DECISIONS OF THE CONSTITUTIONAL COURT (TSETS) OF MONGOLIA

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Ulaanbaatar

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Decisions of the Constitutional Court (Tsets) of Mongolia

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RESOLUTIONS OF THE CONSTITUTIONAL COURT OF MONGOLIA

FOREWORD

One of the biggest achievements of the new Constitution of Mongolia is an establishment for the first time in the state system of the Constitutional Tsets (Constitutional Court) entitled to exercise a supreme supervision over an implementation of the Constitution.

As provided by the Constitution of Mongolia, the Constitutional Court is an organization that exercises the supreme supervision over an implementation of the Constitution, issues conclusions regarding whether a Constitutional clause has been breached, reviews and resolves related petitions submitted by citizens and requests submitted by competent organizations and officials.

It has been 25 years since the Constitutional Court has started exercising a supreme supervision over an implementation of the Constitution. During this period when resolving the disputes on constitutionality it took decisions that protected basic concept of the Constitution, values of democracy and human rights and freedoms, provided the principle of separation of powers and restored the state system.

While exercising its legal functions, the Constitutional Court issues several types of decisions which are different regarding power, efficiency, and public adherence. So the conclusions and the resolutions of the Constitutional Court differ from other decisions. These decisions of the Constitutional Court of Mongolia are important because they draw legal conclusions on the unconstitutional disputes, protect citizens' rights, limit the willfulness of the competent officials, and ensure the constitutionalism. In this regard, the decisions (conclusions and resolutions) of the Constitutional Court have been published so

they could become available for public and a source for research. Moreover, these decisions of the Constitutional Court have been published in order to make them available for the foreign scientists and other people in their researches and detailed observance.

Therefore some significant decisions of the Constitutional Court resulted from the supreme supervision over an implementation of the Constitution, resolving the disputes on the constitutionality are compiled, translated into English, which is a worldwide language, with assistance of the Hanns Seidel Foundation of FRG on the occasion of the 25th Anniversary of the Constitutional Court of Mongolia.

Taking this opportunity, I would like to express my gratitude to the Representative Office of Hanns Seidel Foundation of FRG in Mongolia who has rendered significant assistance for an activity of the Constitutional Court and an efficient cooperation.

Jantsan Navaanperenlei

Chairman of the Constitutional Court of Mongolia
Merited Lawyer of Mongolia, Doctor, Professor

CHARTER ONE

CONCLUSIONS OF THE CONSTITUTIONAL COURT OF MONGOLIA

CONCLUSION OF THE CONSTITUTIONAL COURT OF MONGOLIA

2001.03.23 No.01 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.

GROUNDS:

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 exercises powers it does not possess.

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.

PRESIDING MEMBER	N.JANTSAN
MEMBERS	J.BYAMBAJAV
	J.BOLDBAATAR
	D.CHILKHAAJAV
	V.UDVAL

The conclusion number 01 of the Constitutional Court dated 23 March 2001 was accepted by the Parliament on 11 November 2001, and the Parliament passed a resolution number 64.

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.

GROUNDS:

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 penal 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 defense 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 defense 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.

PRESIDING MEMBER	N.JANTSAN
MEMBERS	L.RENCHIN
	N.CHINBAT
	CH.DASHNYAM
	V.UDVAL

The conclusion number 01 of the Constitutional Court dated 21 April 2004 was accepted by the Parliament on 7 May 2004, and the Parliament passed a resolution number 27.

CONCLUSION OF THE CONSTITUTIONAL COURT OF MONGOLIA

2005.04.13. No. 03 Ulaanbaatar

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

Constitutional Court Session Hall, 15:00

The Constitutional Court examined the dispute on whether the amendment made to Article 6.1 of the Law on Excise Tax requiring the imposition 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, 4th 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 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."

GROUNDS:

The breach of the Articles 10.2 and 10.3 of the Constitution and Article 6.2 of the Constitutional Annex Law by 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, as well as 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." It also violates Article 18.2 which states: "The contracting parties recognize further that it may be necessary for those contracting parties, in order to implement programs 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 programs 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 phased

commitments referred to in the Paragraph 13 (among others) of the Working Party Report. Paragraph 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 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 the court of its decision within 15 days.

PRESIDING MEMBER	J.BYAMBADORJ
MEMBERS	L.RENCHIN
	J.BOLDBAATAR
	J.AMARSANAA
	TS.SARANTUYA

The conclusion number 03 of the Constitutional Court dated 13 April 2005 was accepted by the Parliament on 30 June 2005, and the Parliament passed a resolution number 36.

CONCLUSION OF THE CONSTITUTIONAL COURT OF MONGOLIA

2005.09.30. No.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

Constitutional Court Session Hall, 16:30

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.

1. The petition submitted on 29 August 2005 by citizen Kh.Temuujin, residing at the address of Bayanzurkh District, 4th khoroo, 15th khoroolol, Building 28, Apt 1 contained the following arguments.

"a. 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 certain 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 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 discrimination in the law against 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.

b. The provision which defines the scope of the application 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 principles of democracy to participate in elections by establishing coalitions within the framework of specific laws, and then adopt and enforcing new laws specially designed to serve the interests of coalition. This situation would affect activities of the State Great Khural in a manner inconsistent with the Constitution and other laws as well as normal effectiveness of the law. This new law has not respected the votes of the electorate and has 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.

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

a. 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 the formation of party and coalition groups as a result of election. This provision also violates the Article 19.2 of the Law on Parliamentary Elections which allows coalition parties to participate as one body in the election and in a new parliament formed as a result.

b. The Law on Amendments to the Law on State Great Khural contains a provision 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 also violates 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.

c. 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.

GROUNDS:

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 for the creation of 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 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, or Article 16.10 which states that it is prohibited to discriminate against or persecute a person for his/her membership of a political party or 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 of forming 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 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 the court 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.

PRESIDING MEMBER	J.BYAMBADORJ
MEMBERS	N.JANTSAN
	L.RENCHIN
	J.AMARSANAA
	TS.SARANTUYA

The conclusion number 07 of the Constitutional Court dated 30 September 2005 was accepted by the Parliament on 14 October 2005, and the Parliament passed a resolution number 59.

CONCLUSION OF THE CONSTITUTIONAL COURT OF MONGOLIA

2010.03.24 No. 01 Ulaanbaatar

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

Constitutional Court Session Hall, 12:30

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 decedents.

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 a citizen 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:

ON BEHALF OF THE CONSTITUTION OF MONGOLIA IT IS CONCLUDED:

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, Article14 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 states "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 Khural.

PRESIDING MEMBER	J.BYAMBADORJ
MEMBERS	N.JANTSAN
	J.AMARSANAA
	D.NARANCHIMEG
	D.MUNKHGEREL

The conclusion number 01 of the Constitutional Court dated 24 March 2010 was accepted by the Parliament on 22 April 2010, and the Parliament passed a resolution number 19.

CONCLUSION OF THE CONSTITUTIONAL COURT OF MONGOLIA

2013.05.08 No. 02 Ulaanbaatar

Adjudication on whether some paragraphs of the Law on legal status of judges, the Law on the Prosecuting authority, The Law against corruption, the Law on legal status of lawyers and The Law on the legal status of the citizens' representative at Court has breached relevant articles and paragraphs of the Constitution

Constitutional Court Session Hall, 13:00

Content of the dispute:

The middle bench session of the Constitutional court considered whether the specification of the words such as "impunity" in paragraph 4.1.1, Article 4 of the Law on Legal status of judges /2012/, "… impunity…" in paragraph 39.1, Article 39 2002 Law on the Prosecuting authority /2002/, "…impunity…" in paragraph 19.1, Article 19 of the Law against corruption,/2006/ "reference letter of the Police authority confirming the impunity" in paragraph 19.2.2, Article 19, Law on Legal status of lawyers /2012/ and "…impunity…" in paragraph 5.1.3, Article 5 of the 2012 Law on the legal status of the Citizen's representative at court respectively violates paragraph 2, Article 1 of the Constitution of Mongolia which says "The supreme principles of the activities of the state shall be to give effect to democracy, justice, freedom, equality and national unity and respect the rule of law." and "the right to free choice of employment" stipulated in the paragraph 4, Article 16 of the Constitution of Mongolia."

Erdenetsogt Ts., citizen of Mongolia, in his information submitted to the Constitutional Court, provides that:

"The inclusion of requirements such as "impunity" in paragraph 28.1.2, Article 28 of the Law on the Court which

was adopted on 4 July 2002 and is effective now, "impunity" in paragraph 4.1.1, Article 4 of the Law on Legal status of the Judge, which was adopted on 7 March 2012 and will be effected from 1 July 2013, "… impunity…" in paragraph 39.1, Article 39 of the Law on Prosecuting organization, which was adopted on 04 July 2002, "impunity" in paragraph 19.1, article 19, Law against corruption, which was adopted on 6 July 2006, "reference letter of the Police organization confirming the impunity" in paragraph 19.2.2:'License of the Jurist's professional activity and its issuance procedure', Article 19, Law on Legal status of the Jurist, which was adopted on 7 March 2012 and "impunity" in paragraph 5.1.3: 'Requirements for Citizen's representatives', Article 5 of the Law on the legal status of the Citizen's representative at court which was adopted on 22 May 2012 and will be effective from 1 July 2013 in the requirement sections for employees and human resources of the law enforcement organizations in the above mentioned laws that establish their legal status respectively violates paragraph 4, "right to free choice of employment, … " in Article 16 of the Constitution of Mongolia as well as paragraph 28.1.2, Article 28 of the Law on the Court violates paragraph 3, Article 51 of the Constitution and closes the opportunity of the citizens to freely choose their employment and profession. The reason is that the right to freely choose employment and profession is a main right that is related to human's conduct of him and life, unlocking of their talents and its devotion to public, dignity and their existence and living. The above mentioned paragraphs are a human rights violation, as they put limitation and restriction on humans from freely choosing their employment and profession due to their previously committed crimes. Discrimination against people because of their previously made faults, establishment of a negative outcome or limitation of rights, and stifling of human rights shall not be compatible with the Constitution and its concept in any circumstances. After the cancelation of the criminal record as provided in Article 78 of the Criminal code, no negative outcome should follow anybody with regard to that. As society develops and legal awareness and culture improves,

it should become such that the criminal record is cancelled, the person gets the punishment only once for what he/she has committed, and enjoys equal rights which are enjoyed by each and every citizen of this society. Thus, my request is to repeal the paragraph "impunity or to have no record of criminal penalty" mentioned in the above mentioned laws and replace it with the paragraph "to have no criminal penalty', and it will be compatible with the Constitution and its current development and need."

GROUNDS

1. Putting special requirements and demands, directed at satisfying the moral requirements of a democratic society, for judges and prosecutors, managing or implementing officials of the Anticorruption agency which implements the special mission of the state, as well as citizen's representatives who participate in the settlement of cases and disputes in the composition of the court on the collective principle, moreover, persons to conduct jurist's professional activities through considering the characters of their official position, work and profession, and mission and endorsement of it by relevant laws, falls under the powers of the legislator.

2. No grounds can be established to consider that paragraph 4.1.1, Article 4 of the 2012 Law on Legal status of the Judge, paragraph 39.1, Article 39 of the 2002 Law on Prosecuting organization, "impunity" in paragraph 5.1.3, Article 5 of the 2012 Law on the legal status of the Citizen's representative at court, "… have not a record of criminal responsibility…" in paragraph 19.1, Article 19 of the 2006 Law against corruption, "reference letter of the Police organization confirming the impunity" in paragraph 19.2.2, Article 19 of the 2012 Law on Legal status of the Jurist respectively violated the relevant parts of paragraph 2, Article 1 and paragraph 4, Article 16, the Constitution of Mongolia.

Guided by the provisons of the Article 64 and Paragraphs 2.1, Article 66 of the Constitution of Mongolia; and Articles 31 and 32 of the Law on the Constitutional Court Procedure,

ON BEHALF OF THE CONSTITUTION OF MONGOLIA IT IS CONCLUDED:

1. to consider that the parts such as "impunity" in paragraph 4.1.1, Article 4 of the 2012 Law on Legal status of the Judge, "… impunity…" in paragraph 39.1, Article 39 of the 2002 Law on Prosecuting organization, "…have not a record of criminal responsibility…" in paragraph 19.1, Article 19 of the 2006 Law against corruption, "reference letter of the Police organization confirming the impunity" in paragraph 19.2.2, Article 19, 2012 Law on Legal status of the Jurist and "impunity" in paragraph 5.1.3, Article 5 of the 2012 Law on the legal status of the Citizen's representative at court respectively have not violated the paragraph 2, Article 1 "The supreme principles of the activities of the state shall be to give effect to democracy, justice, freedom, equality and national unity and respect of law." and paragraph 4, Article 16 "right to free choice of employment, … " of the Constitution of Mongolia.

2. to mention to the State Great Khural that the Conclusion be discussed and responded to within 15 days of the receipt of it, in accordance with paragraph 2, Article 36 of the Law on Constitutional Court Procedure.

PRESIDING MEMBER	N.JANTSAN
MEMBERS	P.OCHIRBAT
	T.LKHAGVAA
	D.NARANCHIMEG
	B.PUREVNYAM

CONCLUSION OF THE CONSTITUTIONAL COURT OF MONGOLIA

2013.12.18 No. 06 Ulaanbaatar

Adjudication on whether paragraph 5, Article 4 of the Law on Administrative sanctions has violated the relevant paragraphs of the Constitution

Constitutional Court Session Hall, 13:15

Content of the Dispute:

Whether part 5 "Arrest sanction specified in Articles 21, 22, 23, 24 and 45 of this law may be imposed by the Governor of the Soum." in Article 4 of the Law on Administrative sanctions violates the part 1 of the Article 47 of the Constitution of Mongolia which states " Judicial power shall be vested exclusively in courts".

D.Togtokhbayar, a citizen of Mongolia, in his information to the Constitutional Court, provides that:

"Even though, it is provided that the arrest sanction shall be imposed only by the judge in part 4, Article 4 of the Administrative sanctions law adopted on 27 November 1992, also it is specified in part 5, Article 4 "An arrest sanction specified in Articles 21, 22, 23, 24 and 45 of this law may be imposed by the Governor of the Soum." of the same law. This leads to a situation in which a citizen's freedom is restricted on the grounds of administrative offence and an arrest sanction is imposed not by an independent judicial structure dedicated for deciding legal disputes but by a non-professional person. The statement in the part 7 of the Article 18 which states "The Governor of the soum shall deliver his decision that imposed the arrest sanction, to the court of relevant jurisdiction within 3 days accompanied with the other documents.", cannot guarantee that the arrest sanction is reasonable and legal, and the person is not arrested without reason.

Because the introductory process of a judge to an arrest sanction decision and other materials of the Governor are only limited within the frame of offence note, and the explanation provided by the person who committed such an offence, the possibility to settle such a case objectively and justly, is restricted to that extent. According to the part "The Governor of the soum shall deliver his resolution that imposed the arrest sanction with other materials to the court of relevant jurisdiction within 3 days", it might appear that the court is to review the decision issued by the Governor, and the judge is to make possible and final decision. However, single part that provides that the case is reviewed only on the bases of someone's note and explanation gives the arrest and detention right not to the judges but to the Governor. Thus, the part 5, article 4 of the Administrative sanctions law adopted on 27 November 1992 has violated the part 1, article 47 that provides "judicial power shall be vested exclusively in courts."

D.Lundeejantsan, member and authorized representative of the State Great Khural of Mongolia, in his explanation, provides that:

"Special regulation that enables the Governor of a soum to impose arrest sanction for some types of administrative offences such as affray, drinking, illegal acquire, carrying and storing fire arms, and asphyxiating or tear substances have been included in the Administrative sanctions law in 1995. The practical ground of such legal regulation is that as legal offence might contravene the public interest, and cause loss to the citizen's individual and property security, the competent authority is needed to immediately and independently suspend and terminate the legal offence within the powers provided to him under the laws. Moreover, part 5, Article 4 of the Administrative sanctions law falls compatible with the content of the principle that "arrest, temporary detention and detention shall be implemented only by a competent authority under law, or a person whose power is provided under law" in "principles of protection of the persons arrested or detained in any form" adopted by Resolution

No.43/173, dated 9 December 1988, of the General Assembly, UN. Another significant idea reflected in the Administrative sanctions law is that even though, on the one hand, the decision to impose arrest sanction through administrative procedure is issued by the administrative official, the final decision is endorsed by the court of the relevant jurisdiction. Thus it was specified in the law in such manner that the Governor is obliged to deliver his decision on the imposition of arrest sanction with the relevant materials to the court of relevant jurisdiction within 3 days as provided in part 7, Article 18 of the above mentioned law. Upon review of the above mentioned decision and material, the Judge retains full power to repeal the decision that imposed arrest sanction through administrative procedure if he or she deems it groundless. However, the right of the offender to consider the decision of the Governor as illegal and submit his complaint to Administrative case court for protection of his violated right is open. Thus, we consider that part 5, Article 4 of the Administrative sanctions law of Mongolia has not violated part 1, Article 47 of the Constitution of Mongolia.

GROUNDS:

There are grounds to consider that part 5 "Arrest sanction… may be imposed by the Governor of the Soum." in Article 4 of the Law on Administrative sanctions adopted by the State Great Khural of Mongolia on 27 November 1992, through transferring the power to impose arrest sanction to political official falls incompatible with the concept and fundamental principle of the Constitution that obliges the state to respect the human rights specified in the Constitution of Mongolia and create a legal guarantee of human rights.

In accordance with part 1, Article 64 and parts 2.1, Article 66 of the Constitution of Mongolia; and Articles 31 and 32 of the Law on the Constitutional Court Procedure,

ON BEHALF OF THE CONSTITUTION OF MONGOLIA IT IS CONCLUDED:

1. Part 5 "Arrest sanction specified in Articles 21, 22, 23, 24 and 45 of this law may be imposed by the Governor of the Soum." in Article 4 and part 7 "The Governor of soum shall deliver his resolution that imposed the arrest sanction with other materials to the court of relevant jurisdiction within 3 days", in Article 18 of the law of the Law on Administrative sanctions have violated the part 1, " Judicial power shall be vested exclusively in courts " in Article 47 of the Constitution of Mongolia.

2. The part 5 "Arrest sanction specified in Articles 21, 22, 23, 24 and 45 of this law may be imposed by the Governor of the Soum." in Article 4 and paragraph 7 "The Governor of soum shall deliver his resolution that imposed the arrest sanction with other materials to the court of relevant jurisdiction within 3 days", in Article 18 of the law of the Law on Administrative sanctions should be suspended respectively starting from the 18th of December 2013 in accordance with part 4, Article 32 of the Law on the Constitutional Court procedure.

3. It is mentioned to the State Great Khural that the Conclusion be discussed and responded to within 15 days of the receipt of it, in accordance with part 2, Article 36 of the Law on Constitutional Court Procedure.

PRESIDING MEMBER	J.AMARSANAA
MEMBERS	N.JANTSAN
	P.OCHIRBAT
	D.NARANCHIMEG
	TS.SARANTUYA

The conclusion number 06 of the Constitutional Court dated 18 December 2013 was accepted by the Parliament on 9 January 2014, and the Parliament passed a resolution number 11.

CONCLUSION OF THE CONSTITUTIONAL COURT OF MONGOLIA

2014.01.15 No. 01 Ulaanbaatar

Adjudication of constitutional dispute on constitutionality of provisions of Article 342, part 342.1 of the Criminal Procedure Code of Mongolia

Constitutional Court Session hall, 13:15

Content of the dispute:

Dispute on inconsistency of Article 342, part 342.1 of the Criminal Procedure Code of Mongolia stipulating: "In resolving of guiltiness of the accused or justified person, if a court of appeal considers that there has been a serious breach of the Criminal Procedure Code, or improper application of the Criminal Code, according to the procedure specified in Article 304 of this Law, the accused, justified person, or advocate of the victim, have rights to submit a complaint, and the prosecutor or the prosecutor of the high instance court has the right to write a protest", in particular the part "… the accused, justified person, or advocate of the victim …" with the provisions of the Constitution of Mongolia, Article 14, part 1 stipulating: "All persons … are equal before the law and the Court", Article 14, part 2 stipulating: "No person shall be discriminated against on the basis of … occupation and position …" and Article 16, part 14 stipulating: "citizens of Mongolia are guaranteed to enjoy … the right to self-defense … to appeal to the court … ".

Content of a petition of citizen Lkhagvasuren Ch. to the Constitutional Court:

A citizen, Lkhagvasuren Ch. stated the following in his petition: "An accused and a convicted person, as citizens of Mongolia, have the right to appeal against a court decision in accordance with the Constitution and Criminal Procedure

Code. But in compliance with the provision of Article 342, part 342.1 of the Criminal Procedure Code, which was modified by the law of 9 August 2007, and resolution of the Supreme Court of Mongolia number 35, part 13, dated 10 September 2007 on "Application procedure of certain provisions of the Law on Amendments to the Criminal Procedure Code", a citizen has been deprived of the right to appeal against the court decision guaranteed by the Constitution. This provision of the Criminal Procedure Court and the resolution of the Supreme Court have restricted the right of the accused, justified person and victims to submit their complaints themselves; have their cases or disputes reviewed by the court of review; and been rendered the decision of the final instance, breached the constitutional right to appeal against the court decision, the right to be equal before the court and law, and discriminated against the accused by his legal status, occupation, position and education. And the question has arisen on what should be done in the case of self defence by the accused. Persons authorized to undertake advocacy using the advantages provided in Article 342, part 342.1 of the Criminal Procedure Code, tend to act contrary to the advocates' moral code and gain illegal profit. In particular, I was involved in a serious crime on 31 January 2010. I chose advocate "X", a member of the Mongolian Union of Advocates, and agreed to hire him as an advocate at the investigation process and all stages of court process, for a certain amount of payment. But, advocate "X" did not submit a complaint in compliance with the right specified in Article 342, part 1 of the Criminal Procedure Code, to the court of review within the period specified in Article 304, part 1 of this Law. At the time, advocate "X" requested 10 million Tugrik from me and my family, but we did not have such an amount of money. Due to this fact we could not use the chance to submit the complaint to the court of review for revision of the criminal case, which I was involved in, within the period specified by the law. Thus, I am requesting a conclusion be made on whether provisions of Article 342, part 1 of the Criminal Procedure Code, breach the relevant provisions of the Constitution".

Content of the explanation submitted by a member of Parliament, Temuujin Kh., an accredited representative of Parliament (State Great Khural):

In international practice, a dispute arisen in compliance with the complaint for review process is not a civil dispute, but a legal dispute discussed among lawyers. In the practice of some countries, a citizen is required to submit the complaint to the court of appeal only through his/her lawyer or advocate. With respect to the said common principle of world criminal law, the Parliament of Mongolia (State Great Khural) adopted the Law on Amendments to the Criminal Procedure Code on 9 August 2007. An explanation of the Supreme Court provided in resolution number 35 of 10 September 2007:"Rule on application of certain provisions of the Law on Amendments to the Criminal Procedure Code" regarding the provision of Article 342, part 1 of the above Law stipulated: "… accused, justified person, advocate of the victim …" would mean an advocate of the accused, an advocate justified person, or an advocate of the victim. This explanation that adheres to the above principle has set a unified standard in court, and is not in breach of the concept of the Constitution. Article 342, part 1 of the Criminal Procedure Code does not restrict the right to appeal in the case of civil court decision, and does not contain discrimination by occupation, position and education. It contains an idea that only the court of review resolves exclusively the legal dispute regarding improper application of law, or breach of law, by the courts of first and appeal instances, so that citizens should submit the complaints for review process through their advocates.

GROUNDS:

1. There is not any restriction in guaranteeing the right of a citizen of Mongolia provided in Article 16, part 14 of the Constitution: "… the right to appeal to the court to protect his/her rights, if he/she considers that the rights or freedoms as spelt out by the Mongolian law or an international treaty have been

violated …", and the citizen's right to appeal against the court decision is not limited to the right to apply to the court of appeal,. Indeed, as provided in Article 14, part 5 of the International Covenant on Civil and Political Rights, which Mongolia is party to, it should be understood that the above mentioned right means the right to have reviewed decisions of any court in the court of higher instance.

2. The provision of Article 342, part 1 of the Criminal Procedure Code stipulating: "In resolving the guiltiness of the accused or justified person, the court of appeal, if it considers that the Criminal Procedure Code was seriously breached, or the Criminal Code was improperly applied, according to the procedure specified in Article 304 of this Law, the accused, justified person and advocate of the victim have the right to submit a complaint, and the prosecutor or the prosecutor of the high instance court has the right to write a protest" means that the accused, justified person and victim implement their right to submit the complaint to the Supreme Court exclusively through their advocates. This introduces a certain breach of the Constitution, as the right to self defence and the right to submit a complaint to the court of review is restricted.

3. It has not been found that Article 342, part 1 of the Criminal Procedure Code is in breach of Article 14, part 1 of the Constitution stipulating: "All persons lawfully residing within Mongolia are equal before the law and the Court" and part 2 of the same article: "No person shall be discriminated against on the basis of ethnic origin, language, race, age, sex, social origin and status, property, occupation and position, religion, opinion and education. Every one shall be an equal person before the law".

Guided by the provisions of Article 64, part 1, Article 66, and part 2, subpart 1, of the Constitution of Mongolia and Articles 31 and 32 of the Law on Constitutional Court Procedure:

ON BEHALF OF THE CONSTITUTION OF MONGOLIA IT IS CONCLUDED:

1. It is considered that provision of Article 342, part 1 stipulating: "In resolving the guiltiness of the accused or justified person, the court of appeal, if it considers that the Criminal Procedure Code was seriously breached, or the Criminal Code was improperly applied, according to the procedure specified in Article 304 of this Law, the accused, justified person and advocate of the victim have the right to submit a complaint, and the prosecutor or the prosecutor of the high instance court has the right to write a protest", in particular "… the accused, justified person and advocate of the victim …" is in breach of Article 16, part 14 of the Constitution stipulating: "have the right to appeal to the court to protect his/her rights, if he/she considers that the rights or freedoms, as spelt out by Mongolian law or an international treaty have been violated … to self-defence … to appeal against a court decision".

2. It is considered that provision of Article 342, part 1 stipulating: "In resolving the guiltiness of the accused or justified person, the court of appeal, if it considers that the Criminal Procedure Code was seriously breached, or the Criminal Code was improperly applied, according to the procedure specified in Article 304 of this Law, the accused, justified person and advocate of the victim have the right to submit a complaint, and the prosecutor or the prosecutor of the high instance court has the right to write a protest", in particular "… the accused, justified person and advocate of the victim have the right …" is not in breach of Article 14, part 1 stipulating: "All persons lawfully residing within Mongolia are equal before the law and the Court" and Article 14,part 2 stipulating: "No person shall be discriminated against on the basis of ethnic origin, language, race, age, sex, social origin and status, property, occupation and position, religion, opinion and education. Every one shall be an equal person before the law".

3. Pursuant to the provision of Article 32, part 4 of the Law

on Constitutional Court Procedure, it is resolved to suspend Article 342, part 1 stipulating: "In resolving the guiltiness of the accused or justified person, the court of appeal, if it considers that the Criminal Procedure Code was seriously breached, or the Criminal Code was improperly applied, according to the procedure specified in Article 304 of this Law, the accused, justified person and advocate of the victim have the right to submit a complaint, and the prosecutor or prosecutor of the high instance court has the right to write a protest" from 15 January 2014.

4. In compliance with Article 36, part 2 of the Law on Constitutional Court Procedure, notify the Parliament (State Great Khural) to discuss this resolution and respond within 15 days of its receipt.

CHAIRMAN	J.AMARSANAA
MEMBERS	P.OCHIRBAT
	SH.TSOGTOO
	D.SUGAR
	D.NARANCHIMEG

The conclusion number 01 of the Constitutional Court dated 15 January 2014 was accepted by the Parliament on 23 January 2014, and the Parliament passed a resolution number 21.

