

Strategies to Combat Transnational Organized Crime

Prof. Dr. Marc Thommen University of Zürich



Istanbul

- 7 April 2015: Arrest at Zurich airport.
- He was boarding a plane to Istanbul.
- Online search history monitored
- Suspicion: support of IS in Syria.



Swiss Federal Supreme Court 22.11.2017 (<u>6B_948/2016</u>)



Istanbul

- 5 November 2017: Flight to Istanbul
- Lecture: Terrorism and Rule of Law
- Internet research on terrorism





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I. Organized Crime

- 1. Definition
- 2. Empirics
- II. Strategies
 - 1. Prohibition
 - 2. Proceeds
 - 3. Prosecution
 - 4. Police



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I. Organized Crime

1. Definition

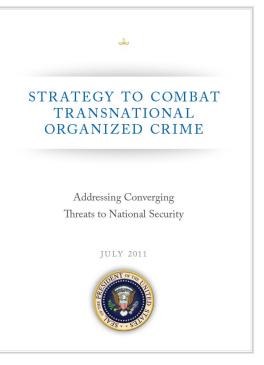
2. Empirics

II. Strategies

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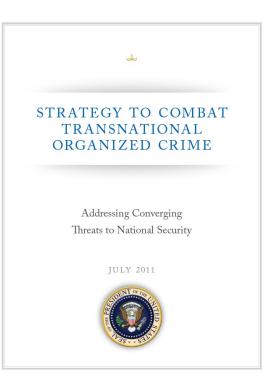
Transnational organized crime refers to those selfperpetuating associations of individuals who operate transnationally for the purpose of obtaining power, influence, monetary and/or commercial gains, wholly or in part by illegal means, while protecting their activities through a pattern of corruption and/or violence, or while protecting their illegal activities through a transnational organizational structure and the exploitation of transnational commerce or communication mechanisms. There is no single structure under which transnational organized criminals operate; they vary from hierarchies to clans, networks, and cells, and may evolve to other structures. The crimes they commit also vary. Transnational organized criminals act conspiratorially in their criminal activities and possess certain characteristics which may include, but are not limited to:



perma.cc/YU6G-RU49



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"...an established, long-term group structure, a high degree of division of labour, a profit motive, a strongly hierarchical structure, internal and external isolation, the existence of effective enforcement mechanisms for internal group norms, as well as the willingness of the organisation to commit acts of violence and to gain influence on politics and the economy in order to defend and expand its position. Professionalism is then characteristic, from planning and logistics to the execution of the crime and the utilisation of the loot and legalisation of the proceeds. However, criminal organisations are also characterised by the ability to quickly and flexibly adapt their structures - which are regularly of an informal nature - to changing needs".



Swiss Federal Council (BBI 1993 297)



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Swiss Federal Council (BBI 1993 297)



- Aiming for profit
- Legal and illegal means
- Violence/Intimidation
- Permanent institution
- Hierarchical
- Isolation ("omertà")
- Influence on politics/economy



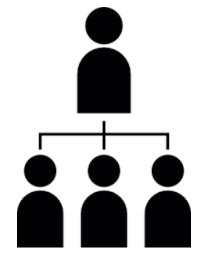








Gang, Conspiracy



Hierarchy



Network



 Mafia-style criminal organisations: Cosa Nostra (Sicily), 'Ndrangheta (Calabria), Camorra (Campania), Sacra Corona Unita (Puglia): Hierarchical, aim: profit



 Terroristic criminal organisations (Al-Qaïda, Islamic State, FARC): Networks/Cells, aim: political



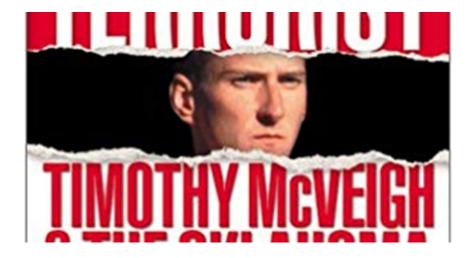
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 Sacra Corona Unita (Puglia):
 Hierarchical, aim: profit
- Terroristic criminal organisations (Al-Qaïda, Islamic State, FARC): Networks/Cells, aim: political



Flag used by Al Quaida fractions (Wikipedia)



- Terrorism does not necessarily have to take place in an organised network.





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Is there organized crime in Switzerland?



Umberto Pajarola, OC-prosecutor



Is there organized crime in Switzerland?



Meeting of suspected 'Ndrangheta members, Frauenfeld/Switzerland



- 11 October 2022: Belgian Citizen (35) arrested in Zürich
- Kidnapping, hostage-taking, large scale drug trafficking
- Member/supporter of criminal organization?



aargauerzeitung.ch 11 October 2022



"extremely difficult ... to arrive at representative statements".



Mark Pieth, 1993



"The Federal Office of Justice has commissioned a study on the threat ... Based on an extensive analysis of literature and ... in-depth interviews with police... hypotheses on... organized crime were developed... the study does not claim to be scientific... Nevertheless, increased vigilance is indicated."

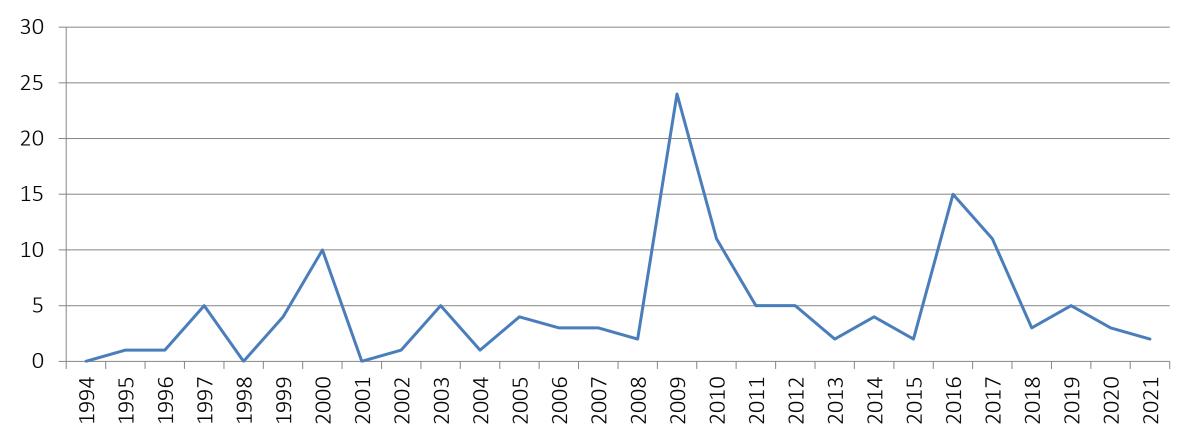


Swiss Federal Council (<u>BBI 1993 279 ff., 283</u>)



