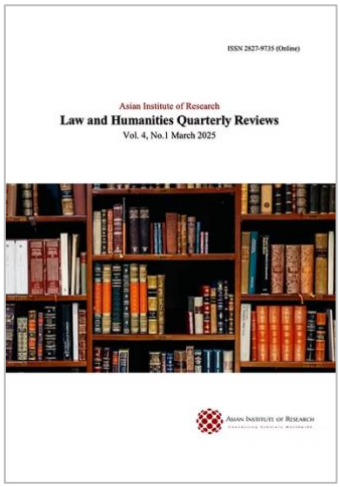

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Legal Receipts and Reforms in Civil Procedure Law of Mongolia

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Abstract
Problem and Purpose: The brief introduction to Mongolian Civil Procedure Law (=CPL) in this article aims to evaluate pros and contras of the main reforms in the CPL since enacting the Constitution of 1992, the Civil Code and the CPL itself in 2002. The researchers held the transition from socialist law system into continental law tradition based on liberalism and social state successfully accomplished. But a fundamental reorganization of the legal system has not reached yet, especially the development of civil procedure rules and principles shows that the structure, style, ideological model and transitional regulations of the previous laws interacted with the new norms, methods and mechanisms of the reform, thereby influencing the formation of a mixed model in the legal environment. Methods: So, the main reforms and the further need for reforms will be discussed here under the spotlight of mixture of those legal methods which are persistent in the CPL of Mongolia from a comparative view to the old system. In comparison to the western countries, Mongolia faces many difficulties in the procedural law field caused by transition and rapid development of the environment. Results: The reform process did not stop at reforming the legal environment, but rather changed the regulatory structures of received norms, which led to a mixed structure that combined old and new in Mongolia. Generally, the judicial reform in Mongolia from 2021 has reached its goals and ended with new definition of Supreme court power. The digitalization of the justice is a continuous process, which arises the problems of digital evidence etc. In order to simplify the judiciary, the inclusion of low-cost case resolution procedure in CPL instead of dunning procedure shows that model procedures or class action models will come to good to the willingness of the Mongolian legislator to reform. Conclusion: Civil procedural law must not remain as resistant to reform as substantive law in order to be in line with new developments of technology and the economy so that participants in economic transactions can exercise their procedural rights in a timely manner. In this regard, new expected reforms are welcome, even institutes from different legal families can be transformed into domestic law, especially since the two major legal families have developed closely together.

Keywords: Legal Receipts, Legal Reforms, Civil Procedure Law, Mongolia

1. Development of Civil Procedure Regulations in Mongolia

The Civil Procedure Code in Mongolia developed in three stages: firstly, before Mongolia accepted socialist laws according to the example of the Soviet Union; further while the Mongolian National Republic was a socialist state after the UdSSR; and after Mongolia transformed into democracy and into a market economy. Over time, the Mongolian legal system as a whole has grown very closely related to the continental legal system (Amarsanaa, 2000).

1.1. Brief introduction

Mongolia is a central state and the tradition of governmental organization goes back to the 209 b.C. to the Hunnen Empire, which was the first established state power in Central Asia with a king as a ruler and legislator in person and with well-organized executive powers. From this time, despite the rulers being changed the state tradition was going further. Since the 13th century Mongolia has become an unitary state under the Chinggis Khan's regime. He was the only ruler in the history of the theory of state, whose state power stretched independent from the existing territory. Besides, he was a big administrative and legal reformer. He has regulated many branches of life and appointed the highest judge in the Empire. The most famous regulation of him was the "Great Governance Law" (Gomec, 2013), which included the Administration, Military, Criminal Law and the Hygiene and Discipline. He proclaimed the equality of religions. That was one of the reasons why the Mongolian people have the born tolerance to other religions. The Laws, which have been enacted through him, became later, during the Middle Ages, the inseparable part of the tradition of the Mongolian ethnic groups, and they characterized the whole culture. So, they could be very good prevention tools against the crimes. It had big influences on the development of the formal Justice system. As a result, the legal tradition, also the Justice, was much formalized; legal consciousness was shaped through and despite the nomadic way of life. As the Chinese and Mandgurian state was strengthened during the 18th century the Laws of the both countries grew closer through the consolidation of the Chinese Interests.

After the achieving of Independence 1921 the first measures in the legal field were the abolishing the cruel sanctions of the Middle Ages like banishing or neck blocking and the death penalty was at times suspended. And then, in 1926 the first modern Civil Code was enacted, but the Independence of the justice was abolished to facilitate the repressive measures in the meaning of the Soviet Union. The role of representatives of citizens, also laymans, was predominant in legal procedures. That was not an alternative to the formal justice system, not at all, but the method for realization of the party interest. The abolishing of the decisions of the courts through the judges of the higher instance according to the own or common sense of justice had as result the disciplinar or even criminal sanctions from the communist party system.

After Mongolia transformed into a democracy the need appeared to build a new state and market system; to reform the existing legal system in accordance towards the new goals. The main challenges for the state were to reject the inappropriate dogmas of Soviet law and to establish the foundations and elements of a market economy with its characteristic legal relationships. The promulgation of new legislation began with the adaptation of relevant norms, with the adoption of normative acts in those fields that had not been regulated by previous legislation, and with the development of comprehensive codifications embracing all areas of the law.

Although, by the first democratic reforms most members of Parliament were in favor of retaining the normative core and structure of the former civil code and civil procedure law, so they consequently voted in favor of retaining the old legal culture (Buyankhishig, 2000). So, the regulations of nowadays can be understood in whole context with the structures and models of former laws.

1.2. Civil procedural law of Mongolia in the socialist era

1.2.1. Reform of the legal system and revision of contracts

Mongolia has adopted Civil Procedure Law of Mongolia (=CPL) (State Information Bulletin, 2002) of its own in 1926 and again in 1967. When designing and adopting those Codes, their authors were instructed by the Central committee of communist party. The CPL of Mongolian People's Republic /MPR/ practically did not differ from the Civil Procedure Codes of the other Soviet Republics. The civil procedure was considered as the process of execution of socialist justice as established by the Soviet State in civil cases. Courts did not play any substantial role in this society. In all legal relations the legal entities did not have the liberty of choice and in particular could not invoke the principle of liberty of agreement, instead, they were regulated by state acts only. That was why all their disputes were resolved according to the special procedure before the State Arbitration courts.

1.2.2. State domination in the civil procedure during the period of socialism

It can be said that the dialogue about human rights, personal freedom and liberty was of great importance even during socialism, but civil proceedings, like material laws, were conditioned by ideology. In the socialist legal system, the same legal principles and institutions as in the capitalist countries were inevitably applied, and fundamental rights and freedoms were understood and interpreted in different contexts in these two systems. In this sense, the dispositive principle was included in the previous legislation on civil procedure. But this did not mean that the state would consistently support the freedom of individuals and the right to freely participate in legal relations and exercise their rights. Art. 4 of the CPL (Law on Civil Procedure, 1967) of the Mongolian People's Republic states that an individual may file a claim to initiate a civil process in order to protect his own interests, and if the prosecutor or the representative of a government organization believes that the interests of the state have been violated (State Committee for Law, 1967). It was a manifestation of this principle and has almost the same wordings as nowadays.

But it was normal for the socialist state to limit the freedom of the participants in the civil process, and the tendency to expand the state's rights in the resolution of private legal disputes, to give more authority to its organs, and to represent public interests is common. At the beginning of the establishment of socialism, after the revolution, the majority of the population did not have public education, so the practical requirement that the state actively supported people's participation, believing that they lacked the ability to defend their interests in court, became the basis for legalizing the role of the state's advisory function and the auxiliary role of the state organization (Buyankhishig, 2021). In modern times, this situation has become the basis for limiting the dispositive principle of the civil process to a very broad scope, and as social relations are modernized, the previous practice was influenced by ideology, and thus becomes legally inappropriate. According to the traditional concept of civil law, the civil process is a manifestation of the conflict of interests of the parties hereto. In socialist system on contrary was held, that the social conflicts were already destroyed, private and social interests were balanced, and the state was the highest form of justice, justifying the dominance of state regulation in social, political and economic relations. It became a common phenomenon to deny the individual's independence and include him in the social system. The goal of building a communist society allowed the state to penetrate deeply into private life and created a stereotype that did not recognize other ways of life (Kurzynsky-Singer, 2019).

Thus, while limiting the operation of the dispositive principle, the view that finding material truth was the priority has spread, and the practice of court decisions having a common effect on public in addition to the parties to the dispute has been established. Pursuant to Art. 12 of the CPL /1967/ of MPR all state-owned companies, authorized organizations, cooperatives, other cooperatives, their associations, other social organizations, government employees, and citizens are obliged to comply with court decisions (State Committee for Law, 1967). This provision has remained in Art. 11 of the CPL of 2002 (Civil Procedure Law, 2002) the same. In order to facilitate the functioning of the courts in socialist civil proceedings, CPL has severely limited the rights of the parties to determine the content of the proceedings. Other ways of restricting this right were starting civil proceedings by the court on its own initiative, regulating the official maxim in the CPL, so that the principle of mandatory investigation was applied in civil litigations (Khuyag, 2013), not being limited to the parties' statements and facts presented the courts were obliged to determine the truth by itself, and took measures to fully investigate and clarify the events that happened. The obligation to obtain or demand evidences was in the power of courts. In addition, in order to protect the rights and interests of the plaintiffs by the law, the court may file a decision that goes beyond the content of the claim and by the exercising of fundamental rights to reject the claim, entering into a settlement agreement, ending the civil dispute has required consent of the court, which could be beheld if these proceedings are prohibited by law or if public or private interests were involved. These interests were somewhere ideological nature. The refusal of the permission could show to the fact that the dispositive principle was not properly implemented in the CPL of 1967. However, in the current legislation of civil procedure the above norms have remained in a slightly modified form.

Another mechanism of the state to control private legal disputes was to give prosecutors the power to participate in civil proceedings and to give them the function of "supervising the implementation of socialist legislation" (Buyankhishig, 2021). If it is deemed necessary to protect the state, public interest or the interests of citizens

protected by law, the state prosecutor has had the right to initiate the civil litigation at any time, as well as the right to participate in the proceedings, so the Art. 45 of the CPL /1967/ of MPR which was similar to Art. 4.2 and Art. 41 of the CPC of the former Soviet Union[1]. These regulations granted unlimited full authority to conduct the process and to initiate a civil case to protect the interests of the citizens without requiring their consent. The termination was also fully dependent on courts approval. In fact, the person whose interests are in question could participate in "own" process, only when they are informed about the initiation of the process or when they held as a plaintiff. In addition, several mechanisms for social control of private legal disputes were used in socialist civil proceedings. For example, the Art. 46 of the CPL (State Committee for Law, 1967) /1967/ of MPR stipulated that citizens of state administration, cooperatives, and public organizations can file lawsuits to protect the rights and interests of others protected by law, which is a way of restricting personal freedom.

