Swiss Criminal Procedure

Prof. Dr. Marc Thommen

Introduction to Swiss Law

Date	Topic	Lecturer
19/09/2025	Constitutional Law	Daniel Moeckli
26/09/2025	Administrative Law / Administrative Procedure	Florian Brunner
03/10/2025	Civil Procedure	Lorenz Droese
10/10/2025	Civil Law Principles, Family Law & Law of Persons	Elisabetta Fiocchi
17/10/2025	Contract and Tort Law	Tina Huber-Purtschert
24/10/2025	Corporate and Banking Law	David Bertrand Roth
31/10/2025	Criminal Law	Nadine Zurkinden
07/11/2025	Criminal Procedure	Marc Thommen
14/11/2025	Legal History/ History of International Law	Elisabetta Fiocchi
21/11/2025	Legal Philosophy & Legal Theory	Matthias Hächler
28/11/2025	Legal Sociology	Camilla Dul
05/12/2025	Roman Law	Adrian Häusler
12/12/2025	Oral Exam	All

Swiss Criminal Procedure

I. Criminal Justice Authorities

II. Code Criminal Procedure

III. Penal Order Proceedings

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Swiss Criminal Procedure

I. Criminal Justice Authorities

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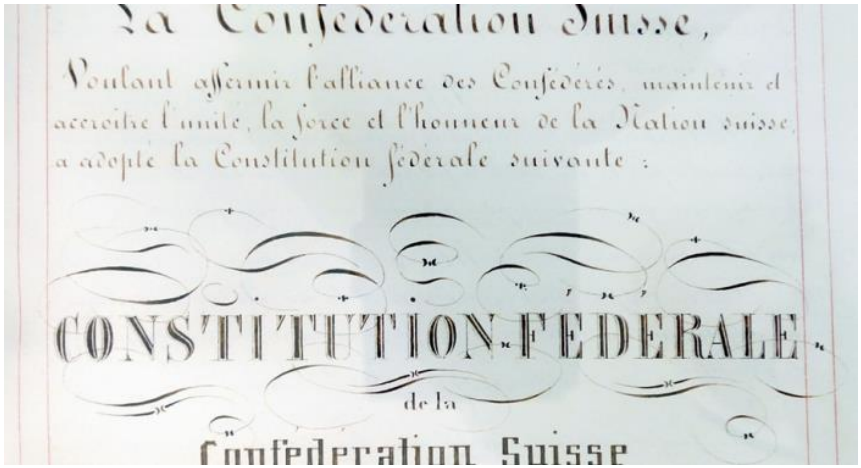
Article 123 – Constitution

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 – 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

Article 123 – Constitution

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

211.1

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

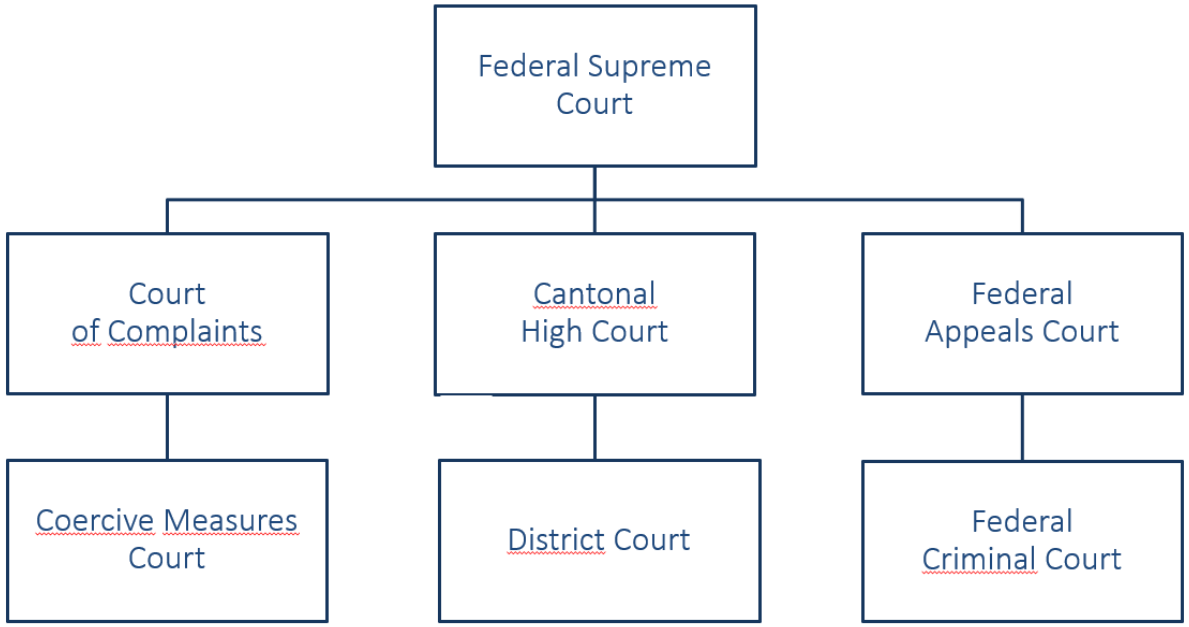
(vom 10. Mai 2010)[1, 2]

Der Kantonsrat,

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

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

Article 123 – Constitution



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

Article 123 – Constitution

Cantons provide prisons and institutions for therapeutic and isolation measures.

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

Swiss Criminal Procedure

I. Criminal Justice Authorities

II. Code Criminal Procedure

III. Penal Order Proceedings

Swiss Criminal Procedure Code

Title 1 Scope of Application and Principles
Title 2 Criminal Justice Authorities
Title 3 Parties
Title 4 Evidence
Title 5 Coercive Measures
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Title 7 Main Proceedings of First Instance
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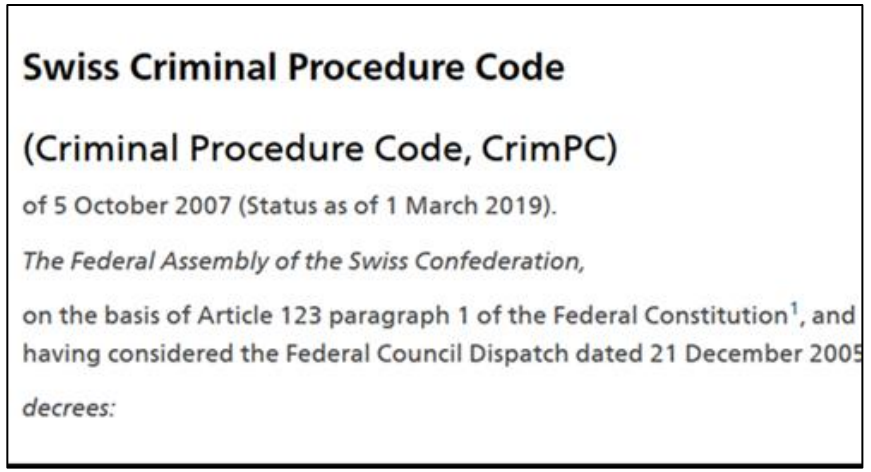
Title 10 Procedural Costs
Title 11 Legal Effect and Execution of Decisions
Title 12 Final Provisions



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 123 paragraph 1 of the Federal Constitution[1], and having considered the Federal Council Dispatch dated 21 December 2005

decrees:

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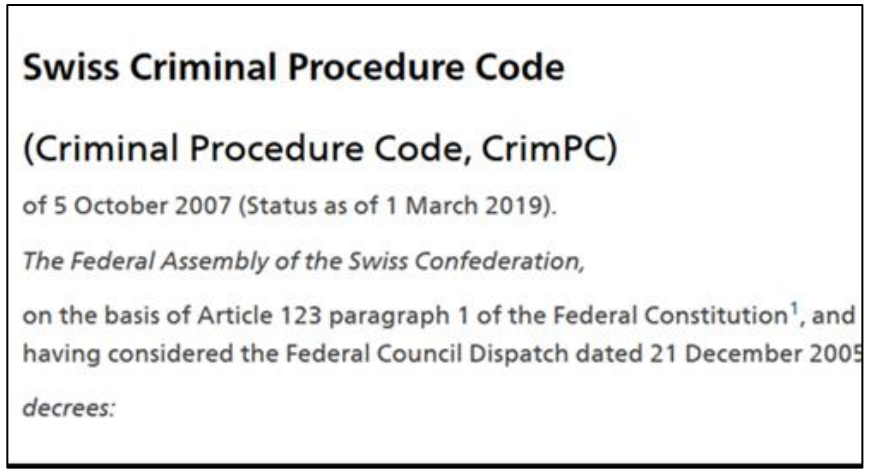

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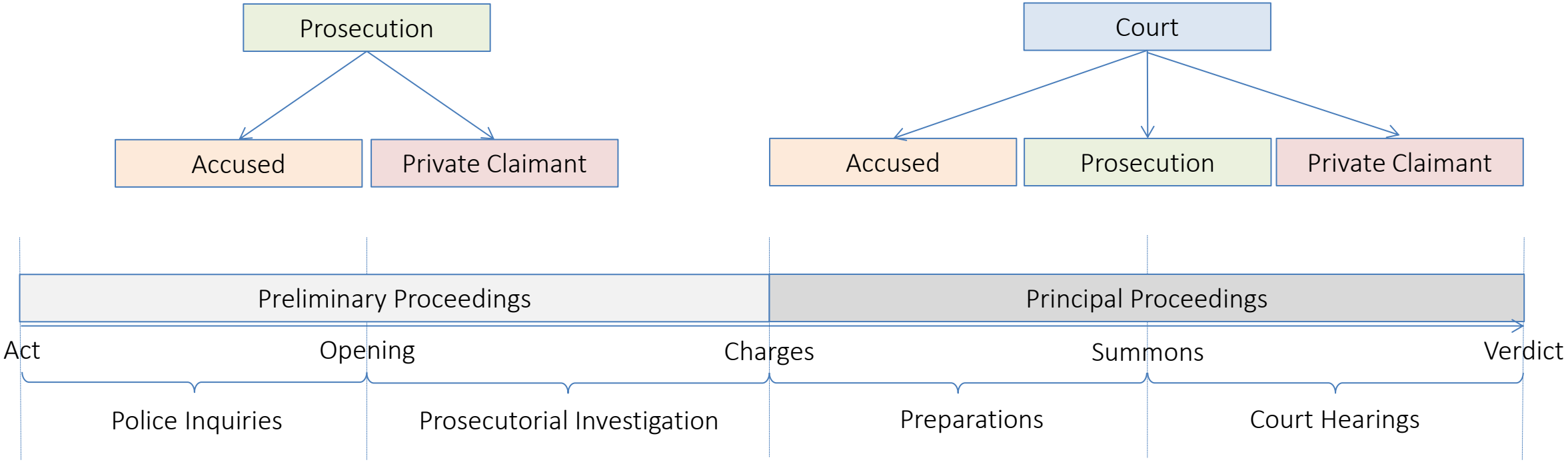
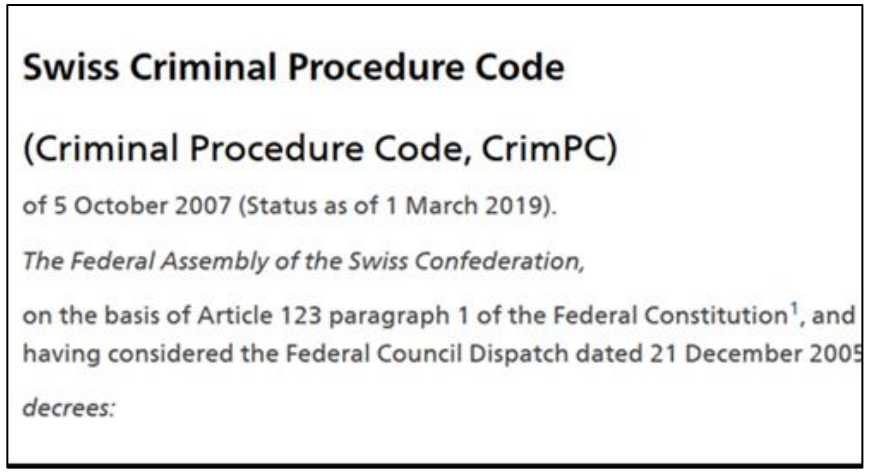
Criminal Proceedings



Art. 6 – Principle of substantive truth

[1] The criminal justice authorities shall investigate ex officio all the circumstances relevant to the assessment of the criminal act and the accused.

[2] They shall investigate incriminating and exculpating circumstances with equal care



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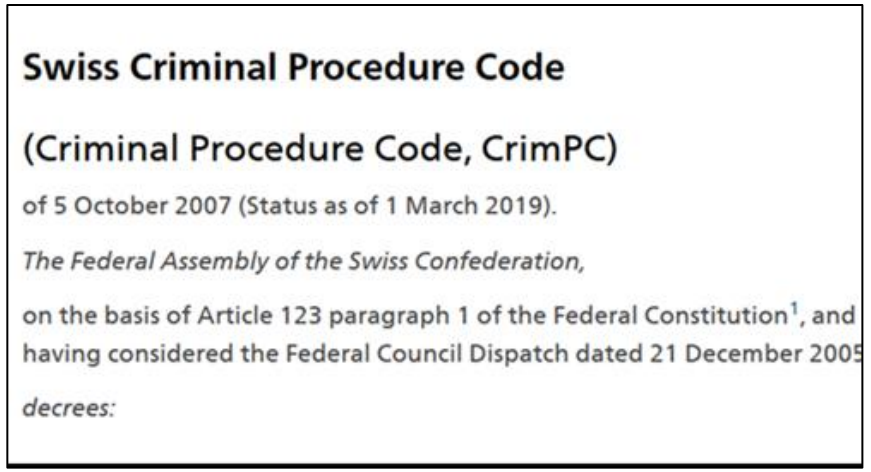
Art. 7 – Obligation to prosecute

[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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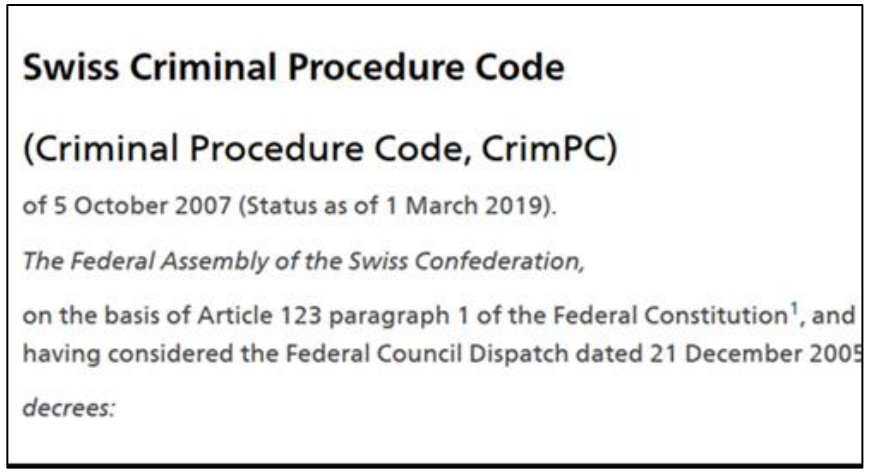

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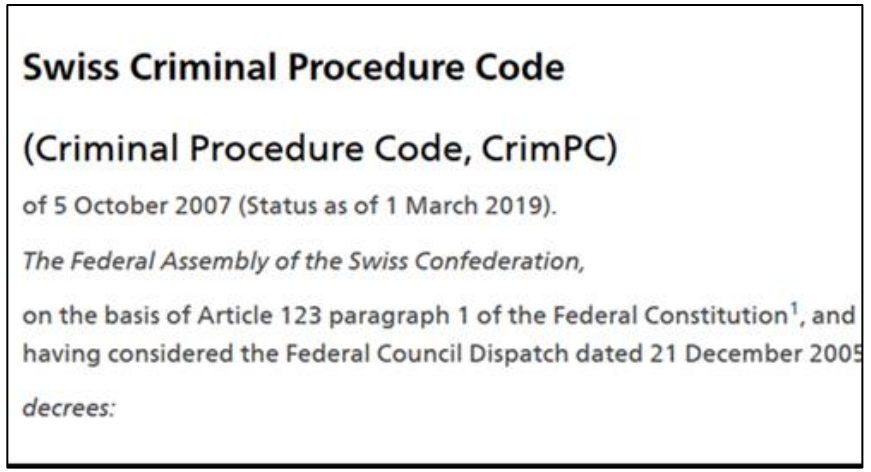
Art. 12 – Prosecution authorities

The prosecution authorities are:

a. the police;

b. the public prosecutor;

c. Authorities (contraventions)



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Definitions

Art. 10 Swiss Criminal Code

[2] **Felonies** are offences that carry a custodial sentence of more than three years.

