

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

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Volume 9 | Issue 3

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2026

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# Reform of the System Ensuring Uniform Application of Law in Mongolia: Opportunities for Improvement

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## ABSTRACT

*Based on the 2019 constitutional amendments, Mongolia articulated the concept of judicial reform and enacted the revised Law on the Judiciary in 2021. Within the framework of this reform, fundamental changes were introduced to the system for ensuring uniform application of law. As a result, although Mongolia is a civil law jurisdiction adhering to the doctrine of jurisprudence constante, certain decisions of the Supreme Court have acquired normative force. However, these structural and procedural legislative changes remain insufficient to fully achieve the objective of ensuring uniform application of law. It is necessary to adopt measures that highlight decisions of significant importance to the attention of judges and legal practitioners, and to strengthen the persuasive authority of decisions of civil law system in Mongolia. This paper analyzes the current system of ensuring uniform application of law in Mongolia, reviews relevant statistical data, and concludes that the main area for improvement lies in the development of “soft mechanisms.”*

**Keywords:** Uniform application of law, Mongolian judiciary, Judicial reform, hybrid approach of Uniform application of law

## I. INTRODUCTION

In 2019, Mongolia adopted constitutional amendments that introduced significant reforms to the structure of state power. Mongolia first enacted its democratic Constitution in 1992, and subsequently, in 2000, adopted amendments that have since been remembered by legal scholars and practitioners with criticism as the so-called “Seven Deteriorating Amendments.” In contrast, the 2019 amendments marked a decisive step toward consolidating democracy, undertaken on the basis of over three decades of democratic experience, careful observation of Mongolia’s political culture, and the balance and functioning of state institutions.

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Through these amendments, major reforms were introduced to strengthen constitutional democracy in all areas: the number of seats in Parliament was increased from 76 to 123; the President was limited to a single six-year term with curtailed powers, including the removal of authority to influence judicial appointments and to intervene in the leadership of law enforcement agencies; and greater stability of the executive branch was ensured.<sup>1</sup>

As part of these reforms, the judiciary was also subject to restructuring. The judicial reform has been directed at strengthening judicial independence, establishing legal guarantees for accountability and disciplinary responsibility, and enhancing transparency. Among these objectives, this paper specifically examines the reform of the system for ensuring the uniform application of law.<sup>2</sup>

The uniform application of law serves as a crucial mechanism for safeguarding the rights and legitimate interests of citizens through fair adjudication, enhancing public trust in the judiciary, and further advancing legal development. Internationally, this mechanism evolves differently depending on legal tradition: in common law systems, through judicial precedent (*stare decisis* or case law), and in civil law systems, primarily through the principle of legal stability (*jurisprudence constante*).

Although Mongolia belongs to the civil law tradition, it has introduced a hybrid structure for ensuring uniform application of law. This development is not only innovative but also raises important questions, linking further to the phenomenon of legal hybridity.

The aim of this study is to analyze the impact of both structural and procedural reforms on the system of uniform application of law, to assess the current situation, and to identify the needs and avenues for improvement.

Methodologically, the research relies primarily on document analysis, observation, comparative study, synthesis, and case analysis. The legal regulations, objectives, and outcomes of the reforms within the judiciary were examined in detail, supported by relevant statistical data. Furthermore, selected best practices from foreign jurisdictions were compared to propose appropriate measures applicable in Mongolia.

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<sup>1</sup> Furthermore, by staggering the terms of parliamentary and presidential elections, the reform sought to foster political stability and thereby guarantee the institutional stability of the executive power.

<sup>2</sup> This will be discussed in more detail in the first chapter.

## II. JUDICIAL REFORM AND THE SYSTEM OF ENSURING UNIFORM APPLICATION OF LAW

### A. The Concept and Impact of Judicial Reform

Although the history of Mongolian statehood extends back more than two millennia, the judiciary as a function distinct from other state activities is generally traced to the 13th century, beginning with the Year of the Red Tiger in 1206.<sup>3</sup>

Following the victory of the National Liberation Movement in 1911, the Bogd Khanate of Mongolia adopted 63 legislative instruments, thereby formally establishing an independent judicial body tasked with adjudication and punishment.

