



# Swiss Criminal Law

## Swiss Criminal Procedure

Prof. Dr. iur. Marc Thommen

Dr. iur. Nadine Zurkinden

# Criminal Law

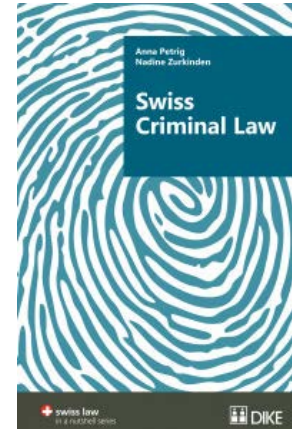
## Current positions

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



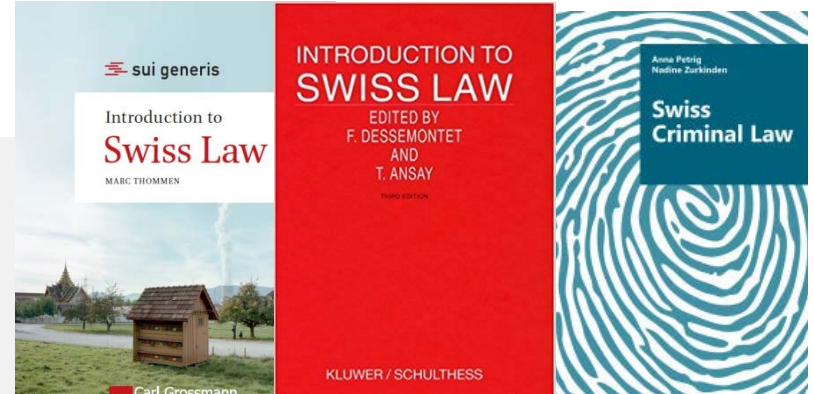
Dr. iur. Nadine Zurkinden

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



# 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](#).

# Translated Legislation

## **Federal Constitution of the Swiss Confederation**

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

## **Swiss Criminal Code**

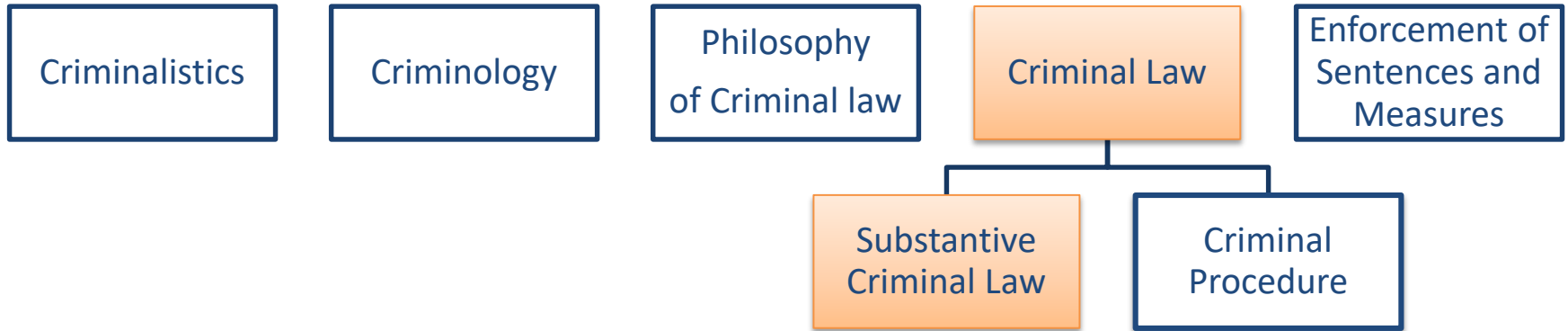
<https://www.admin.ch/opc/en/classified-compilation/19370083/index.html>

## **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.

# Swiss Criminal Law



# Case Examples 1/2

- X begs for money in the streets of Zurich and Basel.
- 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.
- Drug addict breaks into flat to get money to buy drugs.



[Egor Myznik on Unsplash](#)



<http://www.parlament.ch>



SRF



[Michael Longmire 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 disregards the right of way. A child is hurt.
- «Monster of Rapperswil» abuses and kills child. He also kills mother and brother of the child and brother's girlfriend. Perpetrator suffers from mental disorders.



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

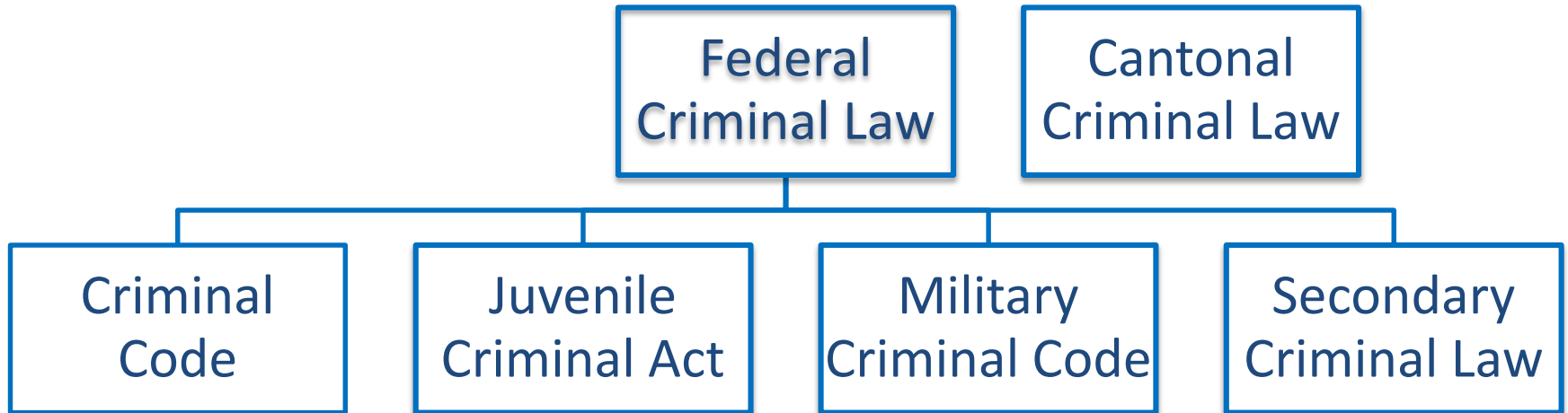


[Gareth Harrison](#), [Unsplash](#)

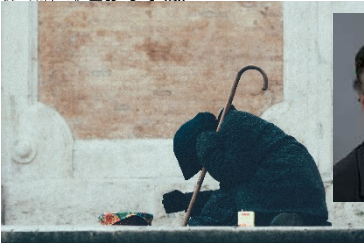


[Marloes Hilckmann](#), [Unsplash](#)

# Swiss Substantive Criminal Law

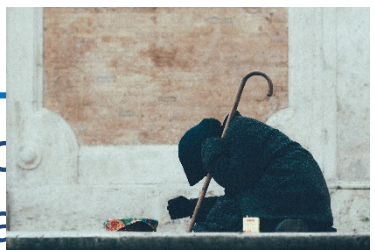






Federal  
Criminal Law

Canto  
Crimina



Crim  
Code

Private  
Criminal Act

Military  
Criminal Code

Secondary  
Criminal Law





**General Part**  
**Art. 1-110**

**Specific Part**  
**Art. 111-332**

**Third Part:**  
**Introduction of Code**

**Criminal Liability**  
**Art. 1-33**

**Sanctions**  
**(sentences/measures)**  
**Art. 34-73**



General Part  
Art. 1-110

**Specific Part**  
**Art. 111-332**

Third Part:  
Introduction of Code

Criminal Liability  
Art. 1-33

Sanctions  
(sentences/measures)  
Art. 34-73

# How do the different parts work together?

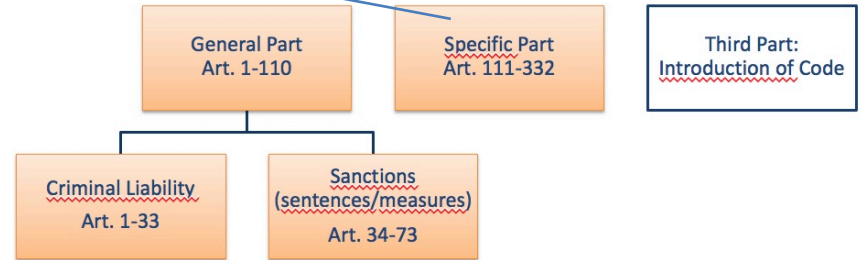
Article 111 SCC

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

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



## Swiss Criminal Code



# How do the different parts work together?

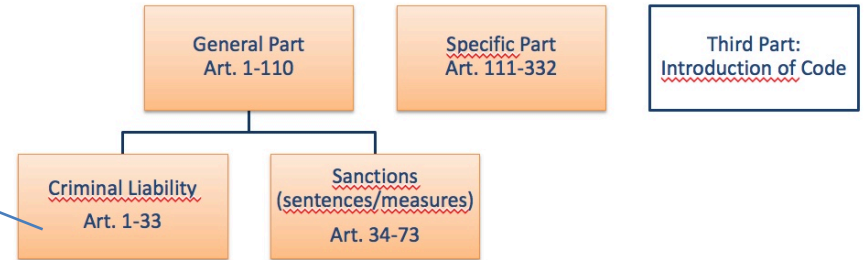
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## Swiss Criminal Code



