

A large, light blue silhouette of Lady Justice, the personification of the Roman goddess Iustitia. She is blindfolded, holding a pair of scales in her right hand and a sword in her left hand. The background is a dark blue with a repeating pattern of the scales of justice.

**Cumulative prosecutions
of foreign terrorist
fighters for core
international crimes
and terrorism-related
offences: An analysis of
selected jurisprudence**

Genocide Prosecution Network Report

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September 2025



GENOCIDE
PROSECUTION
NETWORK

The Genocide Prosecution Network

The European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes (The Genocide Prosecution Network) was established by the Council of the European Union in 2002 to ensure close cooperation between national authorities in investigating and prosecuting the crime of genocide, crimes against humanity and war crimes. The Genocide Prosecution Network facilitates the exchange of information among practitioners, encourages cooperation between national authorities in EU Member States, and provides a forum for sharing knowledge and best practices. The Genocide Prosecution Network is supported in its work by its Secretariat, based at the European Union Agency for Criminal Justice Cooperation (Eurojust) in The Hague, the Netherlands.

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This report has been prepared by the Genocide Prosecution Network Secretariat and is meant solely for information purposes.

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List of abbreviations

CSO	civil-society organisation
EU	European Union
Eurojust	European Union Agency for Criminal Justice Cooperation
Europol	European Union Agency for Law Enforcement Cooperation
FTF	foreign terrorist fighter
Genocide Prosecution Network	European Network for investigation and prosecution of genocide, crimes against humanity and war crimes
ICA	International Crimes Act (<i>Wet Internationale Misdrijven</i>)
ICC	International Criminal Court
ICCT	International Centre for Counter-Terrorism
ICTY	International Criminal Tribunal for the Former Yugoslavia
IHL	international humanitarian law
ISIS	Islamic State
JIT	joint investigation team
LCS	Lafarge Cement Syria
NGO	non-governmental organisation
NIAC	non-international armed conflict
StGB	German Criminal Code (<i>Strafgesetzbuch</i>)
UN	United Nations
UNITAD	United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL
VStGB	German Code of Crimes against International Law (<i>Völkerstrafgesetzbuch</i>)

1. Executive summary

1. This report continues the ongoing efforts of the European Network for investigation and prosecution of genocide, crimes against humanity and war crimes (Genocide Prosecution Network) to address the prosecution of foreign terrorist fighters (FTFs) and expands the findings of its previous report, *Cumulative prosecution of foreign terrorist fighters for core international crimes and terrorism-related offences*, issued in May 2020 (Genocide Prosecution Network, Eurojust, 2020). It highlights the evolving legal strategies for prosecuting FTFs and female returnees for terrorism-related offences and war crimes, crimes against humanity and genocide ('core international crimes'). This approach ensures comprehensive accountability and justice for victims.
2. The central theme of this report is the growing practice of cumulative prosecutions, with key legal insights from high-profile cases in Germany and the Netherlands and additional insights from France and Sweden. Importantly, it aims to serve as a practical tool and guide for prosecutors handling such cases, providing legal and analytical support to strengthen accountability efforts.
3. The findings indicate that the approach of cumulative prosecution is effective in holding FTFs and female returnees fully accountable for their actions. This approach ensures that all members of the Islamic State (ISIS)⁽¹⁾, regardless of their gender, are held responsible for their conduct, as it addresses not only male FTFs typically charged with combat-related crimes but also women involved in crimes occurring in the domestic sphere, such as enslavement. Moreover, while this report focuses on ISIS, the same cumulative prosecution approach can be applied in other contexts where a designated terrorist organisation is a party to a non-international armed conflict (NIAC), such as in Somalia, Mali and Mozambique. This highlights the broader relevance of this publication in addressing accountability in various conflict settings.
4. While prosecuting both terrorism and core international crimes can present challenges, the report emphasises that obstacles can be overcome. Effective national and international cooperation, the right legal frameworks, and expertise are critical in overcoming resource limitations and securing evidence. Case studies demonstrate that when counterterrorism and international crimes units collaborate, cumulative prosecutions are more likely to succeed. This cooperation, supported by other actors, including civil-society organisations (CSOs) and UN international investigative mechanisms, is essential.
5. The report also underscores the importance of relying upon various forms of evidence – including witness testimonies, battlefield evidence, intercepted communications and open-source reports – in building robust cases. Often, the same evidence can support both terrorism and international crime charges, proving ISIS's dual role as a terrorist organisation and an armed group in non-international armed conflict. This includes evidence concerning ISIS's organisational structure and acts of violence, along with acts like bringing children into ISIS-controlled areas, unlawfully appropriating property and participating in ISIS's slavery system.
6. Further, judicial assessments on key defences highlight that courts firmly reject unsubstantiated attempts to downplay involvement in terrorist organisations. Household roles, such as managing homes for fighters or raising children in the caliphate, have been recognised as contributing to ISIS's operations, sustainability and ideology. The report also provides crucial legal assessments on defences related to core international crimes, including outrages upon personal dignity, enslavement and unlawful appropriation of property.
7. Finally, on sentencing, the report notes that while the available data is limited, early trends suggest that cumulative prosecutions tend to result in higher sentences than standalone terrorism cases. There are indications that gender may play a role in sentencing, with female defendants receiving shorter sentences than their male counterparts. However, more data is needed to better understand these patterns and their implications for future cases.

⁽¹⁾ As highlighted in the Genocide Prosecution Network's 2020 report, the 'Islamic State' has undergone several iterations. For the purpose of this report the acronym 'ISIS' will be used. Various court decisions use the acronym 'IS', which in this report will be reflected only in direct quotations from the judgements.

2. Introduction

8. This report represents the Genocide Prosecution Network’s continuous focus on contributing to the legal response to and prosecution of FTFs and female returnees. It builds on its 2020 report which highlighted the importance of prosecuting FTFs, not just for terrorism-related offences but also as perpetrators of core international crimes. This report further contributes to the efforts of national authorities to ensure that all crimes committed by ISIS members and other affiliate terrorist groups are prosecuted, to achieve full criminal accountability and to deliver justice for victims.
9. The primary objective of the report is to provide practitioners in the EU and other countries with practical examples and arguments to facilitate their work. While the report primarily focuses on FTFs and female returnees related to ISIS in Syria and Iraq, its findings can also be applied to other contexts such as Mali, Somalia and Mozambique, where terrorist groups are also armed groups party to a NIAC. Additionally, it also serves as a resource for practitioners, academics and professionals in the field, offering key legal insights based on leading jurisprudence.
10. Since 2020, EU Member States have made significant progress in cumulatively prosecuting and adjudicating terrorism-related offences and core international crimes, with Germany and the Netherlands leading the way. This report serves to demonstrate how cumulative prosecution cases have been successfully prosecuted in practice, setting critical precedents for future cases in other EU Member States and beyond.
11. Regarding the 13 cases analysed in this report, 11 are from Germany and the Netherlands, while the 2 others from France and Sweden are included for limited, specific aspects (‘selected cases’). Additional cases are referenced where relevant to support specific arguments. Consequently, the report’s scope is limited by the availability of jurisprudence and the number of countries represented, as it only considers key cases that have been translated into English by the Genocide Prosecution Network and the European Union Agency for Criminal Justice Cooperation (Eurojust), and, in certain instances, by national authorities themselves. These translations are publicly available in the Genocide Prosecution Network’s national jurisprudence database (Genocide Prosecution Network, Eurojust, 2025). However, with numerous ongoing investigations and prosecutions of cumulative cases, it is envisioned that updated versions of this report will be published in the future.
12. The report is structured around four main chapters: cumulative charging, evidence, legal defences and judicial assessment, and sentencing.
13. **Cumulative charging** unpacks the legal framework and explores how different jurisdictions have charged terrorism and core international crimes cumulatively. Practical and legal implications are also addressed.
14. **Evidence** explores the type of evidence commonly used in cumulative prosecution, from witness testimonies and battlefield evidence to open-source and expert reports. It underscores the importance of maximising the same evidence, particularly to demonstrate ISIS’s dual role as a terrorist organisation and an armed group in a non-international armed conflict. Additionally, it explores how evidence on specific conduct, such as the unlawful appropriation of property, utilising ISIS’ slavery system and the recruitment of children, has been used to prove both terrorism and core international crimes.
15. **Legal defences and judicial assessment** examines the main legal defences and how courts have assessed them, offering insight into evolving jurisprudence.
16. **Sentencing** aims to provide information on whether cumulative prosecution has a tangible impact on sentencing outcomes. It also takes note of aggravating and mitigating circumstances retained by the courts.
17. The **annex** is complementary to the report, providing concise summaries of the legal and factual aspects of the judgments in each selected case. These summaries enhance the reader’s understanding of the cases analysed, providing greater clarity and context for each case individually.

3. Cumulative charging

3.1. Definition, scope and rationale of cumulative charging

18. In its 2020 report, the Genocide Prosecution Network called for a balanced prosecution of FTFs who had joined ISIS and affiliate organisations in conflict zones for both terrorism-related offences and core international crimes (Genocide Prosecution Network, Eurojust, 2020, pp. 7–10 and 26).

19. The 2020 report adopted the definition coined by UN Security Council (UNSC) Resolution 2178 (2014), identifying FTFs as ‘individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict’⁽²⁾.

20. At the time of its initial publication, shortly after the fall of ISIS in 2019, the return of FTFs to their states of nationality posed critical security concerns to the EU. It is estimated that nearly 40 000 foreigners from 60 countries, including about 5 000 men, women and children from Europe, joined the ranks of ISIS. It has further been reported that up to 55 000 women and children are still detained in camps, while young boys and men are held in prisons in north-eastern Syria (Mehra, 2023, p. 71–72). While states were initially reluctant to repatriate their nationals, since 2021 a few EU Member States, including France, the Netherlands and Germany, have conducted an increasing number of repatriations, specifically of women and children (Cuyckens, 2021, p. 582; Mehra, 2023, pp. 71–72; Europol, 2022, p. 35).

21. In response to the FTF phenomenon, the EU updated its counterterrorism legal framework and adopted the 2017 Directive on Combating Terrorism (Directive (EU) 2017/541)⁽³⁾. The objective of the directive was to harmonise the criminalisation of FTF-related offences across the EU, with a focus on the prevention of terrorism, specifically tackling support and preparatory

offences, such as membership in a terrorist organisation, receiving training for terrorism, travelling for the purpose of terrorism, and financing.

22. Most returning FTFs were prosecuted solely for terrorist-related offences when the Genocide Prosecution Network’s 2020 report was published. In 2019, the majority of proceedings concluded, concerning both FTFs and other categories of terrorist offenders, concerned terrorist offences such as participation in a terrorist group, financing of terrorism, (self-)indoctrination or training for terrorist purposes, recruitment, incitement to or glorification of terrorism and the humiliation of victims, and threatening to commit terrorist acts (Cuyckens, 2021, p. 598)⁽⁴⁾. According to available data, in some cases, in addition to terrorist offences, defendants were also charged with weapons or explosives-related offences, document forgery, theft, swindling, offences against public health, or drug offences (Europol, 2020, p. 28). At the time, cumulative charges were brought in a few cases⁽⁵⁾.

23. However, prosecuting returning FTFs only for terrorism-related offences fails to address the full extent of their liability for other crimes they may have committed as ISIS members during the armed conflict in Syria and Iraq (Genocide Prosecution Network, Eurojust, 2020, p. 7; Cuyckens, 2021, p. 597). This is a critical issue, which, considering the horrific acts of violence perpetrated by ISIS, should not be overlooked.

24. In this regard, the 2020 report argued that national judicial authorities should consider ISIS not only as a terrorist organisation, but also as an organised non-state armed group party to a non-international armed conflict (Genocide Prosecution Network, Eurojust, 2020, pp. 8–11)⁽⁶⁾. Under this lens, international humanitarian law (IHL) applies, allowing for the prosecution of serious violations of IHL (war crimes) committed by ISIS members (Genocide Prosecution Network, Eurojust, 2020, pp. 7–10). In addition, the report highlighted that crimes against humanity and genocide can also be prosecuted (Genocide Prosecution Network, Eurojust, 2020, pp. 13–15).

⁽²⁾ UNSC, Resolution 2178 (2014).

⁽³⁾ See Genocide Prosecution Network, Eurojust, 2020, p. 7, for an overview of the EU counterterrorism legal framework and related developments.

⁽⁴⁾ Citing inter alia Europol (2020), p. 28.

⁽⁵⁾ See Europol (2020), p. 29, mentioning a Dutch case and a German case where war crimes charges were brought.

⁽⁶⁾ Refer to Section 4.2.1 for an analysis of the national courts’ findings regarding the dual legal qualification of ISIS in the selected cases.

25. Based on ISIS's dual status, the 2020 report advocated for national authorities to pursue cumulative prosecutions of FTFs for both terrorism-related offences and core international crimes. The terms 'cumulative prosecutions' and 'cumulative charging' should be understood broadly. In the context of Genocide Prosecution Network reports, they refer to: (a) charging multiple distinct crimes based on the same underlying act(s), with the charges presented cumulatively rather than alternatively (Sarfati, 2021, p. 279; Jackson, 2022, p. 86; Mehra, 2023, p. 83); (b) prosecuting various acts separately as terrorist offences, core international crimes and other national offences (e.g. travelling to the conflict zone for the purpose of terrorism and the war crime of pillaging or outrages upon personal dignity).
26. Cumulative charging on the same underlying act is possible provided that all relevant facts of the act are not exhaustively judged under one set of legislation (Genocide Prosecution Network, Eurojust, 2020, p. 16; Sarfati, 2021, pp. 280 and 289). Further, national courts have highlighted that counterterrorism law and IHL protect different interests, which justifies cumulative prosecutions (Mehra, 2023, p. 83). In this regard, a Dutch court stated the following:
- War crimes are violations of international humanitarian law, i.e. the entirety of rules that apply during (non-)international armed conflicts. International humanitarian law aims to protect persons who do not or no longer participate in hostilities in an armed conflict. The criminalisation of these crimes thus protects an interest that differs from that of terrorist crimes, which aim to protect public order⁽⁷⁾.*
27. In a number of German cases, charges for core international crimes are frequently brought in concurrence with charges for membership in a foreign terrorist organisation. This is due to the factual, temporal and geographical connection between the crimes – for example, the defendant's membership in ISIS overlapping with the enslavement of a Yazidi victim, which can constitute a crime against humanity⁽⁸⁾.
28. Cumulative charging brings multiple benefits. In 2019, the Genocide Prosecution Network affirmed that cumulative prosecutions can ensure the full criminal responsibility of perpetrators, deliver higher sentences for the acts committed and lead to more justice for victims (Genocide Prosecution Network, Eurojust, 2019). In addition, cumulative prosecutions can be applied to both male and female members of ISIS. Finally, core international crimes are not subject to a statute of limitation, which allows for prosecution many years after the fact, while this is not the case for terrorism-related offences.
29. Cumulative charging can also be seen as an imperative. Under international treaty law and customary law, all states have the obligation to investigate and prosecute core international crimes⁽⁹⁾. In relation to FTFs, UNSC Resolution 2396 (2017) notably urged UN Member States, 'in accordance with domestic and applicable international human rights law and international humanitarian law, to develop and implement appropriate investigative and prosecutorial strategies, regarding those suspected of the foreign terrorist fighter-related offenses' and reaffirmed that 'those responsible for committing or otherwise responsible for terrorist acts, and violations of international humanitarian law or violations or abuses of human rights in this context, must be held accountable'⁽¹⁰⁾.
30. Despite the time that has elapsed since the fall of ISIS, the prosecution of FTFs remains acute. In 2023, the Council of Europe notably called on its Member States to 'prioritise where possible cumulative prosecution of Daesh foreign fighters for both terrorism-related offences and international crimes such as genocide, crimes against humanity and war crimes, following recent examples in Germany and the Netherlands, duly reflecting the gravity and the different nature of the offences committed' (Council of Europe Parliamentary Assembly (2023)).
31. The *European Union Terrorism Situation and Trend Report 2024* highlighted that, overall, the vast majority of concluded court proceedings in 2023 were exclusively terrorism-related cases.

⁽⁷⁾ The Netherlands, District Court of The Hague, 29 June 2021, Section 2.2.

⁽⁸⁾ As an example, Germany, Higher Regional Court of Hamburg, 27 July 2022, pp. 75–76. See also Sarfati (2021), p. 280, indicating that in Germany, core international crimes 'are regarded as a manifestation of terrorism, which intrinsically implies the use of IHL and domestic criminal law in the same judgment'.

⁽⁹⁾ See for instance International Committee of the Red Cross, 'Rule 158. Prosecution of war crimes', International Humanitarian Law Databases (Customary IHL); UN General Assembly (1948), Article VI; International Law Commission (1996). For more information see also Genocide Prosecution Network, Eurojust (2014), p. 13.

⁽¹⁰⁾ UNSC, Resolution 2396 (2017). See also Parliamentary Assembly of the Council of Europe (2023); Sarfati (2021), pp. 271 and 279.

Terrorism-related charges were brought in conjunction with other offences, including core international crimes, in some cases (Europol, 2024, p. 16)⁽¹¹⁾. While the number of potential cumulative prosecution cases is limited to a smaller pool of cases where FTFs and spouses are specifically involved, since the Genocide Prosecution Network’s 2020 report, the number of cumulative prosecutions has visibly increased (Europol, 2021, p. 38). In fact, the judgments presented in this report only represent a selection of such cases, with many still under ongoing investigation or prosecution.

3.2. Overview of the charges

32. The national jurisdictions represented in the selected cases covered by this report, namely from Germany and the Netherlands, have cumulatively prosecuted FTFs and female returnees under a variety of charges, including terrorism offences, core international crimes and common national offences. Notably, 9 of the 13 selected cases concern female defendants, with charges that reflect their specific role within ISIS, often differing from those brought against male defendants.
33. Concerning **terrorism offences**, all charges observed in the judgments relate to participation and preliminary and preparatory offences envisaged in Directive (EU) 2017/541, including the following:

Participation or membership in a terrorist organisation

Deliberately entering ISIS-controlled territory, marrying an ISIS member, receiving money and accommodation from ISIS, conducting online propaganda supporting ISIS and receiving or offering training on how to use weapons have been charged as active participation⁽¹²⁾. Other acts, such as taking children to ISIS-controlled territory and agreeing to enrol a child in

ISIS training camps⁽¹³⁾, residing in dwellings allocated by ISIS⁽¹⁴⁾ or participating in ISIS’s slavery system, have also been considered as additional acts of participation⁽¹⁵⁾.

Preparing and promoting terrorist offences

can consist of joining the combat zone, patrolling with ISIS’s ‘police force’ or providing information to others on how to do so through chat messages⁽¹⁶⁾. Other preparatory acts may include adopting extremist ideology, obtaining information on how to travel to Syria and carrying firearms⁽¹⁷⁾.

Incitement to commit terrorist offences and dissemination for incitement to commit terrorist offences

Acts under this offence include posting public appeals on social media to solicit funds for terrorist organisations⁽¹⁸⁾ and distributing ISIS propaganda that glorifies horrific acts of violence to generate further terrorist acts⁽¹⁹⁾.

Training for the purpose of committing a terrorist crime

In addition to joining an ISIS training camp, prosecutors have also charged individuals for distributing ISIS propaganda and training manuals online to instruct others on carrying out attacks, making explosives or committing crimes that facilitate terrorism⁽²⁰⁾.

⁽¹¹⁾ The report is issued by the European Union Agency for Law Enforcement Cooperation. The information on convictions and acquittals for terrorist offences included in the report is contributed by Eurojust.

⁽¹²⁾ See for example, Germany, Higher Regional Court of Düsseldorf, 21 April 2021, pp. 33.

⁽¹³⁾ Germany, Higher Regional Court of Düsseldorf, 21 April 2021, pp. 33–35 and 46; Higher Regional Court of Düsseldorf, 29 April 2020, paragraph 35.

⁽¹⁴⁾ Germany, Higher Regional Court of Düsseldorf, 21 April 2021, p. 37.

⁽¹⁵⁾ Germany, Higher Regional Court of Düsseldorf, 21 April 2021, p. 37; Germany, Higher Regional Court of Hamburg, 2 October 2020, pp. 45–46; Germany, Higher Regional Court of Hamburg, 27 July 2022, pp. 65–66. See also Section 4.2.3 of this report.

⁽¹⁶⁾ The Netherlands, Court of Appeal of The Hague, 26 January 2021; the Netherlands, District Court of The Hague, 23 July 2019, Section VII, p. 24

⁽¹⁷⁾ The Netherlands, District Court of The Hague, 11 December 2024, Section 4.3.3.

⁽¹⁸⁾ Sweden, Supreme Court, 13 November 2019.

⁽¹⁹⁾ The Netherlands, District Court of The Hague, 29 June 2021.

⁽²⁰⁾ The Netherlands, District Court of The Hague, Sections 8.1 and 8.3.3.

Financing a terrorist organisation

Knowingly transferring funds to a terrorist organisation to support its operations, as seen in the Lafarge case in France ⁽²¹⁾.

- 34. Alongside one or several terrorism-related charges, war crimes, crimes against humanity and genocide have also been prosecuted.
- 35. **War crimes charges** have been brought forward for the following acts.

Outrage upon personal dignity

Distributing on social media videos and photos where the defendant posed with deceased persons in a humiliating and degrading manner, treating them as a trophy ⁽²²⁾.

Unlawful appropriation of property

Taking possession of apartments and houses (along with their furnishings) that were seized by ISIS after their legal owners fled or were displaced by advancing ISIS troops ⁽²³⁾.

Enlisting of children under the age of 15 years

Supporting the admission of children into ISIS training units ⁽²⁴⁾.

Rape

Aiding in the rape of and commission of sexual violence against Yazidi slaves in the defendant's household ⁽²⁵⁾.

⁽²¹⁾ France, Cour de Cassation, 7 September 2021.

⁽²²⁾ The Netherlands, Court of Appeal of The Hague, 26 January 2021.

⁽²³⁾ Germany, Higher Regional Court of Hamburg, 27 July 2022; Germany, Higher Regional Court of Düsseldorf, 21 April 2021; Germany, Higher Regional Court of Düsseldorf, 4 December 2019; Germany, Stuttgart Higher Regional Court, 5 July 2019.

⁽²⁴⁾ Germany, Higher Regional Court of Düsseldorf, 29 April 2020.

⁽²⁵⁾ Germany, Higher Regional Court of Hamburg, 27 July 2022.

Incitement to commit war crimes

such as through the crime of outrage upon personal dignity, has been charged in a Dutch case ⁽²⁶⁾.

Further, the following **crimes against humanity charges** have been prosecuted in conjunction with terrorism offences and war crimes.

Enslavement

i.e. preventing Yazidi slaves from escaping, either through physical restraint or threats, and forcing them to do housework, often also charged in conjunction with deprivation of liberty ⁽²⁷⁾.

Torture

was charged in the context of the ill-treatment of a Yazidi victim ⁽²⁸⁾.

Persecution

was charged by German courts cumulatively with enslavement, based on the fact that women and girls belonging to the Yazidi community were systematically targeted by ISIS based on discriminatory motives, namely on the grounds of religion and gender ⁽²⁹⁾.

⁽²⁶⁾ The Netherlands, District Court of The Hague, 29 June 2021, paragraph 7.3.5.

⁽²⁷⁾ Germany, Higher Regional Court of Hamburg, 27 July 2022; Germany, Higher Regional Court of Düsseldorf, 16 June 2021; Germany, Higher Regional Court of Düsseldorf, 21 April 2021; Germany, Higher Regional Court of Hamburg, 2 October 2020; the Netherlands, District Court of The Hague, 11 December 2024.

⁽²⁸⁾ Germany, Higher Regional Court of Hamburg, 27 July 2022. However, in this case, the court found that the accused could not be held liable for torture as a crime against humanity, since the acts of ill-treatment did not meet the required threshold.

⁽²⁹⁾ Germany, Higher Regional Court of Hamburg, 27 July 2022; Germany, Higher Regional Court of Düsseldorf, 16 June 2021.

Rape

was also charged as a crime against humanity in ISIS spouses cases, for aiding and abetting the rape of Yazidi victims ⁽³⁰⁾.

36. Regarding **genocide**, in a German case the prosecution charged **aiding genocide by inflicting grievous bodily and psychological harm**, through the repeated rape and sexual violence committed against Yazidi women enslaved by the defendant and her husband ⁽³¹⁾.
37. While common national offences are not the focus of this report, it should be noted that the charges mentioned above have often been cumulatively prosecuted together with other domestic crimes, allowing the prosecution to fully reflect the criminal conduct of the accused. Examples include the following.

