

The judgment became final
on 12 May 2021
Düsseldorf, 8 June 2021



clerk of the registry



BUNDESLANDGERICHT DÜSSELDORF

DÜSSELDORF HIGHER REGIONAL COURT

DÜSSELDORF HIGHER REGIONAL COURT ON BEHALF OF THE PEOPLE JUDGMENT

III-7 Sts 2/20

3 StE 4/20-5 VS-NfD

Federal Prosecutor General at the Federal Court of Justice, Karlsruhe

In the criminal case

against



German national,
currently in Cologne Prison,

on account of

aiding and abetting a crime against humanity (slavery), inter
alia,

the 7th criminal division of Düsseldorf Higher Regional Court, based on the trial that
commenced on 25 February 2021, at which were present:

[REDACTED]

as the presiding judge,

[REDACTED]

[REDACTED]

as associate judges,

[REDACTED]

[REDACTED]

as representatives of the Federal Prosecutor General at the Federal Court of Justice,

[REDACTED]

[REDACTED]

as counsel for the defence,

[REDACTED]

as joint plaintiff,

[REDACTED]

as the joint plaintiff's representative,

[REDACTED]

as clerk of the registry,

on 21 April 2021

has ruled as follows:

The accused is guilty of eight counts of participating in a foreign terrorist organisation as a member, on one count in notional concurrence with the breach of her duty of care or upbringing in respect of a person under 16 years of age, on four counts with war crimes against property, on one count with exercise of actual power over a weapon of war and unlawful possession and unlawful carrying of a semi-automatic handgun and on one count in notional concurrence with aiding and abetting a crime against humanity (enslavement) in notional concurrence with deprivation of liberty lasting more than 1 week.

In all other respects, the accused is acquitted.

She is sentenced to an aggregate custodial sentence of 4 years and 3 months.

Insofar as the accused has been acquitted, the treasury is ordered to pay the costs of the proceedings and the necessary expenses of the accused. In all other respects, the accused is ordered to pay the costs of the proceedings.

Provisions applied:

Section 129a(1)(1), the first and second sentences of Section 129b(1), Section 171, Section 239(1), Section 239(3)(1), Sections 27, 52 and 53 of the German Criminal Code (Strafgesetzbuch, StGB), Section 7(1)(3) and Section 9(1) of the German Code of Crimes against International Law (Völkerstrafgesetzbuch, VStGB), Section 22a(1)(6) of the German War Weapons Control Act (Kriegswaffenkontrollgesetz, KrWaffKontrG) in conjunction with Part B, Section V, No 29 c) of the War Weapons List (Kriegswaffenliste), Section 52(1)(2)(b), Section 1(2)(1) and Section 2(2) of the German Weapons Act (Waffengesetz, WaffG) in conjunction with Annex 2, Part 2, Chapter 1, first sentence to the WaffG, Annex 1, Part 1, Chapter 1, No 1.1 and Chapter 3, No 1.1 to the WaffG

Reasons

I. Findings relating to the accused

[REDACTED]
[REDACTED]
[REDACTED]. Both of her parents had been married before and had divorced. Neither of them had any professional training and her mother's school education was limited to a five-year attendance of primary school. In the 1970s, the accused's father travelled to Germany as a *Gastarbeiter* [guest worker]

[REDACTED].
The accused's mother and – following their birth – the accused and her older brother initially remained in their former home country. It was not until 1987 that the father also arranged for his family to travel to Germany. They lived [REDACTED]. The mother took care of the household and the family. As a child, the accused found her mother to be very affectionate, but found her father to be aggressive, as he often berated the children for what he considered to be bad behaviour and complained a lot.

[REDACTED]
During the same year, the accused was enrolled in school. Prior to this, she had attended a kindergarten. She enjoyed learning while she was at primary school. She had a best friend who lived nearby and they regularly did their homework together. Due to these circumstances, she was allowed to visit this friend on a regular basis. In 1995, the accused's mother started working as a cleaner in the afternoons on an hourly basis. The accused had to look after her younger brother while her parents were out.

After primary school, the accused started attending middle school in 1996.

[REDACTED]
[REDACTED]. The accused felt uneasy about this change in circumstances. At her new school, she was sometimes validated by her classmates, but sometimes also ostracised due to her weight. The classmates who lived near her new house did not treat her well. She did not make any other friends in her local area.

The accused had to help out a lot at home. Her father forbade the accused from visiting or being visited by friends. Her older brother, by contrast, was given greater freedom. Religion did not play a significant role in the family. The accused's parents are of Muslim faith, but did not practice it strictly. The family fasted during Ramadan and celebrated the religious holidays, but did not regularly visit a mosque. The accused did not have to pray or wear a headscarf. Her parents only made sure that she did not dress too revealingly. When the accused was 14, her father received an offer of marriage for her, which he rejected without consulting her, partly because he believed that the accused was too young and ought first to learn a profession. Although the accused did not know the young man in question, she regretted the refusal because she saw marriage as a way out of her unhappy situation.

At the age of 16, the accused fell pregnant unintentionally. This led to a heated argument with her parents, during which she spent one night in a youth centre. Under considerable pressure from both her parents and the father of the child, she finally agreed to have an abortion, which was carried out in Macedonia. After resitting her examinations, the accused narrowly attained the *mittlere Reife* [secondary school leaving certificate] and thus completed her middle school education. Her parents stayed away from the graduation ceremony, even though the accused took part in a performance there.

After completing school, the accused initially applied for several apprenticeships in various sectors without success. In 2002, she attended a vocational college for economics and administration, but left after a few months because she could not follow the lessons. After applying for further apprenticeships without success, the accused began working intermittently as a part-time cleaner, and then started training as a hotel professional in a hotel where a friend of hers worked. She temporarily moved in with this friend. After only 5 months, she abandoned the training again because she did not enjoy the work.

In August 2005, the accused was naturalised in Germany at her request,

[REDACTED]

[REDACTED]

In 2006 and 2007, she worked as a temp in various restaurants and subsequently had several other short-term employment relationships. In 2010, she found a permanent

position at a pharmacy chain.

In 2006, the accused started a relationship with a man called A [REDACTED], who already had children by other women. Through this man, she came into contact with alcohol and drugs and started to consume marijuana and considerable quantities of alcohol. In 2008, they officially became a couple and the accused moved in with him in G [REDACTED]. When A [REDACTED] drank, there were violent attacks on the accused.

During this time, a friend of A [REDACTED] sparked the accused's interest in Islam, including through DVDs containing talks by 'Shaykh' Khalid Yasin. She started to pray regularly and wear a headscarf, she stopped consuming marijuana and alcohol and initially split up with A [REDACTED]. In 2009, however, she started seeing him again. She then got engaged to a man from Albania, but later broke off this engagement, which led to resentment in the family. She then went back to A [REDACTED] and became pregnant by him. They both moved in with the accused's parents. On 20 October 2011, their common daughter H [REDACTED] was born. As a result, her permanent position at the pharmacy chain, which was limited to 6 months, was not extended. Due to his heavy drinking and violence, the accused threw A [REDACTED] out of their home shortly after the birth of their common daughter. She spent a lot of time with her parents, who developed a good relationship with their granddaughter.

The accused was now dressing strictly according to the Islamic rules and became radicalised over time. On 11 February 2015, she initially travelled to Turkey with her – at that time – three-year old daughter and together with her friend N [REDACTED], and from there straight to Syria. There, she joined IS and, shortly after her arrival, married the IS fighter [REDACTED] S [REDACTED] from [REDACTED] in accordance with Islamic rites, with whom she lived in Raqqa and Mayadin. On 14 December 2016, their common son A [REDACTED] was born in Syria. Later, the accused and S [REDACTED] also took in N [REDACTED], the son born on 7 June 2017 to a second wife of S [REDACTED] who had left the IS region.

As military efforts pushed IS back further and further, the family was forced to leave Mayadin and subsequently flee from one place to another in the remaining area under the control of IS. On 11 February 2019, they were finally captured while fleeing by a Kurdish-led militia, which held S [REDACTED], who is being prosecuted separately, captive

and escorted the accused and the children to the Kurdish al-Hawl camp. With the aid of smugglers, they were taken from there to the Turkish border and were placed in a camp in Jarabulus, Syria by the Turkish authorities from 5 March 2020 onwards. In July 2020, they were initially returned to the German embassy in Ankara and then, on 24 July 2020, flown to Frankfurt am Main accompanied by officers from the Federal Criminal Police Office. While still at the airport, the accused was arrested on the basis of the arrest warrant of the investigating judge of the Federal Court of Justice of 5 June 2020 (2 BGs 333/20) and has been in custody awaiting trial since that day.

The accused has no previous convictions.

II. Findings relating to the case

On 11 February 2015, the accused left Germany with her – at that time – three-year old daughter H■■■■ and together with N■■■■, who is being prosecuted separately, and travelled via Turkey to Raqqa in Syria, which at that time was controlled by the terrorist organisation 'Islamic State' (IS). There, she joined IS and after a few days married the IS member I■■■ S■■■ to whom she had been introduced, who was also from Germany, in accordance with Islamic rites. On 14 December 2016, she gave birth to their common son A■■■■ and, from 2017 onwards, also cared for N■■■, the son of a second wife of S■■■ who had left the IS region. The family was provided free of charge with two dwellings captured by IS first in Raqqa and from 2017 in Mayadin. In the dwellings, the accused had access to an assault rifle belonging to S■■■, which was kept there outside of combat and guard duty. She also had her own semi-automatic pistol that she generally took with her when she left the dwelling. In 2016 and 2017, she made considerable use of the enforced services of the joint plaintiff for cleaning and other work in her respective dwellings, the joint plaintiff being a Yazidi woman who was kept as a slave by I■■■ Sa■■■ and S■■■ O■■■■, who are being prosecuted separately and are also from Germany.

1. The terrorist organisation IS

IS is an organisation dominated by the Sunnite sect of Islam, with militant and fundamentalist leanings, which has set itself the goal of establishing an authoritarian

Islamic theocracy based on its own ideals in Iraq, Syria and the neighbouring countries by abolishing national borders and, to this end, bringing down among others the Shiite-dominated government in Iraq and the regime of the Syrian president Bashar al-Assad. The organisation's other goals include the capture of Jerusalem and the physical extermination of the Shiites and Alawites and other religious minorities in its territory, such as the Yazidis. Part of the armed combat involves the destabilisation of existing orders through terrorist attacks. Anyone who opposes the organisation's claims can expect to be captured, tortured and killed.

a) Development, organisational structure and procedures

IS was preceded by the group 'Al-Qaeda in Mesopotamia', which was founded in Iraq in 2000 by Abu Musab al-Zarqawi and perpetrated attacks with the aim of destabilising the State of Iraq. Following the death of al-Zarqawi in June 2006, the organisation gave itself the name 'Islamic State in Iraq' (ISI) in October of the same year and thus asserted the claim of establishing its own Sunnite State. Following the departure of US troops from Iraq in late 2011, the group, now led by Abu Bakr al-Baghdadi, gained in strength. In 2012 and 2013, it perpetrated hundreds of attacks using car bombs, to which many people fell victim, and a further eight – in some cases spectacular – attacks on Iraqi prisons during which many prisoners belonging to the organisation were freed.

