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Legal challenges of the application of Espoo
Convention in post-Soviet OVOS/expertiza systems

**Seminar on 20 years of law and practice under
the Espoo Convention**

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Issues to be addressed

- Genesis of the problem
- Issues of concern
- Conclusions
- Suggestions for the future

Genesis – concept of Espoo Convention

- Based on Western EIA concept
 - designed for market economy
 - assuming well established development control
- Procedural and process oriented
- Obligations put on authorities

Genesis – concept of OVOS/expertiza

- Traditions of OVOS/expertiza systems in Eastern Europe, the Caucasus and Central Asia
 - Designed for centrally planned economy
 - Substance oriented
- Two separate legal regimes
 - OVOS - responsibility of developer
 - Expertiza(s) - responsibility of various agencies

Issues of concern

- Scope of activities covered
- Scope of assessment
- Regulatory control
- Public participation
- Final decision
- Implementation of Espoo Convention

Activities covered

- Theoretically broad regulatory control and extensive list of activities which require expertiza
 - more activities covered than Espoo Appendix I
- Usually only activities where construction is involved
 - no deforestation (or afforestation)
 - no intensive rearing of poultry or pigs

Scope of assessment

- no individual scoping (usually)
- no clear requirement for
 - „identification of gaps in knowledge and uncertainties”
 - locational alternatives
- limited scope of alternatives assessed in practice

Regulatory control

- Two separate processes
 - OVOS
 - expertiza
- Separate control at expertiza stage
 - environmental, sanitary etc
 - in some countries - integrated expertiza
- No single „competent authority”
 - responsible for the entire procedure
 - for „final decision”

Public participation

- **OVOS stage**
 - responsibility of the developer
 - no clear procedures for notification and hearings
 - limited availability of EIA documentation
 - in practice rather propaganda than participation
- **Expertiza**
 - only non-mandatory „public expertiza”
 - no public consultation in practice
 - no clear requirement to take into account outcomes of

Final decision

- No clear-cut final decision
 - who takes it?
 - in which legal form?
- Substance of final decision –
 - conditions for authorisation in final OVOS Report?
 - no reasons and considerations
 - No clear requirement to take into account outcomes of OVOS
- No requirement to announce it

Transboundary procedure

- Screening
 - no precise screening mechanism
 - authorities involved late in the procedure
- No clear transboundary procedure
 - when Party of origin (who and when notifies?)
 - when affected Party (who is responsible?)
 - Espoo convention applied directly?
- No scoping
- OVOS Statement (zajavlenije) vs OVOS Report (otchiot)
- No clear „final decision”

Conclusions

- Conceptual discrepancy between OVOS/expertiza systems and requirements of the Espoo Convention (and also Aarhus Convention)
- Risk of repeated cases at the Implementation Committee
- Need for systemic approach

Suggestions

- Screening mechanism
 - list of projects for mandatory Espoo notification
- Environmental authorities involved in OVOS
 - declaration of intent
 - individual scoping
 - public participation
- EIA documentation

Suggestions -cd

- Clear indication what is „final decision”
- Clear designation of competent authorities
 - for contacts under Espoo Convention
 - for issuing final decision
- Procedures (who does what!)
 - as Party of origin
 - as affected Party