

THE CONSTITUTIONAL COURT OF MONGOLIA

**DECISIONS OF
THE CONSTITUTIONAL
COURT OF MONGOLIA**

**Ulaanbaatar
2012**

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DECISIONS OF THE CONSTITUTIONAL
COURT OF MONGOLIA

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INTRODUCTION

As provided by the Constitution of Mongolia, the Tssets (Constitutional Court) is an organization that would exercise the supreme control of implementation of the Constitution, would issue conclusions regarding whether a Constitutional clause has been breached and to review and resolve related disputes and serve as guarantee for strict compliance of the Constitution. During the 20 years since the Constitutional Court has been set up, the Court reviewed several dozens of disputes regarding whether the Constitution has been breached and successfully performed its duties to strictly enforce compliance of the Constitution.

Each decision of the Constitutional Court provides an evaluation and makes a conclusion from the position of constitutional law regarding whether certain norms of the Constitution has been breached and it serves as valid and lawful legal act that creates a certain legal consequences in the society and therefore the decision serves as the source that creates legal precedent to correctly understand and comply with the Constitution of Mongolia.

Publication of the decisions of the Constitutional Court (its conclusions and resolutions) and making this available to the public will not only play important role to make its activities open and transparent and to promote the Constitutional Court, it will also serve as direction for the organizations, officials and the legislators, who are the potential subjects of constitutional disputes, for them to comply with the Constitution in unwavering manner and shall serve as a handbook for any organizations, officials and the general public to implement the Constitution.

It is also necessary to create conditions for organizations conducting similar activities and officials and academics from abroad to study and comment on the decision of the Constitutional Court.

It is for the first time, therefore, certain high significance

decisions of the Constitutional Court are compiled, translated and published in English language for the 20 years anniversary of the Constitutional Court.

Hereby, I express my gratitude to staff of the Representative Office of Hanns Seidel Foundation in Mongolia who have rendered significant assistance for translation and publication of the Constitutional Court decisions.

Jantsan.N
Deputy Chairman of the Constitutional Court of Mongolia
Merited Lawyer of Mongolia, Doctor, Professor

CHAPTER ONE

**CONCLUSIONS
OF THE
CONSTITUTIONAL
COURT OF
MONGOLIA**



Conclusion of the Constitutional Court of Mongolia

1994.01.12

No. 2

Ulaanbaatar

Adjudication on the consistency of certain provisions of the Law on the Relationship between the State and Monastery with the Constitution of Mongolia

Mr. D. Lamjav and other citizens submitted a petition to the Constitutional Court on December 13, 1993. They argue in their complaint that some provisions of the Law on the Relationship between the State and Monastery infringe the Constitution, prefer one religion over other religions and contain discrimination of other religions except for the Buddhism and muslim. They asked the Constitutional Court to consider and adjudicate on constitutionality of certain provisions of the Law on the Relationship between the State and Monastery. The following provisions of this law were cited as conflicting with the Constitution of Mongolia: Paragraph 7, Article 4 – “..it is prohibited to conduct an organized religious propagation from outside the country”; Paragraph 8, Article 4 – “... for the State to control and coordinate the absolute number of lamas and clergy and location of temples and monasteries..”; Paragraph 5, Article 7 – “... it is prohibited for monasteries to conduct any activities contradicting to the customs and traditions of the Mongolian people...”; Paragraph 6, Article 7 – “... official authorization and conclusion shall be received from religious governing centers for conducting in Mongolia teaching, training

and propagation of the religions other than the Buddhism, muslim and shamanism..”; Paragraph 2, Article 12 – “...it is prohibited for any foreign citizen or stateless person to propagate religious teachings unless they came in the country on religious business by line of religious organization..” These provisions would conflict with certain provisions of the Constitution of Mongolia; the Paragraph 15, Article 16 stating that “...the citizens of Mongolia are guaranteed to enjoy the freedom of conscience and religion”; Paragraph 5, Article 18 stating that “In allowing the foreign citizens and stateless persons under the jurisdiction of Mongolia to exercise the basic rights and freedoms provided for in the Article 16 of the Constitution, the State may establish by law relevant restrictions upon the rights other than the inalienable rights...”; Paragraph 2, Article 14 stating that “... no person shall be discriminated against on the basis of ...religion...”, and Paragraph 3, Article 10 stating 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”.

FINDINGS:

Grounds are found to believe that the Paragraph 6, Article 7, Paragraph 2, Article 9 and Paragraph 2, Article 12 of the Law on the Relationship between the State and Monastery violate the relevant provisions of the Constitution.

The law 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 for any religious believers who have no monastery in Mongolia. The provision that an official authorization and conclusion should be received from the Administration of Religious Matters in Mongolia in the establishment of a Buddhist monastery or Muslim mosque has the meaning as the State’s interference into religious organization’s internal affairs.

The provision that foreign citizens and stateless persons are prohibited religious propaganda in Mongolia, unless this person comes to Mongolia on religious business under the auspices of registered religious organizations has the meaning as infringement of the right of foreign nationals or stateless persons to religious belief and dissemination if they don't arrive in Mongolia for religious purposes.

Grounds are not found to consider that the Articles 4.2, 4.7, 4.8, 7.5, 8.2, 9.1, 13.2 and 13.3 of the Law on Relationship between the State and Monastery violate the relevant provisions of the Constitution of Mongolia.

The Paragraph 2, Article 4 of this law states that “The State respects the prevalent position of Buddhism in Mongolia in order to favour the national unity and historic tradition of the civilization of the Mongolian people and the present provision shall not put obstacles for the citizens to follow other religions”. This is a declaratory statement consistent with the provisions on “inheriting the traditions of national statehood, history and culture” and respect for religion stated in the Preamble of the Constitution. So, this provision does not contradict the Constitution.

The provision of the Paragraph 7, Article 4 of this law stating that “...organised religious activities from outside of Mongolia to introduce foreign religions into Mongolia are prohibited” is a restriction in intentional introduction of any inhumane religion which could harm the national unity, security, public order, human health, and historical traditions of the Mongolian people . This provision conforms to the Constitution and the Article 18, and Paragraph 3, Article 19 of the International Covenant on Civil and Political Rights to which Mongolia is a party.

The Paragraph 8, Article 4 of the law states that “the absolute number of clergy and the location of temples and monasteries are regulated and controlled by the State”. The

Paragraph 5, Article 7 states that “the Monastery shall strictly observe its internal order reflecting the traditional practices of the respective religion. Any inhumane activities and activities against the traditions and custom of the Mongolian people are prohibited”. The Paragraph 2, Article 8 provides that “the dissemination of religious teachings and instruction in the public schools and in other organizations is prohibited”. The Paragraph 1, Article 9 states that “the Capital and Aimag Khurals shall examine the application of citizens on establishment of monastery or temple and its Charter and shall make a decision”. The Paragraph 2, Article 13 states that “the violation of the provision of the Paragraph 5, Article 3, Paragraph 3, Article 4 and Paragraph 2, Article 12 of this law shall result in a fine of up to 15,000 tugrugs unless otherwise provided in the Criminal Code”. The Paragraph 3 of same Article 13 states that “a violation of the Paragraphs 2 and 3, Article 3, Paragraphs 6 and 7, Article 4, Paragraphs 5, 6 and 7, Article 7 and Paragraph 2, Article 8 shall result in a fine of 5000-25000 tugrugs, unless otherwise provided in the Criminal Code”. All these provisions are in conformity with the Constitution, while they are included into the framework of the Law on Relationship between the State and Monastery according to the Paragraph 3, Article 9 of the Constitution.

In accordance with the Paragraph 2, Article 66 of the Constitution of Mongolia and Paragraph 1, Article 19 of the Law on Constitutional Court (Tsets), the Constitutional Court adopts the following CONCLUSION.

1. The Constitutional Court concludes that the Paragraph 6, Article 7 which states that “the teaching, training and propagation of any religion, with the exception of Buddhism, Islam, and Shamanism are prohibited in Mongolia beyond the monasteries and churches of the respective religions”, and the Paragraph 2, Article 9, which states that “official authorization and conclusion shall be received from the Administration of Religious Matters for establishment of Buddhist monastery or Muslim mosque”, the Paragraph 2, Article 12 which states that

“foreign citizens or stateless persons are prohibited religious propagation in Mongolia unless this person arrives in Mongolia under the auspices of registered religious organizations” violate the Paragraph 3, Article 10, Paragraph 2, Article 14 and Paragraph 15, Article 16 of the Constitution of Mongolia.

2. The Paragraphs 2, 7, and 8, Article 4, Paragraph 5, Article 7, Paragraph 2, Article 8, Paragraph 1, Article 9, Paragraphs 2 and 3, Article 13 of this law don't violate the relevant provisions of the Constitution of Mongolia.

3. The Constitutional Court requests the State Great Khural to notify of its decision on this conclusion within 15 days upon its receipt.



Conclusion of the Constitutional Court of Mongolia

1994.01.12

No. 3

Ulaanbaatar

Adjudication on whether member of the State Great Khural Ts.Turmandakh has breached certain provisions of the Constitution of Mongolia

The citizens of Mongolia A.Ganbaatar, D.Ganbold, R.Gonchigdorj, S.Zorig, Ts. Elbegdorj, T.Erdenebileg, D.Lamjav, A.Enkhbat and N.Baasanjav argued in their petition that the member of the State Great Khural Ts.Turmandakh holds a bank account, runs a business entity named “Free TV of Mongolia -1” and this breaches the Article 29 of the Constitution of Mongolia which states that “ a member of the State Great Khural shall not hold concurrently any post or employment unrelated to his duties assigned by the law”. They requested that the question be resolved whether the member of the State Great Khural Ts. Turmandakh has breached the Constitution.

FINDINGS:

It is found on the basis of the registration database of Songinokhairkhan District and Capital City tax authorities, Decision No. 142 of the Capital City Court in year of 1993, Enquiry No. 52 of the Supreme Court and other documents collected that the member of the State Great Khural,

Ts.Turmandakh founded a limited liability company - Mongolian commercial TV-1 (MChT-1) which produces, exchanges TV programmes, produces and trades documentary films. This company was registered with the state registration under number of 34/17 on 12 January 1993 . The initial capital of the company is 528,000 tugrugs. The company has two founding members. The company holds two bank accounts, national and foreign currency accounts.

There are grounds to consider that the work of Mr. Ts.Turmandakh in the MChT Company is not related to his duties assigned by the law as member of the State Great Khural and this breaches the Constitution of Mongolia. It is appropriate to accept the complaint lodged by the citizens A.Ganbaatar, D.Ganbold, R.Gonchigdorj, S.Zorig, Ts.Elbegdorj, T.Erdenebileg, D.Lamjav, A.Enkhbat, N.Baasanjav. In accordance with the Article 66 of the Constitution of Mongolia, and the Article 19 of the Law on Constitutional Court, the Constitutional Court adopts the following CONCLUSION:

1. The Constitutional Court submits to the State Great Khural for its consideration the conclusion that the Member of the State Great Khural Mr. Turmandakh Tsogbadrakh violated the provision of the Article 29 of the Constitution of Mongolia which states that “ a Member of the State Great Khural may not hold concurrently any post or employment unrelated to his duties assigned by the law”.



Conclusion of the Constitutional Court of Mongolia

2001.03.23

No.1

Ulaanbaatar

Adjudication on the matter whether the interpretation of the Constitution by the State Great Khural breaches the Constitution

The petition submitted by Mr. D.Lamjav from Bayangol District and Mr. N.Khaidav from Chingeltei District of the Capital stated that the Constitution of Mongolia was commented twice by the State Great Khural through its resolutions since the adoption of the Constitution and some of its comments violated the Constitution. They said that the Resolution No. 27 of 5 April 1993 by the State Great Khural on interpretation of the Paragraph 2, Article 30 of the Constitution contains the following provisions in violation of the Constitution.

1. The condition about "... permanent residence in the country for last 5 years at least" should mean that the candidate has not resided abroad continuously for more than 6 months during the period of 5 years before the voting date set of the primary presidential election.

2. "... a citizen of Mongolia" means that the person was born from the parents with Mongolian citizenship and this person is still a citizen of Mongolia.

FINDINGS:

1. The power to interpret the Constitution is not vested in the State Great Khural, according to the Article 25 defining the powers of the State Great Khural and other provisions of the Constitution of Mongolia related to the activities of the State Great Khural.

2. Grounds are found to comply with the complaint of the citizens D. Lamjav and N. Khaidav that the very interpretation of the Constitution by the State Great Khural violates the Constitution regardless the consistency or inconsistency of that interpretation with the Constitution and doing so, the State Great Khural enjoys the powers not granted to itself.

3. No ground was found to consider that, when interpreting the Constitution, the State Great Khural violated the provisions of the Articles 64.1, 64.2, 47.1, 47.2 and 50.1.4 of the Constitution as mentioned in the petition of Mr. D. Lamjav and Mr. N. Khaidav.

Guided by the Article 60 of the Constitution of Mongolia, Article 19 of the Law on the Constitutional Court and Article 33 of the Law on Constitutional Court Procedure, the Constitutional Court issues the following CONCLUSION.

1. Since the State Great khural is not granted any power to make official interpretation of the Constitution, the Resolution No. 27 of 5 April 1993 and Resolution No. 10 of 26 July 2000 by the State Great Khural on interpretation regarding the Article 30.2 and 66.4 of the Constitution violated the provisions of the Article 25 and 70.1 of the Constitution.

2. It is decided to dismiss the complaint of Mr. D. Lamjav and Mr. N. Khaidav about violation of the Articles 47.1, 47.2, 50.1.4, 64.1 and 64.2 of the Constitution by the State Great Khural when interpreting the Constitution because of the lack of confirmed grounds.

3. The Constitutional Court requests the State Great Khural to discuss and reply to this conclusion within 15 days upon opening of its session.



Conclusion of the Constitutional Court of Mongolia

2004.04.21.

No. 1

Ulaanbaatar

Adjudication of the dispute on the matter whether certain provisions of the Civil Procedure Law breach the Constitution of Mongolia

The citizen P. Battogtokh submitted on 3 March 2004 his petition stating that the Articles 114.4 and 32.4 of the Civil Procedure Law violate certain provisions of the Constitution. The dispute raised by this petition was examined by this middle bench session as follows.

FINDINGS:

First part of the dispute

1. The Article 52.1 of the Constitution of Mongolia states that courts in all instances shall adjudicate cases and disputes on the basis of collective decision-making. This provision makes clear that the courts shall examine cases with panel of 3 or more judges and their decision must be made by the majority's vote instead of one judge's opinion.

2. The Article 1.2 of the Constitution states that democracy is one of the fundamental principles for the activities of the State. This provision explicitly means that any State body

shall take its decisions on the basis of majority's opinion instead of individual decisions. This principle of collective decision-making should be even more visible in the activities of impartial and fair courts resolving cases and disputes.

3. The principle of collective decision-making is clearly reflected in all the procedural laws such as the Criminal Procedure Law, Administrative Procedure Law and Constitutional Court Procedure Law. As object of dispute, the Paragraph 3, Article 114 of the Civil Procedure Law clearly states that if a case is being decided by a panel composed of three judges, the decision must be made by the majority. But the Paragraph 4 of this Article provides that if three judges have three different opinions when deciding a case with three-judge composition, the decision shall be made on the basis of the proposal of the court chairperson (chief judge). Thus, these paragraphs have clear conflicting contents.

The Article 21.2 of the Law on Courts states that courts of all instances shall take their decisions on the basis of majority's opinion in adjudication of disputes and cases by principle of collective decision. This clarified the concept of collective decision-making stated in the Article 52.2 of the Constitution.

As seen from the findings above, the Paragraph 4, Article 114 of the Civil procedure Law violates the content and collective decision-making principle stated in the Constitution.

Second part of the dispute:

4. The Article 32.4 of the Civil Procedure Law states that a citizen with full legal capacity may be, on a voluntary basis, represented by a family member or a relative or, on a contractual basis, by a defence lawyer. Although it may seem that this provision omitted or restricted representation types and options, there are no immediate grounds confirmed for this provision to have violated the Constitution.

5. It is not possible to accept the part of the petition submitted by Mr. P. Battogtokh concerning the non-conformity of the Articles 114.4 and 32.4 of the Civil Procedure Law with the provisions of the Articles 14.1, 14.2, 16.12, 16.14 and 19.1 of the Constitution.

Therefore, guided by the provisions of the Articles 31.1 and 31.2 of the Law on Constitutional Court Procedure, the Constitutional Court issues the following CONCLUSION.

1. The Paragraph 4, Article 114 of the Civil Procedure Law provides that if three judges have three different opinions when deciding a case with three-judge composition, the decision shall be made on the basis of the proposal of the court chairperson (chief judge) and proposals of other two judges shall be attached in writing to the decision. This provision violates the Constitution, namely, its Article 1.2 which states that democracy is one of the fundamental principles for the activities of the State and Article 52.1 which states that the courts of all instances shall adjudicate cases and disputes on the basis of collective decision-making.