In order to intervene in the Syrian civil war that started in 2011, Syrian members of ISI, at the instigation of al-Baghdadi, founded the 'Jabhat an-Nusra li-Ahl ash-Sham' (Nusra Front) as its Syrian subgroup. The origins of the civil war in Syria can be traced back to the peaceful protests held for social and religious reasons from February 2011 onwards against the regime of President Bashar al-Assad, dominated by the Alawite religious minority, 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 insurgency with no central leadership. The insurgents formed local organisations with no unified control structure, even after the proclamation of the opposition Free Syrian Army (FSA) in July 2011.

During 2012, large parts of Syria were affected by the insurgency. This also led to violent clashes between the insurgent groups who were attempting to capture government military bases in eastern, northern and central parts of the country. During

the civil war, Salafist groups in particular gained in strength, including the Nusra Front, which had become one of the most significant insurgent groups in Syria by the end of 2012. In 2013, the Syrian regime managed to consolidate its position. It was able to recapture areas in the centre of the country and the strategically significant city of Al-Qusayr, secure supply routes and push back the rebels, with chemical weapons also being used from August 2013 onwards.

From 2012 onwards, the Nusra Front quickly gained in notoriety and thus followers due to a series of sensational attacks. In order to safeguard ISI's control over the Nusra Front, on 8 April 2013 al-Baghdadi proclaimed the 'Islamic State in Iraq and the Levant' (ISIL, also known as 'Islamic State in Iraq and Syria' [ISIS] and, in Arabic, al-Dawlah al-Islamiyah fi l-Iraq wa-sh-Sham'), which was to consist of the two groups ISI and the Nusra Front, with the Nusra Front being portrayed as an extension of ISI. However, its leader Abu Mohammad al-Julani refused to be placed under al-Baghdadi's command. Nor could the conflict be resolved through the intervention of Ayman al-Zawahiri, Bin Laden's successor as leader of Al-Qaeda in Pakistan, to whom al-Julani had since sworn allegiance. ISIL refused to take orders from Pakistan and, in the early summer of 2013, used former Nusra Front troops that had defected to ISIL to take over a series of its bases in northern and eastern Syria. In the late summer and autumn of 2013, there were armed conflicts with fighters from other rebel organisations, including the Nusra Front. In January 2014, ISIL was expelled from Al-Qaeda.

In the summer of 2014, ISIL made considerable territorial gains in Iraq and in June 2014 captured Mosul, the second largest city in the country. In response to this, the organisation proclaimed itself the 'Islamic State', now without any territorial restriction in its name, and declared al-Baghdadi the caliph. A subsequent offensive directed against the Nusra Front and the Syrian army brought IS further significant territorial gains in Syria, as a result of which it controlled a continuous area in eastern Syria and the north-west of Iraq from June/July 2014 onwards. This period, up until the autumn of 2015, saw the heyday of the organisation. During the course of 2013, the number of fighters had already grown to around 10 000 to 20 000 people and, by the start of 2016, this increased to approximately 20 000 to 30 000. IS also saw a strong influx of foreign fighters, particularly after the caliphate had been declared.

Abu Bakr al-Baghdadi was at the head of the hierarchical organisation and was its ideological leader. He responded to opposition with force, for example by purging

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.

IS required its male members to complete regular military training at special training camps (in Arabic: mu'askar). After completing their basic training, IS recruits were assigned to a combat unit ('katiba') and equipped with an assault rifle, usually an AK-47, along with ammunition. The organisation provided its fighters with the supplies required for day-to-day life and a salary. The organisation was financed through oil sales, local taxes and protection money, spoils of war, ransom money, and foreign donations.

Paralleling the logo of the Iraqi Al-Qaeda group, IS, like ISIL before it, used the identifying mark comprised of the text 'There is no god but Allah' in Arabic in white Kufic script, with the Seal of Muhammad underneath in white, which features the words 'Muhammad, messenger of God' in Arabic 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.

In addition to these types of acts, the organisation sought to further its agenda by carrying out a large number of attacks, including on civilians, and taking part in various different conflicts in both Syria and Iraq. The attacks were directed against the Syrian regime, but often also against other groups of insurgents, with the aim of capturing areas held by them.

The successes of IS prompted the US government and its European allies to

increase their air strikes from the autumn of 2015 onwards. In addition, the US and several of its allies offered support to the fighters of the Kurdish Democratic Union Party (PYD). In July 2017, the Iraqi army and its allies took back Mosul, the capital of the Islamic State's caliphate; in October 2017, the Syrian Kurds drove IS out of Raqqa with the help of the US army. As a result of these defeats, most of the newly established quasi-state structures also crumbled, a large number of fighters were killed, and recruits and their families fled the IS region. From the autumn of 2017 until March 2019, IS and the last of its desperate troops concentrated on delaying surrender, primarily in the Middle Euphrates region, in the south-east of Deir ez-Zor and the town of Mayadin located in that governorate. On 14 October 2017, the town of Mayadin, which had already been the target of air strikes in May 2017, was recaptured by the Syrian army following an offensive supported by the Russian air force. 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 operating underground, primarily in Iraq. In the night of 26 to 27 October 2019, Abu Bakr al-Baghdadi was killed by the US army. Abu Ibrahim Al-Hashimi Al-Qurashi was appointed as the new leader to succeed him.

Attacks have also been carried out in the name of IS in the western world, particularly Europe, since 2014. The attacks there include 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 on 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).

b) The treatment of the Yazidis by IS

According to the ideology of IS, only Jews and Christians have the right to live alongside Sunni Muslims in the region it controls, since these are major monotheistic

religions with a book of revelation and are mentioned as such in the Koran. Although they could not practice their religion openly, they were permitted to live in the Islamic State as long as they paid a poll tax. Shiites and members of other religions, by contrast, were seen as apostates or unbelievers and were generally killed or enslaved.

The Yazidis are a religious minority living mainly in Sinjar and in Shekhan, further east, in Iraq. The number of Yazidis is disputed, but estimates vary between 200 000 and 700 000 people. Yazidism is a monotheistic religion which has adopted elements of Christianity, Islam and Zoroastrianism. The Yazidis are ethnic Kurds, but they define their identity primarily on the basis of their religion. Since angels play a particular role in Yazidism, IS considers the Yazidis to be 'devil worshippers' and has set itself the goal of completely exterminating Yazidism.

In the night of 2 to 3 August 2014, hundreds of heavily armed IS fighters attacked the region surrounding the Sinjar Mountains in the north-west of Iraq, which, along with the main city, Sinjar, also contains several hundred villages mainly populated by Yazidis. Hundreds of thousands of Yazidis managed to flee, mainly to the Kurdish region of Iraq but in some cases also into the Sinjar Mountains. There, they were surrounded by IS fighters for several weeks and many people, particularly children, were exposed to the heat without protection and, with no access to food, water or medical supplies, lost their lives. With the exception of Kocho, which was situated particularly far to the south, IS managed to capture the villages within the space of 3 days.

IS rounded up the people it captured as they were fleeing and those it found in the conquered villages and then separated the women and children from the adult men and male adolescents. They were forced to surrender their mobile phones, money, jewellery and other valuables. The Yazidis' homes were plundered and destroyed. Yazidi sacred sites and places of worship were also systematically destroyed. The men and male adolescents were in some cases killed immediately and in other cases given the opportunity to escape death by converting to Islam. There were several mass executions. The fate of the men who were willing to convert is not entirely clear. In some cases, they were placed in villages formerly populated by Shiites. In many cases, IS later came to doubt the earnestness of these conversions, and those concerned were executed.

The women and the children remaining with them were initially rounded up in

suitable assembly places, such as the building of the Solagh Technical Institute to the east of the city of Sinjar, from where they were taken to group accommodation, for example in schools or prisons in Tal Afar, Ba'aj, Badush or the 'Galaxy Hall' in Mosul, a well-known wedding venue. During this process, women and girls were arbitrarily singled out by IS fighters and raped. Later, the women were passed on to IS fighters – in some cases for free, for example as a reward for particular services, but mostly in return for a fee – as slaves to be used for virtually any purpose, including and in particular for sexual acts of all kinds. For this purpose, the women and girls were registered and catalogued and sold at slave markets in Raqqa and Mosul, as well as being sold and raffled during online auctions held by IS. Very young girls, shown in various poses and from various perspectives, were also offered on online portals. The buyers generally forced the younger women and girls to perform sexual acts, while the older women were usually put to work in the household and for childcare.

The English-language magazine DABIQ 4, published by IS in October 2014, offered religious justification for killing the male Yazidis and enslaving the Yazidi women and children, as well as recommended prices for trading the slaves and specific instructions for keeping them. In the autumn of 2014, IS also published a document entitled 'Questions and answers about the keeping of slaves and prisoners', containing rules about keeping female slaves, particularly the conditions under which it was permitted to have sexual intercourse with them.

On 15 August 2014, IS also occupied the village of Kocho, which had previously been surrounded and in which the joint plaintiff and her family lived at that time. The residents were rounded up by IS in the school, where they were separated according to gender and spread out over both floors of the building. After the village leader informed the IS fighters that the village residents were not willing to convert to Islam, the men were taken away by car in groups and shot in the vicinity of the village. The joint plaintiff's father, two of her brothers, three of her uncles and two of her cousins were among the dead. The women and children were then taken to the building of the nearby Solagh Technical Institute. There, the older women, from the age of around 50 onwards, were taken aside and shot behind the building, likely because they appeared unsuitable to be sold as slaves. The joint plaintiff was taken with the younger women and initially also her two younger brothers via various stops to 'Galaxy Hall' in Mosul, where she was sold to an IS fighter. Following this, she was sold on from fighter to fighter a number of times

and raped by all of the men, who acted as if they were her 'owners'.

