



Swiss Criminal Law

Swiss Criminal Procedure

Prof. Dr. iur. Marc Thommen

Dr. iur. Nadine Zurkinden



Criminal Law

Current positions

- Senior Assistant for Substantive and Procedural Criminal Law (since June 2018)
- lawyer for the road traffic department of the Basel Cantonal Police.

Co-author of Swiss Criminal Law (with Anna Petrig, 2015).



Dr. iur. Nadine Zurkinden

Criminal Law

Legal education and research experience

- Law studies in Bern, Switzerland and Leuven, Belgium (2001-2007)
- Doctorate in Zurich (2013)
- Researcher, Max Planck Institute for Foreign and International Criminal Law, Germany (2011-2015)
- Researcher and lecturer in Basel, Switzerland (2015-2018)



Dr. iur. Nadine Zurkinden



Criminal Procedure

- Law studies in Basel/Zurich, Switzerland (1995-2000)
- Doctorate and habilitation in Basel and Lucerne (2004 and 2013)
- LL.M University of Cambridge, Trinity Hall College (2005)
- Chair for Criminal Law and Criminal Procedure



Prof. Dr. iur. Marc Thommen

Invitation

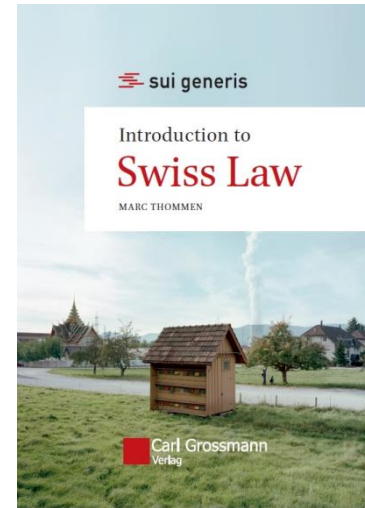
Tuesday, 13 November 2018

18.00h

Photobastei

Sihlquai 125, 8005 Zürich

RSVP



Rowing Match UZH – ETH

Saturday, 3 November 2018

15.00h Alumni

15.05h Professors

15.10h Students (female)

15.15h Students (male)





Introduction to Swiss Criminal Law

1. General Information
2. Substantive Criminal Law
3. Criminal Procedure



Introduction to Swiss Criminal Law

1. General Information
2. Substantive Criminal Law
3. Criminal Procedure



Translated Legislation

Federal Constitution of the Swiss Confederation

<https://www.admin.ch/opc/en/classified-compilation/19995395/index.html>

Swiss Criminal Code

<https://www.admin.ch/opc/en/classified-compilation/19370083/index.html>

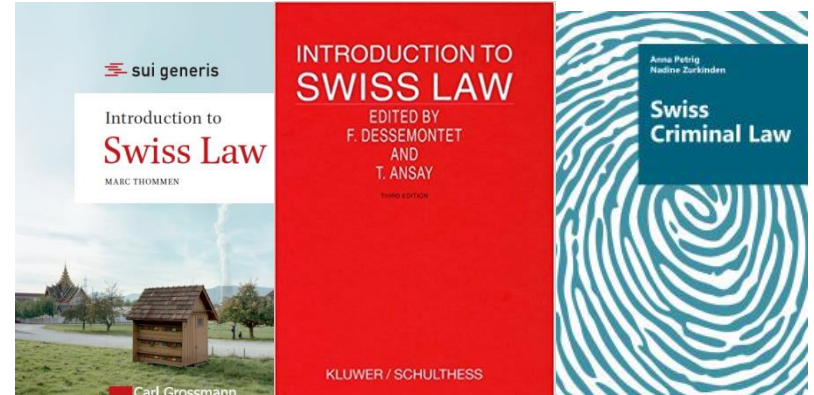
Swiss Criminal Procedure Code

<https://www.admin.ch/opc/en/classified-compilation/20052319/index.html>

See also www.rwi.uzh.ch/thommen for further information.

Literature in English

- Marc Thommen, Introduction to Swiss Law, Zurich 2018 >
<http://www.introductiontoswisslaw.ch/>
- Anna Petrig/Nadine Zurkinden, Swiss Criminal Law, Zurich 2015
- François Dessemondet/Tugrul Ansay (eds.), Introduction to Swiss Law, 3rd ed., The Hague 2004
- Max Planck Information System for Comparative Criminal Law: Infocrim.org



Information System for Comparative Criminal Law

Introduction to the Legal System and Foundations of Criminal Law

The Information System contains complete and partial country reports covering **25 legal systems**. All reports share a **common structure** to simplify the comparison. The project is designed as a **work in progress**, therefore the reports are supplemented on a regular basis.

1. *Select the countries you want to compare.*

... (e.g. China, France and Turkey)

COUNTRIES

2. *Select a topic. (optional)*

... (e.g. purposes of punishment, intent or self-defense)

TOPIC

You can search for keywords or select a topic from the > [table of contents](#).



