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Swiss Criminal Law

Dr. iur. Nadine Zurkinden

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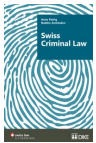
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Criminal Law

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).



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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.



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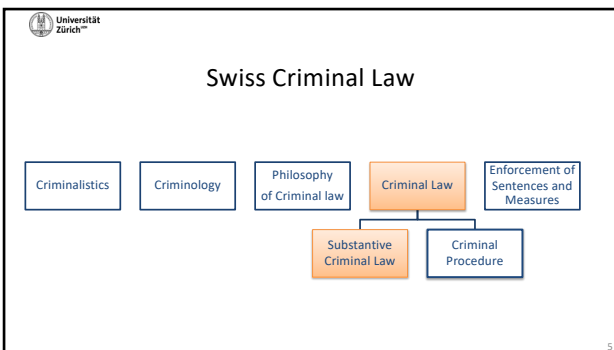
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Literature in English

- 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

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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.



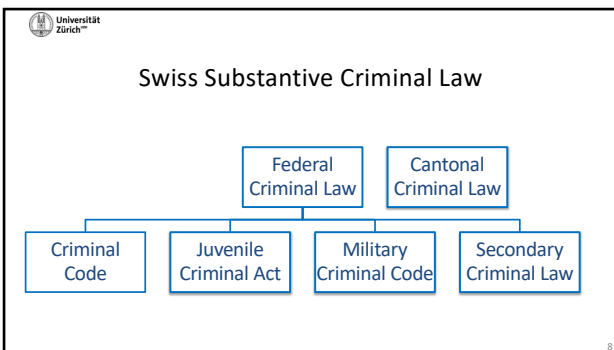
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Case Examples 2/2

- Swiss fighter jet pilot causes crash by he failing to respect the rules for minimum flight altitudes for combat and training exercises.  Vasily Kolode on Unsplash
- X causes car crash because she disregards the right of way. A child is hurt.  Geoffrey Harrison - Unsplash
- «Monster of Rapperswil» abuses and kills child. He also kills mother, brother and brother's girlfriend. He suffers from mental disorders.  Image of a painting by Vincent van Gogh

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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“



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    graph TD
      SCC[Swiss Criminal Code] --> GP[General Part Art. 1-109]
      SCC --> SP[Specific Part Art. 111-292]
      SCC --> TP[Third Part: Introduction of Code]
      GP --> CL[Criminal Liability Art. 1-20]
      GP --> S[Sentences (sentences/measures) Art. 34-79]
  
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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 - Offence against Life and Limb	
1. Homicide	Art. 111
2. Manslaughter	Art. 112
3. Privileged crime	Art. 113
4. Infanticide	Art. 114
5. Hom. at request	Art. 115
6. Homicide by negligence	Art. 116
7. Incitement	Art. 117
8. Inciting and assisting suicide	Art. 118
9. Negligent homicide	Art. 119
10. Intentional homicide	Art. 120
11. Manslaughter	Art. 121
12. Privileged crime	Art. 122
13. Infanticide	Art. 123
14. Hom. at request	Art. 124
15. Homicide by negligence	Art. 125
16. Incitement	Art. 126
17. Inciting and assisting suicide	Art. 127
18. Negligent homicide	Art. 128
19. Intentional homicide	Art. 129
20. Manslaughter	Art. 130
21. Privileged crime	Art. 131
22. Infanticide	Art. 132
23. Hom. at request	Art. 133
24. Homicide by negligence	Art. 134
25. Incitement	Art. 135
26. Inciting and assisting suicide	Art. 136
27. Negligent homicide	Art. 137
28. Intentional homicide	Art. 138
29. Manslaughter	Art. 139
30. Privileged crime	Art. 140
31. Infanticide	Art. 141
32. Hom. at request	Art. 142
33. Homicide by negligence	Art. 143
34. Incitement	Art. 144
35. Inciting and assisting suicide	Art. 145
36. Negligent homicide	Art. 146
37. Intentional homicide	Art. 147
38. Manslaughter	Art. 148
39. Privileged crime	Art. 149
40. Infanticide	Art. 150
41. Hom. at request	Art. 151
42. Homicide by negligence	Art. 152
43. Incitement	Art. 153
44. Inciting and assisting suicide	Art. 154
45. Negligent homicide	Art. 155
46. Intentional homicide	Art. 156
47. Manslaughter	Art. 157
48. Privileged crime	Art. 158
49. Infanticide	Art. 159
50. Hom. at request	Art. 160
51. Homicide by negligence	Art. 161
52. Incitement	Art. 162
53. Inciting and assisting suicide	Art. 163
54. Negligent homicide	Art. 164
55. Intentional homicide	Art. 165
56. Manslaughter	Art. 166
57. Privileged crime	Art. 167
58. Infanticide	Art. 168
59. Hom. at request	Art. 169
60. Homicide by negligence	Art. 170
61. Incitement	Art. 171
62. Inciting and assisting suicide	Art. 172
63. Negligent homicide	Art. 173
64. Intentional homicide	Art. 174
65. Manslaughter	Art. 175
66. Privileged crime	Art. 176
67. Infanticide	Art. 177
68. Hom. at request	Art. 178
69. Homicide by negligence	Art. 179
70. Incitement	Art. 180
71. Inciting and assisting suicide	Art. 181
72. Negligent homicide	Art. 182
73. Intentional homicide	Art. 183
74. Manslaughter	Art. 184
75. Privileged crime	Art. 185
76. Infanticide	Art. 186
77. Hom. at request	Art. 187
78. Homicide by negligence	Art. 188
79. Incitement	Art. 189
80. Inciting and assisting suicide	Art. 190
81. Negligent homicide	Art. 191
82. Intentional homicide	Art. 192
83. Manslaughter	Art. 193
84. Privileged crime	Art. 194
85. Infanticide	Art. 195
86. Hom. at request	Art. 196
87. Homicide by negligence	Art. 197
88. Incitement	Art. 198
89. Inciting and assisting suicide	Art. 199
90. Negligent homicide	Art. 200
91. Intentional homicide	Art. 201
92. Manslaughter	Art. 202
93. Privileged crime	Art. 203
94. Infanticide	Art. 204
95. Hom. at request	Art. 205
96. Homicide by negligence	Art. 206
97. Incitement	Art. 207
98. Inciting and assisting suicide	Art. 208
99. Negligent homicide	Art. 209
100. Intentional homicide	Art. 210

