



JUDICIAL DECISIONS **IN THE CONSTITUTIONAL COURT** **OF MONGOLIA**

THE CONSTITUTIONAL COURT OF MONGOLIA

DDC

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ISBN:

10 9 8 7 6 5 4 3 2 1

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Preface

Preface

CHAPTER ONE.

CONCLUSIONS



Conclusion of the Constitutional Court of Mongolia

1994.01.12
No 02
Ulaanbaatar

Adjudication on the constitutionality of certain provisions of the Law on the relationship between the State and the Monastery with the Constitution of Mongolia

Lamjav.D and others requested in their complaint, the conclusion on the consistency of the Law on the relationship between the State and the Monastery with the Constitution on the grounds of violation of article 16.15 regarding “freedom of conscience and religion”, article 18.5 stating “In allowing the foreign nationals and stateless persons under the jurisdiction of Mongolia to exercise the basic rights and freedoms provided for in Article 16 of this Constitution, the State of Mongolia may establish necessary restrictions upon the rights other than the inalienable rights spelt out in international instruments to which Mongolia is a Party”, article 14.2 stating “ No person shall be discriminated on the basis of ...religion...”, and article 10.3 of the Constitution stating “the international treaties to which Mongolia is a Party, shall become effective as domestic legislation upon the entry into force of the laws on their ratification or accession”. This proclaims the superiority of one religion over another, and discriminates against other religions, with the exception of Buddhism and Islam.

IN REVIEW:

It is the view that paragraph 6 of article 7, paragraph 2 of article 9 and paragraph 2 of article 12 of the Law on the Relationship between the State and the Monastery is not in conformity with

relevant provisions of the Constitution.

The provision that the cultivation, propaganda, and education of any religion, with the exception of Buddhism, Islam, and Shamanism are prohibited in Mongolia beyond the monasteries and churches of the respective religions, restricts the right of cultivation, propaganda, and education of any religious believers who have no monastery in Mongolia.

Provision concerning the official positions of the Heads of organizations of the respective religions shall be required in the establishment of the Buddhist monastery and Muslim mosque has the same meaning as the religious organizations being interfered with by the State.

The provision that foreign citizens and persons without nationality are prohibited from religious propaganda in Mongolia, unless this person comes to Mongolia under the auspices of registered religious organizations, is interfering with the right to religion and propaganda which is an inalienable right of all foreign nationals and stateless persons irrespective of whether this person comes to Mongolia under the auspices of registered religious organizations.

Paragraphs 2,7, and 8 of article 4, paragraph 5 of article 7, paragraph 2 of article 8, paragraph 1 of article 9, and paragraphs 2 and 3 of article 13 are in conformity with the relevant provisions of the Constitution of Mongolia.

The statement that “The State gives preference to Buddhism in order to respect national unity and the historic tradition of the civilization of the Mongolian people. However, the present provision shall not put obstacles for the citizens to follow other religions”, stated in paragraph 2 of article 4 of this Law is a declaratory statement consistent with provision for “inheriting the traditions of national statehood, history and culture” stated in the Preamble of the Constitution, and the state shall respect the religion which is given in article 9 of the Constitution, in conformity with the Constitution.

The provision reflected in paragraph 7 of article 4 of this law

Judicial Decisions in the Constitutional Court of Mongolia

stating that “...religious activities organized outside of Mongolia to introduce foreign religions within Mongolia are prohibited” is a restriction on the intentional introduction of any inhumane religions, which can harm national unity, security, public order and health, and the traditions of national statehood, history and culture of the people of Mongolia within Mongolia in conformity with the Constitution, and article 18 and paragraph 3 of article 19 of the International Covenant on Civil and Political Rights which Mongolia is a party to.

Provision 8 of article 4, stating “the absolute number of clergy and the location of the temples and monasteries are regulated and controlled by the State”, 5 of article 7 stating “the Monastery shall strictly observe its internal order reflecting the traditional practices of the respective religion. Any inhuman activities and the activities against the tradition and the custom of the Mongolian people are prohibited”, 2 of article 8 stating “the dissemination of religious teachings and instruction in the state schools and in other organizations are prohibited”, 1 of article 9 stating “the Capital City and Aimag Khurals shall discuss the application of citizens on the establishment of the monastery and temple and its Chapter and shall make a decision”, paragraph 2 of article 13 stating “the violation of provision 5 of Article 3, provision 3 of Article 4, and provision 2 of Article 12 shall result in a penalty of less than 15,000 tugriks unless otherwise provided by the Criminal Code”, 3 of same article stating “the violation of provisions 2 and 3 of Article 3, provisions 6 and 7 of Article 4, provisions 5, 6 and 7 of Article 7, and provision 2 of Article 8 shall result in a penalty of 5000-25000 tugriks, unless otherwise provided by the Criminal Code” are in conformity with the Constitution, while they are included in the framework of Law on the relationship between the State and the Monastery according to provision 3 of article 9 of the Constitution.

In adherence to provision 2 of article 66 of the Constitution of Mongolia and provision 1 of article 19 of the Law on Constitutional Tsets the Constitutional Tsets it is CONCLUDED THAT:

1. Provisions 6 of article 7 which states that “the cultivation, propaganda, and education of any religion, with the exception of Buddhism, Islam, and Shamanism are prohibited in Mongolia

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beyond the monasteries and churches of the respective religions”, and 2 of article 9, which states that “The official positions and conclusions of the Head organizations of the respective religions shall be required in the establishment of the Buddhist monastery and Muslim mosque”, 2 of article 12 which states that “foreign citizens and persons without nationality are prohibited from religious propaganda in Mongolia unless this person comes to Mongolia under the auspices of registered religious organizations” are not in conformity with provision 3 of article 10, provision 2 of article 14 and provision 15 of article 16 of the Constitution of Mongolia.

2. Provisions 2, 7, and 8 of article 4, provision 5 of article 7, provision 2 of article 8, provision 1 of article 9, and provisions 2 and 3 of article 13 of this Law are not violating relevant provisions of the Constitution of Mongolia.

3. It is passed on to the State Great Khural to submit its response within 15 days upon receiving this conclusion.



Conclusion of the Constitutional Court of Mongolia

1994.01.12
No 03
Ulaanbaatar

Whether member of the State Great Khural Ts.Turmandakh breaches or not a certain provisions of the Constitution of Mongolia

... In the petition made by citizen Zorig.S and others: “A member of the State Great Khural, Turmandakh.Ts’s act in having a bank account for carrying out the business entity “TV-1” is breaching article 29 of the Constitution of Mongolia, which states that “A member of the State Great Khural shall not hold concurrently any posts and employment other than those assigned by law”. It is hereby requested that the question be resolved of whether member of the State Great Khural Turmandakh.Ts breaches the Constitution or not.

IN REVIEW

It is found on the basis of the registration databases of Songinokhairkhan district and capital city tax authorities, decision No. 142 of Capital city court in year of 1993, conclusion No. 52 of the Supreme court and other collected materials that a member of the State Great Khural, Turmandakh.Ts, formed the limited liability company Mongolian commercial tv -1, which produces programmes, exchanges and mediates them. This company produced a documentary with state registration 34/17 dated 12th January 1993, registration number 726745, 528.000□, was placed in two members bank accounts, tugrug account no. 330654, and foreign currency account no. 151254 in Mongol Daatgal bank.

There are grounds to consider that the work of Turmandakh.Ts in MCHT-1 company is not within the powers granted to members of the State Great Khural, and breaches the Constitution of Mongolia. It is appropriate to accept the complaint made by Ganbaatar.Ch, Ganbold.D, Gonchigdorj.R, Zorig.S, Elbegdorj.Ts, Erdenebileg.T, Lamjav.D, Enkhbat.A, Baasanjav.N in adherence to article 66 of the Constitution of Mongolia, and article 19 of the Law on Constitutional Tsets of Mongolia.

IT WAS CONCLUDED THAT:

1. There is to be a submission to the State Great Khural, concluding that Turmandakh.TS, a member of the State Great Khural, is in breach of article 29 of the Constitution of Mongolia which states that “A member of the State Great Khural shall not hold concurrently any posts and employment other than those assigned by law”.



Conclusion of the Constitutional Court of Mongolia

2001.03.23
No 01
Ulaanbaatar

Adjudication on the matters whether the interpretation of the Constitution by the State Great Khural breaches or not the Constitution

The petition indicates that “the Constitution has been interpreted twice by the State Great Khural through the resolution since the adoption of the Constitution...”

1. Paragraph 4 of article 66 of the Constitution of Mongolia, which states that “If the Tsets decides that the laws, decrees and other decisions of the State Great Khural 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 question shall be considered invalid,” shall be understood as “the laws, decrees, instruments of ratification and decisions shall be considered invalid upon issuance of resolution by the session of the Constitutional Tsets”;

2. It is viewed that providing “the laws, decrees and other decisions of the State Great Khural and the President, as well as Government decisions and international treaties concluded by Mongolia in question shall be valid until the issuance of the resolution by the Constitutional Tsets” is breaching articles 50.4, 64.1, 64.2, 70.1, 25.1.1, 47.1, and 47.1.2 of the Constitution.

IN REVIEW:

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1. The power to interpret the Constitution is not vested to the State Great Khural, according to article 25 prescribing the powers of the State Great Khural, and other provisions connected with the activities of the State Great Khural of the Constitution of Mongolia.

2. It finds grounds to comply with the complaint submitted by citizens Lamjav.D and Khaidav.N concerning “The interpretation of the Constitution by the State Great Khural is not vested to its powers, and is breaching the Constitution, as it is not in conformity with the Constitution”.

3. It is not found that “the interpretation by the State Great Khural breaches articles 64.1, 64.2 47.1, 47.2, and 50.1.4 of the Constitution” as mentioned in the petition submitted by citizens Lamjav.D and Khaidav.N.

In adherence with article 60 of the Constitution of Mongolia, article 19 of the Law on the Constitutional Tsets, and article 33 of the Law on Constitutional Court /Tsets procedure

IT WAS CONCLUDED THAT:

1. Resolution No 27 dated 5th April, 1993 and the resolution dated 26th July, 2000 interpreting article 30.2 and article 66.4 of the Constitution issued by the State Great Khural breached article 25 and article 70.1 of the Constitution of Mongolia, because the power to interpret the State Great Khural is not vested to the State Great Khural.

2. Consideraion of the complaint submitted by citizens Lamjav.D and Khaidav.N on the basis of an absence of violations of article 47.1 and articles 47.2, 50.1.4, and 64.1.2 of the Constitution by the interpretation of the State Great Khural.

3. This conclusion of the Constitutional Tsets is submitted to the State Great Khural for discussion within 15 days after opening session of the State Great Khural.



Conclusion of the Constitutional Court of Mongolia

2004.04.21

No 01

Ulaanbaatar

Adjudication of the dispute on the matters whether certain provisions of the Law on Civil Procedure in Court breach or not the Constitution of Mongolia

...Citizen Battogtokh.P in his petition ... 1. It is stated in article 114.4 of the Law on Civil procedure code adopted on 10th January, 2002, and entering into force on 1st September, 2002 that “If a case is resolved by a team of judges consisting of 3 judges who propose 3 different proposals, the decision shall be issued based on the proposal made by the Chief Judge. The proposals of the 2 judges who voted against shall be attached to the case in writing” is in breach of article 52.1 of the Constitution of Mongolia.

GROUNDS:

On dispute 1.

1. Article 52.1 of the Constitution of Mongolia stating that “courts in all instances shall consider and make judgement on cases and disputes on the basis of collective decision-making” means that if a case is resolved by a team of judges consisting of 3 people, the decision shall be issued based on the majority vote instead of one proposal.

2. Providing that “democracy...is the fundamental principle of the activities of the State” in article 1.2 of the Constitution of Mongolia means implicitly that any state organization shall

resolve issues on the basis of collective decision-making instead of individual or imperative basis. In particular, independent and justice courts shall apply this principle of majority voting to resolve any dispute or case.

3. The principle of collective decision-making is reflected in the Criminal procedure code, Administrative procedure code, and Constitutional court procedure code. As the subject matter of this disputed article 114 of the Civil procedure code has an explicit mistake where paragraph 3 of this article states “if a case is resolved by a team of judges consisting of 3 people, the decision of a Court is adopted by majority vote” but paragraph 4 of the article states that “if the case is resolved by a team of judges consisting of 3 people who propose 3 different proposals, the decision shall be issued based on the proposal made by the Chief Judge.”

Article 21.2 of the Law on Court states “a court in a collegial hearing of cases shall render decisions by majority vote” clarified the concept stated in article 52.2 of the Constitution as a “collective decision” that an issue shall be resolved by majority vote.

As seen from the above, article 114.4 of the Law on Civil procedure code adopted on 10th January, 2002 and entering into force on 1st September, 2002 stating “If a case is resolved by a team of judges consisting of 3 judges who propose 3 different proposals, the decision shall be issued based on the proposal made by the Chief Judge” is in breach of the relevant articles, the contents of the Constitution of Mongolia, and the principle of collective decision making.

On part II of the dispute:

4. Provided that “a citizen with full legal capacity may be, on a voluntary basis, represented by a family member and a relative or, on a contractual basis, by an advocate” in article 32.4 of the Law on Civil procedure there is no breach of the Constitution, however there were some restrictions on determining the possibility and type of representation.

5. It is impossible to accept the part of the petition submitted by citizen Battogtokh.P concerning the non-conformity of article 4

Judicial Decisions in the Constitutional Court of Mongolia

114.4 and 32.4 of the Civil procedure code with articles 14.1 and 14.2 and articles 16.12, 16.14, and 19.1 of the Constitution.

Therefore in adherence with articles 31.1 and 31.2 of the Law on Constitutional court procedure, it was CONCLUDED THAT:

1. Article 114.4 of the Law on Civil procedure code adopted on 10th January, 2002 and entering into force on 1st September, 2002, that “If a case is resolved by a team of judges consisted of 3 judges who propose 3 different proposals, the decision shall be issued based on the proposal made by the Chief Judge. A proposal of 2 judges voting against shall be attached to the case in writing” is breaching article 1.2 which states that “democracy...is the fundamental principle of the activities of the State”,and article 52.1 which states that “courts of all instances shall consider and make judgements on cases and disputes on the basis of collective decision-making” in the Constitution of Mongolia.

2. Article 32.4 of the Civil procedure code states that “a citizen with full legal capacity may be, on a voluntary basis, represented by a family member and a relative or, on a contractual basis, by an advocate” is not breaching articles 14.1, 14.2, 16.12, 16.14, and 19.1 of the Constitution of Mongolia.

3. According to the Law on Constitutional Court Procedure it is submitted to the State Great Khural for discussion, which will submit its response on the decision within 15 days upon receipt of this conclusion.



Conclusion of the Constitutional Court of Mongolia

2005.3.31
No 2/02
Ulaanbaatar

Adjudication of the dispute on the matters whether certain provisions of the Law on Administrative Procedure breach or not the Constitution of Mongolia

... The adjudication on the constitutionality of articles 4.1.1 and 4.1.6 of the Law on Administrative Procedure, which states “The Government and the General Election Committee are included under the jurisdiction of the Administrative court” was resolved.

The request includes:

...”1. Article 4.1.1 of the Law on Administrative Procedure, which states that disputes concerning illegal acts made by the Governmental Cabinet of Mongolia shall be decided and invalidated as provided in article 8.1.2 by the Administrative court, breached articles 38.1 and 45.2 of the Constitution.

...” 2. It is stated in article 4.1.6 of the Law on Administrative Procedure that the decision made by the General Election Committee shall be considered as an administrative act, and it is stated in article 8.1.2 of the Law on Administrative Procedure that this decision can be validated by the Administrative court. This breaches subparagraph 2 of paragraph 2 of article 66 of the Constitution.

GROUNDS:

Clause “4.1.1 The Government Cabinet of Mongolia” of article 4.1 of the Law on Administrative Procedure is in breach of articles 38.1 and 45.2 of the Constitution, and clause “4.1.6. The General Election Committee” of article 4.1 of the Law on Administrative Procedure, are in breach of article 66.2.2 of the Constitution, and have been found unconstitutional on the following grounds.

1. Article 45.2 of the Constitution which states “If the resolutions and ordinances are incompatible with laws and regulations, the Government itself or the State Great Khural shall invalidate them” is stating that the competent body to invalidate decisions by the Government which are incompatible with laws, is the highest executive body of the State, according to 38.1 of the Constitution. The adjudication on constitutionality is open for procedure in the case of non-compliance of responsibilities by the State Great Khural and the Government, as provided in the Constitution.

Legislation stating that Government acts shall be reviewed by the Administrative court, as adopted by the legislature, has been found unconstitutional on the grounds of an interference with the powers of the Government and the State Great Khural as stated in the Constitution.

The competence to review the acts of the highest executive body is not provided to the Administrative court by the constitution.

The General Election Committee has functions to conduct referendums, elections for members of the State Great Khural and the President, and to make decisions regarding exercising the right to elect and to be elected by citizens, as provided in the Constitution. As seen from the Constitutions of different democratic countries, there is a precedent that this type of dispute shall be subject either to jurisdiction by the Constitutional court in countries where the constitutional court exists, or to the Supreme court where the constitutional court does not exist. The adjudication on the constitutionality of acts of the General Election Committee shall be subject to article 66.2 of the Constitution. However, if disputes concerning illegal acts made by the General

Election Committee are decided by the Administrative court, by the Law on Administrative procedure this is interfering with the competence of the Constitutional Tsets, as provided by the Constitution.

It was decided that there were no grounds found to make a conclusion, as adjudication on constitutionality is not instigated by citizens Magnaisuren.S and Enkhbayar.B on whether article 4.1.2, amended with “the Prime minister”, breached articles 39.1, 41.1, and 45.1 of the Constitution or not, instead this is found in their additional comments.

In adherence to articles 31.1 and 31.2 of the Law on Constitutional Tsets Procedure IT WAS CONCLUDED THAT:

1. The statement in subparagraph 4.1.1 regarding “The Governmental Cabinet of Mongolia,” of paragraph 1: “Administrative Case Courts shall decide disputes concerning illegal acts made by the following bodies and officials,” and of article 4: “Disputes under Jurisdiction of Administrative Case Courts’ of Law on Administrative Procedure, is found unconstitutional on the basis of a breach of article 38.1, which states that “the Government is the highest executive body of the State”, article 45.2, which states that “if the resolutions and ordinances are incompatible with laws and regulations, the Government itself or the State Great Khural shall invalidate them” and also article 4.1.6 stating “the General Election Committee” is found unconstitutional on the basis of a breach of article 66.2.2 which states that “Tsets shall make judgments on the conformity of 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 with the Constitution”.

2. This conclusion of the Constitutional Tsets is submitted to the State Great Khural for discussion within 15 days after the opening session of the State Great Khural, according to the Law on Constitutional Tsets Procedure.



Conclusion of the Constitutional Court of Mongolia

2005.04.13
No 2/03
Ulaanbaatar

Adjudication of the dispute on the matters whether certain provisions of the Law on amendments to the Law on excise tax breach or not the Constitution of Mongolia

... Adjudication on the constitutionality of amendments made into Law on Excise Tax which states that “Excise tax shall be levied at 0.20 USD per liter beer of domestic industry, and 0.50 USD per liter exported beer” with the Constitution of Mongolia was resolved by session of the Constitutional tssets.

The petition submitted by citizen Tumen-ulzii.M, whose home address is Bayanzurkh district, 15th khoroolol, 4 th khoroo, building 13-59 on 1st February, 2005 states:

“The Law on amendments to the Law on excise tax was adopted by the State Great Khural on 2nd December, 2004 and entered into force on 1st January, 2005. Some provisions of this law, for example article 6.1.1, breach articles 10.2 and 10.3 of the Constitution of Mongolia, and article 6.2 of the Attachment law to the Constitution of Mongolia, and a review is requested”

GROUNDSD:

The breach of articles 10.2 and 10.3 of the Constitution of Mongolia, and article 6.2 of the Attachment law to the Constitution of Mongolia, by article 3 of the Law on amendments to the Law on excise tax adopted by the State Great Khural on 2nd December,

2004 states that article 6.1 of the Law on excise tax was changed as “Excise tax shall be levied at 0.20 USD per liter beer of domestic industry, and 0.50 USD per liter exported beer”, and is established on the following grounds:

1. Provisions prescribed in the introduction of the General agreement on the tariffs and trade of World trade organizations “entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade, and to the elimination of discriminatory treatment in international trade relations”. Article 1 “Most favoured-nation-treatment”, and article 3 “National Treatment on Internal Taxation and Regulation” were violated.

2. The provisions prescribed in article 3.2 of the General agreement on the tariffs and trade of World trade organizations, which Mongolia joined in 1997, claim that “The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products.” , and in article 18.2 “The contracting parties recognize further that it may be necessary for those contracting parties, in order to implement programmes and policies of economic development designed to raise the general standard of living of their people, to take protective or other measures affecting imports, and that such measures are justified in so far as they facilitate the attainment of the objectives of this Agreement. They agree, therefore, that those contracting parties should enjoy additional facilities to enable them (a) to maintain sufficient flexibility in their tariff structure to be able to grant the tariff protection required for the establishment of a particular industry* and (b) to apply quantitative restrictions for balance of payments purposes in a manner which takes full account of the continued high level of demand for imports likely to be generated by their programmes of economic development.” were breached.

3. Provision 3 of Part I of the Protocol of Mongolias acceding into the Marrakesh Agreement establishing WTO states that “It shall be notified to the Secretariat of the WTO those obligations and commitments prescribed in provision 13 of the working group

Judicial Decisions in the Constitutional Court of Mongolia

report”. It is provided that in provision 13 of this report by the working group on the accession of Mongolia that “the national treatment shall be applied to both imported and domestic products to levy excise tax from 1st January of 1997” and notified by the representative of Mongolia. It was informed by the representative of Mongolia that “discriminatory tax policy shall be eradicated from 1st January, 1997.”

4. It is noted in the closing protocol of Meeting leaders in the “Review on Trade policy of Mongolia” done by the WTO trade policy reviewing body, that some countries requested to levy the excise taxes on some products in accordance with national treatment.

5. The response given by Finance minister N.Altankhuyag in session of the standing committee on the budget of the State Great Khural on 30th November, 2004, was official letter # 1/780 sent by Industry and Trade minister Batbold.S to the Constitutional tsets on 30th March, 2005, and confirmed Mongolia has violated the international treaty obligation.

6. In adhering to articles 31.1 and 31.2 of the Law on Constitutional Tsets of Mongolia CONCLUDED THAT:

1. Provided that in article 3 of the Law on amendments to the Law on excise tax adopted by the State Great Khural on 2nd December, 2004 article 6.1 of the Law on excise tax was changed, as “Excise tax shall be levied at 0.20 USD per liter beer of domestic industry, and 0.50 USD per liter exported beer” is breaching article 10.2 of the Constitution of Mongolia, namely “Mongolia shall fulfill in good faith its obligations under international treaties to which it is a Party” and paragraph 3 of the same article, “The international treaties to which Mongolia is a Party shall become effective as domestic legislation upon the entry into force of the laws on their ratification or accession” and article 6.2 of the Attachment law to the Constitution of Mongolia.

