RECENT DEVELOPMENTS OF CONSTITUTIONAL JUSTICE IN ASIA

THE 5th CONGRESS OF THE ASSOCIATION OF ASIAN CONSTITUTIONAL COURTS AND EQUIVALENT INSTITUTIONS

ҮНДСЭН ХУУЛИЙН ШҮҮХ, ТҮҮНТЭЙ АДИЛТГАХ БАЙГУУЛЛАГУУДЫН АЗИЙН НИЙГЭМЛЭГИЙН 5 ДУГААР ИХ ХУРАЛ

THE 5th CONGRESS OF THE ASSOCIATION OF ASIAN CONSTITUTIONAL COURTS AND EQUIVALENT INSTITUTIONS

5-ЫЙ КОНГРЕСС АССОЦИАЦИИ АЗИАТСКИХ КОНСТИТУЦИОННЫХ СУДОВ И ЭКВИВАЛЕНТНЫХ ИНСТИТУТОВ

АЗИ ДАХЬ ҮНДСЭН ХУУЛИЙН ШҮҮХ ЭРХ МЭДЛИЙН ХӨГЖЛИЙН ӨНӨӨГИЙН БАЙДАЛ

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FOREWORD

The Constitutional Court of Mongolia is presiding over the Asian Association of Constitutional Courts and Equivalent Institutions in 2021-2023.

In this context, the Constitutional Court of Mongolia successfully organized the 5th Congress of the AACC under the theme "Recent Developments of Constitutional Justice in Asia" in a hybrid format – in person and online, on August 18-19, 2022.

I am pleased that the compilation of presentations made at the 5th Congress of the AACC on the topic "Recent Developments of Constitutional Justice in Asia" has been published and is being delivered to you.

The 5th Congress of the AACC was held in English and Russian, the official languages of the Association, and the presentations were published in the versions submitted by the speakers without any corrections or changes, following the order in which the presentations were discussed at the Congress.

I am confident that the ideas reflected in these presentations will make an actual contribution to the development of the theory of Constitutionalism and Constitutional Justice.

I would like to extend my gratitude to all the guests who participated in the Congress in person and online, as well as to the Justices of the Constitutional Court of Mongolia, and the management and staff of the Secretariat who worked hard with an effort to organize it.

Chinbat Namjil

Chief Justice of the Constitutional Tsets of Mongolia,

President of the Association of Asian Constitutional Courts and Equivalent Institutions

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OPENING REMARKS OF THE 5th CONGRESS OF THE ASSOCIATION OF ASIAN CONSTITUTIONAL COURTS AND EQUIVALENT INSTITUTIONS

OPENING REMARKS BY MR. NAMJIL CHINBAT, CHIEF JUSTICE OF THE CONSTITUTIONAL COURT OF MONGOLIA, PRESIDENT OF THE ASSOCIATION OF ASIAN CONSTITUTIONAL COURTS AND EQUIVALENT INSTITUTIONS

Dear guests,

Honorable Presidents, Chairmen, Chief Judges of the Constitutional Courts,

Ladies and Gentlemen,

Thirty years ago after all-nation debate on the new constitution bill and upon all-nation reconciliation Mongolia adopted a new democratic Constitution and created legal foundations for advancement along the path of common development of humankind. Over this span of time, Mongolia's Constitution succeeds to serve as a greatest assurance factor for sustainable development of our society.

Mongolia's Constitution Article 64 stipulates: "The Constitutional Court of Mongolia shall be the competent organ with powers to exercise supreme supervision over the enforcement of the Constitution, to make a conclusion on the breach of its provisions and to decide constitutional disputes." Hence, Constitution of Mongolia establishes a constitutional judicial institution supervising the protection of democratic values, human rights and freedoms, the implementation of the principle of state power distribution as well as reviewing whether supreme state organizations act in conformity with the Constitution. Actually, it is a greatest achievement, which the Constitution brought to Mongolia, and it becomes a guarantor for the observance of the Constitution.

The specificity of Mongolia's constitutional review lies in that any citizen has a right to appeal to the Constitutional Court on any breach of the Constitution a citizen considers necessary despite its interests concerned. By a way of the deliberations at the small-, medium- or full bench sessions, they ensure the observance of their constitutional guarantees. We may argue that a procedure to submit a Constitutional Court medium bench session conclusion to the State Great Hural has advantage to open opportunity for

updating and improving existing legislation.

During a whole of the Constitutional Court establishment period in Mongolia a constitutional review on constitutional breach dispute settlement process has always realistically contributed to the protection of constitutional principles, conceptual philosophy and mission, democratic values, human rights and freedoms as well as to educate a society to develop a rule of law.

We acknowledge Constitutional Court of Mongolia now becomes a well-recognized state institution by way of constitutional reviewing at a supreme level and occupying its standing within a society and entire state system. We note the Constitutional Court decisions bring about realistic impact on the increased constitutional rule and order. Therefore, the Constitutional Court's mandate and mission to strictly observe the Constitution and fully use its power and authority will increase further greatly.

It is necessary to make advantage of the specificity given under the Constitution of Mongolia to its Constitutional Court, enhance and strengthen it further. Specifically we think that more free application of Mongolia's constitutional standards such as a principle of rule of constitutional law, basic human rights and freedoms, more increased use of their content, substance and relationship will promote worldwide recognition of universal values and strengthening them at national levels.

The Constitutional Court of Mongolia participates across the world in the like-minded organizations' cooperation. Particularly, in 2005 Constitutional Court of Mongolia initiated to establish a cooperation organization of Asian Constitutional Courts with permanent functioning. With the other Asian countries support in 2010 the Association of Asian Constitutional Courts was established with 20 Constitutional Courts' supervisory organizations' participation. Since 2021-2023 Mongolia presides over activities of the AACC.

A rule of law is said to have emerged as an appeal against monarchy. Hence such concepts as people's direct or indirect participation in the law-making, conduct of referendum, convocation of elections, election of parliaments, state power distribution have been incorporated into the constitutions.

The constitutional courts' mission to improve and perfect a worldwide rule of constitutional law becomes a highest priority and criteria for ruling organizations or officials become guarantees for improved perfection of a rule of constitutional law.

Under the new Constitution of Mongolia a principle of rule of law is a state adopted legislation which has a supreme force and no legal entity except given competence shall confirm, either modify or nullify it and all citizens and organizations have equal rights before the Constitution. In other words, it codifies one condition and principle for governance. It also codifies a rule of law as a fundamental principle of state organizations' operation.

There is, however, a strong intrusion of scientific and technological development and electronic networks into the global social and economic life, which necessitate further improvement, and perfection of a rule and governance of law.

In some cases, a scientific approach to a certain issue differs a great deal depending on different conditions. It is, therefore, no surprise we are deliberating on agenda item: "Constitutional Review in Challenging Times" at the current congress.

The AACC needs and requirements warrant from constitutional courts to cooperate on further making study and research on their own specificity work, diversifying channels of information exchange and finding scientifically sound decisions to the highly controversial social matters.

Within the framework of the AACC collaboration, it is necessary to develop and increase scientific, visionary and pragmatic knowledge of the constitutionality heritage of the humankind. We look forward to developing further cooperation along these lines in the future.

I wish success to the Fifth Congress of the AACC.

Thank you.

ҮНДСЭН ХУУЛИЙН ШҮҮХ, ТҮҮНТЭЙ АДИЛТГАХ БАЙГУУЛЛАГУУДЫН АЗИЙН НИЙГЭМЛЭГИЙН ТАВДУГААР ИХ ХУРЛЫГ НЭЭЖ

МОНГОЛ УЛСЫН ҮНДСЭН ХУУЛИЙН ЦЭЦИЙН ДАРГА, ҮНДСЭН ХУУЛИЙН ШҮҮХ, ТҮҮНТЭЙ АДИЛТГАХ БАЙГУУЛЛАГУУДЫН АЗИЙН НИЙГЭМЛЭГИЙН ЕРӨНХИЙЛӨГЧ Н.ЧИНБАТЫН ХЭЛСЭН ҮГ

Эрхэм хүндэт зочид оо,

Үндсэн хуулийн шүүхийн ерөнхийлөгч, дарга, тэргүүн шүүгч нар аа,

Хүндэт хатагтай, ноёд оо,

Өнөөдөр "Ази дахь Үндсэн хуулийн шүүх эрх мэдлийн хөгжил" сэдэвт Үндсэн хуулийн шүүх болон түүнтэй адилтгах байгууллагын Азийн нийгэмлэгийн 5 дугаар Их Хурал танхимаар болон цахим хосолсон хэлбэрээр Монгол Улсын нийслэл Улаанбаатар хотод эхэлж байна.

Энэ удаагийн хуралд Үндсэн хуулийн шүүх болон түүнтэй адилтгах байгууллагын Азийн нийгэмлэгийн гишүүн 20 орны Үндсэн хуулийн хяналтын институтээс 30 гаруй төлөөлөгчид оролцож байгаа болно.

Түүнчлэн Бүгд Найрамдах Солонгос Улсын Үндсэн хуулийн шүүхийн Ерөнхийлөгч ноён Юү Нам Сог, Бүгд Найрамдах Турк Улсын Үндсэн хуулийн шүүхийн Ерөнхийлөгч ноён Зүхтү Арслан, Бүгд Найрамдах Казакстан Улсын Үндсэн хуулийн зөвлөлийн дарга ноён Кайрат Мами нараар ахлуулсан төлөөлөгчид Монгол Улсын Үндсэн хуулийн цэцийн урилгаар албан ёсны айлчлал хийхээр хүрэлцэн ирээд байна.

Энэхүү хуралд оролцохоор төрт ёсны 2200 гаруй жилийн түүхтэй, Чингис хааны өлгий нутаг болох манай сайхан оронд биечлэн хүрэлцэн ирсэн, мөн цахимаар холбогдон оролцож буй Та бүхэнд чин сэтгэлийн талархал илэрхийлье.

Монгол Улсын Үндсэн хуулийн цэц Үндсэн хуулийн шүүх болон түүнтэй адилтгах байгууллагын Азийн нийгэмлэгийг удирдах

эрхийг хүлээн авч эдгээр арга хэмжээг зохион байгуулах болсонд туйлын баяртай байна.

Одоогоос гучин жилийн өмнө шинэ Үндсэн хуулийн төслийг ард түмнээрээ хэлэлцэж, үндэсний зөвшилцлийн үндсэн дээр Монгол Улсын ардчилсан шинэ Үндсэн хуулийг баталж Монгол Улс хүн төрөлхтний нийтлэг жишгийг баримтлан хөгжих эрх зүйн үндсийг баттай бий болгосон билээ. Энэ хугацаанд Монгол Улсын Үндсэн хууль манай нийгмийн хөгжлийн тогтвортой байдлыг хангах нэг томоохон үндсэн хүчин зүйл болж чадсан юм.

Монгол Улсын Үндсэн хуулийн Жаран дөрөвдүгээр зүйлд "Монгол Улсын Үндсэн хуулийн цэц бол Үндсэн хуулийн биелэлтэд дээд хяналт тавих, түүний заалтыг зөрчсөн тухай дүгнэлт гаргах, маргааныг магадлан шийдвэрлэх бүрэн эрх бүхий байгууллага мөн" хэмээн заасан. Монгол Улсын Үндсэн хуулиар ардчиллын үнэт зүйл, хүний эрх, эрх чөлөөг хамгаалах, төрийн эрх мэдлийг хуваарилах зарчмыг хэрэгжүүлэх, төрийн дээд байгууллагууд Үндсэн хуулийн хүрээнд ажиллаж буй эсэхийг хянадаг Үндсэн хуулийн цэц хэмээх институцийг бий болгосон бөгөөд энэ нь Монгол Улсын шинэ Үндсэн хуулийн нэг томоохон ололт болсон төдийгүй түүнийг чандлан сахиулах Үндсэн хуулийн баталгаа болсон юм.

Манай улсын Үндсэн хуулийн хяналтын онцлог нь иргэн Үндсэн хууль зөрчсөн гэж үзсэн асуудлаар өөрийн эрх ашиг хөндөгдсөн эсэхээс үл хамааран Үндсэн хуулийн цэцэд хандах эрх нээлттэй байдаг, асуудлыг бага суудал, дунд суудал, их суудлын хуралдаанаар хэлэлцэх замаар Үндсэн хуулийг чандлан сахиулах баталгааг хэрэгжүүлдэгт оршдог. Дунд суудлын хуралдаанаас гарсан Цэцийн дүгнэлтийг УИХ-д оруулдаг зохицуулалт нь хууль тогтоомжийг боловсронгуй болгох нэг боломж нээдгээрээ давуу талтай гэж үзэж болох юм.

Монгол Улсын Үндсэн хуулийн цэц байгуулагдсанаасаа хойшхи хугацаанд Үндсэн хууль зөрчсөн эсэх тухай маргааныг хянан шийдвэрлэхдээ Үндсэн хуулийн үндсэн зарчим, суурь үзэл баримтлал, эрхэм зорилго, ардчиллын үнэт зүйл, хүний эрх, эрх чөлөөг хамгаалах, хууль дээдлэх ёсыг нийгэмд төлөвшүүлэн хөгжүүлэх үйлсэд бодитой хувь нэмэр оруулсаар ирсэн юм.

Монгол Улсын Үндсэн хуулийн цэц Үндсэн хуульд дээд хяналт

тавьж, ингэснээр монголын нийгэм, төрийн тогтолцоонд зохих байр суурια нэгэнт эзэлж, хүлээн зөвшөөрөгдсөн төрийн институци болж чадсаныг тэмдэглэхэд таатай байна. Цэцийн шийдвэр Үндсэн хуульт ёсны төлөвшилд бодитой нөлөөгөө үзүүлсээр байгааг тэмдэглэх нь зүйтэй бөгөөд Үндсэн хуулиа чандлан сахиж, түүний хүчин чадлыг бүрэн дүүрэн ашиглахад Үндсэн хуулийн цэцийн гүйцэтгэх үүрэг улам бүр нэмэгдэж байна.

Монгол Улсын Үндсэн хуулиар нэгэнт тогтоосон Цэцийн эрх зүйн зохицуулалтын онцлогийг давуу тал болгон, цаашид улам боловсронгуй болгон төгөлдөржүүлэх шаардлага бий. Тухайлбал, Монгол Улсын Үндсэн хуулийн хэм хэмжээг Үндсэн хууль дээдлэх зарчим, хүний үндсэн эрх, эрх чөлөө зэрэг Үндсэн хуулийн үзэл баримтлалын үүднээс илүү чөлөөтэй, утга агуулга, уялдааг харгалзан хэрэглэх хандлагыг төлөвшүүлэх нь дэлхий нийтийн түгээмэл үнэт зүйлсийг хүлээн зөвшөөрч, үндэсний түвшинд бататгах чиглэлд илүү дөхөм болно гэж үзэж байна.

Монгол Улсын Үндсэн хуулийн цэц нь дэлхийн улсуудын ижил төстэй байгууллагын хамтын ажиллагаанд идэвхтэй оролцсоор ирсэн юм. Тухайлбал, 2005 онд Монгол Улсын Үндсэн хуулийн цэц Ази тивд тогтмол үйл ажиллагаатай Үндсэн хуулийн шүүхийн хамтын ажиллагааны байгууллага байгуулах санал гаргалцаж, түүнийг бусад улс дэмжсэнээр 2010 онд Үндсэн хуулийн шүүх, түүнтэй адилтгах байгууллагын Азийн нийгэмлэг байгуулагдаж, өдгөө 20 улсын Үндсэн хуулийн хяналтын байгууллагыг эгнээндээ нэгтгээд байна. Үндсэн хуулийн шүүх, түүнтэй адилтгах байгууллагуудын Азийн нийгэмлэгийг 2021-2023 онд Монгол Улсын Үндсэн хуулийн цэц удирдан ажиллаж байна.

Хууль дээдлэх тухай үзэл санаа хэмжээгүй эрхт хаант ёсны эсрэг тэмцлийн нэг уриа болон гарч ирсэн бөгөөд хууль тогтооход ард түмний шууд ба шууд бус оролцоо, бүх нийтийн санал асуулга (референдум), сонгууль, парламент, төрийн эрх мэдэл хуваарилах зарчим зэрэг ойлголтууд Үндсэн хуульд бэхжих болсон.

Дэлхий дахинаа Үндсэн хуульт ёсны төлөвшилд Үндсэн хуулийн шүүхийн үүрэг нэн өндөрт тавигдаж, төрийн эрх барих байгууллага, албан тушаалтнуудын хууль дээдлэх ёсны хэмжүүр төдийгүй, үндсэн хуульт ёсны төлөвшлийн баталгаа болж байна.

Монгол Улсын шинэ Үндсэн хуулиар эрх зүйт төрийн үндсэн шинж болох хууль дээдлэх зарчим бол төрөөс баталсан хууль дээд хүчин чадалтай бөгөөд түүнийг эрх олгогдсоноос бусад ямар ч субьект батлан гаргах, өөрчлөх болон хүчингүй болгох эрхгүй байх явдал бөгөөд Үндсэн хуульд хуулийн өмнө бүх иргэд, байгууллага адил тэгш байж, түүнд нэг нөхцөл зарчмаар захирагдаж байхаар хуульчлан заасан. Мөн хуулийг дээдэлж, хуульд захирагдаж байх нь төрийн үйл ажиллагааны үндсэн зарчим болохыг хуульчлан тогтоосон.

Гэвч дэлхий дахины нийгэм, эдийн засгийн амьдралд шинжлэх ухаан, технологийн хөгжил, цахим харилцааны хэлбэрүүд хүч түрэн нэвтэрснээр хууль дээдлэх зарчим, Үндсэн хууль дээдлэх ёсыг улам бүр төгөлдөржүүлэхийг шаардах боллоо.

Улмаар зарим тохиолдолд тодорхой асуудалд хандах шинжлэх ухааны хандлагад өөр өөр байр сууринаас хандах нөхцөл байдлууд бий болж байна. Өнөөдрийн хуралдаанд хэлэлцүүлэх гол илтгэл Үндсэн хуулийн хяналтын сүүлийн үеийн хөгжил, чиг хандлага гэсэн сэдэвтэй байгаа нь ч тохиолдлын зүйл биш юм.

Цаашид улс орнууд өөр өөрсдийн онцлогтой судалгаа, шинжилгээний ажил хийх, харилцан мэдээлэл солилцох сувгийг төрөлжүүлэн сайжруулах, нийгмийн ээдрээ төвөгтэй зарим асуудлын шийдлийг олоход шинжлэх ухааны түвшинд хамтран ажиллах шаардлага тулгарч байгаа нь Үндсэн хуулийн шүүх, түүнтэй адилтгах байгууллагын Азийн нийгэмлэгийн үйл ажиллагааны хэрэгцээ шаардлагыг улам бүр нөхцөлдүүлж байна.

Үндсэн хуулийн шүүх, түүнтэй адилтгах байгууллагын Азийн нийгэмлэгийн гишүүн орнуудын хамтын ажиллагааны хүрээнд хүн төрөлхтөний өв болсон Үндсэн хуульт ёсны талаар шинжлэх ухаан, танин мэдэхүйн болоод практик ойлголтыг хөгжүүлэх шаардлага бий. Иймд энэ чиглэлээр цаашдын хамтын ажиллагаагаа улам хөгжүүлнэ гэдэгт итгэлтэй байна.

Үндсэн хуулийн шүүх, түүнтэй адилтгах байгууллагын Азийн нийгэмлэгийн хурлын үйл ажиллагаанд амжилт хүсье.

Анхаарал хандуулсанд баярлалаа.

CONGRATULATORY REMARKS BY H.E. MR. ZANDANSHATAR GOMBOJAV, CHAIRMAN OF THE STATE GREAT HURAL (PARLIAMENT) OF MONGOLIA AT THE 5TH CONGRESS OF THE ASSOCIATION OF ASIAN CONSTITUTIONAL COURTS AND EQUIVALENT INSTITUTIONS

Distinguished guests,

Ladies and Gentlemen,

It is my pleasure to extend my greetings to all of you on behalf of Mongolia at this prestigious conference.

The democratic Constitution of Mongolia laid the foundation for the democratic and legal state system chosen by the Mongolian people.

One of the main achievements of the democratic Constitution of Mongolia is the establishment and endorsement of the legal basis and principles for the operation of the institution, which has a prestigious and highly responsible role in protecting and strictly maintaining the Constitution.

This year marks the 30th anniversary of the establishment of the Constitutional Court, which is the body with the supreme authority to supervise the implementation of the Constitution in Mongolia.

The Article 64.2 of the Constitution of Mongolia states that the Constitutional Court and its members shall be subject only to the Constitution in the performance of their duties and shall be independent of any organization, official, or any other person. The experience of the past years has shown that as a main mechanism to implement the Constitution by not giving a priority to a form, the role of the Constitutional Court is particularly important in regulating the relationship between public organizations and human rights.

The activities and decisions of the Constitutional Court of Mongolia have become a major factor to adhere to while fostering the supremacy of the Constitution, spreading its morals to the public, explaining the concept of the Constitution and its content, especially making every citizen of

Mongolia aware of the basis of constitutionalism, and determining the ways to solve scientific problems.

In addition, the fact that there are many disputes related to human rights and freedoms in the decisions rendered by the Constitutional Court of Mongolia indicates that human rights and freedoms are the core issues that the Constitutional Court focuses on. In this context, I would like to emphasize that the Constitutional Court of Mongolia protects the values of human rights defined by the democratic Constitution and has an exceptional stimulus on ensuring its development.

These events are particularly important processes for the development of the democratic legal system in our country.

The Constitutional Court of Mongolia has been actively participating in the cooperation of similar organizations of the world such as the World Conference on Constitutional Justice of the Venice Commission of the Council of Europe, the Eurasian Association of Constitutional Review Bodies, the Asian Association of Constitutional Courts and Equivalent Institutions.

I am satisfied with the fact that the 5th Congress of the Asian Association of Constitutional Courts and Equivalent Institutions, which has an organizational structure that performs regular activities and is well-known on the continent, is being organized today in Ulaanbaatar, the capital of Mongolia.

It is considered a good practice that the Asian Association of Constitutional Courts and Equivalent Institutions, in carrying out its goals of protecting human rights, ensuring democracy, implementing the rule of law, promoting cooperation between member countries, and exchanging experience and information, openly engages all its members in the activities of the Association.

It's a matter of honor for Mongolia that the Constitutional Court of Mongolia is presiding over the Asian Association of Constitutional Courts and Equivalent Institutions in 2021-2023.

I wish happiness and well-being to the Justices and personnel of the Constitutional Court, who are honestly working to protect the Constitution, in order to further improve the functioning of Constitutional Justice bodies within the framework of the spirit of the Constitution.

Wishing you all the best and success in all your endeavors.

ҮНДСЭН ХУУЛИЙН ШҮҮХ, ТҮҮНТЭЙ АДИЛТГАХ БАЙГУУЛЛАГУУДЫН АЗИЙН НИЙГЭМЛЭГИЙН ТАВДУГААР ИХ ХУРАЛД ИРҮҮЛСЭН

МОНГОЛ УЛСЫН ИХ ХУРЛЫН ДАРГА ГОМБОЖАВЫН ЗАНДАНШАТАРЫН МЭНДЧИЛГЭЭ

Эрхэм хүндэт зочид оо,

Хүндэт хатагтай, ноёд оо,

Энэхүү нэр хүндтэй Их Хуралд Монгол Улсыг төлөөлөн та бүхэнтэй мэндчилж байгаадаа баяртай байна.

Монгол Улсын ардчилсан Үндсэн хууль монголын ард түмний сонгосон ардчилсан, эрх зүйт төрийн тогтолцооны үндэс суурийг тавьсан юм.

Монгол Улсын ардчилсан Үндсэн хуулийн гол ололтуудын нэг бол Үндсэн хуулийг хамгаалах, чандлан сахиулах нэр хүндтэй бөгөөд өндөр хариуцлагатай үүрэг гүйцэтгэдэг институтын бүрэн эрх, үйл ажиллагааны эрх зүйн үндэс, зарчмыг тогтоон баталгаажуулсан явдал билээ.

Монгол Улсад Үндсэн хуулийн биелэлтэд дээд хяналт тавих эрх бүхий байгууллага болох Үндсэн хуулийн цэц байгуулагдсаны 30 жилийн ой энэ жил тохиож байна.

Монгол Улсын Үндсэн хуулийн жаран дөрөвдүгээр зүйлийн 2 дахь хэсэгт Үндсэн хуулийн цэц, түүний гишүүн үүргээ гүйцэтгэхдээ гагцхүү Үндсэн хуульд захирагдах бөгөөд аливаа байгууллага, албан тушаалтан, бусад хүнээс хараат бус байна хэмээн түүний хараат бус байдлыг баталгаажуулснаар Үндсэн хуулийг хэлбэрэлтгүй биелүүлэх гол механизмын хувьд төрийн эрх бүхий байгууллага, хүний эрхийн харилцааг зохицуулахад Үндсэн хуулийн цэцийн үүрэг онцгой ач холбогдолтой болохыг өнгөрсөн жилүүдийн туршлага харуулсан билээ.

Монгол Улсын Үндсэн хуулийн цэцийн үйл ажиллагаа, шийдвэр нь Үндсэн хууль дээдлэх ёсыг төлөвшүүлэх, түүний үзэл санааг олон нийтэд түгээн дэлгэрүүлэх, Үндсэн хуулийн үзэл баримтлал болон түүний агуулгыг тайлбарлан таниулах, ялангуяа Монгол Улсын иргэн бүрт Үндсэн хуульт ёсны суурийг таниулж төлөвшүүлэх, Үндсэн хуулийн эрх зүйн шинжлэх ухааны тулгамдаж буй асуудлыг шийдвэрлэх арга замыг тодорхойлоход баримталдаг томоохон хүчин зүйл болсоор ирлээ.

Түүнчлэн Монгол Улсын Үндсэн хуулийн цэцээс гаргасан шийдвэрүүдэд хүний эрх, эрх чөлөөтэй холбогдох маргаан олон байгаа нь хүний эрх, эрх чөлөө Цэцийн анхаарлаа хандуулдаг гол цөм асуудал гэдгийг илтгэж байна. Энэ утгаараа Монгол Улсын Үндсэн хуулийн цэц ардчилсан Үндсэн хуулиар тодорхойлсон хүний эрх хэмээх үнэт зүйлсийг хамгаалж, түүнийг хөгжлийг хангахад онцгой нөлөө үзүүлж байгааг онцлон тэмдэглэж байна.

Эдгээр үйл явдал нь манай орны ардчилсан эрх зүйн тогтолцооны хөгжилд онцгой ач холбогдолтой үйл явц юм.

Монгол Улсын Үндсэн хуулийн цэц нь Европын зөвлөлийн Венецийн комиссын Үндсэн хуулийн шүүх эрх мэдлийн Дэлхийн бага хурал, Үндсэн хуулийн шүүх эрх мэдлийн байгууллагуудын Евразийн нийгэмлэг, Үндсэн хуулийн шүүх, түүнтэй адилтгах байгууллагуудын Азийн нийгэмлэг зэрэг дэлхийн орнуудын ижил төстэй байгууллагуудын хамтын ажиллагаанд идэвхитэй оролцсоор ирсэн.

Ази тивийн 20 улсын Үндсэн хуулийн хяналтын байгууллагыг эгнээндээ нэгтгэсэн, тогтмол байнгын үйл ажиллагаа явуулдаг зохион байгуулалтын бүтэцтэй, тивдээ нэр хүнд бүхий Үндсэн хуулийн шүүх, түүнтэй адилтгах байгууллагуудын Азийн нийгэмлэгийн V Их Хурлыг өнөөдөр Монгол Улсын нийслэл Улаанбаатар хотод зохион байгуулж байгаа явдалд сэтгэл хангалуун байна.

Үндсэн хуулийн шүүх, түүнтэй адилтгах байгууллагуудын Азийн нийгэмлэг нь хүний эрхийг хамгаалах, ардчиллыг баталгаажуулах, хууль дээдлэх ёсыг хэрэгжүүлэх, гишүүн улс хоорондын хамтын ажиллагааг дэмжих, туршлага, мэдээлэл солилцох зорилгоо хэрэгжүүлэхдээ гишүүн орнуудыг нийгэмлэгийн бүх үйл ажиллагаанд нээлттэй оролцуулдаг нь сайн жишиг гэж бид үздэг.

Монгол Улсын Үндсэн хуулийн цэц 2021-2023 онуудад Үндсэн хуулийн шүүх, түүнтэй адилтгах байгууллагуудын Азийн нийгэмлэгийг удирдан ажиллаж байгаа нь Монгол Улсын хувьд өндөр нэр хүндтэй үйл явдал юм.

Үндсэн хуулийн үзэл санааны хүрээнд Үндсэн хуулийн шүүх эрх мэдлийн байгууллагын үйл ажиллагааг улам төгөлдөржүүлэх та бүхний ариун үйлсэд тань өндөр амжилт хүсэх ялдамд Үндсэн хуулийн манаанд чин шударгаар хүчин зүтгэж байгаа Үндсэн хуулийн шүүхийн шүүгч нар, ажлын албаны ажилтан нарт аз жаргал, сайн сайхан бүхнийг хүсэн ерөөе.

Та бүхэнд ажлын өндөр амжилт, сайн сайхныг хүсэн ерөөе.

ПРИВЕТСТВЕННОЕ СЛОВО ГОСПОДИНА КАЙРАТА МАМИ, ПРЕДСЕДАТЕЛЯ КОНСТИТУЦИОННОГО СОВЕТА РЕСПУБЛИКИ КАЗАХСТАН, БЫВШЕГО ПРЕЗИДЕНТА АССОЦИАЦИИ АЗИАТСКИХ КОНСТИТУЦИОННЫХ СУДОВ И ЭКВИВАЛЕНТНЫХ ИНСТИТУТОВ

Уважаемый господин Чинбат Намджил!

Уважаемые коллеги! Дамы и господа!

Позвольте от имени Конституционного Совета Республики Казахстан приветствовать вас.

Нынешний Конгресс нашей Ассоциации является пятым по счету, можно сказать первым юбилейным, и для меня большая честь выступить на его открытии.

Глубоко символично, что он проходит в Монголии. Хотел бы отметить, что именно здесь, в столице Монголии, Улан-Баторе, в сентябре 2005 года обсуждался вопрос о необходимости создания ассоциации конституционных судов Азии. Много лет и усилий ушло на образование и дальнейшее усиление нашей организации.

За эти годы она состоялась как авторитетная региональная структура, объединяющая усилия ее членов в деле защиты прав человека, демократии и верховенства права.

Установлено плодотворное сотрудничество как между участниками организации, так и с ее международными партнерами - Венецианской комиссией и другими ассоциациями.

Эффективно работают все подразделения Ассоциации, базирующиеся в Индонезии, Корее и Турции.

Отдельные члены азиатской ассоциации были удостоены чести проводить мероприятия мирового масштаба. Свидетельством этого является миссия по организации Конгрессов Всемирной конференции по конституционному правосудию, которая была возложена на Конституционный Суд Кореи в 2014 году, а в этом году – на Конституционный Суд Индонезии.

Все эти достижения стали возможными благодаря нашей дружбе и конструктивному взаимодействию.

Каждая страна, председательствующая в ассоциации, вносит весомый вклад в расширение ее потенциала. Период казахстанского председательства в 2019-2021 годах совпал с жесткими ограничениями, связанными с пандемией COVID-19. Несмотря на это, благодаря взаимной поддержке и цифровым технологиям все уставные мероприятия были проведены и восприняты с большим энтузиазмом.

Я хотел бы особо отметить значительную роль Конституционного Суда Монголии на посту Председателя Ассоциации. Настоящий Конгресс организован на высоком уровне и позволяет нам обсудить общие вопросы и обменяться опытом.

Уважаемые коллеги!

Сегодняшний форум посвящен важной теме. Основная задача органов конституционного контроля – это обеспечение верховенства Основного Закона.

В Нур-Султанской декларации, принятой по итогам четвертого Конгресса, мы еще раз подтвердили, что в эпоху глобальных перемен обеспечение высшей юридической силы Конституции является непременным условием поступательного развития любого государства, вставшего на путь демократической модернизации.

В Конституции закреплены наиболее важные принципы жизнедеятельности общества и государства, фундаментальные права и свободы человека.

В современном мире конституционное правосудие является одним из неотъемлемых институтов демократических государств.

В этой связи, полагаю, что в ходе настоящего Конгресса будет высказано много интересных суждений и предложений в плане поиска ответов на глобальные вызовы.

Желаю всем конструктивного диалога, активного участия и дальнейших успехов!

Благодарю за внимание.

II

SPEECHES OF THE 5TH CONGRESS OF THE ASSOCIATION OF ASIAN CONSTITUTIONAL COURTS AND EQUIVALENT INSTITUTIONS

Gangabaatar Dashbalbar
Justice of the Constitutional Court of Mongolia

CONSTITUTIONAL REVIEW IN CHALLENGING TIMES

Introduction

Recent global changes, a combination of political, economic and social factors as well as the acceleration in technological progress, unforeseen circumstances, pandemics, global warming, climatic and ecological changes, have presented immense challenges to the nations of the world entailing multiple problems that required urgent solutions. These challenges have affected all branches of governance.

One of the major challenges we are facing today is the Covid-19 pandemic that spread all over the planet in 2020. It's yet uncertain how long the pandemic will continue while it has created numerous unpredictable issues adding on the health issues with countless questions and complications presenting the decision-makers difficult tasks of how to come out with correct and timely solutions.

The difficulties to emerge in the consequence of the pandemic are expected to drag over a long period of time demanding long-term actions and this situation may negatively affect constitutionalism, human rights and freedoms, equality, multifaceted nature of governance leading to potential political, and socio-economic crises.

Therefore, as the main institution with the power to exercise surpeme supervision over the enforcement of the Constitution and the protection of constitutionalism and individual liberties, the role of the Constitutional Court in today's society is becoming crucial for overcoming the challenges and difficulties that are encountered by every nation.

In this connection, I am glad for the organization of this conference which provides opportunities for justices of constitutional courts in Asian countries gather and exchange ideas and experience of how these challenges are handled and solved. In this presentation I will provide an overview of the challenges confronting the world focusing on the constitutional review in Asia and briefly introduce to the experience of my own country.

Seperation of powers during challenging times

The importance of protection of constitutionalism, its effectiveness and democratic values is ever more increasing in the modern era. Establishment of the constitutional limits on the authority of the government and decision-making bodies and officials is exceedingly important for enforcement of human rights and constitutional justice and strengthening peace around the globe.

Since 2020, most Asian countries experienced unprecedented limitations of human rights and freedom as a result of the novel coronavirus. Governments around the world, especially in Asia, have taken decisive measures to fight the Covide-19 such as border closure, curfews, suspending many government services and the schools, stay-at-home orders, cellphone monitoring, restricting travel within the country or abroad, and the censoring of media. Many of these decisions were supported by public, especially in the case of Mongolia. At the same time, there were concerns about the constitutionality of these decisions and their effects on the human rights and freedom and overall constitutional democracy.

This brought up again the issue of constitutional governance and human rights during times of crisis. Checks and balances in the governance dwindle during this challenging time as the executive branch and the officials associated with it dominated at the decision-making level. It is reasonable and widely accepted that the emergency situations lead to more delegation of power to the executive because it is the executive branch among the three, have the capacity to respond to crisis faster and decisvely. However, the ordinary checks and balances change during the emergency situations, and the executive, in many cases, ceases to be constrained by the other two branches.

This classic theory of emergency governance or the ‘’unbound executive’’ during crisis times has been associated with Carl Schmitt and later Eric Posner and Adrian Vermuele although their approach differs somehow. Their idea is that the normal constitutional regime and checks and

balance collapses during emergencies. However, whether these theories are relevant to the global pandemic is a different question. It appears that the Schmittian theory of emergency governance is more related to the national securiry crisis such as a wartime emergency rule.

It is still intersting to see how their theory applies to the current pandemic situation. Some scholars such as Tom Ginsburg, and Mila Versteeg maintain that different kinds of emergencies require different modes of crisis governance. Their idea is that the current pandemic is different from the national security crisis. Therefore, local governments, the legislature and the courts including the constitutional courts play important role in the implementation of the crisis response. This creates a situation where the executive is more bound and limited than the national security crisis.

The speaker supports the latter, and suggests that the role of the legislature, the courts, especially constitutional courts is as important as during the ordinary constitutional order. The pandemic created a situation where different countries placed different limitations on the human rights and freedom. Finding an optimal response to the pandemic and balancing preventive measures and the protection of human rights and individual liberties require the role of constitutional courts to ensure that the restrictions placed are proportional and based on legitimate public interest.

Tendencies of development of constitutional review during the challenging times

The speaker believes that in many Asian countries, the pandemic response did not automatically lead to the same level of emergency regime as during the national security crisis. In most cases, including Mongolia, the ordinary constitutional system remained in place. The checks and balances have also persisted despite the fact that there were many challenges. Especially, the constitutional review and judicial intervention played an important role.