2. The Article 32.4 of the Civil Procedure Law states that a citizen with full legal capacity may be, on a voluntary basis, represented by a family member or a relative or, on a contractual basis, by a defence lawyer. This provision does not violate the Articles 14.1, 14.2, 16.12, 16.14, and 19.1 of the Constitution of Mongolia.

3. In accordance with the provision of the Law on Constitutional Court Procedure, the Constitutional Court requests the State Great Khural to consider this conclusion and notify of its decision within 15 days upon its receipt.



Conclusion of the Constitutional Court of Mongolia

2005.3.31.
No. 2/02
Ulaanbaatar

Adjudication of the dispute on the matter whether certain provisions of the Administrative Procedure Law breach the Constitution of Mongolia

This session of the Constitutional Court examined the constitutionality of the Articles 4.1.1 and 4.1.6 of the Administrative Procedure Law which put the Government and General Election Committee under the jurisdiction of the administrative courts.

The petitioners told they submit their petition to the Constitutional Court on the basis of the provisions of the Article 10.12 and 66.1 of the Constitution and Article 16 of the Constitutional Court Procedure Law.

They noted the following arguments.

1. The Article 4.1.1 of the Administrative Case Procedure Law allows the administrative courts to consider decisions of the Government and Article 8.1.2 allows to assess the constitutionality of those decisions and render them invalid if they are in breach of the Constitution. These provisions violate the Articles 38.1 and 45.2 of the Constitution.

2. The Article 4.1.6 of the Administrative Case Procedure Law considers a decision of the General Election Committee as an administrative act, and the Article 8.12 allows administrative courts to invalidate such decisions if they violate the Article 66.2.2 of the Constitution.

FINDINGS:

It was determined on the following grounds that the Article 4.1.1 of the Administrative Case Procedure Law is in breach of the Articles 38.1 and 45.2 of the Constitution, and the Article 4.1.6 of the this law is in breach of the Article 66.2.2 of the Constitution.

1. The Article 45.2 of the Constitution states that If a resolution or ordinance is not compatible with legislation, the Government itself or the State Great Khural shall invalidate it. Thus, the Constitution specifically defined the subject empowered to invalidate any decision of Government, which is the highest executive body of the State according to the Article 38.1 of the Constitution, in case it does not comply with the legislation. If the Parliament or Government doesn't comply with this responsibility, it is open to go to the Constitutional Court to resolve the issue.

A ground is found to consider the legislation requiring that Government acts may be examined by the administrative courts, as adopted by the legislature, as infringement to the powers of the Government and State Great Khural specifically set by the Constitution.

The Constitution did not grant to the administrative courts any power to review the decisions of the highest executive body.

2. The General Election Committee has functions by the law to conduct national referendums, elections of the State Great Khural and its members and the election of the President in Mongolia. It makes decisions on issues related to

realization of the rights of citizens to elect and to be elected, as provided in the Constitution. As seen from the Constitutions of democratic countries, this kind of dispute is in the jurisdiction of the Constitutional Courts in countries with constitutional courts, or in the jurisdiction of the Supreme Court in case where a constitutional court does not exist. The Article 66.2 of the Constitution provides that the Constitutional Court shall adjudicate on cases where the General Election Committee violates the Constitution by its decisions. But, the Administrative Case Procedure Law provides that an administrative court shall adjudicate on cases where decisions of the General Election Committee don't comply with the laws. This infringes to the powers of the Constitutional Court specifically granted by the Constitution.

3. As to the question of the conflict of Article 4.1.2 of the Administrative Procedure Law which included reference to the Prime Minister with the provisions of Articles 39.1, 41.1 and 45.1 of the Constitution, it was decided that it is not possible for the Constitutional Court to issue a conclusion as an adjudication of the Constitutional Court was not instigated because the citizens S.Magnaisuren and B.Enkhbayar did not complain about, but mentioned this issue in their additional comments.

Guided by the provisions of the Articles 31.1 and 31.2 of the Law on Constitutional Court Procedure, the Constitutional Court issues the following CONCLUSION:

1. The Article 4.1.1 the Administrative Case Procedure Law which allows the administrative courts to review decisions of the Government violates the Article 38.1 of the Constitution stating that the Government of Mongolia is the highest executive body of the State and the Article 45.2 stating that if a resolution or ordinance of the Government does not comply with the legislation, the Government itself or the State Great Khural shall invalidate it. The Article 4.1.6 of the Administrative Case Procedure Law regarding the General Election Committee violates the Article 66.2.2 of the Constitution which provides

that the Constitutional Court shall make conclusions on whether decisions made by the General Election Committee concerning national referendums, elections of the State Great Khural or its members or election of the President are consistent or not with the Constitution”.

2. In accordance with the provision of the Law on Constitutional Court Procedure, the Constitutional Court requests the State Great Khural to consider this conclusion and notify of its decision within 15 days upon opening of its session.



Conclusion of the Constitutional Court of Mongolia

2005.04.13.

No. 2/03

Ulaanbaatar

**Adjudication of the dispute on the matter
whether certain provisions of the Law on
amendments to the Law on Excise Tax
breach the Constitution of Mongolia**

The Constitutional Court examined the dispute on whether the amendment made to the Article 6.1 of the Law on Excise Tax requiring to impose an excise tax of 0.20 USD per liter for domestically produced beer and 0.50 USD per liter for imported beer violates or not the relevant provisions of the Constitution.

The petition submitted by the citizen M.Tumen-Ulzii residing at the address of Bayanzurkh District, 15th khoroolol, 4 th khoroo, Building 13, Apt 59 contains the following statement.

“The Law on Amendments to the Law on Excise Tax was adopted by the State Great Khural on 2 December 2004 was effective from 1 January 2005. I consider that some provisions, particularly, the Article 6.1.6 of this law violate the Articles 10.2 and 10.3 of the Constitution of Mongolia as well as the Article 6.2 of the Constitutional Annex Law.”

FINDINGS:

The breach of the Articles 10.2 and 10.3 of the Constitution

and Article 6.2 of the Constitutional Annex Law by the Article 3 of the Law on Amendments to the Law on Excise Tax adopted by the State Great Khural on 2 December 2004 which changed Article 6.1 of this law and imposed an excise tax of 0.20 USD per liter on domestically produced beer and 0.50 USD per liter on imported beer was established on the following grounds.

1. This provision violates the provision of the Preamble to the General Agreement on Tariffs and Trade of the World Trade Organization to enter 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 commerce, the Article 1 of this agreement on the “most-favoured-nation-treatment”, and Article 3 on “national treatment on internal taxation and regulation”.

2. This law provision violated the Article 3.2 of the General Agreement on Tariffs and Trade of the World Trade Organization that Mongolia joined in 1997 which states: “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 the Article 18.2 which states: “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.”

3. The Paragraph 3, Part I of the Protocol for the Accession of Mongolia to the Marrakesh Agreement Establishing the World Trade Organization says that Mongolia will notify the Secretariat of the WTO annually of the implementation of the referred to in the paragraph 13 of the Working Party Report. The Item 13 of the Working Party Report on Accession of Mongolia to the Marrakesh Agreement Establishing the WTO says: “The Representative of Mongolia stated that from 1 January 1997, Mongolia would apply the national treatment with regard to the rate of excise tax (either specific or ad valorem) to both imports and domestically produced products in each of the categories in paragraph eleven above and to all other products. The Representative of Mongolia also said that Mongolia would eliminate the discrimination against imported products in the application of the sales tax from 1 January 1997. The Working Party took note of these commitments”.

4. The Trade Policy Review Body of the WTO held a session on 15 and 17 March 2005 to review the Trade Policy of Mongolia. The TPRB Chairperson’s Concluding Remarks noted that some Member States urged Mongolia to extend national treatment to imports of some items subject to excise tax.

5. In his response given at the Standing Committee on Budget of the State Great Khural held on 30 November 2004, the Finance Minister Mr. N. Altankhuyag recognized that Mongolia had violated its commitments taken under agreement. Also, the same was done by by the Minister of Industry and Trade Mr. S. Batbold in his official letter No. 1/780 sent to the Constitutional Court on 30 March 2005.

Guided by the provisons of the Articles 31.1 and 31.2 of the Law on Constitutional Court Procedure, the Constitutional Court issues the following CONCLUSION.

1. The Article 3 of the Law on Amendments to the Law on Excise Tax adopted on 2 December 2004 changed the Article 6.1 of the Law on Excise Tax and imposed an excise tax of 0.20

USD per liter on domestically produced beer and 0.50 USD per liter on imported beer. This amendment violated the Article 10.2 of the Constitution of Mongolia which states that Mongolia shall fulfill in good faith its obligations under international treaties and Article 10.3 of the Constitution which states 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 and the Article 6.2 of the Constitutional Annex Law of Mongolia.

2. In accordance with the Paragraph 2, Article 36 of the Law on Constitutional Court Procedure, the Constitutional Court requests the State Great Khural to consider this conclusion and notify of its decision within 15 days.



Conclusion of the Constitutional Court of Mongolia

2005.09.29.

No. 2/06

Ulaanbaatar

Adjudication of the dispute on the matter whether certain provisions of the Law on Political Parties breach the Constitution of Mongolia

The Constitutional Court examined the dispute on constitutionality of certain provisions of the Law on Political Parties.

The petition of the citizen Kh. Selenge residing at the address of Bayagol District, Khoroo 12, Building 27, Apt 16 contained the following arguments.

1. The Paragraph 3, Article 6 of the Law on Political Parties specifies that in cases where a party terminates its activities, or is reorganized through consolidation, or is dissolved or changes its name, it shall be prohibited for newly founded or for other parties to use its full or abbreviated name within 24 years ahead. In view of the constitutional law, a citizen should again enjoy his/her right to freedom of association in cases where his/her party terminated its activities, or united with other party, or was dissolved. On the other hand, the anme of a party is a consolidated form of an ideology and represents an intellectual property of the members who are united on the basis of that ideology. So, the above law provision means that the State

intervenes into the affairs of political parties, infringes to this human right, imposes a time limit for the realization of this right and bars the realization of the right to freedom of association.

2. The Paragraph 6, Article 8 of the Law on Political Parties provides that a political party may participate in elections of the State Great Khural and Assemblies of Citizens' Representatives of aimag, capital, soum or district in 18 months after its foundation and registration with the Supreme Court. This provision does not apply to the newly registered parties established through reorganization. Every person should have the right to peaceful, voluntary and free association, as well as the equal right to elect and to be elected. The State should not make any limitation to realization of these rights in terms of time period, space, territory or form of expression. If the State makes limitations, should comebe setback from democratic and constitutional principles. If human rights are recognised, they should not be curtailed.

The Paragraph 6, Article 8 of the Law on Political Parties violates the Paragraph 9, Article 16 of the Constitution which guarantees the right to elect and to be elected to state bodies and the Paragraph 10 of the same Article which guarantees the right to form a party or other public organization and freedom of to be united into these organizations on the basis their social and personal interests and opinion.

By limiting the human rights to freedom of belief, expression and possibilities for realization of the rights to form parties on the basis of voluntary association, to elect and to be elected, the State violates also the provisions that "Mongolia shall fulfill in good faith its obligations under international treaties to which it is a Party" as stated in the Paragraph 2, Article 10 of the Constitution and the provision 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" as stated in the Paragraph 3, Article 10 of the Constitution.

FINDINGS:

1. The Paragraph 3, Article 6 of the Law on Political Parties specifies that in cases where a party terminates its activities, or is reorganized through consolidation, or is dissolved or changes its name, it shall be prohibited for newly founded or for other parties to use its full or abbreviated name within 24 years ahead. This limitation has a character of infringement to the fundamental human rights of citizens to form parties or other public organizations and freedom of voluntary association on the basis of social and personal interests and views.

2. Every political party acquires its right to conduct its activities since its foundation and registration with the Supreme Court. But, the law provision allows them to participate in State elections only 18 months after. This provision restricts the right of citizens to elect and to be elected.

3. There is no ground confirmed to believe that the abovementioned provisions of the Law on Political Parties violate the Articles 10.2, 10.3 and 16.16 of the Constitution of Mongolia.

4. During the medium bench session of the Constitutional Court, the petitioner Kh. Selenge dismissed her claim that the Article 6.3 of the Law on Political Parties violates the Article 5.2 of the Constitution.

Guided by the provisions of the Articles 31.1 and 31.2 of the Law on Constitutional Court Procedure, the Constitutional Court issues the following CONCLUSION.

1. The Paragraph 3, Article 6 of the Law on Political Parties specifies that in cases where a party terminates its activities, or is reorganized through consolidation, or is dissolved or changes its name, it shall be prohibited for newly founded or for other parties to use its full or abbreviated name within 24 years ahead. The Paragraph 3, Article 6 of the Law on Political

Parties specifies that in cases where a party terminates its activities, or is reorganized through consolidation, or is dissolved or changed its name, it shall be prohibited for newly founded or other parties to use its full or abbreviated name within 24 years ahead. This provision violates the Paragraph 10, Article 10 of the Constitution which states that the citizens are guaranteed to enjoy the right to form parties or other public organizations and freedom of association into these organizations on the basis of social and personal interests and opinion.

2. The Paragraph 6, Article 8 of the Law on Political Parties provides that a political party may participate in elections of the State Great Khural and Assemblies of Citizens' Representatives of aimag, capital, soum or district in 18 months after its foundation and registration with the Supreme Court. This provision violates the Paragraph 9, Article 16 of the Constitution which states that the citizens have the right to elect and to be elected to State bodies.

3. The Articles 6.3 and 8.6 of the Law on Political Parties don't violate the provisions of the Articles 10.2, 10.3 and 16.16 of the Constitution.

4. In accordance with the Paragraph 4, Article 32 of the Law on Constitutional Court Procedure for Dispute Adjudication, the Paragraph 3, Article 6 and the Paragraph 6, Article 8 of the Law on Political Parties are suspended from 29 September 2005.

5. The Constitutional Court requests the State Great Khural to examine this conclusion and notify of its decision thereon in accordance with the Article 66.2.1 of the Constitution and the Article 36.2 of the Law of Constitutional Court Procedure.



Conclusion of the Constitutional Court of Mongolia

2005.09.30.

No. 2/07

Ulaanbaatar

Adjudication of the dispute on the matter whether certain provisions of the Law on Amendments to the Law on State Great Khural breach the Constitution of Mongolia

The Constitutional Court examined a dispute on whether certain provisions of the Law on Amendments to the Law on State Great Khural violated the Constitution.

One. The petition submitted on 29 August 2005 by citizen Kh. Temuujin, residing at the address of Bayanzurkh District, 4th khoroo, 15th khoroolol, Building 28, Apt1 contained the following arguments.

“1. The Law on Amendments to the Law on the State Great Khural contains a provision that a party group (caucus) should be composed of the Members of Parliament who were elected from that party. This provision is in conflict with the following provisions of the Law on State Great Khural, namely, the Article 21.2 which provides that if members representing different parties which have no more than 8 parliamentary seats want to join a party group or a coalition’s group, they should submit their request and the Article 21.3 which provides that in case a member of a party group or coalition’s group abandons

membership to his/her party group or coalition's group, he/she can officially leave his/her party group or coalition's group and join another group or coalition, and the Article 21.4 which states that an elected member of parliament who was an independent candidate may join any party group or or coalition's group. This situation has created simultaneous conflicting regulations and violates the Article 1.2 of the Constitution which states that the rule of law is one of the fundamental principles for activities of the State.

Furthermore, the above provision creates a legal discrimination amongst members of the State Great Khural. For instance, it restricts the right "to join another group upon dismissal from a party group or coalition" for members of parties having more than 8 parliamentary seats, and "to join any party group or coalition group" for members elected on the basis of individual independent candidature. The above provision also violates the Article 1.2 of the Constitution which states that equality is one of the fundamental principles for activities of the State and the Article 16.10 which states that it is prohibited to discriminate or persecute a person for his/her membership to a political party. 2. The provision which defines the applicability scope of the Law on Amendments to the Law on State Great Khural reads that "this law shall be applicable for the term of office of the State Great Khural established by the 4th parliamentary election conducted in 2004". A law based on the constitutional rule of law should be defined by common conditions and should not be designed for a particular subject or case. The above provision violates this fundamental principle of the rule of law as well as the Article 1.2 of the Constitution of Mongolia.

It is not consistent with the ethics of democracy to participate in elections by establishing coalitions within the framework of specific laws, and then, adopt and enforce new laws specially designed to serve their own interests. This situation would affect activities of the State Great Khural in consistency with the Constitution and other laws as well as normal

effectiveness of law provisions. This new law has not respected the votes of electorate and weakened the responsibilities of political parties. Therefore, I request the Constitutional Court to determine violations of the Constitution occurred as a result of adoption of the Law on Amendments to the Law on the State Great Khural

Two. Citizen B. Bayaraa residing at the address of Ulaanbaatar, Bayangol District, Koroo 17, 1-13 included the following arguments in her petition.

1. The Article 1 of the Law on Amendments to the Law on State Great Khural provides that in case activities of a coalition's group have been terminated before the term, the former coalition parties may form a group. This provision violates the Article 24.1 of the Constitution which refers to formation of party and coalition groups as a result of election. This provision also violates the Article 19.2 of the Law on Parliamentary Election which allows coalition parties to participate as one body in the election and subsequently in new parliament to be formed as its result.