[3] **Misdemeanours** are offences that carry a custodial sentence not exceeding three years or a monetary penalty.

Art. 103 Swiss Criminal Code

Contraventions are acts that are punishable by a fine.

Police

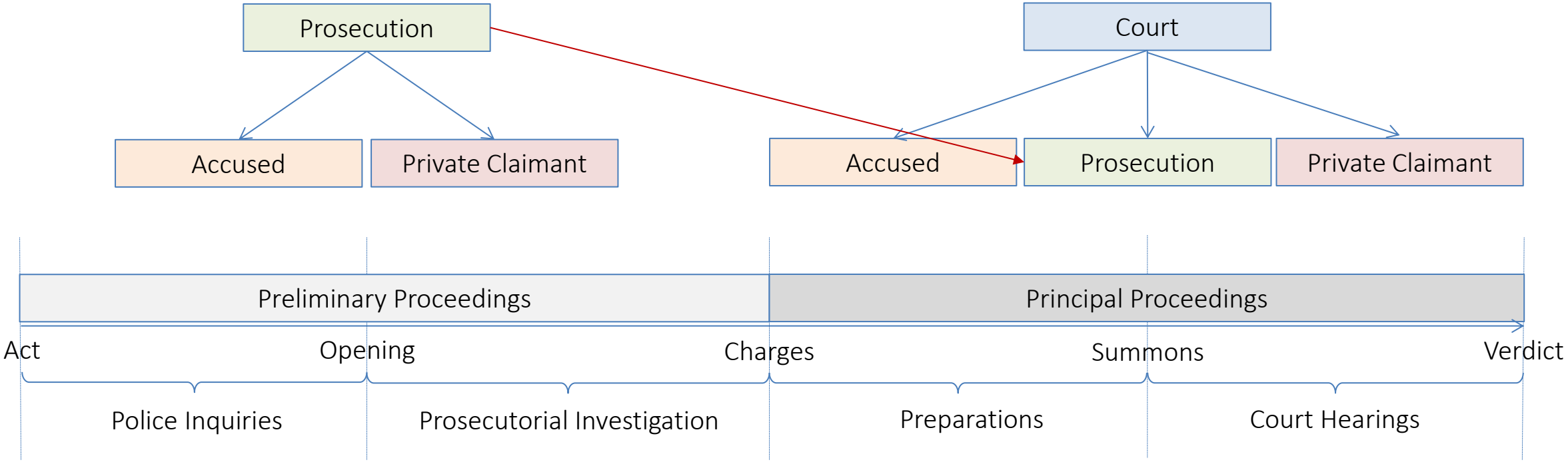
- Secure evidence
- Find suspects
- Examination hearings

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

Parties


Prosecution
Court
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Preliminary Proceedings
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Act
Opening
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Verdict
Police Inquiries
Prosecutorial Investigation
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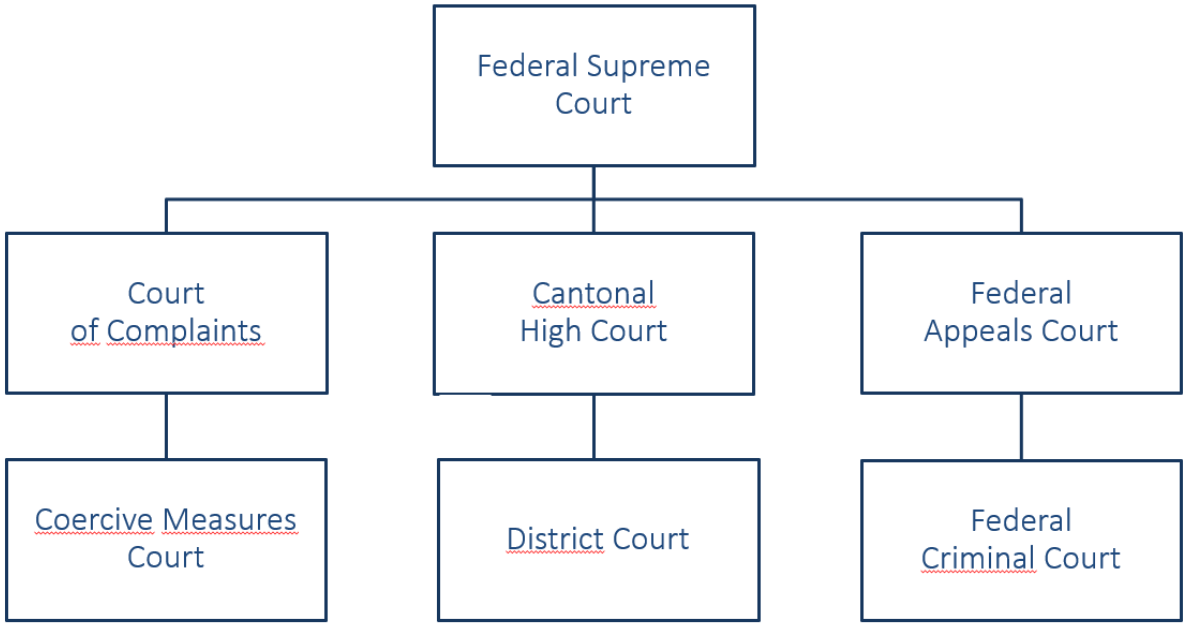
Court Hearings

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



The Judge

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

District Court Judge, Zürich
Simone Nabholz

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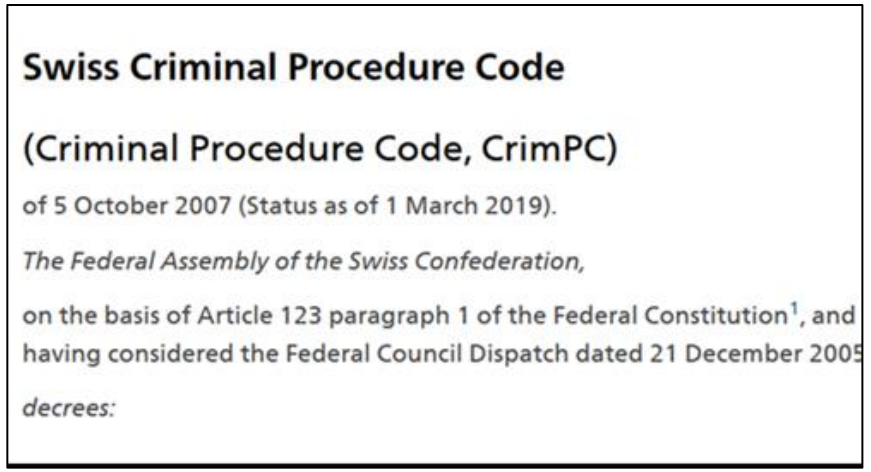

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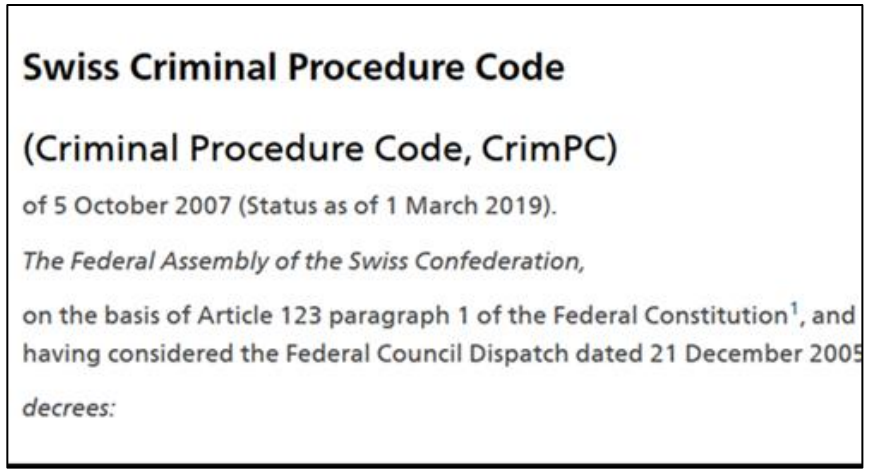
Art. 104 – Parties

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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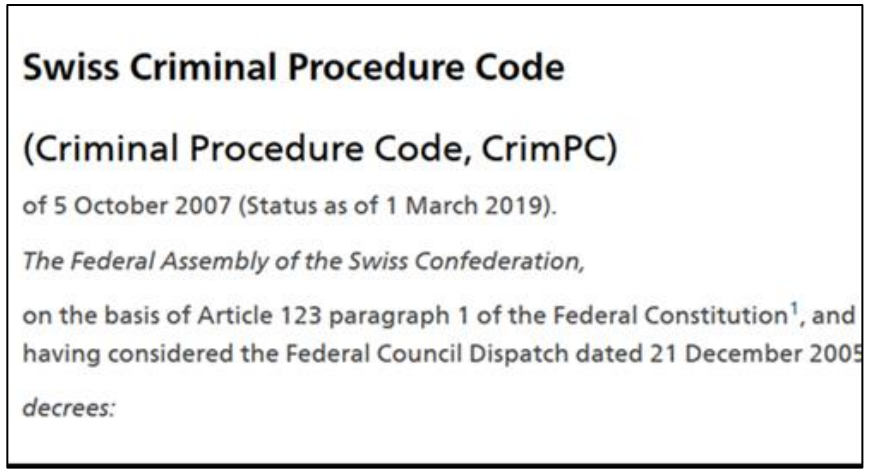

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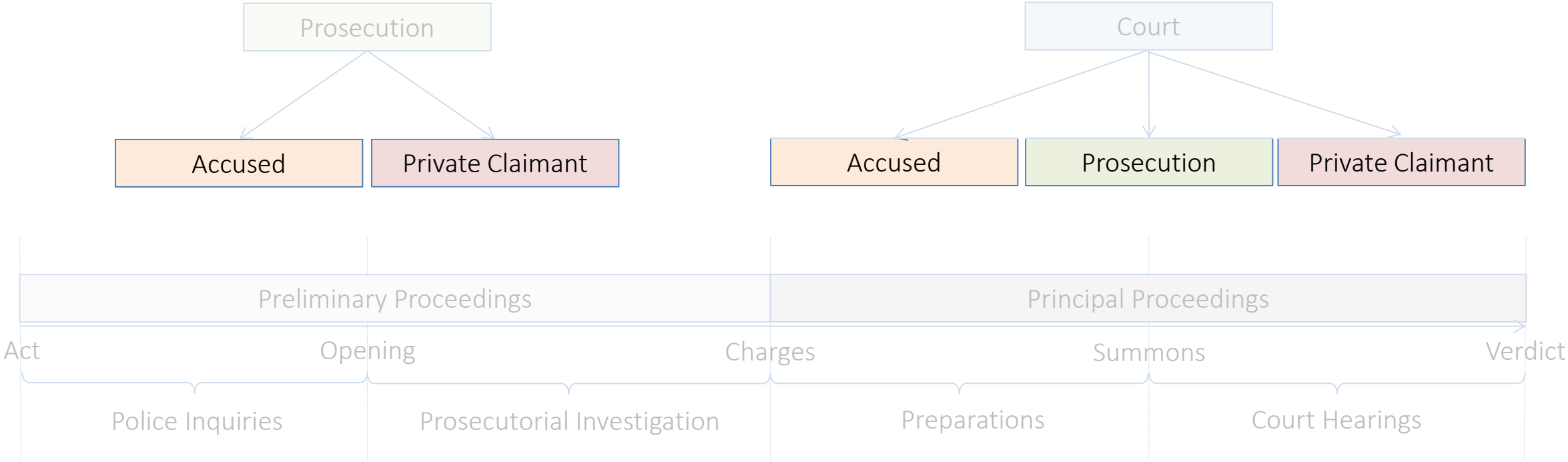
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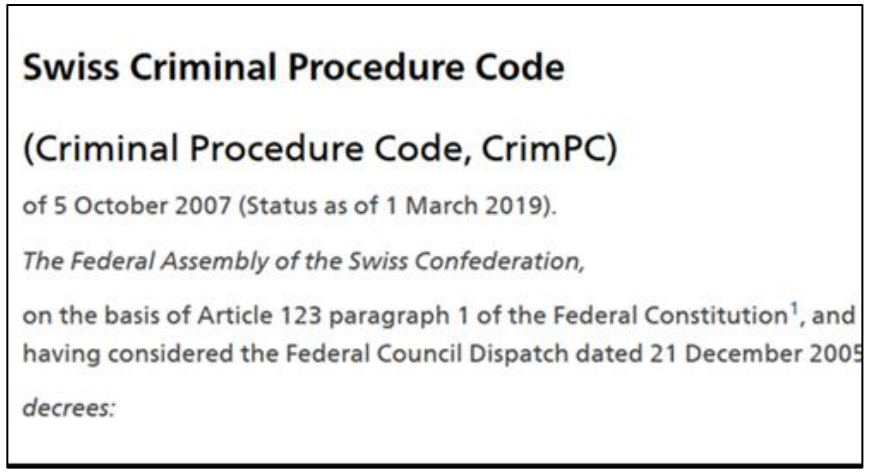
The Accused

- 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)

Art. 113 Status [of the accused]

The accused may not be compelled to incriminate him or herself. In particular, the accused is entitled to refuse to make a statement or to cooperate in the criminal proceedings.



