

Research Article

A Comparative Analysis of the Prosecutorial Strategies Employed by the United States of America and Germany in the Prosecution of IS-Affiliated Women on Terrorism-Related Charges

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Abstract

This article aims to elucidate the similarities and differences between the prosecutorial strategies employed by the United States of America and Germany in the prosecution of IS-affiliated women on terrorism-related charges. By using comparative and doctrinal legal research methods, this article reviews and dissects the criminal proceedings against seven American and seven German IS-affiliated women prosecuted on terrorism-related charges. The article first highlights the fluctuating role of IS-affiliated women, thereby exhibiting the broad spectrum of female engagement in ISIS, ranging from passive participants to active facilitators of violence. Following this, the article presents the international obligations stemming from terrorism-centred UNSC Resolutions and their subsequent transposition into domestic law, amending §2339A and §2339B of the United States Code and §129a and §129b of the German Criminal Code. Finally, the article compares the prosecutorial strategies employed by the two States on the following four grounds: (1) types of evidence, (2) charges, (3) mitigating and aggravating factors, and (4) sentencing. Ultimately, a juxtaposition of the prosecutorial strategies employed by the United States of America and Germany in the prosecution of IS-affiliated women on terrorism-related charges identifies contrasting,

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albeit at times similar, approaches to prosecution primarily as a result of the time at which initiation of criminal proceedings ensues.

Keywords prosecutorial strategies • IS-affiliated women • terrorism charges • comparative legal research • sentencing differences

Introduction

In 2014, succeeding the declaration of the caliphate by Abu Bakr al-Baghdadi, the then caliph, thousands of men, women, and children travelled to Syria and Iraq to join the newly established Islamic State of Iraq and al-Sham (ISIS).² Muslims, supporters, and converts worldwide mobilised to join an organisation they perceived as a legitimate representation of their Islamic beliefs. While countless nationals and citizens from neighbouring States, such as Lebanon and Turkey, travelled to join ISIS, so did numerous nationals and citizens from the Western States, such as the United States of America (the U.S.) and Germany.³ Accordingly, the German authorities acknowledge that approximately 1,150 Germans travelled or attempted to travel to Syria and Iraq as a result of Islamic motivations.⁴ By contrast, the U.S. authorities estimate that approximately 300 Americans had travelled or attempted to travel to Syria and Iraq.⁵

However, following the Islamic State's territorial losses in 2019, countless States whose nationals and citizens had once joined ISIS faced the dilemmas of repatriating and prosecuting their nationals, specifically the women and children.⁶ Varying approaches have been utilised in these regards, ranging from active repatriation and subsequent

² Roel de Bont, Daan Weggemans, Ruud Peters, and Edwin Bakker. "Life at ISIS: The roles of western men, women and children." *Security and Global Affairs* 2017 (2017): 3.

³ *ibid.*

⁴ Sofia Koller. 2022. "Gendered Differences in the Prosecution of Daesh Returnees in Germany." In *Gender in Terrorism and Counterterrorism: Gendered Dynamics in Military Effectiveness, Prosecution and Radicalisation, Ankara, 2022*, 27-30. Ankara: NATO Centre of Excellence Defence Against Terrorism.

⁵ Tanya Mehra, Merlina Herbach, Devorah Margolin, and Austin C. Doctor. "Trends in the Return and Prosecution of ISIS Foreign Terrorist Fighters in the United States." *ICCT/NCITE Report 2023* (2023): 1.

⁶ Anne Speckhard and Molly Ellenberg. "Perspective: Can we repatriate the ISIS children?." *Horizon Insights* (2020): 17.

prosecution to revoking citizenship.⁷ In terms of prosecution, there appear to be two overarching prosecutorial strategies. While some States opt for a proactive strategy by prosecuting IS-affiliated women preceding a departure to IS-controlled territory, others rely on a reactive strategy by making prosecution a precondition for repatriation. These prosecutorial strategies are not mutually exclusive, allowing for simultaneous application in certain States.

In light of the differences between the prosecutorial strategies of the U.S. and Germany, this article aims to provide a comparative analysis of the approaches utilised by the respective States in prosecuting IS-affiliated women on terrorism-related charges. Given the limited comparative academic discourse on this subject matter, this article intends to highlight the difficulties associated with prosecuting female foreign terrorist fighters. While the U.S. adopts a proactive and reactive stance towards prosecuting American IS-affiliated women, Germany predominantly acts reactively. Despite this difference, both States faced difficulties in assessing how the engagements of IS-affiliated women fit within the existing criminal law framework, given ambiguities regarding the evidentiary threshold, the application of criminal provisions, and the imposition of punishment. Accordingly, this article intends to answer the following research question: *To what extent do the prosecutorial strategies of the U.S. and Germany in the prosecution of IS-affiliated women on terrorism-related charges juxtapose?*

Methodology

In light of the limited literature comparing the prosecution of IS-affiliated women in different States, this article utilises a combination of legal research methods, namely, comparative legal research (CLR) and doctrinal legal research (DLR). At its core, CLR “contemplates [a] comparison of systems,” thereby having its relevance lie in “the comparative evaluation of human experience occurring in the legal domains of different situations and jurisdictions.”⁸ The DLR, which “relies extensively on using court

⁷ Alexis March. "Far from Home: Overcoming the Challenges to Repatriating Foreign Women Who Joined the Islamic State." *U. Ill. L. Rev.* (2021): 1170.

⁸ P. Ishwara Bhat. 2020. *Idea and Methods of Legal Research*. Oxford: Oxford University Press.

judgements and statutes to explain [the] law,” is primarily employed to support the CLR.⁹ By comparatively examining court judgements and statutes from the U.S. and Germany, this article aims to elucidate the similarities and differences between the prosecutorial strategies employed by the respective States.

The limitations of the research primarily centre around the accessibility and availability of court documentation. In Germany, the Higher Regional Court of Düsseldorf functions as one of the few courts publicising terrorism-related judgements in an anonymised manner. Following an access request to the Higher Regional Courts of Munich and Berlin, the corresponding courts provided the two requested anonymised judgements. Access requests to other Higher Regional Courts, however, remained unfulfilled given the cited classified and sensitive nature of these cases. Accordingly, the prime limitation of the German cases centres around spatial confinement in that the ensuing analysis solely premises on judgements from the Higher Regional Courts of Düsseldorf, Munich, and Berlin. The access to German court documentation is further limited in that, unlike the access provided by the U.S. authorities, the German authorities only granted access to the judgements. The restrictions concerning access to court documentation in the U.S. focalise on the following:

- (1) succeeding a fee exemption application to twelve U.S. District Courts, six provided such an exemption, thereby generating spatial confinements; and
- (2) Although there is access to several court documents such as criminal complaints, orders of detention, sentencing memorandums, etc., other documents are classified and therefore inaccessible.

