Higher Regional Court *(Oberlandesgericht, OLG)* of Frankfurt am Main (5th Criminal Chamber), judgment of 30 November 2021 – 5-3 StE 1/20 - 4 -1/20

Title:

Genocide to the detriment of the Yazidi religious group

Legislation:

Criminal Code *(Strafgesetzbuch, StGB)* Section 27(1)

StGB Section223(1)

StGB Section 227(1)

StGB Section 52

Code of Crimes against International Law *(Völkerstrafgesetzbuch, VStGB)* Section 6(1) subparagraph 2

VStGB Section 6(1) subparagraph 2, Section 7(1) subparagraphs 3, 5, 8 and 9, Section 7(3), Section 8(1) subparagraph 3, Section 8(4) first sentence in conjunction with Section 8(6) subparagraph 2, Section 8(1) subparagraph 6 in conjunction with Section 8(6) subparagraph 2, Section 2

StGB Section 27(1), Section 223(1), Section 227(1), Section 52

Official headnote:

Conviction of an IS member on the grounds of genocide to the detriment of the Yazidi religious group by inflicting serious physical and psychological harm on female Yazidi slaves; criminal liability arising from a crime against humanity resulting in death through enslavement, torture and deprivation of liberty, war crimes against persons resulting in death through torture, aiding and abetting a war crime against persons by forcibly transferring female Yazidi slaves and bodily injury resulting in death.

Legal fields:

Criminal law, criminal procedural law/Act on Regulatory Offences *(Gesetz über Ordnungswidrigkeiten, OWiG)*, administrative procedure and process, immigration and asylum law

Keywords:

Coronavirus, SARS-CoV-2, main trial, Iraq, Syria, defendant, departure, child, pre-trial detention, defendant, damages, Federal Public Prosecutor General, illness, hospital, pain, prison, Germany, manner, application by the Federal Public Prosecutor General

ECLI:

ECLI:DE:OLGHE:2021:1130.5.3STE1.20.4.1.20.00

Legal force:

Unknown

Operative part:

The defendant is guilty of genocide in notional concurrence *(Tateinheit)* with a crime against humanity resulting in death, a war crime against persons resulting in death, aiding and abetting a war crime against persons in two notionally concurrent cases, as well as bodily injury resulting in death.

He is therefore sentenced to life imprisonment.

The period of detention pending extradition in Greece from 16 May to 8 October 2019 is deducted from the custodial sentence at a ratio of 1:1.

The defendant is also ordered to pay the accessory prosecutor the sum of EUR 50,000.00. It is noted that the claim is based on an intentional illegal act on the part of the defendant. In addition, no decision is to be taken on the adhesion application.

The defendant shall bear the costs of the proceedings and the necessary expenses incurred by the accessory prosecutor, including the special costs of the adhesion proceedings, as well as the necessary expenses incurred by the accessory prosecutor in this regard.

In so far as it concerns payment to the accessory prosecutor, the judgment is provisionally enforceable against provision of a security equal to 110% of the amount to be enforced.

The value of the claim for the adhesion procedure is set at EUR 50,000.00.

Reasons:

Preliminary note:

1 In striving to establish a worldwide Islamic caliphate, the foreign terrorist group 'Islamic State' (IS), active in Syria and Iraq, persecuted the religious minority of Yazidis, mainly located in the Sinjar area in the north of Iraq, which it considered 'apostates'. In order to achieve the complete destruction of the Yazidi religion, Yazidism itself and its followers, IS fighters deliberately targeted members of the group who were living in the vicinity of the Sinjar region during the night of 2 to 3 August 2014 in a centrally planned, organised and coordinated military attack. IS then forced male Yazidis to convert to Islam, compelled them to perform forced labour, enslaved Yazidi women and girls, and carried out mass executions of members of the religious community.

2 The defendant, who had resided in R. in Syria since at least March 2015 and worked there as head of the IS office for Ru., a religious practice performing exorcisms to cure suffering, bought witness A, who belonged to the Yazidi religious group, and her 5-year-old daughter as slaves in Syria in June 2015. They had been captured by IS members during the attack on the Sinjar region in summer 2014. He then took her to Fa. in Iraq, where he forced her to stay in his household, living together with witness C, for several weeks. There they were under the instructions of the defendant, who ruled their entire lives, prohibited them from leaving the property and chastised them on a daily basis in order to discipline them and ensure they remained compliant, meaning that they lived in constant fear of him.

3 Witnesses A and B suffered greatly, both physically and psychologically, due to the living conditions dictated by the defendant and his treatment of them. By inflicting serious

physical and psychological harm on B, on the one hand, and witness A, on the other, the defendant endeavoured, in accordance with IS ideology, to targetedly destroy the Yazidi religion, Yazidism itself and its followers, who were of no value to him, in order to establish an Islamic caliphate.

4 At midday one day – the exact date is unknown – the defendant demanded that witness A stand barefoot on the stone floor of the yard surrounding the house in order to punish and discipline her again. At that time, the maximum daily temperatures in Fa. ranged from 38.1 to 51 degrees in the shade. At the defendant's behest, witness A returned to the house a short while later and, in accordance with instructions, returned to the task of cleaning the ground floor of the house. However, the defendant became angry because the child had urinated on a mattress due to illness. In order to also punish and discipline B, the defendant tied the five-year-old child to the exterior grille of the living room window in the yard. There B was exposed to direct sunlight and could not move. After tying up the girl, the defendant went back inside the house. When he returned to the yard after some time, he untied the child, who had suffered heatstroke as a result of being tied up in direct sunlight and, because of the consequences of which, either had already died by that time or died immediately afterwards. This was foreseeable and the defendant would also have been able to recognise this.

5 The defendant did not admit the crime. The findings made are based largely on the information provided by witness A at the main trial, comments made by witness C to third parties during a car journey in June 2018 and in chats via the messaging services Conversations and Fa., as well as – to a limited extent – on the information provided by witness C at the main hearing.

6 No agreement in accordance with Section 257c of the German Code of Criminal Procedure (*Strafprozessordnung, StPO*) has been made.

I. Findings relating to the defendant's personal circumstances

7 The defendant was born on... 1992 in Province 1 in District 1 in Iraq and holds Iraqi citizenship. He is a member of one of the largest family tribes in Iraq, the 'F tribe', and initially grew up in his parents' household in Fa. together with his two brothers and three sisters. The father of the defendant is also Iraqi. Under the regime of S.H., he was imprisoned as a political prisoner for 10 months. The defendant's mother is of Kurdish descent and illiterate. She cared for the family's household. The defendant's upbringing was characterised by violence, which was normal in his social environment. He learned how to use weapons from an early age.

8 In Fa., the defendant first attended primary school before then attending a secondary school. Following the invasion of Iraq by US armed forces in 2003, he and his family fled to Baghdad to escape the war. After about six months, they fled on to Da. in Syria, where he and his family lived for about four and a half years and he continued his education. Prior to the outbreak of the civil war in Syria in 2011, he and his family moved back to Fa. in Iraq. There he continued to attend school, obtained a secondary school diploma and finally left school after the 11th grade. He subsequently did not undergo any regular vocational training. He was now experiencing a very troubled period of time in Fa. In the wake of the re-emergence of the civil war in Iraq (see II. 1.), which also affected Fa., there were demonstrations in which the defendant took part in order, in his understanding, to 'defend' the city. When the demonstrations culminated in violent clashes, there soon became a state of emergency.

9 The defendant is unmarried. He is the father of First Name1 C, born in Germany on... 2016, from his relationship with witness C in accordance with Islamic law. He has not had any contact with his child for four years.

10 The defendant is of Muslim faith and belongs to the Sunni religious group. He prayed five times a day in accordance with Islamic law, went to a mosque for Friday prayers and fasted during Ramadan. He attaches great importance to females being fully veiled.

11 Following his arrest on 16 May 2019 in At. (Greece) in accordance with the European arrest warrant issued by the Federal Public Prosecutor General *(Generalbundesanwalt)* of the Federal Court of Justice *(Bundesgerichtshof)* on 24 April 2019, the defendant was first placed in continuous detention pending extradition there on 29 May 2019 as ordered in a European arrest warrant issued by the investigating judge of the Federal Court of Justice. On 9 October 2019, he was transferred to Germany and arrested in Frankfurt am Main on the same day. On the basis of the arrest warrant issued by the investigating judge of the Federal Court of Justice on 18 April 2019 (ref.: ...), he has remained continuously since 10 October 2019 in pre-trial detention, currently being served in City 1 prison..., under the stricter conditions of state protection proceedings.

12 During the pre-trial detention, he has not received any visits from family members in the absence of family ties in Germany. He has been allowed to call his mother once a month. Due to the quarantine regulations during the coronavirus pandemic, he spent a lot of time in isolation during the main trial as he was quarantined for one week after each hearing in the main trial. During the quarantine-free periods, he maintained a wide range of social connections in prison. As far as his health is concerned, he suffers from asthma.

13 There have not been any criminal proceedings against the defendant in Germany previously.

II. Findings relating to the case

1. Civil war in Syria, Iraq and 'Islamic State'

a) Initial situation in Syria and Iraq

14 By 2015, both Syria and Iraq had been experiencing civil wars for a long time.

15 Protests had been held since February 2011 against the regime of Syrian President B. al A. in the Syrian capital Da. within the context of what was known as the 'Arab Spring', although they did not initially meet with much of a response throughout the country. This changed after citizens of the city of Deraa in south-west Syria protested against the arrest and torture of children and young people who had written anti-regime slogans on walls. The protests initially extended to rural areas and small towns in the predominantly Sunni-populated areas in the centre, north and east of the country. Although the demonstrations were peaceful, the regime resorted to brutal repression. At that time, many conscripts and lower ranks had already deserted from the army. Together with poorly armed civilians, they attempted to protect the demonstrators by holding back advancing security forces. The regime mainly consisted of infantry and armoured vehicles. There were then clashes between civil defence forces and security forces, which developed into an armed insurgency by the end of 2011. Its supporters were organised into local groups which, despite the establishment of the opposing Free Syrian Army (FSA) in July, were not under any centralised control. The protests extended to the cities of Hama and Homs in the centre of the country. Homs became the centre of the uprising for a few months because the rebels were able to take control of several neighbourhoods there.

16 From October/November 2011 onwards, fierce fighting began, mainly around the Baba Amr district. The regime opted for a strategy which it continued to implement with some success until 2014: It blocked all access to the districts held by insurgents and shelled them. Following an offensive in February 2012, it managed to drive most rebels out of Homs, although the regime did not regain full control of the city. In addition to Homs and Hama, regime forces were mainly active in the provinces of Idlib and Deraa and in the outer districts of Da.

17 By the beginning of 2012 the uprising had spread to large parts of the country and the situation turned into a civil war which continues to this day. The insurgent groups, which remained highly fragmented, were now taking an offensive approach from their strongholds in rural areas. They attempted to cut the regime's lines of connection in the east, north and centre and to capture its military bases in these areas. In particular, they targeted military air bases in order to reduce the attacks which had been carried out since spring 2012 with combat planes and helicopters. In summer 2012, the rebels decided to attack Aleppo, where, as in Da., it had remained rather calm until then. In the following months, they were able to advance and occupy parts of the city in the south and north-east; however, the rest of the city and the airport remained under the control of regime forces. In autumn, the regime began shooting Scud missiles into the areas controlled by insurgents. Towards the end of 2012, the regime had recovered large parts of Homs and halted the rise of rebels in Aleppo. At the same time, the latter also went on the offensive into Da.'s suburbs. The biggest success of the insurgent groups was the capture of the Taftanaz base in the province of Idlib in January 2013. However, the uprising movement remained highly fragmented.

18 As the civil war progressed between 2013 and 2015, opposition groups did form coalitions against the Assad regime at times but increasingly they fought against each other. Jihadist groups, including in particular the organisation 'Islamic State in Iraq and the Levant' (ISIL), later renamed 'Islamic State' (IS), became stronger.

19 At the turn of 2013/2014, the civil war also spread to neighbouring Iraq.

20 The conflict between the Shiite government and its Sunni opponents had resurfaced since 2013, in parallel with the civil war that developed in Syria. Day-to-day life was initially characterised by public protests, which over time turned into a war. The crucial phase of conflict began on 30 December 2013 following a police operation against Sunni opponents of the government in the city of Ra. in the Al Anbar governorate to the west of Baghdad. This led to ongoing hostilities between the Iraqi armed forces and ISIL. By 2014, ISIL/IS held about one third of the territory of Iraq. The military disputes resulted in a large number of victims and displaced persons. There were also detentions and mass executions of Iraqi police and security forces by IS. As it occupied more and more territory in Iraq in summer 2014, IS also succeeded in making its organisation the strongest rebel group in Syria.

21 The IS offensives led the US administration, together with its European and Arab allies, to carry out airstrikes against the organisation, which continued throughout 2015. These initially targeted Iraq, where American combat aircraft began to attack IS positions in August 2014. Subsequently, Iraqi and Kurdish combat groups were able to regain the territories occupied by IS in Iraq with air support from foreign forces until August 2017. As of mid-September 2015 air strikes were also extended to Syrian territory. Russian airstrikes on the opposition's north Syrian targets then began, allowing the regime's

troops to regain positions it had lost in the centre and north of the country.

b) 'Islamic State' – IS

22 IS was an organisation guided by Islamist beliefs which aimed at toppling the Shia-dominated government in Iraq and the regime of President B. al. A. in Syria and to establish an Islamic theocracy subject to Sharia law, initially consisting of the current states of Iraq, Syria and Lebanon. After the 'caliphate' was proclaimed on 29 June 2014, the organisation no longer imposed any territorial limitations on itself.

23 In order to achieve its objectives, IS not only engaged in military fighting on the ground; its members also committed bomb attacks and suicide attacks, as well as kidnappings and killings of civilians. Members of IS saw the armed fighting and attacks as a 'holy war' (Jihad) and thus a religious obligation. Anyone who opposed its claims was deemed by IS to be an 'enemy of Islam'; the killing of such 'enemies' or the intimidation of them through acts of violence was perceived by the organisation to be a legitimate means of combat.

24 The symbol used by the organisation consisted of the 'seal of the prophets', a white oval with the inscription 'Al. - Ra. - Mu.' on a black background, below the Islamic profession of faith.

aa) IS involvement in the civil war in Syria and Iraq

25 After former IS leader Ab. Ba. al.-Ba. declared, in spring 2013, the Islamic State of Iraq and the Levant (ISIL), which had emerged from predecessor organisations operating in Iraq for many years, ISIL's own fighters took up arms in the Syrian civil war. As part of that process, it initially built bases in Syria, such as in A. in the province of Aleppo, in the city of Al. itself, in D. in the province of Idlib and in R. In Iraq, after the turn of 2013/2014, ISIL continued and successfully fought against the Iraqi Armed Forces. In January 2014, Ra. and the neighbouring city of Fa., which, as a purely Sunni city, was a symbolic ISIL stronghold, fell into its hands. At the same time, ISIL managed to take over large parts of the east of Syria, such as Al., R. and Deir ez-Zor, to use its strength there to support the fighting groups in Iraq, while rebel groups prevailed in western Syria. On 10 June 2014, ISIL gained control over Mosul, Iraq, a city with a population of more than a million, which became the centre of its rule alongside R. in Syria. At the end of June 2014, the Iraqi city of Tikrit fell under ISIL control.

26 Following the capture of the town of Mosul in northern Iraq, the organisation declared the 'caliphate' on 29 June 2014 and then became Islamic State (IS).

27 The organisation then experienced a period of success which lasted until autumn 2015 and was accompanied by an influx of foreign fighters, including significantly more women than before. IS tried to build a viable quasi-state in the areas under its control, which it divided into governorates.

28 In Syria, IS initially expanded its territory and strengthened control over its territory. In Iraq, it had gained control from Baghdad to Mosul in northern Iraq and westwards beyond the Iraqi-Syrian border by the end of 2014. Its Syrian territory continued to extend through Deir ez-Zor and R. to Manbij and al-Bab in the province of Aleppo. In May 2015, IS succeeded in capturing Palmyra in Syria. IS carried out isolated attacks in southern Syrian provinces. It also carried out numerous high-profile attacks abroad during this period.

29 From autumn 2015, with the significant increase in air strikes by the international coalition and by Russia on IS targets, the military defeat of the organisation gained momentum,

with the organisation losing one place after another its opponents. In June 2016, for example, Fa. was liberated, and in July 2017 IS lost Mosul too. On 27 August 2017, IS was pushed out of its last stronghold in northern Iraq in Tal Afar. After several months of fighting, IS was finally driven out of R. in October 2017. As a result of these defeats, in which many IS fighters were killed, most of the newly built quasi-state structures were also lost.

30 Following the complete expulsion of IS from Deir ez-Zor in November 2017, the rest of the IS fighter groups returned to its remaining villages on the eastern side of the Euphrates until its last refuge, Baghouz, fell and the last units of IS were defeated in March 2019. Since then, IS has been operating almost exclusively underground in Iraq and Syria by committing attacks. In the night of 26 to 27 October 2019, the leader of IS at that time, Ab. Ba. al.-Ba., was killed in a US operation in Syria.

bb) IS objectives

31 IS endeavoured to establish a global caliphate.

32 With the start of the civil war in Syria and the proclamation of 'ISIL', the organisation aimed to establish an Islamic state both in Iraq and in Syria and the neighbouring territories. The aim was to overcome the existing borders of nation states in the Middle East. IS's goal to establish an Islamic State in the territories of Iraq, Syria and Lebanon was only a short-term one. The organisation also endeavoured to capture Palestine, 'liberate' Jerusalem and eventually create a global caliphate, as reflected in the proclamation of the same in June 2014, then renamed 'Islamic State'.

33 From the outset, in addition to the anti-Israeli and anti-Semitic attitudes, the organisation's ideology also had an anti-Shiite aspect. In line with al-Qaeda's ideology, IS considered the Sunni as the only true believers; it considered the Shiites, who are the majority of the population in Iraq and whose representatives have also dominated the Iraqi government since 2005, to be apostates, however, and believed they should be fought and destroyed in both Iraq and Syria.

34 With President al-Assad and a large part of the political and military elite in Syria being Alawites, and with the majority of the Syrian army and security forces remaining loyal to the regime, IS also sought the physical destruction of the Alawite minority in Syria.

35 IS also opposed all other members of religious minorities in the territory it occupied on the basis of their religious affiliation, including members of the Yazidi religious community, as set out in II. 2.

36 IS also fought the Kurds. Led by the Democratic Union Party (PYD), Kurdish units controlled three areas in the north and north-east of Syria, the largest of which are located in Hasaka province and around the city of Qamishli to the east. Their forces consisted of between 30,000 and 50,000 fighters. The insurgents generally accused the Kurds of not participating in the fight against the Assad regime and of cooperating with it, and Jihadists also considered the left-nationalist PYD to be apostates.

cc) Governance, organisation and 'state' structure of IS

37 IS had a strictly hierarchical structure.

38 Ab. Ba. al.-Ba. was considered to be the Emir and supreme leader of IS, who became a caliph when the caliphate was declared in 2014.

39 He was assisted by what was known as the Shura Council, an advisory body and formally the highest decision-making body of IS. It included leaders, those responsible for the

organisation's largest areas of operation and, in particular, prominent provincial governors. The association also had an official spokesperson and various 'ministries' under the Shura Council. Beneath the Emir and the Shura Council were governors appointed by al-Baghdadi for the individual provinces, most of whom were important field commanders. IS fighters were at the bottom of the organisation's hierarchy.

40 In each province or city it captured, IS set up at least a rudimentary administration. As a minimum, this included a 'Sharia officer' or a 'Sharia committee' or 'Sharia court'. These were mainly responsible for the implementation of Sharia law in IS territory. IS religious scholars oversaw the interpretation and application of Islamic rules in accordance with IS ideology. Violations of Islamic rules were punished with draconian penalties.

41 IS's claim of ensuring a functioning state included ensuring that the population's basic meets were met. In addition to basic financial support, for example for fighters, or medical care, including access to hospitals, doctors and healers, at least in the strongholds of IS, IS provided some homes to families and ran Quranic schools. In particular in R. and Mosul, but also in the Turkish-Syrian border area, IS established hierarchically organised shelters for women. There, unmarried or widowed women, who could not live in the household of a male family member, or women whose husbands were away fighting, were usually housed until they were (re)married or until their husbands returned. Foreign women often made up the majority in the absence of local family ties.

dd) PR activities by IS

42 IS carried out a wide range of PR activities.

43 Key decisions and responsibility for attacks in particular were published on the Internet. Propaganda, which was often produced professionally, was initially made by the organisation's own media production agency, al-Furqan. IS expanded its PR activities throughout 2015 and 2016. It assigned responsibility for all propaganda to a 'Central Office for Public Relations' (Diwan al-I'lam al-Markazi), set up new media offices specialising in certain formats and published new products. In addition to the original media agency al-Furqan, it founded the al-Hayat Media Centre. This media office began its work in spring 2014, and was still operating at the beginning of 2019. Unlike al-Furqan, it not only produced material in Arabic but also in several European languages, primarily in English but also in German, French and Russian. It produced videos and audio clips but was also responsible for the foreign-language online magazines Dabiq, Dar al-Islam and Rumiya. Another important media office was Amaq, which mainly reported on specific operations which IS claimed responsibility for. IS also founded the Maktabat al-Himma publishing office, which published religious ideological works by IS Sharia scholars and writings by Salafist and jihadist authorities approved by IS.

ee) Approach taken by IS

44 IS's strategy to achieve its objectives in Syria and Iraq was to weaken the Iraqi and Syrian state and rebel organisations and to increase their own presence there through attacks and military operations, with a view to using armed force to seize power in both states and becoming the only legitimate representatives of Sunni Islam. The main goal of IS was to capture and control the Sunni-populated territories and install and maintain its state-like entity there.

45 As part of the fight against the state in Iraq, the organisation had previously attempted to undermine the stability of the state through a large number of smaller attacks with few casualties. The suicide attack, mainly in the form of a car bomb attack, in which – often

in coordinated actions – a suicide bomber drives a vehicle loaded with explosives as close as possible to the pre-selected destination and then detonates the explosives was typical of the organisation. But attacks in the form of suicide attacks carried out by setting off explosive belts and firearms were also one of IS's key tools. Victims included members of the Iraqi government and security forces, civilians from the Shiite population, and members of other religious and ethnic minorities.

46 In Syria, ISIL/IS units initially carried out attacks on Syrian government facilities and troops, as well as opponent rebel groups, mainly in the north and east of the country throughout 2013 and 2014. The focus was on strategically important objectives; in addition to gas and oil infrastructure, this included border crossings and airports. For example, in August 2013, IS took part in the capture of the Menagh helicopter and air weapon base near Azaz when some of its fighters cleared the way to the base by means of a car bomb. The military operations carried out by IS in the provinces of Aleppo, Idlib and R. also involved heavy weapons such as tanks, missile and grenade launchers, and ground-to-ground missiles. IS continued to carry out suicide bombings on Syrian territory even after it commenced military action.

47 Alongside the growth of its area of activity and IS's ambition to accelerate the expansion of the regions it controlled, as expressed by the proclamation of the caliphate in June 2014, the organisation carried out more complex attacks, combining different methods – such as suicide or car bomb attacks or storming locations with hand grenades and assault rifles – and resulting in many victims. There were also booby traps in which IS turned ordinary items, among other things, into explosive devices and used armed drones or children and young people to carry out suicide bombings. The latter were first ideologically indoctrinated and trained in the use of weapons in special training camps.

48 However, since the rise of IS and its emergence as a 'state' in June 2014, attacks within Syria and Iraq have decreased in favour of larger military operations. For example, military action – such as the attack on the Sinjar region in August 2014 described in II. 2. – was given priority during IS's period of success for the purpose of gaining territory, during which time IS perpetuated its terrorist methods of warfare. IS has also carried out various attacks in the western world since 2014.

49 When IS managed to bring areas under its control, its members proceeded to take action against enemy fighters and the civilian population with extreme brutality. Public shootings and decapitations were carried out as of autumn 2013. In some cases, the heads of those who had been decapitated were impaled on spikes and displayed. IS fighters also displayed the decapitated heads of their opponents on the Internet. Since the proclamation of the caliphate in June 2014, some opponents have also been burnt alive, drowned or executed using explosives.

2. Persecution of the Yazidis by IS

50 When persecuting religious groups, IS differentiated between different religious communities. 'People of the Book' (ahl al-kitab), i.e. Jews and Christians, were not permitted to practise their religion openly but were theoretically allowed to live in the Islamic State if they paid a capitation tax. From the viewpoint of IS, they were

'infidels' who were in principle allowed to exist, as opposed to 'apostates', who were supposed to be physically destroyed and were usually killed. In addition to Shiite Muslims and Alawites, this also included members of smaller religious communities such as the Yazidis, which IS also endeavoured to destroy.

51 The Yazidis are originally ethnic Kurds. Around 500,000 Yazidis lived in Iraq in 2014. They inhabited contiguous areas in the Sinjar region of northwest Iraq as well as the more eastern district of Shekhan, but they also lived in Syria. Around 300,000 Yazidis lived in the vicinity of the Sinjar area until August 2014. Their culture is narrative. The classification of perceptions in chronological order in numerical terms is atypical; instead, impressions and observations are typically organised in stages of history, which are regularly linked to events or sensations occurring there. They primarily define their own identity through the common religion and form an autonomous religious community. Their supporters are monotheists who have taken on elements of Zoroastrianism, Christianity and Islam. A central Yazidi belief is the existence of seven angels, one of which (Melek Taus) is a fallen angel who has been restored in heaven by the grace of God in the form of a peacock.

52 As angels are seen by IS followers as the embodiment of Satan, IS vilified the Yazidis, claiming they were devil worshippers, and deemed them polytheists who had to be destroyed. In order to achieve the complete destruction of the Yazidi religion, Yazidism itself and its followers, members of IS deliberately targeted those members of the group who resided in the vicinity of the Sinjar region as follows:

53 In the night of 2 to 3 August 2014, hundreds of IS fighters – shortly after the capture of R. and Mosul – carried out a centrally planned, organised and coordinated military attack with armed force on the Yazidi settlement area in the vicinity of the Sinjar region.

54 IS strategically planned to advance from two sides, i.e. from Syria and Iraq, as the Sinjar region is located between R. and Mosul. When it did so, IS met with minimal military resistance, as Kurdish troops present in the Yazidi region had, despite a pledge of protection from the Kurdish Peshmerga to the Yazidis, withdrawn without a fight shortly before the attack in order to avoid becoming encircled.

55 By 5 August 2014, IS had surrounded the area and occupied the surrounding Yazidi villages. IS established checkpoints at strategically important locations. Citizens found in these places or those trying to escape were captured. Some 200,000 Yazidis from the Sinjar region managed to flee, with most of them fleeing north to Iraqi Kurdistan but many also fleeing to the Sinjar Mountains north of the Sinjar region. They waited there without food, water and medicine at high temperatures, and hundreds of them starved or died of thirst.

56 From 11 August 2021, Yazidis who had fled to the Sinjar Mountains and survived were able to flee via a corridor which Kurdish forces and Yazidi militias had liberated with air support from the US army.

57 However, thousands of Yazidis who were unable to flee fell victim to the violence of IS, which now either murdered them in mass executions or forced them to convert to Islam and perform forced labour or – as far as Yazidi women and girls were concerned – enslaved them.

58 IS forced Yazidi men to convert to Islam when they reached puberty. If they were not willing to convert, they were immediately murdered, with IS also carrying out mass executions then too. If the men were willing to convert to Islam in order to survive, IS abducted them and subsequently used them as forced labourers.

59 IS separated women and children from men. It systematically abducted them under threat of armed force, sometimes on buses intended specifically for this purpose, and took them to assembly centres and then on to group accommodation in Iraq, such as Tal Afar, Baaj,

Badoush prison, the Solagh Institute in Sinjar or a large wedding hall in Mosul known as Galaxy Hall. They were housed there first, where they were deprived of their freedom of movement, with insufficient food which sometimes contained narcotics and without sanitation facilities in part, before then being redistributed from there – again under the threat of armed force – to other IS territories, particularly R. and Mosul.

60 While younger children were allowed to remain with their mothers, boys from around seven years of age were separated from their mothers for the purpose of religious re-education and trained in IS's own Quranic schools. From the age of 14 at the latest, boys had to participate in military training camps. Boys who had been forced to convert and given military training were subsequently used as fighters, involved in executions and used specifically for suicide attacks.

61 Older girls and younger women were held as sex slaves by IS members and abused. Older women were mostly used by IS as domestic slaves in private homes, for example, for housework and childcare. In some cases, IS also separated older women it classed as 'useless' immediately after capturing them and executed them.

62 The slaves were first sold directly out of the group accommodation, where IS fighters were able to select and take individuals either because of their prominent role, as an award for 'outstanding performance', as a substitute for their salary or in exchange for payment, or through central slave markets and sometimes via online auctions. Later on, Yazidi women were also sold privately. The price of a slave – there were price lists – ranged from a low three-digit number to a few thousand dollars and was based on age and beauty. Slaves were sometimes given as gifts. A thriving trade in Yazidi women and girls developed in R. in particular, even shortly after the attack on the Sinjar region. Rapes, beatings and frequent changes in location within a short period of time due to the change of ownership were commonplace.

63 There were a large number of unwanted pregnancies among the women, as well as suicides among the enslaved Yazidi women. For Yazidi women, extramarital sexual intercourse with a non-Yazidi, regardless of its involuntary nature, meant that they had to leave their religious community. IS used this fact to achieve its goal of destruction. The Yazidi religious community only changed its stance on this at a much later date so women initially remained aware that they had been disowned.

64 In addition to the main objective of destroying the Yazidis in order to establish an Islamic caliphate, the enslavement of Yazidi women and girls, planned and organised by the IS leadership, also served the purposes of the acquisition of financial resources and the remuneration of their own fighters, as well as relieving IS households of domestic work.

65 Finally, IS destroyed various cultural sites belonging to the religious community in the contested area, drove the Yazidi population out and took possession of their property.

3. Events prior to the offence – The defendant's activities for IS in R.

66 As of at least March 2015, the defendant resided in the city of R., which was occupied by IS at the time. It was by this time at the latest that he joined IS as a member, knowing of and endorsing its objectives. The defendant was aware that there was a civil war in Syria and Iraq and that IS military was active in this civil war, which he approved of. Furthermore, he was aware of the fact that members of IS also killed people in battle, and he approved of this too.

67 Once integrated into the organisation's structures, he started working as head of the IS

office for Ru. and did so for the duration of his stay in R.

68 Ru. is a religious practice used to cure various ailments and involves, among things, reciting the Surahs of the Quran, which, according to their origin, follow prophetic practice. The practice of Ru. is based on the belief that suffering is in principle caused by being possessed by spirits which must be driven out. The aim of this is to cure people of physical discomfort, protect them against forbidden magic or free them of curses. Part of the healing practice of Ru. is what is known as 'Hijama', i.e. cupping. The practising of Ru. was covered by IS's religious ideology and was part of its quasi-state institution in terms of meeting the basic needs of the population in the areas its occupied.

69 In August 2014, witness C, who is being prosecuted separately, entered Syria from her place of residence in Germany. She initially resided there in a women's shelter run by IS in R. After a marriage to an unknown IS member in accordance with Islamic law at the end of December 2014, she then left this shelter. However, as the marriage soon broke down, she moved again to another IS women's shelter in R. in March 2015.

70 In April 2015, the defendant held at least one Ru. session in this women's shelter, which witness C attended. Through arrangements made by third parties, the defendant and witness C subsequently got to know each other better, which led to their marriage in accordance with Islamic law before an IS court in R. on 12 June 2015. For the defendant, it was important that witness C behaved strictly in accordance with Islamic rules and only appeared in public if fully veiled.

4. Acts committed by the defendant

a) Purchase of witness A and her daughter B as slaves

71 The defendant understood that as part of their military action in the Syrian and Iraqi civil war against those members of the Yazidi group residing in the vicinity of the Sinjar region in northern Iraq, IS members carried out the deliberately targeted systematic measures described above under II. 2, resulting from the military action of 2 to 3 August 2014, and he approved of this. He was aware that the Yazidis defined themselves by their common religion and that, through all its actions against the Yazidis, IS was specifically concerned with destroying the Yazidi religion, Yazidism itself and its followers in order to establish an Islamic caliphate, all of which he approved of.

72 In particular, the defendant knew of and supported the IS practice of trading Yazidi women and girls as slaves following the military action and as part of the eradication measures being taken against the Yazidis.

73 For example, shortly before or at the beginning of Ramadan in Syria, which lasted from 18 June 2015 to 16 July 2015, the defendant knowingly and deliberately bought from an IS member, in return for payment of a sum of money, the witness First Name3 A, who was born on ... 1972 and was a member of the Yazidi group, and her Yazidi daughter B, born on ... 2010, as his slaves.

74 As part of IS's attack on the Sinjar region near their home town of Village1 on 3 August 2014, witness A and her daughter B were captured by members of IS under threat of armed force and taken to Syrian R. via various holding stations in Iraq, where they were repeatedly bought and sold by IS members as slaves before reaching the defendant.

75 The defendant was aware that witness A and B were Yazidis. He also knew that, in the course of its military action against the Yazidis, IS had, through organised and planned use of force, acquired possession of the Yazidi women and girls who were being traded as

slaves – including in particular of witness A and B – by capturing them under threat of armed force, which he approved of.

76 The defendant then initially placed witness A and her daughter B with an unknown IS member named '...name1', where they had to spend approximately half of the period of Ramadan, which lasted from 18 June to 16 July 2015. Still during Ramadan, he picked up witness A and her child from there again and, together with witness C, took them to Fa. in Iraq via Mosul.

77 When doing so, the defendant was aware that, by transporting witness A and her daughter from S1. to Fa. in Iraq – again far from their ancestral home of the Sinjar region in north-west Iraq – he was encouraging the transportation of Yazidi women and girls by IS from their ancestral regions to Syria or to other areas of Iraq for the purpose of enslavement. He also approved of this.

b) Residence in Fa.

78 Witness A and her daughter B then spent several weeks in the joint household of the defendant and witness C in Fa. between the beginning of July and September of the summer of 2015, where the child – as will we come back to – eventually died from heatstroke on a window grille in the house's yard as a result of being tied up by the defendant in direct sunlight.

79 In Fa., witness A and the girl had to follow the instructions of the defendant, who, for the duration of their stay in his household, ruled their entire lives and knowingly and willingly subjected them to the living conditions set out in detail below. At the same time, the defendant chastised them on a daily basis on a number of occasions by beating in order to discipline them and ensure they remained compliant. This sometimes happened for no particular reason. The defendant was aware of the pain and injuries that witness A and her child suffered as a result of his chastisement and this was what he intended. As a result, witness A and her daughter B, who, out of fear, remained completely silent in the defendant's presence, lived in a constant state of fear throughout their entire stay and did not dare disobey his instructions, which was clear to the defendant.

80 Because of the living conditions dictated by the defendant and his treatment of them as a whole, witness A and the girl suffered greatly, both physically and psychologically. As a result of all the mistreatment inflicted upon her by the defendant during her stay in Fa. – not least her death as a result of heatstroke – the five-year-old B suffered such serious harm that her ability to lead a normal life was impaired for the long term. In addition to the mistreatment by the defendant which she suffered herself, witness A also had to continuously endure having to tolerate the way in which the defendant treated B without being able to stop it. The defendant also inflicted serious psychological harm on her by failing to inform her of the child's whereabouts in the period following the incident in which he tied the child up – which will be described in further detail – and refusing to let her accompany her when he then took the child to hospital. As a result, the psychological harm suffered by witness A as a whole was so serious that her ability to lead a normal life was also impaired for the long term. All of this was clear to the defendant and he approved of it. By inflicting this serious physical and psychological harm on B, on the one hand, and witness A, on the other, the defendant endeavoured, in accordance with IS ideology, to destroy the Yazidi religion, Yazidism itself and its followers, who were of no value to him, in order to establish an Islamic caliphate.

In detail:

81 Witness A and her child initially lived with the defendant and witness C in a house for a short period of time before moving to another house in the same street surrounded by a walled yard. The defendant prohibited them from going outside the property so they were confined there and could only leave together with him on occasions determined by the defendant.

82 In the temporary accommodation, the defendant assigned witness A and her daughter B a space to sleep on the kitchen floor. In the next house, the defendant provided them with a space to sleep in a room on the upper floor, where he instructed them to sleep on mattresses on the floor and prohibited them from using the bed in the same room.

