

de haesi da j isel si bel giis winaaRmdeg

De Haes and Gijssels v. Belgium

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amonakrebi)

faqtobrivi mxare

I. saqmis konkretul i garemoebebi

6. batonebi l eo de haesi da hiugo j isel si cxovroben antverpenSi da muSaoben yovel kvireul Jurnal "humos" redaqtora da Jurnal istad.

a. ganmcxadebl ebis winaaRmdeg zianisaTvis aRZrul i saqme

7. 1986 wl is 26 ivniss, 18 seqtembersa da 27 noembers ganmcxadebl ebma gamoaqveynes 5 statia (ix. 19 da misi momdevno paragrafebi), sadac maT sakmaod vrcl ad da metad mware gamoTqmebiT gaakritikes antverpenis saapel acio sasamarTI os mosamarTI eebi, radganac maT ganqorwinebis procesSi meurveoba mianiWes bavSvebis mamas, baton X-s, bel giel notariuss. 1984 wel s notariusis meuRI em da meuRI is mSobl ebma sisxl is samarTI is sarCel i Seitanes, sadac adanaSaul ebdnen mas incestSi da bavSvebisadmi cudad mopyrobaSi, magram sabol oo gadawyvetil ebiT saqmis viTarebis real uroba ar dadasturda.

8. batonma X-ma aRZra saqme cil iswamebisaTvis maT winaaRmdeg, vinc masze Tavis droze sarCel i Semoitana. mal inis sisxl is samarTI is sasamarTI osa da SemdgomSi, antverpenis saapel acio sasamarTI os 1985 wl is 4 oqtombrisa da 1986 wl is 5 ivniss gadawyvetil ebebiT mopasuxeebi gaamarTI es. saapel acio sasamarTI os gadawyvetil ebaSi, *Inter alia*, naTqvami iyo Semdegi:

"sasamarTI o gadawyvetil eba, rom gasarCevi saqme, faqtobrivad, ar arsebobs, metyvel ebs imaze, rom sasamarTI o wesiT wardgenil bral debebs safuZvel i ar gaaCnia.

miuxedavad amisa, ver damtkicda, rom mopasuxeebi iqceodnen arakeTil sindisierad, anu boroti ganzraxviT, da rom maT TviTon ar sj erodaT bral debebis simarTI e.

marTI acda, mxol od mopasuxeebi rodi iyvnen darwmunebul ebi bral debis WeSmaritebaSi, amave azrs iziarebdnen gamoCenil i akademikosebi, mag, profesori (m.a.) da doqtori (m.b.), bavSvTa fsiqiatრი რომლებიც procesze mowweul ebi iyvnen eqspertebad gamoZiebis warmmarTvel i mosamarTI is, batoni (u.e.)-is mier.

sisxl is samarTI is sasamarTI os 1985 wl is 6 seqtembris sxdomaze eqspertma ficis qveS daadastura Tavis moxsenebis Sinaarsi.

aRniSnul ma eqspertma, romel sac namdvil ad ar akl da gamocdil eba bavSvis fsiqol ogiis dargSi da romel mac Seiswavl a sisxl is samarTI is saqmis mTel i faqtobrivi masal a, 1984 wl is 28 agvistos gamoitana daskvna, rom bavSvebis ganxcadebebi damajerebel i iyo da warmoadgina ramdenime argumenti am mosazrebis dasasabuTebI ad".

1987 wli 20 ianvars sakasacio sasamarTI om uari uTxra batoni X-s SemotaniI saapel acio saCivarze.

1. briusel is pirvel i instanciis tribunal i

9. 1987 wli 17 Teberval s antverpenis saapel acio sasamarTI os samma mosamarTI em da general urma advokatma wamoiwyes sasamarTI o procesi baton de haesisa da batoni jisel sis, agreTve "humos" redaqtoris, mbeWdavis, gamomceml is, gamavrcel ebl is da iuridiul i warmomadgenl is winaaRmdeg Brussels tribunal de premiere instance - Si (pirvel i instanciis sasamarTI o). samoqal aqo kodeqsis 1382-e da 1383-e muxl ebis safuZvel ze, maT moiTxoves kompensacia aRniSnul statiebSi gakeTebul i gancxadebebiT miyenebul i zianisaTvis. gancxadebebi aRweril i iyo rogorc metad cil ismwamebl uri xasiaTisa. isini iTxovdnen sasamarTI osagan, daekisrebinaT mopasuxeebisaTvis nominal uri jarima TiToeul isagan erTi frankis odenobiT aramaterial uri zianis asanazRaurebl ad; eiZul ebinaT isini gamoeqveynebinaT ganaCeni "humoSi"; da miecaT momCivani mxarisaTvis sasamarTI o gadawyvetil ebis gamoeqveynebis ufl eba eqvs yovel dRiur gazeTSi mopasuxis xarj iT.

10. Zal Ta Tanasworobisa da saTanado procesis uzrunvel yofis mizniT, mopasuxeebma sTxoves sasamarTI os 1988 wli 20 maiss wardgenil damatebiT gancxadebaSi, moeTxovaT samefo mrCevl isagan aRniSnul statiebSi moxseniebul i dokumentebis warmodgena, an, ukidures SemTxvevaSi, batoni X-is bavSvebis janmrTel obis mdgomareobaze profesorebis azris gamokvl eba, romel ic inaxeboda sasamarTI o administraciaSi. maT Semdegnairad daasabuTes es gancxadebebi:

"aq dgas sakiTxi, hqondaT Tu ara ufl eba mopasuxeebs, maTTvis xel misawvdomi faqtebis safuZvel ze da presis Tavisufl ebis fargl ebSi, gamoeqveynebinaT sasamarTI o organos funqcionirebis sadavod gamxdari kritika.

...sadavo statiebSi mopasuxeebi eyrdnobodnen konkretul samedicino daskvnebs, mxareebis mier warmodgenil gancxadebebsa da beil ifis moxsenebebs.

.... arc imis uaryofa SeiZl eba, rom batoni X-is col is winaaRmdeg cil iswamebisaTvis wamowyebul i saqme ar iqna miRebul i warmoebaSi.

axl a, rodesac unda gadawydes, hqondaT Tu ara mopasuxeebs sadavo statiebis gamoeqveynebis ufl eba, maTTvis xel misawvdomi informaciis safuZvel ze, procesis saTanadod Casatarebl ad aucil ebel ia, rom samefo mrCevel ma, romel ic saqmeSi sasamarTI o kodeqsis 764,4 muxl is Sesabamisad moqmedebs, sasamarTI os warmoudginos dokumentacia, romel ic statiebSi citirebul ia rogorc informaciis wyaro. aRniSnul i dokumentebi sxvadasxva sasamarTI os saqmeebSia CarTul i.

rodesac vkamaTobT presaSi gamoeqveynebul i kritikis kanonierebis Taobaze, aucil ebel ia, rom sasamarTI os SeeZl os batoni X-is janmrTel obis mdgomareobis Sesaxeb profesorebis..... azris Seswavl a mainc, roml ebic sasamarTI os administraciaSi aris wardgenil i.

aRniSnul i gamoCeni l i profesorebis mosazreba iyo swored is gadamwyveti faqtori, ramac gamoaqveynebina "humos" sadavo statiebis seria aseTi Zl ieri formiT.

mopasuxeebis mier gamoxatul i mosazrebebi, maT mier gamoyenebul i ena da aRwerebi unda Sefasebul iqnes ar abstraqtul ad, aramed aRniSnul i monacemebis kuTxiT, roml ebic saqmis arss wvdeba.

amgvarad, evropis sasamarTl o l ingensis saqmeSi (1986 wl is 8 ivl isis gadawyvetil eba, seria A. # 103) miuTitebs, rom gamoxatvis Tavisufl ebis ufl ebis ganxorciel ebis sazRvrebis sakiTxi unda gaanal izebul iqnes mTel i faqtobrivi safuZvel is konteqstSi:

"gamoxatvis Tavisufl ebis sazRvrebi unda ganxil ul iqnes mTl ianobaSi, mosarCel is winaarmddeg gamoaqveynebul statiebTan erTad da im konteqstis gaTval iswinebiT, romel Sic isini daiwera" (gadawyvetil ebis par. 40).

... am mizezebis gamo iqneb sasamarTl om inebos da miuTitos, rom procesis sworad Casatarebl ad aucil ebel ia, gansakuTrebiT Zal Ta Tanasworobis principisa da saTanado procesis uzrunvel yofis mizniT, eTxovos samefo mrCevel s "humoSi" gamoaqveynebul aRniSnul statiebSi moxseniebul i dokumentebis warmodgena, an, ukidures SemTxvevaSi, batoni X-is bavSvebis janmrTel obis mdgomareobaze profesorebis azris gamokvl eva, rac sasamarTl o administraciaSi inaxeba.

