

# Swiss Criminal Law

Dr. iur. Nadine Zurkinden

# Criminal Law

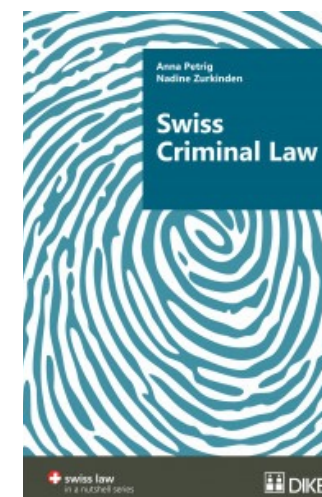
## Current positions

- 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



# 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>

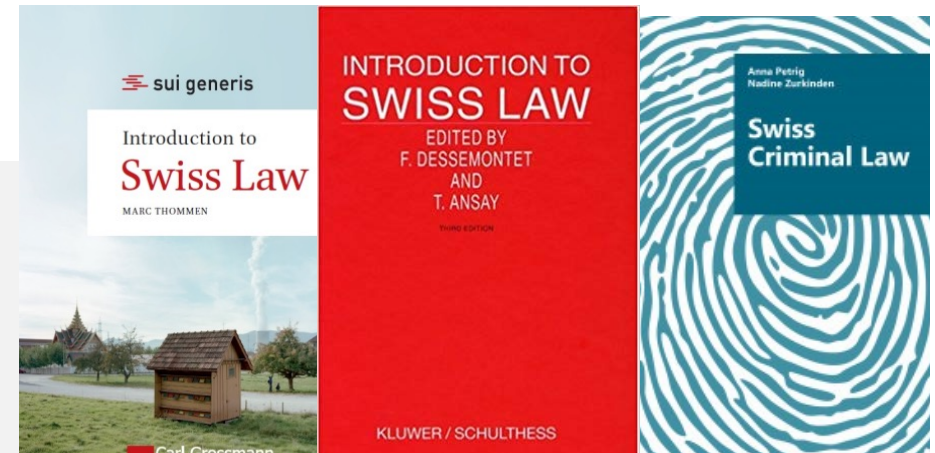
## **Swiss Criminal Procedure Code**

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

See also [www.rwi.uzh.ch/thommen](http://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 Dessemontet/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

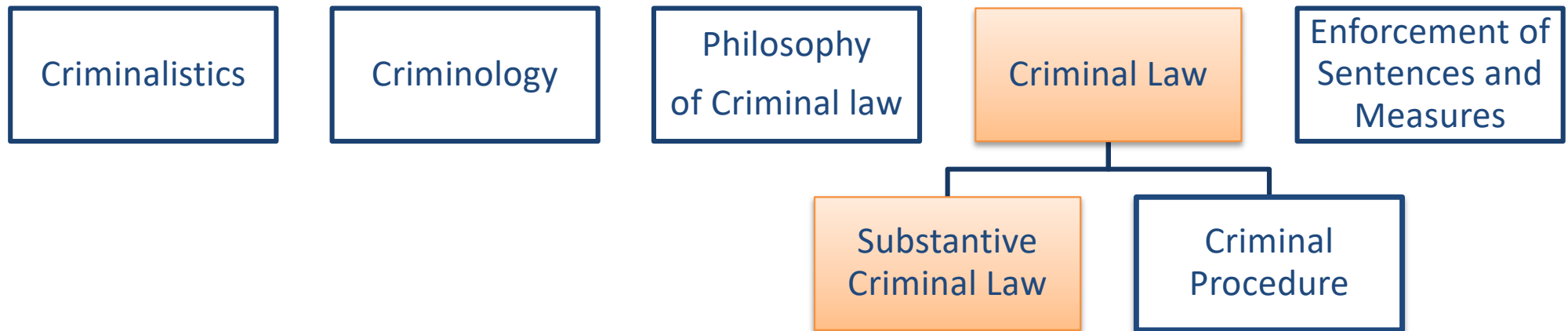
2. *Select a topic. (optional)*

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

TOPIC

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

# Swiss Criminal Law



## Case Examples 1/2

- X hikes in the nudes in the beautiful canton appenzell.
- Swiss politician buys one gram of cocaine from a busker in the streets of Bern and stashes it in the parliament building overnight.
- 16 year old climate activist daubed a bank building to protest against the bank's investments in fossil fuels.
- Farmer destroys a stork's nest in spring.



<http://www.parliament.ch>



SRF



Photo by [Jeremy Wermeille](#) on [Unsplash](#)

## Case Examples 2/2

- Swiss fighter jet pilot causes crash by he failing to respect the rules for minimum flight altitudes for combat and training exercises.
- X causes car crash because she diregards the right of way. A child is hurt.
- «Monster of Rapperswil» abuses and kills child. He also kills mother, brother and brother's girlfriend. He suffers from mental disorders.



