

MONGOLIA

The Constitution of Mongolia provides for an independent judiciary. The General Council of Courts, established to promote the independence of the judiciary, has far-reaching powers with regard to the selection and removal of judges. The General Council is headed by the executive, an arrangement with adverse implications for the independence of the judiciary. There have been incidents reported concerning attempts by members of the executive to influence the judiciary.

Mongolia gained independence from China in 1921. From 1924 until 1990 the country was ruled by the Communist Party. A largely peaceful and democratic revolution changed the country's political system. In May 1990 the Constitution was amended to provide for a multi-party system. The new Constitution entered into force on 12 February 1992.

Mongolia is now an independent, democratic and unitary republic divided into administrative units comprising 18 provinces (*aymguud*) and three municipalities (*hotuud*). The head of state is the President. He is nominated by the parties in the State Great Hural (parliament) and directly elected by popular vote for a term of four years. The President may be re-elected only once. The last elections were held on 20 May 2001, as a result of which Natsagiyn Bagabandi of the ruling Mongolian People's Revolutionary Party (MPRP) was re-elected as President for his second term in a row with 58.13 per cent of the votes cast.

The Prime Minister is the head of government. After the parliamentary elections, the leader of the majority party or majority coalition is customarily elected as Prime Minister by the State Great Hural. All legislative power is vested in the Great Hural. This unicameral parliament of Mongolia has 76 members, elected by popular vote for a term of four years.

The last general elections were held on 2 July 2000. The formerly communist Mongolian People's Revolutionary Party (MPRP) won 72 of the 76 seats in the State Great Hural, thereby regaining the power it had lost in the 1996 elections. The MPRP is the former Mongolian People's Party, which had ruled Mongolia as a one-party state from 1921 until 1991. During the first free elections held in 1992 the communists had won an overwhelming majority, which they subsequently lost to the Democratic Union (DU) in the 1996 elections. In the 2000 elections the leading parties in the ruling DU coalition lost all but one seat. (The Mongolian Social Democratic Party (MSDP) lost all 15 seats and the Mongolian National Democratic Party (MNDP) kept only the seat of the former Prime Minister Janlaviyn Narantsatsralt.)

Nambaryn Enkhbayar, the leader of the MPRP, was elected Prime Minister on 26 July 2000 by 67 out of the 70 present members of the Great Hural. On 9 August 2000 the President and the Great Hural approved the new cabinet nominated by the Prime Minister. The new government consists exclusively of members of the MPRP.

Recently discussions have been underway regarding the manner in which the Great Hural ought to function. The parliament passed a bill to amend the constitution so as to allow the members of the Great Hural to be members of the executive cabinet at the same time. This bill was vetoed by president Bagbandi in January 2000 after it had been approved by the Great Hural in December 1999, and a similar bill was vetoed by him on 12 December 2000 after it had been approved by the

(new) Great Hural on 3 December 2000. This bill had also been struck down as unconstitutional by the Constitutional Court on 15 March 2000. However, in December 2000 the Great Hural had voted 50-8 that the President had no authority to exercise his veto against the amendments.

The Constitution of Mongolia provides for the separation of powers among the judicial, executive and legislative branches. Article 16 guarantees certain fundamental rights and freedoms to the citizens of Mongolia. The rights guaranteed include, *inter alia*, the right to life, the right to property, equal rights for women and men, freedom from torture, freedom of religion and conscience and the right to personal liberty and safety. The Constitution also sets forth several procedural and legal guarantees, such as the right to judicial appeal to protect fundamental rights, the right to be informed of the reason and grounds for arrest, not to have to testify against oneself, the right to defence and to receive legal assistance, the right to a fair trial, the right to appeal and the presumption of innocence. Article 19 of the Constitution provides that, with the exception of the rights to life, freedom of opinion, conscience and religion and freedom from torture, inhuman and cruel treatment, these rights may be limited by law in case of a state of emergency or martial law.

HUMAN RIGHTS BACKGROUND

The Government established a National Commission on Human Rights in December 2000. The human rights of Mongolian citizens are generally respected by the Government. However, there have been some reports of the police beating prisoners and detainees. The conditions in prisons and pre-trial detention facilities are generally poor and have resulted in the death of several prisoners. The Committee on Economic, Social and Cultural Rights considered the third periodic report of Mongolia in August 2000 and noted with concern “the degrading conditions for detainees, who have been reported to suffer from overcrowding, inadequate medical care and hygiene and from malnourishment.” The authorities denied entrance to some persons claiming refugee status, and there is no legal framework for the treatment of refugees.

