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## Order

In relation to three counts of membership in a foreign terrorist organisation, including one count in coincidence with two counts of serious child abduction, one count of child abduction resulting in death, three counts of violating the duty of care or education and one count of a war crime against persons and a further count in coincidence with the exercising of actual control over weapons of war, the Accused is sentenced to a term of imprisonment of

**5 years and 3 months.**

The Accused shall bear the costs of the proceedings.

Provisions applied:

Section 129a, paragraph 1, number 1, Section 129b, paragraph 1, sentences 1 and 2, Section 171, Section 235, paragraph 2, number 1, paragraph 4, number 1, paragraph 5, Sections 52 and 53 of the German Penal Code [StGB], Section 8, paragraph 1, number 5, scenario 2 VStGB, Section 22a, paragraph 1, number 6 of the Weapons of War Control Act [KrWaffKontrG] in conjunction with Part B, Section VII, number 46 of the Weapons of War List.

## Reasons

- 1 Preliminary note**
- 2 At some time in mid-October 2015, the Accused, as a parent with a duty of care and education, travelled to Syria – to the territory of the terrorist organisation known as Islamic State (IS) – with her three children H..., H... and H... from her marriage to the witness S... H... T... against the will of said witness, with whom she held joint rights of custody, and, at the latest upon her arrival at an IS women's house in Raqqa in mid-October 2015, joined IS as a member. By permanently relocating to the territory of

that organisation, she prevented the witness T... from being able to exercise his right of custody. The three children were not just withdrawn from regular schooling, they were also exposed, on multiple occasions, to mortal danger resulting from the bombings carried out during the Syrian civil war, something which the Accused regarded as acceptable. Moreover, the Accused agreed to her – at that time – six- to eight-year-old son H... receiving paramilitary training at special IS training camps established for the purpose of training child soldiers and providing weapons instruction, with her son then participating in the Syrian civil war as an armed combatant. On 7 December 2018, H... T... was killed during a bomb attack targeting IS, which hit the house in Hajin in which the Accused and her family lived (Count 1).

3 Together with IS member A... K..., whom she had wed in an Islamic faith marriage in Syria, the Accused had, at an unspecified time during her stay in Raqqa between June 2016 and June 2017, taken material ownership of at least one hand grenade, to which she had access in her shared home, without the requisite authorisation under legislation on weapons of war (Count 2).

4 Moreover (Count 3), the Accused had, following her arrival in Syria and, in particular, up until her Islamic faith marriage to A... K..., repeatedly asked the witness T... to travel to Syria to join her and her children and to enlist in IS. The Accused also took part in a first-aid course and, at the beginning of 2017, a self-defence course provided by IS. Within IS, the Accused was a member of the Nusaybah Brigade military unit for female IS members for a period of time and, for an approximately two- or three-week period around March or April 2017, held the trusted position of driver transporting female fighters to their location of deployment and delivering supplies to the battalion.

5 As regards all three counts, the Accused accepted the fact that the aim pursued by the IS group, which was organised into a military hierarchy during the period of the offence and had more than three members, was that of slaughtering people as part of their fight against the Syrian and Iraqi Government and establishing an Islamic caliphate based on Sharia principles.

6 The Accused returned to Germany via Turkey on 4 April 2019, was arrested in S... that same day, and has been detained since the following day. She has been largely consistent in her submissions.

7 The judgment is not based on a Common Understanding of Delegated Acts in accordance with Section 257c of the German Code of Criminal Procedure [StPO].

## 8 **A. Findings relating to the Accused**

9 The Accused, a German national, was born on 13 March 1987 in O..., the daughter of J... B... S... and K...-H... J..., and where, with the exception of a brief stay in Tunisia, she lived until she travelled to Syria in autumn 2015. She has a younger brother. Her parents separated while she was at nursery school, and the Accused lived with her mother in O..., with visits to her father every 14 days. She was a Protestant and attended A...-F... school. From there, she transferred to E...-B... secondary school, where she met and befriended M... G... and was held back a grade. When this was again threatened at 8th grade, her father decided she should attend G... F... boarding school in H..., where she was able to

retake her examinations and move up to 9th grade. She completed her secondary school leaving certificate at this institution before then transferring to W...-B... comprehensive school in M..., where she again encountered M... G... who had, in the meantime, attended a different boarding school before dropping out following her conversion to Islam, and had been living with her boyfriend F... M... E...-K... following an Islamic faith marriage. Her friend's conversion triggered the Accused's fascination with Islam, as a result of which she stopped eating pork and accepted Islam as a source of ideology. She converted during 2005, adopted the Muslim name 'R...', and started to wear a headscarf, leading to conflict with her father, with whom the Accused lived at the time and whose apartment she then left. Having briefly stayed with her mother, a series of arguments caused her to move to live with the family of her former friend A..., whom she wed in an Islamic faith marriage. Upon reaching the age of 18 and completing 12th grade, the Accused dropped out of school without graduating. The Accused did not complete any vocational training, but rather took a job in a call centre. The Accused ended the Islamic faith marriage with her husband A... and returned to live with her father, where she considered removing her headscarf. However, due to her renewed contact with M... G... and F... E...-K..., and thus as a result of her encountering her second husband, the witness T..., she decided against this. The witness T..., who is also a devout Muslim, was first introduced to the Accused at the end of 2006, after he discovered her profile on a matrimonial website for Muslim women. Prior to this, the witness T... had separated from his girlfriend at the time, as she refused to wear a headscarf and did not wish to give up her western lifestyle.

- 10 Following a 3-month period during which they got to know each other, the Accused and the witness T... married in a civil ceremony in the second half of 2007. The marriage resulted in three children, namely the daughter H... born on ..., the son H... born on ... and deceased on ..., and the daughter H... born on ....

11 Following her arrival in Syria, the Accused wed IS member M... A... I..., originally from Somalia and also known as A... K..., who had lived in Kenya before his relocation to Syria, in an Islamic faith marriage during June 2016, and gave birth to his daughter K... J... on .... Following A... K...'s death, she wed Egyptian IS member H... M... a...-N... in an Islamic faith marriage during spring 2017.

12 As can be seen from an extract from the Federal Central Criminal Register dated 13 September 2019, the Accused has no previous convictions.

13 **B. Findings on the case**

14 **I. In relation to the Syrian civil war and the terrorist organisation IS**

15 **1. The civil war in Syria and in the Syrian-Iraqi border area**

- 16 The origins of the civil war in Syria can be traced back to the peaceful protests held from February 2011 onwards against President Bashar al-Assad in parts of the country with predominantly Sunni populations, which, having been suppressed by force by the government at the end of 2011, developed into an armed rebellion. The insurgents formed local organisations with no unified control structure, even after the proclamation of the opposition Free Syrian Army (FSA) in July. At the same time, the number of troops in the Syrian Army declined, following desertion from ratings and non-commissioned officers belonging to the Sunni population. Army units recruited from the Alevi population and the

paramilitary units of the intelligence services remained loyal to the government and fought on its side with newly recruited volunteer militia.

- 17 At the beginning of 2012, the rebellion already covered large areas of Syria and escalated to the point of civil war, during which government opponents sought to occupy the government's military bases in the east, north and centre of the country. During the summer of 2012, the rebels began their advance on the city of Aleppo in the north-east, which government troops were unable to halt until the end of 2012. The insurgent's camp continued to lack central leadership and was now also dominated by jihadist groups that were continuously gaining in strength. This is how, at the end of 2012, the 'Support Front for the People of Syria' (the Al-Nusra Front, in Arabic 'Jabhat an-Nusra li-Ahl ash-Sham') grew from a very small group to one of the most influential organisations in the whole of Syria.
- 18 During 2013, government troops succeeded in reclaiming areas in the centre of the country and the strategically important city of Al-Qusayr, securing supply routes and driving back insurgents, which, from August 2013 onwards, was also accomplished using chemical weapons. During the same period, the jihadist organisation 'Islamic State in Iraq' (ISI, previously also 'al-Qaida in Iraq') proclaimed the 'Islamic State in Iraq and Greater Syria' (ISIG, also known as 'Islamic State in Iraq and Syria' [ISIS], in Arabic 'ad-Daula al-Islamiya fi l-Iraq wa-sh-Sham') in April 2013 and quickly became a significant opponent of the Al-Nusra Front. The conflicts between the two al-Qaida-based organisations and also between ISIG and the other insurgent groups intensified from summer onwards. The – at that time – newly established 'Islamic Front', which was led by the Salafist group of Ahrar al-Sham (Free Men of Syria) together with FSA associations, mounted military attacks against ISIG from December 2013 onwards, the latter then withdrawing from north-west Syria but succeeding in securing positions in the east of the Aleppo Governorate and areas to the east thereof. Despite the apparent weakening of ISIG, at least in Syria, it was able to re-occupy new Syrian territories from as early as June 2014 onwards, after it had successfully reclaimed the second-largest Iraqi city of Mosul at the beginning of June 2014. ISIG units took up positions in other parts of western and north-western Iraq, just short of Baghdad, during that same period, while also attacking territories around Mosul under the rule of the Kurdish Regional Government. In light of his organisation's increasing influence, Abu Bakr al-Baghdadi, ISIG's leader, changed its name from ISIG to IS and declared himself caliph in a mosque in Mosul.
- 19 The events in Iraq also influenced, in turn, the situation in Syria, where IS combat units forced the Al-Nusra Front out of its last remaining positions in eastern Syria in June and July 2014, which propelled IS to the most powerful group in the Syrian insurgents' camp. IS then shifted its focus to the fight against the Kurds in northern and north-eastern Syria and attempted to enlarge its area of control by capturing the Kurdish-inhabited city of Ayn al-Arab (also known as Kobani in Kurdish). Prior to this, IS troops had resumed the fight against the Syrian Government for the first time since August 2013, capturing two important government positions in the Raqqa Governorate during the summer. These attacks by IS prompted the United States Government and its allied governments from Europe and the Arab world to begin deploying their air forces against the organisation from August 2014 onwards, initially just in Iraq. From mid-September onwards, these air

strikes were extended to Syria to prevent IS capturing Kobani. During January 2015, troops from the Kurdish Democratic Union Party (PYD), affiliated with the Kurdistan Workers' Party (PKK), succeeded in driving the jihadists out of Kobani and the surrounding area.

- 20 Following its defeat by IS, the Al-Nusrah Front refused to cooperate with the organisation any further and attempted, as did IS, to establish a secure territory using its positions in the Idlib Governorate, where, in October and November 2014, it succeeded in defeating units of the FSA, such as the Syrian Revolutionaries Front (Jabhat Thowar Suriya) and the Hazzm Movement. Due to its continued cooperation with Islamist organisations such as Ahrar al-Sham, military victories continued to amass in spring 2015, and, in March 2015, the Islamist units led by the Al-Nusrah Front and Ahrar al-Sham formed what was known as the Army of Conquest (Jaish al-Fatah), which successfully captured Idlib that same month. In order to prevent the insurgents' advance to the south or into Syria's coastal region, Russia decided to deploy its air force from the end of September 2015 against Jaish al-Fatah and the FSA, as a result of which the Syrian Army was able to reclaim its former positions in the centre and north of the country.
- 21 Likewise, the air operations carried out by the United States and its allies kept IS in check during the course of 2015. The coalition's cooperation with PYD troops also facilitated the capture of the border post of Tell Abyad in June 2015, which was of significance to IS. Despite these setbacks, IS succeeded in capturing the provincial capital of Ramadi in Iraq and the desert city of Palmyra in Syria. It was only after this that the Iraq Army was able to gain the upper hand against IS and reclaim Tikrit in March 2015 and Ramadi by January 2016. The air operations carried out against IS by the United States, its allies and Russia between autumn 2015 and summer/autumn 2017 caused IS's military situation to deteriorate significantly. During July 2017, troops of the Iraqi Government and its allies succeeded in capturing the IS capital Mosul after a 9-month struggle, while the Syrian Kurds, with support from the United States, were able to liberate Raqqa from IS in October 2017. As a result of this military defensive, IS lost the majority of the symbols of its 'statehood' and its fighters suffered significant losses, while, at the same time, IS supporters and their families hastily fled the former's territory. The period from autumn 2017 to March 2019 saw no improvement in IS's situation, the latter using its last remaining troops, most of whom were fighting fiercely in the Middle Euphrates region and to the south-east of Deir ez-Zor, to focus on delaying its capitulation. Following another withdrawal to the Iraqi border, IS's last stronghold in Baghuz was successfully captured in March 2019 and, since then, IS has once again been exclusively operating underground (primarily in Iraq).
- 22 **2. IS**
- 23 a) General structure, organisation and methodology
- 24 IS emerged from al-Qaida in Iraq, which was established by the Jordanian jihadist al-Zarqawi in 2000 and operated as ISI from October 2006 onwards. After the death of its founder in June 2006, the de facto leadership passed on to Egyptian national A... Ayyub al-Masri, while A... Umar al-Baghdadi was promoted to emir. In accordance with ISI's proclamation, the organisation's main aim was to gain territorial control of Iraq and establish a 'state' structure. However, in view of the defensive against the American

