

# Swiss Criminal Procedure

Prof. Dr. Marc Thommen



# Introduction to Swiss Law

Date	Topic	Lecturer
20/09/2024	Constitutional Law	Daniel Möckli
27/09/2024	Administrative Law / Administrative Procedure	Florian Brunner
04/10/2024	Criminal Law	Nadine Zurkinden
11/10/2024	Civil Law Principles, Family Law & Law of Persons	Elisabetta Fiocchi
18/10/2024	Contract and Tort Law	Tina Huber-Purtschert
25/10/2024	Corporate and Banking Law	David Roth
01/11/2024	Civil Procedure	Tanja Domej or tbd.
08/11/2024	Criminal Procedure	Marc Thommen
15/11/2024	Legal History/ History of International Law	Elisabetta Fiocchi
22/11/2024	Legal Philosophy & Legal Theory	Pascal Meier
29/11/2024	Legal Sociology	Christoph Graber/Camilla Dul
06/12/2024	Roman Law	Adrian Häusler
13/12/2024	Oral exam	Will be communicated

# Swiss Criminal Procedure

- I. Criminal Justice Authorities
- II. Code Criminal Procedure
- III. Penal Order Proceedings



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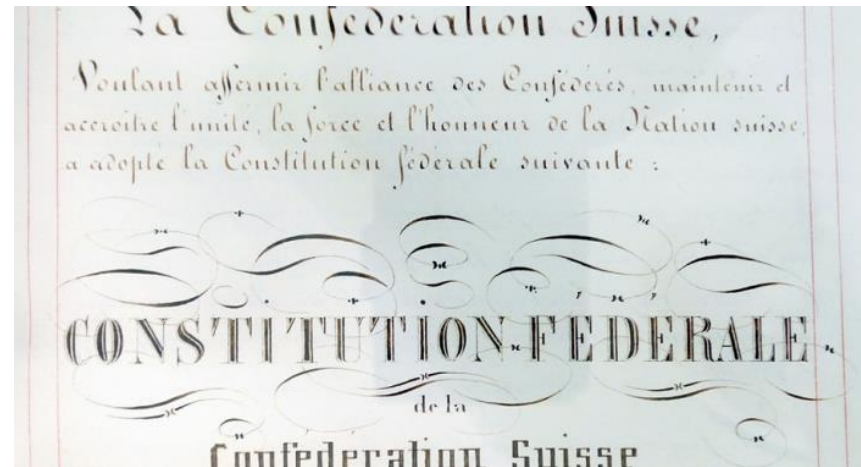
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# Article 123 – Constitution

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.



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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.

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

**211.1**

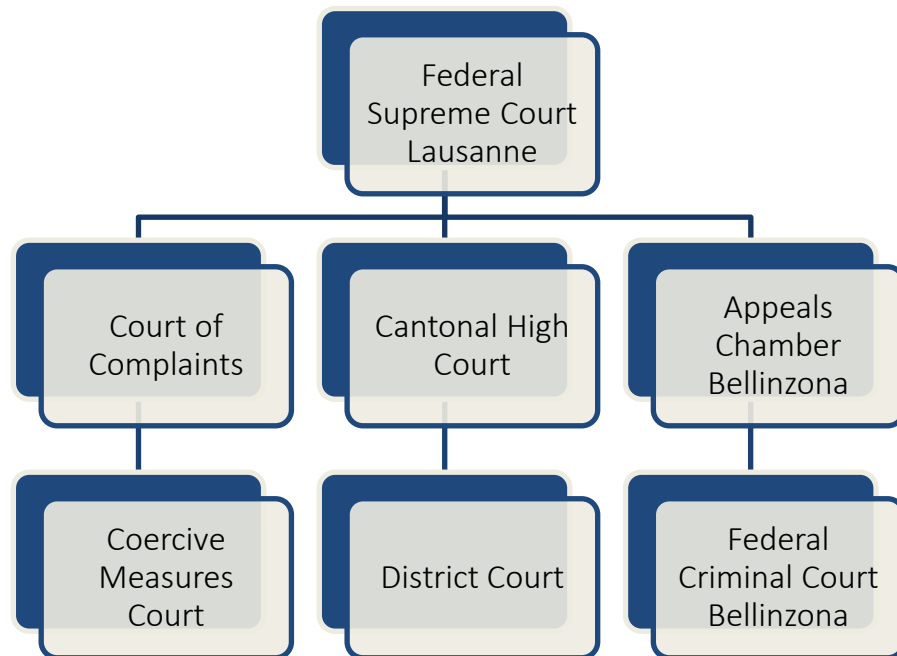
**Gesetz  
über die Gerichts- und Behördenorganisation  
im Zivil- und Strafprozess (GOG)**

(vom 10. Mai 2010)<sup>1,2</sup>

*Der Kantonsrat,*

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

# Article 123 - Constitution



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

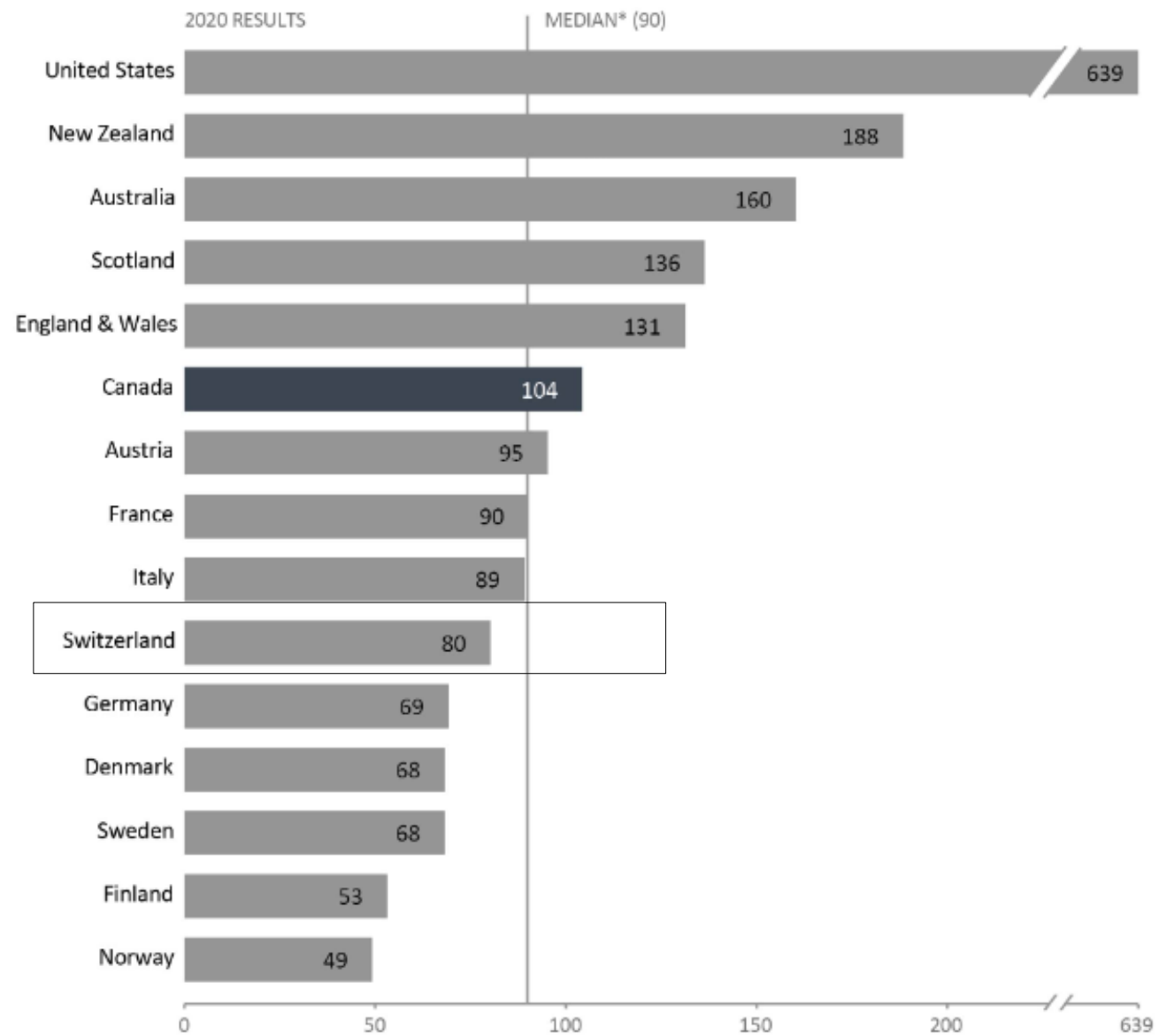


# Article 123 - Constitution

Cantons provide prisons and institutions for therapeutic and isolation measures.



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



► Image description

**Figure A3 Notes:**

Source: World Prison Brief, Institute for Crime & Justice Policy Research (ICJR) (retrieved January 13, 2021 at [www.prisonstudies.org/highest-to-lowest/prison-population-total/](http://www.prisonstudies.org/highest-to-lowest/prison-population-total/)).

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# Swiss Criminal Procedure Code

Title 1 Scope of Application and Principles

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Title 4 Evidence

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Title 7 Main Proceedings of First Instance

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Title 9 Appellate Remedies

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**(Criminal Procedure Code, CrimPC)**

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

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having considered the Federal Council Dispatch dated 21 December 2005*

*decrees:*

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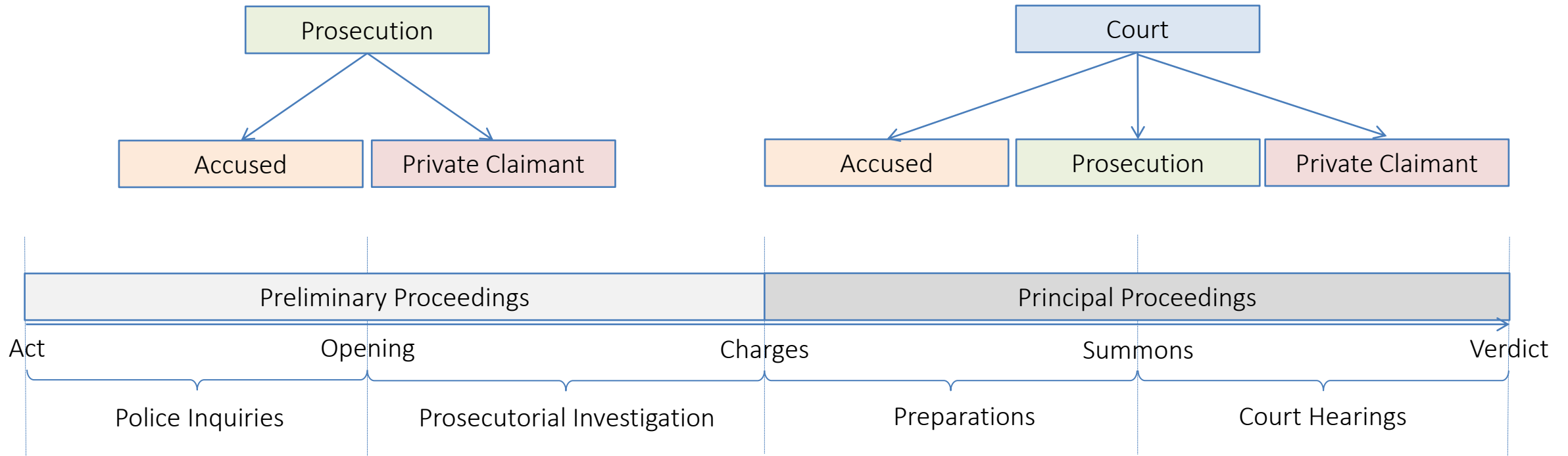
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# Criminal Proceedings



# 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 exculpatory 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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# Art. 12 – Prosecution authorities

The prosecution authorities are:

- a. the police;
- b. the public prosecutor;
- c. Authorities (contraventions)

