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## Swiss Criminal Code

of 21 December 1937 (Status as of 1 July 2016)

**Please note:** this translation does not yet include the amendments of 1.10.2016

**Please note:** this translation does not yet include the amendments of 1.1.2017

**Please note:** this translation does not yet include the amendments of 1.1.2018

*The Federal Assembly the Swiss Confederation,*

based on Article 123 paragraphs 1 and 3 of the Federal Constitution<sup>1,2</sup>  
and having considered a Federal Council Dispatch dated 23 July 1918<sup>3</sup>,

*decrees:*

### **Book One:<sup>4</sup> General Provisions**

#### **Part One: Felonies and Misdemeanours**

#### **Title One: Scope of Application**

##### **Art. 1**

1. No penalty  
without a law

No one may be punished for an act unless it has been expressly declared to be an offence by the law.

##### **Art. 2**

2. Commence-  
ment of applica-  
bility of the  
Code

<sup>1</sup> This Code applies to any person who commits a felony or misdemeanour following the date on which it comes into force.

<sup>2</sup> Any person who commits a felony or misdemeanour prior to this Code coming into force is only subject to its terms in the event that the penalty hereunder is reduced than the penalty that would otherwise apply.

AS **54** 757, **57** 1328 and BS **3** 203

<sup>1</sup> [BS **1** 3]. The said provision now corresponds to Art. 123 of the Federal Constitution of 18 April 1999 (SR **101**).

<sup>2</sup> Amended by No I of the Federal Act of 30 Sept. 2011 in force since 1 July 2012 (AS **2012** 2575; BBl **2010** 5651 5677).

<sup>3</sup> BBl **1918** IV 1

<sup>4</sup> Amended by No I of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979).

**Art. 3**

3. Territorial scope of application  
Felonies or misdemeanours in Switzerland

<sup>1</sup> Any person who commits a felony or misdemeanour in Switzerland is subject to this Code.

<sup>2</sup> If the person concerned has served a sentence in full or in part for the offence in another country, the Swiss court must take the sentence served into account in determining the sentence to be imposed.

<sup>3</sup> If the person concerned has been prosecuted in a foreign country at the request of the Swiss authorities, then unless the offence involves a gross violation of the principles of the Federal Constitution or the Convention from 4 November 1950<sup>5</sup> for the protection of Human Rights and Fundamental Freedoms (ECHR), he is not prosecuted in Switzerland for the same offence if:

- a. the foreign court has acquitted him and the judgment has taken full legal effect;
- b. the penalty to which he had been sentenced in the foreign country has been served, suspended or has prescribed.

<sup>4</sup> If the person prosecuted abroad at the request of the Swiss authorities has not served the sentence or has only served it in part, the whole sentence or the remainder shall be served in Switzerland. The court decides whether a measure that has not been executed abroad or has only been served in part must be executed or continued in Switzerland.

**Art. 4**

Felonies or misdemeanours against the state committed abroad

<sup>1</sup> This Code also applies to any person who commits a felony or misdemeanour against the state or its national security (Art. 265–278).

<sup>2</sup> If the person concerned has been convicted of the offence and has served the sentence in full or in part in another country, the court shall take the sentence served into account in determining the sentence to be imposed.

**Art. 5**

Offences against minors abroad<sup>6</sup>

<sup>1</sup> This Code also applies to any person who is in Switzerland, is not being extradited and has committed any of the following offences abroad:

<sup>5</sup> SR 0.101

<sup>6</sup> Expression amended by Annex No 14 of the Federal Act of 19 Dec. 2008 (Adult Protection, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001). This amendment has been made throughout the text.

- a.<sup>7</sup> trafficking in human beings (Art. 182), indecent assault (Art. 189), rape (Art. 190), sexual acts with a person incapable of proper judgment or resistance (Art. 191) or encouraging prostitution (Art. 195) if the victim was less than 18 years of age;
  - a<sup>bis</sup>.<sup>8</sup> sexual acts with dependent persons (Art. 188) and sexual acts with minors against payment (Art. 196);
  - b. sexual acts with children (Art. 187) if the victim was less than 14 years of age;
  - c.<sup>9</sup> aggravated pornography (Art. 197 paras. 3 and 4) if the items or performances depict sexual acts with minors.
- <sup>2</sup> Unless the offence involves a gross violation of the principles of the Federal Constitution and the ECHR<sup>10</sup>, the person concerned is not liable to further prosecution in Switzerland for the offence if:
- a. he has been acquitted of the offence abroad in a legally binding judgment;
  - b. the sentence that was imposed abroad has been served, waived, or has prescribed.

<sup>3</sup> If the person concerned has been convicted of the offence abroad and if the sentence imposed abroad has been partly served, the court shall take the part served into account in the sentence to be imposed. The court decides whether a measure ordered abroad but only partly executed there must be continued or taken into account in the sentence imposed in Switzerland.

## Art. 6

Offences committed abroad prosecuted in terms of an international obligation

<sup>1</sup> Any person who commits a felony or misdemeanour abroad that Switzerland is obliged to prosecute in terms of an international convention is subject to this Code provided:

- a. the act is also liable to prosecution at the place of commission or no criminal law jurisdiction applies at the place of commission; and
- b. the person concerned remains in Switzerland and is not extradited to the foreign country.

<sup>7</sup> Amended by Art. 2 No 1 of the Federal Decree of 24 March 2006 on the Approval and Implementation of the Optional Protocol of 25 May 2000 to the Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography, in force since 1 Dec. 2006 (AS 2006 5437 5440; BBl 2005 2807).

<sup>8</sup> Inserted by Annex No 1 of the Federal Decree of 27 Sept. 2013 (Lanzarote Convention), in force since 1 July 2014 (AS 2014 1159; BBl 2012 7571).

<sup>9</sup> Amended by Annex No 1 of the Federal Decree of 27 Sept. 2013 (Lanzarote Convention), in force since 1 July 2014 (AS 2014 1159; BBl 2012 7571).

<sup>10</sup> SR 0.101

<sup>2</sup> The court determines the sentence so that overall the person concerned is not treated more severely than would have been the case under the law at the place of commission.

<sup>3</sup> Unless the offence involves a gross violation of the principles of the Federal Constitution and of the ECHR<sup>11</sup>, the person concerned is not liable to further prosecution in Switzerland if:

- a. he has been acquitted of the offence abroad in a legally binding judgment;
- b. the sentence that was imposed abroad has been executed, waived, or has prescribed.

<sup>4</sup> If the person concerned has been convicted of the offence abroad and if the sentence imposed abroad has been partly served, the court shall take the part served into account in the sentence to be imposed. The court decides whether a measure ordered abroad but only partly executed there must be continued or taken into account in the sentence imposed in Switzerland.

#### Art. 7

Other offences  
committed  
abroad

<sup>1</sup> Any person who commits a felony or misdemeanour abroad where the requirements of Articles 4, 5 or 6 are not fulfilled is subject to this Code if:

- a. the offence is also liable to prosecution at the place of commission or the place of commission is not subject to criminal law jurisdiction;
- b. the person concerned is in Switzerland or is extradited to Switzerland due to the offence; and
- c. under Swiss law extradition is permitted for the offence, but the person concerned is not being extradited.

<sup>2</sup> If the person concerned is not Swiss and if the felony or misdemeanour was not committed against a Swiss person, paragraph 1 is applicable only if:

- a. the request for extradition was refused for a reason unrelated to the nature of the offence; or
- b. the offender has committed a particularly serious felony that is proscribed by the international community.

<sup>3</sup> The court shall determine the sentence so that overall the person concerned is not treated more severely than would have been the case under the law at the place of commission.

<sup>11</sup> SR 0.101

<sup>4</sup> Unless the offence involves a gross violation of the principles of the Federal Constitution and the ECHR<sup>12</sup>, the person concerned is not liable to further prosecution in Switzerland for the offence if:

- a. he has been acquitted of the offence abroad in a legally binding judgment;
- b. the sentence that was imposed abroad has been served, waived, or has prescribed.

<sup>5</sup> If the person concerned has been convicted of the offence abroad and if the sentence imposed abroad has been partly served, the court shall take the part served into account in the sentence to be imposed. The court decides whether a measure ordered abroad but only partly executed there must be continued or taken into account in the sentence imposed in Switzerland.

### Art. 8

Place of  
commission

<sup>1</sup> A felony or misdemeanour is considered to be committed at the place where the person concerned commits it or unlawfully omits to act, and at the place where the offence has taken effect

<sup>2</sup> An attempted offence is considered to be committed at the place where the person concerned attempted it and at the place where he intended the offence to take effect.

### Art. 9

4. Personal scope  
of application

<sup>1</sup> This Code does not apply to persons whose offences are subject to military criminal law.

<sup>2</sup> For persons who have not attained the age of 18 at the time of the offence, the provisions of the Juvenile Criminal Law Act of 20 June 2003<sup>13</sup> (JCLA) are reserved. Where an offence committed before and after attaining the age of 18 must be judged, Article 3 paragraph 2 JCLA applies.<sup>14</sup>

## Title Two: Criminal Liability

### Art. 10

1. Felonies and  
misdemeanours  
Definition

<sup>1</sup> In this Code, felonies are distinguished from misdemeanours according to the severity of the penalties that the offence carries.

<sup>12</sup> SR 0.101

<sup>13</sup> SR 311.1

<sup>14</sup> Amended by Art. 44 No 1 of the Juvenile Criminal Law Act of 20 June 2003, in force since 1 Jan. 2007 (AS 2006 3545; BBl 1999 1979).

<sup>2</sup> Felonies are offences that carry a custodial sentence of more than three years.

<sup>3</sup> Misdemeanours are offences that carry a custodial sentence not exceeding three years or a monetary penalty.

### Art. 11

Commission by omission

<sup>1</sup> A felony or misdemeanour may also be committed by a failure to comply with a duty to act.

<sup>2</sup> A person fails to comply with a duty to act if he does not prevent a legal interest protected under criminal law from being exposed to danger or from being harmed even though, due to his legal position, he has a duty to do so, in particular on the basis of:

- a. the law;
- b. a contract;
- c. a risk-bearing community entered into voluntarily; or
- d. the creation of a risk.

<sup>3</sup> Any person who fails to comply with a duty to act is liable to prosecution only if, on the basis of the elements of the offence concerned, his conduct is, in the circumstances, as culpable as it would have been had he actively committed the offence.

<sup>4</sup> The court may reduce the sentence.

### Art. 12

2. Intention and negligence  
Definitions

<sup>1</sup> Unless the law expressly provides otherwise, a person is only liable to prosecution for a felony or misdemeanour if he commits it wilfully.

<sup>2</sup> A person commits a felony or misdemeanour wilfully if he carries out the act in the knowledge of what he is doing and in accordance with his will. A person acts wilfully as soon as he regards the realisation of the act as being possible and accepts this.

<sup>3</sup> A person commits a felony or misdemeanour through negligence if he fails to consider or disregards the consequences of his conduct due to a culpable lack of care. A lack of care is culpable if the person fails to exercise the care that is incumbent on him in the circumstances and commensurate with his personal capabilities.

### Art. 13

Error of fact

<sup>1</sup> If the person concerned acts under an erroneous belief as to the circumstances, the court shall judge the act according to the circumstances as the offender believed them to be.

<sup>2</sup> If the person concerned could have avoided the error had he exercised due care, he is liable to prosecution for his negligent act provided the negligent commission of the act is an offence.

#### **Art. 14**

3. Lawful acts and guilt  
Act permitted by law

Any person who acts as required or permitted by the law, acts lawfully even if the act carries a penalty under this Code or another Act.

#### **Art. 15**

Legitimate self-defence

If any person is unlawfully attacked or threatened with imminent attack, the person attacked and any other person are entitled to ward off the attack by means that are reasonable in the circumstances.

#### **Art. 16**

Mitigatory self-defence

<sup>1</sup> If a person in defending himself exceeds the limits of self-defence as defined in Article 15 and in doing so commits an offence, the court shall reduce the sentence.

<sup>2</sup> If a person in defending himself exceeds the limits of self-defence as a result of excusable excitement or panic in reaction to the attack, he does not commit an offence.

#### **Art. 17**

Legitimate act in a situation of necessity

Any person who carries out an act that carries a criminal penalty in order to save a legal interest of his own or of another from immediate and not otherwise avertable danger, acts lawfully if by doing so he safeguards interests of higher value.

#### **Art. 18**

Mitigatory act in a situation of necessity

<sup>1</sup> Any person who carries out an act that carries a criminal penalty in order to save himself or another from immediate and not otherwise avertable danger to life or limb, freedom, honour, property or other interests of high value shall receive a reduced penalty if he could reasonably have been expected to abandon the endangered interest.

<sup>2</sup> If the person concerned could not have been reasonably expected to abandon the endangered interest, he does not commit an offence.

#### **Art. 19**

Absence of legal responsibility due to a mental disorder and diminished responsibility

<sup>1</sup> 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 prosecution.

<sup>2</sup> 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.

<sup>3</sup> Measures in accordance with Articles 59–61, 63, 64, 67, 67b and 67e may, however, be taken.<sup>15</sup>

<sup>4</sup> 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.

### Art. 20

Doubt as to legal responsibility

If there are serious grounds for believing that the accused may be legally responsible due to a mental disorder, the investigating authority or the court shall order a specialist report from an expert.

### Art. 21

Error as to unlawfulness

Any person who is not and cannot be aware that, by carrying out an act, he is acting unlawfully, does not commit an offence. If the error was avoidable, the court shall reduce the sentence.

### Art. 22

4. Attempts  
Criminal liability for attempts

<sup>1</sup> If, having embarked on committing a felony or misdemeanour, the offender does not complete the criminal act or if the result required to complete the act is not or cannot be achieved, the court may reduce the penalty.

<sup>2</sup> If the offender fails to recognise through a serious lack of judgement that the act cannot under any circumstances be completed due to the nature of the objective or the means used to achieve it, no penalty is imposed.

### Art. 23

Withdrawal and active repentance

<sup>1</sup> If the person concerned of his own accord does not complete the criminal act or if he assists in preventing the completion of the act, the court may reduce the sentence or waive any penalty.

<sup>2</sup> If two or more persons carry out or participate in a criminal act, the court may reduce the sentence or waive any penalty in respect of any person concerned who, of his own accord, assists in preventing the completion of the act.

<sup>15</sup> Amended by No I 1 of the Federal Act of 13 Dec. 2013 on Activity Prohibition Orders and Contact Prohibition and Exclusion Orders, in force since 1 Jan. 2015 (AS 2014 2055; BBl 2012 8819).



<sup>3</sup> The court may also reduce the sentence or waive any penalty in respect of a person who withdraws from carrying out or participating in a criminal act if the withdrawal of the person concerned would have prevented the completion of the act had it not remained uncompleted for other reasons.

<sup>4</sup> If one or more of the persons carrying out or participating in a criminal act makes a serious effort to prevent the completion of the act, the court may reduce the sentence or waive any penalty if an offence is committed irrespective of the efforts of that person or persons.

#### **Art. 24**

5. Participation  
Incitement

<sup>1</sup> Any person who has wilfully incited another to commit a felony or a misdemeanour, provided the offence is committed, incurs the same penalty as applies to the person who has committed the offence.

<sup>2</sup> Any person who attempts to incite someone to commit a felony incurs the penalty applicable to an attempt to commit that felony.

#### **Art. 25**

Complicity

Any person who wilfully assists another to commit a felony or a misdemeanour is liable to a reduced penalty.

#### **Art. 26**

Participation in a  
special offence

If criminal liability is established or increased by a special obligation on the part of the offender, a participant is liable to a reduced penalty.

#### **Art. 27**

Personal  
circumstances

Special personal conditions, characteristics and circumstances that increase, reduce or exclude criminal liability are taken into account in the case of offenders or participants to which they apply.

#### **Art. 28**

6. Criminal  
liability of the  
media

<sup>1</sup> If an offence is committed and completed through publication in a medium, then, subject to the following provisions, only the author is liable to prosecution.

<sup>2</sup> If the author cannot be identified or if he cannot be brought to court in Switzerland, then the editor responsible in accordance with Article 322<sup>bis</sup> is liable to prosecution. If there is no responsible editor, then the person responsible for publication in accordance with Article 322<sup>bis</sup> is liable for prosecution.

<sup>3</sup> If the publication has taken place without the knowledge or against the will of the author, then the editor or, in his absence, the person responsible for publication is liable to prosecution as the offender.

<sup>4</sup> The accurate reporting of public talks and official communications from a public authority may not be made subject to prosecution.

### Art. 28a

Protection of sources

<sup>1</sup> If persons who are professionally involved in the publication of information in the editorial section of a periodical medium or their auxiliary personnel refuse to give evidence as to the identity of the author or as to the content and sources of their information, they are not liable to any penalty nor to any procedural law enforcement measures.

<sup>2</sup> Paragraph 1 does not apply if the court holds that:

- a. the evidence is required in order to save a person from immediate danger to life or limb; or
- b.<sup>16</sup> without the evidence, a case of homicide under Articles 111–113 or a different felony that carries a minimum custodial sentence of three years, or an offence under Articles 187, 189–191, 197 paragraph 4, 260<sup>ter</sup>, 260<sup>quinquies</sup>, 305<sup>bis</sup>, 305<sup>ter</sup> and 322<sup>ter</sup>–322<sup>septies</sup> of this Code or under Article 19 paragraph 2 of the Narcotics Act of 3 October 1951<sup>17</sup> will not be solved or the persons suspected of committing the said offence may not be apprehended.

### Art. 29

7. Agency relationships

A special obligation, the violation of which establishes or increases criminal liability, and which is incumbent only on the legal entity, the company or the sole proprietorship<sup>18</sup>, is attributed to a natural person, if that person acts:

- a. as a governing officer or as a member of a governing officer of a legal entity;
- b. as a company member;
- c. as an employee with independent decision-making authority in his field of activity within a legal entity, a company or a sole proprietorship<sup>19</sup>; or
- d. without being a governing officer, member of a governing officer, company member or employee, as the de facto manager.

<sup>16</sup> Amended by Annex No 1 of the Federal Decree of 27 Sept. 2013 (Lanzarote Convention), in force since 1 July 2014 (AS 2014 1159; BBl 2012 7571).

<sup>17</sup> SR 812.121

<sup>18</sup> Footnote relevant to German text only.

<sup>19</sup> Footnote relevant to German text only.

**Art. 30**

8. Criminal  
complaint  
Right to file a  
complaint

<sup>1</sup> If an act is liable to prosecution only if a complaint is filed, any person who suffers harm due to the act may request that the person responsible be prosecuted.

<sup>2</sup> If the person suffering harm does not have the legal capacity to act, his legal representative is entitled to file a complaint. If he is under guardianship or subject to a general deputyship, the adult protection authority is also entitled to file a complaint.<sup>20</sup>

<sup>3</sup> If the person suffering harm is a minor or if he is subject to a general deputyship, he is entitled to file a complaint if he is capable of judgement.<sup>21</sup>

<sup>4</sup> If the person suffering harm dies without filing the criminal complaint or without expressly waiving his right to file the criminal complaint, his next of kin are entitled to file the complaint.

<sup>5</sup> If an entitled person expressly waives his right to file a complaint, his waiver is final.

**Art. 31**

Time limit for  
filing a com-  
plaint

The right to file a complaint expires after three months. The period begins on the day that the person entitled to file a complaint discovers the identity of suspect.

**Art. 32**

Indivisibility

If an entitled person files a complaint against one person who participated in the act, all the participants become liable to prosecution.

**Art. 33**

Withdrawal of a  
complaint

<sup>1</sup> The person entitled to file a complaint may withdraw the complaint at any time before notice is given of the judgment of the second cantonal instance.

<sup>2</sup> Any person who has withdrawn his complaint may not file it again.

<sup>3</sup> If the entitled person withdraws his complaint against one suspect, the withdrawal applies to all suspects.

<sup>4</sup> If a suspect objects to the withdrawal of the complaint against him, the withdrawal does not apply to him.

<sup>20</sup> Second sentence amended by Annex No 14 of the Federal Act of 19 Dec. 2008 (Adult Protection, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

<sup>21</sup> Amended by Annex No 14 of the Federal Act of 19 Dec. 2008 (Adult Protection, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

## Title Three: Sentences and Measures

### Chapter One: Sentences

#### Section One: Monetary Penalties, Community Service, Custodial Sentences

##### Art. 34

1. Monetary  
penalty  
Assessment

<sup>1</sup> Unless the law provides otherwise, a monetary penalty amounts to a maximum of 360 daily penalty units. The court decides on the number according to the culpability of the offender.

<sup>2</sup> A daily penalty unit amounts to a maximum of 3000 francs. The court decides on the value of the daily penalty unit according to the personal and financial circumstances of the offender at the time of conviction, and in particular according to his income and capital, living expenses, any maintenance or support obligations and the minimum subsistence level.

<sup>3</sup> The authorities of the Confederation, the cantons and the communes shall provide the information required to determine the daily penalty unit.

<sup>4</sup> The number and value of the daily penalty units must be stated in the judgment.

##### Art. 35

Execution

<sup>1</sup> The executive authority shall specify that the offender make payment within a period of between one and twelve months. It may stipulate payment by instalments and on request may extend the period allowed.

<sup>2</sup> If there is justified suspicion that the offender will fail to pay the monetary penalty, the executive authority may request immediate payment or the provision of security.

<sup>3</sup> If the offender fails to pay the monetary penalty within the specified period, the executive authority shall instruct the debt collection proceedings provided their success is expected.

##### Art. 36

Alternative  
custodial  
sentence

<sup>1</sup> In the event that the offender fails to pay the monetary penalty and it is not recoverable through debt collection procedures (Art. 35 para. 3), the offender shall serve a custodial sentence as the alternative to the monetary penalty. A daily penalty unit corresponds to one day in custody. The retrospective payment of the monetary penalty leads to a corresponding reduction in the alternative custodial sentence.

<sup>2</sup> If the monetary penalty has been imposed by an administrative authority, the court decides on the alternative custodial sentence.

<sup>3</sup> If the offender is unable to pay the monetary penalty because the circumstances relevant to the assessment of the daily penalty unit have worsened since conviction through no fault of his own, he may request the court to defer the execution of the alternative custodial sentence and instead to:

- a. extend the deadline for payment for up to 24 months; or
- b. reduce the daily penalty unit; or
- c. order community service.

<sup>4</sup> If the court orders community service, Articles 37, 38 and 39 paragraph 2 apply.

<sup>5</sup> In the event that the offender fails to pay the monetary penalty despite being granted an extended deadline for payment or a reduced daily penalty unit or fails to perform the community service despite being warned of the consequences, the alternative custodial sentence is executed.

### **Art. 37**

2. Community  
service  
Type of work

<sup>1</sup> The court may, with consent of the offender, order community service of a maximum of 720 hours as an alternative to a custodial sentence of less than six months or a monetary penalty not exceeding 180 daily penalty units.

<sup>2</sup> Community service is performed for the benefit of welfare institutions, projects in the public interest or persons in need. No remuneration is paid for the work done.

### **Art. 38**

Execution

The executive authority shall stipulate a period of no more than two years in which the offender must perform the community service.

### **Art. 39**

Conversion

<sup>1</sup> If, despite being warned of the consequences, the offender fails to perform the community service in accordance with the judgment or the conditions and requirements imposed by the competent authority, the court shall convert the community service order into a monetary penalty or a custodial sentence.

<sup>2</sup> Four hours of community service corresponds to one daily penalty unit of a monetary penalty or one day of a custodial sentence.

<sup>3</sup> A custodial sentence may only be imposed if it is to be expected that a monetary penalty may not be paid.

3. Custodial sentence  
In general

### Art. 40

The duration of the custodial sentence is normally no less than six months; the maximum term is 20 years. Where the law expressly provides, the custodial sentence is for life.

Short unsuspended custodial sentence

### Art. 41

<sup>1</sup> The court may impose an immediate custodial sentence of up to six months only if the requirements for a suspended sentence (Art. 42) are not fulfilled and it is to be expected that a monetary penalty may not be paid or community service not completed.

<sup>2</sup> It must explain why it has decided to impose this form of penalty.

<sup>3</sup> The right is reserved to impose a custodial sentence in place of a monetary penalty (Art. 36) or uncompleted community service (Art. 39).

## Section Two: Suspended and Partially Suspended Sentences

1. Suspended sentences

### Art. 42

<sup>1</sup> The court shall normally suspend the execution of a monetary penalty, a community service order or a custodial sentence of at least six months and no more than two years if an unsuspended sentence does not appear to be necessary in order to deter the offender from committing further felonies or misdemeanours.

<sup>2</sup> If the offender received a suspended or unsuspended custodial sentence of at least six months or a monetary penalty of at least 180 daily penalty units within the five years prior to the offence, the sentence may only be suspended where the circumstances are especially favourable.

<sup>3</sup> The suspension of the execution of a sentence may also be refused if the offender has failed to make a reasonable effort to compensate for any loss or damage he may have caused.

<sup>4</sup> A suspended sentence may be combined with an unsuspended monetary penalty or with a fine in accordance with Article 106.<sup>22</sup>

2. Partially suspended sentences

### Art. 43

<sup>1</sup> The court may partially suspend the execution of a monetary penalty, a community service order or a custodial sentence of at least one year

<sup>22</sup> Amended by No I of the Federal Act of 24 March 2006 (Revision of the Law on Sanctions and the Register of Convictions), in force since 1 Jan. 2007 (AS 2006 3539 3544; BBl 2005 4689).

and no more than three years if this is necessary in order to take sufficient account of the culpability of the offender.

<sup>2</sup> The part of the sentence that must be executed immediately may not exceed one half of the sentence.

<sup>3</sup> In the case of a partially suspended custodial sentence, both the suspended and the unsuspended part must amount to at least six months. The provisions on the granting of parole (Art. 86) do not apply to the unsuspended part of the sentence.

#### Art. 44

3. General provisions  
Probationary period

<sup>1</sup> If the court suspends the execution of a sentence in full or in part, it shall make the offender subject to a probationary period of from two to five years.

<sup>2</sup> The court may order probation assistance and impose conduct orders for the duration of the probationary period.

<sup>3</sup> The court shall explain the importance and the consequences of the suspended and partially suspended sentence to the offender.

#### Art. 45

Successful completion of probation

If the offender is of good conduct until the expiry of the probationary period, the postponed sentence is not executed.

#### Art. 46

Breach of probation

<sup>1</sup> If the offender commits a felony or misdemeanour during the probationary period and if it therefore must be expected that he will commit further offences, the court shall revoke the suspended sentence or the suspended part of the sentence. It may modify the form of the revoked sentence in order to form a cumulative sentence with the new sentence in the analogous application of Article 49. In doing so it may impose an immediate custodial sentence only if the cumulative sentence amounts to a minimum of six months or the requirements of Article 41 are fulfilled.

<sup>2</sup> If it is not expected that the offender will commit further offences, the court shall not revoke the suspended sentence. It may admonish the offender or extend the probationary period by up to one half of the duration specified in the judgment. The court may order probation assistance and impose conduct orders for the duration of the extended probationary period. If the extension begins after the expiry of the probationary period, the extended period begins on the day that it is ordered.

<sup>3</sup> The court that judges the new felony or misdemeanour also decides on revocation.

<sup>4</sup> If the offender fails to attend for probation assistance or disregards the conduct orders, Article 95 paragraphs 3–5 apply.

<sup>5</sup> Revocation may no longer be ordered if three years have elapsed since the expiry of the probationary period.

### Section Three: Determination of the Sentence

#### Art. 47

1. Principle

<sup>1</sup> The court determines the sentence according to the culpability of the offender. It takes account of the previous conduct and the personal circumstances of the offender as well as the effect that the sentence will have on his life.

<sup>2</sup> Culpability is assessed according to the seriousness of the damage or danger to the legal interest concerned, the reprehensibility of the conduct, the offender's motives and aims, and the extent to which the offender, in view of the personal and external circumstances, could have avoided causing the danger or damage.

#### Art. 48

2. Mitigation of  
the sentence  
Grounds

The court shall reduce the sentence if:

- a. the offender acted:
  1. for honourable motives,
  2. while in serious distress,
  3. while of the view that he was under serious threat,
  4. at the behest of a person whom he was duty bound to obey or on whom he was dependent;
- b. the offender was seriously provoked by the conduct of the person suffering injury;
- c. the offender acted in a state of extreme emotion that was excusable in the circumstances or while under serious psychological stress;
- d. the offender has shown genuine remorse, and in particular has made reparation for the injury, damage or loss caused, insofar as this may reasonably be expected of him;
- e. the need for punishment has been substantially reduced due to the time that has elapsed since the offence and the offender has been of good conduct in this period.



- Art. 48a**
- Effect
- <sup>1</sup> If the court chooses to reduce the sentence, it is not bound by the minimum penalty that the offence carries.
  - <sup>2</sup> The court may impose a different form of penalty from that which the offence carries, but remains bound by the statutory maximum and minimum levels for that form of penalty.
- Art. 49**
3. Concurrent sentencing
- <sup>1</sup> If the offender, by committing one or more offences, has fulfilled the requirements for two or more penalties of the same form, the court shall impose the sentence for the most serious offence at an appropriately increased level. It may not, however, increase the maximum level of the sentence by more than half, and it is bound by the statutory maximum for that form of penalty.
  - <sup>2</sup> If the court must pass sentence on an offence that the offender committed before he was sentenced for a different offence, it shall determine the supplementary penalty so that the offender is not more severely punished than he would have been had the sentences been imposed at the same time.
  - <sup>3</sup> If the offender committed one or more offences before reaching the age of 18, the court shall determine the cumulative sentence in accordance with paragraphs 1 and 2 such that it is not more severe than it would have been had sentences been imposed separately.
- Art. 50**
4. Obligation to justify
- Where a judgment must be justified, the court shall also specify the circumstances taken into account in determining the sentence and their weighting.
- Art. 51**
5. Taking account of pre-trial detention
- When determining the sentence, the court shall take account of any period in pre-trial detention that the offender has served in respect of the proceedings in question or any other proceedings. One day in detention corresponds to one daily penalty unit of a monetary penalty or four hours of community service.

## Section Four: Exemption from Punishment and Abandonment of Proceedings<sup>23</sup>

### Art. 52

1. Grounds for exemption from punishment  
No need for a penalty<sup>24</sup>

The competent authority shall refrain from prosecuting the offender, bringing him to court or punishing him if the level of culpability and consequences of the offence are negligible.

### Art. 53

Reparation

If the offender has made reparation for the loss, damage or injury or made every reasonable effort to right the wrong that he has caused, the competent authority shall refrain from prosecuting him, bringing him to court or punishing him if:

- a. the requirements for a suspended sentence (Art. 42) are fulfilled; and
- b. the interests of the general public and of the persons harmed in prosecution are negligible.

### Art. 54

Effect on the offender of his act

If the offender is so seriously affected by the immediate consequences of his act that a penalty would be inappropriate, the responsible authorities shall refrain from prosecuting him, bringing him to court or punishing him.

### Art. 55

2. General provisions

<sup>1</sup> The court shall refrain from revoking a suspended sentence and in the case of the parole from a recall if the requirements for an exemption from punishment are met.

<sup>2</sup> The cantons designate the bodies responsible for the administration of criminal justice as the competent authorities under Articles 52, 53 and 54.

<sup>23</sup> Amended by No I of the Federal Act of 3 Oct. 2003 (Prosecution of Offences within Marriage or Registered Partnerships), in force since 1 April 2004 (AS **2004** 1403 1407; BBl **2003** 1909 1937).

<sup>24</sup> Amended by No I of the Federal Act of 3 Oct. 2003 (Prosecution of Offences within Marriage or Registered Partnerships), in force since 1 April 2004 (AS **2004** 1403 1407; BBl **2003** 1909 1937).

**Art. 55a<sup>25</sup>**

3. Discontinuation of proceedings. Spouse, registered partner, or partner as victim<sup>26</sup>

<sup>1</sup> In a case of common assault (Art. 123 no. 2 para. 3–5), repeated acts of aggression (Art. 126 para. 2 let. b, bbis and c), threatening behaviour (Art. 180 para. 2) and coercion (Art. 181), the public prosecutor or the court may suspend the proceedings if:<sup>27</sup>

a.<sup>28</sup> the victim:

1. is the spouse of the offender and the offence was committed during the marriage or within a year of divorce, or
2. is the registered partner of the offender and the offence was committed during the registered partnership or within a year of its dissolution, or
3. is the hetero- or homosexual partner of the offender or the ex-partner of the offender if they have been separated for less than a year; and

b. the victim or, if he or she lacks legal capacity, his or her legal representative so requests or if the victim or his or her legal representative consents to a corresponding application from the competent authority.

<sup>2</sup> The proceedings are resumed if the victim or, if he or she lacks legal capacity, his or her legal representative revokes consent in writing or verbally within six months of the suspension of the proceedings.<sup>29</sup>

<sup>3</sup> If consent is not revoked, the public prosecutor or the court shall order the abandonment of the proceedings.<sup>30</sup>

<sup>4</sup> ...<sup>31</sup>

- <sup>25</sup> Inserted by No I of the Federal Act of 3 Oct. 2003 (Prosecution of Offences within Marriage or Registered Partnerships), in force since 1 April 2004 (AS **2004** 1403 1407; BBl **2003** 1909 1937).
- <sup>26</sup> Amended by Art. 37 No 1 of the Same-Sex Partnership Act of 18 June 2004, in force since 1 Jan. 2007 (AS **2005** 5685; BBl **2003** 1288).
- <sup>27</sup> Amended by Annex 1 No II 8 of the Criminal Procedure Code of 5 Oct. 2007, in force since 1 Jan. 2011 (AS **2010** 1881; BBl **2006** 1085).
- <sup>28</sup> Amended by Art. 37 No 1 of the Same-Sex Partnership Act of 18 June 2004, in force since 1 Jan. 2007 (AS **2005** 5685; BBl **2003** 1288).
- <sup>29</sup> Amended by Annex 1 No II 8 of the Criminal Procedure Code of 5 Oct. 2007, in force since 1 Jan. 2011 (AS **2010** 1881; BBl **2006** 1085).
- <sup>30</sup> Amended by Annex 1 No II 8 of the Criminal Procedure Code of 5 Oct. 2007, in force since 1 Jan. 2011 (AS **2010** 1881; BBl **2006** 1085).
- <sup>31</sup> Repealed by Annex 1 No II 8 of the Criminal Procedure Code of 5 Oct. 2007, with effect from 1 Jan. 2011 (AS **2010** 1881; BBl **2006** 1085).

## Chapter Two: Measures

### Section One:

### Therapeutic Measures and Indefinite Incarceration

#### Art. 56

##### 1. Principles

<sup>1</sup> A measure is ordered if:

- a. a penalty alone is not sufficient to counter the risk of further offending by the offender;
- b. the offender requires treatment or treatment is required in the interest of public safety; and
- c. the requirements of Articles 59–61, 63 or 64 are fulfilled.

<sup>2</sup> The ordering of a measure requires that the related intervention in the personal rights of the offender is not unreasonable in view of the probability and seriousness of additional offences.

<sup>3</sup> In ordering a measure under Articles 59–61, 63 and 64 and in modifying the sanction in accordance with Article 65, the court shall base its decision on an expert assessment. This shall provide an opinion on:

- a. the necessity and the prospects of success of any treatment of the offender;
- b. the nature and the probability of possible additional offences; and
- c. the ways in which the measure may be implemented.

<sup>4</sup> If the offender has committed an offence in terms of Article 64 paragraph 1, the assessment must be conducted by an expert who has neither treated the offender before nor been responsible in any other way for his care.

<sup>4bis</sup> If consideration is given to ordering lifelong incarceration in accordance with Article 64 paragraph 1<sup>bis</sup>, the court shall base its decision on reports from at least two experienced specialists who are independent of each other and who have neither treated the offender nor been responsible in any other way for his care.<sup>32</sup>

<sup>5</sup> Normally the court only orders a measure if a suitable institution is available.

<sup>6</sup> Where the requirements for a measure are no longer fulfilled, it is revoked.

<sup>32</sup> Inserted by No I of the Federal Act of 21 Dec. 2007 (Indefinite Incarceration of Extremely Dangerous Offenders), in force since 1 Aug. 2008 (AS 2008 2961 2964; BBl 2006 889).

**Art. 56a**

Concurrent measures

1 If two or more measures are equally suitable but only one is necessary, the court shall order the measure that is more convenient for the offender.

2 If two or more measures are necessary, the court may order these concurrently.

**Art. 57**

Relationship between measures and penalties

1 If the requirements for both a penalty 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.

**Art. 58**

Implementation

1 ...<sup>33</sup>

2 The therapeutic institutions in terms of Articles 59–61 must be managed separately from penal institutions.

**Art. 59**

2. In-patient therapeutic measures

Treatment of mental disorders

1 If the offender is suffering from a serious mental disorder, the court may order in-patient treatment if:

- a. the offender's mental disorder was a factor in a felony or misdemeanour that he committed; and
- b. it is expected that the measure will reduce the risk of further offences being committed in which his mental disorder is a factor.

2 The in-patient treatment is carried out in an appropriate psychiatric institution or therapeutic institution.

3 If there is a risk of the offender absconding or committing further offences, he shall be treated in a secure institution. He may also be treated in a penal institution in accordance with Article 76 paragraph 2,

<sup>33</sup> Repealed by Annex 1 No II 8 of the Criminal Procedure Code of 5 Oct. 2007, with effect from 1 Jan. 2011 (AS 2010 1881; BBl 2006 1085).

provided it is guaranteed that the required therapeutic treatment can be provided by specialist staff.<sup>34</sup>

<sup>4</sup> The deprivation of liberty associated with in-patient treatment normally amounts to a maximum of five years. If the requirements for parole have not yet been fulfilled after five years and if it is expected that the measure will reduce the risk of further felonies or misdemeanours being committed in which his mental disorder is a factor, the court may at the request of the executive authority order the extension of the measure for a maximum of five years in any case.

### Art. 60

Treatment of  
addiction

<sup>1</sup> If the offender is dependent on addictive substances or in any other way dependent, the court may order in-patient treatment if:

- a. the offender's dependence was a factor in the felony or misdemeanour that he committed; and
- b. it is expected that treatment will reduce the risk of further offences being committed in which his dependence is a factor.

<sup>2</sup> The court shall take account of the offender's request for and readiness to undergo treatment.

<sup>3</sup> The treatment is carried out in a specialised institution or, if necessary, in a psychiatric hospital. It must be adjusted to the special needs of the offender and the state of his health.

<sup>4</sup> The deprivation of liberty associated with in-patient treatment shall normally amount to a maximum of three years. If the requirements for parole have not yet been fulfilled after three years and if it is expected that the measure will reduce the risk of further felonies or misdemeanours being committed in which his dependence is a factor, the court may at the request of the executive authority on one occasion only order the extension of the measure for a maximum of one further year. In the event of an extension and the recall to custody following parole, the deprivation of liberty associated with the measure may not exceed a maximum of six years.

### Art. 61

Measures for  
young adults

<sup>1</sup> If the offender was under 25 years of age at the time of the offence and if he is suffering from a serious developmental disorder, the court may commit him to an institution for young adults if:

- a. the offender's developmental disorder was a factor in the felony or misdemeanour that he committed; and

<sup>34</sup> Amended by No I of the Federal Act of 24 March 2006 (Revision of the Law on Sanctions and the Register of Convictions), in force since 1 Jan. 2007 (AS 2006 3539 3544; BBl 2005 4689).

- b. it is expected that the measure will reduce the risk of further offences being committed in which his developmental disorder is a factor.

<sup>2</sup> Institutions for young adults must be managed separately from other institutions and facilities under this Code.

<sup>3</sup> The offender should be taught the skills needed to live independently and without further offending. In particular, he should be encouraged to undergo basic and advanced vocational and professional training.

<sup>4</sup> The deprivation of liberty associated with the measure amounts to a maximum of four years. In the event of the recall to custody following release on parole, it may not exceed a maximum of six years. The measure must be revoked when the offender reaches the age of 30.

<sup>5</sup> If the offender was convicted of an offence committed before he was 18 years of age, the measure may be implemented in an institution for minors.

#### **Art. 62**

Parole

<sup>1</sup> The offender is released on parole from undergoing an in-patient measure as soon as his condition justifies his being given the liberty to prove himself.

<sup>2</sup> In the case of release on parole from a measure under Article 59, the probationary period amounts to one to five years, and in the case of release on parole from a measure under Articles 60 and 61, from one to three years.

<sup>3</sup> The person released on parole may be required to undergo out-patient treatment during the probationary period. The executive authority may order probation assistance and issue conduct orders for the duration the probationary period.

<sup>4</sup> If on expiry of the probationary period, a continuation of the out-patient treatment, the probation assistance or the conduct orders is considered necessary in order to reduce the risk of further felonies and misdemeanours being committed that are associated with the condition of the person released on parole, the court may at the request of the executive authority extend the probationary period as follows:

- a. by one to five years in the case of release on parole from a measure in accordance with Article 59;
- b. by one to three years in the case of release on parole from a measure under Articles 60 and 61.

<sup>5</sup> The probationary period following release on parole from a measure under Articles 60 and 61 may not exceed six years.

<sup>6</sup> If the offender has committed an offence in terms of Article 64 paragraph 1, the probationary period may be extended as often as is

considered necessary to prevent further such offences being committed.

### **Art. 62a**

Breach of  
probation

<sup>1</sup> If a person released on parole commits an offence during the probationary period and thus demonstrates that the risk that the measure was intended to reduce is still present, the court assessing the new offence may, after consulting the executive authority:

- a. order his recall to custody;
- b. revoke the measure and, provided the relevant requirements are fulfilled, order a new measure; or
- c. revoke the measure and, provided the relevant requirements are fulfilled, order the execution of a custodial sentence.

