

THE ROLE OF THE CONSTITUTIONAL COURT IN THE PROCESS OF DEMOCRATIC DEVELOPMENT IN MONGOLIA

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(Translated by Mrs. Shao-Man Lee , if literary meanings of this translation in English abstracted by the Judicial Yuan for reference only are inconsistent with Mongolian, they shall subject to Mongolian)

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To the Honorable President of Judicial Yuan, to the Honorable Justices, ladies and gentlemen: on behalf of the Constitutional Court of Mongolia, I would like to express my sincere wishes to the host of this Conference, the Constitutional Court of Taiwan, and all the distinguished speakers and guests. I extend my best wishes for great success of the conference. My topic today is on the role of the Constitutional Court in consolidating democracy in Mongolia.

I. Political History and Legal Tradition in Mongolia

1. On November 26, 1924, the First State Great Hural (Great Assembly) unanimously adopted the first Constitution of the People's Republic of Mongolia, which reads:

“Mongolia is proclaimed an independent People's Republic, in which the whole power belongs to the laboring people. The people exercise their supreme power through the Great Assembly of all the people and the Government elected by the latter (Article 1).”

Mongolia has since adopted three constitutions respectively in 1940, 1960 and 1992, including the earlier socialist modules and the recent liberal democratic one: the 1924, 1940, and 1960 Constitutions followed the guidance of socialist ideologies, whereas the 1992 Constitution was aligned with liberal democratic ideas.

The main threads of socialist constitutions include one-party rule as the political core, in which all must safeguard the party's ideology and party building; management and supervision of society by the vanguards of working class; and the party's control of the law-making process and the implementation of its basic policies, ideology, and programs.

All these three socialist constitutions shared such socialist features as one-party rule, centralized government, party-centered developmental goals, emphasis on party programs and ideology, class consciousness, and the restriction of human rights.

2. At the foundation of socialist ideology was Marxist theory, and Marxism-Leninism was further formulated as the core of socialist judicial system in Mongolia until democratic movements took place in early 1990s. The Amendments to the Constitution of the People's Republic of Mongolia,

adopted on May 10, 1990, played an important role in the democratic transition as to set the institutional framework for democracy, notwithstanding the 1960 Constitution was yet in force.

The seventy years under socialist constitutions had witnessed the independence of Mongolia, and its unprecedented social and cultural achievements. But on the other hand, the development of Mongolian economy had fallen into a deadlock. As the Communist Party of the Soviet Union was diagnosed at the time, Mongolia was likewise under a centralized system, just like a machine with a number of functionally interrelated yet loosing parts.

I mention this for a reason. Because Mongolia was so closely allied with the Soviet Union that the political reforms and the “New Thinking” put forward by Gorbachev were understood to have a far-reaching influence on the democratic developments in Mongolia.

3. In 1990, the democratic movement broke out in Mongolia with demonstrations and hunger strikes. The Democratic Union in Ulaanbaatar in December, the then ruling party Mongolian People’s Revolutionary Party (MPRP), and government leaders reached a consensus to adopt a new democratic constitution, which was marked as the achievement of Mongolian society during transition. Mongolia has peacefully transitioned itself from a socialist system to a democratic one, which is widely acknowledged and admired.

As the Amendments to the Constitution of the People’s Republic of Mongolia in 1990 laid the legal foundation for democratic reforms, the new constitution, the fourth constitution in Mongolian history, was adopted on January 13, 1992. For the first time Mongolia enshrined in the constitution the ideas of human rights, democratic politics, pluralism, free economy, separation of powers and checks and balances, local self-government, independent judicial power, and judicial review. The one-party system was subsequently abandoned in the mid-1990s.

The following is a brief summary of how academic scholarship evaluates the progress of Mongolian democracy. Since there is no perfect democracy in the world, Mongolia has inevitably encountered numerous challenges during the democratization process. For example, Mongolian scholars have come to believe that democratic development shall not be prior to economic development, in line with the “Asian values.” Meanwhile, ordinary people either lack the knowledge of pluralism, separation of powers, checks and balances, and judicial independence, or question whether the government obeys the law. These are some warnings to which the Constitutional Court should pay attention.

II. Democratic Transition and the 1992 Constitution

1. Constitution is not only the supreme law of the land, but also the law that guides the country’s future directions of development. As long as the constitution is strictly observed, the stability of the constitutional order is ensured. Democracy and the protection of human rights and freedom are widely recognized as the foundation of constitutional development by many developed and developing countries.

2. Mongolian legal scholars construe the principle of democracy as follows:

“The principle of democracy is the basic principle of organizing governance by representing the power of the people. It institutionalizes the authority of government, implements the multi-party system, and embraces political pluralism. Meanwhile, it respects human rights, especially the freedom of press and speech.