2. The Law on Amendments to the Law on State Great Khural contains a provision that that a party group shall be composed only of members of parliament who were elected from that party. This law provision is in conflict with the Law on Parliamentary Election. It violates also the Article 70.1 of the Constitution which states 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.

3. The Article 2 of the above law says that this law shall be applied during the term of office of the State Great Khural established by the 4th parliamentary election. This violates the fundamental principle of the equal and stable functioning of the law in society, and protects the interests of certain groups via discriminatory treatment. I think this law was adopted in the

interest of a certain subject.

Therefore, I request the Constitutional Court to determine the violations made with regard to the Constitution.

FINDINGS:

1. The concept of “party and coalition groups formed as a result of election” is introduced in Paragraph 1, Article 24 of the Constitution by the amendments made by the State Great Khural in 2000. But, the amendments made to the Law on State Great Khural allow to create party groups regardless of election results. This violates the constitutional provision.

2. There are no grounds confirmed to consider that the Law on Amendments to the Law on State Great Khural violates the Article 1.2 of the Constitution which states that democracy, justice, equality and rule of law shall be the fundamental principles for activities of the State, Article 16.10 which states that it is prohibited to discriminate or persecute a person for his/her membership to a political party and Article 70.1 which states 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.

Guided by the provisions of the Articles 31.1 and 31.2 of the Law on Constitutional Court Procedure the Constitutional Court issues the following CONCLUSION.

1. The provision of the Law on Amendments to the Law on State Great Khural, adopted on 4 August 2005 by the State Great Khural which states that “in case activities of a coalition group have been terminated before the term, the parties which were members of the coalition and have at least 8 seats in the State Great Khural may form their individual party groups composed only of the members of parliament who were elected from these parties ” violates the Article 24.1 of the Constitution of Mongolia which envisages the possibility to form party or

coalition groups as result of that particular election of the State Great Khural.

2. The Law on Amendments to the Law on State Great Khural does not violate with the provisions of the Articles 1.2, 16.10 and 70.1 of the Constitution of Mongolia.

3. The effect of the Law on Amendments to the Law on State Great Khural is suspended from 18 October 2005 in accordance with the Paragraph 4, Article 32 of the Law on Constitutional Court Procedure.

4. The Constitutional Court requests the State Great Khural to examine this conclusion and notify of its decision thereon within 15 days after opening its autumn session in accordance with the Article 66.2.1 of the Constitution and the Article 36.2 of the Law on Constitutional Court Procedure.



Conclusion of the Constitutional Court of Mongolia

2006.06.21.

No. 7

Ulaanbaatar

Adjudication of the dispute on the matter whether certain provisions of the Law on State Great Khural of Mongolia breach the Constitution of Mongolia

The Constitutional court at its medium bench session examined and resolved dispute on constitutionality of the provisions of the 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 in his petition the following.

Five Subparagraphs 7.3.1, 7.3.3, 7.3.4, 7.3.5, 7.3.6 of the Paragraph 7.3, Article 7 of the Law on State Great Khural of Mongolia have violated the Paragraph 1, Article 23 and Paragraph 2, Article 29 of the Constitution of Mongolia. For instance, a member of the State Great Khural who was appointed as member of the Government Cabinet shall not enjoy the right to vote in the following circumstances:

7.3.1. when voting on his/her own election or appointment to position of Speaker, Deputy Speaker, head

of standing, sub or temporary committee or member of the Government Cabinet,

7.3.3. when voting on his/her suspension, resignation or withdrawal;

7.3.4. when voting on granting permission to competent authority for his/her investigation in relation to criminal matters;

7.3.5. when on voting on granting permission to competent authority for his/her arrest or confinement as a suspect, inspection or search in his/her body, house, office or vehicle, or for imposing administrative penalty on him/her by the court decision;

7.3.6. when voting on confidence to the Government or its resignation.

These provisions have violated the Article 23.1 of the Constitution which states that “a member of the State Great Khural shall be an envoy of the people and shall uphold the common interests of citizens and of the State” and the Article 29.2 which states that “the immunity of members of the State Great Khural shall be protected by law.”

FINDINGS:

The provisions of the Articles 7.3.1, 7.3.3, 7.3.4, 7.3.5 and 7.3.6 of the Law on State Great Khural have violated the Articles 16.14, 23.1.2 and 29.2 of the Constitution of Mongolia. This situation is confirmed on the following grounds:

1. The prohibition by law of groundless restriction of Parliament Members’ right to vote and cast is a main principle of the democratic rule of law.

In other branch laws, the voting right is open for candidates in the presidential or parliamentary election.

2. The restriction of parliament members' right to vote by law on the grounds such as conflicting interests or discussion of matters related to themselves has characteristics of infringement to the full powers of members of the State Great Khural.

Guided by the provisions of the Articles 31.1 and 31.2, of the Law on Constitutional Court Procedure, the Constitutional Court issues the following CONCLUSION:

1. The provisions of the Articles 7.3.1 and 7.3.6 of the Law on State Great Khural have violated the Articles 23.1, 23.2 and 29.2 of the Constitution of Mongolia.

2. The provisions of the Articles 7.3.3, 7.3.4 and 7.3.5 of the Law on State Great Khural have violated the Articles 16.14, 23.1 and 29.2 of the Constitution of Mongolia.

3. The effect of the Articles 7.3.1, 7.3.3, 7.3.4, 7.3.5 and 7.3.6 of the Law on State Great Khural of Mongolia shall be suspended from 21 June 2006.

4. The Constitutional Court requests the State Great Khural to examine this conclusion and notify of its decision thereon within 15 days in accordance with the provisions of the Law on Constitutional Court Procedure.



Conclusion of the Constitutional Court of Mongolia

2007.03.02.

No. 3

Ulaanbaatar

Adjudication on whether the Speaker of the State Great Khural Mr. Ts. Nyamdorj breached certain provisions of the Constitution of Mongolia

The Constitutional Court examined and resolved a dispute on constitutionality of some actions of the Mr. Ts. Nyamdorj, Speaker of the State Great Khural who made changes and corrections in the text of the Law against Corruption after presentation of its final edition to the State Great Khural , also made changes and corrections in the text of the Mineral Law after introducing the final edition to the State Great Khural and did not inform the Parliament of these corrections.

One. 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:

In several occasions corrections were made without permission of the State Great Khural in the text of adopted laws after introducing their final version to the State Great Khural or editions were not presented to the State Great Khural. Although this was an illegal process, the Speaker of the State Great Khural signed those laws and made them official. This situation

is directly related with the failure of the Parliament's Speaker in fulfilling his duties. This action has violated the Article 20 of the Constitution which states that "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 Article 25.1 which states that " the State Great Khural shall keep within its exclusive power ...the right to enact laws, make amendments to them" and the Article 70.1 which states that "... activities of all organizations and citizens should be in full conformity with the Constitution" . Therefore, we request the Constitutional Court to examine and resolve this situation.

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

"The Speaker of the State Great Khural Mr. Ts. Nyamdorj, in violation of the Article 1.2 of the Constitution which states that "the rule of law shall be a fundamental principle of the activities of the State", and Article 25.1.1, Chapter 3 which specifies that "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 discretionary corrections into the text of the Mineral Law had been adopted by the State Great Khural on 8 July 2006. For instance, this law when adopted by the Parliament had 40 pages, 10 chapters, 70 articles, but later, got 43 pages, 11 chapters, 66 articles after Speaker of the State Great Khural signed and enacted it. In addition, he eliminated 27 provisions that the members of the State Great Khural had approved and added himself 24 provisions that the members did not discuss. The Article 5.5 of this law referred to the holder of license for deposit exploitation, but after the Speaker's correction it referred to the

owner of deposit. This is in conflict with the Article 6.2 of the Constitution.

Also, the Speaker made many corrections into the Law on Rules for Implementation of the Mineral Law after its adoption. In accordance with the 1997 Mineral Law, licenses for use of mineral deposit were distributed to holders. Then after some time, this law was invalidated and licenses became invalid. In order to return now licenses to their holders, the Speaker decided to restore the effect of the 1997 Mineral Law. This action has violated the content of the Article 1.2 of the Constitution.

We consider correction of the laws adopted at sessions of the State Great Khural by its Speaker as an action of infringement on legislative powers of the State Great Khural and abuse of his power. We request the Constitutional Court to examine and resolve this situation.

FINDINGS:

1. The minutes of the State Great Khural sessions, relevant law dossiers and other evidences show that Mr. Ts. Nyamdorj, Speaker of the State Great Khural made many corrections and changes in terms of content, policy, principle, edition, lexicology, sequence or structure in the following laws. On 8 September 2006, he made changes and corrections in the Law against Corruption which was adopted by the State Great Khural at its plenary session on 6 July 2006 by 93% of votes of the MPs, final edition of which was introduced to the State Great Khural on 20 July 2006. On 5 August 2006, he also made his corrections and changes in the Mineral Law which was adopted by the State Great Khural at its plenary session on 8 July 2006 by 83,7% of votes of its members, the last edition of which was introduced to the State Great Khural on 20 July 2006.

There exist grounds to consider that Mr. Ts. Nyamdorj, Speaker of the State Great Khural violated the Article 32.1 of the Law on State Great Khural which provides that “the Procedure

for Sessions of State Great Khural should be followed in discussion, adoption of draft laws, and decision making at session of the State Great Khural” and the Item 51.4 of the Procedure for Sessions of the State Great Khural approved on 27 January 2006 by the Resolution No. 14 of the State Great Khural which states that “after introduction of the edition of a law or other decision to the State Great Khural, the Speaker of the State Great Khural shall sign it into law within 3 business days in accordance with the Item 51.1.3 of the Procedure”.

By not complying with the the Law on State Great Khural and relevant provisions of the Procedure for Sessions of the State Great Khural approved by a Resolution of the State Great Khural, the Speaker of the State Great Khural Mr. Ts. Nyamdorj violated the Article 1.2 of the Constitution which states that “democracy, justice and rule of law shall be fundamental principles for activities of the State” , Article 20 which states that “the legislative power shall be vested solely in the State Great Khural” and Article 25.1.1 of the Constitution which states that “the State Great Khural shall keep within its exclusive power the issues to enact laws and make amendments to them”.

But, no grounds were determined for considering that the Speaker of the State Great Khural Mr. Ts. Nyamdorj violated the Article 70.1 of the Constitution which states that “laws, decrees and other decisions of state bodies, and activities of all organizations and citizens should be in full conformity with the Constitution.”

2. The question of conclusion over resignation of the President, Speaker of the State Great Khural or Prime Minister of Mongolia must be examined at the Constituional Court at the request of a competent body or official. Therefore, its is not possible for the Constituional Court to resolve the request of applicant citizens on this issue.

Under the provisions of the Article 66.2 of the Constitution of Mongolia and Article 31.2 of the Law on

Constitutional Court Procedure, the Constitutional Court issues the following CONCLUSION in the name of the Constitution of Mongolia :

1. By making many corrections and changes in terms of style, lexicology, terms, sequence and structure in the Law against Corruption and the Mineral law after the introduction of their final edition to the State Great Khural, the Speaker of the State Great Khural Mr. Ts. Nyamdorj violated the Article 1.2 of the Constitution which states that “democracy, justice and rule of law shall be fundamental principles for activities of the State” , Article 20 which states that “the legislative power shall be vested solely in the State Great Khural” and Article 25.1.1 of the Constitution which states that “the State Great Khural shall keep within its exclusive power the issues to enact laws and make amendments to them”.

2. The Speaker of the State Great Khural Mr. Ts. Nyamdorj has not violated the Article 70.1 of the Constitution which states that “laws, decrees and other decisions of state bodies, and activities of all organizations and citizens should be in full conformity with the Constitution.”

3. The Constitutional Court requests the State Great Khural to examine this conclusion and notify of its decision thereon within 15 days in accordance with the provisions of the Law on Constitutional Court Procedure. In accordance with the provisions of the Article 36.2 of the Law on Constitutional Court Procedure, the Constitutional Court requests the State Great Khural to examine this conclusion and notify of its decision thereon within 15 days upon beginning of its spring session.



Conclusion of the Constitutional Court of Mongolia

2008.02.27.

No. 3

Ulaanbaatar

Adjudication of the dispute on constitutionality of some provisions of the Resolution No. 102 of the State Great Khural dated 28 December 2007

The Constitutional Court at its medium bench session examined and resolved the dispute whether the Resolution No. 102 of the State Great Khural on discussion of the proposal of the Prosecutor General violated some provisions of the Constitution.

One. Citizen Ch. Unurbayar, resident of 6th khoroo, Bayangol District, Ulaanbaatar city in his notification stated:

The resolution of the State Great Khural adopted on the basis of a proposal of State Prosecutor General has violated the Article 34.7 of the Law on State Great Khural which provides that “except for in the cases specified in the Article 6.9.1 of this law, no member of the State Great Khural shall be searched, arrested, detained or imposed administrative penalty by the court decision, their home, office, transport shall not be searched.” This leads to violation of the Article 1.2 of the Constitution which states that “rule of law shall be a fundamental principle for activities of the State”, Article 29.2 which specifies that “the immunity of the members of the State Great Khural shall

be protected by law” and Article 29.3 which specifies that “the issue concerning involvement of a member of the State Great Khural in a crime shall be considered by session of the State Great Khural, which shall decide whether to suspend his/her mandate or not.” By adopting above-mentioned resolution, the State Great Khural established a wrong legal norm which would allow illegal infringement to the immunity of the members of the Parliament.

Two. Citizen P. Ulziibat, resident of 16th khoroo, Bayangol District, Ulaanbaatar city in his notification stated:

The State Great Khural, by adopting above-mentioned resolution, plays a role as a court or a prosecutor. In fact, it interferes with activities of those bodies, violating the provision of the Article 49.2 of the Constitution.

The State Great Khural, based on repeated proposals by the Prosecutor General, has had to express its own position about suspension of the mandate of members of the State Great Khural. Rather than complying with the Prosecutor General’s requests, it has ordered that other investigations be conducted. Such activities could be conducted in the following conditions:

- only if the mandate of a member of the State Great Khural was suspended; and
- according to the procedure stated in the law and not “by a resolution of the State Great Khural”.

The State Great Khural established a wrong precedence which allows interference with the immunity of members of the State Great Khural not according to the procedure set in the law, but by its resolution. This constitutes a violation of the Article 29.2 of the Constitution.

The State Great Khural adopted this resolution by referring to the Article 34.7 of the Law on State Great Khural. In other words, using the prohibitive clause for giving permission, it

has violated the Article 1.2 of the Constitution which states that “the rule of law shall be a fundamental principle for activities of the State”.

FINDINGS:

1. The Article 29.3 of the Constitution specifies that “question concerning involvement of a member of the State Great Khural in a crime shall be considered by the session of the State Great Khural, which shall decide whether to suspend his/her mandate”. The Article 6.6.13 of the Law on State Great Khural provides that “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 a member of the State Great Khural”. It is clear from these statements that the State Great Khural may decide question on suspension of a member’s mandate on the basis of a proposal from the State Prosecutor General.

2. The Constitutional ruling on protection of immunity of members of the State Great Khural by law is legalized in the Article 34.7 of the Law on State Great Khural. But, a 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 or provision of law the State Great Khural referred to when it adopted on 28 December 2007 the Resolution No. 102. Also, there exists a ground to consider that the State Great Khural exceeded its power granted by the Constitution by adopting this resolution.

4. No ground was found to consider that the permission given by this resolution to carry out a search in the body of certain members of the State Great Khural, their home, office and transport constitutes interference with the exercise by judges of their duties.

In accordance with the Article 66.2.1 of the Constitution of Mongolia, Articles 31.2 and 32.4 of the Law on Constitutional Court Procedure, the Constitutional Court issues the following **CONCLUSION** in the name of the Costituion of Mongolia.

1. The Resolution No. 102 on discussion of the proposal of the Prosecutor General adopted on 28 December 2007 by the State Great Khural violated the Article 1.2 of the Constitution which states that “the rule of law shall be a fundamental principle for activities of the State”, Article 29.2 which specifies that “the immunity of members of the State Great Khural shall be protected by law” and Article 29.3 which states that “question concerning 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”.

2. This resolution has not violated the Article 49.2 of the Constitution which states that “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 Resolution No. 102 of the State Great Khural of 28 December 2007 shall be suspended from 27 February 2008.

4. The Constitution Court requests the State Great Khural to examine this conclusion and notify of its decision within 15 days upon opening of its next session.



Conclusion of the Constitutional Court of Mongolia

2010.03.24

No 01

Ulaanbaatar

Adjudication of a dispute whether provision in section 57.2 of article 57 of the law on family has breached relevant provisions of the constitution

The Constitutional
Court Hall 12.30p.m

The session of the Constitutional Court of Mongolia has taken place in the chamber of the Constitutional Court with J.Byambadorj, Chairman of the Constitutional Court presiding, members N.Jantsan(reporting member), J.Amarsanaa, D.Naranchimeg and D.Munkhgerel in the bench and secretary G.Agar-Erdene participating, with open access for the public.

