



**3<sup>rd</sup> Congress of the World Conference on Constitutional Justice  
'Constitutional Justice and Social Integration'  
28 September – 1 October 2014  
Seoul, Republic of Korea**

**Questionnaire**

**Reply by the Constitutional Court of Mongolia**

**A. INTRODUCTION OF THE CONSTITUTIONAL COURT OF MONGOLIA**

***I. Basic texts.***

A legal basis for the foundation of the Constitutional court which shall to exercise supreme control over the implementation of the Constitution was formed by the enactment of the new Constitution of Mongolia in 1992. The creation of the mechanism of control over the Constitution is an achievement and innovation of new Constitution. The Constitution of Mongolia states that “The Constitutional Tsets of Mongolia is the body which has full powers to exercise supreme supervision over the implementation of the Constitution, to render decisions on the infringements of its provisions, to settle constitutional disputes, and is the guarantor for the Constitution to be strictly observed”<sup>1</sup>

The principles, methods, forms and organization of the activity and the powers of the Tsets shall be determined by the Constitution and by The law of Mongolia on the Constitutional Tsets (1992) and The law of Mongolia on the Constitutional court procedure, 1997.

***II. Composition, procedure and organization***

The Constitutional Tsets consists of 9 members. A member of the Tsets shall be a citizen of Mongolia who has high legal and political professional standing , is without a criminal record against him and has reached forty years of age.

In conformity with the law the members of the Constitutional Court shall be appointed by the State Great Khural for a term of 6 years , with three of them to be nominated by the State Great Khural, three by the President and three by the Supreme Court.

The term of office of the newly appointed or filled in vacancy, member of the Tsets shall commence on the day of appointment and shall continue until the expiration of their term of office as provided for in the Constitution. A member of the Tsets whose term of authorities has expired shall continue to fulfill his/her obligations until the appointment of a new member to the post.

The Chairman of the Constitutional Court shall co-ordinate its activities. 9 members of the Tsets shall propose from among themselves the name of a person who is to be elected Chairman and elect the person who receives the majority of votes as the Chairman. The

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<sup>1</sup>The Constitutional court of Mongolia has its proper name The Constitutional Tsets of Mongolia

Chairman of the Tssets shall be elected by a term of 3 years and may be re-elected only once.

1. The Tssets shall be governed by such basic principles:
  - adherence to the Constitution of Mongolia
  - Independence, impartiality
  - openness and transparency of the proceedings
  - directness and continuity of proceedings
  - adversarial nature and equality of parties
  - oral proceedings
  - the proceedings shall be conducted in mongolian language
  - the proceedings shall be conducted in the physical presence
  - confidentiality of deliberations during a consultation
  - lawfulness and justification of decision

Composition of the process of examining and resolving disputes.

According to the Law on Constitutional court procedure:

- A member shall decide on initiating/not initiating proceedings based on petitions, notifications and requests addressed to the Tssets;
- Complaints concerning a decision of a Member of Tssets on initiating/not initiating proceedings based on petitions, notifications and requests addressed to the Tssets shall be considered by a session of a Small bench -3 members bench;
- first decision on all issues examined for dispute resolution by a Tssets session shall be delivered by a Middle bench -5 members bench except a decision on the substance of breach of the Constitution and existence of grounds for resignation or recall an official specified in Article 13, Section 2 and 3 of the Law on constitutional procedure.
- a full bench or in case of justified inability of some members to attend the session, a no less than 7-members bench shall discuss and deliver final decision on reconsidered cases of Tssets judgments rejected by the State Great Hural<sup>2</sup>, or new circumstances arising on a previously settled dispute or judgments petitioned by the majority of members of Tssets for reconsideration and final decision. A full bench of 7-9 members of the Tssets shall examine and deliver a decision on the substance of breach of the Constitution and existence of grounds for resignation or recall an official specified in Article 13, Section 2 and 3 of this Law.

Citizens of Mongolia, foreign citizens and stateless persons residing lawfully in the territory of Mongolia shall enjoy the right to submit petitions and notifications to the Tssets concerning breach of the Constitution; President, State Great Khural, Prime Minister, Supreme Court, and the Prosecutor General shall be entitled to submit requests regarding existence of substance of breach of the Constitution.

Citizens, organizations and officials shall submit their petitions, notifications and requests in writing and shall include the following therein:

- name, address of residence and method of correspondence;
- name, address, position, and other necessary information about the person to perform duties of an authorized representative or advocate;

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<sup>2</sup> Парламент

- title date of adoption, and number of the legislation considered not compliant with the Constitution, as well as the name, address and actions of the official breaching the Constitution;
- grounds of a claim, other circumstances and proof of evidence;
- statement of point of view regarding the disputed issue;
- claims to be settled by the Tsets;
- articles, sections and provisions of the Constitution and this Law justifying application to the Tsets;
- enclosed documents, list of relevant persons and current addresses. Necessary documents include a power of attorney in the case of originators of a petition, notification, or a request to be represented by an authorized representative in the process of examining and resolving disputes, as well as translations of enclosed documents written in a language other than the Mongolian language.