2. Acts of the accused

It was during her unhappy relationship with A [REDACTED], who drank and was violent, that the accused first came into contact with the radical form of Islam in 2008. A friend of A [REDACTED], who impressed the accused because, unlike A [REDACTED], he neither smoke nor drank and took good care of his family, brought round DVDs containing talks by 'Shaykh' Khalid Yasin, which sparked the accused's interest. She started to read the Koran and pray five times a day, stopped consuming marijuana and alcohol and from that time on wore a headscarf, which led to reactions from the public that she experienced as condescending and dismissive. After she finally split up with A [REDACTED] following the birth of her daughter in October 2011, she would then only appear in public fully veiled, which troubled her parents. She spent a lot of time on Facebook, where she found friends in a similar situation and came into contact with the idea of the duty to emigrate to an Islamic country and join the 'Holy War' against the 'unbelievers'. She started to visit a mosque near her home and became acquainted with other women who were considering emigrating to an Islamic country.

a) Count 1

At the start of 2015, the accused and N [REDACTED], who is being prosecuted separately and whom the accused met on Facebook, together decided to emigrate to the region controlled by IS and to join IS. The accused considered the strict enforcement of Sharia law practised by IS there – including through lethal force – and IS's fight against the 'unbelievers' and other opponents to be right, even though she was not primarily concerned with participating in the jihad and was in any case also motivated by the fact that she was unhappy in her life. The accused was aware that IS had seized the region under its control by force, using armed fighters, and had displaced or killed those of other beliefs, that it generally opposed those of other beliefs and killed its opponents in combat but also through attacks, and that its aim was to violently expand the region under its control. She was also aware that IS expected those who emigrated to the region under its control to submit to its rules and promote its aims. The accused was willing to accept this.

On 11 February 2015, the accused initially flew to Kayseri in Turkey together with

her daughter, who was around three and a half years old at the time, and K [REDACTED], from where they travelled to Sanliurfa. After staying there overnight, they were picked up the following day by a middleman – arranged by K [REDACTED] over the telephone – and taken via various stops to a women's shelter in Syria and from there straight to another women's shelter in Raqqa, where many young women from various countries were staying. A few days after her arrival, on 17 February 2015, the accused was introduced to I [REDACTED] S [REDACTED], also known as Abu S [REDACTED], who was from [REDACTED] in Germany and was 28 years old at the time, to whom the middleman had recommended the accused as a 'marriage candidate'. They both had a discussion in the presence of the head of the women's shelter and her husband, and agreed to marry in accordance with Islamic rites. The marriage in accordance with Islamic rites was formally concluded on the same day before an IS 'court'.

S [REDACTED], a former member of the Millatu Ibrahim group, worked for the media department of IS but was also active as a fighter and performed guard duty, including at the airport in Deir ez-Zor.

The accused initially lived together with S [REDACTED] in Raqqa. She took care of the household and also of their common son A [REDACTED], following his birth on 14 December 2016. Later, the accused and S [REDACTED] additionally took in N [REDACTED], the son born on 7 June 2017 to a second wife of S [REDACTED] who had left the IS region after the birth of her child. From then on, the accused also took care of this child. In this way, as she was aware, she made it easier for him to fulfil his tasks with IS.

Due to increasing air strikes, the family fled from Raqqa to Mayadin on 17 February 2017. From May 2017 onwards, the number of air strikes there also increased. At an indeterminate point in time before the capture of the city by the Syrian army on 14 October 2017, the accused and her family also fled from there together with the retreating IS via Hajin and further stops to Baghuz. She also fled from there shortly before it was captured by the Syrian Democratic Forces in early 2019. On 11 February 2019, the family was captured while fleeing by a Kurdish-led militia, which held S [REDACTED], who is being prosecuted separately, in a prison and escorted the accused and the children to the Kurdish al-Hawl camp. This camp was used by the Kurdish security forces in Syria primarily to accommodate IS followers and their children following the military defeat of IS. The camp was surrounded by a fence and consisted mainly of tents. The

accused also had to camp in a tent with her children. The sanitary conditions there were poor and there were insufficient supplies of medicine, food and daily necessities. The accused managed to use the phone of a friend she met there to contact her parents and the parents of S [REDACTED], with the latter providing financial support and later enabling them to flee with the intervention of people smugglers. With the help of the smugglers, they reached the Turkish border and were placed in a camp in Jarabulus, Syria, in considerably better conditions, by the Turkish authorities from 5 March 2020 until directly before their return to Germany in July 2020.

b) Count 2

When the accused left Germany in February 2015, taking her daughter H [REDACTED], who was born on 20 October 2011 and was therefore around three and a half years old at that time, she was already aware that she was travelling to a civil war zone in which, despite the relatively secure military dominance of IS at that time in the parts of Syria and Iraq it had captured, air strikes or other combat operations could occur at any time, and that her daughter might witness atrocities committed by IS there. Accordingly, it was clear to her that staying there was associated with considerable risks to the physical and psychological development of her daughter. Even though she hoped that her daughter, who she loved unflinchingly, would not be harmed, she was nevertheless willing to accept these risks as the inevitable consequence of her decision to emigrate to the IS region.

During her stay in Raqqa and Mayadin, the accused occasionally allowed her daughter to watch IS propaganda videos on the laptop of S [REDACTED], even though her daughter was generally not allowed to use the computer, which S [REDACTED] used in his work for IS. Above all, however, she tolerated her daughter, during her many visits to S [REDACTED] O [REDACTED], who is being prosecuted separately, watching propaganda videos on the television of O [REDACTED] together with O's children, including those showing beheadings. During the time of the offence, there were also air strikes that were perceptible to the accused and her daughter, although their exact times and numbers cannot be determined.

The stay in the IS region, which started when her daughter was around three and a half years old and lasted around 4 years in total, led to considerable psychological damage of the accused's daughter. After her return, she was initially placed in a

children's home in [REDACTED] by the youth welfare office and then moved to a smaller institution due to psychological problems. She has insomnia, is hypersensitive and suffers from anxiety, particularly due to aircraft noise. The latter is so severe that her carers have to take an alternative route to her riding therapy in order to avoid [REDACTED] airport. She occasionally exhibits a form of dissociation to the extent that she suddenly does not know what has been happening and believes that she is no longer at the children's home but in another, dangerous place. She also exhibits a dramatic lack of impulse control and behaves aggressively towards other children and also towards adults. She sometimes threatens, among other things, to skin other children or set their house on fire. At the same time, however, her self-esteem is impaired and she occasionally describes herself as a 'piece of shit'. She asked her carers remarkable questions such as whether there were stonings in Germany and whether she would be punished by flogging if she did not wear her headscarf in public. When each of these questions was answered in the negative, she said she thought the children's home was the best place in the world and she never wanted to leave. She also had to submit to dental treatment on several of her teeth under general anaesthesia due to extensive tooth decay.

The accused's daughter, who would have been required to attend school in North Rhine-Westphalia from 1 August 2018 onwards, did not attend school for the entire time that she was in Syria. Therefore, instead of the third grade, she is currently attending the first grade.

c) Counts 3 to 7

IS provided the accused and her family with two dwellings free of charge, both in Raqqa and in Mayadin. These dwellings were appropriated by IS – as was its standard practice – as spoils of war after it had captured the places in question and were placed under the control of a property administration body to ensure their proper use. The legal owners of the dwellings had either fled from or been killed by IS, or the dwellings belonged to the Syrian State. IS used the captured dwellings, among other things, to house its members that had arrived from other countries. The appropriation and management of the dwellings served to reinforce IS's territorial claims and was also intended to make it harder for the areas to be recaptured. The accused knew it was possible that IS had come into possession of the dwellings in the manner described and was willing to accept this, as she considered the reinforcement of IS's territorial claims

to be right and was in need of accommodation for herself and her family.

Shortly before the accused and her family were also forced to flee Mayadin as a result of air strikes during the course of 2017, they moved into a third dwelling in or in the vicinity of Mayadin. With regard to this dwelling (count 7 of the indictment), it is not possible to exclude that it was found by S [REDACTED] on the free market and that the family paid a rent of USD 100 per month for it, in other words that it is not a dwelling from IS's spoils of war.

d) Count 8

The accused possessed a functional semi-automatic pistol, which she generally took with her – loaded and in a shoulder holster – when she left the dwelling. During the entire period of the offence, S [REDACTED] possessed an AK-47 'Kalashnikov' fully automatic assault rifle or a similar fully automatic rifle which, together with the associated ammunition, was kept in a room in the dwelling without any particular safeguards where it was also possible for the accused to access it.

e) Count 9

In Raqqa, the accused met S [REDACTED] O [REDACTED] ('Umm H [REDACTED]'), who is being prosecuted separately and is also from Germany, and became friends with her. They regularly visited each other.

At an indeterminate point in time from the autumn of 2015 onwards, O [REDACTED], together with her husband in accordance with Islamic rites I [REDACTED] Sa [REDACTED], 'acquired' the joint plaintiff from a slave trader with the Kunya name Abu H [REDACTED] in Raqqa, in order to keep her as a slave. The joint plaintiff was taken to the shared household of O [REDACTED] and Sa [REDACTED], where she was forced to do housework for O [REDACTED], to help care for their children and to submit sexually to Sa [REDACTED].

From then on, along with her children, O [REDACTED] regularly brought the joint plaintiff with her on her visits to the accused, where the joint plaintiff was used to carry out work in the accused's household. This occurred in such a way that the accused, who was unable to communicate with the joint plaintiff for want of the required language skills,

informed O [REDACTED] what work she wanted to be carried out. O [REDACTED] then instructed the joint plaintiff to carry out the desired work. Very often, this involved cleaning the kitchen of the accused, who sold home-made cakes and used a large gas oven in her kitchen to make them. The cleaning work often took 2 to 3 hours. Moreover, the joint plaintiff was often required to serve food and to look after the children present, including the accused's daughter. After O [REDACTED] and the joint plaintiff arrived, the accused would always lock the front door from the inside.

At an indeterminate point in time after the accused moved to Mayadin on 17 February 2017, the joint plaintiff was passed on by I [REDACTED] Sa [REDACTED] to his brother E [REDACTED], who was now also staying in Mayadin. After that, she was only taken to see the accused rarely.

During the time before the joint plaintiff was handed over to E [REDACTED], O [REDACTED] paid around 50 visits to the various dwellings of the accused, during which the joint plaintiff carried out housework or childcare tasks in the manner described.

The accused was aware that the joint plaintiff was a Yazidi, that she had been captured by IS during its attack on the areas settled by Yazidis and that she was being kept against her will as a slave by O [REDACTED] and her husband. Over the course of time, she also learned that the joint plaintiff not only performed housework for O [REDACTED] but was also forced to submit sexually to I [REDACTED] Sa [REDACTED]. The accused accepted without criticism the view, taken by IS, that the enslavement of Yazidis was justified.

