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ON

**"CONSTITUTIONAL CONTROL BODIES
IN THE INTEGRATION OF LEGAL SYSTEMS:
THE INTERNATIONAL EXPERIENCE AND PRACTICE
IN TAJIKISTAN"**

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REPORT

**“BODIES OF CONSTITUTIONAL CONTROL IN THE CONDITIONS
OF INTEGRATION OF THE LEGAL SYSTEMS:
THE INTERNATIONAL EXPERIENCE AND PRACTICE
OF MONGOLIA“**

by

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**Statement by Chairman of the Constitutional Court of Mongolia
Dr. Prof. J. Byambadorj**

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Esteemed ladies and gentlemen,

The issue of effective monitoring of the Constitution is one of the main guarantees of its implementation. Experience in creating specialized courts involved with Constitutional dispute resolution is part of the modern history of mankind.

The world's first Constitutional Court was established in 1920 in Austria, and continues its activities to this date, serving as an example for other countries. Independent courts resolving constitutional disputes were created in 1947 in Burma and Italy, in 1949 in Germany, in 1950 in Syria and Luxembourg, in 1952 in Uruguay, in 1960 in Cyprus, in 1961 in Turkey, in 1963 in Algeria and Yugoslavia, in 1968 in Greece, in 1976 in Portugal, in 1978 in Spain, and later in Colombia, Chile, Iraq, South Korea, Angola, Egypt, Mali, Ethiopia etc. Scholars believe that while the twentieth century was the century of constitutional order, the twenty-first century will be the century of constitutional courts. Today constitutional courts and equivalent bodies are established in most countries. They find effective forms of collaboration to perfect their activities and share experiences. Among this are the conference of judges of constitutional courts of European and Asian countries, the world congress on Constitutional Justice and annual regional meetings of constitutional courts.

Establishment of the Constitutional Court became a phenomenon of a new society in our country. In 1990, the People's Great Hural of the Mongolian People's Republic approved the Law on the amendment of the 1960 Constitution, fundamentally changing the system of state structure. Although the amended constitution provided for a first time, the establishment of the Constitutional Council, the establishment of the Constitutional Council was not realized, and in 1992 a new Constitution was adopted. The reason why such Constitutional Court was not established was because such organization as the Constitutional Court or the supervisory board never existed in the history of the Mongolian government, and members of the People's Great Hural as well as the leaders of state organizations of the time, did not have a deep understanding of such a specialized court and did not fully appreciate the importance of this public institution.

The new Constitution, which became the foundation of a constitutional state and guaranteed the transition of Mongolia to a new democratic stage, as in the example of other countries, provides for an establishment of an independent constitutional court called the Constitutional Court (*Tsets*) the competence of which includes protection of the Constitution and oversight of its execution. This has led to the establishment, for the first time in the Mongolian political structure, of a permanent independent court, the sole function of which is supreme supervision of the implementation of the Constitution, and constitutional dispute resolution.

Following the entry into force of the approved Constitution, the State Small Hural, the permanent parliament of that time approved on the 8th of May 1992 the law on the Constitutional Court, and on the 1st of June of the same year appointed the first members of the Constitutional Court. From then on begins the history of our court *Tsets* which translates as the wise judge.

It is not a coincidence that the last two chapters of the Constitution of Mongolia are about constitutional control and regulations for making amendments to the Constitution, thereby providing a legal guarantee for the implementation of the Constitution and its provisions.

The fifth chapter of the Constitution specifically identifies the Constitutional Court as a specialized court. According to paragraph 1 of Article 64 of the Constitution "The Constitutional Court shall be an organ exercising supreme supervision over the implementation of the Constitution, making judgment on the violation of its provisions and resolving constitutional disputes. It shall be the guarantee for the strict observance of the Constitution." It is clear that the Constitutional Court of Mongolia is a specialized court with the following features:

1. The Constitutional Court of Mongolia shall exercise the highest supervision over the implementation of the Constitution, and resolving disputes about violation of its provisions. This judicial power is not given to any other court.

