

Swiss Summary Penalty Order Workshop HU - Faculty of Law

Marc Thommen, Zurich

Caroline Ruggli, Zurich



- 91 % of convictions by penal order





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



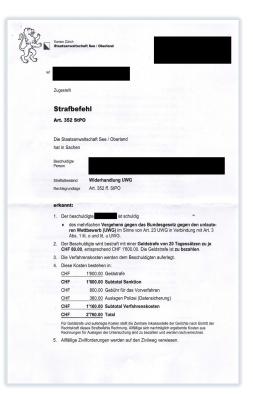


1. Penal order

2. Criticism

3. Efficiency

4. Justice



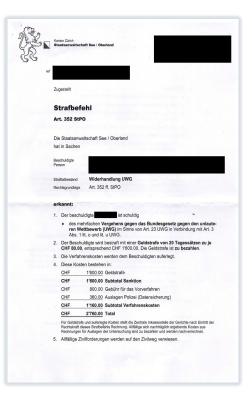


1. Penal order

2. Criticism

3. Efficiency

4. Justice





Strafprozessordnung

- a. fine
- b. monetary penalty
- C. ...
- d. 6 months of imprisonment



Strafprozessordnung

- a. fine
- b. monetary penalty
- С. ...
- d. 6 months of imprisonment



Strafprozessordnung

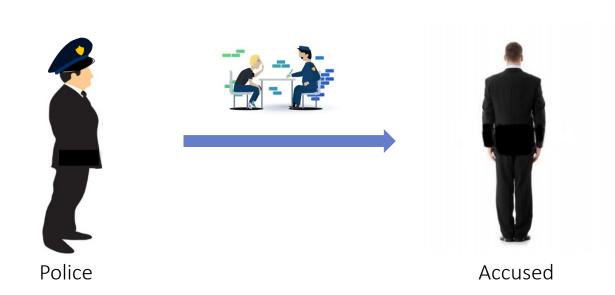
- a. fine
- b. monetary penalty
- С. ...
- d. 6 months of imprisonment



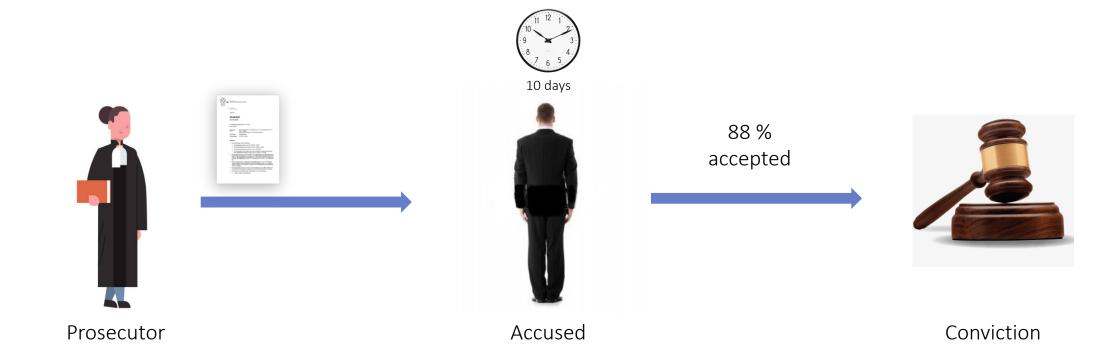
Strafprozessordnung

- a. fine
- b. monetary penalty
- С. ...
- d. 6 months of imprisonment

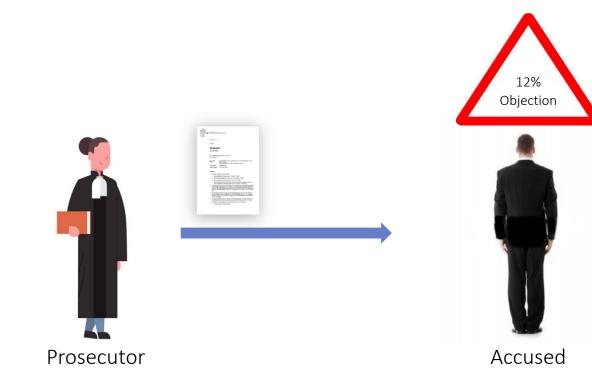














		Objection
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Prosecutor		Accused







