

## НАМЫН БҮРТГЭЛД ТАВИГДАХ ШААРДЛАГАД ГИШҮҮНЧЛЭЛИЙН ДООД ХЯЗГААРЫГ ТУСГАСАН БАЙДАЛ: ГАДААДЫН ЗАРИМ ОРНЫ ТУРШЛАГА

(Мэдээлэл, лавлагаа)

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### АГУУЛГА

- Европын зөвлөлийн Венецийн комиссын Улс төрийн намуудын талаарх тайлан;
- Гадаадын зарим орны Үндсэн хуульд холбогдох асуудлыг тусгасан байдал;
- Европын холбооны зарим гишүүн орнуудын улс төрийн намын тухай хууль тогтоомжид холбогдох асуудлыг тусгасан байдал.

Монгол Улсын Ерөнхийлөгч Халтмаагийн Баттулгаас 2019 оны 07 дугаар сарын 16-ны өдөр өргөн мэдүүлсэн Үндсэн хуульд оруулах нэмэлт, өөрчлөлтийн төслийн Арван ес<sup>1</sup> дүгээр зүйлийн 2 дахь хэсэгт “Намыг Монгол Улсын сонгуулийн эрх бүхий тавин мянга нэгээс доошгүй тооны иргэн нэгдэж байгуулах бөгөөд гишүүний бүртгэл, өөрчлөлтийг сонгуулийн төв байгууллага хөтөлнө.” гэж нэмэхээр тусгасан. Үүнтэй холбогдуулан дэлхийн улс орнуудын Үндсэн хууль болон холбогдох хууль тогтоомжид дээр дурдсан асуудлыг хэрхэн зохицуулсан талаар судалгаанд авч үзсэн болно.

Европын зөвлөлийн Венецийн комиссын Улс төрийн намуудын талаарх тайлан<sup>255</sup> -д Азербайжан, Босни Херцеговин, Канад, Хорват, Чех, Эстони, Гүрж, ХБНГУ, Грек, Киргиз, Латви, Литва, Молдова, ОХУ (500)<sup>256</sup>, Словак, Турк зэрэг улсад<sup>257</sup> улс төрийн намын гишүүнчлэлийн доод хэмжээг 50, 500, 5000 зэргээр

<sup>255</sup>EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION) COMPILATION OF VENICE COMMISSION OPINIONS AND REPORTS CONCERNING POLITICAL PARTIES, 2016 [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2016\)003-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2016)003-e)

<sup>256</sup>Федеральным законом «О политических партиях» (пункт 2 статьи 3) определены требования, предъявляемые к политической партии для ее государственной регистрации, в том числе численность, которая с 4 апреля 2012 года должна составлять – не менее 500 членов политической партии с учетом требований, которые предусмотрены пунктом 6 статьи 23 Федерального закона «О политических партиях». Уставом политической партии могут быть установлены требования к минимальной численности членов политической партии в ее региональных отделениях. Политическая партия должна иметь региональные отделения не менее чем в половине субъектов Российской Федерации, при этом в субъекте Российской Федерации может быть создано только одно региональное отделение данной политической партии. <https://minjust.ru/ru/node/202387>

<sup>257</sup>B. Minimal membership requirement

... However, some pre- conditions for registration of political parties existing in several Council of Europe Member States requiring a certain territorial representation and a minimal number of members for their registration could be problematic in the light of the principle of free association in political parties.”

“It is true that minimal membership requirements do exist in a number of States (Azerbaijan, Bosnia and Herzegovina, Canada, Croatia, Czech Republic, Estonia, Georgia, Germany, Greece, Kyrgyzstan, Latvia, Lithuania, Moldova, Russian Federation, Slovakia and Turkey). At first glance the sequence of thresholds of not fewer than 50, 500 and 5000 individuals may appear as good as any other. However, closer inspection reveals, that these thresholds will be obstacles which would be very difficult or simply impossible to overcome.

Ordinary citizens, who want to found a new party – maybe at first for political work in a municipality and later development into a nationwide active political party –, cannot be expected to overcome these obstacles without active support of an existing organisation with ample administrative resources. If the goal is to found a party for political on the level of a municipality there may not even be 5000 inhabitants in the municipality, in which the future political party is supposed to be active. The thresholds of 50 and 500 should also be related to the number of individuals, which are necessary to found an association or similar legal person; founding a political party should not be more difficult than founding an ordinary association or company.