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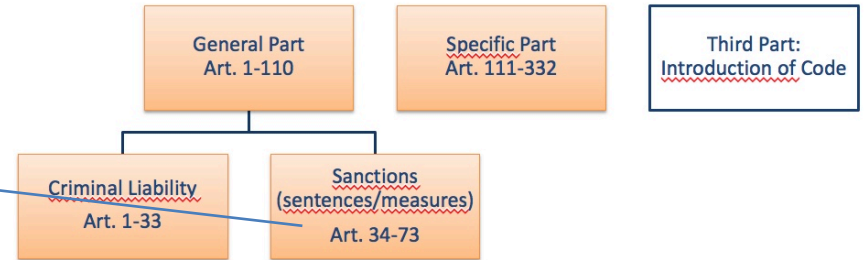
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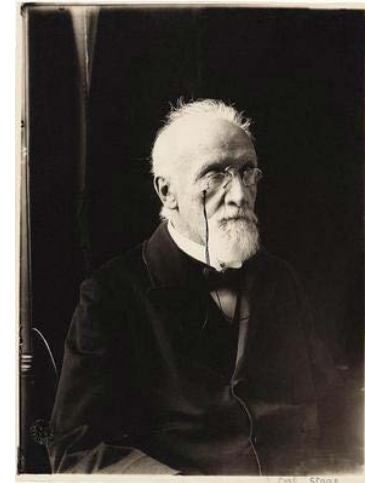


## Swiss Criminal Code



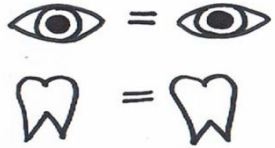
# Carl Stooss (1849-1934)

- 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



Retribution

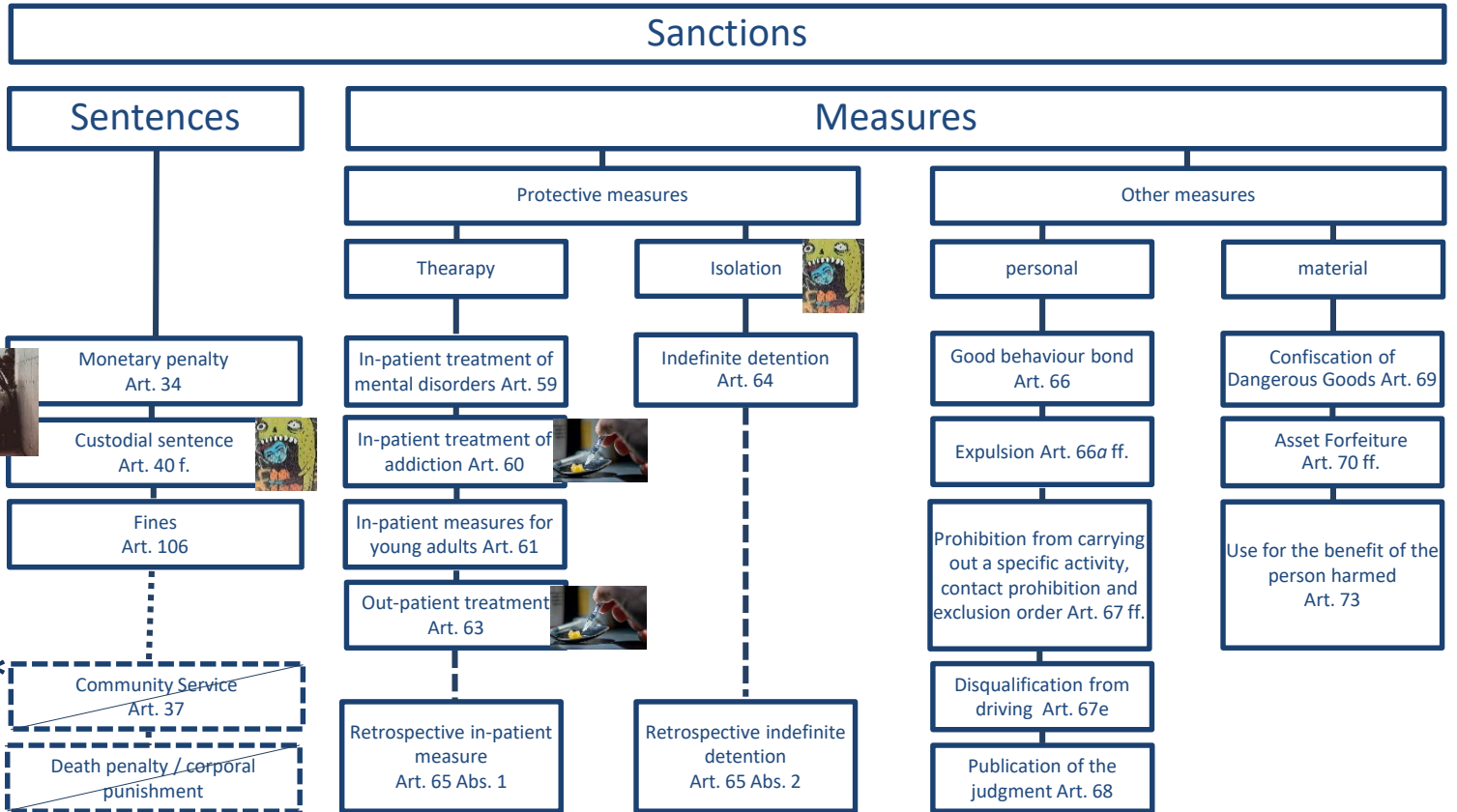
Prevention

Sentences

Measures





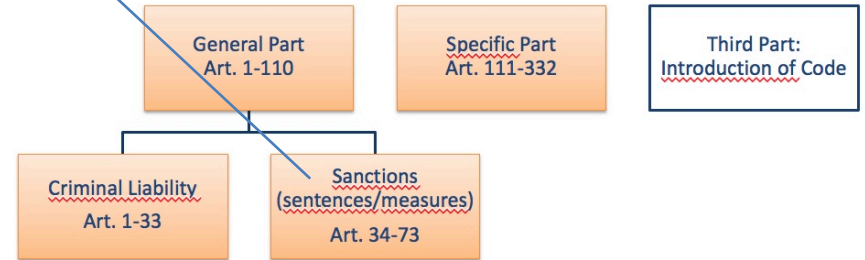


\* Community service is no longer a separate type of sentence. However all sentences up to 6 months can be converted into community service (Art. 79a).

# Art. 57 – Relationship between measures and sentences

- <sup>1</sup> If the requirements for both a penalty [sentence] and a measure are fulfilled, the court shall order both sanctions.
- <sup>2</sup> 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.
- <sup>3</sup> The deprivation of liberty associated with the measure must be taken into account in determining the penalty [sentence].

