"LEGAL EDUCATION" ACADEMY

HANNS SEIDEL FOUNDATION

"ASSESSMENT OF THE IMPACT OF IMPLEMENTATION OF THE GENERAL ADMINISTRATIVE CODE"

Summary of final Conclusions and Recommandations

Ulaanbaatar
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ASSESSMENT OF THE IMPACT OF IMPLEMENTATION OF SOME PROVISIONS OF PARTS I, II, III, IV, V, VI, VIII, IX AND X OF THE GENERAL ADMINISTRATIVE CODE

Ulaanbaatar 21 June 2018

It is just over two years since the commencement of the General Administrative Code *(GAC)*, bringing the activities of administrative bodies in Mongolia together under a common set of standards from 1 July 2016 after its adoption on 19 June 2015.

During this period it has been observed that administrative bodies and administrative courts encountered certain issues in consistent and correct implementation and application of the Code in practice.

The purpose of this study, therefore, is to look into the status of implementation of certain provisions of the Code and the impact thereof, and offer suggestions and conclusions for further improvement.

Objectives of the study:

- To ascertain whether the certain provisions of Part 10 of the GAC *(except Part 7 that regulates matters pertinent to planning)* achieve the objectives originally set out in the Code, the state of their implementation in practice as well as the state of recognition, and to determine whether other unforeseen consequences and impacts have arisen; and

- To identify future possible consequences and impacts of the Code, and provide relevant suggestions and conclusions for improvements of the legislation.

The processes of the study:

Subsection 51.3 of the Legislation Act of Mongolia *(enactment in 2015 and commencement on 1 July 2017)* provides that "… unless otherwise stipulated in law, the impact of implementation of a piece of legislation will be assessed every five (5) years after its commencement, or earlier where necessary". In addition, pursuant to the "Principal Areas of Mongolian Legislation subject to Improvement until 2020" approved by Parliament in early 2017, the GAC is due to be amended and updated in 2018.

We assessed the impact of implementation of the GAC, jointly with the Ministry of Justice and Home Affairs, in three phases – Planning, Implementation and Assessment – by applying, in general, the "Guidelines for Impact Assessment of Implementation of Legislation" approved by Annex 6 to Government Resolution No. 59 dated 2016.

For the purpose of defining the scope of the study, we organised five discussion sessions with judges from the Capital City's Administrative Courts of First Instance and Appeal in December 2017, with representatives from the Cabinet Secretariat of the Government and the Citizens' Assembly and the Administrative Office of the Capital City and thirteen ministries on 25 January 2018, with representatives from 27 implementing and regulatory agencies of the Government, the Energy Regulatory Commission, the Communications Regulatory Commission, the Task Force of the Nuclear Energy Commission, the National Council for

Social Security and the Regulatory Council for Urban Water Supply, Sanitation and Sewerage Services on 2 February and with representatives from the bodies established by Parliament on 9 February, respectively. Analysis of the notes and feedback from these discussions helped identify the parts, sections and subsections to be covered in the assessment of the GAC and formulation of corresponding criteria.

The team members were divided into three groups to assess the impact of implementation of thirty-eight sections, in total, of ten parts of the GAC except Part 7 that regulates planning.

The methods we used in the study included legal comparison within the scope of the study, research into judicial practice, discussions with employees of the relevant bodies and organisations, analysis of reports and statistical data, and collection of information from private individuals through enquiries, questionnaires and interviews. The team members conducted studies working in the Capital City, Sukhbaatar and Orkhon provinces, and Teshig soum in Bulgan province between March and June 2018.

Structure of the assessment report:

1. Introduction
2. Report on the assessment of some provisions of Parts 1, 2, 4 and 10 of the GAC
3. Report on the assessment of some provisions of Parts 3, 6 and 11 of the GAC
4. Report on the assessment of some provisions of Parts 5, 8 and 9 of the GAC
5. Final conclusions and recommendations.

