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Session II – Special Investigation Techniques, Human Rights and the Rule of Law – Challenges and Possible Solutions

Session II was devoted to a discussion on the possible conflicts between SIT use and safeguarding human rights and the rule of law.

These notions should not be seen as mutually exclusive but should be reconciled, i.e., pursued at the same time.

The various international conditions and regulations on the use of SITs were presented by the panellists.

From a CoE perspective, the case-law of the European Court of Human Rights was presented. The specific requirements of the Court such as a legitimate aim, judicial control and proportionality were highlighted.

While States rarely go beyond their margin of appreciation, the Court has also drawn red lines.

The political commitments of the OSCE participating states were presented as was the action of ODIHR to provide specific assistance and training. A new special OSCE manual will become available shortly.

The interest of law enforcement authorities to comply with rule of law and human rights requirements was clearly demonstrated.

The UN's work, following UNSC Resolution 1373 (2001) and, in particular, the 2006 UN Global counter-terrorism strategy were presented. In addition, the Detailed Implementation Survey (DIS) was discussed and common shortfalls in the application of SITs noted. Amongst the main issues raised were: the right to privacy and the right to fair trial. The difficulties of using cross-border evidence, as a result of differences in legal systems were underlined.

During the discussions, the increase of cybercrime was referred to, together with the concern that it was often not recognised as a serious crime.

Questions were also put as regards the specific requirements of the European Court of Human Rights and international law in general.