III. Assessment of evidence

1. The findings in I. relating to the accused's personal circumstances are based on her credible statements in this respect and, in a few respects, additionally on the statement of the witness, detective chief inspector [REDACTED], who gave evidence regarding the results of the police investigations relating to the accused and her family circumstances that were conducted after she left the country.

2. The findings in II. 1 relating to IS and its treatment of the Yazidis are mainly based on the statements made by the judicial expert [REDACTED], who works for the German

Institute for International and Security Affairs (*Stiftung Wissenschaft und Politik*) and has been focussing on the phenomenon of Islamic terrorism for years. The Senate found his expert opinion convincing. The results of his expert opinion have been confirmed by the extensive observations of the detective chief inspectors [REDACTED], [REDACTED] and [REDACTED] introduced during the private reading procedure, which summarise the findings of the Federal Criminal Police Office on IS, its treatment of the Yazidis and other minorities and the role of women in IS, particularly including migrant women. With regard to the treatment of the Yazidis, the results of the expert opinion of [REDACTED] have been confirmed and supplemented by the credible testimony of the witness [REDACTED] who, as a Yazidi woman, was herself forced to endure ill treatment at the hands of IS and on whose statement the findings relating to the IS attack on her home village of Kocho and the subsequent events there are primarily based.

3. The findings in II. 2. relating to the acts of the accused are based on her statement, to the extent that it could be followed, and on the further evidence taken during the trial, in particular the credible testimony of the witness [redacted].

a) Count 1

The findings made at the start of II. 2. and in II. 2. a) relating to count 1 are essentially based on the credible statement of the accused in this respect.

In particular, the accused admitted to the decision, taken together with N [REDACTED] K [REDACTED], to travel to the IS region and described the extraneous circumstances of her journey to Syria and her stay there, including her marriage in accordance with Islamic rites to [REDACTED] S [REDACTED], their life together and the management of their shared household, the birth of a common son and taking in the son of a second wife of S [REDACTED], the stays in Raqqa and Mayadin and their subsequent flight, up to their return journey via the German embassy in Ankara, as established above.

The accused did not expressly admit to the fact that she was already aware and approved of the aims and actions of IS, as established above, at the time of her decision to leave the country. The findings relating to the attitude of the accused at the time of her journey are derived, however, from the circumstances credibly admitted by her and are circumstantially supported by the contents of the email she sent to her brother on 13 April 2015 after her arrival in Syria and earlier Facebook messages sent to her family.

The only express comment made, somewhat casually, by the accused in relation to her attitude towards IS was in connection with her statements regarding the accusation of enslavement, to the effect that while she was in Syria she 'believed everything' that IS stipulated, admittedly without giving it any further thought. In connection with her motivation for leaving the country, the accused initially emphasised that she wanted to escape from her life, with which she had not been content due to her unhappy relationships in the past, the lack of acceptance for her strict religiousness from the public and even her parents, as well as her dependency on her parents. Finally, she also mentioned that her parents had increasingly been interfering in the upbringing of her daughter. Despite this relativisation, the accused also admitted, however, to having read up extensively about the idea of leaving the country for religious regions, including in the Facebook group 'Iman-Hijra und Jiha', in which it was claimed – in accordance with the name of the group – that faith (Iman), emigration to an Islamic country (Hijra) and 'Holy War' (Jihad) against 'unbelievers' belonged together. Even though she was not interested in the 'Jihad' and had no idea about it, she believed the propaganda following the proclamation of the caliphate according to which living in a country of 'unbelief' meant a life of sin.

During her internet searches relating to Hijra, the accused cannot have failed to notice that IS represented a strict Islamic ideology, that it had captured the region under its control through armed combat, that it killed its opponents or those it believed to be 'unbelievers' in combat but also through attacks, that it did not shrink from killing dissenters or persons it persecuted for religious or other reasons even outside of combat, and that its aim was to expand the region under its control and impose Sharia law there with the utmost severity and force. The fact that, despite this knowledge, the accused decided to travel to the region controlled by IS suggests – even in the light of her discontent specifically with the lack of acceptance of the form of Islam she strictly practised – that she approved of IS's actions and had already been radicalised before she left the country. The suggestion that the accused already had an Islamist attitude at the time of her journey is also supported by the fact that she informed her family via Facebook a few weeks after her arrival in the IS region that she was doing 'very well' with IS and, in an email sent to her brother a short time later, asked her family not to cooperate with the police, as it was forbidden ('haram') in the Islamic faith to seek help from 'unbelievers' ('kuffar') and to help them potentially take action against Muslims. She also stated that they should not worry, as she and her daughter would enter paradise as

martyrs if they were attacked by bombs.

The finding relating to S [REDACTED] working for the media department of IS and performing guard duty is based on the statement of the accused, which is supported, inter alia, by the statement of the IS returnee [REDACTED] made to the Federal Criminal Police Office that was introduced by the interrogator, the witness detective chief inspector [REDACTED], and by further evidence. The finding that he was also used by IS as a fighter is supported by the credible statement of the witness [REDACTED], who substantiated her knowledge of this circumstance by stating that IS women in that area had told her of this at the time. The finding that S [REDACTED] was also deployed as a fighter is also supported by the fact that he had a Kalashnikov AK-47 or similar assault rifle, as was also credibly stated by the witness [REDACTED]. The fact that S [REDACTED], in his interview with the private US organisation 'International Center for the Study of Violent Extremism' (ICSVE), denied having been a fighter does not call into question the Senate's conviction to the contrary. Leaving aside the fact that the content of the interview could only be indirectly determined through the statement of the witness detective chief superintendent [REDACTED], who viewed a video recording of the interview, which was conducted in English, in the presence of interpreters, the interview is characterised by a clear tendency on the part of S [REDACTED] to whitewash his role with IS. Among other things, he claims to have heard about the slavery but never to have seen a female slave. The accused did not comment when asked about S [REDACTED]'s activity as a fighter.

The findings relating to the conditions in the al-Hawl refugee camp are based on the statement of the accused and the corroborating statements made by the judicial expert [REDACTED], as well as the observation made by detective chief superintendent [REDACTED] regarding the findings of the Federal Criminal Police Office made on 1 July 2020 and introduced during the private reading procedure.

b) Count 2

The accused credibly admitted that she took her daughter H [REDACTED], who was aged three, to a civil war zone that was controlled at that time by IS and that, after spending many years there and subsequently fleeing with H [REDACTED], who was then around eight and a half years old, to Turkey in the spring of 2020, she returned to

Germany in the summer of 2020.

The finding relating to the circumstance, which is contested by the accused, that H [REDACTED] was permitted to watch violent IS propaganda videos is based on the credible statement of the witness [REDACTED]. The accuracy of her statement is also supported by the questions asked by H [REDACTED] in the children's home, in accordance with the statement of the witness C [REDACTED], regarding possible stonings and floggings in Germany. The findings relating to the impairment of the physical and mental health of the accused's daughter as a result of her stay in the IS region are likewise based on the credible statement of the witness C [REDACTED], a social worker employed by the youth welfare office of the city of [REDACTED] who is in contact with the institutions in which H [REDACTED] has been staying since her return.

The finding that H [REDACTED] witnessed air strikes in Syria is based on the credible statement of the witness [REDACTED], who stated that H [REDACTED] would scream and cry when there was audible bombardment, but even when she merely heard aircraft. This statement is supported by the statement of the witness C [REDACTED], according to which H [REDACTED] still has such a severe fear of the noise of aircraft that it is necessary to take an alternative route to her riding therapy in order to avoid the nearby airport.

In response to the question regarding how the accused thought a relatively long stay in the region of Syria controlled by IS would affect the development of her daughter, who was only three and a half years old at the time they left the country, the accused stated that she did not expect her daughter's development to have been impaired to the extent it has been. Although she knowingly travelled to a civil war zone, her situation before her departure meant that she simply blocked out certain matters and assumed that everything would be alright. After all, the IS propaganda had always suggested that Allah would protect her if she were to undertake the 'Hijra'. She stated that she feels deep shame about her daughter's problems. She also stated, however, that the abnormalities with H [REDACTED] and the other children only developed after the start of the problems while they were fleeing. In the camp – meaning al-Hawl – she states that she lost control over her children.

Regardless of the fact that H [REDACTED]'s 'problems' are not merely due to her

experiences in al-Hawl, the Senate ultimately concludes from this statement, despite its relativising nature, that the accused already knew at the time she left the country that she and her daughter, while in Syria, might experience air strikes or combat operations and witness acts of violence by IS first hand or in some other way, and as a consequence that she was aware that staying in the IS region would entail considerable risks to the physical and mental development of her daughter. This is evident from her admitted interest in IS and its propaganda on the internet before she left the country and from her likewise admitted knowledge of the fact that she was travelling to a civil war zone. The accused's statement also reveals that she had no credible reasons for assuming that her daughter's development would nevertheless not be damaged, but instead deliberately suppressed this possibility. She was willing to accept the risk of developmental damage to her daughter since her desire to stay in the IS region governed by Sharia law was more important to her than avoiding these risks.

c) Counts 3 to 7

The Senate bases its findings relating to the appropriation of two dwellings in Raqqa and then two dwellings in Mayadin on circumstantial facts resulting from the expert opinion of ██████, the findings of the Federal Criminal Police Office on 'women in Islamic State' summarised in the observation by detective chief inspector ██████ from July 2020, the statements made by I ██████ S ██████ to the ICSVE and the statement of the witness ██████ and, in part, from the statement of the accused in respect of the use of the dwellings as such.

The accused stated, in relation to the dwellings used by her and her family, that her husband initially found only one room for them in Raqqa in the four-room home of a friend. They did not move to their own home until a couple of months had passed. On 17 February 2017, they moved to Mayadin where they lived in several dwellings, not described in greater detail, one after the other. Rent was allegedly paid for all of the dwellings.

Regarding the number of dwellings used by the accused and her family, the statement of the accused essentially differs from that of the witness ██████ only in respect of the time in Raqqa. The latter was sure that she had carried out housework for the accused in two different dwellings in Raqqa. In this respect, the Senate follows the

statement of the witness ██████. Her statement is also credible in this respect. The witness was, however, unsure about the description of the buildings, which appears plausible given that the events occurred several years ago and the nature of the buildings was not particularly important to the witness in her situation at that time. However, the witness was able to remember that, in the first house described, the accused lived with her family, including S█████, and in the second house both the accused and the second wife of S█████ lived in separate living quarters. She was also sure that she had performed housework for the accused in both dwellings, mainly in the kitchens.

