

Hanseatisches Oberlandesgericht (Higher Regional Court of Hamburg)

3rd Criminal Division

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Judgment

In the name of the people

In the criminal case against [redacted]

born on [redacted] in [redacted],

the Higher Regional Court of Hamburg, 3rd Criminal Division, in the

2. October 2020 session, attended by the following:

Presiding Judge at the Higher Regional Court

- as Chair –

Judge at the Higher Regional Court

Judge at the Higher Regional Court

- as associate judges –

Senior Public Prosecutor at the Federal Court of Justice

- as representative of the Federal Prosecutor General

Lawyer

- as defence counsel –

Court clerk

- as court registrar, ruled that:

The Defendant is guilty on four counts of membership of a foreign terrorist organisation, including one count in conjunction with violating the duty of care and education, one count in conjunction with intentionally otherwise exercising actual control over weapons of war (fully automated gun and ammunition), and one count in conjunction with acting as an accessory to the commission of a crime against humanity (enslavement) and with deprivation of liberty.

She is sentenced to an aggregate custodial sentence of 3 years and 6 months.

The Defendant shall bear the costs of the proceedings.

Provisions applied:

Point 1 of Section 129a(1), Sections 129b(1), 171 and 239(1) of the German Criminal Code (StGB), Point 3 of Section 7(1) and (2) of the Code of Crimes against International Law (VStGB), Point 6a of Section 22a(1) of the Weapons of War Control Act (KrWaffKG) in conjunction with Part B, Section V Points 29c) and 50 of the Weapons of War List, Sections 27, 52 and 53 of the StGB

Reasons:

I. Findings relating to the Defendant

[redacted]

II. Findings relating to the case

In January 2015, the Defendant travelled from Germany with her three children, then aged 7 years, almost 2 years, and 7 months, firstly to Turkey, and from there, accompanied by her husband H, to the Syrian city of Raqqa, which was then under the control of the terrorist organisation 'Islamic State' (IS). There, the Defendant and her husband joined IS, the objectives and practices of which they supported. Initially, the Defendant's husband underwent military training with IS, while she and her children were placed in an IS 'women's house'. The family then moved into their own apartment in Raqqa. In March 2015, the Defendant's husband was killed in the fighting. The Defendant then received a widow's allowance of EUR 1 000 and a one-off payment of EUR 310 from IS. After the end of her mourning period (Iddah), the Defendant wed the IS member C in August 2015 in an Islamic faith marriage. The Defendant kept house for her respective husbands and looked after the children. She also promoted life in the 'caliphate' on social media and via email, and encouraged like-minded women in Germany to travel to IS territory. The Defendant raised her children in accordance with IS ideology. The Defendant had her own gun, and she also took material ownership of her husband's assault rifle for a short period of time. At the request of an acquaintance in the 'Hisba' religious police, the Defendant kept the latter's slave, a 13-year-old Yazidi girl enslaved by IS as 'spoils of war' during the attack on the Sinjar region, in her apartment for several hours, in order to keep an eye on her during the temporary absence of her 'owner'. At a later stage, the Defendant ordered two Yazidi women, who served as domestic and sex slaves in the household of the separately prosecuted O and S, to clean her home on two occasions. An attempt by the Defendant to register with IS, along with O, as a volunteer for use in armed conflict proved unsuccessful. The Defendant left IS territory in April 2016 and returned to Germany at the beginning of September 2016.

Specifically:

1. The organisation 'Islamic State'

The organisation 'Islamic State' is a foreign terrorist organisation, which is guided by radical religious beliefs and aims to overthrow Iraq's Shiite-dominated government and the regime of President Bashar al-Assad in Syria by way of military conflict and, as an immediate objective, to establish a theocratic state comprising the territory of present-day Iraq and the historical region of 'Ash-Shām' (Syria, Lebanon, Jordan and Palestine) under Sharia law.

a) Origins and development

'Islamic State' is not a state, but a terrorist organisation that has been operating under this name since June 2014 and is identical to its predecessor organisations, 'Islamic State in Iraq and Syria' (ISIS), 'Islamic State in Iraq and Greater Syria (ISIG)', 'Islamic State in Iraq' (ISS) and 'Al-Qaeda in Mesopotamia'.

In October 2006, Al-Qaeda in Iraq rebranded for the umpteenth time and claimed to be establishing its own Sunni state in Mesopotamia, and thus 'Islamic State in Iraq' (ISI) was created. ISI was one of the main groups involved in the uprising against the American occupying forces, which broke out in Iraq in the wake of the invasion in spring 2003. Despite intervening setbacks, the US troops and their Iraqi allies managed to weaken the rebels, meaning that the security situation had clearly improved when the Americans withdrew at the end of 2011. However, the withdrawal of US troops from Iraq at the end of 2011 allowed ISI to regain strength. Shortly after the American withdrawal, it was clear that Iraqi security forces were completely overwhelmed, leading to a rapid increase in the frequency of terrorist attacks, which ISI had also carried out in the past, and the group expanded quickly in the years 2012 and 2013.

As early as summer 2011, the new leader of ISI, Abu Bakr al-Baghdadi, sent supporters to Syria to evaluate the possibility of participating in the insurgency taking place there. Subsequently, Syrian members of ISI, led by Abu Mohammad al-Jaulani, founded the 'Front of the Supporters of the People of Syria' ('the al-Nusra Front') as a Syrian offshoot of ISI. Over the course of 2012, the al-Nusra Front became by far the most important jihadist organisation and also one of the strongest anti-government groups in Syria.

In order to exert more control over the al-Nusra Front, ISI leader Abu Bakr al-Baghdadi ('Baghdadi') decided, in spring 2013, to declare the creation of the 'Islamic State in Iraq and Syria' (ISIS), which is also often translated as 'Islamic State in Iraq and Greater Syria' (ISIG), thus creating a new Iraqi-Syrian organisation. In an audio message in April 2013, Baghdadi stated that the Al-Nusra front had originated as part of ISI and that both organisations would now form the Islamic State in Iraq and Syria under his command. Jaulani reacted a few days later, confirming the origins of his group, which had not previously been public knowledge, but refusing to submit to Baghdadi's leadership. Rather, he sought support from Al-Qaeda leader Aiman az-Zawahiri, by publicly affirming his allegiance to him. Zawahiri was then forced to intervene in the conflict between the two 'branches' of Al-Qaeda. In a message in May 2013, he supported Jaulani's position, decreeing that the two organisations should operate independently in their respective countries of origin. However, Baghdadi refused to follow Zawahiri's instructions and insisted that ISIS would continue to operate in Iraq and Syria. As a result, Zawahiri declared the expulsion of ISIS from al-Qaeda in January 2014. At that time, fierce fighting had already

broken out between ISIS on the one hand and the al-Nusra Front and other Islamist organisations on the other, which initially involved the ISIS units being driven out to the east. The situation was reversed in the summer of 2014, when ISIS first made territorial gains in Iraq and stormed Mosul, Iraq's second-largest city, in early June.

IS then went back on the offensive in Syria, driving the al-Nusra Front out of its last remaining bases in the east of the country and focusing on the remaining strongholds of the Syrian government in this area, as well as the fight against the units of Syrian Kurds. From June/July 2014, IS controlled the adjacent areas of eastern Syria and north-western Iraq and sought to establish a kind of state there.

The period from June 2014 to autumn 2015 in some ways represents the 'heyday' of IS. It was launched on 29 June 2014, with the proclamation of the 'caliphate' and the associated renaming of the organisation to 'Islamic State'. The phase was marked by a massive influx of foreign fighters, who were then often accompanied by their families. This had an important symbolic meaning for IS regarding its external perception as a 'state' entity. At the same time, IS reorganised its combat units, claiming significant military successes by taking towns and military bases and attempting to ensure statehood by constructing new administrative buildings or converting existing ones.

IS came under increasing pressure from August 2014 onwards, as the US and its allies conducted air strikes against targets in Iraq and, from September 2014, targets in Syria. Fighting largely took place in border regions initially, in particular the battle for Kobane, which lasted from September 2014 to November 2015, in which IS was ultimately defeated by the alliance between the US air force and the Kurdish YPG. The larger inland cities, Mosul and Raqqa, were initially largely spared any hostilities, although Raqqa was the target of airstrikes by the Syrian air force in 2014. In June 2015, the US air force began carrying out targeted attacks on individual people and buildings in Raqqa. In addition, the Russian air force began carrying out non-targeted attacks from July 2015, including attacks on Raqqa from September 2015, and the French armed forces began non-targeted airstrikes from November 2015, in response to the attacks in Paris. As a result, there was a massive exodus of the surviving recruits and their families from the conflict zone. The subsequent period saw an increasing number of military defeats for IS, as it lost one city after another. Mosul was recaptured in July 2017. Despite extensive resistance, the city of Raqqa was captured by Kurdish YPG forces in October 2017, with IS fighters suffering significant losses. Virtually all of the quasi-governmental structures established by IS were lost as a result.

In the subsequent phase from autumn 2017 to March 2019, IS was under severe pressure, particularly as it was operating without governmental or quasi-governmental structures. At this point, IS could only focus on delaying its capitulation, which had started with the recovery of Mosul and the capture of Raqqa by YPG forces. During this phase, the last remaining IS troops moved eastwards towards the Syrian-Iraq border, where Bāghūz, the last IS stronghold, was lost to YPG forces in March 2019. Since then, IS has once again been operating underground. However, it remains well organised, especially in Iraq, where it carries out attacks on individuals, in particular police and security forces, on an almost daily basis.

b) **Organisation and governance**

Abu Bakr al-Baghdadi, known as the 'Commander of the Faithful', was the undisputed leader of IS from

2010 onwards, including at the time of the offence. He ran a strict authoritarian regime and met resistance with brutal violence. Numerous internal opponents fell victim to the 'purges' carried out after he became leader in 2010. He ran the organisation with the support of a small group of loyal followers, who until 2015 were almost exclusively of Iraqi origin. The inner circle included, alongside Baghdadi, the IS commander for Syria and the IS commander for Iraq. Baghdadi was killed by a US military operation in October 2019.

Formally speaking, IS's highest decision-making body was the Shura, or consultation council, comprising up to a dozen of the organisation's grandees, which made decisions about the succession of the emir/caliph and other particularly important issues. Below the Shura there were at least six committees dealing with religious matters, military affairs, internal security, supervision of provincial administration and media. The 'Department of Internal Security and Intelligence', a sort of secret service, ran in parallel to IS military and administrative structures. This operated not only against IS's enemies, but also monitored the other IS departments and its members.

The territory of the 'Islamic State' was divided into provinces, for which Baghdadi appointed governors. Most of them were also important field commanders.

At the bottom of the hierarchy were the IS fighters, who were known as soldiers. Each belonged to a combat unit headed by a local leader.

c) **Management of territories, training**

IS set up a rudimentary administration system in each province and city in its territories and those of its predecessor organisations. This included at least a 'Sharia officer' or a 'Sharia committee', which was responsible for interpreting and applying Islamic law in accordance with IS's ideology. To this end, IS also established 'Sharia courts', in which 'religious scholars' ruled according to IS law. A religious police force ('Hisba') was also set up in the captured cities, with harsh penalties for violations of the Salafist rules of conduct. In addition, IS endeavoured to ensure a supply of food, electricity and water to the population and undertook a certain administrative burden for this purpose, albeit with only moderate success.

IS also took over the school system for its own purposes. As large numbers of teachers from Syrian state-run schools had fled, IS largely provided the teaching staff itself. The previous curriculum was used only insofar as it did not contradict IS ideology; subjects which were no longer considered appropriate, such as civic education, which had hitherto been taught in Syrian state-run schools, were abolished and replaced with 'Islamic' topics. In terms of subjects, IS schools focused on Arabic and religion, with religious education being based on IS's perspective. The core aspects were, therefore, memorising the Koran and the key issue for IS regarding who is a believer and who is not, and learning that Shiites and others considered by IS to be 'unbelievers' must be defeated. The classes were separated by gender, although there was no difference in the subjects taught.

IS also set up a child and youth organisation in the territories under its control, known as 'Lion Cubs of the Caliphate'. The nature and aims of the organisation, in which boys could participate from around 6 to 15 years of age, was paramilitary training, which included the handling of weapons and aimed to prepare boys for their later roles as fighters or suicide bombers. The training took place in stages at training camps, each of which lasted for 2 to 3 weeks. Attendance was not mandatory for boys of the

relevant age, but depending on how closely the parents were affiliated with the organisation, there was a certain pressure to have their children train there. At least in the promotional videos distributed by the IS propaganda department for the 'Lion Cubs of the Caliphate', members of the 'Lion Cubs' wore uniform-like camouflage clothing and a black cap bearing the organisation's logo, the prophet's seal.

d) **Funding**

Between 2013 and 2015, IS and its predecessor organisations funded themselves through the sale of oil and local taxes and protection money, customs charges, spoils of war, ransom money and donations from abroad, generating roughly between USD 1 to 5 million a day, i.e. between USD 350 million and 1.8 billion per year. These sources of revenue made IS the richest terrorist organisation of all time. They allowed it to pay its members a salary that was sometimes over USD 100 per month for ordinary fighters.

e) **Number of fighters**

The number of IS fighters grew from around 10 000 to 20 000 in 2013 to around 20 000 to 30 000 at the beginning of 2016, with considerable fluctuations in numbers.

More than 30 000 foreign fighters have travelled to Syria since 2011, most of whom came from Saudi Arabia, Morocco and Tunisia. There were around 3 000 European fighters in Syria between 2011 and 2016. Up until the summer of 2013, foreign fighters initially joined the al-Nusra Front for the most part, but subsequently they increasingly opted for IS instead, because many recruits were no longer sure about the jihadist nature of the al-Nusra Front due to its cooperation with other Islamist and Salafist groups and its focus on toppling the Assad regime. Moreover, IS's particularly uncompromising ideological and strategic approach was in principle more attractive to many recruits. IS has for years been characterised by particularly brutal terrorist attacks, a profound hatred of Shiites, including Syrian Alawites, a draconian regime in the territories under its control, and by its vision of an imminent clash with Israel. In addition, according to IS propaganda, volunteers can live under Sharia in a Salafi-influenced 'Islamic state' – just as the Salafists imagine life in 7th century Mecca and Medina. The organisation has for quite some time successfully encouraged the recruitment of new volunteers on these grounds and through its terrorist activities. The virtues of paradise and the path to it through martyrdom in particular are extolled to the new recruits.

f) **Goals**

The objectives of IS are a slightly modified version of those of ISIS (ISIG) and ISI. While Iraq was the main focus from 2003, Syria has been a similarly high priority since 2013 at least. Since then, it has not only been a matter of establishing an Islamic State in Iraq, but an Islamic State in Iraq and the adjacent parts of eastern and northern Syria. The organisation again made clear its aim of removing the existing borders of nation states in the Arab East in June 2014 when it rebranded as IS – without the 'limiting' mention of Iraq and Syria in the organisation's name – and declared the Islamic Caliphate. The 'caliphate' was intended to cover all IS-controlled territories, and all other organisations, groups, emirates and provinces in those areas were denied legitimacy. IS's short-term goal is to establish an Islamic State in the territories of Iraq, Syria and Lebanon. Other objectives include the conquest of Palestine, the 'liberation' of Jerusalem, the recapture of Andalusia, but also, in some cases, the taking of Rome and Istanbul, and finally the creation of a global caliphate. This is based on its claim to represent all Muslims, and also to determine in this regard who is Muslim and who is not – if appropriate through the

excommunication ('Takfir') of infidels ('Kafirs') imposed by IS and its members.

In addition to these objectives and the strong anti-Israel and anti-Jewish sentiment, IS is seeking the destruction of the Shiites, whom they detest. In IS ideology, this dislike applies in particular to the majority Shia population in Iraq, representatives of whom have dominated the Iraqi governments since 2005 and who are described in the jihadist's publications as 'apostates' (Rafida). However, IS also directs this hatred to Syrian Alawites. As President Assad and large numbers of the political and military elite in Syria are Alawites, and the majority of the factions of the army and security forces that remain loyal to the government regime are Alawites, they are the most significant Syrian target of IS's hatred of Shiites. This loathing of Shiites and Alawites is so fundamental in nature and so deeply ingrained that IS aims to physically destroy the entire Alawi minority in Syria. The same applies to other religious minorities in the 'Caliphate', in particular the Yazidis (see i) below). IS also considers its Sunni opponents to be apostates and infidels who must be killed.

In the context of global jihad, IS also regards all western institutions and members of western institutions and the western way of life as a legitimate target for attack. This includes diplomatic missions, international hotel chains, companies and non-governmental organisations. Attacks and assaults against these targets were and are used by IS to undermine the government's authority, to demonstrate its own firepower and to intimidate its opponents with the widespread media coverage.

g) **Strategy**

The goal of establishing an Islamic 'caliphate' is something that IS has attempted and continues to attempt, initially through trying to weaken the Iraqi and Syrian States through terrorist attacks and military operations, and through increasing its own numbers, with the aim of eventually conquering both countries and becoming the sole legitimate representative of Sunni Muslims. One difference between the Iraqi and Syrian strategies was that the organisation was already the main insurgent group in Iraq. In Syria, on the other hand, ISIS had to firstly try to eliminate its competition in the form of other anti-government groups. In addition to the al-Nusra Front, this meant in particular the Free Syrian Army (FSA), which was considered to be an ally of the West and had been involved in military conflict since July 2013.

Since at least 2012, IS and its predecessor organisations have also publicly announced parts of their strategy. On 21 July 2012, IS leader Baghdadi launched the 'Breaking the Walls' campaign, and shortly afterwards terrorist violence began which lasted until July 2013. For the year between July 2013 and June 2014, Baghdadi launched a new campaign, with the macabre moniker 'Soldiers' Harvest'.

h) **Terrorist activities**

In Iraq, IS and its predecessors' organisations initially attempted to undermine the stability of the government by way of numerous small attacks with a low number of casualties. The typical attack from 2003 onwards was a car bomb attack, with a suicide bomber driving a car or lorry loaded with explosives as close as possible to the predetermined target and setting off the bomb. In many cases, there were coordinated attacks involving several vehicles at the same time.

Since 2003, IS and its predecessor organisations have been responsible for hundreds of these attacks, which primarily targeted the Iraqi government, the security forces and the Shiite population. From 2009 onwards, the organisation had the resources to carry out these attacks in an increasingly complex and

elaborate way. Subsequent attacks caused high numbers of casualties and serious damage to property. During ISI and ISIS's 'Breaking the Walls' campaign in 2012 and 2013, hundreds of car bomb attacks were carried out as well as eight – in some cases spectacular – breakouts from Iraqi prisons. ISIS members carried out more than 50 attacks in Baghdad, Kirkuk and other Iraqi cities from January 2013 to mid-February 2014 alone. Several hundreds, if not thousands, of police officers and soldiers were killed in 2013 and 2014 as part of the 'Soldiers' Harvest' campaign mentioned above, mostly in the Mosul area.

Acts of violence by IS and its predecessor organisations also targeted members of other religious and ethnic minorities. Shiite and Alawites were affected, for example by the raid on 10 Alawi villages in Latakia in Syria, in which numerous civilians were killed or captured. However, Sunnis who opposed IS or were accused of cooperating with the Iraqi security forces were also victims of IS's violent crackdown. In addition, persecution of the Yazidi minority, based in the north of Iraq, was particularly intensive, as explained further below under i).

IS and its predecessor organisations increasingly carried out suicide and bomb attacks in Syria as well, although there were significantly fewer attacks there than in Iraq. In Syria, however, IS was also involved in assassination plots targeting prominent members of the FSA, the Islamic Front and the al-Nusra Front. These violent atrocities further cemented IS's reputation as by far the most violent and brutal of the groups fighting in Syria.

In both Iraq and Syria, IS and its predecessor organisations carried out acts of extreme brutality against enemy fighters and civilians in the territories under their control. Public executions by firing squad, crucifixions and decapitations were regular occurrences from autumn 2013 onwards. The heads of the decapitated were often impaled on spikes or poles and publicly displayed – sometimes even on vehicles belonging to IS or its predecessor organisations. Violations of Islamic law, as interpreted by IS, were punished by draconian measures such as the removal of extremities or flogging. Executions and abuse were documented in videos and photographs and disseminated online.