The member who received petitions and notifications concerning a breach of the Constitution from citizens shall carry out the initial examination within 14 days and deliver a decision on initiating a process on his/her own initiative. The law states that the member of the Tsets, who received requests from authorized organizations and officials, shall initiate a dispute resolution process immediately upon their receipt.

Grounds to refrain from initiation of the process of examining and resolving disputes are fixed in the article 21, paragraph 5 of the Law on Constitutional court procedure. Complaints against a decision of a member of the Tsets on initiating/not initiating a process of examining and resolving disputes by the Tsets raised by disputing parties or proposed by a member of the Tsets, in writing, shall be considered by a session of a 3-member bench.

### **III. Jurisdiction/Powers**

The Tsets shall settle following disputes specified in the Article 66 of the Constitution and article 13 of the law on Constitutional court procedure:

1/ The Tsets shall consider the following disputes concerning the breach of the Constitution, render conclusions thereon and submit them to the State Great Khural; if the conclusion is rejected by the State Great Khural, the Tsets shall reconsider the grounds for the rejection and shall make a final decision.

- law and other decisions of the State Great Khural;
- decrees and other decisions of the President of Mongolia;
- decisions of the government;
- international treaties to which Mongolia is a signatory party;
- decisions of the Central electoral body on referendums, and elections of the State Great Khural, and the President.

2/The Tsets shall consider and deliver a judgment on acts of non-compliance with the Constitution of the following officials:

- the President of Mongolia;
- the Chairman of the State Great Khural;
- a member of the State Great Khural;
- the Prime Minister;
- a member of the Government;
- the Chief Justice of the Supreme Court;
- the Prosecutor General.

3/The Tsets shall consider and deliver a judgment on existence of grounds for the resignation or withdrawal of the following officials:

- the President of Mongolia;
- the Chairman of the State Great Khural;
- a Member of the State Great Khural.
- the Prime Minister;

The Constitutional Court cannot receive and resolve disputes concerning violation of any other laws except the Constitution.

#### **IV. Nature and effects of judgments**

Decisions of the Mongolian Constitutional Court fall into the following 3 categories: certification, judgment, and resolution, of which judgment and resolution are for common compliance. In certain instances all of these decisions are final in their nature. For example, certification of the small bench of the Court becomes the final decision on whether or not dispute review and settlement case should be opened regarding an issue mentioned in a petition or information. There is no legal ground to appeal this certification. The judgment of the Middle bench of the Court is also the final decision in the matter of establishing whether or not an official has violated the Constitution. With the acceptance of the Middle bench judgment by the State Great Khural the decision becomes final and enforceable.

Once a Court judgment is made that laws, decrees, the parliament's and the President's other decisions, decisions of the Government, international treaties to which Mongolia is a party to, or relevant articles and clauses thereof are in violation of the Constitution, such legal acts become suspended until Court has made its final decision. Court's decision enters into force once it is passed.

### **B. Social integration**

#### **1. Social integration in a globalised world**

*1.1 What challenges has your Court encountered in the past, for example in the field of asylum law, taxation law or social security law?*

Since the adoption of the new Constitution in 1992 the Constitutional Court has made void laws passed by the parliament such as social insurance and taxation laws, which restricted human rights. For example, Judgment number 2 of April 9<sup>th</sup>, 1997 states that article 1 of the amendment to the law on pensions and benefits from the social insurance fund, and article 1.3 of the law on the application of laws declaring void certain provisions of the law on pensions and benefits from the social insurance fund, and the law on pensions and benefits from the social welfare fund are in violation of the Constitution.;

Resolution number 3 of 17<sup>th</sup> December 1997 has resolved the conflict whether or not Resolution number 24 of 1997 of the State Great Khural on the customs duties of imported goods, and its initial voting has violated the Constitution.

*1.2 How were issues of social integration or conflict transformed into legal issues?*

The parliament, Government, and other decision-making bodies pass laws, resolutions and other decisions without sufficient scientific research, analysis, or civil participation, which may lead to the concerned issue being transformed into legal conflict.

*1.3 Is there a trend towards an increase in cases on legal issues relating to social integration? If so, what were the dominant questions before your Court in the past and what are they at present?*

In relation to the fact that Mongolia will need to enter into a number of international treaties and conventions in the future, and related laws will be passed by the State Great Khural, it is

possible that the number of social integration disputes submitted to our Court will increase. In relation to issues of social integration, one of the main tasks of the Constitutional Court in the past years was disseminating information to the public on the past decisions of the Court with purpose of promoting knowledge of social integration issues that can be addressed to the Court. As was mentioned previously, Mongolia will need to enter a number of international treaties and conventions in the coming years. Therefore, looking ahead, an important task for our Court will be cooperating with the parliament to make sure that these international treaties and related domestic laws do not conflict with the Constitution.