military and Shiite militia ongoing since 2007, this could not initially be achieved. Despite its relative weakness, IS succeeded in surviving until the withdrawal of US troops from Iraq in 2011, from which point it experienced renewed strength under the interim leadership of Ibrahim Awad al-Badri al-Samarai, also known as A... Bakr al-Baghdadi. IS sent some of its supporters to Syria as early as during summer 2011, in order to evaluate the possibility of participating in the insurgency taking place there. It established the Al-Nusra Front under the leadership of A... Muhammad al-Jaulani. The proclamation made by ISIG in spring 2013 was intended to ensure enhanced control of the Al-Nusra Front, as, from the former's point of view, both the Al-Nusra Front and ISI had been merged into ISIG under al-Baghdadi's leadership. Jaulani refused to submit the Al-Nusra Front to al-Baghdadi's leadership, turning instead to the leader of al-Qaida, Aiman az-Zawahiri, who made the decision in May 2013 that both organisations should operate independently in their respective countries of origin. This decision was rejected by al-Baghdadi, prompting az-Zawahiri to expel ISIG from al-Qaida in January 2014. Prior to IS's declaration and the proclamation of a caliph in June 2014, al-Baghdadi had been appointed a 'Commander of the Faithful' (Amir al-Mu'minin) by his followers.

- 25 A... Bakr al-Baghdadi stood unopposed at the head of the organisation's hierarchy and met any resistance with violence, for example through purges of internal opponents. 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 IS was assigned a commander who reported to 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.
- 26 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.
- 27 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 ISIG. 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.
- 28 From 2013 to 2015, the organisation was financed through oil sales, local taxes and protection money, spoils of war, ransom money, and foreign donations.
- 29 Paralleling the logo of the Iraqi al-Qaida group, IS, like ISIG before it, used the identifying mark comprised of the Arabic text 'There is no god but Allah' in white Kufic script, with the Seal of Muhammad underneath in white, which features the Arabic 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.

- 30 From 2012 onwards, al-Baghdadi began to publicly implement his short-term strategy. Following the 'Breaking the Walls' campaign declared on 21 July 2012, which ran until July 2013 and involved hundreds of car bomb attacks and eight attacks on Iraqi prisons, al-Baghdadi announced a new campaign entitled 'Soldiers' Harvest' for the period from July 2013 to June 2014, during which at least several hundred Iraqi police officers and soldiers were killed, primarily in the Mosul area.
- 31 IS has been carrying out attacks on the western world, particularly Europe, since 2014. The European attacks included those carried out on 24 May 2014 (shooting at the Jewish Museum in Brussels, resulting in four deaths), 26 June 2015 (beheading of the head of a logistics company in Lyon), 13 November 2015 (armed raids and suicide bombings at the Stade de France, a concert and restaurants in Paris, resulting in 130 deaths), 22 March 2016 (attacks on the airport and metro system in Brussels, resulting in 32 deaths), 13 June 2016 (stabbing of a police officer and his partner in Magnanville/France, resulting in two deaths), 14 July 2016 (attack involving a truck on the Promenade des Anglais in Nice, resulting in 84 deaths), 19 December 2016 (attack involving a truck on a Christmas market in Berlin, resulting in 12 deaths), 20 April 2017 (armed raid on police officers at the Champs-Élysées, resulting in one death), 22 May 2017 (bombing at a pop concert in Manchester, resulting in 22 deaths), 17 August 2017 (attack involving a truck in Barcelona, resulting in 15 deaths) and 18 August 2017 (attack involving a truck in Cambrils/Spain, resulting in one death).
- 32 b) Military organisation
- 33 The capture of larger territories in summer 2014 forced IS to restructure its military units. From 2014 or 2015 onwards, IS troops were organised into two 'army groups': one known as the Caliphate Army (in Arabic: Jaish al-Khalifa) and the other known as the Armies of the Provinces (in Arabic: Jaish al-Wilaya or Juyush al-Wilayat). The Caliphate Army was deployed throughout IS territory in Syria and Iraq and also in more remote provinces. The deployment of each provincial army was – in theory, at least – restricted to its respective territory. These so-called 'army groups' were divided into combat units of varying strength called 'katiba', or battalions, the complements of which were mostly in the three-figure range. These battalions consisted, in turn, of companies (in Arabic: sariya) consisting of around 10 to 15 fighters under the command of an emir and his deputy. There was a specialised battalion for female IS members named Nusaybah Brigade. This battalion, headquartered in Raqqa, trained women as armed fighters and nurses. The battalion also offered childcare and provided IS members with food.
- 34 IS required all of its male members to complete military training at special training camps (in Arabic: mu'askar). All of these camps were located in IS-occupied territories. During 2014 and 2015, this training generally lasted approximately 4 weeks and comprised sports, weapon expertise and target practice using AK-47 assault rifles. Since the beginning of 2015, the excessive combat losses suffered by IS resulted in this training period being reduced. Following completion of basic training, IS recruits were assigned to

a battalion and equipped with their own AK-47, including ammunition, as well as hand grenades and military clothing where this was deemed necessary. Temporary passes were also issued, entitling the holder to stay in a specific part of IS territory.

35 During the period of the offence, IS systematically recruited children and young people in a targeted manner in captured territories in order to train them in the organisation's camps. This was in line with the organisation's new self-image, which, since the declaration of the caliphate, had changed from that of a mere armed group to a state that would attract future generations of fighters dubbed 'mujahideen' to its political system. This practice was, in turn, reflected in the organisation's approach to public propaganda since the summer of 2014, which no longer primarily sought to recruit fighters, but instead now aimed to attract entire families, including women and children, to live in the newly established 'state'. This was accompanied by the message that the organisation would educate and train these children in the spirit of IS and mould young boys into fighters. Whereas young boys would be trained alongside adult recruits from the age of 15 or 16, the organisation generally had special facilities for children between the ages of around six or seven and approximately 14, which were created especially for these 'Cubs of the Caliphate' (in Arabic: ashbal al kalifah) and were generally referred to as 'Ashbal' for short. Neither the parents nor the children were under any obligation to participate in training to become a child soldier or to grant authorisation for said training, unless they were the children of IS opponents or IS victims. Children generally underwent training over a period of 3 weeks before temporarily returning home. These camps provided children with ideological instruction in line with the organisation's beliefs as part of a scheduled routine and with tuition on the rules of jihadist warfare, for example, as well as familiarising them with the use of extreme violence, such as beheadings. They were shown videos of executions. The children underwent physical training and had to complete military drills, such as fast crawling on the ground under low arches or swinging from poles. They learnt and practised close combat techniques and handled firearms and explosive belts. They were taught military tactics and completed tactical exercises themselves or carried out sentry duty. The training did not follow strict age parameters. Depending on their physical and intellectual capabilities, children as young as 6 years old were introduced to as much of the teaching content listed above as possible. Children aged 6 or 8 attended the same training camps as the older children, who then acted as role models. In individual cases, the children who attended these camps, some of whom were as young as 6 years old, were exposed to executions, including beheadings. Some Yazidi children were also groomed and used to commit suicide attacks. Children aged between 8 and 10 were also used during regular combat, for example as supporters dubbed 'munasir', for the purpose of running errands and providing other support services, distributing food or – depending on their abilities – even standing watch. Later, the munasir would be able to swear an oath of allegiance and become mujahideen.

36 **II. The Accused's involvement in the IS organisation and criminal acts during the journey to and following arrival in Syria**

37 **1. The facts of the case**

38 After the witness T... had, prior to their civil marriage, been forced to promise the Accused that he would emigrate with her to an Islamic country and that any children they had would not be made to attend school in Germany, against his own views, he proceeded to



instruct the Accused in Islamic theology and, together with his mother, housekeeping. While they were married, the Accused thus ran the shared household and cared for the three children resulting from the marriage. Together with the witness T..., the Accused visited one of his friends T... who delivered sermons at a B... mosque, which is where the Accused first encountered women wearing burkas. Having been told that this was the proper Islamic clothing for a woman, the Accused also began to dress accordingly from this point on. The witness T... became the co-founder of an Arabic-African cultural association, where he also began to give lectures. In this respect, the Accused gradually began to follow an increasingly strict interpretation of Islam, the severity of which soon surpassed the views of her husband. As a result of the growing differences in their religious beliefs and differing views as regards education, disputes between the Accused and the witness T... subsequently became more and more common, with the latter also demonstrating authoritarian behaviour towards the Accused and subjecting her to domestic A...se in the form of physical harm, once even striking her in the face. Due to her religious convictions, the Accused believed that a wife should be submissive towards her husband and not answer back. When the Accused behaved in this manner, her home life was peaceful. The witness T... always played the loving father when it came to his children. In their household, the spouses prepared meals in accordance with 'halal' and observed gender segregation. Listening to music was also prohibited, and birthdays were not celebrated. Despite her – by now – Salafist beliefs, the Accused adopted an anti-authoritarian parenting style towards her children. This style was not, however, endorsed by her husband, whose faith was actually moving further and further away from the Salafist belief spectrum. In addition to her role as a housewife, the Accused, who is a talented illustrator, published a children's book titled 'Unsere schönen islamischen Feiertage' [Our beautiful Islamic holidays] in 2014, together with her friend M... G... and a number of other women. This was an attempt on the part of the Accused to continue to contribute to the family's income even after the planned departure to T..., which is where the witness T...'s family originated from and, in some cases, still resided. She also considered opening a pony farm for tourists in T.... After the witness T... repeatedly used his work as a reason to delay their emigration, something which he did not, in reality, want, the Accused saw no other option than to allow her daughter H... to attend school in Germany in 2014, contrary to her actual intentions. During this period, M... G... and F... E...-K... began to tell the Accused and her husband stories about IS, in an attempt to convince them that the caliphate was legitimate and that all Muslims had a duty to travel there. At the behest of M... G..., the Accused watched several episodes of an approximately 10- to 15-episode series on 'YouTube' that purported to clarify alleged misconceptions about the IS caliphate. The witness T..., who had always rejected IS and Islamist violence, attempted to counteract this using reports of execution videos. The Accused was sceptical of German television reports on IS, which she watched at her mother's house. After some initial unease about specific aspects of IS, the Accused, following encouragement from a women's group run by her friend M... G... and having listened to lectures delivered by A... O... a...-G..., proceeded to accept the work being done by IS in its entirety, and endorsed its approach. As a result of their firm belief in the righteousness of IS, M... G... and F... E...-K... travelled to IS-occupied territory in Syria and joined the organisation shortly before the end of 2014. Prior to that departure, the Accused and the witness T... had in-depth discussions about IS, an organisation which held a unique appeal to the Accused due to her wish to be able to live her life according to the strictest requirements of Sharia. Thus, the Accused suggested to the witness T...