2. According to paragraph 2 of article 36 of the Law on Constitutional Tsets procedure, the State Great Khural is obliged to discuss this conclusion within 15 days and submit its response.



Conclusion of the Constitutional Court of Mongolia

2005.09.29
No 2/06
Ulaanbaatar

Adjudication of the dispute on the matters whether certain provisions of the Law on political parties breach or not the Constitution of Mongolia

The Constitutional court examined and resolved the dispute on constitutionality of the some provisions of the Law on Political parties of Mongolia.

Citizen H. Selenge, resident of 12 khoroo, 27 house, flat 16 of Bayangol district, Ulaanbaatar city in her petition stated:

1. Paragraph 3 of article 6 of the Law on political parties specifying “In cases when a party terminated its activities, reorganized through amalgamation, was dissolved or changed its name newly established or other existing parties should not use its full name and abbreviation within 24 years since that date.” has violated paragraph 10 of article 16, chapter 2 of the Constitution specifying that the citizens have the right “to form a party or other mass organization and freedom of association to these organizations on the basis of social and personal interests and opinion”, paragraph 2 of article 5 specifying “The State... shall protect the rights of the owner by law.’, paragraph 16 of article 16 specifying the citizens shall enjoy “freedom of thought, opinion and expression...’

2.Paragraph 6 of article 8 of the Law on political parties specifying “The party could participate in the State Great Khural

election and election of the aimag, capital city, soum and district Citizens Representatives Khural upon expiration of 18 month since its establishment and registration in the Supreme court. This provision does not apply to the newly registered parties established through reorganization, “ has violated the provisions of paragraph 9 of article 16 of the Constitution specifying “The right of citizen to elect and to be elected to State bodies.”; paragraph 10 of the same article specifying “the right to form a party or other mass organization and freedom of association to these organizations on the basis of social and personal interests and opinion.”; paragraph 2 of article 10 specifying that “Mongolia shall fulfill in good faith its obligations under international treaties to which it is a Party.”; and paragraph 3 of same article specifying that “The international treaties to which Mongolia is a Party shall become effective as domestic legislation upon the entry into force of the laws on their ratification or accession”.

REASONED THAT:

1.The restriction set in paragraph 3 of article 6 of the Law on political parties specifying that “In case when party terminated its activities, reorganized through amalgamation, was dissolved or changed its name newly established or other existing parties should not use its full name and abbreviation within 24 years since that date” constitutes the violation of the right of citizen to form a party or other mass organization and freedom of association to these organizations on the basis of social and personal interests and opinion.

2.Every party since its establishment and registration in the Supreme Court has a right to conduct its activities. The suspension of the right to participate in an election for 18 month restricts the citizens right to elect and to be elected.

3.There are no grounds for considering that the abovementioned articles of the Law on political party have violated paragraphs 2 and 3 of article 10 and paragraph 16 of article 16 of the Constitution.

4.Petitioner H. Selenge during the medium bench session of the Constitutional court declined her claim regarding the violation

of paragraph 2 of article 5 of the Constitution by paragraph 3 of article 6 of the Law on political parties.

In accordance with paragraphs 1 and 2 of article 32 of Law on Constitutional Court Procedure ON BEHALF OF THE CONSTITUTION CONCLUDED THAT:

1. Paragraph 3 of article 6 of the Law on political parties specifying that “In cases when a party terminated its activities, reorganized through amalgamation, was dissolved or changed its name newly established or other existing parties should not use its full name and abbreviation within 24 years since that date” has violated paragraph 10 of article 16, chapter 2 of the Constitution specifying that the citizens have right “to form a party or other mass organization and freedom of association to these organizations on the basis of social and personal interests and opinion.”

2. Paragraph 6 of article 8 of the Law on political parties specifying that “The party could participate in the State Great Khural election and election of aimag, capital city, soum and districts Citizens Representatives Khural upon expiration of 18 month since its establishment and registration in the Supreme court“ has violated paragraph 9 of article 16 of the Constitution specifying “The right of citizens to elect and to be elected to State bodies.”

3. Paragraph 3 of article 6, paragraph 6 of article 8 of the Law on political parties have not violated paragraphs 2, 3 of article 10, paragraph 16 of article 16 of the Constitution.

4. In accordance with paragraph 4 of article 32 of the Law on Constitutional Court Procedure the effect of paragraph 3 of article 6, paragraph 6 of article 8 of the Law on political parties shall be suspended from September 29, 2005.

5. In accordance with the subparagraph 1 paragraph 2 of article 66 of the Constitution and paragraph 2 of article 36 of the Law of Constitutional Court Procedure the State Great Khural shall settle a judgment of the Court within 15 days upon its receipt and the reply on result of the discussion shall be requested.



Conclusion of the Constitutional Court of Mongolia

2005.09.30
No 2/07
Ulaanbaatar

Adjudication of the dispute on the matters whether certain provisions of the Law on Amendments to the Law on State Great Khural breach or not the Constitution of Mongolia

The adjudication on constitutionality of certain statements of the Law on Amendments to the Law on State Great Khural.

In the petition submitted by citizen Temuujin.Kh, residing in Bayanzurkh district, 4th khoroo, 15th khoroolol, building 28-1 on 29th August, 2005 to the Constitutional Tsets of Mongolia.

“1.The statement that “Party groups shall consist only of members who are elected to the State Great Khural” of the Law on Amendments to the Law on the State Great Khural is not in conformity with other effective provisions of the Law on the State Great Khural, regulating the same kind of relation with the same legal status. This includes article 21.2, which states that “members representing different parties which occupy no more than 8 mandates in the State Great Khural... the request shall be submitted to join the party or coalition in the case of joining the party or coalition ”, and paragraph 3 of the same article stating “in case of rejection, a political party group or coalition can join another coalition only after official removal from that party or coalition group”, and paragraph 4, stating “members elected on an individual basis to the State Great Khural can join any of party or coalition ”. This has created conflicting regulations among laws, which is followed by the statement that “Rule of law is the

fundamental principle of the activities of the State” in article 1.2 of the Constitution.

Furthermore, this provision creates discrimination amongst members of the State Great Khural, such as the right “to join another group upon dismissal from a group or coalition” of elected members of a party occupying more than 8 seats, and “to join any party or coalition group” of elected members on an individual basis are restricted. Article 1.2 of the Constitution states that “equality is the fundamental principle of the activities of the State”, and article 16.10 of the Constitution states that “discrimination and persecution of a person for joining a political party ...or for being their member shall be prohibited” are violated.

2. The statement defining the competence of the Law on Amendments to the Law on the State Great Khural claims that “this law shall be applied for the term of office of the State Great Khural established by the 4 parliament election which was held in 2004” and is violating the fundamental principle of the rule of law which states “law shall be determined with common conditions and not be dedicated to one subject or occasion”, based on the rule of law provided in the Constitution and the above mentioned statement of article 1.2 in the Constitution of Mongolia.

It is not consistent with the ethics of democracy to adopt special laws for their own needs after participation through election or establishment of certain laws, and this law creates a negative impact on the activities of the State Great Khural. According to the Constitution and other laws, this application of the law does not respect the votes of people and weakens the responsibilities of political parties. Therefore, it is for your consideration to determine the noncompliance of the Law on Amendments to the Law on the State Great Khural adopted on 4th August by the State Great Khural under the competence given by the Constitution.

Two. Citizen Bayara.B, resident of building 1-13, 17th khoroo of Bayangol district, of Ulaanbaatar city, stated in the petition submitted to the Constitutional Tsets:

1.The statement that “in cases where the activities of coalition groups are terminated before their term, the former

coalition parties... can form a group ” in article 1 of the Law on Amendments to the Law on the State Great Khural is breaching article 24.1 concerning “party and coalition groups are formed as a result of election”. And the statement “parties and coalitions shall go as same body both in the election and newly elected State Great Khural” is breaching paragraph 2 of article 19 of the Law on Elections to the State Great Khural.

2. The statement that “a party group shall consist of members elected on the name of the same party only” is in conflict with the Law on Elections to the State Great Khural and therefore, is violating paragraph 1 of article 70 of the Constitution stating “Laws, decrees and other decisions of state bodies, and activities of all other organizations and citizens should be in full conformity with the Constitution.”

3. Article 2 of the Law on Amendments to the Law on the State Great Khural states “this law shall be applied for the term of office of the State Great Khural established by the 4 parliament election which was held in 2004”. This is loosening the fundamental principle of the equal and sustainable nature of the law, and is protecting the interest of certain groups via unequal treatment. I propose that this law is dedicated only for a certain subject.

Therefore, there is a request to determine the violation of the Law on Amendments to the Law on the State Great Khural adopted by the State Great Khural on 4th August, 2005 to the Constitution of Mongolia.

GROUNDS:

1. The concept of “party and coalition groups formed as a result of election” is reflected in paragraph 1 of article 24 of the Constitution by the amendments made by the State Great Khural in 2000. As can be seen from this, the amendment made in the Law on the State Great Khural which proposes forming a party group while ignoring the result of an election has a character in complete violation of the Constitution.

2. It is not established that the Law on Amendments to the Law of the State Great Khural breaches paragraph 2 of article

Judicial Decisions in the Constitutional Court of Mongolia

1 stating “The fundamental principles of the activities of the State shall be the insurance of democracy, justice, ...equality,... rule of law”, paragraph 10 of article 16 stating “Discrimination and persecution of a person for being a member of ...a political party... shall be prohibited”, and paragraph 1 of article 70 of the Constitution stating “Laws, decrees and other decisions of state bodies, and activities of all other organizations and citizens should be in full conformity with the Constitution”.

In adherence to paragraphs 1 and 2 of article 31 of the Law on the Constitutional Court Procedure

IT IS CONCLUDED THAT:

1. Paragraph 2 of article 21 of the Law on Amendments to the Law on State Great Khural, stating “in case of the dissolution of a coalition group before its term of office, the parties which were a member of the coalition having not less than 8 mandates in the State Great Khural can form a group consisting only of members who were elected in the State Great Khural” breaches paragraph 1 of article 24 of the Constitution of Mongolia stating “a party and coalition group is formed as the result of an election”.

2. The Law on Amendments to the Law on the State Great Khural is in conformity with paragraph 2 of article 1, paragraph 10 of article 16 and paragraph 1 of article 70 of the Constitution of Mongolia.

3. According to paragraph 4 of article 32 of Law on Constitutional Court Procedure, let the Law on Amendments to the Law on the State Great Khural abstain after 18th October, 2005.

4. This conclusion shall be discussed by the State Great Khural within 15 days and it will submit its response to the Constitutional Tsets according to subparagraph 1 of paragraph 2 of article 60 of the Constitution of Mongolia and paragraph 2 of article 36 of the Law on Constitutional Court Procedure.



Conclusion of the Constitutional Court of Mongolia

2006.06.21

No 07

Ulaanbaatar

Adjudication of the dispute on the matters whether certain provisions of the Law on State Great Khural of Mongolia breach or not the Constitution of Mongolia

The Constitutional court at its medium bench session examined and resolved dispute on constitutionality of the subparagraph 7.3.1, 7.3.3, 7.3.4, 7.3.5, 7.3.6 of paragraph 7.3 of article 7 of the Law on State Great Khural of Mongolia.

Citizen D. Lamjav, resident of 13 khoroo of the Bayangol district, of Ulaanbaatar city in his petition submitted to the Constitutional Court on 1th of May, 2006 stated:

Five subparagraphs, 7.3.1, 7.3.3, 7.3.4, 7.3.5, 7.3.6 of paragraph 7.3 of article 7 of the Law on State Great Khural of Mongolia have violated paragraph 1 of article 23; paragraph 2 of article 29 of the Constitution of Mongolia. For instance, the member of the State Great Khural has not rights to vote when the voting on the following issues is conducted:

7.3.1. on his/her election or appointment to the position of the Chairman or deputy chairman, head of standing committee, head of sub-committee or temporary committee,

7.3.3. on his/her resignation or withdrawal;

7.3.4. on granting permission to authorized bodies for his / her investigation in relation to criminal matters;

7.3.5. on granting permission to authorized bodies for his/

her search, arrest or conviction as a suspect, or for imposing administrative penalty on him/her by the court decision and for the search of his/her home, office, transport means;

7.3.6. on impeachment of the Government or rendering trust to the Government if he/she appointed as a Government member

Those provisions have violated paragraph 1 of article 23 of the Constitution specifying “A member of the State Great Khural shall be an envoy of the people and shall represent and uphold the interests of all the citizens and the State.”; and paragraph 2 of article 29 of the Constitution of Mongolia specifying “The legal immunity of members of the State Great Khural shall be protected by law.”

REASONED THAT:

The statement that the provisions of subparagraphs 7.3.1, 7.3.3, 7.3.4, 7.3.5, 7.3.6 of paragraph 7.3 of article 7 of the Law on State Great Khural of Mongolia have violated paragraph 14 of article 16; paragraphs 1;2 of article 23; paragraph 2 of article 29 of the Constitution of Mongolia is established on the following grounds:

1. The prohibition by law of groundless restriction of Parliament members’ right to vote at the session is a main principle of the democratic statehood.

In other laws, the candidates to the President election and the State Great Khural election has right to vote on similar situation.

2.The restriction of Parliament members right to vote by reason of “conflict of interest”, or “issues related to him/her” constitute interference with the immunity of the member of the State Great Khural.

In accordance with paragraph 1;2 of the article 31, of the Law on Constitutional court Procedure **CONCLUDED THAT:**

1.The subparagraphs 7.3.1, 7.3.6 paragraph 7.3 of article 7 of the Law on State Great Khural of Mongolia have violated paragraphs 1;2 of article 23; paragraph 2 of article 29 of the Constitution of Mongolia.

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2. The subparagraphs 7.3.3, 7.3.4, 7.3.5 of paragraph 7.3 of article 7 of the Law on State Great Khural of Mongolia have violated paragraph 14 of article 16, paragraph 2 of article 29 of the Constitution of Mongolia.

3. The effect of subparagraphs 7.3.1, 7.3.3, 7.3.4, 7.3.5, 7.3.6 of paragraph 7.3 of article 7 of the Law on State Great Khural of Mongolia shall be suspended from June 21, 2006.

4. The State Great Khural shall settle a judgment of the Court within 15 days upon its receipt, and the reply on result of the discussion shall be requested.



Conclusion of the Constitutional Court of Mongolia

2007.03.02
No 03
Ulaanbaatar

Whether the Chairman of the State Great Khural Ts.Nyamdorj breaches or not a certain provisions of the Constitution of Mongolia

The Constitutional Court examined and resolved dispute on constitutionality of the some actions of the Chairman of the State Great Khural Ts.Nyamdorj, who made correction to the text of the Law on Bribery and the text of the Mineral law after introducing last version to the State Great Khural and has not informed Parliament on such correction.

Citizen D. Lamjav, resident of 13 khoroo of Bayangol district, citizen R. Burmaa, resident of 1 khoroo of the Khan-uul district of Ulaanbaatar city in their information submitted to the Constitutional Court on 15 December , 2006 stated:

The cases, when the correction made to the adopted laws after introducing the last version to the State Great Khural without permission of the State Great Khural and further introduction to it occurred several times. Despite of this Chairman of the State Great Khural signed and enacted those laws. Such illegal action resulted from abuse of the power by the Chairman of the State Great Khural. This action has violated article 20 of the Constitution specifying “The State Great Khural of Mongolia is the highest organ of State power and the legislative power shall be vested solely in the State Great Khural.” and paragraph 1 of article 25 specifying “The State Great Khural shall keep within its exclusive power ...the right to enact laws, make amendments to them;” and paragraph 1 of article

70 specifying "... activities of all organizations and citizens should be in full conformity with the Constitution."

Citizen J. Byambaa, resident of 2 khoroo of the Sukhbaatar district, citizen Ch. Khurts resident 15 khoroo of the Bayanzurkh district, citizen S.Avirmed, resident of 1 khoroo of the Bayangol district, citizen L. Tsog resident of 1 khoroo, of the Sukhbaatar district, citizen P. Bold, resident of 13 khoroo of Bayanzurkh district of Ulaanbaatar city in their information submitted to the Constitutional Court on 19 December, 2006 stated:

"The Chairman of the State Great Khural Ts. Nyamdorj in violation of paragraph 2 article 1 of the Constitution specifying "the rule of law shall be a fundamental principle of the activities of the State", and 25.1.1 of the chapter 3 specifying "The State Great Khural shall keep within its exclusive power the right to enact laws, make amendments to them" and in abuse of his power made many correction to the text of the Mineral law, which was adopted by the State Great Khural Plenary session on 8 July, 2006. For instance, this law when adopted by the Parliament has 40 pages, 10 chapters, 70 articles. Later on when Chairman of the State Great Khural signed and enacted the law it has 43 pages, 11 chapters, 66 articles. It means that 27 provisions of the adopted law were extracted and 24 new provisions not discussed by the Parliament were included in this law. Paragraph 5.5 of this in its original version mentioned about holder of the mining license and in the new version it mentioned about deposit holder. Such correction interferes with ownership of the state property and has violated paragraph 2 of article 6 of the Constitution.

Also many corrections were made to the Law on enactment of the Mineral law after its adoption by plenary session. This Law admitted retroactive effect of the Mineral law of 1997 for the purpose of keeping the exploration and mining license in the possession of the former holders. This has violated paragraph 2 of article 1 of chapter 1 of the Constitution.

Correction made by Chairman to the laws adopted by the State Great Khural plenary session infringes on Parliamentary legislative power and should be considered as action abusing power of the Chairman and his official duties."

REASONED THAT:

1.It is proved by the minutes of the plenary session of the State Great Khural, Law draft files and other evidence that the Chairman of the State Great Khural Mr.Ts.Nyamdorj on September 8, 2006 made many correction related to content, policy, and principle established by the Law on Bribery adopted on July 6, 2006 by 93% of votes of members of the Parliament, the last edition of which was introduced to the State Great Khural on July 20, 2006; also made editorial, sequence and structural changes to it; and on August 5, 2006 made correction to the Mineral Law adopted on July 8, 2006 by 83,7% of votes of members of the Parliament and which last edition was introduced to the State Great Khural on July 20, 2006.

Chairman of the State Great Khural Ts. Nyamdorj has violated the provision 32.1 of article 32 of the Law on State Great Khural stating “the State Great Khural shall discuss and ...adopt law, pass a resolution according to the State Great Khural plenary session reglament” and provision 51.4 of the resolution No 14 of the State Great Khural of January 27, 2006 “ On State Great Khural plenary session reglament” which specified that “The Chairman of the State Great Khural shall sign the law and resolution of the State Great Khural within 3 days since introducing last edition to the State Great Khural.”

Therefore the Chairman Ts.Naymdorj has violated the provisions of the Law on State Great Khural and the State Great Khural plenary session reglament. Consiquently it violated paragraph 2 of article 1 of the Constitution specifying “The fundamental principles of the activities of the State shall be securing democracy, justice ... and rule of law.”; provision of article 20 stating “...the legislative power shall be vested solely in the State Great Khural.”, the subparagraph1 of paragraph 1 of article 25, specifying the State Great Khural shall hold within its exclusive power right “to enact laws, make amendments to them”.

But no grounds were established for stating that the chairman Ts.Nyamdorj has violated paragraph 1 of article 70 specifying “Laws, decrees and other decisions of state bodies, and activities of all other organizations and citizens should be in full

conformity with the Constitution.”

1. The Constitutional Court examines the existence of the grounds for the removal of the President, Chairman of the State Great Khural and the Prime Minister on submission of authorized organization and officials. Therefore such request could not be resolved on submission of the citizens.

In accordance with the subparagraph 1 paragraph 2 of article 66 of the Constitution, paragraph 2 of article 31 of the Law on Constitutional Court Procedure ON BEHALF OF THE CONSTITUTION CONCLUDED THAT:

1. The Chairman of the State Great Khural Ts. Nyamdorj, by making many corrections related to content, policy, and principle as well as editorial, sequence and structural changes in the Law on Bribery and the Mineral law has violated paragraph 2 of article 1 of the Constitution specifying “The fundamental principles of the activities of the State shall be securing democracy, justice... and rule of law.”; article 20 stating “...the legislative power shall be vested solely in the State Great Khural.”, the subparagraph 1 paragraph 1 of article 25, stating that the State Great Khural shall hold within its exclusive power the right “to enact laws, make amendments to them”.

2. The Chairman of the State Great Khural has not violated paragraph 1 of article 70 of the Constitution specifying “Laws, decrees and other decisions of state bodies, and activities of all other organizations and citizens should be in full conformity with the Constitution.”

3. In accordance with paragraph 2 of article 36 of the Law of Constitutional Court Procedure the State Great Khural shall settle a judgment of the Court within 15 days upon beginning of the spring session and the reply on result of the discussion shall be requested.



Conclusion of the Constitutional Court of Mongolia

2008.02.27

No 03

Ulaanbaatar

Conclusion of the dispute on Constitutionality of some provision of the resolution No 102 of the State Great Khural dated from 28th December, 2007

The Constitutional Court at the medium bench session examined and resolved dispute on constitutionality of the State Great Khural resolution No 102 of 2007 “On discussion of the proposal of the Prosecutor General”.

Citizen Ch. Unurbayar, resident of 6 khoroo of the Bayangol district, Ulaanbaatar city in his information stated:

The resolution of the State Great Khural adopted on proposal of Prosecutor General has violated paragraph 34.7 of article 34 of the Law on State Great Khural specifying “Except in the case specified in article 6.9.1 of this law no member of the State Great Khural shall be searched, arrested, detained, imposed administrative penalty by the court decision; no home, office, transport of the State Great Khural member shall be searched.” This leads to violation of paragraph 2 of article 1 of the Constitution specifying “rule of law shall be a fundamental principle of the activities of the State”, and paragraph 2 of article 29 specifying “The legal immunity of members of the State Great Khural shall be protected by law,” and paragraph 3 of the same article specifying “The issue concerning the involvement of a member of the State Great Khural in a crime shall be considered by the plenary session of the State Great Khural, which shall decide whether to suspend

his/her mandate or not.” By adopting abovementioned resolution the State Great Khural established a wrong legal precedent allowing interference within the immunity of the member of the Parliament.

Citizen P. Ulziibat, resident of 16 khoroo of the Bayangol district, Ulaanbaatar city in his information stated:

The State Great Khural by adopting abovementioned resolution acted as court and prosecutor. In fact, it interfered with activities of those bodies, violating the provision of paragraph 2 of article 49 of the Constitution.

The State Great Khural based on repeated proposal by the Prosecutor General has to express own position on existence of legal grounds for suspension of mandate of the member of the State Great Khural. But instead it ordered to conduct some investigation activities. Such activities could be conducted in the following condition:

- only if the mandate of the member of the State Great Khural is suspended; and
- according to the procedure established in the law and not “in the resolution of the State Great Khural”.

