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(VENICE COMMISSION)

MONGOLIA

OPINION

ON

THE DRAFT LAW ON THE CONSTITUTIONAL COURT AND ON THE DRAFT LAW ON THE PROCEDURE OF THE CONSTITUTIONAL COURT

Adopted by the Venice Commission
at its 143rd Plenary Session
(online, 13-14 June 2025)

On the basis of comments by

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I. Introduction

1. By letter of 21 March 2025, Mr Bayasgalan Gungaa, Chief Justice of the Constitutional Court of Mongolia, requested an opinion of the Venice Commission of the Council of Europe on the draft law on the Constitutional Court (Tsets) (CDL-REF(2025)018), and on the draft law on the Procedure of the Constitutional Court of Mongolia (CDL-REF(2025)030).

2. Ms Cartabia, Mr Vardanyan and Mr Dimitrov acted as rapporteurs for this opinion.

3. On 5 and 6 May 2025, the rapporteurs, accompanied by Ms Simona Granata-Menghini, Secretary of the Commission, and Mr Vahe Demirtshyan, acting Head of Division at the Secretariat, travelled to Ulaanbaatar and had meetings with the judges and former judges of the Constitutional Court, members of Parliament from the majority coalition and other parties, notably members of the sub-working group in charge of preparing the draft laws, representatives of the office of the President, representatives of the Ministry of Justice and Home Affairs, justices of the Supreme Court, as well as with civil society organisations and international organisations. On 5 May 2025 the delegation of the Venice Commission also participated in the joint seminar organised by the Constitutional Court of Mongolia and the Venice Commission dedicated to the international standards on constitutional justice and their application in Mongolia. The Commission is grateful to the Mongolian authorities for the excellent organisation of this visit

4. This opinion was prepared in reliance on the English translation of the draft laws. The translation may not accurately reflect the original version on all points.

5. This opinion was drafted on the basis of comments by the rapporteurs and the results of the meetings on 5 and 6 May 2025. The draft opinion was examined at the Joint meeting of the Sub-Commissions on Constitutional Justice and on Fundamental Rights on 12 June 2025. Following an exchange of views with Mr Bayasgalan Gungaa, Chief Justice of the Constitutional Court and Mr Munkhsaikhan Odonkhuu, it was adopted by the Venice Commission at its 143rd Plenary Session (online, 13-14 June 2025).

II. Background

A. The status of the Draft Laws

Justification and legislative need for the revised laws on the Constitutional Court

6. The law on the Constitutional Court of Mongolia, adopted by the Small Khural[1] of the Mongolian People's Republic on 8 May 1992, and the law on the Procedure of the Constitutional Court, enacted by the State Great Khural (Parliament) on 1 May 1997, laid the foundational legal framework for the establishment and operation of the Constitutional Court of Mongolia (hereinafter also referred to as "the Tsets"). These two laws marked a significant milestone in the institutionalisation of constitutional review and played a key role in the emergence and consolidation of constitutional jurisprudence in the country.

7. While these laws were instrumental at the time of their adoption, apart from a limited number of amendments introduced over the years, they have remained largely unchanged. As a result, they no longer fully reflect the evolving constitutional landscape, contemporary legal doctrine, developments in democratic governance, or the broader reforms undertaken within the Mongolian legal system.

[1]The Small Khural was the presidium of the Mongolian People's Republic from 1924 until 1951 and then the standing legislature from 1990 to 1992.

8. According to the information provided by the national authorities, the current legal framework exhibits several shortcomings. These include, in particular: insufficient institutional safeguards to guarantee the independence of the Constitutional Court and its Justices; the access to the constitutional court by citizens; the absence of adequate structural and administrative support; and the lack of detailed legal provisions governing the qualifications, nomination, appointment, and tenure of Justices.

9. Furthermore, the procedural framework of the Court has been deemed inadequate. According to the authorities, in contrast to the detailed procedural guarantees applicable in criminal, civil, and administrative proceedings, the Constitutional Court's procedures have been criticised as overly succinct and lacking in fundamental guarantees of due process. The Court's restricted jurisdiction regarding issues involving fundamental rights has also been identified as a matter of concern. As indicated by the authorities, these issues have been repeatedly raised in academic publications, policy papers, and strategic legal reform documents, underscoring the need for comprehensive legislative revision.

10. On 28 September 2021, during its 2020–2024 term, the Standing Committee on Legal Affairs of the State Great Khural (Parliament) of Mongolia established a working group tasked with reviewing and revising the legislation on the Constitutional Court and on the Constitutional Court procedure. Over a period of nearly three years, the working group developed draft laws, which were formally submitted to Parliament in March 2024. These drafts passed their first reading but were not adopted before the expiration of the legislative term.

11. Following the 2024 general elections, the newly elected Parliament initiated a new legislative process by forming a new working group. According to the authorities, the drafts revised by this working group reflect amendments introduced in light of the parliamentary debates and incorporate proposals aimed at further refining the initial texts.

12. This proposed legislative reform aims to address the above issues by aligning the institutional and procedural framework of the Constitutional Court with European standards and international best practices. The principal objective is therefore to reinforce the independence, impartiality, and effectiveness of the Constitutional Court, and the introduction of the individual appeal, thereby enabling it to exercise constitutional review in a manner consistent with the principles and values enshrined in the Constitution of Mongolia and in line with the standards of democratic governance and the rule of law.

B. Overview of the current legal framework governing the Constitutional Court of Mongolia and the draft laws

The Constitution

13. The Constitutional Court of Mongolia is entrenched in Chapter V of the Constitution of Mongolia, which was adopted by the People's Great Khural on 13 January 1992 and entered into force on 12 February 1992. The Mongolian term "tsets" means "gathering (council) of wise people".

14. Chapter Five of the Constitution (Articles 64–68) defines the status, powers, composition, and procedures of the Constitutional Court. According to Article 64 (Mandate and Independence), the Constitutional Court is entrusted with the highest level of constitutional supervision. It adjudicates violations of constitutional provisions and resolves disputes concerning the interpretation and application of the Constitution. The Court acts as the principal guarantor of the Constitution's supremacy and observance. In the exercise of its functions, the Constitutional Court and its members are bound solely by the Constitution. The Court is independent from all state bodies, officials, and any external influence. This institutional and individual independence is safeguarded by guarantees enshrined in the Constitution and reinforced by applicable legislation.

15. As regards the composition, term of office and appointment, Article 65 of the Constitution states that the Constitutional Court is composed of nine members appointed for a term of six years. Appointment is carried out by the State Great Khural (Parliament), with nominations submitted as follows: three by the Parliament itself, three by the President, and three by the Supreme Court. To be eligible for appointment, a candidate must be a Mongolian citizen of at least 40 years of age, with high qualification in law and politics. The Chairperson of the Constitutional Court is elected from among the nine members by majority vote for a term of three years and may be re-elected once. Members of the Constitutional Court may be removed by the Parliament upon a decision by the Court and based on the opinion of the nominating authority, in cases where they are found to have violated the law. Sitting members of the Constitutional Court may not simultaneously hold positions as President, Member of Parliament, Prime Minister, Government Minister, or Justice of the Supreme Court.

16. According to Article 66 of the Constitution, the Constitutional Court may be seized with a case upon request by the State Great Khural, the President, the Prime Minister, the Supreme Court, or the Prosecutor General. In addition, it may act upon its own initiative based on petitions or information submitted by citizens. The Court delivers decisions to the State Great Khural on the following matters:

1. The conformity with the Constitution of laws, presidential decrees, government decisions, and international treaties signed by Mongolia.
2. The constitutionality of national referenda and decisions of the central electoral authority concerning parliamentary and presidential elections.
3. Whether the President, Chairperson or members of Parliament, Prime Minister, members of Government, Chief Justice, or Prosecutor General have committed constitutional breaches.
4. The validity of grounds for the removal of the President, Chairperson of Parliament, or Prime Minister, or for the recall of a member of Parliament.

17. Where the Parliament disagrees with the Court's decision on matters falling under points (1) and (2) above, the Constitutional Court is required to re-examine the case and issue a final decision. When the Constitutional Court declares a legal act (law, decree, decision, or treaty) unconstitutional, such act is deemed null and void.

18. Decisions of the Constitutional Court enter into force immediately upon adoption (Article 67). Proposals for constitutional amendments may be initiated by bodies or officials with legislative initiative rights. In addition, the Constitutional Court has the authority to propose constitutional amendments to the State Great Khural (Article 68).

Law on the Constitutional Court (Tsets)

19. The current Law on the Constitutional Court of Mongolia[2] provides the legal basis for the establishment, structure, powers, and functioning of the Tsets, which is entrusted with overseeing the implementation of the Constitution, resolving constitutional disputes, and ensuring constitutional compliance. The Law regulates the appointment of nine Justices, nominated in equal numbers by the Parliament, the President, and the Supreme Court, for a single six-year term. It establishes eligibility criteria, including citizenship, legal and political experience, and a minimum age requirement. The Chairperson is elected by the Justices for a three-year term, renewable once.

20. Provisions safeguarding the independence and immunity of the Justices include protection from arrest and dismissal, subject to strict legal conditions. The law also regulates the administrative structure, including internal procedures, staffing, and budget. The Court is

[2] The law of Mongolia on the Constitutional Court (Tsets) – THE CONSTITUTIONAL COURT OF MONGOLIA.

competent to review the constitutionality of laws, presidential decrees, government decisions, international treaties, and decisions of electoral authorities. It may also determine constitutional breaches by high-ranking officials and assess grounds for their removal. Its decisions are final and binding. Procedural provisions address the submission of petitions, the principles of fairness and transparency, and the legal effects of rulings, while also establishing penalties for obstruction of the Court's activities.

21. Based on the information provided by the authorities and comparative legal analysis, the draft law on the Constitutional Court (hereinafter also referred to as "the draft LCC") introduces several changes aimed at strengthening the independence, efficiency, and legal clarity of the Tsets. In particular, as regards the nomination and appointment, the draft establishes clear deadlines and procedures for nominating and appointing Justices (Article 6). It also requires compliance with legal criteria, public and professional participation, and public disclosure of nominees at least five days before submission to Parliament (Article 6(4)). As regards the jurisdiction, the draft states the Court's competence to adjudicate citizens' petitions on fundamental rights, in line with Article 66(1) of the Constitution (Article 4(4)), strengthening what was previously implied. The draft LCC reinforces the independence and immunity of Justices, expanding protections to include their residence, correspondence, workplace, and equipment (Article 13(5)). A new instrument - the "influence statement" - allows Justices to formally report undue pressure during adjudication (Article 14).

22. The draft LCC details the principles, duties, and restrictions applicable to Justices (Articles 18-20), including the explicit requirement of political neutrality and procedures for suspension or dismissal. It also codifies procedures for collective decision-making and adoption of internal rules (Article 9). As regards the administrative support and structure, the draft defines the role of the Secretariat, introduces Registrars with required qualifications, and assigns each Justice one assistant and one researcher (Articles 11–12). It also provides for a Research Centre, Library, and Archive - new elements absent in the current law. The draft also provides a more detailed framework for remuneration, insurance, and post-mandate compensation (Articles 15-17). It prohibits reducing the Court's budget below the previous year's allocation (Article 17(4)).

23. A dedicated chapter (Chapter 4) outlines a comprehensive list of prohibited actions to safeguard impartiality and prevent conflicts of interest, expanding on the limited provisions in the current law. The draft LCC refers to the Criminal Code and Law on Infringement for sanctions related to obstruction of the Court's activities (Chapter 5), replacing the general references to fines in the current law.

Law on the Procedure of the Constitutional Court

24. The current law on the Procedure of the Constitutional Court of Mongolia[3] provides the procedural framework governing the operations of the Tsets. It complements the Constitution and the law on the Constitutional Court by establishing detailed rules for adjudicating constitutional disputes. The law sets out the guiding principles for proceedings, aimed at ensuring judicial independence, and describes the responsibilities of the Court and the parties involved.

25. Under the current law, the Constitutional Court examines cases in panels of 3, 5, or 7 - 9 Justices, depending on the nature and complexity of the case. Decisions must be lawful, reasoned, and justified, and require a two-thirds majority when reconsidered. Hearings are public by default, unless confidentiality is required for national security or personal privacy reasons. Core principles such as orality, adversarial proceedings, and the use of the Mongolian language are expressly stated, alongside provisions guaranteeing the presence of Justices during sessions and the secrecy of deliberations.

[3] The law on Constitutional Court procedure – THE CONSTITUTIONAL COURT OF MONGOLIA.

26. The law sets forth rules on jurisdiction and admissibility. The procedural rights and obligations of parties - such as access to case materials, submission of evidence, participation in hearings, recusals and the right to legal representation - are established. The procedural phases are delineated, covering preparation, hearings, and judgment. Hearings involve oral presentations, followed by private deliberations and public announcements of the decision. Reconsideration may occur in limited circumstances, such as when the Parliament refuses to implement a decision, new facts arise, or upon a qualified request from the Court itself. Decisions are enforced by the relevant public authorities and published in accordance with transparency requirements.

27. The draft law on the Procedure of the Constitutional Court (hereinafter also referred to as "the draft LPCC") introduces several substantive and structural changes aimed at clarifying roles, enhancing transparency, and improving procedural guarantees. One of the key innovations is the inclusion of a section on definitions (Article 3), providing clarity on terms such as "citizen", "plaintiff", "respondent", "fundamental rights dispute", and "petition". In matters of fundamental rights, the draft LPCC introduces a right for individuals to petition the Court when a public act allegedly violates their constitutional rights, subject to the exhaustion of other legal remedies.

