

Swiss Criminal Law

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Translated Legislation

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>

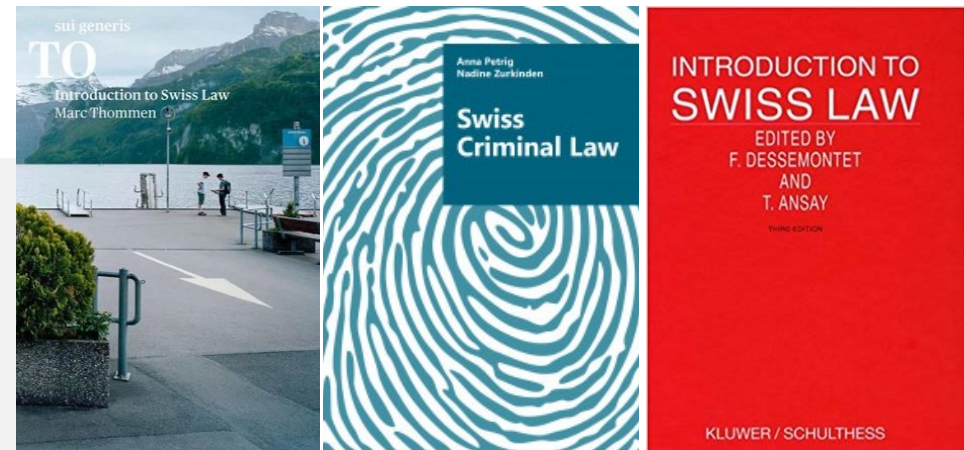
Swiss Criminal Procedure Code

<https://www.admin.ch/opc/en/classified-compilation/20052319/index.html>

See also www.rwi.uzh.ch/thommen for further information.

Literature in English

- Marc Thommen, Introduction to Swiss Law, Zurich 2022
- 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



Information System for Comparative Criminal Law

Introduction to the Legal System and Foundations of Criminal Law

The Information System contains complete and partial country reports covering **25 legal systems**. All reports share a **common structure** to simplify the comparison. The project is designed as a **work in progress**, therefore the reports are supplemented on a regular basis.

1. Select the countries you want to compare.

... (e.g. China, France and Turkey)

COUNTRIES

2. Select a topic. (optional)

... (e.g. purposes of punishment, intent or self-defense)

TOPIC

You can search for keywords or select a topic from the > table of contents.

Swiss Criminal Law



Case Examples 1/2

- X hikes in the nudes in the beautiful canton Appenzell.
- 16 year old climate activist daubes a bank building to protest against the bank's investments in fossil fuels.
- Swiss fighter jet pilot causes crash by failing to respect the rules for minimum flight altitudes for combat and training exercises.



SRF



[Vasily Koloda](#) on [Unsplash](#)

Case Examples 2/2

- X causes car crash because she disregards the right of way. A child is hurt.
- «Monster of Rapperswil» abuses and kills child. He also kills mother, brother and brother's girlfriend. He suffers from mental disorders.

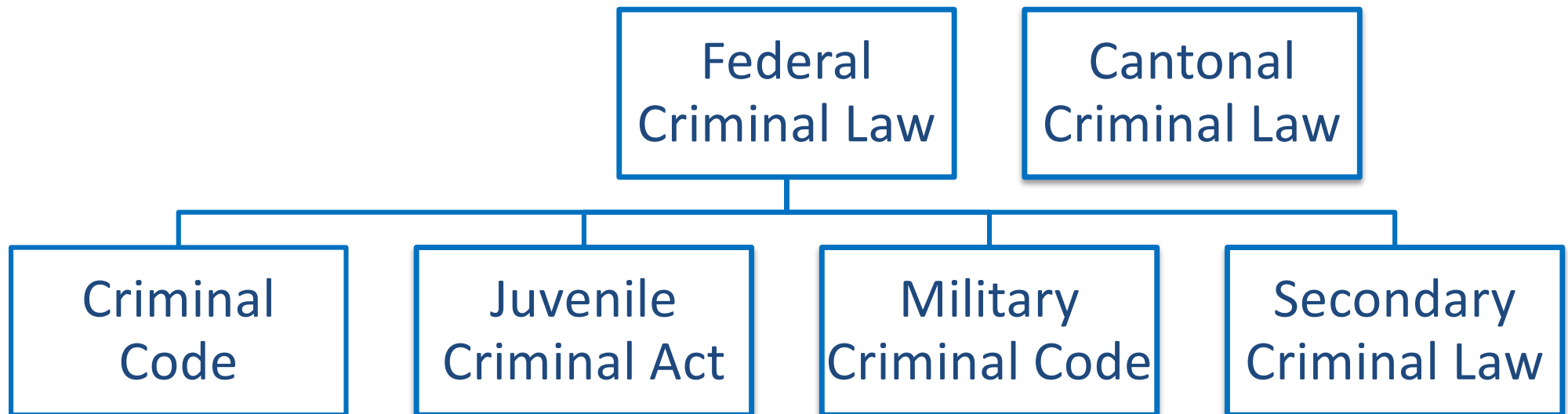


[Gareth Harrison, Unsplash](#)



[Marloes Hlickmann, Unsplash](#)