The State Great Khural established wrong precedent when it interfered within the immunity of the member of the State Great Khural by adopting resolution, which constitutes a violation of paragraph 2 of article 29 of the Constitution.

The State Great Khural adopted this resolution by referring to paragraph 34.7 of article 34 of the Law on State Great Khural. In other words using the prohibitive clause for giving permission it has violated paragraph 2 of article 1 of the Constitution specifying “the rule of law shall be the fundamental principle of the activities of the State. ...”

REASONED THAT:

1. Paragraph 3 of article 29 of the Constitution specified “The issue concerning the involvement of a member of the State

Great Khural in a crime shall be considered by the plenary session of the State Great Khural, which shall decide whether to suspend his/her mandate or not”, paragraph 6.13 of the Law on State Great Khural specified “The plenary session of the State Great Khural shall decide by a majority of members of the State Great Khural present and voting, whether to suspend the mandate of the member of the State Great Khural or not ...”. Therefore it is clear that the State Great Khural may decide on suspension of the mandate of the member of the State Great Khural.

2. The Constitutional ruling on protection of immunity of the member of the State Great Khural by law is legalized in article 34.7 of the Law on State Great Khural. But the ruling prohibited by the law has been permitted by the resolution. Therefore it constitutes a violation of the Constitution.

3. It is unclear which article of the law the State Great Khural referenced when it adopted resolution No 102 of 2007. The State Great Khural exceeded its power granted by the Constitution by adopting such resolution.

4. The permission given by this resolution to carry out a search of certain members of the State Great Khural and their home, office, transport does not constitute interference with the exercise by the judges of their duties.

In accordance with subparagraph 1, paragraph 2 of article 66 of the Constitution of Mongolia, paragraph 2 of article 31, paragraph 4 of article 32 of the Law on Constitutional Court Procedure,

ON BEHALF OF THE CONSTITUTION CONCLUDED THAT:

1. The State Great Khural resolution No 102 of 28 December 2007 “On discussion of the proposal of the Prosecutor General” has violated paragraph 2 article 1 of the Constitution specifying “The rule of law shall be the fundamental principle of the activities of the State....”; paragraph 2 of article 29 specifying “The legal immunity of members of the State Great Khural shall be protected by law”; and paragraph 3 of the same article specifying “Issue concerning

Judicial Decisions in the Constitutional Court of Mongolia

the involvement of a member of the State Great Khural in a crime shall be considered in the plenary session of the State Great Khural, which shall decide whether to suspend his/her mandate or not .”

2. This resolution has not violated paragraph 2 of article 49 of the Constitution specifying “Neither a private person nor any official including the President, Prime Minister, members of the State Great Khural and the Government, officials of political parties or other mass organizations shall interfere with the exercise by the judges of their duties.”

3. The effect of the State Great Khural resolution No 102 of 28 December 2007 shall be suspended since February 27, 2008.

CHAPTER TWO.
RESOLUTIONS



Resolution of The Constitutional Court of Mongolia

1993.03.13
No 02
Ulaanbaatar

Resolution on the dispute on the constitutionality of some paragraph of the General Law on Taxation and of the Law on Personal Income tax of Mongolia with some provisions of the Constitution of Mongolia

...The dispute on the inconsistency of paragraph 2 of article 4, paragraph 2 of article 18 and paragraph 1 of article 28 of the General Law of Taxation, paragraph 2 of article 7 of the Law on Personal Income Tax of Mongolia with article 20, provision 1 of paragraph 1 of article 25, provision 13 of article 16, and provision 3 of paragraph 1 of article 17 of the Constitution was re-settled.

The session of the Constitutional Tsets took place on 10, 11, and 12th February, 1993 and the conclusion issued over the dispute instigated by the President was as follows:

“1. Paragraph 2 of article 4, and paragraph 2 of article 18 of the General Taxation Law has violated article 20, provision 1 of paragraph 1 of article 25 of the Constitution which states that “...the supreme legislative power shall be vested only in the State Great Khural”, “The State Great Khural... shall keep within its exclusive competence and decide to enact laws, or make amendments to them”.

2. Paragraph 2 of article 7 of the Law on Personal Income Tax has violated provision 3 of paragraph 1 of article 17, and provision

Judicial Decisions in the Constitutional Court of Mongolia

1 of paragraph 1 of article 25 of the Constitution which states that “Citizens of Mongolia shall pay taxes levied by law”, “The State Great Khural... shall keep within its exclusive competence and decide to enact laws, or make amendments to them”.

3. Paragraph 1 of article 28 of the General Law on Taxation which states that “The list of means protecting the Tax Administration and the rules for their use will defined by the General Department of State Taxation and the General Department of Police on the approval of the State General Procurator” has violated paragraph 13 of article 16 of the Constitution.

This Conclusion of the Constitutional Tsets was discussed by the session of the State Great Khural on 16th February, 1993 and resolution 22 stating “not to accept the resolution of the Constitutional Tsets ” was issued.

IN REVIEW:

Even though paragraph 2 of article 7 of the Law on Personal Income Tax stating “Amount of annual income to be levied by tax shall be subject to change by the Government in consideration of price increase balance ” is an important provision which relieves people from tax pressures in case of price increase, it means to explicitly change the amount legalized by the State Great Khural, and there is no guarantee that tax percentage is not subject to change. On the other hand, transferring the right to change and regulate the amount of income to levy tax to the Government, which is obliged to organize law exercise, is violating the articles of the Constitution.

The above mentioned provision of paragraph 1 of article 28 of the General Law on Taxation violates directly paragraph 13 of article 16 of the Constitution stating “The citizens of Mongolia... have the right to personal liberty and safety,...no one shall be restricted of liberty... except in accordance with procedures and grounds determined by law” and it is not proper that the list of body guard utilities, and the rule of use of them, is by implementing bodies instead of law.

The session of the Tset resumed on the basis of majority

vote of the members of the Tsets, where it was considered that the inconsistency of paragraph 2 of article 4 and paragraph 2 of article 18 of the General Law on Taxation with the Constitution is not proved by the hearing of the Tsets session. Further evidence of proof is required, and an additional inquiry on the dispute regarding those two provisions shall be finalized upon the conclusion made by the joint experts, consisting of political, legal and economic professionals.

The violation of the provision stated in the second sentence of paragraph 1 of article 28 of the General Law on Taxation to paragraph 13 of article 16 of the Constitution, paragraph 2 of article 7 of the Law on Personal Income Tax to provision 3 of paragraph 1 of article 17, provision 1 of paragraph 1 of article 25 of the Constitution, which states that “Citizens of Mongolia shall pay taxes levied by law”, “The State Great Khural... shall keep within its exclusive competence the decision to enact laws, or make amendments to them” is completely proved by the hearing of the Tsets session, evidence of proof, and in adherence with articles 66.3 and 66.4 of the Constitution of Mongolia, and article 8.2 of the Law on Constitutional Court Procedure:

IT WAS CONCLUDED THAT:

1. Paragraph 1 of article 28 of the General Law of Taxation stating “...The list of means protecting the Tax Administration and the rules for their use, will be defined by the General Department of State Taxation and the General Department of Police on the approval of the State General Procurator,” paragraph 2 of article 7 of the Law on Personal Income Tax stating “Amount of annual income to be levied in tax shall be subject to change by the Government in consideration of price increase balance” be annulled.

2. The dispute on the inconsistency of paragraph 2 of article 4 of the General Law of Taxation, and paragraph 2 of article 18 with the Constitution be resumed for additional enquiry according to article 18.5 of the Constitutional Court Procedure.

3. This resolution shall be considered as valid upon issuance.



Resolution of The Constitutional Court of Mongolia

1995.09.07
No 02
Ulaanbaatar

Resolution on the adjudication of the dispute on the unconstitutionality of the certain provision of the Law on State Great Khural and 88th Resolution of the State Great Khural with the Constitution of Mongolia

Citizen D. Lamjav, resident of 13 khoroo of Bayangol district in his petition stated:

1.Paragraph 3 of article 20 of the Law on State Great Khural specifying “The dispute related to the question and inquiry of the Member of the State Great Khural shall be finally decided by the State Great Khural.” has violated paragraph 1 of article 52 of the Constitution specifying “Courts of all instances shall consider and make judgment on cases and disputes on the basis of collective decision-making.”; and paragraph 2 of article 50 specifying “The decision made by the Supreme Court shall be a final judiciary decision and shall be binding upon all courts and other persons.” paragraph 1 of article 64 specifying “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.” Because the dispute specified in paragraph 3 of article 20 of the Law on State Great Khural may arose in relation to the implementation of the Constitution or other laws in such case the Constitutional court or ordinary courts should have right to held the case and issue judgment.

2.Paragraph 2 of article 34 of the State Great Khural specifying that “..The conclusion of the Constitutional Court shall be heard after discussing such report..”; paragraph 1 of article 38 specifying “..if grounds specified in subparagraphs 3,4 of paragraph 2 of article 66 exists” has contradicted to paragraph 2 of article 66 of the Constitution specifying “The Constitutional court, in accordance with paragraph 1 of this Article, shall make and submit conclusions to the State Great Khural on..”. The Constitutional court would not issue any conclusion in the absence of grounds specified in paragraph 1 of article 66 of the Constitution. Therefore the State Great Khural in such case should not demand from the Constitutional court to submit the conclusion for the settlement.

3.Paragraph 2 of article 35 of the Law on State Great Khural specified “..the State Great Khural when discussing issue related to withdrawal of the President in advance shall establish the following cause and conditions:

1/ whether the conclusion of the Constitutional court issued on grounds specified in subparagraphs 3,4 paragraph 2 of article 66 of the Constitution is true and right;

2/whether the grounds and cause of violation by the President of the Constitution in breach of his oath properly established” has violated paragraph 1 of article 64 of the Constitution and paragraph 2 of article 35 specifying “In case of a violation of the Constitution and/or abuse of power in breach of his oath, the President may be removed from his post on the basis of the findings of the Constitutional Court by an overwhelming majority of members of the State Great Khural present and voting.” Because according to the Constitution once the Constitutional court established the grounds for removal of the President the State Great Khural shall discuss this issue. The conclusion itself is not subject for the discussion. But the Law on State Great Khural provided to discuss the conclusion itself, which leads to violation of abovementioned two articles of the Constitution.

4.Paragraph 1 of article 452 specified “The chairman or member of the Constitutional court empowered by him/her shall introduce to the State Great Khural conclusion of the Constitutional

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court on the decision of the State Great Khural issued in accordance with paragraph 2 of article 66 of the Constitution.” This law omitted the Constitutional court conclusion issued in accordance with paragraph 3 of article 66 of the Constitution.

From those two documents we could see that the paragraph 3 of article 45 2 became legal basis for reaching decision on breach of the Constitution.

5.Paragraph 4 of article 19 of the Law on State Great Khural specified “the member of the Parliament shall be resigned or removed on the following condition:

1/ was elected to the position of the President of Mongolia,
2/ unable to hold his /her position and submitted request for the release due to the health or other valid reasons,

...5/the commitment of the crime by the member of the Parliament has been proved and the court judgment became effective.” This law has no any other provision on resignation or removal of the member of the Parliament. Such provision waives the effect of the subparagraph 4 of paragraph 2 of article 66 of the Constitution or violates paragraph 1 of article 64 of the Constitution. When it would be necessary to issue conclusion of the Constitutional court on existence of grounds for removal of the Chairman of the State Khural or its member we could not refer to the Law on State Great Khural. Because this law does not contain provision empowering the Constitutional court to issue such conclusion. And the Constitutional court as a guarantor of the Constitution guided by its concept may establish grounds for the removal using other laws provision by analogy. In such case the State Great Khural may settle that the conclusion of the Constitutional court is adopted in violation of the Law on State Great Khural.

In such case paragraph 1 of article 64 of the Constitution will be violated. Therefore such voting shall be included into decision of the State Great Khural. Otherwise the Constitutional breach will stay valid. Only inclusion of such voting to the decision of the State Great Khural will allow to repair such violation.

6.Paragraph 4 of article of the 20 of the Law on State Great

Khural specifying “The member of the State Great Khural during their term should not hold other paid job not related to his/her duties established by the Constitution and other laws.” has violated paragraph 1 of article 29 of the Constitution specifying “Members of the State Great Khural shall be remunerated from the State budget during their term and shall not hold concurrently any posts and employment other than those assigned by law.” Because from the content of the Law on State Great Khural we could conclude that the member of the Parliament may hold unpaid position not related to his/her duties.

7.Paragraph 3 of article 45 2 specified “The State Great Khural shall decide whether to accept or reject the conclusion of the Constitutional court by majority votes of members present at the session. If the State Great Khural after discussing the conclusion of the Constitutional court considers that it has no legal grounds it shall pass resolution on thereon.” Previously I understood that this provision says about Constitutional court conclusion on decision of the State Great Khural which was wrong assumption. It is obvious from the minutes of the State Great Khural session that paragraph 3 of article 45 2 of the Law on State Great Khural is only legal basis for conducting voting on Constitutional court conclusion issued in accordance with subparagraphs 3,4 paragraph 2 of article 66 of the Constitution. Therefore paragraph 3 of article 45 2 has violated paragraph 1 of article 64 of the Constitution specifying “The Constitutional court shall decide disputes concerning to the violation of the Constitution.”

8.The provision of the resolution No 88 of State Great Khural from December 6,1994 specifying “The conclusion of the Constitutional court on breach of paragraph 12 of article 16, paragraph 1 of article 56 of the Constitution by the Prosecutor General N. Ganbayar deemed to has no grounds ” has violated paragraph 1 of article 64 and paragraph 1 of article 66 of the Constitution.

9.Paragraph 1 of article 51 of the Law on State Great Khural specifying “Unless otherwise stipulated in the Constitution, this law, other laws the State Great Khural shall conduct voting and issue decision by the majority votes of members present at the session. The voting shall be conducted through open balloting

except cases where secret ballot requested.

Open voting shall be conducted through hand raise or network; secret voting through voting lists or network. If at least 5 members present at the session or chairman requested the open voting may be conducted by names. In such case every vote will be introduced with the name of the voter. “has violated paragraph 2 of article 1 of the Constitution specifying “The fundamental principles of the activities of the State shall be securing democracy, justice, freedom, equality, national unity and rule of law.” The voting through the network considered as open and secret balloting. This acknowledges that each time when vote conducted the chairman can see whether members voted for or against. It means that in this case the essence of the secret ballot is lost and open ballot concealed under the name of the secret ballot. Such situation is proved by the other provisions (subparagraphs 4,6 of paragraph 4 of article 54, paragraphs 1,2,3 of article 55) of the Law on State Great Khural.

10.The subparagraph 4 of paragraph 4 of article 54 of the Law on State Great Khural specifying “in case when voting conducted by names every vote will be introduced with the name of the voter” and recorded in the minutes of the session has violated paragraph 2 of article 1, paragraph 17 of article 16, paragraph 1 of article 3 of the Constitution. Because for the saving the time every voting conducted through network and only the voting conducted by name recorded in the minutes. It means that such computer based voting is actually secret.

In this way the most important mechanism for supervision of fulfillment of his /her oath by the member of the Parliament has been removed. It has violated citizens Constitutional right to seek and receive information except that which the state and its bodies are legally bound to protect as secret. The lack of true information on members voting creates wide possibility for misleading the electors and makes the provision of the Constitution declaring that the state power shall be vested on people of Mongolia unrealistic. And most important principle of transparency of the State Great Khural activities is lost.

11.Paragraph 1 of article 54 of the Law on State Great Khural

specifying “The seal office of the State Great Khural shall be in charge of keeping minutes of the session of the State Great Khural, of working meeting of members of the State Great Khural and of the meetings of the standing committee and use and storage of the minutes according to the regulation established by the General secretary,” has violated rights of the citizens to seek and receive information except that which the state and its bodies are legally bound to protect as secret specified in paragraph 17 of article 16 of the Constitution.

12.Subparagraph 3 of paragraph 2 of article 55 of the Law on State Great Khural specifying “Written minutes of the session and video and audio records could be seen or heard only in presence of the employee in charge of this work or archivist and not allowed to copy.” has violated paragraph 17 of article 16; and subparagraph 2 paragraph 1 of article 14 of the Constitution.

Because even the minutes of the session of the State Great Khural and standing committee are accessible citizens may have some doubt on this regard. The subparagraph 3 paragraph 2 of article 55 of the Law on State Great Khural restricted the possibility for clarifying such doubt for the ordinary citizens. Every citizen legally residing within the territory of Mongolia should be equal before the court and the law, and the discriminatory provision of abovementioned law has violated the subparagraph 2 paragraph 1 of article 14 of the Constitution.

Citizen Ts.Tserenpiljee in his petition stated : “The new Constitution provides division of the rights and duties of supreme state power organization and established rule of law”.

1.Subparagraph 2 of paragraph 2 of article 66 of the Constitution of Mongolia) specified that only the Constitutional court may issue conclusion on breach of law by “the President, Chairman and members of the State Great Khural, the Prime Minister, members of the Government, the Chief Justice of the Supreme court and the Prosecutor General” and such right not entitled to any other state bodies, including the State Great Khural.

2.This resolution has violated article 56 of the Constitution specifying “The Prosecutor shall exercise supervision over the

inquiry into investigation of cases and the execution of punishment, and participate in the court trial on behalf of the State.” The State Great Khural by issuing resolution No 88 on defending the enquiry conducted by the State Prosecutor office seriously violated rights and freedom of the citizen protected by the Constitution.” Therefore he requested to issue relevant resolution on this matter.

The Constitutional Court on its conclusion No 1 from 4th January, 1995 stated:

One. Paragraph 3 of article 20 of the State Great Khural specifying “The dispute related to the question and inquiry of the Member of the State Great Khural shall be finally decided by the State Great Khural.” has violated paragraph 1 of article 52 of the Constitution specifying “Courts of all instances shall consider and make judgment on cases and disputes on the basis of collective decision-making”; and paragraph 2 of article 50 specifying “The decision made by the Supreme Court shall be a final judiciary decision and shall be binding upon all courts and other persons.”; paragraph 1 of article 64 specifying “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.”

Two. Paragraph 4 of article 20 of the Law on State Great Khural specifying “The member of the State Great Khural during his/her term should not hold other paid position not related to his/her duties established by the Constitution and other laws.” has violated paragraph 1 of article 29 of the Constitution specifying “Members of the State Great Khural ... during their term ..shall not hold concurrently any posts and employment other than those assigned by law.”

Three. Paragraph 2 of article 35 “..the State Great Khural when discussing issue related to withdrawal of the President in advance shall establish the following cause and conditions:

1/ whether the conclusion of the Constitutional court issued on grounds specified in subparagraphs 3,4 paragraph 2 of article 66 of the Constitution is true and right;

2/whether the grounds and cause of violation by the President of the Constitution in breach of his oath properly established;

3/ whether the framework and condition of the violation by the President” is consistent to paragraph 2 of article 35 of the Constitution specifying “In case of a violation of the Constitution and/or abuse of power in breach of his oath, the President may be removed from his post on the basis of the findings of the Constitutional Court by an overwhelming majority of members of the State Great Khural present and voting.”

Four. The paragraph 1 of article 45 2 specifying that “The chairman or member of the Constitutional court empowered by him/her shall introduce to the State Great Khural conclusion of the Constitutional court issued regarding the decision of the State Great Khural in accordance with paragraph 2 of article 66 of the Constitution.”;

Paragraph 2 specifying that “The standing committee which was in charge of drafting of this law or State Great Khural’s resolution and Standing committee on legal issues shall issue conclusion upon introducing the Constitutional court conclusion. The members of the State Great Khural may ask question and get answers and express own opinion regarding the conclusion of the Constitutional court”;

Paragraph 3 specifying “The State Great Khural shall decide whether to accept or reject the conclusion of the Constitutional court by majority votes of members present at the session. If the State Great Khural after discussing the conclusion of the Constitutional court considers that it has no legal grounds it shall pass resolution on thereon.”

Paragraph 4 specifying “If the State Great Khural upon discussing the conclusion of the Constitutional court considers it legally grounded it shall cancel such law or other resolution in whole or in part or make amendment to it.” have violated paragraph 2 of article 66 of the Constitution specifying “The Constitutional court, in accordance with paragraph 1 of this Article, shall make

and submit conclusions to the State Great Khural on:

1) the conformity of 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 with the Constitution;

2) the conformity of national referenda and decisions of the Central election authority on the elections of the State Great Khural and its members as well as on Presidential elections with the Constitution.”

Five. Provision 2 of the resolution No88 of the State Great Khural from December 6, 1994 specifying “The conclusion of the Constitutional court on breach of paragraph 12 of article 16, paragraph 1 of article 56 of the Constitution by the Prosecutor General Mr. N.Ganbayar deemed to be groundless.” has violated paragraph 1 of article 64 of the Constitution specifying “1. 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”; and paragraph 1 of article 66 of the Constitution specifying “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.”

Six. Resolved to decline the petition of the citizen D.Lamjav who considered that paragraph 2 of article 34, paragraph 1 of article 38, paragraph 1 of articles 51, 54, 55 of the Law on State Great Khural have violated the Constitution.

The resolution of the State Great Khural No51 from 30 June 1995 resolved to accept the provisions 1,2 of the conclusion No1 of the Constitutional court from 1995 and to reject its provisions 3,4 and 5. This resolution omitted the provision 6 of the conclusion No1 of the Constitutional court.

4.The violation of paragraph 2 of article 35 of the Constitution by paragraph 2 of article 35 of the Law on State Great Khural

deemed to be groundless. Because the proposal on impeachment of the President was declined by the State Great Khural while the Constitutional court passed its conclusion No 1.

5.The issue on breach of the Constitution by the State Great Khural resolution No88 has been raised. The State Great Khural in this regard has 3 different practices. By which procedure the conclusion of the Constitutional court issued in relation to the disputes specified in subparagraphs 3,4 of paragraph 2 of article 66 of the Constitution should be discussed? Or it should not be discussed? This issue is currently not regulated by the law, but it should be regulated. The standing committee on State organization included particular comments on this issue in its conclusion submitted to the State Great Khural.

REASONED THAT:

On examination of materials of the plenary session of the Constitutional court it was established that some provision of the Law on State Great Khural and provision 2 of the resolution No88 of the State Great Khural have violated the constitutional provisions.

Firstly. The State Great Khural discussed the conclusion of the Constitutional court concerning the dispute on violation of the subparagraphs3,4 of paragraph 2 of article 66 of the Constitution. The procedure for discussing such conclusion is set in paragraph 2 of article 35,and article 45 2 of the Law on State Great Khural . According to this procedure the State Great Khural discussed the conclusion of the Constitutional court on violation of the Constitution by the member of the State Great Khural Mr. S. Zorig and the Prosecutor General N.Ganbayar and the issued resolution No88 from 6th December,1994 which found groundless the conclusion of the Constitutional court specifying that Prosecutor General N. Ganbayar has violated paragraph 12 of article 16 and article 56 of the Constitution.

