Judicial procedure for administrative case in Mongolia

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I. Introduction

In this paper, I tried to include some administrative law aspects of Mongolia. First, it contains brief historical background of administrative law of Mongolia, then in second, third parts, issue of source of law, adjudicatory bodies.

Subject of “agency action” itself is very controversial subject in Mongolian practice because the administrative courts are specialized and limited jurisdiction court. Moreover, it has some sort of jurisdictional conflict with the Constitutional Court and general jurisdiction courts.

A. Mongolia: contemporary legal system

Mongolia has a rich legal history from Hun and Mongol nomad’s unwritten customary law through the Ikh Zasag Khuul, Chinggis Khaan’s legal codification of customary norms. During Manchu rule over Mongolia, administrative authority encompassed judicial authority and Manchu and Mongol laws existed parallel. Following the 1921 People’s Revolution, the government instituted a mixed Asian and European legal system. Mongolia’s legal system during the communist era was based on the Soviet adaptation of the Roman law tradition. However, there were no professional lawyers or judges. In 1933, the court system was abolished altogether, and judicial power was transferred to the governors of administrative units. When the judicial system was reestablished during communist rule, it was structured primarily as a criminal legal system. After heavy amounts of Russian funding, a tangible legal profession emerged, primarily to service this criminal law system.

Mongolia’s emergence from communism’s long shadow began in earnest in December 1989, when hundreds of people gathered in Sukhbaatar’s Square to protest against the poor life and lack of social and political reform. Moreover, it resulted to the resignation of Government’s and the repeal of the constitutional provision declaring Mongolia a one-party state. Under new leadership, the parliament held the country’s first multiparty election in July 1990, leading to the formation of a new constitutional convention.

In May 1990, an Amendment Law “Amendment to the Constitution of Mongolia” was adopted. Based on this Amendment the first ever-democratic elections of the State Great Hural took place in July 1990 and a preliminary operating Parliament with a multi-party system was established. The Parliament proclaimed the legitimacy of private property and determined new economic relation by adopting 35 new laws and

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1 Judge in Capital city administrative court & part time instructor at the School of Law, NUM
2 The population is predominantly made up Mongolian peoples (81.5% Khalkh). There is a Turkic Kazakh minority (4.3%) and 20 Mongol minorities. The Statesman’s Yearbook, the Politics, Cultures and Economies of the World 2005. Edited by Barry Turner, Palgrave Macmillan Ltd 2004
3 Ganbat Chimidlkham, Former Chief Justice of the Supreme Court, Judicial Reform in Mongolia, paper prepared for 11th Conference of Chief Justices of Asia and the Pacific, 2005 Australia
5 Sukhbaatar, leader of 1921 Public Revolution
amendments. All of these laws became a solid base in the process of adopting the 1992’s Constitution.

This democracy promotion had the potential to transform political as well as government administration systems throughout the country. One of the most important elements in the reform of the State’s institutional and legal framework has been modifying the judicial and administrative system of Mongolia to conform to the new Constitution. To strengthen the independence of judges, the courts and their operations, Parliament enacted new laws governing the constitutional court, judiciary, prosecution, civil procedures, advocacy, notaries, the execution of judgments, and amendments to the Code of Criminal Procedure.

II. Scope of administrative law

A. Mongolia

1. The Constitution

Within the resignation of Socialist rulers from Mongolian government, the country began to design a whole new form of government. By enacting the Constitution in 1992, Mongolia has replaced the former social structure and established principles and foundations for reforming the Mongolian State and society that are based on democratic method of governance. This new choice was to develop a country respecting human rights, democratic values, the market economy and the rule of law.

For regulating whole new social life, many new laws have been adopted since 1992, while reforming old laws, making, and revising legislation to conform to the Constitution.

As the constitution declared the State is unified and its territory divided into administrative units. The President of Mongolia shall be the Head of State and embodiment of the unity of the people. Therefore, President does not have power, as of US President of executive instead he is kind of conciliator between branches of government and political parties. Nevertheless, he has some distinguishable power to exercise in order to fit its name of “man in unity” such as to veto, partially or wholly, laws and other decisions adopted by the State Great Hural, to propose to the State Great Hural the candidature for the appointment to the post of Prime Minister in consultation with the majority party or parties in the State Great Hural if none of them has majority of seats, as well as to propose to the State Great Hural the dissolution of the Government. He also enjoys the power to appoint all judges based on proposal of General Council of Courts for life time tenure.

