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APPROACHING THE REQUIREMENT OF LEGALITY OF DECISIONS OF THE CONSTITUTIONAL TSETS OF MONGOLIA FROM THE PERSPECTIVE OF LEGAL TECHNIQUE

AUTHORED BY - ODONTUYA KHUKHLEE

Ph.D. Candidate in Law, Researcher,
Shihihutug University, Mongolia

Abstract

This study examines the requirement of legality in the decisions of the Constitutional Tsets of Mongolia from the perspective of legal technique. While the Law on Procedures of the Constitutional Tsets establishes that its decisions must be both lawful and reasoned, the practical realization of these requirements raises important theoretical and methodological questions. The research analyzes the structure, content, and reasoning of Constitutional Tsets decisions in light of general principles applicable to judicial acts, including compliance with substantive and procedural legal norms, proper legal interpretation, and adherence to fundamental principles such as impartiality and transparency. Particular attention is given to interpretative methodologies, highlighting challenges arising from the predominant reliance on textual and originalist approaches, and the insufficient use of alternative or hybrid interpretative methods. The study also identifies procedural and institutional shortcomings that may affect the legitimacy and effectiveness of constitutional adjudication. It argues that strengthening legal technique in judicial decision-making enhances not only the quality of decisions but also public trust in constitutional justice. The paper concludes with recommendations aimed at improving the legal framework, interpretative practices, and procedural guarantees of the Constitutional Tsets in order to ensure the consistent realization of legality in its decisions.

Introduction

Article 11.2 of the Law on Procedures of the Constitutional Tsets of Mongolia provides that *“a decision of the Tsets shall be lawful where it fully conforms to the letter, wording, and spirit of the Constitution, the Law on the Constitutional Tsets, and the relevant provisions of this Law.”* Furthermore, Article 11.3 stipulates that *“a decision of the Tsets shall be reasoned where all circumstances relevant to the resolution of the dispute have been comprehensively, fully, and objectively examined during the hearing, and the conclusions reached are sufficiently substantiated by evidence.”*

Although courts in different countries operate within diverse legal traditions and national contexts, and are guided by varying legal doctrines, it may be appropriate to approach judicial decision-making through generally accepted legal-technical requirements, particularly the requirements that decisions be **lawful** and **reasoned**. From this perspective, the present study seeks to explore how the Constitutional Tsets of Mongolia ensures the legality and reasoning of its decisions within the framework of legal technique.

As a key mechanism for safeguarding the Constitution and ensuring the protection of human rights and freedoms, the Constitutional Tsets has the authority to invalidate laws and legislation that are inconsistent with the Constitution. As noted above, such decisions must meet the legal requirements of legality and reasoning.

Decisions of the Constitutional Tsets constitute judicial acts arising from adjudicative proceedings. They are acts of legal application through which the court determines the factual circumstances of a case and renders its decision in a procedural form.

According to Article 31.1 of the Law on Procedures of the Constitutional Tsets, decisions of the Tsets take the form of **conclusions, resolutions, and rulings**. Article 33 of the same law sets out the content of such decisions in ten elements, without explicitly structuring them into traditional components of judicial decisions.¹ However, the structural elements of Constitutional Tsets decisions may be identified as follows:

- an introductory part (although not explicitly designated as such, its content is fully present),
- reasoning,
- and conclusion.

Thus, decisions of the Constitutional Tsets exhibit both similarities and distinctive characteristics in comparison with decisions of other courts. The requirement that decisions be lawful and reasoned constitutes one of the most important factors influencing public confidence in constitutional adjudication and the institutional authority of the Constitutional Tsets. Accordingly, this study evaluates the extent to which these requirements are fulfilled, based on an analysis of decisions issued by the Constitutional Tsets from the perspective of legal technique.

¹ Civil Procedure Law of Mongolia (2002, as amended), Article 118.1.

Discussion

Decisions of the Constitutional Tsets constitute primary judicial acts. Therefore, the core arguments of this study are grounded in the legal framework governing judicial decisions and legal acts, as established by the Law on Courts.