From paragraph 1 of the article 64 of the Constitution specifying “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”; and paragraph 2 of the same article specifying “The Constitutional court and its members in the execution of their duties shall be subject to the Constitution only and shall be independent of any organizations, officials or any other person.”; paragraph 2 article 35 of the Constitution specifying “ In case of a violation of the Constitution and/or abuse of power in breach of his oath, the President may be removed from his post on the basis of the findings of the Constitutional Court by an overwhelming majority of members of the State Great Khural present and voting.”; and paragraph 3 of article 66 specifying “If a conclusion submitted in accordance with sub-paragraph 1 and 2 of Paragraph 2 of this Article is not accepted by the State Great Khural, the Constitutional court shall reexamine it and make a final judgment” we could clearly understand that the State Great Khural should not discuss conclusion issued according to the subparagraph 3,4 of paragraph 2 of article 66 of the Constitution.

The existing practice when State Great Khural discusses or rejects the conclusion of the Constitutional court passed according to the subparagraph 3,4 of paragraph 2 of article 66 of the Constitution is wrong and denies the right of the of the Constitutional court on exercising supreme supervision over the implementation of the Constitution.

Two. Article 45 2 of the Constitution stated that the State Great Khural shall discuss only conclusions of the Constitutional court regarding the decision of the State Great Khural. But during the hearing of the Constitutional court it was proved that paragraph 3 of article 45 2 became the basis for discussing by the State Great Khural the conclusions of the Constitutional court passed according to the subparagraphs 1,2,3,4 of paragraph 2 of article 66 of the Constitution.

Three. In the conclusion of the Constitutional court No1 from January 4, 1995 not given answers to the request of the citizen D.Lamjav or no provision on subparagraph 4 paragraph 4 of article 54, paragraphs 2,3 of article 55 of the Law on the State Great Khural. Therefore the part 6 of the conclusion should be amended.

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Four. The resolution No51 of the State Great Khural from 30th June, 1995 has no provision regarding the acceptance of the part 6 of the conclusion No1 from 1995.

In accordance with paragraph 3,4 of article 66 of the Constitution of Mongolia and paragraph 2 of article 8 of the Law on Constitutional court Procedure full panel session of the Constitutional court RESOLVED THAT:

1. Paragraph 2 of article 35 and article 45 2 of the Law on the State Great Khural shall be deemed as invalid.

2. Provision 2 of the resolution No 88 “On conclusion of the Constitutional court” of the State Great Khural from December 6, 1994, and provision 2 of the resolution No51 of the State Great Khural from June 30,1995 shall be deemed as invalid.

3. Paragraph 6 of the conclusion No1 of the Constitutional court from January 4, 1995 shall be revised as follows: “Paragraph 2 of article 34, paragraph 1 of article 38, subparagraph 4 of paragraph 4 of article 54, paragraphs 2,3 of article 55 of the State Great Khural have not violated the Constitution.”

4. This decision of the Constitutional court of Mongolia is final and effective since its issuance.



Resolution of The Constitutional Court of Mongolia

1998.11.24
No 02
Ulaanbaatar

Adjudication on the constitutionality of certain provisions of Law regarding the Legal Status of Members of the State Great Khural of Mongolia with reference to the paragraph 1 of article 29 of the Constitution of Mongolia

The adjudication on the constitutionality of certain provisions of Law regarding the Legal Status of Members of the State Great Khural of Mongolia, with reference to the 1st paragraph of article 29 of the Constitution of Mongolia, and instigated by petition of citizen Lamjav.D, was resolved.

Citizen Lamjav.D in his petition stated:

“Regarding “Members of the State Great Khural being appointed as Prime minister and a member of the Government cabinet of Mongolia /6.1/, In case of appointment as Prime minister or a member of Government cabinet, Members of the State Great Khural shall be obliged to work simultaneously /8.2.11/ ”, members of the State Great Khural may function as Prime minister or a member of Government cabinet simultaneously /8.3/. The laws on the legal status of Members of the State Great Khural of Mongolia are conflicting with the 1st paragraph of article 29 of the Constitution of Mongolia, which states that “a Member of State Great Khural shall not engage in any job or task which is not in function defined by law.”

The Constitutional court of Mongolia held a session on

23rd October, 1998 and issued conclusion No. 09 on 1. Provisions including Subparagraph 11 of paragraph 2 of article 8 of the Law on the Legal status of Members of the State Great Khural of Mongolia “in case of appointment shall be obliged to work simultaneously”, paragraph 3 of the aforementioned article “Members of the State Great Khural may function as Prime minister or as a member of Government cabinet simultaneously” and paragraph 1 of article 6 “Members of the State Great Khural to be appointed as Prime minister and members of the government cabinet of Mongolia” are in conflict with the 1st paragraph of article 29 of the Constitution of Mongolia which states that “a Member of the State Great Khural shall not engage in any job or task which is not in function defined by law.”

IN REVIEW

1. The Law on the Legal status of Members of the State Great Khural of Mongolia was amended in conflict with the principle, provisions, and contents of the Constitution, and the rights and duties of Members as provided by Law.

2. The amendments made in the Law on the Legal status of Members of the State Great Khural of Mongolia, concerning a member of the State Great Khural functioning as the Prime minister and a member of the Government cabinet simultaneously, are in conflict with the concept of the Constitution of Mongolia regarding the separation and control of powers among legislative and executive bodies.

3. It is not necessary to resolve the resolutions of the State Great Khural mentioned in the petition of citizen Lamjav.D since they depend on the violation of certain provisions of Law on the Legal status of Members of the State Great Khural of Mongolia.

In accordance with paragraph 4 of article 66 of the Constitution of Mongolia, article 31, 32 of the Law on Constitutional court procedure, it was CONCLUDED THAT:

1. Let the subparagraph 11 of paragraph 2 of article 8 of the Law on the Legal status of Members of the State Great Khural of Mongolia “in case of appointment shall be obliged to

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work simultaneously”, paragraph 3 of the aforementioned article “Members of the State Great Khural may function as Prime minister or as members of Government cabinet simultaneously” and paragraph 1 of article 6 “Members of the State Great Khural to be appointed as Prime minister and members of the governmental cabinet of Mongolia” be deemed as invalid...

2. Shall consider resolution No 112, dated Nov.12.1998, adopted by the State Great Khural regarding resolution No 09 of Constitutional tsets invalid.

3. Shall consider this decision of the Constitutional Tsets of Mongolia as final and deemed as valid at issuance.



Resolution of The Constitutional Court of Mongolia

2000.11.29

02

Ulaanbaatar

Final decision on the matters whether the amendments to the Constitution breach or not the Constitution

Citizen S.Narangerel on his petition submitted to the Constitutional court on 31 th of December, 1999 stated:

I considered that amendments made on 24th December 1999 to the Constitution by the State Great Khural has violated the following articles of the Constitution:

1.Paragraph 1 of article 3 of the Constitution specifying “In Mongolia state power shall be vested in the people of Mongolia.” was violated seriously. This is proved by the fact that the amendments to the Constitution were submitted by the members of the State Great Khural to the chairman R. Gonchigdorj on 23th December, 1999 and on the next morning the Constitutional amendments adopted by the State Great Khural even this draft were not in the agenda of this plenum.

2.The fact that the members of the State Great Khural have violated paragraph 1 of article 23 of the Constitution specifying “A member of the State Great Khural shall be an envoy of the people and shall represent and uphold the interests of all the citizens and the State.” when amended the Constitution has the following grounds:

a) it was wrong to assume that the only 3 parties which hold seats at the Parliament should agree on amending the Constitution,

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b) the political parties which currently hold seats at the Parliament should not represent interests of all citizens and the state, and national interest.

3. The State Great Khural urgently amended the Constitution without asking electors opinion which is serious violation of the paragraph 9 of article 16 of the Constitution specifying “the right of the citizens to take part in the conduct of State affairs directly or through representative bodies.”

4. The draft of the amendment to the Constitution has been submitted to the State Great Khural and adopted shortly excluding possibility for its discussion by electors and citizens. This also constitute violation of article 16 of the Constitution specifying “freedom of thought, opinion, expression and speech”.

5. It is obvious from number of members who attended this session and number of votes that the State Great Khural violated paragraph 1 of article 69 of the Constitution specifying “An amendment to the Constitution shall be adopted by not less than three-quarters of votes of all members of the State Great Khural.”

6. Article 68 of the Constitution of Mongolia stated “Amendments to the Constitution shall be initiated by organization and officials enjoying the right to legislative initiative and could be submitted by the Constitutional court to the State Great Khural.” The State Great Khural in this case itself submitted the amendment to the State Great Khural session exercising power entitled to the Constitutional court. Also the State Great Khural failed to submit the draft of the amendment to the President for reaching consensus on this matter, which constitutes a violation of paragraph 1 of article 30 specifying “The President shall be the Head of State and embodiment of the unity of the Mongolian people.”

Citizen S. Narangerel on his additional explanation submitted to the Constitutional Court on 13 of the March 2000 stated:

1. The violation of paragraph 2 of article 1 of the Constitution specifying that “The fundamental principles of the activities of the State shall be securing democracy, justice, freedom,

equality, national unity and rule of law,” is proved by facts that the Constitution amended without asking opinion of the Constitutional court, without reaching consensus with the President and without discussion among citizens or electors.

2. Absence of opinion of the citizens and other political parties constitute violation of the paragraph 2 of article 26 of the Constitution specifying that “Citizens and other organizations shall forward their suggestions on law drafts to those who entitled to initiate a law.”

3. From the content of paragraph 1 of article 68 of the Constitution we could understand that the “Amendments to the Constitution ...could be submitted to the State Great Khural by the Constitutional court.” From this we could conclude that the Constitutional court as guarantor for the strict observance of the Constitution is entitled to submit the amendment to the Constitution to the State Great Khural.

4. Paragraph 1 of article 69 of Constitution requires “An amendment to the Constitution shall be adopted by not less than three-quarters of votes of all members of the State Great Khural.” The State Great Khural failed to meet the requested quorum. Even so the State Great Khural discussed and adopted the amendments.

5. The amendment in whole has violated article 20 of the Constitution specifying “The State Great Khural of Mongolia is the highest organ of State power and the legislative power shall be vested solely in the State Great Khural. “ and paragraph 1 of article 23 specifying “A member of the State Great Khural shall be an envoy of the people and shall represent and uphold the interests of all the citizens and the State.” For instance:

a) the amendment decreased the quorum of the session which will negatively influence the possibility of including all citizens’ interest and the state interest in the decision of the State Great Khural,

b) according to the amendment the duration of the session of the State Great Khural decreased to not less than 50 days which diminish its permanent legislative and representative bodies character (paragraph 1 of article 3 of the Constitution),

c) amendment related to the dissolution of the State Great Khural if the State Great Khural fails to appoint a Prime Minister within 45 days from the submission of the proposal of his/her appointment to the Great Khural makes the legislative body of the

state unstable, and creates possibility for the opposition party and political forces fighting for the power to delete the result of the election.

1. Article 3 of the Constitution on state organization is the major basis of the concept of the Constitution and regulated power division issues. But the amendment made to paragraph 1 of article 29 of the Constitution was the step which consolidated legislative power with executive power and falls back from this concept. This violated articles 20,38 of the Constitution.

2. The amendments to paragraph 1 of article 24, paragraph 6 of article 27 which changed secret ballot to open ballot contradicting the general provision of paragraph 2 of article 21 which specified that the member of the State Great Khural shall be elected by the Secret ballot. This violates the right to freedom of opinion entitled by paragraph 16 of article 16 of the Constitution. It also violates paragraph 1 of article 1 and contradicts to article 20 of the Constitution stating that “the State Great Khural of Mongolia is the highest organ of State power”.

The Constitutional court also discussed petitions of citizen D. Chuluunjav, N.Haidav, N.Baasanjav, N.Otgon, O.Jambaldorj which have similar meaning.

The Constitutional court initiated the process of constitutionality of the amendment to the Constitution by the resolution of the member of the Constitutional court on 18 January 2000. The Constitutional court issued conclusion No 03, regarding the examination of the dispute on constitutionality of the amendment to the Constitution on 15 March 2000 and submitted to the State Great Khural for settlement. The thirdly formed State Great Khural at the first session discussed this conclusion and issued protocol No 04 on July 28, 2000.

Mr. Ts.Sharavdorj, a Member of the State Great Khural and a head of the Standing committee on legal issues in his speech made on full bench session of the Constitutional court stated:

According to article 20 of the Constitution the legislative power vested only on the State Great Khural and according to article 69 of the Constitution an amendment to the Constitution shall be adopted by not less than three-quarters of votes of all members of the State Great Khural. The State Great Khural made amendment to the Constitution strictly complying with those

provisions.

But the Constitutional court initiated case on this lawful amendment and issued illegal conclusion specifying that this amendment violated paragraph 2 of article 1, paragraph 1 of article 70 and paragraph 1 of article 68 of the Constitution and requested the State Great Khural to discuss it.

The State Great Khural discussed conclusion No 03 of the Constitutional court on its plenary session on 28 July, 2000. The member of the Constitutional court Mr. J.Amarsanaa introduced court conclusion on this session and members of the Parliament expressed their opinion .

The State Great Khural during the discussion concluded that the Constitutional court issued conclusion on issue which does not fall under its jurisdiction entitled by the Law on Constitutional Court and Law on Constitutional Court Procedure. Therefore it is impossible to issue any decision accepting or declining conclusion No 03.

It was stated that the Constitutional court is not entitled to examine and issue conclusion on constitutionality of the amendment.

REASONED THAT:

1. Mongolian State Great Khural when amended the Constitution on 24 December 1999 has violated the Law on State Great Khural, Law on procedure of the session of the State Great Khural and the Law on procedure of drafting and submission of laws and other decision of the State Great Khural. This inconsistent to paragraph 2 of article 1 and paragraph 1 of article 70 of the Constitution.

2. The State Great Khural when amended the Constitution not allowed to the Constitutional court to implement paragraph 1 of article 68 of the Constitution.

3. Therefore petition of the citizens S.Narangerel , D. Chuluunjav, N.Haidav, N.Baasanjav, N.Otgon, O.Jambaldorj

declaring that the amendment to the Constitution adopted by the State Great Khural has violated paragraph 2 of article 1, paragraph 1 of article 68; and paragraph 1 of article 70 considered to be well-grounded.

In accordance with paragraph 3 article 66 of the Constitution, the articles 31,32 of the Law on Constitutional Court Procedure

ON BEHALF OF THE CONSTITUTION RESOLVED:

1. The amendment to the Constitution adopted by the State Great Khural on 24 December 1999 has violated paragraph 2 of article 1 of the Constitution specifying that “The fundamental principles of the activities of the State shall be securing democracy, justice, freedom, equality, national unity and rule of law.”; paragraph 1 of article 68 of the Constitution of Mongolia specifying “Amendments to the Constitution shall be initiated by organization and officials enjoying the right to legislative initiative and could be submitted by the Constitutional court to the State Great Khural.”; paragraph 1 of article 70 specifying “Laws, decrees and other decisions of state bodies, and activities of all other organizations and citizens should be in full conformity with the Constitution.” and shall be deemed as invalid.

2. Declare all provisions of the Constitution of Mongolia adopted on January 13, 1992 as valid.

3. This decision of the Constitutional court of Mongolia is final and effective since its issuance



Resolution of The Constitutional Court of Mongolia

2002.06.05

No. 01

Ulaanbaatar

On the adjudication on the constitutionality of article 92.2 of the Law on Civil procedure stating “this shall not be subject to instances of review trials of the Supreme court” with article 16.14 of the Constitution providing a “fair trial”, and article 49.1 of the Constitution stating the “judge shall be independent”

In relation to resolution #11 dated 35th April of 2002 adopted by the State Great Khural, rejecting resolution #01 dated 3rd April of 2002 of the Constitutional Tsets, the adjudication on the constitutionality of article 92.1 of the Law on Civil procedure stating “this shall not be subject to instances of review trials of the Supreme court” with article 16.14 of the Constitution providing a “fair trial”, and article 49.1 of the Constitution stating the “judge shall be independent” was re-settled.

One. In the petition made by Davaadorj Nyamdorj, a citizen of Darkhan bag, Shariin Gol soum, Darkhan-Uul aimag:

Article 92.2 of the Law on Civil procedure stating that “this shall not be subject to the review instance trial of the Supreme court” was amended by the Law on Amendments and Changes to the Law, violated Civil procedure as follows:

□/ Constitution Art 1.2 “the primary principles of activities of the State shall be democracy, justice, freedom, equality, providing national unity, and respect of law” was violated through

the adoption of amendments on discrimination of civil procedure on trials of a high and low and judge basis.

b/ The status of human rights prescribed in the Constitution Art 16.14 “to receive a fair trial, to submit the case to the higher instance court for review” was lost, and the right to reject the judges of the supreme court who took part in prior trials, or who had a personal interest in the review instance of the Supreme court, and the ability to appeal to a prior decision made without legal grounds are missing;

c/ Constitution Art 49.1 states “Judges shall be independent and subject only to law” and judges of the Supreme court are bound to their prior decisions against new, legal laws in the Supreme court making them non-independent.

d/ The contents of Constitution Art 50.1.2 “to examine the decisions of the lower-instance court through appeal and supervision” are missing.

GROUNDS:

The amendment “This shall be not be subject to instances of review trials of the Supreme court” following “The judge who first took part in instances of court appeals shall not take part in other instances to settle this” stated in article 92.2 of the Law on Civil procedure was made by the Law on Amendments to the Law on Civil procedure adopted on 5th July of 1995, and is considered as unconstitutional on the following grounds:

1. Before a dispute is settled in the court trial a judge shall not have any prior conviction; this is considered as the main factor for a fair decision, and it is an internationally accepted common principle to prohibit the re-participation of a judge on the same dispute. Namely, there is a common principle of one judge taking part in and settling one dispute one time only.

2. While this is strictly prohibited for a judge in cases when he/she took part in the same dispute as a civil representative, advocate, prosecutor, secretary of court trial, witness, expert, translator, or interpreter on the basis of prevention of prior

conviction in article 92.1.1 of the Law on Civil procedure, there is no ground not to apply this to judges who made the judicial decision personally.

3. The sovereignty of judges is violated, with influencing decisions made by other judges in cases of a judge who took part in a first instance trial re-participating in a review trial.

While the same principles should be applied to judges settling the dispute provided by the legislation, providing more powers to the Supreme court judges gives an imbalance in equality.

4. The following is not found to be legal: Article 1 of resolution #11 dated 25th April of 2002, adopted by the State Great Khural rejecting resolution #01 dated 3rd April of 2002 of the Constitutional tsets on the adjudication of the constitutionality of the amendment, "This shall not be subject to instances of review trials of the Supreme court" following "A judge who first took part in instances of court appeals shall not take part in other instances to settle this" prescribed in the article 92.2 of the Law on Civil procedure, was made by the Law on Amendments to the Law on Civil procedure adopted on 5th July of 1995.

IT IS ESTABLISHED ON BEHALF OF THE CONSTITUTION OF MONGOLIA:

In adhering with article 66.3 of the Constitution, article 8.2, 8.4 of the Law on the Constitutional tsets, and article 31.2 of the Law on the Procedure of the Constitutional Tsets:

1. Consider as invalid the amendment "This shall not be subject to instances of review trials of the Supreme court" following "A judge who first took part in instances of court appeals shall not take part in other instances to settle this" stated in article 92.2 of the Law on Civil procedure, which was made by the Law on Amendments to the Law on Civil procedure adopted on 5th July of 1995, violating article 16.14 of the Constitution providing a "fair trial", and article 49.1 of the Constitution stating the "judge shall be independent".

2. Consider as invalid the article 1 of the resolution #11 dated 25th April of 2002 adopted by the State Great Khural on

Judicial Decisions in the Constitutional Court of Mongolia

Conclusion #01 adopted by the Constitutional tsets in the year of 2002.

3. This resolution shall be deemed as valid upon issuance.



Resolution of the Constitutional Court of Mongolia

2005.11.14
No 1/01
Ulaanbaatar

Resolution of the dispute on constitutionality of the relevant provision of the Law on Political parties

15.00 Constitutional court session hall

Citizen H. Selenge in her information stated:

1.Paragraph 3 of articlearticle 6 of the Law on political parties specifying “In case when party terminated its activities, reorganized through amalgamation, was dissolved or changed its name newly established or other existing parties should not use its full name and abbreviation within 24 years since that date” constitute interference by the state with political parties affairs and legalization of its internal regulation which leads to the violation of paragraph 10 of articlearticle 16, chapter 2 of the Constitution specifying that the citizens have right “to form a party or other mass organization and freedom of association to these organizations on the basis of social and personal interests and opinion.”

...Name of the party is an expression of the opinion of the political party members and also their intellectual property. Therefore the abovementioned paragraph of the Law on political parties has violated paragraph 2 of article 5 of the Constitution specifying that “The State ...shall protect the rights of the owner by the law.” and interfered with the internal rule of the political parties and restricted their rights.

Such restriction of the freedom of conscience, expression and association also has violated paragraph 2 of article 10 of the Constitution stating “Mongolia shall fulfill in good faith its obligations under international treaties to which it is a Party“; and paragraph 3 of the same article specifying “The international treaties to which Mongolia is a Party shall become effective as domestic legislation upon the entry into force of the laws on their ratification or accession.”

2.Paragraph 6 of article 8 of the Law on political parties specifying that “The party could participate in the State Great Khural election and election of aimag, capital city, soum and districts Citizens Representatives Khural upon expiration of 18 month since its establishment and registration in the Supreme court. This provision does not apply to the newly registered parties established through reorganization.“ has violated paragraph 9 of article 16 of the Constitution specifying “The right of citizens to elect and to be elected to State bodies.”; paragraph 10 of the same article specifying “the right to form a party or other mass organization and freedom of association to these organizations on the basis of social and personal interests and opinion.” and also violated the principle of equality.

Constitutional court in conclusion No 2/06 of September 29, 2005 issued upon examination of this dispute at the medium bench session stated:

The restriction made in paragraph 3 of article 6 of the Law on political parties specifying that in case when party terminated its activities, reorganized through amalgamation, was dissolved or changed its name newly established or other existing parties should not use its full name and abbreviation within 24 years since that date constitute interference with basic rights of the citizens to form a party on the basis of social, personal interests and opinion and freedom of association. Any party should enjoy the right to conduct its activities since its establishment and registration in the Supreme court suspension of the right of political party to participate in election for 18 month since its registration, should be considered as the restriction of the rights of the citizen to elect and to be elected.

CONCLUDED THAT:

1. Paragraph 3 of article 6 of the Law on political parties specifying that “In case when party terminated its activities, reorganized through amalgamation, was dissolved or changed its name newly established or other existing parties should not use its full name and abbreviation within 24 years since that date” has violated paragraph 10 of article 16, chapter 2 of the Constitution specifying that the citizens have right “to form a party or other mass organization and freedom of association to these organizations on the basis of social and personal interests and opinion.”