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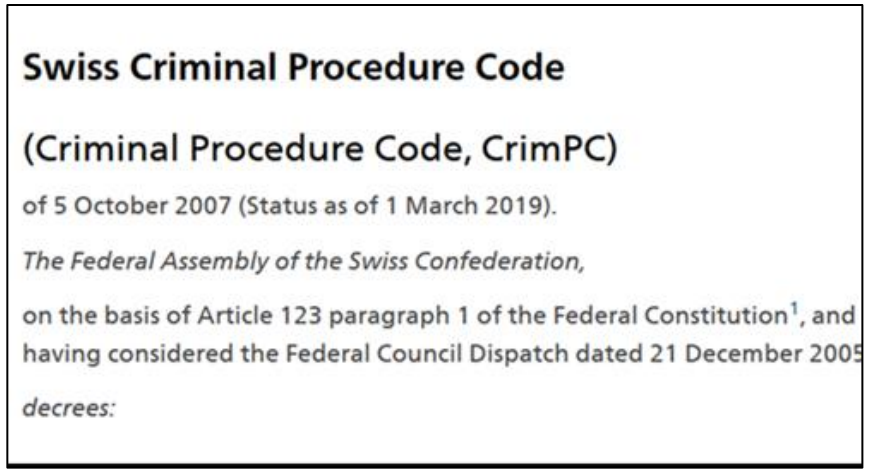

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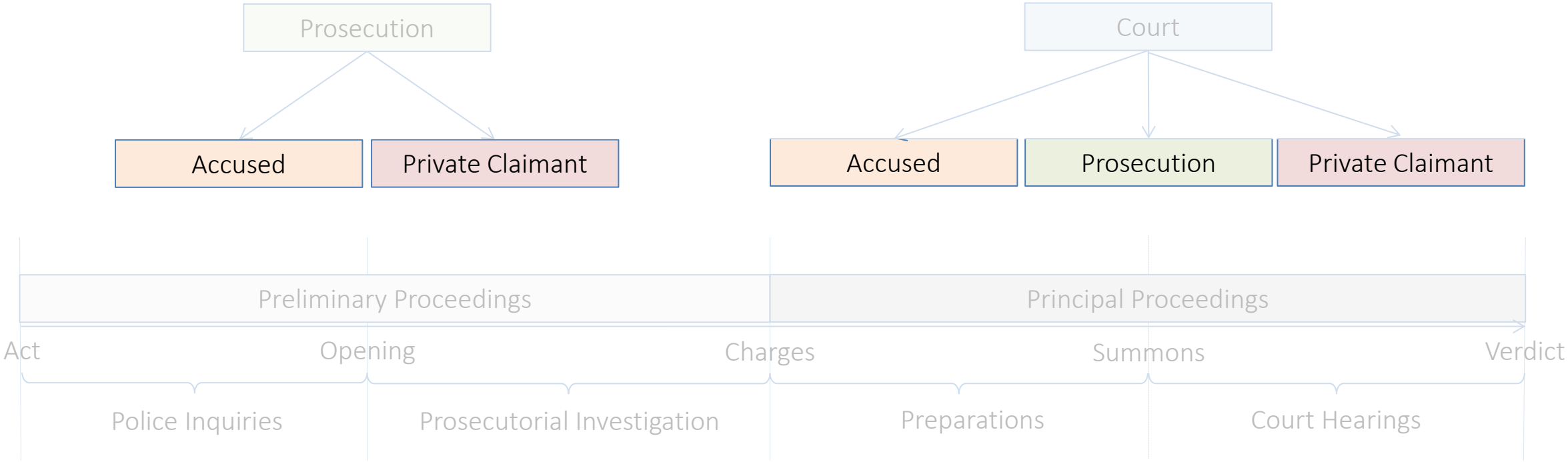
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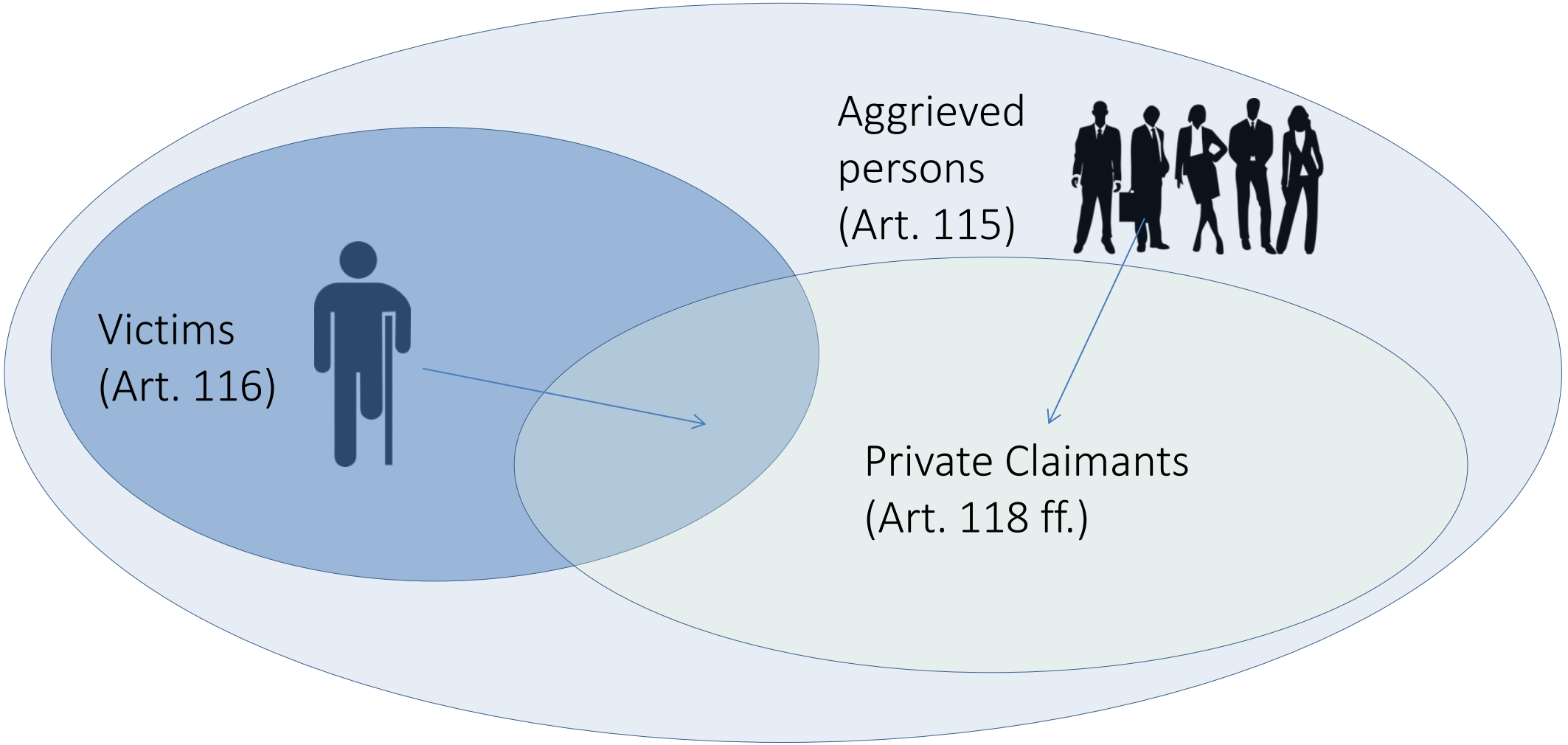
Art. 115 – The aggrieved person

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

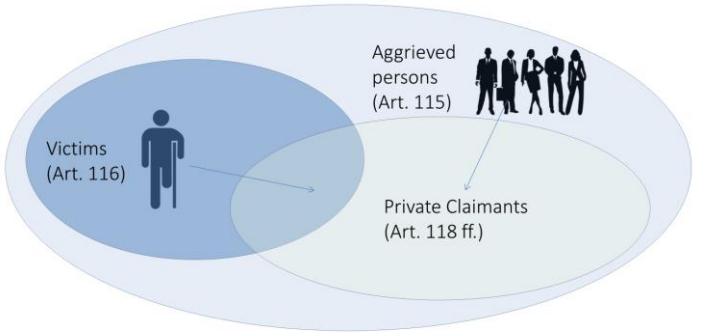
Art. 116 – Victim

[1] A victim is a person suffering harm whose physical, sexual or mental integrity has been directly and adversely affected by the offence.


Aggrieved persons (Art. 115)
Victims (Art. 116)
Private Claimants (Art. 118 ff.)

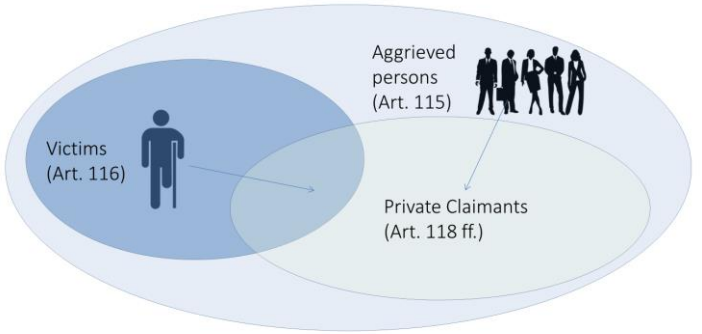
Art. 118 – Private Claimants

[1] A private claimant is a person suffering harm who expressly declares that he or she wishes to participate in the criminal proceedings as a criminal or civil claimant.



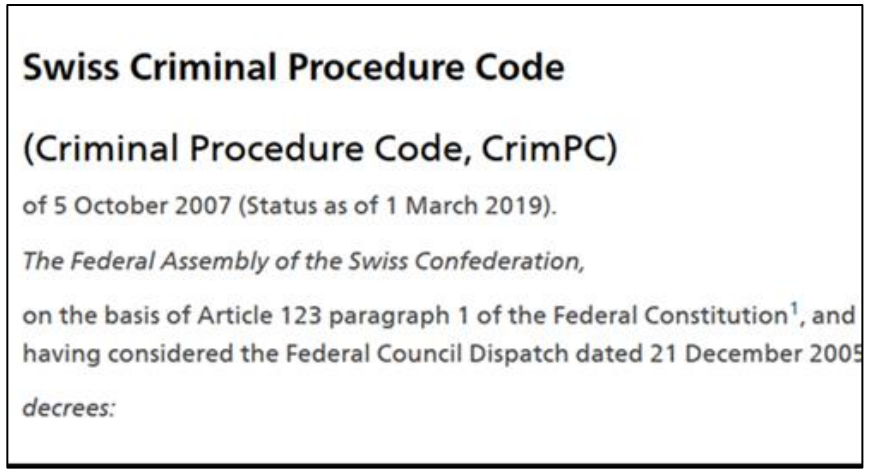
Private Claimants

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



Art. 127 – [Legal counsel]

[1] 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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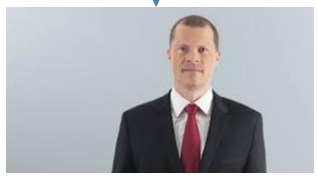
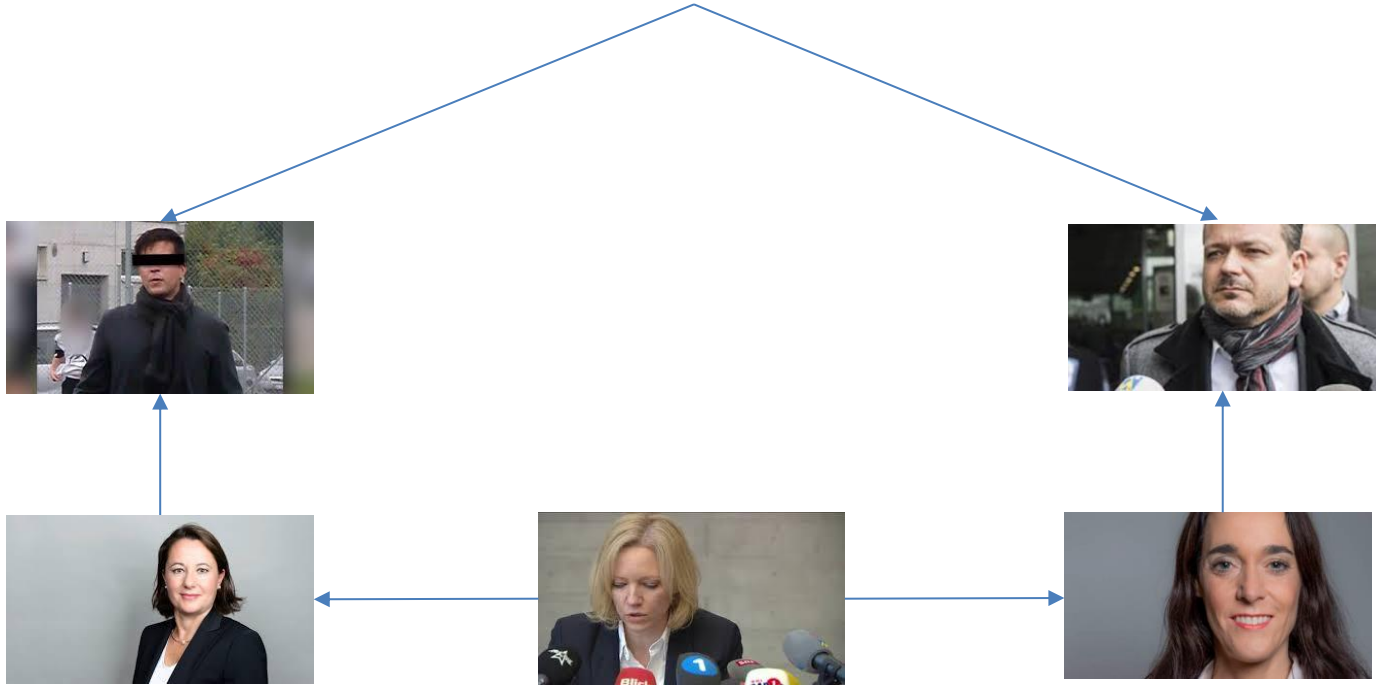
Legal counsel



Accused appoints
Defence counsel
(Art. 128/129 CPC)

Victim/family appoint
legal counsel
(Art. 128/12 CPC)

Legal aid (defence) counsel



Prosecutor
appoints
legal aid counsel
Art. 133 CPC

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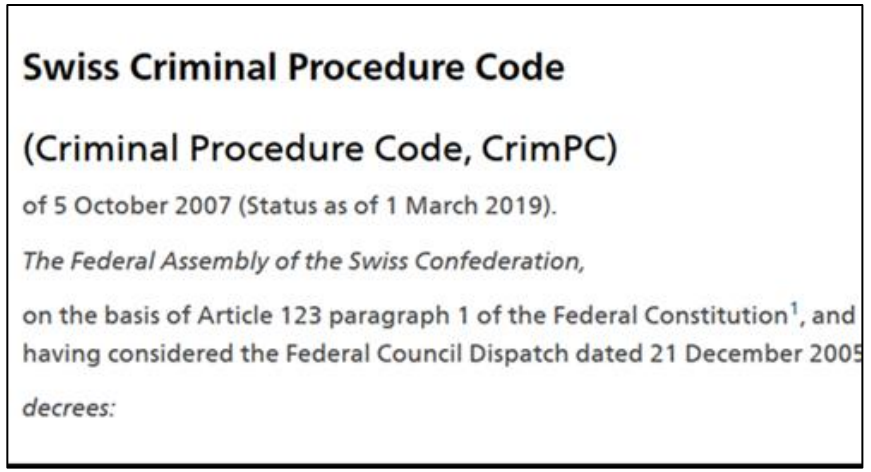

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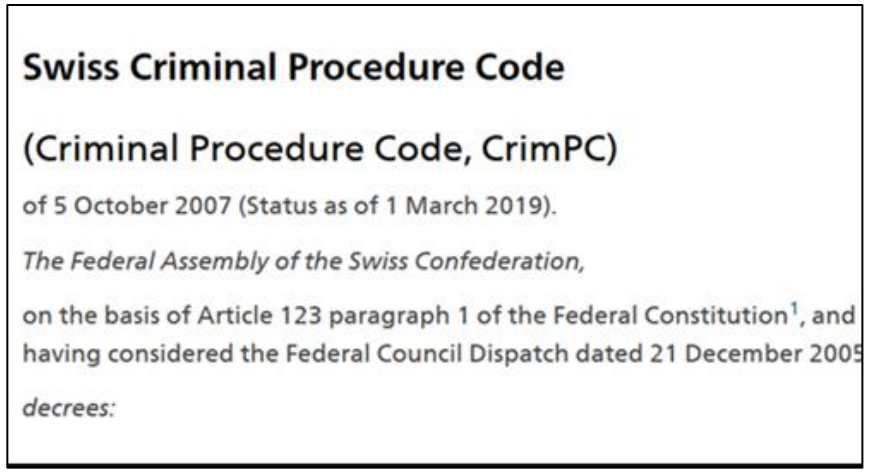
Art. 139 – [Evidence]

[1] In order to establish the truth, the criminal justice authorities shall use all the legally admissible evidence that is relevant in accordance with the latest scientific findings and experience.