Annexes:

- Annexes 1–20 to the Report on the assessment of some provisions of Parts 1, 2, 4 and 10 of the GAC
- Annexes 1–5 to the Report on the assessment of some provisions of Parts 3, 6 and 11 of the GAC
- Annexes 1–4 to the Report on the assessment of some provisions of Parts 5, 8 and 9 of the GAC.

Academy of Legal Education

The Mongolia Office of the Hanns Seidel Foundation

SUMMARY OF
FINAL CONCLUSIONS AND RECOMMENDATIONS[1]

Part 1 of the General Administrative Code:

The purpose of this study is to evaluate the implementation in practice of subsections 3.1.4, 3.1.7, 4.2.6 and 4.2.8 selected from Part 1 within the scope hereof, and to issue conclusions. Consequently, we offer the following conclusions according to the criteria set out for this evaluation.

- *Under the "state of recognition" criterion:*

The General Administrative Code *(GAC)* stipulates that contravention proceedings are not administrative processes. The Administrative Procedure Code *(APC)* states that such disputes do not fall within the jurisdiction of administrative courts. However, as set out in the Contravention Proceedings Act, if a decision made by an authorised official imposing a sanction is disputed, a complaint can be lodged and decided in accordance with the procedures under the APC. These substantially conflict with one another.

- *Under the "implementation in practice" criterion*:

1. The Administrative Court of Appeal submitted to the Supreme Court of Mongolia draft amendments for review as to whether it is in violation of the Constitution to legislate that the GAC should not apply to contravention proceedings and further that rulings, except those resulting from such proceedings, constitute regulatory acts. The Supreme Court has requested that the Constitutional Court look at this. Accordingly, all contravention proceedings instigated in the Capital City's Administrative Court of First Instance have been suspended until the Constitutional Court issues a final ruling on the matter. In other words, no contravention cases can currently be decided by an administrative court, and are on hold.

2. The current judicial practice in this country is that the Administrative Court did not, in each case, clearly distinguish the political and policy activities of administrative bodies from those of an administrative nature, resulting in three instances of rulings being made without reaching a conclusion on whether a disputed decision was of a political and policy nature. This indicates the need for consistent understanding and interpretation of the relevant subsection of the GAC in judicial practice.

3. Since the GAC took effect, there were 34 occasions where cases were decided on the basis of the provision of the GAC which stipulates that "those whose rights and/or legitimate interests will be affected by an administrative ruling must be notified in advance and their participation enabled".[2] As the study revealed, in most occasions the legal opinion was that administrative bodies failed to apply this principle of notice set out in the GAC. This means that the aforementioned principle is not in full compliance on the part of administrative

[1] Please see Part 5 of the Assessment Report for the final conclusions and recommendations in full.
[2] Cases were searched for in the electronic database of judgments, T.M.

bodies.

4. Since the GAC took effect, only one case was decided on the basis of the principle of protecting legitimate expectations set out in the GAC. Therefore, there is insufficient material from which a conclusion could be reached in respect of the implementation of this provision in practice.

Part 2 of the GAC:

Within the scope of the study to assess the consequences of implementation, we selected the provisions relating to "all central and local bodies that exercise executive power of the state", "municipal self-governments and those entities whose decisions and activities are subject to complaints lodged with the administrative courts, as specifically set out in law", and "administrative bodies assigning their administrative functions specifically set out in law to others", and aimed to evaluate and produce conclusions about the implementation in practice of these provisions, and also whether the provisions achieved the objectives stipulated in the Code.

- *Under the "achieving the objectives" criterion:*

The GAC stipulates which bodies are included in "the administrative bodies that exercise executive power within the scope of public law" in setting out its purpose. When defining administrative bodies, the Code tries to avoid the "exhaustive citing" principle which was applied in the previous APC 2002, as much as possible. However, the current Code, as a whole, could not be said to have applied the general stipulation principle. We conclude that although the GAC does not apply the general stipulation principle in full, it achieved the objective to provide a definition for administrative bodies.