2. Judicial System and Legislation on Civil Procedure of Mongolia

Normative acts regulating different aspects of civil proceedings stand in a certain hierarchy. The basic act that defines the court system of Mongolia and contains the main principles for ensuring justice is found in the Constitution of Mongolia of 1992 (Constitution of Mongolia, 2019), Section 4, named "Judicial Power" (Art. 47-56). This section contains provisions on the principle of the independence and immunity of judges. In addition to forming the legal basis for civil litigation, there is also a catalog of fundamental rights that are important for the interpretation of private law legislation. First of all, it includes the fundamental rights and freedom to protect one's rights in court Art.16.14[2] and Art.14.1[3] of the Constitution, that everyone is equal before the court. Next in importance comes the Law on the Judiciary[4]/=LOJ/, which defines the legal grounds for the organization of the court power and the execution of justice, the system of courts of general jurisdiction, the main requirements for the formation of the professional judges and the procedures for accomplishing self-regulation of judges. Besides this, it sets general rules for the performance of court activities and regulates other issues of the court system.

After the legal reform 2002, the main normative act in the field of civil proceedings is the Civil Procedure Law /=CPL/ of 2002 (Civil Procedure Law, 2002), which defines the subjects of the civil proceedings; accountability and judicial jurisdiction; evidence and the procedure for consideration of evidence; filing of applications; consideration at the court of the first instance and at the appellate and cassation levels and some aspects of enforcement proceedings. It should also be noted that the Law on Enforcement Proceedings of 2017 covers the procedure for enforcement of court verdicts (Law on Enforcement Proceedings, 2017). But not all issues of civil proceedings are regulated by the above-mentioned Codes. It is a continuation and detailed legislation of the procedure for the execution of court decisions stipulated in §§183-188 of the CPL. Other important legislation includes the Laws on the Courts, on Prosecution, on Judicial Examination, etc. Besides, there are a number of by-laws, usually adopted at the level of the ministry of Justice etc. Although the documents issued by courts are not sources of law, they should be applied and followed and courts actively use them in their day-to-day

[1] CPC of UdSSR/Art. 4. Jurisdiction of civil cases to courts
(1) … (2) In cases provided for by law, civil cases may be considered by friendly courts or arbitration courts. The procedure for the activities of friendly and arbitration courts is established by the legislation of the Soviet republics.
CPC of UdSSR/Art.41. Termination of proceedings. The court terminates the proceedings:
1) if the case is not subject to consideration in the courts;
2) if the interested person who applied to the court did not comply with the procedure for preliminary out-of-court resolution of the dispute established for this category of cases and the possibility of applying this procedure was lost;
3) if there is a court decision or a court ruling on the acceptance of the plaintiff's waiver of the claim or on the approval of a settlement agreement between the parties that has entered into legal force, made on a dispute between the same parties, on the same subject and on the same grounds;
4) if the plaintiff abandoned the claim and the refusal was accepted by the court;
5) if the parties have entered into a settlement agreement and it is approved by the court;
6) if a decision has been made by a comrades' court, adopted within its competence, on a dispute between the same parties, on the same subject and on the same grounds.

[2] Art. 16 Nu.14. Constitution of Mongolia: The right to appeal to the court for protection if one considers the rights or freedoms spelt out by the Mongolian law or an international treaty to have been violated; to be compensated for the damage illegally caused by others; not to testify against oneself, one's family, parents, or children; to defense;
to receive legal assistance; to have evidence examined; to fair trial; to be tried in one's presence; to appeal against a court decision; to seek pardon. Compelling to testify against oneself is prohibited. Every person is presumed innocent until proven guilty by a court by due process of law. The penalties imposed on the convicted may not be applicable to his or her family members and relatives.

[3] Constitution of Mongolia. Chapter Two. Human Rights and Freedoms. Article 14 [Equality, Right to Personality]
(1) All persons lawfully residing within Mongolia are equal before the law and the courts.

[4] The LOJ dated March 7, 2012 shall be considered void as of March 1, 2021.

activities (Hanns-Seidel, 2009). Namely, the Plenum of the Supreme Court has the right to issue explanations, and right to issue resolutions that sum up legal practices.

2.1. Judicial system of Mongolia under the CPL of 2002

The Judicial System may be divided, depending on the kind of procedure or the form of justice under Art.48 of the Constitution of Mongolia and Art. 10(1) of the LOJ. The Judicial System of Mongolia shall consist of the Supreme Court (the court of cassation or review), aimag and capital city courts (the court of appeals), soum or intersoum and district courts (courts of first instance). It is based on the continental legal system as practiced in Russia and Germany (Constitution of Mongolia, 1992; Batzaya & Peter, 2012).

In compliance with the legislative provisions quoted above, court power is executed through the enforcement of justice in the form of civil, administrative, criminal and constitutional court procedures. Court procedures are carried out by the Constitutional Court of Mongolia and by courts of general jurisdiction. Organization, powers and procedures of the Constitutional Court are defined by the Law on the Constitutional Court of Mongolia as of 1992.

Courts of general jurisdiction constitute the unified court system. Under this system, general and specialized courts of certain jurisdictions have been established. The specialized courts are defined as administrative and "other" courts. Currently, there are only administrative specialized courts in Mongolia but in the future, some others may be established. Particularly, specialized courts to resolve disputes in the area of some economic and family matters are needed.

In compliance with the Constitution, the general jurisdiction courts system is established according to geographical needs and specialization. This system consists of: 1. local courts; 2. appellate courts; 3. higher specialized courts; and 4. the Supreme Court of Mongolia (Constitution of Mongolia, 1992). Soum, intersoum and district courts are the local courts, which have jurisdiction only at first instance. Aimag courts, found in the aimag capitals, deal with appeals from the lower-level courts. The Supreme Court of Mongolia is the highest court which deals with any matters at first instance that are not specifically within the jurisdiction of the other courts and appeals from decisions of the Aimag courts and the Capital City Court (Hanns-Seidel, 2009).

The Judicial System in Mongolia may also be divided depending on the formation method of the courts. The criterion is whether the court is established by the state or upon the agreement of the parties. As indicated above, the courts of general jurisdiction constitute the state court system. Non-governmental courts encompass the mediation centers and the National Arbitration Court at the Chamber of Commerce in Mongolia.

The Law on Arbitration of 2003 and its' revised version of 2017 (Law of Mongolia, 2017) regulates the establishment and activities of the arbitration courts in Mongolia and the requirements for arbitration proceedings for the protection of property and non-property rights and the legally protected interests of the citizens and of legal entities (Dolhin, 2017). Any civil or economic dispute can be filed with arbitration courts upon the agreement of the parties except for cases stipulated by law (e.g., cases to plead certain legal documents invalid; disputes related to conclusion, alteration, termination and execution of economic agreements in the area of meeting state demands etc.). Mongolian and foreign citizens, stateless persons, legal entities and physical persons who are subjects of entrepreneurial activities may file suits with arbitration courts, if there is an arbitration clause in the agreement (Art.8 Arbitration Law[5]). Both permanent and ad hoc arbitration courts may be established. This procedure for dispute resolution is recognized mainly in commercial disputes (Dugerjav, 2017; Dolhin 2017).

2.2. Civil procedure in Mongolia

[5] Art. 8. of Arbitration Law: Arbitration agreement and its form:
8.1."Arbitration agreement" shall mean an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

The CPL of MPR of 1967 was replaced by a new code (CPL of Mongolia, 2002). The drafting of the new Code (the CPL of 2002) took several years. The working group was established at the end of 1990s, more than 5 years before the Code was adopted (Joahimski, 2004). If we compare the CPL of 2002 and the 1952 CPC of the MNR, we find that the CPL of 2002 is much better structured although it beheld some regulations in Soviet traditions. It is designed in a way that takes into account: 1/. international experience; 2. the provisions of the Constitution of Mongolia of 1992; and 3. domestic legal and court experience. It should also be mentioned that Mongolian civil procedure law, despite some regulations in Soviet tradition, belonged to the continental legal system and is rather closely related to German law (Joahimski, 2004).

The CPL of Mongolia consists of 7 sections that are divided into 20 chapters, and 195 articles. The CPL can be divided into two parts: General and Special. The General Part incorporates provisions that regulate the subjects of the civil lawsuit, jurisdiction of civil courts, evidence, measures of judicial compulsion, court fees etc. The Special Part covers all kinds and phases of court proceedings, their procedural timeframes, deadlines; mandatory, actional, and special proceedings; court hearings by upper instances (appellate, cassational, etc.) and court hearings involving foreign elements.

The new law on civil procedure is where substantive innovations are being made, in particular to strengthen the rule of law, speed up procedures and improve party rule over the procedure, some of which may be considered exemplary beyond Mongolia (Law Reform and National Legal System in Mongolia, 2000). The Civil Procedural Code aims at just and timely consideration and settlement of civil cases in the courts for the protection of the rights, freedoms or interests of natural persons, the rights and interests of legal entities and of the state. Foreigners, stateless persons, foreign legal entities, foreign states (their bodies and officials) and international organizations have procedural rights and duties that are equal to those of the Mongolian natural persons and legal entities.

The role of the judge in Mongolian civil procedure has changed since then: the judge has a positive responsibility to conduct the case as presented by the parties in a manner to reach a prompt, economical and just resolution of the dispute. Although the proceedings lay in parties' disposition, the judge is responsible for the procedure order (Buyankhishig, 2021). In comparison to earlier CPL of 1967, which gave the state a domination in civil procedure, it lay now on party disposition; although it is still recognized the leading position of the judge (Supreme Court of Mongolia, 2014).

The CPL states that parties to civil proceedings shall be a plaintiff and a defendant. These may be natural persons, legal entities or the state. An attorney or another person who is at least 18 years old and has capacity to conduct civil proceedings and properly certified authorities to be a representative in court may represent the parties. The result of any procedure shall be the passing of a decision. All other cases that must be settled under civil proceedings are considered as falling under the claim procedure. In order to start court proceedings an interested party shall file a written brief of complaint that has a content stipulated by the CPL with a court. The required contents of the application are defined in Art. 62 CPL. According to the rules, cases must be considered at the court of the first instance within two months starting from the beginning of the court proceedings. Court decisions may be re-considered under appeal or classification procedure and in case of exceptional or newly revealed circumstances. The CPL also defines the procedure for recognition and enforcement of decisions of foreign courts in Art.51.

The courts consider cases on the protection of violated, non-recognized or disputed rights, freedoms or interests, which arise from civil, housing, land, family, labor relations, as well as from other legal relations. As regards the composition of the courts, civil cases must be considered in the courts of first instance by one judge or in some cases by one judge and two representatives of citizens (Khuyag, 2013), in the court of appeal - by three judges and in the court of cassation - by five judges.

According to Art. 52 of the Constitution[6], the role of representatives of citizens changed in comparison to the Constitution of 1960, in which they had the power to judge and decision-making into a democratic control function of the public.