Child abduction

Travelling to Syria with children without their father's permission, with whom custody rights were shared, and exposing them to mortal danger ⁽³²⁾.

Violation of the duty of care and education

Taking children to a conflict zone, depriving them of formal education, raising them in accordance with ISIS ideology, allowing them to attend ISIS training camps, and impairing their physical and psychological development ⁽³³⁾.

Unlawful possession or exercise of control over a weapon of war

Namely, exercising material ownership over illegally obtained weapons of war ⁽³⁴⁾.

Participation in a criminal organisation whose objective is to commit war crimes and crimes against humanity

A specific offence seen in multiple Dutch cases ⁽³⁵⁾. This offence, based on Section 140 of the Dutch Penal Code, is similar to participation in a terrorist organisation and criminalises participation in an organisation whose purpose is the commission of serious offences. In these cases, courts have relied on evidence of ISIS's large-scale acts of violence amounting to core international crimes, which were part of its *modus operandi*, to infer that the organisation's objective was to commit such crimes ⁽³⁶⁾.

38. Further, it is worth noting that charges brought against perpetrators reflect the gendered functions of male and female ISIS members in the so-called caliphate. Female members were predominantly supporting ISIS from within the confines of their homes. Women were tasked with running the household, which also resulted in overseeing the Yazidi slaves, taking care of their children and supporting their husbands, along with acting as recruiters, propagandists and fundraisers (Mehra, 2023, p. 92). Men, on the other hand, mainly fulfilled the role of fighters and as such were more likely to commit crimes directly concerning the conduct of hostilities.
39. This attribution of roles is well understood by national courts, as highlighted in a German case.

⁽³⁰⁾ Germany, Higher Regional Court of Hamburg, 27 July 2022, Germany, Higher Regional Court of Düsseldorf, 16 June 2021.

⁽³¹⁾ Germany, Higher Regional Court of Hamburg, 27 July 2022, p. 71.

⁽³²⁾ Germany, Higher Regional Court of Düsseldorf, 29 April 2020; the Netherlands, District Court of The Hague, 11 December 2024.

⁽³³⁾ Germany, Higher Regional Court of Düsseldorf, 21 April 2021; Germany, Higher Regional Court of Hamburg, 2 October 2020; Germany, Higher Regional Court of Düsseldorf, 29 April 2020.

⁽³⁴⁾ Germany, Higher Regional Court of Düsseldorf, 21 April 2021; Germany, Higher Regional Court of Hamburg, 2 October 2020; Germany, Higher Regional Court of Düsseldorf, 29 April 2020.

⁽³⁵⁾ The Netherlands, District Court of The Hague, 22 January 2024; the Netherlands, District Court of The Hague, 29 June 2021.

⁽³⁶⁾ The Netherlands, District Court of The Hague, 29 June 2021, Section 5.4.4.

[F]rom the point of view of IS, the role of women was primarily to run the household for the fighting husband, bear children and raise them in the spirit of IS, which primarily involved preparing them for their future – gender-differentiated – role in jihad. It was also accepted that women should actively promote IS, for example via social media channels. Only later, as the military pressure on IS grew, did the possibility of other uses for women arise, such as in the IS religious police force ‘Hisba’ or in the women’s combat unit ‘Katiba Nuseiba’. Men were expected to complete IS’s recruitment training and subsequently participate in military operations as part of one of IS’s armed combat groups ⁽³⁷⁾.

40. The charges brought against female ISIS members in the selected jurisprudence clearly reflect the allocation of gender roles to FTFs and their spouses in ISIS ideology. Women have been predominantly charged as direct perpetrators with membership and preparatory terrorist offences cumulatively with the unlawful appropriation of property and the enlisting of children as war crimes, along with deprivation of liberty, enslavement and persecution as crimes against humanity. Further, they have been charged for aiding and abetting rape as a war crime and a crime against humanity, torture as a crime against humanity and genocide. In addition, where women have travelled to Syria and Iraq with their children, charges of child abduction or violation of the duty of care and education have been repeatedly included.
41. In comparison, it is noticeable from the selected jurisprudence that male defendants have been charged mainly as direct perpetrators for membership and preparatory terrorist offences, cumulatively and quite commonly with the war crime of outrage upon personal dignity, along with torture as a crime against humanity.
42. Finally, the report also includes one selected case dealing with corporate liability for core international crimes and terrorist offences. In the interlocutory decision issued by the French Supreme Court on 7 September 2021 in the Lafarge case, the court confirmed charges of complicity in crimes against humanity against a legal person,

the corporation Lafarge SA, cumulatively with financing terrorist activities and endangering the lives of others. The charges stemmed from the company’s payments to multiple armed groups in Syria, including ISIS, with the aim of maintaining the ongoing operation of its cement plant during the armed conflict ⁽³⁸⁾.

3.3. Legal implications

3.3.1. Applicability of national and international law

43. Cumulative charging of terrorist offences and core international crimes requires national prosecutors to apply both domestic and international legal frameworks.
44. The **underlying crimes and respective legal requirements** for both terrorism-related offences and core international crimes can be found in national criminal codes. Most EU Member States have incorporated into their national law the terrorist offences envisaged in Directive (EU) 2017/541 (and previously the 2002 framework decision) and the crimes defined by the *Rome Statute of the International Criminal Court* (ICC, 1998; Genocide Prosecution Network, Eurojust, 2023a), sometimes with adaptations. For cumulative prosecutions, it is essential that both sets of crimes are incorporated into national legislation.
45. Sweden is a notable example in this regard. It had a limited counterterrorism legal framework until 2023 and had not criminalised participation in a terrorist organisation, along with some other preparatory offences. In addition, Rome Statute crimes were only incorporated into Swedish domestic law in May 2014, although genocide and war crimes (defined differently) were already criminalised ⁽³⁹⁾. These legal limitations prevented Swedish prosecutors from prosecuting FTFs cumulatively until recently. As a result, FTFs and female returnees were prosecuted for other types of national offences. For example, a Swedish FTF was convicted of the rape of children, while

⁽³⁸⁾ France, Cour de Cassation, 7 September 2021.

⁽³⁹⁾ See International Committee of the Red Cross, [‘Act on criminal responsibility for genocide, crimes against humanity and war crimes, 2014’](#), International Humanitarian Law Databases (National Practice).

⁽³⁷⁾ Germany, Higher Regional Court of Hamburg, 27 July 2022, p. 8. See also Germany, Higher Regional Court of Hamburg, 2 October 2020, pp. 15 and 46; See also Germany, Higher Regional Court of Stuttgart, 5 July 2019, p. 23.

the children’s mother was convicted on several counts of human trafficking for bringing her two daughters to Syria and allowing them to marry ISIS members who sexually abused them ⁽⁴⁰⁾. Another female returnee was convicted of grave abduction of a child. In this case, the court ruled that living in a different country where a severe armed conflict was occurring and being exposed to a violent Salafist-jihadist environment could harm the development of the child ⁽⁴¹⁾. In the recent landmark case, Lina I., a Swedish woman who was convicted in 2022 of complicity in war crimes for failing, in her capacity as legal guardian, to prevent her son from enlisting and serving as a child soldier for ISIS ⁽⁴²⁾, was subsequently convicted of having committed genocide, crimes against humanity and gross war crimes against women and children belonging to the Yazidi community in Syria ⁽⁴³⁾. This judgment marks the first conviction in Sweden of crimes against humanity since the implementing legislation of 2014 came into force, and the first conviction of genocide. Finally, on 27 May 2025, Swedish prosecutors filed the first indictment on cumulative charges – terrorist crimes and grave war crimes – against a Swedish FTF for the murder of a Jordanian air force pilot ⁽⁴⁴⁾. On 31 July 2025, the Stockholm District Court delivered its judgment, convicting the accused and sentencing him to life imprisonment. In assessing whether the defendant could be convicted of both charged offences simultaneously, the Court found no legal impediment. Accordingly, the defendant was convicted of both a grave war crime and a terrorist offence ⁽⁴⁵⁾.

46. Similarly, in Finland, participation in the activities of a terrorist group was criminalised in 2022, which limited the potential for cumulative prosecutions

on this type of charge ⁽⁴⁶⁾. However, other terrorist charges were relied on in cumulative prosecution cases, for instance, in May 2017, two Iraqi nationals were prosecuted for war crimes and murder as a terrorist crime in relation to the Camp Speicher massacre perpetrated by ISIS in Tikrit in 2014 ⁽⁴⁷⁾. Further, with regard to the criminalisation of core international crimes at the national level, Denmark only codified war crimes and crimes against humanity in its criminal code in December 2024, while Italy is yet to implement Rome Statute crimes in its national law.

47. While national law serves as the primary legal framework for national authorities, **international law and jurisprudence** play an important role in interpreting core international crimes, in particular their contextual and material elements. For national courts, in all selected cases, key resources include the Rome Statute, the *Elements of Crimes* of the International Criminal Court (ICC) (ICC, 2011), and the jurisprudence of international courts and tribunals such as from the ICC, the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda ⁽⁴⁸⁾. This is clearly reflected in the jurisprudence reviewed for this report. In addition, in the Netherlands, the courts have scrutinised the parliamentary history of the International Crimes Act and have concluded that ‘Dutch courts must observe the case law of the international Criminal Tribunals and the International Criminal Court’ ⁽⁴⁹⁾.

48. Prosecutors apply their own domestic law to apply **modes of liability**. To illustrate, in a Dutch case, the accused was charged with participation in a criminal organisation of which the objective is to commit war crimes and crimes against humanity. The defence sought acquittal by arguing, inter alia, that this offence is not criminalised under Syrian or international criminal law and therefore the accused could not reasonably have foreseen that his act was punishable at the time the offences

⁽⁴⁰⁾ Sweden, Svea Court of Appeal, 11 May 2023.

⁽⁴¹⁾ Sweden, Scania and Blekinge Court of Appeal, 24 June 2021. Please note that this judgement is available in Swedish only.

⁽⁴²⁾ Sweden, Stockholm District Court, 4 March 2022.

⁽⁴³⁾ Sweden, Stockholm District Court, 11 February 2025. Please note that this judgement is available in Swedish only and will be integrated into the Genocide Prosecution Network’s national jurisprudence database on core international crimes once the English translation is available.

⁽⁴⁴⁾ The trial is expected to start on 4 June 2025 before the Stockholm District Court. See Swedish Prosecution Authority (2025).

⁽⁴⁵⁾ See Stockholm District Court (2025). Please note that this judgment was rendered concurrently with the publication of this paper, and as such, a comprehensive analysis was not feasible at this stage. The judgment is currently available only in Swedish and will be incorporated into the Genocide Prosecution Network’s national jurisprudence database on core international crimes once the English translation is available.

⁽⁴⁶⁾ See ICCT, ‘Interlinkages Database’, [Finnish case](#).

⁽⁴⁷⁾ See ICCT, ‘Interlinkages Database’, [Ahmad S. case](#).

⁽⁴⁸⁾ See for instance, the Netherlands, District Court of The Hague, 29 June 2021, Sections 2.2 and 5.4.4; Germany, Higher Regional Court of Düsseldorf, 29 April 2020, paragraph 100; Higher Regional Court of Düsseldorf, 16 June 2021, paragraphs 51–54.

⁽⁴⁹⁾ The Netherlands, District Court of The Hague, 22 January 2024, Section 10.3. See also the Netherlands, District Court of The Hague, 23 July 2019, Section 5.3.1.

were committed⁽⁵⁰⁾. Furthermore the defence argued that the court should apply the more restrictive (lower threshold) equivalent mode of liability under international legal framework for core international crimes⁽⁵¹⁾ instead of that under Dutch law, claiming that doing otherwise would also violate the principle of legality⁽⁵²⁾. The court rejected this argument, ruling that participation in a criminal organisation should be assessed according to Dutch legal standards. It reasoned that Section 140 of the Dutch Penal Code, which criminalises participation in a criminal organisation, applies uniformly, regardless of whether the crimes are international or domestic in nature. Interpreting the law differently based on jurisdiction would undermine consistency and coherence in criminal liability⁽⁵³⁾. Although this case does not involve terrorism charges, the defence's argument concerning modes of liability may be relevant also to core international crimes cases.

49. In sum, national and international law complement each other in assessing the underlying crimes in cumulative prosecution cases, in particular core international crimes. However, courts have addressed legal challenges in this context, carefully balancing the application of both legal frameworks.

3.3.2. Interplay between counterterrorism and international humanitarian law

50. This section examines key legal issues arising from the intersection of the counterterrorism and IHL frameworks, particularly how national courts have navigated potential conflicts in cumulative prosecution cases. This section mainly highlights the complexities of this interplay but does not provide an in-depth analysis of the topic.

⁽⁵⁰⁾ The Netherlands, District Court of The Hague, 22 January 2024, Section 12.3.

⁽⁵¹⁾ According to the defence, the participation form pursuant to Article 25(3)(d) of the Rome Statute (also known as common purpose liability) should be applied.

⁽⁵²⁾ The Netherlands, District Court of The Hague, 22 January 2024, Section 12.2.

⁽⁵³⁾ The Netherlands, District Court of The Hague, 22 January 2024, Sections 10.3 and 12.3. See European Court of Human Rights, *Milanković v. Croatia*, paragraphs 8–12, 20 January 2022, cited in Genocide Prosecution Network, Eurojust (2023b), p. 15.

51. Prosecutors must reconcile the differences between counterterrorism laws and IHL, which are at times not aligned with each other. This issue is longstanding and many scholars have criticised the use of counterterrorism legislation, rather than IHL, to adjudicate conduct linked to armed conflict. Under IHL, certain acts of violence committed in the context of an armed conflict are lawful, whereas acts of violence designated as 'terrorist' are always unlawful (Cuyckens and Paulussen, 2019, p. 562; Cuyckens, 2021, p. 584; Sarfati, 2021, p. 269). As a result, individuals may face prosecution under counterterrorism laws, even if their actions are permissible under IHL, where liability arises only when their conduct constitutes serious violations of IHL, or in other words, war crimes (Sarfati, 2021, p. 269).

52. Scholars have identified several risks resulting from this apparent tension (Cuyckens and Paulussen, 2019, p. 539). In particular, the broad criminalisation and interpretation of what may constitute the 'support' or 'financing' of terrorism may implicate impartial humanitarian organisations carrying out their regular activities (Sarfati, 2021, p. 272). Further, counterterrorism laws risk being politically instrumentalised, as governments may hastily classify non-state armed groups as terrorist organisations in order to classify any act of participation in hostilities as unlawful. This approach is also problematic because it discourages non-state armed groups from adhering to IHL (Sarfati, 2021, p. 273). Finally, prioritising the prosecution of terrorist offences over serious violations of IHL contravenes states' obligation under international customary law to investigate and prosecute war crimes. This in turn can lead to an accountability gap and threatens the relevance of IHL in national legal systems (Sarfati, 2021, p. 274).

53. To mitigate this legal tension, some counterterrorism laws incorporate exclusion clauses that exempt activities governed by IHL from their scope (Cuyckens and Paulussen, 2019, p. 544). The preamble to Directive (EU) 2017/541, for example, states that it does not govern the activities of armed forces during periods of armed conflict⁽⁵⁴⁾.

⁽⁵⁴⁾ Directive (EU) 2017/541, preamble, paragraph 37. The exclusion clause was previously included in recital 11 of the Council Framework Decision of 13 June 2002 on combating terrorism, which was repealed and replaced by Directive (EU) 2017/541. It is debated whether the exclusion clause, found in the preamble and not in the operative part of the directive, is legally binding.

54. National jurisdictions have adopted diverse approaches to integrating and interpreting exclusion clauses (Cuyckens and Paulussen, 2019, p. 551; Sarfati, 2021, pp. 286–288). Whereas most states consider that the exclusion clause only benefits state armed forces, in Belgium the courts have found that the term ‘armed forces’ could refer to both state and non-state armed forces⁽⁵⁵⁾. This interpretation has led to various outcomes in court where the exclusion clause was applied to activities led by the Kurdistan Workers’ Party, considered as an armed group, but denied to Jabhat Al-Nusra, considered as a terrorist group, on the basis that the latter lacked sufficient organisational structure and did not enable its members to comply with IHL. Scholars have criticised the courts’ qualification of some groups – either as a terrorist group falling under counterterrorism legislation or as a non-state armed group benefitting from the exemption – as opportunistic (Cuyckens and Paulussen, 2019, pp. 553–554 and 557–559; Mehra, 2023, p. 84)⁽⁵⁶⁾. On the contrary, Dutch courts have consistently ruled that only the activities of state armed forces can be excluded from counterterrorism legislation⁽⁵⁷⁾. In the Context case, the court notably emphasised that ‘in a non-international armed conflict international humanitarian law is not exclusively applicable’ and therefore that ‘[d]uring armed conflicts various legal regimes apply, including international humanitarian law and the domestic law of a state’⁽⁵⁸⁾.
55. Beyond the debated interpretation of the exclusion clause, another key issue is the application of combatant privilege. Contrary to members of state armed forces, who benefit from

immunity and privileges against prosecution for their participation in hostilities – also known as ‘combatant privilege’ – non-state armed groups are not granted combatant privilege (Cuyckens and Paulussen, 2019, pp. 541–542)⁽⁵⁹⁾. As a result, national authorities retain the right to prosecute members of non-state armed groups (including, but not limited to terrorist groups) for their mere participation in hostilities, regardless of the lawfulness of their conduct under IHL (Cuyckens and Paulussen, 2019, p. 548; Sarfati, 2021, pp. 273 and 288; Mehra, 2023, p. 84)⁽⁶⁰⁾.

56. Dutch courts have recalled in numerous instances that combatant privilege does not apply to members of non-state armed groups⁽⁶¹⁾ and clarified that members of non-state armed groups are punishable for all acts of violence they commit, including for general crimes such as murder and for violations of IHL (war crimes)⁽⁶²⁾. The Swedish Supreme Court has issued a similar ruling, finding that non-state armed groups do not benefit from combatant privilege, which reinforces and justifies the application of counterterrorism legislation to terrorist acts committed by such groups⁽⁶³⁾.
57. Despite these legal tensions, legal scholars have recognised cumulative prosecution – applying both counterterrorism and IHL frameworks – as a beneficial approach. Prosecuting cumulatively, instead of solely focusing on terrorist offences, enables national authorities to carefully assess potential tensions and adjudicate conduct simultaneously under several overlapping legal frameworks (Sarfati, 2021, p. 269).

⁽⁵⁵⁾ The interpretation of the term ‘armed forces’ in exclusion clauses is debated among academic scholars. In that regard, see Cuyckens and Paulussen (2019), p. 544; Cuyckens (2021), pp. 584–586.

⁽⁵⁶⁾ It should be noted that Belgium reformed Article 141(2) of its criminal code, containing the exclusion clause, in February 2024. The exclusion clause previously stated that the counterterrorism legal framework ‘does not apply to the activities of armed forces in time of armed conflict, as defined and governed by international humanitarian law ...’ whereas the new version of the exclusion clause now provides that ‘it does not apply to acts committed in the context of an international armed conflict or an armed conflict not of an international character by the armed forces of a party to the conflict when such acts are covered by and in conformity with the applicable rules of international humanitarian law’ (emphasis added). This new wording may impact the application of the exclusion clause by national judges in the future.

⁽⁵⁷⁾ The main judicial precedent establishing this interpretation is the ‘Context’ case, which is regularly referred to in the selected cases. See the Netherlands, *Prosecutor v. Imane B et al.*, 10 December 2015, paragraph 7.43.

⁽⁵⁸⁾ The Netherlands, *Prosecutor v. Imane B et al.*, 10 December 2015, paragraph 7.17. See also paragraphs 7.42–7.43.

⁽⁵⁹⁾ Members of non-state armed groups have therefore been qualified as ‘unprivileged’ or ‘unlawful’ combatants or belligerents.

⁽⁶⁰⁾ See also International Committee of the Red Cross, ‘How Does Law Protect in War?’, International Humanitarian Law Databases (Immunities).

⁽⁶¹⁾ See the Netherlands, *Prosecutor v. Imane B et al.*, 10 December 2015, paragraphs 7.23 and 7.41, noting that ‘during the negotiations for the Geneva Conventions the contracting parties did not want to grant the combatant’s privilege to the members of organised armed groups that they had come into conflict with, or that had engaged in conflict within their territory. This would grant these members the right to legitimately participate in the hostilities.’ And that ‘under the law as it stands not a single act of war performed by a member of an organised armed group is legitimate’.

⁽⁶²⁾ The Netherlands, *Prosecutor v. Imane B et al.*, 10 December 2015, paragraph 7.23. See also paragraphs 7.26–7.27, emphasising that although this legal principle does not incentivise non-state armed groups to respect IHL, in any case terrorist groups such as ISIS and Jabhat al-Nusra violate IHL systematically and on a large scale.

⁽⁶³⁾ Sweden, Supreme Court, 13 November 2019, paragraphs 21–22 and 33–35.

3.3.3. Jurisdictional considerations

58. States can exercise jurisdiction based on several legal principles. These include **territorial jurisdiction** (when crimes are committed within the territory of a state), **active nationality jurisdiction** (based on the perpetrator’s nationality), **passive nationality jurisdiction** (based on the victim’s nationality) and **universal jurisdiction**, which allows the prosecution of core international crimes regardless of where they were committed or the nationality of those involved.
59. As outlined in the Genocide Prosecution Network’s 2020 report and reflected in the selected cases analysed in this report, many FTFs are EU nationals who left their home countries to join ISIS in Syria and Iraq. They are primarily prosecuted under active nationality jurisdiction for crimes committed abroad. Cases involving core international crimes, as in cases of cumulative prosecutions, also fall under universal jurisdiction.
60. Jurisdictional requirements may vary with regard to core international crimes, terrorist crimes and other common offences, respectively, when committed outside the territory of the prosecuting state or by a foreign national. Therefore, a careful assessment is necessary to ensure that national authorities can exercise jurisdiction over all crimes when prosecuting cumulatively.
61. In the Netherlands, since 1 July 2014, national counterterrorism legislation applies to both Dutch nationals and foreign nationals having a fixed residence in the country who are suspected of committing terrorist crimes abroad. Further, jurisdiction over core international crimes extends to Dutch nationals (both present and outside the Netherlands) and to foreign nationals who are physically present in the Netherlands⁽⁶⁴⁾.
62. In Germany, universal jurisdiction is broader and applies to crimes committed abroad with no connection to the country⁽⁶⁵⁾. For other offences, including terrorism, German criminal law applies if: (a) the act is a criminal offence at the place of its commission or if that place is not subject to any criminal law jurisdiction; (b) the offender was

a German national at the time of the offence or became a German national after its commission, or was a foreign national at the time of the offence who was found to be staying in Germany and cannot be extradited⁽⁶⁶⁾. Additionally, terrorist offences committed by foreign terrorist organisations can only be prosecuted with authorisation from the Federal Ministry of Justice, which was granted for ISIS in March 2014 and renewed in 2015⁽⁶⁷⁾.

63. To establish jurisdiction over terrorist and other common offences (i.e. violation of the duty of care and education, child abduction) committed by German FTFs, German courts have reasoned that the locations where the crimes occurred were under ISIS’s exclusive control at the time. Consequently, they were not subject to any de facto legal authority, which enabled German jurisdiction to apply⁽⁶⁸⁾.
64. Of note is the *Taha al-J.* case, in which the court convicted an Iraqi national of genocide, crimes against humanity and war crimes for, inter alia, the murder of a five-year-old Yazidi child he had enslaved⁽⁶⁹⁾. The accused was arrested in Greece and later extradited to Germany. As explained above, as a foreign national who was not found to be staying in Germany, he could not be prosecuted for terrorism-related crimes. However, Germany could apply universal jurisdiction over core international crimes, which resulted in a sentence of life imprisonment.

3.4. Practical implications

3.4.1. Challenging aspects of cumulative prosecution cases

65. Prosecuting individuals solely for terrorism-related offences is often perceived as more expeditious and straightforward than pursuing cumulative charges. However, prosecuting cumulatively is important in ensuring accountability for the full scope of crimes committed and achieving justice

⁽⁶⁴⁾ The Netherlands, Appeals Court of The Hague, 26 January 2021; the Netherlands, District Court of The Hague, 23 July 2019, Section 3.3.2. See also the Dutch International Crimes Act, Section 2.