Art. 260^{ter} SCC – Criminal/Terrorist Organisation

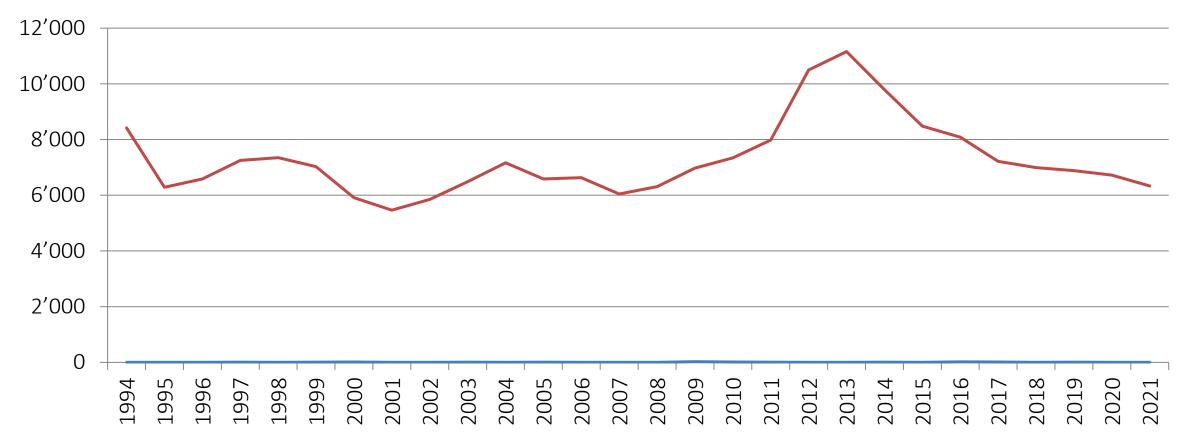
Convictions





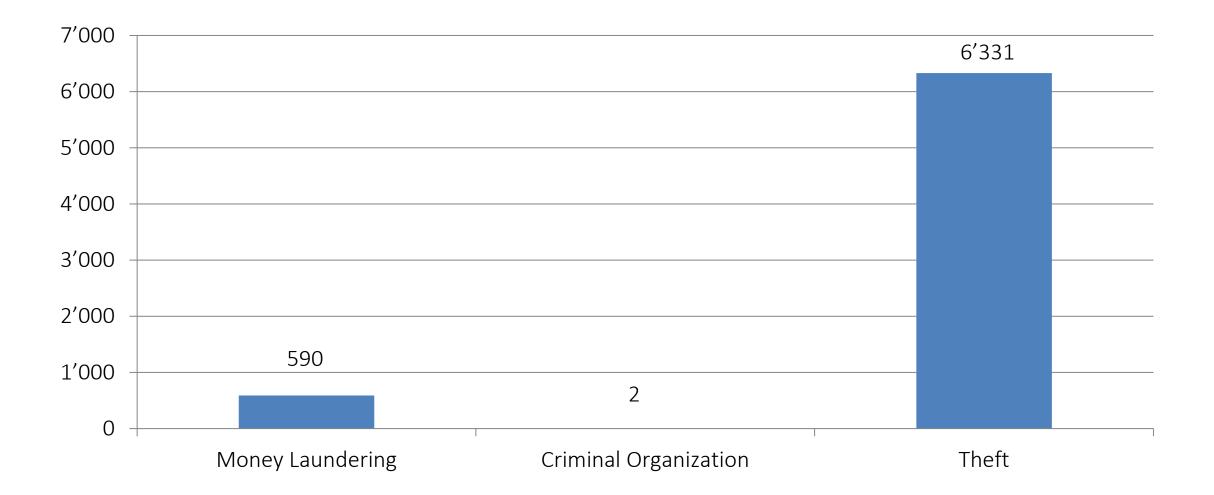
Art. 139 SCC – Theft

Convictions

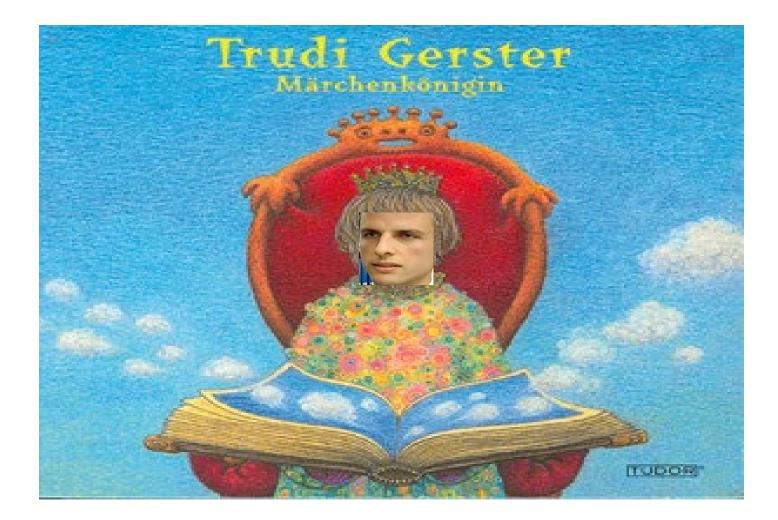




Convictions 2021









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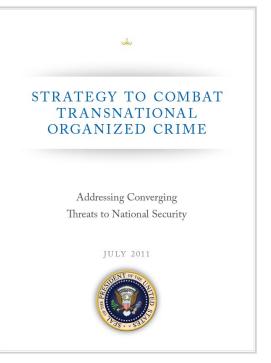
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Combatting Organized Crime

- Strengthen Interdiction
- Protect the Financial System
- Strengthen Prosecution
- Build International Cooperation
- Strengthen Investigation
- Enhance Intelligence



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Prohibition

| Crimes against property committed for gain and by gangs |
|---|
| Trafficking in human beings |
| Acts preparatory to the commission of an offence |
| Criminal and terrorist organisations |
| Financing of terrorism |
| Recruitment, training and travel to commit terrorist offences |
| Unlawful association |
| Money laundering |
| Bribery |
| Trafficking in narcotics for gain and by gangs |
| Confiscation of dangerous goods |
| Confiscation of assets |
| Confiscation of assets of criminal organisation |
| |



Swissair 330

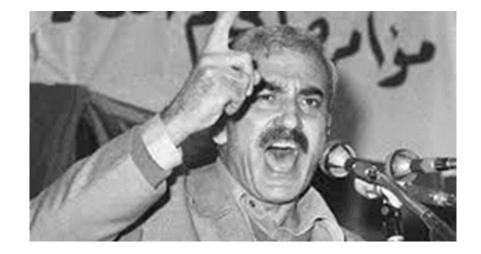
- 21 February 1970, noon, Swissair 330, Zürich to Tel Aviv.
- Bomb detonates in cargo compartment.
- Crew tries to turn around flight.
- CV-990 Coronado crashes in Würenlingen.
- 47 people die.





Swissair 330

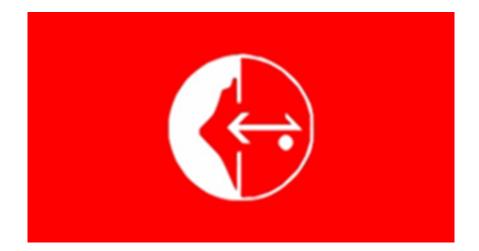
- George Habash, Popular Front for the Liberation of Palestine (PFLP) claims responsibility.





Swissair 330

Suspected assassins Sufian Radi
 Kaddoumi and Badawi Mousa Jawher
 identified by Federal Police but never
 arrested and tried.





Zarqa/Jordan

- 6 September 1970: PLFP hijack three planes (Swissair, TWA, BOAC) and have them land in Zarqa/Jordan.
- The passengers were released in exchange for imprisoned Palestinian activists
- The planes were blown up.





