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Workshop on cybercrime and cybersecurity policies and legislation

Article 15: rule of law and human rights safeguards

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1 Article 15 Budapest Convention

Procedural powers (articles 16 to 21 Budapest Convention) are to be:

“subject to conditions and safeguards provided for under its domestic law which shall provide for the adequate protection of human rights and liberties...” (article 15)

Artículo 15 – Condiciones y salvaguardias

1. Cada Parte se asegurará de que la instauración, ejecución y aplicación de los poderes y procedimientos previstos en la presente Sección se sometan a las condiciones y salvaguardias previstas en su derecho interno, que deberá garantizar una protección adecuada de los derechos humanos y de las libertades ...

Council of Europe (CyberCrime@IPA) 2011:
Conditions and Safeguards under the
Budapest Convention on Cybercrime
[Examples of Netherlands, USA, Croatia]

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2 Rule of law requirements

In general terms, one would expect a State to meet rule of law requirements such as:

- **There shall be no punishment without a law**
- **Everyone has the right to a fair trial, including the presumption of innocence**
- **Interference in the rights of individuals only in accordance with the law and as is necessary in the public interest – including crime prevention – or the protection of the rights of others. Investigative measures are to be prescribed by law**
- **Anyone whose rights are violated must have the right to an effective remedy**
- **States to put in place a framework that allows to reconcile different interests that are to be protected**
- **positive obligation by states to protect the rights of individuals. This may include criminal law and effective enforcement to bring offenders to justice**

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3 Rule of law requirements and principles with regard to procedural powers of the Budapest Convention

- **Principle of proportionality**, meaning in particular that “the power or procedure shall be proportional to the nature and circumstances of the offence”. For example, particularly intrusive measures, such as interception, are to be limited to serious offences
- **Judicial or other independent supervision**
- **Grounds justifying the application of the power or procedure and the limitation on the scope or the duration**
- **Powers and procedures must be reasonable and “consider the impact on the rights, responsibilities and legitimate interests of third parties”**

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4 Assessment of Article 15

For practical purposes, an assessment of Article 15 could include:

- **An inventory of international human rights treaties to which a State is party to**
- **An overview of how the above requirements are reflected in the constitution of a State**
- **An analysis of how the above requirements are reflected in the criminal law of a State in general**
- **A more specific analysis of how these requirements apply when the measures of Articles 16 (expedited preservation) to 21 (interception) are applied at the domestic level**

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