CONCLUSION OF THE CONSTITUTIONAL COURT OF MONGOLIA

2014.03.12 No. 03 Ulaanbaatar

Adjudication on whether paragraph 65.7, Article 65 of the Law on the Legal Status of the Jurist/Lawyers and paragraph 35.2, Article 35 of the Law on the Legal Status of the Judge have violated the relevant paragraphs and Articles of the Constitution

Constitutional Court Session Hall, 13:00

Content of the dispute:

Whether paragraph 65.7-"…The decision of Administrative Court of Appeal shall be final.", Article 65 of the Law on the Legal Status of the Jurist and paragraph 35.2-"…The decision of the Court of Appeal shall be final.", Article 35 of the Law on the Legal Status of the Judge have violated the relevant parts of the paragraph 2, Article 14, paragraph 14, Article 16, paragraph 1, Article 48, paragraph 1.2, Article 50 and paragraph 2, Article 5 of the Constitution.

A citizen of Mongolia has submitted the following information to the Constitutional Court:

"According to Article 64 of the Law on the Legal Status of the Jurist, disputes related to the doubt at the level of jurist's profession and skill such as the violation of the Jurist's Code of Professional Conduct, Law on the Legal Status of the Jurist, legitimate decision or assignment provided by the Jurists' Federation as well as suspension and invalidation of the special license to conduct Jurist's professional activity shall be classified as disputes related to the Professional activities of the Jurist. According to paragraph 65.1, Article 65 of the same law, if the decision of the Professional liability committee that settles the dispute is not accepted, dispute participants and their representatives, within 14 days after the

receipt of the decision, are entitled to make complaint to the administrative court of appeal, moreover, in paragraph 65.7, Article 65 of the same law "…Decision of the Administrative court of appeal shall be final" was legalized. The creation of a condition to entitle citizens to make a complaint to the court for the protection of his right and to appeal against a court decision if the decision was not accepted, in the event anybody considers that his right has been violated is a guarantee of rights and freedoms from the state to protect the citizens' rights and freedoms, as well as an expression of judicial justice. It was provided in paragraph 14, Article 16 of the Constitution of Mongolia that the "The right to appeal to the court to protect his/her right if he/she considers that the rights or freedoms as spelt out by the Mongolian law or the international treaties have been violated; … a fair trial; … appeal against a court judgment …", moreover, overview over the basic structure of the courts and activities of the specialized courts, and finality of court decision have been specifically legislated. Paragraph 65.7, Article 65 of the Law on the Legal Status of the Jurist that provides "…The decision of Administrative Court of Appeal shall be final." is inconsistent with paragraph 1, Article 48 "… The activities and decisions of the specialized courts shall not be outside the supervision of the Supreme Court", paragraph 1, "… The Supreme Court of Mongolia shall be the highest judicial organ and shall exercise the following powers." and in paragraph 2, "to examine decisions of lower-instance courts through appeal and supervision" Article 50, in paragraph 2 "The decisions made by the supreme court shall be the final judicial decision and shall be binding upon all courts and other persons…" of the Constitution.

2. By the amendment of the Law on the Legal Status of the Judges, dated 17 January 2013, to Article 35 of the Law on the Legal Status of the Judges adopted on 7 March 2012, by the State Great Khural of Mongolia, it was additionally legislated that "in the event the dispute participant, their representatives and advocates do not accept the judgments specified in paragraph 35.1 of this law, they are entitled to make complaint to the Administrative

Court of Appeal within 14 days of the receipt of such a judgment. The decision of the Court of Appeal shall be final." It was mentioned that the limitation of the dispute participant subject's right to a higher level of court or protection of rights on the decision resolved the disputes, related to the ethics of judges and professional activities by the above mentioned paragraph of the law on the legal status of the Judge have violated the paragraph 2-"No person shall be discriminated against on the bases of ethnic origin, language, race, age, sex, social origin and status, property, occupation and post, religion, opinion or education." In Article 14, in paragraph 14-"right to: appeal to the court to protect his/her right if he/she considers that the rights or freedoms as spelt out by the Mongolian laws or the international treaties have been violated; …a fair trial; …appeal against a court judgment;…"in article 16, paragraph 1-"The judicial system shall consist of the Supreme Court, aimag and capital city courts, soum, inter-soum and district courts. Specialized courts such as criminal, civil and administrative courts may be formed. The Activities and decisions of the specialized courts shall not be outside the supervision of the Supreme Court. "in Article 48, paragraph 1-"The Supreme Court shall be the highest judicial organ and shall exercise the following powers:", in paragraph 1.2-"to examine decisions of lower-instance courts through appeal and supervision" and in paragraph 2-"The decision made by the Supreme Court shall be a final judicial decision and shall be binding upon all courts and other persons" in article 50 of the Constitution of Mongolia.

Kh.Temuujin, member and certified representative of the State Great Khural, in his response explanation, provides that:

"1. Legal requirement and liabilities are high for jurists as they are people who conduct the activities to protect human rights and freedoms, embellishment of justice and for the public interest. Because of the professional fault committed by the Jurist, civil rights are violated and justice in society is lost. Thus, when adopting the Law on the legal status of the Jurist and its amendment on 17 January 2013, several restrictions and

regulations for jurist have been created, including, disputes arisen with regard to the professional activities of the jurist, and unique regulation of the dispute settlement have been legislated. When a jurist has committed a professional mistake, the Professional Liability Committee is entitled to impose liabilities specified in law, and on the other hand if such a decision is not accepted, the right to make an appeal complaint to the Administrative court of appeal has been provided to the participant person of the dispute. However, the decision of the administrative court of appeal has been considered by the legislators as final. Such dispute which is arisen with regard to the professional activities of the jurist is normally arisen by the complaint of the entity and competent official specified in law, and as it contains the purpose to protect the violated rights and interest of the citizens occurred due to the professional mistakes of the jurist, it can't be taken equally with the citizens' right to make complaint to the court and activities to settle it by the court. Such amendment has been included and adopted in paragraph 65.7, Article 65 of the law considering the international standard that create protection of citizens' rights whose right has been violated or might be violated for the future due to the professional mistakes of the Jurist.

2. The amendment was made in Article 35 of the Law on the legal status of the judge, changing the circumstance in which final decision is made by the Ethical committee on the ethical mistakes of the judges, and provision with right to make complaint to the administrative court of appeal in the event the decision of the Ethical committee is unaccepted, and as a result it became good amendment that improved the legal status of the judges. When a judge makes professional and ethical mistakes, a citizen's right is violated and social justice is lost. With regard to this, amendment to paragraph 2, Article 35 of the Law on the legal status of the Judge, some restrictions were put in place with regard to the work and professional nature of the judge. The restriction put over the judge, in the first place, is established by law, in the second place, it is guided by the legitimate purpose. Because human rights

violation and loss is hidden behind the professional and ethical mistakes of the judges, it cannot be compared with the civil procedure activities. When Legislators establishing an special procedure on the redressing of professional and ethical mistakes of the judges, imposing a penalty and making a complaint against it, legitimate purpose to justice in the judicial and legal sector directed to redress the violated right of the person, and to create ethical state service were taken as guidance."

GROUNDS:

- When providing the right in paragraph 14-"The right to appeal to the court to protect his/her right if he/she considers that the rights or freedoms as spelt out by the Mongolian laws or the international treaties have been violated; … appeal against a court judgment;…" in Article 16 of the Constitution of Mongolia, no restrictions were made and a citizen's right to appeal against a court judgment and such right is not restricted to a right to make appeal to only appeal court, but it can be understood as right to get any decision of the court to be reviewed by the higher instance court, which is clearly seen from paragraph 5, Article 14 of the International Covenant on Civil and Political rights to which Mongolia is party.

- Paragraph 65, that the dispute participant and their representatives' right to make appeal complaint to the Administrative Court of Appeal in the event the decision of the Professional Liability Committee is not accepted, paragraph 65.7-"The Decision of the Administrative Court of Appeal shall be final." of the Law on the Legal Status of the Jurist, paragraph 35.2-"The decision of the Court of Appeal shall be final" in Article 35 of the Law on the Legal Status of the Judge which establish the procedures for settlement of disciplinary cases of judges, has contained the natural of Constitutional conflict by limiting the full power of the State Supreme Court-the highest judicial organ that issues final judicial decision in Mongolia, to overview the decisions of lower instance courts, and regulating to make the

decision of the specialized court fall outside the overview of the Supreme Court.

In accordance with paragraph 1, Article 64, and Paragraphs 2.1, Article 66 of the Constitution of Mongolia; Articles 31 and 32 of the Law on the Constitutional Court Procedure,

ON BEHALF OFTHE CONSTITUTION OF MONGOLIA IT IS CONCLUDED:

1. Paragraph 65.7-"…The decision of the Administrative Court of Appeal shall be final." in article 65 of the Law on the Legal Status of the Jurist, and the paragraph 35.2-"The decision of the Court of Appeal shall be final." In article 35 of the Law on the Legal Status of the Judge have violated the paragraph 2-"No person shall be discriminated against on the basis of … occupation and post …", article 14, paragraph 14-"right to: appeal to the court to protect his/her right if he/she considers that the rights or freedoms as spelt out by the Mongolian law or an international treaty have been violated; ……appeal against a court judgment;" in article 16, paragraph 1-"The activities and decisions of the specialized courts shall not be outside the supervision of the Supreme Court" in Article 48, paragraph 1.2-"to examine decisions of lower-instance courts through appeal and supervision" and in paragraph 2-"the decision made by the Supreme Court shall be a final judicial decision and shall be binding upon all courts and other persons" in article 50 of the Constitution of Mongolia.

2. Paragraph 65.7-"…The decision of Administrative Court of Appeal shall be final." in Article 65 of the Law on the Legal Status of the Jurist, and paragraph 35.2-"The decision of the court of appeal shall be final." in Article 35 of the Law on the Legal Status of the Judge be suspended on the bases of the paragraph 4, Article 32 of the law on the Constitutional Court Procedure.

3. This is informed to the State Great Khural that this Conclusion is discussed within 15 days after the start of the

next State Great Khural session, and a response is delivered in accordance with paragraph 2, Article 36 of the Law on Constitutional Court Procedure.

CHAIRMAN	N.JANTSAN
MEMBERS	T.LKHAGVAA
	SH.TSOGTOO
	D.SUGAR
	D.NARANCHIMEG

The conclusion number 03 of the Constitutional Court dated 12 March 2014 was accepted by the Parliament on 10 April 2014, and the Parliament passed a resolution number 29.

CONCLUSION OF THE CONSTITUTIONAL COURT OF MONGOLIA

2015.01.28 No. 01 Ulaanbaatar

Adjudication of constitutional dispute regarding the consitutionality of provision 55.1.2 of article 55 of the Law of Mongolia on Court Decision Implementation

Constitutional Court Session hall, 12:00

Content of the dispute:

Middle bench session of the Constitutional Court reviewed the matter on whether provision 55.1.2 of article 55 of the Law on Court Decision Implementation breached article 16, part 14 of the Constitution of Mongolia.

Chuluuntogtokh Ts., a citizen of Mongolia informed the following in his petition submitted to the Constitutional Court:

Provision 55.1 of article 55 of the Law on Court Decision Implementation provides for the list of essential property of a citizen-debtor that is not subject to confiscation, and specifies in the second part of this provision "one set of clothes for each season of the citizen-debtor and members of his/her family". This regulation leads to the consequences that the clothes, property of the debtor and his/her family are unfairly confiscated as payment of the "defaulting" person. Moreover, the debtor is left with the single set of clothes on him/her. This situation is a fact of repression, and breached provision of article 14 of the Constitution of Mongolia wording "The penalties imposed on the convicted shall not be applicable to his/her family members and relatives".

Also, according to the lawful decision of the court, an imposition of an extra responsibility on the family members and relatives of the convicted on behalf of the latter is in controversy

to the principles of justice. Implementation of provision 55.1 of article 55 of the Law on Court Decision Implementation shall lead to the possibility of the repetition of historical events evidencing the repression such as the confiscation of property and forcible assembling in communities.

Compare with the slave or feudal or communist regimes, being responsible on behalf of others are not acceptable in the democratic society. Thus, I am applying the request to discuss and resolve this matter.

Explanation of the Court Decision Implementation Authority infers the following:

"It has been done the decision implementation work with respect to 279, 847 documents on the decision execution since adoption of the new edition of the Law on Court Decision Implementation in 2002.

For the period from the entrance of the Law into force up to now there have not been done any procedures during the decision implementation operations to confiscate the debtor's or his/her family members' clothes as payment for the sum specified in the decision".

Response of Batzandan J., the accredited representative of the Parliament (State Great Khural), the MP:

"The payment of the debtor is done based on the following provisions of the Law on Court Decision Implementation in the ways described below:

- Provision 53.1: "The payment shall be done from such debtor's property as his/her money deposited in banks and non-banking organizations and money or securities in the saving account of commercial banks as well as immovable and movable property";

- Provision 53.3: "Based on the implementation documents, the payment shall be done at first from the debtor's cash and savings or money deposited in the banks or money in the account of non-banking organizations as well as from other valuable

property";

- Provision 53.6: "In cases where the property specified in provision 53.1 of this Law is lacking, or there is not enough money to do the payment, the payment shall be done from other property owned by the debtor";

- Provision 53.7: "If the property specified in the provisions 53.3 and 53.6 of this Law is not enough to do the payment, the payment shall be done from the debtor's portion of the property that he/she owns partly or jointly".

Provisions of the Civil Code are adhered to in completing the from the debtor's portion of the property that he/she owns partly or jointly. No payment shall be made on grounds except the for those specified in the above provisions of the Law on Court Decision Implementation from the debtor or his/her family members, and provision 55.1.2 of article 55 of this Law inferring that it is prohibited to remove "one set of clothes for each season of the citizen-debtor and members of his/her family" as the payment of the debt shall not mean an application of penalty of the convicted to his/her family members. Provision of this article should be considered as provision that sets restricting norms in the activity of the public servant rather than the criminal penalty."

GROUNDS:

Provision 55.1 of article 55 of the Law on Court Decision Implementation provides "It is prohibited to confiscate the following property of necessity of only the debtor", however, provision 55.1.2 of this article provides "one set of clothes for each season of the citizen-debtor and members of his/her family", which means that the payment shall be removed not from only the debtor, but also from the cost of clothes of his/her family members. This is inconsistent with provision 14of article 16 of the Constitution of Mongolia "The penalties imposed on the convicted shall not be applicable to his/her family members and relatives".

Guided by the provisions of article 64, part 1, article 66, part 2.1 of the Constitution of Mongolia, articles 31 and 32 of the Law on Constitutional Court Procedure:

ON BEHALF OF THE CONSTITUTION OF MONGOLIA IT IS CONCLUDED

1. Part wording "his/her family member" of provision 55.1.2 "one set of clothes for each season of the citizen-debtor and members of his/her family is inconsistent with provision 14 of article 16 of the Constitution of Mongolia "The penalties imposed on the convicted shall not be applicable to his/her family members and relatives".

2. Part wording "his/her family member" of provision 55.1.2 of article 55 of the Law on Court Decision Implementation shall be suspended pursuant to article 32, part 4 of the Law on Constitutional Court Procedure from January 28 of 2015.

3. Commit the Parliament (State Great Khural) to discuss this conclusion is within 15 days upon it receipt and deliver the response pursuant to provision 2 of article 36 of the Law on Constitutional Court Procedure.

CHAIRMAN	N.JANTSAN
MEMBERS	P.OCHIRBAT
	T.LKHAGVAA
	SH.TSOGTOO
	D.GANZORIG

The conclusion number 01 of the Constitutional Court dated 28 January 2015 was accepted by the Parliament on 5 February 2015, and the Parliament passed a resolution number 23.

CONCLUSION OF THE CONSTITUTIONAL COURT OF MONGOLIA

2015.04.29 No. 05 Ulaanbaatar

Adjudication of the constitutional dispute on inconsistency of certain provisions of the Law on Judicial Administration and Law on Legal Status of Judge with the Constitution of Mongolia

Constitutional Court Session Hall, 15:00

Content of the dispute:

The dispute on whether part 8.1.4 of Article 8, part 23.6.2 and part 23.7 of Article 23 of the Law on Judicial Administration, and Article 8, Article 18, part 23.3 of Article 23 of the Law on Legal Status of Judge have breached the part 2 of Article 1, part 1 and 4 of Article 49, part 2 and 4 of Article 51 of the Constitution of Mongolia.

Content of the petition of the citizens Ochirbal R., Bayasgalan O., Natsagdorj G. to the Constitutional Court:

1. Part 1.4 of Article 8 of the Law on Judicial Administration: "develop the indicators and procedure for evaluating the conditions and requirement of judge and define the level of professional activities of judge and carry out its implementation as well jointly with the Qualifications Committee", part 6.2 of Article 23 of the Law on Judicial Administration: "procedure of defining the level of professional activities of judge stated in part 3 of Article 8 of the Law on the Legal Status of Judge shall be carried out and evaluated and concluded in accordance with the guidance of General Council", part 7 of the same article: "evaluation and conclusion stated in part 23.6.1 of this law remains valid for two years and the conclusion and evaluation stated in the part 23.6.2 of this law shall be the ground to discuss the removal of the judge through the meeting of General Council"

breaches the part 2 of Article 1 of the Constitution of Mongolia which states that "fundamental principles of the activities of the state shall be …rule of law", part 1 of Article 49: "judge shall be independent and subject only to the law", part 4 of the same article: "The Judicial General Council, without interfering in the activities of courts and judges, shall deal exclusively with the selection of judges from among legal professionals, protection of their rights and other matters pertaining to the ensuring of conditions for guaranteeing the independence of the judiciary" and the part 4 of Article 51: "Removal of a judge of a court of any instance shall be prohibited except in cases 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, by a valid court decision".

2. Part 3 of Article 23 of Law on Legal Status of Judge providing: "Judge shall be issued the additional pay consistently to his/her accuracy of decision, performance and workload which depends on the result of evaluation of proficiency level stated in Article 8.3 of this law, and the amount of additional pay shall be up to the 50 percent of basic salary" could be deemed as a breach of part 1 of Article 49 of the Constitution of Mongolia which states: "the judge shall be independent and subject only to the law".

3. Setting out as Part 1 of Article 8 of Law on Legal Status of Judge: "The procedure for evaluation based conclusion and selection on whether meeting the conditions and requirements stated in the articles from 4 to 7 of this law shall be developed by The Judicial General Council jointly with the Judicial Qualifications Committee and approved by The President of Mongolia", part 2 of Article 8: "The Judicial General Council is obliged to continuously improve and update the procedure stated in the part 1 of Article 8", part 3 of Article 8: "The indicators and procedure to evaluate the level of professional activities of judges for a 3 to 5 years of period shall be developed by The Judicial General Council jointly with Judicial Qualifications Committee

and be approved by the Chief Justice of the Supreme Court", part 1 of Article 18: "The judge shall be the subject to the dismissal and resignation only with the grounds stated in this law and the Constitution of Mongolia" breaches the part 4 of Article 51 of the Constitution of Mongolia which provides: "Removal of a judge of a court of any instance shall be prohibited except in cases 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" and explained their petition as follows:

"It could possibly be understood that regulation of concluding the level of professional activities of a judge with a period of 3 to 5 years has been legalized within the main purpose of creating the possibility to implement its' duty to society completely by improving the skill and knowledge of judge. However, making the decision of the judge which had solved a dispute matters to the operation of concluding the level of professional activities of judge, respectively, the chance to define the quality of court's decisions allowed to the Judicial Qualifications Committee which is not authorized by the Constitution to do so while causing a significant breach against the Constitutional principle of the judge's and court's independence". The right of Judge to use the Law complying with the concept of Rule of Law freely and the legal possibility to treat any issue with his/her pure belief cannot be limited.

Considering the concept of the Constitution cautiously, The Judicial General Council is the organization that shall deal exclusively with the selection of judges from among legal professionals, protection of their rights but not the organization that monitors the professional activities of judge and evaluates the trial proceedings of the courts without interfering in the activities of courts and judges. The conception of indicators and procedure to define the proficiency level of judge cannot be existed and the concept of defined level and indicators will set the norms that restrain the right of judge to make decision independently. If this

law continues to be effect, the judge will be the subject dependent to the Judicial General Council in terms of activities.

Content of the explanation by the accredited representative of the Parliament of Mongolia, member Temuujin Kh. delivered to the Constitutional Court:

Providing with part 8.1.4 of Article 8 of the Law on Judicial Administration: "develop the indicators and procedures for evaluating the conditions and requirement of judge and to define the level of professional activities of judge and carry out its' implementation as well jointly with the Qualifications Committee" is the detailed regulation regarding the issues in scope of the authorities of The Judicial General Council stated in Article 49 of the Constitution of Mongolia. Evaluating the professional activities of judge does not hold the intention violate the independency of judge and affect the judge, therefore, affecting independency of judge has been allowed with this provision is not found. Providing with part 23.6.2 of Article 23 of the same law that the procedure of defining the level of professional activities of judge stated in part 8.3 of Article 8 of the Law on the Legal Status of Judge shall be carried out and evaluated and concluded in accordance with the guidance of the Judicial General Council is not posing the meaning of affecting the independency of judge and the judges subordinated by the Qualifications committee.

According to the part 3 of Article 8 of Law on the Legal Status of Judge, the procedure of defining the level of professional activities of judge shall be approved by the Chief Justice of the Supreme Court. Defining the proficiency level of judge in accordance with the procedure approved by the legally authorized subject does not making the judge dependent and subordinated notwithstanding creating the possibilities for judge to discover and improve the level of his/her knowledge and skill, respectively, it has significance of increasing the guarantee of the citizens' right fair trial.

With the regulation that appointing and removing of the judge is the authority of President of Mongolia only, part 7 of

Article 23 of the Law on Judicial Administration: "evaluation and conclusion stated in part 23.6.1 of this law remains valid for two years and the conclusion and evaluation stated in the part 23.6.2 of this law shall be the ground to discuss the removal of the judge through the meeting of the Judicial General Council" cannot be interpreted as "The Judicial General Council is authorized to interfere the trial proceedings and remove the activities and decisions of courts out of the Supreme Court's supervision while bringing them under their control".

According to Article 8 of Law on the Legal Status of Judge, the procedure of evaluating conditions to become judge shall be developed by The Judicial General Council jointly with the Judicial Qualifications Committee and the authority of approval is the President of Mongolia, and The Judicial General Council is obliged to continuously improve and update the procedure stated above. Clauses which are stating "the indicators and procedure to evaluate the level of professional activities of judge for a 3 to 5 years period shall be developed by The Judicial General Council jointly with the Judicial Qualifications Committee and be approved by the Chief Justice of the Supreme Court" not causing the removal and dismissal of the judge with the grounds not stated in the Constitution and Law on judiciary. With this sense the termination grounds for authority of judge had been specifically stated with Article 18 of the Law on Legal Status of Judge.

Providing with part 3 of Article 23 of Law on the Legal Status of Judge: "Judge shall be issued the additional pay consistently to his/her accuracy of decision, performance and workload and the amount of additional pay shall be up to the 50 percent of basic salary" is the regulation to allow the judges to receive appropriate additional pay for their workload, performance and effectiveness, and not causing the breaching the articles of Constitution of Mongolia mentioned in the petitions of the citizens.

Content of the explanation by the Judicial General Council to the Constitutional Court:

1. The countries which had strengthened the principle of independency of judge in their Constitution use the method which does not affect the independency of the judge when they evaluate their professional activities. Our country passed the Package Law on Courts in 2012 and with part 3 of Article 8of Law on the Legal Status of Judge the legal ground for the process of evaluating the level of professional activities of judge had been established. Operation of defining the level of professional activity of judge is the instrument to increase the judge's private skill such as evaluate his/her legal knowledge, method of leading the trial proceeding, tendency and performance. Accordingly, part 3 of Article 8 of the Law on Legal Status of Judge does not breach the principle of independency of judge stated in the Constitution; notwithstanding it is the norm with the purpose to strengthen the independency.

2. Appointing the judge for a termless period is legal protection for judge from illegal affection, but does not protect the system from a judge who is found to be inefficient. Judges solve the dispute in the name of the "State", and as the public official who provides the public service or the justice, acts under the public control, and removing him/her of the position is the compliance with the principle of the rule of law and the principle of public service being ruled by law in cases where the judge is deemed not to have met the professional qualifications, knowledge and skills stated by law.

3. The process of defining the level of professional activities of the judge does not mean involving the trial proceedings because it does not have the purpose of revising and terminating the decision of a court.

Therefore, some provisions and articles of the Law on the Judicial Administration, Law on the Legal Status of Judge regarding to process of defining the level of professional activities of judge are not in breach of the Constitutional principle of independency of judges and the principle of appointing judge termless.

GROUNDS:

1. Providing with Part 1.4 of Article 8 of the Law on Judicial Administration: "develop the indicators and procedure for evaluating the conditions and requirement of judge and to define the level of professional activities of judge and carry out its' implementation as well jointly with the Qualifications Committee", part 6.2 of Article 23 of the Law on Judicial Administration: "procedure of defining the level of professional activities of judge stated in part 3 of Article 8 of the Law on the Legal Status of Judge shall be carried out and evaluated and concluded in accordance with the guidance of General Council", part 7 of the same article: "evaluation and conclusion stated in part 23.6.1 of this law remains valid for two years and the conclusion and evaluation stated in the part 23.6.2 of this law shall be the ground to discuss the removal of the judge through the meeting of General Council", part 3 of Article 8 of Law on Legal Status of Judge: "The indicators and procedure to evaluate the level of professional activities of judge for 3 to 5 years of period shall be developed by The Judicial General Council jointly with Judicial Qualifications Committee and be approved by the Chief Justice of the Supreme Court" and the judge shall be allowed the additional pay consistently to the accuracy of the decision of his/her decision, and the amount of the additional pay shall be dependent from the proficiency level according to the part 3 of Article 23 of the Law on Legal Status of Judge has violated the principle of independency of judge; created the regulation for the Judicial General Council which is not relevant to its' function provided by the Constitution of Mongolia and respectively breached the Constitution regarding the dismissal and removal of the judge, and deflected regulation from the main goal of evaluating the professional activities of judge.

2. Part 1 of Article 8, part 2 of Article 8, and Article 18 of the Law on Legal Status of Judge are not found breached the part 2 of Article 1, part 1 and 4 of Article 49, part 4 of the Article 51 of the Constitution of Mongolia.

Guided by the part 1 of Article 64, section 1 of part 2 of Article 66 of the Constitution of Mongolia and Article 31 and 32 of the Law on Constitutional Court Procedure:

ON BEHALF OF THE CONSTITUTION OF MONGOLIA IT IS CONCLUDED:

1. Section stating "…indicators for evaluating the level of professional activities of judge…" of part 1.4 of Article 8: "develop the indicators and procedure for evaluating the conditions and requirement of judge and to define the level of professional activities of judge and carry out its' implementation as well jointly with the Qualifications Committee", providing with part 6.2 of Article 23: "procedure of defining the level of professional activities of judge stated in part 3 of Article 8 of the Law on the Legal Status of Judge shall be carried out and evaluated and concluded in accordance with the guidance of the General Council", part 7 of Article 23:"evaluation and conclusion stated in part 23.6.1 of this law remains valid for two years and the conclusion and evaluation stated in the part 23.6.2 of this law shall be the ground to discuss the removal of the judge through the meeting of the General Council" of the Law on Judicial Administration; and part 3 of Article 8: "The indicators and procedure to evaluate the level of professional activities of judge for 3 to 5 years of period shall be developed by The Judicial General Council jointly with Judicial Qualifications Committee and be approved by the Chief Justice of the Supreme Court", section stating "… accuracy of decision….which depends on the result of evaluation of proficiency level stated in Article 8.3 of this law…" of part 3 of Article 23: "Judge shall be issued the additional pay consistently to his/her accuracy of decision, performance and workload which depends on the result of evaluation of proficiency level stated in Article 8.3 of this law, and the amount of additional pay shall be up to the 50 percent of basic salary" of the Law on Legal Status of Judge breached the following provisions of the Constitution of Mongolia: Part 1 of Article 49 "Judges shall be independent and

subject only to law", part 4 of Article 49 "The Judicial General Council, without interfering in the activities of courts and judges, shall deal exclusively with the selection of judges from among legal professionals, protection of their rights and other matters pertaining to the ensuring of conditions for guaranteeing the independence of the judiciary", part 4 of Article 51 "Removal of a judge of a court of any instance shall be prohibited except in cases 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".