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# Police

- Secure evidence
- Find suspects
- Examination hearings



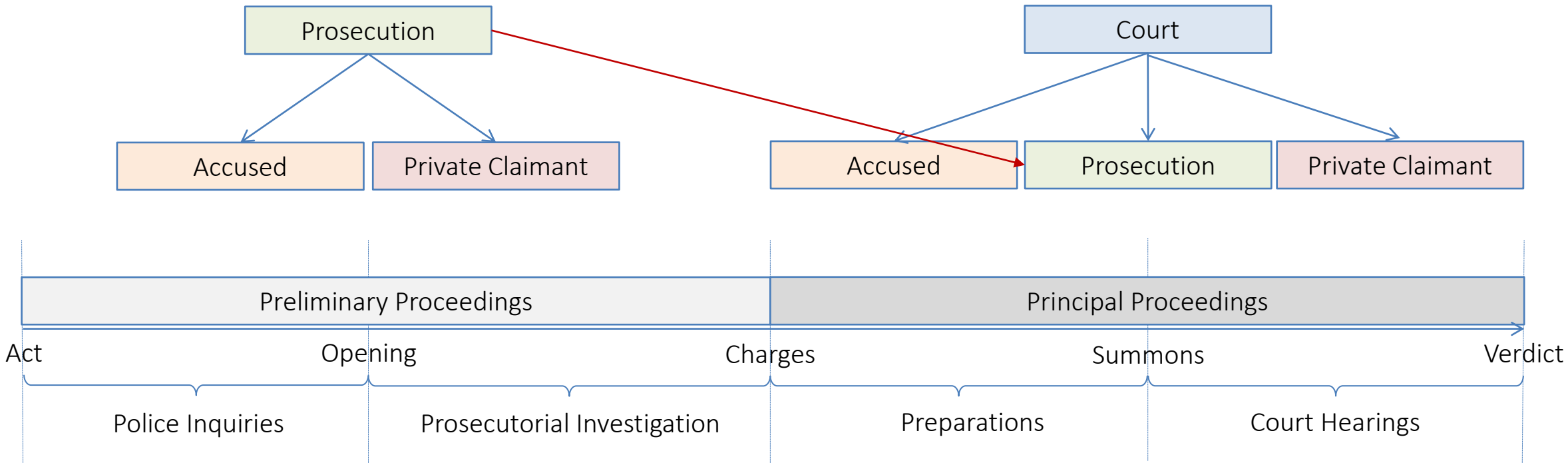
# Public Prosecutor

- 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

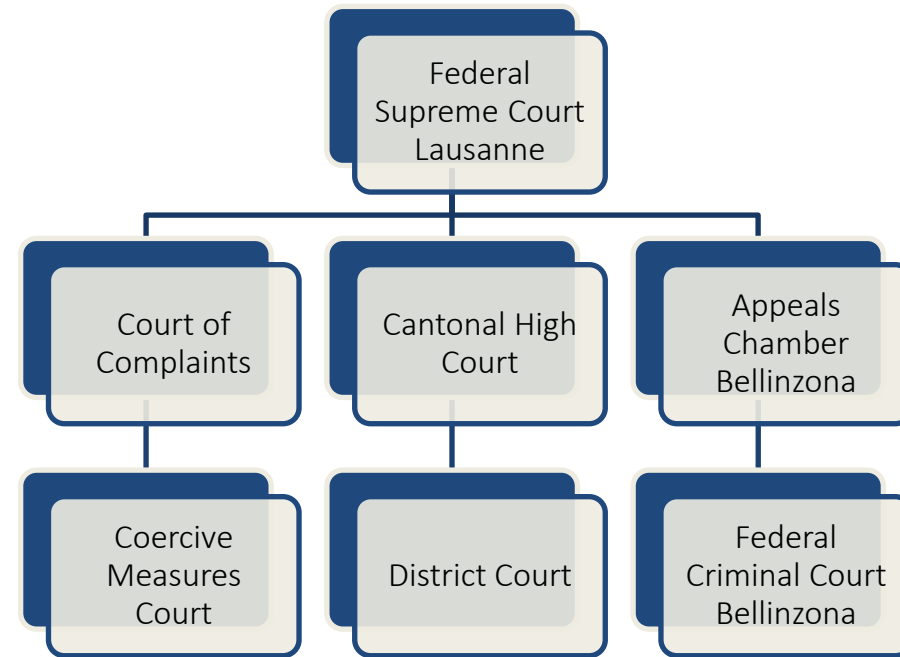
# Parties



# 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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# 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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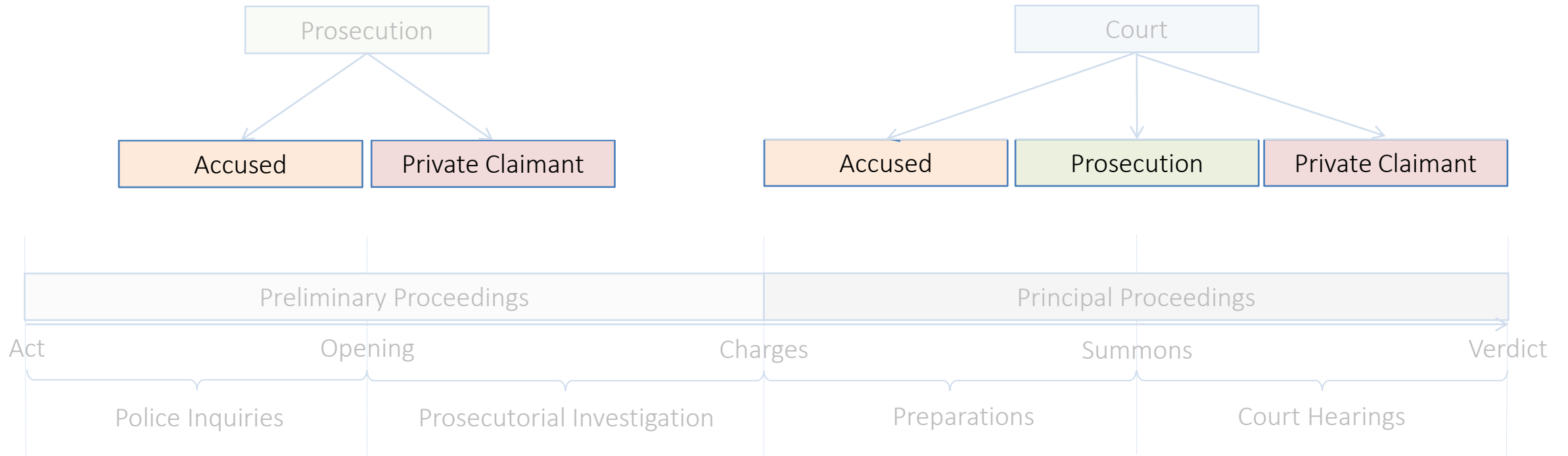
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# Parties



# 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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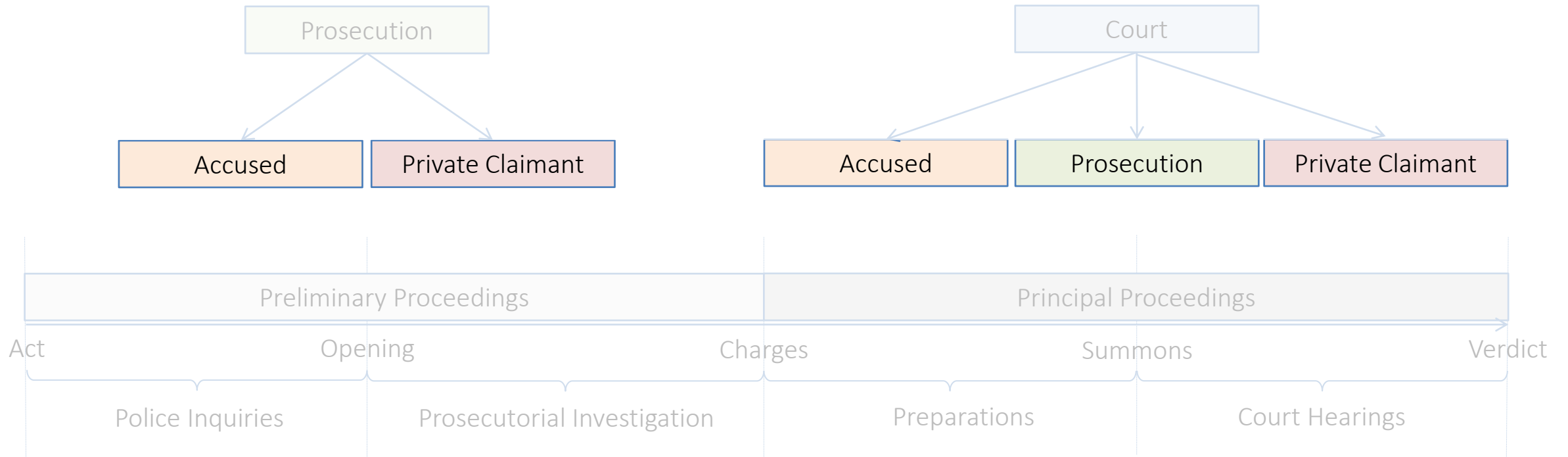
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# Parties



# Art. 115 – The aggrieved person

<sup>1</sup> An aggrieved person is a person whose rights have been directly violated by the criminal offence.

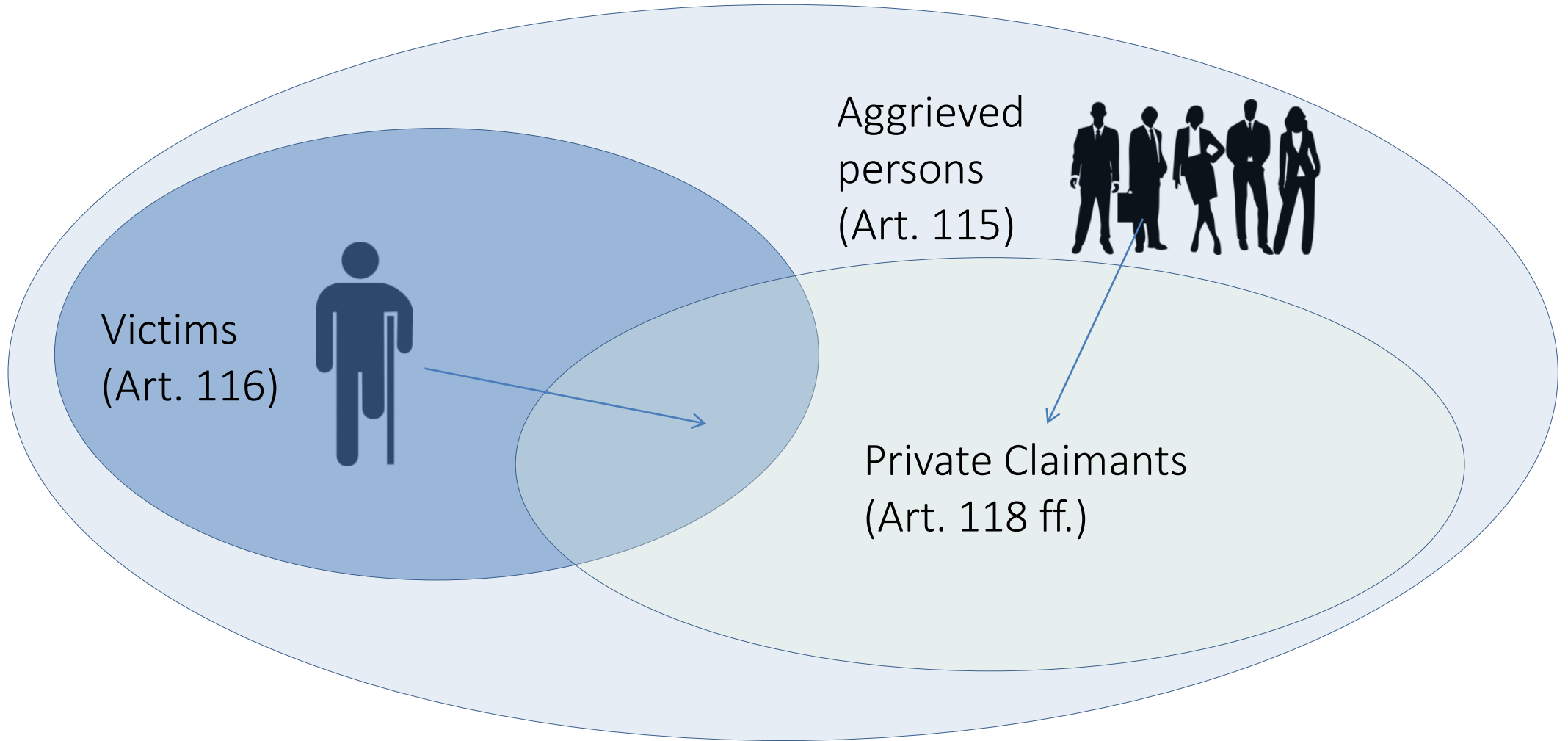




# Art. 116 – Victim

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





Victims  
(Art. 116)



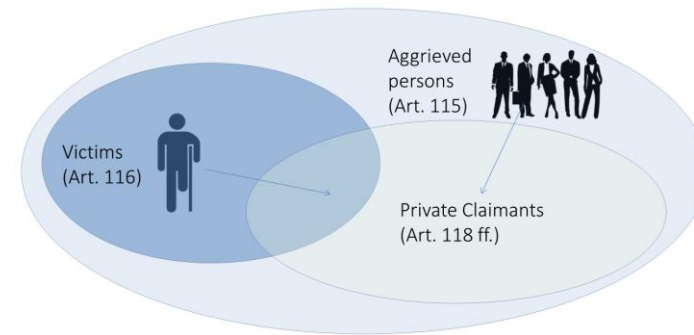
Aggrieved  
persons  
(Art. 115)



Private Claimants  
(Art. 118 ff.)