Swiss Substantive Criminal Law





Swiss Criminal Law



Federal
Criminal Law

Canto
Crimina



Crim
Code



Mobile
Criminal Act

Military
Criminal Code

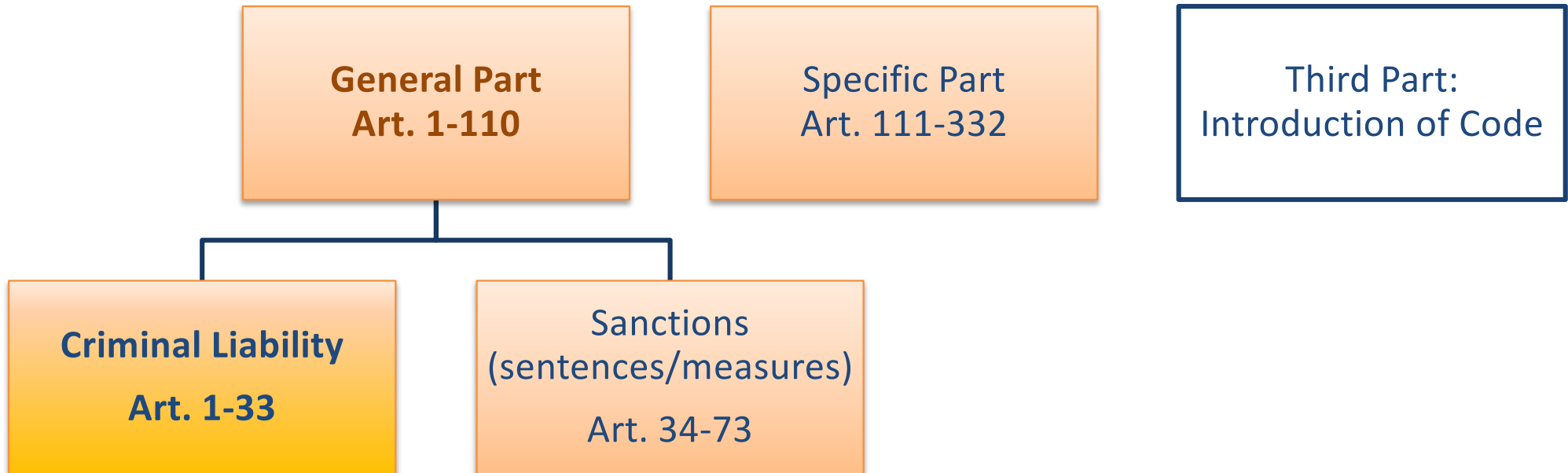


Secondary
Criminal Law





Swiss Criminal Code



General Part I – Art. 1-33 CC

General Provisions on Criminal Liability that apply to all offences

- Territorial Application
- Crime Categories
- Intention/Negligence
- Excuses/Defences
- Law on Attempts
- Participation/Complicity

Table of contents

Book One: General Provisions

Part One: Felonies and Misdemeanours

Title One: Scope of Application

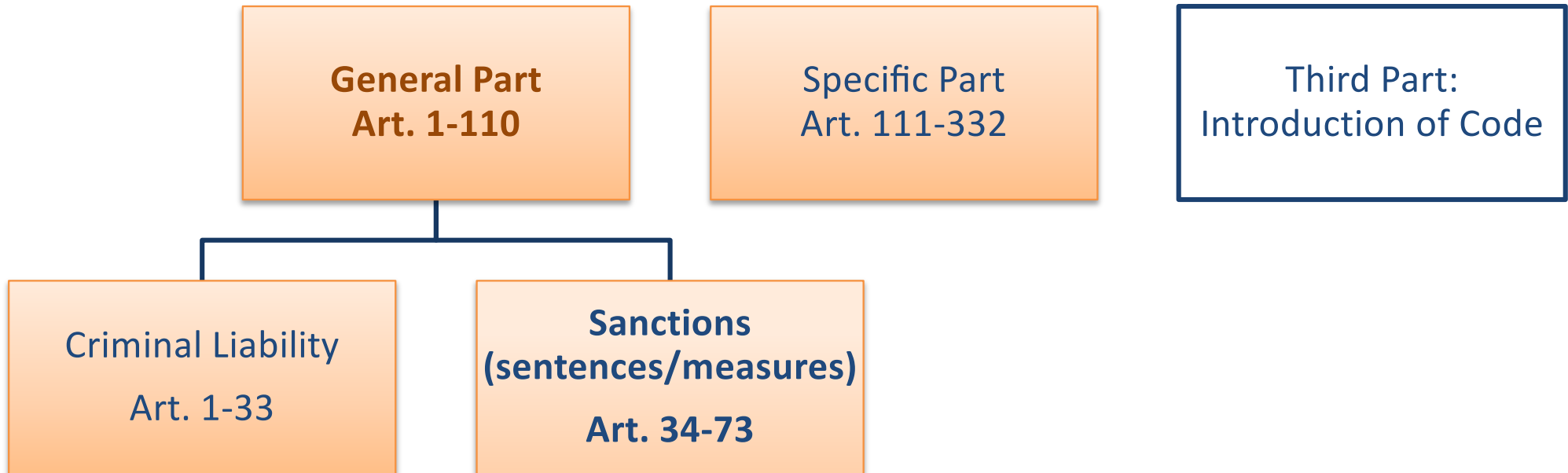
| | |
|--|--------|
| 1. No penalty without a law | Art. 1 |
| 2. Commencement of applicability of the Code | Art. 2 |
| 3. Territorial scope of application | |
| Felonies or misdemeanours in Switzerland | Art. 3 |
| Felonies or misdemeanours against the state committed abroad | Art. 4 |
| Offences against minors abroad | Art. 5 |
| Offences committed abroad prosecuted in terms of an international obligation | Art. 6 |
| Other offences committed abroad | Art. 7 |
| Place of commission | Art. 8 |
| 4. Personal scope of application | Art. 9 |

Title Two: Criminal Liability

| | |
|--|---------|
| 1. Felonies and misdemeanours | |
| Definition | Art. 10 |
| Commission by omission | Art. 11 |
| 2. Intention and negligence | |
| Definitions | Art. 12 |
| Error of fact | Art. 13 |
| 3. Lawful acts and guilt | |
| Act permitted by law | Art. 14 |
| Legitimate self-defence | Art. 15 |
| Mitigatory self-defence | Art. 16 |
| Legitimate act in a situation of necessity | Art. 17 |
| Mitigatory act in a situation of necessity | Art. 18 |
| Absence of legal responsibility due to a mental disorder and diminished responsibility | Art. 19 |
| Doubt as to legal responsibility | Art. 20 |
| Error as to unlawfulness | Art. 21 |
| 4. Attempts | |
| Criminal liability for attempts | Art. 22 |
| Withdrawal and active repentance | Art. 23 |