Executive branch of government is headed by Prime Minister and its cabinet. The Prime Minister shall, in consultation with the President, submit his/her proposals on the structure and composition of the cabinet and on changes in these to the State Great Hural. Executive branch is responsible for all implementation of State law including the Constitution itself.

6 Article 30.1, the Constitution of Mongolia
7 Article 39.2, the Constitution of Mongolia
8 Article 38.2, the Constitution of Mongolia
The territory of Mongolia is divided administratively into Aimag and a capital city; Aimag is subdivided into sums; Sum into bags; the capital city is divided into districts and district into horoo. Governance of administrative and territorial units is organized on the basis of combination of the principles of both self-government [Hural of Representatives of the citizens of a territory] and central government [governor].

The judicial system shall consist of the Supreme Court, Aimag and capital city courts, Sum, inter-sum and district courts. **Specialized courts such as criminal, civil and administrative courts may be formed.** The activities and decisions of the specialized courts shall not be under the supervision of the Supreme Court. This is the originality of administrative courts, first ever and only specialized court in Mongolia.

### 2. Substantive laws

Generally, substantive laws are divided as civil law group (mainly regulate conducts of equal parties) and public law group (regulates conducts between public or government and citizen). Although criminal law sometimes classified as a separate division, it must be considered as a specialized part of public law.

One could make a classification such as public international law, constitutional law, administrative law, criminal law, business and civil law (civil law contains contract and tort). Because of countries unified structure of government form there is no conflict between laws such as conflicts between a state and federal laws in US, but of course, laws are often conflict each other somewhat overlap or ambiguous. Substantive and procedural laws are all statutes. These would be the main source of law in Mongolia. In contrary, the court decisions are not a source of law, therefore decisions issued by the various courts do not have to follow case law. Judicial decisions (opinion) by the Supreme Court are limited to particular cases. Although they are binding upon all courts and other persons in means of the particular case, they have no formal effect on future similar cases. Nevertheless, there is different kind of “case law” exists for the lower courts. It is formal suggestion of Supreme Court on particular types of cases. After decided a number of cases, which all have similar error in it, Supreme Court’s chamber

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1) to organize and ensure nation-wide implementation of the Constitution and other laws;
2) to work out a comprehensive policy on science and technology, guidelines for economic and social development, the State budget, credit and fiscal plans and to submit these to the State Great Hural and to execute decisions taken thereon;
3) to elaborate and implement comprehensive measures on sectional, intersectional, as well as regional development;
4) to undertake measures on the protection of the environment and on the rational use and restoration of natural resources;
5) to provide efficient leadership of central state administrative bodies and to direct the activities of local administrations;
6) to strengthen the country's defense capabilities and to ensure national security;
7) to take measure for the protection of human rights and freedoms, enforcement of public order and prevention of crime;
8) to realize the State foreign policy;
9) to conclude and implement international treaties with the consent of and subsequent ratification by the State Great Hural as well as to conclude and abrogate intergovernmental treaties.

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9 The Constitution of Mongolia, Article 48 (1)
10 Material laws
in that type of case will summarize all those case and its basis of error and issue the suggestion.

Legal doctrines are not a source of law. Therefore, academic opinions are not cited into account when a court writes out the opinion. Instead, law professors and scholars widely involved the reform of law as working in groups responsible to prepare a changes or amendments of laws.\textsuperscript{11} It is not the practice of Mongolian courts to cite the published works of commentators or scholars when issuing a judgment because the law permits a judge apply none of these but statutes. Traditional-public-legal-customary norms sometimes considered a very limited, not often, source of law. While studying existing legislation in Mongolia, one can find some evidence of the importance of legal tradition. For instance, if public administration made a decision that inconsistent with the traditional customary norm then it would be unlawful.

3. Law on Procedure for administrative case

December 26, 2002 the State Great Hural passed the Law on establishment of administrative court along with the Law on procedure for administrative cases in accordance with Article 48 (1) of the Constitution. It took almost ten years to convince the State Great Hural to pass this law with enormous work of lawyers, scholars, and support of international organizations.\textsuperscript{12}

The law of Mongolia on procedure for administrative cases\textsuperscript{13} entered into force on June 1, 2004. It divided into two sections: first – procedure for administrative tribunal(s) and higher administrative officials to pre-decide the original act based on the complaint submitted by citizen or legal entity, second – procedure for administrative courts.