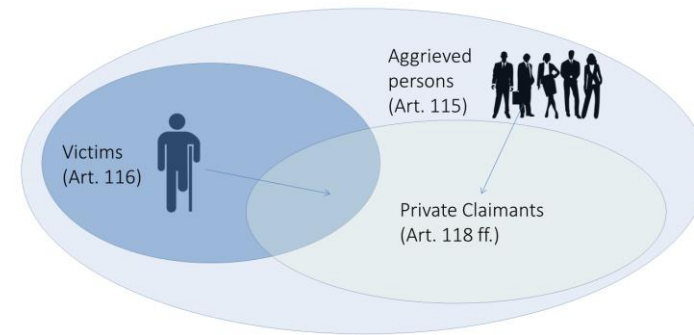
# Art. 118 – Private Claimants

<sup>1</sup> 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]

<sup>1</sup> 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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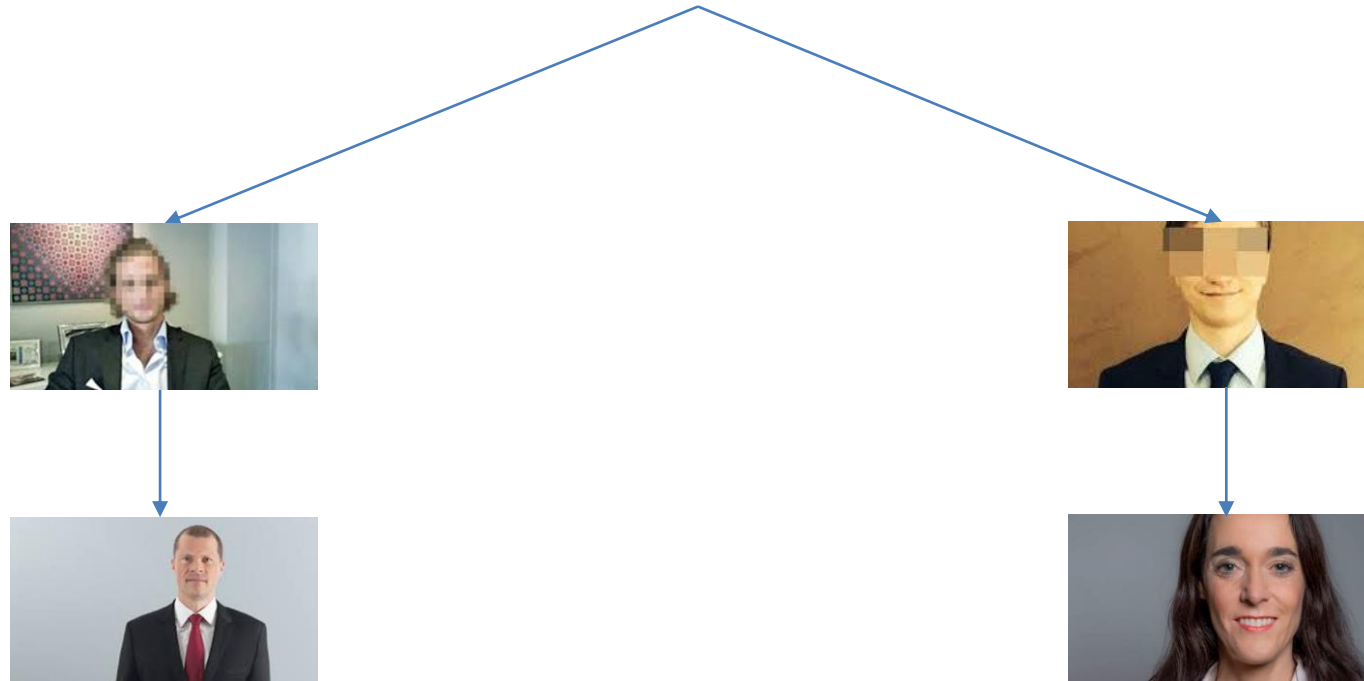
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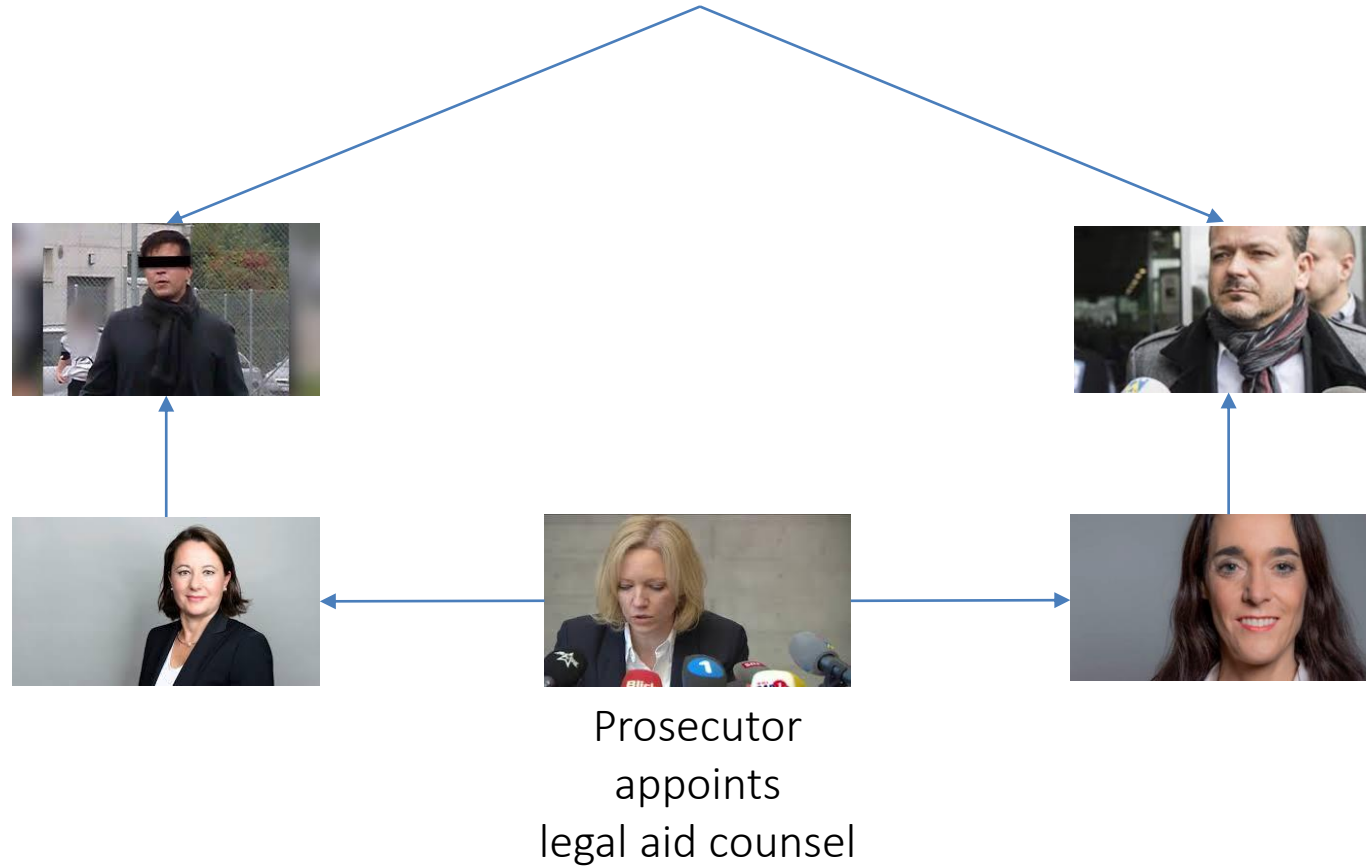
# Legal counsel



Accused appoints  
Defence counsel  
(Art. 128/129)

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

# Legal aid (defence) counsel



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## Art. 139 – [Evidence]

<sup>1</sup> 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]

<sup>2</sup> 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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# Coercive Measures

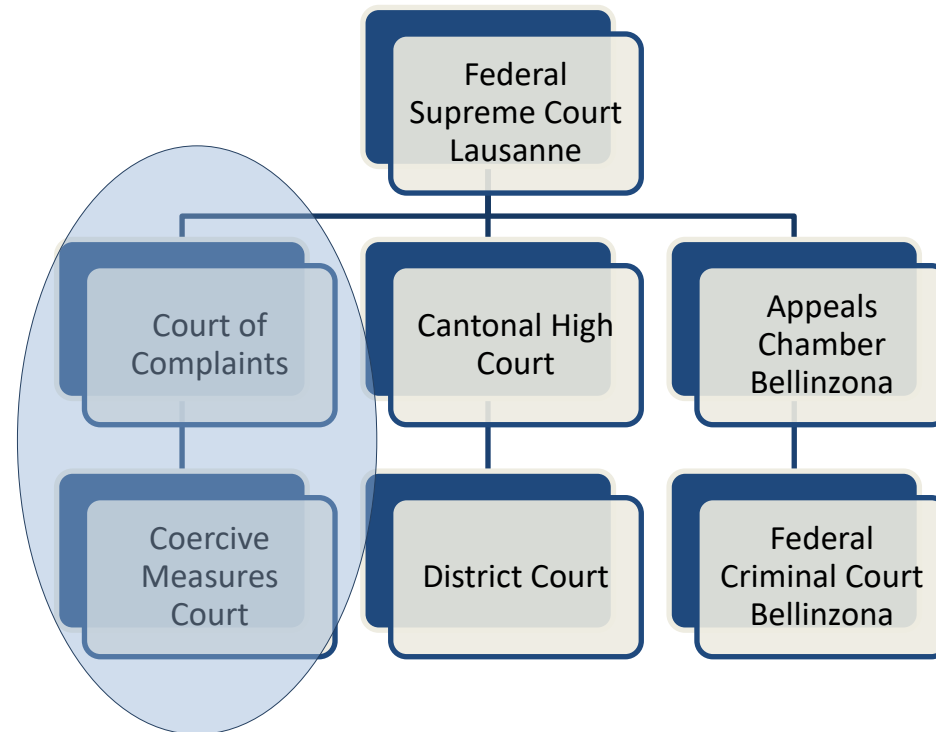
- Summons
- Detention on Remand
- Searches & Examinations
- DNA Analysis
- Seizure
- Covert Surveillance



Buchholzer/keystone

# Coercive Measures

- Summons
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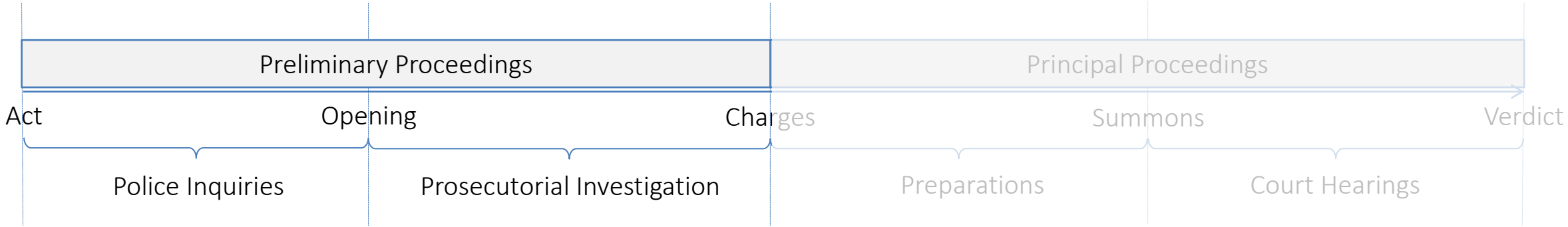
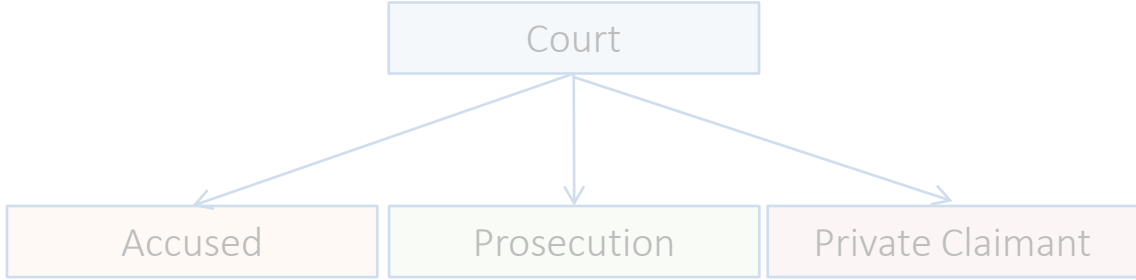
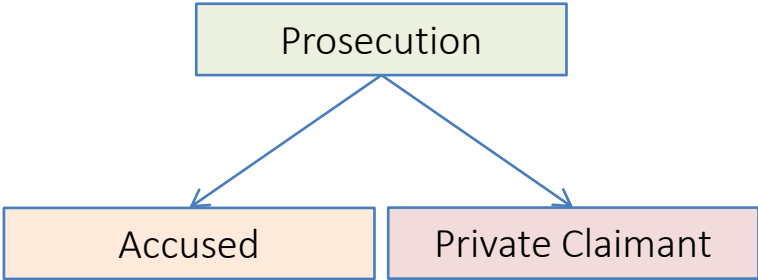
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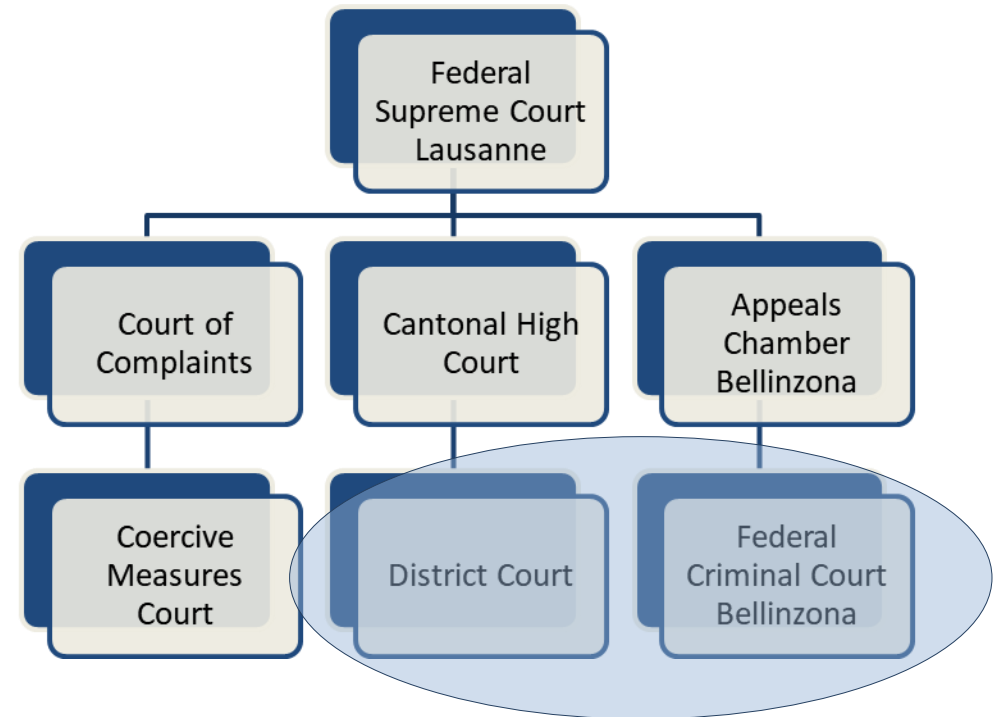
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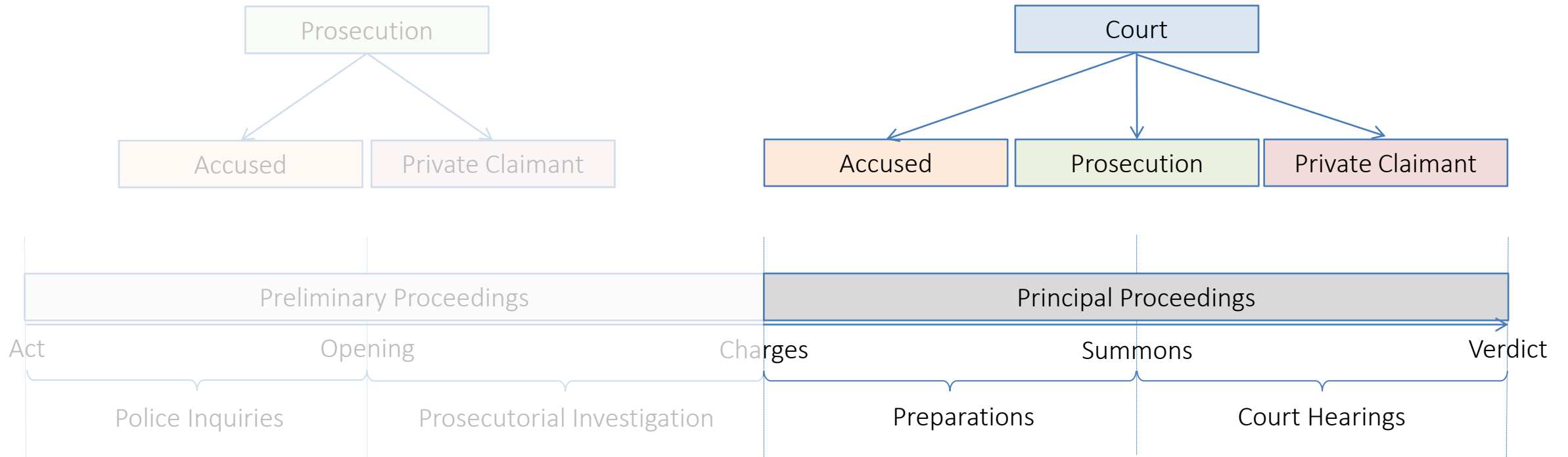
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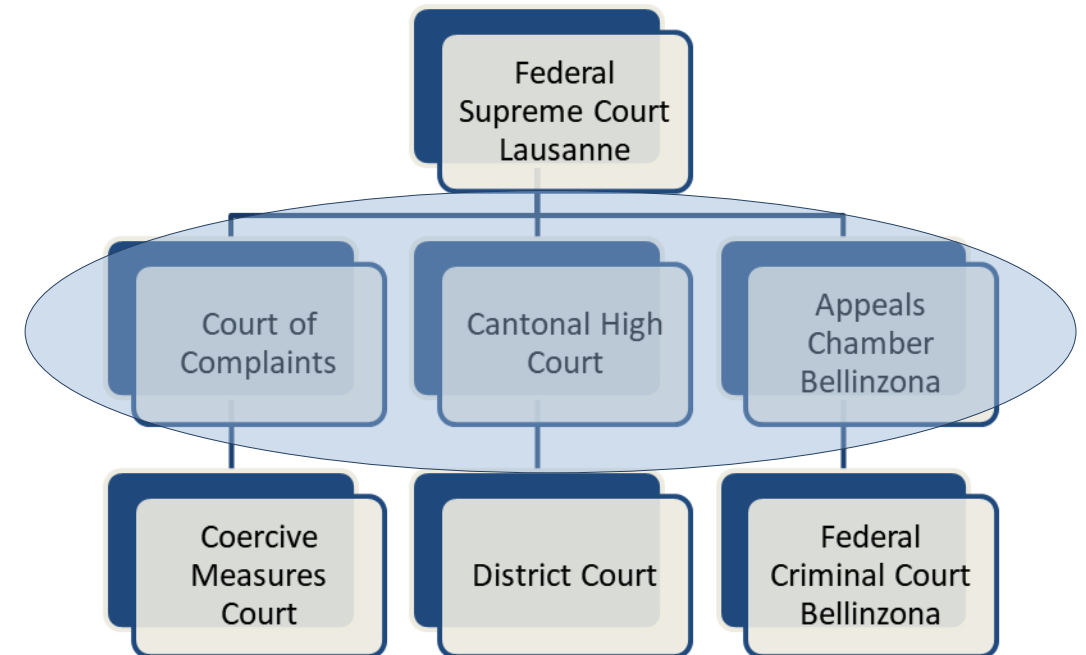
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# Fake passport