28. Several provisions of the draft LPCC aim to enhance transparency and efficiency, including rules for the public availability of hearings and decisions, the electronic random allocation of cases, and new time limits for various stages of proceedings. The initiation of proceedings would no longer be the responsibility of a single Justice; instead, a Small Bench of three Justices would make this determination. The roles of all parties involved - plaintiffs, respondents, witnesses, experts, and interpreters - are regulated in greater detail, including their procedural rights and obligations. The draft LPCC also introduces a dedicated chapter on special procedures for cases brought by constitutional bodies such as the Parliament, Supreme Court, or Prosecutor General, as well as for disputes involving fundamental rights.

Rules of Procedure of the Constitutional Court

29. According to information received by the delegation of the Venice Commission during bilateral consultations in Ulaanbaatar, it appears that the Constitutional Court of Mongolia (the Tsets) currently operates without formally adopted Rules of Procedure. Following allegations of unconstitutionality concerning a previous set of Rules, the Tsets has relied instead on Internal Guidelines.

C. Key Venice Commission documents on constitutional justice

30. The Venice Commission has developed a substantial body of work on constitutional justice, reflected in a number of key texts. These are collected in the Compilation of Venice Commission Opinions, Reports and Studies on Constitutional Justice (CDL-PI(2022)050), which brings together extracts from approximately 100 opinions, reports, and studies adopted by the Commission. This compilation provides a structured overview of the Commission's doctrine and comparative approaches to constitutional adjudication. The issue of separate, dissenting, and concurring opinions of Constitutional Court judges is addressed in detail in the Report on Separate Opinions of Constitutional Courts (CDL-AD(2018)030rev), which analyses their legal relevance, benefits, and potential challenges.

31. Questions related to individual access to constitutional review are discussed in the Revised Report on Individual Access to Constitutional Justice (CDL-AD(2021)001), adopted in 2020, as well as in the earlier Study on Individual Access to Constitutional Justice (CDL-AD(2010)039rev). These texts examine different models of access and their implications for the protection of fundamental rights. The composition of constitutional courts, including appointment mechanisms and institutional safeguards, is analysed in the Report on the Composition of Constitutional Courts (CDL-STD(1997)020), published in the Science and Technique of Democracy series (No. 20).

D. Scope of the Opinion

32. The Mongolian authorities have submitted the two draft laws for the Venice Commission's consideration. In this Opinion, the Venice Commission will assess the draft laws in light of international standards and best practices, particularly those concerning the rule of law, separation of powers, legal certainty, legality, equality before the law, access to justice, fair trial guarantees, and other relevant principles. To the extent that the Commission's observations may touch upon matters directly regulated in the Constitution, they are to be understood as referring to a possible future constitutional reform.

33. The Venice Commission underlines that the fact that this Opinion does not explicitly address some aspects of the draft laws should not be interpreted as an endorsement by the Venice Commission or as indicating that these aspects will not be raised in the future.

III. Analysis

A. Draft Law on the Constitutional Court (LCC)

1. Level of regulation

34. According to Article 2(1) of the draft LCC, the legislation governing the Court shall consist of the Constitution of Mongolia, this law, the Law on Constitutional Court Procedure, and other legislative acts enacted in conformity with these laws. On the other hand, according to Article 2(2) of the draft LPCC, any matters related to dispute adjudication not explicitly regulated by it shall be governed by "the Rules of Procedure of the Constitutional Court of Mongolia, approved in accordance with the Law on the Constitutional Court of Mongolia and this law, through a deliberation of the Court". Such matters are expressly mentioned in articles 10(10), 20(2), 20(5), 20(6), 47(1) of the draft LPCC, and include, inter alia, the procedures governing the broadcasting and recording of public hearings, the modalities for access to case materials by the parties, the rules for archiving and preserving case files, as well as provisions related to the operation of the Court's website, its electronic database, and the live streaming of hearings.

35. The Venice Commission recalls that the legal framework governing the functioning of constitutional courts is generally composed of three distinct normative layers within the domestic legal order. At the highest level stands the Constitution, which defines the jurisdiction of the constitutional court, specifies who may initiate proceedings, and enshrines the fundamental principles guiding the court's operation. At the second level, the law on the Constitutional Court operationalises these constitutional principles, translating them into concrete legal norms that regulate the court's organisation and procedures. The third level comprises the Rules of Procedure, which provide detailed provisions for the day-to-day functioning of the court and will be discussed in a more detailed way in the following paragraphs of this Opinion. These rules should be adopted by the Constitutional Court itself,[4] in accordance with the principle of institutional autonomy, in order to ensure the effective and independent administration of constitutional justice.[5] This reflects a key distinction between constitutional courts and ordinary courts, as the latter typically do not possess the authority to adopt their own rules of procedure (see below under Chapter "Rules of Procedure").

36. In this context, the Venice Commission notes that the Mongolian legal framework does not seem to leave sufficient space to the Court's Rules of Procedure. Indeed, the Commission was informed that there currently exist no Rules of Procedure of the Constitutional Court of Mongolia,

[4] For example, in Germany, Hungary, Azerbaijan, Armenia, Moldova, Türkiye, Ukraine, Montenegro, Bulgaria, Lithuania, Slovenia the Constitutional Courts enact their Rules of Procedures.
[5] Venice Commission, CDL-AD(2004)023, Azerbaijan - Opinion on the Rules of Procedure of the Constitutional Court of Azerbaijan, paras. 5-6.

but merely Internal Guidelines. Moreover, Article 2(1) of the draft LCC does not refer to the rules of procedure enacted by the Court itself as sources of regulation, and the draft LPCC limits drastically the possible content of the Rules of Procedures to a limited list of technical matters.

37. In line with the principle of institutional autonomy, the Venice Commission recommends that the Rules of Procedure be explicitly mentioned in the list of normative instruments governing the functioning of the Constitutional Court in Article 2(1) of the draft LCC. This would enhance legal certainty and ensure a coherent normative framework applicable to the Court's operation. Certain provisions which are currently regulated under the Law on the Procedure of the Constitutional Court would need to be left for the Rules of Procedure (see below).

2. Appointment of Judges to the Tsets

38. In line with the Constitution, Article 6(1) of the draft LCC provides that the Tsets shall be composed of nine Justices, appointed by the State Great Khural for a term of six years. The nomination power is distributed among three constitutional bodies: three Justices are to be nominated by the State Great Khural, three by the President, and three by the Supreme Court. Pursuant to Article 6(2) of the draft LCC, each of these bodies is to nominate a candidate who satisfies the criteria established for judicial office and submit the nomination to the State Great Khural, which has the final authority to appoint. Moreover, according to Article 6(6) of the draft LCC, if the State Great Khural rejects the appointment of a candidate proposed under Article 6(2), the nominating body must submit a proposal to nominate another candidate within 30 days.

39. The Venice Commission has constantly underlined that, in principle, a nomination process involving multiple constitutional actors contributes to a more balanced and inclusive appointment procedure.[6] A mixed system involving all three branches of power enhances democratic legitimacy and institutional balance.[7]

40. While the tripartite system of nominations in Mongolia reflects such pluralistic approach, the Venice Commission notes that the final decision on all nine appointments remains with the State Great Khural. The Commission is cognizant that this procedure is consistent with Article 65(1) of the Constitution; it considers nonetheless that the concentration of appointment power in the hands of the State Great Khural, particularly in the presence of a dominant parliamentary majority, may lead to undue political influence and jeopardise the independence and perceived impartiality of the Court. The Commission has previously expressed the view that a system in which all justices are formally elected by Parliament - albeit upon proposals from other branches - does not fully secure a balanced composition of the Court.[8]

41. Moreover, the draft LCC remains silent on the procedural consequences should the candidate proposed by the President, or the Supreme Court be rejected by the State Great Khural, nor does it clarify whether the same candidate may be re-proposed by the President or the Supreme Court.

42. In the Commission's opinion, the absence of clear procedures in the event of repeated rejections by the State Great Khural raises concerns about potential institutional deadlock. Similarly, the lack of clarification as to whether a previously rejected candidate may be proposed again by the same body risks legal uncertainty and may erode inter-institutional respect. Additional normative precision would therefore be beneficial.

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[6] Venice Commission, CDL-AD(2004)043, Republic of Moldova - Opinion on the Proposal to Amend the Constitution (introduction of the individual complaint to the constitutional court), paras. 18-19.
[7] Venice Commission, CDL-AD(2004)024, Türkiye - Opinion on the Draft Constitutional Amendments with regard to the Constitutional Court, para. 19.
[8] Venice Commission, CDL-AD(2011)010, Montenegro - Opinion on the draft amendments to the Constitution, as well as on the draft amendments to the law on Courts, the law on State's Prosecutor Office and the law on the Judicial Council of Montenegro, para. 27.

43. As regards the voting threshold, Article 65 (1) of the Constitution of Mongolia does not specify any required majority for the election of the judges of the Constitutional Court; according to Article 27(6) of the Constitution of Mongolia, sessions of the State Great Khural and sittings of its Standing Committees shall be considered valid with the presence of a majority of their Members, and the issues shall be resolved by a majority vote of the Members present in sessions and sittings, unless provided otherwise by the Constitution.

44. The Venice Commission underlines that the composition of the Constitutional Court and the procedure for the appointment of its judges are among the most crucial and sensitive aspects of constitutional adjudication, directly impacting the preservation of a credible system of constitutional rule of law. It is therefore imperative to ensure both the independence of constitutional judges and the involvement of different state organs and political forces in the appointment process, so that judges are perceived as being independent and not merely the instruments of one or another political faction.[9]

45. In this context, the Venice Commission emphasises that the election of constitutional judges by a qualified majority serves as an important safeguard for the depoliticisation of the appointment process, as it necessitates a substantial degree of consensus and ensures that the opposition plays a meaningful role in the selection procedure. While it is acknowledged that the requirement of a qualified majority may give rise to the risk of a stalemate between the majority and the opposition, this risk can be effectively mitigated through the introduction of specific anti-deadlock mechanisms, which are essential to guarantee the continued functioning and renewal of the Constitutional Court.[10]

46. The Venice Commission further notes that, in the current practice of the State Great Khural, there appears to be no clearly established or transparent procedure for the selection of candidates for the Constitutional Court among the three nominees proposed and appointed by Parliament. This issue was confirmed during the bilateral consultations held in Ulaanbaatar.

47. The Venice Commission acknowledges that the appointment of Constitutional Court judges is a sovereign prerogative of the nominating bodies and reflects the trust vested in the candidates, and that, as a consequence, this process cannot be equated with the bureaucratic, purely merit-based selection process applicable to public servants. Nevertheless, the introduction of certain criteria aimed at promoting transparency would significantly enhance public confidence in the Constitutional Court without undermining the independence of the judiciary or the sovereign nature of the appointment process. Such a procedure should be clearly provided for by law11 and conducted in an open and transparent manner.[12] As previously emphasised by the Venice Commission, establishing this type of mechanism contributes significantly to strengthening public confidence in the Constitutional Court.[13]

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[9] Venice Commission, CDL-AD(2004)043, Republic of Moldova - Opinion on the Proposal to Amend the Constitution (introduction of the individual complaint to the constitutional court), paras. 18-19.
[10] Venice Commission, CDL-AD(2017)001, Slovak Republic - Opinion on Questions Relating to the Appointment of Judges of the Constitutional Court, paras. 58-59. See also, CDL-AD(2015)027, Ukraine - Opinion on the proposed amendments to the Constitution regarding the judiciary as approved by the Constitutional Commission on 4 September 2015, para. 25, CDL-AD(2013)028, Montenegro - Opinion on the draft amendments to three constitutional provisions relating to the Constitutional Court, the Supreme State Prosecutor and the Judicial Council, paras. 21-23, CDL-AD(2022)004, Chile - Opinion on the drafting and adoption of a new Constitution, para. 54.
[11] Venice Commission, CDL-AD(2017)011, Armenia - Opinion on the Draft Constitutional Law on the Constitutional Court of Armenia, para. 14.
[12] Venice Commission, CDL-AD(2016)025, Kyrgyzstan - Joint Opinion on the Draft Law “On Introduction of Amendments and Changes to the Constitution”, para. 52.
[13] Venice Commission, CDL-AD(2014)033, Montenegro - Opinion on the Draft Law on the Constitutional Court, paras 12-16.

48. Acknowledging that a more comprehensive reform of the appointment mechanism would likely require constitutional amendments, the Venice Commission nevertheless recommends that the legislator clarify the legal framework governing the nomination and appointment process and provide specific provisions to enshrine and apply the principle of transparency in the nomination process for judges of the Constitutional Court.[14]

3. Judicial terms and age limits for appointment to the Tsets

49. As concerns the term of office of constitutional court judges, the Venice Commission generally favours long, non-renewable terms or, at most, a single re-election. Non-renewability significantly enhances the independence of constitutional court judges,[15] and a long term of office ensures independence, particularly from the bodies that elected them. An alternative approach could be to allow re-appointment only after a certain period, thereby excluding only consecutive mandates.[16] In principle, the Commission finds that excluding the possibility of a second term of office for Constitutional judges is a strong guarantee for independence.