With the triumph of the People's Revolution in 1921, Mongolia underwent fundamental transformations in its political, social, and economic structures, laying the foundation for the emergence of the People's Courts in the Mongolian People's Republic. In March 1921, the "Adjudication Division" was established within the Ministry of Interior; in July of the same year, the Ministry of Justice was created; and at the local level, "temporary adjudication bureaus" and the "Provisional Court" under the Government became the initial institutions of the modern judiciary.

Following the democratic revolution of 1990 and the transition from socialism, the 1992 Democratic Constitution reorganized the judiciary on the basis of the principle of separation of powers.<sup>4</sup> Since then, in line with social, economic, and legal developments, judicial reforms have been undertaken on three occasions.<sup>5</sup> Among these, the judicial reform implemented under the 2021 Law on the Judiciary is distinct in that its concept was founded upon the 2019 constitutional amendments, with the overarching aim of consolidating constitutional democracy.

This reform introduced a wide range of objectives: restructuring the Judicial General Council and establishing the Judicial Disciplinary Committee; creating circuit and specialized courts;<sup>6</sup>

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<sup>3</sup> Secret History of Mongols, §203: Chingis khan declared "By the blessing of Eternal Heaven, as you bring order to the realm, be its eyes to see and its ears to hear. Assign to our sons and younger brothers their respective shares among the felt yurts, and distribute among them the people attached to each encircled gate. Let no one alter the commands you issue. Thus it was decreed. Moreover, Shikhikhutug was appointed the chief state officer (judge), with the charge..."

<sup>4</sup> On 4 February 1993, the *Law on the Judiciary* was enacted. <https://legalinfo.mn/mn/detail?lawId=7167>

<sup>5</sup> The Law on the Judiciary was subsequently re-enacted on 4 July 2002 (<https://legalinfo.mn/mn/detail?lawId=90>), on 7 March 2012, and, following the 2019 constitutional amendments, a revised version of the *Law on the Judiciary of Mongolia* was adopted on 15 January 2021. Each of these laws contained substantially different provisions regarding the structure, powers, and functions of the judiciary.

<sup>6</sup> On 5 June 2024, the *Law on the Establishment of Courts* was revised. <https://legalinfo.mn/mn/detail?lawId=17140721145671>

strengthening judicial independence; enhancing transparency;<sup>7</sup> developing infrastructure for training and research;<sup>8</sup> and ensuring a balanced structure of leadership and collective governance within the judiciary. One of its central objectives was to improve the system for ensuring the uniform application of law. In this respect, the following measures were introduced:

1. The Supreme Court's mandate to ensure the uniform application of law was clarified. As a result, decisions of appellate courts may now be reviewed by the Supreme Court only on specific statutory grounds and strictly for the purpose of ensuring uniform application of law. These grounds include:
  - a. Eliminating discrepancies in judicial application of law;
  - b. Where a lower court has applied the law in a manner inconsistent with a resolution or interpretation of the Supreme Court;
  - c. Where a serious procedural violation has occurred that affected the outcome of the case;
  - d. Where a new legal concept has arisen, or where determination of legal application is of general and fundamental significance.<sup>9</sup>

These grounds have been incorporated into the procedural laws governing criminal, civil, and administrative proceedings.<sup>10</sup> Table 1 below illustrates the number of cases in which the Supreme Court chambers applied these grounds when adjudicating cases.

**Table 1. Grounds for Cases Reviewed by the Cassation Court Hearing, and Their Percentage**

| <b>№</b> | <b>Chamber</b> | <b>Number of cases decided at cassation stage</b> | <b>Share of cases decided at cassation stage</b> | <b>Number of cases heard</b> | <b>Legal grounds for cassation review</b> | <b>Number</b> | <b>Percentage (%)</b> |
|----------|----------------|---------------------------------------------------|--------------------------------------------------|------------------------------|-------------------------------------------|---------------|-----------------------|
|          |                |                                                   |                                                  |                              |                                           |               |                       |

<sup>7</sup> Whereas the earlier law provided that hearings were closed unless expressly mandated to be open, the new principle established that hearings are open to the public unless expressly mandated by law to be closed. Accordingly, all court hearings concerning corruption cases at every level, as well as all open cassation hearings, have begun to be livestreamed to the public.