Over the course of 2014, IS increasingly clamped down on dissenters within its own ranks, especially following the declaration of the caliphate in late June 2014. In 2014 alone, between 120 and 200 members of the organisation were killed in Syria for this reason. IS set up a sort of security department to identify such individuals. The security department also included a 'storm troop' which was tasked with apprehending IS members who broke IS rules, defectors and suspected 'spies' and putting them in jail, where, usually after torturing them, IS would put them on 'trial', which in many cases ended with the prisoners being executed.

Political opponents were arrested, tortured and killed in IS-controlled territories; arbitrary executions were common, with injured or captured opposition fighters being executed.

The armed conflict also moved beyond the borders of IS-controlled territories, for instance with attacks on targets in Turkey beginning in June 2015. Attacks were then also carried out in Europe, starting with the Paris attacks on 13 November 2015.

i) **In depth: Attack on Yazidis**

The Yazidi ethnic group is one of the minorities persecuted by IS. The Yazidis are a religious minority of

monotheists whose religion comprises elements of Zoroastrianism, Christianity and Islam. They inhabit contiguous areas in the Sinjar region of Iraq as well as the more eastern region of Shekhan. Their persecution by IS is based on the fact that the latter regards the Yazidi religion as 'polytheism' and 'devil worship'.

On 3 and 4 August 2014, shortly after IS seized Raqqa and Mosul, it started a large-scale military offensive against Yazidis in the Sinjar region of Iraq. IS's military advance met with little resistance, as the Yazidi people themselves only had rudimentary weapons. The Kurdish Peshmerga, which also had a presence in the region, had promised to protect the Yazidis, but when IS combat units moved into the Sinjar region, the Peshmerga withdrew without warning the Yazidi people, so that they were virtually unprotected against IS attack.

As a consequence, hundreds of thousands of Yazidis fled from the approaching IS fighters, mostly to Iraqi Kurdistan, but several thousand also to the Sinjar mountains. They were besieged there by IS fighters for a period of several weeks. In the mountains, they had no protection from the sun or heat and no access to water, food or medical supplies. Many people died as a result, especially children.

Those who had not fled, or were captured by IS as they attempted to flee, were rounded up by IS in the villages. They firstly separated the men from the women. Men and adolescent boys who were unwilling to convert were killed immediately, sometimes in mass shootings, as were older women who were of no benefit to IS. Men who were willing to convert were transported by IS to the Afar valley, where they were housed in empty flats abandoned by fleeing Shiites. After a few months, however, it became clear in many cases that the conversion was only superficial, and the men concerned were killed. The same happened to men who tried to flee.

The female Yazidis, on the other hand, were systematically enslaved by IS. For this purpose, IS initially transported the Yazidi women and girls by bus to large facilities, such as the 'wedding hall' in Mosul, the Solagh Institute east of Sinjar and the Badoush prison. From there, the women and girls were transported to decentralised distribution points, where they were distributed and sold as spoils of war. 20% of the women were given as rewards to commended fighters, to serve as domestic and sex slaves. The remaining 80% were sold freely by traders, which led to the development of a flourishing slave trade, in particular in Raqqa. Slaves were bought in large numbers and resold to IS members or auctioned on slave markets; price lists were circulated indicating the prices of the slaves up for sale, based on their age and perceived beauty. In view of the issues raised through dealing with and trading in slaves on a daily basis, IS's 'Office for Research and Fatwas' issued a set of rules for dealing with slaves through its 'Al-Himma' publisher at the end of 2014. In addition to questions relating to the religious justification for enslaving 'infidels', this set of rules focused on whether, and within what limits, Islamic legal doctrine allows sexual intercourse with slaves and how a slave may be punished by her owner, for example for refusing to obey or attempting to escape. A number of specific issues were also addressed, such as the separation of children from their mothers, or the circumstances under which a slave can get married, and the consequences for the parties involved. In practice, the rules, in particular those relating to the limits on punishment, were often ignored. However, as slaves were mostly kept at home, infringements were generally concealed.

Yazidi children remained with their mothers until they were around 6 years of age and were sold together with them as slaves. Boys over that age were forced to convert and were moved to the 'Lion Cubs of the

Caliphate' camps, where they underwent religious and paramilitary training. This led, among other things, to IS using Yazidi boys as suicide bombers.

The number of killed and enslaved Yazidis was estimated to be in the thousands or low tens of thousands.

IS's attack on the Yazidis in the Sinjar region was systematically planned. This does not just refer to the seizure of the land, for which the necessary military resources had to be organised and prepared, but also to the murder of the male population and the enslavement of the women. For example, many buses were available to transport women from Kocho to the central assembly points right on schedule, which suggests that central planning had taken place. In addition, large buildings, such as the Technical University of Solagh and the 'wedding hall' in Mosul, were vacated in order to accommodate the women and girls.

As can be seen in the aforementioned IS rules for dealing with slaves, IS openly publicised and provided religious justification for its attack on the Yazidis and its enslavement of the Yazidi women and girls. In its online magazine *Dabiq*, IS published an article in October 2014 entitled 'The revival of slavery before the hour', in which it provided religious justification for the campaign against the Yazidis and the mass enslavement of the women. According to this article, the research carried out by IS's Sharia scholars showed that, unlike Shiites, the Yazidis are not just dissident Muslims (apostates) but original 'infidels' (Mushrikin), and that, as the Yazidis worshipped 'Iblis', a devil, the Yazidi religion is particularly removed from the true faith. The article goes on to say that the 'sword verse' in the Koran calls for infidels to be killed if they are not willing to convert, and thus, in the case of the Yazidis, the 'sword verse' does not merely provide justification, but even contains an obligation, the fulfilment of which each Muslim must vouch for before Allah on the Day of Judgment. The article concludes that the female population and children have been enslaved and distributed as spoils of war, as required by Sharia law, and that the example of the Prophet's companions has been followed here.

j) **Propaganda, role of C**

Media and propaganda, areas of particular importance to IS, fell under the remit of the IS 'Ministry of Information'. Fundamental decisions and announcements claiming responsibility for attacks were made available on the internet very quickly and sometimes in a professional format. Like its predecessor organisations, IS made use of various kinds of media. The announcements were regularly adapted to the target audience, including linguistically through the use of subtitles or translations. Propaganda was produced and disseminated primarily through the organisation's 'al Furqan' production centre, but also via the media outlets 'al'tisam' and 'Al-Hayat Media Center', as well as a number of other media outlets and magazines. IS media outlets mostly used the IS symbol on their products as an obvious indicator of their IS membership. This is the 'seal of the prophet', a white oval on a black background with the text of the Islamic declaration of faith. The logo is used both with the words 'Islamic State' – or before the organisation was renamed in 2013 and 2014 with the words 'Islamic State Iraq' or 'Islamic State in Iraq and Syria' – and without this addition.

For years, IS and its predecessor organisations used state-of-the-art technology to produce their videos, and from 2014 even employed small, camera-equipped drones which can take aerial photographs. The organisation's main aim here was to demonstrate its own power in order to intimidate opponents, recruit

new supporters and substantiate the claim that it had in fact established an Islamic State. IS propagandists were thus willing to use any means to get as much attention as possible. They were particularly 'successful' with videos of brutal executions, in which, on camera, victims have their throat cut with a knife and are then decapitated (while still alive), or which show victims being burned alive.

IS propaganda also included the dissemination of battle hymns ('Nasheed', 'Anasheed [pl.]'), in which IS's violence, its absolute authority, the duty of jihad and martyrdom were praised and glorified, and the enemies of IS were maligned as infidels.

In order to demonstrate its power and prove that it had in fact established an Islamic State with all the insignia of sovereignty, i.e. control over territory, corresponding financial resources and heavy weaponry, IS also published progress reports from the individual provinces and photos and videos of 'state' institutions, such as courts and the religious police. In July 2014, IS began publishing a professionally designed, English-language online magazine called *Dabiq*, some extracts from which also appeared in German and in other languages.

In order to attract as many recruits as possible from western nations, IS tried to establish role models for as many countries as possible, who appeared in videos speaking in their respective native languages, which were then distributed on social media. One of these role models for German-speaking countries was C from Berlin [redacted].

Due to his previous work as a rapper with the pseudonym [redacted], C was a well-known personality, which helped him to become arguably the most prominent German IS member after he joined the organisation in November 2013.

C, who appeared for IS under the Kunya name [an Arabic name based on the name of one's eldest child] 'Abu Talha al-Almani' or 'Abu Talha al-Mujaheen', was a fighter for IS, but was best known for his appearances in promotional videos issued by the IS media outlet Al-Hayat-Media and for producing German-language songs with lyrics glorifying jihad ('Anasheed'). C also worked as an instructor at the paramilitary organisation for children and young people, 'Lion Cubs of the Caliphate'. Nothing is known about whether C had any formal ranking within the IS hierarchy, although he was known to be close friends with the leader of the German IS delegation in Raqqa, the Austrian M, who used the Kunya name 'Abu Osama al-Gharib'.

C most likely died in January 2018, during IS conflict in Syria.

2. Events prior to the offence

After the Defendant and H married in 2012, H became a keen supporter of armed jihad. He had initially intended to join the jihad in Afghanistan, but after IS gained strength in 2013, culminating in the declaration of the 'caliphate' in June 2014, he wanted to go there. He argued about this with the Defendant, who, if left behind, would be solely responsible for her self and her children. In the subsequent period, H visited Syria several times, but always returned to Germany.

At the beginning of 2014, the Defendant and H argued when she discovered that he had met another woman and wed her in an Islamic faith marriage. After also experiencing domestic violence, the Defendant moved out of the family home in February/March 2014 and moved into her own apartment

with her two children.

H's new relationship fell apart after a few months. After the Defendant gave birth to their daughter [redacted] in May 2014, she and H were once again in regular contact, and their relationship was on and off.

During 2014, H decided to move to Syria permanently and join the IS armed jihad. He and the Defendant watched IS propaganda videos together, for example showing parades celebrating the capture of Raqqa and other cities. He also procured various items in preparation for his departure, such as a night-vision device and a second mobile phone. H then left Germany in December 2014, initially for Turkey.

3. The offence

a) Counts 1 and 2

In January 2015, H telephoned the Defendant from Turkey and asked her to join him there, so that they and the children could travel to IS territory in Syria together. He told her that it was the obligation of every Muslim to move to the 'caliphate', and that life there was free from the provocations and temptations that were incompatible with Islam. The Defendant, who was in any event fascinated by the idea of an Islamic State based entirely on Sharia, in which she would be able to 'express her faith freely', allowed herself to be persuaded. She was also excited by the idea of being the wife of a jihadi fighter (Mujahideen). She therefore decided to join her husband in travelling to IS territory in Syria, together with her children.

The Defendant was aware that both IS territory and the areas of Syrian territory that they would have to travel through to get there were civil war zones, in which – depending on how the conflict was progressing in various places – military hostilities had occurred and would in all probability occur again. Likewise, the Defendant knew that she would become part of a highly militarised society, in which the carrying of weapons and arms of all kinds was very common. She therefore knew, and also accepted, that travelling to and staying in IS territory would pose a serious risk to life and limb, not only for herself but also for her three children.

On 13 January 2015, the Defendant thus travelled with her three children, accompanied by her brother-in-law H, from Frankfurt via Istanbul to Gaziantep, where she met her husband. From there, the family travelled on to Raqqa in Syria a few days later via the Turkish-Syrian border.

Upon their arrival in Raqqa at the latest, H and the Defendant submitted to IS command, and became part of the organisation, with knowledge of its aims and practices. H, who from then on used the Kunya name 'Abu Bilal', was initially placed in a reception camp for men. The Defendant, who used the Kunya name 'Umm Firdaus', initially lived with her children in an IS guest house for women. After a few days, she left there and lived with her children for a transitional period of 2 weeks in the apartment of Abu Osama al-Gharib, the head of the German contingent in Raqqa, with whom H had been friendly in Germany. After IS leaders decided that H was to train and be stationed in Raqqa, H arranged for the whole family to move to a rented apartment in inner city Raqqa. H then undertook military training, as part of which he was provided with a fully automatic Kalashnikov assault rifle. Meanwhile, the Defendant managed their household and took care of the children.

In March 2015, H received and followed an order from IS leaders to join a combat mission in Kobane.

After a long period in which the Defendant heard nothing from H, she received the news from IS leaders that he had been killed in an airstrike near Kobane. The IS then published an obituary for H entitled 'The Caravan of Martyrs – Abu Bilal al-Maghribi', which commended his merits as an IS member, in particular his propaganda project 'Islamic Audios'. The Defendant received a condolence payment of USD 1 000 and a one-off salary payment of USD 310 in cash from IS.

At the end of August / beginning of September 2015, and thus immediately after the end of her mourning period (Iddah), the Defendant wed the IS member C in an Islamic faith marriage. As explained in more detail under point II.1. f) above, due to his previous artistic endeavours in Germany as the rapper [redacted], C was a well-known personality within IS, for whom he was a fighter and also a propagandist at the IS media outlet 'Al-Hayat-Media'. In addition, C had close links with Abu Osama al-Gharib, the head of the German contingent in Raqqa, and had been close friends with H, who before his death had recommended to the Defendant that, should he be killed, she should marry C or another close friend.

The Defendant kept her apartment even after marrying C, although she often stayed with her children at her husband's home. She continued to run the household – including in the home she shared with C – and to care for her children. In addition, she was co-administrator of a Facebook account entitled 'Hijra zum IS' [the journey to IS], the aim of which was to encourage women to emigrate to IS territory, and which thus extolled the virtues of life in the 'caliphate'. She also ran a Facebook account entitled 'Das Leben einer Muhajira' [the life of a woman who joined IS], or 'DLEM', in which IS and life in the 'caliphate' were portrayed in a positive light. With regard to the contents of this account, the Defendant worked closely with D, who is being prosecuted elsewhere.

For her part, D ran a Facebook page entitled 'Die ideale Muslima' [the ideal Muslim woman], or 'DIM'. Both accounts were repeatedly deleted by Facebook because content was posted which breached the rules, such as the IS prophet's seal or images with weapons. In response, the Defendant and D, who is being prosecuted elsewhere, opened new accounts with the same name, but with an additional number ('DLEM 2', 'DLEM 3', etc.), and continued to post the same content.

Additionally, the Defendant attempted to use email to recruit women involved in Islamism who were still living in Germany, and to persuade them to emigrate to IS territory. She extolled the virtues of life in the 'caliphate' and gave practical advice about how to prepare for the trip. The following is an extract from an email she sent to the recipient B on 15 September 2015:

'Dear Ukhti [sister], it has been 9 months now and I don't for one second regret having taken this step. Allah is naturally testing me with the pain of separation, but this only proves to me that I am on the right path, (...). It is wonderful to live in a country where Allah's word is supreme, in which we live by Allah's law, regardless of status or origin! (...)

I wish you fortitude and courage, and belief and strength, to leave durul Kuffur [the land of the infidels] with your family and to experience the true blessedness of Islam. May Allah allow us to meet again in this Dunya [in this world]. Many Islamic regards from the land of honour.'

The following is an extract from a message the Defendant sent to the user of the email account [redacted]@gmx.de

on 29 November 2015:

(...) Get a cheap smartphone and install the Telegram app inshallah [if Allah wills it]. There are lots of ways to communicate. There shouldn't be any problems here either inshallah. Everything can be arranged. Save your money and start to slowly sell the things that you cannot take with you inshallah'.

At some point in the first third of 2016 (a more precise date is unknown), the Defendant visited a military post in Raqqa with O, known as 'Umm Hureira', who is being prosecuted elsewhere. There, they both requested to be allowed to register for armed combat, in the event that this should become necessary. However, no such registration took place, because IS leaders did not see any need for women to be actively involved in hostilities at that time.

The Defendant raised her children, or at least the older two, in accordance with IS ideology. At the Defendant's instigation, her daughter [redacted] attended the 'activity class' at the IS-run school 'Descendants of Tawheed [monotheism]', and finished the school year with the grade 'very good'. The Defendant also allowed her daughter to pose for photographs in a black full-face veil (niqab) and with an IS flag bearing the prophet's seal in her hand. At her instigation, her son [redacted] regularly wore a camouflage uniform and a black headband with the prophet's seal, i.e. the clothing worn by the members of the paramilitary organisation for children and young people set up by IS, 'Lion Cubs of the Caliphate', in their propaganda videos. In addition, the Defendant and H allowed their son [redacted] to play and pose for photos with a gun and a radio – or with toys which look deceptively similar. The Defendant also encouraged her children to make the

Tawheed finger gesture in photographs. This gesture was originally intended to signify a commitment to monotheism in Islam, but at least in the context of the Syrian civil war, has also come to be recognised as a commitment to radical Islamism that supports armed jihad, and is thus often used by IS members and sympathisers in particular.

As explained under point II 1 a) above, by 2014 Raqqa was already the target of airstrikes by the Syrian armed forces. The associated risk posed to the lives of Raqqa's inhabitants greatly increased during 2015, as a succession of other air forces also began to carry out airstrikes on the city, namely the US air force as of June 2015, the Russian air force as of July 2015 and the French air force as of November 2015. A British IS member was killed in a targeted airstrike at the end of August 2015 in the immediate vicinity of the apartment in which the Defendant

lived with C. The explosive rocket detonated so close to the Defendant's home that the windows were blown out by the force of the explosion. There was therefore a real risk, including for the Defendant's children, of being injured or killed by airstrikes while they were living in Raqqa, either as a result of a non-targeted attack or, as in the example mentioned above, as potential 'collateral damage' of a targeted attack. In addition, the ubiquitous presence of firearms and explosives in homes, which is typical of civil war zones, also posed a significant risk, especially for children, in particular due to the risk of fatal accidents while playing with weapons which have not been safely stored away.

b) **Count 3**

On an evening in March 2015, the Defendant visited a milkshake bar in Raqqa with H and their children. H was carrying with him the fully automatic Kalashnikov assault rifle that he had been given, and it was loaded. When H had to leave the area in which the family were sitting for a short period, he temporarily handed the aforementioned weapon over to the Defendant, with her consent. He hung it either over her

shoulder or over the back of her chair. Meanwhile, the children were playing at an adjacent table. It was not possible to establish how long the Defendant had access to the weapon in this way. However, considering the circumstances of the incident as a whole, this Senate assumes, in favour of the Defendant, that H returned a few minutes later and reclaimed his assault rifle. The Defendant did not possess a permit under the KrWaffKG either.

c) **Count 4**

On a date between mid-March and the end of August 2015, which cannot be identified more precisely, the Defendant was approached during the evening by an acquaintance known only by the Kunya name 'Umm Fulan al-Canadi'. Her full name is unknown. The latter told the Defendant that she had to go to the hospital the following day, but that a slave belonging to a 'brother', i.e. to an acquaintance of her husband, was still staying with her. She asked the Defendant if she could keep an eye on this slave. When asked by the Defendant what she should do with the slave, 'Umm Fulan' responded that she did not have to do anything with her – if the slave wanted to, she could clean the Defendant's home. The Defendant then agreed. She thus knew about the enslavement of Yazidi women and girls by IS, the subsequent slave trade and the rules set out by IS for dealing with slaves. Although at that time she was still inwardly opposed to the slave trade, she did not say anything because she knew that 'Umm Fulan' and her husband worked for the 'Hisba' religious police, and she assumed that if she made any comments to that effect or refused to keep an eye on the slave temporarily, she could get in to trouble with the 'Hisba'.