2. Paragraph 6 of article 8 of the Law on political parties specifying that “The party could participate in the State Great Khural election and election of aimag, capital city, soum and districts Citizens Representatives Khural upon expiration of 18 month since its establishment and registration in the Supreme court“ has violated paragraph 9 of article 16 of the Constitution specifying “The right of citizen to elect and to be elected to State bodies.”

3. Petitioner H.Selenge during the medium bench session of the Constitutional court declined her claim regarding the violation of paragraph 2 of article 5 of the Constitution by paragraph 3 of article 6 of the Law on political parties which is also mentioned in the conclusion.

The State Great Khural discussed this conclusion on its plenary session on October 13, 2005 and issued resolution No 58. In this resolution the State Great Khural refused to admit conclusion No2/06 of the Constitutional court from 2005 stating that paragraphs 3,8 of article 6 of the Law on Political parties breached paragraphs 9,10 of article 16 of the Constitution.

REASONED THAT:

1. The restriction on use of full name of the party and its abbreviation by newly established party within 24 years since the date when party terminated its activities, reorganized through amalgamation, was dissolved or changed its name set in paragraph

3 of article 6 of the Law on political parties has violated the rights of citizens to form a party on the basis of social and personal interests and opinion and basic right on freedom of association. If we consider admitting such time restriction for using the name of the party its term should be reasonable. The term established by this law considered to be inconsistent with the general principle of the Constitution stating that “any restriction should have reasonable limit”.

2. Any party has right to conduct its activities since its establishment and registration in the Supreme Court. The legalization of participation of political party in election upon expiration of 18 month since its registration restricts citizens right to elect and to be elected. The political party upon registering in the Supreme court and receiving the certificate of registration should has right to conduct its activities within the territory of Mongolia including participation in the election which constitute major part of it.

In accordance with paragraph 3 of article 66 of the Constitution, paragraph 2 of article 8 of the Law on the Constitutional court, paragraph 2 of article 31 and paragraph 3 of article 36 of the Law on Constitutional Court Procedure and ON BEHALF OF THE CONSTITUTION RESOLVED THAT:

1. Paragraph 3 of article 6 of the Law on political parties specifying that “In case when party terminated its activities, reorganized through amalgamation, was dissolved or changed its name newly established or other existing parties should not use its full name and abbreviation within 24 years since that date” has violated paragraph 10 of article 16, chapter 2 of the Constitution specifying that the citizens have right “to form a party or other mass organization and freedom of association to these organizations on the basis of social and personal interests and opinion.” and shall be deemed as invalid.

2. Paragraph 6 of article 8 of the Law on political parties specifying that “The party could participate in the State Great Khural election and election of aimag, capital city, soum and districts Citizens Representatives Khurals upon expiration of 18 months since its establishment and registration in the Supreme

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court“ has violated paragraph 9 of article 16 of the Constitution specifying “The right of citizen to elect and to be elected to State bodies,”and shall be deemed as invalid.

3. The resolution No 58 of Oct.13, 2005 adopted by State Great Khural regarding the conclusion No 2/06 of Constitutional Court from 2005 shall be deemed as invalid.

4. This decision of the Constitutional court of Mongolia is final and effective since its issuance.



Resolution of the Constitutional Court of Mongolia

2005.12.14
No 1/ 02
Ulaanbaatar

On final decision of dispute on Constitutionality of some provision of the resolution No 22 of the Government of Mongolia dated from 2th February, 2005

The Constitutional court hearing room 14.30

Citizen S. Batsukh in his petition submitted to the Constitutional Court stated:

Paragraph 2 of the resolution No22 of the Government from 2th February 2005 “On revising the coefficient of and increasing the pension” specified “The maximum monthly wages and similar income for calculating pension up to 1th July 1998 shall be 120000 tugrugs.” Such provision divides all pension age citizens into two group and treats them differently. Most of the pensioners who terminated labor contract before 1998 were employed during the socialist time and it seems that they were considered unnecessary for the new society. The Government of Mongolia which is obliged to implement the Constitution and other laws within whole country treats own citizen differently and breaches their rights. This has violated paragraph 2 of article 14 of the Constitution.

Citizen J. Batsambuу in his petition submitted to the Constitutional Court stated:

“I have retired in June 1990 and established an old age pension from monthly wages equal to 1193 tugrugs, and 38 years length of work. The governmental resolution No22 from 2th February, 2005 established the coefficient for calculating pension

equal to 100 and increased the pension by 7.5%. But the provision 2 of this resolution fixed the maximum wages for calculating pension on amount of 120000 tugrugs, for those who retired before 1998. My wages multiplied by coefficient 100 became 119300 tugrugs which was less than 120000 tugrugs, but automatically my pension was calculated from decreased amount equal to 106000 tugrugs and was not increased by 7.5%. This infringes my Constitutional rights.”

Citizen B. Demberel in his petition submitted to the Constitutional Court stated:

“a/ For those who established old age pension after 1998 the monthly maximum wages and similar income for calculating pension fixed on amount of 400000 tugrugs. While for those who established old age pension before 1998 the monthly maximum wages and similar income for calculating pension fixed on amount of 120000 tugrugs by the resolution No 22 of the Government dated 2th February, 2005.

b/ Those who retired after 1995 if worked after retirement are allowed to include those years in the work lengths and increase their pension while those who retired before 1995 not allowed to include years worked after retirement to work lengths and to increase pension. This is one of the facts of discrimination.

c/ In 2005 as result of the inflation the currency rate dropped and the prices increased. Therefore the sources for the increasing pension and wages by 7.5% were included in the state budget. Firstly, the old age pension was increased by 7.5% from 1st of February, 2005. The coefficient for calculating pension was equal to 100 and for those whose pension increased 7.5% raise has not been paid. It is also discrimination. The unpaid pension and 7.5% raise should be paid.

d/ The Mongolian government should ask forgiveness from 250000 pensioners to whom it due 150 million tugrugs pension for the last 10 years,

e/ The current pension law shall be adopted in June 1994 and effected from 1th January, 1995. Many pensioners whose pension was established 10-20 years ago will be recalculated according to this law. In this case many peoples pension will be decreased compared to others people pension. It would be more fair to multiply the initially set pension by the relevant coefficient.“

Judicial Decisions in the Constitutional Court of Mongolia

The representative of the Government nominated to the medium bench session of the Constitutional court in his explanation stated:

There is groundless to say that the resolution No22 of the Government of Mongolia from 2th February 2005 “On revising the coefficient and increasing the pension” discriminated citizen depending on age and position. Due to the transfer of Mongolia to the market economy prices are increased and tugiugs devaluation resulted on impossibility of pension paid from social insurance to catch up with inflation rate. Therefore we renewed established pension using coefficient based on price and minimum living standards increase and ratio between the basic wages for calculating the pension and paid off wages. Such measures non-discriminatory and based on calculation made by the professional organization using scientific method depending on economic condition and solvency of social insurance fund.

Article 32 of the Law on social insurance specified that “the Government shall establish procedure for determining maximum amount of the wages and income for calculating pension.” By the resolution No 92 dated of 10th of June 1998 establish that the maximum wages or income for calculating social insurance fee shall be equal to 10 times of the minimum wages or 120000 tugiugs. This law effected from 1th of July, 1998. The resolution No 22 of the Government from 2005 renewed the coefficient for calculating pension. It means that the maximum wage of those who was enshured before July 1, 1998 was increased by 80000 tugiugs.

The Constitutional court examined this dispute at its medium bench session on June17, 2005 and issued conclusion 2/04.

1. The provision 1,3,4 of the of the resolution No 22 of the Government “On revising the coefficient and increasing the pension” of February 2, 2005 which established coefficient for renewing the pension. And specified if renewed pension increase is less than 7.5% of previous pension it shall be increased to that level have not violated paragraph 2 of article 5, paragraph 3 of article 16, paragraph 1 of article 19, paragraph 7 of article 38 of the Constitution.

2. Provision 2 of the resolution No22 of the Government from 2th February 2005 “On revising the coefficient and increasing the pension” specifying “The maximum monthly wages and similar income for calculating pension before 1th of July 1998 shall be 120000 tugrigs.” has violated paragraphs 1,2 of article 14 of the Constitution.

3. The State Great Khural discussed abovementioned conclusion at its plenary session on 3th November, 2005 and issued resolution No 61 that it is impossible to accept conclusion No2/04 of the Constitutional court specifying that “provision 2 of the resolution No22 of the Government from 2th February 2005 “On revising the coefficient and increasing the pension” specifying “The maximum monthly wages and similar income for calculating pension before 1th of July 1998 shall be 120000 tugrigs.” has violated paragraphs 1,2 of article 14 of the Constitution.”

REASONED THAT:

1. The provision 1,3,4 of the of the resolution No 22 of the Government “On revising the coefficient and increasing the pension” of February 2, 2005 which established coefficient for renewing the pension. And specified if renewed pension increase is less than 7.5% of previous pension it shall be increased to that level have not violated paragraph 2 of article 5, paragraph 3 of article 16, paragraph 1 of article 19, paragraph 7 of article 38 of the Constitution.

2. Provision 2 of the resolution No22 of the Government from 2th February 2005 “On revising the coefficient and increasing the pension” specifying “The maximum monthly wages and similar income for calculating pension before 1th of July 1998 shall be 120000 tugrigs.” is applied article 32 of the Social Insurance law reversely and limited the right of people who already established their pension. This violated general principal of non-reverse effect of the law which makes worse the existing condition. It leads to different treatment of citizen depending on date of pension establishment and has violated paragraph 1 of article 14 specifying “All persons lawfully residing within Mongolia are equal before the law”, paragraph 2 of the same article specifying “No person shall be discriminated against on the basis ofage, ..status.”

Judicial Decisions in the Constitutional Court of Mongolia

3. The State Great Khural on its resolution No61 dated from November 3, 2005 has not specified the reason for rejecting the conclusion 2/04 of the Constitutional court from June 17, 2005.

In accordance with paragraph 3 article 66 of the Constitution, paragraph 2 of article 8 of the Law on Constitutional court, the paragraph 2 of the articles 31, paragraph 3 of article 36 of the Law on Constitutional Court Procedure ON BEHALF OF CONSTITUTION OF MONGOLIA RESOLVED:

1. Provision 2 of the resolution No 22 of the Government from 2th February 2005 “On revising the coefficient and increasing the pension” specifying “The maximum monthly wages and similar income for calculating pension before 1st of July 1998 shall be 120000 tugrigrs.” has violated 1 of article 14 specifying “All persons lawfully residing within Mongolia are equal before the law”, paragraph 2 of the same article specifying “No person shall be discriminated against on the basis ofage, ..status.” and shall deemed as invalid.

2. The resolution No 61 of the State Great Khural dated from November 3, 2005 “On conclusion No 2/04 of the Constitutional court from 2005” shall be deemed as invalid.

3. This decision of the Constitutional court of Mongolia is final and effective since its issuance.



Resolution of the Constitutional Court of Mongolia

2006.01.11
No. 01
Ulaanbaatar

The adjudication on the constitutionality of article 27.2 of the Law on Non-judicial foreclosure of Mortgage collateral with the Constitution of Mongolia was finalized.

The adjudication on the constitutionality of article 27.2 of the Law on Non-judicial foreclosure of Mortgage collateral with the Constitution of Mongolia was finalized by the great-bench session of the Constitutional Tsets.

One. In petition to the Constitutional Tsets made by Yanjinkhorloo.D, citizen of Chingeltei district, 18th khoroo, Ulaanbaatar:

Article 27.2 stating “the court shall reject complaints made on the basis other than that prescribed in article 27.1 of this Law” and 27.1 stating “In cases of the Lender or the Registration office of Rights breaching the procedures stipulated in this Law: While the foreclosure of mortgaged assets are non-judicial, the Lender is entitled to make a claim to the court, and the court shall hear it in accordance with the procedures provided in the Law on Civil procedure” of the Law on Non-judicial foreclosure of Mortgage assets restricting the rights of the Lender to claim on disputes regarding contract law, which is the basis for owning the mortgaged asset but only allows claims on registration procedures made by the State registration office of rights.

On this basis it breaches article 14.1 stating “All persons

lawfully residing within Mongolia are equal before the Law and the Court”, article 16.14 which provides the “right to appeal to the court, defend oneself, and receive legal assistance, a fair trial to protect his/her rights if he/ she considers that the rights or freedoms as spelled out by Mongolian Law and/or an International treaty have been violated” of the Constitution of Mongolia.

The question of whether contracted parties have understood each other or the legal consequences of their acts and had a legal ability to do so, contained unequal conditions, the standard conditions of a contract are conformity with the law and their legal status shall be determined by the court. It would be a violation of the Constitution in cases of withdrawing this control by a newly adopted law.

The loan agreements made by banks and non-banking financial institutions offer one party interests and standard conditions and the provision on non-judicial foreclosure of mortgage assets could obviously be inserted there for their own interests. Since the newly adopted law entered into force on 1st September, 2005 agreements have been done, but the rights and interests of borrowers would be lost without the court control which has been withdrawn.

The commercial banks have the opportunity to escape from the court control through this kind of clause inserted into agreements with big legal entities, because both parties are legal entities having the purpose of gaining profits from doing business activities with professionals and are obliged to know the legal consequences and intentions of their business activities, and in addition they employ professional lawyers.

However on the other hand, the seizure of court control should not be accepted into the state of law regarding family businesses and especially for citizens.

Civil code is the primary law which regulates relationships with respect to material and non-material wealth arising among legal persons, and civil legislation should be based on the principles of ensuring the equality and autonomy of participants in civil legal relations, the sanctity of their property, contract freedom, non-

interference into personal affairs, the unlimited exercising of civil rights and fulfillment of obligations, and having violated rights restored through court protection.

As such it is stated that “a person dominating the market by producing certain types of goods, or delivering services, or performing works, shall be liable to enter a contract with persons willing to make a deal with it in the areas mentioned above, and shall not be entitled to put pressure on the other party to accept unequal terms and conditions or to refuse to conclude a contract” in article 189.4 of this law. Namely, commercial banks and non-banking financial institutions shall be deemed as persons dominating the market with loan services and it shall not be supported by the law to put pressure on citizens to accept unequal terms and conditions.

The agreements made by banks and non-banking financial institutions with citizens not covered by the jurisdiction of the court and exercising prior rights could not only abuse the principle of equality which is the basic principle of the state of law, but also, as the majority of citizens do not own the land, but 98 percent of houses have already been privatized, it is therefore suggested to settle the unconstitutionality of mortgage contracts mortgaging mostly houses, which are a primary human need, and that this be left out of the jurisdiction of the court.

GROUNDS:

1. Article 27.2 of the Law on the Non-judicial foreclosure of Mortgages, which states that the court shall reject complaints made on any basis other than that prescribed in article 27.1 of this Law has grounds to violate the right to appeal to the court and a fair trial provided in the Constitution.

2. While Article 27.1 of the Law on the Non-judicial foreclosure of Mortgages states that “In cases of the Lender or the Registration office of Rights breaching the procedures stipulated in this Law, while foreclosure of mortgaged assets is non-judicial, the Lender is entitled to make a claim to court” the right to file a complaint of the lender is restricted to the above mentioned grounds in article 27.2 and has grounds to violate article 16.14 of the Constitution which provides the “right to appeal to the court, receive a fair trial to protect his/her rights if he/ she considers

Judicial Decisions in the Constitutional Court of Mongolia

that the rights or freedoms as spelled out by Mongolian Law and/or an International treaty have been violated”.

3. Resolution # 75 of 2005 made by the State Great Khural did not indicate the grounds not to accept the relevant parts of resolution #2/08 dated 16th November, 2005 of the Constitutional Tsets.

In adhering with article 66.3 of the Constitution of Mongolia and article 8.2 of the Law on Constitutional Tsets, articles 31.2, 36.3 of the Law on Constitutional procedure IT IS ESTABLISHED ON BEHALF OF THE CONSTITUTION OF MONGOLIA:

1. Consider invalid Article 27.2 of the Law on the Non-judicial foreclosure of Mortgages, stating that “the court shall reject any complaints made with a basis other than that prescribed in article 27.1 of this Law” on the grounds of violating article 16.14 of the Constitution which provides the “right to appeal to the court, receive a fair trial to protect his/her rights if he/ she considers that the rights or freedoms as spelled out by Mongolian Law and/or an International treaty have been violated”.

2. Annul resolution #75 dated 01st December 2005 made by the State Great Khural on hearing resolution #2/08 dated 16th November 2005 made by the Constitutional Tsets.

3. This conclusion of the Constitutional Tsets of Mongolia shall be valid upon issuance.



Resolution of the Constitutional Court of Mongolia

2006.06.15

No. 02

Ulaanbaatar

The adjudication on the constitutionality of articles 154.3, 154.4, 174.2, 174.3 of the Law on the Amendment to Civil Law adopted in connection with the Law on Non-judicial foreclosure of Mortgage collateral with the Constitution of Mongolia was resolved by the mid-bench session.

One. The Supreme court states in its petition:

1. Where it is stated that “the object of a pledge may be in the ownership of others. In this case demand shall be satisfied after the relevant property has been transferred to the pledgee’s ownership” in article 154.3 of the Civil law, after the adoption of the Law on non-judicial foreclosure of mortgaged assets it is not clear and is considered to breach the rights of the owner.

The supreme court finds it is not compatible with article 16.2 which states that “citizens of Mongolia shall be guaranteed the privilege to enjoy the right to fair acquisition, possession and inheritance of moveable and immoveable property” in the Constitution of Mongolia.

2. Considers article 154.4, which states that the “item of pledge may be erased in the future. In this case demand shall be satisfied after the relevant property has been erased and transferred to the pledgee’s ownership” of the Civil law contains an error in meaning, and breaches the above mentioned statement

of the Constitution.

It finds a breach of article 16.2, which states that “citizens of Mongolia shall be guaranteed the privilege to enjoy the right to fair acquisition, possession and inheritance of moveable and immovable property” of the Constitution. Not only is there a conflict of meaning when it is stated that an item of pledge erased in the future can be pledged, but also, in cases after the relevant property has been erased, there could be difficulty in applying this statement. In addition, the owner is obliged to refuse and to transfer the rights of ownership of others in cases of enjoying the disposal rights of the assets of ownership on the pledge basis.

3. Article 174.3 which states that “If the creditor is a bank or a non-banking financial institution, it shall submit the request to a court for selling through a judicial proceeding, or to a registration office for selling through a non-judicial proceeding as prescribed in the law” is not compatible firstly with the equal rights principle of parties of private law, and secondly, with articles 14.1 containing “the principle of all persons being equal before the law and the court”, article 47.2 containing “the exercise of judicial power by any organization other than the court is prohibited” and “the right to appeal to the court ...a fair trial” provided by the Constitution.

Two. In the explanation made by Z.Enkhbold, member of State Great Hural, appointed as accredited representative to the mid bench session of the Tssets:

1. The petition made by the Supreme court states that article 154.3 of the Civil law has become the regulation, meaning “...the object of pledge may be pledged for the obligation of others but in doing so the right of ownership shall be transferred to the obligator” and it is not compatible with the statement of the Constitution which says citizens of Mongolia shall be guaranteed the privilege to enjoy the right to fair acquisition, possession and inheritance of moveable and immovable property. This regulation is not about pledging one’s own property for the obligation of others. In the Supreme courts case, the third party makes the contract with pledger, but not with the obligator, and is not entitled to do so.

The content of this statement is the regulation that if

someone who has no object of pledge wants to have a loan to buy an apartment, leasing the apartment shall be the item of pledge.

Once the pledge is the relation of obligation concluded by the parties on the basis of their own will, accepting the item of pledge refers to the risk of the pledgee.

Therefore “the object of pledge can be referred to the ownership of others” shall be understood that not as having had a pledge after transfer to the ownership of the creditor pledgee, but to the transfer of the the object of pledge, which will be transferred in ownership in the future on the basis of the pledge contract.

On the other side where stated that the right to demand of the pledgee shall be satisfied only in cases emerging from the right to ownership of the pledger, is the regulation which protects the rights of other owners but does not affect their interests. In other words the failure of a commitment to have assets in future shall be referred to the pledge and not affect the others property.

2. Paragraph 154.4 of article 154 of the Civil law is similar to the above mentioned statement. It provides the opportunity to transfer the object of pledge which will be erased in the future. It will not affect the right to ownership of others. As the right to demand emerges when the object of pledge to be erased in the future is erased and transferred to ownership of the obligated performer, this means even when the object of pledge is erased but not transferred to ownership of the pledger, the right to demand shall not be satisfied. Therefore the rights of other owners are protected as well.

3. It was concluded that the second sentence of article 174.2 of the Civil law, which states “this provision shall not be applied when the pledgee is a bank or non-banking financial institution” breaches paragraph 1 of article 14, which states “all persons are equal before law and court”. The principle of equal rights is mentioned only among unequal parties. In other words there are no equal rights among parties who are no equal. For instance, even though both banking and non-banking financial institutions are legal persons their rights and duties are different on the basis of their legal status. Non-banking financial institutions do not provide

a savings service. If it is considered that each legal entity has equal rights it is obvious that banks, non-banking financial institutions, companies, non government organizations, and also citizens can have the right to provide a savings service.

4. It was also stated that paragraph 3 of article 174 of the Civil law breaches article 14.1 containing “the principle of all persons being equal before the law and the court”, article 47.2 containing “the exercise of judicial power by an organization other than the court is prohibited” and “the right to appeal to the court ...a fair trial” stated in the Constitution.

The registration office is not the organization to decide whether to sell the pledged assets or not and to fulfill the judicial functions. It is able to witness to and register only the pledged immovable property, satisfying obligation and procedure satisfactorily, but not able to restore violated rights according to non-judicial procedure stipulated in law, to value the damages and force them to be covered, and to hear disputes among parties. One of the specialties of this process is the absence of any disputes among the parties. In cases where there is a dispute instigated by either of the parties regarding the contract or during the process, it shall be subject to the court.

Even though any dispute which has arisen according to paragraph 3 of article 174 of the Civil law shall be resolved in a non-judicial manner, where one finds one’s own rights and freedoms protected by law are violated during the non-judicial process, one is entitled to appeal to the court to restore those violated rights during any stage of the foreclosure of mortgaged assets.

It is stated in paragraph 1 of article 27 of the Law on Procedure of Foreclosure of Mortgaged Assets. As well as the right to appeal to court to restore violated right when finds the rights and freedom protected by law is violated.

Therefore paragraph 3 of article 174 of the Civil law provides the legal basis to make the obligation performance satisfied without the participation of the court only in cases where the rights and freedom of someone have not been violated, but this does not restrict one’s right to appeal to the court.

It finds that provision 154.3, 154.4, 174.2 and the second sentence of 174.3 do not breach the concerned provisions of the Constitution.

GROUNDS:

2. It is stated that the object of pledge may be in the ownership of others. In this case demand shall be satisfied after the relevant property has been transferred to the pledgee's ownership in provision 154.3 of the Civil law.

The pledger shall be entitled, including remaining as owner of the assets not transferred to satisfy the demand of the pledgee, while keeping the object of pledge under his/her ownership, to keep the object of ownership under his/her ownership upon being relieved of the pledge obligation after performing the obligation on behalf of the obligation performer, transferring the right to pledge to ownership of a third party who is not the obligation performer with or without charge. This is the commonly accepted civil law principle.