The Senate bases the finding that the two dwellings in Raqqa (counts 3 and 4) and the first two dwellings in Mayadin (counts 5 and 6) were dwellings that IS had placed under its administration as spoils of war and whose legal owners were either private individuals who had fled from or been killed by IS or the Syrian State on the following overall assessment of the circumstances:

In accordance with the statements of the judicial expert ██████, IS placed unoccupied dwellings in the region it controlled under its administration and set up a property administration body. Generally speaking, these dwellings had previously belonged to members of the military, the security authorities, officials in the former regime or members of religious minorities. Members of the military more frequently lived in connected blocks of flats. As a rule, the unoccupied dwellings seized by IS were made available free of charge to IS members. There was also a private housing market, on which monthly rents of usually a low three-figure amount in US dollars were demanded. Since IS saw itself as a 'State subject to the rule of law', it was also possible for private landlords (those not persecuted by IS for religious or other reasons) to demand rent from IS members. According to the findings of the Federal Criminal Police Office summarised in the observation by detective chief inspector ██████, which is dated no more precisely than July 2020, emigration to the IS region was being advertised on social media, among other things, with claims that dwellings from the spoils of war would be provided there free of charge. The analysis of the blog written in Syria by S█████, who is being prosecuted separately, revealed that dwellings were either made available by IS free of charge, with there being waiting lists in some cases, or could be rented privately for a fee.

The Senate is convinced that the dwellings in counts 3 to 6 were under the administration of IS and were made available to [REDACTED] and the accused free of charge by IS. In addition to the fact that this was common practice in accordance with the above, this is also supported by the statements made by S [REDACTED] to the ICSVE and the statement of the witness [REDACTED]. However, his statements to the ICSVE are of reduced evidential value from the outset. The interview, which was conducted in English, was recorded on video and made available by the ICSVE to the Federal Criminal Police Office only for a one-off screening. The witness chief detective superintendent [REDACTED], among others, was present at the screening of the video. According to his own statement, his knowledge of the language meant that he was essentially able to follow the interview and he was able to use the services of two interpreters who were present, if needed. According to the statement of the witness, S [REDACTED] was not specifically asked about all of the dwellings he used in Syria, but at one point reported that he had received a place in Raqqa that 'Dawah' had rented for him, and at another point, in connection with his statements regarding his stay in Mayadin, stated that 'she' had 'given him a good home' and that he had later switched to a better dwelling that he had rented. In terms of its content, this must be seen as an admission that he in general benefited from dwellings provided free of charge by IS. The witness [REDACTED], too, states that in the entire time she spent in the household of O [redacted], in other words from the end of 2015 until the autumn of 2017, she saw nothing to suggest that any of the IS members ever had to pay any rent and she never saw a landlord come to collect rent or check that everything was in order. Finally, the circumstance that the rent for a dwelling on the free market – in accordance with the statements of the judicial expert [REDACTED] generally a low three-figure amount in US dollars – would not have been easily manageable also decisively militates against the assumption that the accused or S [REDACTED] would consistently have paid rent during their stay in Raqqa and Mayadin. According to the statement of the accused, the income of S [REDACTED] was close to the 'poverty line'.

Accordingly, in view of the dwellings giving rise to the conviction, the accused's blanket statement that rent was paid for all of the dwellings should be seen as an attempt to justify her behaviour. The likewise blanket statement by S [REDACTED] that IS 'rented' a dwelling for him in Raqqa should also be seen as an attempt to justify his behaviour.

In view of the dwellings giving rise to the conviction, there are no serious

indications, either from the statement of the accused or from the other taking of evidence, that, contrary to the norm described by the judicial expert [REDACTED] and the advertising claims of IS documented in the observation made by detective chief inspector [REDACTED], IS for its part obtained power of disposal over the dwellings made available to the accused not by appropriating the property of its opponents but, for instance, by purchasing or renting these dwellings itself or that they were surrendered to IS by its local members. In this respect, the Senate excludes such an unlikely and only theoretically possible course of events.

By contrast, the Senate was not convinced from the taking of evidence that the third dwelling in Mayadin used by the accused and S [REDACTED] (count 7 of the indictment) was a dwelling belonging to opponents of IS who had fled or been killed or to the Syrian State. S [REDACTED] stated to the ICSVE that he moved from a dwelling provided by IS to a better, rented dwelling. Unlike many other points, he described this occurrence in quite a lot of detail: the landlord was an old man, who initially demanded rent of USD 200 but then, as this was not manageable, reduced this to USD 100. He described the house as a brick building in a 'good location'. The dwelling they rented was at the top. The landlord lived below and became friends with him. This description coincides in some respects, particularly in terms of the good location, with the accused's description of the third dwelling used solely by her family in Mayadin (not counting a house that – according to her statement – they shared with several other families at the beginning of their time in Mayadin) as a 'very nice, well-kept home in a lovely, family-friendly area'. The statement of the witness [REDACTED] does not reveal anything different in this respect. No other evidence was available. The Senate is therefore not able to exclude with the necessary degree of certainty the possibility that this dwelling was actually privately rented and not part of IS's spoils of war.

d) Count 8

The accused did not comment on the weapons offences of which she is accused in her statement. The findings relating to the weapons offences are based on the credible statement of the witness [REDACTED]. Regarding the type of the weapons, when shown a picture of an AK-47, she stated that the weapon in the home of the accused looked the same or at least very similar. When shown a further picture of a replica semi-automatic self-loading pistol, she also confirmed that the pistol owned and carried by the accused,

as established above, was a similar model in appearance. In the absence of any indication of such a circumstance outside the realm of probability, the Senate excludes the possibility that the weapons belonging to the accused and S [REDACTED], as members of an influential party to a civil war in a civil war zone, were not genuine or functional or that the accused had a (war) weapons permit.

e) Count 9

The findings relating to the predicate offence committed by O [REDACTED], who is being prosecuted separately, namely relating to the 'acquisition' of the witness [REDACTED] as a slave, her lengthy stay in the household of O [REDACTED] while deprived of her freedom of movement and the treatment she experienced there are based on the credible statement of the witness.

The accused has admitted that the witness [REDACTED] worked in the household of the accused in the manner established and that she accepted these work services in knowledge of the fact that the witness had been enslaved during IS's attack on the Yazidis and continued to be kept in slavery. The witness carried out the work 'on the instructions' of O [REDACTED] or after being ordered to do so by O [REDACTED]. However, the accused claims that this happened in 'far fewer' cases than alleged by the witness. In this respect, she had 'misrepresented' the facts.

Insofar as the statement relating to the involvement of O [REDACTED] in the events is to be understood in such a way that the nature and scope of the work to be performed in each specific case was determined by O [REDACTED] alone and the work performed by the witness was in each case initiated exclusively by O [REDACTED], this is already disproved by the overall circumstances that have also been admitted by the accused. The work was carried out in the home of the accused and was exclusively in her interest. In the absence of S [REDACTED], it was only the accused who was responsible for determining what happened in her home. The Senate considers it unrealistic that, under these circumstances, the accused would not have decided herself whether and what work should be done. The fact that the instructions to carry out the work were in each case issued by O [REDACTED], as was also stated by the witness, is due solely to the inability of the witness and the accused to understand each other in the absence of a shared

language. The Senate is convinced, however, that O [REDACTED] in each case passed on instructions issued by the accused, although O [REDACTED] had the right to decide whether the joint plaintiff should comply with the wishes of the accused in relation to the work in question.

However, it was not possible to establish – as the accused is charged in the indictment – that she additionally phoned O [REDACTED] in each case to specifically order the services of the witness. The indictment bases this accusation solely on the fact that there were telephone calls between the accused and O [REDACTED] before each time O [REDACTED] visited the accused with the witness. The statement of the witness [REDACTED] reveals, however, that the accused and O [REDACTED] were friends and regularly visited each other, with telephone calls taking place before each of these visits in German, which the witness could by then identify as such but not understand. It cannot be excluded that the friendship between O [REDACTED] and the accused was the main reason for the visits, that the telephone calls were for the purpose of arranging suitable dates and times and that the accused was merely taking advantage of the opportunity to use the witness for housework that presented itself to her through the presence of the witness due to O [REDACTED]'s visits in combination with O [REDACTED]'s willingness to 'lend' her the joint plaintiff.

With regard to the frequency of the work, the Senate considers the statement of the witness [REDACTED] to be credible and the accused's statement to the contrary to be an attempt at whitewashing. The witness has stated that she is unable to say the exact number of times she performed work but that it was around 50. As the basis for her estimation, the witness stated that the visits of O [REDACTED] to the accused took place regularly, sometimes up to three times a week but sometimes only three to four times a month. The accused also returned these visits, but less frequently. She stated that the duration of her stay with O [REDACTED] was around 2 years. She clearly also included the time after she was passed on to E [REDACTED] in this, during which, however, she was only taken to visit the accused sporadically by O [REDACTED], from then on primarily for the purpose of providing childcare. She could not say the exact time when she was handed over to E [REDACTED], which happened after the accused moved to Mayadin. In view of these circumstances, which have been credibly stated by the witness, the Senate assumes, in accordance with the witness' estimation, that she in any case had to perform housework

for the accused in the manner established on around 50 visits up to the time she was handed over to E [redacted].

The finding that the accused also learned over the course of time that the witness was forced to submit sexually to the 'husband' of O [redacted] is based on the statement of the witness [redacted], who stated in this regard that O [redacted] herself had occasionally spoken to her about the accused and other IS women asking O [redacted] how she could cope with the fact that her husband had a 'sexual relationship' with the witness. The statement of the witness, which is also credible in this respect, at the same time reveals that it was not a 'sexual relationship', which implies voluntary participation, but that I [redacted] S [redacted] exploited the enslavement of the witness to force her to perform sexual acts. Based on the overall circumstances, the Senate is convinced that this was also clear to the accused, despite the euphemism used by her or other IS women when talking to O [redacted].

f) The statement of the witness [redacted], on which the Senate has based considerable parts of the findings and on the basis of which it considers parts of the accused's statement to be disproved, was credible as a whole. The witness has described the events in detail and in large part also in a manner that accords with the accused's statement. She made it clear if there were any matters of which she was uncertain, for instance regarding the exact description of the buildings in which the dwellings of the accused were located or the chronology of the events. In view of the time that has passed since the events in question and the long period of the offence that the witness was forced to endure, certain gaps in memory are unavoidable and do not reduce the credibility of her statement. Although the answers given by the witness were at times somewhat circuitous, her efforts to provide the most accurate representation possible of the events she witnessed were always apparent. For instance, the witness concluded – as did the Senate (see III. 3. c)) – from the fact that the work she performed took place in the dwelling of the accused and that it was the accused who benefited, that it was also the accused who originally issued the instructions to carry out the work. The witness, however, made a point of identifying this conclusion as such, and on several occasions clearly emphasised that she did not understand any of the communication in German between O [redacted] and the accused and that it was only O [redacted] who told her (in Arabic) what was to be done. Following further intensive questioning, she

remembered that O [redacted] had once told her that it was the accused who decided what work was to be done.