## Swiss Criminal Code

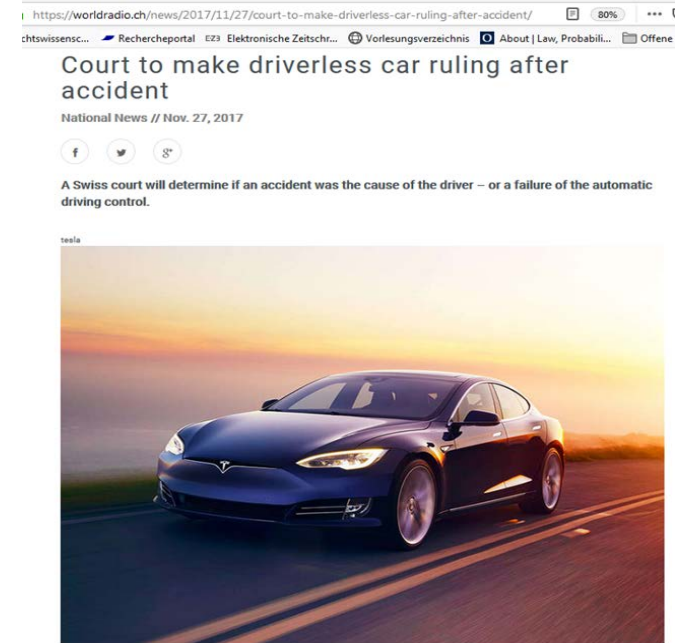


# Case for Breakout Session

Tesla in autopilot mode followed another car which switched from the left to the right lane on the motorway.

Tesla hit a construction vehicle on the left lane of the motorway without breaking at 100 km/h  $\approx$  62 mph. The guy sitting in the construction vehicle got injured (whiplash trauma).

Tesla-driver (who happens to be an IT-entrepreneur) did not steer, brake or accelerate himself for at least 2 minutes before the crash. He was replying to messages on his phone. Driver argues he did not drive the car, but the autopilot drove the car. He trusted the autopilot because of Teslas impressive advertising videos for the autopilot and was disappointed that the autopilot caused a crash.



# Case for Breakout Session - Tasks

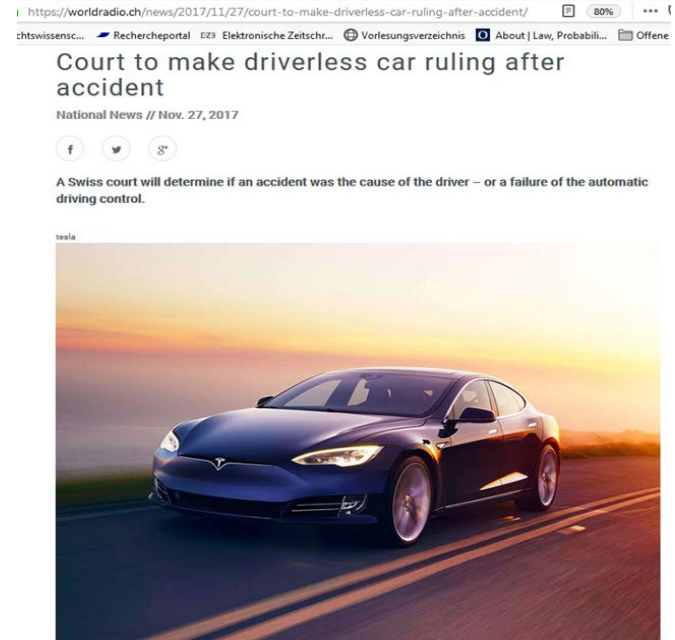
Questions to be answered: Does the driver incur **criminal liability for injuring the guy in the construction vehicle?**

Find in the Swiss Criminal Code:

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

- The offence he may have committed.
- A provision in the general part which needs to be examined to determine whether he is criminally liable.
- The provision on the determination of the sentence by assessing his culpability. Find arguments for low and high fault.
- Discuss which law could be the source of the following provision and why does this provision matter to determine criminal liability?

*“Drivers of a vehicle must be able to control the vehicle at all times in such a way that they can fulfil their duty of care.”*






# Breakout Session - Answers

<https://worldradio.ch/news/2017/11/27/court-to-make-driverless-car-ruling-after-accident/> 80%

chtswissensc... Rechercheportal EZ3 Elektronische Zeitschr... Vorlesungsverzeichnis About | Law, Probabili... Offene


## Court to make driverless car ruling after accident

National News // Nov. 27, 2017

A Swiss court will determine if an accident was the cause of the driver – or a failure of the automatic driving control.

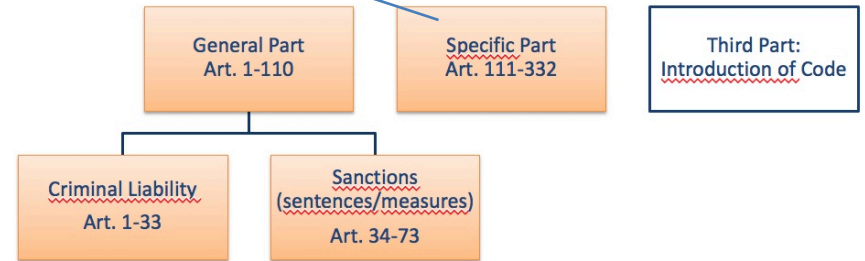
tesla



# Art. 125 Assault through negligence

<sup>1</sup> Any person who causes injury to the person or the health of another through negligence is liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.

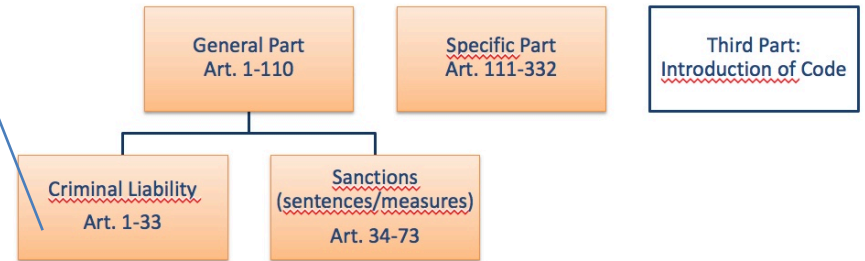
## Swiss Criminal Code



# Art. 12 negligence definition

<sup>3</sup> A person commits a felony or misdemeanour through negligence if he fails to consider or disregards the consequences of his conduct due to a culpable lack of care. A lack of care is culpable if the person fails to exercise the care that is incumbent on him in the circumstances and commensurate with his personal capabilities.

## Swiss Criminal Code



# Art. 31 Road Traffic Act as standard of care

Drivers of a vehicle must be able to always control the vehicle in such a way that they can fulfil their duty of care.

## Art. 12 Swiss Criminal Code

<sup>3</sup> A person commits a felony or misdemeanour through negligence if he fails to consider or disregards the consequences of his conduct due to a culpable lack of care. A lack of care is culpable if the person fails to exercise the **care that is incumbent on him in the circumstances** and commensurate with his personal capabilities.



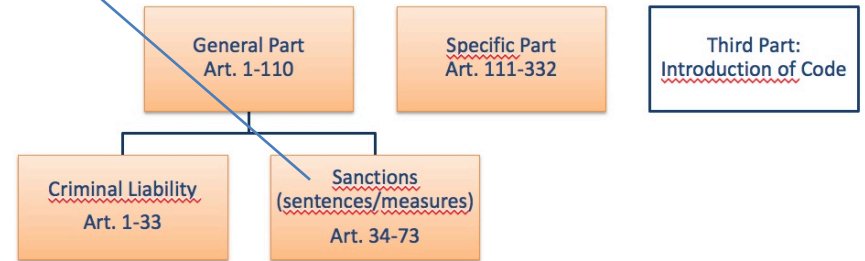


# Art. 47 – Principles of Sentencing

The court determines the sentence according to the culpability of the offender...

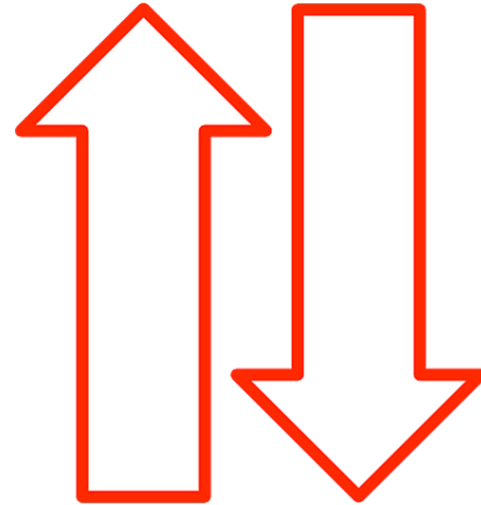
Culpability is assessed according to the seriousness of the damage or danger to the legal interest concerned, the reprehensibility of the conduct, the offender's motives and aims, and the extent to which the offender, in view of the personal and external circumstances, could have avoided causing the danger or damage.