2. Part 6.2 and 7 of Article 23 of the Law on Judicial Administration; part 3 of Article 8, part 3 of Article 23 of the Law on Legal Status of Judge have not breached the part 2 of Article 1 of the Constitution of Mongolia.

3. Part 1 and 2 of Article 8, Article 18 of Law on Legal Status of Judge have not breached the part 2 of Article 1, part 1 and 4 of Article 49, part 4 of Article 51 of the Constitution of Mongolia.

4. According to the part 4 of Article 32 of the Law on Constitutional Court Procedure, the effectiveness of the following articles, parts and sections shall be suspended from 29 April 2015:

- Section stating "…indicators for evaluating the level of professional activities of judge…"Part 1.4 of Article 8 "develop the indicators and procedure for evaluating the conditions and requirement of judge and to define the level of professional activities of judge and carry out its' implementation as well jointly with the Qualifications Committee" of Law on Judicial Administration;

- Part 6.2 of Article 23: "procedure of defining the level of professional activities of judge stated in part 3 of Article 8 of Law on the Legal Status of Judge shall be carried out and evaluated and concluded in accordance with the guidance of the General Council" of the Law on Judicial Administration;

- Part 7 of Article 23: "evaluation and conclusion stated in part 23.6.1 of this law remains valid for two years and the

conclusion and evaluation stated in the part 23.6.2 of this law shall be the ground to discuss the removal of the judge through the meeting of the General Council" of the Law on Judicial Administration;

- Part 3 of Article 8: "The indicators and procedure to evaluate the level of professional activities of judge for 3 to 5 years of period shall be developed by The Judicial General Council jointly with the Judicial Qualifications Committee and be approved by the Chief Justice of the Supreme Court" of the Law on Legal Status of Judge;

- Section stating "…accuracy of decision….which depends on the result of evaluation of proficiency level stated in Article 8.3 of this law…" of part 3 of Article 23: "Judge shall be issued the additional pay consistently to his/her accuracy of decision, performance and workload which depends on the result of evaluation of proficiency level stated in Article 8.3 of this law, and the amount of additional pay shall be up to the 50 percent of basic salary" of the Law on Legal Status of Judge.

5. In compliance with the article 36, part 2 of the Law on Constitutional Court Procedure, notify the Parliament (State Great Khural) to discuss this resolution and respond within 15 days after its receipt.

PRESIDING MEMBER	J.AMARSANAA
MEMBERS	D.SUGAR
	D.NARANCHIMEG
	D.SOLONGO
	D.GANZORIG

The conclusion number 05 of the Constitutional Court dated 29 April 2015 was accepted by the Parliament on 7 May 2015, and the Parliament passed a resolution number 48.

CONCLUSION OF THE CONSTITUTIONAL COURT OF MONGOLIA

2015.09.30 No.12 Ulaanbaatar

Adjudication of the dispute on whether article 26, part 26.6 of the Law on Election to the Parliament (State Great Khural) is inconsistent with the relevant provision of the Constitution

Constitutional Court Session Hall, 13:30

Content of the dispute:

The Constitutional Court discussed whether article 26, part 26.6, of the Law on the Election to the Parliament (State Great Khural) was inconsistent with the relevant provisions of the Constitution of Mongolia, in particular article 1, part 2; article 14, part 2; and article 16, part 9.

Citizen Ulziisaikhan Ch. infers the following in the petition submitted to the Constitutional Court:

Provision "In cases of public officials, the governing body of the state-owned, local state-owned and partially state-owned legal entities, except political officials, standing as candidates to the Parliament, they shall be released from the public service body and position or work from the first day of January in the election year" of the article 26, part 26.6 of the Law on Elections to the Parliament is inconsistent with the provision of the article14, part 2 of the Constitution of Mongolia which states "No person shall be discriminated against on the basis of ethnic origin, language, race, age, sex, social origin and status, property, occupation and position, religion, opinion and education. Every one shall be a person before the law".

According to the above provision of the Law on Elections, people were distinguished by their "position and work" or only by

the "status" of the organization where the state was responsible for the salary, even though they were employed in the same positions, which resulted in the fact that they enjoyed different rights, and were discriminated against. I believe that the above situation is an example of unequal treatment towards employees of the state-owned entities in comparison to those employed in the same positions at private entities.

This law provision did not comply with the purpose of the law to regulate criteria related to state political officials, public administrative officials and state special officials, and it was adopted in breach of the provision of the Civil Code, article 4, part 3, stipulating "Norms regulating exclusively special relations shall not be applied similarly to other relations". If the work or activities of people employed by the public organizations are so negative that may have a considerable impact on the election campaign, the employees in similar positions should meet these requirements.

According to the Law on Public Service, a citizen of Mongolia has to terminate the employment agreement in order to enjoy his/her constitutional right to be elected and if he/she does not succeed in election, there is the risk of losing their employment as well as their salary.

Compulsory withdrawal of officials of the state service organizations from their work from the first day of January of the election year means an unavoidable intervention and creates obstacles to citizens intending to participate in the election. This situation infringes the equal right of citizens to vote and be elected, as guaranteed in article 19, part 9 of the Constitution of Mongolia.

Also, the provision of the Law on Election to the Parliament adopted by the Parliament is inconsistent with the provision of the article 1, part 1 of the Constitution stipulating "The fundamental principles of the activities of the State shall be securing … justice… national unity and rule of law".

Thus, I am requesting to implement the constitutional

provision "The State is responsible to provide the citizens with economic, social, legal and other guarantees sufficient to enjoy the human rights and freedoms, and prevent the breach of human right and freedoms, restore the infringed rights", restore the right of the115, 019 citizens who have been distinguished from those working in similar positions, and render a decision adhering to the Constitution.

Bakei A., PM, the accredited representative of the Parliament of Mongolia (State Great Khural) infers in his explanation submitted to the Constitutional Court:

Provision of the article 26, part 26.6 of the Law on Election to the Parliament provides that if the state official intents to participate in the political election; he/she is required to withdraw from his/her work or position in order to provide for the possibility to compete fairly, in equal conditions. Also, this provision is based on lawful purpose of implementing the principle of separation of the public service from politics. The requirement specified in the article 26, part 26.6 of the Law on Election to the Parliament is not a limitation of the right to be elected with respect to its content. If the public servant proposes him/herself as a candidate in the political election, this is an additional condition or requirement of the candidates imposed in respect to the implementation of the fundamental principle of the Constitution and lawful purpose of the Law on Election to the Parliament of Mongolia (State Great Khural).

There are requirements and conditions to the candidates for the valid and fair upholding of the election campaign. Regardless of the sector, which the candidate enrolled to, whether public or private, he/she is obliged to meet those requirements. However, state officials are additionally required to withdraw from the public service. The following factors have been taken into account when lawmakers set the above requirements in case of participation of the state officials in the election: prevent from abuse of honor of the public service, use of budget money and gaining an advantage over other candidates advertising and propagating

the service and achievements reached in the position of public servant in favor of himself/herself; protect other candidates from any illegal actions, create similar legal starting conditions, and guarantee the voters' participation in the election and factual expression of their aspirations. However, the application of this provision to candidates from the private sector is irrelevant, and the interference to the labor activity of the private sector entity is inconsistent with the concept of the Constitution.

The above law provision does not create any direct or indirect restriction of the citizens' right to be elected to the Parliament, in particular, state officials. The choice of individuals to change his/her position from the public service to the political sphere is an intentional act taken in compliance with right to free choice of job and profession guaranteed by the Constitution. Any attempt to influence this right, or restrict this right in any forms in laws, shall be considered as denying the fundamental principle and values of the Constitution.

Based on the above mentioned, I am hereby denoting that the provision of the Law on Election to the Parliament (State Great Khural), article 26 part 26.6, has not been inconsistent with the provisions of the Constitution of Mongolia, article 1 part 2, article 14 part 2, and article 16 part 9.

GROUNDS:

1. Ensuring public servants or specialized officials are separate from the political activity, taking into consideration the specifics of their work, profession and enforcing functions, and imposing particular requirements designated to maintain neutrality and regulating them in law is the subject matter of the lawmaker's competence. The Law on Public service, article 23 part 23.2 provides for such a regulation.

2. Referring to the records (notes) of the Standing Committee and General session of the Assembly on which the Law on Election to the Parliament (State Great Khural) was discussed

and adopted, and explanation of the assigned representative of the Parliament, the lawmaker set forth the provision of the article 26 part 26.6 of Law on Election to the Parliament (State Sikh Khural) for the purpose of preventing the authorized public servant from abusing his/her powers and taking advantage in the election campaign.

However, in the law provision, involving the public servants to the context of "other state officials" does not comply with the original purpose of the lawmaker, and candidates to the Members of the Parliament have had to meet a wide scope of requirements.

The provision of the article 26 part 26.6 of Law on Election to the Parliament (State Sikh Khural) stipulating "In case if the public servants, governing body of the state-owned, local state-owned and partially state-owned legal entities, except political officials, stand as candidates to the Parliament, they shall be released from the public service body and position or work from the first day of January of the election year" has imposed similar requirements and criteria to the public servants and state officials, furthermore, set unfair conditions and restrictions in comparison with the employees of the private sector working in similar positions. So therefore it is deemed inconsistent with the provision stipulating "No person shall be discriminated against on the basis of … occupation and position …" of the article 14, part 2 of the Constitution of Mongolia.

3. It is not found that the article 26 part 26.6 of the Law on Election to the Parliament (State Sikh Khural) is inconsistent with the provisions of the Constitution of Mongolia, in particular, article 1, part 2 "The fundamental principles of the activities of the State shall be securing … justice, … national unity and rule of law"; article 16, part 9 "… enjoy the right to elect and to be elected to State bodies".

Guided by the provisions of the article 64, article 66, part 2.1 of the Constitution of Mongolia and articles 31 and 32, article 36 of the Law on Constitutional Court Procedure:

ON BEHALF OF THE CONSTITUTION OF MONGOLIA IT IS CONCLUDED

1. The part "… other state officials…" of the provision 26, part 26.6 of the Law on Election to the Parliament (State Sikh Khural) "In case if the public officials, governing body of the state-owned, local state-owned and partially state-owned legal entities, except political officials, stand as candidates to the Parliament, they shall be released from the public service body and position or work from the first day of January of the election year" is inconsistent with the provision "No person shall be discriminated against on the basis of … occupation and position …" of the article 14, part 2 of the Constitution of Mongolia.

2. The provision 26, part 26.6 of the Law on Election to the Parliament (State Sikh Khural) "In case if the public officials, governing body of the state-owned, local state-owned and partially state-owned legal entities, except political officials, stand as candidates to the Parliament, they shall be released from the public service body and position or work from the first day of January of the election year" is not inconsistent with the provisions of the Constitution of Mongolia, in particular, article 1, part 2 "The fundamental principles of the activities of the State shall be securing … justice, … national unity and rule of law"; article 16, part 9 "… enjoy the right to elect and to be elected to State bodies".

3. The provision 26, part 26.6 of the Law on Election to the Parliament (State Sikh Khural) "In case if the public officials, governing body of the state-owned, local state-owned and partially state-owned legal entities, except political officials, stand as candidates to the Parliament, they shall be released from the public service body and position or work from the first day January of the election year" shall be dismissed from September 30 of 2015 pursuant to the article 32, part 4 of the Law on Constitutional Court Procedure.

4. The Parliament (State Ikh Khural) is noticed that this conclusion shall be discussed at the session of the next assembly

within 15 days and the response is to be delivered pursuant to the provision of the article 36, part 2 of the Law on Constitutional Procedure.

PRESIDING MEMBER	P.OCHIRBAT
MEMBERS	T.LKHAGVAA
	D.SUGAR
	D.SOLONGO
	D.GANZORIG

The conclusion number 12 of the Constitutional Court dated 30 September 2015 was accepted by the Parliament on 18 October 2015, and the Parliament passed a resolution number 84.

CONCLUSION OF THE CONSTITUTIONAL COURT OF MONGOLIA

2016.05.25 No. 07 Ulaanbaatar

Adjudication of the dispute on whether some provisions of the Law on Amendments to the Civil Code are inconsistent with the relevant provisions of the Constitution of Mongolia

Constitutional Court Session Hall, 14:50

Content of the dispute:

Whether articles 1 and 2 of the Law on Amendments to the Civil Code adopted by the Parliament on 3 December 2015 have breached the following provisions of the Constitution of Mongolia, in particular:

- Article 5, sec. 1 stipulating "Mongolia's economy is based on different forms of property following both universal trends of world economic development and national specifics";

- Sec. 2 of this article "The State recognizes all forms of both public and private property and protects the right to ownership by the law";

- Article 16, part 3 stipulating "… have the rights to fair acquisition, possession, and inheritance of movable and immovable property… ";

- Part 4 of this article "… have the right to engage in private enterprise. …";

- Article 19, sec. 1 "The State is accountable to the citizens for the creation of economic, social, legal, and other guarantees ensuring human rights and freedoms, the prevention of violations of human rights and freedoms, and restoration of infringed rights."

Citizens Tsogzolmaa Kh., Ochirbal R. and Mongol Ts. submitted to the Constitutional Court the petition with the following content:

The amendment wording "a loan contract shall be free of repayment" made to article 281, part 281.3 of the Civil Code pursuant to the Law on Amendments to the Civil Code adopted on 3 December 2015 allowed the banks and non-banking legal entities, authorized to issue loans granted privilege, was in contravention of the equal right, independence and property immunity, freedom of contract of the participant of civil law relations, and breached the following provisions of the Constitution of Mongolia:

- Article 5, sec.1 stipulating "Mongolia's economy is based on different forms of property following both universal trends of world economic development and national specifics";
- Sec.2 of this article "The State recognizes all forms of both public and private property and protects the right to ownership by the law";
- Article 16, part 3 stipulating "… have the rights to fair acquisition, possession, ownership and inheritance of movable and immovable property… ";
- Part 4 of this article "… have the right to engage in private enterprise. …";
- Article 19, sec. 1 "The State is accountable to the citizens for the creation of economic, social, legal, and other guarantees, ensuring human rights and freedoms, the prevention of violations of human rights and freedoms, and restoration of infringed rights."

Thus, we are requesting the Constitutional Court to render a conclusion.

Response of Batzandan J., the accredited representative of the Parliament (State Sikh Khural), MP, delivered to the Constitutional Court:

1. There is a common practice for individual persons, especially individuals without due license and registration, to run businesses loaning money with interest, which leads to adverse impacts on society and creates unequal and distinctive regulations rather than providing the citizens with loan services sufficient to their demands. Although, article 282, part 2 of the

Civil Code, provides "If interest rate was set in the amount obviously damaging to the rights and legitimate interests of the borrower, then the Court may reduce the interest rate at the request of the borrower", this cannot be sufficient regulation to protect the interests of the parties to the contract. Due to the lack of legal knowledge and financial problems of the citizens the loan contracts between citizens tend to be beneficial to the lenders, and some non-governmental organizations and researchers warn that the citizens enrolled in the retail business in the trade centers have been victims of loan-shark activity. Provision of article 19, sec. 1 of the Constitution has not been breached.

2. The feature of any transaction or contract to be efficient, or the basis of the existence of any contract is the condition to be mutually beneficial in terms of economy, as it is mentioned in the petition, is not an absolute idea. According to the Law on Income Tax, income from the interest includes loan interest, ending balance, interest of savings, fee for the guarantee; bond, interest derived in compliance with the law and contract, forfeit (fine), which are subject to tax imposition, however, the loan service between citizens has become a reason for the increase in the shadow economy and uncontrolled money flow.

Depending on particular social demands, the state is responsible for constant regulation of certain relations. The above mentioned precedent or legal tradition reveals that the question on whether the loan contract to be concluded between the bank or legal entity authorized to undertake loan business and other persons has repay terms or has interest terms is the subject matter of not the Constitutional Court, but a decision of the lawyers' policy.

GROUNDS:

1. The part of article 1 of the Law on Amendments to the Civil Code adopted on 3 December 2015 wording "281.3. A loan contract shall be free of repayment" restricted the right of the citizen to obtain a fair income through transference of money

or other items of his/her ownership to others with terms of repayment, and discretionally dispose items of his/her ownership, which has reasonably been considered inconsistent with the relevant provisions of article 5, sec. 2 and article 16, part 3 of the Constitution.

2. The Constitution provides the obligation of the State for the creation of economic, legal and other guarantees for ensuring human rights and freedoms, and because of the dismissal of the relevant provisions of the Civil Code, designated to ensure the above mentioned constitutional guarantees, the provision of article 2 of the Law on Amendments to the Civil Code, adopted on 3 December 2015, stipulating "Dismiss the art.282 and sec. 283.2, 283.3, 283.4 of article 283 of the Civil Code" has been considered inconsistent with relevant provisions of article 5, sec. 2, article 16, part 3 and article 19, sec. 1.

3. The provisions of the Law on Amendments to the Civil Code, adopted on 3 December 2015, in particular, article 1 stipulating "281.3. The Loan contract shall be free of repayment" and article 2 stipulating "Dismiss art.282 and sec.283.2, 283.3, 283.4 of article 283 of the Civil Code" are not inconsistent with relevant provisions of art.5, sec.1 and article 16, part 4 of the Constitution.

Article 1 of this Law on Amendments, stipulating "Provision 281.3. A loan contract shall be free of repayment" has reasonably considered not inconsistent with article 19, sec. 1 of the Constitution.

4. As the petitioner Ochirbal R. declined his request to set forth whether the following provisions of the Law on Amendments to the Civil Code adopted by the Parliament on 3 December 2015, in particular article 1 stipulating "281.2. A loan contract shall be concluded upon transference of money or property to the debtor", and article 3 stipulating "This Law shall be adhered from the date of enforcement of the Criminal Code", are constitutional or not, the Constitutional Court considered it not necessary to render the conclusion.

Guided by article 64, sec. 1, article 66, part 2.1 of the Constitution of Mongolia, articles 31 and 32 of the Law on Constitutional Court Procedure:

ON BEHALF OF THE CONSTITUTION OF MONGOLIA IT IS CONCLUDED:

1. The article 1 of the Law on Amendments to the Civil Code adopted on 3 December 2015 with the wording "281.3. A Loan contract shall be free of repayment" is inconsistent with the provisions of the Constitution, in particular article 5, sec. 2 "… the right of the owner shall be protected by the law…", article 16, part 3 "… have the rights to fairly obtain, possess, own and inherit the movable and immovable property…".

2. Article 2 of the Law on Amendments to the Civil Code, adopted on 3 December 2015, stipulating "Dismiss the art.282 and sec.283.2, 283.3, 283.4 of article 283 of the Civil Code" is inconsistent with article 5, sec. 2 "… the right of the owner shall be protected by the law", article 16, part 3 " have the right to fairly obtain, possess, own and inherit the movable and immovable property…" and article 19, sec. 1 "The State is accountable to the citizens for the creation of economic, social, legal, and other guarantees, ensuring human rights and freedoms, … " of the Constitution.

3. The provisions of the Law on Amendments to the Civil Code adopted on 3 December 2015, in particular, article 1 wording "281.3. The Loan contract shall be free of repayment" and article 2 stipulating "Dismiss the art.282 and sec.283.2, 283.3, 283.4 of article 283 of the Civil Code" are not inconsistent with article 5, sec.1 "Mongolia's economy is based on different forms of property following both universal trends of world economic development and national specifics" and article 16, part 4 "… have the right to engage in private enterprise. …" of the Constitution.

4. The article 1 of the Law on Amendments to the Civil Code adopted on 3 December 2015 wording "281.3. Loan contract

shall be free of repayment" is not inconsistent with article 19, sec. 1 of the Constitution, "The State is accountable to the citizens for the creation of economic, social, legal, and other guarantees, ensuring human rights and freedoms, …".

5. Suspend the enforcement of the provisions of the Law on Amendments to the Civil Code adopted 3 December 2015, in particular, article 1 stipulating "281.3. A loan contract shall be free of repayment" and article 2 "Dismiss the art.282 and sec.283.2, 283.3, 283.4 of article 283 of the Civil Code" from 25 May 2016.

6. Inform the Parliament that according to the article 36, sec. 2 of the Law on Constitutional Court Procedure, , this conclusion shall be discussed and responded within 15 days from the date of its receipt.

PRESIDING MEMBER	D.GANZORIG
MEMBERS	SH.TSOGTOO
	D.SUGAR
	D.NARANCHIMEG
	D.SOLONGO

The conclusion number 07 of the Constitutional Court dated 25 May 2016 was accepted by the Parliament on 30 August 2016, and the Parliament passed a resolution number 32.

CHARTER TWO

RESOLUTIONS OF THE CONSTITUTIONAL COURT OF MONGOLIA

RESOLUTION OF THE CONSTITUTIONAL COURT OF MONGOLIA

1995.09.07. No. 2 Ulaanbaatar

Final adjudication of the dispute on the inconsistency of certain provisions 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 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 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 situation as listed 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 issues 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 Article 66.2.3 and 66.2.4 of the Constitution is true and right and;

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 the discussion of 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 "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 breaching 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 his/her inability to exercise his/her mandate for reason 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 conclusions 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 of 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 t purpose, 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 remain effect... Only inclusion of such voting into the decision of the State Great Khural will allow repairing 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 violates 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. 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 an incorrect 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 provides 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 members' votes secret in decisions taken by the State Great Khural.

In this way, the most important mechanism to monitor how loyal the members are to their oath taken before them is

not working for the electorate. 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 electorate 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 permitted to make copies". 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 following:

"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 have 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 participation 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 the Constitutional Court to consider and make a decision on the Resolution No.88 of the State Great Khural.

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

1. 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." violates 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."

2. 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." violates 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."

3. Paragraph 2 of article 35 states that "…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 paragraphs 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 are 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."

4. 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 its conclusion upon introducing the Constitutional court conclusion. The members of the State Great Khural may ask questions and get answers and express their 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 a 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." violates 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."

5. Provision 2 of the resolution No 88 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.".

6. 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.

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 should 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 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.

GROUNDS:

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 Constitution of Mongolia.

One. According to the Articles 35.2 and 45² 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 Articles 66.2.3 and 66.2.4 of the Constitution and decide whether the conclusion has a legal ground. 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 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 precedent for denying the authority of the Constitutional Court to oversee the implementation of the Constitution.

Two. The Article 45.2 of the Law on State Great Khural states 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 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

ON BEHALF OF THE CONSTITUTION OF MONGOLIA IT IS RESOLVED;

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 are revised and edited 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.

PRESIDING MEMBER	G.SOVD
MEMBERS	G.NYAMDOO
	L.BAASAN
	TS.TSOLMON
	N.JANTSAN
	S.JANTSAN
	J.BYAMBAA
	D.CHILKHAAJAV
	CH.ENKHBAATAR

RESOLUTION OF THE CONSTITUTIONAL COURT OF MONGOLIA

2000.11.29 No 02 Ulaanbaatar

Final adjudication 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 of December, 1999 stated:

I considered that amendments made on 24th December 1998 to the Constitution by the State Great Khural have 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 constitutes 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 understood 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 of article 3 of the Constitution),

c) amendment related to the dissolution of the State Great Khural if the State Great Khural fails to appoint a Prime Minister within 45 days from the submission of the proposal of his/her appointment to the Great Khural makes the legislative body of the state unstable, and creates possibility for the opposition party and political forces fighting for the power to delete the result of the election.

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

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

The Constitutional court also discussed petitions of citizen D. Chuluunjav, N.Haidav, N.Baasanjav, N.Otgon, and 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 3, 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.

GROUNDS:

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.Jambaldoij 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 articles 66 of the Constitution, the articles 31, 32 of the Law on Constitutional Court Procedure

ON BEHALF OF THE CONSTITUTION OF MONGOLIA IT IS RESOLVED;

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

with the Constitution." and shall be deemed as invalid.

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

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

PRESIDING MEMBER	N.JANTSAN
MEMBERS	J.BOLDBAATAR
	D.CHILKHAAJAV
	J.BYAMBAJAV
	J.AMARSANAA
	V.UDVAL
	N.CHINBAT

RESOLUTION OF THE CONSTITUTIONAL COURT OF MONGOLIA

2005.11.14 No.01 Ulaanbaatar

Final adjudication on constitutionality of the relevant provision of the Law on Political parties

Constitutional court session hall, 15.00

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.

GROUNDS:

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 citizen's 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,

ON BEHALF OF THE CONSTITUTION OF MONGOLIA IT IS RESOLVED

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.

PRESIDING MEMBER	J.BYAMBADORJ
MEMBERS	L.RENCHIN
	P.OCHIRBAT
	J.BOLDBAATAR
	CH.DASHNYAM
	D.NARANCHIMEG
	TS.SARANTUYA

RESOLUTION OF THE CONSTITUTIONAL COURT OF MONGOLIA

2006.01.11 No. 01 Ulaanbaatar

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

Constitutional Court Session Hall, 13:00

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 great-bench session of the Constitutional Court.

In petition to the Constitutional Court made by Yanjinkhorloo.D, citizen of Chingeltei district, 18th khoroo, Ulaanbaatar: Article 27.2 stating "the court shall reject complaints made on the basis other than that prescribed in article 27.1 of this Law" and 27.1 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 interest 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.

GROUNDS:

1. Article 27.2 of the Law on the Non ¬judicial foreclosure of Mortgages, which states that the court shall reject complaints made on any basis other than that prescribed in article 27.1 of this Law 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. 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

ON BEHALF OF THE CONSTITUTION OF MONGOLIA IT IS RESOLVED:

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

2. #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.

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

PRESIDING MEMBER	J.BYAMBADORJ
MEMBERS	N.JANTSAN
	L.RENCHIN
	P.OCHIRBAT
	J.BOLDBAATAR
	J.AMARSANAA
	CH.DASHNYAM
	D.NARANCHIMEG

RESOLUTION OF THE CONSTITUTIONAL COURT OF MONGOLIA

2007.06.22 No 02 Ulaanbaatar

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

Constitutional Court Session Hall, 13:00

Citizen N.Khaidav, in his petition stated:

It was found from Part 2 of Article 1 of the Constitution of Mongolia that the principle of separation of powers by which legislative, executive and judicial branches of the Government 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, last year it increased up to 100 million, and now has reached 250 million. Moreover, it is setting a precedent, and violating the principle of separation of powers stated in the Constitution.

The State Great Khural by its resolution of 30 November, 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 Part 2 of Article1, Part 2 of Article 3, sub-Part 2 of Part 2 of Article 38, Parts 1 and 2 of Article 62, and Part 1 of Article 70 of the Constitution of Mongolia.

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

The Constitutional court discussed this dispute in its medium bench session on 23 February, 2007 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 1 October, 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 manager's 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 Part 2 of Article1, Part 1 of Article 23, Part 2 of Article 38, Part 1 of Article 58, Parts 1, 2 of Article 62, and Part 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, programs, 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.

GROUNDS

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 29 May, 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 million 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 Part 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 subpart 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, Parts 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 1 October, 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 Part 2 of Article 38, and Part 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 Part 2 of Article 1, Part1 of Article 23, subpart 2 of Part 2 of Article 38, and Part 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 Part 3 of Article 66 of the Constitution, and Part 2 of Article 31 of the Law on the Procedure of Constitutional Court:

ON BEHALF OF THE CONSTITUTION OF MONGOLIA IT IS RESOLVED:

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 Parts 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 Part 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." ; Part 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."; subpart 2 of Part 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"; Part 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."; Part 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."; Part 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."; Part 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 24 April, 2007 on the rejection of the Constitutional Court's conclusion No 2, 2007 shall be deemed invalid.

3. This resolution shall be effective upon its issuance.

PRESIDING MEMBER	J.BYAMBADOR
MEMBERS	N.JANTSAN
	P.OCHIRBAT
	J.BOLDBAATAR
	J.AMARSANAA
	CH.DASHNYAM
	D.NARANCHIMEG
	TS.SARANTUYA
	D.MUNKHGEREL

RESOLUTION OF THE CONSTITUTIONAL COURT OF MONGOLIA

2008.11.19 No. 03 Ulaanbaatar

Final adjudication on the constitutionality of Part 38.2 of Article 38 of the Criminal Procedure law

Constitutional Court Session 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 Part 38.2 of Article 38 of the Criminal Procedure Law, stating that "In cases when a professional attorney cannot 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 at 17 khoroo, Bayangol district, in his petition submitted to the Constitutional Court stated:

It is stated in Part 1 of Article 55 of the Constitution that "The accused shall have the right to defend him." And it is stated in Part 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 Part 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 Part 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.