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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.

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E.g. types of homicide

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    graph LR
      A[Intentional homicide] --- B[Murder]
      A --- C[Privileged crime]
      B --- D[Manslaughter]
      C --- E[Hom. at request]
      C --- F[Infanticide]
      G[Negligent homicide]
      H[Inciting and assisting suicide]
    
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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.



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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.



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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.




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E.g.: Art. 19 Absence of legal responsibility due to a mental disorder and diminished responsibility

- 1 If the person concerned was unable at the time of the act to appreciate that his act was wrong or to act in accordance with this appreciation of the act, he is **not liable to a penalty**.
- 2 If the person concerned was **only partially able** at the time of the act to appreciate that his act was wrong or to act in accordance with this appreciation of the act, the court shall **reduce the sentence**.
- 3 Measures in accordance with Articles 59–61, 63, 64, 67, 67b and 67e may, however, be taken.
- 4 If it was **possible** for the person concerned to avoid his state of mental incapacity or diminished responsibility and had he done so to **foresee** the act that may be committed in that state, paragraphs 1–3 do not apply.


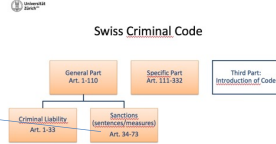


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How do the different parts work together?

Article 111 SCC
 „Any person who kills a person intentionally... is liable to a custodial sentence of not less than five years“

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Death penalty is history

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



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




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Carl Stooss (1849-1934)

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

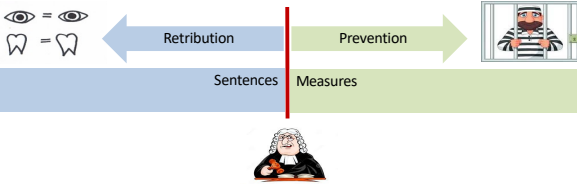


Carl Stooss (1849-1934)

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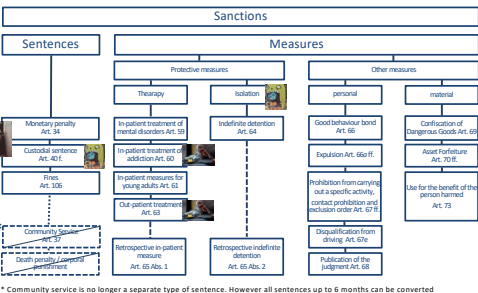
Dual System of Sanctions



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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).

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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].

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Criminal Procedure

- 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
- Title 12 Final Provisions

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 129 paragraph 1 of the Federal Constitution¹, and
having considered the Federal Council Dispatch dated 21 December 2006
decrees:

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Criminal Procedure

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Criminal Procedure

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Art. 7 – Obligation to prosecute

1 The criminal justice authorities are obliged to commence and conduct proceedings that fall within their jurisdiction where they are aware of or have grounds for suspecting that an offence has been committed.

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Criminal Procedure

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Criminal Procedure

The prosecution authorities are:

- a. the police;
- b. the public prosecutor;
- c. ...