## Swiss Criminal Code



# Mitigating or an aggravating circumstances

- Seriousness of the damage
- Danger to the legal interest concerned **↑**
- Reprehensibility of the conduct **↑**
- Motives and aims (Texting while driving **↑**; Trust in driving automation **↓?** vs. being an IT-entrepreneur **↑?**)
- the extent to which the offender, in view of the personal and external circumstances, could have avoided causing the danger or damage **↑** (Promises of the car manufacturer **↓?**)



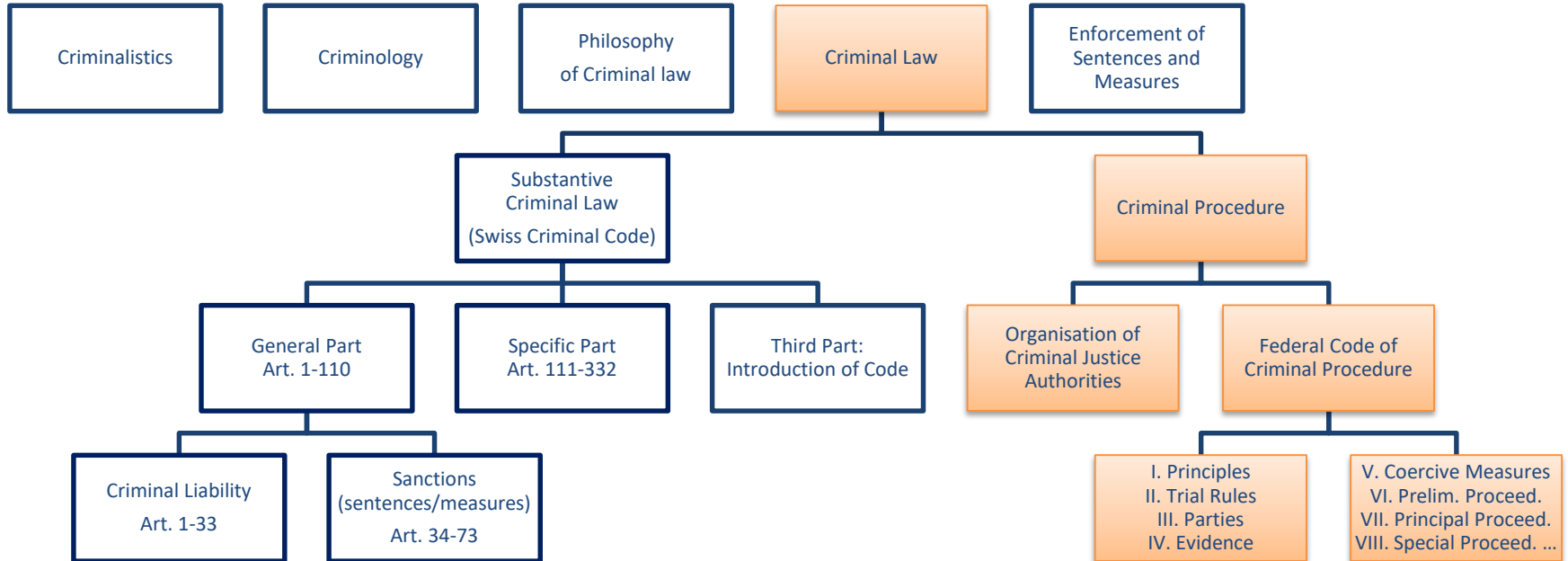


Universität  
Zürich <sup>UZH</sup>

# Swiss Criminal Procedure

Marc Thommen

# Swiss Criminal Law

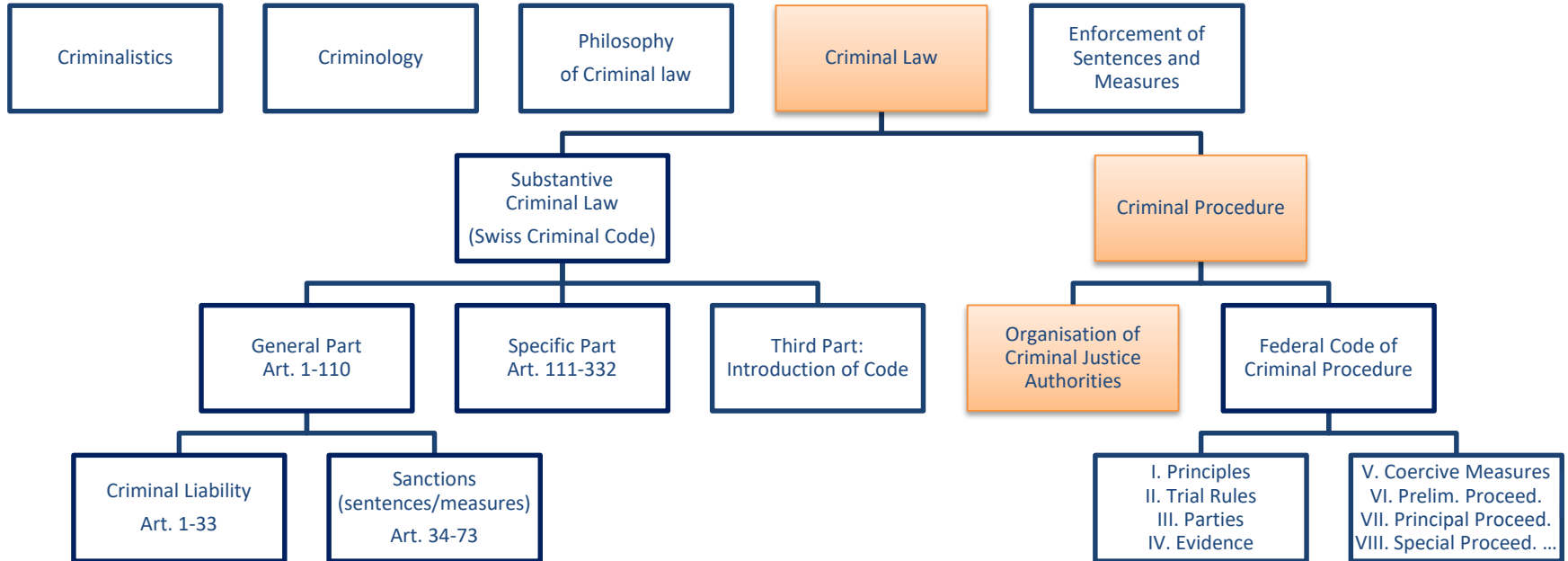




# Criminal Procedure

## Organisation of Criminal Justice Authorities

# 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.





## 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.

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.

