

Criminal Law

Criminal Procedure

Prof. Dr. Marc Thommen

Luisa Lichtenberger, MLaw

III. Introduction

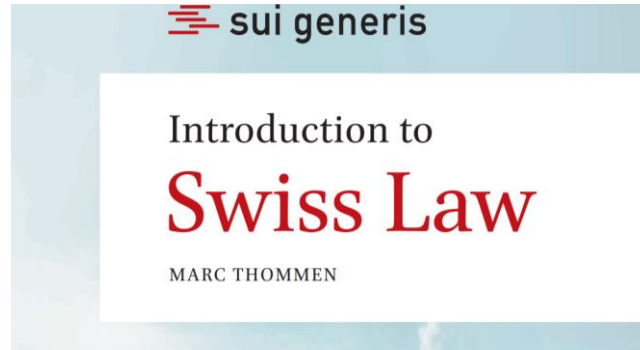
1. General Information
2. Criminal Procedure
3. Criminal Law

III. Introduction

1. General Information
2. Criminal Procedure
3. Criminal Law

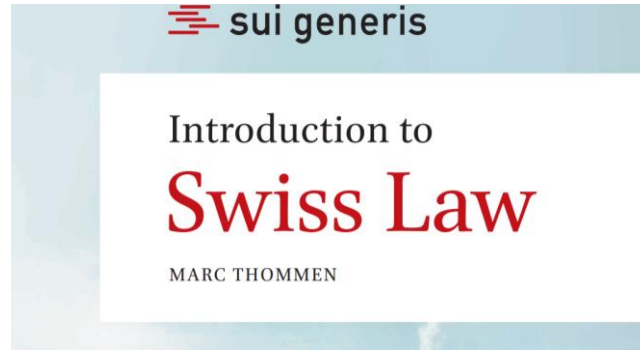
General information

- On campus lecture with Podcasts
- Module booking via an external form on our [homepage](#) be aware of different booking deadlines for mobility students (6. October)
- Oral online exam on the 23. December
- Examiner will be communicated one week in advance



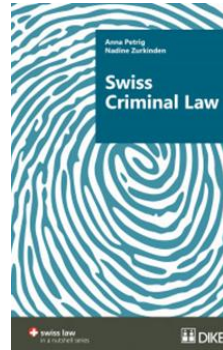
Literature

- Marc Thommen, Introduction to Swiss Law, Zurich 2018,
https://suigeneris-verlag.ch/img/uploads/pdf/oa_pdf-002-1605631970.pdf



Literature

- 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



General information

- Podcast of last year
- The lecture will not be rescheduled



General information

- 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>



III. Introduction

1. General Information
2. Criminal Procedure
3. Criminal Law

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

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 Constitution¹, and
having considered the Federal Council Dispatch dated 21 December 2005

decrees:

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

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 Constitution¹, and
having considered the Federal Council Dispatch dated 21 December 2005

decrees:

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.

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 Constitution¹, and having considered the Federal Council Dispatch dated 21 December 2005

decrees:

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

Swiss Criminal Procedure Code

(Criminal Procedure Code, CrimPC)

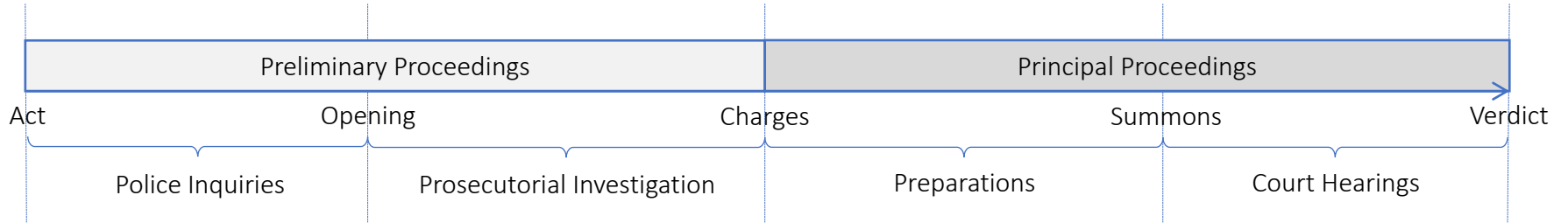
of 5 October 2007 (Status as of 1 March 2019).