83 The defendant prohibited witness A and her child from getting any food or drink in the household themselves. In particular, he refused to let them help themselves to the contents of the refrigerator. He only allowed them to consume tap water, which was warm and tasted bitter due to high outdoor temperatures. It was only after the defendant and witness C had finished their meals that witness A and her daughter N. [sic.] were allocated some food, which consisted of basic items such as rice, noodles, eggs or bread rolls. The food was also closely measured, meaning that they went hungry and witness A gave her child some of the food she had received.

84 The defendant also prohibited witness A and her daughter B from cleaning their clothes with laundry detergent, which could only be used to clean his laundry and that of witness C, meaning that they could only wash their own laundry with water. They were also only allowed to wash themselves in a washbasin in the yard of the house, since the bath in the house was reserved solely for the defendant and witness C.

85 Furthermore, the defendant treated B like an object and, at the end of Ramadan, in spite of witness A's desperate pleas, 'lent' her to an acquaintance of his who witness A. and the child did not know, where B had to spend the night without her mother. Witness A even kissed his feet but he still was not dissuaded.

86 The defendant ordered witness A and the child to regularly pray in accordance with the rules of the Islamic faith at Islamic prayer times, contrary to their religious practice as Yazidi, whereby he also instructed them to cite the Quran. He also ordered witness A to be fully veiled when leaving the house. The defendant described the name 'B' as the name of a 'apostate', with the result that he renamed the child 'E' and the defendant and witness C would then only address her by that name. In particular, he did so for the purpose of breaking down their religious beliefs and their Yazidi identity.

87 The defendant ordered witness A to carry out day-to-day domestic work. She had to wash the dishes, clean the house, wash the laundry, sweep the yard and collect water. He did not pay for the work done by witness A, however.

88 The corporal punishments were carried out in different ways. For example, the defendant regularly struck witness A on the head with the palm of his hand and with the handle of the mop, injuring her leg below the knee. In addition, on at least one day he struck her with his fist in one of her eyes, leaving her with swelling and bruising on the eye. On at least one occasion the defendant beat witness A because water had dripped on to the sofa as she was cleaning, which led to severe pain for her. When, on another occasion, a glass fell on the floor in the kitchen, the defendant struck both witness A and B in such a way that witness A began to shake out of fear and wet herself. The defendant also struck the child during Muslim prayer when, in his view, B did not pray correctly, and he also threatened to kill her. In addition, the defendant pushed the child in the yard of the house,

causing an injury to the child's elbow. The defendant also struck B with his hand as he and witness C felt that the child had disturbed them. On one occasion, the defendant struck the girl with his hand multiple times and with such vehemence that she suffered bruising on her back and severe pain, as a result of which witness A managed to get the defendant to allow B to stay in bed for four days.

89 At midday one day – the exact date is unknown – when the temperature was very high, as witness A was cleaning the house, the defendant demanded that she stand barefoot on the stone floor of the yard surrounding the house. The defendant ordered her to remain there in order to again punish her and discipline her. At that time, the maximum daily temperatures in Fa. ranged from 38.1 to 51 degrees in the shade. In the house's yard, when exposed directly to the sun, the temperature was even higher. The floor of the yard became extremely hot. As a result of the bare soles of her feet coming into contact with the hot floor, witness A suffered pain on her feet, which the defendant was aware of and which he also intended. At the defendant's behest, the witness returned to the house a short while later and, as instructed, returned to the task of cleaning the ground floor of the house.

90 However, the defendant became angry because B had urinated on a mattress. Following the punishment of witness A, he then summoned B. In order to punish and discipline the child, the defendant used a cable to tie B's arms to her left and right, at head height, to the outside grille of the living room window, in direct sunlight during the persistent midday heat, so that the child, who was wearing pyjama bottoms and a mid-length dress, could not move around – as the defendant intended. When doing so, he was aware that, by tying up the girl in direct sunlight at that outside temperature, he would cause B serious physical harm, which he actually wanted to do for the purpose of punishment and discipline. At the same time, it could be foreseen that the child would die as a result of being tied up in the sun, and the defendant would have been able to understand this.

91 After tying up the girl, the defendant went back into the house. He sat on the living room sofa with witness C, while B remained tied to the outside grille of the living room window for some time, for more than just a few minutes at least, without any liquid or food intake. B first called for her mother. Witness A, who had been cleaning the living room area during this, was terrified for her child but did not dare to intervene out of fear of the defendant.

92 Ultimately, as a result of being tied up in direct sunlight and the high outside temperatures, the child suffered heatstroke, as a result of the consequences of which she either died at that time or died immediately afterwards.

93 After some time, the defendant went back out into the yard. When he realised that the child was at least unconscious, he untied B, whose body had already become stiff. When witness A saw her daughter's condition, she began to scream and tear at her hair. The defendant took B into the living room and laid her on the floor. The child's eyes were open and the pupils had rolled back. B's lips and skin were dry, the skin on her face was pale and her hands were clenched into fists. As B's mouth could not be opened, the attempts then made to give her water failed. The defendant then became A1. and declared that he was going to take B to hospital. However, contrary to her request, he prohibited witness A from accompanying him, so he left the house alone with the child and went to a hospital. Witness A suffered tremendously as a result of not being allowed to accompany her child. As a result of this, and because the defendant never informed her of what then happened

to the child or of the unknown whereabouts of B's body, he caused witness A serious psychological harm.

94 After the defendant had left the house, witness A was left alone with witness C. Witness A could no longer sleep because of the previous event. She cried constantly out of deep, profound fear for her child. After a few days, they received a visit from the uncle of the defendant who informed them that B had died, leaving witness A tremendously distressed.

95 A few days later, the defendant returned to the house with members of IS. Together with witness A, he was taken to an IS base and questioned about what had happened in connection with B. An unknown IS member now told witness A once again that her daughter had died. The defendant was beaten by IS members during the questioning and detained. The reason for his detention was that the murder of a slave for no reason was not permitted under the rules which IS had set itself. After an unknown period of time, the defendant was released from IS's custody.

5. Events following the offence

a) Subsequent fate of witness A and liberation

96 Witness A no longer returned to the defendant's household. Following the interview at the IS base, she was taken by IS members to Ra., then later to Mosul and Tal Afar, where she was held captive for several months by changing IS slave holders.

97 It was only in summer 2017 that witness A regained her freedom, coinciding with the increasing losses of IS territory in the north of Iraq. She sought refuge in a refugee camp called Qadya near Governorate3 in northern Iraq on 27 August 2017 and now lives in Germany.

b) Departure of the defendant and witness C to Türkiye

98 The defendant left Iraq in September 2015 with witness C, who was now pregnant by him, in order to go to City5 in Türkiye, where the defendant's family was residing. They took up residence there. The defendant then registered as a refugee in City5 on 2 December 2015. When, on 29 January 2016, witness C informed the German Embassy in Ankara in Türkiye that her travel or identity documents had been lost, she was detained by the Turkish authorities in custody pending deportation and deported to Germany. She arrived there on 2 February 2016.

c) Defendant's activities for IS in Türkiye

99 In the meantime, the defendant subsequently worked for IS in Türkiye in a variety of ways, with continued knowledge and further approval of its objectives. He in turn practised Ru., supported IS members who had fled to Türkiye from lost IS territory of Syria, accompanied female IS members to hospitals or provided them with food. In July 2018, he also told an unknown chat partner that he was able to produce various types of explosive devices for IS and to train an IS member how to use explosives at his house in Türkiye.

d) Departure of the defendant to Greece

100 Between 27 October and 9 November 2018, the defendant moved from Türkiye to Greece and from then on stayed in Athens, where he was arrested on 16 May 2019.

6. Suspension of proceedings and limitation of prosecution

101 At the request of the Federal Public Prosecutor General of the Federal Court of Justice (hereinafter the 'Public Prosecutor General'), the Chamber provisionally suspended the

proceedings in accordance with Section 154(2), (1) subparagraph 1 StPO with regard to the specific accusation under point I.1 of the indictment of 5 February 2020, legally assessed there as being a member of a terrorist group abroad pursuant to Section 129a(1) subparagraph 1, Section 129b(1), first and second sentences StGB (point 1 of the abstract charge).

102 Furthermore, in accordance with Section 154a(2), (1) subparagraph 1 StPO, the Chamber, with the consent of the Public Prosecutor General and the accessory prosecutor, has, in respect of point 2 of the abstract charge and the specific accusation under point I. 2. of the indictment of 5 February 2020, limited the prosecution to the parts of the offence or to the infringements of the law relating to that offence in respect of which a conviction is possible for the commission of offences under the Code of Crimes against International Law (unlimited) in notional concurrence with personal injury resulting in death pursuant to Section 223(1) and Section 227(1) StGB.

III. Assessment of evidence

103 The defendant spoke only to provide personal details. He answered further questions about his life in so far as they did not have any direct temporal or actual relevance to the allegations in the present case.

1. The defendant

104 The findings made under I. concerning the defendant's life are largely based on statements he made, some of which are credible as they are consistent with other evidence and, moreover, unrefuted at the main trial.

105 In so far as the defendant's statements concerning his place of birth in Province1 in District 1 in Iraq and his nationality as an Iraqi national are concerned, they are confirmed by the identical content of an identity document issued to the defendant and by the content of a form also issued to him in a family matter.

106 The defendant's explanations of the events of war in Iraq, in particular in Fa., following the invasion of the US armed forces and the associated movements made by his family when fleeing to Baghdad (Iraq) and then to Da. (Syria) correspond to the statements made by expert SV1 concerning the history of the events of war in Iraq. According to the comprehensible statements he made, the US-led coalition forces began to invade Iraq in March 2003. In the period that followed, large numbers of people went to Syria, including residents of Fa., as they fled from the war in their homeland. The other statements made by the defendant regarding his return to Iraq in 2011 before the outbreak of the civil war in Syria are also consistent with the comprehensible statements made by expert SV1 concerning the start of the Syrian civil war (see III. 2. a)), so the events described by the defendant seem to correspond to historical events.

107 In so far as the defendant stated that he had a child with the witness First Name4 C, namely the daughter born on... 2016 with the name First Name1 C, biological paternity is evidenced by the result of the parentage report by expert SV2, which identifies the defendant as the father of the child with a probability of 99.999%. The circumstances in which that report was drawn up, as described by expert SV2 – in her capacity as a witness at the main trial – also prove that the defendant is the father of the child born on... 2016. In view of the importance of the paternity of the defendant for the assessment of evidence, the corresponding evidence is reproduced in detail below in the interest of standardised representation.

108 In her capacity as witness, expert SV2 credibly stated, among other things, that witness C had asked her in an email of 6 September 2017 to the 'IFUAG Institute for the Recognition of Paternity' whether a paternity report could be provided as a matter of urgency. In this email, she stated that the child's possible father was in Türkiye. On the next day, 7 September 2017, witness C, together with her daughter First Name1 C, came to the Institute, where DNA samples were taken from her and her daughter via buccal swabs. Witness C then made a formal request for the paternity report to be prepared, indicating her personal details in a form; she gave the name 'First Name3 F' as the possible father. The expert also stated that she was presented with a birth certificate for First Name1 C indicating her date of birth as ... 2016. She was also presented with a copy of the identification document of the potential father of the child, 'First Name3 F'. She then sent a DNA collection kit together with a blank identification form for the potential father to the German Embassy in Ankara. Following the collection of DNA from the potential father of the child in Türkiye on 21 November 2017, medical officer G there sent the collection kit back to her institute in City4 with the collected DNA. She also received the proof of identity, bearing the name of the presumed father as 'First Name3 First Name5 First Name6 F', born on... 1992, residing in City5', signed by both the doctor there and by 'First Name3 F'. On 20 December 2017 she completed the paternity report and on 10 January 2018 sent it together with a cover letter to both witness C and the German Embassy in Ankara, so that the father of the child could obtain the report from there.

109 In view of the fact that the name is the same and the date of birth is the same, the Chamber has no doubts as to whether the person stated by the witness as a child's father was in fact the defendant.

110 As an expert, she also explained in a coherent and comprehensible manner that, on the basis of the DNA samples taken from the three persons, she concluded, by using recognised scientific methods which she clearly explained, that there is a 99.999% probability that First Name3 F is the father of First Name1 C.

111 There is no doubt as to the relevant expertise of the expert. She is licensed as a qualified biologist with additional training as a specialist parentage investigator at the Deutsche Gesellschaft für Abstammungsbegutachtung and has been working in the field of parentage investigation for nine years, for the judiciary among others, after previously focussing professionally on DNA research many years.

112 The defendant himself stated that he is Muslim and belongs to the Sunni religious group. In this regard, he stated that in the past he had prayed five times a day in accordance with Islamic law, praying at a mosque on Fridays and fasting during Ramadan. This is credible given that he is from Iraq, which has a predominantly Muslim population, including Sunni Muslims. This is all the more likely given that expert SV1 clearly stated that Fa. is a city with a predominantly Sunni Muslim population.

113 The belief that the defendant attached great importance to females being fully veiled is based on the consistent statements made in this regard by witnesses C, D and A, who explained this independently of each other at the main trial. This also includes the content of a video on a data storage device belonging to witness C that was seized. In this, the interviewee describes himself as Muslim and says that women should obey men. The fact that the interviewee was the defendant will be explained later (see III. 2. c) dd) (3)).

114 The findings made in relation to the nature and course of pre-trial detention are based on the statements made by credible witnesses H and I in their capacity as employees of City1

prison... They also credibly stated that based on their observations during their time spent working at the prison, the defendant prayed regularly in accordance with Muslim rules.

115 The content of the excerpt from the Federal Central Criminal Register (Bundeszentralregister) of 2 March 2021 proves that there have not been any criminal proceedings against the defendant in Germany previously.

2. The case

a) Civil war in Syria, Iraq and 'Islamic State'

116 The findings made in II. 1. concerning the civil war Syria and Iraq as well as those concerning IS are based on the convincing statements made by expert SV1.

117 The expert's statements were consistent and very clear. They were convincing, particularly because the expert was able to substantiate them on a scientific basis with references to their sources.

118 The statements made by expert SV1 are also fully consistent with the notices found in the evaluation report by Detective Sergeant (Kriminaloberkommissar) J of the Federal Criminal Police Office (Bundeskriminalamt) of January 2018, which confirm the expert's comments and coherently supplement them. The evaluation report by the Federal Criminal Police Office confirmed SV1's statements on the beginning and development of the civil war in Syria and the organisations involved in it, as well as the spill-over of the civil war into Iraq and the development of it there. In line with the statements made by SV1, the evaluation report also sets out the objectives of IS, its leadership and organisational structure, in particular Ab. Ba. al.-Ba. as leader, the established quasi-state structures and the terrorist activities of IS in Syria and Iraq during the period described, as well as IS's presence in northern Syria and Iraq, as noted in each case. Annexes 3 (Iraq) and 4 (Syria) to the Federal Criminal Police Office's evaluation report list, for the period in question, individual attacks by IS in Syria and Iraq, which are included and in turn evidenced in the description by expert SV1 of IS's strategy.

119 Furthermore, the statements made by expert SV1 on IS's strategy are confirmed by the comments made by Detective Inspector (Kriminalhauptkommissar) K of the Federal Criminal Police Office, of which some excerpts were read out, on the acts of the Islamic State in Syria and Iraq which are relevant under international criminal law for the months of June to September 2014. The comments, in line with the expert's statements, describe various types of IS terrorist activities such as attacks in Syria and Iraq during the relevant periods.

120 There is no doubt as to the expertise of SV1. He is known to the Chamber from a variety of procedures as a renowned expert on Islam who has been working for many years in documenting, analysing and evaluating Islamist terrorism and enjoys a good professional reputation.

b) Persecution of the Yazidis by IS

121 The findings concerning the persecution of Yazidis by IS under II. 2. are based on the convincing, clear statements of experts SV1 and SV3 at the main trial, which are consistent with and/or coherently supplement each other.

122 The statements made by SV3 – as well as those of expert SV1 on this subject – were made in a consistent, fully coherent and illustrative manner. Like SV1, SV3 also supported his claims with a variety of sources, indicating a scientifically substantiated way of working.

123 Expert SV3 explained in particular the religious and cultural background of Yazidism, as

stated. When doing so, he explained that their culture is narrative. The classification of perceptions in chronological order in numerical terms, including details of age, dates or time periods such as by minute or hour, is atypical. Instead, impressions and observations are typically organised in stages of history, which are linked to events or sensations occurring there.

124 IS's attack on the Yazidis in the Sinjar region during the night of 2 to 3 August 2014 and its consequences as a whole, including the identified measures taken against the captured members of the religious community and the enslavement of Yazidi women and girls in the manifestations identified, have been consistently highlighted by the experts. Expert SV3 has also clearly supported his comments on the geographical location of the Yazidi settlement area using maps of the region concerned.

125 Both experts have consistently described IS's attitude towards the Yazidis, stating that IS classed them as 'apostates' and therefore wanted to physically destroy the Yazidi religion, Yazidism itself and its followers, which the deliberately targeted actions of IS in the aftermath of the attack of 2/ 3 August 2014 were intended to do.

126 The assessment made by both experts in this regard is clear, in particular because the position of IS is documented in the content of the article by IS, 'The revival of slavery before the hour', from the fourth edition of IS's English-language online magazine, Dabiq, of October 2014 entitled 'The Failed Crusade'.

127 This article refers to IS's actions following the attack on the Sinjar region. It gives the main argument for the destruction of the Yazidis through murder and enslavement as the Yazidis' faithlessness and/or the alleged 'devil-worshipping' of the Yazidis as polytheists. It expressly states that Yazidis – unlike Christians and Jews – could not 'buy' their freedom through a capitation tax. It also states that Yazidi women and children must be enslaved, while men should be killed once they had been granted the opportunity to repent and pray. Women and children were, it states, shared among fighters in accordance with Sharia law as the 'spoils of war'. One-fifth of these 'spoils of war' must, it states, be transferred to the 'institutions of the Islamic State'. The enslaved women and children also had to be sold in the same way as had traditionally been the case for polytheists. It is, it states, therefore prohibited to separate a mother from her young children. It states that it is necessary for the slaves to give birth to the children of their 'masters' in order to spread Islam in the conquered territories through their shared children. All in all, it states, this practice constitutes a religious obligation.

128 In addition, the list of questions and answers from the IS's own Maktabat al-Himma publisher with the Arabic title 'Su'al wa-Jawab fi al-Sabi wa Riqb', which translates as 'Questions and answers on the keeping of slaves and prisoners', describes IS's attitude towards the trading of Yazidi women as slaves, and IS's theoretical behavioural and commercial requirements with regard to Yazidi slaves in accordance with the experts' statements. The Q & A dates from 'Muharram' 1436, which corresponds to October/November 2014, and indicates the issuer the IS Research and Religious Jurisdiction Office, i.e. an authentic source within the organisation.

129 In this Q & A, the leadership of IS provides information on the owner's rights vis-à-vis slaves and theoretical instructions on how to handle and keep slaves. According to this, 'infidel' women captured during war, which included the Yazidis captured, could, in principle, be brought into the territory under the rule of Islam. Sexual intercourse could, it stated, be had with female prisoners immediately after 'taking possession' of them,

provided that they were still virgins; in the case of pregnant slaves, this was, it stated, permitted only after the birth of the child and then after one menstrual period. One could buy and sell the slaves and give them as gifts as they were 'only property'. It was not permitted to separate a mother from her prepubescent children. Separation was only permitted after that. In the event of the death of the 'owner' of a prisoner, the latter was to be distributed like property, whereby the 'new owner' could not have sexual intercourse with her if the 'previous owner' or one of his sons had already done so. Sexual intercourse with a slave was permitted even if she had not yet reached puberty. She simply needed to be physically capable of having intercourse. If she was not, it was still permitted to 'afford one's self pleasure' with her without having intercourse. It was permitted to beat a slave woman in order to discipline her. However, the use of force in order to cause fractures, to torture her or in order to get revenge was not permitted. Hitting slaves in the face was not permitted either. A slave woman who attempted to flee from her 'owner' had to be dealt with in such a way that it deterred other slaves from trying to escape. However, killing a slave was not permitted and was punishable as a criminal offence.

130 Experts SV1 and SV3 again consistently explained, however, that IS often deviated from these dogmatic requirements in everyday practice, for example by disregarding the rules on the permitted method of punishment to the detriment of enslaved women and girls.

131 Furthermore, the existence and content of an IS price list for female slaves can be found in the experts' statements and constitutes proof of the sales practice itself and the pricing within the slave trade. The price list indicates that different prices may be charged according to the age of the slave; the younger the slave, the higher the amount that then had to be paid.

132 The experts also gave a congruent description of the Yazidi population in Iraq and Syria in 2014, including the number of inhabitants, in line with the findings made.

133 In addition, the statements made by the witness Detective Sergeant L are consistent with the information provided by the experts on IS's actions against the Yazidis. On the basis of her findings as the investigating officer of the Federal Criminal Police Office, which had been investigating IS's actions against the Yazidis in Iraq and Syria since the beginning of August 2014, the witness confirmed the expert's statements on IS's attack on the Yazidi settlement area in August 2014 and the subsequent consequences they set out. In addition to the consistent description of IS's handling of Yazidi prisoners, in particular the enslavement of Yazidi women and girls and the details of the slave trade, the witness also reported the subsequent discovery of a large number of mass graves in the Yazidis' original settlement area in northern Iraq, the destruction of their sacred sites, places of pilgrimage and cultural sites, and the use of boys as child soldiers in accordance with the findings made.

134 Finally, the persecution of those of different faiths by IS is evidenced by the content of the notes kept by Detective Inspector K, of which parts have been read out, from the Federal Criminal Police Office on the acts of the Islamic State in Syria and Iraq that are relevant under international law in the months of June to September 2014, which describe, in particular, individual acts of forced displacement and execution committed by IS members in the corresponding months in Syria and Iraq. The notes relating to the month of August 2014 also explicitly describe IS's attack on members of the Yazidi religious group located in the Sinjar region and thus corresponds seamlessly to the experts' statements.

135 The Chamber also has no doubt as to expert SV1's statements underlying the findings on the persecution of Yazidis by IS. The Chamber is equally convinced of the qualification and expertise of expert SV3 as a recognised religious and political scientist who has researched the Yazidi religion in depth and for that purpose spent a long time in the Yazidi settlements in northern Iraq and Syria.

c) Objective events prior to the offence

136 The Chamber's certainty as regards the external course of events laid out in II. 3., the time spent in Syria by witness C and the defendant, the way in which they met and their marriage in accordance with Islamic law in R. in June 2015 is based on the statements made by witness C at the main trial and on the consistent statements made by witness D, each of which is supported by further evidence.

137 The findings on the defendant's function as head of the IS office for Ru. in R. are based on the content of a conversation between witness C and a trusted person of the investigating authorities during a car journey on 29 June 2018 (hereinafter: interior surveillance), witness C's chat with a trusted person of the investigating authorities via the 'Conversations' messaging service in May 2018 in the run-up to that car journey (hereinafter: Conversations chats) and a Fa. chat between witness C and First Name7 N, who is being prosecuted separately, in February 2017 (hereinafter: Fa. chat), again supported by other indicia. The statements made by witness C at the main trial, which are inconsistent in this regard, were not credible.

aa) Information provided by witness C at the main trial

138 At the main trial, witness C described the external course of events concerning her and defendant A2 in R., the way in which they met and finally their marriage in accordance with the findings made. The credibility of that information is supported, first of all, by the fact that it was made in a detailed manner.

139 Thus, at the main trial, the witness gave a detailed account of how she had arrived in Syria from Germany at the end of August 2014 and had entered a women's shelter in R., where she also met witness D for the first time. In December 2014, she married an IS member in accordance with Islamic law. As the marriage soon failed, she was transferred to another IS women's shelter in R. It was there that she met the defendant in April 2015 when he held a Ru. session in the women's shelter together with a friend; the defendant had already been in R. for a month longer. In particular, she described in detail the circumstances of the marriage to the defendant, namely that they first went to an IS office in R. on 12 June 2015 in order to deal with administrative matters. They then went to an IS court, where the marriage took place in accordance with Islamic law.

She then left the women's shelter and, together, with the defendant, left R. The description of the subsequent course of events by witness C in the main trial will be assessed later (see comments under III. 2. d) aa) (1) (d), (2) (b) (bb) and (3) (c)).

140 The detailed information provided by witness C in this regard is also credible because it is plausible. This is because it depicts a sequence of events that is consistent in itself and also with the other evidence.

141 The witness clearly described her departure for Syria at the end of August 2014 following the declaration of the caliphate by IS at the end of June 2014. Expert SV1 confirmed that IS declared the caliphate at the end of June 2014. The reported stays in IS women's shelters correspond to the fact that at the time in R. there were indeed IS women's

shelters in R. and single women, among others, often lived there. Expert SV1 coherently stated in this regard that IS operated women's shelters in Syria, including R., between summer 2014 and summer 2015. Only the wives of IS members who were away fighting or unmarried or widowed IS women stayed in these women's shelters. Furthermore, the content of the official statement made by the Federal Intelligence Service (Bundesnachrichtendienst) TE-14/2020 proves that there was in fact a women's shelter in R., which was frequented by various German female voluntary jihadists. In that regard, the statement that she met witness D in both this shelter and the women's shelter she had previously been staying in is also consistent with the statement made by witness C.

142 The fact that she saw the defendant for the first time in April 2015 when he came to the IS women's shelter with a friend and held a Ru. meeting there is plausible in view of the fact that, according to the comprehensible and consistent statements made by expert SV4 and expert SV1, the practice of Ru. was part of IS ideology and the quasi-state structures for meeting basic needs.

143 Expert SV4 has coherently explained that Ru. is a religious practice used to cure various ailments and involves reciting the Surahs of the Quran, which, according to their origin, follow prophetic practice. The practice of Ru. is based on the belief that suffering is in principle caused by being possessed by spirits which must be driven out. The concept is therefore equivalent to exorcism. The aim of this is to cure people of physical discomfort, protect them against forbidden magic or free them of curses. This understanding of the practice of Ru. has also been shared by expert SV1, who described the practice consistently with expert SV4. Both experts also stated that the practice of Ru. was part of IS ideology and was a firm part of the IS institution within the 'state' structures for meeting basic needs.

144 There is no doubt as to the professional qualifications of expert SV4, who has worked as an expert on Islam for the investigating authorities for several years and focused as part of his master's degree in Asian Studies on the Arabic language and translation.

145 Moreover, witness C's description of the circumstances of the marriage in accordance with Islamic law before an IS court is also highly consistent with IS ideology, which is why the course of events described can also be explained against this background.

146 However, witness C's statement at the main trial describing the defendant as a 'simple Iraqi' who worked only as an assistant in the Ru. office is not credible.

147 The statements made in this regard by the witness that the defendant never swore an oath to IS and refused to fight, that he merely worked as an assistant and that the head of the office for Ru. was a friend of the defendant are inconsistent in themselves. In addition, the witness clearly adjusted her testimony in response to the Chamber's questions.

148 For example, the witness first stated that the defendant had come to Syria to assist the previous head of the IS office for Ru., as he had gone away to fight. First of all, this suggests that the defendant would have stepped into his position. However, in the course of her examination at the main trial, the witness stated on her own initiative that the head of the IS office for Ru. was a friend of the defendant and had led the Ru. session at the women's shelter, at which the defendant was also present. When questioned by the Chamber about this inconsistency, the witness did not clarify it. On the contrary, she then stated – adjusted to the Chamber's questions – that another friend of the defendant was the head of that office, while the defendant only worked there.

149 The witness also has a considerable exoneration interest concerning the defendant's role in IS.

150 Criminal proceedings are being taken against her on the grounds of, among other things, multiple counts of alleged membership of a terrorist group abroad (IS), in notional concurrence with other offences, including under the Code of Crimes against International Law, and with aiding and abetting attempted murder by neglect, committed between September 2014 and September 2015, that is to say, the present period of the offence, or at least parts thereof. These proceedings also concern the events being examined here which witness A and her child suffered in the summer of 2015 in Fa.. This is apparent from the indictment of the Federal Public Prosecutor General of 13 December 2018 and the extended arrest warrant issued by the Munich Higher Regional Court on 24 April 2020 against witness C. The accusation therein also includes her alleged activity in the IS unit 'Khatab Shishani Katiba' in R. and for the religious and moral police (Hisba) after the end of June 2015 in Mosul and Fa.

151 According to the credible information provided by the witness Detective Sergeant M, the proceedings were initiated on 14 June 2018. Witness C was provisionally arrested on 29 June 2018 during a car journey with her daughter First Name1 and a trusted person of the investigating authorities. The conversation had during the car journey (interior surveillance) as well as the Conversations chats between witness C, under the user name 'o', with a trusted person of the investigating authorities, who communicated under the name '...Name2a', as well as with First Name8 P, who is being prosecuted separately, in May and June 2018 gave rise to further suspicions in respect of the witness regarding the possibility of new plans to depart to Syria for the purpose of joining IS. She has remained continuously in pre-trial detention since 30 June 2018. The suspicions thus emerged prior to her examination in the present main trial.

152 According to the disclosure made by the Higher Regional Court of Munich of 2 November 2021 and the operative part of the judgment annexed to that disclosure, the main trial before the Munich Higher Regional Court against witness C was concluded on 25 October 2021 by the sentencing of witness C on 25 October 2021 to ten years' imprisonment on the grounds of two separate, adjoined *(tatmehrheitlich)* counts of membership of and participation in a terrorist organisation abroad, one in notional concurrence with aiding attempted murder through omission in notional concurrence with aiding an attempted crime against humanity in the form of the murder of a person through omission in notional concurrence with aiding an attempted war crime against persons in the form of the murder of a person protected by international humanitarian law through omission in notional concurrence with two concurrent crimes against humanity in the form of enslavement, one resulting in death. The sentencing was handed down accordingly following her examination at said main trial.

153 In light of this, witness C had a considerable interest in the role of the defendant – and thus a (further) marriage to an IS member – not being established. Evidence of close links between witness C and other IS members, especially in a leading role, in her immediate environment in R. would otherwise have been highly indicative of the witness's participation in IS as a member herself. If she had entered into a marriage with a 'simple Iraqi', she could have exonerated herself of the accusation of membership of IS, since this would have meant a less close relationship with IS.

154 In addition, there are significant inconsistencies on this point with further definite

evidence, in particular the statements made by the witness outside the main trial. We will return to this shortly (see comments under III. 2. c) cc)).

bb) Information provided by witness D at the main trial

155 Further proof of the residence of witness C and the defendant in the first half of 2015 in R., the way in which they met there and their marriage in R. in early summer 2015 forms the content of witness D's testimony at the main trial, in accordance with the information provided by witness C in this regard at the main trial.

156 Witness D credibly provided a detailed, consistent description of how she came to Syria, met a woman called 'First Name9' in an IS women's shelter there and, through Ru. sessions carried out by a 'First Name3' in another IS women's shelter in R. in which she and 'First Name9' subsequently lived together, became closer to 'First Name3', which ultimately led to a marriage in accordance with Islamic law arranged by third parties. 'First Name9' went to Fa. with 'First Name3' in early summer 2015, before she herself left the last women's shelter in which she had lived in R. in mid-July.

157 In various photographs, which, according to the witness Detective Sergeant M, show witness C, she identified 'First Name9' as witness C both at the main trial and – as credibly confirmed by her and by the witness Detective Sergeant M as the interviewing officer – on 17 September 2018 in her police questioning by witness Detective Sergeant M and Detective Constable (Kriminalkommissar) Q, even though the evidential value of that information is in itself small because this did not involve a line-up of police photographs and a suggestive influence must therefore be taken into account.

158 In addition, witness D stated that she first saw 'First Name9' again at the main trial before the Higher Regional Court of Munich, where the defendant was also present as she was giving evidence as a witness at that main trial. In the absence of comparison with other persons, the evidential value in this regard is also in itself small. However, read together with the information provided by witness C, who confirmed that she had lived together with witness D in two IS women's shelters in R., there is no doubt that 'First Name9' described by witness D was actually witness C.

159 The course of events described by witness D is also plausible, as, in light of the findings on the existence of IS women's shelters in R., the events are consistent with the comments of expert SV1 on the existence of such IS women's shelters locally and with the other evidence already presented in the assessment of this part of witness C's statements (see comments under III. 2. c) (aa)).

160 The fact that witness D's statement was accompanied by strong emotions also indicates that, overall, she reported things which she had actually experienced. For example, when outlining the conditions in the women's shelters in which she lived in Syria, the witness began to cry considerably and was visibly angry about the management of the women's shelters and IS itself, the members of which she has repeatedly described as 'idiots'.

161 The information provided by witness D is also the same as that provided by witness C at the main trial in so far as both reported a fire in a women's shelter caused by playing children.

162 Moreover, the fact that witness D did not clearly identify the defendant as 'First Name3' during the main trial, in the courtroom, in photographs or during the police questioning on 17 September 2018 does not mean that her testimony is not credible. For example, at the main trial, when various photographs of the defendant were presented, she only

stated that it could be the defendant in relation to one photograph because of the long hair, having never seen his face; according to the witness Detective Sergeant M, when the photo was presented during police questioning she stated, in response to the question of whether it was the second husband of witness C, that it could be, but she was not 100% sure.

163 However, the fact that the defendant's first name corresponds to the name 'First Name3' given by the witness clearly points to the defendant, which corresponds to the statements made by witness C. Furthermore, since witness D stated that, during the two sessions in the women's shelter held by 'First Name3', the room had been dim, she had been looking down, had been fully veiled with a mesh grille over her eyes and had otherwise seen him only from the back, it is understandable that she had only had limited opportunity to see 'First Name3' and had not definitely recognised the defendant as 'First Name3'. In particular, the link between 'First Name9' and 'First Name3' described by witness D suggests that not only does 'First Name9' mean witness C but also that 'First Name3' means the defendant.

164 Moreover, the witness is credible. There were no signs of any particular blaming or exonerating tendencies. In fact, on the one hand, she made it possible to attribute the course of events to witness C by actually reporting the sequence of events and identifying her in photographs; on the other hand, she did not clearly identify the defendant as 'First Name3'.

cc) Information provided by witness C outside the main trial

(1) Interior surveillance

165 The following passages from the interior surveillance are definite proof of the defendant's role as head of the IS office for Ru. in R. in accordance with the findings made, contrary to the information provided by witness C in this regard at the main trial. Furthermore, the other statements made by witness C at the main trial concerning her and defendant A2 in R., the way in which they met and their marriage are supported by the content of the conversation.

166 According to the credible statements made by the witnesses Detective Inspector U and Detective Sergeant M at the main trial, it is first established that witness C's conversation with the trusted person of the investigating authorities, which took place during the car journey on 29 August 2018, was recorded and then transcribed in full. In his capacity as trusted person handler, the witness Detective Inspector U credibly stated that, on 29 June 2018, the car journey taken by witness C, her daughter and a trusted person from the witness's place of residence in City2 via City3 heading south was continuously observed by a tracking vehicle from the investigating authorities. Prior to deployment, he instructed the trusted person, who had to pretend to be witness C's driver and associated with IS, for the purpose of her journey to Syria, to discuss topics relevant to the investigation only during the car journey. The conversation conducted during the car journey was recorded in full using a listening device previously installed in the vehicle. The witness Detective Sergeant M confirmed these events and stated that the English content of the conversation, with parts in Arabic, was recorded in full and then transcribed word-for-word and translated into German. Accordingly, in the view of the Chamber, transmission errors and any incomplete reproduction of the content of the conversation are ruled out.

167 The fact that witness C stayed in two different IS women's shelters in R., as she described at the main trial, is evidenced by her statements in the course of the conversation in that

she remained in the 'madafa' for the longest time; while all the others had gone back after a week or at the latest one month, she stayed in the first 'madafa' for four months. She stayed in the second 'madafa' after she was divorced; she also spent four months there. In one of the 'madafa' she almost died as a result of a fire caused by children playing with a lighter. She also reported such a fire at the main trial, as did witness D. In this regard, expert SV4 explained coherently and comprehensibly that 'madafa' is an Arabic term for a women's shelter. The women's shelters in the areas occupied by IS were referred to as such, as confirmed by expert SV1.

168 The witness's stay in R. (and also Fa.) in accordance with her statements at the main trial is evidenced further by the fact that she spoke about R. to her interlocutor at various points. For example, in the course of the conversation, she stated that she had been in R. and then in Fa. When asked by her interlocutor whether she had met her current husband in Fa., she said that she had met him in R. The witness also explained, when asked by her interlocutor, when she learned Arabic; that was in 'Sham', in the Greater Syria region, when she married her husband. These statements also support the findings that, at least in part, the defendant resided in R. at the same time as witness C, met witness C there and also married her, as the witness stated during her examination at the main trial.

