



SUBSTANTIVE AND PROCEDURAL LAW: Something old & something new

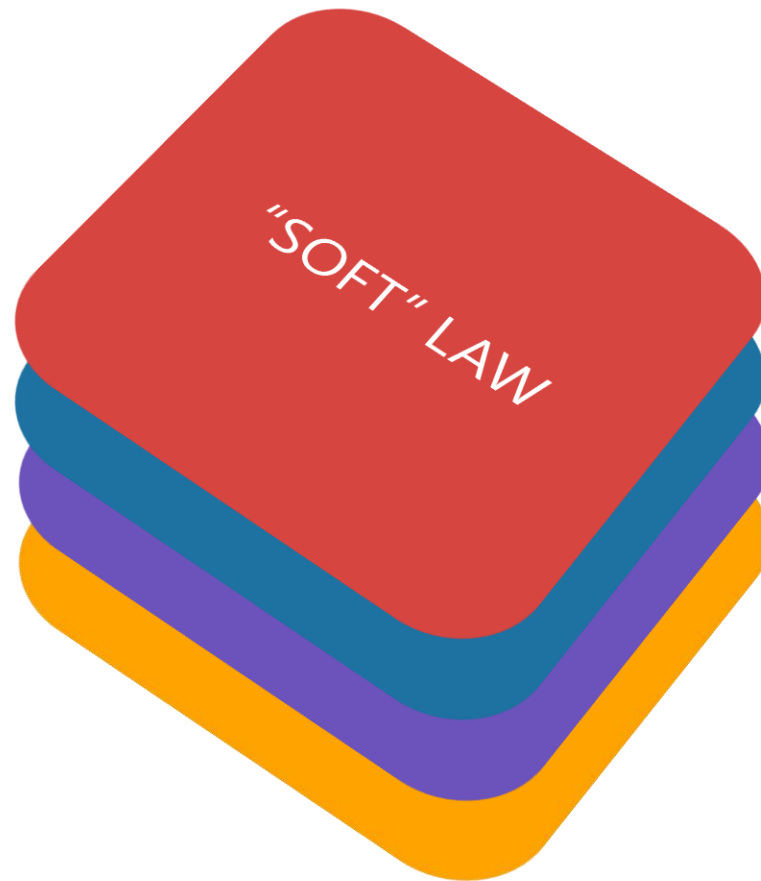
CoE's efforts in the field of cybercrime legislation:

(1) to develop common (minimal) standards in the field of substantive and procedural law, and (2) have them implemented in national legislation of member states and applied properly



International law in the field of cybercrime

INTERNATIONAL LEGAL STANDARDS



SCOPE OF LEGISLATIVE ACTIVITIES

SUBSTANTIVE LAW: CRIMINALIZATION OF CERTAIN HARMFUL CONDUCT

PROCEDURAL LAW: POWERS TO SUCCESSFULLY INVESTIGATE AND PROSECUTE CYBERCRIME

INTERNATIONAL COOPERATION: MAKING IT POSSIBLE TO PROSECUTE CYBERCRIME IN GLOBAL ENVIRONMENT



SUBSTANTIVE LAW

SUBSTANTIVE LAW IN A NUTSHELL

BUDAPEST CONVENTION

- Offences against the confidentiality, integrity and availability of computer data and systems
- Computer-related offences
- Content-related offences
- Offences related to infringements of copyright and related rights
- Ancillary liability and sanctions

LANZAROTE CONVENTION

- Substantive criminal law (criminal offences) regarding **sexual exploitation and sexual abuse of children**, some of which can occur online

ISTANBUL CONVENTION

- Substantive criminal law (criminal offences) regarding **violence against women** (including violence committed online)

OFFENCES AGAINST CHILDREN

BUDAPEST CONVENTION

- Child pornography (Article 9)

LANZAROTE CONVENTION

- Only limited mention of cybercrime and/or ICTs
- But, there is shared understanding of Parties that this Convention covers some offences committed through the use of ICT
 - Child pornography (Article 20)
 - Offences concerning the participation of a child in pornographic performances (Article 21)
 - Corruption of children (Article 22)
 - Solicitation of children for sexual purposes (“grooming”, Article 23)

OFFENCES AGAINST WOMEN

ISTANBUL CONVENTION

- Only limited mention of cybercrime and/or ICTs
- But, there is shared understanding of Parties that this Convention covers some offences committed through the use of ICT
- Psychological violence (Article 33)
- Stalking (Article 34)
- Sexual harassment (Article 40)



PROCEDURAL LAW

Budapest convention complements other treaties by providing relevant framework for procedural measures

PROCEDURAL LAW: A QUESTION OF BALANCE

Procedural powers

Preservation of data

Production orders

Search and seizure

Real-time collection of traffic data

Interception of content data

Conditions and safeguards

Article 15 of the Budapest Convention

ECtHR's case-law

DESIGNING ADEQUATE LEGAL FRAMEWORK



Question of implementation:

International treaties are addressed to states (not LEA's and/or courts)

STATES' DUTIES

Create appropriate legal grounds for criminal offences and procedural measures in national legislation

STATES' DUTIES

Write precise and foreseeable national legislation, avoid vague and overbroad provisions, but at the same time keep statutes sufficiently general and capable of following inventions in ICT

STATES' DUTIES

Ensure that the law is properly applied and consistently interpreted (including guidance from international level)

STATES' DUTIES

Apply the principle of proportionality in both procedural and substantive aspects

STATES' DUTIES

Empower LEA's and courts to apply law effectively and properly,
while ensuring proper protection of fundamental rights and
freedoms

Thank you!

Questions?