The Federal Assembly of the Swiss Confederation,

on the basis of Article 123 paragraph 1 of the Federal Constitution¹, and
having considered the Federal Council Dispatch dated 21 December 2005

decrees:

Criminal Procedure



Criminal Procedure

The prosecution authorities are:

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

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 Constitution¹, and
having considered the Federal Council Dispatch dated 21 December 2005

decrees:

Police

- Secure evidence
- Find suspects
- Examination hearings

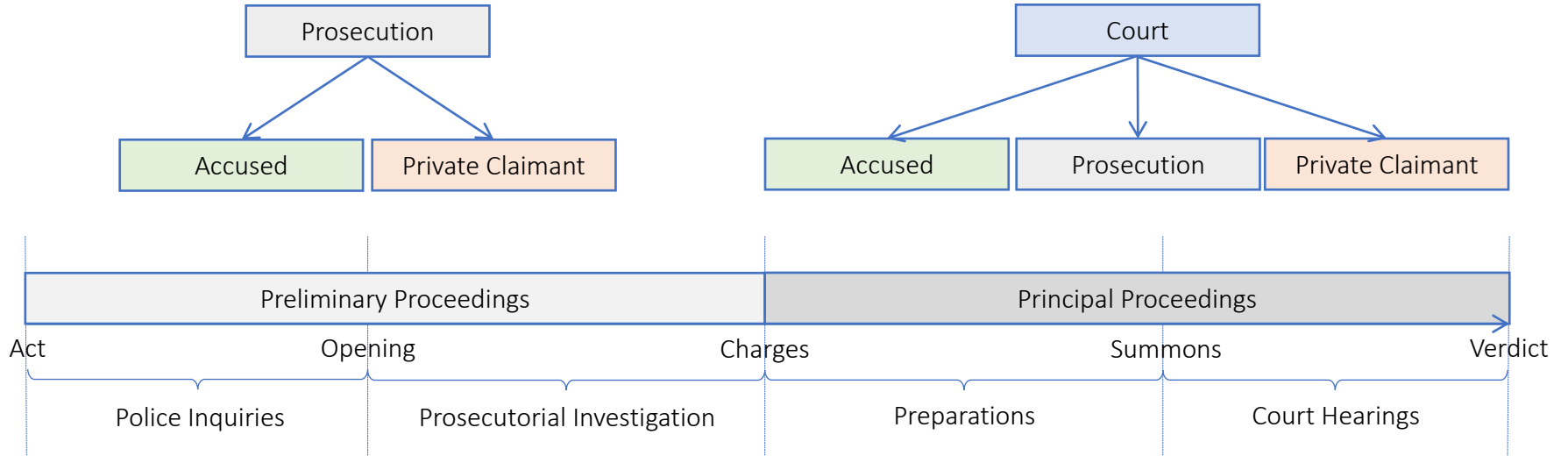


Public Prosecutor

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



Criminal Procedure



Art. 13 – Courts

The following bodies have judicial powers in criminal proceedings:

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

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 Constitution¹, and having considered the Federal Council Dispatch dated 21 December 2005

decrees:

Art. 13 – Courts

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



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

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 Constitution¹, and
having considered the Federal Council Dispatch dated 21 December 2005

decrees:

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.

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 Constitution¹, and
having considered the Federal Council Dispatch dated 21 December 2005

decrees:

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.

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 Constitution¹, and
having considered the Federal Council Dispatch dated 21 December 2005

decrees:

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)



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.

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 Constitution¹, and
having considered the Federal Council Dispatch dated 21 December 2005

decrees:

Art. 115 – The aggrieved person

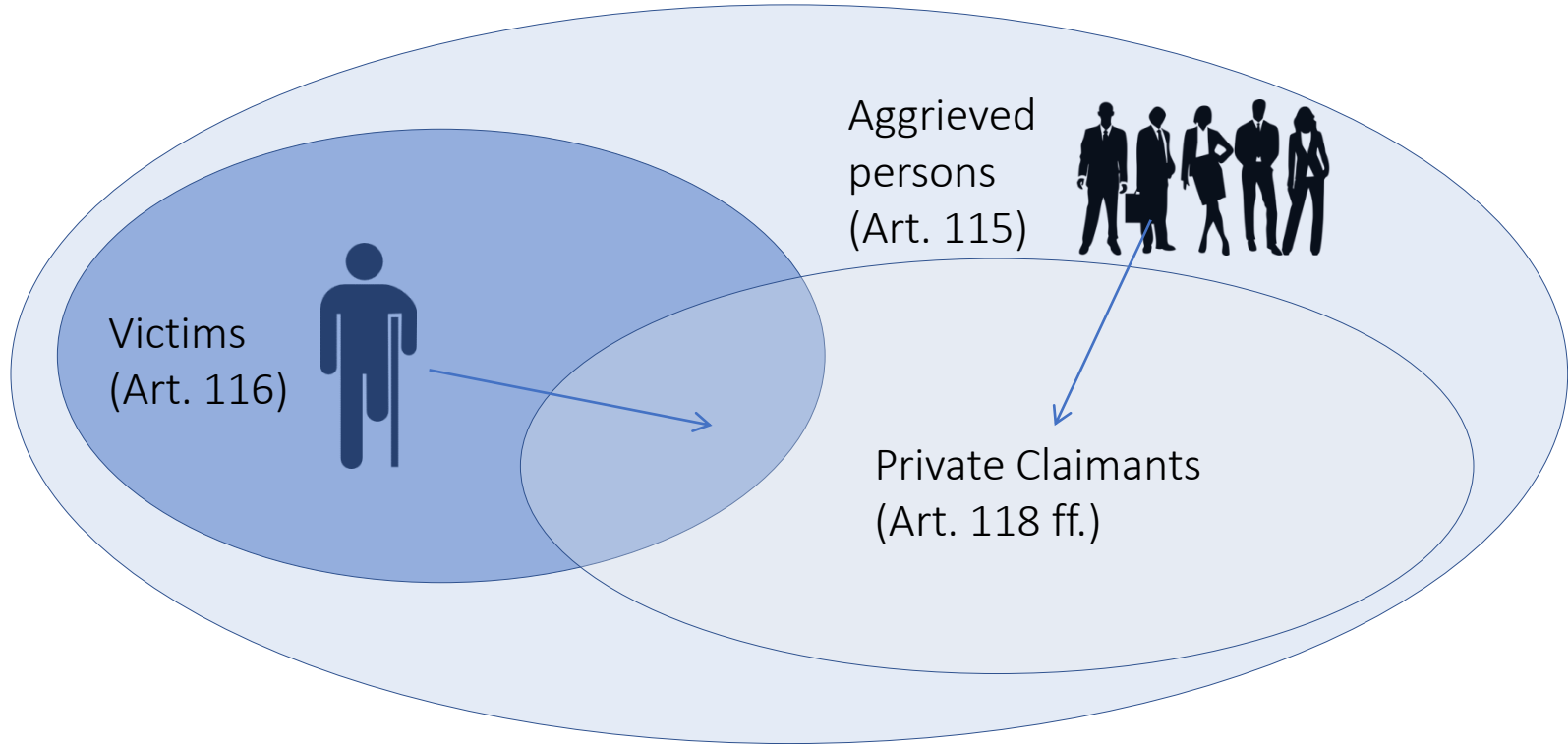
An aggrieved person is a person whose rights have been directly violated by the criminal offence.



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»





Victims
(Art. 116)



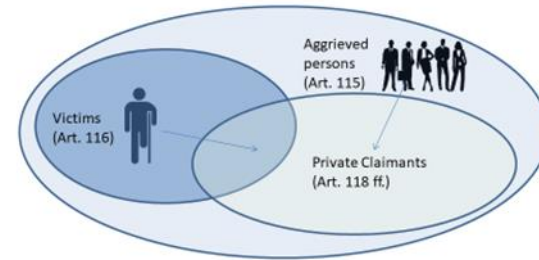
Aggrieved
persons
(Art. 115)



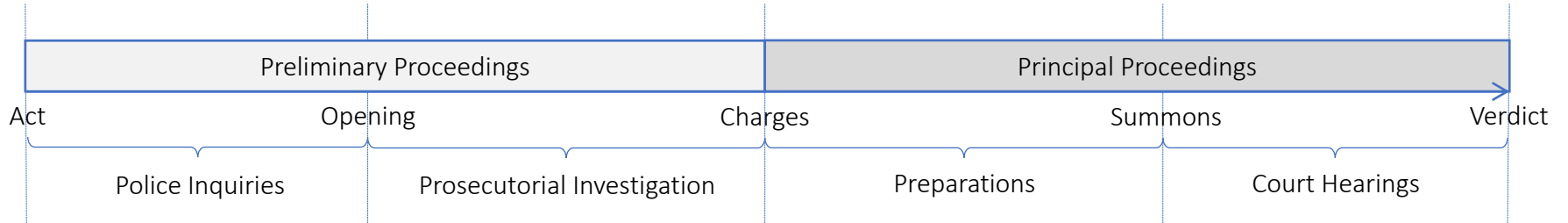
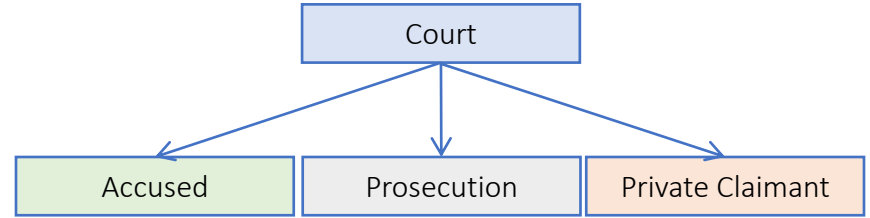
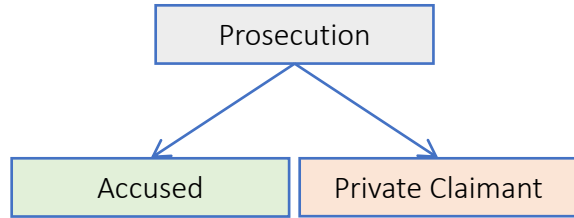
Private Claimants
(Art. 118 ff.)