Part 38.2 of Article 38 of the Criminal Procedure Law of 10 January, 2002, by stating that "In cases when a professional attorney cannot 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 Part 38.2 of Article 38 of the Criminal procedure law has violated Part 14 of Article 16 guaranteeing the right "to defend himself/herself... and to receive legal assistance", Part 1 of Article 55 of the Constitution, specifying that "The accused shall have the right to defend himself." and Part 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 its 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: "Part 38.2 of Article 38 of the Criminal procedure law stating that "In cases when a professional attorney cannot participate in criminal proceedings, the suspect, defendant and accused may choose an eligible person to act as defense attorney." has violated Part 14 of Article 16, guaranteeing the right "to defend himself/herself…and to receive legal assistance" and

Part 2 of Article 55, stating that "The accused shall be accorded legal assistance according to the law at his/her request."

GROUNDS:

1. Part 38.2 of Article 38 of the Criminal Procedure Law, in stating that "In cases when a professional attorney cannot 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 Part 38.2 of Article 38 of the Criminal Procedure Law is inconsistent with Part 14 Article 16 and Part 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 Part 3,4 of Article 66 of the Constitution of Mongolia and Part 2,4 of Article 8 of the Law on Constitutional Court, Part 2 of Article 31, Part 2 of Article 32 of the Law on Procedure of Constitutional Court

ON BEHALF OF THE CONSTITUTION OF MONGOLIA IT IS RESOLVED

1. Consider invalid Part 38.2 of Article 38 of the Criminal procedure law, which states that "In cases when a professional attorney cannot 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 Part 14 of Article 16 of the Constitution stating that a citizen "has a right to defend himself/herself… and to receive legal assistance" and Part 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."

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

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

PRESIDING MEMBER	N.JANTSAN
MEMBERS	P.OCHIRBAT
	J.AMARSANAA
	J.BOLDBAATAR
	D.NARANCHIMEG
	TS.SARANTUYA
	D.MUNKHGEREL
	B.PUREVNYAM

RESOLUTION OF THE CONSTITUTIONAL COURT OF MONGOLIA

2009.06.10 No. 03 Ulaanbaatar

Final adjudication of the dispute on whether the article 24 sec.7 of the Law on the State Great Khural stating "… the conclusion made unanimously…" is inconsistent with the relevant provisions of the Constitution of Mongolia, was finalized

Constitutional Court Session Hall, 12.40 p.m.

The adjudication of the dispute on whether the article 24 sec.7 of the Law on the State Great Khural, stating "… the conclusion made unanimously…" is inconsistent with the relevant provisions of the Constitution was finalized by the Great 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 before the end of its term of office, 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 the article 24 sec.7 of the Law on the State Great Khural adopted on 26th January of 2006 and its part, wording "… e the conclusion made unanimously …" breached the following articles and clauses of the Constitution, in particular :

1. The Art.1 sec.2 of the Constitution, stipulating "The

fundamental principles of the activities of the State shall be… justice, … and rule of the law;

2. The part, stipulating "… issues shall be decided by a majority …" where stated in the Art 27 sec.6 of the Constitution, "Sessions of the State Great Khural and sittings of its Standing Committees shall be considered valid with the presence of a majority of its members, and issues shall be decided by a majority vote of the members present in such sittings. … ";

3. The Art. 29 sec.3 of the Constitution, stipulating "The issue concerning a member of the State Great Khural, who is involved in a crime, shall be considered by the Session of the State Great Khural as to whether or not suspend his/her powers. …".

Pursuant to art.24, sec.7 of the Law on 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 conclusion unanimously on the proposals made by the competent authorities and officials regarding suspension of the mandate of members of the State Great Khural, there is no opportunity to be discussed the issue in the Session of the Standing Committee and the State Great Khural. 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. If so the members of the Sub-committee on the Immunity could not make the conclusion, the art.29 sec.3 of the Constitution, stipulating "The issue concerning a member of the State Great Khural, who is involved in a crime, shall be considered by the Session of the State Great Khural as to whether or not suspend his/her powers. …" could not take effect. The legal ground could not be established for the issue concerning a member of the State Great Khural, who is involved in a crime, considered by the Session of the State Great Khural as to whether or not suspend his/her powers. And it makes deadlock situation. Furthermore, it makes to clearly violate the art.1 sec.2, stipulating

"The fundamental principles of the activities of the State shall be…justice, … and rule of the law", there will not be any condition to be made decision by State Great Khural, regarding whether or not do suspension of the mandate of members of the State Great Khural.

Additionally, article 24 sec.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 consistent with the art. 27 sec.6 of the Constitution, stipulating "Sessions of the State Great Khural and sittings of its Standing Committees shall be considered valid with the presence of a majority of its members, and issues shall be decided by a majority vote of the members present in such sittings. …".

Even though article 24.7 of the Law on the State Great Khural, stating "the conclusion made unanimously," restricts the opportunity to make a decision by a majority, and violates article 27.6 of the Constitution. ".

Among sub-committees, especially 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, "The fundamental principles of the activities of the State shall be … rule of the law".

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 rule of the law by the State Great Khural, which is the highest power of State power.

GROUNDS:

1. Conclusion #10 dated 17th December of 2008 of the Constitutional Court , which states that "article 24 sec.7 of the Law on the State Great Khural stating " the conclusion made unanimously" violates article 1 sec.2 of the Constitution, "The

fundamental principles of the activities of the State shall be democracy, justice … and rule of law " and article 14.1 of the Constitution, "All people lawfully residing within Mongolia are equal before the law and court.", art 27 sec.6 of the Constitution, "Sessions of the State Great Khural and sittings of its Standing Committees shall be considered valid with the presence of a majority of its members, and issues shall be decided by a majority vote of the members present in such sittings. …" and art. 29 sec.3 of the Constitution "The issue concerning a member of the State Great Khural, who is involved in a crime, shall be considered by the Session of the State Great Khural as to whether or not suspend his/her powers. …" shall be considered valid.

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

ON BEHALF OF THE CONSTITUTION OF MONGOLIA IT IS RESOLVED

1. The statement "the conclusion made unanimously" from article 24 sec.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 before the end of its term of office, 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 sec.2 of the Constitution, "Democracy, justice … and rule of law is the fundamental principle of the activities of the State," and article 14 sec.1 of the Constitution, "All people lawfully residing within Mongolia are equal before the law and court.", Constitution Art 27.6 "Sessions of the State Great Khural and sittings of its Standing Committees

shall be considered valid with the presence of a majority of its members, and issues shall be decided by a majority vote of the members present in such sittings. …" and Constitution Art. 29.3 "The issue concerning a member of the State Great Khural, who is involved in a crime, shall be considered by the Session of the State Great Khural as to whether or not suspend his/her powers. …" and therefore consider "the conclusion made unanimously" stated in article 24 sec.7 of Law on State Great Khural is dismissed/ void.

2. This resolution of the Constitutional Court of Mongolia shall be enforceable upon its issuance.

PRESIDING MEMBER	J.BYAMBADORJ
MEMBERS	N.JANTSAN
	P.OCHIRBAT
	J.BOLDBAATAR
	J.AMARSANAA
	D.NARANCHIMEG
	TS.SARANTUYA
	D.MUNKHGEREL
	B.PUREVNYAM

RESOLUTION OF THE CONSTITUTIONAL COURT OF MONGOLIA

2010.01.22 No.01 Ulaanbaatar

Final adjudication of the dispute on whether the article 26, sec.3, clause 6 of the Law on the Election of the State Great Khural is inconsistent with the relevant provisions of the Constitution of Mongolia was finalized

Constitutional Court Session Hall, 12.30 p.m.

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

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

Pursuant to clause 26.3.6 of the Law on the Election of the State Great Khural adopted on 29th December of 2005 by the State Great Khural, stipulating "... in cases of the statement of previous election expenses not being submitted to the General committee on Election according to clause 42.2 of this law", the General Committee on Election refuses to register political parties and coalitions is inconsistent with clause 16.9 stating "... Has a right to elect and to be elected to the state authority", clause 16.10 stating "…Discrimination and persecution of a person for joining a political party … for being its member shall be prohibited. …" clause 19.1 stating "…The state shall be accountable for creation of … legal and other guarantees for ensuring human rights and freedoms" which are provided by the Constitution.

Pursuant to the clause 42.8 of the Law on the Election of the State Great Khural, parties and coalitions are punished with a fine of 800.000¬ -1.200.000 tugrugs for failure or late submission of statements of election expenses. However, withdrawing the right

to participate in election 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 the democratic values of other members, upcoming members and supporters for just one failure made by one of the irresponsible officials of a party.

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

GROUNDS:

1. While according to clause 3.2 of the Law on Central election authority, the General committee on Election is the state authority which has a power to organize elections of the State Great Khural, pursuant to clause 26.3.6 of the Law on the State Great Khural, allowing the power to terminate the right to elect and to be elected on the basis of failure or late submission of statements of election expenses to the General committee on Election, is inconsistent with the Constitution.

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 statement of previous election expenses not being submitted according to clause 42.2 of this law to the General Committee on Election" violates clause 16.9 stating "... Has a right to elect and to be elected to the state authority", clause 16.10 stating "… Discrimination and persecution of a person for joining a political party … for being its member shall be prohibited. …" of the Constitution, and shall be deemed legal.

In adhering with article 64, part 3 of article 66 of the Constitution of Mongolia and clause 30.1.1, article 31, 32 of the Law on Constitutional Court Procedure:

ON BEHALF OF THE CONSTITUTION OF MONGOLIA IT IS RESOLVED:

1. It is considered that clause 26.3.6 of the Law on the Election of the State Great Khural adopted on 29th December of 2005 stating that "… in cases of the statement of previous election expenses not being submitted according to clause 42.2 of this law to the General Committee of Election" violates clause 16.9 stating "... Has a right to elect and to be elected to the state authority", clause 16.10 stating "… Discrimination and persecution of a person for joining political party… for being its member shall be prohibited. …" of the Constitution, and shall be dismissed.

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

3. This resolution shall be enforceable upon its issuance.

PRESIDING MEMBER J.BYAMBADORJ

MEMBERS N.JANTSAN
P.OCHIRBAT
J.BOLDBAATAR
J.AMARSANAA
TS.SARANTUYA
D.MUNKHGEREL
B.PUREVNYAM

RESOLUTION OF THE CONSTITUTIONAL COURT OF MONGOLIA

2011.01.05 No. 01 Ulaanbaatar

Final adjudication of the dispute on whether the section 50.7 of article 50 of the law on the election of the State Great Khural of Mongolia has breached the relevant provisions of the Constitution

Constitutional Court Session Hall, 12.30

The Session of the Constitutional Court of Mongolia has taken place in the Constitutional Court Hall with Jantsan N., Deputy Chairman of the Constitutional Court presiding, members Ochirbat P., Amarsanaa J., Naranchimeg D., Sarantuya Ts., Munkhgerel D. and Purevnyam B. (reporting member) 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 on whether the section 50.7 of Article 50 of the Law on Election of the State Great Khural that stated "... finally ..." has breached provisions of paragraph 14, Article 16 of the Constitution that guarantees citizen's "Right to appeal to the court ... if he/she considers that the rights of freedoms as spelt out by the Mongolian law or the international treaties have been violated; to a fair trial...", and paragraph 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 Khural 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 petition to the Constitutional Court:

In section 50.7 of Article 50 of the Law on Election of the State Great Khural, 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 Khural 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 Article 19 of the Law on Election of the State Great Khural, the decision of the circuit committee shall be reviewed by the General Election Committee unless otherwise provided by law and section 50.7 of Article 50 of the Law on Election of the State Great Khural 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 Article 50 of the Law on Election of the State Great Khural 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, and then the Constitutional Court does not have the power to resolve the issue. ...

... The fact that section 50.7 of Article 50 of the Law on Election of the State Great Khural 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 Article 50 of the Law on Election of the State Great Khural sets as final instance the resolution of the disputes regarding results of voting or re¬counting of ballots does not comply with provision of paragraph 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 the international treaties have been violated ...", provisions of section 1, Article 47: "The judicial power shall be vested exclusively by the courts" and provisions 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 Khural Zagdjav D., who was appointed as an authorized representative of the State Great Khural 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 the section 50.7 of Article 50 of the Law on Election of the State Great Khural 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 Article 50 of the Law on Election of the State Great Khural of Mongolia)

Amendment was made to the Law on Election of the State Great Khural 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 Khural - 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 Khural, 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 are 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 Khural 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 Khural of Mongolia that states "... finally ..." does not breach the paragraph 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 Khural of Mongolia that states "... finally ..." did breach respectively the paragraph 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 the paragraph 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 Khural 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 Khural of Mongolia that states "... finally ..." did breach respectively the paragraph 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 the paragraph 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".

GROUNDS:

1. Provision in section 50.7 of Article 50 of the Law on Election of the State Great Khural 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 Khural of Mongolia that states "... finally ..." did breach respectively the paragraph 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 the paragraph 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, paragraph 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

ON BEHALF OF THE CONSTITUTION OF MONGOLIA IT IS RESOLVED:

1. In section 50.7, Article 50 of the Law on Election of the State Great Khural of Mongolia adopted by the State Great Khural 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 No.70 of the State Great Khural dated December 02, 2010 "Regarding resolution of the conclusion No.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 its issuance.

PRESIDING MEMBER	N.JANTSAN
MEMBERS	P.OCHIRBAT
	J.AMARSANAA
	D.NARANCHIMEG
	TS.SARANTUYA
	D.MUNKHGEREL
	B.PUREVNYAM

RESOLUTION OF THE CONSTITUTIONAL COURT OF MONGOLIA

2012.02.08 No. 01 Ulaanbaatar

Final adjudication of the dispute on whether some provisions of the law on the implementation of the Social Insurance Law and some other Tax laws violate the relevant provisions of the Constitution

Constitutional Court Session hall, 12:00

Content of the Dispute:

Whether the specification of the words such as "… social insurance premium" in paragraph 1.1, Article 1, "paragraph 20.1.1 of the Social insurance law" in paragraph 3.1.5 and "… social insurance premium" in paragraph 3.2, Article 3, "… social insurance premium …" in paragraph 4.2 and "social insurance premium "in paragraph 4.3.11, Article 4 of the Law on the implementation of the 2007 Social insurance law, and some other tax laws to release from the social insurance premium mentioned in Social insurance law, as well as late fees incurred due to the failure to make the social insurance premium payment on time, respectively violates paragraph 5, "right to material and financial assistance in old age, disability, childbirth and child care and in other circumstances as provided by law;" and paragraph 6, "right to the protection of health and to medical care. … " in Article 16 of the Constitution of Mongolia.

Ariunbold N., a citizen of Mongolia, in his information to the Constitutional Court, provides that:

"…a1. The main ground for the enjoyment of the right, of any Mongolian citizen, enshrined in the Constitution of Mongolia, which is a "right to material and financial assistance in old age, disability, childbirth and child care and in other

circumstances as provided by law" arises upon the citizen's or employee's registration of certain funds of the social insurance or accumulation of monetary asset. Such monetary assets accumulated in the social insurance fund are formulated as "social insurance premium". This way, the insured citizen, for the purpose of exercising his right under the Constitution, pays the social insurance premium of 10% and the employer 10% of the wage, in the event he is employed. Then, according to the Law on the implementation of the 2007 Social insurance law and some other Tax law, releasing the employer from his obligation to transfer to the social insurance fund on behalf of the citizen or employee by the state (State Great Khural), violates the "right to material and financial assistance in old age, disability, childbirth and child care and in other circumstances as provided by law" under the Constitution, of all the citizens or employees with pension accounts under their name, and all the citizens or employees who created an accumulation in other cases. Because of the release of employers from the obligation to pay social insurance premiums on behalf of the citizens, or employees through adoption of the law by the state (State Great Khural), there arises a blank space which is equal to the amount of released assets in the pension account of the citizen or employee, as well as the social insurance fund, and the state is not held liable to compensate such assets.

2. According to Social insurance law, social insurance has the following insurance types: "pension", "benefit", "health", "industrial accident and professional illness" and "unemployment". Of them, "industrial accident and professional illness insurance" is to be fully covered by the employer. However, because of the above mentioned release of social insurance premiums, including industrial accident and professional illness insurance, the interests of all the insured people who create such a fund are violated. Because the "industrial accident and professional illness insurance" is not paid, the citizen or employee who is to pay is not entitled to claim any monetary asset or insurance compensation from the fund when the situation arises. According to the Law on

the Pension insurance premium account, citizens or employees who were born after 1960 possess pension accounts in their names in the pension insurance fund, and the monetary assets paid by them and their employers is accumulated as pension insurance in such an account. Thus, it can be considered that the right of the citizens to get material and monetary assistance in old age is violated, as the monetary asset which is to be accumulated in the account of the citizens is decreased by the amount released under the law due to the inclusion of such a provision to release the employer from the social insurance or pension insurance premium. However, for citizens and employees who were born before 1960, there is a likelihood of a decrease in the period for which the pension insurance is paid, due to the release of the employer from the social insurance premium, and moreover, eligibility to get the pension fixed on the basis of five consecutive years with the highest premium payment might be negated.

3. As provided in paragraphs 18.1.2 and 18.4 of the Social insurance law, the obligation to pay the social insurance premium is terminated "automatically" in the event the employer is liquidated or goes bankrupt. According to such a principle, there is no such understanding as "bad debt" in social insurance law. However, incapacity of the employer-social insurance premium payer to make the payment shall not serve as grounds to release him from the obligation to pay social insurance premiums, and from the time when such a person becomes financially capable, he shall be held liable for the payment of "debt" in front of the payment receiver or social insurance fund and insured. Thus, it is requested to establish if the respective paragraphs - "… social insurance premium" in paragraph 1.1, Article 1, "paragraph 20.1.1 of the Social insurance law" in paragraph 3.1.5 and "… social insurance premium" in paragraph 3.2, article 3, "… social insurance premium …" in paragraph 4.2 and "social insurance premium." in paragraph 4.3.11, Article 4 and "… of social insurance premium …, the premium is to be imposed …" in paragraph 6.2, Article 6 of the Law on the implementation of the

2007 Social insurance law and some other tax laws has breached the paragraph 5, "right to …. old age, disability, childbirth and child care …" and paragraph 6, "right to the protection of health and to medical care. …" Article 16 of the Constitution."

This dispute has been discussed in the Middle bench session of the Constitutional court, dated 7 December 2011 and a 4th conclusion has been issued. In the grounds section of the Conclusion:

"1. The Social insurance premium is an advance payment made by the insured and the employer into the insurance fund, within the period specified by law for the purpose of getting insured with social insurance, and the payment of such a premium shall be the ground to exercise the right provided by law to receive pension, benefit and payment as insured. However, the above mentioned regulation by the law on the implementation of the Social Insurance Law and some other Tax laws adopted by the State Great Khural on 28 December 2007, has released the employer from his legal obligation to pay the social insurance premium and left the protection of the insured's rights and interests without any regulation. It is found that there are grounds that it contradicts paragraph 5, "right to material and financial assistance in old age, disability, childbirth and child care and in other circumstances as provided by law;" and paragraph 6, "right to the protection of health and to medical care. … " in Article 16, the Constitution of Mongolia and caused the right of the insured to receive pension, benefit and payment provided under the law violated such as ineligibility to receive pension, benefit and payment to be provided, or lower fixing of pension and benefit than is to be fixed … ".

In the resolution section, it is provided that:

"1.The specification of the words such as "… social insurance premium" in paragraph 1.1, article 1, "paragraph 20.1.1 of the Social insurance law" in paragraph 3.1.5 and "… social insurance premium" in paragraph 3.2, Article 3, "… social insurance premium …" in paragraph 4.2 and "social insurance premium."

in paragraph 4.3.11, Article 4 of the Law on the implementation of the Social insurance law and some other tax laws respectively has violated the paragraph 5, "right to material and financial assistance in old age, disability, childbirth and child care and in other circumstances as provided by law;" and paragraph 6, "right to the protection of health and to medical care. … " in Article 16, the Constitution of Mongolia.

2. The specification of the words such as "… the paragraphs 1 and 2, Article 20, Social insurance law" in paragraph 4.1.5, Article 4, "… of social insurance premium …" and "… premium is to be imposed … " in paragraph 6.2, Article 6 of the Law on the implementation of the Social insurance law and some other tax laws respectively has not violated paragraph 5, "right to material and financial assistance in old age, disability, childbirth and child care and in other circumstances as provided by law;" and paragraph 6, "right to the protection of health and to medical care. … " in Article 16, the Constitution of Mongolia.

Having discussed Conclusion No.4 of the Constitutional Court, dated 2011 through its General session of 05 January 2012, the State Great Khural has issued resolution No.1 that does not accept the Conclusion.

GROUNDS:

Payment of social insurance premiums and coverage into social insurance under the laws and legislations is one of the guarantees of the civil right to material and financial assistance, the right to protection of health and medical care specified in paragraph 5 and 6, Article 16 of the Constitution of Mongolia. According to the Law on the implementation of the Social insurance law and some other tax laws adopted on 28 December 2007, when releasing the employer from his legal obligation to pay social insurance as specified in paragraph 3.1, Article 3 and paragraph 4.1, Article 4 of the same law, the leaving the protective regulation of the insured's right and interest, as well as limitation of the insured's right to get covered under social insurance contain

the sign of breach of the Constitution. There are legal grounds to consider the Conclusion No.4 dated 2011 of the Constitutional court that provides that the specification of the words such as "… social insurance premium…" in paragraph 1.1, Article 1, "paragraph 20.1.1 of the Social insurance law" in paragraph 3.1.5 and "… social insurance premium…" in paragraph 3.2, Article 3, "… social insurance premium …" in paragraph 4.2 and "social insurance premium." in paragraph 4.3.11, Article 4 of the 2007 Law on the implementation of the Social insurance law and some other tax laws respectively violates paragraph 5, "right to material and financial assistance in old age, disability, childbirth and child care and in other circumstances as provided by law;" and paragraph 6, "right to the protection of health and to medical care. … " in Article 16, the Constitution of Mongolia.

Guided by the Paragraphs 3 and 4, Article 66 of the Constitution of Mongolia; paragraph 2.1, Article 8 of the Law on the Constitutional Court; paragraph 2, Article 31, paragraph 2, Article 32 and paragraphs 3 and 4, Article 36 of the Law on the Constitutional Court Procedure,

ON BEHALF OF THE CONSTITUTION OF MONGOLIA IT IS RESOLVED:

1. to repeal the relevant parts of the paragraphs and Articles of the Law on the implementation of the Social insurance law and some other tax laws, adopted on 28 December 2007, as the specification of the words such as "… social insurance premium" in paragraph 1.1, article 1, "paragraph 20.1.1 of the Social insurance law" in paragraph 3.1.5 and "… social insurance premium" in paragraph 3.2, Article 3, "… social insurance premium …" in paragraph 4.2 and "social insurance premium." in paragraph 4.3.11, Article 4 of the Law on the implementation of the 2007 Social insurance law and some other tax laws to release the employer from his legal obligation to pay social insurance premium mentioned in Social insurance law as well as leaving unregulated the protection of insured's rights and interests respectively violates the paragraph

5, "right to material and financial assistance in old age, disability, childbirth and child care and in other circumstances as provided by law;" and paragraph 6, "right to the protection of health and to medical care. … " in Article 16, the Constitution of Mongolia.

2. to repeal the Resolution No.03, dated 05 January 2012 of the State Great Khural of Mongolia "on the Conclusion No.04 dated 2011 of the Constitutional Court".

3. to mention that this resolution is effective upon its issuance.

PRESIDING MEMBER	N.JANTSAN
MEMBERS	P.OCHIRBAT
	J.BOLDBAATAR
	J.AMARSANAA
	D.NARANCHIMEG
	TS.SARANTUYA
.	D.MUNKHGEREL
	B.PUREVNYAM

RESOLUTION OF THE CONSTITUTIONAL COURT OF MONGOLIA

2012.02.15 No.02 Ulaanbaatar

Final adjudication of the dispute regarding the constitutionality of provision 6.9.1 of Article 6 of the Law on Parliament of Mongolia (State Great Khural)

Constitutional Court Session Hall, 14:00

Content of the dispute:

Dispute on whether provision 6.9.1, Article 6 of the Law on Parliament (State Great Khural) of Mongolia: "…the arrest of a member of Parliament while he/she is committing a crime or at the crime scene with due evidence, and consequent submission of the proposal of the Prosecutor General on suspension of mandate of the member of Parliament from Parliament…" breaches the following provisions of the Constitution:

- Article 29, part 3 of the Constitution: "A question concerning the 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 ...";
- Article 14, part 1 of the Constitution: "All persons are equal before the law and the Court";
- Article 14, part 2 of the Constitution: "No person shall be discriminated on basis of their occupation and position …"r.

Content of the information of Citizen Enkhjin Ts. submitted to the Constitutional Court:

The Article 29, part 3 of the Constitution of Mongolia provides: "A question concerning the 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. If a court rules that the member in question is

guilty of a crime, the State Great Khural shall terminate his/her mandate in the Parliament". However, provision 6.9.1, Article 6 of the Law on the Parliament (State Great Khural) of Mongolia stipulates: "the arrest of a member of Parliament while he/she is committing a crime, or at the scene of a crime with due evidence, and the subsequent submission of the proposal of the Prosecutor General will result in the suspension of mandate of the member of Parliament".

This provision means that the mandate of the member of Parliament can be suspended, and due law process is held to determine whether he/she has committed a crime only in the case that he/she is arrested while committing a crime, or at the scene of a crime with due evidence. The question of imposition of criminal responsibility arises after initiation of a criminal case with respect to the alleged person, based on the evidence and determining whether he/she has committed a crime as a result of the investigation carried out. However, this process cannot be carried out if the mandate of the Member of Parliament is not suspended. Because article 34, part 7 of the Law on Parliament of Mongolia provides: "Except in cases provided in provision 6.9.1 of this Law, it is prohibited to use measures of restraint such as putting into custody, confinement, imposition of administrative penalties pursuant to court procedures, or examination and searches of his/her home, office room and transport means." Also, Article 14, part 1 of the Constitution provides: "All persons are equal before the law and the Court", part 2 of the same Article provides: "No person shall be discriminated against on the basis of occupation and position. Every one shall be equal before the law". However, according to the above provision of the Law on Parliament of Mongolia (State Great Khural), if a citizen commits a crime, a criminal case is initiated and guilt is determined based on evidence regardless of the fact, that he/she was arrested at the crime scene or while committing a crime with due evidence. On the contrary, in the case of commission of a crime by a member of Parliament, the above law provision serves as a barrier eliminating the grounds to determine whether the member of the Parliament is guilty or not, and to suspend his/her mandate for the further imposition of the responsibility. The Law of 30 December 2010

invalidated provision 6.9.2, Article 6, of the Law on Parliament (State Great Khural). That part of the provision stipulated: "a criminal case was initiated with respect to the member of the Parliament, and the State Prosecutor General submitted a proposal on suspension of his/her mandate to the Parliament". But, after the invalidation of that provision, the only provision (6.9.1) left has made the grounds to suspend the mandate of the member of Parliament inadequate, and has a meaning that is in breach of the Constitution of Mongolia.

Content of the explanation by the authorized representatives of the Parliament of Mongolia, members Batbold Su. and Gonchigdorj R., delivered to the Constitutional Court:

According to the Constitution of Mongolia, determination of immunity of a Member of Parliament remains the subject matter of the power of the legislative body. Thus, the determination of immunity of a member of Parliament under the current Law of Mongolia on Parliament (State Great Khural) is not the determination that breaches the Constitution, and is the provision that was first included in the draft of the Constitution. The Parliament of Mongolia is the legislature and the highest state body, and as its members are acting as representatives of the people and their function concerns the interests of all citizens and the country, the promulgation of their power of immunity in the Constitution is deemed not to be in conflict with the principle of equality provided in Article 14, part 1 of the Constitution. The existence of the provision regarding the guarantee of immunity of the relevant officials in the Constitution and other laws is the fact that determines the immunity of not the individuals, but the positions they are functioning in. The citizen's information has implied that the invalidation of provision 6.9.2 of the Law on Parliament of Mongolia on suspension of the mandate of the member of Parliament was inadequate.Although it might be inadequate in this particular case, this does not breach the Constitution (is not unconstitutional).