169 The fact that the defendant worked for IS – contrary to what the witness stated at the main trial – as head of the office for Ru. in R. is supported by various statements made by the witness in the course of the car journey. She explained:

'UMP: How did you meet your first husband?

C: Me?

UMP: Hmhm?

C: 'm. ru.' is the place where they do 'ru. in R.'.

UMP: And that's where you met him?

C: Hmhm.'

170 In this regard, expert SV4 clearly stated that the term 'maktab ruqia' should be understood from an Islamic point of view as an organisation that performs exorcisms. 'Ru. in R.' should therefore be understood as referring to exorcisms in R. Where witness C used the term 'maktab wali' elsewhere in the course of the conversation, that means 'office of the provincial director'. It can be inferred from this that the witness used the term 'maktab' in the official, administrative sense, which shows that 'maktab ruqia' meant an official office. In this context, he also explained in a coherent and comprehensible manner that in the territories occupied by IS, including R. in 2015, official activities in connection with Ru. could be envisaged exclusively as part of IS 'state' services for meeting basic needs. In that regard, expert SV1 stated that it was not possible for someone in the areas controlled by IS to have practised Ru. without being at the same time a member of IS. In fact, he stated, it must then have been an IS organisation that operated such facilities in R. In addition, a person who was an Iraqi national in Syria in 2015 was, as a rule, with IS, since other Iraqis fleeing the civil war had fled to other states, but not to Syria, to an area occupied by IS, due to the rise of IS in northern Syria.

171 The conversation also contains the passage:

'UMP: When you first said that your husband was the 'Emir' of 'ruqia', I first thought you meant R. and thought, wow, he was the 'Emir' of R., of the entire city!

C: No, no! It's the 'Emir' of... just 'maktab ruqia'.

UMP: Which is an important task. But before I heard 'Emir' of the whole of R., which is a big task.

C: Yes. That is a big task.'

172 In this respect, in line with the identical statements made by expert SV1, expert SV4 stated that the term 'Emir' of 'maktab ruqia' should be understood as head of the office for Ru. in the established context.

173 Based on the last two sections of the conversation, it can only be inferred that witness C met and married her 'husband' – as described in the course of the conversation – in connection with his duties as head of the IS office for Ru. in R.

174 The fact that the person referred to as her husband in these passages – even separately from the statements made by witness C at the main trial – and the husband referred to in the Conversations and Fa. chats referred to below is the defendant is evidenced by various other objective indicia, which will be explained later (see comments under III. 2. c) dd)).

(2) Witness C's Conversations chats

175 Evidence that witness C and the defendant lived in R. and that the defendant and witness C met there, but in particular further evidence of his activity as head of the IS office for Ru. in R., in accordance with the findings made – contrary to the statements made by witness C at the main trial – is also apparent from Conversations chats of 9, 11, 13 and 25 May 2018 had by witness C under the user name 'o' with the trusted person of the investigating authorities, who communicated under the name '...Name2a'.

176 The chats on Conversations conducted by witness C with the trusted person in May and June 2018, which contained the following passages, primarily included the planning or organisation of the departure of witness C for Syria.

177 The content of the chat of 11 May 2018 (Attachment 10) indicates that witness C and the defendant actually met in R. Witness C stated therein, clearly, based on the context, in relation to her husband, that they had met 'in R.' when he, contrary to what she stated at the main trial, was 'Emir of the office', and that this was 'early 2015', again essentially in line with the timeline she specified at the main hearing (where more specifically she stated: April 2015) – and she married him 'when he was still Emir'. The fact that she was actually married to that person in accordance with Islamic law is also supported by the chat with the trusted person on 25 May 2018 (Attachment 27), in so far as she stated therein, in relation to her 'husband', that 'Wallah what he is doing is not normal. He must be punished' and 'almost everyone is saying that the marriage is no longer valid''.

178 The content of the chat between witness C and the trusted person of 9 May 2018 (Attachment 4) is consistent with this and with the evidence from the interior surveillance of the defendant's work as head of the IS office for Ru. in R. This is because the witness initially stated therein, in relation to her husband, who was an Iraqi and resident in City5: 'Previously he was the leader/commander of the Ru. office in R.' When asked by her interlocutor 'He was the leader?', the witness replied 'Yes'.

179 In addition to the fact that, according to Detective Sergeant M, at least parts of the communication were found on the mobile phone seized from witness C, it is also clear from the fact that 'o' stated in a chat with the trusted person on 13 May 2018 (Attachment 13) that her address was 'Street1, City2' that the person communicating with the user

name ‘o’ was actually witness C. According to the information provided by the witness Detective Sergeant M, this is the last residential address of witness C before her arrest on 29 June 2018. In connection with the parallels found in the content of the chat under interior surveillance – irrespective of the consistency with the statements made by witness C during the main trial regarding her stay in R. and the fact that she met and married the defendant there – it can only be concluded that the interlocutor communicating under ‘o’ was indeed witness C.

(3) Witness C’s Fa. chat

180 Further evidence of the marriage in accordance with Islamic law between witness C and the defendant, residence in R. (and Fa.) and at least the defendant’s affiliation with IS as such – even if not specifically of the established role of the defendant in R. – is the content of a chat between witness C and First Name7 N, who is being prosecuted separately, of 21 and 22 February 2017 via the messaging service Fa.

181 It is apparent from the Detective Chief Inspector (Erster Kriminalhauptkommissar) V’s note of 20 January 2021 that a user active under the user name ‘Username1’ with the Fa. account ‘(...)’ exchanged messages with a user communicating under the name ‘Username2’, who was First Name7 N, prosecuted separately on the grounds of suspicion of membership of a foreign terrorist organisation (IS), via the messaging service Fa. during the period from 20 February 2017 at 19:13 to 5 April 2017 at 17:30; N was in Syria at that time.

182 According to the record of the chat, ‘Username1’ asks her chat partner for help from a legal officer to resolve a conflict with her husband, and the chat partners shared their experiences of stays in IS-occupied territories in Syria and Iraq.

183 In a message dated 21 February 2017 at 15:05, ‘Username1’ stated that ‘she’ had been ‘there’ from August 2014 to September 2015, meaning, based on the context, the territory occupied by IS in Syria and Iraq.

184 In a message on the same day at 3.30 p.m., she then stated that her husband had sent her to the German consulate in Türkiye, where she had been detained and deported.

185 In a message on 21 February 2017 at 15:34, she also explained to her interlocutor, in relation to her husband, that he wanted to come to Germany and kill them and have a ‘chilled’ life in Türkiye with his family.

186 In a message on 21 February 2017 at 15:45, she wrote to her interlocutor, among other things: ‘I’m copying you the text here for ‘shar’ii’’. The term ‘shar’ii’ is to be translated as ‘legal officer’, according to the official report of the Central Criminal Inspectorate of City 4 of 11 February 2020 drawn up by expert SV4.

187 She then sent a longer text to her interlocutor at 4 pm. For a better understanding, the text is presented in full here, although various passages are only relevant for the assessment of further stages of the events:

‘Firstly, I would like to know whether my marriage is still valid or not; secondly, whether he is mu.; and thirdly, what has been decided on the matter in relation to him.

I am First Name9 (um aliasname3a). And it’s about my husband... name3b.

My husband does not want to be with me, but does not want to give me talaq. And I cannot do a khulla, as he said he will come and take my child away from me.

He says that I’m k. and my blood is halal because of that, and that I allegedly tried to commit suicide by taking tablets, which is not true; that’s a complete lie. He also said that

I would stand by my k. mother instead of him, which is not true; that's complete nonsense, but he says this is kufr too. Every day, he told me that he would come and kill me and take my possessions as ghanima.

Is our marriage still valid? We have not been talking to each other for 3 months either.

As to whether he is mu. or not, a talibul told him that that's right. Because my husband says that he will come, ask his uncle (who works in court) for help, take my child away from me and say it is not kufr because he didn't go to the court and because I am k. and he is Muslim. He also said that he would rather my/our daughter became a kuffar instead of being raised by me because I would not be able to deal with money.

He insults me every day and, for no reason, calls me sharmuta, khara, haywana and similar and alleges that I would have men visiting me every day and do wicked things like wayaudhubillah.

Most of what I have said I have recorded in audio or text messages he wrote to me; unfortunately I have not recorded any calls though.

About the third matter, I would like to know how it was decided, as nobody asked me what happened.

To understand what's going on, abu aliasname3 was in prison in Fa. because he was the reason why the little sa. died.

He claimed that the older sa. was responsible for that, which isn't true.

He tied her up in the midday sun as uquba, Allahu a'alam for 1 hour; I told him she would die, he said no problem, nothing will happen; she eventually died.

He was supposed to go to court in ra. but he fled to Türkiye with me. Which I did not want.

Last but not least, I would like to ask how someone can continue to 'work' for da.. Where he was denied his bay'a and left da. of his own free will. I swear down that I heard him on the phone in Fa. to somebody called Aliasname2, abu aliasname3 say 'eywallah dawia kilab' to him; this man has two faces.

He has also been in contact with Jaish al.-Hurr, through which he is helping people get from da. to Türkiye. I personally know one person he helped. And he also knows enough awwam in Raqqa who make passports for money for those who want to leave.

I swear down on everything I say that I feared Allah, am not speaking out of turn or lying, and I have witnesses for all these things.

I know that many brothers like my husband, including in the mahkama, that everyone will stand by him, and that none of them will stand by me because I simply known as 'ma'.

He will tell lies about me and they will believe him.

Nevertheless, I am asking you, fear Allah, and if you will not be just, Allah is my Lord and protector.

Ba. Al.u fe. wa Ja. Al.u Ja.l Fi..

May Allah protect and preserve you.'

188 It is clear from this text – and for the time being is only relevant here – that the sender is the wife of ... name3b, with whom she is married and has child K1 together, and, accordingly, to whom the previous messages also refer. The text serves, in addition to

the marriage itself, as proof of a marriage in accordance with Islamic law according to the information provided by witness C at the main trial, as a legal officer is entrusted with the task of resolving the problem, which is consistent with IS ideology.

189 Moreover, the text provides indications that the husband worked for 'da.', which, according to expert SV1 is to be understood as IS, that he initially left IS and nevertheless continued to work for 'da.' at the time at which the messages were sent. In the context of the message sent on 21 February 2017 at 15:05 pm stating 'she' was 'there' from August 2014 to September 2015, it is clear that the husband referred to initially worked for IS in R.

190 In a later message from 'Username1' dated 22 February 2017 at 12:14, she stated that in the 'madafa' it was unpleasant to experience how others treat one another, indicating a stay in an IS women's shelter (see, with regard to the translation of the term, the comments made by expert SV4 above under III. 2. c) cc) (1)); the city R. is also mentioned there. She also stated that it was worse in Syria than in Iraq, where you were warmly received. Another indication of a stay in R. (and also Fa.) can be found in a message of 22 February 2017 at 15:41, in which 'Username1' writes, among other things, that in R. it is not possible to simply 'grab your Kalash and shoot it into the air', while in Fa., everything is allowed.

191 Other indicia show that the person communicating under the username 'Username1' was indeed witness C. As a Fa. user, witness C also used the name 'Username1' for other accounts, or at least as an element, as demonstrated by the content of the evaluation report on witness C's social media usage by Inspector (Polizeioberkommissar) W of 20 November 2018. As she introduced herself as 'forename9 (um aliasname3a)' in the text sent on 21 February 2017 at 16:00, witness D also knew witness C by the name 'forename9'. In addition, witness C, using the name 'forename9' at least as an element of the name, was also otherwise active as an Fa. user, which is also apparent from the aforementioned evaluation report by Inspector W of 20 November 2018.

dd) Other indicia

192 The fact that the defendant was the husband of witness C since early summer 2015, was the head of the IS office for Ru. in R. and is the person referred to in the interior surveillance, the Conversations chats and the Fa. chats is also supported by the following evidence.

(1) Paternity on the part of the defendant in respect of First Name1 C

193 First of all, the existence of First Name1 C, born on... 2016, and the paternity on the part of the defendant (see above III. 1.) are evidence that the husband referred to by witness C in the interior surveillance and the Conversations chats and Fa. chats, and also the person named 'First Name3' described by witness D as the spouse of witness C at the main trial, was the defendant. This is because, on the basis of an average duration of 40 weeks of pregnancy, the conception of the child born on ... 2016 must have taken place around mid-July 2015, which, according to a conservative view of religion, is consistent with the marriage of witness C to the defendant in accordance with Islamic law in June 2015.

(2) Name '... name3b'

194 The fact that the defendant referred to himself as '... name3b' in WhatsApp messages confirms that he is the person described as the husband in the Conversations and Fa.

chats and named ‘abu aliasname3b’.

195 For example, witness C referred to her husband as ‘... name3b’ in a Conversations chat dated 8 May 2018 (Attachment 20) with the trusted person and P, who is being prosecuted separately. In the course of a Conversations chat on 9 May 2018 (Attachment 4), she gave her husband’s name in the same way and also gave the husband’s email address as ‘@(...)’, which had phonetic parallels to the defendant’s surname. She also gave her husband’s name as ‘... name3b’ in the Fa. chat on 21 February 2017 at 16:00.

196 Meanwhile, the defendant described himself in the same way: According to the content of the chat communication on the defendant’s mobile phone, chat no. 105, chat platform WhatsApp Business, of 12 May 2019, the defendant sent his chat partner three photographs on that day at 01:48:17, showing a text in Arabic characters which is signed

‘Your brother... name3b’

with the remark in a message immediately afterwards on 12 May 2019, 01:49:18:

‘This is the book of Sh. First Name3 F.’

and at 03.32.52 a voice message stating:

‘Forename1, have you read the pages I sent you about demons. I will, God willing, next write a book on the devil, demons and magic/witchcraft and how to counter them. I will be rewarded by God. The reward is permanent.’

197 According to the content of the defendant’s chat communication from the same mobile phone, chat no. 104, on the chat platform WhatsApp Business, the defendant sent, at the same time, the same three images of the same text, signed off with the same name.

198 The text is captioned ‘Questions and answers for returnees’ and addresses issues relating to the name of the devil before he was expelled from paradise, what the devil likes, which days and holidays he hates, which colours the devil likes, where he can be found, which food he likes and what he hates. This, in turn, proves the defendant’s interest in and involvement in the subject matter, which is consistent with his activity as an ‘exorcist’.

199 (3) Audio and video files on data storage devices belonging to witness C, particularly with regard to the comment made in the abovementioned message by witness C in the Fa. chat of 21 February 2017 at 16:00 that she had evidence in the form of ‘audio’, support the existence and content of various Arabic audio/video files, which, according to the witness Detective Sergeant M, were on the data storage devices seized on 29 June 2018 as part of witness C’s belongings, namely a Galaxy Tab, an SD card and a Samsung Phablet Note 5, and the content of which is clearly linked to the defendant, and the certainty that the husband referred to in the interior surveillance, the Conversations chats and the Fa. chats was the defendant.

200 It is apparent from audio file no. 21, which was found on the Samsung Phablet Note 5, that the author of the message was the father of ‘First Name1’ and had to go to the consulate and underwent ‘analysis’ in the form of a paternity test to give a saliva sample. The test results would then be sent to Germany and compared. It is thus established that he is the father. This is seamlessly reflected in the testimony of expert SV2 on the preparation of the defendant’s paternity report (see III. 1. above). It is clear from the records of conversations on the Galaxy Tab that those involved in the conversations are the father and mother of First Name1; they discuss, among other things, what will happen to the child if the father or mother goes to prison or dies. From the conversations recorded on the SD card, it is clear that those involved in the conversations in the audio files

'Sprache 002.m4a' and 'Sprache 004.m4a' as well as 'Sprache 022_sd.m4a' share a daughter called First Name1 and, in this context, are disagreeing and are married in accordance with Islamic law, which is apparent from statements such as 'we are still married' with references to 'religious right' or 'a promise before God' (Sprache 002.m4a) and 'You swore on the Quran that you would not marry any other man than me' (Sprache 004.m4a und Sprache Sprache 022_sd.m4a).

201 The content of a further file entitled 'Sprache 008.m4a' on that medium is a communication from the IS Information Office or IS Media Office concerning a dispute between persons called 'Sister Um Aliasname3' – witness C used this element of the name in the aforementioned Fa. communication, 'forename9 (... name3a)' – and 'Brother... name3', over which a religious judge or sharia judge, with which there was no direct contact, was to make a judgment. According to the above, 'Sister Um Aliasname3' and 'Brother Aliasname3' undoubtedly refer to the defendant and witness C. The content of that audio file – in connection with the other recorded audio messages 'Sprache 002.m4a' 'Sprache 004.m4a' and 'Sprache 022_sd.m4a' – constitutes, on one hand, further evidence of the matrimonial relationship between witness C and the defendant in accordance with Islamic law, otherwise no religious judge would have to be involved in the matter. On the other hand, the contents of this file fit seamlessly with the request made by witness C for clarification of the matrimonial relationship by a legal officer in the Fa. chat of 21 February 2017 at 16:00. Once again, this further proves that the defendant was involved in Islamic State. This is because it is only for this reason that it makes sense for the Islamic State Information Office/Media Office to deal with the matter at all, which indicates involvement in the organisation.

202 Finally, the content of video files in Arabic which, according to the witness Detective Sergeant M, were found on the seized Samsung Phablet 5 at the time of witness C's arrest, proves that the defendant actually insulted the witness – as written in the Fa. chat of 21 February 2017 and also stated by the witness at the main trial. In it, the defendant insults the witness, calling her 'shit', several times. In video no. 20, the defendant says verbatim:

'I cannot come to Germany because I would end up in prison. You want me to go to prison. You're such a piece of shit.'

203 The sender also speaks about 'divorce' at various points and says that he is Muslim and that women are supposed to obey men; at this point, witness C was actually residing in Germany.

(4) Picture of the defendant with Pakol cap

204 The identity of the defendant as the husband of witness C and of his IS membership are also evidenced by the fact that on 9 May 2018 (Chat Attachment 4), the witness sent the trusted person an image file which, in the view of the Chamber, depicts the defendant. It was sent specifically in response to the chat partner's question concerning a photograph 'of him', which, based on the context, meant the husband being referred to.

205 As well as sending the image file, the witness stated: 'But I don't have a new one. All deleted.' and 'It's old, but never mind'.

206 The image shows a male with long, dark, curly hair, a full beard and a black cap with a patch bearing a white circle and characters. The face of the person depicted is uniquely similar to the defendant, as it is the same as his face – which can be seen directly at the

main trial – both in terms of the shape of the cheekbones and eye area and the contour of the nose and mouth. For this reason alone, the Chamber is convinced that the person depicted is the defendant. The defendant's outward appearance in that image is also consistent with the description of the defendant by witness D, who described 'First Name3' as having long hair.

207 According to the convincing statements made by expert SV4, the person seen in the image is wearing what is known as a Pakol cap, which was of great importance in the history of jihad. According to the expert, the characters recognisable on the patch make up the Arabic words 'State of IS'; many IS fighters wore such caps when having their photograph taken. In light of these coherent expert explanations, the fact that the defendant wore a cap with such a patch in the image constitutes further evidence of his IS membership, even though no specific date can be assigned to the taking of the photograph except that it must be 'older' than C's statement in the chat of 9 May 2018.

(5) Other indications of the defendant's activity for IS in R.

208 Finally, there are other indications that support the Chamber's certainty of the defendant's role as head of the IS office for Ru. in R. in 2015 and form part of the evidence found.

209 It is clear from the statements made by the witness... at the main trial that the defendant was aware of Ru. practice. The witness stated that the defendant had given her medicinal advice regarding her wish to have children, as he was well-versed in Ru.

210 The defendant's involvement in Ru. is also indicated by various image and video files as well as message content found on his mobile phone, including a leaflet on cupping together with photographs regarding the use of cupping jars as well as images of 'hadiths' on the subject of cupping which concerned the legitimisation of cupping by the prophet Mohammed and placed them in a religious context. According to expert SV4, cupping is part of the practice of Ru.. According to the content of the chat communication on the defendant's mobile phone, chat no. 63, chat platform WhatsApp Business, on 7 February 2019 at 15:40:43, he also sent his communication partner 'Username3' a massage and cupping offer together with a price quotation. In addition, it is apparent from chat no. 56, chat platform WhatsApp Business, on the same mobile phone, that the defendant sent a video to a 'Username4' on 11 February 2019 at 17:26:49 with the comment that this is the hijama of today's username5. The defendant then wrote: 'I am just doing hijama for my friend. I am making you a video of it, God willing. If you want, I can come to you and do hijama, for you', whereby, according to expert SV4, hijama means cupping. Although the messages date back to 2019, their existence and content in any event reflect the fact that the defendant was well-versed in Ru.

211 The certainty regarding the defendant's IS membership is also supported by the content of a chat had by the defendant under the name 'y' with a trusted person of the investigating authorities on 4 July 2018, with whom, according to Detective Sergeant M, the defendant had a chat conversation between 20 June 2018 and the beginning of July 2018.

212 In the course of the conversation, the defendant enquired at various points about the state of play concerning a visa that he had asked his counterpart – as apparent from the context – to obtain (chat communication of 26 June, 27 June and 3 July 2018), as he was to get his wife out of prison. She had been taken into custody by the German government and had taken his daughter with her (chat communication of 3 July 2018), which

corresponds to the date of the arrest of witness C on 28 June 2018. His chat partner then explained to him that it would become very expensive and he knew that the 'brothers' would not help anyone who was not a part of IS. The defendant then confirmed his wife's IS membership (chat communication of 3 July 2018). Asked about whether he was also a member of IS himself, he expressly stated to his interlocutor in the ongoing chat on 4 July 2018, when asking again about the visa and referring to his wife's imprisonment as well and stating that it had to come quickly because of his daughter:

'Yes Ak. I am IS'.

213 Although the defendant, in view of his desire to obtain his visa, clearly had a strong interest in proving to his interlocutor – even if it were not true – that he was a useful IS member, this does not give rise to any doubt as to the truth of his statements in this regard, since that commitment to be part of IS forms part of the other evidence. It is true that the defendant did in fact make this statement at a much later date (2018) than the time of his residence in R. (2015). However, this is, at the very least, still indicative of his IS membership at that point in time.

214 More recently, other image files found on the defendant's mobile phone have reinforced the certainty of the defendant's IS membership in R. in 2015: According to the witness and expert in Islamic studies, SV5, who, by his own account, was involved in the specialist Islamic analysis of files on the defendant's mobile phone for the investigating authorities, three image files show the IS leader al-Baghdadi and one image file the IS flag. According to SV5, the latter image comes from the IS propaganda magazine Dabiq. Another image file shows Name1 and another image file ...name4. According to SV5, these persons are prominent IS members. In addition, according to SV5's statements, the defendant's mobile phone contained a total of 26 image files from the coverage by Western and Arab media of the topic of Islamic State, including six image files which could be attributed to the coverage of Baghouz, the last location liberated from IS occupation, and six image files concerning coverage of IS members and their fate. The Chamber verified the plausibility of the statements made by the witness and expert SV5 by inspecting the image files for itself. The existence of these images reveals sympathies for IS and an interest in its prominent figures. In view of that multitude of indicia, the fact that, according to SV5, two image files opposing Islamic State were also included, is irrelevant.

215 There is no doubt in the expertise of expert SV5 on the Middle East.

ee) Overall assessment

216 Overall, all the above evidence leads to no other conclusion than that the defendant and witness C entered into marriage in early summer 2015 before an IS court in R. The specific historical link between the sequence of events is apparent from the statements made by witness C at the main trial, which are essentially in line with those of witness D and are supported by the content of her statements given outside the main trial. The resulting picture is supplemented by the multitude of further evidence of a connection between the defendant and witness C and the existence of a marriage in accordance with Islamic law, in particular the birth of First Name1 C born on ...2016 and the paternity on the part of the defendant.

217 Moreover, the only conclusion that can be drawn from the evidence presented when considered altogether is that the defendant joined IS and, by March 2015 to early summer 2015 at the latest, had in fact been integrated into the structures of IS and worked as head of the IS office for Ru. in R. The Chamber is certain that this has been proven in

view of the parallels found in the content of the various conversations and between the statements made by witness C at various points outside the main trial, together with the other indicia showing his involvement with Ru. and confirming his IS membership. In particular, given that Ru. was part of IS ideology, it would not have been possible to practise Ru. at that time without being involved with IS, the defendant R1. practised in an IS women's shelter, worked as an Iraqi in an IS-occupied territory and described himself as belonging to IS in chat conversations proves a link between Ru. activity and IS membership.

218 In this regard, the Chamber is certain that the statements made by witness C outside the main trial within the context of the interior surveillance, the Conversations chats and the Fa. chats, are true.

219 With regard to the interior surveillance, the atmosphere of the conversation and the structure of the conversation as a whole indicate that the witness was communicating on the basis of her own experience. The atmosphere of the conversation is relaxed, natural and held in a conversational tone with several interruptions, sometimes for the witness to attend to her daughter, who was also in the vehicle. The structure of the conversation is characterised by the topics addressed being brought up in no particular order and with various spontaneous statements by witness C, which also indicates that they are true. This is also supported by the consistent description of how she met her 'husband' at various points in the conversation.

220 This is reflected in the Conversations chats, where witness C also described the defendant's role consistently; see the chats of 9 May 2018 (Attachment 4) and 11 May 2018 (Attachment 10). Even in itself, but especially in conjunction with the consistent information obtained through the interior surveillance and the comment in the Fa. chat that the defendant had been involved with 'da.', this is proof that she provided truthful information in this regard.

221 The truth of the information in the Fa. chat described above is not only supported by the fact that, in relation to the residence in R. and the involvement of the defendant in IS as such – in addition to various other similarities on other subjects with information provided by witness C and witness A, as explained in more detail elsewhere – it is consistent with the content of the interior surveillance and the Conversations chats. It must also be taken into account that there are actually audio or video files that were seized as part of witness C's belongings and that depict the conflict between the two spouses as described in the Fa. chat, or in which the witness is insulted by her interlocutor (see comments under III. 2. c) dd) (3)).

222 That, in response to the general questions as regards the inconsistencies in the statements made in the interior surveillance and the Conversations/Fa. chats, witness C made a general remark in relation to her statement at the main trial to the effect that she wanted to exert her importance because she was hoping for benefits from IS in relation to her planned departure from Germany, is implausible. Indeed, the witness could not at all explain why she could have expected benefits from her interlocutor of all people or what the nature of those advantages might have been. With regard to the interior surveillance and the Conversations chats, there have been no other indication that the trusted person at any time purported to hold a role that would have enabled him to give witness C benefits in respect of IS. In addition, neither the witness Detective Sergeant M nor the witness Detective Inspector U stated that the trusted person had been instructed

to do so. Accordingly, in the light of the aforementioned interest in exoneration that witness C had, (see comments under III. 2. c) aa)) this reasoning is considered to be untrue.

223 Even if there are various indications that witness C had massive conflicts with the defendant, this does not give rise to doubts as to the truthfulness of the statements she made during the interior surveillance, the Conversations chats or the Fa. chats.

224 In addition to the content of the Fa. chats presented as well as the audio and video files (see comments under III. 2. c) dd) (3)), there are various other Conversations chats indicating such conflict. For example, on 8 May 2018 (Attachment 18), witness C stated to the trusted person that her husband would kill her as she would soon be divorcing him. On the same day, witness C informed the trusted person that she did not want to see her husband because he would take her daughter 'straight' off her (Attachment 20). On 31 May 2018, she explained to the trusted person that she could not find out his address without him seeing his daughter, and if he found out that she was in Türkiye, she may as well dig her own grave (Attachment 23). In addition, in chats with the trusted person of 31 May 2018 (Attachment 23) and 11 June 2018 (Attachment 24), there are indications that witness C had given an order that third parties should, in exchange for payment, carry out 'action' to the detriment of the defendant, with whom she did not wish to be associated.

225 However, this is in itself neutral with regard to the assessment of the veracity of her statements and, in the light of the above, there is no indication that witness C wrongfully incriminated the defendant. In fact, the ongoing conflict may have been the exact reason for presenting the defendant to third parties on supposedly the same side in his true light and revealing the truth about his actions and his role. In all three conversations, witness C herself considered herself to be communicating within a private context, with the result that, from her point of view, there was no reason to fear any criminal prosecution measures or – unlike in the main trial in this case – other consequences with regard to a possible conviction. Accordingly, the witness did not believe she had to protect herself, meaning that she could safely discuss the actual circumstances. The fact that witness C then exonerated the defendant of his role in IS at the present main trial despite the conflict between them in fact shows that the differences between her and the defendant do not permit any conclusion to be drawn as to the truth or inaccuracy of her statements.

d) Objective acts of the defendant

aa) Origin and purchase of the slaves and residence in Fa.

In summary:

226 The findings regarding the external course of events concerning the origin and purchase of witness A and her daughter B as slaves by the defendant and their presence in the defendant's household in Fa., including the external course of events in connection with the death of B under II. 4., are based on the information provided by witness A.

227 Witness A's statement at the main trial was credible.

228 For a better understanding, this is presented separately for each stage of the events, taking into account the assessment of further evidence in the relevant context.

229 The witness gave a very detailed account of the external course of events concerning the origin of her personally and her daughter B, the purchase, her everyday life during the period of residence in the defendant's household in Fa. and the circumstances surrounding

the death of the B in the river, as established, together with outlining her emotional state.

230 With the exception of the timing, which the Chamber does not consider reliable in the sense of a Western understanding of time, the information provided by the witness was coherent and plausible on the whole.

231 At its core, the comprehensive statement she made was also consistent in itself and when compared with previous statements made during examination by the Federal Public Prosecutor General in 2019 and two interviews with the global NGO Yazda in Iraq in 2018 and 2017.

232 Evidence of the veracity of the information provided by witness A at the main trial, which is therefore in itself credible, can also be found in a large number of other items of evidence outside her testimony. In addition to indicia supporting her statement on the individual stages of the events, her description of the purchase and the circumstances of the child's death in particular are confirmed by the statements made by witness C outside the main trial in the interior surveillance and her Fa. message of 21 February 2017 at 16:00.

233 In so far as dates or periods of time (date of purchase, dates and duration of residence in Fa., time of day and length of time for which B was tied up) are concerned, the Chamber attained the level of certainty underlying the findings made in this regard by way of an overall examination of various pieces of evidence on the basis of witness A's testimony, which, in turn, provided for a rough temporal orientation, even if it was not numerically reliable because of cultural characteristics and particularities related to the witness personally.

234 On the other hand, the statement made by witness C at the main trial, which was partly inconsistent with the information provided by witness A, was not entirely credible because of the considerable interest of the witness in exoneration, which meant that it could not undermine the Chamber's certainty of the truth of witness A's statements if there were inconsistencies.

235 Finally, witness A was credible.

236 Neither the origins of her statement nor her motivation to make a statement have given rise to doubts about this; she has also proven to be fully able to provide a statement.

In detail:

(1) Origin and purchase

237 The findings under II. 4. a) on the origin of witness A and her daughter B, their capture by IS and the subsequent captivity and the external course of events concerning their purchase as slaves by the defendant in Syria are the result of the statements made by witness A at the main trial. The information she provided on the purchase is directly supported by the contents of the interior surveillance and the testimony of witness D at the main trial; the Fa. message of 21 February 2017 at 16:00 and witness C's statement at the main trial also contain at least some indications of a previous purchase.

238 In respect of the findings under II. 4 a) on the time of the purchase in June 2015 just before or at the beginning of Ramadan, which lasted from 18 June to 16 July 2015, the Chamber's certainty in this regard results from an overall assessment of the dates given by witness A, together with the testimony of witness C and witness D at the main trial (see III. 2. d) aa) (1) (e)).

(a) Information provided by witness A at the main trial

239 As stated, witness A described how she and her daughter were captured by members of IS during the IS attack on the Sinjar region near their home town of Village1 on 3 August 2014 and taken as slaves to R. via various holding stations in Iraq, where they were purchased and sold several times by IS members. A man called '...name3' (phonetic) then bought her and her daughter in Syria as slaves and initially housed them with an unknown person called '...name1' (phonetic), where they had to spend approximately half of Ramadan before being picked up from there again by '...name3'. They then travelled to Fa. via Mosul together with his German wife.

240 The information provided by witness A concerning her origin, her capture by IS, the subsequent captivity and the purchase by '... name3' is firstly credible because she described in detail the sequence of events of her capture by IS as well as the individual stations and experiences during her captivity, until she was bought from '... name3':

241 For example, witness A stated that she is a Yazidi and that she grew up in Village1 in the Sinjar region, which was at the time inhabited mainly by Yazidis. On 3 August 2014, together with other family members, including her sons, First Name11 and First Name12 as well as her daughter B, who was about three years old at that time, she travelled to the mountains by car to escape IS. She had previously been at home in Village1 when it was said that IS were coming. Her husband, whose whereabouts she still does not know to this day, stayed in Village1. However, on the mountain passes of the mountains of Iofa, they – and other fleeing Yazidis – were then arrested in the afternoon by members of IS who threatened them with Kalashnikovs. They were truly afraid. This was very difficult. She just wanted to be free but they could not escape. They were taken by bus to the town hall of City6. From there, they were taken to Badoush – she together with her children – and then to a prison in T. Af. Here, the more attractive women were sorted and taken away. After being moved to two other places, they were taken to a hall in Mosul. At some point, the women, including her and her daughter, were taken by IS to R. in Syria by bus. Meanwhile, her sons remained separated from her with the men in Mosul. In R., they were then distributed. The women were sold and raped.

242 She was taken to a '...name5', who, after some time, sold her again to a '... name6', where she stayed for 10 days, who then sent her back to '... name5'. There was another Yazidi woman, namely her friend 'Name2' from 'T. Be.', who was in the same house with a friend of '... name5'. '...name5' then sold them to someone else. They then sold them to '...name3'. When they came to '...name3', they had been in captivity for about a year. B was around five years old. It was again summer. From '...name3', they were initially placed with a person called '...name1' following purchase, still during the Ramadan. Halfway through Ramadan, '...name3' collected them from there. They then travelled to Fa. via Mosul with him and his German wife.

243 In this regard, the witness reported on her own personal experiences of captivity, stating that it was very difficult to know that one could not be released, which, in the light of the events described above, resulted in both an understandably heightened emotional state and an indication of experience-based information.

244 The information on her religion and origin is fully comprehensible. This is because the content of the copy of the witness's identity card includes in accordance with the information provided by her – where she is referred to by her full name as 'First Name2 First Name3 A' – various entries, including among others '...1972 under the heading 'Date of birth', 'City6/Governorate1' under 'Place of birth', 'Village1/Governorate2 under 'Place

of registration' and 'Yazidi' under 'Religion'. The full name, date of birth and place of birth can be found in accordance with this in the copy of the witness's passport issued by the 'Republic of Iraq'. The information provided by the witness on her origin and religion are also in line with the statements made by experts SV1 and SV3 on the Yazidi settlement area, including the Sinjar area in north-west Iraq.

245 The fact that the child was in fact her daughter – as the witness has consistently described – is also coherent and supported by further evidence. The fact that, at the request of the defence counsel, the witness provided in detail events from the girl's past before captivity is evidence of the family relationship in question. Upon request, she described the circumstances of the birth as normal and reported that the child was previously hospitalised in City6 due to febrile pneumonia, with B sitting on her lap in the car on the way to the hospital. This family relationship is also evidenced by the content of the copy of the child's identity card. There, under the heading of the mother's name, there is the entry 'First Name2 First Name3'. The entry is identical to the name stated on the passport of witness A. In addition, at the main trial, witness Name3 credibly stated that she herself was from the locality of City6 in the Sinjar region and knew witness A from her home town. She knew that witness A had a daughter and two sons from the time before IS came, which confirms the information provided by witness A in this regard. Ultimately, it is consistent with this that, in line with IS's own practice of handling slaves, younger children remained with their mothers after being captured by IS.

246 The statements made by the witness concerning the course of her capture by IS and her enslavement, together with the timing and the stations at which she described having been kept in Iraq before she was finally taken to R. and her separation from her sons, are comprehensible in particular because her account is consistent with the findings concerning IS's attack on the Sinjar region and the subsequent separation of women and children from the male prisoners as well as the subsequent enslavement of women and girls, and sometimes, the transportation of them from Iraq to Syria. Since it has been established that the attack on the Sinjar region began during the night of 2 to 3 August 2014, the date on which she fled Village1 – 3 August 2014 – in particular is coherent, even though the other numerical details of dates provided by the witness in terms of numbers were not reliable, which will be explained later. There is no indication that witness A might have invented her own story on the basis of the well-known course of historical events.