Accused

Objection





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

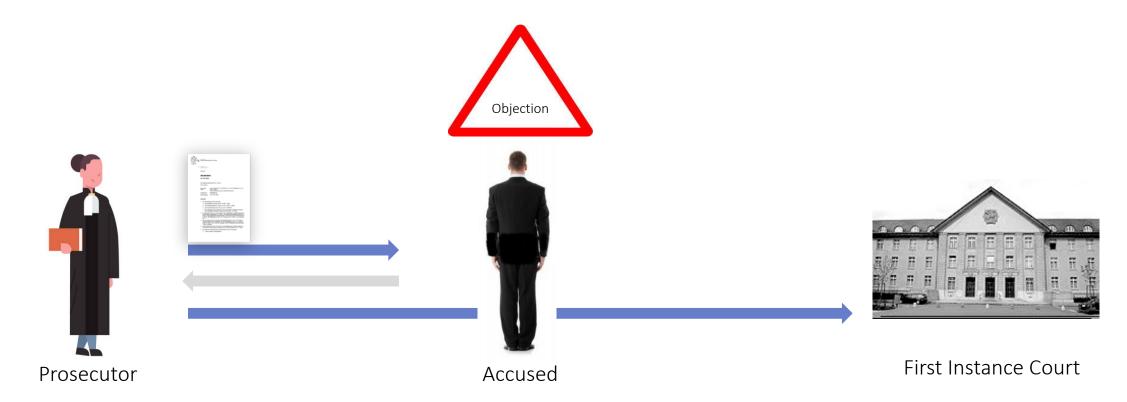
Prosecutor decides to

- a. Uphold penal order 28 %
- b. Abandon proceedings
- c. Issue new penal order
- d. Bring charges at court

StPO Strafprozessordnung



a. Uphold penal order





Art. 355 CPC – Procedure after Objection

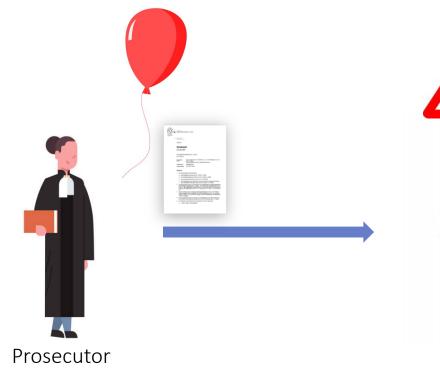
Prosecutor decides to

- a. Uphold penal order
- b. Abandon proceedings 10 %
- c. Issue new penal order
- d. Bring charges at court