⁽⁶⁵⁾ German Code of Crimes against International Law (VStGB), Section 1. See also Germany, Higher Regional Court of Düsseldorf, 16 June 2021, p. 48.

⁽⁶⁶⁾ German Criminal Code (StGB), Section 7.

⁽⁶⁷⁾ Germany, Higher Regional Court of Düsseldorf, 16 June 2021, p. 48; Germany, Higher Regional Court of Düsseldorf, 29 April 2020, paragraph 69.

⁽⁶⁸⁾ See for instance Germany, Higher Regional Court of Düsseldorf, 21 April 2021, p. 32; Germany, Higher Regional Court of Hamburg, 2 October 2020, pp. 44–45; Germany Higher Regional Court of Düsseldorf, 29 April 2020, paragraph 111; Germany, Higher Regional Court of Stuttgart, 5 July 2019, p. 80.

⁽⁶⁹⁾ See ICCT, ‘Interlinkages Database’, [Taha al-J.](#) case.

for the victims. Even when national authorities are willing to prosecute cumulatively, successful outcomes often require them to acknowledge and plan strategically for several challenges, including the following:

- **Legal complexity.** Core international crimes can be particularly complex to investigate, prosecute and adjudicate (Verhagen, 2023, p. 540). This is partly because contextual elements must be proven, in addition to the material and intentional elements. In contrast, in counterterrorism cases, national prosecutors can pursue more accessible charges with a lower evidentiary threshold and a higher likelihood of prosecutorial success (i.e. membership or participation in a terrorist organisation), compared to core international crimes (Cuyckens and Paulussen, 2019, p. 539; Verhagen, 2023, pp. 531 and 543–544) ⁽⁷⁰⁾.
- **Factual complexity.** Core international crimes often occur on a large scale and may involve hundreds, if not thousands, of victims. They may take place within a wide geographic area and in remote settings. Perpetrators may be state or non-state actors with complex organisational structures. Further, to prove the contextual elements, national authorities need to familiarise themselves with and access expertise on foreign political, social, cultural and historical contexts.
- **Access to evidence.** Evidence available in the territory of EU Member States, which is in principle more easily accessible, can be sufficient to prosecute FTFs for terrorist offences, in particular preparatory (e.g. travel, financing) or membership offences. However, core international crimes charges often require seeking access to evidence located abroad, including in ongoing or post-conflict zones (Verhagen, 2023, p. 540). This may lead to difficulties in accessing locations where the crimes were committed, identifying and locating witnesses and documentary evidence, or converting intelligence into admissible evidence, which can hinder investigations and

prosecutions (Cuyckens, 2021, p. 600; Verhagen, 2023, p. 531; Eurojust, 2020, 2024). Further, testimonial evidence is often critical to cumulative prosecution cases. In addition to the difficulty of identifying and locating witnesses, investigators will also need specialised training to engage with vulnerable and traumatised witnesses.

- **Lack of resources and expertise.** Given the national security threat posed by terrorism, EU Member States have dedicated significant resources to monitoring, investigating and prosecuting FTFs for terrorist offences (Verhagen, 2023, pp. 532 and 539). However, resources and expertise are scarcer when it comes to core international crimes (Verhagen, 2023, p. 548). To date, only six EU Member States have established fully specialised core international crimes units within prosecution services and/or law enforcement services ⁽⁷¹⁾. In this context, strengthening the systematic engagement of these specialised units in the investigation and prosecution of cases with a potential dual dimension can enhance the effectiveness of cumulative prosecution.

The lack of specialised units can lead to a gap in expertise and specialised knowledge of the international criminal law framework. This does not mean, however, that cumulative prosecutions cannot be conducted in countries that do not have specialised core international crimes units. For instance, in October 2021 a Syrian national was convicted in Hungary on cumulative charges for his participation in several executions ⁽⁷²⁾. In March 2024, a Portuguese court convicted an ISIS member on membership and war crimes charges. Though Portugal does not have a specialised unit, Portuguese prosecutors were able to utilise the expertise gained through their participation in the Genocide Prosecution Network, the assistance of the Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD) and the help of other partners, to build a successful cumulative prosecution case (UNITAD, 2024).

⁽⁷⁰⁾ See also Sarfati (2021), pp. 281–282, explaining that, in France, the offence of ‘association of wrongdoers in relation to a terrorist enterprise’ has been preferred for the prosecution of FTFs, since there is no requirement that the individual contributes materially to the commission of the terrorist act in itself, nor that the terrorist plan is executed. The mere participation in a group that has a plan to commit a terrorist act, with the knowledge that the group has a plan to commit such an act, is enough to qualify as a terrorism-related crime. Penalties of more than ten years can be issued for this offence.

⁽⁷¹⁾ Belgium, Germany, France, Croatia, the Netherlands and Sweden. See Genocide Prosecution Network, Eurojust (2022b), p. 10; Cuyckens and Paulussen (2019), p. 564.

⁽⁷²⁾ See ICCT, ‘Interlinkages Database’, [Hassan F.](#) case.

66. In combination, these challenges can lead to the selection and prioritisation of solely prosecuting counter-terrorism offences, to the detriment of the prosecution core international crimes (Verhagen, 2023, p. 531). Nonetheless, the judgments analysed in this report clearly demonstrate that national authorities can secure successful convictions on cumulative charges when equipped with the right tools, and legal and practical strategies, and with the building of expertise and retention of knowledge. In this regard, the Genocide Prosecution Network and Eurojust play a critical role by enabling the sharing of expertise and best practices in cumulative prosecution cases, and facilitating judicial cooperation and operational exchanges. In addition, it is worth mentioning the Genocide Prosecution Network’s publications of 2022 explaining the key factors for the successful investigation and prosecution of core international crimes (Genocide Prosecution Network, Eurojust, 2022a, 2022b).

3.4.2. National cooperation

67. Effective cooperation among relevant stakeholders at the national level is a key factor in the success of cumulative prosecution cases. Specialised core international crimes units and counterterrorism units often operate separately within law enforcement and prosecution services, but effective coordination between them is essential. Other relevant stakeholders include asylum and immigration services, which may identify suspects of core international crimes and terrorism-related offences upon entry into the territory of an EU Member State, along with intelligence services, customs authorities and central bodies dealing with mutual legal assistance.

68. In this regard, some EU Member States have established national coordination task forces. For instance, in the Netherlands, a ‘chain approach’ method has been implemented. At the beginning of the process, the Ministry of Foreign Affairs works through diplomatic channels to deter perpetrators from entering the Netherlands. Immigration services then screen individuals applying for asylum and, at the last stage, police and prosecution services investigate and bring cases to court. The organisations involved (Public Prosecution Service, National Police, Immigration Service, Ministry of Justice, Ministry of Foreign Affairs, Repatriation and Departure Service) meet on a regular basis to coordinate their actions

and to solve any potential challenges (Genocide Prosecution Network, Eurojust, 2022b, p. 16).

3.4.3. International cooperation

69. In cumulative prosecution cases, international cooperation will be necessary, whereas this is not always the case in counterterrorism cases (Verhagen, 2023, p. 549). Such cooperation is critical for overcoming one of the main challenges – access to evidence. To overcome this challenge, national authorities can use a variety of **mutual legal assistance tools** under international, EU and Council of Europe frameworks.

70. In the EU, cooperation between judicial authorities is supported by **Eurojust**, whereas the European Union Agency for Law Enforcement Cooperation (**Europol**) enables the exchange of intelligence at the law enforcement level. Notably, Eurojust supports **joint investigation teams (JITs)**, a specific judicial cooperation tool which enables the direct exchange of evidence, knowledge and resources between two or more states. JITs are an efficient tool for maximising available resources and addressing legal and practical challenges that states have in common (Genocide Prosecution Network, Eurojust, 2022b, pp. 20–21). Currently, Eurojust publicly supports two JITs related to the conflict in Syria and Iraq, one addressing crimes committed by FTFs against the Yazidis (Eurojust, 2023) and the other handling crimes committed by the Assad regime (Eurojust, 2022).

71. Further, national authorities can also request assistance from international investigative mechanisms, in particular the UN International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011, which is mandated to collect, preserve and analyse evidence of core international crimes for the purpose of supporting investigations and prosecutions of these crimes in competent jurisdictions (Cuyckens, 2021, p. 600) ⁽⁷³⁾. The mechanism’s mandate covers crimes committed by the former Assad regime and by FTFs in Syria.

⁽⁷³⁾ Indicating that ‘by outsourcing the evidence collection to impartial, international bodies, present in the area and working in collaboration with the local authorities’ national authorities can overcome challenges to access evidence.

72. Another UN investigative mechanism, UNITAD, proved to be an essential partner for national authorities in many cumulative prosecution cases. However, the mandate of UNITAD came to an end on 17 September 2024, pursuant to UNSC Resolution 2697 (2023). At the date of publication of this report, UNITAD's evidentiary holdings are stored in the archives of the UN Secretariat, and in part, by Iraqi national authorities. Political and diplomatic efforts are ongoing to ensure continued access for national authorities to the collected evidence, in order to support both ongoing and future cases.

73. CSOs may support national authorities by: (a) sharing information on crimes they have documented in Syria and Iraq; (b) identifying potential victims and witnesses; (c) facilitating the attendance of victims and witnesses during trials; (d) assisting in outreach towards affected communities ⁽⁷⁴⁾.

⁽⁷⁴⁾ For examples of best practices established by national authorities in relation to civil society organisations, see Genocide Prosecution Network, Eurojust (2022b), p. 25. See also Parliamentary Assembly of the Council of Europe (2023), calling on Member States to make better use of the evidence collected by UN investigative mechanisms and CSOs, and ensure that such evidence can be lawfully used in criminal proceedings in their jurisdictions.

4. Evidence

4.1. Types of evidence used in cumulative prosecution cases

74. The crimes charged in cumulative prosecution cases often occur in distant, conflict-ridden regions, making evidence collection challenging. Additionally, the contextual elements required for core international crimes necessitate establishing a broader, detailed narrative that goes beyond isolated incidents. To overcome these challenges, these cases often rely on various types of evidence collected from multiple sources, the most common of which are listed below.
75. **Witness testimonies** are crucial in providing direct, first-hand accounts of specific incidents and the accused's involvement. These accounts are often provided by victims, insider witnesses or other individuals present during the events. Witness testimonies, corroborated by other forms of evidence, often serve as the cornerstone of proving a case. Given the reliance on witness statements, ensuring their reliability is paramount to the success or failure of a charge. A recent judgment in the Netherlands highlights how the consistency and reliability of the victim's statements were pivotal in securing the conviction of the accused in relation to one incident, while leading to his acquittal for another ⁽⁷⁵⁾.
76. **Social media and digital content**, including Facebook posts, YouTube videos or Telegram messages, are frequently key in corroborating the accused's involvement in criminal activities. However, they can also serve as direct evidence, particularly seen in cases concerning outrages upon personal dignity ⁽⁷⁶⁾.
77. **Seized physical evidence**, including mobile phones, physical documents and other personal items, provide further context for the defendant's

actions, such as incriminating photographs, locations or discussions on their involvement in military operations (via email or apps) ⁽⁷⁷⁾.

78. Similarly, **intercepted telecommunications**, such as phone conversations or communications via Facebook, Viber and WhatsApp, often contain discussions on attacks and the coordination of activities and even confessions of involvement in illegal acts, such as sniper attacks or the enslavement of Yazidi women ⁽⁷⁸⁾.
79. For the contextual elements of core international crimes, courts have relied heavily on **open-source information**, particularly from the UN and other credible organisations. These sources provide information on broader themes, such as the treatment of minority groups, ISIS's acts of violence and the nature of the armed conflict. Further, **expert witness testimonies** from scholars, political scientists and journalists are also used for this purpose ⁽⁷⁹⁾.
80. **Battlefield evidence**, such as documents produced by ISIS, are particularly valuable for proving the accused's formal role within the group. For example, a payroll list obtained by military intelligence, containing the details of approximately 40 000 ISIS fighters, was instrumental in confirming the assignment of a defendant to a sniper battalion. This evidence, corroborated by a testimony from the defendant's mother, who confirmed that her son received a salary from ISIS, and by seized photographs showing the accused in combat gear, solidified the defendant's conviction for participation in terrorist activities ⁽⁸⁰⁾.
81. Finally, **personal circumstances of the accused** are often evaluated through a combination of their own testimony, expert psychological reports and witness statements from acquaintances, family members and officials. Courts have also

⁽⁷⁵⁾ The Netherlands, District Court of The Hague, 11 December 2024, Section 4.3.5.

⁽⁷⁶⁾ See for instance, the Netherlands, Appeals Court of The Hague, 6 December 2022 (a YouTube video was the basis for a conviction on the war crime of outrages upon personal dignity); the Netherlands, District Court of The Hague, 29 June 2021 (charges for both terrorism-related crimes and core international crimes based on Telegram posts and messages); Germany, Higher Regional Court of Hamburg, 2 October 2020, pp. 25–26.

⁽⁷⁷⁾ Germany, Higher Regional Court of Düsseldorf, 16 June 2021, pp. 21–28; the Netherlands, Court of Appeal of The Hague, 26 January 2021, Section VII.

⁽⁷⁸⁾ Germany, Higher Regional Court of Düsseldorf, 16 June 2021, pp. 28–31; Germany, Higher Regional Court of Hamburg, 2 October 2020, p. 21.

⁽⁷⁹⁾ For instance, the Netherlands, Court of Appeal of The Hague, 26 January 2021, Section VII; Germany, Higher Regional Court of Hamburg, 27 July 2022, pp. 17 and 40; Germany, Higher Regional Court of Hamburg, 2 October 2020, pp. 20, 24, 28, 31–32 and 38.

⁽⁸⁰⁾ The Netherlands, Court of Appeal of The Hague, 26 January 2021, Section VII. See also the Netherlands, District Court of The Hague, 11 December 2024, Section 4.3.1.

relied on communications between the defendant and family members or friends, such as farewell letters or social media messages, to further assess the defendant’s personal motivations and connections to the crimes.

4.2. Intersections of evidence for terrorism and core international crimes

4.2.1. ISIS as a terrorist organisation and a non-state armed group in a non-international armed conflict

82. The Genocide Prosecution Network’s 2020 report argued from a legal standpoint that ISIS should not be considered only as a terrorist organisation but also as a non-state armed group party to a non-international armed conflict. Building on this key issue, this section examines relevant jurisprudence, analysing how courts have applied these classifications in practice and consistently concluded that ISIS qualifies as both a terrorist organisation and an armed group. This section therefore mainly reflects on maximising the same evidence to prove that ISIS is a terrorist group and to establish the contextual elements for core international crimes.

83. As explained in Section 3.3.1 of this report, prosecuting FTFs on cumulative charges requires the application of two distinct legal frameworks: the counterterrorism legal framework and the international criminal law framework. For the counterterrorism framework to apply, it must be demonstrated that the alleged offences relate to a terrorist group or organisation⁽⁸¹⁾. Under international criminal law, among other requirements, it is necessary to establish the contextual elements. Although the legal framework has been extensively explained in the 2020 report (Genocide Prosecution Network, Eurojust, 2020, pp. 7–15), legal elements of terrorism and contextual elements for war crimes and crimes against humanity are briefly reiterated below.

84. Under Directive (EU) 2017/541, a terrorist group is defined as ‘a structured group of more than two persons, established for a period of time and acting in concert to commit terrorist offences’. Further, a structured group is defined as ‘a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure’⁽⁸²⁾.

85. The terrorist nature of the group is inferred from the type of offences it seeks to commit. Terrorist offences are defined as ‘intentional acts, which, given their nature or context, may seriously damage a country or an international organisation’, where committed with one of the following aims: (a) seriously intimidating a population; (b) unduly compelling a government or an international organisation to perform or abstain from performing any act; (c) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation⁽⁸³⁾.

86. Turning to the contextual elements for war crimes, in order to assess **the existence of a NIAC**, national courts have heavily relied on the Rome Statute and jurisprudence from international tribunals, particularly from the ICTY. This assessment is based on two key criteria: (a) whether hostilities reached a minimum level of intensity; (b) whether the armed groups involved were sufficiently organised to qualify as a party to the armed conflict⁽⁸⁴⁾. Under international humanitarian law, the purpose for which armed forces engage in acts of violence is not taken into account when assessing whether there was a NIAC. Therefore, the fact that ISIS is also a terrorist organisation is irrelevant to this determination⁽⁸⁵⁾.

⁽⁸¹⁾ ISIS and other similar groups are commonly referred to as ‘terrorist organisations’, whereas Directive (EU) 2017/541 refers to ‘terrorist groups’. For the purpose of this report, the terms ‘organisation’ and ‘group’ are used interchangeably.

⁽⁸²⁾ Directive (EU) 2017/541, Article 2(3).

⁽⁸³⁾ Directive (EU) 2017/541, Article 3(1) and (2).

⁽⁸⁴⁾ The Netherlands, District Court of The Hague, 29 June 2021, Section 5.4.3; the Netherlands, District Court of The Hague, 23 July 2019, Section 5.3.3.1.

⁽⁸⁵⁾ The Netherlands, District Court of The Hague, 23 July 2019, Section 5.3.3.1; Germany, Higher Regional Court of Hamburg, 27 July 2022, p. 73. See also Genocide Prosecution Network, Eurojust (2020), pp. 8–10.

87. Another key requisite for establishing war crimes is the **nexus requirement**, which necessitates demonstrating a clear link between the criminal conduct and the armed conflict. The nexus is what distinguishes war crimes from common offences and other core international crimes ⁽⁸⁶⁾.
88. For crimes against humanity, it must be proven that the acts were committed as part of a **widespread or systematic attack against a civilian population**. This requires that the prohibited act be carried out as part of, or in support of, a governmental or organisational policy. This policy may be executed by a state or any group capable of conducting large-scale or systematic attacks against a civilian population. ‘Widespread’ refers to the scale of the attack, emphasising a significant number of victims and the repeated commission of acts. For an attack to be considered ‘systematic’, it must be organised, follow a consistent pattern and not occur randomly (Genocide Prosecution Network, Eurojust, 2020, p. 13–15).
89. For genocide, it must be proven that the victims belong to a particular national, ethnical, racial or religious group and that the perpetrator intended to destroy, in whole or in part, the group, as such. Further, it must be established that the conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction ⁽⁸⁷⁾.

4.2.2. Contextual evidence common to both terrorism and core international crimes

90. Despite terrorism and core international crimes being governed by separate legal frameworks, the factual background underlying the crimes is largely identical, as they are perpetrated by the same organisation (ISIS) and within the same territorial context in Syria or Iraq. Indeed, in some judgments, the courts have relied upon evidence related to the armed conflict in Syria and Iraq, as well as ISIS’ background, organisational structure, governance, training methodology, funding, resources, ideology, media propaganda and core objectives, to demonstrate the dual nature of the group. In

this respect, courts have primarily relied on expert testimonies, such as from Islamist and Middle-East experts ⁽⁸⁸⁾, corroborated by investigative or governmental reports and open sources, including UN and non-governmental organisation reports, journalistic sources and social media ⁽⁸⁹⁾.

91. Indicative of ISIS’s dual nature as a terrorist and non-state armed group, the German judgments do not strictly differentiate between the two qualifications applicable to the organisation in their assessment of evidence. Several judgments simply indicate that ISIS is a foreign organisation outside the EU whose objectives and activities are directed at the commission of both terrorism and core international crimes ⁽⁹⁰⁾.

Evidence on ISIS’s hierarchy and organisational structure

92. Evidence related to ISIS’s hierarchy and organisational structure can be used to prove that ISIS is a (structured) terrorist group, as defined above, and an organised non-state armed group. Such evidence can also serve to prove the contextual elements of core international crimes.
93. **For the contextual elements of war crimes**, one of the requirements is to prove that the armed groups involved were sufficiently organised to qualify as a party to the armed conflict (existence of a NIAC) ⁽⁹¹⁾. ISIS operated as a highly structured entity with a clear chain of command, regulations and an administrative framework that governed a large amount of territory. Evidence that shows these structures can be used to prove ISIS’s coordinated efforts to commit both terrorism and core international crimes.
94. With regard to the structure and degree of organisation of ISIS as a terrorist organisation and non-state armed group, the courts have commonly

⁽⁸⁶⁾ See the Netherlands, District Court of The Hague, 23 July 2019, Section 5.3.5.1, recalling that a war crime must be ‘shaped by or dependent upon the environment – the armed conflict – in which it is committed’.

⁽⁸⁷⁾ *Elements of Crimes*, Article 6.

⁽⁸⁸⁾ See in particular Germany, Stuttgart Higher Regional Court, 5 July 2019, p. 59, discussing the credibility and reliability of expert evidence.

⁽⁸⁹⁾ The Netherlands, District Court of The Hague, 29 June 2021, Section 4.4.1; the Netherlands, Appeals Court of The Hague, 26 January 2021, Section VII, p. 28; the Netherlands, District Court of The Hague, 23 July 2019, Section 5.3.3.2., Germany, Higher Regional Court of Hamburg, 27 July 2022, p. 40; Germany, Higher Regional Court of Düsseldorf, 16 June 2021, pp.5-7, 20; Germany, Dusseldorf Higher Regional Court, 21 April 2021, pp. 6–13 and 19–20; Germany, Stuttgart Higher Regional Court, 5 July 2019, pp. 19–26 and 59.

⁽⁹⁰⁾ Germany, Higher Regional Court of Düsseldorf, 16 June 2021, pp. 49–50; Germany, Higher Regional Court of Düsseldorf, 21 April 2021, pp. 32–33.

⁽⁹¹⁾ The Netherlands, District Court of The Hague, 29 June 2021, Section 5.4.3; the Netherlands, District Court of The Hague, 23 July 2019, Section 5.3.3.1.

reviewed evidence relating to the organisation’s access to arms and vehicles, including tanks and artillery; its capacity to carry out large-scale, sustained and coordinated military operations; its organisational and governance structure; its partnerships with affiliated organisations; and its exercise of control over a territory⁽⁹²⁾. ISIS’ claims to statehood, following the establishment of the so-called ‘caliphate’ in June 2014, also supported the courts’ findings⁽⁹³⁾. In a German case, the Court notably emphasised that ‘at the time of the offence, IS had an organisational structure that clearly exceeded the minimum level required in this respect’⁽⁹⁴⁾.

95. In a Dutch case, the court relied largely on the same evidence of ISIS’s structure and hierarchy to determine that the organisation continued to be both a terrorist organisation and a non-state armed group between January and October 2019, even after the fall of the caliphate in March 2019. The court stated that after the fall of Baghouz, ISIS’s operations did not cease. From July to September 2019, ISIS reorganised into underground cells, maintaining a hierarchical structure and designating a new leader. During this time, ISIS continued to employ digital propaganda and claimed responsibility for attacks, demonstrating that the group was still active, organised and able to carry out attacks. Additionally, while ISIS no longer controlled territory, it retained significant resources, including weapons, facilities and an estimated 10 000 fighters⁽⁹⁵⁾. Further, ISIS’s violent acts aimed at intimidating the population and destabilising governments were driven by terrorist intent and therefore qualify as terrorist crimes⁽⁹⁶⁾.

96. **For the contextual elements of crimes against humanity**, evidence relating to ISIS’ hierarchy, structure and level of organisation is also relevant to prove the existence of a widespread or systematic attack conducted in furtherance of an organisational policy. In a German case, the systematic nature of ISIS’s attack on the Yazidi

population of Sinjar was demonstrated through evidence showing that the attack was highly organised and executed according to a deliberate plan. This included the strategic deployment of ISIS resources, such as fighters, weapons and transportation to carry out the attack⁽⁹⁷⁾.

Evidence on ISIS’s violent acts

97. Additionally, violent acts committed by ISIS – such as murder, torture, enslavement and sexual violence – qualify as both terrorism and core international crimes. By instilling fear and spreading terror among the population, they fulfil the primary objectives of terrorism, creating panic and undermining social stability⁽⁹⁸⁾.

98. In relation to the **terrorist intent of the organisation**, both Dutch and German courts have consistently found that ISIS and other groups, such as Ahrar al-Sham⁽⁹⁹⁾, aimed ‘to violently impose a purely Islamic society and/or state based on Sharia – all this as perceived by them – on the civilian population’ in regions conquered by the organisation⁽¹⁰⁰⁾, with the intention to overthrow the governments of Syria and Iraq through violence⁽¹⁰¹⁾. Similarly, in a Dutch case, the court concluded that:

[t]he crimes committed by these armed groups, such as murder, manslaughter, arson, causing explosions and the like, were therefore committed with terrorist intent and are therefore terrorist offences. Participation in the armed struggle in Syria on the part of these armed groups therefore implies at all times the commission of terrorist offences⁽¹⁰²⁾.