<sup>2</sup> If as a result of the new offence the requirements for an unsuspended custodial sentence are fulfilled and if this sentence runs concurrently with a custodial sentence that has been suspended to give precedence to the measure, the court shall impose a cumulative sentence in application of Article 49.

<sup>3</sup> If as a result of the conduct of the person released on parole during the probationary period there is a serious expectation that he could commit an offence in terms of Article 64 paragraph 1, the court that ordered the measure may, at the request of the executive authority, order a recall to custody.

<sup>4</sup> For a measure under Article 59, the recall to custody is for a maximum period of five years, and for measures under Articles 60 and 61 for a maximum period of two years.

<sup>5</sup> If the court decides against a recall to custody or a new measure, it may:

- a. admonish the person released on parole;
- b. order out-patient treatment or probation assistance;
- c. impose conduct orders on the person released on parole; and
- d. extend the probationary period by from one to five years in the case of a measure under Article 59, and by from one to three years in the case of a measure under Articles 60 and 61.

<sup>6</sup> If the person released on parole fails to comply with the terms of probation assistance or disregards the conduct orders, Article 95 paragraphs 3–5 applies.

### **Art. 62b**

Final release

<sup>1</sup> If the person released on parole successfully completes the probationary period, he is granted final release.



<sup>2</sup> The offender is granted final release if the maximum duration of a measure under Articles 60 and 61 is reached and the requirements for the parole apply.

<sup>3</sup> If deprivation of liberty associated with the measure is for a shorter period than the suspended custodial sentence, the remainder of the sentence is not executed.

### **Art. 62c**

Termination of a measure

<sup>1</sup> A measure is terminated, if:

- a. its implementation or continuation appears to have no prospect of success;
- b. the maximum duration under Articles 60 and 61 has been reached and the requirements for the parole do not apply; or
- c. a suitable institution does not exist or no longer exists.

<sup>2</sup> If the deprivation of liberty associated with the measure is for a shorter period than the suspended custodial sentence, the remainder of the sentence is executed. If the requirements for parole or a suspended custodial sentence apply in relation to the remainder of the sentence, execution of the sentence is suspended.

<sup>3</sup> Instead of ordering the execution of the sentence, the court may order another measure if it is to be expected that such a measure will reduce the risk of the offender committing further felonies and misdemeanours in which his condition is a factor.

<sup>4</sup> If there is a serious expectation that if a measure ordered in respect of an offence in terms of Article 64 paragraph 1 is terminated, the offender will commit further such offences, the court may at the request of the executive authority order his indefinite incarceration.

<sup>5</sup> If the competent authority regards an adult protection measure to be appropriate on the termination of the measure, it shall inform the adult protection authority of this.<sup>35</sup>

<sup>6</sup> Furthermore, the court may terminate an in-patient therapeutic measure before or during its implementation and order another in-patient therapeutic measure in its place if it is expected that the new measure has a significantly better chance of reducing the risk of the offender committing further felonies and misdemeanours in which his condition is a factor.

<sup>35</sup> Amended by Annex No 14 of the Federal Act of 19 Dec. 2008 (Adult Protection, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

**Art. 62d**

Consideration of  
release and the  
termination of  
measures

<sup>1</sup> The competent authority shall on request or ex officio consider whether and when the offender should be released on parole from the implementation of the measure or whether the measure should be terminated. It makes a decision on such matters at least once each year. It shall first grant a hearing to the offender and obtain a report from the governing body of the relevant institution.

<sup>2</sup> If the offender committed an offence in terms of Article 64 paragraph 1, the competent authority shall reach its decision on the basis of the expert opinion of an independent specialist and after hearing a committee comprising representatives of the prosecution services, the execution authorities and one or more psychiatrists. The specialists and psychiatrists concerned must not be those responsible for the treatment or care of the offender.

**Art. 63**

3. Out-patient  
treatment  
Requirements  
and implementa-  
tion

<sup>1</sup> If the offender is suffering from a serious mental disorder or if he is dependent on addictive substances or in any other way, the court may order that he receive out-patient rather than in-patient treatment if:

- a. the offender commits an offence in which his condition is a factor; and
- b. it is expected that the measure will reduce the risk of further offences being committed in which his condition is a factor.

<sup>2</sup> The court may defer the execution of an unsuspended custodial sentence imposed at the same time, a suspended custodial sentence due for execution following revocation of suspension and the remainder of a sentence due for execution following a recall to custody to give precedence to out-patient treatment in order to take account of the form of the treatment. It may order probation assistance and issue conduct orders for the duration the treatment.

<sup>3</sup> The competent authority may order the offender to be treated temporarily as an in-patient if this is required in order to initiate the out-patient treatment. The period of in-patient treatment may not exceed two months.

<sup>4</sup> The period of out-patient treatment may not normally exceed five years. If the continuation of the out-patient treatment is considered necessary at the end of the five-year period in order to reduce the risk of further felonies and misdemeanours in which a mental disorder is a factor, the court may at the request of the executive authority continue the treatment for a further period of from one to five years.

**Art. 63a**

Termination of  
the measure

<sup>1</sup> The competent authority shall assess at least once each year whether the out-patient treatment should be continued or terminated. It shall first grant a hearing to the offender and obtain a report from the therapists.

<sup>2</sup> The out-patient treatment is terminated by the competent authority if:

- a. it has been successfully completed;
- b. its continuation appears to have no prospect of success; or
- c. the statutory maximum duration for the treatment of an alcohol, drug or therapeutic product dependent person has been reached.

<sup>3</sup> If the offender commits a further offence during the out-patient treatment and thus demonstrates that this form of treatment will probably be unsuccessful in averting the risk of offences being committed in which the condition of the offender is a factor, the unsuccessful treatment shall be terminated by order of the court assessing the new offence.

<sup>4</sup> If the offender fails to comply with the conditions of probation assistance or if he disregards the conduct orders, Article 95 paragraphs 3–5 applies.

**Art. 63b**

Execution of the  
suspended  
custodial  
sentence

<sup>1</sup> If the out-patient treatment has been successfully completed, the suspended custodial sentence is not executed.

<sup>2</sup> If out-patient treatment is terminated due to there being no prospect of success (Art. 63a para. 2 let. b), the statutory maximum duration being reached (Art. 63a para. 2 let. c) or its being unsuccessful (Art. 63a para. 3), the suspended custodial sentence is executed.

<sup>3</sup> If out-patient treatment conducted while the offender is at liberty is considered a risk to third parties, the suspended custodial sentence is executed and the out-patient treatment continued while the custodial sentence is being served.

<sup>4</sup> The court decides on the extent to which the deprivation of liberty associated with the out-patient treatment is taken into account in determining the custodial sentence. If the requirements for parole or a suspended custodial sentence apply in relation to the remainder of the sentence, execution of the sentence is suspended.

<sup>5</sup> Instead of the execution of the sentence the court may order an in-patient therapeutic measure under Articles 59–61 if it is to be expected that this will reduce the risk of the offender committing further felonies or misdemeanours in which his condition is a factor.

**Art. 64**

<sup>1</sup> The court shall order indefinite incarceration if the offender has committed murder, intentional homicide, serious assault, rape, robbery, hostage taking, arson, endangering life or another offence that carries a maximum sentence of five or more years by which he has caused or intended to cause serious detriment to the physical, psychological or sexual integrity of another person, and if:<sup>36</sup>

- a. due to the personality traits of the offender, the circumstances of the offence and his general personal circumstances, it is seriously expected that he will commit further offences of the same type; or
- b. due to a permanent or long-term mental disorder of considerable gravity that was a factor in the offence, it is seriously expected that the offender will commit further offences of the same type and the ordering of a measure in accordance with Article 59 does not promise any success.

<sup>1bis</sup> The court shall order lifelong incarceration if the offender has committed murder, intentional homicide, serious assault, robbery, rape, indecent assault, false imprisonment or abduction, hostage-taking, trafficking in human beings, genocide, or a felony under the heading of crimes against humanity or war crimes (Title Twelve) and if the following requirements are met:<sup>37</sup>

- a. the offender, by committing the offence, caused or intended to cause serious detriment to the physical, psychological or sexual integrity of another person.
- b. There is a high probability that the offender will commit one of these felonies again.
- c. The offender is assessed as being permanently untreatable, as the treatment offers no long-term prospect of success.<sup>38</sup>

<sup>2</sup> The execution of the custodial sentence takes priority over indefinite incarceration. The provisions on parole in relation to the custodial sentence (Art. 86–88) do not apply.<sup>39</sup>

<sup>3</sup> If during the execution of the custodial sentence, it is expected that the offender will prove to be of good behaviour when at liberty, the

<sup>36</sup> Amended by No I of the Federal Act of 24 March 2006 (Revision of the Law on Sanctions and the Register of Convictions), in force since 1 Jan. 2007 (AS **2006** 3539 3544; BBl **2005** 4689).

<sup>37</sup> Amended by No I 1 of the Federal Act of 18 June 2010 on the Amendment of Federal Legislation in Implementation of the Rome Statute of the International Criminal Court, in force since 1 Jan. 2011 (AS **2010** 4963; BBl **2008** 3863).

<sup>38</sup> Inserted by No I of the Federal Act of 21 Dec. 2007 (Indefinite Incarceration of Extremely Dangerous Offenders), in force since 1 Aug. 2008 (AS **2008** 2961 2964; BBl **2006** 889).

<sup>39</sup> Amended by No I of the Federal Act of 24 March 2006 (Revision of the Law on Sanctions and the Register of Convictions), in force since 1 Jan. 2007 (AS **2006** 3539 3544; BBl **2005** 4689).

court shall order parole from the custodial sentence at the earliest from the time when the offender has served two thirds of a specific custodial sentence or 15 years of a life sentence. The court that ordered indefinite incarceration is responsible for the decision on parole. In addition, Article 64a applies.<sup>40</sup>

<sup>4</sup> Indefinite incarceration is executed in a therapeutic institution or in a penal institution in accordance with Article 76 paragraph 2. Public safety must be guaranteed. The offender receives psychiatric care if this is necessary.

### **Art. 64a**

Revocation and  
release

<sup>1</sup> The offender is released on parole from indefinite incarceration in accordance with Article 64 paragraph 1 as soon as it is expected that he will be of good behaviour when at liberty.<sup>41</sup> The probationary period amounts to two to five years. For the duration of the probationary period, probation assistance may be ordered and conduct orders may be imposed.

<sup>2</sup> If on expiry of the probationary period a continuation of the probation assistance or the conduct orders is considered to be necessary in order to reduce the risk of further offences in terms of Article 64 paragraph 1, the court may at the request of the executive authority extend the probationary period by a further two to five years.

<sup>3</sup> If due to his conduct during the probationary period, it is seriously expected that the offender may commit further offences in terms of Article 64 paragraph 1, the court at the request of the executive authority shall order his recall to custody.

<sup>4</sup> If the offender when released on parole fails to comply with the conditions of probation assistance or disregards the conduct orders, Article 95 paragraphs 3–5 applies.

<sup>5</sup> If the offender when released on parole is of good behaviour until the expiry of the probationary period, he is granted final release.

<sup>40</sup> Amended by No I of the Federal Act of 24 March 2006 (Revision of the Law on Sanctions and the Register of Convictions), in force since 1 Jan. 2007 (AS **2006** 3539 3544; BBI **2005** 4689).

<sup>41</sup> Amended by No I of the Federal Act of 21 Dec. 2007 (Indefinite Incarceration of Extremely Dangerous Offenders), in force since 1 Aug. 2008 (AS **2008** 2961 2964; BBI **2006** 889).

**Art. 64<sup>b42</sup>**

Consideration of  
release

<sup>1</sup> The competent authority shall consider on request or ex officio:

- a. at least once annually, and for the first time after two years have lapsed, whether and when the offender may be released on parole from indefinite incarceration (Art. 64a para. 1);
- b. at least every two years, and for the first time before indefinite incarceration takes effect, whether the requirements for an in-patient therapeutic treatment have been fulfilled and whether a related application should therefore be made to the competent court (Art. 65 para. 1).

<sup>2</sup> The competent authority makes its decisions in terms of paragraph 1 based on:

- a. a report from the institution board;
- b. an independent specialist assessment in terms of Article 56 paragraph 4;
- c. its hearing of a committee in accordance with Article 62d paragraph 2;
- d. its hearing of the offender.

**Art. 64<sup>c43</sup>**

Consideration of  
release from  
lifelong incar-  
ceration and  
parole

<sup>1</sup> In cases of lifelong incarceration under Article 64 paragraph 1<sup>bis</sup> the competent authority shall consider ex officio or on application whether there are any new scientific findings that lead to the expectation that the offender can be treated so that he will no longer pose a risk to the public. It decides on the basis of a report from the Federal Commission for the Assessment of the Treatability of Offenders subject to Lifelong Incarceration.

<sup>2</sup> If the competent authority concludes that the offender can be treated, it shall offer him the option of treatment. Treatment is carried out in a secure institution. Until the order imposing lifelong incarceration has been revoked in accordance with paragraph 3, the provisions on the execution of lifelong incarceration continue to apply.

<sup>3</sup> If the treatment demonstrates that the risk posed by the offender has been considerably reduced and may be reduced to the extent that he no longer poses a risk to the public, the court shall revoke the order imposing lifelong incarceration and order an in-patient therapeutic measure in accordance with Articles 59–61 in a secure institution.

<sup>42</sup> Amended by No I of the Federal Act of 24 March 2006 (Revision of the Law on Sanctions and the Register of Convictions), in force since 1 Jan. 2007 (AS **2006** 3539 3544; BBl **2005** 4689).

<sup>43</sup> Inserted by No I of the Federal Act of 21 Dec. 2007 (Indefinite Incarceration of Extremely Dangerous Offenders), in force since 1 Aug. 2008 (AS **2008** 2961 2964; BBl **2006** 889).

<sup>4</sup> The court may grant the offender parole from lifelong incarceration if he no longer poses a risk to the public due to old age, serious illness or on other grounds. Parole is governed by Article 64a.

<sup>5</sup> The court that ordered lifelong incarceration is responsible for deciding whether parole should be granted. It bases its decision on reports from at least two experienced specialists who are independent of each other and who have neither treated the offender nor been responsible in any other way for his care.

<sup>6</sup> Paragraphs 1 and 2 also apply during the execution of the custodial sentence that precedes lifelong incarceration. Lifelong incarceration shall be revoked in accordance with paragraph 3 at the earliest when the offender has served two thirds of a specific custodial sentence or 15 years of a life sentence.

### Art. 65

5. Modification of the sanction

<sup>1</sup> If an offender fulfils the requirements for an in-patient therapeutic measure in terms of Articles 59–61 before or during the execution of a custodial sentence or of indefinite incarceration in accordance with Article 64 paragraph 1, the court may order this measure retrospectively.<sup>44</sup> The competent court is the court that imposed the sentence or ordered indefinite incarceration. The execution of any remainder of the sentence is deferred.

<sup>2</sup> If during the execution of the custodial sentence, new information or evidence comes to light to the effect that the requirements for indefinite incarceration are fulfilled and already applied at the time of conviction although the court could not have had knowledge of this, the court may order indefinite incarceration retrospectively. Jurisdiction and procedure are determined by the rules that apply to re-opening a case.<sup>45</sup>

## Section Two: Other Measures

### Art. 66

1. Good behaviour bond

<sup>1</sup> If there is the risk that a person will commit a felony or misdemeanour that he has threatened to commit, or if a person convicted of a felony or of a misdemeanour indicates the clear intention to repeat the offence, the court may, at the request of the person threatened, obtain a

<sup>44</sup> Amended by No I of the Federal Act of 21 Dec. 2007 (Indefinite Incarceration of Extremely Dangerous Offenders), in force since 1 Aug. 2008 (AS **2008** 2961 2964; BBI **2006** 889).

<sup>45</sup> Inserted by No I of the Federal Act of 24 March 2006 (Revision of the Law on Sanctions and the Register of Convictions), in force since 1 Jan. 2007 (AS **2006** 3539 3544; BBI **2005** 4689).

promise from the offender that he will not commit the offence and require him to deposit appropriate security therefor.

<sup>2</sup> If he refuses to make the promise, or fails to deposit the security within the specified period, the court may require him to make the promise or deposit the security by imposing a period of detention for security reasons. The period of detention for security reasons may not be for more than two months. It is executed in the same way as a short custodial sentence (Art. 79).

<sup>3</sup> If the offender commits the felony or the misdemeanour within two years of depositing the security, the security is forfeited to the State. If no offence is committed, the security is returned.

**Art. 67<sup>46</sup>**

2. Prohibition from carrying on an activity, contact prohibition and exclusion order  
a. Prohibition from carrying on an activity, requirements

<sup>1</sup> If a person has committed a felony or misdemeanour in the course of carrying on a professional activity or an organised non-professional activity, and has as a result received a custodial sentence in excess of six months or a monetary penalty of more than 180 daily units, and if there is a risk that he will abuse his activity in order to commit a further felony or misdemeanour, the court may prohibit him totally or partially from carrying on this activity or comparable activities for a period of six months to five years.

<sup>2</sup> If a person has committed a felony or misdemeanour against a minor or another especially vulnerable person and if there is a risk that in the course of carrying on a professional activity or an organised non-professional activity that involves regular contact with any minors or with other especially vulnerable persons he will commit further offences of this nature, the court may prohibit him from carrying on the activity concerned for one to ten years.

<sup>3</sup> If a person is sentenced to a custodial sentence of more than six months, a monetary penalty of over 180 daily penalty units or a measure in accordance with Articles 59–61 or 64 for any of the following offences, the court shall prohibit him from carrying on any professional activity or organised non-professional activity that involves regular contact with any minors for ten years:

- a. trafficking in human beings (Art. 182), indecent assault (Art. 189), rape (Art. 190), sexual acts with persons incapable of judgement or resistance (Art. 191), sexual acts with persons in institutional care, prisoners and persons on remand (Art. 192), exploitation of a person in a position of need or dependency (Art. 193) or encouraging prostitution (Art. 195), provided the offence is committed against a minor;

<sup>46</sup> Amended by No I 1 of the Federal Act of 13 Dec. 2013 on Activity Prohibition Orders and Contact Prohibition and Exclusion Orders, in force since 1 Jan. 2015 (AS 2014 2055; BBl 2012 8819).



- b. sexual acts with children (Art. 187) or sexual acts with dependent persons (Art. 188);
- c. aggravated pornography (Art. 197 No 3<sup>47</sup>), provided the content of the items or performances involved sexual acts with children.

<sup>4</sup> If a person is sentenced to a custodial sentence of over six months, a monetary penalty of over 180 daily penalty units or a measure in accordance with Articles 59–61 or 64 for committing any of the following offences against an especially vulnerable adult person, the court shall prohibit him from carrying on any professional activity or organised non-professional activity that involves regular contact with especially vulnerable adult persons for ten years: trafficking in human beings (Art. 182), indecent assault (Art. 189), rape (Art. 190), sexual acts with persons incapable of judgement or resistance (Art. 191), sexual acts with persons in institutional care, prisoners and persons on remand (Art. 192), exploitation of a person in a position of need or dependency (Art. 193) or encouraging prostitution (Art. 195).

<sup>5</sup> If the offender receives a sentence or is made subject to a measure for two or more offences in the same proceedings, the court shall specify what portion of the sentence or which measure applies to an offence that entails an activity prohibition order. This portion of the sentence, the measure and the offence are decisive in determining whether an activity prohibition order under paragraph 1, 2, 3 or 4 is imposed. The sentence portions for two or more relevant offences are added together. More than one activity prohibition order may be imposed.

<sup>6</sup> The court may impose lifelong prohibition orders under paragraphs 2, 3 and 4 if it is probable that a term of ten years is insufficient to guarantee that the offender will no longer represent a risk. On application from the executive authority, it may extend limited prohibition orders under paragraphs 2, 3 and 4 by a maximum of five years in each case if this is necessary to prevent the offender from committing further felonies and misdemeanours of the type that gave rise to the prohibition order.

<sup>7</sup> The court may order probation assistance for the duration of the prohibition orders. It shall order probation assistance in every case in which a prohibition order has been imposed for an offence under paragraph 3 or 4.

<sup>47</sup> Art. 197 has now been reworked.

Content and  
scope

**Art. 67a<sup>48</sup>**

<sup>1</sup> Professional activities within the meaning of Article 67 are activities in exercise of a principal or secondary profession or trade or of a commercial enterprise. Organised non-professional activities are activities that are not or not primarily carried on for pecuniary gain and which are carried on in the context of an association or other organisation.

<sup>2</sup> The prohibition from carrying on an activity under Article 67 includes activities that the offender carries on on a self-employed basis, as a governing officer of a legal entity or commercial enterprise, or as the agent or representative of another person or which he arranges to be carried on by a person dependent on his instructions.

<sup>3</sup> If there is a risk that the offender will also misuse his activity in order to commit offences if he is subject to the orders and control of a superior or supervisor, he shall be totally prohibited from carrying on the activity.

<sup>4</sup> Prohibition orders under Article 67 paragraphs 3 and 4 always apply to the entire activity.

**Art. 67b<sup>49</sup>**

b. Contact  
prohibition and  
exclusion order

<sup>1</sup> If a person has committed a felony or misdemeanour against one or more specific persons or against persons in a specific group, and if there is a risk that he will commit further felonies or misdemeanours in the event of having contact with such persons, the court may impose a contact prohibition and exclusion order of up to five years.

<sup>2</sup> By means of a contact prohibition and exclusion order the court may prohibit the offender from:

- a. contacting one or more specific persons or persons in a specific group directly or via third parties, in particular by telephone, in writing or online, or employing, accommodating, educating, caring for such persons or associating with such persons in any other way;
- b. approaching a specific person or coming within a specific distance of that person's home;
- c. being present in specific locations, in particular specific streets, areas or districts.

<sup>48</sup> Amended by No I 1 of the Federal Act of 13 Dec. 2013 on Activity Prohibition Orders and Contact Prohibition and Exclusion Orders, in force since 1 Jan. 2015 (AS 2014 2055; BBl 2012 8819).

<sup>49</sup> Inserted by No I 1 of the Federal Act of 13 Dec. 2013 on Activity Prohibition Orders and Contact Prohibition and Exclusion Orders, in force since 1 Jan. 2015 (AS 2014 2055; BBl 2012 8819).

<sup>3</sup> The competent authority may use technical devices that are securely attached to the offender in order to enforce the prohibition order. These devices may in particular serve to determine the offender's location.

<sup>4</sup> The court may order probation assistance for the duration of the prohibition order.

<sup>5</sup> On application from the executive authority, it may extend limited prohibition orders by a maximum of five years in each case if this is necessary to prevent the offender from committing further felonies and misdemeanours against minors or other especially vulnerable persons.

**Art. 67c<sup>50</sup>**

c. Common provisions  
Enforcement of prohibition orders

<sup>1</sup> A prohibition order comes into effect on the day on which the judgment takes full legal effect.

<sup>2</sup> The duration of a custodial sentence or of a custodial measure (Art. 59–61 and 64) is not taken into account in determining the term of the prohibition order.

<sup>3</sup> If the offender fails to complete the probationary period successfully and if the suspended custodial sentence is executed or a recall to custody is ordered in respect of a sentence or measure, the term of the prohibition order is calculated from the day on which the offender is released on parole or granted final release or on which the sanction is revoked or remitted.

<sup>4</sup> If the offender completes the probationary period successfully, the competent authority shall decide on any modification of the conditions or term of the prohibition order under Article 67 paragraph 1 or Article 67b, or on whether the prohibition order should be revoked.

<sup>5</sup> The offender may apply to the competent authority for a modification of the conditions or term of the prohibition order, or to have the prohibition order revoked:

- a. in the case of a prohibition order under Article 67 paragraph 1 or under Article 67b: after the order has been in force for two years;
- b. in the case of a limited prohibition order under Article 67 paragraph 2: after half of the term of the prohibition order, provided the order has been in force for at least three years;
- c. in the case of a limited prohibition order under Article 67 paragraph 3 or 4: after the order has been in force for five years;

<sup>50</sup> Inserted by No I 1 of the Federal Act of 13 Dec. 2013 on Activity Prohibition Orders and Contact Prohibition and Exclusion Orders, in force since 1 Jan. 2015 (AS 2014 2055; BBl 2012 8819).

- d. in the case of a lifelong prohibition order under Article 67 paragraph 2, 3 or 4: after the order has been in force for ten years.

<sup>6</sup> If it is considered unlikely that the offender will commit any further felonies or misdemeanours by misusing an activity or by having contact with specific persons of a specific group to and the offender has provided reasonable compensation for the loss, damage or injury caused, the competent authority shall revoke the prohibition order in cases falling under paragraph 4 or 5.

<sup>7</sup> If the offender breaches an activity prohibition order or a contact prohibition and exclusion order or if he fails to comply with the associated probation assistance, or if such assistance cannot be provided or is no longer required, the competent authority shall submit a report to the court or the executive authority. The court or the executive authority may revoke or make a new order for probation assistance.

<sup>8</sup> If the offender fails to comply with the probation assistance during a probationary period, Article 95 paragraphs 4 and 5 apply.

<sup>9</sup> If the offender breaches an activity prohibition order or a contact prohibition and exclusion order during a probationary period, Article 294 and the provisions on revoking a suspended sentence or the suspended part of a sentence and on a recall to custody in respect of a sentence or measure apply.

**Art. 67<sup>d</sup>**<sup>51</sup>

Modification of a prohibition order or subsequent imposition of a prohibition order

<sup>1</sup> If it becomes apparent during the term of an activity prohibition order or a contact prohibition and exclusion order that in the offender's case an extension of the prohibition order or an additional such prohibition order is required, the court may on application from the executive authority extend the prohibition order or impose an additional prohibition order.

<sup>2</sup> If it becomes apparent during a custodial sentence or a custodial measure that in the offender's case a prohibition order under Article 67 paragraph 1 or 2 or under Article 67<sup>b</sup> is required, the court may impose this prohibition order on application from the executive authority.

**Art. 67<sup>e</sup>**<sup>52</sup>

3. Disqualification from driving

If the offender has used a motor vehicle in order to commit a felony or misdemeanour and where there is a risk of re-offending, the court, in addition to imposing a sentence or measure under Articles 59–64, may

<sup>51</sup> Inserted by No 11 of the Federal Act of 13 Dec. 2013 on Activity Prohibition Orders and Contact Prohibition and Exclusion Orders, in force since 1 Jan. 2015 (AS 2014 2055; BBl 2012 8819).

<sup>52</sup> Originally: Art. 67<sup>b</sup>.

order that the offender forfeit his provisional or full driving licence for a period of between one month and five years.

### Art. 68

4. Publication of the judgment

<sup>1</sup> If publication of a criminal judgment is required in the public interest, or in the interests of the person harmed or of the complainant, the court shall order publication at the expense of the offender.

<sup>2</sup> If publication of an acquittal or of a ruling of the prosecution service abandoning proceedings is required in the public interest, or in the interests of the acquitted person or former suspect, the court shall order publication at State expense or at the expense of the complainant.

<sup>3</sup> Publication is made in the interests of the person harmed, complainant, acquitted person or former suspect only if such persons so request.

<sup>4</sup> The court decides on the form and extent of publication.

### Art. 69

5. Forfeiture  
a. Forfeiture of dangerous objects

<sup>1</sup> The court shall, irrespective of the criminal liability of any person, order the forfeiture of objects that have been used or were intended to be used for the commission of an offence or that have been produced as a result of the commission of an offence in the event that such objects constitute a future danger to public safety, morals or public order.

<sup>2</sup> The court may order that the objects forfeited be rendered unusable or be destroyed.

### Art. 70

b. Forfeiture of assets  
Principles

<sup>1</sup> The court shall order the forfeiture of assets that have been acquired through the commission of an offence or that are intended to be used in the commission of an offence or as payment therefor, unless the assets are passed on to the person harmed for the purpose of restoring the prior lawful position.

<sup>2</sup> Forfeiture is not permitted if a third party has acquired the assets in ignorance of the grounds for forfeiture, provided he has paid a consideration of equal value therefor or forfeiture would cause him to endure disproportionate hardship.

<sup>3</sup> The right to order forfeiture is limited to seven years; if, however, the prosecution of the offence is subject to a longer limitation period, this period also applies to the right to order forfeiture.

<sup>4</sup> Official notice must be given of forfeiture. The rights of persons harmed or third parties expire five years after the date on which official notice is given.

<sup>5</sup> If the amount of the assets to be forfeited cannot be ascertained, or may be ascertained only by incurring a disproportionate level of trouble and expense, the court may make an estimate.

### Art. 71

Equivalent claim <sup>1</sup> If the assets subject to forfeiture are no longer available, the court may uphold a claim for compensation by the State in respect of a sum of equivalent value, which claim may be enforced against a third party only if he is not excluded by Article 70 paragraph 2.

<sup>2</sup> The court may dismiss an equivalent claim in its entirety or in part if the claim is likely to be unrecoverable or if the claim would seriously hinder the rehabilitation of the person concerned.

<sup>3</sup> The investigating authority may seize assets of the person concerned with a view to the enforcement of an equivalent claim. Such seizure does not accord the State preferential rights in the enforcement of the equivalent claim.

### Art. 72

Forfeiture of assets of a criminal organisation

The court shall order the forfeiture of all assets that are subject to the power of disposal of a criminal organisation. In the case of the assets of a person who participates in or supports a criminal organisation (Art. 260<sup>ter</sup>), it is presumed that the assets are subject to the power of disposal of the organisation until the contrary is proven.

### Art. 73

6. Use for the benefit of the person harmed

<sup>1</sup> If as a result of a felony or misdemeanour a person has suffered harm and is not entitled to benefits under an insurance policy, and if it is anticipated that the offender will not pay damages or satisfaction, the court shall award the person harmed, at his request, a sum of money up to the amount of damages or satisfaction set by a court or agreed in a settlement with the person harmed and obtained from:

- a. the monetary penalty or fine paid by the offender;
- b. objects and assets that have been forfeited, or the proceeds of their sale after deduction of expenses;
- c. compensatory claims;
- d. the amount of the good behaviour bond.

<sup>2</sup> The court may order such an award only if the person harmed assigns the corresponding element of his claim to the State.

<sup>3</sup> The cantons shall provide a simple and quick procedure for cases where their courts are not entitled to make an award of this nature in a criminal judgment.

## **Title Four: Execution of Custodial Sentences and Custodial Measures**

### **Art. 74**

#### 1. Principles

The human dignity of the prison inmates or of the inmates of an institution for the execution of measures must be respected. Their rights may only be limited to the extent that that is required for the deprivation of their liberty and their co-existence in the penal institution.

### **Art. 75**

#### 2. Execution of custodial sentences Principles

<sup>1</sup> The execution of sentences must encourage an improvement in the social behaviour of the prison inmates, and in particular their ability to live their lives without offending again. The conditions under which sentences are executed must correspond as far as possible with those of normal life, guarantee the supervision of the prison inmates, counteract the harmful consequences of the deprivation of liberty and take appropriate account of the need to protect the general public, the institution staff and other inmates.

<sup>2</sup> ...<sup>53</sup>

<sup>3</sup> The institution rules shall provide that a sentence management plan be drawn up in consultation with the prison inmate. This plan in particular contains details of the supervision offered, the opportunities to work and receive basic or advanced training, making reparation, relations with the outside world and preparations for release.

<sup>4</sup> The prison inmate must actively cooperate in resocialisation efforts and the preparations for release.

<sup>5</sup> Account is taken of the gender-specific concerns and needs of the prison inmates.

<sup>6</sup> If the prison inmate is released on parole or granted final release and it subsequently comes to light that on his release he was subject to another executable judgment imposing a custodial sentence, execution of that custodial sentence is waived if:

- a. it was not executed concurrently with the other custodial sentence for a reason within the control of the executive authorities;
- b. the prison inmate was able to assume in good faith that on his release he was not subject to another executable judgment imposing a custodial sentence; and
- c. the reintegration of the prison inmates would be prejudiced.

<sup>53</sup> Repealed by Annex 1 No II 8 of the Criminal Procedure Code of 5 Oct. 2007, with effect from 1 Jan. 2011 (AS 2010 1881; BBl 2006 1085).

**Art. 75a**<sup>54</sup>

Special security measures

<sup>1</sup> The Commission under Article 62d paragraph 2 shall with a view to a transfer to an open penal institution and the authorisation of a relaxation in the execution of the sentence assess the danger to the community of the offender if:

- a. he has committed a felony in terms of Article 64 paragraph 1; and
- b. the executive authority cannot satisfactorily answer the question of whether he is a danger to other prison inmates.

<sup>2</sup> Relaxation of the execution of the sentence involves easing the regime for the deprivation of liberty, in particular by means of a transfer to an open institution, the granting of release on temporary licence, the authorisation of day release employment or of external accommodation and the granting of parole.

<sup>3</sup> Danger to the community is assumed if there is a risk that the prison inmate will abscond and commit a further offence that severely prejudices the physical, psychological or sexual integrity of another person.

**Art. 76**

Place of execution

<sup>1</sup> Custodial sentences are executed in a secure or open penal institution.

<sup>2</sup> The prison inmate shall be admitted to a secure penal institution or to the secure section of an open penal institution if there is a risk that that he will abscond or it is expected that he will commit further offences.

**Art. 77**

Normal execution

The prison inmate normally spends his working, rest and leisure time in the institution.

**Art. 77a**

Day release employment and external accommodation

<sup>1</sup> The custodial sentence is executed in the form of day release employment if the prison inmate has served part of the custodial sentence, normally a minimum one half, and it is not expected that he will abscond or commit further offences.

<sup>2</sup> In day release employment, the prison inmate works outside the institution and spends his rest and leisure time in the institution. The change to day release employment normally takes place following an appropriate period spent in an open institution or the open section of a

<sup>54</sup> Amended by No I of the Federal Act of 24 March 2006 (Revision of the Law on Sanctions and the Register of Convictions), in force since 1 Jan. 2007 (AS 2006 3539 3544; BBl 2005 4689).



secure institution. Work outside the institution may also include housework and caring for children.

<sup>3</sup> If the prison inmate proves himself to be of good behaviour in day release employment, the further execution of the sentence takes the form of external accommodation and day release employment. Here the prison inmate lives and works outside the institution, but remains under the supervision of the executive authority.

#### **Art. 77b**

Semi-detention

A custodial sentence of from six months to one year is executed in the form of semi-detention if it is not expected that the prison inmate will abscond or commit further offences. The prison inmate continues his work or education and training outside the institution and spends his rest and leisure time in the institution. The supervision of the offender required for the duration of the period of execution must be guaranteed.

#### **Art. 78**

Solitary confinement

Solitary confinement in the form of uninterrupted separation from other prison inmates may only be ordered:

- a. for a maximum of one week at the start of the sentence in order to initiate the execution of the sentence;
- b. for the protection of the prison inmate or of third parties;
- c. as a disciplinary sanction.

#### **Art. 79**

Form of execution of short custodial sentences

<sup>1</sup> Custodial sentences of up to six months and sentences of which less than six months remains after account is taken of pre-trial detention are normally executed in the form of semi-detention.

<sup>2</sup> Custodial sentences not exceeding four weeks may on request be served on a daily basis. The sentence is divided into several instalments that are served on days when the offender is not working or is on holiday.

<sup>3</sup> Semi-detention and sentences served on a daily basis may also be executed in the special section of a pre-trial detention institution.

#### **Art. 80**

Other forms of sentence execution

<sup>1</sup> A departure from the rules governing the execution of sentences in favour of the prison inmates may be permitted:

- a. if the state of health of the prison inmates so requires;
- b. in the event of pregnancy, childbirth and for the time immediately after childbirth;

- c. to enable the mother and infant to be accommodated together, provided this is also in the interests of the child.

<sup>2</sup> If the sentence is not served in a penal institution, but in another appropriate institution, the prison inmate is subject to the regulations of that institution unless the executive authority orders otherwise.

### **Art. 81**

Work

<sup>1</sup> The prison inmate is obliged to work. Wherever possible, the work should be appropriate to his skills, education and training and his interests.

<sup>2</sup> If he consents to do so, the prison inmate may work for a private employer.

### **Art. 82**

Basic and advanced training

Where he shows the required aptitude and the possibility exists, the prison inmate is given the opportunity to undergo basic and advanced training appropriate to his skills.

### **Art. 83**

Wages

<sup>1</sup> The prison inmate receives a wage for his work based on his performance and according to the circumstances.

<sup>2</sup> The prison inmate may freely dispose of only part of his wage while serving his sentence. The remaining part is withheld until the inmate has been released. The wage may neither be pledged, seized nor included in an insolvent estate. Any assignment or pledge of the wage is null and void.

<sup>3</sup> If the prison inmate participates in basic or advanced training instead of work in accordance with his sentence management plan, he receives appropriate remuneration.

### **Art. 84**

Relations with the outside world

<sup>1</sup> The prison inmate has the right to receive visitors and to cultivate contacts with persons outside the institution. Contact with close relatives and friends shall be facilitated.

<sup>2</sup> Contact may be monitored and for the preservation of order and security in the penal institution it may be restricted or prohibited. The supervision of visits is not permitted without the knowledge of those concerned. The foregoing does not apply to procedural measures in order to secure evidence for the purposes of a prosecution.

<sup>3</sup> Clerics, doctors, attorneys, notaries and guardians as well as persons with comparable duties may be permitted to communicate freely with the prison inmates subject to the general institution rules.

<sup>4</sup> Contact with defence attorneys must be permitted. Visits from the defence attorney may be supervised but conversations may not be listened in on. Inspecting the content of correspondence and attorneys' documents is not permitted. Contact with attorneys may be prohibited by the competent authority in the event of abuse.

<sup>5</sup> Communications with the supervisory authorities may not be monitored.

<sup>6</sup> The prison inmate shall be granted release on temporary licence to an appropriate extent in order to cultivate relations with the outside world, prepare for his release or where there are special circumstances, provided his conduct in custody does not preclude this and there is no risk that he will abscond or commit further offences.

<sup>6bis</sup> Offenders subject to indefinite incarceration are not granted release on temporary licence or other relaxations of the execution of the sentence during the sentence served prior to incarceration.<sup>55</sup>

<sup>7</sup> Article 36 of the Vienna Convention of 24 April 1963<sup>56</sup> on Consular Relations and other regulations under international law on visits and correspondence that are binding on Switzerland are reserved.

### Art. 85

Searches and inspections

<sup>1</sup> The personal effects and the accommodation of the prison inmate may be searched in the interests of maintaining order and security in the penal institution.

<sup>2</sup> A prison inmate who is suspected of concealing unpermitted articles about his person or in his body, may be subjected to a body search. The search must be conducted by a person of the same gender. If the removal of clothing is required, this must be carried out in the absence of other prison inmates. Searches of body cavities must be carried out by a doctor or other medically qualified staff.

### Art. 86

Parole  
a. Granting of parole

<sup>1</sup> If the prison inmate has served two thirds of his sentence, provided this amounts to at least three months, he shall be released on parole by the competent authority if this is justified by his conduct while in custody and it is not expected that he will commit further felonies or misdemeanours.

<sup>2</sup> The competent authority shall assess ex officio whether the inmate may be released on parole. It shall obtain a report from the institution board. The prison inmate shall be granted a hearing.

<sup>55</sup> Inserted by No I of the Federal Act of 21 Dec. 2007 (Indefinite Incarceration of Extremely Dangerous Offenders), in force since 1 Aug. 2008 (AS **2008** 2961 2964; BBl **2006** 889).

<sup>56</sup> SR **0.191.02**

<sup>3</sup> If parole is refused, the competent authority must reassess the question of whether parole may be granted at least once each year.

<sup>4</sup> If the prison inmate has served half of his sentence, provided this amounts to at least three months, he may be released on parole by way of exception, if exceptional personal circumstances justify this.

<sup>5</sup> In the case of persons serving a life sentence, parole under paragraph 1 is possible at the earliest after 15 years, and under paragraph 4 at the earliest after ten years.

### **Art. 87**

b. Probationary period

<sup>1</sup> A person released on parole is made subject to a probationary period of a duration that corresponds to the remainder of his sentence. The period however amounts to at least one year and no more than five years.

<sup>2</sup> The executive authority shall normally order probation assistance for the duration of the probationary period. It may impose conduct orders on the person released on parole.

<sup>3</sup> If parole is granted to an inmate serving a custodial sentence for an offence mentioned in Article 64 paragraph 1, and if on expiry of the probationary period a continuation of the probation assistance or the conduct orders appear to be required in order to reduce the risk of further offences of this type being committed, the court may at the request of the executive authority extend the probation assistance or the conduct orders in each case by one to five years or impose a new conduct order for this period. A recall to custody in accordance with Article 95 paragraph 5 is not possible in such cases.

### **Art. 88**

c. Successful completion of probation

If the person released on parole is of good behaviour throughout the probationary period, he is granted final release.

### **Art. 89**

d. Breach of probation

<sup>1</sup> If a person released on parole commits a felony or misdemeanour during the probationary period, the court judging the new offence shall order his recall to custody.

<sup>2</sup> If, despite the commission of a felony or misdemeanour during the probationary period, it is not expected that the offender will commit further offences, the court shall dispense with a recall to custody. It may admonish the offender and extend the probationary period by no more than half of the period originally fixed by the competent authority. If the extension is ordered after the expiry of the original probationary period, it begins on the day on which it is ordered. The provisions on probation assistance and conduct orders apply (Art. 93–95).

<sup>3</sup> If a person released on parole fails to comply with the conditions of probation assistance or disregards the conduct orders, Article 95 paragraphs 3–5 applies.

<sup>4</sup> A recall to custody may not be ordered if three years have elapsed since the expiry of the probationary period.

<sup>5</sup> Any period of pre-trial detention that the offender has served during the recall to custody proceedings are taken into account in the remainder of his sentence.

<sup>6</sup> If the requirements for an unsuspended custodial sentence are fulfilled due to the new offence and if this coincides with the remainder of the sentence that must be executed by the recall to custody, the court shall impose a cumulative sentence in application of Article 49 a. The rules on parole again apply to this sentence. If only the remainder of the sentence is executed, Article 86 paragraphs 1–4 applies.