Therefore there are grounds that the second sentence of paragraph 3 of article 154 of the Civil law breaches subparagraph 3 of paragraph 1 of article 16 of the Constitution, which provides the "right to ownership moveable, immovable property".

2. It is stated that "Provision of this law shall be applied for sales of immovable properties, and the regulations of this law shall be deemed as more detailed regulation. This provision shall not be applied to banks or non-banking financial institutions in paragraph 2 of the article on Civil law. It can be understood that the rule of foreclosure of immovable property is the object of pledge regulated by the Civil law in cases where the pledgee is a bank or non-banking financial institution.

In other words, while it determines that the rule prescribed in article 175 of the Civil law shall not be applied even in cases where the pledgee is a bank or non-banking financial institution, owner of immovable property as obligation performer, or where the pledger submits the request to a court for selling through a judicial proceeding, or to a registration office for selling through a non-judicial proceeding, as prescribed in the law on the rights

of the obligation performer and the owner of immovable assets being violated.

Therefore there are grounds to consider the petition which concluded with paragraph 2 of article 174 of the Civil law stating that “this provision is not applied to... cases of the pledge being a bank or non-banking financial institution” is not consistent with paragraph 1 of article 14 of the Constitution which states that all persons are equal before law and the court.

3. It is stated in paragraph 3 of article 174 of the Civil law that, if the creditor is a bank or a non-banking financial institution, it shall submit the request to a court for selling through a judicial proceeding or to a registration office for selling through a non-judicial proceeding as prescribed in the law. Articles 175.5-175.7, 176 and 177 of this law shall not be applicable for selling in a non-judicial way.

There are grounds, as prescribed in paragraph 3 of article 174 of the Civil law, that while a bank or non-banking financial institution has, as a creditor, a right to choose the person who will satisfy the demand solely at the discretion of the obligation performer or pledger, the owner of immovable property has no such right, is breaching not only the principle of equal rights but also paragraph 1 of article 14 which states that “every persons are equal before the law and the court”, paragraph 2 of article 14 which states that “...no person shall be discriminated against on the basis of property”, paragraph 14 of article 16 containing “...have a right to appeal to the court...a fair trial” provided in the Constitution, and also stating that to submit to a registration office for selling through a non-judicial proceeding is not consistent with paragraph 1 of article 47 stating that “judicial power is vested only in court” and paragraph 2 of article 47 stating that “the exercise of judicial power by an organization other than the court is prohibited” in the Constitution.

IT IS ESTABLISHED ON BEHALF OF THE CONSTITUTION OF MONGOLIA THAT In adhering with paragraph 3 of article 66 of the Constitution of Mongolia and paragraph 2 of article 8 of the Law on Constitutional Tsets, paragraph 2 of article 31, paragraph 3 of article 36 of the Law on

Procedure of Constitutional Tsets:

1. Consider invalid paragraph 3 of article 154 of the Civil law which stated that “In this case demand shall be satisfied after the relevant property has been transferred to the pledgee’s ownership” on the basis of a breach of subparagraph 3 of paragraph 1 of article 16 of the Constitution stating “has a right to own moveable and immovable property”, and paragraph 2 of article 174 of the Civil law which stated that “in cases of the pledgee being a bank or a non-banking transaction institution this provision shall not be applied to” on the basis of a breach of paragraph 1 of article 14 of the Constitution stating that “all persons shall be equal before law and the court” and paragraph 3 of article 174 of the same law which stated that “If the creditor is a bank or a non-banking financial institution, it shall submit the request to a court for selling through a judicial proceeding or to a registration office for selling through a non-judicial proceeding as prescribed in the law. Articles 175.5-175.7, 176 and 177 of this law shall not be applicable for sale in a non-judicial way” on the basis of a breach of paragraph 1 of article 14 of the Constitution stating that “all persons shall be equal before law and the court”, paragraph 14 of article 16 containing “...have a right to appeal to the court...a fair trial”, paragraph 2 of article 14 containing “...shall not be discriminated against on the basis of property”, paragraph 1 article 47 containing “judicial power is vested only in court”, paragraph 2 of article 47 stating that “the exercise of judicial power by the organization other than the court is prohibited” which are provided by the Constitution.

2. Consider resolution 30 dated 26th April of 2006 of the State Great Khural regarding the conclusion 2/04 of 2007 issued by the Constitutional Tsets as invalid.

3. This resolution shall be deemed as valid upon issuance.



Resolution of the Constitutional Court of Mongolia

2007.05.23
No. 06
Ulaanbaatar

The hearing on the constitutionality of action of the Chairman Ts. Nyamdorj, and the existence of grounds for removal from his position

... The adjudication on the constitutionality of action of Chairman Ts. Nyamdorj, and the existence of grounds for his removal was resolved by the large bench session of the Constitutional Tsets.

One. The citizen B.Lkagvajav, residing Sukhbaatar district, in his information submitted to the Constitutional Tsets stated:

Chairman Ts.Naymdorj, when editing the following laws, abused his power vested by the Constitution by making corrections which led to a change of meaning, policy and principles of the law draft:

. Revised version of the VAT law and Corporate tax law adopted by Parliament on 29 June, 2006 and the Law on annulment of previous VAT and Corporate tax laws, was corrected. This can be seen if we compare the drafts enclosed in the law files, drafts distributed to State Great Khural members and law texts published in "Toriin medeeler" journal.

The Chairman, after introducing the most recent version of the drafts of the abovementioned laws to the State Great Khural without consent of Parliament, made corrections and signed those laws when the deadline for signing had expired. Therefore

he violated paragraph 2 of article 1, article 20, sub-paragraph 1 paragraph 1 of article 25, and paragraph 1 of article 70 of the Constitution.

Also violated were clauses 51.1, 51.2, 51.4 of the Procedure of the State Great Khural's Session. Clauses 51.1.1, 51.1.2 of the Procedure stated that the Chairman, when editing the last edition of the law draft, may correct words, and change the order of clauses or structure without changing it's meaning, policy and principles.

Clause 51.4 of the Procedure stated that, "The Chairman shall validate the law draft by signing within 3 days upon submission of the last edition to the State Great Khural". However, Ts. Nyamdorj abused his power, and has seriously infringed on the power of the State Great Khural and its members. Therefore the petitioner asked to establish the constitutionality of the actions of Ts. Nyamdorj, and the existence of grounds for his removal from the position of Chairman.

Two. Citizen D.Lamjav, residing in Bayangol district, and R. Burmaa, residing in Khan-Uul district, on their petition submitted to the Constitutional Tsets stated:

1. Chairman Ts. Nyamdorj, after submitting to the State Great Khural the last edition of the Mineral law and Anticorruption law, made a lot of corrections to such laws by himself and directed others to do so. He also declared illegally that it is possible to act in such a way. He even ignored the procedural routine which demands introducing corrections to the State Great Khural before signing, and immediately published those laws. All these actions constitute abuse of his power by the Chairman Ts.Nyamdorj.

2. To stop such a serious abuse of democratic principles by the Chairman, the petitioners and other citizens applied to the Constitutional Tsets and the Tsets started a process according to decision number 24 of January 24, 2007. After this on 7th of February, 2007 those laws last edition were introduced to the State Great Khural. This proves that the law was violated.

3. Pursuant to the abovementioned decision of the Constitutional Tsets, the large bench session of the Constitutional Tsets issued conclusion number 3 of March 2, 2007. In which it was stated that Ts.Nyamdorj had violated paragraph 2 of article

1 of the Constitution specifying “The fundamental principles of the activities of the state shall be democracy, justice, rule of law”, article 20 specifying “The State Great Khural is the highest organ of the state power and legislative power shall be vested solely therein.”, and sub-paragraph 1 of paragraph 1 of article 25 “adopting, amending laws shall be solely within the power of the State Great Khural”.

4. The Constitutional Tsets, by such a conclusion, decided that Ts. Nyamdorj, by such a decision, had not violated paragraph 1 of article 70 of the Constitution specifying that “..activities of all organizations and citizens must be in conformity with the Constitution.” Such a conclusion rested on the following assumptions: Firstly, Ts. Nyamdorj’s activities were directly related to his official duties, therefore he could not be considered as a citizen, secondly, Chairman of the Parliament could not be considered as an organization.

5. On the grounds of the third conclusion, the Constitutional Tsets stated that “2. The existence of grounds for the removal of the President, Chairman of the State Great Khural, or Prime Minister, shall be decided by the Constitutional Tsets on the request of authorized bodies or officials. Therefore it is impossible to reach a conclusion on this issue of the citizen’s request”. This conclusion was delivered to the State Great Khural with a request to discuss it and reply within 15 days of the commencement of the Spring session. It was a very significant comment in regards to the implementation of subparagraph 4 paragraph 2 of article 66 of the Constitution.

The Constitutional Tsets for the first time provided the State Great Khural with an opportunity to correct its Chairman’s decision. Pursuant to the Law, the State Great Khural shall pass one of the following decisions:

/Decide on the removal of Ts. Nyamdorj,

/Submit a request to the Constitutional Tsets on the existence of grounds for the removal of Ts. Nyamdorj.

/Get an oath from Ts. Nyamdorj of non-violence..

6. The State Great Khural did nothing in this direction, instead it made a political attack on the Constitutional Tsets.

Therefore the State Great Khural violated clause 1 of article

70 of the Constitution stating “Activities of state organization shall be in conformity with the Constitution.”

7. In cases where the State Great Khural has not fulfilled its duties, the Constitution allows consideration of the “Existence of grounds for removal of the Chairman of the State Great Khural” on request of the citizen. The conclusion of the Constitutional Tsets and its resolution being evidence that is still effective.

Also, the petitioner requested to establish whether the refusal of Ts.Naymdorj to admit the conclusion of the Constitutional Tsets number 3 which had established violation of paragraph 2 of article 1, article 20, sub-paragraph 1, and paragraph 1 of article 25 of the Constitution itself constitute grounds for his removal.

Three. Chairman Ts. Nyamdorj in official letter number 1/3040 of 17 May, 2007 made the following explanation:

Based on the consent of the State Great Khural of 20 July, 2006 and clause 51.2 of the Procedure of the State Great Khural Session I made the following correction to the VAT law and Corporate income tax law which has the following editing, wording, structural and order changing character:

Firstly, structural changes made to the VAT law:

1. Article 1 of the previous draft, divided into article 1 and article 2 and part of this article, stated “the goods imported and exported by the citizen, legal entities or goods produced and sold, and services provided within the territory of Mongolia” numbered as article 3.

2. Articles 16, titled “Payment of VAT to the budget and its reporting” and article 17, titled “Imposing VAT on imported goods and its payment to budget and reporting” were consolidated into one article numbered as article 16. Therefore the numbering of articles and clauses which refer to the other articles were changed.

Secondly, Editing, wording and order corrections

1. In clause 4.1.10 of the law, the phrase stated “income from goods produced, works performed and services provided ” was changed to “income from activities specified in article 3 of this law”, because all those sources of income were stated in article 3.

2. In clause 5.2 of the law, the phrase stating “revenues

derived from the sale of goods, works performed, and services provided” was changed to “sales revenues of goods sold, work performed, or services provided.”

3. In clause 6.1, the wording stating “an entity which became a VAT payer” was changed to “an entity qualified for the condition provided in subparagraph 4.1.10” (which means that its revenue reached 10 mln and more MNT)

4. In clause 6.2 the phrase stating “citizen, entities which sold goods, performed work and provided services” was changed to “as specified in subparagraph 4.1.10”

5. In clause 6.3, the wording “VAT taxpayer certificate” was changed to “certificate specified in paragraph 6.2 of this law”.

6. In clause 6.5 “ subparagraphs 6.4.1 and 6.4.2” were changed to “6.4” and the order of the words “income tax return” was changed.

7. In clauses 6.9, 6.10 the wording “entities belonging to one group” was changed to “entities specified in paragraph 6.7 of this law.”

8. In clause 7.1.1 the words “all types” were added because those words were also included in clauses 4.1.2, 7.1.3.

9. In clause 7.1.2 “outside” was changed to “in foreign countries” and the words “all types” were added.

10. In clause 7.1.4 one sentence was divided into two and numbered as 7.1.4 and 7.2 Therefore numbering within this article was changed.

11. In clause 7.3.4 the wording “to pay off debts by barter” was changed to “pay off debts by transferring goods.”

12. In clause 7.4.8 the wording “to pay off debts by barter” was changed to “pay off debts by transferring goods.”

13. Clause 7.5.1 was divided into 2 clauses 7.5.1, 7.6.

14. In clause 8.1 the words “on the following procedure” were added, and the words “imposed on VAT” were deleted from other subparagraphs; the word “exported” was added, which was omitted in this clause even it was in clause 5.1.

15. Clause 8.2 was divided into two clauses 8.2 and 8.3.

16. Each sub-clause of article 9 has the phrase “shall be determined”, therefore those words were removed from sub-clauses and brought to clause 9.1, stating that “The taxable amount of VAT shall be determined as follows”. Also some order changes were made to clauses 9.5, 9.6, 9.1.4, 9.1.5.

17. In clauses 10.2, 10.3, 10.4, 10.5 the words “value added”

were added to the word “tax”. Such changes were also made to clause 12.1.

18. Clauses 12.1.1a, 12.1.1.6, 12.1.2a, 12.1.2.6, 12.1.2 b were merged into two clauses 12.1.1, 12.1.2, and in clause 12.1.3 “outside of Mongolia” was changed to “foreign country.”

19. Clause 12.1.4 consists of 2 sentences. Therefore clause 12.1.4 “a” stating that “Clause 12.1.4 of this shall not apply to services provided in direct relation to movable and immovable property located in the territory of Mongolia.” was numbered as 12.2, and the phrase “VAT shall be zero” in clause 12.1.6. was deleted because it is a repeated phrase included in clause 12.1

20. In clauses 12.4.1, 12.4.2 “representing” was changed to “representative” and in clause 12.4.2 the phrase “or stays in a country.” was added, because clause 12.4 includes citizens and legal entities and we used “reside” for citizens, and “stay” for legal entities.

21. In clause 13.1.2 “consular offices” was added after the word “mission”, because the same wording was used in clause 13.1.3. and “international organizations” was changed to “specialized agencies of the UN.”

22. Clause 13.1.3a stating that “Clause 13.1.3 shall not apply to one time purchases of goods, works and services costing less than 10000 MNT” was numbered as 13.3 and placed after 13.2.

23. Clause 13.1.6 consisted of 2 sentences. The first sentence became 3.4 and stated “clause 13.1.6 shall not apply to non-custom made vehicles.”

24. Clause 13.1.8 consisted of 2 sentences, therefore 13.1.8 a stating that “Clause 13.1.8 of this law shall not apply to the newly built apartment or its part for purpose of sale.” was numbered as 13.5.

25. Clause 13.6.6 was edited to “placement of monetary assets”.

26. The second sentence of 13.2.4a stating “Clause 12.2.4 of this shall not apply to the production, purchase and sale of medicine, medical preparation, devices or equipments” was separated and numbered as 13.8

27. Clause 13.6.14 consisted of 2 sentences. One sentence was left as clause 13.6.14 and the phrase stating “the services shall not apply to tourist camps, restaurants, tour transport, and hotel services” was separated into clause 13.9.

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28. In clause 13.11 sentences in brackets were joined to the main sentence.

29. Clause 14.1.4 consisted of 2 sentences and the section stating “this article shall not apply to imported and sold unprocessed agricultural products ” was separated into clause 14.2.

30. Clause 14.4.1 consisted of 2 sentences. Clause 14.3.1a, related to automobiles, was separated into clause 14.5.

31. The order of the clauses in article 15 was changed. Clause 15.3 became 15.4 and was related to one group member, 15.4 became 15.5 and related to producer –exporters.

32. Clause 16.1 was separated into 2 clauses, the sentences stating “VAT imposed on goods sold, work performed or services provided in a given month ” was numbered as clause 16.1.1.

33. In clause 16.2.3 “custom authority ” mentioned in 16.2.1 was stated more specifically as “custom headquarters.”

Three. Structural changes made to the corporate tax law

1. Clause 4.1.8 was numbered as article 6 and titled “Related party.”

2. Article 19 titled “Tax credit” was merged to article 20 titled “Investment credit.’

Due to the structural changes the numbering of articles was not changed, the structure of the law stays the same and it has 22 articles, only the order of articles and reference numbers were changed.

Four. Editing, wording and ordering correction made to the Corporate tax law

1. The clauses of article 3 were numbered and “representing place” was changed to “representative office.”

2. In clause 4.1.1 of article 4, “outside of Mongolia” was changed to “in a foreign country”.

3. In clause 4.1.5 the wording “in accordance with tax legislation ” was changed to “obliged to pay income tax.”

4. Clause 4.1.5 stated “similar legal entity” therefore in clause 4.1.6 “an economic entity” was changed to “entity.”

5. In article 5 “residing and not residing” was changed to “as having permanent residence and non-resident taxpayer ”, because of “legal entity locates” and “citizen resides’.

6. Clauses 5.5 and 5.6 were merged into one clause and

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“representing place” was changed to “representative office.”

7. Clause 8.1.4, which consisted of 2 sentences, was divided into clauses 8.1.4 and 8.1.5

8. In clauses 9.2.1, 9.2.2, 9.2.3, 9.2.5, 9.2, 9.2.6 “for usage” was changed to “payment for usage”, and also in some clauses “payment for usage ” was written as “payment for exercising” therefore from clause 9.2 the phrase “payment for exercising the rights according to the legislation” was deleted.

9. Clause 11.1 was revised and reference was made to article 6 because in one sentence one phrase was repeated several times, also in clause 11.2 reference was made to articles 7.5, 11.1.

10. Clauses 12.1.13, 12.1.16, 12.1.19, 12.1.25, and 12.1.26 consisted of 2 sentences. Those clauses were separated into 2 clauses as follows: the second sentence of clause 12.1.13 became 12.3; the second sentence of clause 12.1.16 became 12.4; the second sentence of clause 12.1.19 became 12.5; the second sentence 12.1.25 became 12.6 and the second sentence of 12.1.26 became 12.7.

11. The sub-clauses 12.8.1, 12.8.2 have the phrase “...shall not be deductible expenses from taxable income” therefore this phrase was added to the heading of clause 12.8, and states “The following expenses shall not be deductible from gross taxable income” and was deleted from each sub-clause.

12. Clause 13.2 was put into table form.

13. Article 12 was titled “Deductible expenses from gross taxable income ” but clause 12.1.7 indicated “the loan interest” (which is a deductible expense) therefore the title of article 14 brought in consistency with the title of chapter 3 and article 12 of the law, and was revised as “Interest expenses deductible from gross taxable income”

14. In clause 16.6 the phrase “taxable income from quizzes, gambling and lotteries” and in clause 16.8 the phrase “share and securities” were used repeatedly, therefore were deleted in some parts.

15. In clause 17.1 some numbers were expressed in words for reasons of clarity.

16. In clause 18.2 the first 3 rows were deleted and reference to 18.1.2 was made.

17. All items stated in clause 19.1 were numbered.

18. Clause 19.2 consisted of 2 sentences. Therefore the sentence stating “Government shall approve a list of priority

sectors.” was separated into clause 19.7.

19. In clause 20.2 the phrase “tax statement loss ” was deleted and reference made to clause 20.1. The same phrase was deleted in clause 20.3 and reference to 20.2 was made.

20. In clause 21.4 the phrase “tax authority shall deliver yearly tax payment schedule ” was deleted and reference to clause 21.3 was made.

21. Clause 21.5 consisted of 2 sentences, therefore the second sentence stating “a withholder shall prepare and submit the withholding tax statement as specified in subparagraphs 21.5 and 21.6 of this law by the 20th of the first month of the following quarter on a quarter-to-date basis and annual statement by February 10th of the following year to the corresponding tax authority and make payment to the budget.” was separated into clause 21.7.

ON THE GROUNDS THAT :

One. It was established from the law drafts file, and other evidentiary documents considered at a large bench session of the Constitutional Tsets, that the Law on VAT was corrected on 27 September 2006 or 49 days, on 10 October or 58 days and 17 October or 63 days since its last edition was introduced to the Parliament, and the Corporate tax law was corrected on 7,11,19,26 September and 3 October or 35,37,43,48,53 days since its last edition was introduced to the Parliament. Such corrections had policy , principal and structural character.

Therefore Chairman Ts. Nyamdorj has violated clause 32.1 of article 32 of the Law on the State Great Khural which stated “The State Great Khural shall adhere the Procedure of the State Great Khural Session while conducting reading of the drafts law and adopting it.” In addition, clause 51.4 of the Procedure of the State Great Khural of 27th January 2006, approved by resolution number 14 of the State Great Khural, stating that “The Chairman shall validate the law draft by signing within 3 days upon submission of the last edition to the State Great Khural.”

Two. Chairman Ts. Nyamdorj said that after introducing the last edition of the drafts he received approval of the members of the State Great Khural to make corrections. However neither

the Law on the State Great Khural nor the Procedure of the State Great Khural Session allows him to do so.

1. The Rule of law principle prohibits state organization and officials from exercising rights beyond those vested by the law. The explanation of the chairman Ts. Nyamdorj that he received the approval of the members of the State Great Khural and his validation of the law by signing it without approval of the State Great Khural is inconsistent with the Rule of law principle.

2. Even Ts. Naymdorj said that he acted on the approval of the members of the State Great Khural; such approval has not been issued in the form of a resolution, and also breaches effective law principles.

Three. The action of the chairman Ts. Naymdorj, who several times made corrections to the law drafts after the introduction of the last editions to the State Great Khural, infringing upon the Constitution and other legislation, constitute grounds for his removal from the position of Chairman of the State Great Khural.

Four. The effective date of the Law on annulment of previous VAT and Corporate tax laws was approved by the State Great Khural in connection with approval of the Law on VAT of 29th June, 2006. Therefore on this issue grounds for the violation of the Constitution by the Chairman Ts. Nyamdorj were not established.

Five. The article 70 of the Constitution stating “all organization and citizen” is not applicable to the position of the Chairman of the State Great Khural therefore the grounds for violation of this article of the Constitution was not established.

ESTABLISHES ON BEHALF OF THE CONSTITUTION OF MONGOLIA THAT In adhering with paragraph 2 of article 66 of the Constitution, paragraph 2 of article 31 of the Law on Procedure of Constitutional Tsets:

1. Considers that the Chairman Ts. Nyamdorj, by making many meaningful policy, principle, wording, and structural changes to the Laws on VAT and on Corporate Tax after introducing the last

edition to the State Great Khural session, has violated paragraph 2 of article 1 of the Constitution stating that “The fundamental principle of activities of the state shall be democracy, justice... rule of law” and article 20 stating that “legislative power shall be vested solely in the State Great Khural” and paragraph 1 of article 25 stating that “adopting, supplementing, and amending laws” shall be within the sole competency of the State Great Khural.