Terrorism in Switzerland

- Federal Council in over their head.
- 1995: Del Ponte, new prosecution
- 2000: Case dropped





Prohibition

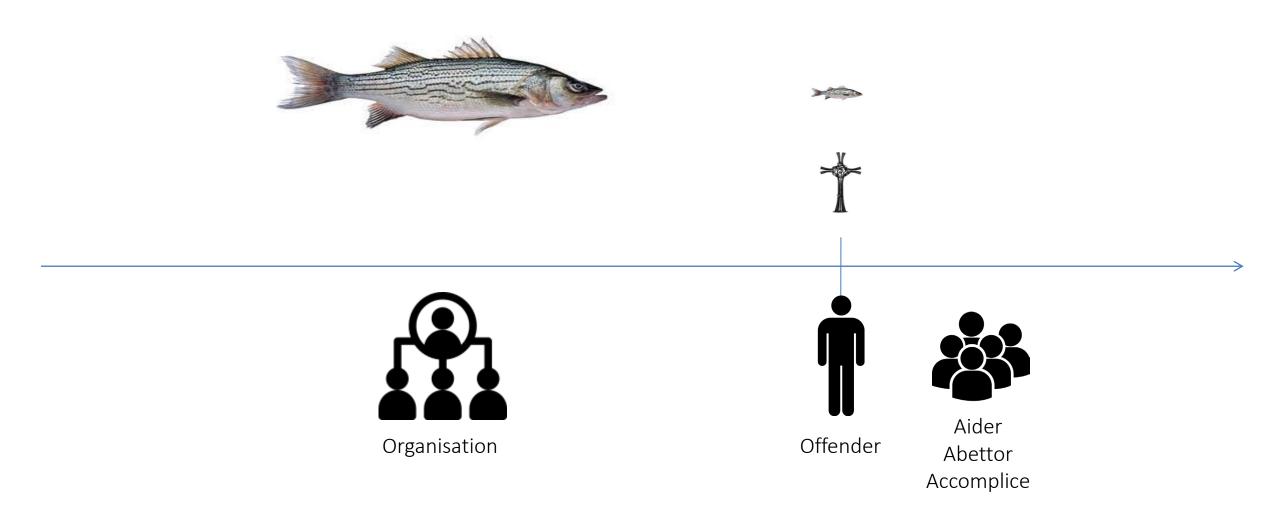
- Switzerland hat to act.
- Hwo to combat organized crime through substantial criminal law?
- By extending criminal liability ratione temporis and personae.



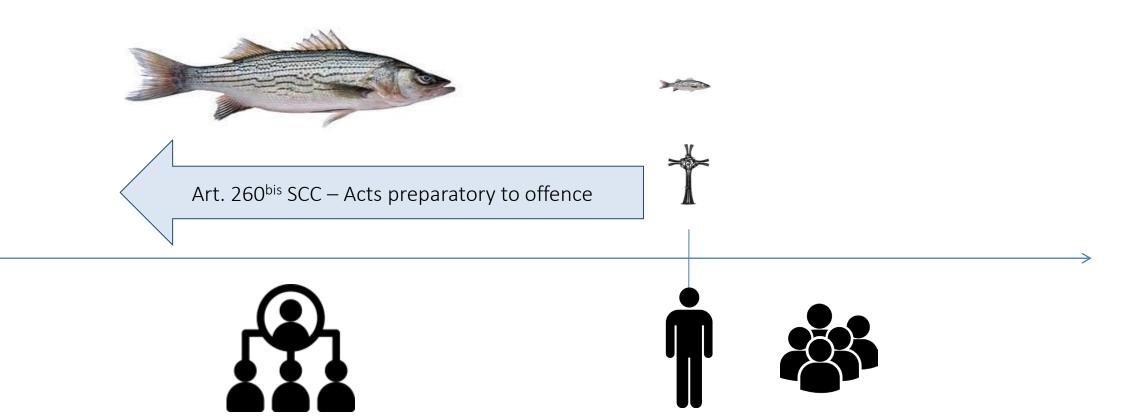
Federal Criminal Court, Bellinzona



Prohibition









Art. 260^{bis} SCC – Acts preparatory to offence

¹ Any person who, in accordance with a plan, carries out specific technical or organisational measures, the nature and extent of which indicate that the offender intends to commit any of the offences listed below shall be liable to a custodial sentence not exceeding five years or to a monetary penalty:

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a. intentional homicide (Art. 111);
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b. murder (Art. 112);
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c. serious assault (Art. 122
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•••
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j. war crimes (Art. 264c–264h).
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² If the offender, of his own volition, does not complete the preparatory act, he is not liable to any penalty.

³ It is also an offence for any person to carry out a preparatory act abroad, provided it was intended to commit the offences in Switzerland. Article 3 paragraph 2 applies.



Federal Criminal Court, Bellinzona



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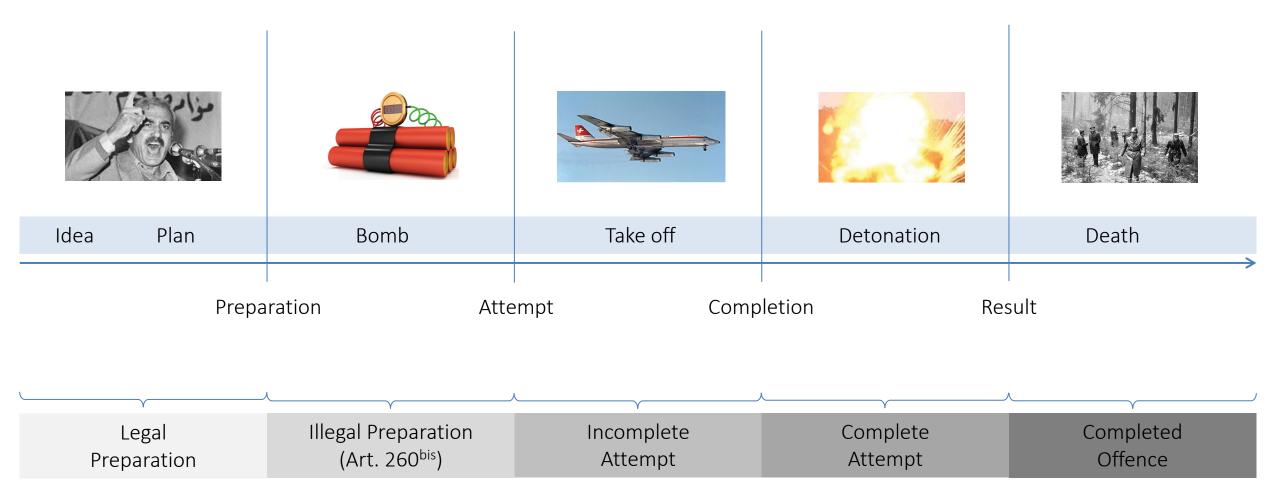
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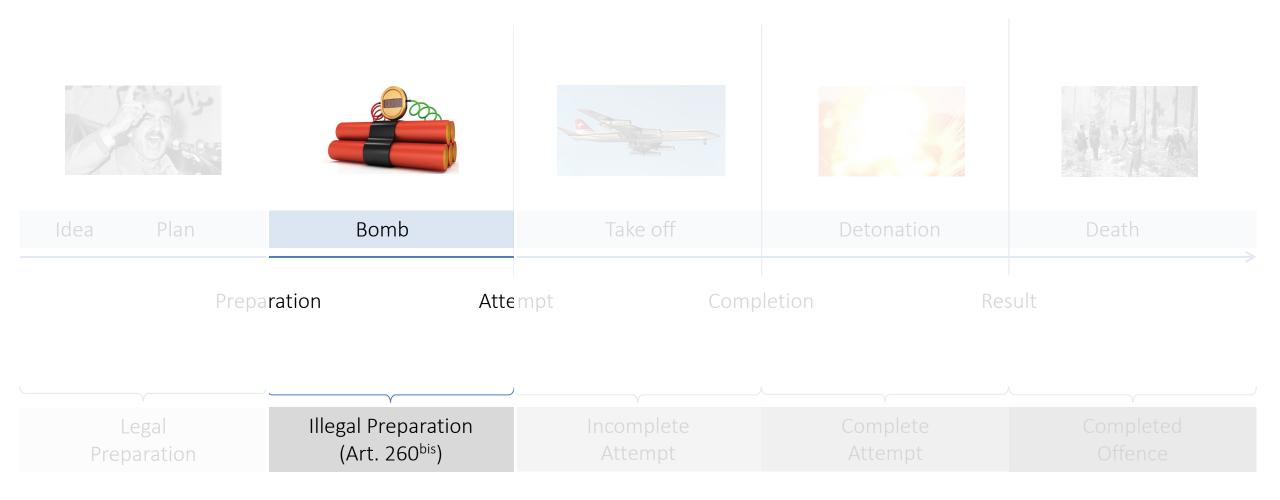