50. Justices of the Constitutional Court of Mongolia have a mandate of six years. The Commission observes that this duration of mandate is not so long if compared with the average duration for constitutional court judges in different countries. Furthermore, the Commission notes that neither the Constitution nor the legislation, whether in force or in draft form, contains an explicit provision regarding the possibility or prohibition of a second term of office for judges of the Constitutional Court, thereby creating legal uncertainty and leaving room for divergent interpretations.

51. The Commission reiterates that the principle of legal certainty and foreseeability requires not only that the law be promulgated in advance and be foreseeable in its effects, but also that it be formulated with sufficient precision and clarity to enable legal subjects to regulate their conduct accordingly.[17] The required degree of precision depends on the nature of the legal provision, the Commission considers that, in the present context, the question of a second term for Constitutional Court judges constitutes a matter of such significance that it should be clearly and unambiguously regulated by the constitution.

52. Given that the term of office for the judges of the Tsets is relatively short compared to the practice of other constitutional courts, the Venice Commission notes that consideration could be given to extending the duration of judicial mandates to a non-renewable term of nine years in the context of any future constitutional reform.

53. According to Article 7(1) of the draft law on the Constitutional Court, the mandate of a Justice shall commence on the day of appointment and shall terminate upon the expiration of the term and upon the appointment of the next Justice by the State Great Khural. A similar mechanism is currently applied in many countries - such as Bulgaria, Germany, Latvia, Lithuania, Portugal, and Spain - with the aim of preventing a stalemate in the appointment process from paralysing the functioning of the Court, and is welcome.[18] However, the draft LCC should explicitly provide that, in the event that the State Great Khural fails to appoint a successor, for example, in case of possible political deadlock, the outgoing Justice may continue to exercise his or her functions beyond the six-year term.

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[14] Venice Commission, CDL-AD(2025)005, Republic of Moldova - Opinion on the draft law on the Constitutional Court, paras. 64 and 65.
[15] Venice Commission, CDL-AD(2009)042, Opinion on Draft Amendments to the Law on the Constitutional Court of Latvia, para. 14.
[16] Venice Commission, CDL-AD(2025)005, Republic of Moldova - Opinion on the draft law on the Constitutional Court, para. 37.
[17] Venice Commission, CDL-AD(2016)007, Rule of Law Checklist, Benchmark II,B,3.
[18] Venice Commission, CDL-AD(2007)036, Azerbaijan - Opinion on Draft Amendments to the Law on the Constitutional Court, the Civil Procedural Code and the Criminal Procedural Code, para. 16.

54. In addition, the draft LCC envisages that the mandate of a Justice shall commence on the day of appointment (Article 7(1)), while Article 8(1) provides that "[w]ithin five days following the day of appointment, a Justice shall take the... oath." It is therefore necessary to clarify the status of a "Justice-elect" during the period between appointment and the taking of the oath. In general, the taking of an oath or solemn declaration marks the moment when a Justice acquires the full authority to exercise judicial functions, as without it, a Justice is not entitled to act in a full-fledged capacity. Accordingly, the Venice Commission recommends introducing an explicit safeguard in the law to ensure that a Justice may continue to exercise his or her functions after the expiration of the term until the successor has been duly appointed and has taken office.

55. As regards the age limits of the judges of the Tsets, the draft LCC (Article 5(1)) establishes a minimum age requirement of 40 years. In this respect, while the Venice Commission has previously considered a minimum age of 50 years to be excessive, the proposed threshold of 40 years appears reasonable, as it takes into account the necessary degree of life experience and maturity without unduly restricting the pool of potential candidates.[19] The draft LCC does not specify a concrete maximum age limit for candidates, instead referring to the general age limit applicable to civil servants. Furthermore, it clarifies that reaching the civil service age limit during a judge's tenure shall not constitute grounds for the premature termination of the term of office (Article 7(3)). The Venice Commission stresses that security of tenure until the mandatory retirement age or the expiry of the term office is a fundamental guarantee of judicial independence, and that the grounds of early termination of the mandate of judges are limited to incapacity or professional misconduct.[20] Moreover, the Venice Commission has therefore repeatedly stated that "the retirement age for judges should be clearly set out in the legislation. And any doubt or ambiguity has to be avoided and a body taking decisions on retirement should not be able to exert discretion.[21] In this regard, the Commission finds the approach taken in the draft LCC to be appropriate.

4. Qualifications and incompatibilities

a. Qualifications

56. According to Article 5 of the draft LCC, a citizen who is 40 years of age, possesses a higher legal education, and holds advanced legal and political qualifications shall be eligible for appointment as a Justice. The citizen who has reached the age limit for civil service or who has been convicted of a crime, as determined by a legally valid court decision, shall be prohibited from being appointed as Justice. The draft LCC requires a mandatory legal education but does not explicitly require that only legal professionals be eligible for appointment.

57. A comparative analysis of the legislation of Council of Europe member states shows that most of them require some formal legal qualification, either explicitly requiring a law degree or higher legal education (as is the case for Albania, Armenia, Austria, Azerbaijan, Czechia, Georgia, Hungary, Latvia, Lithuania, Portugal, Romania, Slovak Republic and Ukraine), or requiring them to be lawyers or jurists (Bulgaria, Croatia, Montenegro, Serbia and Spain), or requiring that they be qualified to hold judicial office (Germany) or requiring legal qualifications only, by referring to the professional groups from which candidates are drawn (Italy, North Macedonia). Slightly diverging from this are countries which point in general to the high level of legal expertise required, such as Andorra ("*recognised knowledge of legal and institutional matters"*), the Republic of Moldova ("*outstanding judicial knowledge*"), Poland ("*persons distinguished by their knowledge of the law*") and Slovenia ("*experts in law*"). Liechtenstein does

[19] Venice Commission, CDL-AD(2009)042 Latvia - Opinion on Draft Amendments to the Law on the Constitutional Court, para. 11.
[20] Venice Commission, CDL-AD(2020)016, Armenia – Opinion on three legal questions in the context of draft constitutional amendments concerning the mandate of the judges of the Constitutional Court, para. 28.
[21] Venice Commission, CDL-AD(2013)034, Ukraine – Opinion on proposals amending the draft law on the amendments to strengthen the independence of judges of Ukraine, para. 52.

not condition membership on formal legal qualifications but requires at least three of the five constitutional justice and three of the five alternative justices to be "*versed in the law*", Türkiye draws candidates from different professional groups, some of which require a legal education, and France does not require members of the Constitutional Council to have any kind of legal qualification or training.[22] As to the minimum requirement for professional legal experience for appointment to a constitutional court, it varies considerably across jurisdictions, typically ranging from 5 to 20 years.[23]

58. The Venice Commission emphasises that the professional qualifications of constitutional judges are not a merely formal requirement, but are essential to ensuring a competent, independent, and effective constitutional jurisdiction. This consideration is particularly relevant in the case of Mongolia, where the introduction of an individual complaint mechanism for the protection of fundamental rights is envisaged. In such a context, a high standard of legal expertise among judges is instrumental in promoting professionalism, depoliticization, and institutional credibility. This understanding was also reaffirmed during the bilateral consultations held in Ulaanbaatar.

59. The Commission further underlines that the more specific and objective the eligibility criteria, the less room is left for political discretion, thereby reducing the potential for undue influence in the nomination and appointment process. Precise qualifications not only enhance transparency and predictability, but also minimise the risk of appointment-related disputes and contribute to reinforcing public trust in the independence and impartiality of the Constitutional Court.

60. The Commission also draws attention to the use of the term "advanced political qualification" in the existing framework. The meaning of this term remains ambiguous, as it is unclear whether it refers to prior experience in political office, involvement in party structures, or other forms of political engagement. The Commission stresses that political qualifications must not be viewed as an alternative to legal qualifications and reiterates that judicial appointments should be governed by objective, merit-based criteria established by law. While some margin of discretion is inherent in judicial appointments - particularly in systems involving political bodies - the exercise of this discretion must be balanced with legal standards to ensure that the selection process remains rooted in professional competence and institutional integrity.

61. The Venice Commission hence recommends that the legal framework include a clearly defined and detailed list of qualifying professional positions for candidates eligible for appointment to the Tsets. Such positions may include judges, university professors of law, attorneys with substantial legal experience, and other legal professionals with a proven record of competence and integrity. In this context, the Commission further recommends introducing a minimum threshold of professional legal experience, ideally ranging between 10 and 15 years, applicable across such range of legal professions.

62. Finally, as regards the provision in Article 5(2)(2) of the draft LCC, which stipulates that a citizen shall be disqualified from appointment as a Justice if they have been convicted of a crime by a legally valid court decision, the Venice Commission finds this rule overly stringent. The provision fails to distinguish between different types of offences or to consider the statute of limitations. Consequently, this blanket disqualification could encompass minor or unintentional offences committed long ago, which may no longer reflect on an individual's suitability for judicial office. The Venice Commission therefore recommends adopting a more nuanced approach, excluding minor, unintentional, or negligent offences from the disqualifying criteria. Such an approach would ensure that eligibility requirements are fair, proportionate, and conducive to attracting qualified candidates to the Constitutional Court.

[22] Venice Commission, CDL-AD(2024)015, Bosnia and Herzegovina - Opinion on the method of electing judges to the Constitutional Court, para. 10.
[23] Ibid. paras. 12 and 13.

b. Incompatibilities

63. According to Article 18(1)(14), it is prohibited for the justice to be a member of a political party or to participate in political party activities, movements, non-governmental organisations affiliated with political parties, or religious organisations, except as allowed by law. Article 65 (5) of the Constituion prohibits the President, member of the State Great Khural, the Prime Minister, members of the Government and judges of the Supreme Court to be a member of the Constitutional Court.

64. The Venice Commission notes that constitutional judges are generally prohibited from holding concurrent office. This principle is designed to protect judges from potential external influences arising from involvement in activities beyond their judicial duties. At times an incompatibility between the office of constitutional judge and another activity may not be apparent, even to the judge in question. Such conflicts of interests can be prevented from the outset by way of strict incompatibility provisions.[24]

65. However, the Venice Commission underlines that practices concerning the permissible degree of political engagement by constitutional judges vary across jurisdictions. Membership of a political party is not allowed in many countries (Albania, Azerbaijan, Canada, Croatia, Czechia, Estonia, Georgia, Hungary, Italy, Latvia, Romania, Russia, Slovakia, Slovenia, Türkiye, Ukraine), or at least no active participation in a political party or public association is permissible (Argentina, Armenia, Finland, France, Ireland, Japan, Latvia, Lithuania). However, past political involvement is often permissible either expressly or implicitly (Armenia, Belgium, Finland, France, Iceland, Ireland, Republic of North Macedonia, Norway, Sweden, Switzerland, Türkiye).

66. Active political involvement by such judges after their appointment is unlikely to come about, since this would be generally seen as inappropriate. Sometimes there is only a bar from taking an executive, leading or professional role in a political party (Germany, Portugal, Spain), but even then judges must show some restraint in their enjoyment of this freedom. In Austria, public officials and employees of a political party cannot be members of the Constitutional Court (for the president and vice-president this incompatibility extends to the four years preceding their appointment). Criticism of strict incompatibility requirements included that they tend to produce a court composition of *retiring* members of society (France).[25]

67. While acknowledging that the above-mentioned varied practice across different jurisdictions provides some freedom to national authorities to choose either of the approaches - whether strict prohibition or more flexible regulation - the Venice Commission nevertheless underlines that any such regulation must be formulated with sufficient clarity and foreseeability to meet the standards of legal certainty.

68. For this reason, given the importance and sensitivity of the issue of political affiliations of Constitutional Court judges, the Venice Commission recommends that certain terms used in the draft LCC - such as “participation in political party activities,” “movements,” and “non-governmental organisations affiliated with political parties” - be further clarified, as their current formulation may give rise to divergent interpretations and, consequently, to problematic application or potential abuse. Furthermore, the Commission observes that the phrase “except as allowed by law” should also be clarified. In the Commission’s view, any exceptions permitting engagement in political activities by Constitutional Court judges must be provided for explicitly in the law on the Constitutional Court itself, which should remain the principal statutory act comprehensively regulating all matters relating to the Court and its members.

[24] Venice Commission, CDL-STD(1997)020, The composition of constitutional courts - Science and Technique of Democracy, no. 20 (1997), pp.15-16.
[25] Ibid.

69. As regards other forms of incompatibilities or "prohibited actions," as formulated in Article 18 of the draft LCC, the Commission underlines that the provision encompasses a broad range of activities, ranging from inappropriate behaviour - such as disclosing opinions on a pending case (Article 18(1)(2)) - to pure incompatibility cases, such as holding any position or office unrelated to official duties, except for teaching or conducting research (Article 18(1)(4)), or engaging in commercial activities, managing a business, or participating in the management of business organisations or associations, either personally or through an authorised representative (Article 18(1)(8)). It also includes actions that could constitute disciplinary or even criminal offences, such as misusing the prestige of one's official position to serve personal or other interests (Article 18(1)(6)), or receiving assistance, services, benefits, undue advantages, discounts, monetary rewards, or illegal gifts from parties involved in disputes or their representatives (Article 18(1)(7)). The Venice Commission underlines that, in terms of substance, the provision is extensive and comprehensively covers a wide range of prohibited actions. However, in terms of structure, the provision appears somewhat chaotic and lacks sufficient clarity.

