

*The Constitutional Court of Mongolia  
on the Protection of Rights and Liberties  
Guaranteed by the Constitution*

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Honourable Chair of the symposium,  
Presidents, Chairmen, and Chief Justices of the Constitutional Courts,  
Ladies and Gentlemen,

I would like to extend my congratulations to the Constitutional Court of Thailand on its 25<sup>th</sup> anniversary. On behalf of the Association of Asian Constitutional Courts and Equivalent Institutions, on behalf of the Constitutional Court of Mongolia, and personally, I would like to send my warm greetings and wish prosperity to the Constitutional Court of Thailand, organizing this international symposium on the topic "The Constitutional Court on the Protection of Rights and Liberties" in connection with its 25<sup>th</sup> anniversary, which is of special importance not only for your country but also for the Asian continent, to the Justices participating in the symposium with a speech and to the Honourable guests.

I am pleased to express my confidence that this symposium will be fruitful and successful.

**1. The Constitution of Mongolia and the human rights protection system**

The Constitution of any country is the basic law of the country that establishes the society, economy, state structure, independence, the basics of the legal status of the individual, the state system, and the basic principles and procedures of their organization.

In the preamble of the Constitution of Mongolia, the aspired mission is declared as "*We, the people of Mongolia... whereas respecting and upholding the human rights and freedoms, justice, and unity of our nation... to build and develop a humane, civil democratic society in our motherland*", which is inextricably linked to the success of the constitutionalism in Mongolia today.

The Constitution established the legal basis of the market economy system, recognized political pluralism, guaranteed the values of a democratic society, and

ensured the implementation of human rights regulations in real life, all of which are considered great achievements for Mongolia.

The basis for strengthening this achievement is to maintain the governance power, stipulated in Article Three of the Constitution of Mongolia, vested in the people, and to ensure the direct participation of people in the State affairs, and such power is exercised through the representative organs of the State power elected by them. There have been eight elections to the State Great Khural (Parliament) of Mongolia, the highest organ of the State power, since 1992, and eight elections of the President, Head of State of Mongolia, on the basis of the principle of universal, equal, free and direct suffrage by secret ballot, and free expression of the will since 1993. It is a manifestation of the implementation of the principles of democracy stipulated in the Constitution.

In Article Fourteen of the Second Chapter "Human Rights and Freedoms" of the Constitution of Mongolia, it is stipulated: *"All persons lawfully residing within Mongolia shall be equal before the law and the courts. No person shall be discriminated against on the basis of ethnic origin, language, race, age, sex (gender), social origin, status, property and assets, employment occupation and official position, religion and conscience, conviction and opinion, and education. Every human being shall be a legal person"*; and in Article Fifteen: *"The grounds and procedure for citizenship of Mongolia, and the acquisition or loss of citizenship shall be exclusively prescribed by law. The deprivation of the citizens of Mongolia from their citizenship, the exile from its Motherland, and extradition to other countries shall be prohibited."*

In addition, Article Sixteen of the Constitution guarantees eighteen "groups" of rights exercised by citizens of Mongolia. Also, Article Nineteen of the Constitution defines the state's obligations to ensure human rights and permissible limitations on human rights as *"The State shall be accountable to the citizens for the creation of economic, social, legal, and other guarantees for ensuring human rights and freedoms and shall fight against the violations of human rights and freedoms, and shall restore such infringed rights. In case of a state of emergency or war, the human rights and freedoms as prescribed in the Constitution and by other laws are subject to limitation exclusively by law. Such law shall not affect the right to life, the freedom of thought, conscience, and religion, as well as the legal provisions concerning the right not to be subjected to torture, inhuman, degrading, or cruel treatment. In*

*exercising his/her rights and freedoms, a person shall not breach national security, the rights and freedoms of others, or breach public order.”*

Mongolia has joined and ratified more than 50 international treaties on human rights, including 20 basic international human rights treaties of the United Nations, 17 international treaties of the International Labor Organization, 7 international treaties on international humanitarian law, and more than 10 other treaties. According to Section 3 of Article Ten of the Constitution of Mongolia, the international treaties to which Mongolia is a State Party, shall become effective as its domestic legislation, upon the entry into force of the laws in their ratification or accession.

In this manner, universally recognized human rights norms of modern international law specified in the Universal Declaration on Human Rights, in the International Covenant on Civil and Political Rights, and in the International Covenant on Economic, Social and Cultural Rights are included in Chapter Two of the Constitution of Mongolia, specifically in Article Sixteen, and all foundations and conditions for guaranteed enjoyment of human rights and freedoms have been provided. Accordingly, laws in all spheres of society in Mongolia are required to be approved at a level that guarantees human rights without distortion.

On the other hand, the State has paid particular attention to guaranteeing the actual implementation of human rights, not just declaring and abandoning them.

