



FEDERAL COURT OF JUSTICE

RESOLUTION

AK 12/19
2 BJs 962/18-4

of
4 April 2019
in the preliminary proceedings
against

[text hidden]

for war crimes against property and other rights etc.

The 3rd Criminal Tribunal of the Federal Court of Justice, after hearing the Federal Prosecutor General as well as the defendant and her defense counsel, made the following ruling on 4 April 2019 in accordance with Section 121, 122 StPO:

The provisional detention shall continue.

Any further review of remand in custody by the Federal Court of Justice shall take place in three months.

Until that time, the review of remand in custody shall be entrusted to the court competent according to general principles.

Grounds: I.

1 1. The defendant was arrested on 21 September 2018 and has been in pre-trial detention since then, initially on the basis of the arrest warrant issued by the investigating judge of the Federal Supreme Court on 24 September 2015 (2 BGs 445/15), and since 14 March 2019 on the basis of the extended arrest warrant issued by the investigating judge of the Federal Supreme Court on the same day (2 BGs 164/19).

2 Subject of the arrest warrant of 14 March 2019 is the allegation that the defendant, who was a juvenile or an adolescent offender at the time of the offence, had participated in four legally independent acts in the Syrian cities of Jarabulus, Rakka and Ai-Mayadin from the end of January 2014 to October 2017 as a member of the group called "Islamic State" (IS) and thus of a non-European terrorist organisation, the purposes and activities of which were aimed at murder (Section 211 StGB), manslaughter (Section 212 StGB), crimes against humanity (Section 7 VStGB) or war crimes (Section 8, 9, 10, 11 or 12 VStGB), that in two of these cases the defendant, through the same act in connection with a non-international armed conflict, acquired, to a considerable extent in violation of international law, objects of the opposing party which had been defeated by the violence of her own party, without this having been prompted by the requirements of the armed conflict, and, in one case, in an act involving three persons who were to be kept in slavery, one of whom had been under the age of eighteen at the time of the offence, seized them and kept them hostage by taking advantage of their personal predicament and by threatening them with a serious evil, at

the same time depriving people of their freedom in another manner for longer than one week (Section 9(1) VStGB, Section 129a(1)(1), Section 129b(1), Section 232(1) sentence 1 point 2, paragraph 2 point 1 and 2, paragraph 3 sentence 1 point 1, sentence 2, Section 239(3) point 1, Section 25(2), Section 52, 53 StGB in connection with Section 1, 3, 105 JGG).

3 2. The special review of remand in custody in accordance with Section 121, 122 StPO is required. The issue of the extended arrest warrant of 14 March 2019 did not set in motion a new six-month period within the context of Section 121(1) StPO. To that applies the following:

4 The term "on account of the same act" within the context of Section 121(1) StPO deviates from the definition of the act in Section 264(1) StPO. In view of the protective purpose of the standard, it is to be interpreted broadly and covers all acts of the defendant from the time at which they became known - in the sense of an urgent suspicion - and could have been included in the existing arrest warrant. This avoids a so-called reserve holding of charges in that offences which are known from the outset or become known in the course of the investigation are initially held back and are only made the subject of a new or extended arrest warrant shortly before the expiry of the six-month period with the aim of opening a new six-month period (cf. BGH, resolution of 6 April 2017 - AK 14/17, juris marg. no. 6 with further references).

5 In this case, the arrest warrant originally issued against the defendant on 24 September 2015 was limited to the allegation that the juvenile defendant had participated since the beginning of 2014 at the latest in Syria as a member of the IS and thus in a non-European terrorist organisation the purposes and activities of which had been aimed at committing murder (Section 211 StGB) and manslaughter (Section 212 StGB) (Section 129a(1) point 1, Section 129b(1) sentences 1 and 2 StGB in conjunction with Section 3 JGG). The circumstances underlying the extension of the alleged offence by the arrest warrant of 14 March 2019 were already known when the defendant was arrested. The new allegations could therefore already have been included in the existing arrest warrant at that time.

II.

6 The conditions for the continuation of a pre-trial detention beyond six months are duly met.

7 1. The defendant is highly suspected of the charges laid against her.

8 a) According to the results of the investigations to date, the following facts are to
be assumed in the sense of an urgent suspicion:

9 aa) The IS is an organisation with militant-fundamentalist Islamist orientation, which
had originally set itself the goal of establishing a "theocracy" under Sharia law,
encompassing the territory of today's Iraq and the historical "ash-Sham" region - the
present-day states of Syria, Lebanon and Jordan as well as Palestine - based on their
ideology, and overthrowing the Shiite dominated government in Iraq and the regime of
Syrian President Assad. It accepted and accepts civilian casualties in its continued
struggle, because it sees everyone who opposes its claims as an "enemy of Islam"; the
killing of such "enemies" or their intimidation by acts of violence is seen by the IS as a
legitimate means of struggle.

