

**Transnational Crime And Swiss Perspective**

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**LALIVE**

# Summary Penalty Order Procedure

## Art. 352 Requirements

<sup>1</sup> If the accused has accepted responsibility for the offence in the preliminary proceedings or if his or her responsibility has otherwise been satisfactorily established, the public prosecutor shall issue a summary penalty order if, having taken account of any suspended sentence or parole order that must be revoked, it regards any of the following sentences as appropriate:

- a. a fine;
- b. a monetary penalty of no more than 180 daily penalty units;
- c. community service of no more than 720 hours;
- d. a custodial sentence of no more than 6 months.

<sup>2</sup> (...)

<sup>3</sup> Sentences in accordance with paragraph 1 letters b–d may be combined with each other provided the total sentence imposed corresponds to a custodial sentence of no more than 6 months. A fine may always be combined with any another sentence.

# Summary Penalty Order Procedure

## Art. 353 Content and notice of the summary penalty order

<sup>1</sup> The summary penalty order contains:

- a. the name of the authority issuing the order;
- b. the name of the accused;
- c. a description of the act committed by the accused;
- d. the offence constituted by the act;
- e. the sanction;
- f. notice of the revocation of a suspended sentence or of parole with a brief statement of the reasons;
- g. the costs and damages due;
- h. details of any seized property or assets that are to be released or forfeited;
- i. reference to the possibility of rejecting the order and the consequences of failing to reject the order;
- j. place and date of issue;
- k. the signature of the person issuing the order.

# Summary Penalty Order Procedure

## **Art. 353**    **Content and notice of the summary penalty order**

(Continued)

<sup>2</sup> If the accused has accepted the civil claims of the private claimant, this shall also be recorded in the summary penalty order. Claims that are not accepted shall be referred for civil proceedings.

<sup>3</sup> Immediate written notice of the summary penalty order shall be given to persons and authorities who are entitled to reject the order.

# Summary Penalty Order Procedure

## Art. 354 Rejection

<sup>1</sup> A written opposition to the summary penalty order may be filed with the public prosecutor within 10 days by:

- a. the accused;
- b. other affected persons;
- c. if so provided, the Office of the Attorney General of Switzerland or of the canton in federal or cantonal proceedings respectively.

<sup>2</sup> A rejection other than that made by the accused must be accompanied by a statement of grounds.

<sup>3</sup> Unless a valid rejection is filed, the summary penalty order becomes a final judgment.

# Simplified Proceedings

## Art. 358 Principles

<sup>1</sup> At any time prior to bringing charges, the accused may request the public prosecutor to conduct simplified proceedings provided the accused admits the matters essential to the legal appraisal of the case and recognizes, if only in principle, the civil claims.

<sup>2</sup> Simplified proceedings are not an option in cases where the public prosecutor requests a custodial sentence of more than five years.

# Simplified Proceedings

## **Art. 359 Opening proceedings**

<sup>1</sup> The decision of the public prosecutor on whether to conduct simplified proceedings is final. The ruling need not contain a statement of reasons.

<sup>2</sup> The public prosecutor shall notify the parties that simplified proceedings are to be conducted and shall set the private claimant a time limit of 10 days to file civil claims and request the reimbursement of costs incurred in the proceedings.

# Simplified Proceedings

## Art. 360 Indictment

<sup>1</sup> The indictment shall contain:

- a. the details required in accordance with Articles 325 and 326;
- b. the sentence;
- c. any measures;
- d. instructions related to the imposition of a suspended sentence;
- e. the revocation of suspended sentences or parole;
- f. the ruling on the civil claims made by the private claimant;
- g. the ruling on costs and damages;
- h. notice to the parties that by consenting to the indictment, they waive their
- i. rights to ordinary proceedings and their rights of appeal.

# Simplified Proceedings

## **Art. 360    Indictment                   (Continued)**

<sup>2</sup> The public prosecutor shall serve the indictment on the parties. The parties must declare within ten days whether they consent to the indictment or not. Consent is irrevocable.

<sup>3</sup> If the private claimant fails to give written notice rejecting the indictment within the time limit, he or she is deemed to have consented to it.

<sup>4</sup> If the parties consent, the public prosecutor shall pass the indictment with the files to the court of first instance.

<sup>5</sup> If any party rejects the indictment, the public prosecutor shall conduct ordinary preliminary proceedings.

# Simplified Proceedings

## Art. 361 Main hearing

<sup>1</sup> The court of first instance shall conduct a main hearing.

<sup>2</sup> At the main hearing, the court shall question the accused and establish whether:

- a. he or she admits the matters on which the charges are based; and
- b. this admission corresponds to the circumstances set out in the files.

<sup>3</sup> If necessary, the court shall also question other parties present.

<sup>4</sup> No procedure for taking evidence shall be conducted.

# Simplified Proceedings

## Art. 362 Judgment or rejection of application

<sup>1</sup> The court shall be free to decide whether:

- a. the conduct of simplified proceedings is lawful and reasonable;
- b. the charge corresponds to the result the main hearing and the files; and
- c. the requested sanctions are equitable.

<sup>2</sup> If the requirements for a judgment in the simplified proceedings are fulfilled, the court shall issue a judgment that sets out the offences, sanctions and civil claims contained in the indictment, together with a brief statement of reasons for the fulfillment of the requirements for the simplified proceedings.

# Simplified Proceedings

## **Art. 362 Judgment or rejection of application (Continued)**

<sup>3</sup> If the requirements for a judgment in the simplified proceedings are not fulfilled, the court shall return the files to the public prosecutor so that ordinary preliminary proceedings may be conducted. The court shall give notice of its decision not to issue a judgment both orally and by issuing written conclusions. This decision is non-contestable.

<sup>4</sup> Following a decision not to issue a judgment in simplified proceedings, statements made by the parties for the purpose of the simplified proceedings may not be used in any subsequent ordinary proceedings.

<sup>5</sup> The sole grounds for appeal against a judgment in simplified proceedings are that a party did not consent to the indictment or that the judgment does not correspond to the indictment.

# Extradition treaty between United States and Switzerland

## Art. 4 NON BIS IN IDEM

1. Extradition shall not be granted when the person sought has been convicted or acquitted by the Requested State for the same acts for which extradition is required.
2. Extradition may be denied by the Executive Authority of the United States or by the competent authorities of Switzerland if the offense for which extradition is required is subject to the jurisdiction of the Requested State and that State will prosecute that offense.
3. Extradition shall not be precluded if the competent authorities of the Requested State have decided not to prosecute the person sought for the same acts for which extradition is requested or have decided to discontinue any criminal proceedings which have been initiated against the person sought.