70. First and foremost, whereas many of the prohibited actions listed in the mentioned article are disciplinary in nature, the draft LCC does not foresee any specific disciplinary proceedings. The Venice Commission recalls that any disciplinary framework applicable to judges of the Constitutional Court must be based on transparent procedures and clearly defined criteria to safeguard judicial independence and guarantee compliance with the principles of due process. The grounds for disciplinary action must be explicitly established by law, and any sanctions imposed must be proportionate to the gravity of the misconduct. Furthermore, disciplinary proceedings must be conducted free from external interference or political influence, which could otherwise undermine judicial impartiality and public confidence in the Court.[26] The Commission has previously stated that disciplinary and dismissal procedures should involve a binding vote by the Court itself.[27]

71. Moreover, subsequent Articles 19 (Suspension of a Justice) and 20 (Recall of a Justice) of the draft LCC address only the suspension or removal of judges in connection with the commission of a criminal offence. In this context, the Venice Commission emphasises that disciplinary liability is distinct from criminal liability, both in terms of its constitutive elements and the applicable standard of proof. Criminal and disciplinary liabilities are not mutually exclusive, and disciplinary measures may range from a simple reprimand to the dismissal of a judge, depending on the seriousness of the misconduct.

72. Furthermore, the Commission stresses that, even if certain procedural details of disciplinary proceedings were intended to be set out in the Internal Rules of Procedure, the principal aspects - including grounds for liability, procedures, and applicable sanctions - must be regulated by law, given the fundamental importance and substantive nature of these provisions. Only the law on the Constitutional Court, as the primary statutory act governing the functioning of the Court and the status of its members, should address these issues, unlike crimes, which may be regulated by the Criminal Code, or administrative violations, which may be regulated by relevant administrative legislation.

73. The Commission also notes that Article 65 of the Constitution provides a constitutional basis for disciplinary proceedings, stating that "If the Chairman or a member of the Constitutional Court violates the law, he/she may be withdrawn by the State Great Khural based on the decision of the Constitutional Court and on the proposal of the institution which nominated him/her." Nevertheless, the draft LCC focuses exclusively on criminal, administrative liability by providing in Article 22 that individuals or legal entities violating the law shall be held accountable in

[26] Venice Commission, CDL-AD(2025)005, Republic of Moldova - Opinion on the draft law on the Constitutional Court, para. 78.
[27] Venice Commission, CDL-AD(2016)034, Ukraine - Opinion on the draft Law on the Constitutional Court, para. 26.

accordance with the Criminal Code or the Law on Infringement. If the actions of a government official do not constitute a crime or an administrative offence, accountability shall be determined in accordance with the Law on Civil Service.

74. The Venice Commission thus recommends introducing in the draft LCC a comprehensive legislative framework on the disciplinary liability of judges of the Constitutional Court and to clearly indicate in Article 18 which prohibited actions may give rise to disciplinary proceedings.

75. As concerns criminal liability, the Venice Commission notes that, pursuant to Article 20(1) of the draft LCC, a criminal conviction automatically results in the termination of a judge's mandate, irrespective of the seriousness of the offence. In this respect, the Commission emphasises that, in accordance with the principle of security of tenure, criminal liability linked to the exercise of judicial functions must meet a high threshold. In particular, termination of judicial office should be limited to cases involving malice or, arguably, gross negligence.[28] Accordingly, the Commission recommends that the suspension or dismissal of a judge should not be triggered by any criminal conviction, but only by convictions for offences of a nature and gravity incompatible with judicial office (see above under Chapter "Qualifications").

76. As regards the procedure for the suspension and removal of judges, the Venice Commission notes that, pursuant to Articles 19(4) and 20(4) of the draft LCC, such decisions require a two-thirds majority of the judges present. The Commission welcomes the choice to subject the suspension or removal of a judge to a qualified majority vote, as well as the provision entrusting the preliminary decision-making in this regard to the Tsets itself.[29] Such safeguards are important contributions to the protection of judicial independence.

77. However, the Commission observes that, under Articles 19(3) and 20(3) of the draft LCC, the judge whose suspension or removal is under consideration retains the right to participate in the deliberations and vote in their own case. The Commission recalls that, in accordance with fundamental principles of impartiality and procedural fairness, a person whose conduct is under review should not participate in the decision-making process concerning themselves.[30] Allowing such participation could raise serious concerns about the impartiality of the procedure, particularly if the concerned judge's vote proves decisive.

78. In light of the above, the Commission recommends that a judge whose suspension or removal is being considered should not take part in either the deliberations or the vote on the decision concerning their own case.

B. Draft law on the Procedure of the Constitutional Court (LPCC)

1. Rules of Procedure

79. According to Article 2(2) of the draft LPCC, any matters related to dispute adjudication not explicitly regulated by this law shall be governed by the Rules of Procedure of the Constitutional Court of Mongolia, approved in accordance with the law on the Constitutional Court of Mongolia and this law through a deliberation of the Court.

80. The matters to be regulated by the Rules of Procedure are expressly mentioned in articles 10(10), 20(2), 20(5), 20(6), 47(1) of the draft LPCC, they include the procedures governing the broadcasting and recording of public hearings, the modalities for access to case materials by the

[28] Venice Commission, CDL-AD(2017)011, Armenia - Opinion on the Draft Constitutional Law on the Constitutional Court of Armenia, para. 22.
[29] Venice Commission, CDL-AD(2016)034, Ukraine - Opinion on the Draft Law on the Constitutional Court, para. 26.
[30] Venice Commission, CDL-AD(2008)030, Montenegro - Opinion on the Draft Law on the Constitutional Court, para. 24.

parties, the rules for archiving and preserving case files, as well as provisions related to the structure of the Court's decision, the operation of the Court's website, its electronic database, and the live streaming of hearings. Moreover, some provisions of the draft LCC (Article 21 (2)) also refer to the Rules of Procedures, in particular, regarding the regulations for the deliberation, the designs and usage procedures of emblem, gown and lapel pins.

81. As a general principle, the Venice Commission reiterates that, given the Constitutional Court's unique role as "the sole authority on constitutional review, independent from other state powers, ensuring the supremacy of the Constitution and the protection of the rule of law and human rights," it is both appropriate and necessary for the Court to be empowered to regulate aspects of its functioning through its own internal rules. Accordingly, the Commission welcomes and encourages the approach of entrusting the Constitutional Court with the authority to adopt Rules of Procedure for the regulation of its internal operations, provided that this regulatory competence is exercised within the bounds of the Constitution and the law.[31] Moreover, the Venice Commission has previously underlined that "it is very dangerous, not only from a theoretical but also from a practical point of view, to authorise the legislature to decide on the peculiar procedural rules".[32]

82. At the same time, the Venice Commission also has warned against an excessively liberal approach in this regard, which would entail leaving critical matters affecting individual rights solely to internal regulations.[33] In this regard, the Commission recalls its consistent position that fundamental aspects of the organisation and functioning of Constitutional Courts - such as the status and appointment of judges, access to the Court, the essential procedural framework, the types and legal effects of decisions - must be established by law. These matters concern core elements of constitutional justice and therefore require a legal basis that ensures democratic legitimacy and legal certainty.[34]

83. By contrast, the Venice Commission has previously affirmed that the Rules of Procedure should govern the Constitutional Court's internal organisation and operational matters. These include case registration,[35] preliminary examination, case allocation[36] - preferably through an automated system - order of voting, budget administration,[37] and the duties of the Secretary General.[38] Ceremonial and logistical matters, such as the Court's seat or courtroom protocol,[39] should likewise be regulated by the Rules. Within the constitutional and legal framework, the Rules of Procedure should also define the distribution of responsibilities among the President, judges, and court staff.[40] Such a division not only respects the constitutional hierarchy of norms but also allows the Court to maintain a degree of flexibility in the management of its internal affairs, enabling it to adapt its procedures to evolving needs and circumstances without the delays associated with legislative amendment.[41]

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[31] Venice Commission, CDL-AD(2025)005, Republic of Moldova - Opinion on the draft law on the Constitutional Court, para. 92.
[32] Venice Commission, CDL-INF (2001) 28, Azerbaijan – Opinion on the Draft law on the Constitutional Court, page 6.
[33] Venice Commission, CDL-AD(2012)014, Opinion on Legal Certainty and the Independence of the Judiciary in Bosnia and Herzegovina, paras. 78-79.
[34] Ibid., CDL-AD(2025)005, para. 95.
[35] Ibid., CDL-INF (2001) 28, page 3.
[36] Ibid., CDL-AD(2017)011, para. 57.
[37] Venice Commission, CDL-AD (2002) 5, Azerbaijan – Opinion on the draft law on the Constitutional Court, page 8.
[38] Venice Commission, CDL-AD(2014)033, Montenegro- Opinion on the Draft Law on the Constitutional Court, para. 27.
[39] Ibid., CDL-AD(2017)011, paras. 100-101.
[40] Venice Commission, CDL-AD(2004)023, Azerbaijan - Opinion on the Rules of Procedure of the Constitutional Court of Azerbaijan, para. 10.
[41] Ibid., CDL-AD(2025)005, paras. 95 and 96.

84. The Venice Commission is of the opinion that certain provisions contained in the draft LPCC - such as those relating to the costs associated with dispute adjudication (Article 7(1)), the electronic information system (Article 20), procedural matters including the recording of hearings (Article 35), deliberation procedures (Article 45), the determination of the grounds for decisions (Article 46), and the structure of the Court's decisions (Article 47) - serve as illustrative examples of issues that could be more appropriately regulated in the Rules of Procedure. This list is not exhaustive, and additional matters of a similar procedural or operational nature may also be better addressed through the Court's Rules.

85. The Venice Commission further underlines that the independence and institutional integrity of the Constitutional Court is reinforced when it is granted sufficient space to regulate its own internal procedures autonomously. Moreover, as legislative amendments may only be enacted by Parliament, this constraint can hinder the Constitutional Court's ability to respond promptly and effectively to practical or procedural needs - particularly in situations of institutional tension between the Court and the legislature. In this light, the Commission finds that the current draft law on the Procedure of the Constitutional Court appears overly detailed, potentially limiting the Court's ability to adapt and refine its procedures over time.

86. While welcoming the references to the Rules of Procedure in both draft laws, the Commission recommends further streamlining the legislative text by transferring to the Rules of Procedure those provisions which concern matters of a purely technical, procedural, organisational, logistical character - particularly those relating to the Court's internal autonomy and self-governance.

2. Legal representation

87. According to Article 22 (5) of the draft LPCC, if citizens submit a joint petition or information, they shall designate one representative to participate in the hearing, who shall exercise the rights and obligations of the principal party. The draft law appears to limit representation in joint petitions to a single individual, though the rationale for this restriction remains unclear. If the intention is to require the petitioners themselves to designate one among them to present the case before the Court, it is essential that all petitioners retain the right to be heard or to intervene, particularly the individual(s) who initiated the proceedings. Any limitation in this regard could unduly restrict the procedural rights of the other petitioners and may be inconsistent with the principles of fairness and equality of arms.[42]

88. Alternatively, if the provision aims to require that a single external representative - such as a lawyer - be appointed to act on behalf of all joint petitioners, the limitation to only one representative also raises concerns. While it is legitimate to avoid excessive complexity in proceedings by setting a reasonable limit on the number of representatives, an overly restrictive approach may compromise the effective representation of the parties' interests. In many jurisdictions, it is common practice to allow a team of legal representatives - typically limited to a manageable number - especially in complex constitutional cases.

89. In order to ensure an appropriate balance between procedural efficiency and the right to effective legal representation, the Venice Commission recommends that the draft law permit the participation of up to three or four representatives for petitioners in the examination of cases.

3. Recusals

90. Article 30 of the draft LPCC sets out the grounds and procedure for the recusal of a Justice. Pursuant to Article 30(4), where the recusal of a Justice would result in an insufficient number of Justices to form a quorum - whether in the Small, Medium, or Full Bench - the proposal for recusal

[42] Venice Commission, CDL (97) 18 rev., Ukraine - Opinion on the law on the Constitutional Court, para. 11.

shall not be accepted. In such cases, the Justice concerned is required to continue participating in the proceedings, irrespective of the existence of the grounds for recusal set out in Article 30(1) of the draft LPCC.

91. While this provision may appear problematic at first glance, as it allows a Justice with a potential conflict of interest to continue sitting in the case, the Venice Commission notes that this approach is consistent with its earlier opinions. In particular, the Commission has emphasised that the Constitutional Court must be able to continue functioning as a democratic institution and constitutional guarantor. The exclusion of judges due to recusals must not result in the Court being incapacitated or unable to reach a decision. Unlike ordinary courts, where recused judges can be replaced by alternates, Constitutional Courts are composed of a fixed number of members, and no substitution mechanism typically exists.[43] This provision is especially relevant in situations where multiple Justices may share similar grounds for recusal, potentially leaving the Court unable to reach a quorum even for the purpose of deciding on recusals.

92. In such exceptional cases, maintaining the Court's functionality must prevail, while upholding the principle of impartiality to the greatest extent possible. Therefore, the Commission finds this approach to be consistent with international standards but emphasises that in practice it should be applied with caution and only in exceptional cases to prevent any potential abuse.