- 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





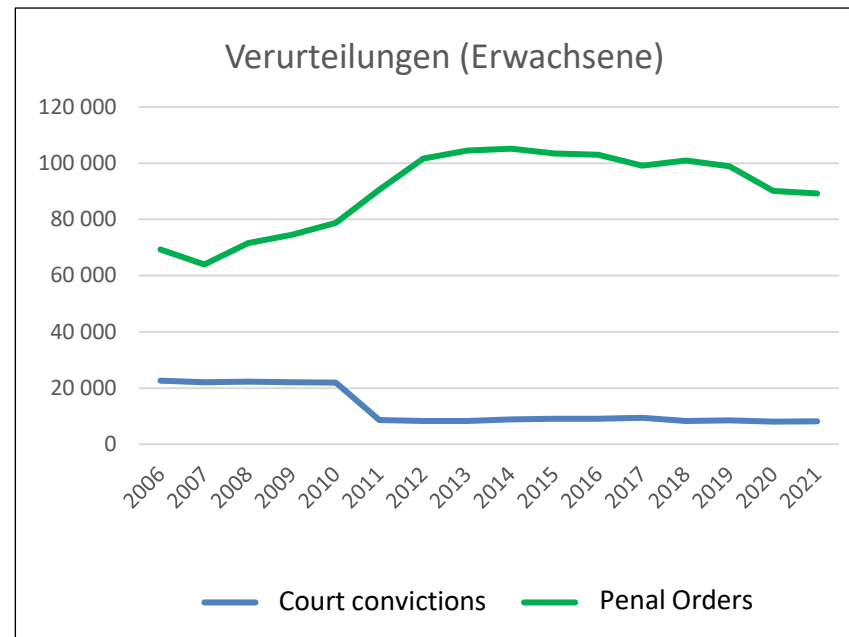
# Fake passport

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

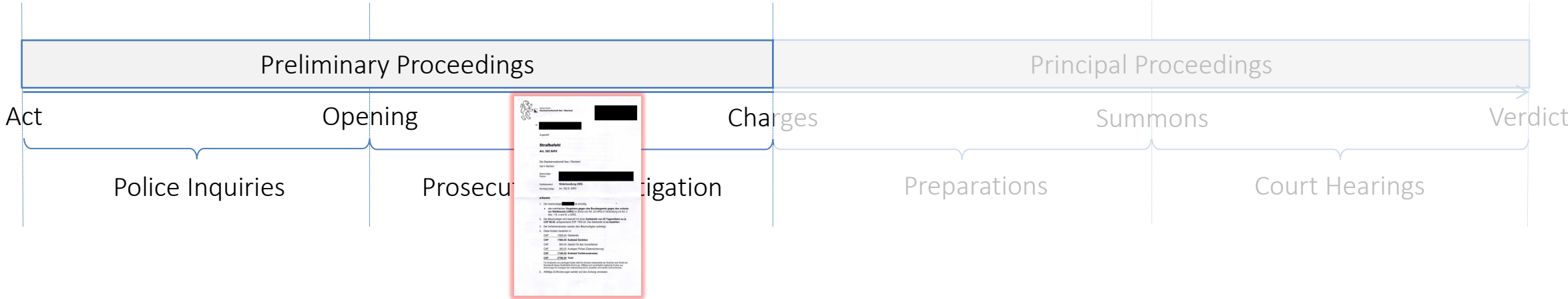
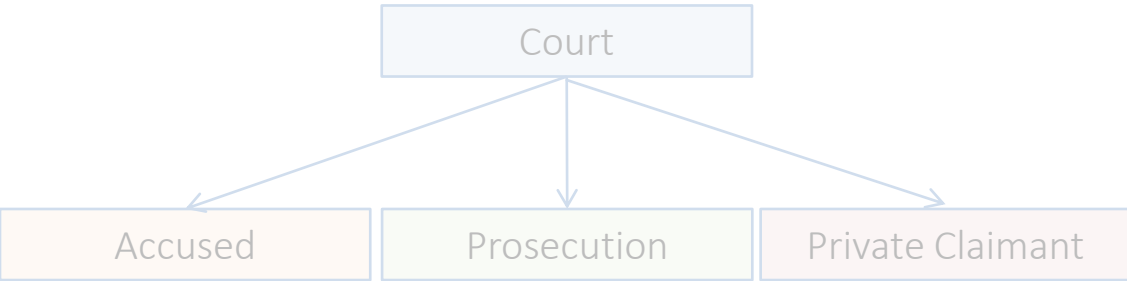
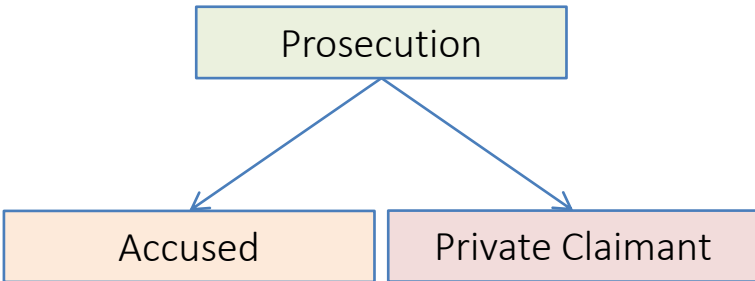


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# Penal Order Proceedings



1. Penal order

2. Criticism

3. Correction



 **Kanton Zürich**  
**Staatsanwaltschaft See / Oberland**

nr. [REDACTED]

Zugestellt

**Strafbefehl**  
**Art. 352 StPO**

Die Staatsanwaltschaft See / Oberland  
hat in Sachen

Beschuldigte  
Person [REDACTED]

Strafbestand **Widerhandlung UWG**  
Rechtsgrundlage **Art. 352 ff. StPO**

**erkannt:**

- 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 ff. u UWG.
- 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.
- Die Verfahrenskosten werden dem Beschuldigten auferlegt.
- Diese Kosten bestehen in:

CHF	1'900.00	Geldstrafe
CHF	<b>1'900.00</b>	<b>Subtotal Sanktion</b>
CHF	800.00	Gebühr für das Vorverfahren
CHF	360.00	Auslagen Polizei (Datensicherung)
CHF	<b>1'160.00</b>	<b>Subtotal Verfahrenskosten</b>
CHF	<b>2'760.00</b>	<b>Total</b>

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 Aussagen der Untersuchung sind zu bezahlen und werden nachverrechnet.

- Allfällige Zivilforderungen werden auf den Zivilweg verwiesen.

# Art. 352 CPC – Penal Order

<sup>1</sup> 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

<sup>1</sup> 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:

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- c. ...
- d. 6 months of imprisonment