Federal Criminal Court, Bellinzona

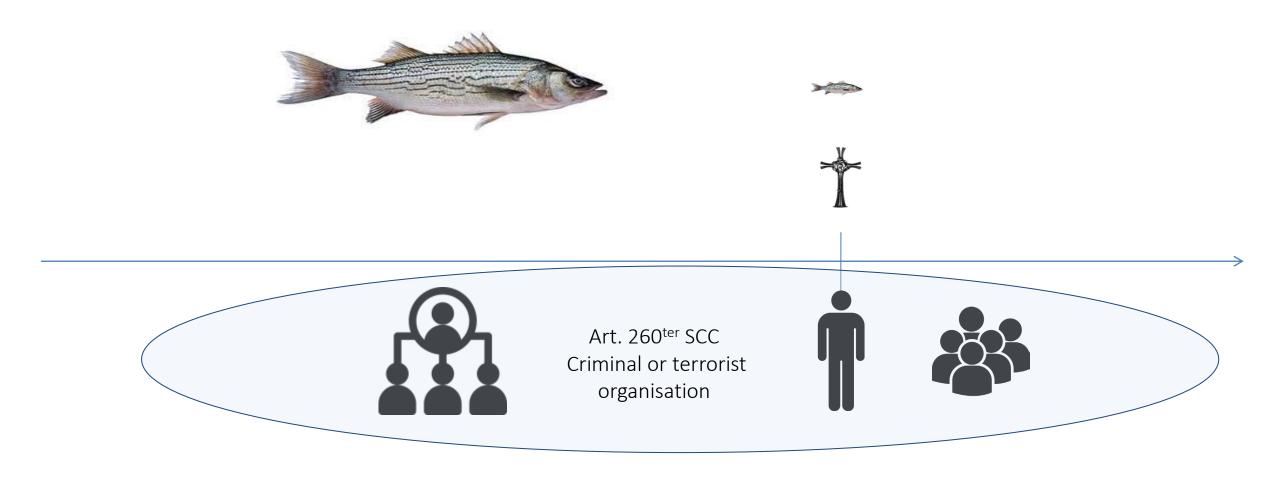














Art. 260^{ter} SCC – Criminal or terrorist organisation

¹ Any person who:

- a. participates in an organisation which pursues the objective of:
 - 1. committing violent felonies or securing a financial gain by criminal means, or
 - 2. committing violent felonies aimed at intimidating the population or coercing a State... to act or refrain from acting; or who

b. supports such an organisation in its activities.

shall be liable to a custodial sentence not exceeding ten years or to a monetary penalty.

² Paragraph 1 letter b does not apply to humanitarian services...

³ If the offender exercises a decisive influence within the organisation, ...liable to a custodial sentence of not less than three years.

⁴ The court (can) mitigate the penalty imposed... if the offender makes an effort to foil the activities of the organisation...





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Proceeds

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|---------------------------------|---|
| Art. 182 SCC | Trafficking in human beings |
| Art. 260 ^{bis} SCC | Acts preparatory to the commission of an offence |
| Art. 260 ^{ter} SCC | Criminal and terrorist organisations |
| Art. 260 ^{quin.} SCC | Financing of terrorism |
| Art. 260 ^{sex.} SCC | Recruitment, training and travel to commit terrorist offences |
| Art. 275 ^{ter} SCC | Unlawful association |
| Art. 305 ^{bis} SCC | Money laundering |
| Art. 322 ^{ter} ff. SCC | Bribery |
| Art. 19 NarcAct | Trafficking in narcotics for gain and by gangs |
| Art. 69 SCC | Confiscation of dangerous goods |
| Art. 70 SCC | Confiscation of assets |
| Art. 72 SCC | Confiscation of assets of criminal organisation |



Pizza Connection

- 1980s: Morphine base from Turkey processed into heroin in Sicily.
- Heroin shipped/sold in the USA
- Money collected in Mafia-controlled pizzerias in Queens/New York





Pizza Connection

- 40 Mio in cash ("Narcodollari") transferred to Swiss bank accounts





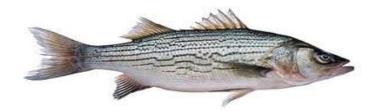
Lebanon Connection

- 1980s: Lebanese-Turkish drug trafficking organisation transfers
 CHF 1.4 billion to Switzerland
- Credit Suisse, UBS provide services
- Recipient of the drug money:
 Shakarchi Trading AG, Board of
 Directors Hans W. Kopp.