99. At the same time, in the context of **war crimes**, these violent acts are relevant in establishing the existence of a NIAC, where one of the requirements is that the hostilities have reached a minimum

⁽⁹²⁾ The Netherlands, District Court of The Hague, 23 July 2019, Section 5.3.3.2; Germany, Higher Regional Court of Hamburg, 27 July 2022, p. 10.

⁽⁹³⁾ Germany, Higher Regional Court of Hamburg, 27 July 2022, p. 8.

⁽⁹⁴⁾ Germany, Higher Regional Court of Dusseldorf, 29 April 2020, paragraph 100.

⁽⁹⁵⁾ The Netherlands, District Court of The Hague, 29 June 2021, Section 5.4.1.

⁽⁹⁶⁾ The Netherlands, District Court of The Hague, 29 June 2021, Section 5.4.2. Reference is made to Article 83 of the Dutch Criminal Code which determines which offences qualify as terrorist offences. See also the Netherlands, District Court of The Hague, 23 July 2019, p. 24.

⁽⁹⁷⁾ Germany, Higher Regional Court of Hamburg, 27 July 2022, p. 68.

⁽⁹⁸⁾ Directive (EU) 2017/541, Article 3(1) and (2).

⁽⁹⁹⁾ The Netherlands, Appeals Court of The Hague, 6 December 2022, Section 10.1.

⁽¹⁰⁰⁾ The Netherlands, District Court of The Hague, 29 June 2021, Sections 4.4.1, 5.4.1 and 5.4.2. See also the Netherlands, Appeals Court of The Hague, 26 January 2021, Section VII, p. 23; the Netherlands, District Court of The Hague, 23 July 2019, Section 4.3.1; Germany, Higher Regional Court of Hamburg, 27 July 2022, p. 6.

⁽¹⁰¹⁾ The Netherlands, Appeals Court of The Hague, 26 January 2021, p. 28; Germany, Stuttgart Higher Regional Court, 5 July 2019, p. 19.

⁽¹⁰²⁾ The Netherlands, Appeals Court of The Hague, 26 January 2021, Section VII, p. 23.

level of intensity (Genocide Prosecution Network, Eurojust, 2020, pp. 8–9). For instance, in a Dutch case, the court highlighted that, amid escalating hostilities, ISIS and other armed opposition groups engaged in widespread violence, including summary executions, kidnappings and torture. Alongside other factions, ISIS also unlawfully detained and executed numerous individuals, further contributing to the sustained and intense nature of the conflict ⁽¹⁰³⁾.

- 100.** Regarding the nexus requirement, evidence used to prove an accused’s membership or participation in ISIS can also be used to prove that, as a member of the group, his or her actions were not isolated crimes but were committed within the context of the armed conflict in Syria and Iraq and thus constituted war crimes. For instance, in a Dutch judgment concerning the war crime of outrage upon personal dignity, the court reasoned that the accused was in the conflict zone and had the opportunity to further affect the personal dignity of the deceased person, by posing with a crucified body in a photo disseminated on Facebook, precisely because he was there as a member of ISIS ⁽¹⁰⁴⁾.
- 101.** In a German case, the court found that the unlawful appropriation of dwellings by ISIS had been made possible by the military capture of Raqqa and Mayadin and was therefore connected to the armed conflict. Further, the conduct served to reinforce the dominance of ISIS and to make it harder for the areas to be recaptured. These circumstances were sufficient to establish the nexus and prove the war crime ⁽¹⁰⁵⁾.
- 102.** Turning to **crimes against humanity**, ISIS’s violent acts also qualify as crimes against humanity as these acts form part of a systematic campaign aimed at attacking the civilian population, which constitute a direct violation of international humanitarian law. The severity and widespread nature of these acts additionally reinforces that they can be qualified as crimes against humanity.
- 103.** ISIS’s campaign against the Yazidis exemplifies how a single course of conduct can fulfil the legal requirements of multiple crimes. The mass execution of Yazidi men and boys and the

systematic enslavement of women and girls not only constitute terrorism but also meet the criteria for crimes against humanity and genocide. In one of the cases, the Court highlighted that the attack against the Yazidi population was motivated by the terrorist objectives of ISIS – destroying the fundamental political structures of Iraq and Syria to impose a ‘pure’ Islamic society – explaining that ‘[t]he attacks were carried out pursuant to the “political” ideology of IS with the aim of eradicating the Yazidi religion and establishing radical Sunni Islam as the sole and “true religion”’ ⁽¹⁰⁶⁾.

- 104.** Courts have relied on expert evidence, notably provided by theologians and political scientists, along with open-source, documentary and witness evidence, to establish ISIS’ policy of persecution against the Yazidis ⁽¹⁰⁷⁾. National judges have analysed the slavery system implemented by ISIS, including the religious justification of slavery, the functioning of slave markets, price lists, instructions on how to treat female slaves, and a variety of abuses against enslaved Yazidi ⁽¹⁰⁸⁾.
- 105.** German courts in particular have extensively analysed this policy, highlighting that ISIS’s aim was to destroy or annihilate the Yazidi community due to their religious beliefs, which were seen as ‘devil worship’. ISIS adopted differentiated practices based on gender, subjecting men, boys and older women to killings, forced military training or forced religious conversion, while younger women and girls were systematically enslaved ⁽¹⁰⁹⁾.
- 106.** These findings were relied upon in several German cases to establish the contextual elements required for crimes against humanity charges. Referring to international jurisprudence and provisions of the Rome Statute, German judges found that ISIS led a systematic and widespread attack against the Yazidi community (civilian population sharing common traits) ⁽¹¹⁰⁾, notably in the Sinjar region of

⁽¹⁰³⁾ The Netherlands, District Court of The Hague, 23 July 2019, p. 24.

⁽¹⁰⁴⁾ The Netherlands, Appeals Court of The Hague, 26 January 2021, pp. 28–30.

⁽¹⁰⁵⁾ Germany, Dusseldorf Higher Regional Court, 21 April 2021, p. 36.

⁽¹⁰⁶⁾ Germany, Higher Regional Court of Düsseldorf, 16 June 2021, pp. 51–52.

⁽¹⁰⁷⁾ Germany, Higher Regional Court of Hamburg, 27 July 2022, p. 40; Germany, Higher Regional Court of Düsseldorf, 16 June 2021, pp. 20–21; Germany, Dusseldorf Higher Regional Court, 21 April 2021, pp. 19–20.

⁽¹⁰⁸⁾ Germany, Higher Regional Court of Hamburg, 27 July 2022, p. 40; Germany, Higher Regional Court of Düsseldorf, 16 June 2021, pp. 6–7; the Netherlands, District Court of The Hague, 11 December 2024, Section 4.3.5.

⁽¹⁰⁹⁾ Germany, Higher Regional Court of Hamburg, 27 July 2022, pp. 16–17.

⁽¹¹⁰⁾ Germany, Dusseldorf Higher Regional Court, 21 April 2021, pp. 38–39.

Iraq⁽¹¹¹⁾. This is due to the high number of victims (widespread character), and the carefully planned use of ISIS resources (fighters, weapons, transport of prisoners) to carry out the attack methodically (systematic character)⁽¹¹²⁾.

4.2.3. Evidence common to both terrorism-related and core international crimes

107. Prosecuting FTFs for both terrorism-related offences and core international crimes requires a comprehensive strategy that leverages overlapping evidence to satisfy both legal frameworks. Drawing from the jurisprudence, this section explores how evidence has been effectively maximised to substantiate both crime areas. Additionally, such evidence also supports additional domestic offences, including child abduction and breach of duty of care and education, as discussed further below.

108. This section does not detail the legal requirements for each terrorist offence or core international crime, as it focuses on intersections of evidence. For reference, the specific legal requirements for each individual crime are addressed in the annex to this report. Nonetheless, it is useful to note that the general framework for membership or participation offences is set out in Directive (EU) 2017/541, which identifies as a criminal offence the following acts: participating in the activities of a terrorist group, including by supplying information or material resources, or by funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the terrorist group. EU Member States have incorporated their own definition of the offences into domestic law.

Bringing children to ISIS-controlled territory

109. Evidence of accused persons bringing children to ISIS-controlled territory has been successfully used to prove various crimes, including membership or participation in a terrorist organisation, the war crime of enlisting children, and other common offences such as child abduction and violations of the duty of care and education. Courts have

relied on travel records, photographs, videos and witness testimonies to establish the children's presence and activities in these areas.

110. Concerning terrorism-related crimes, the jurisprudence clearly demonstrates that taking children to ISIS-controlled territory constitutes an additional act of participation in a terrorist organisation. It notes that settling in ISIS-controlled territories with children contributes to expanding the population affiliated with the group and maintaining the caliphate⁽¹¹³⁾. Additionally, agreeing to enrol a child in ISIS training camps further strengthens the group's combat capabilities, exposes children to its ideological influence and integrates them into ISIS's state-building efforts⁽¹¹⁴⁾. This is clearly captured in a German judgment demonstrating that both recruiting children and expanding its so-called state by attracting entire families contributed to ISIS's long-term objectives.

IS systematically recruited children and young people in a targeted manner in captured territories in order to train them in the organisation's camps. This was in line with the organisation's new self-image, which, since the declaration of the caliphate, had changed from that of a mere armed group to a state that would attract future generations of fighters [...] to its political system. This practice was, in turn, reflected in the organisation's approach to public propaganda [...], which no longer primarily sought to recruit fighters, but instead now aimed to attract entire families, including women and children, to live in the newly established 'state'. This was accompanied by the message that the organisation would educate and train these children in the spirit of IS and mould young boys into fighters⁽¹¹⁵⁾.

111. It therefore follows that bringing children into ISIS-controlled territory significantly heightened the risk of recruitment and military training, resulting in committing the war crime of enlisting children under the age of 15. In a German case, a female perpetrator was convicted of this crime after allowing her seven-year-old son to attend an ISIS

⁽¹¹¹⁾ Germany, Higher Regional Court of Hamburg, 27 July 2022, p. 67; Germany, Higher Regional Court of Düsseldorf, 16 June 2021, pp. 50–54; Germany, Dusseldorf Higher Regional Court, 21 April 2021, pp. 38–39.

⁽¹¹²⁾ Germany, Higher Regional Court of Hamburg, 27 July 2022, p. 68.

⁽¹¹³⁾ Germany, Dusseldorf Higher Regional Court, 21 April 2021, p. 35, 46. See also Germany, Higher Regional Court of Hamburg, 2 October 2020, pp. 14 and 23–24; District Court of The Hague, 11 December 2024, 4.3.2.

⁽¹¹⁴⁾ Germany, Higher Regional Court of Düsseldorf, 29 April 2020, paragraphs 94 and 98–106.

⁽¹¹⁵⁾ Germany, Higher Regional Court of Düsseldorf, 29 April 2020, paragraph 35.

training camp, where he underwent physical training, weapons instruction and performed sentry duty. The Court emphasised that admitting a child for training qualifies as enlistment, regardless of whether they actively participated in combat ⁽¹¹⁶⁾.

- 112.** Beyond terrorism-related offences and core international crimes, taking children to ISIS-controlled territory can also amount to child abduction and violations of the duty of care and education under national laws. Courts have highlighted how depriving children of formal schooling, exposing them to bombings and public executions, subjecting them to extreme indoctrination, and denying them access to medical care and other essential services pose severe risks to their physical and mental well-being ⁽¹¹⁷⁾.

Unlawful appropriation of property

- 113.** Evidence of unlawful appropriation of property in ISIS-controlled territory has been used to prove both membership or participation in a terrorist organisation and war crimes. Appropriation of dwellings often results from forced displacement or persecution of the civilian population, which are linked to ISIS's terror tactics to consolidate power through fear and coercion. At the same time, these actions can amount to war crimes when occurring in the context of a NIAC and violate property rights under international humanitarian law ⁽¹¹⁸⁾. Relevant evidence includes testimonies from witnesses or any proof of ownership or residency in these properties.
- 114.** To illustrate, in a German case, the evidence presented in relation to an accused who appropriated four properties resulted not only in a conviction regarding war crimes against property, but was also considered an additional act of participation since it 'served to reinforce the actual territorial domination of IS' ⁽¹¹⁹⁾. In another case, where the accused had occupied two houses provided by ISIS, the court emphasised that the properties did not only serve the accused to live comfortably, but also to consolidate ISIS's claim to

power and to make it more difficult for the opposing military organisations to recapture the region. Therefore, in addition to being convicted for war crimes, this constituted an act of participating in a terrorist organisation ⁽¹²⁰⁾.

- 115.** Similarly, in an order during preliminary proceedings, the Federal Court of Justice in Germany also considered the act of unlawfully seizing property as an additional act of participation. It stated that the use of dwellings captured by ISIS during the conquest of Jarabulus served the purpose of reinforcing ISIS's occupation of the city and making it more difficult for the owners expelled by the organisation to return ⁽¹²¹⁾. Further, the court highlighted that the fact that the owners had fled due to the threat posed by ISIS troops did not imply consent to abandon their belongings. The owners' absence at the time of appropriation did not negate the unlawful nature of the act, as possession does not require their direct control over the goods. Also, the fact that ISIS had previously seized the apartment and its furnishings is irrelevant to the defendant and her husband's appropriation of the property. The concept of appropriation is not confined to the initial seizure of goods against or without the owner's consent but extends to subsequent unlawful possession ⁽¹²²⁾.

Utilisation of ISIS's slavery system

- 116.** Participation in ISIS's slavery system demonstrates support for the group's economic and ideological structure, including the use of terror to subjugate the population and sustain operations. The use of slavery aligns with ISIS's goal of maintaining power through violence and fear, which, as explained below, has resulted in courts considering it as an additional act of participation in ISIS. At the same time, engaging with ISIS's system of slavery, including the purchase, sale or exploitation of individuals, constitutes evidence of involvement in crimes against humanity. Evidence of such acts may include survivor testimonies, transactions or communications related to the acquisition or exploitation of enslaved persons.

⁽¹¹⁶⁾ Germany, Higher Regional Court of Düsseldorf, 29 April 2020, paragraph 101.

⁽¹¹⁷⁾ Germany, Dusseldorf Higher Regional Court, 21 April 2021, pp. 34–35. See also Germany, Higher Regional Court of Hamburg, 2 October 2020, pp. 47–48; Germany, Higher Regional Court of Düsseldorf, 29 April 2020, paragraphs 95–97; District Court of The Hague, 11 December 2024, Section 4.3.4.

⁽¹¹⁸⁾ See for instance, Article 8, points (c)(xiii) and (e)(xii) of the Rome Statute.

⁽¹¹⁹⁾ Germany, Dusseldorf Higher Regional Court, 21 April 2021, p. 37.

⁽¹²⁰⁾ Germany, Stuttgart Higher Regional Court, 5 July 2019, p. 32.

⁽¹²¹⁾ Germany, Federal Court of Justice, 14 April 2019, paragraph 30. See also Germany, Federal Court of Justice, 15 May 2019, paragraph 27.

⁽¹²²⁾ Germany, Federal Court of Justice, 14 April 2019, paragraphs 34 and 36. See also Germany, Federal Court of Justice, 15 May 2019, paragraph 29.

117. Therefore, evidence proving that the accused is responsible for the enslavement of a person can also be used to establish their membership in ISIS. For instance, in several cases where perpetrators were convicted of enslaving Yazidi girls and women, the court concluded that these actions also amounted to an additional act of participation in ISIS. This is because the conduct contributed to ISIS's goal of eradicating the Yazidi religion and culture, thus advancing the organisation's objective in this regard ⁽¹²³⁾.
118. Furthermore, in the context of core international crimes, evidence of both membership and involvement in enslavement, can also be indicative of genocide, rape, persecution or torture. This is exemplified in a German case, where the accused was convicted of aiding genocide by facilitating the rape and sexual abuse of several Yazidi women enslaved by her husband. Both the accused and her husband were ISIS members. The court found that these acts caused grievous bodily and psychological harm to the victims, who were members of a distinct religious group ⁽¹²⁴⁾.

Other categories of evidence

119. Acts such as **voluntarily travelling to Syria, marrying an ISIS fighter or member, actively promoting ISIS and receiving financial support from ISIS** can not only constitute distinct terrorist-related offences, but also support establishing core international crimes.
120. In the context of terrorism-related crimes – particularly membership, participation and incitement – courts have consistently recognised that the abovementioned acts constitute **active participation in a terrorist organisation** ⁽¹²⁵⁾. Such

conduct contributes to ISIS's objective, reinforces its foundation and promotes its establishment, cohesion and operations. A German court ruling provides clear guidance in this regard.

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 ⁽¹²⁶⁾.

121. While these acts may not be immediately seen as relevant for core international crimes, they are critical in **identifying** such crimes from the outset and can serve as **circumstantial evidence** to establish their occurrence. For instance, the analysed jurisprudence strongly indicates that female returnees who engage in the aforementioned acts have been involved not only in terrorism-related offences but also in crimes against Yazidi women and girls, including enslavement, rape, genocide, persecution and torture. These crimes usually took place within the domestic sphere, making them more prevalent among female returnees – in collaboration with their husbands, who were ISIS fighters or high-ranking ISIS members ⁽¹²⁷⁾.
122. Evidence of this conduct has also been used to establish **intent and knowledge**. For instance, in cases related to the enslavement and persecution of Yazidi women, courts have consistently found that the accused acted deliberately and with full awareness that these crimes were part of ISIS's broader violent campaign against the Yazidi community. This knowledge has been inferred from circumstantial evidence, including the accused's voluntary travel to ISIS-controlled territory, their awareness of the situation on

⁽¹²³⁾ Germany, Dusseldorf Higher Regional Court, 21 April 2021, p. 37; Germany, Higher Regional Court of Hamburg, 2 October 2020, pp. 45–46; Higher Regional Court of Hamburg, 27 July 2022, pp. 65–66. Other cases where the accused was convicted of both membership and enslavement are: Higher Regional Court of Düsseldorf, 16 June 2021, pp. 49–56; the Netherlands, District Court of The Hague, 11 December 2024, Sections 4.3.2 and 4.3.5.

⁽¹²⁴⁾ Germany, Higher Regional Court of Hamburg, 27 July 2022, p. 71.

⁽¹²⁵⁾ Germany, Higher Regional Court of Hamburg, 27 July 2022, p. 65; Germany, Higher Regional Court of Düsseldorf, 16 June 2021, p. 50; Germany, Dusseldorf Higher Regional Court, 21 April 2021, p. 33; Germany, Higher Regional Court of Hamburg, 2 October 2020, p. 46; Germany, Higher Regional Court of Düsseldorf, 29 April 2020, paragraphs 93–94; Germany, Stuttgart Higher Regional Court, 5 July 2019, pp. 83–84; District Court of The Hague, 11 December 2024, Section 4.3.1 ('Further course of the stay in IS territory').

⁽¹²⁶⁾ Dusseldorf Higher Regional Court, 21 April 2021, p. 33.

⁽¹²⁷⁾ See for instance, Germany, Higher Regional Court of Hamburg, 27 July 2022; Germany, Higher Regional Court of Düsseldorf, 16 June 2021; Germany, Higher Regional Court of Düsseldorf, 21 April 2021; Germany, Higher Regional Court of Hamburg, 2 October 2020; Germany, Higher Regional Court of Düsseldorf, 29 April 2020; Germany, Higher Regional Court of Stuttgart, 5 July 2019. See also Section 3.2 of this report.

the ground and ISIS's systematic targeting of the Yazidis, their ideological alignment with ISIS and their direct affiliation with the group ⁽¹²⁸⁾.

- 123.** Lastly, evidence of the above-mentioned acts can be useful to establish the **nexus between the crimes committed and the non-international armed conflict**, as outlined in Section 4.2.1. Since ISIS functions both as a terrorist organisation and as a party to a non-international armed conflict, its policies are intrinsically linked to both sets of crimes. Consequently, individuals who become members of ISIS, often through the actions described above, are also typically aware of the group's broader policies. Accordingly, crimes committed by the accused are not isolated incidents but rather integral to ISIS's overarching strategy, thereby reinforcing the connection to the non-international armed conflict ⁽¹²⁹⁾.

⁽¹²⁸⁾ Higher Regional Court of Hamburg, 27 July 2022, pp. 69–70 ('The joint plaintiff was enslaved in her capacity as a Yazidi woman and therefore represented an identifiable religious community. The Yazidis were persecuted by IS for religious reasons. The defendant and [her husband] shared these religious reasons and acted with the intention of discriminating against the joint plaintiffs on these grounds'); Germany, Higher Regional Court of Düsseldorf, 16 June 2021, pp. 52, 55 and 57 ('She acted in the knowledge that she was following the rules on the treatment of Yazidis set by IS'); Germany, Dusseldorf Higher Regional Court, 21 April 2021, p. 40.

⁽¹²⁹⁾ See Section 4.2.1.

5. Legal defences and judicial assessment

5.1. Defences concerning terrorism-related crimes

124. This chapter addresses a wide range of legal defences raised in the context of cumulative prosecution cases. Understanding these defences is key, as they offer valuable insight into how courts interpret and apply the legal requirements to terrorism and core international crimes. Moreover, they highlight the factors that courts consider when evaluating the strength of a case, including the reliability of evidence and intent and the context in which the alleged crimes occurred.

5.1.1. Participation or membership in a terrorist organisation

The accused's acts do not amount to participation

125. The legal threshold of what constitutes 'membership' or 'participation' in a terrorist organisation has been a pivotal issue in numerous court cases. Defence arguments frequently contend that the accused's actions fall short of meeting this standard, raising questions about which specific acts qualify for such crimes. In numerous cases relating to cumulative prosecutions and analysed for the purpose of this report, defendants have argued that their actions were peripheral or insignificant, claiming that their connections to ISIS were unsubstantiated or limited to menial tasks⁽¹³⁰⁾, or qualifying their actions as personal rather than ideological⁽¹³¹⁾. Others have maintained that disseminating extremist propaganda is insufficient to establish participation in a terrorist group⁽¹³²⁾.

126. However, courts have consistently rejected these defences. In cases where **the accused's direct involvement in violent acts** was evident, proving participation was straightforward. For instance, in a case in the Netherlands, the accused, associated with the Ahrar al-Sham terrorist group, participated in one of their battles. The court found that his actions, including fighting, adopting a leadership role and appearing in propaganda videos, directly contributed to the group's objective of overthrowing the Assad regime. Further, by allowing himself to be filmed and promoting the group's ideology on social media, the accused contributed to the spreading of terrorist ideology⁽¹³³⁾.

127. Similarly, in another case, the court rejected the defendant's claim that he had been involved in menial tasks. The evidence – photographs in which the defendant can be seen in combat clothes and/or carrying firearms, his presence in places controlled and ruled by ISIS, and the mention of his name and position on an ISIS payroll list – overwhelmingly showed that the defendant made a contribution to the armed struggle and therefore participated in a terrorist organisation⁽¹³⁴⁾.

128. Notably, courts have also affirmed that participation does not per se require direct involvement in the ISIS armed struggle, through violent acts. **Any form of support, logistical or propagandistic, can suffice** if the accused is aware of the organisation's criminal activities and intends to contribute to its objectives. Notably, this principle extends to female defendants, often spouses of ISIS fighters, who primarily assumed household roles. In a German case, the court took into account household activities as a contribution to ISIS, stating:

[R]unning a household can also be regarded in this present case as a long-term behaviour typical of the organisation. It also clearly served to ensure that [her husbands] were ready to fight and corresponded to the gender roles promoted by IS. The Defendant thus not only fulfilled the 'domestic obligations' arising from living with her respective husband but also provided services to IS. The fact that she mainly carried out household activities does not preclude her participation as a member⁽¹³⁵⁾.

⁽¹³⁰⁾ The Netherlands, Appeals Court of The Hague, 6 December 2022, Section 10.2; the Netherlands, Court of Appeal of The Hague, 26 January 2021, Section VII.

⁽¹³¹⁾ Germany, Stuttgart Higher Regional Court, 5 July 2019, pp. 61 and 64.

⁽¹³²⁾ The Netherlands, District Court of The Hague, 29 June 2021, Section 5.3; the Netherlands, Court of Appeal, 11 September 2024, Section 'Further considerations regarding fact 1' (in Dutch only).