Introduction to Swiss Criminal Law

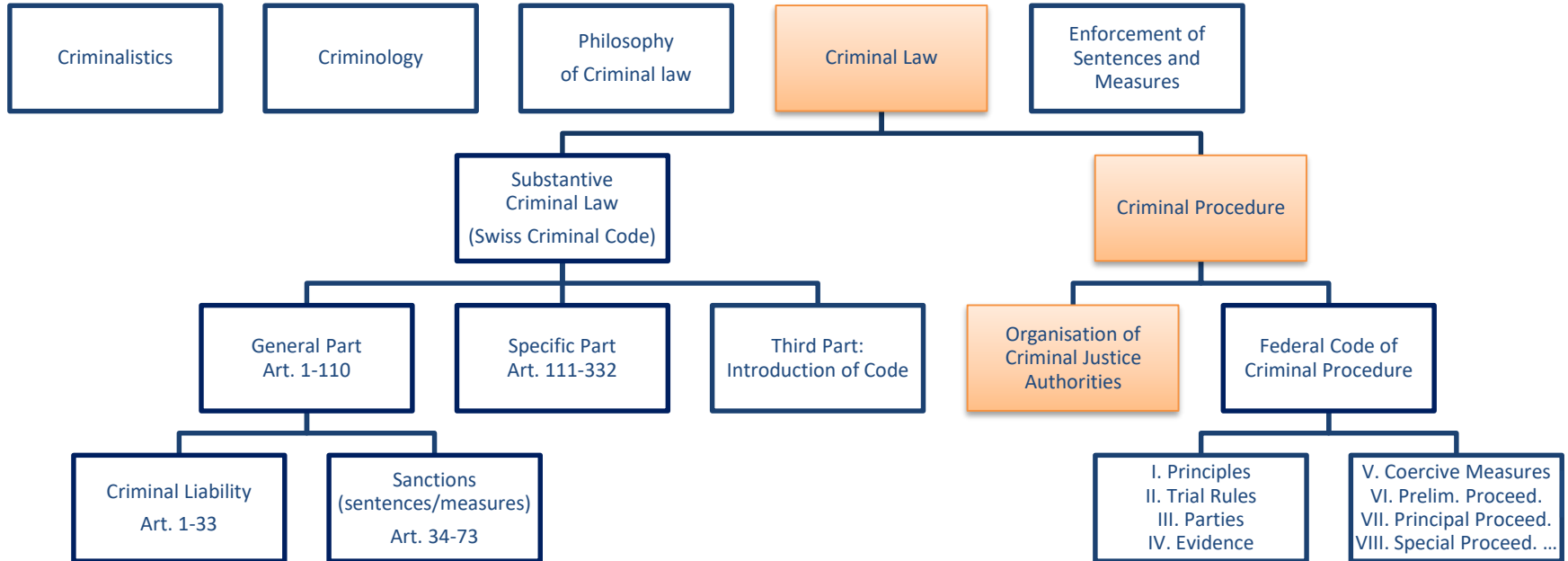
1. General Information
2. Substantive Criminal Law
3. Criminal Procedure



Criminal Procedure

Swiss Criminal Procedure Code of 5 October 2007

Swiss Criminal Law



Article 123 II – Constitution

The Cantons are responsible for the organisation of the courts, the administration of justice in criminal cases as well as for the execution of penalties and measures, unless the law provides otherwise.



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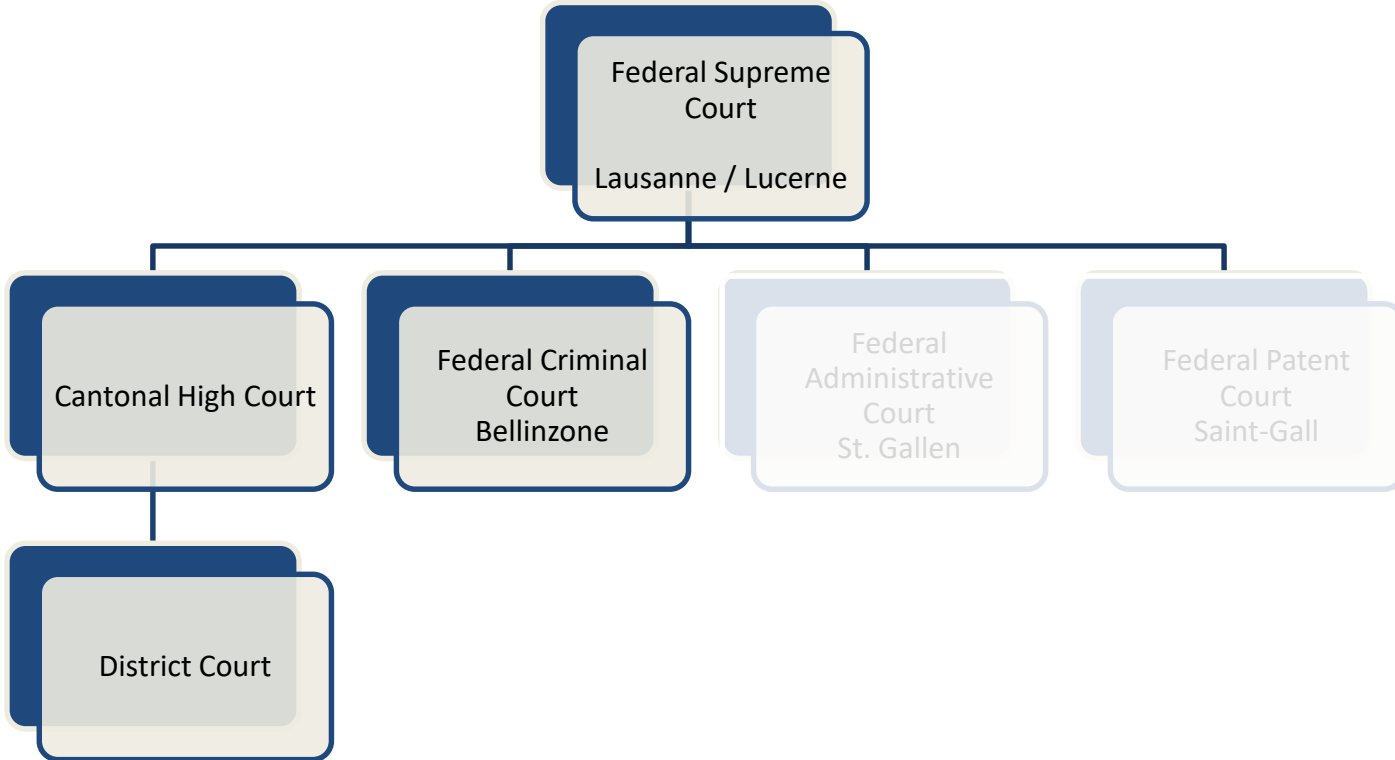
1. Organisation of Courts
2. Administration of Justice
3. Execution of Sanctions

1. Organisation of Criminal Justice Authorities

Cantonal Code on the
Organisation of Civil and
Criminal Justice
Authorities.



