

FEDERAL COURT OF JUSTICE

ORDER

AK 56/19

of

17 October 2019 in the criminal proceedings against...

for war crimes against persons, inter alia...

ECLI:DE:BGH:2019:171019BAK56.19.0

After hearing the Federal Prosecutor General and the accused and her defence lawyer, the 3rd Criminal Chamber of the Federal Court of Justice (Bundesgerichtshof, BGH), in accordance with Sections 121 and 122 of the German Code of Criminal Procedure (Strafprozeßordnung, StPO), ordered as follows on 17 October 2019:

The remand detention must be continued.

Any further review of the remand detention required will be carried out by the Federal Court of Justice in three months' time.

Until this time, the review of the remand detention is referred to Düsseldorf Higher Regional Court.

Reasons:

I.

1. The accused was arrested on 4 April 2019 and has been held in remand detention since 5 April 2019, initially on the basis of the arrest warrant issued by Oberhausen District Court on 28 March 2019 (27 Gs 987/18) and since 6 June 2019 on the basis of the arrest warrant issued by the investigating judge of the Federal Court of Justice on 28 May 2019 (2 BGs 236/19). This arrest warrant covers the following charges:
2. From October 2015 to 4 April 2019, through three legally independent acts, the accused participated as a member in the group 'Islamic State' (IS) and thus in a non-European terrorist organisation whose aims or activity were directed at the commission of murder under specific aggravating circumstances (Section 211 of the German Criminal Code (Strafgesetzbuch, StGB)), murder (Section 212 StGB), crimes against humanity (Section 7 of the Code of Crimes against International Law (Völkerstrafgesetzbuch, VStGB)) or war crimes (Sections 8, 9, 10, 11 or 12

VStGB). In one of the cases, she removed a child from the custody of one of its parents in three legally concurrent cases in order to take the child abroad and by the offence placed the victim in danger of death or serious injury or a substantial impairment of their physical or mental development and in one of the cases caused the death of the victim, at the same time physically abused another person, in three legally concurrent cases grossly neglected her duty to provide care or education for a person under the age of sixteen and thereby created a danger that the person's physical or mental development could be seriously damaged and, in the context of a non-international armed conflict, integrated a child under the age of 15 into an armed group. In one case, the accused concomitantly exercised actual control over weapons of war, without the acquisition of actual control being based on a permit under the Weapons of War (Control) Act (Kriegswaffenkontrollgesetz, KrWaffKG) (Section 129a(1), subparagraph 1, the first and second sentences of Section 129b(1), Sections 171, 223(1), Sections 235(2), subparagraph 1, (4), subparagraph 1, (5), Section 25(2), Sections 52, 53 StGB, the second scenario of Section 8(1), subparagraph 5 VStGB, Section 22a(1), subparagraph 6 KrWaffKG in conjunction with Part B, subparagraph 46 of the Annex to Section 1(1) KrWaffKG).

- 3 The Federal Prosecutor General brought charges before Düsseldorf Higher Regional Court on 4 October 2019 for these alleged crimes.

II.

- 4 The conditions for the continuation of the remand detention exceeding a period of six months have been met.

5 1. There is a compelling suspicion that the accused committed the offences with
which she is charged.

6 a) According to the results of the investigations so far, the following facts can be
assumed with regard to a compelling suspicion:

7 aa) IS is an organisation with a militant, fundamental Islamic orientation, which
originally set itself the target of founding a 'theocracy' based on its ideology and
covering the territory of modern-day Iraq and the historical region 'ash-Sham' (the
modern-day states of Syria, Lebanon and Jordan, as well as Palestine) to be
governed by Sharia, and to this end of overthrowing the Shiite-dominated
government of Iraq and the regime of the Syrian president Assad. It accepted and
continues to accept civilian casualties in its continued fight, since it sees anyone who
opposes its claims as an 'enemy of Islam'. IS sees killing such 'enemies' or
intimidating them by acts of violence as a legitimate instrument in their fight.