[Vasily Koloda](#) on [Unsplash](#)

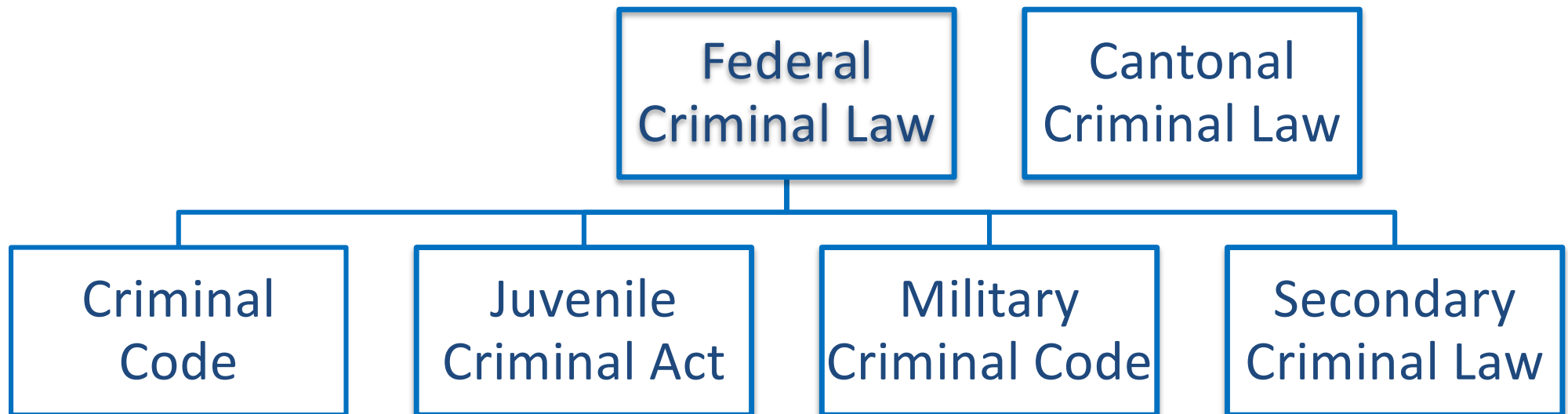


[Gareth Harrison](#), [Unsplash](#)



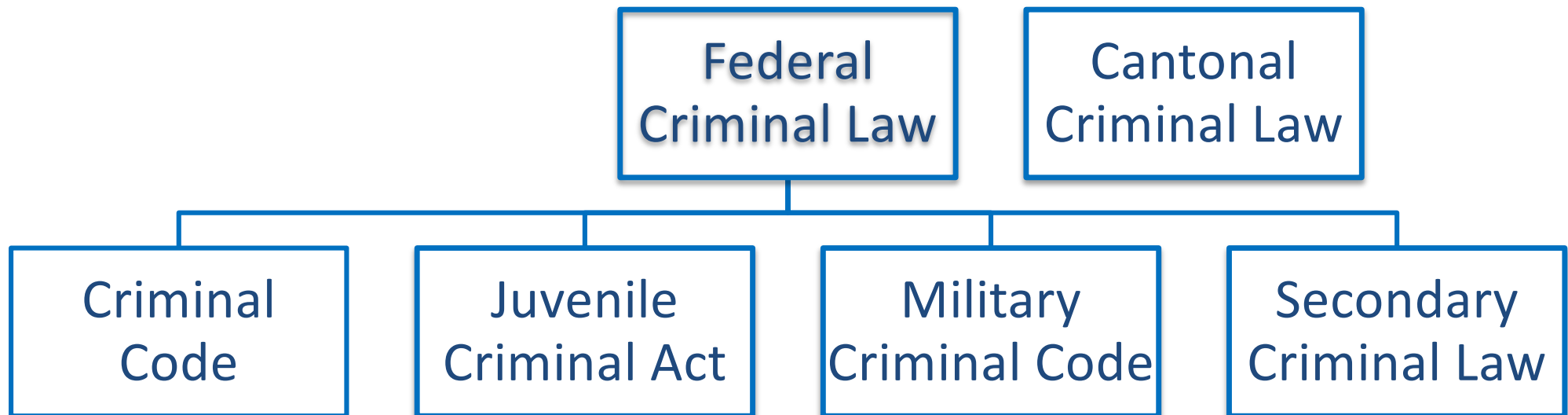
[Marloes Hilckmann](#), [Unsplash](#)