211.1

**Gesetz  
über die Gerichts- und Behördenorganisation  
im Zivil- und Strafprozess (GOG)**

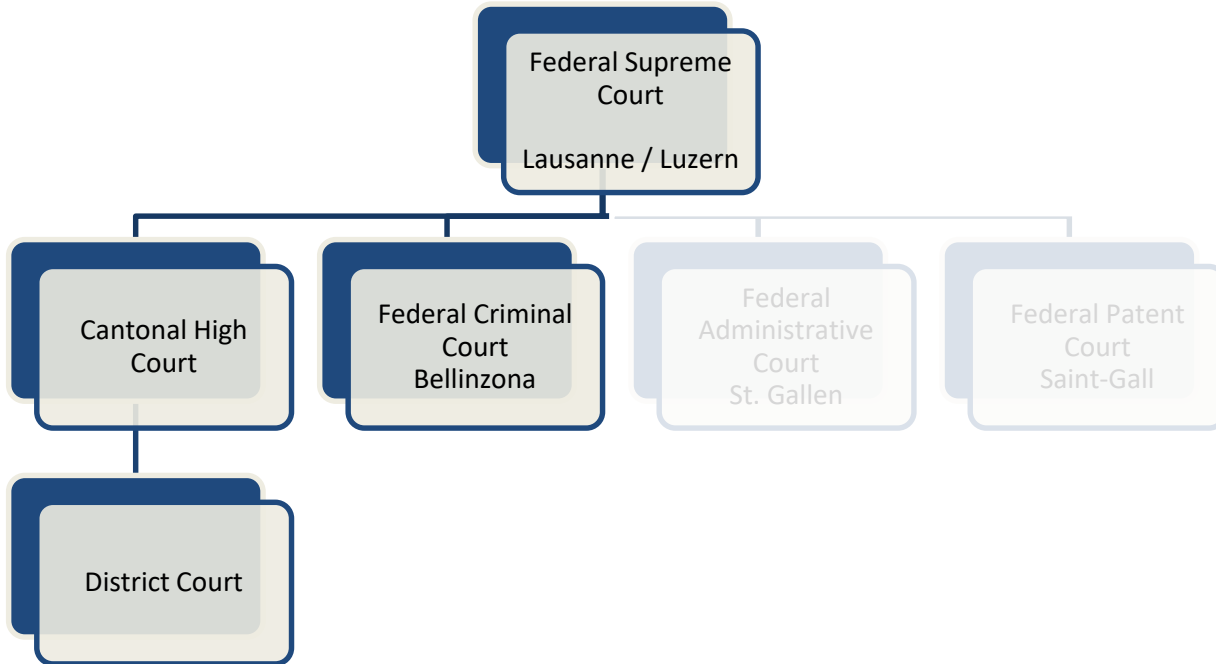
(vom 10. Mai 2010)<sup>1,2</sup>

*Der Kantonsrat,*

nach Einsichtnahme in den Antrag des Regierungsrates vom 1. Juli 2009<sup>3</sup> und in den geänderten Antrag der Kommission für Justiz und öffentliche Sicherheit vom 18. März 2010<sup>4</sup>,

*beschliesst:*

## 2. Administration of Criminal Justice

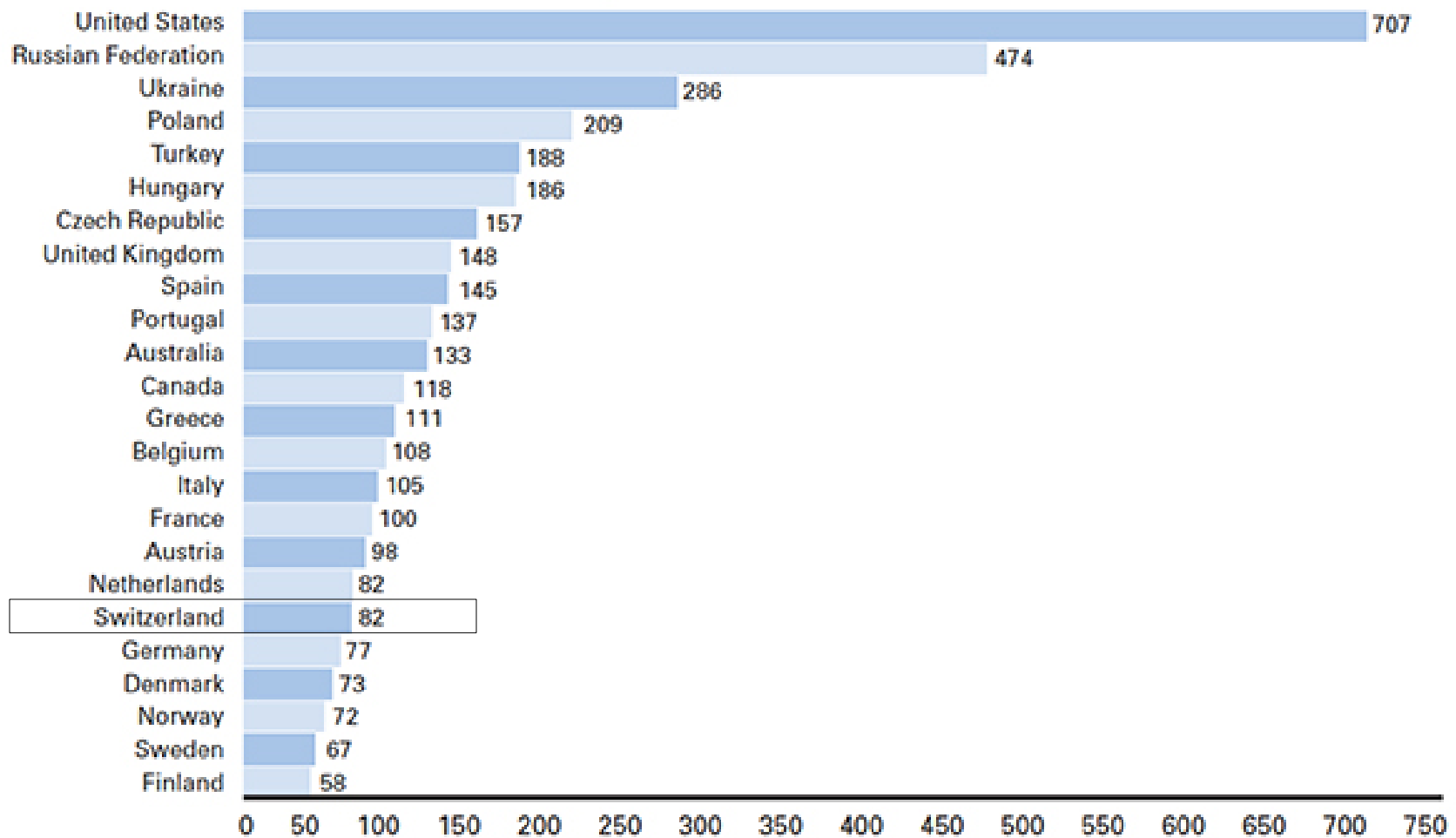


## 3. Execution of Sanctions

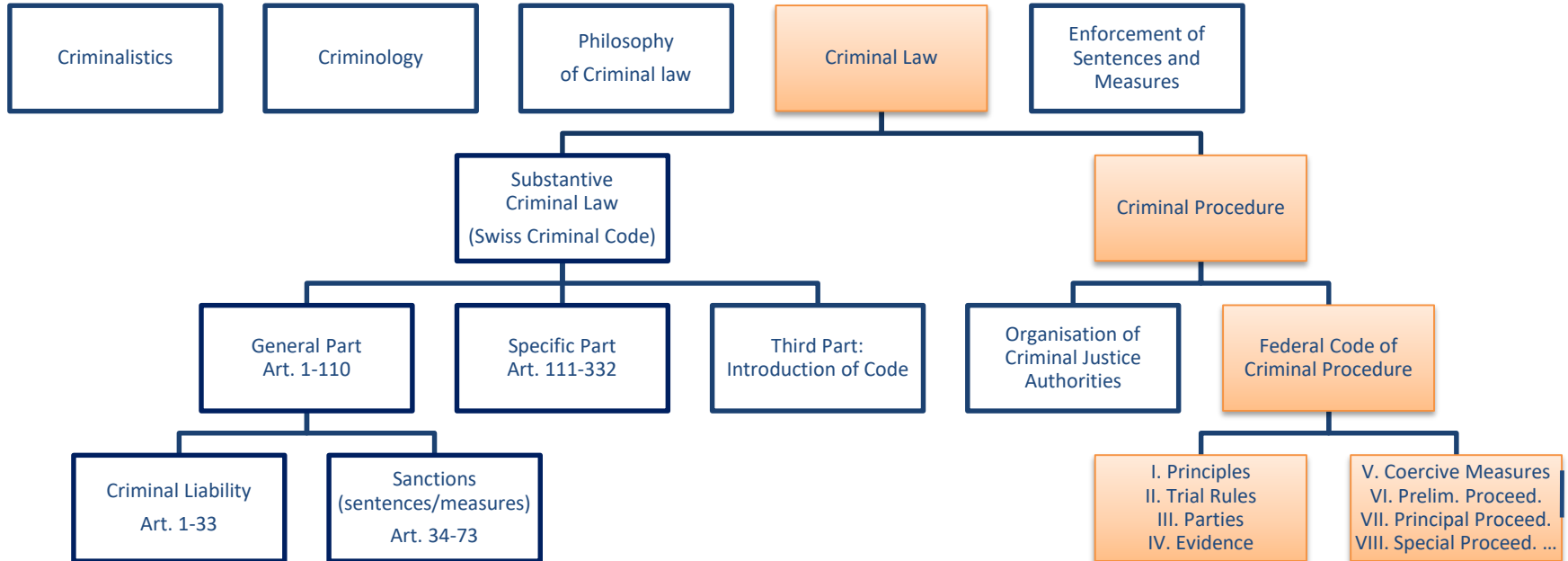
Cantons provide prisons and institutions for therapeutic and isolation measures.