10 The leadership of the association, which renamed itself from ISIG to IS with the
proclamation of the "Caliphate" in June 2014 - thus signaling its ambitions for territorial
expansion - has been in the hands of the "Emir" Abu Bakr al-Baghdadi since 2010. Al-
Baghdadi had been declared a "caliph" by his spokesman, to whom Muslims worldwide
had to obey. Rumors that he has been killed in the meantime have not yet been confirmed.
A deputy as well as "ministers" responsible for individual domains, such as a "Minister of
War" and a "Minister of Propaganda", are subordinate to the "Caliph". The leadership also
includes advisory "Shura councils". Publications are produced by the "Al-Furqan" media
department and distributed via the "al-t'tisam" media office, which uses its own Twitter
channel and an Internet forum for this purpose. The symbol of the association also used
by combat units is the "Prophet's Vicar" (a white oval with the inscription: "Allah - Rasul -
Muhammad") on a black background, signed with the Islamic creed. The several
thousand fighters are subordinated to the "Minister of War" and divided into local combat
units with one commander each.

11 The association divided the territories occupied by it into governorates and set up
a secret service apparatus; these measures aimed at creating totalitarian state structures.
Members of the Syrian army, but also opposition groups opposed to the IS, foreign
journalists and employees of non-governmental organisations as well as civilians who
questioned the newly won IS territories were subjected to arrest, torture and execution.
Film footage of particularly cruel killings has been published several times by ISIG or IS
for purposes of intimidation. In addition, the association repeatedly commits massacres
on parts of the civilian population and terrorist attacks outside its sphere of influence. It
has thus assumed responsibility for attacks in Europe, for example in France, Belgium

and Germany.

12 bb) In the night from August 2 to 3, 2014, hundreds of IS militiamen attacked the region around the Sindjar Mountains in northwestern Iraq, where mainly Kurds of Yezidi faith lived, who were regarded as unbelievers or "devil worshipers" according to the radical Sunni understanding of the IS. The purpose of the operation was the complete annihilation of the Yezidi religion, of Yezidism as such, and of its followers in the territories occupied by the IS, including through forced conversion and religious re-education of all Yezidis, the immediate execution of men who were not ready for conversion, and the enslavement of women and children.

13 Accordingly, men who refused to convert to Islam were executed; those who - in order to survive - had agreed to convert to Islam were captured, abducted and subsequently mostly used as forced laborers.

Women and children were first rounded up at collection points and transferred to group accommodation facilities. Later, under threat of violence, they were deported to areas that had been occupied by the IS for some time, particularly Rakka in Syria and Mossul in Iraq. There, women and girls were collected in shelters in which IS fighters could choose and take individual prisoners either because of their outstanding service, as awards for special achievements, as remuneration or as material award. The younger women and girls were then predominantly kept and abused as sex slaves, the older women mostly used in private houses as house slaves, for example to take care of the household and look after children. While the women and girls were not "marketed" directly from the shelters, they were sold via central slave markets, especially in Rakka or Mossul.

14 cc) In the course of 2013 at the latest, the defendant decided to leave Germany and go to Syria in order to support the fight against the Syrian regime there and to participate in the founding of an Islamic state according to the rules of Sharia law. For this purpose, she travelled first to Turkey on 31 October 2013 and then on to Syria. There she was trained in November 2013 in the use of the Kalaschnikow (AK 47) automatic rifle. In order to fight the "unbelievers" effectively, she procured herself a pistol.

15 On 4 January 2014 she got married in Jarabulus according to Islamic rite and with permission of the IS to a separately prosecuted man [text hidden], who had joined the IS in November 2013, took the oath of allegiance to its emir and participated in hostilities in Syria. After the wedding, at the latest, the defendant, advocating the ideology and the methods of the IS, integrated herself into the daily life of the organisation, subordinated herself to the will of the association and agreed to promote its terrorist aims.

After the IS had brought the city of Jarabulus under its sole control on 17 January 2014, following military confrontations with fighters of the "Free Syrian Army" (FSA), the defendant did the following deeds for IS:

16 (1) She moved into a house used by [text hidden] and his brother and then lived there together with her husband. The furniture of the house had been seized during the hostilities. The defendant and [text hidden] furnished the house free of charge with supplies they knew had been captured by IS fighters during the conquest of Jarabulus and distributed to IS supporters. These included kitchen appliances, a washing machine and carpets. The rightful owners of the goods had been killed by IS or fled the city. The said materials and supplies used for house furnishing served the purpose pursued by the defendant: to stay permanently as an IS member in the city now controlled by the organisation, to secure the expulsion of the natives - who in their view were unbelievers - and to make it more difficult for the FSA to recapture the city (Case 1).