<sup>7</sup> If the remainder of a sentence that must be executed in accordance with a decision on recall to custody coincides with the execution of a measure under Articles 59–61, Article 57 paragraphs 2 and 3 applies.

### Art. 90

#### 3. Execution of measures

<sup>1</sup> A person subject to the execution of a measure under Articles 59–61, may only be accommodated without interruption separately from the other inmates of an institution for the execution of measures if this is essential:

- a. as a temporary therapeutic measure;
- b. for the protection of other inmates of the institution or of third parties;
- c. as a disciplinary sanction.

<sup>2</sup> At the start of the execution of the measure, a sentence management plan is drawn up in consultation with the inmate or his legal representative. This includes in particular details of the treatment of the inmate's mental disorder, dependence or developmental disorder and on measures to prevent the endangerment of others.

<sup>2bis</sup> Measures under Articles 59–61 and 64 may be executed in the form of external accommodation and day release employment if there is a justified opinion that this will significantly contribute to the aim of the measure being achieved, and if there is no risk that the inmate will abscond or will commit further offences. Article 77a paragraphs 2 and 3 applies by analogy.<sup>57</sup>

<sup>57</sup> Inserted by No I of the Federal Act of 24 March 2006 (Revision of the Law on Sanctions and the Register of Convictions), in force since 1 Jan. 2007 (AS 2006 3539 3544; BBl 2005 4689).

<sup>3</sup> If the inmate is able to work, he is required to work to the extent that his in-patient treatment or care requires or permits. Articles 81–83 apply in an analogous manner.

<sup>4</sup> Article 84 applies by analogy to the relations of the inmates of an institution for the execution of measures with the outside world, unless additional restrictions are required for reasons relating to the in-patient treatment.

<sup>4bis</sup> Article 75a applies by analogy to admission to an open institution and to the authorisation of a relaxation in the measures regime.<sup>58</sup>

<sup>4ter</sup> During lifelong incarceration, it is not permitted to authorise release on temporary licence or a relaxation of the sentence regime.<sup>59</sup>

<sup>5</sup> Article 85 applies by analogy to searches and inspections.

### Art. 91

4. General provisions  
Disciplinary regulations

<sup>1</sup> Disciplinary sanctions may be imposed on prison inmates and inmates of an institution for the execution of measures who are guilty of infringing the institution regulations or the sentence management plan.

<sup>2</sup> Disciplinary sanctions are:

- a. a reprimand;
- b. the temporary withdrawal or restriction of the right to use money, participate in recreational activities or have external contacts;
- c.<sup>60</sup> a fine; and
- d.<sup>61</sup> solitary confinement as an additional restriction of liberty.

<sup>3</sup> The cantons shall enact disciplinary regulations applicable to the execution of sentences and measures. The regulations detail the disciplinary offences, the sanctions and how they are fixed, and regulate the procedure.

### Art. 92

Interruption of execution

The execution of sentences and measures may be interrupted for good cause.

<sup>58</sup> Inserted by No I of the Federal Act of 24 March 2006 (Revision of the Law on Sanctions and the Register of Convictions), in force since 1 Jan. 2007 (AS **2006** 3539 3544; BBl **2005** 4689).

<sup>59</sup> Inserted by No I of the Federal Act of 21 Dec. 2007 (Indefinite Incarceration of Extremely Dangerous Offenders), in force since 1 Aug. 2008 (AS **2008** 2961 2964; BBl **2006** 889).

<sup>60</sup> Inserted by No I of the Federal Act of 24 March 2006 (Revision of the Law on Sanctions and the Register of Convictions), in force since 1 Jan. 2007 (AS **2006** 3539 3544; BBl **2005** 4689).

<sup>61</sup> Originally let. c.

Right to  
information**Art. 92a<sup>62</sup>**

<sup>1</sup> Victims and relatives of victims as defined in Article 1 paragraphs 1 and 2 of the Victim Support Act of 23 March 2007<sup>63</sup> (VSA) and third parties who have a legitimate interest may make a written request to the executive authority for the following information:

- a. the time of execution of the sentence or measure imposed on the offender, institution responsible for execution, the form of execution if it differs from normal, interruptions and relaxations in the sentence or measure, (Art. 75a para. 2), parole and final release, and the reactivation of the execution of a sentence or measure;
- b. immediate notification of the escape of an offender and of his or her recapture.

<sup>2</sup> The executive authority decides on the request after consulting the offender.

<sup>3</sup> It may refuse to provide the information or revoke a previous decision to provide information only if the offender's legitimate interests justify this.

<sup>4</sup> If the executive authority approves a request, it shall advise the person entitled to information of the confidentiality of the information disclosed. Persons entitled to victim support under the VSA are not required to maintain confidentiality in their dealings with a counsellor at a counselling service under Article 9 VSA.

## **Title Five: Probation Assistance, Conduct Orders and Voluntary Social Supervision**

**Art. 93**Probation  
assistance

<sup>1</sup> Probation assistance is intended to protect the probationers from reoffending and enable their social integration. The competent authority for probation assistance provides and arranges for the required social and specialist services.

<sup>2</sup> Persons working in the field of probation assistance must treat matters that come to their knowledge in the course of their work as confidential. They may disclose information on the personal circumstances of a probationer to third parties only if the probationer or the person in charge of probation assistance has consented in writing.

<sup>62</sup> Inserted by No I 1 of the Federal Act of 26 Sept. 2014 on Victims' Right to Information, in force since 1 Jan. 2016 (AS 2015 1623; BBl 2014 889 913). See also the transitional provision to this amendment at the end of the text.

<sup>63</sup> SR 312.5

<sup>3</sup> The authorities for the administration of criminal justice may obtain a report on the probationer from the competent authority for probation assistance.

#### **Art. 94**

Conduct orders

The conduct orders that the court or the executive authority may impose on the offender for duration of the probationary period relate in particular to the practice of a profession, place of residence, driving motor vehicles, reparation and medical and psychological therapy.

#### **Art. 95**

General provisions

<sup>1</sup> Prior to making their decision on probation assistance and conduct orders, the court and the executive authority may obtain a report from the authority responsible for supervising the probation assistance and the conduct orders or for enforcing activity prohibition orders or contact prohibition and exclusion orders.<sup>64</sup> The person concerned may state his opinion on the report. Differences of opinion must be recorded in the report.

<sup>2</sup> The ordering of probation assistance and conduct orders must be noted and justified in the judgment or the decision.

<sup>3</sup> If the offender fails to comply with the conditions of probation assistance or disregards the conduct orders or if the probation assistance or conduct orders cannot be implemented or are no longer required, the competent authority shall submit a report to the court or the authorities responsible for the execution of sentences and measures.

<sup>4</sup> The court or the executive authority may in the cases mentioned in paragraph 3:

- a. extend the probationary period by one half;
- b. revoke or reorganise the probation assistance;
- c. modify or revoke the conduct orders or issue new conduct orders.

<sup>5</sup> The court may in the cases in paragraph 3 revoke the suspended sentence or order the recall to custody for the execution of the sentence or measure if it is seriously expected that the offender will commit further offences.

<sup>64</sup> Amended by No I 1 of the Federal Act of 13 Dec. 2013 on Activity Prohibition Orders and Contact Prohibition and Exclusion Orders, in force since 1 Jan. 2015 (AS 2014 2055; BBl 2012 8819).



**Art. 96**

Social assistance The cantons shall guarantee the provision of social assistance for the duration of the criminal proceedings and of the execution of the sentence which may be claimed voluntarily.

**Title Six: Limitation****Art. 97**

1. Limitation of  
prosecution  
rights  
Periods

<sup>1</sup> The right to prosecute is subject to a time limit of:

- a. 30 years if the offence carries a custodial sentence of life;
- b. 15 years if the offence carries a custodial sentence of more than three years;
- c. 10 years if the offence carries a custodial sentence of three years.
- d. seven years if the offence carries a different penalty.<sup>65</sup>

<sup>2</sup> In the case of sexual acts with children (Art. 187) and dependent persons (Art. 188) and in the case of offences under Articles 111, 113, 122, 124, 182, 189–191, 195 and 197 paragraph 3 involving a child under 16, the limitation period in each case runs at least until the victim has attained the age of 25.<sup>66</sup>

<sup>3</sup> If a judgment is issued by a court of first instance before expiry of the limitation period, the time limit no longer applies.

<sup>4</sup> The limitation of the right to prosecute in the case of sexual acts with children (Art. 187) and dependent minors (Art. 188) and offences under Articles 111–113, 122, 182, 189–191 and 195 involving a child under 16 is governed by paragraphs 1–3 if the offence was committed before the amendment of 5 October 2001<sup>67</sup> came into force and the limitation of the right to prosecute had not yet taken effect.<sup>68</sup>

**Art. 98**

Commencement The limitation period begins:

- a. on the day on which the offender committed the offence;

<sup>65</sup> Amended by No I 1 of the Federal Act of 21 June 2013 (Extension of Prosecution Time Limits), in force since 1 Jan. 2014 (AS **2013** 4417; BBl **2012** 9253).

<sup>66</sup> Amended by Annex No 1 of the Federal Decree of 27 Sept. 2013 (Lanzarote Convention), in force since 1 July 2014 (AS **2014** 1159; BBl **2012** 7571).

<sup>67</sup> AS **2002** 2993

<sup>68</sup> Amended by Art. 2 No 1 of the Federal Decree of 24 March 2006 on the Approval and Implementation of the Optional Protocol of 25 May 2000 to the Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography, in force since 1 Dec. 2006 (AS **2006** 5437 5440; BBl **2005** 2807).

- b. on the day on which the final act was carried out if the offence consists of a series of acts carried out at different times;
- c. on the day on which the criminal conduct ceases if the criminal conduct continues over a period of time.

### Art. 99

2. Limitation period for the execution of a sentence  
Periods

- <sup>1</sup> The right to execute a sentence is subject to a limitation period of:
- a. 30 years if a custodial sentence of life has been imposed;
  - b. 25 years if a custodial sentence of ten or more years has been imposed;
  - c. 20 years if a custodial sentence at least five and less than ten years has been imposed;
  - d. 15 years, if a custodial sentence of more than one and less than five years has been imposed;
  - e. five years if any other sentence has been imposed.
- <sup>2</sup> The limitation period for a custodial sentence is extended:
- a. by the time that the offender spends serving without interruption that or any other custodial sentence or measure that is executed immediately beforehand;
  - b. by the length of the probationary period in the case of release on parole.

### Art. 100

Commencement

The limitation period begins on the day on which the judgment becomes legally enforceable, and in the case of suspended sentences or the execution of a measure, on the day on which the execution of the penalty is ordered.

### Art. 101

3. Exclusion from limitation

- <sup>1</sup> There is no limitation of the right to prosecute the offences of:
- a. genocide (Art. 264);
  - b. crimes against humanity (Art. 264a para. 1 and 2);
  - c. war crimes (Art. 264c para. 1–3, 264d para. 1 and 2, 264e para. 1 and 2, 264f, 264g para. 1 and 2 and 264h);
  - d. felonies that have caused or threatened to cause danger to life and limb to a large number of persons as a method of extortion or duress, in particular through the use of means of mass destruction, the causing of catastrophes, or as part of a hostage taking offence.

e.<sup>69</sup> sexual acts with children (Art. 187 No 1), indecent assault (Art. 189), rape (Art. 190), sexual acts with persons incapable of judgement or resistance (Art. 191), sexual acts with persons in institutional care, prisoners and persons on remand (Art. 192 para. 1) and exploitation of a person in a position of need or dependency (Art. 193 para. 1) if committed against children under the age of 12.<sup>70</sup>

<sup>2</sup> If the right to prosecute the offence would have been time barred had Articles 97 and 98 applied, the court may in its discretion impose a more lenient penalty.

<sup>3</sup> Paragraphs 1 letters a, c and d and paragraph 2 apply if the right to prosecute or execute the sentence had not been time barred by 1 January 1983 in accordance with the law applicable until that point in time. Paragraph 1 letter b applies if the right to prosecute or execute the penalty is not time barred under the previous law when the Amendment of 18 June 2010 to this Code comes into force. Paragraph 1 letter e applies if the prosecution or the sentence is not time barred by 30 November 2008 in accordance with the law applicable until that point in time.<sup>7172</sup>

## Title Seven: Corporate Criminal Liability

### Art. 102

Liability under  
the criminal law

<sup>1</sup> If a felony or misdemeanour is committed in an undertaking in the exercise of commercial activities in accordance with the objects of the undertaking and if it is not possible to attribute this act to any specific natural person due to the inadequate organisation of the undertaking, then the felony or misdemeanour is attributed to the undertaking. In such cases, the undertaking is liable to a fine not exceeding 5 million francs.

<sup>2</sup> If the offence committed falls under Articles 260<sup>ter</sup>, 260<sup>quinquies</sup>, 305<sup>bis</sup>, 322<sup>ter</sup>, 322<sup>quinquies</sup>, 322<sup>septies</sup> paragraph 1 or 322<sup>octies</sup>, the undertaking is penalised irrespective of the criminal liability of any natural

<sup>69</sup> Inserted by No I 1 of the Federal Act of 15 June 2012 (Non-applicability of Limitation to Sexual or Pornography Offences against Prepubescent Children), in force since 1 Jan. 2013 (AS **2012** 5951; BBl **2011** 5977).

<sup>70</sup> Amended by No I 1 of the Federal Act of 18 June 2010 on the Amendment of Federal Legislation in Implementation of the Rome Statue of the International Criminal Court, in force since 1 Jan. 2011 (AS **2010** 4963; BBl **2008** 3863).

<sup>71</sup> Third sentence inserted by No I 1 of the Federal Act of 15 June 2012 (Non-applicability of Limitation to Sexual or Pornography Offences against Prepubescent Children), in force since 1 Jan. 2013 (AS **2012** 5951; BBl **2011** 5977).

<sup>72</sup> Amended by No I 1 of the Federal Act of 18 June 2010 on the Amendment of Federal Legislation in Implementation of the Rome Statue of the International Criminal Court, in force since 1 Jan. 2011 (AS **2010** 4963; BBl **2008** 3863).

persons, provided the undertaking has failed to take all the reasonable organisational measures that are required in order to prevent such an offence.<sup>73</sup>

<sup>3</sup> The court assesses the fine in particular in accordance with the seriousness of the offence, the seriousness of the organisational inadequacies and of the loss or damage caused, and based on the economic ability of the undertaking to pay the fine.

<sup>4</sup> Undertakings within the meaning of this title are:

- a. any legal entity under private law;
- b. any legal entity under public law with exception of local authorities;
- c. companies;
- d. sole proprietorships<sup>74</sup>.

**Art. 102a**<sup>75</sup>

## Part Two: Contraventions

### Art. 103

Definition

Contraventions are acts that are punishable by a fine.

### Art. 104

Application of the provisions of the First Part

The provisions of the First Part also apply to contraventions, subject to the following changes.

### Art. 105

No or conditional applicability

<sup>1</sup> The provisions on suspended and partially suspended sentences (Art. 42 and 43) and on corporate criminal liability (Art. 102 and 102a<sup>76</sup>) do not apply to contraventions.

<sup>2</sup> Attempt and complicity are offences only in the cases expressly mentioned in this Code.

<sup>3</sup> Custodial measures (Art. 59–61 and 64), activity prohibition orders (Art. 67), contact prohibition and exclusion orders (Art. 67b) and the

<sup>73</sup> Amended by No I of the Federal Act of 25 Sept. 2015 (Criminal Law on Corruption), in force since 1 July 2016 (AS 2016 1287; BBl 2014 3591).

<sup>74</sup> Terminological footnote relevant to German only.

<sup>75</sup> Repealed by Annex 1 No II 8 of the Criminal Procedure Code of 5 Oct. 2007, with effect from 1 Jan. 2011 (AS 2010 1881; BBl 2006 1085).

<sup>76</sup> This Article has been repealed. See now: Art. 112 of the Criminal Procedure Code of 5 Oct. 2007 (SR 312.0).

publication of the judgment (Art. 68) are permitted only in the cases expressly mentioned in this Code.<sup>77</sup>

### **Art. 106**

- Fines
- <sup>1</sup> Unless the law provides otherwise, the maximum amount of a fine is 10,000 francs.
- <sup>2</sup> In its judgment, the court shall impose an alternative custodial sentence of at least one day and a maximum of three months for the event that the fine is wilfully not paid.
- <sup>3</sup> The court determines the fine and the alternative custodial sentence based on the offender's circumstances so that the offender receives the sentence that is commensurate with his culpable conduct.
- <sup>4</sup> On retrospective payment of the fine, the offender is released from the alternative custodial sentence.
- <sup>5</sup> Articles 35 and 36 paragraphs 2–5 apply by analogy to execution and conversion.

### **Art. 107**

- Community service
- <sup>1</sup> The court may with the consent of the offender order up to 360 hours of community service instead of the fine imposed.
- <sup>2</sup> The executive authority shall provide for a period of no more than one year within which the community service must be performed.
- <sup>3</sup> If the offender fails to perform the community service despite being warned of the consequences, the court shall order that the fine be enforced.

### **Art. 108**<sup>78</sup>

### **Art. 109**

- Limitation
- The right to prosecute and to execute a sentence is subject to a limitation period of three years.

<sup>77</sup> Amended by No I 1 of the Federal Act of 13 Dec. 2013 on Activity Prohibition Orders and Contact Prohibition and Exclusion Orders, in force since 1 Jan. 2015 (AS **2014** 2055; BBl **2012** 8819).

<sup>78</sup> This Article contains no provisions for technical drafting reasons. Corrected by the Drafting Committee of the Federal Assembly (Art. 58 para. 1 ParlA; SR **171.10**).

## Part Three: Terms and Definitions

### Art. 110

<sup>1</sup> *Close relatives* of a person are his or her spouse, registered partner, relatives of direct lineage, full siblings and half siblings, adoptive parents, adoptive siblings and adoptive children.<sup>79</sup>

<sup>2</sup> *Family members* are persons who live in the same household.

<sup>3</sup> *Public officials* are the officials and employees of a public administrative authority or of an authority for the administration of justice as well as persons who hold office temporarily or are employed temporarily by a public administrative authority or by an authority for the administration of justice or who carry out official functions temporarily.

<sup>3bis</sup> If a provision refers to the term "property", it also applies to animals.<sup>80</sup>

<sup>4</sup> *Official documents* are written works intended and designed to prove a fact of legal relevance, or indications that are intended to prove such a fact. Recordings on image and data carriers are equivalent to a written document, provided that they serve the same purpose.

<sup>5</sup> *Public deeds* are official documents issued by members of an authority, public officials and holders of public office in the exercise of official powers. Official documents that are issued in private law transactions by the management of commercial companies, state monopoly companies or other public corporations or institutions are not public official documents.

<sup>6</sup> A *day* has 24 successive hours. The month and the year are calculated according to the calendar.

<sup>7</sup> Pre-trial detention is any form of detention, pre-trial detention, preventive detention or detention pending extradition imposed in criminal proceedings.

## Book Two: Specific Provisions

### Title One: Offences against Life and Limb

#### Art. 111

Any person who kills a person intentionally, but without fulfilling the special requirements of the following articles, is liable to a custodial sentence<sup>81</sup> of not less than five years.

1. Homicide  
Intentional  
homicide

<sup>79</sup> Amended by Art. 37 No 1 of the Same-Sex Partnership Act of 18 June 2004, in force since 1 Jan. 2007 (AS 2005 5685; BBl 2003 1288).

<sup>80</sup> AS 2006 3583

- Art. 112**<sup>82</sup>
- 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.<sup>83</sup>
- Art. 113**<sup>84</sup>
- 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.<sup>85</sup>
- Art. 114**<sup>86</sup>
- Homicide at the request of the victim Any person who for commendable motives, and in particular out of compassion for the victim, causes the death of a person at that person's own genuine and insistent request is liable to a custodial sentence not exceeding three years or to a monetary penalty<sup>87</sup>.
- Art. 115**
- Inciting and assisting suicide Any person who for selfish motives incites or assists another to commit or attempt to commit suicide is, if that other person thereafter commits or attempts to commit suicide, liable to a custodial sentence not exceeding five years or to a monetary penalty<sup>88</sup>.
- 81 Term in accordance with No II 1 para. 1 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979). This amendment has been taken into account throughout the Second Book.
- 82 Amended by No I of the Federal Act of 23 June 1989, in force since 1 Jan. 1990 (AS **1989** 2449 2456; BBl **1985** II 1009).
- 83 Penalties revised by No II 1 para. 16 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979).
- 84 Amended by No I of the Federal Act of 23 June 1989, in force since 1 Jan. 1990 (AS **1989** 2449 2456; BBl **1985** II 1009).
- 85 Penalties revised by No II 1 para. 16 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979).
- 86 Amended by No I of the Federal Act of 23 June 1989, in force since 1 Jan. 1990 (AS **1989** 2449 2456; BBl **1985** II 1009).
- 87 Term in accordance with No II 1 para. 2 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979). This amendment has been taken into account throughout the Second Book.
- 88 Term in accordance with No II 1 para. 3 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979). This amendment has been taken into account throughout the Second Book.

**Art. 116<sup>89</sup>**

Infanticide

If a mother kills her child either during delivery or while she is under the influence of the effects of giving birth, she is liable to a custodial sentence not exceeding three years or to a monetary penalty.

**Art. 117**Homicide  
through negli-  
gence

Any person who causes the death of another through negligence or recklessness is liable to a custodial sentence not exceeding three years or to a monetary penalty.

**Art. 118<sup>90</sup>**2. Abortion  
Illegal abortion

<sup>1</sup> Any person who terminates a pregnancy with the consent of the pregnant woman or incites or assists a pregnant woman to terminate her pregnancy without the requirements of Article 119 being fulfilled is liable to a custodial sentence not exceeding five years or to a monetary penalty.

<sup>2</sup> Any person who terminates a pregnancy without the consent of the pregnant woman is liable to a custodial sentence of from one<sup>91</sup> to ten years.

<sup>3</sup> Any woman who has her pregnancy terminated or otherwise participates in the termination of her pregnancy following the end of the twelfth week since her last period and without the requirements of Article 119 being fulfilled is liable to a custodial sentence not exceeding three years or to a monetary penalty.

<sup>4</sup> In cases falling under paragraphs 1 and 3 above, prescription takes effect after three years.<sup>92</sup>

**Art. 119<sup>93</sup>**

Legal abortion

<sup>1</sup> The termination of a pregnancy is exempt from penalty in the event that the termination is, in the judgment of a physician, necessary in order to be able to prevent the pregnant woman from sustaining serious physical injury or serious psychological distress. The risk must be greater the more advanced the pregnancy is.

<sup>89</sup> Amended by No I of the Federal Act of 23 June 1989, in force since 1 Jan. 1990 (AS **1989** 2449 2456; BBl **1985** II 1009).

<sup>90</sup> Amended by No I of the Federal Act of 23 March 2001 (Abortion), in force since 1 Oct. 2002 (AS **2002** 2989 2992; BBl **1998** 3005 5376).

<sup>91</sup> Term in accordance with No II 1 para. 4 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979). This amendment has been taken into account throughout the Second Book.

<sup>92</sup> Amended by No I of the Federal Act of 22 March 2002 (Limitation of the Right to Prosecute), in force since 1 Oct. 2002 (AS **2002** 2986 2988; BBl **2002** 2673 1649).

<sup>93</sup> Amended by No I of the Federal Act of 23 March 2001 (Abortion), in force since 1 Oct. 2002 (AS **2002** 2989 2992; BBl **1998** 3005 5376).



<sup>2</sup> The termination of a pregnancy is likewise exempt from penalty if, at the written request of a pregnant woman, who claims that she is in a state of distress, it is performed within twelve weeks of the start of the pregnant woman's last period by a physician who is licensed to practise his profession. The physician must have a detailed consultation with the woman prior to the termination and provide her with appropriate counselling.

<sup>3</sup> If the woman is incapable of judgement, the consent of her legal representative is required.

<sup>4</sup> The cantons designate the medical practices and hospitals that fulfil the requirements for the professional conduct of procedures to terminate pregnancy and for the provision of counselling.

<sup>5</sup> An abortion is reported for statistical purposes to the competent health authority, whereby the anonymity of the woman concerned is guaranteed and medical confidentiality is preserved.

#### Art. 120<sup>94</sup>

Contraventions  
by physicians

<sup>1</sup> Any physician who terminates a pregnancy in terms of Article 119 paragraph 2 and who fails, prior to the procedure:

- a. to obtain a written request from the pregnant woman;
- b. to discuss the termination in detail with the pregnant woman and to counsel her, to advise her of the risks of the procedure to her health, and to provide her with a written guide, the receipt of which she must acknowledge with her signature, that contains:
  1. a list of agencies that provide counselling free of charge,
  2. a list of associations and agencies that offer moral and material support, and
  3. information on the possibility of having the child adopted;
- c. to satisfy himself that a pregnant woman under 16 years of age has been in contact with a counselling agency specialised in dealing with young people.

is liable to a fine<sup>95</sup>.

<sup>2</sup> Any physician who fails to report the termination of a pregnancy to the competent authority in accordance with Article 119 paragraph 5 is liable to the same penalty.

<sup>94</sup> Amended by No I of the Federal Act of 23 March 2001 (Abortion), in force since 1 Oct. 2002 (AS 2002 2989 2992; BBl 1998 3005 5376).

<sup>95</sup> Term in accordance with No II 1 para. 5 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS 2006 3459 3535; BBl 1999 1979). This amendment has been taken into account throughout the Second Book.

**Art. 121**<sup>96</sup>**Art. 122**<sup>97</sup>

3. Assault  
Serious assault

Any person who intentionally inflicts a life-threatening injury on another,

any person who intentionally inflicts serious injury on the person, or on an important organ or limb of another, makes an important organ or limb unusable, makes another permanently unfit for work, infirm or mentally ill, or who disfigures the face of another badly and permanently,

any person who intentionally causes any other serious damage to the person or to the physical or mental health of another,

is liable to a custodial sentence not exceeding ten years or to a monetary penalty of not less than 180 daily penalty units.<sup>98</sup>

**Art. 123**<sup>99</sup>

Common assault

1. Any person who wilfully causes injury to the person or the health of another in any other way is liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.

In minor cases, the court may impose a reduced penalty (Art. 48a).<sup>100</sup>

2. The penalty is a custodial sentence not exceeding three years or a monetary penalty, and the offender is prosecuted ex officio,

if he uses poison, a weapon or a dangerous object,

if he commits the act on a person, and in particular on a child, who is unable to defend himself, or is under his protection or in his care.

if he is the spouse of the victim and the act was committed during the marriage or up to one year after divorce,<sup>101</sup>

if he is the registered partner of the victim and the offence was committed during the period of the registered partnership or up to a year after its dissolution,<sup>102</sup> or

<sup>96</sup> Repealed by No I of the Federal Act of 23 March 2001 (Abortion), with effect from 1 Oct. 2002 (AS **2002** 2989; BBl **1998** 3005 5376).

<sup>97</sup> Amended by No I of the Federal Act of 23 June 1989, in force since 1 Jan. 1990 (AS **1989** 2449 2456; BBl **1985** II 1009).

<sup>98</sup> Penalties revised by No II 1 para. 16 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979).

<sup>99</sup> Amended by No I of the Federal Act of 23 June 1989, in force since 1 Jan. 1990 (AS **1989** 2449 2456; BBl **1985** II 1009).

<sup>100</sup> Amended by No II 2 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979).

<sup>101</sup> Inserted by No I of the Federal Act of 3 Oct. 2003 (Prosecution of Offences within Marriage or Registered Partnerships), in force since 1 April 2004 (AS **2004** 1403 1407; BBl **2003** 1909 1937).

if he is the heterosexual or homosexual partner of the victim provided they have at any time cohabited and the act was committed at that time or up to one year after separation.<sup>103</sup>

#### Art. 124<sup>104</sup>

Female genital mutilation

<sup>1</sup> Any person who mutilates the genitals of a female person, impairs their natural function seriously and permanently or damages them in some other way is liable to a custodial sentence not exceeding ten years or to a monetary penalty of no less than 180 daily penalty units.

<sup>2</sup> Any person who has committed the offence abroad but is now in Switzerland and is not extradited is liable to the foregoing penalties. Article 7 paragraphs 4 and 5 apply.

#### Art. 125

Assault through negligence

<sup>1</sup> Any person who causes injury to the person or the health of another through negligence is liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.<sup>105</sup>

<sup>2</sup> If the injury is serious, the offender is prosecuted ex officio.

#### Art. 126

Acts of aggression

<sup>1</sup> Any person who commits acts of aggression against another that do not cause any injury to the person or health is liable on complaint to a fine.

<sup>2</sup> The offender is prosecuted ex officio if he commits the offence repeatedly:

- a. on a person under his protection or in his care, and in particular on a child;
- b. on his spouse during the marriage or up to a year after divorce; or
- b<sup>bis</sup>.<sup>106</sup> on his registered partner during the period of the registered partnership or up to a year after its dissolution; or

<sup>102</sup> Inserted by Annex No 18 of the Same-Sex Partnership Act of 18 June 2004, in force since 1 Jan. 2007 (AS **2005** 5685; BBl **2003** 1288).

<sup>103</sup> Originally para. 4. Inserted by No I of the Federal Act of 3 Oct. 2003 (Prosecution of Offences within Marriage or Registered Partnerships), in force since 1 April 2004 (AS **2004** 1403 1407; BBl **2003** 1909 1937).

<sup>104</sup> Amended by No I of the Federal Act of 30 Sept. 2011 in force since 1 July 2012 (AS **2012** 2575; BBl **2010** 5651 5677).

<sup>105</sup> Term in accordance with No II 1 para. 2 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979). This amendment has been taken into account throughout the Second Book.

<sup>106</sup> Inserted by Annex No 18 of the Same-Sex Partnership Act of 18 June 2004, in force since 1 Jan. 2007 (AS **2005** 5685; BBl **2003** 1288).

- c. on his heterosexual or homosexual partner provided they have at any time cohabited and the act was committed at that time or up to one year after separation.<sup>107</sup>

**Art. 127**<sup>108</sup>

4. Endangering  
the life or health  
of another  
Abandonment

Any person who exposes a helpless person under his protection or care to a life-threatening danger or to a serious and immediate danger to health, or abandons the person to such a danger is liable to a custodial sentence not exceeding five years or to a monetary penalty.

**Art. 128**<sup>109</sup>

Failure to offer  
aid in an  
emergency

Any person who fails to offer aid to another whom he has injured or to another who is in immediate life-threatening danger, in circumstances where the person either could reasonably have been expected to offer aid,

any person who prevents or hinders others from offering aid,

is liable to a custodial sentence not exceeding three years or to a monetary penalty.

**Art. 128**<sup>bis110</sup>

False alarm

Any person who wilfully and without good reason alerts a public or charitable security, rescue or emergency service, and in particular the police, fire or ambulance services is liable to a custodial sentence not exceeding three years or to a monetary penalty.

**Art. 129**<sup>111</sup>

Endangering life

Any person who unscrupulously places another in immediate life-threatening danger is liable to a custodial sentence not exceeding five years or to a monetary penalty.

**Art. 130–132**<sup>112</sup>

<sup>107</sup> Inserted by No I of the Federal Act of 23 June 1989 (AS **1989** 2449; BBl **1985** II 1009). Amended by No I of the Federal Act of 3 Oct. 2003 (Prosecution of Offences within Marriage or Registered Partnerships), in force since 1 April 2004 (AS **2004** 1403 1407; BBl **2003** 1909 1937).

<sup>108</sup> Amended by No I of the Federal Act of 23 June 1989, in force since 1 Jan. 1990 (AS **1989** 2449 2456; BBl **1985** II 1009).

<sup>109</sup> Amended by No I of the Federal Act of 23 June 1989, in force since 1 Jan. 1990 (AS **1989** 2449 2456; BBl **1985** II 1009).

<sup>110</sup> Inserted by No I of the Federal Act of 17 June 1994, in force since 1 Jan. 1995 (AS **1994** 2290 2307; BBl **1991** II 969).

<sup>111</sup> Amended by No I of the Federal Act of 23 June 1989, in force since 1 Jan. 1990 (AS **1989** 2449 2456; BBl **1985** II 1009).

<sup>112</sup> Repealed by No I of the Federal Act of 23 June 1989, with effect from 1 Jan. 1990 (AS **1989** 2449; BBl **1985** II 1009).

**Art. 133**<sup>113</sup>

Brawling

<sup>1</sup> Any person who participates in a brawl that results in the death of or in an assault causing injury is liable to a custodial sentence not exceeding three years or to a monetary penalty.

<sup>2</sup> A participant in a brawl who acts exclusively in self-defence or in order to separate the other participants does not commit a criminal offence.

**Art. 134**<sup>114</sup>

Attack

Any person who participates in an attack on one or more other persons which causes death or injury to a person attacked or another is liable to a custodial sentence not exceeding five years or to a monetary penalty<sup>115</sup>.

**Art. 135**<sup>116</sup>Representations  
of acts of  
violence

<sup>1</sup> Any person who produces, imports, stores, markets, promotes, exhibits, offers, shows, makes accessible or makes available sound, film or video recordings or other products in which acts of extreme violence against persons or animals are portrayed, without reasonable cultural or scientific grounds therefor, and in doing so seriously offends basic human dignity is liable to a custodial sentence not exceeding three years or to a monetary penalty.

<sup>1bis</sup> Any person who acquires, procures by electronic or any other means, or possesses the recordings or other products mentioned in paragraph 1 above, provided these portray acts of violence against persons or animals is liable to a custodial sentence not exceeding one year or to a monetary penalty<sup>117, 118</sup>

<sup>2</sup> The articles concerned are forfeited.

<sup>113</sup> Amended by No I of the Federal Act of 23 June 1989, in force since 1 Jan. 1990 (AS **1989** 2449 2456; BBl **1985** II 1009).

<sup>114</sup> Amended by No I of the Federal Act of 23 June 1989, in force since 1 Jan. 1990 (AS **1989** 2449 2456; BBl **1985** II 1009).

<sup>115</sup> Term in accordance with No II 1 para. 6 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979). This amendment has been taken into account throughout the Second Book.

<sup>116</sup> Amended by No I of the Federal Act of 23 June 1989, in force since 1 Jan. 1990 (AS **1989** 2449 2456; BBl **1985** II 1009).

<sup>117</sup> Penalties revised by No II 1 para. 16 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979).

<sup>118</sup> Inserted by No I of the Federal Act of 5 Oct. 2001 (Offences against Sexual Integrity; Prohibition of the Possession of hard-core Pornography), in force since 1 April 2002 (AS **2002** 408 409; BBl **2000** 2943).

<sup>3</sup> If the offender acts for financial gain, he is liable to a custodial sentence not exceeding three years or to a monetary penalty. The custodial sentence must be combined with a monetary penalty.<sup>119</sup>

**Art. 136**<sup>120</sup>

Administering substances capable of causing injury to children

Any person who administers or makes available for consumption to children under the age of 16 alcoholic beverages or other substances in such quantities as may endanger their health is liable to a custodial sentence not exceeding three years or to a monetary penalty.

**Title Two:**<sup>121</sup> **Offences against Property**

**Art. 137**

1. Offences against property  
Unlawful appropriation

1. Any person who for his own or for another's unlawful gain appropriates moveable property which belongs to another is liable, unless the special requirements of Articles 138-140 apply, to a custodial sentence not exceeding three years or to a monetary penalty.

2. If the offender has found the property or if the property has inadvertently come into his possession,  
if he does not act for financial gain or  
if he acts only to the detriment of a relative or family member,  
the offence is prosecuted only on complaint.

**Art. 138**

Misappropriation

1. Any person who for his own or another's unlawful gain appropriates moveable property belonging to another but entrusted to him, any person who makes unlawful use of financial assets entrusted to him for his own or another's benefit,  
is liable to a custodial sentence not exceeding five years or to a monetary penalty.

Misappropriation to the detriment of a relative or family member is prosecuted only on complaint.

2. Any person who commits the foregoing offence in his capacity as a member of a public authority, or as a public official, guardian, adviser,

<sup>119</sup> Term in accordance with No II 1 para. 7 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979). This amendment has been taken into account throughout the Second Book.

<sup>120</sup> Amended by No I of the Federal Act of 20 March 2008, in force since 1 July 2011 (**2009** 2623, AS **2011** 2559; BBl **2006** 8573 8645).

<sup>121</sup> Amended by No I of the Federal Act of 17 June 1994, in force since 1 Jan. 1995 (AS **1994** 2290 2307; BBl **1991** II 969).

professional asset manager, or in the practice of a profession or a trade or the execution of a commercial transaction for which he has been authorised by a public authority, is liable to a custodial sentence not exceeding ten years or to a monetary penalty.<sup>122</sup>

### Art. 139

Theft

1. Any person who for his own or for another's unlawful gain, appropriates moveable property belonging to another person with the object of permanently depriving the owner of it is liable to a custodial sentence not exceeding five years or to a monetary penalty.

2. The offender is liable to a custodial sentence not exceeding ten years or to a monetary penalty of not less than 90 daily penalty units<sup>123</sup> if he commits theft on a regular basis for financial gain.

3. The offender is liable to a custodial sentence not exceeding ten years or to a monetary penalty of not less than 180 daily penalty units<sup>124</sup>,

if he commits theft as a member of a group that has been formed for the purpose of carrying out repeated acts of robbery or theft,

if he carries with him a firearm or other dangerous weapon for the purpose of committing theft

or if he represents a particular danger in any other way due to the manner in which he commits theft.

4. Theft to the detriment of a relative or family member is prosecuted only on complaint.

### Art. 140

Robbery

1. Any person who commits theft by using force on another, threatening another with imminent danger to life or limb, or making another incapable of resistance is liable to a custodial sentence not exceeding ten years or to a monetary penalty of not less than 180 daily penalty units.

Any person who, when caught in the act of committing theft, commits any of the coercive acts mentioned in the foregoing paragraph in order to retain the stolen property is liable the same penalties.

<sup>122</sup> Term in accordance with No II 1 para. 8 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979). This amendment has been taken into account throughout the Second Book.

<sup>123</sup> Term in accordance with No II 1 para. 9 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979). This amendment has been taken into account throughout the Second Book.

<sup>124</sup> Term in accordance with No II 1 para. 10 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979). This amendment has been taken into account throughout the Second Book.

2. The offender is liable to a custodial sentence of not less than one year<sup>125</sup> if he carries with him a firearm or other dangerous weapon for the purpose of committing robbery.

3. The offender is liable to a custodial sentence of not less than two years,

if he commits robbery as a member of a group that has been formed for the purpose of carrying out repeated acts of robbery or theft,

or if he represents a particular danger in any other way due to the manner in which he commits robbery.

4. The penalty is a custodial sentence of not less than five years, if the offender endangers the life of the victim, commits a serious assault on the victim or otherwise treats the victim with cruelty.

#### **Art. 141**

Removal of property

Any person who takes moveable property from the person entitled to it to the serious detriment of that person but without intending to permanently deprive the entitled person of it is liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.

#### **Art. 141<sup>bis</sup>**

Unlawful use of financial assets

Any person who for his own or another's benefit unlawfully uses financial assets that have inadvertently come into his possession is liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.

#### **Art. 142**

Unlawful abstraction of energy

<sup>1</sup> Any person who unlawfully obtains energy from an installation that serves to exploit natural power, and in particular an electrical installation is liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.

<sup>2</sup> If the offender acts for his own or for another's unlawful gain, he is liable to a custodial sentence not exceeding five years or to a monetary penalty.

#### **Art. 143**

Unauthorised obtaining of data

<sup>1</sup> Any person who for his own or for another's unlawful gain obtains for himself or another data that is stored or transmitted electronically or in some similar manner and which is not intended for him and has

<sup>125</sup> Term in accordance with No II 1 para. 12 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS 2006 3459 3535; BBl 1999 1979).



been specially secured to prevent his access is liable to a custodial sentence not exceeding five years or to a monetary penalty.

<sup>2</sup> The unauthorised obtaining of data to the detriment of a relative or family member is prosecuted only on complaint.

**Art. 143<sup>bis126</sup>**

Unauthorised  
access to a data  
processing  
system

<sup>1</sup> Any person who obtains unauthorised access by means of data transmission equipment to a data processing system that has been specially secured to prevent his access is liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.

<sup>2</sup> Any person who markets or makes accessible passwords, programs or other data that he knows or must assume are intended to be used to commit an offence under paragraph 1 is liable to a custodial sentence not exceeding three years or to a monetary penalty.

**Art. 144**

Criminal damage

<sup>1</sup> Any person who damages, destroys or renders unusable property belonging to another or in respect of which another has a right of use is liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.

<sup>2</sup> If the offender has committed criminal damage in the course of a public riot, he is prosecuted *ex officio*.

<sup>3</sup> If the offender has caused major damage, a custodial sentence of from one to five years may be imposed. The offence is prosecuted *ex officio*.

**Art. 144<sup>bis</sup>**

Damage to data

1. Any person who without authority alters, deletes or renders unusable data that is stored or transmitted electronically or in some other similar way is liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.

If the offender has caused major damage, a custodial sentence of from one to five years may be imposed. The offence is prosecuted *ex officio*.

2. Any person who manufactures, imports, markets, advertises, offers or otherwise makes accessible programs that he knows or must assume will be used for the purposes described in paragraph 1 above, or provides instructions on the manufacture of such programs is liable to a custodial sentence not exceeding three years or to a monetary penalty.

<sup>126</sup> Amended by Art. 2 No 1 of the Federal Decree of 18 March 2011 (Council of Europe Convention on Cybercrime), in force since 1 Jan. 2012 (AS 2011 6293; BBl 2010 4697).

If the offender acts for commercial gain, a custodial sentence of from one to five years may be imposed.