b. Abandon proceedings

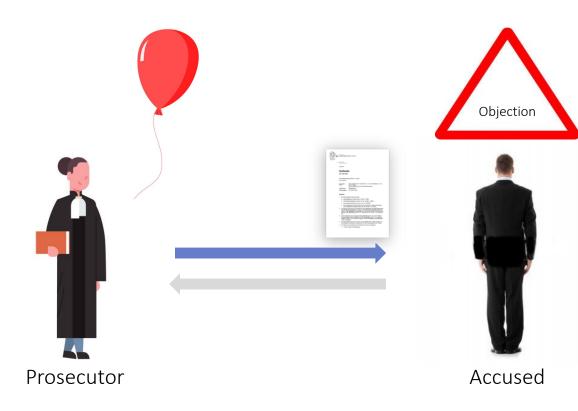








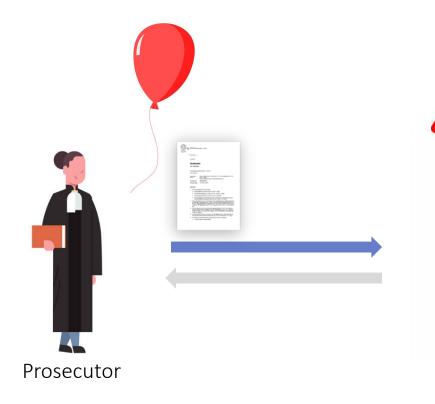
b. Abandon proceedings







b. Abandon proceedings











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

2	Elements I	2
Prosecutor		







c. Issue new penal order

Objection

Accused









c. Issue new penal order









Art. 355 CPC – Procedure after Objection

Prosecutor decides to

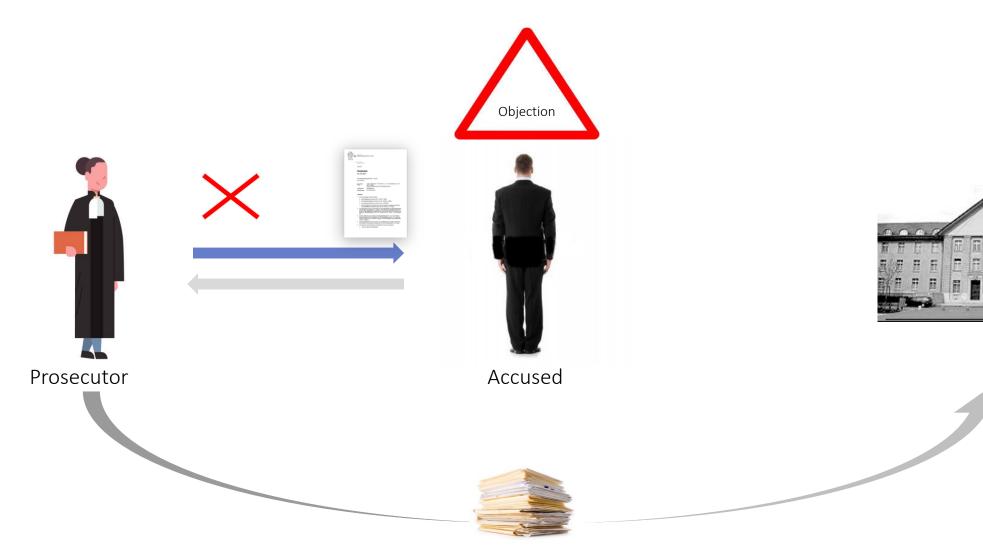
- a. Uphold penal order
- b. Abandon proceedings
- c. Issue new penal order
- d. Bring charges at court 3 %





d. Bring charges at court

-











36 % Objections withdrawn



Conviction

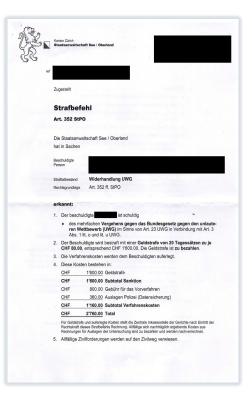


1. Penal order

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3. Efficiency

4. Justice





Criticism?

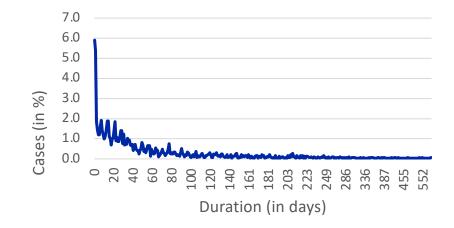
- Discrete
- Speedy





Criticism?

- Discrete
- Speedy





Criticism

- a. Hearing
- b. Defence
- c. Translation
- d. Sentence
- e. Service





Criticism

- a. Hearing
- b. Defence
- c. Translation
- d. Sentence
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Art. 29 – Swiss Constitution

² Each party... has the right to be heard.



Schweizerische Eidgenossenschaft Confédération suisse Confederazione Svizzera Confederaziun svizra



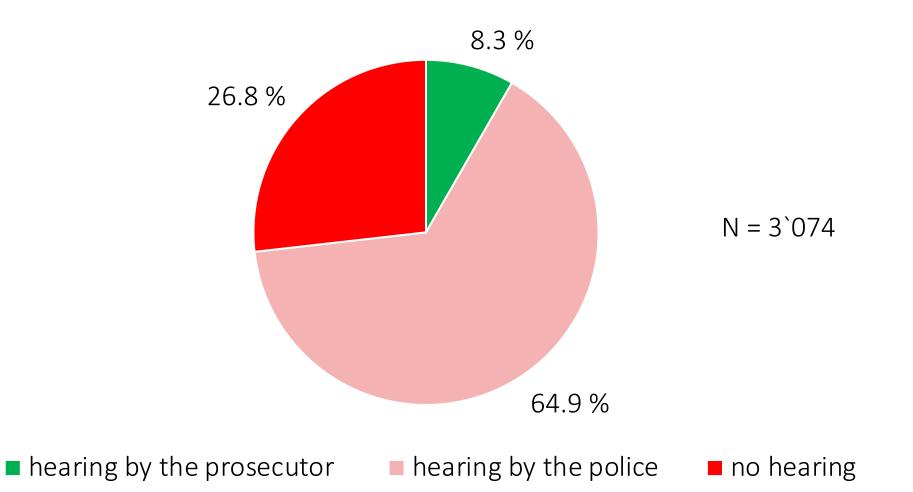
Fake passport

- No hearing by prosecutor
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Hearings before penal order





Criticism

- a. Hearing
- b. Defence
- c. Translation
- d. Sentence
- e. Service





Article 6 ECHR

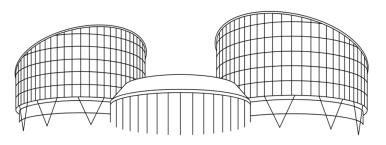
(3) Everyone charged with a criminal

offence has the (right)

(c) to defend himself in person or

through legal assistance of his own

choosing...