17 (2) Since February 2014 and until at least May 2014, the defendant jointly with [text hidden] performed security and policing services for the IS, which involved either the external security of the area controlled by the organisation or the monitoring of the population for their adherence to rules of conduct established by IS. In addition, [text hidden] and the defendant temporarily admitted new arrivals to the organisation in the house they used from February to at least early June 2014.

From May 2014, the IS paid them about 118 US dollars per month for their services. Moreover, in May 2014 and February 2015, the defendant attempted to persuade other persons from Europe to travel to Syria and participate in the jihad for IS (Case 2).

18 (3) From March 2014 the defendant and [text hidden] planned to move into another apartment in Jarabulus. By June 2014 at the latest, they had procured themselves an apartment with a terrace and furnishings whose rightful owners or entitled persons had been expelled by the IS. The IS had - as was known to the defendant and [text hidden] - placed the apartment under its administration and allocated it to the defendant and her husband, along with furniture, for free use, together with instructions not to change the apartment arbitrarily and not to sell the furnishings provided without the consent of the organisation. Together with [text hidden], the defendant took possession of the apartment and the furnishings and used both until the end of 2014 to reinforce IS's territorial claim in Jarabulus and to make it more difficult for enemy military units to recapture the city (Case 3).

19 (4) Around August 2015, the defendant and [text hidden] together with their daughter, born on 15 February 2015, moved into an apartment in Rakka. From September 2015 and beyond the family' s flight from Rakka to Al-Mayadin in June 2017 and until October 2017, both kept at least three female Yezidis there against their will as slaves. One of the Yezidis was about 13 or 14 years old, the second named [text hidden] was 20 years old and the third was probably over 21 years old. They were accommodated in one of the rooms of the apartment, were made to do housework and look after the children of the defendant.

20 The defendant and [text hidden] bought the first slave who was perhaps more than 21 years old shortly before 20 September 2015. They acted following the ideology of IS, according to which the Yezidis were "devil worshippers" and the enslavement of Yezidi women was religiously justified. They detained the slave in their apartment in Rakka until the end of 2015. In case of misconduct or escape the slave had to reckon with severe punishments in the form of physical injuries. The defendant at any rate made this clear to her through her daily instructions.

21 At the end of December 2015 [text hidden] sold the slave. Previously, he and the defendant had already acquired the other Yezidi woman aged 20 and the girl aged between 13 and 14, who from the end of 2015 and until October 2017 had to work as slaves in the household of the defendants and take over childcare (Case 4).

22 b) The urgent suspicion is based with regard to the terrorist organisation IS on the relevant expert opinions of the experts Dr. S. and Dr. K. as well as evaluation reports of the Federal Criminal Police Office. With regard to the violent depredations of IS against the Yezidi population and the enslavement of Yezidi women and children, the urgent suspicion arises from various notes of the Federal Criminal Police Office and online publications of IS as well as the expertise provided by the expert Dr. B.

23 With regard to the alleged acts of the defendant, the urgent suspicion is essentially based on the analysis of the chat traffic and the monitored telephone conversations that she and [text hidden] conducted with others. From this it follows that the defendant already through her marriage with [text hidden] integrated herself into the IS organization according to Islamic law, subjected herself to its will and intended to live permanently in the area controlled by IS and to promote there the objectives of the organization, for example by way of the guard services subsequently performed by her as well as the admission of new arrivals. The monitored telephone

conversations also prove that the defendant and [text hidden] received furnishings for the apartment initially used by them in Jarabulus that IS had captured as well as the apartment and inventory that the defendant and [text hidden] had been using since June 2014 at the latest.

24 From the chat traffic and the monitored telephone conversations it also follows that the defendant and [text hidden] acquired three women of Yezidan origin as slaves and had them permanently working in their household. This is also confirmed by the testimony of witnesses. In view of the circumstances, it can be assumed that the women remained in the household of the defendant only because they were at least tacitly threatened with physical abuse in the event of an attempted escape.

25 In light of the details of the evidence and circumstantial evidence giving rise to an urgent suspicion, reference is made to the detailed explanations in the arrest warrant of 14 March 2019.

26 c) Accordingly, the defendant is very likely to have been involved in at least three criminal activities as a member of a terrorist group in a foreign country (Section 129a(1) point 1, Section 129b(1) sentences 1 and 2, Section 53 StGB), with one case (Case 3) connected with war crimes against property (Section 9(1) VStGB, Section 52 StGB) and one case (Case 4) with very severe human trafficking, with severe human trafficking and with severe deprivation of liberty (Section 232(1) sentence 1 point 2, paragraph 2 point 1 and 2, paragraph 3 sentence 1 point 1, sentence 2, Section 239(3) point 1, Section 52 StGB).