247 In so far as witness A stated that she had been bought together with her daughter B by '...name3', this is plausible in light of other evidence. In addition to the statements made by experts SV1 and SV3 regarding the practice of selling Yazidi women and girls as slaves by IS following the attack on the Sinjar region in August 2014, it is clear in particular from the 'Su'al wa-Jawab fi al-Sabi wa Riqb' Q & A described above (see III. 2. b)) that the sale of female prisoners was lawful according to IS ideology. In addition to the information provided by the experts, the actual practice of sale is evidenced by the existence and content of the aforementioned IS price list for female slaves (see III. 2. b)). Taking this into account, the defendant, as an IS member, therefore acted in accordance with IS ideology by purchasing witness A and her child.

248 On the one hand, it is clear that the person referred to by witness A as '...name3' is the defendant – irrespective of the relevant information provided by witness C at the main trial (see III. 2. d) aa) (1) (d)) – from the above evidence of his name, 'abu aliasname3b'

(see III. 2. c) dd) (2)). This is because the phonetic name '...name3' given by witness A, who, as was immediately apparent at the main trial, suffers from slurred speech affecting her pronunciation, is, aurally, clearly consistent with the defendant's name, '...name3', with the emphasis placed on the first syllable. On the other hand, witness A stated at the main trial that she unequivocally recognised '...name3' as the defendant present. Although the evidential value of this is inconclusive without comparing other persons at the same time, this is nevertheless consistent with the rest of the evidence.

249 Witness A's statement on the stage of events being examined here is also consistent from the outset, as is the case with regard to her statement as a whole and the stages of events assessed later.

250 For example, at the main trial, witness Name3 reported that on 30 August 2017, she visited witness A during her work as a case handler for the global Yazidi NGO Yazda in the Qadya refugee camp, where witness A sought refuge on 27 August 2017 and subsequently stayed. There, she only had a personal interview of about one and a half hours with her, the main content of which she then noted in order to assess the situation of witness A and her need for assistance. During that interview, witness A reported experiences in IS captivity, including the fact that a person named '...name3', whose real name was 'First Name3', had brought her and her five-year daughter to Fa..

251 According to information provided by witness Name4, who, according to her own account, recorded and archived acts committed by IS to the detriment of the Yazidis and the fates of individual victims for Yazda as part of the documentation team, witness A was interviewed by her on 8 July 2018 in Governorate3 for documentary purposes and questioned about her experiences in IS captivity. In that interview, witness A reported experiences in captivity, including a '...name3' in Fa. Witness A told her that she had been sold to '...name3' by someone else. Witness A may have spoken about the height of summer within this context.

252 The information provided by witness A at the main trial is (also) consistent with that given about this stage of events in examination by the Federal Public Prosecutor General in the period from 20 to 22 March 2019. During that period, witness A was questioned for the first time in Germany after she arrived from Iraq specifically for that purpose, which has been established in accordance with the content of the note of 14 March 2019 made by the Senior Public Prosecutor (Oberstaatsanwalt) of the Federal Court of Justice Surname1 and the information provided by the witness Detective Inspector Surname2 in her capacity as the officer interviewing witness A. There, witness A described – congruently with the statements made in the main trial – details such as the individual holding stations following her capture in the Sinjar region, the separation of the more attractive women from the others in Tal Afar, the stay in Mosul, where she was separated from her sons, and that her friend Name2 was staying with '...name5' at the same time as her, having also been captured, prior to her time with the defendant. At the time of purchase by '...name3', it was – as also reported by witness A at the main trial – summer and very warm. In addition, witness A reported a stay at a '...name1a' during Ramadan; '...name3' said she should stay there until he came back. Halfway through Ramadan, '...name3' picked her up again from there. It is true that, at the main trial, she gave the name of the person with whom she was initially placed by the defendant as '...name1', whereas during the previous examination she referred to that person as '...name1a'. However, the Chamber is certain that this difference – again due to the imprecise pronunciation of

witness A – is due to differences in the phonetic perception of the name of the same person.

253 While witness A's statement at the main trial on this stage of events appeared contradictory in respect of a few points and/or differed from her previous statement during examination by the Federal Public Prosecutor General, it cannot be inferred from this that her statements are otherwise untrue, as is also the case with regard to the statement as a whole:

254 Since there were discrepancies between the statements made by witness A in the main trial and her statements during previous examination by the Federal Public Prosecutor General because she stated at that time that she had been sold by '...name5' to '...name3', which had taken place at an IS base, while at the main trial she stated that she had been sold by '...name5' to a third party and then sold by that third party to '...name3' without reporting a base at the same time, it was not possible to establish more precisely the actual sequence of events in that regard. Those differences do not, however, undermine the credibility of her statements with regard to the purchase by '...name3'; if anything, in fact, they actually indicate that her description of the events was not made up, contrary to what would be the case if the respective statements in the various examinations were absolutely identical. Even at the time of the examination by the Federal Public Prosecutor General, witness A, when asked about the sale on the base, stated that she could no longer remember this precisely. In response to the questions asked by the Chamber in the main trial as regards the content in this respect of her examination by the Federal Public Prosecutor General, witness A explained that sometimes she could no longer remember. Given the passage of almost five years between the purchase and the examination of the witness at the main trial, it is completely understandable, in view of the multiplicity of experiences – of different levels of impact – and changes in residence that the descriptions she gave in the previous examination, on the one hand, and the main trial, on the other hand, are not completely the same, which, in terms of the marginal details, can be seen in other parts of her testimony and is considered at a later stage with regard to the further stages of events. In addition, in view of the loss of her daughter, the circumstances surrounding the purchase were, from the witness's point of view, only peripheral events.

255 In terms of the age of her daughter B, who was reportedly approximately three years old at the time of capture by IS but then, when they came to '...name3' approximately one year after being captured by IS, the child was reportedly five years old at that time, the statements made by witness A are indeed contradictory. This is because the child cannot have aged two years within a period of approximately one year. In this regard, her description at the main trial also differs from that in her examination by the Federal Public Prosecutor General. There, she stated that the child was three years old when they were with '...name3'. However, these differences in the age of her child can be explained.

256 At the Court's request, witness A stated that, as Yazidis, they did not celebrate birthdays. According to the comprehensible statements of expert SV3, who confirmed this practice, due to the narrative style (see above under III. 2. b)), exact details of age and time that are comparable with the understanding of time here cannot be expected from members of the Yazidi religious group for cultural reasons. Instead, classifications of time were typically linked to historical events and sensations. Accordingly, in the view of the Chamber, the details of age and time provided by witness A cannot, in general, be

understood as precise information in the sense of the understanding of time in Western culture without any further connecting factors. This is particularly evident from the fact that witness A stated at the main trial, when questioned by the counsel to the accessory prosecution, that she did not know how many days a week has. When asked about how many hours there are in a day, she said that she did not know, perhaps five, perhaps seven. It is clear from this that details of time provided by the witness are only reliable the extent that they are embedded within a historical sequence and linked to events (Ramadan), seasons (summer) or sensations (heat, fear). The witness also has a low level of education and cannot count, read or write, as she stated at the main trial. In addition to the cultural background, this also explains the difficulties in specifying dates or periods of time precisely in terms of numbers.

257 The fact that witness A's daughter was nevertheless five years old in the summer of 2015 is apparent from – in addition to the similar estimates of witness C in the interior surveillance and at the main trial supporting this finding – the further content of the copy of the child's identity card, which, in addition to the name B, states the date of birth as '...2010', the place of birth as 'City6/Governorate1' and the religion as 'Yazidi'.

258 Moreover, in view of the witness's cultural and personal background, the various statements made by the witness regarding the period of residence at '...name1' and '...name1a' in the previous examination, where she stated that she had stayed at '...name1a' for 25 days, and at the main trial, where she stated that she had remained for one and a half months with '...name1', are understandable; in that respect, they do not undermine the credibility of her statements. With regard to the time of purchase just before or at the beginning of Ramadan, separate statements are made (see III. 2. d) aa) (1) (e)).

(b) Information provided by witness C outside the main trial

(aa) Interior surveillance

259 The description given by witness A that she and her daughter were bought by the defendant as slaves is confirmed by the statements made by witness C to the trusted person of the investigating authorities on 29 June 2018.

260 In any event, the fact that the child was actually bought by the defendant as a slave is clearly explained by witness C to her interlocutor on the car journey. This fact, in turn, indicates that witness A was also bought by the defendant, in particular because, according to the above, small children could not be separated from their mothers in accordance with the requirements of IS.

261 One excerpt of a passage from the conversation goes as follows:

'UMP: How did your husband find the girl?

C: They are all in a house. (...) these 'sabaya'. And then you look for what you want. Perhaps thousands of dollars, perhaps two hundred dollars.

UMP: Ah, so he/you bought her?

C: Yes, that's right.

UMP: Ah, like, so you just buy a slave, somehow?

C: Yes (…).

UMP: Ah, okay. So he simply bought her and then let her die outside.

C: Yes. (…)'

262 The Chamber is certain that witness C used the term 'sabaya' here to mean prisoner of war or slave. In this regard, expert SV4 stated coherently and comprehensibly that 'sabaya' is the plural for the Arabic word 'sa'. 'Sa.' may have two different meanings depending on the pronunciation. One meaning is 'prisoner of war or slave', which is a technical term used by IS. The other meaning is 'little girl'. However, in general Arabic usage, the Arabic term 'bind' is usually used to mean 'little girl'. In this sense, the use of the word 'sa.' to describe a little girl ' is unusual. Therefore, in his view, 'sabaya' is used to be 'slave' or 'prisoner of war' within the context of the conversation that was recorded.

263 It is also apparent from the context of the conversation that this statement related to a child. This is because witness C stated to her interlocutor in the course of the conversation:

'I believe she was 5 years old'.

264 The fact that, during this conversation, witness C did not report anything regarding a purchase that would be directly attributable to witness A herself can be explained by the fact that, in that context, she reported to her interlocutor that the child had died (see III. 2) d) aa) (3) (b) (aa)).

265 (bb) Fa. chat of witness C. Proof of the purchase of witness A together with her daughter B in accordance with the information provided by witness A is also the content of the Fa. message presented in full above of 21 February 2017 at 16:00 (see III. 2. c) cc) (3)), in which witness C writes, among other things:

'(...) Abu aliasname3 was in prison in Fa. because he was the reason why the little 'sa.' died. He claimed that the older 'sa.' was responsible for that, which isn't true (…)'

266 It can without doubt be inferred from this that there was another 'older' 'sa.' in relation to the defendant and the death of the 'little' 'sa.'. This, in turn, is highly consistent with the information provided by witness A that she and her daughter were bought by the defendant. Furthermore, the use of the word 'sa.' in the context of an 'older sabaya' shows that witness C generally associates the word not with the meaning of 'little girl' but with the meaning of 'slave' or 'prisoner of war'.

267 (cc) Assessment The Chamber is certain that the statements made by witness C outside the main trial (interior surveillance/Fa. chat) are also true in relation to this stage of events. This is supported by the fact that, through her statements, the witness incriminated herself. Here again it is not clear how she could have obtained an advantage from IS through the self-incriminating statements made to her interlocutors. The fact that there was a relationship between her and defendant K1 must be assessed in a neutral manner at this point, and subsequently, with regard to the veracity of her statements; the above remarks apply accordingly (see III. 2. c) ee)).

(c) Information provided by witness D at the main trial

268 One indication that the defendant purchased witness A and her daughter, as witness A stated at the main trial, is also the content of witness D's statement in this regard. When asked about this during police questioning on 15 January 2016, she stated that she had (only) heard that 'First Name3' had bought a slave but that she could not say anything else about this. Of course, this information is not based on the witness's own experience; she was reporting what she had heard. Nevertheless, it is consistent with the description given by witness A.

(d) Information provided by witness C at the main trial

269 Finally, the description given by witness A at the main hearing of being purchased as a

slave is in any case supported by the statements made by witness C at the main trial, although contrary to statements she made during the interior surveillance, she did not report directly on any purchase in this case either.

270 Specifically, witness C stated at the main trial that the defendant had collected witness A from a house at a time which she could no longer precisely remember after the marriage and stated that she was washing his laundry in the 'men's madafa'. She had a girl of about 5 or 6 years old with her. They then travelled together to Fa. via Mosul. In response to a question from the Chamber, witness C explained that by this time, it was already Ramadan. Meanwhile, in Fa., she thought that 'First Name2' and the child were Yazidi slaves. Witness A told her that the child was not her daughter.

271 Witness C did not, in fact, report any recollections of a specific purchase at the main trial. However, in view of the fact that witness C, in the conversation during the car journey of 29 June 2018, declared to her interlocutor, contrary to what she stated at the main trial, knowledge of a purchase involving the child, the Chamber is convinced that witness C deliberately refrained from sharing her actual knowledge of the purchase at the main hearing. This is due to her interest, in turn, of exonerating herself. Her own participation in the actions and her role in the subsequent events would in particular be presented in a much more passive and therefore more lenient light if, in line with her statements at the main trial, she had ended up in the situation in ignorance, so to speak, of the purchase of witness A and her child as slaves.

272 In so far as witness C stated that witness A had told her that the child was not her daughter, but that she did not have a mother, the statement is not sufficient to give rise to doubt as to the fact that the child was in fact the daughter of witness A, having regard to the remarks set out above concerning the corresponding family relationship between witness A and B. Witness C also has a considerable interest in exonerating herself in this regard. As regards the other events in the defendant's household in Fa., her actions would be seen as much less serious if witness A had not been the child's mother, since this closest of family ties caused a much higher degree of suffering on the part of witness A.

273 On the other hand, the fact that, at least up to the time of her arrest in June 2018, there were massive conflicts between the defendant and witness C (see the remarks under III. 2. c) dd) (3), ee)) does not in the present case – and otherwise – suggest that the witness wrongfully incriminated the defendant.

(e) Date of purchase

274 The fact that the time of purchase of witness A and her child by the defendant in June 2015 was shortly before or at the beginning of Ramadan, which lasted from 18 June to 16 July 2015, is apparent from witness A's statement alone, based on the fact that the witness consistently placed the purchase in the season of summer, after she had already been in captivity for about a year. As this time is linked to a historical event, namely summer, it is also credible. As she was captured in the summer of 2014, it is only the summer of 2015 that can be considered. In addition, the witness also based her perception of time in this regard on events, stating that she first spent half of Ramadan with '...name1' before '...name3' picked her up again. According to expert SV1, Ramadan in 2015 was from 18 June to 16 July 2015. It must therefore be concluded based on this that the purchase by the defendant in June 2015 took place shortly before, or at least, at the beginning of Ramadan, since otherwise the witness would not have been able to spend half of Ramadan with '...name1'. In view of the witness's cultural and personal background,

the differing statements made by the witness during previous examination putting the length of her stay with '...name1' and '...name3' at 25 days, on one hand, and, on the other hand at one and half months in the main trial do not contradict this conclusion. As regards the timing of the 'half of Ramadan', the information is consistent and is reliable, also taking into account the particular cultural and personal characteristics of the witness, since she classified the event in relation to Ramadan.

275 Taking into consideration the statements made by witness A combined with those made by witness C and witness D at the main trial, it can be confirmed that this happened in June 2015 at least before or at the beginning of the Ramadan. The fact that the witness A stated that, after the purchase by the defendant, she first spent half of Ramadan with '...name1' and the time of the purchase must therefore have been before or at the beginning of the Ramadan is consistent with the statement made by witness C at the main trial because she stated that when she went to Fa., it was already Ramadan. Ultimately, this temporal classification is also consistent with the statements made by witness D that 'First Name9' left R. for Fa. with the defendant in early summer 2015, even before she went herself in mid-July, as Ramadan was actually in early summer.

(2) Day-to-day life in Fa.

(a) Period and duration of stay

276 That the period and the duration of the stay established under II. 4.b) of witness A and her daughter in the defendant's household in Fa. between the beginning of July and September of the summer of 2015 comprised several weeks, the Chamber is certain, based on an overall examination of the information provided by witness A at the main trial together with the information provided by witness C outside (interior surveillance, Conversations and Fa. chats) and within the main trial.

277 Witness A has reported extensively a stay in the household of '...name3' in Fa. With regard to the temporal classification of the stay or historical references enabling the temporal classification of the event, she stated that after she had been collected by '...name3' from '...name1' halfway through Ramadan and had travelled to Fa. with '...name3', B and the German wife of the defendant, 'Um Aliasname3', they all lived together in a house in Fa. for a week and then moved to another house; after the end of the Ramadan, they went to the park together; one day, '...name3' informed her that his wife was pregnant. She stayed there for one month in total. The latter piece of information is consistent as regards the temporal component, as she also stated in her examination by the Federal Public Prosecutor General that she had been taken to Fa. to the house of '...name3' with her daughter and the wife of '...name3', 'Um Aliasname3', who was from Germany, and remained there for one month.

278 That the German wife of '...name3', '... name3', described by witness A, meant witness C, irrespective of the information provided by witness C at the main trial, follows from the fact that in the aforementioned Fa. chat of 21 February 2017 at 16:00, witness C introduced herself using the same name 'First Name9 (um aliasname3a)(see remarks under III. 2. c) cc) (3)). Moreover, according to the Arabic records of conversations on the SD card 'Sprache 008.m4a', the recipients of the IS Information Office or Media Office's message are referred to as sister Um Aliasname3 and Brother aliasname3. Witness C is also a German national, which is also consistent.

279 For her part, witness C confirmed, without specifying the length of stay at the main trial, that she had resided with witness A and the approximately five-year-old child in the joint

household with the defendant in Fa. in the summer of 2015. At least as regards the fact of the stay itself, her statements are also credible. In addition to the account, consistent with witness A's statement, that it was already Ramadan during the joint trip to Fa., she also stated, in accordance with witness A, that they had initially lived in their friends' house for a week. They then moved to another house. Finally, she and the defendant left Fa. and moved out of IS territory. They arrived at the defendant's family in Türkiye at the beginning of September 2015.

280 Where witness C, in response to the questions regarding witness A's statement concerning the defendant's announcement of her pregnancy during the stay in Fa., denies that she was not yet pregnant while in Fa. but only became pregnant in Türkiye, this is implausible and therefore not credible given the date of birth of First Name1 C on ... 2016 and that the average pregnancy lasts 40 weeks, resulting in an approximate time of conception of around mid-July 2015. Witness C did not report at the main trial that First Name1 C was born very prematurely.

281 The content of the interior surveillance is also indicative of a joint stay in the defendant's household in Fa. The content of the conversation indicates, at various points, that witness C did in fact reside in Fa. It is also apparent from the course of the conversation that witness C and her husband finally left Fa. and the defendant ultimately lived with his family, which is largely consistent with the information provided by witness C at the main trial, stating that she lived with defendant A3. S2. and his family in Türkiye in 2015.

282 Further evidence of a stay in Fa. itself and a move by witness C and the defendant to live with his family in Türkiye in September 2015 as an indication of the period of residence in Fa. is provided by the content of the Conversation chats between witness C and the trusted person of 10 and 11 May 2018. In a chat of 10 May 2018 (Attachment 9), she made comments to her interlocutor stating that:

'Previously, I had gone to Fa.h with nothing. (...) No, Fa.h was different.'

283 In addition, according to a chat dated 11 May 2018 (Attachment 11), she told the trusted person that:

'I married him when he was still Emir, yes. And we left in September 2015. (..) I didn't leave because I wanted to. Only my husband wanted to leave, because his family had lived or were still living in Türkiye.'

284 Ultimately, the content of the Fa. chat described above of 21 February 2017 at 16:00 and 22 February 2017 at 15:41 pm is, first, proof of the joint residence in Fa. itself and also proof that the defendant fled to Türkiye from there with witness C. The fact that the defendant then lived in Türkiye is also apparent from the messages of 21 February 2017 at 15:30 and 15:34. The fact that witness C stated in a message of 21 February 2017 at 15:05 that she had been 'there' until September 2015 is fully consistent with the fact that, in September, she went from Fa. to Türkiye.

285 Taken together, the consistencies between the statements made by witnesses A and C at the main trial as regards the temporal classification with the reference point of Ramadan, which was still ongoing, for the journey to Fa. and the question of the joint residence in the defendant's household in Fa., in particular a move to another house after one week, can only be explained by the fact that witness A and B did actually reside with witness C in the defendant's household in Fa. in the summer of 2015.

286 Based on the fact that witness C reported at the main trial, as well as to various

interlocutors outside the main trial, that she had travelled to Türkiye with the defendant after her stay in Fa., and that, in particular, both during the main trial and in chats via Conversations and Fa., she gave September 2015 as the date of this – in light of witness A and her child being picked up by the defendant from '...name1' halfway through Ramadan from 18 June to 16 July 2015 and taken to Fa. – it can be deduced that witness A and her child resided in the defendant's household in Fa. between the beginning of July and September 2015.

287 It is true that the (consistent) numerical indication of the duration of stay of one month by witness A is, in the light of the above remarks (see III. 2. d) aa) (1) (a) above) regarding the Western understanding of time and in consideration of her personality, her culture and the associated difficulties with isolated specifications of time, not considered by the Chamber to be completely reliable. However, this indication of time provided by the witness at least provides an indicative framework. Moreover, since the fact of becoming aware of a pregnancy and the time of conception are naturally a few weeks apart, the corresponding transmission of the announcement of the pregnancy by the defendant to the witness A must, in any event, have been after the approximate date of conception in mid-July. This, in turn, presupposes that witness A and her daughter stayed in the defendant's household beyond that date, which is consistent with her statement that, after the end of the Ramadan, they went to the park together.

288 In light of the foregoing, it must be concluded that the stay certainly extended beyond the end of the Ramadan on 16 July 2015. Taken together and in light of the individual circumstances and events of the witness's stay as she described, which are explained in greater detail below, in particular the fact that they initially lived for one week in another house in Fa., the Chamber is certain, in light of this, of a duration of stay for several weeks in the period between the end of halfway through Ramadan at the beginning of July and September 2015.

(b) Everyday life

289 The findings on everyday life in the defendant's household in Fa. under II. 4. b) are also based on the information provided by witness A, which is at least partly supported by the information provided by witness C at the main trial.

(aa) Information provided by witness A at the main trial

290 Witness A described the living conditions while with the defendant at the main trial, as established. In that regard, she explained that the defendant had ruled them completely. They were punished and beaten on a daily basis to make them obey the defendant. She often did not know what they had been beaten for. They were very afraid of the defendant throughout the entire period and always did what he told them to, otherwise something 'bad' would have happened. B became so afraid that she no longer dared to speak in the defendant's presence. In particular, it was very difficult for her, witness A, to see how the defendant treated her child without being able to intervene. They suffered physically from the beatings and punishments but also from the poor-quality water and lack of food.

291 The description of the circumstances of their stay with the defendant and the punishments suffered also contained – like the rest of the statement – a large number of specific details: She described the spatial circumstances of the second house in which she lived, together with a yard surrounded by a wall, which, in accordance with the defendant's instructions, she was not allowed to leave. They were rarely allowed to go to out, and only together

with the defendant. When she was allowed on one occasion to go to the park towards the end of Ramadan with the defendant and witness C, the defendant 'lent' her daughter to an acquaintance of his overnight, although she kissed his feet several times and begged him not to do so, stressing that B was still so young. B returned the following day having suffered no outwardly visible harm. In addition, witness A described the situation as regards sleep and food, as established. She explained that witness C and the defendant had a bedroom with a bed downstairs. There was also a bed upstairs in the room in which they spent the night, but they were not allowed to use it and had to sleep on mattresses on the floor instead. She stated that the tap water was often too hot to drink due to the extremely high outdoor temperatures and tasted very bitter; they were not given enough food and were never full. Because B, who had lost a lot weight, was always so hungry – as was she – she always gave her some of her own food. She also described in detail, as has been established, the way in which domestic work had to be performed on a daily basis without remuneration in accordance with the defendant's instructions. She also described how the defendant forced her to participate in Muslim prayers, including changing the name of daughter, as the name of an 'apostate', to E, in accordance with the findings made in that regard. She also described as established the food situation, the restrictions on cleaning products for washing their own laundry and that they could only wash themselves at the washbasin in the yard, while the bath was reserved for the defendant and witness C.

292 The defendant beat her with a mop handle so hard that she injured her leg below the knee. He often hit her round the head with his palm too. The defendant also beat her because water had dripped on to the sofa during cleaning. He also hit her in one of her eyes with his fist, giving her a black eye. He hit B with his hand if he and witness C felt she was disturbing them. She was also beaten during Muslim prayer for allegedly not bowing down far enough. He also said that he wanted to kill B. She also remembered how the defendant hit B when a glass fell on the floor in the kitchen. She was then so afraid of the defendant that she began to shake and she wet herself. Another time, the defendant also hit B several times so badly that she had a large number of blue bruises on her back and suffered great pain. She then said that B was in pain, so B was allowed to stay in bed for four days. In the yard, there was once a situation in which the defendant pushed B so hard that she injured her elbow.

293 The nature of the description as a whole can only be explained by the fact that the witness actually experienced such situations and conditions. As she is unable to read and write, the witness did not readily seem like she would be able to invent complicated scenarios at the main trial. It is therefore not possible that she would have the cognitive ability required to invent such detailed descriptions. At the same time, the link between the description of events and her emotions is proof that the details are experience-based.

294 The vivid memory of those incidents involving the defendant, as well as the clear and certain allocation of events to the time spent living with the defendant, despite the passage of time and the large number of slave holders with whom she resided during her period of IS captivity, can therefore be plausibly explained by the fact that the time spent with the defendant was a particularly intense experience for her, since she stated that, during the time with IS, she had not been beaten as frequently as she was by the defendant. In addition, she stated that, it had not been as bad with any other slave holder as it was with him. The latter, and the fact that her time with the defendant – despite the fact that, according to the information she provided, she was also raped by other slave

holders – had such a tremendous impact on her, is, understandably, because her stay with the defendant is, retrospectively, of paramount importance for her owing to the loss of her daughter there.

295 With regard to her description of the corporal punishments by the defendant, it is understandable, in light of the way in which punishments, often of the same kind, were repeatedly carried out (e.g. hitting the head with the palm of the hand), that witness A could not present each of the daily punishments with further details, but limited the description of the details to individual events that she could still remember. Nor does it give rise to any doubt as to the credibility of her statements in that regard that the witness could not classify the punishments in a specific chronological order of events. On the one hand, the cultural and personal characteristics of the witness are taken into account here. On the other hand, this can be explained by the multiplicity and similarity of the punishments suffered that were carried out by the defendant and the passage of time since summer 2015, which makes it difficult to classify them in a particular order.

296 The description of the treatment suffered while with the defendant, in particular the deprivation of liberty and the punishments, is also consistent with the IS practice of keeping Yazidi women and girls as slaves, in particular the requirements for their treatment, as set out in the IS document entitled 'Su'al wa-Jawab fi al-Sabi wa Riqb' (see III. 2. b)). Firstly, a slave attempting to flee her 'owner' was to be punished in such a way that it deterred other slaves from absconding, which undoubtedly constitutes deprivation of liberty. The owner was also to beat his slave in order to discipline her, although the use of force in order to cause fractures, to torture her or in order to get revenge was not permitted, nor was hitting her in the face. However, as the latter was often ignored in reality, witness A's statements also fit with regard to the officially unlawful, under these rules, methods of punishment used by the defendant, such as hitting her in the face. In particular, the described practice of the defendant of forcing witness A and B to pray in accordance with Muslim rules forms part of the IS ideology of eradicating the Yazidis, so the treatment described above is also explained in light of the defendant's membership of IS.

297 The information provided by witness A on the circumstances of her stay with the defendant, in particular with regard to the punishments suffered, is also consistent from the outset, with the veracity of it being proven by the following, in addition to the above aspects:

298 Witness Name3 reported that witness A had already told her at the interview in 2017 that she had served the defendant and his German wife, which is consistent with the witness's description at the main trial.

299 Witness Name4 also stated that, in the interview conducted in 2018, witness A also explained to her that she lived in the house of '...name3' with his German wife and her daughter, who was five years old, and served them; she was their servant and had to carry out domestic work. There was hardly any food, she was beaten and also ended up with a black eye. In addition, the water was of poor quality and she had to learn the Quran. This is also the same as witness A's statement at the main trial.

300 In addition, witness A provided the information on the general circumstances of the stay and the punishments in essentially the same terms as at the main trial at her examination by the Federal Public Prosecutor General.

301 In particular, witness A also stated there that punishments or beatings by the defendant

occurred constantly, without the defendant giving reasons for this. She also described the feeling of fear in the same way as at the main trial.

302 It is true that the information provided by witness A at the main trial was in some cases more detailed than in her examination by the Federal Public Prosecutor General. However, this supports her credibility. This is because, in the case of experience-based information, amendments are to be expected compared with information previously provided if, as in the main trial, in-depth questioning is carried out.

303 Thus, at the main trial, witness A described in detail the domestic work to be performed and described the sleeping situation more specifically than during previous examination. She also described the situation regarding the supply of food, in particular the ban on using the refrigerator, in a more detailed manner in the main trial than before. While she stated during examination by the Federal Public Prosecutor General that the reason for the beatings was that she had not carried out the domestic work correctly, she stated specifically at the main trial that the defendant had beaten her because water had dripped on the sofa during cleaning, which caused her severe pain. In addition, at the main trial, she described the injuries suffered by B, because of which she managed to get permission for the child to spend a few days in bed, as blue bruises on B's back, in addition to what was stated during previous examination. This is because, at the main trial, the witness was questioned for much longer – specifically for seven days – and, after providing a general account, was questioned first by the Chamber and then by all the parties to the proceedings specifically with regard to individual points of her stay in the defendant's household in Fa. By contrast, during previous examination, she mainly gave her testimony without being prompted, with only a few questions being asked when something was unclear. The latter follows from the information provided by the witness Detective Inspector Surname2, who stated this.

304 In so far as, in relation to the stage of events being examined here, there have been marginal discrepancies between her statements at the main trial and those made during examination by the Federal Public Prosecutor General, this – including with regard to the differing description of the background to the purchase (purchase by the defendant directly from ...name5 from the base or via a third party to the defendant without mentioning the base) (see III. 2. d) aa) (1) (a)) – in view of the passage of time so far and in light of the fact that the information is otherwise identical in terms of the essential details and in substance, does in fact preclude the possibility of a fictitious description of the events, contrary to what would be the case if the respective statements in the various examinations were absolutely identical.

305 This relates to the account given by witness A during the examination by the Federal Public Prosecutor General, in so far as she stated there that '...name3' pushed B while they were with his uncle, whereas at the main trial she stated, in response to further questions about that situation, that this had actually happened in the house's yard after returning from being with the uncle. The same applies in so far as she stated during examination by the Federal Public Prosecutor General that her shoulders still hurt as a result of being beaten by the defendant, while she did not mention this pain at the main trial, but spoke of pain in the knees caused by being beaten with the mop handle. In this respect too, given the loss of her daughter, witness A considered these events to be less important, which explains the differences and, and in light of the passage of time to date, this does not give rise to any doubt as to the veracity of the information she provided.

(bb) Information provided by witness C at the main trial

306 Witness C confirmed parts of the description given by witness A of the circumstances of the stay in the defendant's household in Fa. and the punishments, which is further evidence of the veracity of witness A's statement at this point.

307 Otherwise, witness C's statement was not credible, however, so it could not be accepted. On the one hand, some of the information she provided was incoherent and contradictory. On the other hand, witness C presented her own role in the events in a softer light thereby absolving herself of any responsibility for the events, which, in respect of the circumstances of the stay in Fa., can be seen as a consistent pattern of her testimony at the main trial. In the view of the Chamber, this is in itself another indication that witness C has, at least in part, given false testimony as regards the events in Fa. The Chamber considers the extenuation and inconsistencies exhibited in her statement as outlined below – as well as her extenuating account that she was unaware of the purchase of slaves, contrary to the statements she made during interior surveillance – to be motivated by her interest in exonerating herself.

308 However, in accordance with the information provided by witness A, witness C stated that the defendant ruled over everything. In so far as witness C stated that she was OK with this since it was an Islamic marriage, this is understandable in view of the patriarchal understanding of roles associated with this form of religious practice. Witness C stated that the defendant was very strict. She also confirmed that E was A1. of the defendant, which is in line with the statements made by witness A.

309 However, as regards the freedom of movement of witness A and B, the information provided by witness C was inconsistent. First of all, she claimed that 'E' (meaning B) could have gone outside to play with other children and had also gone to their relatives when witness A was either in the house or with an aunt. In theory, they could have left the house. When questioned, she subsequently confined this statement, however. She then stated that witness A was only allowed outside if the defendant said so and that she was allowed to visit an aunt but that he had accompanied her; she hadn't simply been allowed to just go. In response to questions by the Chamber, witness C was also unable to specifically name anybody who B had played with.

310 Witness C did in fact also confirm the information provided by witness A that the child had been sent away overnight. That was indeed the case on several occasions. However, contrary to the statements made by witness A, she stated that this was 'okay', that the child had been happy and had gone hand-in-hand with this stranger. In response to the questions regarding the statements made by witness A in this regard, she stated that witness A had not been asked about this. There was no situation in which she had kissed anybody's feet and begged for the child to not be sent away. In that regard, however, the extenuating account given by witness C is unrealistic. This is because it is highly unlikely that the five-year-old child might have liked to spend the night away from her mother with an unknown man.

311 Witness C also confirmed that witness A and her daughter slept on the floor in the kitchen in the first house. However, she limited this, contrary to the statements made by witness A, by stating that they had slept on mattresses. Witness C also confirmed that witness A and the child slept upstairs in the second house. When questioned in that regard, she stated that there was not a bed there and explained that there was no bed anywhere in the house – contrary to the statements made by witness A that witness C and the

defendant had a bedroom with a bed downstairs and that there was a bed upstairs, but they were not allowed to use it. In essence, witness C confirmed the information provided by witness A in this case, but, in the interest of exonerating herself, mitigated the related circumstances in her account.

312 The same pattern can be seen throughout witness C's testimony in respect of the supply of drinking water and food. Witness C did again confirm parts of the information provided by witness A. For example, she stated that overall, due to the general situation in Iraq, there was only simple food. She stated that she also distributed the food herself if she had cooked, or that the defendant distributed the food if he had brought something to eat home, while witness A and the child did not cook, which is consistent with the statements made by witness A that they were allocated food. At the same time, however, witness C extenuated the situation by stating that everyone had received the same amount of food and that witness A and the child could at any time use the refrigerator and access water.

313 Witness C also presented the domestic work situation in some respects in a way that differs from the information provided by witness A and, in parts, is inconsistent in itself, whereby she also presented the situation in relation to herself personally in a softer light. For example, when asked about domestic work, she first stated that witness A mopped up and she herself washed the dishes, and that sometimes it was the other way round. She then claimed that she herself did her and defendant W1.'s laundry, witness A did only her own laundry and that of the child, and they both mopped up together. In response to further questioning, however, she stated that when the defendant was there, witness A had to mop up and clean alone, with she herself allegedly telling her that she should sit down. Moreover, the fact that witness A did not do the defendant's laundry is inconsistent with the statements made by witness C that the defendant told her that witness A had washed his laundry for him in the men's home. It does not make any sense for witness A in Fa. to no longer be doing defendant W1.'s laundry, when she was previously responsible for doing so.

314 With regard to prayer, on the one hand, the statements made by witness C are again partly inconsistent, while on the other hand, they exhibit hesitation and are extenuating from the outset. Initially she stated, in only partial correspondence to the statements made by witness A, that she had prayed regularly herself, alone or with the defendant, in her room. She stated that witness A either came downstairs and prayed with her or stayed in her room to pray. Witness A was not allowed to say that she did not want to pray. The child did not pray, however. However, in response to further questions, witness C then confirmed that the child did have to pray too. The defendant yelled if the child made a mistake or was too slow. In response to further questions from the Chamber as to whether the defendant had beaten the child during prayer, the witness ultimately stated that she was once praying and he did so, since he had been praying and had then looked behind him and seen that the child had not bowed her head. Towards the end, there had been beatings in connection with praying if the child had been too slow to bow down.

315 Moreover, witness C stated – confirming at least some of the information provided by witness A in this regard, but nevertheless being exonerating in respect of in her own role – that there were beatings very often, with this happening on an increasing and ultimately daily basis towards the end. However, she stated that she knew nothing about a black eye suffered by witness A. She herself allegedly stood between witness A and the defendant. The defendant had also beaten the child, which was initially the case only

during prayer. In the end, however, it was more. He slapped the child round the face or hit her on the head. She herself said that he should not do so. However, she was afraid of standing between them. This, in turn, clearly contradicts the previous statements, that it was only towards the end that he beat the child in connection with prayer (see above) or that she herself stood between witness A and the defendant.