8 The organisation, which changed its name from 'Islamic State of Iraq and Greater
Syria' (ISIG) to 'Islamic State' (IS) on proclamation of the 'caliphate' on 29 June 2014,
thereby distancing itself from its self-imposed territorial limitation, has been led by
Abu Bakr al-Baghdadi since 2010. On proclamation of the 'caliphate', the
spokesperson of IS declared al-Baghdadi the 'caliph', to whom Muslims worldwide
owed obedience. His subordinates include a deputy and 'ministers', being the
individuals responsible for certain areas, such as a 'war minister' and a 'propaganda
minister'. The leadership also includes advisory 'Shura councils'. Publications are
produced in the media department 'Al-Furqan' and distributed via the 'al-I'tisam'
media office, which has its own Twitter channel and internet forum for this purpose.
The organisation's symbol, which is also used by the combat units, is the 'seal of the
prophet', a white oval with the inscription 'Allah - Rasul - Muhammad' on a black
background, with the Islamic statement of faith written above it. The now more than

several thousand fighters are subordinate to the 'war minister' and divided into local combat units, each with their own commander.

- 9 The organisation divided the areas it occupied into governorates and set up a secret service apparatus, the purpose of these measures being to create totalitarian state structures. Members of the Iraqi and Syrian armies and of opposition groups hostile to IS, foreign journalists, employees of non-governmental organisations and civilians who question IS's claim to power are faced with imprisonment, torture and execution. Several recordings of particularly gruesome killings were published by IS for the purposes of intimidation. In addition, the organisation continues to perpetrate massacres of parts of the civilian population, and terror attacks outside its sphere of influence. For instance, it has claimed responsibility for attacks in Europe, such as Paris, Brussels and Berlin.
- 10 In 2014, IS managed to occupy around a third of the state territory of Iraq. On 10 June 2014, it gained control over the major city of Mosul, which was its central seat of power in Iraq until the US-supported offensive by the Iraqi army at the end of 2016. Since 2015, the organisation has gradually been driven back with some success. For instance the recapturing of Mosul, which began on 16 October 2016 and was completed at the start of June 2017. On 27 August 2017, IS was driven from its last northern Iraqi stronghold in Tal Afar.
- 11 bb) The accused, who was converted to Islam as early as 2005, has since 2007 been married under German law to the witness T. , who is also of Islamic faith. With him, the accused has the joint children H. , born on 18 February 2008, and Ha.,

born on 5 February 2012. The third joint child Ham., born on 8 July 2009, died during a rocket attack in Syria on 7 December 2018.

- 12 During her marriage, the accused increasingly pursued the aim of travelling with T. and their children to the area controlled by IS in Syria, because she believed that only there could she live by her faith. Since T. had always rejected the ideology of IS and the idea of travelling to Syria, in October 2015, while T. was absent for work-related reasons and against his will, the accused travelled with the children to Turkey and from there to the area controlled by IS in Syria. In doing so, she consciously and wilfully prevented T. from exercising the right of care to which he is entitled in respect of the children, in respect of his daughters H. and Ha. until their return to Germany on 4 April 2019, and in respect of his son Ham. until his death on 7 December 2018.
- 13 The accused initially lived in Syria from October to November 2015 together with her children in a women's house of IS in Raqqa. She joined the organisation no later than on moving into the women's house; she identified with its ideology, actions and aims and submitted to the will of the organisation in agreement with persons who were responsible for IS. The women's house was bombed while the accused was staying there with her children; as a result, the children were placed in real danger of death, which the accused had already foreseen and was at least prepared to countenance on leaving Germany.
- 14 From November 2015, the accused and her children lived in Raqqa in a house that was used by her acquaintance G. and her husband under Islamic law. There, too, they were bombed and fired on. During this time, the accused and her children took part in a public execution. Moreover, her son Ham. witnessed a hand being severed from a thief as punishment.
- 15 During the first few months of her stay with IS, the accused repeatedly asked her husband during telephone calls to follow her to Syria, take part in a three-month paramilitary training course there in a training camp of IS, receive ideological instruction and then fight for the organisation. Since she was unable to convince him to travel to Syria, in the spring of 2016 she married under Islamic law the IS member I. alias 'Abu', who was from Kenya or Somalia, and moved