27 aa) The defendant is highly suspected of being an active member of IS (Section 129a(1) point 1, Section 129b(1) sentences 1 and 2 StGB).

28 Such membership requires a certain formal integration of the perpetrator into the organisation. It only comes into question when the perpetrator promotes the association from within and not merely from without. In this respect, no formal declaration of entrance or formal membership is required. It is necessary, however, that the perpetrator occupies a position within the organisation which identifies him as belonging to the circle of members and makes him distinguishable from non-members. Working for the organisation alone, however intense, is not sufficient for this; for an outsider does not become a member solely through the promotion of the organisation. By its very nature, membership presupposes a relationship that cannot be imposed on an association, but requires its approval. Subordination and action based solely on a unilateral decision is not sufficient, even if the

person concerned is eager to promote the organisation and its criminal aims. Participation on a membership level is therefore ruled out if the supporting actions are not based on a mutual will to continue to participate in the life of the organisation (cf. only BGH, judgment of 14 August 2009 - 3 StR 552/08, BGHSt 54, 69, 113 with further references; resolution of 13 September 2011 - StB 12/11, NStZ-RR 2011, 372 et seq.).

29 By these standards, the defendant is very likely to have acted as a member of the IS. There are circumstances which indicate that she has been with the IS since January 2014. She travelled to Syria on her own initiative to support the struggle against the Syrian regime and to participate in the founding of an Islamic state according to the rules of Sharia law. In Syria she was trained in the use of the AK 47 and obtained a pistol to fight the "unbelievers" effectively. She also married an IS fighter at the beginning of January 2014 with the permission of IS according to Islamic rite and lived with him in cities controlled by the organisation, using dwellings and furnishings captured by the IS and left to her and her husband. In light of the above, it can be assumed that the defendant was accepted into the organisation by mutual agreement.

30 Through the actions she was accused of, she promoted the goals of the IS, namely to establish its own state-like entity in Syria permanently under the Sharia law, as well as to fight the Yezidi population, which was regarded as "devil worshippers". Thus, the use of the dwellings and furnishings captured by IS during the conquest of the city of Jarabulus served the purpose of reinforcing IS's occupation of the city and making it more difficult for the owners expelled by the organisation to return. The guard and policing services provided to IS by the defendant, the temporary reception of newcomers from supporters of the organisation in the house she used, and her efforts to win new members and supporters for the IS were also beneficial for the organisation. The same applies, finally, to the exploitation of the three Yezidi women bought together with her husband to serve as workers in their household. The defendant thus promoted the aim of the IS to annihilate or enslave the Yezidi population.

31 bb) The defendant is also highly suspected of having effectively committed a war crime against property (Section 9 Abs, 1 VStGB) in one case by taking possession, together with her husband, of the apartment and inventory made available to them by IS in June 2014 (Case 3).

32 (1) This way, the defendant appropriated the apartment and its furnishings.

33 An appropriation occurs through the confiscation of an object against or without the consent of the owner for a considerable period of time (MüKoStGB/Ambos, 3rd edition,

Section 9 VStGB marg. no. 9; Werle/Jeßberger, *Völkerstrafrecht*, 4th ed, marg. no. 1314). It does not require the offender to requisition the object in question or at least to have the intent to do so (Werle/Jeßberger, *ibid.*). Both movable and immovable goods may be the subject of appropriation in the same way as they are according to the international law on war crimes codified in the Rome Statute of the International Criminal Court (ICC Statute). With the International Criminal Code, the legislator wanted to incorporate the penal provisions contained in the ICC Statute into national criminal law (Bundestag Document no. 14/8524, p. 121; BGH, judgment of 27 July 2017 -3StR57/17, BGHSt 62, 272 marg. no. 19). Section 9(1) of the VStGB is oriented accordingly to Art. 8(2)(b)(xvi) and (xiii) as well as point (e)(v) and (xii) IStGH Statute (Bundestag Document no. 14/8524, p. 31). These provisions cover all types of property, in particular both movable and immovable goods (see ICC, judgment of 21 March 2016 - Bemba Gombo, ICC-01/05-01/08, No. 115).

34 In this case, the seizure of the apartment together with the inventory by the defendant and [text hidden] was aimed at permanently depriving the rightful owners of these goods against their will. The owners had left the apartment and its furnishings behind only because they had felt compelled to flee from IS troops. They had by no means been concerned with leaving the objects belonging to them to other persons, in particular members of IS.

35 The fact that the owners had already fled at the time when the defendant and [text hidden] took possession of the apartment does not prevent the occurrence of appropriation. For the appropriation of goods within the context of Section 9(1) VStGB does not require the presence of the rightful owners or his/her direct power of disposal over the goods (cf. ICC, judgment of 21 March 2016 - Bemba Gombo, ICC-01/05-01/08, no. 116).