If the participants of the proceedings (parties, third parties) are not satisfied with the court verdict, they may contest the verdict in accordance with the appellate procedure at the appellate court. They must file an appeal within 14 days after the verdict is issued. The appellate level generally reviews the case with 5 judges. As stated before, three judges consider a case at the appellate level. The verdict on appeal may be contested in accordance with the cassation procedure at the Supreme Court. Grounds for cassation proceedings may be incorrect application of the norms of the material law or violation of the norms of procedural law, §167.1 CPL. Since the last reforms in 2021 the Appellate court is last factual instance, so that the power and responsibility of appeal courts are immense nowadays.

In certain situations, under cassation procedure, the participants of the civil proceedings have the right to contest court verdicts in civil lawsuits due to exceptional circumstances after a lawsuit was considered. The list of exceptional circumstances is limited and includes different application of the same legal provision by cassation level courts etc.[7]. A final court verdict or court decision that has come into effect may also be reviewed due to newly discovered circumstances. These are circumstances which either substantiate assertions or objections of parties or have any other substantial influence on the proper trial of the case and which already existed at the moment of the decision or verdict but were not known to the participants (e.g., fraudulent testimony of a witness; incorrect conclusion of an expert; unconstitutional nature of a law established by the Constitutional Court of Mongolia, etc.). The list of newly revealed circumstances is limited and set forth by the CPL.

2.3. Duration of Civil Procedure as specific problem in Mongolia

Total duration of civil process is the one of the most problematic issues ever since the CPL of 2002 was enacted. According to §71.1 of the CPL, the total period of civil proceedings shall be 60 days. Within this period, the civil case will be settled, including the process of dismissing the case or making a decision satisfying the claim. However, in practice, the number of cases that are resolved within this period of the law is very small, and the majority of cases are overdue (Open Society Forum, 2020). The main reason for the delay in proceedings lays in repeated postponements of court hearings, and in some cases the court hearings have been postponed 30 or more times.

To start proceedings before the court of first instance, an interested party files a written application with the court. At the courts of first instance one judge considers the case: in 14 days he or she decides whether to start court proceedings. If there is no ground to dismiss the case (there is an exhaustive list of such grounds in Art. 65 CPL), the judge issues an order and schedules court hearings. The preliminary hearing is not mandatory, but it can be held within 1 month from the starting date of proceedings to provide a correct and speedy resolution of the case. The first instance court verdict must be passed within 60 days from the starting date of proceedings. But in practice these deadlines are often broken (Open Society Forum, 2020).

The parties to the procedure must submit all reasons of claims and reasons of defenses before a certain stage of the procedure. If they cannot do that, principally they shall not be able to submit them. This principle must be applied very carefully because if the procedure takes too long there is a significant risk factor that the parties may bring all relevant or irrelevant materials related to the case. Otherwise, parties risk not being able to bring them to the hearing any more.

[6] Art. 52 of the Mongolian Constitution [Collective Decisions]. https://www.conscourt.gov.mn.
(1) Courts of all instances consider and make judgement on cases and disputes on the basis of collective decision-making.
(2) In passing a collective decision on cases and disputes, the courts of first instance allow representatives of citizens to participate in the proceedings in accordance with the procedures prescribed by law.
(3) A judge alone may take decision on some cases which are specifically singled out by law.

[7] Detailed about it: in section V of this article, under Essential amendments on CPL.

Many surveys came to conclusion (Open Society Forum, 2020; Tserendolgor & Amgalanbaatar, 2023), that the wording and application of §105.1 CPL[8] are the main cause for the delay or termination of the process. It allows the termination of the oral hearing only one time, if the party can sufficiently excuse the delay. The purpose of this rule is that the procedure should not take too long. But the legal practice turns over the rule and uses the regulation above in very extended way: for example, courts terminate legal disputes for each reasons which the parties bring up one more time, so that terminations for one dispute can be more than 2 (Open Society Forum, 2020). Actually, the parties are able to amend their case only one time during the procedure and the parties may not abuse this right. §105.1 of the CPL is an expression of the principle of continuity or concentration of proceedings, which is recognized even though it is not explicitly stated in the general part of the CPL. However, if there is no valid reason specified in §105.2 of the CPL for delaying the explanation or request that can be made within the specified time, the court has the right to make a decision without delaying the hearing.

§105.2 of the CPL is a regulation equivalent to §296 of the German Civil Procedural Code (German, 2005), and the relative theory that takes into account the risk of prolongation of the entire process in the internal preliminary conditions of the regulation can be used to interpret §105.2 of the CPL. In civil proceedings in Germany, the relevant party is guilty of delaying any procedural action, or the objections and explanations made beyond the set time limit without reasonable cause will be refused. The decision to postpone the court session or extend the proceedings is directly dependent on the appropriate time, guilt or good reason if the process is implemented. In addition, it is of major importance here whether there is a risk of prolongation of the process. The extreme concept of a risk of protracted proceedings covers cases where a late explanation or counter-objection would require more time to be considered by the court than if it were returned without acceptance.

Although the CPL regulates individual procedural actions such as providing additional explanations and evidence, hiring a lawyer, and changing claims, but the general requirements for procedural actions are not clear as in continental legal systems[9], it has not been theoretically evaluated as to whether these are appropriate conditions for delaying the proceedings. The absence of a regulation that treats procedural acts separately makes it impossible to check the validity of these acts and to control the delays related to them. Therefore, in order to properly prepare and resolve civil cases in a centralized procedure, it is appropriate to support the approach of delaying only once according to §105.1 of CPL, unless it is necessary to co-ordinate, use or suspend evidence with explanations and counter-explanations in accordance with court practice and procedural law.

Within the framework of the civil process, the parties are obliged to provide their own explanations and evidence, so it is fair and constitutional to limit the right to make such explanations and objections for a certain period of time. If any procedural action is taken, the appropriate period of time is stipulated by the law or if the judge has set the time, the action shall be taken within this period, and refusing to accept the request in late conditions is in accordance with the principle of fair trial. If we examine the reasons, the comparative study has shown that the issue of well-prepared and centralized settlement of civil cases is insufficiently regulated in civil procedure laws of Mongolia, and it is not customary to coordinate and use evidence with explanations and counter-explanations in court practice and procedural law. Therefore, limiting the use of §38.9 of the CPL, and amending §105.2 of the CPL in such a way as to support the party disposition in the process, and to improve the conscious participation in the proper exercise of their rights.

Before the judicial reform of 2021, the criticism of CPL adjusted at the role of the Supreme Court, which was considered as another factual authority like a cassation court, so that the procedure in total took a very long time. Therefore, the practice called for a renewal of the competence of the highest authority[10].

[8] Article 105. Of CPL of Mongolia. Resolution of the termination request made by the party
105.1. Requests made by a party in the case regarding the production of new evidence and other issues related to the proceedings shall be decided by the court panel or judge immediately upon hearing the opinions of the other participants.
105.2. Additional explanations and evidences that are important for the proceedings may be submitted or offered earlier, but if the court deems that there is a valid reason for presenting them during the trial, the trial may be postponed once.

[9] For example, in German CPC: §233. Restoration of former status. If a party was prevented, without its fault, from complying with a statutory time limit or the time limit allowed for filing the grounds for the first appeal, the second appeal, a miscellaneous appeal against the refusal to grant leave to second appeal, a miscellaneous appeal on a point of law or a miscellaneous appeal pursuant to §§ 621 e, 629a (2) or the time limit provided in §234 (1), the party shall, upon its motion, be granted a restoration of its former status.

[10] More detailed below in part V of this Article.

3. Application of Legal Principles in Civil Procedure

In the general part of the Civil Procedure Law of Mongolia, the principles and principles of civil procedure are listed. Nevertheless, it is questionable whether these norms are fundamental legal principles in the sense of the codification theory (Buyankhishig, 2018). The legal principles are generally applicable principles that emerge from the logical systematization of law, a codification. The enumeration of legal principles and principles in the general part of the law is common in the socialist legal tradition and no in-depth research is required here. This simplification technique goes hand in hand with *optimistic normativism*, but leads the application of law to theoretical and methodological poverty and increasingly increases the conflict between the principles that should actually be in balance [11]. The investigation of the procedural maxims in civil law revealed that the principles of civil procedure applicable to Western European or German law still exist in the CPL of Mongolia, but the legal technology of the legislature and methods of applying the law in practice with regard to the procedural maxims look significantly different. According to comparative law, the legislator who uses *legal transplants would have to* adopt the theory and method of applying the law (Buyankhishig, 2018), which are important components of legal culture. However, the legal application of procedural maxims remains in Mongolia, just as it was established before the reforms. If one evaluates the legal reforms from the perspective of the theory of *legal transplants*, the interaction between the old legal system and the new legal norms is intense and one of the evidences that the reception process leads to different results than expected is the inadequate implementation of the principles of civil procedure, especially the dispositional maxim.

3.1. Main principles of civil procedure

After Mongolia has transformed into democracy, civil procedure is governed by basic principles like adversary proceedings, equal protection under the law (§4 CPL), publicity (§8 CPL) and principle of the right to be heard and right to a fair trial (14.1 Constitution, §3 CPL). Some basic principles are enumerated in Art.3-12 CPL from 2002: dispositive principle (§12 CPL), principle of binding court decisions (§11 CPL), principle of conducting oral hearings (§88.1, 90.2 CPL), principle of conducting a trial in Mongolian language (§7 CPL), principle of Concentration of court proceedings (§9 CPL), negotiation principle as outcome of adversary proceedings (§6 CPL) and the principle of judicial independence (§5 CPL).

The principle that the parties have control over the nature and scope of civil litigation is a fundamental guiding principle of civil justice and finds expression in some statutes and court rulings. Therefore, it is the basic principle of Mongolian civil procedure law. Although the validity of the disposition maxim is not included in the enumeration of the CPL, it can be derived from the systematization of the law (Joahimski, 2014). The procedure should be initiated only on the initiative of the parties, at their request. In other words, the proceedings are at the disposition of the parties; they can settle or acknowledge claims, make or withdraw applications. However, the judge bears the responsibility for properly deciding the issues of fact or law.

A party has the responsibility to describe to the court the factual proof for each contested factual allegation of its claim or defense and to identify the source of that proof. The responsibility for fact development between parties and court is referred to as the principle of party control of fact and means of proof. The principle of immediacy of proof is not set forth in a single statutory provision, but it is in the contents of the CPL (Buyankhishig, 2018). Therefore, it is for the parties to proceedings to introduce facts and applications; the opposition to this principle is the so-called examination maxim which applies, for example, in criminal and administrative proceedings. Although the §6.1 CPL uses the word "negotiate" or "debate", it points out at adversarial process (Supreme Court of Mongolia, 2014). Although the proceedings lay in parties' disposition, the judge is responsible for the procedure order, only in this respect it can be the leading role of judges described.

3.2. Private autonomy and disposition maxim

[11] Also, there.