Art. 118 – The private claimant

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



Parties



Art. 127 – [Legal Advisors]

The accused, the private claimant and the other people involved in the proceedings may appoint a legal

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 Constitution¹, and having considered the Federal Council Dispatch dated 21 December 2005

decrees:

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.

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 Constitution¹, and having considered the Federal Council Dispatch dated 21 December 2005

decrees:

Art. 130 – Mandatory appointment of a defence lawyer

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

- a. 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) .

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 Constitution¹, and having considered the Federal Council Dispatch dated 21 December 2005

decrees:

Art. 131 – Appointment of the mandatory defence lawyer

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

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 Constitution¹, and having considered the Federal Council Dispatch dated 21 December 2005

decrees:

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.

Swiss Criminal Procedure Code

(Criminal Procedure Code, CrimPC)

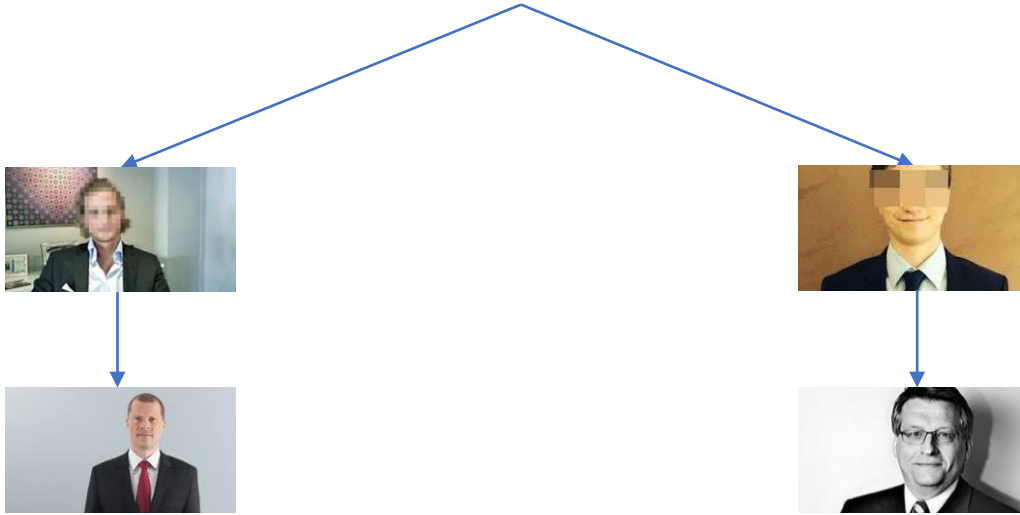
of 5 October 2007 (Status as of 1 March 2019).

The Federal Assembly of the Swiss Confederation,

on the basis of Article 123 paragraph 1 of the Federal Constitution¹, and having considered the Federal Council Dispatch dated 21 December 2005

decrees:

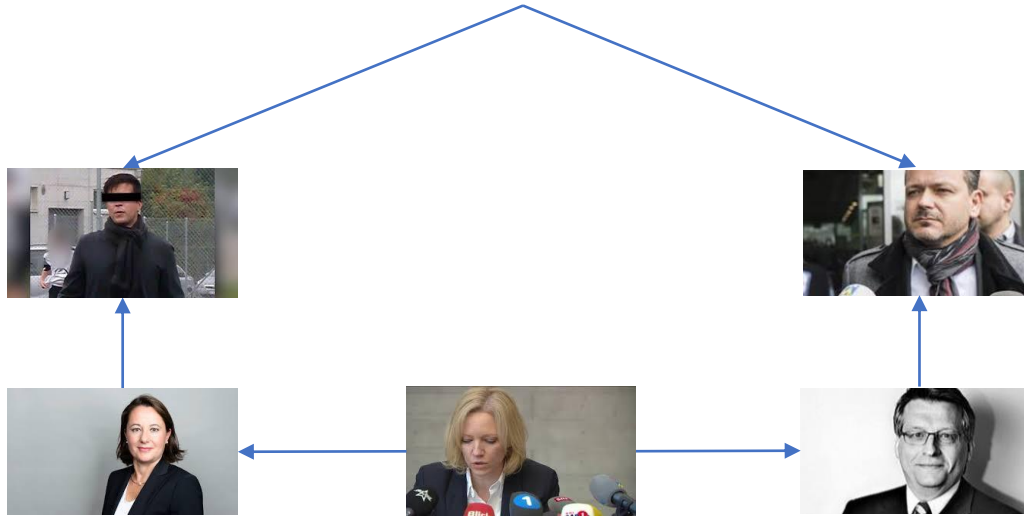
Legal Advisors



Accused appoints
Defence counsel
(Art. 128/129)

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

Legal aid (defence) counsel



Prosecutor
Appoints legal
aid counsel

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

Swiss Criminal Procedure Code

(Criminal Procedure Code, CrimPC)

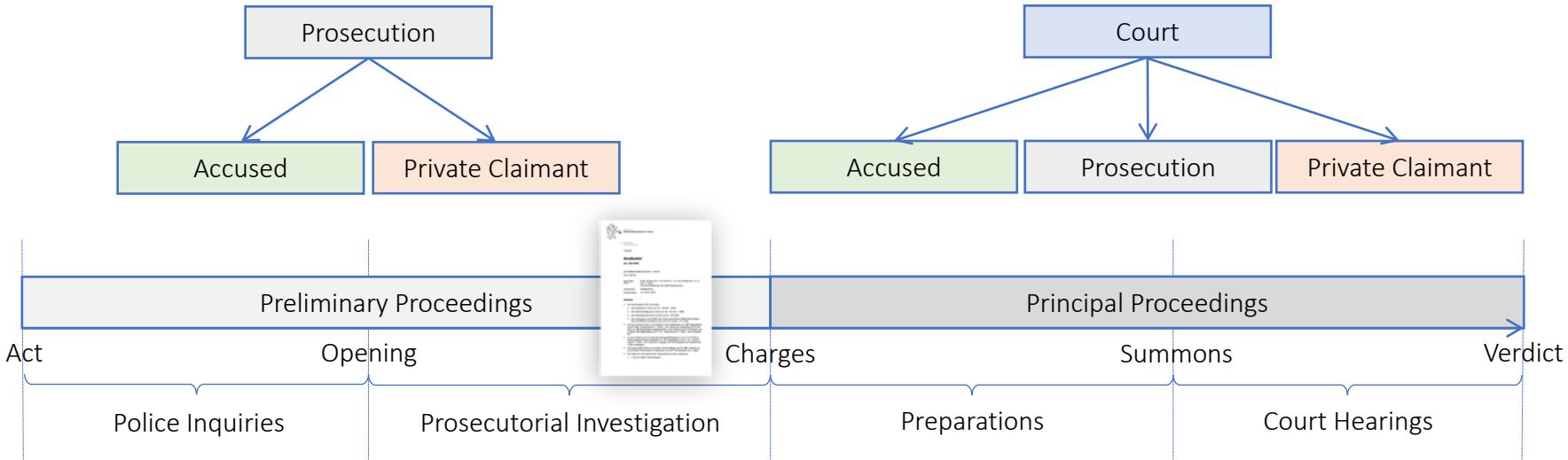
of 5 October 2007 (Status as of 1 March 2019).