that they visit Syria, together with their children, to see IS's work for themselves. However, the witness T... rejected her request and forbade her from having any further contact with M... G.... The Accused was also told to stop researching IS on the internet, as the witness T... feared that this could possibly lead to problems. Following IS's declaration of the so-called caliphate in June 2014, the Accused asked the witness T..., whether they, as Muslims, now had a duty to travel to the caliphate, which the witness T... once again rejected as incorrect. With the help of a theology student from T..., the Accused then took on the project of designing a book on the Islamic faith for use in German primary schools, entitled 'Wir glauben an Allah' [We believe in Allah], which she almost completed. Due to her troubled marriage, the Accused sought help at the beginning of 2015 from a friend of the witness T... named A... J... (real name: M... B... S...), who operated the A...-T... publishing house and gave Islamic lectures. A... J..., who was recognised as an authority in this respect, spoke with the spouses, following which the witness T... stopped his use of violence against the Accused. When A... J... and the Accused, who had been tasked with painting 50 pictures for the A...-T... publishing house, later had a difference of opinion as to whether the depiction of living beings was forbidden, causing the Accused to object to the publication of her pictures, the spouses fought to such an extent that they separated in May or June 2015. At the latest during July 2015, the Accused and her children moved out of their home at H...straße 38 in O..., initially to her mother's house at ... in O.... There, to the surprise of both the Accused and her mother, they also encountered E... G..., the mother of M... G..., who had sought shelter at the house of a friend, the witness S..., before her planned onward journey to B.... The witness had agreed to this, not suspecting that E... G... had since become radicalised and was actually planning to travel to IS to meet her daughter. A number of the Accused's other friends and acquaintances, for example M... R... M... and her husband Y... had also made the journey in the meantime, which her friend M... G... once again tried to encourage her to do. The Accused once again persuaded the witness T..., with whom she had reconciled, to promise to emigrate with her to T..., and, to this end, unenrolled her daughter H... from school just before the 2015 sU...er break. Pending the departure to T..., the Accused rented an apartment for herself and her children at ... in O... on 15 September 2015, which she redecorated together with the witness T... and moved into in the last week of September. Following a request from the school authority, the Accused also re-enrolled her daughter H... in school. During a family holiday to visit the witness T...'s sister, the spouses had a fierce row as the result of the former's belief that the Accused was being insubordinate, during which the witness T... struck the Accused. Upon returning to their apartment, the Accused confronted the witness T... about that event and their emigration to T..., which had, in her view, already been delayed for far too long. The Accused's dream of married life in a predominantly Islamic country, in which she would no longer experience hostility as a result of her strict Islamic clothing, as she did in Germany, collapsed once the witness T... told her that he no longer wished to emigrate to T....

- 39 It was at this point at the latest that the Accused resolved to travel to Syria – most likely to the Idlib region – with their three children. As the Accused was aware that the witness T... was violently opposed to travelling to Syria in general, and more specifically to joining IS, she deliberately decided to start her journey on a date in October 2015 when the witness T... would be in R... for business for 3 weeks, allowing her to leave Germany with their children and travel to Syria unnoticed. In preparation for her journey, the Accused put her

car, a VW Polo, up for sale on 30 September 2015. Ms N... M... contacted the Accused and they agreed upon a purchase price of EUR 300 and the details of the handover. In particular, the Accused was promised that Ms M... would drive her to the airport in A.... on 10 October 2015. As reimbursement for Ms M...’s petrol consumption, the Accused requested EUR 100 from E... G... as a loan. Following a discussion with her daughter Maya, E... G... initially refused to lend the money to the Accused, as her daughter indicated that monetary support should only be provided to those willing to travel to the caliphate. Nevertheless, E... G... agreed to give the money to the Accused as a gift, after the latter promised that she would telephone M... G... upon her arrival in Turkey.

40 **2. Offences**

41 a) (Count 1)

42 On 10 October 2015, as agreed, Ms M... collected the Accused and her children, plus luggage, from O... and drove them to the airport in A.... It was at this point that the three children, H..., H... and H... T... were removed from the witness T...’s influence in accordance with his right of custody, a fact of which the Accused was aware. On that same day, the Accused, together with her three children, travelled to Turkey via Antalya or Ankara airport.

43 In order to conceal her departure, the Accused told the witness S... and the witness T... by telephone that she was in bed with an illness. A few days later on 10 October 2015, the witness T... discovered that the witness S... had received a farewell letter from his daughter, postmarked in A.... In another farewell letter, postmarked in A... on 12 October 2015, the Accused wrote that she was en route to the Idlib region with the children, but was not travelling to ‘ISIS’. From Ankara or Antalya, the Accused travelled by bus to Gaziantep and, during the journey, had an in-depth telephone call with M... G.... It was during this conversation, at the latest, that she decided to travel on to Raqqa and thus to the domain of IS, and discussed with her friend ways that she could do this. On 14 October 2015, she and her children crossed the Turkish-Syrian border close to the city of Kilis and, following the instructions provided by M... G..., boarded a minivan in Kilis that brought them to the border, which they crossed on foot, before then boarding another minivan that was waiting on the Syrian side to take them onwards. Prior to her arrival in Raqqa, she was taken to an IS women’s house at a different location, where the Accused had to hand over the passports of all the family members, as well as her mobile telephone and tablet, and wait. Following her arrival in IS territory, the Accused added the kunya ‘U... H... A...-A...’ to her name ‘R...’. The next day, the journey continued by bus to Raqqa, where the Accused and her children were once again placed in a women’s house from mid-October 2015 onwards. The house had five to six rooms and a large hall. The facility housed a number of women and children and was, in the Accused’s view, dirty and unpleasant. The women’s house was surrounded by a wall and supervised by two guards who controlled access. Residents were responsible, on rotation, for preparing the meals that were offered twice a day by IS. After the Accused had been at the shelter for around 2 weeks, she heard blasts from bombings in Raqqa for the first time, which did not, however, hit the women’s house itself. The blasts did, however, shake the windows of the women’s house, which shocked the Accused. The frequent bombings that occurred throughout the Accused’s stay repeatedly exposed her children to mortal danger, which the Accused not only anticipated as early as upon her departure from Germany but also

regarded as acceptable in order to achieve her aim of living in Syria. The impact of the first blast prompted the Accused to demand the return of her family's passports from the head of the women's house, an English-speaking woman named U... S... M..., also known as M.... U... S... responded that this was not possible and the Accused must wait for her husband. She also explained that no one was permitted to leave the caliphate, as this would be regarded as them turning their back on Islam. U... S... then began to provide the Accused with daily religious instruction in order to straighten out her beliefs. The Accused was allowed to visit an internet café in order to make contact with her husband. Having told the witness T... where she was staying, the Accused also contacted M... G..., who lived nearby and appeared at the internet café after just a few minutes. Although the witness T... refused to travel to Syria, he did, in order to help the Accused leave the women's house, send F... E...-K..., the husband of M... G..., whom she had wed in an Islamic faith marriage, a voice message intended for the Wāli in Raqqa, i.e. the city's administrative officials, in which he transferred responsibility for his wife to E...-K.... After a few days, F... E...-K... arranged for the Accused to leave the women's house around mid-November 2015 and relocate with her children to her friend M.. G...'s spacious residence. The family's passports were not returned to the Accused and E...-K... also had her hand over her personal identity card, driver's licence and other cards. Her mobile telephone was, however, returned to her and she was therefore allowed to use the household WLAN. Her friend M... G... warned the Accused, who was not meant to know, that IS was allegedly monitoring the mobile telephone. The mobile telephone allowed the Accused to send an email to the witness T... once again proposing that they emigrate to T... and asking him to travel to Syria. Raqqa was once again bombed during the Accused's stay in E...-K...'s house, with the house of their immediate neighbour being hit in January or February 2016. Following the failure of her marriage, which had resulted in her leaving the women's house, U... S... also turned to M... G.... Having previously been a teacher in Egypt, she started to provide Arabic and Quran lessons for the children living in the house. The Accused was also made to participate in these lessons as U... S... had noted some gaps in her basic beliefs, leading to a series of discussions. The Accused thus did not send her children to school, instead leaving them to be taught Arabic and instructed in the religious ideology of IS at the home of G... and E...-K....

- 44 Discussions and disputes also arose between the Accused and E... G..., who had since arrived at her daughter's house and who the Accused criticised for having glossed over the war in Syria to her. Upon noticing this, the eldest daughter H... told the witness T... by telephone that the family wished to return home. Following this, the mobile telephone was confiscated from H... and E... G... made it clear to the Accused that a return to Germany was out of the question and should not be mentioned in conversation with the witness T.... E... G... regarded the witness T... as an apostate and no longer even a Muslim, and believed that the Accused must separate from him. To this end, the G... family and E...-K... enlisted the services of a blind Somali Islamic scholar named Tal Mular. He ruled that the witness T...'s failure to travel to the caliphate and his attitude were incompatible with Islam and that it would be better if the Accused separated from or divorced him. However, the Accused endeavoured to delay this, as she did not actually wish to separate from the father of her children. She still held out hope that the witness T... would arrive, it being her wish at that time, i.e. the first half of 2016, for the two to live together in the caliphate, rather than T..., as she believed it was every Muslim's duty to live there.

- 45 By the time they had been in Syria for around 4 months, the Accused and her three children had seen at least one execution. She told the witness T..., with whom she had since spoken by telephone and who sought to convince her to leave with the children, that she belonged there and that he was too soft. On another occasion in 2016, the 6- or 7-year-old H... T... witnessed a presumed thief in Raqqa having one of his hands cut off as punishment. The Accused explained to him that this was right, as dictated under Sharia.
- 46 Disputes between the Accused and E... G... became increasingly common due to the former's anti-authoritarian views on education, and particularly because she would only rebuke H... when he would sometimes pull the girls' hair or push them, but would not punish him any further. E... G... then informed the Applicant that her son-in-law, F... E...-K..., had decided that it was not good for H... to only be associating with women and girls and that he should be sent to an Ashbal training camp. When the Accused stated her unwillingness to do this, E... G... replied that, as she was living in E...-K...'s house, she must abide by his rules and that H... would grow up to be a 'wimp' if things continued as they were, so he had to go. If she did not like this, the Accused was told she should return to the women's house. The Accused was even less in favour of this, as she was of the belief that H... would have had to leave the women's house at the age of seven and begin Ashbal training anyway. She thus withdrew her opposition to the training camp and gave her explicit consent to H... undergoing Ashbal training, even though she was afraid that once H... had 'completed' his training he would then become available to IS as a fighter from the age of nine. Accordingly, E...-K... appeared a few days later with a backpack and two combat uniforms for H... in preparation for his departure to the Ashbal camp. On the agreed-upon date, E... G... woke the family and E...-K... came to collect H..., whom the Accused had helped to get ready, in order to take him to the Ashbal camp, the Accused having spoken to him about it in advance. Even though H... wasn't afraid, she told him that he should simply wet the bed if he could not cope at the camp. E...-K... brought H... back after 3 days at the training camp, and H... told his mother that the emir had decided he was still too small.
- 47 During this time, the Accused attended an English-speaking Sharia course together with E... G..., remaining in contact with the witness T... the entire time. The Accused also did not prevent the children from contacting the witness T..., as it was still her wish for him to travel to Syria. At the beginning, she was unaware that men who travelled to the IS caliphate must attend a 2- or 3-month military and religious training camp (mu'askar). Although E... G... advised her not to disclose this requirement to the witness T... once she became aware of it, the Accused did not wish to leave her husband in the dark, as she knew that he was critical of IS and might find himself in such a camp and could possibly be executed there. When the Accused learnt from a group of German women in Raqqa that the brother of one of the participants had been able to avoid the training camp by contacting a relative of A... W... in Germany, the Accused asked the witness T... to contact A... W... in order to be able to travel to the IS caliphate without having to attend the training camp. As the witness T... was nevertheless still unwilling to travel to Syria, E... G... and F... E...-K... placed increased pressure on the Accused to separate from the witness T.... To this end, they provided the Accused with supposed evidence as to why the witness T... was no longer a Muslim under Islamic law, but rather an apostate. As the Accused found it difficult to accept this, she travelled to the local court with U... S... in

order to state her case. The judge told her that he would be unable to establish witness T...’s lack of belief in or apostasy from Islam without speaking with him, and the Accused should wait a further 6 months. Incensed by the Accused’s act of self-authority, E...-K... travelled to the court with the Accused the following day in order to speak with the judge. The latter pointed out two additional grounds for divorce, namely the woman’s need to be with another man and the lack of financial support. Following E...-K...’s request to select one of the two grounds for divorce, the Accused opted for the lack of financial support and was then granted a divorce under Islamic law by the judge. The Accused categorically refused a marriage proposal from E...-K..., which was suggested to her via M... G.... When, during a henna night held by U... K..., the second wife of A... K..., the Accused was asked if she would like to marry the former’s husband as another co-wife, she initially refused, in the hope that the witness T... might still arrive in Syria. However, once the waiting period for a new marriage had passed, E... G... told the Accused that she could no longer be supported by E...-K... and must re-marry or return to the women’s house, especially since E...-K... needed the rooms occupied by the Accused for his marriage to a second wife. Following this, the Accused decided to wed IS member A... K..., a former IS fighter originally from Somalia who had arrived in Syria from Kenya, in an Islamic faith marriage in June 2016. Her new husband had been shot in the hip during a combat mission for IS and now carried out logistical assignments for the organisation. Her other suitors, A... T... a...-A... and A... H... a...-A..., were active fighters, which is why she decided against marrying them.