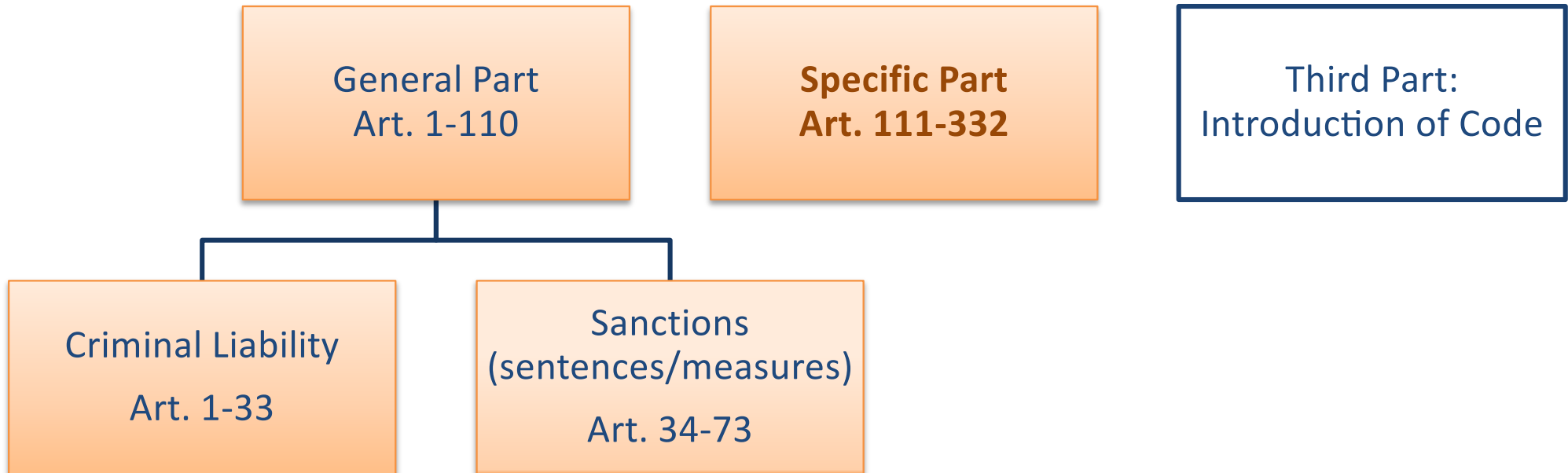


Swiss Criminal Code





Swiss Criminal Code



Specific Criminal Acts

Life and Limb (Art. 111 ff.)
 Property (Art. 137 ff.)
 Personal Honour (Art. 173 ff.)
 Liberty (Art. 180 ff.)
 Sexual Integrity (Art. 187 ff.)
 Family (Art. 213 ff.)
 Public (Art. 221 ff.)
 Counterfeiting of Money (Art. 240 ff.)
 Forgery (Art. 251 ff.)
 Public Order (Art. 258 ff.)
 Genocide, Crimes against Humanity, War Crimes (Art. 264 ff.)
 State and National Security (Art. 265 ff.)
 Will of the People (Art. 279 ff.)
 Official Powers (Art. 285 ff.)
 Foreign Relations (Art. 296 ff.)
 Administration of Justice (Art. 303 ff.)
 Offences against Official or Professional Duty (Art. 312 ff.)
 Bribery (Art. 322ter ff.)

| Title One: Offences against Life and Limb | |
|--|-------------------------|
| 1. Homicide. | |
| Intentional homicide | Art. 111 |
| Murder | Art. 112 |
| Manslaughter | Art. 113 |
| Homicide at the request of the victim | Art. 114 |
| Inciting and assisting suicide | Art. 115 |
| Infanticide | Art. 116 |
| Homicide through negligence | Art. 117 |
| 2. Abortion. | |
| Illegal abortion | Art. 118 |
| Legal abortion | Art. 119 |
| Contraventions by physicians | Art. 120 |
| <i>Repealed</i> | Art. 121 |
| 3. Assault. | |
| Serious assault | Art. 122 |
| Common assault | Art. 123 |
| Female genital mutilation | Art. 124 |
| Assault through negligence | Art. 125 |
| Acts of aggression | Art. 126 |
| 4. Endangering the life or health of another. | |
| Abandonment | Art. 127 |
| Failure to offer aid in an emergency | Art. 128 |
| False alarm | Art. 128 ^{bis} |
| Endangering life | Art. 129 |
| <i>Repealed</i> | Art. 130–132 |
| Brawling | Art. 133 |
| Attack | Art. 134 |
| Representations of acts of violence | Art. 135 |
| Administering substances capable of causing injury to children | Art. 136 |

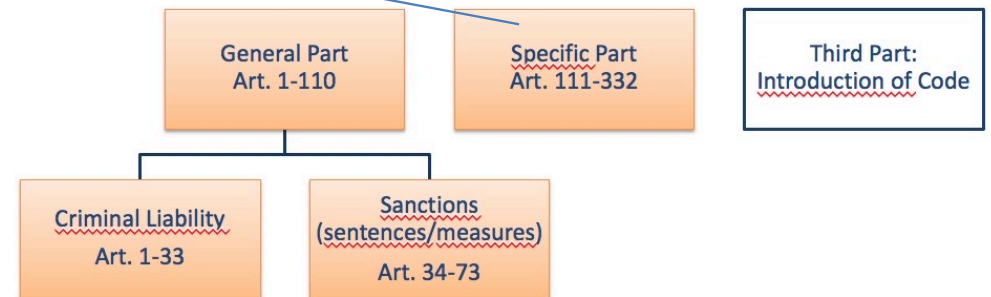
How do the different parts work together?

Article 111 SCC

„Any person who kills a person intentionally... is liable to a custodial sentence of not less than five years”



Swiss Criminal Code



How do the different parts work together?