11. 1988 wl is 29 seqtembers sasamarTl om daakisra baton de haessa da baton jisel s nominal uri jarima TiToeul s erTi frankis odenobiT aramaterial uri zianis asanazRaurebl ad da aiZul a isini gamoaqveynebinaT ganaCeni "humoSi"; agreTve misca momCivan mxares sasamarTl o gadawyvetil ebis gamoaqveynebis ufl eba eqvs yovel dRiur gazeTSi mopasuxis xarjiT. dabol os, man sxva mopasuxeebis winaarmddeg saqme miicnia dauSvebl ad.

sasamarTl om, *Inter alia*, aRniSna:

"mosarCl eebi sakamaTod ar xdian gamoxatvisa da presis Tavisufl ebas im formiT, roml iTac igi garantirebul ia konstituciis me-14 da me-18 muxl ebiT da evropis adamiანis ufl ebebis konvenciis me-10 muxl is pirvel i paragrafiT. amave dros, mopasuxeebic ver uaryofen im faqts, rom aRniSnul i Tavisufl eba ar aris SeuzRudavi da arsebobs garkveul i fargl ebi, romel Ta gadabij ebac dauSvebel ia. rogorc aRniSnul ia konvenciis me-10 muxl is me-2 paragrafSi veraferi SeuSl is xel s samoqal aqo sarCel is Setanas samoqal aqo kodeqsis 1382-e muxl is Tanaxmad, im SemTxvevebSi, rodesac presis saqciel i aramarTebul ia.

konvenciis me-10 muxl is me-2 paragrafi naTl ad miuTitebs, rom presis Tavisufl eba "SeiZl eba eqvemdebarebodes iseT SezRudvebs, roml ebic gansazRvrul ia kanoniT da aucil ebel ia demokratiul sazogadoebaSi, sxvaTa ufl ebebis a reputaciis dasacavad an sasamarTl o sistemis ufl ebamosil ebisa da miukerZoebl obis SesanarCunebl ad" mosarCl eebis piradi cxovrebis (konvenciis muxl i 8 par. 1), gansakuTrebiT ki patiosnebis da reputaciis dacvis aucil ebl oba niSnavs, am konkretul SemTxvevaSi, rom presa (1) unda cdil obdes, pativiscemiT moekidos simarTl es; (2) ar unda iyos usafuZvl od Seuracxmyofeli; da (3) pativs unda scemdes pirovnebis pirad

cxovrebas. aRniSnul i kriteriumebi dadgenil ia "Jurnal istebis ufl ebebisa da moval eobebis dekl araciaSi", romelic Jurnal istebis saerTaSoriso Federaciis mier aris Sedgenil i.

aRniSnul statiebSi mopasuxeebi xSirad miuTiTeben im faqts, rom mosarCl eebis adanaSaul eben SecdomiT gadawyvetil ebaSi da mikerZoebul obaSi. mopasuxeebma, arc meti, arc nakl ebi, WeSmaritebad miRes batoni X-isa da misi mrCeval is (profesori...) mier gakeTebul i gancxadeba, Tumca saqmeSi warmodgenil oTx gadawyvetil ebaSi naTI ad iyo miTiTebul i is mizezebi, Tu ratom ar iyo miCneul i sandod aRniSnul i gancxadeba. metic, aRniSnul statiebSi mopasuxeebi gamoxataven azrs, rom mosarCl eebis qmedeba unda CaiTval os araobieqturad, vinaidan isini TiTqosda ekuTvnian notariusisa da misi mamis nacnobebis gavlenian wres, rom erT-erTi maTgani gaxl daT Jandarmeriis generl is vaJi, romel sac 1948 wel s germaniasTan TanamSroml obaSi edeboda bral i, rom isini TiTqosda iyvnen ukiduresi memarj veneebi da megobrobdnen erTmaneTTan.

mosarCl eebis saqciel s erTob energiul ad da metad mware gamoTqmebiT Seuties mopasuxeebma. isini aSkarad isaxavdnen miznad mosarCl eebis warmocenas araxel sayrel i kuTxiT da surdaT gamoewviaT maTi gakicxva sazogadoebis mxridan. mopasuxeebs surdaT mkiTxvel ebisaTvis SeeqmnaT STabeWdil eba, rom mosarCl eebi bavSvebis mamis mxars iWerdnen da rom maTi gadawyvetil eba garkveul i ideologiuri msofi mxedvel obiT iyo ganpirobetul i. amastan dakavSirebiT, mopasuxeebi yovel gvare saWiroebis gareSe agonebdnen mkiTxvel ebs erT-erTi mopasuxis mamis omisdroidel saqmianobas.

mosarCl eebi marTebul ad Tvl ian, rom ar SeiZl eba sakanomdebl o an aRmasrul ebel i organoebis wevrebTan erTad maTi ubral od erT rigSi dayeneba. politikosebi airCevian da xalxi maT unda endobodes. metic, politikosebs SeuZliaT sainformacio saSual ebebis gamoyeneba Tavis dasacavad maTze Setevis SemTxvevaSi. magistratibisagan (termini, romelic bel giur kanonSi moiazrebs rogorc mosamarTI eebis, ise samefo mrCeval ebs) ki, meores mxriv, el ian TavianTi moval eobis absol uturad damoukidebl ad da obieqturad Sesrul ebas. maTze dakisrebul i keTil gonierebis val debul eba imas niSnavs, rom isini ver daicaven Tavs imave saSual ebebiT, rogorc politikosebi.

aRniSnul i garemoebis gamo mopasuxeebma Caidines aramarTebul i saqciel i, SebRal es ra mosarCl eebis patiosani saxeli da reputacia upasuxismgebl o bral debebiTa da Seuracxmyofeli insinuaciebis saSual ebiT. mosarCl eebis mier moTxovnil i zomebi warmoadgens saTanado kompensacias aRniSnul i aramaterial uri zaral isaTvis...."

2. briusel is saapel acio sasamarTI oSi

12. ganmcxadebl ebma gaasaCivres aRniSnul i gadawyvetil eba. 1989 wl is 10 noembers warmodgenil sabuTebSi maT, *Inter alia*, miuTites, rom maTi statiebis erTaderTi mizani iyo sasamarTI o sistemis funqcionirebis gakritikeba aRniSnul i mosamarTI eebisa da general uri advokatis mier Catarebul i procesebis safuzvel ze im aramarTebul mopyrobasa da incestur moqmedebetan dakavSirebiT, risi gadatanac SesaZl oa mouxdaT bavSvebs. isini araviTar SemTxvevaSi ar xel yofdnen respodentebis pirad cxovrebas sakamato gadawyvetil ebaSi am ukanasknel Ta rol is gauTval iswinebl ad. batonma de

haesma da batonma jisel sma gaimeores TavianTi winadadeba, daemtkicebinaT statiebSi aRniSnul i faqtebi da sTxoves sasamarTI os antverpenis saTavo samefos sabWosagan moeTxovaT aRniSnul i dokumentebis gadmocema, saxel dobr, profesorebis mosazrebebi da batoni X-is ganqorwinebis saqmidan amoRebul i dokumentebi, gansakuTrebiT ki rigi moxsenebebi da profesoris... mier miweril i weril i samefo mrCevl isadmi.

13. respodentebi iTxovdnen dabal i instanciis sasamarTI os gadawyvetil ebis Zal aSi datovebas. maTi azriT, ganmcxadebl ebi kidev ufro Seuracxmyofel ad da gamomwvevad moiqcnen, rodesac 1988 wl is 14 oqtomers "humoSi" (ix. par. 24) dabeWdes statia, romel Sic ganmcxadebl ebi ara marto imeorebdnen TavianT ganxadebas sami mosamarTI isa da general uri advokatis araobieqturobis Taobaze, aramed konkretul i saxel ebiT da metad damamcirebl ad moixseniebdnen im mosamarTI eebis, romel Tac gamoitanes 1988 wl is 29 seqtembris gadawyvetil eba (ix. par 11).
14. 1990 wl is 5 Teberval s briusel is saapel acio sasamarTI om Zal aSi datova aRniSnul i gadawyvetil eba, man, *Inter alia*, miuTiTa:

"... rogorc bral debis argumentaciis mier aris warmodgenil i, aranairi zomebi ar unda iqnes an SeiZl eba ar iqnes miRebul i apel antebis mier sasamarTI oSi Semotanil ganxadebasTan dakavSirebiT, sadac isini iTxoven "mosTxovon antverpenis ZiriTad samefo mrCevel s sasamarTI osaTvis Jurnal "humoSi" gamoqveynebul sadavo statiebSi citirebul i dokumentebis", saxel dobr ki, - sasamarTI o kodeqsis 877-e muxl is Tanaxmad, - "b-ni X-is saqmis yvel a dokumentis warmodgena".

rogorc ukve iqna aRniSnul i, sasamarTI os amocanas ar warmoadgens - da arc Sedis mis iurisdicciaSi - antverpenis saapel acio sabWos mier ukve gadawyvetil i saqmis ganxil va axal gazrdul i sasamarTI osgan momarTul i apel aciis safuZvel ze. igi agreTve aRniSnavs, rom sasamarTI o kodeqsis 877-e muxl is Sesabamisad, zemoT moxseniebul i dokumentebis arsebul i saqmis dokumentaciaSi CarTvis Sesaxeb moTxovna mTI ianad sasamarTI os gadawyvetil ebazea damokidebul i (sakasacio sasamarTI o, 1977 wl is 2 ivnisi, I, 1012) da gaugebaria, Tu ra mizans emsaxureba.

garda amisa, apel antebma unda aRiaron, rom maT garkveul i komentarebi gaakeTes sasamarTI o saqmeze da SebRal es magistratibis patiosani saxel i mTel i saWiro informaciis fl obis gareSe da amit maTma avma saqciel ma kidev ufro skandal uri xasiaTi miiRo.