The courts could review the pandemic responses and monitor the executive actions on the procedural ground or could also engage in the substantive rights review. Another type of constitutional review that is available during the pandemic is the constitutional review demanding the executive to take certain actions to respond to the pandemic. Mongolian Constitutional Court has recognized the negative constitutional review in some decisions although this has not been used during the pandemic. In some countries, the judicial review and oversight was in place if not the

constitutional reivew.

The legislature has also played its role. Many countries have adopted new legislation to prevent and respond the pandemic. In Mongolia, local governments played also a significant role in combatting the pandemic. Some local governments put greater restrictions in their provinces due to the number of the new infections. This is one of the key differences between a national security crisis and a pandemic. In some places, the local government and local officials implemented important response based on the local situation and information available.

Among these institutions that responded to the pandemic, constitutional courts are institutionally well equiped to demand the justification for any executive actions. Therefore, there is a need of strengthening constitutional review, broadening its functions and revitalizing the exisiting constitutional review system, and the introduction of the individual complaint system.

The question who should make decisions and how decisions should be made has been the key issue in the conditions of complicated, multicentered and multifaceted emergencies such as the globally spread Covid-19 pandemic. An absolute majority of the emergency response decisions are made by the executive power as the situation require swift responses. Constitutional review mechanism and procedure need to cope with these emergency situations so that the constitutional courts can still effectively review the executive orders. These could include electronic petition system, virtual hearing and e-communication and individual complaint system etc.

Creation and management of technological infrastructure enabling swift and effective functioning in crisis conditions have become a tendency for further development of constitutional courts. In addition to ICT solutions, creation of a legal framework is important for digital transformation and development of e-governance. The courts and public agencies of the Asian region have undoubtedly been in a leadership position in the trend.

Experience of Mongolia

Just as all other countries of the world, Mongolia has also been heavily affected by the complications brought by the Covid-19 pandemic and has faced heavy challenges in the health, social, economic and political areas. The government of Mongolia implemented its task of protection of

the health and lives of its citizens successfully through a wide-scope control and restrictions that aimed at prevention of penetration of the Coronaviral infections into the territory of the country and swift immunization of the population.[1]

Mongolia did not announce emergency due to Covid-19 pandemic but adopted a law allowing to limit human rights and freedoms within the framework of the international law and the actions in response to the pandemic have been regulated by this temporary act[2] . The scheduled parliamentary, presidential and local elections took place during the pandemic years fulfilling the right of the citizens of Mongolia to political participation.

On the generally positive background of the human rights situation, occasions of human rights violations took place in many areas in the course of implementation of Covid-19 responses. There were cases that individuals suffered damages of their health due to weakness in the coordination of the activities of the institutions that managed the Covid-19 response and their inability to carry out swift and timely decisions in certain circumstances. The procedures of personal data protection were unclear and, coupled with underdeveloped attitude of respecting dignity of citizens by public officers, situations of stigmatization of individuals and their family members with the actual and suspected infection. There have been adverse effects of paper and digital collection of personal data in the absence of protection mechanism of personal information.

While governmental organisations and politicians were allowed to hold public activities involving a large number of people, peaceful protests criticizing the government were generally restricted under a pretext of prevention of a spread of the infection. Most of the decision of this period were made by the executive power and the Extraordinary Committee for Combating the Pandemic, hence not subject to Constitutional Court reviews. In this regard, over a dozen of petitions and reports were received by the Constitutional Court Mongolia from individuals but most of them

[1] Mongolia was able to prevent spread of the infection till November 2020 and to contain the spread of the virus till May 2021. The immunization against Coronavirus commenced in February 2021, and 80% of the adult population had been vaccinated the 1st dose and 70% - the 2nd dose by the peak period of the proliferation of the viral infection. Mongolia ranked 175th among 196 countries y its indicator of the proportion of the infected people to those who perished 0.24.

[2] The State Great Khural of Mongolia adopted the Law on prevention and combating the Coronavirus pandemic and alleviation of its social and economic effects on 29 April 2020.

were disqualified as not falling within the Court's jurisdiction.

The list of disputes falling under the jurisdiction of the Constitutional Court are provided in the Constitution of Mongolia. The Constitutional Court is only authorized to fully review the decisions of the legislature and only some of the decisions of the executive power (decrees and other decisions of the President, resolutions of the Government and its other decision), while court decisions are not subject to review by the constitutional court.[3] To protect citizens' rights and freedom and to limit the state power, the Constitution provides for actio popularis type of review under which any citizen could request for abstract constitutional review of legislation.

In recent years, there have been discussions about constitutional amendments on the introduction of individual complaint and amendments to the relevant legislation. Nevertheless, the Constitutional Court of Mongolia has been making important decisions that protected the human rights guaranteed by the Constitution and maintained the balance of powers during the harsh period of the pandemic. For instance, the decisions on the constitutionality of certain provisions of Law on Presidential Election and the decision on the constitutionality of the proportional electoral system, among others, were made during the pandemic.

The need to accelerate the practical transition to e-governance has become even more apparent during the pandemic. In this regard, the Constitutional Court of Mongolia has begun taking certain measures to digitally transform its activities and to reform the relevant laws. Digital transformation of the constitutional review system will make the constitutional justice more accessible to the citizens during challenging times. It will also help reducing running costs and deliver faster and more efficient services unhindered by vastness of distance and restrictions on the freedom of movement. This is specially apperant in the case of Mongolia, which is 19th largest country in the world in terms of the land as well as the most sparsely populated country.

It would be reasonable to state that the traditional respectful attitude of the Mongolian people toward the state was an important factor for the strict adherence of the orders and advisories issued to the governmental institutions and professional organisations and it may have served as one of the strongest factors in Covid-19 prevention and effective response.

[3] Сарантуяа Ц., Үндсэн хуулийн процессын эрх зүй, УБ, 2005 он, х.128-129

Conclusions

The 2020 pandemic shed new light on the theories of emergency constitutional rule and the role of the constitutioinal courts. There is a fear that unrestricted power of the executive branch as Schmitt stated could persist during and after the pandemic. However, many countries the ordinary courts and constitutional courts have played an important role ensuring the protection of human rights and freedom enshrined in the constitution during the pandemic. Therefore, it is important to note that the crisis governance during pandemic could be different from the one during national security crisis.

The Constitutional review during the current crisis has met multiple challenges. Constitutional identity of each country might require differing solutions in responding the pandemic. But the constitutional courts are here to defend the democracy and civil liberty as the common value of the humanity. The needs to widen the scope of the constitutional review, creating legislative framework for constitutinal courts to effectively work during the times of crisis, and digital transformation remain among the central issues for reforming the constitutional justice during challenging times.

Kairat Mami
Chairman of the Constitutional Council of the Republic of Kazakhstan

CONSTITUTIONAL REVIEW IN KAZAKHSTAN: TASKS AND PROSPECTS AT THE PRESENT STAGE

Dear Mr. Chinbat Namjil!

Dear colleagues!

Let me welcome you once again to the Fifth Congress of the Association of Asian Constitutional Courts!

It is significant that in September 2005 it was here, in the capital of Mongolia, in Ulaanbaatar, where the need to create an association of Asian constitutional courts was discussed. Many years and efforts have been spent to create and further strengthen our organization.

We are witnessing how the structure of our Association has been strengthening over the course of a decade, the number of members is increasing. The quality of coordination of relations between the participants is constantly improving.

I would like to note the significant role of the Constitutional Court of Mongolia as the President of the Association. This Congress is organized at a high level and allows us to discuss common issues and exchange experiences.

Dear participants of the Congress!

As part of my speech, I will inform you about the ongoing constitutional reform in Kazakhstan.

On June 5 this year, we held a nationwide referendum, which adopted amendments to the Constitution of the Republic.

The goal of the current constitutional reform is a systemic

transformation of public administration, as well as the current political model.

Kazakhstan is currently on the path of deep modernization. Its main directions were announced in March this year in the President's Address to the people of Kazakhstan.

Over the past thirty years of Kazakhstan' independence, the positions of constitutional review have significantly strengthened. The accumulated experience allows us to outline further measures to improve its effectiveness.

This time, an important innovation towards strengthening human rights institutions is the transformation of the Constitutional Council into the Constitutional Court.

As you know, constitutional courts operate in most countries of the world. Experts agree that their activities more effectively ensure compliance with the provisions of the Basic Law. Given these circumstances, a new model of constitutional review has been proposed in our country.

At the same time, the list of subjects with the right to apply to this body is expanding. It additionally includes the Prosecutor General, the Commissioner for Human Rights and citizens. The most important and significant change is that the review body will be competent to consider citizens' appeals on the compliance with the Constitution of normative legal acts that directly affect their rights enshrined in the Constitution.

These initiatives are an important step in building a just state and will institutionally strengthen the protection of the constitutional rights of citizens.

At the moment, intensive legislative activity is underway, within the framework of which drafts of new laws are being developed and changes are being made to dozens of existing laws.

We have developed a draft Constitutional Law "On the Constitutional Court", which provides for the implementation of the mentioned changes.

The Constitutional Court retains all the powers of the Constitutional Council.

It is assumed that the right to appeal to the Constitutional Court with a complaint about the violation of constitutional rights will have both individuals and legal entities, in the opinion of which their rights and freedoms are violated by law.

In many countries, it is a rule that a complaint to the constitutional court is admissible if the law is applied by the court in a particular case and all other judicial remedies have been exhausted. We also intend to adopt this rule. I hope that my colleagues today will share their practice on this issue.

The effectiveness of constitutional review to a certain extent depends on the activity of the subjects of appeal. One of them in Kazakhstan is the ordinary courts. The number of court submissions received by the Constitutional Council in recent years has tended to decrease.

In the practice of constitutional justice bodies, it is generally recognized that the right to judicial protection also implies a presumption of compliance with the Constitution of legal acts applicable in the administration of justice. Therefore, when such facts are revealed, the courts are obliged to suspend the proceedings and apply to the constitutional review body. Such applications may be made by the parties to the proceedings. Therefore, we have proposals for further improvement of the procedural legislation regulating the mechanism for considering such applications by the courts. In this connection, it seems necessary to separately highlight the motions of the parties to apply to the Constitutional Court. Such motions must be written, motivated and contain certain details. The law should define a more detailed procedure for considering such motions by the court and legislate specific grounds for refusing to satisfy them.

One of the important issues is the execution of constitutional courts' decisions. In many cases, it involves the adoption of additional legislative measures. We propose the establishment of a six-month deadline for the submission of a draft law to the Parliament aimed at implementing the decision of the Constitutional Court.

All our ideas were positively assessed by the Venice Commission, which, upon our request, gave an opinion.

The strengthening of constitutional principles in legislation, the expansion of the competence of the Constitutional Court, the scope of digital technologies, entail the need to detail the organizational and legal foundations of constitutional proceedings.

In this regard, a procedure is being introduced for written constitutional proceedings, consideration of appeals by individual panels or collegiums of judges. The institution of representation in the Constitutional Court will be developed. Lawyers, legal advisers and legal scholars are allowed as representatives. This will ensure the high quality of handling.

We plan to create a digital platform that will cover all stages of the constitutional process. The Covid-19 pandemic and its associated restrictions have shown the demand for such digital solutions. Finally, a new administrative building for the Constitutional Court is being completed this year. We look forward to welcoming you to this beautiful building of justice.

Ladies and gentlemen!

I have listed only the main innovations of the ongoing constitutional reform in Kazakhstan. In general, this set of measures is necessary to strengthen the guarantees of constitutional human rights, the rule of law and the development of the country's legal system, with the leading role of the Constitution of the Republic.

In any country that has embarked on the path of democratic development, the main factor in the progressive development of constitutionalism is not only the adoption of a legitimate Basic Law, but also the balance between the legal norms of the Constitution and its implementation. Constitutional justice bodies play a major role in this process.

Thank you for your attention!

Кайрат Мами
Председатель Конституционного Совета Республики Казахстан

КОНСТИТУЦИОННЫЙ КОНТРОЛЬ В КАЗАХСТАНЕ: ЗАДАЧИ И ПЕРСПЕКТИВЫ НА СОВРЕМЕННОМ ЭТАПЕ

Уважаемый господин Чинбат Намжил!

Уважаемые коллеги!

Позвольте еще раз приветствовать вас на пятом Конгрессе Ассоциации азиатских конституционных судов!

Знаменательно, что в сентябре 2005 года именно здесь, в столице Монголии, в Улан-Баторе обсуждался вопрос о необходимости создания ассоциации конституционных судов Азии. Много лет и усилий ушло на создание и дальнейшее усиление нашей организации.

Мы являемся свидетелями того, как на протяжении десятилетия крепнет структура нашей Ассоциации, увеличивается количество членов. Постоянно повышается качество координации отношений между участниками.

Я хотел бы отметить значительную роль Конституционного Суда Монголии на посту Председателя Ассоциации. Настоящий Конгресс организован на высоком уровне и позволяет нам обсудить общие вопросы и обменяться опытом.

Уважаемые участники Конгресса!

В рамках своего выступления я проинформирую вас о проводимой в Казахстане конституционной реформе.

5 июня текущего года у нас прошел всенародный референдум, на котором были приняты изменения в Конституцию Республики.

Цель нынешней конституционной реформы – это системная трансформация государственного управления, а также действующей

политической модели.

Казахстан в настоящий момент проходит путь глубокой модернизации. Ее главные направления были озвучены в марте текущего года в Послании Президента народу Казахстана.

За прошедшие тридцать лет независимости Казахстана значительно укрепились позиции конституционного контроля. Наработанный опыт позволяет наметить дальнейшие меры по повышению его эффективности.

В этот раз важным нововведением в направлении усиления правозащитных институтов является трансформация Конституционного Совета в Конституционный Суд.

Как известно, конституционные суды действуют в большинстве стран мира. Эксперты сходятся во мнении, что их деятельность более эффективно обеспечивает соблюдение положений Основного закона. Учитывая эти обстоятельства, и в нашей стране предложена новая модель конституционного контроля.

При этом расширяется перечень субъектов, обладающих правом обращения в данный орган. В него дополнительно включены Генеральный прокурор, Уполномоченный по правам человека и граждане. Самым главным и значимым изменением является то, что контрольный орган будет правомочным рассматривать обращения граждан о соответствии Конституции нормативных правовых актов, непосредственно затрагивающих их права, закрепленные Конституцией.

Эти инициативы являются важным шагом в построении справедливого государства и институционально усилят защиту конституционных прав граждан.

В настоящий момент интенсивно идет законотворческая деятельность, в рамках которой разрабатываются проекты новых законов и вносятся изменения в десятки действующих законов.

Нами разработан проект Конституционного закона «О Конституционном Суде», в котором предусматривается порядок реализации отмеченных изменений.

За Конституционным Судом сохранены все полномочия Конституционного Совета.

Предполагается, что правом на обращение в Конституционный

Суд с жалобой на нарушение конституционных прав будут обладать как физические, так и юридические лица, по мнению которых, законом нарушаются их права и свободы.

Во многих странах установлено правило, что жалоба в конституционный суд допустима, если закон применен судом в конкретном деле и исчерпаны все другие средства судебной защиты. Мы также намерены заимствовать данную норму. Надеюсь, что мои коллеги сегодня поделятся своей практикой по данному вопросу.

Эффективность конституционного контроля в известной мере зависит от активности субъектов обращения. Одним из них в Казахстане являются суды общей юрисдикции. Количество поступающих в Конституционный Совет представлений судов за последние годы имело тенденцию к снижению.

В практике органов конституционной юстиции общепризнано, что право на судебную защиту предполагает и презумпцию соответствия Конституции правовых актов, применяемых при отправлении правосудия. Поэтому при выявлении таких фактов суды обязаны приостановить производство по делу и обратиться в орган конституционного контроля. Соответствующие ходатайства могут заявляться сторонами в судебном процессе. Поэтому у нас имеются предложения по дальнейшему совершенствованию процессуального законодательства, регламентирующего механизм рассмотрения судами таких ходатайств. В этом ключе представляется необходимым отдельно выделить ходатайства сторон об обращении в Конституционный Суд. Такие ходатайства должны быть письменными, мотивированными и содержать определенные реквизиты. В законе следует определить более детальный порядок рассмотрения таких ходатайств судом и законодательно закрепить конкретные основания для отказа в их удовлетворении.

Одним из важных вопросов является исполнение решений конституционных судов. Во многих случаях оно связано с принятием дополнительных законодательных мер. Мы предлагаем установление шестимесячного срока для внесения законопроекта в Парламент, направленного на исполнение решения Конституционного Суда.

Все наши идеи получили положительную оценку

Венецианской комиссии, которая по нашему запросу давала заключение.

Усиление конституционных начал в законодательстве, расширение компетенции Конституционного суда, сфер применения цифровых технологий влекут необходимость детализации организационно-правовых основ конституционного производства.

В этом направлении вводится процедура письменного конституционного судопроизводства, рассмотрения обращений отдельными составами или коллегиями судей. Будет развиваться институт представительства в Конституционном Суде. В качестве представителей допускаются адвокаты, юридические консультанты и ученые-правоведы. Это позволит обеспечить высокое качество рассмотрения обращений.

В наших планах создание цифровой платформы, позволяющей охватить все этапы конституционного процесса. Пандемия Covid-19 и связанные с ней ограничения показали востребованность подобных цифровых решений. И наконец, в этом году завершается строительство нового административного здания для Конституционного Суда. Будем рады приветствовать Вас в этом прекрасном здании правосудия.

Уважаемые дамы и господа!

Я перечислил лишь основные новшества проводимой в Казахстане конституционной реформы. В целом этот комплекс мер необходим для укрепления гарантий конституционных прав человека, верховенства права и развития правовой системы страны при ведущей роли Конституции Республики.

В любой стране, вставшей на путь демократического развития, главным фактором прогрессивного развития конституционализма является не только принятие легитимного Основного закона, но и наличие баланса между юридическими нормами Конституции и ее реализацией. В этом процессе органы конституционной юстиции играют главную роль.

Благодарю вас за внимание!

Anwar Usman
Chief Justice of the Constitutional Court of the Republic of Indonesia

THE CONSTITUTIONAL COURT'S ROLE IN PROTECTING THE CITIZENS' RIGHT TO HEALTH AMID PANDEMIC

Bismillahirahmanirahim,

Assalamu'alaikum Wa Rahmatullahi Wa Barakatuh,

Good afternoon, greetings to you all.

- Your Excellency Chinbat Namjil, Chairperson of the Constitutional Court of Mongolia;
- Your Excellencies Presidents of the Constitutional Courts and Equivalent Institutions;
- The Honorable delegations of members of the AACC;
- Ladies and gentlemen participants of the 5th Congress of the AACC.

First of all, thank you for the invitation extended to the Constitutional Court of the Republic of Indonesia to this impressive Congress hosted by the Constitutional Court of Mongolia. Hopefully with this Congress, the friendly rapport and cooperation between constitutional court and equivalent institutions within the AACC will continue and improve in the future.

Honorable guests,

The theme of this Congress is important to discuss considering the challenges of enforcing the constitution amid the ongoing COVID-19 pandemic, which has forced constitutional courts across the globe to develop new mechanisms to work in a different condition. The pandemic forced us to conduct activities with strict health protocol in order to prevent or at least curb the spread of the novel virus. In this condition, the Constitutional Court plays an important role in protecting the citizens' constitutional rights, especially to health.

Honorable guests,

Upon its foundation, a country has goals it aspires to. Indonesia set its goals in the Preamble to the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), particularly in the fourth paragraph which reads, "... to develop the welfare of the people, the life of the nation, and participate in the world orderliness based on freedom, eternal peace, and social justice." These goals serve to promote the welfare of all Indonesians, including healthcare guarantee.

Health care insurance is one form of protection by the state to guarantee basic needs of a decent life for its citizens. It is a right and investment for the country because human resources are an important capital in building and prospering the nation. A Harvard University scholar states in the book *Capitalism, Democracy, and Welfare*: "Human capital rivals physical capital as a source of personal and national wealth, and it is the single most important determinant of personal income in advanced industrialized countries.*"*

In Indonesia, health insurance is a constitutional mandate enshrined in Article 28H paragraphs (1), (2), and (3) as well as Article 34 paragraphs (1), (2), and (3) of the 1945 Constitution. The efforts to realize public health insurance in the 1945 Constitution can be traced back to the minutes of the formation of the Constitution. In a plenary session of the Investigating Committee for Preparatory Works for Independence (BPUPKI) on 15 July 1945, Boentaran Martoatmodjo proposed that the Article 32 of the Constitution not read "The poor and neglected children are cared for by the State" but "the health of the people is protected by the State." If the health of the people is protected, there will be no needy people and neglected children left by the colonial government.

Although there is no objection to health protection being the state's obligation, another BPUPKI member argued that there was no need to explicitly state the proposed phrase in the Constitution as there was a shared understanding and awareness of the importance of affirming the state's obligation to protect public health rights in the Constitution.

Interest in realizing social welfare and public health insurance following the goals of the founding fathers in the Preamble to the 1945 Constitution resurfaced during the Reform. There was a view that the norms of the old 1945 Constitution were no longer sufficient in providing protection for improving people's welfare. So, demands for amendment to the 1945 Constitution were inevitable. One point of amendment was guaranteed protection of health insurance in particular and social security

in general, which brought forth Article 28H in the second amendment to the 1945 Constitution.

The dynamics of the development of the nation created challenges and demands for the resolution of unresolved problems. One of them was social security for all citizens in Article 28H paragraph (3) and Article 34 paragraph (2) of the 1945 Constitution, the Decree of the People's Consultative Assembly in TAP Number X/MPR/2001-which directed the president to establish the National Social Security System (SJSN) in order to provide comprehensive and integrated social protection. With the enactment of Law Number 40 of 2004 on the National Social Security System, Indonesia now has a social security system for all its people.

The Law on Social Security Administrative Body (BPJS Law) is the implementation of the SJSN Law following the Constitutional Court's decision on case No. 007/PUU-III/2005, as well as to provide legal certainty for BPJS in implementing social security programs throughout Indonesia. The establishment of this body has provided opportunity for all people-wherever they are, whatever their activities and occupations, regardless of their social status, whether they are rich or poor, except for those who are serving time—to receive healthcare insurance, old age and pension insurance, work accident insurance, and death insurance.

As a result, every Indonesian citizen will enjoy the benefits of health insurance, health services for their illness-be it mild or severe, whether it requires a long or short treatment-according to the Indonesian diagnostic related group (Ina DRG) health service standards based on the classification of their illness, with standard costs set by the Government.

Honorable guests,

The establishment of BPJS was the state's effort to improve health insurance services for the public. The Indonesian Government began to introduce health insurance in 1947, but unstable post-independence security situations put a halt to the development of health insurance in Indonesia. In 1960, the Government attempted to reintroduce the concept through Law No. 9 of 1960 on Health Principles.

At that time, the Government believed public health to be one of the main capitals for developing the nation and that providing health service guarantee to the community was the implementation of the nation's goals in general welfare as per the Preamble to the 1945 Constitution. Even though this law was in effect since its promulgation on October 15, 1960, it could not be realized immediately. Article 15 of the Law, which mandated that implementing regulations be drafted to apply the Law within 1 year,

could not be implemented immediately due to various social, economic, and political factors.

Another effort made to implement this Law was carried out in 1967, that is, the issuance of the Decree of the Minister of Manpower on the Public Health Maintenance Insurance (JPKM). This decree stipulated that 6% of employee salary be allocated for health insurance, with 5% covered by the company and 1% by the employee. However, the decree was not very effective because it was not strong enough to force employers into compliance.

Efforts to develop health insurance was restarted in 1968. Presidential Decree No. 230 of 1968 on Healthcare for the Armed Forces and Civil Servants (ABRI and PNS) Who Receive Pension and Their Family Members incentivized the establishment of the National Health Insurance (AKN). At the beginning, this insurance program was managed by the Health Maintenance Fund Organizing Agency (BPDPK), an agency within the Ministry of Health.

However, the need for a more professional and independent management of insurance programs, its management was given to a public company (Perum) through Government Regulation No. 22 of 1984 on Healthcare for Civil Servants and Pensioners and Their Family Members. The company entrusted with it was Perum Husada Bhakti.

Perum Husada Bhakti then transformed into a limited liability company through Government Regulation Number 6 of 1992 on the Transformation of Perum Husada Bhakti into a Limited Liability Company (Persero), with the hope that health insurance can reach participants other than civil servants.

PT Asuransi Kesehatan (PT Askes) was entrusted to manage the health insurance. As a limited liability company, it had more freedom in asset management than Perum Husada Bhakti had, with the hope that participation could be expanded into the private sector. As of 2004, participants of commercial insurance reached 1.5 million, while participants from among civil servants, the military, retirees and their families reached 14 million.

In around 1971, efforts to expand social health insurance to the private sector was initiated with the establishment of the Manpower Social Insurance Company (PT Astek). Initially, it only dealt with occupational accident insurance, but then expanded its programs to cover four social security insurance in 1992 through the Labor Social Security Law (Jamsostek Law). Those four insurances were Healthcare Insurance

(JPK), Work Accident Insurance (JKK), Old Age Benefits (JHT), and Life Insurance.

Ladies and gentlemen,

Efforts to guarantee public health rights began since before the 1945 Constitution was drafted, which can be seen from the minutes of the BPUPKI sessions of the drafting of the 1945 Constitution.

As the importance of public health protection as part of social security and the legal certainty for its implementation were more apparent, with the amendment to the 1945 Constitution in 1999–2002, health protection guarantee for all Indonesians was made explicit in the 1945 Constitution, in particular Article 28H paragraph (3) and Article 34 paragraphs (3) and (4). Thus, health right is a constitutional right that the state must fulfil for every citizen who needs it.

However, it should be noted that health insurance for citizens is not easy to realize. Even so, there is a shared desire and aspiration to do so. Health insurance requires large resources, not only financially, but it also requires adequate medical personnel, medical equipment, and other complex issues.

This is a challenge that all Indonesians face to have a healthy nation as the founding fathers aspired to, as seen in their noble goals in the 1945 Constitution. Although healthcare insurance has been borne by the state, all Indonesians have the responsibility to realize it through preventive measures, which are better than costly treatment. Not to mention, the world is under the threat of the COVID-19, which has taken over 6 million lives worldwide in August 2022. As such, vaccination is a crucial step to preventing and reducing fatality rates due to COVID-19.

In the last two years, through its decisions on the State's Financial Policy and Fiscal Stability for the Mitigation of COVID-19 Pandemic and Health Quarantine, the Constitutional Court of the Republic of Indonesia has provided the Government with legal certainty to take necessary steps in state finances and health quarantine according to the situations. COVID-19 mitigation requires a sizeable budget, its spread and infection rate are dynamic, thus requiring legal flexibility so that the Government can make policies according to factual conditions.

Justices, Honorable Guests,

The Covid-19 pandemic is an ordeal for all of us. Therefore, it should be a real common enemy that unites all of us. There is no reason

for us not to join hands and cooperate to make this tragedy pass quickly. All nations that adhere to the rule of law and democracy have a shared commitment and obligation to realize the rule of law and the Constitution for the realization of just and prosperous society.

Finally, I would like to thank you for the opportunity to speak in this exceptional forum. Hopefully good relations and cooperation that have been established between countries and fellow Constitutional Courts and equivalent institutions will continue and improve in the future.

Billahi Taufik wal Hidayah.

Wassalamu'alaikum Warahmatullahi Wabarakatuh.

May God bless us all.

Tha Htay
Chairperson of the Constitutional Tribunal of the Republic of the Union of Myanmar

THE CONSTITUTIONAL REVIEW IN CHALLENGING TIMES

The Constitutional Justice is the primary duty of Constitutional Court or Tribunal, due to this core duty the Tribunal or the Court shall conduct a hearing shall be held in open Court and shall be adjudicated fairly and speedily under its rules of procedures.

Challenging time of the Pandemic Covid-19 is facing with not only to us but also affected to all over the world. It is starting from 2020, February to till date.

Before the Pandemic, we had the plan to implement the e-Court system in 2018, phase by phase and the Government allowed to us the budget since 2019-2020 Budget year for the first phase. The e-Court system for hearing was planned to implement and managed, undertake it to reform to e-Court by the office of the Tribunal with Information Technology Department guidance by the Tribunal. To implement the e-Court system, we collected the infrastructures, equipment and necessary software, mainly electronic filing system (EFS), case management system (CMS) and court recording and transcribing (CRT) will follow with upgrading the system.

Very beginning of the day as the first phase of the project the Court has have been equipped with conference microphone system and high-quality Desktop Monitors with computer system for each of Members of the Tribunal with the network within the member bench as intranet, and bench clerk, Representatives of Petitioner and Respondent and also for *Amicus Curiae* are to find the document and references with the Tribunal e-library system. And, for the Public, we already installed the three cameras which are High Quality and Megapixel in the Court room for video conferencing.

The courtroom has been equipped with a modern audio system and digital equipment of high quality, including LED video walls and high-resolution screens for judges and the parties' representatives. The

installation of this new audiovisual equipment in the courtroom is effected for the organization of public sitting, hybrid meeting and hearing as second phase had have already done.

Meanwhile, the Covid-19 was affected on 30th March, 2020 at the Chin State, which is situated at North-West of Myanmar border area with East border of India and first wave of Pandemic was attacked to Myanmar. During that first wave spread to our country, the government restricted the lock down the Public area and all transportation, such airway, highway and closed the airport for International and domestic flight and transborder area.

During that time, for the purpose of prevention of Pandemic and due to outbreak situation and unforeseen circumstances, the Government effort to control the outbreak utmost with the WHO standards of procedure with issued the stayed at home order at local areas of Regions and States together with the Capital City of the Union which is called Nay Pyi Taw and all official shall long stay at home from July 17 to August 8, 2021. And, the curfew order was issued at Nay Pyi Taw (Capital) from 10 pm to 4 am. At the hard time of the period, the big challenges were started and facing with us.

However, after we already equipped as first phase, we received the petition from the Chief Minister of Kayah State, U L Phone Shoae through the President of Myanmar for having the decision of interpretation upon the section 236 sub-section (b) and (c), concern with the enquiry upon allegation and impeachment to the Chief Minister of the Kayah State by the legislative's resolution upon him. The nature of case is very emerging for to find the justice for the Peoples of Kayah State.

At that time, the Pandemic was rising to pick as first wave. However, we received the petition as compliance with the rules of procedures of the Court in person and we had had to scrutinize the documents which were received from the President's Office accordance with the rules of Procedures.

At the time, meanwhile in the Tribunal's office staff were shortage with under the covid-19 guidelines with only half amount of personnel of the each and every branch of the office were allowed to attend the office with covid-19 standards. And, those Tribunal staff and officials were under treatment of the covid-19 at the Hospital and under the quarantine procedures continuously and in and out.

Due to this difficult situations and unforeseen circumstances that, we unable to public sitting as in-person due to that situation and covid-19 restriction. And, we have not yet already rule of procedures of electronic

video conferencing system, but as a general application special law namely electronic transaction law was already have in Myanmar.

Our Tribunal tried to overcome for this difficult situation and unforeseen circumstances, we took this opportunity, we have already equipped with our web portal and first phase of e-Court system were already done that why we decided to use the Zoom application for public hearing, but we need to agreement with the Petitioner who was the former Kayah State's Chief Minister, the respondent who was the then Kayah State's Speaker and the Attorney General for *Amicus Curiae.* After we received the consent of both parties and *Amicus Curiae,* we decided as the Diary Order for Public hearing with video conferencing system without prejudice the Rules of Procedures of the Tribunal and they can send the relevant documents to the Tribunal by means of e-mail.

Hybrid and virtual meetings of public sittings was without prejudice to affect the public access, because we also launched Live screening with YouTube Channel Live function for Live public sitting for public access and media access. Generally speaking, hybrid and virtual meetings of public sitting the Tribunal have, of course, been most helpful to the Tribunal in continuing its work during the challenging time of Pandemic. After that Public hearing by means of virtual meeting we pronounce the judgement of the case with the same device and reached the successfully overcome the Challenging Time of the Pandemic Covid-19 and variants.

Askar Gafurov
Deputy Chairman of the Constitutional Court of the Republic of Uzbekistan

КОНСТИТУЦИОННАЯ РЕФОРМА В УЗБЕКИСТАНЕ: НОВЫЙ ЭТАП В РАЗВИТИИ КОНСТИТУЦИОННОГО КОНТРОЛЯ

Уважаемые господин председатель!

Уважаемые коллеги! Дамы и господа!

Позвольте поприветствовать Вас, а также поблагодарить организаторов сегодняшнего мероприятия – Конституционного суда Республики Монголия за приглашение и предоставленную возможность выступить перед Вами.

В этом году Узбекистан празднует 31-ю годовщину своей Независимости. За этот период Узбекистан стал полноправным субъектом мирового сообщества. В обеспечении развития и процветания страны, благополучия и достойной жизни народа важную роль играет Основной закон - Конституция страны.

Конституция Республики Узбекистан служит прочным правовым фундаментом всех успехов и достижений нашей страны в годы независимости. С учетом требований времени, в котором мы живем и осуществляемых реформ она постоянно совершенствуется.

Конституция Узбекистана была принята 8 декабря 1992 года. В этом году исполняется 30 лет. За тридцать лет с момента принятия Конституции в стране произошли колоссальные изменения. Это касается современных технологий, уровня жизни граждан и устойчивости национальной экономики. Стране нужно двигаться вперед, используя свой огромный потенциал. Эти и другие факторы обусловили необходимость вносить серьезные поправки в Конституцию. В связи с этим Президент Узбекистана выступил с инициативой о проведении конституционных реформ.

Определены следующие приоритетные направления

конституционных реформ:

первое - изменение ранее действовавшей парадигмы «государство - общество - человек» на новую: «человек - общество - государство», закрепление ее в конституционном законодательстве и конституционной практике;

второе - обеспечение интересов человека в процессе экономических реформ;

третье - конституционное закрепление роли и статуса институтов гражданского общества;

четвертое - определение конституционных основ развития института семьи, бережного донесения до будущих поколений традиционных человеческих ценностей, укрепление межнационального согласия в стране;

пятое - отражение в Конституции государственной молодежной политики, всесторонней поддержки молодежи, их прав, интересов и обязанностей;

шестое - закрепление в качестве конституционной нормы принципа «Новый Узбекистан - социальное государство»;

седьмое - повышение эффективности действующей системы защиты прав человека, недопущение детского труда, надежной защиты прав лиц с инвалидностью, представителей старшего поколения;

восьмое - введение в Конституцию специальных экологических разделов, правовых норм, касающихся глобальных климатических изменений;

девятое - закрепление на конституционном уровне вопросов развития детских садов, школ, сфер высшего образования и науки.

Конституционные реформы планируется провести в три этапа.

На первом этапе конституционная комиссия работала над изменениями и дополнениями в Основной закон, изучала предложения и замечания, после чего разработала проект Конституционного закона и внесла его в Законодательную палату Олий Мажлиса Республики Узбекистан.

Второй этап конституционной реформы предусматривает вынесение законопроекта на общественное обсуждение. Проект изменений в конституцию вынесен на общественное обсуждение,

который проводился до 1 августа 2022 года.

Третьим этапом является проведение референдума, который позволит узнать отношение народа к предлагаемым реформам.

Следует отметить, что конституционная реформа может стать важным инструментом содействия «лучшему управлению» путем изменения конституционных положений, способствующих укреплению системы сдержек и противовесов между ветвями власти. Это достигается прежде всего путем четкого распределения полномочий между Президентом, парламентом и правительством, формирования должного баланса в системе разделения властей, укрепления сдержек и противовесов, развития свободного и справедливого гражданского общества.

Как известно, реальное обеспечение таких базовых принципов демократии, как верховенство Конституции, защиты основных прав и свобод человека во многом зависит от эффективности института конституционного контроля. Развитие конституционного судебного контроля в Узбекистане является закономерным логическим шагом по пути демократизации общества, укрепления конституционной законности в стране. За прошедший период создана прочная правовая база осуществления конституционного контроля, совершенствования конституционного судопроизводства, повышения эффективности конституционного правосудия.

В последнее за относительно короткое время парламент Узбекистана два раза принял закон о конституционном суде. Так, 31 мая 2017 года был принят Конституционный закон «О Конституционном суде Республики Узбекистан». В данном законе нашли отражение ряд принципиально новых положений.

Принятие нового закона позволило совершенствовать конституционный контроль, расширить полномочия Конституционного суда, усилить самостоятельность судей. Несмотря на это следует признать, что институт конституционного контроля в Узбекистане все еще далек от совершенства. Осуществлению действенного конституционного контроля препятствовали определенные проблемы. Можно отметить, в частности, пассивность субъектов конституционного контроля, отсутствие у граждан прямого доступа конституционному правосудию.

Как известно, эффективным средством защиты основных прав человека является институт конституционной жалобы. Законодательство Узбекистана не предусматривало возможность

внесения гражданами вопросов на рассмотрение Конституционного суда. Граждане имели лишь косвенный доступ к конституционному правосудию. Эти и другие факторы обусловили принятия нового закона.

