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| Lesson: 3 – Civil liberties and safeguards with respect to electronic evidence | **Duration: 45 Minutes** |
| **Resources required for an off-line delivery:**   * Laptop or PC running an operating system with an office suite (capable of showing pptx) * Projector and display screen * Internet access * Whiteboard * Whiteboard pens (at least 2 each of blue, black, red and green) * 1 Flipchart with adequate paper * Student notepaper and pens * Blu tack or a similar product to allow for paper to be affixed to the walls temporarily * Files:   + Session 3 Civil Liberties and Safeguards.pptx   + Nemo tenetur – ECHR.docx   **Resources required for an on-line delivery:**   * Laptop or PC for each trainee (if attending from home) or for a groups of trainees, depending on availability * A strong internet connection * An online tool should be provided that allows video conferencing and is specifically aimed at providing training. Due to the fact that the trainers have to stay in visual contact with the trainees, it is important that when the slides are shown, the trainers still see the trainees (in some online video conferencing tools only the slide can be seen). It is in any case also a plus to be able to provide online break-out rooms. * Files:   + Session 3 Civil Liberties and Safeguards.pptx   + Nemo tenetur – ECHR.docx | |
| **Aim:** Through the previous training sessions, the trainees already had an introduction to electronic evidence (session 1) and a profound refresher on the Budapest Convention principles and substantive and procedural law provisions have a picture of what the tools of the Convention on Cybercrime offer them (Session 2: Refresher Course on the Budapest Convention).  This session will address the very important aspect of human rights and safeguards in the application of the Budapest Convention and the handling of electronic evidence. A conscious decision was made to make this session a separate one, because this topic deserves special and separate attention. The purpose of this session is to put forward a well-defined standard on respect for conditions and safeguards and human rights, and to emphasize its importance. | |
| **Objectives:**  At the end of this session, delegates will be able to:   * Explain the importance of conditions and safeguards and the way they can be determined * Understand the importance of ensuring that human rights and safeguards are applied when investigating, making case assessments or when adjudicating cases in which electronic evidence is involved | |
| **Introduction**  The trainers have already explained in detail to the trainees, at this moment of the training, what the toolbox of the Convention on Cybercrime is, what the electronic evidence is and where it can be found and what the legal framework is within which all this should be done.  In this session, special attention will be paid to the conditions and safeguards provided by the rule of law and human rights that are at stake when it comes to gathering electronic evidence.  It is important to recognize that different jurisdictions may have varying standards and safeguards. As part of the objectives of this session, reference will mainly be made to standards that have already been laid down in certain international conventions and that result from certain supranational jurisprudence, without making a universal claim as to how certain safeguards should be implemented in each jurisdiction. However, certain standards and best practices will be put forward in the light of the Budapest Convention. The message should be that the given synthesis can be adapted to each country taking into account the particularities of the country’s legal system and of its legal international commitments.  In the first part of this session, the relationship of the Budapest Convention to other international legal instruments will be discussed from a human rights point of view. The scope of article 15 of the Budapest Convention and the conditions and safeguards that are envisaged will also be discussed. There will also be a very concrete reference to the human rights and safeguards that are addressed.  The second part of this session will mainly focus on the doctrine of the European Court of Human Rights. This may seem to some jurisdictions as if it does not belong to their domestic legal order, but it does belong to the common good of what the Budapest Convention aims for in terms of human rights and safeguards in a generic way. National differences can certainly be discussed, but it should be made clear that there is a minimum standard.  The third part of this session deals with some of the ECtHR's most important case law on electronic evidence and zooms in on what the ECtHR considers important when collecting electronic evidence. It is a non-exhaustive anthology of jurisprudence and principles that must be observed. It is not intended to come across as imperialistic in this respect, but to give a clear direction.  It is important that the trainers/experts go through the summaries of the jurisprudence and give a clear explanation of the context of the jurisprudence. An attempt was also made to indicate when there were dissenting opinions between the judges, which can also make it clear that discussion is always possible.  All information about this session is included in the PowerPoint presentation entitled “Session 3 Civil Liberties and Safeguards.pptx” in the resource pack. There is also a scientific analysis (Nemo Tenetur - ECHR.docx) of the case law of the ECHR concerning slides 40 and 41, which should enable the trainer/expert to lead a good discussion between the participants. The trainer is responsible for ensuring that the materials are up to date. Changes may be made, however the objectives should be achieved. | |
| **Practical Exercises**  There is no practical exercise foreseen in this session. Anyway, session 3 gives the opportunity to enter into a comprehensive discussion regarding the case law of the ECtHR. More specifically, slides 40 and 41 provide the opportunity to engage in an extensive discussion on the relationship between the right to remain silent and the principle of non-incrimination with regard to electronic evidence. To this end, for the benefit of the trainers/experts, a very extensive analysis and discussion of the case law of the ECHR in this respect was added. The contribution in question explicitly takes a certain point of view, which can and may, however, be questioned. | |