тогтоосон байдаг гэж дурдсан бөгөөд энэ асуудлаарх Комиссын байр суурийг илэрхийлсэн байна. Тухайлбал, Азербайжаны холбогдох хууль тогтоомжид намын гишүүнчлэлийн доод хэмжээг 1000-аас 5000 болгон өөрчлөлт оруулах асуудлаар: 8 сая гаруй хүн амтай улсад 1000 гэсэн тоо нь үндэслэлтэй юм. Харин хязгаарыг 5000 гэж нэмэх нь Европын хүний эрхийн конвенцын 11-р зүйлд заасан иргэдийн эвлэлдэн нэгдэх эрх чөлөөг ханган хэрэгжүүлэхэд саад учруулах, хязгаарлаж болзошгүй, мөн шинээр нам байгуулахад дээрх босго нь өндөр байна гэж үзжээ.

Гадаадын зарим улс орнуудын Үндсэн хуулиас шүүн үзэхэд улс төрийн нам байгуулахтай холбоотой гишүүнчлэлийн тоо хэмжээ, доод хязгаартай холбоотой асуудлыг тусгасан цөөн улс байна. Тэдгээрээс дурдвал:

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In this context the question could be asked, whether and to which extent there will be public support for a newly founded political party. But to find an answer to this question should not be a matter for a court of law in registration proceedings. Instead it should be left to the electorate to decide, whether public support is forthcoming. Therefore, thresholds of not fewer than 50, 500 and 5000 individuals are questionable. Probably they are far too high and should be reconsidered.

In some of its previous opinions the Venice Commission has expressed doubts as to the necessity to establish minimal membership for parties. In its opinion on the Law on political parties in Moldova the Commission considers that: "A State may be entitled to insist on certain minimum standards of size, organization and democratic standards as a condition of registering a party but it seems [...] doubtful that it can be regarded as necessary in a democratic society to prescribe the precise manner in which a political party is to be founded once the party's programme does not represent a danger to the free and democratic order or to the rights of individuals."

CDL-AD(2008)034 Opinion on the Draft Amendments to the Law on Political Parties of Bulgaria, adopted by the Venice Commission at its 77th Plenary Session (Venice, 12-13 December 2008), §14-19.

"In Western states there are often multiplicities of small political parties. They may be too small to be registered where registration requirements are in place, but that does not make their existence unlawful or prevent them from continuing to strive to organize and grow. It seems [...], for example, indefensible to require a party to dissolve itself when its membership falls below a certain threshold. [...] this is contrary to the right of freedom of association and cannot be regarded as necessary in a democratic society. Nor would such a forced dissolution appear to be consistent with the provisions of the European Convention on Human Rights and the Venice Commission's guidelines."

CDL-AD(2002)028 Opinion on the draft law on political parties and Socio-Political organisations of the Republic of Moldova, endorsed by the Venice Commission at its 52nd Plenary Session (Venice, 18-19 October 2002), §28.

"[Concerning a legislative amendment which proposes to increase the minimum membership of a political party from 1,000 to 5,000] In its previous opinion the Venice Commission expressed the view that a figure of 1,000 in a country of a population of eight million was a reasonable number. The new threshold seems to be formidably high and put a burden on citizens trying to exercise their rights under Article 11 of the ECHR which is potentially restrictive and as such would be disproportionate and not necessary in a democratic society. It seems a large threshold particularly for a new party."

CDL-AD(2011)046 Opinion on the Draft Law on Amendments to the Law on political parties of the Republic of Azerbaijan, adopted by the Venice Commission at its 89th Plenary Session (Venice, 16-17 December 2011), §18.

**Замби Улсын Үндсэн хуулийн 1991 (2016)-ийн 21-р зүйлд:<sup>258</sup>**

*2. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision-*

*d for the registration of political parties or trade unions in a register established by or under a law and for imposing reasonable conditions relating to the procedure for entry on such register including conditions as to the minimum number of persons necessary to constitute a trade union qualified for registration;*

*and except so far as that provision or, the thing done under the authority thereof as the case may be, is shown not to be reasonably justifiable in a democratic society.*

**Шинэ Зеланд Улсын Үндсэн хуулийн 1852 (2014)-ийн 63-р зүйлд:<sup>259</sup>**

Улс төрийн намын бүртгүүлэхэд:

*vi нам нь доод тал нь 500 гишүүнээр сонгогдох боломжтой, татвар төлөгч гишүүдтэй болохыг нотлох баримт болох Сонгуулийн хорооноос баталсан маягтыг хавсаргасан байх;*

**Эквадор Улсын Үндсэн хуулийн 2008 (2015)-ийн 109-р зүйлд:<sup>260</sup>**

*Гишүүдийн бүртгэлд өнгөрсөн сонгуульд бүртгүүлсэн сонгогчдын нэг аравны таван хувь (1.5%)-иас бага гишүүдтэй байж болохгүй.*

Европын Холбооны зарим гишүүн орнуудын Улс төрийн намын тухай хууль тогтоомжид намыг бүртгүүлэхэд гишүүнчлэлийн доод хязгаартай холбоотой асуудлыг хэрхэн зохицуулсныг доорх Хүснэгтээс үзнэ үү.