36 It is also irrelevant with regard to the appropriation of the apartment and its furnishings by the defendant and her husband that the objects had previously been annexed by IS. The notion of appropriation is not limited to the first seizure of the goods against or without the consent of the owner. Such a restriction cannot be inferred from the wording of Section 9(1) VStGB. Likewise, it does not result from the general usage of the German language; according to this, "Aneignung" (appropriation) is rather understood to mean any acquisition or seizure (cf. www.duden.de/rechtschreibung/Aneignung). Moreover, limiting the scope of the provision to the first unlawful seizure would be contrary to the protective purpose of the legislation. Section Section 9(1) VStGB is there to ensure comprehensive protection of property, which is only guaranteed if not only the first but

also any subsequent appropriation is covered; the need for protection of property does not expire through the first appropriation.

This understanding is also based on Section 246(1) StGB, according to which several perpetrators can embezzle an object one after the other, so that systematic considerations also speak against a restrictive interpretation of the provision.

37 (2) The defendant appropriated the apartment and its furnishings in connection with an armed conflict.

38 The fighting which took place in Syria during the period of the offence between the Syrian state army and opposition groups as well as among such groups was an armed conflict within the context of Section 9(1) VStGB, and the act of the defendant was connected with it. The functional connection required in this respect is provided if the existence of the armed conflict was of essential importance for the offender's ability to commit the crime, for his/her decision to commit the crime, for the manner in which the crime was committed or for the purpose of the crime; the crime must not only have been committed "on the occasion" of the armed conflict (Werle/Jeßberger, *ibid.* marg. no. 1163 et seq.). On the other hand, an actual offence is not necessary during ongoing combat operations, nor is it particularly necessary to be in close proximity to it (Bundestag Document no. 14/8524, p. 25; see on all points BGH, resolution of 17 November 2016 - AK 54/16, *juris marg.* no. 29).

39 These conditions are fulfilled in this case. The defendant could only take possession of the apartment and the inventory because the owners had to flee from IS troops or had been expelled by them and the organisation had given the captured property to her and her husband as IS members.

40 (3) The apartment and the furnishings were the goods of the opposing party, which were subject to the violence of her own party,

41 (a) The term "opposing party" must be interpreted in the same way as it is in Section 8(6) point 2 VStGB (BGH, judgment of 20 December 2018 - 3 StR 236/17, *juris marg.* no. 92). The following can then be assumed:

42 Section 8 (6) point 2 VStGB is based on Art. 4(1) of the IVth Geneva Convention (BGH, judgment of 20 December 2018 - 3 StR 236/17, *Juris marg.* no. 80), according to which civilians are protected in times of war if they are under the control of a party to the dispute or of an occupying power of which they are not members. The regulation, which is tailored to international armed conflicts, essentially ties in with the nationality of persons

who are subject to soft foreign violence. Since this formal criterion of demarcation does no longer justice to the realities of modern conflicts, the International Criminal Tribunal for former Yugoslavia and - following it - the International Criminal Tribunal have adapted it to the new circumstances. According to the legal practices of the international criminal courts, it is important whether the victims can be considered the opposite side from a substantive point of view (for more details, see BGH judgment of 20 December 2018 -3 StR 236/17, juris marg. no. 85 with further references).

43 In the case of a non-international armed conflict, in which non-state actors of the same nationality are frequently involved, citizenship in any case usually does not prove to be an appropriate criterion with which the scope of protection under international humanitarian law could be meaningfully determined (see BGH, resolution of 17 November 2016 - AK 54/16, juris marg. no. 26).

In order to determine who is to be regarded as the opponent in a non-international armed conflict, it is more appropriate to focus on what characterises the conflict. If, for example, the conflict has ethnic roots, then ethnic affiliation is of decisive importance; in case of a religiously motivated conflict, denominational and ideological convictions come into play (cf. Werle/Jeßberger, *ibid.* marg.no. 1186 et seq. with further references). In a complex civil war situation involving a large number of state and non-state actors with different interests - as in the case of the Syrian civil war, for example - even the person who pursues objectives contrary to the intentions of the conflicting party may be considered to be an opponent (see BGH, resolution of 17 November 2016 -AK 54/16, *ibid.*; judgment of 20 December 2018 - 3 StR 236/17, juris marg. no. 86).

44 In this respect, the IS is to be regarded as an opposing party in relation to the civilians who - like the owners of the apartment occupied by the defendant - fled from the organisation's troops or were expelled by IS fighters in the course of the conquest of the city of Jarabulus. The Syrian conflict was largely characterised by the IS's efforts to bring as large an area of the country as possible under its control. In doing so, the organisation took targeted action against civilians who did not unconditionally adhere to or subordinate themselves to its ideology. The escape and/or expulsion of the affected persons stands for their opposition to IS.