EUROPEAN COURT OF HUMAN RIGHTS



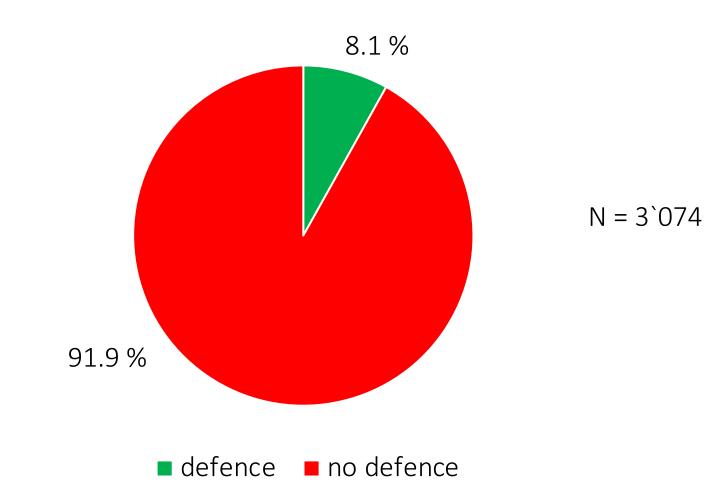
Fake passport

- No hearing
- No defence counsel
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Defence





Criticism

- a. Hearing
- b. Defence
- c. Translation
- d. Sentence
- e. Service





Article 6 ECHR – Right to a fair trial

(3) Everyone charged with a criminal

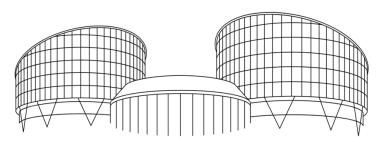
offence has the (right)

(a) to be informed promptly, in a

language which he understands...

(e) to have the free assistance of an

interpreter...



EUROPEAN COURT OF HUMAN RIGHTS



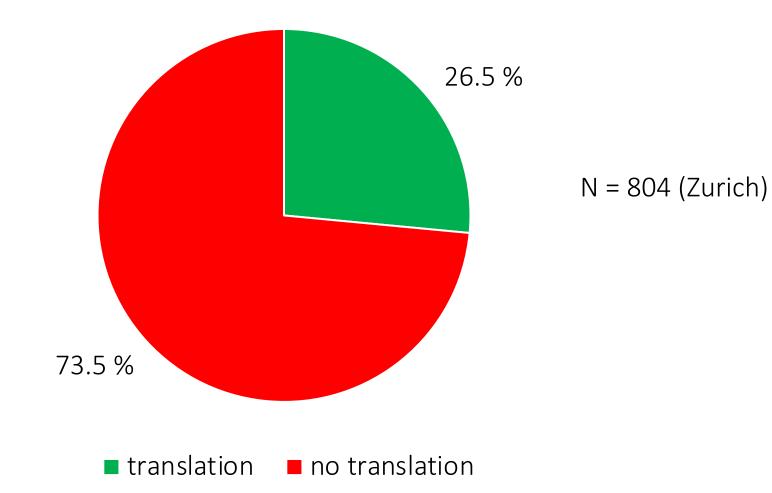
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Translation





Criticism

- a. Hearing
- b. Defence
- c. Translation
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Art. 5 ECHR – Right to liberty

(1) No one shall be deprived of his

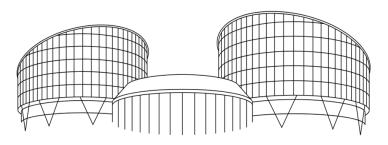
liberty save in the following cases and

in accordance with a procedure

prescribed by law:

the lawful detention of a person after

conviction by a competent court;