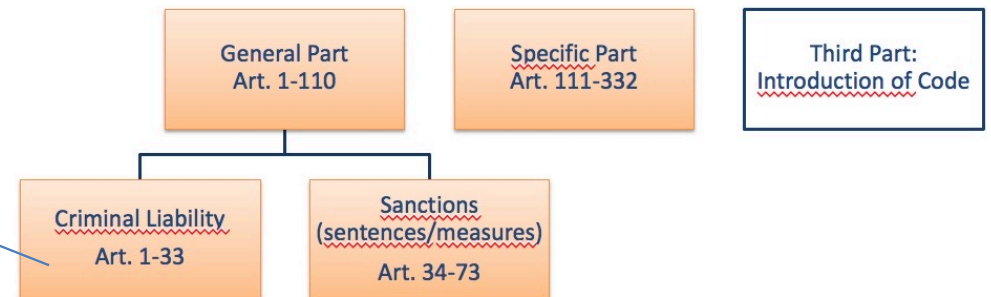
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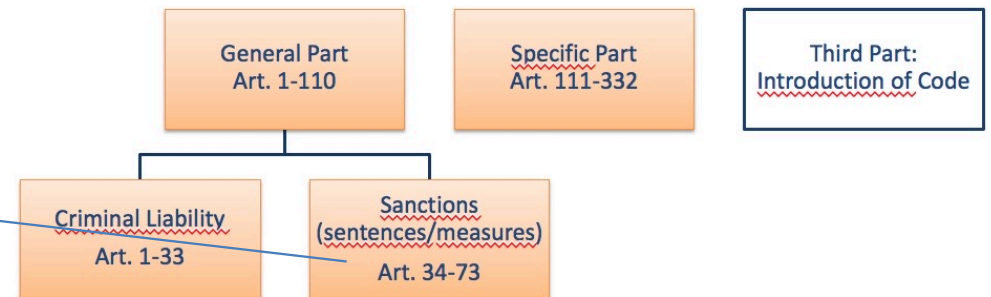
Article 111 SCC

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Swiss Criminal Code

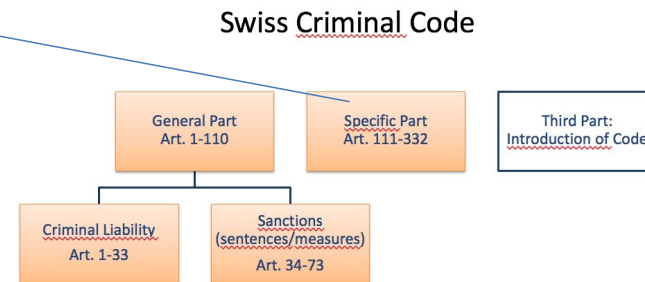


Specific Part; e.g. homicide

How do the different parts work together?

Article 111 SCC

**„Any person who kills a person
intentionally...
is liable to a custodial sentence of
not less than five years”**

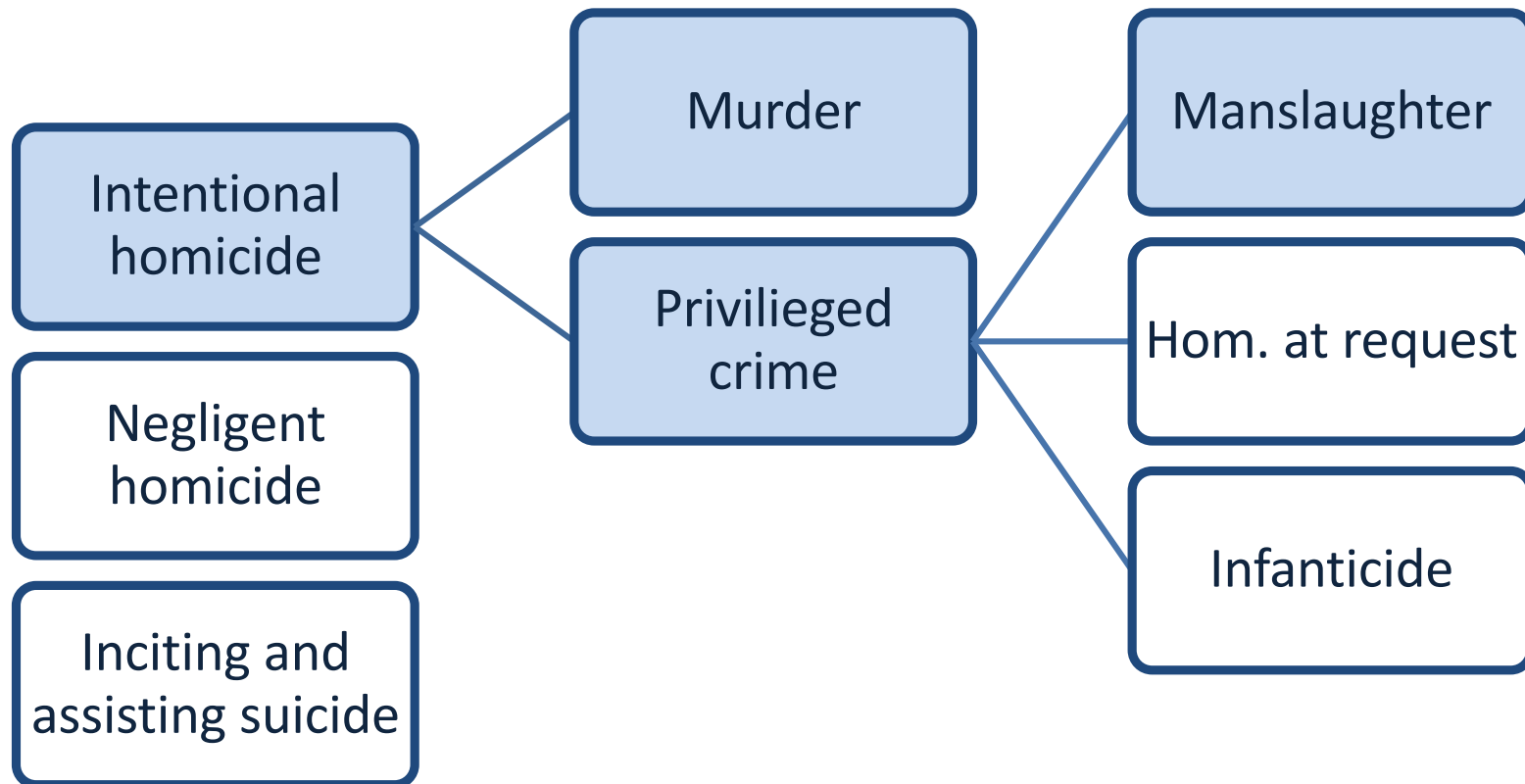


Article 111 Intentional homicide

Any person who kills a person intentionally, but **without fulfilling the special requirements of the following articles**, is liable to a custodial sentence of not less than five years.