# Swiss Substantive Criminal Law





# Swiss Substantive Criminal Law





Federal  
Criminal Law

Canto  
Crimina



Crim  
Code

Mobile  
Criminal Act

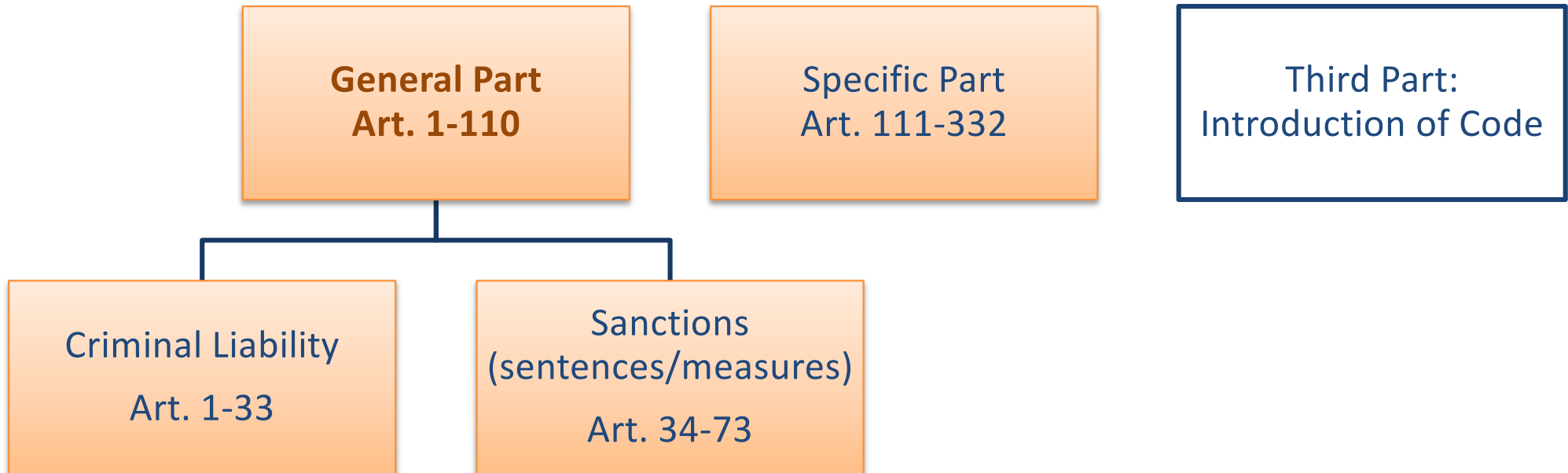
Military  
Criminal Code

Secondary  
Criminal Law



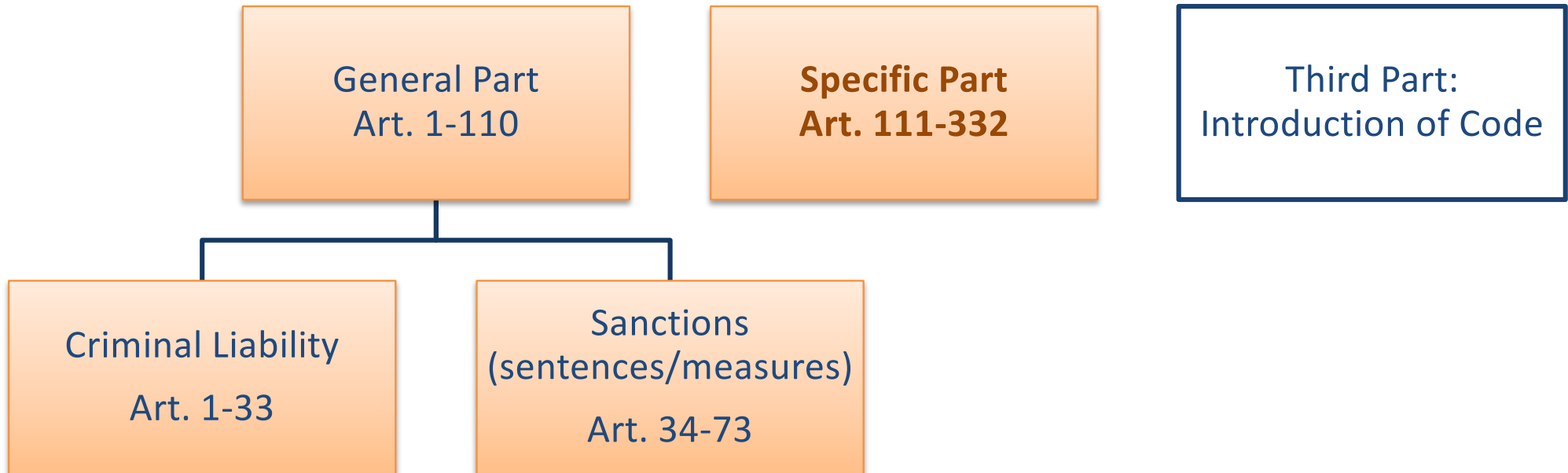


# Swiss Criminal Code





# Swiss Criminal Code



# How do the different parts work together?

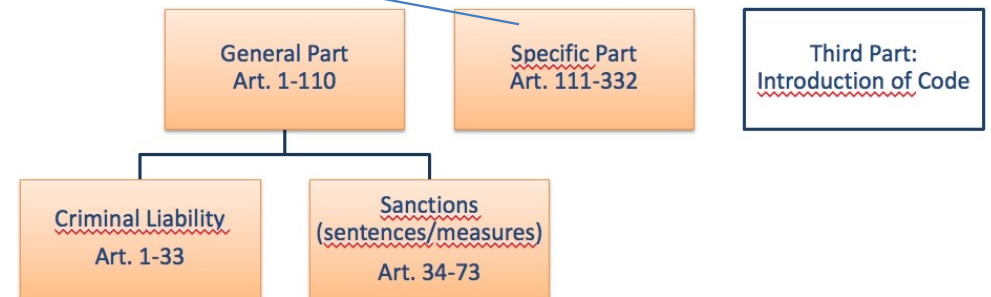
Article 111 SCC

**„Any person who kills a person intentionally...**

is liable to a custodial sentence of not less than five years”