The absence of women at senior levels at work and in public office is a serious problem in Mongolia. One third of the country’s women are estimated to be victims of domestic violence. The Committee on the Elimination of Discrimination against Women examined the combined third and fourth periodic report of Mongolia in January 2001. The Committee noted “with deep concern the deteriorating situation of women in Mongolia in a period of economic transformation. It is particularly concerned that the Government has failed to prevent the erosion of women’s rights to economic advancement, health, education, political participation and personal security.”

INTERNATIONAL HUMAN RIGHTS MECHANISMS

International Obligations

Mongolia is State Party to the International Covenant on Civil and Political Rights and its Optional Protocol, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Elimination of All Forms of Racial Discrimination. Mongolia is not a party to the International Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.

Treaty Bodies

The Human Rights Committee examined the fourth periodic report submitted by Mongolia and remarked:

The Committee recognises the substantial progress made towards the establishment of democratic institutions and the enactment of legislation which seeks to ensure many Covenant rights.... The Committee welcomes ... the improvements with respect to freedom of association made possible by the 1997 Law on Non-governmental Organisations and the emergence of a free Bar Association. ... The Committee regrets that it has been largely precluded ... from examining compliance of the State party's judicial procedures with the rights guaranteed under article 14 of the Covenant [note: article 14 guarantees rights falling under the right to a fair trial]. ... The Committee is deeply concerned that the General Department for Implementation of Judicial Decisions, within the Ministry of Justice, has not been able to ensure that victims of human rights violations obtain in practice the benefit of remedies that have been granted by the courts (art. 3 (3) of the Covenant)...The Committee is deeply concerned about all aspects of detention before trial

JUDICIARY

Article 47 of the Constitution of Mongolia vests judicial power exclusively in courts that shall be solely constituted under the Constitution and other laws. Article 49 stipulates that judges are independent and subject only to law. Section 2 of that article expressly provides that neither any private person, nor the President, Prime Minister, members of the State Great Hural or the Government, officials of political parties or other voluntary organisations shall interfere with the way in which judges exercise their duties. However, judges of lower courts are said sometimes to contact the Supreme Court to discuss cases, for fear of making “mistakes” and risking removal from office. The Judicial Professional Committee reportedly often requests judges who made errors in rulings to take a qualification test and, if they are unsuccessful, concludes that the judges have inadequate qualifications and removes them. Furthermore, judges are said to call at times for meetings with the Minister of Justice to explain their rulings on particular cases.

The court structure

Mongolia is divided administratively into *Aimags* (provinces) and a capital city. *Aimags* are subdivided into *Soums* (provincial districts).

The court system of Mongolia consists of three levels of ordinary courts and a Constitutional Court. At the lowest level of the ordinary courts are the *Soum*, *Intersoum* and the District Courts. These are courts of first instance for misdemeanours, less serious crimes and civil cases with relatively small sums in dispute. Currently there exist 39 of these courts with 246 judges. *Aimag* Courts, which function in the *aimag* capitals, and the Capital City Court in Ulanbaatar are the courts of first instance for more serious crimes, such as felony cases of murder and rape, and in civil cases with large sums of money in dispute. They also hear appeals from the lower level courts. Currently there are 22 of these courts with 97 judges.

The Supreme Court of Mongolia is the highest judicial organ. It is the court of first instance for criminal cases that do not fall within the jurisdiction of the lower courts. The Supreme Court examines decisions of lower-instance courts through appeal and supervision. It decides on matters

referred by the Constitutional Court and the Prosecutor General. It rules as to the official interpretation of all laws, except the Constitution. It may also consider all other matters assigned to it by law. The Supreme Court comprises the *Erönhii Shüügch* (Chief Justice) and 16 judges. The Supreme Court selects one of its members for the position of Chief Justice, who is then appointed for a six-year term by the President. On the recommendation of the Chief Justice, the President appoints the two Senior Judges to preside respectively over the civil and the criminal chambers of the Supreme Court.

Courts of all instances function on the basis of collective decision-making. As provided by law, certain cases are tried by a single judge. The Supreme Court decides cases with the majority of its judges present. The courts of first instance are required to allow up to three representatives of citizens to participate in the proceedings when passing a collective decision.