E.g. types of homicide



Article 112 Murder

Where the offender acts in a **particularly unscrupulous manner, in which the motive, the objective or the method of commission is particularly depraved**, the penalty is a custodial sentence for life or a custodial sentence of not less than ten years.



Article 113 Manslaughter

Where the offender acts in a **state of extreme emotion that is excusable in the circumstances**, or in a **state of profound psychological stress**, the penalty is a custodial sentence from one to ten years.





Domestic Tyrant (BGE 122 IV 1)

Y constantly abused his wife X. In January 1993, he told their daughter that her mother was going to die during the course of that year. On 15 March 1993, Y showed his wife a revolver he had bought in order to kill her. He then put it under his pillow and went to sleep. At one o'clock in the morning, X took the revolver and shot Y dead while he was sleeping.



Criminal Liability

| | | | |
|-------------------|---|--|---|
| Elements of Crime | Objective Elements <ul style="list-style-type: none"> - Offender - Object of the Crime - Act - Result - Causation | Subjective Elements <ul style="list-style-type: none"> - Direct Intent - Conditional Intent |  <p>Objective Wrong</p> |
| Unlawfulness | Justification <ul style="list-style-type: none"> - Self-Defence - Necessity - Consent | <ul style="list-style-type: none"> - Knowledge (of threat) - Will (to defend) | |
| Culpability | <ul style="list-style-type: none"> - Criminal Responsibility - Error of Law - Unreasonableness | |  <p>Subjective Blame</p> |

E.g.: Art. 19 Absence of legal responsibility due to a mental disorder and diminished responsibility

¹ If the person concerned was unable at the time of the act to **appreciate that his act was wrong** or to **act in accordance** with this appreciation of the act, he is **not liable to a penalty**.

² If the person concerned was **only partially able** at the time of the act to appreciate that his act was wrong or to act in accordance with this appreciation of the act, the court shall **reduce the sentence**.

³ Measures in accordance with Articles 59–61, 63, 64, 67, 67*b* and 67*e* may, however, be taken.

⁴ If it was **possible** for the person concerned **to avoid** his state of mental incapacity or diminished responsibility **and** had he done so to **foresee** the act that may be committed in that state, paragraphs 1–3 do not apply.



General Part; e.g. sanctions

How do the different parts work together?

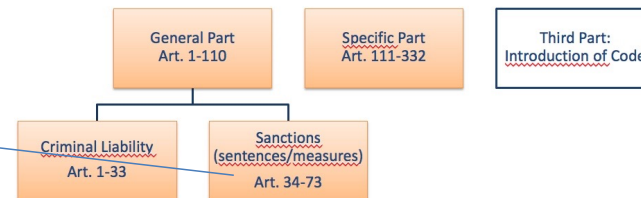
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Swiss Criminal Code



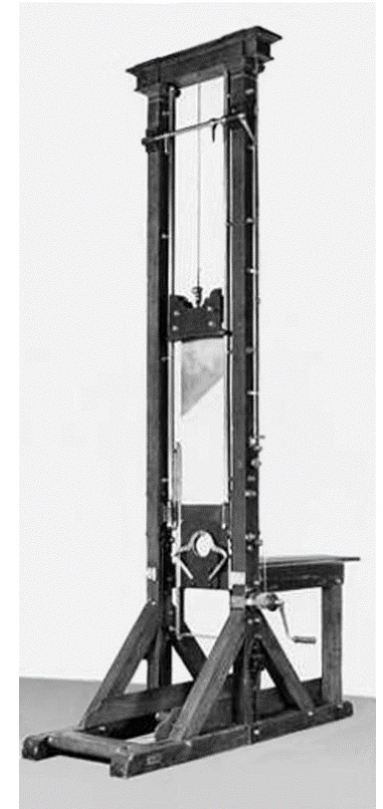
Death penalty is history

13 June 1782: Anna Göldi(n) >
last person executed/behead-
ed for witchcraft in Europe.

18 October 1940: Hans
Vollenweider > Last person
executed in Switzerland

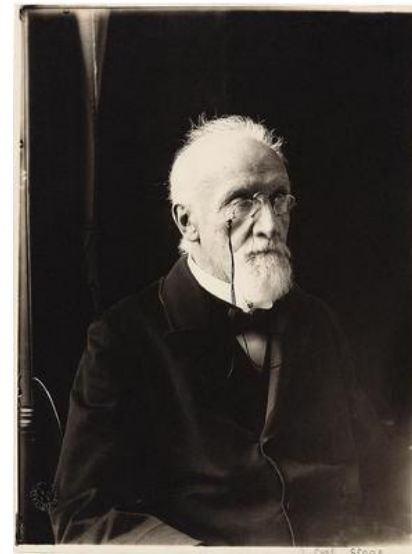


Fictional portrait by Patrick Lo Giudice



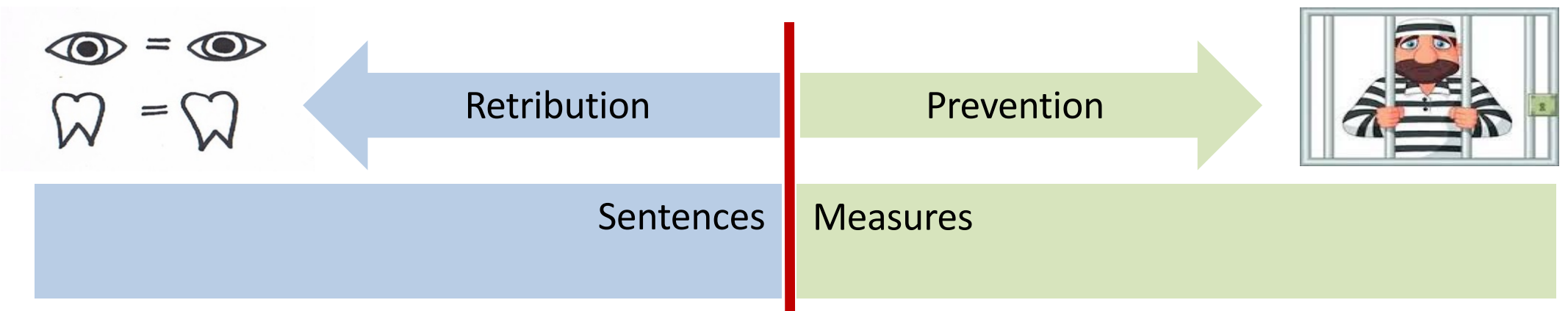
Carl Stooss (1849-1934)