## Swiss Criminal Code



# Specific Criminal Acts

Life and Limb (Art. 111 ff. )  
 Property (Art. 137 ff.)  
 Personal Honour (Art. 173 ff.)  
 Liberty (Art. 180 ff.)  
 Sexual Integrity (Art. 187 ff.)  
 Family (Art. 213 ff.)  
 Public (Art. 221 ff.)  
 Counterfeiting of Money (Art. 240 ff.)  
 Forgery (Art. 251 ff.)  
 Public Order (Art. 258 ff.)  
 Genocide, Crimes against Humanity, War Crimes (Art. 264 ff.)  
 State and National Security (Art. 265 ff.)  
 Will of the People (Art. 279 ff.)  
 Official Powers (Art. 285 ff.)  
 Foreign Relations (Art. 296 ff.)  
 Administration of Justice (Art. 303 ff.)  
 Offences against Official or Professional Duty (Art. 312 ff.)  
 Bribery (Art. 322ter ff.)

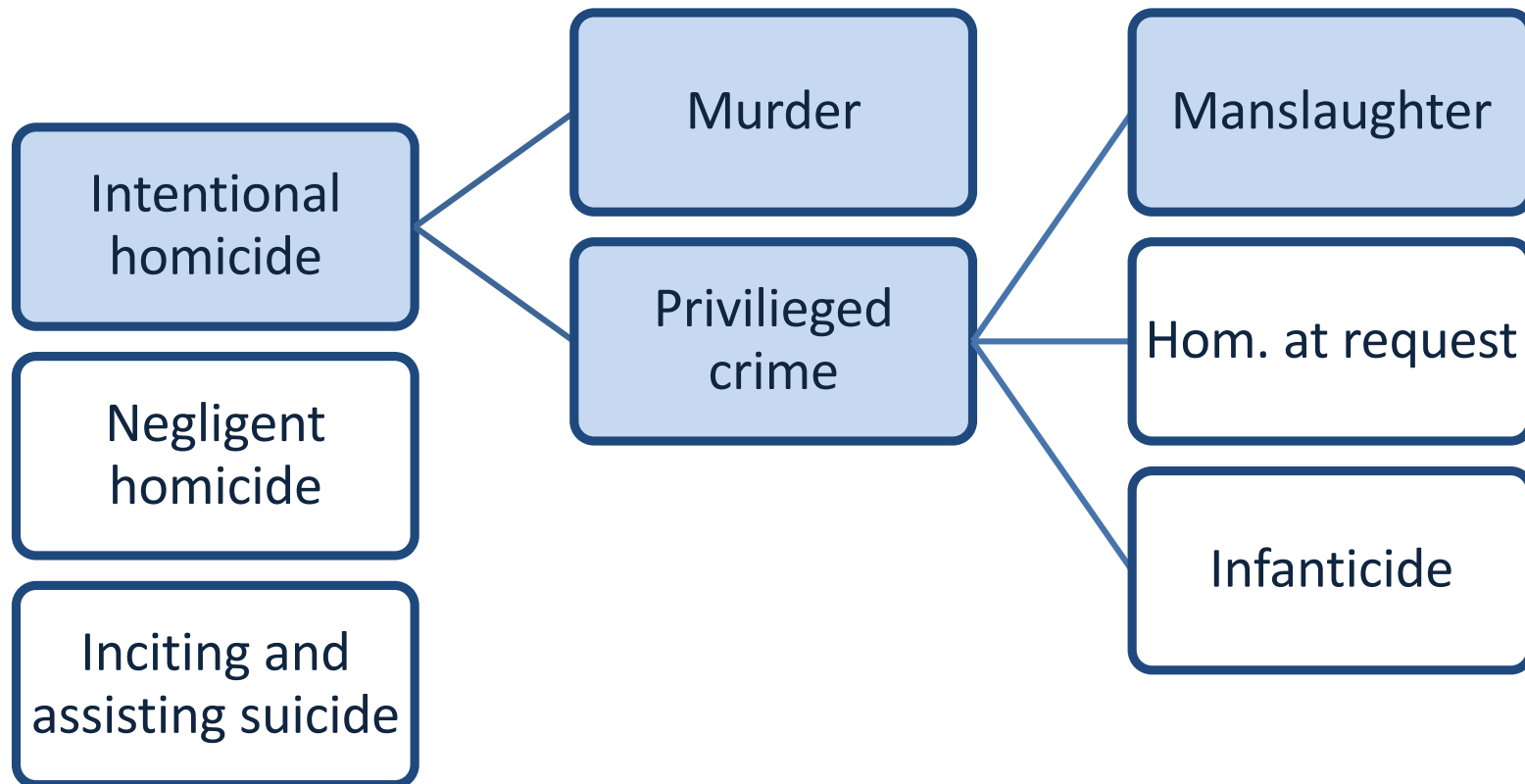
Title One: Offences against Life and Limb	
1. Homicide.	
Intentional homicide	Art. 111
Murder	Art. 112
Manslaughter	Art. 113
Homicide at the request of the victim	Art. 114
Inciting and assisting suicide	Art. 115
Infanticide	Art. 116
Homicide through negligence	Art. 117
2. Abortion.	
Illegal abortion	Art. 118
Legal abortion	Art. 119
Contraventions by physicians	Art. 120
<i>Repealed</i>	Art. 121
3. Assault.	
Serious assault	Art. 122
Common assault	Art. 123
Female genital mutilation	Art. 124
Assault through negligence	Art. 125
Acts of aggression	Art. 126
4. Endangering the life or health of another.	
Abandonment	Art. 127
Failure to offer aid in an emergency	Art. 128
False alarm	Art. 128bis
Endangering life	Art. 129
<i>Repealed</i>	Art. 130-132
Brawling	Art. 133
Attack	Art. 134
Representations of acts of violence	Art. 135
Administering substances capable of causing injury to children	Art. 136