45 (b) After the escape and/or expulsion of the rightful owners, their possessions came under the control of IS and thus of the defendant.

46 (4) By seizing the apartment together with the inventory, the defendant also appropriated goods to a considerable extent.

47 The consideration of the scope of the action is intended to exclude minor cases from the scope of application of Section 9(1) VStGB (Bundestag Document no. 14/8524, p. 31; MüKoStGB/Ambos, 3rd ed., Section 9 VStGB marg. no. 11). However, this must not be misunderstood to mean that only trivial matters are to be eliminated, such as the stealing of objects of minor value within the context of Section 248a StGB. On the contrary, the same applies to the provisions of Art. 8(2)(a)(iv), point (b)(xiii), and point (e)(xii) of the ICC Statute, on which Section 9(1) VStGB is based according to the interpretation of the International Criminal Code (cf. Bundestag Document no. 14/8524, p. 24, 31; MüKoStGB/ Ambos, *ibid.* marg. no. 11).

48 For the realisation of Art. 8(2)(b)(xiii) and point (e)(xii) of the ICC Statute, an isolated infringement of property rights is just as inadequate as in the case of Art. 8(2)(a)(iv) of the ICC Statute, which requires expropriation on a 'large scale'. From a systematic point of view, this results from the fact that the jurisdiction of the International Criminal Court under Art. 5(1) sentence 1 of the ICC Statute is limited to the conviction of the "most severe crimes" which "affect the international community as a whole" (cf. Werle/Jeßberger, *ibid.* marg. no. 1320; MüKoStGB/ Ambos, *ibid.* marg. no. 8). An isolated violation of ownership rights as such does not automatically fulfil these requirements (cf. Werle/Jeßberger, *ibid.*).

49 The decisive factor is an evaluative overall consideration of the circumstances of the individual case, in the context of which the value of the property concerned is just as important as the severity of the consequences for the victim. In addition, it may be relevant whether a few or many persons or particularly protected and important civilian objects, such as a hospital, are affected (cf. MüKoStGB/Ambos, *ibid.* marg. no. 11; Werle/Jeßberger, *ibid.* marg. no. 1321, each with further references).

50 The fact that apartments or houses have a high economic value is of primary importance here. Their confiscation affects the livelihoods of those affected and therefore has serious consequences for them. Moreover, the expulsion of the owners in the course of an armed conflict confers the case an injustice dimension affecting the international community as a whole with regard to the violation of property rights. Therefore, the appropriation of the apartment together with the furnishings must be seen as a considerable appropriation of property.

51 (5) The defendant acquired the property in violation of international humanitarian law. There can be no infringement of international humanitarian law if there is a general or specific justification under international law (cf. MüKoStGB/Ambos, *ibid.* marg. no. 12). This is not the case here.

52 (6) Finally, it is not to any extent apparent that the appropriation was prompted by the requirements of the armed conflict (cf. Werle/Jeßberger, *ibid.* marg. no. 1323 et seq.).

53 cc) The defendant is highly suspected of having committed, in one case, particularly severe human trafficking (Section 232(3) sentence 1 no. 1, sentence 2 in conjunction with paragraph 2 no. 1 and 2 StGB), severe human trafficking (Section 232(2) no. 1 and 2 StGB) and severe deprivation of liberty (Section 239(3) no. 1 StGB), by keeping the three Yezidi women in captivity together with her husband and forcing them to perform work in their household (Case 4).

54 (1) With regard to the offence of human trafficking, the penal provision of Section 232 StGB in its currently valid version is to be applied in accordance with Section 2(2) StGB, which became effective on 15 October 2016 on the basis of the Act to Improve the Fight against Human Trafficking and to Amend the Federal Central Register Act as well as the Eighth Book of the Social Code of 11 October 2016 (BGBl. I, p. 2226) and was in force at the time the offence was committed in October 2017. The conditions for particularly severe human trafficking (Section 232(3) sentence 1 point 1, sentence 2 in conjunction with paragraph 2 point 1 and 2 StGB), for severe human trafficking (Section 232(2) point 1 and 2 StGB) and for human trafficking (Section 232(1) sentence 1 point 2 StGB) are fulfilled, whereby it concerns a uniform act and - because the act involved several victims of different ages - only the basic offence (Section 232(1) No. 2 StGB) is superseded through concurrence of law. In detail:

55 (a) The defendant hosted the three Yezidis by granting them accommodation (cf. on the basis of the notion of accommodation in Bundestag Document no. 18/9095, p. 23; MüKoStGB/Renzikowski, 3rd ed., Section 232 marg. no. 48). Two Yezidis were under the age of 21, so that the realisation of Section 232(1) StGB does not depend on whether the defendant has exploited their personal or economic predicament. With regard to the third, possibly older woman this condition is fulfilled: the defendant took advantage of the fact that the Yezidi woman had already been enslaved by IS and was therefore in a personal predicament.