The Government of Mongolia, in particularly drafting group of this law, has worked closely with German counterparts for long time in preparation of this procedural law and it is derivative work of German administrative procedural law with some national distinctions. Lawyers, judges and law professors from both countries worked together and exchanged their ideas in order to create the most proper administrative procedure for Mongolia. Prospective teachers for future judges and lawyers were prepared in Germany and Mongolia by German administrative law experts and judges as well as Mongolian professionals. The earliest example that “in criminal proceedings the canon law, in contrast to both the Roman law and Germanic systems, developed a science of judicial investigation of the facts of the case, whereby the judge was required to

\textsuperscript{11} Legal education is almost completely isolated from practical study or judicial practice. Although there is some sort of formal externship study, it is just not enough to taste real legal practice. Because both law schools and receiving legal institution do not provide careful supervision to the students practice. And there is clinical program but it is now at its beginning. Therefore, students graduate without real practical experience. In addition, some of them subsequently become a teacher/instructor even without practicing single legal matter.


\textsuperscript{13} I’ve chosen to translate the name as “Law on procedure for administrative case”. Because if translate it as an “Administrative procedure act” it might confuse someone with the law that governs the procedure of administration. At this time, Mongolia does not have the codified law on governing the procedure of various administrations but this work is underway.
interrogate the parties and the witness according to principles of reason and conscience. One of these principles was that the judge must be convinced, in his own mind, of the judgment he rendered. The emphasis on judicial investigation was associated not only with a more rational procedure for eliciting proof but also with the development of concepts of probable truth and of principles of relevancy and materiality.\(^{14}\)

Extensive citations from Law on civil procedure, most of fundamental principles quoted directly from civil procedure. Particularly, the appellate process and enforcement of judgment of administrative courts are exactly same as civil courts. However, the law on civil procedure differs from it with some significant elements. For instance, followings are the most different parts of civil procedure: in civil case, the court cannot make deposition from witnesses in its initiative if the parties did not ask to do so and does not have burden of proof or gather the evidence.

By defining the types of disputes, parties and their rights and duties, one can determine the nature of this law and procedure.

Defendant must always be a public administration, authority; it includes not only the executive branch but also administration of public school, hospital, even energy provider. In some cases, even non-governmental organizations, which Government transferred certain power to, could be subject for claims arising out the exercise of this transferred power.

In contrary, plaintiff must be citizen or legal entity. The government agencies, officers are not eligible for submit a claim if they are administratively under direct control of the defendant. However, the agency that is not under supervision of another agency and asserts that their right breached by another agency illegal act then it is able to bring lawsuit in administrative court. For instance, a tax regulatory agency is not a subject to any supervision of other government agencies, but it could commence the administrative action against the fire inspector for false sanction.

The law contains definition of “citizen” means “a citizen of Mongolia, a citizen of foreign country and stateless person”. Therefore, administrative courts are open to foreign citizens who assert that public administrations or officials of Mongolia breached their rights legitimized by Mongolian and International law.

The law cited the whole section of procedure for international cases\(^{15}\) from the civil procedure; administrative courts bound by this section too. Article 189.1, the law on civil procedure provides that when Mongolian courts decide the civil case related the foreign citizen, legal entity, stateless person, unless ruled differently in statutes of this country, they have same right as Mongolian citizens. Courts do not have right to join the following person into the case, diplomats, their immediate family, officials who visiting by invitation of government, self-ruling organizations of administrative units unless they agreed to be part.

Even the case involved the foreign citizen Mongolian courts have “exclusive jurisdiction” over some case. Such as disputes of ownership of the immovable property in its territory, reconstruction, abolishment of the legal entities which domiciled in its territory, legality of the registration made by its courts and other authorities, patent,


\(^{15}\) Cases that international or foreign citizen involved as party.
trademark and other intellectual property registration issues, petitions or applications for execute or enforcement of court decisions in its territory.

Lastly about the parties, no involvement from Prosecutor’s office in procedure of administrative cases if compare it to the civil procedure. In Mongolia, prosecutor’s offices’ main duties are monitoring the criminal investigation from the very beginning and representing the State in criminal trial. Moreover, prosecutor’s office must attend the civil trail with right that make comment on the legitimacy of the administrative act and right to appeal when a government organization asks it to do so.

But for administrative procedure, even the law contains the clause that requires\textsuperscript{16} the prosecutor’s involvement in trail as a representative of government and have right to comment on legal validity of administrative action, in result of statistical data on these courts very first two years long operation, there were almost no involvements from prosecutors.

In order to represent the citizen or legal entity, one must submit the valid, written and signed by represented party, notice to the court. Advocates (private attorney) may represent the party based on the contract\textsuperscript{17} with client. Every administration or authority has its own lawyer; in most cases, they represent their own organization. However, parties can participate without lawyers or legal representation, likely complaints-citizens.