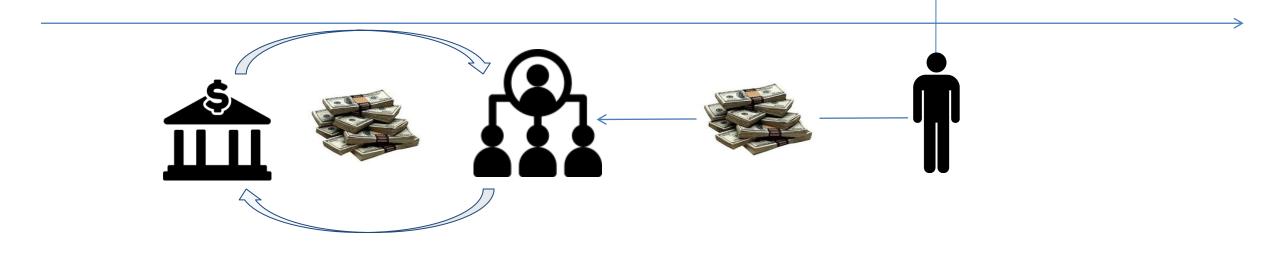




Proceeds

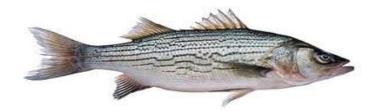




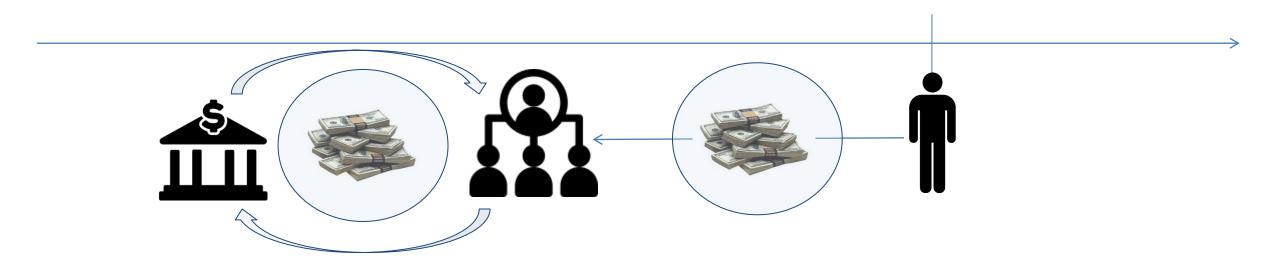




Proceeds









Art. 305^{bis} SCC – Money Laundering

1. Any person who carries out an act that is aimed at frustrating the identification of the origin, the tracing or the forfeiture of assets which he knows or must assume originate from a felony or aggravated tax misdemeanour shall be liable to a custodial sentence not exceeding three years or to a monetary penalty.

1^{bis} An aggravated tax misdemeanour... tax exceeds 300 000 francs.

2. In serious cases, the penalty is a custodial sentence not exceeding five years or a monetary penalty. A custodial sentence is combined with a monetary penalty not exceeding 500 daily penalty units.354 A serious case is constituted, in particular, where the offender:

a. acts as a member of a criminal or terrorist organisation;

b. acts as a member of a group ... or

c. achieves substantial profit through commercial money laundering.

3. The offender is also liable to the foregoing penalties where the main offence was committed abroad...





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Money Laundering

"Switzerland also wanted to get rid of the fatal reputation of helping the gangsters of this world to secure their loot with its financial institutions"



Mark Pieth



Credit Suisse

- Gang of former Bulgarian professional wrestlers were trafficking cocaine.
- Credit Suisse was fined CHF 2 mio for money laundering, CHF 12 mio confiscated, CHF 19 mio restitution.



Bundesstrafgericht, 27.06.2022 (SK.2020.62)



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Criminal Justice Authorities

- Federal jurisdiction for organized crime
- Federal jurisdiction for terrorist offences
- International mutual legal Assistance

Coercive Measures

- Seizure of Assets/Objects
- Secret surveillance Communication/Banking
- Undercover investigation

Special Procedures

- Penal order proceedings
- Abreviated proceedings
- Crown Witness



Attorney General, Stefan Blättler



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Federal Criminal Court, Bellinzona



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Kühne/Rütsche, GovWare, AJP 2019, 350 ff.

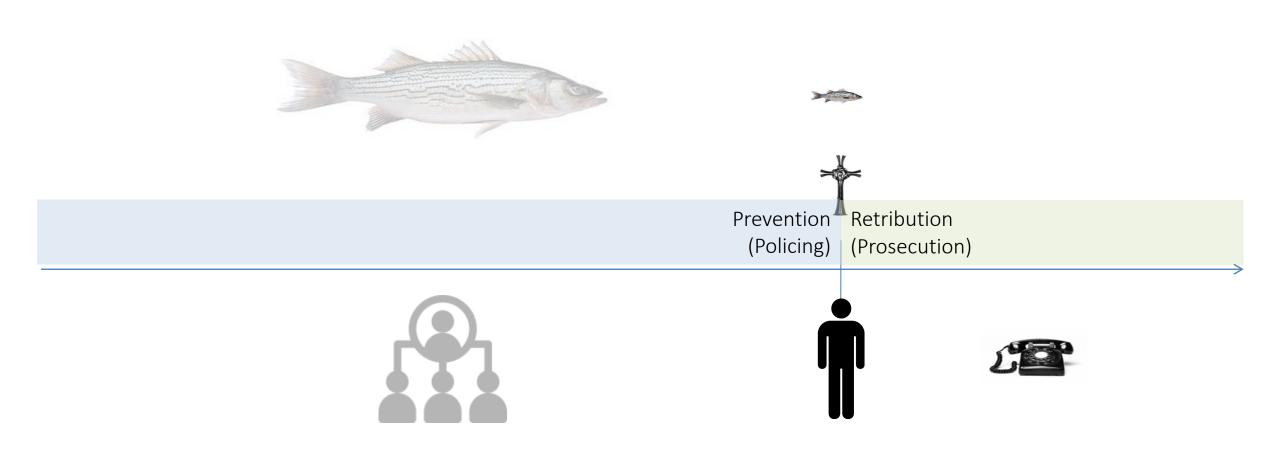


«Undercover investigations are indispensible in the fight against organized crime», Federal Council (2003)