The Federal Assembly of the Swiss Confederation,

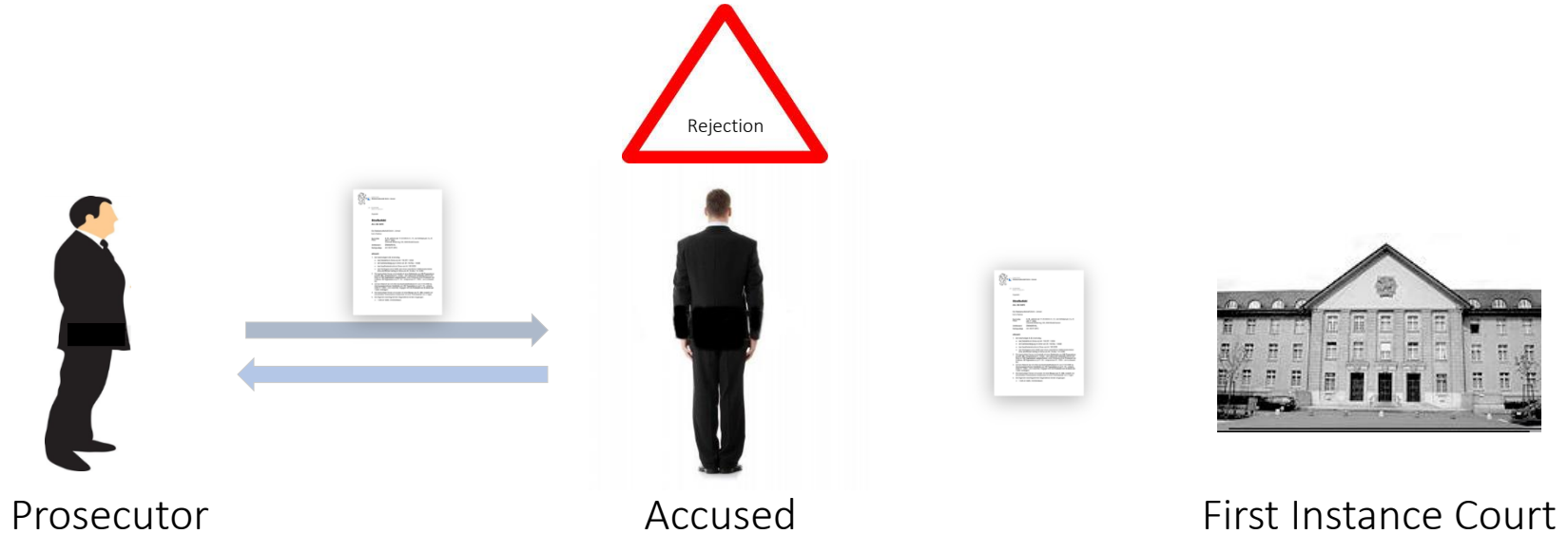
on the basis of Article 123 paragraph 1 of the Federal Constitution¹, and
having considered the Federal Council Dispatch dated 21 December 2005

decrees:

Criminal Procedure



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 – Objection procedure

Prosecutor decides

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

Swiss Criminal Procedure Code

(Criminal Procedure Code, CrimPC)

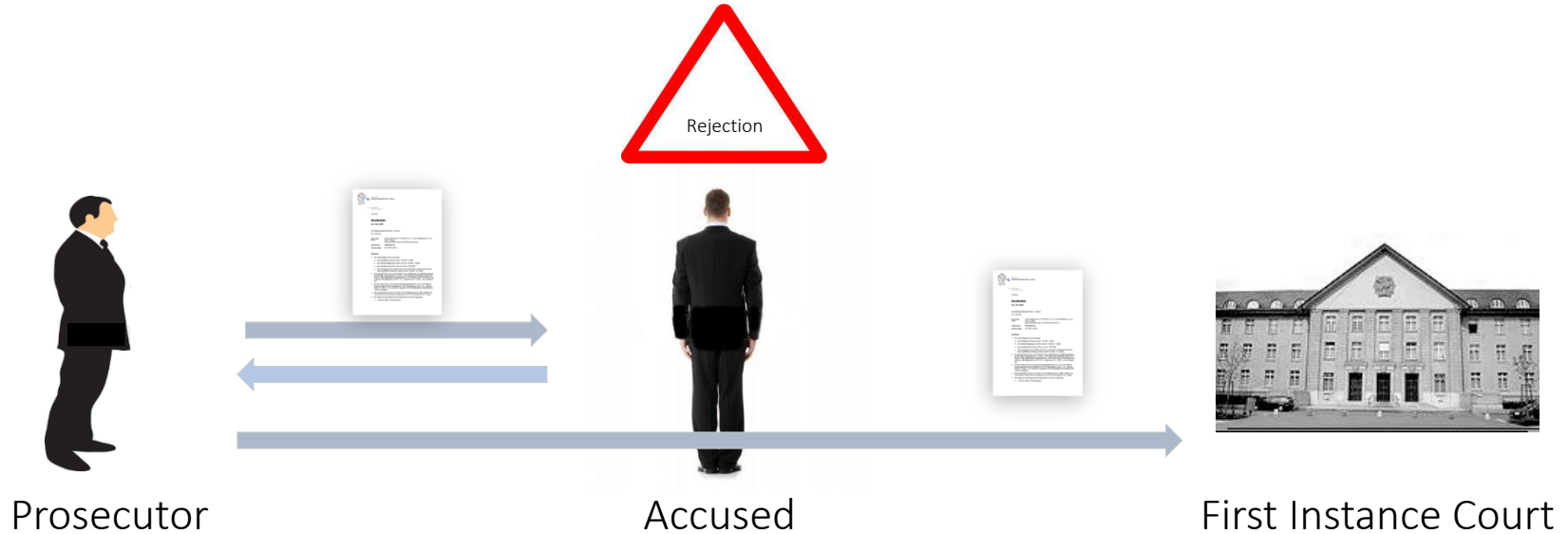
of 5 October 2007 (Status as of 1 March 2019).