## Article 111 Intentional homicide

Any person who kills a person intentionally, but **without fulfilling the special requirements of the following articles**, is liable to a custodial sentence of not less than five years.



## E.g. types of homicide





## Article 112 Murder

Where the offender acts in a **particularly unscrupulous manner, in which the motive, the objective or the method of commission is particularly depraved**, the penalty is a custodial sentence for life or a custodial sentence of not less than ten years.



## Article 113 Manslaughter

Where the offender acts in a **state of extreme emotion that is excusable in the circumstances**, or in a **state of profound psychological stress**, the penalty is a custodial sentence from one to ten years.



## Domestic Tyrant (BGE 122 IV 1)

Y constantly abused his wife X. In January 1993, he told their daughter that her mother was going to die during the course of that year. On 15 March 1993, Y showed his wife a revolver he had bought in order to kill her. He then put it under his pillow and went to sleep. At one o'clock in the morning, X took the revolver and shot Y dead while he was sleeping.



# How do the different parts work together?

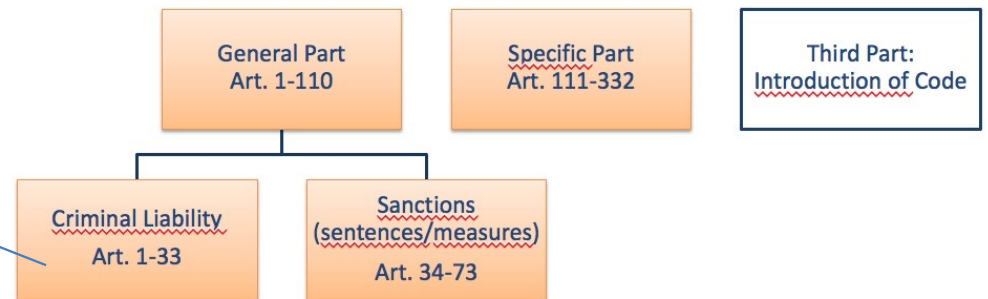
## Article 111 SCC

„Any person who kills a person  
**intentionally**...

is liable to a custodial sentence of  
not less than five years”



## Swiss Criminal Code



# General Part I – Art. 1-33 CC

## General Provisions on Criminal Liability that apply to all offences

- Territorial Application
- Crime Categories
- Intention/Negligence
- Excuses/Defences
- Law on Attempts
- Participation/Complicity

### Table of contents

#### Book One: General Provisions

##### Part One: Felonies and Misdemeanours



###### Title One: Scope of Application

1. No penalty without a law	Art. 1
2. Commencement of applicability of the Code	Art. 2
3. Territorial scope of application	
Felonies or misdemeanours in Switzerland	Art. 3
Felonies or misdemeanours against the state committed abroad	Art. 4
Offences against minors abroad	Art. 5
Offences committed abroad prosecuted in terms of an international obligation	Art. 6
Other offences committed abroad	Art. 7
Place of commission	Art. 8
4. Personal scope of application	Art. 9

###### Title Two: Criminal Liability

1. Felonies and misdemeanours	
Definition	Art. 10
Commission by omission	Art. 11
2. Intention and negligence	
Definitions	Art. 12
Error of fact	Art. 13
3. Lawful acts and guilt	
Act permitted by law	Art. 14
Legitimate self-defence	Art. 15
Mitigatory self-defence	Art. 16
Legitimate act in a situation of necessity	Art. 17
Mitigatory act in a situation of necessity	Art. 18
Absence of legal responsibility due to a mental disorder and diminished responsibility	Art. 19
Doubt as to legal responsibility	Art. 20
Error as to unlawfulness	Art. 21
4. Attempts	
Criminal liability for attempts	Art. 22
Withdrawal and active repentance	Art. 23