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Police

- Secure evidence
- Find suspects
- Examination hearings



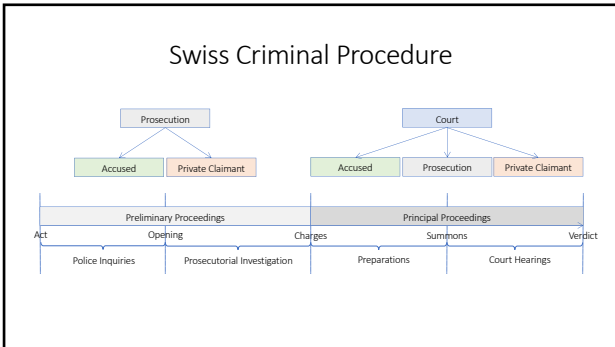
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Public Prosecutor

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



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Art. 13 – Courts

The following bodies have judicial powers in criminal proceedings:

- Complaints Authority
- Coercive Measures Court
- Court of First Instance
- Court of Appeal

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Criminal Procedure

- Title 1 Scope of Application and Principles
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- **Title 3 Parties**
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- Title 6 Preliminary Proceedings
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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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Art. 104 – Parties

- 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)



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Art. 104 – Parties

1 Parties are:

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Art. 115 – The aggrieved person

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



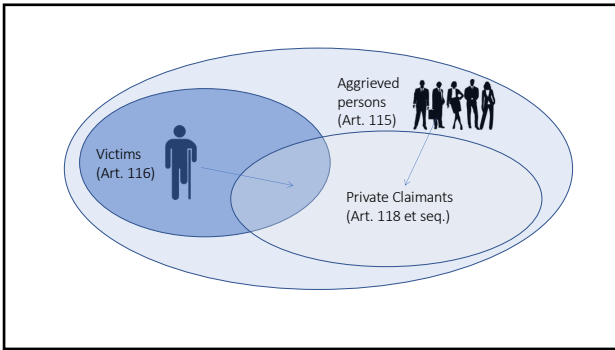
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Art. 116 – The victim

- 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»



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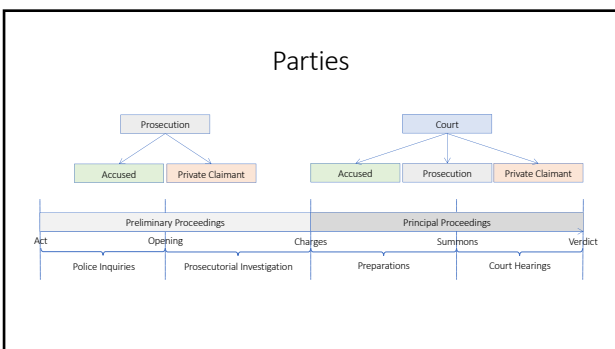


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Art. 118 et seq. – Private claimants

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

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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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Art. 158 – Cautioning

1 The police or prosecution shall inform the accused that :

- a. preliminary proceedings have been instituted;
- b. that he/she may refuse to make statements or to participate
- c. that he/she is entitled to appoint defence counsel or where appropriate to request a legal aid defence counsel;
- d. that he/she may request an interpreter.

2 Examination hearings which take place despite the fact that this information was not first provided shall not be used.

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Art. 130 – Mandatory appointment of a defence lawyer

A defence lawyer must be appointed to represent the accused if:

- a. detention on remand more than 10 days;
- b. custodial sentence of more than a year or expulsion from Switzerland;
- c. the accused is unable to safeguard his or her interests
- d. the prosecuting lawyer is appearing in person before the court;
- e. accelerated proceedings (Art. 358–362).

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Art. 131 – Appointment of the mandatory defence lawyer

1 Where the mandatory appointment of a defence lawyer is required, the head of proceedings shall ensure that a defence lawyer is appointed immediately.

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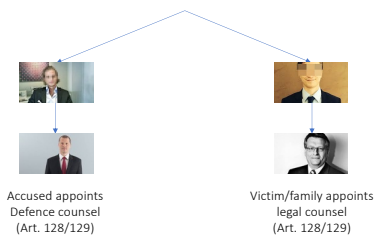
Art. 132 – Legal aid defence counsel

1 The person in charge of the proceedings shall grant legal aid if:
a. in a case involving the mandatory appointment of defence counsel
b. the accused does not have sufficient funds and defence counsel is necessary to safeguard his or her interests.