with him into a three-room residence in Raqqa, for which a monthly rent of USD 50 was payable. I. had incurred a gunshot wound in his hip during a combat mission and could therefore no longer fight. However, he continued to work for IS by undertaking logistical duties. He instructed the accused in how to handle a Kalashnikov in his possession for the purposes of self-defence. Together with him, the accused supervised cash transactions for IS members in Syria carried out via the money transfer provider Western Union. To finance her costs of living, IS paid her USD 100 monthly.

16 On several occasions in 2016, the accused took her son Ham., who at that time was six or seven years old, to an IS training camp in accordance with the ideology she shared with the organisation. There, he received physical training and was instructed in how to handle firearms; apart from this, he also performed guard duty. In addition, the accused allowed all three of her children to be taught by an Egyptian teacher in the interests of IS. When Ham. criticised the ideology of IS, she informed the 'religious police' of this, who punished her son, as she had intended.

17 The accused was also a member of the 'Katiba Nusaiba', an IS combat unit that contained exclusively women. Since the accused had a motor vehicle, she had the task within the Katiba of transporting women to firing practice.

18 At an unknown point in time, she was in possession of a hand grenade. She intended to use this in the event of an attack, in order to kill as many enemies of IS as possible, as well as herself and her children.

19 After the accused had a child by I. in May 2017, she left Raqqa in June 2017 with her four children, because of the increased bombings in the town. I. remained in Raqqa, where he was killed. Consequently, the accused received a one-off payment of USD 1 000 from the 'widows' office' of IS in February 2018. Later, she married the IS member N., becoming his second wife. After she left Raqqa, she fled parallel to the front lines in areas still controlled by IS.

- 20 On 7 December 2018, her son Ham. was killed when the house, situated close to the front line, in which the accused lived with her children, was bombed.
- If she had exercised the necessary care, the accused would have recognised that her children could be killed after she had brought them to an area where severe armed conflicts were taking place at that time and where there was a constant threat of armed violence.
- 21 b) The compelling suspicion with regard to the terrorist organisation IS is based on the relevant expert opinions, in particular those from the experts Dr St. and Dr K., and assessment reports from the Federal Criminal Police Office.
- 22 In relation to the acts with which the accused is charged, the compelling suspicion is essentially apparent from the statements of the witness T. . Particularly during his questioning by the investigating judge of the Federal Court of Justice on 25 April 2019, he described in detail how the accused increasingly urged him to travel with her and the children to Syria and join IS there. According to his description, she repeatedly telephoned him after she had left to ask him to follow her to Syria, to receive military training from IS there and to fight for the organisation. His statements also contain viable indications that the accused allowed her son Ham. to be instructed in how to handle firearms in an IS training camp and that she temporarily possessed a hand grenade, which she intended to use in the event of an attack in order to kill as many enemies of IS as possible as well as herself and her children.
- 23 The statements of the witness T. are partly consistent with the information provided by the accused. Although the accused did not admit to the alleged crimes when she was questioned by the investigating judge of the Federal Court of Justice, she has made comments in this regard on a number of other occasions. In particular, she told the witnesses K. and N. , who accompanied her during her journey from Syria to Stuttgart via Turkey on 4 April 2019, about her life in

Syria. She told them, among other things, about her stays in the IS women's house and the house of her 'friend' in Raqqa, about the bomb attacks, about her husbands under Islamic law and that she had been paid USD 100 per month from IS to finance her costs of living and USD 1 000 from the 'widows office' of the organisation following the death of her husband under Islamic law.