Early in the morning on the following day, 'Umm Fulan' – as agreed with the Defendant – brought a 13-year-old Yazidi girl to the Defendant's home. This girl had previously been enslaved by IS and was now owned by an IS member identified only by the suffix to his Kunya name, 'Al-Jarzawi'. His full name is unknown. The Defendant, who had had a friend staying with her overnight, let the girl sit with them at the table, and treated her in the same way as she did her friend. This friend did not initially realise that the girl was a slave, and was irritated when the girl disclosed this in response to a question. After some time, the Yazidi girl asked the Defendant, on her own initiative, whether she should clean the Defendant's apartment. Although the Defendant declined her offer ('No, you don't need to do that'), the girl began to mop the floor. The Defendant saw this and did not stop her. The Yazidi girl then played on a mobile phone with the Defendant's daughter. After around 3-4 hours, Umm Fulan picked the girl up. The Yazidi girl later praised the Defendant to 'Umm Fulan', saying that she was nice and that she (the girl) would like to go back to the Defendant's house again. The Defendant attributed this reaction to the fact that 'Umm Fulan', unlike herself, was often very unfriendly towards the girl and ordered her around.

d) **Findings outside the offences with which the Defendant has been charged**

The Senate has also made the following findings, which relate to circumstances outside the offences covered by the charge:

aa) From at least spring 2016, the Defendant had a gun which she – on at least one occasion – carried with her when she left the house, in a holster under her niqab.

bb) At the beginning of 2016, O ('Umm Hureira') and S ('Abu Hureira'), prosecuted elsewhere, purchased the witness L as a slave from an IS slave trader in Raqqa with the Kunya name 'Abu Huda'. The witness L is Yazidi; she had previously been captured and enslaved by IS in August 2014 during the attack on

the Sinjar region. She was then sold on from IS fighter to IS fighter via a number of different stations, until she was finally offered for sale by 'Abu Huda' and purchased by O and S. O and S kept another Yazidi slave, called [redacted], in their home at the same time as the witness L. L and [redacted] had to carry out domestic work and look after O and S's daughter, who was around a year old when L arrived. The witness L also served S as a sex slave, as she had already done for her previous owners.

While living with O and S, L was subject to a wide range of physical abuse at their hands and was regularly raped by S.

After around 18 months, O and S gave the witness L to S's brother, S ('Abu Du'a').

He also regularly raped the witness. When IS came under increasing military pressure in 2017, the witness L fled IS territory with S ('Abu Du'a'). Both of them were initially taken prisoner by the Kurds. The witness L was released on 17 December 2017 and returned to her family in Iraq.

O was friendly both with the Defendant and with J ('Umm Shuhada'), prosecuted elsewhere. In spring 2016, O visited the Defendant on several occasions at the home she shared with C, also because she wanted to meet J, who was living with the Defendant temporarily while her husband was away on a combat mission. O brought her two slaves L and [redacted] with her during these visits, and on two occasions, after consulting with the Defendant, she ordered them to clean the apartment that the Defendant shared with C. It took around 1 to 2 hours to clean the apartment on each occasion; the slaves had to clean the entire apartment apart from one room in which C's weapons were kept, which the Defendant instructed them to omit. The Defendant knew that the witness L and [redacted] were azidis enslaved by IS.

On another occasion, the Defendant contacted O by telephone and asked her to come over with her two slaves so that they could clean the apartment again. O refused because she was annoyed with the Defendant. Additionally, she was unable to drive herself over due to health problems linked to a new pregnancy.

4. Events following the offence

From March 2016, the Defendant's desire to leave IS and return to Germany increased. In addition to the increasingly deteriorating security situation in Raqqa, she was also motivated, firstly, by the fact that she was pregnant again. Secondly, she and C had been having relationship problems after he attempted to marry another woman.

On an unspecified date between mid-April 2016 and the end of April 2016, the Defendant left IS territory with her children. She reached A'zaz, located on the Syrian-Turkish border, at the beginning of May 2016, where she stayed for a total of 3 months, initially in a refugee reception centre and later in an apartment provided by the IHH Humanitarian Relief Foundation (IHH). She contacted the German embassy in Ankara by telephone at the beginning of July 2016, via her sister, A, who had travelled to Turkey specifically for this purpose, in order to ensure that she would not be turned back by the Turkish authorities when she crossed the Turkish border. Although the German embassy promised to help her, the Defendant abandoned her plan to cross the Syrian-Turkish border through official channels. Instead, at the beginning of August 2016, with the help of A, prosecuted elsewhere, she was smuggled over the Syrian-Turkish border into Turkey by members of the FSA. There she met up with her sister [redacted].

The Defendant then stayed with her sister and children in Samsun with A's family until late August 2016. There, A gave the Defendant an iPad belonging to W, prosecuted separately, which she was to return to them in Germany. On 31 August 2016, the Defendant went to the German embassy in Ankara, where she received replacement passport documents for herself and her children. She then flew back to Germany on 1 September 2016 with her three children. On 6 September 2016, the Defendant gave birth to her daughter, H.

Since returning to Germany, the Defendant has lived with her parents in [redacted]. She looked to make a living – initially continuing to wear her veil – by working as an interpreter and as a waitress. The Defendant attempted to keep her time in Raqqa, her links to IS and her relationship with C a secret from the outside world, i.e. from those who did not already know, because she knew that this would lead to hostility and even prosecutions.

Over time, particularly after the Defendant received the news in January 2018 that C had been killed in IS fighting in Syria, the Defendant outwardly adapted her lifestyle, little by little, to that of western women. She increasingly dressed in a western style, and, in August 2018, stopped wearing a veil and headscarf in public, as she considered them an obstacle to her professional advancement, and noted that, without a veil, she was 'perceived completely differently'. Her friends and acquaintances increasingly included people who did not move in Salafist circles or who were not Muslim. She stopped going to the mosque and attending talks given by Islamist preachers. In addition to her work as an interpreter and a waitress, she also tried to establish a career as an events manager, creating herself a profile to that effect on the LinkedIn network. In addition, the Defendant volunteered in a woman's aid association through the Federal Voluntary Service and completed various training courses in the cosmetics sector, which she had recently been hoping would enable her to set up her own beauty salon.

Although the Defendant had outwardly adapted her lifestyle, this did not however mean that she had completely distanced herself from IS and its ideology. It is true that she occasionally expressed criticism of IS or of certain aspects of the regime to trusted friends in Salafist circles. For example, she criticised slavery and the practice of polygamy, which she could not accept, at least personally. She also took the view that 'a lot of things went wrong' for IS, which she considered to be because they had 'a lot of the wrong people doing the right [!] things'. Apart from these isolated criticisms, however, the Defendant did not distance herself from IS or from her own decision to emigrate to its territory.

This was also reflected by the Defendant's support for 'Islamic prison aid', which did not aim to assist all imprisoned Muslims, but only those suspected of committing offences relating to Islamic extremism. For this purpose, the Defendant was, inter alia, in telephone contact with F, who was active on the Islamist scene, and the lawyer W.

Additionally, the Defendant, on her own initiative, assisted various former associates with an IS background in their efforts to flee the former IS territory or the adjacent regions. For example, at the end of March 2019, she and the witness M considered how they might smuggle A, prosecuted separately for murder, crimes against humanity and membership of a foreign terrorist organisation (IS), and his relatives from Greece into Germany. Among other ideas, she considered driving her own car to Greece and using it to smuggle them into Germany under false passports. She was also in direct telephone contact with A and his partner. Only when the Defendant learned from the lawyer W that A's name had come up in the proceedings against his former partner, the separately prosecuted W, and that an international arrest

warrant was expected to be issued against him did she abandon her plans and limit her efforts to securing a defence lawyer specialising in Islamic extremism for A.

On 15 April 2019, the Lebanese journalist [redacted] published a video entitled 'German ISIS widow A' via the news channel 'Al-Aan TV', which is broadcast on the websites YouTube and Twitter.

This video discussed the Defendant's IS history and her current life in Germany. The main source of information used in the video, which appeared in Arabic with English subtitles, were pictures and documents from the memory of a mobile phone previously used by the Defendant, which she had lost in unexplained circumstances while fleeing Syria. The approximately 20-minute video covered, inter alia, the Defendant's wedding to H, her journey to Syria, the death of H and the Defendant's subsequent relationship with C. In addition, the video discussed the Defendant's everyday life in IS territory and how this affected her children, such as her daughter [redacted] attending an IS school and her son being given clothes, toys and accessories implying a close affinity with IS. The central message of the video is that it is incomprehensible how a woman with such a history of involvement with IS can live in Germany for years and – the journalist assumes – without any intervention from law enforcement. The release of this video also triggered numerous press articles, which took a similar stance on the Defendant's story. For the Defendant, who up until that point had attempted to conceal her IS history and her relationship with C from the outside world as far as possible, the publication of the video and the subsequent press articles were a serious blow. Many of her friends and acquaintances confronted her about it, which led to hostile reactions and even the breakdown of personal relationships. The Defendant tried to avoid confrontation by deleting her social media accounts. After a short period of time, she recommenced her initial efforts to avoid further in-person confrontation, in particular with the press, by changing her place of residence and her telephone number.

III. Assessment of evidence

1. Testimony of the Defendant

The Defendant admits some of the charges. Her confession covers, specifically, H's departure for Syria to join IS's jihad there, her own journey with the children, her stay in an IS women's house and the subsequent move to her own apartment, H's military training, her brief material possession of H's assault rifle, receiving a widow's allowance and salary payment from IS and her marriage to C. Furthermore, the Defendant has confessed to allowing her daughter to attend an IS school and dressing her son in camouflage clothing and headgear bearing IS symbols.

The same applies to the allegations that the Defendant temporarily kept an eye on a slave for 'Umm Fulan'. Although the Defendant stated, on the occasion of her visit to the German embassy in Ankara on 31 August 2016, that her journey to Syria was not voluntary and that she had been kidnapped by H, she did not persist with that version of events in the main hearing.

Insofar as her testimony differs from the findings above, the Defendant declares the following regarding the charges against her: She emigrated to Syria because her primary motivation at that time was to save her marriage to H. As she had already been divorced, she did not want to risk the break-up of her relationship, which had produced two children. It also offered her the opportunity to express her faith freely without the insults and harassment that were commonly experienced by conservatively dressed Muslim women in Germany. Although the part of Syria in question was a civil war zone, she did not 'see

it as such' at that time. Rather, it was about sharing a common belief without divisions; all were equal and had similar ideas. Once she arrived in Syria, however, she quickly realised that it was not for her. She had informed H of this even before they arrived in Raqqa. H agreed to the Defendant returning to Germany, but on the condition that she left the children with him in Syria. That was out of the question for her. The relationship was already having serious problems, as her own dominant and demanding nature did not correspond to his idea of what a woman should be. This constantly caused arguments, and was the reason why they had previously separated in Germany.

Very soon after her marriage to C, she started seeking opportunities to escape from IS territory. However, this was difficult because IS did not allow people to leave without a specific reason – which she did not have. In any event, from autumn 2015 IS declared: 'Those who are in the Sham, stay in the Sham'.

Insofar as she is accused of sending emails promoting the 'caliphate', her promotional statements did not refer to IS ideology. There were also many positive things set up by IS, e.g. infrastructure such as 'economic offices', rebuilding of roads and the creation of green areas along roads, support for the poor by means of the alms tax ('Zakat') or the support office for single women. She also never ran a Facebook account encouraging others to emigrate to the Islamic State. It is true that she owned the account 'Das Leben einer Muhajira' but she did not use it for propaganda. She merely posted about, for example, what she had cooked or beautiful things she had seen in the 'caliphate', such as sunsets.

She did not give her children any information about IS ideology. It is true that her daughter attended an IS school in Raqqa. The academic subjects taught there were Arabic, maths, sports and memorising the Koran. The camouflage clothing was nothing out of the ordinary in Raqqa; all of the children wore clothes like that. It could be purchased there in normal shops which did not belong to IS. The camouflage clothing was not intended to symbolise anything. Moreover, she had not brought many western clothes with her. The photographs showing [redacted] in camouflage clothing and holding a gun were taken by H. She does not recognise the gun; it did not belong to her husband. She was not present when the photographs were taken.

The allegation that she kept an eye on an enslaved Yazidi girl for several hours at the request of an acquaintance is correct. However, she had doubts about whether the girl was only 13 years old, even though the girl had told her so. Comparing the girl with her eldest daughter, she must actually have then been older than 13.

As regards the witness L, what happened to her is cruel, inhuman and certainly not Islamic. However, the witness L's statements regarding her are inaccurate. She never met the witness L and does not know her at all. At no time did she attempt to register with IS to participate in armed conflict. At that time, ISIS did not allow women to take part in armed conflict under any circumstances. Furthermore, C was possessive and would never have allowed her to be sent to the front. Nor did she own a gun. At no time did slaves work for her, including the witness L and a slave named [redacted]. She also did not attempt to persuade O to allow her slaves to work for her. In any case, she only knew O slightly, in contrast to their respective husbands, C and S, who were close friends. She completely condemns slavery.

As early as January 2016, she often travelled to the borders of IS territory in order to prepare for her escape, on the pretext of visiting 'sisters' at the checkpoint. From March 2016, she was in telephone contact with the German embassy in Ankara via the emergency number. She left IS territory at the

beginning of March 2016. She then travelled for weeks, reaching A'zaz at the beginning of May.

She is not an enemy of the State, but sees Germany as 'her' country. After her return from Syria, she fully integrated here and started a new life. The important things in life for her are her family, her children's education, integrating the children into society, obeying the law and getting a good job. Her change in 2012 was to do with her then husband. But that is in the past; here and now, she is no longer a practising 'sister'. Going to Syria was the most stupid mistake of her life, which she deeply regrets.

2. Taking of evidence

a) Findings relating to the Defendant's personal circumstances

The findings relating to the Defendant's personal circumstances are based on her testimony. These details, insofar as they relate to the Defendant's education and vocational training, are corroborated by the information contained in a curriculum vitae saved on her laptop. The birth dates given by the Defendant for her children [redacted] and [redacted] correspond to the dates on the passport replacement documents issued by the German embassy in Ankara at the end of August 2016, when the Defendant returned to Germany from Turkey. An extract from the Central Federal Register of Convictions dated 23 January 2020 shows that the Defendant does not have a criminal record. Findings relating to the organisation 'Islamic State' aa) The findings concerning the structure of the organisation 'Islamic State', the attack on Yazidis in the Sinjar region at the beginning of August 2014, and the enslavement of Yazidi women are based on the statements by the expert witness Dr [redacted]

in his 'Report on the terrorist organisation Islamic State (IS)' as issued in February 2016 and supplemented in April 2019, and additional oral statements made by the expert witness in the main hearing. His expert statements also covered C's role within IS, the school system and the paramilitary organisation for children and young people, 'Lion Cubs of the Caliphate'.

The Senate has no doubt as to the qualifications and specialist knowledge of the expert witness. The expert is a specialist in Islamic studies and a recognised expert on the subject of the Middle East and the Syrian Civil War. He has given evidence to the Senate in a number of proceedings.

bb) The expert witness's comments on IS's attack on the Yazidis and the enslavement of Yazidi women are in many respects corroborated and supplemented by the testimony from the witness L, who was herself a victim of this attack. The Senate's findings concerning C's work as an instructor in the paramilitary organisation set up by IS for children and young people, 'Lion Cubs of the Caliphate', are also based on her testimony. Her statement is assessed in detail below, please see the comments under letter c) et seq. in this regard.

b) Findings relating to the offence

The findings relating to the offence are firstly based on the Defendant's testimony, which is largely a confession statement. Insofar as the Defendant admitted the charges, her confession is also credible, since her statements are corroborated by numerous pieces of evidence. For example, her journey to Syria and her daily life are documented by many photographs which were found on the Defendant's mobile phones and other storage media, and some of which appeared in the video released by the journalist [redacted]. Other findings documented in this way include the weapons belonging to her

husband, [redacted]'s attendance at school, her son posing in uniform-like clothing like that worn by the 'Lion Cubs of the Caliphate' and her daughter in a full-face veil with an IS flag, the Defendant's temporary material possession of the assault rifle, IS's obituary for H, the receipt of a widow's allowance and a salary payment, and the Defendant's relationship with C.

Insofar as the Defendant has also admitted that she kept an eye on a Yazidi slave for 'Umm Fulan' while the latter was absent for several hours, this admission is corroborated by a conversation between the Defendant and the separately prosecuted K on 7 November 2017, which was recorded through the interception of telecommunications. In this conversation, the Defendant talked extensively about that incident, although in this context she also expressed her reservations about slavery. The Senate sees no reason to believe that the Defendant made these comments 'for appearances' sake', especially because K, to whom she was speaking, seemed very enthusiastic about the idea of having his own slave during this telephone call ('So she does everything, yeah? A slave, right? That's so cool, man, I want one of those'). If the Defendant shared K's enthusiasm, she would have had a very sympathetic ear for such statements. However, there are no such remarks by the Defendant; on the contrary, she tells K that slaves should not be treated like animals and that they also have certain rights, and she later tells him that she cannot, for example, ever imagine herself only giving a slave 'survival essentials' in the form of bread and water while herself sitting at a table covered with food. She could not do that at all. She also disapproved of this 'Sabiyya thing' [war prisoners].

Insofar as the Defendant contested the charges or gave testimony contrary to the aforementioned findings, her statements are refuted by the hearing of evidence: aa) Motivation for emigrating to Syria and remaining in IS territory

The Senate does not accept the Defendant's testimony to the effect that she had travelled to Syria predominantly to save her marriage to H. Rather, considering the overall circumstances, it is clear that the Defendant herself wished to emigrate to IS territory in Syria in order to join IS, whose ideology she shared. At that time, the Defendant herself had radical Islamist beliefs. As she has herself admitted, she was involved in the Salafist scene, through which she had met her future husband H, and had participated in demonstrations and 'prisoner support'. As she herself admitted during the main proceedings, she was also convinced that it was the duty of every Muslim to 'undertake Hijra', meaning to emigrate to a Muslim country ruled solely on the basis of Sharia law. She not only saw this as an obligation, but she was also, by her own admission, fascinated by the idea of living in a country in which she could 'express her faith freely' and she wanted to try out life in the Islamic State, about which those on the Salafist scene had 'always spoken so highly'.

The Defendant's assertion that she had realised even before arriving in Raqqa that this 'was not for her' and that she wished to return to Germany and was only prevented from doing so by her husband insisting that the children remain in Syria, is not credible. On the contrary, the hearing of evidence has convinced the Senate that the Defendant was enthusiastic about life in IS territory and her role as the wife of a Mujahideen, and accordingly had no intention of leaving IS territory, at least until she fell pregnant again in spring 2016. The Senate also considers it to be out of the question that relations between the Defendant and H were so strained that he would blackmail her into remaining in Raqqa by refusing to allow the children to leave:

the fact that the Defendant did not want to return to Germany, but on the contrary was enjoying her new

life, is supported firstly by her own statements during her stay. For example, she wrote the following in an email to the recipient B on 15 September 2015:

'... it has been 9 months now and I don't for one second regret having taken this step. Allah is naturally testing me with the pain of separation, but this only proves to me that I am on the right path, (...). It is wonderful to live in a country where Allah's word is supreme, in which we live by Allah's law, regardless of status or origin!'

Signing off the message, the Defendant sent the recipient 'Many regards from the land of honour'. It is similarly apparent from another email sent by the Defendant to the owner of the email address [redacted]@gmx.de, that it was precisely the Islamic State regime that was the reason for the Defendant's happiness there:

'Inshallah good morning, I wish that everyone could experience what I am experiencing, you don't even have to come here, parts of Libya and Nigeria are already parts of the caliphate, alhamdulillah.'

Moreover, it is also apparent from external events that the Defendant had neither any intention of leaving IS territory as soon as possible, nor was she forced to remain there to be with her children. If the Defendant had intended to leave IS territory at the earliest opportunity, it is likely that she would have done so or at least attempted to do so following the death of H in March 2015. However, that was clearly not the case; instead, the Defendant planned to start studying medicine or Sharia law in Raqqa part-time, as is evident from a series of text messages sent by the Defendant to her chat partner D on 29 July 2015. She also married C as soon as her mourning period (Iddah) was over, another IS member, and a well-known one this time. This in practice meant that she would be remaining in Raqqa for an indefinite period. The Defendant's conduct is also consistent in particular with the fact that C was one of the two people that H recommended to the Defendant to be his 'successor' in the event of his death.