- 48 The Accused left M... G... and F... E...-K...’s house and moved with her new husband and her three children to a second-floor, three-room apartment in an apartment building close to a mosque in Raqqa, for which her husband paid a monthly rent of USD 50. At the latest from this date, the Accused began to receive approximately USD 100 each month from IS to cover their living expenses. She also received an identity document from IS and pledged her allegiance to the organisation before A... K..., the latter being an IS member authorised to receive pledges. The Accused’s children took to their new ‘stepfather’ well. He took them on swimming trips to the Euphrates river, for example. The children were sent to a school that taught boys in the morning and girls in the afternoon.
- 49 Following school one day, the Accused’s son told her that his friends would be attending the Ashbal camp and he wished to attend too, as he was now old enough. When the Accused denied his request, he turned to A... K..., who, due to his strong belief in IS, was very enthusiastic about the idea. As a newly married wife, the Accused did not dare to oppose A... K..., although she did tell him that she ‘did not like’ the idea of H... receiving further training as H... was still too small and would, for that reason, be sent back after a couple of months. A... K... then told the Accused that H... could seek out a friend of his, A... S... A..., who was a trainer and could thus keep an eye on him and look out for him. The Accused did not dispute the matter any further, and so H... was taken away and accompanied A... S... to the Ashbal training camp in Hamad. H... was 7 years old at this time in sU...er 2016. At the training camp, he underwent physical training and weapons instruction, was trained to perform sentry duty, and shot a gun. The Accused lost her appetite and struggled to sleep after being separated from her son. This was noted by A... K... after 5 to 10 days and he asked the Accused to explain, after which he contacted A... S... and arranged for H...’s return to the household, as A... S... informed him that H... was unable to read and write Arabic, which was crucial for religious schooling. H..., who,

following his return from the training camp, stated that he had enjoyed his time there, was then sent back to a normal school.

- 50 Shortly after H...’s return from the Ashbal training camp, the uncle of A... K..., A... A... S..., who worked for the IS army, appeared on his nephew’s doorstep, informing him that he needed H... and must take him immediately. After being questioned by the Accused, he explained that IS’s television station, the al-Hayat Media Center, needed a young German boy for an execution video. The Accused, who did not wish her son to be used in this way, lied to A... A..., telling him that H... was not at home. Although the Accused condoned all of IS’s actions, regarding them as just and consistent with Islamic law, she did not endorse H...’s active involvement in an execution. The Accused’s continued belief in IS’s caliphate also began to waver, as her new setting – in contrast to the circle of people around M... G..., all of whom believed strongly in IS – allowed her to see, for the first time, that the Syrians in her neighbourhood showed little enthusiasm for IS’s occupation of their city. Against this backdrop, the Accused searched for a way to escape her living situation, which she viewed as too dangerous, and travel to Turkey. She took this request to the English-speaking Syrians in her neighbourhood and was referred to a certain A... D.... The Accused travelled there with her son H... and spoke to an elderly Syrian woman, who asked for money and enquired as to the warrior name of the Accused’s husband under Islamic law. Due to a lack of available funds, the Accused referred the request for money to her mother, providing her telephone number. During another meeting, the aforementioned woman told the Accused that she had received the money from her mother and asked for the Accused’s address. A few days later, the Accused was woken by A... K..., who shouted at her, asking why she wanted to leave. Officers of the religious police (hisbah) waited at the front door, who handed A... K... an IS court letter and took the Accused away. At the hisbah offices, A... K... told the Accused that she had had a judgment passed against her for trying to leave IS. Under that judgment, the Accused was sentenced to 30 lashes, which could also be carried out by A... K... unless he wished for a harsher punishment and divorce from the Accused. If A... K... believed that the Accused were an apostate, she would be executed. The Accused truthfully told A... K... that she had nothing against IS, but was instead afraid of the bombs. After A... K... had spoken to the hisbah representatives, the Accused was judged to be nothing more than disobedient towards IS, and the corporal punishment imposed on the Accused, who was shackled for this purpose, was carried out by a group of veiled women. The Accused was also told that she would be executed and her children enslaved if she were to flee as an apostate. When, in response, the Accused told the accent-free, German-speaking hisbah representative that she was sick, she was scalded with hot water and then sent home to A... K.... A... K... enrolled the Accused in a German-language Sharia course in order to reinforce her beliefs. It was while attending this course that the Accused first began to doubt whether IS was acting in compliance with Sharia, although this did not yet result in her abandoning the IS ideology.
- 51 Following a series of bombings in Raqqa at the end of 2016, A... K... told the Accused that he wished to take the family to Turkey, where he had a friend – also a member of IS – with whom they could stay until the area was stable once more and they could return. The day before their departure from Raqqa, for which A... K... had obtained appropriate authorisation from IS, the Accused was to pack a small backpack for the journey. The journey first led to Tabqa, near Raqqa, where the Accused and her children were given

shelter in the apartment of a friend of A... K... and told to wait. After half a day, it became clear that smuggling the family into Turkey was no longer an option and A... K..., himself stationed in Raqqa, wanted to bring the family to a quieter city within IS-occupied territory. The family first returned to Raqqa, where A... K... was now undergoing training as a sniper. During January 2017, the daughter, H..., developed Guillain-Barré syndrome and required hospital treatment. The Accused gave birth to A... K...’s daughter, K... J..., on ....

- 52 Due to the ever increasing frequency of the air strikes, A... K... sent the Accused and the four children away from Raqqa to stay with his uncle, A... A..., in Mayadin in June 2017. A... K...’s wives and children were first sent to the women’s house run by U... W... until A... A... returned and arranged a house for them, where the Accused lived with her children, while U... K... stayed with another family. The Accused shared the house with U... and A... W... and with A... A... and his wife. A... A... turned out to be very strict and ordered H... to return to an Ashbal camp. The Accused told A... A...’s wife that H... should be allowed to improve his Arabic first. A... A... disagreed, and H... was sent to the local Ashbal camp, under the leadership of A... R... I..., before returning after 2 or 3 weeks. Due to increasing instability in the area, the Accused was finally able to convince A... A...’s wife that H... should not return to the camp but could instead attend the local school, to ensure that he could be reached nearby should it become necessary for the family to flee. H... and H... could also attend the girls’ school. At H...’s school, the Accused then met U... A... A..., whom, she soon learned, took a critical view of IS. When U... A... A... told the Accused that she wished to return to Germany, the Accused – who had not turned her back on IS, but rather wished to escape the dangerous living conditions in Syria – asked whether she and her children could go with her. After speaking with her husband, U... A... A... told the Accused that they could go with her, but it would cost USD 7 000, which the Accused did not, of course, have. Neither the Accused’s parents nor the witness T... were able to send her that amount.
- 53 A... A...’s wider circle, including the Accused and her children, then fled along the front to areas that were still occupied by IS. The Accused and her children thus left Mayadin, where they had lived from July 2017 to October 2017, and arrived in the city of Al-Bukamal, located approximately 80 km southeast of Mayadin, where they stayed from November 2017 to January 2018. During her stay in Al-Bukamal, the Accused discovered that A... K... had been killed. He had been sent to a hospital after being injured, and was killed during a bomb attack on the hospital. The Accused’s group left Al-Bukamal and travelled to a place in Syria called Al-Ramadi, where she lived in a mosque for around a month during January 2018. After this, she spent a number of days in the Syrian city of Hajin, located between Al-Bukamal and Mayadin, before spending 1 or 2 months around January/February 2018 in Gharanidsch, where she received a one-off payment of USD 1 000 from IS’s widows’ office to cover her living expenses. In Gharanidsch, the Accused separated from A... A...’s group, citing the fact that she had caught jaundice, after A... A... told her that he wished to marry her – at that time – 10-year-old daughter H.... She then joined another group of which M... G... was also a member. M... G... told the Accused that she had divorced F... E...-K... under Islamic law, left her mother, and married A... Y... a...-M... After another brief stay in Hajin in March 2018, the Accused spent around 2 months from April 2018 onwards in a city called Kishma. During that time, her youngest daughter became gravely ill and required hospital treatment. The Accused attempted to contact the witness T... to arrange for him to travel to Syria after learning



from A... Y... a...-M... that participation in a training camp was no longer required. She received a response from the witness T... a few weeks later, refusing her request on the grounds that he was suffering from an intervertebral disc disorder, and the Accused decided to enter into another Islamic faith marriage in order to provide her and her children with a breadwinner and protector. In observance of a 4-month mourning period following the death of A... K..., the Accused wed Egyptian IS member H... M... a...-N... in an Islamic faith marriage during her stay in Kishma, becoming his third wife. The Accused and her four children, together with the family of a...-N..., then moved into a house in Hajin, located some distance from the city centre. A...-N... told the Accused that he had seen terrible things while fighting for IS in Raqqa, things that he did not wish to do in order to protect himself, leading him to the conclusion that he no longer wished to fight for IS. The Accused, who did not wish to renunciate IS, but did wish to escape the living conditions in Syria, contacted her father to ask for help in fleeing, who then also contacted the witness T.... However, the suggested route via Jordan was impractical from Hajin, which was located on the Iraqi border.

- 54 A few days later, on 7 December 2018, the Accused's son with the witness T..., H... T..., was killed during an air strike on a...-N...'s house in Hajin, which was located close to the front line. One or more bombs or rockets hit the house at 8.00 am that day. H... T... was found dead after the attack. A...-N...'s other wife and their daughter were also killed during the attack. A...-N... dug graves for the three deceased and buried them. The Accused and her daughter H... were injured during the air strike. They were treated in a hospital for 1 day before being discharged. After initially avoiding answering the Accused's questions about H...'s stay, a...-N... finally told her the truth about H...'s death and the fact that he had dug both his grave and graves for his wife and daughter, who had also died, himself. Shortly after H...'s death, the Accused made contact with the witness S..., notifying her of the death of her grandchild and asking for money in order to leave Hajin. The witness T... was told of his son H...'s death during a telephone call with M... G...'s father. The Accused broached the issue of her son's death herself in several chat messages. She posted the following message on her Facebook account: 'So many bombs were dropped near him. The mosque was bombed three times while he was there and he didn't get a scratch on him. This Friday, Allah had written that Malak al-Mawt would take H...'s soul and lead him to our Lord. We belong to Allah and to him we will return.' The Accused made the following entry in the calendar of her mobile telephone on 7 December 2018: 'H... became a Shahid inshallah'. After H...'s death, the Accused and her children left the city of Hajin and travelled with a...-N..., following a route that took them through Al-Shaafah and Bāghūz, amongst other places, in order to reach Manbij in northern Syria. A...-N... turned himself in to the Turkish Armed Forces at the end of January 2019.
- 55 In January 2019, the Accused paid some smugglers to help her and her three surviving children to cross the Turkish-Syrian border, with the aim of reaching Gaziantep in Turkey. The witnesses S... and T... then flew to Gaziantep together on 23 January 2019 in an attempt to fetch the Accused and her children from Turkey. However, the Accused and her children were caught by the Turkish Land Forces while attempting to cross the border, before being taken to a refugee camp near to the city of Azaz in northern Syria, which was controlled by the Turkish Armed Forces. The conditions in which the Accused and her daughters lived in the camp were very basic, with poor sanitation and the camp was also located very close to the fighting. In March 2019, the Accused and her surviving

children left the refugee camp and moved into a nearby apartment, which was shared with another woman.