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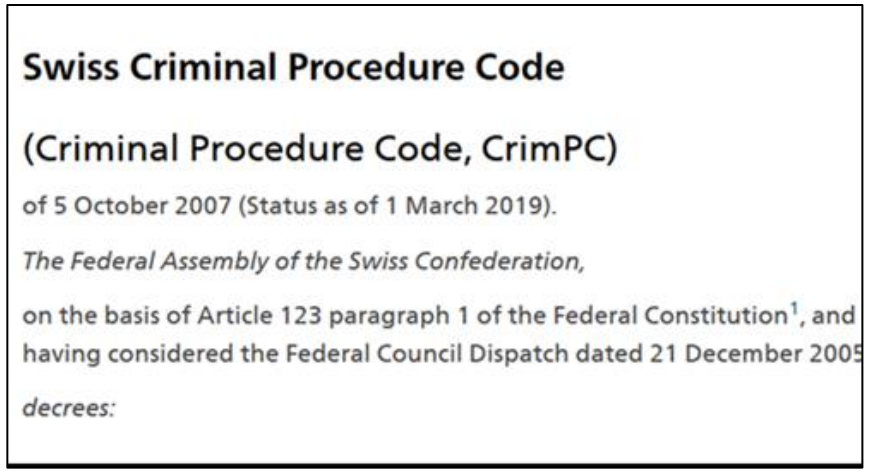
Art. 141 – [Admissibility of Evidence]

[2] Evidence that criminal justice authorities have obtained by criminal methods or by violating regulations on admissibility is inadmissible unless it is essential that it be admitted in order to secure a conviction for a serious offence.



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Thommen/Samadi The Bigger the Crime, the Smaller the Chance of a Fair Trial?, European Journal of Crime, Criminal Law and Criminal Justice, 24/2016, S. 65-86

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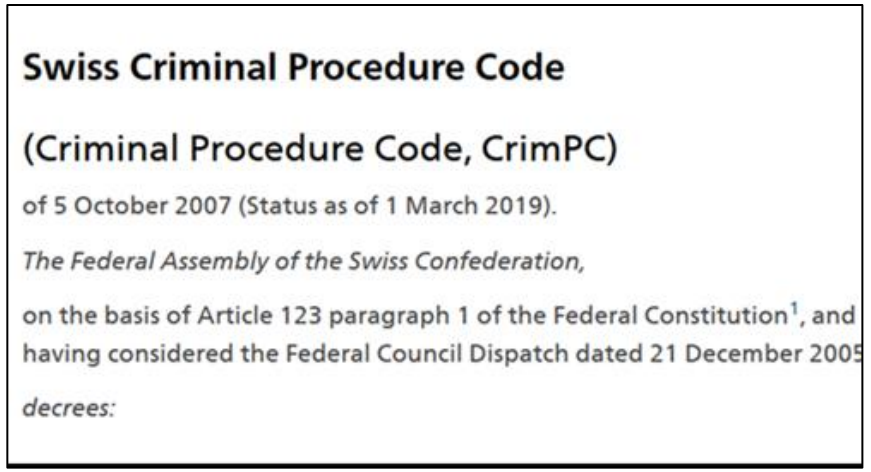

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Coercive Measures

- Summons
- Detention on Remand
- Searches & Examinations
- DNA Analysis
- Seizure
- Covert Surveillance

Buchholzer/keystone

Coercive Measures

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- Detention on Remand
- Searches & Examinations
- DNA Analysis
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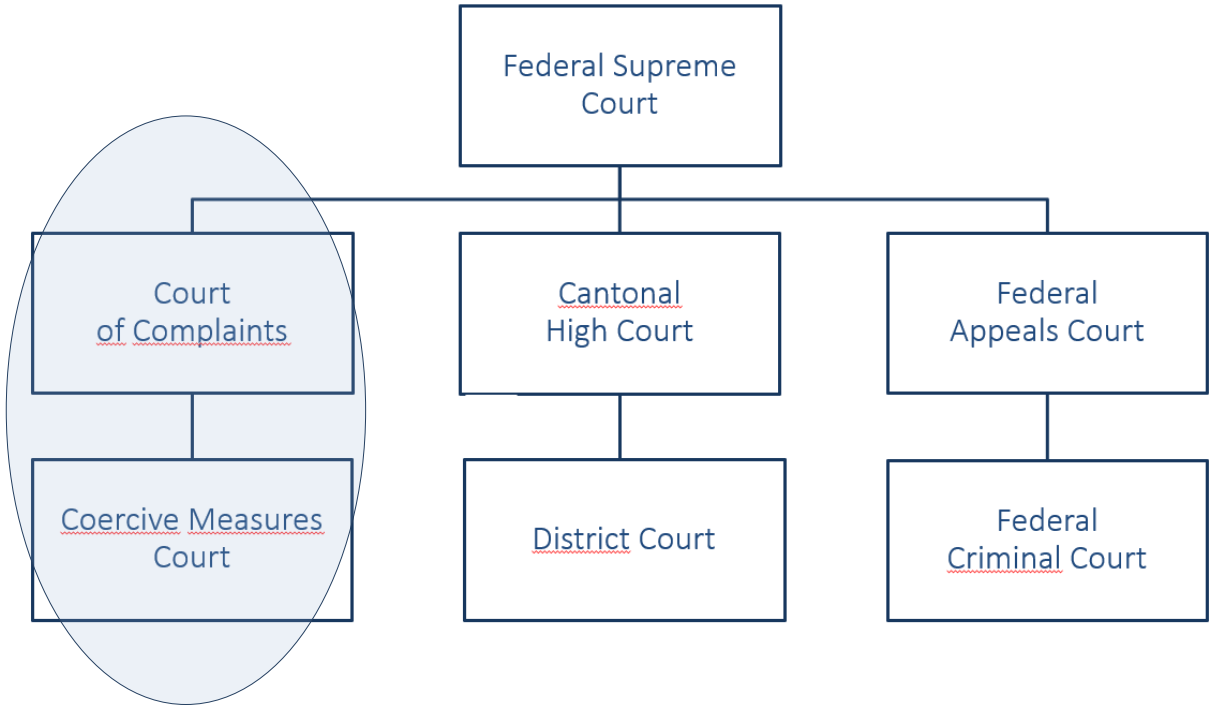
- Covert Surveillance



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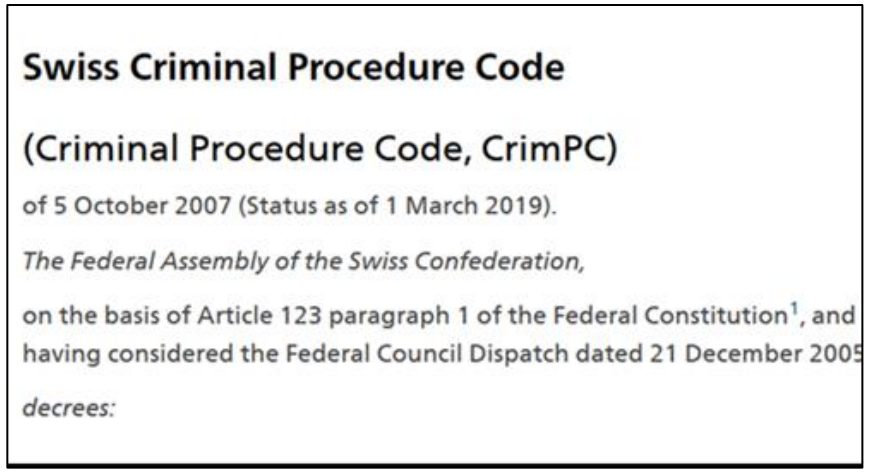


Swiss Criminal Procedure Code

(Criminal Procedure Code, CrimPC)

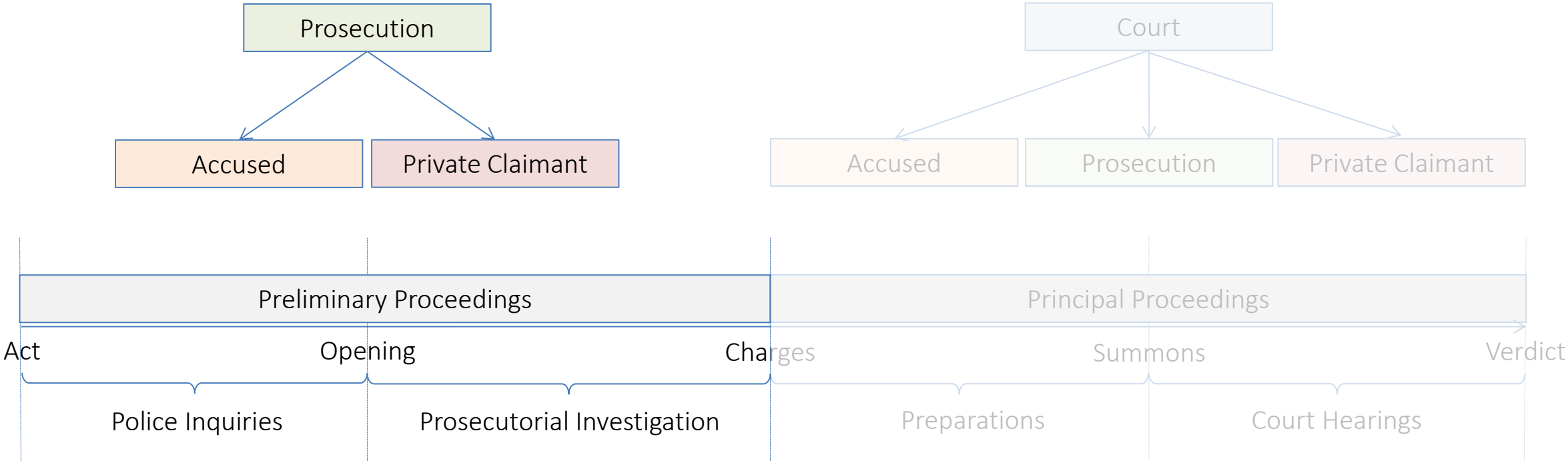
of 5 October 2007 (Status as of 1 March 2019).

The Federal Assembly of the Swiss Confederation,

on the basis of Article 123 paragraph 1 of the Federal Constitution[1], and having considered the Federal Council Dispatch dated 21 December 2005

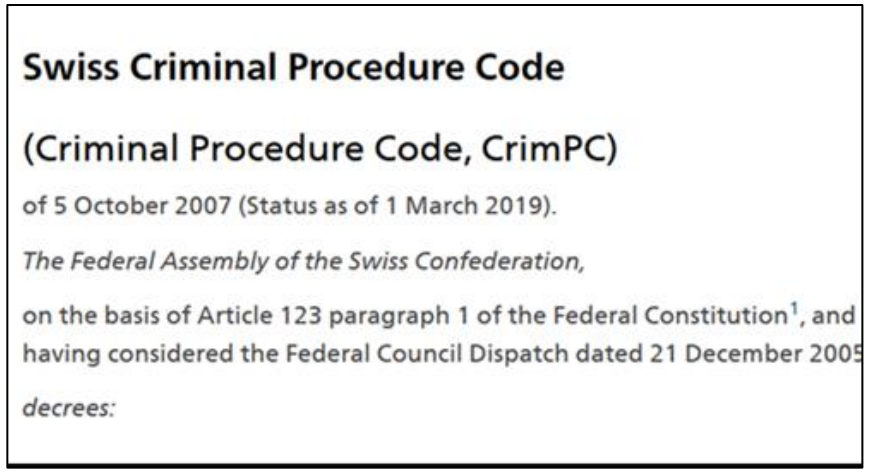
decrees:

Parties


Prosecution
Accused
Private Claimant
Court
Accused
Prosecution
Private Claimant
Preliminary Proceedings
Principal Proceedings
Act
Opening
Charges
Summons
Verdict
Police Inquiries
Prosecutorial Investigation
Preparations
Court Hearings

Swiss Criminal Procedure Code

Title 1 Scope of Application and Principles
Title 2 Criminal Justice Authorities
Title 3 Parties
Title 4 Evidence
Title 5 Coercive 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



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(Criminal Procedure Code, CrimPC)

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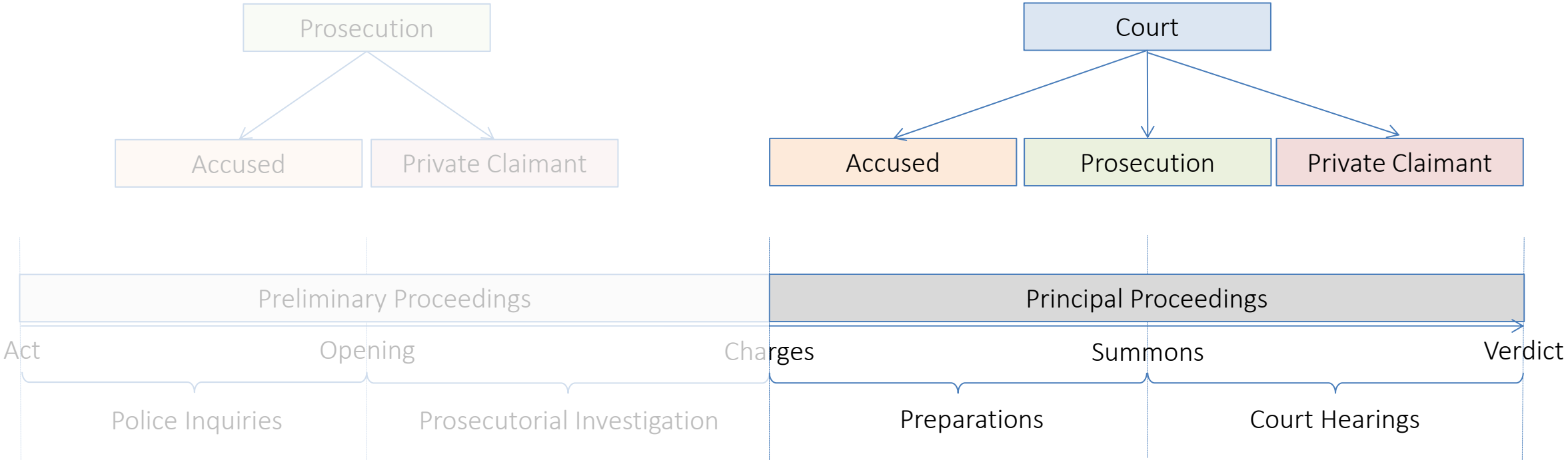
decrees:

Main Proceedings



Swiss Criminal Procedure Code

Title 1 Scope of Application and Principles
Title 2 Criminal Justice Authorities
Title 3 Parties
Title 4 Evidence
Title 5 Coercive Measures
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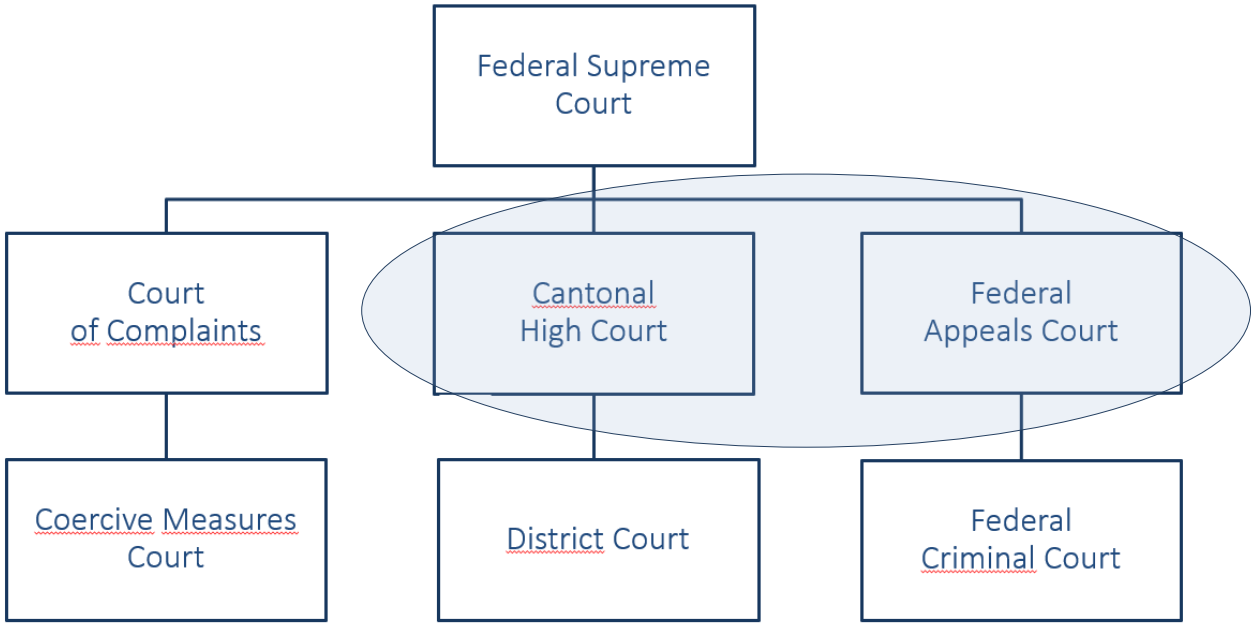
Title 12 Final Provisions



Swiss Criminal Procedure Code

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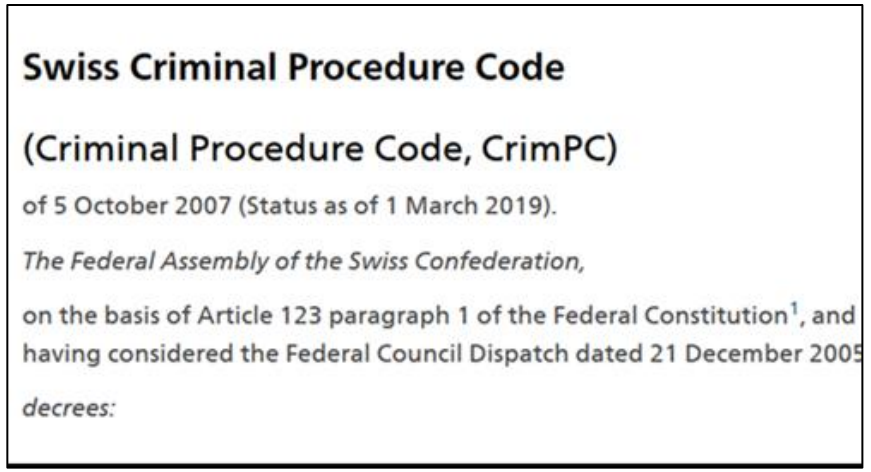

Swiss Criminal Procedure Code

(Criminal Procedure Code, CrimPC)

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decrees:

Swiss Criminal Procedure

I. Criminal Justice Authorities

II. Code Criminal Procedure

III. Penal Order Proceedings

Fake passport

- 18 May 2016, railway station border crossing, Basel
- 30-year-old woman of color was stopped and frisked by the police
- Fake cameroonian passport
- Police arrest and interrogation

Fake passport

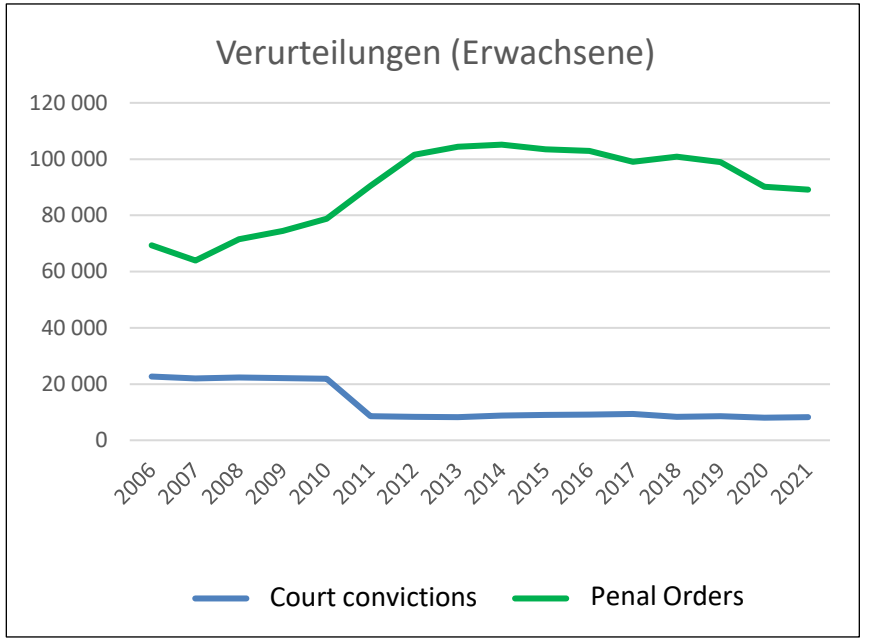
- 19 May 2016
- Prosecutor issues penal order
- Prison sentence 1.5 months
- No parole

Fake passport

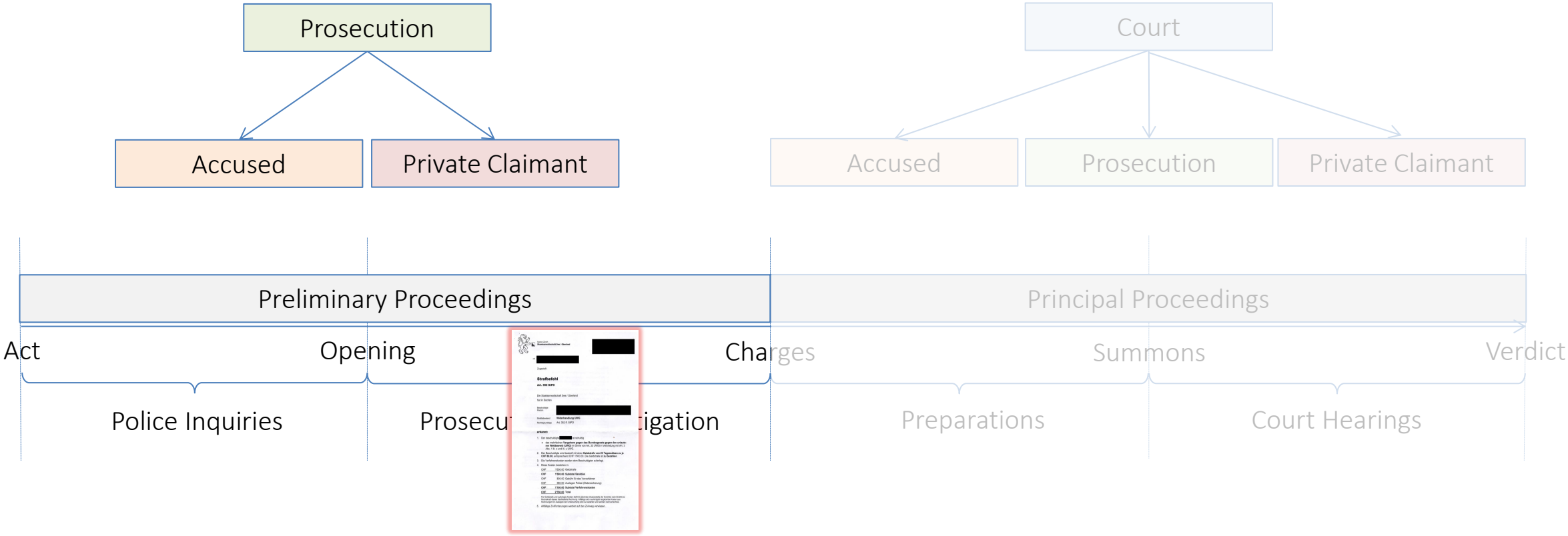
- No hearing by prosecutor
- No defence counsel
- No translation
- Served by police

Fake passport

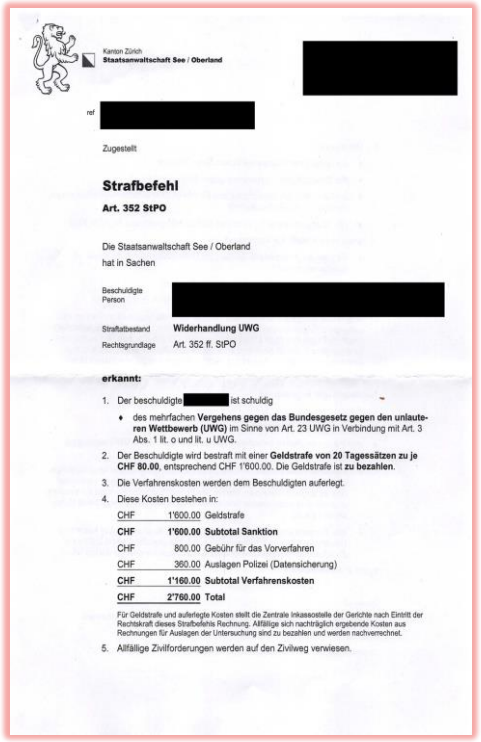
- No hearing by prosecutor
- No defence counsel
- No translation
- Served by police



Penal Order Proceedings



1. Penal order
2. Criticism
3. Correction



Kanton Zürich
Staatsanwaltschaft See / Oberland

[redacted]

ref [redacted]

Zugestellt

Strafbefehl

Art. 352 StPO

Die Staatsanwaltschaft See / Oberland

hat in Sachen

Beschuldigte Person [redacted]

Straftatbestand **Widerhandlung UWG**

Rechtsgrundlage Art. 352 ff. StPO

erkannt:

1. Der beschuldigte [redacted] ist schuldig
   - des mehrfachen **Vergehens gegen das Bundesgesetz gegen den unlauteren Wettbewerb (UWG)** im Sinne von Art. 23 UWG in Verbindung mit Art. 3 Abs. 1 lit. o und lit. u UWG.
2. Der Beschuldigte wird bestraft mit einer **Geldstrafe von 20 Tagessätzen zu je CHF 80.00**, entsprechend CHF 1'600.00. Die Geldstrafe ist **zu bezahlen**.
3. Die Verfahrenskosten werden dem Beschuldigten auferlegt.
4. Diese Kosten bestehen in:

CHF	1'600.00	Geldstrafe
CHF	**1'600.00**	**Subtotal Sanktion**
CHF	800.00	Gebühr für das Vorverfahren
CHF	360.00	Auslagen Polizei (Datensicherung)
CHF	**1'160.00**	**Subtotal Verfahrenskosten**
CHF	**2'760.00**	**Total**

Für Geldstrafe und auferlegte Kosten stellt die Zentrale Inkassostelle der Gerichte nach Eintritt der Rechtskraft dieses Strafbefehls Rechnung. Allfällige sich nachträglich ergebende Kosten aus Rechnungen für Auslagen der Untersuchung sind zu bezahlen und werden nachverrechnet.

5. Allfällige Zivilforderungen werden auf den Zivilweg verwiesen.

Art. 352 CPC – Penal Order

[1] If the accused person has … confessed to the facts of the case or if the circumstances have been otherwise sufficiently resolved, then the prosecution shall issue a penal order if it considers… that one of the following sentences suffices:

a. fine

b. monetary penalty

c. …

d. 6 months of imprisonment

Art. 352 CPC – Penal Order

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Art. 352 CPC – Penal Order

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c. …

d. 6 months of imprisonment

Definitions

Art. 10 Swiss Criminal Code

[2] **Felonies** are offences that carry a custodial sentence of more than three years.

[3] **Misdemeanours** are offences that carry a custodial sentence not exceeding three years or a monetary penalty.

Art. 103 Swiss Criminal Code

Contraventions are acts that are punishable by a fine.