In light of these limitations, there is an omission of argumentative generalisations with the analysis premising on seven American and seven German cases against IS-affiliated women. Lastly, given that Germany practises anonymisation in case judgements, the American cases have been anonymised as a means to establish consistency throughout the article.

⁹ Mike McConville and Wing Hong Chui. 2007. “Introduction and Overview.” In *Research Methods for Law*, edited by Mike McConville and Wing Hong Chui, 1-18. Edinburgh: Edinburgh University Press.

The Fluctuating Role of IS-Affiliated Women

The two overarching perceptions, perceiving IS-affiliated women as naïve victims versus active facilitators and perpetrators of violence, have caused interpretive and applicable contentions. In criminal proceedings, the discrepancy between the two perceptions is most evident given that the prosecution primarily relies on the latter perception, whereas the defence entrusts the former. Given ISIS's strict interpretation of Sharia Law and consequent employment of gendered stereotypes, women's lives in the Islamic State starkly contrast those of men. Whether arriving in IS-controlled territory married or unmarried, the future of IS-affiliated women "is one of serving society from behind the scenes."¹⁰ Such servitude includes maintaining the household, obeying the husband, and raising as many children as possible with the aim of expanding the Islamic State.¹¹ Ultimately, IS-affiliated women are encouraged to "live a sedentary existence."¹²

Although the primary responsibility of women in ISIS is that of servitude, research has exposed several other roles occupied by IS-affiliated women within the organisational structure of the Islamic State. Accordingly, IS-affiliated women have also engaged in the following areas:

- (1) online propaganda by attempting to recruit other women and girls;
- (2) education and healthcare given the gendered separations in accordance with Sharia Law;
- (3) an expectation of engaging in armed jihad following a legal directive; and
- (4) joining the all-female *Al-Khansaa* brigade tasked with the enforcement of ISIS's laws.¹³

Correspondingly, "not all ISIS women hold 'back seat' roles" in the organisation, thereby highlighting the fluctuating nature of women's engagement in ISIS.¹⁴

¹⁰ De Bont, Weggemans, Peters, and Bakker, 10.

¹¹ *ibid.*

¹² *ibid.*

¹³ De Bont, Weggemans, Peters, and Bakker, 10-11.

¹⁴ *ibid.*, 13.

Although Western media often presents IS-affiliated women as “naïve individuals duped by deceptive recruiters,” scholars have argued that an analysis of recruitment must consider women’s engagement as being “a reasonable political option.”¹⁵ According to Kathleen German and Rosemary Pennington, “women [...] drawn to jihad, view the calling as emancipatory in nature.”¹⁶ Even though there are parallels between the reasons men and women join ISIS, recruitment approaches appear to be gendered. “The ISIS materials aimed at young women and teenage girls skirt the more violent realities of life in a jihadist culture by establishing strong interpersonal contacts.”¹⁷ ISIS utilises romanticised representations of potential relationships with foreign terrorist fighters posing with “kittens or caring for the elderly” to lure young women and girls to IS-controlled territory.¹⁸ While relationships with foreign terrorist fighters are romanticised, so are “the role[s] of women as jihadi fighters.”¹⁹ “These are not women who need saving by the West, but who will, instead, save their sisters from Western imperialism.”²⁰ Consequently, ISIS employs a wide range of strategies to recruit women and girls, primarily relying on romanticised narratives to overshadow the terrorist organisation’s violent nature.

According to Joseph Makanda, examining women’s engagement in ISIS necessitates the consideration of two lines of reasoning. Firstly, by joining the organisation, “women are meant to increase the human powers and populace of the Islamic State.”²¹ This line of reasoning aligns with the supportive perceptions of women’s engagement in ISIS and their consequent sedentary existence as household wives and mothers. The second line of reasoning posits that “by joining ISIS, women are striving to emancipate, liberate and assert their equality to men within the male-dominated arena of terrorism.”²² Unlike the former, this line of reasoning supports German’s and Pennington’s claim, positioning

¹⁵ Kathleen German and Rosemary Pennington. "Sisters of the Caliphate: Media and the Women of ISIS." *Journal of Vincentian Social Action* 4, no. 2 (2019): 37.

¹⁶ *ibid.*

¹⁷ *ibid.*, 42.

¹⁸ *ibid.*

¹⁹ *ibid.*, 43.

²⁰ *ibid.*

²¹ Joseph Makanda. "The Jihad Feminist Dynamics of Terrorism and Subordination of Women in the ISIS." *Multidisciplinary Journal of Gender Studies* 8, no. 2 (2019): 137.

²² *ibid.*, 138.

women's jihadi engagement as emancipatory rather than subordinate in nature. Although academia has attempted to categorise the activities and engagements of IS-affiliated women, a definitive categorisation remains challenging. This is principally due to the often interwoven, fluctuating, and intricate reasons behind women's engagement in the Islamic State.

International Obligations, §2339A and §2339B of the United States Code, and §129a and §129b of the German Criminal Code

Succeeding United Nations Security Council Resolution (UNSC Res.) 1373, the UN Member States are obliged to prosecute terrorists, ensure that domestic legislation classifies terrorist-related acts as serious criminal offences, and guarantee adequate punishment for such offences.²³ UNSC Res. 2396 further acknowledges the diverse and fluctuating roles of women in terrorist organisations, as “victims, supporters, facilitators, or perpetrators,” thereby highlighting the necessity of “tailored and gender-sensitive prosecution, rehabilitation, and reintegration.”²⁴ According to the UNSC Counter-Terrorism Committee Executive Directorate, “the challenges involved in prosecuting women who return from the Islamic State in Iraq and the Levant [...] have often been cited as a reason for States’ reluctance to repatriate their female citizens.”²⁵ These challenges include, *inter alia*, the applicability of domestic terrorism provisions and the evidentiary threshold required to incriminate IS-affiliated women. Nevertheless, given the international obligations, States have opted to prosecute IS-affiliated women under varying criminal offences such as membership in a terrorist organisation, the commission of international crimes, and/or the abduction of minors.²⁶

²³ S.C. Res. 1373, U.N. Doc. S/Res/1373 (Sept. 28, 2001).

²⁴ S.C. Res. 2396, U.N. Doc. S/Res/2396 (Dec. 21, 2017).

²⁵ Counter-Terrorism Committee Executive Directorate. 2020. *Analytical Brief: The Prosecution of ISIL-associated Women*. United Nations Security Council Counter-Terrorism Committee Executive Directorate.

<https://www.un.org/securitycouncil/ctc/content/cted-analytical-brief-%E2%80%93-prosecution-isil-associated-women>.