2. Considers that the action of Ts.Nyamdorj, Chairman of the State Great Khural, who several times infringed the power of the State Great Khural in violation of the Constitution constitute grounds for his removal .

3. Consider that Chairman Ts. Nyamdorj, when signing the effective date of the Law on the annulment of previous VAT and Corporate tax laws approved by the State Great Khural on 29th June, 2006, has not violated the relevant provision of the Constitution.

4. Consider that Chairman Ts. Naymdorj has not violated paragraph 1 of article 70 of the Constitution stating “activities of all organizations and citizens must be in conformity with the Constitution.”



Resolution of the Constitutional Court of Mongolia

2007.06.22
No 02
Ulaanbaatar

Resolution of the dispute on the constitutionality of allocating 250 million tugrug for each State Great Khural election District, while approving the State budget law for 2007

Constitutional Tssets Meeting Hall
6:00 pm

Citizen N.Khaidav, in his petition stated:

It can clearly be seen from paragraph 2 of article 1 of the Constitution of Mongolia that the principle of power division when legislative, executive, and judicial power shall exercise their own rights in an impartial and independent manner, is adhered to and guaranteed by the Constitution.

The statement in article 3 of the Constitution specifying “illegal seizure of state power or attempt to do so shall be prohibited”, not only means “armed seizure” but also includes “fraudulent election”.

...When approving the State Budget law for 2007, some members of the State Great Khural, in violation of the exclusive power of the Government to draft and submit budgets to Parliament, initiated the allocation of 250 million tugrug to each election district for spending under direct control of the MP. After this illegal action had encountered mass public opposition, members of Parliament decided to relocate it into the Ministers’

budget package for each named parliament member.

Thus this issue, disputable at the public and the parliamentary level, should be resolved unanimously. In the beginning, the allowance was 10 million, it then increased up to 100 million, but now, it has reached 250 million. Moreover, it is setting a precedent, and violating the principle of power separation stated in the Constitution.

The State Great Khural by its resolution of November 30, 2006, approved by the Standing Committee on Budget issues of the State Great Khural, allocated 250 million tugrug for each election district, a total of 19.0 billion tugrug, into the Minister's budget package via the parliamentary members list, in abuse of the executive power and the competence of local self-governing bodies. This resolution has violated paragraph 2 of article 1, paragraph 2 of article 3, subparagraph 2 of paragraph 2 of article 38, paragraphs 1 and 2 of article 62, and paragraph 1 of article 70 of the Constitution of Mongolia.

Based on the above facts, I request to examine the State Great Khural's resolution of November 30, 2006 and invalidate it in order to abide by the Constitution of Mongolia.

The Constitutional court discussed this dispute in its medium bench session and approved conclusion No.2 which mentioned:

The State Great Khural, when discussing the Law on the state budget of Mongolia for 2007 in accordance with the proposal of some members of the Parliament, allocated 250 million Tugrug for each election district, a total of 19 billion tugrug, into the Minister's budget package via the parliamentary members list. This is proved by documentary evidence, including the protocol of the plenary session of the State Great Khural of 26,27 October 2006 and 21, 26, 30 of November 2006, protocol of the Standing committee on Budget issues 20, 29 of November 2006, protocol No 186 of the Mongolian people's revolutionary party group session of 20 November 2006. In addition, MP R. Bud participated in a court hearing with the power of attorney from SGK, and explained that each member's regional development proposal for 2007 was attached to the Law on the State Budget for 2007.

In the draft Law on the Budget for 2007 submitted to the State Great Khural by the Government on October 1, 2006, there was no provision allocating 250 million tugrugs for each election district. The State Great Khural, during the discussion on the interference of Governmental power, increased the budgetary amount within the general managers package. Each members proposal was included in the investment list enclosed with the budget, but some identical items of investment differ from each other, and some activities overlap; some issues which could not be decided within state financial policy were included with the attachment. From this we can conclude that the MPs proposal was included in the draft automatically. The State Great Khural, in allocating 250 million tugrug to each election district, a total of 19 billion tugrug, into the Minister's budget package via the parliamentary members list, has violated paragraph 2 of article 1, paragraph 1 of article 23, paragraph 2 of article 38, paragraph 1 of article 58, paragraphs 1, 2 of article 62, and paragraph 1 of article 70 of the Constitution of Mongolia.

The State Great Khural discussed the above conclusion of the Constitutional Tsets and issued resolution No34 from 24th April, 2007 which mentioned:

Member of the Constitutional Tsets, V.Udval received the petition from citizen T.Mendsaikhan, who claimed that "... the Mongolian Government at the Cabinet session held on 18 September 2002, decided to allocate 760 million for the financing of projects, programmes, and events planned by parliament members within the activities implemented by the Governmental action plan from non-distributed budget items. Such a resolution has violated the Constitution." V. Udval refused to initiate the proceeding. Furthermore, the Constitutional Tsets discussed this petition at an appeal procedure on 11th February, 2003 and approved the Constitutional Tsets's member resolution No 35 by its final resolution.

After 4 years, the Constitutional Tsets initiated proceedings instantly on the same matter in terms of content and grounds, and issued a different decision, while resolution No 35 of 18 December 2002 and determination 1 of 11 February 2002 of the Constitutional

Tsets stays valid.

The State Great Khural did not use the term “election district” when it approved the Law on the State Budget, and did not apply such a principle.

Moreover, the Constitutional Tsets, when reaching the conclusion that the allocation of 250 million tugrug for each election district, a total of 19 billion tugrug, into the General managers Budget package has violated the Constitution, did not indicate the provision of the State Budget Law which violated the Constitution, and also did not specify the program, project or event which should be suspended for the total cost of 19 billion tugrugs.

IT WAS REASONED THAT

1. In reaching part of conclusion No 2, the Constitutional Tsets stated that the fact of allocating 250 million tugrug to each election district in the budget package of Deputy Minister and the General Managers of State Budget, with the attached investment list prepared on the proposal of parliament members, has been proved by protocol of the plenary session of the State Great Khural of 26,27 October 2006 and 21, 26, 30 of November 2006, protocol of the Standing committee on Budget issues 20, 29 of November 2006, protocol No 186 of the Mongolian people’s revolutionary party group session of 20 November 2006 and the explanation of MP T Ochirkhuu, R. Bud participated in the court hearing with power of attorney from SGK and the list of investment proposals of Parliament members, attached to the Law on state Budget for 2007.

2. As stated in the 2nd section of the Concluding part, the investment of 19 billion tugrug has been suspended from the day when the Constitutional Tsets’s Conclusion was approved. As a result, N.Bayartsaikhan, Minister of Finance, sent a letter No 3-s/971 of March 1, 2007 to the General Managers of State Budget to suspend the implementation of the relevant construction projects and other projects and programs.

To this letter was attached application 1 of the State Budget Law for 2007 according to which the financing of the following projects, measures, and construction were temporarily suspended:

48 million tugrug investment stated in section VII.5.1.2 of the Prime Minister's package; 750 million tugrug for the investment stated in VIII.4 section of the Deputy Minister's package; 1381 million tugrug for the investment stated in section IX.1.1 -IX.1.29, 268.5 million tugrug for the capital renovation stated inspection IX.2.2 -IX.2.22, and 363 million tugrug for the equipment stated in IX.3.2 -IX.3.17 from the package of the Head of Cabinet Secretariat of the Government; 24 million tugrug for the investment stated in section X.1.1.5 -10.1.1.8, 15 million tugrug for the capital renovation stated in section X.1.2.8, and 21 million tugrug for the equipment stated in section X.1.3.1 and X.1.3.2 from the package of the Minister of Justice and Internal Affairs; 871 million tugrug for the power and electricity stated in section XIII.1.3.1 -XIII.1.3.8, 6.5 million tugrug for the restorative power stated in section XIII.1.4.1, and 56 million tugrug for the fuel stated in section XIII.2.4 of the package of the Minister of Energy and Fuels; 20 million tugrug for the investment stated in section XIV.1.5 and XIV.1.6, and 5. million tugrug for the equipment stated in section XIV.3.2 of the package of the Minister of Emergency; 652 million tugrug for the Education investment stated in section XVI.1.1.45 -XVI.1.1.52, 49 million tugrug stated in section XVI.1.1.53 and 2208 million tugrug for the investment stated in section XVI.1.1.54 -XVI.1.1.77, 1617 million tugrug stated in section XVI.1.2.1 -XVI.1.2.51 and 20 stated in section XVI.1.2.56 for the capital renovation, 286 million tugrug for the equipment as stated in section XVI.1.3.3 -XVI.1.3.21, 50 million tugrug stated in section XVI.2.1.7 and 1345 million tugrug stated in section XVI.2.1.14 -XVI.2.1.28 for the investment, 42 million tugrug stated in section XVI.2.2.3 and XVI.2.2.5 section for the equipment, and 844.6 million tugrug for the renovation stated in section XVI.2.23 of the package for the culture fund of the Minister of Education Culture and Science; 100 million tugrug stated in section XVII.1.9 and 1186 million tugrug stated in section XVII.1.24 - XVII.1.41 for the investment, 386.1 million tugrug stated in section XVII.3.8 -XVII.3.21 for the equipment, and 546.5 million tugrug stated in section XVII.4 for capital renovation of hospitals of the package of the Minister of Health; 50 million tugrug for the investment stated in section XVII.2, and 430 million tugrug as stated in XVI.1.53 for the supporting investment of small and medium enterprise and trade of the package of the Minister of Industry and Trade; 128 million tugrug for the investment stated

in section XIX.1.8-XIX.1.15 section, and 65 million tugrug as stated in XIX.2.1- XIX.2.3 section for the capital renovation of the package of Minister of Food and Agriculture; 13 million tugrug for the investment stated in section XX.1.6 of the package of the Minister of the Environment; 568 million tugrug for the investment stated in section XXI.1.3-XXI.1.19, 130 million tugrug for the equipment stated in section XXI.4.1-XXI.4.4, and 20 million tugrug as stated in section XXI.4.5 for the equipment of the package of Minister of Social Welfare and Labor; - 60 million tugrug stated in section XXII.1.3.3 section and 1075 million tugrug as stated in section XXII.1.3.6 for the financing of road and bridge construction of the package of the Minister of Roads, Transportation and Tourism; - 11 million tugrug stated in section XXIII.1.9 and 1294 million tugrug as stated in section XXIII.1.17 section for the investment, 73 million tugrug for the capital renovation as stated in section XXIII.2, and 100 million tugrug for the equipment as stated in section XXIII.3 of the package of Minister of Construction and Urban Development; - 1741 million tugrug stated in section XVII.1.5-XXVIII.1.26 for the investment of the package of the Governors of Aimags and Cities.

The proposals and investment lists provided by parliament members such as Ch.Ulaan, L.Gundalai, Ts.Jargal, S.Oyun, M.Zorigt, B.Jargalsaikhan and A.Bakei, as requested by the Constitutional Tsets, are similar to the 1st attachments of the State Budget law for 2007 and the attachment enclosed with the Letter of the Minister of Finance.

Therefore, it could be concluded that for each member of Parliament, including those members who have not submitted special proposals for spending 250. million tugrug in their election district, in total 750 million tugrugs, were allocated to the Deputy Minister's package.

It should be noted that the Speaker of the Parliament, the Standing committee of Budget issues, the parliamentary group of the MPRP, and the counsel of MDP, have several times been requested by the Constitutional court to submit a list of proposals for the spending of 250 million tugrug by each election district, but they without due reason failed to do so.

For instance, the Head of the parliamentary group of

the MPRP, D.Idvekhten, in his official letter No 20 of May 29, 2007 specified that "... there was no discussion conducted on local investment by the MPRP parliamentary group ... neither proposals, nor lists of projects. No proposal for the local investment of 250 mln tugrugs submitted to the State Great Khural, relevant Standing Committee and working group". But this was disproved by the fact that some parliament members who belong to MPRP have submitted such proposals to the Constitutional court.

3. State Great Khural's resolution No 34 of 24 April, 2007 on conclusion No 2 of 23 February, 2007 of the Constitutional Tsets is illegal because it is considered that a member of the Constitutional court initiated proceedings on an issue which is totally different from this ongoing matter in terms of context and object, as well as small bench session determination.

4. The Mongolian Government, as the highest executive body of the state as specified in paragraph 2 of article 38 of the Constitution shall "... 2/ work out ... the state budget, credit and fiscal plans and to submit these to the State Great Khural, and to execute decisions taken thereon", and as specified in subparagraph 7.1.3 of article 7 of the Law on the Managing and Financing of State Budgetary Organizations shall "develop the Expenditure Notification of Budgets consistent with the Government action program, and to develop drafts of the state budget based on the Expenditure Notification of Budget" and as specified in articles 29, 30 and 31, paragraphs 33.1, 33.2 of article 33 of the same law, determine grounds for budget drafting, request procedures for its submission to the Government, discussion of drafts at government sessions. and submission of the draft of the budget to the State Great Khural.

The draft of the Law on the State Budget for 2007, submitted by the Government to the State Great Khural on October 1, 2006 has no provision allocating 250 million tugrugs for each election district, but during the discussion of the draft of the budget for 2007, the State Great Khural overreached the Governmental power and increased the budget package of general managers of the budget, taking into consideration the location of election districts, and each Parliament member's proposal, which has been included in the budgetary managers package. This has been done

Judicial Decisions in the Constitutional Court of Mongolia

in such a way that there has been allocation of different amounts of money for the same type of objects, allowance of double funding for one object, and has included certain things that should not be resolved through state financing policy.

This has violated paragraph 2 of article 38, and paragraph 1 of article 70 of the Constitution.

5. Members of the State Great Khural, based on their own election district interests, proposed to allocate 250 million tugruqs for each election district in the Government's budget package. The list of investments was compounded by using election district principles, instead of the principle of administrative and territorial distribution. It resulted in an unequal position of candidates for the election. The general managers of the budget have to discuss with parliament members the funding for particular projects. The State Great Khural has not followed the procedure established by the law when it developed, submitted and approved the resolution on allocating 250 million tugruqs for each election district of the 76 members of the parliament. So, according to these mentioned facts, it violated paragraph 2 of article 1, paragraph 1 of article 23, subparagraph 2 of paragraph 2 of article 38, and paragraph 1,2 of article 62 of the Constitution of Mongolia.

As stated in attachment 1 of the Law on the State Budget for 2007, some unrelated funds have been located in the General Manager's package as requested by parliament members, such as allocating budgets for the electricity of Arkhangai, Bulgan, and Choibalsan aimags and the bus station of Jargalant district of Khovd aimag, to the budget package of the Head of the Cabinet Secretariat of the Government. This interferes with the power of local authorities.

In accordance with paragraph 3 of article 66 of the Constitution, and paragraph 2 of article 31 of the Law on the Procedure of Constitutional Tsets:

IT WAS CONCLUDED ON BEHALF OF THE CONSTITUTION THAT:

1. The State Great Khural, when it adopted the Law on

the State budget for 2007, did not follow the procedures and principles stated in article 29.30 and 31 and paragraphs 33.1,33.2 of article 33 of the Law on Managing and Financing State Budgetary Organizations. Based on a proposal of the members of the State Great Khural, it allocated 250 million tugrug for each election district, in total 19,0 billion tugrugs in the package of the General Managers of the state budget. This is in violation of paragraph 2 article 1 of the Constitution, which specifies that “The fundamental principles of the activities of the State shall be securing democracy, justice, freedom, equality, national unity and rule of law.” ; paragraph 1 of article 23, which specifies that “. A member of the State Great Khural shall be an envoy of the people and shall represent and uphold the interests of all the citizens and the State.”; subparagraph 2 of paragraph 2 of article 38 of the Constitution, which specifies that, “ to develop the State budget, credit and fiscal plans and to submit these to the State Great Khural and to execute decisions taken thereon”; paragraph 1 of article 58, which specifies that “Aimag, the capital city, Soum and District are administrative, territorial and socioeconomic complexes with their functions and administrations provided for by law.”; paragraph 1 of article 62, which specifies that “Local self-governing bodies, besides making independent decisions on matters of socioeconomic life of the respective Aimag, the capital city, Soum, District, Bagh and Khoroo, shall organize the participation of the population in solving problems of a national scale and that of higher territorial units.”; paragraph 2 of the same article, which specifies that “Authorities of higher instance shall not take decisions on matters coming under the jurisdiction of local self-governing bodies. If the laws and decisions of respective superior state organs do not specifically deal with definite local matters, local self-governing bodies can decide upon them independently in conformity with the Constitution.”; paragraph 1 of article 70, which specifies that “Laws, decrees and other decisions of state bodies, and activities of all other Organizations and citizens should be in full conformity with the Constitution.” Therefore the following sections of attachment 1 of the Law on the State Budget for 2007 stated in the “List of projects, measures, and construction funded by state budget, 2007”, shall be deemed invalid:

48 million tugrug investment stated in section VII.5.1.2 of the

Prime Minister's package; 750 million tugrug for the investment stated in VIII.4 section of the Deputy Minister's package; 1381 million tugrug for the investment stated in section IX.1.1 -IX.1.29, 268.5 million tugrug for the capital renovation stated in section IX.2.2 -IX.2.22, and 363 million tugrug for the equipment stated in IX.3.2 -IX.3.17 from the package of the Head of Cabinet Secretariat of the Government; 24 million tugrug for the investment stated in section X.1.1.5 -10.1.1.8, 15 million tugrug for the capital renovation stated in section X.1.2.8, and 21 million tugrug for the equipment stated in section X.1.3.1 and X.1.3.2 from the package of the Minister of Justice and Internal Affairs; 871 million tugrug for the power and electricity stated in section XIII.1.3.1 -XIII.1.3.8, 6.5 million tugrug for the restorative power stated in section XIII.1.4.1, and 56 million tugrug for the fuel stated in section XIII.2.4 of the package of the Minister of Energy and Fuels; 20 million tugrug for the investment stated in section XIV.1.5 and XIV.1.6, and 5 million tugrug for the equipment stated in section XIV.3.2 of the package of the Minister of Emergency; 652 million tugrug for the Education investment stated in section XVI.1.1.45 -XVI.1.1.52, 49 million tugrug stated in section XVI.1.1.53 and 2208 million tugrug for the investment stated in section XVI.1.1.54 -XVI.1.1.77, 1617 million tugrug stated in section XVI.1.2.1 -XVI.1.2.51 and 20 stated in section XVI.1.2.56 for the capital renovation, 286 million tugrug for the equipment as stated in section XVI.1.3.3 -XVI.1.3.21, 50 million tugrug stated in section XVI.2.1.7 and 1345 million tugrug stated in section XVI.2.1.14 -XVI.2.1.28 for the investment, 42 million tugrug stated in section XVI.2.2.3 and XVI.2.2.5 section for the equipment, and 844.6 million tugrug for the renovation stated in section XVI.2.23 of the package for the culture fund of the Minister of Education Culture and Science; 100 million tugrug stated in section XVII.1.9 and 1186 million tugrug stated in section XVII.1.24 - XVII.1.41 for the investment, 386.1 million tugrug stated in section XVII.3.8- XVII.3.21 for the equipment, and 546.5 million tugrug stated in section XVII.4 for capital renovation of hospitals of the package of Minister of Health; 50 million tugrug for the investment stated in section XVII.2, and 430 million tugrug as stated in XVI.1.53 for the supporting investment of small and medium enterprise and trade of the package of the Minister of Industry and Trade; 128 million tugrug for the investment stated in section XIX.1.8-XIX.1.15 section, and 65 million tugrug as stated in XIX.2.1- XIX.2.3 section for the capital renovation of the package

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of the Minister of Food and Agriculture; 13 million tugrug for the investment stated in section XX.1.6 of the package of the Minister of the Environment; 568 million tugrug for the investment stated in section XXI.1.3-XXI.1.19, 130 million tugrug for the equipment stated in section XXI.4.1-XXI.4.4, and 20 million tugrug as stated in section XXI.4.5 for the equipment of the package of the Minister of Social Welfare and Labor; - 60 million tugrug stated in section XXII.1.3.3 section and 1075 million tugrug as stated in section XXII.1.3.6 for the financing of road and bridge construction of the package of the Minister of Roads, Transportation and Tourism;- 11 million tugrug stated in section XXIII.1.9 and 1294 million tugrug as stated in section XXIII.1.17 section for the investment, 73 million tugrug for the capital renovation as stated in section XXIII.2, and 100 million tugrug for the equipment as stated in section XXIII.3 of the package of Minister of Construction and Urban Development;- 1741 million tugrug stated in section XVII.1.5-XXVIII.1.26 for the investment of the package of Governors of Aimags and Cities.

2. Hereby, the State Great Khural's resolution No 34 of April 24, 2007 on the rejection of the Constitutional Tsets's conclusion No 2, 2007 shall be deemed invalid .

3. This decision of the Constitutional court of Mongolia is final and effective since its issuance.



Resolution of the Constitutional Court of Mongolia

2008.05.07
No 02
Ulaanbaatar

On final decision of the dispute on constitutionality of provisions 8.1.4, 8.1.5 of the Law on procedure of the plenary session of the State Great Khural

The Constitutional court hearing room 12.50

Citizen D. Lamjav, B. Bayarsaikhan in their petition submitted to the Constitutional Court on January 29, 2008 stated:

The State Great Khural adopted the Law on procedure of the plenary session of the State Great Khural on 11th October, 2007.

The subparagraph 8.1.4 of this Law specifying “when discussing issues related to the structure and composition of the Government, appointment, release and dismissal of the Prime minister and members of the Government, action plan of the Government and state budget, the member shall adhere to the policy and principles agreed on by party or coalition meetings” and subparagraph 8.1.5 specifying “when discussing drafts of laws, resolutions of the State Great Khural and issues not specified in the subparagraph 8.1.4 the member shall deliver speech and vote adhering his/her own position.” have violated following provision of the Constitution:

1.Paragraph 2 of article 1 specifying “The fundamental principles of the activities of the State shall be securing democracy, justice, freedom, equality, national unity and rule of law.”

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2.Paragraph 1 of article 3 specifying “In Mongolia state power shall be vested in the people of Mongolia. The Mongolian people shall exercise it through their direct participation in state affairs as well as through the representative bodies of the State authority elected by them.”

3.Paragraph 1 of article 23 specifying “. A member of the State Great Khural shall be an envoy of the people and shall represent and uphold the interests of all the citizens and the State.”

4.The subparagraph 7 of paragraph 1 of article 25 “to define the State’s financial, credit, tax and monetary policies; to lay down the guidelines for the country’s economic and social development; to approve the Government’s program of action, the State budget and the report on its execution.”

Therefore the provisions 8.1.4, 8.1.5 of the Law on procedure of the plenary session of the State Great Khural shall be invalidated..

