

The Case of Swiss Summary Penalty Order

Marc Thommen, Zurich



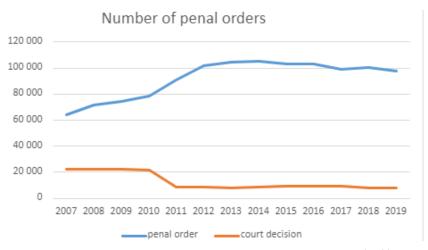
- Thommen, Kurzer Prozess fairer Prozess?

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





91 % of convictions by penal order



Markwalder 2020 Quelle:BfS



- 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





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



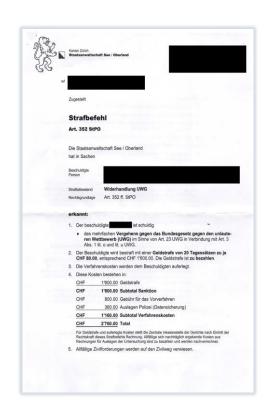


- No hearing by prosecutor
- No defence counsel
- No translation
- Served by police



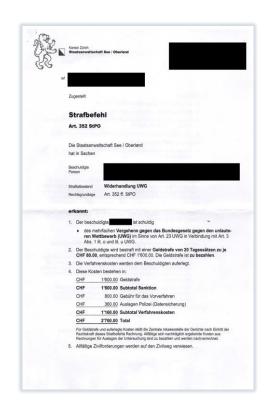


- 1. Penal order
- 2. Criticism
- 3. Efficiency





- 1. Penal order
- 2. Criticism
- 3. Efficiency





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. financial penalty
- C. ..
- d. 6 months of imprisonment max





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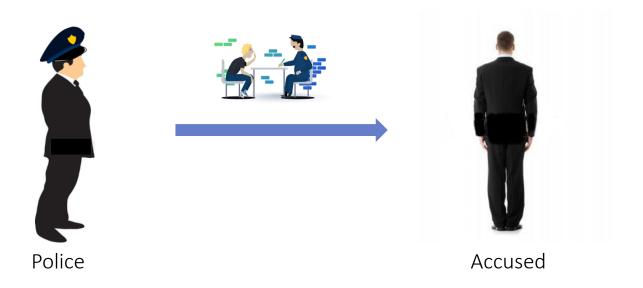


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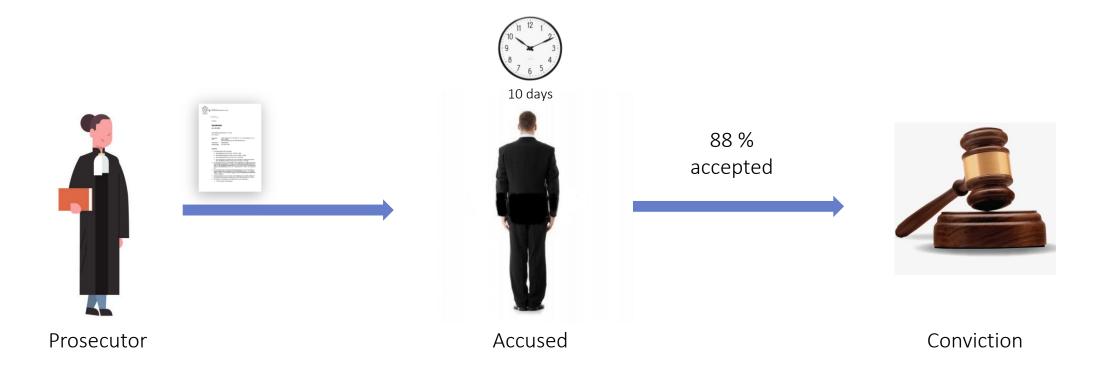
- a. fine
- b. financial penalty
- C. ..
- d. 6 months of imprisonment





