The session reviewed and resolved the dispute whether provision in section 57.2 of Article 57 of the Law on Family has breached relevant provisions of the Constitution.

Citizen Togtokhjargal. D, resident of 5th housing committee, Chingeltei District, the Capital City, in his application to the Constitutional Court stated that:

“Provision in section 57.2 of Article 57 of the Law on

Family of Mongolia, which was adopted on June 11, 1999 and which is currently effective, breached section 2, Article 14 of the Constitution of Mongolia that states “No person shall be discriminated against on the basis of ethnic origin, language, race, age, sex, social origin and status, property, occupation and post, religion, opinion or education. Everyone shall have the right to act as a legal person”.

...Once a citizen of Mongolia reaches the age of 60, he/she is to be deprived of his/her basic citizenship rights and though having proper health and livelihood opportunities his/her wishes are limited by law and is deprived of the right to leave his/her descendents.

Thus, the provision of the Constitution of Mongolia that prohibits discrimination based on “age” and that states that each person is a legal person, is breached with very serious consequences.

The above mentioned Constitutional provision that stipulates acitizen is a legal person because though he/she has reached the age of 60, he/she is still “a human being”. ...

... Continuing one’s generation through adoption of a child, leaving a heritage and rearing a human being for the benefit of the state and society is one of the Mongolian traditions we have kept. This was also maintained in previous laws and regulations. ...

... The Law on Family, which is currently in application, deprives a citizen of his/her right to adopt a child by providing for a specific age and it not only eliminates by law the right of a citizen who wishes for a child to continue the person’s generation and who has the possibilities in terms of his/her health and wealth, but also limits the right of an orphan child who wishes for parents and guardianship.

This also obstructs the basic right of a citizen to adopt a child who was orphaned due to unfortunate accident in his/her

life and to rear the child out of pure generosity...

... Thus, myself consider that causing a senior citizen not to be able to exercise his/her citizen's right is the breach of the basic right of a citizen proclaimed by the Constitution and at the same time I would like to explain that it is not wrong to legalize provisions that would list conditions contradictory for adoption.

Therefore, hereby I submit my application requesting to give a chance by restoring the right to adopt a child by a citizen by way of deleting the words "over the age of 60 ..." from the section 57.2 of Article 57 of the Law on Family of Mongolia".

GROUNDS:

Depriving the right to adopt a child of a citizen of Mongolia, who meets the criteria to adopt a child as provided by law and who has full legal capacity, based on ground that "the citizen is 60 years old or older" contains the characteristics of breach of the Constitution.

Guided by provisions of section 2.1, Article 66 of the Constitution of Mongolia, Articles 31 and 32 of the Law on Proceedings for Reviewing and Resolving Disputes in the Constitutional Court:

IT IS CONCLUDED: FOR THE NAME OF THE CONSTITUTION OF MONGOLIA:

1. The provision of section 57.2 of Article 57 of the Law on Family of Mongolia that states "over the age of 60 ..." does breach provisions of section 2, Article 14 of the Constitution that states "No person shall be discriminated against on the basis of ... age ..." and section 1, Article 19 of the Constitution that states "The State shall be responsible to the citizens for the creation of economic, social, legal and other guarantees..."

2. The provision of section 57.2 of Article 57 of the Law on Family of Mongolia that states “over the age of 60 ...” does not breach provision of section 2, Article 14 of the Constitution that states “Everyone shall have the right to act as a legal person” and section 13, Article 16 of the Constitution that guarantees the “Right to personal liberty and safety. No person shall be searched, arrested, detained, persecuted or deprived or liberty ...”.

3. Based on section 4, Article 32 of the Law on Proceedings for Reviewing and Resolving Disputes in the Constitutional Court, application of section 57.2 of Article 57 of the Law on Family of Mongolia that states “over the age of 60 ...” shall be suspended commencing from March 24, 2010.

4. Based on section 2, Article 36 of the Law on Proceedings for Reviewing and Resolving Disputes in the Constitutional Court, the conclusion shall be submitted to the State Great Hural.



Conclusion of the Constitutional Court of Mongolia

2010.07.07

No 04

Ulaanbaatar

Adjudication of a dispute whether provision in resolution #86 of the government of mongolia has breached relevant provisions of the constitution

The Constitutional
Court Hall 12.00p.m

The session of the Constitutional Court of Mongolia has taken place in the chamber of the Constitutional Court with Chairman of the Constitutional Court J. Byambadorj presiding, members P.Ochirbat (reporting member), J.Boldbaatar, D.Munkhgerel and B.Purevnyam in the bench and secretary G.Agar-Erdene participating, with open access for the public.

The session of the Constitutional Court reviewed and resolved the dispute whether second provision in the resolution #86 of the Government of Mongolia dated April 1, 2009, titled “On Acquiring a Land as Reserve” has breached provisions of section 2, Article 1, second provision, section 1, Article 25, provision 1, section 2, Article 38, section 1, Article 41 and section 1 of Article 70 of the Constitution.

Citizen Munkhzul G., resident of 8th housing committee,

Khan-Uul District, the Capital City in her information stated that:

“The Government by its resolution #86 of 2009 titled “On Acquiring a Land as Reserve”, in attachment #2 instructed the Minister of the Mineral Resources and Energy D. Zorigt to allot minerals exploration licenses on 25 fields through tendering based on section 19.2 of Article 19 [of the Minerals Law].

However, these fields to be allotted through tendering are part of specially protected area and the Government under the pretext of acquiring the land for reserve actually has permitted mineral exploration licenses on this specially protected area.

In subsection 9.1.3 of Article 9 of Minerals Law when defining the Government’s power it is very clearly stated that [the Government has the power] “to resolve matters concerning prospecting and exploration of minerals and mining on State special purpose territory, exclusive of areas with State special protection” and in subsection 8.1.3 of Article 8 of Minerals Law when defining the State Great Hural power it is stated that [the SGH has the power] “to resolve matters concerning reconnaissance, exploration and mining of minerals in areas with State special protection”.

Under the Law on Specially Protected Areas in section 25.1 of Article 25 the issue of “defining the state policy regarding acquiring of land for special protection of the state” is stated to be the power of the State Great Hural and under the Law on Land in subsection 17.1.1 of Article 17 the issue of “defining the state policy regarding land” is stated to be the power of the State Great Hural too.

In other words, as stated in subsection 1, section 2, Article 25 of the Constitution defining the basis of the domestic policies of the State in any industry is the prerogative of the State Great Hural. This is also fully proven by section 25.1 of Article 25 of the Law on Specially Protected Areas and subsection 17.1.1 of

Article 17 of the Law on Land. It can be understood from these provisions that these are the issues within the power of the State Great Hural.

In Article 25 of the Constitution when providing for the power of the State Great Hural it is stated in section 4 that “the other powers, structure and the procedures of the State Great Hural shall be defined by law”.

In section 25.2, Article 25 of the Law on Specially Protected Areas it is stated that [the State Great Hural] “to make decision regarding acquisition of land for special protection as submitted by the Government, to set categories of national protection for this lands, and to approve and change borders of the national parks and nature reserves”, in subsection 17.1.3 of Article 17 of the Law on Land it is stated that [the State Great Hural] “to acquire land for national special needs for purposes provided in subsections 16.1.1-16.1.4 and 16.1.9, to release the lands or define and change their borders”. Subsection 16.1.1 of Article 16 of the Law includes the Special Protected Areas.

Two. During the session of the Constitutional Court citizen Munlhzul .G increased the scope of her information by stating that the second provision in the resolution #86 of the Government of Mongolia dated April 1, 2009 has breached section 1, Article 45 of the Constitution.

GROUND:

1. In subsection 9.1.3 of Article 9 of Minerals Law adopted by the State Great Hural on July 8, 2006 when defining the Government’s power with respect to minerals sector it is clearly stated that [the Government has the power] “to resolve matters concerning prospecting and exploration of minerals and mining on State special purpose territory, exclusive of areas with State special protection”, however in provision 2(a) of resolution 86 of the Government of Mongolia dated April 1, 2009 it was provided that allotment of minerals exploration

licenses was to be organized through tendering in areas that completely fall on or partially overlap with special protected areas, and this was a decision on an issue of power of State Great Hural, which contains characteristics of a breach of the Constitution.

The fact that the mentioned areas fully or partially overlap with special protected areas is evidenced by letter 1/615 of the Minister of Nature, Environment and Tourism Gansukh L., dated February 26, 2010, by letter a/1771 of the Minister of Mineral Resources and Energy Zorigt D., dated May 26, 2010 and information, map and letter 1/2102 of the Minister of Nature, Environment and Tourism Gansukh L., dated June 8, 2010 and by admission of Deputy Minister of Mineral Resources and Energy Ariunsan B., the representative of the Government during session of the Constitutional Court.

2. There is no ground to consider that the provision of attachment 2 of section 2(a) of the resolution #86 of the Government dated April 1, 2009, titled “On Acquiring a Land as Reserve” that mentions “... 3) Tal lake, 4) Ikh Khorgo, 6) Dushkhairkhan, 10) Yembuu mountain, 11) Zost-Undur, 17) Ulaan davaa, 19) Bayan mountain, 23) Numrug river” does breach provision of section 1.2, Article 25 of the Constitution that states “to define the basis of the domestic and foreign policies of the State” and provision of Section 4, Article 25 of the Constitution that states “the other powers, structure and the procedures of the State Great Hural shall be defined by law”, provision of Section 2.1, Article 38 of the Constitution that states “to organize and ensure nation-wide implementation of the Constitution and other laws” and provision of Section 1, Article 41 of the Constitution that states “the Prime Minister shall lead the Government and shall be responsible to the State Great Hural for the implementation of State laws”.

3. There is no ground to consider that other provisions of attachment 2 of section 2(a) of the resolution #86 of the Government dated April 1, 2009, titled “On Acquiring a Land

as Reserve” that mentions “... 3) Tal lake, 4) Ikh Khorgo, 6) Dushkhaikhan, 10) Yembuu mountain, 11) Zost-Undur, 17) Ulaan davaa, 19) Bayan mountain, 23) Numrug river” and section (b) does breach provision of Section 2, Article 1 of the Constitution “The supreme principles of the activities of the State shall be ensurance of democracy, justice, freedom, equality and national unit and respect of law” and provision of Section 1.2, Article 25 of the Constitution that states “to define the basis of the domestic and foreign policies of the State” and provision of Section 4, Article 25 of the Constitution that states “the other powers, structure and the procedures of the State Great Hural shall be defined by law”, provision of Section 2.1, Article 38 of the Constitution that states “to organize and ensure nation-wide implementation of the Constitution and other laws” and provision of Section 1, Article 41 of the Constitution that states “the Prime Minister shall lead the Government and shall be responsible to the State Great Hural for the implementation of State laws”, provision of Section 1, Article 45 of the Constitution that states “The Government shall, in conformity with legislation, issue resolutions and ordinances which shall be signed by the Prime Minister and the Minister concerned”, and provision of Section 1, Article 70 of the Constitution that states “Laws, decrees and other decisions of state bodies, and activities of all other organizations and citizens should be in full conformity with the Constitution”.

Guided by provisions of subsection 2.1, Article 66 of the Constitution of Mongolia, Articles 31 and 32 of the Law on Proceedings for Reviewing and Resolving Disputes in the Constitutional Court:

**IT IS CONCLUDED:
FOR THE NAME OF THE CONSTITUTION OF
MONGOLIA:**

5. The provision of attachment 2 of section 2(a) titled “Areas where geological 1:50,000 scale mapping and general exploration works had been conducted using the Government

budget” of the resolution #86 of the Government dated April 1, 2009, titled “On Acquiring a Land as Reserve” that mentions “... 3) Tal lake, 4) Ikh Khorgo, 6) Dushkhaikhan, 10) Yembuu mountain, 11) Zost-Undur, 17) Ulaan davaa, 19) Bayan mountain, 23) Numrug river” does breach provision of section 2, Article 1 of the Constitution that states “The supreme principles of the activities of the State shall be ... respect of law” and provision of Section 1, Article 45 of the Constitution that states “The Government shall, in conformity with legislation, issue resolutions and ordinances ...”, provision of Section 1, Article 70 of the Constitution that states “Laws, decrees and other decisions of state bodies, and activities of all other organizations and citizens should be in full conformity with the Constitution”.

6. The provision of attachment 2 of section 2(a) of the resolution #86 of the Government dated April 1, 2009, titled “On Acquiring a Land as Reserve” that mentions “... 3) Tal lake, 4) Ikh Khorgo, 6) Dushkhaikhan, 10) Yembuu mountain, 11) Zost-Undur, 17) Ulaan davaa, 19) Bayan mountain, 23) Numrug river” does not breach provision of Section 1.2, Article 25 of the Constitution that states “to define the basis of the domestic and foreign policies of the State” and provision of Section 4, Article 25 of the Constitution that states “the other powers, structure and the procedures of the State Great Hural shall be defined by law”, provision of Section 2.1, Article 38 of the Constitution that states “to organize and ensure nationwide implementation of the Constitution and other laws” and provision of Section 1, Article 41 of the Constitution that states “the Prime Minister shall lead the Government and shall be responsible to the State Great Hural for the implementation of State laws”.

7. Application of the provision of attachment 2 of section 2(a) titled “Areas where geological 1:50,000 scale mapping and general exploration works had been conducted using the Government budget” of the resolution that states “...3) Tal lake, 4) Ikh Khorgo, 6) Dushkhaikhan, 10) Yembuu mountain, 11) Zost-Undur, 17) Ulaan davaa, 19) Bayan mountain, 23)

Numrug river ..." shall be suspended commencing from July 7, 2010.

8. Other provisions of attachment 2 of section 2(a) of the resolution #86 of the Government dated April 1, 2009, titled "On Acquiring a Land as Reserve" than the provision mentioned in section 1 of this conclusion, and section (b) do not breach provision of section 2, Article 1 of the Constitution "The supreme principles of the activities of the State shall be ... respect of law" and provision of Section 1.2, Article 25 of the Constitution that states "to define the basis of the domestic and foreign policies of the State" and provision of Section 4, Article 25 of the Constitution that states "the other powers, structure and the procedures of the State Great Hural shall be defined by law", provision of Section 2.1, Article 38 of the Constitution that states "to organize and ensure nation-wide implementation of the Constitution and other laws" and provision of Section 1, Article 41 of the Constitution that states "the Prime Minister shall lead the Government and shall be responsible to the State Great Hural for the implementation of State laws", provision of Section 1, Article 45 of the Constitution that states "The Government shall, in conformity with legislation, issue resolutions and ordinances ...", and provision of Section 1, Article 70 of the Constitution that states "Laws, decrees and other decisions of state bodies, and activities of all other organizations and citizens should be in full conformity with the Constitution".

9. Based on section 2, Article 36 of the Law on Proceedings for Reviewing and Resolving Disputes in the Constitutional Court, the conclusion shall be submitted to the State Great Hural and a response shall be provided within 15 days.



Conclusion of the Constitutional Court of Mongolia

2011.10.21

No 03

Ulaanbaatar

Adjudication of a dispute whether provision in subsection 6.9.1 of article 6 of the law on state great hural of mongolia has breached relevant provisions of the constitution

The Constitutional
Court Hall 16.00 p.m

The middle bench session of the Constitutional Court reviewed and resolved the dispute whether provision in subsection 6.9.1 of Article 6 of the Law on State Great Hural of Mongolia that states “the Prosecutor General submitted to the State Great Hural a proposal to suspend his/her power due to arrest of him/her during the course of his/her guilty action, or at a crime scene with physical evidence;” has breached respectively provisions of section 3, Article 29 of the Constitution of Mongolia that states “If a question arises that a member of the State Great Hural is involved in a crime, it shall be considered by the session of the State Great Hural and decide whether to suspend his/her mandate. If the court proves the member in question to be guilty of crime, the State Great Hural shall terminate his/her membership in the legislature”, section 1, Article 14 of the Constitution of Mongolia that states

“ ... all persons are equal before the law and the court”, and section 2, Article 14 of the Constitution of Mongolia that states “No person shall be discriminated against on the basis of ... occupation and post...”.

Citizen Enkhjin Ts., resident of 4th housing committee, Bayanzurkh District, the Capital City in her information and additional explanation to the Constitutional Court stated that:

“In section 3, Article 29 of the Constitution of Mongolia, it is stated that “If a question arises that a member of the State Great Hural is involved in a crime, it shall be considered by the session of the State Great Hural and decide whether to suspend his/her mandate. If the court proves the member in question to be guilty of crime, the State Great Hural shall terminate his/her membership in the legislature. ...

However, in subsection 6.9.1 of Article 6 of the Law on State Great Hural of Mongolia, it is provided regarding suspension of power of a member of the Parliament that if “the Prosecutor General submitted to the State Great Hural a proposal to suspend his/her power due to arrest of him/her during the course of his/her guilty action, or at a crime scene with physical evidence”, the member’s power shall be suspended.