...The Constitutional court discussed this dispute at its medium bench session on February 29, 2008 and issued conclusion No 04. This conclusion stated:

1. The subparagraph 8.1.4 of this Law specifying “when discussing issues related to the structure and composition of the Government, appointment, release and dismissal of the Prime minister and members of the Government, action plan of the Government and state budget the member shall adhere the policy and principle agreed on party or coalition meetings” and subparagraph 8.1.5.specifying “...issues not specified in the subparagraph 8.1.4...” have violated paragraph 2 of article 1 specifying “The fundamental principles of the activities of the State shall be securing democracy, .. and rule of law.”, Paragraph 1 of article 3 specifying “In Mongolia state power shall be vested in the people of Mongolia. The Mongolian people shall exercise it through their direct participation in state affairs as well as through the representative bodies of the State authority elected by them.”, paragraph 1 of article 23 specifying “. A member of the State Great Khural shall be an envoy of the people and shall represent and uphold the interests of all the citizens and the State.” of the

Constitution.

2. The subparagraph 8.1.4 of this Law specifying “when discussing issues related to the structure and composition of the Government, appointment, release and dismissal of the Prime minister and members of the Government, the action plan of the Government and state budget the member shall adhere to the policy and principle agreed on party or coalition meetings” and the subparagraph 8.1.5 specifying “...issues not specified in the subparagraph 8.1.4...” have not violated subparagraph 7 of paragraph 1 of article 25 of the Constitution specifying “to define the State’s financial, credit, tax and monetary policies; to lay down the guidelines for the country’s economic and social development; to approve the Government’s program of action, the State budget and the report on its execution.”

The resolution No22 of the State Great Khural on rejection of the conclusion No4 of the Constitutional court upon its discussion on plenary session on 10th of April 2008 stated:

1. It is impossible to accept the conclusion No4 of the Constitutional court dated from 29th February, 2008 specifying that subparagraph 8.1.4 and part of the subparagraph 8.1.5 specifying “...issues not specified in the subparagraph 8.1.4...” of the Law on procedure of the plenary session of the State Great Khural have violated paragraph 2 of article 1, paragraph 1 of article 3, paragraph 1 of article 23 of the Constitution.

2. This resolution shall be effective since its issuance or from 10th of April, 2008.

REASONED THAT:

1. Conclusion No4 of the Constitutional court dated from 29th February, 2008 specifying that subparagraph 8.1.4 and part of the subparagraph 8.1.5 specifying “...issues not specified in the subparagraph 8.1.4...” of article 8 of the Law on procedure of the plenary session of the State Great Khural have violated paragraph 2 of article 1, paragraph 1 of article 3, paragraph 1 of article 23 of the Constitution well-founded.

2. The resolution No22 of the State Great Khural from 10th April 2008 stating that "It is impossible to accept the conclusion No4 of the Constitutional court dated from 29th February, 2008 specifying that subparagraph 8.1.4 and part of the subparagraph 8.1.5.specifying "...issues not specified in the subparagraph 8.1.4..." of the Law on procedure of the plenary session of the State Great Khural have violated paragraph 2 of article 1, paragraph 1 of article 3, paragraph 1 of article 23 of the Constitution." has no grounds and could not deny existing facts therefore it should be deemed as invalid.

In accordance with paragraph 3 article 66 of the Constitution, the subparagraph 1 of paragraph 2 of article 8 of the Law on Constitutional court, the paragraph 2 of the articles 31, paragraph 3 of article 36 of the Law on Constitutional Court Procedure

ON BEHALF OF CONSTITUTION MONGOLIA
RESOLVED:

1. The subparagraph 8.1.4 of the Law specifying "when discussing issues related to the structure and composition of the Government, appointment, release and dismissal of the Prime minister and members of the Government, action plan of the Government and state budget the member shall adhere the policy and principle agreed on by party or coalition meetings" and part of the subparagraph 8.1.5.specifying "...issues not specified in the subparagraph 8.1.4..." have violated paragraph 2 of article 1 specifying "The fundamental principles of the activities of the State shall be securing democracy, .. and rule of law.", paragraph 1 of article 3 specifying "In Mongolia state power shall be vested in the people of Mongolia. The Mongolian people shall exercise it through their direct participation in state affairs as well as through the representative bodies of the State authority elected by them.", paragraph 1 of article 23 specifying ". A member of the State Great Khural shall be an envoy of the people and shall represent and uphold the interests of all the citizens and the State." of the Constitution. Therefore the subparagraph 8.1.4 and part of the subparagraph 8.1.5.specifying "...issues not specified in the subparagraph 8.1.4..." of the Law on procedure of the plenary session of the State Great Khural shall be deemed as invalid.

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2. The resolution No22 of the State Great Khural dated from January 10, 2008 “On conclusion No 04 of the Constitutional court of 29th February, 2008” shall be deemed as invalid since 7th May, 2008.

3. This decision of the Constitutional court of Mongolia is final and effective since its issuance.



Resolution of the Constitutional Court of Mongolia

2008.11.19

No. 03

Ulaanbaatar

**Final hearing on the constitutionality of
paragraph 38.2 of article 38 of the Criminal
Procedure law**

Constitutional tsets hall
14.00

The State Great Khural, on 16 October 2008 at its plenary session, discussed conclusion number 7 of the Constitutional Tsets of 10 October, 2008 which stated that paragraph 38.2 of article 38 of the Criminal Procedure Law, stating that “In cases when a professional attorney can not participate in criminal proceedings, the suspect, defendant or accused may choose an eligible person to act as defense attorney.” has violated the Constitution. By resolution number 27 the State Great Khural refused to accept this conclusion. Therefore this dispute was not resolved, and was decided finally by the Constitutional Tsets.

One. Citizen D. Batsukh, residing 17 khoroo, Bayangol district, in his petition submitted to the Constitutional Tsets stated:

It is stated in paragraph 1 of article 55 of the Constitution that “The accused shall have the right to defend himself.” And it is stated in paragraph 2 of the same article that “The accused shall be accorded legal assistance according to the law at his/her request”.

Also the right to receive professional legal assistance ensured in paragraph 14 of article 16 as the right : “to defend

himself/herself.. to receive legal assistance” in connection with basic Constitutional rights of the citizen.

This right is spelled out in paragraph 41.1 article 41 of the Criminal procedure law, that “the attorney ...is obliged to render legal assistance”, and section 35.2.7 of article 35 and section 36.3.3 of article 36 which state the right to receive legal assistance.

Paragraph 38.2 of article 38 of the Criminal Procedure Law of 10 January, 2002, by stating that “In cases when a professional attorney can not participate in criminal proceedings, the suspect, defendant, or accused may choose an eligible person to act as defense attorney” violated the abovementioned concept of the Constitution. This statement denies the rights of the suspect, defendant, or accused to receive professional legal assistance, and diminishes the importance and content of professional legal service.

Therefore the petitioner, on the abovementioned grounds, demanded a conclusion be issued that paragraph 38.2 of article 38 of the Criminal procedure law has violated paragraph 14 of article 16 guaranteeing the right “to defend himself/herself.. and to receive legal assistance” ,paragraph 1 of article 55 of the Constitution, specifying that “The accused shall have the right to defend himself.” and paragraph 2 of the same article, specifying that “The accused shall be accorded legal assistance according to the law at his/her request”.

Three. the Constitutional Tsets held this dispute by it’s medium bench seat on 10 October 2008 and issued conclusion number 7, stating that the abovementioned provision of the Criminal procedure law has violated the Constitution.

Four. The State Great Khural on 16 October 2008, at it’s plenary session, discussed conclusion number 7 of the Constitutional Tsets, and issued resolution number 27 in which they rejected it.

The resolution stated that it was impossible to accept conclusion number 7 of the Constitutional Tsets of 10 October 2008, which specified that: “paragraph 38.2 of article 38 of the

Criminal procedure law stating that “In cases when a professional attorney can not participate in criminal proceedings, the suspect, defendant and accused may choose an eligible person to act as defense attorney.” has violated paragraph 14 of article 16, guaranteeing the right “to defend himself/herself.. and to receive legal assistance” and paragraph 2 of article 55, stating that “The accused shall be accorded legal assistance according to the law at his/her request.”

GROUNDS:

1. Paragraph 38.2 of article 38 of the Criminal Procedure Law, in stating that “In cases when a professional attorney can not participate in criminal proceedings, the suspect, defendant, or accused may choose an eligible person to act as defense attorney” allows every non-legal person to participate in the criminal process, to defend the interests of the suspect, defendant, or accused. This diminishes the rights of citizens provided by the Constitution.

Therefore paragraph 38.2 of article 38 of the Criminal Procedure Law is inconsistent with paragraph 14 article 16 and paragraph 2 of article 55 of the Constitution.

2. The plenary session of the State Great Khural has not provided grounds and notification for refusing the conclusion of the Constitutional Tsets.

ESTABLISHES ON BEHALF OF THE CONSTITUTION OF MONGOLIA THAT: In adhering with paragraph 3,4 of article 66 of the Constitution of Mongolia and paragraph 2,4 of article 8 of the Law on Constitutional Tsets, paragraph 2 of article 31, paragraph 2 of article 32 of the Law on Procedure of Constitutional Tsets:

1. Consider invalid paragraph 38.2 of article 38 of the Criminal procedure law, which states that “In cases when a professional attorney can not participate in criminal proceedings, the suspect, defendant and accused may choose an eligible person to act as defense attorney.” on the basis of a breach of paragraph 14 of article 16 of the Constitution stating that a citizen “has a right to defend himself/herself.. and to receive legal assistance” and paragraph 2 of article 55 of the Constitution, which states that

Judicial Decisions in the Constitutional Court of Mongolia

“The accused shall be accorded legal assistance according to the law at his/her request.”

2. Consider resolution number 27 of 16 October, 2008 of the State Great Khural regarding the conclusion 07 of 10 October, 2008 issued by the Constitutional Tsets as invalid.

3. This resolution shall be effective from its issuance.



Resolution of the Constitutional Court of Mongolia

2009.05.27
No.02
Ulaanbaatar

On the constitutionality of the restoration of statements in the Law on excise tax invalidated by conclusion 2/03 of the Constitutional Tsets of 2005

Constitutional tsets hall
14.00

... The adjudication on the constitutionality of the restoration of statements in the Law on Excise tax, invalidated by conclusion 2/03 of the Constitutional Tsets of 2005, by the Amendment to the Law on Excise tax law adopted on March 12 of 2009, was resolved by the supervision procedure of the Constitutional Tsets according to paragraph 3 of article 15 of the Law on Procedure of the Constitutional Tsets.

One. Citizen Bayaraa, residing 16 khoroo, Bayangol district, in information submitted to the Constitutional tsets on 30 March, 2009 stated :

Article 3 of the Law on amending the Law on excise tax adopted by the State Great Khural on December 2, 2004 revised part 1 of article 6 of the Law on excise tax, stating that taxpayers shall pay a “0,20 US dollar excise tax on every liter of domestic beer and 0,50 US dollars on every liter of imported beer.” Some citizens submitted to the Constitutional Tsets a petition on the constitutionality of this part of the law. The Constitutional Tsets initiated a case and reviewed the dispute via its medium bench

seat, and issued conclusion number 2/03 on 13 April, 2005.

With this conclusion the legislator set different tax rates for domestic and imported beer, and therefore the General Agreement on Tariffs and Trade of the WTO, which Mongolia adopted in 1997, has been breached. For instance, its introduction states its aims as being “To diminish trade and tariff barriers, to eliminate discrimination in international trade and reach equal and mutually beneficial agreement”, article 1 “most favorable national conditions”, article 3 “domestic tax imposition and regulation condition” has been violated and it leads to a breach of paragraph 2,3 of article 10 of the Constitution and paragraph 2 of article 6 of the annex law in the Constitution. The State Great Khural, in resolution number 36 of 30 June, 2005, admitted that it violated the Constitution and accepted conclusion 2/03 of the Constitutional court.

However, the State Great Khural, on 12 March 2009, amended the Law on excise tax, and article 6, table 6.1, paragraph 5 stated that taxpayers shall pay “0,35” US dollars on imported goods. As such, the “0,20” US Dollar excise tax on imported beer was replaced by a “0,35” US dollar tax, meaning that the excise tax rate of domestic beer became different from the excise tax rate of imported beer. Therefore the clause in the Law invalidate by conclusion 2/03 of the Constitutional Tsets of 2005 has been altered.

Therefore, the petitioner requested to issue a conclusion on the violation of parts 2 and 3 of article 10 of the Constitution specifying that “2. Mongolia shall fulfill in good faith its obligations under international treaties to which it is a Party.” and part 3 of the same article of the Constitution specifying that “3. The international treaties to which Mongolia is a Party shall become effective as domestic legislation upon the entry into force of the laws on their ratification or accession.” by the abovementioned amendment to the Law on excise tax of 12 March, 2009.

FOUNDATIONS: The Large Bench Session of the Constitutional Tsets established that from the issuance of conclusion 2/03 of 13 April 2005 until the adoption of the amendment to the Excise Tax Law of 12 March, 2009, WTO agreements and Mongolian Government international commitments to the WTO have not

changed. Although the Constitutional Tssets previously held that imposing different tax rates on domestic and imported beer would be a violation of the Constitution, the new amendment altered the meaning of the Excise Law, which had previously been invalidated by conclusion 2/03 of 2005.

IT IS ESTABLISHED ON BEHALF OF THE CONSTITUTION OF MONGOLIA THAT: In adhering with article 66 of the Constitution of Mongolia and paragraph 2 of article 8 of the Law on Constitutional Tssets, paragraph 3 of article 15, paragraph 2 of article 31 of the Law on Procedure of Constitutional Tssets:

1. It is considered that article 1 of the Law on amending the Law on Excise Tax of 12 March, 2009, in article 6, table 6.1, paragraph 5 by replacing the “0,20” US Dollar Tax imposed on imported goods with a “0,35” Dollar Tax established different tax rates on domestic and imported beer. This law has altered the law on excise tax which was invalidated by the Constitutional Tssets conclusion 2/03 of 2005. Therefore the amendment to paragraph 5, table 6.1, article 6 of the Law on Excise Tax which states “0,35” US Dollars shall be deemed invalid.

2. It is considered that paragraph 5, table 6.1 of article 6 of the Law on excise tax of June 29, 2006 adopted by the State Great Khural shall be valid.

3. This resolution shall be effective from the date of issuance.



Resolution of the Constitutional Court of Mongolia

2009.06.10

No. 03

Ulaanbaatar

The adjudication on the constitutionality of article 24.7 of the Law on the State Great Khural stating “to make the conclusion unanimously” was finalized.

The adjudication on the constitutionality of article 24.7 of the Law on the State Great Khural stating “to make the conclusion unanimously” was finalized by the great-bench session of the Constitutional Tsets.

One. In the petition made by Nyamdorj.D, citizen residing in Sukhbaatar district, 3rd Khoroo, Ulaanbaatar to the Constitutional Tsets:

It is stated that the “Sub-committee on the Immunity of Members of the State Great Khural consists of the 4 members who have been elected the most times in the State Great Khural, and to study the proposals made by the competent authorities and officials prescribed in this Law regarding the dissolution of the State Great Khural, dismissal and impeachment of members of the State Great Khural, and to transfer the conclusion made unanimously to the Session of the concerned Standing committee and the Session of the State Great Khural” in article 24.7 of the Law on the State Great Khural adopted on 26th January of 2006 and “to make the conclusion unanimously” shall be interpreted as unconstitutional on the following basis:

1. The Constitution Art.1.2 “The supreme principles of the

activities of the State shall be ...justice and respect of the law;

2. “decisions are taken by a majority” where stated in the Constitution Art 27.6 “The presence of a majority of members of the full floor session and the Standing Committee session of the State Great Khural is required to consider the session valid, and decisions are taken by a majority of all members present”

3. The Constitution Art. 29.3 “If a question arises that a member of the State Great Khural is involved in a crime, it shall be considered by the Session of the State Great Khural.

It is regulated that “where 4 members of the Sub-committee on the Immunity of members of the State Great Khural fail to make the resolution unanimously on the proposals made by the competent authorities and officials regarding suspension of the mandate of members of the State Great Khural, the issue shall not be discussed in the Session of the Standing committee and the State Great Khural” in article 24.7 of the Constitution. Namely, in cases of members of the Sub-committee refusing, suspending, or agreeing on the issue regarding suspension of the mandate of members of the State Great Khural, they will have no more opportunity to make the conclusion unanimously.

...It is stated that “the presence of a majority of members of the full floor session and the Standing Committee session of the State Great Khural is required to consider the session valid, and decisions are taken by a majority of all members present” in article 27.6 of the Constitution and therefore, in other words, where decisions are taken by a majority of all members of the Sub-committee it shall be considered constitutional.

Additionally, article 24.12 of the Law on the State Great Khural stating “The decisions of the Sub-committee shall be made by a majority of all members present ” is not inconsistent with the statement of the same law, “The Sub-committee on the Immunity of members of the State Great Khural... to make the resolution unanimously on the proposals made by the competent authorities and officials regarding the suspension of the mandate of members of the State Great Khural and to transfer the conclusion made unanimously to the Session of the concerned Standing committee

and the Session of the State Great Khural” and this contradiction violates the Constitution article 1.2 “...respect of law is the supreme principle of the activities of the State”.

Even though article 24.7 of the Law on the State Great Khural states “to make the conclusion unanimously,” this restricts the opportunity to make a decision by a majority, and violates article 27.6 of the Constitution stating “decisions are taken by a majority of all members present”.

Among other sub-committees the Sub-committee on the Immunity of Members of the State Great Khural shall be entitled to apply either article 24.7 or article 24.12 of the above mentioned Law. It introduces contradictions to articles of the Law, and is a hindrance to the activities of the State, as well as violating article 1.2 of the Constitution, “...respect of law is the supreme principle of the activities of the State”.

Namely, the contradiction between articles 24.7 and 24.12 of the Law on the State Great Khural is a hindrance to the normal functioning of activities under the principle of respect of the law by the State Great Khural, which is the highest power of State power.

FOUNDATIONS:

1. Conclusion #10 dated 17th December of 2008 of the Constitutional Tsets, which states that “article 24.7 of the Law on the State Great Khural including “to make the conclusion unanimously” violates article 1.2 of the Constitution, “democracy, justice and...respect of law is the supreme principle of the activities of the State,” and article 14.1 of the Constitution, “all people lawfully residing within Mongolia are equal before the law and court”, Constitution Art 27.6 “The presence of a majority of members of the full floor session and the Standing Committee session of the State Great Khural is required to consider the session valid, and decisions are taken by a majority of all members present” and Constitution Art. 29.3 “If a question arises that a member of the State Great Khural is involved in a crime, it shall be considered by the Session of the State Great Khural” shall be considered valid.

In adhering with article 64, 66.4 of the Constitution of Mongolia, and articles 30.1.2, 31.2, and 36.3 of the Law on

Constitutional procedure

IT IS ESTABLISHED ON BEHALF OF THE
CONSTITUTION OF MONGOLIA:

1. The statement “to make the conclusion unanimously” from article 24.7 of the Law on the State Great Khural, adopted on 26th January of 2006, stating that “the Sub-committee on the Immunity of Members of the State Great Khural consists of the 4 members who have been elected the most times in the State Great Khural, and will study the proposals made by the competent authorities and officials prescribed in this Law regarding dissolution of the State Great Khural, dismissal and impeachment of members of the State Great Khural, and to transfer the conclusion made unanimously to the Session of the concerned Standing committee, and the Session of the State Great Khural” violates article 1.2 of the Constitution, “democracy, justice and...respect of law is the supreme principle of the activities of the State,” and article 14.1 of the Constitution, “all people lawfully residing within Mongolia are equal before the law and court”, Constitution Art 27.6 “The presence of a majority of members of the full floor session and the Standing Committee session of the State Great Khural is required to consider the session valid, and decisions are taken by a majority of all members present” and Constitution Art. 29.3 “If a question arises that a member of the State Great Khural is involved in a crime, it shall be considered by the Session of the State Great Khural” and therefore consider “to make the conclusion unanimously” stated in article 24.7 of Law on State Great Khural invalid.

2. This resolution of the Constitutional Tsets of Mongolia shall be valid upon issuance.



Resolution of the Constitutional Court of Mongolia

2010.01.22
No 01
Ulaanbaatar

The adjudication on the constitutionality of paragraph 6 of article 26 of the Law on the Election of the State Great Khural was finalized.

The adjudication on the constitutionality of clause 26.3.6 of the Law on the Election of the State Great Khural was resolved by the session of grand bench.

One. In the petition made on 21st September of 2009 by B.Lhagvajav, a citizen of khoroo 1 of Khan-Uul district of Ulaanbaatar:

Clause 26.3.6, containing“... in cases of the previous financial statement not being submitted to the General committee on Election according to clause 42.2 of this law” and not registering political parties and coalitions on the basis of clause 26.3 of the Law on the Election of the State Great Khural adopted on 29th December of 2005 by the State Great Khural is not consistent with clause 16.9 stating “...has a right to elect and to be elected”, clause 16.10 stating “discrimination and persecution of a person for joining political party”, clause 19.1 stating “the state shall be responsible for creation of guarantees for ensuring human rights and freedom” which are provided by the Constitution.

Parties and coalitions are punished with a fine of 800.000-1.200.000 tugrugs for failure or late submission of financial statements of election. However, withdrawing the right to be

ected for one instance of failure is a violation of the principle of one penalty per failure, which is commonly accepted in legal science. It is not proper to withdraw the right to elect and to be elected, which is a democratic right of other members, upcoming members and supporters for just one failure made by one of the party officials.

Therefore, it was requested to make invalid the above mentioned clauses of the Law on the Election of the State Great Khural which violate civil rights and relevant clauses of the Constitution.

Grounds:

1. While according to clause 3.2 of the Law on Central election authority, the General committee of an Election is the state authority which has a power to organize elections of the State Great Khural, allowing the power to terminate, and the right to elect and to be elected on the basis of failure or late submission of financial statements to the General committee of Election, clause 26.3.6 of the Law on the State Great Khural contains some characters of non-constitutionality.

2. Resolution #04 dated 4th November of 2009 of the Constitutional Tsets found that clause 26.3.6 of the Law on the Election of the State Great Khural stating that “in cases of the previous financial state not being submitted according to clause 42.2 of this law to the General Committee of Election” violates clause 16.9 stating “...has a right to elect and to be elected”, clause 16.10 stating “discrimination and persecution of a person for joining a political party” of the Constitution, and shall be deemed legal.

ESTABLISHES ON BEHALF OF THE CONSTITUTION OF MONGOLIA THAT In adhering with article 64, paragraph 3 of article 66 of the Constitution of Mongolia and clause 30.1.1, article 31, 32 of the Law on Procedure of Constitutional Tsets:

1. It is considered that clause 26.3.6 of the Law on the Election of the State Great Khural adopted on 29th December of 2005 stating that “in cases of the previous financial state not

Judicial Decisions in the Constitutional Court of Mongolia

being submitted according to clause 42.2 of this law to the General Committee of Election” violates clause 16.9 stating “...has a right to elect and to be elected”, clause 16.10 stating “discrimination and persecution of a person for joining political party” of the Constitution, and so is invalid.

2. Considered resolution #86 dated 3rd December of 2009 adopted by the State Great Khural as invalid.

3. This resolution shall be deemed as valid upon issuance.

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