Jurisdiction – the only target of this court procedure is “administrative act or action” and its validity and legitimacy. Article 3.1.4 of the Law of Mongolia on procedure for administrative cases provides the following definition. An administrative act is a single compelling order or commanding action [which causing direct legal result] that issued or acted by an administrative authority, official in oral or written form, in order to regulate the particular incident caused in public legal framework.

Hence, the most common types of acts that likely to be in issue in administrative cases would be, but not limited to, all kinds of government licensing, tax order, land related regulation and government procurement. Some times disputes that arising out exactly same occurrence could end up with different jurisdiction depending on that who commenced the action. For instance, a tax related case may tried by either administrative or civil court depending on who filled the action. If the taxpayer files complaint against the tax authority then the administrative court has a jurisdiction over that case. In contrary, if the tax authority commences the action asserting that taxpayer failed to pay then it must file in civil court, which has a jurisdiction over the cases, that citizen as a defendant.

Administrative courts have jurisdiction of all disputes arising out actions of public administration and directed out to citizens or businesses. Article 4 of the Law on procedure for administrative cases provides the broad jurisdiction for administrative courts by defining the administrative agencies and officials whom act is subject to the judicial control. However, not all of their decisions but only the acts that directed out to the particular individual or public to order or prohibit. Simple description one cannot sue his boss in this court.

\textsuperscript{16} Actual language of the Article 55 (1) of the Law on procedure for administrative cases states as following: a prosecutor shall represent the state in the trial and make comment on the legal validity of administrative act and action.

\textsuperscript{17} Article 29.1, 29.4 of the Law on procedure for administrative cases
Article 4.1, 4.2 of the law on procedure for administrative cases contains the list of the defendants of the administrative case and defines the scope of judicial review. The President is entitled to be the head of the State of Mongolia and specifically authorized to issue decrees in accordance with the Constitution and Mongolian law. Presidential decrees must be consistent with the rights granted to him by the Law on the Presidency. These rights granted in the Constitution and the Law on the Presidency. The Presidential decree excluded in this list of defendant, however, original draft of law contained it and there were concerns about bringing the President’s decree into judicial control.

Executive power in Mongolia is vested in the Government Cabinet, which limited by the Constitution, statutes and resolutions of the State Great Hural. Government issues resolutions by the cabinet and ordinances by the prime minister. The Ministry or Minister may issue in many forms of resolutions. When the Law on procedure for administrative cases entered into force in June 1, 2004, the Government listed at very first in the Article 4.1.1 therefore the administrative court had jurisdiction over the Government action qualifies that Article 4.1, 4.2.

Shortly after Administrative court of Capital City decided the significant two cases, which were in very public attention, the action filled in the Constitutional Tssets asserting that Article 4.1.1 of the law on procedure for administrative cases is incompatible to the Constitution. In Enkhbayar vs. Parliament (Constitutional Tssets 2005), The Tssets found that Article 4.1.1 is unconstitutional, therefore, ordered to the State Great Hural make amendment to the law on procedure for administrative cases. The Parliament excluded the Article 4.1.1 and 4.1.6 from the defendants list, based on Constitutional Tssets’s judgment that reasoning the Tssets has jurisdiction over disputes arise from these two organization’s action.

Some do not agree with this judgment and say that it is the clear trend which government or its agencies trying to get out from the independent judicial control over their illegal action.

However, Article 4.1.2 Prime Minister and Minister of Cabinet are still in defendant’s list. All Ministries and agencies have the power to issue administrative acts pursuance to specific delegations of authority from the State Great Hural and Government. Moreover, these acts are subject to review by the administrative courts based on complaint.

A minister to governor of sum (the smallest administrative unit) and its officials are potential defendant. Sum representatives Hural (House of Representatives), which is self-governing body of administrative units, is also in the list. Not only all executive branch but also some independent government agencies under Parliament such as Central Bank of Mongolia (Mongol Bank), Financial Regulatory Agency, Government Employment Council and administration of public school, hospital and other public organizations, which public must receive their service such as monopole electric providers etc. In some cases, Temple, Church, and Monastery administration, the

19 4.1.6 was the General Election Committee; there were similar claim in that action.
20 As I mentioned earlier in this paper, independency of the Constitutional court is in question among lawyers because of its some members such as ex-politicians.
21 Article 4.1.15, the Law on procedure for administrative cases
General Council of Courts that is administrative arm of judiciary, might challenged by citizens. Finally yet importantly, even non-governmental organizations, which Government transferred certain power to, could be subject for claims arising out the exercise of this transferred power before administrative courts.