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

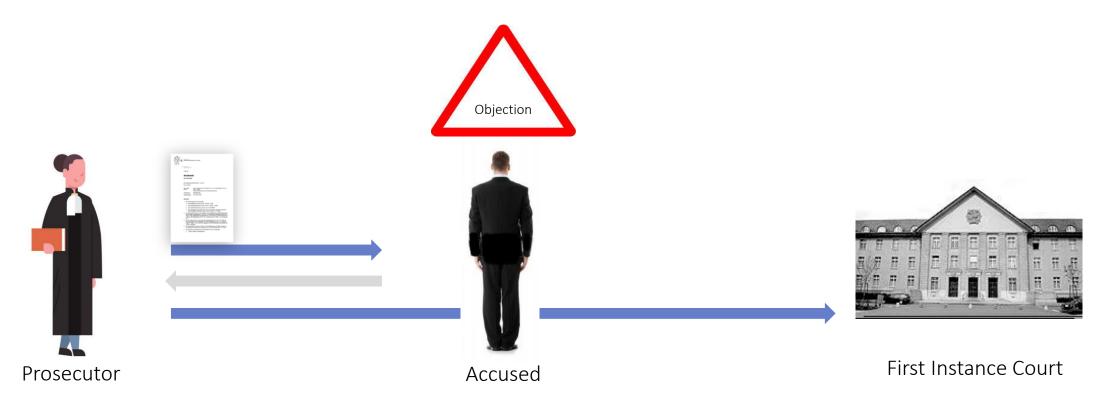
a. Uphold penal order 28 %

- 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



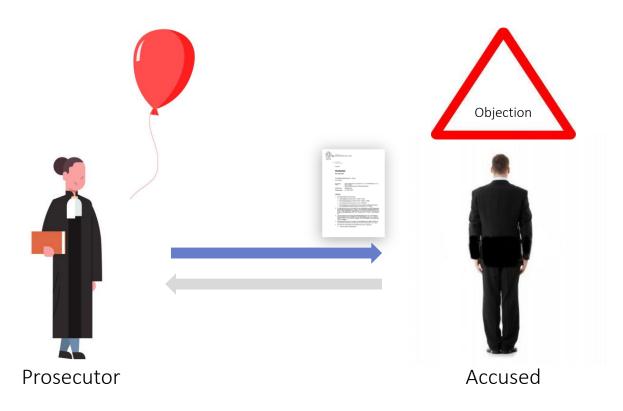






First Instance Court

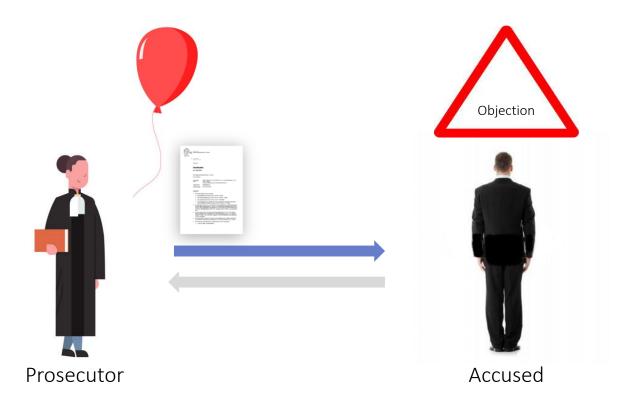






First Instance Court







First Instance Court





Art. 355 CPC – Procedure after Objection

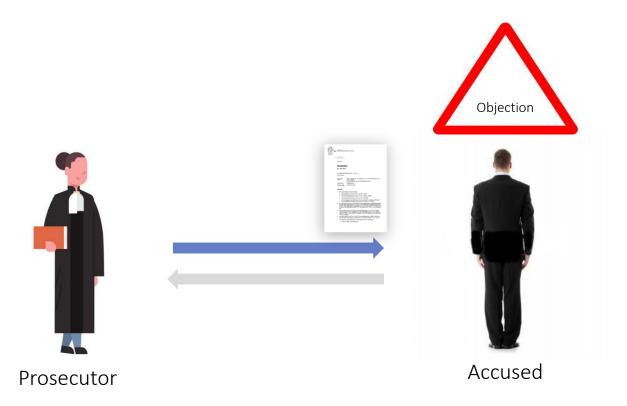
Prosecutor decides to

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





c. Issue new penal order

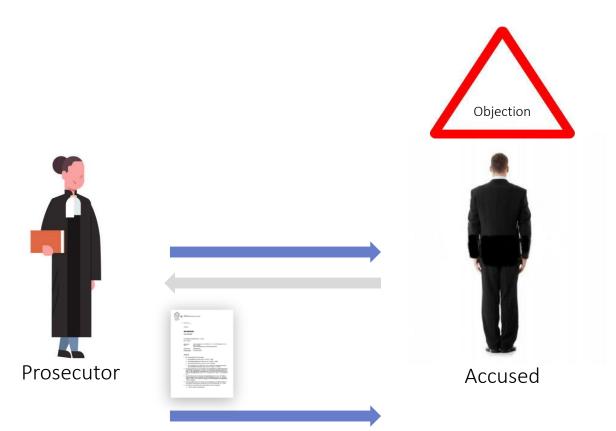




First Instance Court