Article 22.2 of the Law on Courts provides that the methodology and procedures for drafting judicial decisions shall be approved by the Supreme Court. Furthermore, Article 22.3 stipulates that “*the methodology for drafting judicial decisions shall include requirements concerning the structure, types, content, language and style, legal drafting technique, citation standards for judicial decisions, and methods for providing comprehensive reasoning with respect to the parties’ claims, objections, explanations, disputed facts, and legal grounds.*”

From the perspective of legal technique, this study evaluates how the requirements of legality and reasoning in decisions of the Constitutional Tsets are ensured. Moreover, it aims to demonstrate that judicial acts developed in accordance with proper legal procedures and techniques contribute to fostering respect for the law among citizens. Judicial decisions drafted in compliance with the rules of legal technique strengthen confidence in the correctness of judicial activities and play a crucial role in building public trust in the judiciary. In this regard, the research seeks to make a modest contribution to the understanding of these issues.

The requirement that decisions of the Constitutional Tsets be **lawful** is examined in light of the general legal-technical standards applicable to the content of judicial acts.

Under procedural law, the first and fundamental requirement imposed on any judicial decision is that it must be lawful.²

The requirement that a judicial act be lawful means that such an act must be rendered in full conformity with the applicable substantive legal norms governing the relevant legal relationship and in strict compliance with procedural legal rules.

In order for a judicial decision to be considered lawful, the following requirements must be satisfied:

² T. V. Kashanina, *Legal Technique* (Ulaanbaatar, 2016), 401.

1. The judicial act must be rendered in accordance with applicable substantive legal norms;
2. The principle of legality must not be violated;
3. The requirements of legality must be fully complied with;
4. The judicial decision must be issued in accordance with procedural law;
5. The decision must reflect the hierarchy and legal force of laws and normative acts;
6. In the absence of a governing legal norm, the court shall apply legal norms regulating analogous relations;
7. The court shall be guided by decisions and interpretations issued by higher courts during adjudication;
8. The court shall apply foreign legal norms where permitted by law;
9. In rendering its decision, the court shall take into account the jurisprudence of the European Court of Human Rights.

The cumulative fulfillment of the above requirements constitutes the legality of a judicial decision.

Based on decisions issued by the Constitutional Tsets, the present study evaluates how the requirement of legality is ensured in practice. This evaluation is conducted in light of the specific characteristics of Constitutional Tsets decisions, taking into account standards appropriate to the legal system of Mongolia.

1. Compliance with Substantive Legal Norms

A judicial act must be rendered in accordance with applicable substantive legal norms. This implies that the court must apply the relevant law to the конкрет case and interpret it correctly. Where a court fails to apply the appropriate legal norm, such an error leads to an incorrect assessment of the factual circumstances of the case.

In such situations, two forms of legal error may occur simultaneously:

- failure to apply the law that ought to have been applied;
- application of a law that ought not to have been applied.

However, in the context of the Constitutional Tsets, the issue of applying ordinary laws does not arise in the same manner. This is because the Tsets examines whether a disputed legal act conforms exclusively to the Constitution. Accordingly, the applicable legal norm is the

Constitution itself, and the distinction between “applicable” and “non-applicable” laws is not directly relevant.

Nevertheless, the question of legal interpretation remains central. The Constitutional Tssets not only applies the Constitution but also interprets it. Thus, issues of interpretation are inseparably linked to the role and function of the constitutional court. One of the core functions of the Constitutional Tssets is to interpret the Constitution in the course of rendering its decisions.

Incorrect interpretation may lead to adverse consequences in constitutional adjudication. Such errors may arise in two main forms:

1. Misunderstanding or misinterpreting the wording, text, or spirit of constitutional provisions:
 - misunderstanding;
 - misinterpretation;
2. Failure to employ a pluralistic or alternative interpretative methodology.

Example of Misinterpretation

A notable example of misunderstanding can be observed in the interpretation of the electoral system. By relying primarily on textual interpretation, the Constitutional Tssets effectively invalidated the possibility of a mixed electoral system.

Subsequently, this issue was revisited through constitutional amendment. By the amendment to Article 21.1 of the Constitution of Mongolia adopted on May 31, 2023, a mixed electoral system was explicitly introduced, providing that:

“The State Great Khural shall consist of one chamber with one hundred and twenty-six members. Elections shall be conducted under a mixed electoral system. Seventy-eight members shall be elected by majoritarian representation, and forty-eight members shall be elected by proportional representation.”