316 In response to the Chamber's questions regarding the matter that, according to the information provided by witness A, the child had been severely beaten and suffered bruising and that witness A had once managed to get permission for the child to stay in bed for four days, witness C explained that the child had not been well for several days and that she did not know anything about any beatings. However, according to her, the child had bruises from playing, without the witness being able to provide further details of this. The pattern of making extenuating statements in her testimony due to her interest in exonerating herself is apparent in this regard too.

(3) Death of the child

317 The certainty regarding the external sequence of events under II. 4. b) concerning the death of the child and the other circumstances directly related to this before and after B was tied up is also based on the information provided by witness A, which is also confirmed by a large amount of other evidence, in particular by the contents of the interior surveillance and the Fa. message of 21 February 2017 at 16:00.

318 However, the statements made by witness C at the main trial, which partly contradict that part of the statement given by witness A, were also not entirely credible with regard to this part of the case.

(a) Information provided by witness A at the main trial

319 Witness A stated that, during her stay with '...name3', her daughter died as a result of being tied up by him to a window grille in the sun in the yard of the house. After the tying up, '...name3' said that he would take the child to hospital and would be away for a few days. She was not allowed to accompany him but stayed in the house with 'Um Aliasname3'. She never saw the child again. She was first informed that the child had died by the uncle of '...name3'. After his return from the hospital, she and '...name3' were taken and questioned by IS. The defendant was beaten and arrested by IS. She was then told again that the child was dead. She herself did not then return to the household of '...name3' but was taken to other slave holders instead.

320 A clear indication of the truth of her statement including in respect of this stage of events is the fact that the description contained key details of the historical course of events:

321 For example, first freely and then in response to a number of questions from all the parties to the proceedings on various days of the main trial, witness A confirmed her statements, stating that on one day of her stay there at the height of summer, as she was doing housework, '...name3' told her to go outside to the yard and remove her shoes; that was her punishment. She then stood in the yard barefoot; it was very hot, and she had to stay there. She was unable to give a time, but the sun was high and it was the middle of the day. Her feet got burnt and she remained in the yard for about half an hour. She was standing on the stone floor; there was no shade. She did not suffer any injuries to her feet but it hurt because the ground was so hot. As she endured this, she began to feel dizzy.

322 Immediately afterwards, the defendant called for her daughter in order to punish her

because he was angry. The defendant took a cable and tied it around the child's hands, to her left and right, and then tied the child, with her arms to her left and right at head height, to the outside grille of the living room window in the sun. When questioned by the Chamber as to the reason for the tying up, witness A stated that B had previously urinated on a mattress which made the defendant angry and he wanted to punish B for that. In response to questions regarding the manner of the tying up, she repeated this description on several occasions. The child was wearing pyjama bottoms and a mid-length dress. She did not receive any water or food. B was unable to move and, at the beginning, called for her. She herself was sent back into the house by '...name3' to continue cleaning, which she did. Out of fear of the defendant, she did not intervene, and was extremely afraid for B. The defendant then sat down on the living room sofa with witness C, while she continued to clean. It was only after some time that the defendant returned to the yard. He untied the child, who had by then stopped moving, and carried her into the living room, where he laid her on the floor. When she herself saw that the child was no longer moving, she began to scream and tear at her hair.

323 In response to questions regarding the child's condition, the witness thoroughly explained on several occasions that B was already 'stiff', her eyes were open and had rolled back, the child's lips and skin were dry, her hands were clenched into fists, and the skin on her face was pale. She then tried to give her a drink but the child's mouth could not be opened. However, she still saw a slight movement in the child's throat. The defendant then become tense and nervous. He then said he would drive B to the hospital. She begged him to let her go with him. However, the defendant did not allow this, which was horrendous for her. She was then left behind in the house with witness C. During this time she cried continuously because she was thinking about B so much and could not sleep. After a few days, they received a visit from the uncle of the defendant, who then informed her that her child had died. This was extremely difficult for her. She continued to cry a lot.

324 After a few more days, the defendant then returned with IS men; his hair and beard had been cut off. Together, he and she were then taken by the IS men to an IS base and questioned about the incident. There the defendant was beaten and arrested by the IS men. She was again told by an IS man that her daughter had died. After that, she was not returned to the defendant, who she then did not see again until the main trial. Nor did she see her daughter's body at any time; the defendant never told her anything about the whereabouts of the child or her body at any point. This caused her great suffering.

325 Whether or not the defendant actually took the child to hospital, either still living or already deceased, the witness does not in fact know. However, the Chamber draws that conclusion from the information provided by witness A that the defendant told her that he would take the child to hospital and then drove away with the child, which was also confirmed by witness C at the main trial.

326 In addition to the level of detail provided in the description, the veracity of this information provided by witness A is demonstrated – like her information as a whole in relation to all stages of the events – in particular by the coherent account of the overall course of events in that the tying up of the child is included within the context of the description of the punishment to the detriment of witness A herself immediately before and in the account of the subsequent events after the child had been untied.

327 Here, too, the link between what she reported and various sensations and emotions, such as the burning of her feet, the dizziness she suffered as the result of her punishment and

the admission that she did not dare to intervene in the defendant's harmful behaviour towards B out of fear of the punishment of herself is a definite indication that the description was actually experienced. These reactions are understandable in the overall context; in particular, the fear described by the witness of intervening in the tying up incident is to be understood within the context of the punishment imposed on her immediately before and the other circumstances of her stay with the defendant. Where the witness stated that she had screamed loudly and torn at her hair when she saw the condition of the child, and cried a lot following the incident and was unable to sleep, this is an understandable human reaction. This is also supported by the fact that the witness burst into tears at the main trial as she reported on this stage of events, in particular the tying up of the child and the child calling for her mother.

328 In view of the fact that, according to IS's 'Su'al wa-Jawab fi al-Sabi wa Riqb' list of questions and answers, the killing of a slave was not permitted and punishable even under IS's internal rules, it is understandable that the defendant was questioned, beaten and detained by IS members following the incident. Since, in practice, IS does not consistently comply with its own rules, it is however also comprehensible based on the sequence of events that the defendant was subsequently released from custody too.

329 Furthermore, the witness's account is coherent in so far as she reported that the uncle of the defendant and later an IS man informed her that the child had died, although the witness's first language is the Kurdish Kurmanji dialect and the corresponding messages were supposed to have been made in Arabic. This is because the witness stated that at the school she attended as a child, teaching had been provided in Arabic; in addition, she had been held captive in the Arab-speaking region for almost a year, so she had a sufficient understanding of Arabic, which substantiates her capacity for understanding in this regard. That is all the more so since the communication and the grasping of the fundamental content of communications relating to the matter of the child's death do not require any particular language skills.

330 Finally, with regard to this stage of events, there is also a strong indication of the credibility of the information she provided in that, throughout the main trial, the information she provided was consistent from the outset:

331 Witness Name3 reported that witness A had told her in the conversation on 30 August 2017 – in addition to the content of the conversation described above, as well as in the main trial – that '...name3' had one day tied up her daughter in the sun, where she died.

332 According to witness Name4, witness A reported to her during the conversation on 8 July 2018 that her daughter, who was 5 years old, had been tied to a window by '...name3' in the burning heat of the sun without food and water and had died; '...name3' was then brought before a 'court' and she too was brought before 'court'; '...name3' said that he intended to take the child to hospital and she said she wanted to go to the hospital too, but he had not allowed it; she then never saw her daughter again. Witness A became exhausted when describing the incident.

333 As at the main trial, witness A described the events relating to the tying up incident, including with regard to the events that occurred immediately before and after the typing up, during examination by the Federal Public Prosecutor General. The witness also reported there that the defendant had tied the dressed child to a window by her arms in the extreme midday heat, after she herself had been made to stand outside in the heat, thereby burning her feet. After the tying up incident, an unsuccessful attempt was made

to give the child W2. and the defendant declared that he was going to take the child to hospital and then was away for a week. In the meantime, the defendant's family announced that the child had died. When the defendant returned, his hair and beard had been cut off and they were taken away and questioned by Daesh, where the defendant was beaten and arrested. She was also told once again that the child had died.

334 Furthermore, according to the information provided by the interviewing officer, witness Detective Inspector Surname2, witness A cried when describing the events her child had suffered, which meant that the examination had to be suspended – just as she reacted at the main trial. In addition, witness A linked the information there to various personal impressions, for example, that her heart hurts when she thinks about her child. Accordingly, in addition to the description of identical objective details of the course of events, the witness's statement was also consistent in relation to the emotional reactions shown (exhaustion according to witness Name4 and crying according to the witness Detective Inspector Surname2).

335 The fact that the witness also described certain parts of this stage of events in more detail at the main trial than during examination by the Federal Public Prosecutor General is in fact evidence of its credibility, given the much more intensive and extended questioning at the main hearing by a large number of parties to the proceedings and the amendments that can therefore be expected.

336 Thus, the fact that, at the main trial, the witness stated as the reason for the punishment of B that she had urinated on the mattress, which she did not explain during examination by the Federal Public Prosecutor General, is due to the fact that – unlike with the Federal Public Prosecutor General – the witness was specifically questioned about the reason for the punishment at the main trial.

337 The fact that the witness described the child's physical condition after being untied by '...name3' in more detail at the main trial than during examination by the Federal Public Prosecutor General, where she merely stated that it was no longer possible to give the child W2. as she was already dead or, when prompted further, the child was not moving anymore, can be explained by the fact that, in her questioning at the main hearing, particular attention was paid to this aspect of the child's condition after the child had been untied by the defendant. This also explains why witness A only reported at the main trial that she still had noticed a slight movement in the child's throat, while the child was otherwise stiff.

338 Moreover, where certain discrepancies have also arisen with regard to this stage of events, this does not preclude the credibility of the information:

339 Where witness A stated during examination by the Federal Public Prosecutor General that the child's feet were in contact with the floor while she was tied up, while she reported at the main trial that the child's feet had remained in the air without contact with the floor, this inconsistency could not be clarified. In response to questions regarding this information, witness A stated at the main trial that it was correct that she had said so during previous examination. However, this is incorrect because she then remembered the child's feet not being in contact with the floor, but hanging in the air. Despite this inconclusive inconsistency, however, witness A's statement is credible because of its consistent level of detail, its plausibility and coherence (with the exception of the timing, which, in accordance with the above remarks, is explained) and its consistency in essential

respects.

340 It was possible to clarify the existence of discrepancies in the description of the position of the child's arms when tied up. In that regard, witness Detective Inspector Surname2 first stated that witness A had said during examination by the Federal Public Prosecutor General that the child's hands had been tied up in a cross and that witness A had made this clear by displaying the position of one's arms in a cross, whereas witness A expressly stated at the main trial on several occasions and directly in response to questions that the child had been tied to the window grille with her arms to her right and left at head height. This alleged inconsistency was resolved because witness A stated in response to questions in this regard concerning the alleged content of her examination by the Federal Public Prosecutor General that she did not report to the Federal Public Prosecutor General that the child had been tied up in a cross but had instead demonstrated the position of the arms like at the main trial (tied up with the arms to the right and left at head height). The Chamber, in turn, asked witness Detective Inspector Surname2 about this. In response, she stated that she had not seen witness A's demonstration of the position because she was on a PC and had been sitting at it in the questioning room in order to record the content of the questioning, whereas witness A had been sitting with the interpreter behind her at a 90 degree angle. She was very focused on her computer and her transcript, which is why she was not looking very closely. In the absence of the possibility to look at witness A, which was clarified at the main trial, there is therefore no real inconsistency on the part of witness Detective Inspector Surname2.

341 Finally, differences in the respective information on the time during which the child was tied up were again explained by the witness's cultural and personal characteristics. Witness A stated during previous examination that she had to spend about half an hour outside herself and that her child was also tied up outside for about half an hour, while at the main trial she stated that her own punishment had lasted half an hour but that the child was in fact tied up for longer than she was punished for. Following corresponding questioning regarding this inconsistency and further questions, she stated at the main trial that the period for which the child was tied up was by all means longer than the main trial in the morning. In the view of the Chamber, these obvious difficulties with regard to giving the timing of the events numerically are again understandable in light of her culture and personality. Nevertheless, on the basis of the description of the sequence of events by witness A together with the other evidence, the Chamber is certain that the defendant tied up the child for longer than just a few minutes, which will be explained later (see III. 2. d) aa) (3) (g)).

(b) Information provided by witness C outside the main trial

342 (aa) The content of the interior surveillance proves the veracity of the information provided by witness A and, at the same time, is proof – independently of this – of the child's death after being tied up by the defendant and that the defendant was taken away by IS after the incident.

343 There are various indications from the content of the conversation that, in accordance with the information provided by witness A, the defendant did actually punish her five-year-old daughter when she urinated on the mattress by tying her up in the sun in the extreme heat, as a result of which the child died, and, within this context, that the defendant was taken away by IS in Fa. to a base; in addition, there are indications that the tying up incident occurred around midday, which is consistent with the information

provided by witness A that the sun was 'high' or that it was the middle of the day, and from which the Chamber concludes that the tying up of the child actually did take place in the midday heat (see the overall examination under III. 2. d) aa) (3) (g)):

344 Witness C first stated in response to the question by the trusted person:

'UMP: Why did your husband want to move away at the time?

C: Because he said, you know, Da. does a lot and he was in prison in Fa. because our 'sa.' had died because of him. He punished her so hard that she died. And... yes. And they detained him, and he said no, that is (incomprehensible Arabic) and it is not right... yes. So they took him.'

345 It follows from the course of the conversation immediately afterwards that witness C and the defendant subsequently left Fa. There is then the following passage:

'UMP: I did not know that men were allowed to punish small girls. I thought only female hisbah could punish other women and small girls.

C: Because she was our 'sa'.

346 Furthermore:

'UMP: Aha, okay.

C: I think she was five years old.

(regarding the purchase, already described above under III. d) aa) (1) (b) (aa))

C: That was a bad day when he punished her (...).

C: It was not right what he did.

UMP: No, it is not.

C: Because using the sun for punishment is not allowed, you know? And in Fa.h it is very hot at midday. It is about 50 degrees at midday. And he just put her there and tied her up, you know? She couldn't move at all, it was so hot and he didn't give her any water or anything. And she died really slowly. I told him, she will die if you leave her like that, she will die.

UMP: And he didn't care, he just left her?

C: He did not care.'

347 The conversation – immediately after the dialogue regarding the purchase, as described above under III. d) aa) (1) (b) (aa) – goes on:

'UMP: Ah, okay. So he simply bought her and then let her die outside.

C: Yes (...).

UMP: Why did he do that?

C: Because he is always angry. And she did a wee on the mattress... because she was ill. And then... he got so angry and took her outside and told her that she would have to wash it... yes. Because it was so warm, so hot, she wanted to come into the house, but he said no.

UMP: And when you told him that he should let her in, did he not listen to you?

C: No. (...) Yes. You know, nobody asked me what happened. Not even the (incomprehensible Arabic), nobody asked me. I told his relatives: If Da. ask me what I saw, then I will tell them, very clearly. And they said no, don't tell them, they're just slaves. They mean nothing, you know, just tell them some story, otherwise they will...

you know.

UMP: Punish him.

C: Yes. (...) But nobody asked me. (...) They said no, it's just a 'sa', we forgive him, it's okay. I don't know why. That's wrong somehow. (…)'

(bb) Witness C's Fa. chat

348 In addition, the content of the Fa. message of 21 February 2017 at 16:00 is proof of the established course of events in relation to the tying up of B in the midday heat in the direct sunlight and the death of the child, as well as the subsequent events, in accordance with the information provided by witness A and the content of the conversation during the car journey of 29 June 2018.

349 The course of events was presented there by witness C in the same way as it was presented in the (see above under III. 2. c) cc) (3) where it is reproduced in full) message, which states among other things:

'To understand what's going on... name3 was in prison in Fa. because he was the reason why the little sa. died. He claimed that the older 'sa.' was responsible for that, which isn't true

He tied her up in the midday sun as 'uquba', for an hour, I told him she would die, he said no problem, nothing will happen, she eventually died. He was supposed to go to court in R., but he fled to Türkiye with me. Which I did not want!'

According to the report produced by expert SV4 of the Central Criminal Inspectorate of City4 of 11 February 2020, the term 'uquba' is translated as 'sanction' or 'punishment''.

(cc) Assessment

350 With regard to the passages of witness C's statements in the interior surveillance and/or the Fa. chat presented here, there is no evidence in itself that she gave a false account of the course of events there.

351 Rather, the fact that the statements made at very different points in time (2017 and 2018) and in different contexts with different interlocutors are substantively consistent with each other proves, irrespective of witness A's statement, that witness C was reporting her actual experiences there.

352 As regards the excerpt of the interior surveillance provided, this is in itself also evidenced by the fact that witness C consistently described that the child had died at various points in the conversation, which was relaxed and covered a variety of topics. In addition, further evidence of the veracity of the information provided by witness C is that, according to the comprehensible statements made by expert SV4, the sun and fire are reserved for God as methods of punishment in accordance with Islam. This explains witness C's statements that what 'he' had done was not right because using the sun for punishment is not allowed.

353 Here too it is not clear to what extent witness C could have obtained advantages from IS by reporting the death of the child to her interlocutors, especially since the killing of slaves was prohibited under IS internal rules.

(c) Information provided by witness C at the main trial

354 The information provided by witness A concerning the course of events to the detriment of B in connection with her being tied up by the defendant is partly confirmed by witness C's statement at the main trial, which is further evidence of its truth. Otherwise, however,

witness C's information could not be accepted.

355 In agreement with witness A, witness C also reported at the main trial an incident to the detriment of the child in which the defendant tied her up with a rope or a cable in the yard of the house in order to punish her. Moreover, witness C stated, in broad congruence with witness A, that the reason for the action was that the child had urinated on a mattress, which the defendant had become angry about. Similarly, in accordance with the information provided by witness A, the witness stated that the defendant had sat down on the sofa after tying the child up. The child at least became unconscious. In any event, at that time, the sun was 'out'. The defendant (ultimately) untied her and carried her inside. Attempts to give the child W2 were unsuccessful. She also stated that the defendant then took the child to hospital, while witness A stayed at home with her, after he had refused to let her accompany him. Furthermore, witness C confirmed that they had subsequently received a visit from the defendant's family. She knew nothing about the child's whereabouts but she assumed that she had died. The defendant returned around a week later with IS personnel and then – again in accordance with the information provided by witness A – was taken to an IS base. Witness A was also taken by IS and, after that, she never saw her again, which was also reported by witness A. She did not see the defendant again until two to three weeks later. They then left Fa. and arrived at the defendant's family in City5 in Türkiye at the beginning of September 2015.

356 Where witness C described the sequence of events in contradiction with the information provided by witness A and the other evidence, the information she provided was implausible:

357 Witness A – unlike witness C – stated that the tying up of the child was not preceded by the punishment of witness A.

358 However, it is not clear why witness A would have provided false information at this point, especially since she has testified consistently and provided the same information in her examination by the Federal Public Prosecutor General and at the main trial. The situation as a whole would, however, be seen in a somewhat more favourable light in relation to witness C if another person, witness A, had not already been punished first, which affects the assessment of any possible involvement on the part of witness C. Accordingly, in view of her interest in exonerating herself, unlike witness A, different findings regarding the course of events in relation to this point would be favourable.

359 First of all, the information provided by witness C as regards the method of tying up was implausible: She stated that, initially, the defendant had only tied up the child loosely, so that she could move and take a few steps, and that the child had initially found being tied up fun and was still hopping about.

360 The witness could not explain in this regard, when asked, where the defendant had tied the child. In that regard, she merely stated that a longer piece of rope had been fixed somewhere next to or on the window and she did not know that she was tied 'around the corner like that'; in response to further questions, she stated that she was, at most, tied to the window frame.

361 All of this is incomprehensible, however, given the method and way in which the child was tied up. Moreover, it is highly unlikely that the child would have found it fun, having regard to the punishments suffered at the defendant's hands during their stay and the fact that the defendant was angry about the mattress being soiled with urine. Additionally, the information provided by the witness, in so far as it relates to the child's alleged ability to

move at any time, is in direct contradiction with the content of the interior surveillance ('And he just put her there and tied her up, you know?' She couldn't move at all').

362 Furthermore, the statements made by witness C on the timing of the tying up incident and the position of the sun are implausible and contradictory.

363 Witness C did not comment on the position of the sun on her initiative to begin with. When asked, she then changed her information on the position of the sun during the tying up incident during questioning. In response to the statements made by witness A to the effect that the sun was 'high', witness C initially stated that the sun was not yet out before the child was tied up but that it was out once the child had been tied up. In response to further questions regarding the sun, she stated that the sun was later 'up', but she could not say what time it was. The child changed throughout the incident of being tied up; the sun was out as the child changed. She looked at the child several times. When asked again, she stated that when she went the second time the child was calmer as the sun was slowly 'coming out', the third time the sun was out, but the first time it was not out yet. She did not have a clock but had seen the time on her mobile phone; it had been 10 minutes. There were then only five minutes between the child being untied and taken to the hospital.

364 However, there is no meteorological explanation for how there could have been a change from just a ray of sunshine to strong sunshine in just ten minutes. On the contrary, in her capacity as a qualified meteorologist, expert SV6 stated coherently that although changes in radiation conditions were to be expected throughout the day, at the levels of latitude there the sun is significantly higher, and the angle of inclination throughout the day is flatter than at local latitudes. Furthermore, it is not clear why, on the one hand, witness C saw on the mobile phone that only ten minutes had passed, but at the same time she could not say what time it was.

365 This information provided by witness C, that it was only at the end that the sun was 'up' and that the incident took place over just ten minutes, also contradicts the content of the conversation on the car journey of 29 June 2018 ('Because using the sun for punishment is not allowed, you know? And in Fa.h it is very hot at midday.') and the Fa. message of 21 February 2017 at 16:00 ('He tied her up in the midday sun as 'uquba', for an hour'). There is therefore no doubt that witness C was completely aware, at least at those points in her memory, that the child was tied up in direct sunlight in the middle of the day and for a period of longer than ten minutes.

366 As regards the description of the child's condition, the information provided by witness C at the main trial is also implausible because it is not understandable. First of all, she stated that the child had slumped down while tied to the window. Later, she stated that the child had slumped over in the defendant's arms. However, if the child had already slumped down beforehand, the child – assuming she remained unconscious – could not have first slumped over in the defendant's arms.

367 Unlike witness A, who stated that the uncle of the defendant had informed her, a few days after the defendant's departure, that the child had died, witness C stated that the aunt of the defendant, after he had taken the child to hospital, merely informed her that there had been problems with IS. She said that IS had doubts as to whether he was a member of IS and that it was strange because he did not want to fight. This was the reason why IS had taken him away. However, the aunt only spoke Iraqi, and of the things the aunt said, she only understood what she had reported; in any event, she did not tell her about

the death of the child. Witness C also explained in this regard that witness A barely understood any Arabic either. She, witness C, did not learn of the child's condition or whereabouts from the defendant either, even later. She never discussed this with him. When IS took him away, the defendant merely explained that he had problems.

368 For a start, it is highly unusual that such a huge incident would not be discussed in any way within the social framework of a family relationship or marriage. Nor could witness C comprehensibly explain why IS should have raised doubts about the defendant. With regard to the knowledge of Arabic of witness A and her ability to clearly understand such information, please refer to the above (III. 2. d) aa) (3) (a)). In so far as witness C stated that she herself could speak and understand little Arabic, this is contradicted by further evidence. The analysis of witness C's data storage devices revealed that various messages attributable to her were in Arabic, as stated above (III. 2. c) dd) (3)). She herself also stated in response to the question posed by her interlocutor in the interior surveillance of when she learned Arabic that this was in 'Sham', i.e. Syria (see III. 2. c) cc) (1)). It is clear from this that, contrary to her claims at the main trial, witness C did in fact speak Arabic. The fact that she had the Arabic vocabulary necessary to communicate regarding the death of an enslaved girl is apparent, in particular, from the content of another message from witness C in Arabic on her HP laptop, which will be examined later (III. 2. d) aa) (3) (f)). Finally, witness C stated that she herself assumed that the child had died. This makes sense if – as stated by witness A – the uncle of the defendant actually stated during a visit that the child was dead, and witness C also understood this. There was no longer any need for such information from the defendant.

369 Overall, as the Chamber could clearly see, witness C's lack of emotion and increased concentration in the main trial were noticeable precisely at point at which she was describing the events in which the child was harmed. This indicates some cognitive effort and is thus a further indication of at least some misrepresentation.

370 On the other hand, with regard to witness A, as experienced by the Chamber at the main trial, it is impossible that she could have been cognitively able to present the course of events selectively and untruthfully and to omit aspects such as the child initially being tied up loosely and direct sunlight only appearing during the time in which she was tied up.

371 The pattern exhibited in witness C's testimony, as described above, of admitting parts of the charge but in an extenuating manner if it casts her own involvement in the events in a softer light also continues with regard to the complexities of the tying up of the child. In view of the charge of aiding and abetting attempted murder by omission (among other things) with regard to the incident in which B was tied up, witness C has a particular interest in an extenuating description of the tying up incident as a whole in order to exonerate herself, which at this point – as with regard to the defendant's role in IS, but unlike with regard to the punishments and other living conditions in the defendant's household in Fa. – entails, out of necessity, the trivialisation of the defendant's involvement too. In particular, it can be seen at this point that the ongoing conflict between her and the defendant does not allow any conclusion to be drawn as to the truth or lack of truth of the information she has provided, since, by trivialising the tying up incident, she has in this case exonerated the defendant's actions too.

(d) Climatic conditions

372 The comprehensible statements made by expert SV6 with which the Chamber agrees

support the fact that – in accordance with the information provided by witness A – it was extremely hot during the tying up incident.

373 According to the coherent statements made by the expert, the maximum daily temperatures in the period of the offence under consideration here, between the beginning of July and September 2015 at the official weather stations in Baghdad and Kerbala, which are similar to the temperatures in Fa., were, in any case, between 38.1 and 51 degrees in the shade, with the maximum daily temperature being measured between 2 pm and 3 pm and the sun already reaching its peak at 12 noon. The expert also explained that the temperature increase is highest in the early hours of the morning, and only reaches a maximum of one to two degrees per hour as of midday. The climatic conditions in Baghdad and Kerbala are comparable to those in Fa., since all three cities are part of the 'hot desert climate' zone and the cities are only 50 to 70 kilometres apart.

374 However, according to the remarks by the expert, higher temperatures should be assumed in the case of direct sunlight. The expert also explained that, in the absence of air circulation comparable to that out in the open, and due to heat radiation from the walls of the house, an even higher level of heat could be expected in the yard of a house.

375 There is no doubt about the specialist knowledge of SV6 as a qualified meteorologist who has been working at the German Meteorological Service (Deutscher Wetterdienst) for many years and has been particularly involved in climatic conditions abroad since 2004.

(e) Forensic medical assessment

376 Finally, in light of the comments made by SV7 in his capacity as a forensic medical expert, it is plausible from a medical point of view that the child died as a result of being tied up in the midday sun, as is apparent from the information provided by witness A, in accordance with the content of the interior surveillance and the Fa. chat of 21 February 2017 at 16:00.

377 On the basis of the observations of SV7, the Chamber is certain that the death of B as a result of being tied up in the sun was caused by heatstroke, with the death either having already occurred by the time the defendant untied her or at least immediately afterwards, without any other circumstances playing a role in the cause.

378 Assessing – based on the information provided by witness A – the child's physical condition after being tied up, expert SV7 coherently and comprehensibly stated that the child's condition after being untied was, from a medical point of view, highly consistent with the second stage of a heat shock, with circulatory centralisation having already occurred, resulting in heat cramp or, even, alternatively, rigor mortis. The pallor and stiffness of the body are equally explanations for both. The Chamber agrees with this conclusion of its own conviction on the basis of the following considerations.

379 The expert explained his conclusion in this regard on a medical basis in a fully comprehensible manner: He stated that if the outside temperature was higher than 28 degrees Celsius in the shade, the body would absorb heat. The body normally adjusts to this heat absorption by sweating. However, the warmer it is, the more difficult such regulation becomes. At temperatures of 40 degrees in the shade, the body's own ability to regulate itself by sweating alone is no longer sufficient. In the absence of cooling or fluid intake, what is known as heatstroke then occurs, because the absorbed heat can no longer be compensated for. In the case of heat transmission from direct sun exposure, such regulation is also considerably more difficult. In a position with the arms restrained to the right and left at head height, breathing is also impaired, which hinders the body's

own regulation mechanisms. The auxiliary respiratory muscles cannot work properly in this position because the diaphragm can no longer relax.

380 Heatstroke is divided into two stages. The first stage is known as 'red stage', with increased blood flow and sweating. The temperature of the body rises, but heat is still released. Electrolyte balance adjusts in order to maintain muscle and nerve function. This stage does not correspond to the condition of the child as described above. The second stage is characterised by circulatory centralisation and is known as the 'grey stage' of heatstroke; the person affected no longer sweats and the body is grey. Circulation is weak, blood pressure falls and the pulse increases. The body concentrates on blood supply to the essential organs, namely the lungs, heart and brain. Heatstroke occurs, which is a life-threatening situation. This is characterised by the risk of central organ failure, the occurrence of cerebral oedema or heart failure. At the same time, electrolyte imbalances result in cramp. The child's stiff condition after being untied, with clenched fists, open eyes and a jaw that could not be opened, as well as the pale skin, is fully consistent with this.

381 However, the condition of the child is also almost fully consistent with rigor mortis, in so far as the child was described as 'stiff'. While it is true that, under normal conditions, death must have occurred between two and six hours before this rigor mortis occurs, this does not apply in the case of extreme heat, where rigor mortis occurs significantly faster. Heat cramp resulting from exposure to extreme heat can quickly turn into rigor mortis without the transition stage in which the body becomes limp. The expert clearly explained that this process of direct onset rigor mortis following heatstroke, stating that an adenosine triphosphate (ATP) deficiency occurs when energy is no longer supplied, since the muscles exhibit very high consumption of ATP as a result of the electrolyte imbalances associated with heatstroke. If a massive amount of ATP is used, rigor mortis can occur within minutes. The movement described in the pit of the child's throat, if rigor mortis had already occurred, could be explained medically by the fact that decomposition gases which are rapidly formed in the abdominal cavity escape through the respiratory tract as a sign of death. The expert also explained coherently that, in principle, the death of a five-year-old child could occur in the sun after just brief sun exposure if, as in the present case, there was extreme heat, no fluids were given and, in addition, breathing was impaired as a result of the arms being restrained to the right and left at head height. When asked, he stated that a period of 15 minutes was considered sufficient under the conditions described.

382 Even if B had not yet died at the time of being untied by the defendant but the established physical condition was explained solely by suffering of second-degree heatstroke, the Chamber is convinced that the death of the child is obvious from a medical point of view. Expert SV7 went on to state that the chances of survival at the second stage of heatstroke are very low. In order to be able to survive, it is necessary to provide intensive medical attention, quickly cool down the body and provide fluids, which must be dosed and not taken too quickly. In the meantime, blood samples should be continuously collected and analysed and dosed minerals added. The reduction in body temperature should be only half a degree per hour. The crucial factor is that these measures are carried out immediately upon the onset of cramp. There is no chance of survival in the event of delays, however. Even if an ambulance transports the patient, recovery is not possible in the absence of intensive medical care. In view of her physical condition, giving the child a drink when she was untied would not have helped her to survive, if she was still alive at

this point.

383 Since, following the onset of heatstroke, the child was not immediately treated in the manner described above but, on the contrary, B was first brought inside the house, a failed attempt was made to give her a drink and she was only subsequently taken to hospital, without any treatment, it is clear, in light of these expert explanations, that even if B was still alive at the time of being untied, she would, in any event, have subsequently died as a result of the heatstroke, without any other circumstances playing a role in the cause.

384 There is no doubt in the specialist knowledge of SV7 as head of the Institute of Forensic Medicine of University1 in City1, who has more than 20 years of professional experience as a medical examiner and is a renowned competent forensic expert.

(f) Other indicia

385 The fact that B actually died as a result of her treatment by the defendant is further evidenced by the content of two chats that witness C had with the defendant in Arabic, using Latin script, which were found on her HP laptop when searching her luggage for the car journey of 29 June 2018. The fact that the interlocutor of witness C was in fact the defendant is apparent from the fact that the interlocutor's telephone number was stored under the name 'First Name3', the first name of the defendant, as well as from the broader context of the conversation, which again reflects the problem of separation between witness C and the defendant. At the same time, the content of these chats proves that, contrary to the information she provided at the main trial, witness C communicated with the defendant regarding the child's whereabouts and has a sufficient understanding of Arabic.

386 As proven by the content of one chat, witness C stated verbatim:

'She is not a Muslim.

And I said, no, I am not a liar.

And they said, if you tell them, they will kill First Name3.

I said, if they think that is right, then it is right. If it is not right and they do kill him, then he will be in paradise. Why be afraid? I will not defend anybody.

I wouldn't defend a Yazidi, who lies a lot, but I wouldn't kill a 'sakera', who never pays attention and is always disobedient.

It is not about defending you and whether you are always right or not.

I only defend what I know and what I have seen.'

387 In another chat, witness C stated verbatim:

'You want to stop contact and I don't. I am just being fair. I said that if someone asks what I have seen, I will say what I have seen or I will say nothing at all. But I am not a liar, never.

And if they tell me it's a lie, I'll tell them, it was the killing of a 'sakera' when she was still only 'sabea'.

388 In this regard, expert Arabic linguist SV8 has coherently stated that the term 'sakera' can be traced back to various transcripts of Arabic words with different meanings. They include the terms 'a drunk', 'the condemned' or 'little', each of which has a different spelling in the Arabic but correspond phonetically to the Latin characters used. The term 'sabea', written with Latin characters, means the Arabic word 'sa.' here. Within this context, the

Chamber is certain that the translation of the term 'sakera' into 'little' and 'sabea' into slave (see above) is consistent with the course of events relating to the tying up of the child, with the result that the Chamber is certain that this refers to the child of witness A and to the killing of the child by the defendant, and that third parties are afraid that the defendant could be killed if witness C reported on what happened.

389 The latter can be seen in an overall examination of the content of the interior surveillance and the following mobile phone communications of the defendant, since the respective content of the communication can be linked:

390 First of all, the content of the interior surveillance within the context of the description of the child's death contains, as explained above, the following passage:

'C: No. (...) Yes. You know, nobody asked me what happened. Not even the (incomprehensible Arabic), nobody asked me. I told his relatives: If Da. ask me what I saw, then I will tell them, very clearly. And they said, no, don't tell them, they're just slaves. They mean nothing, you know, just tell them some story, otherwise they will... you know...'

391 According to the content of the chat communication, chat no. 45, chat platform WhatsApp, which was stored on the defendant's mobile phone, on 12 November 2018 the defendant sent a message to 'username7' in which he wrote that he had fled to Greece because the Turkish police were causing him problems. Iraq had reportedly requested a list of names from Türkiye. There was the possibility of him being deported to Iraq and then executed. His mother was afraid that they would find out where he was.

392 According to the chat communication stored on the defendant's mobile phone, chat no. 105, chat platform WhatsApp Business, the defendant sent a message to a 'First Name1' on 29 March 2019 at 11:10. In terms of content, the defendant asks 'First Name1' to ensure that 'First Name13' 'deletes' his old telephone. The conversation also goes verbatim:

'First Name1: I am afraid of them pinning it on you.

First Name3: It is possible that I will be imprisoned at any time.

First Name3: It is important to instruct a lawyer now.

First Name3: So that he can put a stop to the proceedings.

First Name3: She admitted everything...

First Name3: Wallah, I don't know, if Baghdad threatens execution and if there is a 25-year prison sentence here. Neither of them is desirable... get him to delete everything, I'll explain later...'

393 In addition, 'First Name1' recommends that the defendant change his name. The defendant declares that he wanted to injure his hands with a knife because his fingerprints had been taken; it was better than prison. 'First Name1' states that the defendant had been reported.

394 According to the content of the chat communication stored on the same mobile phone, chat no. 38, chat platform WhatsApp Business, on 6 April 2019 the defendant sent a person called 'username6a' or '(...)' (user name 6 meaning in German the Red.), a message stating, among other things, that he feared that the interlocutor's mobile phones would be monitored and that he could be arrested at any time.