56 According to the joint plan of the defendant and her husband, the three Yezidis

were to be kept in slavery (Section 232(1) sentence 1 point 2 StGB).

57 The term slavery describes a relationship based on forceful subjugation in which the subjected person is regarded as the property of his/her master, over whom he/she can force his/her will arbitrarily (cf. MüKoStGB/Renzikowski, 3rd ed., Section 232 marg. no. 75; Schönke/Schröder/Eisele, StGB, 30th ed., Section 232 marg. no. 47, each with further references). However, only exploitative relationships within the scope of a legal system which still recognizes the legal status of a slave or is in any case factually tolerated in slavery are covered (see BGH, judgment of 11 May 1993 -1 StR 896/92, BGHSt 39, 212, 214 et seq.). [re Section 234 StGB old version].

58 These requirements are fulfilled here. The defendant and her husband had bought the Yezidi women as slaves according to the ideology of IS in order to force them to do household work. They regarded the women as their property, with whom they could do whatever they liked. The relationship of these women to them was thus marked by complete submission. The territories in which the defendant was staying at the time of the offence were controlled by IS; the state legal system was de facto suspended there; rather, the rules propagated by the applied, according to which the enslavement of Yezidi women was justified as religious and practised accordingly.

59 As things stood, the defendant and her husband accommodated the three Yezidis by threatening them with immediate physical harm (Section 232(2) point 1 StGB) and seized them (Section 232(2) point 2 StGB). With regard to the approximately 13 or 14 year old girl, Section 232(3) sentence 1 point 1 StGB is also fulfilled.

60 (b) This is a uniform act in the legal sense. This is not contradicted by the fact that the actions of the defendant punishable under Section 232 StGB were directed against the personal freedom and thus highly personal legal interests of the three Yezidi women. It is true that the assumption of a uniform act is far from true if the perpetrator's actions are directed against the most personal legal interests of several victims, because highly personal legal interests are only accessible from an additive point of view in exceptional cases (BGH, resolution of 19 November 2009 -3 StR 87/09, BGHR StGB Section 232 concurrences 1, marg. no. 16). In such cases, a close temporal and spatial connection of different courses of action as well as similar motivations pushing the perpetrator are not sufficient in themselves to construe different sorts of acts as a substantive act within the context of Section 52 StGB; the situation is, however, different, if the objective actions are at least partially identical with a part that is necessary to perform the offence and thus contribute to fulfil the requirements of all relevant criminal laws (BGH, *ibid.* marg. no. 19; cf. also BGH, resolution of 19 September 1986 - 2 StR 484/86, BGHR StGB Section 52(1)

act, same 1; judgment of 15 July 2007 - 2 StR 131/05, NStZ-RR 2007,46, 47). This is the case here. The defendant and her husband bought two of the three Yezidis before reselling the first slave they had purchased in late 2015. The act of providing accommodation within the context of Section 232(1) StGB was therefore temporarily directed against all three victims, so that the offence can be attributed to one single person.

61 There is concurrence of offence between particularly heavy human trafficking pursuant to Section 232(3) sentence 1 point 1 and heavy human trafficking according to Section 232(2) point 1 and 2 StGB. Indeed, the legal context of Section 232(3) StGB generally supersedes the basic elements of paragraph 1 and 2 (cf. Schönke/Schröder/Eisele, StGB, 30th ed., Section 232 marg. no. 78).

 However, this does not apply if Section 232(3) StGB - as is the case here - is only fulfilled with regard to one of several victims. In that case, the assumption of concurrence of offence is necessary in order to emphasize the overall unlawfulness of the act. Accordingly, only the basic element of Section 232(1) StGB is superseded through concurrence of law.

62 (2) The urgent suspicion with regard to severe deprivation of liberty in the sense of Section 239(3) point 1 StGB, which was carried out in concurrence with particularly severe as well as severe human trafficking, is based on the fact that the defendant deprived the three Yezidi women of their liberty for longer than one week in each case. She kept the victims in her apartments as slaves by at least implied threats of bodily harm, thus preventing them from leaving.

63 dd) The offences committed in Cases 3 and 4 constitute the majority of criminal acts perpetrated by the defendant in a case of multiple offences, with the remainder acts of the defendant in her capacity as the membership of a terrorist organisation not constituting any other criminal offence. (cf. BGH, resolution of 9 July 2015 - 3 StR 537/14, BGHSt 60, 308 marg. no. 23 et seq.).