# Penal Order Proceedings

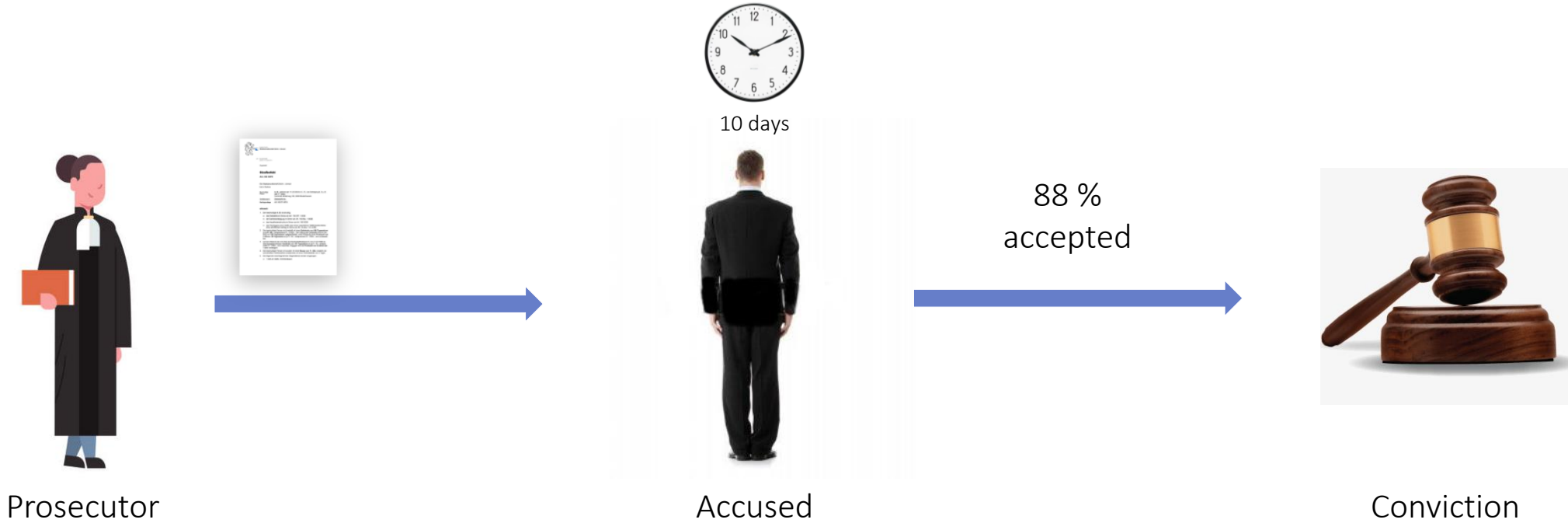


Police

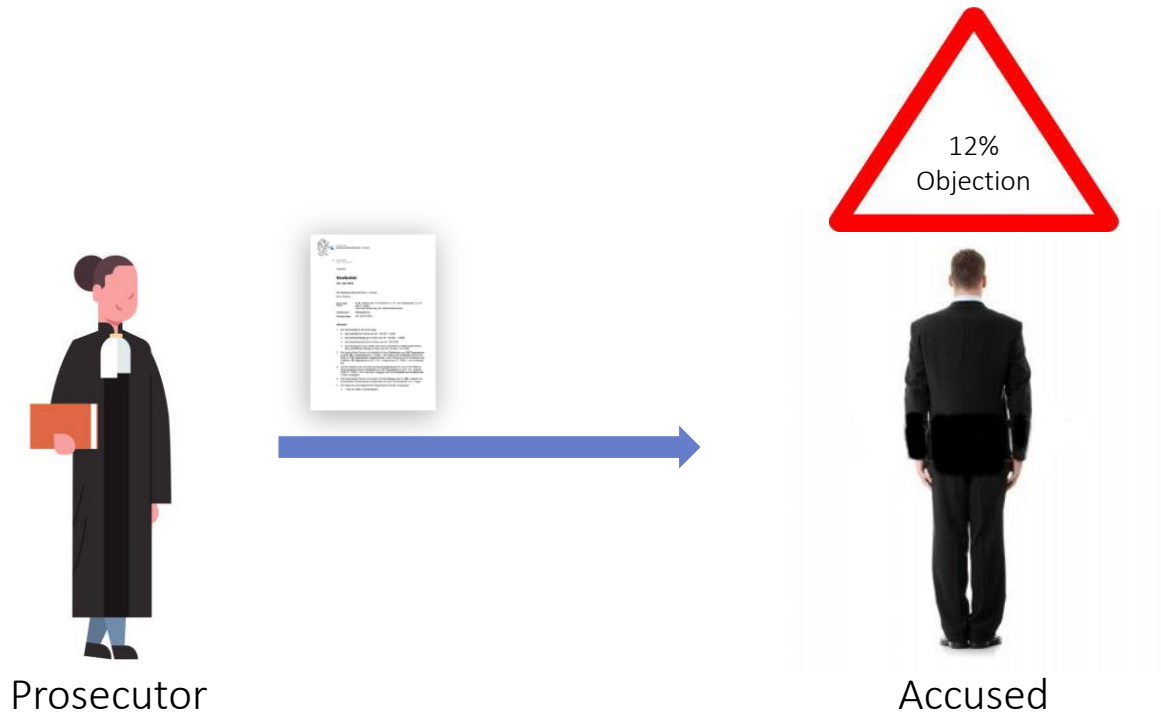


Accused

# Penal Order Proceedings



# Penal Order Proceedings



# Penal Order Proceedings

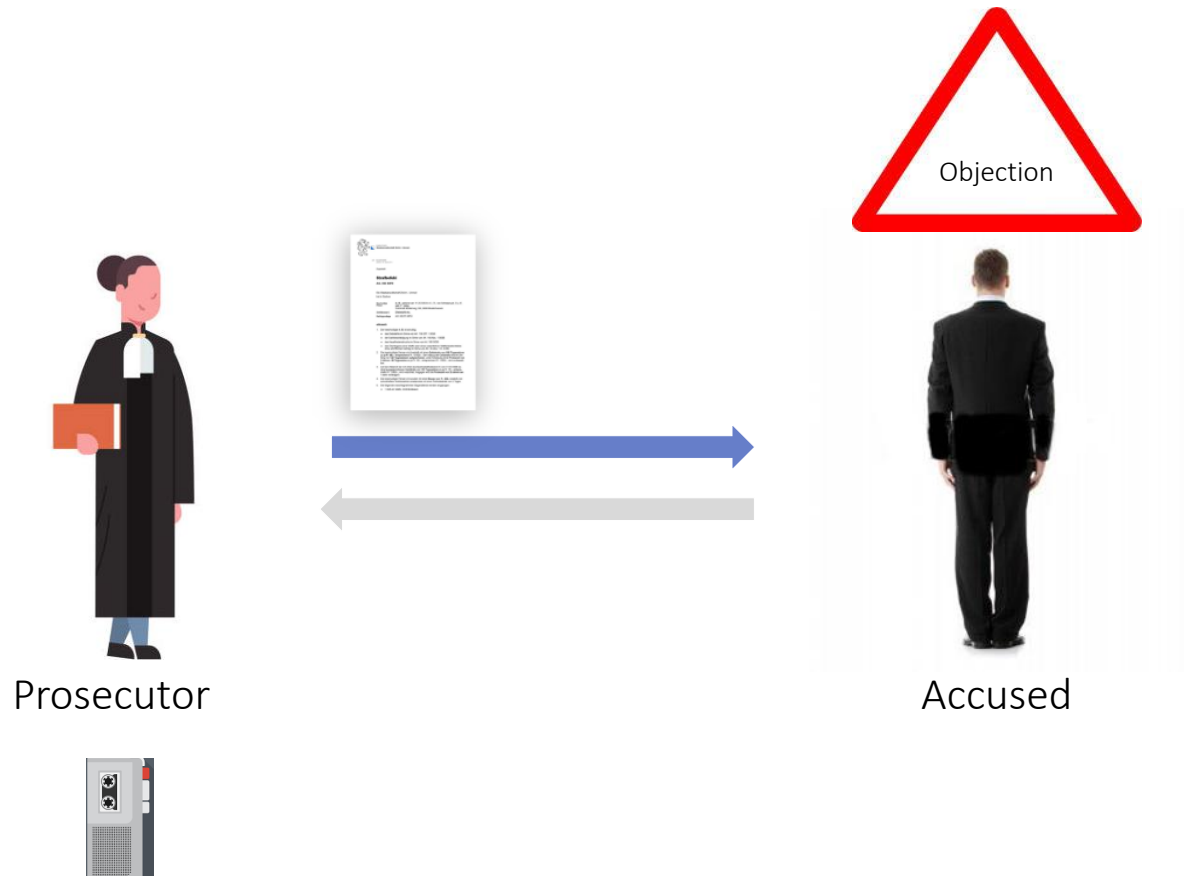


Prosecutor



Accused

# Penal Order Proceedings



# 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



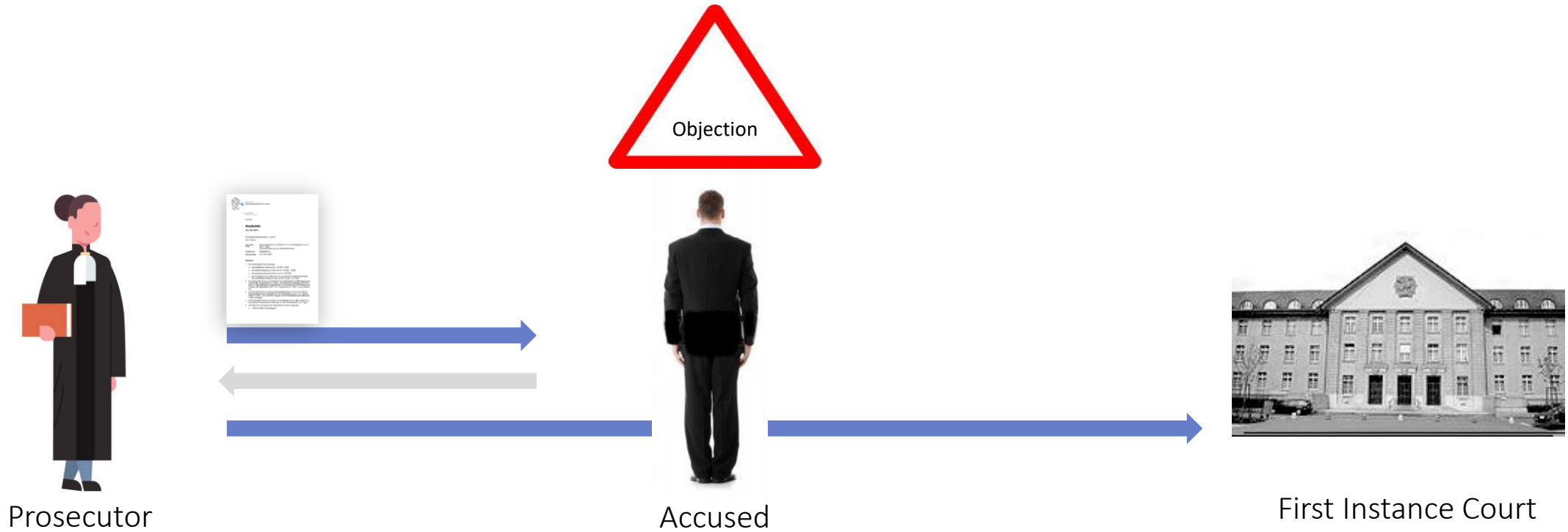
# Art. 355 CPC – Procedure after Objection

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





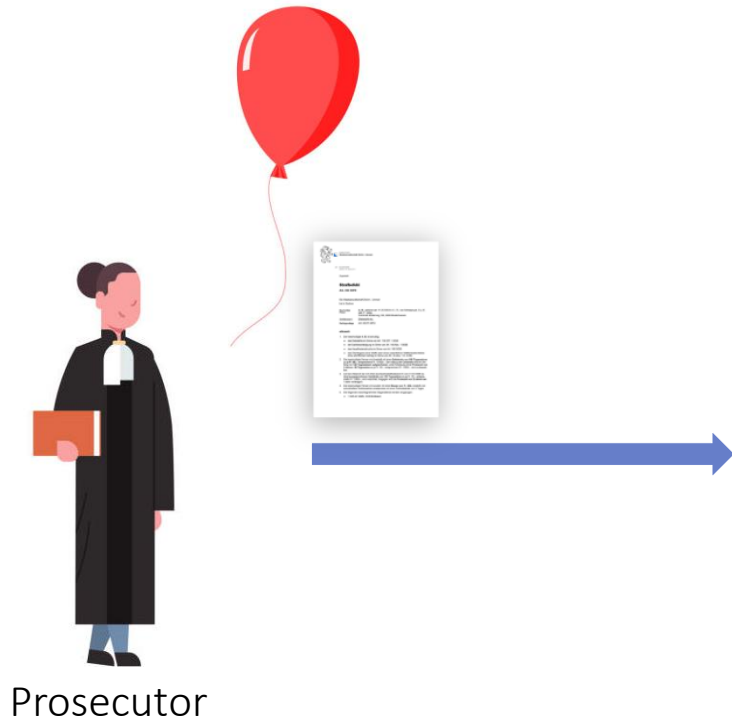
# Art. 355 CPC – Procedure after Objection