# Criminal Liability

Elements of Crime	<b>Objective Elements</b> <ul style="list-style-type: none"> <li>- Offender</li> <li>- Object of the Crime</li> <li>- Act</li> <li>- Result</li> <li>- Causation</li> </ul>	<b>Subjective Elements</b> <ul style="list-style-type: none"> <li>- Direct Intent</li> <li>- Conditional Intent</li> </ul>	 <p>Objective Wrong</p>
Unlawfulness	<b>Justification</b> <ul style="list-style-type: none"> <li>- Self-Defence</li> <li>- Necessity</li> <li>- Consent</li> </ul>	<ul style="list-style-type: none"> <li>- Knowledge (of threat)</li> <li>- Will (to defend)</li> </ul>	
Culpability	<ul style="list-style-type: none"> <li>- Criminal Responsibility</li> <li>- Error of Law</li> <li>- Unreasonableness</li> </ul>		 <p>Subjective Blame</p>

## E.g.: Art. 22 Criminal Liability for attempts

<sup>1</sup> If, having embarked on committing a felony or misdemeanour, the offender does not complete the criminal act or if the result required to complete the act is not or cannot be achieved, the court may reduce the penalty.



# How do the different parts work together?

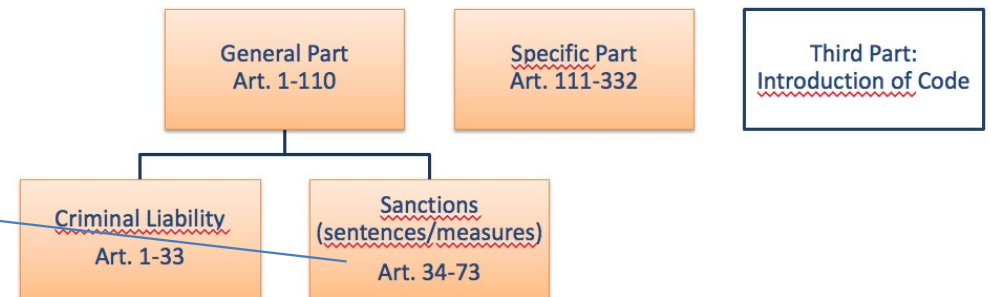
## Article 111 SCC

„Any person who kills a person intentionally...

is liable to a custodial sentence of not less than five years”



## Swiss Criminal Code





## Death penalty is history

13 June 1782: Anna Göldi(n) >  
last person executed/behead-  
ed for witchcraft in Europe.

18 October 1940: Hans  
Vollenweider > Last person  
executed in Switzerland

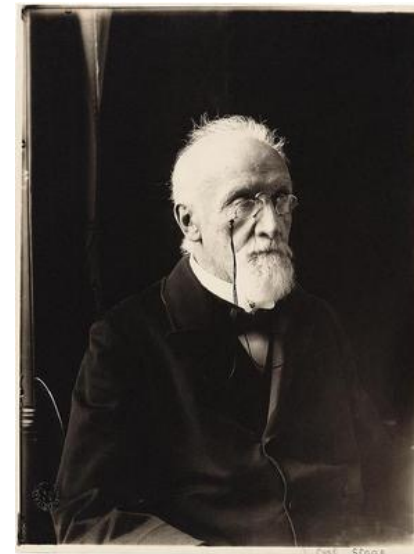


Fictional portrait by Patrick Lo Giudice



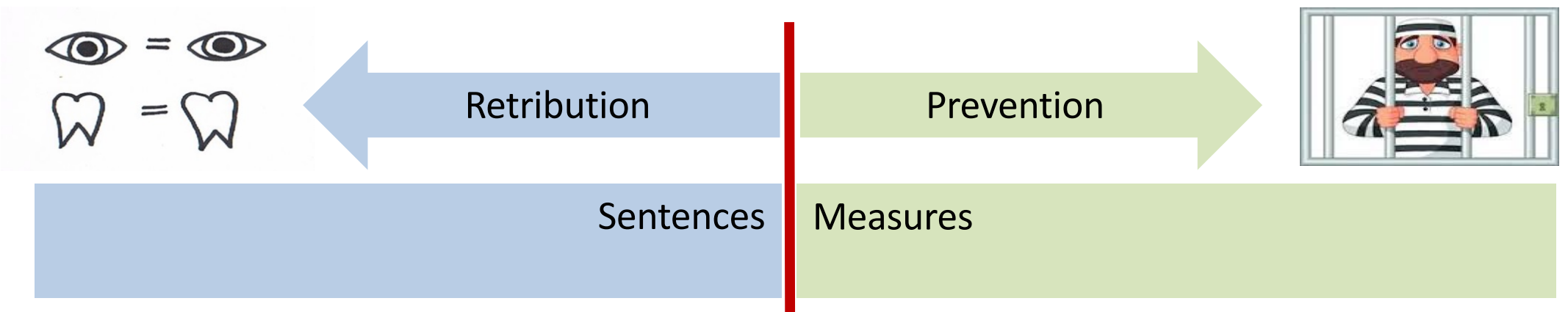
## Carl Stooss (1849-1934)