27 апреля 2021 года парламент Узбекистана принял новый Конституционный закон «О Конституционном суде Республики Узбекистан», разработка и принятие, которого была предусмотрена Национальной стратегией по правам человека Республики Узбекистан. В данном законе нашли отражение новые положения, обеспечивающие дальнейшее развитие конституционного контроля.

Новый закон, в первую очередь, направлен на усиление правозащитной функции Конституционного суда. В частности, расширен круг субъектов, обладающих правом внесения вопросов на рассмотрение Конституционного суда. В круг субъектов конституционного контроля включены:

- Национальный центр по правам человека,
- Уполномоченный при Президенте Республики Узбекистан по защите прав и законных интересов субъектов предпринимательства (Бизнес-омбудсмен),
- Уполномоченный по правам ребенка (Ювенальный омбудсмен).

Несомненно, расширение круга субъектов послужит усилению системы защиты прав и свобод граждан, особенно детей, а также законных интересов субъектов предпринимательства.

Новый закон предусматривает, что граждане и юридические лица вправе обращаться в Конституционный суд с жалобой о проверке конституционности закона, если закон, по их мнению, нарушает их конституционные права и свободы, не соответствует Конституции и применён в конкретном деле, рассмотрение которого в суде завершено и все другие средства судебной защиты исчерпаны.

Следует заметить, что значения института конституционной жалобы не ограничивается обеспечением прав граждан на доступ к конституционному правосудию, но и также служит правовым механизмом по повышению качества и эффективности законов, обеспечению их конституционности. Применение института конституционной жалобы способствует развитию доктрины конституционной законности и защиту основных прав и свобод граждан. Предоставление гражданам права оспаривать конституционность закона способствует развитию демократизации

общества и соблюдение законности в стране.

В законе определена юридическая природа решений Конституционного суда. Решение Конституционного суда является окончательным и обжалованию не подлежит. Решения Конституционного суда обязательны для всех государственных органов, общественных объединений, предприятий, учреждений, организаций, должностных лиц и граждан. Нормативно-правовые акты или их отдельные положения, признанные неконституционными, утрачивают юридическую силу.

Внедрена превентивная форма конституционного контроля. Закон возлагает на Конституционный суд задачу по определению соответствия Конституции Республики Узбекистан конституционных законов, законов о ратификации международных договоров — до их подписания Президентом Республики Узбекистан.

Опыт органов конституционного контроля зарубежных стран показывает, что наделение граждан правом внесения вопроса на рассмотрение Конституционного суда приводит к резкому увеличению нагрузки в суде. Естественно, увеличиться и сроки рассмотрения дел. С учетом зарубежного опыта, а также в связи с внедрением института конституционной жалобы состав Конституционного суда Республики Узбекистан увеличен на 2 человека и определен в количестве 9 судей.

Порядок формирования Конституционного суда стал более демократичным. Отныне Конституционный суд избирается Сенатом по представлению Президента из числа лиц, рекомендованных Высшим судейским советом. Таким образом, в формировании Конституционного суда участвуют не только парламент и глава государства, но и специализированный орган судейского сообщества в лице Высшего судейского совета.

Закон ограничивает на переизбрание судей Конституционного суда, одно и то же лицо не может быть избрано судьей более двух раз. Вместе с тем, увеличен срок полномочий судьи Конституционного суда, который составляет при первоначальном избрании пять лет, при очередном избрании – десять лет.

Установлено также ограничение на переизбрание председателя Конституционного суда и его заместителя. Председатель и его заместитель избираются Конституционным судом сроком на пять лет. Одно и то же лицо не может быть избрано председателем или заместителем более двух сроков.

Можно с уверенностью утверждать, что с принятием нового Конституционного закона «О Конституционном суде Республике Узбекистан», с внедрением института конституционной жалобы система защиты прав человека в Узбекистане выходит на новый конституционно-правовой уровень.

На сегодняшний день в рамках конституционных реформ обсуждается расширение доступа граждан к конституционному правосудию. Думаю, следующим шагом по расширению прав граждан на доступ к конституционному правосудию могло бы стать включение в Конституционный закон «О Конституционном суде Республики Узбекистан» положений, предусматривающих возможность оспаривания гражданами конституционности не только законов, но и других нормативно-правовых актов.

В заключение хочу отметить, что проводимая конституционная реформа и реализация нового Конституционного закона «О Конституционном суде Республики Узбекистан» способствует повышению эффективности конституционного судебного контроля в нашей стране.

Спасибо за внимание.

Гафуров Аскар Бойисович

Заместитель Председателя Конституционного Суда Республики Узбекистан

Ki Young Kim
Justice of the Constitutional Court of the Republic of Korea

CONSTITUTIONAL REVIEW IN CHALLENGING TIMES PROTECTION OF PERSONAL INFORMATION, COVID-19, JUDICIALIZATION OF POLITICS

1. Introduction

It is with great pleasure to have the opportunity to share the experiences of the Constitutional Court of the Republic of Korea on this timely topic of "Constitutional Review in Challenging Times" at the 5th AACC Congress.

For the past thirty years since its inception, the Constitutional Court of Korea has adjudicated numerous cases of constitutional review to guarantee citizens' fundamental rights and control the abuse of state power, therefore actively contributing to the task of realizing constitutional ideas and values in Korean society. However, constitutional review in Korea is faced with multiple challenges. In this presentation, I will first introduce the development of information technology and the protection of personal information in the context of fundamental rights, and the guarantee of fundamental rights in the post-COVID era, followed by discussions on the judicialization of politics concerning the governance and the separation of powers.

2. Development of Information Technology and Protection of Personal Information

A. Criminal Investigation and Personal Information

In modern society where anyone with a smartphone can access the internet at all times, people's traces are not only left in the analog space but also kept and managed as digital data. In criminal investigation, there are more cases where the traces and evidence of criminals are sought in the digital world. However, a careful approach should be taken in digital investigation as it may severely infringe upon fundamental rights such as the secrecy and freedom of private communications and the secrecy and

freedom of privacy. In this context, I would like to present several decisions of the Constitutional Court that curbed the abuse of communications data in criminal investigations.

Under the *Protection of Communications Secrets Act*, investigative agencies may ask any telecommunications entity to provide communication confirmation data and location tracking data for criminal investigations. Communication confirmation data include incoming and outgoing call numbers, the time of the calls made and the duration of the conversations within the coverage of certain base stations. Location tracking data received from information and communication devices include whereabouts and movements of the information subject at a certain period of time. The Constitutional Court of Korea ruled in June 2018 that the provisions that allowed an investigative agency to acquire communication confirmation data and location tracking data using base stations violated the principle of proportionality, thus infringing upon information subjects' right to informational self-determination and freedom of communications (*2012Hun-Ma538, 2012Hun-Ma191*). The Court viewed that communication confirmation data is sensitive information, and information on the information subject may be inferred by analyzing it in conjunction with other information. It also added that while an investigative agency should obtain permission from courts to request such information, the condition of 'when deemed necessary to conduct a criminal investigation' cannot provide sufficient procedural safeguards.

Consequently, the *Protection of Communications Secrets Act* was amended in December 2019 in accordance with the nonconformity decision by the Constitutional Court. The amended law stipulates that an investigative agency may request communication conformation data using base stations or real-time location tracking data only if it is impracticable to prevent the execution of a crime by other means, to identify and secure a criminal, or to collect and preserve the evidence. Provided, however, in the case of severe crimes, investigative agencies are not subject to this amended requirement.

Meanwhile, the Constitutional Court held in August 2018 that the provision which provides a legal basis for intercepting telecommunications transmitted and received through internet lines infringed on the secrecy and freedom of communication and privacy (*2016Hun-Ma263*). The Court viewed that as all the data traveling through an internet line, including information on its unspecified users, are collected and stored through the interception of the internet line captured in the form of packets, there is a strong need for supervisory or regulatory measures to ensure that investigative agencies use and process data in accordance with the

originally authorized purpose and scope of such acts. Accordingly, the Act was amended in March 2020 to require an investigative agency to select the contents of telecommunications requiring storage and request the court's approval within 14 days from the last day of executing the interception of internet lines.

B. Sensitive Information about Health and Diseases

The next cases I will discuss concern the management of sensitive personal information about health and diseases. I will briefly touch upon the overview and key issues of these cases as they are still pending before the Court.

The amendment of the *Personal Information Protection Act* and the *Credit Information Use and Protection Act* in February 2020 allowed for the use of pseudonymized information without the consent of data subjects for purposes such as the compilation of statistics for commercial purposes and industrial research. A motion was filed challenging the constitutionality of the above provision on the ground that personal identification may be possible if pseudonymized information is combined with other information and the risks are particularly high in the case of personal information on health and diseases (*2020Hun-Ma1476*).

Further, the *Medical Service Act* amended in December 2020 created a new obligation for the head of a medical institution to report to the Minister of Health on records of non-covered medical expenses. The petitioner argued that mandating the head of a medical institution to report on records of non-covered medical expenses which are sensitive information concerning a person's health and diseases infringes upon the right to self-determination while arguing that the state can reduce the overuse of medical services and expand the list of covered medical expenses by accurately assessing and analyzing the current situation concerning non-covered medical expenses (*2021Hun-Ma374*).

As such, while there is a growing pressure to use collected personal information for a wide range of areas including criminal investigation, the compilation of statistics, industrial research and social security, there is stronger need for supervising and managing the use of personal information. It means that the Constitutional Court is continuously called upon to adjudicate regarding a constitutional balance between the two competing interests.

3. COVID-19 Pandemic and Fundamental Rights

As noted, the world after 2020 has experienced an unprecedented period brought about the COVID-19 pandemic, and its influence has not fully faded away. As states have taken urgent actions to address the pandemic, some of the people's fundamental rights have been restricted at times inevitably and at times for somewhat suspicious reasons. Amid this chaotic and painful period, the Constitutional Court has continued to perform its core mission of guaranteeing people's fundamental rights.

The first relevant case concerns a decision on the freedom of occupation. The Constitutional Court has rendered a provisional disposition which suspended the effect of the Public Notice of the Ministry of Justice informing that "persons confirmed with COVID-19 may not apply for the bar exam (*2020Hun-Sa1304*)." The bar exam is a qualification examination which is held once a year, and a person may apply for the exam five times only during the first five years upon earning a juris doctorate degree. Therefore, the Court viewed that irreparable damage may occur in the event that a person loses the opportunity to apply for the exam resulting from COVID-19 infection. Thereafter, persons confirmed with the COVID-19 were able to apply for the 10th National Bar Examination held from January 5 to 9, 2021.

The next case concerns the right to vote. The Republic of Korea held its 21st Legislative Elections on April 15, 2020. However, the National Election Commission decided to suspend overseas election-related operations due to the spread of COVID-19, and the petitioner residing in the United States came to Korea to cast a vote but failed to do so because he did not return home and file a report before the commencement date of the period for overseas voting (April 1). The Constitutional Court pointed out the unconstitutionality of the *Public Official Election Act* which failed to provide for concrete measures to ensure the right to vote in such an urgent and exceptional situation due to its incompleteness and insufficiency, and rendered a decision of nonconformity to the Constitution (*2020Hun-Ma895*).

In addition, the Court is reviewing cases of alleged infringement of fundamental rights such as the case on the decision by the Commissioner of the Korea Disease Control and Prevention Agency which recommended COVID-19 vaccinations for teens aged 12 to 17 years (*2021Hun-Ma1359*) and the Government's COVID-19 response guideline requiring the presentation of a vaccine pass for entering private academies and department stores (*2022Hun-Ma1*). During a state of emergency such as a pandemic of infectious diseases, states have no choice but to use all the

tools at their disposal to respond to the emergency. The future task of the Constitutional Court is how to detect various forms of exercising state power such as guidelines and recommendations, as well as administrative dispositions which are a traditional form of governmental action, as the object of constitutional review and adjudicate them.

4. Judicialization of Politics and Separation of Powers

As we have examined new challenges in the context of fundamental rights, I will now review the meaning and role of constitutional review from the perspective of the separation of powers. The first issue to look at is the issue of judicialization of politics which has become a deeply contested issue in Korean society.

The term "judicialization of politics" began to surface around 2005 in Korea. The key cases that contributed to the growing attention to this new term were *Case on the Impeachment of the President and the Relocation of the Capital City Case*, both from 2004. Concerning the former case, the Constitutional Court rejected the petition for impeachment adjudication, finding that the President's violation of the election law did not constitute a grave violation of law sufficient to justify the removal of the President from office (*2004Hun-Na1*). As for the latter, the Constitutional Court ruled unconstitutional the relocation of the capital, stating that since it is a constitutional matter, relocating the nation's capital merely in the form of a simple statute without following the constitutional amendment procedure including the national referendum on this issue violated the people's right to vote on referendum (*2004Hun-Ma554*). In these two cases, the Constitutional Court ruled against the political initiatives put forward by the National Assembly.

In this regard, political science scholars criticize that promoting democracy should take precedence over the rule of law, noting that democratic decisions became null and void by the rule of law. In other words, the thrust of their argument is that as important national policies are determined based on the legal principles applied by appointed judicial officials instead of the democratically legitimate political system, a few experts rule over the majority's opinion.

On the other hand, the judicialization of politics can be understood as a phenomenon that inevitably occurs in the process of mutual development of democracy and the rule of law. While this new trend may be partly attributable to the 'failure of democracy,' it may also be viewed as the 'outcome of a properly functioning democracy' or a 'phenomenon accompanying the process of consolidation of democracy.' There is an

aspect that the judiciary takes on the tasks that cannot be done by the legislative or executive powers which are the national institutions governed by majority rule.

Particularly, if a decision of nonconformity is rendered on an issue that is impossible or substantially impracticable to be politically resolved, the National Assembly can relatively easily address the issue by amending the relevant law in accordance with the decision. Furthermore, instead of carrying the burden of possibly creating legal confusion caused by rendering a decision of simple unconstitutionality and thus immediately invalidating the law, the Constitutional Court can delegate to the National Assembly the task of improving the legislation, ultimately leading to a more appropriate amendment to the challenged legislation. As such, the complementary and mutually-cooperative relationship between the Constitutional Court and the National Assembly built through the exercise of constitutional review deserves some recognition in that they cooperate in performing the governmental function of addressing social conflicts.

5. Conclusion

The protection of personal information in the digital era has become an essential part of the right to personality, and states take on the difficult mission of ensuring the lives and health of their citizens while refraining from infringing upon the traditional freedom rights. Meanwhile, the judicialization of politics prompts us to revisit the meaning of democracy and the separation of powers. In these challenging times, constitutional review bodies should have an insight which can discern the meaning and nature of social change for proper response to new challenges while not losing sight of the original meaning and role of constitutional review. I hope that our Court's experience will help other constitutional review bodies in Asia to address the challenges they currently face. Thank you for your attention.

Taghreed Hikmet
Judge of the Constitutional Court of Jordan

CONSTITUTIONAL REVIEW

Constitutional review, or constitutional oversight, is the evaluation of the constitutionality of laws in some countries.

It is meant to be a system to prevent the violation of rights granted by the Constitution, and to ensure its effectiveness, stability and preservation.

A system that gives the Court the power to examine the actions of various national institutions, including legislative actions, to see if they comply with the constitution.

And to declare actions invalid if they are unconstitutional. It is also called judicial review system or legal review system.

It is one of the constitutional security systems established to prevent the violation of the national constitution by highest laws and regulations of the state.

Why Do Countries Adopt Constitutional Review in Challenging Times?

In recent decades, there has been a wide-ranging global movement towards constitutional review.

This development poses important puzzles of political economy:

Why would self-interested governments willingly constrain themselves by constitutional means?

What explains the global shift toward judicial supremacy?

Though different theories have been proposed, none have been systematically tested against each other using quantitative empirical methods.

In this article, we utilize a unique new dataset on constitutional review for

204 countries for the period 1781–2011 to test various theories that explain the adoption of constitutional review.

Using a fixed-effects spatial lag model, we find substantial evidence that the adoption of constitutional review is driven by domestic electoral politics.

By contrast, we find no general evidence that constitutional review adoption results from ideational factors, federalism, or international norm diffusion.

Constitutional review, the ability of judges to supervise the constitution, has spread around the world in recent decades.

By our account, some 38% of all constitutional systems had constitutional review in 1951.

By 2011, 83% of the world's constitutions had given courts the power to supervise implementation of the constitution and to set aside legislation for constitutional incompatibility.

Why would self-interested governments willingly constrain themselves by constitutional means?

And why would democratic majorities restrict their future political choices by putting their faith in the hands of unelected judges?

What underlies this radical global move toward "judicialization" or "juristocracy"?

Several theories have been proposed to explain this phenomenon.

Early theoretical accounts were federalist or ideational in character.

Some argued that constitutional review arose to respond to governance problems such as federalism, or the need to coordinate among multiple branches of government.

Ideational accounts instead emphasized the importance of rights protection and the rule of law, or the need to be protected from the vagaries of government action.

More recent work has proposed strategic explanations, in which constitutional review is conceptualized as a response to the domestic electoral market.

When constitution-makers foresee losing power after constitutional adoption or revision, they are more likely to institute constitutional review, as the judiciary may protect the substantive values that the drafters will be unable to vindicate through the political process.

Constitutional review, in this account, is a form of "political insurance," through which constitution-makers safeguard their future political interest.

In addition, there is a recent but growing literature on cross-national diffusion of constitutional norms, which suggests that provisions might be adopted in response to constitutional developments in foreign states.

If constitutional norms diffuse, so might constitutional review, as drafters seek to achieve conformity with international norms?

Although there is no lack of theories, little is known in an empirical and systematic way about the origins and evolution of constitutional review on a global scale. None of the theories have been systematically tested against each other using quantitative empirical methods.

And in particular, there has been almost no effort to apply theories of norm diffusion to the adoption of constitutional review.

This article takes up these challenges. Drawing on an original dataset on 204 countries since 1781.

We are in a unique position to empirically document the historical trajectory of constitutional review.

We then use this data to test which of the theories appear to provide the best explanation for the spread of constitutional review around the globe over the past two centuries.

We find that the adoption of constitutional review is best explained by domestic politics, and in particular in the electoral market.

More specifically, we find that electoral competition, as measured by the difference between the proportion of seats held by the first and second parties in the legislative branch, predicts the adoption of constitutional review.

This phenomenon, we find, is present in autocracies and democracies

alike.

Although we find empirical support for the theory that constitutional review is adopted as a form of political insurance, we do not find robust evidence to support theories of transnational diffusion.

We only find some evidence of diffusion in democratic regimes, but do not find a diffusion effect in the full sample of countries.

This finding has implications for the literature on norm diffusion.

Recent work has revealed substantial evidence of diffusion in the realm of constitutional rights.

Only democracies-regimes that may honestly want to constrain themselves by constitutional means sensitive following international norms regarding the adoption of constitutional review.

Andrey Bushev
Judge of the Constitutional Court of the Russian Federation

CONSTITUTIONAL REVIEW IN CHALLENGING TIMES: TEST AS OPPORTUNITY

Any serious changes or crises present also possibilities for growth. Any "challenging time" contains an ambivalent perspective: it can lead to a deadlock, or bring about a new level of consistent development. For several years now, it is apparent that we are witnessing such a "challenging time". To the constitutional justice, it poses acute questions about its duty, relevance for national legal system, optimal scope of powers granted to a constitutional court, limits of impact that it has on law and public authorities, as well as on the society as a whole. Answers to these questions largely depend on the consistency of a constitutional court's activity in addressing the challenges presented by time itself.

Constitution is a meta-legal text. Its meaning and importance go beyond pure legal substance. Constitutional provisions are instrumental for interpretation and clarification of any matter subject to constitutional supervision with regard to any important social changes. On their part, such changes strongly affect constitutional judicial practice. Harmonising constitutional provisions with reality uncovers potential of the Constitution while preserving its core, namely the constitutional values.

The function of constitutional judiciary does not depend on the nature or scale of changes encountered by country, region or world. Where collisions between certain categories of fundamental rights and freedoms are aggravating, it is for the constitutional justice to restore harmony. The constitutional supervisory body shall always oppose potential arbitrariness, which may be covered under the legal form. In other words, one of the (if not the primary) goals of constitutional normative control should be seen as constraining the public authority from possible arbitrariness and mistakes in respect of private persons.

Firstly, this is executed by protection of the principle of proportionality implying *inter alia* striking a balance between public and private interests.

Among recent examples of the Russian Federation Constitutional Court's case-law one can name the Judgment of 29 September 2021 No. 42-P[1] where the Court found a defect in the environmental legislation. In this case, the statutory law obliged entrepreneurs to obtain, under certain circumstances, specific forecasts of consequences of their activity for the environment. The objective of this was recognised as constitutionally sound – to limit the entrepreneurial activity in order to protect the environment. But the law did not set out with a required level of certainty the distinction between the content of general environmental information provided free of charge, and specific information provided for a fee. With regard to the second type of information a mandatory execution of the relevant contracts could lead to arbitrary intervention into the private affairs.

Secondly, this pertains to support and development of effective legal remedies, first and foremost the judicial ones, taking into account that during the time of changes and crises there is a higher probability of their weakening. The right of everyone to fair justice lies at the core of effective judicial protection. Therefore, preserving efficiency of legal remedies depends not only on the constitutional judiciary, but also on all branches and elements of the national judiciary. In this respect, a bright example illustrating also judicial response to technological advancement would be the Judgment of the Constitutional Court of Russia of 16 June 2022 No 25-P[2]. Therein, the Court ruled that the author of computer program as a composite product shall have the right to protect his authorship in courts even where he himself did not obtain proper consent of the authors of the components used for creation of the relevant program. In fact, the Court has broadened the scope of judicial protection for the authors of computer programs with regard to violations of their copyrights, while not excluding their liability for violations committed towards the third persons.

Thirdly, constitutional justice must stay prepared to protect the private persons' interests and expectations with regard to proper performance of administration functions by public authorities ("due public order"); to fairness of administrative procedures, to practical possibility of

[1] Judgment of 29 September 2021 No.42-П/2021 "In the case on the review of constitutionality of Article 17, parts 1 and 3 of the Federal Law "On meteorological service"; items 3, 4 and 5 of the Regulation on information services in the sphere of meteorology and monitoring of pollution of the natural environment in connection with the complaint of OOO 'Valmaks'"

[2] Judgment of 16 June 2022 No 25-П/2022 "In the case on the review of constitutionality of Article 1260, item 3 of the Civil Code of the Russian Federation in connection with complaint of citizen A.E. Mamichev"

holding public officials liable for illegal behaviour; to obtain compensation for losses resulted from unlawful actions (omission) of state and municipal entities. Thus, in its Judgment of 12 May 2022 No 18-P[3] the Constitutional Court held that it shall be unlawful to deny recognition a person as a victim on the sole basis that the investigator had fabricated the evidence relating to this person criminal charge, even if the person was finally found guilty. Even where only a part of evidence had been falsified and a person was lawfully convicted, the interests of justice have been harmed, as well as the rights of the accused.

Fourthly, the constitutional court must remain vigilant in guarding the principle of legal certainty, including the protection of citizens' lawful expectations. A citizen must know what is expected from him on the part of public authority. This requires the legal norms to: (a) be formulated clearly and precisely; (b) have their provisions accessible in advance; and (c) have no retrospective effect as a general rule (with the exception only for extraordinary circumstances) and provide sufficient time for the members of the society to be able to comply with the new requirements. Further, the scope of discretion (margin of appreciation) of the relevant authorities must be explicitly defined. This is particularly important for relations in the sphere of social care. For example, in its Judgment of 17 March 2022 No 11-P[4] the Constitutional Court pointed out that legislative changes regarding increased amounts of unemployment benefits for persons who reached near-pension age must take due regard of the situation of persons who reached such age and were recognised as unemployed before introduction of the relevant amendments. In other words, a person approaching the age of retirement (pension) who became unemployed before the new legislation was passed, shall not receive less unemployment benefits only because drafting the new legislation had taken up too long time.

Fifthly and finally, the constitutional courts shall stay on guard of statutory establishment of fair balance between opposing interests upon regulating of both vertical and horizontal relationships between parties to the private relationships. One example of such approach is the

[3] Judgment of 12 May 2022 No 18-П/2022 "In the case on the review of constitutionality of Article 42, Part 1 of the Criminal Procedure Code of the Russian Federation in connection with the complaint of citizen A.O.Nikitin"

[4] Judgment of 17 March 2022 No. 11-П/2022 "In the case on the review of constitutionality of Article 10, part 1 of the Federal Law «On introducing amendments to certain legislative acts of the Russian Federation on the issues of allocation and payment of pensions» in connection with complaint of citizen I.Kotlova"

Constitutional Court's judgment of 21 July 2022 N 34-P[5]. Private person's acting in public interests does not create sufficient grounds for providing such person with additional advantages at the cost of other private persons. Deprivation of private person of his or her mortgage right cannot be made without compensation (without equivalent consideration), even where annulment of such right serves to benefit of numerous private persons' right to have a place to live.

The mission of constitutional judiciary does not depend on "challenging" or "casual" times. This work never stops.

It is well known that situations of crisis dialectically turn problems into opportunities, opening valuable opportunities for the constitutional justice.

One option is filling in the legislative gaps triggered by rapid crisis changes that don't provide the legislator with sufficient time to react and develop adequate legislative answers. In such a situation constitutional justice can and should refer to general principles of law.

Another option refers to an issue of due respect of the principle of proportionality upon application of the procedural requirements to drafting and passing normative acts. The Constitutional Court must assess whether public authority adequately balanced the competing interests that are equally valued from the constitutional point of view, and whether fair balance between such interests was achieved

These opportunities were seized when the Constitutional Court of Russia considered the case on limitations to freedom of movement with regard to COVID-19 pandemic. This pandemic was an unprecedented threat to life and health of citizens and demanded extreme measures on the part of state in order to defend these fundamental values. The Constitutional Court assessed such measures in its Judgment of 25 December 2020 No 49-P[6].

[5] "Judgement of 21 July 2022 No 34-П/2022 "In the case on the review of constitutionality of Article 16, part 14 and 17 of the Federal law "On Amendments to Federal Law "On participation in shared construction of apartment buildings and other real estate objects and on amendments to certain legislative acts of the Russian Federation"; Article 201.1, item 1, sub-item 3 and 3.1; Article 201.10, item 5; Article 201.15, paragraph 2 item 2; Article 201.15-1, item 8, sub-tem 1 and Article 201.15-2, item 11 of the Federal Law "On Insolvency (Bankruptcy)" in connection with the request of the Supreme Court of the Russian Federation and complaint of citizen A.N. Shalimova"

[6] Judgment of 25 December 2020 No. 49-П/2020 "In the case on the review of constitutionality of Para. 5, subpara. 3 of the Governor of the Moscow Region Decree «On the Introduction in the Moscow Region of a High Alert Regime for the Authorities and Forces of the Moscow Regional Emergency Prevention and Response System and

The Court underlined that human life and health represent a supreme value, lack of which renders meaningless many other values and commodities. Therefore, care for preservation and strengthening of this supreme value is one of the fundamental constitutional obligations of the state. The situation where spread of a dangerous disease threatens life and health of citizens not merely allows but requires the state to take limiting measures proceeding from the supreme value of human life demanding protection and preservation in all circumstances. In the material case, fulfilling this unconditional obligation of state was regarded as an extraordinary occasion allowing short-term establishment of certain limitations to constitutional rights by the executive order rather than by the law. Necessity to protect life and health of citizens in the face of emergency situations and in countering epidemics and eliminating their consequences presupposes adoption of such legal acts that do not exclude limitation of human rights and freedoms, including the right to freedom of movement, but only insofar as it corresponds to the goals set, and in meeting the requirements of proportionality (balance) and adequacy. Observance of these requirements was ensured *inter alia* by the constitutional legal interpretation of the challenged regulatory framework.

In other words, the protection of everyone's right to life may require introduction of rather serious limitations to other rights and freedoms. But these limitations – regardless of the urgency of protection of the right to life and health – cannot turn into arbitrariness and must be proportional and be introduced in strict compliance with the Constitution of the Russian Federation.

The tasks of national constitutional jurisdiction during the challenging times, including those conditioned by the crisis of the so-called "global constitutionalism" can hardly be resolved by any state acting alone. We now can clearly see that it is most likely impossible to establish a world order based on values perceived as universal and unified (identical) for all humanity. But the genuine constitutional dialogue at the regional level, defying the globalization in its Westernised interpretation that presently manifests itself instead of the global constitutionalism aims to reach compromise between varieties of constitutional development of countries, to find a more respectful and focused approach to national constitutional traditions. It is apparent that this approach outlines more realistic reference points for the constitutional jurisprudence, and creates a more reliable ground for dialogue. Preparation of any constitutional process and delivering a ruling upon its results encompass analysis of tremendous amount of legal information. This includes foreign regulation and experience of colleagues

some Measures to Prevent the Spread of a New Coronavirus Infection (COVID-2019) on the Territory of the Moscow Region» in connection with the request of the Protvinsky City Court of the Moscow Region"

from constitutional courts. Therefore, comparative data comprises a large portion in the said information. This informational logistics must not interrupt during challenging times, so that constitutional courts could timely and fully obtain all the needed information in the context of a particular constitutional control issue – from national authorities and national experts, but also using resources of inter-court communications offered *inter alia* by our Association.

In this context we can only note with regret the statements of some constitutional bodies and even their alliances that have abandoned dialogue and petrified in self-proclaimed righteousness, intolerant to the very existence of another opinion. On the contrary, the work of our Association perfectly illustrates the valuableness of preserving the dialogue. Today, it is crucial to keep and further develop our cooperation. Importantly, exchange of different opinions must not destroy the very foundations of our communications. Critical situations clearly show the objective limits to capabilities of legal regulation as a whole, and of course the defined scope of powers of constitutional judiciary. One should not overlook that the constitutional judiciary is not an actor taking high-level political decisions. It is at best inappropriate to accuse a legal institution which mission is to protect fundamental rights and freedoms from possible encroachment on the part of public authority of something that is clearly and evidently outside its competence.

In conclusion, the following should be emphasised.

Changes, including modern critical challenges, do not undermine the most important functions of constitutional supervision related to protection of constitutional values. On the contrary, they add urgency to active and effective activities of relevant institutions, both national and international.

At the same time, new challenges call upon constitutional courts to resort to unconventional opportunities for overcoming them, including filling in the legislative gaps by way of resorting to general principles of law and assessing procedures of drafting and adopting of the normative acts.

Challenging time should not be used as pretext to abandon the dialogue among the courts, and most certainly it cannot serve as a ground to blame the constitutional jurisdictional bodies. We must respectfully study the experience of our colleagues, take due account of their positions and arguments notwithstanding possible or even unavoidable differences. We must remain ready to appreciate useful intellectual, organisational and other approaches developed by the collective mind of constitutional experts.

According to a wise proverb of the country presiding in the

Association, “He, who holds a horse’s tail, will cross the river; he, who holds a dog’s tail, will drown in a puddle”. This metaphor can be further interpreted in the following manner. Regardless of severity of these challenges presented by the era of change, steady following the principles of constitutional legality and unwavering respect to constitutional values, will allow the legal systems and statehood of our countries to thrive and overcome all challenges. Eventually, when challenges pass, we will become even stronger than before.

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КОНСТИТУЦИОННЫЙ КОНТРОЛЬ В ТРУДНЫЕ ВРЕМЕНА: ИСПЫТАНИЕ КАК ШАНС

Любые серьезные перемены или кризисы одновременно представляют и возможности для роста. Каждое «трудное время» таит в себе амбивалентную перспективу: оно может завести в тупик или вывести на новый виток поступательного развития. Последние годы мы, очевидно, наблюдаем именно такое «трудное» время. Для конституционной юстиции оно с особой остротой ставит вопросы о предназначении конституционной юрисдикции, о ее востребованности национальной правовой системой, оптимальном объеме полномочий, которыми должен располагать конституционный суд, границах его влияния на право, публичную власть, общество в целом. Ответ на эти вопросы во многом зависит от того, насколько деятельность конституционного суда адекватна вызовам времени.

Конституция является (мета) юридическим текстом, значение и смысл которого не исчерпывается строго правовым содержанием. Конституционные положения являются определяющими для истолкования всех явлений, входящих в предмет конституционного надзора, применительно ко всем по-настоящему значимым переменам в обществе. Со своей стороны, такие перемены также сообщают мощный импульс конституционно-судебной практике. Гармонизация положений конституционного текста с реальностью раскрывает потенциал Конституции, сохраняя ее сердцевину, а именно конституционные ценности.

Функция конституционной юстиции не зависит от характера или масштабов перемен, с которыми сталкивается страна, регион или мир. При обострении коллизий между отдельными категориями основных прав и свобод именно на конституционном правосудии лежит задача восстановления гармонии между ними. При этом орган конституционного контроля неизменно должен противостоять облекаемому порой в правовые одеяния произволу. Иными словами,

одним из и, при этом, едва ли не основным предназначением конституционного нормоконтроля видится сдерживание публичной власти от возможного произвола и ошибок в отношении частных лиц.

Во-первых, это осуществляется путем защиты принципа соразмерности и адекватности, предполагающего, помимо прочего, установление баланса публичных и частных интересов. Среди недавних примеров практики российского Конституционного Суда можно назвать Постановление от 29 сентября 2021 года № 42-П[1]. Суд указал на недостаток законодательства о защите окружающей среды, обязывающего предпринимателей получать специализированный прогноз воздействия их деятельности на окружающую среду. Хотя преследуемая цель – корректировать предпринимательскую деятельность в целях защиты окружающей среды – является конституционно допустимой, закон не разграничивал с достаточной определенностью содержание общедоступной бесплатной информации о состоянии экологии и специализированной, получаемой платно. В отношении второго вида информации, таким образом, допускалось принудительное заключение договоров о ее предоставлении, не соразмерное возложение на предпринимателя дополнительных расходов, что представляло собой произвольное вмешательство в частные дела.

Во-вторых, это поддержка и развитие эффективных средств правовой защиты (прежде всего судебной), учитывая, что в условиях перемен и кризисов всегда есть опасность их ослабления. Ядром эффективной судебной защиты является право каждого на справедливое судебное разбирательство, и поэтому сохранение эффективности средств защиты зависит не только от конституционной юстиции, но и от всех ветвей и элементов национальной судебной системы. В этом отношении яркий пример, иллюстрирующий также конституционно-судебный отклик на технологическое развитие – это Постановление от 16 июня 2022 года № 25-П[2]. Конституционный Суд подтвердил, что

[1] Постановление Конституционного Суда Российской Федерации от 29 сентября 2021 года № 42-П «по делу о проверке конституционности частей 1 и 3 статьи 17 Федерального закона «О гидрометеорологической службе», пунктов 3, 4 и 5 Положения об информационных услугах в области гидрометеорологии и мониторинга загрязнения окружающей природной среды в связи с жалобой общества с ограниченной ответственностью «Валмакс»».

[2] Постановление Конституционного Суда Российской Федерации от 16 июня 2022 года № 25-П «по делу о проверке конституционности пункта 3 статьи 1260 Гражданского кодекса Российской Федерации в связи с жалобой гражданина

автор компьютерной программы как составного произведения должен иметь возможность защитить свое авторское право даже в том случае, если сам не получил надлежащего согласия авторов использованных компонентов программы на их использование при создании своего произведения. Фактически, Суд расширил возможности судебной защиты авторов компьютерных программ от нарушений, но не исключил их ответственности, если они сами нарушили права третьих лиц.

В-третьих, конституционное правосудие в любой ситуации должно защищать интересы и ожидания частных лиц на надлежащее выполнение органами публичной власти управленческих функций, на справедливый характер административных процедур, на реальную возможность привлечения к ответственности должностных лиц за неправомерные действия органов государственной власти, а также право на возмещение ущерба, причиненного любыми незаконными действиями и бездействием государственных и муниципальных учреждений. Так, в Постановлении от 12 мая 2022 года № 18-П[3] Конституционный Суд указал, что неправомерно отказывать лицу в признании потерпевшим в результате фальсификации следователем доказательств по уголовному делу лишь только на том основании, что в отношении заявителя впоследствии был вынесен обвинительный приговор. Даже если лишь часть доказательств была сфальсифицирована, и человек был законно осужден на основании других доказательств, реально пострадали интересы правосудия, как и права подсудимого.

В-четвертых, конституционный суд должен стоять на страже принципа правовой определенности, включая защиту законных ожиданий граждан. Гражданин должен знать, что от него ожидает публичная власть, для чего правовые нормы должны (а) быть сформулированы ясно и точно, (б) быть заблаговременно доступными для ознакомления, (в) по общему правилу (за исключением лишь только экстраординарных случаев), не распространять, свое действие ретроспективно, а до вступления в силу предоставлять членам соответствующего общества достаточно времени для того, чтобы они могли быть разумно готовы к выполнению новых требований.

А.Е.Мамичева».