<sup>8</sup> In addition, the Judicial Training, Research, and Information Academy was established under the Supreme Court, with exclusive authority to conduct judicial training. The Academy also functions as a think tank responsible for undertaking nationwide research necessary for adjudication.

<sup>9</sup> Article 25.7.5 of the Law on the Judiciary of Mongolia

<sup>10</sup> Criminal Procedure Code, Article 40.1, Sections 1.1–1.4, Civil Procedure Code, Article 172, Sections 172.2.1–172.2.4,

Administrative Procedure Code, Article 123, Sections 123.2.1–123.2.4

|   |                            |     |        |                   |                                       |     |      |
|---|----------------------------|-----|--------|-------------------|---------------------------------------|-----|------|
| 1 | Chamber for criminal cases | 144 | 14.67% | 125 <sup>11</sup> | Criminal Procedure Code Art. 40.1-1.1 | 87  | 69.6 |
|   |                            |     |        |                   | Criminal Procedure Code Art. 40.1-1.2 | 4   | 3.2  |
|   |                            |     |        |                   | Criminal Procedure Code Art. 40.1-1.3 | 2   | 1.6  |
|   |                            |     |        |                   | Criminal Procedure Code Art. 40.1-1.4 | 32  | 25.6 |
| 2 | Chamber for civil cases    | 321 | 20.32% | 321               | Civil Procedure Code Art. 172.2.1     | 290 | 90.3 |
|   |                            |     |        |                   | Civil Procedure Code Art. 172.2.2     | 125 | 38.9 |
|   |                            |     |        |                   | Civil Procedure Code Art. 172.2.3     | 8   | 2.5  |
|   |                            |     |        |                   | Civil Procedure Code Art. 172.2.4     | 17  | 5.3  |
| 3 |                            | 138 | 26.69% | 111 <sup>12</sup> | Administrative Procedure              | 56  | 50.5 |

<sup>11</sup> In 2024, the Criminal Chamber reviewed a total of 144 cases at the cassation stage. Of these, 19 cases consisted of prosecutorial motions for review due to newly discovered circumstances (*IIIHHB*) and acquittals, while 125 cases were reviewed on the basis of cassation complaints and protests.

<sup>12</sup> The Administrative Chamber decided 111 cases on cassation complaints (accepted for review at the cassation stage) and 27 cases on appeals, amounting to 138 cases in total. Since all such cases are assigned a cassation case number, the total is recorded as 138.

|  |                                  |  |  |  |                                            |    |      |
|--|----------------------------------|--|--|--|--------------------------------------------|----|------|
|  | Chamber for administrative cases |  |  |  | Code Art. 123.2.1                          |    |      |
|  |                                  |  |  |  | Administrative Procedure Code Art. 123.2.2 | 36 | 32.4 |
|  |                                  |  |  |  | Administrative Procedure Code Art. 123.2.3 | 37 | 33.3 |
|  |                                  |  |  |  | Administrative Procedure Code Art. 123.2.4 | 34 | 30.6 |

*Note: Since some cases were decided on multiple grounds, certain figures overlap, which is to be expected.*

Furthermore, since 2021, the Supreme Court has resumed issuing official interpretations “on the correct application of law,” which had been suspended since the adoption of the 2012 Law on the Judiciary.

In 2021, the Judicial Training, Research, and Information Institute was established under the Supreme Court, and by 2023 it was further developed into an academic-level institution. With the legal framework revised to authorize the Judicial Academy as the sole provider of judicial training in Mongolia, conditions have been created for the Supreme Court to deliver information and training on the application of law through a unified channel.

## **B. Theoretical Foundations and the New Framework of Uniform Application of Law in Mongolia**

The efforts described above to establish a new system in Mongolia were distinctive in that they were based on a new theoretical approach to ensuring the uniform application of law, marking a significant departure from previous models.

### **1. Adoption of a Hybrid Theory of Uniform Application of Law**

Since its democratic transition, Mongolia, as a civil law jurisdiction, has traditionally adhered to the principle of *jurisprudence constante* in ensuring uniform application of law. Within this framework, prior to the judicial reform, the Supreme Court was obliged to review every appeal against lower court decisions, which, on the one hand, reduced appellate courts to a mere

transitional instance without substantive significance for the uniform application of law, and on the other hand, diminished the authority of Supreme Court decisions due to the inadequacy of the cassation review mechanism.