Pre-hearing by the administrative tribunals before commencing the action in courts is the important step. For complaints of a citizen or legal entity (businesses) against action taken by government or its agency or officials, a direct supervising administration or officer should be the one to decide whether the action is lawful or not before it goes to court. If the complainant asserts any public administration or official's act or action (oral and written form of decree, order, decision, and regulation) breached his/her lawful right, he or she shall submit a complaint to the direct higher officials or administrative tribunals above it within 30 days upon recipient or time to know it.

There is 30 days “statute of limitation” to submit a complaint to the administrative tribunals. No “statute of limitation” to file a claim with the court, but if there is no appellate tribunal or higher official then it is same 30 days of limitation apply. In practice, courts are concerned to allow or extend the statute of limitation and it granted in the Civil Code.

Scope of rights and duty of tribunals: Determine legitimacy of lower administration’s decision, hold a hearing including parties, appoint an expert if necessary, gather necessary evidences. The administrative tribunal or supervising officer could decide either agree with the complaint that alleging the act is inconsistent with the law, or vacate partially or fully the disputed act, issue an order for defendant to take appropriate action that complainant wants. The most of the times this pre-hearing right kept in direct higher administration or officers; however, there are a number of administrative tribunals that established specially for this purpose the Tax Dispute Settlement Council, Government Employment Council, Unfair Competition Control Agency, Government Procurement Board (unit in Ministry of Finance). Some agency statutes prescribe specific procedures for administrative tribunal’s hearing different, in extent of making it more specific, from the Law on procedure for administrative case’s rules. Although this law has been in force for three years, administrations or officials who supposed to control over their lower officials action, still hesitate to do it or just affirm their action without reasonable basis. If the person do not satisfied with the outcome of the administrative hearing then he has absolute right to fill an appeal/claim in the administrative court, which the administration sets.

Before commence the action (calls it “open a case”) after received the claim, court have to check following matters within 7 days. The main requirement being eligible to file a claim to the administrative court is submitting complaint to higher officials or administrative tribunals above the defendant. Is this requirement satisfied? Nevertheless, there are following exceptions.\(^{22}\) 1)if the specific statute enables to direct filling, 2)if there is no direct supervising administrative organization or officials above defendant (such as Central Bank or City Hural), 3)if defendant does not execute the higher administration's decision or higher administration did not decide/answer the complaint in time that law requires (30 days plus if extended 30 days).

Service of process: In Mongolian legal system, the court does service of process, not defendant. Because the idea is if the plaintiff has a duty to serve, it would be so

\(^{22}\) Article 12, Law on procedure for administrative cases
difficult to commence action in court. Courts have an officer who delivers the summons to the defendant. After defendant arrives in court, judge or his law clerk would submit the copy of claim, attached materials, and must explain the defendant’s right.\(^{23}\) If court does not explain the rights, even explained but failed to show the written proof (usually form signed by the party that stating court explained their right), then it would be reason to vacate the judgment later in appeal.

**Burden of proof:** Surprisingly for most common law lawyers, court, not parties has a burden of proof.\(^{24}\) This means courts carry the duty of gathering all the important evidences, inquiring the evidences from anybody who has it and granted to enforce if they do not. Trail court must decide the case after collecting all-important evidences. In addition, it is court’s responsibility to proof the matter by evidence. Again it based on the “unequal party” doctrine. Imagine a poor man trying to recover his right breached by the Governor of the city, especially in developing society where government has incomparable power and source. Nevertheless, it could drive court and judge in wrong direction because it almost leads them to loose their inseparable characters of neutrality. In contract, some argue that if parties have the burden of proof, there is no chance that plaintiff gets the evidence and win the case. Therefore, it considers very important and distinctive part of judicial procedure for this type of cases.

Bringing pre-answer motions (expiration of statute limitations, luck of jurisdiction etc.) is not defendant’s duty, however they may. Court must determine these issues within 7 days after filing, and then decide. If court finds no such a problem then opens the case by entering judgment. Burden of dismiss case on the ground of jurisdiction, improper venue (courts must transfer the case to the appropriate venue if there is venue available for that case) are on courts.