... This provision expresses a meaning that the power of a member of the Parliament can be suspended and legal proceedings to establish the commission of a crime may be possible only in cases when the member is arrested during commission of a crime, or at the crime scene together with the physical evidence. However, under the Criminal Procedure Law, all the actions provided by law shall be taken in order to determine the fact of commission of a crime by the person. Whereas a criminal case is initiated with respect to a person concerned based on evidence alleging in commission of a crime and the fact of the commission of the crime is determined as a result of criminal investigation, in case of a member of the State Great Hural this process is not possible without suspension of the full power of a member of the State Great Hural. In section

34.7 of Article 34 of the Law on State Great Hural, it is stated that “except as provided in subsection 6.9.1 of this Law, it shall be prohibited to detain, take into custody, impose administrative sanction by way of court proceedings to conduct frisk and search on his/her home, office, means of transportation and body of a member of the State Great Hural”. If such action is taken without suspension of power of the member of the Parliament, it shall be a breach of the law.

When there is sufficient evidence to prove commission of a crime and it is necessary to initiate a criminal case and investigation based on the evidence, the fact that it is now not possible to determine commission of a crime, even though such a crime is committed, just because the person is not arrested during commission of the crime, or at the crime scene because of subsection 6.9.1 of Article 6 of the Law on State Great Hural of Mongolia, does breach section 3, Article 29 of the Constitution and does eliminate the ground to identify the perpetrator and to impose sanctions.

In section 1, Article 14 of the Constitution of Mongolia, it states that “... all persons are equal before the law and the court” and in section 2, Article 14 of the Constitution of Mongolia, it states that “No person shall be discriminated against on the basis of ... occupation and post... Everyone shall have the right to act as a legal person”.

The above mentioned provision of the section of the Law on State Great Hural of Mongolia eliminates the grounds for suspension of power of a member of the State Great Hural to determine the guilt of the member committing a crime and to impose sanctions under the cover of the above mentioned provision, whereas a criminal case is initiated and a guilt is determined with respect to a lay citizen committing a crime based on evidence only and without mandatory requirement to have been arrested at a crime scene with the evidence, or during the commission of a crime. Therefore, the Constitutional provision that stipulates all persons are equal before the law and the court is breached and a lay citizen and a member of the State

Great Hural are discriminated based on their occupation and post and this shows the breach of the Constitution by the Law.

In addition, subsection 6.9.2 of Article 6 of the Law on State Great Hural of Mongolia was considered as revoked by the Law dated 30 December 2010. This subsection includes a provision that stipulated as part of the grounds for suspending power of a member of the Parliament “when a criminal case is initiated with respect to a member of the Parliament and the Prosecutor General submitted to the State Great Hural a proposal to suspend his/her power”. However, upon consideration of this provision as revoked, a single provision (6.9.1) with grounds for suspension of power is remaining, and grounds for suspension of power were extremely narrowed and the given provision itself expresses the content breaching the Constitution of Mongolia.

GROUND:

1. In section 3, Article 29 of the Constitution of Mongolia, it states that “If a question arises that a member of the State Great Hural is involved in a crime, it shall be considered by the session of the State Great Hural and decide whether to suspend his/her mandate”. However, in subsection 6.9.1 of Article 6 of the Law on State Great Hural of Mongolia, it stipulates that “the Prosecutor General submitted to the State Great Hural a proposal to suspend his/her power due to arrest of him/her during the course of his/her guilty action, or at a crime scene with physical evidence;” and it contains characteristics conflicting with common principles that all persons are equal before the law and the court by extremely narrowing the content of the provision of the Constitution.

2. It is not reasonable to consider provision in subsection 6.9.1 of Article 6 of the Law on State Great Hural of Mongolia breaches section 3, Article 29 of the Constitution that states “... If the court proves the member in question to be guilty of crime, the State Great Hural shall terminate his/her membership in the legislature”.

Guided by provisions of Article 64, section 2.1, Article 66 of the Constitution of Mongolia, Articles 31 and 32 of the Law on Proceedings for Reviewing and Resolving Disputes in the Constitutional Court:

**IT IS CONCLUDED:
FOR THE NAME OF THE CONSTITUTION OF
MONGOLIA:**

1. Provision in subsection 6.9.1 of Article 6 of the Law on State Great Hural of Mongolia that states “the Prosecutor General submitted to the State Great Hural a proposal to suspend his/her power due to arrest of him/her during the course of his/her guilty action, or at a crime scene with physical evidence;” has breached respectively provisions of section 3, Article 29 of the Constitution of Mongolia that states “If a question arises that a member of the State Great Hural is involved in a crime, it shall be considered by the session of the State Great Hural and decide whether to suspend his/her mandate. If the court proves the member in question to be guilty of crime, the State Great Hural shall terminate his/her membership in the legislature”, section 1, Article 14 of the Constitution of Mongolia that states “... all persons are equal before the law and the court”, and section 2, Article 14 of the Constitution of Mongolia that states “No person shall be discriminated against on the basis of ... occupation and post...”.

2. Provision in subsection 6.9.1 of Article 6 of the Law on State Great Hural of Mongolia does not breach section 3, Article 29 of the Constitution that states “... If the court proves the member in question to be guilty of crime, the State Great Hural shall terminate his/her membership in the legislature”.

3. Provision in subsection 6.9.1 of Article 6 of the Law on State Great Hural of Mongolia that states “the Prosecutor General submitted to the State Great Hural a proposal to suspend his/her power due to arrest of him/her during the

course of his/her guilty action, or at a crime scene with physical evidence;" shall be suspended commencing from October 21, 2011 in accordance with section 4, Article 32 of the Law on Proceedings for Reviewing and Resolving Disputes in the Constitutional Court.

4. Based on section 2, Article 36 of the Law on Proceedings for Reviewing and Resolving Disputes in the Constitutional Court, this conclusion shall be submitted to the State Great Hural for resolution within 15 days and a response shall be provided.

CHAPTER TWO

**RESOLUTIONS
OF THE
CONSTITUTIONAL
COURTS OF
MONGOLIA**



Resolution of the Constitutional Court of Mongolia

1993.03.13.

No. 2

Ulaanbaatar

Resolution on final decision of the dispute on consistency of some provision of the General Law on Taxation and of the Law on Personal Income Tax of Mongolia with provisions of the Constitution of Mongolia

The Constitutional Court re-examined the dispute about inconsistency the Articles 4.2, 18.2 and 28.1 of the General Law of Taxation and Article 7.2 of the Law on Personal Income Tax of Mongolia with the Articles 20, 25.1.1, 16.13 and 17.1.3 of the Constitution.

The session of the Constitutional Court was held on 10, 11, and 12 February 1993 and examined the dispute instigated by the President of Mongolia.

“The conclusion made by the Constitutional Court contained the following statements:

1. The Articles 4.2 and 18.2 of the General Law on Taxation violate the Articles 20 and 25.1.1 of the Constitution which provide that “the supreme legislative power shall be vested solely in the State Great Khural” and “the State Great Khural

shall keep within its exclusive power and decide issues to enact laws and make amendments to them”.

2. The Article 7.2 of the Personal Income Tax Law has violated the Article 17.1.3 and 25.1.1 of the Constitution which provide that “ citizens of Mongolia shall pay taxes levied by law” and “the State Great Khural shall keep within its exclusive power and decide issues to enact laws and make amendments to them”.

3. The Article 28.1 of the General Law on Taxation which states that “the rules for use of special instruments to protect the body of a tax inspector shall be determined by the State General Tax Department and the General Police Department with approval of the State Prosecutor General” has violated the Article 16.13 of the Constitution.

The State Great Khural discussed this Conclusion of the Constitutional Court at its session of 16 February 1993 and adopted the Resolution No. 22 which stated that “it is not possible to accept the Conclusion of the Constitutional Court ”.

FINDINGS:

Even though the Article 7.2 of the Personal Income Tax Law which states that “ amount of annual income to be levied by tax shall be subject to change by the Government in consideration of price increase level ” is an important provision that relieves people from tax pressures in case of price increase, it means explicitly to change the norms legalized by the State Great Khural. This means also that there is no guarantee for tax percentage to remain unchanged. On the other hand, the right to change and regulate the taxable income’s amount is being transferred to the Government, which is a body responsible for implementation of laws. This situation violates articles of the Constitution.

The above mentioned provision of the Article 28.1 of the General Law on Taxation violates the Article 16.13 of the

Constitution which states that “the citizens of Mongolia have the right to personal liberty and safety; no one shall be restricted of liberty... except for in accordance with procedures and grounds determined by law”. It should be appropriate to approve the list of special body protection instruments and rules for their use on the basis of a law. But, this law envisages them to be determined by executive bodies.

There was no enough deliberation at the Constitutional Court and there exist no sufficient evidence for deciding on whether the the Articles 4.2 and 18.2 of the General Law on Taxation violate the Constitution. The majority of the members proposed to make additional examination about the dispute concerning these two provisions. Therefore, the Constitutional Court decided that a final decision on this dispute should be postponed until additional examination is made through conclusion of a panel composed of political, legal and economic experts.

The Article 28.1.2 of the General Law on Taxation violates the Article 16.13 of the Constitution. The Article 7.2 of the Personal Income Tax Law violates the Articles 17.1.3 and 25.1.1 of the Constitution which state respectively that “citizens of Mongolia shall pay taxes imposed by law” and “the State Great Khural shall keep within its exclusive power the issues to enact laws and make amendments to them”. This situation was fully proved by the deliberations of the Constitutional Court and evidences taken into dossiers.

Guided by the provisions of the Articles 66.3 and 66.4 of the Constitution of Mongolia and Article 8.2 of the Law on Constitutional Court, the plenary session of the Constitutional Court adopts the following RESOLUTION.

1. The Article 28.1 of the General Law of Taxation which states that “the list of special instruments to protect the body of a tax inspector and rules for their use shall be defined by the State General Tax Department and the General Police Department

with approval of the State Prosecutor General” and Article 7.2 of the Personal Income Tax Law which states that “amount of annual income to be levied by tax shall be subject to change by the Government in consideration of price increase level” are invalidated.

2. The consideration of the dispute on whether the Articles 4.2 and 18.2 of the General Law of Taxation violated the Constitution is deferred by the Constitutional Court until additional examination of the question is conducted in accordance with the Article 18.5 of the Law on Constitutional Court.

3. This Resolution is a final decision of the Constitutional Court and takes effect upon its adoption.



Resolution of The Constitutional Court of Mongolia

1995.09.07.

No. 2

Ulaanbaatar

Adjudication of the dispute on the inconsistency of certain provision of the Law on State Great Khural and the Resolution No. 88 of the State Great Khural with the Constitution of Mongolia

Citizen D.Lamjav, resident of Bayangol District in his petition stated:

1. The Article 20.3 of the Law on State Great Khural which states that “the State Great Khural shall make a final decision on any dispute raised in respect to questions or inquiries of Members of the State Great Khural” violates the Article 52.1 of the Constitution which states that “courts of all instances shall consider and make judgment on cases and disputes on the basis of collective decision-making”. Article 50.2 which states that “a decision made by the Supreme Court shall be a final judiciary decision and shall be binding upon all courts and other persons”, and Article 64.1 which states that “the Constitutional Court shall be an organ exercising supreme supervision over the implementation of the Constitution, making judgment on violation of its provisions and resolving constitutional disputes. It shall be the guarantee for a strict observance of the Constitution.” Because a dispute specified in the Article 20.3 of the Law on State Great Khural may be raised in connection

with enforcement of the Constitution or other laws, and the Constitutional Court or an ordinary court of any instance may issue its judgment on such dispute.

2. The Article 34.2 of the Law on State Great Khural which states that “a conclusion of the Constitutional Court shall be heard after discussion of the report ” violates the the Article 66.2 of the Constitution which states that “the Constitutional Court shall issue its conclusion on the following disputes and submit it to the State Great Khural for its consideration”. Here, if there is no ground stated in the Article 66.1 of the Constitution, the Constitutional Court would not issue any conclusion and the State Great Khural has no ground to hear the conclusion of the Constitutional Court.

3. The Article 35.2 of the Law on State Great Khural states that “when discussing issue related to resignation of the President, the State Great Khural shall determine in advance the following causes and conditions:

1/ whether the conclusion of the Constitutional Court issued on grounds specified in the Article 66.2.3 and 66.2.4 of the Constitution is true and right;

2/ whether the grounds and causes were properly determined under which the President broke his oath and violated the Constitution.

This provision has violated the Article 64.1 and Article 35.2 of the Constitution which state that “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 by an overwhelming majority of members of the State Great Khural present and voting on the basis of discussion of the conclusion of the Constitutional Court.” According to the relevant provisions of the Constitution, the State Great Khural shall discuss the issue of resignation or removal of the President only when a conclusion of the Constitutional Court determined the existence

of the grounds for removal or resignation of the President. The conclusion itself shall not be subject for the discussion. But the Law on State Great Khural requires to discuss the conclusion itself, which leads to violation of abovementioned two articles of the Constitution.

4. The Paragraph 1, Article 452 of the Law of State Great Khural provides that specified “The Chairman or a member of the Constitutional Court empowered by him/her shall introduce to the State Great Khural the conclusion of the Constitutional Court on the decision of the State Great Khural issued in accordance with the Article 66.2 of the Constitution.” There is no other provision other than this on discussion of conclusion of the Constitutional Court in accordance with the Article 66.3 of the Constitution.

The Paragraph 3, Article 45 2 of the Law on State Great Khural is the basis for the above situation to breach the Constitution.

5. The Article 19.4 of the Law on State Great Khural specifies that “a member of the Parliament may be released or recalled in the following conditions:

1/ if he/she was elected as the President of Mongolia,

2/ if he/she submitted a request to be released due to inability to exercise his/her mandate for state of health or other excusable reasons,

3) if it was proved that he/she committed a crime and a court judgment became effective. This law contains no other provision than this article on possible recall of a member of the Parliament. Such a provision suspends the effect of the Article 66.2.4 or violates the Article 64.1 of the Constitution. When it would be necessary to issue conclusion of the Constitutional Court on existence of grounds for resignation of the Speaker 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 resignation or recall using other law provisions by analogy. In such case, the State Great Khural may decide that the conclusion of the Constitutional Court is adopted in violation of the Law on State Great Khural.

In such a case, it is clear that the Article 64.1 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 into the decision of the State Great Khural will allow to repair such violation.

6. The Article 20.4 of the Law on State Great Khural specifying that “ members of the State Great Khural during their term should not hold any paid post or position not related to his/her duties set by the Constitution or other laws” has violated the Article 29.1 of the Constitution which states that “members of the State Great Khural shall be remunerated from the State budget during their term and shall not hold concurrently any posts or employment other than those assigned by law”. Because from the content of the Law on State Great Khural we could conclude that members of the Parliament can hold unpaid positions not related to his/her duties.

7. The Paragraph 3, Article 452 of the Law on State Great khural states that “the State Great Khural shall decide whether to accept or reject the conclusion of the Constitutional Court by majority votes of all members. If the State Great Khural after discussing the conclusion of the Constitutional Court considers that it has no legal grounds, it shall pass resolution thereon.” I understood that this provision is related to conclusions of the Constitutional Court on decisions of the State Great Khural taken in accordance with the Paragraph 1 of this Article. But this was a wrong assumption. It is clear now from the minutes of

the State Great Khural session that the Paragraph 3, Article 45 2 of the Law on State Great Khural is only legal basis for voting on Constitutional Court's conclusion issued in accordance with the Articles 66.2.3 and 66.2.4 of the Constitution. Therefore, the Paragraph 3, Article 45 2 of the Law on State Great Khural violates the Article 64.1 of the Constitution which specifies that "the Constitutional Court shall decide disputes concerning violations of the Constitution."

8. The part of the Resolution No. 88 of 6 December 1994 by the State Great Khural which says that "it exists no legal ground for the conclusion of the Constitutional Court on breach of the Articles 16.12 and 56.1 of the Constitution by the Prosecutor General Mr. N. Ganbayar" violates the Articles 64.1 and 66.1 of the Constitution.

9. The Article 51.1 of the Law on State Great Khural specifies that "unless otherwise stipulated in the Constitution, this law and other laws, the State Great Khural shall conduct voting and issue decision by the majority votes of all the members present at the session. The voting shall be conducted through open balloting except for in cases where secret ballot requested in this law or other laws. Open voting shall be conducted through hand raising or electronic voting system ; secret voting through voting list or electronic voting system. At the request of 5 members present or at initiative of the chairman, an open voting may be conducted by names. In such cases, every vote will be introduced with the name of the voter". This provision violates the Article 1.2 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." Because the voting through the electronic voting system was considered as an open voting and also a secret balloting. This acknowledges that each time when voting is conducted the chairman can see how a member voted. The meaning of secret ballot was lost. The reason for this is that a purpose was set to conceal open votes. . This is proved by the concept of "voting by name" and its related provisions, namely,

Articles 54.4.4, 54.4.6, 55.1, 55.2 and 55.3 of the Law on State Great Khural.