- *Under the "implementation in practice" criterion:*

One. The GAC stipulates that "all central and local bodies that exercise executive power of the state" are referred to as administrative bodies; it should be noted that the term "the highest or central state administrative body" is not used here, but rather the wide formulation "the central bodies that exercise executive power of the state". From the concepts applied by the law drafters and legislators and the purpose of the Code as well as in theoretical and methodical aspects of interpreting legal norms, it is clear that "the central bodies that exercise executive power of the state" include the Government of Mongolia, ministries and agencies. In practice, both lawyers and administrative court judges have understood and applied this provision without any ambiguity and without dispute. Twenty-one cases against the Government of Mongolia as a defendant were decided by administrative courts since 1 July 2016[3].

Government activities are split into two classifications – policy and administrative. If the lawful rights and/or legitimate interests of a private individual and/or legal entity have been violated due to the Government's administrative activities, an ordinary court *(in a jurisdiction which has one, a specialist administrative court)* should restore such infringed rights. The

[3] Judgments publicly available in the electronic database have been collected and studied. The current report "Government decisions being subject to judicial supervision: Issues with jurisdiction of the Constitutional Court and ordinary courts" produced by the Judicial Research, Information and Training Institute of the General Judicial Council makes mention of 35 cases https://drive.google.com/file/d/19bHUidJ0OQi4QiG_7gOhLOKErYzjlCsn/view.

Government of Mongolia has a wide legal remit to make decisions which directly affect private individuals and legal entities and have legal consequences. In particular, out of 106 randomly selected decisions made by the Government in 2017, 8.55% or nine are regulatory acts, and 42.4% i.e. 45 are normative statutory acts.

It is the case that where the lawful rights and/or legitimate interests of a private individual and/or legal entity have been violated due to the Government's decision or administrative activity, the administrative and civil courts will resolve such disputes according to their respective jurisdiction. If none of the courts hears the dispute, the Constitutional Court will determine and assign jurisdiction to one of the courts.

Two. The Constitutional Court did not allow instigation of a case with respect to demand for information raised by private individuals whose rights are deemed by the President of Mongolia to have been infringed. However, there was an instance where the Administrative Chamber of the Supreme Court was assigned jurisdiction in a complaint for determination of jurisdiction in a dispute which had not been heard by any court.

Three. The GAC clearly refers to "municipal self-governments" i.e. Citizens' Assemblies of provinces, the Capital City, soums and districts, and Citizens' General Meetings of baghs and subdistricts as administrative bodies. The APC 2002 also legalised the same substance. This provision has been understood and applied in judicial practice without any ambiguity and without dispute. This is the case now, as established from a study of judgments.

Subsection 5.1.5 of the GAC specifically identified Citizens' Assemblies of provinces, the Capital City, soums and districts, and Citizens' General Meetings of baghs and subdistricts as administrative bodies. Administrative activities of municipal self-governments are subject to supervision by administrative courts.

Implementation in practice of subsection 8.1 of this Part which stipulates that "Unless provided for in law, administrative bodies are prohibited from assigning to others their mandates specifically set out in law" is deficient. Thus, it is important to clearly provide in substantive laws for instances when mandates can be assigned to others.

Part 3 of the GAC:

Of the various forms of administrative activities specified in subsection 11.3 of the GAC, regulatory acts are mainly used. Administrative bodies do not understand the content of subsection 11.4 of the GAC; thus, we reached a conclusion that provisions of this subsection are not being implemented.

We interviewed researchers and judges about the formulation specified in law with regard to persons at whom the effect of a regulatory act or an administrative contract stipulated in subsection 13.1 of the GAC is directly or indirectly aimed. The most of them considered it to be appropriate.