2. Administration of Criminal Justice

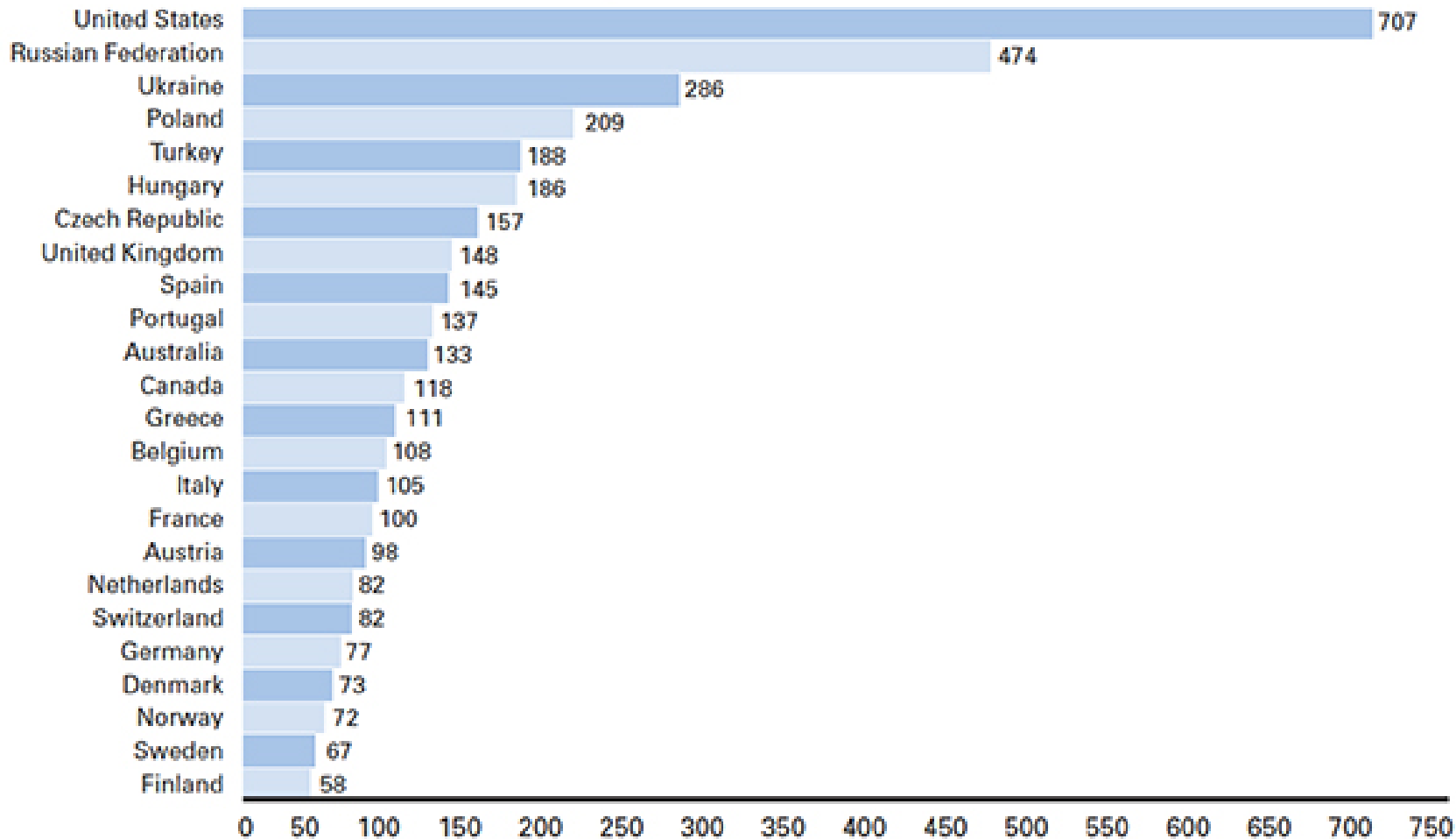


3. Execution of Sanctions

Cantons provide prisons and institutions for therapeutic and isolation measures.