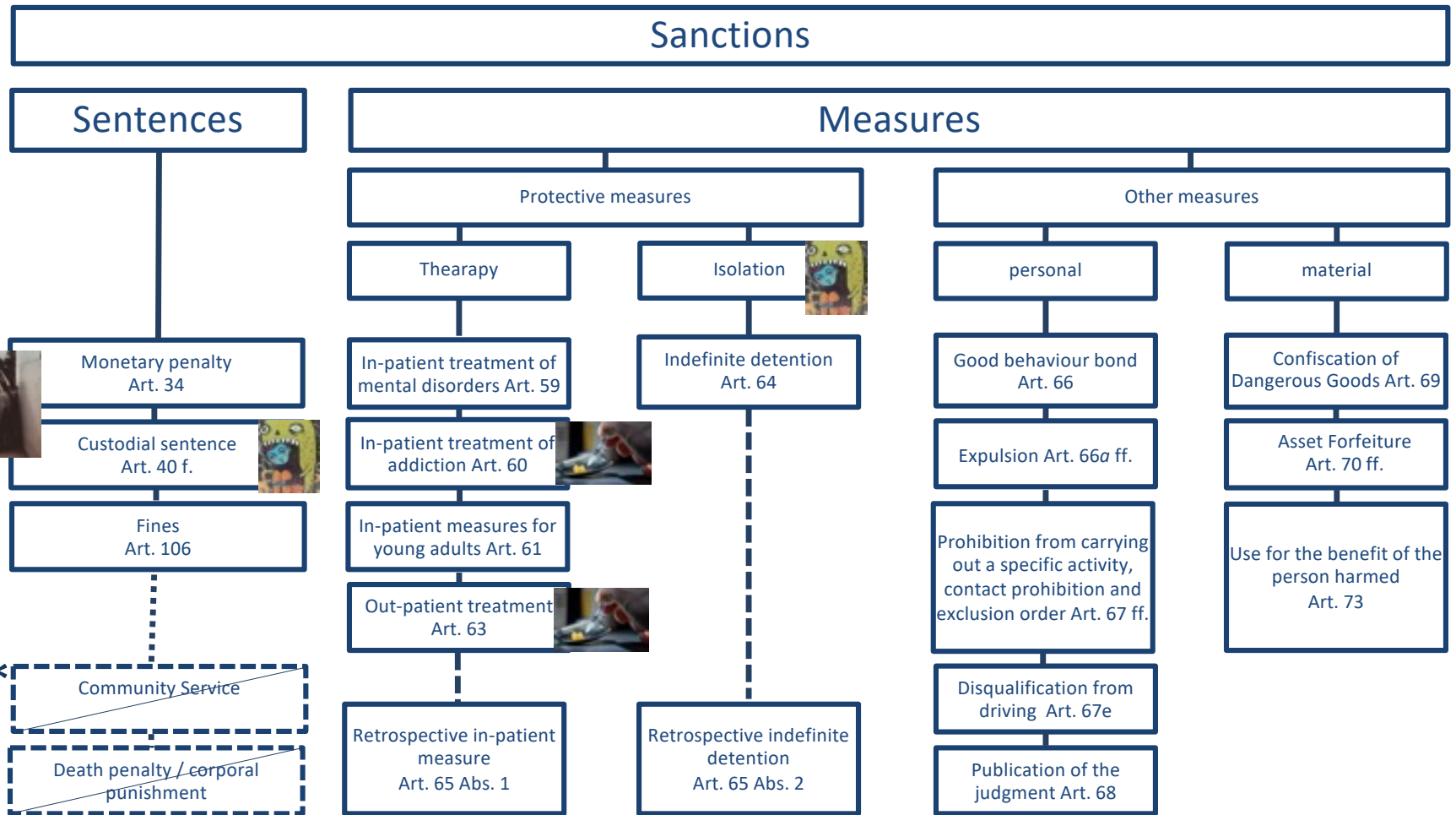
- His dual system of sanctions
→ Sentences and Measures
had great influence on legal
systems of other european
countries



Carl Stooss (1849-1934)

Dual System of Sanctions



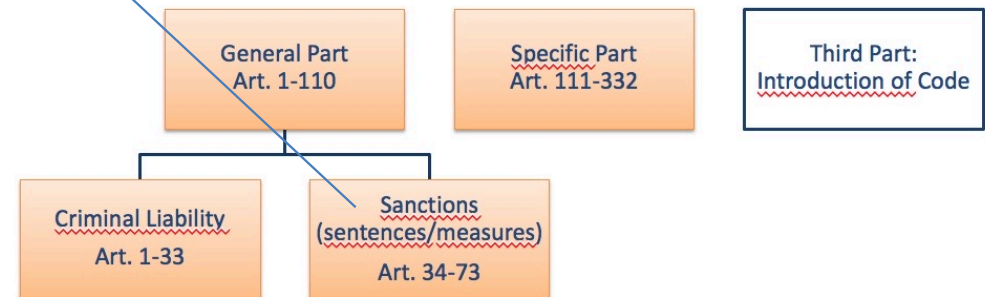


* Community service is not a separate type of sentence. However all sentences up to 6 months can be converted into community service (Art. 79a).