Penal Order Proceedings

Police

Accused

Interrogation: 65%

Thommen (2025), 18

Penal Order Proceedings

Prosecutor

10 days

Accused

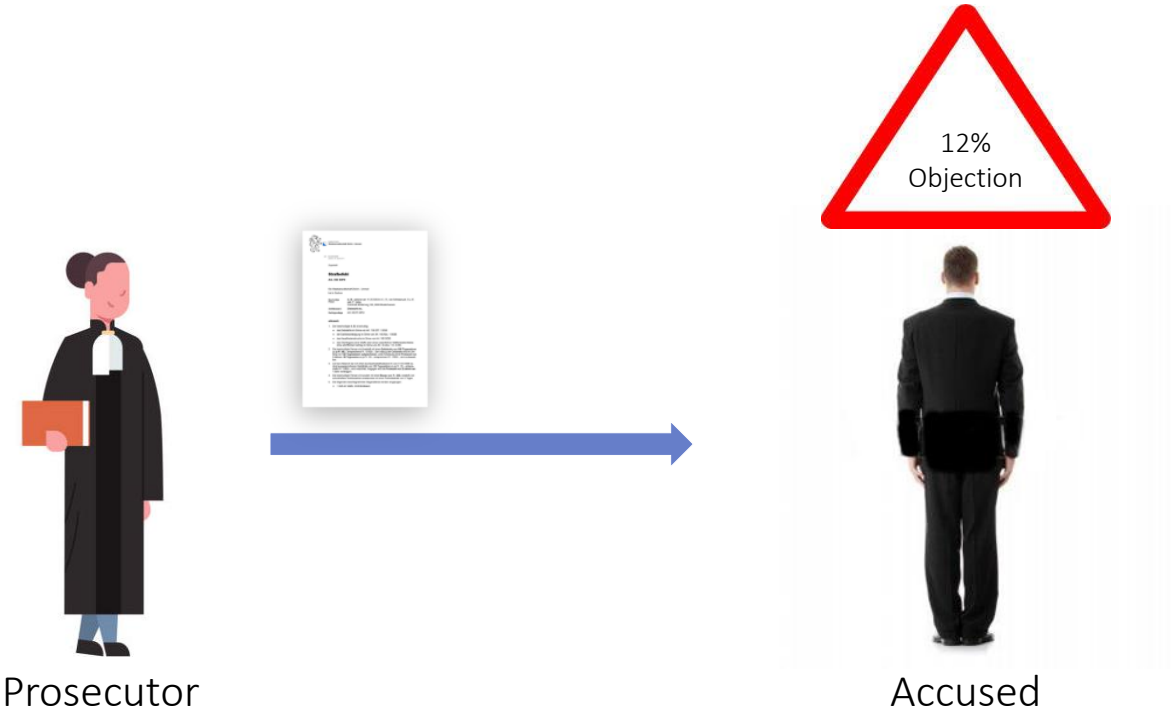
88 %
accepted

Conviction

Interrogation: 8 %

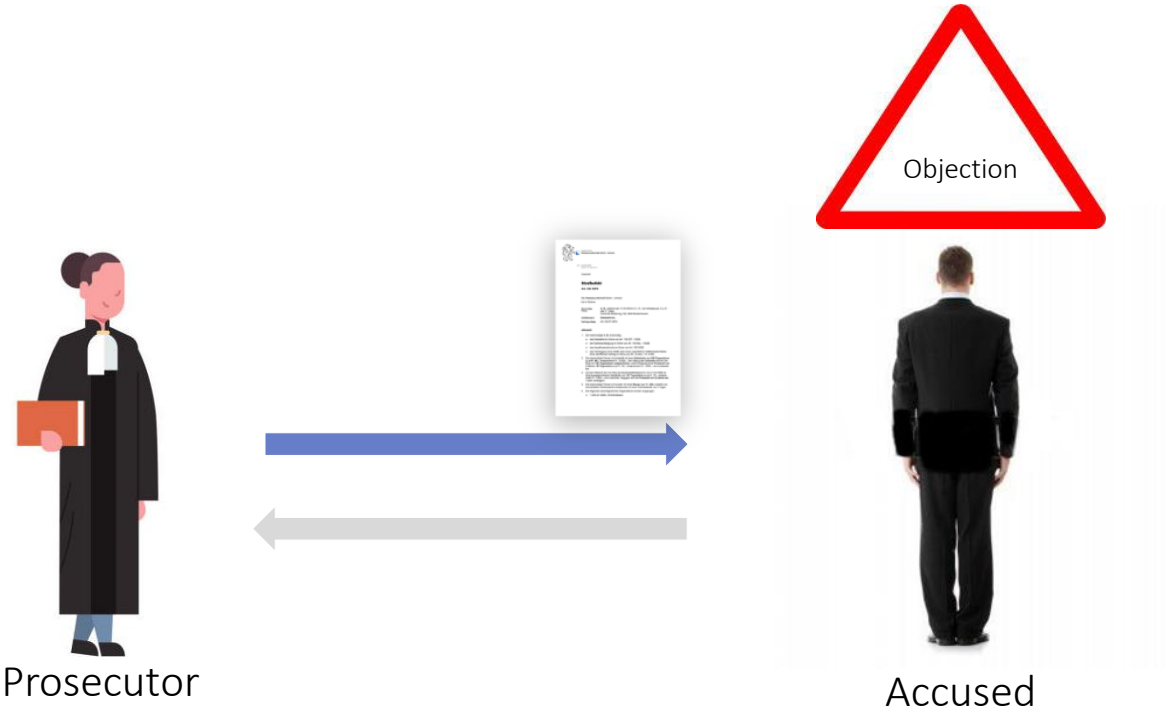
7B_131/2022
Strafprozess.ch

Penal Order Proceedings



Studer (2019)
Thommen/Diethelm (2015)

Penal Order Proceedings



Penal Order Proceedings

19 % - Interrogation

Thommen (2025), 18

Art. 355 CPC – Procedure after Objection

Prosecutor decides to

a. Uphold penal order

b. Abandon proceedings

c. Issue new penal order

d. Bring charges at court

Art. 355 CPC – Procedure after Objection

Prosecutor decides to

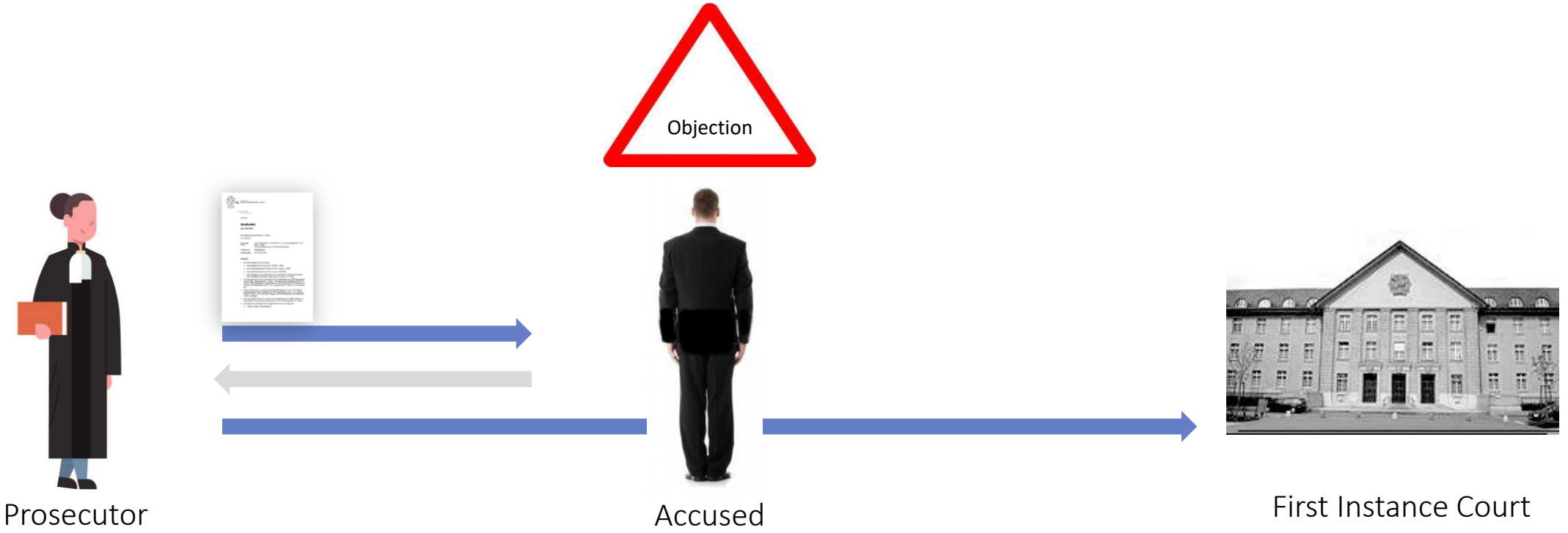
a. Uphold penal order 28 %

b. Abandon proceedings

c. Issue new penal order

d. Bring charges at court

a. Uphold penal order



Thommen/Eschle (2020)

Art. 355 CPC – Procedure after Objection

Prosecutor decides to

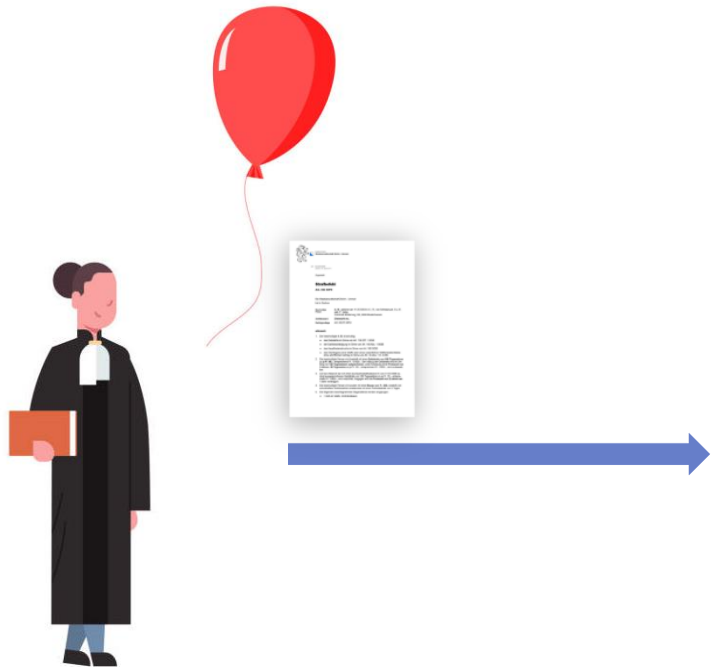
a. Uphold penal order

b. Abandon proceedings 10 %

c. Issue new penal order

d. Bring charges at court

b. Abandon proceedings

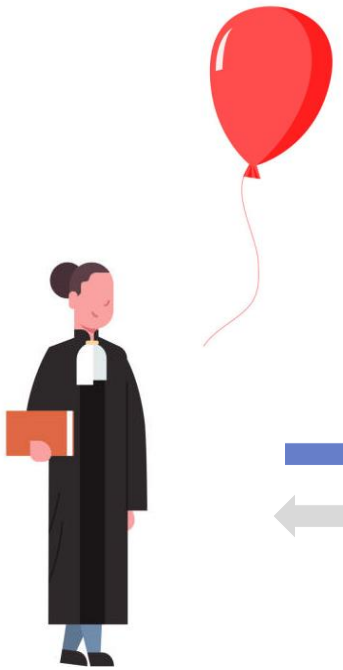


Prosecutor

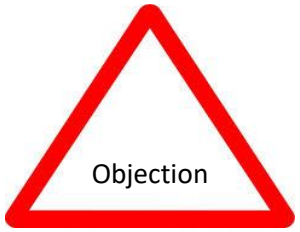
Accused

First Instance Court

b. Abandon proceedings



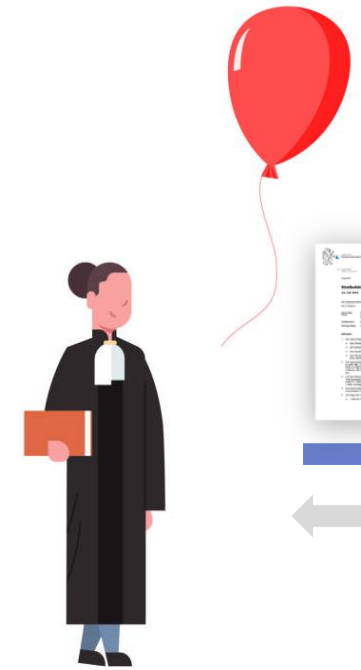
Prosecutor



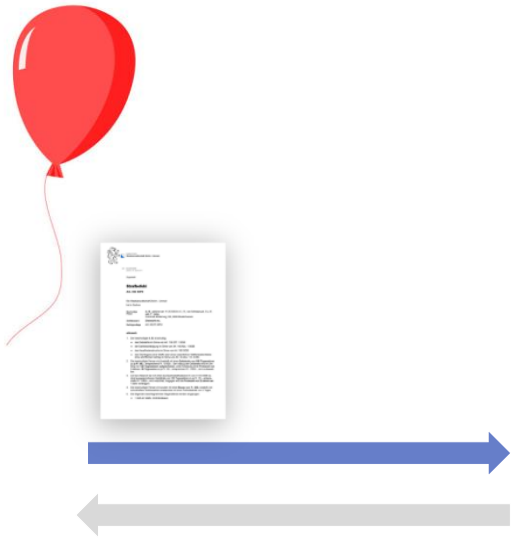
Accused

First Instance Court

b. Abandon proceedings



Prosecutor



Accused

First Instance Court

Art. 355 CPC – Procedure after Objection

Prosecutor decides to

a. Uphold penal order

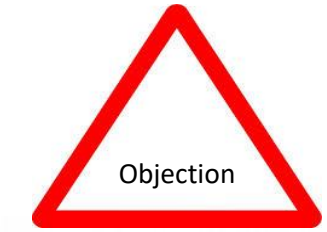
b. Abandon proceedings

c. Issue new penal order 23 %

d. Bring charges at court

c. Issue new penal order

Prosecutor

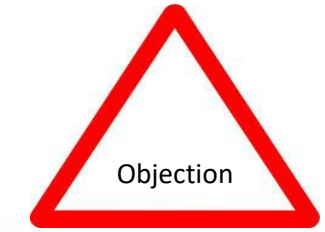


Accused

First Instance Court

c. Issue new penal order

Prosecutor



Accused

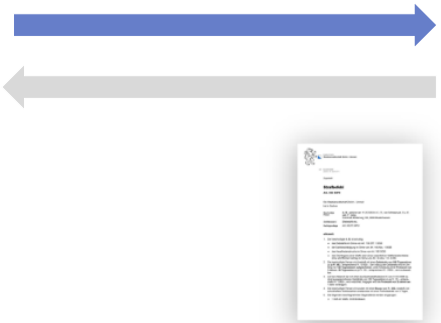
First Instance Court

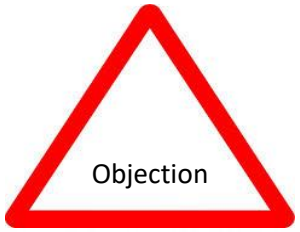
Second Penal Order:
- Milder sanction
- Partial closing

BGE 138 IV 241
Oehen (2019) 117

c. Issue new penal order

Prosecutor





Accused

First Instance Court

Art. 355 CPC – Procedure after Objection

Prosecutor decides to

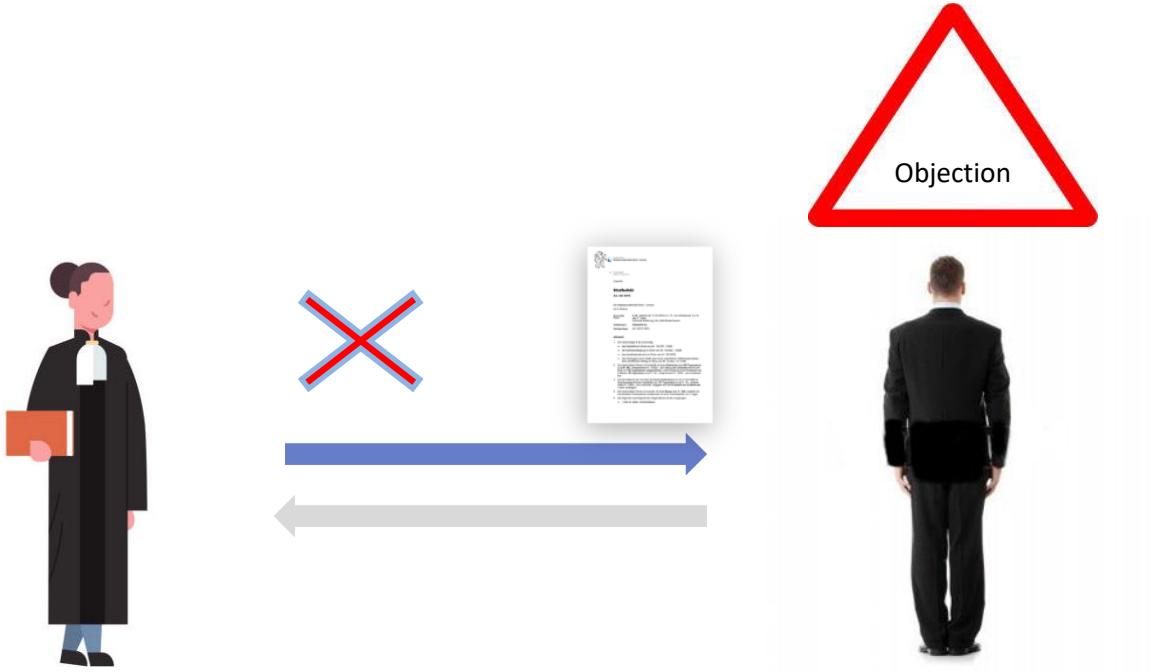
a. Uphold penal order

b. Abandon proceedings

c. Issue new penal order

d. Bring charges at court 3 %

d. Bring charges at court



BGE 149 IV 50

Jeker (2023)