Similarly, the way in which the Defendant reflected upon her time in Syria after returning to Germany leaves no doubt that, far from being there against her will, on the contrary she remained in Syria of her own accord and treasures the memory of it.

This is particularly apparent from a telephone conversation on 15 October 2018 with the witness M, in which the Defendant looked back on her time there:

'My life in Syria was great, mate ... I've never felt disappointed in myself, you know? I fully stand behind everything that I did.'

There is also nothing to suggest that the relationship between the Defendant and H had broken down to the extent that he would have blackmailed her as she describes. The Senate considers it credible that, some time before travelling to Syria, the Defendant moved out of the home she shared with H, after differences arose between them due to H beginning a relationship with another woman. However, the Senate does not believe that those tensions were still present after the couple made the joint decision to emigrate to Syria. In particular, text messages sent by the Defendant to H after he had departed for the conflict in Kobane and she had not heard from him for several days suggest that there were no such tensions and that the relationship was intact. The following message from the Defendant to her husband, sent on 22 March 2015, appeared in the video released by the journalist [redacted] on 15 September 2019.

'If you are a martyr, I ask Allah to welcome you ... I want to enter paradise with you, wait for us! May Allah unite us in the afterlife at last, with all our children, amen. I love you!'

Nor was the deep affection expressed in this message one-sided, as demonstrated by a diary-like entry written by H several days earlier, on 17 March 2015, separate from the Defendant's messages, which reads:

'One day's rest, then soon on to Ain al Islam (Kobane). May Allah give us strength, endurance and fortitude. If I don't return to my family, may Allah stand with them, and protect them from leaving the blessed land of Jihad. A life with drones and fighter jets over our heads and Allah's Sharia law is better than life in supposed safety in Darul Kufr [the land of the infidels], surrounded by Schirk [sin]. Pray to Allah for fortitude and make Dua [say a prayer] that if we do not meet again in Dunya [in this life] then in Akhira [the afterlife], do not leave Dawlat al Khilafa [the caliphate state]. Let our children grow up in honour and may Allah gift you with an honest husband, should Allah take me.'

Even retrospective statements by the Defendant suggest that her relationship was solid until the end. In a voice message sent by the Defendant to D, prosecuted elsewhere, on 30 August 2015, i.e. shortly after her new marriage to C, she said:

'Point 2 is of course: Life goes on. Of course I miss him [meaning H]. Hello, he's the father of my children? But I loved him too, he was my dream man (...) But Hamdullah, Allah does not take without ... without giving you something, I don't want to say now, having given you something better, but also something beautiful, which in any case makes you happy and content (...)'

bb) Knowledge of the risks associated with the civil war situation

When the Defendant travelled to Syria, she knew that she would be exposing not only herself but also her children to considerable risk of injury and death. Insofar as the Defendant admitted in the main hearing that she or 'one' did not perceive the civil war situation and the associated risks 'as such', the Senate view this as an attempt to justify her behaviour. The fact that IS's territorial gains were the result of military action, which also involved conflict with the Assad regime or other insurgent groups, was then the subject of daily media coverage and was thus general knowledge. This is particularly true for those in Salafist circles, who followed events in Syria with particular interest. The fact that the Defendant was aware of the dangers and at best deliberately chose to ignore them is also clear from her own testimony, according to which she watched several IS propaganda videos with H in the period before they left for Syria, such as IS military parades celebrating the capture of Raqqa and other cities. She also knew that the precise reason H wanted to go to Syria was to fight, and that he had purchased items for use in combat in preparation, such as a night-vision device. In light of this, the Defendant could not have been unaware that IS territory was a civil war zone in which military conflict was an everyday occurrence. The Defendant also could not be sure that she and her family would live in an area that was within IS territory and thus unaffected by hostilities. According to the Defendant's own testimony, it was not clear before and at the beginning of their stay in IS territory in which region or city her husband would be stationed, so it was also undecided where the rest of the family would reside. Additionally, as she knew about the civil war, the Defendant was also aware that territorial borders and front lines could change at any time, meaning that there were actually no areas which were reliably and permanently safe from military

hostilities. She was at least willing to accept this, because it was clearly agreed between H and the Defendant that – as stated in H’s diary entry of 17 March 2015 addressed to the Defendant – ‘a life with drones and fighter jets overhead and Allah’s Sharia law is better than life in supposed safety in the land of the infidels, surrounded by sin’.

cc) Objective danger

The findings of the Senate to the effect that the Defendant had not only recognised the aforementioned risks at the time of her departure, but also that these actually later materialised, are based firstly on the expert statements by expert witness Dr [redacted].

The latter’s statements, in particular concerning the danger resulting from airstrikes in the period between 2014 and 2016 are supported by numerous other pieces of evidence.

The witness S, who themselves lived in Raqqa in 2013 and 2014, stated that, in 2014, targeted raids took place on an almost daily basis for over 2 months, aiming to hit targets in inner city Raqqa, including the court, the hospital and men’s accommodation. One of these attacks also destroyed the windows of her home.

In addition, the Senate read out extracts from the judgment of the Munich Higher Regional Court of 27 April 2017 (Ref. 8 St 2/16 [redacted]). This states that between the beginning of January and the end of October 2015, Raqqa was the target of airstrikes by the Assad regime, by an alliance led by the United States, of which Jordan was also a part, and by France and Russia. During an air strike in Raqqa’s urban area in March 2015, the defendant in that case, who lived there, was himself injured by a bomb fragment. He also learned of two other airstrikes, one of which had hit the hospital. He went there on the orders of IS leaders and found 30-35 civilians, including children, who had been killed. Due to the bombings on Raqqa, he was very scared for himself and his children, which motivated him to evacuate his children from IS territory in October 2015.

The Defendant herself also repeatedly told outsiders about the dangers, particularly due to airstrikes, that she and her children faced in Raqqa. For example, she wrote the following to the user of the email address [redacted]@gmx.de in an email of 23 November 2015:

‘... you can’t forget the time in which we are living. We are not living by sea here, getting a coffee and a piece of a cake in the afternoon. Oukhti [sister], there are regularly bombings here, and of course it’s better to have a man to look after you’.

On 30 August 2015, the Defendant also sent her chat partner D a video that she had herself recorded on her mobile phone, documenting the results of a targeted attack on her neighbour. It is clear from the Defendant’s own explanations in this video and from the subsequent chat messages that the Defendant’s neighbour was killed in this attack, a British IS member who worked as an IT specialist for IS. The

Defendant commented on this in the video with the words ‘We belong to God and we return to God’. A subsequent email from the Defendant to the owner of the email address [redacted]gmx.de on 11 September 2015 reveals that the bomb blast went off next to their house – they survived, but their bedroom windows ‘disintegrated’ due to the enormous pressure and sound.

According to the statement from witness S, who lived in the Iraqi city of Fallujah from 2015, the Defendant told her about numerous bomb attacks on Raqqa and also that the Defendant was very upset by this. Among other things, the Defendant told the witness S that one of the airstrikes had hit a house in which many Russian families lived and many of them had been killed.

The fact that the Defendant's children were also exposed to significant risk of injury and death due to the highly militarised society and the associated ubiquity of weapons is also clear from the Defendant's own remarks in monitored telephone calls. The Defendant told K, prosecuted separately, in a telephone call on 23 December 2017 about numerous accidents in which children were playing with weapons or explosive belts and killed themselves or their siblings. Lastly, in another telephone call with K on 27 December 2017, the Defendant described the 'normality' of children dying in Raqqa.

Defendant: '(...) I believe that there is one real reason why I am not there. Because – I think, there's no way I could bear it if my child was crushed in a pile of rubble, I think, eh'.

K: 'Yes, who could bear it?'

Defendant: 'Yes, if you listen to some stories, how they say: Yes, my son became shaheed [died as a martyr] in the Euphrates, the other became shaheed in some other way ... a dead ... body on the street. It always sounds like it's so normal, you know. A friend I know, her sons are ... she has seven sons, five of them became shaheed, subhanallah'. K: 'Subhanallah, may Allah welcome them ...'

K: 'Hmm.' (agreeing)

Defendant: 'Yes, and young, too: around 13, 15, 17, that sort of age.'

Defendant: 'It's pretty intense. And people are so relaxed about it.'

dd) Promoting the 'caliphate' and emigrating to it

(1) 'Hijra zum IS'

Insofar as the Senate has established that the Defendant was co-administrator of a page entitled 'Hijra zum IS' on the website Facebook, which gave those wishing to emigrate advice about how best to reach IS territory, this is based on the statement from the witness S. The witness S gave testimony about her own situation, in which she says that she herself resided in IS territory for several years and joined that organisation, for which she was sentenced to 5 years imprisonment by the Stuttgart Higher Regional Court. During her stay in IS territory, she herself promoted IS on social media. With regard to the 'Hijra zum IS' page, the witness also stated that, although she was not very active on that Facebook page, she was aware that the page was quite frequently banned – presumably because of terrorist content – and would then be set up again. Every time a new version was created, she received an email invitation from the Defendant. There was an area on the page where you could see who was a member and who was an administrator. There she saw for the first time that one of the administrators was referred to as 'Umm Fufu'. 'Fufu' is the nickname of [redacted], the Defendant's eldest daughter. The witness S was familiar with the Kunya name 'Umm Fufu' because she had long been in contact with the owner of the 'Umm Fufu' Facebook account. Her first contact with this account took place while she – the witness S – was already in Iraq, but the Defendant was still

in Germany. They discussed private matters and IS, and the Defendant told her that she also wanted to emigrate.

They also remained in contact after the Defendant had moved to Syria. This is how she learned, among other things, that the Defendant's husband had died after 3 months and that the Defendant wished to marry again.

In view of the degree of detail in the witness's statement – also concerning how she concluded that the Defendant was a co-administrator of the Facebook page – the Senate has no doubts as to the credibility of her testimony. The fact that she herself promoted IS and emigration to the caliphate on social media explains why she paid more attention to other social media pages with a similar theme.

The Senate can also rule out the possibility that the witness S has deliberately made false accusations against the Defendant. She attributed her willingness to testify against other IS returnees to the fact that she did a lot of thinking during her imprisonment, that crimes have been committed and she therefore simply considered it right that every returnee should also be brought to justice. Nevertheless, the Senate still considers it possible for the witness S to have an interest in unfairly incriminating the Defendant. However, it can rule out the possibility that any interest in incriminating the Defendant is reflected in the testimony from the witness S, because this shows no tendency to incriminate. For example, the witness was unable to give further details when asked about the Defendant's individual activities on the account 'Hijra zum IS' and thus did not incriminate her further, although she could have done so easily and without any significant risk of being found out. In addition, she responded to the Senate's enquiry about whether the Defendant possessed weapons by saying that the Defendant had never spoken to her about that; if she had been seeking to incriminate the Defendant as much as possible, it would have been easy to do so, especially as she had previously stated that she herself had been armed, if only for self-defence purposes, and that most women there carried weapons for that reason.

(2) **'Das Leben einer Muhajira' and subsequent accounts**

The Senate's findings regarding the Defendant's promotional activities on the Facebook account 'Das Leben einer Muhajira' and subsequent accounts are based firstly on the Defendant's testimony, in which she admitted that she ran those accounts herself. The Defendant denies having posted IS propaganda on those pages, and stated that she merely posted 'beautiful things', such as cooking recipes, sunsets, etc. However, this statement is refuted by the contents of the chat communication with D, prosecuted elsewhere:

Firstly, it is apparent from numerous messages in this chat that the Defendant and D had set up numerous Facebook user profiles using fictional personal details in order to log onto Facebook pages and make posts on the 'Das Leben einer Muhajira' account. The large number of profiles was necessary because Facebook moderators repeatedly banned the user profiles temporarily because the posts they created breached community standards. For example, the user profile 'Safiyya' was banned for 30 days because this profile posted a photograph showing a flag with the IS prophet's seal (messages from D on 2 August 2015, 20:02 to 20:26). In a further communication (5 January 2016, messages from 13:09 to 20:15), D reported that the 'Safiyya' profile had been banned (again) for 30 days, because, among other things, a sticker with the prophet's seal and the slogan 'La ilaha illa Allah' [there is no other God but Allah] had been posted there. In numerous other messages, the Defendant and D also discussed which profiles

were currently banned by Facebook moderators and for how long, which profiles were still 'working' and what the log-in details were for these.

Furthermore, it is clear from the messages that Facebook moderators deleted multiple posts from the aforementioned user profiles, because the content breached Facebook's community standards. For instance, on 29 July 2015, D sent the Defendant a screenshot of a Facebook system message, which stated that a post written in Arabic on the profile 'Nusyeba Khattab', which both women used – here 'La ilaha illa allah' – had been deleted for breaching community guidelines.

Lastly, it can be seen from the messages exchanged between the Defendant and D that the page 'Das Leben einer Muhajira' and subsequent accounts were also banned for publishing content breaching community standards. For example, in a message of 2 August 2015, D sent the Defendant a message with a screenshot of the Facebook page 'Das Leben einer Muhajira 2', which showed a ban notification from Facebook moderators. The post which had caused the page to be banned was also shown. It was a photograph which, according to the Defendant's testimony, she had herself posted, showing her husband H's Kalashnikov with the Defendant's handbag hanging from its front sight. The Defendant explained this in the main hearing as 'a sort of romantic picture'. On 2 August 2015, the Defendant sent a message to D about the page 'Das Leben einer Muhajira 2' being banned, commenting: 'shame ...' – 'never mind: Muhajira 3' – 'Hahaha' (emphasis added).

The aforementioned examples of posts which caused the Facebook moderators to implement bans clearly show that the Defendant and D were not merely posting 'beautiful things such as cooking recipes or sunsets', but IS symbols and slogans which are used in Islamist circles to express commitment to that organisation. This is also evident from a further communication, in which the Defendant and D excitedly discussed an idea suggested by D for a new Facebook page entitled 'Khilafa in pictures' [the caliphate in pictures]. The key concept of this new page was that 'nothing provocative' would be posted, but 'only really beautiful things', meaning 'nature, children, so that the world and his wife will want to come to dawla [the state]' (messages from 2 August 2015, 19:53 to 20:17). It is obvious that this idea, although not later implemented, had its origins precisely in the fact that the page 'Das Leben einer Muhajira' and its successor accounts definitely contained 'provocative' content, and that they hoped that the 'new page idea' would allow them to promote IS ('... so that the world and his wife will want to come to dawla') without running the risk of the page being regularly banned by Facebook moderators for breaching Community standards.

ee) Raising children in accordance with IS ideology

(1) **Schooling of [redacted]**

The Senate's findings that the Defendant sent her daughter [redacted] to an IS-run school are based on the Defendant's testimony and on [redacted]'s school report certificate, which appeared in the 'German ISIS widow A' video released by the journalist [redacted].

The Senate is convinced that the establishment attended by [redacted] was a school and not merely a kindergarten. It is true that the Arabic text on the certificate could be translated either way: but the Defendant herself described the institution as a school in which 'academic subjects' were taught. The fact that the Defendant's daughter was 7 years old at the time also supports the argument that this establishment was a school, intended for girls at an appropriate age to be receiving education. In

addition, according to the school certificate, the pupil's performance was graded.

Insofar as the Defendant admitted that the school's academic subjects were limited to 'Arabic, maths, sports and memorising the Koran', thus implying that IS ideology was not taught there, her testimony is refuted by the expert testimony from the expert witness Dr [redacted] on schooling in the Islamic State. In that regard, the expert stated that the former teaching staff from Syrian state-run schools had largely fled, meaning that IS had to employ its own personnel as teachers. Teaching content and subjects considered to be 'non-Islamic' from an IS perspective were removed from the curriculum and replaced by IS-approved content. A key role was played by religious education, the main aim of which was to convey IS's interpretation of Islam. This included the questions of who, from IS's perspective, should be regarded as 'believers' and who should be regarded as 'infidels', and also the question of what should happen to infidels, i.e. the central components of IS ideology.

(2) **Clothing, accessories and toys**

The Senate's findings that the Defendant and her husband gave the Defendant's children [redacted] and [redacted] clothing, accessories and toy weapons showing an affinity with IS, with which they then posed for photos, are based on various photographs saved on mobile phones and other storage media belonging to the Defendant, and images which appeared in the 'German ISIS widow A' video. In addition, several photographs saved on the Defendant's mobile phone, in which the Defendant's children are making the 'Tawheed finger gesture', were examined. The Senate's findings that the camouflage clothing worn by [redacted] together with the black hat with the prophet's seal was the same as the clothing worn by the members of the paramilitary youth organisation 'Lion Cubs of the Caliphate' are based on the expert testimony from the expert witness Dr [redacted], who was shown the corresponding photographs of [redacted].

The Defendant acknowledged that the persons depicted in the photographs were her children. The Senate cannot agree with her objection that the camouflage clothing worn by [redacted] was not intended to symbolise anything. It may be true that, generally speaking, camouflage clothing can also be worn purely as a fashion statement and is often (probably) not intended to 'symbolise anything'. However, that is not the case here. The precise combination of the camouflage clothing with a black hat bearing the prophet's seal and, as can be seen in a series of photos, posing with a gun and radio at the same time, make it clear that the intention here was to create maximum resemblance to the clothing and equipment of the 'Lion Cubs of the Caliphate', in order to depict the members of this youth organisation – and, as a long-term goal, adult IS fighters too – as role models and idols. This conclusion is not invalidated by the fact that many children may have worn this type of clothing in Raqqa. Nothing else was to be expected in a city which was used by IS as its capital city in the Syrian part of its territory and thus had a high proportion of fighters among its population, and in which many people, like the Defendant, would aim to prepare their children in this way as early as possible for their future as 'holy warriors'. The Senate's assessment is not altered by the Defendant's claim that she 'had not brought many western clothes with her'. As the witness S pointed out, it was also possible to buy normal children's clothing in the shops in Raqqa, in particular clothes donated from Europe and from the USA.

The fact that the Defendant considered it the destiny of her children to assume the role designated for their respective gender by IS is also clear from chat messages between the Defendant and D, prosecuted elsewhere. When D learned that the Defendant had married C, D said jubilantly 'and hopefully a couple

of small jihadi fighters will soon follow, inshallah'. The Defendant responded, in reference to her son: 'I already have one Istishadi [suicide bomber] inshallah. That's enough.' In relation to her two daughters, she added: 'And 2 girls, who can give birth to more' (messages from 30 August 2015, 17:51:20 to 17:51:56).

ff) 'Keeping an eye on' an enslaved Yazidi girl

The Senate's findings regarding the incident in which the Defendant 'kept an eye on' an enslaved Yazidi girl for 3 to 4 hours, while the girl's 'owner' was temporarily absent at the hospital, are based on the relevant information provided by the Defendant in a telephone conversation with K, prosecuted elsewhere, on 7 November 2017 as well as the reading of the Defendant's confession in this regard at the remand hearing on 20 April 2020, and the Defendant's supplementary testimony at the main hearing.

The fact that the girl was a prisoner of war enslaved by IS is clear from the fact that, in the above-mentioned telephone conversation, the Defendant described the girl as a 'Sabiyya' [prisoner of war] and also expressly described her as a 'slave'. It is clear from the previous conversation during this telephone call that the Defendant had detailed knowledge of IS slavery, both at the time of the call and even at the time of the offence, as she had already met an acquaintance's slave and had learned about IS slavery on that occasion. Accordingly, she knew what was meant by the name 'Sabiyya' or 'slave' in an IS context.