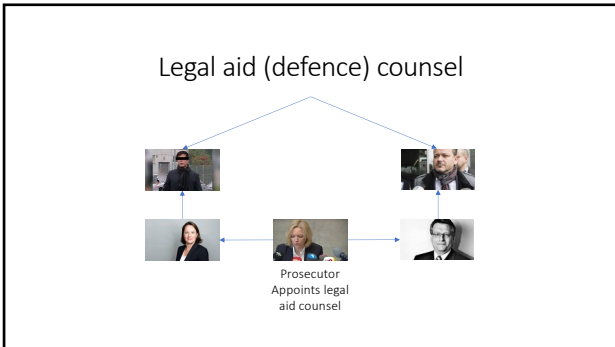
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Legal Advisors



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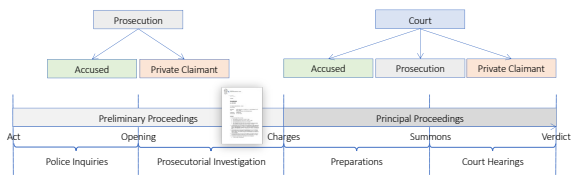
Court of First Instance – Title 7 CrimPC

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



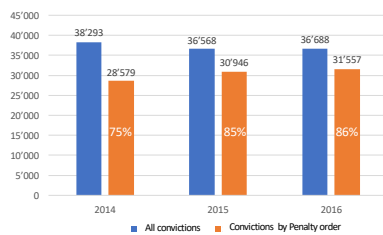
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Criminal Procedure

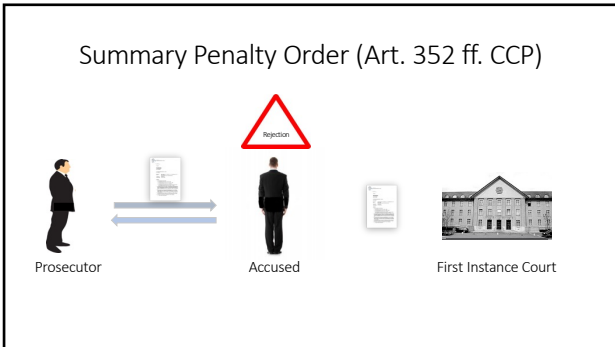


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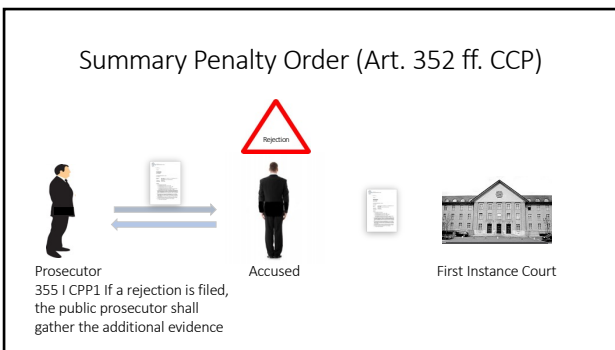
Convictions by Penalty order for felonies/misdemeanours of CC



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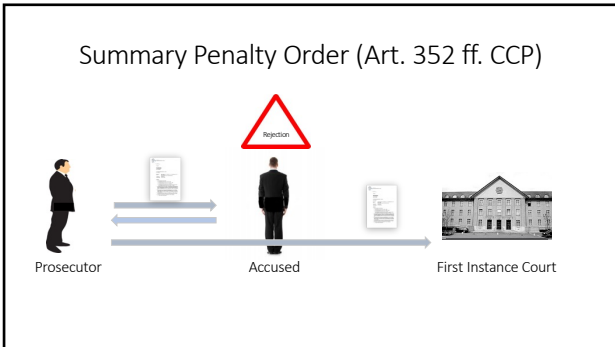
Art. 355 CPP – Objection procedure

Prosecutor decides

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

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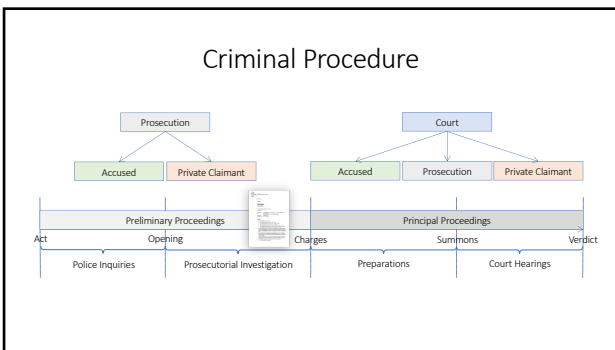
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III. Summary

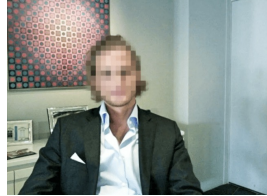
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Case: Homicide in Küsnacht, Zurich, Switzerland

- 31-year old art dealer and drug addict
 - killed his friend brutally
 - said he thought his friend was an alien
 - had been taking drugs (cocaine & cetamine) at the time of the homicide
- Guilty verdict or acquittal?
Which are the relevant articles of the StGB?
If guilty: what sanctions could be imposed?



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