As a result of the reforms of the 1990s, the disposition principle (Khuyag, 2013) was reflected in the current CPL. It was an important event that reinforced the values of individualism, the independence of the individual and the ability to determine and implement one's own interests. Discussions about human rights, personal freedom and freedom were also very important under socialism. In a socialist legal system, it was inevitable that certain legal principles and institutions would be applied in the same way as in capitalist countries. However, fundamental rights and freedoms were understood and interpreted differently in these two systems (Kurzynsky-Singer, 2019). Although the disposition maxim was regulated literally in the old laws on civil procedure, this does not mean that the state consistently supported the freedom of the individual and the right to freely participate in legal transactions and exercise one's rights. For example, Art. 4 CPL of the MPR stipulated that private individuals, in order to protect their own interests and when the prosecutor and the representative of the authorities consider that the interests of the state have been violated, file a lawsuit and initiate civil procedure. So, this represented the manifestation of this principle. But under the judicial system of the MPR, which was based on relations between the judicial hierarchy and the principle of hierarchy of control, higher instance courts have the power to pull out the cases, even if the participants have not appealed, and change and withdraw the cases (Tsogt & Tserendolgor, 2023).

After 2002, this situation has changed to the court of higher instance only entitled to review cases when participants appealed to such courts. The new CPL limits the possibility for the prosecutor to intervene in disputes between the parties to cases where the public interest is seriously affected. This change is reflected in §12.1.1 CPL of Mongolia. However, according to §12.1 Nu. 2 and §31 CPL, the public prosecutor's office still has the opportunity to participate in the proceedings if the interests of the general public are affected in connection with the activities of the state and local authorities. Administrative authorities acting in the public interest take part in civil proceedings for the purpose of protecting public interests. This idea is based on the same principles as above. In German practice, the involvement of public authorities in the process is subject to the jurisdiction of the administrative courts. According to the legislation of the Russian Federation, most of these cases fell within the jurisdiction of commercial courts. According to Art. 52.1.1 of the Commercial Procedure Code of the Russian Federation[12], it was permissible to initiate abstract control of sub-legal norms only to protect the legally protected rights and interests of citizens and organizations. In the area of private law, prosecutors are excluded from enforcing the rights of third parties in civil proceedings.

However, the regulation of the participation of the public prosecutor in civil proceedings raises some doubts as to the consistent application of the dispositive principle by the legislature when determining the jurisdiction of ordinary courts. In addition, §26 of the CPL of Mongolia states that participation in civil proceedings is possible to protect own interests, but to protect the rights of others. In the procedural law of the Russia, the form of participation is the prosecutor as representative of the injured party. In order to protect the legally protected rights, freedoms and interests of the individual due to damage to health, lack of age, incapacity or other reasons, the public prosecutor may participate in the process (Ulsbold, 2020). In addition, there is the possibility of participating in the civil process if there is a claim for damages under civil law because of a crime against human life or health. So the public prosecutor's office can engage in private litigation, but its powers are limited compared to previous law during the socialism.

Another change concerns the change of defendant; according to §28.1 CPL of Mongolia, the defendant can be replaced during the proceedings. Then the negotiation must be started again. The court may recommend a change of defendant, but this requires the plaintiff's consent. If this permission is refused, the court is obliged to decide the action and end the proceedings. This represents an outgrowth of the party principle and the disposition maxim (Buyankhishig, 2021). In the socialist civil proceedings, according to §41.4 CPL of MPR, the court was allowed to replace the original defendant directly or add him as a co-defendant (Compilation of the Civil Procedure Code, 1967). The departure from the principle of investigation and the transition to party

[12] Commercial Procedure Code of the Russian Federation, in https://www.wto.org/english/thewto_e/acc_e/rus_e/wtaccrus58_leg_61.pdf.
Article 52. Participation of the Prosecutor in a Case
1. The prosecutor shall be entitled to file with an arbitration court the following: applications for disputing normative legal acts, non-normative legal acts of state power bodies of the Russian Federation, state power bodies of the subjects of the Russian Federation and bodies of local self-government which concern the rights and legitimate interests of organizations and citizens in the area of business and other economic activities;

disposition is considered a significant change in civil proceedings of fundamental importance. According to the current CPL, the court is not allowed to search, collect or compile evidence on its own initiative, but is obliged to initiate the evidentiary procedure at the request of the parties (Buyankhishig, 2021). In exceptional cases, the court's involvement in the collection and presentation of evidence and the appointment of experts may predominate, but it is generally based on the request of affected parties.

3.3. Restriction of the disposition maxim through legal force of the decision

The disposition maxim is recognized as a basic principle in modern civil proceedings, but there are still some fundamental restrictions, such as the principle of the general validity of the court decision contained in §11 CPL of Mongolia. Such principle in §11, left over from the socialist tradition, represents a factor that weakens legal reform. §11 CPL stipulates that authorities, local self-government organizations, public associations, civil servants and citizens must comply with court decisions. The legal force of a court decision according to §122 CPL can include not only the tenor, but also the reasons for the decision, which determine what and how exactly must be followed (Buyankhishig, 2021). §11 CPL is similar in content to the provisions of Art. 13 of the CPC of the Russian Federation (Civil Procedure Code of the Russian Federation, n.d.) and Art. 16 of the Commercial Procedure Code (Commercial Procedure Code of the Russian Federation, n.d.), which contains the principle of public validity of judicial decisions. These regulations in the civil procedure of the Russian Federation are even considered *odre public of the RF* from the perspective of private international law, and this principle is one of the foundations of the legal system of the RF and Mongolia. Retaining this principle, which originates from Soviet procedural law, has the potential to restrict private autonomy and individual freedom.

In Western European countries, the legal force of a judgment has *subjective* restriction: it applies only to the contracting parties and their legal successors. From ***an objective*** point of view it only affects the subject matter of the claim. In principle, findings of fact and rights and legal relationships do not constitute precedents, but the overall value given to procedural laws is very broad. In emphasizing the mandatory character of the court decision at the level of procedural maxims through §11 CPL, it must be examined whether this obligation only affects the parties or whether it includes other third parties not involved in the case, including the state authorities. A legal interpretation must be undertaken in this regard. The Supreme Court of Mongolia's interpretation of §11 of the CPL states: "Citizens and officials are obliged to comply with final judgments, orders and other procedural decisions of judges without exception"; However, this does not exclude effective legal protection if you feel that your legal rights and interests have been compromised (Supreme Court of Mongolia, 2014). From this commentary one can clearly see that the Supreme Court of Mongolia has a position on the generality of the judgment similar to that stated in the relevant norms of the former CPL.

On the one hand, if the complex legal questions in a procedure are generally established and followed by the public, from the point of view of procedural economy it is advantageous to assume the general validity of the determination in similar cases and to shorten the evidentiary procedure and limit it to the subject of the claim. On the other hand, the economic analysis of the law shows that the generally valid decisions require more effort than the normal party process because of their breadth of decision-making (Buyankhishig, 2021). For example, if the plaintiff's determination as the owner of a particular property should be general, other litigation related to the ownership of the property will be spared.

The juxtaposition of the dispositional maxim and the general validity of court decisions in civil proceedings indicates a conflict between the old and the new concept. On the one hand, it is clear that the parties' legal enforcement under the CPL cannot apply or be binding to the rights of third parties. On the other hand, the fact that the action to be taken or findings to be made in the decision should generally be followed represents a contradiction and shows the interplay of contradictory principles in civil procedure law. The strengthening of the disposition maxim by the legislature with several regulations in the CPL serves the goal of abolishing the socialist legal system. However, this is called into question by the continued application of the principle of the general validity of court decisions. It can even significantly hinder the implementation of the maxim.

The disposition maxim represents an outgrowth of the constitutionally enshrined principles like adversary proceedings stated in Art.16 section 14 Constitution (Supreme Court of Mongolia, 2014), which provides a necessary impulse for the further development of the socialist legal system. Currently, the burden of proof is imposed only on the party concerned and not on the general public, and the court has to make its decision only within the framework of the requests made and on the basis of the demands of the parties. Due to the limitation of judicial investigations, it is impossible to comprehensively examine the case with regard to the rights and interests of third parties. Within this conceptual framework, private legal disputes between citizens in civil matters remain effectively private (Buyankhishig, 2021). In proceedings involving settlements, acknowledgment of the claim or waiver of action, it can only be checked whether the decisions made through a simplified procedure clearly affect the rights and interests of third parties.

The legal technique that the legislature did not include the disposition maxim literally in the lists of legal principles, but rather it can be found in many rules, is in line with the codification theory. However, the use of the enumeration method in other principles is not typical of Western codifications, but rather to preserve the previous socialist legal structure. This simplification technique will lead to theoretical and methodological deficiencies in the application of law and will increase the conflict between the principles of mutual balance. In particular, the fact that the principles of civil procedure are enumerated in the same way as the CPL of 1967 and the majority of them have been preserved is a factor that negatively affects the dispositive principle of protecting individual freedom. Since the disposition maxim is the basic principle of the new civil procedure law and is intended to protect private autonomy, such negative effects on its implementation must be eliminated through minor changes to the CPL, for example Article 11 (Buyankhishig, 2021).

4. Essential Amendments to the CPL of Mongolia

Since 2002 have been more than 33 amendments introduced to the current CPL. Among these, the most important changes in principle are:

4.1. Judicial Reform and Role of the Supreme Court, Comparison

Within the scope of legislative reform in 2002, the role of the supreme court was mainly considered through amendments to the Constitution (Constitution of Mongolia, 2000, 2019) made in 2019, the revised version of the Law on Judiciary (Law on Judiciary, 2021) (LOJ) in 2021, along with the amendments made to the procedural laws for improving the system of judicial review. The process of reviewing cases by the Supreme Court significantly changed with the amendments in 2021. Former regulation of §172.2 of CPL (Civil Procedure Law, 2002) allowed the Supreme Court to control the complaints on the following grounds: 1/. if the court did not apply the appropriate law, if it applied laws that should not be applied, it interprets the law incorrectly, or the law regulating similar relationships is applied incorrectly; 2/. the court violated the procedures of the proceedings established by law.

After reform of 2021, the Art. 25.7.5 of the revised version of the LOJ of Mongolia states that in order to ensure uniform application of the law, the Supreme Court shall adjudicate rulings of appellate instance courts as cassation instances for eliminating differences at the primary and appellate instance courts on application of law[13]. The Amendment of January 15th of 2021 let the control of the highest level in following cases: 1/. the first and appellate courts applied the law inconsistently; 2/. committing a serious violation of the procedure affected the court's decision; 3/. the court interpreted and applied the law differently from the official interpretation of the Supreme Court (Amendment to the CPL, 2021).