2. Paragraph 1 of Article 65 indicates procedures related to the appointment of judges of the Constitutional Court and their authorized period and declares that "The Constitutional court shall consist of 9 members. Members of the Constitutional court shall be appointed by the State Great Hural for a term of six years upon the nomination of three of them by the State Great Hural, three by the President and the remaining three by the Supreme Court." This indicates that the Constitutional Court is a specialized court and its members have their own unique characteristics. We also see the roots of the principle of separation of powers. In other words, in the formation of the Constitutional Court and appointment of its members are involved the State Great Hural--the legislative branch, the President of Mongolia--representing the executive branch and the Supreme Court--the judiciary branch by each proposing candidates for appointment as a member of the court. But this does not mean the designated members will be accountable to those same authorities.

3. The Constitutional court will only resolves disputes predicated by the Constitution. The Constitutional Court reviews and makes a final decision on the constitutionality of laws, decrees and other decisions of the State Great Hural and the President, as well as Government decisions and international treaties of Mongolia, decisions of the Central Election Authority regarding a national referendum, elections to the State Great Hural and its members, and presidential elections. The Constitutional Court also reviews disputes relating to Constitutional violations by the President, the Speaker and members of the State Great Hural, the Prime Minister, cabinet members, the Chief Justice of the Supreme Court and the Attorney General.

If actions or decisions of other officials and government bodies do not conform to the Constitution, they are considered by the administrative court, and in some cases, criminal or civil courts.

4. Procedures for dealing with disputes in the Constitutional court have several features that represent political and legal consequences as opposed to ordinary courts. The Constitutional Court plays an important role in balancing of state powers. The most important principle of state structure of a democratic society is to create a legal environment and mechanisms for its implementation for activities of state bodies on the basis of mutual dependence and mutual checks and balances. If acts approved by the Parliament, President, Government, as well as actions by state high officials do not comply with the Constitution, the Constitutional Court demonstrates the existence of such violations for the abolition of these acts and provides grounds for dismissal of authorities from their posts. This is the basic mechanism of limiting the powers of public institutions by the judiciary, and balancing of the separation of powers. Constitutional Court judges must be highly qualified in the legal field. The Constitution states that "A member of the Constitutional court shall be a Mongolian citizen who has reached forty years of age and has high political and legal qualifications." These are of course in addition to all the requirements that judges ordinary courts must meet, as well as knowledge of intricacies of political activities and expert political skills. If we compare age requirement, members of the Constitutional Court must be five years older than judges of the Supreme Court and fifteen years older than the members of the State Great Hural. A member of the Constitutional Court shall be a person with extensive experience in public service, with deep theoretical knowledge, one who has achieved a certain position in the society.

It can be said that the Constitutional Court is a court, which has the right to give an official interpretation of the Constitution. The proof of this can be seen in the provision of paragraph 4 of Article 66 of the Constitution which declares that, "If the Constitutional Tsets decides that the laws, decrees and other decisions of the State Great Hural and the President as well as Government decisions and international treaties concluded by Mongolia are incongruous with the Constitution, the laws, decrees, instruments of ratification and decisions in questions shall be considered invalid," and in the fact that the State Great Hural, upon adoption of the Court's conclusion, abolishes such constitutional violation.

Ladies and gentlemen,

The Constitutional Court of Mongolia occupies its rightful place in the state structure. It was no accident that the first state constitutional body, established under the new Constitution was the Constitutional Court (Tsets), which from the beginning has been entrusted with the duty of supervising actions of the State Great Hural and the Government which were to be formed later on, as well as the actions of the President, and to ensure that laws, decrees, decisions and resolutions adopted by them strictly adhere to the spirit and letters of the Constitution.

Despite the crisis of transition, lack of funds and resources, Mongolia was still able to create the Constitutional Court, and took many important steps to enable the Court to carry out its functions under the Constitution. Over the past 18 years, the Constitutional Court (Tsets) of Mongolia continues to fulfill its obligations under the law and not only achieved an appropriate place in the structure of the democratic state, but is also recognized in the society, among the population, which previously had an insufficient and vague understanding of the Constitutional Court. The public attitude toward the Constitutional Court has now changed to the positive side, and the number of applications and complaints filed with the Court is increasing with each year.

The Constitutional Court shall conduct its activities in accordance with the Constitution, the Law on the Constitutional Court adopted in 1992, and the Law on the Order of Dispute Review in the Constitutional Court adopted in 1997. It is especially important to determine whether a specific dispute should be addressed to and reviewed by the Constitutional Court. Constitutional violations occur not only on all levels of government organizations, but also in enterprises, non-governmental organizations and among citizens. It is not possible for the Constitutional Court alone to review and resolve all these cases.