EUROPEAN COURT OF HUMAN RIGHTS



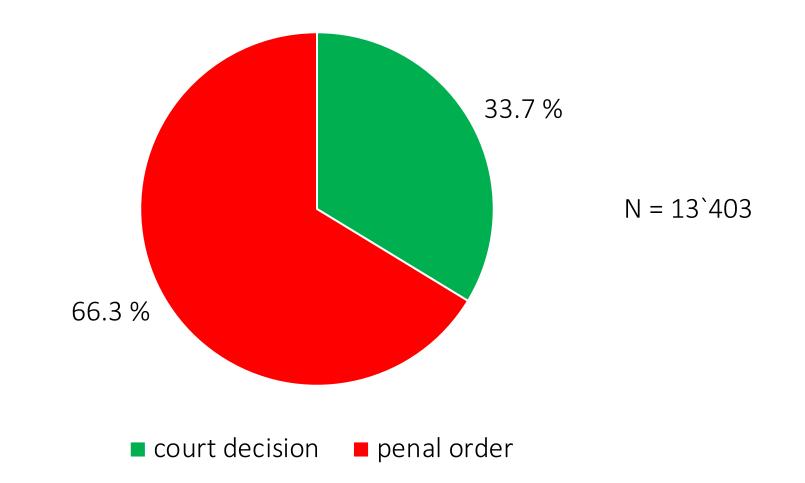
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Custodial sentences (2020)





Criticism

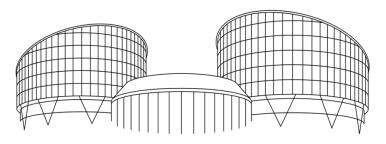
- a. Hearing
- b. Defence
- c. Translation
- d. Sentences
- e. Service





Article 6 ECHR – Right to a fair trial

(1) ...everyone is entitled to a fairand public hearing...



(2) ...

EUROPEAN COURT OF HUMAN RIGHTS

(3) Everyone charged with a criminal offence has the (right) (a) to be informed promptly...



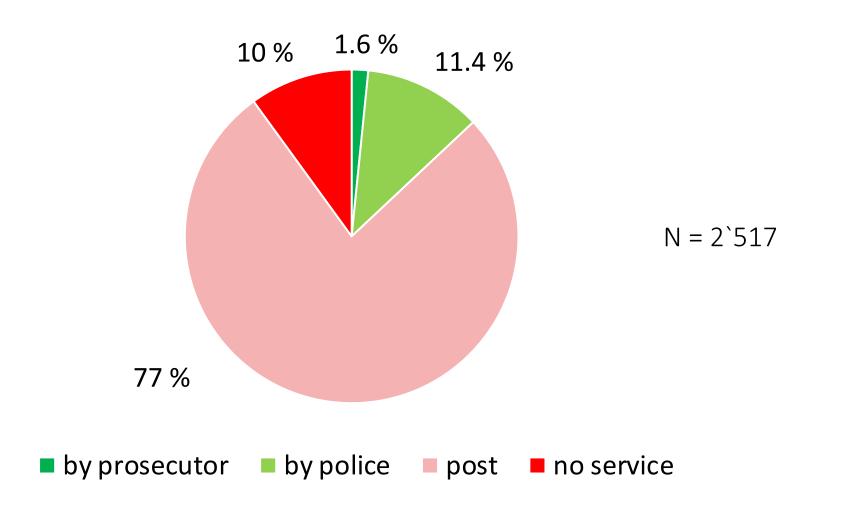
Fake passport

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Service





Conclusion

- a. Hearing
- b. Defence
- c. Translation
- d. Sentence
- e. Service



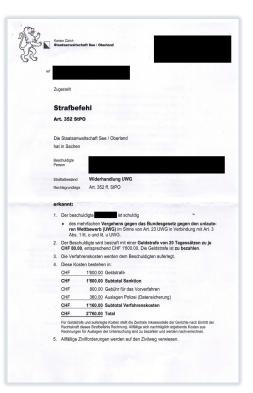


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1. Penal order

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Robert M. Bohm, ""McJustice": On the McDonaldization of criminal justice." *Justice Quarterly* 23.1 (2006): 127-146.