Prosecutor decides to

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



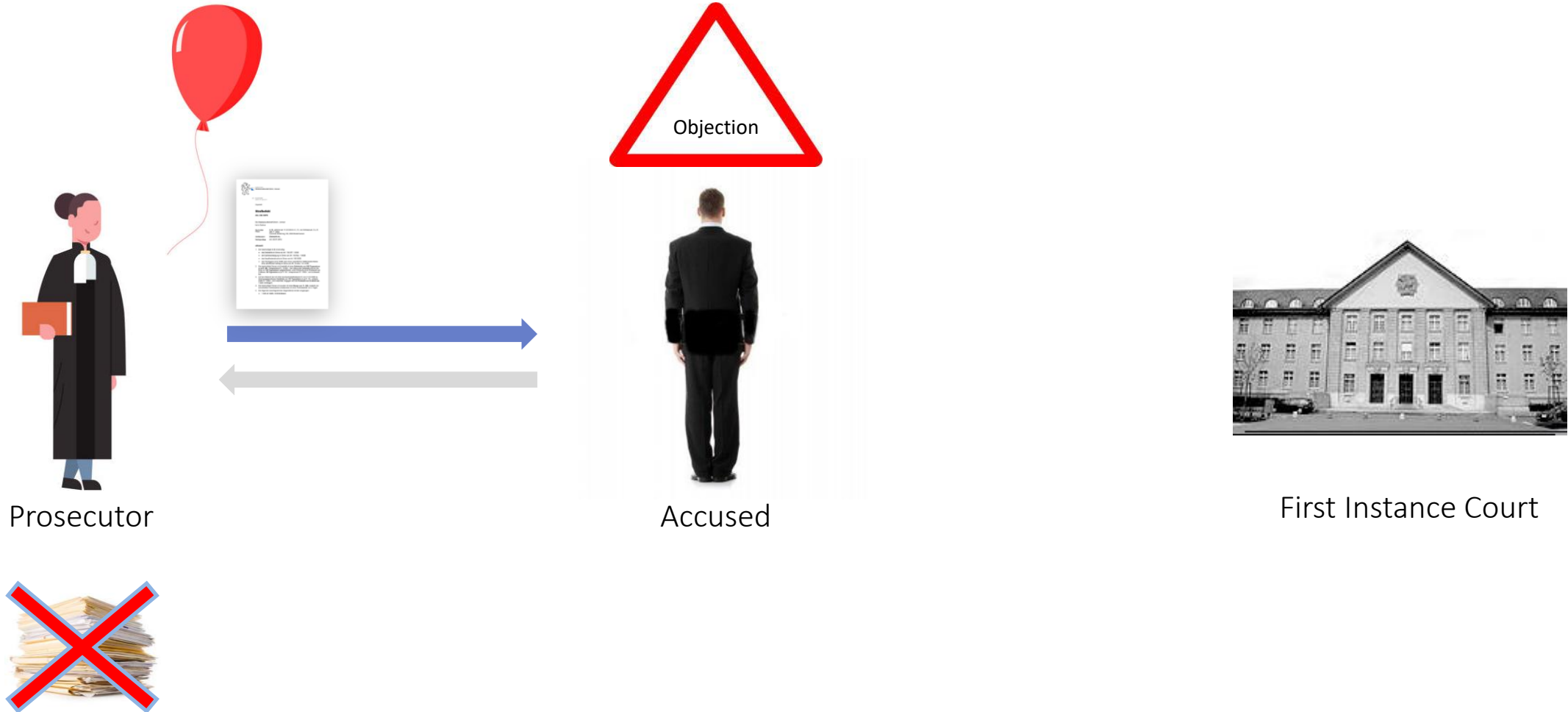
## b. Abandon proceedings



## b. Abandon proceedings



## b. Abandon proceedings



# Art. 355 CPC – Procedure after Objection

Prosecutor decides to

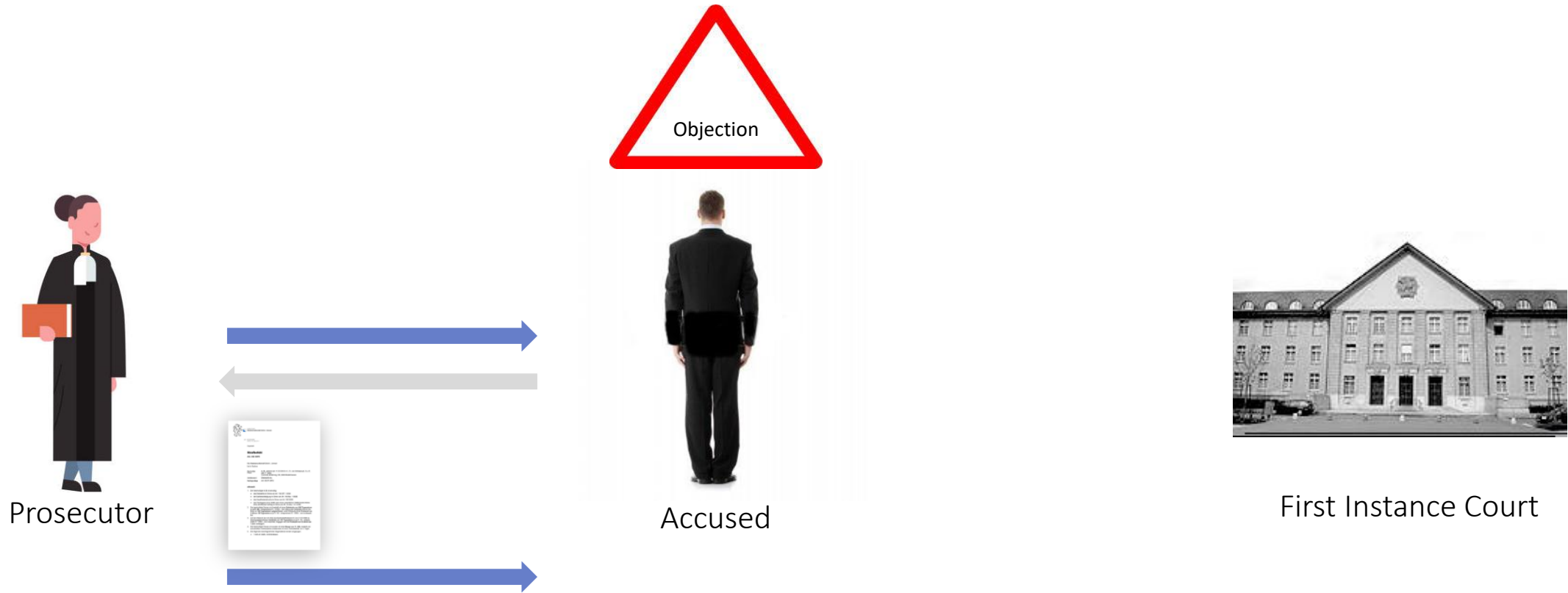
- a. Uphold penal order
- b. Abandon proceedings
- c. Issue new penal order 23 %
- d. Bring charges at court



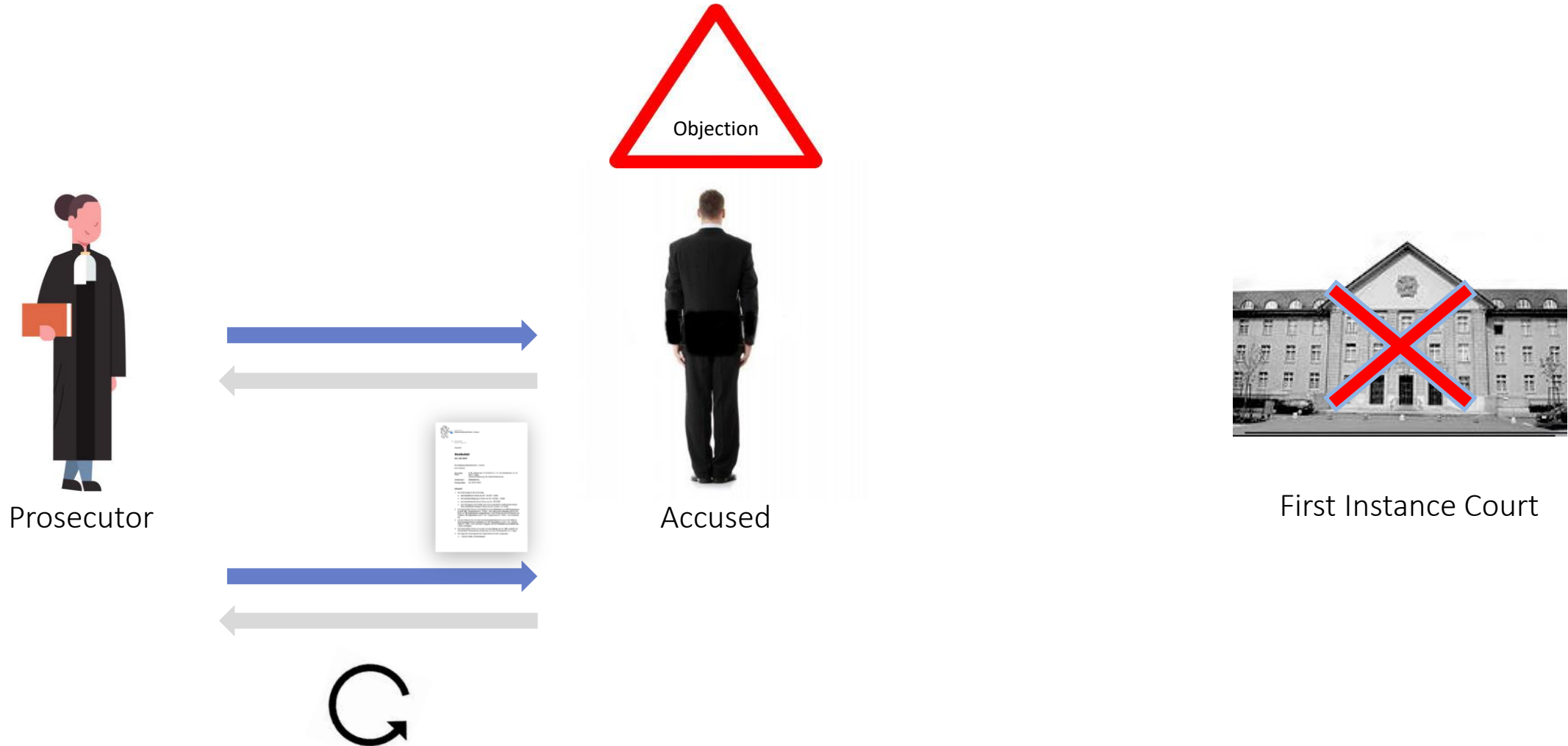
## c. Issue new penal order



## c. Issue new penal order



## c. Issue new penal order





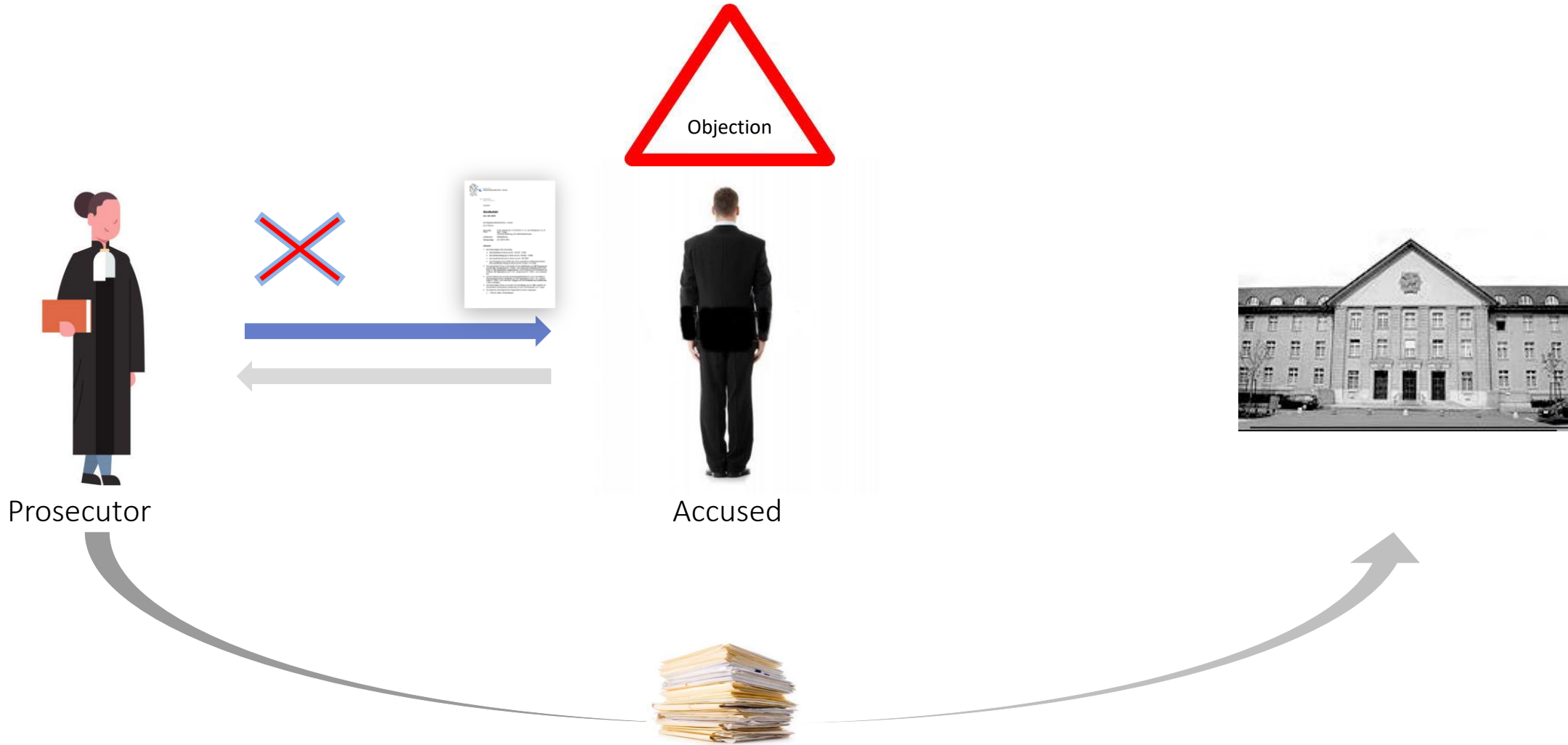
# Art. 355 CPC – Procedure after Objection

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





# 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

nr. [REDACTED]

Zugestellt

**Strafbefehl**  
**Art. 352 SPO**

Die Staatsanwaltschaft See / Oberland  
hat in Sachen

Beschuldigte Person [REDACTED]

Strafbestand **Widerhandlung UWG**  
Rechtsgrundlage **Art. 352 ff. SPO**

**erkannt:**

- 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 ff. u UWG.
- 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.**
- Die Verfahrenskosten werden dem Beschuldigten auferlegt.
- Diese Kosten bestehen in:

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

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 Aussagen der Untersuchung sind zu bezahlen und werden nachverrechnet.

- Allfällige Zivilforderungen werden auf den Zivilweg verwiesen.