²⁶ Counter-Terrorism Committee Executive Directorate.

In the case of terrorism-related charges in the U.S., federal prosecution “relies heavily on preventative law enforcement and material support statutes.”²⁷ Given the international and domestic classification of terrorism-related crimes as serious criminal offences, terrorism prosecutions in the U.S. carry high conviction rates.²⁸ Despite this, “commentators regularly cast female terrorism offenders as naïve, gullible, susceptible targets of violent extremism, even when they admit their culpability by pleading guilty.”²⁹ The use of gendered framing during the criminal proceedings, in turn, may influence judicial decision-making.³⁰ The U.S. federal courts usually resort to U.S.C. §2339A and §2339B when prosecuting IS-affiliated women. Both sections constitute material support statutes, and while §2339A “is broad, designed to prosecute individuals for specific acts,” §2339B “provides [the] prosecutorial basis for attempting or conspiring to provide material support.”³¹

In response to UNSC Res. 2178, Germany undertook legislative amendments to enable “law enforcement agencies [...] at the state and federal levels to launch criminal investigations into individuals or groups perceived to have links to terrorist organisations.”³² In practice, these changes resulted in the prosecuting authorities opening criminal investigations into IS-affiliates preceding their repatriation.³³ Before 2017, “many prosecutors tended to search for additional evidence adding to the fact of their departure before opening a criminal investigation into German IS-affiliated women.”³⁴ This prosecutorial hesitancy, however, changed in 2017 when “the federal prosecutor general announced that henceforth no differences between men and women will be applied.”³⁵ Accordingly, a returnee participates as a member of a terrorist

²⁷ Evan Colleen Jones. "Gone Girls: Exploring the Systematic Misunderstanding of Women in ISIS and Resulting International Security Concerns." *Loy. U. Chi. Int'l L. Rev.* 16 (2020): 240.

²⁸ *ibid.*

²⁹ Audrey Alexander and Rebecca Turkington. "Treatment of terrorists: How does gender affect justice?." *CTC Sentinel* 11, no. 8 (2018): 24.

³⁰ See note 26 above, 249.

³¹ *ibid.*, 254.

³² Daniel H. Heinke and Jan Raudszus. "Germany's Returning Foreign Fighters and What to Do about Them." *Egmont Paper* 101 (2018): 50.

³³ *ibid.*

³⁴ Heinke and Raudszus.

³⁵ *ibid.*

organisation abroad, criminalised under §129a and §129b of the German Criminal Code, if:

- (1) the returnee takes part in the associational life of the terrorist organisation;
- (2) does so over an extended period of time;
- (3) finds their way into the terrorist organisation by submitting to the will of the organisation; and
- (4) performs promotional activity from within the organisation.³⁶

If the membership is accompanied by a violation of other criminal norms, such as participation in an execution, then these offences are to be prosecuted in addition to membership, thereby influencing the legal consequences.³⁷

A Comparison of the Prosecutorial Strategies

The main difference between the investigative practices employed by the U.S. and German law enforcement authorities stems from the U.S.'s utilisation of informants and sting operations to initiate criminal proceedings against American IS-affiliated women. The U.S. law enforcement authorities primarily employ informants and sting operations in cases where a departure to IS-controlled territory has yet to occur, thereby enabling the prosecution of American IS-affiliated women preceding an emigration to Syria or Iraq. The use of informants and sting operations corroborates the U.S.'s proactive approach in prosecuting American IS-affiliated women. Based on the available case law, the German law enforcement authorities do not employ informants or sting operations; however, they do appear to rely on foreign intelligence services as a source of information. Given Germany's reactive approach in prosecuting German IS-affiliated women upon repatriation to Germany, a lack of informants and sting operations appears justified.

There are similarities and differences between the two States as to the times at which the initiation of criminal proceedings materialises. In Germany, the prosecution of

³⁶ Gerwin Moldenhauer. "Rückkehrerinnen und Rückkehrer aus der Perspektive der Strafjustiz." *Bundeszentrale für politische Bildung* 31 (2018): 82.

³⁷ *ibid*, 84-85.

German IS-affiliated women is a precondition for repatriation. On account of this, German law enforcement authorities operate reactively, given that prosecution only ensues following repatriation to German territory. U.S. law enforcement authorities, on the other hand, operate reactively and proactively in that they prosecute American IS-affiliated women before as well as after a departure to IS-controlled territory. In terms of the types of evidence used during the criminal proceedings (*see Tables 1 and 2*), the two States heavily rely on testimony by the defendants and witnesses, communications via social media platforms, and miscellaneous sources such as photographs, travel documents, and sales receipts. The main difference between the two States in terms of evidence concerns the U.S.'s reliance on informants and sting operations as a source of evidence and Germany's use of expert testimony during the criminal proceedings as a means to elucidate concepts such as Islamic radicalisation and extremism.

Table 1: American IS-Affiliated Women (Types of Evidence)

Case	U.S. District Court	Types of Evidence
A ³⁸	Eastern District of Virginia	Cooperating witnesses and ISIS evidence recovered from the battlefield
B ³⁹	Middle District of Florida	Cooperating witnesses, online communication, communication with an undercover FBI employee, Facebook communication, sales receipts, USPS confirmation, and video surveillance recordings
C ⁴⁰	Eastern District of Virginia	Facebook posts, Facebook profiles/accounts, communication with an undercover FBI

³⁸ *United States of America v Fluke-Ekren* [2019] U.S. District Court Eastern District of Virginia 1:22-cr-00092, (2019) Document 2 Affidavit by USA as to Allison Elizabeth Fluke-Ekren; *United States of America v Fluke-Ekren* [2019] U.S. District Court Eastern District of Virginia 1:22-cr-00092, (2022) Document 36 Statements of Facts as to Allison Elizabeth Fluke-Ekren.

³⁹ *United States of America v Sheppard* [2018] U.S. District Court Middle District of Florida 2:18-cr-00019, (2018) Document 3 Indictment; *United States of America v Sheppard* [2018] U.S. District Court Middle District of Florida 2:18-cr-00019, (2019) Document 68 Plea Agreement.

		employee (virtual and in-person), interview with two FBI special agents, online communication, and text messages
D ⁴¹	Eastern District of Kentucky	Facebook group, Facebook messages, letter from the defendant's daughter, letter from the defendant's friend, and testimony of the defendant
E ⁴²	Northern District of Indiana	Defendant's diary, video clips of interviews, audio clips of interviews, Facebook messages, email communication, Telmate messages, and testimony (of witness and defendant)
F ⁴³	District of Colorado	Online communication, list of contacts, and a number of items demonstrating the defendant's proficiency and certifications for a variety of specialised skills
G ⁴⁴	Eastern District of Wisconsin	Academic report, Facebook profiles, email communication, Facebook messages, FBI confidential source, Twitter accounts, character reference letters (from the

⁴⁰ *United States of America v Coffman* [2014] U.S. District Court Eastern District of Virginia 3:15-cr-00016, (2014) Document 1 Criminal Complaint; *United States of America v Coffman* [2014] U.S. District Court Eastern District of Virginia 3:15-cr-00016, (2015) Document 28 Criminal Information; *United States of America v Coffman* [2014] U.S. District Court Eastern District of Virginia 3:15-cr-00016, (2015) Document 33 Statement of Facts.