#### Art. 145

Misappropriation and removal of property subject to a pledge or lien

Any debtor who, with the intention of causing loss to his creditors, appropriates, uses without authority, damages, destroys, reduces the value of or renders unusable property subject to a pledge or lien is liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.

#### Art. 146

Fraud

<sup>1</sup> Any person who with a view to securing an unlawful gain for himself or another wilfully induces an erroneous belief in another person by false pretences or concealment of the truth, or wilfully reinforces an erroneous belief, and thus causes that person to act to the prejudice of his or another's financial interests, is liable to a custodial sentence not exceeding five years or to a monetary penalty.

<sup>2</sup> If the offender acts for commercial gain, he is liable to a custodial sentence not exceeding ten years or to a monetary penalty of not less than 90 daily penalty units.

<sup>3</sup> Fraud to the detriment of a relative or family member is prosecuted only on complaint.

#### Art. 147

Computer fraud

<sup>1</sup> Any person who with a view to his own or another's unlawful gain, by the incorrect, incomplete or unauthorised use of data, or in a similar way, influences the electronic or similar processing or transmission of data and as a result causes the transfer of financial assets, thus occasioning loss to another, or immediately thereafter conceals such a transfer is liable to a custodial sentence not exceeding five years or to a monetary penalty.

<sup>2</sup> If the offender acts for commercial gain, he is liable to a custodial sentence not exceeding ten years or to a monetary penalty of not less than 90 daily penalty units.

<sup>3</sup> Computer fraud to the detriment of a relative or family member is prosecuted only on complaint.

#### Art. 148

Misuse of a cheque card or credit card

<sup>1</sup> Any person who with a view to obtaining services of a financial value and although incapable of making or unwilling to make payment uses a cheque card or credit card or similar means of payment that has been entrusted to him by the issuer thereof and thus causes loss to the issuer, is liable, provided the issuer and the contracting enterprise have

taken reasonable measures in order to prevent the abuse of the card, to a custodial sentence not exceeding five years or to a monetary penalty.

<sup>2</sup> If the offender acts for commercial gain, he is liable to a custodial sentence not exceeding ten years or to a monetary penalty of not less than 90 daily penalty units.

#### Art. 149

Making off from a hotel, restaurant or bar without payment

Any person who accepts accommodation, food or drink or other services in a hotel, restaurant, bar or similar premises and dishonestly makes off without making payment therefor is liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.

#### Art. 150

Obtaining a service without payment

Any person who obtains a service without paying, knowing that the service is only rendered against payment, and in particular makes use of public transport, attends public performances, exhibitions or similar events, or obtains services from a data processing device or a vending machine, is liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.

#### Art. 150<sup>bis</sup> 127

Production and marketing of equipment for the unauthorised decoding of encoded services

<sup>1</sup> Any person who manufactures, imports, exports, transports, markets or installs equipment, the components or data processing programs of which are designed and are suitable for the unauthorised decoding of encoded television or radio programmes or telecommunications services is liable on complaint to a fine.<sup>128</sup>

<sup>2</sup> An attempt to commit the foregoing offence or complicity in the same is also an offence.

#### Art. 151

Maliciously causing financial loss to another

Any person who without a view to gain, by making representations or suppressing information, wilfully misleads another or wilfully reinforces an erroneous belief with the result that the person in error acts in such a way that he or another incurs a financial loss is liable on

<sup>127</sup> Inserted by Annex No 2 of the Telecommunications Act of 30 April 1997, in force since 1 Jan. 1998 (AS 1997 2187; BBl 1996 III 1405).

<sup>128</sup> Penalties revised by No II 1 para. 16 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS 2006 3459 3535; BBl 1999 1979).

complaint to a custodial sentence not exceeding three years or to a monetary penalty.

**Art. 152**

False statements  
about commercial  
business

Any person who, whether as founder, proprietor, partner with unlimited liability, authorised representative or member of the management board or the board of directors, or as an auditor or liquidator of a trading company, a co-operative or any other enterprise which carries on commercial business,

makes or causes to be made to all the company members, partners or shareholders of the enterprise, or co-operative members, or to the participants in any other commercial enterprise a false or incomplete statement of substantial significance by means of a public announcement or notice, report or presentation that could cause another to dispose of his own assets in such a way that he sustains financial loss,  
is liable to a custodial sentence not exceeding three years or to a monetary penalty.

**Art. 153**

False statements  
to the commercial  
register  
authorities

Any person who causes an authority responsible for the Commercial Register to make a false entry in the Register or withholds from such an authority information which is required to be entered in the Register is liable to a custodial sentence not exceeding three years or to a monetary penalty.

**Art. 154**

*Repealed*

**Art. 155**

Counterfeiting of  
goods

1. Any person who with a view to deceiving another in trade or business

manufactures a product which appears to have a higher commercial value than its true commercial value, in particular by being an imitation or counterfeit version of another product,

or imports, stores or markets such a product,

is liable, provided the act is not subject to a more severe penalty under another provision hereof, to a custodial sentence not exceeding three years or to a monetary penalty.

2.<sup>129</sup> If the offender acts for commercial gain, he is liable, provided the act is not subject to a more severe penalty under another provision hereof, to a custodial sentence not exceeding five years or to a monetary penalty.

### Art. 156

Extortion

1. Any person who, with a view to securing an unlawful gain for himself or for another, induces another person by using violence or the threat of seriously detrimental consequences to behave in such a way that he or another sustains financial loss is liable to a custodial sentence not exceeding five years or to a monetary penalty.

2. If the offender acts for commercial gain, or if he repeatedly commits the offence against the same person,

he is liable to a custodial sentence of from one to ten years.

3. If the offender uses violence against another or if he threatens another with an immediate danger to life and limb, a penalty in accordance with Article 140 hereof is imposed.

4. If the offender threatens to endanger the life and limb of a large number of persons or to cause serious damage to property in which there is a substantial public interest, he is liable to a custodial sentence of not less than one year<sup>130</sup>.

### Art. 157

Profiteering

1. Any person who for his own or another's financial gain or the promise of such gain, exploits the position of need, the dependence, the weakness of mind or character, the inexperience, or the foolishness of another person to obtain a payment or service which is clearly disproportionate to the consideration given in return,

any person who acquires a debt originating from an act of profiteering and sells or enforces the same,

is liable to a custodial sentence not exceeding five years or to a monetary penalty.

2. If the offender acts for commercial gain, he is liable to a custodial sentence of from one to ten years.

<sup>129</sup> Amended by No I 1 of the Federal Act of 3 Oct. 2008 on the Implementation of the Revised Recommendations of the Financial Action Task Force, in force since 1 Feb. 2009 (AS 2009 361 367; BBl 2007 6269).

<sup>130</sup> Term in accordance with No II 1 para. 12 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS 2006 3459 3535; BBl 1999 1979). This amendment has been taken into account throughout the Second Book.

Criminal  
mismanagement

### Art. 158

1. Any person who by law, an official order, a legal transaction or authorisation granted to him, has been entrusted with the management of the property of another or the supervision of such management, and in the course of and in breach of his duties causes or permits that other person to sustain financial loss is liable to a custodial sentence not exceeding three years or to a monetary penalty.

Any person who acts in the same manner in his capacity as the manager of a business but without specific instructions is liable to the same penalty.

If the offender acts with a view to securing an unlawful financial gain for himself or another, a custodial sentence of from one to five years may be imposed.

2. Any person who, with a view to securing an unlawful gain for himself or another, abuses the authority granted to him by statute, an official order or a legal transaction to act on behalf of another and as a result causes that other person to sustain financial loss is liable to a custodial sentence not exceeding five years or to a monetary penalty.

3. Criminal mismanagement to the detriment of a relative or family member is prosecuted only on complaint.

### Art. 159

Misuse of salary  
deductions

Any employer who breaches his obligation to make use of a deduction from an employee's salary for the payment of taxes, duties, insurance premiums or contributions or in any other way for the benefit of the employee and thus causes loss to the employee is liable to a custodial sentence not exceeding three years or to a monetary penalty.

### Art. 160

Handling stolen  
goods

1. Any person who takes possession of, accepts as a gift or as the subject of a pledge, conceals, or assists in the disposal of goods which he knows or must assume have been acquired by way of an offence against property is liable to a custodial sentence not exceeding five years or to a monetary penalty.

The offender is liable to the penalty applicable to the original offence if that penalty is reduced.

If the original offence is prosecuted only on complaint, the handling of stolen goods is prosecuted only if a complaint has been made in respect of the original offence.

2. If the offender acts for commercial gain, he is liable to a custodial sentence not exceeding ten years or to a monetary penalty of not less than 90 daily penalty units.

**Art. 161**<sup>131</sup>**Art. 161**<sup>bis 132</sup>**Art. 162**

2. Breach of  
manufacturing or  
trade secrecy

Any person who betrays a manufacturing or trade secret that he is under a statutory or contractual duty contract not to reveal, any person who exploits for himself or another such a betrayal, is liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.

**Art. 163**

3. Bankruptcy  
and debt  
collection  
felonies or  
misdemeanours  
Fraudulent  
bankruptcy and  
fraud against  
seizure

1. Any debtor who fictitiously reduces his assets to the prejudice of his creditors, and in particular disposes of or conceals assets, creates fictitious debts, accepts fictitious claims as valid or arranges for the enforcement of such claims, is liable, if bankruptcy proceedings are commenced against him or a certificate of unsatisfied claims has been issued in his respect, to a custodial sentence not exceeding five years or to a monetary penalty.

2. Subject to the same requirements, any third party who carries out any of the foregoing acts to the prejudice of creditors is liable a custodial sentence not exceeding three years or to a monetary penalty.

**Art. 164**

Reduction of  
assets to the  
prejudice of  
creditors

1. Any debtor who reduces his assets to the detriment of his creditors by damaging, destroying or reducing the value of any assets or rendering them unusable, disposing of any assets for no consideration or for a consideration that is clearly negligible in value, or by waiving, without material grounds, any rights which may accrue thereon or by renouncing rights for no consideration,

<sup>131</sup> Repealed by No. II 3 of the Federal Act of 28 Sept. 2012, with effect from 1 May 2013 (AS **2013** 1103; BBl **2011** 6873).

<sup>132</sup> Inserted by Art. 46 of the Stock Exchange Act of 24 March 1995 (AS **1997** 68; BBl **1993** I 1369). Repealed by No. II 3 of the Federal Act of 28 Sept. 2012, with effect from 1 May 2013 (AS **2013** 1103; BBl **2011** 6873).

is liable, if bankruptcy proceedings are commenced against him or a certificate of unsatisfied claims has been issued in his respect, to a custodial sentence not exceeding five years or to a monetary penalty.

2. Subject to the same requirements, any third party who carries out any of the foregoing acts to the prejudice of creditors is liable to a custodial sentence not exceeding three years or to a monetary penalty..

### Art. 165

Mismanagement

1. Any debtor who in a manner other than that in Article 164 through mismanagement, in particular through inadequate capital provision, excessive expenditure, hazardous speculation, the negligent granting or use of credit, the squandering of assets or gross negligence in the exercise of his profession or the management of his assets,

causes or aggravates his excessive indebtedness, causes his insolvency or, in the knowledge that he is unable to pay, prejudices his financial situation,

is liable, if bankruptcy proceedings are commenced against him or a certificate of unsatisfied claims is issued in his respect, to a custodial sentence not exceeding five years or to a monetary penalty.

2. Any debtor whose assets have been seized is prosecuted solely on the complaint of a creditor who has obtained a certificate of unsatisfied claims against him.

The complaint must be filed within three months of receipt of the certificate of unsatisfied claims.

Any creditor who has induced a debtor to incur irresponsible debts, unreasonable expenditure or to enter into hazardously speculative transactions, or who has exploited the debtor usuriously, is barred from filing a complaint.

### Art. 166

Failure to keep proper accounts

Any debtor who fails to comply with a statutory obligation to which he is subject to keep and preserve business accounts or draw up a balance sheet, with the result that his financial position is not or not fully ascertainable, is liable, if bankruptcy proceedings are commenced against him or a certificate of unsatisfied claims has been issued in his respect following a seizure of assets in accordance with Article 43 of the Federal Act of 11 April 1889<sup>133</sup> on Debt Enforcement and Bankruptcy (DEBA), to a custodial sentence not exceeding three years or to a monetary penalty.



**Art. 167**

Undue preference to creditors

Any debtor who, in the knowledge of his inability to pay and with a view to showing preference to some of his creditors to the prejudice of others, acts in order to achieve such an aim, and in particular pays debts that are not due for payment, pays due debts in a way that differs from the normal methods, or provides security for a debt from his own means when he is not obliged to do so, is liable, if bankruptcy proceedings are commenced against him or a certificate of unsatisfied claims has been issued in his respect, to a custodial sentence not exceeding three years or to a monetary penalty.

**Art. 168**

Subornation in enforcement proceedings

<sup>1</sup> Any person who gives or promises a creditor or his representative special advantages in order to obtain his vote at the creditors' meeting or on the creditors' committee, or to obtain his consent to or rejection of a judicial composition agreement is liable to a custodial sentence not exceeding three years or to a monetary penalty.

<sup>2</sup> Any person who gives or promises the administrator in bankruptcy, a member of the bankruptcy administration, the Commissioner, or the liquidator special advantages in order to influence his decisions is liable to a custodial sentence not exceeding three years or to a monetary penalty.

<sup>3</sup> Any person who causes another to give or promise such advantages is liable the same penalty.

**Art. 169**

Disposal of seized assets

Any person who without proper authority and to the prejudice of his creditors disposes of an asset

that has been officially seized or attached,

that has been officially recorded in debt recovery, bankruptcy or retention proceedings, or

that forms part of property that has been ceded in a liquidation settlement

or damages, destroys, reduces the value of, or renders unusable such an asset,

is liable to a custodial sentence not exceeding three years or to a monetary penalty.

**Art. 170**

Obtaining a  
judicial composition  
agreement  
by fraud

Any debtor who misleads his creditors, the Commissioner, or the debt collection authorities, in particular by false accounting or drawing up a false balance sheet, in order to obtain a moratorium of debt enforcement or the approval of a judicial composition agreement,

any third party who acts in the foregoing manner for the benefit of the debtor,

is liable to a custodial sentence not exceeding three years or to a monetary penalty.

**Art. 171**

Judicial composition  
agreement

<sup>1</sup> Articles 163 paragraph 1, 164 paragraph 1, 165 paragraph 1, 166 and 167 also apply in the event that a judicial composition agreement has been approved and adopted.

<sup>2</sup> If the debtor or a third party in terms of Articles 163 paragraph 2 and 164 paragraph 2 has made special efforts in economic terms and as a result facilitated the adoption of a judicial composition agreement, the competent authority may waive any prosecution, referral to court or the imposition of a penalty.

**Art. 171<sup>bis</sup>**

Revocation of  
bankruptcy

<sup>1</sup> If the bankruptcy proceedings are revoked (Art. 195 DEBA<sup>134</sup>), the authorities responsible may waive any prosecution, referral to court or the imposition of any penalties.

<sup>2</sup> If a judicial composition agreement is concluded, paragraph 1 above applies only if the debtor or the third party in terms of Article 163 paragraph 2 and 164 paragraph 2 has made special efforts in economic terms and as a result facilitated the adoption of the agreement.

**Art. 172<sup>135</sup>**

4. General  
provisions

**Art. 172<sup>bis</sup>**

Combination of  
a custodial  
sentence with a  
monetary penalty

Where only a custodial sentence is provided for in this Title, the court may in any case combine the custodial sentence with a monetary penalty.<sup>136</sup>

<sup>134</sup> SR 281.1

<sup>135</sup> Repealed by No II 3 of the Federal Act of 13 Dec. 2002, with effect from 1 Jan. 2007 (AS 2006 3459 3535; BBl 1999 1979).

<sup>136</sup> Penalties revised by No II 1 para. 16 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS 2006 3459 3535; BBl 1999 1979).

**Art. 172<sup>ter</sup>**

Minor offences  
against property

1 Where the offence relates only to a minor asset value or where only a minor loss is incurred, the offender is liable on complaint to a fine.

2 This provision does not apply to aggravated theft (Art. 139 paras. 2 and 3), robbery or extortion.

**Title Three:**  
**Offences against Personal Honour and in Breach of**  
**Secrecy or Privacy<sup>137</sup>**

**Art. 173<sup>138</sup>**

1. Offence  
against personal  
honour  
Defamation

1. Any person who in addressing a third party, makes an accusation against or casts suspicion on another of dishonourable conduct or of other conduct that is liable to damage another's reputation,

any person who disseminates such accusations or suspicions, is liable on complaint to a monetary penalty not exceeding 180 daily penalty units<sup>139</sup>.

2. If the accused proves that the statement made or disseminated by him corresponds to the truth or that he had substantial grounds to hold an honest belief that it was true, he may not be held guilty of an offence.

3. The accused is not permitted to lead evidence in support of and is criminally liable for statements that are made or disseminated with the primary intention of accusing someone of disreputable conduct without there being any public interest or any other justified cause, and particularly where such statements refer to a person's private or family life.

4. If the offender recants his statement, the court may impose a more lenient penalty or no penalty at all.

5. If the accused is unable to prove the truth of his statement, or if it is shown to be untrue, or if the accused recants his statement, the court must state this in its judgment or in another document.

<sup>137</sup> Amended by No I of the Federal Act of 20 Dec. 1968, in force since 1 May 1969 (AS 1969 319 322; BBl 1968 I 585).

<sup>138</sup> Amended by No I of the Federal Act of 5 Oct. 1950, in force since 5 Jan. 1951 (AS 1951 I 16; BBl 1949 I 1249).

<sup>139</sup> Term in accordance with No II 1 para. 13 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS 2006 3459 3535; BBl 1999 1979). This amendment has been taken into account throughout the Second Book.

**Art. 174**

Wilful defama-  
tion

1. A person in addressing a third party, and knowing his allegations to be untrue, makes an accusation against or casts suspicion on another of dishonourable conduct, or of other conduct that is liable to damage another's reputation,

any person who disseminates such accusations or suspicions, knowing them to be untrue,

is liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.

2. If the offender has acted systematically to undermine the good reputation of another, he is liable to a custodial sentence not exceeding three years or to a monetary penalty of not less than 30 daily penalty units.<sup>140</sup>

3. If the offender recants his statement before the court on the grounds that it is untrue, the court may impose a more lenient penalty. The court must provide the person harmed with a document confirming the recantation.

**Art. 175**

Defamation of a  
deceased person  
or of a person  
missing pre-  
sumed dead

<sup>1</sup> If the defamation, whether wilful or not, is directed at a person who is deceased or who has been declared missing presumed dead, the relatives of the deceased person or the person missing presumed dead are entitled to apply for prosecution.

<sup>2</sup> No offence is committed if, at the time of the statement being made, the deceased person has been dead or the missing person missing for more than 30 years.

**Art. 176**

General provi-  
sion

Verbal defamation, whether wilful or not, is regarded as the equivalent of defamatory statements made in writing, in pictures, by gestures or in any other manner.

**Art. 177**

Insult

<sup>1</sup> Any person who attacks the honour of another verbally, in writing, in pictures, through gestures or through acts of aggression is liable on complaint to a monetary penalty not exceeding 90 daily penalty units.<sup>141</sup>

<sup>140</sup> Penalties revised by No II 1 para. 16 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS 2006 3459 3535; BBl 1999 1979).

<sup>141</sup> Penalties revised by No II 1 para. 16 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS 2006 3459 3535; BBl 1999 1979).

<sup>2</sup> If the insulted party has directly provoked the insult by improper behaviour, the court may dispense with imposing a penalty on the offender.

<sup>3</sup> If there is an immediate response to the insult by way of a retaliatory insult or act of aggression, the court may dispense with imposing a penalty on either or both offenders.

### Art. 178

Limitation

<sup>1</sup> The right to prosecute misdemeanours against personal honour is subject to a limitation period of four years.<sup>142</sup>

<sup>2</sup> Article 31 applies to the expiry of the right to file a complaint.<sup>143</sup>

### Art. 179

2.144 Offences in breach of privacy or secrecy  
Breach of the privacy of a sealed document

Any person who without authority opens a sealed document or sealed mail in order to obtain knowledge of its content,

any person who disseminates or makes use of information he has obtained by opening a sealed document or sealed mail that was not intended for him,

is liable on complaint to a fine.

### Art. 179<sup>bis</sup> 145

Listening in on and recording the conversations of others

Any person who by using a listening device and without the permission of all those participating, listens in on a private conversation between other persons, or records such a conversation on a recording device,

any person who makes use of information that he knows or must assume has come to his knowledge as the result of an offence under the above paragraph or makes such information known to a third party,

any person who stores or allows a third party access to a recording that he knows or must assume has been made as the result of an offence under paragraph 1 above,

is liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.

<sup>142</sup> Amended by No I of the Federal Act of 22 March 2002 (Limitation of the Right to Prosecute), in force since 1 Oct. 2002 (AS **2002** 2986 2988; BBl **2002** 2673 1649).

<sup>143</sup> Amended by No II 2 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979).

<sup>144</sup> Amended by No I of the Federal Act of 20 Dec. 1968, in force since 1 May 1969 (AS **1969** 319 322; BBl **1968** I 585).

<sup>145</sup> Inserted by No I of the Federal Act of 20 Dec. 1968, in force since 1 May 1969 (AS **1969** 319 322; BBl **1968** I 585).

Unauthorised recording of conversations

**Art. 179<sup>ter</sup>** 146

Any person who, as a participant in a private conversation, records the conversation on a recording device without the permission of the other participants,

any person who stores or makes use of a recording, makes the recording available or discloses its content to a third party when he knows or must assume that the recording has been made as the result of an offence under paragraph 1 above,

is liable on complaint to a custodial sentence not exceeding one year or to a monetary penalty.<sup>147</sup>

Breach of secrecy or privacy through the use of an image-carrying device

**Art. 179<sup>quater</sup>** 148

Any person who observes with a recording device or records with an image-carrying device information from the secret domain of another or information which is not automatically accessible from the private domain of another,

any person who makes use of information or makes information known to a third party, which he knows or must assume has been produced as a result of an offence under paragraph 1 above,

any person who stores or allows a third party access to a recording that he knows or must assume has been made as the result of an offence under paragraph 1 above,

is liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.

**Art. 179<sup>quinquies</sup>** 149

Legal recordings

<sup>1</sup> Persons who as participants in the conversation or subscribers to a participating line record calls:

- a. with the emergency, rescue or security services; or
- b. in the course of business that have orders, assignments, reservations and similar transactions as their subject matter.

do not commit an offence under Article 179<sup>bis</sup> paragraph 1 or Article 179<sup>er</sup> paragraph 1.

<sup>146</sup> Inserted by No I of the Federal Act of 20 Dec. 1968, in force since 1 May 1969 (AS 1969 319 322; BBl 1968 I 585).

<sup>147</sup> Penalties revised by No II 1 para. 16 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS 2006 3459 3535; BBl 1999 1979).

<sup>148</sup> Inserted by No I of the Federal Act of 20 Dec. 1968, in force since 1 May 1969 (AS 1969 319 322; BBl 1968 I 585).

<sup>149</sup> Inserted by No I of the Federal Act of 20 Dec. 1968 (AS 1969 319; BBl 1968 I 585). Amended by No I of the Federal Act of 3 Oct. 2003, in force since 1 March 2004 (AS 2004 823 824; BBl 2001 2632 5816).

<sup>2</sup> Article 179<sup>bis</sup> paragraphs 2 and 3 and 179<sup>ter</sup> paragraph 2 apply by analogy to the use of recordings in accordance with paragraph 1 above.

**Art. 179<sup>sexies</sup>** 150

Marketing and promotion of devices for unlawful listening or sound or image recording

1. Any person who manufactures, imports, exports, acquires, stores, possesses, transports, passes on to another, sells, leases, lends or in any other manner markets, promotes or provides instruction on the manufacture of technical devices which are in particular intended for unlawful listening or the unlawful making of sound or image recordings,

is liable to a custodial sentence not exceeding three years or to a monetary penalty.

2. If the offender acts on behalf of a third party, that third party is liable to the same penalty as the offender provided he was aware that the offence was being committed and failed to use his best efforts to prevent the commission of the offence.

If the third party is a legal entity, a general or limited partnership or a sole proprietorship<sup>151</sup>, paragraph 1 above applies to those persons who acted or should have acted on behalf of that entity.

**Art. 179<sup>septies</sup>** 152

Misuse of a telecommunications installation

Any person who uses a telecommunications installation maliciously or mischievously in order to cause distress to or harass another, is liable on complaint to a fine.

**Art. 179<sup>octies</sup>** 153

Official surveillance, exempted acts

<sup>1</sup> Any person who, in the exercise of express statutory powers, orders or carries out the surveillance of postal or telecommunications traffic of another or makes use of technical surveillance devices (Art. 179<sup>bis</sup> ff.) does not commit an offence provided that the consent of the appropriate court is obtained without delay.

<sup>2</sup> The requirements for the surveillance of postal or telecommunications traffic and the procedure therefor is governed by the Federal Act

<sup>150</sup> Inserted by No I of the Federal Act of 20 Dec. 1968, in force since 1 May 1969 (AS 1969 319 322; BBl 1968 I 585).

<sup>151</sup> Terminological amendment relevant only to the German text.

<sup>152</sup> Inserted by No I of the Federal Act of 20 Dec. 1968 (AS 1969 319; BBl 1968 I 585). Amended by Annex No 2 of the Telecommunications Act of 30 April 1997, in force since 1 Jan. 1998 (AS 1997 2187; BBl 1996 III 1405).

<sup>153</sup> Inserted by No VII of the Federal Act of 23 March 1979 on the Protection of Personal Privacy (AS 1979 1170; BBl 1976 I 529 II 1569). Amended by Annex No 1 of the Federal Act of 6 Oct. 2000 on the Surveillance of Post and Telecommunications, in force since 1 Jan. 2002 (AS 2001 3096; BBl 1998 4241).

of 6 October 2000<sup>154</sup> on the Surveillance of Postal and Telecommunications Traffic.

**Art. 179**<sup>novies 155</sup>

Obtaining  
personal data  
without authori-  
sation

Any person who without authorisation obtains from a data collection personal data or personality profiles that are particularly sensitive and that are not freely accessible is liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.

**Title Four: Felonies and Misdemeanours against Liberty**

**Art. 180**

Threatening  
behaviour

<sup>1</sup> Any person who places another in a state of fear and alarm by making a serious threat is liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.

<sup>2</sup> The offender is prosecuted ex officio if he:

- a. is the spouse of the victim and the threat was made during the marriage or within one year of divorce; or
- a<sup>bis</sup>.<sup>156</sup> is the registered partner of the victim and the threat was made during the registered partnership or within one year of its dissolution; or
- b. is the heterosexual or homosexual partner of the victim, provided they are cohabiting for an unlimited period and the threat was made during this time or within one year of separation.<sup>157</sup>

**Art. 181**

Coercion

Any person who, by the use of force or the threat of serious detriment or other restriction of another's freedom to act compels another to carry out an act, to fail to carry out an act or to tolerate an act, is liable to a custodial sentence not exceeding three years or to a monetary penalty.

<sup>154</sup> SR **780.1**

<sup>155</sup> Inserted by Annex No 4 of the Federal Act of 19 June 1992 on Data Protection, in force since 1 July 1993 (AS **1993** 1945; BBl **1988** II 413).

<sup>156</sup> Inserted by Annex No 18 of the Same-Sex Partnership Act of 18 June 2004, in force since 1 Jan. 2007 (AS **2005** 5685; BBl **2003** 1288).

<sup>157</sup> Inserted by No I of the Federal Act of 3 Oct. 2003 (Prosecution of Offences within Marriage or Registered Partnerships), in force since 1 April 2004 (AS **2004** 1403 1407; BBl **2003** 1909 1937).



**Art. 181**<sup>158</sup>

Forced marriage,  
forced registered  
partnership

<sup>1</sup> Any person who, by the use of force or the threat of serious detriment or other restriction of another's freedom to act compels another to enter into a marriage or to have a same-sex partnership registered is liable to a custodial sentence not exceeding five years or to a monetary penalty.

<sup>2</sup> Any person who commits the foregoing offence abroad but is now in Switzerland and is not being extradited is liable to the same penalty. Article 7 paragraphs 4 and 5 apply.

**Art. 182**<sup>159</sup>

Trafficking in  
human beings

<sup>1</sup> Any person who as a supplier, intermediary or customer engages in the trafficking of a human being for the purpose of sexual exploitation, exploitation of his or her labour or for the purpose of removing an organ is liable to a custodial sentence or to a monetary penalty. The soliciting of a person for these purposes is equivalent to trafficking.

<sup>2</sup> If the victim is a minor<sup>160</sup> or if the offender acts for commercial gain, the penalty is a custodial sentence of not less than one year.

<sup>3</sup> In every case, a monetary penalty must also be imposed.

<sup>4</sup> Any person who commits the act abroad is also guilty of an offence. Articles 5 and 6 apply.

**Art. 183**<sup>161</sup>

False imprison-  
ment and  
abduction

<sup>1</sup> Any person who unlawfully arrests or holds another prisoner or otherwise unlawfully deprives another of his liberty,  
any person who, by the use of force, false pretences or threats, abducts another,

is liable to a custodial sentence not exceeding five years or to a monetary penalty.

<sup>2</sup> Any person who abducts a person who is incapable of judgement or resistance or who is under the age of sixteen, is liable the same penalty.

<sup>158</sup> Inserted by No I 6 of the Federal Act of 15 June 2012 on Measures against Forced Marriages, in force since 1 July 2013 (AS **2013** 1035; BBI **2011** 2185).

<sup>159</sup> Amended by Art. 2 No 1 of the Federal Decree of 24 March 2006 on the Approval and Implementation of the Optional Protocol of 25 May 2000 to the Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography, in force since 1 Dec. 2006 (AS **2006** 5437 5440; BBI **2005** 2807).

<sup>160</sup> AS **2012** 7501

<sup>161</sup> Amended by No I of the Federal Act of 9 Oct. 1981, in force since 1 Oct. 1982 (AS **1982** 1530 1534; BBI **1980** I 1241).

**Art. 184**<sup>162</sup>Aggravating  
circumstances

The penalty for false imprisonment and abduction is a custodial sentence of not less than one year,  
 if the offender attempts to obtain a ransom,  
 if he treats the victim with cruelty,  
 if the deprivation of liberty lasts for a period in excess of ten days or  
 if the health of the victim is seriously endangered.

**Art. 185**<sup>163</sup>

Hostage taking

1. Any person who deprives another of his liberty, or abducts or otherwise seizes another in order to coerce a third party to carry out an act, abstain from carrying out an act or tolerate an act,  
 any person who exploits a situation created in the foregoing manner by another in order so to coerce a third party,  
 is liable to a custodial sentence of not less than one year .
2. The penalty is a custodial sentence of not less than three years if the offender threatens to kill or seriously injure the victim or to treat the victim with cruelty.
3. In particularly serious cases, and in particular if the act involves several victims, the offender is liable to a custodial sentence of life.
- 4.<sup>164</sup> If the offender abandons the coercion and releases the victim, a reduced penalty may be imposed (Art. 48a).
5. Any person who commits the offence abroad is also liable to the foregoing penalties provided he is arrested in Switzerland and not extradited. Article 7 paragraphs 4 and 5 apply.<sup>165</sup>

**Art. 186**

Unlawful entry

Any person who, against the will of the lawful occupants enters a building, an apartment, a self-contained room within a building, an enclosed area, courtyard or garden forming a direct part of a building, or a clearly demarcated workplace or, despite requests from the lawful occupants to leave, remains in such a location, is liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.

<sup>162</sup> Amended by No I of the Federal Act of 9 Oct. 1981, in force since 1 Oct. 1982 (AS 1982 1530 1534; BBl 1980 I 1241).

<sup>163</sup> Amended by No I of the Federal Act of 9 Oct. 1981, in force since 1 Oct. 1982 (AS 1982 1530 1534; BBl 1980 I 1241).

<sup>164</sup> Amended by No II 2 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS 2006 3459 3535; BBl 1999 1979).

<sup>165</sup> Second sentence amended by No II 2 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS 2006 3459 3535; BBl 1999 1979).

**Title Five:**<sup>166</sup>  
**Offences against Sexual Integrity**

**Art. 187**

1. Endangering  
the development  
of minors  
Sexual acts with  
children

1. Any person who engages in a sexual act with a child under 16 years of age, or,
  - incites a child to commit such an activity, or
  - involves a child in a sexual act,
  - is liable to a custodial sentence not exceeding five years or to a monetary penalty.
2. The act is not an offence if the difference in age between the persons involved is not more than three years.
- 3.<sup>167</sup> If the offender has not reached the age of 20 at the time of the act or the first of the acts, and if there are special circumstances, or if the child is the spouse or registered partner of the offender, the responsible authority may dispense with prosecution, referral to the court or the imposition of a penalty.
4. If the offender acts under the misconception that the child is 16 years of age or older, but he would not have made this error had he exercised due care, the penalty is a custodial sentence not exceeding three years or to a monetary penalty.
5. ...<sup>168</sup>
6. ...<sup>169</sup>

**Art. 188**

Sexual acts with  
dependent  
persons

1. Any person who commits a sexual act by exploiting his or her relationship with a minor over the age of 16 who is dependent on him due to a relationship arising from the minor's education, care or employment or another form of dependent relationship,
  - any person who encourages such a minor to commit a sexual act by exploiting such a relationship,

<sup>166</sup> Amended by No 1 of the Federal Act of 21 June 1991, in force since 1 Oct. 1992 (AS **1992** 1670 1678; BBl **1985** II 1009).

<sup>167</sup> Amended by No I 1 of the Federal Act of 13 Dec. 2013 on Activity Prohibition Orders and Contact Prohibition and Exclusion Orders, in force since 1 Jan. 2015 (AS **2014** 2055; BBl **2012** 8819).

<sup>168</sup> Repealed by No I of the Federal Act of 21 March 1997, with effect from 1 Sept. 1997 (AS **1997** 1626; BBl **1996** IV 1318 1322).

<sup>169</sup> Inserted by No I of the Federal Act of 21 March 1997 (AS **1997** 1626; BBl **1996** IV 1318 1322). Repealed by No I of the Federal Act of 5 Oct. 2001 (Limitation of Right to Prosecute in general and in cases of Sexual Offences against Children), with effect from 1 Oct. 2002 (AS **2002** 2993; BBl **2000** 2943).

is liable to a custodial sentence not exceeding three years or to a monetary penalty.

2.<sup>170</sup> If the minor is the spouse or registered partner of the offender, the responsible authority may dispense with prosecution, referral to the court or the imposition of a penalty.

### Art. 189

2. Offences  
against sexual  
liberty and  
honour  
Indecent assault

<sup>1</sup> Any person who uses threats, force or psychological pressure on another person or makes that other person incapable of resistance in order to compel him or her to tolerate a sexual act similar to intercourse or any other sexual act is liable to a custodial sentence not exceeding ten years or to a monetary penalty.

2 ...<sup>171</sup>

<sup>3</sup> If the offender acts with cruelty, and if in particular he makes use of an offensive weapon or any other dangerous object, the penalty is a custodial sentence of not less than three years.<sup>172</sup>

### Art. 190

Rape

<sup>1</sup> Any person who forces a person of the female sex by threats or violence, psychological pressure or by being made incapable of resistance to submit to sexual intercourse is liable to a custodial sentence of from one to ten years.

2 ...<sup>173</sup>

<sup>3</sup> If the offender acts with cruelty, and if in particular he makes use of an offensive weapon or any other dangerous object, the penalty is a custodial sentence of not less than three years.<sup>174</sup>

### Art. 191

Sexual acts with  
persons incapa-  
ble of judgement  
or resistance

Any person who, in the knowledge that another person is incapable of judgement or resistance, has sexual intercourse with, or commits an act similar to sexual intercourse or any other sexual act on that person is

<sup>170</sup> Amended by Annex No 18 of the Same-Sex Partnership Act of 18 June 2004, in force since 1 Jan. 2007 (AS **2005** 5685; BBl **2003** 1288).

<sup>171</sup> Repealed by No I of the Federal Act of 3 Oct. 2003 (Prosecution of Offences within Marriage or Registered Partnerships), with effect from 1 April 2004 (AS **2004** 1403 1407; BBl **2003** 1909 1937).

<sup>172</sup> Amended by No I of the Federal Act of 3 Oct. 2003 (Prosecution of Offences within Marriage or Registered Partnerships), in force since 1 April 2004 (AS **2004** 1403 1407; BBl **2003** 1909 1937).

<sup>173</sup> Repealed by No I of the Federal Act of 3 Oct. 2003 (Prosecution of Offences within Marriage or Registered Partnerships), with effect from 1 April 2004 (AS **2004** 1403 1407; BBl **2003** 1909 1937).

<sup>174</sup> Amended by No I of the Federal Act of 3 Oct. 2003 (Prosecution of Offences within Marriage or Registered Partnerships), in force since 1 April 2004 (AS **2004** 1403 1407; BBl **2003** 1909 1937).

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

### Art. 192

Sexual acts with persons in institutional care, prisoners and persons on remand

<sup>1</sup> Any person who, by abusing a dependent relationship with a person in institutional care, an inmate of an institution, a prisoner, a detainee or a person on remand, induces the dependent person to commit or submit to a sexual act, is liable to a custodial sentence not exceeding three years or to a monetary penalty.

<sup>2</sup> If the person harmed is the spouse or registered partner of the offender, the responsible authority may dispense with prosecution, referral to the court or the imposition of a penalty.<sup>175</sup>

### Art. 193

Exploitation of a person in a position of need or dependency

<sup>1</sup> Any person who induces another to commit or submit to a sexual act by exploiting a position of need or a dependent relationship based on employment or another dependent relationship is liable to a custodial sentence not exceeding three years or to a monetary penalty.

<sup>2</sup> If the person harmed is the spouse or registered partner of the offender, the responsible authority may dispense with prosecution, referral to the court or the imposition of a penalty.<sup>176</sup>

### Art. 194

Indecent conduct

<sup>1</sup> Any person who engages in an act of exhibitionism is liable on complaint to a monetary penalty not exceeding 180 daily penalty units.

<sup>2</sup> If the offender undergoes medical treatment, the criminal proceedings may be suspended. They may be resumed if the offender refuses to continue treatment.

### Art. 195<sup>177</sup>

3. Exploitation of sexual acts  
Encouraging prostitution

Any person who

- a. induces a minor into prostitution or encourages a minor in his or her prostitution with the intention of securing a financial advantage
- b. induces a person into prostitution by exploiting his or her dependence or a financial advantage,

<sup>175</sup> Amended by Annex No 18 of the Same-Sex Partnership Act of 18 June 2004, in force since 1 Jan. 2007 (AS **2005** 5685; BBl **2003** 1288).

<sup>176</sup> Amended by Annex No 18 of the Same-Sex Partnership Act of 18 June 2004, in force since 1 Jan. 2007 (AS **2005** 5685; BBl **2003** 1288).

<sup>177</sup> Amended by Annex No 1 of the Federal Decree of 27 Sept. 2013 (Lanzarote Convention), in force since 1 July 2014 (AS **2014** 1159; BBl **2012** 7571).

- c. restricts the freedom to act of a prostitute by supervising him or her in the course of his or her activities or by exercising control over the location, time, volume or other aspects of his or her work as a prostitute or,
- d. makes a person remain a prostitute against his or her will,

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

**Art. 196**<sup>178</sup>

Sexual acts with minors against payment

Any person who carries out sexual acts with a minor or induces a minor to carry out such acts and who makes or promises payment in return is liable to a custodial sentence not exceeding three years or to a monetary penalty.

**Art. 197**<sup>179</sup>

4. Pornography

<sup>1</sup> Any person who offers, shows, passes on or makes accessible to a person under the age of 16 pornographic documents, sound or visual recordings, depictions or other items of a similar nature or pornographic performances, or broadcasts any of the same on radio or television is liable to a custodial sentence not exceeding three years or to a monetary penalty.

2. Any person who exhibits in public items or performances as described in paragraph 1 above or shows or otherwise offers the same unsolicited to others is liable to a fine. Any person who, in advance, draws the attention of visitors to private exhibitions or performances to their pornographic character does not commit an offence.

<sup>3</sup> Any person who recruits or causes a minor to participate in a pornographic performance is liable to a custodial sentence not exceeding three years or to a monetary penalty.

<sup>4</sup> Any person who produces, imports, stores, markets, advertises, exhibits, offers, shows, passes on or makes accessible to others, acquires, or procures or possesses via electronic media or otherwise items or performances as described in paragraph 1 above that contain sexual acts involving animals, acts of violence involving adults or non-genuine sexual acts with minors is liable to a custodial sentence not exceeding three years or to a monetary penalty. If the items or performances contain genuine sexual acts with minors, the penalty is a custodial sentence not exceeding five years or a monetary penalty.

<sup>178</sup> Amended by Annex No 1 of the Federal Decree of 27 Sept. 2013 (Lanzarote Convention), in force since 1 July 2014 (AS **2014** 1159; BBl **2012** 7571).

<sup>179</sup> Amended by Annex No 1 of the Federal Decree of 27 Sept. 2013 (Lanzarote Convention), in force since 1 July 2014 (AS **2014** 1159; BBl **2012** 7571).

<sup>5</sup> Any person who consumes or who for his or her own consumption produces, imports, stores, acquires or procures or possesses via electronic media or otherwise items or performances as described in paragraph 1 above that contain sexual acts involving animals, acts of violence involving adults or non-genuine sexual acts with minors is liable to a custodial sentence not exceeding one year or to a monetary penalty. If the items or performances contain genuine sexual acts with minors, the penalty is a custodial sentence not exceeding three years or a monetary penalty.

<sup>6</sup> In the case of offences under paragraphs 4 and 5, the items shall be forfeited.