⁽¹³³⁾ The Netherlands, Appeals Court of The Hague, 6 December 2022, Section 10.2.

⁽¹³⁴⁾ The Netherlands, 26 January 2021, Section VII.

⁽¹³⁵⁾ Germany, Higher Regional Court of Hamburg, 2 October 2020, p. 46.

129. Further, in a separate case, the accused spread violent jihadist material and messages through Telegram groups from the Netherlands. Although the defence argued that ISIS's media strategy was separate from her actions, the Court of Appeal ruled that she deliberately supported ISIS's media strategy, which promoted its armed struggle in Syria. By doing so, she contributed to the organisation's goals ⁽¹³⁶⁾.
130. Defendants have also attempted to justify their involvement by citing personal motivations or downplaying the significance of their actions, but courts have consistently dismissed such defences. For instance, in Germany, the court rejected the defendant's claim that her intentions in travelling to Syria were humanitarian and that she sought to care for orphaned children ⁽¹³⁷⁾. Similarly, in the Netherlands, the Court of Appeal dismissed the defendant's assertion that his social media posts, including chats and photographs, were simply attempts to 'act tough'. Also, allegations that he was working solely as a parking attendant or humanitarian aid worker were unconvincing and unsubstantiated ⁽¹³⁸⁾.
131. In sum, the jurisprudence shows important precedents that participation in a terrorist organisation extends beyond acts of violence to include actions that support or advance the organisation's objectives. By rejecting attempts to downplay involvement, judicial decisions reinforce the principle that both direct and indirect contributions to terrorism carry significant legal consequences.

ISIS no longer a terrorist organisation during the charged timeframe

132. In a Dutch case, the defence argued that **ISIS was no longer a terrorist organisation during the period of the alleged charges, from 1 January to 10 October 2019**. The defence claimed that ISIS's structure and operational capacity had significantly diminished by that time, rendering it no longer a functioning terrorist organisation ⁽¹³⁹⁾. However, the court rejected this claim, ruling that ISIS remained

a terrorist organisation beyond March 2019, as it continued to function as an underground network, retaining a hierarchical structure under new leadership and actively engaging in propaganda and attacks. Despite losing territorial control, ISIS still possessed significant resources, including weapons and thousands of fighters. Also, ISIS's violent acts aimed at intimidating the population and destabilising governments were driven by terrorist intent and therefore qualify as terrorist crimes ⁽¹⁴⁰⁾.

5.1.2. Incitement and dissemination

133. A notable case addressing incitement and dissemination to incite terrorism involved a defendant prosecuted for distributing violent jihadist material, including videos with captions, through various groups on Telegram, whilst operating from the Netherlands ⁽¹⁴¹⁾. Although the defendant had travelled to Syria in 2015, she had returned to and was in the Netherlands throughout the timeframe of the charges in 2019.
134. The defence sought acquittal, arguing that the accused **lacked intent** and attributing her actions to psychological difficulties rather than genuine interest in ISIS ideology. They also claimed that the videos – such as those depicting prisoners being burned alive or a man being executed – were not inherently inciting and the context in which they were distributed did not alter this assessment.
135. The Court of Appeal found the shared content to be inciting in nature and ruled that even material not inherently inciting could become so when distributed within certain contexts, including on Telegram groups which included hundreds of like-minded ISIS sympathisers. To illustrate, among the evidence was a message where the accused glorified martyrdom and encouraged followers to commit violence against unbelievers by posting that '*they can buy a ticket to paradise by killing an unbeliever, for example by running them over or stabbing them with a knife*'. In this regard, the court stated that:

By glorifying martyrdom in such a way in chat groups consisting of IS sympathisers, the suspect has wilfully and knowingly accepted

⁽¹³⁶⁾ The Netherlands, Court of Appeal, 11 September 2024, Section 'further considerations regarding fact 1'. See also the Netherlands, District Court of The Hague, 29 June 2021, Section 5.4.5–5.4.7.

⁽¹³⁷⁾ Germany, Stuttgart Higher Regional Court, 5 July 2019, pp. 61 and 64.

⁽¹³⁸⁾ The Netherlands, Court of Appeals of The Hague, 26 January 2021, Section VII.

⁽¹³⁹⁾ The Netherlands, District Court of The Hague, 29 June 2021, Section 5.3.

⁽¹⁴⁰⁾ The Netherlands, District Court of The Hague, 29 June 2021, Section 5.4.2. Reference is made to Article 83 of the Dutch Criminal Code, which determines which offences qualify as terrorist offences.

⁽¹⁴¹⁾ The Netherlands, Court of Appeal, 11 September 2024. See also the Netherlands, District Court of The Hague, 29 June 2021.

the considerable chance that others would feel called upon to commit such terrorist attacks and kill unbelievers ⁽¹⁴²⁾.

136. The psychological problems of the accused were considered as mitigating factors during sentencing but did not alter the court's conclusion regarding her criminal liability ⁽¹⁴³⁾.
137. Lastly, regarding a beheading video found on the accused's tablet, but not shared on Telegram, the defence maintained that there was no evidence of **intent to distribute** the content ⁽¹⁴⁴⁾. The court agreed with the defence and acquitted the accused in this regard ⁽¹⁴⁵⁾. This underscores that making the material public, or at the very least having the intent to do so, is a key factor to proving incitement.

5.1.3. Training with the purpose of committing a terrorist crime

138. In the same case as above ⁽¹⁴⁶⁾, the accused distributed messages that contained instructions on various matters in Telegram groups, which may constitute training with the purpose of committing a terrorist crime. In this regard, the defence argued that the suspect's actions lacked the requisite **intent** to train others or acquire techniques for terrorism purposes. Further, the defence rejected the notion that the suspect had adopted strict extremist ideology but instead argued that **her behaviour on social media was aimed at getting attention and seeking excitement** ⁽¹⁴⁷⁾.
139. The Court of Appeal, however, found these arguments unpersuasive. It concluded that the accused's extensive self-study and repeated engagement with ISIS propaganda were indicative

⁽¹⁴²⁾ The Netherlands, Court of Appeal, 11 September 2024, Section 'Further considerations regarding fact 3 and 4', subsection 'Incitement and dissemination to incite the commission of a terrorist offence'. See also the Netherlands, District Court of The Hague, 29 June 2021, Sections 7.3.6–7.3.7.

⁽¹⁴³⁾ The Netherlands, Court of Appeal, 11 September 2024, Section 'Sentencing motivation'.

⁽¹⁴⁴⁾ The Netherlands, Court of Appeal, 11 September 2024, Section 'Further considerations regarding fact 3 and 4', subsection 'The defence's position'. See also the Netherlands, District Court of The Hague, 29 June 2021, Section 7.2.

⁽¹⁴⁵⁾ The Netherlands, Court of Appeal, 11 September 2024, Section 'Further considerations regarding fact 3 and 4', subsection 'Incitement and dissemination to incite the commission of a terrorist offence'.

⁽¹⁴⁶⁾ See Section 5.1.2 of this report and the Netherlands, Court of Appeal, 11 September 2024.

⁽¹⁴⁷⁾ The Netherlands, Court of Appeal, 11 September 2024, Section 'Further considerations regarding fact 2', subsection 'Defence position'.

of her appropriation of the group's radical ideology. This conclusion was further supported by evidence found at her home, such as ISIS flags and private conversations encouraging violence. The court also disagreed with the defence's characterisation of the accused's social media activity as merely attention-seeking and determined that her actions demonstrated a deliberate intention to provide information that could aid in committing terrorist activities ⁽¹⁴⁸⁾.

140. More specifically, regarding the materials posted by the accused, the court found that the message titled 'Take precautions, traps on the path of Jihad', shared in a Telegram group of like-minded individuals, constitutes training for terrorism, as it discussed ways for Muslims to contribute to jihad, including travelling to conflict zones, providing financial support and avoiding detection by intelligence services. By sharing this message, the accused knowingly exposed herself to the risk that others might use the information to commit terrorist crimes. In relation to another message, titled 'instructions for making explosives and a bomb belt', which were found on the accused's tablet, the court determined that the accused had trained herself in committing terrorist crimes through this material ⁽¹⁴⁹⁾.

5.2. Defences concerning core international crimes

5.2.1. Enslavement as a crime against humanity

141. Defences in cases of enslavement as a crime against humanity typically involve **denying control over the victim, asserting that escape was possible, or claiming duress and lack of intent**. In a recent Dutch case, the defence argued that the enslaved Yazidi woman had the chance to escape as she even had a key to the house at one point. The court rejected this, recognising that escape was unrealistic for a Yazidi woman in ISIS-controlled territory, especially as she refused to leave without her children who had also been captured by ISIS and were staying in her vicinity ⁽¹⁵⁰⁾.

⁽¹⁴⁸⁾ The Netherlands, Court of Appeal, 11 September 2024, Section 'Further considerations regarding fact 2', subsection 'Court assessment'. See also the Netherlands, District Court of The Hague, 29 June 2021, Section 8.3.3.

⁽¹⁴⁹⁾ The Netherlands, Court of Appeal, 11 September 2024, Section 'Further considerations regarding fact 2', subsection 'Court assessment'.

⁽¹⁵⁰⁾ The Netherlands, District Court of The Hague, 11 December 2024, Section 4.3.5.

142. Further, in a German case, the accused benefited from the housework of an enslaved Yazidi girl regularly brought to her house by the owner, a friend of the defendant. The accused claimed the housework was directed solely by the owner and argued a language barrier prevented her from interacting with the victim ⁽¹⁵¹⁾. However, the court found that she knowingly facilitated the enslavement by locking the door, enabling her instructions to be passed through her friend and accepting the victim's labour in her own house. In this respect, it stated the following:

The work was carried out in the home of the accused and was exclusively in her interest. The absence of [the ISIS fighter], 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 [the owner] is due solely to the inability of the witness and the accused to understand each other in the absence of a shared language ⁽¹⁵²⁾.

143. In addition, claims of **duress** also arose, such as a defendant stating that she was coerced into keeping slaves and was herself a victim. Courts remain critical of such defences, especially when they are unsubstantiated or overwhelmingly contradicted by evidence ⁽¹⁵³⁾.

5.2.2. Outrage upon personal dignity as a war crime

The severity of the conduct

144. The crime of outrage upon personal dignity requires conduct that inflicts **severe** humiliation or degradation on an individual's personal dignity. As a result, a common defence strategy is to **challenge the severity of the conduct in question, arguing that it does not rise to the level necessary to constitute an outrage upon personal dignity.**

145. For instance, in a Dutch case involving members of the Ahrar al-Sham terrorist group ⁽¹⁵⁴⁾, the accused was initially convicted for actions captured in a YouTube video showing fighters disrespecting the bodies of deceased government soldiers after winning a battle. The conduct included placing feet on the opponent's bodies, kicking them and spitting on them ⁽¹⁵⁵⁾. However, on appeal, the court overturned the conviction, agreeing with the defence that these acts, while distasteful and disrespectful, did not meet the threshold for a serious affront to personal dignity. It noted that the bodies were neither physically desecrated nor displayed as trophies. Further, intent was not evident, as the actions of the accused and other soldiers were brief and appeared celebratory, rather than deliberately aimed at undermining the dignity of the deceased. Lastly, there was no information on the file regarding the interests of surviving relatives, leading to the court not being able to consider this element ⁽¹⁵⁶⁾. Recently, the Supreme Court upheld the findings of the Appeals Chamber in this regard (Supreme Court of the Netherlands, 2025).

146. Similarly, in another Dutch case, the Court of Appeal overturned the conviction of a defendant who had shared two ISIS propaganda videos in a closed Telegram group of 80 members. The posted videos depicted gruesome acts of violence, including burning four men alive and executing another by gunfire. One video was accompanied by the caption 'like roasted chicken', which openly glorified the brutality ⁽¹⁵⁷⁾. While the accused's actions were deemed disrespectful, the court ruled that the legal threshold of severity was not met as the videos had already been widely circulated through ISIS media channels and sharing them with a closed group in Telegram caused no clear additional harm to victims' families or the public ⁽¹⁵⁸⁾.

147. By contrast, in a third case in the Netherlands, the accused was found guilty on appeal of outrage upon personal dignity towards an hors de combat individual, after posing beside a deceased, bloodied man in an orange jumpsuit

⁽¹⁵¹⁾ Germany, Dusseldorf Higher Regional Court, 21 April 2021, pp. 28–29 and 40–41. Similar defences were also brought in another German case. Although the accused was found guilty of enslavement, the court did not specifically address these defences. See Germany, Higher Regional Court of Hamburg, 27 July 2022, pp. 39 and 68–69.

⁽¹⁵²⁾ Germany, Dusseldorf Higher Regional Court, 21 April 2021, p. 28.

⁽¹⁵³⁾ Germany, Higher Regional Court of Düsseldorf, 16 June 2021, pp. 15 and 50–54.

⁽¹⁵⁴⁾ A radical Islamist movement that sought to contribute to and shape a Syrian national uprising against the Bashar al-Assad regime.

⁽¹⁵⁵⁾ The Netherlands, District Court of The Hague, 21 April 2021, Section 5.

⁽¹⁵⁶⁾ The Netherlands, Appeals Court of The Hague, 6 December 2022, Section 9.3.

⁽¹⁵⁷⁾ The Netherlands, Court of Appeal, 11 September 2024, Section 'Further considerations regarding fact 1'. See also The Netherlands, District Court of The Hague, 29 June 2021, Section 6.

⁽¹⁵⁸⁾ The Netherlands, Court of Appeal, 11 September 2024, Section 'Further considerations regarding fact 1'.

hanging from a cross and later sharing the photo on social media. The court reasoned that by posing with the deceased and taking the photo, the accused further deepened the humiliation and degradation of the body, treating it as a trophy and asserting superiority. Furthermore, by subsequently posting the photo on his Facebook account, the accused ensured that a large number of people had the opportunity to view the photograph, which further exposed the deceased to public disrespect. The court found the conduct of such severity that it unequivocally qualified as an outrage upon personal dignity ⁽¹⁵⁹⁾.

148. Cases from Germany and Sweden are also worth mentioning in this regard, as they are relevant to the issue of what constitutes ‘severity’, even though they are not cumulative prosecution cases and do not involve terrorism-related charges. In a German case, the court ruled that the accused’s actions reached the severity to constitute outrages against personal dignity. The accused, an armed Jihadist fighter, posed for photographs near the severed heads of soldiers, which had been impaled on metal poles and publicly displayed as trophies. By standing close to the deceased bodies and adopting a posture of superiority and mercilessness, he visibly reinforced the humiliation inflicted on the victims. Additionally, another fighter posted a picture online showing the accused alongside him and an unknown person with one of the victims on display. The court noted that the accused was aware at the time that these photos could be shared online and willingly accepted this. The court further stated that the fact that the defendant did not physically harm the victims is irrelevant ⁽¹⁶⁰⁾.

149. In another case in Sweden, the Court of Appeal rejected the defence’s claim that his actions do not constitute a serious breach of IHL for allowing himself to be photographed and filmed standing with his foot next to a victim’s head, making victory signs and uttering insulting and derogatory remarks. In another image, the accused held a weapon against three bodies. He thereafter posted the images online. The court stated that the images give the impression that the purpose of capturing the content was to show the material to the outside world or the other party to the armed conflict. It therefore determined that the deceased were

presented as trophies as part of war propaganda and that these acts constitute the war crime of outrages against personal dignity ⁽¹⁶¹⁾.

150. The jurisprudence in the Netherlands highlights the fine line courts must tread in assessing the severity of acts under the crime of outrages upon personal dignity. The distinction between what is to be considered mere disrespect and what qualifies as an act of war crime is delicate and nuanced. This is particularly evident in the contrasting decisions between first instance and appeal courts, where initial judgments viewed the actions as sufficiently severe, only for the appeal court to overturn them. Nevertheless, the case-law analysed suggests that when actions such as treating a deceased body as a trophy or symbol of superiority are compounded by the public sharing of these acts, the gravity of the offence is significantly heightened and therefore meets the severity requirement for this crime.

Contextual elements

151. In the same case mentioned above, where the accused shared two ISIS propaganda videos via Telegram ⁽¹⁶²⁾, she was acquitted of the war crime charge on appeal and the defence’s challenges regarding the contextual elements were not addressed further. However, the district court’s reasoning on this matter remain noteworthy and is explained below.

152. At first instance, the defence argued that there was **no longer an armed conflict when the videos were posted in 2019 and that there was insufficient nexus between the armed conflict and her conduct** ⁽¹⁶³⁾. On the first issue, the court determined that ISIS remained both a terrorist organisation and a non-state armed group between January and October 2019, as it continued operating through an underground network with a hierarchical structure, propaganda and ongoing attacks. Although ISIS no longer controlled territory, it retained significant resources, including weapons and an estimated 10 000 fighters ⁽¹⁶⁴⁾. Regarding the nexus, the district court found that the accused had acted in line with ISIS’s media strategy. Addressing the fact that the videos were posted from the Netherlands, the court highlighted that IHL extends beyond

⁽¹⁵⁹⁾ The Netherlands, Appeals Court of The Hague, 26 January 2021, Section VII (Chapter ‘Further evidentiary consideration regarding the charges proven under 2’, sub-chapter ‘Establishment of facts’).

⁽¹⁶⁰⁾ Germany, Federal Court of Justice, 27 July 2017, paragraphs 53–54.

⁽¹⁶¹⁾ Sweden, Scandia and Blekinge Court of Appeal, 8 June 2023.

⁽¹⁶²⁾ See paragraph 146 of this report.

⁽¹⁶³⁾ The Netherlands, District Court of The Hague, 29 June 2021, Section 6.3.

⁽¹⁶⁴⁾ The Netherlands, District Court of The Hague, 29 June 2021, Sections 5.4.1, 5.4.3 and 6.4.1. See also paragraph 95 of this report.

the immediate geographical scope of the armed conflict and that it would be illogical to deprive the victims of the protection they are awarded under IHL merely because the violations occurred elsewhere ⁽¹⁶⁵⁾.

153. Further, the defence argued that **the victims depicted in both videos are not persons protected under IHL**, a claim which the court rejected. One video showed victims in orange overalls, tied up and hung from a scaffold by ISIS, while another depicted a seated man in camouflage clothing with his hands tied behind his back, with subtitles stating he was a captured soldier. Based on this evidence, the court determined that the victims were captured soldiers who were no longer participating in hostilities (*hors de combat*) and were therefore protected by IHL ⁽¹⁶⁶⁾.

Duress

154. Defendants may also argue that their actions were carried out under duress, seeking to absolve themselves of responsibility. In one Dutch case, a defendant was found guilty on appeal of outrages upon personal dignity. The conviction stemmed from the accused's act of posing beside a deceased, bloodied man in an orange jumpsuit hanging from a cross and subsequently sharing the photo on social media. The defendant argued he was forced to take the photo, but the court rejected this claim as implausible. The image showed him actively posing with 'a big smile' and he later requested to be sent the photo to use as his profile picture, suggesting pride rather than coercion. Furthermore, the defendant raised the duress claim only during trial, despite having had prior opportunities to do so at an earlier stage ⁽¹⁶⁷⁾.

5.2.3. Unlawful appropriation of property

155. When examining defences against allegations of pillaging, the narratives of the accused often centre on the lack of **intent and knowledge**. The stories of two defendants reveal different approaches to

these defences, though both ultimately faltered under scrutiny.

156. In the first case, the accused and her son moved into a house provided by ISIS from mid-September to mid-December 2015. The property was formerly the residence of Shiite military personnel who fled from advancing ISIS forces. According to her account, she only learned this fact later on and maintained that her use of the house was temporary and incidental. She argued that her actions were neither voluntary nor part of a deliberate effort to appropriate the property for personal gain ⁽¹⁶⁸⁾. Despite these claims, the court found her explanations unconvincing and found her guilty of this crime. Her statements during the investigation revealed that she was aware of the circumstances under which the house had been seized. Her claim that she lacked intent to benefit from the property was undermined by her knowledge of ISIS' practices and the fact that she did not take alternative steps to avoid using the house. In addition, the court stated that it was irrelevant that she received the house after it had been seized by ISIS, as 'appropriation' is not limited to the initial seizure of the property but also applies to the subsequent possession and use ⁽¹⁶⁹⁾. The fact that the owners had fled due to the threat posed by ISIS troops did not imply consent to abandon their belongings, as possession does not require their direct control over the goods ⁽¹⁷⁰⁾.
157. The second case presents different circumstances but a similar outcome. Here, the accused acknowledged that ISIS provided her and her husband with at least two properties as part of the organisation's support for its members. These properties were rent-free, furnished with looted goods and assigned by ISIS as part of their governance system ⁽¹⁷¹⁾. The defendant admitted that she knew that these homes had been seized from fleeing residents, but claimed that she would have left the home had the owners returned. Additionally, she emphasised her efforts to treat the homes with care, often carrying out repairs and leaving the properties in better condition than when she arrived ⁽¹⁷²⁾.

⁽¹⁶⁵⁾ The Netherlands, District Court of The Hague, 29 June 2021, Section 6.4.2, subsection 4.

⁽¹⁶⁶⁾ The Netherlands, District Court of The Hague, 29 June 2021, Section 6.4.2, subsection 2.

⁽¹⁶⁷⁾ The Netherlands, Appeals Court of The Hague, 26 January 2021, Section VII (Chapter 'Further evidentiary consideration regarding the charges proven under 2', sub-chapters 'Establishment of facts' and 'Discussion of the Defence concerning the photo being taken under duress').

⁽¹⁶⁸⁾ Germany, Dusseldorf Higher Regional Court, 4 December 2019, pp. 12–13.

⁽¹⁶⁹⁾ Germany, Dusseldorf Higher Regional Court, 4 December 2019, pp. 16–18.

⁽¹⁷⁰⁾ See paragraph 115 of this report.

⁽¹⁷¹⁾ Germany, Stuttgart Higher Regional Court, 5 July 2019, pp. 28, 29, 32 and 34.

⁽¹⁷²⁾ Germany, Stuttgart Higher Regional Court, 5 July 2019, pp. 56 and 75.

158. The court rejected these defences, pointing to her high-ranking position within ISIS and her detailed understanding of its policies. The systematic appropriation of property by ISIS was a key element of its strategy to consolidate power and the defendant knowingly participated in this scheme⁽¹⁷³⁾. The court stated the following:

The use of the house served not only for living comfortably, but also the objective pursued by the defendant, namely to reside on a permanent basis as an ISIS member in the city controlled by the organisation; to intensify the expulsion of the original owners, who in her view were infidels as they had fled; and, as a member of the organisation, to consolidate ISIS's claim to power by taking possession of the property, and to make it more difficult for opposing military organisations to recapture the region⁽¹⁷⁴⁾.

159. Ultimately, both cases reveal that claims of ignorance, temporary use, or care for property cannot shield defendants from allegations of pillaging when their actions occur within a broader context of systematic appropriation. The court emphasised that the accused in both cases were aware of the unlawful nature of their actions and had knowingly benefitted from the displacement and dispossession of others.

160. Lastly, in two separate Dutch cases the accused were acquitted of pillaging as a war crime. The court found that there was insufficient information to determine who originally owned the houses in question or whether the defendant resided in them without permission. While there was general evidence that ISIS confiscated homes in occupied areas, this does not conclusively establish that the specific houses involved in these cases were unlawfully seized. There is also no clear indication that the defendant's use of the properties occurred against the will of the rightful owners. As the absence of consent is essential to establish looting and the defendant's intent to permanently deprive the owners has not been proven, the court found that there is insufficient evidence to convict⁽¹⁷⁵⁾.

5.2.4. Reliability and attribution of open-source evidence

161. Open-source evidence, such as videos and social media content, is increasingly central to criminal trials but often challenged by the defence on grounds of **reliability** and **attribution**. A Dutch case involving the war crime of outrages upon personal dignity highlights the challenges of assessing the reliability of such evidence. In this case, the defence questioned the reliability of a YouTube video, pointing to uncertainties about its origin, timing and visual quality. On appeal, the court acknowledged that certain aspects of the video remained uncertain, including the identity of its creator and uploader and the precise time of the recording, and noted its poor visual quality. Nonetheless, it determined that these factors did not render the video unreliable. Investigators had secured the video using a rigorous process, obtaining relevant upload data and confirming the absence of any manipulation or staging. Though the video was a compilation, neither it nor its five source fragments were found elsewhere, adding to its authenticity. Moreover, the locations depicted in the video aligned with verified events in the case. Importantly, the court emphasised that the video was not assessed in isolation but corroborated by a witness statement, further strengthening its reliability⁽¹⁷⁶⁾.