As a result, decisions clarifying or interpreting the law did not stand out from ordinary corrective decisions or from decisions affirming lower court judgments. In practice, there was no institutionalized system for ensuring uniform application of law; rather, it was left to individual lawyers to study the Supreme Court's decisions themselves.

Such a system had certain advantages, insofar as it prevented overly rigid judicial interpretation that might stifle legal development, but it carried the risk of inconsistency in legal application. As noted in Opinion No. 20 (2017) of the Consultative Council of European Judges (CCJE), lack of uniform application of law undermines public confidence in the judiciary and jeopardizes fairness in adjudication.<sup>13</sup> At the same time, excessive adherence to uniformity may hinder legal development and may conflict with the independence of individual judges.<sup>14</sup>

In the context of judicial reform, the fact that the Supreme Court now reviews appellate decisions only on four specific statutory grounds<sup>15</sup> reflects a conscious shift towards a hybrid theoretical approach. In civil law systems, higher court decisions are not binding but rather persuasive, and their consideration is realized *de facto* rather than *de jure*. In contrast, in common law systems governed by *stare decisis*, precedents are binding *de jure*. Nevertheless, even civil law jurisdictions increasingly take account of precedent in substance, and in the European Union<sup>16</sup>, case law exerts a strong influence, despite the absence of a fully uniform system across Member States.<sup>17</sup>

For Mongolia, the rule introduced in the Law on the Judiciary and procedural codes — namely, that an appellate decision shall be subject to cassation review when “the law was applied differently from a Supreme Court decision or interpretation” — is a clear expression of this hybrid approach.<sup>18</sup> Consequently, Supreme Court decisions are now more frequently invoked

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<sup>13</sup> Consultative Council of European Judges (CCJE). Opinion No. 20 (2017): The Role of Courts with Respect to the Uniform Application of the Law. <https://rm.coe.int/opinion-ccje-en-20/16809ccaa5#:~:text=III,A%20SOURCE%20OF%20LAW>

<sup>14</sup> *Ibid.*

<sup>15</sup> *Supra* note 10, 11

<sup>16</sup> *Supra* note 13

<sup>17</sup> *Supra* note 13

<sup>18</sup> This subparagraph was originally formulated as “applied or interpreted the law differently from the official interpretation of the Supreme Court.” However, by Decision No. 02 of 3 May 2023, the Constitutional Court (Constitutional Tssets) suspended its application as of 15 December 2023. Subsequently, by Resolution No. 40 of 8 June 2023, the State Great Khural (Parliament) accepted this conclusion and amended the law to read: “applied the law differently from a decision of the Supreme Court.”

in judicial debates among judges, prosecutors, and defense lawyers, and are formally cited in cassation complaints and judicial rulings.

As a result of this development, although Supreme Court decisions are not applied in a strictly normative manner as binding precedent equivalent to statutory law, they are increasingly used as authoritative reasoning that strongly influences judicial decision-making. In this sense, one may conclude that Supreme Court decisions have acquired a “quasi-normative” character.<sup>19</sup>

In other words, while the principle of *jurisprudence constante* remains predominant, elements of *stare decisis* are now incorporated in a quasi-normative manner into Mongolia’s system of ensuring uniform application of law.

## 2. Emancipating Abstract Interpretations and Issuing Practice-Based Explanations

Under the 2012 Law on the Judiciary, the Supreme Court’s authority to issue official interpretations on the correct application of law was removed, and for nine years—until 2021—the Court did not issue any such interpretations. The reason was that the former regulation empowered the Supreme Court to adopt abstract interpretations<sup>20</sup>, which, rather than having practical value, led to the proliferation of numerous explanations and risked encroaching upon the powers of the legislature, thereby undermining the principle of separation of powers.

As of 30 September 2025, the Unified Legal Information System records 259 Supreme Court decisions containing interpretations and recommendations,<sup>21</sup> of which only 18 have been issued since 2022 under the new law.

