International Association of Judges

Abidjan 2002

Response of Ireland to the questionnaire of the third study commission:

Preliminary

The judiciary in Ireland have no role in the actual conduct of criminal investigations. Criminal investigations are conducted by the national police force. If such an investigation is not conducted in accordance with law and respect for the fundamental rights of the individual as guaranteed under the constitution, they may be subject to judicial review in legal proceedings brought by a person so affected. They may also be the subject of judicial control in pre-criminal trial procedures or in the course of the criminal trial where evidence obtained unlawfully or in breach of constitutional rights may be excluded.

SECTION 1

- Observations - New investigative measures

There has been no “new”, if by new is meant in the last 12 months or so, legislative measures concerning the investigation of organised crime. But police powers to investigate serious crime, including “organised crime” have evolved and been increased by statute over the last ten years or so to meet the changing criminal landscape particularly the rise of wealthy, well resourced and well organised criminals such as so-called “drug barons”.

Relatively recent initiatives include the Criminal Assets Bureau Act 1996 and the Proceeds of Crime Act, 1996. These statutes operate separately from the prosecution of criminals for criminal offences (although there may be a great deal of co-operation with those involved in investigating such offences). The objective is to target criminals where they are most vulnerable, that is their wealth and assets which they have acquired as proceeds of their crimes.

Before referring in slightly more detail to those statutes, one can conveniently refer briefly to certain provisions of the Income Taxes Consolidation Act 1997 which, inter alia, made income from criminal activities the subject of income tax. This means that the income tax authorities, (the Revenue Commissioners), can make an assessment of the income tax due by known criminals or persons with no apparent employment but with large assets such as large villas, penthouses, farms, large deposits in banks and so on. They may dispute the assessment of tax due like any other taxpayer and must then make tax returns declaring their income and the amount of tax due. As a result, very substantial funds have been recovered from such persons.

However, it is the combined effect of the Proceeds of Crime Act, 1996 and the Criminal Assets Bureau Act, 1996 which has provided the most potent attack on funds accumulated by those involved in organised crime. Under the Proceeds of Crime Act the Criminal Assets Bureau may obtain an interim order “freezing” the assets of a named individual where it is shown to the satisfaction of the High Court, on the balance of probabilities, that those assets constitute directly or indirectly the proceeds of crime or were acquired, in whole or in part, with the proceeds of crime. This interim application can be made ex-parte without notice to the party concerned. Such an order prohibits the person concerned, or any other person having notice of the order from disposing or otherwise dealing with or diminishing the value of the property or assets during a period of 21 days from the date of making such an order. The order lapses after 21 days unless the Criminal Assets
Bureau makes an application, this time on notice to the party concerned, for a continuation of the “freezing” order. In deciding whether or not to make such an order, the High Court may accept hearsay or opinion evidence of a member of the Garda Siochána (national police force) not below the rank of Chief Superindant as evidence of the facts sworn to, where the court is satisfied that there are reasonable grounds for his/her belief that the assets or property constitute the proceeds of crime. The onus is then on the person concerned to establish the source of their own monies or assets or property and to demonstrate that they are not the proceeds of crime but of legitimate business activity. The second “freezing” order, continues in force for seven years in relation to the property or assets specified unless the person concerned establishes that they have a legitimate source. After the lapse of that period the property rights of the owner are extinguished.

The Criminal Assets Bureau is a novel initiative bringing together for the first time multi-agency approach in tackling organised crime. This means that the resources of the Garda Siochána (national police force) the fiscal authorities and the social security authorities are combined so as to produce a more effective weapon to combat organised crime. The Bureau’s objectives are defined as:

(i) The identification of the assets of persons which derive from criminal activities;
(ii) The taking of action under the law to deprive those persons of the assets;
(iii) The pursuit of any investigations or the doing of any other preparatory work in relation to any proceedings arising from the objectives in (i) or (ii). Since its formation the main focus of the Bureau has been on the proceeds of drug trafficking. Its statutory remit, however, extends to all forms of criminal activity, including terrorist activity.

