

4th Congress of the World Conference on Constitutional Justice

THE RULE OF LAW AND CONSTITUTIONAL JUSTICE IN THE MODERN WORLD

11-14 September 2017, Vilnius, Lithuania

REPLIES OF THE CONSTITUTIONAL COURT OF MONGOLIA

I. The different concepts of the rule of law

1. *What are the relevant sources of law (e.g. the Constitution, case-law, etc.) which establish the principle of the rule of law in the legal system of your country?*

A relevant source of law which recognizes and establishes the principle of the rule of law in the legal system of Mongolia is the Constitution. The Constitution of Mongolia declares that any law, other organizations', officers' activity must be in conformity with the Constitution and a law.

Second part of the article one of the Constitutional Court of Mongolia says "The fundamental purpose of state activity is the ensurance of democracy, justice, freedom, equality, and national unity and respect of law.", the part one of the article seventy says "Laws, decrees, and other decisions of state bodies and activities of all other organizations and citizens must be in full conformity with the Constitution." which are the main provision defining a principle of the rule of law and the Constitution.

Article thirty four says "The President, within his powers, issues decrees in conformity with the law. If a Presidential decree is incompatible with law, the President himself or the National Parliament invalidates it." As for the Government, an article forty five says "The Government, in conformity with law and regulations, issues resolutions and ordinances and if these resolutions and ordinances are incompatible with laws and regulations, the Government itself or the National Parliament invalidates them." In part one of the article forty nine it is said that Judges are independent and subject only to the law.

Besides the fact that the General administrative law which was adopted in 2015 and is valid since 2016 confirms and enshrines that Administrative organizations',

officers' activity must be in conformity with a law could be seen as a stronger guarantee of the Rule of law.

2. *How is the principle of the rule of law interpreted in your country? Are there different concepts of the rule of law: formal, substantive or other?*

Briefly the main concept of the Rule of law is described as following: the society and governmental organization system are in conformity with the Constitution, any citizen and officer no matter who is he exists in conformity with a law. The main reason of supremacy of the Constitution is that it comprises legal values such as democracy, human right, freedom, principle of separation of power which are the basic concepts, ideas and principles. Mongolia has a legal system of the Romano-Germanic Legal Family so the Rule of law was developed long ago and after an adoption of the new Constitution in 1992 and a transition to democracy it has been developing in the legal system of the Rule of law and the Constitutionalism.

3. *Are there specific fields of law in which your Court ensures respect for the rule of law (e.g. criminal law, electoral law, etc.)?*

There is no specific field, all fields are guaranteed in general way.

4. *Is there case-law on the content of the principle of the rule of law? What are the core elements of this principle according to the case-law? Please provide relevant examples from case-law.*

In most cases the decisions of the Constitutional Court of Mongolia are issued on the basis of the principle of the rule of law. As Mongolia has a legal system of the Romano-Germanic Legal Family, there is no decision based on a case-law, however, in some cases the previous decisions were quoted, mentioned as a basis of a decision.

5. *Has the concept of the rule of law changed over time in case-law in your country? If so, please describe these changes referring to examples.*

Mongolia has a legal system of the Romano-Germanic Legal Family so the Rule of law was developed long ago and after an adoption of the new Constitution in 1992 and a transition to democracy it has been developing in the legal system of the Rule of law and the Constitutionalism.

6. *Does international law have an impact on the interpretation of the principle of the rule of law in your country?*

According to the law on Constitutional procedure before taking a decision the Constitutional Court of Mongolia analyses all important circumstances completely and factually during the procedure, in some cases the Constitutional Court analyzes international standards, rule of law and orientation and reflects it in certain level in its decisions and explanations.

ii. New challenges to the rule of law

7. *Are there major threats to the rule of law at the national level or have there been such threats in your country (e.g. economic crises)?*

In Mongolia sometimes there are occasions when political instability, excess of powers by a politician, legal rusticity create difficulties to the rule of law which is developing in the country. But these difficulties are overcome via the Constitutional Court's and other national legal mechanisms.

8. *Have international events and developments had a repercussion on the interpretation of the rule of law in your country (e.g. migration, terrorism)?*

Currently there have not been a such case.

9. *Has your Court dealt with the collisions between national and international legal norms? Have there been cases of different interpretation of a certain right or freedom by your Court compared to regional / international courts (e.g. the African,*

Inter-American or European Courts) or international bodies (notably, the UN Human Rights Committee)? Are there related difficulties in implementing decisions of such courts / bodies? What is the essence of these difficulties? Please provide examples.

There have not been such cases.