⁴¹ *United States of America v Castelli* [2017] U.S. District Court Eastern District of Kentucky 2:17-cr-00049, (2017) Document 3 Information as to Marie Antoinette Castelli; *United States of America v Castelli* [2017] U.S. District Court Eastern District of Kentucky 2:17-cr-00049, (2017) Document 7 Plea Agreement.

⁴² *United States of America v Elhassani* [2019] U.S. District Court Northern District of Indiana 2:19-cr-00159, (2020) Document 23 Sentencing Memorandum by United States of America as to Samantha Elhassani (Exhibit List).

⁴³ *United States of America v Conley* [2014] U.S. District Court District of Colorado 1:14-cr-00163, (2014) Document 15 Information; *United States of America v Conley* [2014] U.S. District Court District of Colorado 1:14-cr-00163, (2014) Document 37 Plea Agreement and Statement of Facts.

⁴⁴ *United States of America v Dais* [2018] U.S. District Court Eastern District of Wisconsin 2:18-cr-00143, (2018) Document 1 Complaint.

		defendant's son, two daughters, and sister), Telegram channels, and communication with an undercover FBI employee
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Table 2: German IS-Affiliated Women (Types of Evidence)

Case	German Higher Regional Court	Types of Evidence
H ⁴⁵	Higher Regional Court of Düsseldorf	Witness testimony, statements by an expert, confession by the defendant, email communication, Facebook groups, internet search history, Facebook messages, and statements by a social worker
I ⁴⁶	Higher Regional Court of Munich	Facebook profile(s), Facebook posts, internet chats, statements by an expert, witness testimony, statements by the defendant, video interviews, and statements by a forensic expert
J ⁴⁷	Higher Regional Court of Berlin	WhatsApp messages, confession by the defendant, telecommunication(s), statements by an expert, witness testimony, contact list on the mobile phone, photographs, and Facebook profile
K ⁴⁸	Higher Regional Court of Düsseldorf	Facebook profile, Facebook group(s), SMS messages, WhatsApp messages, bank transfers, statements by an expert, statements by the defendant, witness testimony, photographs, and videos

⁴⁵ 7 StS 2/20 Oberlandesgericht Düsseldorf 7 StS 2/20, (2021) Urteil.

⁴⁶ 8 St 9/18 Oberlandesgericht München 8 St 9/18, (2022) Urteil.

⁴⁷ (6) 2 StE 6/20-3 (2/20) Kammergericht Berlin (6) 2 StE 6/20-3 (2/20), (2021) Urteil.

⁴⁸ 5 StS 2/19 Oberlandesgericht Düsseldorf 5 StS 2/19, (2019) Urteil.

L ⁴⁹	Higher Regional Court of Düsseldorf	Statements by the defendant, contents of the telecommunications surveillance, witness testimony, analysed results of the seized data carriers, statements by an expert, police investigation reports, statements by the Federal Intelligence Service, photographs, travel documents, Viber messages, Facebook profile, and Skype chats
M ⁵⁰	Higher Regional Court of Düsseldorf	Statements by the defendant on the matter, witness testimony, statements by an expert, Telegram messages, Facebook messages, testimony of the lead investigators, distribution of IS propaganda videos, and audio messages
N ⁵¹	Higher Regional Court of Düsseldorf	Confession by the defendant, witness testimony, online communication (via email and phone), information from the registration authority portal, evaluation reports from the police headquarters, and official statement

The charges brought against American and German IS-affiliated women both correlate and diverge. While U.S. law enforcement authorities resort to material support statutes to incriminate American IS-affiliated women (*see Table 3*), German law enforcement authorities rely on membership in a foreign terrorist organisation and international crimes provisions (*see Table 4*). The difference in reliance appears to predominantly stem from the initiation period of criminal proceedings. In the U.S., criminal proceedings are initiated preceding and succeeding a departure to IS-controlled territory whereas in Germany prosecution is a precondition for repatriation. A reliance on material support

⁴⁹ 7 StS 3/19 Oberlandesgericht Düsseldorf 7 StS 3/19, (2021) Urteil.

⁵⁰ 7 StS 3/20 Oberlandesgericht Düsseldorf 7 StS 3/20, (2021) Urteil.

⁵¹ 7 StS 4/19 Oberlandesgericht Düsseldorf 7 StS 4/19, (2020) Urteil.

statutes enables U.S. law enforcement authorities to act reactively and proactively, given that a departure to IS-controlled territory is not necessary for the fulfilment of the offence conduct. In contrast, the German criminal provisions, especially the international crimes provisions, necessitate emigration for criminal liability to attach.

Table 3: American IS-Affiliated Women (Charges)

Case	U.S. District Court	Charge(s)
A ⁵²	Eastern District of Virginia	18 U.S.C. §2339B (Conspiring to Provide Material Support to a Foreign Terrorist Organisation, Namely the Islamic State of Iraq and al-Sham)
B ⁵³	Middle District of Florida	18 U.S.C. §2339B(a)(1) & §2 (Attempting to Provide Material Support and Resources to a Foreign Terrorist Organisation)
C ⁵⁴	Eastern District of Virginia	18 U.S.C. §1001(a) (False Statements Involving International Terrorism)
D ⁵⁵	Eastern District of Kentucky	18 U.S.C. §875(c) and §2 (Interstate Communication of a Threat)
E ⁵⁶	Northern District of Indiana	18 U.S.C. §2339C(c)(2)(A) (Prohibitions Against the Financing of Terrorism and Aiding and Abetting)

⁵² *United States of America v Fluke-Ekren* [2019] U.S. District Court Eastern District of Virginia 1:22-cr-00092, (2022) Document 35 Plea Agreement.

⁵³ *United States of America v Sheppard* [2018] U.S. District Court Middle District of Florida 2:18-cr-00019, (2018) Document 3 Indictment.

⁵⁴ *United States of America v Coffman* [2014] U.S. District Court Eastern District of Virginia 3:15-cr-00016, (2015) Document 32 Plea Agreement.

⁵⁵ *United States of America v Castelli* [2017] U.S. District Court Eastern District of Kentucky 2:17-cr-00049, (2017) Document 7 Plea Agreement.