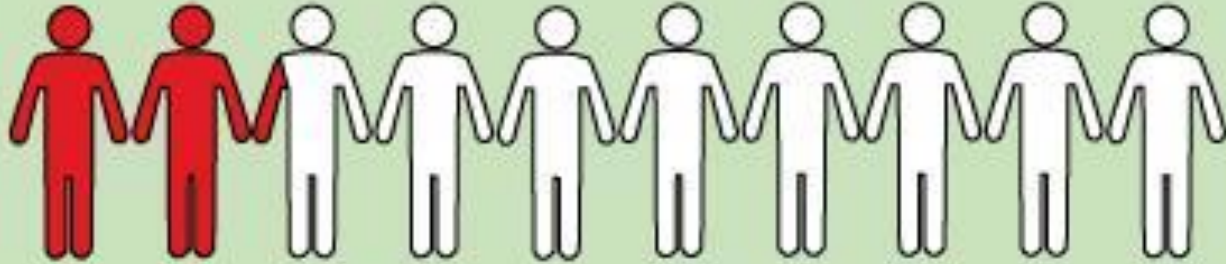
Incarceration rates per 100,000





Percentage of Foreigners in Swiss Population

22.1%

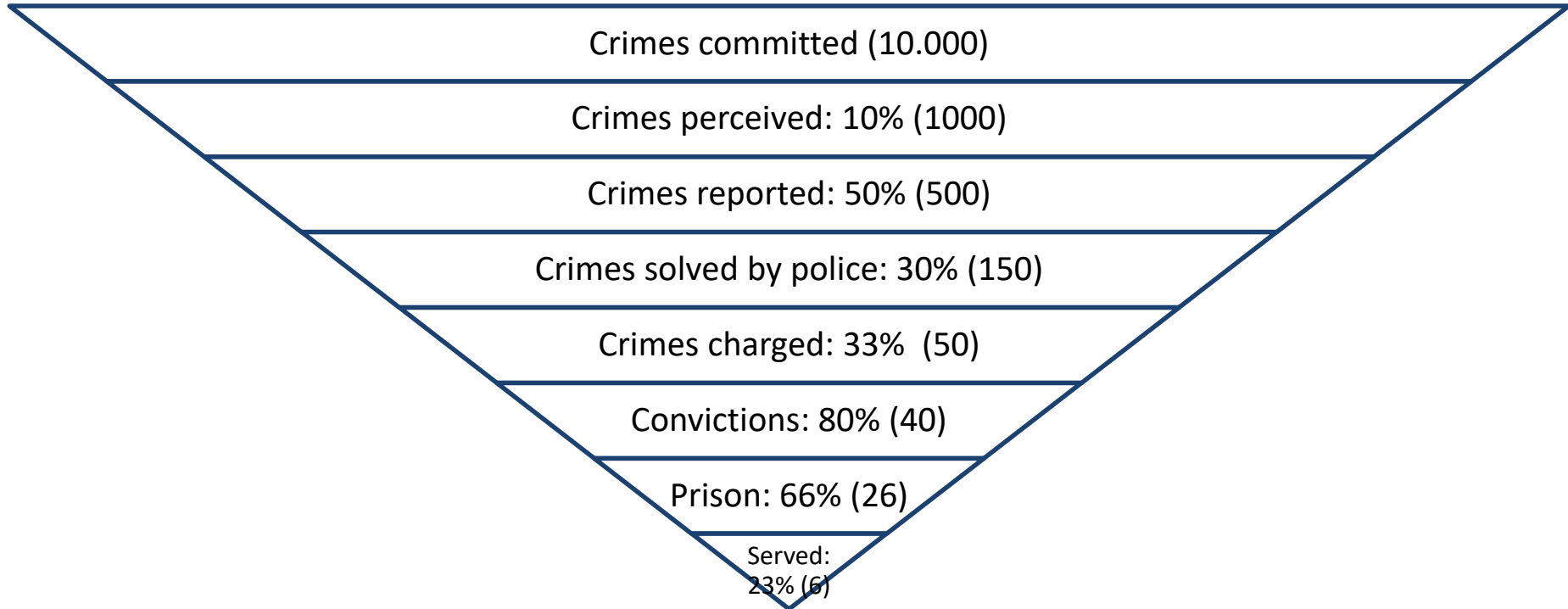


Percentage of Foreigners in Swiss Prison Population

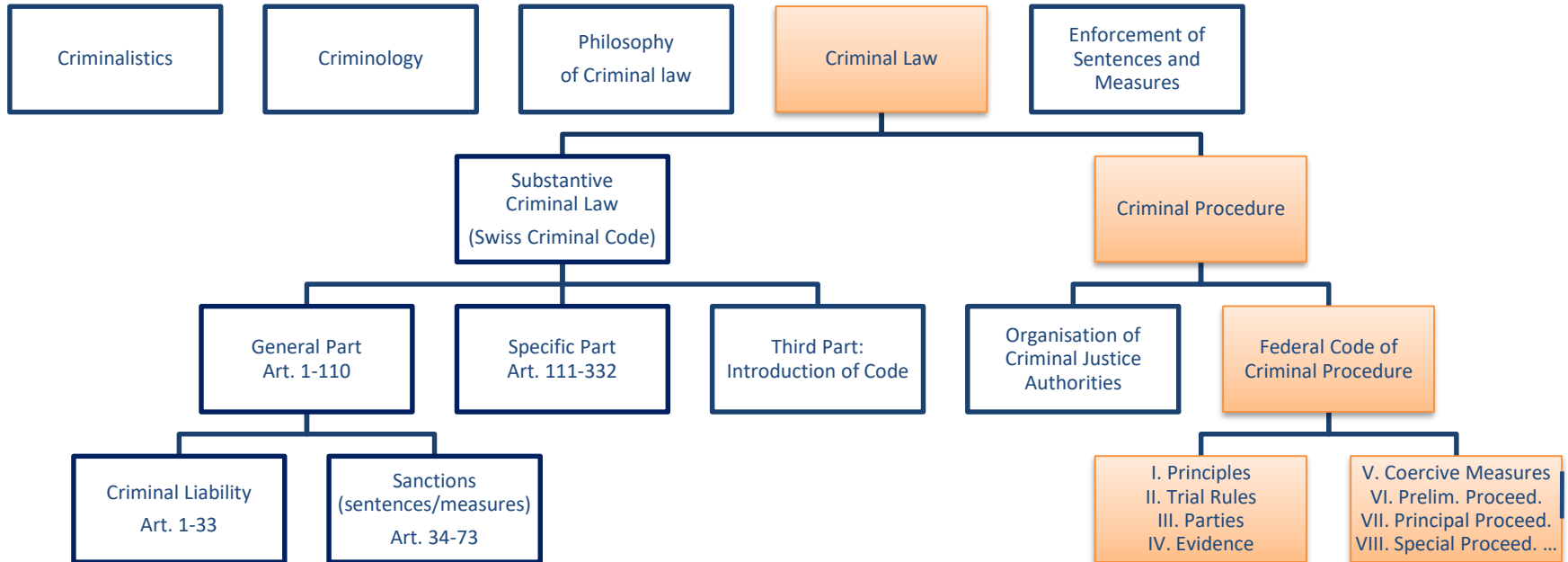
71.6%



«Sanction-Strainer»