c. Issue new penal order

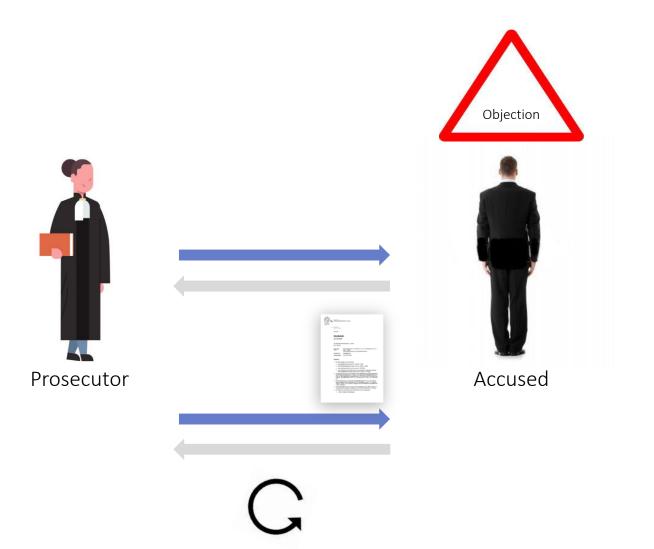




First Instance Court



c. Issue new penal order





First Instance Court



Art. 355 CPC – Procedure after Objection

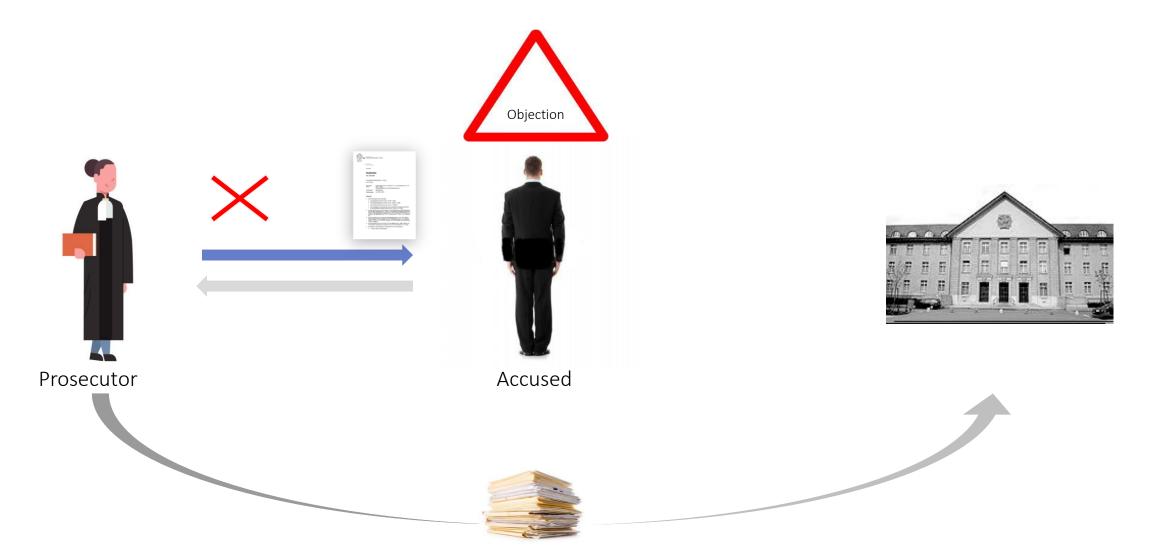
Prosecutor decides to

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





d. Bring charges at court









- 1. Penal order
- 2. Criticism
- 3. Efficiency





Criticism

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





Criticism

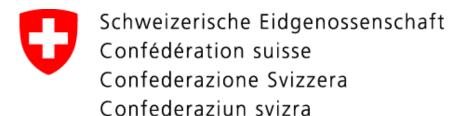
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Art. 29 – Swiss Constitution