10. The Article 54.4.4. of the Law on State Great Khural specifies that “when voting is conducted by name, every vote and voter’s name shall be recorded in the minutes of the session”. This violates the Articles 1.2, 16.17 and 3.1 of the Constitution. We see that, in case of voting by name, vote shall be noted with the voter’s name, voting is conducted in general through computer network to save the time and results of voting conducted through computer network are not included in the proceeding’s minutes. This situation actually makes secret members’ votes in decisions taken by the State Great Khural.

In this way, the most important mechanism is not working for the electorate to monitor how loyal the members are to their oath taken before them. This violates the constitutional provision that the citizens of Mongolia are guaranteed the right to seek and receive information on any issues except for the secret information that must be protected by the state and its bodies. The lack of true information on members voting creates wide possibilities for misleading the electors by members and political parties, and consequently, makes the constitutional provision that “the state power shall be vested in the people” an empty slogan. This violates also the most important principle of democracy, transparency of the activities of the State Great Khural before its electors.

11. The Article 54.1 of the Law on State Great Khural specifies that “the Secretariat of the State Great Khural shall be in charge of officially recording, using and keeping the minutes of the sessions of the State Great Khural, working meetings of members and meetings of the standing committees in accordance with the rules set by the Secretary General”. This provision violates the rights of the citizens to seek and receive information on any issues except for the secret information that must be protected the state and its bodies proclaimed in the Article 16.17 of the Constitution.

12. The Article 55.2.3 of the Law on State Great Khural specifies that “written minutes of session, video and audio records may be seen or heard only in presence of the employee in charge or archivist and it is not allowed to copy”. This provision violates the Articles 16.17 and 14.1.2 of the Constitution.

Because even if the minutes of proceedings of the State Great Khural and its standing committees are allowed to be seen, one may have doubt in any of these minutes. In this case, if the person holds no due position, he/she has no possibility to dispel his/her doubts under the Article 55.2.3 of the Law on State Great Khural. This violates the Article 14.1.2 of the Constitution which states that “all persons lawfully residing in Mongolia are equal before the law and court, and no person shall be discriminated against on the basis of occupation or position”.

Citizen Ts.Tserenpiljee in his petition stated : “The new Constitution specified clear-cut rights and duties of the state supreme bodies and required them to carry out their activities only within the framework of the laws..

1. The Article 66.2.2 of the Constitution of Mongolia specified that “only the Constitutional Court may issue conclusion whether the President, Speaker 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 breached the Constitution”. No other body, including the State Great Khural, is entitled to this right.

2. This resolution has violated the Article 56 of the Constitution which states that “the Prosecutor shall exercise supervision over the inquiry, investigation of cases and the execution of punishment, and participate in the court trial on behalf of the State.” The State Great Khural defended the inquiry conducted by the State Prosecutor’s Office by issuing a Resolution and , doing so, seriously violated human rights and freedoms protected by the Constitution. Therefore, we request to consider and make a decision on the Resolution No.88 of the

State Great Khural.

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.

FINDINGS:

It was found from the materials examined at the full session of the Constitutional Court that the certain provisions of the Law on State Great Khural and Item 2 of the Resolution No.88 of 1994 by the State Great Khural violated provisions of the Constituion of Mongolia.

One. According to the Articles 35.2 and 45I of the Law on State Great Khural, the State Great Khural shall examine any conclusion made by the Constitutional Court on disputes instigated in relation to issues indicated in the Artciles 66.2.3 and 66.2.4 of the Constitution and decide whether the conclusion has a legal gorund. Under this regulation, 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 State Prosecutor General Mr. N. Ganbayar. The State Great Khural adopted its Resolution No.88 on 6 December 1994 in which it found groundless the conclusion of the Constitutional Court which said that the Prosecutor General Mr. N. Ganbayar violated the Articles 16.12 and 56 of the Constitution.

It is clear from the following constitutional provisions that the State Great Khural should not discuss the conclusions issues by the Constitutional Court in relation to the grounds indicated in the Articles 66.2.3 and 66.2.4 of the Constitution. These provisions include the Article 64.1 of the Constitution which states that “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”; Article 64.2 which states that “the Constitutional Court and its members in the execution of their duties shall be subject to the Constitution only and shall be independent from any organizations, officials or any other person.”; Article 35.2 which states that “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 Article 66.3 which states that “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”.

If the State Great Khural examines and decides whether to accept or reject conclusions of the Constitutional Court to be made on issues mentioned in the Articles 66.2.3 and 66.2.4 of the Constitution, this will establish a bad practice for denying the power of the Constitutional Court to oversee the implementation of the Constitution.

Two. The Article 452 of the Law on State Great Khural stated that the State Great Khural shall discuss only conclusions of the Constitutional Court regarding decisions 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 the State Great Khural to discuss the conclusions of the Constitutional Court issued in accordance with the Article 66.2.1, 66.2.2, 66.2.3 and 66.2.4 of the Constitution.

Three. The Conclusion No.1 of 4 January 1995 by the Constitutional Court did not give answers to the request of the citizen D.Lamjav or to questions concerning the Article 54.4.4, 55.2 and 55.3 of the Law on the State Great Khural. Therefore, the Item 6 of the Conclusion No.1 of the Constitutional Court should be amended accordingly.

Four. The Resolution No. 51 of 30 June 1995 by the State Great Khural contains no provision regarding the acceptance of the Item 6 of the Conclusion No 1 of 1995 issued by the Constitutional Court.

Guided by the provisions of the Articles 66.3 and 66.4 of the Constitution of Mongolia and Article 8.2 of the Law on Constitutional Court , the full session of the Constitutional Court adopted the following **RESOLUTION**:

1. The Paragraph 2, Article 35 and the entire Article 45 2 of the Law on the State Great Khural are invalidated.

2. The Provision 2 of the Resolution No. 88 “On the Conclusion of the Constitutional Court” of 6 December 1994 by the State Great Khural and Provision 2 of the Resolution No. 51 of 30 June 1995 by the State Great Khural I are invalidated.

3. The Item 6 of the Conclusion No. 1 of 4 January 1995 by the Constitutional Court was revised and reedited as follows: ”The provisions of the Articles 34.2, 38.1, 54.4.4, 55.2 and 55.3 of the Law on State Great Khural did not violate the

Constitution of Mongolia.”

4. This Resolution of the Constitutional Court of Mongolia is effective upon its issuance.



Resolution of The Constitutional Court of Mongolia

1998.11.24.

No. 2

Ulaanbaatar

Adjudication of the dispute whether certain provisions of the Law regarding the Legal Status of Members of the State Great Khural of Mongolia violate the Paragraph 1, Article 29 of the Constitution of Mongolia

The Constitutional Court examined and adjudicated a dispute instigated by citizen D. Lamjav on whether certain provisions of the Law regarding the Legal Status of Members of the State Great Khural violate the Article 29.1 of the Constitution of Mongolia.

Citizen D. Lamjav in his petition stated:

The Law regarding the Legal Status of Members of the State Great Khural contains the provisions that “if a member of the State great Khural is appointed as the Prime Minister of Mongolia or a member of the Government Cabinet” (Article 6.1); “if a member of the State Great Khural is appointment as the Prime Minister or a member of the Government Cabinet, he/she shall have the duty to exercise a double position simultaneously (Article 8.2.11); “a member of the State Great Khural may hold concurrently a position as the Prime Minister or a member of the Government Cabinet (Article 8.3). These provisions violate the

Article 29.1 of the Constitution of Mongolia which states that “a Member of State Great Khural shall not hold concurrently any post or employment other than those assigned by law.”

The Constitutional Court held a session on 23 October 1998 and issued the Conclusion No. 9 which says that the above mentioned provisions of the Law regarding the Legal Status of Members of the State Great Khural indeed violated the Article 29.1 of the Constitution of Mongolia.

FINDINGS:

1. Amendments were made to the Law regarding the Legal Status of Members of the State Great Khural without taking into consideration the fact that although the State Great Khural has the right to legally set the duties of its members, this right must be restricted by the principles and, provisions of the Constitution.

2. The amendment to the Law on the Legal Status of Members of the State Great Khural on possibility of a member of the State Great Khural to hold concurrently the post of the Prime Minister or a member of the Government Cabinet conflicts with the constitutional concept of separation legislative and executive powers and their mutual supervision.

3. Since the resolutions of the State Great Khural mentioned in the petition of citizen D. Lamjav directly depend on the validity or invalidity the relevant provisions of the Law on the Legal Status of Members of the State Great Khural, it is not necessary to take a decision on these resolutions.

Guided by the the Article 66.4 of the Constitution of Mongolia, Articles 31 and 32 of the Law on Constitutional Court Procedure, the Constitutional Court issued the following RESOLUTION:

1. Let the subparagraph 11 of paragraph 2 of The Article 8.2.11 of the Law regarding the Legal Status of Members of the

State Great Khural which states that “if a member of the State Great Khural is appointed as the Prime Minister or a member of the Government Cabinet, he/she shall hold this position concurrently”, Article 8.3 which provides that “a member of the State Great Khural may hold concurrently a position as the Prime Minister or a member of the Government Cabinet” and the Article 6.1 which says “if a member of the State Great Khural is appointed as the Prime Minister or a member of the Governmental Cabinet” are invalidated.

2. The Resolution No. 112 dated 12 November 1998 of the State Great Khural on the Conclusion No. 9 of the Constitutional Court Is invalidated.

3. This decision of the Constitutional Court of Mongolia is final and takes effect upon its issuance.



Resolution of The Constitutional Court of Mongolia

2000.11.29

02

Ulaanbaatar

Hearing 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,

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 1of 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.

FINDINGS:

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 the Constitutional court adopted the following RESOLUTION:

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 upon its issuance.



Resolution of The Constitutional Court of Mongolia

2002.06.05

No. 01

Ulaanbaatar

Hearing 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 25th April of 2002 adopted by the State Great Khural, rejecting resolution #01 dated 3rd April of 2002 of the Constitutional Court, 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:

a/ Constitution Art 1.2 which “the primary principles of activities of the State shall be democracy, justice, freedom, equality, providing national unity, and respect of law” is being violated through the adoption of amendments on discrimination of civil procedure according to the level in the judicial hierarchy of the court which made the decision.

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.

FINDINGS:

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 court 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.

In adhering with article 66.3 of the Constitution, article 8.2, 8.4 of the Law on the Constitutional court, and article 31.2

of the Law on the Procedure of the Constitutional Court, the Constitutional court adopted the following RESOLUTION:

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 Conclusion #01 adopted by the Constitutional court 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 on constitutionality of the
relevant provision of the Law on Political
parties**

15.00 The Constitutional court hall

Citizen H. Selenge in her information stated:

1. Paragraph 3 of article 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 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.”

...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.

FINDINGS:

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, the Constitutional court adopted the following RESOLUTION:

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 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 upon 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 hall 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. Batsambuu 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 then 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.“

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 tugrugs 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 tugrugs. 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 tugrugs.

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 tugrugs.” 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 tugrugs.” has violated paragraphs 1,2 of article 14 of the Constitution.”

FINDINGS:

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.”

3. The State Great Khural on it’s 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 the Constitutional court adopted the following RESOLUTION:

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 tugrigs.” 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 upon its issuance.



Resolution of the Constitutional Court of Mongolia

2006.01.11

No. 01

Ulaanbaatar

Hearing on the constitutionality of article 27.2 of the Law on Non-judicial foreclosure of Mortgage collateral was finalized.

The dispute 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 full bench session of the Constitutional Court.

One. Citizen D.Yanjinkhorloo, a resident of Chingeltei district, Ulaanbaatar in his petition stated:

Article 27.2 which states that “the court shall reject complaints made on the basis other than that prescribed in article 27.1 of this Law” and 27.1 which states that “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 violates article 14.1 which states that “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 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.

FINDINGS:

1. It was found that 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 violates 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 which 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 was found violates 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”.

3. It was found that Resolution # 75 of 2005 made by the State Great Khural did not mention the grounds not to accept the relevant parts of resolution #2/08 dated 16th November, 2005 of the Constitutional Court.

In adhering with article 66.3 of the Constitution of Mongolia and article 8.2 of the Law on Constitutional Court, articles 31.2, 36.3 of the Law on Constitutional procedure the full session of the constitutional court adopted the following Resolution:

1. 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” is invalidated.

2. 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 Court is invalidated.

3. This Conclusion of the Constitutional Court of Mongolia is effective upon issuance.



Resolution of the Constitutional Court of Mongolia

2006.06.15

No. 02

Ulaanbaatar

Adjudication of the dispute on the inconsistency 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 issued 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 immoveable 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 Court:

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 immoveable 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 not 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.

FINDINGS:

1. It is found 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 entitlements, 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 it is found 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, immoveable 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 immoveable 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 immoveable 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 immoveable 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 immoveable 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.

In adhering with paragraph 3 of article 66 of the Constitution of Mongolia and paragraph 2 of article 8 of the Law on Constitutional Court, paragraph 2 of article 31, paragraph 3 of article 36 of the Law on Procedure of Constitutional, the Constitutional court issued the following Resolution :

1. Paragraph 3 of article 154 of the Civil law which states 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 immoveable property”, and paragraph 2 of article 174 of the Civil law which states 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 which states that “all persons shall be equal before law and the court” and paragraph 3 of article 174 of the same law 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. 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 which states 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” are invalidated.

2. Resolution # 30 dated 26th April of 2006 of the State Great Khural regarding the conclusion 2/04 of 2007 issued by the Constitutional Court is invalidated.

3. This resolution is effective 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 dispute on the constitutionality of action of Chairman Ts. Nyamdorj, and the existence of grounds for his removal was resolved by the full session of the Constitutional Court.

One. Citizen B.Lkagvajav, a resident of Sukhbaatar district, in his petition 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 modified. It 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 medeelel” journal.

The Chairman, after introducing the most recent version of the drafts of the above mentioned laws to the State Great Khural without consent of Parliament, made modifications and signed those laws when the deadline for signing had expired. Therefore he violated paragraph 2 of article 1, article 20, subparagraph 1 paragraph 1 of article 25, and paragraph 1 of article 70 of the Constitution.

Also Provisions 51.1, 51.2, 51.4 of the Law on Procedure of the State Great Khural's Session were violated. Provisions 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 its meaning, policy and principles.

Provision 51.4 of the Procedure states 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 find 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, a resident of Bayangol district, and R. Burmaa, a resident of Khan-Uul district, in their petition stated:

1. Chairman Ts. Nyamdorj, upon submission of the last edition of the Mineral law and Anticorruption law to the State Great Khural, made a number of modifications 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 modifications 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 Court and the Court started a process according to decision number 24 of January 24, 2007. After this on 7th of February, 2007 last editions of those laws were introduced to the State Great Khural. This proves that the law was violated.

3. Pursuant to the abovementioned decision of the Constitutional Court, the full session of the Constitutional Court issued the Conclusion # 3 of March 2, 2007. In which it states 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 Court, 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 Court 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 Court 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 Court 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 Court 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 toward the Constitutional Court.

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 Court and its resolution being evidence that is still effective.

Also, the petitioner requested to establish whether the refusal of Ts. Nyamdorj to admit the conclusion of the Constitutional Court 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 modifications 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.

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 “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.

FINDINGS:

One. It was found from the law drafts file, and other evidentiary documents considered at a large bench session of the Constitutional Court, that the Law on VAT has been modified 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 has been modified 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 states that “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 powers 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. Nyamdorj 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. Nyamdorj, 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.

In adhering with paragraph 2 of article 66 of the Constitution, paragraph 2 of article 31 of the Law on Procedure of Constitutional Court, the Constitutional court adopted the following RESOLUTION:

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. Nyamdorj 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

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

The Constitutional Court Hall

6:00 pm

Citizen N.Khaidav, in his petition stated:

It was found 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 Court and issued resolution No34 from 24th April, 2007 which mentioned:

Member of the Constitutional Court, 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 Court discussed this petition at an appeal procedure on 11th February, 2003 and approved the Constitutional Court’s member resolution No 35 by its final resolution.

After 4 years, the Constitutional Court 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 Court 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 Court, 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.

FINDINGS:

1. In reaching part of conclusion No 2, the Constitutional Court 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 Court'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 Court, 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 Court 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 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 tugrugs 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 tugrugs 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 Court, the Constitutional court adopted the following RESOLUTION:

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 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 Court's conclusion No 2, 2007 shall be deemed invalid .

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



Resolution of the Constitutional Court of Mongolia

2008.05.07

No 02

Ulaanbaatar

**Hearing 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 hall 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

the following provisions 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.”

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.

FINDINGS:

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 the Constitutional court adopted the following Resolution:

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.

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 upon 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

The Constitutional
Court hall 14.00

The State Great Khural, on 16 October 2008 at its plenary session, discussed conclusion number 7 of the Constitutional Court 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 Court.

One. Citizen D. Batsukh, residing 17 khoroo, Bayangol district, in his petition submitted to the Constitutional Court 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 Court 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 its plenary session, discussed conclusion number 7 of the Constitutional Court, 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 Court 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.”

FINDINGS:

1. 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” 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 Court.