<sup>7</sup> If the offender acts for financial gain, the custodial sentence must be combined with a monetary penalty.

<sup>8</sup> Minors over the age of 16 are not liable to any penalty if by mutual consent they produce items or performances as described in paragraph 1 above that involve each other, or possess or consume such items or performances.

<sup>9</sup> Items or recordings as described in paragraphs 1-3 above are not regarded as pornographic if they have a cultural or scientific value that justifies their protection by law.

#### **Art. 198**

5. Contraven-  
tions against  
sexual integrity  
Sexual harass-  
ment

Any person who causes offence by performing a sexual act in the presence of another who does not expect it,

any person who sexually harasses another physically or through the use of indecent language,

is liable on complaint to a fine.

#### **Art. 199**

Unauthorised  
practice of  
prostitution

Any person who violates the cantonal regulations on the permitted locations or times at which prostitution may be practised or the manner in which it may be practised, or on the prevention of related public nuisance is liable to a fine.

#### **Art. 200**

6. Joint commis-  
sion

Where any person commits an offence under this Title jointly with one or more others, the court may increase the penalty imposed, but may not exceed the standard maximum penalty for the offence by more than an additional half. The court, in imposing the penalty, is bound by the statutory maximum penalty for the type of offence in question.

**Art. 201–212**<sup>180</sup>

**Title Six: Felonies and Misdemeanours against the Family**

**Art. 213**<sup>181</sup>

Incest

<sup>1</sup> Any person who has sexual intercourse with a blood relative in direct line or with a brother or sister, or a half-brother or half-sister is liable to a custodial sentence not exceeding three years or to a monetary penalty.

<sup>2</sup> Minors are not liable to any penalty provided they have been induced to commit the act.

<sup>3</sup> ...<sup>182</sup>

**Art. 214**<sup>183</sup>

**Art. 215**<sup>184</sup>

Bigamy

Any person who marries or enters into a registered same-sex partnership when he is already married or living in a registered same-sex partnership,

any person who marries or enters into a registered same-sex partnership with a person who is already married or living in a registered same-sex partnership,

is liable to a custodial sentence not exceeding three years or to a monetary penalty.

**Art. 216**<sup>185</sup>

<sup>180</sup> These repealed articles have (with the exception of Art. 211) been replaced by Articles 195, 196, 197, 198, 199 (see Commentary on Dispatch No 23; BBl **1985** II 1009). Art. 211 has been deleted without replacement.

<sup>181</sup> Amended by No I of the Federal Act of 23 June 1989, in force since 1 Jan. 1990 (AS **1989** 2449 2456; BBl **1985** II 1009).

<sup>182</sup> Repealed by No I of the Federal Act of 5 Oct. 2001 (Limitation of Right to Prosecute in general and in cases of Sexual Offences against Children; AS **2002** 2993; BBl **2000** 2943).

<sup>183</sup> Repealed by No I of the Federal Act of 23 June 1989, with effect from 1 Oct. 2002 (AS **1989** 2449; BBl **1985** II 1009).

<sup>184</sup> Amended by Annex No 18 of the Same-Sex Partnership Act of 18 June 2004, in force since 1 Jan. 2007 (AS **2005** 5685; BBl **2003** 1288).

<sup>185</sup> Repealed by No I of the Federal Act of 23 June 1989, with effect from 1 Jan. 1990 (AS **1989** 2449; BBl **1985** II 1009).



**Art. 217**<sup>186</sup>

Neglect of duty to support the family

<sup>1</sup> Any person who fails to fulfil his or her family law duties to provide maintenance or support although he or she has or could have the means to do so, is liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.

<sup>2</sup> The authorities and agencies appointed by the cantons also have the right to file a complaint. In exercising this right, they shall take account of the interests of the family.

**Art. 218**<sup>187</sup>**Art. 219**<sup>188</sup>

Neglect of duties of care, supervision or education

<sup>1</sup> Any person who violates or neglects his or her duties of supervision and education towards a minor and thus endangers the minor's physical or mental development, is liable to a custodial sentence not exceeding three years or to a monetary penalty.

<sup>2</sup> If the person concerned acts through negligence, a fine may be imposed instead of a custodial sentence or a monetary penalty.<sup>189</sup>

**Art. 220**<sup>190</sup>

Abduction of minors

Any person who removes a minor from or refuses to return a minor to the person holding the right to decide on the minor's place of residence is liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.

## **Title Seven: Felonies and Misdemeanours constituting a Public Danger**

**Art. 221**

Arson

<sup>1</sup> Any person who wilfully causes a fire and thus does damage to another or causes a danger to the public is liable to a custodial sentence of not less than one year.

<sup>186</sup> Amended by No I of the Federal Act of 23 June 1989, in force since 1 Jan. 1990 (AS **1989** 2449 2456; BBl **1985** II 1009).

<sup>187</sup> Repealed by No I of the Federal Act of 23 June 1989, with effect from 1 Jan. 1990 (AS **1989** 2449; BBl **1985** II 1009).

<sup>188</sup> Amended by No I of the Federal Act of 23 June 1989, in force since 1 Jan. 1990 (AS **1989** 2449 2456; BBl **1985** II 1009).

<sup>189</sup> Penalties revised by No II 1 para. 16 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979).

<sup>190</sup> Amended by Annex No 4 of the Federal Act of 21 June 2013 (Parental Responsibility), in force since 1 July 2014 (AS **2014** 357; BBl **2011** 9077).

<sup>2</sup> If the offender wilfully endangers the life and limb of others, the penalty is a custodial sentence of not less than three years.

<sup>3</sup> If the damage caused is minor, the penalty may be reduced to a custodial sentence of up to three years or to a monetary penalty.

#### **Art. 222**

Negligent arson

<sup>1</sup> Any person who causes a fire through negligence and thus does damage to another or causes a danger to the public is liable to a custodial sentence not exceeding three years or to a monetary penalty.

<sup>2</sup> If the offender through negligence endangers the life and limb of others, the penalty is a custodial sentence not exceeding three years or a monetary penalty.

#### **Art. 223**

Causing an explosion

1. Any person who wilfully causes an explosion involving gas, petrol, paraffin or a similar substance and thus knowingly endangers the life and limb or property of others is liable to a custodial sentence of not less than one year.

If only minor loss, damage or injury is caused, a custodial sentence not exceeding three years or a monetary penalty may be imposed.

2. If the person concerned acts through negligence, the penalty is a custodial sentence not exceeding three years or a monetary penalty.

#### **Art. 224**

Misuse of explosives and toxic gases with criminal intent

<sup>1</sup> Any person who wilfully and with criminal intent endangers the life and limb or the property of others through the use of explosives or toxic gases is liable to a custodial sentence of not less than one year.

<sup>2</sup> If only an insignificant danger to property is caused, a custodial sentence not exceeding three years or a monetary penalty may be imposed.

#### **Art. 225**

Misuse of explosives or toxic gases without criminal intent or through negligence

<sup>1</sup> Any person who wilfully but without criminal intent endangers the life and limb or the property of others through the use of explosives or toxic gases is liable to a custodial sentence not exceeding five years or to a monetary penalty.

<sup>2</sup> In minor cases, a fine may be imposed.

**Art. 226**

Manufacture, concealment and transport of explosives and toxic gases

<sup>1</sup> Any person who manufactures explosives or toxic gases that he knows or must assume are intended to be used to commit a felony is liable to a custodial sentence not exceeding ten years or to a monetary penalty of not less than 180 daily penalty units.

<sup>2</sup> Any person who procures, passes on to another, accepts from another, safeguards, conceals or transports explosives, toxic gases or substances suitable for their manufacture is liable, if he knows or must assume that they are intended to be used to commit a felony, to a custodial sentence not exceeding five years or to a monetary penalty of not less than 30 daily penalty units<sup>191</sup>.

<sup>3</sup> Any person who instructs another person on how to manufacture explosives or toxic gases when he knows or must assume that that person is planning to use the explosives or toxic gases to commit a felony is liable to a custodial sentence not exceeding five years or to a monetary penalty of not less than 30 daily penalty units.

**Art. 226<sup>bis</sup>** 192

Causing danger by means of nuclear energy, radioactivity or ionising radiation

<sup>1</sup> Any person who wilfully causes serious danger to the life or the health of people or to the property of others by means of nuclear energy, radioactive substances or ionising radiation is liable to a custodial sentence or a monetary penalty. A custodial sentence must be combined with a monetary penalty.

<sup>2</sup> If the offender acts through negligence, he is liable to a custodial sentence not exceeding five years or to a monetary penalty. A custodial sentence must be combined with a monetary penalty.

**Art. 226<sup>ter</sup>** 193

Preparatory offences

<sup>1</sup> Any person who systematically carries out specific technical or organisational preparations for acts intended to cause danger to the life or the health of people or to the property of others by means of nuclear energy, radioactive substances or ionising radiation of substantial value is liable to a custodial sentence not exceeding five years or to a monetary penalty. A custodial sentence must be combined with a monetary penalty.

<sup>2</sup> Any person who manufactures, procures, passes on to another, accepts from another, stores, conceals or transports radioactive substances

<sup>191</sup> Term in accordance with No II 1 para. 14 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979). This amendment has been taken into account throughout the Second Book.

<sup>192</sup> Inserted by Annex No II 2 of the Nuclear Energy Act of 21 March 2003, in force since 1 Feb. 2005 (RO **2004** 4719; BBl **2001** 2665).

<sup>193</sup> Inserted by Annex No II 2 of the Nuclear Energy Act of 21 March 2003, in force since 1 Feb. 2005 (RO **2004** 4719; BBl **2001** 2665).

es, equipment, apparatus or articles that contain radioactive substances or may emit ionising radiation is liable, if he knows or must assume that they are intended for unlawful use, to a custodial sentence not exceeding ten years or to a monetary penalty. A custodial sentence must be combined with a monetary penalty.

<sup>3</sup> Any person who instructs another person on how to manufacture such substances, equipment, apparatus or articles is liable, if he knows or must assume that they are intended for unlawful use, to a custodial sentence not exceeding five years or to a monetary penalty. A custodial sentence must be combined with a monetary penalty.

**Art. 227**

Causing a flood, collapse or landslide

1. Any person who wilfully causes a flood, the collapse of a structure or a landslide or rock fall and thus knowingly endangers the life and limb of people or the property of others is liable to a custodial sentence of not less than one year.

If only minor loss, damage or injury is caused, a custodial sentence not exceeding three years or a monetary penalty may be imposed.

2. If the person concerned acts through negligence, the penalty is a custodial sentence not exceeding three years or a monetary penalty.

**Art. 228**

Criminal damage to electrical installations, and hydraulic or protective structures

1. Any person who wilfully damages or destroys electrical installations, hydraulic structures such as dams, weirs, dikes, and floodgates, structures erected to provide protection against natural forces such as landslides or avalanches, and thus knowingly endangers the life and limb of people or the property of others, is liable to a custodial sentence of not less than one year.

If only minor loss, damage or injury is caused, a custodial sentence not exceeding three years or a monetary penalty may be imposed.

2. If the person concerned acts through negligence, the penalty is a custodial sentence not exceeding three years or a monetary penalty.

**Art. 229**

Violation of construction regulations

<sup>1</sup> Any person engaged in the management or execution of construction or demolition work who wilfully disregards the accepted rules of construction and as a result knowingly endangers the life and limb of others is liable to a custodial sentence not exceeding three years or to a monetary penalty. The custodial sentence must be combined with a monetary penalty.

<sup>2</sup> If the offender disregards the accepted rules of construction through negligence, the penalty is a custodial sentence not exceeding three years or a monetary penalty.

**Art. 230**

Removal or non-  
installation of  
safety devices

1. Any person who wilfully damages, destroys, removes, otherwise renders unusable or deactivates a safety device which serves to prevent accidents in a factory or other commercial premises or on a machine, who wilfully fails to install such a device in violation of the regulations, and thus knowingly endangers the life and limb of other people, is liable to a custodial sentence not exceeding three years or to a monetary penalty. The custodial sentence must be combined with a monetary penalty.
2. If the person concerned acts through negligence, the penalty is a custodial sentence not exceeding three years or a monetary penalty.

**Title Eight:**  
**Felonies and Misdemeanours against Public Health**

**Art. 230**<sup>bis 194</sup>

Causing danger  
by means of  
genetically  
modified or  
pathogenic  
organisms

- 1 Any person who wilfully releases genetically modified or pathogenic organisms or the disrupts the operation of a facility for the research into, or the safeguarding, production or transport of such organisms is liable to a custodial sentence not exceeding ten years, provided he knows or must assume that through his acts:
  - a. he will endanger the life and limb of people; or
  - b. the natural composition of communities of animals and plants or their habitats will be seriously endangered.

<sup>2</sup> If the offender acts through negligence, he is liable to a custodial sentence not exceeding three years or to a monetary penalty.

**Art. 231**<sup>195</sup>

Transmission of  
human diseases

1. Any person who maliciously transmits a dangerous communicable human disease is liable to a custodial sentence of from one to five years.

<sup>194</sup> Inserted by Annex No 1 of the Gene Technology Act of 21 March 2003, in force since 1 Jan. 2004 (RO 2003 4803; BB1 2000 2391).

<sup>195</sup> Amended by Art. 86 No 1 of the Epidemics Act of 28 Sept. 2012, in force since 1 Jan. 2016 (AS 2015 1435; BB1 2011 311).

**Art. 232**

Transmission of  
an epizootic  
disease

1. Any person who wilfully causes the transmission of an epizootic disease among domestic animals is liable to a custodial sentence not exceeding three years or to a monetary penalty.

If the offender maliciously causes serious loss, damage or injury, the penalty is a custodial sentence of from one to five years.

2. If the person concerned acts through negligence, the penalty is a custodial sentence not exceeding three years or a monetary penalty.

**Art. 233**

Propagation of  
harmful parasites

1. Any person who wilfully propagates a parasite or micro-organism that constitutes a danger to agriculture or forestry, is liable to a custodial sentence not exceeding three years or to a monetary penalty.

If the offender maliciously causes serious loss, damage or injury, the penalty is a custodial sentence of from one to five years.

2. If the person concerned acts through negligence, the penalty is a custodial sentence not exceeding three years or a monetary penalty.

**Art. 234**

Contamination  
of drinking water

<sup>1</sup> Any person who wilfully contaminates drinking water intended for people or domestic animals with substances that are damaging to health is liable to a custodial sentence not exceeding five years or to a monetary penalty of not less than 30 daily penalty units.

<sup>2</sup> If the person concerned acts through negligence, the penalty is a custodial sentence not exceeding three years or a monetary penalty.

**Art. 235**

Production of  
harmful animal  
feed

1. Any person who wilfully produces or treats animal feed or feedstuffs for domestic animals in such a way that they constitute a danger to the health of animals is liable to a custodial sentence not exceeding three years or to a monetary penalty.

If the offender carries on a commercial operation to produce or treat animal feed that is harmful to animals, the penalty is a custodial sentence not exceeding three years or a monetary penalty of not less than 30 daily penalty units. A custodial sentence must be combined with a monetary penalty.<sup>196</sup> In such cases, public notice is given of the conviction.

2. If the person concerned acts through negligence, the penalty is a fine.

<sup>196</sup> Penalties revised by No II 1 para. 16 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS 2006 3459 3535; BBl 1999 1979).

3. The products are forfeited. They may be rendered harmless or destroyed.

### Art. 236

Marketing of  
harmful animal  
feed

<sup>1</sup> Any person who wilfully imports, stores, offers for sale or markets animal feed or animal feedstuffs that constitute a danger to animals is liable to a custodial sentence not exceeding three years or to a monetary penalty. Public notice is given of the conviction.

<sup>2</sup> If the person concerned acts through negligence, the penalty is a fine.

<sup>3</sup> The products are forfeited. They may be rendered harmless or destroyed.

## Title Nine: Felonies and Misdemeanours against Public Traffic

### Art. 237

Disruption of  
public traffic

1. Any person who wilfully obstructs, disrupts or endangers public traffic, in particular traffic on the roads, on water or in the air and as a result knowingly causes danger to the life and limb of other people is liable to a custodial sentence not exceeding three years or to a monetary penalty.

If the offender thus knowingly endangers the life and limb of a large number of people, a custodial sentence of from one to ten years may be imposed.

2. If the person concerned acts through negligence, the penalty is a custodial sentence not exceeding three years or a monetary penalty.

### Art. 238

Disruption of rail  
traffic

<sup>1</sup> Any person who wilfully obstructs, disrupts or endangers railway services and as a result causes danger to the life, limb or property of other people, and in particular the danger of derailment or collision is liable to a custodial sentence or to a monetary penalty<sup>197</sup>.

<sup>2</sup> If the person concerned acts through negligence and as a result causes serious danger to the life, limb or property of other people the penalty is a custodial sentence not exceeding three years or a monetary penalty.

<sup>197</sup> Term in accordance with No II 1 para. 15 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS 2006 3459 3535; BBl 1999 1979). This amendment has been taken into account throughout the Second Book.

**Art. 239**

Disruption of  
public services

1. Any person who wilfully obstructs, disrupts or endangers the operation of a public service and in particular the railway, postal, telegraphic or telephone services,

any person who wilfully obstructs, disrupts or endangers the operation of a public utility or installation which provides water, light, power or heat,

is liable to a custodial sentence not exceeding three years or to a monetary penalty.

2. If the person concerned acts through negligence, the penalty is a custodial sentence not exceeding three years or a monetary penalty.

**Title Ten:  
Counterfeiting of Money, Official Stamps, Official Marks,  
Weights and Measures**

**Art. 240**

Counterfeiting  
money

<sup>1</sup> Any person who counterfeits coins, paper money or banknotes in order to pass these off as genuine is liable to a custodial sentence of not less than one year.

<sup>2</sup> In particularly minor cases, the penalty is a custodial sentence not exceeding three years or a monetary penalty.

<sup>3</sup> The offender is also liable to the foregoing penalties if he committed the act abroad, has entered Switzerland and is not being extradited, provided the act is also an offence at the place of commission.

**Art. 241**

Falsification of  
money

<sup>1</sup> Any person who alters coins, paper money or bank notes in order to pass these off at a value higher than their true value is liable to a custodial sentence not exceeding five years or to a monetary penalty of not less than 180 daily penalty units.<sup>198</sup>

<sup>2</sup> In particularly minor cases, the penalty is a custodial sentence not exceeding three years or a monetary penalty.

<sup>198</sup> Penalties revised by No II 1 para. 16 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS 2006 3459 3535; BBl 1999 1979).



**Art. 242**

Passing or  
tendering  
counterfeit  
money

<sup>1</sup> Any person who passes or tenders counterfeit or falsified coins, paper money or bank notes as genuine money is liable to a custodial sentence not exceeding three years or to a monetary penalty<sup>199</sup>.

<sup>2</sup> If the offender, the person instructing him or his agent accepted the coins or banknotes on the understanding that they were genuine or not falsified, the penalty is a custodial sentence not exceeding three years or a monetary penalty.

**Art. 243**<sup>200</sup>

Imitation of bank  
notes, coins or  
official stamps  
without intent to  
commit forgery

<sup>1</sup> Any person who, without the intention of committing the offence of forgery, reproduces or imitates bank notes and thus creates the risk that persons or machines will confuse such notes with genuine notes, in particular if the overall appearance, one side or the greater part of one side of a bank note reproduces or imitates a material and a size that is identical or similar to the material and size of the original,

any person who, without the intention of committing the offence of forgery, produces objects which in their appearance, weight and size are similar to coins in circulation, or which show the nominal value or other characteristics of coins which have been officially struck, and thus creates the risk that persons or machines will confuse such coins with coins which are in circulation,

any person who, without the intention of committing the offence of forgery reproduces or imitates official stamps and thus creates the risk that such stamps will be confused with genuine stamps,

any person who imports, offers or puts into circulation such objects articles,

is liable to a custodial sentence not exceeding three years or to a monetary penalty.<sup>201</sup>

<sup>2</sup> If the person concerned acts through negligence, he is liable to a fine.<sup>202</sup>

<sup>199</sup> Term in accordance with No II 1 para. 2 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979). This amendment has been taken into account throughout the Second Book.

<sup>200</sup> Amended by Annex No 3 of the Federal Act of 22 Dec. 1999 on Currency and Payment Instruments, in force since 1 May 2000 (AS **2000** 1144; BBl **1999** 7258).

<sup>201</sup> Penalties revised by No II 1 para. 16 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979).

<sup>202</sup> Penalties revised by No II 1 para. 16 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979).

**Art. 244**

Import, acquisition and storage of counterfeit money

<sup>1</sup> Any person who imports, acquires or stores counterfeit or falsified coins, paper money or bank notes in order to pass these off as genuine or non-falsified is liable to a custodial sentence not exceeding three years or to a monetary penalty.<sup>203</sup>

<sup>2</sup> Any person who imports, acquires or stores such money on a large scale is liable to a custodial sentence of from one to five years.

**Art. 245**

Forgery of official stamps

1. Any person who forges or falsifies official stamps, and in particular postage stamps, revenue stamps or fee stamps, in order to pass these off as genuine or non-falsified,

any person who gives cancelled official value stamps the appearance of being valid in order to pass them off as such,

is liable to a custodial sentence not exceeding three years or to a monetary penalty.

The offender is also liable to the foregoing penalties if he committed the act abroad, has entered Switzerland and is not being extradited, provided the act is also an offence at the place of commission.

2. Any person who passes off forged, falsified or cancelled official stamps as genuine, non-falsified or valid is liable to a custodial sentence not exceeding three years or to a monetary penalty.

**Art. 246**

Forgery of official marks

Any person who forges or falsifies an official mark which the authorities affix to an object to confirm the result of an inspection or the granting of authorisation such as hallmarks, or marks stamped on goods by meat inspectors or customs officials, with the intention of passing the mark off as genuine,

any person who passes off such forged or falsified marks as genuine or non-falsified,

is liable to a custodial sentence not exceeding three years or to a monetary penalty.

**Art. 247**

Counterfeiting equipment and unlawful use of equipment

Any person who constructs or acquires equipment for the forgery or falsification of coins, paper money, bank notes or official stamps in order to make unlawful use of such equipment,

<sup>203</sup> Amended by Annex No 3 of the Federal Act of 22 Dec. 1999 on Currency and Payment Instruments, in force since 1 May 2000 (AS 2000 1144; BBl 1999 7258).

any person who makes unlawful use of equipment which is used for the production of coins, paper money, bank notes or official stamps, is liable to a custodial sentence not exceeding three years or to a monetary penalty.

#### **Art. 248**

Falsification of weights and measures

Any person who, in order to deceive others in trade or commerce, attaches a false calibration mark to weights and measures, scales or other measuring instruments or falsifies an existing calibration mark, makes alterations to weights and measures, scales or other measuring instruments, or makes use of forged or falsified weights and measures, scales or other measuring instruments, is liable to a custodial sentence not exceeding five years or to a monetary penalty.

#### **Art. 249<sup>204</sup>**

Forfeiture

<sup>1</sup> Forged or falsified coins, paper money, banknotes, official stamps, official marks, weights and measures, scales or other measuring instruments as well as the counterfeiting equipment is forfeited and rendered unusable or destroyed.

<sup>2</sup> Banknotes, coins or official stamps that have been reproduced, imitated or produced without the intent to commit forgery, but which create a risk of confusion, are also forfeited and rendered unusable or destroyed.

#### **Art. 250**

Foreign currency and stamps

The provisions this Title also apply in the case of foreign coins, paper money, banknotes and stamps.

### **Title Eleven: Forgery**

#### **Art. 251<sup>205</sup>**

Forgery of a document

1. Any person who with a view to causing financial loss or damage to the rights of another or in order to obtain an unlawful advantage for himself or another,

<sup>204</sup> Amended by Annex No 3 of the Federal Act of 22 Dec. 1999 on Currency and Payment Instruments, in force since 1 May 2000 (AS **2000** 1144; BBl **1999** 7258).

<sup>205</sup> Amended by No I of the Federal Act of 17 June 1994, in force since 1 Jan. 1995 (AS **1994** 2290 2307; BBl **1991** II 969).

produces a false document, falsifies a genuine document, uses the genuine signature or mark of another to produce a false document, falsely certifies or causes to be falsely certified a fact of legal significance or,

makes use of a false or falsified document in order to deceive,

is liable to a custodial sentence not exceeding five years or to a monetary penalty.

2. In particularly minor cases, a custodial sentence not exceeding three years or a monetary penalty may be imposed.

#### **Art. 252<sup>206</sup>**

Forgery of  
certificates

Any person who with the intention of furthering his own position or that of another,

forges or falsifies identity documents, references, or certificates,

uses such a document in order to deceive another,

or uses a genuine document of this nature but which does not apply to him in order to deceive another,

is liable to a custodial sentence not exceeding three years or to a monetary penalty.

#### **Art. 253**

Obtaining a false  
certificate by  
fraud

Any person who by fraudulent means causes a public official or a person acting in an official capacity to certify an untrue fact of substantial legal significance, and in particular to certify a false signature or an incorrect copy as genuine, or

any person who makes use of a document obtained by fraud in this way in order to deceive another as to the fact certified therein,

is liable to a custodial sentence not exceeding five years or to a monetary penalty.

#### **Art. 254**

Suppression of  
documents

<sup>1</sup> Any person who damages, destroys, conceals or misappropriates a document over which he has no exclusive right of disposal, with a view to causing financial loss or damage to the rights of another or in order to obtain an unlawful advantage for himself or another is liable to a custodial sentence not exceeding five years or to a monetary penalty.

<sup>206</sup> Amended by No I of the Federal Act of 17 June 1994, in force since 1 Jan. 1995 (AS 1994 2290 2307; BBl 1991 II 969).

<sup>2</sup> The suppression of documents to the detriment of a relative or family member is prosecuted only on complaint.

### Art. 255

Official foreign documents Articles 251–254 also apply to official foreign documents.

### Art. 256

Moving of boundary markers

Any person who, with the intention of causing financial loss or damaging the rights of another or of obtaining an unlawful advantage for himself or another, removes, moves, renders unrecognisable, falsely positions or falsifies a boundary stone or other boundary marker is liable to a custodial sentence not exceeding three years or to a monetary penalty.

### Art. 257

Removal of survey points and water level indicators

Any person who removes, moves, renders unrecognisable or falsely positions a public survey point or water level indicator is liable to a custodial sentence not exceeding three years or to a monetary penalty.

## Title Twelve: Felonies and Misdemeanours against Public Order

### Art. 258<sup>207</sup>

Causing fear and alarm among the general public

Any person who causes fear and alarm among the general public by threatening or feigning a danger to life, limb or property is liable to a custodial sentence not exceeding three years or to a monetary penalty.

### Art. 259<sup>208</sup>

Public incitement to commit a felony or act of violence

<sup>1</sup> Any person who publicly incites others to commit a felony is liable to a custodial sentence not exceeding three years or to a monetary penalty.

<sup>1bis</sup> Public incitement to commit genocide (Art. 264), where the intention is for the act to be carried out exclusively or partly in Switzerland, is also an offence if the incitement occurs outside Switzerland.<sup>209</sup>

<sup>207</sup> Amended by No I of the Federal Act of 17 June 1994, in force since 1 Jan. 1995 (AS 1994 2290 2307; BBl 1991 II 969).

<sup>208</sup> Amended by No I of the Federal Act of 9 Oct. 1981, in force since 1 Oct. 1982 (AS 1982 1530 1534; BBl 1980 I 1241).

<sup>209</sup> Inserted by No I 1 of the Federal Act of 18 June 2010 on the Amendment of Federal Legislation in Implementation of the Rome Statute of the International Criminal Court, in force since 1 Jan. 2011 (AS 2010 4963; BBl 2008 3863).

<sup>2</sup> Any person who publicly incites others to commit a misdemeanour that involves violence against other persons or property is liable to a custodial sentence not exceeding three years or to a monetary penalty.

**Art. 260**

Rioting

<sup>1</sup> Any person who takes part in a riotous assembly in public in the course of which acts of violence are committed against persons and property by the use of united force is liable to a custodial sentence not exceeding three years or to a monetary penalty.

<sup>2</sup> Participants who remove themselves when officially ordered to do so are not held to have committed an offence if they have not used violence or encouraged others to do so.

**Art. 260<sup>bis</sup>**<sup>210</sup>

Acts preparatory to the commission of an offence

<sup>1</sup> 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 is liable to a custodial sentence not exceeding five years or to a monetary penalty:

- a. Intentional homicide (Art. 111);
- b. Murder (Art. 112);
- c. Serious assault (Art. 122);
- <sup>cbis</sup><sup>211</sup> Female genital mutilation (Art. 124);
- d. Robbery (Art. 140);
- e. False imprisonment and abduction (Art. 183);
- f. Hostage taking (Art. 185);
- g. Arson (Art. 221);
- h. Genocide (Art. 264);
- i. Crimes against humanity (Art. 264a);
- j. War crimes (Art. 264c–264h).<sup>212</sup>

<sup>2</sup> If the offender, of his own volition, does not complete the preparatory act, he is not liable to any penalty.

<sup>210</sup> Inserted by No I of the Federal Act of 9 Oct. 1981, in force since 1 Oct. 1982 (AS 1982 1530 1534; BBl 1980 I 1241).

<sup>211</sup> Inserted by No I of the Federal Act of 30 Sept. 2011 in force since 1 July 2012 (AS 2012 2575; BBl 2010 5651 5677).

<sup>212</sup> Amended by No I 1 of the Federal Act of 18 June 2010 on the Amendment of Federal Legislation in Implementation of the Rome Statue of the International Criminal Court, in force since 1 Jan. 2011 (AS 2010 4963; BBl 2008 3863).

<sup>3</sup> 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.<sup>213</sup>

**Art. 260<sup>ter</sup>** 214

Criminal  
organisation

1. Any person who participates in an organisation, the structure and personal composition of which is kept secret and which pursues the objective of committing crimes of violence or securing a financial gain by criminal means,

any person who supports such an organisation in its criminal activities, is liable to a custodial sentence not exceeding five years or to a monetary penalty.

2. The court has the discretion to mitigate the penalty imposed (Art. 48a)<sup>215</sup> if the offender makes an effort to foil the criminal activities of the organisation.

3. The foregoing penalties also apply to any person who commits the offence outside Switzerland provided the organisation carries out or intends to carry out its criminal activities wholly or partly in Switzerland. Article 3 paragraph 2 applies.<sup>216</sup>

**Art. 260<sup>quater</sup>** 217

Endangering  
public safety  
with weapons

Any person who sells, hires, gifts, hands over or procures firearms, weapons prohibited by law, essential components of weapons, weapons accessories, ammunition or components of ammunition, although he knows or must assume that the weapons are intended to be used to commit a felony or misdemeanour is liable, provided his activities do not constitute a more serious offence, to a custodial sentence not exceeding five years or to a monetary penalty.<sup>218</sup>

<sup>213</sup> Wording of the sentence in accordance with No II 2 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979).

<sup>214</sup> Inserted by No I of the Federal Act of 18 March 1994, in force since 1 Aug. 1994 (AS **1994** 1614 1618; BBl **1993** III 277).

<sup>215</sup> Wording of the first part-sentence in accordance with No II 2 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979).

<sup>216</sup> Wording of the sentence in accordance with No II 2 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979).

<sup>217</sup> Inserted by Art. 41 of the Weapons Act of 20 June 1997, in force since 1 Jan. 1999 (AS **1998** 2535; BBl **1996** I 1053).

<sup>218</sup> New designation of criminal penalties in accordance with No II 1 para. 16 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979).

**Art. 260**<sup>quinquies 219</sup>

Financing terrorism

<sup>1</sup> Any person who collects or provides funds with a view to financing a violent crime that is intended to intimidate the public or to coerce a state or international organisation into carrying out or not carrying out an act is liable to a custodial sentence not exceeding five years or to a monetary penalty.

<sup>2</sup> If the person merely acknowledges the possibility that the funds may be used to finance terrorism, he does not commit an offence under this Article.

<sup>3</sup> The act does not constitute the financing of a terrorist offence if it is carried out with a view to establishing or re-establishing a democratic regime or a state governed by the rule of law or with a view to exercising or safeguarding human rights.

<sup>4</sup> Paragraph 1 does not apply if the financing is intended to support acts that do not violate the rules of international law on the conduct of armed conflicts.

**Art. 261**

Attack on the freedom of faith and the freedom to worship

Any person who publicly and maliciously insults or mocks the religious convictions of others, and in particularly their belief in God, or maliciously desecrates objects of religious veneration,

any person who maliciously prevents, disrupts or publicly mocks an act of worship, the conduct of which is guaranteed by the Constitution, or

any person who maliciously desecrates a place or object that is intended for a religious ceremony or an act of worship the conduct of which is guaranteed by the Constitution,

is liable to a monetary penalty not exceeding 180 daily penalty units.

**Art. 261**<sup>bis 220</sup>

Racial discrimination

Any person who publicly incites hatred or discrimination against a person or a group of persons on the grounds of their race, ethnic origin or religion,

any person who publicly disseminates ideologies that have as their object the systematic denigration or defamation of the members of a race, ethnic group or religion,

any person who with the same objective organises, encourages or participates in propaganda campaigns,

<sup>219</sup> Inserted by No 11 of the Federal Act of 21 March 2003 (Financing of Terrorism), in force since 1 Oct. 2003 (AS 2003 3043 3047; BBl 2002 5390).

<sup>220</sup> Inserted by Art. 1 of the Federal Act of 18 June 1993, in force since 1 Jan. 1995 (AS 1994 2887 2888; BBl 1992 III 269).



any person who publicly denigrates or discriminates against another or a group of persons on the grounds of their race, ethnic origin or religion in a manner that violates human dignity, whether verbally, in writing or pictorially, by using gestures, through acts of aggression or by other means, or any person who on any of these grounds denies, trivialises or seeks justification for genocide or other crimes against humanity,

any person who refuses to provide a service to another on the grounds of that person's race, ethnic origin or religion when that service is intended to be provided to the general public,

is liable to a custodial sentence not exceeding three years or to a monetary penalty.

### Art. 262

Disturbing the  
peace of the dead

1. Any person who desecrates the resting place of a dead person, Any person who maliciously disrupts or desecrates a funeral procession or funeral ceremony,

Any person who desecrates or publicly insults a dead body, is liable to a custodial sentence not exceeding three years or to a monetary penalty.

2. Any person who removes a dead body or part of a dead body or the ashes of a dead person against the will of those entitled thereto is liable to a custodial sentence not exceeding three years or to a monetary penalty.

### Art. 263

Committing an  
offence while in  
a state of  
voluntarily  
induced mental  
incapacity

1 Any person who is incapable of forming criminal intent as a result of voluntarily induced intoxication through alcohol or drugs, and while in this state commits an act punishable as a felony or misdemeanour is liable to a monetary penalty not exceeding 180 daily penalty units.

2 If the offender has, in this self-induced state, committed an act for which the only penalty is a custodial sentence, the penalty is a custodial sentence not exceeding three years or a monetary penalty.<sup>221</sup>

<sup>221</sup> Amended by No II 1 para. 16 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS 2006 3459 3535; BBl 1999 1979).

**Title Twelve<sup>bis</sup>:<sup>222</sup>**  
**Genocide and Crimes against Humanity**

**Art. 264**

- Genocide
- <sup>1</sup> The penalty is a custodial sentence of life or a custodial sentence of not less than ten years for any person who with the intent to destroy, in whole or in part, a group of persons characterised by their nationality, race, religion or ethnic, social or political affiliation:
- a. kills members of such a group, or seriously harms them physically or mentally;
  - b. inflicts living conditions on members of such a group that are calculated to bring about its total or partial destruction;
  - c. orders or takes measures that are directed towards preventing births within such a group; or
  - d. forcibly transfers children in such a group to another group or arranges for such children to be forcibly transferred to another group

**Art. 264a**

- Crimes against humanity
- <sup>1</sup> The penalty is a custodial sentence of not less than five years for any person who, as part of a widespread or systematic attack directed against any civilian population:
- a. Intentional homicide
  - b. Extermination
  - c. Enslavement
  - d. False imprisonment
  - e. Enforced disappearance of persons
- a. intentionally kills another person;
  - b. intentionally kills a number of persons or intentionally inflicts conditions of life calculated to bring about the destruction of all or part of the population;
  - c. assumes and exercises a right of ownership over a person, in particular in the form of trafficking in persons, sexual exploitation or forced labour;
  - d. severely deprives a person of his or her liberty in violation of the fundamental rules of international law;
  - e. and with the intention of removing a person from the protection of the law for a prolonged period of time:
    1. on behalf of or with the acquiescence of a State or political organisation, deprives that person of his or her liberty, and thereafter refuses to give information on his or her fate or whereabouts, or

<sup>222</sup> Inserted by No I of the Federal Act of 24 March 2000 (AS 2000 2725; BBl 1999 5327). Amended by No I 1 of the Federal Act of 18 June 2010 on the Amendment of Federal Legislation in Implementation of the Rome Statue of the International Criminal Court, in force since 1 Jan. 2011 (AS 2010 4963; BBl 2008 3863).

2. on behalf of or with the acquiescence of a State or political organisation or in violation of a legal duty refuses to give information on the fate or whereabouts of the person concerned;
- f. Torture f. inflicts severe pain or suffering or serious injury, whether physical or mental, on a person in his or her custody or under his or her control;
- g. Violation of sexual rights g. rapes a person of the female gender or, after she has been forcibly made pregnant, confines her unlawfully with the intent of affecting the ethnic composition of a population, forces a person to tolerate a sexual act of comparable severity or forces a person into prostitution or to be sterilised;
- h. Deportation or forcible transfer h. expels or by other coercive acts displaces persons from an area in which they are lawfully present;
- i. Persecution and apartheid i. in violation of international law and for political, racist, ethnic, religious, social or other reasons, severely denies or deprives a group of people of fundamental rights in connection with an offence under Title Twelve<sup>bis</sup> or Title Twelve<sup>ter</sup> or for the purpose of the systematic oppression or domination of an ethnic group;
- j. Other inhuman acts j. commits any other act of a comparable seriousness to the felonies mentioned in this paragraph and thereby causes severe pain or suffering or serious injury, whether physical or mental, to a person.

<sup>2</sup> In especially serious cases, and in particular where the offence affects a number of persons or the offender acts in a cruel manner, a custodial sentence of life may be imposed.

<sup>3</sup> In less serious cases under paragraph 1 letters c–j, a custodial sentence of not less than one year may be imposed.

## Title Twelve<sup>ter</sup>:<sup>223</sup> War Crimes

### Art. 264b

#### 1. Scope of application

Articles 264d–264j apply in connection with international armed conflicts including occupations as well as, unless the nature the offences requires otherwise, in connection with non-international armed conflicts.

<sup>223</sup> Inserted by No I 1 of the Federal Act of 18 June 2010 on the Amendment of Federal Legislation in Implementation of the Rome Statute of the International Criminal Court, in force since 1 Jan. 2011 (AS 2010 4963; BBl 2008 3863).

**Art. 264c**

2. Serious violations of the Geneva Conventions

<sup>1</sup> The penalty is a custodial sentence of not less than five years for any person who commits a serious violation of the Geneva Conventions of 12 August 1949<sup>224</sup> in connection with an international armed conflict by carrying out any of the following acts against persons or property protected under the Conventions:

- a. intentional homicide;
- b. hostage taking;
- c. causing severe pain or suffering or serious injury, whether physical or mental, in particular by torture, inhuman treatment or biological experiments;
- d. extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly;
- e. compelling a person to serve in the forces of a hostile power;
- f. unlawful deportation or transfer or unlawful confinement;
- g. denying the right to a fair and regular trial before the imposition or execution of a severe penalty.

<sup>2</sup> Acts in terms of paragraph 1 committed in connection with a non-international armed conflict are equivalent to serious violations of international humanitarian law if they are directed against a person or property protected by international humanitarian law.

<sup>3</sup> In especially serious cases, and in particular where the offence affects a number of persons or the offender acts in a cruel manner, a custodial sentence of life may be imposed.

<sup>4</sup> In less serious cases under paragraph 1 letters c–g, a custodial sentence of not less than one year may be imposed.

**Art. 264d**

3. Other war crimes  
a. Attacks on civilians and civilian objects

<sup>1</sup> The penalty is a custodial sentence of not less than three years for any person who in connection with an armed conflict directs an attack:

- a. against the civilian population as such or against individual civilians not taking direct part in hostilities;
- b. against personnel, installations, material or vehicles involved in a humanitarian assistance or peacekeeping mission in ac-

<sup>224</sup> Geneva Convention of 12 Aug. 1949 for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (GA I), SR **0.518.12**; Geneva Convention of 12 Aug. 1949 for the Amelioration of the Condition of the Wounded and Sick and Shipwrecked Members of Armed Forces at Sea (GA II), SR **0.518.23**; Geneva Convention of 12 Aug. 1949 relative to the Treatment of Prisoners of War (GA III), SR **0.518.42**; Geneva Convention of 12 Aug. 1949 relative to the Protection of Civilian Persons in Time of War (GA IV), SR **0.518.51**.

cordance with the Charter of the United Nations of 26 June 1945<sup>225</sup>, as long as they are entitled to the protection of international humanitarian law;

- c. against civilian objects, undefended settlements or buildings or demilitarised zones that are not military objectives;
- d. against medical units, material or vehicles using a distinctive emblem under international humanitarian law or whose protected character is recognisable even without a distinctive emblem, hospitals and places where the sick and wounded are collected;
- e. against cultural property or persons entrusted with its protection or vehicles for its transport, against buildings dedicated to religion, education, art, science or charitable purposes, provided they are protected by international humanitarian law.

<sup>2</sup> In especially serious cases of attacks on persons, a custodial sentence of life may be imposed.

<sup>3</sup> In less serious cases, a custodial sentence of not less than one year may be imposed.