162. The defendant also denied being the person depicted in the video, claiming he was in Türkiye (not Syria) at the time. However, forensic facial analysis, witness recognition of his voice and gestures, and links to a Turkish phone number and Twitter account further connected him to the events. Together, this evidence led the court to conclude that the video was reliable and that the accused was indeed the individual shown in the video⁽¹⁷⁷⁾.

163. In another case involving Telegram accounts used to disseminate ISIS extremist material, the defendant **admitted creating the accounts, but claimed that others had used them to post the content**. The court dismissed this defence, finding it implausible and unsubstantiated, as it was unlikely that others would need to use her accounts, given that they already had their own. Additionally, intercepted telephone conversations,

⁽¹⁷³⁾ Germany, Stuttgart Higher Regional Court, 5 July 2019, pp. 75–76.

⁽¹⁷⁴⁾ Germany, Stuttgart Higher Regional Court, 5 July 2019, p. 32.

⁽¹⁷⁵⁾ The Netherlands, District Court of The Hague, case number 71-283856-22, 26 April 2024, Section 6.4.3.1; the Netherlands, District Court of The Hague, case number 71/098061-22, 26 April 2024, Section 5.4. Please note that both judgements are in Dutch only and will be integrated into the report once the English translations are available.

⁽¹⁷⁶⁾ The Netherlands, Appeals Court of The Hague, 6 December 2022, Section 8.3.3.

⁽¹⁷⁷⁾ The Netherlands, Appeals Court of The Hague, 6 December 2022, Section 8.3.5.

mobile data and private Telegram chats linked the defendant to the Telegram account. Messages shared in private chats mirrored in-group chats, the timing of certain messages, and her personal conversations with key individuals, indicating that the defendant herself used these accounts. As a result, the court concluded that she consistently used the account to disseminate extremist material and rejected her defence that others were responsible for these actions ⁽¹⁷⁸⁾.

164. In a Swedish case, while not involving cumulative prosecutions but nonetheless relevant to this matter, YouTube videos played a central role as evidence against a Syrian asylum seeker convicted of the extrajudicial killings of seven captured Syrian soldiers. The video depicted the execution and showed the defendant in the footage. The Swedish National Forensic Centre conducted a thorough analysis, concluding that the individual in the video strongly resembles the accused. Their investigation confirmed that the footage had not been manipulated and verified at least six gunshots fired by the defendant. Furthermore, an examination of multiple videos estimated that seven bodies were thrown into the pit, reinforcing the credibility of other corroborating evidence in the case ⁽¹⁷⁹⁾.

165. In sum, these cases highlight that it is essential not only to collect open-source evidence properly, but also to supplement it with corroborative materials, such as witness statements, intercepted communications, and forensic tools like facial recognition. This comprehensive approach ensures that the evidence stands up to scrutiny and enhances its reliability.

⁽¹⁷⁸⁾ The Netherlands, District Court of The Hague, 29 June 2021, Section 4.5; the Netherlands, Court of Appeal, 11 September 2024, Section 'further considerations regarding fact 1'.

⁽¹⁷⁹⁾ Sweden, Stockholm Court of Appeal, 16 February 2017, paragraphs 15–25.

6. Sentencing

166. This section examines whether prosecuting terrorism alongside core international crimes results in higher sentences compared to terrorism-only cases. It further explores the mitigating and aggravating factors considered by courts in their sentencing decisions.

6.1. Sentencing in cumulative prosecution cases versus terrorism-only cases

167. The report is limited in assessing sentencing trends as it analyses a limited sample of 13 cumulative prosecution cases. As noted above, the vast majority of the selected cases for this report are German and Dutch judgments, as these two countries currently have the highest number of cumulative prosecutions. Consequently, comparisons are limited to these two jurisdictions.

168. Sentencing frameworks are encoded in the domestic legislation of each country. In Germany, the maximum sentence for members of terrorist organisations (excluding leadership figures, who face higher penalties) is 10 years of imprisonment⁽¹⁸⁰⁾. By contrast, sentences for core international crimes are significantly more severe, ranging from a minimum of 1 to 10 years (for war crimes against property or other rights) to life imprisonment (for crimes such as war crimes involving killing, crimes against humanity or genocide)⁽¹⁸¹⁾. Sentences in cumulative prosecution cases tend to be higher because the simultaneous commission of multiple crimes constitutes an aggravating factor under sentencing guidelines. This reinforces the principle that judicial decisions should comprehensively reflect the gravity and breadth of an individual's criminal conduct.

169. In the Netherlands, a maximum sentence of 15 years applies for participation in a terrorist organisation, excluding members in leadership positions, who face 30 years to life

imprisonment⁽¹⁸²⁾. Sentences for core international crimes range from a minimum of 10 years (war crimes) to life imprisonment (genocide, crimes against humanity)⁽¹⁸³⁾.

170. In terms of figures, between July 2019 and December 2024, the selected cases indicate an average custodial sentence of 5.2 years. Considering that 9 out of 12 defendants in the selected cases are women, it is noteworthy to examine how sentencing trends differ by gender. As noted in the first chapter, many of the female defendants were charged primarily with complicity in, being an accessory to, or aiding and abetting core international crimes, which generally result in lower sentencing than for men prosecuted as direct perpetrators⁽¹⁸⁴⁾. Indeed, in the selected cases, the average sentence for male defendants is 6.1 years, whereas for female defendants it is 5.5 years.

171. Although it is not possible to accurately compare the above data with external sources, due to variations in factors such as timeframe, severity of the charges, and dataset size, it is worth mentioning a report published in December 2023 by the International Centre for Counter-Terrorism (ICCT), which examines 45 cases of cumulative prosecution and compares their sentences to a randomised selection of 34 terrorism-only proceedings in Germany and the Netherlands. The dataset indicates that the average sentences for men and women are 6.4 years and 4.1 years, respectively. According to the ICCT's report, the average sentence for male defendants is 10.9 years for cumulative charges and 4.3 years for terrorism-only cases, whereas for female defendants the average is 5.3 years and 3.4 years respectively (Mehra, 2023, p. 88).

172. In sum, while the limited data considered in this report prevents us from drawing any conclusions, in Germany and the Netherlands there seems to be a trend which points to higher sentences in cumulative prosecution cases than in terrorism-only cases. Gender may also play a role in sentencing outcomes, with female defendants receiving shorter sentences than their male

⁽¹⁸⁰⁾ Section 129a, subsection (4) of the German Criminal Code.

⁽¹⁸¹⁾ German Code of Crimes against International Law.

⁽¹⁸²⁾ [Council of Ministers approves higher maximum sentencing for participation in a terrorist organisation | News item | Government.nl](#).

From 1 July 2025, the maximum sentence will increase from 15 to 20 years.

⁽¹⁸³⁾ Dutch International Crimes Act.

⁽¹⁸⁴⁾ See paragraphs 38–40.

counterparts. To draw more robust conclusions, further analysis with a larger dataset, including additional countries, would be necessary. Additionally, continued monitoring of sentencing patterns and an examination of factors, including gender, will contribute to a better understanding of sentencing practices in these complex cases.

6.2. Mitigating and aggravating circumstances

173. Common mitigating factors in the selected cases include (partial) confessions ⁽¹⁸⁵⁾, remorse ⁽¹⁸⁶⁾, cooperation with the investigation ⁽¹⁸⁷⁾, voluntary disengagement from terrorist groups ⁽¹⁸⁸⁾, participation in rehabilitation programs ⁽¹⁸⁹⁾, the absence of prior criminal records ⁽¹⁹⁰⁾, and difficult detention conditions ⁽¹⁹¹⁾. Conversely, aggravating factors include the length of membership in a terrorist organisation ⁽¹⁹²⁾, the severity of the crimes ⁽¹⁹³⁾, the accused’s role within the group ⁽¹⁹⁴⁾, and the number and age of victims ⁽¹⁹⁵⁾.

174. Specific considerations are highlighted in some cases, including the accused’s post-crime behaviour, such as distancing themselves from extremist beliefs ⁽¹⁹⁶⁾, or signs of recidivism ⁽¹⁹⁷⁾. The length and conditions of pre-trial detention, including difficult pre-trial detention conditions in the Kurdish camps in Syria and Iraq, were also considered ⁽¹⁹⁸⁾. Further, in a German case, the court took into account the impact of media coverage on the victim. The court noted that it exceeded the normal level, leading to the publication of her full name, uncensored photographs and her address, causing significant stress to the defendant ⁽¹⁹⁹⁾.

175. In cases involving female defendants, these factors can be different. Notably, courts have frequently considered as mitigating circumstances their subordinate roles within ISIS ⁽²⁰⁰⁾ and the control exerted by men over them ⁽²⁰¹⁾. However, courts have fully recognised the active role female members played in ISIS crimes, in line with ISIS’s ideology ⁽²⁰²⁾.

⁽¹⁸⁵⁾ Germany, Higher Regional Court of Hamburg, 27 July 2022, pp. 76 and 80; Germany, Higher Regional Court of Düsseldorf, 21 April 2021, pp. 43 and 47; Germany, Higher Regional Court of Hamburg, 2 October 2020, p. 56; Germany, Higher Regional Court of Düsseldorf, 29 April 2020, p. 33; Germany, Stuttgart Higher Regional Court, 5 July 2019, p. 88.

⁽¹⁸⁶⁾ Germany, Higher Regional Court of Düsseldorf, 16 June 2021, p. 62; Germany, Higher Regional Court of Düsseldorf, 21 April 2021, pp. 43, 45 and 47; Germany, Higher Regional Court of Düsseldorf, 29 April 2020, pp. 33–34.

⁽¹⁸⁷⁾ Germany, Higher Regional Court of Düsseldorf, 29 April 2020, p. 33; Germany, Stuttgart Higher Regional Court, 5 July 2019, pp. 88–89.

⁽¹⁸⁸⁾ Germany, Higher Regional Court of Düsseldorf, 29 April 2020, p. 33.

⁽¹⁸⁹⁾ Germany, Stuttgart Higher Regional Court, 5 July 2019, pp. 33–34.

⁽¹⁹⁰⁾ The Netherlands, District Court of The Hague, 21 April 2021, Section 7.4.

⁽¹⁹¹⁾ The Netherlands, Court of Appeal of The Hague, 11 September 2024 (the reasonable period of detention has exceeded at first instance and on appeal); Germany, Higher Regional Court of Düsseldorf, 21 April 2021, pp. 43–44 (particularly affected by the separation from her children associated with her custody awaiting trial); Germany, Stuttgart Higher Regional Court, 5 July 2019, p. 88 (under stricter conditions of proceedings for the protection of the state; in particular visits had taken place and must continue to take place with a glass partition).

⁽¹⁹²⁾ Germany, Higher Regional Court of Düsseldorf, 16 June 2021, p. 62; Germany, Stuttgart Higher Regional Court, 5 July 2019, p. 89.

⁽¹⁹³⁾ The Netherlands, District Court of The Hague, 11 December 2024, Section 7.3; the Netherlands, Court of Appeal of The Hague, 26 January 2021, Section VIII.

⁽¹⁹⁴⁾ The Netherlands, Appeals Court of The Hague, 6 December 2022, Section 16; Germany, Higher Regional Court of Hamburg, 2 October 2020, p. 54.

⁽¹⁹⁵⁾ Germany, Higher Regional Court of Düsseldorf, 16 June 2021, p. 63; Germany, Higher Regional Court of Düsseldorf, 29 April 2020, p. 34; Germany, Higher Regional Court of Hamburg, 2 October 2020, p. 56.

⁽¹⁹⁶⁾ Germany, Higher Regional Court of Düsseldorf, 16 June 2021, p. 63.

⁽¹⁹⁷⁾ The Netherlands, District Court of The Hague, 11 December 2024, Section 7.3; the Netherlands, Court of Appeal of The Hague, 26 January 2021, Section VIII.

⁽¹⁹⁸⁾ The Netherlands, Court of Appeal of The Hague, 6 December 2022, Section 16; the Netherlands, Court of Appeal of The Hague, 26 January 2021, Section VIII; Germany, Higher Regional Court of Hamburg, 27 July 2022, p. 76; Germany, Higher Regional Court of Düsseldorf, 21 April 2021, pp. 43–44.

⁽¹⁹⁹⁾ Germany, Higher Regional Court of Hamburg, 2 October 2020, p. 55.

⁽²⁰⁰⁾ Germany, Higher Regional Court of Düsseldorf, 21 April 2021, p. 46; Germany, Higher Regional Court of Hamburg, 2 October 2020, p. 55.

⁽²⁰¹⁾ Germany, Higher Regional Court of Hamburg, 2 October 2020, p. 55.

⁽²⁰²⁾ Germany, Higher Regional Court of Hamburg, 27 July 2022, p. 76; Germany, Higher Regional Court of Düsseldorf, 21 April 2021, p. 43; Germany, Higher Regional Court of Hamburg, 2 October 2020, p. 55.

7. Conclusion

176. The cumulative prosecution of terrorism-related offenses alongside core international crimes is essential for ensuring comprehensive accountability for FTFs and female returnees while delivering justice to victims. This approach effectively addresses the full spectrum of criminal activities committed by ISIS members, ranging from acts of terrorism to core international crimes such as enslavement, sexual violence and combat-related offences. By holding both male and female perpetrators accountable, it ensures that all individuals involved face justice, regardless of their gender or the nature of their participation.
177. The selected cases in this report demonstrate that, despite legal and practical challenges, the cumulative prosecution of terrorism-related and core international crimes is not only possible but also necessary. These cases provide a legal precedent that can guide future prosecutions in EU Member States and beyond, particularly in addressing legal challenges in prosecuting ISIS and its affiliates as both a terrorist organisation and a non-state armed group participating in a non-international armed conflict. The jurisprudence further provides insights into the interpretation of complex legal requirements for core international crimes, drawing from both domestic and international legal frameworks.
178. Lastly, it is apparent that the same body of evidence can often support charges for both categories of crimes. It is therefore important that, when initiating investigations into FTFs and female returnees for terrorism-related offences, national authorities also consider including charges of core international crimes from the outset, where applicable. This requires ensuring that witnesses are questioned comprehensively about events related to both types of crimes, and that documentary and forensic evidence is analysed through both legal lenses. By leveraging the overlap between terrorism and core international crimes, national authorities can strengthen prosecutions, enhance victim-centred justice and contribute to the global effort to hold ISIS members accountable for the full extent of their crimes.

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9. Annex: case-law handbook

This annex complements the main report by providing concise summaries of the key legal and factual aspects of each selected case. These summaries are intended to enhance the reader's understanding by providing greater clarity and context for each case, allowing for a more focused examination of individual judgments. The summaries offer the facts and core findings without delving into an exhaustive analysis of every legal requirement or point of law. By presenting these highlights, the annex enriches the overall report and provides a valuable resource providing clarity on specific cases.

Case 1

The Netherlands, District Court of The Hague

Case numbers 71/283722-22 and
71/256885-24, 11 December 2024

Summary of the facts

The accused was found guilty of participation in a terrorist organisation, preparatory acts and enslavement, and sentenced to 10 years of imprisonment. On 17 February 2015, the accused travelled to Syria with her four-year-old son. Shortly after her marriage to an ISIS fighter, the accused and her son moved into the home of another ISIS fighter for one month, where a Yazidi woman (victim 1) was enslaved. Victim 1 was forced to perform housework and subjected to sexual and other forms of violence. The accused ordered her to perform tasks for herself and her son, which the court considered to amount to forced labour. In relation to another victim (victim 2), the court acquitted the accused of charges of enslavement due to significant discrepancies in the victim's statements regarding the accused's actions.

Participation in a terrorist organisation

Legal requirement. Section 140(a)(1) of the Dutch Criminal Code criminalises participation in an organisation whose purpose is the commission of terrorist offences. The organisation, whether stable or fluid in composition, must

aim to commit serious offences listed in Section 83 of the Dutch Criminal Code, provided they align with the terrorist objective defined therein. A terrorist objective means the objective to cause serious fear in the population or a part thereof, or to unlawfully compel a public authority or international organisation to act or to refrain from or tolerate certain acts, or to seriously disrupt or destroy the fundamental political, constitutional, economic or social structures of a country or an international organisation. Participation in a terrorist organisation requires that the accused be a member and contribute to actions directly aimed at or related to the realisation of the objective to commit terrorist offences. Such contribution may consist of committing or co-committing the offences, and providing assistance that, while not necessarily punishable on its own, serves to further the organisation's purpose. It is sufficient that the accused generally knows that the organisation has the commission of terrorist offences as its purpose. However, the accused does not need to intend to commit specific offences, nor personally participate in offences carried out by members of the organisation.

Court assessment. The court found that the accused participated in ISIS from 17 February 2015 to 26 February 2019. In reaching this decision, it considered that established case-law identified ISIS as a terrorist organisation aiming to destroy Syria and Iraq's political structure, instil fear and impose Sharia law through violence. The court determined that the accused actively furthered ISIS's terrorist objectives. She knowingly travelled to the so-called caliphate despite warnings from the police and care providers, married an ISIS fighter, lived off ISIS financial support, adhered to its rules, and managed her household and raised children in accordance with its ideology. She also spread extremist views to her family and publicly displayed allegiance to ISIS.

Preparatory acts for terrorism

Legal requirement. Under Article 96(2) of the Dutch Criminal Code, preparatory and facilitation acts are punishable regardless of their result. It is required that the perpetrator undertakes the act with the intention of preparing or promoting the terrorist offence. Conditional intent to prepare or promote a terrorist offence is not sufficient. Isolated acts may not amount to punishable preparation but, when viewed collectively, they may demonstrate the intent to prepare and promote a crime.

Court assessment. The court found the accused guilty of having committed preparatory acts from 17 February 2015 to 26 February 2019, including adopting extremist ideas, obtaining information about travelling to the conflict zone, travelling to Syria, joining ISIS fighters and carrying firearms. It determined that she embraced ISIS's ideology and supported its armed struggle before travelling to Syria, as evidenced by photos of ISIS flags, weapons and fighters on her Facebook account. The accused's travel to Syria and association with ISIS fighters confirmed her commitment. The conviction for carrying firearms was based on the accused's admission of this fact and on a witness testimony. However, the accused was acquitted of 'contributing to the armed jihad' due to insufficient evidence in this respect. She was also acquitted of 'sharing ISIS propaganda' as the messages to her father were considered private and cannot be qualified as such.

Crime against humanity: enslavement

Legal requirement. Article 4 of the International Crimes Act (ICA) criminalises slavery as a crime against humanity, stating that slavery is the 'exercise over a person of one or all of the powers associated with the right of ownership'. The ICA reflects the ICC's Rome Statute and therefore the court has taken into consideration the ICC's *Elements of Crimes*. Jurisprudence from international courts stipulates that the court must assess whether one or all of the powers associated with the right of property have been exercised over a person. It is not required that a person has been 'acquired' or 'alienated' for monetary or other consideration. The deprivation of liberty of the victim can take various forms, including situations in which a victim is not physically locked up, but is otherwise unable to leave because she has nowhere else to go and fears for her life.

Court assessment. The court found the suspect guilty of complicity in the crime against humanity of enslavement concerning victim 1, from 1 May 2015 to 1 October 2015. The victim was enslaved by the ISIS fighter in whose house the suspect stayed for a month. The victim was forced to perform housework (laundry, cooking, cleaning) and endure sexual and other forms of violence. Although she had a key to the house at one point, the court ruled

that escape was not a viable option, given her status as a Yazidi woman in the caliphate and her unwillingness to flee without her children, who had been captured by ISIS but were staying in her vicinity. The court found that the accused, aware of the victim's enslavement, worsened her situation by assigning tasks she could not refuse out of fear of repercussions, thereby reinforcing her servitude. However, the accused was acquitted in relation to victim 2, who lived in the house of yet another ISIS fighter and alleged that the suspect had also forced her to do housework. The court found significant, irreconcilable discrepancies in the victim's statements with regards the actions of the suspect, rendering them unreliable as evidence.

Placing and keeping a minor in a helpless condition

Court assessment. The court found the accused guilty of this charge from 17 February 2015 to 26 February 2019. It determined that the accused knowingly took her minor son to a conflict zone while fully aware of the ongoing war, wilfully exposing him to significant risks to his life and health and placing him in a helpless state. Evidence from her text messages and her statement revealed that the child was exposed to bombings and shelling and was deprived of essential care, worsening his developmental problems. His stay in Syria and Iraq had severe adverse effects on his development. While the inability to leave a conflict zone can be considered, messages revealed the accused repeatedly invited her father to join her in Syria, indicating no intent to leave.

Sentencing

The accused was sentenced to 10 years of imprisonment. The court considered the accused's extremist views as an aggravating factor. As mitigating circumstances, it considered her lack of direct involvement in the armed struggle and her prolonged stay in Kurdish detention camps. The court also took into account the assessment of mental health experts who determined that she had a mild intellectual disability and other personality disorders at the time of the offences and therefore concluded that the charges could be attributed to her to a lesser extent.

Case 2

The Netherlands, Court of Appeal of The Hague

Case number 22-002037-21, 11 September
2024 (currently only available in Dutch)

Summary of the facts

The Court of Appeal found the accused guilty of participation in an organisation with the aim to commit terrorism-related offences and war crimes and violate the Sanctions Act 1977. The charges were based on messages and documents shared by the accused from 1 January to 10 October 2019 in multiple Telegram groups of ISIS supporters, some of which she administered. The accused operated from her home in the Netherlands. The Court of Appeal acquitted the accused of the war crime of outrages upon personal dignity, and of incitement and dissemination to incite to commit such a crime. The accused was sentenced to three years of imprisonment.

Participation in an organisation with the aim to commit terrorist crimes and war crimes

Legal requirement. See Case 1 above and Section 5.4.5 of the District Court judgment ⁽²⁰³⁾.

Court assessment. The Court of Appeal found the accused guilty of participation in an organisation with the aim to commit terrorist and war crimes. It upheld the District Court's decision that, as an administrator and member of several extremist Telegram groups, from January to October 2019, the accused played an active role in spreading ISIS propaganda. She shared materials glorifying jihad, instructions for making explosives, and calls for financial and armed support for ISIS. The court determined that the accused's actions went beyond mere ideological sympathy. By distributing propaganda and facilitating ISIS' media strategy, she knowingly contributed to its objectives, including recruitment and inciting violence.

Training for committing a terrorist crime

Legal requirement. Article 134a of the Dutch Criminal Code makes it a criminal offence to cooperate (as a trainer) and participate (as a trainee) in training courses for terrorism. Training is defined as 'acquiring or transferring knowledge or becoming proficient in skills or techniques'. The law addresses a range of training scenarios, from physical terrorist training camps to virtual or self-directed learning. In such cases, factors such as the type and coherence of training materials, the circumstances of their use and how often they are consulted are considered. For trainers, conditional intent suffices, allowing prosecution if they knowingly expose themselves to the considerable chance that their students follow that training with a view to committing a terrorist offence. For trainees, it must be proven that they had the intention to acquire knowledge or skills with the specific aim of committing a terrorist offence.

Court assessment. The Court of Appeal upheld the District Court's judgment convicting the accused of training to commit terrorist crimes. It found that the accused has fully embraced ISIS's radical extremist ideology, actively sought to gather knowledge about terrorist activities and shared materials intended to promote and facilitate terrorism. More specifically, the court found that the message titled 'Take precautions, traps on the path of Jihad', which the accused shared in a Telegram group of like-minded individuals, amounted to training for terrorism. The message outlined ways to contribute to jihad, including travelling to conflict zones, providing financial support and avoiding detection by intelligence services. By sharing this message, the accused knowingly exposed herself to the risk that others might use the information to commit terrorist crimes. Regarding the 'Instructions for making explosives and a bomb belt' found on the accused's Huawei tablet, the Court ruled that the accused had trained herself in committing terrorist crimes through this material. As for a message titled 'Knife attacks', while it provided specific instructions for carrying out such attacks, the court found insufficient evidence to prove that the accused had authored, shared or even reviewed this message. Therefore, she was acquitted of any criminal liability in this regard.

⁽²⁰³⁾ The Netherlands, District Court of The Hague, 29 June 2021.