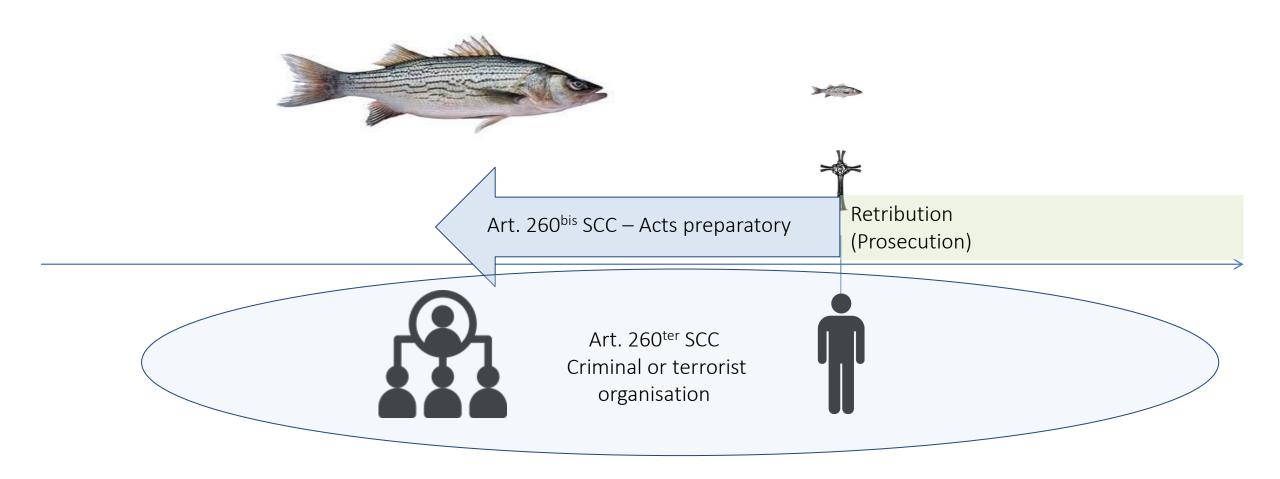


Mark Kennedy, aka Mark Stone Confessions of an Undercover Cop

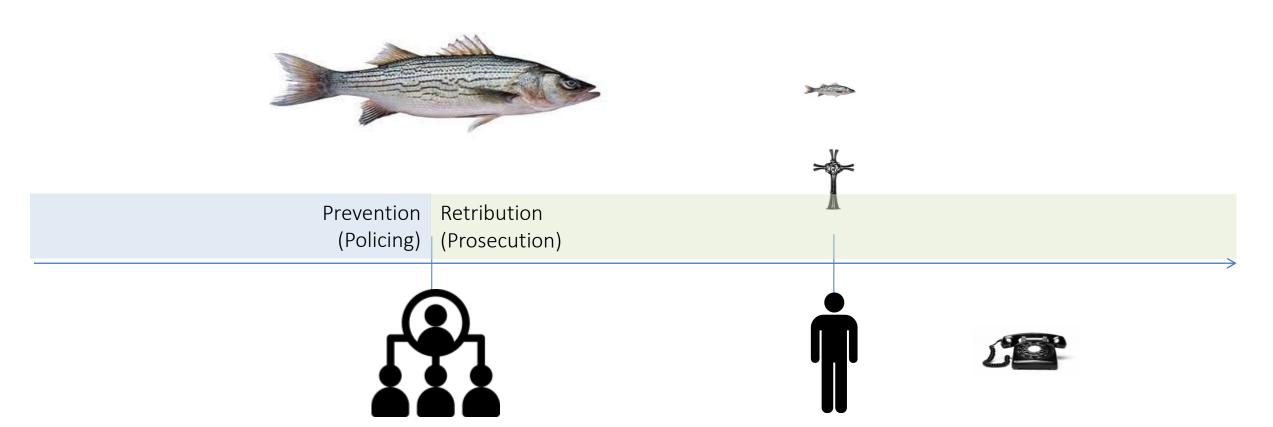




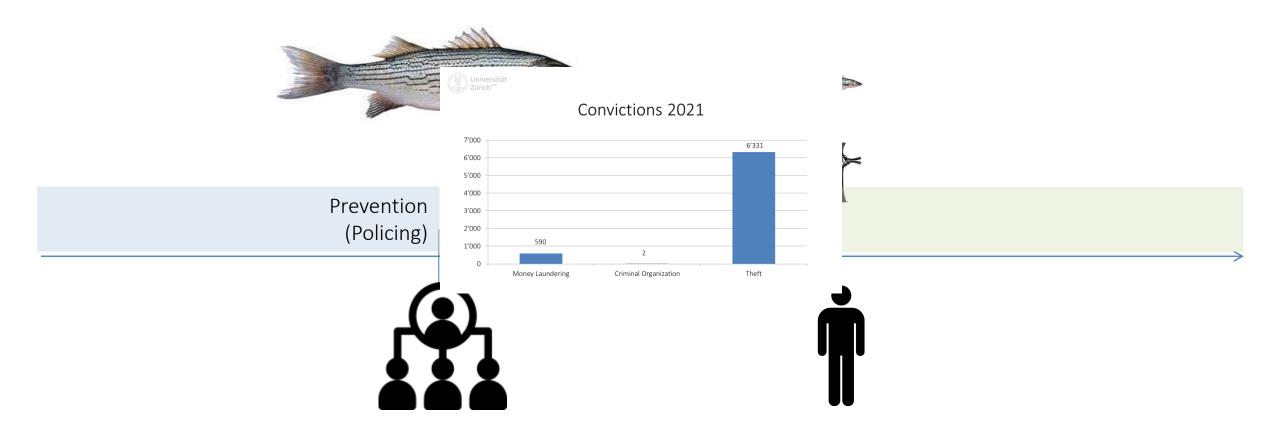














Criminal Justice Authorities

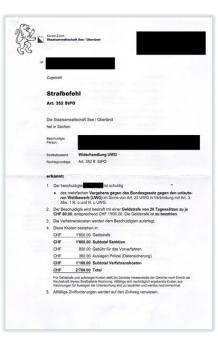
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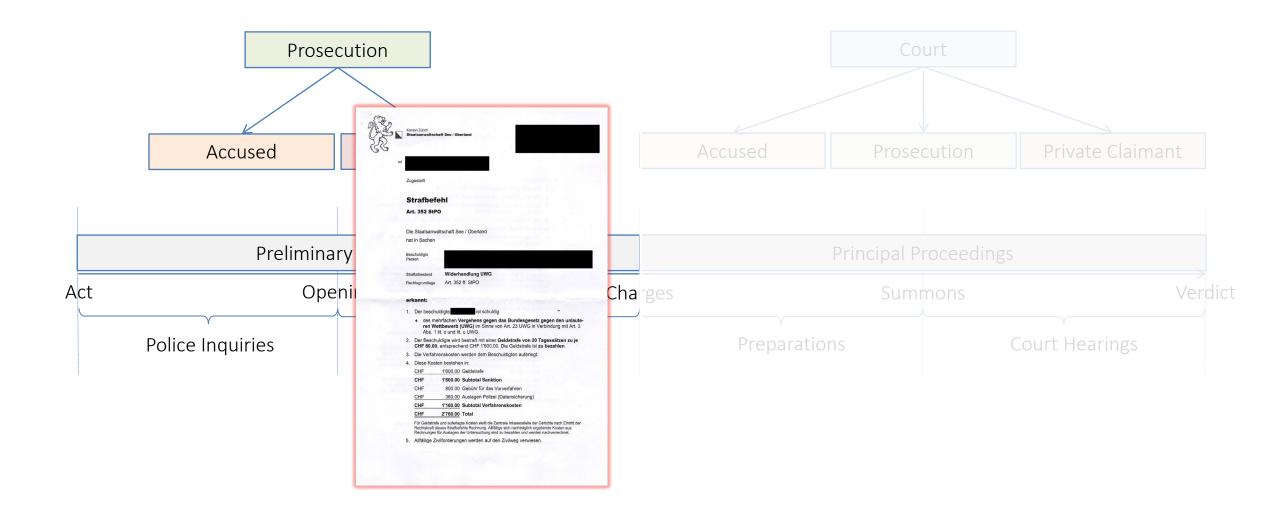
Special Procedures

- Penal order proceedings
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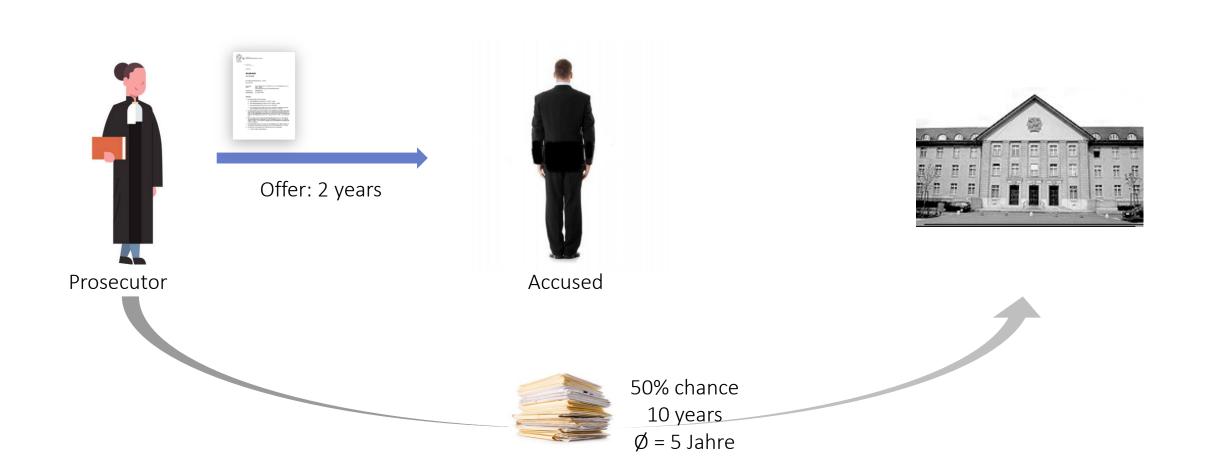
- Guilty Plea
- Plea Bargain
 - Charge Bargain
 - Sentence Bargain
 - Fact Bargain