The details given by the Defendant about the relationship between the girl and her owners make it clear that it was a slavery relationship. According to this information, the girl was actually the slave of an 'Al-Jarzawi'; however, he travelled a lot and had therefore left the girl with the Defendant's friend 'Umm Fulan' and her husband on a long-term basis. The statements made by the Defendant in the telephone conversation referred to above suggest that the girl was required to carry out domestic work in 'Umm Fulan's' household. Additionally, when the Defendant asked 'Umm Fulan' what she should do with the slave while 'Umm Fulan' was at the hospital, the latter responded that the girl could 'clean her home'. In addition, the Defendant stated that the slave was not available to 'Umm Fulan's' husband for sexual purposes because she belonged to 'Al-Jarzawi', who, as her original 'owner', had the exclusive right to demand sexual services from her, according to the rules published by IS for dealing with slaves. It is clear from external circumstances that 'Umm Fulan' and her husband also exerted control over the girl's movements and will: otherwise it would not have been necessary to find someone to 'keep an eye' on her while 'Umm Fulan' was at the hospital. It is also apparent from the Defendant's comments during the aforementioned telephone conversation that 'Umm Fulan' regularly treated the girl as one would expect a slave to be treated, that is to say in a condescending and commanding way. The Defendant said:

'the other one [meaning: 'Umm Fulan'] is strict, she talks to her like she is a piece of shit, like: Do that now, get up, do this, now this. She really gives you tasks, that's how it is, you understand'

Insofar as the Senate has established that the girl is of Yazidi origin, this is based on the Defendant's testimony during the remand hearing on 20 April 2020, in which the Defendant herself expressly referred to a 'Yazidi' girl. It is thus highly likely that the girl was Yazidi, also because although the statements from the expert witness Dr [redacted] and the witness L agree that in rare, one-off cases, women from other religious communities were enslaved, the only mass enslavement by IS involved the Yazidis from the Sinjar region.

The Senate is also convinced that the girl was 13 years old at the time of the offence. The Defendant explicitly stated this age when asked by her interlocutor K during the above telephone call. In her testimony during her remand hearing, the Defendant added that her knowledge of the girl's age was based on the information that the latter had herself provided at the time. The Senate therefore has no evidence to suggest and sees no reason why the girl should have declared herself to be younger than she actually was. In particular, she was not likely to have 'made herself younger' in order to protect herself from sexual assault by her 'owner', because the question of whether enslaved girls could be raped by their owners did not depend on a certain minimum age, according to the rules published by IS, but on whether the girl in question was physically 'capable' of sexual intercourse. If that was not (yet) the case, the owner could 'enjoy her in other ways'. Insofar as the Defendant doubted the girl's age in her statement in the remand hearing, because in hindsight the girl seemed to be older, at least compared to the Defendant's own daughter, this does not cast any serious doubts on the above finding. It is clear that such a comparison cannot be given any weight, given the widely varying stages of development of girls in the age group in question.

gg) 'Borrowing' of two slaves to clean the apartment, possessing a gun, attempt to register for armed conflict

The basis for the Senate's findings that, on two occasions, the Defendant ordered L and [redacted], the two slaves owned by the separately prosecuted O, to clean her apartment is the statement from the witness L.

The same applies to the findings that the Defendant had a gun which she – on at least one occasion – carried on her person when she left the house and that she, together with the separately prosecuted O, sought unsuccessfully to register with IS's military department for armed conflict.

(1) **Testimony of the witness L**

The witness L stated that she came from the village of Kocho in the Sinjar region and was living there with her family at the time of the IS attack. During this attack, which was described in great detail by the witness, she was detained in the Kocho school building together with the other inhabitants of her village. There, IS separated the men from the women and took the men by car out of the village, where they were shot. The older women were also separated and then shot. The remaining women and children were taken away by bus and were held for several months in communal accommodation in various places, including Soulaa, Tal Afar, Al-Kash and Mosul, where the women were consistently forced to convert to Islam. Lastly, she was moved to Raqqa together with her brothers, then aged 3 and 8 years old, whom she had passed off as her sons so that IS members did not see her as a virgin. Once there, her eight-year-old brother was picked up by IS members and taken to a camp for religious and military training. She and her three-year-old brother were sold in exchange for an arms delivery to an IS member named Abu Omar, for whom she had to serve as a slave in a military hospital for injured IS fighters. She was subsequently sold on a total of seven times to IS fighters, each of whom physically abused and raped her. She ultimately ended up with a slave trader called 'Abu Huda' in Raqqa. He sold her to Abu Hureira al-Almani. Abu Hureira's household and his wife Umm Hureira already had a Yazidi slave called [redacted] working for them. She and [redacted] carried out domestic work and had to look after the Hureiras' daughters [redacted] and the subsequent arrival [redacted]. Abu and Umm Hureira also beat her regularly. Abu Hureira also raped her on many occasions, with the knowledge and agreement of

Umm Hureira. She remained with Abu and Umm Hureira for a total period of 18 months, until Abu Hureira passed her on to his brother, 'Abu Du'a'. Together with the latter, she later fled and was initially imprisoned in a Kurdish prison, until she was released in December 2017 and could return to her family.

During her time with Abu and Umm Hureira, Umm Hureira visited her friend Umm Firdaus several times. She and [redacted] always accompanied Umm Hureira on these visits because slaves were not allowed to remain at home alone. The first visit to Umm Firdaus took place around 1 month after she was sold to Abu and Umm Hureira. Umm Firdaus had three children, [redacted], [redacted] and [redacted]. Her husband was Abu Talha, an IS emir. On the occasion of the first visit to Umm Firdaus, Umm Shuhada was also present, who had a daughter of colour named [redacted]. There were also subsequent visits to Umm Firdaus with Umm Hureira. On two of these visits, she and [redacted] were asked by Umm Hureira to clean Umm Firdaus's apartment. She does not know how that request came to be made, because Umm Firdaus and Umm Hureira spoke to one another in German. However, it was common practice for slaves to also clean the homes of other IS fighters. She had to do it for other fighters too, because she was a slave. Umm Firdaus had shown her and [redacted] the apartment and told them what they should clean and what they should not. Umm Firdaus stopped in front of a room with an open door and said that she and [redacted] should not clean in there, because it contained her husband's belongings. In that room, the door of which Umm Firdaus then closed, there were lots of weapons and an IS flag. Among the weapons were a Kalashnikov and axes, which were used by IS fighters to cut off the heads of their murdered victims. She and [redacted] then cleaned the apartment, which took between 90 minutes and 2 hours on each occasion.

At a later date, Umm Firdaus contacted Umm Hureira again and asked if Umm Hureira could send her and [redacted] over to clean her home. However, Umm Hureira was irritated by this request and refused it, because it was not convenient for her and she was unable to drive her car.

During one of the visits, during which Umm Shuhada and her daughter [redacted] were also present, they had taken a trip to a park, to which they had travelled in Umm Hureira's car. Before going out, the women, who were uncovered while at home, put on a black veil. They also each took a gun and concealed it underneath their veils. It was a gun of the type that male fighters sometimes wore in a side holster on their belt. The women – including Umm Firdaus – carried the weapon under their niqab, specifically in a belt that was worn around the neck and which held the gun in the armpit.

On another day, which was one day after a visit to Umm Firdaus, she was woken by Umm Hureira at 8 o'clock in the morning. Umm Hureira told her that she wanted to register for the military; Umm Firdaus was also there for this reason. The family then travelled together to a military building in Raqqa. Umm Hureira parked there and locked her daughter and her two slaves in the car. She could not say what happened in the military building because there was a curtain in front of the entrance. When Umm Hureira came out, she was accompanied by Umm Firdaus. When she got back into the car, she reported angrily that she could no longer register because new recruits were not currently required. Registering for the military meant that their names would have been recorded so that when the war broke out they could participate in armed conflict.

(2) **Assessment**

The Senate considers the testimony from the witness L to be credible overall.

(i) First of all, the Senate has no doubt that the witness L was a victim of the IS attack on the Sinjar region and was captured, abducted and enslaved by IS in the manner she describes. Firstly, her statements exactly match the expert testimony given by the expert witness Dr [redacted] about the IS attack on Yazidis in the Sinjar region. In that regard, her report was not limited to the core facts, which could have been picked up from the media or from reports by international organisations, but also contained a wealth of details directly linked to the particular circumstances of her own personal situation or her overall perspective on the events. This is true, for example, of her description of the fate of her much younger brothers, who she passed off as her sons for her own protection, of the unsuccessful attempts to escape described by the witness, and not least of what befell her at the hands of the various slave owners to whom she was sold over time. The course of events she described was so frequently characterised by complications and individual incidents that the Senate does not believe that the witness could have invented the whole thing.

(ii) Furthermore, the Senate also considers the witness L's testimony to be credible insofar as it relates to events in which the Defendant was involved and which incriminate the Defendant. The Senate was aware of the possibility that the witness could have merely invented these events or imputed this conduct to the Defendant, on the basis of what she had learned from the video released by the journalist [redacted], as a representative of IS in order to avenge the wrongs she suffered, or to fulfil a – perceived – obligation to the Yazidi people. However, after assessing the overall circumstances of her statement and how it fits with the other findings from the main hearing, the Senate has ruled out this possibility.

First of all, the real criteria described above also apply to the parts of the statement which directly involve the Defendant. In those parts, too, the witness was able to describe in detail the situations in which she perceived these events. As regards the two incidents in which the Defendant ordered the witness, together with the slave [redacted], to clean her apartment, the witness was for example able to describe how the situation arose and who else was involved, and gave details about the apartment's appearance and how it was furnished. The same applies to the witness's statement that the Defendant armed herself with a gun during a trip to the park. Here, too, the witness was able to describe the situation in detail and give extensive information about where and how the Defendant carried the weapon.

It is true of the whole of witness L's testimony that, where she seems to have surprising knowledge of the details, she can also spontaneously and plausibly indicate how she acquired this knowledge. For example, she was able to plausibly explain her detailed knowledge about the diagnosis, progression and complications of O's pregnancy, because O always took the witness with her to her monthly gynaecology appointments. Conversely, where more detailed knowledge might have been expected, the witness was always able to plausibly explain why she could not provide this. For example, when asked about the nature of the weapon carried by the Defendant, e.g. type, calibre, model, the witness was unable to provide any details because she did not know much about weapons. She was unable to provide details of dates and time periods because she had no access to the usual tools such as calendars or mobile phones during her captivity.

The witness's descriptions also contained individual particulars and complications which make it seem unlikely that these are 'fictional' events. This applies in particular to the part in which she describes, when cleaning the apartment, being asked to omit a room in which C's weapons were kept, and the Defendant's other, unsuccessful attempt to 'borrow' the slaves when her apartment needed cleaning. The same is true of the fact that the attempt by O and the Defendant to be signed up for armed conflict was

unsuccessful.

The fact the witness described the situations in which the Defendant was involved according to her testimony in such a way that it was generally possible to verify them by examining other evidence, in particular testimony from other witnesses, suggests that her statements are credible and not invented. For example, when she described the incidents in which she and [redacted] were asked to clean the Defendant's apartment, she stated that other people were present as well as the Defendant, such as O ('Umm Hureira') and J ('Umm Shuhada'). The same is true of the incident in which the Defendant wore a gun and holster. If the witness had wished to deliberately and unjustly incriminate the Defendant with a fabricated or transferred story, given the risk of discovery, she would have been far more likely to invent a scenario in which only she and the Defendant were present, without anyone else who could potentially act as a witness. At the time of her testimony, the witness was unaware of the fact that O and J, prosecuted elsewhere, would not later be interrogated as part of these proceedings, because they have invoked their right to remain silent under Section 55 of the German Code of Criminal Procedure. She could not also foresee this with certainty, especially as other IS returnees, such as the witness S, did not invoke this right.

In addition, the fact that the witness's testimony does not show any tendency to incriminate the Defendant as much as possible also militates against the assumption that the witness could have been inappropriately influenced by the desire for revenge. On the contrary, in almost all the situations she described in which the Defendant was involved, it appears that the latter's criminal behaviour falls significantly short of comprising a more serious offence. For example, according to the witness L's testimony, the room with weapons which was not to be cleaned belonged only to C, not also to the Defendant. The weapon which, according to the witness, was carried by the Defendant was only a gun. If the witness had wished to accuse the Defendant of a more serious offence, it would have been very easy to claim that she possessed heavier weaponry. In the light of the media coverage of other IS returnees who were accused of being armed with Kalashnikov assault rifles, hand grenades or explosive belts, such an allegation would not in itself have constituted an anomaly. The situation described by the witness concerning the attempt to register for armed combat would also have been easy to embellish. If the witness had dishonest intentions, she could easily have described the registration attempt as being successful, which from a legal perspective would have meant that the Defendant would have been charged with a further, in this case very serious, participation offence.

It cannot be concluded from the witness L's testimony in response to the question of whether she was abused and raped by O and S during her period of captivity with them that she intended to unfairly incriminate IS members – in this case O and S – in retrospect. However, the testimony from the witness L has prompted the Senate to examine this question in more detail. This is because, in a video-taped interview conducted in Dohuk, Iraq, on 16 January 2018 by an employee of the Yazda organisation, the witness initially claimed that O and S had treated her well and did not do anything to her, while she later (during her interrogation by the Federal Prosecutor) accused them of a wide range of physical abuse and rape. At the same time, the lack of consistency in her testimony raised fundamental questions as to the credibility of her statements. However, the witness was able to plausibly explain the discrepancy between the statements: She stated in this regard that she had initially lied and deliberately exonerated O and S during the video interview conducted by Yazda. The reason for this was that she was then afraid that IS members – and in particular O and S who were still at large – would become aware of her testimony through an unregulated distribution of the video, and that her relatives, some of whom wer e

still in IS captivity, would have to 'pay the price' for this. This had happened to her once before, when S learned from a video that her mother had fled. By contrast, in a later interview with Yazda, which was not recorded on video but only in writing, she told the truth and spoke about the abuse and rapes committed by O and S. The same applies to subsequent interviews, in particular with the Federal Prosecutor.

The Senate considers the initial lack of consistency in her statements to have been plausibly explained. This suggests that the witness's representation of events is accurate and militates against the opposite interpretation, in which case only the statement exonerating O and S in the video interview would be accurate.

Again, the fact that the witness later described the acts of violence to which she was subjected in great detail and with such a high degree of individualisation makes it highly unlikely that she could have invented the incidents.

Insofar as the defence has also argued that the allegations made against the Defendant by the witness L must be fabricated because the Defendant and the witness did not know each other at all and, given that they were not in Raqqa at the same time, could not have come to know one another, the Senate does not agree:

It must firstly be considered in this regard that the personal acquaintances of the witness L in Raqqa overlapped considerably with those of the Defendant, according to the (other) testimony by the Defendant. For example, the Defendant admitted that C and S were close friends and met regularly, with the 'head' of the IS German delegation in Raqqa, Abu Osama al-Gharib, also being present at these meetings. The friendship between C and S was so close that C gave S a key to his apartment. Similarly, the Defendant acknowledged that she knew O, alias 'Umm Hureira', although she claimed that she 'did not have contact with her very often'. As evidenced by the intercepted telephone call with K, prosecuted elsewhere, on the Defendant also knew that O and S had several Yazidi slaves, and that their 'personal supply' of slaves – described in the same way by the witness L – frequently changed as a result of buying and selling. All of this makes it very likely that the Defendant also had contact with O and S's slaves, especially in light of the fact that, according to the witness L, the slaves belonging to O and S were not allowed to remain at home alone when their 'owners' left the house, and thus always accompanied their 'owners' when the latter went out – for example to visit others. It was also noticeable that the witness L had considerable knowledge of the Defendant's personal circumstances. She could not have picked up this information solely from the video released by the journalist [redacted], because she knew, inter alia, the names of the Defendant's younger children, [redacted] and [redacted], despite the fact that these names, unlike that of the eldest daughter [redacted], were not mentioned in the video at all.

The Senate is also convinced that the Defendant and the witness L were in Raqqa at the same time for an extensive period. It considers it to be established that the witness L was already owned by O and S at the beginning of 2016, and thus was resident in Raqqa, while the Defendant, who had lived in Raqqa since January 2015, did not leave the city until mid- to late April 2016. This creates an overlap in time of around 3 to 4 months.

Apart from the date on which her captivity commenced and of her liberation, the witness L was not able to provide the dates of when she was bought and sold by an 'owner'. As already stated, she gave a

plausible explanation for this, namely that she had no access to the usual tools such as calendars or mobile phones for the duration of her imprisonment. Where the witness provided information on timings, these are roughly based on external events. Regarding the start of her period of captivity with O and S, the witness L mentions two points of reference, firstly, the month of fasting Ramadan, and secondly, O's pregnancies and childbirths. However, these two references lead to events that are mutually exclusive:

As regards the link to the month of fasting, Ramadan, the witness L stated that she was asked to fast while she was being held by the slave trader Abu Huda, meaning that she assumed that it had to be Ramadan at that time. Several days after Ramadan, she was sold to O and S. As Ramadan fell between 6 June and 5 July in 2016, she could only have been sold to O and S in July 2016, and thus only at a time after the Defendant had already left IS territory.

On the other hand, the reference to O's pregnancies and childbirths suggests that her captivity began at the start of 2016: the witness stated that when she arrived in their household, O and S already had a daughter named [redacted], who at this point had just learned to walk and had taken her 'first steps'. At the beginning of her time in O and S's household, she had her period at the same time as O. In the following month, however, O did not menstruate, and a visit to the doctor confirmed that she was pregnant. The child was born a month early, i.e. after 8 months of pregnancy. Around 4 to 5 months after the birth, O fell pregnant again, which meant that the child would have been born around the time that the witness was fleeing IS territory with S's brother (Abu Du'a), i.e. in December 2017. The Senate has obtained additional evidence regarding the birth dates of the children by reading their identity documents, according to which [redacted] was born in [redacted] 2015, [redacted] in [redacted] 2016 and the third child, [redacted], in [redacted] 2017. This means that, by counting backwards, the witness L's arrival with S and O can be fixed at a point in early 2016 (birth of [redacted] in [redacted] 2016, after 8 months of pregnancy and at least 1 month in which L and O had their periods at the same time).

The Senate is convinced that only the witness's latter reference to the pregnancies and births leads to the correct timeline. It should be noted in this regard, first of all, that the birth dates of O's children, established independently of her testimony, correspond exactly to the other details she gave. For instance, O's third child was actually born in the month in which the witness fled IS territory. The pregnancy with [redacted] thus began 9 months earlier, in March 2017, that is to say – as indicated by the witness – around 5 months after the birth date of [redacted] in [redacted] 2016. The stage of development of O's eldest daughter when the witness L joined their household – described by L as the age when she was 'taking her first steps' – matches exactly, because [redacted] was almost a year old at the beginning of 2016, and was therefore at the age at which young children typically learn to walk.

Insofar as the defence expressed doubts in this connection concerning the backwards calculation discussed above, because it might be possible that O's period, mentioned by L, was in fact 'implantation bleeding', which can occur during pregnancy and which could have been mistaken by the witness L for menstruation, the Senate can rule this out with sufficient certainty. If it were to be assumed that the witness only lived in O and S's household from July 2016, and that her observations thus related to this period, this would mean that O's pregnancy was only established 2 months before the birth of [redacted], or 3 months before the due date. The Senate considers that this can be ruled out. It is true that there may be cases in obstetric medicine in which pregnant women become aware of their pregnancy only in the later months, or even just before childbirth. However, the Senate considers it inconceivable that this was the case here. In view of the fact that such a chronology is atypical of pregnancy and its diagnosis,

the witness could have been expected to mention this in her testimony, especially as she did mention other atypical circumstances, in particular the reduction of pregnancy to 8 months and the fact that the child suffered health problems after the birth. If such a chronology had occurred here, this would also have meant that O would have experienced implantation bleeding in each of the preceding 6 months, which would have had to happen by chance on the dates when she would otherwise have expected to menstruate. This seems unlikely. In addition, the witness L mentioned a number of times the period in which O was (knowingly) pregnant, and it was obvious from her statements that this was not merely a period of a few weeks. For example, she reported that she accompanied O to all her appointments with her gynaecologist, which took place once a month. The witness also explained that O was not in good health during the last few months of her pregnancy with [redacted]. For that reason, O remained at home as much as possible and thus also refused the Defendant's request to come over with the slaves L and [redacted] so that the latter could clean the Defendant's apartment. In the last 2 months of the pregnancy, there were no further meetings with the Defendant. All of this – in particular the last statement – suggests that the period during which O and those around her were aware of her pregnancy was not limited to 2-3 months.