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

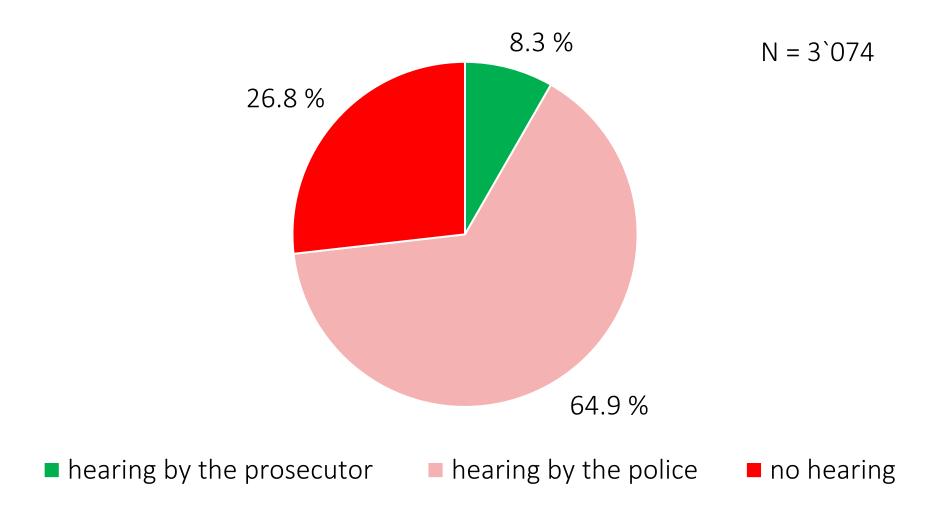




- No hearing by prosecutor
- No defence counsel
- No translation
- Served by police



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...





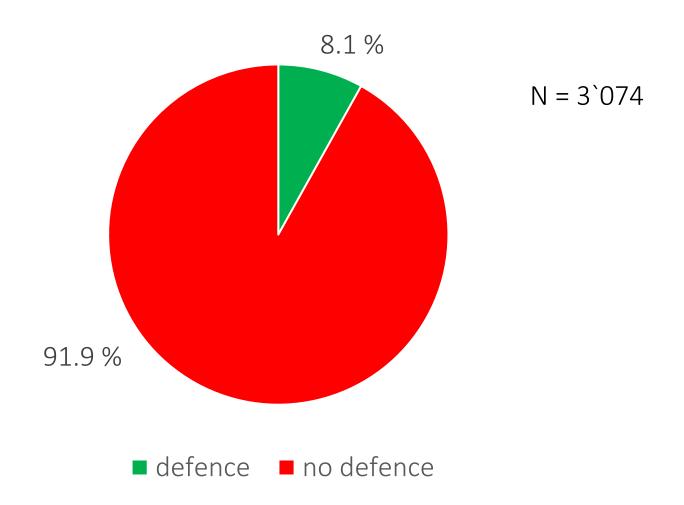
Fake passport

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





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...





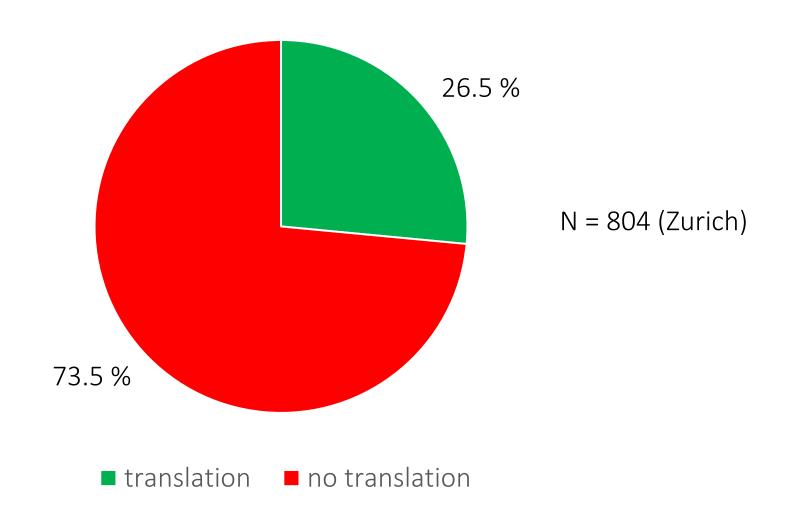
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Translation