64 The urgent suspicion of membership in a foreign terrorist organisation in three cases where the defendant committed criminal acts, one of which occurred in coincidence with an offence involving war crimes against property and one of which occurred in coincidence with an offence involving particularly severe abduction, severe abduction and severe deprivation of liberty already justifies the continuation of pre-trial detention in itself. The Senate therefore leaves it open whether the defendant is also highly suspected in Case 1 of a war crime against property (Section 9(1) VStGB). In that

regard, it may be questionable whether the defendant appropriated the opposing party's property to a significant extent, since, according to current knowledge, the appropriation in that case did not relate to the home but only to furnishings, in particular kitchen utensils, a washing machine and carpets.

65 d) German criminal law is applicable.

66 With regard to being a member of a foreign terrorist organisation, it may remain open whether the applicability of German criminal law results directly from Section 129(1) sentence 2 version 2 StGB because the defendant is a German national (see BGH, resolution of 6 October 2016 -AK52/16, Juris marg. no. 33 et seq.). In any case, German criminal law is applicable in this respect - as is the case with regard to the severe deprivation of liberty - pursuant to Section 7(2) point 1 StGB. The respective crime scenes (Jarabulus, Rakka and Al-Mayadin) were under the sole control of IS at the time of the offence and were thus virtually not subject to any penal authority. Moreover, affiliation with a terrorist organisation pursuant to Article 1 and 3 of the Syrian Anti-Terror Law (Law 19/2012), which has replaced the previously applicable provisions on the criminal liability of membership in a terrorist organisation pursuant to Article 304 to 306 of the Syrian Penal Code, is also punishable in Syria.

67 With regard to the war crime against property, the applicability of German criminal law follows from Section 1 VStGB, with regard to human trafficking from Section 6 point 4 StGB.

68 e) The prosecution authorisation required under Section 129b(1) sentences 2 and 3 StGB is present.

69 f) The competence of the Federal Prosecutor General for the prosecution of criminal offences in accordance with Section 129a, 129b StGB and thus also for offences which were realised in concurrence with them results from Section 142a(1) sentence 2 GVG in conjunction with Section 120(1) point 6 GVG while its competence for the prosecution of criminal offences under the International Criminal Code stems from Section 142a(1) sentence 1 GVG in conjunction with Section 120(1) point 8 GVG.

70 2. In any case, there is a ground for arrest for severe crime on which the arrest warrant of 14 March 2019 is based (Section 112(3) StPO in conjunction with Section 2(2) JGG). Among other things, the defendant is highly suspected of membership in a foreign terrorist organisation (Section 129a(1), Section 129b(1) StGB).

71 If convicted, the defendant can expect a significant juvenile sentence. There are no sufficient circumstances which may prevent the defendant from an escape attempt if released provisionally. The defendant, who has both German and Algerian citizenship, left Germany permanently at the end of October 2013 despite family ties in order to take part in the fight against the Assad regime in Syria with the aim of establishing a theocracy under Sharia law. She did not return to Germany voluntarily, but was arrested and deported in Turkey.

72 In view of the above, it is likely that the defendant, if released, will evade criminal proceedings. The fact that she has three children doesn't stand in the way of that. The children were born in IS-controlled territory where the defendant lived with her husband and children for years; her husband is still abroad today. At the very least, the aforementioned circumstances constitute the risk that punishment of the offences could be thwarted without further imprisonment of the defendant, so that the continuation of pre-trial detention must be based on the grounds for imprisonment of Section 112(3) StPO even if the provision is interpreted restrictively as required in the given situation (cf. Meyer-Goßner/Schmitt, StPO, 61st ed., Section 112 marg. no. 37 with further references).

73 Less drastic measures in the context of Section 116 StPO offer little prospect for success.

74 3. The conditions for the continuation of pre-trial detention beyond six months (Section 121(1) StPO) are met. The particular difficulty and scope of the procedure have not yet allowed for a judgment to be made.

75 The investigation procedure has been accelerated since September 2018. Extensive requests for legal assistance were made to the United States of America and Turkey, which were met promptly. Documents received from the United States have been available since January 2019. They comprise almost 80 pages as well as a DVD with data and had to be translated, taking so much time and effort. The translation was completed at the end of February 2019; the evaluation of the data is still ongoing. In addition, it was necessary to evaluate the telecommunications surveillance measures carried out over several years in the light of the new allegations. The Federal Criminal Police Office summarised the findings to date on the organised slave trade of IS with Yezidi women and children in Rakka in a memo dated 15 February 2019. Inquiries were made to non-governmental organisations in order to identify and, if necessary, interrogate the women who worked in the household of the defendant. The answers are still outstanding.

According to the Federal Prosecutor General, the indictment is imminent despite the extraordinary complexity of the case.

76 Against this background, the procedure has so far been conducted with the kind of celerity required in detention cases.

77 4. Finally, the continuation of pre-trial detention is not disproportionate to the importance of the matter and the punishment to be expected in the event of a conviction (Section 120(1) sentence 1 StPO).

Names of the Judges