Insofar as the witness L believed that her observations were made during the fasting month of Ramadan, because the slave trader Abu Huda asked her to fast, the Senate is convinced that this was due to a mistake, an incorrect conclusion or confusion of situations. It is also clear that this timescale given by witness L cannot be correct in light of her further statement that she was sure that Ramadan was observed in full twice during her stay with S and his brother. In view of the fact that the witness L was liberated in December 2017, she can only be referring to the Ramadan celebrations in 2016 and 2017. It is also clear that O must have been aware of her pregnancy prior to Ramadan in 2016, because, according to the statement of the witness L, O did not fast during Ramadan precisely because of her pregnancy with [redacted]. O must have been aware that she was pregnant if she refrained from fasting due to pregnancy. This also makes sense because at the beginning of Ramadan – i.e. in June 2016 – O was already 5 months pregnant, counting back from the birth and considering the shortened pregnancy of 8 months.

The Senate is also convinced that the Defendant left IS territory in mid-April 2016 at the earliest. Insofar as the Defendant has contradicted this, claiming that she had already left IS territory at the beginning of March 2016, this is not credible.

First of all, it is clear from the Defendant's testimony that in August 2016 she was in Samsun in Turkey at the home of A, prosecuted separately, and had previously spent 3 months – thus from the start of May to the end of July 2016 – in the Syrian city of A'zaz, waiting for an opportunity to cross the border. Her 3-month stay in A'zaz is confirmed by findings from intercepted telecommunications, because the Defendant mentioned her stay there and its duration in a telephone conversation with S on 6 June 2019:

'(...) For me, the plan was: They said that, you come to A'zaz from Raqqa, you stay in a hotel for 1, 2 or 3 days and then you go over to Turkey. Dude, it was 3 months. I was in A'zaz for 3 months. Man. I was in A'zaz for 3 fucking months. I lived with them there. (...).

As regards the period prior to her arrival in A'zaz, the Defendant testified that she left Raqqa or IS territory at the beginning of March 2016 and then 'travelled around for weeks, finally arriving in A'zaz via a roundabout route'. However, there is no reliable evidence that it could have actually taken the Defendant

around 8 weeks to travel to A'zaz, which was only around 250 km away from Raqqa. Unlike virtually all the other aspects of the charge, the Defendant herself was unwilling to provide further information in this regard. The aforementioned telephone conversation with S also militates against the Defendant's claims, as she does not mention the time she spent travelling to A'zaz at all. However, this would have been expected if that journey had taken 8 weeks, and thus almost lasted as long as her stay in A'zaz, especially since the journey, which the Defendant undertook alone with her three children through the middle of the Syrian civil war zone, would have been fraught with danger in that case. The Senate therefore assumes that both of the Defendant's submissions in that regard are self-serving declarations which were intended primarily to support the assertion that as soon as she arrived in Raqqa, she immediately developed the desire to leave IS territory as soon as possible and return to Germany.

Lastly, in the view of the Senate, there are no serious doubts as to the credibility of the testimony of the witness L given in a telephone interview of 6 May 2019. In this interview, the witness was questioned by telephone by employees of the O legal practice about various persons she had met in Raqqa and in other places in IS territory, including O, I, S and C.

When asked about C, the witness L said that he had 'two to three wives' and 'more than two wives'; she had heard that his last wife was a Russian woman; another wife, who had called herself 'Umm Hajr', was a dark-skinned woman from Algeria who had already had a child by another man. The Defendant was not mentioned – at least not by name – by the witness L, even though, according to her statement, she was known to her by the Kunya name 'Umm Firdaus' as the wife of Abu Talha, both through personal encounters in Raqqa and from the video released by the journalist [redacted], which the witness claimed in her testimony to have already seen prior to the interview of 6 May 2019. The witness explained in the main hearing that she had forgotten to mention the Defendant in the interview. She had seen a large number of IS women and only remembered most of them during the interrogation by the Public Prosecutor. Therefore, she only recalled the Defendant and the video when the Federal Prosecutor questioned her about 'Umm Shuhada'. The Defendant came to mind then because she first met 'Umm Shuhada' at the Defendant's apartment.

The Senate ultimately considers this explanation to be plausible. However, the Senate does not consider the witness's statement that she had seen the video released by the journalist [redacted] prior to the telephone interview of 6 May 2019 to be plausible, especially as the witness could not identify any link to other events or name any other trigger that reminded her of the chronological sequence of events. However, the face-to-face meeting with the Defendant, as described by the witness, triggered the memory. However, account should be taken in this regard of the fact that the witness L had remained in Raqqa or IS territory until the end of 2017, and continued to follow happenings there, while the Defendant left Raqqa in April 2016, thus over 18 months earlier, while C remained in Raqqa. Against this background, it is not inconceivable that the witness L's memories of the later and 'more recent' wives of C were fresher than those of the Defendant, and that she needed her memory jogging in order to remember the Defendant, which happened during the interrogation by the Public Prosecutor, when J, alias 'Umm Shuhada', was mentioned. In addition, the witness's knowledge of the relationship between the Defendant and C was based solely on the fact that C had told her about it; on the other hand, the witness had never seen the Defendant and C together during her visits to their apartment, which the witness explained plausibly to the effect that under IS rules, men were not allowed to be in the same room as women.

Moreover, the contrary assumption – namely that the witness L was not yet aware of the Defendant at the time of the interview – would mean that the witness later deliberately incriminated the Defendant. In addition to the circumstances set out above, however, this is contradicted by the fact that the witness did not specifically name the Defendant before the investigating authorities, but rather mentioned her for the first time in passing during an interrogation about another defendant. Additionally, the rather minor nature of the allegations, which are essentially limited to having to clean the Defendant's house on two occasions, a mere 'triviality', at least in relation to the other suffering endured by the witness L during her captivity with IS, also militates against the assumption that the witness wishes to 'avenge' herself by way of a deliberate false allegation or to make a name for herself in some other way.

hh) Possession of a fully automatic 'Kalashnikov' assault rifle

The findings concerning the exercise of actual physical control over a fully automatic assault rifle are based on the Defendant's confession in this regard and the inspection of various photographs which appeared in the journalist [redacted]'s video and show the Defendant with an assault rifle hung over her shoulder or the back of her chair. However, according to the Defendant's testimony, which cannot be refuted and is also plausible on the basis of further photographs of the situation in question, the weapon concerned was the assault rifle issued to her husband H by IS before he went to fight in Kobane. There were no indications that the Defendant also had an assault rifle of her own.

Regarding the type of weapon that can be seen in the photographs, the Senate consulted the expert Dipl.-Ing [redacted] who has the relevant expert knowledge due to his work as a weapons expert at the State Office for Criminal Investigation (Landeskriminalamt, LKA) in Hamburg. The Senate's findings are based on his convincing statements.

ii) motivation to return, behaviour after the offence and personal attitude of the Defendant to her IS past after returning to Germany

The Senate's findings regarding the Defendant's motives for returning to Germany are based on two telephone conversations which were recorded through the interception of telecommunications. These conversations reveal that her reasons were not based on any desire to distance herself from IS, but rather on an argument with C, who was toying with the idea of marrying another woman. The Defendant described this argument in a telephone conversation with the witness M on 8 April 2019, after which she added that if it had not happened, she might still be 'there' today – that 'put a real damper on things' for her. On the other hand, the Defendant's new pregnancy also played a role. In a telephone call with the witness M on 11 April 2019, the Defendant stated that due to her husband's opposition to her plans, she had believed that it would not be possible for her to return in any case. However, when she then became pregnant, she had 'gone mad' and had to 'flee in the truest sense of the word'. The Senate assumes that pregnancy prompted the Defendant to flee, mainly because the security situation in Raqqa was noticeably deteriorating due to the ever more frequent air strikes and the Defendant was unwilling to carry and give birth to a child in these circumstances. This is indicated in the conversation, already mentioned above, with K, prosecuted separately, on 27 December 2017, in which the Defendant stated: 'I believe that there is one real reason why I am not there. Because – there's no way I could bear it if my child was crushed in a pile of rubble (...)'.

Insofar as the Defendant stated that she distanced herself from IS following her return to Germany, that

she now considered going to Syria to be ‘the most stupid mistake of her life’ and that she had now integrated into German society, the Senate is convinced that this account of herself is not or at best only partially true. As already described under II. 4, it is true that, since her return to Germany, the Defendant has increasingly adapted her external appearance and her lifestyle. However, the reason behind this was not that she had abandoned her internal affiliation with IS and fully embraced the values of Germany’s legal and social order, but that she was convinced that she could not express her ideas – still based on IS ideology – in Germany in the same way as she had in Raqqa, without encountering a lot of hostility on a daily basis.

The fact that the Defendant maintained personal connections to IS after her return to Germany is clearly demonstrated by a video message for C that the Defendant recorded with her children on 2 July 2017 during the festivities marking the end of Ramadan. This video begins with the Defendant’s children saying, one after another and at the Defendant’s prompting, that they wish to see C again. The

Defendant can also be seen and heard encouraging her children to declare their support for IS and its ideology in various ways, which the children all do. For example, the Defendant asks [redacted] and [redacted] to repeat the slogans ‘Allah u Akbar’ [Allah is great], ‘La ilaha illa allah’ [there is no other God but Allah] and ‘Baqiyya’ [the abbreviated way of saying ‘the Islamic State shall persist’] and to make the Tawheed finger gesture. [Redacted] is also asked by the Defendant to make a hand gesture symbolising cutting someone’s throat (‘like this ...!’), which the child does with obvious glee. After further images and videos of the children, there is a written message set alongside an image of the Defendant, which reads as follows:

‘Salamalleikum wa rahmet Allah wa barakatou [Peace unto you and Allah’s mercy and blessings]

BLACK GOLD

*I hope that I can bring you a little bit of joy
with my video, please know that I have never
stopped loving you and I cannot wait for the day
when I see you again, if not
in Dunya [this world] then as the beautiful Hoor Al Ayn [virgin in paradise] ...*

*May Allah ease your pain
and for your patience and fortitude
unite you with all our children in Jannatul Firdaus [in the Garden of Eden],*

Amen

*I love you for Allah,
your loving wife Umm Fallujah’*

Her clearly expressed loyalty to her husband, a staunch IS fighter and ideologue would be incomprehensible if the Defendant had seriously distanced herself from IS on a personal level, as she claimed.

After the Defendant received the news of C’s death in January 2018, during a telephone conversation

with K, prosecuted separately, on 22 January 2018, she placed particular importance on the fact that her Islamic faith marriage to C had remained valid until the end and that she was now thus in her mourning period (Iddah). In the same telephone conversation, she vehemently disagreed with other opinions, expressed primarily from those close to her deceased husband, that due to her flight from IS territory she was a 'Murtadda' (apostate). She emphasised to K that she could obtain written confirmation from IS official bodies at any time which would show that she was not an apostate. In the Senate's view, it is noteworthy here that the Defendant clearly considers it important that she could receive certification from IS bodies that she is not an apostate. This shows that she was not only concerned about continuing to qualify as a Muslim, but that she also claimed to remain part of the IS-defined community of believers, which, according to its ideology, was much narrower.

The fact that the Defendant's outwardly adopted behaviour was not matched by a corresponding internal break with her IS past is clearly demonstrated by a telephone conversation between the Defendant and the witness M on 15 October 2018. In this conversation, the Defendant reflected thus on her stay in Syria:

'My life in Syria was great, man ... I've never felt disappointed in myself, you know? I fully stand behind everything that I did'.

In a further telephone conversation with the lawyer W on 27 March 2019, the Defendant explained in more detail how her new environment forced her to adapt and to what extent she was not exactly doing so. The attempt to 'live in a dual reality' is expressed particularly vividly here:

'(...) the life there [meaning: in IS territory] at that time was a normal life, so it's difficult to say in retrospect: No, everything was wrong or whatever. (...) And everything could always be justified in the Koran and by tradition. Whatever you were questioning, someone would come with a book and say: Here, Surah this, verse that. (...) This is Allah's Sharia, no? The other thing is when you come back here ... Okay, it's all well and good that for you that was still the right thing to do and you represent that ideology, then make the best of it, you are no longer [there], now you are here and the rules are different here (...) So you have to find this happy medium. No-one is expecting that everyone who goes back to Kuffar will deny everything now, and [say:] 'it's all shit' or 'that wasn't Islam' or whatever. (...).'

The fact that the Defendant did not wish to disassociate herself from her IS history is also demonstrated by her support for prisoners and her efforts to smuggle A, prosecuted elsewhere, and his family members into Germany.

The Senate's findings in this regard are based on information obtained through the interception of telecommunications. Her involvement in F's prisoner support activities is clear from the telephone conversation of 15 November 2018, in which the Defendant and F discussed a number of recent cases, in particular of IS returnees. The Defendant discussed A's situation and the plan to smuggle him to Germany with the lawyer W on 20 and 27 March 2019, with A and his partner on 26 March 2019, and with the witness M on 26 and 27 March 2019.

Even on the occasion of her arrest, which took place near her apartment in [redacted] on 19 September 2019, the Defendant revealed her inner attachment to Islamism. When the Defendant was led away by police and passed by a camera team from North German Broadcasting (NDR), she took the opportunity to make the Tawheed finger gesture to the camera, despite the fact that her hands were cuffed behind her back. The video produced by NDR, in which the gesture can clearly be seen, was viewed during the

main hearing. The Senate is convinced – also in light of the Defendant’s statement and conduct as described above – that this gesture was not merely a reckless act of defiance, but that the Defendant wanted to show her commitment and signal to like-minded people that, despite her arrest, she was unwavering and ‘would not let them beat her down’. The Senate does not disregard the fact that, after her return to Germany, the Defendant sometimes also expressed criticism of IS and some aspects of its regime. For example, in the telephone conversation with K, prosecuted separately, on 17 November 2017, she spoke out against polygamy and slavery. The Defendant was also particularly critical of the direction taken by IS after she had left its territory. For example, in a telephone call with F on 15 November 2018, she said:

‘(...) It’s all got out of hand now. Now there’s this whole discussion with the Khawarij [Kharijites, meaning militant believers]. There are so many of them there now. (...). They call anyone and everyone takfiri [denounce others as infidels]. And they arrest anyone and everyone. And you don’t know who you can turn to any more. It’s completely out of hand. (...) You no longer know what’s right and wrong. (...) Many are doubtful now, expressing disappointment. (...) Others say: No, it is right. We are probably ... It’s like ... mmmh ... you, you, ... I don’t know. So, so I went at a time when, praise be to God, everything was actually still, in quote marks, OK.’

The Defendant made similar comments to W during a telephone conversation on 27 March 2019, in which the Defendant summarised her view as follows:

‘But a lot of shit was going on there and there were just a lot of the wrong people doing the right things.’

However, these critical statements do not mean that the Defendant fundamentally broke with IS and its ideology. This is clear from the statements just cited, according to which the Defendant definitely considered the situation in IS territory to be ‘OK’ at the time of her return and she saw the cause of subsequent missteps to be only due to the fact that the wrong people were doing the right (!) things. Lastly, the Defendant expressed this attitude in a further telephone conversation with K, prosecuted separately, on 22 January 2018. In this call, she admitted that returnees could express internal – even clear – criticism of IS, but at the same time she took it for granted that outwardly she would stand by IS and defend it unconditionally:

‘And indeed, brothers who left because of Dhulm [injustices], who left because they saw mistakes. Because they simply said: No, we don’t identify with that and so on. And for Islamic reasons ... But who still preserved their reputation in the eyes of the outside world. Like we do. If we see something, we always say ‘yes, yes, yes, yes, yes’. But we talk about it among ourselves and say, praise be to God, that’s so annoying. But outwardly we would never allow any returnee to say anything like that, you understand what I mean?’

These statements, taken as a whole, show that, although the Defendant was critical of certain aspects of IS’s regime, she nevertheless continued to identify with IS issues and merely attempted to hide her internal beliefs by outwardly adapting her behaviour to prevent herself and her children from constantly encountering hostility during their current living situation in Germany, where this attitude was, as she knew, condemned.

The statements from the witnesses A and M do not cast doubt on these findings. Insofar as the witness M reported that the Defendant had left Syria because she ‘wanted to be done with religion’ and she was

‘completely opposed to it’, this is not credible. On the contrary, the statement from the witness M, who described herself as a friend of the Defendant since childhood, reveals a clear bias in favour of the Defendant. The Defendant has herself never claimed that the reason for her return to Germany was because she had entirely broken with her religion. Furthermore, that would be manifestly incompatible with the above statements made by the Defendant in the period following her return.

The statement by witness A also does not give rise to serious doubts about the accuracy of the Senate’s findings. The witness, who is herself Christian, said at the very beginning of her interview about the Defendant that the latter was an ‘incredibly cool woman’, very funny, a really good person, friendly and supportive, and there had never been a day on which they had not laughed together. After the interview had in fact ended and the witness was to be dismissed, the witness still felt the need to say that the Defendant had ‘never broached the subject of religion’ and never would. She had ‘never heard any religious statements’ from the Defendant. She also did not share the view that ‘the Defendant is the woman under the veil’. It should be noted in that regard that the witness’s testimony, insofar as it relates to religious statements by the Defendant, does not contradict the Senate’s findings. On the contrary: As stated above, after returning from Syria, the Defendant deliberately adapted her external behaviour, which did not just involve removing her headscarf but also having friends or acquaintances of other religions and exercising restraint in religious matters, in particular, of course, during interactions with people of other faiths. At the same time, however, it should be noted that the witness M’s testimony showed a clear bias in favour of the Defendant. This was already clear from the aforementioned statement at the beginning of the interview, and was later expressed with similar clarity, when the witness answered the Chairman’s question as to whether she considered the Defendant’s emigration to Syria to be problematic or if the Defendant had ever spoken to her about it in the negative, and then downplayed it by comparing it to a holiday trip to Mallorca or Turkey – ‘I didn’t like to ask about it’.

jj) Requests from the defence to produce alternative evidence

In the event that the Senate issued a prison sentence of more than 3 years – as is the case – the defence submitted three requests to produce alternative evidence. There was no need to follow up on these requests:

(1) Insofar as the defence requested that the head of the women’s section at Billwerder prison be heard as a witness in relation to the claim that the Defendant’s conduct and statements gave no indication of radical Islamic belief, and that she had instead expressed criticism of IS and its radical Islamic position, the request was rejected pursuant to Point 2 of the third sentence of

Section 244(3) of the Code of Criminal Procedure (StPO).

The alleged fact is irrelevant to the decision for factual reasons. This must be assumed in relation to those facts which, if proven, could not influence the decision because they allow only possible, not definitive conclusions, and the court does not wish to draw a possible conclusion (BGH NStZ 2018, 111, with further references). This is the case here. As explained in more detail above, the Senate assumes that, at least since the Defendant’s decision to show herself in public without a headscarf, she has endeavoured to lead an externally integrated life. This can be expected not only in public but especially in prison, in which she is – especially given the nature of the charge – being observed particularly closely. Against this background, adapted behaviour or even IS-critical statements made by the Defendant in

prison do not give any indication of her internal feelings.

(2) The defence's request to hear testimony from the LKA officer Dr [redacted] in relation to the claim that when the journalist [redacted]'s video was released, at least 20 articles appeared in the press in which the Defendant's face was shown, unpixelated, and that since her arrest at least 50 press articles have been published about the Defendant and her criminal proceedings was likewise rejected under Point 2 of the second sentence of Section 244(3) of the StPO.

The defence's application is clearly made in light of the case-law of the Federal Court of Justice (BGH), with which the Senate agrees, according to which the trial court may take account of media reporting as a mitigating circumstance if it goes far beyond the ordinary level which every offender must expect to endure and has thus been particularly detrimental to the defendant (see, most recently, the Federal Court of Justice, order of 23 August 2018 – 3 StR 149/18, paragraph 28, with further references). However, on the basis of other evidence, not least the Defendant's testimony, it has already been established that not only was the journalist's [redacted] video published about the Defendant, which disclosed the Defendant's address as well as her full name and unpixelated images of her, but there were also many press reports on a similar theme, and the NDR video of the Defendant's arrest. In addition, the Defendant's statement and the telephone conversation between the Defendant and [redacted], which was read by the members of the Court individually on 24 June 2019, demonstrate that the Defendant felt massively persecuted and under pressure as a result of this reporting. Against this background, it is not clear to the Senate whether or in what way the facts presented as evidence add anything else that is relevant to the decision. The mere number of articles published is not conclusive in that regard. The request does not claim that the press reports it references were particularly or increasingly prejudiced.