It is obvious that general conditions for reviewing cases by the Supreme Court are aimed to review legal disputes that are fundamentally important for further developing laws, establishing unity of law. The primary purpose of establishing a unified application of the law through the Supreme Court is ranked in first place. Short after the

[13] Art. 172.2 of Civil Procedure law, Art. 123.2 of Administrative Procedure law, Art. 40.1 of the Criminal Procedure law had the same wordings.

reform the Supreme Court stopped accepting review appeals and began to focus on differences in the application of the law by lower courts, which appeared to some of the appellants to be vulnerable. The Constitution Court of Mongolia had to clarify whether the Art. 172.2. of the CPL, which defined the scope of the Supreme Court narrowly to former version of it, complies with the Constitution.

a). Art. 172.2.1 CPL was concentrated only on eliminating differences at the primary and appellate instance courts on application of the law. Therefore, the accusation was that Art. 172.2.1 CPL would not achieve the goal of unifying the application of law. The appellate court has the competence to apply the law differently as it was applied in the decision of the first instance court when legally justified. According to Art. 48 [14] of the Constitution combined with Art.29.5.1 [15] LOJ of Mongolia, the appellate court has to supervise law application of first instance courts under it. The power of an appellate court includes the correction of court decisions in first instance (Joachimski, n.d.), but worsening the position of rights (*reformatio in peius*) should be prohibited (Supreme Court of Mongolia, 2014).

In the situation where the application of the law of the first instance and the appellate court are different, there will not be a "difference in the application of the law" in the true sense. Because the powers and functions of the appellate courts granted by the Constitution are to review the decisions of the courts of first instance under its jurisdiction at the legal and factual level. Art. 29.1 of the LOJ states that the appellate instance court consists of provincial and capital city courts and the appellate instance administrative court. Provincial and capital city courts and the appellate instance administrative court ensure unity of law in the territory under its jurisdiction. Hence, applying laws different from the courts of the first instance is a power provided them by the law, but the application of the law should be clearly understood by the participants of the cases when resolving the same legal disputes. Therefore, the fact that the first and appellate court decisions differ from each other does not undermine the unity of law application, like when the appellate court applied the law differently than previously applied or deviated from the law application practice of another higher court (Hefller, n.d.).

Art.172.2.1 of CPL led to a negative effect of reviewing every appellate court ruling that deviates from the decision of the court of first instance, regardless of whether it complies with the law or not. On the other hand, it is not possible to review cases in a situation if there is no different application of the law but has a conflict in the fact or there has no difference in the decisions of the first instance and appellate courts, but the law was applied differently from the decisions of other courts that resolved similar disputes (Tsogt & Tserendolgor, 2023). Thus, appellate court decisions that are different from the practice of other courts or its previous practice, create the risk of mislaying the uniform application of the law. It may create interest in clarifying law application by appealing to the Supreme Court for participants of the case when the appellate court applied a different law from the court of the first instance. But the difference in the application of the law is often considered as an element of public interest that is discussed in the horizontal axis. There is no precise regulation in Art.172.2 of CPL in this regard. These are embodiments of the policy of limiting the scope of the jurisdiction of the Supreme Court to review disputes by law.

These amendments are considered as the phenomenon related to the Anglo-American law system, which is a filter system of judicial precedents that officially entered the legal soil of Mongolia since the reform of 2021 (Tserendolgor, 2021). It is concluded that the scope of the jurisdiction of the Supreme Court to review disputes by law and the purpose of resolving cases by way of review procedures of the Supreme Court stipulated in the revised version of the LOJ of Mongolia. So, the purpose of "ensuring uniform application of the law" in revised version of Art. 172.2.1 of CPL is the proper method to reach this goal (Tsogt &Tserendolgor, 2023).

Compared to initial version of Art. 172.2.1 CPL, cases reviewed by the Supreme Court are drastically mitigated under this regulation; as a result, the load on the Supreme Court will decrease significantly. In the scope of a former law, the court's activities which were operating on a larger scale based on the ground of "failure of a

[14] Article 48 [Court Organization] https://www.conscourt.gov.mn/?page_id=842&lang=en.
(1) The judicial system consists of the Supreme Court, provincial and capital city courts, Region, inter-region, and district courts. ...
[15] Art. 29 of LOJ: Court of Appeal and its powers: https://legalinfo.mn/mn/detail?lawId=16106892006021.
29.5.1. review the decision of the court of first instance by appeal procedure according to the law;

court to apply the applicable law, application of law that should not be applied", were temporarily suspended, but only a small amount of complaints were acceptable even though there were many complaints against the decisions of appellate courts. So, some researchers started to consider reviewing filters which represent the filtered system and mechanism of judicial precedent, as inappropriate. For instance, a regulation of the court that has not conducted regular *stare decisis* will review the case only on the ground of the "difference between the decisions of the first court and the appellate court" and not reviewing other cases, is a legal element of common law system that countries applying judge made legal norms (Tsogt, Tserendolgor, 2023). And it indicates that these differences between the decisions of the above two courts are considered as "legislation".

Since domestic legal system adopted many abstract general laws following the continental legal system tradition, the main role of the Supreme Court has always been to review the legality of the decisions of the appellate courts. So, the Art. 172.2.1 of CPL before the reform abstractly determined as "failure of a court to apply the applicable law, application of law that should not be applied" (Supreme Court of Mongolia, 2014). The Supreme Court interpreted these provisions by focusing on the law. "Applicable law" is interpreted as laws regulating the disputes between participants of the case, "law that should not be applied" is interpreted as laws irrelevant to the disputes between participants of the case, "applied incorrect interpretation of a law" is interpreted as the relevant provision was understood and applied in a different context and meaning than that prescribed by the law (Supreme Court of Mongolia, 2014). It is apparent that there is ground for rendering two-level decisions unreasonable since reviewing the main source was legislation (Kaut, 2015). Thus, the Art. 176.2.4/5 of CPL states the consequence of annulling both the decision and rulings. But Art. 176.2 of the CPL has remained on a larger scale than the filter of the precedent law. In other words, accepting the cases with "discrepancy" and annulling both decisions that should be removing differences. Nevertheless, the stare decisis doctrine of case law declares only one of these two decisions as the applicable norm (Tsogt, Tserendolgor, 2023). Thus, in our system, which is the core of the problem is the written legislation and the basic principle of the court's operation is the rule of law principle, it is questionable that limiting the powers of the Supreme Court as eliminating the difference in the law application between the two lower courts. There is no option "whether to respect the law" or "not" in case of wrongly applied law in two-level courts. In addition, the lack of review in many other cases is evident from the comparison of old and new regulations. The issue of lowering the overload of the Supreme Court may be an important aspect of the revised versions of these regulations. This is caused by Art. 172.2 of the former CPL and other equal regulations that had wide application. For instance, the participant in the case may easily have the opportunity to appeal to the Supreme Court, based on his or his lawyer's "legal" point of view regarding the misinterpretation of the law when there is a lack of official interpretation. However, it is implemented by transferring TSC to stare decisis operation of case law which cannot be a sufficient guarantee of "enforcement of the law" in a country with a large number of written laws. And it is proven by the circumstances that many cases are not acceptable to the Supreme Court.

On the contrary, it is appropriate to provide the power to review disputes that principally have fundamental significance which are becoming issues in a large number of cases understanding that review is conditioned by public interest, along with the replenishing Art. 172.2 CPL with the vague terms with necessary goals and objectives of the Supreme Court, such as "developing the law" and "ensuring the uniform application of the law". The public interest in developing law as unified is understood to be that it aims to prevent different decisions of appellate courts by reviewing commonly concluded contracts at model and process levels at once, expressing a unified position on numerous similar cases.

After the Amendment of the 2021, the Art.172.2.1 of the CPL was only aimed at eliminating differences in the decisions of courts with mutual supervision at courts of a lower level, and not at keeping the whole legal practice as unified. Thus, it can't be a method for ensuring uniform application of the law. It should have been in compliance with the principle of ensuring unified application of law stated in Article 25.1 of LOJ, and this regulation should not have the function of granting discretionary solution of the Supreme Court case by case.

The Constitutional Court of Mongolia decided On May 3, 2023 that some provisions of the LOJ of Mongolia, the Law on Administrative Litigation, the Law on Criminal Procedure, and the Law on Civil Litigation violated the relevant provisions of the Constitution of Mongolia. Hereunder fall the sub-clauses 25.7.5.a and 25.7.5.b of

the LOJ of Mongolia and 172.2.1 and 172.2.3 of the CPL among others, because according to the Constitutional Court, they did not comply with Art. 14 and Art. 16 of the Constitution of Mongolia and their application was suspended till December 15, 2023 (Constitutional court of Mongolia, n.d.). In conclusion, it is noted that there is a need to improve the regulations and remove the loopholes in the context of providing the right of citizens to be tried by a fair court in order to properly ensure the coordination between LOJ of Mongolia and the criminal, civil, and administrative process laws.

The Great Khural, the parliament of Mongolia, reviewed the Art. §172.2.1 of CPL and replaces the regulation with the meaning of ensuring uniform application of law following article 25.1 of LOJ. The last amendment of the CPL on 16. June of 2023 states only that the Supreme Court should according to 172.2.1. of the CPL "eliminate differences in the application of court law" (The Amendment to the CPL, 2023).

b). In the same proceeding was the Art. 25 of LOJ and Art. §172.2.3 (The Amendment to the CPL, 2021) of the CPL considered as non-compliant with the Constitution, which referred to cases, when the courts applied the law by interpreting it differently than the *official interpretation* of the Supreme court. Art. 25 of LOJ and Art. 172.2.3 CPL mentioned that the ground of the court applied the law by interpreting differently than the "official interpretation" of the Supreme Court. In the Amendment to the CPL on 16. June of 2023 the Art. §172.2.3 CPL corrected as "the law was applied differently from the ruling and interpretation of the Supreme Court".

The article 172.2.3 of the CPL in the former or current version can be accepted if the criteria applies only to submitting a complaint for review to the Supreme Court, but the review after initiating proceedings should be done according to ordinary law. Within the scope of Art. 172.2.3 of CPL, if it is explained as to review decisions deviating from the interpretation that complied with the law, and if there is an interpretation that does not comply with the law, a mechanism for the the Supreme Court is to review its interpretation compared to the law, creates the conditions that correctly determine the application of new regulations (Kaut, 2015).

Thus, it should be refined whether it leads to the application of interpretations that are inconsistent with the law, thereby contradicting the principle of enforcement of the law. Even though the above-mentioned ground is one criterion of the Supreme Court accepting cases, this does not mean that the court's decision will be only compared to the official interpretation of the Supreme Court when it is reviewed. According to the above-mentioned statement, procedural and substantive laws are still applied in cassation instances. Though, it is a factor to review whether the interpretation of the appellate court complies with the law and whether it needs to be updated when the appellate court rulings deviate from the interpretation of the Supreme Court. In other words, it is an opportunity to double-check the previous method of interpretation when reviewing the legality of a decision that does not comply with the interpretation. Violation of rights expressed by violation of procedural rules or incorrect application of substantive legal regulations (Heßler, n.d.). Different requirements shall be applied to substantive and procedural complaints. The complaint for review is considered reasonable when the procedural error would have affected the appellate court's decision. Since the presumption of law applies in this situation, respondents to the review complaint are obliged to prove that the error did not affect the decision at all. Based on the above, the higher court with the continental legal tradition is conducting a review directed to the legal regulation when reviewing the grounds of the complaint even in situations where it deviates from its own practice.