Art. 57 – Relationship between measures and sentences

- ¹ If the requirements for both a penalty [sentence] and a measure are fulfilled, the court shall order both sanctions.
- ² The implementation of a measure under Articles 59-61 takes precedence over a custodial sentence that is imposed at the same time or which is executed through revocation of a suspended sentence or recall to custody. Likewise, the reactivation of the execution of a measure in accordance with Article 62a takes precedence over a cumulative sentence imposed at the same time.
- ³ The deprivation of liberty associated with the measure must be taken into account in determining the penalty [sentence].

Swiss Criminal Code



Case: Homicide in Küsnacht, Zurich, Switzerland

31-year old art dealer and drug addict

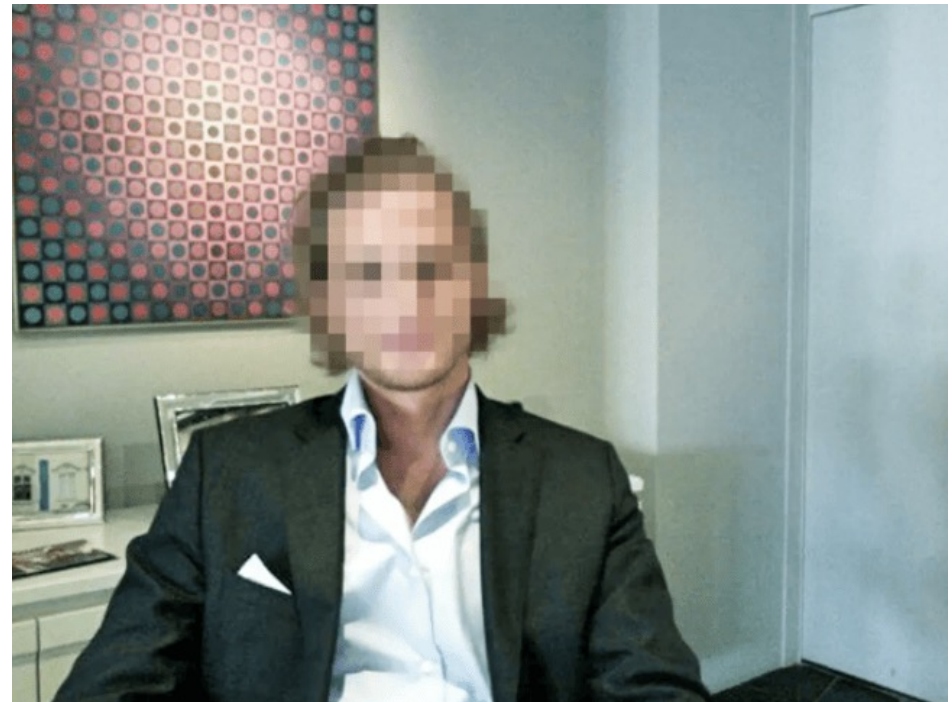
- killed his friend brutally
- said he thought his friend was an alien and attacked him / tried to kill him
- had been taking drugs (cocaine & cetamine) at the time of the homicide

Guilty verdict or acquittal?

Which offence provided for by the Criminal Code could he have committed?

What are possible defences (based on what articles of the Criminal Code?)

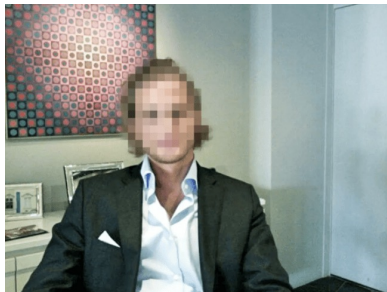
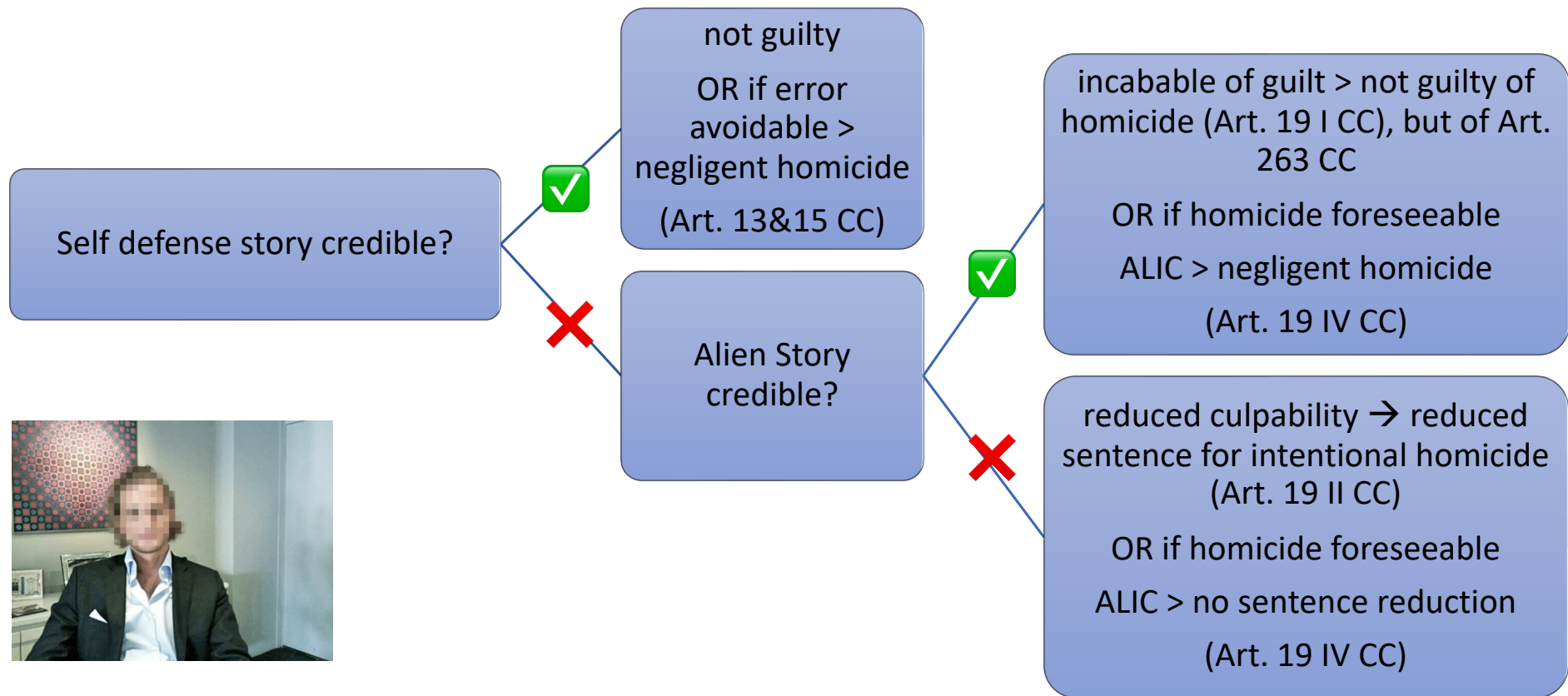
If guilty: what sanctions could be imposed?