⁵⁶ *United States of America v Elhassani* [2019] U.S. District Court Northern District of Indiana 2:19-cr-00159, (2019) Document 1 Information; *United States of America v Elhassani* [2019] U.S. District Court Northern District of Indiana 2:19-cr-00159, (2019) Document 2 Plea Agreement.

F ⁵⁷	District of Colorado	18 U.S.C. §371 (Conspiracy to Provide Material Support to a Designated Foreign Terrorist Organisation)
G ⁵⁸	Eastern District of Wisconsin	18 U.S.C. §2339B(a)(1) (Attempting to Provide Material Support or Resources to a Foreign Terrorist Organisation)

Table 4: German IS-Affiliated Women (Charges)

Case	German Higher Regional Court	Charge(s)
H ⁵⁹	Higher Regional Court of Düsseldorf	§27 (Aiding); §52 (Several offences committed by one act); §53 (Joinder of offences); §129a (Forming terrorist organisations); §129b (Foreign criminal and terrorist organisations); §171 (Breach of duty of care or upbringing); and § 239 (Unlawful imprisonment) of the German Criminal Code. §7 (Crimes against humanity) and §9 (War crimes against property and other rights) of the Code of Crimes against International Law. §22a (Other penal provisions) of the War Weapons Control Act
I ⁶⁰	Higher Regional Court of Munich	§13 (Commission by omission); §23 (Criminal liability for attempt); §25 (Commission of offence); §27 (Aiding); §52 (Several offences committed by one act); §53 (Joinder of

⁵⁷ *United States of America v Conley* [2014] U.S. District Court District of Colorado 1:14-cr-00163, (2014) Document 37 Plea Agreement and Statement of Facts.

⁵⁸ *United States of America v Dais* [2018] U.S. District Court Eastern District of Wisconsin 2:18-cr-00143, (2019) Document 26 Plea Agreement.

⁵⁹ 7 StS 2/20 [2021] Oberlandesgericht Düsseldorf 7 StS 2/20, (2021) Urteil.

⁶⁰ 8 St 9/18 [2022] Oberlandesgericht München 8 St 9/18, (2022) Urteil.

		offences); §129a (Forming terrorist organisations); and §129b (Foreign criminal and terrorist organisations) of the German Criminal Code. §7 (Crimes against humanity) and §8 (War crimes against persons) of the Code of Crimes against International Law
J ⁶¹	Higher Regional Court of Berlin	§52 (Several offences committed by one act); §53 (Joinder of offences); §129a (Forming terrorist organisations); and §129b (Foreign criminal and terrorist organisations) of the German Criminal Code. §9 (War crimes against property and other rights) of the Code of Crimes against International Law. §22a (Other penal provisions) of the War Weapons Control Act
K ⁶²	Higher Regional Court of Düsseldorf	§52 (Several offences committed by one act); §53 (Joinder of offences); §129a (Forming terrorist organisations); and §129b (Foreign criminal and terrorist organisations) of the German Criminal Code. §9 (War crimes against property and other rights) of the Code of Crimes against International Law. §22a (Other penal provisions) of the War Weapons Control Act
L ⁶³	Higher Regional Court of Düsseldorf	§25 (Commission of offence); §27 (Aiding); §52 (Several offences committed by one act); §53 (Joinder of offences); §129a (Forming terrorist organisations); §129b (Foreign

⁶¹ (6) 2 StE 6/20-3 (2/20) [2021] Kammergericht Berlin (6) 2 StE 6/20-3 (2/20), (2021) Urteil.

⁶² 5 StS 2/19 [2019] Oberlandesgericht Düsseldorf 5 StS 2/19, (2019) Urteil.

⁶³ 7 StS 3/19 [2021] Oberlandesgericht Düsseldorf 7 StS 3/19, (2021) Urteil.

		criminal and terrorist organisations); §223 (Bodily harm); §239 (Unlawful imprisonment) of the German Criminal Code. §7 (Crimes against humanity) of the Code of Crimes against International Law
M ⁶⁴	Higher Regional Court of Düsseldorf	§25 (Commission of offences); §52 (Several offences committed by one act); §53 (Joinder of offences); §129a (Forming terrorist organisations); §129b (Foreign criminal and terrorist organisations); and §171 (Breach of duty of care or upbringing) of the German Criminal Code. §9 (War crimes against property and other rights) of the Code of Crimes against International Law
N ⁶⁵	Higher Regional Court of Düsseldorf	§52 (Several offences committed by one act); §53 (Joinder of offences); §129a (Forming terrorist organisations); §129b (Foreign criminal and terrorist organisations); §171 (Breach of duty of care or upbringing); and §235 (Child theft) of the German Criminal Code. §8 (War crimes against persons) of the Code of Crimes against International Law. §22a (Other penal provisions) of the War Weapons Control Act

The applied mitigating and aggravating factors in the criminal proceedings against American and German IS-affiliated women compare and contrast. The main similarities between the mitigating factors (see *Tables 5 and 6*) considered in the cases of American and German IS-affiliated women include the following:

⁶⁴ 7 StS 3/20 [2021] Oberlandesgericht Düsseldorf 7 StS 3/20, (2021) Urteil.

⁶⁵ 7 StS 4/19 [2020] Oberlandesgericht Düsseldorf 7 StS 4/19, (2020) Urteil.

- (1) lack of a criminal record preceding the committed offence;
- (2) defendant's expression of remorse;
- (3) conditions of detention;
- (4) lack of previous radical ties or conduct; and
- (5) presence of domestic violence.

Mitigating factors unique to the cases of American IS-affiliated women include:

- (1) the U.S.'s consideration of the defendant's mental health;
- (2) the U.S.'s acknowledgement of character reference letters; and
- (3) the U.S.'s recognition of the defendant's age.

Mitigating factors unique to the cases of German IS-affiliated women include:

- (1) Germany's acknowledgement of the defendant's abolishment and rejection of IS ideology and adherence;
- (2) Germany's consideration of the defendant's separation from her children as a result of detention;
- (3) Germany's recognition of the differing modes of participation; and
- (4) Germany's awareness of stigmatising media portrayal.

Lastly, a comparison of the U.S. sentencing hearings and German judgements reveals that the German courts assess the mitigating factors more thoroughly and extensively, given each factors' consideration in light of the corresponding offence conduct. Contrastingly, the U.S. courts assess the mitigating factors holistically prior to the sentence imposition.

The main similarities between the cited aggravating factors (*see Tables 7 and 8*) by the U.S. and German courts are the following:

- (1) defendant's active participation and instrumental role in the commission of the offence(s);
- (2) defendant's awareness of the terrorist organisation's aims and methods; and
- (3) gravity of the offence(s).