But within the scope of a revised version of the regulation, it also remains unclear whether the Supreme Court will exercise review directing to the legal regulation or based on the stare decisis doctrine that descends from the previous Supreme Court's decision, which checks rationale if there is a difference that decides whether or not it will be bound by the previous Supreme Court's decision and interpretation like the Anglo-American courts. In the framework of the previous law, the regulation with the content of "...applied incorrect interpretation of a law..." is now replaced by composition in Art. 25.1.3 of LOJ and Article 172.2.3 of CPL. If these conditions are reflected as a criterion at the level of filing a case by complaint in order to reduce the overload of the Supreme Court, and in terms of the content examination, the Supreme Court reviews back its own interpretation of the law, it will be a more clarified provision with no difference in principle from the previous law.

On the other hand, it creates an inefficient mechanism to supervise interpretations that do not have the force of law in a legal system in which abstract general laws applied in the situation of the supervision of the Supreme Court are carried out within the framework of the stare decisis doctrine which does not exercise review directed to law, and the review is carried out only with the content of the decision which deviates from the previous interpretation of the Supreme Court. It was mentioned in Art.172.2.3 of CPL demanded applying the interpretation of the Supreme Court which is inconsistent with the law. If we explain these as only a phenomenon that legalizes the criteria for filing a complaint in the supervisory court and assume that review of ordinary laws will be implemented after the initiation of the proceedings, then there will be less risk of the Supreme Court apply an interpretation that in conformity with the law and not suitable for the legal relationship. However, in the system where judge-made law applies, the interpretation and decision of the Supreme Court are rendered as a legal act, and if it is interpreted that it will be implemented by the review directed to it, then it is considered as regulation is incapable of representation for our legal system.

As comparison hereto can be used the same regulation for reviewing disputes in the Federal Supreme Court of Germany /BGH/, based on the combination of the following indicators, which are 1/. legal disputes contain common fundamental issues; 2/ the decision of the supervisory court is necessary for the further development of law or the establishment of unified court practice (CPC of Germany, 2005). Art. 543.2 of CPC of Germany explains disputes contain common fundamental issues as courts have reached contradictory solutions from each other or deviated from the decision of the higher court. Further, there will be a situation where legal certainty will be lost due to these different decisions (Heßler, n.d.). In this case, the Federal Supreme Court/BGH/ will accept the dispute for review and will review the complaint only if there is a violation of rights according to article §545.1 of CPC of Germany[16]. In this regard has the last amendment to the CPL on 16. June of 2023 added another paragraph. Therein: "Art.172.2.4. it is of general importance to establish a new legal concept or the application of law" (The Amendment to the CPL, 2023).

4.2. Revision of private law regulations on compliance with the Constitution

Revision of private law regulations on compliance with the Constitution is from two different aspects problematic. Generally, they can be revised due to petitions and complaints on the part of citizens, that state regulations or measures violate the Constitution.

The first problematic issue whether the court decisions in civil matters should be further reviewed/revised by the Constitutional Court of Mongolia will be soon decided through a new law on constitutional procedure (Constitutional Law Institute at NUM, 2023). According to the the Mongolian Law on Tsets[17], constitutional complaint against court rulings not possible. The latest amendment of the Constitution and new approval of Law on Constitutional procedure of Mongolia will handle this issue, so that the decisions of the Supreme Court in civil matters will be revised in compliance with the Constitution of Mongolia.

a) Conclusions on the protection of economic rights. On other hand, some surveys show that the regulations of the Constitution itself are not sufficiently to revise all kind of legislations or in future some court decisions in private law field (Buyankhishig, 2016). For example, there are doubts about whether the rights, which are the main driving force of the economy in our country with a market economy, are sufficiently protected by the Constitution. The basic regulation of the economy of any country should be reflected in the regulations of the Constitution, which directly apply to economic life, because economic independence is a guarantee of independence (Chimid, 2008). Despite the lack of a national economic system, production force, and technical development, which defining the economic problems of our country, the rules for determining economic policy to be a fundamental issue that should be established and limited by the Constitution (Sainhishig, 2015) and the regulation of this important sector only at the level of ordinary law is the reason for the economic crisis, public

[16] German CPC: Section 545. Grounds for an appeal on points of law
(1) An appeal on points of law may only be based on the reason that the contested decision is based on a violation of the law.
(2) An appeal on points of law may not be based on the fact that the court of first instance was wrong in assuming that it had or did not have jurisdiction.
German CPC: Section 546. Definition of the term "violation of the law"
The law is violated where a legal norm has not been applied, or has not been applied properly.

[17] The Tsets is referred to as the Mongolian Constitutional Court.

spending, and the excessive amount of public debt. The Constitution enshrines its economic principles in Art. 5, which promises a kind of mixed economy (UNDP, 2015): “Mongolia shall have an economy based on different forms of property and in accordance with both universal trends of world economic development and specific national characteristics.” By affirming property rights in the catalog of fundamental rights in Article 16 of the Constitution, the legislator moved away from the concept of socialist property and acted in line with the liberal concept of property. However, in general, Art.5.2 of the Constitution stipulates that both public and private property systems should be preserved (Buyankhishig, 2021). According to Art.16 section 4 of the Constitution is the basis of economic activity and provides the right to freely choose one's profession, workplace, education and training, and includes the choice to carry out or not carry out certain activities according to the chosen profession (Constitution of Mongolia, 2000, 2019).

In this context, the state will grant this freedom by very little involvement in the professional activities of citizens (Hans-Siedel, 2009). Although, the norms that apply to many types of professional content hinder this goal. In the sense that occupation fulfills the purpose of a person's life and creates a source of existence, having an occupation and creating enough jobs are the main issues of economic policy. Since this fundamental right has the function of job protection, it applies only to the citizens and domestic enterprises enjoy this fundamental right. However, the right of foreign citizens to freely choose and maintain their occupation has no other way than to be granted by general norms.

Art.16 section 3 of the Constitution provides for the granting and confirmation of rights pertaining to property on the territory of Mongolia, and guarantees the payment of compensation or price in case of confiscation or mobilization. The guarantee of inheritance is also a continuation of this right, and it is fulfilled by the right to free will and the continuation of business activities by the heir (Buyankhishig, 2016). The scope of guarantee of ownership rights is very wide, in addition to citizens, foreigners are granted of ownership rights to objects other than land, and in essence, it covers the ownership rights of enterprises. Therefore, foreign investment in Mongolia does not necessarily have an international investment protection agreement, but in practice, the need for investment protection is urgent.

But there are no further regulations on economic rights, like freedom contracts or freedom of competition etc., which are explicitly mentioned in Constitution of Mongolia. Freedom of contract includes the right to enter into and independently determine and terminate contracts for the purchase and sale of products and services[18]. This right as key to realizing the individual's right to freely dispose of the exchange objects can be read out of Art. 16 section 4 of Constitution by interpretation, but there is no such praxis found in the jurisprudence of the Constitutional Court until now. The freedom of contract was declared as a fundamental principle of international economic law. In §1.2 of the Civil law of Mongolia (Civil law of Mongolia, 2000), which is the main codification of private law, is regulated to be the basic principle of civil law relations. Based on this principle, many types of contract terms are established in practice, so the legislator has even added the requirement to be consistent with §202 of the Civil law in terms of content. This principle was declared as a basic principle in the UN International Court of Justice, and it is a broad concept that includes the right to choose courts, arbitrators and other mediators in addition to material legal contracts and agreements.

However, in Art.16 section 3 of the Constitution, it is not enough that the freedom of contract is guaranteed only by the right of an individual to acquire property. For example, for a contract that does not aim to acquire ownership of any property arises the question, if it here the freedom of contract is granted. Transactions aimed at moving and acquiring immovable property are primarily governed by §§242-286 of the Civil law, like contracts of sale and purchase, trade, or credit can fall under the protection of Constitution after the object is acquired. However, it is not clear what will happen to the other 30 contracts included the Civil law. Of course, the basic principle contained in §1.2 of the Civil law is likely to be significant in the context of limiting the freedom of contract, but it is a phenomenon that has not yet been implemented today.

[18] Also, there, page 19.

An example of the fact that it is not possible to check whether other laws are compatible with economic freedom in the conditions where the freedom of contract is not protected by the Constitution is the "Law on the procedure for the non-judicial purchase and sale of mortgage items[19]. By the revision of §27.1/2 of this law the Constitutional court has found that this rule was in violation of Art.16 section 14 of the Constitution, which guarantees the right to file a lawsuit (Resolution of the Constitution court, 2006). §27.1/2 regulates that during the non-judicial sale of mortgage items, the borrower waived his right to appeal to the court in matters related to the relationship of primary obligations, and the law was repealed because the court limited the right to "report to the court provided for in Art.16 section 14 of the Constitution. It is questionable whether the property right is here violated, as the non-contestation sale of mortgaged items is an internationally recognized practice only in terms of the process. The most interesting thing is that when the representatives of the legislator came to participate in this case, "refusing to file a complaint arising from the main obligation (related to the loan agreement) to the court is an exercise of the freedom of contract", so it means that the said law has not been violated[20].

However, the Tsets did not consider the relationship between the freedom of contract and the right to protect one's rights in court, and made a decision based on the right to file a lawsuit. This is one of the consequences of the fact that the freedom of contract is not clearly reflected in the Constitution. In complex economic relations, it becomes difficult for a judge to make an accurate decision based on his inner conviction, so he must apply the theoretical principle of finding a balance between two conflicting fundamental rights. If §27.1/2 of the Tender law infringes on the right to file a lawsuit and determines whether it is compatible with the principle of freedom of contract through a practical concordance method, then it will be concluded that Art.16 section 14 of the Constitution has not been violated. In general, the Supreme Court itself consists of two types of norms: dispositive regulations that are mandatory and can be changed by agreement of the parties. Since dispositive regulations are in harmony with the basic principles of private law that respect freedom of contract, the manifestation of this right is allowed by Art.16 section 4 of the Constitution called limitation.

In another case, the Tsets had to decide that the regulation of §281.3 Civil Law, which prohibited regulations about fee in loan agreement between citizens, violated the property rights of contractors (Conclusion of the Constitutional Law of Mongolia, 2016). Here was the protection area of property right under Art.16 section 4 of the Constitution actually not opened, but the freedom of contract was the right which was violated. Because the freedom of contract is not explicitly mentioned in Constitution, so that the Tsets, the Constitutional court of Mongolia, has invoked a different right than freedom of contract. There are many such examples where the revision of private law norms with regard to the Constitution has failed, because the matching economic right is not properly developed and incorporated into the Constitution (Buyankhishig, 2016). The above regulation does not cover the following rights that are essential in the economic sphere, but providing constitutional protection through interpretation of laws is important for constitutional control of other private law legislation, including price fixing, financial freedom, freedom of competition, advertising liberties, consumer rights, liberties, industrial freedoms, individual freedoms, freedom to travel abroad for professional activities, and freedom to sell.