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 Court, paragraph 2 of article 31, paragraph 2 of article 32 of the Law on Procedure of Constitutional Court the Constitutional court adopted the following resolution:

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

2. Resolution # 27 of 16 October, 2008 of the State Great Khural regarding the conclusion 07 of 10 October, 2008 issued by the Constitutional Court is invalidated.

3. This resolution shall be effective upon its issuance.



Resolution of the Constitutional Court of Mongolia

2009.05.27

No.02

Ulaanbaatar

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

Constitutional court 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 2005 of the Constitutional Court, 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 Court according to paragraph 3 of article 15 of the Law on Procedure of the Constitutional Court.

One. Citizen Bayaraa, residing 16 khoroo, Bayangol district, in information submitted to the Constitutional court 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 Court a petition on the constitutionality of this part of the law. The Constitutional Court 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 2005 of the Constitutional Court 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.

FINDINGS: The Full Bench Session of the Constitutional Court 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 Court 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.

In adhering with article 66 of the Constitution of Mongolia and paragraph 2 of article 8 of the Law on Constitutional Court, paragraph 3 of article 15, paragraph 2 of article 31 of the Law on Procedure of Constitutional Court, the Constitutional court adopted the following **RESOLUTION**:

1. 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 Court 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 is invalidated.

2. Paragraph 5, table 6.1 of article 6 of the Law on excise tax of June 29, 2006 adopted by the State Great Khural is invalidated.

3. This resolution shall be effective upon its issuance.



Resolution of the Constitutional Court of Mongolia

2009.06.10

No. 03

Ulaanbaatar

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

The dispute 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 full bench session of the Constitutional Court.

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

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.

FINDINGS:

1. Conclusion #10 dated 17th December of 2008 of the Constitutional Court, which states that “article 24.7 of the Law on the State Great Khural “to make the conclusion unanimously” violates the followings: 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” to be 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 the Constitutional court adopted the following RESOLUTION:

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 Court of Mongolia shall be valid upon issuance.



Resolution of the Constitutional Court of Mongolia

2010.01.22

No 01

Ulaanbaatar

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

The dispute 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” is being used to refuse to register political parties and coalitions 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.

The refusal of the General Committee on Election to register parties and coalition “in cases of the previous financial

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

FINDINGS:

1. While according to clause 3.2 of the Law on Central election authority, the General Election Committee 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 Election Committee, 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 Court 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 statement not being submitted according to clause 42.2 of this law to the General Election Committee” is being used by the General Committee on Election to refuse to register parties who have not submitted financial statements, which violates Article 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.

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 Court the Constitutional court adopted the following RESOLUTION:

1. It is considered that the use of 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 statement not being submitted according to clause 42.2 of this law to the General Election Committee” to refuse to register parties 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. The resolution #86 dated 3rd December of 2009 adopted by the State Great Khural is invalidated.

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



Resolution of the Constitutional Court of Mongolia

2011.01.05

No 01

Ulaanbaatar

Adjudication of a dispute whether provision in section 50.7 of article 50 of the law on election of the state great hural of mongolia has breached relevant provisions of the constitution

The Constitutional
Court Hall 12.30 p.m

The session of the Constitutional Court of Mongolia has taken place in the chamber of the Constitutional Court with N.Jantsan, Deputy Chairman of the Constitutional Court presiding, members P.Ochirbat, J.Amarsanaa, D.Naranchimeg, Ts.Sarantuya, D.Munkhgerel and B.Purevnyam (reporting member) in the bench and secretary N.Bolortungalag participating, with open access for the public.

The session of the full bench of the Constitutional Court reviewed and finally resolved the dispute whether provision in section 50.7 of Article 50 of the Law on Election that stated "... finally ..." has breached provisions of section 14, Article 16 of the Constitution that states "Right to appeal to the court ... if he/she considers that the right of freedoms as spelt out by the

Mongolian law or an international treaty have been violated; to a fair trial...”, and section 1, Article 47 of the Constitution that states “The judicial power shall be vested exclusively in courts”, and reviewed the grounds of resolution #70 of the State Great Hural dated December 2, 2010 titled “On Conclusion #7 of the Constitutional Court 2010”.

Citizen Ariunbold.N, resident of 15th housing committee, Bayangol District of the Capital City has stated following in his notes to the Constitutional Court:

“... In section 50.7 of the Law on Election of the State Great Hural, it is provided that a dispute regarding results of voting shall be resolved finally by the circuit committee which is a middle instance election organization. In other words a norm was “set” by the Law on Election of the State Great Hural that establishes a regime where if results of voting at the units and circuit level of election are disputed and further dispute related to re-counting of ballots is to be resolved by the circuit committee as final instance.

In section 19.10 of the Law on Election of the State Great Hural, the decision of the circuit committee shall be reviewed by the General Election Committee unless otherwise provided by law and section 50.7 of the Law on Election of the State Great Hural specifically stated otherwise regarding dispute on voting results or re-counting ballots. Therefore, the Central Election Organization should not be reviewing this type of disputes. In addition, section 57.5 of the Law on Election of the State Great Hural specifically provides for disputes that should be resolved by the Central Election Organization and that section does not include the reviewing and resolving dispute regarding re-counting of ballots as part of the power of the General Election Committee.

... Since there is no legal ground for the Central Election Organization to review and resolve the dispute regarding voting results or re-counting of ballots, therefore such a dispute is not under the jurisdiction of the Constitutional Court. In other

words, if there is a dispute regarding re-counting of ballots based on the dispute on voting results due to illegal counting of ballots, then the Constitutional Court does not have the power to resolve the issue. ...

... The fact that section 50.7 of the Law on Election of the State Great Hural provides that disputes regarding results of voting or re-counting of ballots shall be resolved as a final instance though this is a stage of pre-court review of the dispute, therefore, this provision breaches the right of a Mongolian citizen to lodge a complaint to court, to protect his/her rights when he/she considers that the political rights and freedoms are breached and thus limits “the adjudication” power of the courts. ...

... This fact where provision in section 50.7 of the Law on Election of the State Great Hural sets as final instance the resolution of the disputes regarding results of voting or re-counting of ballots does not comply with provision of section 14, Article 16 of the Constitution: “Right to appeal to the court to protect his/her right if he/she considers that the right of freedoms as spelt out by the Mongolian law or an international treaty have been violated ...”, provision of section 1, Article 47: “The judicial power shall be vested exclusively in courts” and provision of section 1, Article 48 of the Constitution “The judicial system shall consist of the Supreme Court, aimag and capital city courts, soum, inter-soum and district courts... “.

Member of the State Great Hural Zagdjav D., who was appointed as an authorized representative of the State Great Hural of Mongolia at the middle bench session of the Constitutional Court in his explanation to the Constitutional Court stated that:

“... The process for producing “results of voting” as stated in section 50.7 of the Law on Election of the State Great Hural of Mongolia is the process of counting of ballots and the power to carry out the process was granted to the unit committee, which is the election organization that was specifically authorized by law

and this power was not granted to any other organizations.

The circuit committee consolidates voting results sent by the unit committees based on criteria stipulated by law and provides final voting results of the given circuit. (Section 50.1 of the Law on Election of the State Great Hural of Mongolia)

Amendment was made to the Law on Election of the State Great Hural of Mongolia by the Law dated 26 December 2007 regarding final resolution by a given circuit committee within 14 days if any dispute arises with respect to voting results in order to eliminate adverse consequences such as dragging of a dispute regarding voting results of the election through instances of court and election committees, losing time, delay in the election result, lack of the election result within the period specified by law, impossibility of implementation of powers by the State Great Hural - the supreme organization of the State, delay for establishment of the executive supreme organization of the State, no election of delegates of thousands of voters, who legally casted their votes, to the State Great Hural, and menacing interests of the voters. Final resolution of a dispute in relation to voting results by the circuit committee within 14 days is related to specifics of the election activities that is carried out within the set period. ...

... Therefore, I consider that the word “finally” of section 50.7, Article 50 of the Law on Election of the State Great Hural of Mongolia does not breach relevant provisions of the Constitution of Mongolia”.

The middle bench session of the Constitutional Court reviewed and resolved this dispute on November 17, 2010 and issued a conclusion #07. In the section that provides the ruling, it is stated:

1. It is resolved that “provision in section 50.7, Article 50 of the Law on Election of the State Great Hural of Mongolia that states “... finally ...” does not breach section 1, Article 48 of the Constitution of Mongolia that states “The judicial system shall

consist of the Supreme Court, aimag and capital city courts, soum, inter-soum and district courts...”.

2. Provision in section 50.7, Article 50 of the Law on Election of the State Great Hural of Mongolia that states “... finally ...” did breach respectively section 14, Article 16 of the Constitution of Mongolia that states “to appeal to the court to protect his/her right if he/she considers that the right of freedoms as spelt out by the Mongolian law or an international treaty have been violated, ... to a fair trial, ... “ and section 1, Article 47 of the Constitution of Mongolia that states “ The judicial power shall be vested exclusively in courts”.

The plenary session of the State Great Hural resolved the above dispute of the Constitutional Court on December 02, 2010 and issued a resolution #70. In this resolution:

“1. The statement that the part that specified “Provision in section 50.7, Article 50 of the Law on Election of the State Great Hural of Mongolia that states “... finally ...” did breach respectively section 14, Article 16 of the Constitution of Mongolia that states “to appeal to the court to protect his/her right if he/she considers that the right of freedoms as spelt out by the Mongolian law or an international treaty have been violated, ... to a fair trial, ... “ and section 1, Article 47 of the Constitution of Mongolia that states “ The judicial power shall be vested exclusively in courts” shall not be acceptable.

2. This resolution shall be applicable commencing from December 2, 2010”.

GROUPS:

1. Provision in section 50.7 of Article 50 of the Law on Election of the State Great Hural of Mongolia that stated “... finally ...” of “a dispute regarding results of voting shall be resolved finally by the circuit committee within 14 days after the voting” has limited principal human rights to appeal to a court.

2. The conclusion #07 of the Constitutional Court of 2010 that reviewed and resolved that “ Provision in section 50.7, Article 50 of the Law on Election of the State Great Hural of Mongolia that states “... finally ...” did breach respectively section 14, Article 16 of the Constitution of Mongolia that states “to appeal to the court to protect his/her right if he/she considers that the right of freedoms as spelt out by the Mongolian law or an international treaty have been violated, ... to a fair trial, ... “ and section 1, Article 47 of the Constitution of Mongolia that states “The judicial power shall be vested exclusively in courts” is reasonable.

Guided by provisions of Article 64, section 3, Article 66 of the Constitution of Mongolia, sections 2 and 4, Article 8 of the Law on Constitutional Court, section 2, Article 31 and section 3, Article 36 of the Law on Proceedings for Reviewing and Resolving Disputes in the Constitutional Court:

**IT IS RESOLVED:
FOR THE NAME OF THE CONSTITUTION OF
MONGOLIA**

1. In section 50.7, Article 50 of the Law on Election of the State Great Hural of Mongolia adopted by the State Great Hural of Mongolia on December 29, 2005, it is stated that a dispute regarding results of voting shall be resolved finally by the circuit committee within 14 days after the voting”, the word “... finally ...” shall be made void.

2. Resolution #70 of the State Great Hural dated December 02, 2010 “Regarding resolution of the conclusion #7 of the Constitutional Court on November 7, 2010” shall be made void.

3. This resolution is the final decision, therefore it shall be effective upon issuance.



Resolution of the constitutional court of mongolia

2010.06.09

No 02

Ulaanbaatar

Adjudication of a dispute whether certain provisions of the law on procedure of session of the state great hural of mongolia have breached relevant provisions of the constitution

The Constitutional
Court Hall 15.30 p.m

The session of the full bench of the Constitutional Court of Mongolia has taken place in the chamber of the Constitutional Court with N. Jantsan, Deputy Chairman of the Constitutional Court presiding, members J.Boldbaatar, J.Amarsanaa, D.Naranchimeg, Ts.Sarantuya, D.Munkhgerel (reporting member) and B.Purevnyam in the bench and secretary G.Agar-Erdene participating, with open access for the public.

The session of the full bench of the Constitutional Court reviewed for the second time and finally resolved the dispute whether provisions in subsections 32.1.1, 32.1.9 and 32.2.1 of Article 32 and section 35.4 of Article 35 of the Law on Procedure of Session of the State Great Hural of Mongolia have breached relevant provisions of the Constitution.

Citizen Ariunbold.N, resident of 15th housing committee, Bayangol District of the Capital City has stated following in his notes to the Constitutional Court:

“...The Law on Procedure of Session of the State Great Hural of Mongolia has set certain norms where by the conclusion of the Constitutional Court submitted to the State Great Hural regarding breach of the Constitution now has to be presented by the Chairman of the Constitutional Court or in his/her absence by Deputy Chairman to the plenary session of the Standing Committees or plenary session of the State Great Hural and questions now should be asked from and responses to be given by the person presenting the Constitutional Court conclusion. This provision is a regulation that would impact the final resolution of the dispute regarding breach of the Constitution by the organization with the functional duty to adjudicate the dispute regarding the breach. Since the Constitutional Court shall resolve the dispute as a final instance in case when the State Great Hural does not accept the Constitutional Court conclusion, the possibility of imposition by the members of the State Great Hural of their views to the Constitutional Court and possibility to attempt to interfere with the belief of the members of the Constitutional Court, who should be independent from anyone, does not comply with principle of the independence of the Constitutional Court and its members.

The possibility of asking questions from a person presenting the conclusion of the Constitutional Court on the other hand creates an obligation to respond to the questions. This carries a meaning that the person has to defend the decision of the Constitutional Court before the highest governing body and therefore this provision breaches the exclusive status of the Constitutional Court which shall be the guarantee for implementation of the Constitution.

Citizen Khaidav.N, resident of 5th housing committee, Chingeltei District of the Capital City in his application stated that:

“I consider that legislation of presentation of the Constitutional Court conclusion by the Chairman of the Court or his/her deputy, or of the Supreme Court resolution by the Chief Justice to the sessions of the Standing Committees or to the plenary session of the State Great Hural and allowing the members of the State Great Hural to ask questions and to hear comments during review of the Constitutional Court conclusion or the Supreme Court resolution is distorting the principle of independence of the Constitutional Court and of its members and the principle of being ruled by the Constitution only and of the judges not being subject to interference when discharging their duties to adjudicate.

Following provisions that mention”...Chairman of the Constitutional Court or in his/her absence his/her deputy...” in subsection 32.1.1, “...Chairman of the Constitutional Court or his/her deputy...” in 32.1.9, “... Chairman of the Constitutional Court or in his/her absence his/her deputy...” in subsection 32.2.1 of Article 32 and”...Chief Justice of the Supreme Court... or ...chairman...” in subsection 35.4 of Article 35 of the Law on Procedure of Session of the State Great Hural of Mongolia breach respective provisions of sections 1 and 2 of Article 49 and section 2 of Article 64 of the Constitution. Therefore, hereby I request to review and resolve this matter”.

This dispute was reviewed by the middle bench of the Constitutional Court on April 2, 2010 and it was concluded that the relevant provisions of the Constitution were breached and a conclusion #2 was issued. In the section of the conclusion that provides reasons for the conclusion, it is stated that:

1. While it is clearly stated in section 2 of Article 66 of the Constitution that “the Constitutional Court shall issue a conclusion regarding the disputed matter and shall “submit” [the conclusion] to the State Great Hural”the Law on Procedure of Session of the State Great Hural of Mongolia adopted on October 11, 2007 has changed this meaning so that the conclusion of the Constitutional Court now has to be “presented

to the sessions of the Standing Committees or to the plenary session...” and has distorted the meaning.

2. Establishing the regime by the Law on Procedure of Session of the State Great Hural of Mongolia whereby resolutions of the Supreme Court are presented by the Chief Justice of the Supreme Court or conclusions of the Constitutional Court are presented by the chairman of the Constitutional Court and they respond to the questions posed by members of the State Great Hural deprives the principles of judicial independence and non-interference of the Constitutional Court, members of the Constitutional Court and judges.

3. Submission of the Constitutional Court conclusion to the plenary session of the State Great Hural by a member of the Constitutional Court who has taken part in the Constitutional Court session shall not be viewed as non-compliance of the Constitution”.

In the section that provides the ruling, it is stated:

1. Following provisions of the Law on Procedure of Session of the State Great Hural of Mongolia namely Article 32, subsection 32.1.1 that states “the conclusion of the Constitutional Court shall be presented to the Standing Committees and plenary sessions [of the State Great Hural] by the Chairman of the Constitutional Court or in his/her absence his/her deputy;”, subsection 32.1.9 that states “during review of the Constitutional Court conclusion by the Standing Committees and plenary sessions, the members may ask questions and make comments to the Chairman of the Constitutional Court or his/her deputy or with respect to comments and conclusion of a Standing Committee;”, subsection 32.2.1 that states “the conclusion of the Constitutional Court shall be presented to the Standing Committees and plenary sessions by the Chairman of the Constitutional Court or in his/her absence his/her deputy;”and Article 35, subsection 35.4 that states”resolution of the Supreme

Court or conclusion of the Constitutional Court shall be presented to Standing Committees and plenary sessions by the Chief Justice of the Supreme Court or by the Chairman of the Constitutional Court respectively and shall respond to questions of the members” breach provisions of the Constitution such as section 1, Article 49: “Judges shall be independent and subject only to law”, section 2, Article 49: “Neither a private person nor any official including the President, Prime Minister, members of the State Great Hural and the Government, officials of political parties or other mass organizations shall interfere with the exercise by the judges of their duties”, section 2, Article 64: “The Constitutional court and its members in the execution of their duties shall be subject to the Constitution”, section 3, Article 64: “ independence of the members of the Constitutional court shall be ensured by the guarantees set out in the Constitution and other laws” and section 1, Article 70: “Laws, decrees and other decisions of state bodies, and activities of all other organizations and citizens should be in full conformity with the Constitution”.