Unique to the cases in Germany are the following factors:

- (1) the special dangerousness and cruelty of ISIS as a terrorist organisation;
- (2) duration of ISIS membership;

- (3) defendant's treatment of Yazidi slaves (where applicable); and
- (4) the high degree of danger posed to the defendant's children as a result of emigration to IS-controlled territory.

The latter factor corresponds to an aggravating factor cited in the American case of E, whereby the court deemed the defendant's involvement of her underage son in activities preceding and succeeding a departure to IS-controlled territory as aggravating. In summary, the prosecutorial approaches opted for by the respective States, whether reactive or proactive in nature, the time at which initiation of criminal proceedings ensues, and the types of charges brought against American and German IS-affiliated women, influence the applicable mitigating and aggravating factors. This is because the mitigating and aggravating factors arise in response to the aforementioned elements.

Table 5: American IS-Affiliated Women (Mitigating Factors)

Case	U.S. District Court	Mitigating Factor(s)
A	Eastern District of Virginia	N/A (Transcript of Sentencing Hearing is Classified)
B	Middle District of Florida	N/A (Transcript of Sentencing Hearing is Classified)
C	Eastern District of Virginia	N/A (Transcript of Sentencing Hearing is Classified)
D ⁶⁶	Eastern District of Kentucky	Defendant's age, mental health issues, and the lack of a criminal history
E ⁶⁷	Northern District of Indiana	Defendant's expression of remorse, defendant was manipulated and abused by her husband, and defendant's imprisonment

⁶⁶ *United States of America v Castelli* [2017] U.S. District Court Eastern District of Kentucky 2:17-cr-00049, (2020) Document 29 Transcript of Sentencing Hearing.

⁶⁷ *United States of America v Elhassani* [2019] U.S. District Court Northern District of Indiana 2:19-cr-00159, (2021) Document 46 Transcript of Sentencing Hearing.

		in IS-controlled territory (during which she was subjected to inhumane conditions following her husband's death)
F	District of Colorado	N/A (Transcript of Sentencing Hearing is Classified)
G ⁶⁸	Eastern District of Wisconsin	Defendant's lack of a criminal record, defendant had been subjected to abuse, defendant was somewhat sympathetic, lack of previous radical ties/conduct, defendant's mental health issues, and the defendant's children's positive description of the defendant

Table 6: German IS-Affiliated Women (Mitigating Factors)

Case	German Higher Regional Court	Mitigating Factor(s)
H ⁶⁹	Higher Regional Court of Düsseldorf	Defendant's confession and remorse, defendant distanced herself from ISIS following her return, defendant's separation from her children because of pre-trial detention, stay of the defendant and her children in Syrian and Turkish camps, and lack of a criminal record
I ⁷⁰	Higher Regional Court of Munich	Lack of prior criminal conviction, offences occurred six years ago, defendant's partial confession, defendant had been in pre-trial

⁶⁸ *United States of America v Dais* [2018] U.S. District Court Eastern District of Wisconsin 2:18-cr-00143, (2020) Document 51 Statements of Reasons Memorandum; *United States of America v Dais* [2018] U.S. District Court Eastern District of Wisconsin 2:18-cr-00143, (2020) Document 52 Transcript of Sentencing Hearing.

⁶⁹ 7 StS 2/20 [2021] Oberlandesgericht Düsseldorf 7 StS 2/20, (2021) Urteil.

		detention for over three years and was unable to see her daughter grow up, defendant was an accomplice, and defendant was not directly involved in one of the crimes
J ⁷¹	Higher Regional Court of Berlin	Lack of a criminal record, defendant's partial confession, short duration of possession over a weapon of war and lack of utilisation, defendant's suffering because of ISIS engagement, defendant being a victim of domestic violence, conditions of detention while attempting to escape IS-controlled territory, defendant's separation from her son, and stigmatising media coverage of defendant
K ⁷²	Higher Regional Court of Düsseldorf	Defendant's comprehensive and remorseful confession, defendant's statements made a significant contribution in clarifying ISIS's structure, defendant's IS-affiliation was not based on Islamist convictions, defendant's provision of witness testimony, defendant's membership was several years ago, defendant lacked a criminal record, defendant's endurance of onerous pre-trial detention conditions, and if the defendant had not moved into IS designated property, she would have been rendered homeless

⁷⁰ 8 St 9/18 [2022] Oberlandesgericht München 8 St 9/18, (2022) Urteil.

⁷¹ (6) 2 StE 6/20-3 (2/20) [2021] Kammergericht Berlin (6) 2 StE 6/20-3 (2/20), (2021) Urteil.

⁷² 5 StS 2/19 [2019] Oberlandesgericht Düsseldorf 5 StS 2/19, (2019) Urteil.

L ⁷³	Higher Regional Court of Düsseldorf	Defendant's confession, commission of offences was in the past, defendant regrets joining ISIS, duration of main trial was long, lack of previous criminal convictions, defendant's positive behaviour during pre-trial detention, defendant was exposed to additional security measures and separated from her children, stigmatising media coverage of defendant, and defendant was not the principal perpetrator in one of the crimes
M ⁷⁴	Higher Regional Court of Düsseldorf	Defendant's remorseful confession, defendant joined ISIS at the request of her husband, defendant left ISIS for the well-being of her children and ceased membership, circumstances of the defendant's deportation, defendant subjected to extensive visit restrictions, defendant consented to use information she provided during the proceedings against her husband's brother, and ISIS had already appropriated the apartment the defendant was residing in
N ⁷⁵	Higher Regional Court of Düsseldorf	Defendant's early and comprehensive confession, defendant's provision of information on separately prosecuted third parties suspected of ISIS membership, defendant voluntarily ceased ISIS

⁷³ 7 StS 3/19 [2021] Oberlandesgericht Düsseldorf 7 StS 3/19, (2021) Urteil.

⁷⁴ 7 StS 3/20 [2021] Oberlandesgericht Düsseldorf 7 StS 3/20, (2021) Urteil.

⁷⁵ 7 StS 4/19 [2020] Oberlandesgericht Düsseldorf 7 StS 4/19, (2020) Urteil.

		membership, particular sensitivity of defendant's three underage children to their mother's detention, and lack of a criminal record
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Table 7: American IS-Affiliated Women (Aggravating Factors)

Case	U.S. District Court	Aggravating Factor(s)
A	Eastern District of Virginia	N/A (Transcript of Sentencing Hearing is Classified)
B	Middle District of Florida	N/A (Transcript of Sentencing Hearing is Classified)
C	Eastern District of Virginia	N/A (Transcript of Sentencing Hearing is Classified)
D ⁷⁶	Eastern District of Kentucky	Seriousness of the offence
E ⁷⁷	Northern District of Indiana	Defendant was instrumental in getting her husband and brother-in-law into Syria, defendant brought her son on her second trip to Hong Kong, misrepresenting the travel information to her son's biological father, defendant's awareness of the purpose behind her trips abroad, activities and engagements of the defendant's son while in IS-controlled territory (videos of the defendant's son holding a machine gun, etc.)