Criticism

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





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:







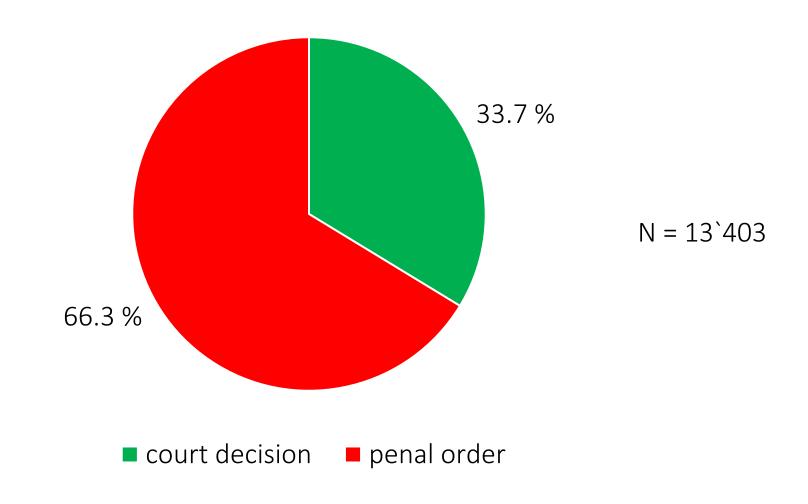
Fake passport

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Custodial sentences (2020)





Criticism

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

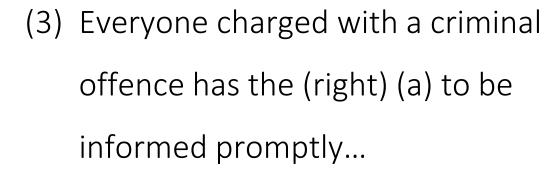




Article 6 ECHR – Right to a fair trial

(1) ...everyone is entitled to a fair and public hearing...









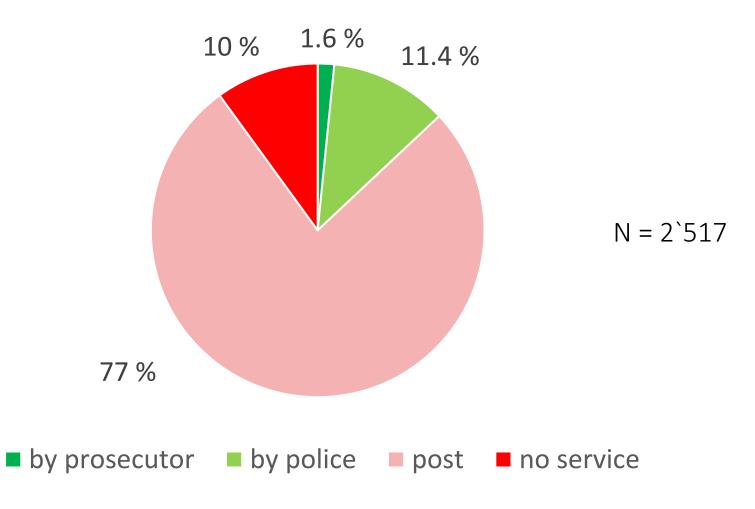
Fake passport

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Service





Conclusion

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



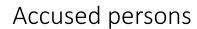


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Costs/accused



Expenditure criminal justice





More convictions with same total budget.











Costs/accused

















Less Offences Less Police





Increase total budget





Not slow food Healthier fast food



- Knowledge
- Help
- Contacts





Justice



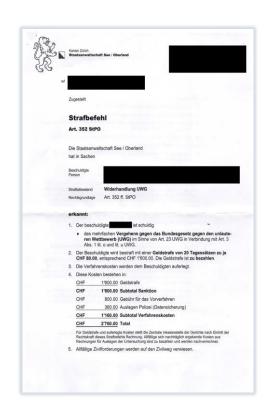


Justice





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Prosecutors as Judges?

The Case of Swiss Summary Penalty Order

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