In addition, insofar as the request relates to possible dangers to the Defendant upon her release from prison and states that the LKA official named as a witness, Dr [redacted], had continually collected press articles about the Defendant in order to evaluate them, this is a simple request to examine evidence. There is no concrete factual claim; in particular, it is not alleged that the Defendant is in danger. In terms of clarification, there is no need to follow up on the request because the risk analysis relates to a possible release scenario, which is not an issue at present.

(3) Insofar as the defence has requested the reading of sheet 338 of the case file 'Video' and the questioning of the police officer KK, responsible for evaluating the journalist's [redacted] video, in order to prove the fact that, of the various Arabic-language documents displayed in the video, only one refers to the school/kindergarten attendance of one [redacted], which says: 'Report – Kindergarten for the descendants of monotheism', that request is rejected because the proven facts have already been established (point 3 of the third sentence of Section 244(3) of the StPO).

The video in question was examined during the main hearing. The Arabic-language sections of text were translated by an accredited Arabic interpreter. Extracts from the text of the report, which appears on sheet 337 of the case file 'Video', read as reproduced in the request for evidence. Other Arabic-language documents relating to [redacted]'s attendance at school or kindergarten are not shown in the video.

IV. Legal analysis

The Defendant was guilty on four counts of membership of a foreign terrorist organisation (Point 1 of Section 129a(1) and the first and second sentences of Section 129b(1) of the StGB), including one count

in conjunction with violating the duty of care and education (Section 171 of the StGB), one count in conjunction with intentionally otherwise exercising actual control over weapons of war (Point 6 of Section 22a(1) of the KrWaffKG in conjunction with Part B, Points 29c and 50 of the Annex to the KrWaffKG), and one count in conjunction with acting as an accessory to the commission of a crime against humanity (enslavement) (Point 3 of Section 7(1) of the VStGB in conjunction with Section 27 of the StGB) and with deprivation of liberty (Section 239 of the StGB). Specifically:

1. **Applicability of German criminal law**

a) **Sections 129a and 129b of the German Criminal Code (StGB)**

Sections 129a and 129b of the StGB apply to the Defendant's actions abroad because the Defendant is of German nationality and also resides in Germany (the second sentence of Section 129b(1) of the StGB).

Sections 129a and 129b of the StGB also apply in accordance with Points 1 and 2 of Section 7(1) of the old version of the StGB. When the offences were committed, the IS territory was not under the jurisdiction of the Syrian Arab Republic. One reason for the absence of criminal authority may be an internal armed conflict leading to the dissolution of central state power (BGH NStZ-RR 2011, 199; LK-Werle/Jeßberger, paragraph 53 on Section 7 of the StGB; MK-Ambos, paragraph 18 on Section 7 of the StGB). This is the case here. In the parts of Syria taken by IS by military means, including Raqqa, the place where the offences took place, the Syrian government de facto no longer had any control, meaning that it could no longer exercise criminal authority.

Since the offence relates to an association whose centre of activity is outside the Member States of the European Union, under the second and third sentences of Section 129b(1) of the StGB, criminal proceedings are only actionable with the authorisation of the Federal Ministry of Justice and Consumer Protection. This authorisation was granted by the Federal Ministry of Justice and Consumer Protection for the terrorist organisation 'Islamic State' and its predecessor organisations by letter of 6 January 2014 (II B 1 to 4030 E (1326 – 21 495/2015)).

b) **Section 171 of the StGB**

Section 171 of the StGB applies to offences committed abroad due to the lack of criminal authority in IS territory (see above under letter a) under Points 1 and 2 of Section 7(2) of the old version of the StGB.

c) **Point 6 of Section 22a(1) of the KrWaffKG**

The rules of the KrWaffKG on the criminalisation of the possession of weapons of war also apply under Points 1 and 2 of Section 7(2) of the old version of the StGB. These are also applicable under Point 1 of Section 7(2) of the old version of the StGB, because possession of weapons of war was also punishable under Syrian law at the time of the offence (Articles 314 and 315 of the Syrian Criminal Code).

d) **Point 3 of Section 7(1) of the VStGB in conjunction with Section 27 of the StGB**

The applicability of Point 3 of Section 7(1) of the VStGB – crimes against humanity in the form of enslavement – to offences committed abroad arises from the principle of universal jurisdiction laid down

in Section 1 of the VStGB. Under Section 2 of the VStGB, this also applies to forms of participation below perpetration.

e) **Section 239 of the StGB**

2. Due to the absence of criminal authority in Syria, Section 239 of the StGB also applies to the Defendant's actions abroad, under Points 1 and 2 of Section 7(2) of the old version of the StGB. Membership of a foreign terrorist organisation

a) **Terrorist organisation**

The organisation 'Islamic State' is a foreign terrorist organisation within the meaning of Point 1 of Section 129a(1) in conjunction with Section 129b(1) of the StGB. The organisation's focus on murder and slaughter stems from the objective of abolishing the state structures, which they consider to be run by 'apostates', in Iraq and Greater Syria at least, and replacing them with an Islamic theocracy under Sharia law, which is to be achieved by military means and thus by the targeted killing of all forces which are not willing to submit to this objective or to IS's claim to power. This includes not only members of the state military forces, but also members of other groups, even those with Islamist beliefs, and any civilians who are considered by IS to be 'infidels' due to their faith or beliefs. IS's approach also involves the commission of crimes against humanity, such as the mass enslavement of Yazidi women and girls during the attack on the Sinjar region.

b) **Participation as a member**

The Defendant also participated in IS as a member. According to settled case-law of the Federal Court of Justice (BGH) (see recent BGH decisions of 15 May 2019, AK 22/19 and of 29 July 2020, AK 18/20, with further references in each case), participation as a member generally requires that the perpetrator become integrated within an organisation, where said integration is desired by both parties and lasts for a certain duration, submits to its will and plays an active part in promoting its activities (cf. BGH, Decision of 14 April 2010 – StB 5/10, NJW 2010, 3042, 3044). Membership requires a certain formal integration of the offender into the organisation. Integration can only be considered if the perpetrator supports the organisation from both within and from the outside. The perpetrator does not have to make a formal declaration of membership or participate in the organisation's daily activities in an organised manner. However, it is necessary for the perpetrator to hold a position within the group which identifies them as a member and distinguishes them from non-members. Carrying out activities for the organisation does not suffice here, even if these are particularly intensive, because an outsider does not become a member of an organisation simply by promoting it. Even if the person concerned seeks to promote the organisation and its criminal objectives, this is not sufficient if they submit to the group and act on the basis of a merely unilateral decision. Membership by its very nature presupposes a relationship which, as a rule, cannot be imposed on the organisation but is subject to its consent. Participation as a member is therefore ruled out if supportive activities are not backed up by a mutual agreement that the individual concerned shall continue to participate in the association (cf. BGH, judgment of 14 August 2009 – 3 StR 552/08, BGHSt 54, 69, 113 and 114; and decisions of 13 September 2011 – StB 12/11, NStZ-RR 2011, 372 and 373, and of 7 September 2017 – AK 42/17, NStZ-RR 2018, 10, 11).

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 (cf. LK/Krauβ, StGB, 12th edition, Section 129, paragraph 106; also BGH, decision of 22 October 1979 – StB 52/79, BGHSt 29, 114, 123; judgment of 11 June 1980 – 3 StR 9/80, BGHSt 29, 288, 291; decision of 14 July 2016 – 3 StR 23/16, BGHR StGB Section 129a, paragraph 1, participation as a member 1). For example, behaviour that promotes the organisation or otherwise typical of the organisation of corresponding significance may be considered (cf. BGH, decision of 22 March 2018 – StB 32/17, NStZ-RR 2018, 206, 207; MüKoStGB/Schäfer, 3rd edition, Section 129, paragraph 82). By contrast, in cases of purely formal or passive membership, which are irrelevant to the operation of the organisation, there is in principle no active act of membership (cf. BGH, decisions of 22 October 1979 – StB 52/79, loc. cit., p. 121; of 30 March 2001 – StB 4 and 5/01, BGHSt 46, 349, 356; LK/Krauβ, loc. cit., paragraph 107).

Measured against these criteria, the Defendant was not merely a passive member of IS, but rather actively supported its goals. She travelled on her own initiative from Germany to the Syrian civil war area to participate – indirectly – in the fight against the Assad regime and in the expansion of a religious fundamentalist state under Sharia law. The declared aim of her departure and that of her husband H was, from the outset, to join the organisation IS. They both identified with the group's ideology, methodology and objectives. In Raqqa, the Defendant was temporarily placed in a 'women's house' while her husband H received training and thus, at this point at the latest, was mutually admitted to the organisation. She lived exclusively in Raqqa until she left IS territory in April 2016, and thus in a city controlled by IS and selected as its 'Syrian capital'. The Defendant promoted IS via email and social media, trying to encourage like-minded women in Germany to travel to IS territory. She had her own gun which she carried with her outside her home. She raised her children in accordance with IS ideology. In addition, the Defendant received monetary payments from IS, in the form of the salary payment and the 'widow's allowance'. After H's death in March 2015, the Defendant married C, another, in this case well-known, member of the organisation (cf. BGH, decision of 28 July 2020, AK 18/20, paragraph 19). In addition, the Defendant benefited from IS's slavery system, as on two occasions she ordered two Yazidi slaves from the household of O, separately prosecuted, to clean the apartment she shared with C. She also supported that system by keeping an eye on a slave belonging to a friend working for the 'Hisba' religious police, at the latter's request, in her home for several hours. All this clearly goes beyond merely living in the 'caliphate'.

The Defendant was thus not only a passive member, but carried out significant activities typical of IS for the purposes of the organisation. Promoting the 'caliphate' via email and social media, much like raising children in accordance with IS ideology, constitutes active support. The same applies to the Defendant using IS's slavery system and exploiting it for her own purposes. The maintenance of that system was in IS's interests, particularly since enslaving Yazidi women and girls pursued its declared objective of destroying the Yazidis as a religious community. Against this background, running a household can also be regarded in this present case as long-term behaviour typical of the organisation. It also clearly served to ensure that H and later C 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 husbands (see, in this regard, BGH, decision of 22 March 2018 – StB 32/17, NStZ-RR 2018, 206, 207), but also provided services to IS. The fact that she mainly carried out household activities does not preclude her participation as a member (cf. BGH, decisions of 28 June 2018 – StB 10/18, NStZ 2018, 598, 599, and StB 11/18, NStZ-RR 2018, 369, 371).

3. Violation of the duty of care or education

In addition, the Defendant was guilty of breaching the duty of care and education (Section 171 of the StGB).

a) **Duty of care to a person under 16 years of age**

In her position as a mother, the Defendant had, by operation of law, a duty to care for and educate her children [redacted] and [redacted] under Section 1626(1) of the BGB. At the time of emigration and throughout their stay in Syria, her children were below the age limit of 16 years set out in Section 171 of the Criminal Code. At the time of the family's emigration, they were 7 years, almost 2 years, and 7 months old. When they returned to Germany in September 2016, the children were 9, 3 and 2 years old, i.e. younger than 16.

b) **Actions constituting an offence**

The Defendant has grossly violated her duty of care and education, thereby putting her children at risk of suffering serious damage to their physical or psychological development.

In accordance with the case-law of the Federal Court of Justice, the Senate assumes that 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 (BGH NStZ 1982, 328). Furthermore, 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; rather, there must be a risk that the normal physical and mental development process could sustain lasting and continuous damage (BGH, loc. cit.) The ability to act lawfully in future is also part of mental development, meaning that if the latter is threatened, the protected party – as they are described in Section 171 of the StGB as a subgroup – is also at risk of turning to a life of crime (cf. BT-Drs. VI/3521, page 16; LK-Dippel, 12th edition 2009, paragraph 18 on Section 171 of the StGB; Fischer, StGB, 67th edition 2020, paragraph 9 on Section 171 of the StGB). The ability to act lawfully in future is also part of mental development, meaning that if the latter is threatened, the protected party – as they are described in Section 171 of the StGB as a subgroup – is also at risk of turning to a life of crime

According to these criteria, the Defendant has grossly violated her duty of care and education in two ways:

aa) Bringing her children into a civil war zone

First, the Defendant grossly violated her duty of care and education by taking her three children from Germany to Syria, and thus into a civil war zone, in which it was to be expected that the children might be exposed to military hostilities at any time, which might seriously injure or even kill them.

The risk posed to the physical development of the children was thus specific in the above sense. As explained in detail in Point III of the grounds of the judgment, the Defendant herself regularly told persons outside Syria with whom she was in contact about airstrikes on Raqqa in which numerous people, including children, had been killed. In view of the fact that the Defendant's neighbour was killed in the immediate vicinity of the apartment shared by her and C in a targeted rocket attack, which caused the windows of the Defendant's home to shatter, there was also not merely a theoretical possibility, but a real risk of damage caused by the effects of war.

bb) Raising the children in accordance with IS ideology

In addition, the Defendant grossly violated her duty of care and education by raising her daughter [redacted] in accordance with IS ideology, in particular by sending her to a school run by IS. As a result, the Defendant put her daughter in a situation which could cause serious harm to her mental development, by exposing her to the teaching of IS ideology – including the doctrine that ‘infidels’ should be killed and why. There was a risk that her daughter might identify with this idea and thus later join IS herself, which, in accordance with Sections 129a and 129b of the StGB, amounts to turning to a life of crime. This threat is also specific to the above-mentioned sense, since at the time of their arrival in Syria, [redacted] was already 7 years old and thus of an age at which children can be successfully permanently indoctrinated.

The Defendant also raised her son [redacted] in accordance with IS ideology, here in terms of identifying with the societal role given to men by IS, as ‘holy warriors’. However, in the case of [redacted], the Senate has not been able to establish with sufficient certainty the risk to mental development which remains necessary in order to establish the offence. In any case, given the very young age of [redacted] during the period in question, the Senate has serious doubts as to whether these teachings could have a lasting effect in terms of him turning to a life of crime in the future.

c) **Intent**

The Defendant also acted intentionally in relation to both violations of this duty:

At the time of emigrating to Syria, she was aware that it was a civil war zone in which it was to be expected that she and her children might be exposed to military hostilities at any time. She also willingly accepted this. It was also in line with her religious beliefs that her daughter would be raised in accordance with IS ideology, which she shared.

4. **Otherwise exercising actual control over weapons of war**

In addition, the Defendant also committed the offence of (otherwise) exercising actual control over weapons of war (a fully automatic assault rifle plus ammunition) pursuant to Point 6a) of Section 22a(1) of the KrWaffKG in conjunction with Part B, Section V Points 29c) and 50.

a) **Weapon of war**

The ‘Kalashnikov’ assault rifle is a fully automatic rifle, and thus a weapon of war according to Section 1(1) of the KrWaffKG in conjunction with Part B, Point 29c) of the annexed War Weapons List; the war weapon status of the associated ammunition follows from Part B, Point 50 of the War Weapons List, Annex to Section 1(1) of the KrWaffKG.

b) **Otherwise exercising actual control**

The Defendant exercised actual control of this weapon. 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. Third-party ownership and merely being an agent of the owner suffice in this regard (Gade, WaffG, 2nd edition 2018,

paragraph 172 Annex 1 to Section 1(4) of the Weapons Act (WaffG)). The duration of actual physical control is not relevant in this respect, meaning that temporary possession, for example, only for storage purposes, is also sufficient (BGH NStZ 2008, 158, paragraph 10). Exceptions only apply to a 'very brief ancillary activity without intention to control' (cf. BGHSt 28, 294 et seq., paragraph 3: immediately passing the weapon on in the event of 'the defendant accidentally becoming involved in a handover process'). It is not necessary that the perpetrator has the will to use the weapon (according to the following, which is, at least in this sense, ambiguous: Volk/Beukelmann-Oehmichen; MünchAnwHB Verteidigung in Steuer- und Wirtschaftsstrafsachen [Defence in tax-related and economic criminal proceedings], 3rd edition, 2020, Section 27 Foreign trade, paragraph 216).

By this measure, the Defendant exercised actual control over the weapon. This applies irrespective of whether the weapon was hung over the Defendant's shoulder or the back of her chair, because in both cases the Defendant had temporary (sole) physical access to the weapon. The fact that the weapon belonged to her husband is irrelevant, as is the fact that the Defendant, given the nature of the situation, had possession of the weapon solely for safekeeping. Nor was it merely a very brief ancillary activity without intention to control, because considering the overall circumstances, it was precisely the point that the Defendant was to look after the weapon during H's temporary absence, which lasted for at least several minutes. This required her to take possession of the weapon with intention to control it.

5. Acting as an accessory to a crime against humanity

The Defendant has also committed the offence of acting as an accessory to a crime against humanity in the form of enslavement (Point 3 of Section 7(1) of the VStGB in conjunction with Section 27 of the StGB).

a) Principal offence

(7) Point 3 of Section 7(1) of the VStGB requires that, in the context of a systematic or widespread attack on the civilian population, the perpetrator engages in the trafficking of a human being, in particular a woman or a child, or enslaves a person in another way and in so doing exercises a right of ownership over them. In any event, these conditions are met by the person known as 'Umm Fulan', who has not been more precisely identified, because she had borrowed a 13-year-old Yazidi girl, who had previously been captured and enslaved by IS as a result of the campaign against the Yazidis in the Sinjar region, as a slave from her previous owner on a long-term basis and made her work in her household. Specifically:

aa) General aspects of the offence: Systematic or widespread attack on the civilian population

IS's attack on Yazidis in the Sinjar region of Iraq is a systematic and at the same time widespread attack on the civilian population within the meaning of Section 7(1) of the VStGB.

(8) An attack targets the 'civilian population' if it is directed not against individuals but against multiple people, linked by common features which make them the target of the attack: it is not necessary that the entire population thus described are affected by the attack (MüKo-Werle, paragraph 15 on Section 7 of the VStGB). The target of IS's attack was the Yazidi population in the Sinjar region, which are linked by their shared religion. That characteristic also made the Yazidis a target for attack by IS, because the organisation was specifically concerned with destroying Yazidism, which it considered to be 'devil

worship’.

(9) ‘Attack’ within the meaning of Section 7(1) of the VStGB is understood by reference to the legal definition in Article 7(2)(a) of the ICC Statute to mean a course of conduct involving the multiple commission of the acts referred to in Section 7(1) of the VStGB (MüKo-Werle, loc. cit., paragraph 14). That is the case here, because IS slaughtered the adult Yazidi men it captured who were not willing to convert on a massive scale (Point 1 of Section 7(1) of the VStGB). The same applies to the older Yazidi women. The remaining women and girls were enslaved (Point 3 of Section 7(1) of the VStGB) and sold in large numbers to IS members in Syria or in other regions of Iraq (Point 4 of Section 7(1) of the VStGB).

(10) The phrase ‘widespread’ refers to the large-scale nature of the attack and the number of victims (ICTY, judgment of 12 June 2002, Kunarac, paragraph 94). An attack is considered to be systematic if the use of force is organised and carried out consistent with a plan (BGH NStZ 2010, 581). On that basis, IS’s attack was both widespread and systematic. Given that the number of victims was in four to five figures, the widespread nature of the attack is easily confirmed. The same applies to its systematic nature, which is apparent from the carefully planned use of resources (fighters, weapons, buses for transporting the women and girls). On the question of whether a ‘political element’ is also required in order to satisfy the conditions for the offence set out in Section 7(1) of the VStGB, i.e. an action ‘implementing or supporting the policies of a State or an organisation which aims to conduct an attack’, this is doubtful (cf. MüKo-Werle’s position, paragraph 30 et seq. on Section 7 of the VStGB). However, the question can remain open in the present case, since there was clearly a political element here, given the official statements made by IS on the reasons for its persecution of the Yazidis. According to the article in the IS magazine *Dabiq*, the destruction of Yazidis, regarded as ‘devil worshippers’, was a religious obligation, the fulfilment of which every Muslim would have to account for on the Day of Judgment. The destruction of the Yazidis on religious grounds was thus part of IS’s religious and fundamentalist programme.

bb) Individual aspects of the offence: Enslavement through assumption of ownership

The Yazidi girl was enslaved by ‘Umm Fulan’ and her husband within the meaning of Point 3 of Section 7(1) of the VStGB, through assumption of ownership. According to the legal definition in Article 7(2)(c) of the ICC Statute, ‘enslavement’ is understood to mean exercise of any or all of the powers attaching to the right of ownership over a person (cf. MüKo-Werle, 3rd edition 2018, paragraph 57 on Section 7 of the VStGB, with further references). The main indications of a slavery relationship are controlling the victim’s freedom of movement and freedom of choice, acting against their will and exerting economic control or exploiting them; a particular duration or contrary will of the victim is not required (cf. fundamentally, ICTY, judgment of 22 February 2001, Kunarac, paragraph 542). Traditional forms of enslavement involve the purchase, sale, lending and exchange of persons, including similar forms of deprivation of liberty (MüKo-Werle, loc. cit., paragraph 57, with further references).