However, the question as to who will be included received various answers; private individuals responded that they did not understand the formulation. Therefore, we consider that this provision is defective under the criterion of achieving the objectives. With regard to the state of recognition, results from the questionnaire taken by individuals demonstrate that 46.7% participated in the decision-making process of an administrative body one way or

other. Of the remaining 52%, 20% said that they did not participate because of unawareness of their "rights to participate" and 30% were "not sure". This suggests that information about their right to participation in decision-making processes is inadequate.

Application of subsections 24.1 and 24.5 of the GAC are ineffective in terms of the implementation in practice criterion. The understanding of evidentiary documents pertinent to decision-making processes is poor; in particular, users do not understand the evaluation of evidence using the methods based on research, calculation and analysis.

Section 25 of the GAC – Administrative bodies are inefficient in the gathering and evaluation of evidence in accordance with the Code.

Fourteen bodies participating in the study had commenced a hearing process as stipulated in sections 26, 27 and 28 of the GAC. However, during the study it was observed that such processes were not conducted in accordance with the procedures and requirements set out in the Code. Although we conclude that it is sufficient in terms of achieving the objectives criterion, it is inadequate in respect of implementation in practice.

According to the study, the ones that maintain dossiers for administrative rulings and accompanying checklists in conformity with the procedures set out in section 29 of the GAC are the administrative office of the Capital City's Governor and the administrative office of Songginokhairkhan district. When considering the criterion of achieving the objectives, as administrative bodies and judges support the maintenance of dossier sets, we concluded that it was sufficient. However, we consider it insufficient in terms of the implementation in practice criterion.

Recommendations:

- *Provisions which have not been implemented at all*
  - The provisions for conducting a hearing process where a disabled person is to participate in administrative proceedings have not been implemented. It can be concluded that this was not because of inarticulateness or unenforceability but due to lack of initative and willingness to implement on the part of administrative bodies.
  - Subsection 11.4 which stipulates that "If it is impossible to choose and apply any of the forms of activities set out in the Code, administrative bodies shall autonomously choose an alternative form of administrative proceedings" is one of the provisions that are not implemented, due to inarticulateness of the substance and formulation thereof. Administrative bodies suggest that an explanation defining which activities are included is needed.
  - It is necessary to change the formulation "directly or indirectly" stipulated in subsection 13.1 of the Code.
  - Training should be organised for officials and officers on establishing of circumstances and gathering evidence under sections 24 and 25 of the GAC.

With regard to the provisions being implemented, private individuals need to be given systematic information about the GAC, and on the other hand, detailed sample procedures for

hearing processes should be adopted by the Government. We predict that an improvement in implementation of the provisions in sections 103 and 105 of the GAC could influence compliance with this Part.

Part 4 of the GAC:

The additional provisions included in the GAC pursuant to the Contraventions Act affect the purpose of the GAC, with the consequence that the Code, the Contraventions Act and the Contravention Proceedings Act are rendered incompatible with one another, and are unenforceable in judicial practice. This makes it necessary to change the relevant provisions of the Code.

When searching the database of judgments at shuukh.mn during the study, there has been no court ruling or regulatory act issued applying subsection 37.7 of the GAC. This subsection does not need any change for further clarification, but it should be explained with examples for better understanding and elucidation.

Administrative bodies must clearly state the actual circumstances in regulatory acts they pass in writing *(subsection 40.4 of the GAC)* and this subsection has been consistently implemented by administrative bodies in practice.

With regard to invalidating a regulatory act on the grounds of failure to meet the notice requirement as set out in the GAC *(section 43)*, the courts of higher instance are of the opinion and explained that as this requirement is merely of a form, it is of no value in invalidating an act on such grounds. Although parties to cases do refer to a failure to meet the requirement to give notice, the court invalidated a regulatory act on these grounds in one case only. The study revealed that going forward administrative bodies must give notice of a regulatory act pursuant to the purpose and concepts of the GAC, and consistent implementation of the Code should be ensured.

