

JB

International Association of Judges

Third Study Commission

Dublin 12th - 16th of July 1987.

Internationally organised crime: problems of proof.

Questionnaire

Answers no later than the 31st of March 1987.

The problems under consideration are those the trial judge (or court) has to decide upon.

I General principles

- A. Who has the burden of proof before the trial judge?
- B. Valuation of the evidence by the trial judge: inner conviction of the judge or evidence on the basis of a set of rules given by the law.
 - 1. Text of the rules of law
 - 2. Functioning of these rules
 - 3. Consequences
 - 4. Possible complementary obligations for the judge
 - 5. Consequences of produced evidence which is in violation of the legal rules
 - 6. Other considerations.

II Special problems in the evaluation of evidence of internationally organised offences (or other grave offences).

Specify those offences for all the cases as stated hereafter while indicating:

- 1. Whether there exist in your legislation such special rules and under which circumstances they should be applied.
- 2. Whether you hold the view that such rules should be introduced in your legislation and on what conditions.

A. Reversal of the burden of proof.

Example: Presumption of trafficking when a person is found in possession of a certain amount of drugs except when he can prove that the drugs came from a legitimate source.

B. The use of under-coveragents or agents provocateur.

C. Anonymous witnesses.

1. The possibility for a witness to refuse to reveal the identity of the person who gave him some information.

Take into consideration:

- a. any witness
- b. police-officers.

2. Other possibilities for anonymous witnesses to supply evidence while their anonymity remains guaranteed.

D. Complete body search.

E. The interception and recording of conversations, specifically telephone-conversations (audio-surveillance).

N.B. The problem of audio-surveillance has been considered during the meeting of the International Academy of Comparative Law, which was held in Sydney-Melbourne from 18th to 26th of August 1986.

F. Other possible problems.

III Final considerations

Your point of view and possible opinions in your country.