[3] Постановление Конституционного Суда Российской Федерации от 12 мая 2022 года № 18-П «по делу о проверке конституционности части первой статьи 42 Уголовно-процессуального кодекса Российской Федерации в связи с жалобой гражданина А.О.Никитина».

Далее, границы дискреции (свободы усмотрения) соответствующих публично-властных органов должны быть четко определены. Это особенно важно для отношений социальной защиты. Так, в Постановлении от 17 марта 2022 года № 11-П[4] Конституционный Суд указал, что законодательные изменения, касающиеся увеличения размера пособия по безработице для лиц предпенсионного возраста, должны надлежащим образом принимать во внимание ситуацию лиц, которые были признаны безработными в предпенсионном возрасте до внесения соответствующих изменений. Иначе говоря, человек предпенсионного возраста, ставший безработным до принятия нового законодательства, не должен получать меньшее пособие только из-за длительной разработки соответствующего законопроекта.

Наконец, в пятых, конституционные суды должны стоять на страже закрепления в нормативных актах справедливого баланса противостоящих интересов при регулировании не только вертикальных, но и горизонтальных отношений, возникающих между участниками частных отношений. Одним из примеров такого подхода является Постановление Конституционного Суда от 21 июля 2022 года № 34-П[5]. Деятельность частного лица в публичном интересе не является достаточным основанием для предоставления такому лицу дополнительных преимуществ за счет другого частного лица. Не может быть безвозмездным лишение права залога, даже если прекращение такого права способствует реализации права на жилище множества частных лиц.

Описанное предназначение конституционного правосудия, таким образом, не зависит от «трудного» или «легкого» времени. Эта

[4] Постановление Конституционного Суда Российской Федерации от 17 марта 2022 года № 11-П «по делу о проверке конституционности части 1 статьи 10 Федерального закона «О внесении изменений в отдельные законодательные акты Российской Федерации по вопросам назначения и выплаты пенсий» в связи с жалобой гражданки И.И.Котловой».

[5] Постановление Конституционного Суда Российской Федерации от 21 июля 2022 года № 34-П «по делу о проверке конституционности частей 14 и 17 статьи 16 Федерального закона «О внесении изменений в Федеральный закон «Об участии в долевом строительстве многоквартирных домов и иных объектов недвижимости и о внесении изменений в некоторые законодательные акты Российской Федерации» и отдельные законодательные акты Российской Федерации», подпунктов 3 и 31 пункта 1 статьи 201.1, пункта 5 статьи 201.10, абзаца второго пункта 2 статьи 201.15, подпункта 1 пункта 8 статьи 201.15-1, пункта 11 статьи 201.15-2 Федерального закона «О несостоятельности (банкротстве)» в связи с запросом Верховного Суда Российской Федерации и жалобой гражданки А.Н.Шалимовой».

работа никогда не прекращается.

Кризисные ситуации, как известно, диалектически превращают проблему в шанс, открывая перед конституционной юстицией ценные возможности.

Одна из них – это восполнение пробелов регулирования, обусловленных стремительными кризисными изменениями, не дающими законодателю времени выработать надлежащее нормативное регулирование в ответ. В такой ситуации конституционное правосудие может и должно обратиться к общим принципам права.

Другая возможность связана с вопросом о том, как учитывается принцип пропорциональности при применении процедурных требований выработки и принятия нормативных актов. Конституционный суд должен оценить, в какой степени публичной властью были учтены конкурирующие и обладающие с конституционной точки зрения равной значимостью интересы, достигнут ли справедливый баланс таких интересов.

Эти возможности были реализованы при рассмотрении дела об ограничениях передвижения в связи с пандемией COVID-19. Пандемия, представляющая собой угрозу жизни и здоровья граждан беспрецедентного характера, потребовала от государства реализации экстренных мер по защите названных фундаментальных ценностей. Оценка таких мер была дана Конституционным Судом Российской Федерации в Постановлении от 25 декабря 2020 года № 49-П[6]. Конституционный Суд подчеркнул, что жизнь и здоровье человека – высшее благо, без которого утрачивают свое значение многие другие блага и ценности, а потому забота об их сохранении и укреплении образует одну из основополагающих конституционных обязанностей государства. В ситуации, когда распространение опасного заболевания угрожает жизни и здоровью граждан, государство не просто вправе, а обязано вводить ограничительные меры, исходя из наивысшей ценности человеческой жизни, требующей защиты и сохранения в любых обстоятельствах. В рассматриваемом случае выполнение этой безусловной обязанности государства явилось исключительным

[6] Постановление Конституционного Суда Российской Федерации от 25 декабря 2020 года № 49-П «по делу о проверке конституционности подпункта 3 пункта 5 постановления Губернатора Московской области «О введении в Московской области режима повышенной готовности для органов управления и сил Московской областной системы предупреждения и ликвидации чрезвычайных ситуаций и некоторых мерах по предотвращению распространения новой коронавирусной инфекции (COVID-2019) на территории Московской области» в связи с запросом Протвинского городского суда Московской области».

случаем, допускающим кратковременное установление некоторых ограничений конституционных прав не на уровне закона, а на уровне акта органа исполнительной власти. Необходимость защиты жизни и здоровья граждан при возникновении чрезвычайных ситуаций или угрозе их возникновения и осуществлении мер по борьбе с эпидемиями и ликвидацией их последствий предполагает принятие таких правовых актов, которые не исключают возможности ограничения прав и свобод человека, в том числе и свободы передвижения, но только в той мере, в какой это соответствует поставленным целям при соблюдении требований соразмерности (пропорциональности) и адекватности. Выполнение указанных требований было обеспечено, в том числе конституционно-правовым истолкованием оспоренного регулирования.

Иначе говоря, защита права каждого на жизнь может требовать введения достаточно серьезных ограничений иных прав и свобод. Однако эти ограничения – насколько бы необходимой не была защита жизни и здоровья людей – не могут превращаться в произвол, должны быть соразмерными, и должны вводиться в строгом соответствии с Конституцией Российской Федерации.

Задачи национального конституционного правосудия в трудные времена, связанные, в том числе, с кризисом т.н. «глобального конституционализма», вряд ли могут быть решены в каждом государстве изолированно. Установление универсального мирового порядка, основанного на ценностях, предполагаемых в качестве общих и унифицированных (единообразных) для всего человечества, как мы сейчас ясно видим, вряд ли возможно. Но выступающий на смену глобальному конституционализму подлинный конституционный диалог на региональном уровне, не опирающийся на вестернизированную глобализацию, нацелен на достижение компромисса между многообразием конституционного развития стран мира, на более уважительное и внимательное отношение к национальным конституционным традициям. Очевидно, такой подход обозначает более реалистичные ориентиры для конституционной юриспруденции и создает более надежную почву для судебного диалога. Подготовка каждого конституционного процесса и принятие решения по его итогам связаны с анализом огромного массива правовой информации. Он включает и зарубежное регулирование, и, конечно, опыт коллег из конституционных судов. Поэтому компаративные данные обладают в этом массиве значительным удельным весом. Эта информационная логистика не должна прерываться и в трудные времена, чтобы конституционные суды своевременно и в полном

объеме получали всю необходимую информацию от национальных властей и национального экспертного сообщества, а также, с опорой на ресурсы межсудебной коммуникации и, в том числе, на возможности нашей Ассоциации.

На этом фоне вызывают сожаление заявления некоторых органов конституционного контроля и их объединений, отказавшихся от диалога и застывших в самопровозглашенной непогрешимости, не терпящей даже существования иных позиций. И наоборот, деятельность нашей Ассоциации как нельзя лучше иллюстрирует ценность сохранения диалога, нить которого сейчас как никогда важно не прервать. При этом важно, чтобы обмен мнениями не разрушал сами основы нашего взаимодействия. Кризисные ситуации наглядно демонстрируют объективные пределы возможностей правового регулирования в целом, равно как и то, что у возможностей органа конституционного правосудия имеются не менее отчетливые границы. Нельзя забывать, что конституционное правосудие не относится к акторам, принимающим высшие политические решения. Предъявлять сугубо юридической институции, смысл существования которой состоит, в том числе в защите основных прав и свобод от возможного недобросовестного поведения со стороны публичной власти, претензии за то, что заведомо находится вне ее компетенции, по меньшей мере, неуместно.

Подводя итог сказанному, вновь подчеркну следующее.

Перемены, в том числе современные критические вызовы, не только не умаляют важнейшие функции конституционного контроля по охране конституционных ценностей, но и еще более востребуют активизации и повышения эффективности деятельности соответствующих организаций (как национальных, так и международных).

В то же время, новые вызовы призывают конституционные суды использовать и нестандартные возможности для их преодоления, включая восполнение пробелов в регулировании путем обращения к общеправовым принципам, а также оценку процедуры разработки и принятия нормативных актов.

Сложное время – не повод отказываться от судебного диалога, и уж точно не повод для предъявления претензий к органам конституционной юстиции. Нам необходимо с уважением изучать опыт коллег, с должным вниманием относиться к их мнению и аргументам, несмотря на возможные (и порой неизбежные) разночтения, быть готовым воспринимать полезные интеллектуальные, организационные и иные подходы, выработанные коллективным разумом экспертов-конституционалистов.

В заключение приведем мудрую пословицу страны, председательствующей ныне в Ассоциации. «Держась за хвост коня — переправишься через реку, держась за хвост собаки — утонешь в луже». Развивая заключенную в этой монгольской пословице метафору можно сказать, что стойкое следование конституционным принципам и непреклонное уважение, оказываемое конституционным ценностям, позволят правовой системе и государственности наших стран, как бы сурово эпоха перемен не проверяла их на прочность, выйти из всех испытаний еще более жизнеспособными, чем прежде.

Ayesha A. Malik
Justice of the Supreme Court of the Islamic Republic of Pakistan

CONSTITUTIONAL REVIEW IN PAKISTAN

Hon'ble Judges

Distinguished Guests

Ladies and Gentlemen

Good Afternoon from Islamabad, Pakistan

1. It is of immense pleasure to be a part of this forum reviewing and discussing constitutional developments in Asia. Although I was looking forward to attend the Conference in person, unfortunately on account of professional commitments, I am unable to attend in person so I shall share online the role of Supreme Court of Pakistan in protecting and developing fundamental rights in Pakistan over the years.

2. As Pakistan celebrates 75 years of independence it is a time to reflect on 75 years on the role of the judiciary. The Constitution over this time has received a liberal interpretation when it comes to Fundamental Rights, to bring such rights in line with the changing conditions of society. Chapter 1 of the Constitution provides for Fundamental Rights and in its interpretation, the Supreme Court has played an impactful and progressive role in protecting and developing fundamental rights. The fundamental rights enumerated in Chapter 1, *ibid*, include the right to life, fair trial, dignity and information. It also provides for fundamental freedoms such as freedom of movement, of assembly, of association and the freedom, to profess religion and to manage religious institutions. I have broadly touched on the enumerated fundamental rights just to give context to the cases discussed hereinafter.

3. The Supreme Court of Pakistan is the highest Appellate Court and the constitution assigns the Supreme Court the responsibility to protect the fundamental rights of the people, especially in matters of public importance.

4. The jurisdiction of the Supreme Court is set out in the Constitution

of the Islamic Republic of Pakistan, 1973 of which my focus is Article 184(3) wherein the Supreme Court shall, if it considers that a question is of public importance and which arises with reference to the enforcement of any fundamental right, pass an order for the purposes of protection of that right. Under this jurisdiction, the Supreme Court has delivered significant judgments, which have strengthened the rule of law, safeguarded fundamental rights and dealt with matters of public interest. The question of what is in the interest of public is not defined in the Constitution rather has been interpreted by the Supreme Court to mean the general welfare of the public that warrants recognition and protection of a matter in which the public as a whole has a stake (*PLD 2004 SC 482 Javed Ibrahim Paracha v Federation of Pakistan*). So public importance means effectively matters which affect the public at large. The Supreme Court has also exercised Suo Motu jurisdiction where it has, on its own accord, taken notice of an issue in public interest and proceeded to treat the same as a petition before it.

5. Over the passage of time a very liberal view with reference to 'standing' has been taken under Article 184(3) of the Constitution as the Court has deemed this liberal interpretation of standing necessary to protect those who are less resourceful or to breakthrough technical and procedural constraints and provide justice to an individual or a class or a community who otherwise are prevented from bringing their claim before the Court (*PLD 2011 SC 854 Marvi Memon v. Federation of Pakistan and others*). In cases where public interest is at stake, the Court is often more inquisitorial as it may dwell into fact finding to promote public interest (*PLD 2011 SC 997 Watan Paty & another Vs. Federation of Pakistan & another*).

6. What has emerged is a jurisdiction where the Supreme Court essentially can look at policy matters or, executive decisions that affect the public at large to protect the fundamental rights of the public (*PLD 2014 SC 47 Habibullah Energy Ltd. and another v. WAPDA through Chairman and others*).

7. By way of example, the Constitution in Article 9 provides that no person shall be deprived of life or liberty save in accordance with law. The meaning of the right to life under Article 9 has been expanded and interpreted by the Supreme Court in a number of cases, to include all amenities and facilities, which a person is entitled to in a free country to enjoy with dignity, legally and constitutionally. The Court has held that life has a larger concept, which includes the right to enjoy life, to maintain an adequate level of living for full enjoyment of freedom and rights (*PLD 1994 SC 693 Ms. Shehla Zia and others v. WAPDA*).

8. The right to life has been interpreted to include basic healthcare, the right to livelihood, the right to access to justice, the right to education and civil infrastructure and transportation. Cases filed in public interest with the objective of ensuring that very basic requirements, which affect the quality of life must be granted by the State were taken up by the Court, which then seeks to protect and enforce fundamental rights. This is an expansive reading of the fundamental right, in an effort to protect life, liberty and dignity. Unfortunately, this suggests that the State has not been able to provide these facilities and that it has not paid attention to the fact that these are areas which call for serious attention, time and policies or laws.

9. With reference to employment rights, the Supreme Court has held that the right to life as envisioned under Article 9 of the Constitution included the right to livelihood which meant that a right to retain employment or be in continuous service particularly for those employees who were employed under a contract for decades and not made permanent employees of an institution (*2015 SCMR 1257 Pir Imran Sajid and others v. Managing Director/General Manager(Manager Finance) Telephone Industries of Pakistan and others*).

10. In a recent case (*2021 SCMR 702 National Bank of Pakistan v. Nusrat Parveen*) where the question was whether an appeal filed by a civil servant would abate on his death or whether his legal heirs could pursue the same, the Supreme Court concluded that the fundamental right of life under the Constitution not only protects and safeguards a citizen during his life but also protects and safeguards his survival interests by being equally available to his legal heirs so pecuniary and pensionary benefits of the legal heirs or even the right to restore ones reputation as pursued by the legal heirs was protected under the Constitution as a fundamental right.

11. The right to life has also been interpreted in environment cases where the Supreme Court has held that life includes the right to a clean and healthy environment. I must add that in the area of environment and climate change, the Supreme Court of Pakistan has gone to great lengths to bring the subject of environment and climate change to the forefront, compelling the Government to devise policies and law and take the issue of environment and climate change seriously. Just to demonstrate the extent to which the Court has gone under its constitutional jurisdiction, in one case, the Supreme Court ordered an inquiry from the Chief Secretary Balochistan about nuclear and industrial waste dumping in the province and issued guidelines regarding the same. In the Khewra Mines Case (*1994 SCMR 2061 General Secretary West*

Pakistan Salt Miners Labour Union (CBA), Khewra, Jhelum v. The Director, Industries and Mineral Development, Punjab, Lahore), the Supreme Court declared that 'the right to have unpolluted water is the right of every person wherever he lives. In another case, the Supreme Court recently required planning authorities to consider and support adaptation, climate resiliency and sustainability, that is to consider adverse environmental consequences in residential neighborhoods. (*Raja Zahoor Ahmad & others v. C.D.A. - C.P. No.3347 to 3351, 4229 & 4263 of 2021*).

12. Suo Motu Cases No. 10/2005 and No.13/2005 (*2010 SCMR 361 Suo Motu Case No.10 of 2005*) were important steps taken in the preservation of the Murree hill station. A proposed project, the New Murree Project was reported to have serious adverse environmental impact on the Patriata Forest in Murree, which was a highly fragile eco-system and was declared as a forest reserve as far back as 1986. The Court noted that the issues raised could affect the public at large, with particular reference to Fundamental Rights enshrined in Article 9 of the Constitution. Resultantly, the New Murree Project was disbanded. The Canal Bank case was also seminal as the petitioners in the case challenged the project of widening of the 14km long Canal Bank Road section which would not only destroy the greenbelt/park on both sides of the canal, but would also fail to solve the traffic congestion at the Canal Road. The Court took suo motu notice of the letter addressed to the HCJ and the Court held that the fallout from the project would be violative of the Fundamental Right to Life (Article 9 of the Constitution) and may also have the effect of degrading human existence (violation of Article 14 of the Constitution). (*2011 SCMR 1743 Suo Motu Case No 25 of 2009 Cutting of trees for canal widening project, Lahore in the matter of SMC No.25 of 2009*).

13. The Supreme Court has delivered landmark judgments for the protection of political and civil liberties. Under the fundamental right of freedom to form associations or unions subject to any reasonable restriction imposed by law, the Supreme Court has interpreted the same to mean and include the right to form a political party and the right to participate in elections. In the *Benazir Bhutto Case*, (*PLD 1988 SC 416 Miss Benazir Bhutto v. Federation of Pakistan and another)* amendments to the Political Parties Act 1962 and the *vires* of the Freedom of Association Order which directly impacted this right to form an association were challenged in the Supreme Court and the Court sought to explain the basis of granting political rights.

14. The principles and guidelines for political detainees were laid down

by the Supreme Court in *Malik Ghulam Jillani Case* (*PLD 1967 SC 373 Malik Ghulam Gilani v. The Government of West Pakistan through the Home Secretary, Lahore another*) where the detention of a citizen was challenged for being unreasonable and in impingement of their right of freedom of movement within Pakistan. The Supreme Court held that the detaining authority was required to specify the period of detention and that reasonable belief for the purposes of detention did not mean suspicion. In another case, the Supreme Court required the disclosure of all material on the basis of which the executive authority had acted for the purposes of passing an order of preventive detention (*PLD 1968 SC 313 Mir Abdullah Baqi Baluch v. The Government of Pakistan through the Cabinet Secretariat, Rawalpindi, etc*). So not only the jurisdiction of the executive authority to pass an order of detention but also the manner of exercising that jurisdiction was interfered with and subjected to judicial review. The Supreme Court introduced the test of reasonableness and required the executive to state its reasons being sufficiency of grounds so as to protect the basic rights to due process of law for the protection of the fundamental right of being treated in accordance with law.

15. With respect to suo motu powers, on a telegram received by the Chief Justice of Pakistan alleging bonded labour and illegal detention by employers in brick kiln industry, the Supreme Court took notice of the same as it was considered to be a case falling in the category of public interest litigation for the enforcement of fundamental rights and consequently an order was passed by the Court emphasizing the need for legislation defining the expression of forced labour so as to minimize its practice and to prevent bonded labour of any form. In another suo motu action, the Supreme Court took notice of the violence committed by a mob in a colony of religious minority due to an alleged incident of blasphemy and issued directions for maintenance of law of and order in the Province (*2013 SCMR 918*) in the matter of violence in Christian Colony in Badami Bagh area over alleged blasphemy). In another case, the Supreme Court took notice of a church attack and other discriminatory practices against minorities and delivered a significant judgment on the the scope of freedom of religion relying on international human rights law requiring the government to deal with the issue of persecution of religious minorities in Pakistan binding directions to the government to remedy these persecutions so as to prevent it for the future (SMC No.1 of 2014 *PLD 2014 SC 699*). In the recent past, the Supreme Court took cognizance of the outbreak of Covid 19 in prisons and as this case proceeded it called for reports on measures undertaken to tackle the pandemic. The Court also called for

immediate legislation for dealing with the pandemic and for dealing with relevant measures for quarantine at entry points of Pakistan.

16. The Supreme Court of Pakistan has, in its constitutional jurisdiction, interpreted fundamental rights to protect and uphold the rights of women. Equal protection of law, inheritance, privacy and dignity, family life, motherhood, affirmative action and the franchise are some of the important themes that have time and again been reiterated and reinforced by the apex Court. In doing so, the Courts have been cognizant of international human rights principles as placing responsibility on states to ensure that all women are treated equally before the law (*PLD 2019 SC 218 National Commission on Status of Women through Chairperson and others v Government of Pakistan through Secretary Law and Justice and others*).

17. The protection afforded to women in fundamental right contained in Article 25 (3) of the Constitution does not only mean the protection of the body but also the rights, and these rights include the property rights (*PLD 1992 SC 811 Mst. Fazal Jan v Roshan Din*). The scope of the rights of inheritance of females has been noted to be so wide and its thrust so strong that it is the duty of the courts to protect and enforce them. The Court declared the claim of a brother that his sister had relinquished her hereditary share in his favour because he had spent money on her marriage opposed to public policy and held that such a relinquishment even if proved would be against public policy (*PLD 1990 SC 1 Ghulam Ali and 2 others v Ghulam Sarwar Naqvi*).

18. The Supreme Court held in Shirin Munir Case (*PLD 1990 SC 295 Shirin Munir v Government of Punjab*) that the fixation of quota for admission to medical colleges in the Punjab in the ratio of 4:1 for male and female students respectively was violative of equality before the law clause contained in Article 25 of the Constitution. It was further held that while the difference on the basis of sex can be created and maintained, it should be done only in those cases where it operates favourably as a protective measure for women and not against them. No discrimination, on the grounds of sex alone, can be permitted except on the grounds of reasonable and intelligible differentia. In this context, in *2018 PLC(CS) 22 LHC Government of the Punjab, Secretary Home Department through Deputy Secretary (Police) Interior Department and others v. Qanoot Fatima and others*), upheld by the Supreme Court, the Government of Punjab had advertised posts in the Counter-Terrorism Department against which the female respondents had applied, cleared tests and interviews on merit, but were not appointed on jobs as the Department was of the view that female candidates were not akin to fieldwork and

so could only be appointed on a 5% quota as opposed to the general seats. In this case, I reiterated that Article 25(3) was a special measure, i.e. an affirmative action, which was considered necessary to ensure equal opportunity to women and ensure their participation in the public sector. However, when a candidate meets the merit, he or she cannot be placed on a quota list simply because of their gender, disability or being a minority. The quota is fixed to facilitate and encourage representation from groups which are considered to be under-represented and cannot be deemed as the maximum representation from that group. This judgment has been upheld by the Supreme Court.

19. The Court has upheld the independence and dignity of women. A High Court decision that a *sui juris* Muslim girl can contract marriage of her own accord without the consent of her *Wali* was upheld in *Hafiz Abdul Waheed Case* by the Supreme Court *(PLD 2004 SC 219 Hafiz Abdul Waheed v. Mrs. Asma Jehangir*). The *Salman Akram Raja Case (PLJ 2013 SC 107 Salman Akram Raja v.Government of Punjab through Chief Secretary, Civil Secretariat, Lahore and others*) was a seminal case in which the administration of DNA tests and preservation of DNA evidence was made mandatory in rape cases. It also set out victim friendly processes to be maintained in court in rape cases. These have been adopted and formed the biases of the gender based violence courts in Pakistan. In *Atif Zareef Case (PLD 2021 SC 550 Atif Zareef and others v. The State*), the Court went into more depth regarding women's issues and even recognized that "Medical language of MLC is riddled with gender biases and immediately calls into question the character of the rape survivor."

20. It would not be out of context to mention here that in a case that came before me in the Lahore High Court, the outdated 2-finger virginity test/hymen test for the purpose of ascertaining the virginity of a female victim of rape or sexual abuse was declared to be unlawful. I recognized that the test amounted to *gender-based discrimination as" it is neither a medical condition which requires treatment, nor does it provide any clinical benefit to the victim"* and against her fundamental rights to dignity.

21. With respect to the rights of a transgender person against molestation and humiliation and restoration of their fundamental rights, the Supreme Court held that they enjoyed the same rights under the Constitution, and they should be treated equally with other citizens (*PLD 2013 SC 188 Dr. Muhammad Aslam Khaki and others v. S.S.P. (Operations) Rawalpindi and others*). And the landmark ruling in 2009 which granted transgender persons the right to issuance of a national identity card.

CONCLUSION

Due to paucity of time, I am unable to elaborate upon the case law developed over time, however my endeavour was to show how basic rights have been interpreted to ensure that they are protected in every sense. The Supreme Court has especially demonstrated commendable zeal to alleviate the suffering of the women and marginalized groups. Besides, a liberal and progressive approach has generally been adopted for preservation of fundamental rights overall.

Thank you.

Dinesh Maheshwari
Justice of the Supreme Court of India

CONSTITUTIONAL JUSTICE IN CHANGING TIMES: INDIAN PERSPECTIVE

1. Hon'ble the Chair;

Hon'ble Chief Justices/Chairpersons and other Hon'ble Justices of the respective Asian Constitutional Courts and Equivalent Institutions;

Other learned dignitaries;

Ladies and Gentlemen.

2. On behalf of the Supreme Court of the largest democracy in world, it is my deemed privilege to address this august gathering, particularly on the Indian perspective of Constitutional Justice in changing times.

3. The Association,in conformity with one of its objectives topromote cooperation with exchange of experiences and information amongst the members, has taken timely steps, despite challenges thrown by Covid-19 pandemic,to convene this Congress at Ulaanbaatar in the majestic landscape of Mongolia. While this pandemic and other global emergencies haveposed several challenges tothe human race, they have also given usopportunities to renew and reinforce our commitment to stay together and be closer to each other.

4. Challenges are closely associated with changes; and changes are intrinsic to anything that is organic and has the propensity to evolve and grow. In these ever-evolving and ever-expanding horizons with interplay of changes and challenges, the constitutional principles, norms and ethos play a pivotal role in every progressive activity. Hence, apt it is to continuously discuss constitutionalism and tounderstand different judicial approaches around the globe, which would allow us to deal withevery challenge in a holistic manner. Viewed from a different angle, even when comparative approaches are not binding as such, they indeed provide reasonable flexibility to adopt a particular approach while customising it to address local challenges.

5. Having regard to the vastness of topics we are discussing on the recent developments of Constitutional Justice in Asia as also on managing the short and long-term horizons, an insight into the foundational features of Indian Constitution shall be apposite.

HISTORY OF INDIAN CONSTITUTION

6. The Indian jurisprudence and legal system havebeen embedded in *Dharma*, a sanskrit expression of wide amplitude; it refers to justice, it also refers to what is right. It gives precise meaning depending upon the context but has always been considered to be supreme and foundation of all the affairs of the world.In the universal context, India has always believed in the concept of *Vasudhaiva Kutumbakam,* which means that the world is one family.

7. The aforementioned are some of the foundational principles on which the rule of law has developed in India, regulating the conduct of the persons themselves as also their conduct towards the State and towards humanity at large. These fundamentals are innate and ingrained in the Constitution of India.The Constitution of India has, at its heart,the individual; and the rights of individual are recognized as 'fundamental'. Significantly, some of the fundamental rights are guaranteed to all the persons, whether they are citizens or not, like that of life and personal liberty in Article 21[1]. These rights are systematically balanced with the demands of public order, morality and health.

MAIN CONSTITUTIONAL PRINCIPLES

8. Preamble to the Indian Constitution indicates the source from which it came into existence namely, the People of India, and throws light on its aims and objectives. The main objectives being to ensure the dignity of the individual and unity and integrity of the nation by promoting fraternity among people.The Constitution casts a duty on the Government to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which Justice- social, economic and political, shall form part of all the institutions of the national life.

9. Apart from other features, I wish to share with this august gathering two extremely significant and unique provisions in the Constitution of India.Both of themare pertaining to the Supreme Court of India andare contained in Articles 32 and 142 respectively.

10. Article 32[2] is placed in Part III of the Constitution specifying

1 Article 21 reads as under: -

21. Protection of life and personal liberty. – No person shall be deprived of his life or personal liberty except according to procedure established by law.

2 Article 32 of the Constitution of India reads as under: -

Fundamental Rights. By virtue of this Article, the right to constitutional remedies to enforce the rights conferred by Part III of the Constitution has **itself** been assigned the status of a fundamental right.Article 142[3] on the other hand, is placed in Part V Chapter IV dealing with Union Judiciary. Itvests with the Supreme Court of India a repository of discretionary power that can be exercised in appropriate circumstance to ensure "complete" justice in a given case. As the Supreme Court has explained, the advantage derived from this constitutional provision couched in such a wide compass is that it prevents "clogging or obstruction of stream of justice"[4].

CONSTITUTION IN WORKING

11. The Indian judiciary has played a proactive role in transformative constitutionalism in order to meet the needs of changing society while duly recognising every facet of meaningful life to be the part of fundamental rights. Over the years, the Courts in India have interpreted

"32. Remedies for enforcement of rights conferred by this Part. - (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed. (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part. (3) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other Court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2). (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution."

[3] Article 142of the Constitution of India reads as under: -

"142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.-

(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or orders so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself."

[4] Kalyan Chandra Sarkar v. Rajesh Ranjan: (2005) 3 SCC 284.

the Constitution innovatively whenever required, which has led to the defining and refining of several rights which are concomitant to the fundamental rights like the rights of substantive equality, of privacy, and of creative expression. The Supreme Court has also expounded that the right to life guaranteed in any civilised society implies in it the right to food, water, decent environment, education, medical care and shelter as also the right to livelihood.[5]

12. In procedural innovation to deal with a situation which cannot be remedied instantaneously but requires a solution over a long period of time with regular monitoring of compliance, the concept of continuing mandamus has been applied with tremendous positive results, like safeguarding and protecting the forest land and forest cover from unlawful timber and mining activities.[6]

13. Another befitting example to understand the extent and ambit of transformative constitutionalism is the case where, in the absence of specifically enacted domestic law, the Supreme Court referred to international conventions and norms to uphold the right of women against sexual harassment at workplace and issued necessary guidelines to be adhered to, untila suitable legislation in that regard was made by the legislature.[7]

CONSTITUTIONALISM AND NEW CHALLENGES

Digitalisation and technology

14. Digitalisation and technology have played a significant role in enhancing efficiency, transparency and accountability in legal system and improving access to justice worldwide.The Supreme Court of India has allowed live-streaming of cases of constitutional and national importance with various safeguards so as to make the right of access to justice more meaningful and real.[8] The Supreme Court has also ruled that an undefined restriction of internet services would be illegal and that orders for internet shutdown must satisfy the tests of necessity and proportionality.[9]

15. However, assoon as we enter into the arena of internet, it dawns upon us that as an unavoidable corollary of the all-pervading effect of the internet, the existing rules of substantive and procedural laws,

[5] Chameli Singh and Ors. v. State of U.P and Anr.: (1996) 2 SCC 549 and Olga Tellis and Ors. v. Bombay Municipal Corporation and Ors.: (1985) 3 SCC 545.
[6] T.N. Godavarman Thirumulpad v. Union of India and Ors.:WP (C) No. 202 of 1995.
[7] Vishaka and Ors. v. State of Rajasthan and Ors.: (1997) 6 SCC 241.
[8] Swapnil Tripathi v. Supreme Court of India: (2018) 10 SCC 639.
[9] Anuradha Bhasin v. Union of India and Ors.: (2020) 3 SCC 637.

which were created with reference to geographical boundaries, urgently require suitable modification. While dealing with a matter relating to tort of defamation where the publication was brought about with the use of internet, the High Court of Australia underscored the urgency for the Courts throughout the world to '*address the immediate need to piece together gradually a coherent transnational law appropriate to the digital millennium*'while indicating the need of the common law adapting itself to the '*centralfeatures of the internet namely, its global, ubiquitous and reactive characteristics'* even when each legal regime would adhere to the binding local laws or local public policy[10].

16. Putting it differently, the question of jurisdiction in cyber-space is probably the biggest challenge that law faces. It correlates with the situs of the role players in the usage of technology. On the face of it, the conundrum related with jurisdiction might appear easy to tackle but the adjudicators of different jurisdictionswould agree that it is rather of a most complex challenge.Nevertheless, it needs our immediate attention.

17. In this digital age, constitutional justice has to be guaranteed not only against the State, but also against ever increasing powerful private players. These private entities, which function like intermediaries, usually do not take legal responsibility despite having all the wherewithal to check on the abuse of people's rights taking place on their platforms. Many of these globally used platforms are currently answerable only to their headquartered country. It becomes imperative on State and judiciary to develop a framework to check on cross-border civil liabilities of these online intermediaries. There have been many recent examples of organisations using datasets on individuals to influence their behaviour; from their shopping behaviour to even their electoral choices. The right to privacy should necessarily cover privacy on these digital platforms, and the need is to form laws to ensure that these are stringently followed. It is essential that a responsibility is attached to every process by which the data is collected by private entities from individuals, particularly to ensure that these datasets are not used to manipulate people. In the given scenario, obviously, the concept of Digital sovereigntyacquires immense significance.[11]

[10] Dow Jones & Company Inc v. Joseph Gutnick: [2002] HCA 56.

[11] "Digital sovereignty is a key idea in the internet age — the idea that parties must have sovereignty over their own digital data. This can be applied on an individual basis or toward nations — the bottom line is that digital sovereignty involves consideration of how data and digital assets are treated. On an individual level, digital sovereignty has to do with individuals owning their data and controlling its use. Through the encroachment of corporate digital activity, individual user information is too often harvested by corporations and sold for profit. This issue gets to the heart of why digital

18. The sum and substance of the matter is that the emerging technologies have led to many new questions and challenges which ought to be addressed by forming a consensus.

Climate change

19. Climate change and the accompanying problems are like a threat multiplier to various other constitutional rights of people and global welfare.Indian judiciary has played a proactive role in imparting constitutional justice related to this issue by developing the specific environmental law principles upon the interpretation of Indian statutes and the Constitution, such as raising the right to clean and healthy environment to the status of fundamental right to life.

20. The Supreme Court has alsoevolved the rule of **absolute liability** wherein, if an enterprise is engaged in a hazardous or inherently dangerous activity resulting, for example, in the escape of toxic gas, it would be absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate in the rule of strict liability. The Court has also laid down what could be related to the principle of deep-pocket theory i.e., the measure of the compensation should be correlated to the magnitude and capacity of the enterprise.[12]

21. Addressing the path to deliver equitable constitutional justice in the face of the threat of climate change becomes ever more important, for it is directly related with international peace, stability, and security.

Pandemic

22. One grave challenge faced by global community is of Covid-19 virus. However, this pandemic has increased the pace of digitalisation and consequent changes provide another challenge coupled with opportunity for Courts to fulfil their duty to provide constitutional justice to their citizens. Seeing the surge of Covid cases, the Courts in Indiaopted for virtual proceedings. Further, in order to ensure that there is proper and effective distribution of essential supplies and services during pandemic, the Supreme Court took *suo motu* cognizance of burning issues and passed necessary orders[13]. Some sort of continuing mandamus might also be in the offing if the variants of this virus or other

sovereignty is important"
As available at https://www.techopedia.com/definition/33887/digital-sovereignty
[12] M.C. Mehta and Anr. v. Union of India and Ors.: (1987) 1 SCC 395.
[13] In Re: Distribution of Essential Supplies and Services During Pandemic: Suo Moto WP (C) No. 3 of 2021.

global health emergencies keep on emerging with threats to overwhelm the system. Variety of such emergencies are as uncertain as the variants of these viruses. Again, the need is, and would always be, to take care of domestic concerns while balancing them with global concerns.

FINAL COMMENTS

23. While discussing the management of short-term and long-term horizons, balancing of interests would be pertinent. In order to effectively deal with the challenges, acknowledging and accepting the present situation and moving forward with a vision of how it should be in accordance with the fundamental principles is of utmost importance.

24. As Justice Michael Kirby tersely placed it, increase in dialogue between judges and other lawyers across national boundaries is a distinctive feature of the present age. It is, of course, a matter of regular attention of academicians and scholars if the Constitutions evolve organically from distinctive historical roots or they evolve along well-defined pathways shared by Courts of like-minded countries. We need not explore that subject in finer details here. Suffice would bethat while sitting together, we join all our historical roots so as to build strong bridges[14], and thereupon, we evolve common minimum programmes to meet with common challenges. In other words, we can take concrete steps toaddress the concerns of society that we suffer from global problems but without having a global community[15].

25. I am sure that the message of this congregation would be that the human quest to understand truth and find justice would never fail, whatever be the changes and whatever be the challenges.

Thanks to one and the all.

[14] Akin to the "Living Root Bridges", which one could see in the north-eastern parts of India.

As expressed by Yuval Noah Harari in "21 Lessons for the 21st Century", Chapter 16, page 268.

Noppadon Theppitak
Justice of the Constitutional Court of the Kingdom of Thailand

CONSTITUTIONAL REVIEW IN THAILAND THROUGH SOCIAL CHANGE AND CHALLENGES

The Honourable Justice Namjil Chinbat, Chief Justice of the Constitutional Court of Mongolia,

Distinguished Participants,

Ladies and Gentlemen,

I am deeply honoured for the opportunity to be here at this very prestigious congress and wish to therefore, sincerely thank the Honourable Justice Namjil Chinbat, Chief Justice of the Constitutional Court of Mongolia for inviting the Constitutional Court of Thailand to take part at this event.