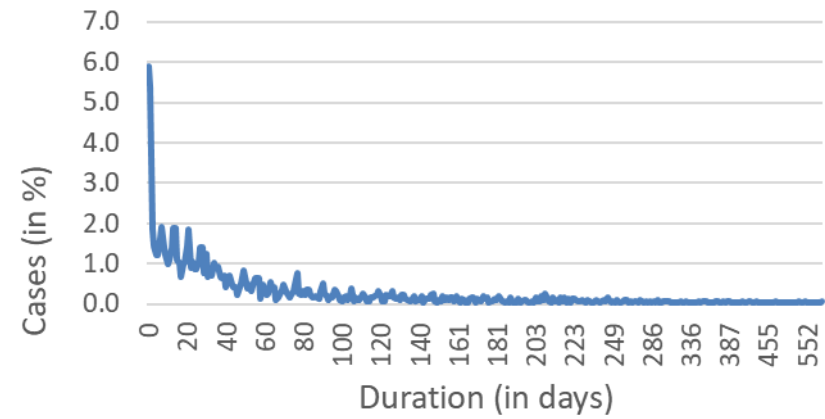
# Criticism

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



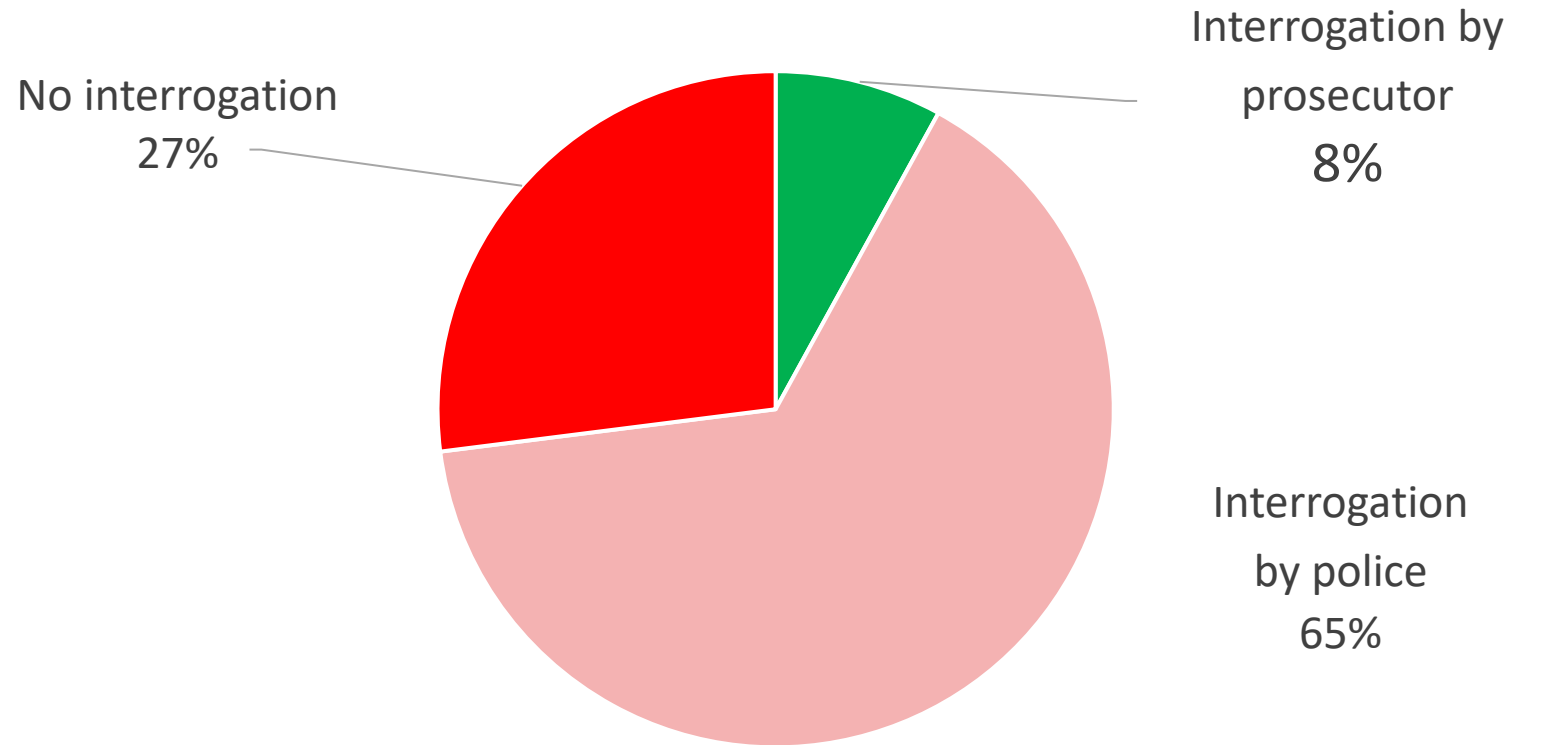
# Criticism

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



# Criticism

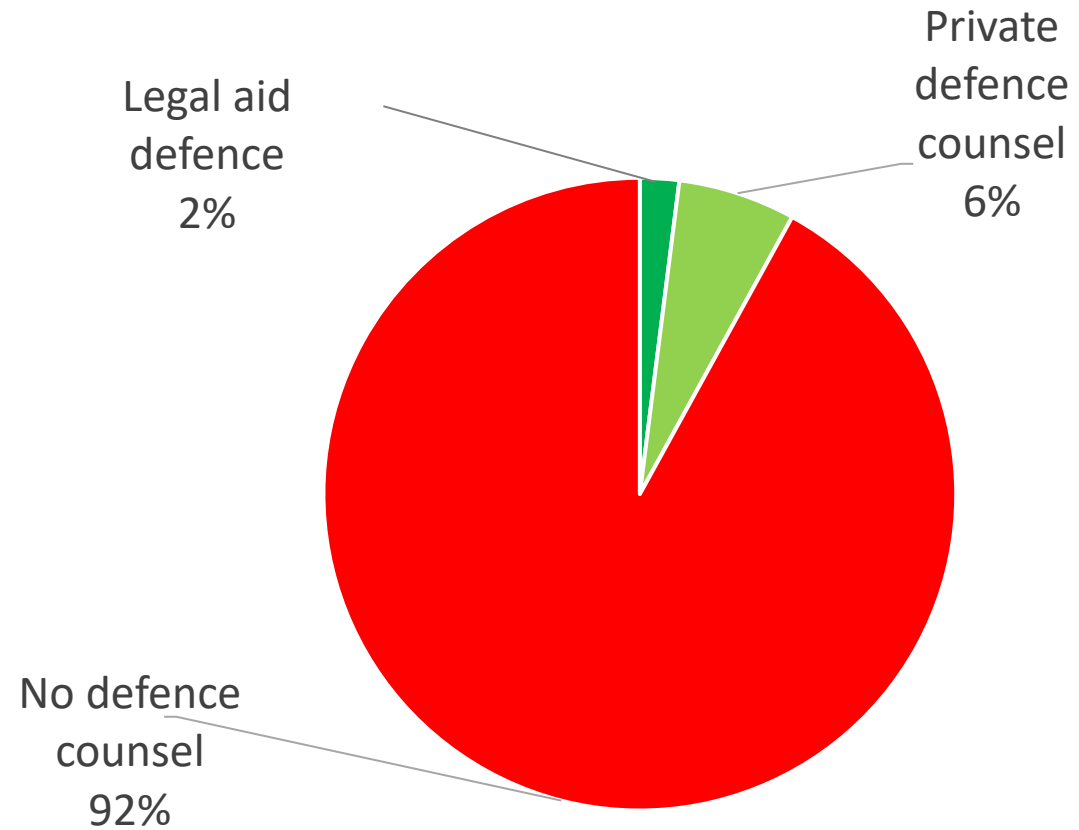
- a. Hearing
- b. Defence
- c. Translation
- d. Service
- e. Prison





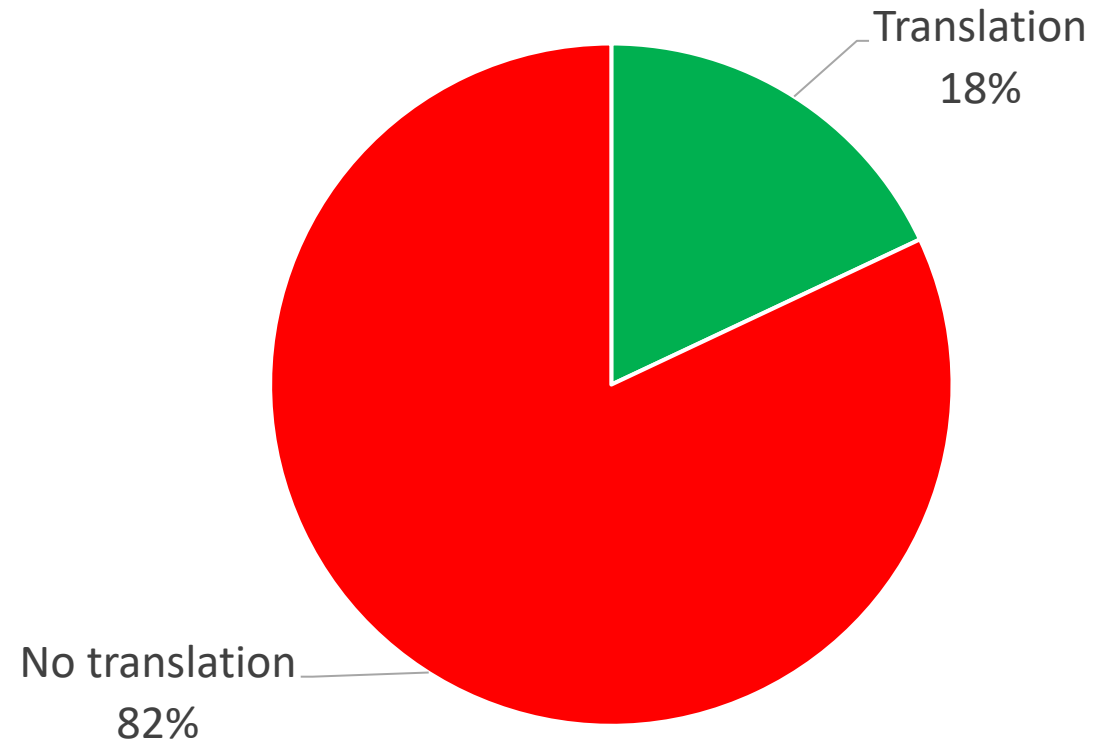
# Criticism

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



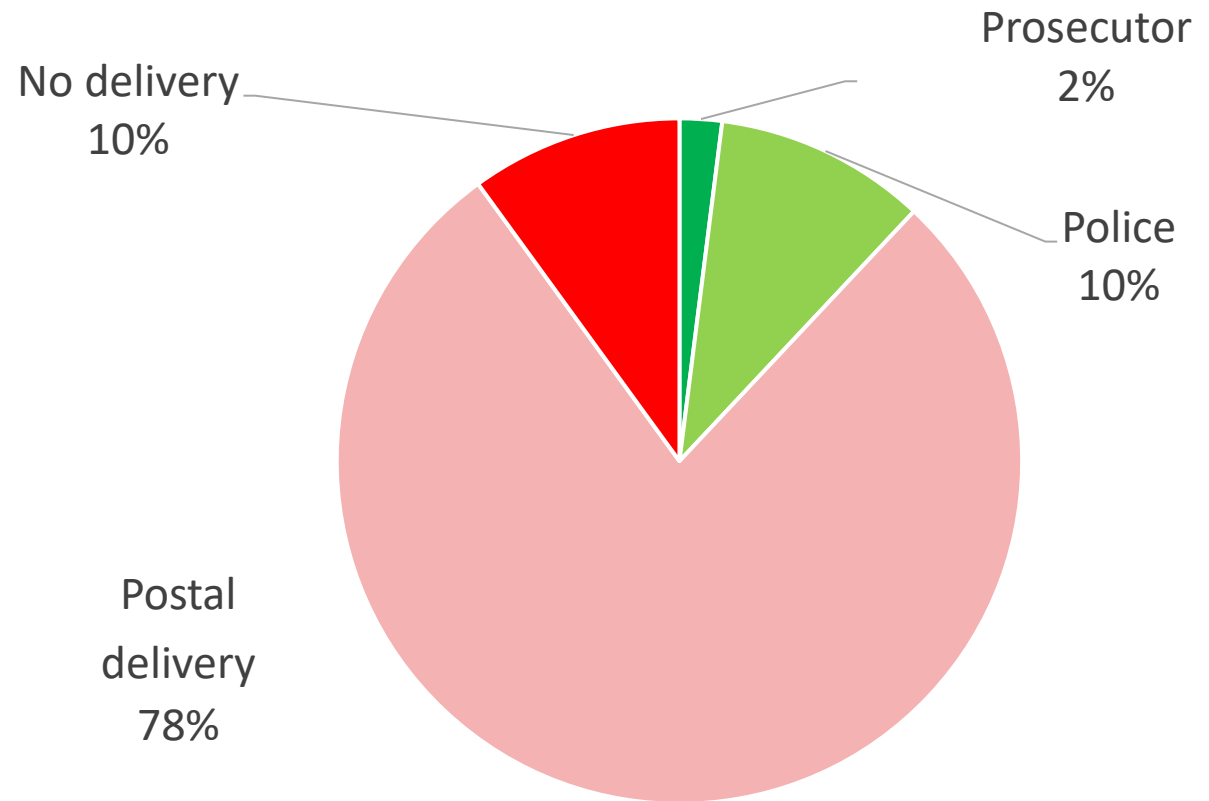
# Criticism

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



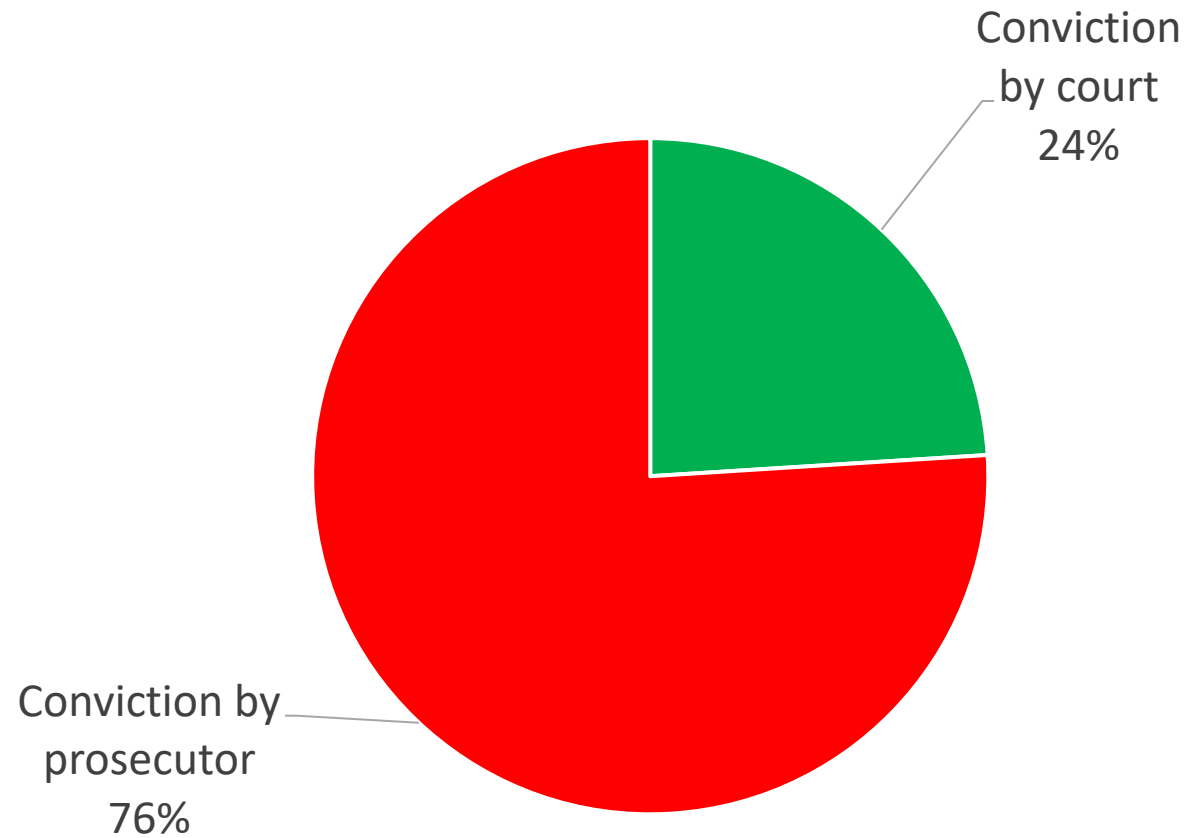
# Criticism

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



# Criticism

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



1. Penal order

2. Criticism

3. Correction

Kanton Zürich  
Staatsanwaltschaft See / Oberland

nr. [REDACTED]