The Federal Assembly of the Swiss Confederation,

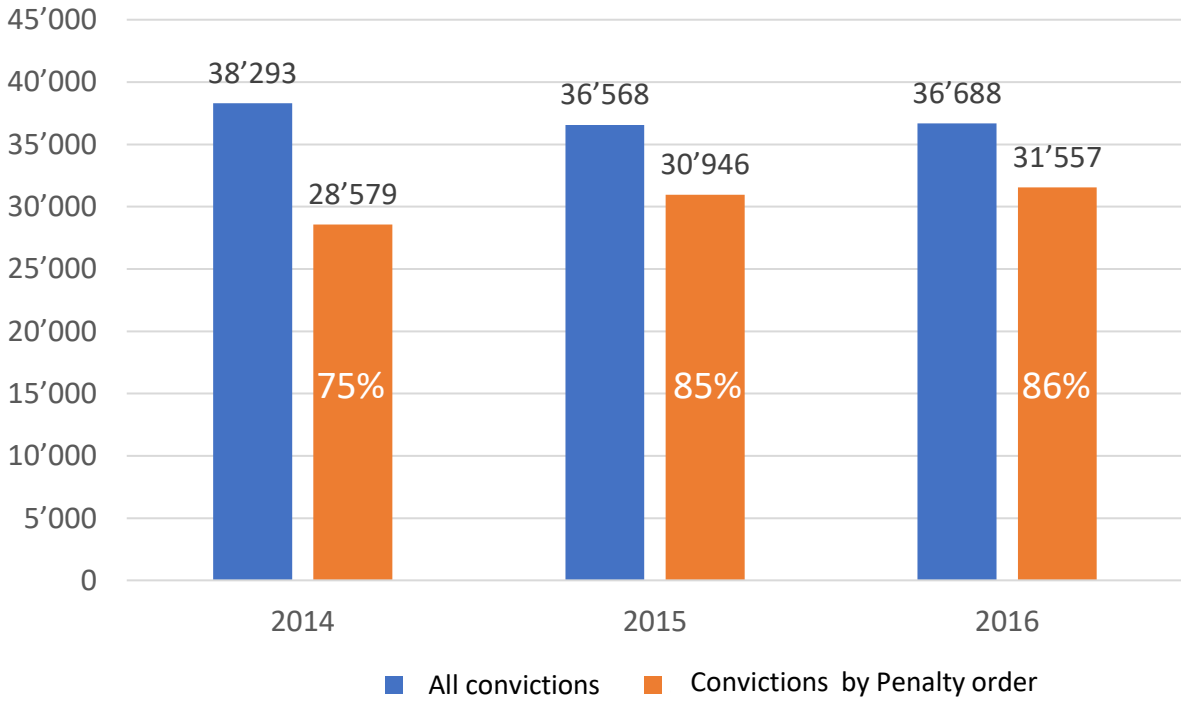
on the basis of Article 123 paragraph 1 of the Federal Constitution¹, and
having considered the Federal Council Dispatch dated 21 December 2005

decrees:

Summary Penalty Order (Art. 352 ff. CCP)