Procedural time limit is a big problem if compare it to the US even Germany, which has the pilot court and procedural law for this cases. In civil procedure, it would be 60 days from the commencement (judgment that ordered the opening case), in administrative case, even less, it would be 30 days in Ulaanbaatar or 40 days in provinces form the filling with the possibility of extension 30+15. Moreover, judge allowed postponing the trail once on the ground of insufficient evidence etc. Procedural time limit means the time that court must dispose the case. It is unbelievable short time and there should be very enough time, even should be more since court needs to collect all evidence.

In court procedure, there is no jury system but representatives of citizen with the very different right from jurors. These are members of the public without legal training who are selected by court to the position. They receive an allowance for their participation. Every citizen registered in electoral list with a good record of behavior is eligible. They express their opinion about the facts of the case or legitimacy of administrative action. Mongolia’s first Constitution of 1926 introduced citizens' representatives, who were then known as people’s representatives, and whose task it was to represent the people in court hearings with the right to vote for decision.

Depends on complexity of the case 1-3 representatives must attend the first instance trial and comment on whether the administrative action is lawful or not. The issue that weakens its role is that judge(s) is not abiding by this comment. Involvement

\(^{23}\) Article 37.1.1, 37.1.3, Law on procedure for administrative cases  
\(^{24}\) Article 31.1, Law on procedure for administrative cases
of this citizen representation does get its root from the Constitution\textsuperscript{25} and every time drafting the change for procedural law this question gets up for argument whether they should have more right to decide the case instead of just make comment.

All witness must be a non-party and deposited by the court. There is no terminology for party witness. Only court makes deposition from witness and witness must swear under Criminal law to tell the truth. Affidavits are not considered as important as witness’ deposition. Moreover, court appoints the expert and no party expert allowed to present. If party challenges the expert deposition, court may appoint different expert group.

No court based Alternative Dispute Resolutions are introduced in this procedure. However, after “opening case” (commence procedure) one of immediate duty of court is to take all possible efforts to settle the case without trial.

Right after opening case, court shall grant the injunction to prevent the future harm of administrative action until the court rules the case, but exceptions\textsuperscript{26}. Court is prohibited to order this injunction such as if it may cause more damage to someone or lead to cause to death, or it is tax and similar order, and if the other statute said so.

The punitive damage is not available, and if there is, argument arises out of the amount of actual damage administrative court shall order separation this damage dispute from the administrative case and transfer\textsuperscript{27} it to the civil court.

In short, when a claim is accepted to the court, the allocated judge, who opened case, invites the defendant to a meeting to determine whether there is a defense or if the matter will be contested. This is the first of what may be several meetings between the judge and one of the parties without the other. Right after service and receiving the answer if settlement is not possible, a date is allocated for the hearing, must be within 75 (in city) or 85 (in provinces) days after filing. Prior to the hearing the parties may submit written statements, documents and other evidence to the court. However, there are several interlocutory procedures available such as gathering evidences, appoint experts, make witness deposition and join the third party. Interlocutory appeals are permitted most judgments such as refusal of receiving the claim (dismissal on the ground of jurisdiction), injunction to stop administrative action’s future effect, joinder of third party.

Trials are held in public except lack of space, which happens often. All evidence must be presented and examined at the hearing and a full transcript is made by the court secretary. Judges must base their decision on the evidence properly gathered in the case and presented. Decisions are made in the “conference room” after hearing the opinion/comment of the citizen representatives. If there is more than one judge on the bench\textsuperscript{28}, the decision is made by majority vote. Surprisingly, discussion and judge’s vote is secret by the Article 67.2, Law on procedure for administrative case. A summary of\hfill

\textsuperscript{25} Article 52.2, the Constitution of Mongolia - In passing a collective decision on cases and disputes, the courts of first instance shall allow representatives of citizens to participate in the proceedings in accordance with the procedures prescribed by law.

\textsuperscript{26} Article 45.2, 46.1, Law on procedure for administrative cases

\textsuperscript{27} Article 70.4, Law on procedure for administrative cases

\textsuperscript{28} Article 52.1 defines the cases that shall heard by three judges panel in trial: cases that arise out from the action of prime minister or minister and governor of the province, city, cases that previous decision was vacated and remanded by the SC.
judgment is must announced at the end of the hearing and a typed version is shall provided within seven days from the trial.

All appeals are considered by three (intermediate appellate panel) or five judges who receive the complete file from the lower court and base their decision on it. Judgments that are not voluntarily executed are implemented for the winning party by the court bailiffs.

III. Adjudicative bodies: courts and administrative tribunals as trier of administrative case and dispute

1. Mongolia

a) The Constitutional Tsets (court)

The Constitution of Mongolia, in fact, established the model for a strong judiciary. Article 47 of the constitution expresses the separation of powers doctrine by stating “exercise of judicial power by any other organization but courts shall be prohibited.”