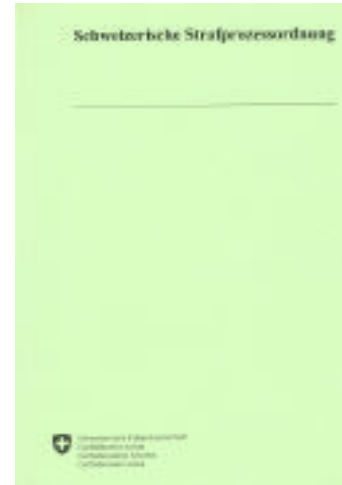


Swiss Criminal Law



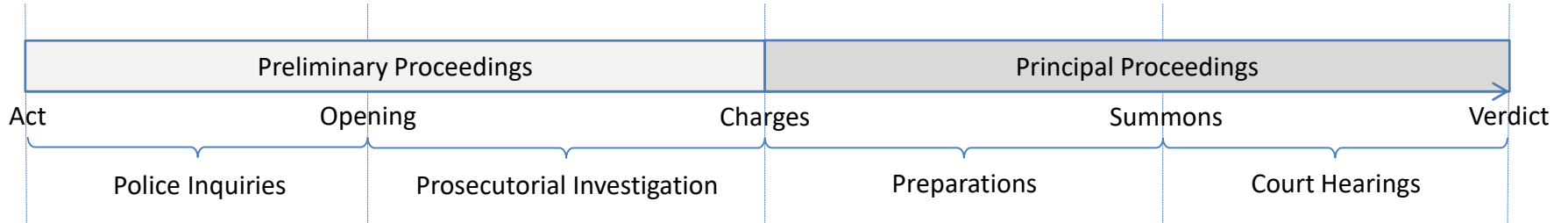
Swiss Criminal Procedure Code of 5 October 2007

- Title 1 Scope of Application and Principles
- Title 2 Criminal Justice Authorities
- Title 3 Parties
- Title 4 Evidence
- Title 5 Compulsory Measures
- Title 6 Preliminary Proceedings
- Title 7 Main Proceedings of First Instance
- Title 8 Special Procedures
- Title 9 Appellate Remedies
- Title 10 Procedural Costs
- Title 11 Legal Effect and Execution of Decisions

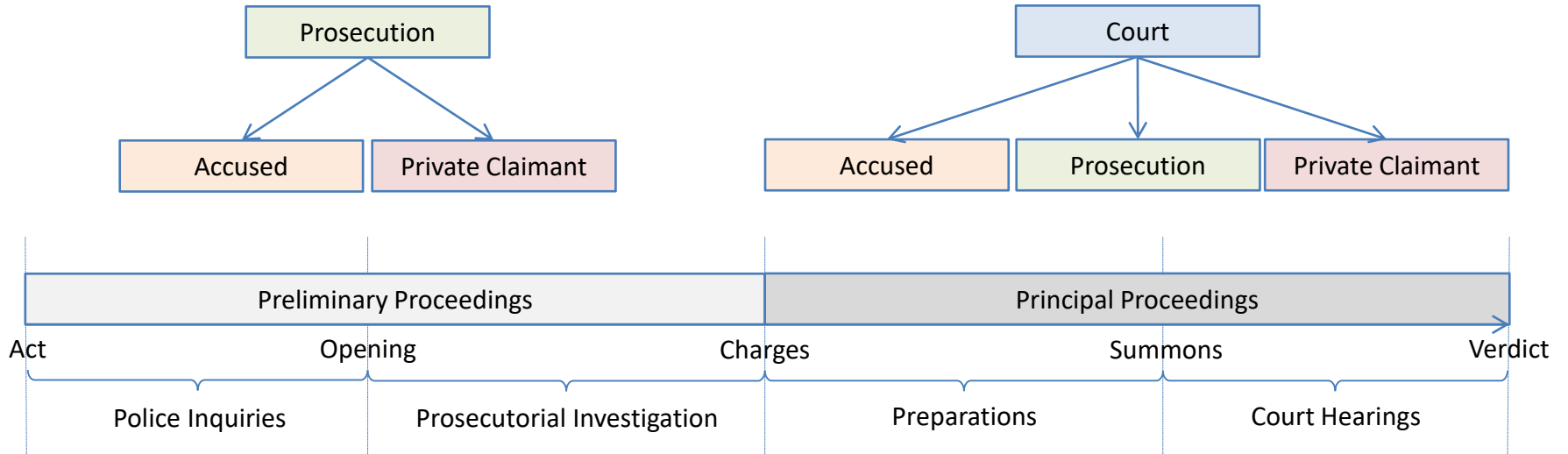




Criminal Proceedings



Parties



Police (Art. 306 ff.)

- Secure evidence
- Find suspects
- Examination hearings



The Public Prosecutor

- Formal head of the investigation (Art. 16)
- Duty to investigate the incriminating and exculpatory circumstances with equal care (Art. 6 II)
- Becomes party to the trial proceedings once the charges are brought before court (Art. 104 I c)



Umberto Pajarola, Prosecutor – organised crime division Zürich

The Accused

- the accused is a person suspected, accused of or charged with an offence (Art. 111)
- Party in the Criminal Proceedings (Art. 104 I)
- Nemo tenetur (Art. 113 I)