Incitement and dissemination to incite to commit a terrorist offence in preparation for or facilitation of a terrorist offence, and incitement and dissemination to incite to commit war crimes

Legal requirement. Articles 131 and 132 of the Dutch Criminal Code criminalise incitement and dissemination for the purpose of incitement to any punishable criminal offence. It must be clear from the facts and circumstances that, if the message called for were to be carried out, it would constitute a criminal offence. What is decisive is not whether someone feels incited to commit the act, but whether the expressions are such that someone could be led to commit that act. This includes both direct calls to action and indirect influence. In relation to the intent, the perpetrator must have wilfully and knowingly accepted the significant likelihood that others could be influenced to commit criminal acts. Additionally, the content must be made public, which includes social media posts. When assessing incitement via social media, the courts evaluate the content of individual messages, their collective scope, the wording, intent, context, platform and target audience. Such assignments must balance the right to freedom of expression (Article 10 of the European Convention on Human Rights) with the need to protect public order.

Court assessment. The Court of Appeal upheld the District Court's conviction of the accused for incitement and dissemination of materials to incite the commission of terrorist offences. On 21 and 27 June 2019, the accused posted an inflammatory message in two telegram group chats with six and eight participants, respectively. The message urged men to defend the Islamic community by killing unbelievers through actions such as driving over or stabbing them, glorifying martyrdom as a path to paradise. The court determined that, in doing so, the accused wilfully and knowingly accepted the considerable chance that others would feel called upon to commit terrorist attacks of such nature.

Additionally, between 25 and 27 September 2019, as an administrator of three Telegram groups, the accused shared six propaganda videos, an image of a bloody hand with a text glorifying violence, and five posters advocating attacks against unbelievers. These Telegram groups had memberships ranging from 56 to 137 individuals. The court ruled that the content of these materials was incitive, emphasising that even messages not explicitly urging criminal acts can be considered as such, given their placement in groups targeting ISIS sympathisers. This is further reinforced by the fact that these messages cannot be easily deleted from Telegram, remain permanently accessible and could be repeatedly viewed.

The accused was acquitted in relation to a beheading video found on her Huawei tablet. While the digital investigation report suggested that it was obtained via Telegram, the court found this insufficient to prove that the accused intended to disseminate it. Additionally, she was acquitted of 'incitement and dissemination to incite the commission of the war crime outrages upon personal dignity' in relation to two videos depicting the brutal execution of ISIS opponents, one of which was accompanied by a caption. Since the court had acquitted the accused of the charge of committing a war crime (see below), it concluded that the alleged incitement to such a crime could also not be substantiated.

War crimes: outrages upon personal dignity

Legal requirement. The crime of outrages upon personal dignity is criminalised in Article 6(1)(c) of the ICA. The court has taken into account the criteria laid out in the ICC's *Elements of Crimes*. Further, ICTY case-law considers acts committed intentionally that are seriously humiliating or degrading. Factors include the form, duration and intensity of the act, mental suffering, and cultural or religious background. The humiliation must be substantial and serious but need not be permanent. Physical or mental pain is not required, but the defendant must have known the consequences of their conduct. The victim need not be aware of the act; deceased persons can also be victims. IHL protects the deceased's dignity after death, prohibiting looting, mutilation and dehumanisation.

Court assessment. The Court of Appeal acquitted the accused of outrages upon personal dignity, overturning the District Court's conviction. The accused shared two official ISIS propaganda videos on 25 and 26 September 2019 in a closed Telegram group with 80 like-minded members. The first video showed the execution of four men set alight while hanging from scaffolding, the second depicted the execution by gunfire of a man in camouflage clothing. Both videos were accompanied by captions promoting acts of violence. However, the court concluded that while the accused's actions were deemed inappropriate and disrespectful, they did not constitute serious humiliating or degrading treatment. The videos were already widely disseminated through official ISIS channels before being shared by the accused. Also, the distribution occurred in a closed group and there was no clear evidence of further harm to the victims' families.

Violation of the Sanctions Act 1977

Legal requirement. The Sanctions Act 1977 establishes a legal framework for enforcing international sanctions. It was amended in 2002 to explicitly include the combating of terrorism. The Netherlands implemented these resolutions through regulations that ban providing financial services or resources to designated terrorist individuals or organisations. Notably, ISIS was added to the UN's sanctions list in 2013, reinforcing prohibitions on financial support for ISIS and similar groups. Violating these regulations is an offence and is punishable under the Sanctions Act 1977, regardless of the accused's knowledge of the prohibition, as long as the unlawful conduct is intentional.

Court assessment. The Court found the accused guilty of violating the Sanctions Act 1977. On 21 September and 1 October 2019, she intentionally transferred EUR 200 and EUR 300, respectively, through intermediaries to two individuals who were subject to sanctions at the time. The defendant's claim that she was unaware of their status on the sanctions list was deemed irrelevant, as was her defence that these individuals had been acquitted of terrorism-related charges in Türkiye and should have not been on the sanctions list.

Sentencing

The Court of Appeal reduced the accused's sentence from six to four years of imprisonment, considering her acquittal for the war crime of outrages upon personal dignity and the incitement thereof. Mitigating factors included the accused's mental health condition (multiple sclerosis), which caused cognitive impairments and influenced her actions, reducing her responsibility. The court also ordered mandatory psychiatric treatment and recommended long-term supervisory measures to mitigate future risks.

Case 3

The Netherlands, Court of Appeal of The Hague

Case number 2200128321v,
6 December 2022

Summary of the facts

The Court of Appeal found the accused guilty of participating in an organisation whose objective is committing terrorist offences but acquitted them of the war crime of outrages upon personal dignity. He was sentenced to five years and four months imprisonment. The defendant is Syrian and applied for asylum in the Netherlands in 2019. He was a member of the Liwa' al-Adiyat brigade within Ahrar al-Sham, a radical Islamist movement that sought to shape the Syrian uprising against the Assad regime. The offences were committed in Syria between 1 March 2015 and 1 July 2017. The accused appeared in a YouTube video showing Ahrar al-Sham fighters celebrating their victory in the battle of Al-Ghab, shouting slogans and engaging in disrespectful behaviour towards the bodies of the deceased government soldiers, including placing a foot on a body, and kicking and spitting on the deceased persons.

Participation in an organisation whose objective is to commit terrorist offences

Legal requirement. See Case 1 above and Section 10.1 of this judgment.

Court assessment. The court reaffirmed its prior ruling in previous cases, classifying Ahrar al-Sham as a terrorist organisation. It concluded that Ahrar al-Sham had terrorist intent, aiming to overthrow Bashar al-Assad's regime, establish an Islamic state and instil fear in part of the population. To achieve these goals, the group committed several terrorist offenses, including murder and manslaughter. While the defence argued that Ahrar al-Sham adopted a more moderate stance after 2013, the court found that it continued to pursue its objectives through violence and collaborated with groups like Jabhat al-Nusra. The court also emphasised that opposing a widely criticised regime does not justify or negate the unlawful intent to terrorise the population.

The court further determined that the accused knowingly participated in an organisation whose objective was to commit terrorist offences. His active role as a fighter, along with his actions in the videos, directly contributed to the realisation of Ahrar al-Sham's objective. Given the widely known presence of jihadist groups terrorising Syria at the time, the accused was aware of the organisation's intent. His engagement on social media, including comments and Twitter activity, further demonstrated his awareness and alignment with the group's goals, members and alliances.

War crime: outrages upon personal dignity

Legal requirement. See Case 2 above and Section 9.3 of this judgment.

Court assessment. The Court of Appeal overturned the District Court's decision ⁽²⁰⁴⁾ and acquitted the accused of outrages upon personal dignity. In a YouTube video featuring the accused, Ahrar al-Sham fighters are seen celebrating their victory in the battle of Al-Ghab, shouting slogans and engaging in disrespectful acts towards the bodies of deceased government soldiers, including placing a foot on a body, and kicking and spitting on them. While the court acknowledged the distasteful and disrespectful nature of these actions, it ruled that they did not meet the legal threshold for outrages upon personal dignity. It noted that, although the deceased soldiers were protected under IHL, they were no longer suffering physically or mentally, and their bodies remained largely undisturbed and were not displayed as trophies. The court also considered the brief and subtle nature of the acts, emphasising that the focus was on celebrating victory rather than deliberately degrading the dead. Additionally, while the impact on surviving relatives can be relevant in assessing such a crime, no evidence was provided on this aspect by the prosecution.

Sentencing

The Appeals Court reduced the accused's sentence from six years of imprisonment, as imposed by the District Court, to five years and four months. Mitigating factors included the accused's background, having been born and raised in Syria rather than voluntarily travelling there. The court also considered his lack of Dutch nationality or permanent residency, which, along with his likely ineligibility for conditional release and the absence of previous convictions, contributed to the sentence reduction.

⁽²⁰⁴⁾ The Netherlands, District Court of The Hague, 21 April 2021.

Case 4

Germany, Higher Regional Court of Hamburg Case number 3 ST 2/22, 27 July 2022

Summary of the facts

The accused was found guilty of participation as a member in a foreign terrorist organisation, war crime against property, enslavement, deprivation of liberty, torture and genocide. She was sentenced to five years and six months. The accused, a German national, joined her brother (an ISIS fighter) in Syria in April 2014. Over the course of three years, she married four ISIS fighters in succession, two of whom were known jihadists, including one who held a high-ranking position within ISIS. At different points in time, she took possession of three houses belonging to Kurdish occupants who had been displaced by or had fled from ISIS – two in Tal Abyad and one in Raqqa. Additionally, she also received financial support from ISIS. Further, one of her husbands brought a Yazidi slave into their home, where the accused lived with her for about three weeks. The accused forced the Yazidi woman to do household chores and physically assaulted and abused her on three occasions. She was also aware that her husband beat and raped the victim and facilitated these acts.

Participation as a member in a foreign terrorist organisation

Legal requirement. Participation as a member in a foreign terrorist organisation is criminalised under Sections 129a and 129b of the German Criminal Code (StGB). Membership requires formal integration of the offender into the organisation, though no explicit declaration is required. However, it is necessary for the perpetrator to hold a position within the group which distinguishes them from non-members. Merely supporting the organisation is insufficient. A person cannot become a member simply by aligning with or acting on the group's behalf. Membership exists only if both the individual and the organisation mutually acknowledge participation. The member's support may consist of a direct contribution to achieving the goals of the organisation; it may also be aimed at merely creating

or maintaining foundations for the organisation's activities. Promoting the establishment, cohesion or activity of the organisation is therefore sufficient.

Court assessment. The court found the accused guilty of membership in a foreign terrorist organisation. It determined that ISIS qualified as a terrorist organisation and that the accused had fully integrated herself into it, actively participating as a member. She voluntarily travelled to Syria, remained there for three years, and married four ISIS fighters. She adopted the views of ISIS, including its treatment of the Yazidis, and actively engaged in membership activities. Additionally, she accepted material and financial support from ISIS.

War crime against property

Legal requirement. Section 9(1) of the German Code of Crimes against International Law (VStGB) criminalises war crimes against property. Appropriation consists of the seizure of an object against or without the will of the entitled party over a not insignificant period of time, whereby it is not necessary for the perpetrator to permanently transfer the object to his assets or to have the intention to do so.

Court assessment. The court found the accused guilty of unlawfully appropriating property for one instance of appropriation in Tal Abyad. The accused lived for several months in a house abandoned by its Kurdish occupants, who had either fled or been displaced by ISIS due to their opposition to the group. By residing in the property under these circumstances, the court determined that she had appropriated it. However, she was acquitted of unlawfully appropriating two other dwellings, as there was insufficient evidence to prove that the homes belonged to the opposing parties.

Crime against humanity: enslavement and serious deprivation of liberty

Legal requirement. Enslavement is the exercise of all or some of the powers associated with a right of ownership over a person. See also the legal requirement in Case 6 below.

Court assessment. The court found the accused guilty of enslavement and serious deprivation of liberty as a crime against humanity. By holding the victim in captivity for several weeks, supervising her and issuing orders which she had to obey against her will, the accused effectively deprived the victim of her freedom and subjected her to enslavement. The court determined that the accused

was aware that enslavement was part of ISIS's broader campaign against the Yazidis. As such, these crimes were directly linked to the systematic persecution of the Yazidi community.

Crime against humanity: persecution

Legal requirement. The persecution of identifiable groups or communities is criminalised under Section 7(1) (10) of the VStGB. Accordingly, persecution is the deprivation or restriction of fundamental rights on the grounds of religion or gender, among others. While persecution can target a group as a whole, acts directed against individuals may also constitute an offence if the individuals are targeted as representatives of an identifiable group. See also Case 6 below.

Court assessment. The defendant and her husband participated in the enslavement of a Yazidi woman, depriving her of basic human rights as part of ISIS's broader persecution of the Yazidis, aimed at destroying their religious community. The victim was targeted specifically as a Yazidi woman, representing an identifiable religious group. Both the defendant and her husband shared ISIS's religious motives and acted with the intent to discriminate against her on these grounds.

However, the court did not recognise additional persecution based on gender as it considered that the Yazidis were primarily persecuted uniformly, both in the overall context and in the present case, mainly because they belonged to the Yazidi community. Additional discrimination on grounds of gender can only be considered for the gender that is subject to further persecution measures on grounds of gender.

Genocide

Legal requirement. Serious bodily or mental harm falling within the scope of Section 6(1)(2) of the VStGB must constitute harm that impairs the victim's ability to lead a normal life in the long term. Indeed, rape and sexual violence constitute the infliction of serious harm on the victim and are, according to the chamber, one of the worst ways of inflicting harm on the victim, as he or she suffers both bodily and mental harm.

Court assessment. The court found that her husband caused serious harm to the victim as a result of rape and acted deliberately with the intention of destroying the Yazidi group. It further found the accused guilty of aiding genocide by inflicting grievous physical and psychological harm to a Yazidi woman enslaved by her and her

husband. She participated in the victim's enslavement by ensuring that she did not escape and intentionally facilitated her husband in perpetrating the crimes of rape and sexual violence against the victim. As a member of ISIS, the accused was fully aware that slavery and sexual exploitation were integral to ISIS's policy and its systematic attack on the Yazidi minority.

Crimes against humanity and the war crimes of torture and rape

Legal requirement. Sections 7(1)(5) and 8(1)(3) of the VStGB criminalise torture as a crime against humanity and a war crime, respectively: whoever tortures a person in their custody or otherwise under their control by causing that person substantial physical or mental harm or suffering where such harm or suffering does not arise only from sanctions that are compatible with international law.

Sections 7(1)(6) and 8(1)(4) of the VStGB criminalise rape and other conduct of sexual violence as a crime against humanity and a war crime: whoever commits sexual assault, sexual coercion, rape, enforced prostitution, sexual slavery or enforced sterilisation against a person; confines a forcibly impregnated person with the intention of affecting the ethnic composition of any population or in order to commit offences under Sections 6 to 13; or aborts a pregnancy against the will or without the consent of the pregnant person.

Court assessment. The court also found the accused guilty of aiding in the crime against humanity of torture, rape and the infliction of significant emotional harm, and aiding in a war crime against persons by cruel and inhumane treatment and rape by encouraging the rape of the Yazidi victim. The court referred to the same reasons as for the crime of genocide, stating that the actions of the defendant also constitute torture as a crime against humanity. As a slave, the victim was in the custody of her husband and the defendant, and she was thus under their control. Through the rape, her husband caused the victim considerable mental suffering, which the defendant also intentionally encouraged. She acted intentionally and in full knowledge of the consequences of her actions.

Further, concerning the war crimes of rape and cruel treatment, the court considered that the defendant's husband, as a member of ISIS, sought to fight 'infidels', including the Yazidi community. The victim was a civilian not participating in hostilities and therefore protected under IHL. The crimes cannot be separated from the ongoing armed conflict. The defendant aided in subjecting a person protected under IHL to cruel or inhuman treatment through rape, causing her serious mental suffering.

Sentencing

The accused is sentenced to five years and six months of imprisonment. The court considered the accused's membership in ISIS, a particularly dangerous and violent organisation, as an aggravating factor. In relation to the crimes committed against the victim, the court noted that the accused did not proactively seek a slave and that, even without her complicity, the crimes would have most likely still occurred. However, the accused accepted the system of enslavement of the Yazidi women in accordance with ISIS's ideology and mistreated the victim, including through beatings.

Case 5

France, Criminal Chamber of the Supreme Court (*Cour de Cassation*)

Appeal No 19-87.367, 7 September 2021

Summary of the facts

Lafarge SA, a French company, commissioned a cement plant near Jalabiya, Syria, in 2010. The plant was owned and operated by its subsidiary, Lafarge Cement Syria (LCS), a Syrian-registered company in which Lafarge held a majority stake of over 98 %. Between 2012 and 2015, as the region fell into conflict and came under the control of various armed groups, including ISIS, LCS's Syrian employees continued working while foreign management was evacuated. The employees were exposed to a number of risks, including extortion and kidnapping by various armed groups. During this time, LCS made payments through intermediaries to armed groups that controlled the area and were in a position to compromise the activity of the cement plant. The plant was finally evacuated in September 2014, shortly before ISIS seized it.

Financing a terrorist organisation

Legal requirement (intent). Under Section 421-2-2 of the French Criminal Code, it must be established that the person authorising the funds knew that the supplied funds are destined to be used by the terrorist organisation to commit a terrorist act, whether or not that act materialises. It is irrelevant that the author does not intend for the funds to be used for this purpose.

Court assessment. An internal investigation and report conducted by the Lafarge-Holcim Group revealed that payments were made to armed groups through intermediaries using LCS accounts. The court noted that there was an attempt to deliberately conceal these transactions, as they were manually recorded instead of being processed electronically, contrary to standard practice. Additionally, the operational managers of LCS, with the agreement or even instructions from their supervisors at Lafarge SA, facilitated these payments to ensure the plant's continued operation. The court also found that Lafarge SA was aware of ISIS's status as a terrorist organisation. The company received regular briefings on the situation in Syria through weekly meetings

of its security committee whose reports highlighted the increasing difficulty of operating without negotiating with terrorist networks.

Complicity in crimes against humanity

Legal requirement (crimes against humanity). According to Section 212-1 of the French Criminal Code, a crime against humanity consists, in particular, of a deliberate attack on life, enslavement, forced movement of people, torture, rape, forced prostitution, persecution of any identifiable group or community for reasons in particular of a religious nature, where these crimes are committed in execution of a concerted plan against a section of the civilian population in the context of a generalised or systematic attack.

Legal requirement (complicity). According to Section 121-7 of the French Criminal Code, anyone who, by aiding or abetting, knowingly facilitates the preparation or execution of a crime or an offence is considered an accomplice. For crimes against humanity, it is not required that the accomplice belongs to the organisation responsible for the crime, supports a concerted plan against civilians in a widespread or systematic attack, or approves the commission of the underlying crime. It is sufficient that the accomplice knows such crimes are being or will be committed and that their assistance facilitates their preparation or execution. This requirement applies to both natural persons and legal entities.

Court assessment. The court overturned an earlier decision which had acknowledged evidence of crimes against humanity committed by ISIS and affiliated groups in Raqqah and Aleppo but had dismissed the indictment against Lafarge SA for complicity in such crimes. The previous ruling concluded that Lafarge SA's payments to ISIS were made to ensure the cement plant's continued operation and did not show an intention to support ISIS's criminal activities. On the contrary, the Supreme Court found that paying millions of dollars to a criminal organisation was sufficient to constitute complicity in aiding and abetting those crimes. The court added that it was irrelevant whether the payments were made for commercial purposes, as this was a consideration related to motive and rather than intent. The court therefore confirmed the indictment against Lafarge SA for complicity in crimes against humanity.

Sentencing

Not applicable as this is an interlocutory decision issued in the course of an ongoing judicial investigation.

Case 6

Germany,
Higher Regional Court of Düsseldorf
Case number III-7 stS 3/19, 16 June 2021

Crime against humanity: enslavement and enslavement resulting in death

Legal requirement. Enslavement is criminalised under Section 7(1)(3) of the VStGB. Enslavement is understood to mean the exercise of an arrogated ‘right of ownership’ over a person. The offence of slavery includes acts involving the perpetrator’s forcing a person to submit to their will and their interests and denying them the freedom to exercise their autonomy. Control over the victim’s movements, the victim’s vulnerability, acts of abuse, and financial control over or exploitation of the person in question are significant indications of enslavement. Enslavement need not necessarily involve the victim being ‘bought’ or ‘sold’ using money or any other form of consideration, or the exercise of the ‘right of ownership’ lasting for a prolonged period of time. However, those aspects can be strong evidence of this crime.

A death can be considered to be caused ‘through an offence pursuant to subsection (1), no. 3’ if it occurs as a result of the act of enslavement itself or if it occurs during the situation created by the enslavement, and in particular as a result of the treatment suffered by the victim. However, the death of the victim as a result of a common or everyday risk, even if occurring while the victim is under the perpetrator’s physical control, is not attributable to the perpetrator if the death was not the consequence of risks specifically and typically associated with the basic offence.

Court assessment. The court found the accused guilty of co-perpetration for enslavement. It determined that the enslavement of seven Yazidi women and girls occurred as part of a systematic and widespread attack against a civilian population. The accused, together with her husband, enslaved Yazidi women and girls who had been captured by ISIS. She forced them to perform domestic tasks without compensation, denied them autonomy and religious freedom, and beat them when they disobeyed. The court found that she acted intentionally, fully aware of and furthering ISIS’s campaign against the Yazidis.

The accused was also found guilty of enslavement resulting in death for one of the victims. The court found that the death of one of the Yazidi women was a direct consequence of the conditions of her enslavement by the accused and her husband. The victim was forced to live in a conflict zone targeted by airstrikes against ISIS. The risk of injury or death was significantly heightened by her status as a slave, as she had no choice but to accompany the accused’s husband (who took a route where further strikes were expected) on a shopping trip.

Summary of the facts

The accused, a German national, was found guilty of membership in a foreign terrorist organisation, enslavement, persecution and aiding and abetting rape. She was sentenced to six years and six months imprisonment. From November 2013 to October 2017, she lived in Syria and married an ISIS member. During this time, the accused supported her husband’s activities, housed ISIS newcomers and encouraged others to join jihad. Between mid-September 2015 and October 2017, the accused and her husband enslaved five Yazidi women and two underage Yazidi girls, forcing them into domestic labour and subjecting them to sexual violence. The accused punished disobedience with beatings and approved of her husband’s exploitation of the victims. In autumn 2017, one of the enslaved Yazidi girls was killed during an attack while shopping for the accused’s household. The accused was arrested upon return to Germany on 21 September 2018.

Participation as a member in a foreign terrorist organisation

Legal requirement. See Case 4 above and pages 49–50 of this judgment.

Court assessment. The court reaffirmed that ISIS is a foreign terrorist organisation whose objectives and activities are directed at the commission of murder, crimes against humanity and other offences. The accused was found guilty of participating as a member of a foreign terrorist organisation. She actively promoted ISIS’s objectives and deliberately integrated herself into the group. She married an ISIS member under Islamic rites and through marriage, if not earlier, became part of the organisation by mutual agreement. The birth of her children in ISIS-controlled territory further contributed to establishing and maintaining ISIS’s caliphate. Further, she facilitated her husband’s duties within ISIS by managing their household, temporarily housing new recruits and attempting to persuade family members to join ISIS in Syria. She and her husband received a monthly payment of USD 118 from ISIS.

Crime against humanity: persecution on religious and gender grounds

Legal requirement. Persecution is criminalised under Section 7(1)(10) of the VStGB. The element necessary for the defendant's actions to constitute a crime against humanity is the persecution of an identifiable group or collectively by depriving or substantially restricting that group or collective's fundamental human rights, committed as part of the ISIS attack directed against the Yazidis. Persecution may be directed against a group as a whole; however, individuals can also be the victims of persecution if they are attacked as representatives of an identifiable group.

A perpetrator has religious motives if they discriminate against a victim on the grounds of the victim's affiliation with a specific religious community. Persecution can be gender-specific in particular if a man and a woman who are members of the same affected group are attacked in different ways or through different forms of violence depending on their gender. The discriminatory intent of the defendant needs to be proven.

Court assessment. The court found the accused guilty of persecution on religious and gender grounds. Her actions severely restricted the fundamental rights of the Yazidi women through enslavement. The accused acted intentionally and with discriminatory motives, targeting her victims based on their religion and gender. As part of ISIS's broader campaign against the Yazidis, men were forcibly separated and largely executed, while women were enslaved. In line with ISIS's ideology, the accused enslaved the women in her household specifically because they were Yazidi and female.