This dispute was considered by the Middle bench session of the Constitutional Court of Mongolia on 21 October 2011 and rendered a decision under hearing number 03. The reasons of the

conclusion include the following:

1. Article 29, part 3 of the Constitution of Mongolia provides: "A question concerning the 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." But provision 6.9.1 of Article 6 of the Law on Parliament (State Great Khural), that stipulates "the arrest of a member of Parliament while he/she is committing a crime or at the scene of a crime with due evidence, and consequent submission of the proposal of the Prosecutor General on suspension of mandate of the member of Parliament", has made the content of the constitutional provision insufficient and been contrary to the common principle of equality before the court and law; and

GROUNDS:

1. Stipulation of the provision 6.9.1, Article 6 of the Law of Mongolia on Parliament (State Great Khural) "the arrest of a member of Parliament while he/she is committing a crime or at the scene of a crime with due evidence, and consequent submission of the proposal of the Prosecutor General on suspension of mandate of the member of Parliament" is in breach of the following provisions:

- Article 29, part 3 of the Constitution: " A question concerning the 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 ...";
- Article 14, part 1 of the Constitution: "All persons are equal before the law and the Court";
- Article 14, part 2 of the Constitution: "No person shall be discriminated against on the basis of occupation and position …"

2. Provision 6.9.1, Article 6 of the Law of Mongolia on Parliament (State Great Khural) is not in breach of the provision of Article 29, part 3 of the Constitution of Mongolia: "...If a court rules that the member in question is guilty of a crime, the State Great Khural shall terminate his/her membership of the Legislature".

The Parliament discussed the above conclusion of the Constitutional Court during its General session on 12 January 2012, and adopted resolution number 05, according to which it deemed that the part breaching the Constitution was unacceptable.

GROUNDS:

1. Article 29, part 3 of the Constitution provides: "A question concerning the 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". But provision 6.9.1, Article 6 of the Law of Mongolia on Parliament (State Great Khural) stipulating "the arrest of a member of Parliament while he/she is committing a crime or at the scene of a crime with due evidence, and consequent submission of the proposal of the Prosecutor General on suspension of mandate of the member of Parliament" has made the content of the constitutional provision insufficient and has been contrary to the common principle of equality of individuals before the court and law.

Also, the discussion of suspension of the mandate of the Member of Parliament involved in a crime, and the posing restrictions of the possibility to determine the commission of a crime by the respective member has led to a breach of the fundamental principle of criminal law on the essence of criminal responsibility.

2. Decision number 03 of the Constitutional Court, dated 21 October 2011 has reasonable grounds.

3. Resolution number 05 of Parliament, dated 12 January 2012 does not provide the grounds for disagreement with the relevant clause of decision number 03 of the Constitutional Court of 2011, which is to be according to Aarticle 36, part 3 of the Law on Constitutional Court Procedure .

Guided by the provisions of Aarticles 64 and 66, part 3 of the Constitution of Mongolia, Article 8, parts 2 and 4 of the Law on the Constitutional Court (State Great Khural) and Article 31, part 2, Article 36, part 3 of the Law on Constitutional Court Procedure:

ON BEHALF OF THE CONSTITUTION OF MONGOLIA IT IS RESOLVED:

1. Invalнdate provision 6.9.1, Article 6 of the Law of Mongolia on Parliament (State Great Khural), that was adopted 26 January 2006, stipulating: "the arrest of a member of Parliament while he/she is committing a crime or at the scene of a crime with due evidence, and consequent submission of the proposal of the Prosecutor General on suspension of mandate of the member of Parliament" as it breaches the provision of Article 29, part 3 of the Constitution: "A question concerning the 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 ..."; Article 14, part 1 of the Constitution: "All persons are equal before the law and the Court"; Article 14, part 2 of the Constitution: "No person shall be discriminated against on the basis of occupation and position …".

2. Invalнdate Resolution number 05 of 12 January 2012 that concerns the discussion of Resolution 03 of the Constitutional Court issued on 21 October 2011.

3. Note that this Resolution is final and becomes enforceable upon its issuance.

PRESIDING MEMBER	N.JANTSAN
MEMBERS	P.OCHIRBAT
	J.BOLDBAATAR
	J.AMARSANAA
	D.NARANCHIMEG
	TS.SARANTUYA
	D.MUNKHGEREL
	B.PUREVNYAM

RESOLUTION OF THE CONSTITUTIONAL COURT OF MONGOLIA

2012.05.02 No.03 Ulaanbaatar

Final adjudication of the constitutional dispute regarding the unconstitutionality of certain provisions of the Mongolian Law on Election of the Parliament of Mongolia /State Great Khural/

Constitutional Court Session Hall, 15:00

Content of the dispute:

The dispute is regarding whether the following law provisions of the Law of Mongolia on the Election of the State Great Khural concerning the case of a candidate who has received 28 or more percent of votes, notwithstanding he/she has not won in his/her respective county, among candidates in 26 counties for 48 mandates to the member of Parliament (State Great Khural) to be elected as a member of Parliament are unconstitutional, and

- Article 4, part 4.9 stipulating: "submitted pursuant to provision 49.1.6 of this Law…"

- Article 49, part 49.1.5 stipulating: "remove the following candidates from List A, specified in provision 48.2 of this Law, issue an additional list (henceforth, List B) allocating an equal total amount of the votes received by the removed candidates to the candidates who remained on this List other than those deemed to have been elected as members of Parliament";

- Provision 49.1.5 stipulating: "a candidate who received less than 28 percent of votes from voters";

- Provision 49.1.5.b stipulating: "an independent candidate who received more than 28 percent of votes from voters, but was not deemed elected pursuant to provision 48.2 of this Law";

- Provision 49.1.5.b stipulating: "a candidate from a

political party or coalition who received more than 28 votes from voters but, pursuant to provision 48.2 of this Law, deemed as not elected as a member to the Parliament and received less than 5 percent of votes throughout the country";

- Provision 49.1.6 stipulating "list the candidates, who are included in List B (provision 49.1.5), that covers every county, and who are not deemed elected as members of Parliament pursuant to the provisions of Articles 48.2 and 48.5 of this Law, by their political parties or coalitions and percentage of votes presented in the List B, and after those candidates…"

Breach the following provisions of the Constitution of Mongolia:

- Article 1, part 2 stipulating: "The fundamental principles of the activities of the State shall be securing democracy, justice, freedom, equality, national unity and rule of law."

- Article 3, part 1 stipulating: "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."

- Article 14, part 1 stipulating: "All persons lawfully residing within Mongolia are equal before the law and the Court."

- Article 16, part 9 stipulating: "... citizens of Mongolia are guaranteed to enjoy the right to elect and to be elected to State bodies."

- Article 21, part 2 stipulating: "The members of Parliament (State Great Khural) shall be elected by citizens eligible to vote, on the basis of universal, free, direct suffrage by secret ballot for a term of four years."

As well as provisions of the Law of Mongolia on Parliament (State Great Khural), in particular Article 4, part 4.9; Article 49, parts 49.1.5, 49.1.5.a, relevant part of the provision 49.1.5.b, 49.1.5c, 49.1.6, breach provisions of the Constitution, in particular Article 2, part 1; Article 3, part 1; Article 14, part 1; Article 16,

part 9 and Article 21, part 2.

Content of an information of some citizens submitted to the Constitutional Court:

The citizens noted down the following:

1. "According to the Law of Mongolia on the Election of the Parliament (State Great Khural), a total of 76 candidates ballot in the election from one political party, and first 48 ballot by majority system for 48 mandates (in 25 counties), the remaining 28 candidates together with the first candidates, or 48 candidates are included in the name list altogether and ballot by proportional system in a single county for 28 mandates. But the above provisions of the Law of Mongolia on the Election of the Parliament (State Great Khural) disregard the principle of equal estimation of votes of citizens and voters. Because, in fact, for the first 48 candidates the votes supporting them are estimated twice (at county and party seats), and there is no estimation of votes for the remaining 28 candidates.

This fact infers that the relevant provisions of the Law of Mongolia on the Election of the Parliament (State Great Khural) not only make an Election of the Parliament the election of 48 candidates with respect to the political party or coalition as participants of the election, but also abandon the constitutional right of the 28 candidates listed at the end of the party list, which completely interferes with contents of the direct election right of the proportional election system.

2. Also, a candidate, who received more than 28 percent of the votes in compliance with the provision of the Law of Mongolia on the Election of the Parliament (State Great Khural) on dispute but wasn't elected (from the first 48 of the list), has a chance to be elected again from the party list. Candidates must have an equal chance to be elected or win in the election. But the above said provision allows the first 48 candidates to contend for a seat in Parliament two times giving them a privilege over the remaining 28 candidates, which violates the principle of equality promulgated in the Constitution. Transferring the estimation of the

votes, or percentage of votes, of a single candidate in the election county counted by one election system to another system, or changing the list of candidates evaluating them as received party votes violates the constitutional principle of direct voting and the principle of justice in state affairs, and furthermore, destroys the structure of the election system. In addition, this is in breach with the constitutional right to direct vote, the right to equal participation in the election and the right to non-discrimination. Thus, we request to invalidate the provisions that breach the Constitution."

Content of the explanation submitted by the authorized representative of Parliament (State Great Khural) to the Constitutional Court:

The provisions of the Law of Mongolia on the Election of the Parliament (State Great Khural) have arisen the dispute resolution process at the Constitutional Court are subject matter exclusively to the estimation of the election results. County Election committees define the names of the candidates to be elected from one or another county, and a General Election Committee sums up the results of the election throughout the country and defines candidates to be elected, in compliance with the votes received by the parties. The regulations concerning this process shall be the provisions that initiate the dispute at the Constitutional Court. These provisions function as regulations that entitle the candidate to vote and be elected preventing the omission of votes given for that candidate and counting the percentage of votes received by him/her in the county. In other words, the candidates are put into an order in one cohesive list in compliance with the votes they received from voters, and then the General Election Committee accepts and hands over the certificates to candidates, the amount of which is equal to the seats the parties have taken by this order. This will be the regulation that reflects the votes of voters in the results of the election more effectively. Putting the candidates in an order reflects the votes of voters in the results of the election and completely satisfies their right to vote and be

elected. Also, the above regulation of the Law of Mongolia on the Election of the Parliament (State Great Khural) has eliminated the difference that might be caused due to the number of county voters, number of candidates and number of mandates during the process of putting the candidates into an order of the cohesive list by each party they represent and according to the votes they have received from voters of the county. On the other hand, a main feature of the mixed election system is an incorporation of the counting methods of results of the majority election and proportional election systems to get a unified result. Separate counting of the election results by majority or proportional system would not represent the mixed system, but the parallel election. Democracy does not mean resolution of all questions by majority, and, in counting the election results, the number of mandates to be allotted to a particular party or coalition is defined by the votes it received prior. And the election of the candidates from the party or coalition according to these results is a fact of guarantee of the principle of justice promulgated in the Constitution without leaving out voters' representation of the county and voters' votes. It is deemed that the provisions of Article 4, part 4.9, Article 49, parts 49.1.5, 49.1.5.a, 49.1.5.b and relevant part of the provision 49.1.6 do not breach the right of citizens of Mongolia to vote and be elected to the state (public) organizations. Because, political parties or coalitions have the right to nominate no more than 76 candidates and not more than 48 of these 76 candidates are nominated to the election in the counties. The Law of Mongolia on the Election of the Parliament (State Great Khural) provides that the allocation of seats of not more than 28 candidates is done in compliance with the percentage of votes that the party or coalition has received regardless to the right of the candidates to vote and be elected to the state (public) organizations, and this is not in breach with the above right. The right of citizens to participate in state affairs is their political right, and they have the direct decision-making right in the state affairs or may enjoy this right through the representatives they have chosen. Thus, the respective provisions of the Law of Mongolia on the Election of

the Parliament (State Great Khural) covered by this dispute at the constitutional Court do not violate the citizens' right to vote and be elected. The candidates' right to vote and be elected are not restricted, and the fact of being elected depends on evaluation of candidates by the voters of the particular county and evaluation of the election program of parties or coalitions by the people. Thus, there are no grounds to deem that the question matter is in breach with the citizens' right to vote and be elected to the state (public) organizations. Therefore, based on the above grounds, it is considered that provisions of Article 4, part 4.9, Article 49, parts 49.1.5, 49.1.5.a, 49.1.5.b and the relevant part of the provision 49.1.6 of the Law of Mongolia on the Election of the Parliament (State Great Khural) do not breach the respective provisions of Article 1, part 2, Article 3, part 1, Article 14, part 1, Article 16, part 9 and Article 21, part 2 of the Constitution of Mongolia.

This dispute was considered by the Constitutional Court on the session of Middle bench on 28 March 2012 and rendered a conclusion under number 02. The grounds of the conclusion include the following:

GROUNDS:

1. Regulations contained in the provisions of Article 4, part 4.9, Article 49, parts 49.1.5, 49.1.5.a, 49.1.5.b and relevant part of provision 49.1.6 of the Law of Mongolia on the Election of the Parliament (State Great Khural) provide certain candidates among those balloting for the 48 mandates in 26 counties with the chance to be elected as members of Parliament, notwithstanding the fact that they were not elected in their respective counties, but received more than 28 percent of votes, and give them privileges. This is inconsistent with the content of the principle of equality before the court and the law stipulated in the Constitution.

2. Although the citizens have already voted, the above regulation infringes their right to directly vote. This is because the movement of the candidates, who were not elected in their respective counties, but received more than 28 percent of votes,

to the list of political parties or coalitions makes it impossible to implement the proportional form of election that is intended to allocate seats or mandates of the members of Parliament among political parties or coalitions according to the percentage of votes they received.

3. Votes for not more than the first 48 candidates included in the list were counted twice, in particular by a majority system of election and in the form of proportionality, so that votes of voters given to the candidates by their parties were in shortage, and it became impossible to count accurately the votes for 28 candidates included in the coalition list of political parties and parties' election, which caused restriction of their right to be elected. Respective regulations contained in the provisions of the article 4, part 4.9, article 49, parts 49.1.5, 49.1.5.a, 49.1.5.b and relevant part of the provision 49.1.6 of the Law of Mongolia on the Election of the Parliament (State Great Khural) contain the characteristics of the above breach, so that they are in conflict with the fundamental constitutional principles of democracy, justice, equality and the principle that state power belongs to the people.

The Parliament discussed conclusion number 02 of the Constitutional Court on its General session of 19 April 2012, and adopted resolution number 26, pursuant to which it rejected the former resolution.

GROUNDS:

1. Regulations contained in the provisions of Article 4, part 4.9, Article 49, parts 49.1.5, 49.1.5.a, 49.1.5.b and the relevant part of provision 49.1.6 of the Law of Mongolia on the Election of the Parliament (State Great Khural) provide certain candidates among those balloting for the 48 mandates in 26 counties with the chance to be elected as members of Parliament, notwithstanding the fact that they were not elected in their respective counties but received more than 28 percent of votes, and give them privileges. This is inconsistent with the content of the principle of equality

before the court and the law stipulated in the Constitution.

2. Votes for not more than the first 48 candidates included in the list were counted twice, in particular by the majority system of election and in the form of proportionality, so that votes of voters given to the candidates by their parties were in shortage, and it became impossible to count accurately the votes for 28 candidates included in the coalition list of political parties and parties' election, which caused restriction of their right to be elected. Respective regulations contained in the provisions of Article 4, part 4.9, Article 49, parts 49.1.5, 49.1.5.a, 49.1.5.b and the relevant part of the provision 49.1.6 of the Law of Mongolia on the Election of the Parliament (State Great Khural) contain the characteristics of the above breach, so that they are in conflict with the fundamental constitutional principles of democracy, justice, equality and the principle that state power belongs to the people.

3. Conclusion of the Constitutional Court number 02 of 2012 on the fact that provisions of Article 4, part 4.9, Article 49, parts 49.1.5, 49.1.5.a, 49.1.5.b and the relevant part of provision 49.1.6 of the Law of Mongolia on the Election of the Parliament (State Great Khural) breached the respective provisions of Article 1, part 2, Article 3, part 1, Article 14, part 1, Article 16, part 9 and Article 21, part 2 of the Constitution of Mongolia shall be deemed well founded.

Guided by the provisions of Article 64, Article 66, part 3 of the Constitution of Mongolia, Article 8, parts 2 and 4 of the Law on Constitutional Court and Article 31, part 2, Article 36, part 3 of the Law on Constitutional Court Procedure:

ON BEHALF OF THE CONSTITUTION OF MONGOLIA IT IS RESOLVED:

1. The Law of Mongolia on the Election of the Parliament (State Great Khural), in particular, provisions of Article 4, part 4.9 stipulating: "submitted pursuant to provision 49.1.6 of this

Law…"; Article 49, part 49.1.5 stipulating: "remove the following candidates from List A, specified in provision 48.2 of this Law, generate an additional list (henceforth, List B) allocating equally the total amount of votes received by the removed candidates to the candidates who remained in this List, other than those deemed to have been elected as members of Parliament"; provision 49.1.5 stipulating: "a candidate who received less than 28 percent of votes from voters"; provision 49.1.5.b stipulating: "an independent candidate who received more than 28 percent of votes from voters but was not deemed elected pursuant to provision 48.2 of this Law"; provision 49.1.5.b stipulating: "a candidate from a political party or coalition who received more than 28 percent of votes from voters but, pursuant to provision 48.2 of this Law, deemed not to have been elected as a member of Parliament and received less than 5 percent of votes throughout the country"; provision 49.1.6 stipulating "list the candidates, who are included in List B (provision 49.1.5), that covers every county, and who are not deemed elected as members to the Parliament pursuant to the provisions of articles 48.2 and 48.5 of this Law, by their political parties or coalitions and percentage of votes presented in the List B, and after those candidates…" have violated the Constitution of Mongolia, in particular provisions of Article 1, part 2 stipulating: "The fundamental principles of the activities of the State shall be securing democracy, justice, freedom, equality, national unity and rule of law."; Article 3, part 1 stipulating: "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."; Article 14, part 1 stipulating: "All persons lawfully residing within Mongolia are equal before the law and the Court."; Article 16, part 9 stipulating: "... citizens of Mongolia are guaranteed to enjoy the right to elect and to be elected to State bodies."; Article 21, part 2 stipulating: "The members of Parliament (State Great Khural) shall be elected by citizens eligible to vote, on the basis of universal, free, direct suffrage by secret ballot ...", the above provisions of the Law of

Mongolia on the Election of the Parliament (State Great Khural) Law shall be invalidated.

2. The provision of Article 49, part 49.1.5b of the Law of Mongolia on the Election of the Parliament (State Great Khural) Law stipulating: "Comment: the vote percentage of the candidate in the List B, who was balloted again in compliance with the provision 48.5 of this Law but was not considered elected, shall be the percentage of the first vote" is considered invalid.

3. Resolution number 26 of Parliament, on 19 April 2012, on conclusion number 02 of the Constitutional Court of 2012, is considered invalid.

4. This Resolution of the Constitutional Court rendered on the plenary session of the Grand bench shall be final and is effective upon its issuance.

PRESIDING MEMBER	N.JANTSAN
MEMBERS	P.OCHIRBAT
	J.BOLDBAATAR
	J.AMARSANAA
	D.NARANCHIMEG
	TS.SARANTUYA
	D.MUNKHGEREL
	B.PUREVNYAM

RESOLUTION OF THE CONSTITUTIONAL COURT OF MONGOLIA

2013.11.27 No. 01 Ulaanbaatar

Final adjudication of constitutional dispute on constitutionality of certain provisions of the Criminal Procedure Code of Mongolia

Constitutional Court Session Hall, 14:00

Content of the dispute:

Dispute on inconsistency of Article 334, part 334.4 of the Criminal Procedure Code of Mongolia stipulating: "An order on early relief from conviction or release from conviction shall not be subject to an appeal, and only a prosecutor may bring a protest on it", in particular the part "shall not be subject to an appeal" with Article 16, part 14 of the Constitution of Mongolia which says "The citizens of Mongolia are guaranteed to enjoy the right to appeal to the court".

Content of information of citizen Munkhbat Ts. submitted to the Constitutional Court:

Article 334, part 334.4 of the Criminal Procedure Code of Mongolia provides that an order on early relief from conviction or replacement of the non-served part of a conviction with a milder conviction shall not be subject to an appeal. I think this is in breach of the provision of Article 16, part 14 of the Constitution of Mongolia stating that "The citizens of Mongolia are guaranteed to enjoy the right to appeal to the court". In particular, this provision has deprived the convicted person, who has met requirements of early relief from conviction, from the possibilities of enjoying the rights guaranteed by the Constitution and of appealing to the appellate court to restore his infringed rights if he/she considers that the judge's decision to "not release" has been unreasonable, procedure at court process has been breached or the Criminal

Code has been applied improperly or the convicted has not agreed with the decision of the court in other ways.

Content of the explanation submitted by a member of Parliament, Tuvdendorj Sh., an authorized representative of Parliament (State Great Khural) to the Constitutional Court (Tsets):

Citizens of Mongolia have the right to appeal the decision of the courts of first and appeal instances which resolved cases and disputes involving him/her. There is a principle in the criminal law that the person who committed a crime and who was found guilty by courts of instances has a penalty compulsorily imposed. The purpose of the Criminal Procedure Code is to find the guilt of the person in committing a crime, impose a reasonable and proportional penalty, not to deem an innocent person guilty of a crime or not to impose upon him/her a penalty. The accused person, whose guilt was found by the court, inevitably serves a sentence, and only in cases which meets certain legal requirements (Criminal Code, Articles 74 and 76) a judge of the court, where the court decision implementing body is located, issues an order of complete or partial relief from serving the sentence, or non-imposition of the penalty based on the confirmation of the court decision implementing body, in accordance with Article 334 of the Criminal Procedure Code. This order cannot be appealed, but the prosecutor may bring a protest on it. In other words, in cases where the period of punishment was expired, the convicted person demonstrated exemplary behavior, compensated for the damage aroused from the crime, eliminated harm, and served a certain portion of his/her sentence, the judge decides at his/her discretion whether to release him/her from serving the sentence, based on proposal by the authorized organization or authorized official. This does not necessarily mean an early relief or release from conviction. In contrary, as this has a certain risk of possibly leaving with impunity, this question is to be resolved solely by the state authorized body or official (without the participation of other persons). The ground for appellation in the criminal

procedure law is appealing complaint (appealing protest). Thus, the provision of Article 334, part 334.4 of the Criminal Procedure Code stipulating: "An order on early relief from conviction or release from conviction shall not be subject to an appeal" has not breached related provisions of the Constitution of Mongolia.

This dispute was considered by the Constitutional Court on the session of Middle bench on 9 October 2013 and rendered a conclusion under number 03 on breach of relative constitutional provisions. The grounds of the conclusion include the following:

GROUNDS

"1. An order of the judge specified in Article 334 of the Criminal Procedure Code is a court decision regarding whether to allow the convicted early relief, or release from conviction or improve the citizen's legal status. Any citizen whose rights, interests and legal status are infringed due to the court decision should have a chance to appeal, or to be reviewed, if he/she wishes to. This is the main requirement of the fair court procedure and a guarantee of the human fundamental right to file a complaint to the court and appeal.

2. According to Article 334, part 334.4 of the Criminal Procedure Code it is provided that the convicted has no right to appeal the judge's order on refusal to early relief or release from conviction. This provision restricts the right to appeal guaranteed by the Constitution. Thus, it is considered that Article 334, part 334.4 of the Criminal Procedure Code of Mongolia stipulating: "An order on early relief from conviction or release from conviction shall not be subject to an appeal, and only a prosecutor may bring a protest on it", in particular the part "shall not be subject to an appeal" is inconsistent with Article 16, part 14 of the Constitution of Mongolia: "The citizens of Mongolia are guaranteed to enjoy the right to appeal to the court".

The Parliament discussed the conclusion of the Constitutional Court on its plenary session of 18 October 2013, and adopted

resolution number 54, pursuant to which it rejected the above conclusion.

GROUNDS:

1. Article 334, part 334.4 of the Criminal Procedure Code of Mongolia stipulating: "An order on early relief from conviction or release from conviction shall not be subject to an appeal" restricts the possibility of the convicted, his representative or advocate to appeal the judge's order on refusal to early relief or release from the conviction, which narrows the content of the Constitutional provision and is contrary to the basic principle of right to appeal. Thus, it is reasonable to consider that Article 334, part 334.4 of the Criminal Procedure Code of Mongolia stipulating: "An order on early relief from conviction or release from conviction shall not be subject to an appeal, and only a prosecutor may bring a protest on it" is in breach of Article 16, part 14 of the Constitution of Mongolia "The citizens of Mongolia are guaranteed to enjoy the right to appeal to the court".

2. The conclusion number 03 of the Constitutional Court of Mongolia of 9 October 2013 is well-grounded.

3. Resolution number 54 of Parliament (State Great Khural), dated 18 October 2013, on non-acceptance of the related provision of the conclusion, number 03 of the Constitutional Court of Mongolia dated 2013, was lack of the grounds as provided by Article 36, part 3 of the Law on Constitutional Procedure.

Guided by the provisions of Article 64, Article 66, parts 3 and 4 of the Constitution of Mongolia, Article 8, parts 2 and 4 of the Law on Constitutional Court and Article 31, part 2, Article 32, part 2, Article 36, parts 3 and 4 of the Law on Constitutional Court Procedure:

ON BEHALF OF THE CONSTITUTION OF MONGOLIA IT IS RESOLVED:

The provision of Article 334, part 334.4 of the Criminal Procedure Code of Mongolia stipulating: "An order on early relief from conviction or release from conviction shall not be subject to an appeal, and only a prosecutor may bring a protest on it" is considered invalid, as it is in breach of Article 16, part 14 of the Constitution of Mongolia: "The citizens of Mongolia are guaranteed to enjoy the right to appeal to the court"

1. Resolution number 54 of October 18, 2013 of the Parliament of Mongolia (State Great Khural) on conclusion number 3 of 2013 of the Constitutional Court shall be invalidated.

2. This decision shall be final and is effective upon its issuance.

PRESIDING MEMBER	J.AMARSANAA
MEMBERS	P.OCHIRBAT
	N.JANTSAN
	T.LKHAGVAA
	D.NARANCHIMEG
	D.SUGAR
	TS.SARANTUYA
	B.PUREVNYAM
	D.GANZORIG

RESOLUTION OF THE CONSTITUTIONAL COURT OF MONGOLIA

2014.01.08 No. 01 Ulaanbaatar

Final adjudication on whether some paragraphs of the Law on the legal status of the citizens' representative at Court have violated the relevant paragraphs of the Constitution

Constitutional Court Session hall, 15:25

Content of the dispute:

Whether the specification of the words such as "participation in the composition of the court for settlement of cases and disputes" in paragraph 3.3.1, Article 3 and "… in composition of court …", Article 12 of the Law on the legal status of the Citizen's representative at court respectively violates paragraph 2, Article 49 "It shall be prohibited for a private person or any civil officer (including the President, Prime minister, members of the State Great Khural or the government or an official of a political party or other public organization) to interfere with the exercise by the judges of their duties." of the Constitution of Mongolia.

Bayasgalan. O, a citizen of Mongolia, in his information to the Constitutional Court, provides that:

"The State Great Khural has adopted the Law on the legal status of the Citizen's representative at court on 22 May 2012, and the specification of the words such as "participation in the composition of the court for settlement of cases and disputes" in paragraph 3.3.1, Article 3 and "one citizen's representative shall participate in the composition of court at first instance court hearing of cases and disputes …" in paragraph 12.1, Article 12 of the same law respectively have violated paragraph 2, Article 49 "It shall be prohibited for a private person or any civil officer (including the President, Prime minister, members

of the State Great Khural or the government or an official of a political party or other public organization) to interfere with the exercise by the judges of their duties." of the Constitution of Mongolia. However, it was provided in paragraph 2, Article 52 of the Constitution of Mongolia that "In passing a collective decision on cases and disputes, the courts of first instance shall allow representatives of citizens to participate in the proceedings in accordance with the procedures prescribed by law.", but it is not a regulation that interfere with the powers of the Court specified in the Constitution and negate the independence of the judges through having reviewed the cases by representatives of the citizens'. "Participant" in Mongolian refers to "person who is participating" in any activity, however, it does not mean he has authority as well as it does not have meaning of competent authorities that "review and decide".