#### **Art. 264e**

b. Unjustified medical treatment, violation of sexual rights and human dignity

<sup>1</sup> The penalty is a custodial sentence of not less than three years for any person who, in connection with an armed conflict:

- a. causes severe pain or suffering or serious injury or danger, whether physical or mental, to a person protected by international humanitarian law by subjecting that person to a medical procedure that is not justified by the state of his or her health and which does not comply with generally recognised medical principles;
- b. rapes a person of the female gender protected by international humanitarian law or, after she has been forcibly made pregnant, confines her unlawfully with the intent of affecting the ethnic composition of a population, forces a person to tolerate a sexual act of comparable severity or forces a person protected by international humanitarian law into prostitution or to be sterilised;
- c. subjects a person protected by international humanitarian law to especially humiliating and degrading treatment.

<sup>2</sup> In especially serious cases, and in particular where the offence affects a number of persons or the offender acts in a cruel manner, a custodial sentence of life may be imposed.

<sup>3</sup> In less serious cases, a custodial sentence of not less than one year may be imposed.

225 SR 0.120

c. Recruitment  
and use of child  
soldiers

### Art. 264f

<sup>1</sup> The penalty is a custodial sentence of not less than three years for any person who enlists a child under the age of fifteen into armed forces or groups or recruiting them for this purpose or using them to participate in armed conflicts.

<sup>2</sup> In especially serious cases, and in particular where the offence affects a number of children or the offender acts in a cruel manner, a custodial sentence of life may be imposed

<sup>3</sup> In less serious cases, a custodial sentence of not less than one year may be imposed.

d. Prohibited  
methods of  
warfare

### Art. 264g

<sup>1</sup> The penalty is a custodial sentence of not less than three years for any person who, in connection with an armed conflict:

- a. launches an attack although he knows or must assume that such an attack will cause loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
- b. uses a person protected by international humanitarian law as a human shield in order to influence military operations;
- c. as a method of warfare, pillages or otherwise unlawfully appropriates property or destroys or seizes enemy property in a way not imperatively demanded by the necessities of war, deprives civilians of objects indispensable to their survival or impedes relief supplies;
- d. kills or wounds an enemy combatant treacherously or after he or she has laid down his or her arms or no longer has a means of defence;
- e. mutilates a dead enemy combatant;
- f. as the commander orders that no quarter be given or threatens the enemy that no quarter will be given;
- g. makes improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, or the distinctive emblems under international humanitarian law;
- h. as a member of an occupying power, transfers parts of its own civilian population into the territory it is occupying or deports all or parts of the population of the occupied territory within or outside that territory.

<sup>2</sup> In especially serious cases, and in particular where the offence affects a number of persons or the offender acts in a cruel manner, a custodial sentence of life may be imposed.

<sup>3</sup> In less serious cases, a custodial sentence of not less than one year may be imposed.

#### **Art. 264h**

e. Use of prohibited weapons

<sup>1</sup> The penalty is a custodial sentence of not less than three years for any person who, in connection with an armed conflict:

- a. employs poison or poisoned weapons;
- b. employs biological or chemical weapons, including poisonous or asphyxiating gases, substances and liquids;
- c. employs bullets which expand or flatten easily or explode in the human body;
- d. employs weapons primarily designed to cause injury through splinters that cannot be detected by x-ray equipment;
- e. employs laser weapons primarily designed to cause permanent blindness.

<sup>2</sup> In especially serious cases, a custodial sentence of life may be imposed

#### **Art. 264i**

4. Violation of a ceasefire or peace agreement. Offences against a peace negotiator. Delayed repatriation of prisoners of war

The penalty is a custodial sentence not exceeding three years or a monetary penalty for any person who:

- a. continues military operations after receiving official notification of an agreement on a ceasefire or a peace agreement, or violates the conditions of the ceasefire in some other way;
- b. abuses, insults or without reason obstructs an opposing peace negotiator or any of his party;
- c. without justification delays the repatriation of prisoners of war after conclusion of military operations.

#### **Art. 264j**

5. Other violations of international humanitarian law

The penalty is a custodial sentence not exceeding three years or a monetary penalty for any person who in connection with an armed conflict violates a provision of international humanitarian law other than those mentioned in Articles 264c–264i, where such a violation is declared to be an offence under customary international law or an international treaty recognised as binding by Switzerland.

**Title Twelve**<sup>quater</sup>•226**Common Provisions for Title Twelve<sup>bis</sup> and Title Twelve<sup>ter</sup>****Art. 264k**Criminal liability  
of superiors

<sup>1</sup> A superior who is aware that a subordinate is carrying out or will carry out an act under the Title Twelve<sup>bis</sup> or Title Twelve<sup>ter</sup> and who fails to take appropriate measures to prevent the act is liable to the same penalty as the perpetrator of the act. If the superior fails to prevent the act through negligence, the penalty is a custodial sentence not exceeding three years or a monetary penalty.

<sup>2</sup> A superior who is aware that a subordinate has carried out an act under Title Twelve<sup>bis</sup> or Title Twelve<sup>ter</sup> and who fails to take appropriate measures to ensure the prosecution of the perpetrator of the act is liable to a custodial sentence not exceeding three years or a monetary penalty.

**Art. 264l**

Acting on orders

A subordinate who, on orders from a superior or on orders of equivalent binding effect, carries out an act under Title Twelve<sup>bis</sup> or Title Twelve<sup>ter</sup> is guilty of an offence if he was aware at the time that the act is an offence.

**Art. 264m**Acts carried out  
abroad

<sup>1</sup> A person who carries out an act under Title Twelve<sup>bis</sup>, Title Twelve<sup>ter</sup> or Article 264k while abroad is guilty of an offence if he is in Switzerland and is not extradited to another State or delivered to an international criminal court whose jurisdiction is recognised by Switzerland.

<sup>2</sup> Where the victim of the act carried out abroad is not Swiss and the perpetrator is not Swiss, the prosecution, with the exception of measures to secure evidence, may be abandoned or may be dispensed with provided:

- a. a foreign authority or an international criminal court whose jurisdiction is recognised by Switzerland is prosecuting the offence and the suspected perpetrator is extradited or delivered to the court; or
- b. the suspected perpetrator is no longer in Switzerland and is not expected to return there.

<sup>3</sup> Article 7 paragraphs 4 and 5 applies unless the acquittal, or the remission or application of time limits for the execution of the sen-

<sup>226</sup> Inserted by No 11 of the Federal Act of 18 June 2010 on the Amendment of Federal Legislation in Implementation of the Rome Statue of the International Criminal Court, in force since 1 Jan. 2011 (AS 2010 4963; BBl 2008 3863).



tence abroad has the aim of protecting the offender from punishment without justification.

#### **Art. 264n**

Exclusion of relative immunity

The prosecution of offences under Title Twelve<sup>bis</sup>, Title Twelve<sup>ter</sup> and under Article 264k does not require authorisation in accordance with any of the following provisions:

- a. Article 7 paragraph 2 letter b of the Criminal Procedure Code<sup>227</sup>;
- b. Article 14 and 15 of the Government Liability Act of 14 March 1958<sup>228</sup>;
- c. Article 17 of the Parliament Act of 13 December 2002<sup>229</sup>;
- d. Article 61a of the Government and Administration Organisation Act of 21 March 1997<sup>230</sup>;
- e. Article 11 of the Federal Supreme Court Act of 17 June 2005<sup>231</sup>;
- f. Article 12 of the Federal Administrative Court Act of 17 June 2005<sup>232</sup>;
- g. Article 16 of the Patent Court Act of 20. March 2009<sup>233</sup>;
- h. Article 50 of the Criminal Justice Authorities Act of 19 March 2010<sup>234</sup>.

### **Title Thirteen: Felonies and Misdemeanours against the State and National Security**

#### **Art. 265**

1. Felonies and misdemeanours against the state  
High treason

Any person who carries out an act with the aim, through the use of violence,  
of changing the constitution of the Confederation<sup>235</sup> or of a canton<sup>236</sup>,

- 227 SR **312.0**  
 228 SR **170.32**  
 229 SR **171.10**  
 230 SR **172.010**  
 231 SR **173.110**  
 232 SR **173.32**  
 233 SR **173.41**  
 234 SR **173.71**  
 235 SR **101**  
 236 SR **131.211/.235**

of deposing the constitutionally appointed state authorities or rendering them unable to exercise their powers, or  
of severing an area of Swiss territory from the Confederation or a part of cantonal territory from a canton,  
is liable to a custodial sentence of not less than one year<sup>237</sup>.

**Art. 266**

Attacks on the independence of the Confederation

1. Any person who carries out an act with the aim of, violating or endangering the independence of the Confederation or endangering the independence of the Confederation by bringing about the interference of a foreign power in federal affairs,  
is liable to a custodial sentence of not less than one year.

2.<sup>238</sup> Any person who enters into a relationship with the government of a foreign state or its agents with the aim of bringing about a war against the Confederation is liable to a custodial sentence of not less than three years.

In serious cases a life sentence may be imposed.

**Art. 266<sup>bis</sup>**<sup>239</sup>

Foreign operations and activities directed against the security of Switzerland

<sup>1</sup> Any person who with a view to bringing about or supporting foreign operations or activities directed against the security of Switzerland, contacts a foreign state, foreign parties, or other foreign organisations or their agents, or issues or disseminates false or distorted information is liable to a custodial sentence not exceeding five years or to a monetary penalty.

<sup>2</sup> In serious cases, a custodial sentence of not less than one year may be imposed.

**Art. 267**

Diplomatic treason

1. Any person who wilfully makes known or makes accessible to a foreign state or its agents or to the general public a secret, the preservation of which is necessary in the interests of the Confederation,<sup>240</sup>

<sup>237</sup> Term in accordance with No II 1 para. 11 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979). This amendment has been taken into account throughout the Second Book.

<sup>238</sup> Amended by No I of the Federal Act of 5 Oct. 1950, in force since 5 Jan. 1951 (AS **1951** I 16; BBl **1949** I 1249).

<sup>239</sup> Inserted by No I of the Federal Act of 5 Oct. 1950, in force since 5 Jan. 1951 (AS **1951** I 16; BBl **1949** I 1249).

<sup>240</sup> Amended by No I of the Federal Act of 10 Oct. 1997, in force since 1 April 1998 (AS **1998** 852 856; BBl **1996** IV 525).

any person who falsifies, destroys, disposes of or steals documents or evidence relating to legal relations between the Confederation or a canton and a foreign state and thus endangers the interests of the Confederation or the canton, or

any person who, as the authorised representative of the Confederation, conducts negotiations with a foreign government which are intended to be detrimental to the Confederation,

is liable to a custodial sentence of not less than one year.

2.<sup>241</sup> Any person who wilfully makes known or makes accessible to the general public a secret, the preservation of which is necessary in the interests of the Confederation is liable to a custodial sentence not exceeding five years or to a monetary penalty.

3.<sup>242</sup> If the person concerned acts through negligence, the penalty is a custodial sentence not exceeding three years or a monetary penalty.

#### **Art. 268**

Moving of  
national  
boundary  
markers

Any person who removes, moves, renders unrecognisable, falsely positions or falsifies a boundary stone or other boundary marker which serves to indicate a national, cantonal or communal boundary is liable to a custodial sentence not exceeding five years or to a monetary penalty.

#### **Art. 269**

Violation of  
Swiss territorial  
sovereignty

Any person forcibly enters Swiss territory in violation of international law is liable to a custodial sentence or to a monetary penalty.

#### **Art. 270**

Attacks on Swiss  
national  
emblems

Any person who maliciously removes, damages or acts in an insulting manner towards a Swiss national emblem which is displayed by a public authority, and in particular the coat of arms or the flag of the Confederation or a canton is liable to a custodial sentence not exceeding three years or to a monetary penalty.

#### **Art. 271<sup>243</sup>**

Unlawful  
activities on  
behalf of a  
foreign state

1. Any person who carries out activities on behalf of a foreign state on Swiss territory without lawful authority, where such activities are the responsibility of a public authority or public official,

<sup>241</sup> Inserted by No I of the Federal Act of 10 Oct. 1997, in force since 1 April 1998 (AS 1998 852 856; BBl 1996 IV 525).

<sup>242</sup> Originally No 2.

<sup>243</sup> Amended by No I of the Federal Act of 5 Oct. 1950, in force since 5 Jan. 1951 (AS 1951 I 16; BBl 1949 I 1249).

any person who carries out such activities for a foreign party or organisation,

any person who encourages such activities,

is liable to a custodial sentence not exceeding three years or to a monetary penalty, or in serious cases to a custodial sentence of not less than one year.<sup>244</sup>

2. Any person who abducts another by using violence, false pretences or threats and takes him abroad in order to hand him over to a foreign authority, party or other organisation or to expose him to a danger to life or limb is liable to a custodial sentence of not less than one year.

3. Any person who makes preparations for such an abduction is liable to a custodial sentence or to a monetary penalty.

#### **Art. 272**<sup>245</sup>

2. Espionage  
Political  
espionage

1. Any person who provides political intelligence-gathering services or organises such services in the interest of a foreign state, a foreign party or any other foreign organisation, to the detriment of Switzerland or its citizens, inhabitants or organisations,

any person who recruits or encourages others to provide such services, is liable to a custodial sentence not exceeding three years or to a monetary penalty.

2. In serious cases, the penalty is a custodial sentence of not less than one year. A serious case is constituted, in particular, where the offender incites activities or makes false reports such that the internal or external security of the Confederation is threatened.

#### **Art. 273**

Industrial  
espionage

Any person who obtains a manufacturing or trade secret in order to make it available to an external official agency, a foreign organisation, a private enterprise, or the agents of any of these, or,

any person who makes a manufacturing or trade secret available to an external official agency, a foreign organisation, a private enterprise, or the agents of any of these,

is liable to a custodial sentence not exceeding three years or to a monetary penalty, or in serious cases to a custodial sentence of not less than

<sup>244</sup> Penalties revised by No II 1 para. 16 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS 2006 3459 3535; BBl 1999 1979).

<sup>245</sup> Amended by No I of the Federal Act of 5 Oct. 1950, in force since 5 Jan. 1951 (AS 1951 I 16; BBl 1949 I 1249).

one year. Any custodial sentence may be combined with a monetary penalty.<sup>246</sup>

**Art. 274**<sup>247</sup>

Military espionage

1. Any person who conducts, organises, recruits others to conduct or encourages military intelligence-gathering services on behalf of a foreign state and to the detriment of Switzerland,

is liable to a custodial sentence not exceeding three years or to a monetary penalty.

In serious cases, a custodial sentence of not less than one year may be imposed.

2. Any correspondence and materials will be confiscated.

**Art. 275**<sup>248</sup>

3. Endangering the constitutional order  
Attacks on the constitutional order

Any person who carries out an act which is intended to disrupt or alter the constitutional order of the Confederation<sup>249</sup> or the cantons<sup>250</sup> in an unlawful manner is liable to a custodial sentence not exceeding five years or to a monetary penalty.

**Art. 275<sup>bis</sup>**<sup>251</sup>

Subversive propaganda

Any person who disseminates foreign propaganda which is intended to bring about the violent overthrow of the constitutional order of the Confederation or a canton is liable to a custodial sentence not exceeding three years or to a monetary penalty.

**Art. 275<sup>ter</sup>**<sup>252</sup>

Unlawful association

Any person who founds an association, the aim of which or the activity of which involves the commission of acts that are offences under Articles 265, 266, 266<sup>bis</sup>, 271–274, 275 and 275<sup>bis</sup>,

any person who joins such an association or participates in its activities, and

<sup>246</sup> Penalties revised by No II 1 para. 16 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979).

<sup>247</sup> Amended by No I of the Federal Act of 5 Oct. 1950, in force since 5 Jan. 1951 (AS **1951** I 16; BBl **1949** I 1249).

<sup>248</sup> Amended by No I of the Federal Act of 5 Oct. 1950, in force since 5 Jan. 1951 (AS **1951** I 16; BBl **1949** I 1249).

<sup>249</sup> SR **101**

<sup>250</sup> SR **131.211/.235**

<sup>251</sup> Inserted by No I of the Federal Act of 5 Oct. 1950, in force since 5 Jan. 1951 (AS **1951** I 16; BBl **1949** I 1249).

<sup>252</sup> Inserted by No I of the Federal Act of 5 Oct. 1950, in force since 5 Jan. 1951 (AS **1951** I 16; BBl **1949** I 1249).

any person who calls for the formation of such an association or follows its instructions,  
is liable to a custodial sentence not exceeding three years or to a monetary penalty.

**Art. 276**

4. Disruption of military security  
Incitement and inducement to violate military duties

1. Any person who publicly incites others to disobey military orders, to violate military duties, to refuse to perform military service or to desert, and

any person who induces a person obliged to perform military service to carry out such an act,  
is liable to a custodial sentence not exceeding three years or to a monetary penalty.

2. Where the incitement or inducement relates to mutiny or the preparation for mutiny, the penalty is a custodial sentence or a monetary penalty.

**Art. 277**

Forgery of military orders or instructions

1. Any person who wilfully forges, falsifies, suppresses or removes a call-up order, mobilisation order or marching order, or instructions intended for those obliged to perform military service, and

any person who makes use of such a forged or falsified order or instruction,  
is liable to a custodial sentence or to a monetary penalty.

2. If the person concerned acts through negligence, the penalty is a custodial sentence not exceeding three years or a monetary penalty.

**Art. 278**

Disruption of military service

Any person who prevents a member of the armed forces from carrying out his military service or obstructs him in the course of his service is liable to a monetary penalty not exceeding 180 daily penalty units.

**Title Fourteen:  
Misdemeanours against the Will of the People**

**Art. 279**

Disruption and obstruction of elections and votes

Any person who by the use of violence or the threat of seriously detrimental consequences obstructs or disrupts a meeting, election or vote organised under the terms of the constitution or the law, and any person who by the use of violence or the threat of seriously detrimental

consequences obstructs or disrupts the collection of signatures for or the handing-over of a petition requesting a referendum or initiative, is liable to a custodial sentence not exceeding three years or to a monetary penalty.

#### **Art. 280**

Attacks on the right to vote

Any person who by the use of violence or the threat of seriously detrimental consequences prevents a voter from exercising his right to vote or to sign a petition requesting a referendum or initiative, and any person who by the use of violence or the threat of seriously detrimental consequences coerces a voter into exercising his voting rights or into voting in a particular way, is liable to a custodial sentence not exceeding three years or to a monetary penalty.

#### **Art. 281**

Corrupt electoral practices

Any person who offers, promises, or gives a voter or arranges for a voter to be given a gift or other advantage in return for voting in a particular way, or in return for signing or refusing to sign a request for a referendum or an initiative, any person who offers, promises, or gives a voter or arranges for a voter to be given a gift or other advantage in return for not participating in an election or vote, and any person who as a voter secures the promise of or arranges for himself to be given such an advantage, is liable to a custodial sentence not exceeding three years or to a monetary penalty.

#### **Art. 282**

Electoral fraud

1. Any person who forges, falsifies, removes or destroys an electoral register, any person who participates in an election or a vote, or signs a request for a referendum or an initiative without authority, and any person who falsifies the results of an election or vote or a petition requesting a referendum or initiative, in particular by adding, altering, omitting, deleting ballot papers or signatures, counting them incorrectly or incorrectly certifying the result, is liable to a custodial sentence not exceeding three years or to a monetary penalty.
2. If the offender acts in official capacity, the penalty is a custodial sentence not exceeding three years or to a monetary penalty of not less

than 30 daily penalty units. The custodial sentence may be combined with a monetary penalty.<sup>253</sup>

**Art. 282**<sup>bis 254</sup>

Vote catching Any person who systematically collects, completes or alters ballot papers, or distributes ballot papers which have been completed or altered in this way is liable to a fine.

**Art. 283**

Breach of voting secrecy Any person who obtains knowledge by unlawful means of how individuals have voted is liable to a custodial sentence not exceeding three years or to a monetary penalty.

**Art. 284**<sup>255</sup>

**Title Fifteen: Offences against Official Powers**

**Art. 285**

Violence and threats against public authorities and public officials 1.<sup>256</sup> Any person who by the use of violence or threats prevents an authority, one of its members or a public official from carrying out an official act, or coerces them to carry out such an act, or attacks them while they are carrying out such an act is liable to a custodial sentence not exceeding three years or to a monetary penalty.

Public officials also include employees of undertakings in terms of the Railways Act of 20 December 1957<sup>257</sup>, the Passenger Transport Act of 20 March 2009<sup>258</sup> and the Goods Transport Act of 19 December 2008<sup>259</sup>, as well as employees of organisations operating with a licence from the Federal Office of Transport under the Federal Act of 18 June 2010<sup>260</sup> on the Security Units of Public Transport Companies.

<sup>253</sup> Penalties revised by No II 1 para. 16 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979).

<sup>254</sup> Inserted by Art. 88 No I of the Federal Act of 17 Dec. 1976 on Political Rights, in force since 1 July 1978 (AS **1978** 688; BBl **1975** I 1317).

<sup>255</sup> Repealed by No I of the Federal Act of 18 March 1971, with effect from 1 July 1971 (AS **1971** 777; BBl **1965** I 561).

<sup>256</sup> Amended by No I of the Federal Act of 5 Oct. 1950, in force since 5 Jan. 1951 (AS **1951** I 16; BBl **1949** I 1249).

<sup>257</sup> SR **742.101**

<sup>258</sup> SR **745.1**

<sup>259</sup> SR **742.41**

<sup>260</sup> SR **745.2**



2. If the offence is committed by a mob, any person who participates in the mob is liable to a custodial sentence not exceeding three years or to a monetary penalty.<sup>261</sup>

Any participant who uses violence against persons or property is liable to a custodial sentence not exceeding three years or to a monetary penalty of not less than 30 daily penalty units.<sup>262</sup>

**Art. 286**<sup>263</sup>

Prevention of an official act

Any person who prevents a public authority, one of its members or a public official from carrying out an act which is one of their official duties is liable to a monetary penalty not exceeding 30 daily penalty units.

Public officials also include employees of undertakings in terms of the Railways Act of 20 December 1957<sup>264</sup>, the Passenger Transport Act of 20 March 2009<sup>265</sup> and the Goods Transport Act of 19 December 2008<sup>266</sup>, as well as employees of organisations operating with a licence from the Federal Office of Transport under the Federal Act of 18 June 2010<sup>267</sup> on the Security Units of Public Transport Companies.<sup>268</sup>

**Art. 287**

Usurpation of office

Any person who with unlawful intention usurps the exercise of an official function or military command is liable to a custodial sentence not exceeding three years or to a monetary penalty.

**Art. 288**<sup>269</sup>

**Art. 289**

Removal of seized property

Any person who removes from official control an item of property which has been officially seized is liable to a custodial sentence not exceeding three years or to a monetary penalty.

<sup>261</sup> Amended by Art. 11 para. 2 of the Federal Act of 18 June 2010 on the Security Units of Public Transport Companies, in force since 1 Oct. 2011 (AS **2011** 3961; BBl **2010** 891 915).

<sup>262</sup> Penalties revised by No II 1 para. 16 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979).

<sup>263</sup> Amended by No I of the Federal Act of 5 Oct. 1950, in force since 5 Jan. 1951 (AS **1951** 1 16; BBl **1949** 1 1249).

<sup>264</sup> SR **742.101**

<sup>265</sup> SR **745.1**

<sup>266</sup> SR **742.41**

<sup>267</sup> SR **745.2**

<sup>268</sup> Amended by Art. 11 para. 2 of the Federal Act of 18 June 2010 on the Security Units of Public Transport Companies, in force since 1 Oct. 2011 (AS **2011** 3961; BBl **2010** 891 915).

<sup>269</sup> Repealed by No I 1 of the Federal Act of 22 Dec. 1999, with effect from 1 May 2000 (Revision of the Criminal Law on Corruption; AS **2000** 1121; BBl **1999** 5497).

**Art. 290**

Breaking the seals

Any person who breaks open, removes or renders ineffective an official mark and in particular an official seal which is used to close or identify an object is liable to a custodial sentence not exceeding three years or to a monetary penalty.

**Art. 291**

Breach of an expulsion order

<sup>1</sup> Any person who breaches an order issued by a competent authority to expel him from the territory of the Swiss Confederation or a canton is liable to a custodial sentence not exceeding three years or to a monetary penalty.

<sup>2</sup> The duration the sentence is not taken into account in determining the length of the period of expulsion.

**Art. 292**

Contempt of official orders

Any person who fails to comply with an official order that has been issued to him by a competent authority or public official under the threat of the criminal penalty for non-compliance in terms of this Article is liable to a fine.

**Art. 293**

Publication of secret official proceedings

<sup>1</sup> Any person who without authorisation publishes information from the files, proceedings or official investigations of a public authority which have been declared secret by that authority in accordance with its powers is liable to a fine.

<sup>2</sup> Complicity is also a criminal offence.

<sup>3</sup> The court may waive the penalty if the secret made public is of negligible importance.<sup>270</sup>

**Art. 294<sup>271</sup>**

Breach of an activity prohibition order or a contact prohibition and exclusion order

Any person who carries on an activity that he is prohibited from carrying on by a prohibition order under Article 67 hereof, Article 50 of the Military Criminal Code of 13 June 1927<sup>272</sup> (MCC) or Article 16a JCLA<sup>273</sup> shall be liable to a custodial sentence not exceeding one year or monetary penalty.

<sup>270</sup> Inserted by No I of the Federal Act of 10 Oct. 1997, in force since 1 April 1998 (AS **1998** 852 856; BBl **1996** IV 525).

<sup>271</sup> Amended by No I 1 of the Federal Act of 13 Dec. 2013 on Activity Prohibition Orders and Contact Prohibition and Exclusion Orders, in force since 1 Jan. 2015 (AS **2014** 2055; BBl **2012** 8819).

<sup>272</sup> SR **321.0**

<sup>273</sup> SR **311.1**

<sup>2</sup> Any person who contacts or approaches one or more specific persons or persons in a specific group or is present in a specific location when he is prohibited from doing so by a contact prohibition and exclusion order under Article 67b hereof, Article 50b MCC or Article 16a JCLA shall be liable to a custodial sentence not exceeding one year or monetary penalty.

**Art. 295**<sup>274</sup>

Failure to comply with probation assistance or instructions

Any person who fails to comply with probation assistance ordered by the court or the executive authority or with instructions issued by the court or the executive authority shall be liable to a fine.

**Title Sixteen: Offences detrimental to Foreign Relations**

**Art. 296**<sup>275</sup>

Insulting a foreign state

Any person who publicly insults a foreign state in the person of its head of state, the members of its government, its diplomatic representatives, its official delegates to a diplomatic conference taking place in Switzerland, or one of its official representatives to an international organisation or department thereof based or sitting in Switzerland is liable to a custodial sentence not exceeding three years or to a monetary penalty.

**Art. 297**<sup>276</sup>

Insulting an international organisation

Any person who publicly insults an international organisation or department thereof based or sitting in Switzerland in the person of one of its official representatives is liable to a custodial sentence not exceeding three years or to a monetary penalty.

**Art. 298**

Attacks on the national emblems of a foreign state

Any person who wilfully removes, damages or conducts himself in an insulting manner towards a national emblem of a foreign state, and in particular its coat of arms or flag which is publicly displayed by one of its official representatives is liable to a custodial sentence not exceeding three years or to a monetary penalty.

<sup>274</sup> Amended by No I 1 of the Federal Act of 13 Dec. 2013 on Activity Prohibition Orders and Contact Prohibition and Exclusion Orders, in force since 1 Jan. 2015 (AS 2014 2055; BBl 2012 8819).

<sup>275</sup> Amended by No I of the Federal Act of 5 Oct. 1950, in force since 5 Jan. 1951 (AS 1951 1 16; BBl 1949 1 1249).

<sup>276</sup> Amended by No I of the Federal Act of 5 Oct. 1950, in force since 5 Jan. 1951 (AS 1951 1 16; BBl 1949 1 1249).

**Art. 299**

Violation of  
foreign territorial  
sovereignty

1. Any person who violates the territorial sovereignty of a foreign state, in particular by conducting official activities without authorisation on foreign territory,

any person who enters foreign territory in breach of international law, is liable to a custodial sentence not exceeding three years or to a monetary penalty.

2. Any person who attempts from within Swiss territory to disrupt the political order of a foreign state through the use of force is liable to a custodial sentence not exceeding three years or to a monetary penalty.

**Art. 300**

Hostility towards  
a country at war  
or foreign troops

Any person who from neutral Swiss territory acts in a hostile manner towards or supports hostile acts against a country at war,

any person who acts in a hostile manner towards foreign troops who have been admitted to Switzerland,

is liable to a custodial sentence or to a monetary penalty.

**Art. 301**

Military  
espionage  
against a foreign  
state

1. Any person who conducts or organises the conduct of military intelligence gathering services on Swiss territory for a foreign state against another foreign state, and

any person who recruits persons for, or encourages others to provide such services,

is liable to a custodial sentence not exceeding three years or to a monetary penalty.

2. Any correspondence and other materials are forfeited.

**Art. 302<sup>277</sup>**

Prosecution

<sup>1</sup> Felonies and misdemeanours under this Title are only prosecuted on the authority of the Federal Council.

<sup>2</sup> The Federal Council shall order a prosecution only if a request to do so is received from the government of the foreign state in the case of Article 296 or from a governing officer of the international organisation in the case of Article 297. In times of active service, the Federal Council may also order a prosecution in the absence of a request.

<sup>3</sup> In the case of Articles 296 and 297, the right to prosecution is subject to a time limit of two years.<sup>278</sup>

<sup>277</sup> Amended by No I of the Federal Act of 5 Oct. 1950, in force since 5 Jan. 1951 (AS 1951 I 16; BBl 1949 I 1249).

## Title Seventeen: Felonies and Misdemeanours against the Administration of Justice

### Art. 303

- False accusation
1. Any person who makes an accusation to the authorities that a person whom he knows to be innocent has committed a felony or a misdemeanour, with the intention of causing a criminal prosecution to be brought against that person,  
  
any person who otherwise carries out malicious acts with the intention of causing a criminal prosecution to be brought against a person whom he knows to be innocent,  
  
is liable to a custodial sentence or to a monetary penalty.
  2. If the false accusation relates to a contravention, the penalty is a custodial sentence not exceeding three years or a monetary penalty.

### Art. 304

- Misleading the judicial authorities
1. Any person who reports the commission of a criminal offence to the judicial authorities which he knows has not been committed,  
  
any person who falsely reports to the judicial authorities that he has himself committed an offence,  
  
is liable to a custodial sentence not exceeding three years or to a monetary penalty.
  2. In particularly minor cases, the court may waive the imposition of a penalty.

### Art. 305

- Assisting offenders
- <sup>1</sup> Any person who assists another to evade prosecution, the execution of a sentence, or the execution of any of the measures provided for in Articles 59–61, 63 and 64<sup>279</sup> is liable to a custodial sentence not exceeding three years or to a monetary penalty.
  - <sup>1bis</sup> Any person who assists a person who is being prosecuted or has been convicted outside Switzerland in respect of a felony in accordance with Article 101 to evade prosecution or the execution of a custodial sentence or a measure within the meaning of Articles 59–61, 63 or 64 in that place is liable to the same penalties as in paragraph 1.<sup>280</sup>

<sup>278</sup> Amended by No I of the Federal Act of 22 March 2002 (Limitation of the Right to Prosecute), in force since 1 Oct. 2002 (AS **2002** 2986 2988; BBl **2002** 2673 1649).

<sup>279</sup> Part of sentence amended by No II 2 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979).

<sup>280</sup> Inserted by No I of the Federal Act of 9 Oct. 1981, in force since 1 Oct. 1982 (AS **1982** 1530 1534; BBl **1980** I 1241).

<sup>2</sup> The court may waive the imposition of a penalty where the person committing an offence in terms of this Article is so closely related to the person receiving his assistance that his conduct is excusable.

**Art. 305<sup>bis</sup>** <sup>281</sup>

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 is liable to a custodial sentence not exceeding three years or to a monetary penalty.<sup>282</sup>

1<sup>bis</sup>. An aggravated tax misdemeanour is any of the offences set out in Article 186 of the Federal Act of 14 December 1990<sup>283</sup> on Direct Federal Taxation and Article 59 paragraph 1 clause one of the Federal Act of 14 December 1990<sup>284</sup> on the Harmonisation of Direct Federal Taxation at Cantonal and Communal Levels, if the tax evaded in any tax period exceeds 300 000 francs.<sup>285</sup>

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.<sup>286</sup>

A serious case is constituted, in particular, where the offender:

- a. acts as a member of a criminal organisation;
- b. acts as a member of a group that has been formed for the purpose of the continued conduct of money laundering activities; or
- c. achieves a large turnover or substantial profit through commercial money laundering.

3. The offender is also liable to the foregoing penalties where the main offence was committed abroad, provided such an offence is also liable to prosecution at the place of commission.<sup>287</sup>

<sup>281</sup> Inserted by No I of the Federal Act of 23 March 1990, in force since 1 Aug. 1990 (AS **1990** 1077 1078; BBl **1989** II 1061).

<sup>282</sup> Amended by No I 4 of the Federal Act of 12 Dec. 2014 on the Implementation of the 2012 Revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS **2015** 1389; BBl **2014** 605).

<sup>283</sup> SR **642.11**

<sup>284</sup> SR **642.14**

<sup>285</sup> Inserted by No I 4 of the Federal Act of 12 Dec. 2014 on the Implementation of the 2012 Revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS **2015** 1389; BBl **2014** 605). See also the transitional provision to this amendment at the end of the text.

<sup>286</sup> Penalties revised by No II 1 para. 16 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979).

<sup>287</sup> Corrected by the Drafting Committee of the Federal Assembly [Art. 33 ParlPA; AS **1974** 1051].

**Art. 305<sup>ter</sup> 288**

Insufficient  
diligence in  
financial  
transactions and  
right to report <sup>289</sup>

<sup>1</sup> Any person who as part of his profession accepts, holds on deposit, or assists in investing or transferring outside assets and fails to ascertain the identity of the beneficial owner of the assets with the care that is required in the circumstances is liable to a custodial sentence not exceeding one year or to a monetary penalty.<sup>290</sup>

<sup>2</sup> The persons included in paragraph 1 above are entitled to report to the Money Laundering Reporting Office in the Federal Office of Police any observations that indicate that assets originate from a felony or an aggravated tax misdemeanour in terms of Article 305<sup>bis</sup> number 1<sup>bis</sup>.<sup>291</sup>

**Art. 306**

Perjury by a  
party to civil  
proceedings

<sup>1</sup> Any person who is a party to civil proceedings and, following an express caution by the judge that he must tell the truth and notification of the penalties for failure to do so, gives false evidence in relation to the case is liable to a custodial sentence not exceeding three years or to a monetary penalty.

<sup>2</sup> If the offender testifies on oath or affirmation, the penalty is a custodial sentence not exceeding three years or a monetary penalty of not less than 90 daily penalty units.<sup>292</sup>

**Art. 307**

Perjury.  
Perjury by an  
expert witness.  
False translation

<sup>1</sup> Any person who appears in judicial proceedings as a witness, expert witness, translator or interpreter and gives false evidence or provides a false report, a false expert opinion or a false translation in relation to the case is liable to a custodial sentence not exceeding five years or to a monetary penalty.

<sup>2</sup> If the statement, report, expert opinion or translation is made on oath or affirmation, the penalty is a custodial sentence not exceeding five years or a monetary penalty of not less than 180 daily penalty units.<sup>293</sup>

<sup>288</sup> Inserted by No I of the Federal Act of 23 March 1990, in force since 1 Aug. 1990 (AS **1990** 1077 1078; BBl **1989** II 1061).

<sup>289</sup> Amended by No I of the Federal Act of 18 March 1994, in force since 1 Aug. 1994 (AS **1994** 1614 1618; BBl **1993** III 277).

<sup>290</sup> Penalties revised by No II 1 para. 16 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979).

<sup>291</sup> Inserted by No I of the Federal Act of 18. März 1994 (AS **1994** 1614; BBl **1993** III 277). Amended by No I 4 of the Federal Act of 12 Dec. 2014 on the Implementation of the 2012 Revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS **2015** 1389; BBl **2014** 605).

<sup>292</sup> Penalties revised by No II 1 para. 16 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979).

<sup>293</sup> Penalties revised by No II 1 para. 16 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979).

<sup>3</sup> If the false statement relates to matters that are irrelevant to the judicial decision, the penalty is a monetary penalty not exceeding 180 daily penalty units.<sup>294</sup>

### Art. 308

Mitigation of the sentence

<sup>1</sup> If the offender makes his false accusation (Art. 303), false report of an offence (Art. 304) or testimony (Art. 306 and 307) of his own accord and before it has caused any legal detriment to others, the court may reduce the sentence (Art. 48a) or waive a penalty.<sup>295</sup>

<sup>2</sup> If the offender perjured himself (Art. 306 and 307) because by testifying truthfully he or his close relative would risk prosecution, the court may reduce the sentence (Art. 48a).<sup>296</sup>

### Art. 309<sup>297</sup>

Administrative cases and proceedings before international courts

Articles 306–308 also apply to:

- a. the administrative court proceedings, arbitration proceedings and proceedings before public authorities and public officials who are entitled to examine witnesses;
- b. proceedings before international courts where Switzerland recognises their mandatory jurisdiction.

### Art. 310

Assisting prisoners to escape

1. Any person who by using force, threats or false pretences, frees or assists in the escape of a person under arrest, a convicted prisoner or a person committed to an institution by official order is liable to a custodial sentence not exceeding three years or to a monetary penalty.

2. If the act is committed by a mob, any person who participates in the mob is liable to a custodial sentence not exceeding three years or to a monetary penalty.

Any participants who commits acts of violence against persons or property is liable to a custodial sentence not exceeding three years or to a monetary penalty of not less than 30 daily penalty units.<sup>298</sup>

<sup>294</sup> Penalties revised by No II 1 para. 16 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS 2006 3459 3535; BBl 1999 1979).

<sup>295</sup> Last part of sentence amended by No II 2 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS 2006 3459 3535; BBl 1999 1979).

<sup>296</sup> Last part of sentence amended by No II 2 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS 2006 3459 3535; BBl 1999 1979).

<sup>297</sup> Amended by No I 1 of the Federal Act of 22 June 2001 (Offences against the Administration of Justice before International Courts), in force since 1 July 2002 (AS 2002 1491 1492; BBl 2001 391).

<sup>298</sup> Penalties revised by No II 1 para. 16 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS 2006 3459 3535; BBl 1999 1979).



**Art. 311**

Prison mutiny

1. Convicted prisoners or other persons who have been committed to an institution by official order who form a riotous assembly with the common intent

to attack the officers of the institution or other persons entrusted with their supervision,

to coerce these persons by force or the threat of force to carry out acts or abstain from carrying out acts, or

to break out of the institution by using force,

are liable to a custodial sentence not exceeding three years or to a monetary penalty of not less than 30 daily penalty units.<sup>299</sup>

2. Any participant who commits acts of violence against persons or property is liable to a custodial sentence not exceeding five years or to a monetary penalty of not less than 90 daily penalty units.<sup>300</sup>

### **Title Eighteen: Offences against Official or Professional Duty**

**Art. 312**

Abuse of public office

Any member of an authority or a public official who abuses his official powers in order to secure an unlawful advantage for himself or another or to cause prejudice to another is liable to a custodial sentence not exceeding five years or to a monetary penalty.

**Art. 313**

Overcharging of taxes

Any public official who for unlawful gain levies taxes, fees or other charges which are not due or which exceed the statutory rates is liable to a custodial sentence not exceeding three years or to a monetary penalty.

**Art. 314<sup>301</sup>**

Misconduct in public office

Any member of an authority or public official who, in the course of a legal transaction and with a view to obtaining an unlawful advantage for himself or another, damages the public interests that he has a duty to safeguard is liable to a custodial sentence not exceeding five years

<sup>299</sup> Penalties revised by No II 1 para. 16 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979).

<sup>300</sup> Penalties revised by No II 1 para. 16 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979).

<sup>301</sup> Amended by No I of the Federal Act of 17 June 1994, in force since 1 Jan. 1995 (AS **1994** 2290 2307; BBl **1991** II 969).

or to a monetary penalty. A custodial sentence must be combined with a monetary penalty.<sup>302</sup>

**Art. 315–316**<sup>303</sup>

**Art. 317**<sup>304</sup>

Forgery of a document by a public official

1. Any public official or person acting in an official capacity who wilfully forges or falsifies a document or uses the genuine signature or handwriting of another to produce a false document,

any public official or person acting in an official capacity who wilfully falsely certifies a fact of legal significance, and in particular falsely certifies the authenticity of a signature or handwriting or the accuracy of a copy,

is liable to a custodial sentence not exceeding five years or to a monetary penalty.

2. If the person concerned acts through negligence, the penalty is a fine.

**Art. 317**<sup>bis 305</sup>

Exempted acts

<sup>1</sup> Any person who, as part of a covert investigation, produces, amends or uses documents with the authority of a court in order to construct or maintain his cover story or produces, amends or uses documents with the authorisation of the Head of the Federal Department of Defence, Civil Protection and Sport (DDPS) in accordance with Article 14c of the Federal Act of 21 March 1997<sup>306</sup> on Measures to Safeguard Internal Security (ISA) in order to create or maintain his assumed identity does not commit an offence under Articles 251, 252, 255 and 317.

<sup>2</sup> Any person who, with authorisation for a covert investigation or with the consent of the Head of the DDPS under Article 14c ISA, produces or amends official documents for the purposes of an assumed identity does not commit an offence under Articles 251, 252, 255 and 317.

<sup>3</sup> Any person who produces, amends or uses official documents under the Federal Act of 23 December 2011<sup>307</sup> on Extra-Procedural Witness

<sup>302</sup> Penalties revised by No II 1 para. 16 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979).

<sup>303</sup> Repealed by No I 1 of the Federal Act of 22 Dec. 1999, with effect from 1 May 2000 (Revision of the Criminal Law on Corruption; AS **2000** 1121; BBl **1999** 5497).