Crime against humanity: rape

Legal requirement. Rape is criminalised under Section 7(1)(6) of the VStGB. Whoever sexually coerces or rapes another person as part of an attack directed against a civilian population has committed a criminal offence under this provision. The element of sexual coercion is always present if the perpetrator uses force or the threat of serious harm or exploits a situation in which an individual is unprotected to cause that individual to perform or acquiesce to sexual acts. Rape is committed if the perpetrator uses force, the threat of force or coercion, or takes advantage of a coercive environment to invade the body of the victim by conduct resulting in penetration.

Court assessment. The court found the accused guilty of aiding and abetting her husband in the crime against humanity of rape. She not only approved of his sexual

exploitation of their enslaved victims in accordance with ISIS's ideology, but also actively supported it. Believing that her husband had the right to own slaves and force them into sexual intercourse, she accepted that refusal to submit was considered a sin and that she was religiously forbidden from intervening. The accused acted with intent both in relation to the principal offence and her role in facilitating it. She was fully aware that ISIS promoted the rape of Yazidi women as a means of furthering its objective of exterminating the Yazidi community and openly supported this ideology. She accepted and supported her husband's actions as a natural consequence of the ISIS doctrine she endorsed.

Unlawful imprisonment

Court assessment. In accordance with Section 239(1), Section 239(3)(1) and Section 25(2) of the StGB, the court found the accused guilty of jointly committing the crime of serious unlawful imprisonment in five cases, as the victims were deprived of their liberty for over a week. These acts are linked to the crime against humanity of enslavement. Although the enslaved women were not continuously confined within the home, they were effectively deprived of their freedom through coercion and threats. Any attempts to escape would have led to severe punishment. Regarding the victim who died (described above, under the heading 'Crime against humanity: enslavement and enslavement resulting in death'), the defendant was found guilty of jointly committing unlawful imprisonment resulting in death.

Sentencing

The accused was sentenced to six years and six months imprisonment. In determining the sentence, the court considered her age at the time of the offences, which she committed both as a juvenile and as a young adult. Mitigating factors included her difficult family background, her expressed regret for travelling to Syria and engaging in ISIS, her lack of a prior criminal record and the hardship of being separated from her three young children. On the other hand, aggravating factors included her extremist views, the prolonged duration of her membership in ISIS and her active role in supporting the organisation.

Case 7

Germany,
Higher Regional Court of Düsseldorf
Case number III-7 Sts 2/20, 21 April 2021

Summary of the facts

The accused, a German national, travelled with her three-year-old daughter to Syria to join ISIS. She became the spouse of an ISIS fighter and was given, free of charge, two dwellings appropriated by ISIS as spoils of war. In Syria, she often received the visit of another spouse (her friend), accompanied by an enslaved Yazidi woman who carried out housework tasks for the accused. The accused knew that the Yazidi woman had been captured by ISIS and was being kept against her will. The accused was found guilty of participating as a member in a foreign terrorist organisation, violating her duty of care and education with respect to a person under 16 years of age, war crimes against property, weapons offences and enslavement in notional concurrence with deprivation of liberty lasting more than one week. She is sentenced to an aggregate custodial sentence of four years and three months.

Participating as a member in a terrorist organisation

Legal requirement. See Case 4 above and page 33 of this judgment.

Court assessment. The court reasoned that the accused was not merely a passive member of ISIS but actively supported its goals by conducting the following acts: she deliberately decided to travel from Germany to ISIS-controlled territory; married an ISIS member; settled her family and gave birth to another child in ISIS-controlled territory which served to create and maintain the foundations for ISIS's activities. Further, the accused made it easier for her husband to fulfil his tasks in ISIS by running the household and taking care of the children. Taking her daughter to ISIS-controlled territory, the appropriation of the four dwellings, committing the weapons offences and aiding and abetting the enslavement and deprivation of liberty of a Yazidi girl, are additional acts of participation, since they each promote the objectives pursued by ISIS.

Crime against humanity: enslavement in conjunction with deprivation of liberty

Legal requirement. See Case 4 above and pages 39–40 of this judgment.

Court assessment. The court determined that the acquisition of the victim by the accused's friend and her husband constituted enslavement. By locking the front door from the inside, allowing work instructions to be passed on to the victim and then accepting the work performed for her own benefit during her visits (about 50 times in total), the accused aided and abetted both the deprivation of liberty and enslavement committed by her friend. The court further found that although the instructions to perform housework were given to the victim through her friend, this was only the case because of a language barrier. The accused had agency in her own house and the work carried out by the victim was exclusively in her interest.

War crime against property

Legal requirement. See Case 4 above.

Court assessment: The accused was found guilty of this offence. The court reasoned that by using the four dwellings together with her family, the accused appropriated them because her conduct was aimed at permanently depriving the legal owners of that property. It is not relevant that ISIS had already placed these dwellings under its control before the accused used them. 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.

On the other hand, the accused was acquitted, for factual reasons, of the charge of having committed a further war crime against property through the appropriation of a third dwelling in Mayadin. It was not possible for the court to establish that this was the property of an adverse party. Further, there was no evidence to contradict the accused who had claimed that she had paid rent for it.

Violating the duty of care and education

Court assessment. The accused was found guilty of this crime in accordance with Section 171 of the StGB. The court reasoned that by taking her three-and-a-half-year-old daughter to ISIS-controlled territory during an ongoing armed conflict and staying there for four years without sending her to school is a gross breach of the duty of care and education. The gross neglect of duty on the part of the accused created the risk that the physical or mental

development of her daughter could be seriously damaged. The court took into account factors such as the child staying in an active war zone, having no proper medical care, having no access to education and occasionally viewing extremely brutal ISIS propaganda videos.

Possession of weapons

Court assessment. By exercising actual power over an assault rifle, the accused was guilty of unlawfully exercising actual power over a weapon of war and unlawfully possessing and carrying a semi-automatic pistol. Since, in their shared home, the accused had access to the AK-47 or similar assault rifle belonging to ISIS, she, together with her husband, exercised actual control over this weapon.

Sentencing

The accused was sentenced to four years and three months. The court took into account as an aggravating factor the particularly high level of danger, the cruel actions of ISIS and the serious and lengthy nature of her crimes. The mitigating factors included the accused's confessional and remorseful statement, lengthy pre-trial detention, the living conditions in a Kurdish camp and the absence of previous convictions.

Case 8

The Netherlands, Court of Appeal of The Hague

Case number 2200392619,
26 January 2021

Summary of the facts

The Appeal Court of The Hague confirmed the District Court's judgment convicting the accused of his participation in an organisation whose aim is to commit terrorist offences, the preparation and promotion of terrorism offences, and the war crime of outrages upon personal dignity. The latter concerned the humiliating and degrading treatment of hors de combat deceased persons by posting a photograph on Facebook featuring the defendant posing next to a man who had been executed by ISIS, dressed in orange overalls and tied to a cross⁽²⁰⁵⁾. The appeal also addressed the *ne bis in idem* principle, as the defence argued that the accused had already been convicted for the same terrorism offences in Türkiye. This argument was rejected and the accused was sentenced to a term of imprisonment of seven years.

Ne bis in idem principle

Legal requirement. In accordance with the Dutch Code of Criminal Procedure, the *ne bis in idem* principle would prevail if the first decision is final and relates to the same circumstances and if the punishment imposed was followed by a complete enforcement.

Court assessment. The Court of Appeal established that the accused was convicted for the same offence, namely participating in an organisation with the aim to commit terrorist offences, by a Turkish court on 17 May 2018. However, he did not serve the full sentence of 75 months imposed by the court but was only in pre-trial detention for 18 months and 15 days. The Court of Appeal therefore concluded that the requirement that the sentence imposed must have been served in full has not been met. However, the time served in Türkiye will be taken into account in determining the length of the sentence. In sum, the court concluded that the accused can be prosecuted in the Netherlands for this offence.

⁽²⁰⁵⁾ The Netherlands, District Court of The Hague, 23 July 2019.

Participation in an organisation whose purpose is to commit terrorist offences

Legal requirement. See Case 1 above and Section VII of this judgment.

Court assessment. The Court of Appeal found that the accused has committed acts that contributed to the realisation of the aim of the terrorist organisation (ISIS) which the accused joined as a fighter and of which he remained a member for more than two years. The evidence in which the accused can be seen in combat clothes and/or with firearms, the fact that he has been in places controlled and ruled by ISIS, and the mention of his name and position on an ISIS payroll list led to the conclusion that the accused had joined ISIS and had been involved in fighting. In doing so, he made an actual contribution to their armed struggle. Further, the accused knew that ISIS had the intention of committing terrorist offences as this was generally known at the time of the alleged charges considering that the group systematically committed serious crimes on a large scale, terrorising the population.

Preparation and promotion of terrorist offences

Legal requirement. See Case 1 above and Section VII of this judgment.

Court assessment. The Court of Appeal found the accused guilty of preparing and promoting terrorist offences, largely based on the same evidence as mentioned above. The accused travelled to Syria and Iraq, entered a combat zone and joined ISIS. He actively contributed to the jihad efforts, demonstrating both his willingness to carry out attacks, including suicide attacks, and his access to firearms. In doing so, he attempted to incite and recruit others to commit terrorist offences.

War crime: outrages upon personal dignity

Legal requirement. See Case 2 above and Section VII of this judgment.

Court assessment. The court concluded that by posing next to the deceased man – who was bloodied, dressed in an orange jumpsuit and hanging from a cross – and by taking or having a photograph taken, the defendant further deepened the humiliation and degradation of the victims. This conduct was deemed of such severity that it constituted an outrage upon the deceased man's personal dignity. Moreover, by posting the photograph on his Facebook account, the defendant ensured that a wide audience had access to the image, further

amplifying the humiliation. His deliberate participation in the photograph and its dissemination reinforced and prolonged the violation of the deceased person's dignity.

Sentencing

The accused was sentenced to seven years of imprisonment. As aggravating factors, the court took into account that the defendant was part of a sniper battalion and that he used or threatened to use violence against civilians during the time of his participation in the armed struggle. As a mitigating factor, the court considered the defendant's pre-trial detention of 18 months in Türkiye.

Case 9
Germany,
Hamburg Higher Regional Court
Case number 3 St 1/20, 2 October 2020

Summary of the facts

The accused travelled from Germany to Syria in January 2015 with her husband and three children. In Raqqa, they joined ISIS, adopting and supporting its objectives and practices. After her husband was killed, she married another ISIS fighter. During her time in Syria, she raised her children in accordance with ISIS ideology, actively promoted life in ISIS-controlled territory through social media and emails, encouraging other German women to join. She also owned a firearm and briefly took possession of her husband's assault rifle. The accused also attempted to register with ISIS as a volunteer for combat. Additionally, the accused kept a 13-year-old Yazidi girl in her home for several hours, supervising her during the absence of the girl's 'owner'. Later, she ordered two other Yazidi women, enslaved by different ISIS members, to do housework for her. The accused was sentenced to three years and six months for membership in a foreign terrorist organisation, enslavement as a crime against humanity, and violating the duty of care and education.

Participating as a member in a foreign terrorist organisation

Legal requirement. See Case 4 above and pages 45–46 of this judgment.

Court assessment. The court found the accused guilty of participating as a member in a foreign terrorist organisation. It determined that the fact that she mainly carried out household activities did not preclude her participation as a member in ISIS. The court found that the accused actively supported ISIS' objectives by travelling to Syria to engage in activities aligned with ISIS, such as promoting the organisation through email and social media, raising her children in accordance with ISIS ideology, benefiting from ISIS's system of slavery and receiving financial support from the organisation.

Crime against humanity: enslavement

Legal requirement. See Case 6 above and page 50 of this judgment.

Court assessment. The court concluded that the accused acted as an accessory to the commission of the crime against humanity of enslavement. Concerning the principal offence, the Yazidi girl had been enslaved by ISIS as a prisoner of war and had been loaned to two ISIS members, acquaintances of the accused, for whom the victim was forced to perform housework. The Yazidi girl was deprived of her freedom of choice and movement. By having the Yazidi girl in her home for a few hours in order to 'keep an eye' on her and thus ensuring that the girl did not flee, the accused acted as an accessory to the enslavement of the victim. Also, the defendant was found guilty of deprivation of liberty in conjunction with this offence.

Violating the duty of care and education

Legal requirement. Under Section 1 626(1) of the German Civil Code, parents have a duty to care for and educate their children under the age of 16 years old. In accordance with jurisprudence from the Federal Court of Justice, there is a gross violation of those obligations only if the breach is subjectively and objectively serious, which may be the case even in the event of a single act. The risk of harm required under Section 171 of the StGB must be specific, meaning that a merely theoretical or removed possibility of harm is not sufficient; there must instead be a risk that the normal physical and mental development process could sustain lasting and continuous damage.

Court assessment. The court found that the accused has grossly violated her duty of care and education by taking her children into a war zone and raising them according to ISIS's ideology. At the time of her departure to Syria, the accused was fully aware that there was an ongoing conflict in Syria, where her children could be exposed to hostilities, and she willingly accepted this risk. By sending her eldest child to an ISIS-run school, the accused placed her daughter in a situation which could cause serious harm to her mental development. Exposure to ISIS's ideology carried the risk that her daughter might adopt these beliefs and join ISIS herself, potentially leading to committing crimes.

Exercising control over weapons of war

Legal requirement. Under German domestic law, some weapons are specifically listed and considered as weapons of war. The 'Kalashnikov' assault rifle is on this list, as a fully automatic rifle and its control is prohibited. Ownership is not a decisive factor in determining whether actual control is exercised over a weapon. The only requirement is that the perpetrator must have sufficient physical access to the weapon, the use of the weapon is not necessary.

Court assessment. The court found the accused guilty of this crime, reasoning that the defendant's role was specifically to safeguard the weapon during her husband's temporary absence, which lasted for at least several minutes. This responsibility required her to take possession of the weapon with the clear intention of controlling it. The fact that the weapon belonged to her husband is irrelevant.

Sentencing

The accused was sentenced to three years and six months of imprisonment. The court took into consideration as mitigating factors that the accused had no prior criminal record, partially confessed to the crime committed and that her control over the weapon was very short and she did not make any attempt to use it herself. In relation to acting as an accessory to the enslavement, the fact that she treated the victim humanely was considered. As aggravating factors, the court noted the considerable length of the accused's membership in ISIS, the fact that she brought her three children with her and raised them in ISIS-controlled territory and in accordance with ISIS ideology, and the fact that she benefited from the slavery system.

Case 10

Germany, Higher Regional Court of Düsseldorf

Case number 7 StS 4/19, 29 April 2020

Summary of the facts

The accused was found guilty of membership in a terrorist organisation, the war crime of enlisting children under the age of 15 years old, serious child abduction, violating the duty of care and education, and weapon-related offences. She was sentenced to five years and three months of imprisonment. The accused, a German national, travelled to Syria in mid-October 2015 together with her three children, without the permission of their father who remained in Germany. Following her arrival in Syria, the accused married an ISIS member in June 2016 and they had a daughter together. Following her husband's death, the accused married another ISIS member in spring 2017. The accused agreed for her seven-year-old son to be sent to an ISIS training camp, where he underwent physical training and weapons instruction, was trained to perform sentry duty and shot a gun. The son was ultimately killed as a result of an air strike on the accused's home.

Participation as a member in a terrorist organisation

Legal requirement. See Case 4 above and page 93 of this judgment.

Court assessment. After determining that ISIS is a foreign terrorist organisation, the court found the accused guilty of participating as a member in ISIS. It reasoned that the accused was not merely a passive member, but actively supported its goals. The accused was integrated into the organisation by mutual agreement. She identified with ISIS ideology, methods and goals. As part of her activities, she received a monthly sum of USD 100 from ISIS. After her husband's death, ISIS paid her a widows' compensation of USD 1 000. Further, the court emphasised that the accused actively supported the group by agreeing to let her son undergo training in one of ISIS's military camps, thus increasing the group's combat strength. The acts of exposing all of her children to ISIS's ideological influence and facilitating the appropriation of her children into the group's hypothetical state were also taken into account.

Also, the accused pledged her allegiance to ISIS, became a member of the Nusaybah Brigade and served as a driver for women for about 2–3 weeks – a position of trust within the brigade.

War crime: enlisting children under 15 years old

Legal requirement. The war crime of conscripting children under the age of 15 years into the armed forces, or enlisting them in the armed forces or in armed groups, or using them to participate actively in hostilities is criminalised under Section 8(1)(5) of the VStGB.

Court assessment. The accused was convicted of enlisting her seven-year-old son in an ISIS training camp, where he underwent physical training, weapons instruction, sentry duty and firearm use. The court clarified that 'enlisting' encompasses any form of admission, formal or de facto, into an armed unit. In this case, the training camp where the accused's son was enrolled, with her consent, constituted an armed unit within ISIS, as evidenced by the fact that children and young boys received firearms training. The court emphasised that enlisting for training purposes also falls under the offense, even if the child was not placed in an active combat unit or did not directly participate in hostilities. Given that the act took place against the backdrop of an ongoing civil war and contributed to strengthening ISIS's combat power, the crime was directly linked to the conflict. It was not necessary for the enlistment to occur during or in direct proximity to combat operations. The court also found that, while the accused acted as a member of the armed group when enlisting her child, this is not a necessary requirement for the provision to be applicable – the crime can be committed by members and non-members alike.

Child abduction and child abduction resulting in death

Court assessment. The accused was convicted for this crime. The court determined that by leaving Germany with the children she shared with her former husband – who also held joint custody rights – and traveling to Syria against his will with the intention of residing there permanently, she deprived the father of his ability to exercise his custody rights while they were in that country. Due to repeated and continuous bombings in Syria, the three children were repeatedly exposed to mortal danger, a risk the accused knowingly accepted. Ultimately, their son was killed in an airstrike on her home. This resulted from the foreseeable and avoidable danger the accused subjected her children to by relocating to a war zone.

Violating the duty of care and education

Legal requirement. See Case 9 above.

Court assessment. The court found that the accused, as a parent with a duty of care and education, committed three counts of gross violations of these duties by taking her children to ISIS-controlled territory in Syria with the intent of living there permanently under ISIS rule and in a war zone. Additionally, she allowed her six to eight-year-old son to be exposed to ISIS paramilitary training at one of the group's military camps. The children were subjected to repeated bombings and deprived of regular education. The accused also took the children to witness a public execution. These actions collectively demonstrate an extreme degree of irresponsibility, exposing the children to severe risks that could significantly impair their physical and psychological development. The accused was aware of these dangers and accepted them.

Exercise of actual control over weapons of war

Court assessment. The accused was found guilty of this crime as she, together with her (second) husband, possessed at least one hand grenade, which she had access to in their shared home and was willing to use without the necessary authorisation. By jointly owning a weapon of war in service of ISIS and demonstrating a willingness to use it, she contributed to enhancing the organisation's defensive capabilities.

Sentencing

The accused was sentenced to five years and three months of imprisonment. Mitigating circumstances include that the accused was cooperative during the proceedings, the confessional nature of her statements, that she deeply deplores and regrets her actions, the loss of her son, and the absence of previous convictions. The court considered an aggravating factor the extended duration of the offence of child abduction and duty of care and education, and the relatively long duration of her membership in ISIS lasting more than three years.

Case 11
Germany,
Düsseldorf Higher Regional Court
Case number III-2 StS 2/19,
4 December 2019

Summary of the facts

The accused, a German national, travelled from Germany to Syria and then Iraq in February/March 2015 to join ISIS, bringing her son without the father's consent. Between September and December 2015, she and her husband (an ISIS fighter) took possession of a house that had been abandoned first by its civilian owners and later by Shiite military personnel who had fled or been displaced by ISIS forces. The accused was found guilty of participating as a member of a terrorist organisation and committing a war crime against property.

Please note that the court's assessment and reasoning for participation as a member and sentencing is not available in English and therefore not summarised.

War crime against property

Legal requirement. See Case 4 above and pages 16–17 of this judgment.

Court assessment. The court found the accused guilty of committing a war crime against property in conjunction with her membership in a foreign terrorist organisation. The occupation of the house by the accused and her family constituted a permanent deprivation of the legal owners' rights, serving to strengthen ISIS's territorial control and hinder opposing military forces from reclaiming the area. Moreover, the fact that the property belonged to an opposing party in the conflict further reinforced the connection between the war crime against property and the accused's active membership in ISIS.

Case 12

Sweden, Supreme Court

Case number B-5948-17, 13 November 2019

Summary of the facts

In the context of the non-international armed conflict in Syria, the accused was convicted and sentenced to six months of imprisonment for publicly soliciting funds and property to support the terrorist activities of ISIS and other groups through multiple Facebook posts. The court determined that the accused's appeals served as an incentive to commit particularly serious crimes, as the funds were specifically intended to purchase weapons to avenge a chemical attack against civilians. In particular, 'this case raises questions about the relationship between international humanitarian law, especially the law related to non-international armed conflicts, and the Swedish legislation on terrorism, more specifically, whether, and if so to what extent, the application of terrorism legislation is restricted by international humanitarian law'.

Financing terrorist organisations

Legal requirement. The Financing Law and the Recruiting Law criminalises public instigation. It provides that 'publicly appealing to others to commit particularly serious crime is a criminal offence' (paragraphs 12-15). Particularly serious crimes include murder, manslaughter and grievous bodily harm – classified as such if they aim to intimidate a population or groups within a population, or to coerce a government or an international organisation into taking or refraining from certain actions – and as terrorist offences.

Court assessment. The Supreme Court stated that 'international humanitarian law understands terrorism to mean actions which are targeted at, or disproportionately affect, civilians'. While upholding the ruling of the Court of Appeal, the Supreme Court explained that terrorism is expressly prohibited by international law. Since the terrorist groups are actually involved in a non-international armed conflict and carrying out regular and systematic acts of terror against civilian populations as part of their military action, it is not possible to distinguish the financing of weapons for the armed conflict from financial support for weapons used in other military actions carried out by these organisations, which often involve acts of terror against civilians. Therefore, the

Supreme Court considered that the accused's intention, by appealing to finance the terrorist organisations, was to appeal to the public to finance particularly serious crimes, including attacks against the civilian population.

Sentencing

The Supreme Court upheld the decision of the Court of Appeals. The accused was sentenced to six months of imprisonment.

Case 13

Germany,
Stuttgart Higher Regional Court

Case number 5-2 StE 11/18, 5 July 2019

Summary of the facts

The accused, a German national, left Germany for Syria in December 2013 or January 2014, where she married a senior ISIS fighter. Shortly after, she joined ISIS. While residing in ISIS-controlled territory, she lived with her husband in accommodation previously abandoned by its owners after fleeing ISIS forces. She managed the household and cared for her two children. Actively involved in ISIS propaganda, she operated German-language public blogs glorifying life under ISIS's rule and encouraging others to emigrate and join the group. The accused had access to two firearms and two weapons of war. Additionally, she attended 10 executions as an ISIS representative and received regular payments from ISIS. She remained in ISIS-controlled territory until August 2017.

Participation as a member in a foreign terrorist organisation

Legal requirement. See Case 4 above and pages 82–84 of this judgment.

Court assessment. The court found the accused guilty of participating as a member in the terrorist organisation ISIS. She joined ISIS upon arriving in ISIS-controlled territory in 2013/2014 and consistently adhered to its ideology and structure. Her role included managing the household, caring for her children, following instructions from her husband and others, and receiving financial support from ISIS. The accused also disseminated propaganda through her blogs, which contributed to ISIS's goals. Additionally, she attended public executions as an ISIS representative and trained in the use of firearms in order to engage in combat effectively.

War crime against property

Legal requirement. See Case 4 above.

Court assessment. The court found the accused guilty of a war crime against property by occupying, together with her husband, a house in Manjib and an apartment in Raqqa, both provided to them by ISIS. Indeed, by taking possession of the house and the flat, together with the furnishings, the accused appropriated items on a significant scale.

Violation of the War Weapons Control Act and the Weapons Act

Court assessment. The court found the accused guilty of two offenses related to the unauthorised exercise of power over weapons of war and two offenses of unlawful possession of semi-automatic handguns. The accused possessed and used a machine pistol and an assault rifle for several months, along with two semi-automatic handguns, without permission.

Sentencing

The accused was sentenced to five years of imprisonment. As mitigating factors, the court considered her lack of a prior criminal record and her confession to most of the offenses. The court found as aggravating factors her nearly 3.5-year membership in ISIS, active involvement in ISIS propaganda and participation in 10 executions as an ISIS representative.



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