4. Suspension of examination

93. According to Article 33 (1) of the draft LPCC, if a decision from another court is deemed essential for the resolution of the matter under adjudication, the panel shall suspend the adjudication procedure until such decision is rendered. According to Article 33(2) of the draft LPCC, the suspension of the adjudication procedure for any reason other than those specified in Article 33(1) is strictly prohibited.

94. This formulation appears overly restrictive, as it allows only one ground for suspension. It should be noted that in many legal systems, ordinary courts rather suspend the examination of their cases pending a decision by the Constitutional Court than the contrary. Moreover, in practice, a range of legitimate situations may arise in which the Constitutional Court would be compelled to suspend proceedings temporarily. These may include, for example, the need to request an *amicus curiae* opinion from external institutions, or to await the outcome of expert analysis deemed necessary for the adjudication of the case. The Commission therefore recommends revising Article 33 of the draft LPCC to provide for a limited and clearly defined set of additional grounds for suspension.

5. Submission of the Court's conclusions on constitutionality to the State Great Khural

95. According to Article 43(1) of the draft LPCC, the conclusion rendered by the Medium Bench, following the adjudication of disputes specified in Clauses 1 and 2 of Article 66(2) of the Constitution,[44] shall be submitted to the State Great Khural for its consideration. Should the State Great Khural, after discussion, decide not to accept the Court's conclusion, it shall issue a resolution clearly stating the grounds for such non-acceptance (Article 43(7)). This resolution

[43] Venice Commission, CDL-AD(2006)006, Romania - Opinion on the Two Draft Laws amending Law No. 47/1992 on the organisation and functioning of the Constitutional Court, para. 7.

[44] Article 66(2), Clauses (1) and (2) of the Constitution of Mongolia:
The Constitutional court in accordance with Paragraph 1 of this Article shall make and submit conclusion to the State Great Khural on the following issues under a dispute:
1/whether laws, decrees and other decisions of the State Great Khural and the President, as well as Government decisions and international treaties to which Mongolia is a party are in conformity with the Constitution or not;
2/whether national referendums and decisions of the Central election authority on the elections of the State Great Khural and its members as well as on Presidential elections are in conformity with the Constitution or not.

shall be submitted to the Court within 10 days of its effective date. An authorised representative of the State Great Khural may also provide an explanation to the Court detailing the grounds for non-acceptance (Article 43(8)).

96. According to Article 44(1)(1) of the draft LPCC, the Full bench of the Court shall then deliberate to resolve the disputes related to the failure of the State Great Khural to review and accept the Court's conclusion within the timeframes established in Articles 43(5) and 43(6),[45] or the failre of the State Great Khural to adopt the requisite decision within the designated timeframe, or its failure to submit its decision to the Court within the period specified in Article 43(8) of this law.

97. The Full Bench, after reconsidering the dispute, shall issue a final decision in the form of a "resolution". If the Full Bench upholds the conclusion, that is the decision of unconstitutionality, the resolution of the State Great Khural rejecting the Court's conclusion becomes void. If the Full Bench finds the law to be in accordance with the Constitution, the Court's initial conclusion shall be annulled (Article 44(2)).

98. The Venice Commission observes that constitutional review systems, as identified by comparative constitutional scholarship (e.g., Mark Tushnet,[46] Stephen Gardbaum[47]), generally fall into two main categories: "strong" and "soft" models. Under "strong" models (e.g., Germany, Italy, USA), constitutional or supreme courts have definitive authority to invalidate legislation and decisions of political or administrative bodies that contravene constitutional norms. Conversely, "soft" models (e.g., UK, Canada, New Zealand, Australia) allow courts to issue declarations of incompatibility, identifying constitutional discrepancies, but leaving the responsibility to address and rectify these issues to parliament.

99. The Mongolian system appears to occupy an intermediate position between these two established models. Article 4(3) of the draft LCC[48] and Article 43 of the draft LPCC envisage an interactive mechanism between the State Great Khural and the Tsets. Parliament may disagree with the findings of unconstitutionality of the Tsets, nevertheless, ultimate authority remains with the Tsets. This represents a distinct and mixed constitutional approach.

100. The Venice Commission acknowledges that the obligation to submit the conclusions of the Constitutional Court to the State Great Khural derives from constitutional provisions and, consequently, can only be reconsidered through potential constitutional amendments. Moreover, during the meetings held in Ulaanbaatar, it was explained that the mechanism involving the submission of the Constitutional Court's conclusions to the State Great Khural is perceived in practice as a form of dialogue and cooperation between the legislative and judicial branches. It was further noted that, to date, this arrangement has not given rise to any practical difficulties, and the number of times in which the Full Bench has not upheld the conclusions of the Medium Bench are a minority.

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[45] Article 43(5) of the draft law on the Procedure of the Constitutional Court: The State Great Hural shall discuss upon and resolve the Court's conclusion within 14 days of its receipt during a parliamentary session. If the conclusion is received during a parliamentary recess, the matter shall be reviewed and resolved within 14 days from the commencement of the next session, in accordance with the Law on Rules of Procedure of Sessions of the State Great Hural of Mongolia.
Article 43 (6) of the draft law on the Procedure of the Constitutional Court: Conclusions issued by the Court regarding matters specified in Article 5.2 of this law shall be reviewed by the State Great Hural on an expedited basis. The timeframe established in Article 43.5 shall not apply in such cases.

[46] Mark Tushnet, *Weak Courts, Strong Rights: Judicial Review and Social Welfare Rights in Comparative Constitutional Law* (Princeton University Press, 2008).

[47] Stephen Gardbaum, *The New Commonwealth Model of Constitutionalism: Theory and Practice* (Cambridge University Press, 2013).

[48] Article 4(3) of the draft law on the Constitutional Court: The Court shall reconsider and render a final decision if the State Great Hural (the Parliament) rejects the Court's conclusion on disputes specified in Article 66.2, Clause 1 and Clause 2 of the Constitution.

101. The Commission nonetheless finds that while potentially beneficial in fostering cooperative interactions between judicial and political branches, this arrangement may undermine the authority of the Constitutional Court, to the extent that its decisions may be rejected by parliament (even if only provisionally); it may also expose the Court to political pressures, thereby risking its judicial independence. Requiring the submission of the Court's conclusions to Parliament risks politicising the functioning of the Constitutional Court. Parliament is fundamentally a political body rather than a judicial institution and granting it the authority to override or influence judicial decisions through political resolutions may lead to negative implications.

102. The Commission acknowledges that, even where the State Great Khural does not accept the Constitutional Court's conclusion regarding the constitutionality of legislative provisions, the Court retains the authority to render a final, binding decision. However, the Commission is of the view that the role and authority of the Constitutional Court, as the institution entrusted with the supreme oversight of constitutional compliance under Article 64(1) of the Constitution, should be further reinforced.

103. In the first place, in order to maintain the conclusion of the Medium Bench, the Full Bench needs to vote by majority (with a quorum of 7). In the Commission's view, a majority should rather be required *not to maintain* the conclusion of the Medium Bench. As concerns the effects of the conclusion of the Medium Bench, the Commission notes that it entails the suspension of the effects of the legislation, decisions or provisions deemed unconstitutional (Article 43(2) LPCC). While Article 43(4) prohibits strictly the reinstatement of the effectiveness of any law, decision, or provision suspended pursuant to Article 43(2), the reinstatement would follow the decision of the Full Bench not to confirm the conclusion (this is not explicitly regulated in the LPCC).

104. In the Commission's view, this situation is problematic from the viewpoint of legal certainty. It would be preferable to provide that the conclusion of the Middle Bench only produces effects either after failure by the State Great Khural to challenge it, or after confirmation by the Full Bench. Moreover, the Commission finds that a provision should be included in the draft LPCC providing that, in the event of inaction by the State Great Khural —namely, its failure to either accept or reject the Court's conclusion within fourteen days—the conclusion of the Constitutional Court shall immediately acquire final and binding force. In the Commission's view, this provision would address the concern of the Constitutional Court that Parliament's inaction could prevent the conclusion from entering into force for a potentially unlimited time.

105. Furthermore, the Commission finds the interaction between the Constitutional Court and the State Great Khural unclear in circumstances where the constitutionality of elections to the State Great Khural or the Presidency is contested. It remains ambiguous whether the Court's conclusions should be submitted to the outgoing or newly established Parliament. Such ambiguity carries substantial political implications and may facilitate undue political influence on judicial outcomes.

106. The Venice Commission finds that clarifying the interaction between the Constitutional Court and the State Great Khural would ensure legal certainty and safeguard judicial independence. In particular, provisions requiring parliamentary consideration of the Court's conclusions should be interpreted and applied in a manner that preserves the Constitutional Court's authority as the arbiter of constitutional issues and prevents undue political influence on its decisions.

6. Individual complaints on fundamental rights and *actio popularis*

a. Constitutional and legislative framework for individual complaints to the Constitutional Court

107. According to Article 66(1) of the Constitution of Mongolia, the Constitutional Court shall examine and settle constitutional disputes on its own initiative on the basis of petitions and

information received from citizens or at the request of the State Great Khural, the President, the Prime Minister, the Supreme Court and the Prosecutor General. The above-mentioned provision as well as the draft LPCC distinguish between two forms of applications that may be submitted by individuals: petitions and information.

108. A petition may be submitted by a citizen who alleges that an act or decision by a legislative, executive, or judicial authority, or an official has violated his/her fundamental rights (Article 16.1). Petitions must be submitted within 30 days of becoming aware of the contested act or decision and must demonstrate that all available legal remedies have been exhausted (Articles 16(6) and 17(1)).

109. In contrast, information may be submitted in the public interest concerning matters listed in Article 66(2) of the Constitution (Article 16(2) of the draft LPCC). It is not tied to individual rights but instead aims to address broader constitutional issues. Specific time limits apply depending on the nature of the contested act, ranging from one year for general legislation to shorter deadlines for electoral and treaty-related matters (Article 17(2)).

110. Both petitions and information must comply with formal requirements regarding content, supporting documentation, and legal standing (Articles 18(1) - 18(4)). The General Registrar is responsible for the initial review of submissions to ensure they meet these criteria. If the requirements are not fulfilled, or the matter has been previously adjudicated without grounds for reconsideration, the submission may be returned (Article 19(3)). Applicants may refile within 30 days if they disagree with this decision (Article 19(4)). If deemed admissible, the case is forwarded to the Small Bench for registration and review.

111. Article 53 of the draft LPCC titled “Disputes Regarding Fundamental Rights” foresees that disputes concerning fundamental rights are adjudicated by the Medium Bench, which issues a conclusion following its review (Article 53(1)). Parties with a vested interest in such disputes may submit written explanations within timeframes determined by the Court (Article 53(2)). Where the petition concerns the constitutionality of legislation, the State Great Khural or the Government may also submit their explanations (Article 53(3)). In addition, the National Human Rights Commission is entitled to provide its views (Article 53(4)).

112. If the Tsets decides to hold a hearing, the relevant parties, including those listed in Articles 53(2) to 53(4), may be invited to participate (Article 53(5)). If the Medium Bench finds the petition justified, it must identify the specific act or decision by a legislative, executive, or judicial body - or by a public official - that violates fundamental rights (Article 53(6)). The Court may also suspend the effects of such decisions under Article 45(9) and instruct the relevant authority to bring the measure into conformity with constitutional standards. If a judicial decision is suspended, the matter shall be transferred to the Supreme Court for further protection of rights, pursuant to Article 50(1)(3) of the Constitution[49] (Article 53(7)).

113. All public bodies and officials must act in accordance with the Constitutional Court’s conclusion to ensure compliance with fundamental rights (Article 53(8)). Where the dispute concerns unconstitutional legislation, the legislation in question is to be suspended pending a final decision. The Medium Bench’s conclusion must be submitted to the State Great Khural, which is required to deliberate and issue a resolution (Article 53(9)). If the State Great Khural fails to act within the prescribed time limits, the matter is referred to the Full Bench, which shall issue a final and binding decision (Article 53(10)). Where the violation of rights stems from unconstitutional legislation, such legislation is also suspended, and the procedure under Articles 53(9) and 53(10) shall apply (Article 53(11)).

[49] According to Article 50 (1)(3) of the Constitution of Mongolia, the Supreme Court shall examine and take decision on matters related to the protection of law and human rights and freedoms stated therein, as transferred to it by the Constitutional court (Tsets) and/or the Prosecutor General.

b. Information received from citizens (*actio popularis*)

114. The Venice Commission is of the view that, under the concept of "information submitted by citizens," the Constitution of Mongolia permits *actio popularis* - that is, applications to the Constitutional Court submitted in the public interest, without the requirement to demonstrate a direct personal legal interest. This interpretation was confirmed during the bilateral meetings held in Ulaanbaatar.

