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

- 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

Swiss Criminal Code

Swiss Criminal Procedure Code

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
- Max Planck Information System for Comparative Criminal Law: Infocrim.org
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1. General Information

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Criminal Procedure

Swiss Criminal Procedure Code of 5 October 2007
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

2. Administration of Criminal Justice

- Federal Supreme Court
  - Lausanne / Lucerne
- Cantonal High Court
- Federal Criminal Court
  - Bellinzona
- Federal Administrative Court
  - St. Gallen
- Federal Patent Court
  - Saint-Gall

- District Court
3. Execution of Sanctions

Cantons provide prisons and institutions for therapeutic and isolation measures.
Percentage of Foreigners in Swiss Population
22.1%

http://www.immigration-massive.ch/

Percentage of Foreigners in Swiss Prison Population
71.6%
«Sanction-Strainer»

- Crimes committed (10,000)
- Crimes perceived: 10% (1,000)
- Crimes reported: 50% (500)
- Crimes solved by police: 30% (150)
- Crimes charged: 33% (50)
- Convictions: 80% (40)
- Prison: 66% (26)
- Served: 23% (6)

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

- Prosecution
  - Accused
  - Private Claimant

- Court
  - Accused
  - Prosecution
  - Private Claimant

Preliminary Proceedings
- Act
  - Police Inquiries
- Opening
  - Prosecutorial Investigation

Principal Proceedings
- Charges
  - Preparations
- Summons
  - Court Hearings
- Verdict
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)
Penal order convictions by age and sex

Dispersion des âges par sexe

Source: OFS
Density of PO-Convictions by age and sex

Dispersion des âges par sexe

Source: OFS
Penal Order Convictions by age and federal laws

[Graph showing 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»
Aggrieved persons (Art. 115)

Victims (Art. 116)

Private Claimants (Art. 118 ff.)
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
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
- 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.
«Aiming at cows» (2014) - Facts

- X. (furious) got his revolver, «aimed at the cows» and threatened to shoot them...
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
Summary Penalty Order (Art. 352 ff. CCP)
Summary Penalty Order (Art. 352 ff. CCP)

Proceeding: If a rejection is filed, the public prosecutor shall gather the additional evidence.

- **Prosecutor**
- **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

![Bar chart showing convictions by penalty order for felonies/misdemeanours over the years 2014 to 2016. The chart compares all convictions (blue) and convictions by penalty order (red).]

- **2014**:
  - All convictions: 38,293
  - Convictions by penalty order: 28,579
  - Percentage: 75%

- **2015**:
  - All convictions: 36,568
  - Convictions by penalty order: 30,946
  - Percentage: 85%

- **2016**:
  - All convictions: 36,688
  - Convictions by penalty order: 31,557
  - Percentage: 86%
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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Discussion