<sup>304</sup> Amended by No I of the Federal Act of 17 June 1994, in force since 1 Jan. 1995 (AS **1994** 2290 2307; BBl **1991** II 969).

<sup>305</sup> Inserted by Art. 24 No 1 of the Federal Act of 20 June 2003 on Covert Investigations, in force since 1 Jan. 2005 (AS **2004** 1409; BBl **1998** 4241). Amended by Annex No. 3 of the Federal Act of 23 Dec. 2011, in force since 16 July 2012 (AS **2012** 3745; BBl **2007** 5037, **2010** 7841).

<sup>306</sup> SR **120**

<sup>307</sup> SR **312.2**

Protection does not commit an offence under Articles 251, 252, 255 and 317.<sup>308</sup>

### Art. 318

Issuing a false medical certificate

1. Any doctor, dentist, veterinary surgeon or midwife who wilfully issues a certificate, the content of which is untrue, for the purpose of being produced to the authorities or to obtain an unlawful advantage, or which may prejudice the substantial and lawful interests of third parties is liable to a custodial sentence not exceeding three years or to a monetary penalty.

If the offender has requested, accepted or secured the promise of a special form of recompense, he is liable to a custodial sentence not exceeding three years or to a monetary penalty.

2. If the person concerned acts through negligence, the penalty is a fine.

### Art. 319

Assistance by a public official in the escape of prisoners

Any public official who assists or allows a person under arrest, a convicted prisoner or a person committed to an institution by official order to escape is liable to a custodial sentence not exceeding three years or to a monetary penalty.

### Art. 320

Breach of official secrecy

1. Any person who discloses secret information that has been confided to him in his capacity as a member of an authority or as a public official or which has come to his knowledge in the execution of his official duties is liable to a custodial sentence not exceeding three years or to a monetary penalty.

A breach of official secrecy remains an offence following termination of employment as a member of an authority or as a public official.

2. The offender is not liable to any penalty if he has disclosed the secret information with the written consent of his superior authority.

### Art. 321

Breach of professional confidentiality

1. Any person who in his capacity as a member of the clergy, lawyer, defence lawyer, notary, patent attorney, auditor subject to a duty of confidentiality under the Code of Obligations<sup>309</sup>, doctor, dentist, chiropractor, pharmacist, midwife, psychologist or as an auxiliary to any of the foregoing persons discloses confidential information that

<sup>308</sup> Inserted by Annex No 3 of the Federal Act of 23 Dec. 2011 on Extra-Procedural Witness Protection, in force since 1 Jan. 2013 (AS 2012 6715; BBl 2011 1).

<sup>309</sup> SR 220

has been confided to him in his professional capacity or which has come to his knowledge in the practice of his profession is liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.<sup>310</sup>

A student who discloses confidential information that has come to his knowledge in the course of his studies is also liable to the foregoing penalties.

A breach of professional confidentiality remains an offence following the termination of professional employment or of the studies.

2. No offence is committed if the person disclosing the information does so with the consent of the person to whom the information pertains or on the basis of written authorisation issued in response to his application by a superior authority or supervisory authority.

3. The federal and cantonal provisions on the duty to testify and on the obligation to provide information to an authority are reserved.

**Art. 321**<sup>bis 311</sup>

Breach of professional confidentiality in research involving human beings

<sup>1</sup> Any person who discloses without authorisation a professional secret that has come to his knowledge in the course of his research activities involving human beings in accordance with the Human Research Act of 30 September 2011<sup>312</sup> is liable to a penalty in accordance with Article 321.

<sup>2</sup> Professional secrets may be disclosed for the purpose of research into human diseases and concerning the structure and function of the human body if the requirements of Article 34 of the Human Research Act of 30 September 2011 are met and authorisation for disclosure has been obtained from the responsible ethics committee.

**Art. 321**<sup>ter 313</sup>

Breach of postal or telecommunications secrecy

<sup>1</sup> Any person who in his capacity as a public official, employee or auxiliary of an organisation providing postal or telecommunications services reveals to a third party details of customers' post, payments or telecommunications, opens sealed mail or tries to find out its content, or allows a third party the opportunity to carry out such an act is liable to a custodial sentence not exceeding three years or to a monetary penalty.

<sup>310</sup> Amended by Art. 48 No 1 of the Psychology Professions Act of 18 March 2011, in force since 1 April 2013 (AS **2012** 1929, **2013** 915 975; BBl **2009** 6897).

<sup>311</sup> Inserted by Annex No 4 of the Federal Act of 19 June 1992 on Data Protection (AS **1993** 1945; BBl **1988** II 413). Amended by Annex No 2 of the Human Research Act of 30 Sept. 2011, in force since 1 Jan. 2014 (AS **2013** 3215; BBl **2009** 8045).

<sup>312</sup> SR **810.30**

<sup>313</sup> Inserted by Annex No 2 of the Telecommunications Act of 30 April 1997, in force since 1 Jan. 1998 (AS **1997** 2187; BBl **1996** III 1405).

<sup>2</sup> The foregoing penalties also apply to any person who by deception causes a person bound by a duty of confidentiality in terms of paragraph 1 to breach his obligation of secrecy.

<sup>3</sup> A breach of postal or telecommunications secrecy remains an offence even after termination of employment as a public official, employee or auxiliary of an organisation providing postal or telecommunication services.

<sup>4</sup> A breach of postal or telecommunications secrecy is not an offence if it is carried out in order to determine the identity of the entitled person or to prevent loss or damage being occasioned.

<sup>5</sup> Article 179<sup>octies</sup> is reserved, together with the federal and cantonal provisions on the obligations to give evidence or provide information to a public authority.

#### **Art. 322**<sup>314</sup>

Breach of the media duty to provide information

<sup>1</sup> Media organisations are obliged, at the request of any person, to reveal immediately and in writing their place of business and the identity of those responsible for their publications (Art. 28 para. 2 and 3).<sup>315</sup>

<sup>2</sup> Newspapers, magazines or periodicals must indicate in an imprint the place of business of their media organisation, significant holdings in other organisations and the editor responsible. If the editor is responsible only for part of the newspaper, magazine or periodical, it must be indicated that he is the editor responsible for that part. Details of the editors responsible must be given for each part of the newspaper, magazine or periodical.

<sup>3</sup> In the event of any violation of the provisions of this Article, the manager of the media organisation is liable to a fine. If the person indicated as editor (Art. 28 para. 2 and 3) does not in fact hold such a position, this also constitutes an offence.<sup>316</sup>

#### **Art. 322**<sup>bis 317</sup>

Failure to prevent an illegal publication

Any person who, as the person responsible in terms of Article 28 paragraphs 2 and 3, wilfully fails to prevent the publication of material<sup>318</sup>, the publication of which constitutes an offence is liable to a

<sup>314</sup> Amended by No I of the Federal Act of 10 Oct. 1997, in force since 1 April 1998 (AS **1998** 852 856; BBl **1996** IV 525).

<sup>315</sup> Part of sentence amended by No II 2 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979).

<sup>316</sup> Part of sentence amended by No II 2 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979).

<sup>317</sup> Inserted by No I of the Federal Act of 10 Oct. 1997, in force since 1 April 1998 (AS **1998** 852 856; BBl **1996** IV 525).

<sup>318</sup> Part of sentence amended by No II 2 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979).

custodial sentence not exceeding three years or to a monetary penalty. If the person concerned acts through negligence, the penalty is a fine.

## Title Nineteen:<sup>319</sup> Bribery

### Art. 322<sup>ter</sup>

1. Bribery of  
Swiss public  
officials  
Bribery

Any person who offers, promises or gives a member of a judicial or other authority, a public official, an officially-appointed expert, translator or interpreter, an arbitrator, or a member of the armed forces an undue advantage, or offers, promises or gives such an advantage to a third party in order to cause the public official to carry out or to fail to carry out an act in connection with his official activity which is contrary to his duty or dependent on his discretion,

is liable to a custodial sentence not exceeding five years or to a monetary penalty.

### Art. 322<sup>quater</sup>

Acceptance of  
bribes

Any person who as a member of a judicial or other authority, as a public official, officially-appointed expert, translator or interpreter, or as an arbitrator demands, secures the promise of or accepts an undue advantage for that person or for a third party in order that he carries out or fails to carry out an act in connection with his official activity which is contrary to his duty or dependent on his discretion,

is liable to a custodial sentence not exceeding five years or to a monetary penalty.

### Art. 322<sup>quinquies</sup> 320

Granting an  
advantage

Any person who offers, promises or gives a member of a judicial or other authority, a public official, an officially-appointed expert, translator or interpreter, an arbitrator or a member of the armed forces an undue advantage for that person or for a third party in order that the person carries out his official duties is liable to a custodial sentence not exceeding three years or to a monetary penalty.

<sup>319</sup> Inserted by No I 1 of the Federal Act of 22 Dec. 1999 (Revision of the Criminal Law on Corruption), in force since 1 May 2000 (AS **2000** 1121 1126; BBI **1999** 5497).

<sup>320</sup> Amended by No I of the Federal Act of 25 Sept. 2015 (Criminal Law on Corruption), in force since 1 July 2016 (AS **2016** 1287; BBI **2014** 3591).

**Art. 322**<sup>sexies 321</sup>

Acceptance of an advantage

Any person who as a member of a judicial or other authority, as a public official, officially-appointed expert, translator or interpreter, or as an arbitrator, demands, secures the promise of, or accepts an undue advantage for himself or for a third party in order that he carries out his official duties is liable to a custodial sentence not exceeding three years or to a monetary penalty.

**Art. 322**<sup>septies</sup>

2. Bribery of foreign public officials

Any person who offers, promises or gives a member of a judicial or other authority, a public official, an officially-appointed expert, translator or interpreter, an arbitrator, or a member of the armed forces who is acting for a foreign state or international organisation an undue advantage, or gives such an advantage to a third party, in order that the person carries out or fails to carry out an act in connection with his official activities which is contrary to his duties or dependent on his discretion,

any person who as a member of a judicial or other authority, a public official, an officially-appointed expert, translator or interpreter, an arbitrator, or a member of the armed forces of a foreign state or of an international organisation demands, secures the promise of, or accepts an undue advantage for himself or for a third party in order that he carries out or fails to carry out an act in connection with his official activity which is contrary to his duty or dependent on his discretion<sup>322</sup>

is liable to a custodial sentence not exceeding five years or to a monetary penalty.

**Art. 322**<sup>octies 323</sup>3. Bribery of private individuals  
Bribery

<sup>1</sup> Any person who offers, promises or gives an employer, company member, agent or any other auxiliary to a third party in the private sector an undue advantage for that person or a third party in order that the person carries out or fails to carry out an act in connection with his official activities which is contrary to his duties or dependent on his discretion is liable to a custodial sentence not exceeding three years or to a monetary penalty.

<sup>2</sup> In minor cases, the offence is only prosecuted on complaint.

<sup>321</sup> Amended by No I of the Federal Act of 25 Sept. 2015 (Criminal Law on Corruption), in force since 1 July 2016 (AS **2016** 1287; BBI **2014** 3591).

<sup>322</sup> Paragraph inserted by Art. 2 No 2 of the Federal Decree of 7 Oct. 2005 on the Approval and Implementation of the Criminal Law Convention and the Additional Protocol of the Council of Europe on Corruption, in force since 1 July 2006 (AS **2006** 2371 2374; BBI **2004** 6983).

<sup>323</sup> Amended by No I of the Federal Act of 25 Sept. 2015 (Criminal Law on Corruption), in force since 1 July 2016 (AS **2016** 1287; BBI **2014** 3591).

**Art. 322**<sup>novies 324</sup>

Accepting bribes <sup>1</sup> Any person who as an employer, company member, agent or any other auxiliary to a third party in the private demands, secures the promise of, or accepts an undue advantage for himself or for a third party in order that the person carries out or fails to carry out an act in connection with his official activities which is contrary to his duties or dependent on his discretion is liable to a custodial sentence not exceeding three years or to a monetary penalty.

<sup>2</sup> In minor cases, the offence is only prosecuted on complaint.

**Art. 322**<sup>decies 325</sup>

4. General provisions

<sup>1</sup> The following are not undue advantages:

- a. advantages permitted under public employment law or contractually approved by a third party;
- b. negligible advantages that are common social practice.

<sup>2</sup> Private individuals who fulfil official duties are subject to the same provisions as public officials.

**Title Twenty:**<sup>326</sup> **Contraventions of Federal Law****Art. 323**<sup>327</sup>

Failure of a debtor to comply with the regulations governing Debt Enforcement and Bankruptcy proceedings

The following persons are liable to a fine:

1. a debtor who is not present or has not appointed a representative to be present at the seizure of or the recording of an inventory of his assets of which he has been given lawful notice (Art. 91 para. 1 no. 1, 163 para. 2 and 345 para. 1<sup>328</sup> DEBA<sup>329</sup>);
2. a debtor who fails to disclose his assets including those not in his possession, or his claims and rights against third parties to the extent required to obtain satisfaction by seizure or to implement an attachment (Art. 91 para. 1 Sec. 2 and 275 DEBA);
3. a debtor who fails to fully disclose his assets including those not in his possession, or his claims and rights against third parties on the

<sup>324</sup> Inserted by No I of the Federal Act of 25 Sept. 2015 (Criminal Law on Corruption), in force since 1 July 2016 (AS 2016 1287; BBl 2014 3591).

<sup>325</sup> Inserted by No I of the Federal Act of 25 Sept. 2015 (Criminal Law on Corruption), in force since 1 July 2016 (AS 2016 1287; BBl 2014 3591).

<sup>326</sup> Originally Title 19.

<sup>327</sup> Amended by Annex No 8 of the Federal Act of 16 Dec. 1994, in force since 1 Jan. 1997 (AS 1995 1227 1307; BBl 1991 III 1).

<sup>328</sup> Now Art. 341 para. 1.

<sup>329</sup> SR 281.1



recording of an inventory of assets (Art. 163 para. 2, 345 para. 1<sup>330</sup> DEBA);

4. a debtor who fails to disclose or make available all his assets to the Bankruptcy Office (Art. 222 para. 1 DEBA);

5. a debtor who does not make himself available to the bankruptcy administrator during the bankruptcy proceedings unless he has special permission to be excused this duty (Art. 229 para. 1 DEBA).

#### Art. 324<sup>331</sup>

Failure of third parties to comply with the regulations governing debt collection, bankruptcy and composition proceedings

The following persons are liable to a fine:

1. any adult person who shared a household with a debtor who is deceased or has absconded and who fails to disclose full details of that debtor's assets and to make themselves available to the Bankruptcy Office (Art. 222 para. 2 DEBA<sup>332</sup>);

2. any debtor of a bankrupt who fails to report to the Bankruptcy Office within the time limit (Art. 232 para. 2 Sec. 3 DEBA);

3. any person who possesses items belonging to a debtor as a pledge or for any other reason and fails to deliver such items to the Bankruptcy Office within the time limit (Art. 232 para. 2 Sec. 4 DEBA);

4. any person who possesses items belonging to a debtor as a pledgee and fails to deliver such items to the liquidators after expiry of the time limit for realisation (Art. 324 para. 2 DEBA);

5. any third party who fails to comply with his duty to provide information and to deliver assets in accordance with Articles 57a paragraph 1, 91 paragraph 4, 163 paragraph 2, 222 paragraph 4 and 345 paragraph 1<sup>333</sup> of the DEBA.

#### Art. 325

Failure to comply with accounting regulations

Any person who wilfully or through negligence fails to comply with the statutory duty to keep proper accounts or to preserve accounts, business correspondence and business telegrams,

any person who wilfully or through negligence fails to comply with the statutory duty to preserve accounts, business correspondence and business telegrams,

is liable to a fine.

<sup>330</sup> Now Art. 341 para. 1.

<sup>331</sup> Amended by Annex No 8 of the Federal Act of 16 Dec. 1994, in force since 1 Jan. 1997 (AS 1995 1227 1307; BBl 1991 III 1).

<sup>332</sup> SR 281.1

<sup>333</sup> Now Art. 341 para. 1.

Failure to comply with the regulations governing the protection of tenants of domestic and commercial properties

**Art. 325<sup>bis</sup>** 334

Any person who prevents or attempts to prevent a tenant by the threat of detrimental consequences, and in particular the termination of the lease, from contesting the level of rent or other claims of the landlord,

any person who serves notice of termination on the tenant because the tenant asserts or wishes to assert his rights under Swiss Code of Obligations<sup>335</sup>, or

any person who unlawfully demands or attempts to demand payment of rent or other claims after the failure of an attempt to reach agreement thereon or following a court judgment thereon,

is liable on complaint by the tenant to a fine.

**Art. 326**<sup>336</sup>

Application to legal entities, trading companies and sole proprietorships<sup>337</sup>

1. ...

2. In cases falling under Article 325<sup>bis</sup>

**Art. 326<sup>bis</sup>** 338

<sup>1</sup> Where the acts constituting offences under Article 325<sup>bis</sup> are committed while attending to the affairs of a legal entity, general or limited partnership or sole proprietorship<sup>339</sup> or otherwise in the provision of commercial or business services to another, the criminal provisions apply to those natural persons who have committed the acts.

<sup>2</sup> An employer or principal who is aware of the offence or becomes aware of the offence subsequently and who, although he is in a position to do so, fails to prevent the offence or to remedy its consequences is liable to the same penalties as the offender.

<sup>3</sup> If the employer or principal is a legal entity, general or limited partnership, sole proprietorship<sup>340</sup> or corporate body without legal personality, paragraph 2 applies to the culpable management bodies, mem-

<sup>334</sup> Inserted by No II Art. 4 of the Federal Act of 15 Dec. 1989 on the Amendment of the CO (Leases and Tenancies), in force since 1 July 1990 (AS 1990 802; BBI 1985 I 1389 at the end, final provisions on Titles VIII and VIII<sup>bis</sup>).

<sup>335</sup> SR 220

<sup>336</sup> Repealed by No II 3 of the Federal Act of 13 Dec. 2002, with effect from 1 Jan. 2007 (AS 2006 3459 3535; BBI 1999 1979).

<sup>337</sup> Footnote relevant to German text only.

<sup>338</sup> Inserted by No II Art. 4 of the Federal Act of 15 Dec. 1989 on the Amendment of the CO (Leases and Tenancies), in force since 1 July 1990 (AS 1990 802; BBI 1985 I 1389 at the end, final provisions on Titles VIII and VIII<sup>bis</sup>).

<sup>339</sup> Footnote relevant to German text only.

<sup>340</sup> Footnote relevant to German text only.

bers of the management bodies, executive company members, de facto managers or liquidators.

**Art. 326<sup>ter</sup>** 341

Contravention of the law on business and other names

Any person who uses a name for a legal entity or branch entered in the Commercial Register that does not correspond to the name entered in the Commercial Register and which may be misleading,

any person who uses a misleading name for a legal entity or branch not entered in the Commercial Register, or

any person who gives the impression that a foreign legal entity not entered in the Commercial Register has its registered office or a branch in Switzerland,

is liable to a fine<sup>342</sup>.

**Art. 326<sup>quater</sup>** 343

Provision of false information by an employee benefits institution

Any person who as a management officer of an employee benefits institution is under a statutory obligation to provide information to beneficiaries and supervisory bodies but fails to provide any information or provides false information is liable to a fine.

**Art. 327<sup>344</sup>**

**Art. 328**

Reproduction of postage stamps without intent to commit forgery

1. Any person who reproduces Swiss or foreign postage stamps with the intention of marketing the stamps as reproductions but without making the individual stamps distinguishable as reproductions from genuine stamps, or

any person who imports, offers for sale or markets such reproduction stamps,

is liable to a fine.

341 Inserted by No I of the Federal Act of 17 June 1994 (AS **1994** 2290; BBI **1991** II 969). Amended by Annex No 5 of the Federal Act of 16 Dec. 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies Limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan. 2008 (AS **2007** 4791; BBI **2002** 3148, **2004** 3969).

342 Corrected by the Drafting Committee of the Federal Assembly (Art. 58 para. 2 ParlA; SR **171.10**).

343 Inserted by No I of the Federal Act of 17 June 1994, in force since 1 Jan. 1995 (AS **1994** 2290 2307; BBI **1991** II 969).

344 Repealed by Annex No 3 of the Federal Act of 22 Dec. 1999 on Currency and Payment Instruments, with effect from 1 May 2000 (AS **2000** 1144; BBI **1999** 7258).

2. The reproductions are forfeited.

**Art. 329**

Breach of  
military secrecy

1. Any person who unlawfully enters buildings or any other places, the access to which is prohibited by the military authorities,

makes drawings, diagrams or plans or takes photographs or makes films of military establishments or objects serving the national defence, or copies or publishes such drawings, diagrams, plans, photographs or films,

is liable to a fine.

2. Attempts and complicity are also offences.

**Art. 330**

Trading in  
material  
requisitioned by  
the armed forces

Any person who unlawfully sells, purchases, pledges or accepts as a pledge, uses, disposes of, destroys or renders unusable property which has been seized or requisitioned by the military authorities in the interest of national defence is liable to a fine.<sup>345</sup>

**Art. 331**

Unauthorised  
wearing of the  
military uniform

Any person who wears the uniform of the Swiss armed forces without authority is liable to a fine.<sup>346</sup>

**Art. 332**<sup>347</sup>

Failure to report  
a find

Any person who finds or comes into the possession of property and fails to make a report to the police or the owner as required by Articles 720 paragraph 2, 720a and 725 paragraph 1 of the Civil Code<sup>348</sup> is liable to a fine.

<sup>345</sup> Penalties revised by No II 1 para. 16 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979).

<sup>346</sup> Penalties revised by No II 1 para. 16 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459 3535; BBl **1999** 1979).

<sup>347</sup> Amended by No III of the Federal Act of 4 Oct. 2002 (Basic Article Animals), in force since 1 April 2003 (AS **2003** 463 466; BBl **2002** 4164 5806).

<sup>348</sup> SR **210**

**Book Three:**<sup>349</sup> **Introduction and Application of the Code****Title One:****Relationship between this Code and other Federal and Cantonal Acts****Art. 333**

Application of  
the General  
Provisions to  
other federal acts

<sup>1</sup> The general provisions of this Code apply to offences provided for in other federal acts unless these federal acts themselves contain detailed provisions on such offences.

<sup>2</sup> In the other federal acts, the terms below are replaced as follows:

- a. penal servitude by a custodial sentence of more than one year;
- b. imprisonment by a custodial sentence not exceeding three years or by a monetary penalty;
- c. imprisonment for less than six months by a monetary penalty, whereby a one-month custodial sentence corresponds to a monetary penalty of 30 daily penalty units up to a maximum of 3000 francs.

<sup>3</sup> An offence that carries a maximum penalty of detention or a fine or of a fine only is a contravention. Articles 106 and 107 apply. Article 8 of the Federal Act of 22 March 1974<sup>350</sup> on Administrative Criminal Law is reserved. An offence is also a contravention if, in terms of another Federal Act that came into force before 1942, it carries a term of imprisonment not exceeding three months.

<sup>4</sup> Sentences of lengths differing from those mentioned in paragraph 2 and Article 41 as well as fines of amounts differing from those mentioned in Article 106 are reserved.

<sup>5</sup> If another federal act provides for a fine to be imposed for a felony or misdemeanour, Article 34 applies. Rules on determining a penalty that differ from Article 34 do not apply. Article 8 of the Federal Act of 22 March 1974 on Administrative Criminal Law remains reserved. If the fine is limited to a sum under 1 080 000 francs, this limit no longer applies. If the fine is limited to a sum exceeding 1 080 000 francs, this limit continues to apply. In this case, the maximum number of daily penalty units equals the current maximum fine divided by 3000.

<sup>6</sup> Until they have been amended, the following applies in other federal acts:

- a. the limitation periods for the prosecution of felonies and misdemeanours are increased by half and the limitation periods for

<sup>349</sup> Amended by No III of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS 2006 3459 3535; BBl 1999 1979).

<sup>350</sup> SR 313.0

the prosecution of contraventions by twice the ordinary duration;

- b. the limitation periods for the prosecution of contraventions that exceed one year are increased by the ordinary duration;
- c. the rules on the interruption and suspension of the limitation period for prosecution are repealed. Article 11 paragraph 3 of the Federal Act of 22 March 1974 on Administrative Criminal Law remains reserved;
- d. prescription of the right to prosecute no longer applies if a judgment is issued by a court of first instance before expiry of the limitation period.
- e. the limitation periods for the execution of penalties for felonies and misdemeanours continue to apply, and those for penalties for contraventions are increased by one half.
- f. the provisions on the suspension of the limitation period for the execution of a penalty continue to apply, and those on interruption are repealed.

<sup>7</sup> The contraventions provided for in other federal acts are offences, even if they have been committed through negligence, unless only intentional commission is an offence in terms of the provision concerned.

#### **Art. 334**

Reference to repealed provisions

If reference is made in federal legislation to provisions being amended or repealed by this Code, the references relate to the provisions of this Code that regulate the matter.

#### **Art. 335**

Cantonal acts

<sup>1</sup> The cantons retain the power to legislate on contraventions that are not the subject matter of federal legislation.

<sup>2</sup> The cantons have the power to provide for sanctions for offences against cantonal administrative and procedural law.

### **Title Two:**<sup>351</sup> ...

#### **Art. 336-338**

<sup>351</sup> Repealed by Annex 1 No II 8 of the Criminal Procedure Code of 5 Oct. 2007, with effect from 1 Jan. 2011 (AS 2010 1881; BBl 2006 1085).

**Title Three:**<sup>352</sup> ...**Art. 339-348****Title Four: Administrative Assistance on Police Matters**<sup>353</sup>**Art. 349**<sup>354</sup>

1. ...

**Art. 350**2. Cooperation  
with INTERPOL  
a. Jurisdiction<sup>355</sup>

<sup>1</sup> The Federal Office of Police carries out the duties of a National Central Bureau in terms of the Constitution and General Regulations of the International Criminal Police Organization (INTERPOL).

<sup>2</sup> It is responsible for coordinating the exchange of information between the federal and cantonal prosecution services on the one hand and the National Central Bureaus of other states and the General Secretariat of INTERPOL on the other.

**Art. 351**b. Tasks<sup>356</sup>

<sup>1</sup> The Federal Office of Police coordinates the exchange of police information for the investigation and prosecution of offences and for the execution of sentences and measures.

<sup>2</sup> It may transmit police information for the purpose of preventing offences if there are specific indications that there is a serious probability of a felony or misdemeanour being committed.

<sup>3</sup> It may coordinate the exchange of information relating to searches for missing persons and for the identification of unknown persons.

<sup>4</sup> In the interest of preventing and investigating offences, the Federal Office of Police may receive and provide information from and to private individuals if this is in the interests of the persons concerned and their consent has been given or may be assumed in the circumstances.

<sup>352</sup> Repealed by Annex 1 No II 8 of the Criminal Procedure Code of 5 Oct. 2007, with effect from 1 Jan. 2011 (AS **2010** 1881; BBl **2006** 1085).

<sup>353</sup> Amended by Annex 1 No II 8 of the Criminal Procedure Code of 5 Oct. 2007, in force since 1 Jan. 2011 (AS **2010** 1881; BBl **2006** 1085).

<sup>354</sup> Repealed by Annex 1 No 5 of the Federal Act of 13 June 2008 on the Federal Police Information System, with effect from 5 Dec. 2008 (AS **2008** 4989; BBl **2006** 5061).

<sup>355</sup> Amended by Annex 1 No II 8 of the Criminal Procedure Code of 5 Oct. 2007, in force since 1 Jan. 2011 (AS **2010** 1881; BBl **2006** 1085).

<sup>356</sup> Amended by Annex 1 No II 8 of the Criminal Procedure Code of 5 Oct. 2007, in force since 1 Jan. 2011 (AS **2010** 1881; BBl **2006** 1085).

**Art. 352**

c. Data protection<sup>357</sup>

<sup>1</sup> The exchange of police information is governed by the principles of the Mutual Assistance Act of 20 March 1981<sup>358</sup> as well as the Constitution and General Regulations of INTERPOL declared to be applicable by the Federal Council.

<sup>2</sup> The Federal Act of 19 June 1992<sup>359</sup> on Data Protection applies to the exchange of information in connection with searches for missing persons and the identification of unknown persons and for administrative purposes.

<sup>3</sup> The Federal Office may provide information directly to the Central Bureaus of other states provided the recipient state is subject to the INTERPOL data protection regulations.

**Art. 353**

d. Financial aid and other payments<sup>360</sup>

The Confederation may provide financial aid and make payments to INTERPOL.

**Art. 354**

3. Cooperation in connection with the identification of persons<sup>361</sup>

<sup>1</sup> The responsible department registers and stores criminal records data recorded and transmitted to the department by cantonal, federal and foreign authorities in connection with criminal proceedings or in fulfilment of other statutory duties. This data may be used for comparison purposes to identify a wanted or unknown person.

<sup>2</sup> The following authorities may use and process data in terms of paragraph 1:

- a. the Computer Centre of the Federal Department of Justice and Police;
- b. the Federal Office of Police;
- c. the border posts;
- d. the police authorities in the cantons.

<sup>3</sup> Personal data that relates to criminal records data in accordance with paragraph 1 is processed in separate information systems; the procedure is subject to the provisions of the Federal Act of 13 June 2008<sup>362</sup> on Federal Police Information Systems, the Asylum Act of 26 June

<sup>357</sup> Amended by Annex 1 No II 8 of the Criminal Procedure Code of 5 Oct. 2007, in force since 1 Jan. 2011 (AS **2010** 1881; BBl **2006** 1085).

<sup>358</sup> SR **351.1**

<sup>359</sup> SR **235.1**

<sup>360</sup> Amended by Annex 1 No II 8 of the Criminal Procedure Code of 5 Oct. 2007, in force since 1 Jan. 2011 (AS **2010** 1881; BBl **2006** 1085).

<sup>361</sup> Amended by Annex 1 No II 8 of the Criminal Procedure Code of 5 Oct. 2007, in force since 1 Jan. 2011 (AS **2010** 1881; BBl **2006** 1085).

<sup>362</sup> SR **361**



1998<sup>363</sup> and the Federal Act of 16 December 2005<sup>364</sup> on Foreign Nationals. The DNA Profile Information System is subject to the provisions of the DNA Profiling Act of 20 June 2003<sup>365,366</sup>

<sup>4</sup> The Federal Council:

- a. regulates the details, and in particular responsibility for data processing, the categories of the data to be recorded, the retention period for the data and cooperation with the cantons;
- b. designates the authorities that are authorised to enter and retrieve personal data by remote access or to which personal data may be disclosed in individual cases;
- c. regulates the procedural rights of the persons concerned, and in particular the right to inspect their data as well as to correct, archive or destroy such data.

**Art. 355**<sup>367</sup>

4. ...

**Art. 355a**<sup>368</sup>

5. Cooperation with Europol  
a. Exchange of data<sup>369</sup>

<sup>1</sup> The Federal Office of Police (fedpol) and the Federal Intelligence Service (FIS) may pass on personal data, including sensitive personal data and personality profiles to the European Police Office (Europol).<sup>370</sup>

<sup>2</sup> The passing on of such data is subject in particular to the requirements of Articles 3 and 10–13 of the Agreement of 24 September 2004<sup>371</sup> between the Swiss Confederation and the European Police Office.

<sup>3</sup> At the same time as passing on data, the Federal Office of Police shall notify Europol of the purpose for which the data is provided as well as of any restrictions with regard to its processing to which it is itself subject in accordance with federal or cantonal legislation.

<sup>363</sup> SR 142.31

<sup>364</sup> SR 142.20

<sup>365</sup> SR 363

<sup>366</sup> Amended by Annex 1 No 5 of the Federal Act of 13 June 2008 on the Federal Police Information System, in force since 5 Dec. 2008 (AS 2008 4989; BBl 2006 5061).

<sup>367</sup> Repealed by Annex 1 No 5 of the Federal Act of 13 June 2008 on the Federal Police Information System, with effect from 5 Dec. 2008 (AS 2008 4989; BBl 2006 5061).

<sup>368</sup> Inserted by Art. 2 of the Federal Decree of 7 Oct. 2005 on the Approval and Implementation of the Agreement between Switzerland and Europol, in force since 1 April 2006 (AS 2006 1017 1018; BBl 2005 983).

<sup>369</sup> Amended by Annex 1 No II 8 of the Criminal Procedure Code of 5 Oct. 2007, in force since 1 Jan. 2011 (AS 2010 1881; BBl 2006 1085).

<sup>370</sup> Amended by No I 3 of the Ordinance of 4 Dec. 2009 on the Amendment of Legislation due to the Creation of the Federal Intelligence Service, in force since 1 Jan. 2010 (AS 2009 6921).

<sup>371</sup> SR 0.360.268.2

**Art. 355b**<sup>372</sup>

b. Extension of  
mandate<sup>373</sup>

The Federal Council is authorised to agree with Europol amendments to the scope of its mandate in accordance with Article 3 paragraph 3 of the Agreement of 24 September 2004<sup>374</sup> between the Swiss Confederation and the European Police Office.

**Art. 355c**<sup>375</sup>

5<sup>bis</sup>. Cooperation  
under the  
Schengen  
Association  
Agreement.  
Jurisdiction

The federal and cantonal police authorities shall implement the provisions of the Schengen Association Agreement<sup>376</sup> in accordance with domestic law.

**Art. 355d**<sup>377</sup>

5<sup>ter</sup> ...

**Art. 355e**<sup>378</sup>

5<sup>quater</sup>. SIRENE  
Office

<sup>1</sup> The Federal Office of Police maintains a central office (SIRENE Office<sup>379</sup>) that is responsible for N-SIS.

<sup>372</sup> Inserted by Art. 2 of the Federal Decree of 7 Oct. 2005 on the Approval and Implementation of the Agreement between Switzerland and Europol, in force since 1 April 2006 (AS **2006** 1017 1018; BBl **2005** 983).

<sup>373</sup> Amended by Annex 1 No II 8 of the Criminal Procedure Code of 5 Oct. 2007, in force since 1 Jan. 2011 (AS **2010** 1881; BBl **2006** 1085).

<sup>374</sup> SR **0.360.268.2**

<sup>375</sup> Inserted by Art. 3 No 4 of the Federal Decree of 17 Dec. 2004 on the Adoption and Implementation of the Bilateral Agreements between Switzerland and the EU on the Association to Schengen and Dublin, in force since 1 June 2008 (AS **2008** 447 2179; BBl **2004** 5965).

<sup>376</sup> Agreement of 26 Oct. 2004 between the Swiss Confederation, the European Union and the European Community on the Association of that State with the Implementation, Application and Development of the Schengen Acquis (SR **0.362.31**); Agreement of 28 April 2005 between the Swiss Confederation and the Kingdom of Denmark on the Establishment of Rights and Obligations between these two States with a view to Cooperation on Schengen (SR **0.362.33**); Agreement of 17 Dec. 2004 between the Swiss Confederation, the Republic of Iceland and the Kingdom of Norway on the implementation, application and development of the Schengen Acquis and on the criteria and procedure for determining the State responsible for examining an application for asylum lodged in Switzerland, Iceland or Norway (SR **0.362.32**).

<sup>377</sup> Inserted by Art. 3 No 4 of the Federal Decree of 17 Dec. 2004 on the Adoption and Implementation of the Bilateral Agreements between Switzerland and the EU on the Association to Schengen and Dublin (AS **2008** 447 2179; BBl **2004** 5965). Repealed by Annex 2 No II of the Federal Act of 13 June 2008 on the Federal Police Information System, with effect from 5 Dec. 2008 (AS **2008** 4989; BBl **2006** 5061).

<sup>378</sup> Inserted by Art. 3 No 4 of the Federal Decree of 17 Dec. 2004 on the Adoption and Implementation of the Bilateral Agreements between Switzerland and the EU on the Association to Schengen and Dublin, in force since 1 June 2008 (AS **2008** 447 2179; BBl **2004** 5965).

<sup>379</sup> Supplementary Information REquest at the National Entry.

<sup>2</sup> Das SIRENE Office is the contact, coordination and consultation point for the exchange of information in connection with the alerts in the SIS. It reviews the formal admissibility of Swiss and foreign alerts in the SIS.

**Art. 355**<sup>380</sup>

<sup>5</sup>quinquies.  
Judicial cooperation under the Schengen-Association Agreements: Disclosure of personal data  
a. To a third country or international body

<sup>1</sup> Personal data that has been transmitted or made available by a state, bound by any of Schengen Association Agreements<sup>381</sup> (a Schengen state) may be disclosed to the competent authority of a third state or to an international body if:

- a. disclosure is required in order to prevent, detect or prosecute a criminal offence or to execute a criminal judgment;
- b. the receiving authority is responsible for the prevention, detection or prosecution of criminal offences or the execution of a criminal judgment;
- c. the Schengen state that has transmitted the personal data or made it available has given its prior consent to disclosure; and
- d. the third state or the international body provides adequate safeguards for the data.

<sup>2</sup> By way of derogation from paragraph 1 letter c, personal data may be disclosed in an individual case if:

<sup>380</sup> Inserted by No 4 of the Federal Act of 19 March 2010 on the Implementation of Framework Decision 2008/977/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, in force since 1 Dec. 2010 (AS **2010** 3387 3418; BBl **2009** 6749).

<sup>381</sup> The Schengen Association Agreements comprise:

- a. the Agreement of 26 October 2004 between the Swiss Confederation, the European Union and the European Community on the association of that State with the implementation, application and development of the Schengen Acquis (SR **0.362.31**);
- b. the Agreement of 26 October 2004 in the form of an exchange of letters between the Council of the European Union and the Swiss Confederation on the Committees that assist the European Commission in the exercise of its executive powers (SR **0.362.1**);
- c. the Agreement of 17 December 2004 between the Swiss Confederation, the Republic of Iceland and the Kingdom of Norway on the Implementation, Application and Development of the Schengen Acquis and on the Criteria and Procedure for determining the State responsible for examining an application for asylum lodged in Switzerland, Iceland or Norway (SR **0.362.32**);
- d. the Agreement of 28 April 2005 between the Swiss Confederation and the Kingdom of Denmark on the implementation, application and development of those parts of the Schengen Acquis that are based on the provisions of Title IV of the Treaty establishing the European Community (SR **0.362.33**);
- e. the Protocol of 28 February 2008 between the Swiss Confederation, the European Union, the European Community and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the Swiss Confederation, the European Union and the European Community on the association of the Swiss Confederation with the implementation, application and development of the Schengen Acquis (SR **0.362.311**).

- a. the prior consent of the Schengen states cannot be obtained in good time; and
- b. disclosure is essential for the prevention of an immediate and serious threat to the public security of a Schengen states or of a third state or to safeguard the essential interests of a Schengen state.

<sup>3</sup> The competent authority shall give immediate notice of the disclosure of personal data under paragraph 2 to the Schengen state that has transmitted the personal data or made it available.

<sup>4</sup> By way of derogation from paragraph 1 letter d, personal data may be disclosed in an individual case if:

- a. this is required to protect prevailing legitimate interests of the person concerned or a third person;
- b. this is required to protect a prevailing public interest; or
- c. adequate guarantees suitable protection are provided.

**Art. 355g**<sup>382</sup>

b. To a natural or legal person

<sup>1</sup> Personal data that has been transmitted or made available by a Schengen state may be disclosed to a natural or legal person in an individual case if:

- a. the specific legislation or an international agreement so provides;
- b. the Schengen state that has transmitted the personal data or made it available has given its prior consent to disclosure; and;
- c. no prevailing legitimate interests of the person concerned prevent disclosure; and
- d. disclosure is essential for:
  - 1. compliance with a statutory duty by the natural or legal person,
  - 2. the prevention, detection or prosecution of a criminal offence or the execution of a criminal judgment,
  - 3. the prevention of an immediate and serious threat to public security, or
  - 4. the prevention of a serious breach of third party rights.

<sup>2</sup> The competent authority shall disclose the data to the natural or legal person subject to the express condition that it is used exclusively for the purpose specified by the authority.

<sup>382</sup> Inserted by No 4 of the Federal Act of 19 March 2010 on the Implementation of Framework Decision 2008/977/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, in force since 1 Dec. 2010 (AS 2010 3387 3418; BBl 2009 6749).

**Art. 356-361**<sup>383</sup>**Art. 362**<sup>384</sup>

6. Notification in relation to pornography If an investigating authority establishes that pornographic articles (Art. 197 para. 4) have been produced in or imported from a foreign state, it shall immediately notify the Federal Central Office for Combating Pornography.

**Title Five: Notification of Offences against Minors****Art. 363**<sup>385</sup>**Art. 364**<sup>386</sup>

Right to report Where an offence has been committed against a minor, persons bound by official and professional secrecy (Art. 320 and 321) are entitled to report the matter to the child protection authority where this is in the interests of the minor.

**Title Six: Register of Criminal Convictions****Art. 365**

Purpose <sup>1</sup> The Federal Office of Justice, with the support of the other federal authorities and the cantons (Art. 367 para. 1), maintains a computerised register of criminal convictions and applications for extracts from the register of convictions in connection with ongoing criminal proceedings, which contains sensitive personal data and personality profiles. The data on convictions and on applications for extracts from the register of convictions in connection with ongoing criminal proceedings are processed separately in the computerised register.

<sup>2</sup> The register serves to support the federal and cantonal authorities in the fulfilment of the following tasks:

- a. the conduct of criminal proceedings;
- b. international mutual assistance and extradition proceedings;

<sup>383</sup> Repealed by Annex 1 No II 8 of the Criminal Procedure Code of 5 Oct. 2007, with effect from 1 Jan. 2011 (AS **2010** 1881; BBl **2006** 1085).

<sup>384</sup> Amended by Annex No 1 of the Federal Decree of 27 Sept. 2013 (Lanzarote Convention), in force since 1 July 2014 (AS **2014** 1159; BBl **2012** 7571).