115. While *actio popularis* may serve as a broad mechanism for constitutional review - potentially allowing for the swift elimination of unconstitutional laws from the legal system, including those predating the Constitution - comparative constitutional analysis indicates that most European systems restrict access to constitutional courts to individuals who can demonstrate a specific legal interest or victim status. Consequently, *actio popularis* remains an exception within Europe and among the member states of the Venice Commission.[50]

116. The Commission also underlines that although *actio popularis* provides the widest possible access to constitutional justice - enabling any citizen to play a role in defending constitutional norms - it also presents significant risks. Chief among these is the potential to overburden the Constitutional Court with an excessive volume of submissions, which may impair the Court's capacity to function effectively. In this respect, the Commission refers notably to the Croatian experience, where the availability of *actio popularis* contributed to caseload pressures that were subsequently subject to critical assessment by the Commission. For this reason, the Venice Commission has consistently recommended that constitutional complaint mechanisms be limited to applicants who can demonstrate a personal legal interest or status as a victim of a constitutional violation.[51]

117. The Commission further notes that *actio popularis* carries a heightened risk of abusive or politically motivated applications, which may undermine the serious and principled nature of constitutional adjudication. This risk is one of the principal reasons why most countries do not provide for such a mechanism. In those jurisdictions where *actio popularis* is permitted, access is generally subject to strict admissibility conditions to prevent misuse and to safeguard the functionality of the constitutional court.[52]

118. Nevertheless, the Venice Commission takes note that, in the Mongolian constitutional context, *actio popularis* has been actively applied over several decades as a means for citizens to raise constitutional concerns unrelated to personal legal interests. Given that this mechanism is explicitly provided for by the Constitution, the Commission acknowledges that any reconsideration of its scope would necessarily require constitutional amendment.

119. The Venice Commission also observes that the constitutional provision empowering the Constitutional Court to examine and resolve constitutional disputes on its own initiative - *inter alia* based on information submitted by citizens - gives rise to interpretative ambiguity. It is not clearly established whether this provision grants the Court discretionary authority to initiate proceedings *ex officio*, or whether it imposes a mandatory obligation to initiate review whenever the formal criteria for admissibility are satisfied.

120. In the view of the Venice Commission, the former interpretation - where the Court retains discretion to act upon information submitted by citizens - is more consistent with the nature and institutional function of a constitutional court. Such discretion serves as an essential filtering mechanism, particularly in systems that permit *actio popularis,* helping to preserve the Court's

[50] Venice Commission, CDL-AD(2011)001, Hungary - Opinion on three legal questions arising in the process of drafting the New Constitution, paras. 57-58.
[51] Venice Commission, CDL-AD(2021)001, Revised Report on individual Access to Constitutional Justice, para. 41.
[52] Ibid.

capacity to manage its docket effectively and avoid undue overload. This position is further reinforced by the fact that the Mongolian authorities are considering the introduction of a mechanism for individual access to the Constitutional Court for the protection of individual rights. Should such a mechanism be introduced, the volume of applications submitted to the Court would likely increase significantly. In this context, the Court's discretion to decide whether to initiate proceedings based on *actio popularis* submissions becomes even more critical for maintaining the efficiency and integrity of constitutional adjudication. The Commission therefore recommends that the constitutional and legislative framework, or its authoritative interpretation, explicitly reflect this discretionary power to ensure legal certainty and safeguard the Court's institutional effectiveness.

121. With respect to procedural aspects, the Venice Commission draws attention to the time limits for submitting information to the Constitutional Court, as set out in Article 17(2)(1) of the draft LPCC. This provision establishes that a citizen must file such information within one year from the date on which a law, decree, or decision adopted by the State Great Khural, the President, or the Cabinet enters into force.

122. The Commission notes, however, that in the context of *actio popularis,* where the public interest is central and no direct personal harm is required, the effects of a legislative or normative act may not become immediately evident. It may take considerably more than one year for an individual or civil society actor to observe and understand the broader or indirect implications of such an act - particularly when its impact emerges only through practical application in concrete cases. Constitutional violations are often discernible only over time, once a pattern of enforcement or administrative interpretation becomes clear.

123. Accordingly, the Commission recommends reconsidering the strict one-year deadline for submissions under *actio popularis*. A more flexible or extended timeframe- appropriately tailored to the nature of public interest litigation - would better accommodate the practical realities of constitutional oversight and enhance access to justice.

c. Individual access to the Constitutional Court for fundamental rights protection

124. Over the past seven decades, there has been a marked evolution in the role of constitutional justice in safeguarding human rights, both in Europe and in constitutional systems worldwide. Respect for human rights is now universally recognised as a foundational component of democratic governance and the rule of law. This normative shift has not only elevated the status of human rights within constitutional texts but has also increased the demand for effective enforcement mechanisms. As a result, procedures that allow individuals to invoke constitutionally guaranteed rights have gained growing importance. The design and accessibility of these mechanism are now widely viewed as critical indicators of a functioning constitutional democracy.

125. In recent years, a clear trend has emerged among both long-established and transitional democracies toward expanding individual access to constitutional justice, albeit in diverse forms. France, historically limited to *a priori* abstract review, introduced the *Question Prioritaire de Constitutionnalité (QPC)* in 2008, allowing individuals to raise constitutional issues indirectly during ordinary court proceedings, with potential referral to the Constitutional Council.[53] The United Kingdom, while maintaining the doctrine of parliamentary sovereignty, has seen courts gain the authority - under the Human Rights Act 1998 - to declare legislation incompatible with the European Convention on Human Rights, enhancing the role of the judiciary in protecting individual rights.[54] Meanwhile, the Netherlands continues to prohibit direct constitutional review of statutes (Article 120 of the Constitution), but Dutch courts may disapply legislation that conflicts

[53] French Constitutional Law of 23 July 2008.
[54] Human Rights Act 1998 section 4, available at: https://www.legislation.gov.uk/ukpga/1998/42/contents.

with self-executing international treaty provisions, providing a functional, if indirect, review mechanism.

126. Several states in Central and Eastern Europe have recently strengthened models of constitutional review by introducing or expanding individual complaint mechanisms. In 2012, Hungary replaced its previous *actio popularis* system with individual constitutional complaints. Türkiye, following constitutional reform in 2010, began adjudicating individual complaints in 2012. Similarly, Ukraine established the right to lodge individual constitutional complaints in 2016, and Lithuania in 2019, reinforcing judicial avenues for rights protection.[55]

127. Constitutional review may be organised through either a diffuse or a concentrated model. In a diffuse system, as exemplified by the United States, all ordinary courts have the authority to assess the constitutionality of laws and acts in the context of individual cases. This allows individuals to raise constitutional issues at any stage of proceedings, without the need to lodge a separate constitutional complaint, thereby ensuring broad and immediate access to constitutional justice. However, this model may lead to inconsistent judicial interpretations and legal uncertainty, as different courts may reach conflicting conclusions on the same constitutional matter. It also depends heavily on the willingness and capacity of both individuals and judges to pursue and assess constitutional arguments. While diffuse review promotes legal pluralism and access to justice, it can also result in fragmented jurisprudence and protracted litigation.

128. By contrast, the concentrated model, developed by Hans Kelsen and first implemented in Austria in 1920, entrusts a specialised Constitutional Court (or a Supreme Court with such competence) with exclusive authority to conduct constitutional review. This system promotes jurisprudential unity and legal certainty, as constitutional questions are resolved by a single, centralised institution. However, concentrated review may generate tensions with ordinary courts, particularly when constitutional courts review the interpretation or application of laws in individual cases, potentially encroaching on the jurisdiction of lower courts. Despite this, the concentrated model has become prevalent in Europe due to its ability to safeguard both the constitutional order and fundamental rights through authoritative, coherent adjudication.[56]

129. Today, the majority of countries have a system of concentrated review (e.g., Albania, Algeria, Andorra, Armenia, Austria, Azerbaijan, Belgium, Belarus, Croatia, Czechia, France, Georgia, Germany, Hungary, Italy, Republic of Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Morocco, North Macedonia, Poland, Russia, San Marino, Serbia, Slovakia, Slovenia, Spain, Tunisia, Türkiye and Ukraine). Only some countries have systems of constitutional review that are entirely diffuse (e.g., Canada, Denmark, Finland, Iceland, Norway, Sweden and the United States of America). Some Latin American countries follow the American model with diffuse review and a strong supreme court (e.g., Brazil, Mexico), and others have opted for a specialised constitutional court (e.g., Peru, Chile).[57]

130. Constitutional review systems may also be distinguished according to direct and indirect individual access to constitutional justice. Direct access allows individuals to challenge laws or acts directly before the Constitutional Court,[58] while indirect access requires constitutional questions to be channelled through other state bodies, such as ordinary courts[59] or public

[55] Venice Commission, CDL-AD(2021)001, Revised report on individual access to Constitutional justice, para. 25.
[56] Ibid. paras. 9-17.
[57] Ibid. para. 18.
[58] Austria, Armenia, Belgium, Germany, Spain, Slovenia, Lithuania, Montenegro, Switzerland, Serbia, Kyrgyzstan, Türkiye.
[59] Albania, Andorra, Armenia, Austria, Belgium, Bosnia and Herzegovina, Chile, Croatia, Czechia, Georgia, Germany, Hungary, Italy, Kazakhstan, Republic of Korea, Liechtenstein, Lithuania, Luxembourg, Montenegro, Morocco, North Macedonia, Poland, Romania, Russia, San Marino, Slovakia, Slovenia, Spain, Türkiye, Ukraine and Uruguay, Chile, Azerbaijan, Belarus, Bulgaria, Greece, the Republic of Moldova.

authorities (ombudspersons).[60] Most countries employ mixed systems that combine both forms. Among the direct access mechanisms, three types are identified: full constitutional complaints, which target individual acts violating fundamental rights and may involve unconstitutional laws; normative constitutional complaints, which challenge laws directly; and *actio popularis* discussed above.

131. The draft LPCC establishes a concentrated model of constitutional review, whereby the Constitutional Court is vested with exclusive authority to adjudicate constitutional disputes. Importantly, the draft law also introduces direct access and some elements of indirect access,[61] thus creating a mixed access model. It envisages the possibility of full constitutional complaints, allowing individuals to challenge not only legislative acts but also decisions and actions taken by public authorities across all branches of government. This model is reflected not only in the structure and operative provisions of the draft LPCC but also in its definitional clauses. Article 3(1)(6) defines a "fundamental rights dispute" as a disagreement concerning whether the actions or decisions of legislative, executive, or judicial bodies and officials have infringed upon the fundamental rights of the petitioner. In parallel, Article 3(1)(9) defines a "petition" as a formal submission by a citizen to the Constitutional Court alleging such a violation.

132. The Venice Commission favours full constitutional complaints as they offer the strongest protection of individual rights. It is more cautious about normative complaints, which are ineffective where the issue lies in the application and warns against the risks of *actio popularis* overwhelming constitutional courts.[62] The Venice Commission considers direct access through individual constitutional complaints, particularly full constitutional complaints, to be the most effective form of constitutional remedy for the protection of individual rights. While recognising the value of indirect access as a supplementary mechanism for upholding constitutional guarantees, the Commission has emphasised that it should not replace direct access. Instead, a combined system that incorporates both direct and indirect access is viewed as optimal, as it allows for a balanced approach that leverages the strengths of both models while mitigating their respective limitations.[63]

133. The Venice Commission underlines that, while the introduction of an individual complaint mechanism represents a positive development for enhancing the protection of fundamental rights, certain institutional and interpretative safeguards must be carefully considered. Without adequate legal clarity and procedural regulation, the unrestrained or ambiguously defined implementation of this mechanism may result in significant practical and constitutional challenges, including the risk of overburdening the Constitutional Court and undermining legal certainty.

134. In this context, the Commission notes that the constitutional framework of Mongolia does not yet expressly mandate the introduction of an individual complaint mechanism. As discussed above in relation to *actio popularis*, Article 66(1) of the Constitution provides that the

[60] Albania, Armenia, Austria, Azerbaijan, Croatia, Czechia, Estonia, Hungary, Latvia, the Republic of Moldova, Peru, Poland, Portugal, Romania, Russia, Serbia, Slovakia, Slovenia, South Africa, Spain and Ukraine.

[61] The draft law establishes an indirect mechanism of constitutional review initiated through the judiciary. If a court considers that a law or international treaty applicable to a case is inconsistent with the Constitution, it must suspend proceedings and refer the matter to the relevant panel of the Supreme Court. If at least one-third of the panel supports the opinion, the Supreme Court is required to submit a request to the Constitutional Court (Article 51(1)). Similarly, the appellate instance of the Supreme Court may directly initiate constitutional review when it identifies a conflict between the Constitution and the applicable law or treaty (Article 51(2)). Furthermore, the Judicial General Council may submit an opinion to the Supreme Court, and if the full panel of judges finds the opinion well-founded, the case is referred to the Constitutional Court (Article 51(3)).
Although these provisions do not explicitly refer to individual fundamental rights, in practice it is not excluded that ordinary courts may trigger constitutional review based on a belief that a law violates fundamental rights. This indirect route thus allows for what effectively amounts to a normative constitutional complaint linked to human rights protection.

[62] Venice Commission, CDL-AD(2021)001, Revised report on individual access to Constitutional justice, para. 231.

[63] Ibid., para. 233.

Constitutional Court shall examine and resolve constitutional disputes *on its own initiative*, including on the basis of petitions and information submitted by citizens. While this provision may be interpreted, in the case of *actio popularis*, as granting the Court discretionary authority to filter out applications lacking constitutional relevance or public interest, the same logic cannot be applied to individual complaints concerning fundamental rights. The notion of *ex officio* initiation by the Court stands in tension with the core principle of individual access, which presupposes that proceedings are triggered by the individual's autonomous action and legal standing. This ambiguity in constitutional language - and its implications - was highlighted during bilateral meetings conducted in Ulaanbaatar.