III. The law and the state

10. *What is the impact of the case-law of your Court on guaranteeing that state powers act within the constitutional limits of their authority?*

The main content of the decisions of the Constitutional Court declaring that the Constitution was not breached, concludes that the Parliament, Government, relevant high-ranking official worked, exercised its full power in the frame of the Constitution. Thus it could be considered in the frame of this decision as ensuring that state power organizations exercise their power in the frame of the Constitution.

11. *Do the decisions of your Court have binding force on other courts? Do other / ordinary courts follow / respect the case-law of your Court in all cases? Are there conflicts between your Court and other (supreme) courts?*

According to the article sixty seven of the Constitution a decision by the Constitutional Court shall become effective and enter into force immediately upon its commencement. If the Constitutional Court of Mongolia settle and take a decision recognizing unconstitutional a law, decree, other decisions of the Parliament and President, Government's decision, International treaties of Mongolia, decision of the General election organization, a whole relevant law, decree, ordinance, decision or their breaching article, part, provision are repealed. So all courts, people, organizations must follow our Court's final decision.

Our Court does not have a power to exercise supervision over any court's decision and it is not entitled to do so. Thus there is no conflict between our Court and other ordinary courts

12. *Has your Court developed / contributed to standards for law-making and for the application of law? (e.g. by developing concepts like to independence, impartiality, acting in accordance with the law, non bis in idem, nulla poena sine lege, etc.).*

Over 70 percent of decisions of our Court are related to laws, Parliament's decisions, almost 10 percent are related to the Government's decisions and activity. Thus our decisions have contributed to law-making, its further approach and application of law.

There are several examples when the Constitutional Court of Mongolia took decisions which ensured independence of a court and impartiality of a judge. The principles non bis in idem and nulla poena sine lege are recognized in Criminal Code of Mongolia and are reflected in the Criminal Code and relevant laws. For example, it is stated in the article 3 of the Criminal Code "This Code only shall recognize an act or omission a crime and shall determine the punishment and other measures of criminal liability to be imposed for committing them. Application of the Criminal Code by analogy shall be prohibited.", in the article 6 "A culprit shall be subjected to criminal liability once only."

13. *Do you have case-law relating to respect for the rule of law by private actors exercising public functions?*

Our Court has not reviewed this kind of case or dispute. However certain regulations are reflected in laws of Mongolia. (e.g. General Administrative law etc.)

14. *Are public officials accountable for their actions, both in law and in practice? Are there problems with the scope of immunity for some officials, e.g. by preventing an effective fight against corruption? Do you have case-law related to the accountability of public officials for their actions?*

There was not any case of settling this kind of dispute.

IV. The law and the individual

15. *Is there individual access to your Court (direct / indirect) against general acts / individual acts? Please briefly explain the modalities / procedures.*

According to the law on the Constitution Court's procedure the dispute reviewing procedure of Court shall be open and transparent. Except for exceptional circumstances requiring protection and confidentiality of the state, business/commercial information and privacy or safety of a citizen, the Court shall conduct open sessions. Also participants of an open session of the Court shall be allowed to make notes, tape recording, radio and TV live broadcasting, cinematic, photographic and video recording. The decisions of the Constitutional Court /conclusions, resolutions/ are published weekly in legal journal, moreover, they become available on the Legal information website of Mongolia in 5 days.

A person submitted petition, information is permitted to acquaint with the materials related to the dispute any time. However, interested people or researchers can acquaint with the materials in the Constitutional Court on a basis of their written request explaining their purpose.

16. *Has your Court developed case-law concerning access to ordinary / lower courts (e.g. preconditions, including, costs, representation by a lawyer, time limits)?*

There has not been such decision of the Constitutional Court of Mongolia. However, recently court's transparency and openness has increased in the frame of justice reform of Mongolia. Any interested person can acquaint electronically with decisions that came into force, attend court session unless there are exceptional circumstances requiring protection and confidentiality of the state, business/commercial information and privacy or safety of a citizen. Today some courts' procedure is available electronically,

17. *Has your Court developed case-law on other individual rights related to the rule of law?*

Over 70 percent of decisions of our Court are related to laws, Parliament's decisions, almost 10 percent are related to the Government's decisions and activity. Thus our decisions have contributed to law-making, its further approach and application of law. Some examples could be mentioned. Our Court took 15 decisions related to the right of a citizen to submit a petition and has paid attention to the Parliament's consideration of our decisions as case-law when adopting a law and not to take such decisions in the future.

18. *Is the rule of law used as a general concept in the absence of specific fundamental rights or guarantees in the text of the Constitution in your country?*

First of all, our Constitution was adopted in 1992 and it is considered as a quite new Constitution, so the citizens' rights are reflected in detail. However, in some cases decisions were made in order to better clarify fundamental rights, refer to the concept of the rule of law, provisions of the international treaty, convention on human rights to make clarification to the relevant dispute.