Temuujin. Kh, a member and authorised representative of the State Great Khural of Mongolia, in his explanation to the Constitutional Court, provides that:

"It is provided that in paragraph 2, Article 52 that "in passing a collective decision on cases and disputes, the courts of first instance shall allow representatives of citizens to participate in the proceedings in accordance with the procedures prescribed by law." We can clearly see from this that the Constitution has allowed the legislators to establish a procedure of participation of the representatives of citizens. According to the theory of the Constitution, the judge and the court are not the primary sources, and they are evidently not a thing that competes with the natural right of people. Thus, it is impossible to assess the judge as natural and put the independence of the judge or overestimate it against the right of the citizen to just court. Moreover, the participation of the citizens' representative in the composition of court is a just and significant mechanism for displaying the fair and satisfactory activities of the judges, that is protected under the independence of court judge, that satisfy the rights and legitimate interest of the citizen, only under the law and strengthens the citizens trust, on the

other hand, improves the accountability of the court proceeding. Only when the participation of the citizens' representatives specified in paragraph 2, Article 52 of the Constitution is understood at such level the fundamental principle and goal of the Constitution-right to just court shall be satisfied and it shall not be incompatible with the principle of independence of the judge. After this, the possibility of the citizens to implement such power - principle of Constitutional democracy may be practiced hand to hand with the rule of law, but not to influence the independence of the judge and court. Thus, we consider that the paragraph 3.3.1, article 3 and paragraph 12.1, Article 12 of the Law on the legal status of the citizens' representatives at court falls compatible with the right to just court or participation of citizens' representatives of the Constitution, and shall not be incompatible with the principle of independence of the judge.

The Constitutional court discussed the dispute by its middle bench hearing on 13 November 2013, and issued Conclusion 04 that paragraph 3.3.1, Article 3 and paragraph 12.1 "… in the composition of court …", Article 12 of the Law on the legal status of the citizens' representatives at court have violated paragraph 2, Article 49, the Constitution of Mongolia. In the ground section of the Conclusion, it is provided that:

1. It appears from paragraph 1-" Judicial power shall be vested exclusively in courts ", Article 47 of the Constitution of Mongolia and paragraph 12.1-"Courts of all the instances shall consist of chief judge and judges", Article 12 of the Law on the Courts of Mongolia that the courts shall be composed of only judges.

2. Paragraph 1 - "The courts of all instances shall discuss and review cases and disputes in a collective principle.", Article 52 of the Constitution belongs to composition of courts.

3. Paragraph 2 - "In passing a collective decision on cases and disputes, the courts of first instance shall allow representatives of citizens to participate in the proceedings in accordance with the procedures prescribed by law", Article 52 of the Constitution

does not appear to have required the citizens' representatives in the composition of court.

Thus, there are grounds to consider paragraph 3.3.1, Article 3 and paragraph 12.1, Article 12 of the Law on the legal status of the citizens' representatives on court have violated paragraph 2, Article 49 of the Constitution of Mongolia.

The Above mentioned Conclusion of the Constitutional court has been discussed by the session of the State Great Khural on 28 November 2013 and issued Resolution 64, which does not recognize the Conclusion.

GROUNDS:

1. When considering Conclusion No.04, dated 13 November 2013, of the Constitutional court as unrecognizable by its Resolution 64, dated 28 November 2013, the State Great Khural have not mentioned the ground as provided in paragraph 3- "in the event the State Great Khural issues a resolution that did not recognise the Conclusion of the Constitutional Court, its grounds shall be discussed from the beginning with the full bench session of the Constitutional court, and in the event the grounds that did not recognise the Conclusion is evidenced to be correct, the previous Conclusion shall be repealed and if the ground is not found correct, the Resolution of the State Great Khural shall be invalidated by the Resolution.", Article 36 of the law on Constitutional Court Procedure, there are no grounds to invalidate the Conclusion of the Constitutional Court, dated April 2013.

2. The legalization of participation of citizens' representatives in the composition of court can't be considered to serve as condition that satisfy the protection of human rights and freedom, exercise of judicial power and principle requirements of court proceeding established by the law.

3.There are grounds to consider that the specification of paragraphs that specifies the inclusion of citizens' representatives in the composition of the court, interference with the professional

use of law by the professional judges which compose the court that exercise the judicial power, and providing the right of making of legal decision and exercising of judicial power to the citizens representatives in paragraph 3.3.1, Article 3 and paragraph 12.1, Article 12 of the Law on the legal status of the citizens' representatives at court has violated the paragraph 2, Article 49 of the Constitution.

4. There are grounds to consider that the legalization of the same content that includes the citizens' representatives in paragraph 3.4, Article 3, paragraph 9.3, Article 9 and Article 12 of the Law on the legal status of the citizens' representatives at court has violated the paragraph 2, Article 49 of the Constitution.

In accordance with Article 64, and Paragraphs 3, Article 66 of the Constitution of Mongolia; paragraphs 2 and 4, Article 8 of the Law on the Constitutional Court; paragraph 2, Article 31, and 3, Article 36 of the Law on the Constitutional Court Procedure,

ON BEHALF OF THE CONSTITUTION OF MONGOLIA IT IS RESOLVED:

1. to invalidate the part-"… in the composition of the court …" in paragraph 3.3.1 "to participate in the composition of court that decides and reviews cases and disputes", in Article 3, part - "…included in the composition of the court…" in paragraph 3.4 "citizens' representatives that is included in the composition of court, before the court hearing, shall make vow that he shall respect the human rights, freedom, justice and law, that he shall resolve the cases and disputes independently" in Article 3, part "…to be included in the composition of court…" in paragraph 9.3 "upon the announcement of the court hearing timing, one and two reserve citizens' representatives to be included in the composition of the court specified in the sub list as provided in paragraph 9.2 of this law, shall be distributed to each court hearing through draw" in Article 9, and part-"… in the composition of court …" in paragraph and title of the Article 12 –"participation of citizens' representatives in the composition of court" of the

Law on the Legal status of the citizens' representatives as they violated the paragraph 2, Article 49 "It shall be prohibited for a private person or any civil officer (including the President, Prime minister, members of the State Great Khural or the government or an official of a political party or other public organization) to interfere with the exercise by the judges of their duties." of the Constitution of Mongolia.

2. to repeal the Resolution No.64 "About the Conclusion 04 dated 2013 of the Constitutional Court" dated 28 November 2013, of the State Great Khural of Mongolia.

3. to mention that this resolution is effective upon its issuance.

PRESIDING MEMBER	J.AMARSANAA
MEMBERS	P.OCHIRBAT
	N.JANTSAN
	T.LKHAGVAA
	SH.TSOGTOO
	D.SUGAR
	D.NARANCHIMEG
	D.SOLONGO

RESOLUTION OF THE CONSTITUTIONAL COURT OF MONGOLIA

2014.12.12 No. 02 Ulaanbaatar

Final adjudication of dispute on constitutionality of provisions of Article 4, part 4 of the Law of Mongolia on Privacy

Constitutional Court Session Hall, 11:50

Content of the dispute:

Dispute on inconsistency of Article 4, part 4 of the Law of Mongolia on Privacy stipulating: "Diseases other than certain specific, dangerous to the public diseases" specified in part 2, subpart 2 of this Article, do not include infection with Human Immunodeficiency Virus (HIV) and Acquired Immuno Deficiency Syndrome (AIDS)" with the provisions of Article 16, part 13 of the Constitution of Mongolia stipulating: "Privacy of citizens … shall be protected by the law"; part 17 of this Article stipulating: "In order to protect human rights, dignity and reputation of persons …, which are not subject to disclosure, shall be determined and protected by law"; Article 19, part 1 stipulating: "The State shall be responsible to the citizens for the creation of legal … guarantees ensuring human rights and freedoms …".

Content of a petition of citizen Mergen B. to the Constitutional Court:

A citizen, Mergen B. stated the following in his petition:

"Article 4, part 2 of the Law of Mongolia on Privacy provides: "In this Law, privacy of correspondence, health, property and family shall mean the following …", and Article 4, part 2, subpart 2 provides that health privacy includes physical defects and information on diseases other than certain specific, dangerous to the public, diseases. However, this Law has been amended, in particular Article 4, part provides that "diseases other than certain specific, dangerous to the public diseases" shall not

include infection with Human Immunodeficiency Virus (HIV) and Acquired ImmunoDeficiency Syndrome (AIDS). So the Law excludes information of a person about infections of Human Immunodeficiency Virus (HIV) and Acquired ImmunoDeficiency Syndrome (AIDS) from the individual's privacy. Thus, Article 4, part 4 of the Law on Privacy is in breach of the following provisions of the Constitution of Mongolia:

- Article 14, part 1: "All persons lawfully residing within Mongolia are equal before the law and the Court";
- Article 14, part 2: "No person shall be discriminated …";
- Article 16, part 13: "Privacy of citizens, their families, correspondence … shall be protected by law";
- Article 16, part 17: "In order to protect human rights, dignity and reputation of persons … which are not subject to disclosure shall be determined and protected by law";
- Article 19, part 1: "The State shall be responsible to the citizens for the creation of legal … guarantees ensuring human rights and freedoms …"

Content of the explanation submitted by a member of Parliament, Bayanselenge Z., an authorized representative of Parliament (State Great Khural) to the Constitutional Court:

1. Regarding the provision of Article 14, parts 1 and 2 of the Constitution: the provision of the Constitution stipulating "All persons are equal before the law and court" covers legislative, executive and judicial organs and officials, and the regulation that restricts discrimination against any person in any forms, implies that individuals are equal before the law and court, or the regulation has common characteristics. Thus, it is deemed that information on a person infected with Human Immunodeficiency Virus (HIV) and Acquired ImmunoDeficiency Syndrome (AIDS) has not been specially excluded from the privacy and his right has been violated.

2. Regarding the provisions of Articles 16, parts 13 and 17 of the Constitution: as provided in Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights, "No one shall be subjected

to arbitrary interference with his privacy. Everyone has the right to protection by the law against such interference or attacks." Thus, privacy of a person is an immune right, and in the case of breach of this right, if it is considered that due to the disclosure of information pertaining to the privacy specified in provision 24.1 of the Civil Code without permission, damage was caused, the citizen has the right to require remedy. Also, according to the relevant laws, an administrative and criminal penalty is imposed for disclosure of the person's private affairs. The World Health Organization sets a list of certain infectious diseases dangerous to the public, and the list does not include Human Immunodeficiency Virus (HIV) and Acquired ImmunoDeficiency Syndrome (AIDS). Unfortunately, there is no such regulation in the laws of Mongolia. But, certain precise regulations on protection of the rights of persons who are infected with Human Immunodeficiency Virus (HIV) and Acquired ImmunoDeficiency Syndrome (AIDS), are included in the Law on Prevention from infection with Human Immunodeficiency Virus (HIV) and Acquired ImmunoDeficiency Syndrome (AIDS).

3. Regarding the provision of Article 19, part 1 of the Constitution: human rights and freedoms are equally natural rights of all human beings. Protection of human rights is a primary duty of legislative, executive and judicial bodies. The State organization designated to protect human rights, or the National Human Rights Commission of Mongolia, was established as a mechanism for supervision of the implementation of human rights. Besides this, an independent and impartial administrative court was developed with the purpose of fighting against violation of human rights and freedoms, and rehabilitating the infringed rights. This court has a big effect on implementation of human rights. Therefore, provision of Article 4, part 4 of the Law on Privacy has not breached the relevant provisions of the Constitution.

Content of the explanation of the Minister of Health of Mongolia, submitted to the Constitutional Court:

"The Infections Human Immunodeficiency Virus (HIV) and Acquired Immuno Deficiency Syndrome (AIDS) are not "infectious diseases dangerous to the public". Thus, I propose re-

editing the content of the provision, because there is a stylistic mistake in the content of Article 4, part 4 of the Law on Privacy. According to the International Health Regulations (2005), "A member state should evaluate and make a conclusion on any serious situation that has emerged on its territory, and inform of the following unusual, unforeseen diseases, having severe effect to human health":

- Smallpox;
- Polio caused by a wild-type poliovirus;
- Human influenza caused by a new subtype;
- SARS;
- Cholera;
- Plague;
- Yellow fever;
- Bloody Virus fever (Ebola Hemorrhagic fever, Lassa fever; Marburg Hemorrhagic fever; Western Nile virus);
- Other diseases of national or regional concern (Dengue fever; Rift Valley fever; Meningitis infections, etc.)

GROUNDS:

The Constitutional Court discussed this dispute at its Medium Bench Session on 10 September 2014, and rendered the conclusion number 05 that provision of Article 4, part 4 of the Law on Privacy stipulating: "Diseases other than certain specific dangerous to public diseases" specified in part 2, subpart 2 of this Article, do not include infection with Human Immunodeficiency Virus (HIV) and Acquired Immuno Deficiency Syndrome (AIDS)", has breached the provisions of Article 16, part 13 of the Constitution of Mongolia, stipulating: "Privacy of citizens … shall be protected by law"; part 17 of this Article stipulating: "In order to protect human rights, dignity and reputation of persons …, which are not subject to disclosure, shall be determined and protected by law"; Article 19, part 1 stipulating: "The State shall be responsible to the citizens for the creation of legal … guarantees ensuring human rights and freedoms …"; and has not

breached the relevant provisions of Article 14, parts 1 and 2 of the Constitution of Mongolia.

The Parliament of Mongolia (State Great Khural) discussed the above conclusion of the Constitutional Court) on the plenary session of 9 October 2014, and rendered resolution number 56 on rejection to accept the first clause of conclusion number 05, dated 10 September 2014.

GROUNDS:

1. An amendment of 13 December 2012, made to Article 4, part 4 of the Law on Privacy stipulating that information on disease, of a person infected with Human Immunodeficiency Virus (HIV) and Acquired ImmunoDeficiency Syndrome (AIDS), was excluded from the health privacy of the person, is considered to be a regulation that might cause such consequences as: violation of dignity and reputation of the persons with infection of Human Immunodeficiency Virus (HIV) and Acquired ImmunoDeficiency Syndrome (AIDS); deprivation of them from the community; and avoidance of the infected persons from enrolment in medical tests and treatment, without concealment of disease.

2. Conclusion number 05 of the Constitutional Court of 2014 that the provision of Article 4, part 4 of the Law on Privacy stipulating: "Diseases other than certain specific, dangerous to the public diseases" specified in part 2, subpart 2 of this Article do not include infection with Human Immunodeficiency Virus (HIV) and Acquired ImmunoDeficiency Syndrome (AIDS)" breached the provisions of Article 16, part 13 of the Constitution of Mongolia stipulating: "Privacy of citizens … shall be protected by law"; part 17 of this Article stipulating: "In order to protect human rights, dignity and the reputation of persons …, which are not subject to disclosure, shall be determined and protected by law"; Article 19, part 1 stipulating: "The State shall be responsible to the citizens for the creation of legal … guarantees ensuring human rights and freedoms …" is considered well-grounded.

Guided by the provisions of Article 64, Article 66, part 3 of the Constitution of Mongolia and Article 8, parts 2 and 4 of the

Law on Constitutional Court, Article 31, part 2 and Article 36 part 3 of the Law on Constitutional Court Procedure:

ON BEHALF OF THE CONSTITUTION OF MONGOLIA IT IS RESOLVED:

1. Invalidate the provision of Article 4, part 4 of the Law on Privacy stipulating that information on disease of a person infected with Human Immunodeficiency Virus (HIV) and Acquired ImmunoDeficiency Syndrome (AIDS), as it is in breach of the provisions of Article 16, part 13 stipulating: "Privacy of citizens … shall be protected by law"; part 17 of this Article stipulating: "In order to protect human rights, dignity and reputation of persons …, which are not subject to disclosure, shall be determined and protected by law"; Article 19, part 1 stipulating: "The State shall be responsible to the citizens for the creation of legal … guarantees ensuring human rights and freedoms …" of the Constitution of Mongolia.

2. Invalidate resolution number 56 of the Parliament of Mongolia (State Great Khural) on "Conclusion number 05 of the Constitutional Court of 2014" dated 9 October 2014.

3. This decision shall be final and is effective upon its issuance.

PRESIDING MEMBER	J.AMARSANAA
MEMBERS	P.OCHIRBAT
	N.JANTSAN
	T.LKHAGVAA
	SH.TSOGTOO
	D.NARANCHIMEG
	D.SOLONGO
	D.GANZORIG

RESOLUTION OF THE CONSTITUTIONAL COURT OF MONGOLIA

2015.01.30 No. 02 Ulaanbaatar

Final adjudication of the constitutional dispute on inconsistency of someprovisions of articles 1 and 2 of the Law of Mongolia on Establishment of the Court with the Constitution of Mongolia

Constitutional Court Session hall, 16:00

Content of the dispute:

Whether some provisions of articles 1 and 2 of the Law on Establishment of the Court are inconsistent with the provision 48.1, article 48, of the Constitution of Mongolia wording "The judicial system shall consist of the Supreme Court, Aimag and capital city courts, Soum, inter-soum and District courts. Specialized courts such as criminal, civil and administrative courts may be formed."

Nomynbayasgalan S, a citizen of Mongolia submitted a petition stipulating the following:

The Constitution provides in article 48, part 1 "The judicial system shall consist of the Supreme Court, Aimag and capital city courts, Soum, inter-soum and District courts. Specialized courts such as criminal, civil and administrative courts may be formed." This infers two propositions: first, "The judicial system shall consist of the Supreme Court, Aimag and capital city courts, Soum, inter-soum and District courts", and second, "Specialized courts such as criminal, civil and administrative courts may be formed". The two propositions are linked by the conjunction 'and'. Clarifying, this part clearly infers that the judicial system shall consist, not of the district or inter-district courts, but of the district courts. This is proved by the text of the Constitution and the Constitutional Court or its decision (conclusion). In particular, it is set that each Soum may have independent court or inter-soum court, while there is no word about inter-district court, but it is

obviously determined that each district shall have an independent court.

However, while there are several districts in the capital city, the Law on Establishing of the Court provides for such reforms in the establishment of the district courts as follow: 4 district courts of first instance for civil cases; 4 district courts of first instance for criminal cases; 1 district court of first instance for administrative cases. At the result of this reform, it has been a practice of making and using the stamp, symbols address and document form of an "inter-soum court" in the form of the inter-district court or district court number XXX, and the decision or resolution or order made on behalf of the State of Mongolia is written in the form of "inter-soum court" or district court number XXX.

The Constitutional Court of Mongolia discussed the dispute related to the Law on Establishment of the Court and developed the conclusion number 05 on 15 April 1994, and considered that the fact of establishing a single inter court in two districts pursuant to the Law on Establishment of the Court of 14 June 1993 has breached the provision 48.1, article 48, of the Constitution.

Thus, I am applying for the discussion and issuing a conclusion on whether article 2 of the Law on Establishment of the Court stipulating "The judicial system shall consist of the Supreme Court, Aimag and capital city courts, Soum, inter-soum and District courts. Specialized courts such as criminal, civil and administrative courts may be formed" is consistent with the provision 48.1, article 48, of the Constitution of Mongolia".

Response of Temuujin Kh., the accredited representative of the Parliament (State Great Khural), a member of the Parliament, delivered to the Constitutional Court:

"1. Related provision of article 48 of the Constitution and the provision 22.1, article 22, of the Law on the Court adopted on 7 March 2012 were adhered to in the adoption of the Law on Establishment of the Court by the Parliament. In particular, provision 1 of 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. Specialized courts such as criminal, civil and administrative courts may be formed" and

provision 3 of this article "The courts shall be financed from the State budget. The State shall ensure economic guarantee of the court's activities". The common practice of using terms 'general court' and 'specialized court' in other world countries were taken into account and being guided by the above mentioned constitutional provisions the Law on Establishment of the Court adopted on 7 March 2012 at the session of the Parliament set forth that the judicial system of Mongolia would consist of two parts: "main" and "specialized". Provided in article 10 of this Law, "The judicial system shall consist of the Supreme Court (court of review), Aimag and capital city courts (appeal court), Soum, inter-soum and District courts (first instance court)", and the establishing of the first instance courts for civil, criminal and administrative cases in the capital city is consistent with relevant provisions of the Constitution.

2. The Law of Mongolia on Court adopted in 2012 does not contain legal terms 'court unit of the first instance' and 'inter-district court' mentioned by the petitioner. In other words, the 'inter-district' was not established by the Parliament of Mongolia, but the location of the district court and its territorial jurisdiction were defined. For instance, the district civil cases' court of first instance is located in the eastern part of Ulaanbaatar city, and involves the territory of Bayanzurkh, Sukhbaatar and Chingeltei districts of the capital city. The court jurisdiction does not necessarily comply with the distribution of administrative and territorial units. In common practice of world countries, courts are established not by the administrative units, but by the regions.

3. Complying with the court system provided in the new edition of the Law on Courts, and taking into account the issues on concentration of the population in certain local area, judges' work load and improvement of the court service access to citizens, and based on the requirement to reform courts of the first instance the Parliament of Mongolia adopted the new edition of the Law on Establishment of the Court. The establishment of the courts specialized in criminal, civil and administrative cases has improved the proficiency of judges, and quality of the court decisions, thus completely conformed to the interests of citizens

applied for remedy and actually is one of the reasons for citizens to resolve their cases in the court of justice.

Therefore, the related provision of article of the Law on Establishment of the Court that sets the location and jurisdiction of soum or inter-soum, district courts (courts of first instance) has been considered to have not breached the related provision of the part 1, article 48, of the Constitution."

The Constitutional Court of Mongolia discussed this dispute on its Middle bench session of 10 December 2014 and developed the conclusion number 07 that articles 1 and 2 of the Law on Establishment of the Court are consistent with some provisions of the part 1, article 48, of the Constitution of Mongolia. The grounds of this conclusion are as follows:

1. "The Law on Establishment of the Court provides in its article 48, part 1 that the integrated judicial system consists of two sub-parts: "main" and "specialized" courts; the general judicial system is composed of the Supreme Court, Aimag, capital city and Soum or inter-soum, district courts; and the specialized court system are consisted of such types of courts specialized for the resolution of legal disputes and legal procedure.

According to article 47, part 3, of the Constitution, any court shall be established in compliance with the Constitution and other laws, and other laws shall comply with the Constitution. The Constitution has provided that the general judicial system of Mongolia has been organized by the principle territorial jurisdiction, not county jurisdiction.

2. On 15 April 1994, the Constitutional Court rendered the conclusion number 05 based on grounds that "…Establishment of single courts among Baganuur and Bagakhangai districts, Bayanzurkh and Gachuurt districts, Songinokhairkhan and Jargalant districts, Khan-Uul and Tuul districts calling as the 'district' courts, but in fact, referring to the establishment of the single court among two districts pursuant to the Law of Mongolia on Establishment of the Court adopted on 14 June 1993 has breached the provision of article 48, part 1, on the separate court for each district."

The Resolution Number 02 of the Constitutional Court dated 9 November 1994 that settled the above dispute provided: "…1. As the Resolution number 52 of the Parliament of Mongolia, 23 June 1994, that considered the conclusion 05 of the Constitutional Court, 15 April 1994, on inconsistency of the provisions 1, 3, 5 and 7 of the part 3, article 2 of the Law on Establishment of the Court adopted in 1993 with the Constitution as unacceptable due to a lack of grounds, it should be dismissed."

The Constitutional Court has guaranteed the constitutional concept on a separate court for each aimag, the capital city and district within the general judicial system, which is provided in article 48, part 1, of the Constitution of Mongolia, in the above mentioned decisions.

3. According to the provision of article 19, part 1 of the Constitution of Mongolia stipulating: "The State shall be responsible to the citizens for the creation of economic, social, legal and other guarantees ensuring human rights and freedoms, to fight against violations of human rights and freedoms and to restore infringed rights.", the state is responsible to guarantee such basic rights of citizens as the right to receive legal assistance, appeal to the court to be tried in his/her presence, and to appeal against a court decision specified in the provision 14, article 16, of the Constitution.

However, it has been considered that article 1 of the Law on Establishment of the Court (new edition) adopted by the Parliament of Mongolia on 24 January 2013, which provides the following below mentioned structure, denied the general judicial system and breached the provision of article 48, part 1, of the Constitution that promulgates the constitutional principles to provide the citizens with guarantee to enjoy basic rights and make accessible to the public service:

- Article 1 of the Law: Appeal courts of aimags and the capital city were reformed to specialized courts of civil, criminal and administrative cases, and in setting of their location and jurisdiction, a single appeal inter-court was set covering territory of 2-3 aimags;

- Instead of the Capital city court there were set 10th Appeal

Court of the civil cases and 10th Appeal Court of the criminal cases covering territory of all administrative and territorial units of the capital city, territory of some soums of the Central and Khentii aimags;

- Article 2 of the Law: In setting of the location and territorial jurisdiction of the courts of the first instance, several districts were fallen under the jurisdiction of one of the first instance courts named the First, Second, Third and Fourth Courts of civil cases and the First, Second, Third and Fourth Courts of criminal cases;

- Some districts of the capital city, some soums of the Central and Khentii aimags were fallen under the jurisdiction of 4 first instance courts of civil cases and 4 first instance courts of criminal cases and located in the east and west regions as well as in Baganuur and Nalaikh districts of Ulaanbaatar city;

- In establishment of the administrative courts of the first instance number 6 and 11, territories of two separate aimags were fallen under the jurisdiction of each court."

The Parliament of Mongolia discussed the above conclusion number 07 of the Constitutional Court of 2014 at its session on 19 December 2014 and considered it to be unacceptable in its Resolution 81.

GROUNDS:

1. It is reasonable to consider that provisions of article 1, part 1, of the Law on Establishment of the Court regarding 'Appeal Court of the civil cases', part 2 regarding 'Appeal Court of the criminal cases'; provisions of article 2, part 1 regarding 'District Court of the First instance of the civil cases', part 2 regarding 'District Court of the First instance of the criminal cases' and provisions 6 and 11, part 3 regarding 'District Court of the First instance of administrative cases' denied the general judicial system and breached the provision of article 48, part 1, of the Constitution of Mongolia that promulgates the fundamental constitutional principles to provide the citizens with guarantee to enjoy basic rights and make accessible to the public service.

Article 47, part 3, of the Constitution of Mongolia provides that courts shall be established solely under the Constitution and other laws, and other law shall be in conformity with the Constitution. The Constitution sets forth that the general judicial system shall be established in compliance with principle of administrative and territorial jurisdiction.

2. The Constitutional Court considered on 15 April 1994 that"… The establishment of separate single inter-district courts in Baganuur and Bagakhangai districts, in Bayanzurkh and Gachuurt districts, Songinokhairkhan and Jargalant, Khan-Uul and Tuul districts was in context (in terms) of name as 'district' court, but actually referred to the establishment of the single court that functioned for two separate districts. The Constitutional Court found out this fact as inconsistent with the provision 'every district shall have its court' specified in article 48, part 1, of the Constitution, and rendered the conclusion number 05.

The final decision rendered by in the Resolution 02 on 9 November 1994 of the Constitutional Court of Mongolia on the above dispute confers the following: "… 1. As the Resolution number 52 of the Parliament of Mongolia rendered on 23 June 1994, that considered the conclusion 05 of the Constitutional Court of 15 April 1994 on inconsistency of the provisions 1, 3, 5 and 7 of the part 3, article 2 of the Law on Establishment of the Court, adopted in 1993, with the Constitution as unacceptable due to lack of grounds, so that it should be dismissed."

The constitutional concept promulgated in article 48, part 1, of the Constitution of Mongolia that each aimag, the capital city and district pursuant to the general judicial system shall have the separate single court has been guaranteed by the Constitutional Court in the above decisions.

3. The conclusion of the Parliament of Mongolia number 07 issued on 10 December 2014 is reasonable.

4. The Parliament did not specify in its Resolution 81 of 19 December 2014 the grounds on unacceptability of the conclusion of the Constitutional Court number 07 dated 10 December 2014 as it should have been done pursuant to the article 36, part 3 of the Law on Constitutional Court Procedure.