⁷⁶ *United States of America v Castelli* [2017] U.S. District Court Eastern District of Kentucky 2:17-cr-00049, (2020) Document 29 Transcript of Sentencing.

⁷⁷ *United States of America v Elhassani* [2019] U.S. District Court Northern District of Indiana 2:19-cr-00159, (2021) Document 46 Transcript of Sentencing Hearing.

F	District of Colorado	N/A (Transcript of Sentencing Hearing is Classified)
G ⁷⁸	Eastern District of Wisconsin	Defendant was not just a passive participant (she hacked accounts, taught others how to hack accounts, etc.)

Table 8: German IS-Affiliated Women (Aggravating Factors)

Case	German Higher Regional Court	Aggravating Factor(s)
H ⁷⁹	Higher Regional Court of Düsseldorf	Special dangerousness and cruelty of ISIS, the offence lasted for four years, and the considerable impairment of the psychological and physical development of the defendant's daughter as a result of the offence
I ⁸⁰	Higher Regional Court of Munich	Special dangerousness and cruelty of ISIS, defendant attempted to travel to IS-controlled territory for a second time after having resided in Germany for two years, and the enslavement of the Yazidi slaves lasted more than one and a half months
J ⁸¹	Higher Regional Court of Berlin	Defendant was an active rather than passive member, defendant's possession of a weapon of war was not of secondary importance, extended duration of ISIS membership, and wishful and actual possession over a weapon of war

⁷⁸ *United States of America v Dais* [2018] U.S. District Court Eastern District of Wisconsin 2:18-cr-00143, (2020) Document 51 Statements of Reasons Memorandum; *United States of America v Dais* [2018] U.S. District Court Eastern District of Wisconsin 2:18-cr-00143, (2020) Document 52 Transcript of Sentencing Hearing.

⁷⁹ 7 StS 2/20 [2021] Oberlandesgericht Düsseldorf 7 StS 2/20, (2021) Urteil.

⁸⁰ 8 St 9/18 [2022] Oberlandesgericht München 8 St 9/18, (2022) Urteil.

⁸¹ (6) 2 StE 6/20-3 (2/20) [2021] Kammergericht Berlin (6) 2 StE 6/20-3 (2/20), (2021) Urteil.

K ⁸²	Higher Regional Court of Düsseldorf	Special dangerousness and cruelty of ISIS, long duration of defendant's membership participation, and defendant's return to IS-controlled territory
L ⁸³	Higher Regional Court of Düsseldorf	Defendant's conscious decision to emigrate to IS-controlled territory, defendant attempted to convince other individuals to join ISIS, defendant continuously lived in IS-controlled territory, defendant's active involvement in the enslavement (and death) of Yazidi slaves, and special dangerousness and cruelty of ISIS
M ⁸⁴	Higher Regional Court of Düsseldorf	Special dangerousness and cruelty of ISIS, offence period was of longer duration, prominent position of the defendant's husband in ISIS, and high degree of danger for the defendant's children
N ⁸⁵	Higher Regional Court of Düsseldorf	Special dangerousness and cruelty of ISIS, defendant's engagement in <i>Katiba Nusaiba</i> (women-only unit of the IS morality police), and relatively long duration of defendant's membership

In terms of the imposed punishment, the two States diverge, given the reliance on the respective sentencing guidelines in the two States (see *Tables 9 and 10*). While U.S. law enforcement authorities use the prescribed Sentencing Guidelines Table to calculate the applicable offence level, German law enforcement authorities resort to the codified guidelines in the criminal provisions themselves. The sentences imposed by the

⁸² 5 StS 2/19 [2019] Oberlandesgericht Düsseldorf 5 StS 2/19, (2019) Urteil.

⁸³ 7 StS 3/19 [2021] Oberlandesgericht Düsseldorf 7 StS 3/19, (2021) Urteil.

⁸⁴ 7 StS 3/20 [2021] Oberlandesgericht Düsseldorf 7 StS 3/20, (2021) Urteil.

⁸⁵ 7 StS 4/19 [2020] Oberlandesgericht Düsseldorf 7 StS 4/19, (2020) Urteil.

U.S. District Courts are significantly lengthier than those imposed by the German Higher Regional Courts, which may be due to differing approaches to punishment. A lengthier prison sentence serves to deter by preventing the offender and other potential offenders from committing the offence.⁸⁶ Conversely, a shorter prison sentence appears to opt for rehabilitation and reintegration, thereby reforming and providing the offender with a second chance at life outside incarceration.⁸⁷ In both States, there is a direct correlation between the gravity of the offence and the punishment imposed, with more severe offences receiving lengthier sentences. Moreover, both States consider the following factors during the sentencing process:

- (1) the personal and criminal history of the defendant;
- (2) the applicable mitigating and aggravating factors; and
- (3) the nature and circumstances of the committed offence(s).

Lastly, in both States, the courts summate the foregoing factors to compute an adequate and appropriate prison sentence. As evidenced by the case law, in both States, the courts benefit from a large margin of discretion, thereby enabling deviations from the official guidelines, which are often resorted to during the sentencing process. Despite the sentencing procedures varying between the two States, there are similarities in the calculation of the appropriate prison sentence and the margin of discretion enjoyed by the respective courts.

Table 9: American IS-Affiliated Women (Sentencing)

Case	U.S. District Court	Imprisonment	Supervised Release
A ⁸⁸	Eastern District of Virginia	20 years	25 years

⁸⁶ Vesna Stefanovska. "Surveillance and control over incapacitation, deterrence and rehabilitation effects of the punishment." *Balkan Social Science Review* 11, no. 11 (2018): 24.

⁸⁷ Stefanovska.

⁸⁸ *United States of America v Fluke-Ekren* [2019] U.S. District Court Eastern District of Virginia 1:22-cr-00092, (2022) Document 66 Judgement.

B ⁸⁹	Middle District of Florida	5 years and 8 months	15 years
C ⁹⁰	Eastern District of Virginia	4 years and 6 months	3 years
D ⁹¹	Eastern District of Kentucky	7 years and 6 months	3 years
E ⁹²	Northern District of Indiana	6 years and 5 months	3 years
F ⁹³	District of Colorado	4 years	3 years
G ⁹⁴	Eastern District of Wisconsin	7 years and 5 months	3 years

Table 10: German IS-Affiliated Women (Sentencing)

Case	German Higher Regional Court	Imprisonment
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⁸⁹ *United States of America v Sheppard* [2018] U.S. District Court Middle District of Florida 2:18-cr-00019, (2020) Document 74 Judgement.