The Constitutional Court (*Ündsen Huuliin Tssets*) exercises ultimate judicial authority over the implementation of the Constitution. It renders decisions on the violations of the provisions of the Constitution and resolves constitutional disputes. Article 64 of the Constitution of Mongolia provides that the Constitutional Court and its members are independent from any organisation, official or any other person and are subject only to the Constitution in the execution of their duties. The Constitutional Court has nine members. These members elect by majority vote from among themselves a chairman for a period of three years. The Constitutional Court decides constitutional disputes on its initiative on the basis of petitions and information received from citizens or at the request of the Great Hural, the President, the Prime Minister, the Supreme Court or the Prosecutor General.

General Council of Courts

Pursuant to Article 49 of the Constitution, a General Council of Courts is established for the protection of the independence of the judiciary. It serves to consider the selection of judges from among lawyers, the protection of their rights and other matters pertaining to the insurance of conditions guaranteeing the independence of the judiciary. Article 35 of the Law of the Courts further provides that the Great Council of Courts is to submit proposals to the State Great Hural regarding the budget of the judiciary, its personnel and court buildings, and should organise training courses for judges.

Article 33 of the Mongolian State Law of Courts governs the composition of the General Council of Courts. The General Council has 12 members: the Chief Justice of the Supreme Court, the General Prosecutor, the Minister of Justice, a Secretary of the General Council of Courts appointed by the President, two members appointed by the Supreme Court, two members appointed by the State Great Hural, two members representing the *Aimag* and Capital City Courts, and two members representing the *Soum* and *Intersoum* and District Courts.

Article 33.3 of the Law on Courts provides that the Chairman of the General Council of Courts shall be the Minister of Justice. The General Council of Courts has far-reaching powers and influence on the selection and removal of judges and has a mandate to promote the independence of the judiciary. The composition of the General Council, with the executive at its head, threatens the independence of the judiciary in Mongolia, as it creates an inherent conflict of interest in the person who has to fulfil both positions.

Appointment of Judges

All Judges of Mongolia are appointed by the President upon the proposal of the General Council of Courts. The judges of the Supreme Court are appointed by the President after the General Council of Courts has informed the State Great Hural. In 1995, the Great Council of Courts established a Judicial Professional Committee composed of nine experienced jurists to examine the qualifications of present and future judges. At the time of this writing only one member was said to be a judge.

To qualify for appointment to the Supreme Court, a person must be a Mongolian national who has reached 35 years of age with a higher education in law and a professional career of not less than ten years. Every Mongolian national of 25 years of age with a higher education in law and a professional career of not less than three years may be appointed a judge of the other courts.

The nine members of the Constitutional Court are appointed by the Great Hural for a term of six years. Three members are nominated by the Great Hural, three are nominated by the President and the remaining three are nominated by the Supreme Court. To qualify for appointment, a person must be a Mongolian national who has reached forty years of age and has high political and legal qualifications. However, the Constitution provides that the President, members of the Great Hural, the Prime Minister, members of the Government and members of the Supreme Court shall not be nominated.

Security of tenure

Judges are appointed for an indefinite term. According to Article 35 of the Law of Courts, judges may be transferred by the General Council of Courts. Judges depend on the good will of the General Council of Courts in order to be or not be transferred. This arrangement may impact negatively on the independence of the judiciary, since judges might be prone to avoid any contention with this body in order to obtain a favourable decision.

Disciplinary action

According to Article 39 of the Law of Courts, the General Council of Courts establishes the Judicial Disciplinary Committee, which consists of nine judges of high professional standards with work experience, for a term of six years. The members elect the Chairman of the Committee from among themselves. The Judicial Disciplinary Committee is authorised to take disciplinary actions against judges, *inter alia*, for a breach of moral standards of the judiciary, for violations of internal regulations, and for commission of an offence while reviewing and deciding a case. The Committee can either remove or reprimand a judge pursuant to the procedures laid down in the Law of Courts. A judge may lodge a complaint against the decision of this body to the General Council of Courts within one week.

Dismissal of judges

Article 51 of the Constitution provides that a judge may only be removed from office at his/her own request or on the grounds provided for in the Constitution and/or the law on the Judiciary and by a valid court decision. If a judge of the Constitutional Court violates the law, that judge may be withdrawn by the Great Hural on the basis of the decision of the Constitutional Court and on the opinion of the institution which nominated the judge.