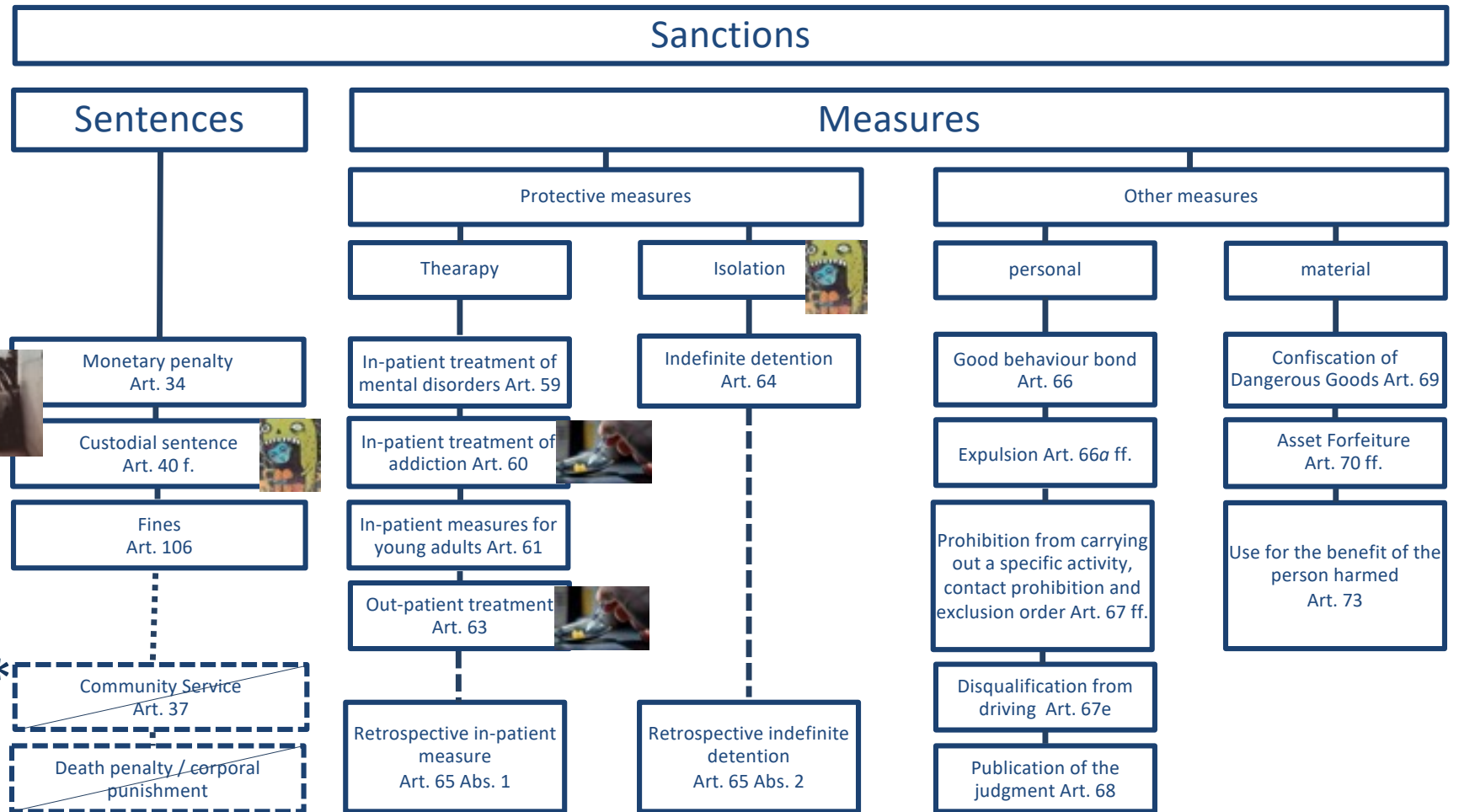
- His dual system of sanctions  
→ Sentences and Measures  
had great influence on legal  
systems of other european  
countries



Carl Stooss (1849-1934)

# Dual System of Sanctions



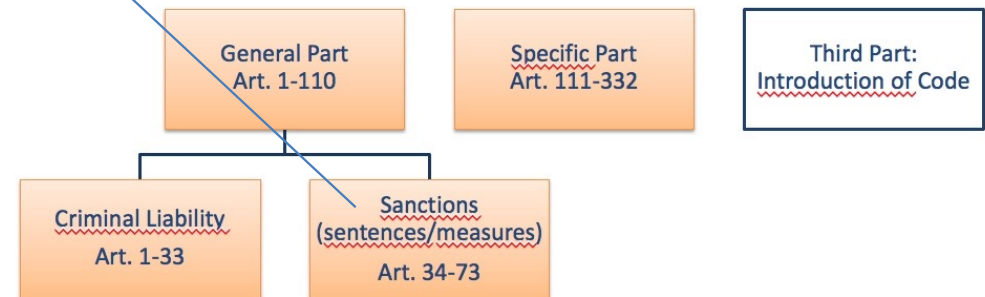


\* Community service is no longer a separate type of sentence. However all sentences up to 6 months can be converted into community service (Art. 79a).

# Art. 57 – Relationship between measures and sentences

- 1 If the requirements for both a penalty [sentence] and a measure are fulfilled, the court shall order both sanctions.
- 2 The implementation of a measure under Articles 59-61 takes precedence over a custodial sentence that is imposed at the same time or which is executed through revocation of a suspended sentence or recall to custody. Likewise, the reactivation of the execution of a measure in accordance with Article 62a takes precedence over a cumulative sentence imposed at the same time.
- 3 The deprivation of liberty associated with the measure must be taken into account in determining the penalty [sentence].