395 The content of those messages corresponds to the fact that B actually died as a result of

her treatment by the defendant and that, at the time when the messages were sent, the defendant and his interlocutors feared criminal prosecution resulting in execution in Iraq or a long prison sentence in his place of residence at that time, Greece. The phrase 'she admitted everything' is also consistent with the fact that witness C reported the death of the child during the conversation on the car journey of 29 June 2018 and that this resulted in the initiation of an investigation against the defendant, as is apparent from the excerpt that was read out of the preamble by the Senior Public Prosecutor of the Federal Court of Justice Surname1 of 28 February 2019.

(g) Time of day and duration of the tying up

396 That the tying up incident occurred in the midday heat is evidenced by the consistencies between the information provided by witness A ('the sun was high', 'midday') and the content of the interior surveillance ('midday') as well as the content of the Fa. chat on 21 February 2017 at 16:00 ('midday sun').

397 It is true that it has not been possible to establish the exact length of time for which the child was tied up. Nevertheless, the Chamber is certain that the period in question must have been a longer period of time, at least more than just a few minutes. It is true that witness A's details as regards the time (half hour/longer than half an hour) were not precise in this regard, although they still provide some guidance. However, the information provided by the witness reflects her perception that it was not just a few moments. In addition, similar information can be found in the Fa. chat of 21 February 2017 at 16:00, where witness C described the length of time of the tying up incident as one hour.

(4) Credibility of witness A

398 Finally, there is no doubt as to the credibility of witness A.

(a) Origin of the statement

399 It is precisely the origins of the statement that support its credibility.

400 Witness A did not contact the investigating authorities on her own initiative; in fact she did not even report the death of the child in order to initiate the prosecution the defendant or witness C.

401 Instead, a link emerged between, on the one hand, the events described by witness A to the witnesses Name3 and Name4 in 2017 and 2018 respectively, and, on the other hand, the findings of the contents of the interior surveillance regarding the tying up and death of the child, only by pure chance. In addition to the report by witness Detective Sergeant M which states this, this can be seen in detail from the history of the following evidence:

402 According to witness Name3, in December 2018, the lawyer First Name14 Surname 3, working for Yazda in Governorate3, Iraq, shared information via Fa. with other Yazda employees, including witness Name3, regarding the bringing of charges against witness C in Germany, including the key charge, which included, among other things, the events that occurred in the defendant's household in Fa. in the summer of 2015 and was based almost exclusively on the content of the interior surveillance at the time of the indictment on 13 December 2018. The investigation proceedings against witness C were made public in December 2018 following the press release of 28 December 2018 by the Federal Public Prosecutor General of the Federal Court of Justice.

403 Witness Name3 stated that, having taken note of the information over Fa., she established a link with the descriptions given by witness A in the first meeting of 30 August 2017.

That is why, during her interview with witness A in 2017, she had told the lawyer surname3 that her daughter died in captivity at '...name3' in Fa. as a result of being tied up in the sun. Ms Surname3 then informed the lawyer First Name15 Surname4 of the law firm 'Z' of this. It is apparent from the content of the comment by the Federal Prosecutor at the Federal Court of Justice, Surname5, of 12 April 2019 that an employee of that law firm, the lawyer First Name15 Surname5, subsequently contacted the Federal Public Prosecutor General and stated that Yazda had contact with a person who could be the mother of the murdered child and who was available for a witness examination. Finally, as explained above, witness A was questioned as a witness for the first time in Germany from 20 to 22 March 2019 by the Federal Public Prosecutor General.

404 Independently of the findings regarding the information provided by witness A to Yazda in 2017 and 2018, an investigation was already officially initiated against the defendant on 28 February 2019 based mainly on the findings from the interior surveillance and the content of the Conversations chats with regard to the offence involving the defendant, as is apparent from the comment of 28 February 2019 by the Senior Public Prosecutor Surname1 at the Federal Court of Justice.

(b) Testimony

405 Furthermore, there is no evidence that a motive underlying witness A's statement would have resulted in her making false statements, in whole or in part, to the detriment of the defendant.

406 There were no particular tendencies to incriminate the defendant. On the contrary, it has become apparent that the witness sometimes exonerated the defendant's actions too. For example, the witness stated that she had not been raped by the defendant in comparison with other slave holders. She was unable to specifically describe each individual act of punishment on the part of the defendant. It is expected that she would have been able to do so if she had invented the charges, however, and therefore wanted to give a particularly convincing description of them. She also stated that, after returning from the night away with the stranger, the child had not suffered any outwardly visible harm. She also stated that an attempt had been made to give the child W2 and that the defendant had said he was taking the child to hospital, all of which is exonerating evidence.

407 In so far as witness A stated during examination at the main trial that she was angry about her child being tied up by '...name3' and wanted '...name3' to be held to account, that he should be punished for having done 'that' to her and tying up her daughter and that she wanted every country to know what IS had done to the Yazidis, she is in fact seeking atonement in order to attain justice. However, it is perfectly understandable that, in view of the treatment suffered at the hands of IS and the defendant and the loss of her daughter, she wishes the perpetrators to be brought to justice and held accountable. There is no apparent reason why she would therefore have provided false information, however.

(c) Ability to make a statement

408 Witness A has proved to be fully able to testify. In particular, there were no signs that she was suffering from a mental or other illness or impairment that might influence her ability to testify or the manner in which she might testify.

409 During intensive examination during the main trial, the witness demonstrated both her cognitive ability, her memory and her ability to provide an account of events. The witness was interviewed intensively by the Chamber and all the parties to the proceedings on

seven days of the main trial, over a number of hours on each day. In doing so, she has proven herself to be very resilient and, above all, in a position to describe – in detail – sequences of events many years ago as well as to provide detailed information. She faced extensive and in-depth questioning within this context. She did not display any inclination to fantasise. The fact that, according to her, no other slave holder was as bad as the defendant and her time with the defendant had a particularly grave impact on her – despite the passage of time and the multitude of places of residence in which she spent her captivity as well as the fact that she was also raped by other slave holders – is understandable specifically because the stay with the defendant occupies a prominent position in her memory owing to the loss of her daughter there.

410 In light of her personality and her Yazidi culture, the difficulties in classifying the timing of events can also be fully explained, as has already been stated.

411 In view of her comprehensible motivation to testify and the context of the questioning before the Chamber, a state authority, it is also understandable that the witness, through constructive cooperation, sought to be able to respond to the Chamber's questions. On the other hand, there are no indications that the witness was influenced by the interviewers in terms of a suggestion of the expected responses. On the contrary, the witness made it clear in each case that she could no longer remember details, which would otherwise not have been expected. In particular, as shown by the assessment of her credibility, there are various signs of credibility (level of detail, plausibility, consistency) opposing any indication of suggestibility.

412 The fact that the witness may have any current or processed trauma on the basis of the experiences she described and, as she stated at the main trial, as the result of the events that occurred while with the defendant, particularly due to the loss of her daughter, that she sometimes suffers from insomnia and that she requires psychological support, especially to process the events involving the defendant, does not give rise to doubt as to the witness's ability to testify.

413 It is true that, in certain cases, the traumatisation of witnesses may have an impact on the manner in which they testify and their ability to testify. In addition, the experiences described by witness A are extreme examples of conceivable suffering. That the witness may have some current or processed trauma is therefore not unlikely. However, the Chamber itself knows, based on a large number of proceedings, that traumatic experiences may well cause a loss of memory (e.g. retrograde amnesia), since the brain, by activating its self-protection function, erases painful memories. When these are memories of catastrophic events, however, this is an indication of experience-based information. This is the case here, as the witness described in detail what she remembered, in particular as regards the core of the offence, even within the context of critical questioning. Accordingly, there are no doubts as to her ability to make statements, even in light of the traumatisation of the witness. The witness proved to be psychologically stable during the lengthy questioning at the main trial. This was demonstrated in particular by the fact that, as she described how her daughter was tied up, her emotional involvement meant that she began to cry; however, when a short break was taken during the trial because of this, she was able to calm down again and regain the strength to resume the questioning.

(5) Overall assessment

414 Since, on the basis of the above, the information provided by witness A is credible as a whole – and equally for all stages of the events assessed individually – and since the witness herself is undoubtedly credible, her statement forms a solid basis for those external findings under II. 4. a) and b) on which the Chamber's certainty is based.

415 With regard to the defendant's purchase of witness A and her daughter B, the demonstrated consistencies between, on the one hand, the statements made by witness A and the interior surveillance and the statements made by witness D on the other hand permit only the conclusion that witness A and her child were actually bought by the defendant as slaves, which has already been credibly proven in itself. This certainty is supported by the statements made by witness C at the main trial and by the content of the Fa. chats, which at least demonstrate the defendant's 'ownership' of the two slaves, which, in view of IS's practice in relation to the slave trade in Yazidi women and girls, is highly consistent with the previous purchase.

416 The fact that the time of purchase was close to or at the beginning of Ramadan in summer 2015 is consistent with the overall examination of the statements of witness A, which are already credible in themselves, and those of witness C and witness D in the main trial.

417 The information provided by witness A at the main trial, as well as the information provided by witness C outside (interior surveillance, Conversations and Fa. chats) and at the main trial, also proves, when considered together, that witness A and her daughter B's stay in the defendant's home in the Fa. following the purchase took place between the beginning of July and September of the summer of 2015 and lasted several weeks.

418 In so far as the findings relating to everyday life during the stay, which are based in detail solely on the information provided by witness A, are concerned, the information provided by witness C is consistent with these in parts; the credibility of witness A's statements within the context of an overall examination is also supported by other evidence that her description of her treatment by the defendant is consistent with IS practice regarding the keeping of Yazidi women and girls as slaves and its ideology entailing the destruction of the Yazidis. In addition, it is apparent from an overall examination that a large part of her statement as a whole is corroborated elsewhere, which also underlines the credibility of such statements, for which no further evidence was available for verification.

419 The consistencies relating to the punishment of B by the defendant by tying her up, as a result of which she died, and the defendant subsequently being taken away and detained by IS members which are found in the information provided by witness A, the content of the Fa. chat of 21 February 2017, the content of the interior surveillance and, to a limited extent, the information provided by witness C at the main trial can only be explained by the fact that the defendant actually did tie up B in the sun, that she died as a result of this and the defendant was consequently taken to an IS base in Fa., where members of IS arrested him. This is also supported by other evidence which is consistent with this (see III. 2. d) aa) (3) (d), (e), (f)). It is also evidenced by the fact that witness A's statements, on the one hand, and the information provided by witness C in the Fa. chat of 21 February 2017 and the interior surveillance of 29 June 2018, on the other hand, were made with origins entirely independent of each other, and, in addition, by the fact that witness C made statements that were fundamentally consistent with those described above independently of each other, at very different times (2017 and 2018) and to various interlocutors and in different contexts.

420 The fact that the tying up incident actually occurred in the midday heat is again evidenced

by the consistencies found between the information provided by witness A and the content of the interior surveillance as well as the content of the Fa. message of 21 February 2017 at 16:00. The very high outdoor temperatures are documented in the statements of expert SV6. The specific period of time for which the child was tied up cannot be determined; however, when considering the information provided by witness A, which at least provides some rough temporal guidance in this regard, as well as the content of the Fa. chat of 21 February 2017 at 16:00 and the overall picture of the course of events, it becomes apparent that the period was longer than just a few minutes (see III. 2. d) aa) (3) (g)).

421 Moreover, the fact that the defendant was taken, questioned, beaten and detained by IS members, given that a slave holder was prohibited from killing his slave even under IS internal rules, is an indication that the child actually died as a result of treatment by the defendant.

422 The medical processes leading to the death of the child have been fully and clearly explained by expert SV7 and therefore the child's death as a result of being tied up in the sun at the high outside temperatures established is evident from a scientific point of view too.

423 Finally, on account of the extreme heat, the time of day and the direct sunlight, and with due regard to the young age of the child, it is also clear that, in the light of all of the foregoing, it was objectively foreseeable that B would – likely, based on general life experience – die as a result of being tied up in the sun.

bb) Other consequences

424 The findings concerning the consequences of the treatment by the defendant of witness A and her daughter B under II. 4. b) result from an assessment of the overall objective picture of the living conditions with the defendant and his treatment as established on the basis of the information provided by witness A, as well as the description by the witness of her and B's mental health.

425 The living conditions dictated by the defendant over several weeks and his treatment as a whole initially indicate a serious violation of the physical integrity of witness A and her child. This is due to inadequate nutrition as a result of there being too little food, because of which witness A and her daughter were never full and began to starve, the daily punishments in the form of beatings over several weeks, the pain and injuries associated with the punishments, and the punishment in the sun suffered by witness A, resulting in pain in her feet. There is also the pushing that injured B on the elbow and the tying up of the child in the sun in extreme heat with her arms tied to her right and left at head height over a period of more than just a few minutes (regardless of the fact that she died as a result of heatstroke) without B being able to move. Against this background, it is clear that both witness A and her child endured great physical suffering under the living conditions dictated by the defendant and his treatment as a whole, as witness A has also reported.

426 Taken together, all of the circumstances affecting the child demonstrate, in the opinion of the present Chamber, with regard to B's young age of only five years, the length of the stay of several weeks and the scale of the treatment that B – regardless of the fact that she died as a result of heatstroke, which is disregarded here – suffered such grave physical harm at the defendant's hands that it impaired her ability to lead a normal life

for the long term.

427 The Chamber infers from all the objective circumstances established that witness A and B also endured considerable mental suffering under the living conditions dictated by the defendant and his treatment. This is because, on the one hand, of the several weeks of being deprived of freedom, being forced to pray, and the nutritional, sleeping and washing situation. It also results from the daily punishments in the form of beatings, as well as pain and injuries, and the lending of the child overnight to a stranger, which, in the opinion of the Senate, was an extremely distressing experience on the part of both the child and witness A. As regards witness A, this results, on the other hand, from the continued exploitation of her unpaid domestic labour and her punishment in the sun. As regards B, this can also be seen in light of changing her name, pushing resulting in injury to her elbow, and being tied up in the sun in the way established, regardless of her death. The Chamber's certainty is also supported by the fact that witness A stated that they were A1. of the defendant for the entire time they spent with him, that they always did what he told them to otherwise something 'bad' would happen and that B did not dare to speak in the defendant's presence out of fear, and also that witness A wet herself as a result being beaten by the defendant.

428 The fact that, in addition to the treatment she experienced herself, witness A also endured the sustained and severe suffering of having to tolerate how the defendant treated B, without being able to stop this, and also that she suffered serious psychological harm as a result of the defendant not telling her B's whereabouts following the tying up incident and him not allowing her to accompany him to the hospital, is initially concluded by the Chamber on the basis of the overall picture of the objective circumstances established in the context of witness A being B's mother, because motherhood is, naturally, associated with a particularly strong relationship with one's own child. For example, witness A also stated that it had been very difficult for her to watch how the defendant treated her child without being able to intervene. Similarly, this is reflected by the fact that witness A was extremely afraid for B during the tying up incident. The fact that, according to her, she begged the defendant to allow her to accompany him to the hospital, which he did not allow and which caused her great suffering, and that she had suffered greatly from the defendant's failure to inform her of the child's whereabouts, also reflects her deep feeling of pain. This is further evidenced by the fact that, according to her statements, during this time after the defendant took B to hospital she cried continuously because she was thinking about B so much and could not sleep.

429 Finally, on the basis of the overall picture of all the circumstances, it is clear that, on the whole, witness A suffered such serious psychological harm that her ability to lead a normal life was also impaired for the long term. This is also apparent from the fact that she suffered a great deal mentally as a result of the treatment she herself suffered at the defendant's hands. In addition, she experienced sustained and severe psychological suffering by having to endure the treatment of her daughter by the defendant. In addition, she suffered serious psychological harm because she was not informed of the whereabouts of B and was not allowed to travel to hospital. Finally, the great severity of the psychological harm is demonstrated by the fact that, according to her, witness A still needs psychological support today in order to process the events that occurred with the defendant, which she feels, despite the fact that she was raped by other slave holders, were worse than with any other slave holder.

e) Objective events following the offence

aa) Subsequent fate of witness A and liberation

430 The findings regarding the subsequent fate of witness A following her stay in the defendant's household in Fa. under II. 5. a) are also based on the credible information provided in this respect by the credible witness A, who has described this consistently with the findings made. In addition, witness S3 confirmed the date of arrival and the stay of witness A at the Qadya refugee camp.

bb) Departure of the defendant and witness C to Türkiye

431 The further findings under II. 5. b) concerning the departure of the defendant and witness C from Iraq and the taking up of residence with the defendant's family in City5, Türkiye are based on the above statements made by witness C at the main trial, which are in line with her statements outside the main trial in this regard (see the comments on the duration of the stay of witness A and her daughter B in the defendant's household in Fa. under III. 3. d) aa) (2) (a)).

432 In addition, it is apparent from the registration certificate of the Office for Refugees in City5, Türkiye of 2 December 2015 that the defendant was registered as a refugee in City5 on that day.

433 Finally, at the main trial, witness C stated that she had reported her travel and identity documents lost at the German Embassy in Ankara, Türkiye on 29 January 2016, that she had been detained in this regard by the Turkish authorities and that she had been deported to Germany. She arrived there on 2 February 2016. The corresponding information is confirmed by the content of the letter from the German Embassy in Ankara dated 29 January 2016, which documents the witness's report of the loss of identity documents on that day. Finally, this is also consistent with the corresponding information provided by witness C to the trusted person in a Conversations chat of 11 May 2018 (Attachment 11) and with the content of the Fa. message of 21 February 2017 at 15:30, where she described the circumstances in the same terms.

434 cc) Activity of the defendant on behalf of IS in Türkiye That the defendant subsequently worked out of Türkiye, as established under II. 5. c), again as part of IS as an Ru. healer, assisted refugees from IS territory in Türkiye, supplied food to IS women or accompanied them to hospitals is apparent from an overall examination of the various pieces of consistent evidence.

435 First of all, there are various indications that, besides the second half of 2015, the defendant also resided in Türkiye in 2016, 2017 and 2018. A declaration of consent by the defendant of 11 May 2016 that First Name1 C is registered as his child and that he is registered as her father states a notary office in Stadt5, Türkiye as the place of issue, which indicates that the defendant was residing there at the time of issue. It is clear from the Fa. messages from witness C of 21 February 2017 at 15:34 and 16:00 that the defendant was also located in Türkiye at that time. The testimony of expert SV2 on the production of the parentage report concerning First Name1 C (see III. 1.) also indicates that the defendant was residing in Türkiye in the second half of 2017. Finally, it is clear from the content of the defendant's chat under the name 'y' with a trusted person of the investigating authorities of 25 June 2018 that the defendant was in Türkiye, in particular at that later stage (see below).

436 Moreover, the content of the Conversations chat between witness C and the trusted person of May 2018 is evidence that the defendant remained an integrated part of IS

even in Türkiye. On 8 May 2018, witness C wrote to the trusted person about the defendant, saying that he was still working for 'da.' in Türkiye (Attachment 20). On 11 May 2018, the witness wrote to the trusted person in response to their question as to what the defendant was doing for 'the sisters in City5' that he was looking after them, buying food for them, going to hospital with them and performing Ru. (Attachment 10). On 28 May 2018, witness C wrote to the trusted person that the defendant was definitely connected to other 'da.' members (Attachment 22) or that someone in City5 could ask for a brother who performed Ru. and that her husband would definitely come (Attachment 23). Moreover, the fact that the defendant supported refugees in Türkiye who had fled IS territory to Türkiye is evidenced by the content of the interior surveillance. There, witness C confirms that, in response to a question from her interlocutor, the defendant brings 'sisters' and 'brothers' across the border to Türkiye. This is clearly consistent with the content of the above (III. 2. c) cc) (3)) Fa. message of 21 February 2017 at 16:00 as further evidence that the defendant was involved in IS from Türkiye and helped refugees to Türkiye. It is clear from the text intended to be forwarded to a legal officer that the husband referred to therein, who was the defendant, continued to work for 'da.' at the time at which the message was sent and assisted 'people from da' in Türkiye. In response to a corresponding question at the main trial, witness C (regardless of being involved in IS) also reported that the defendant was employed as a refugee support worker.

437 In addition, the content of the messages of 7 and 11 February 2019 as described above, as well as the Ru.-related image and video files on the defendant's mobile phone (see comments under III. 2. c) dd) (5)), are consistent with this, which is at least indicative of the defendant's involvement in Ru. before leaving Türkiye in October 2018.

438 The other indicia outlined above that the defendant was a member of IS (image of the defendant wearing a Pakol cap, see III. 2. c) dd) (4) and image files related to IS on his mobile phone, see III. 2. c) dd) (5)) are also consistent with the findings made regarding the defendant's activities for IS from Türkiye too.

439 That the defendant, as set out further in II. 5 c), in July 2018 stated, within the context of his continued integration into IS structures, to an unknown chat partner, that he was able to produce various types of explosive devices for IS and to train an IS member how to use explosives at his house in Türkiye is based on the content of the defendant's chat with the trusted person of the investigating authorities under the name 'y' of 4 and 5 July 2018. This also contains further proof of his involvement in Ru. In addition to the above (see III. 2. c) dd) (5)) declaration by the defendant that he was a member of IS ('yes Ak., I am IS'), he expressly gave his interlocutor an offer to make explosives in the chat on 4 July 2018 and stated, among other things:

'I know how to produce the packages manually, in addition to Rukia and other legal matters'.

440 In response to the question asked by his interlocutor

'But what kind of packages Ak.? Boom packages',

the defendant replied on 5 July 2018:

'Yes' and explained: 'Making explosive devices, making explosive belts and a few other things', as can be seen from the chat history of 4 and 5 July 2018. In response to his interlocutor's question as to how large he could make the packages, the defendant explained to his interlocutor on 5 July 2018 that it depended on the initial material; he could do everything, big or small, if the initial material was available; he needed two

assistants. He also asked:

'What do you need, brother? Packages. Or belts. Or badges. But it will be hard and a package will explode if you step on it.'

as well as:

'There are very simple things, for example, grenades. Made from a bottle, oil, there are simple things, and there are things for which you need difficult materials, for example, TNT, flash powder.'

441 In response to his interlocutor's statement that they wanted 'something big that can just go in a truck', the defendant then stated that they would need TNT for that, that these materials were difficult to get in 'yorup', but that any successful explosion required TNT. In the course of the conversation, the defendant also told the interlocutor that he could send one of the 'brothers' in order to be trained 'here' in Türkiye, in his house.

442 This is also evidence of the defendant's clear strong interest in obtaining a visa (see III. 2. c) dd) (5)) in light of his efforts to prove to his chat partner that he was a useful IS member; there is no doubt that the defendant's offers to his chat partner were serious. The defendant's statements are detailed and knowledgeable in relation to the making of explosive devices and the materials required to do so. In addition, the defendant made the specific offers on his own initiative without having been explicitly asked about the making or procurement of explosive devices; rather, his interlocutor initially asked in general terms about something 'useful' that the defendant could do for the 'brothers', as is apparent from the chat of 4 July 2018.

dd) Departure of the defendant to Greece

443 The defendant's departure from Türkiye to Greece between 27 October and 9 November 2018 and the subsequent stay in Athens (Greece) are evidenced by various video files and chats stored on the defendant's mobile phone and examined at the main trial.

444 On the basis of the information provided by witness and expert SV5, it is clear that there were four videos on the defendant's mobile phone, which, according to the time stamp of the mobile phone, were recorded on 27 October 2018 (video 16 from the report (video files) of 27 January 2020 by expert SV5, mobile phone evaluation volume, exhibit 1.1., volume 1), on 28 October 2018 (videos 17 and 18 from the same report) and on 9 November 2018 (video 19 from the same report). In video 16, a male is filming from his view in Türkiye, at sea and in Greece and commenting on this. In videos 17 and 18, a male is filming the surroundings of a house. In video 18, the person refers to that house as that of the smuggler. In video 19, a male is filming the journey on a ferry and documents the journey by ferry from the islands where they were to Athens.

445 According to the chat communication stored on the defendant's mobile phone, chat no. 63, chat platform WhatsApp, the defendant told his interlocutor 'First Name1', in a chat conducted between 9 November and 15 December 2018 about, among other things, the ferry crossing and the arrival in Athens during the night, having previously been on an island, which is consistent with the above video content. In chat no. 44, chat platform WhatsApp, the defendant writes to a person named 'Name6' between 12 November and 5 December 2018 that he had fled to Greece because the Turkish police had caused him difficulties. This also fits with that video content. Finally, the content of the abovementioned chat numbered 45, chat platform WhatsApp, is evidence of the defendant's flight to Greece in accordance with the video content (see III. 2. d) aa) (3)

(f)). In chat no. 53, chat platform WhatsApp, of 14 December 2018, the defendant also states to a person called Username6 that he now resides in Athens and that he had previously been on an island.

446 Finally, the fact that the defendant was arrested in Athens on 16 May 2019 is evidence of the corresponding findings made.

f) Mens rea

447 The respective findings under II. 3., 4. and 5. c) on mens rea are based on an assessment of the objective circumstances as established, taking into account various permissible evidentiary findings regarding the mens rea of defendant R2.

In detail:

aa) Mens rea with regard to day-to-day conditions

448 The findings on mens rea concerning imposing the living conditions described above on witness A and her child are the result of an assessment of the overall objective picture of the reality of life in the defendant's household. Since, over a period of several weeks, the defendant ruled the entire lives of witness A and B and the precise conditions under which they had to live were based on his instructions (being locked in the property, 'lending' the child overnight to a stranger, sleeping arrangements, food situation, washing and laundry provisions, coercion to practise religion, unpaid domestic labour), it must be concluded that in each case he acted knowingly and deliberately in that regard.

449 On the basis of the objective general profile of the acts of punishment in the form of targeted beatings or pushing in that specific way against the background of the enslavement, it is also clear that the defendant acted knowingly and deliberately with regard to the respective acts of punishment.

450 Based on the statements made by witness A at the main trial, the Chamber is certain that when punishing them, the defendant always acted with the aim of disciplining witness A and B and making them obey. This is because witness A stated that the defendant punished her and beat her on a daily basis so that she would obey him. This is evident, in light of the living conditions and punishments, since the victims would not have voluntarily suffered this if they had any autonomy. The use of punishments to make them submit was thus an effective means of maintaining the imbalance of power in the enslavement situation.

451 The fact that the defendant knew about the pain and injuries suffered by witness A as a result of his punishments (pain below the knee as a result of the use of the mop handle, swelling and bruising on the eye as a result of being punched in the eye, pain after beating after water had been dripped on the sofa) or B (injury to the elbow after being pushed in the yard, bruising on the back and severe pain after being hit multiple times) is also apparent from the objective manner in which the acts of punishment which caused injury were carried out. Considering the fact that he wanted to discipline witness A and her daughter B, it also follows that he did not just intend to inflict pain and injury but also that he wanted to do so.

bb) Mens rea with regard to the events on the day that B was tied up

(1) Punishment of witness A

452 Due to the extreme heat, the defendant was aware that witness A suffered pain when exposed barefoot to the sun on the extremely hot floor of the yard surrounding the house. Since the defendant enforced his demand to the detriment of the witness despite being

aware of this, it must be concluded that he also acted deliberately in that regard. This is apparent from the nature of the chosen disciplinary measure alone since, from the point of view of the defendant, a punishment only achieved its purpose when it was associated with inflicting pain.

453 The fact that the defendant put witness A in the sun in order to punish her is established on the basis of the information provided by witness A, in so far as she stated that the defendant made his demand together with a comment that this was her punishment; the disciplinary purpose of that punishment is again apparent from the information provided by witness A concerning the general treatment in Fa. and the fact that the defendant punished her and her daughter and beat them every day to make them obey him, which is evident from the general context and the nature of the enslavement situation.

(2) Tying up of B

454 First of all, it is apparent from the external course of events of the tying up incident that the defendant knowingly and deliberately tied up B in the manner determined in direct sunlight in the midday heat, so that she could not move.

455 The fact that the defendant tied up the child and thereby exposed her to the sun to punish B for urinating on a mattress is clear first of all from the information provided by witness A, who reported this. It is also apparent from the content of the interior surveillance, from which it is clear, at various points within the context of the child's death, that the defendant wanted to punish B for having 'done a wee' on the mattress, and that this was the reason for his anger. It is also apparent from the Fa. chat of 21 February 2017 at 16:00 that the tying up incident was carried out as 'uquba', i.e. as a punishment. Witness C ultimately confirmed this in the main trial. It can be inferred from the reason for the punishment (urinating on a mattress) in conjunction with the information provided by witness A that the defendant penalised and punished her so that she would obey him and that this punishment, in the form of tying up the child, was also carried out for the purpose of disciplining the child.

456 In any event, based on the objective findings made, the Chamber is certain that the defendant was aware of the fact that tying up the child would cause her serious physical harm. Since the tying up incident lasted more than just a few minutes, took place in direct sunlight in extreme heat and involved the child's arms being up to her right and left at head height so that the child could not move, it is clear that this caused B grave physical harm and that the defendant was aware of this. That it was also the defendant's intention to do so is apparent, in particular, from the purpose of the treatment (punishment/discipline), which was aimed at causing physical harm.

457 At the same time, it follows from all of those circumstances, together with the child's young age, which was obvious to the defendant, that, in terms of unintentional negligence, the defendant would have realised that B would die as a result of being tied up in the sun.

458 However, the Chamber is not certain, having assessed all the evidence, that the defendant in fact considered B's death as a result of heatstroke to be possible or highly likely.

459 It is true that the act of tying up the child with her arms to her right and left at head height, without B being able to move, in direct sunlight in extreme heat would be objectively dangerous, which may, in principle, be an indication that the defendant might actually have realised that the child would die as a result of heatstroke. At first glance, there are further indications of this in the content of the interior surveillance in the sense that witness C stated therein to her interlocutor, with regard to the incident in which the

child was harmed, that she had told the defendant that the child would die if he left her like that, but that he did not care. In that regard, however, it should be noted that, in so far as witness C made a similar statement therein, unlike her statement in the Fa. chat of 21 February 2017 at 16:00, it was merely a conclusion drawn by witness C on the defendant's personal attitude at the time of the car journey on 29 June 2018. The statement made by the witness at that point does not, however, reliably reflect the defendant's actual personal attitude during the tying up incident.

460 In the view of the Chamber, because the defendant wanted to discipline the child by tying her up, the defendant's act of going back into the house after tying up the child and leaving her tied up in the sun for a period of more than a few minutes is in fact explained on the basis of this motivation to punish and discipline, and is thus an indication that he did not consider the child's death possible or highly likely. From the point of view of the defendant, disciplining the child could only be achieved if she also survived the punishment and, in the future, adapted her behaviour to the wishes of the defendant as a result of the impact of his actions. The picture of the punishment suffered by witness A, which, at the defendant's will, was carried out and also ended immediately beforehand is also consistent with this.

461 In addition to the fact that the defendant was, as established, very angry, further evidence of this personal attitude is provided by the content of the Fa. chat of 21 February 2017 at 16:00, in so far as witness C stated therein – unlike her statement based on the content of the interior surveillance – that:

'(...) I told him she would die, he said no problem, nothing will happen (...)'

462 Finally, the defendant's reaction after untying the child is consistent with this in the sense that he became worried, combined with his attempt to give the child W2. and the fact that he took the child to hospital. While rescue efforts can, in principle, also reflect a change of personal attitude that only occurs during the course of the events, in the view of the Chamber, this is not the case in the general context here.

463 In the overall assessment carried out, the Chamber also included the information provided by witness C at the main trial. She stated that she had informed the defendant of the condition of the child and told him that he should release the child, while he sat on the sofa and played on his mobile phone. However, this information does not shed any light on mens rea or on the extent to which the defendant might have considered the occurrence of the child's death to be possible or highly likely.

cc) Mens rea with regard to the other consequences

464 In the view of the Chamber, in consideration of the overall picture of the stay, lasting several weeks, in the defendant's household by witness A and her daughter B, shaped by his conscious and intentional instructions and actions, it was clear to the defendant that they both suffered considerably, both physically and mentally, as a result of the living conditions he dictated and his treatment as a whole. In particular, because of how witness A began to shake and wet herself after being beaten by the defendant and how the child would not speak in his presence, the Chamber is convinced that both were in a state of constant fear of him and did not dare to disobey his instructions. From this, and because he nevertheless maintained the conditions he had created and his treatment for several weeks, it follows that the defendant accepted the serious physical and mental suffering

of witness A and her daughter B as a result of the general living conditions he dictated and his treatment of them.

465 In view of the overall picture that emerges, it was clear to the defendant, with due regard for the young age of the child, which was obvious to the defendant, that B suffered grave physical harm as a result of the treatment knowingly and deliberately inflicted upon her, that this impaired her ability to lead a normal life for the long term; based on the fact that the defendant did so consciously and continued his actions for several weeks, it can be concluded that he also condoned this overall. On the whole, this is apparent from the fact that the defendant knowingly and deliberately punished B by beating her for a period of several weeks and pushed her around resulting in the injury to her elbow. He was aware of the pain and injury caused by the punishments and the pushing, and this was what he intended. Furthermore, he deliberately tied her up in the manner determined in extreme heat and in direct sunlight in the awareness that he would cause the child serious physical harm as a result, which was also what he intended in pursuit of his aim to punish and discipline her. Finally, there is also the fact that he knowingly and deliberately did not provide adequate food, so B starved.

466 The fact that it was clear to the defendant that witness A also endured sustained and severe suffering as a result of having to tolerate her inability to stop his treatment of her child and that he caused her serious psychological harm by failing to inform her of B's whereabouts after refusing to allow her to accompany him to the hospital, is inferred by the Chamber from the objective picture of the events as a whole, which gives rise to this conclusion. This was also supported by the defendant's deliberate actions, which continued for several weeks.

467 Finally, the Chamber concludes from the overall picture of all the circumstances that it was clear to the defendant that witness A as a whole – owing to the severe psychological suffering caused by the treatment she herself received, on the one hand, and the sustained and severe suffering from having to tolerate the treatment of B and not knowing B's whereabouts, on the other hand – faced such serious psychological harm that her ability to lead a normal life was impaired for the long term, and he condoned this.

dd) Mens rea with regard to the defendant's activities for IS

468 It must also be concluded from the objective circumstances established, taken as a whole, that the defendant was aware of the objectives of IS. This is inferred from his voluntary decision to live in IS-occupied Syrian territory as an Iraqi combined with his role as head of the IS office for Ru. in R. over a long period of time, and from the fact that he practised Ru. in an IS women's shelter. In view of the above, it is clear that the defendant was aware of the objectives of IS, in particular the establishment of a global caliphate. This applies particularly with regard to the defendant's position as head of the office for Ru. over a long period of time. His corresponding long-lasting, and thus continued, activity, with knowledge of these objectives, reveals his identification with them. It must be concluded from this that the defendant also endorsed the objectives of IS as a whole.

469 Since the defendant lived for a long period as an Iraqi in areas occupied by IS, namely in R. in Syria first and then in Iraq, and his childhood and adolescence were already shaped by life in areas affected by civil war, he must in particular have been aware, in view of everyday life in R. and/or Fa. in 2015, that there was civil war in Syria and Iraq and that IS, as a party active in that civil war, played a military role. His approval of that involvement of IS in the civil war is evidenced by the fact that he continued to reside in

these territories occupied by IS until September 2015, acting in his managerial capacity, at least in R. In light of the foregoing, it must also be concluded that he knew about and approved of the fact that people were also killed in battle by members of IS.

470 On one hand, the Chamber infers that the defendant continued his activities for IS in Türkiye while being aware and approving of the objectives of IS, even though he no longer resided in an area occupied by IS, from the fact that this was already the case in R. in 2015 with regard to his role as head of the IS office for Ru. On the other hand, this is apparent from the objective picture of his activities in Türkiye – involved in IS. This is reflected in particular by his offer to make explosive devices and train an IS member how to use explosives in his home and by the fact that he still referred to himself as an IS member in 2018 ('yes Ak., I am IS'), which, by the same token, is an indication of his personal attitude back in 2015 too.

ee) Mens rea as regards the purchase and intention to destroy the Yazidis

471 In any event, the fact that the defendant considered it possible for IS, in the context of its military actions in the Syrian and Iraqi civil war, to have targeted those members of the Yazidi group who were located in the vicinity of the Sinjar region in northern Iraq and to have deliberately carried out the range of systematic measures described under II. 2., and that he in fact approved of this too, again arises from an overall assessment of all the circumstances.