maT SemdgomSi kidev ufro daamZimes sakuTari mdgomareoba imis SeTavazebiT, rom "saqmis gadawyvetamde statiebSi asaxul i faqtebi daemtkicebinaT nebismeri iuridiul i saSual ebebiT, mowmeebis dakiTxvis CaTvl iT" - SeTavazeba, romel ic ara marto uaryofil i unda iyos, rogorc aradrul i, aramed romel ic naTI ad migvaniSnebs - da swored es gaxl avT yvel aze mniSvnel ovani - Tu ramdenad akl da sifrTxil e da informaciis sizuste statiebsa da bral debebs, roml ebic apel antebma manamde daweres da gaakeTes, vidre sakmarisi damamtkicebel i sabuTi eqnebodaT xel T.

winamdebare saqmeSi aRniSnul i SemoTavazeba verafrIT gamodgeba apel antebis argumentad. piriqIT, igi adasturebs, rom mosarCl eebis Tavdapirvel i argumentacia safuZvl iani iyo da saqmes marTI ac akl da saWiro sizuste.

apel antebisagan ar aris sakmarisi imis SemoTavazeba – rasac isini mainc akeTeben, – rom daamtkeben "saqmesTan" dakavSirebiT maT mier daweril i informaciis WeSmaritebas; aucil ebel ia, rom detal urad, etapobrivad iyos dakonkretebul i, romel i zusti da naTI ad aRweril i faqtebi – "zusti da rel evanturi" sasamarTI o kodeqsis 915-e muxl is Tanaxmad, sityvasityviT – aris warmodgenil i rogorc mtkicebul eba. es imisaTvis aris saWiros, rom mowinaaRmdege mxarem warmoadginos sapirispiro mtkicebul ebebi, da raTa sasamarTI om SeZl os warmodgenil i faqtebis rel evanturobisa da mniSvel obis Sefaseba; apel antebma arc ki CaTval es saWiros aRniSnul i moTxovnis dakmayofil eba.

metic, sasamarTI os ukve gaacnia mTel i informacia, roml is safuZvel ze mas SeuZl ia gadawyvitos, faqtebis srul i codniT, marTI acda, gvaqvs Tu ara saqme cil iswamebasTan.

...rac Seexeba TviTon saqmis arsebiT mxares, garkveul i rel evanturi mizezebis gamo, roml ebic ar iqna uaryofil i da romel Tac sasamarTI o eTanxmeba, sasamarTI om daadgina, rom apel antebis mier Tavdapirvel ad mimarTul i sarCel i safuZvl iania, radgan apel antebis, eWwgareSea, Cadenil i aqVT seriozul i danaSaul i Tavdapirvel i mosarCl eebis patiosani saxel isa da reputaciis Sel axviT, gaumarTI ebel i bral debebiTa da Seuracxmyofel i insinuaciebiT.

gamoxatvisa da presis Tavisufl eba, romel ic konstituciis me-14 da me-18 muxl ebiT, agreTve konvenciis me-10 muxl is 1-el i paragrafiT aris garantirebul i, SeuZRudavi rodi gaxl avT; garkveul i fargl ebis gadal axva dauSvebel ia da, rogorc ukve iqna aRniSnul i, samoqal aqo kodeqsis 1382-e da 1383-e muxl ebis Tanaxmad, garkveul SemTxvevebSi Sesazl ebel ia saqmis aRZvra zianisaTvis, rodesac presa aramarTebul ad iqceva.

metic, aRniSnul del iqtTan dakavSirebiT, sisxl is samarTI is kodeqsis 443-e da misi momdevno muxl ebi agreTve miuTiteben qmedebebze, romel Tac SeiZl eba Sel axon admanis patiosneba an sajarod dagmon piri. saxel mwifo xel isufl ebis winaaRmdeg mimarTul i cil iswameba isj eba iseve, rogorc cal keul i piri cil iswameba. swored es cil iswameba gaxl daT, razedac winamdebare saqmeSi Civian Tavdapirvel i mosarCl eebi da rac namdvil ad ganekutvneba arakanonier "qmedebes", roml ebic miTitebul ia samoqal aqo kodeqsis 1382-e muxl Si, rogorc "sxvebisTvis zianis miyenebel i".

ar arsebobs safuZvel i apel antebis kontrargumentaciisaTvis, rom "sisxl is samarTI is kodeqsis muxl i 443 warmoadgens erTader T debul ebas bel giis kanonmdebl obaSi, romel ic sasamarTI oebis azris Tavisufl ebis SezRudvis ufl ebamosil ebas aniWebs sxvebis patiosnebisa da reputaciis dacvasTan dakavSirebiT; arc sasamarTI o kodeqsis muxl i 764,4 arc samoqal aqo kodeqsis muxl i 1382 ar iTval iswinebs aRniSnul s". am argumentis Sesabamisad, presa, da mxol od da mxol od presa, ar eqvemdebareba samoqal aqo kodeqsis 1382-e da 1383-e muxl ebSi gaTval iswinebul zogad debul ebas, romel ic val debul ebas akisrebs "yovel pirs" da pasuxismgebl obas akisrebs nebisniers, mis mier Cadenil i "qmedebiT", "umoqmedobiT" an "gaufrTxil ebl obiT" miyenebul i zianis gamo.

konvenciis me-10 muxl is me-2 paragrafis Tanaxmad, presis Tavisufl eba "SeiZl eba eqvemdebarebodes iseT SezRudvebs, romel Tac gansazRvravs kanoni da aucil ebel ia demokratiul sazogadoebaSi sxvaTa ufl ebebisa an reputaciis dasacavad an sasamarTl o sistemis ufl ebamosil ebisa da miukerZoeblobis SesanarCunebl ad".

adamianis ufl ebebis dacvisa da ZiriTadi Tavisufl ebebis konvenciis me-8 muxl is 1-el i paragrafis Tanaxmad, piradi cxovrebis pativiscemis garantirebisaTvis aucil ebel ia, rom presaSi gamoqveynebul i statiebi Seesabamebodes simarTl es, ar iyos usafuZvl od Seuracxmyofel i da pativscemdes adamianis pirad cxovrebas, kriteriumebi, roml ebic amoRebul ia "Jurnal istTa ufl ebebidan da val debul ebebidan", romel ic Seadgina Jurnal istebis saerTaSoriso federaciam da damtkicda evropis Tanamegobrobis sxvadasxva qveynebi yovel dRiuri gazeTebis Jurnal istebis mier miunxenSi 1971 wl is 24 da 25 noembers, sadac bel gia warmodgenil i iyo bel giis presis profkavSiris saxiT.

apel antebis ar SeuZl iaT daeyrdnon gaerTianebul i erebis SeTanxmebas an universal ur dekl aracias, vinaidan arc maTsi aris raime aRniSnul i presis ganusazRvrel i Tavisufl ebis Sesaxeb.

ufro metic, apel antebma ver ganmartes, da ver miuTites gansxvavebaze, Tu ratom modis samoqal aqo kodeqsis 1382-e da mis momdevno muxl ebSi miTitebul i danaSaul is zogadi koncepcia winaarMdegobaSi konvenciis me-8 muxl is 1-el paragrafTan da me-10 muxl is me-2 paragrafTan (roml is precedentic aq sadavo ar gamxdara) kanonis mier gansazRvrul i Tavisufl ebis SezRudvasa da piradi cxovrebis dacvasTan mimarTebaSi, rasTanac gvaqvs saqme; an ratom ar eqvemdebarebian aRniSnul debul ebebs mxol od da mxol od Jurnal istebi.

amasTan dakavSirebiT sasamarTl o savsebiT eTanxmeba dabal i instanciis sasamarTl os gadawyvetil ebaSi moyvanil rel evantur mizezebs da mTl ianad iziarebs maT....

amave dros, evropis adamianis ufl ebebis sasamarTl om bruno kreiskis saqmeSi daadgina, rom avstriel i Jurnal isti lingensi Tavs esxmoda baton kreiskis mxol od rogorc politikoss da, Sesabamisad, ar daurRvevia misi piradi cxovrebis pativiscemis ufl eba. Cvens SemTxvevaSi ki piriqit, aRniSnul i ufl eba namdvil ad iqna darRveul i - da sakmaod Zl ieradac - apel antebis mier.

aRniSnul statiebsa da nawyvetebSi gamoyenebul i sityvebi, insinuaciebi da l anZRva metad damamcirebel i da Seuracxmyofel ia, vinaidan Tavdapirvel i mosarCl eebi, saxel ebis konkretul ad dasaxel ebiT, dadanaSaul ebul iqnen araobieqturobaSi, rac ufrosi magistratibisaTvis seriozul bral s warmoadgens; agreTve gamoitqva insinuaciebi, rom maT hqondaT kavSiri JandarmeriasTan, rom isini ekuTvnodnen ukidures memarj veneebis da bavSvebis mamis megobrebis wreSi trial ebdenen - romel ic, apel antebis azrit, aseve ukidures memarj veneebis ekuTvnode - da amgvarad, Tavdapirvel i mosarCl eebis mier gamotanil i sasamarTl o gadawyvetil eba bavSvebis meurveobasTan dakavSirebiT srul iad mosal odnel i iyo - da yovel ive es raime seriozul i da obieqturi mtkicebul ebis warmodgenisa an arsebobis gareSe, romel ic aCvenebeda, rom magistratibis winaarMdeg wayenebul bral debas raime safuZvel i hqonda....