Criminal Justice Authorities

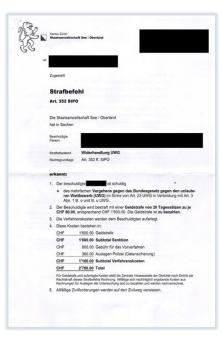
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Thommen, penal orders



- USA/Italy: View crown witness as tool in the fight againgst organized crime
- Switzerland: no immunity for crown witnesses, but mitigation of sentence



WITNESS' BROTHER ASSASSINATED IN



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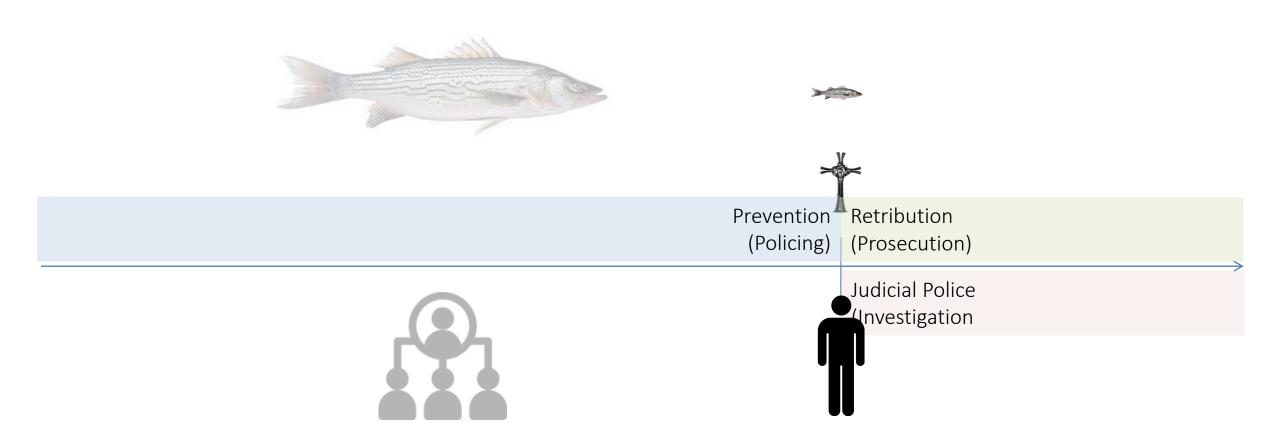
«Fiches» Scandal

- Between 1900-1990 Swiss federal and cantonal authorities have drawn up a large scale mass surveillance of the Swiss population.
- The Swiss Federal Police gathered over 900.000 secret files (fiches).
- After discovery federal police was put under supervision by Federal Council

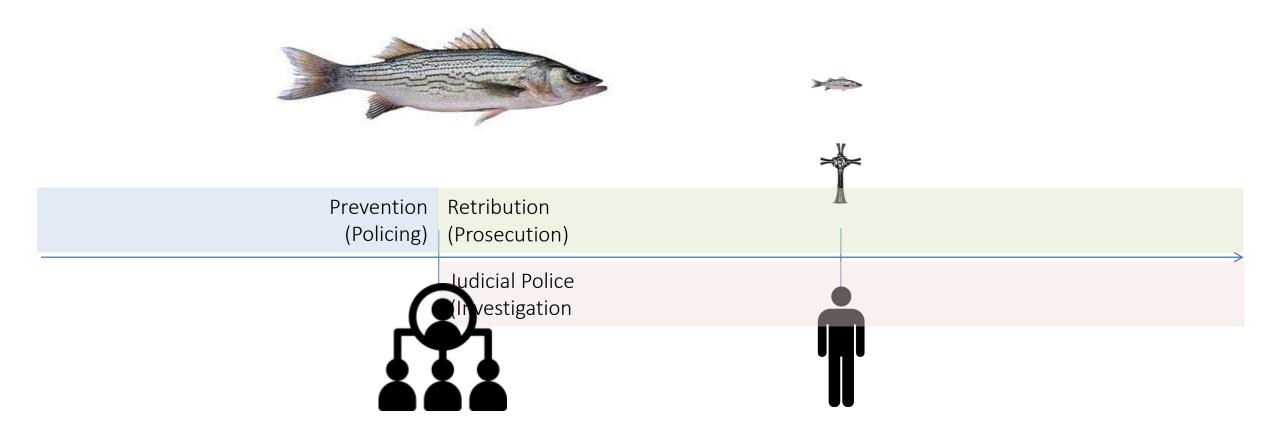
| Vorname: M | AX | Eltern: | Franz und Lina geb. Wildermuth |
|-----------------------------|--------------|--|---|
| Geburt: 15.5.1911 | | Heimat | Zürich |
| Beruf: S. | chriftstelle | r & Architekt Zivilstand | : verh. mit Gertrud Anne Constance geb. Meyenburg |
| Wohnort: Z | ürich / Z | selikerstr. 265, Berzo | na TI |
| Bemerkungen: | Pass Nr. 57 | 238/410 | 1.Karte |
| Akten | Datum | Gegenstand | |
| C.8.10086 | 27.8.48 | v.Dep.Agentur: Reiste am 23.8.48 nach Folen zur Teilnahme am Weltkongness der Intellektuellen für die Sache des Friedens. von Pol.Insp.ES; Bericht betr. dem "Weltkongress der Intellektuellen für Frieden". Nach Aussagen von Prof BIRCHLER E.T.H. Zürich ist F. vorzeitig abgereist. | |
| | 25.9.L.B | | |
| c. 16 . 10055 | 31.8.49 | v.Fol.Insp.Basel. Bericht über die 'Schweizerisch-Deutsche Kultur-Vereinigung', hervorgegangen aus "Freies Deutschland", hatte anfänglich Linkskurs, soll aber angebl. seit 1946 keine poltischen "endenzen mehr verfolgen. Mehrere prominente Kommunisten gehören dem Vorstand an. Auch F. ist Mitglied des Vorstandes. Die Vereinigung soll in Auflösung begriffen sein. H/Fa/N/az | |
| | 14.6.50 | v.Dr.Balsiger. F. nahm am kommunist. 'Weltfriedenskongress' 1948 in Breslau tei | |
| C. 2.13356 | 28.8.51 | aus 'Vorwärts' v. 20.8.51,Nr. 190. Artikel "Kunst und Politik". Es wird darauf hingewiesen,dass F. aus den 'Partisans de la paix' ausgetreten sei, wie der bür- genlich gewunden sei und demächst mit einem USA-Stipendium eine 6 monatige | |

Fiche on Max Frisch (wikipedia)











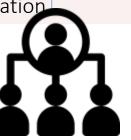
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PreventionRetribution(Policing)(Prosecution)

