its fighters. The scope and intensity of the conflict have clearly crossed over into the territory of armed conflict, in light of the protracted armed confrontations that have been waged consistently across very substantial areas of Iraq.

b) The fact that the house was occupied from mid-September 2015 until it was abandoned for good on or around 20 December 2015 meets the requirements of appropriation. Appropriation entails deprivation of an item of intangible property against the will or without the consent of the rightful owner for a not insignificant period of time and does not require the perpetrator to take ownership of the property or at least have the intention of doing so (see MüKoStGB/Ambos, 3rd edition, Section 9 VStGB, paragraph 9; Werle/Jeßberger, *Völkerstrafrecht*, 4th edition, paragraph 1314). The appropriation of the house on the part of the Accused and M. D. was designed to permanently deprive the rightful owners of said house. Appropriation is also not dependent on whether the house was occupied by

the Accused on a consistent basis, as the act of clearing out her possessions following M. D.'s death was an outwardly visible sign that she had surrendered ownership. The rightful owners had only abandoned the house because they felt compelled to flee from IS troops. As regards the appropriation of the house on the part of the Accused and M. D., it is irrelevant that it had been previously annexed by IS and placed under its control, as the term 'appropriation' is not restricted to the initial seizure of the property against the will or without the consent of the rightful owner, meaning that subsequent acts of appropriation under Section 9, paragraph 1 VStGB are also covered (Federal Court of Justice [BGH], decision of 4 April 2019 – Ref. 12/19, NStZ-RR 2019, 229, 230).

c) The property, consisting of house and garden, was also the property of the opposing party to the conflict, which was subject to violence from that same party, namely IS; the latter is to be regarded as an opponent in relation to the civil population, particularly in relation to the Iraqi State and its military. The decisive factor in determining whether an item of property within the meaning of Section 9, paragraph 1 VStGB belongs to the 'opposing party' is whether the victims can, from a material perspective, be attributed to that party. In accordance with the findings, the conflict was characterised by efforts on the part of IS to bring as large an area as possible under its control, with the organisation taking targeted action against civilians and other individuals who did not unreservedly adhere to its ideology or subject themselves to its rule. The Shiite population, as members of an opposing religion whose only option was to be killed or convert, was hit particularly hard. The flight or forced displacement of those affected thus places them in opposition to IS.

d) The appropriation also affected property, to a considerable extent. When interpreting this feature, account must be taken of the fact that, in accordance with the explanatory memorandum, it is only petty lawsuits that should be excluded from the scope of Section 9, paragraph 1 VStGB (BT-Drucks., No 14/8524, page 31; see also MüKoStGB/Ambos, 3rd edition, Section 9 VStGB, paragraph 11). As part of the necessary evaluation, the circumstances of the individual case must be evaluated as a whole, namely, amongst other things, the value of the property affected and the severity of the consequences for the rightful owners. Specifically, consideration must be given here to the fact that a house generally has a high financial value and fulfils one of the basic needs of its rightful owners. The Senate also weighed up the fact that the house was not in good condition. However, contrary to what the Accused would have us believe, it was not an uninhabitable ruin. In

addition, the forced displacement of the rightful owners and/or their flight in fear of IS within the context of an armed conflict imparts a dimension of unjustness concerning the international community as a whole to the violation of property rights as such, but also to the intensification and perpetuation thereof by the Accused and M. D.

e) The appropriation had the functional connection to the armed conflict required to establish the offence, as it would not have been possible had the armed conflict not been taking place in the region. The definitive seizure of the private property of the forcibly displaced persons or refugees, and the further appropriation by the Accused and M. D., is not justified under international law nor is it necessitated by the demands of the armed conflict.

f) There are no apparent grounds for justification or mitigation for the Accused. For simple factual reasons, the Accused cannot cite coercion in relation to the appropriation of the house; it has neither been submitted nor is it apparent that the Accused was forced to take ownership of the house under duress or threat from M. D. or IS and that she only moved in through a desire to protect herself. Rather, it is apparent from the Accused's earlier hearing and the statements provided by the witness A. L. and the judicial expert Dr K. that IS did not force anyone to occupy its houses, rather it was a form of 'service' provided by IS that also formed part of the salary. In fact, there was the option of renting a property privately, which was also confirmed by the Accused and which option she exercised after M. D.'s death. The Accused was also not liable for any avoidable mistake of law under the first sentence of Section 17 StGB. Although the case-law relating to Section 9, paragraph 1 VStGB of relevance to the present case had not yet been established in 2015, the Accused was not in a position to assume that the appropriation of the property of the displaced persons or refugees who had left their home for fear of death could have been allowed.

2. (...)

Part 4: Pronouncement of legal consequences

1. (...) It had to be noted, to the detriment of the Accused, that the violation of Section 9 VStGB also constituted an act of membership under Sections 129a and 129b StGB. Finally, the recitals should state that IS is an exceptionally dangerous terrorist organisation that acts with extreme brutality against its opponents and unrelated third parties. The Accused's participation in those acts was also not circumstantial. According to the findings made, IS deemed it important to help its fighters, particularly those who had immigrated, find wives who would provide them with a home and care for them, and, in so doing, consolidate IS's control over occupied territories by appropriating property. (...)

2. (...)

Part 5: Supplementary decisions

(...)