## Incarceration rates per 100,000



# 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

## **Swiss Criminal Procedure Code**

**(Criminal Procedure Code, CrimPC)**

of 5 October 2007 (Status as of 1 March 2019).

*The Federal Assembly of the Swiss Confederation,*

on the basis of Article 123 paragraph 1 of the Federal Constitution<sup>1</sup>, and  
having considered the Federal Council Dispatch dated 21 December 2005

*decrees:*



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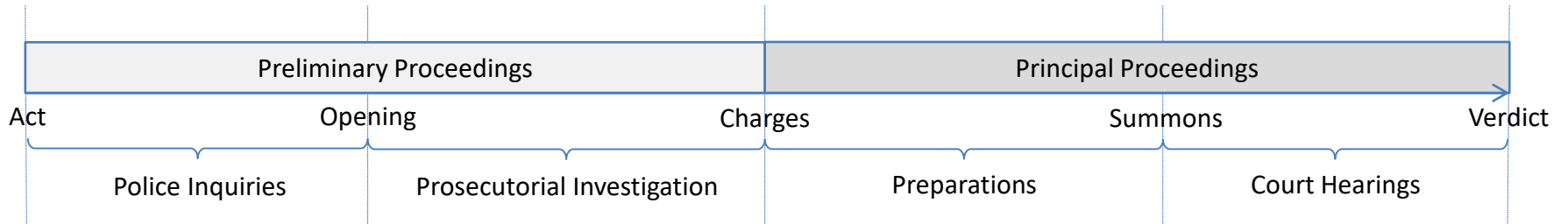
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# Criminal Proceedings







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# Art. 12 – Prosecution authorities

The prosecution authorities are:

- a. the police;
- b. the public prosecutor;
- c. Authorities (contraventions)

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# Police

- Secure evidence
- Find suspects
- Examination hearings



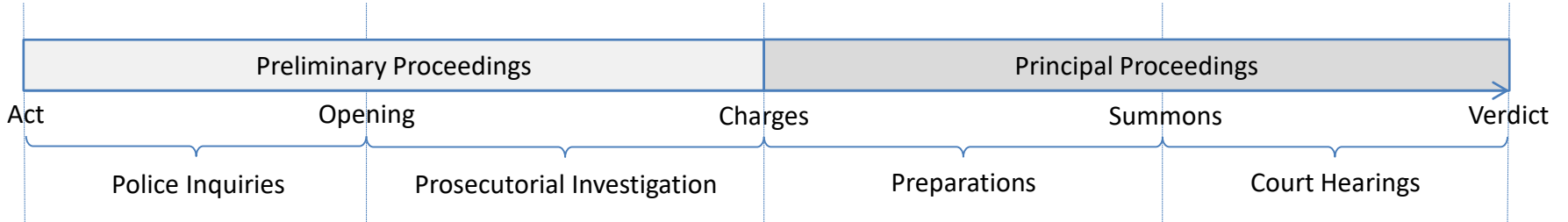
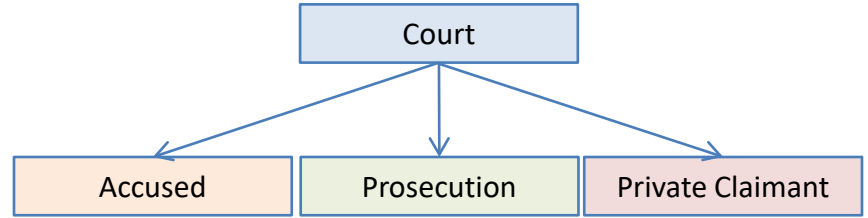
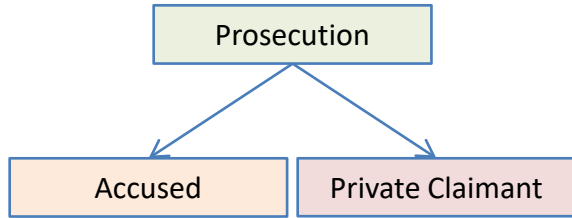


# The Public Prosecutor

- Formal head of the investigation (Art. 16)
- Becomes party to the trial proceedings once the charges are brought before court (Art. 104 I c)



Marcel Scholl, Prosecutor





## Art. 13 – Courts

The following bodies have judicial powers in criminal proceedings:

- a. Coercive Measures Court
- b. Court of First Instance
- c. Complaints Authority
- d. Court of Appeal

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# The Judge

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



District Court Judge, Zürich  
Simone Nabholz



# Swiss Criminal Procedure Code of 5 October 2007

Title 1 Scope of Application and Principles

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**Title 3 Parties**

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# Art. 104 – Parties

1 Parties are:

- a. the accused;
- b. the private claimant;
- c. in the main hearing and in appellate proceedings: the public prosecutor.

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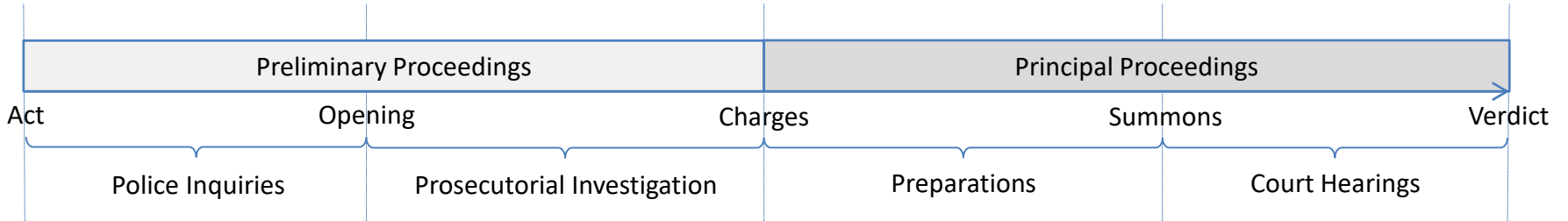
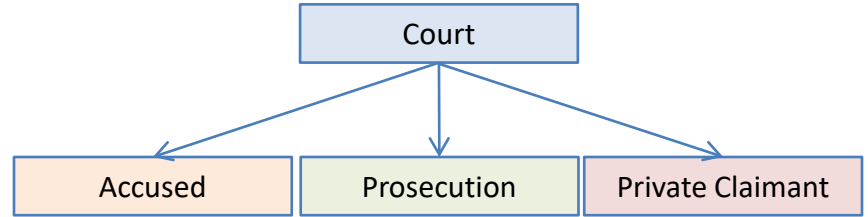
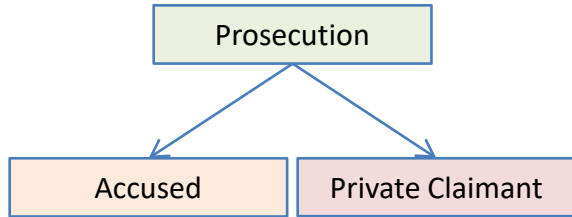
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# Parties