Despite the discernible (and understandable) indignation and rage of the witness at the persecution she suffered and her explicitly expressed interest in the appropriate criminal prosecution of the perpetrators in IS, her statement did not reveal any tendency towards false allegations. The witness admitted to gaps in memory where such existed and also described the roles of the various IS women she dealt with in a differentiated manner. For instance, her statement contained details of the established physical and sexual abuse by O [redacted] and Sa [redacted], regarding which the accused and her husband in accordance with Islamic rites, by contrast, state that she did not suffer any further injustice apart from the exploitation of her labour.

When assessing the statement of the accused in the context of the further results of the taking of evidence, the Senate also took into account that, despite the fact that her statement was ultimately largely in the nature of a confession, the behaviour of the accused when giving the statement was overall characterised by clear tendencies towards whitewashing. For instance, in her original statement regarding the work performed by the witness [redacted], she claimed that the witness helped to tidy up after meals without being asked, as did her visitors belonging to IS. After the witness was questioned, the accused then admitted in an additional statement that the work had been carried out in the manner described by the witness, but at the same time resorted to the assertion that this work had in any case taken place a lot less frequently than claimed by the witness.

The additional statement of the accused also revealed a tendency towards whitewashing in respect of the consequences of her actions on her daughter H [redacted]. Between the two statements, in addition to the witness [redacted], the witness O [redacted] was also questioned, who expressly described the mental impairments she had observed in H [redacted] following her return. In her additional statement, the accused who, according to the statement of the witness detective chief inspector [redacted] who accompanied her on her flight back from Turkey, had a mutually loving relationship with her children, expressed shock and shame – comprehensible and credible in this respect – regarding her daughter's development. At the same time, however, she attributed this development to their experiences in the al-Hawl camp after the accused and her children

were captured by Kurdish forces. When questioned, however, she was then forced to admit that there were no air strikes, floggings or stonings in the camp. The remarkable comments made by H [redacted] in this respect that were described by the witness O [redacted] can therefore not be attributed to any experiences in the al-Hawl camp, even if the circumstances otherwise present there were not such as would be conducive to the development of children. Instead, the comments made by H [redacted] suggest that, as stated by the witness [redacted], she was permitted to watch IS propaganda videos in Syria.

IV. Legal analysis

The applicability of German criminal law to the offence that took place almost entirely in Syria arises from Section 7(2)(1) of the StGB. The accused is a German national and 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. In respect of the crime against humanity in accordance with Section 7(1)(3) of the VStGB, the applicability of German criminal law additionally arises from the universality principle set down in the first sentence of Section 1 of the VStGB.

In addition, the conditions set down in Section 129b(1) of the StGB for the application of Section 129a of the StGB to terrorist organisations outside the European Union have been met. The crucial element in this respect, in addition to the accused being a German national (second sentence of Section 129(1) of the StGB), is an authorisation to prosecute required by the third and fourth sentences of Section 129b(1) of the StGB, which the Federal Ministry of Justice and Consumer Protection issued on 18 March 2014 for the criminal prosecution of members or supporters of ISIL and adapted on 13 October 2015 to reflect the name 'IS' used from then on by the organisation.

1. By committing the offence established in II. 2. a) (count 1), the accused was guilty of participating as a member of a foreign terrorist organisation in accordance with Section 129a(1)(1), the first and second sentences of Section 129b(1) and Section 129(2) of the StGB.

a) IS is a foreign organisation outside the Member States of the European Union

whose objectives or activities are directed at the commission of murder, manslaughter, crimes against humanity and the other crimes listed in Section 129b(1)(1) and (2) of the StGB. Its organisational structure fulfils both the requirements of the concept of an organisation formerly applied in the case-law of the Federal Court of Justice (see, in that regard, for example judgments of the Federal Court of Justice (BGH) of 20 March 1963, 3 StR 5/63, BGHSt 18, 296, 299 and 300, and of 14 August 2009, 3 StR 552/08, BGHSt 54, 69 paragraph 123.) and the requirements of the legal definition of an organisation, which are slightly lowered in terms of the organisational structure and decision-making process, in Section 129(2) in conjunction with Section 129a(1) of the StGB, in the version valid since 22 July 2017.

b) The accused participated as a member of IS.

In accordance with the case-law of the Supreme Court, a perpetrator participates as a member if, supported by the shared will of both parties and for a certain duration, they integrate themselves within the organisation, submit to its will and actively engage in an activity to promote its aims. This promotional activity can consist of directly contributing to the enforcement of the organisation's aims, for instance by participating in combat operations. It can also be directed at merely creating or maintaining the foundation for the organisation's activities. Promoting the establishment, cohesion or activity of the organisation is therefore sufficient. For example, conduct of appropriate severity that promotes or is otherwise typical of the organisation may be considered. In contrast to this, cases of merely formal or passive membership that is of no meaning to the activity of the organisation are fundamentally lacking an active act of membership (BGH, decision of 15 May 2019, AK 22/19 with further references).

The case-law of the Supreme Court, in the context of an overview, has considered, in particular, deliberately entering the territory of IS, marrying an IS member, receiving money and accommodation from IS, following orders given by a husband with commanding authority and by other local commanders, deliberately deciding to expand the 'constituent people' of IS, using blog posts to call on those of similar beliefs in Europe to likewise travel to the territory of IS and join that organisation, and receiving training in dealing with weapons, as evidence of active promotion. The fact that the activity was mainly carried out as part of managing the household does not preclude participation as a member (Gericke/Moldenhäuer NStZ-RR 2020, 329 with numerous references from the case-law).

According to this standard, the accused was not only a passive member of IS, but as such actively promoted its aims and integrated herself within the organisation with its agreement. Aware and approving of the aims and actions of IS, she deliberately decided to emigrate from Germany to the region controlled by IS. She used the services of a middleman, together with K [REDACTED], when she entered the territory, initially lived for a short time in two IS women's shelters, had a discussion in the presence of the head of the women's shelter with a male IS member to whom she had been recommended as a marriage candidate and formally married him in accordance with Islamic rites on 17 February 2015 before an IS 'court'. Her integration by mutual agreement into IS occurred no later than as a result of this. The settlement of her family and child and the birth of another child in the region controlled by IS also served to create and maintain the foundation for the activities of IS. The accused made it easier for S [REDACTED], who is being prosecuted separately, to fulfil his tasks in IS by running the household and taking care of the children. Until her flight from Baghuz in 2019, the accused lived continuously in the IS region.

c) The accused acted wilfully and knowingly, unlawfully and culpably.

2. By taking her daughter to the IS region, as established in II. 2. b), and subsequently staying there for several years (count 2), the accused was guilty of breaching her duty of care or upbringing in respect of a person under 16 years of age in accordance with Section 171 of the StGB in notional concurrence (Section 52 of the StGB) with participation as a member of a foreign terrorist or organisation.

a) Taking her daughter, who was three and a half years old at the start of the period of the offence, to the region controlled by IS in Syria and subsequently staying there for around 4 years under a form of inhuman arbitrary rule in a civil war zone without sending her to school constitutes a gross breach of the duty of care or upbringing incumbent on the accused as a mother within the meaning of Section 171 of the StGB. 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). These conditions have clearly been met.

The gross neglect of duty on the part of the accused created a danger that the

physical or mental development of her daughter could be seriously damaged. The fact that staying in a civil war zone in which air strikes take place and in which there is no proper medical care is associated with a danger that the physical development of a three and a half year old child could be seriously damaged requires no further discussion. It is likewise obvious that the mental development of a child could be seriously damaged by viewing the sometimes extremely brutal IS propaganda videos. Staying under a form of arbitrary rule that completely contradicts the system of values of the Basic Law (Grundgesetz) also creates a danger of serious damage to mental development. Such damage has in fact occurred in the daughter of the accused, which in this respect goes beyond the requirements of the elements of the offence under Section 171 of the StGB.

The accused acted wilfully and knowingly. She knowingly accepted the risks to her daughter's development associated with travelling to and staying in the IS region in order to facilitate her own desired participation in IS in the region it controlled.

The accused acted unlawfully and culpably.

b) Taking the daughter of the accused to the IS region also constitutes an additional act of participation on the part of the accused as a member of IS realised as part of several offences committed by means of a single act (Section 52 of the StGB), since travelling and settling there with children contributed towards enlarging the constituent people indispensable for a 'State' and thus towards establishing the caliphate. In this respect, the accused also acted wilfully and knowingly, unlawfully and culpably.

3. By using dwellings that were legally owned by IS opponents, as established in II. 2. c) (counts 3 to 6), the accused was guilty of four counts of a war crime against property in accordance with Section 9(1) of the VStGB in each case in notional concurrence (Section 52 of the StGB) with participation as a member of a foreign terrorist organisation.

a) Based on the findings, the accused committed an offence in each case in accordance with Section 9(1) of the VStGB by using a total of four dwellings made available free of charge by IS.

aa) The act falls within the scope of the offence under Section 9(1) of the VStGB in objective terms, inter alia, if the perpetrator, in connection with an international armed

conflict or with an armed conflict not of an international character, unless this is imperatively demanded by the necessities of the armed conflict, extensively appropriates property of the adverse party contrary to international law, such property being in the power of the perpetrator's party. These conditions have been met.

(1) The Syrian civil war, in which several well-organised armed groups, including IS, the Nusra Front, the FSA and Kurdish-led militias, fought the Syrian regime and in some cases each other is an armed conflict not of an international character that lasted for the entire period of the offence. The seizure of the dwellings by IS was made possible by the capture of Raqqa and Mayadin during this conflict and was therefore connected to that conflict. It also served to reinforce the dominance of IS and to make it harder for the areas to be recaptured.

(2) The dwellings used by the accused, which are the subject of the present conviction, constituted property of the adverse party that was in the power of the perpetrator's party, namely IS. In accordance with the findings made, the dwellings were legally owned by the Syrian State itself or by civilians or officials of the Syrian State who had fled from or been expelled or killed by IS, meaning that these legal owners were members of the adverse party in relation to IS.

Any person who pursues aims contrary to the intentions of the perpetrator's own party to the conflict is to be attributed to the adverse party (MüKo-StGB/Ambos, 3rd edition 2018, VStGB Section 9, paragraph 10). In this case, IS should also be considered to be an adverse party in relation to the civilian population and especially in relation to the Syrian State (see BGH, decision of 15 May 2019, AK 22/19, paragraph 29).