- 24 For details of the circumstances substantiating the compelling suspicion, reference is made to the detailed statements made in the arrest warrant of 28 May 2019 and the indictment.
- 25 c) According to these, the accused very likely participated in a foreign terrorist organisation as a member in three cases (Section 129a(1), subparagraph 1, the first and second sentences of Section 129b(1), Section 53 StGB), in one of these cases in concomitance (Section 52 StGB) with a war crime against persons (the second scenario of Section 8(1), subparagraph 5 VStGB), with aggravated abduction of minors (Section 235(2), subparagraph 1, (4), subparagraph 1 StGB) in two legally concurrent cases, with abduction of a minor resulting in death (Section 235(2), subparagraph 1, (5) StGB), with neglect of the duty to provide care and education in three legally concurrent cases (Sections 171, 52 StGB) and with bodily harm (Section 223(1), Section 25(2) StGB) and in one further cases in concomitance (Section 52 StGB)

with an infringement of Section 22a(1), subparagraph 6 KrWaffKG in conjunction with Part B, subparagraph 46 of the Annex to Section 1(1) KrWaffKG.

26 aa) There is a compelling suspicion that the accused participated in IS as a member (Section 129a(1), subparagraph 1, the first and second sentences of Section 129b(1) StGB).

27 This is the case both when applying the previously relevant concept of organisation according to the case-law of the Federal Court of Justice (see in this regard, for instance, BGH, judgments of 20 March 1963 - 3 StR 5/63, BGHSt 18, 296, 299 and 300; of 14 August 2009 - 3 StR 552/08, BGHSt 54, 69 paragraph 123) and when applying the legal definition of Section 129(2) in conjunction with Section 129a(1) StGB in the version in force since 22 July 2017 (cf. Section 2(1), (3) StGB), which places lower requirements on the organisational structure and formation of will and has thus broadened the concept. Now, this includes not only alliances of persons whose members consider themselves to be a unified association, but also hierarchical groups involving the mere enforcement of the will of an authoritarian leader without any 'group identity' (BT-Drucks. 18/11275, pp. 7, 11).

28 Also in accordance with the legal definition, an organisation is now an organised alliance of persons, which at least requires a certain organisational structure and, to a certain extent, instrumental advance planning and coordination; it is also necessary that action is taken in a superordinate, common interest (BT-Drucks. 18/11275, pp. 7 and 8, 11). Although, unlike the previous interpretation, the legal definition of participation in an organisation as a member does not require the offender to be integrated into the 'life' of the organisation and to be subject to its will, it continues to

require a certain involvement of the offender in the organisation by mutual agreement (BGH, order of 5 September 2019 - AK 49/19, juris paragraph 11). It can only be considered if the offender supports the organisation from the inside, not just from the outside. In this respect, it does not require there to be any formal declaration of joining or formal membership. However, the offender must occupy a position within the organisation that identifies him or her as belonging to the circle of members and distinguishes him or her from non-members. For this, merely acting for the organisation is insufficient, even if it is particularly intensive, since an outsider does not become a member of an organisation merely by supporting it. By its nature, membership involves a relationship that cannot be imposed on an organisation, but requires its consent. Subordination and activity that are based on the will of only one party are insufficient, even if the party in question strives to support the organisation and its criminal aims. The assumption of participation as a member therefore does not apply if the acts of support are not based on a mutual desire for continuous involvement in the life of the organisation (cf. BGH, order of 13 June 2019 - AK 27/19, juris paragraph 20; cf. also BGH, judgment of 14 August 2009 - 3 StR 552/08, BGHSt 54, 69 paragraph 128).

29 By these measures, the accused very likely participated in IS as a member. There are circumstances suggesting that she became integrated into the organisation no later than on moving into the IS women's house in October 2015. For instance, she travelled to Syria with her children of her own accord in order to support the fight against the Syrian regime and to help expand an Islamic state according to Sharia rules. She therefore tried to win over her husband as a fighter for IS, and married an IS fighter under Islamic law who taught her how to handle a Kalashnikov. Moreover, she was financially supported by the organisation

and received a one-off payment of USD 1 000 from the organisation's 'widows office' following the death of her husband under Islamic law. In addition, she was a member of an IS combat unit that contained only women and in this context took on the task of transporting the women to firing practice. Together with her husband under Islamic law, she supervised cash transactions for IS members in Syria carried out via the money transfer provider Western Union and temporarily possessed a hand grenade, which she intended, among other things, to use in the event of an attack in order to kill as many enemies of IS as possible. In view of this, it must be assumed that the accused was accepted into the organisation by mutual agreement.