Before I dive into my presentation, allow me to first express my full confidence in the Honourable Justice Namjil Chinbat, in his capacity as host and chairperson of the congress together with the esteemed members of the constitutional court of Mongolia, that they will be able to guide us into very successful and mind-enriching discussions in the few days ahead of us.

Distinguished Participants,

My presentation, entitled, "Constitutional Review in Thailand through Social Change and Challenges," will be based on a few current examples of public interest. Also, for the sake of saving time, I will focus on only one aspect of human rights, namely, gender equality. I hope that I can demonstrate through such examples, how the constitutional court has adjusted its judicial review to handle specific social changes, while even paving the way for Thailand to nurture future social transformations.

Thailand's concept of constitutional justice

I wish to first explain the judicial basis or principle that is applied in

our constitutional review in Thailand. Thailand's political system is based on a constitutional monarchy, in which His Majesty the King exercises the balance of his power through the enactors of the three pillars of democracy, namely, the parliament for legislature, the government for executive and the court for judiciary. His Majesty the late King Bhumibol Adulyadej the Great, so eloquently explained that legislation is a tool for the administration of justice. Therefore, justice ought to be prioritized above the law as justice should should always remain the main objective of any judicial trial. It is with this consideration that the constitutional court upholds the principle, that justice should always be the main goal of any constitutional review.

Distinguished Participants,

Thailand has an ancient culture that had originally adopted social norms common within the region of Southeast Asia, one of a matriarchal society, where women were principle decision-makers and the centre of family clans. However, Thailand was later on, heavily influenced by external societies and religions such as Brahmanism from the far east of India, Islam from Persia and later on Confucianism from China, which all introduced a more male-dominant society into Thailand's social formula. These influences also gradually took over state practices and the royal court.

Despite such changes, the prominent role of women in Thai society, particularly their dominant role in the smallest social unit, the family unit, has nonetheless remained prevalent in Thai family structures until today.

Therefore, when Thailand became among the first countries to officially adopt the Universal Declaration of Human Rights (UDHR) in 1948, it was not a difficult transition for us. Female members of Thai society merely expanded their presence from being in charge in the household, to taking on more socially prominent roles instead. The late king Bhumibol Adulyadej took the leading example of appointing his queen, to be Queen Regent in 1956. This enabled Her Majesty Queen Sirikit, to act on behalf of the late King Bhumibol Adulyadej should His Majesty become absent or unable to perform his duty.

Fast-forward to present day Thailand. Women now take equal positions and are paid equal salaries as men. Furthermore, increasingly more women are overtaking top positions as CEOs, leading the business sector, as well as decision-making in the public sector. Thailand has already had its first female Prime Minister about a decade ago, and I am sure we will see more female political leaders directing Thailand into the future.

Gender Equality in Thailand

The Constitutional Court of Thailand has also acted as a catalyst to encourage gender equality. In 2003,[1] the Court ruled that section 12 of the 1962 Names of Persons Act contradicted or was inconsistent with the 2017 Constitution of Thailand. Prior to this ruling, the 1962 Names of Persons Act allowed married women to only adopt their spouses' surnames, and this would only be lifted when they were granted divorce or their spouses had passed away. The Constitutional Court viewed this as an abuse of women's rights which caused inequality of gender and personal status as well as an unjust discrimination on the grounds of marriage. The Court also considered harmony and peace in a family unit as a crucial component to maintain a peaceful society. Therefore, it was important to establish acceptance and mutual respect between husbands and wives, which could deepen lasting understanding in a family. The 1962 Names of Persons Act was deemed unconstitutional due to such rationale and the Constitutional Court had ended a practice that had become the norm for over 40 years, paving the way for more social change and true acceptance for gender equality in Thailand.

As a result, married women now have the choice of either adopting their maiden name, or their spouses' name, or both names by hyphenation, just as in the English language. Most importantly, they have the choice of being addressed as "Miss," which makes no distinction of their marital status, just as men are addressed as "Mister."

Ladies and Gentlemen,

More recently, in 2020, the Constitutional Court ruled[2] that Section 301 of the Penal Code of Thailand failed to protect pregnant women's rights to self-determination. Before I go further, allow me to put out a disclaimer that the purpose for bringing this up this is not for the sake of arguing on the topic of prochoice, but rather, to demonstrate the progressive thinking of the constitutional court in Thailand as well as how we universally uphold the principle of justice over any other factor, be they religious or social values.

Having said that, I'll proceed further. Section 301 of the Penal Code of Thailand held any woman liable of criminal charges should she cause an act of abortion upon herself or consent to others performing an abortion upon herself. The virtue of this provision to protect the life of an embryo, has consequently and unintentionally, deprived another individual of her bodily rights. In an attempt to provide protection of human rights from both angles, the court therefore, enabled an amendment of this law.

[1] Constitutional Court Ruling No. 21/2546 (2003), dated 5th June 2003.
[2] Constitutional Court Ruling No. 4/2563 (2020), dated 19th February 2020.

Due to this amendment, criminal liability is now targeted to those aborting pregnancies of over 12 weeks gestational age. Women who wish to determine the direction of their unwanted pregnancies, are protected from criminal liability.

My last example is one among the most controversial and also most recent legal debates in Thailand regarding Lesbian, Gay, Bisexual, Transgender and Queer or LGBTQ rights. I am referring to the legalization of same sex marriage in Thailand. While Thailand has a very visible LGBTQ community and a very accepting and tolerant society, the laws that govern the union between individuals is founded on a conservative definition that such union serves the purpose of procreation. With such a rationale, it has been a difficult journey for those advocating to legalize same sex marriages in Thailand.

The Constitutional Court last year ruled against a petitioner's argument that the present provision of law which does not extend to couples of different sexual orientation, is unconsitutional. In this regard, the Court decided that Thailand's current marriage law, which only recognizes heterosexual couples, was constitutional. However, the Court also offered recommendations to have legislation expanded to ensure rights of other genders. This has paved the way for other related bills to be amended and thus, ignited hope towards the end goal of legalization of same sex unions.

Thailand has a unique relationship with its LGBTQ community. As a majority Buddhist country, Thailand's conservative elements are not associated with religious intolerance of LGBTQ identities. Thai society and culture has therefore traditionally accepted the existence of three main genders; male, female, and male-female. This fundamental gender theory has helped to create acceptance and a strong voice for the LGBTQ community in Thai society. The globally famous Miss Tiffany's Universe pageant in Thailand has been recognizing transgender queens since 1975. Thailand is also well-known for its top-notch gender reassignment procedures. Thailand even had its first transgender prime ministerial candidate in the 2019 general election.

In recent years, LGBTQ rights have been actively advocated by both government and opposition parties, seeing an urgency to push for gender equality. Two bills have emerged: the Civil Partnership Act and the Marriage Equality Act. The Civil Partnership Act[3], defines a same-sex

[3] The current civil partnership draft act, proposed by the government, covers the registration and termination of partnerships between same-sex couples and rules for property sharing, adoption, and inheritance. However, the act doesn't yet fully grant rights in some areas,

union as between two people of the same gender, both of whom must be at least 17 years of age and at least one must be a Thai national.

The Marriage Equality Act, proposes that the current marriage law be amended to use gender-neutral terminology like "spouse" instead of "husband" and "wife" and "person" instead of "man" and "woman." If passed, the proposed amendments would allow individuals to be legally married regardless of gender, and will ensure that they receive equal rights, duties, and protection under the law. If either act is passed into law, Thailand would become the first country in Southeast Asia to legalise same-sex unions. Although the journey towards legalizing same sex marriages might still require time and much legal scrubbing, nevertheless, the window of discourse in Thailand has shifted irreversibly.

Conclusion

Ladies and Gentlemen,

These three examples illustrate not only a Thai society undergoing transition to accommodate social changes but also compliance with the Universal Declaration of Human Rights, particularly the very first article that states, "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

Throughout such social changes the Constitutional Court of Thailand has stood by the people and its continued conviction to uphold its universal principle of achieving justice as its highest objective throughout all constitutional reviews, despite inevitable challenges and external pressures of globalisation and modern society. It is with such focused and sharp perspective that we hope to continue our journey to ensure that Thai society moves forward in a healthy and balanced manner, that it is able to provide justice that is equally accessible for all, for a righteous and just cause.

I thank you for your kind attention.

such as changing sexual identity, tax allowance, and government-related benefits as a couple before the law. These would involve amendments to other laws and will thus need to be done step-by-step.

Kuvvatzoda Fotekh Juma
Judge of Constitutional Court of the Republic of Tajikistan

ОСОБЕННОСТИ КОНСТИТУЦИОННОГО КОНТРОЛЯ В ТАДЖИКИСТАНЕ В СОВРЕМЕННЫХ УСЛОВИЯХ

Для развития демократического государства, способного гарантировать обеспечение верховенства права, защиту прав и законных интересов граждан от незаконного посягательства, а также эффективно управлять обществом, необходима прочная единая нормативно-правовая система, в которой не существует противоречия между нормами права.

И сегодня известно, что наиболее эффективной юридико-правовой гарантией обеспечения верховенства права и неукоснительного исполнения норм Основного закона страны признается судебный конституционный контроль, осуществляемый органом конституционного контроля.

В Таджикистане создание независимого судебного органа конституционного контроля было объективной необходимостью в условиях переходного периода, и выбор действующей модели конституционного контроля в Республике Таджикистан обусловлен учрежденной Конституцией системой органов государственной власти, особенностями национально-правовой системы и соответствует концепции правового и демократического государства.

После приобретения государственной независимости реформирование государственности на демократических принципах, осуществляемое на основе поиска оптимальной модели социально-политического развития, привело к конституционному обновлению системно-функциональных характеристик государства.

Следует отметить, что начиная с 90-х годов XX века Таджикистан вступил в новый этап общественного развития, стали осуществляться глобальные реформы, охватившие все важнейшие сферы общественной жизни.

В политической сфере они были связаны, прежде всего, с реализацией принципа разделения властей и построением демократического правового государства, и решить эти задачи было возможно лишь с принятием новой Конституции независимого Таджикистана.

Впервые в рамках статьи 9 Конституции Республики Таджикистана был установлен принцип разделения властей, обеспеченный механизмом сдержек и противовесов между ветвями власти. На конституционном уровне человек, его права и свободы признаны высшей ценностью и закреплено, что в Таджикистане народ является носителем суверенитета и единственным источником государственной власти, а также гарантированы права и свободы человека и гражданина, что полностью соответствует общепризнанным принципам международного права.

Сущность правового и демократического государства Таджикистана, наряду с другими правовыми принципами, выражается и в принципе верховенства Конституции. В соответствии с частью 1 статьи 10 Конституции Республики Таджикистан она обладает высшей юридической силой, ее нормы имеют прямое действие. Законы и другие правовые акты, противоречащие Конституции, не имеют юридической силы.

Исходя из этой конституционной нормы, особое значение приобретает вопрос реализации данных конституционных положений в условиях необходимости обеспечения единства правового пространства и конституционной законности в Таджикистане, а также правовой охраны Конституции, ставший предметом пристального внимания со стороны государства и общества.

Но следует учесть, что правовая охрана Конституции не может быть эффективной без наличия соответствующего механизма и в настоящий момент является общепризнанным, что судебный конституционный контроль является одним из эффективнейших средств правовой охраны Конституции.

В частности и в современной теории конституционализма реальность исполнения норм Конституции государства связана с наличием в правовой системе государства института судебного конституционного контроля.

В свою очередь, существование судебного конституционного контроля обусловлено развитием правовой системы государства, поскольку правовая система с массивом нормативных правовых актов

нуждается в систематизации и регулировании, а также в приведении законодательной базы в соответствие с нормами Основного закона страны.

Исходя из этого, еще в процессе разработки первой Конституции независимого Таджикистана был поставлен вопрос о создании отдельного института судебного конституционного контроля, поскольку ранее конституционный контроль осуществлялся Комитетом конституционного надзора Республики Таджикистан.

Конституционный контроль в Таджикистане, осуществляемый специализированным судебным органон - Конституционным судом, придерживаясь европейской модели конституционного контроля, обеспечивает строгое соблюдение режима конституционной законности и соответствия правовых актов, их норм Конституции.

Следует подчеркнуть, что в целом в настоящее время институт конституционного контроля приобрел тенденцию к универсализации и он присущ подавляющему большинству современных государств. Причинами чего в основном является, прежде всего, общее признание концепции правового государства и развитие идеи верховенства права, в частности его важнейшего источника - Конституции.

Осуществление конституционного контроля – это не только охрана Конституции, но и её защита в случае выявления и фиксации реального посягательства, а также установление, поддержание, упрочение и восстановление конституционной законности и порядка.

Как показывает практика двадцативасмилетней деятельности Конституционного суда Таджикистана, осуществление конституционного контроля является одним из важных институтов правового государства, в котором верховенству Конституции и обеспечению законности в стране уделяется особое внимание.

Эффективная деятельность органа конституционного контроля в Таджикистане способствовала тому, что субъекты обращения стали более глубоко осознавать важность и необходимость обращения в данный орган для обеспечения верховенства и непосредственного действия норм Конституции, а также защиты прав и законных интересов граждан. Свидетельством этому является из года в год увеличение количества обращений в Конституционный суд.

Другие полномочия также определены конституционным Законом Республики Таджикистан «О Конституционном суде

Республики Таджикистан», который 26 июля 2014[1] года был принят в новой редакции.

Принятие нового конституционного Закона «О Конституционном суде Республики Таджикистан» было обусловлено, с учетом опыта и современного законодательства органов конституционного контроля различных стран мира.

Принятие нового конституционного Закона «О Конституционном суде Республики Таджикистан» включающего в себя как правила, регулирующие структуру, компетенцию, образование суда, так и правила, регулирующие судебные процедуры, в свою очередь, отвечает всем тем признакам, которые характерны для демократической организации конституционного судебного контроля в правовом государстве, что способствовало совершенствованию деятельности органа конституционного контроля в деле обеспечения верховенства Конституции, укрепления конституционной законности и защиты прав и свобод человека и гражданина.

В целом основной целью судебно-правовой реформы является дальнейшее укрепление судебной власти, упрощение хода судебного процесса, повышение роли суда в защите прав и свобод человека и гражданина, защита интересов государства, организаций, обеспечение законности и справедливости и на этой основе совершенствование деятельности судебных органов Республики Таджикистан.

Доказано, что сила любого демократического государства заключается в справедливости, и именно в конституциях стран сформулированы основные позиции для обеспечения законности и правопорядка в целом, стабильности политической системы и защиты прав и свобод человека.

И сегодня обеспечение верховенства Конституции и укрепления конституционной законности можно достичь лишь созданием благоприятных условий для эффективной деятельности органа судебного конституционного контроля

В целом орган конституционного контроля, являясь наиболее действенным методом достижения единого правового пространства и важным фактором стабильности и гарантией прогресса развитии общества в стране, способствует укреплению государственности, стабилизации социально-политических отношений, формированию правового государства, а также гражданского общества.

[1] См.: АМО РТ, 2014 год, № 7 ч.1, ст.379, с изменениями и дополнениями 2015 г.

Безусловно, наличие института судебного конституционного контроля в Таджикистане является единственно возможным условием для обеспечения верховенства Конституции, и данный институт укрепляет принцип разделения властей, поддерживает баланс в системе сдержек и противовесов. В частности развитие конституционного контроля повышает взаимную ответственность органов власти за результат осуществления правотворчества и принимаемых ими решений.

Также благодаря осуществлению конституционного контроля политические проблемы могут и должны решаться в рамках и на основе права.

В связи с чем сегодня органы конституционного контроля, а также государственная власть в целом должны способствовать стремлению граждан к восстановлению конституционности в государстве.

Кувватзода Фотех Джумъа

Судья Конституционного суда
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THE NATIONAL CONSENSUS FACILITATED PROVIDING FOR THE AMENDMENTS TO THE CONSTITUTION IN 2019

In its 2016 election manifesto, the MPP promised to amend the Constitution by "asking the people" to strengthen its parliamentary rule and subsequently it won 65 seats in the Parliament and worked for it for almost 3 years. For this purpose, working groups including diverse representatives of the parties were established, and within the framework of the previously mentioned topics regarding amendments to the Constitution, the opinions of the citizens were collected through traditional and modern methods, and the bill was formulated based on research. As a result, 62 members led by D. Lundeejantsan, who were nominated by the Democratic Party (DP), Mongolian People's Party (MPP), and Mongolian People's Revolutionary Party (MPRP), submitted a draft of amendments to the Constitution on June 6, 2019. After this date, the Parliament and the working group listened again to the opinions of citizens and the opinions of lawyers and researchers for 5 months, consulted with the President and the parties, and successfully completed the first, second and third discussions (reading) of the bill. Although some important provisions of the draft originally submitted by 62 members were removed and changed, the main content of the bill was supported, and amendments were made to the Constitution of Mongolia with 100% votes of 64 members, who participated in the plenary session of the Parliament on Nov 14, 2019.

As a researcher who served as one of the members of the sub- working group on the Constitutional amendment draft, I would like to share the significance of the process and content of the formulation and endorsement of that amendment in this presentation. Specifically, amendments to the Constitution demonstrates the result of the decision made in consultation with political parties and the President, listening to citizens' opinions on

issues that have been discussed in the past 20 years, and reflecting the opinions and criticisms of researchers, in order to strengthen parliamentary governance and make the judiciary more independent and accountable. Since the contents of the amendments made to the Constitution in 2019 are extensive, it is not intended to be presented and explained within the scope of this presentation.

The process of formulating the draft amendments (bill) to the Constitution

The process of formulating the draft amendments (bill) to the Constitution has been significant in many ways. First of all, the Constitution is a consensual document, but that consensus must be based on fundamental principles. Therefore, the 2010 Law on Procedures for Amendments to the Constitution of Mongolia played an important role in terms of making the process of drafting and approving amendments to the Constitution consistent with the basic structure and basic concepts of the Constitution, upholding and observing the Constitution, ensuring its stability, ensuring the sovereignty and participation of the people, and being realistic and transparent.

The Constitution of 1992 was well-received by parties, politicians, and citizens of different political views because it was produced with great participation and understanding. Even amendments to the Constitution should not only reflect the opinions of the citizens, but also be accepted after understanding with the political parties inside and outside the parliament and the President. Therefore, a working group responsible for drafting amendments to the Constitution of Mongolia and preparing for submission to the Parliament was established on 05.05 in 2017 by Order No. 78 of the Speaker of the Parliament and D. Lundeejantsan was the leader of the working group, and representatives of the various parties including MPP, DP, MPRP worked as members. For two years, this Working Group worked on developing draft amendments to the Constitution, publishing them regularly, receiving opinions, recommendations, and criticisms from the public and working in consultation.

Citizens were asked about the content of the draft amendments to the Constitution and their opinions were taken into account. Draft amendments to the Constitution of 1999, 2000, 2011, 2012, and 2015 were drafted and submitted directly without public discussion or participation. However,

in the formulation and approval of the draft amendments to the 2019 Constitution, citizens' participation was provided through conventional and modern methods. For example, in February 2017, the Parliament approved the Law on Deliberative Polls, and in April 2017, a Deliberative poll was held on the issue of amendments to the Constitution. More than 700 randomly selected citizens were presented with written reasons for both supporting and opposing sides on the topics of amendments to the Constitution, and experts gave answers to their oral and written questions and thereby a deliberative polling was held after delivering such information. On May 1, 2017, the National Statistics Office (NSO) submitted the "Report on the Results of the first Deliberative Polls on Amendments to the Constitution of Mongolia" to the Deliberative Council, and the Deliberative Council submitted its recommendations based on this report to the Parliament on May 5, 2017. A working group responsible for drafting amendments to the Constitution and preparing them for submission to the Parliament prepared the first draft of amendments to the Constitution and submitted it to the Speaker of the Parliament on May 25, 2017 based on the results of the deliberation (Recommendation of the Deliberative Council).

On June 2, 2017, the Parliament approved Resolution No. 39 of the Parliament "On Ensuring People's Sovereignty and Participation in Matters of Amendments to the Constitution of Mongolia". In this resolution, based on the recommendations of the first deliberative polls on amendments to the Constitution of Mongolia, it is stipulated that the bill developed by the working group will be discussed by the public between 06.05.2017 and 09.10.2017, and the draft amendments to the Constitution will be published in mass media and presented to the public. A Working Group and Sub-Working groups were established to organize the discussion of draft amendments to the Constitution at the national and local level and the work plan for public discussion of the project was approved and implemented as per the annex to the resolution. In addition to having the bill discussed among citizens as indicated in this plan, various works have been done, such as to organize the discussion of government institutions in the field of careers, to discuss the bill within the political parties' communication channels, to submit proposals and conclusions to the working group, to organize theoretical conferences on the draft of amendments to the Constitution. In accordance with the 39th resolution of the Parliament, the process of collecting opinions from citizens, professional organizations and [political] parties were organized in the summer and autumn of 2017.

During this time, about 327,000 citizens' opinions were received orally, on paper, and online, and the Working Group reflected the ones with the highest support among these opinions in bill.

The draft of amendments to the Constitution took into account the constitutional legal and political studies conducted earlier in the field. Also, the finished bill was evaluated with professional opinions and conclusions. For example, institutions such as The Secretariat of the Parliament, the Ministry of Foreign Affairs, the General Council of the Judiciary, the National Institute of Justice, the School of Law of the Mongolian University of Mongolia, the School of Political Studies of the National University of Mongolia organized about ten academic meetings and made recommendations. Certain comments from 20 organizations such as the Government, the Office of the President, the National Security Council (NSC), the General Council of the Judiciary (SJEC), the Bank of Mongolia, the National Human Rights Commission (NHRC), the Mongolian Bar Association as well as expert opinions of about 10 academicians and scientists were submitted to the Working Group. Also, a sub-working group of scientists and researchers responsible for drafting proposals for amendments to the Constitution was established on May 17, 2018 by the order of the working group leader D. Lundeejantsan, who is responsible for drafting amendments to the Constitution of Mongolia and preparing for submission to the Parliament. The sub-working group worked for a year and a half, and L. Ulziisaikhan, senior advisor of the Standing Committee on State Structures, was the leader of the sub-working group, and 10 constitutional law researchers and scholars worked as members. In May 2018 and March 2019, this Sub-working group submitted detailed proposals to the Working Group. Based on detailed study of such opinions, recommendations and conclusions of scientists, researchers and experts, a draft of amendments to the Constitution was developed.

Sub-Working groups consisting of professionals were in pepration. Let us introduce three of the subworking groups carried out in 2016-2019 as an example. By the order of the Prime Minister J. Erdenebat dated 21.12.2016, a working group was established to "Research whether amendments to the Constitution should be made and formulate comments", headed by Dr. Ch. Enkhbaatar, professor of constitutional law, and employing 14 scientists, researchers, and experts as members. Also, it was mentioned earlier that the sub-working group of scientists and researchers, who were responsible for

formulating proposals for amendments to the Constitution in 2018-2019. In addition, a Sub-working group responsible for the preparation of the bill formula for amendments to the Constitution and evaluation of the bill's effectiveness was established by the order of the Working Group Leader D. Lundeejantsan on 05.24.2018 and it worked until the amendments to the Constitution were finally approved. Eight people with experience in drafting laws worked in that Sub-Working group as members, including R. Khatanbaatar, deputy of the National People's Congress (NPC) and former member of the People's Congress (PC), headed by D. Lamjav, Deputy of the People's Congress (PC), former member of the People's Congress (PC). Ts. Tovuusuren, former member of the State Great Khural (Parliament) and N. Luvsanjav, Minister of Justice and former head of the State Great Khural (Parliament). The Parliament's Secretariat played an important role in providing technical and organizational assistance to the Parliament for the consideration and approval of draft amendments to the Constitution as well as working conditions for working groups and sub-sections. In particular, Secretary General of the Parliamentary Office - L. Olziysaikhan, Head of Law and Legal Department E. Tuvshinjargal, Senior Counselor J. Byambadulam, Counselor T. Bolormaa, Counselor A. Solongo, Counselor B. Khatantuul, Referent B. Zolboo, and analyst E. Battogtoh, etc., made important professional and methodological contributions.

The process of discussion (reading) of draft amendments to the Constitution

Since the Constitution is a jurisprudential document on the one hand, and a political or consensual document on the other hand, amendments to it must be accepted and approved by the main political parties and institutions. Therefore, The draft amendment to the Constitution was discussed for more than five months after it was submitted, and it was approved by national consensus. Let's present the activities aimed at ensuring consensus within the framework of principles, and listening to and reflecting public opinions and criticisms.

The draft of amendments to the Constitution was submitted by 62 members of the Parliament elected from the MPP, DP, and the MPRP on June 6, 2019 and on this day, the process of submitting the bill was conducted at the general session of the Parliament. The first discussion of the draft amendments (bill) to the Constitution submitted by 62 named members of Parliament on 06.06.2019 was held on 06.14.2019 and 06.18.2019.

On June 18, 2019, Parliament Resolution No. 68 on "Establishing a working group responsible for preparing draft amendments to the Constitution of Mongolia for the second and third discussions" was approved. The working group was headed by Member of Parliament O. Enkhtuvshin, and representatives of MP, DP and other parties participated. Member of Parliament D. Lundeejantsang was appointed as the initiator ^x 6apurH) of the draft of amendments to the Constitution of Mongolia. According to the annex of Parliament Resolution No. 68, Sub-working groups were established to provide professional and methodological assistance in the following six areas, and included researchers, lawyers, and experts in the respective fields: (1) Sub-working group to provide information, professional and methodological assistance to the initiator of the draft of amendments to the Constitution, (2) Sub-working group of amendments related to the development of parliamentary democracy and ensuring the right of the people to govern, (3) Sub-working group of the amendment relating to increasing the executive accountability and stability, (4) Subsection of amendment related to enhancing the accountability and independence of the judiciary power, (5) Sub-working group of amendments related to improvement of local government system, (6) Sub-working group of formulation.

When drafting amendments to the Constitution, in accordance with the direction given by the Speaker of the Parliament by Order No. 159 of 2019, activities such as public awareness, information provision, and opinion gathering were organized from 19.06.2019 to 30.06.2019. When members of parliament went to their constituencies to provide information to 40,930 citizens and ask for opinions, 19% of all participants proposed their comments. A total of 7,795 citizens submitted 200,439 opinions through meetings held by members of the Parliament, members of working groups and working subgroups with citizens, phone calls, e-mail addresses, and documents and and when those propositions are consolidated, on average, 82% percent of citizens, who submitted proposals supported the draft amendments to the Constitution.

On July 16, 2019, the President of Mongolia, Kh. Battulga, submitted draft and proposals for amendments to the Constitution to the Speaker of the Parliament, G. Zandanshatar. Parliament approved Resolution No. 72 on 18.07.2019 and a working group was established responsible for integrating drafts and proposals submitted by the President

of Mongolia with drafts of amendments to the Constitution of Mongolia submitted by 62 members. The head of the consensus working group is the President of Mongolia H. Battulga, the deputy head of the working group is Prime Minister U. Khurelsukh, the secretary is the head of the Standing Committee on State Structure (SCSS) S. Byambatsogt, and the members of the MPP, DP and other parties are included in a balanced way.

According to the plan of the Working Group established by Parliament Resolution No. 72 of 2019, a series of 5 discussions on drafts and proposals for amendments to the Constitution of Mongolia are held from 22.07.2019 to 26.07.2019 by the Office of the President and the Office of the Parliament jointly at the state palace. A total of 705 people participated in a series of five discussions and 154 of them asked questions and 155 participants spoke and expressed their opinions. 203 representatives from 28 political parties, 261 from governmental and non-governmental organizations, 90 academicians, and 110 representatives of citizens, who registered their requests online and by phone participated in the discussion.

In connection with the submitted bill, the process of obtaining the opinions of political parties continued. On July 30, 2019, Speaker of the Parliament G. Zandanshatar met with representatives of 17 political parties and exchanged opinions regarding the draft amendments to the Constitution of Mongolia. Even after that, the parties continued to submit their suggestions about the bill to the Working Group. For example, National Labor Party (NLP or HUN) submitted its proposal five times.

The opinions of lawyers, researchers and professional organizations were heard regarding the submitted bill. For example, Organizations such as the Supreme Court of Mongolia, the Mongolian Bar Association, and individual researchers and lawyers also submitted their opinions, which were discussed in the Working Group and Sub-working groups from time to time. Also Mongolian Bar Association, Mongolian Law Society NGO and young lawyers joined together and organized a "lawyers with tie" demonstration and meeting on August 29, 2019 at the Lawyers' Square, calling for the inclusion of clauses that make the courts independent and accountable in the Constitution. Representatives of civil society organizations such as "Youth Policy Watch" NGO also participated in this demonstration and meeting.

Citizens and civil society organizations have been actively calling

for the comprehensive approval of the main concept of the bill submitted by the 62 members of the Parliament. For example, 23 human rights NGOs, youth, researchers, and lawyers, under the leadership of " Youth Policy Watch" NGO and "Intellectual Innovation" NGOs, joined forces to create "Citizens' Participation in the Constitution" campaign. In this way, they actively worked from June to November 2019 and made a great contribution for the approval of the provisions relating to the judiciary and the Government in the draft amendments to the Constitution, in ways such as, presenting their contents to the public, organizing discussions, meetings, interviews, publishing interviews and articles, printing posters and pasting them on streets and squares, holding press conferences, spreading the word of supporters in Ulaanbaatar city and provinces, a series of influential videos, podcasts, posters, posts, infographics were made and distributed them through social media, respectfully urging people to tag every member of Parliament in their posters, support and vote by sending a message to their phone number, and they submitted the position document to the members of Parliament.

Based on the results achieved by the consensus working group in July and August 2019, the Parliament held the second discussion of the draft amendments to the Constitution on 28.08.2019, 29.08.2019, 04.09.2019, 05.09.2019, and 07.09.2019. The Parliament decided on 09.07.2019 to submit the draft amendments to the Constitution through a referendum. At the same time, President H. Battulga submitted a draft of the Parliament's resolution on 09.09.2019 to hold a public referendum within the framework of the question "Which of the presidential and parliamentary governments is suitable for Mongolia?" However, the Parliament rejected this proposal, which violates the basic structure and fundamental principles of the Constitution. Consequently, on September 11, 2019, the Parliament issued Resolution No. 73 "Concerning a referendum and approving the original document of amendments to the Constitution of Mongolia".

On September 20, 2019, the President of Mongolia vetoed Parliament Resolution No. 73 of 2019. At its session on 10.04.2019, the Parliament decided that it is appropriate to discuss and accept the President's veto and revoked Resolution No. 73. As the Parliament accepted the President's veto, the opportunity to hold a referendum on the issue on its own was eliminated in terms of time. On the other hand, there was a need to meet the "social consensus" mentioned in the President's veto by re-discussing

some important issues that were not included in the draft approved in the second discussion. Therefore, the Parliament decided to submit the draft amendments to the Constitution to the third discussion.

According to the order of the Speaker of the Parliament No. 199 of 30.09.2019, a working group was established to consult and study the issue of amendments to the Constitution of Mongolia and holding a referendum. The working group discussed the proposals of the Democratic Party (DP) on forming the Cabinet by Prime Minister, introducing a mixed electoral system, and electing the President from the expanded composition of the Parliament. The Parliament conducted the third discussion of the draft amendments to the Constitution of Mongolia at its plenary sessions on November 13, 2019 and November 14, 2019, and finally approved it. President H. Battulga confirmed and validated the amendments to the Constitution on November 26, 2019.

It was an important decision that the amendments to the Constitution will be complied throughout the country from 25.05.2020. Since it was not clear which party would win the 2020 parliamentary elections, and the majority in the 2016-2020 parliamentary elections could become either a majority or a minority in the next elections, it can be said that he was in a condition to work not only from the perspective of the majority, but also from the perspective of the minority, and not from the interest of any political party, but to be recognized as fair, when discussing and approving the draft amendments to the Constitution in 2019. In other words, since the amendments to the Constitution will be implemented starting with the mandate of the next Parliament and the Government, which will be formed based on the results of the 2020 election, by then the respective composition of the Parliament did not approve this amendment for itself.

For five months after the submission of the draft amendments to the Constitution, in order to reflect the opinions of the President, the Democratic Party (DP), and other parties, although there were some changes in the 62 members' draft, the main content was still approved. In total, the draft bill of 62 members touched 20 articles and 50 clauses of the 70 articles of the Constitution, whereas the actual amendments to the Constitution have turned out to become 19 articles and 36 clauses, affecting 28.5% percent of the Constitution. Let us summarize the provisions of the proposals of the President, DP and other parties.

Out of the proposals and drafts submitted by the President on 16.07.2019, a total of 15 proposals were included in the amendments to the Constitution, half of which were new clauses not included in the 62 member's draft. Following clauses were newly introduced by the President's proposal, including: Natural resources are the public property of the state, the scope of the right to initiate laws, to set by law, to develop the government's action program in accordance with development and national security policies, prohibition of holding referendums to deny independence and territorial integrity, at least one percent of the electorate to unite and form a party, establishing courts on the basis of constituencies, and clarify the procedures for changing administrative and territorial units. Other proposals such as the establishment of the Judicial Disciplinary Committee etc coincided with the content of the project of 62 members and was integrated.

Many of the proposals of political parties were included in amendments to the Constitution. For example, when the Democratic Party had the most seats in the Parliament, about 80% of the bills submitted in 2015 were conceptually included in the 2019 amendments. The DP Council submitted proposals in July, August and October 2019, and 11 of which were incorporated into amendments and many of these overlap in content with relevant provisions of the 62 members' draft. For example, the following proposals coincided with the content of the 62 members' bill, such as: to operate a wealth fund, the President to propose the dissolution of the Parliament in consultation with the Speaker of the

Parliament, prohibition of increasing the amount of budget expenditures and deficits submitted by the Government when the Parliament approves the draft, and clarifying the grounds for recalling a Member of Parliament. The provision for the prime minister to form his own cabinet (one of the spiritual clauses of the bill) was defeated in the Second discussion without support, however, as a result of the proposal of the DP to include that clause in the framework of the consensus after the second discussion, it is reflected in the Constitution and thus approved. Also, the opinions of parties outside the Parliament were also reflected. For example, the requirements of the National Labor Party (NLP) have been fulfilled, such as to inscribe the composition of the General Council of the Court (SEC), independent establishment of the Judicial Disciplinary Committee, not remove clauses of Prime Minister to form his cabinet, and

not to raise too many issues related to local governance.

In addition to the amendments made to the Constitution being consistent with the basic structure and primary concepts of the Constitution, and also because it cannot exceed 35% percent of the total articles, some important provisions of the 62 members' draft bill had no other choice except to be deleted or changed. After making compromises like this, the amendments to the Constitution received the support of all parties and were passed through three rounds of discussions (readings). The Parliament deliberated on each item of the bill of amendment and approved it with the votes of two-thirds of all members in the first reading and three-fourths or votes of at least 57 members in the second and third readings. If we did not make some compromises and consensus within the framework of our principles, we would not have been able to get more than 57 members' votes. If we refer to a similar story, the Constitution would not have been approved if the votes of 200 deputies was not received, who demanded the direct election of the President by the people in 1991-1992 and it cannot be denied that there was a risk of entering into a deep political crisis and conflict. Some of these compromises are the cause of some of the problems we face today, but by and large, the adoption of the 1992 Constitution was far better than if it hadn't been approved.

One of the wonderful aspects of democracy is that citizens can participate, directly or indirectly, in establishing the basic rules for how they live. Since citizens and their representatives have different life experiences, opinions, and beliefs, they disagree on what the content of the charter should be. However, the common values of citizens of a democratic country help citizens agree on the foundations of the Constitution and require compromise on some detailed issues. For example, Professionals believed that the number of members of the Parliament should be increased and the President should be elected from the extended composition of the Parliament, whereas, the results of the polls showed that the majority of citizens do not support it. Some citizens believe that the parliament should be bicameral, but there is no research showing that this is absolutely necessary and in addition to that, this time, it was rejected because it would lead to too many fundamental amendments. In any case, it can be said metaphorically that the draft bill submitted by 62 members took five steps forward, while the actual amendments made to the Constitution took three steps. It makes no sense to say that you must walk five steps, and if you

can't, don't walk three steps.

Amendments made to the Constitution focused on correcting and improving the mistakes of the past 20 years. First of all, in order to solve the constitutional crisis that arose in 1998-2000, the 1992 Constitution was amended for the first time. The composition of the Parliament that worked in 1996-1999 (the Democratic Union was in the majority) approved this amendment on 24.12.1999, but it was annulled by the Constitutional Court by Resolution No. 2 of 2000. Subsequently, the new composition of the Parliament established as a result of the 2000 elections (by then MPRP or current MPP was in the majority) approved this amendment without changing the wording, exactly in that context, on 14.12.2000.