2. Subsections 32.1.1, 32.1.9 and 32.2.1 of Article 32 and subsection 35.4 of Article 35 of the Law on Procedure of Session of the State Great Hural of Mongolia do not breach following provisions of the Constitution, section 1, Article 64: “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 section 1, Article 65: “The Constitutional court shall consist of 9 members...”.

3. Based on section 4, Article 32 of the Law on Proceedings for Reviewing and Resolving Disputes in the Constitutional Court, commencing from May 1, 2010 following provisions of the Law on Procedure of Session of the State Great Hural of Mongolia namely Article 32, subsection 32.1.1 that states “the conclusion of the Constitutional Court shall be presented to the Standing Committees and plenary sessions [of the State Great Hural] by the Chairman of the Constitutional Court or in his/her

absence his/her deputy;”, subsection 32.1.9 that states “during review of the Constitutional Court conclusion by the Standing Committees and plenary sessions, the members may ask questions and make comments to the Chairman of the Constitutional Court or his/her deputy or with respect to comments and conclusion of a Standing Committee;”, subsection 32.2.1 that states “the conclusion of the Constitutional Court shall be presented to the Standing Committees and plenary sessions by the Chairman of the Constitutional Court or in his/her absence his/her deputy;” and Article 35, subsection 35.4 that states “resolution of the Supreme Court or conclusion of the Constitutional Court shall be presented to Standing Committees and plenary sessions by the Chief Justice of the Supreme Court or by the Chairman of the Constitutional Court respectively and shall respond to questions of the members” shall be suspended.

4. Based on section 2, Article 36 of the Law on Proceedings for Reviewing and Resolving Disputes in the Constitutional Court, the conclusion of the Constitutional Court shall be submitted to the spring session of the State Great Hural in 2010 within 15 days of opening of the session and it shall be communicated that a response shall be provided.

The plenary session of the State Great Hural on April 30, 2010 has discussed the conclusion #2 of 2010 of the Constitutional Court and has issued resolution #22 that stated the conclusion is not acceptable.

GROUND:

1. While it is clearly stated in section 2 of Article 66 of the Constitution that “the Constitutional Court shall issue a conclusion regarding the disputed matter and shall “submit” [the conclusion] to the State Great Hural” the Law on Procedure of Session of the State Great Hural of Mongolia adopted on October 11, 2007 has changed this meaning so that the conclusion of the Constitutional Court now has to be “presented to the sessions of the Standing Committees or to the plenary

session ...” and has distorted the meaning.

2. Subsections 32.1.1, 32.1.9 and 32.2.1 of Article 32 and subsection 35.4 of Article 35 of the Law on Procedure of Session of the State Great Hural of Mongolia that establish that resolutions of the Supreme Court to be presented by the Chief Justice of the Supreme Court or conclusions of the Constitutional Court to be presented by the Chairman of the Constitutional Court and to respond to the questions posed by members of the State Great Hural opens the possibility to influence judicial independence and to interfere with the Constitutional Court, members of the Constitutional Court and judges and therefore contains the characteristics of breach of the Constitution.

3. It is reasonable to consider that submission of the Constitutional Court conclusion and reading it out to the plenary session of the State Great Hural by a member of the Constitutional Court who has taken part in the Constitutional Court session only is not be viewed as non-compliance of the Constitution”.

However, the right of the State Great Hural to discuss through sessions of its Standing Committees the matter of whether to accept the conclusion of the Constitutional Court without representation of the Court remains open.

4. The conclusion #2 of the Constitutional Court of 2010 that concluded subsections 32.1.1, 32.1.9 and 32.2.1 of Article 32 and subsection 35.4 of Article 35 of the Law on Procedure of Session of the State Great Hural of Mongolia breached the Constitution is found to be reasonable.

Guided by provisions of sections 3 and 4, Article 66 of the Constitution of Mongolia, subsection 2.1, Article 8 of the Law on Constitutional Court, section 2, Article 31, section 2, Article 32 and sections 3 and 4 of the Law on Proceedings for Reviewing and Resolving Disputes in the Constitutional Court:

**IT IS RESOLVED:
FOR THE NAME OF THE CONSTITUTION OF
MONGOLIA**

1. Since following provisions of the Law on Procedure of Session of the State Great Hural of Mongolia namely Article 32, subsection 32.1.1 that states “the conclusion of the Constitutional Court shall be presented to the Standing Committees and plenary sessions [of the State Great Hural] by the Chairman of the Constitutional Court or in his/her absence his/her deputy;”, subsection 32.1.9 that states “during review of the Constitutional Court conclusion by the Standing Committees and plenary sessions, the members may ask questions and make comments to the Chairman of the Constitutional Court or his/her deputy or with respect to comments and conclusion of a Standing Committee;”, subsection 32.2.1 that states “the conclusion of the Constitutional Court shall be presented to the Standing Committees and plenary sessions by the Chairman of the Constitutional Court or in his/her absence his/her deputy;” and Article 35, subsection 35.4 that states “resolution of the Supreme Court or conclusion of the Constitutional Court shall be presented to Standing Committees and plenary sessions by the Chief Justice of the Supreme Court or by the Chairman of the Constitutional Court respectively and shall respond to questions of the members” did breach provisions of the Constitution such as section 1, Article 49: “Judges shall be independent and subject only to law “, section 2, Article 49: “Neither a private person nor any official including the President, Prime Minister, members of the State Great Hural and the Government, officials of political parties or other mass organizations shall interfere with the exercise by the judges of their duties”, section 2, Article 64: “The Constitutional court and its members in the execution of their duties shall be subject to the Constitution”, section 3, Article 64: “ independence of the members of the Constitutional court shall be ensured by the guarantees set out in the Constitution and other laws” and section 1, Article 70: “Laws, decrees and other decisions of state bodies, and activities of all other

organizations and citizens should be in full conformity with the Constitution”, the provisions shall be made void.

2. The resolution #22 “Regarding the conclusion #2 of the Constitutional Court of 2010” by the State Great Hural of Mongolia on April 30, 2010 shall be made void.

3. This resolution shall be effective upon issuance.



Resolution of the constitutional court of mongolia

2011.01.07

No 02

Ulaanbaatar

**Adjudication of a dispute whether provision
in subsection 18.1.2 of article 18 of the
law on selection of lawyers has breached
provisions of sections 3 and 4 of article
51 of the constitution**

The Constitutional
Court Hall 12.50 p.m

The session of the full bench of the Constitutional Court of Mongolia has taken place in the chamber of the Constitutional Court with N.Jantsan, Deputy Chairman of the Constitutional Court presiding, members P.Ochirbat, J.Amarsanaa, D.Naranchimeg, Ts.Sarantuya, D.Munkhgerel (reporting member) and B.Purevnyam in the bench and secretary N.Bolortungalag participating, with open access for the public.

The session of the full bench of the Constitutional Court reviewed and finally resolved the dispute whether provision in subsection 18.1.2 of Article 18 of the Law on Selection of Lawyers that stated “not attending the training stipulated in Article 17.2 without respectful reasons and not meeting the credit hours requirement” has breached provisions of sections 3 and 4 of Article 51 of the Constitution.

In a request submitted to the Constitutional Court through an official letter with reference #1/3230 dated October 11, 2010 by authorized representatives of the Supreme Court appointed according to order #77 of the Chief Justice of the Supreme Court on September 24, 2010, it is stated:

“... With the adoption of the Law on Selection of Lawyers for the first time on May 22, 2003, jurists who would work as judges, prosecutors, advocates and notaries in Mongolia are required to sit and pass the lawyers’ selection exam as per the global standard. Though every country with its own specific legal system has its own selection procedure for lawyers, the main reason for such an exam is that the person who has passed such an exam and has received the title of lawyer has the right to work in the future as judge, prosecutor, notary or advocate.

Re-edition of the Law on Selection of Lawyers has been adopted on August 2, 2007 and following provisions of the Law such as section 17.1 of Article 17 that states “Lawyer shall have the obligation to attend continuing legal training and shall meet the requirement of certain training credit hours per 3 years”, subsection 18.1.2 of Article 18 that states “not attending the training stipulated in Article 17.2 without respectful reasons and not meeting the credit hours requirement shall lead to revocation of the lawyer’s certificate” conflict with section 1.1 of Article 1, subsection 3.1.1 of Article 3, section 16.3 of Article 16 of the Law on Selection of Lawyers, subsection 28.1.3. of Article 28, section 41.1 of Article 41 of the Law on Courts and in addition, the provisions are not in compliance with the principles provided in section 2, Article 1 and sections 3 and 4 of Article 51 of the Constitution.

Section 3, Article 51 of the Constitution of Mongolia states that “A Mongolian national of thirty five years of age with higher legal education and experience in judicial practice of not less than 10 years, may be appointed as a judge of the Supreme Court. A Mongolian national of twenty five years

of age with higher legal education and legal practice for not less than three years, may be appointed as a judge of the other courts. As provided in Article 28 of the Law on Courts, for being nominated as a judge it is required to meet the above mentioned Constitutional requirement, and to pass the selection exam as provided by the Law on Selection of Lawyers and to obtain the relevant certificate. With adoption of the Law on Selection of Lawyers, no amendment was made to the Law on Tertiary Education and though it does not conform with the definition provided in section 3.3. of Article 3 of the Law, it can be considered that the two requirements of having tertiary legal education and passing the lawyer selection exam would amount to consolidated notion of “having judicial tertiary education” as provided in the Constitution and though one may accept that the requirement in the Law on Courts does not breach the Constitution, this requirement of validating the certificate for passing the lawyer selection exam every 3 years, or [for example] 15 times during 35 years of service in the judiciary is inadequate to be considered in line with the Constitution.

On the other hand, the fact that Constitutional requirements to a person who would work as a judge were increased in their content and additional requirements were imposed and such statutory procedure and its application may be considered not in conflict with the principle of rule of law provided in section 2, Article 1 of the Constitution. However, these two provisions mentioned above that create conditions whereby the certificate of passing the lawyer selection exam has to be validated every 3 years by the ad hoc council to organize the lawyer selection, i.e. the additional requirement not provided by the Constitution and the Law on Courts is not in compliance with provision of section 3, Article 51 of the Constitution.

It is clear the requirements imposed on the candidate for judge also apply to person who works as judge and it is also obvious that the judge will be impeached if it is found that during appointment he/she forged a tertiary education diploma. Now, if the lawyer certificate becomes invalid then the judge's status

will be not even close to a candidate for a judge, therefore it will be impossible to remain in the post of a judge. However, Articles 58 and 59 of the Law on Courts that define the reasons for dismissing and impeaching a judge do not include such grounds, therefore it may be considered that the regulation provided by subsection 18.1.2 of Article 18 of the Law on Selection of Lawyers breaches section 4 of Article 51 of the Constitution. If a person remains on the post of a judge, not in violation of the Constitutional provision, but in violation of the requirements of the Law on Courts and the Law on Selection of Lawyers, then it will be a situation where a non-lawyer would administer judicial process thus leading to violation of the principle of rule of law provided in section 2, Article 1 of the Constitution. In this case, the requirement that everyone should be equal before law and court as provided in section 1, Article 14 of the Constitution will be breached too.

Finally, the non-interference and indefinite appointment of a judge is one of the principal guarantees for independence of judges and “The Fundamental Principles of Judicial Independence”, approved by resolutions 40/32 and 40/146 of the General Assembly of the United Nations on November 29, 1985 and December 12, 1985, specifically state that the grounds for dismissing and impeaching judges shall be only provided by law and shall be absolutely clear. Therefore, it is considered that the provision of the Law that creates this ambiguous situation with respect to this issue violates requirement of the section 4, Article 51 of the Constitution which impacts the guarantee for judicial independence proclaimed by section 1, Article 49 of the Constitution.

Hereby, it is requested to issue a conclusion whether the regulation provided by section 17.1 of Article 17 and subsection 18.1.2 of Article 18 of the Law on Selection of Lawyers is in compliance with the Constitution.

The middle bench of the Constitutional Court on November 24, 2010 has reviewed this dispute and has issued

conclusion #8. In the section that provides grounds for the conclusion, it is stated:

“1. The provision of the Law on Selection of Lawyers that requires invalidation of lawyer certificate by the ad hoc council for not meeting the credit hours requirements while imposing obligations to judges to go through continuing legal education training makes the Constitutional requirement imposed on judges too narrow and carries characteristics of breach of the Constitution. Invalidation by the ad hoc council that is entrusted with organizing lawyer selection process of the certificate may make impossible for judge to continue his/her work, therefore is not in compliance with the provisions of the Constitution regarding dismissal and impeachment of judges.

Failure to fulfill the obligation to meet continuing legal education credit hours requirements is not a ground to invalidate lawyer certificate, but judges, prosecutors, advocates and notaries are not released from this obligation and it is in line with the statutory requirements to maintain professional ethics and to continuously improve work skills and level of professionalism.

It is necessary for the State Great Hural to precisely define the responsibility for the lawyers to fulfill the obligation to pass the lawyer selection exam and to go through continuing legal education training ...

3. It is not possible to consider as breach of the Constitution the fact that the Government regulates to increase knowledge and professionalism of lawyers including judges and to organize trainings aimed at increasing their skills of application of law, and legislating that the ad hoc council that is the subject that would administer the lawyer selection process shall also define the procedures for involving the lawyers in the trainings”.

In the section that provides the ruling, it is stated:

“ ... The provision of subsection 18.1.2 of Article 18 that states “not attending the training stipulated in Article 17.2 without respectful reasons and not meeting the credit hours requirement” conflict with section 3, Article 51 of the Constitution that states “ A Mongolian national of thirty five years of age with higher legal education and experience in judicial practice of not less than 10 years, may be appointed as a judge of the Supreme Court. A Mongolian national of twenty five years of age with higher legal education and legal practice for not less than three years, may be appointed as a judge of the other courts” and section 4, Article 51 of the Constitution that states “ Removal of a judge of a court of any instance shall be prohibited except in cases when he/she is relieved at his/her own request or removed on the grounds provided for in the Constitution and/or the law on the judiciary and by a valid court decision”.

6. Based on section 4, Article 32 of the Law on Proceedings for Reviewing and Resolving Disputes in the Constitutional Court, the provision of the Law on Selection of Lawyers in subsection 18.1.2 of Article 18 that states “ not attending the training stipulated in Article 17.2 without respectful reasons and not meeting the credit hours requirement” shall be suspended commencing from November 24, 2010”.

The plenary session of the State Great Hural on December 2, 2010 has discussed the conclusion #8 of the Constitutional Court of 2010 and has issued resolution #71 that stated the conclusion is not acceptable.

GROUND:

1. The conclusion #8 of the Constitutional Court of 2010 that concluded subsection 18.1.2 of Article 18 of the Law on Selection of Lawyers which states “not attending the training stipulated in Article 17.2 without respectful reasons and not meeting the credit hours requirement” breached sections 3 and 4, Article 51 of the Constitution is found to be reasonable.

Guided by provisions of Article 64, sections 3 and 4, Article 66 of the Constitution of Mongolia, subsection 2.1, Article 8 of the Law on Constitutional Court, section 2, Article 31, section 2, Article 32 and sections 3 and 4 of the Law on Proceedings for Reviewing and Resolving Disputes in the Constitutional Court:

**IT IS RESOLVED:
FOR THE NAME OF THE CONSTITUTION OF
MONGOLIA:**

1. Since provision of subsection 18.1.2 of Article 18 of the Law on Selection of Lawyers that states “not attending the training stipulated in Article 17.2 without respectful reasons and not meeting the credit hours requirement” did breach provisions of the Constitution such as section 3, Article 51: “ A Mongolian national of thirty five years of age with higher legal education and experience in judicial practice of not less than 10 years, may be appointed as a judge of the Supreme Court. A Mongolian national of twenty five years of age with higher legal education and legal practice for not less than three years, may be appointed as a judge of the other courts” and section 4, Article 51: “ Removal of a judge of a court of any instance shall be prohibited except in cases when he/she is relieved at his/her own request or removed on the grounds provided for in the Constitution and / or the law on the judiciary and by a valid court decision”, the provision shall be made void.

2. The resolution #71 “Regarding the conclusion #8 of 2010 of the Constitutional Court” by the State Great Hural of Mongolia on December 2, 2010 shall be made void.

3. This resolution shall be effective upon issuance.