This development demonstrates that earlier interpretative approaches resulted in delays and contributed to institutional rigidity, particularly in matters related to the electoral system, thereby exacerbating political and legal deadlock.

With respect to the constitutional principles of elections, Article 3.1 of the Constitution and Article 21.2 of Chapter III of the Constitution provide that: “*Members of the State Great Khural shall be elected by the citizens of Mongolia having the right to vote on the basis of universal, free, and direct suffrage by secret ballot for a term of four years.*” From these fundamental electoral principles, the Constitutional Tsets focused on the principle of “**direct**” election in the reasoning section of its decision. In interpreting this term, the Tsets referred to the discussions that took place at the time the Constitution was originally adopted, and concluded that the proposal for a mixed electoral composition had not received sufficient support during those deliberations. On that basis, it effectively invalidated the possibility of maintaining the mixed electoral system provided for in the Election Law adopted on December 25, 2015. More specifically, in Conclusion No. 05 of April 22, 2016, the Tsets reasoned as follows:

*Reasoning*³

1. In order to clarify the conceptual meaning of Article 21 of the Constitution of Mongolia, the minutes of the sessions of the Baga Khural and the People’s Great Khural of the former Mongolian People’s Republic, during which the draft Constitution was discussed, were examined. These records show that the Baga Khural deliberated and voted on the form of the electoral system to be used for constituting the State Great Khural.

More specifically, during the session of October 15, 1991, at which the draft Constitution was discussed, certain members proposed that “*some members of the Great Khural should be seated on the basis of votes cast for political parties under proportional representation, while others—specifically two-thirds—should be directly elected, thereby creating a mixed composition. A unicameral parliament with a mixed composition is necessary. Let us put this proposal to a vote.*” However, when the proposal to introduce a mixed electoral system containing a proportional representation element for elections to the State Great Khural was put to a vote, it failed to secure the support of the majority of members.

From this, it was considered reasonable to conclude that the Constitution of Mongolia did not recognize the possibility of conducting elections to the State Great Khural under a proportional representation system.

³ On the review and resolution of the dispute concerning whether Article 7.1.1 of the Law on Elections and Article 120.3 of the same law violate the relevant provisions of the Constitution, available at: <https://legalinfo.mn/mn/detail?lawId=11847> (last accessed 15 March 2024).

In accordance with this constitutional understanding, Article 21(2) of the Constitution provides that “*Members of the State Great Khural shall be elected ...*”, and Article 21(3) further provides that “*A citizen shall be elected as a Member of the State Great Khural ...*”. These provisions were understood as requiring that votes be cast for an individual candidate rather than for a political party.

Accordingly, Article 7.1.1 of the Election Law in its entirety, as well as the phrase in Article 120.3 stating that “*... not more than 28 members shall be elected through proportional elections ...*”, was found to be inconsistent with the above-mentioned provisions of the Constitution of Mongolia.

- **Alternative interpretative methodologies are not being applied in a pluralistic manner.**

We are living in an era of conflict and polarization in political, legal, and constitutional practice.⁴

There should be no notion in theory of what is appropriate or inappropriate, nor of the incorrect application of theory. In forming the reasoning of its decisions, the Constitutional Tsets of Mongolia does not employ interpretative methods beyond textual and originalist interpretation in a selective or alternative manner. This reflects a deficiency in interpretative methodology and indicates the need to apply interpretative theories in a hybrid or combined manner. It is also worth noting that, on the grounds of inconsistency with the Constitution, certain legal provisions particularly those that could otherwise be amended to address legislative obsolescence are being invalidated. Constitutional theories, in general, are based on reasoned arguments, similar to political normative theories. The theory of constitutional interpretation requires that, in cases of ambiguity, constitutional provisions be interpreted not only through a particular interpretative approach but also through counter-arguments and from a politically and theoretically appropriate perspective grounded in legality.⁵

The Constitution is both a legal and a political document. Accordingly, constitutional disputes have a legal form while possessing a political substance.⁶ The role of the constitutional

⁴ Michael J. Perry, Why constitutional theory matters to constitutional practice (and vice versa), <https://conservancy.umn.edu/server/api/core/bitstreams/e19b7b91-8ecf-403f-8126-4d2e5011c50d/content> last accessed 13 February 2022).