According to this, the amendments made to the Constitution in 2000 were discussed and approved through two different compositions of the Parliament. For 20 years, we have judged and debated that seven amendments made to the Constitution in 2000 were flawed. Six of these seven amendments were improved and amended in 2019 by subsequent amendments made to the Constitution.

It was intended to resolve the issues discussed through the three rounds of compositions of the Parliament. Draft amendments to the Constitution were submitted to the Parliament in 2011, 2012, and 2015, and their general contents were reflected in the 2019 Constitution amendments. For example, in 2015, almost 80% of the drafts submitted by 47 members of the Parliament were included in the draft amendments to the Constitution and finally approved. For example, to make the entire government stable and effective, the following concepts were included, such as: raising the threshold for dismissing the government, no more than one-third of the government [executive] members being members of parliament, the prime minister's power of forming his own cabinet, improving the functioning of the parliament, and making the courts independent and fair. The concept of amendments to the Constitution was not decided only at the working group established by the Parliament, but because it has been discussed for many years, it would be biased to think that it was developed only within the framework of one party or narrow interests.

Although a compromise was made to reflect the opinions and views of both parties, the amendments to the Constitution did not lose their backbone, which is to strengthen the parliamentary governance, which had

been reflected in the draft bill of 62 members. Specifically, this amendment aimed at followings such as: to operate the government [executive] in a stable and efficient manner; improve parliamentary control over it and improve the quality of legislative process; to strengthen the political party by making it democratic in terms of its internal organization, as well as by making its assets, sources of income, and financing transparent to the public; consistent implementation of the Law on Parliamentary Elections; completely refuse to give additional powers to the President, which are not given by the Constitution, and take him to the position of the president of a parliamentary country by prohibiting him from re-nomination and re-election; making the judiciary independent and impartial; improvement of local administration; and clarify the principle of using natural resources. Therefore, the amendments made to the Constitution were drafted in accordance with the basic structure and basic concepts of the 1992 Constitution (parliamentary rule), and thus became a step to strengthen the foundations of Mongolia's security, democracy, and sustainable development.

Conclusion

Let me summarize the value and main lessons of the process of amending the Constitution in 2019. This amendment to the Constitution not only corrects the 2000 amendment, known as the "Seven Impaired Clauses", but also within the framework of the content discussed through the last three parliaments, this bill was developed with the participation of all parties for three years, and it was discussed and finally approved on the basis of consensus. From this process it appears that there should be a reasonable approach based on research, when developing and approving drafts of amendments to the Constitution, taking into consideration the opinions and conclusions of citizens, researchers, lawyers, professionals, and organizations, ensuring the consensus of parties with and without seats in the Parliament and strictly complying the "Law on the Procedure for Making Amendments to the Constitution of Mongolia", and it also appears that it helps to protect the basic structure and fundamental principles of the Constitution and to ensure national consensus and acceptance. Also, in case of amendments to the Constitution of Mongolia, at least two rounds of composition of the Parliament must review and approve the bill (that is, if a draft amendment to the Constitution is submitted, after the regular elections of the Parliament, it will be approved on the basis of re-discussion); and

in order to prevent members of the Parliament from acting with their own narrow interests, a standard that the amendments to the Constitution are decided to be followed after the regular elections of the Parliament was established by amendments to the Constitution of 2000 and 2019. Adhering to this standard will help prevent errors.

Compared to the 17 amendments made to the US Constitution in the period of 230 years since 1791, Amendments to the Constitution of Mongolia in 2019 can be considered significant reforms in terms of quantity, content, and scope. The Parliament added, changed and deleted 36 provisions on 19 articles of the Constitution, which was intended to strengthen the basic structure and fundamental concepts of the 1992 Constitution, not only in terms of quantity, but also in terms of content. As soon as the amendments to the Constitution gets approved, all this will not be an immediate reality. In addition, if the nearly 50 laws to be followed are well formulated and approved based on research in accordance with the concept of amendments to be included in the Constitution, and if they can be implemented correctly and consistently, this will probably yield results. The "Schedule for Conforming Legislation to the Amendments to the Constitution of Mongolia" approved by Parliament Resolution No. 02 of 09.01.2020 and its annex have briefly outlined the main content with decisive role in determining the concept of amendments to the Constitution in 2019 and thus it should be adhered when drafting respective laws.

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2019 ОНД ҮНДСЭН ХУУЛЬД НЭМЭЛТ, ӨӨРЧЛӨЛТ ОРУУЛАХАД ҮНДЭСНИЙ ЗӨВШИЛЦЛИЙГ ХАНГАСАН НЬ

МАН 2016 оны сонгуулийн мөрийн хөтөлбөртөө парламентын засаглалаа бэхжүүлэхийн тулд “ард түмнээсээ асууж” Үндсэн хуульд нэмэлт, өөрчлөлт оруулна гэж амлаад УИХ-д 65 суудал авч, үүнийхээ төлөө бараг 3 жил ажилласан. Уг зорилгоор намуудын олон талт төлөөллийг багтаасан ажлын хэсгүүд байгуулагдан ажиллаж, Үндсэн хуульд нэмэлт, өөрчлөлт оруулах талаар өмнө хөндөгдөж байсан сэдвүүдийн хүрээнд уламжлалт болон орчин үеийн аргаар иргэдийн саналыг авч, судалгаанд үндэслэн төслийг боловсруулсан. Улмаар, АН, МАН, МАХН-аас нэр дэвшин сонгогдсон Д.Лүндээжанцан тэргүүтэй 62 гишүүний зүгээс 2019.06.06-нд Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төслийг өргөн барьсан. Энэ өдрөөс хойш УИХ болон ажлын хэсгийн зүгээс 5 сарын турш иргэдийн санаа бодол болон хуульчид, судлаачдын саналыг дахин сонсож, Ерөнхийлөгч болон намуудтай зөвшилцөж, уг төслийн нэг, хоёр, гуравдугаар хэлэлцүүлгийг амжилттай хийж дуусгасан. 62 гишүүний анх өргөн барьсан төслийн зарим чухал заалт хасагдаж өөрчлөгдсөн ч төслийн гол агуулга дэмжигдэж, 2019.11.14-нд УИХ-ын чуулганы нэгдсэн хуралдаанд оролцсон 64 гишүүний 100 хувийн саналаар Монгол Улсын Үндсэн хуульд нэмэлт, өөрчлөлт оруулав.

Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төслийн Ажлын дэд хэсгийн гишүүдийн нэгээр ажилласан судлаачийн хувьд уг нэмэлт, өөрчлөлтийг боловсруулж батлагдсан процесс болон агуулгын ач холбогдлыг энэхүү илтгэлээрээ хуваалцахыг хүсэж байна. Тодруулбал, Үндсэн хуульд оруулсан нэмэлт, өөрчлөлт нь парламентын засаглалыг бэхжүүлэх, шүүхийг илүү хараат бус,

хариуцлагатай болгохын тулд сүүлийн 20 жил яригдсан асуудлыг иргэдийн санаа бодлыг сонсож, судлаачдын санал, шүүмжийг тусгаж, улс төрийн намууд болон Ерөнхийлөгчтэй хийсэн зөвшилцлөөр шийдвэрлэсэн үр дүн гэдгийг харуулна. 2019 онд Үндсэн хуульд оруулсан нэмэлт, өөрчлөлтийн агуулга өргөн тул энэхүү илтгэлийн хүрээнд түүнийг танилцуулж тайлбарлахыг зориогүй.

Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төслийг боловсруулсан үйл явц

Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төслийг боловсруулсан үйл явц нь олон талаар ач холбогдолтой болсон. Юуны өмнө, Үндсэн хууль бол зөвшилцлийн баримт бичиг ч уг зөвшилцөл суурь зарчмын дагуу явагдах ёстой. Иймээс, Монгол Улсын Үндсэн хуульд нэмэлт, өөрчлөлт оруулах журмын тухай 2010 оны хууль нь Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төслийг боловсруулах, батлах үйл явцыг Үндсэн хуулийн үндсэн бүтэц, суурь үзэл баримтлалд нийцүүлэх, Үндсэн хуулийг дээдлэн сахих, түүний тогтвортой байдлыг хангах, ард түмний бүрэн эрхэт байдал, оролцоог хангах, бодитой, ил тод байхад чухал үүрэг гүйцэтгэсэн.

1992 оны Үндсэн хууль маш сайн оролцоо, ойлголцлоор гарсан учраас улс төрийн хувьд өөр өөр үзэлтэй нам, улс төрчид, иргэдийн хувьд сайн хүлээн зөвшөөрөгддөг. Үндсэн хуульд оруулах нэмэлт, өөрчлөлт ч иргэдийн санаа бодлыг тусгах төдийгүй парламентын доторх, гаднах улс төрийн намууд, Ерөнхийлөгчтэй ойлголцож байж хүлээн зөвшөөрөгдөнө. Иймээс, Монгол Улсын Үндсэн хуульд нэмэлт, өөрчлөлт оруулах төслийг боловсруулан УИХ-д өргөн мэдүүлэх бэлтгэл хангах үүрэг бүхий ажлын хэсгийг УИХ-ын даргын 78-р захирамжаар 2017.05.05-нд байгуулж, уг ажлын хэсгийн ахлагчаар Д.Лүндээжанцан, гишүүнээр МАН, АН, МАХН зэрэг тал талын төлөөлөл ажилласан. Энэхүү Ажлын хэсэг нь хоёр жилийн турш Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төслийн хувилбаруудыг боловсруулж, тухай бүр нийтэлж, олон нийтээс санал, зөвлөмж, шүүмж авч, зөвшилцөж ажилласан.

Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төслийн агуулгын талаар иргэдээс асууж санаа бодлыг нь харгалзсан. 1999, 2000, 2011, 2012, 2015 оны Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төслүүд нь олон нийтийн хэлэлцүүлэг, оролцоогүйгээр хаалттай боловсруулагдаж

шууд өргөн баригдсан. Харин, 2019 оны Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төслийг боловсруулж батлахад иргэдийн оролцоог уламжлалт болон орчин үеийн аргаар хангасан. Жишээлбэл, УИХ 2017 оны 2 сард Зөвлөлдөх санал асуулгын тухай хуулийг баталсан бөгөөд 2017 оны 4 дүгээр сард Үндсэн хуульд нэмэлт, өөрчлөлт оруулах асуудлаар зөвлөлдөх санал асуулга зохион байгуулсан. Санамсаргүй түүврийн аргаар сонгогдсон 700 гаран иргэдэд Үндсэн хуульд нэмэлт, өөрчлөлт оруулах сэдвүүдийн хүрээнд дэмжих болон эсэргүүцэх аль аль талын үндэслэлүүдийг бичгээр танилцуулж, амаар болон бичгээр асуусан асуултад нь экспертүүд хариулт өгч, мэдээлэлжүүлсний дараа санал асуулга авсан. Үндэсний статистикийн хороо 2017.05.01-нд "Монгол Улсын Үндсэн хуульд нэмэлт, өөрчлөлт оруулах асуудлаар явуулсан анхдугаар зөвлөлдөх санал асуулгын дүнгийн тайлан"-г Зөвлөлдөх зөвлөлд ирүүлсэн бөгөөд Зөвлөлдөх зөвлөл энэхүү тайланд үндэслэн гаргасан зөвлөмжөө УИХ-д 2017.05.05-нд гардуулан өгсөн. Үндсэн хуульд нэмэлт, өөрчлөлт оруулах төслийг боловсруулан УИХ-д өргөн мэдүүлэх бэлтгэл хангах үүрэг бүхий ажлын хэсэг зөвлөлдөх санал асуулгын үр дүн (Зөвлөлдөх зөвлөлийн зөвлөмж)-д тулгуурлан Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төслийн эхний хувилбарыг боловсруулж 2017.05.25-нд УИХ-ын даргад гардуулсан.

УИХ 2017.06.02-нд "Монгол Улсын Үндсэн хуульд нэмэлт, өөрчлөлт оруулах асуудлаар ард түмний бүрэн эрхт байдал, оролцоог хангах тухай" УИХ-ын 39-р тогтоолыг баталсан. Уг тогтоолд Монгол Улсын Үндсэн хуульд нэмэлт, өөрчлөлт оруулах асуудлаар явуулсан анхдугаар зөвлөлдөх санал асуулгын зөвлөмжийг үндэслэн Ажлын хэсгээс боловсруулсан төслийг 2017.06.05-2017.09.10-ны хооронд олон нийтээр хэлэлцүүлэх, Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төслийг олон нийтийн хэвлэл, мэдээллийн хэрэгслээр нийтэлж ард нийтэд толилуулахаар заасан. Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төслийг хэлэлцүүлэх ажлыг улс, орон нутгийн хэмжээнд зохион байгуулах Ажлын хэсэг болон Ажлын дэд хэсгүүдийг байгуулж, төслийг олон нийтээр хэлэлцүүлэх ажлын төлөвлөгөөг тогтоолын хавсралтаар баталж хэрэгжүүлсэн. Энэ төлөвлөгөөнд заасны дагуу төслийг иргэдийн дунд хэлэлцүүлэхээс гадна ажил мэргэжлийн чиглэлээр төрийн байгууллагууд хэлэлцүүлэх ажлыг зохион байгуулах, төслийг улс төрийн намууд өөрсдийнхөө шугамаар хэлэлцүүлж, санал, дүгнэлт гаргаж ажлын хэсэгт ирүүлэх,

Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төслийн талаар онолын бага хурлууд зохион байгуулах зэрэг ажил хийсэн. УИХ-ын 39-р тогтоолын дагуу иргэд, мэргэжлийн байгууллага, намуудаас саналыг авах ажиллагааг 2017 оны зун, намар зохион байгуулсан. Энэ үеэр 327 орчим мянган иргэдийн саналыг амаар, цаасаар, цахимаар авсан бөгөөд эдгээр саналаас хамгийн өндөр дэмжлэг авсныг нь Ажлын хэсэг төсөлд тусгасан.

Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төсөл нь тухайн чиглэлээр өмнө нь хийгдсэн үндсэн хуулийн эрх зүйн болон улс төр судлалын судалгааг харгалзсан. Мөн, бэлэн болсон төслийг мэргэжлийн санал, дүгнэлтээр шүүн тунгаасан. Тухайлбал, УИХ-ын Тамгын газар, Гадаад хэргийн яам, ШЕЗ, ХЗҮХ, МУИС-ийн Хууль зүйн сургууль, МУИС-ийн Улс төр судлалын тэнхим зэрэг байгууллагаас тухайлан төслийн агуулгаар эрдэм шинжилгээний хурал арав шахмыг зохион байгуулж, зөвлөмж гаргасан. Засгийн газар, Ерөнхийлөгчийн тамгын газар, ҮАБЗ, ШЕЗ, Монгол Банк, ХЭҮК, Хуульчдын холбоо зэрэг 20 гаран байгууллагаас тодорхой саналуудыг, 10 орчим академич, эрдэмтдээс экспертийн дүгнэлтийг Ажлын хэсэгт ирүүлжээ. Мөн, Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төсөлд саналын хувилбар боловсруулах үүрэг бүхий эрдэмтэн, судлаачдын дэд ажлын хэсгийг Монгол Улсын Үндсэн хуульд нэмэлт, өөрчлөлт оруулах төслийг боловсруулан УИХ-д өргөн мэдүүлэх бэлтгэл хангах үүрэг бүхий ажлын хэсгийн ахлагч Д.Лүндээжанцангийн захирамжаар 2018.05.17-нд байгуулж нэг жил хагасын хугацаанд ажиллуулсан бөгөөд уг ажлын дэд хэсгийн ахлагчаар ТББХ-ны ахлах зөвлөх Л.Өлзийсайхан, Үндсэн хуулийн эрх зүйн 10 судлаач, эрдэмтэн гишүүнээр ажилласан. Энэхүү ажлын дэд хэсэг 2018 оны 5 сар, 2019 оны 3 сард дэлгэрэнгүй саналаа Ажлын хэсэгт бичгээр хүргүүлсэн. Эрдэмтэд, судлаачид, мэргэжилтнүүдийн энэ мэт санал, зөвлөмж, дүгнэлтийг нэг бүрчлэн судалсны үндсэн дээр Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төсөл боловсруулагдсан.

Мэргэжлийн хүмүүсээс бүрдсэн Ажлын дэд хэсгүүд ажилласан. 2016-2019 онд ажлын дэд хэсгүүдээс гурвыг нь жишээ болгон танилцуулъя. Ерөнхий сайд Ж.Эрдэнэбатын 2016.12.21-ний захирамжаар “Үндсэн хуульд нэмэлт, өөрчлөлт оруулах эсэхийг судлах, санал дүгнэлт боловсруулах” ажлын хэсгийг байгуулж, үндсэн хуулийн эрх зүйн профессор, доктор Ч.Энхбаатараар ахлуулж, 14

эрдэмтэн, судлаач, мэргэжилтнийг гишүүнээр ажиллуулсан. Мөн, 2018-2019 онд Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төсөлд саналын хувилбар боловсруулах үүрэг бүхий эрдэмтэн, судлаачдын дэд ажлын хэсэг ажилласан талаар өмнө дурдсан. Түүнчлэн, Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төслийн томьёоллыг бэлтгэх, төслийн үр нөлөөний үнэлгээ хийх үүрэг бүхий ажлын дэд хэсгийг Ажлын хэсгийн ахлагч Д.Лүндээжанцангийн захирамжаар 2018.05.24-нд байгуулж Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийг эцэслэн батлуулах хүртэл ажиллуулсан бөгөөд уг ажлын дэд хэсгийг АИХ-ын депутат, УБХ-ын гишүүн асан Р.Хатанбаатар ахалж, АИХ-ын депутат, УБХ-ын гишүүн асан Д.Ламжав, УБХ-ын гишүүн, УИХ-ын гишүүн асан Ц.Товуусүрэн, Хууль зүйн сайд, УИХ-ын Тамгын газрын дарга асан Н.Лувсанжав зэрэг хууль боловсруулах ажлын туршлагатай найман хүн гишүүнээр ажилласан. УИХ Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төслийг хэлэлцэж батлах, Ажлын хэсгүүд болон дэд хэсгүүд ажиллах нөхцөлийг хангаж техник, зохион байгуулалтын туслалцааг УИХ-ын Тамгын газар үзүүлж чухал үүрэг гүйцэтгэсэн. Ялангуяа, УИХ-ын Тамгын газрын Ерөнхий нарийн бичгийн дарга Л.Өлзийсайхан, Хууль, эрх зүйн хэлтсийн дарга Э.Түвшинжаргал, Ахлах зөвлөх Ж.Бямбадулам, Зөвлөх Ц.Болормаа, Зөвлөх А.Солонго, Зөвлөх Б.Хатантуул, Рефрент Б.Золбоо, Шинжээч Э.Баттогтох зэрэг олон хүн мэргэжил, арга зүйн чухал хувь нэмэр оруулсан.

Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төслийг хэлэлцсэн үйл явц

Үндсэн хууль нэг талаас хууль зүй, нөгөө талаас улс төрийн буюу зөвшилцлийн баримт бичиг тул үүнд оруулах нэмэлт, өөрчлөлт нь улс төрийн гол намууд, инстүүцүүдэд хүлээн зөвшөөрөгдөж батлагдах шаардлагатай. Иймээс, Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төслийг өргөн барьснаас хойш таван сар гаруй хугацаанд хэлэлцэж үндэсний зөвшилцлийг ханган баталсан. Зарчмын хүрээнд зөвшилцлийг хангах, олон нийтийн санал, шүүмжийг сонсож тусгахад чиглэсэн ажиллагаа толилуулъя.

Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төслийг МАН, АН, МАХН-аас сонгогдсон УИХ-ын нэр бүхий 62 гишүүн 2019.06.06-нд өргөн барьсан бөгөөд энэ өдөр уг төслийг өргөн мэдүүлэх ажиллагааг УИХ-ын чуулганы нэгдсэн хуралдаан дээр явуулсан. УИХ-ын нэр бүхий 62 гишүүний 2019.06.06-нд өргөн мэдүүлсэн Үндсэн

хуульд оруулах нэмэлт, өөрчлөлтийн төслийн нэг дэх хэлэлцүүлгийг 2019.06.14, 2019.06.18-д явуулсан.

2019.06.18-нд "Монгол Улсын Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төслийг хоёр, гурав дахь хэлэлцүүлэгт бэлтгэх үүрэг бүхий ажлын хэсэг байгуулах тухай" УИХ-ын 68 дугаар тогтоол баталсан. Уг ажлын хэсгийг УИХ-ын гишүүн Ө.Энхтүвшин ахалж, МАН, АН, бусад намын төлөөллийг оролцуулсан. Монгол Улсын Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төслийн эхийг баригчаар УИХ-ын гишүүн Д.Лүндээжанцанг томилсон. УИХ-ын 68 дугаар тогтоолын хавсралтаар Ажлын хэсэгт дараах зургаан чиглэлээр мэргэжил, арга зүйн туслалцаа үзүүлэх ажлын дэд хэсгүүдийг байгуулж тухайн чиглэлийн судлаачид, хуульчид, мэргэжилтнүүдийг оруулсан: (1) Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төслийн эхийг баригчийг мэдээлэл, мэргэжил, арга зүйн туслалцаагаар хангах дэд хэсэг, (2) Парламентын ардчиллыг төлөвшүүлж, ард түмний засаглах эрхийг хангахтай холбоотой нэмэлт, өөрчлөлтийн дэд хэсэг, (3) Гүйцэтгэх эрх мэдлийн хариуцлагыг нэмэгдүүлж, тогтвортой байдлыг хангахтай холбоотой нэмэлт, өөрчлөлтийн дэд хэсэг, (4) Шүүх эрх мэдлийн хариуцлагыг дээшлүүлж, хараат бус байдлыг хангахтай холбоотой нэмэлт өөрчлөлтийн дэд хэсэг, (5) Нутгийн удирдлагын тогтолцоог боловсронгуй болгохтой холбоотой нэмэлт, өөрчлөлтийн дэд хэсэг, (6) Томьёоллын ажлын дэд хэсэг.

Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төслийг УИХ-ын даргын 2019 оны 159-р захирамжаар өгсөн чиглэлийн дагуу иргэд, олон нийтэд таниулах, мэдээллээр хангах, санал авах ажлыг 2019.06.19-2019.06.30-нд зохион байгуулсан. УИХ-ын гишүүд сонгогдсон тойрогтоо очиж 40930 иргэнд мэдээлэл хүргэж, санал авахад нийт оролцогчдын 19 хувь нь санал гаргасан байна. УИХ-ын гишүүд, Ажлын хэсгийн болон ажлын дэд хэсгийн гишүүд иргэдтэй хийсэн уулзалт, санал авах утас, цахим хаяг, бичиг хэргээр нийт 7795 иргэнээс 200439 санал ирүүлснийг нэгтгэн үзвэл Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төслийг **дунджаар санал ирүүлсэн иргэдийн 82 хувь нь дэмжсэн байна.**

Монгол Улсын Ерөнхийлөгч Х.Баттулгаас УИХ-ын дарга Г.Занданшатарт 2019.07.16-нд Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төсөл, саналыг өргөн мэдүүлсэн. УИХ-аас 2019.07.18-нд 72 дугаар тогтоол баталж, Монгол Улсын Ерөнхийлөгчөөс өргөн

мэдүүлсэн төсөл, саналыг 62 гишүүний өргөн мэдүүлсэн Монгол Улсын Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төсөлтэй уялдуулах, асуудлыг зөвшилцөх үүрэг бүхий Ажлын хэсгийг байгуулсан. Зөвшилцлийн ажлын хэсгийн даргаар Монгол Улсын Ерөнхийлөгч Х.Баттулга, Ажлын хэсгийн орлогч даргаар Ерөнхий сайд У.Хүрэлсүх, Нарийн бичгийн даргаар ТББХ-ны дарга С.Бямбацогт, бүрэлдэхүүнд нь МАН, АН, бусад намын төлөөллийг тэнцвэртэй оруулсан.

УИХ-ын 2019 оны 72 дугаар тогтоолоор байгуулагдсан Ажлын хэсгийн төлөвлөгөөний дагуу Монгол Улсын Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төсөл, саналын талаарх 5 удаагийн цуврал хэлэлцүүлгийг 2019.07.22-2019.07.26-нд Ерөнхийлөгчийн Тамгын газар, УИХ-ын Тамгын газар хамтран Төрийн ордонд зохион байгуулсан. **Таван удаагийн** цуврал хэлэлцүүлэгт нийт 705 хүн биечлэн оролцжээ. Тэдний 154 нь асуулт асууж тодруулсан бол 155 оролцогч үг хэлж, санал бодлоо илэрхийлэв. Хэлэлцүүлэгт улс төрийн 28 намаас 203 төлөөлөл, төрийн болон төрийн бус байгууллагаас 261, эрдэмтэн судлаачид 90, цахимаар болон утсаар хүсэлтээ илэрхийлж бүртгүүлсэн иргэдийн төлөөлөл 110 хүн оролцжээ.

Өргөн баригдсан төсөлтэй холбогдуулан улс төрийн намуудын саналыг авах ажиллагаа үргэлжилсэн. 2019.07.30-нд УИХ-ын дарга Г.Занданшатар улс төрийн 17 намын төлөөлөлтэй уулзаж, Монгол Улсын Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төсөлтэй холбогдуулан санал солилцов. Үүний дараа ч намуудаас төслийн талаарх саналаа Ажлын хэсэгт ирүүлсээр байсан. Тухайлбал, ХҮН нийт таван удаа саналаа ирүүлжээ.

Өргөн баригдсан төслийн талаар хуульчид, судлаачид, мэргэжлийн байгууллагуудын саналыг сонссон. Жишээлбэл, Улсын дээд шүүх, Монголын Хуульчдын холбоо зэрэг байгууллага болон хувь судлаачид, хуульчид ч саналаа ирүүлснийг Ажлын хэсэг болон дэд хэсгүүд дээр тухай бүр хэлэлцэж байсан. Мөн, Хуульчдын холбоо, Хуульчдын нийгэмлэг ТББ болон залуу хуульчид нэгдэж Үндсэн хуульд шүүхийг хараат бус, хариуцлагатай болгох заалтуудыг тусгахыг уриалсан “хуульчдын зангиатай” жагсаал, цуглааныг 2019.08.29-нд Хуульчдын талбай дээр зохион байгуулсан бөгөөд энэхүү жагсаал, цуглаанд мөн “Бодлогод залуусын хяналт” ТББ зэрэг иргэний нийгмийн байгууллагын төлөөлөгчид дэмжиж оролцжээ.

УИХ-ын нэр бүхий 62 гишүүний өргөн барьсан төслийн гол үзэл баримтлал алдагдалгүйгээр цогцоор нь батлахыг иргэд болон иргэний нийгмийн байгууллагууд уриалж идэвхтэй ажилласан. Жишээлбэл, "Бодлогод залуусын хяналт," "Оюуны инноваци" ТББ-уудын манлайлал дор 23 хүний эрхийн ТББ-ууд, залуучууд, судлаачид, хуульчид эв санаагаа нэгтгэн "Үндсэн хуульд – Иргэдийн оролцоо аян" үүсгэж, Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төсөл дахь шүүх болон Засгийн газартай холбоотой заалтуудыг батлуулахын төлөө тэдгээрийн агуулгыг олон нийтэд танилцуулах, хэлэлцүүлэг, уулзалт, ярилцлага зохион байгуулах, ярилцлага, нийтлэл хэвлүүлэх, гудамж, талбайд постер хэвлэж наах, хэвлэлийн бага хурал хийх, Улаанбаатар хот болон аймгууд дахь дэмжигч залуусын үгийг түгээх, нөлөөллийн видео, подкаст, постер, пост, инфографик цувралаар хийж сошеал медиагаар түгээх, постертоо УИХ-ын гишүүн бүрийг таглах, утас руу нь мессеж бичиж дэмжиж саналаа өгөхийг хүндэтгэлтэйгээр уриалах, байр суурийн баримт бичгээ УИХ-ын гишүүдэд хүргүүлэх зэргээр 2019 оны 6 сараас 11 сар хүртэл идэвхтэй ажиллаж том хувь нэмэр оруулсан.

Зөвшилцлийн ажлын хэсэг 2019 оны 7, 8 дугаар сард ажиллаж хүрсэн үр дүнд УИХ Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төслийн хоёрдугаар хэлэлцүүлгийг 2019.08.28, 2019.08.29, 2019.09.04, 2019.09.05, 2019.09.07-нд хийсэн. УИХ Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төслийг ард нийтийн санал асуулгаар оруулахаар 2019.09.07-нд шийдвэрлэсэн. Үүнтэй зэрэгцүүлэн Ерөнхийлөгч Х.Баттулга "Монгол Улсад Ерөнхийлөгчийн болон парламентын засаглалын аль нь тохирох" вэ гэдгээр ард нийтийн санал асуулга явуулах тухай УИХ-ын тогтоолын төслийг 2019.09.09-нд өргөн мэдүүлсэн боловч Үндсэн хуулийн үндсэн бүтэц, суурь үзэл баримтлалыг зөрчсөн энэхүү саналаас нь УИХ татгалзсан. Улмаар УИХ 2019.09.11-нд "Ард нийтийн санал асуулга явуулах, Монгол Улсын Үндсэн хуулийн нэмэлт, өөрчлөлтийн эхийг батлах тухай" 73 дугаар тогтоолыг гаргасан.

2019.09.20-нд Монгол Улсын Ерөнхийлөгч УИХ-ын 2019 оны 73 дугаар тогтоолд бүхэлд нь хориг тавьсан. 2019.10.04-ний хуралдаанаараа УИХ Ерөнхийлөгчийн дээрх хоригийг хэлэлцэж хүлээн авах нь зүйтэй гэж шийдээд 73 дугаар тогтоолоо хүчингүй болгосон. УИХ Ерөнхийлөгч хоригийг хүлээн авсан тул Ард

нийтийн санал асуулгыг уг асуудлаар бие даан явуулах боломж цаг хугацааны хувьд байхгүй болгосон юм. Нөгөө талаас хоёрдугаар хэлэлцүүлгээр батлагдсан төсөлд тусгагдаагүй зарим чухал асуудлыг дахин хэлэлцэж сэргээх замаар Ерөнхийлөгчийн хоригт дурдсан "нийгмийн зөвшилцөл"-ийг хангах шаардлага үүссэн. Тиймээс УИХ Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төслийг гуравдугаар хэлэлцүүлэгт оруулах шийдвэр гаргасан.

УИХ-ын даргын 2019.09.30-ны 199 дүгээр захирамжаар Монгол Улсын Үндсэн хуульд нэмэлт, өөрчлөлт оруулах, Ард нийтийн санал асуулга явуулах тухай асуудлаар зөвшилцөх, судлах ажлын хэсэг байгуулан ажилласан. Уг ажлын хэсэг Ерөнхий сайд танхимаа бүрдүүлэх, сонгуулийн холимог тогтолцоог заах, Ерөнхийлөгчийг УИХ-ын өргөтгөсөн бүрэлдэхүүнээс сонгох тухай АН-ын саналыг хэлэлцсэн. УИХ 2019.11.13, 2019.11.14-ний чуулганы нэгдсэн хуралдаанаараа Монгол Улсын Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төслийн Гурав дахь хэлэлцүүлгийг явуулж эцэслэн баталсан. Ерөнхийлөгч Х.Баттулга Үндсэн хуульд оруулсан нэмэлт, өөрчлөлтийг 2019.11.26-нд нотлон баталгаажуулсан.

Үндсэн хуульд оруулсан нэмэлт, өөрчлөлтийг 2020.05.25-аас улс орон даяар дагаж мөрдөхөөр болсон нь чухал шийдвэр байсан. 2020 оны УИХ-ын сонгуульд аль нам ялах нь тодорхойгүй байсан бөгөөд 2016-2020 оны УИХ дахь олонх дараагийн сонгуулиар олонх эсхүл цөөнхийн аль нь ч болох боломжтой байсан учраас 2019 онд Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төслийг хэлэлцэж батлахдаа зөвхөн олонхийн өнцгөөс бус, харин цөөнхийн талаас нь ч харах, аль нэг улс төрийн намын сонирхлын үүднээс бус, харин шударга гэж хүлээн зөвшөөрөгдөхөөр ажиллах нөхцөлд байсан гэж хэлж болно. Өөрөөр хэлбэл, Үндсэн хуульд оруулсан нэмэлт, өөрчлөлт нь 2020 оны сонгуулийн дүнгээр бүрдэх дараагийн УИХ болон Засгийн газрын бүрэн эрхээс эхэлж хэрэгжих учраас УИХ-ын тухайн бүрэлдэхүүн өөртөө зориулж энэ нэмэлт, өөрчлөлтийг батлаагүй.

Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төслийг өргөн барьснаас хойш таван сарын турш Ерөнхийлөгч, АН, бусад намын саналыг тусгах үүднээс 62 гишүүний төсөлд зарим өөрчлөлт орсон ч гол агуулга нь хэвээр батлагдсан. Дүнгээр нь харвал, 62 гишүүний төсөл Үндсэн хуулийн 70 зүйлийн 20 зүйл, 50 шахам заалтыг хөндсөн байсан бол Үндсэн хуульд оруулсан нэмэлт, өөрчлөлт 19 зүйл, 36

заалттай болсон бөгөөд Үндсэн хуулийн 28.5 хувийг нь хөндсөн. Ерөнхийлөгч, АН, бусад намын саналаас тусгасан заалтуудын тоймлон үзүүлье.

Ерөнхийлөгч 2019.07.16-нд санал, төсөл ирүүлснээс нийтдээ 15 саналыг нь Үндсэн хуульд оруулсан нэмэлт, өөрчлөлтөд тусгасан бөгөөд үүний тал нь 62 гишүүний төсөлд тусгагдаагүй шинэ заалтууд юм. Байгал баялаг төрийн нийтийн өмч байх, хууль санаачлах эрхийн хүрээ, хуулиар тогтоох, хөгжлийн болон үндэсний аюулгүй байдлын бодлогод нийцүүлэн Засгийн газрын үйл ажиллагааны хөтөлбөрийг боловсруулах, тусгаар тогтнол, нутаг дэвсгэрийн бүрэн бүтэн байдлыг үгүйсгэх зорилгоор ард нийтийн санал асуулга явуулахыг хориглох, сонгогчдын нэг хувиас доошгүй тооны иргэд эвлэлдэн нэгдэж нам байгуулах, шүүхийг тойргийн зарчмаар байгуулах, засаг захиргаа, нутаг дэвсгэрийн нэгжийг өөрчлөх журмыг тодорхой болгох заалтууд Ерөнхийлөгчийн саналаар шинээр оржээ. Шүүхийн сахилгын хороог байгуулах зэрэг бусад саналын хувьд 62 гишүүний төслийн агуулгатай давхцаж, нэгтгэгдэн тусжээ.

Улс төрийн намуудын саналаас Үндсэн хуульд оруулсан нэмэлт, өөрчлөлтөд чамгүй олон туссан. Жишээлбэл, АН УИХ-д хамгийн олон судалтай байх үед 2015 онд өргөн баригдсан төслийн 80 орчим хувь 2019 оны нэмэлт, өөрчлөлтөд үзэл санаагаараа орсон. АН-ын зөвлөлөөс 2019 оны 7, 8, 10 дугаар сард саналаа ирүүлснээс 11 санал нь үзэл санаагаараа нэмэлт, өөрчлөлтөд шингэсэн бөгөөд эдгээрийн нэлээд нь 62 гишүүний төслийн холбогдох заалттай агуулгын хувьд давхацсан. Жишээлбэл, баялгийн сан ажиллуулах, УИХ өөрөө тарах асуудлыг Ерөнхийлөгч УИХ-ын даргатай зөвшилцөн санал болгох, УИХ улсын төсөл батлахдаа Засгийн газрын өргөн мэдүүлсэн төсвийн зарлагын болон алдагдлын хэмжээг нэмэгдүүлэхийг хориглох, УИХ-ын гишүүнийг эгүүлэн татах үндэслэлийг тодорхой болгох зэрэг санал нь 62 гишүүний төслийн агуулгатай давхцан оржээ. Ерөнхий сайд танхимаа өөрөө бүрдүүлэх заалт (төслийн амин сүнс болсон заалтуудын нэг) нь Хоёрдугаар хэлэлцүүлэг дээр дэмжигдээгүй унасан байсан боловч хоёрдугаар хэлэлцүүлгийн дараах зөвшилцлийн хүрээнд АН уг заалтыг оруулах санал гаргаснаар Үндсэн хуульд орж батлагдсан билээ. Мөн, УИХ-ын гадна буй намуудын санал ч тусгагдсан. Жишээлбэл, ШЕЗ-ийн бүрэлдэхүүнийг заах, Шүүхийн сахилгын хороог бие даалган байгуулах, Ерөнхий сайд кабинетаа бүрдүүлэх

заалтуудыг хасахгүй байх, нутгийн удирдлагатай холбоотой хэт олон асуудлыг хөндөхгүй байх тухай ХҮН-ын шаардлага биелэгдсэн.