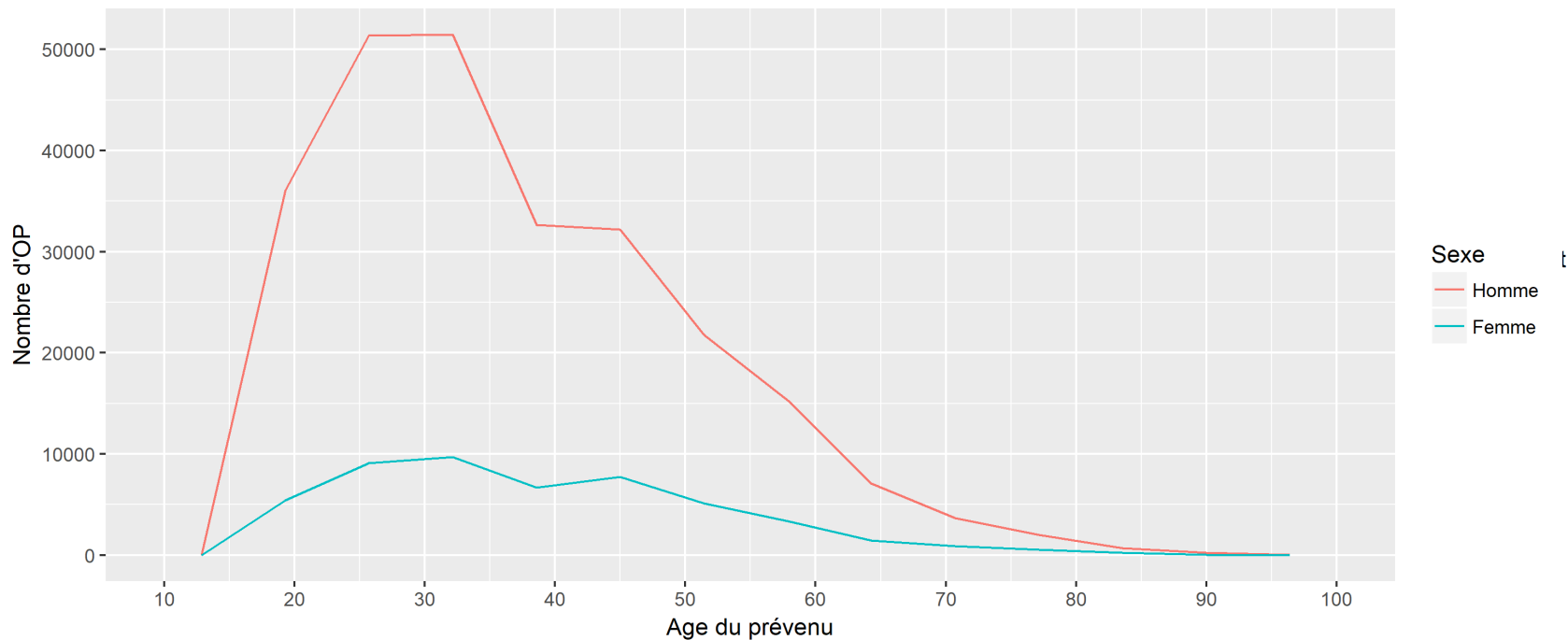


Carl Hirschmann



Penal order convictions by age and sex

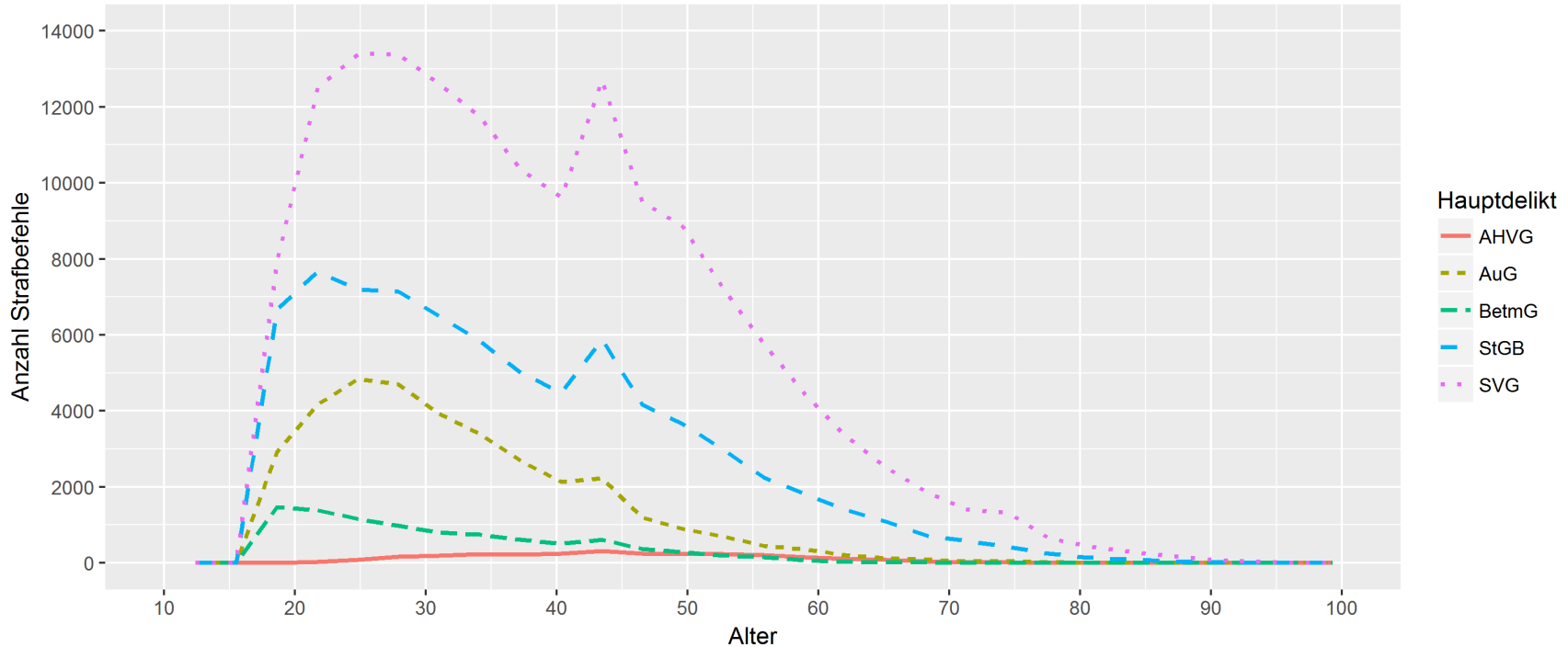
Dispersion des âges par sexe



Density of PO-Convictions by age and sex



Penal Order Convictions by age and federal laws





The Judge

- Head of the main Court hearings
- Ordering compulsory measures (detention on remand, secret surveillance, undercover agents...)



District Court Judge, Zürich
Simone Nabholz

The aggrieved person

An aggrieved person is a person whose rights have been directly violated by the criminal offence (Art. 115).