The principle of democracy also enhances public participation by monitoring government behavior at both central and local levels. Therefore, democracy is more than an arbitrary exercise of majority power. It is a complex process through which to achieve the will of the people in strict observance of the Constitution.”

Furthermore, democracy is the manifestation of individual autonomy already embedded within the concept of human rights especially with regard to political rights and liberties. For instance:

Article 16(9) provides for the right to take part in the government of the country directly or through representative bodies, and the right to elect and to be elected to State bodies.

Article 16(10) provides that on the basis of social and personal interests and opinion, citizens have the freedom of association in political parties or other voluntary organizations. No one should be discriminated against and persecuted due to his or her participation in a political party or a mass organization.

Article 16(11) stipulates that men and women enjoy equal rights in political, economic, social, and cultural fields as well as in marriage.

Article 16(12) stipulates that citizens have the right to submit a petition or a complaint to State bodies and officials. The State bodies and officials are obliged to respond to the petitions or complaints of citizens in conformity with law.

Article 16(13) provides for the right to personal liberty and safety. No one may be searched, arrested, detained, persecuted, or restricted of liberty save in accordance with procedures and on grounds determined by law. No one may be subjected to torture, inhuman, cruel, or degrading treatment.

Article 16(16) stipulates that citizens have the freedom of thought, opinion, expression, speech, press, and peaceful assembly. Procedures for organizing demonstrations and other assemblies are determined by law.

The 1992 Constitution followed the global trend of democratization in the second half of the 20th century, in which liberal democracy has become the universally recognized criterion of democracy, and has constituted the basis of Mongolian constitutional patriotism.

Following rapid democratic development, challenges in implementing the constitution have arisen. Notwithstanding the frequent constitutional amendments proposed by the parliamentarians, the constitutionally obliged Constitutional Court shall safeguard the basic structure of a democratic constitution from political challenges.

III. The Role of the Constitutional Court in the Process of Democratic Development in Mongolia

1. Consolidation of democracy does not only come from the codification of the constitution and laws, but also the designated institution of constitutional oversight.

The Mongolian Constitutional Court was established to constrain state actions and to build up a body of constitutional law based upon democratic values and human rights protection. Article 64 of the Constitution of Mongolia provides that the Mongolian Constitutional Court exercises supreme supervision over the implementation of the constitution, making judgement on the violation of its provisions, and resolving constitutional disputes. The Constitutional Court is the guarantee for the strict observance of the Constitution.

Since its establishment the Constitutional Court has made great achievements in declaring challenged acts unconstitutional, protecting democratic principles and human rights, and building a humane, civil and democratic society. For instance, the Court has made more than 70 decisions related to Article 2 of the Constitution, namely the basic principles of state behavior, of which 35 state actions were found unconstitutional. Half of these decisions were particularly linked to democracy principles. Studies have shown that the Court also made more than 20 decisions which compelled state institutions to behave in accordance with democratic principles.

The Court heard another 110 cases related to human rights issues, 40% of which concerned political rights. The Court declared 50% of the human rights cases unconstitutional.

2. The following is a brief introduction of some cases heard by the Constitutional Court of Mongolia. In Decision No.1 of May 15, 1996, the Court ruled that citizens enjoy the right to peaceful demonstration and assembly, which became the precedent related to demonstrations and assemblies before the Court.

One case the Court heard concerned the participation of children in demonstrations and assemblies. The Law concerning the Procedures of Assembly and Demonstration stipulated that neither should children be involved in the organizing of an assembly (Article 11(3) para. 5) nor should they participate in the assembly and marchers (Article 12(1) para. 4). The Constitutional Court, drawing on the United Nations Convention on the Rights of the Child that Mongolia joined in 1990, held that these provisions violated constitutional rights of children in peaceful demonstrations and assemblies as well as and the Convention.

The Court has responded to a total of 16 disputes on election law since its establishment.

One case came to the Court after the parliament amended the Law on the Parliamentary Elections in 2005, which added that “The candidates should have no criminal record.” (Article 27(4) para. 3) In the past, the concept of “no criminal record” was explained by the Supreme Court as the candidate who had never been sentenced. The Constitutional Court, in Decision No. 6 on May 14, 2008, held that the added provision infringed upon the right of citizens who had been sentenced to be elected and their right to vote. The Court restored political rights of these candidates and voters and safeguarded democracy through striking down violations of human rights by a judgment of unconstitutionality.

By so ruling, the Court not only censured illegal provisions but also ruled out similar mistakes in the future. This decision had a profound impact on democratic consolidation in Mongolia.

3. The jurisprudence of the Mongolian Constitutional Court greatly contributes to the construction of a democratic legal system. Ultimately, it is the mission of constitutional court to ensure the

supremacy of the Constitution, the democratic values, and protection of human rights. The Mongolian Constitutional Court is no exception.

With this I conclude my presentation. Thank you.