Үндсэн хуульд оруулсан нэмэлт, өөрчлөлт нь Үндсэн хуулийн үндсэн бүтэц, суурь үзэл баримтлалд нийцсэн байхын зэрэгцээ нийт зүйлийн 35 хувиас хэтэрч болохгүй учраас Ерөнхийлөгчийн 15 санал, АН-ын 11 санал, бусад намын болон иргэдийн саналыг тусгахын тулд 62 гишүүний төслийн зарим чухал заалтыг хасах, өөрчлөхөөс өөр аргагүй болсон. Энэ мэтээр буулт хийж байж Үндсэн хуулийн нэмэлт, өөрчлөлт тал талын дэмжлэг авч гурван удаагийн хэлэлцүүлгээр өндөр босгыг даван батлагдсан. УИХ нэмэлт, өөрчлөлтийн төслийн зүйл бүр дээр нь хэлэлцэж, эхний хэлэлцүүлэг дээр нийт гишүүнийхээ гуравны хоёрын саналаар, хоёр болон гуравдугаар хэлэлцүүлгүүд дээр дөрөвний гурваас буюу 57-оос доошгүй гишүүний санал нэгдэж байж батлагдсан. Зарчмынхаа хүрээнд зарим буулт, зөвшилцлийг хийхгүй бол 57-оос дээш тооны гишүүний санал авч чадахгүй байх байсан. Ижил төстэй түүх сөхвөл 1991-1992 онд Ерөнхийлөгчийг ард түмнээс шууд сонгохыг шаардаж байсан 200 гаран депутатын саналыг аваагүй бол Үндсэн хууль батлагдаж чадахгүй байх байсан, улмаар улс төрийн гүнзгий хямрал, зөрчилдөөн рүү ч орох эрсдэл байсныг үгүйсгэх аргагүй. Иймэрхүү зарим буулт нь өнөөдрийн бидний тулгамдсан зарим асуудлын шалтгаан боловч томоороо бол 1992 оны Үндсэн хууль баталсан нь түүнийг батлаагүй байснаас хамаагүй дээр байсан.

Ардчиллын нэг гайхалтай тал бол иргэд хэрхэн амьдрах суурь дүрмээ батлахад шууд буюу шууд бусаар оролцох боломжтой байдаг явдал. Нэгэнт иргэд, тэдгээрийн төлөөлөгч нар нь амьдралын туршлага, үзэл бодол, итгэл үнэмшлээр ялгаатай тул уг дүрмийн агуулга ямар байх вэ гэдэг дээр санал зөрөлддөг. Гэхдээ, ардчилсан улсын иргэдийн нийтлэг үнэт зүйл нь иргэдийг Үндсэн хуулийн сууриуд дээр санал нэгдэхэд тусалдаг бөгөөд зарим нарийвчилсан асуудал дээр харилцан буулт хийхийг шаарддаг. Жишээлбэл, мэргэжлийн хүмүүс УИХ-ын гишүүдийг тоог нэмэх, Ерөнхийлөгчийг УИХ-ын өргөтгөсөн бүрэлдэхүүнээс сонгох хэрэгтэй гэж үзэж байсан бол иргэдийн дийлэнх олонх үүнийг дэмжихгүйг асуулгын дүн харуулсан. Зарим иргэн УИХ-ыг хоёр танхимтай болгох хэрэгтэй гэж үздэг бол энэ нь зайлшгүй шаардлагатайг харуулсан судалгаа байхгүйн зэрэгцээ суурь шинжтэй хэт олон нэмэлт, өөрчлөлт хийхэд хүргэх учраас энэ удаа

татгалзсан. Ямар ч гэсэн 62 гишүүний өргөн барьсан төсөл урагшаа тав алхах байсан бол Үндсэн хуульд оруулсан нэмэлт, өөрчлөлт гурав алхана гэж зүйрлүүлж хэлж болно. Заавал тав алх, чадахгүй бол гурав ч битгий алх гэх нь утгагүй.

Үндсэн хуульд оруулсан нэмэлт, өөрчлөлт нь сүүлийн 20 жилийн алдаа оноог дэнсэлж засаж сайжруулахад анхаарсан. Юуны өмнө, 1998-2000 онд үүссэн Үндсэн хуулийн хямралыг шийдвэрлэхийн тулд 1992 оны Үндсэн хуульд анх удаа нэмэлт, өөрчлөлт оруулсан. 1996-1999 онд ажилласан УИХ-ын бүрэлдэхүүн (Ардчилсан холбоо эвсэл олонх байсан) энэхүү нэмэлт, өөрчлөлтийг 1999.12.24-нд онд батлагдсан ч түүнийг Үндсэн хуулийн цэц 2000 оны 2 дугаар тогтоолоороо хүчингүй болсон. Улмаар, 2000 оны сонгуулийн үр дүнд байгуулагдсан УИХ-ын шинэ бүрэлдэхүүн (тухайн үеийн МАХН, одоогийн МАН олонх болсон) энэхүү нэмэлт, өөрчлөлтийг үг үсэг өөрчлөхгүйгээр яг тэр агуулгаар нь 2000.12.14-нд баталсан. Эндээс үзэхэд 2000 онд Үндсэн хуульд оруулсан нэмэлт, өөрчлөлт нь УИХ-ын хоёр өөр бүрэлдэхүүн дамнан хэлэлцэгдэж батлагдсан. 2000 онд Үндсэн хуульд оруулсан долоон нэмэлт, өөрчлөлт оноотой, алдаатай болсныг 20 жил шүүн хэлэлцсэн. Эдгээр долоон нэмэлт, өөрчлөлтийн зургааг нь 2019 онд Үндсэн хуульд оруулах нэмэлт, өөрчлөлтөөр засаж сайжруулсан.

УИХ-ын гурван бүрэлдэхүүн дамжин яригдсан асуудлыг шийдэхийг зорьсон. 2011, 2012, 2015 онд Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төслийг УИХ-д өргөн мэдүүлж байсны ерөнхий агуулгаас 2019 оны Үндсэн хуулийн нэмэлт, өөрчлөлтөд тусгасан. Тухайлбал, 2015 онд УИХ-ын 47 гишүүн өргөн мэдүүлсэн төслийн бараг 80 орчим хувь үзэл санаагаараа Үндсэн хуульд оруулсан нэмэлт, өөрчлөлтийн төсөлд тусаж эцэслэн батлагдсан. Жишээлбэл, Засгийн газрыг тогтвортой, үр нөлөөтэй болгохын тулд Засгийн газрыг огцруулах босгыг өндөрсгөх, Засгийн газрын бүрэлдэхүүний гуравны нэгээс илүүгүй нь УИХ-ын гишүүн байх, Ерөнхий сайд кабинетаа өөрөө бүрдүүлэх, УИХ-ын үйл ажиллагааг сайжруулах, шүүхийг хараат бус, шударга болгох гэх мэт санаа орсон. Үндсэн хуульд оруулсан нэмэлт, өөрчлөлтийн үзэл баримтлал нь зөвхөн УИХ-ын байгуулсан ажлын хэсэг дээр шийдэгдээгүй, харин олон жил яригдсан учраас зөвхөн нэг намын эсхүл явцуу ашиг сонирхлоор боловсруулагдсан гэж үзэх нь өрөөсгөл.

Хэдий тал талын санал, үзэл бодлыг тусгах маягаар буулт хийсэн ч Үндсэн хуульд оруулсан нэмэлт, өөрчлөлт нь 62 гишүүний төсөл дахь парламентын засаглалыг бэхжүүлэх агуулгаа ноён нуруугаа алдаагүй. Тодруулбал, энэ нэмэлт, өөрчлөлт Засгийн газрыг тогтвортой, үр нөлөөтэй ажиллуулах; түүнд тавих парламентын хяналтыг сайжруулж хууль тогтоох ажиллагааг чанаржуулах; улс төрийн намыг дотоод зохион байгуулалтын хувьд ардчилсан, хөрөнгө, орлогын эх үүсвэр, санхүүжилт нь нийтэд ил тод болгож бэхжүүлэх, УИХ-ын сонгуулийн тухай хуулийг тогтвортой биелүүлэх; Үндсэн хуулиар олгоогүй бүрэн эрхийг Ерөнхийлөгчид хуулиар нэмж олгохоос бүрэн татгалзаж түүнийг уг албан тушаалд дахин нэр дэвших, дахин сонгогдохыг нь хориглох замаар парламентын засаглалтай улсын ерөнхийлөгчийн байр сууринд аваачих; шүүх эрх мэдлийг хараат бус, шударга болгох; нутгийн удирдлагыг боловсронгуй болгох; байгалийн баялаг ашиглах зарчмыг тодорхой болгоход чиглэсэн. Иймд, Үндсэн хуульд оруулсан нэмэлт, өөрчлөлт нь 1992 оны Үндсэн хуулийн үндсэн бүтэц, суурь үзэл баримтлал (парламентын засаглал)-д нийцүүлэн боловсруулагдсан учраас Монгол улсын аюулгүй байдал, ардчилал, тогтвортой хөгжлийн суурийг бэхжүүлсэн алхам болсон.

Дүгнэлт

2019 онд Үндсэн хуульд нэмэлт, өөрчлөлт оруулсан процессын үнэ цэнэ, гол сургамжийг дүгнэж хэлье. Үндсэн хуульд оруулсан энэхүү нэмэлт, өөрчлөлт нь "Дордохын долоо" гэгдэх 2000 оны нэмэлт, өөрчлөлтийг засаж залруулаад зогсохгүй сүүлийн гурван парламент дамжин хэлэлцсэн агуулгаар төслийг гурван жилийн турш тал талын оролцоотой боловсруулж, зөвшилцлийн үндсэн дээр хэлэлцэж эцэслэн баталсан. Энэ үйл явцаас Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төслийг боловсруулах болон батлахдаа судалгаанд суурилж үндэслэлтэй хандах, иргэдийн санаа бодол, судлаачид, хуульчид, мэргэжлийн хүмүүс, байгууллагын санал, дүгнэлтийг авч харгалзах, УИХ-д суудалтай болон суудалгүй намуудын зөвшилцлийг хангаж Монгол Улсын Үндсэн хуульд нэмэлт, өөрчлөлт оруулах журмын тухай хуулийг ягштал баримтлах нь Үндсэн хуулийн үндсэн бүтэц, суурь үзэл баримтлалыг хамгаалах, үндэсний зөвшилцлийг хангаж, хүлээн зөвшөөрөгдөх байдлыг хангахад тустай гэдэг нь харагдаж байна. Мөн, Монгол Улсын Үндсэн хуульд нэмэлт, өөрчлөлт оруулах тохиолдолд доод тал нь УИХ-ын хоёроос доошгүй бүрэлдэхүүнээр

дамжин шүүн хэлэлцэж батлах (өөрөөр хэлбэл, Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төсөл өргөн баригдсан бол УИХ-ын ээлжит сонгуулийн дараа түүнийг дахин хэлэлцэж нягталсны үндсэн дээр батлах), мөн УИХ-ын бүрэлдэхүүн өөрийн явцуу сонирхлоор хандахаас сэргийлэх үүднээс Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийг УИХ-ын ээлжит сонгуулийн дараагаас эхлэн дагаж мөрдөхөөр шийдвэрлэх жишгийг 2000, 2019 оны Үндсэн хуульд оруулсан нэмэлт, өөрчлөлтүүд тогтоосон. Энэ жишгийг баримтлах нь алдаа мадаг гарахаас сэргийлэхэд тустай.

АНУ-ын Үндсэн хуульд 1791 оноос хойш 230-аад жилийн хугацаанд 17 нэмэлт, өөрчлөлт оруулсантай харьцуулж үзэхэд л 2019 онд Монгол Улсын Үндсэн хуульд оруулсан нэмэлт, өөрчлөлт тоо хэмжээ, агуулга, цар хүрээгээрээ дорвитой шинэчлэл. УИХ Үндсэн хуулийн 19 зүйл дээр 36 заалтыг нэмж, өөрчилж, хасна гэдэг нь тоон талаасаа олон төдийгүй агуулга талаасаа 1992 оны Үндсэн хуулийн үндсэн бүтэц, суурь үзэл баримтлалыг бэхжүүлэхийг зорьсон. Үндсэн хууль оруулах нэмэлт, өөрчлөлт батлагдсан төдийгөөр энэ бүхэн шууд бодит байдал болохгүй. Үүнээс гадна дагаж гарах 50 шахам хуулийг Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн үзэл баримтлалд нийцүүлэн судалгаанд үндэслэн сайн боловсруулж батлах, зөв, тууштай хэрэгжүүлбэл үр дүнгээ өгөх болов уу. УИХ-ын 2020.01.09-ний 02 дугаар тогтоол, түүний хавсралтаар баталсан “Монгол Улсын Үндсэн хуульд оруулсан нэмэлт, өөрчлөлтөд хууль тогтоомжийг нийцүүлэх хуваарь” нь 2019 онд Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн үзэл баримтлалыг тодорхойлоход шийдвэрлэх үүрэгтэй гол агуулгыг товч тусгасныг хуулиудыг боловсруулахад баримтлах нь зүйтэй.

Bhushan Ramkrishna
Justice of the Supreme Court of India

THE CONSTITUTIONAL REVIEW IN CHALLENGING TIMES – AN INDIAN PERSPECTIVE

Hon'ble Mr. Justice Chinbat Namjil, Chief Justice, Constitutional Court of Mongolia, my sister and brother Judges and delegates from the Member States of the Association of Asian Constitutional Courts & Equivalent Institutions (AACC), dignitaries both on the dais and of the dais, it gives me a great privilege and honour to be with you all,this afternoon toparticipate in thediscussion on an important subject – the Constitutional Review in Challenging Times.

We all are homesto major democracies in the world. We share a common base with cultural, social, economic, political and linguistic diversities. The problems faced by most of the Members of AACC are common. Many of the Members face the problem of economic and social equality and a population with growing poverty.

I therefore express my gratitude to Hon'ble the Chief Justice of the Constitutional Court of Mongolia for hosting this important event to address the problems faced by the member countries and find out solutions by the indigenous and homegrown approaches. Cross-border dialogue can play a vital role in the continuous process of evolution of the Constitution and democracies.

Though democracy has its different facets, the three important pillars of rule of law are justice, liberty and equality which are at the very foundation of democracy.

It cannot be disputed that the role of constitutional courts become very vital in the promotion and protection of democratic values and rule of law. Judicial independence or independent judiciary plays a pivotal role in regulating, restructuring and rejuvenating the core conscience of civil society.

Every judicial decision affects not only the concerned party but also

the whole society. Independence of judiciary and access to justice are the twin features that are ingrained in the notion of rule of law.

It cannot also be disputed that South Asian democracies are essentially dynamic. The changes may be gradual, but these changes indicate the democracy's desirability towards social transformation. In the neoliberal era that the world order is stepping in, natural law principles are playing a pervasive role in the realms of ethics, politics, governance, society, culture and law.

It is a matter of great coincidence that just a couple of days ago, India has celebrated diamond jubilee of its independence. As all of you know that when India attained freedom, it was a country full of diversities. The country consisted of various States having geographical, linguistic, cultural and ethnic diversities. Many of the PrincelyStates merged to form a unified India. On a social plain, it was a society divided into various blocks/compartments, wherein travel from one compartment to another was impossible. On an economic plain, the vast economy of the country was concentrated in few hands whereas majority of population was deprived of even the basic needs of livelihood. In this backdrop, the Constituent Assembly, which consisted of Members from different political ideologies, was required to draft a Constitution suitable for a country full of diversities.

Dr. B.R. Ambedkar, the Principal Architect of the Indian Constitution considered the Constitution as an instrument for revolution. The Indian Constitution, in its Preamble itself, has vowed to achieve justice – social, economic and political. In this regard, it will be relevant to refer to the words of Dr. Ambedkar in his speech just a day prior to the adoption of the Constitution on 26th November 1949:

> "Political democracy cannot last unless there lies at the base of its social democracy. What does social democracy mean? It means a way of life which recognizes liberty, equality, and fraternity as the principles of life. These principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of the trinity. Liberty cannot be divorced from equality; equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become the natural course of things. It would require a constable to enforce them."

The working of the Indian Constitution in the last 72 years reveals that the Indian Constitution has been successful in transforming Indian society by bringing in principles like liberty, rule of law, due process, justice, constitutional morality etc. It made the relationship between the individual and the state morally synchronized and protected.

Part III of the Indian Constitution containing Fundamental Rights protects various rights which are necessary for a citizen to lead ahuman life with dignity. Part IV containing Directive Principles of State Policy is aimed at having an egalitarian society.

The initial conflict between the Fundamental Rights and Directive Principleswas put to rest with the judgment of the Supreme Court rendered by 13 Judges in the case of ***Kesvananda Bharti v. State of Kerala and Another***[1]which emphasized on harmony between the Directive Principles and Fundamental Rights. They were held to be of equal importance. It was held that the Directive Principles and the Fundamental Rights together and only together form the soul of the Indian Constitution.

The journey of last 72 years would show that the Indian Government and the Constitutional Courts in the country have played a pivotal role in an attempt to achieve social and economic equality along with political equality.

Various enactments in order to eliminate economicinequalities were enacted by the Indian Parliament. Though, the Supreme Court found that some of these enactments violated the Fundamental Rights of the citizens, but since they were found to be enacted in order to further the promise of economic justice, these enactments were upheld. On a social plain, in order to bring the millions of citizens into mainstream who, on account of social and geographical reasons, were on the periphery of society, special provisions were made for bringing them in the mainstream. Principles of corrective justice, distributive justice, proportional equality were invoked to protect the special provisions made for advancement of these backward classes of citizens.

The concept of equality does not mean that everyone is treated equally. If everyone is treated equally, it will lead to widening of inequalities. Therefore, equal treatment to equals and unequal treatment to unequals is at the very soul of the equality clause in the Indian Constitution.

Various rights including the right to education, right to clean drinking water, right to food, right to shelter, right to pollution free and clean environment and right to health were read as Fundamental Rights

[1] (1973) 4 SCC 225

by corelating them to the Directive Principles. Due to paucity of time, it may not be possible to delve upon them in detail. However, a reference to some of the judgments will be necessary to study the role of Constitutional Courts in India.

In ***Maneka Gandhi v. Union of India and Another***[2], the Supreme Court held that for a law to be held valid, it must prescribe a procedure which is fair, just and reasonable and not fanciful, oppressive, or arbitrary.

In the case of ***Bandhua Mukti Morcha v. Union of India and Others***[3], the Supreme Court issued various directions to ensure that children were not exploited and the interest of the labourers were safeguarded by providing them necessary health care and preventing hazardous situation.

In ***Khatri and Others (II) v. State of Bihar and Others***[4], famously known as ***Bhagalpur Blinding Case***, the Supreme Court addressed the issue of compensating undertrial prisoners, who had been blinded by police authorities. After all, the power to prevent abuse by State Authorities is the acid test of effective judicial review.

In ***Joseph Shine v. Union of India***[5], the Constitution Bench of the Supreme Court struck down the adultery provisions as unconstitutional.

In ***Shayara Bano v. Union of India and Others***[6], the practice of instant triple talaq was held to be illegal.

In ***Vineeta Sharma v. Rakesh Sharma and Others***[7], the Supreme Court again made an important stride towards gender equality by confirming equal coparcenary rights to a Hindu woman in Hindu Undivided Families.

These decisions, amongst several others, are important milestones towards the goal of ensuring gender equality.

In ***Navtej Singh Johar and Others v. Union of India through Secretary, Ministry of Law & Justice***[8], Section 377 of the IPC was read down to exclude consensual same-sex relationship between adults.

In ***K.S. Puttaswamy and Another v. Union of India and Others***[9],

[2] (1978) 1 SCC 248
[3] (1997) 10 SCC 549
[4] (1981) 1 SCC 627
[5] (2019) 3 SCC 39
[6] (2017) 9 SCC 1
[7] (2020) 9 SCC 1
[8] (2018) 10 SCC 1
[9] (2017) 10 SCC 1

the Constitution Bench guaranteed right to privacy as a Fundamental Right.

In the last 2 or 3 years, the entire globe is facing challenges on account of the pandemic. However, the Constitutional Courts in India responded immediately to the situation. In a day or two of the lockdown, the courts shifted to virtual mode and ensured that no citizen was deprived of approaching the court and ensured that his Fundamental Rights are protected.

In ***Re: Problems and Miseries of Migrant Labourers***[10], the Supreme Court took *suomotu* cognizance of the migrant labour crisis and directed the provision for food rations to migrant workers irrespective of whether they had ration cards or not. The principle of "One Nation, One Ration Card" was emphasized so that their migration would not lead to loss of food security.

In ***Re: Children in Need of Care and Protection due to Loss of Parents During Covid 19***[11],the Supreme Court took *suomotu* cognizance of the problems faced by the children, who had lost their parents due to Covid. Directions were issued to ensure that not only such children and their properties are protected but also to ensure that they are not deprived of their education due to the unfortunate loss of their parents.

In ***BudhadevKarmaskar v. State of West Bengal and Others***[12], the Court took cognizance of the most neglected class of society – the sex-workers. Various directions were issued to ensure that their right to live with dignity is not compromised. During pandemic, directions were issued to provide them food and other basic amenities.

It can thus be seen that the Indian Constitution and particularly its Constitutional Courts have responded with alacrity to these challenges. The review of the working of the Indian Supreme Court and High Courts would show that it has always marched ahead even in challenging times and played its role in preserving, achieving and promoting the promise of social and economic justice as enshrined in the Indian Constitution.

I once again thank the organizers for giving me this opportunity to share my thoughts on the Constitutional Review in Challenging Times - an Indian Perspective.

[10] 2021 SCC OnLine SC 441
[11] SMW (C) No. 6 of 2021 dated 4th April 2022
[12] 2021 SCC OnLine SC 3254

Latip Jumabaev
Judge of the Constitutional Court of the Kyrgyz Republic

ON SOME ASPECTS OF THE IMPLEMENTATION OF CONSTITUTIONAL JUSTICE IN THE KYRGYZ REPUBLIC IN THE CONTEXT OF THE COVID-19 PANDEMIC

Ladies and gentlemen!

First of all, allow me on behalf of the Constitutional Court of the Kyrgyz Republic and on my own behalf, to welcome the participants of V Congress and wish everyone effective and fruitful work!

The rapid growth in the spread of coronavirus infection COVID-19 prompted the World Health Organization on March 11, 2020 to declare it a pandemic, which subsequently covered more than 188 countries, including the Kyrgyz Republic.

For the first time, the Kyrgyz Republic found itself in an emergency situation of a biological and social nature, under the destructive influence of which, all spheres of activity of the state and society underwent significant changes.

Despite this, preventive measures were immediately taken in the Kyrgyz Republic to mitigate the devastating impact, primarily, on the health of the country's population, which inevitably required the introduction of restrictive measures aimed at minimizing the spread of COVID-19 to other regions of the country.

According to Article 4 of the International Covenant on Civil and Political Rights, in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties may take measures derogating from their obligations to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law.

On April 24, 2020, the UN Human Rights Committee adopted a special Statement on derogations from the Covenant in connection with

the COVID-19 pandemic, in which one of the statement was that States parties should replace COVID-19-related measures that prohibit activities relevant to the enjoyment of rights under the Covenant with less restrictive measures that allow such activities to be conducted, while subjecting them as necessary to public health requirements, such as physical distancing.

Thus, the Decrees of the President dated March 24, 2020 and April 14, 2020 established temporary restrictions on the rights and freedoms of citizens and their additional duties in emergency zones, in particular in the city of Bishkek, on the territory of which the constitutional control of the Kyrgyz Republic is deployed. For the period of the state of emergency, a ban was introduced on the movement of people and personal vehicles unless absolutely necessary.

In fairness, it should be noted that, despite the said ban, it did not affect the right of citizens to health care, since citizens were allowed to move to purchase medicines and medical devices, to go to a medical facility in an emergency and in other cases that threaten their life and health.

The COVID-19 pandemic, changed the usual way of life of society and the country as a whole, made certain adjustments to the activities of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic, which, in turn, resulted in a decrease in the number of cases under consideration compared to the previous year. In particular, if in 2019 the Constitutional Chamber received 81 appeals in the order of constitutional proceedings, then their number in 2020 was 57, and in 2021 50 appeals.

Despite the restrictions imposed in connection with COVID-19, the Constitutional Chamber ensured the implementation of abstract constitutional control, according to which everyone has the right to challenge the constitutionality of a law and other regulatory legal act if they believe that they violate the rights and freedoms recognized by the Basic Law.

Thus, in 2020, the Constitutional Chamber issued 11 decisions and 6 resolutions, and in 2021, 9 decisions and 8 resolutions. Among the decisions of the Constitutional Chamber adopted at the height of the pandemic, the decision of December 2, 2020 should be noted. The Constitutional Chamber recognized the Constitutional Law on the suspension of Articles 38, 63 of the constitutional law "On Elections of the President of the Kyrgyz Republic and Deputies of the Parliament of the Kyrgyz Republic" as not contradicting the Constitution. The contested constitutional law suspended the operation of Articles 38 and 63 of the above constitutional laws of the Kyrgyz Republic, which regulate the procedure for holding repeat elections,

if they are declared invalid or not held.

The Constitutional Chamber noted that in connection with the spread of coronavirus infection, a state of emergency was introduced on March 22, 2020. In addition, the events that took place on October 5-6, 2020, due to the dissatisfaction of a certain part of society with the results of the elections and the existing electoral system, were accompanied by riots and had all the outlines of social instability. That is, it is impossible to deny the evidence of the fact that the Kyrgyz Republic is in a state of a large-scale socio-political crisis. In view of this, the Jogorku Kenesh (Parliament) had all the formal grounds for adopting the disputed constitutional law in a special regime, provided for by its Regulations.

The mention of the events that took place on October 5-6, 2020 in direct connection with the said decision of the Constitutional Chamber was not without reason, since it, having laid the foundation for the constitutional reform in the socio-political life of the republic, opened a new page in the history of Kyrgyzstan.

On April 11, 2021, the draft law of the Kyrgyz Republic "On the Constitution of the Kyrgyz Republic" was submitted to a referendum (nationwide vote). Following the results of the referendum, the majority of the population that participated in the referendum voted for the adoption of the new Constitution of the Kyrgyz Republic. Thus, the Constitution of the Kyrgyz Republic adopted as a result of the referendum came into force on May 5, 2021, in accordance with Article 97 of which the Constitutional Chamber was transformed into the Constitutional Court of the Kyrgyz Republic with the expansion of its powers.

The Constitutional Court consists of nine judges: the chairman, the deputy chairman and seven judges of the Constitutional Court. Judges of the Constitutional Court are elected by at least half of the total number of deputies of the country's parliament until reaching the age limit.

The changes also affected the procedure for appointing the chairman of the Constitutional Court and his deputy, according to which the chairman of the Constitutional Court is appointed by the President at the proposal of the Council of Judges and with the consent of at least half of the votes of the total number of deputies of the Parliament from among the judges of the Constitutional Court for a period of 5 years. The deputy chairman of the Constitutional Court is appointed by the President on the proposal of the chairman of the Constitutional Court for a period of 5 years. In the Kyrgyz Republic, the Council of Judges is an elected body of judicial self-government, which operates between congresses of judges and protects the

rights and legitimate interests of judges, considers issues of bringing judges to disciplinary liability, controls the formation and execution of the budget of courts, and organizes advanced training for judges.

In addition, as it was noted, the powers of the Constitutional Court are supplemented by such powers as:

- giving an official interpretation of the Constitution;
- resolving disputes over competence between the branches of state power;
- issuing an opinion on compliance with the established procedure for bringing charges against the President.

At the same time, the innovations affected not only the powers of the Constitutional Court of the Kyrgyz Republic in terms of their increase, but also the status and organization of the activities of the Constitutional Court of the Kyrgyz Republic, as well as directly constitutional legal proceedings.

Thus, the novelty of the newly adopted constitutional law "On the Constitutional Court of the Kyrgyz Republic" was the ability of the body of constitutional control to consider cases according to a written procedure, i.e. the court session in certain categories of cases will be held in the absence of participants in the trial, which, in turn, will entail procedural savings for both the court and the parties. At the same time, a written procedure is provided for in cases on the official interpretation of the Constitution, on giving an opinion on the constitutionality of international treaties that have not entered into force for the Kyrgyz Republic, on a request from a judge (judges), on considering a complaint against a decision of a panel of judges to refuse or accept an appeal for proceedings.

With regard to procedural economy, it should be noted that the timing of the consideration of cases has also undergone a number of changes. So, if the Constitutional Court considers and issues an act on an appeal accepted for proceedings within six months (previously this period was 5 months) from the date of its acceptance for proceedings, then in cases of interpretation Constitution, as well as related to the request of the judges, the act of the Constitutional Court must be issued within two months. In cases on giving an opinion on compliance with the established procedure for bringing charges against the President, the act of the Constitutional Court must be issued within one month.

The changes also affected the deadlines for the execution of acts of the Constitutional Court. So, instead of a four-month deadline, two-

month and three-month deadlines for the implementation of acts have been introduced, differentiated by types of regulatory legal acts. Thus, the Cabinet of Ministers of the Kyrgyz Republic, no later than three months, submits to the parliament a draft constitutional law or a law arising from the decision of the Constitutional Court. In turn, the President, the Cabinet of Ministers, state authorities and local self-government bodies, which have normative powers in accordance with the law, no later than two months, adopt a new normative legal act or amend a normative legal act recognized as unconstitutional.

One of the innovations can rightfully be considered the consideration of cases online, since this was facilitated by circumstances caused, first of all, by the need to prevent the spread of coronavirus infection and to maintain physical distance in this regard.

The current Constitution is the product of a complex and lengthy process of its creation, during which public proposals were taken into account on such issues as limiting state intervention in the life of society and the individual, forms of organization and exercise of state power, individual rights and freedoms. At the constitutional level, rights and freedoms are recognized and guaranteed that fully comply with international human rights standards.

Today, the Constitutional Court is the most important institution of state power, and being the core element of the establishment of the foundations of the constitutional system, the protection of human and civil rights and freedoms, compliance with the principle of separation of powers and the provision of the constitutional mechanism of checks and balances, it is designed to foster respect for the Basic Law of the country both on the part of state authorities and officials, and from the sides of citizens. The Constitutional Court forms fundamental legal positions in its activities, which in many respects strategically orient the legislative, executive and judicial branches of government.

The Constitutional Court does not replace other authorities and does not interfere with their competence, it occupies an important and definite place in the system of state authorities. On the one hand, it is independent of them, on the other hand, Court can influence their activities with its decisions.

Thank you for attention!

Жумабаев Латип Пазылович
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О НЕКОТОРЫХ АСПЕКТАХ ОСУЩЕСТВЛЕНИЯ КОНСТИТУЦИОННОГО ПРАВОСУДИЯ В КЫРГЫЗСКОЙ РЕСПУБЛИКЕ В УСЛОВИЯХ ПАНДЕМИИ COVID-19

Уважаемые дамы и господа!

Позвольте от имени Конституционного суда Кыргызской Республики и от себя лично поприветствовать участников сегодняшнего Конгресса и пожелать всем эффективной и плодотворной работы!

Уважаемые участники Конгресса**!**

Стремительный рост распространения коронавирусной инфекции COVID-19 подвигло Всемирную организацию здравоохранения 11 марта 2020 года объявить её пандемией, которая, впоследствии охватила более 188 стран, в том числе и Кыргызскую Республику.

Кыргызская Республика впервые оказалась в чрезвычайной ситуации именно биолого-социального характера, под деструктивным влиянием которой, все сферы деятельности государства и общества претерпели существенные изменения.

Несмотря на это, в Кыргызской Республике незамедлительно были приняты превентивные меры по смягчению разрушительного удара, прежде всего, по здоровью населения страны, что неизбежно требовало введения ограничительных мер, направленных на минимизацию распространения COVID-19 в другие регионы страны.

Согласно статье 4 Международного пакта о гражданских и политических правах, во время чрезвычайного положения в обществе, когда жизнь нации находится под угрозой, государства могут принимать меры, ущемляющие определённые права человека и в отступление от своих обязанностей и обязательств в рамках международных и региональных правовых соглашений, только в

такой степени, в какой это требуется остротой положения.

Комитет ООН по правам человека 24 апреля 2020 года принял специальное заявление об отступлении от положений Пакта в связи с пандемией COVID-19, в котором одним из указаний было то, что государствам-участникам следует заменить связанные с COVID-19 меры, запрещающие деятельность, имеющую отношение к осуществлению закреплённых в Пакте прав, менее ограничительными мерами, позволяющими осуществлять такую деятельность, и в то же время подчинить её, по мере необходимости, требованиям охраны здоровья населения, таким как физическое дистанцирование.

Так, указами Президента от 24 марта 2020 года и 14 апреля 2020 года установлены временные ограничения прав и свобод граждан и их дополнительные обязанности в зонах чрезвычайного положения, в частности в городе Бишкек, на территории которого дислоцирован орган конституционного контроля Кыргызской Республики. На период действия чрезвычайного положения был введён запрет на передвижение людей и личного транспорта без крайней необходимости.

Справедливости ради стоит отметить, что, несмотря на указанный запрет, он не затронул право граждан на охрану здоровья, так как допускалось передвижение граждан для приобретения ими лекарственных препаратов и медицинских изделий в аптеках, выезда в медицинское учреждение по экстренному случаю и в других случаях, угрожающих их жизни и здоровью.

Пандемия COVID-19, изменившая привычный уклад жизни общества и страны в целом, внесла определённые коррективы и в деятельность Конституционной палаты Верховного суда Кыргызской Республики, выразившиеся, в свою очередь, в уменьшении количества рассматриваемых дел по сравнению с предшествующим годом. В частности, если в 2019 году в адрес Конституционной палаты поступило 81 обращений в порядке конституционного судопроизводства, то их количество в 2020 году составило 57, а в 2021 году 50 обращений.

Несмотря на введённые ограничения в связи с COVID-19, Конституционной палатой была обеспечена реализация абстрактного конституционного контроля, согласно которому каждый имеет право оспорить конституционность закона и иного нормативного правового акта, если считает, что ими нарушаются права и свободы, признаваемые Основным Законом.

Так, в 2020 году Конституционной палатой было вынесено 11

решений и 6 постановлений, а в 2021 году 9 решений и 8 постановлений. Среди принятых, в разгар пандемии, решений Конституционной палаты следует отметить решение от 2 декабря 2020 года. Конституционная палата признала не противоречащим Конституции конституционный Закон о приостановлении действия статей 38, 63 конституционного Закона «О выборах Президента Кыргызской Республики и депутатов Жогорку Кенеша Кыргызской Республики». Оспариваемым конституционным Законом было приостановлено действие статей 38 и 63 конституционного Закона Кыргызской Республики «О выборах Президента Кыргызской Республики и депутатов Жогорку Кенеша Кыргызской Республики», регламентирующих порядок проведения повторных выборов, в случае признания их недействительными или несостоявшимися.

Конституционная палата отметила, что в связи с распространением коронавирусной инфекции с 22 марта 2020 года был введён режим чрезвычайной ситуации. Кроме того, события, произошедшие 5-6 октября 2020 года, обусловленные недовольством определённой части общества итогами выборов и существующей избирательной системой, сопровождались массовыми беспорядками и имели все очертания социальной нестабильности. То есть, очевидность факта нахождения Кыргызской Республики в состоянии масштабного социально-политического кризиса отрицать невозможно. Ввиду чего у Жогорку Кенеша были все формальные основания для принятия оспариваемого конституционного Закона в особом режиме, предусмотренном его Регламентом.

Упоминание событий, имевшихся место 5-6 октября 2020 года, в непосредственной связи с указанным решением Конституционной палаты было неспроста, поскольку оно, заложив основу для проведения конституционной реформы в общественно-политической жизни республики, открыло новую страницу в истории Кыргызстана.

11 апреля 2021 года на референдум (всенародное голосование) был вынесен проект Закона Кыргызской Республики «О Конституции Кыргызской Республики». По итогам проведённого референдума большая часть населения, участвовавшая на референдуме, проголосовала за принятие новой Конституции Кыргызской Республики. Так, принятая в результате проведённого референдума Конституция Кыргызской Республики вступила в силу с 5 мая 2021 года, в соответствии со статьёй 97 которой Конституционная палата была преобразована в Конституционный суд Кыргызской Республики с расширением его полномочий.

Конституционный суд состоит из девяти судей: председателя, заместителя председателя и семи судей Конституционного суда. Судьи Конституционного суда избираются не менее половиной голосов от общего числа депутатов парламента страны до достижения предельного возраста.

Изменения затронули также порядка назначения Председателя Конституционного суда и его заместителя, в соответствии с которым Председатель Конституционного суда назначается Президентом по предложению Совета судей и с согласия не менее половины голосов от общего числа депутатов парламента из числа судей Конституционного суда сроком на 5 лет. Заместитель председателя Конституционного суда назначается Президентом по представлению председателя Конституционного суда сроком также на 5 лет. В Кыргызской Республике Совет судей является выборным органом судейского самоуправления, действующим в период между съездами судей и осуществляющим защиту прав и законных интересов судей, рассмотрение вопросов о привлечении судей к дисциплинарной ответственности, контроль за формированием и исполнением бюджета судов, организацию обучения и повышения квалификации судей.