⁵ Michael J Perry, “Why Constitutional Theory Matters to Constitutional Practice (And Vice Versa)” (1989) 6 *Constitutional Commentary* 231, available at: <https://scholarship.law.umn.edu/concomm/727> (last accessed 13 February 2026).

⁶ Arne Mavčič, *Constitutional Review* (Ulaanbaatar, 2014), 173.

court is to safeguard the Constitution. In fulfilling this function, it reviews the activities of legislative and administrative bodies.⁷ This function of the constitutional court is inherently political in nature.

Public discourse often criticizes the Constitutional Tsets for issuing decisions of a political nature. In response, it may be argued, first, that the Constitution itself is a political document, and second, that constitutional courts, from the perspective of legal philosophy, render their decisions by adopting approaches grounded in formalism and realism. In this regard, Mark Tushnet, discussing the realist position of the judiciary, states that “*constitutional theory is important because it defines the boundaries of political discourse*,” thereby endorsing this interpretative approach.⁸ In other words, constitutional courts render decisions based on prevailing social and political conditions. For example, this can be observed in the Constitutional Tsets’ Conclusion (2025, No. 8)⁹ concerning the review and resolution of the dispute on whether the dismissal of the Prime Minister was consistent with the Constitution of Mongolia. At that time, Mongolia was experiencing a complex and turbulent political situation. During the same period in which the Speaker of the State Great Khural, D. Amarbaysgalan, was relieved of his duties, the State Great Khural voted on whether to dismiss the Prime Minister, G. Zandanshatar. The Constitutional Tsets reviewed and resolved the question of whether this action violated the Constitution.

The constitutional court must not contradict itself. Therefore, in exercising constitutional review, the court is often required to rely on certain “unwritten laws.” For instance, in interpreting the Constitution, the body exercising constitutional review must take into account prevailing social and political principles, assess whether a law conforms to the Constitution from both formal and substantive perspectives, and recognize that fundamental principles and rights serve as limits on the powers of the legislature. Consequently, although the constitutional court evaluates whether laws are consistent with the Constitution, it thereby protects those rights through such review...¹⁰ Constitutional argumentation may influence judges to resolve constitutional disputes through alternative approaches. It is agreed that

⁷ Research Team of the Constitutional Committee, *The State of Petitions and Complaints Submitted by Citizens to the Constitutional Tsets and Constitutional Violations in the Activities of State Institutions: Research Report*.

⁸ Michael J Perry, “Why Constitutional Theory Matters to Constitutional Practice (And Vice Versa)” (1989) 6 *Constitutional Commentary* 231, available at: <https://scholarship.law.umn.edu/concomm/727> (last accessed 13 February 2026).

⁹ Constitutional Tsets of Mongolia, Great Chamber Conclusion No. 08 (22 October 2025).

¹⁰ Arne Mavčič, *Constitutional Review* (Ulaanbaatar 2014) 173.

theories of constitutional interpretation, to some extent, serve to clarify the role of the constitutional court. Such judicial argumentation may, in certain cases, be reflected in separate opinions accompanying judicial decisions.

In conclusion, it may be argued that if the Constitutional Tsets correctly applies and properly interprets the Constitution, it can avoid errors and incorrect assessments, as well as refrain from issuing politically driven decisions. Under such circumstances, the requirement of legality of judicial decisions may be more effectively ensured.

2. Violation of the Principle of Legality

In addition to the principles governing adjudicative proceedings as prescribed by the Law on Procedures of the Constitutional Tsets, the fundamental principles governing the activities of the Constitutional Tsets must not be violated.

In particular, it is necessary to adhere to the principles guiding decision-making. According to Article 2.1 of the Law on the Constitutional Tsets, “*adherence to the Constitution of Mongolia, respect for laws consistent with the Constitution, reliance on research, impartiality, independence, and transparency shall constitute the fundamental principles of the activities of the Tsets.*” The Constitutional Tsets, in accordance with the principle of impartiality, must not approach any issue from a political standpoint.