Although some bodies pay attention to the notification process, adopt appropriate procedures, approve a sample notice form and ensure compliance therewith, this is not enough. Therefore, it is necessary for the court to create consistent understanding and establish integrated practice regarding conformity of this section with the purpose of the Code and how to apply the specific principle of the GAC in cohesion with the regulation, to enter changes relating to invalidation of a regulatory act on the grounds of failure to meet the notice requirement, and to explain possibilities for administrative bodies to adopt detailed procedures for notification.

The grounds for judgments, notes of discussions held among judges, and the results of training organised for administrative court judges demonstrate that the over-generalised formulation of subsection 47.1.6 of the GAC which stipulates that “A regulatory act is manifestly void … if there was lack of grounds stipulated in law for impinging on the rights and legitimate interests of a private individual or legal entity” resulted in circumstances non-conformant with the fundamental concepts and purpose of the Code to which errors of breaching the principle based on law are included. Thus, amendments should be made to this subsection making it conformant with the purpose of the Code.

It is not necessary to make changes to this subsection since it is seen to be doable that the purpose and concepts of the provisions of the GAC relating to invalidation of unlawful regulatory acts are explained to administrative bodies, judges and private individuals, and it is consistently understood and applied by courts and common practice is established.

The study revealed that administrative bodies do not consistently understand the provisions in the GAC relating to revocation of regulatory acts, free from a legal wrong, and re-conduct the process of issuing a regulatory act. Thus, these also need to be explained and promoted. There is no need to make changes to the Code for this effect.

It is around two years only since public adherence to the GAC. As such, it is, in effect, a new law in Mongolia. Thus, attention should be paid to some of its provisions. Especially those regulations requiring a theoretical understanding need proper explanation.

Part 5 of the GAC:

Analysis of the rights to enter into administrative contracts legislated for in Mongolian law demonstrates that such contracts have been concluded on matters including state services, health, environmental protection, land management, social welfare and insurance within the scope of provisions of the GAC relating to administrative bodies assigning some of their functions and powers to others.

In final conclusion, the legislating of administrative contracts is highly significant; in practice, although administrative bodies implement their functions through such contracts, it is only in a few that the provisions of the GAC regarding those contracts are "used". Furthermore, it is too soon to determine the level of the Code's provisions for administrative contracts achieved the objectives. In order to determine the level, there have to be disputes concerning such contracts, signed after the Code took effect, and decided by a court. It will be possible to determine the extent of the objectives achieved based on the Code's provisions when they are applied in such contracts, and whether the contracts conform to the provisions of the Code.

Enabling administrative bodies to understand the application of the administrative contract-related provisions stipulated in the GAC in specific contracts *(at the minimum, which meet the requirements)* is a pressing need. However, it is unnecessary to make amendments to or invalidate those provisions.

Part 6 of the GAC:

The Constitution of Mongolia *(subsection 62.2)* differentiates the powers vested in Citizens' Assemblies between the authorisation to independently make decisions and the function assigned for decision-making. Therefore, within the scope of implementing the relevant provisions of the GAC, it is necessary to distinguish normative statutory acts issued by the Assemblies based on these two characteristics *(independent normative acts and normative statutory acts).*

There is a necessity to create a body as a unit under the Parliament that will register and supervise normative statutory acts approved by the Government as stipulated in the GAC, and, in connection with that, to invalidate the provisions in the Government Act regarding effectiveness of normative statutory acts.

It is necessary to give the Parliamentary unit the functions to register and monitor normative statutory acts issued by administrative bodies established by Parliament and also Citizens' Assemblies. A timescale should be set to register normative statutory acts within five (5) business days of issuance, differently at the Capital City and local levels.

If a body receiving a conclusion with regard to a normative statutory act it issued being in violation of the law revises the act and rectifies the violation and resubmits it for registration, there is a need to consider the specifics of Citizens' Assemblies.