(3) By using the four dwellings that are the subject of the present conviction together with her family, the accused appropriated those dwellings because her conduct was aimed at permanently depriving the legal owners of those dwellings. It is not relevant that IS had already placed these dwellings under its control previously (BGH, loc. cit.). As the property appropriated related to dwellings, each of the acts of appropriation was extensive in nature.

(4) The appropriation of the dwellings was neither imperatively demanded by the necessities of the armed conflict nor were there any justifications for it under international law.

(5) The accused acted at least with conditional intent. Based on the overall circumstances, the Senate assumes that it was clear to the accused that the dwellings, which were in towns and cities previously captured by IS through armed violence, could not originally have been in the ownership of IS. She would have at least been alert to the fact that the dwellings for the migrant members of IS also had not been, for instance, purchased by IS or made available by other local members after those places had been captured, but that IS had seized the dwellings from its opponents and those it deemed 'unbelievers'. However, she was willing to accept this because, during the period of the offence, she considered the actions of IS to be right as a whole and was also in need of accommodation.

(6) The accused acted unlawfully and culpably.

b) The appropriation of the four dwellings in each case also constitutes an additional act of participation on the part of the accused as a member of IS realised as part of several offences committed by means of a single act (Section 52 of the StGB), since it also served to reinforce the actual territorial domination of IS. In this respect, too, the accused acted wilfully and knowingly, unlawfully and culpably. The four acts are related to one another in the manner of multiple offences committed by multiple acts (Section 53 of the StGB).

4. By exercising actual power over an assault rifle, as established in II. 2. d), and possessing and carrying a semi-automatic pistol outside the home (count 8), the accused was guilty of unlawfully exercising actual power over a weapon of war and unlawfully possessing and unlawfully carrying a semi-automatic handgun in accordance with Section 22a(1)(6) of the KrWaffKontrG in conjunction with Part B, Section V, No 29 c) of the War Weapons List, Section 52(1)(2)(b), Section 1(2)(1) and Section 2(2) of the WaffG in conjunction with Annex 2, Part 2, Chapter 1, first sentence to the WaffG, Annex 1, Part 1, Chapter 1, No 1.1 and Chapter 3, No 1.1 to the WaffG in notional concurrence (Section 52 of the StGB) with participation as a member of a foreign terrorist organisation.

Since, in their shared home, the accused had access to the AK-47 or similar assault rifle belonging to ██████ S ██████, she, together with the latter, exercised actual control over this weapon within the meaning of Section 22a(1)(6) of the KrWaffKontrG.

With regard to both of the weapons offences, the accused acted wilfully and knowingly, culpably and unlawfully.

Both of the weapons offences are related to one another in the manner of several offences committed by means of a single act (Section 52 of the StGB), since the unlawful possession of the pistol and the exercise of actual control over a weapon of war took place predominantly at the same time in each case in the same dwelling and the continuing offence of unlawful possession of the pistol combines all of the acts, including the carrying of the pistol outside the home, into one offence.

By committing the weapons offences, the accused also committed an additional act of participation as a member of IS as part of several offences committed by means of a single act, since her joint possession of the weapon of war that was used in combat by IS and her own possession of a firearm promoted the organisation's defence capabilities.

5. By using the joint plaintiff enslaved by O [REDACTED] for housework in each of her dwellings, as established in II. 2. e) (count 9), the accused was guilty of aiding and abetting a crime against humanity (enslavement) in notional concurrence with deprivation of liberty lasting more than 1 week in accordance with Section 7(1)(3) of the VStGB and Section 239(1), Section 239(3)(1) and Section 27 of the StGB in notional concurrence (Section 52 of the StGB) with participation as a member of a foreign terrorist organisation.

a) In accordance with the findings made, the perpetrator of the predicate offence, O [REDACTED], wilfully, knowingly and unlawfully committed a crime against humanity, in the form of the enslavement of the joint plaintiff, in accordance with Section 7(1)(3) of the VStGB. In order for the act to fall within the scope of the offence, it is required that the perpetrator, as part of a widespread or systematic attack directed against any civilian population, traffics in persons or enslaves a person in another way and in doing so arrogates a right of ownership over that person.

aa) The Yazidis, who were attacked by IS on the basis of their religion, are a civilian population within the meaning of Section 7 of the VStGB. They are a large group of people who share distinguishing features on the basis of which they are attacked (BGH, judgment of 20 December 2018, 3 StR 236/17, paragraph 164).

bb) The actions taken by IS against the Yazidis constituted a widespread and systematic attack directed against the Yazidi civilian population.

The IS attack on the areas settled by Yazidis and the subsequent treatment of this population group readily constitutes an attack within the meaning of the provision. An attack represents an overall process into which the individual offences must fit (Werle/Jeßberger, *Völkerstrafrecht*, 4th edition 2016, paragraph 932). It is a requirement that the acts mentioned in paragraph 1 are committed several times

(MüKo StGB/Werle, 3rd edition 2018, VStGB Section 7, paragraph 24). It is not necessary for the attack to be of a military nature for the overall offence to be present. Instead, any form of mistreatment of the civilian population is encompassed by the term 'attack' (Werle/Jeßberger, *loc. cit.*, paragraph 933).

The attack was both widespread and systematic. Its extent is demonstrated by the fact that hundreds of IS militiamen were involved in the attack on the night of 2 to 3 August 2014 and that hundreds of Yazidi villages were located in the area surrounding the Sinjar Mountains that was attacked. The attack was also systematic, since the use of force was organised and planned in the sense of a consistent action and did not just involve isolated or randomly clustered acts (see MüKoStGB/Werle, *loc. cit.*, paragraph 27).

The question as to whether an attack also requires a 'political element', which has not yet been resolved in the case-law of the Supreme Court (BGH, *loc. cit.*, paragraph 168), can be left open since the IS attack on the Yazidis in any case involves such an element. After all, it took place in accordance with the policy pursued by IS of destroying the Yazidi religion and culture.

cc) Perpetrators of a crime against humanity may be any persons acting in accordance with or in support of the policy of the State or organisation (MüKoStGB/Werle, *loc. cit.*, paragraph 42), which was the case with O [REDACTED]. In the case of Section 7(1)(3) of the VStGB, the act of the individual perpetrator is the trafficking in persons or the enslavement of a person with arrogation of a right of ownership over that person.

A prerequisite for enslavement is that the perpetrator exercises an arrogated right of ownership over a person. In accordance with the legal definition in Article 7(2)(c) of

the Rome Statute of the International Criminal Court, enslavement means ‘the exercise of any or all of the powers attaching to the right of ownership over a person’. Conventional forms of enslavement include the purchase, sale, lending or exchanging of one or more persons, including ‘similar’ forms of deprivation of liberty (MüKoStGB/Werle, loc. cit., paragraph 57).

The ‘acquisition’ of the joint plaintiff by O [redacted] and Sa [redacted] and subsequent full determination of her place of residence and activities therefore constitute enslavement within the meaning of Section 7(1)(3) of the VStGB.

The enslavement of the joint plaintiff by O [redacted] was carried out as part of the IS attack on the Yazidis, since O [redacted] herself acted as an IS member who was aware and approved of the aims of IS, including in relation to the Yazidis.

dd) In the absence of any justification, O [redacted] acted unlawfully.

b) By committing the offence established in ll. 2. d), O [redacted] also wilfully, knowingly and unlawfully fulfilled all the elements of the offence of deprivation of liberty lasting more than 1 week in accordance with Section 239(1) and Section 239(3)(1) of the StGB to the detriment of the joint plaintiff.

c) The acts of O [redacted], which were aimed at enslavement within the meaning of Section 7(1)(3) of the VStGB, are closely connected in terms of subject matter, time and location. They were always directed in the same way against the same victim and were part of the same widespread and systematic attack against the Yazidi civilian population. They therefore constitute an offence within the meaning of the law, which is in notional concurrence (Section 52 StGB) with the continuing offence of qualified deprivation of liberty.

d) By using the labour of the joint plaintiff who was enslaved by O [redacted], the accused aided and abetted the crime against humanity committed by O [redacted] in notional concurrence with deprivation of liberty lasting more than 1 week.

aa) By locking the front door from the inside, allowing work instructions to be passed on to the joint plaintiff and then accepting the work performed for her own benefit

on the occasion of the visits from O [redacted] during which the latter brought along the joint plaintiff, as established above, the accused promoted both the qualified deprivation of liberty committed by O [redacted] and her crime against humanity. In this case, the promotion of the offence arises, first, from the participation of the accused in the specific organisation of the enslavement and also the deprivation of liberty during the time spent by O [redacted] and the joint plaintiff in the dwelling of the accused, by locking the door, and also from the fact that, by exploiting the enslavement and the associated qualified deprivation of liberty, the accused expressed towards O [redacted] her acceptance and approval of the predicate offence, which served to encourage O [redacted] 's actions.

bb) Unlike the prosecution, the Senate does not consider the actions of the accused to be complicit in the offence committed by O [redacted] .

The question as to whether, in the case of several persons involved in an offence, the actions of one of these persons constitute complicity within the meaning of Section 25(2) of the StGB, must be assessed by the trial court on the basis of an overall evaluation of all the established circumstances of the case in question. The relevant criteria are the degree of the person's own interest in the offence, the scope of the participation in the offence and the actual perpetration of the offence, or at least the will to do so, as a result of which the execution and outcome of the offence also depend to a significant extent on the will of the person concerned (established case-law, see BGH NStZ 2020, 22, with references). If, according to the will of the person involved, the participation amounts to nothing more than merely promoting the actions of another, that person can only be charged with aiding and abetting (BGH, decision of 28 April 2020, 3 StR 85/20).

By this measure, the accused did not act as a perpetrator. However, it was she who decided whether and, if so, what work she wanted the joint plaintiff to do. She was nevertheless unable to independently order the deployment of the joint plaintiff, but in each case had to ask O [redacted] , due to her position as the 'owner' of the slave and the fact that the accused and the joint plaintiff could not understand each other, to pass on her expectations to the joint plaintiff. By the standards of IS, O [redacted] – together with Sa [redacted] , who was not present during the acts of the accused – was alone entitled to decide on the deployment of the joint plaintiff. She performed a form of 'friendly turn' for the accused at the expense of the joint plaintiff. O [redacted] also had an interest in the

deployment of the joint plaintiff in the accused's home, since this use of the joint plaintiff's labour reinforced her position as her 'mistress'. The ultimate decision regarding whether and when she visited the accused, and whether and for how long the accused's wish for the joint plaintiff to perform work was taken into account during each individual visit rested with O [redacted] alone. Although the accused contributed to a minor degree towards the restriction of the freedom of movement by locking the front door, she could not have decided to release the joint plaintiff against the will of O [redacted].