Although it is clear that the government will protect the competition industry in the form of an objective guarantee of the Constitution, understanding it as one of the basic human rights will open up the possibility for individuals to protect their rights in court, approach the Constitution and check whether the legislation that has an unfair effect on the competition is compatible with the Constitution. Because the main legal function of a country with a market economy is to recognize and protect competition as the highest legal value, and this "invisible hand" of law is the main factor for proper development of the economic sector. Freedom of competition includes the right of individuals to operate freely in the market and to compete with other entrepreneurs and falls under the protection of freedom of profession in western countries (Badura, 2013). Due to the lack of clarity on the protection of some rules in the Mongolian Constitution, it is impossible to check whether some provisions are in accordance with freedom of competition.

[19] abbreviated as Tender law; §27.1/2 of the Law on the procedure for the non-judicial purchase and sale of mortgage items: www.legalinfo.mn.
[20] Also there, conclusions: https://www.conscourt.gov.mn.

Taking further example, in a conclusion of the Constitutional Court (Conclusion of the Constitutional Law of Mongolia, 2006), it has to decide whether §14.2 of the Law on the Purchase of Goods and Services by Citizens with State and Local Property Funds violets the principles stipulated in Art.1.2 like democracy or rule of law, principle of economic diversity in Art.5.1/2/4; international treaty obligations according Art.10.2 of the Constitution; principle of equal treatment in 14.1/2; property rights in Art. 16.3; the right to choose own occupation in Art. 16.4; finally principle of conformity with the Constitution in Art. 70.1. The content of the tender law regulation says that "a legal entity may participate in the tenders announced in the same year in the field of its main activity no more than 6 times, and if the tender is won 3 times, it is prohibited to participate in the tenders again in the same year". From the Tsets, it was concluded that the regulation had not violated the Constitution. However, it is mentioned that the principle of fair competition stipulated in international agreements has been touched[21]. §14.2 of the Law on the Purchase of Goods and Services by Citizens with State and Local Property Funds aims to keep tenders orderly, accessible or inclusive. If the freedom of competition was included in Constitution, which would be the same content and nature as the principle of fair competition stipulated in the international agreements, so the grounds of dismissal would have been based on this issue.

b) Actual possibilities and proposals of constitutional protection of other rights. Economic legislation is a concept that evolves very quickly with socio-economic development, so it is necessary to enrich the interpretation of the norms of the relevant civil society very quickly.

If we consider that the rights mentioned in the previous chapter are not included in the protection of the Constitution, there will be considerable difficulties. It is necessary to determine whether there are basic rights with a general content that can cover and protect the mentioned economic rights. Considering Art.16 section 13[22] of the Constitution guarantees the right to personal liberty and safety, and in the corresponding interpretation of the Constitution, the inviolability of a person is d Art.16 section 13 includes the right to be free; to be physical inviolable; inviolability of the accommodation is inviolable; confidentiality; inviolability of name; and it includes the inviolability of property by interpretation (Hanns-Seidel, 2009).

The primary purpose of this regulation is to prevent the state from arbitrarily encroaching on individual liberties. However, considering the meaning of the wording and the purpose of the law, it is to respect human freedom, and according to this regulation can be considered as a norm containing the general protection of fundamental rights. However, the economic rights are the basis for the realization of human rights and need to be protected by the general norms of the Constitution. The right to freedom and inviolability of the individual is related to economic relations (Banzragch, 2013). Therefore, it can be interpreted to protect other rights, which are manifestations of personal freedom, while keeping the individual inviolable.

The arguments in favor of using Art.16 section 13 as general clause in the Constitution are that 1/. this norm has the main purpose of protecting human freedom, and this broad concept cannot be imagined without economic freedom (the content and purpose of the norm. The consideration of the inviolability of property in the interpretation of Art. 16 section 13 of the Constitution shows that the regulation protects the economic basis of human existence (comparative conclusion); 2/. Art.16 section 18[23] of the Constitution specifically regulates the right to free movement within the territory of Mongolia, which indicates that the inviolability provided for in Article 16 section13 of the Constitution is not only physical nature (*systemic argument*). In this sense, Art.16 section 13 of the Constitution should be interpreted and applied as protecting human freedom, especially economic freedom.

[21] Also, there: in the section for conclusion.

[22] The Constitution of Mongolia: https://www.conscourt.gov.mn/?page_id=842&lang=en. Art. 16 section 13) The right to personal liberty and safety. No one may be searched, arrested, detained, persecuted, or restricted of liberty save in accordance with procedures and on grounds determined by law. No one may be subjected to torture, inhuman, cruel, or degrading treatment. Where a person is arrested his or her family and counsel shall be notified within a period of time established by law of the reasons for the arrest. Privacy of citizens, their families, correspondence, and homes are protected by law.

[23] The Constitution of Mongolia: https://www.conscourt.gov.mn/?page_id=842&lang=en. Art. 16 section 18) The right to freedom of movement and residence within thecountry, to travel and reside abroad, and to return home to the country. The right to travel and reside abroad may be limited exclusively by law for the purpose of ensuring the security of the country and population and protecting public order.

According to the above mentioned, Art.16 section 13 of the Constitution can cover the rights on price fixing, financial freedom, competition freedom, advertising freedom, consumer freedom, industrial freedom, personal freedom, travel abroad for professional activities, since it protects economic rights such as freedom of sale, it is necessary to make it routine to check whether the newly approved laws and regulations are compatible with these regulations by explaining them (Buyankhishig, 2016). Only this way can the private law regulations can be properly revised by the Constitutional Court, so that the civil procedure will succeed in the end effect properly. The court acts, which evolved during the civil procedure can be checked according to economic rights in the Constitution by proper interpretation of it; besides the material law which applied by the civil courts will be more homogeny with the commercial needs of the country.

5. Further Reform Needs

5.1. Commercial litigation procedure

Commercial branch in Mongolia criticizes that the civil dispute regulation under CPL is too long for business matters and too rudimentary for commercial cases (Nyambaatar, 2021). In several studies are the need of establishing of a Commercial Code mentioned (Hanns-Seidel, 2019). So, it cannot be excluded that the economic branch will demand a Commercial or Economic Procedural Code in the future. According to example of some post-socialist countries like Ukraine, such kind of regulation shall give protection of violated or disputed rights and legally protected interests of legal entities (including foreign entities and state bodies); and citizens who are subjects of entrepreneurial activity (Khanyk-Pospolitak, 2008). However, the costs for establishing of parallel court systems is from economic perspective is not possible yet for our country. There are more urgent problems in this field, like establishing a family court, which covers the family matters like child adoption, transactions with minors, approval etc. and some inheritance matters.

Actually, the pre-trial settlement institutions or the Arbitration court are designated for economic matters between legal entities and entrepreneurs. But the arbitration process cannot be initialized, when the parties didn't include arbitration clause in the contract. Besides there is no time frame or limit for arbitration proceedings in the Arbitration Law of Mongolia. In the praxis of arbitration courts: after every interim decision during the process the court terminates the procedure in order to give the parties opportunity to let it revised through state courts. At the end the arbitration process lasts more than one year, sometimes 2-3 years.

The calculating of arbitration fee is usually higher than court fees, which consists mainly stamp duty fees[24]. Core costs of the Arbitration court include arbitration services and arbitrators loan (Doljin, 2012). By the calculating of arbitration fee will be added 2-4 percent of exceeding the sum of dispute from respective scale (Batzaya & Yuen, 2012). Although the Arbitration Law was amended 2017 according to the international standards, rapid development of technology and digitalization of the economic sector require constant further development of procedural law. Above mentioned issues showed need and requirements to improve the law on civil proceedings by facilitating the process of judicial review of commercial disputes, reducing the steps, and creating special regulations for resolving small-value disputes have been conditioned (Nyambaatar, 2021).

5.2. Low-cost case resolution

In order to make commercial dispute resolution process expeditious and accessible, financially efficient a further amendment was submitted on October 19. 2023 as a special proceeding in the seventh chapter of the CPL (Project Nu, n.d.). This project is based on some surveys from current praxis of courts and comparative law studies (Bayarmaa, 2023). The following claims with an amount not less than 20 times the minimum wage for one month[25] should be processed by the court in a special procedure, if the claimant wishes:

[24] For example, it lays by the amount of 13,000,000 MNT by 222,950 MNT, if it is over 13,000,001 MNT there will be added 0.5 percent, Law regarding state stamp fees of Mongolia, revised version of November 25, 2010: https://legalinfo.mn/mn/detail/515.

[25] From the meeting of the tripartite National Committee for Labor and Social Partnership, on May 4, 2022, the issue of resetting the minimum wage was increased from January 1, 2023, to 3,273 MNT 81 per hour or 550,000 MNT per month: https://mlsp.gov.mn/eng/content/detail/1652.

- to withdraw cash and ensure the fulfillment of obligations from collateral in accordance with the loan agreement;
- issuing monetary assets according to all types of contracts except the loan contract specified in Article 75^1.1.1 of this law;
- issue cash according to the contract of the customer who has established a regular payment relationship, such as water, electricity, heat, telephone, cellular communication, and the Internet;
- issue cash according to the duties of a member of the association of apartment owners;
- on the basis of the labor relationship, issue benefits equal to the average salary during the period of unemployment;
- recovery of monetary assets due to damage to other people's property.

Claims arising from a single legal dispute related to this proceeding are prohibited from being made partially by several claims, and counterclaims, increasing the originally filed claims, attracting additional defendants, involving third parties, changing plaintiffs and defendants, and succession proceedings are not permitted (Bayaramaa 2023; Dorjpagma & Khongorzul, 2021). In addition, all types of disputes arising from family relationships are not subject to the special procedures.

The principle of resolving the case in one court session based on paper and electronic evidence shall be applied to the special procedures. Here, it is stated that it is the duty to submit demands, responses, objections and evidence to the court before the court hearing to decide the appropriate case, which prevents the delay of civil case proceedings. Before the court session to resolve the case, the author is obliged to submit to the court the demands, explanations, objections and proof thereof. The regulation about expenses related to obtaining legal assistance goes parallel to the normal civil procedure and should not be considered as damages to the claimant.

If a party submits a request before the start of the court hearing, the case shall be transferred to the normal proceedings. The court shall issue an order to transfer when the claimant filing a claim violated Article 75^1.1; the defendant did not appear at the court hearing due to valid reasons and the case could not be resolved based on paper and electronic evidence; the court held it inappropriate to handle the case in a special procedure.

From the main principle of immediacy of proof makes an exception when the court has analyzed and studied the evidence upon receipt, it may not carry out not the whole procedure specified in Art.108.1[26] CPL, which demands to analyze and study the evidence individually at the court hearing. If the court deems that it is sufficient for the witness to submit the notarized statement to the court stating that he has given an accurate statement based on his understanding of the rights and duties stipulated in Art. 43.3 of this law, it may be evaluated as evidence. If the court deems it sufficient, the testimony of the witness obtained by the witness, the judge, and the author simultaneously with the help of audio and video recording can be evaluated as evidence. The fact that the case has been transferred to the normal processing procedure does not prevent the evaluation of the testimony of the witness in accordance with the clauses §75^5.2 and 75^5.3 of CPL.