The provisions for the Government to discuss conclusions received within the remit of its monitoring and registration activities, and based on that, to decide whether to invalidate the normative statutory act need to be checked as to whether the substances contradict and are also in contravention of other laws *(in particular, whether the Government is the proper authority that is allowed to invalidate decisions made by Citizens' Assemblies and independent entities established by Parliament).*

The provisions to invalidate decisions which have not taken effect need to be checked for errors in formulation or principle. With regard to other provisions, the reason for the insufficiency of their implementation can be concluded that it is associated with the failure of administrative bodies to fulfil their duties in law and certain irresponsible actions on their part.

Part 8 of the GAC:

The content of that Part in the GAC concerning enforcement of administrative rulings shows that because of procedures for enforcement of regulatory acts, among the types of administrative rulings stipulated in the Code, have more provisions, the enforcement of other administrative rulings specified in the Code, especially administrative contracts are largely left out.

Bodies participant in the study do not apply the Part of the GAC that regulates enforcement of administrative rulings, as clearly seen during meetings and interviews. It appears that administrative bodies, rather than applying such provisions, are often unaware of the availability of such provisions and possibilities. Because of this, there is a high probability that the conduct of enforcement of judgments processes under a body's internal procedures, or at an employee's discretion resulting in enforcement being deemed a violation of law at a later date.

Furthermore, as stipulated in the GAC, there are occasions where procedures not registered in the integrated registration of normative statutory acts are applied to enforcement of administrative rulings. Those procedures must be registered with the integrated registration, and kept updated subsequently. By doing so, a process of enforcement of a ruling on vacating a piece of land would be enabled to conform to the enforcement-related provisions of the GAC.

Provisions of the GAC with regard to the possibility of obtaining assistance from the police and specialist entities that enforce administrative rulings and have specifically granted rights, as well as other administrative bodies, do not contradict the provisions that regulate "the duty of administrative bodies to provide reciprocal assistance". Rather they complement each other.

Although the GAC stipulates that "If obligations are not fulfilled within the timescale stipulated in the notice, … [the administrative body responsible for the enforcement of administrative rulings] will pass a regulatory act ordering use of compulsion, and enforce the act immediately", but then a complaint may be made against such an act as provided for in the same section, which is contradictory. In other words, the provision to enforce the act

immediately could not be implemented. Therefore, in order to enable immediate enforcement, changes should be entered so that if it is considered that there was a violation in law or of the obligor's rights during the enforcement, a complaint could be made at a later date for restoration of the infringed rights.

Provisions in the Part of the GAC relating to enforcement of rulings are of such a nature that they determine procedures for enforcement of all types of administrative rulings generally. These should be made more specific by way of changes to the sections, which emphasise regulatory acts with this substance. Furthermore, if administrative bodies were to be provided with training and information regarding these provisions of the GAC which regulate enforcement of administrative rulings, that would facilitate implementation of the provisions and achieving the objectives of the enforcement-related regulations in the Code.

Part 9 of the GAC:

The procedures set out in the GAC for lodging complaints do not regulate matters relating to administrative contracts, but only to regulatory acts, and aim to establish procedures for resolving such complaints. There are no clear provisions for parties to a contract, especially, the other party opposite an administrative body, i.e. private individuals and legal entities having the right to make a complaint to the administrative body of higher instance which is the party to the contract.

In the event of a contractual dispute, the court will require a decision obtained under the preliminary proceedings, irrespective of whether the claim relates to a regulatory act or a contract[4]. Thus, it is necessary to include provisions in the GAC in respect of whether a requirement should be imposed to make a complaint relating to the contract under the preliminary proceedings.

The reason for the provisions in this Part of the GAC not fully achieving the objectives is that there are multiple parallel provisions and the insufficiency of personnel, budget and time for resolving complaints, etc. Furthermore, the overlapped provisions of the "Act on Procedures for Resolving Applications and Complaints lodged by Private Individuals with Regulatory Bodies and Public Officials" result in neutralising complaint procedures and unforeseen consequences, which in turn impact the implementation of the Code.