Judicial organization in Mongolia consists with the Constitutional Tsets, Courts including specialized court, and sometimes-even prosecutors. Tsets does not mean court, but is the name for the referee in the traditional Mongolian wrestling: The image the word evokes is not of a court upholding the rights of individuals against the government, but of a neutral force mediating between heavyweight political institutions. The drafters of the Mongolian Constitution could have called the body a court, but chose not to do so.

Mongolia has followed the example of some other civil law countries and has established a constitutional court known as the Tsets. During the constitution drafting process, there was widespread agreement on the need for some sort of constitutional oversight body. There were views about where the authority should reside. Some jurists wanted to adopt the decentralized model of judicial review along the lines of America or Japan, wherein every judge has the power to evaluate constitutional issues. Others argued that because Mongolia’s legal system is structured along the lines of the continental system, the “centralized” model of judicial review found in Germany and other European countries was more appropriate.

This court examines and settles constitutional challenges to legislation, regulations of State Great Hural, presidential decrees, government decisions, international treaties to which Mongolia is a party at the request of the State Great Hural, the President, the Prime Minister, the Supreme Court, the General Prosecutor, on its own initiative, or on the basis of petitions received from citizens. In addition, it

30 “Tsets” means wisdom or accuracy in Mongolian language.
serves as court of first instance for certain cases involving high-ranking officials such as Chief Justice\textsuperscript{33} of the Supreme Court. Most of its work involves the latter issue, mainly petition asserts the statute or its clause is inconsistent with Constitution. However, a substantial number of these do not fall within its jurisdiction and to be transferred to the ordinary courts or other institutions. Lately, there were some jurisdictional overlapping problems between Constitutional Tsets and newly established administrative courts (most of its cases are involved administrative action of state officials). Tsets called as a “bodyguard” of the Constitution. Even people and law says there is noting above it except blue sky, political influence related controversy arises out of its membership. “However, providing for judicial review by an independent constitutional court and achieving actualization are discrete matters. For example, the Parliament, the State Great Hural, and the Constitutional Court of Mongolia appear to be at an impasse, severely seemed to be deepening”\textsuperscript{34}. “By repeatedly ignoring the findings of the Court relating to the separation of Parliament and the Cabinet, the Mongolian Parliament is effectively hindering the translation process and weakening the rule of law.”\textsuperscript{35}

\textbf{b) The Supreme Court}

The Supreme Court is the highest judicial organ\textsuperscript{36} for non constitutional matters and exercises the following powers. To try criminal cases and other legal disputes in its jurisdiction as a first instance court, to examine decisions of lower courts through appeal, to examine and make decision on matters related to the human rights and freedoms therein and transferred to it by the Constitutional Court and the Prosecutor General, to provide official interpretations for correct application of all statutes except the Constitution, to make judgments on all other matters assigned to it by the statute. The Supreme Court has three chambers: civil, criminal, administrative, and consists of 17 justices.

The court hears the civil and criminal cases with panel of five justices; however, it hears the administrative cases with two different panels. In civil and criminal matter, the court may hear one case two times with the different numbers of justices’ panel. If Chief Justice grants the rehearing (similar to certiorari) for the case or criminal cases that contains the capital punishment, the Supreme Court must rehear the case with full bench. Latter one would be the final decision for the case.

Pursuant to Article 50.1.4 of the Constitution, the Supreme Court provides official interpretations related to the correct application of all laws other than the Constitution.

\textsuperscript{33} Recently, The Tsets decided the dispute that related to Chief Justice of the Supreme court, held that Chief Justice did not breached the Constitution. Petition asserted that Chief Justice breached the Constitution by rejecting the petitioner’s appeal himself; instead to grant it hearing. http://www.conscourt.gov.mn

\textsuperscript{34} Danielle Conway-Jones. Mongolia, Law convergence, and the third era of globalization (3 Wash. U. Global Stud. L. Rev. 63)

\textsuperscript{35} also there

\textsuperscript{36} The Constitution grants judicial power under Chapter 3 but ensures Constitutional Tsets’ power separately under Chapter 5. There were a number of disagreements about its separation and whether Tsets is court or not, but now these disputes are settled among lawyers as Tsets is court and it is an important part of Judiciary of Mongolia.
The Supreme Court interprets the law on its own initiatives or based on request of interested body, and after its formal interpretation, every body is bind to follow it.

c) The Administrative Court

Following in the wake of the legal needs assessment, on May 4, 2000 the State Great Hural passed the “Strategic Plan for the Judicial System”. This Plan identifies the direction of the development of the judiciary within the frame of the overall Legal Reform Plan and sets strategic goals to define the judicial reforms. It surely includes the establishment of specialized court that would somehow answer the growing concern of human right violation by the state organizations and its officials.