Judges of other courts are relieved or removed from their posts by the President on the recommendation of the General Council of Courts. The grounds for relieving as stipulated in Article

51 of the Law of Courts include: if the judge requests removal; if the judge is appointed to another state job with his/her agreement; health reasons; reaching of the retirement age defined by law; if the term to replace the judge has expired, or if the General Council Court decides that a judge is no longer competent and qualified to work as a judge.

According to Article 52 of the Law of the Court, the grounds for removal are the adoption of the decision to remove a judge reached by the Committee on Discipline, repeated disciplinary actions within one year, or conviction for commission of a crime.

The working conditions of judges

The working conditions of judges in Mongolia are generally very poor, a partial consequence of the general economic state of the country. Salaries of judges are quite low and diminutive pay rates inevitably gives rise to a risk of corruption. The courts lack the necessary technical equipment, such as computers, printers and copy machines. Many court buildings are in need of renovation. The situation is worse in rural areas, where courts have limited space and judges sometimes have to share offices and phones. The lack of funding provided by the Government resulted, *inter alia*, in the disconnecting of the phone in the Capital City Court for three months in the year 2000 for failure to pay the phone bill.

Judges tend to be overworked because there is not enough money to hire the amount of judicial staff needed. For example, for every two Supreme Court judges there is only one clerk. Communication among courts is very difficult as well, as many judges do not have access to internet and the phone lines are bad in Mongolia. Transportation is also difficult and judges sometimes have to travel great distances due to the size of the country. Due to the lack of means of transportation, their capacity for travel is limited.

PROSECUTORS

The Prosecutor General and his/her deputies are appointed by the President in consultation with the Great Hural for a term of six years. Prosecutors exercise supervision over the investigation of cases and the execution of punishment.

CASES

Ganzorig Gombosuren {Retired Judge of the Supreme Court of Mongolia}: Mr. Ganzorig Gombosuren served as a Judge of the Supreme Court of Mongolia for eight years and left the Court in 1998 to take a master in law degree in the United States. When he returned to Mongolia in March 2001 he was nominated by the Supreme Court to be appointed as a judge again. In spite of his prior service, he had to take a test that the Judicial Professional Committee has established as a first step in order to ensure the adequate qualification of candidates. He was unsuccessful on the test and was therefore not recommended by the General Council of Courts to the President for renewed appointment. The General Council of Courts rejected his request to reconsider this decision. Reportedly, the majority of the members of the General Council of Courts at first voted in his favour, but after the Minister of Justice, who was Chairman of this body, made comments to his disadvantage, the second round of voting confirmed the negative decision not to renew his nomination. Mr. Ganzorig Gombosuren appealed this decision to a District Court in the capital city. The outcome of his case was pending at the time of writing.

The judicial exam reportedly had been developed by the Judicial Professional Committee, composed mainly of scholars and lacking judicial members. The only reason stated for the rejection of his candidacy was his inadequate qualification. According to Ganzorig Gombosuren, the de facto reason behind his rejection is that he has been active in promoting the independence of the judiciary in Mongolia. In December 1993 he and his colleagues established the Mongolian Group for the Independence of Judges and Lawyers to support judicial independence and legal reform in Mongolia. He has also written a number of articles in newspapers and law journals, spoken on TV and on the radio, and in law schools and conferences.

L. Nasan Ulzii {former judge of a local court in Darhan *aimag*}: Judge L. Nasan Ulzii annulled electoral results from a June 2000 local election as a result of a violation of Election Law. The former Communist Party, which had won these elections, won an appeal against Ms. Ulzii's decision. Shortly thereafter, on 10 October 2000, the Chairman of the Darhan *aimag* Citizen's Representative Meeting (head of the local parliament, who was nominated by the former communist party), Mr. L. Amarsanaa, reportedly summoned the judge to his office and declared that he had the right to advise judges. He stressed to her even the appeal court had overturned her decision. On 17 October 2000 Mr. Amarsanaa sent a letter to the Chief Justice of the local court and the Chief Justice of the *aimag* court ordering them to sanction judge Ulzii for her violation of the judge's code of conduct. As a result, the Disciplinary Committee for Judges removed Ms. Ulzii from her office on 8 November 2000. Judge Ulzii appealed that decision to the Supreme Court. The Supreme Court decided in her favour, holding that the disciplinary sanctions against the judge violated Article 49 of the Constitution that guarantee the independence of the judiciary. In spite of this ruling, the Judicial Professional Committee requested Ms. Ulzii to take a test and later concluded that she was not qualified to be a judge. On the basis of this decision, the General Council of Courts removed Ms. Ulzii on 22 May 2001 from the bench.