Кроме этого, как было отмечено полномочия Конституционного суда дополнены такими полномочиями, как:

- дача официального толкования Конституции;
- разрешение споров о компетенции между ветвями государственной власти;
- дача заключения о соблюдении установленного порядка выдвижения обвинения против Президента.

Вместе с тем, новшества коснулись не только полномочий Конституционного суда Кыргызской Республики в части их увеличения, но и статуса и организацию деятельности Конституционного суда Кыргызской Республики, а также непосредственно конституционного судопроизводства.

Так, новеллой вновь принятого конституционного Закона «О Конституционном суде Кыргызской Республики» стала возможность органа конституционного контроля рассматривать дела по письменной процедуре, т.е. судебное заседание по определённым категориям дел будет проводиться в отсутствие участников судебного процесса, что, в свою очередь, повлечёт процессуальную экономию как для суда, так и для сторон. При этом письменная процедура предусматривается по

делам об официальном толковании Конституции, о даче заключения о конституционности не вступивших в силу для Кыргызской Республики международных договоров, о запросе судьи (судей), о рассмотрении жалобы на определение коллегии судей об отказе или о принятии обращения к производству.

Касательно процессуальной экономии следует отметить, что сроки рассмотрения дел также подверглись ряду изменений. Так, если Конституционный суд рассматривает и выносит по принятому к производству обращению акт в течение шести месяцев (раньше этот срок составлял 5 месяцев) со дня его принятия к производству, то по делам о толковании Конституции, а также связанным с запросом судей, акт Конституционного суда должен быть вынесен в течение двух месяцев. По делам о даче заключения о соблюдении установленного порядка выдвижения обвинения против Президента, акт Конституционного суда должен быть вынесен в течение одного месяца.

Изменения коснулись также сроков исполнения актов Конституционного суда. Так, вместо четырёхмесячного срока исполнения введены двухмесячные и трёхмесячные сроки исполнения актов, дифференцированные по видам нормативных правовых актов. Так, Кабинет Министров Кыргызской Республики не позднее трёх месяцев вносит в парламент проект конституционного закона или закона, вытекающий из решения Конституцонного суда. В свою очередь, Президент, Кабинет Министров, органы государственной власти и органы местного самоуправления, обладающие в соответствии с законодательством нормотворческими полномочиями, не позднее двух месяцев, принимают новый нормативный правовой акт либо вносят изменения в нормативный правовой акт, признанный неконституционным в отдельной его части.

Одним из нововведений по праву можно считать рассмотрение дел в режиме онлайн, поскольку этому поспособствовали обстоятельства, вызванные, прежде всего, необходимостью предотвращения распространения коронавирусной инфекции и соблюдения в связи с этим физической дистанции.

Действующая Конституция является продуктом сложного и длительного процесса её создания, в ходе которого учтены предложения общественности по таким вопросам, как ограничение вмешательства государства в жизнь общества и индивида, формы организации и осуществления государственной власти, индивидуальные права и свободы. На конституционном уровне признаны и гарантированы

права и свободы, полностью соответствующие международным стандартам в области прав человека.

Сегодня Конституционный суд – это важнейший институт государственной власти, и будучи стержневым элементом утверждения основ конституционного строя, защиты прав и свобод человека и гражданина, соблюдения принципа разделения властей и обеспечения конституционного механизма сдержек и противовесов, он призван воспитывать уважение к Основному Закону страны как со стороны органов государственной власти и должностных лиц, так и со стороны граждан. Конституционный суд в своей деятельности формирует фундаментальные правовые позиции, которые во многом стратегически ориентируют законодательную, исполнительную и судебную ветви власти.

Конституционный суд не подменяет другие властные органы и не вторгается в их компетенцию, он занимает важное и определённое место в системе органов государственной власти. С одной стороны, он независим от них, с другой – может своими решениями влиять на их деятельность.

Благодарю за внимание!

III

CLOSING REMARKS OF THE 5th CONGRESS OF THE ASSOCIATION OF ASIAN CONSTITUTIONAL COURTS AND EQUIVALENT INSTITUTIONS

CONCLUDING STATEMENT BY H.E. MR. NAMJIL CHINBAT, CHIEF JUSTICE OF THE CONSTITUTIONAL COURT OF MONGOLIA, PRESIDENT OF THE ASSOCIATION OF ASIAN CONSTITUTIONAL COURTS AND EQUIVALENT INSTITUTIONS AT THE FIFTH CONGRESS OF THE ASSOCIATION OF ASIAN CONSTITUTIONAL COURTS

Honorable Judges,

Ladies and Gentlemen,

The Fifth High-Level Congress of the Association of Asian Constitutional Courts on the "Development of the Constitutional Review in Asia" convened with representative physical and on-line participation in Ulaanbaatar city successfully winds up its two days deliberations.

Sunny days accompany our meetings. As Mongols say "open soul is like the sky" Mongolia's crystal blue sky and warm calm weather follow congress meetings as if foreseeing our bright future cooperation.

Our gratitude and tribute go to all AACC members and speakers who have made contributions, shared good experience and knowledge, made interesting and thought-provoking presentations as well as for the support they have displayed to make ongoing AACC congress a success.

Our special thanks go to the Constitutional Courts of the Republic of Korea, Turkey and Indonesia who are paramount supporters, guarantors and reliable tower of strength for the AACC activity. We welcome their high-level presence and participation at the current congress.

We pay tribute to Honorable President Yu Nam Sog of the CC of the Republic of Korea, Honorable President Zuhtu Arslan of the CC of Turkiye Republic, Honorable Anwar Usman, General Justice of the CC of Indonesia, Honorable Kairat Mami, former AACC President and Chairman of Constitutional Council of Kazakhstan for acceptance of our invitation and their personal presence.

In my name and on behalf of the Constitutional Court of Mongolia and AACC may I request our guests and national delegations to convey

our sincere thanks for sending delegations to the heads of the constitutional courts and supervisory agencies of Indonesia, Uzbekistan, Thailand, India and Philippines as well as Russian Federation, Union of Myanmar, Kyrgyz Republic, Islamic Republic of Pakistan, Tajikistan, Bangladesh and Jordan for their on-line participation.

The congress participants in their deliberations noted the constitutional courts and supervisory agencies continue to serve as guarantors of the constitutional governance while protecting democracy, its values, fundamental human rights and freedoms, ensuring a balance of state establishment and governance, safeguarding legal basis for strengthening specificities of the national constitutionality, social and political stability as well as national development. It was reiterated the constitutional review has a vital importance for overcoming modern multiple challenges.

I agree today's world changes, impacts of globalization, speedy technological development, worldwide pandemic, mass migration, flows of refugees, climate change, economic and financial calamities create huge challenges and problems which warrant resolution. Although efforts are being undertaken to address these challenges ruling authorities often make extraordinary decisions distorting a very substance of a rule of law or breaching human rights. Under such complex circumstances for constitutional review makers there is no other task than to protect constitutionality and democratic values, guarantee human rights and freedoms, ensure democracy, prevent countries from constitutional crisis and ensure sustainable development.

The presentations made at the meetings contain countries' good experience, theory, concepts, studies, surveys, practical approaches, interesting ideas and thoughts which have to re-think and reflect on. More specifically:

Mr. Ki Young Kim, Constitutional Court Judge of the Republic of Korea shared his experience how to make decisions on the protection and guarantee personal information at the age of globalization and digital development and how extraordinary restrictions set under COVID regime were suspended by the court decisions. He noted constitutional review bodies should have capacity to understand a substance and content of emerging social changes. They should not forget basic purposes and guide lines of the constitutional review.

Mr. Kairat Mami, Chairman, Constitutional Council of Kazakhstan made interesting presentation on the constitutional review in Kazakhstan, reforms of legal environment of the protection of human rights, computerization of the court meetings. I take this opportunity to welcome the restoration of the Constitutional Court by Kazakhstan and elaboration of a new expanded constitutional review model.

Mr. Andrei Bushev, Constitutional Court Judge of the Russian Federation argued how constitutional review and emerging new challenges could be converted into advantages and new opportunities. Mr. Anwar Usman, General Judge, Constitutional Court, Indonesia made a presentation attracting special attention.

Mr. Jumabaev Latip, Constitutional Court Judge of the Kyrgyz Republic made on-line presentation on the decisions taken during difficult times of the COVID-19 pandemic, reforms of the constitutional review, complaint receipt procedure on basic human rights and emerging changes.

Mr. Gafurov Askarjon, Constitutional Court Vice-Chairman, Uzbekistan presented constitutional reform and development of the constitutional review. Mr. Kuvvatzoda Foteh Juma, Constitutional Court Judge, Tajikistan dealt on the specificity of the constitutional review and its development trends. Mr.O.Munkhsaikhan, Director, Institute of Constitutional Law, State University, Mongolia, Doctor(Ph.D) made interesting report on overcoming difficulties in 2019 with a view to attain all-nation consent to make new amendments to the Constitution of Mongolia.

Mrs.Tagred Hikmat, Constitutional Court Judge of Jordan attracted attention to the theoretic approach and new study and survey on the constitutional review. Mr.Ta Htai, Chairman, Constitutional Tribunal, Union of Myanmar presented his country's good experience on computerization in the COVID-19 pandemic era.

These and other contributions contain multiple ideas, proposals and realizable novelties. Let me cut short my remarks at this due to the time restraint. Let me thank the constitutional courts and their supervisory agencies and all the presentation makers for active participation and deliberation during current congress. Let me also thank all the participants at the meetings sharing their knowledge and experience as well as asking questions and giving answers.

On behalf of the congress organizers I thank interpreters, translators, students, conference room service and all technical personnel and staff for their efforts to make the Fifth Congress a success.

The Fifth AACC Congress comes to completion by the adoption of Ulaanbaatar Declaration which, inter alia, "Reiterates that modern world development calls upon states to strictly observe their constitutions and ensure their effective compliance. It notes that responsibility of the constitutional courts and their supervisory agencies will increase further. It acknowledges that the negative consequences of the COVID-19 pandemic and unpredictable emergency situations will directly affect activities and efforts of the constitutional courts".

Development does not come by itself. It comes by overcoming any challenge, learning from your own lessons or others', taking rightful and reasonable decisions and setting out forward-looking approaches and targets. The principal mechanism is to develop mutual relationship, interaction and sharing experience. I am sure performance of the AACC will have positive impact on the improvement of the constitutional courts and their supervisory agencies in the region and common development and prosperity.

Let me conclude with appeal for "mutual trust – joint efforts – common results".

Finally I invite you to take part in the cultural program on historical traditions, customs and Mongolia's way of life opening tomorrow. Under program you will watch Mongolian traditional festivities. You will see national wrestling, ride horses and experience archery.

ҮНДСЭН ХУУЛИЙН ШҮҮХ, ТҮҮНТЭЙ АДИЛТГАХ БАЙГУУЛЛАГУУДЫН АЗИЙН НИЙГЭМЛЭГИЙН 5 ДУГААР ИХ ХУРЛЫГ ХААЖ МОНГОЛ УЛСЫН ҮНДСЭН ХУУЛИЙН ЦЭЦИЙН ДАРГА, ҮНДСЭН ХУУЛИЙН ШҮҮХ, ТҮҮНТЭЙ АДИЛТГАХ БАЙГУУЛЛАГУУДЫН АЗИЙН НИЙГЭМЛЭГИЙН ЕРӨНХИЙЛӨГЧ Н.ЧИНБАТЫН ХЭЛСЭН ҮГ

Эрхэм шүүгчид ээ,

Эрхэмсэг хатагтай, ноёд оо,

“Ази дахь Үндсэн хуулийн шүүх эрх мэдлийн хөгжил” сэдэвт Үндсэн хуулийн шүүх, түүнтэй адилтгах байгууллагуудын Азийн нийгэмлэгийн Тавдугаар Их хурал өндөр түвшний төлөөлөлтэй, өргөн оролцоотойгоор биечилсэн болон цахим хосолмол хэлбэрээр Улаанбаатар хотноо хоёр өдөр амжилттай хуралдаж өндөрлөж байна.

Бидний хурлын эдгээр өдрүүд нарлаг сайхан байлаа. Монголчууд ярихдаа “тэнгэр шиг уудам сэтгэлтэй гэдэг”. Хурал болсон өдрүүдэд монголын хөх тэнгэр цэлмэг сайхан байж, налгар дулаан цаг агаартай байсан нь бидний хамтын ажиллагаа цаашид гэрэл гэгээтэй байхын бэлгэдэл боллоо гэж үзэж байна.

Энэхүү хурлыг зохион байгуулахад дэмжлэг үзүүлсэн Үндсэн хуулийн шүүх, түүнтэй адилтгах байгууллагуудын Азийн Нийгэмлэгийн гишүүд болон хуралдаан дээр илтгэл тавьж өөрсдийн туршлага, үзэл санаагаа хуваалцан сонирхолтой бөгөөд үр өгөөжтэй илтгэл тавьж, хувь нэмрээ оруулсан нийт илтгэгч нартаа халуун талархал илэрхийлж, ажлын амжилт хүсье.

Манай Нийгэмлэгийн үйл ажиллагаанд гол дэмжлэгийг үзүүлэн, баталгаа болгож ажилладаг тулгийн гурван чулуу бол Бүгд Найрамдах Солонгос Улсын Үндсэн хуулийн шүүх, Бүгд Найрамдах Турк Улсын Үндсэн хуулийн шүүх, Бүгд Найрамдах Индонез Улсын Үндсэн хуулийн шүүх билээ.

Бидний урилгыг хүлээн авч биечлэн хүрэлцэн ирсэн Бүгд Найрамдах Солонгос Улсын Үндсэн хуулийн шүүхийн Ерөнхийлөгч ноён Юү Нам Сог, Бүгд Найрамдах Турк Улсын Үндсэн хуулийн

шүүхийн Ерөнхийлөгч ноён Зүхтү Арслан, түүнчлэн нийгэмлэгийн өмнөх ерөнхийлөгч Бүгд Найрамдах Казакстан Улсын Үндсэн хуулийн зөвлөлийн дарга ноён Кайрат Мами нарт гүнээ талархаж буйгаа илэрхийлье.

Мөн төлөөлөгчөө илгээсэн Бүгд Найрамдах Узбекистан Улс, Тайландын Хаант Улс, Бүгд Найрамдах Энэтхэг Улс, Бүгд Найрамдах Филиппин Улсын Үндсэн хуулийн шүүх, хяналтын байгууллагын тэргүүн нарт хувиасаа болон Монгол Улсын Үндсэн хуулийн цэц, Үндсэн хуулийн шүүх, түүнтэй адилтгах байгууллагуудын Азийн нийгэмлэгийн нэрийн өмнөөс халуун талархал илэрхийлж байгааг уламжилж өгөхийг эрхэм зочид, төлөөлөгчдөөсөө хүсье.

Түүнчлэн идэвх зүтгэл гарган цахимаар оролцсон Бүгд Найрамдах Индонез Улс, Оросын Холбооны Улс, Бүгд Найрамдах Мьянмарын Холбооны Улс, Бүгд Найрамдах Азербайжан Улс, Бүгд Найрамдах Киргиз Улс, Исламын Бүгд Найрамдах Пакистан Улс, Бүгд Найрамдах Тажикистан Улс, Малайз Улс, Мальдив Улс, Бүгд Найрамдах Бангладеш Ард Улс, Иорданы Хашимит Хаант Улсын Үндсэн хуулийн шүүх, хяналтын байгууллагуудад баярласнаа илэрхийлье.

Хуралд оролцогчид Үндсэн хуулийн шүүх болон хяналтын байгууллагууд ардчилал, түүний үнэт зүйлс, хүний үндсэн эрх, эрх чөлөөг хамгаалахын зэрэгцээ улс орны хөгжлийг хангах эрх зүйн үндсийг хамгаалж, Үндсэн хуульт ёсны баталгаа болж ирсэн бөгөөд өнөөгийн өргөн цар хүрээг хамарсан олон талт сорилт, бэрхшээлийг даван туулахад Үндсэн хуулийн хяналтын үүрэг, оролцоо өндөр байгааг цохон тэмдэглэлээ.

Миний бие ч өнөөгийн дэлхий нийтийг хамарсан олон талт өөрчлөлт, шинэчлэл, даяаршлын нөлөөлөл, технологийн хурдтай хөгжил, нийтийг хамарсан цар тахал, цагаачлал, дүрвэгсдийн их урсгал, уур амьсгалын өөрчлөлт зэрэг нь улс орнуудад томоохон сорилт болж, шийдвэрлэх олон асуудлыг дагуулж байгаатай санал нэг байна. Эдгээр сорилт, бэрхшээлийг даван туулахын тулд улс орон бүр чармайж байгаа ч стандарт бус аргаар, хууль дээдлэх ёсыг гажуудуулсан, эсхүл хүний эрхийг хөндсөн шийдвэр, шийдлийг эрх бүхийн этгээдүүд гаргаж байна. Иймд энэ хүнд үед Үндсэн хуулийн хяналтыг хэрэгжүүлэгч бид Үндсэн хуульт ёс, ардчиллын үнэт

зүйлсийг хамгаалж, хүний эрх, эрх чөлөөг баталгаажуулахын зэрэгцээ ардчилал, Үндсэн хуулийн хямралаас улс орноо сэргийлж, хөгжлийн тогтвортой байдлыг хангах явдал чухал болж байна.

Хуралд тавьсан илтгэлүүдэд өөрийн орны сайн туршлагуудыг тусгаж, онол, үзэл баримтлал, судалгаа шинжилгээ, практикийн шинэ хандлага, хөгжлийн талаар сонирхолтой бөгөөд эргэн харж, эргэцүүлэн бодмоор олон санааг дэвшүүлсэн байна.

Тухайлбал, Солонгос Улсын Үндсэн хуулийн шүүхийн шүүгч НОЁН КИ ЁН КИМ даяаршиж буй дижитал хөгжлийн үед хувийн мэдээллийг хамгаалах болон баталгаажуулах хүрээнд гаргасан, түүнчлэн COVID-19-ийн цаг үед тогтоосон зүй бус хязгаарлалтыг хүчингүй болгосон өөрийн шүүхийн шийдвэрээ танилцуулж, туршлагаа солилцсон нь бусдад жишиг болохуйц сайхан жишээ байлаа. Мөн тэрээр энэхүү сорилтын үед Үндсэн хуулийн хяналтын байгууллагууд нийгмийн өөрчлөлтийн мөн чанар, агуулгыг ойлгон таних чадвартай байхын зэрэгцээ үндсэн хуулийн хяналтын үндсэн зорилго, чиг үүргийг умартаж болохгүй гэж цохон тэмдэглэсэнтэй хэн ч санал нийлэх биз ээ.

Харин Казахстан Улсын Үндсэн хуулийн зөвлөлийн дарга НОЁН КАЙРАТ МАМИ Казахстан дахь Үндсэн хуулийн хяналт, хөгжлийн хандлагын талаар сонирхолтой илтгэл тавьж, хүний эрхийг хамгаалах эрх зүйн орчны хүрээнд хийгдэж байгаа шинэтгэл, шүүхийн ажиллагааг цахимжуулах чиглэлд зорьж буй өөрчлөлтийн талаар ярьсан нь анхаарал татаж байна. Энэ дашрамд Казакстан Улс Үндсэн хуулийн шүүхээ сэргээн тогтоож, тус улсад Үндсэн хуулийн хяналтыг илүү өргөн хүрээнд хэрэгжүүлэх шинэ загварыг бий болгож буйд баяртай байгаагаа илэрхийлье.

Оросын Холбооны Улсын Үндсэн хуулийн шүүхийн шүүгч НОЁН АНДРЕЙ БУШЕВ сорилтын үеийн Үндсэн хуулийн хяналт, учирсан сорилтыг хэрхэн боломж болгон ашиглах талаар хөндөн ярьсан нь цаг үеэ олсон, эргэн харж, эргэцүүлэн болох олон асуултыг бидэнд үлдээж байна. Мөн Индонез Улсын Үндсэн хуулийн шүүхийн Ерөнхий шүүгч НОЁН АНВАР УСМАНЫ илтгэл ч онцгой анхаарал татлаа.

Цахимаар оролцсон Киргиз Улсын Үндсэн хуулийн шүүхийн шүүгч НОЁН ЖУМАБАЕВ ЛАТИП COVID-19 цар тахлын хүнд

нөхцөлд гаргасан шийдвэрүүдээ танилцуулж, Үндсэн хуулийн шүүх эрх мэдлийн эрх зүйн орчны хүрээнд хийгдэж байгаа зарчмын шинжтэй шинэтгэл, үндсэн эрхийн гомдлыг хүлээн авах хүрээнд гарсан өөрчлөлтийн талаар ярьсан нь сонирхолтой байлаа.

Мөн Узбекистан Улсын Үндсэн хуулийн шүүхийн орлогч дарга НОЁН ГАФУРОВ АСКАРЖОН тус улсын Үндсэн хуулийн шинэчлэл болон Үндсэн хуулийн хяналтын хөгжлийн хандлагын талаар, Тажикистан Улсын Үндсэн хуулийн шүүхийн шүүгч НОЁН КУВВАТЗОДА ФОТЕХ ЖУМА Тажикстан дахь Үндсэн хуулийн хяналтын онцлог, ирээдүйн төлөвийн талаар, мөн Монгол Улсын оролцогч МУИС - Үндсэн хуулийн эрх зүйн хүрээлэнгийн захирал, доктор (Ph.D), профессор НОЁН О.МӨНХСАЙХАН 2019 онд Монгол Улсын Үндсэн хуульд оруулсан нэмэлт, өөрчлөлтийн сорилт бэрхшээлийг үндэсний зөвшилцлийн хүрээнд хэрхэн даван туулсан талаар сайхан илтгэл тавилаа.

Энэхүү хуралд цахимаар оролцож байгаа Иорданы Үндсэн хуулийн шүүхийн шүүгч ХАТАГТАЙ ТАГРЕД ХИКМАТ Үндсэн хуулийн хяналтын онолын чиг хандлага, шинэ судалгааны чиглэлийн талаарх танилцуулсан нь сонирхол татаж байна. Түүнчлэн Мьянмарын Үндсэн хуулийн трибуналын дарга НОЁН ТА ХТАЙ сорилтын үеийн Үндсэн хуулийн хяналтын цахимжуулалт, өөрийн орны туршлагыг танилцуулсан нь шинэлэг байна.

Хуралд хэлэлцэгдсэн бусад илтгэлүүдэд олон сайхан санаа, шинэлэг туршлага, хэрэгжүүлж болох жишгүүд дурдагдлаа. Цаг бага учир ингээд товчилъё.

Мөн энэхүү хурлын ажиллагаанд оролцон санал бодлоо харамгүй солилцож, асуулт асууж, мэдлэг туршлагаа хуваалцсан бүх хүмүүст талархал илэрхийлье

Хурлын ажиллагааг амжилттай болоход бүх талын хувь нэмрээ оруулсан ХУРАЛДААН ДАРГАЛАГЧ НАР болон орчуулагчид, техникийн ажилтан, оюутнууд болон нийт хүмүүст хурал зохион байгуулагчдын өмнөөс талархал илэрхийлье.

Энэхүү Тавдугаар Их хурлын үр дүн болж Улаанбаатарын тунхаглал батлагдсанд баяртай байна. Уг тунхаглалд “- Дэлхий дахины өнөөгийн хөгжлийн үйл явц нь улс орнууд Үндсэн хуулиа

чанд сахиж, түүний биелэлтийг үр дүнтэй хангахыг улам бүр шаардаж байгааг баталж,

- Үндсэн хуулийн шүүх, хяналтын байгууллагуудын хариуцлага цаашид өсөн нэмэгдэх нь зайлшгүй байгааг цохон тэмдэглэж,

- Сүүлийн жилүүдэд үүссэн КОВИД-19-ийн цар тахлын хор уршиг зэрэг гэнэтийн тааварлашгүй нөхцөл байдлууд нь Үндсэн хуулийн шүүхүүдийн үйл ажиллагаанд шууд нөлөөлөх сорилт болж байгааг тэмдэглэсэн" билээ.

Хөгжил бол нэг хэвийн байдлаас бий болохгүй, аливаа сорилтыг даван туулж, өөрийн болон бусдын туршлага дээр суралцаж, сайн сайхан, зөв зүйтэй шийдлээс үлгэр жишээ авч, цаашдын хандлага, зорилгоо тогтоож байж хөгжил бий болно. Ийнхүү хөгжихөд хамтын харилцаа бий болгож, хамтран ажиллаж, харилцан туршлага солилцох нь гол хөшүүрэг болдог. Иймд бидний байгуулсан энэхүү нийгэмлэгийн үйл ажиллагаа бол энэ бүс нутгийн Үндсэн хуулийн шүүх, хяналтын байгууллагуудын үйл ажиллагааг улам боловсронгуй болгох, хамтран хөгжин дэвшихэд чухал нөлөө үзүүлж байгаа бөгөөд үзүүлсээр ч байх болно гэдэгт итгэлтэй байна.

Ингээд "ХАРИЛЦАН ИТГЭЛЦЭЛ - ХАМТЫН ХҮЧИН ЧАРМАЙЛТ - ХАМТЫН ҮР ДҮН" гэсэн уриагаараа хурлын үйл ажиллагааг өндөрлүүлье.

Та бүхнийг маргааш болох Монгол орны түүхэн уламжлал, монгол ахуйг харуулсан соёлыг хөтөлбөрт урьж байна. Уг хөтөлбөрөөр эртнээс өдийг хүртэл хадгалагдан ирсэн монголыг уламжлалт эрийн гурван наадам, тэр дундаа бөхийн барилдааныг үзэж сонирхох боломжтой бөгөөд Та бүхэн өөрсдөө сур харваж, морь унаж үзэхийг урьж байна.

Анхаарал хандуулсанд баярлалаа.

IV

THE ULAANBAATAR DECLARATION OF THE 5th CONGRESS OF THE ASSOCIATION OF ASIAN CONSTITUTIONAL COURTS AND EQUIVALENT INSTITUTIONS

THE ULAANBAATAR DECLARATION OF THE 5th CONGRESS OF THE ASSOCIATION OF ASIAN CONSTITUTIONAL COURTS AND EQUIVALENT INSTITUTIONS

August 19, 2022, Ulaanbaatar, Mongolia

We, the Members of the Association of Asian Constitutional Courts and Equivalent Institutions, held the 5th Congress in a hybrid form – in person and virtually, on August 18-19, 2022 in Ulaanbaatar, Mongolia, under the theme "Recent Developments of Constitutional Justice in Asia".

During the 5th Congress, we have mutually exchanged experience on respecting and strengthening the constitutionalism, protecting the fundamental rights and freedoms of every person in the face of the Covid-19 pandemic, and improving the mechanisms for human rights protection. Consequently, the role of the constitutional courts and equivalent institutions within the mechanism of human rights protection has been reaffirmed more than ever. It's appreciative that we have been able to overcome the long-standing pandemic situation that dragged on for more than two years and held productive, amicable meetings that have expanded the scope of our cooperation.

Reiterating the achievements of the AACC since its establishment in 2010, taking into consideration the outcome of the 5th Congress 2022, we declare the following in Ulaanbaatar:

1. We reaffirm that the social, economic, political and cultural development process taking place throughout the world increasingly demands the countries to adhere to the Constitution and ensure its effective implementation.

2. We emphasize that the constitutional courts and equivalent institutions have been playing an exclusive role in exercising supreme supervision over the implementation of the Constitution and in guaranteeing for strict observance of the Constitution, and that the responsibilities of these bodies would inevitably increase in the future. We stress the fact that the unforeseen circumstances, such as the devastating effects of the Covid-19 pandemic in recent years, have directly challenged the functioning of constitutional courts.

3. The Members of the AACC are encouraged to take active part in the 5th Congress of the World Conference on Constitutional Justice to be held on October 4-8, 2022 in Bali, Republic of Indonesia.

4. The AACC is open for accession of the constitutional courts and equivalent institutions that pursue our common goals. In this regard, welcoming the accession to the AACC of the Supreme Constitutional Court of Palestine during the 5th Congress, the AACC reiterates its policy of steady expansion, and therefore invites once again other Asian constitutional courts and equivalent institutions to become a member of the Association.

PRESIDENT OF THE AACC  CHINBAT NAMJIL

УЛААНБААТАРСКАЯ ДЕКЛАРАЦИЯ ПЯТОГО КОНГРЕССА АССОЦИАЦИИ АЗИАТСКИХ КОНСТИТУЦИОННЫХ СУДОВ И ЭКВИВАЛЕНТНЫХ ИНСТИТУТОВ

19 августа 2022 г., Улаанбаатар, Монголия

Мы, члены Ассоциации азиатских конституционных судов и эквивалентных институтов, провели 18-19 августа 2022 года в г. Улаанбаатар, Монголия, Пятый Конгресс на тему «Текущее развитие конституционного правосудия в Азии» в гибридном формате – очно и виртуально.

В ходе Пятого Конгресса мы взаимно обменялись опытом по соблюдению и укреплению конституционализма, защите основных прав и свобод каждого человека в условиях пандемии Ковид-19, совершенствованию механизмов защиты прав человека. В результате, роль конституционных судов и эквивалентных институтов в механизме защиты прав человека подтверждается более чем когда-либо. Отрадно, что нам удалось преодолеть затянувшуюся более чем на два года ситуацию с пандемией и провести продуктивные, дружеские встречи, расширившие рамки нашего сотрудничества.

Подтверждая достижения ААКС с момента ее создания в 2010 году, принимая во внимание итоги Пятого Конгресса 2022 года, заявляем в Улаанбаатаре о нижеследующем:

1. Мы заново подтверждаем, что происходящий во всем мире процесс социального, экономического, политического и культурного развития все

больше требует от стран соблюдения Конституции и обеспечения ее эффективной реализации.

2. Мы придаем особое значение тому, что конституционные суды и эквивалентные институты играют исключительную роль в осуществлении высшего контроля за выполнением Конституции и в гарантировании неускорительного соблюдения Конституции, и что обязанности этих органов неизбежно возрастут в будущем. Мы подчеркиваем тот факт, что непредвиденные обстоятельства, такие как разрушительные последствия пандемии Ковид-19 в последние годы, напрямую осложнили функционирование конституционных судов.

3. Члены ААКС призываются принять активное участие в Пятом Конгрессе Всемирной конференции по конституционному правосудию, который состоится 4-8 октября 2022 года на Бали, Республика Индонезия.

4. ААКС открыт для присоединения конституционных судов и эквивалентных институтов, преследующих наши общие цели. В связи с этим, приветствуя присоединение к ААКС Верховного конституционного суда Палестины во время Пятого Конгресса, ААКС подтверждает свою политику неуклонного расширения и, следовательно, вновь приглашает другие азиатские конституционные суды и эквивалентные институты стать членами Ассоциации.

ПРЕДСЕДАТЕЛЬ ААКС НАМЖИЛ ЧИНБАТ

ҮНДСЭН ХУУЛИЙН ШҮҮХ БОЛОН ТҮҮНТЭЙ АДИЛТГАХ БАЙГУУЛЛАГУУДЫН АЗИЙН НИЙГЭМЛЭГИЙН 5 ДУГААР ИХ ХУРЛЫН УЛААНБААТАРЫН ТУНХАГЛАЛ

Монгол Улс, Улаанбаатар хот, 2022.08.19.

Үндсэн хуулийн шүүх болон түүнтэй адилтгах байгууллагуудын Азийн нийгэмлэгийн гишүүд бид 2022 оны 8 дугаар сарын 18-19-ний өдөр Монгол Улсын Улаанбаатар хотноо "Ази дахь Үндсэн хуулийн шүүх эрх мэдлийн хөгжлийн өнөөгийн байдал" сэдвийн хүрээнд 5 дугаар Их Хурлыг биечилсэн болон цахим хосолмол хэлбэрээр зохион байгууллаа.

5 дугаар Их Хурлаар Үндсэн хуульт ёсыг дээдэлж, улам бүр төлөвшүүлэх, Ковид 19-ийн цар тахлын нөхцөлд хүн бүхний үндсэн эрх, эрх чөлөөг хамгаалах, хүний эрхийг хамгаалах механизмыг сайжруулах талаар харилцан туршлага судаллаа. Улмаар хүний эрхийг хамгаалах механизмд Үндсэн хуулийн шүүх, түүнтэй адилтгах байгууллагын эзлэх байр суурийг улам бататгав. Ийнхүү сүүлийн хоёр жил гаруй хугацааны турш үргэлжилж буй цар тахлын нөхцөл байдлаас гарч, хамтын ажиллагааны хүрээг тэлсэн, өргөжүүлсэн, үр дүнтэй нөхөрсөг уулзалтууд болсонд талархалтай байна.

ҮХШАН 2010 онд байгуулагдсанаас хойш амжилт бүтээлээ бататган, 2022 оны 5 дугаар Их Хурлын үр дүнг харгалзан бид бүхэн Улаанбаатар хотноо дараах зүйлийг тунхаглаж байна:

1. Дэлхий дахинд гарч буй нийгэм, эдийн засаг, улс төр, соёлын хөгжлийн үйл явц нь улс орнууд Үндсэн хуулиа чанд сахиж, түүний биелэлтийг үр дүнтэй хангахыг улам бүр шаардаж байгааг бид дахин баталж байна.

2. Үндсэн хуулийн шүүх болон түүнтэй адилтгах байгууллагууд нь Үндсэн хуулийн биелэлтэд дээд хяналт тавих, Үндсэн хуулийг чандлан сахиулах баталгаа болох онцгой чиг үүргээ гүйцэтгэсээр байгаа бөгөөд эдгээр байгууллагын хариуцлага цаашид өсөн нэмэгдэх нь зайлшгүй байгааг цохон тэмдэглэв. Сүүлийн жилүүдэд үүссэн Ковид 19-ийн цар тахлын хор уршиг зэрэг гэнэтийн тааварлашгүй нөхцөл байдлууд нь Үндсэн хуулийн шүүхүүдийн үйл ажиллагаанд шууд нөлөөлөх сорилт болж байгааг тэмдэглэж байна.

3. Бүгд Найрамдах Индонез Улсын Балид 2022 оны 10 дугаар сарын 4-8-ны өдрүүдэд зохиогдох Үндсэн хуулийн шүүх эрх мэдлийн Дэлхийн бага хурлын 5 дугаар Их Хуралд ҮХШАН-ийн гишүүдийг идэвхтэй оролцохыг уриалж байна.

4. ҮХШАН нь бидний нийтлэг зорилгыг баримталдаг Үндсэн хуулийн шүүх болон түүнтэй адилтгах байгууллагуудад нэгдэн ороход нээлттэй. Үүнтэй холбогдуулан 5 дугаар Их Хурлын үеэр Палестины Үндсэн хуулийн дээд шүүхийн ҮХШАН-т элссэнийг сайшаан хүлээн авч, ҮХШАН нь тууштай өргөжин тэлэх бодлогоо дахин нотолж байгаа ба Азийн бусад Үндсэн хуулийн шүүх болон түүнтэй адилтгах байгууллагуудыг Нийгэмлэгийн гишүүнээр элсэхийг дахин урьж байна.

ҮХШАН-ИЙН ЕРӨНХИЙЛӨГЧ Н.ЧИНБАТ

V

THE PHOTOS OF THE 5th CONGRESS OF THE ASSOCIATION OF ASIAN CONSTITUTIONAL COURTS AND EQUIVALENT INSTITUTIONS

The President of the Association of Asian Constitutional Courts and Equivalent Institutions and Chief Justice of the Constitutional Court of Mongolia H.E. Mr. Chinbat Namjil delivers an opening remarks of the 5th Congress.

Symbol of the 5th Congress of the Association of Asian Constitutional Courts and Equivalent Institutions.

Heads of delegations of the 5th Congress of the Association of Asian Constitutional Courts and Equivalent Institutions.

Delegations of the 5th Congress of the Association of Asian Constitutional Courts and Equivalent Institutions.

Opening ceremony of the 5th Congress of the Association of Asian Constitutional Courts and Equivalent Institutions.

Opening ceremony of the 5th Congress of the Association of Asian Constitutional Courts and Equivalent Institutions. /3D show/

Opening ceremony of the 5th Congress of the Association of Asian Constitutional Courts and Equivalent Institutions. /3D show/

Board of Members Meeting of the Association of Asian Constitutional Courts and Equivalent Institutions.

The 5th Congress of the Association of Asian Constitutional Courts and Equivalent Institutions.

The President of the Association of Asian Constitutional Courts and Equivalent Institutions, Chief Justice of the Constitutional Court of Mongolia H.E. Mr. Chinbat Namjil delivers a closing remarks of the 5th Congress.

The gala concert dedicated for the online participants.
The 5th Congress of the Association of Asian Constitutional Courts and Equivalent Institutions was held in person and in online format.