56 b) (Count 2)

57 Sometime during her stay in Raqqa between June 2016 and June 2017, the Accused had access to at least one hand grenade from a weapons vest belonging to A... K... without the requisite authorisation under legislation on weapons of war. A... K... had made sure that the grenade(s) were accessible to the Applicant during his stay in the shared apartment. The Accused had intended to use the hand grenade(s) in the event of an attack by opponents of IS.

58 c) (Count 3)

59 Following her arrival in Syria and, in particular, up until her Islamic faith marriage to A... K..., the Accused had repeatedly and explicitly asked the witness T... to travel to Syria to join her and her children and enlist in IS. The Accused placed considerable pressure on her husband in an attempt to convince him to travel to IS in Syria. She threatened to divorce him before an Islamic court if he did not follow her to Syria. She also enlisted their children's help in asking their father to travel to Syria, although their daughter H... actually confessed to her father on the telephone, in tears, that she wanted to return to Germany. The Accused also sent the witness a number of IS propaganda videos, including one purporting to show the ways in which IS cares for the people, and two videos glorifying IS troops' fight against 'infidels'. Adolescents and children were featured prominently in these videos as IS fighters. After the witness T... told the Accused that he would not be travelling to Syria in order to fight for IS, she asked him on two or three occasions to act on behalf of the organisation in Germany. To this end, she sent contact details for A... W... and instructed the witness T... to contact him. The witness T... did not comply with the request to contact A... W.... The Accused repeated her requests during telephone calls with the witness T....

60 The Accused took part in a first-aid course organised by U... K..., who had trained as a nurse, and E... G.... The Accused also took part in a self-defence course organised by a fighter from what was known as IS's H... Brigade at the beginning of 2017, after her daughter H... became unwell.

61 Within IS, the Accused was a member of the Nusaybah Brigade. The Accused had joined this battalion at A... K...'s request, as he was a member of a male battalion that was ranked above the Nusaybah Brigade. The Accused pledged her allegiance to IS before A... K..., who then brought her to a mosque located outside the city where a gathering of predominantly non-Syrian women were speaking, in English, about the duties performed by the battalion. There, it was possible to join the battalion by adding one's name to a list, which the Accused did. Some time later, the Accused was brought to A... D... in the centre of Raqqa, where she met U... M... A... R..., who acted as an intermediary between the men's battalion and the Nusaybah Brigade. The original requirement to name three male IS members to vouch for one's trustworthiness was waived once the Accused mentioned that she was the wife of A... K.... Duties were then assigned (for example, training as a nurse, kitchen work to prepare meals for the various battalions, combat training or childcare). The Accused was unwilling to take on any of the duties listed, as she was already heavily pregnant at that time (around March or April 2017) and still had a

young daughter, H..., to care for. The Accused was then told of the need for a driver, which was a position of trust that she, as the wife of A... K..., would be permitted to fill. The Accused accepted the position, following which she was taught the routes to be driven and shown the locations where she would need to collect the women. The Accused made a list of the women's locations and suitable collection points. After her training, the Accused began driving the route, delivering women in the battalion to their placements, from 8.00 am the following day. Following a break to complete household chores and collect her son from school, the Accused would then go to the battalion's kitchen, taking her son along with her, in order to collect and deliver food. After a period of free time, the Accused would return to work at 4.00 pm in order to collect the women from their placements and drive them back. The Accused completed these duties for around 2 to 3 weeks until she started to experience uterine bleeding due to the advanced stage of her pregnancy and the conditions of the roads, which had several potholes. She was then allowed to stop with A... K...'s permission.

d)

62 The Accused committed the criminal acts detailed above in full knowledge of the material facts of IS's organisation, objectives and methodology, and, at the latest upon her entry into the IS women's house until at least the beginning of March 2019, in consensus with and on behalf of the IS organisation.

63 Up until the point immediately before her detention, the Accused maintained a Salafist interpretation of Islam. She adhered to a radical Islamic and militant ideology, such as that propagated by IS, until 2019; however, her time in Syria caused the Accused to gradually begin to doubt whether that ideology was consistent with Sharia.

64 **3. Events following the offence**

65 The witness S... and the Accused herself contacted the German Foreign Office at the latest during February 2019 in order to enable the latter to return to Germany. The Foreign Office then contacted the competent Turkish authorities, following which the Accused and her three surviving children travelled to Turkey on 4 April 2019. Following an appointment at the Turkish migration authority in Kilis, she was accompanied to Gaziantep airport by officers K... and N... from the Federal Criminal Police Office, from where she returned to the Federal Republic of Germany via S... airport. She and her children were met there by Federal Police officers and officers from the police headquarters in E.... The children H..., H... and K... were handed over to the youth welfare office in E..., which gave them into the care of the witness T.... Following an unsuccessful attempt to enrol in fourth grade, the Accused's eldest 12-year-old daughter is now, as of the 2019/2020 school year, attending third grade at a primary school, rather than sixth grade at a secondary school, which would be appropriate for her age. The Accused's second-oldest, 8-year-old daughter is, as of the 2019/2020 school year, attending first grade instead of the age-appropriate second grade.

66 Following her imprisonment, the Accused rejected her Salafi jihadist ideology and, on her own initiative, made contact with the Aussteigerprogramm Islamismus (API) [Islamism Exit Programme] of the North Rhine-Westphalia Office for the Protection of the Constitution.

67 During the main proceedings, the Accused, showing obvious remorse, apologised to the witness T... for her actions, particularly as regards their children, and asked him for forgiveness.

68 **4. Authorisation to prosecute**

69 On 18 March 2014, the Federal Ministry of Justice and Consumer Protection provided its authorisation to criminally prosecute German nationals who are members or supporters of the foreign terrorist organisation ISIG. On 13 October 2015, this authorisation was reworded so as to authorise the prosecution of any past or future offences committed in connection with the foreign terrorist organisation identifying itself as ISIG and IS.

70 **C. Assessment of evidence**

71 The Senate has confidence in the findings made on the person of the Accused and the facts of the case on the basis of the submission made by the Accused during the main proceedings, insofar as it could be followed, and the evidence gathered from the minutes of the hearing.

72 **I. In relation to her personal circumstances**

73 The findings made in relation to the Accused's personal circumstances are primarily based on the entirely credible submission she made in this respect and, in addition, on the statements made by the witnesses S... and T..., information from the portal of the Registry Office of North Rhine-Westphalia of 20 March 2017, and the extract from the Federal Central Criminal Register dated 13 September 2019. During the submission on her person, the Accused was very consistent and open in providing details about her life and also did not shy away from describing unpleasant events.

74 **II. In relation to the findings on the case**

75 **1. In relation to the Syrian civil war and IS**

76 The findings made in relation to the Syrian civil war and the foreign terrorist organisation IS are primarily based on the expert's report provided by Dr G... S.... The expert provided not just a comprehensive account of IS's development and structure, as established by the Senate, and its approach to achieving its goals, but also in relation to the respective political conditions in Syria and the Syrian civil war. He also described individual offensives and attacks carried out by IS, including its modus operandi, and the system used by IS to recruit, train and deploy child soldiers. He also categorised the videos viewed and commented on the notice of the Federal Criminal Police Office dated 9 September 2019. The Senate is convinced beyond doubt of the qualifications and specialist knowledge of the expert, who is an Islamicist and recognised expert on the Middle East and the Syrian civil war and is known to the Senate due to his involvement in a large number of proceedings. The expert was clearly able to call upon in-depth knowledge. He evaluated the statements (audio, video messages, publications) issued by the group in question, international, namely Arabic, print media and scientific literature, and provided his own opinions. He critiqued and evaluated the validity of various different sources. He carried out additional research on specific matters (for example, in the present case, the deployment of child soldiers by IS) and (in some individual cases, for detailed questions) readily disclosed any missing information. In addition to the expert's

report provided by Dr S..., the Senate's findings on IS were also supported by the evaluation report published by the Federal Criminal Police Office in relation to the terrorist organisation IS on 31 May 2018.

**77 2. In relation to the individual alleged crimes**

78 The Senate's findings made in relation to the events leading up to the offences and the offences themselves were primarily

based on the submission, which was predominantly confessional in nature, made by the Accused, unless the points of that submission that deviate from the findings, as described in more detail below, are contradicted by the credible statements made by the credible witnesses T... and S... and the statement of the E... police headquarters of 23 April 2019 and the evaluation reports of the E... police headquarters of 10 and 24 May 2019. The Senate's findings in this respect are also based on the statement made by the Federal Intelligence Service on 29 January 2019 and the photocopy of the Accused's undated letter, postmarked 12 October 2015 in A..., addressed to the witness T....

79 Insofar as the Accused admitted that her intention in leaving Germany had not been to emigrate to IS territory, but rather to live with the family of her friend Y..., the evidence does not show this, nor does it reveal with sufficient certainty that the aim of her journey was to travel directly to IS in order to join the organisation. Although the latter option is supported by the fact that, according to the witness T..., IS was always mentioned whenever the subject of travelling to Syria was brought up, and that it does not appear particularly plausible that the Accused would travel, alone, with children and without her husband, to a Muslim country undergoing a bloody civil war without intending to join an organisation, there are also signs pointing in the other direction. According to the declaration made by the Federal Intelligence Service on 29 January 2019, the probative value of which is admittedly not particularly high due to a failure to cite sources, the Accused's intention upon leaving Germany was to travel to join the Al-Nusra Front in the Idlib region. The witnesses T... and S... stated that the Accused did not tell them that she was travelling to join IS, but that there was mention of Idlib and the Turkish-Syrian border region. Finally, the Accused's undated letter, postmarked in A... on 12 October 2015, sent to the witness T... reads as follows: 'When we arrive, inshallah, we will live in the Idlib region, not with ISIS.'

80 Contrary to the Accused's version of events, the evidence confirms that, during her stay in the house of E...-K... and G... with her three children, the Accused attended at least one execution that took place on a roundabout in Raqqa. However, it could not be established whether or not the Accused had intentionally sought out the execution. The Accused's submission that she had merely seen the preparations for an execution while returning from a dental appointment, had left as quickly as possible, and had, at a later date, lied to the witness T..., stating that she had watched the execution with the children in order to get even with him for having left her and the children 'high and dry', is refuted by statements made by the credible witness T..., of which the Senate is fully convinced. The witness reported, with obvious dismay, that the Accused, with whose manner of speaking he was well acquainted and was able to categorise as a result of their marriage, had called him and told him that she and the children had attended an execution. The witness vividly described how he had felt as if his soul had left his body. He then did not have the slightest doubt that the Accused had spoken truthfully, indeed he took her

statements so seriously that he outright begged her to take the children and leave the area immediately for their own good. There is also no evidence to suggest why the Accused would, only some time after the execution, use this as an opportunity to tell the witness T... an untrue tale of horror. The statement made by the Accused in this respect also contradicts her subsequent behaviour, where she tried time and again to contact the witness, showing no sign of thoughts of revenge. Moreover, the act of witnessing a public execution is consistent with the Accused's religious and ideological understanding at the time of the offence. According to her own submission, she had told her son, who had observed a thief having his hand cut off as punishment, that this was the punishment required under Islamic law. The Accused also highlighted just how important the concept of Sharia was to her, a legal order that imposes – amongst other things – corporal punishment and the death penalty for a variety of offences.