# The Accused

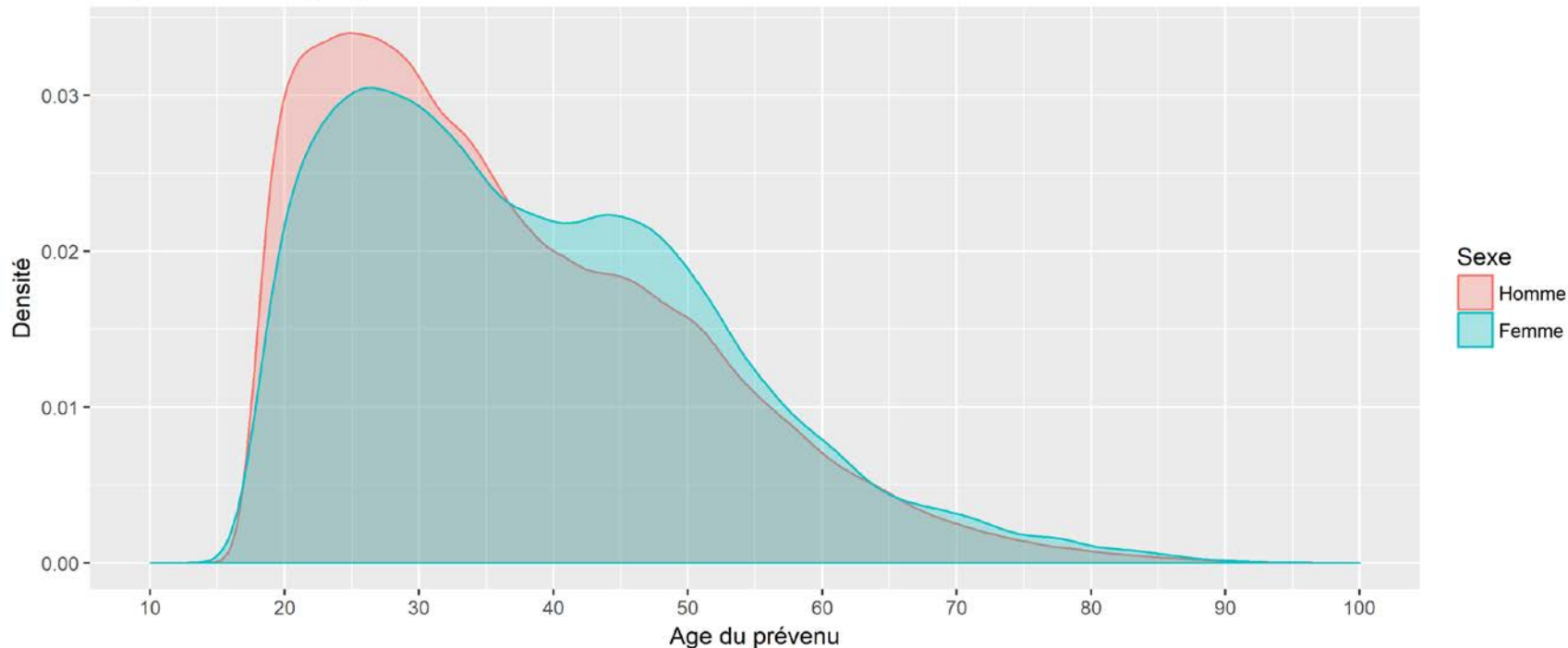
- the accused is a person suspected, accused of or charged with an offence (Art. 111 )
- Party in the Criminal Proceedings (Art. 104 I)
- Nemo tenetur (Art. 113 I)



Carl Hirschmann

# Density of PO-Convictions by age and sex

Dispersion des âges par sexe





# Art. 104 – Parties

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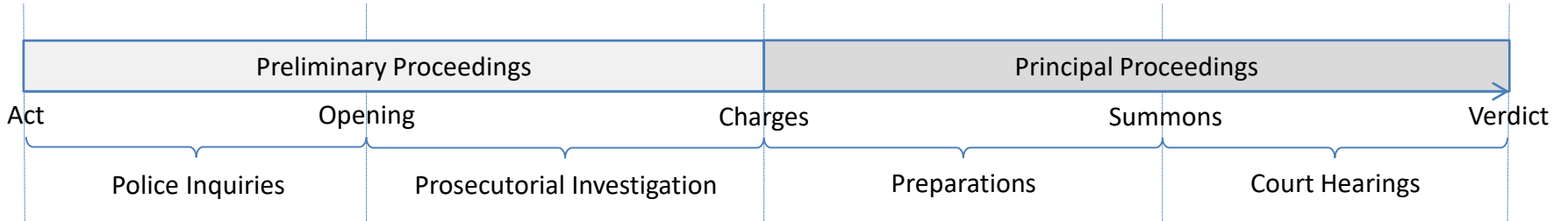
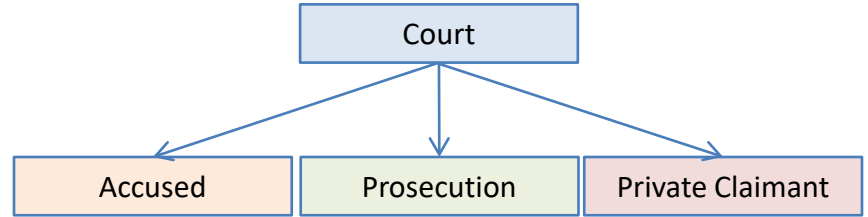
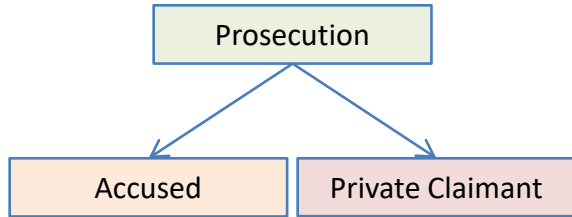
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# Parties





## Art. 115 – The aggrieved person

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



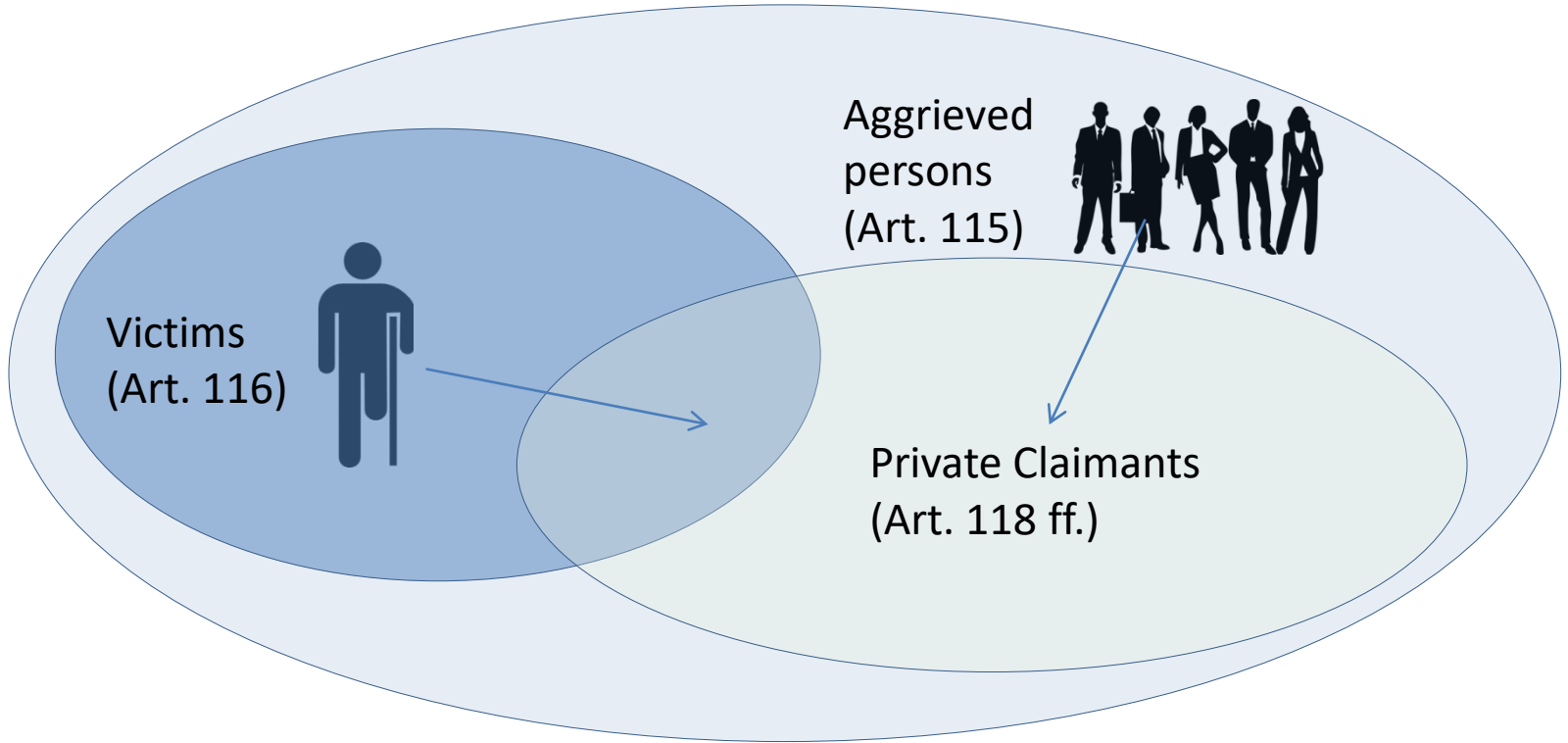




# The victim

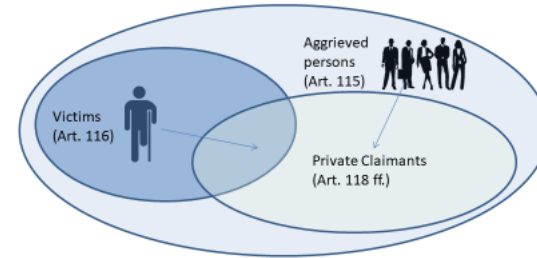
- Victim is a person who suffered physical, sexual or mental harm from an offence (Art. 116 )
- Status: **Special** protection and rights under the Federal Act on Support to Victims of Crime (2007)
- Special rights that apply only to «victims» and not «aggrieved persons»





# Private Claimants

- Be present at hearing of accused
- See evidence
- Plead to charges
- Demand compensation





## Art. 127 – [Legal advisors]

The accused, the private claimant and the other people involved in the proceedings may appoint a legal advisor to safeguard their interests.