apel antebis ganzraxul i hqondaT mkiTxvel isaTvis SeeqmnaT STabeWdil eba, rom mosamarTI eebi da general uri advokati emxrobodnen erT-erT mxares saqmeSi da metic, rom maTi gadawyvetil eba nakarnaxevi iyo garkveul i ideol ogiuri mosazrebebiT.

garda amisa, maT absol uturad yovel gvari saWiroebis gareSe moagones mkiTxvel ebs meore respodentis, aw gardacvl il i mamis, omisdroidel i saqmianoba, rasTanac meore respodents araferi aqvs saerto da romel ic - imisda miuxedavad, rom apel ants amis Taobaze sawinaaRmdego mosazreba aqvs - mTI ianad piradi cxovrebe dacul sferos miekuTvneba.

apel antebis kidec rom swamdeT, rom respodentebis SeiZl eba miweros garkveul i ideol ogiuri Sexedul ebebi (risi damtkicebac maT ver SeiZl es), maT aranairi ufl eba ar aqvT, aRniSnul i Sexedul ebebidan - kidevac rom moxerxebul iyo maTi damtkiceba - martivad gamoetanaT daskvna, rom mosamarTI eebi da general uri advokati mikerZoebul ebi iyvnen da es faqti saj arod gaekicxaT.

mosamarTI eebisa da general uri advokatis winaaRmdeg (romel Tac Tavidan Semoitanes sarCel i) mimarTul aRniSnul eWwebSi da miTqma-moTqmaSi simarTI is marcval ic ki ar urevia. apel antebma icrues 1986 wl is 6 noembris statiaSi (gv. 19), rodesac ganaxxades, rom aRniSnul i saqme, romel ic am mosamarTI eebma ganixil es, maT mier sakasacio sasamarTI odan iyo gamotanil i; SemdgomSi ki maT mouwiaT damatebiT wardgenil ganmarTEbaSi (gv. 6) imis aRiareba, rom "sakasacio sasamarTI oSi samefo sabWom uari ganaxxada saqmis sxva sasamarTI oSi gadatanis daSvebaze" (sasamarTI o kodeqsis 651-e muxl is Tanaxmad).

1986 wl is 6 noembris maT ganaxxades: "gasul xuTSabaTs vimisa da j enis saqme sul sxva mimarTul ebiT Setrial da samefo mrCevl is gancxadebiT sakasacio sasamarTI om gamoitana bni X-is fail ebi antverpenis sasamarTI odan da gadaitana igi gentis tribunal Si (pirvel i instanciis sasamarTI o) im imediT, rom gentis magistratibi nakl ebad mikerZoebiT moekidebodnen saqmes..."

27 noembris isini kvl av daubrundnen am saqmes statiaSi, sadac werdnen: "gamarTI da Cveni am ori kviris winandel i prognozi imis Taobaze, rom im saocrad nel i progresis Sedegad, riTac vimisa da j enis saqme viTardeba, saqme al baT antverpenis sasamarTI o darbazebeSi CaiXSoboda. rogorc Cans, sakasacio sasamarTI om gadawyvita, rom antverpenis mosamarTI eebi ver iqnebian dadanaSaul ebul i incestis am saqmeSi da, Sesabamisad, saqmis ganxil va kvl avac antverpenis sasamarTI oSi unda gagrZel des..."

amgvari tipis yal bma informaciam Tavdapirvel mosarCl eebis aunazRaurebadi ziani miayena, vinaidan araobieqturobaSi dadanaSaul eba magistratisaTvis yvel aze saSinel bral debas warmoadgens.

apel antebis upasuxismgebl o kritikis gansakuTrebul i RvarZl ianoba al baT advil ad SeiZl eba iqnes axsnil i - magram ara gamarTI ebul i - garkveul i politikuri dapirispirebiT (romel ic, ra Tqma unda, samarTI ianobis interesebs ar emsaxureba), da TviT apel antebis 1987 wl is 12 Teberval s "humoSi" gamoqveynebul statiaSi gakeTebul i aRiarebiT: ... "Tuki raime damamtkicebel i sabuTia saWiro batoni X-is saqmesTan dakavSirebul i

intrigebisa da im faqtis dasamtkicebl ad, rom pol itikuri kavSirebi marTI ac mniSvnel ovan rols TamaSoben, aRniSnul i informaciis (naadrevi) gaJonva presaSi amis yvel aze damaj erebel sabuTs warmoadgens..."

imis gamo, rom Tavdapirvel mosarCI eebis yovl ad dauSvebel i manerIT esxmodnen sadavo statiebSi, isini gansakuTrebiT arasaxarbiel o kuTxiT iyvnen naCvenebl da maTi patiosneba da reputacia seriozul ad iqna Seryeul i im Seuracxmyofel i gancxadebebiT, roml ebic aWarbebdas imas, rasac apel antebi "daundobel kritikas" uwodebdnen.

miuxedavad amisa, apel antebi Taviant agresiul tonsa da Seuracxmyofel damcirebas gamarTI ebul ad miicneven iseTi mcire zomis gazeTisaTvis, rogoric "humo", romel sac isini "kritikul sa da antiburJuaziul s" uwodeben.

Tumca burJuaziul i sazogadoebis winaarmdag aSkara kritikul i damokidebul ebis mqone amgvare tipis Jurnal Si dabeWdil statiebTan mimarTebaSi ar unda iqnes gamoyenebul i igive kriteriumebi, rac "Cveul ebriv" gazeTSi gamoqveynebul statiebTan, faqtia, rom sayovel Taod cnobil kritikul Jurnal ebSi ki saWiroa kritikis garkveul i standartebis dacva da dauSvebel ia yal bi informaciisa da daudasturebel i bral debebis gamoqveyneba mxol od erTi mizniT - konkretul i adaminebis damcirebisa da wyeninebis mizniT, rac namdvil ad warmoadgens presis Tavisufl ebis borotad gamoyenebas.

miuxedavad imisa, rom adaminebs namdvil ad aqvT "antiburJuaziul i ganwyobil ebis" ufl eba, es maT ar aniWebT sazogadoebaSi sufTa saxis Worebis gavrcelebis ufl ebas - raoden SezRudul ic ar unda iyos maTi mkiTxvel ebis raodenoba - magal iTad, amis dawerIT: "general uri advokati absol uturad samarTI ianad iqna moxsnil i aRniSnul i saqmian Tavisi ufl ebamosil ebis gadaWarbebis gamo" ("humo", 1986 wl is 17 ivl isi, gv. 6-7).

Tumca damatebiT warmodgenil ganmartebes apel antebi ukan ixeven da aRniSnaven, rom maT mier adre gamoTqmul i gancxadeba general uri advokatis "moxsnis" Taobaze gaxl daT maTi "piradi interpretacia im faqtisa, rom man Sewyvita saqmeSi monawil eoba", amgvarema "interpretaciam" am "Jurnal istebis" unda mouwodos meti keTil sindisierebiT ganaxorciel on Tavianti saqmianoba, imisgan damoukidebl ad, Tu ramdenad "piradi" iqneba maTi stil i.

"humoSi" dabeWdil 1988 wl is 14 oqtombris statiaSi (gv. 15) - anu am procesis periodSi da im faqtis miuxedavad, rom maT aqve ganacxades imis Taobaze, rom isini saapel acio sarCel is Setanas apirebdnen - apel antebma kidev ufro gaiuarenes mdgomareoba, daadanaSaul es ra Tavdapirvel i mosarCI eebi araobieqturobaSi da metad gesl iani sityebiT gaakritikes is mosamarTI eebi, roml ebmac pirvel instanciaSi gamoitanes gadawyvetil eba da saxel ebiT moixsenies es ukanasknel ni.

es statia, sxva mraval Ta Soris, Semdegs aRniSnavda: "... vice-prezidenti da sxva mosamarTI eebi ugul isyurod moekidnen saqmes... CvenTvis ucnobia, namdvil ad waikiTxes Tu ara maT "humo", magram "humo" ar Sexebia raime Tval sazrisiT mosamarTI eebis pirad cxovrebas... aSkaraa, rom briusel is mosamarTI eebma ver gamoiCines miuxrobl oba da damoukidebl oba antverpenis saapel acio sasamarTI odan kol egebis saqmeSi gadawyvetil ebis gamotanas. Sesabamisad, isinic araobieqturi gadawyvetil ebebis xazs iWeren.

aRniSnul is interpretireba SeiZl eba rogorc sasamarTI os wevrebze gavl enis moxdenis gansakuTrebiT uadgil o da araswori mcdel obisa, gansakuTrebiT ki rodesac apel antebi warmodgenil sabuTebSi winaswarmetyvel eben, rom arc erTi gazeTi dabeWdavs am gadawyvetil ebas, risi mcdel obac, principSi, Cven arc ki gvqonia.

rac Seexeba saqmis "ugul isyurod" mokidebas, apel antebis, rogorc Cans, ar aqvT Segnebul i, rom, rogorc wesi, da srul iad marTebul adac, sasamarTI oebi met mniSvnel obas aniWeben - rogorc am konkretul saqmeSic - maTive mier daniSnul i eqspertebis daskvnas, romel Tac raime kavSiri ar aqvT modaveebTan da vis obieqturobaSic, Sesabamisad, verc erTi mxare eWvs ver Seitans, vidre - rogorc amas apel antebi akeTeben - mxaris sakuTar eqspertebis, romel Ta mier Catarebul i gamoZieba, Sefaseba da gakeTebul i daskvnebi warmoadgens umTavres, da erTaderT, damamtkicebel sabuTs, roml is safuZvel zec, apel antebis azriT, maT ufl eba aqvT Taviant statiebSi Tavs daesxnen konkretul pirebs.