Zugestellt

**Strafbefehl**  
**Art. 352 StPO**

Die Staatsanwaltschaft See / Oberland  
hat in Sachen

Beschuldigte  
Person [REDACTED]

Strafbestand **Widerhandlung UWG**  
Rechtsgrundlage **Art. 352 ff. StPO**

**erkannt:**

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  - 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 lt. u UWG.
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- Die Verfahrenskosten werden dem Beschuldigten auferlegt.
- Diese Kosten bestehen in:

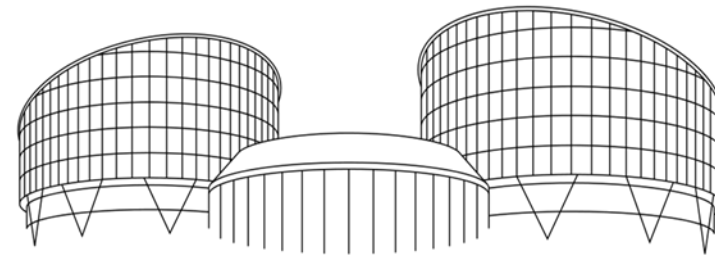
CHF	1'900.00	Geldstrafe
CHF	1'900.00	Subtotal Sanktion
CHF	800.00	Gebühr für das Vorverfahren
CHF	360.00	Auslagen Polizei (Datensicherung)
CHF	1'160.00	Subtotal Verfahrenskosten
CHF	2'760.00	Total

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 Aussagen der Untersuchung sind zu bezahlen und werden nachverrechnet.

- Allfällige Zivilforderungen werden auf den Zivilweg verwiesen.

# Correction

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



EUROPEAN COURT OF HUMAN RIGHTS

# 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](#)

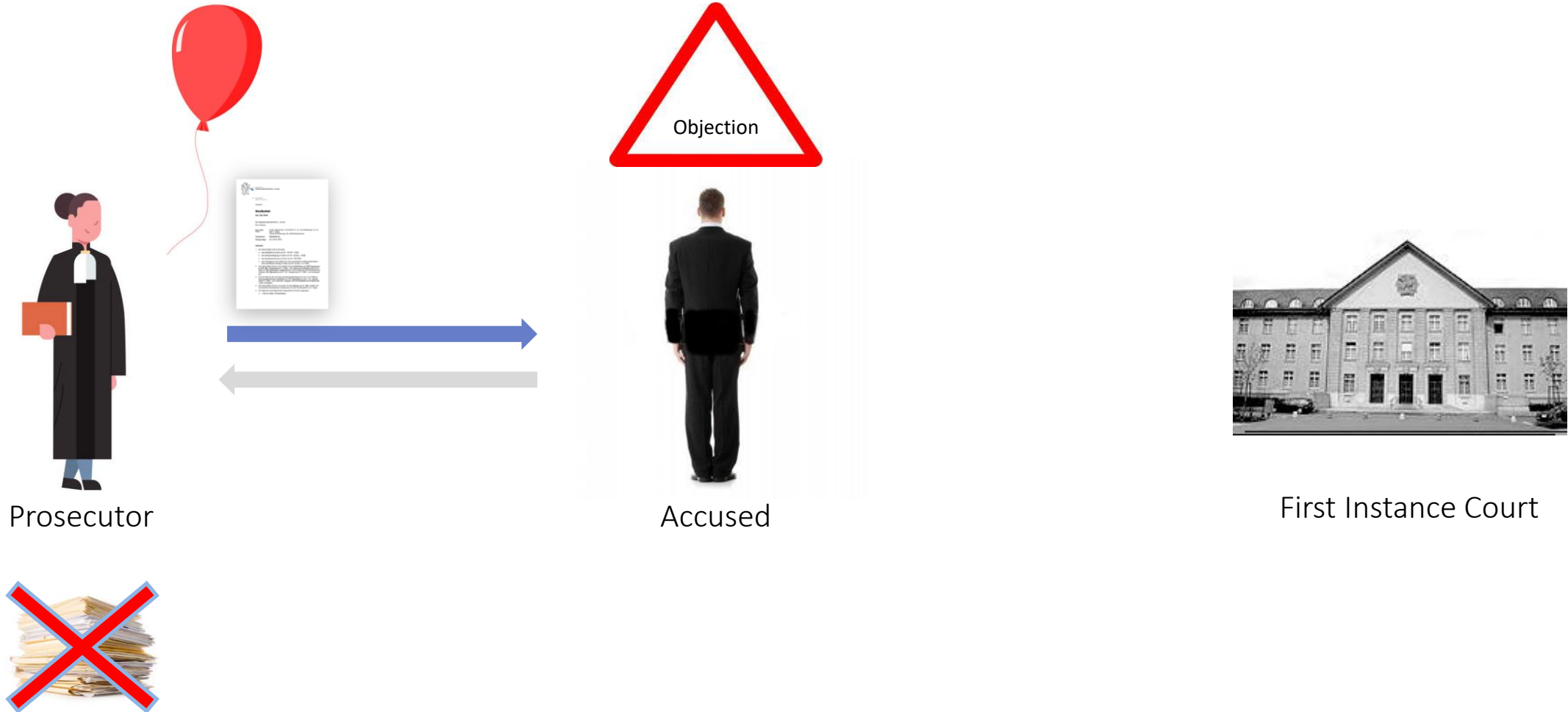
# Correction

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



Doron Teichman, HUI, Behavioral  
Law and Economics

## b. Abandon proceedings



# Correction

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



# Swiss Criminal Procedure

## Summary

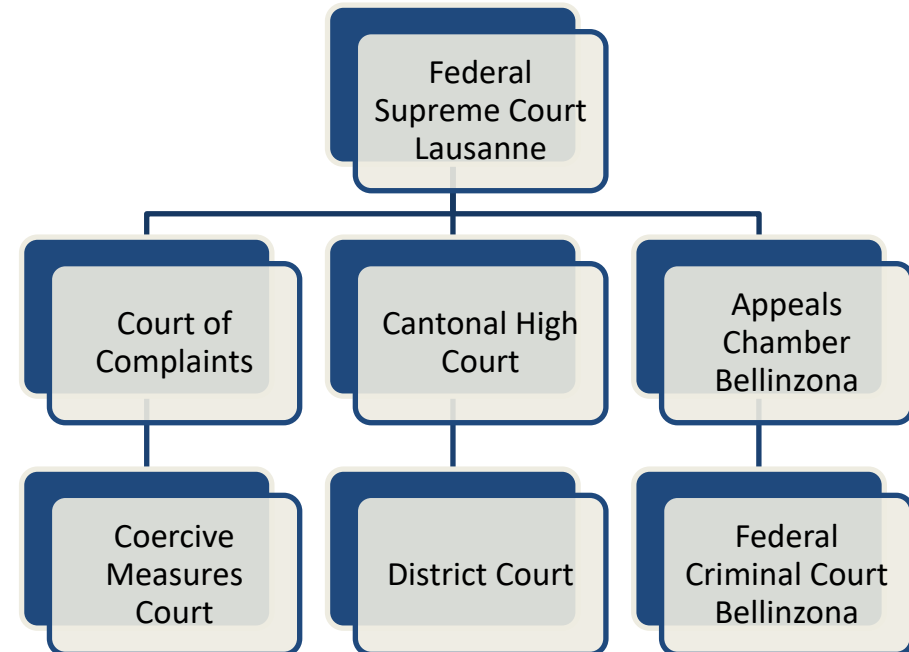
# Summary

- I. Criminal Justice Authorities
- II. Code Criminal Procedure
- III. Penal Order Proceedings



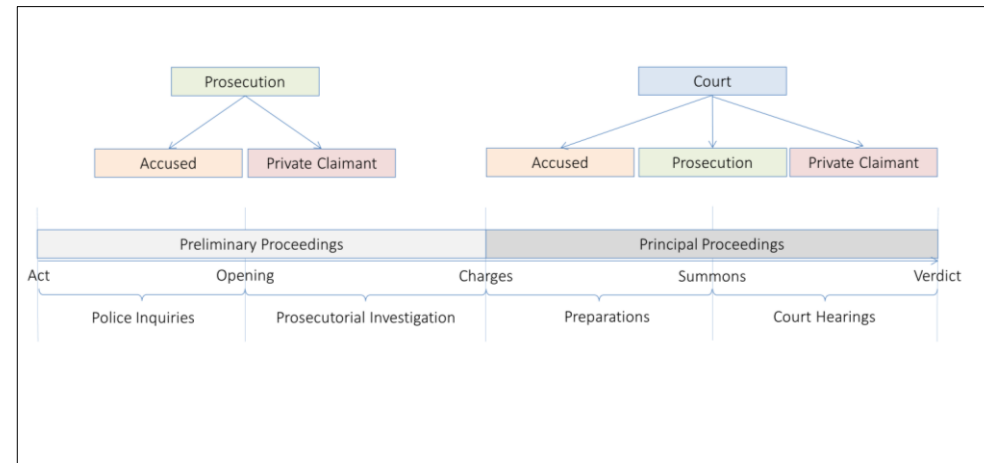
# Summary

- I. Criminal Justice Authorities
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# Summary

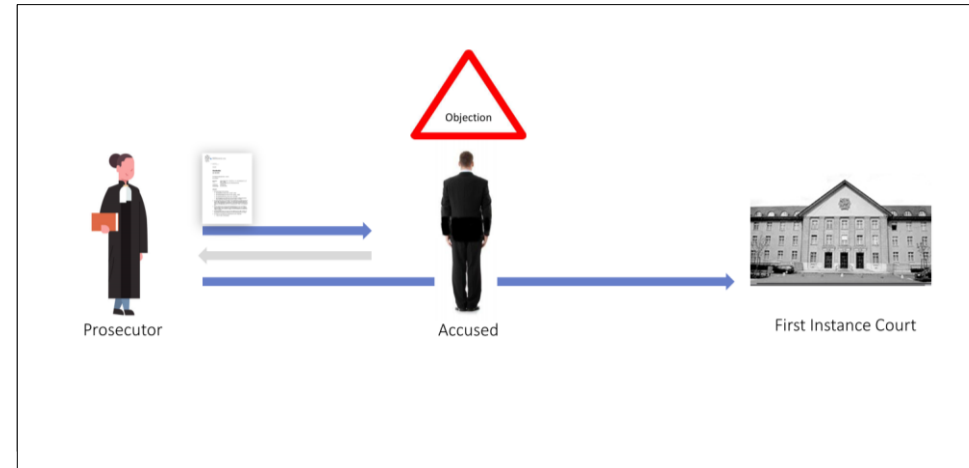
- I. Criminal Justice Authorities
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# Summary

- I. Criminal Justice Authorities
- II. Code Criminal Procedure
- III. Penal Order Proceedings



# Introduction to Swiss Law

Date	Topic	Lecturer
20/09/2024	Constitutional Law	Daniel Möckli
27/09/2024	Administrative Law / Administrative Procedure	Florian Brunner
04/10/2024	Criminal Law	Nadine Zurkinden
11/10/2024	Civil Law Principles, Family Law & Law of Persons	Elisabetta Fiocchi
18/10/2024	Contract and Tort Law	Tina Huber-Purtschert
25/10/2024	Corporate and Banking Law	David Roth
01/11/2024	Civil Procedure	Tanja Domej or tbd.
08/11/2024	Criminal Procedure	Marc Thommen
15/11/2024	Legal History/History of International Law	Elisabetta Fiocchi
22/11/2024	Legal Philosophy & Legal Theory	Pascal Meier
29/11/2024	Legal Sociology	Christoph Graber/Camilla Dul
06/12/2024	Roman Law	Adrian Häusler
13/12/2024	Oral exam	Will be communicated

# Swiss Criminal Procedure

Prof. Dr. Marc Thommen