Above I mentioned disputes that are reviewed by the Constitutional Court. The new Constitution makes specific distinction of cases to be reviewed by different courts, such as administrative, criminal or civil courts, if actions and decisions of a government agency and their officials do not comply with the Constitution and other legal acts. It is believed that this corresponds to today's reality.

The Constitutional Tsets reviews and decides upon disputes related to Constitutional violations by the President, the Speaker and members of the State Great Hural, the Prime Minister, cabinet members, the Chief Justice of the Supreme Court and the Attorney General, and whether there is reason for resignation of the President, Speaker of the State Great Hural, Prime Minister, and recall of members of the State Great Hural. The decision of the Constitutional Court is then sent to State Great Hural for review and decision. The State Great Hural shall not discuss the correctness of the Court's decision, but should discuss and resolve the issue of senior officials who have violated the Constitution. Unfortunately The State Great Hural has never removed from office officials, whom the Constitutional Court had deemed to have violated the Constitution and put forward the issue of their recall. In 2008, at the request of some citizens, the Constitutional Court reviewed a dispute regarding Constitutional violations by the Speaker of the State Great Hural, and breach of the

Parliament's authority. The Constitutional Court ruled that there are grounds for the Speaker's dismissal and submitted the decision to the State Great Hural.

The Constitutional Court examines and settles disputes regarding Constitutional violations on its own initiative based on statements and messages from citizens, or at the request of the State Great Hural, President, Prime Minister, the Supreme Court and the Attorney General. In other words, the Constitution strictly specified initiators that may apply to initiate cases on constitutional litigation.

Due to the fact that the Constitutional Court is a judicial authority and in accordance with the universal principle, judges of the Constitutional Court are forbidden by law to examine constitutional disputes on their own initiative in order to ensure their independence. Unlike constitutional courts of some countries, the right to appeal to the Constitutional Court of Mongolia with a statement or request is granted not only to citizens of Mongolia, but also foreign citizens and stateless persons legally residing in Mongolia. Every person, every official may apply to the Constitutional Court as a citizen. In some instances, members of the State Great Hural who became the minority in adopting a law have appealed to the Constitutional Court in the capacity of a citizen in order to defend their opinions.

In a country with a vast territory and under-developed transport and communication networks, citizens living in remote areas rarely appeal to the Constitutional Court compared to citizens of the capital. There is a need to find ways to provide citizens living in remote areas with the same opportunities as residents of the capital.

Two years ago, I criticized the fact that since the establishment of the Constitutional Court there has not been a single case raised by the President, the State Great Hural, the Prime Minister, the Supreme Court or the Attorney General to the Constitutional Court. Since then, the Supreme Court (on several occasions) and the Attorney General have made requests to the Constitutional Court to review Constitution violations, and proceedings were initiated. Official authorities may not only be involved as parties to disputes, they also have a duty to monitor compliance with the Constitution. The President of Mongolia has the right to veto laws and other resolutions approved by the State Great Hural. There are many cases where the State Great Hural does not accept the President's veto. In such cases, the next option is for the President to appeal to the Constitutional Court with a request.

Ordinary courts apply laws on a daily basis upon hearing cases, and often they are the first ones faced with a violation of the Constitution. Paragraph 3 of Article 50 of the Constitution states that "The Supreme Court and other courts shall have no right to apply laws that are unconstitutional." This article obliges the Supreme Court to identify for invalidation constitutional violations at once.

The Constitutional Court may exercise supreme supervision of the compliance with the Constitution only if it can operate independently from anyone. The second paragraph of Article 64 of the Constitution states that in the execution of their duties the Constitutional Tsets and its members shall be guided by the Constitution only and shall be independent of any organizations, officials or anybody else. Such independence is determined by the appointment of its members, the size of their salaries, the authority to resolve constitutional disputes and conditions to be free from any outside pressure. It must be noted that although these safeguards are well supported by legislation, economic guarantees for the Constitutional Court activities and its members are less than satisfactory due to the current economic situation of our country.

Thank you for your attention.