- 81 As regards the objective circumstances, established in accordance with the findings, in which her son was taken to undergo the IS military child soldier training at the Ashbal training camps, the Senate is unable to follow the Accused's admission that she was powerless against the decisions made by E...-K..., A... K... and A... A.... According to the Accused's own submission, E...-K..., acting as her potential guardian, had given her the choice to move into a women's house if she did not wish to go through with his decision. This submission is also inconsistent with her otherwise displayed ability to achieve her goals when it mattered, despite her limited opportunities as a woman in the IS community. When she was being forced into divorcing the witness T... because he was an infidel, something which she did not want to do, she went behind the back of the head of the household E...-K... to visit a court with U... S..., where the judge confirmed that he could not rule on the witness T...'s lack of faith. When E...-K... was pressuring her to marry him, she contacted A... K...'s wife, without E...-K...'s knowledge, and arranged to marry him. In this case, she made a conscious choice between various different candidates, even consulting with H... When A... A... later expressed his wish to marry H..., the Accused decided that she needed to take H... out of his control, and she did so. In this respect, it is incomprehensible why the Accused did not explicitly oppose her son being sent to a training camp for child soldiers, in light of her misgivings. As regards her inner mindset, the Senate assumes that although she was unwilling for her son H... to undergo Ashbal training, as she had concerns about his well-being and safety, she accepted that the training was common practice within IS.
- 82 The Senate also believes that the Accused is attempting to justify her behaviour by claiming that the escape attempts identified were the result of an internal rejection of IS. Rather, the Senate believes that the thoughts of escape entertained by the Accused were the result of mere disappointment, with no rejection of IS or renunciation of her strict Salafist views. The escape attempts were inconsistent and were interspersed with a large number of activities carried out in support of IS. Around March/April 2017, she occupied the trusted position of driver in the Nusaybah Brigade military unit. The Accused's Google searches, as detailed in the evaluation report of E... police headquarters of 24 May 2019, serve as proof that, even in spring 2019, the Accused adhered not just to Salafist views, but also IS's jihadist ideology. As late as 9 March 2019, the Accused searched the internet for songs celebrating IS and its activities. Various conversion videos created by the organisation, glorifying jihad and promising martyrdom, were also found on her mobile telephone. The same is true of the fact that, according to the evaluation report prepared

by E... police headquarters dated 10 May 2019, the calendar entry relating to the death of her son was worded such that he had been made a martyr, which realistically means that, in the eyes of the Accused, he had become a martyr for IS's caliphate. Against this background, her explanation as to why she carried out internet searches for jihadist battle hymns in spring 2019, namely that she simply wanted to remember her deceased son and, out of motherly devotion, wished to listen once again to the songs he had sung back then, is also not a credible justification for her behaviour.

- 83 Lastly, the evidence has shown, to a sufficient degree of certainty and to the conviction of the Senate, that there is no longer any reasonable doubt that the son of the Accused and the witness T... was indeed killed on 7 December 2018 during a missile strike on the home of the Accused in Hajin and that he is not simply missing – something which the Accused had refrained from definitively stating in her submission, as she had not seen it for herself. Indeed, specific details as to the exact location of the corpse, i.e. the burial site, could not be provided. In this regard, the Accused's husband a...-N..., whom she had wed in an Islamic faith marriage, told both the Accused and the witnesses T... and S... that he had not just found the young boy dead after the air strike, with blood running from his ears, but had also buried him himself, along with his deceased wife and their daughter. The Accused and the witnesses S... and T... all described these events in the same way. There is nothing concrete to suggest that a...-N... had told the Accused and the two witnesses anything other than the truth in this respect. In particular, the fact that no photographs were taken of the deceased boy, as emphasised by the Accused, does not suffice, especially since it was not possible to establish whether a device for taking photographs was even available to the uninjured survivors, and in particular a...-N..., following the bombing. Nor was the lack of photographs of a...-N...'s deceased wife and their daughter a reason for the Accused to seriously question their deaths. By its very nature, such an attack could cause varying degrees of injury to numerous people in or close to the bombed house, leaving some uninjured while killing others. Lastly, the Accused and her daughter H... also suffered significant injuries and the second wife of a...-N... and their daughter were killed, while H... was virtually uninjured. H... herself did not tell anyone that she saw what happened to H... The fact that, according to her submission, a...-N... subsequently told the Accused that they had not found the boy, but would be able to search for him later after they had got themselves and others to safety away from opposition fighters, was clearly an attempt to pacify the Accused, which would enable her to flee and save herself and the surviving children. The simplistic and vague observation made by the witness T... that a...-N...'s depiction of events might be incorrect, as he had perhaps sought to cover up his selling the boy as a slave, does not lead to a different conclusion. It is unclear how a...-N... is supposed to have been able to sell an intelligent child of Sunni faith, who was presumably capable of explaining what was happening to him, as a slave in IS territory without causing a sensation and/or why a...-N..., who had presented himself to the Accused as having been enlightened by the atrocities he had experienced while working for IS, would do this to his stepson. It is thus not for nothing that both the Accused and the witness T... admitted that their observations that H... could still be alive, and why, are ultimately the product of wishful thinking. Lastly, the Accused had listed the date of death in her calendar with a note that her son had been martyred and reported H...'s death to third parties without any semblance of doubt, as shown from traceable chat communications. The Senate learnt of the calendar entry, the existence of which the Accused did not deny, from the evaluation report of the E...

police headquarters dated 10 May 2019. The memorandum from the E... police headquarters dated 23 April 2019 revealed that the Accused had sent a chat message to the witness S... on 8 February 2019 stating that H... had been dead for 2 months and that she missed him greatly. The Accused was consoled by her mother, who commented that losing a child was the worst thing that someone could go through. The Accused responded with two hearts but did not take the opportunity to mention any shadow of doubt she felt surrounding H...’s death, which would have been obvious, especially when speaking with H...’s grandmother. As is clear from the evaluation report of the E... police headquarters of 24 May 2019, the Accused also expressed no doubts when she told a chat partner named ‘L... A...’ on 6 March 2019 that ‘Our house was bombed by a number of missiles sent by the kuffar tahaluff’ and ‘That’s when he died’. The witness S... expressed a sober view of events during the main proceedings, in spite of her obvious dismay at losing her grandchild. She reported that she made contact with a...-N... in order to arrange for a mercenary to be sent from Turkey to search for H... A...-N... told her that he had buried the boy and even described the exact location of the grave. The witness, who clearly would have taken any and all steps necessary to find her grandchild, even if there was only a slight chance that he had survived, thus decided it was not worth sending a mercenary just to retrieve the body. There has been no objective sign that H... is alive since the day of the air strike.

- 84 Despite her assertion to the contrary, which must be regarded as a contradictory attempt to justify her behaviour, the fact that the Accused was already aware at the point of her departure from Germany to Syria of the risk that her children could be killed as a result of air strikes during their stay in the war zone, and regarded this risk as acceptable, is apparent from the fact that she knowingly travelled to a war zone in order to live in a ‘state’ that had taken up the case of the war against the ‘infidels’. She believed this to be her religious duty. In light of the focus placed on jihad in the public image presented by IS to the rest of the world, particularly in propaganda intended for Europe, her claims that she was unaware of the danger this war posed to her children is also not credible, as the Syrian civil war had already been ongoing – and had been reported on widely in the media – for more than 3 years on the date of the Accused’s departure, and no one observing these events would have expected to see peace any time soon. Against this background, the fact that, while in Syria, the Accused had demanded the return of her family’s passports from U... S... M... following the first bombing and, at a later date, had told E... G... that she had glossed over the war in Syria to her did not preclude the assumption that the Accused had intended to place her children in danger. The Senate attributed this to the fact that being directly confronted with said danger was far more alarming for the Accused than the mere idea of it. On the other hand, it seems absurd to assume that the Accused did not expect bombings or else trusted that her children alone would not be in danger while living in the territory of a main player in the civil war.
- 85 Following examination, the Senate believed the vast majority of the submissions made to be credible, particularly as, within the context of the findings made, they corresponded to the statements made by the witnesses S... and T..... The fact that the statements made by the Accused relating to the time she and her children spent travelling to and in Syria were logical and consistent, including details that went beyond the scope of the investigation, and even incriminated her, was another factor supporting the accuracy of the information provided (e.g. relating to the Nusaybah Brigade and the role she



performed therein, in relation to which the letter from the Federal Intelligence Service dated 29 January 2019 provided no further details). The Accused never made reference to an authorisation under legislation on weapons of war, nor was such an authorisation apparent in any other way.

86 **3. In relation to the events following the offence and the authorisation to prosecute**

87 As regards the findings relating to the events following the offence, the Senate consulted not just the submissions (and the examination thereof), but also the memorandum from the E... police headquarters dated 23 April 2019 and the witnesses T... and S.... The information relating to the Accused's eventual flight from the war zone to northern Syria and her return to Germany came from her own submissions and an examination of her mobile telephone. The findings on the condition of the girls H... and H... are based on the plausible and consistent details provided by the witnesses S... and T....

88 The authorisation to prosecute results from the letters of the Federal Ministry of Justice and Consumer Protection dated 18 March 2014 and 13 October 2015.

89 **D. Legal analysis I.**

90 As a result of the established criminal acts, the Accused is guilty of three counts of membership in a foreign terrorist organisation outside of the Member States of the European Union pursuant to Section 129a, paragraph 1, number 1, Section 129b, paragraph 1, sentences 1 and 2 StGB, including one count (Count 1) in coincidence with (a) two counts of serious child abduction pursuant to Section 235, paragraph 2, number 1 and paragraph 4, number 1 StGB and one count of child abduction resulting in death pursuant to Section 235, paragraph 2, number 1 and paragraph 5 StGB, (b) three counts of violating the duty of care or education pursuant to Section 171 StGB and (c) a war crime against persons pursuant to Section 8, paragraph 1, number 5, scenario 2 VStGB, and a further count (Count 2) in coincidence with the exercise of actual control over weapons of war without the authorisation under KrWaffKontrG pursuant to Section 22a, paragraph 1, number 6 KrWaffKontrG in conjunction with Part B, Section VII, number 46 of the Weapons of War List.

91 **1. (Count 1)**

92 IS, which is predominantly active in Iraq and Syria, is considered to be a foreign terrorist organisation outside of the Member States of the European Union on the basis of both the concept of an organisation previously used by the case-law of the Federal Court of Justice (see, in this respect, Federal Court of Justice [Bundesgerichtshof, BGH], judgment of 20 March 1963, 3 StR 5/63, BGHSt 18, 296, 299 and 300; BGH, judgment of 14 August 2009, 3 StR 552/08, BGHSt 54, 69, paragraph 123) and on the basis of the legal definition under Section 129, paragraph 2 StGB in conjunction with Section 129a, paragraph 1 StGB, in the version in force since 22 July 2017 (see Section 2, paragraphs 1 and 3 StGB), which, in terms of organisational structure and decision-making, established less stringent requirements and thus broadened the concept (see BGH, decision of 17 October 2019, AK 56/19, paragraph 27). During the period of the offence, IS's aim was to establish a hierarchical Islamic state under the will of a caliph, based on an Islamic order and subject to Sharia, on the national territory of Syria and Iraq, and it was mainly there that the offences deriving from the aims and

activities of IS took place. These constitute a catalogue of offences, namely at least the manslaughter of members of the Syrian armed forces and other representatives of the Syrian Government and administration, members of the Yazidi minority community, and victims of the deadly terror attacks in Europe (Section 129a, paragraph 1, number 1, scenarios 1 and 2 and Section 129b, paragraph 1, sentence 1 StGB).

- 93 As before, membership requires a certain degree of consensual integration into the organisation on the part of the perpetrator (BGH, loc. cit.; BGH, decision of 5 September 2019, AK 49/19, juris, paragraph 11). Integration can only be considered if the perpetrator supports the organisation from both within and from the outside. It is necessary for the perpetrator to occupy a position within the organisation that identifies her as a member and distinguishes her from non-members. By contrast, the assumption of membership is excluded if the support tasks were carried out for any reason other than the mutual desire for long-term participation in the life of the organisation (BGH, decision of 17 October 2019, AK 56/19, paragraph 28; BGH, decision of 15 May 2019, AK 22/19, NJW 2019, 2552, 2554 with further references; BGH, decision of 28 June 2018, StB 11/18, NStZ-RR 2018, 369 and 370, 371 with further references). The member's support may consist of a direct contribution to achieving the goals of the organisation; it may also be aimed at merely creating or maintaining foundations for the organisation's activities. A task of corresponding weight that supports the development, cohesion or activities of the organisation is thus also sufficient to be regarded as membership (BGH, decision of 15 May 2019, AK 22/19, NJW 2019, 2552, 2554 with further references). Measured against these conditions, the Accused was not merely a passive member of IS, but rather actively supported its goals. She was integrated into the organisation by mutual agreement. Having coordinated the journey with IS member M... G..., she travelled to IS territory alone with her children of her own accord. She identified with the IS ideology, methodology and goals, for the most part. As part of her activities for IS, she received a monthly sum of USD 100 from the group's state-like organisational units, intended not just for her husband under Islamic law, but also for her. After his death, IS paid her widows' compensation of USD 1 000.
- 94 The Accused actively supported the group by, on the one hand, agreeing to her son H... undergoing the Ashbal training provided by IS and thus increasing the group's combat strength, exposing all of her children to IS's ideological influence, and facilitating the appropriation of her children into the group's hypothetical state.
- a)
- 95 By departing Germany with the children she shared with the witness T..., with whom she also held joint rights of custody, and travelling to Syria against his will in order to live there on a permanent basis, the Accused prevented the witness T... from being able to exercise his right of custody under Section 235, paragraph 2, number 1 StGB during their time in that country. As a result of repeated and continuous bombings carried out in the territory of the Syrian civil war, the three children were exposed to mortal danger within the meaning of Section 235, paragraph 4, number 1 StGB on multiple occasions, something which the Accused regarded as acceptable. They had already experienced heavy air strikes in Raqqa during their time spent in the women's house, and at E...-K...'s house they were exposed to actual danger when the house of their immediate neighbour was damaged. H... was gravely injured during an air strike on 7 December 2018.