The said Act, which neutralises the provisions in this Part of the GAC, should be invalidated, considering that its obligations are discharged. The Part of the GAC regarding procedures for lodging complaints has no specific provisions for whether a requirement will be imposed to make a complaint relating to an administrative contract under the preliminary proceedings, and also the types of claims in complaints. Thus, we suggest making relevant changes differentiating them. Furthermore, it might be useful to include provisions in the GAC that only the bodies empowered to review and resolve complaints are entitled to resolve complaints, thereby assigning complaint procedure functions separately to the sectors in charge of the bodies and/or system, but without granting overlapping powers to higher instance bodies and officials within the main system of administrative bodies to review decisions made by lower instance bodies and officials.

[4] In judicial practice, subsection 54.1.3 of the Administrative Procedure Code is used only in relation to claims concerning regulatory acts, on the grounds that sections 92-94 of the General Administrative Code which provide for complaints solely concerning regulatory acts shall apply.

Part 10 of the GAC:

Although the Government recompenses for losses caused due to its wrongful actions as stipulated in the Civil Code, the GAC and other applicable Acts of Parliament, the implementation of the relevant laws about indemnifying the Government is nil. Those were not implemented at all, not only after the adoption of the GAC but also since the legal provisions in this regard were made in other laws.

Therefore, this issue must be regulated in detail; the matters must be regulated in an integrated manner, and include whether public servants will have personal liability; the losses caused due to errors and mistakes of its officials to be covered by the state; which losses are to be recovered from state officials; how to impose liability on a person at fault for losses caused by a body with joint management; whether the current structure is optimal whereby one of the state structures is in charge of recovering losses caused to the state from the person at fault; or this matter should be handled by non-government organisations.

The unavailability of solution for the issue with the state recovering losses further escalates cases where public servants cause losses to private individuals and legal entities by way of making irresponsible decisions. Thus, attention should be paid to the necessary implementation of processes where the state recovers losses from persons at fault and making it standard practice.

Some provisions of the GAC that regulate matters concerning losses and compensation conflict internally, as well as with other laws, and do not contain provisions sufficient for resolving certain cases that arise in practice. Thus, reciprocal cohesion between Acts of Parliament must be ensured.

A study of implementation of the Code in terms of recompensing private individuals and legal entities for losses caused through the lawful activities of administrative bodies revealed that this issue has no proper provision; the concept of “damage caused to a citizen or legal entity by a lawful activity of an administrative body” itself is unclear. There is no integrated calculation or study as to how such “damage caused to a citizen or legal entity by a lawful activity of an administrative body” was compensated for, since the commencement of the GAC. Therefore, we present to the lawmakers recommendations for improving the legal provisions and drafting relevant legislation.

Part 11 of the GAC:

Fourteen administrative bodies participating in the study have not made any ruling applying provisions of the GAC with regard to sanctions to be imposed on officials violating the law. Of 660 Acts of Parliament currently in force in Mongolia, 184 Acts have provisions for sanctions to be imposed on public servants. There are 145 Acts that cite the Public Office Act. The GAC provides for the imposition of a disciplinary sanction and an apology to be delivered in the event of an erroneous regulatory act.

These trigger questions about how different the disciplinary sanctions imposed on officials at fault are from the sanctions stipulated in the Public Office Act, and if they overlap how it should be regulated. Perhaps theoretical and methodical interpretation should be provided on these questions.

The provision of the GAC which stipulates that “The court will impose a sanction stipulated

in the relevant law on an official who failed to comply with a ruling of an administrative body or a court judgment" should be interpreted; if the court considers that it is necessary to impose a sanction on an official at fault, the sanction could take the form of an administrative sanction, i.e. imposition of a fine.

THE RESEARCH TEAM