To guarantee human rights and freedom, the Mongolian State needs to establish an Administrative Court which will settle petitions regarding alleged illegal actions and resolutions by State organizations and their officials, to further revise regulations which now unduly limit human rights and freedom, and to further strengthen the courts by providing them skilled staff and lifting their responsibilities. Specialized courts such as criminal, civil and administrative courts may be formed. This is the originality of administrative courts, first ever and only specialized court in Mongolia.

Finally, December 26, 2002 State Great Hural passed the Law on establishment of administrative court along with the Law on procedure for administrative cases. It took almost ten year to convince the State Great Hural to pass this law with enormous work of lawyers, scholars, and support of international organizations. Again, with the cooperation of international organizations such as World Bank, Hans Seidel Foundation, government and judiciary prepared for the actual formation of administrative court for more than two years.

During the 2004 actual formation of the Administrative court, the one of main problem was in the judiciary – the executive branch did not want to lose power to, at least not be under control of the judicial branch. New courts had certain trouble to operate the because of the public authorities bureaucratic behavior.

The court system consists of the Supreme Court - last resort, Aimag and capital city courts – appellate, Sum, inter-sum and district courts – trial. Because of following two reasons, the State Great Hural decided the administrative courts to be differently than ordinary court system. The reasons are first – financial shortage of funding to establish three levels administrative courts same as ordinary courts and second – not enough cases to employ the courts in sums and districts. Thus, every Aimag and capital city, not sum and district has its administrative court and it is a trial court with jurisdiction over cases arising out of its own public administration or official’s action.

However, the activities and decisions of the specialized courts shall not but must be under the supervision of the Supreme Court. Then Supreme Court has a new

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38 The Constitution of Mongolia, Article 48 (1)
39 Even still now, almost after three years of beginning of these courts, some courts do not have enough cases to employ the judges. These are mainly rural Aimag (province) administrative courts. In 2005, administrative courts decided 385 cases. 114 solved and settled before trial, 271 cases went through trial. There are 21 administrative courts working as a first instance court, but Administrative court of Capital city, one that sets in Ulaanbaatar city, has decided more then half of these cases.
40 The Constitution of Mongolia, Article 48 (1)
chamber in addition to civil and criminal chamber. Administrative chamber of Supreme Court has responsibility not only as a last instance court but also as an intermediate appellate court. Intermediate appellate panel decides the case with panel of three justices and do not limited to consider the issues stated in appeal but must review the whole case. As a last instance court, administrative chamber hears the case with panel of five justices. Moreover, if the case has heard by the chamber prior to this latter hearing, justices who took part in first hearing must recuse themselves.

Administrative courts began operating in June 1, 2004. It deals with disputes, between the public authorities and individuals, about legitimacy of administrative act, which arises from the exercise of public authority and may breach the lawful rights' of citizen or legal entity.

Even before commencement of administrative court, ordinary courts had jurisdiction over types of cases that now in jurisdiction of administrative courts. Nevertheless, the incentives being established this court was the specialized judges and stffs, moreover attorneys whom hopefully bring the fight against illegal administrative actions to new level.

Protection right to submit a petition or a complaint to State bodies and officials, right to appeal to the court to protect his/her right if he/she considers that the right of freedoms as spelt out by the Mongolian law or an international treaty have been violated is now in hand of specialized court. Therefore, this court enforces the Constitutional obligation of the State bodies and officials to respond to the petitions or complaints of citizens in conformity with law and to strictly abide by the Constitution and other laws and work for the benefit of the people.

The most dangerous threat for building democratic state is a corruption, nowadays in Mongolia. “A profound blurring of the lines between the public and private, sector brought about by endemic and systemic conflict of interest at nearly all levels,” lack of information, weak non-government sector, limited political will and weak internal control mechanisms. One of the corruption’s most common result, delay and mistreatment of public administration is now under control of administrative courts, which began to show some good result for the public against illegal administrative actions.

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41 The Law on procedure for administrative cases, Article 85 (3)
42 The Constitution of Mongolia, Article 16 (12), (14)
43 The Constitution of Mongolia, Article 16 (12)
44 The Constitution of Mongolia, Article 46 (2)