samwuxarod, Zal ian xSiria SemTxvevebi, gansakuTrebiT sasamarTI o saqmeebSi, rodesac universitetebis saukeTeso profesorebi da special istebic ki - am SemTxvevaSi ki TiToeul mxares samze nakl ebi special isti ar iyo - erTmaneTs ar eTanxmebian, xol o iseT sferoebSi, rogoricaa fsiqol ogia da fsiqiatia, diametral urad gansxvavebul i mosazrebebi aqvT, amasTanave yovel i maTgani irwmuneba, rom 100 procentiT aris darwmunebul i sakuTar simarTI eSi. aman unda daarwmunos Jurnal istebi, Tavi Seikavon araobieqturobaSi dadanaSaul ebisagan da, rac kidev ufro mniSvnel ovania, mosamarTI eebis araobieqturobaSi dadanaSaul ebisagan, roml ebmac unda miRon sabol oo gadawyvetil eba iseTi rTul i sakiTxis garSemo, rogoricaa bavSvebis meurveoba, rasac mudam axl avs Zl ieri vnebebi, da romel Tac uxdebaT procesis mimdinareobisas mxareebis mier warmodgenil i sxvadasxva mosazrebebidan erT-erTisaTvis upiratesobis miniWebi.

am saqmeSi apel antebi kidev ufro Sors midian da yovel gvare simarTI is gareSe amtkiceben, rom maT araobieqturobis Sesaxeb daskvnebis gakeTebis saSual eba misca TviTon mosamarTI eebisa da general uri advokatis pirovnebebma, amgvarad, isini iWrebian am adamianebis pirad cxovrebaSi, rac yovl ad arakanonieria. garda amisa, aRniSnul i procesis sagans imis dadgena ki ar warmoadgens, Tu raSi mdgomareobda obieqturi sinamdvile im saqmeSi, romel ic Tavdapirvel i mosarCI eebis mier iyo ganxil ul i, aramed is, unda atarebdes Tu ara statiaSi asaxul i komentarebi cil ismwamebl ur xasiaTs, rac arc badebs raime eWvs.

Tumca apel antebi uars acxadeben im faqtis aRiarebaze, rom ar SeiZl eba magistratibus gaigiveba politikosebTan, romel Tac yovel Tvis SeuZl iaT sityvierad Tu weril obiT, saTanadod da dauyovnebl iv daicvan Tavi gamkil avi piradi Tavdasxmebisagan da, Sesabamisad, nakl ebad arian daucvel ni, vidre magistratibus, romel Tac amis gakeTebis arc ufl eba da arc Sesazl ebl oba aqvT.

magistratus statusi radikal urad gansxvavdeba saxel mwifo moxel isa da politikosis statusisagan. igi raime privilegiebsa an tradiciebs ki ar eyrdnoba, aramed im faqts, rom es gansxvavebul i statusi aucil ebel ia samarTI is administrirebisTvis, rasac Tan axl avs konkretul i amocanebi da pasuxismgebl obebi (ix. f. diumonis, sakasacio sasamarTI os mTavari samefo

mrCevl is sityva axal i iuridiul i semestris dawyebis ceremonial ze, 1981 wel i, pirvel i seqtemberi, gv. 64).

keTil gonierebis val debul ebis gamo, romel sac magistrats samsaxureobrivi moval eoba akisrebt, magistrats ar SeuZl iaT Tavis ise dacva, rogorc, magal iTad, politikosebs, Tu romel ime gazeTi, rogorc Cans, finansurad momgebian sensaciur amebbs daxarbebul i, Tavs daesxmiT maT da l afSi amoTxvris. am SemTxvevaSi apel antebis mier saproceso samarTI idan moyvanil i magal iTebi da iuridiul i azri sufta politikur SemTxvevebs exeba da, Sesabamisad, aRniSnul saqmesTan saerto araferi aqvs.

politikosisagan gansxvavebiT, mosamarTI e sakuTari Tavis gamarTI ebis mizniT ver gamarTavs sajaro pol emikas im saqmis Sesaxeb, romel ic man unda ganxil os, ase rom Tavdapirvel i mosarCl eebis mier pasuxis ufl ebis gamouyenebl oba ar unda iqnes gamoyenebul i apel antebis mier am ukanasknel Ta winaaRmdeg (ix. gansof van der merskis, sakasacio sasamarTI os yofil i mTavari samefo mrCevl is sityva); arCevnis gakeTebis aRniSnul val debul ebaze kvl av iqna miTitebul i sakasacio sasamarTI os mier (sakasacio sasamarTI o, 1987 wl is 14 maisi, gv. 58).

3. sakasacio sasamarTI oSi

15. batonebma de haesma da jisel sma gadawyvetil eba gaasacivres sakasacio sasamarTI oSi, romel mac 1991 wl is 13 seqtembers saqmis warmoebaSi miRebaze uari Tqva kanonieri safuZvl iT (Pasicrisie, 1992, I, gv. 41).
16. apel aciis pirvel safuZvl ad isini asaxel ebdnen damoukidebel i da miukerZoebel i tribunal is mier ufl ebis darRvevas da ZiriTadad eyrdnobodnen konvenciis me-6 muxl is 1-el paragrafs. maT mier warmodgenil i ganmartebis Tanaxmad, saapel acio sasamarTI os gadawyvetil ebis garkveul i nawyvetebi safuZvl ian eWvs badebda maTi damweris obieqturobaSi. magal iTad, sityvebi - "'humos' msgavsi patara gazeTi", sityva "miqseva", 1988 wl is 14 oqtombris statiidan amoRebul i nawyvetidan (ix. par. 24 qvemoT), romel ic 1988 wl is 29 seqtembris gadawyvetil ebas exeboda (ix. par. 11 zemoT), punqtuacia, magal iTad, kiTxvis niSani "antiburJuaziul is" Semdeg da gancxadeba rom 1988 wl is 14 oqtombris statia " unda ganxil ul iqnes, rogorc gansakuTrebiT uadgil o da araswori mcdel oba sasamarTI os wevrebze gavl enis moxdenisa". apel antebi agreTve Ciodnen, rom procesi saTanadod ar warmarTul a, maTi gancxadebiT, saapel acio sasamarTI om sakuTari Suamdgoml obiT ise miuTiTa 1988 wl is 14 oqtombris statiaze, rom mopasuxeebs arc ki miecaT aRniSnul sakiTxTan dakavSirebiT Tavis dacvis saSual eba.

sakasacio sasamarTI os mier aRniSnul i motivacia uaryofil iqna im mosazrebiT, rom "mxol od im faqtidan gamomdinare, rom saapel acio sasamarTI os mosamarTI eebi Taviant gadawyvetil ebaSi upiratesobas aniWeben erTi mxaris mier warmodgenil argumentebbs, ar SeiZl eba davaskvnaT, rom aq saqme gvaqvs kanoniT dadgenil i debul ebebisa da ZiriTadi principebis darRvevasTan, razedac l aparakia apel aciis motivirebis am nawil Si". xol o rac Seexeba 1988 wl is "humoSi" dabeWdil statias, masze saapel acio sasamarTI os mosamarTI eebbs Tavis sakuTari Suamdgoml obiT ar gaukeTebiat miTiteba, vinaidan apel aciis respodentebis mier igi aRniSnul i iyo saapel acio sasamarTI oSi wardgenil ganmartebaSi.

17. apel aciis meore safuZvl ad batonebi de haesi da jisel si asaxel ebdnen konvenciis me-10 muxl is me-8 paragrafis darRvevas. maTi TqmiT, daadanaSaul a ra isini samoqal aqo kodeqsis 1382-e da 1383-e muxl ebis zogadi koncefciidan gamomdinare, saapel acio sasamarTI om maTi gamoxatvis Tavisufl ebis ufl eba dauqvemdebara zomebs, pirobebs, SezRudvebsa da jarimebs, roml ebic ar aris gansazRvrul i "kanonis" mier konvenciis me-10 muxl is me-2 paragrafis mixedviT. metic, imis dadgeniT, rom presaSi gamoqveynebul i statia unda Seesabamebodes simarTI es, ar unda iyos usafuZvl od Seuracxmyofel i da pativs unda scemdes adamianis pirad cxovrebas, saapel acio sasamarTI om Semoitana SezRudvebi, roml ebic mniSvnel ovnad scil deba imas, rac absol uturad aucil ebel ia demokratiul sazogadoebaSi; sasamarTI o sistemis funqcionirebis Taobaze sajaro disputebi bevrad ufro mniSvnel ovania, vidre magistratibis interesebi, rodesac isini kritikisagan icaven Tavs (meore nawil i). dabol os, saqmeSi warmodgenil i mtkicebul ebebiT ar sabuTdeba saapel acio sasamarTI os daskvna, rom sadavo statiebSi ignorebul i iyo zemoT aRniSnul i SezRudvebi (mesame nawil i).

sakasacio sasamarTI om ar gaiziara apel aciis aRniSnul i safuZvel i, kerZod ki daadgina:

"pirvel nawil Tan dakavSirebiT:

miiCnevs, rom apel antebi pasuxs ageben Tavianti statiebis Sedegebze, saapel acio sasamarTI os mier miRebul i gadawyvetil eba eyrdnoba ara mxol od daskvnas, romel ic nawil obriv dasabuTebis am nawil Sic aris citirebul i – rom apel antebma Caidines arakanonieri saqciel i da apel antebma ver ganmartes, da gaugebaria, Tu ratom modis samoqal aqo kodeqsis 1382-e da mis momdevno muxl ebSi miTitebul i danaSaul is zogadi koncefcia winaaRmdegobaSi konvenciis me-8 muxl is 1-el paragrafTan da me-10 muxl is me-2 paragrafTan (roml is precedentic aq sadavod ar gamxdara), aramed respodentebis mier wamoyenebul udavo argumentsac, rom apel antebi damnaSaveni arian cil iswamebaSi sisxl is samarTI is kodeqsis 443-e da misi momdevno muxl ebis Tanaxmad.

saapel acio sasamarTI os gadawyvetil eba miuTitebs, Tu ris safuZvel ze iqna miRebul i daskvna (romel ic ar aris gaprotestebul i apel aciis am nawil Si), rom apel antebis Cadenil i aqvT danaSaul i samoqal aqo kodeqsis 138-e muxl is Tanaxmad.

aRniSnul i nawil i ar izl eva dabal i instanciis sasamarTI os mier miRebul i gadawyvetil ebis gauqmebis safuZvel s da, Sesabamisad, ar miReba rogorc aramarTebul i argumenti, rogorc amas respodentebi amtkiceben.

meore nawil Tan dakavSirebiT:

zemoT moyvanil i me-10 muxl is Tanaxmad, presis Tavisufl eba "Seizl eba eqvemdebarabodes iseT SezRudvebs, romel Tac gansazRvravs kanoni da aucil ebel ia demokratiul sazogadoebaSi, sxvaTa ufl ebebisa an reputaciis dasacavad, an sasamarTI o sistemis ufl ebamosil ebisa da miukerZoeblobis SesanarCunebl ad".

mosamarTI eebisaTvis saziarod gamoxatvis Tavisufl ebis ufl ebis borotad gamoyenebisaTvis pasuxismgebl obis sakiTxis gadawyvetisas sasamarTI o unda Seecados, ar daarRvios wonasworoba erTis mxriv, gamoxatvis Tavisufl ebis moTxovnebsa da meore mxriv, konvenciis me-10 muxl is me-2 paragrafiT gaTval iswinebul SezRudvebs Soris.

winamdebare saqmeSi saapel acio sasamarTI os gadawyvetil eba emyareba im mosazrebas, rom apel antebis mxridan adgil i hqonda adamianis ufl ebebis dacvisa da ZiriTad Tavisufl ebaTa konvenciit gaTval iswinebul i gamoxatvis Tavisufl ebis borotad gamoyenebas ara mxol od respodentebis piradi cxovrebis xel Seuxebl obasTan mimarTebaSi, aramed im safuZvl iTac - romel ic ar gamxdara davis sagani - rom gamoTqmuli bral debebi arc yofil a damtkicebul i, kritika mimarTul i iyo konkretul ad dasaxel ebul i mosamarTI eebis winaRmdeg, moyvanil i faqtebi ar iyo miRebul i daskvnebis rel evanturi da gamoTqmuli bral debebi STagonebul i iyo respodentebis piradad wyeninebisa da maTi reputaciis Sel axvis survil iT.

rogorc gadawyvetil ebis teqstidan Cans - rom "adamianis ufl ebebisa da ZiriTad Tavisufl ebaTa dacvis konvenciis me-8 muxl is 1-el i paragrafis Tanaxmad, piradi cxovrebis pativscemis garantia moitxovs, rom presaSi gamoqveynebul i statiebi Seesabamebodes simarTI es, ar unda iyos usafuZvl od Seuracxmyofel i da unda pativs scemdes adamianis pirad cxovrebas" - saapel acio sasamarTI om gaiTval iswina, rom saWiroa wonasworobis dacva Tavisufal i presis interesebsa da pirad interesebs Soris; Sesabamisad, mas ar gadauyvetia, rom sasamarTI o sistemis funqcionirebis Taobaze saj aro diskusiebi nakl eb mniSvel ovania, vidre piradi interesebi, da arc raime sxva SezRudvebi daumatebia im gamonaklisebisaTvis, rac mTlianad aris gaTval iswinebul i me-10 muxl is me-2 paragrafiSi.

apel aciis dasabuTeba am nawil Si ar iqneba dakmayofil ebul i.

mesame nawil Tan dakavSirebiT:

zemoT aRniSnul is gaTval iswinebiT, mesame nawil i saerTod mokl ebul ia safuZvel s".

18. apel aciis mesame punqtSi apel antebi edavebodnen im faqts, rom briusel is saapel acio sasamarTI om uari ganaxxada gaeTval iswinebina is mtkicebul ebebi, roml ebic wardgenil i iyo antverpenis saapel acio sasamarTI os winaSe da neba daerTo apel antebisaTvis, nebismieri saSual ebiT daemtkicebinaT Tavianti ganaxxadebebis simarTI e. maT mier warmodgenil i ganmartebiT, Sesabamisad, dairRva konvenciis me-6 da me-10 muxl ebi.

sakasacio sasamarTI om daadgina:

"saapel acio sasamarTI om gadawyvita, ar daekmayofil ebina apel antebis Txovna da ar mieca maTTvis Tavianti bral debebis damtkicebis ufl eba. kerZod, uari ganaxxada mtkicebul ebebad daSvebul iyo im saqmeebis dokumentebi, roml ebzedac miRebul i iqna presaSi gakritikebul i gadawyvetil ebebi.

saapel acio sasamarTI os gadawyvetil eba eyrdnoboda ara mxol od apel aciaSi warmodgenil dasabuTebas, aramed damoukidebel , udavo faqtebs: saxel dobr,

rom apel antebma aRiars magistratibus reputaciis Sel axva srul i informaciis fl obis gareSe, rac, TavisTavad, danaSaul s warmoadgens; rom apel antebis mier mtkicebul ebebis warmoadgens SeTavazeza aradroul i da araefegturi iyo; da rom saapel acio sasamarTI os xel T hqonda mTel i saWiro informacia imis gadasawvetad, marTI a hqonda Tu ara adgil i cil iswamebas.

apel aciis argumentacia ver asabuTebis dabal i instanciis sasamarTI os gadawvyetil ebis gauqmebas da, Sesabamisad, ar dakmayofil deba".

samarTI ebrivi mxare

I. gancxadeba me-10 muxl is darRvevis Taobaze

32. apel antebi acxadeben, rom briusel is pirvel i instanciis tribunal isa da saapel acio sasamarTI os gadawvyetil eba warmoadgens konvenciis me-10 muxl is darRvevas.
33. apel antebis winaaRmdog miRebul i gadawvyetil eba udavod warmoadgens maT mier gamoxatvis Tavisufl ebis ganxorciel ebaSi "Carevas". Careva gamarTI ebul ia imiT, rom igi "kanonis mier iyo dadgenil i" da miznad isaxavda me-10 muxl is me-2 paragrafis sul mcire erTi kanonieri miznis miRvevas – sxvaTa ufl ebebisa da reputaciis dacvas, am konkretul SemTxvevaSi saqme exeba procesSi monawil e mosamarTI eebisa da general uri advokatis ufl ebebs. sasamarTI o amas eTanxmeba. Sesabamisad, unda dadgindes, iyo Tu ara "Careva" aucil ebel i "demokratiul sazogadoebaSi" aRniSnul i miznis misaRwevad.
34. batonebi de haesi da jisel si aRniSnaven, rom maTi statiebi daiwera saj aro debatebis konteqstSi, roml is Sesaxebac sxva gazeTebi werdnen da romel ic exeboda fl andriaSi momxdar incestsa da imas, Tu rogor mihyavdaT aRniSnul i saqme sasamarTI o moxel eebis. aRniSnul i statiebis daweramde maT sakmarisad vrcel i gamoZieba Caatares, gaarkvies sxvadasxva eqspertebis azri da amis Sedegad maT SeZl es obieqturi faqtibus safuZvel ze statiebis Seqmna. erTaderTi mizezi imisa, Tu ratom ar warmoadgines maT sasamarTI oSi TaviantI mtkicebul eba, gaxl daT is, rom maT ar surdaT TaviantI informaciis wyaroebis gamxel a. briusel is pirvel i instanciisa da saapel acio sasamarTI oebis mier aRniSnul i dokumentebis daSvebaze nebis ar darTva TavisTavad warmoadgens me-10 muxl is darRvevas. aRniSnul i mosamarTI eebisa da general uri advokatis maT mier gakritikeba ver gaamarTI ebda dakisrebul sasjel s ubral od im mizeziT, rom maTi kritika ar Seesabameboda antverpenis saapel acio sasamarTI os gadawvyetil ebas. "obieqturi sinamdvil is" dadgena sasamarTI o gadawvyetil ebaSi sul ac ar niSnavs imas, rom romel ime sxva mosazreba mcdarad unda CaiTval os, rodesac saqme exeba presis Tavisufl ebis ganxorciel ebis anal izs. swored es moxda aRniSnul saqmeSi, Tumca sadavo statiebi emyareboda sakmaris obieqtur informacias. mokl ed rom vTqvaT, Careva, romel ic gasacivrebul i iqna, ar iyo aucil ebel i demokratiul sazogadoebaSi.
35. komisiis mier aRniSnul i argumenti arsebiTad miRebul i iqna.
36. mTavroba aRniSnavs, rom sadavo statiebi Sors iyo bel giaSi sasamarTI os sistemis funqcionirebis Sesaxeb saj aro diskusiebis stimuli rebisagan; maT ZiriTad mizans warmoadgenda antverpenis mosamarTI eebisa da general uri