96 H... was ultimately killed as a result of this air strike on the Accused's home. This was the result of the identifiable and avoidable risk that the Accused took by travelling to a war zone. In the present case, the factual causation to H... 's death required to fall within the scope of the offence qualified by the result of death regulated by Section 235, paragraph 5 StGB consisted not just of the factual result of child abduction, but also the criminal act.

b)

97 As a parent with a duty of care and education, the Accused, insofar as she took her three children and travelled to IS territory in Syria in order to live there permanently under tyrannical rule in a war zone, while also withdrawing them from regular schooling, also committed three counts of gross violation of the duty of care or education pursuant to Section 171 StGB. She also grossly violated her duty of care by allowing her 6- to 8-year-old son to be exposed to IS paramilitary training at one of the group's training camps. The act falls within the scope of the offence if there is a particularly clear contradiction in objective terms between the act in question and the principles of proper education and if the act in question subjectively shows a high degree of irresponsibility, measured against the capacities of the perpetrator (BGH, decision of 17 October 2019, AK 56/19, paragraph 44; Schönke/Schröder/Bosch/Schittenhelm, StGB, 30th edition, Section 171, paragraph 4, with further references). These conditions are met in the present case. The will of the Accused was for the children to live in IS territory, which thus meant living under tyrannical rule in a war zone. They were exposed to repeated bombings and did not attend a mainstream school. The Accused also took them with her to a public execution. In addition, the Accused allowed her son H... to receive instruction at one of the group's training camps. These facts, collectively, attest to the high degree of irresponsibility displayed by the Accused, as a result of which the children were exposed to the real danger of their physical and psychological development being significantly impaired, a risk of which the Accused was aware and at least regarded as acceptable. Accordingly, the daughters H... and H... could not be enrolled in age-appropriate classes following their return to Germany.

c)

98 By agreeing to allow her 6-year-old son H... to attend a training camp for child soldiers of IS, which was an active participant in the Syrian civil war, in May 2016, the Accused enlisted a child under the age of 15 into an armed group within the context of a non-international armed conflict within the meaning of Section 8, paragraph 1, number 5 VStGB.

99 The battles taking place in Syria during the time of the offence between the governmental Syrian Army and opposition groups, in particular IS, constituted a non-international armed conflict within the meaning of Section 8, paragraph 1 VStGB (see also BGH, decision of 17 November 2016, AK 54/16, juris, paragraph 23 [relating to 2012]; decision of 25 September 2018, StB 40/18, juris, paragraph 20 [relating to January 2012 to January 2013], BGH, decision of 11 August 2016, AK 43/16, juris, paragraph 7 [relating to February to October 2013]; BGH, decision of 6 April 2017, AK 14/17, juris, paragraph 23 [relating to March 2013]; BGH, judgment of 27 July 2017, 3 StR 57/17, juris, paragraph 12 [relating to 2014]; Stuttgart Higher Regional Court, judgment of 11 January 2018, 6-32

OJs 9/17, juris, paragraph 82 [relating to spring 2015]; Berlin Higher Regional Court [KG], judgment of 1 March 2017, [2A] 172 OJs 26/16 [3/16], juris, paragraph 65 [relating to March 2015]). In accordance with international criminal law, an armed conflict is understood to mean the use of armed force between countries (international armed conflict) or protracted armed confrontations between the government and organised armed groups or between such groups within a country (non-international armed conflict). A non-international armed conflict cannot be found to exist: 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. Even if a country or several countries were to intervene on behalf of the actual government, such as, for example, the Russian intervention in Syria, a non-international conflict would still exist (see MüKoStGB/Geiß/Zimmermann, 3rd edition, VStGB, Section 8, paragraph 101). The confrontations taking place in Syria during the period of the offence thus meet the aforementioned conditions.

- 100 During the period of the offence, IS constituted an armed group within the context of this civil war. By applying the characteristic of an armed group in addition to that of (governmental) armed forces, the legislator's aim was to extend the scope of application of Section 8, paragraph 1, number 5 VStGB – in accordance with the provisions of Article 8, paragraph 2, letters b (xxvi) and e (vii) of the International Criminal Court Statute – to cover non-international armed conflicts, which do not necessarily require participation from armed forces (BGH, decision of 17 October 2019, AK 56/19, paragraph 34; MüKoStGB/Geiß/Zimmermann, 3rd edition, Section 8 VStGB, paragraph 163; BT-Drucks. 14/8524, pages 26 and 27). It is clear from the guidelines on the provisions of the International Criminal Court Statute that the characteristic of an armed group within the meaning of Section 8, paragraph 1, number 5 VStGB requires a minimum level of organisational structure (see BGH, loc. cit.; MüKoStGB/Geiß/Zimmermann, loc. cit.). This is because Article 8, paragraph 2, letter f of the International Criminal Court Statute establishes that the corresponding provision of Article 8, paragraph 2, letter e (vii) of that Statute only applies if 'organised' armed groups – in addition to governmental armed forces – take part in an armed conflict occurring in the territory of a country, and not just in situations of mere civil unrest, tensions or riots. At the time of the offence, IS had an organisational structure that clearly exceeded the minimum level required in this respect. The organisation had several thousand armed fighters under the command of the 'Minister of War', divided into local combat units headed in each case by a commander. This created a structure that, under responsible leadership, enabled the group to exercise military control over a territory, to provide training for new recruits, and to carry out sustained and coordinated combat operations (see also BGH, loc. cit., paragraph 35).
- 101 The Accused enlisted her son H... T... in the armed group IS. Enlisting within the meaning of Section 8, paragraph 1, number 5, scenario 2 VStGB is understood to mean admission of any kind – including de facto – to an armed unit (BGH, loc. cit., paragraph 36; see also Palomo Suárez, *Kindersoldaten und Völkerstrafrecht*, 2009, page 137). In the present case, the Ashbal training unit in which the Accused's son was enlisted, with her consent, constituted an armed unit within the armed group IS. This is clear from the simple fact that the children and young boys received firearms instruction during their time at the camp. The act of surrendering the young boy to E...-K... so that the latter could bring him

to the head of the IS camp was a manifestation of the Accused's consent for H... to undergo training through the so-called Ashbal system, which fact alone met and, as regards the subsequent surrenders to A... K... and A... A... in order to allow him to be brought to A... S... and A... R... I..., the subsequent heads of the IS camp, merely added to the conditions for the offence of enlisting. Admission for the purposes of providing training also falls within the scope of the offence of enlisting in an armed group, since admission into an active armed combat unit is not necessary (see above), active participation in hostilities on the part of the person enlisting is not required, and the act of enlisting need not be for that purpose. This is immediately apparent from the classification of Article 8, paragraph 1, number 5 VStGB, according to which the enlisting, coercion and deployment of child soldiers are in each case independent, alternative offences. Accordingly, the question of whether active deployment appears realistic in the future is irrelevant to determining whether the admission of a child for training falls within the scope of the offence under Article 8, paragraph 1, number 5, scenario 2 VStGB. This is because children should be protected not just from the dangers of deployment on the front, but also, and in particular, from being exposed at a young age and without safeguarding measures to a culture in which violence and taking human lives are commonplace or endorsed and even required. In addition, in accordance with the ratio legis, children should be protected from a variety of other dangers that could threaten them at military camps, such as corporal punishment, A...se or bombings. The Ashbal training camps constituted armed units of IS, as they were equipped with firearms for the purposes of providing training. The training camps were also official IS facilities. For example, they were not operated by private bodies, but were instead subject to management and supervision by the organisation. IS systematically recruited children and young boys in a targeted manner to undergo repeated training at these camps and subsequently be deployed as IS troop fighters. The children who underwent training at these camps were posted at executions and later actively deployed to run errands and provide other field support services, before being used as fighters for the organisation once they were old enough.

- 102 At the time of his enlisting, H... T... was a child under the age of 15. According to its unambiguous meaning and as regards the comprehensive protection it provides against the recruitment of children (see also in this respect Palomo Suárez, loc. cit., pages 121 and 122), Article 8, paragraph 1, number 5 VStGB also does not restrict its scope of application to persons protected under international humanitarian law within the meaning of Article 8, paragraph 6 VStGB.
- 103 The offence committed by the Accused was also connected to the armed conflict. The characteristic must be understood in functional terms. That connection exists if the presence of the armed conflict was of vital importance to the perpetrator's ability to commit the offence, to his/her decision to commit the offence, to the manner in which the offence was committed or to the purpose for which it was committed; the offence must not have been committed merely 'in the course of' the armed conflict (BGH, loc. cit., paragraph 38; BGH, judgment of 27 July 2017, 3 StR 57/17, NJW 2017, 3667 and 3668, 3672; BGH, decision of 4 April 2019, AK 12/19, NStZ 2019, 229, 231). By contrast, it is not necessary for the offence to have been committed during or in particularly close proximity to ongoing combat operations (see BGH, loc. cit., paragraph 38, with reference to BGH, judgment of 27 July 2017, 3 StR 57/17, BGHSt 62, 272, paragraph 55, with

further references). In the present case, the background of the armed conflict in which IS was an active participant was crucial to the Accused's decision to allow her son to receive instruction in how to handle firearms at an IS training camp. H... T...'s enlisting in the armed organisation IS occurred against the backdrop of the ongoing civil war and served to strengthen IS's combat power as a party to that conflict. The armed conflict within the context of which IS was able to establish its own 'state' was a condition that enabled IS training camps such as the one being discussed here to be established in the first place.

104 The Accused acted in a culpable manner since, according to the evidence heard, she herself decided in May 2016 that H... should undergo Ashbal training. What was decisive for H...'s admission to the camp was the Accused's decision to prepare him for his future role in jihad, in accordance with IS ideology. In addition, the Accused's actions fall within the scope of the offence under Section 8, paragraph 1, number 5 VStGB regardless of whether or not she was a member of IS during the period of the offence, and what position she held. This is because the penal provision does not require the perpetrator to be a member of one of the parties to the conflict (see also Palomo Suárez, loc. cit., page 169). The protective purpose of international criminal law on war crimes always applies if the specific situation of danger within the context of the armed conflict enables or facilitates the offence, even if the perpetrator is a civilian, which clearly did not apply to the Accused as a member of IS.