## **2. International standards for social integration**

*2.1. What are the international influences on the Constitution regarding issues of social integration/social issues?*

*2.2. Does your Court apply specific provisions on social integration that have an international source or background?*

*2.3. Does your Court directly apply international instruments in the field of social integration?*

*2.4. Does your Court implicitly take account of international instruments or expressly refer to them in the application of constitutional law?*

*2.5. Has your Court ever encountered conflicts between the standards applicable on the national and on the international level? If so, how were these conflicts solved?*

2.1. Mongolia has a duty to ensure implementation of international treaties it enters into once they are ratified by the parliament. International treaties are applied the same as domestic laws, and play an important role in establishing a constitutional legislation.

2.2. If an international treaty to which Mongolia is a party to has a special provision for interpretation, Mongolia may use this provision; to date there are no cases where such specific provisions were applied.

2.3. The Constitutional Court applies international instruments in the field of social integration.

2.4. Provisions of international treaties to which Mongolia is a party to may be cited in the source part of the Court's decision, if an international treaty has been applied in the review and resolution of a conflict by the Constitutional Court.

2.5. Mongolia will need to join a number of international treaties on social integration. At the moment there are only a few cases of petitions made to the Constitutional Court citing conflicts between national and international standards.

## **3. Constitutional instruments enhancing/dealing with/for social integration**

*3.1 What kind of constitutional law does your Court apply in cases of social integration – e.g. fundamental rights, principles of the Constitution (“social state”), “objective law”, Staatszielbestimmungen, ...?*

When reviewing cases of social integration, the Constitutional Court applies the Constitution, international treaties to which Mongolia is a party to, and other organic laws relevant to the case or dispute.

3.2 In cases where there is access of individuals to the Constitutional Court: to what extent can the various types of constitutional law provisions be invoked by individuals?

The Constitutional Court reviews disputes of Constitutional violation based on information or petition from citizens, either at its own initiative or at the request from the parliament, President, Prime Minister, Supreme Court or General Prosecutor.

The Constitutional Court makes judgment on the following disputed matters and submits to parliament:

- Constitutional compliance of laws, decrees and other decisions of the State Great Khural or the President, decisions of the Government and international treaties to which Mongolia is a party to;
- Constitutional compliance of the decisions made by the central election authority on the results of national referendum, parliamentary and presidential elections;
- Violation of the Constitution by the President, Speaker of the parliament, Prime Minister, members of the Cabinet, Supreme Justice, and the General Prosecutor.
- Existence of legal grounds for removal from the office of the President, Speaker of the parliament, Prime Minister, and members of the parliament.

There are no restrictions on the Constitutional article which citizen's may cite in petitions. In other words, citizens may address the Constitutional Court regarding all and any article of the Constitution which they may find to have been violated.

*3.3 Does your Court have direct competence to deal with social groups in conflict (possibly mediated by individuals as claimants/applicants)?*

The Constitutional Court does not have legal authority to negotiate with/between conflicting social groups, organizations and/or officials.

*3.4 How does your Court settle social conflicts, when such cases are brought before it (e.g. by annulling legal provisions or by not applying them when they contradict the **principle of equality and non-discrimination**)?*

If a case is brought before the Constitutional Court to settle social conflicts, the Court will review the case according to legal provisions, and the article of the law or the decision in question is declared void and null if it's judged to be in violation of the Constitution.

*3.5 Can your Court act preventively to avoid social conflict, e.g. by providing a specific interpretation, which has to be applied by all state bodies?*

Currently there is no such practice.

*3.6 Has your Court ever encountered difficulties in applying these tools?*

The Court has not encountered such difficulties because it does not issue interpretations on such issues.

*3.7 Are there limitations in the access to your Court (for example only by State powers), which prevent it from settling social conflicts?*

The Constitutional Court is accessible to receive and settles all disputes of Constitutional violation, except for the 2 restrictions below:

The Constitutional Court cannot receive and resolve disputes concerning violation of any other laws except the Constitution.

The Court cannot review and resolve disputes regarding Constitutional violation of laws passed or officials' activities made prior to 12 February 1992, when the Constitution came into effect.

#### **4. The role of constitutional justice in social integration**

*4.1. Does your Constitution enable your Court to act effectively in settling or avoiding social conflict?*

*4.2. Does your Court de facto act as 'social mediator', or/and has such a role been attributed to it?*

*4.3. Have there been cases, when social actors, political parties could not find any agreement, they would 'send' the issue to your Court which had to find a 'legal' solution, which normally should have been found in the political arena?*

4.1. Articles 64 through 66 of the Constitution of Mongolia specify the legal status of the Constitutional Court and the disputes which fall under the jurisdiction of the Court, thus establishing the legal environment for the Court's dispute settlement.

4.2 The Constitution states that the Constitutional Court may review and resolve Constitutional disputes based only on citizen's information or petitions, or requests from authorized organizations or officials.

4.3. Yes. Such cases arise mainly in relation to results of parliamentary elections.