In rendering decisions, it is appropriate to be guided by the core principles of adherence to the Constitution, reliance on research, and impartiality. Furthermore, pursuant to Article 10.2 of the Law on Procedures of the Constitutional Tsets, “*no person other than the members participating in the hearing and the secretary responsible for recording the deliberations shall be permitted to enter the deliberation room. If a member’s opinion expressed during deliberation forms part of the reasoning of the Tsets’ decision, it shall be included in the reasoning section, and any dissenting opinion shall be appended to the decision.*”

Judicial dissenting opinions are widely recognized as significant for the analysis of decisions and for academic research, and they contribute to the development of constitutional legal scholarship. However, it is regrettable that certain decisions of the Constitutional Tsets have undermined public trust in the institution. This concern is also reflected in the work of O.

Munkhsaikhan, who argues that¹¹ “*the most progressive provisions are being invalidated one by one under the name of the Constitution.*” The main argument of this critique is that, although decisions are made by majority in cases of disagreement over the relevance of facts or the interpretation of constitutional provisions, the restriction on publishing dissenting opinions of minority judges has hindered the development of law.

Although the principle of the **rule of law** underpins a state governed by law, it should also be noted that excessive reliance on formal legal regulation for every matter does not necessarily produce favorable outcomes. There is an increasing societal demand for decision-making that is guided not only by law but also by fundamental legal values and principles, a development that should not be overlooked.

3. Failure to Fulfill the Requirement of Legality

According to Article 12.1 of the Law on the Constitutional Tsets, “*in adjudicating disputes, the Tsets shall conduct hearings publicly, directly, and continuously, except as otherwise provided by law; ensure equality of the parties and allow them to freely present arguments; deliberate collectively; and render decisions by majority vote, objectively, and in strict conformity with this Law and the Law on Procedures of the Constitutional Tsets.*”

In practice, however, there have been instances where this requirement has not been fully observed. For example, during the proceedings of the Small Chamber concerning eligibility for candidacy in the presidential election in connection with the 2019 constitutional amendments, a situation occurred in which a member left the hearing at the moment of decision-making. Although the principle of decision-making by majority is clearly established in the Law on the Constitutional Tsets, and it was evident that two out of three members held the same position, the matter could not be appropriately resolved due to the interruption of the session. It may be noted that such circumstances required a more responsible approach, particularly given that the situation generated significant public controversy and polarized societal reactions.

¹¹ O Munkhsaikhan, “The Blind Decisions of the Constitutional Tsets Have Gone Too Far: Separate Opinions of a Member of the Tsets and a Justice of the Supreme Court,” available at: <https://www.trends.mn/n/5941> (last accessed 13 March 2022). Constitutional Tsets of Mongolia, Resolution No. 4 (7 June 2016), available at: <http://legalinfo.mn/law/details/11992?lawid=11992>.

The requirement that decisions be lawful is closely linked to the proper and timely adjudication of cases. Ensuring that disputes are resolved correctly and without undue delay constitutes an essential condition for maintaining public trust in the decisions of the Constitutional Tsets and for upholding respect for the institution itself.

Conclusion and recommendations

- The legality of decisions of the Constitutional Tsets should not be assessed solely on the basis of statutory requirements, but also in light of the general legal-technical standards applicable to the legality of judicial decisions;
- Although the reasoning section of Constitutional Tsets decisions had previously been criticized for being overly brief and unclear, decisions have now become more detailed and are increasingly substantiated through theoretical and doctrinal explanations. This development should be further expanded;
- It is necessary to address the possibility that certain rights of participants in constitutional proceedings may be restricted or not fully exercised due to the absence of formal procedural status. In particular, introducing provisions concerning third parties—often referred to as “friends of the court”—through legislative amendments could fill an existing legal gap and broaden the substantive scope of decisions. The legal status of such third parties should be regulated in accordance with the specific characteristics of constitutional procedural law;
- The legal regulation concerning the form and content requirements of Constitutional Tsets decisions should be clarified, and a comprehensive methodology and procedure for drafting such decisions should be established, similar to those applicable to other judicial decisions;
- Given the increasing likelihood of a growing number of constitutional disputes, it is necessary to enhance the decision-making capacity of the Constitutional Tsets and strengthen the authority of its decisions;
- Ethical issues in the relationship between the State Great Khural (Parliament) and the Constitutional Tsets should be addressed at the policy level, particularly to prevent the repeated enactment of laws or provisions that have previously been invalidated by the Tsets in essentially identical form.

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