135. The Venice Commission considers that the most appropriate and constitutionally coherent approach would be to interpret Article 66(1) in a manner that distinguishes clearly between *actio popularis* and individual complaints on fundamental rights. Through established methods of constitutional interpretation - including structural, purposive, evolutive, doctrinal, and comparative interpretation - the phrase *"on its own initiative"* should be construed as referring solely to the Court's competence to act in public interest cases (e.g., *actio popularis*), and not to those involving individual rights claims. This interpretative clarification would allow for the effective implementation of the individual complaint mechanism foreseen in the draft legislation, without generating a conflict with the constitutional text.

136. Furthermore, the Venice Commission notes that the introduction of the individual complaint mechanism in Mongolia would represent a significant institutional shift, as it would be applied for the first time in the country's constitutional practice. Accordingly, both the legal framework and institutional capacity of the Constitutional Court must be adequately prepared to absorb what is likely to be a substantial influx of individual applications. Without such preparation, there is a serious risk that the Court could become overburdened, compromising its ability to function effectively.

137. The experience of other jurisdictions demonstrates that one of the key drawbacks of full constitutional complaints is their tendency to dominate the caseload of constitutional courts, sometimes exceeding ninety percent of all cases. A large proportion of these may lack any substantive constitutional dimension and may instead reflect dissatisfaction with decisions of ordinary courts. To prevent frivolous, abusive or repetitive complaints, it is essential to establish a robust and well-designed filtering mechanism, capable of swiftly identifying and dismissing inadmissible, repetitive, or manifestly unfounded complaints.[64]

138. In comparative practice, several procedural filters are typically employed to manage the volume and quality of individual complaints. These include: strict admissibility criteria, time limits, mandatory legal representation, and the possibility of summary dismissal of clearly unfounded cases. Furthermore, the internal structure of the Constitutional Court must be adapted to support the new caseload. This may involve the use of smaller judicial panels, the delegation of procedural decisions to rapporteur judges, and ensuring that judges are supported by a sufficient number of qualified legal advisors.[65]

139. The successful implementation of this mechanism also requires adequate institutional resourcing. This includes the allocation of additional staff, financial resources, and the deployment of digital case-management tools to enhance efficiency and maintain the quality of constitutional adjudication. The Commission stresses that such organisational and logistical measures are not auxiliary, but rather essential to the sustainable functioning of the Court under its expanded mandate.

[64] Venice Commission, CDL-AD(2018)012, Georgia - *Amicus Curiae* Brief for the Constitutional Court on the effects of Constitutional Court decisions on final judgments in civil and administrative cases, para. 29.
[65] Ibid. paras. 24-29.

140. Another effective means of reducing the number of repetitive or excessive individual applications is the recognition of the *erga omnes* effect of decisions rendered by the Constitutional Court. When a decision declaring the unconstitutionality of a normative act has general binding effect, it results in the invalidation or inapplicability of that act in future cases, thereby preventing the need for subsequent identical complaints. The Venice Commission strongly supports this approach, as it not only reinforces the authority and coherence of constitutional jurisprudence but also contributes to judicial economy. By resolving systemic constitutional issues with general effect, the Court can focus its resources on novel or unresolved matters, rather than being repeatedly called upon to review the same unconstitutional provision in different individual cases.

141. The complexity of managing individual complaints lies not only in filtering excessive applications, but also in ensuring procedural fairness and transparency. While the Venice Commission fully supports the objective of preventing the overburdening of constitutional courts, it emphasises that any rejection of an application should be accompanied by a reasoned decision, even if provided in a standardised or summary form. This requirement reinforces public trust in constitutional justice and ensures that applicants receive a clear explanation of the grounds for inadmissibility. Only in cases of manifestly abusive or clearly unfounded applications may a decision be rendered without detailed reasoning.[66]

142. The Venice Commission notes that certain admissibility criteria are provided for in Article 18 of the draft LPCC, and that provisions regarding the appointment of assistants and legal researchers are included in Article 12 of the draft LPCC. While welcoming these elements, the Commission underlines the importance of ensuring their effective and consistent implementation in practice, and encourages the authorities to consider their further reinforcement, particularly in light of the potential expansion of the Court's workload resulting from the introduction of individual complaints. The Commission does not consider it necessary to comment on the detailed design of these provisions, which rightly falls within the discretion of the national legislator and the institutional actors responsible for implementation. Nevertheless, their successful application will be essential to preserving the efficiency, credibility, and sustainability of constitutional justice in Mongolia.

143. The Venice Commission furthermore underlines the importance of carefully delineating the respective competences of the Constitutional Court and the ordinary judiciary, particularly in matters concerning the protection of individual rights. The relationship between these two branches of the judiciary must be approached with institutional sensitivity and constitutional coherence, especially in light of Mongolia's constitutional architecture. Article 50(1) of the Constitution establishes the Supreme Court as the highest judicial authority, and any mechanism that grants individuals access to the Constitutional Court must respect this status and avoid undermining the Supreme Court's prerogatives.

144. In this context, the Commission emphasises that the power of the Constitutional Court to adjudicate individual complaints must be strictly limited to questions of constitutional relevance and must not extend to acting as a general appellate body over the ordinary judiciary. The subsidiary nature of individual constitutional complaints is a fundamental principle in most systems allowing such access. It presupposes that all ordinary legal remedies must first be exhausted, and only then may the individual apply to the Constitutional Court as a guardian of constitutional norms. The Commission welcomes the inclusion of this principle in Article 16(6) of the draft law and encourages its vigilant application in practice.

145. Furthermore, the Commission draws attention to Article 50(3) of the Constitution, which assigns to the Supreme Court the authority to decide on matters of legal protection of human

[66] Venice Commission, CDL-AD(2017)011, Opinion on the Draft Constitutional Law on the Constitutional Court of Armenia, para. 61.

rights and freedoms, including where such matters have been referred by the Constitutional Court or the Prosecutor General. This provision reinforces the role of the Supreme Court as the final judicial body entrusted with ensuring individual justice in the concrete application of the law. Conversely, Article 66(1) of the Constitution defines the Constitutional Court as the body exercising supreme supervision over the enforcement of the Constitution, which places it in a structurally different role.

146. Accordingly, the Commission considers that the proper interpretation of these constitutional provisions requires a balanced and coordinated relationship between the two courts. While the Constitutional Court must retain the authority to annul unconstitutional laws or acts that infringe on fundamental rights protected by the Constitution, the final resolution and practical restoration of those rights- particularly in terms of individual legal remedies - should lie with the Supreme Court. This dual structure ensures both the primacy of the Constitution and the institutional continuity of the judiciary, preserving the integrity of each court's constitutional function.

147. Moreover, the Commission also finds that the authorities may consider a phased or delayed entry into force of the provisions regulating individual complaints. Postponing the operationalisation of these articles would allow the Constitutional Court, the judiciary, legal professionals, and the general public the necessary time to prepare for the new procedure. This approach would also create space for strengthening internal case management systems and ensuring that admissibility screening mechanisms are fully operational by the time the mechanism becomes applicable. Feedback received during the bilateral meetings in Ulaanbaatar indicated that such a staged approach could be acceptable.

148. Consequently, the Commission recommends: interpreting the constitutional clause on the Court's *ex officio* authority as applying solely to *actio popularis*, not to individual complaints; establishing robust and effective filtering mechanisms to prevent both *actio popularis* and individual complaints from overwhelming the Court with inadmissible or repetitive claims; ensuring a clear demarcation of competence between the Constitutional Court and the ordinary judiciary, particularly where individual rights are concerned; and considering the possibility of delaying the entry into force of the individual complaint mechanism to allow for full institutional readiness.

7. *A priori* constitutional review of international treaties

149. According to Article 66(2)(1) of the Constitution of Mongolia, the Tsets shall make and submit conclusion to the State Great Khural on the issue whether laws, decrees and other decisions of the State Great Khural and the President, as well as Government decisions and international treaties to which Mongolia is a party, are in conformity with the Constitution or not. According to Article 66(4) of the Constitution, if the Constitutional Court decides that these are inconsistent with the Constitution, the laws, decrees, instruments of ratification and decisions in question shall be considered invalid. Article 10(4) of the Constitution provides that Mongolia may not abide by any international treaty or other instruments incompatible with its Constitution.

150. The draft LPCC introduces several provisions relevant to the review of international treaties. Article 17(2)(2) provides that a citizen may submit information concerning the constitutional conformity of an international treaty, to be assessed prior to its ratification or accession. Additionally, Article 50(1)(4) LPCC allows the State Great Khural or the President to refer draft international treaties to the Tsets for constitutional review before formal ratification or accession. Article 51 further sets out the mechanisms by which other institutional actors, including courts, the Supreme Court's Appellate Panel, the Judicial General Council, and the Prosecutor General, may refer issues concerning the constitutionality of laws or treaties to the Court.

151. However, an analysis of the relevant constitutional and legislative provisions reveals a lack of clarity regarding whether *a priori* constitutional review of international treaties is constitutionally

foreseen. On the one hand, the Constitution appears to address only treaties that have already been concluded, by providing for their invalidation in cases of unconstitutionality. On the other hand, the draft LPCC introduces procedures allowing for pre-ratification review, despite the absence of an explicit constitutional basis for such review. Meanwhile, the procedural framework set out in Article 51 of the draft LPCC clearly anticipates the possibility of *a posteriori* review of treaties already ratified or acceded to. This raises a constitutional ambiguity that may warrant further clarification to ensure consistency between the Constitution and the procedural law governing the Constitutional Court.

152. The Venice Commission recalls that *a priori* constitutional review of international treaties serves a sound and well-established legal purpose. The absence of such review may expose the State to risks under international law, particularly by engaging obligations that are later found to be unconstitutional. This may, in turn, threaten compliance with the international principle of *pacta sunt servanda*, which requires states to honour their treaty commitments in good faith. The Commission notes that when a potential conflict arises between a treaty and the Constitution - or, where applicable, constitutional (organic) laws - the tension is particularly sensitive, as it engages the core hierarchy of domestic legal norms on one hand and binding international obligations on the other. As a matter of good practice and legal foresight, States generally seek to avoid such conflicts in advance.[67] One established mechanism to achieve this is a constitutional prohibition against the ratification of treaties that contradict the Constitution, often paired with a system of preventive constitutional review.[68]

153. The Commission has previously emphasised that declaring a ratified treaty - or any of its provisions - unconstitutional may have serious legal and diplomatic consequences, including the obligation to denounce or withdraw from the treaty, and could expose the State to allegations of violating international law. Once a treaty is ratified, it creates binding obligations toward other contracting parties. In this context, the Commission recalls Article 27 of the Vienna Convention on the Law of Treaties, which stipulates that "[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty." This principle reinforces the view that constitutional compatibility should be assessed prior to ratification, not retrospectively. The prevailing practice in many legal systems is to seek harmonisation between national constitutional norms and international treaty obligations in order to prevent conflict and preserve legal certainty.

154. The Commission further underlines the importance of ensuring that both the legal framework and its implementation reflect the constitutional principles of the rule of law and separation of powers. These principles must be balanced in such a way that the exercise of constitutional review does not interfere unduly with the respective roles of the executive and legislative branches in the treaty-making process. In this regard, the timing of *a priori* constitutional review is critical. Ideally, such review should be carried out after the signature of the treaty by the executive or the head of state - as part of its foreign affairs competence - but before ratification by the legislature, thus ensuring constitutional compliance without disrupting the institutional balance.

155. The Venice Commission therefore recommends that, through authoritative constitutional interpretation, the relevant constitutional provisions be construed to allow for *a priori* review of international treaties prior to ratification. This approach would ensure compliance with both domestic constitutional principles and international legal obligations.

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[67] Venice Commission, CDL-AD(2025)005, Republic of Moldova - Opinion on the draft law on the Constitutional Court, para. 25.

[68] Such examples can be found in the Constitutions of Armenia (Article 116), Ukraine (Article 9), Spain, (Article 95.1). Furthermore, several countries, such as Belgium, the Czechia, France, and the Netherlands, require or at least permit a preliminary review of the compatibility of international treaties with the constitution prior to ratification, thereby reducing the risk of coexistence between two incompatible norms, both of a fundamental nature, within the same legal order.

8. Dismissal of a dispute

156. According to Article 34(1) of the draft LPCC, the panel shall have the jurisdiction to dismiss a dispute in the event of the death of the petitioner (Article 34(1)(1)); if the plaintiff has withdrawn from the proceedings (Article 34(1)(2)); or if the law, regulation, or other legal instrument relevant to the dispute has been declared null, or the factual or legal circumstances that gave rise to the dispute have been eradicated (34(1)(3)). According to Article 34(2), nevertheless the fulfilment of any of the conditions set forth in Article 34(1), where the matter in question is deemed to be of significant public interest, the panel shall proceed with the adjudication of the dispute.

157. The Venice Commission has previously expressed support for the approach whereby a Constitutional Court may continue to examine a case following the withdrawal of an application, when doing so serves the public interest. This possibility reflects the inherent institutional autonomy of constitutional courts and their core function as guardians of the Constitution, independent of the procedural will of the applicant. It affirms the principle that constitutional adjudication is not solely adversarial in nature, but also directed toward safeguarding the normative integrity of the legal order, even where the original party ceases to pursue the claim.[69]

158. The Commission further notes that such a provision may serve to protect constitutional justice from external pressures, including instances in which an applicant may be induced to withdraw a complaint for political or coercive reasons. At the same time, it acknowledges that, in comparative practice, it is relatively uncommon for constitutional courts to proceed absent a pending complaint or motion, unless such competence is explicitly provided for by the Constitution or statutory law. In the Mongolian context, the mechanism remains tethered to an initial application, meaning that the Court does not act entirely *ex officio*. Nevertheless, the broad and undefined reference to "public interest" raises concerns. Without a defined standard, this could result in a quasi-inquisitorial role for the Court, which may be at odds with its function in adjudicating concrete constitutional disputes.[70]

159. In light of the above, the Venice Commission recommends that the draft LPCC be amended to provide clear and objective criteria for the determination of "public interest" in cases of withdrawn applications which would enhance predictability and consistency in the Court's practice and would help ensure that the continued examination of withdrawn cases remains grounded in institutional legitimacy.