⁹⁰ *United States of America v Coffman* [2014] U.S. District Court Eastern District of Virginia 3:15-cr-00016, (2015) Document 45 Judgement.

⁹¹ *United States of America v Castelli* [2017] U.S. District Court Eastern District of Kentucky 2:17-cr-00049, (2020) Document 37 Amended Judgement.

⁹² *United States of America v Elhassani* [2019] U.S. District Court Northern District of Indiana 2:19-cr-00159, (2020) Document 41 Amended Judgement.

⁹³ *United States of America v Conley* [2014] U.S. District Court District of Colorado 1:14-cr-00163, (2015) Document 79 Judgement.

⁹⁴ *United States of America v Dais* [2018] U.S. District Court Eastern District of Wisconsin 2:18-cr-00143, (2020) Document 49 Judgement.

H ⁹⁵	Higher Regional Court of Düsseldorf	4 years and 3 months
I ⁹⁶	Higher Regional Court of Munich	10 years
J ⁹⁷	Higher Regional Court of Berlin	2 years and 10 months
K ⁹⁸	Higher Regional Court of Düsseldorf	2 years and 9 months
L ⁹⁹	Higher Regional Court of Düsseldorf	6 years and 6 months
M ¹⁰⁰	Higher Regional Court of Düsseldorf	4 years
N ¹⁰¹	Higher Regional Court of Düsseldorf	5 years and 3 months

Table 11 provides a reiterated overview of the comparative analysis as a means to facilitate an understanding of the analysis in a more comprehensive manner.

Table 11: Overview of the Comparative Analysis

Factor	United States of America	Germany
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⁹⁵ 7 StS 2/20 [2021] Oberlandesgericht Düsseldorf 7 StS 2/20, (2021) Urteil.

⁹⁶ 8 St 9/18 [2022] Oberlandesgericht München 8 St 9/18, (2022) Urteil.

⁹⁷ (6) 2 StE 6/20-3 (2/20) [2021] Kammergericht Berlin (6) 2 StE 6/20-3 (2/20), (2021) Urteil.

⁹⁸ 5 StS 2/19 [2019] Oberlandesgericht Düsseldorf 5 StS 2/19, (2019) Urteil.

⁹⁹ 7 StS 3/19 [2021] Oberlandesgericht Düsseldorf 7 StS 3/19, (2021) Urteil.

¹⁰⁰ 7 StS 3/20 [2021] Oberlandesgericht Düsseldorf 7 StS 3/20, (2021) Urteil.

¹⁰¹ 7 StS 4/19 [2020] Oberlandesgericht Düsseldorf 7 StS 4/19, (2020) Urteil.

Investigative Practises	Use of informants and sting operations	No use of informants or sting operations but a reliance on information gathered by foreign intelligence services
Time(s) of Prosecution	Preceding and succeeding a departure to IS-controlled territory	Succeeding a departure to IS-controlled territory
Type(s) of Evidence	Testimony by defendants and witnesses, communications via social media platforms, miscellaneous sources (photographs, travel documents, etc.), and informants and sting operations	Testimony by defendants and witnesses, communications via social media platforms, miscellaneous sources (photographs, travel documents, etc.), and expert testimony (experts on radicalisation and extremism)
Type(s) of Offence(s)	Material support statutes	Membership in a foreign terrorist organisation and international crimes provisions
Mitigating Factor(s)	Lack of a criminal record, the defendant's expression of remorse, the conditions of detention, a lack of previous radicalisation, the presence of domestic violence, the defendant's mental health issues, the defendant's age, and character reference letters	Lack of a criminal record, the defendant's expression of remorse, the conditions of detention, a lack of previous radicalisation, the presence of domestic violence, the defendant's abolishment of IS ideology and affiliation, the defendant's separation from her children, and the time at which the commission of the offence(s) occurred

<p>Aggravating Factor(s)</p>	<p>The defendant's active participation and instrumental role in the commission of the offence(s), the defendant's awareness of the terrorist organisation's aims and methods, and the gravity of the offence</p>	<p>The defendant's active participation and instrumental role in the commission of the offence(s), the defendant's awareness of the terrorist organisation's aims and methods, the gravity of the offence(s), the special dangerousness and cruelty of ISIS, the duration of ISIS membership, the defendant's treatment of Yazidi slaves, and the high degree of danger posed to the defendant's children as a result of emigration to IS-controlled territory</p>
<p>Sentencing</p>	<p>Utilisation of the Sentencing Guidelines Table (however, courts enjoy a large margin of discretion)</p>	<p>Utilisation of the codified guidelines contained within the criminal provisions themselves (however, the courts enjoy a large margin of discretion)</p>
<p>Prosecutorial Strategy</p>	<p>Proactive and Reactive</p>	<p>Reactive</p>

Conclusion

Although there are crucial similarities between the prosecutorial strategies employed by the U.S. and Germany in prosecuting IS-affiliated women, the prosecutorial approaches differ in several respects. The examined factors work in a chain reaction in that the time at which initiation of criminal proceedings ensues influences the types of evidence

admitted during the criminal proceedings. This guides the applicability of the mitigating and aggravating factors that ultimately dictate the imposition of punishment. The materialisation of these factors premises primarily on the chosen prosecutorial strategy. By relying on material support statutes, U.S. law enforcement authorities can instigate criminal proceedings against American IS-affiliated women preceding and succeeding a departure to IS-controlled territory, thereby enabling a reactive and proactive approach to prosecution. Due to a dependence on membership in a foreign terrorist organisation and international crimes provisions, there appears to be a necessity for German law enforcement authorities to act reactively, given the requirements of emigration and repatriation for criminal liability to arise.

A juxtaposition of the prosecutorial strategies employed by the U.S. and Germany in the prosecution of IS-affiliated women on terrorism-related charges highlights contrasting, albeit at times similar, approaches to prosecution primarily as a result of discordance concerning the time at which initiation of criminal proceedings ensues. Nevertheless, the prosecutorial decisions by the States do not operate in a vacuum and are, instead, influenced by several amalgamating factors, including political choices on repatriation. While the U.S. and Germany have successfully convicted IS-affiliated women on terrorism-related charges, ambiguities concerning the extent to which women's engagements fall within the existing criminal provisions remain. The complex issue of prosecuting (repatriated) female foreign terrorist fighters would benefit from further comparative research in the areas of substantive and procedural criminal law.

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United States of America v Sheppard [2018] U.S. District Court Middle District of

Florida 2:18-cr-00019, (2019) Document 68 Plea Agreement.

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Florida 2:18-cr-00019, (2020) Document 74 Judgement.