<sup>385</sup> Repealed by Annex 1 No II 8 of the Criminal Procedure Code of 5 Oct. 2007, with effect from 1 Jan. 2011 (AS **2010** 1881; BBl **2006** 1085). Revised by the Federal Assembly Drafting Committee on 20 Feb. 2013 (AS **2013** 845).

<sup>386</sup> Amended by Annex No 14 of the Federal Act of 19 Dec. 2008 (Adult Protection, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).

- c. the execution of sentences and measures;
- d. civilian and military security checks;
- e. the imposition and revocation of measures banning entry on foreign nationals under the Federal Act of 26 March 1931<sup>387</sup> on the Residence and Permanent Settlement of Foreign Nationals as well as the other forms of expulsion;
- f. the assessment of eligibility for asylum under the Asylum Act of 26 June 1998<sup>388</sup>;
- g. naturalisation procedures;
- h. the grant and revocation of full and provisional driving licences under the Road Traffic Act from 19 December 1958<sup>389</sup>;
- i. conduct of consular protection measures;
- j. statistical processing under the Federal Statistics Act of 9 October 1992<sup>390</sup>;
- k.<sup>391</sup> the imposition or revocation of child or adult protection measures;
- l.<sup>392</sup> exclusion from the performance of alternative civilian service or prohibition from performing periods of service under the Civilian Service Act of 6 October 1995<sup>393</sup>;
- m.<sup>394</sup> the assessment of good character for certain forms of work under the Civilian Service Act of 6 October 1995;
- n.<sup>395</sup> the assessment of eligibility for recruitment, exclusion from the armed forces, or readmission to the armed forces or demotion under the Armed Forces Act of 3 February 1995<sup>396</sup> (Ar-mA);

<sup>387</sup> [BS 1 121; AS 1949 221, 1987 1665, 1988 332, 1990 1587 Art. 3 Abs. 2, 1991 362 No II 11 1034 No III, 1995 146, 1999 1111 2262 Annex No 1, 2000 1891 No IV 2, 2002 685 No I 1 701 No I 1 3988 Annex No 3, 2003 4557 Annex No II 2, 2004 1633 No I 1 4655 No I 1, 2005 5685 Annex No 2, 2006 979 Art. 2 No 1 1931 Art. 18 No 1 2197 Annex No 3 3459 Annex No 1 4745 Annex No 1, 2007 359 Annex No 1. AS 2007 5437 Annex No I]. See now the Federal Act of 16 Dec. 2005 on Foreign Nationals (SR 142.20).

<sup>388</sup> SR 142.31

<sup>389</sup> SR 741.01

<sup>390</sup> SR 431.01

<sup>391</sup> Amended by Annex No 14 of the Federal Act of 19 Dec. 2008 (Adult Protection, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

<sup>392</sup> Inserted by No II 1 of the Federal Act of 3 Oct. 2008 (AS 2009 1093 1100; BBl 2008 2707). Amended by No II 1 of the Federal Act of 25 Sept. 2015, in force since 1 July 2016 (AS 2016 1883; BBl 2014 6741).

<sup>393</sup> SR 824.0

<sup>394</sup> Inserted by No II 1 of the Federal Act of 3 Oct. 2008 (AS 2009 1093 1100; BBl 2008 2707). Amended by No II 1 of the Federal Act of 25 Sept. 2015, in force since 1 July 2016 (AS 2016 1883; BBl 2014 6741).

<sup>395</sup> Inserted by Annex No 1 of the Federal Act of 3 Oct. 2008 on Military Information Systems, in force since 1 Jan. 2010 (AS 2009 6617; BBl 2008 3213).

<sup>396</sup> SR 510.10

- o.<sup>397</sup> the assessment of suitability for promotion or appointment under the ArmA;
- p.<sup>398</sup> the assessment of grounds for refusing to issue a personal weapon under the ArmA;
- q.<sup>399</sup> the assessment of exclusion from service under the Civil Protection and Civil Defence Act of 4 October 2002<sup>400</sup>.

### Art. 366

Content

<sup>1</sup> The register lists persons who have been convicted on the territory of the Confederation, together with Swiss nationals who have been convicted abroad.

<sup>2</sup> The register also includes:

- a. convictions for felonies and misdemeanours in cases where a sentence or measure has been imposed;
- b. convictions for contraventions specified by ordinance of the Federal Council of this Code or any other Federal Act;
- c. notifications received from abroad of convictions there that must be recorded in accordance with this Code;
- d. information on the circumstances leading to the amendment of existing entries.

<sup>3</sup> Convictions of juveniles are included only if the following sentences were imposed:

- a. a custody order (Art. 25 JCLA<sup>401</sup>); or
- b. accommodation in a secure institution (Art. 15 para. 2 JCLA); or
- c. out-patient treatment (Art. 14 JCLA); or
- d. an activity prohibition order or a contact prohibition and exclusion order (Art. 16a JCLA).<sup>402</sup>

<sup>3bis</sup> Convictions of juveniles for contraventions must be included if the penalty involves an activity prohibition order or a contact prohibition and exclusion order (Art. 16a JCLA).<sup>403</sup>

<sup>397</sup> Inserted by Annex No 1 of the Federal Act of 3 Oct. 2008 on Military Information Systems, in force since 1 Jan. 2010 (AS **2009** 6617; BBI **2008** 3213).

<sup>398</sup> Inserted by Annex No 1 of the Federal Act of 3 Oct. 2008 on Military Information Systems, in force since 1 Jan. 2010 (AS **2009** 6617; BBI **2008** 3213).

<sup>399</sup> Inserted by Annex No 1 of the Federal Act of 3 Oct. 2008 on Military Information Systems, in force since 1 Jan. 2010 (AS **2009** 6617; BBI **2008** 3213).

<sup>400</sup> SR **520.1**

<sup>401</sup> SR **311.1**

<sup>402</sup> Inserted by Art. 44 No 1 of the Juvenile Criminal Law Act of 20 June 2003 (AS **2006** 3545; BBI **1999** 1979). Amended by No 11 of the Federal Act of 13 Dec. 2013 on Activity Prohibition Orders and Contact Prohibition and Exclusion Orders, in force since 1 Jan. 2015 (AS **2014** 2055; BBI **2012** 8819).

<sup>4</sup> The register also lists persons in respect of whom proceedings for felonies and misdemeanours are pending in Switzerland.<sup>404</sup>

### Art. 367

Processing of  
and access to  
data

<sup>1</sup> The following authorities process personal data on convictions in the register in accordance with Article 366 paragraphs 1-3:<sup>405</sup>

- a. the Federal Office of Justice;
- b. the authorities responsible for the administration of civilian criminal justice;
- c. the authorities responsible for the administration of military criminal justice;
- d. the authorities responsible for the execution of sentences and measures;
- e. the cantonal coordination offices.

<sup>2</sup> The following authorities may have online access to the personal data on convictions in accordance with Article 366 paragraphs 1, 2 and 3 letters a and b:<sup>406</sup>

- a. the authorities listed in paragraph 1;
- b. the Office of the Attorney General of Switzerland;
- c. the Federal Office of Police in the course of criminal investigations;
- d. the Armed Forces Joint Staff<sup>407</sup>;
- e.<sup>408</sup> the State Secretariat for Migration<sup>409</sup>;
- f.<sup>410</sup> ...
- g. the cantonal immigration authorities;

<sup>403</sup> Inserted by No I 1 of the Federal Act of 13 Dec. 2013 on Activity Prohibition Orders and Contact Prohibition and Exclusion Orders, in force since 1 Jan. 2015 (AS **2014** 2055; BBl **2012** 8819).

<sup>404</sup> Originally para. 3.

<sup>405</sup> Amended by Annex No 2 of the Federal Act of 19 March 2010, in force since 1 Jan. 2013 (AS **2010** 6015, **2011** 487; BBl **2009** 5917).

<sup>406</sup> Amended by Annex No 2 of the Federal Act of 19 March 2010, in force since 1 Jan. 2013 (AS **2010** 6015, **2011** 487; BBl **2009** 5917).

<sup>407</sup> The name of this administrative unit was amended by Art. 16 para. 3 of the Publications Ordinance of 17 Nov. 2004 (AS **2004** 4937).

<sup>408</sup> Amended by No I 3 of the Ordinance of 3 Nov. 2004 on the Amendment of Statutory Provisions due to the Merger of the Federal Offices IMES and FOR, in force since 1 Jan. 2005 (AS **2004** 4655).

<sup>409</sup> The name of this administrative unit was amended by Art. 16 para. 3 of the Publications Ordinance of 17 Nov. 2004 (AS **2004** 4937), in force since 1 Jan. 2015

<sup>410</sup> Repealed by No I 3 of the Ordinance of 3 Nov. 2004 on the Amendment of Statutory Provisions due to the Merger of the Federal Offices IMES and FOR, with effect from 1 Jan. 2005 (AS **2004** 4655).



- h. the cantonal authorities responsible for road traffic matters;
  - i. the federal authorities responsible for the conduct of personal security checks in terms of Article 2 paragraph 4 letter c of the Federal Act of 21 March 1997<sup>411</sup> on Measures to Safeguard Internal Security;
  - j.<sup>412</sup> the Central Office for Civilian Service.
  - k.<sup>413</sup> the cantonal authorities responsible for decisions on ineligibility for civil protection service.
  - l.<sup>414</sup> the Federal Witness Protection Agency in accordance with the Federal Act of 23 December 2011<sup>415</sup> on Extra-Procedural Witness Protection in order to fulfil their tasks.
- <sup>2bis</sup> The following authorities may also have online access to the personal data on convictions in accordance with Article 366 paragraphs 3 letters c:
- a. the Armed Forces Joint Staff for the purposes of assessing eligibility for recruitment, exclusion from the armed forces, or readmission to the armed forces or demotion under the ArmA<sup>416</sup>, the assessment of grounds for refusing to issue a personal weapon under the ArmA, and the assessment of suitability for promotion or appointment under the;
  - b. the federal authorities responsible for personnel security screening under Article 2 paragraph 4 letter c of the Federal Act of 21 March 1997<sup>417</sup> on Measures to Safeguard Internal Security;
  - c. authorities responsible for the administration of civilian criminal justice in order to conduct criminal proceedings (Art. 365 para. 2 let. a);
  - d. cantonal coordination offices and the Federal Office of Justice in order to fulfil their statutory duties in relation to keeping registers;

<sup>411</sup> SR 120

<sup>412</sup> Inserted by No II of the Federal Act of 21 March 2003, in force since 1 Jan. 2004 (AS 2003 4843 4854; BBl 2001 6127).

<sup>413</sup> Inserted by Annex No 1 of the Federal Act of 3 Oct 2008 on Military Information Systems, in force since 1 Jan. 2010 (AS 2009 6617; BBl 2008 3213).

<sup>414</sup> Inserted by Annex No 3 of the Federal Act of 23 Dec. 2011 on Extra-Procedural Witness Protection, in force since 1 Jan. 2013 (AS 2012 6715; BBl 2011 1).

<sup>415</sup> SR 312.2

<sup>416</sup> SR 510.10

<sup>417</sup> SR 120

- e. the authorities responsible for the execution of sentences and measures in order to execute sentences and measures (Art. 365 para. 2 let. c).<sup>418</sup>

<sup>2ter</sup> The federal office responsible for the register shall notify the Armed Forces Joint Staff immediately for the purposes mentioned in Article 365 paragraph 2 letters n–p of all:

- a. convictions for felonies or misdemeanours;
- b. custodial measures;
- c. decisions on breaches of probation by persons subject to recruitment and members of the armed forces.<sup>419</sup>

<sup>2quater</sup> Notice is given of the personal details of Swiss nationals over the age of 17 who are registered in accordance with paragraph 2<sup>ter</sup>. If the Armed Forces Joint Staff identifies a reported person as being subject to recruitment or as a member of the armed forces, the office responsible for the register also provides the data on the conviction.<sup>420</sup>

<sup>2quinquies</sup> The notice and the identification in accordance with paragraph 2<sup>quater</sup> may be effected via an electronic interface between PISA and the register.<sup>421</sup>

<sup>2sexies</sup> For the purpose of carrying out background checks with a view to granting or withdrawing recognition as a "Youth and Sport" officer, the Federal Office of Sport may by written request inspect personal data relating to criminal convictions.<sup>422</sup>

<sup>3</sup> The Federal Council may, if the number of requests for information so justifies, after consulting the Federal Data Protection and Information Commissioner<sup>423</sup> and until formal legislation on the relevant legal principles comes into force, extend the rights of inspection under paragraph 2 to additional federal and cantonal law enforcement and administrative authorities.

<sup>418</sup> Inserted by Annex No 1 of the Federal Act of 3 Oct. 2008 on Military Information Systems (AS **2009** 6617; BBl **2008** 3213). Amended by Annex No 2 of the Federal Act of 19 March 2010, in force since 1 Jan. 2013 (AS **2010** 6015, **2011** 487; BBl **2009** 5917).

<sup>419</sup> Inserted by Annex No 1 of the Federal Act of 3 Oct. 2008 on Military Information Systems (AS **2009** 6617; BBl **2008** 3213). Amended by Annex No 2 of the Federal Act of 19 March 2010, in force since 1 Jan. 2013 (AS **2010** 6015, **2011** 487; BBl **2009** 5917).

<sup>420</sup> Inserted by Annex No 1 of the Federal Act of 3 Oct 2008 on Military Information Systems, in force since 1 Jan. 2010 (AS **2009** 6617; BBl **2008** 3213). Amended by Annex No 2 of the Federal Act of 19 March 2010, in force since 1 Jan. 2013 (AS **2010** 6015, **2011** 487; BBl **2009** 5917).

<sup>421</sup> Inserted by Annex No 2 of the Federal Act of 19 March 2010, in force since 1 Jan. 2013 (AS **2010** 6015, **2011** 487; BBl **2009** 5917).

<sup>422</sup> Inserted by Art. 34 No 1 of the Sport Promotion Act of 17 June 2011, in force since 1 Oct. 2012 (AS **2012** 3953; BBl **2009** 8189).

<sup>423</sup> The name of this administrative unit was amended by Art. 16 para. 3 of the Publications Ordinance of 17 Nov. 2004 (AS **2004** 4937).

<sup>4</sup> Personal data in relation to pending criminal proceedings may only be processed by the authorities listed in paragraph 2 letters a–e, j and l.<sup>424</sup>

4bis ...<sup>425</sup>

<sup>4ter</sup> For the purpose of carrying out background checks with a view to granting or suspending recognition as a "Youth and Sport" officer, the Federal Office of Sport may by written request inspect personal data relating to criminal convictions.<sup>426</sup>

<sup>5</sup> Each canton shall establish a coordination office for the processing of the data in the register.

<sup>6</sup> The Federal Council regulates the details, and in particular:

- a. responsibility for data processing;
- b. the categories of data to be recorded and their retention periods;
- c. cooperation with the authorities concerned;
- d. the duties of the coordination offices;
- e. the right to information and the other procedural rights for the protection of the persons concerned;
- f. data security;
- g. the authorities that may report personal data in written form, enter data in the register, consult the register or to which personal data may be disclosed in individual cases;
- h. the passing on of electronic data to the Swiss Federal Statistical Office.

### Art. 368

Notice of information subject to registration

The competent federal authority may give notice of entries in the register to the offender's country of origin.

### Art. 369

Removal of entries

<sup>1</sup> Convictions that involve a custodial sentence are removed ex officio if the following periods have elapsed over and above the period of the sentence imposed by the court:

<sup>424</sup> Amended by No II 1 of the Federal Act of 25 Sept. 2015, in force since 1 July 2016 (AS **2016** 1883; BBl **2014** 6741).

<sup>425</sup> Inserted by No II 1 of the Federal Act of 3 Oct. 2008 (AS **2009** 1093; BBl **2008** 2707). Repealed by No II 1 of the Federal Act of 25 Sept. 2015, with effect from 1 July 2016 (AS **2016** 1883; BBl **2014** 6741).

<sup>426</sup> Inserted by Art. 34 No 1 of the Sport Promotion Act of 17 June 2011, in force since 1 Oct. 2012 (AS **2012** 3953; BBl **2009** 8189).

- a. 20 years in the case of a custodial sentence of at least five years;
- b. 15 years in the case of a custodial sentence of at least one but less than five years;
- c. ten years in the case of custodial sentences of less than a year;
- d.<sup>427</sup> ten years in the case of deprivation of liberty in accordance with Article 25 JCLA<sup>428</sup>.

<sup>2</sup> In the event that a custodial sentence has already been entered in the register, the periods in accordance with paragraph 1 are extended by the duration of that sentence.

<sup>3</sup> Convictions involving a suspended custodial sentence, a suspended custody order, a monetary penalty, community service or a fine as the main penalty are removed ex officio after ten years.<sup>429</sup>

<sup>4</sup> Convictions that involve an in-patient measure in addition to a sentence or an in-patient measure alone are removed ex officio after:

- a. 15 years in the case of measures under Articles 59–61 and 64;
- b.<sup>430</sup> ten years in the case of secure placement in accordance with Article 15 paragraph 2 of the JCLA.
- c.<sup>431</sup> seven years in the case of open placement in an institution or with private persons in accordance with Article 15 paragraph 1 JCLA.

<sup>4bis</sup> Convictions that solely involve out-patient treatment in accordance with Article 63 are removed ex officio after ten years. Convictions that involve out-patient treatment in accordance with Article 14 JCLA are removed ex officio after five years unless it is possible to calculate the period in accordance with paragraphs 1–4.<sup>432</sup>

<sup>4ter</sup> Convictions that solely involve a measure under Article 66 paragraph 1, 67 paragraph 1 or 67e of this Code or under Articles 48, 50

<sup>427</sup> Inserted by Art. 44 No 1 of the Juvenile Criminal Law Act of 20 June 2003, in force since 1 Jan. 2007 (AS **2006** 3545; BBl **1999** 1979).

<sup>428</sup> SR **311.1**

<sup>429</sup> Amended by Annex No 2 of the Federal Act of 19 March 2010, in force since 1 Jan. 2013 (AS **2010** 6015, **2011** 487; BBl **2009** 5917).

<sup>430</sup> Amended by No 1 of the Federal Act of 24 March 2006 (Revision of the Law on Sanctions and the Register of Convictions), in force since 1 Jan. 2007 (AS **2006** 3539 3544; BBl **2005** 4689).

<sup>431</sup> Inserted by Annex No 2 of the Federal Act of 19 March 2010, in force since 1 Jan. 2013 (AS **2010** 6015, **2011** 487; BBl **2009** 5917).

<sup>432</sup> Inserted by No 1 of the Federal Act of 24 March 2006 (Revision of the Law on Sanctions and the Register of Convictions)(AS **2006** 3539 3544; BBl **2005** 4689). Amended by Annex No 2 of the Federal Act of 19 March 2010, in force since 1 Jan. 2013 (AS **2010** 6015, **2011** 487; BBl **2009** 5917).

paragraph 1 or 50e of the Military Criminal Code<sup>433</sup> are removed ex officio after ten years.<sup>434</sup>

<sup>5</sup> The periods in accordance with paragraph 4 are extended by the duration of the remainder of the sentence.

<sup>6</sup> The period begins to run:

- a. in the case of convictions under paragraphs 1, 3 and 4<sup>ter</sup>: on the day on which the conviction becomes legally enforceable;
- b. in the case of convictions under paragraphs 4 and 4<sup>bis</sup>: on the day on which the measure is revoked or the person concerned receives his final discharge from the measure.<sup>435</sup>

<sup>7</sup> After removal, the entry may no longer be reconstructed. The removed conviction may no longer be cited against the person concerned.

<sup>8</sup> Data from the register of convictions must not be archived.

#### **Art. 369a**<sup>436</sup>

Removal of convictions involving an activity prohibition order or a contact prohibition and exclusion order

Convictions that involve a prohibition order under Article 67 paragraph 2, 3 or 4 or under Article 67b of this Code, under Article 50 paragraph 2, 3 or 4 or under Article 50b MCC<sup>437</sup> or under Article 16a JCLA<sup>438</sup> shall be removed ten years after the expiry of the prohibition order. If the terms are longer under under Article 369, then these terms apply.

#### **Art. 370**

Right to inspect

<sup>1</sup> Any person has the right to inspect the entire entry relating to him.

<sup>2</sup> No copy may be issued.

<sup>433</sup> SR 321.0

<sup>434</sup> Inserted by No I of the Federal Act of 24 March 2006 (Revision of the Law on Sanctions and the Register of Convictions), in force since 1 Jan. 2007 (AS 2006 3539 3544; BBl 2005 4689). Amended by No I 1 of the Federal Act of 13 Dec. 2013 on Activity Prohibition Orders and Contact Prohibition and Exclusion Orders, in force since 1 Jan. 2015 (AS 2014 2055; BBl 2012 8819).

<sup>435</sup> Amended by No I of the Federal Act of 24 March 2006 (Revision of the Law on Sanctions and the Register of Convictions), in force since 1 Jan. 2007 (AS 2006 3539 3544; BBl 2005 4689).

<sup>436</sup> Inserted by No I 1 of the Federal Act of 13 Dec. 2013 on Activity Prohibition Orders and Contact Prohibition and Exclusion Orders, in force since 1 Jan. 2015 (AS 2014 2055; BBl 2012 8819).

<sup>437</sup> SR 321.0

<sup>438</sup> SR 311.1

**Art. 371**

Extract for  
private individuals<sup>439</sup>

<sup>1</sup> Any person may request the Swiss Central Register of Convictions to issue a written extract from the register of criminal convictions relating to him. The extract lists convictions for felonies and misdemeanours; convictions for contraventions appear in the extract only if an activity prohibition order or a contact prohibition and exclusion order in accordance with Article 67 or 67*b* of this Code or under Article 50 or 50*b* MCC<sup>440</sup> or under Article 16*a* JCLA<sup>441</sup> was imposed.<sup>442</sup>

<sup>2</sup> Juvenile convictions appear in the extract from the register of convictions only if the person concerned was convicted as an adult of additional offences that must be included in the extract from the register of convictions.

<sup>3</sup> A conviction containing a sentence is no longer included in the extract from the register of convictions if two thirds of the period required for removal in accordance with Article 369 has elapsed.

<sup>3bis</sup> A conviction containing a suspended or partially suspended sentence is no longer included in the extract from the register of convictions if the offender was of good behaviour until the expiry of the probationary period.<sup>443</sup>

<sup>4</sup> A conviction containing a measure in addition to a sentence or a measure alone is no longer included in the extract from the register of convictions if half of the period required for removal in accordance with Article 369 has elapsed.

<sup>5</sup> On expiry of the period in accordance with paragraphs 3 and 4, the conviction remains in the extract from the register of convictions, if it contains a conviction in respect of which the period has not yet expired.

**Art. 371*a***<sup>444</sup>

Special private  
extract

<sup>1</sup> Any person who applies to carry on a professional or organised non-professional activity that involves regular contact with minors or with other especially vulnerable persons or who carries on such an activity

<sup>439</sup> Amended by No I 1 of the Federal Act of 13 Dec. 2013 on Activity Prohibition Orders and Contact Prohibition and Exclusion Orders, in force since 1 Jan. 2015 (AS **2014** 2055; BBl **2012** 8819).

<sup>440</sup> SR **321.0**

<sup>441</sup> SR **311.1**

<sup>442</sup> Amended by No I 1 of the Federal Act of 13 Dec. 2013 on Activity Prohibition Orders and Contact Prohibition and Exclusion Orders, in force since 1 Jan. 2015 (AS **2014** 2055; BBl **2012** 8819).

<sup>443</sup> Inserted by No I of the Federal Act of 24 March 2006 (Revision of the Law on Sanctions and the Register of Convictions), in force since 1 Jan. 2007 (AS **2006** 3539 3544; BBl **2005** 4689).

<sup>444</sup> Inserted by No I 1 of the Federal Act of 13 Dec. 2013 on Activity Prohibition Orders and Contact Prohibition and Exclusion Orders, in force since 1 Jan. 2015 (AS **2014** 2055; BBl **2012** 8819).

may request a special private extract register of convictions relating to his person.

<sup>2</sup> Along with the application, he must submit written confirmation in which the employer or the organisation requesting him to provide the special private extract confirms that:

- a. the applicant is applying to carry on or is carrying on the activity under paragraph 1; and
- b. he must provide the special private extract for the purpose of the new activity or of continuing existing activity.

<sup>3</sup> The special private extract displays:

- a. convictions that involve an activity prohibition order under Article 67 paragraph 2, 3 or 4 of this Code or under Article 50 paragraph 2, 3 or 4 MCC<sup>445</sup>;
- b. convictions that involve a contact prohibition and exclusion order under Article 67*b* of this Code or under Article 50*b* MCC, provided this prohibition order was imposed in order to protect minors or other especially vulnerable persons;
- c. convictions against juveniles that involve an activity prohibition order under Article 16*a* paragraph 1 JCLA<sup>446</sup> or a contact prohibition and exclusion order under Article 16*a* paragraph 2 JCLA that was imposed in order to protect minors or other especially vulnerable persons.

<sup>4</sup> A conviction shall be displayed in the special private extract for as long as a prohibition order under paragraph 3 involved therein continues to apply.

## **Title Seven: Execution of Sentences and Measures, Probation Assistance, Institutions and Facilities**

### **Art. 372**

1. Duty to  
execute sentences  
and measures

<sup>1</sup> The cantons shall execute the judgments issued by their criminal courts on the basis of this Code. They are obliged to execute the judgments of the federal criminal justice authorities in return for the reimbursement of their costs.

<sup>2</sup> Decisions in criminal cases made by police authorities and other competent authorities and the decisions of prosecution services are deemed equivalent to court judgments.

<sup>445</sup> SR 321.0

<sup>446</sup> SR 311.1

<sup>3</sup> The cantons shall guarantee the uniform execution of criminal sanctions.<sup>447</sup>

### Art. 373

2. Monetary penalties, fines, costs and forfeitures  
Execution

Legally binding decisions issued on the basis of federal or cantonal criminal law relating to monetary penalties, fines, costs and the forfeiture of property or assets may be executed anywhere in Switzerland.

### Art. 374

Right of disposal

<sup>1</sup> The cantons are entitled to the monetary penalties and fines imposed and the property and assets forfeited in accordance with this Code.

<sup>2</sup> The Confederation is entitled to the proceeds of the cases judged by the Criminal Chamber of the Federal Criminal Court.

<sup>3</sup> The use of proceeds for the benefit of persons harmed in accordance with Article 73 is reserved.

<sup>4</sup> The provisions of the Federal Act of 19 March 2004<sup>448</sup> on the Division of Forfeited Assets are reserved.<sup>449</sup>

### Art. 375

3. Community service

<sup>1</sup> The cantons are responsible for the execution of community service orders.

<sup>2</sup> The competent authority decides on the nature and form of community service to be performed.

<sup>3</sup> The statutory maximum number of working hours may be exceeded in the performance of community service. The regulations on health and safety in the workplace remain applicable.

### Art. 376

4. Probation assistance

<sup>1</sup> The cantons organise the system of probation assistance. They may delegate this duty to private organisations.

<sup>2</sup> Probation assistance is normally the responsibility of the canton in which the probationer is resident.

<sup>447</sup> Inserted by No II 2 of the Federal Act of 6 Oct. 2006 on the New System of Financial Equalisation and the Division of Tasks between the Confederation and the Cantons (NFA), in force since 1 Jan. 2008 (AS **2007** 5779 5817; BBl **2005** 6029).

<sup>448</sup> SR **312.4**

<sup>449</sup> Inserted by Annex No 1 of the Federal Act of 19 March 2004 on the Division of Forfeited Assets, in force since 1 Aug. 2004 (AS **2004** 3503; BBl **2002** 441).



5. Institutions and facilities  
Duty of the cantons to establish and operate

### Art. 377

1 The cantons shall establish and operate institutions and institution units for prison inmates in open and secure custody as well as for prison inmates in semi-detention and in the day release employment.

2 They may also provide units for special inmate groups, and in particular for:

- a. women;
- b. prison inmates of specific age groups;
- c. prison inmates serving very long or very short sentences;
- d. prison inmates that require constant care or treatment or are receiving basic or advanced training.

3 They shall establish and operate the institutions provided for in this Code for the execution of measures.

4 They shall ensure that the regulations and the operation of the institutions and facilities comply with this Code.

5 They shall facilitate the basic and advanced training of the staff.

### Art. 378

Cooperation between the cantons

1 The cantons may enter into agreements on the joint establishment and operation of institutions and facilities or secure themselves a right of joint use of the institutions and facilities belonging to other cantons.

2 The cantons shall inform each other of the special features of their institutions and facilities, and in particular of the range of care, treatment and employment services; they shall cooperate in the allocation of prison inmates to institutions and facilities.

### Art. 379

Licensing of private institutions

1 The cantons may grant licences to privately run institutions and facilities authorising them to execute sentences in the form of semi-detention and of day release employment together with measures under Articles 59–61 and 63.

2 Privately run institutions and facilities are subject to the supervision of the cantons.

### Art. 380

Allocation of costs

1 The costs of the execution of sentences and measures are borne by the cantons.

2 The offender shall contribute in an appropriate manner to the costs:

- a. by performing work while serving a sentence or undergoing a measure;

- b. in accordance with his income or assets if he refuses to perform work assigned to him even though the work satisfies the requirements of Articles 81 or 90 paragraph 3; or
- c. by deduction of part of the income due to him as payment for an activity while in semi-detention, on day release employment or in external accommodation combined with day release employment.

<sup>3</sup> The cantons shall issue detailed regulations on offenders' contributions to costs.

**Title Sevena:**<sup>450</sup>

**Liability in Cases of Discharge from Lifelong Incarceration**

**Art. 380a**

<sup>1</sup> If a person subject to lifelong incarceration is released on parole or discharged from incarceration and commits a felony mentioned in Article 64 paragraph 1<sup>bis</sup>, the responsible body politic is liable for the resultant injury and loss.

<sup>2</sup> In relation to rights of recourse against the offender and the time limits for filing claims for damages or satisfaction, the provisions of the Code of Obligations<sup>451</sup> on unlawful acts apply.

<sup>3</sup> In relation to rights of recourse against the members of the authority issuing the order, cantonal law or the Government Liability Act of 14 March 1958<sup>452</sup> applies.

**Title Eight: Pardons, Amnesties, Re-opening of Cases**

**Art. 381**

1. Pardons  
Jurisdiction

The right to grant a pardon in relation to convictions based on this Code or any other federal act is exercised:

- a. by the Federal Assembly in cases in which the Criminal Chamber of the Federal Criminal Court or an administrative authority of the Confederation has passed judgment;
- b. by the pardons authority of the Canton in cases in which a cantonal authority has passed judgment.

<sup>450</sup> Inserted by No I of the Federal Act of 21 Dec. 2007 (Indefinite Incarceration of Extremely Dangerous Offenders), in force since 1 Aug. 2008 (AS **2008** 2961 2964; BBl **2006** 889).

<sup>451</sup> SR **220**

<sup>452</sup> SR **170.32**

**Art. 382**

Pardon petition 1 The petition for a pardon may be filed by the offender, his legal representative or, with consent of the offender, by his defence agent, spouse or registered partner.<sup>453</sup>

2 In the case of political felonies and misdemeanours and in the case of offences connected with political felonies or misdemeanours, the Federal Council or the cantonal government is also entitled to initiate the pardon procedure.

3 The pardons authority may stipulate that the petition for a pardon that has been refused may not be filed again before the expiry of a certain period.

**Art. 383**

Effects 1 A pardon may wholly or partly remit all sentences imposed by legally binding judgment or commute the sentences to less severe forms of sentence.

2 The pardon decree specifies the extent of the pardon.

**Art. 384**

2. Amnesties 1 The Federal Assembly may grant an amnesty in criminal matters governed by this Code or any other federal act.

2 An amnesty excludes the prosecution of specific offences or categories of offender and grants the remission of related sentences.

**Art. 385**

3. Re-opening of cases In the case of convictions based on this Code or any other federal act, where important information or evidence comes to light that was not available to the court at the time of the earlier proceedings, the cantons must allow the re-opening of the case for the benefit of the convicted person.

<sup>453</sup> Amended by Annex No 18 of the Same-Sex Partnership Act of 18 June 2004, in force since 1 Jan. 2007 (AS 2005 5685; BBl 2003 1288).

**Title Nine:  
Preventive Measures, Supplementary Provisions and  
General Transitional Provisions**

**Art. 386**<sup>454</sup>

1. Preventive  
measures

<sup>1</sup> The Confederation may employ investigative, educational and further measures aimed at preventing specific offences and crime in general.

<sup>2</sup> It may support projects that have the aim mentioned in paragraph 1.

<sup>3</sup> It may participate in organisations that carry out measures mentioned in paragraph 1 or establish and support such organisations.

<sup>4</sup> The Federal Council regulates the nature, aims and form of the preventive measures.

**Art. 387**

2. Supplemen-  
tary provisions  
of the Federal  
Council

<sup>1</sup> The Federal Council has the power after consulting the cantons to enact provisions on:

- a. the execution of cumulative sentences, supplementary sentences and cases where two or more individual sentences are executed simultaneously;
- b. the assignment of the responsibility for executing sentences and measures to another canton;
- c. the execution of sentences and measures imposed on persons suffering from illness or invalidity, or elderly persons;
- d. the execution of sentences and measures in cases under Article 80 involving women;
- e. the wages paid to prison inmates in accordance with Article 83.

<sup>1bis</sup> The Federal Council enacts the required provisions on the establishment of the Federal Commission for the Assessment of the Treatability of Offenders subject to Lifelong Incarceration (Art. 64c para. 1) relating to the appointment of members of the Commission and their remuneration, procedures and the organisation of the Commission.<sup>455</sup>

<sup>2</sup> The Federal Council may at the request of the responsible cantonal authority issue special provisions on the separation of the institutions of the Canton of the Ticino.

<sup>3</sup> The Federal Council may provide that data removed from the register of criminal convictions be preserved for research purposes; if such

<sup>454</sup> In force since 1 Jan. 2006 in accordance with the Ordinance of 2 Dec. 2005 (AS **2005** 5723)

<sup>455</sup> Inserted by No I of the Federal Act of 21 Dec. 2007 (Indefinite Incarceration of Extremely Dangerous Offenders), in force since 1 Aug. 2008 (AS **2008** 2961 2964; BBl **2006** 889).

data is preserved, the privacy of the persons concerned must be protected and the principles of data protection must be complied with.

4 The Federal Council may by way of a trial and for limited time:

- a. introduce or permit new penalties and measures as well as new forms of execution and modify the scope of application of existing sanctions and forms of execution;
- b. introduce or permit the delegation of the execution of custodial sentences to privately run institutions that satisfy the requirements of this Code relating to the implementation of sentences (Art. 74–85, 91 and 92). These institutions are subject to the supervision of the cantons.

5 The cantonal implementing provisions for the trial of new sanctions and forms of execution and the execution of sentences by privately run institutions (para. 4) require the approval of the Confederation in order to be valid.

### Art. 388

3. General  
transitional  
provisions  
Execution of  
earlier judgments

<sup>1</sup> Judgments issued in application of the previous law are executed in accordance with the previous law. The exceptions in paragraphs 2 and 3 are reserved.

<sup>2</sup> Where an act that does not carry a penalty under the new law has led to conviction under the previous law, the sentence or measure imposed is no longer executed.

<sup>3</sup> The provisions of the new law on the regime for the execution of sentences and measures and on the rights and obligations of prison inmates also apply to offenders who have been convicted in accordance with the previous law.

### Art. 389

Limitation

<sup>1</sup> Unless the law provides otherwise, the provisions of the new law on time limits for prosecution and the execution of sentences and measures, if they are less strict, also apply to offenders who have committed offences or been convicted before this Code comes into force.

<sup>2</sup> The periods of time that have elapsed before the new law comes into force are taken into account.

### Art. 390

Offences  
prosecuted on  
complaint

<sup>1</sup> In the case of offences that are only prosecuted on complaint, the period for filing a complaint is calculated in accordance with the law that applied at the time of the offence.

<sup>2</sup> If the new law requires a complaint to be filed in respect of an offence that was prosecuted *ex officio* under the previous law, the period for filing the complaint begins when the new law comes into force. If the prosecution has already been initiated, it may only be continued if a complaint is filed.

<sup>3</sup> If the new law stipulates the *ex officio* prosecution of an offence that was only prosecuted on complaint under the previous law, an offence committed before the new law comes into force is only prosecuted if a complaint is filed.

### Art. 391

4. Cantonal transitional provisions

The cantons shall notify the Confederation of the required transitional provisions to the Swiss Criminal Code.

### Art. 392

5. Commencement of this Code

This Code comes into force on 1 January 1942.

## Final Provisions of the Amendment of 18 March 1971<sup>456</sup>

## Final Provisions of the Amendment of 13 December 2002<sup>457</sup>

### 1. Execution of sentences

<sup>1</sup> Article 46 applies to the revocation of the suspended execution of a sentence ordered under the previous law. The court may impose a monetary penalty (Art. 34–36) or community service (Art. 37–39) instead of a custodial sentence.

<sup>2</sup> The secondary penalties imposed under the previous law of disqualification from holding public office (prev. Art. 51<sup>458</sup>), revocation of parental authority and placing under guardianship (prev. Art. 53<sup>459</sup>), expulsion due to conviction for an offence (prev. Art. 55<sup>460</sup>), prohibition from entering premises licensed to sell alcohol (prev. Art. 56<sup>461</sup>) are repealed when the new law comes into force.

<sup>3</sup> The provisions of the new law on the execution of custodial sentences (Art. 74–85, 91 and 92) and on probation assistance, conduct orders and the voluntary social

<sup>456</sup> Federal Act of 18 March 1971, in force since 1 July 1971 (AS 1971 777 807; BBl 1965 I 561) and for Art. 49 No 4 para. 2, 82–99, 370, 372, 373, 379 No 1 para. 2, 385 and 391 in force since 1 Jan. 1974 (AS 1973 1840). Repealed by No IV of the Federal Act of 13 Dec. 2002, with effect from 1 Jan. 2007 (AS 2006 3459 3535; BBl 1999 1979).

<sup>457</sup> AS 2006 3459 3535; BBl 1999 1979

<sup>458</sup> AS 1971 777

<sup>459</sup> BS 3 203

<sup>460</sup> AS 1951 1

<sup>461</sup> BS 3 203

supervision (Art. 93–96) also apply to offenders who were convicted under the previous law.

### 2.<sup>462</sup> *Imposition and execution of measures*

<sup>1</sup> The provisions of the new law on measures (Art. 56–65) and on the execution of measures (Art. 90) also apply to offenders who committed an offence or were convicted before the new law comes into force. However the following also applies:

- a. The retrospective ordering of indefinite incarceration in accordance with Article 65 paragraph 2 is permitted only if indefinite incarceration would have been possible on the basis of Article 42 or 43 number 1 paragraph 2 of the previous law.
- b. The detention of young adults in a vocational training institution (Art. 100<sup>bis</sup> in its version of 18 March 1971<sup>463</sup>) and any measure for young adults (Art. 61) may not be for a period in excess of four years.

<sup>2</sup> Until twelve months at the latest after the new law comes into force, the court shall assess whether persons indefinitely incarcerated under Articles 42 or 43 number 1 paragraph 2 of the previous law fulfil the requirements for imposing a therapeutic measure (Art. 59–61 or 63). If they do, the court shall impose the relevant; if not, indefinite incarceration is continued in accordance with the new law.

### 3. *Register of criminal convictions*

<sup>1</sup> The provisions of the new law on the register of criminal convictions (Art. 365–371) also apply to convictions under the previous law.

<sup>2</sup> By six months at the latest after the new law comes into force, the competent authority shall ex officio remove entries relating to:

- a. educative measures (Art. 91 in its version of 18 March 1971<sup>464</sup>), with the exception of those ordered on the basis of Article 91 number 2 in its version of 18 March 1971;
- b. special treatment (Art. 92 in its version of 18 March 1971);
- c. the obligation to perform work (Art. 95 in its version of 18 March 1971).<sup>465</sup>

<sup>3</sup> Entries deleted under the previous law are no longer included in the extract from the register of convictions for private individuals.<sup>466</sup>

<sup>462</sup> Amended by No I of the Federal Act of 24 March 2006 (Revision of the Law on Sanctions and the Register of Convictions), in force since 1 Jan. 2007 (AS **2006** 3539 3544; BBI **2005** 4689).

<sup>463</sup> AS **1971** 777

<sup>464</sup> AS **1971** 777

<sup>465</sup> Amended by No I of the Federal Act of 24 March 2006 (Revision of the Law on Sanctions and the Register of Convictions), in force since 1 Jan. 2007 (AS **2006** 3539 3544; BBI **2005** 4689).

<sup>466</sup> Inserted by No I of the Federal Act of 24 March 2006 (Revision of the Law on Sanctions and the Register of Convictions), in force since 1 Jan. 2007 (AS **2006** 3539 3544; BBI **2005** 4689).

#### *4. Institutions for the execution of measures*

The cantons shall establish institutions for the implementation of measures under Articles 59 paragraph 3 and 64 paragraph 3 within ten years at the latest of these amendments coming into force.

#### **Transitional Provision to the Amendment of 12 December 2014<sup>467</sup>**

Article 305<sup>bis</sup> does not apply to aggravated tax misdemeanours as defined in Article 305<sup>bis</sup> number 1<sup>bis</sup> that were committed before the amendment of 12 December 2014 comes into force.

#### **Transitional Provision to the Amendment of 26 September 2014<sup>468</sup>**

The right to information under Article 92a also applies to the execution of sentences and measures that was ordered under the previous law.

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<sup>467</sup> AS 2015 1389; BBl 2014 605

<sup>468</sup> AS 2015 1623; BBl 2014 889 913



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**Final Provisions of the Amendment of 18 March 1971****Final Provisions of the Amendment of  
13 December 2002**