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# Legal advisors

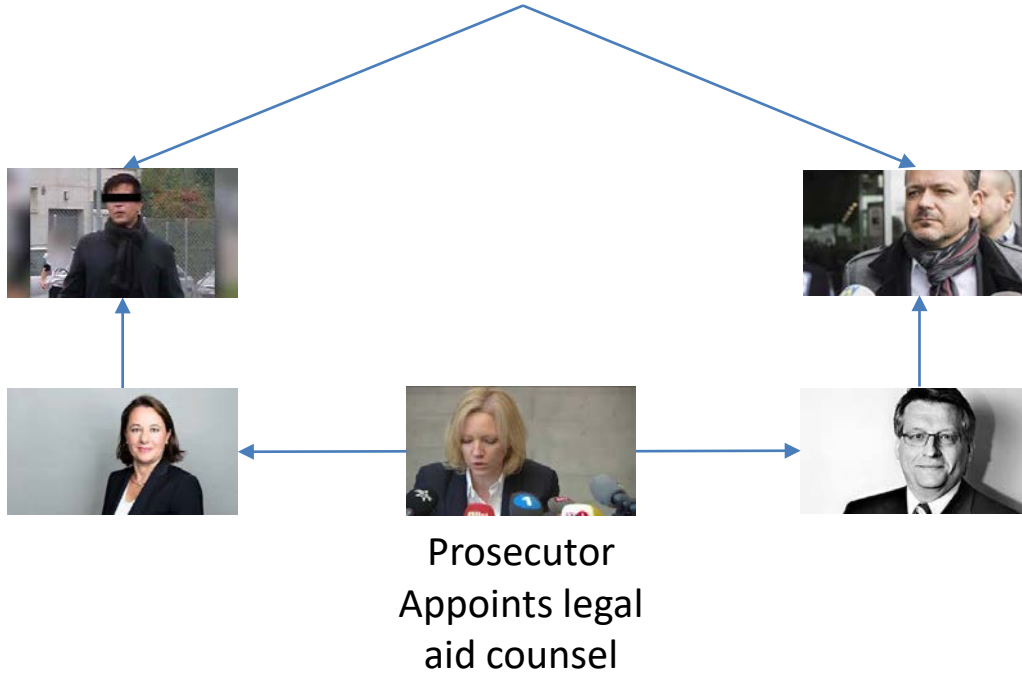


Accused appoints  
Defence counsel  
(Art. 128/129)



Victim/family appoints  
legal counsel  
(Art. 128/129)

# Legal aid (defence) counsel





# Criminal Procedure

## Cases



HALLHUS













# Cattle case

Police investigation:

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



Cantonal Police of St. Gallen

# Cattle case

Public Prosecutor, penal order:

- Threatening behaviour
- Violation of Weapons Act
- Monetary penalty (90 units at CHF 360.– = CHF 32.000.–)
- X. objected to penalty order



Untersuchungsamt Gossau

# Cattle case

District Court,  
Toggenburg



Court of Appeals,  
Kantonsgericht St. Gallen



Federal Supreme Court,  
Bundesgericht Lausanne

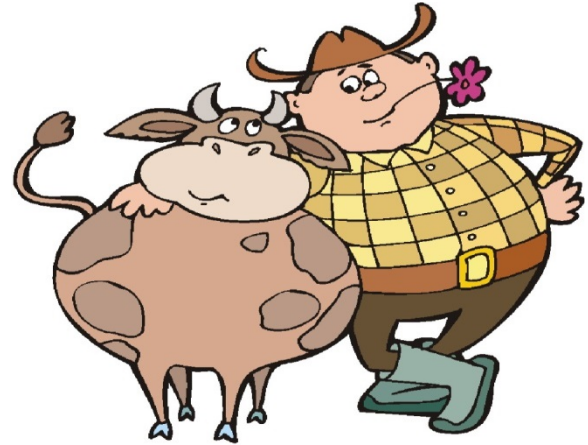


European Court of Human  
Rights (ECHR)





# «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.



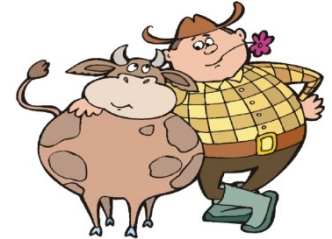
Lütisburg/SG

## «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

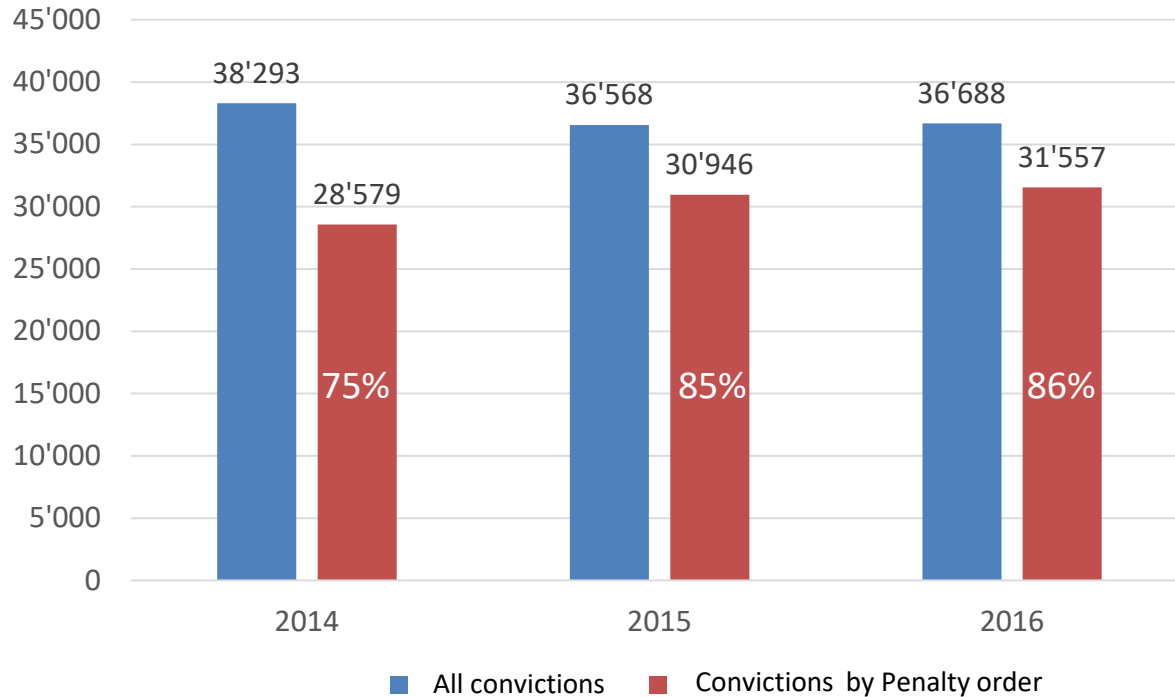
- a. Uphold penalty order
- b. Abandon proceedings
- c. Issue new penalty order
- d. Bring charges at court



# 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)





Universität  
Zürich <sup>UZH</sup>

# Swiss Criminal Procedure

Marc Thommen