30 She promoted the IS aim of founding a dedicated state-like entity in Syria under Sharia law, not only by attempting to persuade her husband to also come to Syria and join the organisation, by supervising cash transactions for members of the organisation and by engaging in the 'Katiba Nusaiba', but also by enrolling her son Ham. in the IS training camp and by allowing her children to be taught in line with the organisation and her son to be punished by the 'religious police' when he expressed doubts about the ideology of IS.

31 bb) There is also a compelling suspicion that in one case the accused concomitantly committed a war crime against persons (the second scenario of Section 8(1), subparagraph 5 VStGB) by sending her son Ham. to an IS training camp several times in order for him to be instructed there in how to handle weapons.

32 (1) The fighting taking place in Syria during the period of the offence between the Syrian army and opposition groups, particularly IS, was an armed conflict within the meaning of Section 8(1) VStGB.

- 33 (2) The accused integrated her son Ham., who at that time was six or seven years old and thus a child under the age of 15, into an armed group.
- 34 (a) By using the feature of the armed group in addition to that of the (state) armed forces, the legislator intended to extend the scope of Section 8(1), subparagraph 5 VStGB – in accordance with the provisions of Article 8(2), subparagraph b (xxvi) and subparagraph e (vii) of the Law on Cooperation with the International Criminal Court (Gesetz über die Zusammenarbeit mit dem Internationalen Strafgerichtshof, IStGH statute) – to include the non-international armed conflict, which does not necessarily require the involvement of armed forces (MüKoStGB/Geiß/Zimmermann, 3rd edition, Section 8 VStGB paragraph 163; BT-Drucks. 14/8524, pp. 26 and 27). The alignment with the provisions of the IStGH statute reveals that the feature of the armed group within the meaning of Section 8(1), subparagraph 5 VStGB requires a minimum degree of organisational structure (cf. MüKoStGB/Geiß/Zimmermann, loc. cit.). This is because, pursuant to Article 8(2), subparagraph f IStGH statute, the corresponding provision of Article 8(2), subparagraph e (vii) only applies when ‘organised’ armed groups – optionally in addition to state armed forces – are involved in an armed conflict taking place in the territory of a state and not, by contrast, in cases of mere civil disturbances, tensions or riots.
- 35 At the time of the offence, IS had an organisational structure that clearly went beyond the minimum degree required here. The organisation had several thousand fighters who were subordinate to the ‘war minister’ and divided into local combat units, each with their own commander. This created a structure that made it possible, under responsible leadership, to exercise control over an area, train new recruits and carry out sustained and coordinated combat operations.

- 36 (b) Integration within the meaning of the second scenario of Section 8(1), subparagraph 5 is to be understood as meaning any admission into an armed unit. This is already clear from general linguistic usage, according to which the German term 'Eingliedern' [integration] designates the meaningful insertion or classification into a greater whole (cf. www.duden.de/rechtschreibung/eingliedern). This interpretation corresponds to that of the provisions of Article 8(2), subparagraph b (xxvi) and subparagraph e (vii) IStGH statute, with which Section 8(1), subparagraph 5 VStGB is aligned. The term integration used in these provisions likewise covers any factual admission into an armed unit; a formal act of admission is not required, nor is active participation in combat operations (cf. Werle/Jeßberger, Völkerstrafrecht, 4th edition, paragraphs 1304 and 1305).
- 37 In this case, the IS training camp in which the accused enrolled her son was an armed unit. This is evident from the fact that he was instructed there in how to handle firearms.
- 38 (3) The offence was also connected to the armed conflict. The feature must be understood as functional. The connection is present if the existence of the armed conflict was of decisive importance for the ability of the offender to commit the offence, for his decision to commit the offence, for the nature or purpose of the offence or the way in which it was committed; it is not sufficient for the offence to be committed merely 'on the occasion' of the armed conflict.