9. Decisions of the Constitutional Court

160. Article 45(8) of the draft LPCC provides that each Justice on the panel is required to sign the conclusion section of the Court's decision. The Venice Commission notes that while this provision appears to ensure collective responsibility and transparency, it may also give rise to practical complications. In practice, requiring the signature of every panel member can delay the formalisation and publication of the Court's decisions. This risk becomes especially acute where a judge refuses to sign or unduly delays the process, potentially resulting in a procedural deadlock. One possible solution - commonly used in other jurisdictions - is to authorise only the Chief Justice (and, where appropriate, the Secretary General or Chief Registrar) to sign the official version of the decision. This approach ensures procedural efficiency while maintaining institutional accountability. However, as is often the case, this solution requires a certain level of trust by the judges of the signing president, which cannot be established by law.[71]

[69] Venice Commission, CDL-AD(2010)039rev., Study on individual access to constitutional justice, para. 144.
[70] Venice Commission, CDL-AD(2017)011, Armenia - Opinion on the Draft Constitutional Law on the Constitutional Court, para. 67-69.
[71] Ibid. para. 82.

161. The Commission further observes that Article 46(9) of the draft LPCC expressly allows for separate or dissenting opinions by individual judges. In this context, it is unclear why a judge who disagrees with the majority opinion should nonetheless be required to sign the main decision. The appropriate solution would be to permit the issuance of dissenting opinions without obligating dissenting judges to endorse the majority judgment with their signature. Such a practice would respect judicial independence while also avoiding unnecessary procedural burdens.

162. Accordingly, the Venice Commission recommends revising Article 45(8) of the draft LPCC to provide that the final decision shall be signed by the Chief Justice and the Chief Registrar. Where the Chief Justice is among the dissenting judges, one judge of the majority should sign in his/her place. This would ensure both procedural clarity and the functional integrity of the decision-making process.

163. The Venice Commission further finds that it should be clarified in both draft laws whether the decisions of the Constitutional Court are intended to have only prospective effect (*ex nunc*), or they may also have retrospective effect (*ex tunc*). This question is of particular significance in the context of fundamental rights violations, especially those related to criminal liability or sanctions under the Criminal Code or the Law on Infringement.

C. Other recommendations

Gender balance

164. The Venice Commission notes that the draft LCC does not contain any provisions aimed at promoting gender balance within the composition of the Court. In its earlier opinions the Venice Commission has encouraged measures aimed at fostering gender balance within public bodies.[72] Accordingly, the Commission is of the opinion that encouraging gender balance - without imposing rigid quotas - would contribute to the effective functioning and representativeness of the Constitutional Court. While the Commission fully respects that the appointment of judges to the Constitutional Court is a sovereign prerogative of the nominating authorities - based primarily on the paramount criteria of high professional competence and personal integrity - it nevertheless recalls the broader principles of equality and diversity underpinning the legitimacy of public institutions. The Commission therefore recommends that the draft law include provisions aimed at promoting gender balance in the composition of the Constitutional Court, while preserving the focus on merit and the independence of the judiciary.

Proposals by the Constitutional Court for improving legislation related to the court

165. The Venice Commission welcomes Article 9(2)(4) of the draft LCC, which empowers the justices to propose improvements to legislation on the Court's legal status and adjudicatory procedures. Granting the Constitutional Court the ability to express its institutional perspective on matters directly affecting its operation is a positive step that reinforces its independence and functional integrity. However, this competence should be exercised with caution to avoid infringing on the constitutional prerogatives of the legislative and executive branches. The court should avoid any risk of being perceived as interfering with political process and decision making. While further regulation may be provided in sectoral laws governing the legislative process, the Commission recommends that the draft law itself clearly specify the institutional addressees - such as the Parliament, the Government, or other authorised bodies - to whom such proposals may be directed, thereby enhancing legal certainty and procedural clarity.

[72] Venice Commission, CDL-AD(2022)004, Chile - Opinion on the drafting and adoption of a new Constitution, para. 79.

Legal persons

166. The Venice Commission notes that Article 3(1)(1) of the draft LPCC defines "citizen" broadly, encompassing Mongolian nationals, foreign nationals, and stateless persons. This inclusive formulation is commendable. However, the provision remains unclear as to whether the term also encompasses legal persons. From the perspective of constitutional adjudication, the Commission considers that private legal persons, including companies and associations, should have standing to raise individual complaints when their constitutional rights are at stake. In European practice, certain public legal entities, such as municipalities, public broadcasters, universities, or religious institutions, are also granted access to constitutional review under defined conditions.[73] The Commission recommends clarifying the scope of the term "citizen" to ensure that both natural and legal persons are entitled to submit individual complaints where their constitutional rights are affected.[74]

Open sessions

167. The Venice Commission takes note of Article 3(1)(12) of the draft LPCC, which defines "deliberation" as the process by which the Court resolves disputes or related matters without convening a formal hearing, based on a review of written and other forms of evidence in a deliberation room.

168. The Commission observes that the provisions on oral hearings in the draft law seem to be inspired from civil and criminal proceedings, where the taking of evidence is essential. However, constitutional proceedings are very different in nature. The facts of the underlying case are usually not essential. The issue before the Constitutional Court is an abstract one, whether a given norm conflicts with the Constitution. The underlying case only provides the 'flavour' for the constitutional case. The Commission notes that many constitutional courts do not hold oral hearings as a default rule but reserve them for particularly complex or sensitive cases. In such systems, proceedings are often conducted in writing, with public pronouncement of the judgment fulfilling the requirement of transparency.[75] Therefore, while fully endorsing the fundamental importance of transparency in constitutional adjudication, the Commission does not consider mandatory oral hearings in all cases to be appropriate. On the contrary, requiring hearings in every case may overburden the Court, jeopardising its efficiency and capacity to address its constitutional mandate in a timely manner.[76]

Timeframe for Dispute Adjudication

169. According to Article 5(1) of the draft LPCC, unless otherwise provided by this law, the Court shall adjudicate disputes within 90 days from the date of initiation. In its previous opinions the Venice Commission welcomed the extension of the time limit from 30 days to 90 days.[77] However, it would be advisable to consider whether the strict timetables for every step of the procedure are helpful. Due to the specific role of the Constitutional Court especially in politically sensitive cases a more flexible timetable might be more beneficial for finding ways to avoid crisis on the level of the state. This timeframe will need to be reconsidered once individual applications start being received in big numbers.

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[73] Venice Commission, CDL-AD(2011)040, Türkiye, Opinion on the law on the establishment and rules of procedure of the Constitutional Court, para. 67.
[74] Venice Commission, CDL-AD(2014)026, North Macedonia - Opinion on the Seven Amendments to the Constitution concerning, in particular, the Judicial Council, the Competence of the Constitutional Court and Special Financial Zones, para. 87.
[75] Venice Commission, CDL-AD(2014)017, Tajikistan - Opinion on the Draft Constitutional Law on the Constitutional Court, para. 36.
[76] Venice Commission ,CDL-AD(2021)001, Revised report on individual access to Constitutional justice, para. 126.
[77] Venice Commission, CDL-AD(2013)014, Ukraine - Opinion on the draft Law on the amendments to the Constitution, strengthening the independence of judges (including an explanatory note and a comparative table) and on the changes to the Constitution proposed by the Constitutional Assembly, paras. 117-118.

IV. Conclusion

170. By letter of 21 March 2025, Mr Bayasgalan Gungaa, Chief Justice of the Constitutional Court of Mongolia, requested an opinion of the Venice Commission on the draft law on the Constitutional Court (Tsets), and the draft law on the Procedure of the Constitutional Court of Mongolia.

171. The Venice Commission notes with appreciation that both draft laws represent a step forward, as they seek to further clarify, operationalise, and implement the constitutional provisions governing the Constitutional Court. The Commission encourages the reform process concerning the Tsets, as presented in the draft laws and discussed extensively during the delegation's meetings with stakeholders in Ulaanbaatar. These reforms may be further refined by the working group, taking into account, inter alia, the recommendations set out in the present Opinion.

172. The Commission also observes that the reform efforts are guided by two key and commendable objectives: strengthening the institutional independence of the Tsets and ensuring broader access to constitutional justice for individuals. Taken as a whole, the proposed reforms aim to consolidate the identity of the Tsets as a fully-fledged Constitutional Court, better equipped to uphold the Constitution and, in particular, to ensure the effective protection of constitutional fundamental rights.

173. Apart from the important need to clarify the appropriate level of regulation of the activities of the Tsets - particularly the distinction between matters to be addressed in statutory law and those to be governed by the Rules of Procedure - the Venice Commission notes, as a general observation, that merging the two draft laws into a single legal act could, in principle, reduce redundancy, prevent interpretative inconsistencies, and minimise potential normative conflicts. Nevertheless, given Mongolia's established legislative tradition of maintaining separate legal instruments for such matters, the Commission does not recommend consolidating the two texts at this stage.

174. The Venice Commission offers a number of recommendations aimed at further enhancing the draft laws, thereby bringing them even closer into conformity with international standards. In particular, the Commission makes the following key recommendations:

Regarding the draft law on the Constitutional Court

- The Rules of Procedure should be explicitly listed among the normative instruments governing the functioning of the Constitutional Court.

- As regards the final nomination of all candidate judges by the Great State Khural, while recognising that a broader reform would require constitutional amendments, the Commission recommends clarifying the nomination and appointment process and ensuring transparency. Furthermore, consideration could be given to extending the duration of judicial mandates to a non-renewable term of nine years in the context of any future constitutional reform. The law should introduce an explicit safeguard to ensure that a Justice may continue to exercise his or her functions after the expiration of the term until the successor has been duly appointed and has taken office.

- The Venice Commission recommends that the law include a clearly defined and detailed list of qualifying legal professions for candidates to the Constitutional Court, along with a minimum threshold of relevant professional legal experience. In relation to criminal records, a more nuanced approach is recommended - minor, unintentional, or negligent offences, particularly those where the statute of limitations has expired, should not automatically disqualify a candidate.

- The terms used regarding the political activity - such as “participation in political party activities,” “movements,” and “non-governmental organisations affiliated with political parties” - should be clarified. Any exceptions allowing engagement in political activities by judges should be regulated directly within the law on the Constitutional Court.

- As regards the liability, a comprehensive legislative framework on disciplinary liability should be introduced, with a clear distinction between prohibited actions that may give rise to disciplinary proceedings. Suspension or dismissal should only follow convictions for offences of a nature and gravity incompatible with judicial office. Judges should not participate in deliberations or decisions concerning their own suspension or removal.

Regarding the draft law on the Procedure of the Constitutional Court

- The Commission recommends reassessing the division between matters regulated by legislation and those governed by internal rules, to ensure a proper balance between legal certainty and institutional autonomy.

- To guarantee effective legal representation, the law should allow up to three or four representatives for petitioners during case examination. While the possibility for a judge with a potential conflict of interest to remain on the case may align with international standards, it should be applied with great caution and only in exceptional circumstances. Furthermore, the law should provide a limited and clearly defined set of additional grounds for suspending case examination.

- Provisions on the State Great Khural’s ability not to accept the Court’s conclusion in the first round should be interpreted and applied in a way that safeguards the Constitutional Court’s authority as the arbiter of constitutional matters and prevents political interference.

- The constitutional and legislative framework should expressly recognise the Constitutional Court’s discretionary power to accept or decline *actio popularis* submissions. The one-year deadline for such submissions should be reconsidered to ensure practical access to constitutional review.

- Concerning individual complaints for the protection of fundamental rights, the Commission recommends: (i) interpreting the Court’s ex officio authority as applicable only to *actio popularis*; (ii) establishing robust filtering mechanisms to manage the caseload; (iii) ensuring a clear division of competence between the Constitutional Court and ordinary courts; and (iv) considering the delayed entry into force of the individual complaint mechanism to ensure adequate institutional preparation.

- Regarding the review of international treaties, the relevant constitutional provisions should be interpreted to allow for *a priori* review before ratification.

- The law should provide clear and objective criteria for determining what constitutes “public interest” when continuing a case after the applicant’s withdrawal. Furthermore, final decisions of the Constitutional Court should be signed by the Chief Justice and the Chief Registrar, or by the judge of the majority if the Chief Justice dissents.

175. In addition, the Commission recommends: including provisions to promote gender balance within the Constitutional Court; specifying the institutional addressees (e.g., Parliament, Government) to whom the Court may submit legislative improvement proposals; clarifying that the term “citizen” includes both natural and legal persons for the purpose of submitting individual complaints; reconsidering the necessity of mandatory oral hearings in all cases, and

reconsidering the imposition of strict procedural deadlines throughout the constitutional review process.

176. The Venice Commission remains at the disposal of the Mongolian authorities for further assistance in this matter.