## Swiss Criminal Code

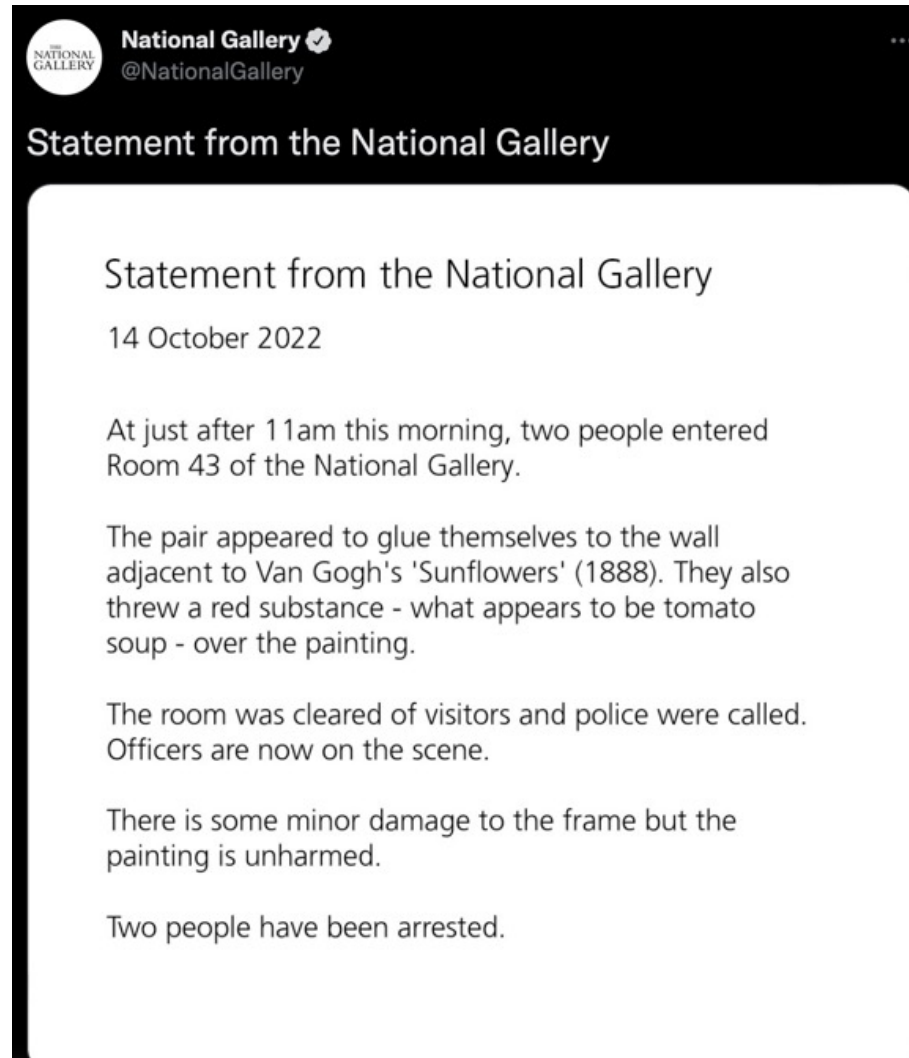


# Case




The  
Guardian

## Case



The screenshot shows a tweet from the National Gallery (@NationalGallery) dated 14 October 2022. The tweet text reads: 'Statement from the National Gallery', '14 October 2022', 'At just after 11am this morning, two people entered Room 43 of the National Gallery.', 'The pair appeared to glue themselves to the wall adjacent to Van Gogh's 'Sunflowers' (1888). They also threw a red substance - what appears to be tomato soup - over the painting.', 'The room was cleared of visitors and police were called. Officers are now on the scene.', 'There is some minor damage to the frame but the painting is unharmed.', and 'Two people have been arrested.'

 **National Gallery** ✓  
@NationalGallery

**Statement from the National Gallery**

14 October 2022

At just after 11am this morning, two people entered Room 43 of the National Gallery.

The pair appeared to glue themselves to the wall adjacent to Van Gogh's 'Sunflowers' (1888). They also threw a red substance - what appears to be tomato soup - over the painting.

The room was cleared of visitors and police were called. Officers are now on the scene.

There is some minor damage to the frame but the painting is unharmed.

Two people have been arrested.

## Case

Imagine this happened in Zurich and the pairs goal was to destroy the painting in order to receive the Swiss parliaments attention. They want the parliament to enact laws that prohibit fossil fuels and that oblige the population and companies to cut their energy demand.

Would the pair incur criminal liability under Swiss law?

What if neither the painting nor the frame was damaged?

Find in the Swiss Criminal Code:

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

- The offence(s) they may have committed.
- Provisions in the general part which need to be examined to determine whether they are criminally liable.
- Provisions that may lead to an exemption from punishment in this case.
- 1 and 3: argue from a prosecutors perspective; 2 and 4: argue from a defence lawyers perspective