By contrast, it is not necessary for the offence to be executed during ongoing combat operations or in particular proximity thereto (cf. for instance BGH, judgment of 27 July 2017 - 3 StR 57/17, BGHSt 62, 272 paragraph 55 with further references).

39 In this case, the armed conflict in which IS was involved was the relevant background for the accused's decision to allow her son to be instructed in the organisation's training camp in how to handle firearms.

40 cc) The accused is also strongly suspected of the concomitantly committed aggravated abduction of minors in two legally concurrent cases (Section 235(2), subparagraph 1, (4), subparagraph 1, Section 52 StGB) and the abduction of minors resulting in death (Section 235(2), subparagraph 1, (5), Section 52 StGB), by travelling to the area controlled by IS in Syria with her three children.

41 By travelling to Syria with the children against the will of the witness T. who, together with her, was jointly entitled to custody, in order to live there permanently, she prevented her husband from exercising his right of care during her stay in Syria. Due to the bombings, the children were on several occasions exposed to a direct risk of death, which the accused was prepared to countenance. Her son was finally killed during the rocket attack on 7 December 2018, this being the realisation of a risk that the accused could have foreseen and prevented.

42 dd) There is also a compelling suspicion that the accused, in three concomitant cases, neglected her duty to provide care and education (Sections 171, 52 StGB) by travelling to the area controlled by IS in Syria with her

three children, living there permanently with them in a war zone and allowing her son Ham. to be instructed in a training camp of the organisation in how to handle fire arms and to be punished by the 'religious police' of IS.

43 The criteria of the offence are fulfilled if the act in question is objectively in particularly clear contrast to the principles of adequate parenting and subjectively reveals an increased degree of irresponsibility as measured by the capabilities of the offender. In the case of a particularly severe violation of duties, a one-off act may suffice in this respect. In the case of repeated acts or acts of a longer duration, however, infringements that are of minor significance per se may assume the magnitude of a gross violation (Schönke/Schröder/Bosch/Schittenhelm, StGB, 30th edition, Section 171 paragraph 4 with further references).

44 These requirements are met in this case. According to the will of the accused, the children had to live in the area controlled by IS and thus under despotic rule and in a war zone. They were repeatedly exposed to bombings and did not attend school. The accused also took part in a public execution with them. The accused also allowed her son Ham. to be instructed in a training camp of the organisation in how to handle firearms and to be punished by the 'religious police' of IS when he expressed doubts about its ideology. Taken in its entirety, this reveals at least an increased degree of irresponsibility on the part of the accused, as a result of which the children, as the accused recognised and was at least prepared to countenance, were exposed to the specific danger that their physical or mental development could be seriously damaged.

- 45 ee) There is also a compelling suspicion that the accused committed bodily harm by taking her son Ham. to the 'religious police' of the organisation when he expressed doubts about the ideology of IS and allowing him to be punished there (Section 223(1), Section 25(2) StGB). The acts of punishment committed by the members of the 'religious police' are to be attributed to the defendant in accordance with Section 25(2) StGB. She wanted Ham. to be physically abused by the members of the 'religious police' and to this end made a significant contribution to the offence by leaving him to the 'religious police' for this purpose.
- 46 ff) Finally, there is a compelling suspicion against the accused owing to an infringement of Section 22a(1), subparagraph 6 KrWaffKG. She temporarily exercised actual control over a hand grenade, which is a weapon of war within the meaning of Part B, subparagraph 46 of the Annex to Section 1(1) KrWaffKG.
- 47 gg) The following applies with regard to the cumulative assessment of the offences:
- 48 (1) The infringements of Section 235(2), subparagraph 1, (4), subparagraph 1 StGB committed to the detriment of several children – and the endangerment of several wards (Section 171 StGB) through the same act – are in concomitance with one another, as is the infringement of Section 235(5) StGB that was realised on the death of the child Ham. . Compared to Section 235(2) StGB, Section 235(4) and Section 235(5) StGB are *lex specialis* (cf. MüKoStGB/Wieck-Noodt, 3rd edition, Section 235 paragraph 103 with further references); Section 235(5) supersedes Section 235(4) StGB.