Thommen/Diethelm (2015)

Prosecutor

Objection

Accused

36 % Objections withdrawn

Conviction

Art. 355 CPC – Procedure after Objection

Prosecutor decides to

a. Uphold penal order 28 %

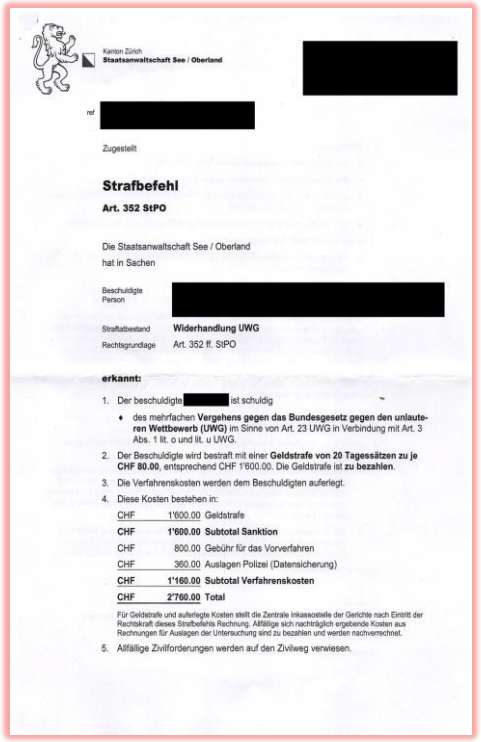
b. Abandon proceedings 10 %

c. Issue new penal order 23 %

d. Bring charges at court 3 %

e. Objection withdrawn 36 %

1. Penal order
2. Criticism
3. Correction



Kanton Zürich
Staatsanwaltschaft See / Oberland

[redacted]

ref [redacted]

Zugestellt

Strafbefehl

Art. 352 StPO

Die Staatsanwaltschaft See / Oberland

hat in Sachen

Beschuldigte Person [redacted]

Straftatbestand **Widerhandlung UWG**

Rechtsgrundlage Art. 352 ff. StPO

erkannt:

1. Der beschuldigte [redacted] ist schuldig
   - des mehrfachen **Vergehens gegen das Bundesgesetz gegen den unlauteren Wettbewerb (UWG)** im Sinne von Art. 23 UWG in Verbindung mit Art. 3 Abs. 1 lit. o und lit. u UWG.
2. Der Beschuldigte wird bestraft mit einer **Geldstrafe von 20 Tagessätzen zu je CHF 80.00**, entsprechend CHF 1'600.00. Die Geldstrafe ist **zu bezahlen**.
3. Die Verfahrenskosten werden dem Beschuldigten auferlegt.
4. Diese Kosten bestehen in:

CHF	1'600.00	Geldstrafe
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CHF	**1'160.00**	**Subtotal Verfahrenskosten**
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Für Geldstrafe und auferlegte Kosten stellt die Zentrale Inkassostelle der Gerichte nach Eintritt der Rechtskraft dieses Strafbefehls Rechnung. Allfällige sich nachträglich ergebende Kosten aus Rechnungen für Auslagen der Untersuchung sind zu bezahlen und werden nachverrechnet.

5. Allfällige Zivilforderungen werden auf den Zivilweg verwiesen.

Criticism

a. Hearing

b. Defence

c. Translation

d. Service

e. Prison

Criticism

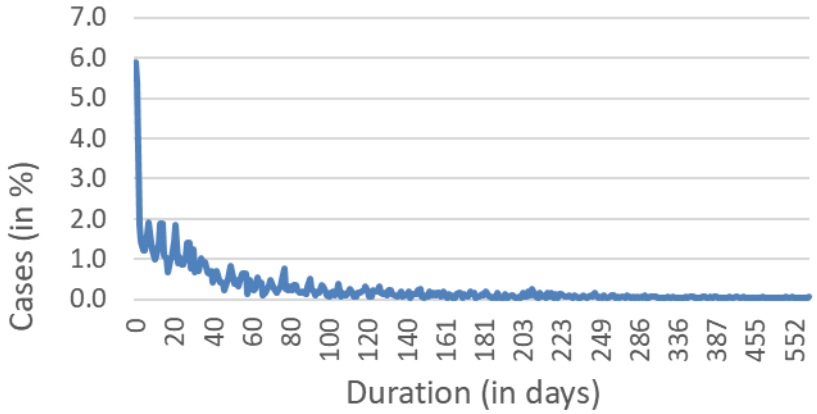
a. Hearing

b. Defence

c. Translation

d. Service

e. Prison



Criticism

a. Hearing

b. Defence

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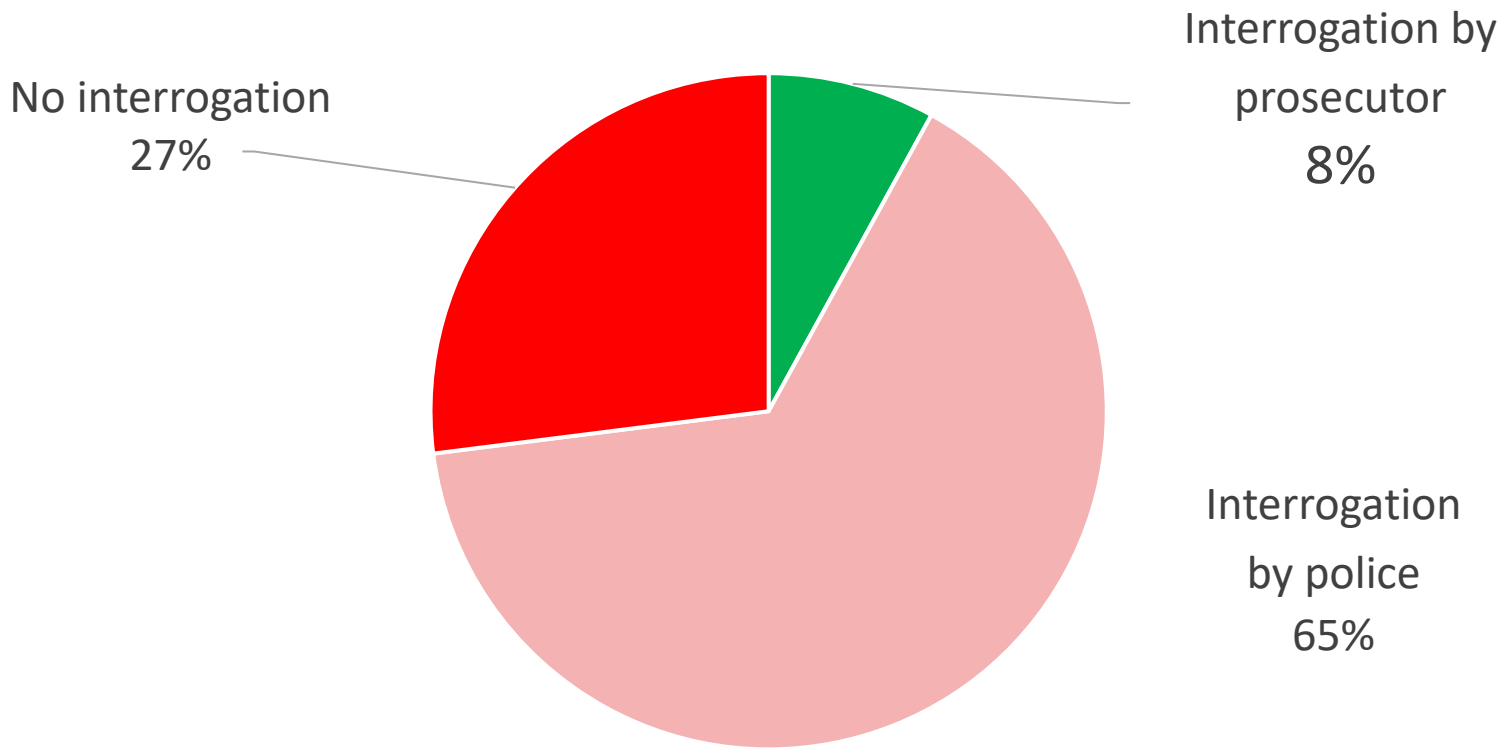
e. Prison



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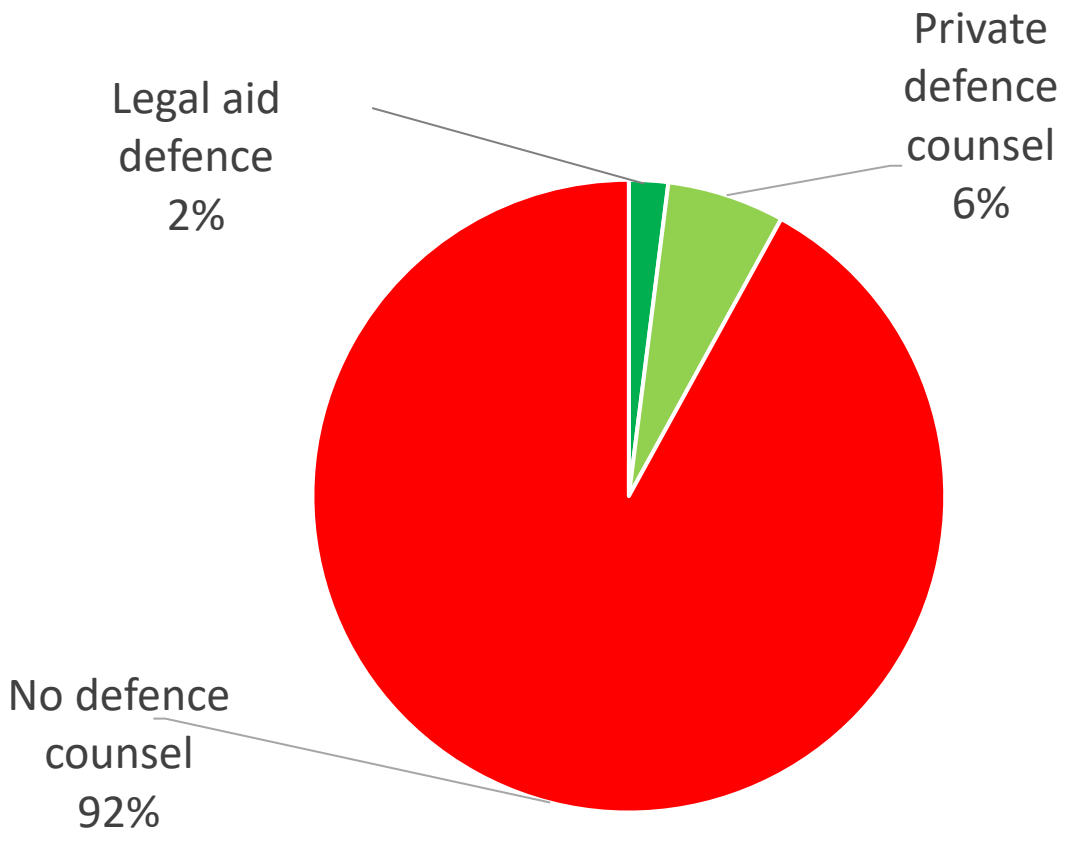
e. Prison



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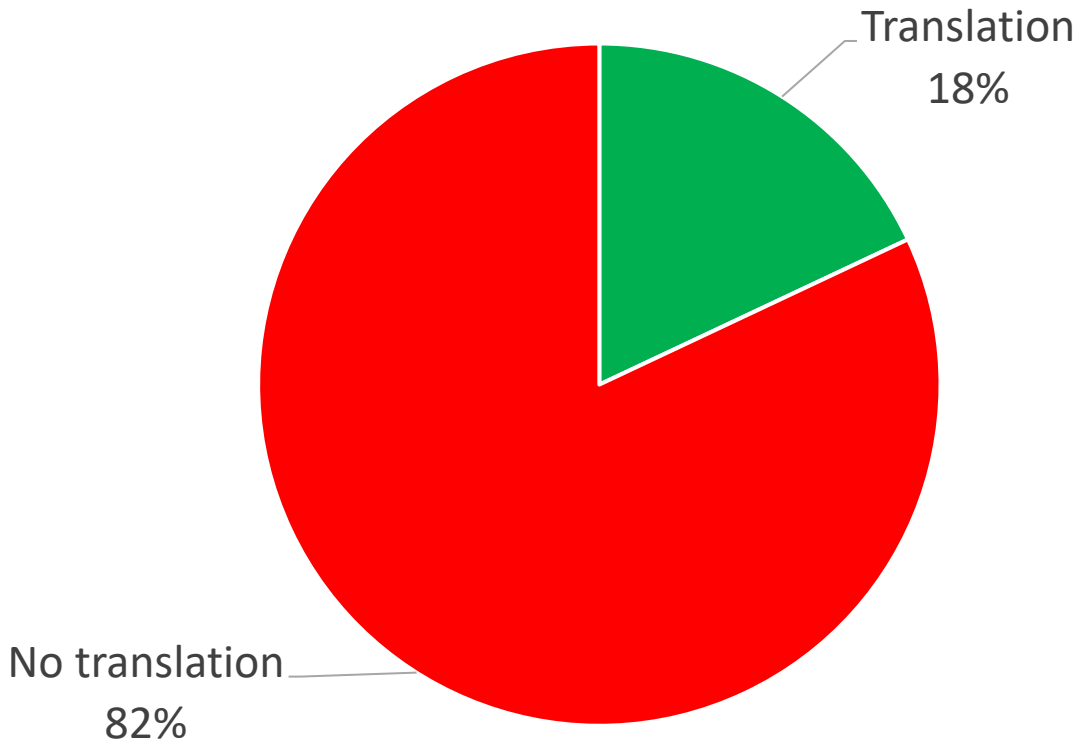