Within the framework of the 2019 constitutional amendments, Article 50 of the Constitution was revised to provide that: “The Supreme Court of Mongolia is the highest judicial body and shall exercise the following powers: ... 4/ issue official interpretations on the correct application of laws other than the Constitution.” The revised Law on the Judiciary further established that “the Supreme Court shall issue official interpretations on the correct application of laws other than the Constitution, based on judicial decisions and practice, on the proposal of its chambers, and shall publish such interpretations regularly.”<sup>22</sup> This reform created a legal environment where official interpretations are grounded not in abstract reasoning but in judicial practice.

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<sup>19</sup> In this regard, Chief Justice of the Supreme Court of Mongolia, D. Ganzorig, noted in his presentation that: “Under the new regulations introduced through the reform, decisions of the cassation instance have acquired legal significance, which judges are required to take into account and apply when resolving similar disputes.” <https://supremecourt.mn/mn/home?page=pages&id=83&pg=3170&pr=14&tp=list&h=0>

<sup>20</sup> Refers to an interpretation issued by the court on its own initiative, without a specific practical ground, when the court deems it necessary to interpret the law.

<sup>21</sup> Unified Legal Information System database. <https://legalinfo.mn/mn/law?page=law&cate=32&active=1&sort=title&page=1>

<sup>22</sup> Article 25.8.4 of the Law on the Judiciary of Mongolia

Consequently, the need for issuing interpretations is now defined by practical necessity. Within the framework of judicial reform, the Supreme Court prioritized issuing interpretations of procedural laws that were deemed most urgently required.<sup>23</sup>

### III. DEFICIENCIES IN THE OPERATION OF ENSURING UNIFORM APPLICATION OF LAW AND MEASURES FOR IMPROVEMENT

Although the reforms described above have improved the system for ensuring the uniform application of law, there remain several areas in need of further development, particularly because the system is still in its early stage of implementation. The key issues relate to the need for greater clarity and the development of soft mechanisms.

In civil law tradition, unlike in *stare decisis*-based common law systems, judicial decisions are persuasive rather than binding. Therefore, the principal factor for improving uniform application lies in organizational soft mechanisms. In Mongolia, such mechanisms have so far been limited mainly to the fields of training and research<sup>24</sup>, but must also be strengthened in terms of case law development and judicial practice.

As noted earlier, Mongolia has created a quasi-normative legal environment in which higher court decisions must be considered. However, it remains necessary to prioritize those Supreme Court decisions that are of greater significance for the application of law and the development of jurisprudence.

The legal basis for this is provided in the Law on the Judiciary, which stipulates<sup>25</sup> that “official interpretations on the correct application of laws other than the Constitution, as well as Supreme Court decisions considered important for ensuring the uniform application of law, shall be published in the ‘State Gazette’<sup>26</sup>.” While official interpretations are deliberated and adopted by the Plenary Session of the Supreme Court, until recently not a single decision had been published.

Since the revised Law on the Judiciary entered into force, the Criminal, Civil, and Administrative Chambers of the Supreme Court have not selected any decisions to be published

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<sup>23</sup> From The Supreme Court of Mongolia’s official database. <https://supremecourt.mn/mn/home?page=advice&id=15&pr=0&tp=list&h=0>

<sup>24</sup> Between 2021 and 2025, the Judicial Academy carried out 229 research projects and organized 155 domestic training sessions, attended in total (including repeat participation) by 13,441 judges. In addition, international trainings and meetings were organized in 12 countries, with the participation of 156 judges. Over the past two years, 9 judges have served as research fellows, publishing 14 research reports.

<sup>25</sup> Article 22.9 of the Law on the Judiciary of Mongolia.

<sup>26</sup> The official gazette in Mongolia for publishing laws and universally binding legal norms.

as “important for ensuring uniform application of law.” However, in September 2025, the Administrative Chamber published five such decisions in the *State Gazette*.<sup>27</sup>

Statistics also show that the Supreme Court, when deciding cases at the cassation stage, invoked the ground of “a new legal concept or a matter of general and fundamental significance for determining legal application” in 20.5% of the cases. Of these, the Criminal Chamber relied on this ground in 32 cases, the Civil Chamber in 17 cases, and the Administrative Chamber in 34 cases. These figures suggest that there is real potential to select and highlight Supreme Court decisions that are of particular importance for ensuring uniform application of law.