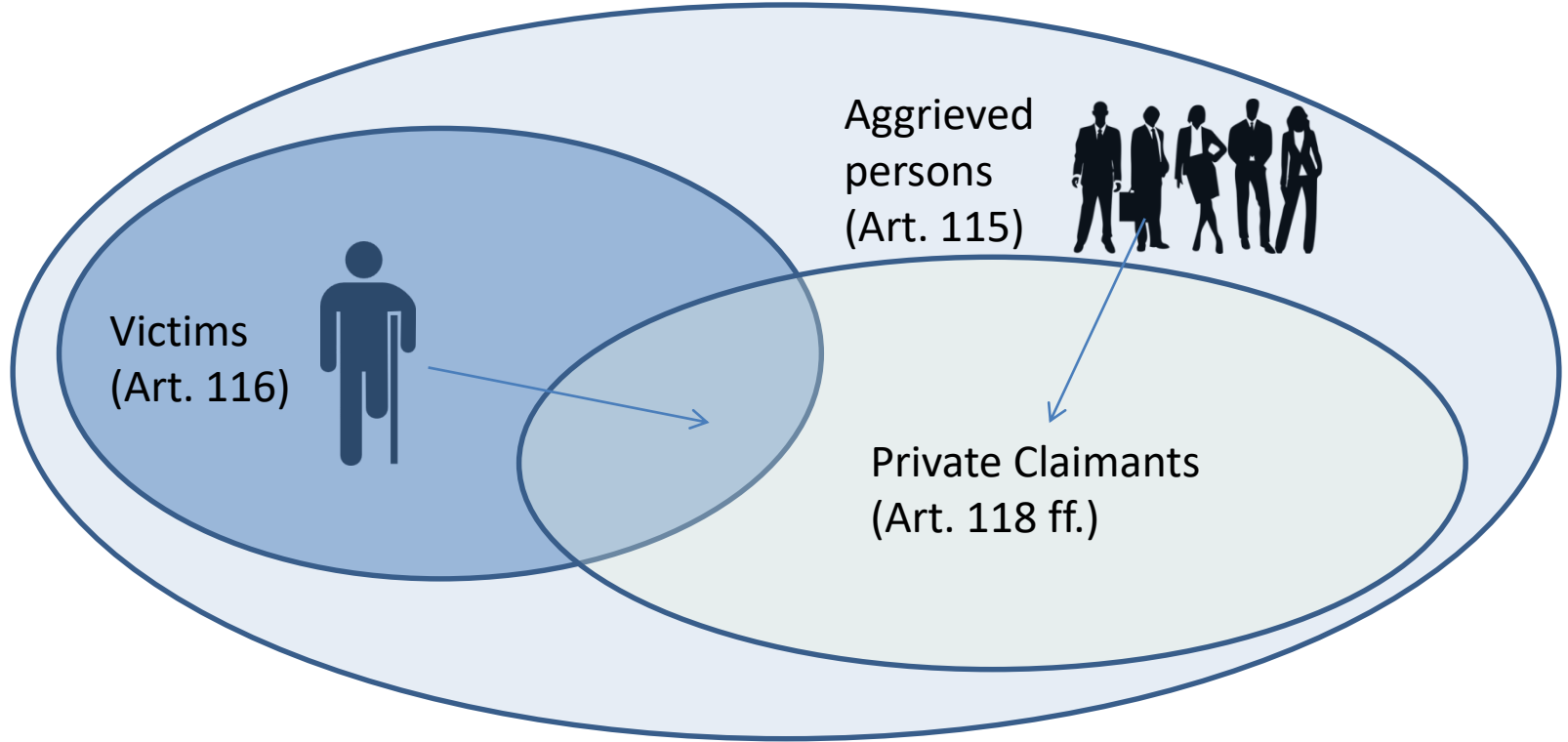




The victim

- Victim is a person who suffered physical, sexual or mental harm from an offence (Art. 116)
- Status: **Special** protection and rights under the Federal Act on Support to Victims of Crime (2007)
- Special rights that apply only to «victims» and not «aggrieved persons»







Private Claimants

- Either a victim or the aggrieved person can become private claimant
- “Opt-in” to obtain this status (118 CCP)
- Private Claimant is a party to the proceedings (Art 104)
- Assist to hearing of accused, see evidence, plead to charges, demand compensation

Lawyers

- The accused and the private claimant may appoint a *legal advisor* to safeguard their interests (Art. 127) at any time (Art. 158)
- Private claimant's lawyer represents the harmed individual's interests.
- Private claimant's lawyer can contest dropping of charges by prosecutor, or ask for a specific conviction, they cannot plead to the sanctions to be imposed



Niklaus Tamm, Attorney



Lawyers

- Legal advisor of the accused person: defence counsel (Art. 128)
- Defence counsel is either chosen by the accused (Art. 129) or appointed by the prosecutor !!! after the first hearing !!! (Art. 132)
- Mandatory appointment of defence counsel (Art. 130)



Tanja Knodel, defence counsel



Appeal Proceedings

Cantonal investigating authority

- Police
- Public Prosecutor

Court of first instance

- Zurich (City):
«Bezirksgericht»

First court of appeal

- Zurich (Canton):
«Obergericht»

Federal Supreme Court

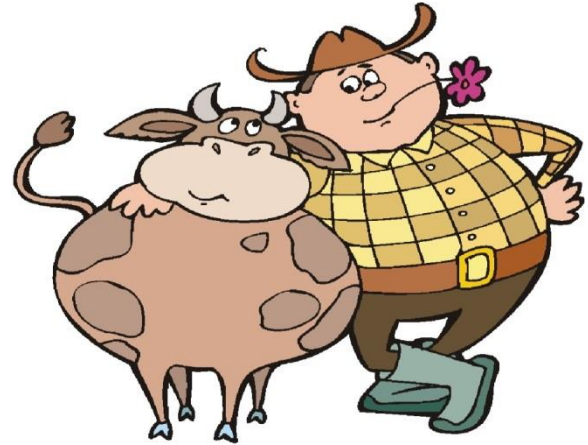
- «Bundesgericht»
Lausanne



Criminal Procedure

Cases

«Aiming at cows» (2014) – Facts



«Aiming at cows» (2014) - Facts

- Farmer drove his herd of cattle down from his alp
- As he did every year he passed in front of the house of pensioner X.
- The cows ate the grass, trampled on the flowers and sh... in X.'s garden.