advokatis winaarMdeg mimarTul i piradi Seuracxyofa da, Sesabamisad, ar im saxurebdnen im gansakuTrebul mfarvel obas, roml iTac sargebl obs pol itikuri Sexedul ebebi. Jurnal istebis mier gamoTqmul i mosazrebebi ver isargebl eben ramenairi imunitetiT imis gamo, rom maTi mosazrebebis sizustis Semowmeba SeuZl ebel ia. am saqmeSi statiebis avtorebs daekisraT sasjel i, vinaidan maT gadaabij es daSvebul i kritikis fargl ebs. srul iad SesaZl ebel i iqneboda sasamarTI os mier batoni X-is saqmis msvl el obis gakritikeba mosamarTI eeba da general ur advokatze pirovnul i Tavdasxmebis gareSe da maTi araobieqturobasa da "damoukidebl obis nakl ebobaSi" dadanaSaul ebis gareSe. amastan dakavSirebiT isic unda gaviTval iswinoT, rom magistratzebe dakisrebul i windaxedul ebisa da sifrTxil is moval eoba ar aZl evs maT saSual ebas, reagireba moaxdinon da daicvan Tavi, rogorc es, magal iTad, pol itikosebs SeuZl iaT.

37. sasamarTI o xazs usvams, rom presa mniSvnel ovan rol s TamaSobs demokratiul sazogadoebaSi. Tumca man ar unda gadaabij os garkveul fargl ebs, gansakuTrebIT sxvaTa ufl ebebTan da reputaciasTan dakavSirebiT, mis moval eobas warmoadgens – mis val debul ebebTan da pasuxismgebl obasTan Sesabamisad – mosazrebebis da informaciis gacema sazogadoebrivi interesis mqone nebismier sakiTxTan dakavSirebiT, sasamarTI o sistemis funcionirebis CaTvl iT. *sasamarTI oebi – samarTI is garantebi, romel Tac gansakuTrebul i rol i eniWebaT saxel mwifoSi, sadac kanonis uzenaesobaa, sazogadobis ndobiT unda sargebl obdnen. Sesabamisad, isini dacul i unda iyvnen destruqciul i da usafuZvl o Tavdasxmebisagan, gansakuTrebIT imis gaTval iswinebiT, rom mosamarTI eebis akisriaT keTil gonierebis moval eoba, rac maT ar aZl evs kritikaze reagirebis saSual ebas.*

am, iseve rogorc sxva, SemTxvevaSi, swored saxel mwifo xel isufl ebam unda gadawyvit os, aris Tu ara saWiro Careva gamoxatvis Tavisufl ebis ganxorciel ebisas. Tumca, amastan mimarTebaSi mis mier ganxorciel ebul i qmedeba eqvemdebareba evropis zedamxedvel obas, rogorc kanonmdebl obis, ise kanonmdebl obis gamomyenebel gadawyvetil ebebs, im SemTxvevebSic ki, rodesac aRniSnul i gadawyvetil ebebi damoukidebel i sasamarTI oebis mier aris miRebul i (ix. mutatis mutandis, prageri da oberSl iki avstriis winaarMdeg, 1995 wl is 26 april is gadawyvetil eba, seria A #. 313, gv. 17-18. par. 34-35).

38. sasamarTI o aRniSnavs, rom apel antebis winaarMdeg gamotanil i gadawyvetil eba emyareboda yvel a im statias, roml ebic 1986 wl is 26 ivnisidan 7 noembramde daibelWda X-is saqmis sakiTxebze. es gaTval iswinebul i unda iyos gasaCivrebul i Carevis aucil ebl obisa da masStabis Sefasebisas.
39. statiebi Seicavs uamrav detal ur informacias im garemoebebis Sesaxeb, roml ebSic miRebul iqna gadawyvetil eba b-ni X-is bavSvebis meurveobis Taobaze. aRniSnul i informacia emyareboda b-ni X-is winaarMdeg bral debebisa da im eqspertTa mosazrebebis seriozul kvl evebs, roml ebic ganmcxadebl ebs awvdi dnen informacias bavSvebis interesebidan gamomdinare. TviT antverpenis saapel acio sasamarTI oc ki adgens, rom "batoni X-is meuRI esa da meuRI is mSobl ebs, romel Ta winaarMdeg aRiZra saqme kriminal uri cil iswamebisaTvis, ar hqondaT mizezi, eWvi SeetanaT bral debebis simarTI eSi" (ix. par. 8).

aqedan gamomdinare, ar SeiZl eba ganmcxadebl ebis dadanaSaul eba imaSi, rom maT TiTqosda uRal ates Taviant profesikul val debul ebas, rodesac gamoaqveynes is, rac TviTon Seityves aRniSnul i saqmis Sesaxeb. presis moval eobas

warmoadgens informaciisa da mosazrebebis gadacema sazogadoebisaTvis saintereso sakiTxebze. da, aseve, sazogadoebasac aqvs maTi miRebis ufl eba (ix., magal iTad, jersil di daniis winaaRmdeg, 1994 wl is 23 seqtembris gadawyvetil eba, seria A, # 298, kv. 23, par. 31; gudvini gaerTianebl i samefos winaaRmdeg, 1996 wl is 27 martis gadawyvetil ebaTa nakrebi, 1996 -II, gv. 500. par. 39). es gansakuTrebiT marTalia aRniSnul SemTxvevasTan dakavSirebiT bral debebis seriozul obidan gamomdinare, roca saqme exeba rogorc bavSvebis beds, ise antverpenis sasamarTI o sistemis funqcionirebas. metic, ganmcxadebl ebs am kuTxiT absol uturad naTel i pozicia ukaviaT, rodesac 1986 wl is 18 seqtembris statiaSi weren: "presam namdvil ad ar unda moaxdinos mosamarTI is rol is uzurpacia, magram am skandal ur situaciaSi SeuZl ebel i da dauSvebel ia Cveni dumil i" (ix. par. 21).

40. metic, aRsaniShavia, rom mosamarTI eebisa da general ur advokats, roml ebsac mihyavdaT procesi, briusel is pirvel i instanciisa da saapel acio sasamarTI oebSi arc weril obiT da arc zepir argumentaciaSi ar dauyenebiaT eWvqveS X-is bavSvebis bedis Sesaxeb gamoqveynebul i informacia, garda im gancxadebisa, rom aRniSnul i saqme gamotanil i iqna antverpenis sasamarTI odan (ix. par. 22 da 23). magram am ukanasknel i punqtis mniSvnel oba mTel sadavo sakiTxTan SedarebiT da TviT is faqtic, rom ganmcxadebl ebma TviTonve Seaswores aRniSnul i gancxadeba, metyvel ebs imaze, rom es incidenti eWvqveS ver daayenebs Jurnal istebis samuSaos sandoobas.

41. faqtobrivad, mosamarTI eebisa da general uri advokatis sarCel i exeba mxol od pirovnul Tavdasxmeks, roml ebsac, maTive azriT, isini ganicdidnen X-is bavSvebis meurveobis saqmeze Jurnal istebis komentarebis Sedegad. maTi sityvebiT, ganmcxadebl ebis SeniSvnebi maTi araobieqturobisa da laCrobis Taobaze cil ismwamebl uri gaxl daT da warmoadgenda maTi patiosnebis xel yofas. SemdgomSi ganmcxadebl ebi or maTgans adanaSaul ebdnen aSkarad gamoxatul ukidures memarjvene politikur simpatiebSi da amrigad seriozul ad arRvevdnen maTi piradi cxovrebis xel Seuxebl obas.

briusel is sasamarTI oebis mier aRniSnul i argumentacia arsebiTad miRebul iqna (ix. par. 11 da 14). saapel acio sasamarTI om ganmcxadebl ebi damnaSaved cno procesebSi monawile mosamarTI eebisa da general uri advokatis piradi cxovrebis Sesaxeb daumtkicebel i gancxadebebis da cil ismwamebl uri daskvnebis gakeTebisaTvis, sadac isini am ukanasknel T b-ni X-is bavSvebis saqmis wayvanisas araobieqturobaSi sdebdnen bral s. sasamarTI o gadawyvetil eba ase JRerda:

"am saqmeSi apel antebi kidev ufro Sors midian da yovel gvare simarTI is gareSe amtkiceben, rom maT araobieqturobis Sesaxeb daskvnebis gakeTebis saSual eba misca TviTon mosamarTI eebisa da general uri advokatis pirovnebebma, da amgvarad isini iWrebian am adamianebis pirad cxovrebaSi, rac yovl ad arakanonieria. garda amisa, aRniSnul i procesis sagans imis dadgena ki ar warmoadgens, Tu raSi mdgomareobda obieqturi sinamdvil e im saqmeSi, romel ic Tavdapirvel i mosarCl eebis mier iyo ganxil ul i, aramed is, atarebs Tu ara statiaSi asaxul i komentarebi cil ismwamebl ur xasiaTs, rac arc badebs raime eWvs" (ix. par. 14).