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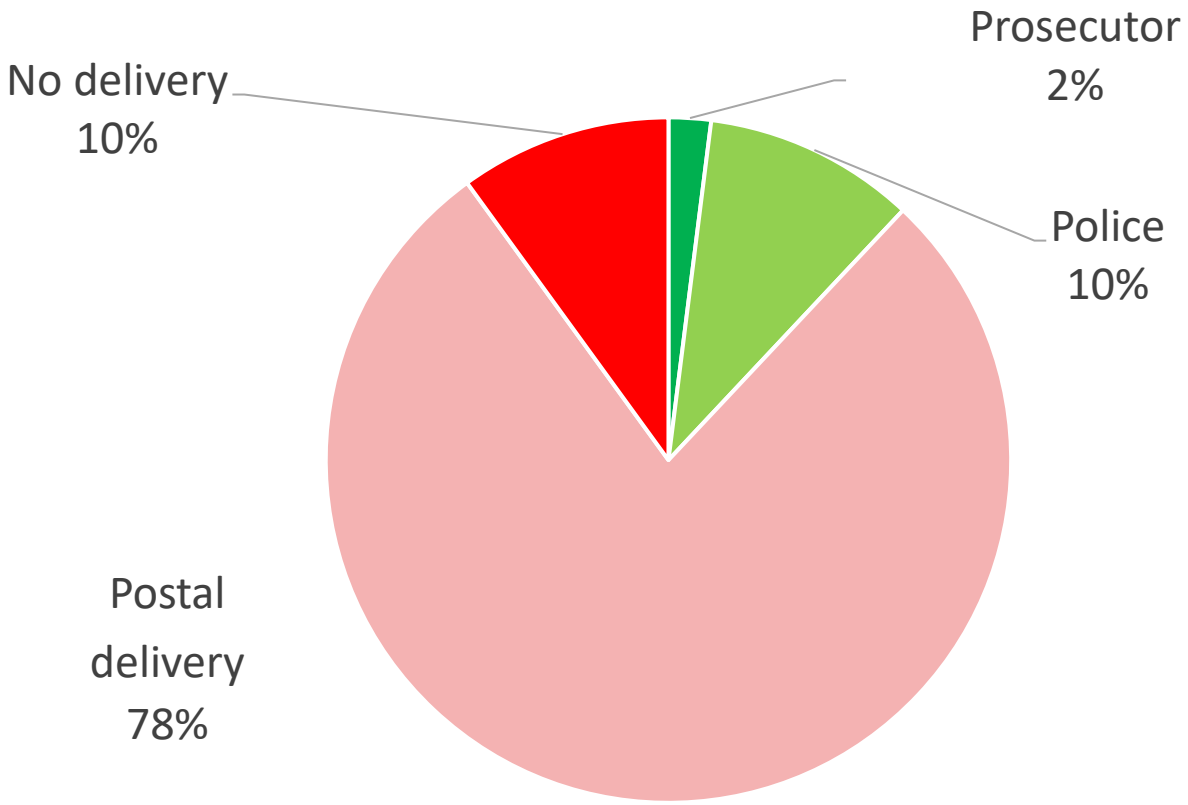

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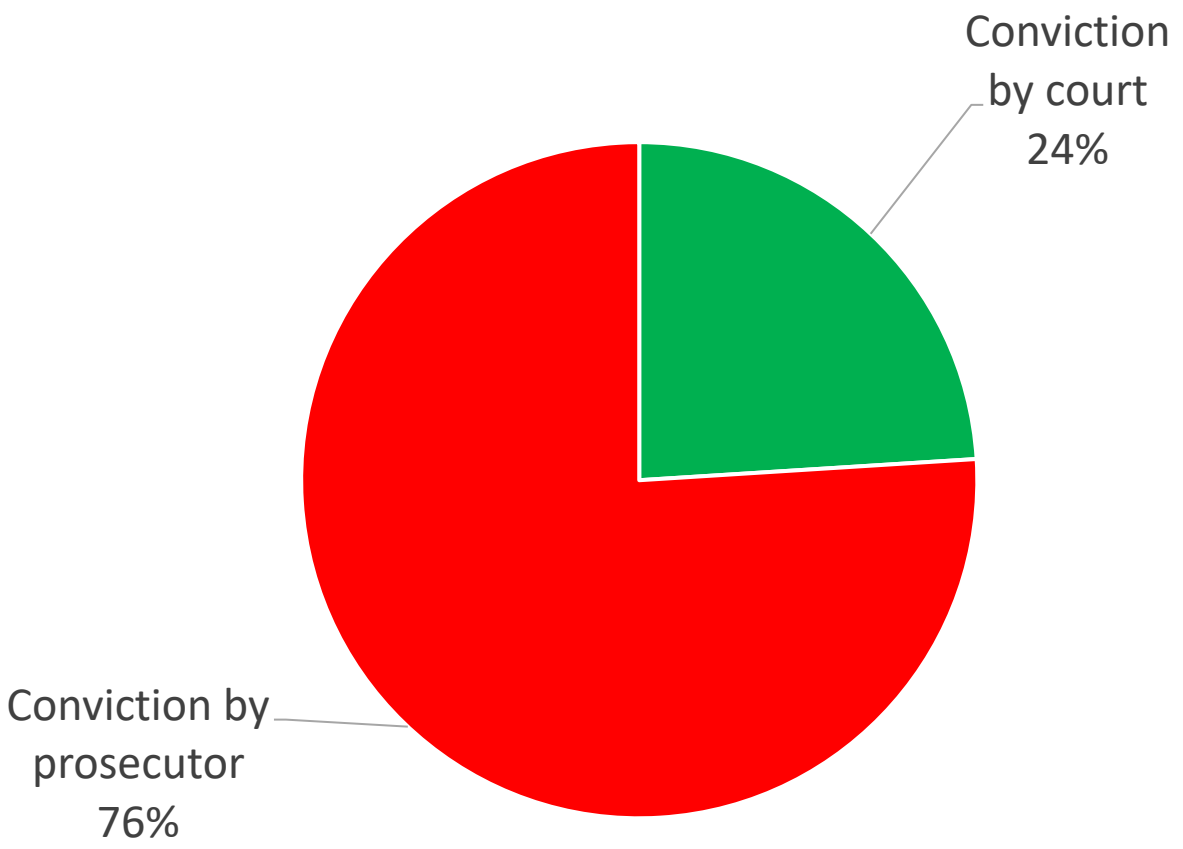
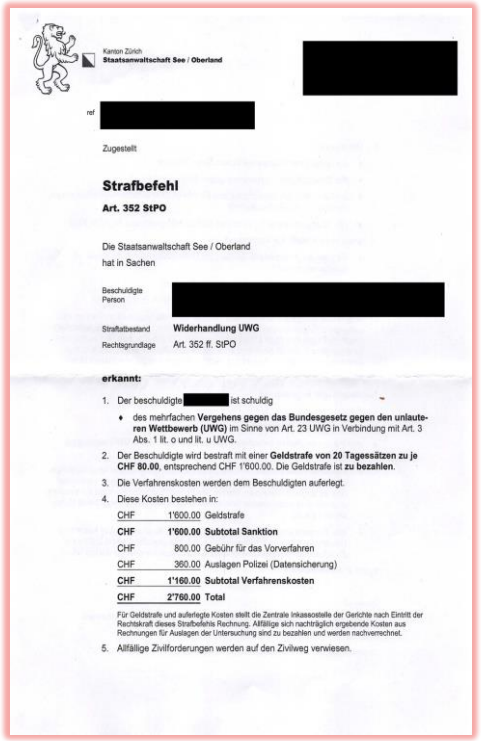


1. Penal order
2. Criticism
3. Correction



Kanton Zürich
Staatsanwaltschaft See / Oberland

[redacted]

ref [redacted]

Zugestellt

Strafbefehl

Art. 352 StPO

Die Staatsanwaltschaft See / Oberland

hat in Sachen

Beschuldigte Person [redacted]

Straftatbestand **Widerhandlung UWG**

Rechtsgrundlage Art. 352 ff. StPO

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Correction

1. Custody
2. Caution
3. Counsel
4. Contact
5. Cookies

Correction

1. Custody
2. Caution
3. Counsel
4. Contact
5. Cookies

Ernesto Arturo Miranda
Miranda v. Arizona (1966)

Correction

1. Custody
2. Caution
3. Counsel
4. Contact
5. Cookies

Correction

1. Custody
2. Caution
3. Counsel
4. Contact
5. Cookies

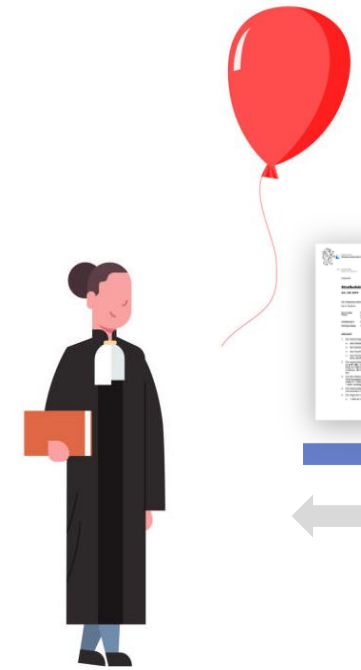
Tom R. Tyler, Legitimacy and Criminal Justice, OSJCL, V7, N1, 307, 323

Correction

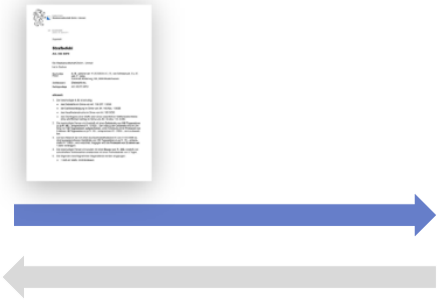
1. Custody
2. Caution
3. Counsel
4. Contact
5. Cookies

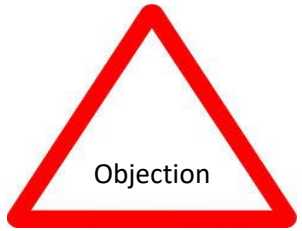
Doron Teichman, HUJ, Behavorial Law and Economics

b. Abandon proceedings



Prosecutor





Accused

First Instance Court

Correction

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Swiss Criminal Procedure

Summary

Summary

I. Criminal Justice Authorities

II. Code Criminal Procedure

III. Penal Order Proceedings

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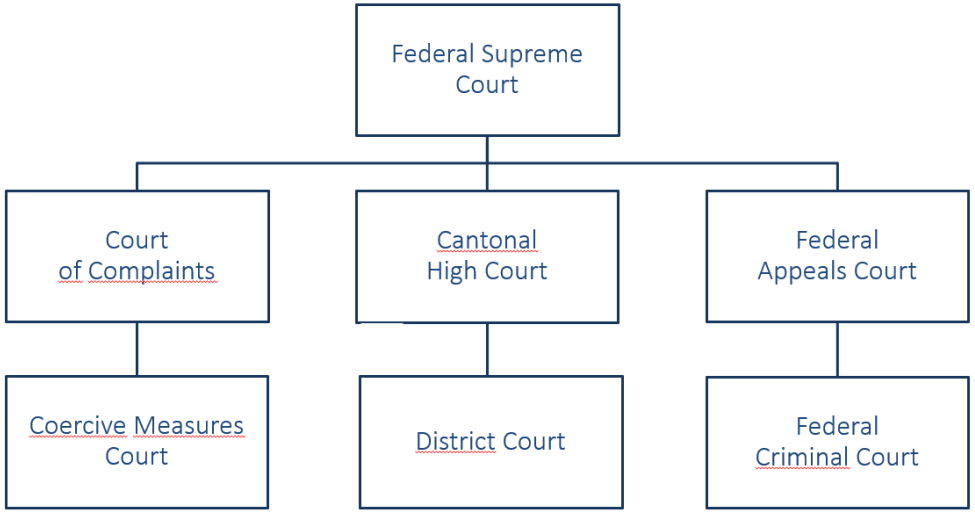

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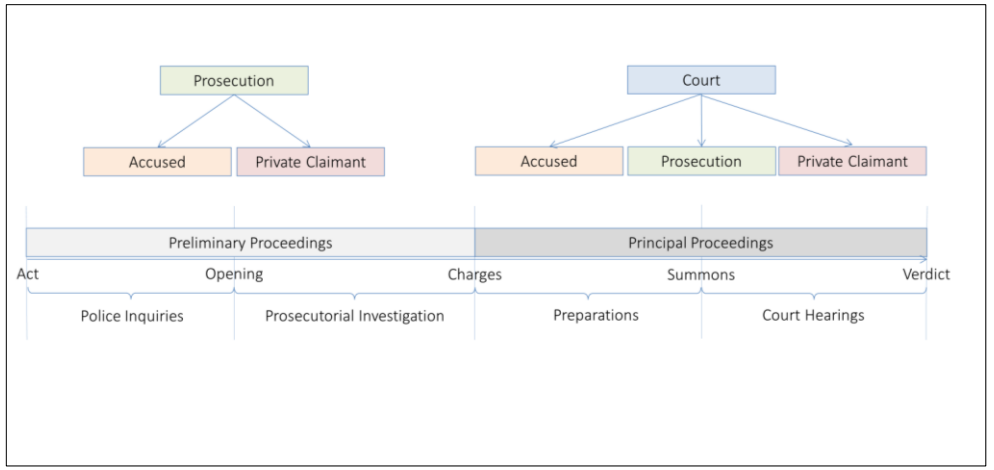

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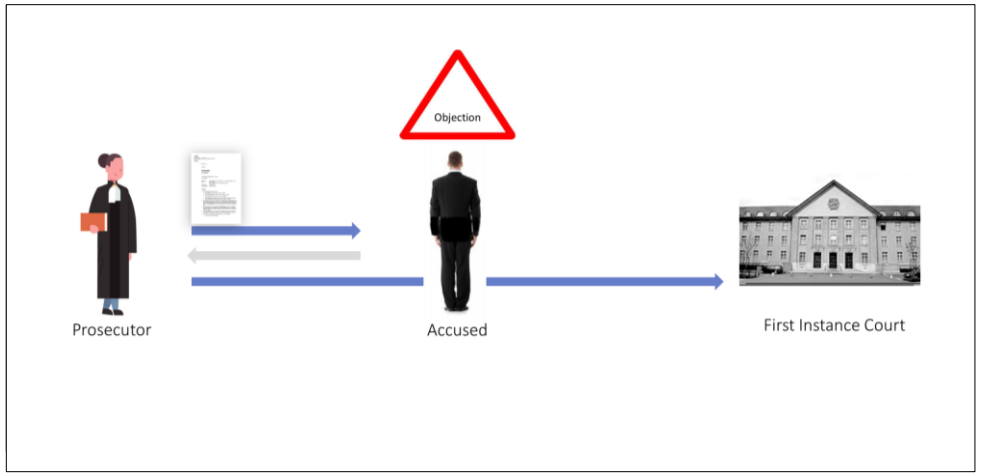

Introduction to Swiss Law

Date	Topic	Lecturer
19/09/2025	Constitutional Law	Daniel Moeckli
26/09/2025	Administrative Law / Administrative Procedure	Florian Brunner
03/10/2025	Civil Procedure	Lorenz Droese
10/10/2025	Civil Law Principles, Family Law & Law of Persons	Elisabetta Fiocchi
17/10/2025	Contract and Tort Law	Tina Huber-Purtschert
24/10/2025	Corporate and Banking Law	David Bertrand Roth
31/10/2025	Criminal Law	Nadine Zurkinden
07/11/2025	Criminal Procedure	Marc Thommen
14/11/2025	Legal History/ History of International Law	Elisabetta Fiocchi
21/11/2025	Legal Philosophy & Legal Theory	Matthias Hächler
28/11/2025	Legal Sociology	Camilla Dul
05/12/2025	Roman Law	Adrian Häusler
12/12/2025	Oral Exam	All

Swiss Criminal Procedure

Prof. Dr. Marc Thommen