Guided by the provisions of article 64, article 66, part 3 of the Constitution of Mongolia, article 8, parts 2 and 4 of the Law on Constitutional Court and article 31, part 2 and article 36, part 3 of the Law on Constitutional Court Procedure:

ON BEHALF OF THE CONSTITUTION OF MONGOLIA: IT IS RESOLVED

1. Article 1, part 1, of the Law on Establishment of the Court regarding 'Appeal Court of the civil cases', part 2 regarding 'Appeal Court of the criminal cases'; article 2, part 1 regarding 'District Court of the First instance of the civil cases', part 2 regarding 'District Court of the First instance of the criminal cases' and articles 6 and 11 regarding 'District Court of the First instance of administrative cases' are inconsistent with the provision of the article 48, part 1 of the Constitution stating that "The general judicial system shall consist of aimag, the capital city and district courts, so that it shall be dismissed.

2. The provision of the "Resolution" part of this resolution shall be in forth from 1 July 2015.

3. Resolution 81 of the Parliament of Mongolia dated 19 December 2014 on Conclusion of the Constitutional Court number 07 (2014) shall be dismissed.

4. Note that this resolution shall be enforceable upon issuance.

CHAIRMAN	J.AMARSANAA
MEMBERS	P.OCHIRBAT
	N.JANTSAN
	T.LKHAGVAA
	SH.TSOGTOO
	D.SUGAR
	D.NARANCHIMEG
	D.SOLONGO
	D.GANZORIG

RESOLUTION OF THE CONSTITUTIONAL COURT OF MONGOLIA

2015.06.17 No. 04 Ulaanbaatar

Final adjudication of the dispute on inconsistency of part 34.3 of article 34 of the Law of Mongolia on Court Decision Implementation with the relevant provisions of the Constitution of Mongolia

Constitutional Court Session Hall, 11:00

Content of the dispute:

The Constitutional Court discussed whether the provision "… The decision of the court of first instance which settled the complaint shall be the final decision" of article 34, part 34.3 of the Law on Court decision Implementation was inconsistent with the provisions of the article 16, part 14, article 48, part 1 and article 50, parts 1 and 2 of the Constitution of Mongolia, at its Full bench session.

Citizens Lkhagvasuren G., Tamir B. and Bat-Erdene B. submitted a petition with the following content:

Article 3 of the Law on Amendments to the Law on Court Decision Implementation adopted on 5 December 2014 by the Parliament of Mongolia provides "the following part of the Law on Court Decision Implementation shall be re-edited as mentioned below: 1) "In cases where the lender and debtor do not agree with the actions and decision of the court decision implementing officer, or have not been notified of the time and place of the action from the commencement date of that the action, they shall submit their complaint to the senior officer responsible for the implementation of the court decision within seven days of the date they were notified. The senior officer shall settle the complaint within 14 days and render a resolution and, if they do not agree with the resolution, they are free to apply to the court. The decision of the

court of first instance which settled the complaint shall be the final decision."

The Government has developed the draft law to do relevant amendments to the Law on the Court Decision Implementation within the framework of 100 days to intensify the economy as it considered that "In current practice, the implementation of the court decision in a short time-frame and in an effective manner is impossible due to relevant law regulations…". Although the country's economic situation has been difficult and currency flow has been restricted, the Government considers that basic human rights cannot be restricted just for the purpose of intensifying the economy.

Therefore, the provision "… The decision of the court of first instance which settled the complaint shall be the final decision" is inconsistent with part 14, article 16 of the Constitution of Mongolia which states that "every person has the right to appeal to the court to protect his/her rights, the right to fair trial …to appeal against a court decision, if he/she considers that the rights or freedoms as spelt out by Mongolian law or an international treaty have been violated"; provision of part 1, article 48"… The activities and decisions of these specialized courts shall not be outside the supervision of the Supreme Court"; provision of part 1, article 50 "The Supreme Court shall be the highest judicial body and shall exercise the following power: …"; provision of part 1.2, article 50 "to examine decisions of courts of lower-instance through appeal and supervision"; provision of part 2, article 50"… The decision of the Supreme Court shall be the final decision of the court."

The fact that the law does not provide for the right to appeal the decision of the court of first instance on complaints related to the decision implementation has seriously breached the civil rights guaranteed by in the Constitution of Mongolia. The main idea of the provision "The activities and decisions of these specialized courts shall not be outside the supervision of the Supreme Court" of the part 1, article 48 of the Constitution is a

concept that the higher instance court undertakes such supervision, and no decision of any court can be considered as outside of its supervision. In other words, if the decision of the court of first instance did not comply with the requirement to be lawful, and the litigant (complainant) has no right to appeal that decision to the court of appeal or review, there is, therefore, the risk that his/her rights may not be realized. Regulations stipulated in article 50, part 1, of the Constitution of Mongolia provides "The Supreme Court shall be the highest judicial body and shall exercise the following power:", and specifies the power in sub-section 2 "examine decisions of courts of lower-instance through appeal and supervision"; and article 50, part 2 provides "The decision made by the Supreme Court shall be a final judiciary decision …" demonstrate the unified judicial system of Mongolia, and the Supreme Court is entitled to supervise the activities of specialized courts. However, the law regulation stipulating the decision of the court of first instance as the final judicial decision has the following legal consequences: First, this infringes the power of the Supreme Court to review the decisions of the lower courts and restricts its opportunity to implement the power and; second, it breaches the main concept that the decision of the Supreme Court shall be the final judicial decision.

Temuujin Kh., a PM, the accredited representative of the Parliament of Mongolia confers in his explanation:

"Provision of the part 34.3, article 34 of the Law on Court decision implementation "…The decision of the court of first instance which settled the complaint shall be the final decision." has been considered not to have breached the relevant provision of the Constitution on the following grounds:

1. The amendments to the article 34, part 34.3 of the Law on Court decision implementation is a regulation designated to protect the right of the lender to be compensated for the illegal damage caused by others, and this is consistent with the provision on the principle of "justice … and equality" of the article 1, part 2, of the Constitution of Mongolia.

2. The above law regulation is more relevant to civil law relations, in particular business law relations, than to the constitutional law relations. Money is the economic or business 'essence" that does not wait for time and should constantly be in economic flow, and the more time you waste, the more loss of money and income you incur. Although the dispute between the lender and debtor was discussed, and the case was resolved at all court instances, the dispute was arisen again during the court decision implementation, and the process through all court instances caused to the lender unfair circumstances, which affected the economy too.

3. According to the provision of the article 34, part 34.3, of the Law on the Court Decision Implementation if the activity of the officer responsible for the decision implementation, and his/her decision are not accepted, the complaint may be submitted to the higher officer or senior officer responsible for the decision implementation, and this will be considered as settlement of the dispute at the first instance procedure. The decision implementation process has some specific regulations, and other countries also use the similar simplified regulations.

4. Article 9, part 3, of the Constitution of Mongolia provides "In exercising his/her rights and freedoms one shall not infringe… rights and freedoms of others …".Although the debtor has the right to be protected by in the court, the lender he/she is now allowed to infringe the right of the lender to be compensated.

5. The provision of the article 34, part 34.4 stipulating "Settlement of complaints on the infringement of the rights of the third party in court of law shall not be covered by in the provision 34.3 of this Law" means that any dispute of other persons may be settled by courts of all instances.

The Constitutional Court discussed this dispute on the session of the Middle bench on 15 April 2015 and rendered a conclusion number 04. The grounds of the conclusion include the following:

1. No restriction is set in respect to the right promulgated in the provision of the article 16, part 14 of the Constitution of

Mongolia "the right to appeal to the court to protect his/her rights if he/she considers that the rights or freedoms as spelt out by the Mongolian law or an international treaty have been violated; … to appeal against a court decision …". The lawmaker has restricted the right to appeal the court decision providing that the decision of the court first settled the complaint shall be the final decision. However, the article 34, part 34.3 of the Law on Court Decision Implementation provides that both lender and debtor have rights to apply to the court.

2. Article 34, part 34.3 of the Law on Court Decision Implementation that regulates the matters related to the complaint on the activity and decision of the court decision implementing officer stipulating "…the decision of the court first settled the complaint shall be the final decision" not only infringed the right of citizens to appeal the above mentioned decision, but also restricted the power of the Supreme Court, that is entitled to settle the final court decision in Mongolia, to review the decisions of the lower courts and, eventually, the article allowed the decision of the court of first instance be outside of Supreme Court supervision. All this seem to be inconsistent with the Constitution of Mongolia.

The Parliament discussed the above mentioned conclusion of the Constitutional Court on 23 April 2015 and rendered Resolution 46 on "Conclusion 04 of the Constitutional Court, 2015" considering the conclusion unacceptable.

GROUNDS:

1. Article 34, part 34.3 of the Law on Court Decision Implementation amended by the Parliament of Mongolia on 5 December 2014 and stipulating "…the decision of the court first settled the complaint shall be the final decision" has restricted the right of the lender and debtor to appeal the decision of the court of first instance in case if they did not agree with it and thus has created the situation where the decision of the court of first instance is outside of the supervision of the Supreme Court.

2. The conclusion of the Constitutional Court, number 04 of 2015 on inconsistency of the article 34, part 34.3 of the Law on Court Decision Implementation stipulating"…the decision of the court first settled the complaint shall be the final decision" with the following articles of the Constitution of Mongolia: article 16, part 14 "… have the right to appeal to the court to protect his/her rights if he/she considers that the rights or freedoms as spelt out by the Mongolian law or an international treaty have been violated; … to appeal against a court decision …", article 48, part 1 "... The activities and decisions of these specialized courts shall not but be outside the supervision of the Supreme Court", article 50, part 1.2 "… the Supreme Court is entitled to examine decisions of lower-instance courts through appeal and supervision", article 50, part 2 "The decision made by the Supreme Court shall be a final judiciary decision" is considered reasonable.

3. The Parliament did not specify in its Resolution number 46 of 23 April 2015 the grounds according to which it did not accept the conclusion of the Constitutional Court of April 2015 as it should have done pursuant to the provision of the article 36 of the Constitutional Court Procedure.

Guided by the article 64, parts 3 and 4 of the article 66 of the Constitution of Mongolia, article 8, parts 2 and 4 of the Law on Constitutional Court, article 31, part 2, and article 36, part 3 of the Law on Constitutional Court Procedure:

ON BEHALF OF THE CONSTITUTION OF MONGOLIA IT IS RESOLVED:

1. A part "The decision of the court of first instance that settled shall be the final decision" of the article 34, part 34.3 of the Law on Court Decision Implementation stipulating "In case if the lender and debtor do not agree with the actions and decision of the court decision implementing officer, or have not been acknowledged about time and place of the action from the commencement date of that the action, they shall submit their complaint to the senior officer responsible for the implementation

of the court decision within seven days since the date they were acknowledged. The senior officer shall settle the complaint within 14 days and render a resolution, and if they do not agree with the resolution, it is available to apply to the court of law. The decision of the court of first instance that settled shall be the final decision" is inconsistent with the following provisions of the Constitution of Mongolia: article 16, part 14 "… have the right to appeal to the court to protect his/her rights if he/she considers that their rights or freedoms as spelt out by Mongolian law or an international treaty have been violated; … to appeal against a court decision …", article 48, part 1 "... The activities and decisions of these specialized courts shall not but be outside the supervision of the Supreme Court", article 50, part 1.2 "… the Supreme Court is entitled to examine decisions of lower-instance courts through appeal and supervision", article 50, part 2 "The decision made by the Supreme Court shall be a final judiciary decision", thus it shall be dismissed.

2. Resolution number 46 of the Parliament of Mongolia issued on 23 April 2015 on "Conclusion number 04 of the Constitutional Court dated April 2015 is to be dismissed.

3. Note that this resolution shall be final and be in force upon issuance

PRESIDING MEMBER	J.AMARSANAA
MEMBERS	P.OCHIRBAT
	N.JANTSAN
	T.LKHAGVAA
	SH.TSOGTOO
	D.NARANCHIMEG
	D.SOLONGO
	D.GANZORIG

RESOLUTION OF THE CONSTITUTIONAL COURT OF MONGOLIA

2015.11.25 No. 09 Ulaanbaatar

Final adjudication of the dispute on constitutionality of Article 7, section 7.1.12 of the Law of Mongolia on Parliament with the relevant provisions of the Constitution of Mongolia

Constitutional Court Session Hall, 14:00

Content of the dispute:

The dispute on whether the section 7.1.12 wording "… appointed …to dismiss …"of the article 7 of the Law on Parliament (State Sikh Khural) of Mongolia stipulating "… discuss report or presentation by an official elected or appointed by the Parliament, make a proposal to resign or dismiss them…" has breached Section 2 of the article 39 and section 1 of the article 41 the Constitution of Mongolia.

Citizens Battulga P., Munkhjargal M., Turbold B. and Erkhambayar B. have filed a complaint with content outlined below to the Constitutional Court of Mongolia:

The complaint outlines as follows: "The provision 7.1.12 of the article 7 of the Law on the Parliament of Mongolia that gives a Parliament member full power to make a proposal to dismiss a member of the Government has become a cause which breaches the concept of the Constitution on cabinet format principle of the Government.

The cabinet format of Government operation implies a legal logic that the Prime Minister shall be solely accountable to the Parliament for the work of the sector ministers, and, and shall make decision on composing a team he/she will work with.The Constitution does not provide a Member of Parliament with a full power to make proposal to dismiss a Government member,

however, it allows a group of 19 or more Members of Parliament to make a joint proposal to dismiss the Government.

Thus, the part 7.1.12 wording "… appointed … to dismiss" of the Article 7 of the Law on Parliament (State Sikh Khural) of Mongolia stipulating "… discuss report or presentation by the official elected or appointed by the Parliament, make a proposal to resign or dismiss them…" is inconsistent with the provision "The Prime Minister in consultation with the President, shall submit his/her proposals on the structure and composition of the Government to the State Sikh Khural…" of the part 2, article 39, and provision "The Prime Minister shall lead the Government and shall be accountable to the State Sikh Khural for the implementation of state laws" of the section 1, article 41 of the Constitution.

Content of the explanation by the accredited representative of the Parliament of Mongolia, MP Temuujin Kh. delivered to the Constitutional Court:

1. According to the provision 25.1.4 of the article 25 of the Constitution of Mongolia, as the Parliament appoints several officials, in addition to the Prime Minister, members of the Government, who are accountable to the Parliament, it is not possible to consider that the provision of the article 7, part 7.1.12 stating "appointed officials" includes only the Prime Minister, and members of the Government.

2. According to the article 33 of the Law on Parliament, the Parliament carries out control in the following forms: receives reports, information and presentations of the above mentioned bodies, does inquiries, asks questions and gets answers, inspects related operational and ethical breaches, and renders recommendations. The member of the Parliament is entitled to issue the proposal on the dismissal of the officials with respect to the above mentioned matters. This is a form of implementation of the special power of the Parliament specified in the provision 4, section 1 of the article 25 of the Constitution of Mongolia through the member of the Parliament.

3. According to the provision of the article 39 of the

Constitution, the Parliament discusses and appoints every candidate to the Government, who is proposed by the Minister. The appointed member of the Government undertakes such functions as developing state policy, implementing laws, decrees of the President and decisions of the Government within the framework of matters specified in the provision of the article 20, sections 4 and 5 of the Law on Government on behalf of the Government, and is personally responsible for the results of the field, for which he/she is accountable to the Prime Minister. Pursuant to the article 51 of the Law on the Procedure of the Parliament Assembly Session, members of the Government have their reports discussed at the sessions of the Standing Committees, the structural body of the Parliament, and reviewed by the Parliament that has appointed them.

Based on the above mentioned, it has been considered that the said provision is not inconsistent with the provisions of the article 39, section 2, and article 41, section 1 of the Constitution of Mongolia.

The following explanation has been delivered to the Government of Mongolia with respect to this dispute:

The term and understanding concept 'Government of Mongolia' includes the Prime Minister and Government members. In other words, 'the Government' means the Prime Minister and its members. The Government (Prime Minister and members) is to maintain its activity under the chamber organization structure; therefore its powers commence upon appointment of the Prime Minister of Mongolia and terminate upon the appointment of new Prime Minister.

In case of resignation of the Government on the initiative of the Parliament, pursuant to the provision of the article 43 of the Constitution, section 4, it is required an official approval of not less than one-fourth of the MPs voting for the resignation of the Government. According to the provision of the article 39, section 1 of the Constitution, as the Government is composed of the Prime Minister and members, it seems that the above mentioned law requirement will be taken in account in resolving of the

matters related to the dismissal of both the Prime Minister and Government member. However, there are no legal grounds for the member of the Parliament to deliver the proposal on resignation of the Government (The Prime Minister, its members) in other cases, except for those specified in the article 43, section 4 of the Constitution, or in ways other than specified in this Law. In this case, the MP's "right to initiate law" specified in the article 26, section 1 of the Constitution is restricted by the article 43 of the Constitution.

Since any law, decree, decision of the state body, activities of organizations and citizens are to be in compliance with the Constitution, the provision stipulating the MP "initiates the proposal on dismissal", specified in the article 7, part 7.1.12 of the Law on the Parliament, should be added 'excluding the Government (the Prime Minister, members)' adhering to the Constitution.

The Constitutional Court discussed this dispute on the Middle bench session on 9 September 2015, and rendered a conclusion number 11 with the following content of the grounding part:

1. Although the MP has the right to initiate the law, and make proposals on any matter, the Constitution provides in the article 39, section 2, "The Prime Minister, in consultation with the President, submits his or her proposals on the structure and composition of the Government and on modifications to it to the National Parliament", so that the matter regarding dismissal of the Government member has been regulated to be in the competence of the Prime Minister. It is considered that the provision of the part 7.1.12 wording "… appointed … to resign" of the Law on the Parliament (State Sikh Khural), article 7, of Mongolia stipulating "… discuss reports or presentation of the official elected or appointed by the Parliament, propose to resign or dismiss them…"is considered as inconsistent with the provision of the Constitution, article 39, section 2.

2. The Constitution provides, article 41, section 1: "The Prime Minister leads the Government and is accountable to the National Parliament for the implementation of state laws";

article 43, section 2: "The Government resigns entirely upon the resignation of the Prime Minister or if a half of the members of the Government resign simultaneously", which proved that the Government has collective responsibility and must work adhering to the cabinet format principle. However, the fact that the dispute on dismissal of the member of the Government on the proposal of the member of the Parliament has been discussed and decided at the Parliament without submission it to the Parliament by the Prime Minister denies the constitutional conception to work in compliance with the cabinet format principle.

3. Content of the section 2 of the article 39 of the Constitution providing "…the composition of the Government …modifications to it" has been extended in the provision of the article 23, section 1 as follows "… proposal on appointment a member of the Government, dismissal or resignation of him from the position..".

The above mentioned conclusion was considered not acceptable by in the Resolution 83 of the Parliament of Mongolia dated 8 October 2015 on "the Constitutional Court Conclusion number 11 of 2015".

GROUNDS:

1. Provisions of the article 39, sections 2 and 3; article 40, section 2; article 41, section 1; article 43, sections 1 and 2 providing for the following: the Prime Minister shall lead the Government, is accountable to the Parliament, the Government term shall depend on the commencement of powers of the Prime Minister and their termination, and formation of the Government on the proposal of the Prime Minister; as well as the Government's work in compliance with the cabinet format principle, correspond with the constitutional concepts.

The lawmakers set forth in the article 5 of the Law on the Government the principle of the Government activity, and provide that they are collectively accountable to the Parliament.

2. Within the scope of the above principle, ensured by in the Constitution and relevant laws, and according to the provision of

the article 39, section 2 of the Constitution stipulating "The Prime Minister, in consultation with the President, submits his or her proposals on the structure and composition of the Government and on modifications to it to the National Parliament", the proposal of the Prime Minister plays the key role in the matters related to the proposal on Government structure, modifications to it or termination and dismissal of the Government member, and appointment of the new Prime Minister.

However, the article 7, part 7.1.12 of the Law on the Parliament allows to discuss and decide the question on dismissal of the Government member without the Prime Minister's participation or his proposal based on the proposal of a Parliament member. This denies the principle of separation of powers and fundamental constitutional concept on cabinet format principle, infringes the power of the Prime Minister, and breaches provisions of the article 39, section 2; article 41, section 1 of the Constitution.

3. The conclusion of the Constitutional Court number 11 rendered on 9 September 2015, in particular the part 7.1.12 of the Law on the Parliament (State Sikh Khural) wording "… appointed … dismiss" of the article 7 stipulating "… discuss report or presentation of the official elected or appointed by the Parliament, propose to dismiss or resign them…" was inconsistent with the provision of the Constitution, article 39, section 2: "The Prime Minister, in consultation with the President, submits his or her proposals on the structure and composition of the Government and on modifications to it to the National Parliament", article 41, section 1: "The Prime Minister leads the Government and is accountable to the National Parliament for the implementation of state laws", has been considered reasonable.

4. The Parliament did not specify the reasons or grounds of the decision on unacceptability of the resolution of the Constitutional Court in its resolution 83 dated 8 October 2015 on "the Constitutional Court Conclusion number 11 of 2015" as it should have been done in compliance with the article 36, section 3 of the Law on Constitutional Court Procedure.

Guided by the provisions of the article 64, article 66, sections

3 and 4 of the Constitution of Mongolia; article 8, sections 2 and 4 of the Law on Constitutional Court and article 31, section 2; article 36, sections 3 and 4 of the Law on Constitutional Court Procedure:

ON BEHALF OF THE CONSTITUTION OF MONGOLIA IT IS RESOLVED

1. The part 7.1.12 of the Law on the Parliament (State Sikh Khural) wording "… appointed … dismiss" of the article 7 stipulating "… discuss report or presentation of the official elected or appointed by the Parliament, propose to dismiss or resign them…" is inconsistent with the provision of the Constitution, article 39, section 2: "The Prime Minister, in consultation with the President, submits his or her proposals on the structure and composition of the Government and on modifications to it to the National Parliament", and article 41, section 1: "The Prime Minister leads the Government and is accountable to the National Parliament for the implementation of state laws", thus the above provision of the Law on the Parliament shall be dismissed.

2. Dismiss the resolution of the Parliament number 83 dated 8 October 2015 on "Conclusion of the Constitutional Court number 11 of 2015".

3. This resolution shall be enforceable upon its issuance.

CHAIRMAN	J.AMARSANAA
MEMBERS	P.OCHIRBAT
	T.LKHAGVAA
	SH.TSOGTOO
	D.SUGAR
	D.NARANCHIMEG
	D.SOLONGO
	D.GANZORIG

RESOLUTION OF THE CONSTITUTIONAL COURT OF MONGOLIA

2015.12.09 No. 11 Ulaanbaatar

Final adjudication of the constitutional dispute on inconsistency of article 171, part 171.2 of the Civil Code of Mongolia and certain provisions of the Law on Immovable Property Pledge with the relevant provisions of the Constitution of Mongolia

Constitutional Court Session Hall, 14:30

Content of the dispute:

The dispute on whether article 171, part 171.2 of the Civil Code; article 27, parts 27.1 and 27.2, article 30, parts 30.1, 30.3, 30.4; article 33, part 33.1 and article 56, relevant provision of the part 56.1 of the Law on the Immovable Property Pledge is inconsistent with the provision of the Article 16, part 3 of the Constitution of Mongolia stipulating "… has the right to own …".

Content of the petition of citizen Bazar A., to the Constitutional Court:

Article 16, part 3 of the Constitution guarantees the right of citizens to own immovable property. The ownership has absolute and powerful characteristics.

Even though the owner of the subject to hypothec has been changed, the creditor's right to have his claim satisfied in terms of the hypothec (or pledge) in as a priority remains in force. Thus, since the transference of the pledge ownership does not infringe the right of the creditor, there is no need to limit the right of the owner to ownership.

Dependence of the transfer of the ownership of the hypothec pledge with permission of the creditor limits the opportunity of the owner to own, sell and receive financing from the market.

Additionally, in cases of the immovable property being re-pledged to two or more persons, the owner has to obtain permission from each holder of pledge in order to transfer the ownership, which causes a burden on the transfer of the ownership. It obviously leads to a decrease in the market price of the property. These circumstances are the reasons for the breach of the ownership's right to own.

The owner has the right to re-pledge the property in his/her ownership to several persons. In cases of the owner re-pledging the property to several persons, the creditors have the right to remedy in order of priority pledge. However, in cases of prohibition to re-pledge, the right of the property owner shall be breached.

According to the Law on Immovable Property Pledge, article 30, part 30.1 stipulating "The creditor has the right to transfer the pledged property to others' ownership for the purpose to lease, rent and utilize with charge for a temporary period of time on terms the debtor has permitted while performing the (main) obligation", provision 30.3 stipulating "The creditor shall obtain permission of the debtor in case if he/she allows others to utilize the pledged property in excess of the obligation performance term or for other purposes", provision 30.4 stipulating "The transaction to entitle the third person in breach of the term specified in the provision 30.1 of this Law without permission of the debtor shall be deemed void", article 171, part 171.2 of the Civil Code providing "Enforceability of the transaction between the owner and the third person on transference of the property of hypothec depends on the permission of the pledge holder/creditor", which has made any transaction of the property owner in respect to possession or utilization of immovable property as well as the property of hypothec by others dependent on permission of the pledge holder/creditor. Thus, this leads to consequences such as requesting the owner to pay for the granting of permission by the pledge holder/creditor, the owner cannot benefit from his/her property or receive profit from rent or lease of the property. Article 56, part 56.1 of the Law on Immovable Property Pledge provides

that the owner may undertake construction work on the land only with the permission of the pledge holder/creditor, which restricts the owner's right to dispose their own property.

Therefore, I am requesting to determine whether the provisions of the article 171, part 171.2 of the Civil Code; provision 27.1 of the Law on Immovable Property Pledge stipulating "according to the article 171 of the Civil Code… only on permission of the pledge holder/creditor…", article 27, part 27.2, article 30, part 30.1 stipulating "with permission of the pledge holder/creditor…", provisions 30.3, 30.4, article 33, part 33.1 stipulating "unless not prohibited by the valid preceding agreement", and provision 56.1 stipulating "unless otherwise provided in the land pledge agreement, with permission of the pledge holder/creditor…" are inconsistent with provision 16.3 of the Constitution stipulating "has the right to own … immovable property" and further invalidate/dismiss them.

Content of the explanation by the accredited representative of the Parliament of Mongolia and a member of the Parliament Bayanselenge Z. delivered to the Constitutional Court:

In order to protect certain rights related to the issue of ownership of the property serving as hypothec, the Civil Code, provision 171.1 of the article 171 entitled "Non-restriction of the owner's right to transaction" stipulating "Transaction, obligating the owner not to use the immovable property serving as a hypothec, not to transfer it to ownership of others, and not to otherwise entitle rights to it to third party, shall be invalid". In other words, the provision 171.2 of the Civil Code is not designated to restricting the right to own immovable property, including rights to utilize and dispose it.

However, a question to grant the permission specified in the article 171, part 171.2 of the Civil Code is a subject matter of not the Constitution, but the Civil Code. The provisions under the dispute refer to the regulations to be applied in respect to interest of the pledge holder/creditor to maintain the integrity of the pledged property and proper performance of the obligation,

but not to restriction of the owner's right to own.

The provision 56.1, article 56 of the Law on Immovable Property Pledge stipulating "If the debtor does not specify otherwise in the agreement on pledge of land, he/she has the right to construct buildings on the pledged land with the permission of the pledge holder/debtor, and if the agreement does not provide otherwise, the pledge does not involve the constructed buildings" infers that the "permission of the pledge holder/creditor" is necessary to protect his/her right in terms of the risk of not being compensated if the condition of the pledged land changes after the construction of buildings on it, but the provision does not restrict the right of the owner to construct buildings on the pledged land.

Based on the above mentioned the provisions that has been discussed are not inconsistent with the article 126, part 3 of the Constitution of Mongolia.

The Constitutional Court discussed this dispute on the Middle bench session on 7 October 2015, and rendered a conclusion number 13. The conclusion contained the following:

1. The right to own is the basic right of the owner, and the owner has the right to free possession, utilization, and disposition and protect from interference the thing of the ownership.

There is a common practice to restrict the right of the owner in compliance with public law and civil law for the purposes only to comply with public interests, restrict causing damage in breach of others' rights, and provide the persons with limited property right with the possibility to implement their rights.