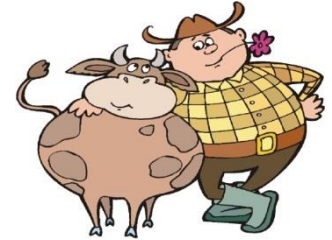
Lütisburg/SG

«Aiming at cows» (2014) - Facts

- X. (furious) got his revolver, «aimed at the cows» and threatened to shoot them...



Pensioner X.



Farmer



Aiming at cows – Proceedings 1/4

Police investigation:

- First examination hearing
- Search of premises
- Seizure of revolver



Cantonal Police of St. Gallen

Aiming at cows – Proceedings 2/4

«Untersuchungsamt Gossau»
(Public Prosecutor) issues a summary
penalty order (Art. 352 ff.):

- Threatening behaviour (Art. 180 CC); offence against Weapons Act
- Sentence: CHF 1000.- fine and suspended monetary penalty of 90 daily penalty units at CHF 360.--
- X. objected to penalty order



Untersuchungsamt Gossau

Summary Penalty Order (Art. 352 ff. CCP)



Summary Penalty Order (Art. 352 ff. CCP)



Prosecutor

355 I CPP1 If a rejection is filed,
the public prosecutor shall
gather the additional evidence

Accused

First Instance Court

Art. 355 CPP – Procedure for rejection

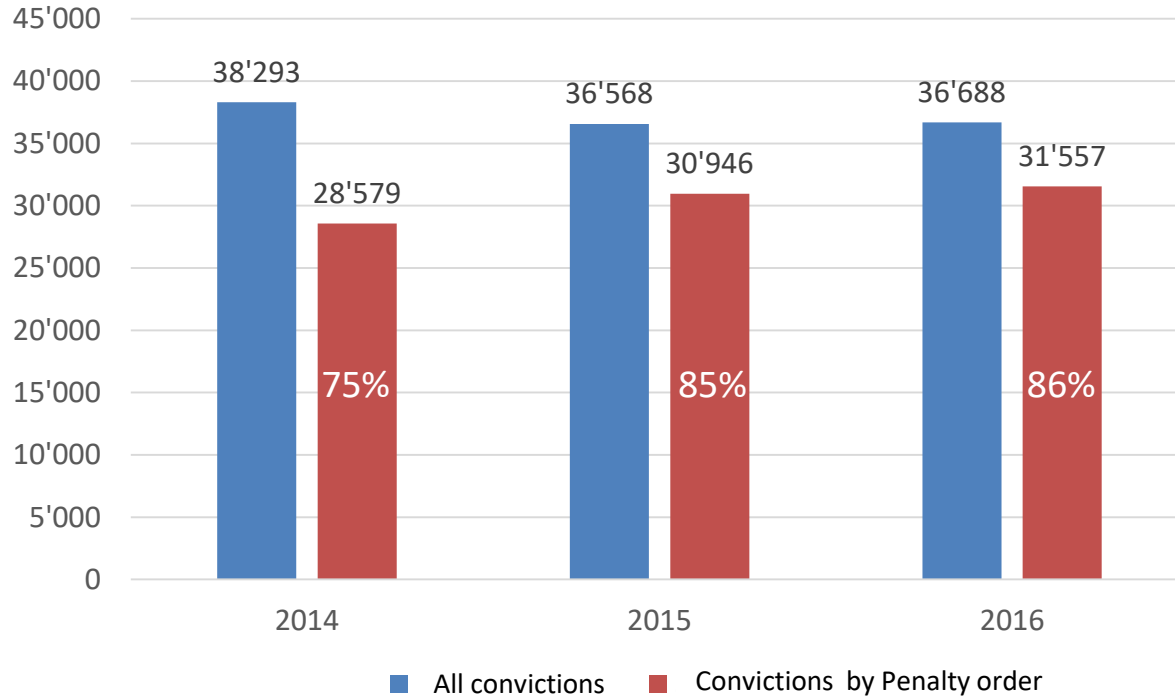
Prosecutor decides

- a. Uphold penalty order
- b. Abandon proceedings
- c. Issue new penalty order
- d. Bring charges at court

Summary Penalty Order (Art. 352 ff. CCP)



Convictions by Penalty order for felonies/misdemeanours of CC





Aiming at cows – Proceedings 3/4

- Public Hearing at Court of first instance.
- X. denies use of revolver
- Farmer declares himself a private claimant
- The defence counsel of X. requires acquittal in dubio pro reo
- Court confirms conviction and sentence



Kreisgericht Toggenburg



Aiming at cows – Proceedings 4/4

Court or appeal
(Kantonsgericht St. Gallen)



Federal Supreme Court,
«Bundesgericht»



European Court of Human
Rights (ECtHR)



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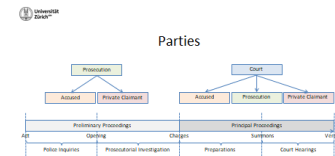
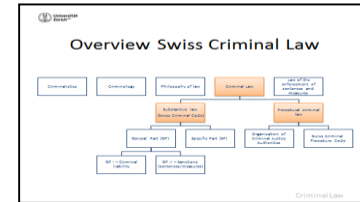
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Exam

Question / Statement	Correct	Wrong	
Answer A		X	+1
Answer B	X		+1
Answer C	X		-1
Answer D			0
Answer E	X		+1

} **2 Points**

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Swiss Criminal Law

Discussion