472 From the objective picture of the purchase in exchange for payment of a sum of money from an IS member, it can be concluded that he knowingly and deliberately purchased witness A and her daughter as his slaves. The persecution of those of different faiths and the slave trade in Yazidi women were common everyday practices in IS territories, as expert SV1 clearly explained. It follows from this, together with the fact that witness A stated that she had talked about her origin with the defendant and the fact that she and her daughter K2. did not speak Arabic as their first language, could not pray in accordance with Muslim rules and that the original name of the child 'B', which the defendant changed to 'E', was not a Muslim name, that he was aware of the Yazidi origin of witness A and her child. It also follows from all the foregoing that he was aware that the Yazidis defined themselves by their common religion.

473 As reflected by the purchase of the two Yazidi slaves – common everyday practice by IS in the territories it occupied – and his membership of IS as head of the office for Ru. in R., while knowingly and deliberately endorsing the objectives of IS, it is clear that the defendant knew about and endorsed the core IS ideology on dealing with 'apostates' and, in particular, Yazidis, who they believed had to be destroyed for the purpose of establishing a global caliphate.

474 In light of the foregoing, it must also be concluded that, as he was himself a slave buyer, the defendant knew about and supported IS's practice with regard to slave trading in Yazidi women and girls. It also follows from this that he was aware of and also supported the slave trade as a result of the military action comprising the attack on the Sinjar region within the context of the civil war and as part of the implementation of this IS ideology.

475 It is also clear from the assessment of all those circumstances that the defendant was aware that, in the course of its military action against the Yazidis, IS had, through the organised and planned use of force, taken possession of the Yazidi women and girls traded as slaves – including witness A and her daughter – by detaining them under threat of armed violence. This is because it is not possible – including from the point of view of the

defendant – that such a large number of women and girls, including witness A and her daughter B, would have voluntarily become part of such circumstances. Similarly, he condoned the purchase and treatment of witness A and her daughter B in the established manner in that he furthered the capture, separation and systematic enslavement of Yazidi women and girls through his behaviour.

476 The fact that, in addition to the slave trade in women and girls, the defendant also considered the many other measures in connection with the military action against members of the Yazidis residing in the Sinjar area to be possible and he also approved of this, is apparent against this general background, particularly in light of the fact that the slave trade related only to female members of the Yazidis, whereas IS's destructive ideology for dealing with non-believers applied to all the sexes of the Yazidis as a whole. Therefore, the fate of the male Yazidis was inevitably covered by his cognitive vision of what he considered to be possible in the world too. His involvement in the general course of events through the purchase of witness A and her daughter as slaves in turn reflects his endorsement of this.

477 From the general picture of the debasing and degrading living conditions and treatment inflicted on witness A and her daughter B in conjunction with the fact that, in accordance with the above remarks, the defendant was aware of and endorsed the IS's destructive ideology, the Chamber concludes that, by inflicting serious physical harm on B and tremendous emotional harm on witness A, the defendant himself wanted, in accordance with IS's ideology, to destroy the Yazidi religion, Yazidism itself and its followers in order to establish an Islamic caliphate.

478 The defendant's desire for complete destruction is reflected in the living conditions he dictated and the nature of the treatment he inflicted on witness A and her daughter B as his slaves on the whole. This is because, through such treatment, the defendant denied them any right to self-determination and right of personality, depriving them of their identities. The defendant's targeted desire for destruction is made particularly clear by the way in which he tied up the child, as if on a cross, in the sun and the midday heat with her arms to her right and left at head height, without B being able to move – regardless of whether she died, which was not his intention – and the fact that, despite her obviously extreme emotional suffering, he refused to allow witness A to accompany him to the hospital and failed to inform her of the child's whereabouts. The religious link with this targeted destruction motive is particularly evident from the fact that he forced witness A and her daughter B to pray in accordance with Muslim rules contrary to their Yazidi faith and the fact he renamed the child, thus eradicating her cultural and religious identity. Moreover, the fact that the Yazidis were worth nothing to him because of their religious affiliation was also expressed by witness C at the main trial.

479 Together with the fact that, in accordance with the above remarks, the defendant, as an IS member, knew about and endorsed IS's ideology concerning the destruction of the Yazidis on account of their religion, the Chamber is of the opinion that the only conclusion to be drawn from this is that, by inflicting grave physical harm on B and tremendous emotional harm on witness A, the defendant himself was targeting the Yazidi religion, Yazidism itself and its followers in order to establish an Islamic caliphate. Finally, the defendant's deep entrenchment in IS ideology is demonstrated by the fact that, even after the events in which B was harmed, the defendant continued to work for IS in a variety of ways in Türkiye, even several years later. This is because, as an additional indication, a

corresponding conclusion can be drawn as to the personal attitude he had during the period in which witness A and her daughter B were staying in his household in Fa.

480 It is true that, apart from an ideological motivation, the defendant also personally benefited, over a period of several weeks, from being able to use witness A for unpaid domestic labour. However, the form of expression of the treatment inflicted on them as his slaves as a whole shows that the defendant was not concerned solely with support in the household but that this was merely a secondary objective of his actions and that personally, with a tendency to go one step further, he pursued the objective of destroying the religious community of the Yazidis, in line with IS.

481 Based on the foregoing, it was also clear to the defendant that, by transporting witness A and her daughter from Syria to Fa. in Iraq – again far from their ancestral home of the Sinjar region in the northwest of the country – he was encouraging the transportation of Yazidi women and girls by IS from their ancestral regions to Syria or to other areas of Iraq for the purpose of enslavement. And, based on his objective contribution to this, he approved of this. Because of his personal attitude, it is unlikely that he would have denied this consequence of his actions, which he was aware of, and not have at least accepted it.

g) Role of witness C

482 It was not possible to establish with certainty that the defendant acted jointly with witness C and that the defendant's actions to the detriment of witness A and her daughter B were based on a joint explicit or implicit decision to commit the offences in agreement with witness C. Witness A stated that the defendant ruled every aspect of their lives, which is consistent with witness C's statements that she was required to obey the defendant within the context of an Islamic marriage and that she herself was afraid that he would be able to punish her if she defied him. Even though witness C did, in turn, attempt to exonerate herself in this regard, which is consistent with the pattern exhibited in her testimony as described above, this is plausible in light of the fact that she had entered into a marriage in accordance with Islamic law. This is also reflected by the fact that the defendant placed great emphasis on females being fully veiled, and described himself as Muslim in video no. 20, which was stored on a data storage device belonging to witness C, and stated that women should obey men (see III. 2. c) dd) (3)).

IV. Legal analysis

483 The offence committed by the defendant as established under II. is a punishable offence as can be seen from the operative part.

484 The criminal actionability of the offence tried under Sections 6, 7 and 8 of the Code of Crimes against International Law (Völkerstrafgesetzbuch, VStGB) follows from the principle of universal jurisdiction laid down in the first sentence of Section 1 VStGB. According to that provision, the Code of Crimes against International Law applies to all the offences referred to therein and to those referred to in Sections 6 to 12 VStGB even if the offence was committed abroad and bears no relation to Germany. In so far as it relates to bodily injury committed in notional concurrence and resulting in death pursuant to Section 223(1) and Section 227(1) of the Criminal Code (Strafgesetzbuch, StGB), the applicability of German criminal law derives from ancillary competence in addition to the principle of universal jurisdiction pursuant to the first sentence of Section 1 VStGB (cf. Federal Court of Justice, Third Criminal Chamber, judgment of 30 April 1999 – 3 StR

215/98, NStZ 1999, 396 et seq., with reference to Section 6 VStGB, Section 211, Section 212 StGB and the Federal Court of Justice, Third Criminal Chamber, decision of 6 June 2019 – StB 14/19, BGHSt 64, 89 - 111, with reference to Section 7 VStGB, Sections 223 et seq. StGB).

1. Criminal liability under Section 6 VStGB – Genocide

485 The defendant is guilty of genocide pursuant to Section 6(1) subparagraph 2 VStGB by, with the intention of destroying the Yazidi religious group in whole or in part, causing B and witness A serious bodily (B) or mental (witness A) harm as members of the group.

a) Actus reus aspect of the offence in Section 6(1) subparagraph 2 VStGB

aa) A member of a religious group

486 Witness A and her daughter B are members of a religious group within the meaning of Section 6(1) VStGB. This is because the Yazidis define themselves through a common religion. It is an autonomous religious community and thus a distinct religious group within the meaning of the provision.

487 Witness A and her daughter, as female Yazidis, were each members of this religious group within the meaning of Section 6(1) subparagraph 2 VStGB. According to the wording of the provision, harm (only) to individual members of the group is expressly covered by the offence.

bb) Inflicting serious bodily or mental harm

488 Serious bodily or mental harm falling within the scope of Section 6(1) subparagraph 2 VStGB must – in so far as it is not already of the kind laid down in Section 226 StGB ('in particular') – constitute harm that impairs the victim's ability to lead a normal life for the long term (MüKoStGB/Kreß, 3rd edition 2018, VStGB Section 6, margin no. 50; 50; Werle/Jeßberger, Völkerstrafrecht, 5th edition 2020, margin no. 897, with further references from international law:

'a grave and long-term disadvantage to a person's ability to lead a normal and constructive life').

489 In particular, the experience of violent separation from a loved one with uncertainty about their whereabouts may result in mental harm sufficient to satisfy the conditions for the individual offence laid out in Section 6(1) subparagraph 2 VStGB (see ICC 8 April 2015 – IT-05-88/2-A, No 207, 210 et seq., page 85 et seq. – Prosecutor v. Tolimir).

490 Where international case law also requires that the act must be objectively capable of contributing to the whole or partial destruction of the group (see MüKoStGB/Kreß, 3rd edition 2018, VStGB Section 6, margin no. 50; Werle/Jeßberger, Völkerstrafrecht, 5th edition 2020, margin no. 897, with further references), it is clear that this is not required from the wording of the national regulation laid out in Section 6(1) subparagraph 2 VStGB in light of the wording of Section 6(1) subparagraph 3 VStGB, which, unlike Section 6(1) subparagraph 2 VStGB, explicitly states this (as a result, as is the case here: MüKoStGB/Kreß, 3rd edition 2018, VStGB Section 6, margin no. 50).

(1) Serious bodily harm to B

491 Within the meaning of the prior understanding of the definition, the defendant committed against B the offence established in II. 4. of serious bodily harm to the required threshold.

492 This is because, as a result of the daily punishments carried out over a period of several weeks in the form of beatings, including such that B suffered bruising on her back and

severe pain, thus spending several days in bed, as well as the pushing, causing injury to the elbow, the inadequate food situation throughout the entire period, meaning that she starved, and the tying up in direct sunlight in the midday heat for some time with her arms tied the right and left at head height without being able to move – not taking into account the fact that the child died of heatstroke – the child, considering her young age of only five years, suffered serious bodily harm as a result of the treatment as a whole. In view of the overall picture and the fact that this impaired B's ability to lead a normal life for the long term, a degree of severity comparable to that laid down in Section 226 StGB has been achieved, with the result that the physical harm suffered must be classified as serious bodily harm within the meaning of the legislation.

(2) Serious mental harm to witness A

493 The defendant inflicted on witness A, within the meaning of the above definition, through the offence established in II. 4., serious mental harm that also reaches the required threshold.

494 On the one hand, witness A herself suffered great mental harm from the living conditions as a whole dictated by the defendant and his treatment during the stay in his household in Fa. for several weeks. On the other hand, she experienced sustained and severe suffering as a result of not being able to stop the treatment of her child by the defendant. The defendant also inflicted deep psychological pain on her by failing to inform her of the child's whereabouts in the period after the tying up incident and refusing to allow her to accompany him when he took the child to hospital. As a result, she, on the whole, suffered massive psychological harm by the defendant. With regard to the general picture and the fact that this has impaired her ability to lead a normal life for the long term, a degree of severity comparable to that laid down in Section 226 StGB has also been achieved, with the result that the mental harm experienced, as defined above, is to be classified as serious mental harm within the meaning of Section 6(1) subparagraph 2 VStGB.

b) Mens rea aspect of the offence in Section 6(1) subparagraph 2 VStGB

aa) Intent with regard to the objective elements of the offence

495 The defendant acted intentionally with regard to all the objective elements of the individual offence laid out in Section 6(1) subparagraph 2 VStGB.

496 The defendant was aware that witness A and her daughter B were members of the Yazidi religious group.

497 Moreover, with regard to the other objective requirements for the offence relating to B, he acted intentionally because it was clear to him, with his approval, that, inter alia, she was physically suffering to a large extent from the particular treatment which he intentionally inflicted upon her overall and that the entirety of her mistreatment meant that, as a result of such serious physical abuse, she suffered such serious physical harm that her ability to lead a normal life was impaired for the long term, which, according to the above remarks, must be classified as serious bodily harm within the meaning of Section 6(1) subparagraph 2 VStGB.

498 As regards the other circumstances giving rise to the objective elements of the offence in relation to witness A, the defendant also acted intentionally. On the one hand, this it because it was clear to him and he condoned the fact that witness A suffered psychologically to a large extent (inter alia) under the particular living conditions which he intentionally dictated and his particular intentional treatment on the whole. In addition,

he was aware and condoned the fact that witness A endured sustained and severe suffering as a result of having to tolerate his treatment of her child without being able to stop it. On the other hand, this was clear to him and he condoned the fact that he was inflicting serious psychological harm on her by failing to inform her of the child's whereabouts in the period following the tying up incident. Finally, he was well aware of – and condoned – the fact that, overall, witness A faced such serious psychological harm that her ability to lead a normal life was impaired for the long term, which, according to the above remarks, constitutes serious mental harm within the meaning of Section 6(1) subparagraph 2 VStGB.

bb) Intention to destroy

499 When inflicting serious bodily or mental harm on B, on the one hand, and witness A, on the other, the defendant acted with the intention of destroying the religious group of Yazidis in itself, in whole or in part, within the meaning of Section 6(1) VStGB.

500 This presupposes the targeted intention to totally or partly destroy a group protected by the provision, at least in terms of its social existence (Federal Court of Justice, Third Criminal Chamber, judgment of 21 May 2015 – 3 StR 575/14, cited from juris, margin no. 13 therein). It is sufficient if the total or partial destruction of the group is the intermediate target of the perpetrator; it must be characterised in the sense of an excessive inner tendency, but does not have to be the driving force or the ultimate aim, motivation or motive of the perpetrator (Federal Court of Justice, Third Criminal Chamber, judgment of 21 May 2015 – 3 StR 575/14, cited from juris, margin no. 16 therein; judgment of 21 February 2001 – 3 StR 372/00, NJW 2001, 2728 et seq. (2729)).

501 Since, for his part, the defendant, by inflicting serious bodily and mental harm on B, on the one hand, and witness A, on the other hand, in line with IS ideology, specifically targeted the Yazidi religion, Yazidism itself and its followers in order to establish an Islamic caliphate, the conditions to be met with regard to him personally in terms of the intention to destroy are met based on the above definition. As outlined above, the Yazidis are an independent religious community and thus a distinct religious group within the meaning of Section 6(1) VStGB. The fact that the defendant acted in line with IS ideology in order to establish an Islamic caliphate is innocuous since the destruction of the Yazidis itself does not have to be his ultimate aim. This is also not precluded by the fact that the defendant benefited from the unpaid domestic labour provided by witness A. The defendant's targeted intention to destroy the Yazidis through all of his acts – which gave rise to the serious harm of a physical nature inflicted on B and of a psychological nature in the case of witness A – was defining in terms of motivation in terms in particular of the inner tendency (see remarks under III. 2. f) ee)).

c) Concurrency within Section 6 VStGB

502 Since the individual acts inflicted on B, on the one hand, and inflicted on witness A, on the other, were uniformly based on the intention of genocide and appear, in terms of time and place, to be limited circumstances, they – notwithstanding the partial identity of the implementing acts – constitute one unit of assessment in light of the fact that the collective property of the group is protected, and constitute only one substantive act in the legal sense (cf. Federal Court of Justice, Third Criminal Chamber, judgment of 30 April 1999 – 3 StR 215/98, NStZ 1999, 396 et seq. (403), generally also: BT-Drs. 14/8524, p. 19).

2. Criminal liability under Section 7 VStGB – Crimes against humanity

503 The defendant is also guilty of the crime against humanity under Section 7(1) subparagraph 3 (enslavement and trafficking in human beings), subparagraph 5 (torture), subparagraph 8 (inflicting serious physical and mental harm) and subparagraph 9 (severe deprivation of physical liberty) of the Code of Crimes against International Law resulting in death pursuant to Section 7(3) VStGB by deliberately committing the individual elements of the offence to the detriment of witness A and her daughter B in the context of a systematic and extensive attack on a civilian population and, in each case, by negligently causing the death of B by committing the individual elements of the offence to the detriment of the child.

a) Actus reus aspect of the overall offence

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

aa) Civilian population

505 The Yazidi population resident in the Sinjar region in August 2014 was a civilian population within the meaning of Section 7(1) VStGB.

506 A civilian population is a large group of people who share the same distinctive features for which they are attacked. A defining feature is that the measures are not primarily aimed at certain victims as individual people but rather because of their affiliation with the group. It is not necessary for the action to be directed against the entire population of a given geographical area. It is sufficient that a significant number of individuals are attacked. An attack on a few randomly selected people, on the other hand, is not an offence in this sense (Federal Court of Justice, Third Criminal Chamber, decision of 9 February 2021 – AK 5/21, margin no. 32; decision of 6 June 2019 – StB 14/19, NJW 2019, 2627, margin no. 56; judgment of 20 December 2018 – 3 StR 236/17, NJW 2019, 1818, cited from beck-online, margin no. 164 therein; MüKoStGB/Werle, 3rd edition 2018, VStGB Section 7, margin no. 15).

507 The target of IS's action of 2 to 3 August 2014 and the subsequent period was the entire Yazidi population from the Sinjar region, which was linked by the characteristic of their common religion. This characteristic also made them the target of the attack by IS, since the purpose of the organisation was precisely to destroy the Yazidis resident there on account of their religion.

bb) Attack

508 IS's action against the Yazidis resident in the Sinjar region of 2 to 3 August 2014 and the subsequent period is an attack against this civilian population within the meaning of Section 7(1) VStGB (cf. Federal Court of Justice, Third Criminal Chamber, decision of 9 February 2021 – AK 5/21, margin no. 34 - 36).

509 An attack against the population is an entire process involving the realisation of a multiplicity of the individual elements of the offence laid out in Section 7(1) VStGB and behind which stands a state or organisation, i.e. a collective (e.g.: Federal Court of Justice, Third Criminal Chamber, decision of 9 February 2021 – AK 5/21, margin no. 33; decision of 6 June 2019 – StB 14/19, NJW 2019, 2627, cited from beck-online, margin no. 57; judgment of 20 December 2018 – 3 StR 236/17, NJW 2019, 1818, cited from beck-online, margin no. 166; decision of 17 June 2010 – StB 3/10, NJOZ 2010, 1736, cited from beck-online, margin no. 25 therein; MüKoStGB/Werle, 3rd edition 2018, VStGB Section 7, margin no. 23).

510 Throughout the entire operation, members of IS, which is an organisation, killed, inter alia, adult men who were not willing to convert and older, 'useless' Yazidi women from the Yazidi population of the Sinjar region on a huge scale (Section 7(1) subparagraph 1 VStGB). They enslaved women and girls by claiming a right of ownership over them and in particular engaged in the human trafficking of them (Section 7(1) subparagraph 3 VStGB) and severely deprived them of their physical freedom, in particular their freedom of movement (Section 7(1) subparagraph 9 VStGB).

cc) Extensive and systematic

511 The attack was both extensive and systematic (cf. Federal Court of Justice, Third Criminal Chamber, decision of 9 February 2021 – AK 5/21, margin no. 34 - 36).

512 An extensive attack is to be understood to be a large-scale operation involving a high number of victims (Federal Court of Justice, Third Criminal Chamber, decision of 9 February 2021 – AK 5/21, margin no. 33; decision of 6 June 2019 – StB 14/19, NJW 2019, 2627, cited from beck-online, margin no. 57; judgment of 20 December 2018 – 3 StR 236/17, NJW 2019, 1818, cited from beck-online, margin no. 166; decision of 17 June 2010 – StB 3/10, NJOZ 2010, 1736, cited from beck-online, margin no. 27 therein; MüKoStGB/Werle, 3rd edition 2018, VStGB Section 7, margin no. 27). The attack is to be regarded as systematic if the use of force is organised and is carried out as planned in a consistent manner (Federal Court of Justice and MüKoStGB/Werle, loc. cit.).

513 Given the large total number of the Yazidi population living in the Sinjar region at the time of the attack of around 300,000 people and the number of casualties of at least four digits, its extensive nature is beyond doubt.

514 The same applies to the systematic nature of the highly planned use of resources (fighters, weapons, buses for the transportation of women and girls, accommodation in group accommodation, etc.).

515 It is not necessary to decide whether a 'political element' is also required in order to satisfy the conditions for the offence laid out in Section 7(1) VStGB, that is to say, an action 'in the implementation of or in support of the policies of a State or an organisation which has as its object such an attack' (for current opinion: MüKoStGB/Werle, 3rd edition 2018, VStGB Section 7, margin no. 30 ff.), because the attacks were carried out in the implementation of the 'political' ideology of IS with the aim of destroying the Yazidi religion and establishing an Islamic state (see also: Federal Court of Justice, Third Criminal Chamber, decision of 9 February 2021 – AK 5/21, margin no. 37).

b) Individual elements of the offence

aa) Section 7(1) subparagraph 3 VStGB – Enslavement and human trafficking

516 In relation to witness A and her daughter B, the defendant, through his actions as established in II. 4., intentionally committed the individual element of enslavement of both by claiming a right of ownership over them and of human trafficking in relation to them within the meaning of Section 7(1) subparagraph 3 VStGB.

(1) Actus reus aspect of the offence in Section 7(1) subparagraph 3 VStGB

517 The actus reus condition of enslavement by claiming a right of ownership pursuant to Section 7(1) subparagraph 3 VStGB is that the perpetrator must inflict on a human being treatment similar to the exercise of an arrogated and de facto 'right of ownership' over a thing (Federal Court of Justice, Third Criminal Chamber, decision of 9 February 2021 – AK 5/21, margin no. 39). This means the exercise of all or some of the powers associated

with a right of ownership in relation to the individual, i.e. the subordination of an individual to the will and interests of the 'owner' and the denial by the owner of the individual's freedom to act independently (Federal Court of Justice, loc. cit.; MüKoStGB/Werle, 3rd edition 2018, VStGB Section 7, margin no. 57).

518 Trafficking in human beings is a special case of enslavement within Section 7(1) subparagraph 3 VStGB (Werle/Jeßberger, Völkerstrafrecht, 5th edition, 2020, margin no. 1030).

519 In accordance with those criteria, the defendant enslaved witness A and her daughter B by purchasing them and making them subject to the living conditions and treatment dictated by him in his household in Fa. and, in doing so, claimed a right of ownership over them.

520 By buying witness A and her child from an unknown IS member as his slaves in exchange for payment, the defendant subsequently dictated all their living conditions, in particular by prohibiting them from leaving the property without his consent, so that they were locked in there and could only leave the property on occasions chosen by the defendant and together with him; he imposed on them daily punishments in order to discipline them and keep them obedient, exercised control over their food and drinking water supply and their sleeping and washing conditions, exploited witness A for unpaid domestic labour and 'lent' the child overnight to a stranger without the mother's consent, he subjected them entirely to his will. He thus denied them their freedom to act independently and treated them as if they were objects over which he had a right of control. The latter is manifested, in particular, by the punishment in the sun to the detriment of witness A and the tying up of the child, as he positioned her visually as if she were an object.

521 Finally, by purchasing witness A and her daughter B in exchange for payment of a sum of money, the defendant also committed the special case of trafficking in human beings.

(2) Mens rea aspect of the offence in Section 7(1) subparagraph 3 VStGB

522 The defendant acted intentionally with regard to the actus reus elements for the individual offence, since he knowingly and deliberately purchased witness A and her daughter B as his slaves, subjected them to the conditions described and inflicted upon them the treatment described.

bb) Section 7(1) subparagraph 5 VStGB – Torture

523 Through the actions established in II. 4., he also committed the individual elements of the offence laid out in Section 7(1) subparagraph 5 VStGB because he deliberately tortured witness A and her daughter B, who were in his custody and under his control, by causing them both serious bodily and psychological suffering, B serious physical harm and witness A serious psychological harm which do not arise only from sanctions that are compatible with international law.

(1) Actus reus aspect of the offence in Section 7(1) subparagraph 5 VStGB

524 Considered to be in custody or otherwise under the control of the perpetrator is any person over whom the perpetrator has claimed ownership, i.e. has created a situation in which the victim is handed over to the perpetrator without protection and other persons cannot easily intervene (Werle/Jeßberger, Völkerstrafrecht, 5th edition 2020, margin no. 1055).

525 Witness A and her daughter were, based on that understanding, in the defendant's custody or under his control from the point at which they were purchased by him until the death of B. This is because they were imprisoned in his property and, for the period

of their stay in his household in Fa., the defendant completely ruled their lives, so that, as a result, they were defenceless and dependent on him. As witness A and her daughter resided in the home of the defendant, it was not immediately possible for third parties to intervene from outside.

526 The fact that the defendant inflicted extensive physical suffering on both witness A and B as a whole is apparent from the inadequate food situation, which is why they went hungry, daily punishments in the form of beatings over several weeks, the pain and injuries associated with the punishments suffered by B and witness A, the pushing which injured B on the elbow, the punishment in the sun to the detriment of witness A, resulting in pain in her feet, and the tying up of the child in the sun in extreme heat with her arms tied to her right and left at head height over a period of more than just a few minutes (regardless of the fact that she died as a result of heatstroke), without B being able to move.

527 The defendant also caused extensive psychological suffering to witness A and her daughter B as a whole, by depriving them – who lived throughout the stay in constant fear of him – of their freedom for several weeks, forcing them to pray, imposing the established food, sleeping and washing situation upon them, punishing them daily through beatings, causing them pain and injury as a result, and 'lending' the child overnight to a stranger, which was distressing for both the child and witness A. This also applies to witness A in view of the continued exploitation of her unpaid domestic labour and her punishment in the sun. With regard to B, this is also apparent in respect of the changing of her name, the pushing resulting in injury to her elbow and the tying up incident in the sun, in the manner established.

528 The large-scale physical and mental suffering reached the materiality threshold laid out in Section 7(1) subparagraph 5 VStGB.

529 This is to be set at a higher level than the de minimis threshold applicable to bodily injury under Section 223 StGB. Unlike in the StGB, Section 7(1) subparagraph 5 VStGB does not exclude only minor cases (Federal Court of Justice, Third Criminal Chamber, decision of 3 February 2021 – AK 50/20, margin no. 38). On the other hand, permanent damage to health or extreme pain is not necessary (Federal Court of Justice, Third Criminal Chamber, decision of 3 February 2021 – AK 50/20, margin no. 38; decision of 5 September 2019 – AK 47/19, cited from beck-online, margin no. 38; decision of 6 June 2019 – StB 14/19, NJW 2019, 2627, cited from beck-online, margin no. 63). In particular, the materiality requirements are not as high as the severity level compared with Section 226 StGB (Federal Court of Justice, Third Criminal Chamber, decision of 3 February 2021 – AK 50/20, margin no. 38).

530 Those requirements are met in respect of large-scale physical and mental suffering on the part of witness A and her daughter B in each case by the totality of the circumstances caused by the defendant and his treatment.

531 In light of the remarks under IV. 1. a) bb), the defendant inflicted significant physical harm on B and significant psychological harm on witness A all the more within the Section 7(1) subparagraph 5 VStGB, as the requirements for the materiality threshold of such harm under Section 7(1) subparagraph 5 VStGB are lower than under Section 6(1) subparagraph 2 VStGB.

(2) Mens rea aspect of the offence in Section 7(1) subparagraph 5 VStGB

532 According to the findings made, the defendant also acted intentionally with regard to the individual requirements of the offence as it was clear to him that witness A and her

daughter suffered to a large extent physically and mentally from the particular living conditions intentionally dictated by him or the particular intentional treatment that they suffered and of which he approved, and he acted intentionally with regard to the inflicting of the significant physical harm to B and the significant psychological harm to witness A (see remarks under IV. 1. b) aa)).

(3) Purpose of torture

533 There is no need to determine whether there was a purpose of torture over and above the general mens rea requirements in the mind of the perpetrator in relation to the conduct penalised as an individual offence by Section 7(1) subparagraph 5 VStGB.

534 However, in view of the clear wording of the law ('by'), such a purpose is not required, since the provision does not lay down any more stringent requirements. In fact, detention or control in itself constitutes a violent relationship which manifests the victim's dependence and defencelessness against the perpetrator and his particular power and, for that reason alone, casts the inflicting of physical or psychological suffering by the offender in a different, more punitive light (against the requirement of a purpose of torture: MüKoStGB/Werle, 3rd edition 2018, VStGB Section 7, margin nos. 73 and 79; MüKoStGB/Geiß/Zimmermann, 3rd edition 2018, VStGB Section 8, margin no. 142; nor does the ICC Statute express any explicit purpose of torture in the legal definition of Article 7(2)(e) of the ICC Statute: see in this regard Federal Court of Justice, Third Criminal Chamber, judgment of 21 February 2001 – 3 StR 372/00, BGHSt 46, 292 et seq., cited from beck-online, margin no. 23; left unresolved in: Federal Court of Justice, Third Criminal Chamber, decision of 3 February 2021 – AK 50/20; decision of 5 September 2019 – AK 47/19; decision of 6 June 2019 – StB 14/19, NJW 2019, 2627; the latter two cited from beck-online).

535 In any event, such a purpose, which does not have to be in the pursuit of obtaining information or compelling a confession anyway (cf. Federal Court of Justice, Third Criminal Chamber, judgment of 21 February 2001 – 3 StR 372/00, BGHSt 46, 292 – 307, cited from beck-online, margin no. 22 therein), was in the defendant's mind.

536 Since, according to the findings made, his actions, which caused considerable physical suffering on the part of witness A and her daughter B and the significant physical harm to B (punishments, punishment in the sun to the detriment of witness A, being tied up in the sun to the detriment of B), were intended, in his mind, to make them obedient and to discipline them and, in addition, served in part to punish them (punishment in the sun to the detriment of witness A, being tied up in the sun to the detriment of B), and this action contributed, at least in part, to the considerable psychological suffering of both and the considerable psychological damage on the part of witness A, there was a corresponding purpose of torture.

cc) Section 7(1) subparagraph 8 VStGB – Causing severe physical and mental harm

537 Since, according to the above remarks on Section 6(1) subparagraph 2 VStGB (IV. 1.), the defendant, through his actions, intentionally caused serious physical harm to B and intentionally caused serious psychological harm to witness A, he also committed the individual element of the offence laid out in Section 7(1) subparagraph 8 VStGB.

dd) Section 7(1) subparagraph 9 VStGB – Severe deprivation of physical freedom

538 In relation to witness A and her daughter B, the defendant, through his actions as established in II. 4., also intentionally committed the individual element of the offence

laid out in Section 7(1) subparagraph 9 VStGB, in so far as he severely deprived them of physical freedom in breach of a general rule of international law.

(1) Actus reus aspect of the offence in Section 7(1) subparagraph 9 VStGB

539 The actus reus conditions for the element of the offence in Section 7(1) subparagraph 9 VStGB are met by anyone who prevents one or more persons from freely leaving their place of residence; this also includes situations in which the freedom of movement of a person is not completely restricted but is limited to a certain area (MüKoStGB/Werle, 3rd edition 2018, VStGB Section 7, margin no. 104).

540 Since – in light of the daily corporal punishments – the defendant refused to let witness A and her daughter B leave his household in Fa. without his permission during their stay in the property for several weeks, meaning that they were locked in there, and, in relation to B, he also tied up the child in the sun without B being able to move, he prevented them from leaving their place of residence and deprived both of their physical freedom in a serious manner.

(2) Mens rea aspect of the offence in Section 7(1) subparagraph 9 VStGB

541 Since the defendant acted knowingly and deliberately in this regard, intent is present with regard to the actus reus conditions of the element of the offence laid out in Section 7(1) subparagraph 9 VStGB.

c) Functional link between the actus reus aspects of the individual elements of the offence and the overall offence

542 The defendant committed all the individual elements of the offence within the context of the overall offence.

543 A prerequisite for this is that the individual elements were functionally linked to the overall offence and therefore formed part of the overall offence (cf. BT-Drs. 14/8524, p. 20).

544 That is the case here. The systematic and extensive attack by IS on the Yazidi population in the Sinjar region continued to have an effect as IS's slave trade was initially developing as part of the general course of events in the aftermath of the attack on the Yazidi settlement area in northern Iraq. All the individual elements committed by the defendant were an immediate continuation of that by means of the enslavement of witness A and her daughter B, in that specific way, and were part of the overall offence in the sense of there being a functional link.

d) Mens rea aspect of the overall offence and the functional link

545 The defendant acted intentionally in respect of the overall offence.

546 This is because he considered it possible for members of IS to target, as part of their military action in the Syrian and Iraqi civil war, those members of the Yazidis who were located in the vicinity of the Sinjar area in northern Iraq and deliberately carry out the range of systematic measures described under II. 2. resulting from the military action of 2 to 3 August 2014, which he approved of. In particular, he knew about and supported IS's practice of slave trading in Yazidi women and girls as a result of these military actions. He was also aware that, in the course of its military actions against the Yazidis, by means of organised and planned use of force, IS had claimed possession of Yazidi women and girls traded on the slave markets by capturing them under threat of armed violence, which he approved of.

547 His intent also related to the functional link between the individual elements and the overall offence. Specifically, it was clear to him – and he approved of the fact – that

witness A and her daughter had been captured under the threat of armed violence and enslaved by IS in the course of its military action against the Yazidis and thus within the context of the overall situation.

e) Fulfilment of Section 7(3) VStGB – Death

548 Since the defendant's individual elements of the offence under Section 7(1), subparagraphs 3, 5, 8 and 9 VStGB led to the death of B as a result of heatstroke, the condition of resulting in death as laid out in Section 7(3) VStGB has been fulfilled.

549 According to the findings made, the defendant acted negligently with regard to B's death. It was foreseeable that the child would die from heatstroke resulting from being tied up in the established manner in direct sunlight in the midday heat, which the defendant would have been able to recognise (unconscious negligence).

550 The death of the child is causally attributed to the individual elements of the offence and constitutes the realisation of the specific danger inherent in the individual element as a basic offence (see, with regard to the requirements of the direct link to tort to be determined in relation to the offence, the case law evidence in Fischer, StGB, 69th edition 2022, Section 18 StGB, margin no. 2).

551 This is because the tying up incident forms part of the overall set of circumstances which (jointly) constitute the individual elements of enslavement (subparagraph 3), torture by inflicting serious physical and psychological suffering or physical injury (subparagraph 5), inflicting serious bodily harm (subparagraph 8) and the severe deprivation of physical freedom (subparagraph 9) to the detriment of B. The risk of a fatal outcome was per se inherent in tying up the child in the way the defendant did, in the sun, in extreme heat.

f) Concurrency within Section 7 VStGB

552 Despite committing several individual elements involving two victims, the defendant thereby committed (only) one substantive offence. This is because the individual elements referred to in Section 7(1) VStGB, which have been committed in each case form one unit of assessment.

553 In the event of individual elements as laid out in Section 7(1) VStGB that are linked in a material, temporal or geographical sense, it applies in principle that their functional link with the same overall offence results in one unit of assessment; under these conditions, the inclusion of the individual elements in the overall offence means that there is only one crime against humanity and there are no grounds establishing *Realkonkurrenz* (multiple offences committed by multiple acts) or *Idealkonkurrenz* (a single act constituting more than one offence) (cf. Federal Court of Justice, Third Criminal Chamber, decision of 3 February 2021 – AK 50/20, margin no. 47; decision of 5 September 2019 – AK 47/19, cited from beck-online, margin no. 59 et seq. in respect of there being a number of victims as laid out in Section 7(1) subparagraph 5 VStGB; decision of 6 June 2019 – StB 14/19, NJW 2019, 2627, cited from beck-online, point 4 of the headnote in relation to all implementing acts under Section 7(1) subparagraphs 1 - 10 VStGB in general or margin no. 69 in respect of there being a number of victims as laid out in Section 7(1) subparagraph 5 VStGB).

554 The individual offences committed by the defendant to the detriment of witness A and her daughter have a material, temporal and geographical link to one another and, moreover, have the same functional link with the same overall offence. The action giving rise to the individual offence was found to be a direct continuation and development of the

enslavement of women and girls by IS as a result of the military action of 2 to 3 August 2014 in the Sinjar region whereby its starting point was the purchase of witness A and her daughter B as slaves by the defendant himself and it took place during the same period and in the same place during the several weeks' stay in the defendant's household in Fa. Moreover, the implementing acts were partly identical to each other in respect of the victims because the treatment of B also had psychological effects on witness A.