If the requirements of the claim are fully or partially met, based on the defendant's financial condition or other necessary reasons, the court may order an additional period for payment based on the defendant's request, or it may be specified in the court decision to pay in installments according to the schedule. The additional period is not more than one year from the date of the decision.If an additional period has been set by the court decision, or a schedule has been established for payment in installments, the court decision may prescribe a one-time fine of not more than 20 percent of the amount of the obligation not fulfilled during the period of breach of the obligation to pay.

If the parties disagree with the court decision processed by special procedure, you can appeal to the appeals court within 7 days after it was handed down in accordance with this provision. Appeal cases shall be resolved within 21 days from the date of receipt by the court (Law Project Nu, n.d.).

[26] CPL §108.1. The court shall determine the order of examination and analysis of written and material documents gathered for obtaining statements from witnesses and experts, and shall conduct these proceedings in accordance with the procedures specified in Articles 110-112 of this law.

5.3. Digitalization of Court system and Civil procedure

With the introduction of a project on the Civil Case Procedure System (CPC) in 2012 among the courts of first instance was taken the first measure to digitalization of court system in Mongolia. It was funded by GIZ and ordered by the Supreme Court of Mongolia, hereby the process of receiving and registering lawsuits and cases in court was facilitated, and the work schedule of judges, assistant judges, and their secretaries, improving information exchange, reducing the time and labor spent on reporting, and reducing technical errors in the process during the proceedings. This system improved the ability to register lawsuits, cases, complaints, and requests, assign judges, initiate and process cases, record necessary information according to workflow, monitor, manage, and report on the judge's case resolution process.

The Corona pandemic has brought the court work to standstill. Gradually, the courts were able to conduct digital hearings, so that a regulation regarding a hearing by means of video and audio transmission was needed. In this case, §128a of German CPC[27] served as example of domestic regulations, which made the examination of witnesses, experts and the parties by video conference. After the corona period, the discussion about digitalization of court system in Mongolia is intensified, which led to the new reform point in the CPL regarding to matters of electronic evidences. The Minister of Justice and Home Affairs of Mongolia plans to approve a draft resolution of the Parliament on the issue of digitalization, and intends to make the court a completely open house of justice that everybody can visit (Nyambaatar, 2021). But the question if digitalization as offspring of the development of artificial intelligence can reshape all areas of our living environments, including the judiciary, can be set aside a while. Before this phenomenon, the problems of digital evidence in the civil procedure is an issue to solve properly.

5.4. Simplification of civil procedural law through model procedures

But civil procedural law must not remain as resistant to reform as substantive law. It must be in line with new developments in technology and the economy so that participants in economic transactions can exercise their procedural rights in a timely manner. In this regard, new expected reforms are welcome, even institutes from different legal families can be transformed into domestic law, especially since the two major legal families have developed closely together. The digitalization of the justice is a continuous process, which will surely solve the problems of digital evidence. Further reforms like introduction of model procedures like in Germany or class actions in USA are needed in near future; in order to simplify the judiciary, the inclusion of dunning procedures in civil procedural law could be considered.

In addition to digitalization of court procedure, it became a new challenge in the economic sector to introduce some model procedure within the framework of standard contracts that have impact to a large number of citizens6 Some surveys consider to implement a procedure similar to the US class action. In order to simplify the operation of the judiciary, the special regulation of the representation process in the same type of cases in the CPL can prevent different decisions of similar cases in some fields like insurance law, credit relations or capital market cases.

Although Mongolia has a population of more than 3 million people and its sparse population density, it is believed that there is little opportunity for acts and conflicts that harm many people at the same time compared to densely populated areas. In this sense, there has been no need yet to implement the model process or class-

[27] Section 128a German CPC: https://www.gesetze-im-internet.de/englisch_zpo/englisch_zpo.html.
§128a. Hearing for oral argument using image and sound transmission
(1) The court may permit the parties, their attorneys-in-fact ,and advisers, upon their filing a corresponding application or ex officio, to stay at another location in the course of a hearing for oral argument, and to take actions in the proceedings from there. In this event, the images and sound of the hearing shall be broadcast in real time to this location and to the courtroom.
(2) The court may permit a witness, an expert, or a party to the dispute, upon a corresponding application having been filed, to stay at another location in the course of an examination. The images and sound of the examination shall be broadcast in real time to this location and to the courtroom. Should permission have been granted, pursuant to subsection (1), first sentence, for parties, attorneys-in-fact and advisers to stay at a different location, the images and sound of the examination shall be broadcast also to that location.
(3) The broadcast images and sound will not be recorded. Decisions given pursuant to subsection (1), first sentence, and subsection (2), first sentence, are incontestable.

action like in Western countries. However, in today's globalized society, the scope of international legal development has expanded, and in accordance with the treaty conventions to which Mongolia is a party[28], the foreign court decisions resulting from this type of model process or class-action must be performed by the domestic authorities in Mongolia In addition, the development of the mining industry will raise the issue of reconsidering environmental protection, dealing with some activities that are harmful to whole environment, and replacing the damage caused. Therefore, 1/. to determine whether it is obliged to execute these type of foreign court decisions, 2/. it is also necessary to consider a model case in which the interests of several parties are affected due to a common violation in the field of domestic economic competition and environment, and to consider the issue of the model process that allowed the addition of many victim-plaintiffs to the dispute in the future.

In continental law, this common mass tort is legislated in a few cases, such as torts in the securities market, while Anglo-American law uses a class-action as a type of civil and criminal procedure combined. From the point of view of a state governed by the rule of law, the process of collecting and summarizing such claims serves the principle of process economy intended by the CPL, but it is questionable whether it is in line with the Constitution of Mongolia as it makes the civil claimant and his lawyer mainly responsible for the investigation and detection of violations by state authorities. In addition, there is a high probability that public pressure will be used against the defendant, and it carries the risk of imposing higher compensation on the market participant than he or she can afford. Public pressure usually ends with amicable negotiations and compensation in that case.

The addition of the provision for compensation for psychological harm[29]/punitive damage to the §497 of Civil Code of the Mongolia can be seen as a manifestation of the tendency to expand the principle of actual damage and accept the regulation of punitive damage in Anglo-American law. However, in continental legal traditions is believed that it is characteristic to initiate a civil case in form of a class-action, to conduct and terminate the civil procedure and to award punitive damages could be much more than the actual damages. Even there were some cases of refusing to fulfill the obligations stipulated in Article 13. 1 of the Hague Convention on the delivery of decisions (Hopt & Jaan, 2007). The principle of the rule of law and the scope of providing legal assistance are limited by the system of CPL and Constitution, and in this context, the gradual implementation of the model procedure used in Western European countries seems more compatible with most of the researchers in this field.

a) Investor model procedure. This type of procedure is mostly used in cases concerning securities, money and insurance markets. Since the investor can be everyone from domestic company shareholders to borrowers, policyholders, and product users, it should not be imagined only as a foreign investor and the solution to simplify the process should not be missed. Investor Model Claims allow you to pool claims of smaller amounts without the risk of incurring exorbitant processing costs. For example, Germany is considered behind the USA in terms of consumer protection, even though it regulates this type of procedure for small and large investors, which aim to refine model claims related to production practices that attract a lot of media attention.

The purpose of a model procedure is to consolidate several claims on behalf of a similar number of claimants, a process with the effect that, at a minimum, the description and counterclaims of those claims are generally binding on the assigning party. In the continental legal tradition, model claims were not recognized, and the strict principle of inter-partes effect of civil law relations and court decisions was used. Accordingly, a court decision can be legally binding only in favor of and against those involved in the process. The only deviation from this is the Model Investor Process Act (KapMuG), where investors exercise performance-oriented claims in model claims, usually for damages or distribution of dividends.

For example, if the securities issuer is held liable for the violation of misrepresentation in the stock market, such as the fact that the prospect of the securities issued to the public is not true, it is stipulated to file a model claim for conducting a special process under appropriate conditions. The reason for the introduction of the procedure is that there were about 16,000 similar claims against the German Telecom company. In other words, it aims to

[28] For example Haag Convention on Civil Procedure.
[29] New wording of 497 of Mongolian Civil code.

ease the work load of the courts. In addition, if at least 10 percent of claims for damages from shareholders have the same legal and fact-finding process, testing of this model was considered reasonable. The judgment can be binding on all registered claimants. Proceedings of the court of first instance on the same claim shall be suspended pending the decision of the higher court. The results of the model process are then used to reconcile related cases.

b) Advantages of the model procedure. Consumer associations have called for the introduction of general model claims in credit commission, competition law and civil law because the process has many advantages for consumers. The main goal is to resolve important disputes in a unified manner, regardless of the amount of the dispute will serve the main goal of the latest reform of CPL in 2021, which aims to building up the uniformity of court decisions.

Consumers avoid litigations when the amount in dispute is small or the evidence is uncertain. But when hundreds of thousands of users are affected, the end result is often an alarming amount of money. Regardless of the small amount of money in dispute, the Supreme Court can clarify fundamental legal questions. After a positive judgment against the company, it applies only to the parties who have joined the proceedings. However, as long as the purpose is to clarify other questions of fact or general questions of law, a model case decision can significantly reduce litigation risk in any case.

The administrative process is also required to include this type of procedure, and the court allows one or more due process procedures to be combined (model process) in advance. In this way, the results of the model case will be used in handling other cases, and cases submitted to other administrative courts will be suspended until a decision is made. After hearing the parties involved in the case, the court will compare the suspended case with the model decision and issue an order in the same conditions as the case based on the actual facts and legal importance.

6. Resume

The changes to the Civil Code and the CPL 2002 which were based on the liberal model, did not lead to a fundamental reorganization of the legal system, but they did require legal reform and brought major changes in the legal system and society. At the end of the reforms, the structure, style, ideological model and transitional regulations of the previous laws interacted with the new norms, methods and mechanisms of the reform, thereby influencing the formation of a completely new introduced model in the legal environment. This process did not stop at reforming the legal environment, but rather changed the regulatory structures of received norms, which led to a mixed structure that combined old and new (Buyankhishig, 2021). During the transition period, conflicts between new and old laws and systems are inevitably expected. In this sense, the CPL also the Civil Code are seen as a reflection of the conflict between two competing social models.

Generally, the judicial reform in Mongolia from 2021 has reached its goals. There is an opportunity to develop the uniform application of the law for the Supreme Court as the supreme judicial body of the Mongolian Judiciary by the Supreme Court only reviewing complaints based on the criteria established by law. In this sense, principally the Supreme Court is able to implement for both private and public purposes in the judicial proceedings. The next step of the Mongolian legislation after creating low-cost dispute resolutions could be also the implementation of some model procedure like mentioned here.

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