Police Investigation







- 1997 Law on domestic safety
- 2003 Law on undercover Investigation
- 2011 Law on Witness Protection
- 2014 Cantonal Police Law/Zürich
- 2016 Law on Intelligence
- 2020 Police Law to Combat Terrorism



Federal Intelligence Service



- 1997 Law on domestic safety
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- 2011 Law on Witness Protection
- 2014 Cantonal Police Law/Zürich
- 2016 Law on Intelligence
- 2020 Police Law to Combat Terrorism



Federal Intelligence Service



- Duty to report/Curfews
- No-Contact Orders
- Exclusion (Perimeter Ban)
- Prohibition to leave the country
- House arrest
- Tracking/localization devices
- Detention for deportation
- Violation up to 3 years imprisonment



Federal Law on Police Measures to Combat Terrorism (PMT) - 25 September 2020



«Fiches» Scandal

- 30 years after the "Swiss Watergate" the Swiss population is no longer sceptical of Secret Surveillance.
- Almost 60% of the electorate accepted the new police law on combatting terrorism.

| Vorname: m | ax | Elt | ern: Franz und Lina geb. Wildermuth | |
|-----------------------------------|------------------|--|---|--|
| Geburt: 15.5.1911 | | | imat: Zürich | |
| Beruf: Schriftsteller & Architekt | | | vilstand: verh. mit Gertrud Anne Constance geb. Meyenburg | |
| Wohnort: Z | äirich / Z | selikerstr. 265, | Berzona II | |
| Bemerkungen: | Pass Nr. 57 | 238/410 | 1.Karte | |
| Akten | Datum | | Gegenstand | |
| C.8.10086 | 27.8.48 | v.Dep.Agentur: Reiste am 23.8.48 nach Polen zur Teilnahme am Weltkongress der Intellektuellen für die Sache des Friedens. Fa/F20 | | |
| | 25 . 9.48 | von Pol.Insp.ES; Bericht betr. den "Weltkongress der Intellektuellen für Frieden". Nach Aussagen von Prof BIRCHLER E.T.H. Zürich ist F. vorzeitig abgereist. B/Fa/H/43 | | |
| .16.10055 | 31.8.49 | v.Pol.Insp.Basel. Bericht über die 'Schweizerisch-Deutsche Kultur-Vereinigung', hervorgegangen aus "Freies Deutschland", hatte anfänglich Linkskurs, soll aber angebl. seit 1946 keine poltischen "endenzen mehr verfolgen. Mehrere prominente Kommunisten gehören dem Vorstand an. Auch F. ist Mitglied des Vorstandes. Die Vereinigung soll in Auflösung begriffen sein. H/Fa/N/az | | |
| | 14.6.50 | v.Dr.Balsiger. F. nahm am kommunist. 'Weltfriedenskongress' 1948 im Breslau tei | | |
| C. 2.13356 | 28.8.51 | hingewiesen, dass F. aus | l,Nr. 190. Artikel "Kunst und Politik". Es wird darauf den 'Partisans de la paix' ausgetreten sei, wieder bür- demmächst mit einem USA-Stivendium eine 6 monatige | |

Fiche on Max Frisch (wikipedia)



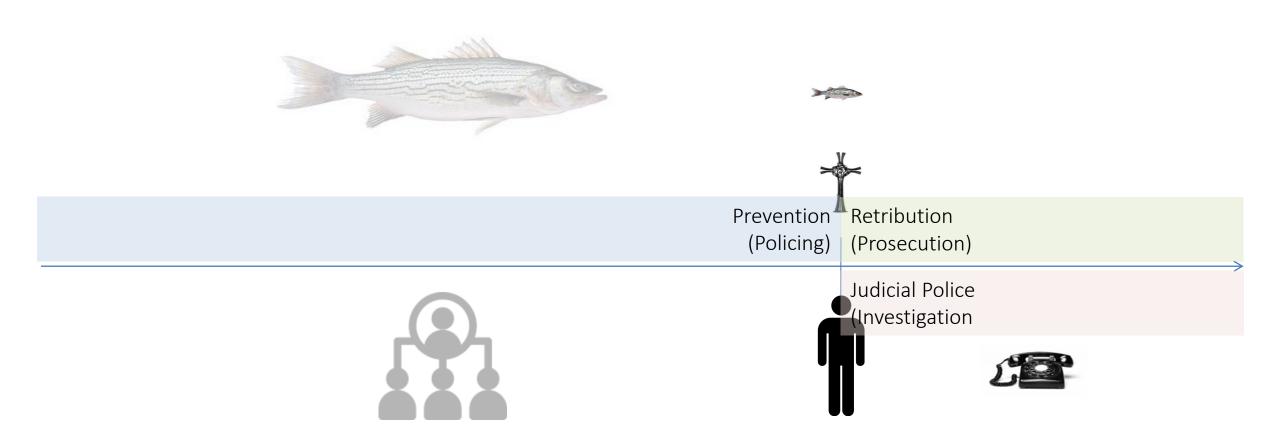
Summary

I. Organized Crime

- 1. Definition
- 2. Empirics
- II. Strategies
 - 1. Prohibition
 - 2. Proceeds
 - 3. Prosecution
 - 4. Police

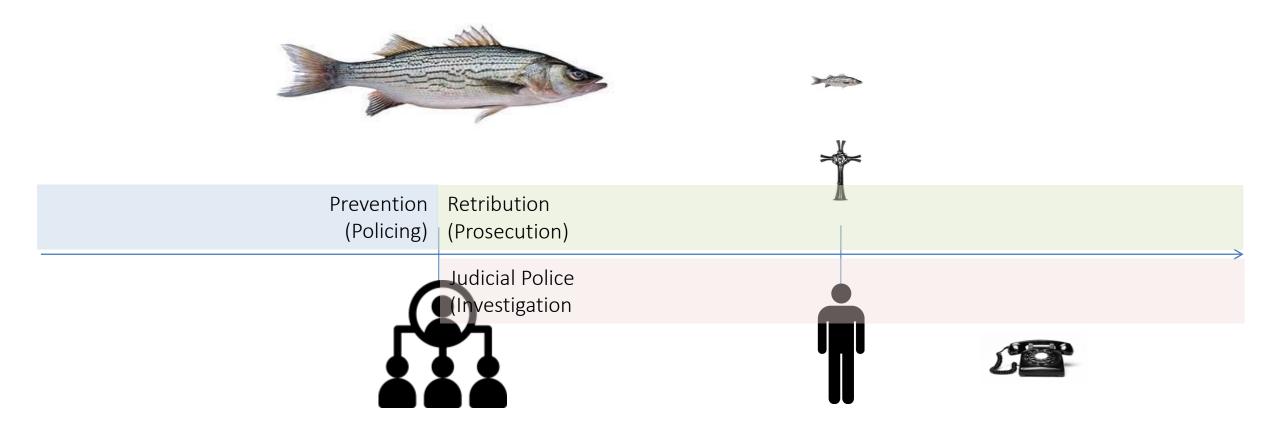


Summary





Summary





Istanbul

- Why was the police allowed to monitor the online search activities?
- Is boarding a plane the first step to support a terrorist organization?
- Why wasn't I arrested?





Istanbul

 Corrupt bargain. For a very uncertain promise of more safety we are ready to trade a very certain loss of civil liberties.





Strategies to Combat Transnational Organized Crime

Prof. Dr. Marc Thommen University of Zürich