3. Criminal liability under Section 8 VStGB – War crimes against persons

555 As a result of the offence established under II., the defendant is also guilty of a war crime against persons resulting in death in accordance with Section 8(1) subparagraph 3, the first sentence of paragraph (4) and paragraph (6) subparagraph 2 VStGB (torture) in notional concurrence with aiding and abetting a war crime against persons in two cases in accordance with Section 8(1) subparagraph 6 in conjunction with Section 8(6) subparagraph 2 and Section 2 VStGB and Section 27(1) StGB (aiding expulsion/forced displacement) and Section 52 StGB.

a) General requirements

aa) Armed non-international conflict

556 During the period of the offence, there was a non-international armed conflict within the meaning of Section 8(1) VStGB.

557 An armed conflict occurs in the event of a war or another form of dispute involving armed violence between two or more states (international armed conflict) or in conflicts in which armed forces within a state fight against organised armed groups or such groups fight amongst themselves, provided that the hostilities are of a certain duration (non-international armed conflict) (see Federal Court of Justice, Third Criminal Chamber, decision of 20 December 2016 – 3 StR 435/16, NStZ 2017, 699 et seq. (700)). The existence of a non-international armed conflict is thus determined by the existence of armed groups with a certain degree of organisation and hostilities of a certain duration (see BGH, Third Criminal Chamber, decision of 17 November 2016 – AK 54/16, cited from beck-online, margin no. 23 therein with further references; judgment of 27 July 2017 – 3 StR 57/17, NJW 2017, 3667 et seq., margin no. 11; judgment of 20 December 2018 – 3 StR 236/17, NJW 2019, 1818 et seq., margin no. 74).

558 These conditions are met with regard to the fighting between the Syrian state army and opposition groups, in particular IS, which took place in Syria in 2015, as well as the fighting in Iraq between IS and the Iraqi armed forces (established case law of the Third Criminal Chamber of the Federal Court of Justice: Federal Court of Justice, Third Criminal Chamber, decision of 17 October 2019 – AK 56/19, concerning Syria since October 2015; decision of 4 April 2019 – AK 12/19, NStZ-RR 2019, 229 et seq. (231), concerning Syria between 2013 and 2017; judgment of 27 July 2017 – 3 StR 57/17, NJW 2017, 3667 et seq., margin no. 11, concerning Syria in 2014; decision of 20 December 2016 – 3 StR 435/16, NStZ 2017, 699 et seq. (700), concerning Syria at the beginning of the civil war; decision of 17 November 2016 – AK 54/16, cited from beck-online, headnote and margin no. 7, 23 therein, concerning Syria since the beginning of 2012; Federal Court of Justice, decision of 22 February 2018 – AK 5/18, cited from beck-online, margin no. 26 therein, concerning Iraq 2014).

bb) Persons to be protected under international humanitarian law

559 The Yazidi population in the Sinjar region – and therefore also witness A and her daughter

B – were persons to be protected under international humanitarian law in a non-international armed conflict within the meaning of Section 8(6) subparagraph 2 VStGB.

560 According to this, this includes protecting persons who do not participate directly in hostilities and who are in the power of the adverse party (see Federal Court of Justice, Third Criminal Chamber, decision of 17 November 2016 – AK 54/16, cited from beck-online, margin no. 25 therein).

561 The concept of 'the adverse party' is based on Article 4(1) of the IV. Geneva Convention (Federal Court of Justice, Third Criminal Chamber, judgment of 20 December 2018 – 3 StR 236/17, NJW 2019, 1818 et seq., margin no. 80). According to the interpretation of the international criminal courts, what matters is whether the victims, from a substantive point of view, are to be attributed to the other side; accordingly, civilians who are fleeing IS troops and have been expelled by IS fighters during the capture of a city, for example, are considered the adverse party (Federal Court of Justice, decision of 4 April 2019 – AK 12/19, NStZ-RR 2019, 229 et seq. (231)). In line with this understanding of the concept, victims present in an area controlled by the opposing party to the conflict should also have been subject to foreign violence (Federal Court of Justice, Third Criminal Chamber, judgment of 20 December 2018 – 3 StR 236/17, NJW 2019, 1818 et seq., margin no. 81).

562 From the point of view of the attacked Yazidis, IS was an adverse party in accordance with Section 8(6) subparagraph 2 VStGB. The members of IS, for their part, regarded the Yazidis as their opponents and saw them as 'apostates' who they sought to destroy. Following IS attacks on the settlements in the Sinjar Mountains, the captured Yazidis, including witness A and her daughter, were in the power of IS and thus of the adverse party.

b) Section 8(1) subparagraph 3 VStGB – Torture

563 Through the established treatment of witness A and her daughter, the defendant committed the individual element of the offence laid out in Section 8(1) subparagraph 3 VStGB. The defendant intentionally treated witness A and her daughter cruelly and inhumanely within the meaning of the provision by inflicting serious physical and mental suffering and serious physical (B) and psychological (witness A) harm on them and, in particular, torturing them.

564 The criterion of inhumane treatment must be interpreted broadly. It includes the inflicting of significant physical or psychological harm or suffering; the condition of cruel treatment must be understood in the same way (in the case law of the ICC and the elements of crime for the Rome Statute, cruel treatment is defined in the same way as inhumane treatment: MüKoStGB/Geiß/Zimmermann, 3rd edition 2018, VStGB Section 8, margin no. 137 with further references).

565 The concept of torture is to be defined as in Section 7(1) subparagraph 5 VStGB (BT-Drs. 14/8524, p. 26).

566 In light of Section 8(1) subparagraph 3 VStGB, the criterion of materiality is also applied not just in order to rule out any minor cases. It also requires a high level of damage to have been caused by the act; materiality must be assessed in the light of all the circumstances of the case, in particular the nature of the act and its context (most recently: Federal Court of Justice, Third Criminal Chamber, judgment of 28 January 2021, 3 StR 564/19, margin no. 65), whereby the actual physical and psychological impact caused should be taken into consideration in particular (Federal Court of Justice, loc. cit., margin

no. 73). In so far as purely physical treatment is to be assessed, the extent of damage in this case too must go well beyond that of a simple bodily injury in accordance with Section 223 StGB, although the requirements for materiality are not as high as the severity level comparable under Section 226 StGB (Federal Court of Justice, loc. cit., margin no. 66 et seq.).

567 In light of these conditions, there is no doubt that the prerequisites for the individual offence are met. The remarks on Section 7(1) subparagraph 5 VStGB under IV. 2. b) bb) apply accordingly in this regard.

c) Connection with the conflict

568 The defendant committed the individual offence referred to in Section 8(1) subparagraph 3 VStGB in connection with the conflict.

569 The characteristic 'in connection with an armed conflict' must also be understood functionally. Such a connection exists where the presence of an armed conflict was of decisive importance to the perpetrator's ability to commit the offence, to his decision to commit the offence, to the manner in which the offence was committed or to the purpose of the offence; the offence should not have been committed merely because the armed conflict 'just happened' to occur (BT-Drs. 14/8524, 25). However, it is not necessary for an offence to have been carried out during ongoing hostilities or to have a particular geographical proximity to it (Federal Court of Justice, Third Criminal Chamber, decision of 17 October 2019 – AK 56/19, cited from beck-online, margin no. 38 therein, decision of 4 April 2019 – AK 12/19, NStZ-RR 2019, 229 et seq. (231); decision of 17 November 2016 – AK 54/16, cited from beck-online, margin no. 29 therein; decision of 11 August 2016 – AK 43/16, NJOZ 2016, 354 et seq., cited from beck-online, margin no. 27).

570 The capture of witness A and her daughter by IS members during the established attack on the Sinjar region as part of the armed non-international conflict made it possible for the defendant to commit the offence in the first place, meaning that it would not have been conceivable in the absence of the conflict. The conflict had a significant influence on, and was of major importance to, the manner in which it was committed, namely the purchase and keeping of slaves as such, within the context of which the abuse was committed. This is because it is only the consequences of the conflict, namely the enslavement of the captured Yazidi women and girls, that also enabled witness A and her daughter B to be bought and held as slaves by the defendant in the manner established.

d) Mens rea aspect relating to the actus reus conditions for the offence independent of the individual elements

571 The defendant also acted with intent with regard to the conditions for the offence which are independent of the individual elements.

572 In so far as the armed non-international conflict and the status of witness A and her daughter B as persons to be protected under international humanitarian law are concerned, this applies because, according to the findings made, he was aware of the existence of civil war in Syria and Iraq and that IS was participating as an active military party in that civil war, which he approved of. In addition, it was clear to him, and he approved of the fact, that IS, through organised and planned use of force in the course of its military action against the Yazidis, had acquired possession of Yazidi women and girls traded on the slave markets by taking them under threat of armed violence, including witness A and her daughter B. Therefore, there is also a deliberate intention as regards the functional link between his individual act and the conflict situation (see, by analogy,

IV. 2. d) above).

e) Fulfilment of Section 8(1) subparagraph 3, paragraph (4) VStGB – Death

573 Through committing the individual offence laid out in Section 8(1) subparagraph 3 VStGB, the defendant negligently caused B's death, fulfilling Section 8(4) VStGB. The above remarks on Section 7(3) VStGB apply accordingly in this regard (see IV. 2.e)).

f) Aiding and abetting the war crime against persons in accordance Section 8(1) subparagraph 6, Section 2 VStGB, Section 27(1) StGB – Expulsion and forced displacement

574 By transporting witness A and her daughter B from Syria to Iraq, the defendant also aided and abetted a war crime against persons in accordance with Section 8(1) subparagraph 6, paragraph (6) subparagraph 2 and Section (2) VStGB as well as Section 27(1) StGB in two notionally concurrent cases within the meaning of Section 52 StGB.

aa) Principal offence

575 By forcibly taking Yazidi women and girls, including witness A and her daughter B, to other areas of Iraq and Syria from the ancestral Sinjar region in which they lawfully resided until they were captured under the threat of armed violence by IS in order to trade them as slaves, IS members fulfilled the actus reus conditions laid down in Section 8(1) subparagraph 6 VStGB.

576 The enslaved Yazidi women and girls, including witness A and her daughter B, were persons to be protected under international humanitarian law within the meaning of Section 8(6) subparagraph 2 VStGB. The transfer of them was carried out in breach of a general rule of international law because there were no objective reasons for such transfer measures (cf. with regard to the conditions:

BT-Drs. 14/8524, p. 21; to a large extent: MüKoStGB/Werle, 3rd edition 2018, VStGB Section 7, margin no. 68, according to which only actions that are classed as punishable acts of wrongdoing in accordance with universally applicable standards should be included).

577 The commission of this single act by members of IS was a direct consequence of the attack on the Sinjar region as part of the armed non-international conflict directly linked to it.

578 As IS members captured and transported women and girls to other areas of Iraq and Syria, including witness A and her daughter B, in a specific and targeted manner as a result of military actions in the Sinjar area, they acted intentionally in relation to all the actus reus conditions of the single offence.

bb) The defendant's contribution to the offence

579 The defendant objectively supported the principal offence, since his contribution – the transfer of witness A and her daughter B from Syria to Fa. in Iraq, that is to say, to a place far from the ancestral Sinjar region of the Yazidis in north-west Iraq, as a result of the purchase of them as his slaves – constituted a condoning of the practice of the expulsion or displacement of Yazidi women and girls by IS members, in particular as regards witness A and her daughter B.

580 The defendant acted intentionally with regard to the principal offence (see above) and his own contribution to the offence. He also acted intentionally with regard to the fact that, through his own contribution, he supported the principal offence.

581 Finally, the defendant's contribution to the offence must, on the basis of an overall assessment of all the circumstances, be classified as an act of aiding and abetting. The extent of his participation in the offence is established as being between the completion and termination of the principal offence and is of little importance in relation to the total course of events of IS's displacement and transfer operations to the detriment of all enslaved women and girls and, in particular, to the detriment of witness A and her daughter B.

g) Concurrency within Section 8 VStGB

582 The offences committed by the defendant under Section 8 VStGB constitute a single act constituting more than one offence, Section 2 VStGB, Section 52 StGB.

583 As regards the competitive relationship between several war crimes against persons, the general rules applicable to offences against highly personal legal interests apply in principle. Unlike in the case of Section 7 VStGB, the connection with an armed conflict cannot combine individual offences into an overall offence in the legal sense (BGH, Third Criminal Chamber, decision of 20 February 2019 – AK 4/19, cited from beck-online, margin no. 25 therein).

584 Section 8 VStGB protects a large number of individual interests. In addition to the right to life, physical and mental integrity and the right to freedom, the provision laid out in Section 8(1) subparagraph 6 VStGB also protects the integrity of the ethnic composition of occupied territories (MüKoStGB/Geiß/Zimmermann, 3rd edition 2018, VStGB Section 8, margin no. 1). Contrary to the individual offence perpetrated and provided for in Section 8(1) subparagraph 3 VStGB, the assistance provided by the defendant pursuant to Section 8(1) subparagraph 6 and Section 2 VStGB and Section 27(1) StGB is directed against the protected integrity of the ethnic and religious composition of the Sinjar region, with the result that an additional legally protected interest is affected by the act of aiding and abetting and the unlawfulness of that offence is not already covered by the individual offence laid out in Section 8(1) subparagraph 3 VStGB.

585 For this reason, the aiding and abetting provided for in Section 8(1) subparagraph 6, Section 2 VStGB and Section 27(1) StGB was also carried out in two notionally concurrent cases within the meaning of Section 52 StGB, since the individual legal interests of two different persons were infringed by the offence.

586 In so far as the defendant, in respect of witness A and her daughter B, committed a war crime against two persons with regard to the realisation of Section 8(1) subparagraph 3 VStGB, or in so far as witness A and her daughter suffered severe debasing and degrading treatment in the form of the treatment established within the meaning of Section 8(1) subparagraph 9 VStGB, including intentionally, there is only one act in a legal sense and this is below the more specific war crime of torture in accordance with Section 8(1) subparagraph 3 VStGB. This is because the offences constituting war crimes against witness A and B and the individual offence laid out in Section 8https://beck-online.beck.de/?typ=reference&y=100&g=VSTGB&p=8(1) subparagraph 9 VStGB are identical to those constituting the individual offence laid out in 8(1) subparagraph 3 VStGB; the abuse of B also had a psychological impact on witness A and caused her psychological suffering and/or psychological damage (cf.: Federal Court of Justice, Third Criminal Chamber, judgment of 28 January 2021, 3 StR 564/19, margin no. 79 et seq.).

4. Bodily injury resulting in the death of B in accordance with Section 223(1) and Section

227(1) StGB

587 Through the act established under II. 4. b), the defendant is also guilty of bodily injury resulting in the death of B in accordance with Section 223(1) and Section 227(1) StGB.

5. Concurrent offences

588 The acts of genocide within the meaning of Section 6(1) subparagraph 2 VStGB, the crime against humanity resulting in death within the meaning of Section 7(1) subparagraphs 3, 5, 8 and 9, (3) VStGB, the war crime against persons resulting in death in accordance with Section 8(1) subparagraph 3, paragraph (4), paragraph (6) subparagraph 2VStGB, and aiding and abetting of the war crime against persons in two dependent cases pursuant to Section 8(1) subparagraph 6, paragraph (6) subparagraph 2, Section 2 VStGB, Section 27(1) StGB and bodily injury resulting in death pursuant to Section 223(1) and Section 227(1) StGB are in *idealkonkurrenz* concurrency within the meaning of Section 52 StGB.

V. Determination of penalties

1. Choice of sentencing

589 In the present case, in accordance with the first sentence of Section 52(2) StGB, which applies by means of Section 2 VStGB, the penalty provided for in Section 6(1) VStGB should be applied, since that provision provides for life imprisonment and thus threatens the most severe penalty for the laws infringed in notional concurrence.

2. Exclusion of a less serious case of genocide

590 There is no less serious case of genocide within the meaning of Section 6(2) VStGB, with the result that the penalty of at least five years' imprisonment to up to 15 years' imprisonment resulting from Section 6(2), Section 2 VStGB and Section 38(2) StGB would have been applied.

591 The general profile of the offence, including all the mens rea aspects and the personality of the defendant, does not, despite the circumstances which are in his favour, deviate from the average case to such an extent that, based on experience, the assumption of a less serious case within the meaning of Section 6(2) VStGB would have been necessary.

592 In making the overall assessment carried out, the Chamber weighed up all the circumstances in favour of and against the defendant which are relevant to the assessment of the offence and the criminal personality of the defendant, regardless of whether they were inherent in, accompanied, preceded or followed the offence (as a yardstick: Federal Court of Justice, Second Criminal Chamber, judgment of 15 March 2017 – 2 StR 294/16, cited from juris).

593 In the defendant's favour, the Chamber, having regard to the other consequences of the offence, including the death of the child which does not, however, fulfil the criteria of Section 6(1) subparagraph 2 VStGB, included in the overall assessment the fact that, in the attempt to give the child W2., and the fact that the defendant took B to a hospital, he made attempts at rescue which reduce the defendant's individual guilt. This is very important. In addition, the Chamber took account, for the defendant, of the fact that, in the immediate aftermath of the event to the detriment of B, he was taken to an IS base, questioned, beaten and detained by IS members, so he has already suffered the consequences of his act.

594 It was also taken into account in his favour that, the defendant, who stated that he experienced violence at the hands of his father during his childhood and spent periods of his childhood and adolescence living under the conditions of civil war in Iraq, therefore

has a lower threshold in terms of the use of violence for punishment and the experiences of civil war while residing in R. in Syria and Fa. in Iraq were normal to him.

595 It is also of major importance for the defendant that there have not been any criminal proceedings against the defendant in Germany previously and that, in the year 2015, he was first 22 and then 23 years old and thus still close to the age limit of an adolescent.

596 At the same time, the Chamber also took into account with mitigating effect that the offence committed in 2015 was already very long ago, having taken place more than six years ago, and that the proceedings, with a duration of two-and-a-half years, have been long, although there has not been a delay in violation of Article 6(1) ECHR.

597 In the overall assessment, the Chamber also took into account, in the defendant's favour, that as this would be the first time he had served a prison sentence and he suffers from asthma, being imprisoned would be particularly hard for him. Similarly, the fact that the pre-trial detention has been subject to the stricter conditions of state protection proceedings and he does not receive visits from family members in the absence of family ties in Germany and he has no contact with his daughter, First Name1 C, makes the pre-trial detention which has now lasted for almost three years, particularly burdensome for him, which has had a mitigating effect. Finally, in this context, account was still taken of the fact that as a result of the quarantine rules in the context of the coronavirus pandemic, the defendant was placed in quarantine for one week after each day of the main trial and therefore spent a lot of time in isolation during the main trial of almost one and a half years, which was another particular burden.

598 On the other hand, the Chamber, to the detriment of the defendant – which is of great importance and, crucially, undermines the assumption that this is a less serious case – took into account in the overall assessment that he committed in notional concurrence with the crime of genocide a crime against humanity in accordance with Section 7(1) VStGB and a war crime (attributable to him as the perpetrator) against persons in accordance with Section 8(1) subparagraph 3 VStGB and thus committed other most serious crimes, in respect of which he also fulfilled the conditions of having negligently caused death in accordance with Section 7(3) VStGB and Section 8(4) VStGB. In that regard, however, the Chamber has also seen that the defendant acted only with unconscious negligence with regard to the death of B.

599 In addition, it is to the defendant's detriment that, with regard to Section 7(1) VStGB with subparagraph 3 (enslavement and trafficking in human beings), subparagraph 5 (torture), subparagraph 8 (inflicting serious physical and psychological harm) and subparagraph 9 (severe deprivation of physical liberty), he committed four individual offences, each to the detriment of two individual victims, namely witness A and her daughter B. This is because, although there is only one act in the legal sense and the collective protection of the interests of the international community is affected only once, a greater amount of individual legal interests, which are also covered by the scope of protection from the offence, have been infringed (see MüKoStGB/Werle, 3rd edition 2018, VStGB Section 7, margin no. 1). Even in so far as, in relation to Section 8(1) subparagraph 3 VStGB, due to the (partial) identity of the acts of performance of the offence, there is only one act in the legal sense, even though it affected two victims in the form of witness A and her daughter B, a greater number of individual legal interests were thereby infringed, which had a negative impact.

600 Finally, account has been taken, with aggravating effect, of the fact that the defendant

has, moreover, carried out in notional concurrence the other offences of aiding and abetting the war crime against persons pursuant to Section 8(1) subparagraph 6, Section 2 VStGB and Section 27(1) StGB in two cases and in respect of bodily injury resulting in death in accordance with Sections 223(1) and 227(1) StGB, to the detriment of B. However, the Chamber has also seen here that the defendant acted only with unconscious negligence with regard to the death of the child.

601 In light of the foregoing, despite the large number of circumstances in favour of the defendant, among which the Chamber attached high importance to his rescue efforts, to the fact that he is a first-time offender with no criminal record and to the fact that, although an adult, he was still particularly young at the time when the offence was committed, there is no deviation in the present case from the average case to such an extent that, based on experience, would lead to the assumption of a less serious case of genocide within the meaning of Section 6(2)VStGB. This results from the circumstances which, on the other hand, are to the detriment of the defendant, among which the notionally concurrent commission of other serious offences was weighted very highly in the overall assessment.

3. Life imprisonment

602 Therefore, in the absence of any compelling or optional mitigating reasons, the defendant is therefore sentenced to life imprisonment in accordance with Section 6(1) VStGB in respect of the offence tried.

4. Exclusion of the particular severity of guilt

603 The defendant's guilt is not particularly severe within the meaning of point 2 of the first sentence of Section 57a(1) StGB.

604 Following a summary assessment of the offence and the personality of the defendant, taking into account all the circumstances already assessed in the assessment of the existence of a less serious case of genocide within the meaning of Section 6(2) VStGB, there is no such weight as to justify the finding of particularly severe guilt.

605 It is true that – in addition to all the other circumstances described above to be assessed to his detriment and to be taken into account again to his detriment in the examination of the severity of his guilt – a very high degree of individual culpability on the part of the defendant arises in particular from the fact that, in addition to the offence of genocide in accordance with Section 6(1) subparagraph 2 VStGB, he committed a crime against humanity within the meaning of Section 7(1) VStGB and a war crime against persons within the meaning of Section 8(1) subparagraph 3 VStGB in conjunction with multiple serious offences, in respect of which he also fulfilled the conditions for having negligently caused death in accordance with Section 7(3)and Section 8(4), whereby he did, however, only act out of unconscious negligence.

606 However, in view of the multitude of circumstances described above which are in the defendant's favour and have been re-assessed for the examination of the severity of guilt, the general profile of the offence does not deviate to such an extent from the degree of wrongdoing, intrinsic to the regulation, of genocide that the suspension of life imprisonment after serving at least 15 years would be inappropriate in the event of a favourable appraisal. In addition to the other circumstances in the defendant's favour (see above), the Chamber has also placed great emphasis on his rescue attempts, his young age and the fact that he acted as a first-time offender.

5. Guidance on deducting the period of detention pending extradition

607 The detention pending extradition from 16 May to 8 October 2019 in a prison in Athens in Greece is to be deducted from the custodial sentence after the exercise of professional discretion at the scale of 1:1, see the second sentence of Section 51(4) StGB. No circumstances justifying a different scale for deduction have been demonstrated by the defendant nor are they otherwise apparent. Rather, it can be assumed that in the prison in Athens, which is in an EU country, the defendant was subject to the same conditions as in pre-trial detention in Germany.

VI. Application for adhesion by the accessory prosecutor

608 As an applicant for adhesion, witness A is claiming compensation from the defendant, as the defendant in the matter of adhesion, for her own non-material damage suffered as a result of the treatment by the defendant and as a result of the death of her daughter B.

609 She originally claimed additional compensation as heir under transferred rights for the non-material damage suffered by B as a result of the treatment by the defendant. In that regard, she withdrew her application for continuation of the main trial of 7 October 2021.

610 She now applies for the Court to

order the defendant to pay her compensation at the discretion of the court, but at least EUR 50,000.00 plus interest at a rate of 5 percentage points above the base rate since proceedings were pending (22 January 2021), and declare that the claim is derived from an intentional tort committed by the defendant.

1. Admissibility of the application for adhesion

611 The application for adhesion is admissible.

612 The Chamber has jurisdiction to rule pursuant to the first sentence of Section 403 and Section 406(1) StPO. In accordance with Article 7 subparagraph 3 of Regulation (EU) 1215/2012, there is special jurisdiction in this case because the defendant was last domiciled in a Member State (Greece).

613 The admissibility of the application for a declaration that the claim is derived from an intentional tort on the part of the defendant follows from the fact that witness A, as the claimant in the adhesion proceedings, has in that regard, in light of Section 850f(1), first half of the sentence and paragraph (2) of the Code of Civil Procedure (Zivilprozessordnung, ZPO), a legitimate interest within the meaning of Section 256 ZPO in obtaining the declaration sought (cf. Federal Court of Justice, Fourth Civil Chamber, judgment by default of 15 November 2011 – VI ZR 4/11, NJW 2012, 601 et seq., margin no. 7).

2. Merits of the application for adhesion

614 The application for adhesion is well founded in so far as witness A claims compensation for non-material damage in her own right and seeks a declaration.

a) Applicable law

615 Iraqi tort law applies. This is referred to in the first sentence of Article 1(1), Article 3, Article 4(1) and (2) of Regulation (EC) No 864/2007 (Rome II Regulation).

616 The acts to the detriment of witness A and her daughter B were committed in the summer of 2015 in Fa. in Iraq, where they lived with the defendant in a common household and the non-material damage (physical and psychological) suffered by witness A occurred. None of the circumstances of the case indicate that the tort is clearly more closely connected with Germany, with the result that, otherwise, in accordance with Article 4(3)

of the Rome II Regulation, German tort law would apply. The mere fact that the defendant now resides in Germany as a result of his involuntary extradition to Germany for the purposes of prosecution or that witness A now resides in Germany is not sufficient to establish such a clear closer connection. In addition, there are no apparent links between the defendant's tortious act, which includes the treatment of witness A and her daughter B, and Germany.

617 The Iraqi conflict-of-law rules incorporate the global renvoi under EU law. Under Article 27 of the Iraqi civil code, which governs international tort law, a link is made with the place where the offence was committed, so the law of the state in which the tort was committed is also applicable.

b) Claims under Iraqi substantive law

618 Witness A is entitled to payment of non-material damages from the defendant in the total amount of EUR 50,000.00 under the Iraqi substantive law applied in that regard.

619 The respective findings on the legal bases under Iraqi law are based on the knowledge freely obtained by obtaining a legal opinion from the Max Planck Institute for Comparative and International Private Law of 5 May 2021.

aa) Witness A's claim for compensation in principle due to her treatment by the defendant to her own detriment

620 Pursuant to Article 202 of the Iraqi civil code in conjunction with Article 204(1) and the first sentence of Article 205(1) of the Iraqi civil code, witness A has, in principle, a right to compensation against the defendant for her own non-material damage which she herself suffered as a result of the treatment by the defendant during her stay in Fa. and as a result of having to tolerate the treatment inflicted on her daughter.

621 Under Article 202 of the Iraqi civil code, the perpetrator must pay compensation if a person is killed, injured, beaten or otherwise harmed. Under Article 204 of the Iraqi civil code, any tort that results in harm to another person attracts compensation liability; under the second sentence of Article 205(1) of the Iraqi civil code, infringing upon the freedom of a person is expressly included in liability for tort. Under the first sentence of Article 205(1) of the Iraqi civil code, liability to compensation also covers the right to compensation for non-material damage. According to Iraqi legal doctrine, the tort must have been wrongful, that is to say, committed intentionally or negligently, and the act must have been causal for the damage suffered. Moreover, for compensation of non-material damage, the non-material damage must have already occurred and have been caused directly by the act in accordance with the development of the law by Iraqi legal literature and case law. The damage must not have already been compensated. In addition, the person claiming the damage must be personally affected.

622 These conditions have clearly been met.

623 Since witness A suffered extensively from the living conditions dictated by the defendant and his treatment, both physically and psychologically, and she endured sustained and severe suffering as a result of having to tolerate how the defendant treated B, the conditions of Article 202 and 205(1), first and second sentences, of the Iraqi civil code are clearly met. In that regard, the defendant acted intentionally and thus culpably. The acts of the defendant were causal as regards the physical and psychological suffering directly inflicted on to witness A personally. No compensation has already been paid for the non-material damage suffered by witness A.

bb) Witness A's claim for compensation in principle as a matter of her own right on account of the death of the child

624 Under Articles 202, 205(1) and (2) of the Iraqi civil code, witness A is also entitled to compensation for the non-material damage suffered as a result of the death of B.

625 Under Article 205(2) of the Iraqi civil code, spouses and relatives may be awarded compensation for the non-material damage suffered as a result of the death of the injured party. The wording of the law leaves open the question of what a 'relative' is and the extent to which there must be a relationship. There are two views on this in Iraqi legal doctrine. According to one view, this covers only those relatives who have a legal right of inheritance. According to a different view, it is for the court in the specific case to decide which category of persons should be covered by this, that is to say, whether there is a close link between the person killed and the relative(s) applying that justifies a claim for non-material damages. In Iraqi case law, the vast majority of first-degree relatives are understood as 'relatives' within the meaning of Article 205(2). These are the descendants and parents of a person who, in accordance with Article 89 of the Iraqi personal status act 'qanun al-Ahwal assahisiya', law no. 188, are also the legal heirs. Article 89 of the Iraqi personal status act also provides that male beneficiaries are to receive a share of the estate twice as high as female heirs.

626 Accordingly, it need not be determined which legal opinion of Iraqi doctrine or case law on the definition of 'relative' as a beneficiary under Article 205(2) of the Iraqi civil code is to be followed, since witness A is entitled in accordance with all the views.

627 This follows, first, from the fact that she is the mother of the deceased, that she is legally entitled to succession under Article 89 of the Iraqi personal status act and that, in the present case, as the mother of the deceased, she had such a close connection with the deceased that a claim for non-material damages is justified without doubt. Since, according to the credible information provided by witness A, the father of B has now been missing for more than six years since IS's attack on the Sinjar region in the summer of 2014, the Chamber is certain that, in accordance with Article 89, witness A alone is a first-degree relative of B of the Iraqi personal status act and legally entitled to succession.

628 The other conditions giving rise to entitlement to the claim are also met.

629 As a result of the culpable act committed by the defendant, B died, whereby the negligence in relation to the death resulting from his intentional mistreatment of the child by tying her up in the direct sun in the midday height is counted against him.

630 Since witness A has endured sustained and severe suffering as a result of having to witness how the defendant treated her child (by tying her up in the sun in extreme heat resulting in her death, among other things) without being able to intervene, as well as not being informed by the defendant of B's whereabouts following the tying up incident and not being allowed to go to the hospital with him, the other conditions for entitlement to the claim were also met in respect of her personally; compensation has not yet been paid for this damage either.

cc) Amount of compensation entitlements

631 Witness A is entitled to the payment of non-material damages of EUR 50,000.00 against the defendant.

632 Under Article 207(1) of the Iraqi civil code, the court is to determine the amount of damages on the basis of the damage caused to the injured party.

633 The first sentence of Article 209(1) of the Iraqi civil code states that the court may determine the manner in which compensation is to be awarded on the basis of the circumstances. Under the first sentence of Article 209(2) of the Iraqi civil code, compensation is in principle to be calculated in money, including in the form of payments in instalments or annuities (second sentence of Article 209(1) of the Iraqi civil code), but the court may, under the second sentence of Article 209(2) of the Iraqi civil code, award damages in other ways (performance of a specific act or transfer of an equivalent object). In that regard, compensation is not intended to place the injured party in a better position than they would have been in had the harmful event not occurred. The court is therefore called upon to determine compensation which does not (otherwise) enrich the injured party. The same applies to non-material damages, although under Iraqi law there are no other benchmarks in that regard.

634 Accordingly, for the non-material damage suffered as a result of the treatment by the defendant of witness A herself, compensation in the sum of €15,000.00 is considered an adequate settlement.

635 Based on the circumstances of the case, a one-off cash payment constitutes appropriate compensation in this case because it can at least provide financial compensation for the non-material damage suffered by witness A as a result of the treatment by the defendant and the non-material damage by nature cannot be reversed, for example, by actions on the part of the defendant.

636 In determining the amount of the monetary compensation for the purpose of compensation, account has been taken, on the one hand, of the high degree of suffering, both physical and psychological, resulting from the treatment by the defendant and having to tolerate the treatment of B. On the other hand, it was borne in mind that, although, through a compensation payment of this amount, witness A is indeed receiving the settlement sought by way of the compensation claim, at the same time it does not enrich her, which is not a matter of concern in view of the amount of the compensation.

637 As witness A did not declare at the main trial that her shoulder had been injured by the defendant, this fact could not be taken into account in the form of an increase in compensation for pain and suffering, contrary to what was claimed in the written adhesion claim.

638 For the non-material damage suffered by witness A as a result of the treatment by the defendant resulting in the death of B, further compensation in the sum of EUR 35,000.00 is considered an adequate settlement. In this respect too, a one-off cash payment is considered the appropriate form of compensation in this case. In that regard, when calculating the amount of the sum, account was taken of the sustained and severe nature of the suffering experienced as a result of having to tolerate the defendant's treatment of her daughter, with the result that her daughter died as a result of negligence. There is no reason to fear unjust enrichment on the part of the accessory prosecutor because of the granting of compensation in the sum of EUR 35,000.00 for the loss of the child due to negligence by the defendant, as this cannot in fact be compensated for financially.

c) Entitlement to a declaratory judgment

639 As the claims awarded result from an intentional tort on the part of the defendant, witness A is also entitled to the declaration sought against the defendant.

3. No decision made as to the remainder of the claim

640 In so far as witness A is seeking interest at a rate of 5 percentage points above the base rate since proceedings were pending, the Chamber, in accordance with the fourth sentence and fifth sentence of Section 406(1) StPO, shall refrain from making a decision, since it is not possible to clarify without considerable delay in the proceedings whether Iraqi law lays down a corresponding basis for entitlement to the payment of interest in legal proceedings, and it does not involve a claim for compensation for pain and suffering.

VII. Costs and determination of the value of the claim

641 Since the defendant has been convicted, he must, in accordance with the first sentence of Section 465(1) StPO, bear the costs of the proceedings, including his expenses.

642 Because the offence in respect of which the defendant has been convicted concerns witness A as an accessory prosecutor, he must also bear the necessary expenses incurred by her, as follows from the first sentence of Section 472(1) StPO.

643 In addition, the defendant must bear the special costs of the adhesion proceedings and the necessary expenses incurred in that regard by witness A as claimant in the adhesion proceedings, Section 472a(1) and (2) StPO.

644 This also applies, with due discretion, in respect of the legal expenses or necessary expenses incurred by witness A in so far as witness A has partially withdrawn her application for adhesion. Through Section 472a(2) StPO, the legislator has granted the court a great deal of discretion; the decision does not have to be based solely on the extent to which the case is won (BVerfG, decision of 20 March 2007 – 2 BvR 1730/06, cited from beck-online, MüKoStPO/Maier, 1st edition 2019, StPO Section 472a, margin no. 16). As a result of his conduct, the defendant on the whole gave rise to the proceedings, particularly the claim for damages arising from the transferred right, and is also convicted of the abuse of the child. The partial withdrawal of the application following legal advice from the Chamber was due to the fact that, although the Iraqi legal situation does not provide for a claim for compensation on the basis of transferred rights, it nevertheless provides for a separate right to compensation for witness A on account of the death of her child, so that she has nevertheless largely succeeded in her applications (see, on this point, MüKoStPO/Maier, 1st edition 2019, StPO Section 472a, margin nos. 16, 17; BeckOK StPO/Weiner, 40th edition, 1 July 2021, StPO Section 472a, margin nos. 2 - 4). Moreover, the application method chosen by witness A in the adhesion proceedings is more favourable to the defendant than that found in civil law. The outstanding claim for interest is not significant in this respect.

645 The decision on provisional enforceability is based on the second sentence of Section 406(3) StPO in conjunction with the first and second sentences of Section 709 ZPO.

646 In accordance with Section 2(1), Section 23(1) of the Act on the Remuneration of Lawyers (Rechtsanwaltsvergütungsgesetz, RVG), the first sentence of Section 48(1) of the Act on Court Costs (Gerichtskostengesetz, GKG) and Section 3 ZPO, the value of the adhesion procedure was determined accordingly, taking into account the material interest of witness A, which she estimated at EUR 50,000.00.