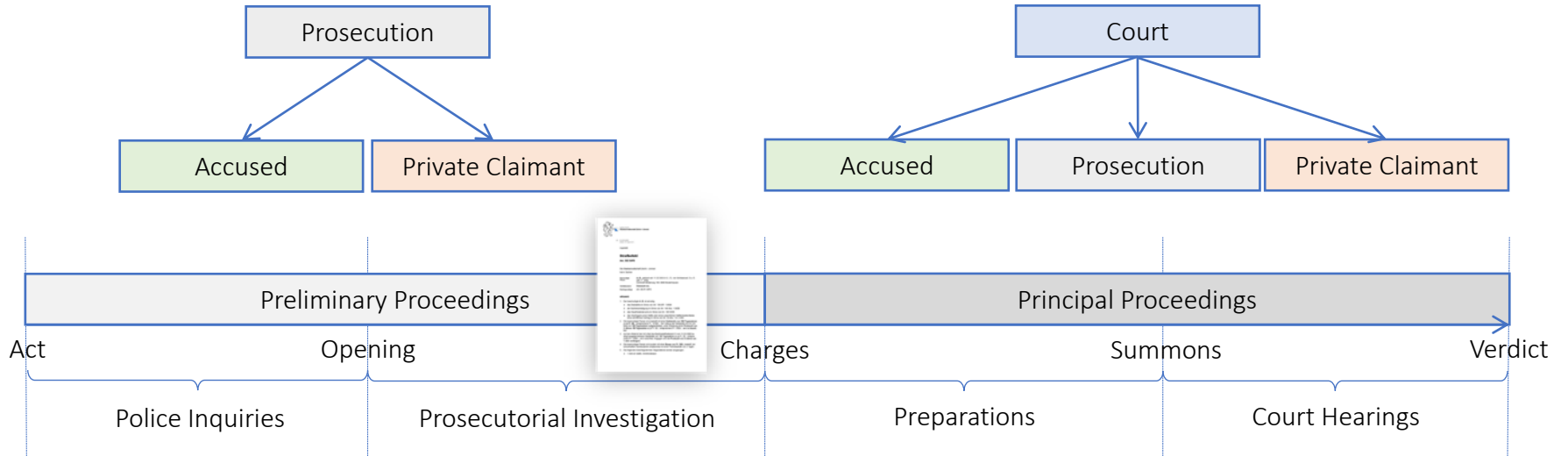
Convictions by Penalty order for felonies/misdemeanours of CC



III. Summary

1. General Information
2. Criminal Procedure
3. Criminal Law

Criminal Procedure

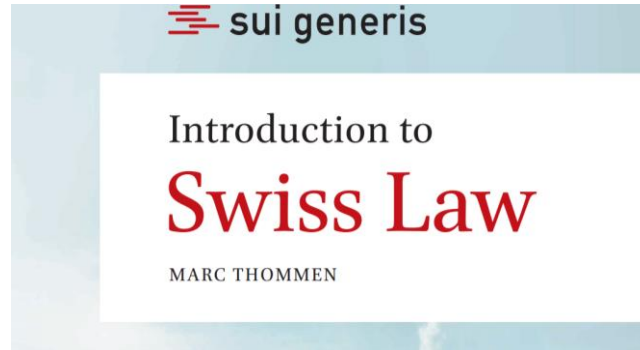


III. Introduction

1. General Information
2. Criminal Procedure
3. Criminal Law

General information

The lecture will focus on Criminal Procedure and will discuss Criminal Law with a Case study. Students, therefore, are expected to have read the Chapter on Criminal Law in order to discuss the Case.



Case

- X is diagnosed with a malignant pancreatic tumour at an advanced stage
- Turns to suicide support organization
- To assist her in suicide an infusion tube was placed. It was equipped with a three-way-valve.



Case

- The idea was that she opens the valve whenever she was ready to die
- The assistant connected the Natrium pentobarbital (NAP) to the valve and directly injected it without checking if the valve was closed.
- As the valve was open the Pentobarbital directly led to the death of the patient.



Consenting to one's own death

Case	Actions by the affected person	Actions by third parties	Criminal liability of third parties
Autonomous suicide	Independent suicide Will to die	--	--
Assisted suicide	Independent suicide Will to die	Provide resources	No. Exception: when there is a selfish motive (Art. 115)
Passive euthanasia	Endure the dying process Will to die	Omission of life support	No. Theoretically Homicide by omission (Art. 11 und 111) but that would intervene with the patient's will
Active euthanasia	Endure being killed Will to die	Death caused by a wilful act of a third party	Yes, Homicide at the request of the victim (Art. 114)

Art. 114 SCC – Homicide at the request of the victim

Any person who for commendable motives, and in particular out of compassion for the victim, causes the death of a person at that person's own genuine and insistent request shall be liable to a custodial sentence not exceeding three years or to a monetary penalty.



Art. 115 SCC - Inciting and assisting suicide

Any person who for selfish motives incites or assists another to commit or attempt to commit suicide is, if that other person thereafter commits or attempts to commit suicide, liable to a custodial sentence not exceeding five years or to a monetary penalty¹⁴³.



Criminal Law

Criminal Procedure

Prof. Dr. Marc Thommen

Luisa Lichtenberger, MLaw