105 Insofar as the Accused did not at any time withdraw her consent to H... undergoing training at the IS training camps, this constitutes one single act of enlisting in the eyes of the law, on the basis of which H... was called upon to attend a camp on three separate occasions. By contrast, the three occasions on which the young boy was surrendered should not be regarded as three counts of enlisting within the meaning of Section 8, paragraph 1, number 5, scenario 2 VStGB. The three periods of time that H... spent at the camps cannot be attributed to three separate decisions made by the Accused, which would each have to be assessed as independent decisions to commit an offence and independent offences. Although the first period of time spent at the camp – following the Accused's conclusive decision, in May 2016, to allow the boy to undergo Ashbal training – was brought to a premature end by IS, as the latter decided the boy was still too small, a reasonable appreciation of the facts can see this act as nothing more than a temporary postponement, rather than the boy being exempted or excluded from service. When a second sojourn at the camp followed in June 2016, the Accused did not withdraw her consent, but instead merely expressed doubt to A... K... as the boy had previously been sent home for being too small. However, once A... K... indicated that he wished to send H... to be trained by a friend of his, she concluded, while clearly suppressing any concerns, that the training that began on the basis of the consent she provided should be allowed to continue. Despite the fact that this spell at the camp was also brought to a premature end, with IS citing H...'s insufficient knowledge of Arabic, this can still only be considered to be a temporary postponement, rather than the boy being exempted or excluded from service. This is borne out in particular by the fact that, following the second temporary postponement, IS member A... A... had no qualms about using the boy H... for an execution video being filmed by the IS media centre, and thus having the boy serve IS's purposes, especially since this was an assignment for which he should already have been prepared at the Ashbal training camp. Similarly, H...'s third sojourn the following year, after he had attended school and was thus obviously able to speak and write

sufficient Arabic, or else this was no longer deemed necessary, was again a continuation of his military training by IS, under whose totalitarian authority H... had lived throughout his time in Syria. The length of the stay with the armed group is even less relevant as regards the constituent element of the offence of enlisting as is the issue of whether or not the end result was the period of service or training required by the armed group being completed. In any event, the temporary interruptions to training do not result in several different acts of enlisting, which was instead a continuous state due to the ongoing consent for all the periods of time spent at the camp.

d)

106 No decision was to be made on the other accusation of collective bodily harm raised in the bill of indictment (Count 1, letter b), as this accusation was excluded from prosecution under Section 154a, paragraph 1, sentence 1, number 1, paragraph 2 StPO.

107 **2. (Count 2)**

108 Under Count 2, insofar as the Accused, together with A... K..., had material ownership of at least one hand grenade, to which she had access in their shared home and which she was also willing to use, without obtaining the authorisation required under legislation on weapons of war prior to taking ownership, she was in possession of an illegally owned weapon of war within the meaning of Number 46 of the List of Weapons of War (Part B) appended to the Weapons of War Control Act, which thus constituted the criminal offence of exercising actual control over a weapon of war pursuant to Section 22a, paragraph 1, number 6 KrWaffKontrG in coincidence (Section 52 StGB) with membership in a foreign terrorist organisation. By taking joint ownership of a weapon of war in the service of IS and being willing to use said weapon, she was furthering the defensive capabilities of that organisation.

109 **3. (Count 3)**

110 The Accused also actively carried out other activities in support of IS that were not severally punishable within the meaning of Section 129a, paragraph 1, number 1 and Section 129b, paragraph 1, sentences 1 and 2 StGB, insofar as, following her arrival in Syria and, in particular, until her Islamic faith marriage to A... K..., she repeatedly and explicitly asked the witness T... to join IS with her in Syria or else to act on behalf of the organisation in Germany. In addition, the Accused attended IS events in the form of a first-aid course and a self-defence course. Finally, she was a member of the Nusaybah Brigade within IS and served the organisation as a driver for this unit.

**II.**

111 As regards her membership in a foreign terrorist organisation, the question of whether the applicability of German penal law follows directly from Section 129b, paragraph 1, sentence 2, scenario 2 StGB can remain open, as the Accused is German (see, in this respect, BGH, decision of 6 October 2016, AK 52/16, juris, paragraph 33 et. seq.). In any event, German penal law is applicable in this respect – as it is in relation to child abduction, the violation of the duty of care and education, and the violation of the Weapons of War Control Act – pursuant to Section 7, paragraph 2, number 1 StGB. The locations in which the respective offences were committed in Syria were, at the time they

were committed, under the exclusive control of IS and were thus not subject to any de facto legal authority.

**III.**

112 The Accused committed all the offences intentionally, including with reference to the goals and methodology of IS.

**IV.**

113 The Accused also acted unlawfully and culpably.

**V.**

114 As regards the assessment of the offences under the law on the accumulation of offences, the Senate makes the following considerations (see BGH, decision of 17 October 2019, AK 56/19, paragraphs 47-51 and 53):

115 The violations of Section 235, paragraph 2, number 1, paragraph 4, number 1 StGB, committed to the detriment of more than one child, are considered – like the endangerment of one or more vulnerable persons (Section 171 StGB) through that same act – to coincide with one another, as is the violation of Section 235, paragraph 5 StGB that occurred upon the death of the child H.... Section 235, paragraphs 4 and 5 StGB constitutes *lex specialis* with regard to Section 235, paragraph 2 StGB (see MüKoStGB/Wieck-Noodt, 3rd edition, Section 235, paragraph 103, with further references); Section 235, paragraph 5 supersedes Section 235, paragraph 4 StGB as regards H... T....

116 Section 235 StGB is a continuing offence (Imperial Court of Justice [RG], judgment of 28 January 1887, 3310/86, RGSt 15, 340, 341; MüKoStGB/Wieck-Noodt, loc. cit., paragraph 10); it is first committed when the unlawful state whereby a child is abducted is brought about and only ends when the unlawful state ceases to exist (MüKoStGB/Wieck-Noodt, loc. cit., paragraph 101). Other offences committed during this state are considered to coincide with the continuing offence, if the acts by which the offences were committed at least partly overlap; by contrast, an accumulation of offences is to be assumed if the other offence is merely committed in the course of the continuing offence (see MüKoStGB/von Heintschel-Heinegg, 3rd edition, Section 52, paragraph 33). A continuing offence, such as the one under Section 235 StGB, combines other offences, which, considered in isolation, would result in an accumulation of offences, into a single offence, provided that the continuing offence coincides with each of these additional offences and does not, due to its ineffectiveness under criminal law, as expressed in the notice of penalty, fall significantly short of the additional infringements committed during its continuing state (BGH, judgment of 8 November 2007, 3 StR 320/07, NStZ 2008, 209, 210, with further references).

117 By contrast, the Accused committed the offence under Section 22a, paragraph 1, number 6 KrWaffKontrG in conjunction with Part B, Number 46 of the Annex to Section 1, paragraph 1 KrWaffKontrG, and the resultant simultaneous offence of membership within the meaning of Section 129a, paragraph 1, number 1 and Section 129b, paragraph 1, sentences 1 and 2 StGB, merely during the course of the continuing offence of child abduction (Section 235 StGB). That offence thus also accumulates in relation to the other



infringements,

as do all of the Accused's acts of membership, which do not fall within the scope of any other offence (see, in this respect, BGH, decision of 9 July 2015, 3 StR 537/14, BGHSt 60, 308 paragraph 23 et. seq.).

118 **E. Decision on the legal consequences**

119 **I. Penalty framework**

120 The Senate based the individual penalties imposed on the Accused in Counts 1 and 2 on the most severe penalties established by the penalty framework of the criminal law infringed in each case, pursuant to Section 52, paragraph 2, sentence 1 StGB and, for the remaining Count 3, on the penalty framework of Section 129a, paragraph 1 StGB, which provides for a custodial sentence of 1 to 10 years. The penalty framework under Section 8, paragraph 1, number 5 VStGB and Section 235, paragraph 5 StGB was to be applied to Count 1, with both laws providing for the imposition of a custodial sentence of 3 to 15 years and a more severe penalty than Section 171 StGB (custodial sentence of up to 3 years or a fine) and/or Section 129a, paragraph 1 StGB, whereby a less serious count under Section 235, paragraph 5 StGB could not be assumed on the basis of an overall consideration and appreciation of the aspects for and against the accused that are relevant when determining the penalty. Accordingly, the same penalty framework under Section 129a, paragraph 1 StGB and Section 22a KrWaffKontrG had to be applied to Count 2. The overall circumstances in which joint possession of a dangerous weapon of war in the territory of a civil war occurred do not justify a less serious count within the meaning of Section 22a, paragraph 3 KrWaffKontrG. Consideration was not given to mitigating the penalty under Section 129a, paragraph 6 StGB for either Count 2 or the remaining counts, as the guilt of the Accused in this respect was not minor, for the reasons given below.

121 **II. Common considerations for determining the penalty**

122 When assessing all of the individual penalties, the Senate, to the benefit of the Accused, considered the previous, comprehensive submission made by the latter during the main proceedings, which was predominantly confessional in nature and substantial parts of which could be accepted, to be particularly relevant. As regards all the offences, the Accused provided details of her criminal conduct that were not fully known to the authorities, which would have been difficult to prove without her and her confession and some of which formed the sole basis for her conviction. She also provided details of third parties undergoing separate prosecution on suspicion of being members of IS. A further point in the Accused's favour is that she did ultimately, albeit at a relatively late stage, voluntarily turn her back on the jihadist organisation IS and ended her association with the Salafist Islamic spectrum during her pre-trial detention, following a critical appraisal of her beliefs. Furthermore, with three under-age children, her particular sensitivity to imprisonment, where she had to serve large parts of her pre-trial detention under particularly onerous security measures, such as a glass partition during visits with her family, worked in her favour. Again to the benefit of the Accused, the Senate gave consideration to the fact that she may possibly have to deal with the consequences of her actions under family law and that she deeply deplores and regrets those actions. According to the credible statements made by the Accused, the Senate takes the view

that her pre-trial detention had a lasting impact and that, as a result, she is willing to reflect further on the wrongness of her actions, which she has already recognised, with professional help, initially, from the Exit Programme. This will allow her to live with impunity, not least in view of the responsibility she has towards her family, and to avoid any involvement in

the Salafist Islamic spectrum. Finally, due consideration was given to the Accused's lack of previous convictions, which was also to her benefit.

123 The particular danger posed by IS, whose operations and terror attacks have caused a significant number of fatalities, is an aggravating factor.

124 **III. Considerations for determining the penalty per specific count**

125 **1. (Count 1)**

126 On this count, the fact that her son H... only spent a relatively short period of time at one of IS's military training camps after he had been enlisted was a point in the Accused's favour. Similarly, account had to be taken of her dismay at the loss of her son H... and at the thought of being alienated from her daughters. The Senate also gave consideration, to the benefit of the Accused, to the fact that she deeply deplores and regrets endangering her children and has apologised sincerely to the aggrieved witness T....

127 To the detriment of the Accused, consideration had to be given to the fact that, in addition to the witness T..., she had also committed several offences against one or more children. A further factor against her was the extended duration of the offence of child abduction and the infringement of her duty of care. During that time, she repeatedly exposed her children to mortal danger and placed them at a severe disadvantage, for example as regards school attendance, and due to their protracted stay in an uncivilised and brutal environment. This was demonstrated, for example, by the fact that the Accused allowed her children to witness an execution. A final point against the Accused was the fact that she agreed to allow H... to enlist at 6 years old, despite his young age.

128 **2. (Count 2)**

129 Consideration was also given, to the detriment of the Accused, to the fact that a hand grenade is a particularly dangerous weapon of war with difficult-to-control effects, although the Senate did acknowledge that the Accused only had joint possession of the weapon of war that had been brought into the household by A... K....

130 **3. (Count 3)**

131 The Senate gave consideration, as an aggravating factor, to the fact that the Accused performed the duties of a housewife for the Nusaybah Brigade and, as a driver, held a particular position of trust therein. The relatively long duration of her membership, lasting more than 3 years, was also taken into consideration, to the detriment of the Accused.

**IV.**

132 Following an overall assessment of the circumstances in favour of and to the detriment of the Accused, the Senate imposes for the offence established under B. II. 2. a) (Count 1) a custodial sentence of

133 **4 (four) years and 6 (six) months,**  
134 for the offence established under B. II. 2. b) (Count 2), a custodial sentence of  
135 **1 (one) year**  
136 and for the offence established under B. II. 2. c), a custodial sentence of  
137 **2 (two) years and 6 (six) months**  
138 to be in proportion to the nature and severity of the offence.  
139 When determining the total penalty to be imposed under Section 54 StGB, the Senate  
assessed all of the aspects detailed above and, in so doing, gave consideration to the  
fact that the offences occurred during a short period of time and were inherently  
connected.  
140 Accordingly, the Senate decided upon a moderate increase in the cumulative penalty of  
4 years and 6 months to an aggregate custodial sentence of  
141 **5 (five) years and 3 (three) months.**  
142  
143 **F. Costs**  
144 The decision as to costs is based on Section 465, paragraph 1, sentence 1, scenario 1  
StPO.