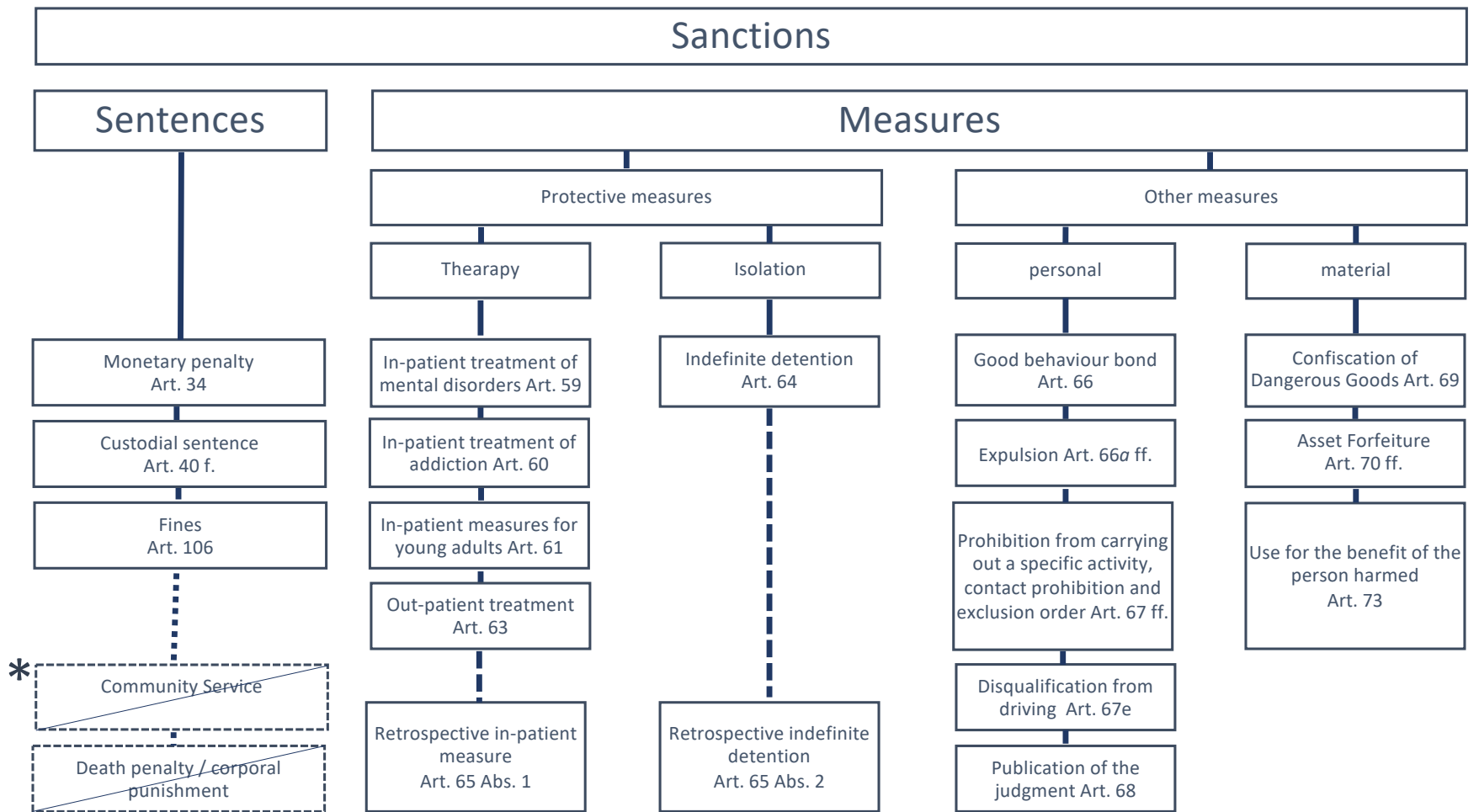


Criminal Liability

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| Elements of Crime | Objective Elements <ul style="list-style-type: none">- Offender- Object of the Crime- Act- Result- Causation | Subjective Elements <ul style="list-style-type: none">- Direct Intent- Conditional Intent | Objective Wrong |
| Unlawfulness | Justification <ul style="list-style-type: none">- Self-Defence- Necessity- Consent | <ul style="list-style-type: none">- Knowledge (of threat)- Will (to defend) | |
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Case: Homicide in Küsnacht, Zurich, Switzerland





* Community service is not a separate type of sentence. However all sentences up to 6 months can be converted into community service (Art. 79a).

Case: Homicide in Küsnacht, Zurich, Switzerland

1. Meilen District Court Verdict:
Guilty of intentional homicide, reduced sentence because of drug induced reduced culpability (12.5 years) plus measure (Art. 63 CC / Art. 60 CC)
2. Zurich Appellate Court:
Not guilty of intentional homicide but only of Committing an offence while in a state of voluntarily induced mental incapacity (Art. 263 CC), 3 years custodial sentence plus measure (Art. 60 CC)
3. Federal Supreme Court sent case back
4. Zurich Appellate Court:
Guilty of intentional homicide, reduced sentence because of drug induced reduced culpability (12 years) plus measure (Art. 60 CC, in-patient treatment).