Another measure of fairly recent origin is the Criminal Justice Act 1994 which established the offence of money laundering. This Act, inter alia, imposes an obligation on all financial institutions (in effect all banking institutions) to identify the persons with whom they have financial transactions. Failure to comply with the requirements of the Act is an offence.


Finally, under long-standing legislation a Court has been established known as the Special Criminal Court. Briefly, this court tries cases where it is considered that the ordinary courts (that is criminal trial by jury) would not be effective due, for example, to the risk of intimidation of juries. In practice this has meant that trials which come before the Special Criminal Court are those which arise out of ‘terrorist’ activity (mainly I.R.A.). In more recent times trials of those concerned with organised crime have been brought before this court. The essential difference between a trial in the Special Criminal Court and a trial in the ordinary criminal courts is that the trials take place before three judges instead of one judge and a jury of twelve persons. The judges are judges of the

ordinary courts. Otherwise the trials are conducted in exactly the same manner as trials before the ordinary courts and subject to ordinary laws and principles (such as the presumption of innocence and onus of proof) as well as constitutional protection for fair procedures and fundamental rights.

SECTION 2  
- Gathering of Evidence

The gathering of evidence in criminal proceedings is purely a police matter. Accordingly, while methods of gathering evidence have undoubtedly been developed to meet the challenge of organised crime in a modern society, no particular laws have been enacted in relation to the gathering of evidence.

In relation to investigations involving a search of premises, the Constitution places limits on the power of the State to search private property. Any search mechanism must be conducted in a fair manner and must not be used as an instrument of oppression and can only be carried out following the issuing of a Search Warrant. In Simple Imports v. The Revenue Commissioners Keane J. confirmed that a strict approach ought to be adopted by the courts in determining the validity of search warrants:

“These are powers which the police and other authorities must enjoy in defined circumstances for the protection of society, but since the authorise the forcible invasion of a person’s property, the courts must always be concerned to ensure that the conditions imposed by the legislature before such powers can be validly exercised have been met”.

SECTION 3  
- Protection of individual liberties in criminal cases

Article 38(1) of the Irish Constitution guarantees that no person shall be tried on any criminal charge save in due course of law.

The Constitution has been interpreted by the courts as guaranteeing to the individual due process and fair procedures in the conduct of criminal trials as well as respect for his/her fundamental rights. Such rights include for example a right to free legal aid so that an accused person is represented by advocates on parity with the state prosecution. These principles apply irrespective of the kind of offence with which an Accused person is charged.

An appeal lies from all courts of trial (including the Special Criminal Court) to the Court of Criminal Appeal and in certain circumstances to the Supreme Court.

SECTION 4  
- The Physical arrangements of the court room

There are no special physical arrangements of courtrooms for the trial of criminal offences including offences related to organised crime or terrorist associated offences. However, where circumstances require special security, arrangements are put in place on the perimeter or outside the

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court building or court room. There is also normal access for members of the public to the court room although persons may be subject to search.

SECTION 5  
- Problems relating to illegal immigration and so-called “new terrorism”

The Offences Against the State (Amendment) Act 1988 increased powers of detention for questioning and also allows the court of trial to draw inferences from certain refusals by accused persons to provide information. It also provides for unlimited fines and the forfeiture of property where that property is used for storage of fire arms or explosives. It also strengthens the law concerning such offences as being a member of an unlawful organisation, directing an unlawful organisation or the unlawful collection of information. These are offences connected with such unlawful organisations as the I.R.A. or the U.V.F.

As regards illegal immigration, persons who enter Ireland illegally may apply for refugee status or seek asylum. Such applications are dealt with pursuant to statute and in accordance with European Union norms and the practices and guidelines laid down by the United Nations. The Illegal Immigrants (Trafficking) Act 2000 makes trafficking in illegal immigrants a serious offence.