- 49 Section 235 StGB is a continuing offence (Reichsgericht (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 committed in full at the point at which the unlawful situation of abduction of the minor comes into being and ends only when the unlawful situation no longer persists (MüKoStGB[Wieck-Noodt, loc. cit. paragraph 101). Other offences that are committed during the continuing situation are in concomitance with the continuing offence when the acts of commission of the offences at least partially correspond; by contrast, real cumulation is to be assumed when the other offence is committed only on the occasion of the continuing offence (cf. MüKoStGB/ von Heintschel-Heinegg, 3rd edition, Section 52, paragraph 33).
- 50 A continuing offence such as Section 235 StGB combines other offences, which viewed in isolation would represent a multiplicity of offences, into a single offence violating multiple laws or the same law more than once if, for its part, it concomitantly coincides with each of these offences and its negative value under criminal law, as expressed in the threat of punishment, does not clearly fall short of the unlawful acts additionally realised during its commission (BGH, judgment of 8 November 2007 - 3 StR 320/07, NStZ 2008, 209, 210 with further references).
- 51 (2) In this case, there are overlapping acts of commission of the offence, to the extent that the accused caused her son Ham. to be admitted into the IS training camp and brought him before the 'religious police' for the purposes of corporal punishment. This further intensified the unlawful situation within the meaning of Section 235 StGB. On account of the associated handling of weapons, the increased risk of bombings and the threat of physical abuse there, taking Ham. to the training camp and to the 'religious police' additionally fulfilled the elements of the offence under Section

235(4), subparagraph 1 StGB. The participation as a member within the meaning of Section 129a(1), subparagraph 1 and the first and second sentences of Section 129b(1) StGB that was realised through these acts is also in concomitance with Section 235(2), subparagraph 1, (4), subparagraph 1 StGB in each case. With regard to taking Ham. to the training camp, this also applies in respect of the concurrently realised infringement of Section 171 StGB in three concomitant cases and the war crime against persons according to the second scenario of Section 8(1), subparagraph 5 VStGB. With regard to the punishment of her son by the 'religious police' that was brought about by the accused, the same applies in respect of the bodily harm (Section 223(1) StGB) and the violation of the duty of care and education realised as a result (Section 171 StGB).

52 If viewed in isolation, the offences realised through taking Ham. to the IS training camp, on one hand, and to the 'religious police', on the other, would be considered to be a multiplicity of offences. In this case, however, the linking through the respectively concomitant offence of Section 235(4), subparagraph 1 StGB justifies the assumption of ideal cumulation. The negative value under criminal law of the infringement of Section 235(4), subparagraph 1 StGB which, like the participation in a foreign terrorist organisation as a member (the first sentence of Section 129a(1), the first and second sentences of Section 129b(1) StGB), is punishable by a prison sentence of one to ten years, clearly falls short of that of the war crime against persons according to the second scenario of Section 8(1), subparagraph 5 VStGB, which is punishable by a prison sentence of no less than three years.

53 By contrast, the accused committed the offence under Section 22a(1), subparagraph 6 KrWaffKG in conjunction with Part B, subparagraph 46 of the Annex to Section 1(1)

KrWaffKG and the thus concurrently realised participation as a member within the meaning of Section 129a(1), subparagraph 1 and the first and second sentences of Section 129b(1) StGB only on the occasion of the continuing offence of the abduction of minors (Section 235 StGB). It therefore equally forms a multiplicity of offences with the other unlawful acts as with the entirety of the additionally realised acts of participation as a member on the part of the accused that do not constitute any other offence (cf. in this regard BGH, order of 9 July 2015 - 3 StR 537/14, BGHSt 60, 308 paragraphs 23 and 24).