2. The owner of the entity serving as the hypothec or the immovable property is entitled to implement his/her absolute rights to transfer to others' ownership or lease or rent or transfer to others' possession for temporary use free of charge, or re-pledge or construct buildings on the pledged land, and this does not infer the breach of the pledge holder/creditor's right or does not cause damage to the holder/creditor. This is because, regardless to whom the ownership or possession of the entity of hypothec

has been transferred, following the entity of pledge, the priority right to implement hypothec right remains with the pledge holder/creditor. Also, the re-pledge of the thing of hypothec does not infringe the right of the preceding pledge holder/creditor, who is entitled to be compensated first.

3. The Civil Code of Mongolia, article 171, part 171.1 providing "Transaction, obligating the owner not to use the immovable property serving as a hypothec, not to transfer it to ownership of others, and not to otherwise entitle rights to it to third party, shall be invalid" is the basic regulation that guarantees the absolute right of the owner.

It has been considered that the part 171.2 of the above article providing that the validity of the transaction concluded by the hypothec owner with a third party depends on the creditor's permission has been inconsistent with the principal regulation, and has unreasonably restricted the owner's right.

The Parliament of Mongolia considered unacceptable the above conclusion by in the resolution 88 on "Conclusion 13 of 2015 of the Constitutional Court" dated 15 October 2015.

GROUNDS:

1. Transferring to others and re-pledging the entity serving as hypothec and constructing of buildings on the pledged land without permission of the pledge holder/creditor have not breached the right of the pledge holder/creditor to be compensated first and the Civil Code and Law on Immovable Property Pledge set forth the possibility to control over the utilization and protection of the entity serving as pledge and protect from the risk.

2. It seems that the issuance privileges to the pledge holder/creditor in compliance with some provisions of the Civil Code and Law on Immovable property Pledge has infringed the principle of equality of participants of the civil law relations and basic right of the owner set forth in the Constitution.

3. The resolution 88 of the Parliament on "Conclusion 13 of

2015 of the Constitutional Court" dated 15 October 2015 did not mention the grounds of unacceptability of this conclusion of the Constitutional Court as it should have been done in compliance with the article 33, part 3 of the Law on Constitutional Court Procedure.

4. The conclusion number 13 rendered on the Middle Bench session of the Constitutional Court on 7 October has been considered reasonable.

Guided by the provisions of the article 64; article 66, parts 3 and 4; article 8, parts 2 and 4 of the Law on Constitutional Court; and article 31, part 2, article 36, parts 3 and 4 of the Law on Constitutional Court Procedure

ON BEHALF OF THE CONSTITUTION OF MONGOLIA IT IS RESOLVED

1. Dismiss the provisions in the below mentioned articles as they are inconsistent with the provision of the article 16, part 3 of the Constitution of Mongolia stipulating "… has the right to own immovable property …":

- article 171, part 171.2 stipulating "Validity of the transaction concluded by hypothec owner with a third party shall depend on the creditor's permission";

- article 27, part 27.1 of the Law on Immovable Property Pledge "… only on permission of the pledge holder/creditor …";

- article 27, part 27.2 of the Law on Immovable Property Pledge "If hypothec is issued the thing of pledge may be transferred to the ownership of others pursuant to conditions determined by this hypothec";

- article 30, part 30.1 "… with permission of the pledge holder/creditor…";

- article 30, part 30.3 "The debtor shall obtain the permission of the pledge holder/creditor in case if he/she allows others to utilize the pledged property in excess of the obligation performance term or for other purposes";

- article 30, part 30.4 "The transaction to entitle the third person in breach of the term specified in the provision 30.1 of this Law without permission of the debtor shall be deemed void";

- article 33, part 33.1 "If not prohibited by in the preceding agreement in force…" ;

- article 56, part 56.1 "…with permission of the pledge holder/creditor, if it is not provided otherwise in the agreement on pledge of land …".

2. Dismiss resolution number 88 of the Parliament of Mongolia dated 15 October 2015on "Conclusion number 13, 2015, of the Constitutional Court of Mongolia".

3. This resolution shall be enforceable upon its issuance.

PRESIDING MEMBER	J.AMARSANAA
MEMBERS	P.OCHIRBAT
	N.JANTSAN
	T.LKHAGVAA
	SH.TSOGTOO
	D.SUGAR
	D.NARANCHIMEG
	D.SOLONGO
	D.GANZORIG

RESOLUTION OF THE CONSTITUTIONAL COURT OF MONGOLIA

2016.03.23 No. 03 Ulaanbaatar

Final adjudication of the constitutional dispute on whether some provisions of the Law on Amendments to the Constitutional Court and Law on Amendments to the Law on the Parliamentary Session Order have restored, through the review process, the content of the provision of the law dismissed by resolution number 02 of 2010of the Constitutional Court of Mongolia

Constitutional Court Session Hall, 12:00

Content of the dispute:

Dispute on whether amendment done to the below mentioned provisions restored the content of the law provision that was dismissed by resolution 02 of the Constitutional Court in 2010. In particular, as provided in article 1, part 7 of the Law on Amendments to the Law on Constitutional Court adopted by the Parliament of Mongolia on 19 January 2016, article 8, part 4 of the Law on the Constitutional Court was amended as follows: "When the conclusion specified in the parts 2 and 3 of article is submitted to the Parliament, the Constitutional Court shall explain the grounds and consequences of the conclusion and answer the questions related to the grounds"; as provided in article 1, part 1 of the Law on Amendments to the Law on the Parliamentary Session Order, article 32, part 32.2 of the Law on the Parliamentary Session Order was amended as follows: "The Constitutional Court shall explain the grounds and consequences of its conclusion on the session of the relevant Standing Committee and general (grand) session of the Parliament , and provide the members with answers of the questions related to the grounds and consequences of its conclusion".

Content of the petition of the citizens Bat-UyangaCh., Lamjav D., BatkholbooTs. Nomiinbayasgalan S., Amgalanbaatar L. to the Constitutional Court:

Article 32, part 32.1.1 of the Law on the Parliamentary Session Order adopted on 11 October 2007 provides ”The Chairman of the Constitutional Court, or the Deputy in case of his/her absence, shall introduce the conclusion of the Constitutional Court on the session of the Standing Committee and general session of the Parliament”; provision 32.1.9 “When the conclusion of the Constitutional Court is discussed on the session of the Standing Committee and general session of the Parliament the members may ask from the Chairman of the Constitutional court and his/her Deputy and ask questions related to the proposals and conclusion of the Standing Committee and express opinions”; provision 32.2.1 “The conclusion of the Constitutional Court shall be introduced by the Chairman of the Constitutional Court, or the Deputy in case of his/her absence, on the session of the Standing Committee and general session of the Parliament”; article 35, part 35.4 “On the session of the Standing Committee and general session of the Parliament, resolution of the court shall be introduced by the Chief Justice of the Supreme Court and answer the questions of the members as well as the conclusions of the Constitutional Court shall be introduced by the Chairman of the Constitutional Court”.

At the request of certain citizens, based on the inconsistence of the above regulations with some provisions of the Constitution, the Constitutional Court initiated the dispute in 2010 which was resolved during the Middle bench session of the Constitutional Court on 2 April 2010, and conclusion number 02 was rendered as well as it was reviewed and resolved in resolution number 02 on the Full bench session on 9 June of 2010. The above law provisions were considered inconsistent with the Constitution and were dismissed.

However, when on 19 January 2016, the Parliament adopted the Law on Amendments to the Constitutional Court and the Law on Amendments to the Law on Parliamentary Session

Order, it was provided that the Constitutional Court should have explained its conclusion submitted to the Parliament on the session of the relevant Standing Committee and general session of the Parliament, and answer the questions of members of the Parliament. The fact that members are to provide the Parliament with explanations related to the decisions of the Constitutional Court restored the content of the provisions of the Law on Parliamentary Session Order that were dismissed by resolution number 02 of the Constitutional Court in 2010.

Thus, we are requesting to render the decision on whether the provision of article 8, part 4 "When the conclusion specified in the parts 2 and 3 of article is submitted to the Parliament, the Constitutional Court shall explain the grounds and consequences of the conclusion and answer the questions related to the grounds" that was amended by the Law on Amendments to the Law on Constitutional Court adopted by the Parliament on 19 January 2016 breached the provisions of the Constitution of Mongolia, in particular article 64, part 2 stipulating "The Constitutional Court and its members in the execution of their duties are subject to the Constitution only and are independent of any organizations, officials, or anybody else", part of this article "The independence of the members of the Constitutional Court is ensured by the guarantees set out in the Constitution and other laws", article 70, part 1 "Laws, decrees, and other decisions of state bodies and activities of all other organizations and citizens must be in full conformity with the Constitution", and article 1, part 2 "The fundamental purpose of state activity is … the respect of law".

Also, we are requesting to resolve the above mentioned dispute in the review process or at the Full bench session of the Constitutional Court in compliance with article 15, part 3 of the Law on Constitutional Court Procedure stipulating "… If authorized bodies, officials restore directly or the content of the provisions of laws or other decisions dismissed by the decision of the Constitutional Court in rendering the decisions, the Constitutional Court may resolve in review process on initiative of any member of the Constitutional Court".

Pursuant to article 23 of the Law on the Constitutional Court Procedure, the member of the Constitutional Court applied to the Chairman of the parliament several times to appoint the accredited representative and deliver the explanation in official letters 3/62, 3/76, 3/84, 3/130 of 2016, however, the Parliament did not appoint the accredited representative, and did not deliver the explanations.

GROUNDS:

1. Although it is clearly provided in article 66, part 2 of the Constitution of Mongolia that the Constitutional Court shall render the conclusion on the constitutional dispute and "submit" to the Parliament, the Law on the Parliamentary Session Order adopted on 11 October 2007 modified the content and falsified the meaning wording: the conclusion of the Constitutional Court "shall be introduced on the session of the Standing Committee and general (grand) session of the Parliament". The fact that, according to article 32, parts 32.1.1, 32.1.9, 32.2.1; article 35, part 35.4 of the Law on the Parliamentary Session Order, "the conclusion of the Constitutional Court is introduced by the Chairman of the Constitutional Court, or the Deputy in case of his/her absence, on the session of the Standing Committee and general (grand) session of the Parliament, and the members of the Parliament ask questions get answers infringed the principle of impartiality of the Constitutional Court, members of the Constitutional Court and judges, and made avail the interference, which breached the provisions of article 49, part 1 stipulating "Judges are independent and subject only to the law", part 2 of this article "Neither a private person nor any civil officer - be it the President, members of the National Parliament, or the Government, officials of political parties, or other voluntary organizations - may not interfere with the judges' exercise of their duties", article 64, part 2 "The Constitutional Court and its members in the execution of their duties are subject to the Constitution only and are independent of any organizations, officials, or anybody else", part 3 of this article "The independence of the members of the Constitutional

Court is ensured by the guarantees set out in the Constitution and other laws", article 70, part 1 "Laws … must be in full conformity with the Constitution". Thus, the Constitutional Court rendered resolution number 02 on 9 June 2010, and dismissed the above mentioned provisions of the Law on the Parliamentary Session Procedure.

2. It is reasonable to consider that amendments made to the following provisions, in compliance with the article 1, part 7 of the Law on Amendments to the Law on Constitutional Court adopted by the Parliament of Mongolia on 19 January 2016, in particular article 8, part 4 of the Law on the Constitutional Court stipulating "When the conclusion specified in the parts 2 and 3 of article is submitted to the Parliament, the Constitutional Court shall explain the grounds and consequences of the conclusion and answer the questions related to the grounds"; according to article 1, part 1 of the Law on Amendments to the Law on the Parliamentary Session Order, article 32, part 32.2 of the Law on the Parliamentary Session Order stipulating "The Constitutional Court shall explain the grounds and consequences of its conclusion on the session of the relevant Standing Committee and general (grand) session of the Parliament, and provide the members with answers of the questions related to the grounds and consequences of its conclusion", restored the content of the provisions that were dismissed by resolution number 02 of the Constitutional Court in 2010.

Guided by the parts 3 and 4 of article 66, article 67 of the Constitution of Mongolia, part 2.1 of article 8 of the Law on the Constitutional Court, part 3 of article 15 and part 2 of article 31 and part 2 of article 32 of the Law on Constitutional Court Procedure.

ON BEHALF OF THE CONSTITUTION OF MONGOLIA IT IS RESOLVED

1. As the amendments made to the following provisions, in compliance with the article 1, part 7 of the Law on Amendments to the Law on Constitutional Court adopted by the Parliament

of Mongolia on 19 January 2016, in particular article 8, part 4 of the Law on the Constitutional Court stipulating "When the conclusion specified in the parts 2 and 3 of article is submitted to the Parliament, the Constitutional Court shall explain the grounds and consequences of the conclusion and answer the questions related to the grounds"; according to article 1, part 1 of the Law on Amendments to the Law on the Parliamentary Session Order, article 32, part 32.2 of the Law on the Parliamentary Session Order stipulating "The Constitutional Court shall explain the grounds and consequences of its conclusion on the session of the relevant Standing Committee and general session of the Parliament, and provide the members with answers of the questions related to the grounds and consequences of its conclusion" restored the content of the provisions of the Law of Mongolia on the Parliamentary Session Order that were cancelled by resolution number 02 of the Constitutional Court in 2010, and breached relevant provisions of article 49, parts 1 and 2, article 64, parts 2 and 3, and article 70, part 1, specified in this resolution, dismiss the above mentioned provisions.

2. This resolution is the final decision, and shall be enforceable upon its issuance.

PRESIDING MEMBER	N.JANTSAN
MEMBERS	P.OCHIRBAT
	T.LKHAGVAA
	SH.TSOGTOO
	D.SUGAR
	D.NARANCHIMEG
	D.GANZORIG

RESOLUTION OF THE CONSTITUTIONAL COURT OF MONGOLIA

2016.06.17 No. 04 Ulaanbaatar

Final adjudication of the dispute on whether some provisions of the Law on Amendments to the Law on the Constitutional Court of Mongolia, Law on Amendments to the Law on Constitutional Court Procedure, Law on Amendments to the Law on Parliamentary Session Order are inconsistent with the relevant provisions of the Constitution of Mongolia

Constitutional Court Session Hall, 12:10

Content of the dispute

Whether amendments made to the article 2, part 1, article 3, part 1, article 4, part 4, article 5, parts 3, 4, 5 and 6, article 8, part 2 of the Law on the Constitutional Court of Mongolia; article 10, part 2, article 18, part 2, article 28, part 5, article 35, part 3 of the Law on the Constitutional Court Procedure; article 401 , part 401.1 of the Law on the Parliamentary Session Order are inconsistent with article 64, parts 1, 2 and 3; article 65, parts 1and 3, article 16, part 14 of the Constitution of Mongolia; and article 2 of the Law on Amendments to the Law on the Constitutional Court; article 3 of the Law on Amendments to the Law on the Constitutional Court Procedure; article 2 of the Law on Amendments to the Law on the Parliamentary Session Order are inconsistent with the article 26, part 3, article 33, part 1.1, article 50, part 3 of the Constitution.

Content of the petition of the citizens Lamjav D. and BatkholbooTs. to the Constitutional Court:

1. The final provisions of these three laws on amendments, stipulating "… shall be enforceable from the date of adoption"

have expressly breached the provisions of the Constitution, in particular article 26, part 3 on enforceability of the law, article 33, part 1.1 on the power of the President to veto, article 50, part 3 on impossibility to apply the unpublished law by the court.

2. The following amendments made to the provisions of mentioned laws are inconsistent with article 65, part 1 of the Constitution regarding the Constitutional Court member's service term of 6 years:

- Law on the Constitutional Court, article 4 on the member of the Constitutional Court: the modified part 4 stipulates "If the member of the Constitutional Court reached the age limit to serve in the public service, he/she shall retire or be released from the position of the Constitutional Court member";

- Parts 4 and 5 of the article 5 of this Law on guarantees of the Constitutional Court member's authority have been modified as follows: the retirement age provides for the grounds to be released in prior to the termination of the service term;

- Part 1 of the article 3 on establishment procedure of the Constitutional Court, or in fact the relevant provision of the Constitution allows one time extension of the service term of the Constitutional Court member (limitation on appointment only for one time);

- In modifying of the part 401.1 of the article 401of the Law on the Parliamentary Session Order, regarding "Discussion Procedure of the Constitutional Court member's release from the position", the retirement age lays ground for the proposal to release the member from the position by the body first proposed the appointment of the Constitutional Court member.

3. The part stipulating "It shall be prohibited to disclose the proposals of the members made in the Session Room" was removed from the Article 10, part 2 of the Law on the Constitutional Court Procedure on "Consulting of the members of the Constitutional Court " and added as follows: "If the proposal made by the member of the Constitutional Court lays ground for the decision of the

Court, it will be recorded in the part of grounds and the special proposal made by the member will be attached to the decision of the Constitutional Court"; the provision "The disputing party has the right to obtain the minute/protocol of the Constitutional Court session. If the disputing party wishes, the Constitutional Court shall provide the minutes in forms of hard, soft, audio and video records" was added to the part 2 of the article 18 on "Rights and duties of the participants in the Constitutional Court Proceedings"; the provision "The question of the Constitutional Court member shall not be of preliminary conclusion character or debating kind" was added to the part 5 of article 28 on "Discussing of dispute on the Constitutional Court session"; the provision "The minutes/ protocols of the consultation shall be maintained undisclosed as confidential matter of the organization" was removed from the part 3 of article 65 on "minutes/protocols of the Constitutional Court session". All the above mentioned amendments are inconsistent with the parts 2 and 3 of article 64 of the Constitution.

4. Article 2, part 1 of the Law on the Constitutional Court was amended as follows: "The basic principle of the activities of the Constitutional Court includes the principles to adhere to the Constitution of Mongolia, abide the laws consistent with the Constitution of Mongolia, be founded on research, be neutral, be independent, be transparent".

The petitioner considered that the provision "Abide the laws consistent with the Constitution of Mongolia", "Be neutral" is inconsistent with the following constitutional provisions: article 64, part 1 "The Constitutional Court of Mongolia is an organization authorized to maintain superior control over the enforcement of the Constitution, render conclusion on whether its provisions are breached, review and decide the disputes"; part 2 "The Constitutional Court, its members shall adhere to the Constitution in performance of their duties, and be impartial from any organizations, officials and other individuals"; part 3 "The independence of the members of the Constitutional Court is ensured by the guarantees set out in the Constitution and other laws".

It is unclear who would determine whether the law specified in this provision complies with the Constitution or not and, with respect to the content, there cannot be such a regulation. Furthermore, with respect to the principle of neutrality of the Constitutional Court, this principle cannot be adhered to in activity of the court. The court renders conclusion on the 'right' or 'wrong' of the dispute, but cannot maintain the control over implementation of the Constitution through neutral means complying to the social, political and economic circumstances, or the interest of the community.

5. It has been considered that the amendment made to the provision "If the court has found that the member of the Constitutional Court has committed a crime or it is found by the court that member of the Constitutional Court has breached the law, the Parliament may remove him/her from the membership of the Constitutional Court based on the decision of the Constitutional Court on the removal and proposal of the organization first appointed" of article 5, part 3 of the Law on the Constitutional Court, stipulating "If the court has found that the member of the Constitutional Court has committed a crime or it is found by the authorized body that member of the Constitutional Court has breached the law, the Parliament may remove him/her from the membership of the Constitutional Court based on the decision of the Constitutional Court on the removal and proposal of the organization first appointed" has breached the provisions of the Constitution, in particular article 16, part 14 "Every person is presumed innocent until proven guilty by a court by due process of law" and article 64, part 3 "The independence of the members of the Constitutional Court is ensured by the guarantees set out in the Constitution and other laws". Determination of whether the law has been breached is a subject matter of judicial organ, and the fact that the law provides for other organizations other than the court to determine the breach of the law constitutes the condition for the failure of the guarantees of the Constitutional Court member ensured by in the Constitution.

Thus, we are requesting to review whether the provision of the above mentioned laws have breached the Constitution, and in case of breach have them be dismissed.

The Constitutional Court discussed this dispute at its Middle Bench Session on 15 February 2016, and rendered the conclusion number 03 that the relevant provisions of the above laws were inconsistent with the Constitution.

The Parliament did not deliver pursuant to article 66, parts 2 and 3, of the Constitution, article 36, part 2 of the Law on the Constitutional Court Procedure and article 32, part 32.3 of the Law on Parliamentary Session Order any resolution on whether it accepted the above conclusion or not.

GROUNDS:

1. The conclusion number 03 of the Middle Bench Session of the Constitutional Court held on 15 February 2016 is deemed reasonable.

2. Article 3, part 1 of the Law on Constitutional Court provides that the member of the Constitutional Court may be re-appointed for one time term. Although the Constitution, article 65, part 3, provides for one time re-election of the Chairman of the Constitutional Court, it does not restrict the one time re-appointment of the member. Thus, the restriction on re-appointment of the Constitutional Court member provided in the Law on Amendments to the Law on the Constitutional Court is in controversy with the Constitution.

3. Article 4, part 4 of the Law on the Constitutional Court provides "If the member of the Constitutional Court reached the age limit to serve in the public service, he/she shall retire…". Although the setting out in the law the highest age of the person serving term as a member of the Constitutional Court by the Parliament does not have any content of restriction, the adoption of the law cannot create grounds for the termination of the constitutional right of the member prior to the expiry of the

service term who has already been appointed before the adoption of the law. In other words, with respect to the Constitutional Court member who has been appointed to serve the term, the re-application of this law would infringe the independence of the member and would be the breach of the Constitution.

4. Amendment to article 18, part 2 of the Law on the Constitutional Court Procedure, stipulating "… has the right to take the minutes/protocols of the Constitutional Court session. If the disputing party wishes, the Constitutional Court shall provide with minutes/protocols in forms of hard, soft, audio and video records" is likely to be pertaining to the consulting session". Article 35, part 3 was added as follows: "technical equipment for audio, video, and audio-video recording shall be used in order to hold complete minutes/protocols, and the records shall be fixed in written form within 7 days and attached together with audio, video, and audio-video records to the files of the dispute settlement documents", but the provision to store the consulting session minutes/protocols as confidential documents was removed.

This is in contravention of the guarantee of independence of the Constitutional Court members that avails the free expression of suggestions and positions. As suggestions and words expressed by the members in the consulting room have been of confidentiality importance, their disclosure constitutes circumstances to infringe the independence of the members.

5. Amendment to article 10, part 2 of the Law on the Constitutional Court Procedure stipulating "… the special proposal made by the member shall be attached to the decision of the Constitutional Court" infers that the proposal of the member with special proposal shall be published regardless to his/her opinion, which creates the regulation with obligatory character. This is in contravention of the guarantee of independence of the Constitutional Court members specified in article 64, parts 2 and 3 of the Constitution.

6. Article 5, part 3 of the Law on the Constitutional

Court stipulating that if the authorized body has found that the Constitutional Court member has breached the law, this will be the ground for the removal of the member. This provision is in contravention of the principle that only the court defines whether the law was breached or not, and in inconsistent with the constitutional provision on guarantee of the independence of the Constitutional Court member.

7. The Law on Amendments to the Law on the Constitutional Court, article 2, the Law on Amendments to the Law on the Constitutional Court Procedure, article 3, the Law on Amendments to the Law on the Parliamentary Session Order, article 2, provide for the provision "This Law shall be enforceable on 19 January 2016", which means to adhere to the above laws from the date of their adoption.

The above mentioned provision is inconsistent with the provisions of the Constitution, in particular article 26, part 3 "National laws are subject to official promulgation through publication and, if the law does not provide otherwise, enter into force 10 days after the day of publication", article 33, part 1.1 "… to veto, partially or wholly, laws and other decisions adopted by the National Parliament" and article 50, part 3 "The Supreme Court and other courts have no right to apply laws that are unconstitutional or have not been promulgated".

8. Amendments made to article 2, part1, article 4, part 4, article 5, parts 4, 5 and 6, article 8, part 2 of the Law on the Constitutional Court by the Law on Amendments to the Law on the Constitutional Court; article 28, part 5 of the Law on the Constitutional Court Procedure by the Law on Amendments to the Law on the Constitutional Court Procedure; article 401part 401.1 of the Law on the Parliamentary Session Order by the Law on Amendments to the Law on the Parliamentary Session Order are not inconsistent with the Constitution.

Guided by the provisions of article 64; article 66, parts 3 and 4; article 67; article 8, part 2.1 of the Law on Constitutional

Court; and article 13, part 1, article 30, part 1; article 31, part 2; article 32, part 2 of the Law on Constitutional Court Procedure

ON BEHALF OF THE CONSTITUTION OF MONGOLIA IT IS RESOLVED

1. Amendment "The Constitutional Court member may re-appointed for one time term" to article 3, part 1 of the Law on the Constitutional Court by the Law on Amendments to the Law on the Constitutional Court adopted by the Parliament on19 January 2016 is inconsistent with the provisions of the Constitution, in particular article 64, part 3 "The independence of the members of the Constitutional Court is ensured by the guarantees set out in the Constitution and other laws", article 65, part 1 "The Constitutional Court consists of 9 members. Members of the Constitutional Court are appointed by the National Parliament for a term of six years upon the nomination of three of them by the National Parliament, three by the President, and the remaining three by the Supreme Court"; article 5, part 3 "… or the breach of the law has been found by the authorized body" has breached article 64, part 2 "The Constitutional Court and its members, in the execution of their duties, are subject to the Constitution only and are independent of any organizations, officials, or any individuals ", article 64.3 "The independence of the members of the Constitutional Court is ensured by the guarantees set out in the Constitution and other laws", article 16, part 14 "… has the right … to fair trial". Thus, these amendments shall be dismissed.

2. The provisions of the Law on the Constitutional Court Procedure amended by the Law on Amendments to the Law on the Constitutional Court Procedure adopted on 19 January 2016, in particular article 10, part 2 "… special proposal made by the member shall be attached to the Constitutional Court decision" has breached article 64, part 2 of the Constitution "The Constitutional Court and its members in the execution of their duties are subject to the Constitution only and are independent of any organizations,

officials, or any individuals ", part 3 "The independence of the members of the Constitutional Court is ensured by the guarantees set out in the Constitution and other laws"; article 18, part 2 "… has the right to take the minutes/protocols of the Constitutional Court session. If the disputing party wishes, the Constitutional Court shall provide with minutes/protocols in forms of paper, audio and video records, and in electronic form", article 35, part 3 "… technical equipment for audio, video, and audio-video recording shall be used in order to hold complete minutes/protocols , and the records shall be fixed in written form within 7 days and attached together with audio, video, and audio-video records to the files of the dispute settlement documents" have breached article 64, part 2 "The Constitutional Court and its members in the execution of their duties are subject to the Constitution only and are independent of any organizations, officials, or any individuals ", part 3 "The independence of the members of the Constitutional Court is ensured by the guarantees set out in the Constitution and other laws". Thus, these amendments shall be dismissed.

3. The Law on Amendments to the Law on the Constitutional Court, article 2, Law on Amendments to the Law on the Constitutional Court Procedure, article 3, Law on Amendments to the Law on the Parliamentary Session Order, article 2, provide for the provision "This Law shall be enforceable on 19 January 2016", which are inconsistent with the provisions of the Constitution, in particular article 26, part 3 "National laws are subject to official promulgation through publication and, if the law does not provide otherwise, be entered into force 10 days after the day of publication", the powers of the President specified in article 33, part 1.1 "… to veto, partially or wholly, laws and other decisions adopted by the National Parliament" and article 50, part 3 "The Supreme Court and other courts have no right to apply laws that are unconstitutional or have not been promulgated". Thus, these amendments shall be dismissed.

4. Notify that article 4, part 4; article 5, parts 4 and 5 of the Law on the Constitutional Court; article 401relevant part

of the provision 401.1 of the Law on the Parliamentary session Order shall not be re-applied with respect to the members of the Constitutional Court appointed before 19 January 2016.

5. This resolution is final and shall be enforceable upon its issuance.

PRESIDING MEMBER	N.JANTSAN
MEMBERS	P.OCHIRBAT
	T.LKHAGVAA
	SH.TSOGTOO
	D.SUGAR
	D.NARANCHIMEG
	D.SOLONGO
	D.GANZORIG