This is the case here. The Yazidi girl had been enslaved by IS as a prisoner of war, and was later the ‘possession’ of ‘Al-Jarzawi’, who has not been more precisely identified, and at the time of the offence had been loaned by the latter to ‘Umm Fulan’ and her husband, who themselves worked for IS as members of the ‘Hisba’ religious police. There, the girl, deprived of her freedom of choice and freedom of movement, was economically exploited as she was forced to work for free in their household.

cc) Contextual element Integration of the individual aspects of the offence into the general aspects

Point 3 of Section 7(1) of the VStGB also requires that the enslavement takes place 'in the context of a widespread or systematic attack on the civilian population. This 'contextual element' requires that the individual aspects of the offence appear as part of the general offence within the meaning of Section 7(1) of the VStGB (cf. BGH, Decision of 6 June 2019 – StB 14/19, on Point 5 of Section 7(1) of the VStGB); they must fit into the widespread and systematic context of the offence, which may result from the circumstances, the objectives, the nature and the consequences of the actions (Ambos, *Internationales Strafrecht* [International Criminal Law], 5th edition 2018, paragraph 192 on Section 7 of the VStGB, with further references). In determining the scope of the 'context' into which the individual aspects of the offence must fit, account must be taken of the content and rationale of Section 7(1) of the VStGB, which is to protect against the particular dangers of multiple or repeated crimes committed by the organisation responsible for the attack (Ambos, *loc. cit.*, paragraph 193, with further references). Against this background, the Senate assumes that an attack which – as in the present case – involves mass enslavement of part of the civilian population is not limited, in terms of time and substance to the first time that the victims were captured and enslaved, but continues as long as their status as a slave is maintained, in particular by members of and sympathisers with the 'attacker' within the meaning of Section 7(1) of the VStGB, or is continued through resale. Therefore, the change of owner, whether as a result of slave trade or through lending or exchange, does not interrupt the attack.

b) Accordingly, in the present case, the lending of the enslaved Yazidi girl to 'Umm Fulan' and her husband and their exploitation of her as free labour took place 'in the context' of IS's attack on the Yazidi population; the fact that the girl had at least one previous owner in 'Al-Jarzawi' does not preclude this. Acting as an accessory

aa) The Defendant acted as an accessory to this offence by 'Umm Fulan' and her husband by having the Yazidi girl in her home for around 3-4 hours in order to 'keep an eye' on her; and thus ensuring that the girl did not flee. This constitutes objective support for the main offence, as this ensured the *de facto* continuation of the girl's enslavement with 'Umm Fulan'.

bb) Contrary to the view taken in the charge, the Senate is unable to identify any criminal act within the meaning of Point 3 of Article 7(1) of the VStGB in the Defendant's conduct. The Defendant has no personal interest in the offence. She was merely an accessory to an offence committed by a third party. Nor did the Defendant claim to have any ownership rights over the Yazidi girl as a result of her action. In particular, she did not exploit the girl's labour for her own purposes. Insofar as the girl mopped the floor in the Defendant's home during the morning of her visit, it must be borne in mind that the Defendant did not ask the girl to do so, but, on the contrary, answered in the negative when the girl asked if she should clean the apartment. The mere fact that the Defendant subsequently nevertheless allowed the girl to mop the floor is not considered by the Senate to be exploitation of labour that could be regarded as 'assumption of ownership'. The same applies insofar as the Defendant was accused of having the Yazidi girl take care of her children. In that regard, it is merely stated that the girl, after having mopped the floor, played on a mobile phone with the Defendant's daughter, with the knowledge and consent of the Defendant. However, the latter did not ask or force the girl to do this.

c) **Intent**

The Defendant acted intentionally in relation to the main offence. She knew of IS's enslavement of Yazidi women and girls and of IS's rules for dealing with them. Due to the relevant statements by 'Umm Fulan', she also knew that the girl was such a slave, that 'Umm Fulan' and her husband had borrowed her from 'Al-Jarzawi' and that since then she had been working for them in their household.

The Defendant also acted intentionally with regard to acting as an accessory. Even though she was still inwardly opposed to the slave trade at that time and she did not refuse the request from 'Umm Fulan' to keep an eye on the slave because she feared that she might get into trouble with the 'Hisba' religious police, she knew and at least accepted that her actions would contribute to the girl's enslavement with 'Umm Fulan' and her husband being de facto maintained.

d) **Illegality and fault**

The Defendant also acted unlawfully and culpably. She cannot rely on necessity as justification (Section 34 of the Criminal Code) or on necessity as defence (Section 35 of the Criminal Code), as the relevant necessity does not exist. Sections 34 and 35 of the Criminal Code require that there is a danger to the legal risks specified in each case that cannot be otherwise averted. This is missing here: Insofar as the Defendant claimed that she complied with 'Umm Fulan's' request because she feared that she would otherwise be punished by the 'Hisba', it is irrelevant whether this punishment would actually have occurred and what the nature of it would have been. This is because the risk of it arising could in any case have been otherwise averted. Since it was only a question of a small 'favour', which any third party from among 'Umm Fulan's' acquaintances could have undertaken, it is unclear to the Senate why the Defendant could not have refused the proposal by making up some excuse.

6. **Deprivation of liberty**

The Defendant is also guilty of deprivation of liberty under Section 239 of the StGB.

The deprivation of liberty 'otherwise' than through imprisonment can be committed using any suitable means, in particular through threats of violence (Fischer, StGB, 67th edition 2020, paragraph 8 on Section 239 of the StGB, with further references). This is the case here. As can be seen from IS's rules on dealing with enslaved women and girls, their owners threatened them with severe, including physical, punishments if they attempted to escape. This was also self-evident to the parties involved here. When the girl was handed over to the Defendant or the girl was brought to her home, the Defendant became responsible for preventing any attempts to escape, meaning that from that point she was the issuer of this implicit continuing threat, without this having to be declared.

That is a deprivation of liberty committed as a perpetrator and not merely as an accomplice, since the Defendant had full and sole control for the entire period in which the enslaved girl was at her home.

7. **Concurrent offences**

a) Sections 129a and 129b of the StGB and other offences

b) The Senate assumes, in accordance with the settled case-law of the BGH, that acts of participation within the meaning of Sections 129a and 129b of the StGB, which occur at the same time as another criminal offence, are multiple offences both in relation to each other and in relation to acts of

participation that do not constitute another offence, but are combined with other offences committed at the same time Sections 129a and 129b of the StGB (BGHSt 60, 308, paragraph 23 et seq.). This also applies to the relationship between Sections 129a and 129b of the StGB and Section 171 of the StGB (BGH, Decision of 17 October 2019, StB 26/19, paragraphs 30 and 31). Consequently, in the present case there are a total of four separate counts of membership of a foreign terrorist organisation, which in three cases occurred in conjunction with other offences (Section 171 of the StGB, Point 6a of Section 22a(1) of the KrWaffKG, Point 3 of Section 7(1) of the VStGB in conjunction with Sections 27 and 239 of the StGB). Section 171 of the StGB

As regards the three children in respect of whom the Defendant violated her duty of care, this is a violation in three legally concurrent cases, meaning that there is only one offence in this regard (BGH, decision of 17 October 2019, StB 26/19, paragraph 32, with further references). Even though the children were endangered by a number of actions, these are legally assessed as one unit.

c) The second sentence of Section 233(1), Section 233(3), Point 1 of Section 232(3) of the old version of the StGB in conjunction with Section 27 of the StGB.

The Senate assumes that the offence of acting as an accessory to the particularly serious crime of trafficking in human beings has also been committed (the second sentence of Section 233(1), Section 233(3), Point 1 of Section 232(3) of the version of the StGB valid until 14 October 2016, in conjunction with Section 27 of the StGB). However, due to specialism in terms of concurrent offences, this offence is secondary to the criminal liability for acting as an accessory to a crime against humanity in the form of slavery (Point 3 of Section 7(1) of the VStGB in conjunction with Section 27 of the StGB):

In this respect, the Senate assumes that the provisions of the VStGB, as *lex specialis*, supersede the general offences of the Criminal Code, insofar as they criminalise the commission of general offences in a specific context, such as in the present case, in the context of an attack against the civilian population (cf. BT-Drs. 14/8524, p. 13; MüKo-Weigend, 3rd edition 2018, paragraph 7 on Section 2 of the VStGB; Jeßberger, HRRS 4/2013, p. 121; Gierhake, NJW2019, 2627; Ambos NJW 2010, 1725). This applies provided that the general criminal offence is not excluded from being considered a concomitant offence for other reasons, whether for reasons of clarification or because the general criminal law establishes a more extensive criminal liability (BT-Drs. 14/8524 loc. cit.). There are no such reasons in the present case. In particular, the protective purpose of Sections 233 and 232 of the old version of the StGB relating to individual legal rights does not go beyond that of Point 3 of Section 7(1) of the VStGB. According to the correct view, the protective purpose of Point 3 of Section 7(1) is not limited to protecting collective legal interests, but also covers the protection of the relevant individual legal rights of the victims, in particular their freedom and human dignity (cf. MüKo- Werle, 3rd edition 2018, paragraph 1 on Section 7 of the VStGB, with further references). Nor is the criminal liability under the second sentence of Section 233(1), Section 233(3), Point 1 of Section 232(3) of the old version of the StGB in conjunction with Section 27 of the StGB more extensive than that under Point 3 of Section 7(1) of the VStGB in conjunction with Section 27 of the StGB.

d) Offences not covered by the charge

Insofar as the Senate has established, on the basis of the statements made by the witness L, that the Defendant owned a gun and, on two occasions, ordered the two slaves belonging to O, prosecuted

separately, to clean her apartment, these facts – which are independently actionable pursuant to Section 52 of the WaffG and Point 3 of Section 7(1) of the VStGB – are not part of the offences with which the Defendant has been charged within the meaning of Section 264 of the StPO. On the basis of the aforementioned case-law of the Federal Court of Justice on concurrent offences for acts of participation as a member within the meaning of Sections 129a and 129b of the StGB, which constitute further offences, these are, from a substantive perspective, multiple offences in relation to the offences charged, meaning that they are also separate procedural offences within the meaning of Section 264 of the StPO.

The case-law of the Federal Court of Justice, according to which, in the case of crimes against humanity, similar offences forming part of the same attack within the meaning of Section 7(1) of the VStGB are legally assessed as one unit (BGH NJW 2019, 2627, paragraph 69), does not lead to a different assessment. This case-law is limited to cases where the perpetrator repeatedly commits similar offences within a limited space and time (cf. BGH, loc. cit.: 30 bodily injuries in connection with the simultaneous arrest of 30 civilians and moving them to a prison building (Point 5 of Section 7(1) of the VStGB). There is no such close connection here. There were more than 4 months between the incident (for which the Defendant has been charged) in which she kept an eye on the 13-year-old Yazidi girl and the (further established) incident in which the Defendant ordered the slaves belonging to O, separately prosecuted, to clean her apartment. The incidents occurred in different apartments and had different motivations.

V. Determination of penalties

1. Individual penalties

a) Range of penalties

In order to determine the individual penalties, the Senate applied the following penalty ranges in each case.

aa) Count 1 (Point 1 of Section 129a(1) and the first sentence of Section 129b(1) of the StGB)

Insofar as the Defendant has committed the offence of being a member of a foreign terrorist organisation, the Senate has based its decision on the general penalty range set out in Section 129a(1) of the StGB, which proposed imprisonment of between 1 and 10 years.

A reduction in the range of penalties under the 'hanger-on clause' (Section 129a(6) in conjunction with the first sentence of Section 129b(1) of the Criminal Code in conjunction with Section 49(2) of the StGB) was not considered, because the Defendant's acts of participation are not of secondary importance. The Defendant – through her husbands – was closely linked to the leadership circle of the German community in Raqqa. In addition, due to the tasks she took on (housekeeping for a fighter, raising children in accordance with IS ideology, promoting emigration of women to the 'caliphate'), she fit perfectly into the role system set out by IS for female members. Moreover, the Defendant's attempt to register for armed conflict shows, in essence, that she did not see herself participating in the organisation in a merely secondary way.

bb) Count 2 (Point 1 of Section 129a(1) and the first sentence of Section 129b(1) of the StGB in conjunction with Section 171 of the StGB, Section 52 of the StGB).

Insofar as the Defendant committed the offence of being a member of a foreign terrorist organisation in conjunction with a violation of the duty of care and education, the general penalty range set out in Sections 129a and 129b of the StGB was applied pursuant to Section 52(2) of the StGB. For the reasons set out in aa) above, mitigation of the penalty under Section 129a(6) in conjunction with Section 49(2) of the StGB was not considered. cc) Count 3 (Point 1 of Section 129a(1), the first sentence of Section 129b(1) of the StGB in conjunction with Point 6 of Section 22a(1) of the KrWaffKG, Section 52 of the StGB)

The same applies insofar as the Defendant has committed the offence of being a member of a foreign terrorist organisation in conjunction with (otherwise) exercising actual physical control over a weapon of war.

dd) Count 4 (Point 1 of Section 129a(1), the first sentence of Section 129b(1) of the StGB in conjunction with Point 3 of Section 7(1) of the VStGB, Section 27 of the StGB, Section 239 of the StGB and Section 52 of the StGB).

Insofar as the Defendant has committed the offence of being a member of a foreign terrorist organisation in conjunction with acting as an accessory to a crime against humanity in the form of enslavement and deprivation of liberty, a combined range of penalties was applied pursuant to the first and second sentences of Section 52(2) of the StGB, which provides for a minimum sentence of 1 year in prison and a maximum sentence of 11 years and 3 months in prison.

(1) The Senate takes the range of penalties provided for minor cases of crimes against humanity from the second alternative in Section 7(2) of the VStGB, which had to be reduced again in accordance with Section 27 in conjunction with Point 2 of Section 49(1) of the StGB.

This is a less serious case of acting as an accessory to a crime against humanity (the second alternative in Section 7(2) of the VStGB). In the necessary assessment of the criteria for determining the penalty, in which, in addition to general criteria, the contribution of the accessory is of primary importance and the principal offence only secondary (BGH StrV 1985, 411, with further references), the mitigating aspects clearly predominate. The Defendant only assisted for a short period. The Defendant acted thus while inwardly disapproving of slavery and out of concern that she might get into trouble with the 'Hisba'. Additionally, she did not treat the girl like a slave, but as a human and as a guest. The Defendant fully admitted that part of the charge. In addition, it should be taken into account, in terms of mitigating the penalty, that the Defendant has no criminal record, that the offence was now over 5 years ago and the Defendant has been on remand for over 1 year, with her detention being subject to the usual restrictions for national security reasons, in addition to the difficulties for prisoners caused by the coronavirus pandemic. The Defendant is [redacted] and in view of the fact that she is separated from her four children, is particularly affected by imprisonment. It is also necessary to take account of the media coverage concerning the Defendant, which exceeded the normal level, in particular in relation to the early publication of her full name, unpixelated photographs and her address in the video by the journalist [redacted], and was therefore particularly stressful for the Defendant. An aggravating factor that must be taken into account with regard to the main offence is the fact that the victim was a 13-year-old minor. However, in view of the human and seemingly also child-friendly way in which the Defendant treated the girl, this is not a decisive factor when considering the offence. In the light of those considerations, there was no need to refer to the fact that the Defendant was merely an accessory in order to classify it as a

minor offence.

In addition, the range of penalties provided for less severe cases in the second alternative under Section 7(2) of the VStGB was also to be mitigated further in relation to the participatory nature of the Defendant's actions as an accessory in accordance with Sections 27 and 49(1) of the StGB, meaning that the maximum sentence was 11 years and 3 months.

(2) The minimum penalty of 1 year's imprisonment, on the other hand, was derived from the standard range of penalties in Section 129a(1) of the Criminal Code, which supersedes the doubly reduced minimum penalty provided for in Section 7(1) of the VStGB pursuant to the second sentence of Section 52(2) of the Criminal Code.

b) Specific considerations when determining the sentence

aa) Mitigating factors

In terms of mitigating factors, the above aspects must first of all be taken into consideration in relation to all the offences, namely the fact that the Defendant has no criminal record, her partial confession, the length of time that has elapsed since the offences occurred, the difficult conditions of pre-trial detention to which the Defendant was particularly vulnerable, and the consequences of the media reporting.

In terms of the specific offences and crimes, under Sections 129a and 129b of the StGB, it had to be taken into account as mitigation that the Defendant's actions as a member of IS – aside from acting as an accessory to the crime against humanity under count 4 – were somewhat removed from the actions constituting the organisation's core terrorist activity. As regards the infringement of the KrWaffKG, account should also be taken of the fact that the period of possession was very short and that the Defendant merely kept the weapon for a third party and did not make any attempt to use it herself. Lastly, in relation to count 4, account should again be taken, albeit to a lesser extent, of the fact that the Defendant committed the offence against her own judgment, out of fear of reprisals from the 'Hisba', and that she also treated the victim humanely.

bb) Aggravating factors

On the other hand, in the context of Sections 129a and 129b of the Criminal Code, account must be taken as an aggravating factor of the particular danger posed by IS. The considerable length of the Defendant's membership, around 15 months, also had to be taken into account as an aggravating factor. The same applies to the fact that, during her stay in IS territory, the Defendant set aside her original objections to slavery, which is reflected in the fact that she later benefited from slavery by borrowing the two slaves of O, prosecuted separately, to clean her apartment.

In counts 2 to 4, the fact that the Defendant has committed one or more other offences is an aggravating factor. In the context of Section 171 of the Criminal Code, account had to be taken as an aggravating factor of the fact that three children were affected by the Defendant's violation of duty of care. In addition, as regards the offence of acting as an accessory to a crime against humanity in the form of enslavement, the minor age of the victim is an aggravating factor. cc) Individual penalties

Taking into account the aforementioned mitigating and aggravating factors, the Senate considered it

necessary, but also sufficient, to impose the following individual penalties:

For count 1 (membership of a foreign terrorist organisation), a custodial sentence of:

2 years and 6 months.

For count 2 (membership of a foreign terrorist organisation in conjunction with violation of the duty of care and education), a custodial sentence of:

1 year and 6 months.

For count 3 (membership of a foreign terrorist organisation in conjunction with otherwise exercising actual physical control over weapons of war), a custodial sentence of

1 year and 1 month;

For count 4 (membership of a foreign terrorist organisation in conjunction with acting as an accessory to a crime against humanity and deprivation of liberty), a custodial sentence of

1 year and 6 months.

2. Total sentence

Pursuant to the second and third sentences of Section 54(1) of the StGB, a total sentence had to be derived from these individual penalties, with a moderate increase in the sentence of 2 years and 6 months imposed for count 1. To that end, the Senate has once again weighed up the aforementioned mitigating and aggravating factors, taking into account the close links between the offences in terms of time, space, situation and motivation, which requires the penalties to be consolidated. Taking further account of the Defendant's character, this results in an overall sentence of

3 years and 6 months.

VI. Costs

The decision on costs is based on the first sentence of Section 465(1) of the StPO.

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