Nor can a different conclusion be drawn from the extent of the services performed for the accused. These were not necessarily part of her enslavement but merely served to intensify it. Despite the considerable extent of the work performed, the accused was only involved, including from a temporal perspective, in a small fraction of the events constituting the (predicate) offence, in view of the approximately 2 years of continuous enslavement and deprivation of liberty to the detriment of the joint plaintiff.

cc) The accused acted wilfully, knowingly, unlawfully and culpably both with regard to the predicate offence committed by O [redacted] and with regard to her acts of aiding and abetting.

e) Aiding and abetting the enslavement and deprivation of liberty to the detriment of the joint plaintiff also constitutes an additional act of participation on the part of the accused as a member of IS realised as part of several offences committed by means of a single act (Section 52 of the StGB), since, as the accused has also admitted, it promoted the extermination of the Yazidi religion and culture pursued by IS. In this respect, too, the accused acted unlawfully and culpably.

6. The accused was to be acquitted, for factual reasons, of the charge of having committed a further war crime against property in accordance with Section 9(1) of the VStGB in notional concurrence with participation as a member of a foreign terrorist organisation through the appropriation of a third dwelling in Mayadin (count 7 of the indictment). As stated in III. 3. c), it was not possible to establish that this dwelling was also the property of an adverse party in respect of IS in the Syrian civil war.

7. To the extent that the statement of the witness [redacted] contained indications of any further punishable acts on the part of the accused, these are not included in the indictment. The witness [redacted] stated that she was still taken by O [redacted] to visit the

accused in isolated cases after she had been passed on to the brother of [REDACTED] S [REDACTED], mainly in order to look after O [REDACTED]'s children. On one occasion during this time, the witness was taken to 'Umm O [REDACTED]', who lived in the same building as the accused, for a week and had to help the 'husband' of the accused repair water damage on one occasion during this time and also performed work in the household of the accused. However, the offence committed by the brother of [REDACTED] Sa [REDACTED], who at that time was the perpetrator of the (predicate) offence of a crime against humanity to the detriment of the joint plaintiff, and thus any participation on the part of the accused in that offence, is not part of this indictment.

V. Determination of penalty

When assessing the individual penalties for all of the established offences, on all counts the Senate took into account the particularly high level of danger and the cruel actions of IS, to the detriment of the accused, within the range of penalties applicable in each case. The organisation was not only directed at the unjustified killing of people and the commission of war crimes, but also committed these offences on a considerable scale and, moreover, is also responsible for attacks outside the region under its control, including in Europe. The long period of the offence, lasting 4 years, also spoke against the accused.

By contrast, there were numerous circumstances that worked to the benefit of the accused. These included, in particular, her largely confessional and remorseful statement – with reservations in the case of the war crimes against property (counts 3 to 6) – and the fact that she has distanced herself from IS since her return, which she demonstrated in a credible manner.

The Senate also considered, to the benefit of the accused, that she has been particularly severely affected by the separation from her children associated with her custody awaiting trial, which has now lasted around 9 months, and that, as a result of the preceding offence, she was forced, even after she was captured by Kurdish forces on 11 February 2019, to live for well over a year with her children in unfavourable unsanitary conditions with a lack of medical and other care in the tent city of the al-Haw

camp, and then for another few months in a Turkish camp in Jarabulus, albeit in considerably better conditions. However, this time cannot be credited against the custodial sentence in accordance with the second sentence of Section 51(3) of the StGB, since her stay in the camps was not based on a State-ordered deprivation of liberty on account of the offence.

Finally, due consideration was given to the accused's lack of previous convictions, which was to her benefit.

A mitigation of the range of penalties that is possible under Section 129a(6) of the StGB in the case of parties to an offence whose guilt is minor and whose contribution is of subordinate importance was not considered for any of the offences as part of the overall assessment.

1. For the participation as a member of a foreign terrorist organisation, established in II. 2. a), committed during the period from the start of February 2015 to at least February 2019 (count 1), an

individual sentence of 2 years

was in proportion to the nature and severity of the offence.

The penalty was derived from the range of penalties set down in Section 129a(1)(1) of the StGB, namely imprisonment for a term of between 1 year and 10 years.

When assessing the penalty within the range of penalties, the Senate took into consideration, in addition to the aforementioned circumstances to the benefit of the accused that apply to all of the offences, the fact that her radicalism was not too pronounced and that her contribution to promoting the aims of IS through her integration and running the household for S ██████ was relatively minor. However, the assessment of her promotional contribution – in this respect to her detriment – cannot ignore the fact that, as a member of the media department of IS, S ██████ held a prominent position, even though it may not have been remunerated accordingly.

2. In respect of the breach of the duty of care or upbringing, established in II. 2. b), in notional concurrence with participation as a member of a foreign terrorist

organisation (count 2), an

individual sentence of 2 years

was in proportion to the nature and severity of the offence.

This penalty was also derived from the range of penalties set down in Section 129a(1)(1) of the StGB, namely imprisonment for a term of between 1 year and 10 years, since, in accordance with Section 171 of the StGB, the offence under that provision forming part of several offences committed by means of a single act is only punishable by imprisonment for a term not exceeding 3 years.

When assessing the individual sentence, the Senate took into account, to the detriment of the accused, the very considerable impairment of the mental and physical development of the accused's daughter as a result of the offence and the fact that the school education of the accused's daughter, which is conducive to healthy development, only began after a considerable delay, as a result of which she is currently attending the first grade, while she would now have reached the third grade if she had been enrolled in school in Germany at the appropriate age, which was frustrated by the offence.

By contrast, it should be considered to the benefit of the accused that, apart from the offence, she endeavoured to be loving in her role as a mother and showed considerable concern during the trial regarding the state of her daughter. In this context, the accused showed a particular degree of remorse.

3. In respect of the four counts of a war crime against property, established in II. 2. c), in each case in notional concurrence with participation as a member of a foreign terrorist organisation (counts 3 to 6), in each case an

individual sentence of 1 year and 6 months

was in proportion to the nature and severity of the offence.

In accordance with both Section 129a(1)(1) of the StGB and Section 9(1) of the VStGB, the range of penalties to be applied is imprisonment for a term of between 1 year and 10 years.

It worked to the benefit of the accused that this in each case involved a 'secondary appropriation' of dwellings that had already been seized by IS. The accused played a subordinate role in the offences since the dwellings were sought by her 'husband' S [REDACTED]. After all, she was in need of accommodation, including for her children.

By contrast, it was necessary to take into account, to the detriment of the accused, that the dwellings represented property of considerable value that held existential meaning for the persons affected. The severity of the offence is

therefore considerably in excess of the threshold of extensive appropriation required by Section 9(1) of the VStGB.

4. In respect of the weapons offences as part of several offences committed by means of a single act, established in II. 2. d), in notional concurrence with participation as a member of a foreign terrorist organisation (count 2), an

individual sentence of 1 year

was in proportion to the nature and severity of the offence.

The penalty was derived from the range of penalties set down in Section 129a(1)(1) of the StGB, namely imprisonment for a term of between 1 year and 10 years, since, in accordance with Section 22a(1)(6) of the KrWaffKontrG and Section 52(1)(2)(b) of the WaffG, the offence forming part of several offences committed by means of a single act is only punishable by imprisonment for a term of between 1 year and 5 years (KrWaffKontrG) or for a term of between 6 months and 5 years (WaffG), even without taking into consideration the less severe case provided for in each of the two provisions.

Even if the provisions of weapons law were applied in isolation, the possession of operational weapons – which are more likely to be used in a civil war zone – would in each case not be considered to be a less severe case. However, in relation to the weapon of war, the Senate took into account, to the benefit of the accused, that she ultimately only had shared control that was 'imposed' by S [REDACTED], when viewed from an

evaluative perspective.

5. In respect of aiding and abetting a crime against humanity committed in notional concurrence with qualified deprivation of liberty, established in II. 2. e), in notional concurrence with participation as a member of a foreign terrorist organisation (count 2), an

individual sentence of 3 years and 6 months

was in proportion to the nature and severity of the offence.

The penalty was derived from the range of penalties set down in Section 7(1)(3) of the VStGB, namely, in principle, imprisonment for a term of between 5 years and 15 years and in the present case imprisonment of between 2 years and 11 years, 3 months due to mitigation in accordance with Sections 27 and 49(2) of the StGB.

A less serious case in accordance with Section 7(2) of the VStGB does not exist, even taking into account the typical mitigating circumstance.

However, her extensive and remorseful confession and her emotional and heartfelt personal apology to the joint plaintiff during the trial are matters that speak greatly in the accused's favour. Other aspects to the benefit of the accused are the relatively minor significance of her contribution to the predicate offence, the fact that she herself did not exercise any physical violence towards the joint plaintiff, that the work performed by the joint plaintiff at the instigation of the accused was not hard labour and that the accused merely took advantage of an opportunity to participate in the offence presented to her by C [REDACTED].

However, aspects to the detriment of the accused were her ideological, albeit not particularly radicalised, beliefs, the fact that the offence was motivated by her own self-interest, the duration of the period of the offence and the considerable extent of the work performed in total.

An overall assessment of all of the circumstances does not justify the assumption of a less serious case in accordance with Section 7(2) of the VStGB, even taking into account the typical mitigating circumstance set down in the second sentence of

Section 27(2) of the StGB that applies in the case of aiding and abetting. The apology made by the accused to the joint plaintiff does not fulfil the conditions of the further typical mitigating circumstance set down in Section 46a of the StGB. It lacks the required communicative process between the accused and the joint plaintiff. The joint plaintiff herself did not respond to the apology directly. At the following session of the trial, in which the joint plaintiff herself did not participate, her representative stated that the apology by all means had meaning for the joint plaintiff, but she was not yet able to accept it.

However, the range of penalties was to be mitigated in accordance with Sections 27 and 49(2) of the StGB, as a result of which a sentence of between 2 years and 11 years, 3 months was applied. Within this range of penalties, the Senate arrived at the individual custodial sentence imposed, taking into account the aforementioned circumstances of relevance to the sentencing.

6. When determining the total penalty to be imposed under Section 54 of the StGB, the Senate once again 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.

Accordingly, the Senate decided upon a moderate increase in the cumulative penalty of 3 years and 6 months to an

aggregate custodial sentence of 4 years and 3 months.

VI. Costs

The decision on the costs and necessary expenses of the accused is based on the first alternative of the first sentence of Section 465(1) and Section 467(1) of the German Code of Criminal Procedure (Strafprozessordnung, StPO).

VII. No negotiated agreement

The judgment is not based on a negotiated agreement in accordance with Section 257c of the StPO.



Ausgefertigt

BUNDESLANDGERICHT DÜSSELDORF

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DÜSSELDORF HIGHER REGIONAL COURT