54 d) German criminal law is applicable.

55 With regard to the participation in a foreign terrorist organisation as a member, it can be left open whether the applicability of German criminal law arises directly from the second scenario of the second sentence of Section 129b(1) StGB since the accused is German (see in this regard BGH, order of 6 October 2016 - AK 52/16, juris paragraphs 33 and 34). In any case, German criminal law is applicable in this respect pursuant to Section 7(2), subparagraph 1 StGB, as it is in relation to the abduction of minors, the violation of the duty of care and education, bodily harm and the infringement of the Weapons of War (Control) Act. At the time of the offence, the respective locations of the offences were under the exclusive control of IS and were therefore in effect not subject to any criminal jurisdiction.

56 With regard to the war crime against persons, the applicability of German criminal law arises from Section 1 VStGB.

57 e) The authorisation to prosecute required under the second and third sentences of Section 129b(1) StGB has been given.

58 f) The jurisdiction of the Federal Prosecutor General to prosecute offences under Sections 129a and 129b StGB and thus also for the concomitantly realised offences arises from the first sentence of Section 142a(1) of the Courts Constitution Act (Gerichtsverfassungsgesetz, GVG) in conjunction with Section 120(1), subparagraph 6 GVG, and to prosecute offences under the Code of Crimes against International Law incidentally from the first sentence of Section 142a(1) GVG in conjunction with Section 120(1), subparagraph 8 GVG.

59 2. The ground for arrest of a flight risk (Section 112(2), subparagraph 2 StPO) exists. It is more likely that the accused, were she to be released, would evade the criminal proceedings than submit to them.

60 In the event of her conviction, the accused can expect a considerable prison sentence. The temptation to abscond arising from this is not mitigated by any sufficient circumstances that would impede flight. The accused has neither a permanent residence nor regular employment in Germany. She only has a family connection to her mother, although this was not enough to stop her travelling to Syria in 2015. Moreover, the accused stated during her questioning on 4 April 2019 that, as a devout Muslim, she could not imagine a life in Germany.

61 In any case, these circumstances are good reason to fear that the punishment of the offences could be jeopardised without the continued detention of the accused,

meaning that, in terms of the fact that the accused is strongly suspected, inter alia, of participation in a foreign terrorist organisation as a member, the continuation of the remand detention is to be based on the ground for arrest of serious crime, even if Section 112(3) StPO is interpreted in the strict manner required (BGH, orders of 22 September 2016 - AK 47/16, juris paragraph 26; of 24 January 2019 - AK 57/18, juris paragraphs 30 et seq.)

- 62 Less drastic measures within the meaning of Section 116 StPO are not likely to be effective.
- 63 3. The conditions for the continuation of the remand detention for a period exceeding six months (Section 121(1) StPO) have been met. The particular complexity and the scope of the proceedings mean that a judgment has not yet been possible.
- 64 Following the arrest of the accused on her return to Germany in April 2019, it was first necessary to evaluate the exhibits found during the search of her person, in particular mobile telephones, some of which contained extensive image, text, audio and video files in German and Arabic. After the witness T. had been questioned and had provided his mobile telephone to the investigating authorities at the start of May 2019, the data stored therein also had to be secured and evaluated. Requests for information were sent to the Federal Criminal Police Office and the Federal Intelligence Service in order to complete the gathering of information regarding the husbands of the accused under Islamic law, her other contacts in Syria, the training camps for child soldiers operated by IS in the Raqqa region and the 'Katiba Nusaiba' consisting exclusively of women. Responses from the authorities have not yet been added to the files. Further investigations, in

particular witness hearings, were also required. Despite this, the Federal Prosecutor General already brought charges before Düsseldorf Higher Regional Court on 4 October 2019.

65 Against this background, the proceedings so far have been conducted with the due expedition required in detention cases.

66 4. Finally, the continuation of the remand detention is not disproportionate to the importance of the case or to the anticipated penalty in the event of conviction (the first sentence of Section 120(1) StPO).