**Table 2. Average Percentage of Grounds for Cases Reviewed at the Cassation Stage**

| <b>№</b> | <b>Grounds for Review at Cassation Stage</b>                                                               | <b>Average Percentage (%)</b> |
|----------|------------------------------------------------------------------------------------------------------------|-------------------------------|
| 1        | To eliminate inconsistencies in judicial application of law                                                | 70.1                          |
| 2        | Serious procedural violations affecting the decision                                                       | 24.8                          |
| 3        | The law was applied differently from a Supreme Court decision or interpretation                            | 12.4                          |
| 4        | A new legal concept, or a matter of general and fundamental significance for determining legal application | 20.5                          |

At present, the Supreme Court lacks specific criteria and mechanisms for selecting and publishing decisions deemed to be of greater importance. This constitutes a shortcoming that undermines the effectiveness of the newly established structure introduced by the judicial reform.

Furthermore, the requirement to publish Supreme Court decisions only in the *State Gazette* carries the risk that important lower court decisions—those not reviewed at the cassation stage but still significant for legal development and uniform application of law—may be overlooked. To address this, the Supreme Court could consider publishing unofficial compilations to bring such decisions to the attention of legal professionals.

Both of these shortcomings can be addressed through soft mechanisms—organizational rather than legislative changes. Comparative experience provides useful insights. For example:

<sup>27</sup> *State Gazette*, No. 35 (1380), 2 September 2025.

**China:** The *Provisions on Work Related to Guiding Cases* (26 November 2010) stipulate that cases meeting one or more of the following criteria may be designated as guiding cases:

- The case received extensive public attention;
- The law applied is of primary importance and may be widely applicable to other cases;
- The case is typical in nature;
- The case is complex or novel to society;
- The case serves another guiding function.<sup>28</sup>

**Japan:** Lower courts second judges to the Supreme Court as *research judges*, who assist not only in adjudication but also in selecting and publishing significant cases as *hanrei*. This *hanrei* may be characterized as a very limited form of precedent.<sup>29</sup>

**Vietnam:** In 2015, Vietnam introduced a reform within its civil law system to establish judicial precedents (*án lệ*). The Council of Judges of the Supreme People's Court was authorized to select and formalize legal principles from case decisions in order to promote uniformity in legal application.<sup>30</sup>

#### IV. CONCLUSION AND RECOMMENDATIONS

Within the framework of judicial reform, Mongolia has improved its system for ensuring the uniform application of law by codifying a hybrid theoretical approach. This has been a significant step towards enhancing consistency in legal practice. Nevertheless, in civil law jurisdictions where the principle of *jurisprudence constante* prevails and judicial decisions are persuasive rather than binding, soft mechanisms play a particularly important role.

The objective of ensuring uniform application of law requires not only structural arrangements prescribed by legislation but also a comprehensive implementation policy. Such a policy—through soft mechanisms—would not only support uniformity of application but also strengthen the legal literacy of both legal professionals and the public by publishing important decisions, while avoiding rigid constraints on the decision-making autonomy of lower courts.

Based on this study, the following recommendations are proposed:

- **Establish a council for the selection and publication of important decisions** in order to ensure uniform application of law. This should include not only Supreme Court

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<sup>28</sup> Wendy Yan. *Provisions on Work Related to Guiding Cases*. 2012.

<sup>29</sup> Geraldine Carney, Stacey Steele. *The Japanese Judicial System: Introduction and Contemporary Issues*. Asian Law Centre, Melbourne Law School, Briefing Paper 14.

<sup>30</sup> Law on Organization of People's Courts (2014) <https://english.luatvietnam.vn/law-no-62-2014-ql13-of-the-national-assembly-on-organization-of-peoples-courts-91350-doc1.html>

decisions but also lower court decisions which, although not falling within the four statutory grounds for cassation review, are correctly decided and of legal significance.

- **Define criteria and procedures** for selecting decisions to be published in the official gazette as those considered important for ensuring uniform application of law.
- **Require the Supreme Court**—when reviewing appellate decisions on the ground that “the law was applied differently from a Supreme Court decision or interpretation”—to explicitly specify which decision or interpretation was applied differently and in what manner. This would allow such significant decisions to be more thoroughly studied, cited in judicial proceedings, and recognized as “landmark decisions,” thereby further strengthening uniform application of law.

Finally, it is essential to further consolidate the judicial training system already established, and to develop methodologies for measuring the level of uniform application of law.

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