Accused persons



X

Costs/accused



Expenditure criminal justice





More convictions with same total budget





	STAATSANWALTSCHAFT ZÜRICH - SIHL	
	Unser Zeichen: E-2/2010/6250 Zugestellt	26. November 201
	STRAFBEFEHL	
	Die Staatsanwaltschaft Zürich - Sihl	
	hat in Sachen gegen	
<u> </u>	betreffend Grobe Verletzung der Verkehrsregeln	
	in Anwendung der §§ 317 ff. der zürcherischen Strafprozessor	dnung;
	gefunden und erkannt:	
	Der Angeschuldigte ist schuldig der groben Verletzung der Verkahrsregeln im Sinn Verbindung mit Art. 27 Abs. 1 Satz 1 SVG und Art. 4a	I von Art. 90 ZIII. 2 SVG in Abs. 1 and 5 VBV
	 Der Angeschuldigte wird bestraft mit einer Geldstrafe von 40 Tagessätzen zu Fr. 30 (entspricht Fr. 1200). 	
	3. Die Geldstrafe wird vollzogen.	
	 Die Kosten werden dem Angeschuldigten auferlegt. Diese bestehen in: 	
	Fr. 700.00 Staatsgebühr	
	Fr. Auslagen (allfällige weitere vorbehalten)	
	Fr. 700.00 Total	
	5. Mitteilung an:	
	 die Leitung der Staatsanwaitschaft Zürich - Sihl 	
	 den Angeschuldigten (vorgenannt) 	
	sowie nach Eintritt der Rechtskraft an:	
	 die Zentrale Inkassostelle der Gerichte 	
	 die Kasse der Staatsanwaltschaft Zürich - Sihl 	
	Adresse: Poelfach, 8026 Zurich Paketadresse: Stauffachentisses 55, 8004 Zürich Telefor: G44 248 21 11	www.staatsanwaitachaften.zh.o

Х



Costs/accused







Χ







Less Offences Less Police





Increase total budget







Χ



Not slow food Healthier fast food

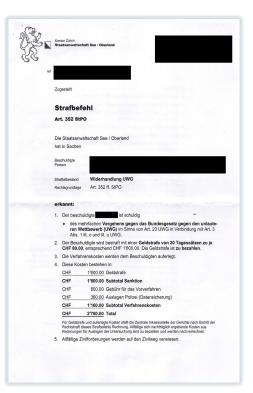


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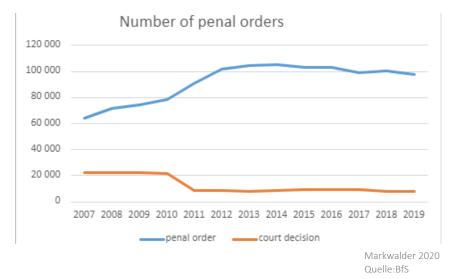






Justice in Modern Criminal Procedure

"The trial has become an accident in the smooth administration of criminal justice." Weigend (2006) 207





- Caution
- Counsel
- Contact





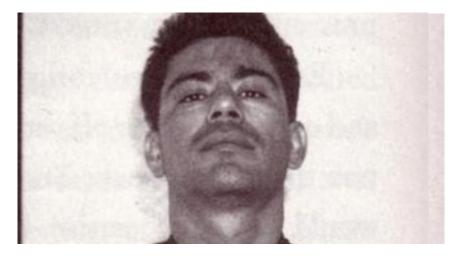
- Caution
- Counsel
- Contact





Caution

- Charges and rights
- Conviction and sentence
- Information asymmetry



Ernesto Arturo Miranda



- Caution
- Counsel
- Contact





Counsel

- Defence attorney
- Interpreter
- Confidant



Angela Agostino-Passerini Defence Counsel



- Caution
- Counsel
- Contact





Contact

- Participation
- Neutrality
- Dignity
- Empathy



Tom R. Tyler, "Enhancing police legitimacy." annals AAPSS 593.1 (2004): 84-99

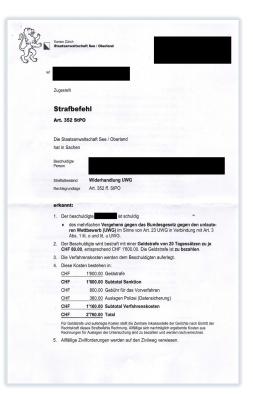


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Marc Thommen, Zurich

Caroline Ruggli, Zurich



- <u>Thommen, Kurzer Prozess fairer Prozess?</u>
 <u>Bern 2013</u>.
- <u>Thommen, Penal Orders and Abbreviated</u>
 <u>Proceedings, in: Caeiro/Mitsilegas/Gless</u>
 (eds.), Elgar Encyclopedia of Crime and
 <u>Criminal Justice, Edward Elgar Publishing,</u>
 <u>2021, preprint</u>