<sup>258</sup>Zambia 1991 (rev. 2016) PART III > Article 21

Protection of Freedom of Assembly and Association

2. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision—

a that is reasonably required in the interests of defence, public safety, public order, public morality or public health;

b that is reasonably required for the purpose of protecting the rights or freedoms of other persons;

c that imposes restrictions upon public officers; or

d for the registration of political parties or trade unions in a register established by or under a law and for imposing reasonable conditions relating to the procedure for entry on such register including conditions as to the minimum number of persons necessary to constitute a trade union qualified for registration;

and except so far as that provision or, the thing done under the authority thereof as the case may be, is shown not to be reasonably justifiable in a democratic society.

<sup>259</sup>New Zealand 1852 (rev. 2014) Electoral Act 1993 > Part 4 > Subpart 1 > 63 > 2

2. An application for the registration of an eligible political party— c must—

vi be accompanied by evidence, in a form approved by the Electoral Commission, that the party has at least 500 current financial members who are eligible to enrol as electors; and

vii be accompanied by a declaration, made by the secretary of the party in the manner provided by section 9 of the Oaths and Declarations Act 1957 that the party has at least 500 current financial members who are eligible to enrol as electors;

<sup>260</sup>Ecuador 2008 (rev. 2015) Article 109

Political parties shall be national in nature, shall be governed by their principles and bylaws, shall propose a government platform and shall keep a record of their members. Political movements may pertain to any level of government or the district of Ecuadorians living abroad. The law shall set the requirements and conditions for the democratic organization, permanence and actions of political movements, as well as incentives for them to forge alliances.

Political parties must submit their statement of ideological principles, government platform setting forth the basic actions they propose to carry out, bylaws, symbols, emblems, logos, list of governing board members. Parties must have a national structure, which shall cover at least 50% of the country's provinces, two of which must pertain to the three provinces with the largest population. The registry of members cannot have a number accounting for less than one point five percent (1.5%) of the persons on the voter registration list used in the last election.

Political movements must submit a statement of principles, government platform, symbols, acronyms, emblems, logos and registry of members or followers, with a number accounting for no less than one point five percent (1.5%) of the voter registration list used in the last election.

**Хүснэгт 1. Европын Холбооны зарим гишүүн орнуудын Улс төрийн намын тухай хууль тогтоомжид улс төрийн намыг бүртгэхэд гишүүнчлэлийн доод хязгаарыг тогтоосон байдал<sup>261</sup>**

д/д	Улсын нэр	Намыг бүртгүүлэх бичиг баримтын жагсаалтад гишүүнчлэлийн доод хязгаартай холбоотой зохицуулалт байгаа эсэх	Гарын үсэг/гишүүн
1	Бельги	-	-
2	Болгар (2009)	2500 намын гишүүний жагсаалт	50 иргэн (500 үүсгэн байгуулагч гишүүн)
3	Чех	-	1000 иргэн (өргөдөл)
4	Дани	-	өмнөх сонгуульд санал өгсөн иргэдийн 1/175-тай тэнцэх
5	Эстони (2010)	-	-
6	Испани (2002)	-	-
7	Франц	-	-
8	Итали (2005)	-	Гарын үсэг (тоо-дүүргээрээ ялгаатай)
9	Кипр (2011)	-	-
10	Латви (2006)	-	200 үүсгэн байгуулагч гишүүн (насанд хүрсэн)
11	Литва (2004)	1000 үүсгэн байгуулагч гишүүн	1000 үүсгэн байгуулагч гишүүн (насанд хүрсэн, Литва Улсын иргэн)
12	Люксембург (2008)	-	-
13	Мальта (2009)	-	-
14	Нидерланд (2011)	-	-
15	Австри	-	-
16	Польш (2008)	-	1000 үүсгэн байгуулагч гишүүн (насанд хүрсэн)
17	Португал (2003)	-	7500 бүртгэлтэй сонгогч
18	Румын (2003)	-	25 000 үүсгэн байгуулагч гишүүн (18-аас доошгүй тойрог)
19	Словак (2005)	-	-
20	Швед (2005)	-	1500 сонгогчийн гарын үсэг
21	Их Британи (1998)	-	-

<sup>261</sup>Criteria, conditions, and procedures for establishing a political party in the Member States of the EU, Policy Department C: Citizens' Rights and Constitutional Affairs European Parliament, 2012 [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2012/462512/IPOL-AFCO\\_ET\(2012\)462512\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2012/462512/IPOL-AFCO_ET(2012)462512_EN.pdf)

## АШИГЛАСАН МАТЕРИАЛ

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- European Commission for Democracy Through Law (Venice Commission) Compilation of Venice Commission opinions and reports concerning political parties, 2016
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