For instance, in case of amendments to the Constitution made by the State Great Khural (Parliament), the amendments to the Constitution shall not undermine the basic human rights and freedoms recognized by the Constitution, or deny the principle of distribution of state power; it is required by the law to ask the National Human Rights Commission's opinion on human rights issues<sup>1</sup>. Also, in case of adoption of ordinary laws, the requirement to determine the effective solution to the problem based on pre-calculation of the effect on "human rights" has also been legislated<sup>2</sup>.

According to the Constitution of Mongolia, the President of Mongolia has the right to veto, partially or wholly, laws and other decisions adopted by the Parliament, to grant pardon and through this mechanism participates in the protection of human rights.

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<sup>1</sup> Article 5.4.3 and 10.1.5 of the Law on Amendments to the Constitution of Mongolia.

<sup>2</sup> Article 13.2.5 of the Law on Legislation.

According to Article 38, Part 2, Clause 1 of the Constitution of Mongolia, the Government exercises the power to organize and ensure the implementation of the laws adopted by the Parliament.

## **Two. The Constitutional Court of Mongolia is a guarantor of human rights**

Human rights are regulated in detail not only by the Constitution but also by branches or special laws. However, those special laws should not in any way conflict with the basic human rights established by the Constitution. Therefore, in case of unjustified restriction of human rights and freedoms, a mechanism to protect them is necessary. The highest form of such a mechanism in domestic law is the Constitutional Court.

Article Sixty-four of the Constitution of Mongolia states that "*The Constitutional Court is an organ exercising supreme supervision over the implementation of the constitution, making a judgement on the violation of its provisions, and resolving constitutional disputes.*" Article 8, Part 1 of the Law on the Constitutional Court states "*The Constitutional Court shall exercise its supreme supervision over the implementation of the Constitution through rendering conclusions on the disputes specified in this Article and through settling disputes specified in the second clause of this Article.*"

The Constitutional Court of Mongolia protects human rights and freedoms by exercising supreme control over the implementation of the Constitution and adjudicating disputes about whether its provisions have been violated.

For example, according to the Constitution of Mongolia and the Law on the Constitutional Court of Mongolia, the Constitutional Court of Mongolia has jurisdiction to review the dispute concerning the constitutionality of the laws, decrees, the other decisions of the Parliament and the President, decisions of the Government, international treaties of Mongolia, the decisions of the central election body on referendum and elections and repeal their effect if they are defined unconstitutional. Also, the Constitutional Court renders conclusions on whether high-ranking government officials, such as the President, Chairman of the Parliament, its members, Prime Minister, Cabinet member, Chief Justice of the Supreme Court, State Prosecutor General (actions, decisions) have violated the Constitution, and whether there are grounds for their dismissal or recall.

In addition to citizens of Mongolia, foreign nationals and stateless persons legally residing in the territory of Mongolia have the right to apply to the Constitutional Court. By doing so, it is not necessary that their rights and freedoms have been violated, and they are not required to have a prior decision by the court, so they can submit petitions, information, and complaints on any issue that falls under the jurisdiction of the Constitutional Court.

According to the Constitution of Mongolia, the right to appeal to the Constitutional Court not only for the violation of personal rights and freedoms but also for issues affecting the rights and interests of all citizens provides a wider opportunity.

The Constitutional Court of Mongolia resolves disputes that violate the Constitution on its own initiative based on citizens' petitions and information, or at the request of the Parliament, the President, the Prime Minister, the Supreme Court, or the Prosecutor General. The Constitutional Court has no right to initiate and investigate the issue of violation of the Constitution on its own initiative without receiving any requests, complaints, or information.

The Constitutional Court of Mongolia has reviewed more than 70 disputes regarding the provisions of the Constitution related to human rights and freedoms (Article Sixteen) and concluded that about 50 percent of them violated the Constitution. There were 40 violations of Article Sixteen of the Constitution and 20 violations of Article Fourteen of the Constitution, which accounted for more than 30 percent of the total number of violations of the Constitution. This shows the important role played by the Constitutional Court in the protection of human rights and freedoms in Mongolia.

The Constitutional Court of Mongolia made conclusions related to citizens' right to learn and education, possession of the property, free choice of employment, personal liberty and safety, freedom of conscience, political rights, and procedural rights by referring to international human rights norms in its decisions.

The decision of the Constitutional Court comes into force as soon as it is issued and is binding so it has a direct impact on the lives of citizens and politics, and the main function of the Constitutional Court is to protect the Constitution, especially human rights and freedoms. The Constitutional Court of Mongolia has successfully fulfilled this duty.

In this presentation, I tried to give you a brief summary of the issue of constitutional development in regard to the state of human rights and freedoms in Mongolia, including how the Constitutional Court of Mongolia protects human rights.

I wish you success in your future endeavors and availing this opportunity wish you again a success at this symposium.