42. sasamarTI o xazs usvams, rom saWiroa sifrTxil e faqtebis da Rirebul i mosazrebebis gamij vnisas. faqtebis arsebobis demonstrireba SeiZl eba, xol o

Rirebul i mosazrebebis ar damtkiceba ar xerxdeba (ix. I lingensi avstriis winaaRmdeg, 1986 wl is 8 ivl isis gadawyvetil eba # 103, gv, 28, par. 46).

43. rac Seexeba, upirvel es yovl isa, procesSi monawile mosamarTI eebisa da general uri advokatis pol itikur simpaTiebs, unda aRiniSnos, rom briusel is saapel acio sasamarTI o adgens: "apel antebis kidec rom swamdeT, rom respodentebis SeiZl eba mieweros garkveul i ideol ogiuri Sexedul ebebi (risi damtkicebac maT ver SeiZl es), maT ufl eba ar aqvT, aRniSnul i Sexedul ebebidan – kidevac rom moxerxebul iyo maTi damtkiceba – martivad gamoetanaT daskvna, rom mosamarTI eebi da general uri advokati mikerZoebul ebi iyvnen da es faqti saj arod gaekicxaT" (ix. par. 14).

aqedan Cans, rom aRniSnul i bral debebi zustic rom yofil iyo, ganmcxadebl ebs mainc damnaSaved cnobdnen, radgan zemoT aRniSnul i exeba ara imdenad wayenebul bral debebs, ramdenadac Jurnal istebis mier aRniSnul Temaze gamoTqmul komentarebs.

44. Tu im informacias, romelic ganmcxadebl ebma moipoves bni X-is mier sakuTar bavSvebTan mopyrobis Sesaxeb, romelic Tavistavad amarTI ebs mosamarTI eebisa da general uri advokatis mier an maTi daxmarebiT miRebul i gadawyvetil ebebis kritikas, davumatebT faqtebs aRniSnul i pirebis pol itikuri Sexedul ebebis Sesaxeb (ganmcxadebl ebs swamdaT, rom maT SeeZl oT mosarCl eebis am pol itikur Sexedul ebebsi dadanaSaul eba), maSin aRniSnul i pirebis pol itikuri simpaTiebi SeiZl eba ganvixil oT, rogorc im mosazrebis damaj erebl obis gasaZl ierebel i faqtori, rom maTi simpaTiebi ar gaxl daT irel evanturi miRebul i sasamarTI o gadawyvetil ebebisTvis.

44. xsenebul pol itikur simpaTiebze erT-erTi miniSneba dauSvebel ia – es gaxl avT erT-erTi mosamarTI is mamis warsul i (ix. par. 19). dauSvebel ia, rom vinme iyos dagmobili misi ojaxis wevrtan dakavSirebul i saqmeebis gamo. sasjel i SeiZl eba gamarTI ebul i yofil iyo Tavistavad am miniSnebis gamo.

magram es saqmis mxol od erT el ements warmoadgens. ganmcxadebl ebi damnaSaved cnes mTel i im gancxadebebis gamo, sadac es ukanasknel ni mosamarTI eebisa da general ur advokats araobieqturobaSi adanaSaul ebdnen.

46. amastan dakavSirebiT, sasamarTI o xazs usvams, rom gamoxatvis Tavisufl eba exeba ara mxol od im "informaciasa" da "mosazrebebs", romlebic kargad an gul gril ad aris miRebul i, an ar aris CaTvl il i Seuracxmyofel ad, aramed im "informaciasa" da "mosazrebebsac", romlebic Seuracxmyofel i, Semawuxebel i da gamaognebel ia saxel mwifosa da sazogadoebis romel ime nawil isaTvis. garda amisa, Jurnal isturi Tavisufl eba iTval iswinebs gazviadebasa da zogjer provokaciasac ki (ix., *mutatis mutandis, prageri da oberSI iki avstriis winaaRmdeg, 1995 wl is 26 april is gadawyvetil eba, seria A. #. 313, gv. 19. par. 38*).

47. saqmis konteqstidan gamomdinare, bral debebi warmoadgens mosazrebas, roml is WeSmaritebis damtkiceba, gansazRvrebis Tanaxmad, SeuZl ebel ia. Tumca SeiZl eba, rom amgvari mosazreba gadaWarbebul i iyos, gansakuTrebiT Tu igi moklebul ia faqtobriv safuZvel s, magram am SemTxvevaSi saqme ase ar aris; amiT winamdebare saqme gansxvavdeba pragerisa da ober skl ikis saqmisagan (ix., *mutatis mutandis, prageri da ober skl iki avstriis winaaRmdeg, 1995 wl is 26 april is gadawyvetil eba, seria A #. 313, gv. 18. par. 37*).

48. Tumca batonebis de haesisa da jisel sis komentarebi udavod metismetad kritikul ia, isini savsebiT Seesabameba im aRSfoTebasa da CoCqol s, rac statiebSi asaxul ma bral debebma gamoiwvia. rac Seexeba Jurnal istebis agresiul da pol emikur tons, ras sasamarTI om ar moiwona, ar unda dagvaviwydes, rom muxl i 10 icavs ara mxol od gamoxatul i informaciisa da mosazrebebis arss, aramed, maTi gamoxatvis formasac (ix. yvel aze ufro gviandel i avtoriteti, j ersil dis gadawyvetil eba, gv. 23. par. 31).
49. dabol os, saqmis viTarebisa da sasworze dadebul i aspeqtetebis seriozul obis gaTval iswinebiT sasamarTI o Tvl is, rom ver iqna demonstrirebul i ganmcxadebl ebis mier gamoxatvis Tavisuflebis ganxorciel ebaSi Carevis aucil ebl oba, garda erT-erTi mosamarTI is mamis warsul ze miniSnebisa (ix. par. 45).

Sesabamisad, adgil i aqvs me-10 muxl is darRvevas.

II. gancxadeba me-6 muxl is 1-el i paragrafis darRvevis Taobaze

50. ganmcxadebl ebi sarCel Si agreTve miuTiteben konvenciis me-6 muxl is 1-el i paragrafis darRvevaze, romelic adgens: "samoqal aqo ufl ebebisa da val debul ebebis gansazRvrisas yvel as aqvs obieqturi tribunal is mier samarTI iani ganxil vis ufl eba"... upirvel es yovl isa, isini akritikeben briusel is pirvel i instanciis da saapel acio sasamarTI os imis gamo, rom aRniSnul ma sasamarTI oebma uari ganaxades sadavo statiebTan dakavSirebul i dokumentebis warmodgenis daSvebaze da mowmeebis dakiTxvaze (zogierTis mainc) (ix. par. 10 da 12). ganmcxadebl ebis sityvebiT, aRniSnul ma garemoebam gamoiwvia Zal Ta uTanabroba erTis mxriv, mosamarTI ebsa da general ur advokatsa da meore mxriv, Jurnal istebis Soris, romel Tac mxol od SezRudul i saSual ebebiT SeeZl oT real uri suraTis aRdgena.

garda amisa, 1988 wl is 14 oqtombris statiis gamo batonebis de haesisa da jisel sis winaaRmddeg procesSi (ix. par. 24) briusel is saapel acio sasamarTI om ganxila sakiTxebi, romlebic mis winaSe wardgenil i ar yofil a, vinaidan aRniSnul statiaSi gakritikebul i mosamarTI eebi ar warmoadgendnen mxares saapel acio sasamarTI os mier ganxil ul saqmeSi da maTi gadawyvetil eba ar iyo aRniSnul i Tavdapirvel sasarCel o ganxadebaSi. Sesabamisad, saapel acio sasamarTI om amosaval wertil ad aiRo faqti, romelic ar warmoadgenda dapirispirebul i kamaTis sagans da, Sesabamisad, gadauxvia saTanado procesis wesi dan.

dabol os, briusel is saapel acio sasamarTI os gadawyvetil ebaSi gamoyenebul i damamcirebel i terminebi metyvel ebs imaze, rom aq Sinagan araobieqturobasTan gvaqvs saqme.

51. komisiar arsebiTad gaiziara ganmcxadebl ebis mosazreba Zal Ta uTanabrobisa da saTanado procesis darRvevis Taobaze. man saWirod ar CaTval a gamoeTqva mosazreba briusel is saapel acio sasamarTI os araobieqturobaze.
52. mTavroba ganmartavs, rom Jurnal istebis mier warsadgenad moTxovnil i mtkicebul ebebi gaTvl il i iyo imisaTvis, rom eWvqveS daeyenebina baton X-isa da misi meuRI is procesze miRebul i gadawyvetil eba, rac res judicataS warmoadgens. Sesabamisad, briusel is sasamarTI os hqonda amaze uaris Tqmis

ufl eba, vinaidan "samarTI ebrivi WeSmariteba" absol uturad naTI ad Canda batoni X-is saqm̄is gadawyvetil ebidan. mokl ed, mtkicebul ebis warmodgena aRniSnul saqmeSi ar iqna CaTvl il i gadawyvetad da sakasacio sasamarTI om gaiziara aRniSnul i Sexedul eba. rac Seexeba saapel acio sasamarTI os mier 1988 wl is 14 oqtombris statiaze miniSnebas, es srul iad zedmeti gaxl daT, vinaidan ganmcxadebl ebis winaaRmdeg gadawyvetil ebas, ZiriTadad, sul sxva safuZvel i hqonda. procesSi monawil e mosamarTI eebisa da general uri advokatis mier aRniSnul statiaze miniSnebebi miznad isaxavda ara sakuTar sarCel Si cvl il ebebis Setanas, aramed batonebis de haesisa da jisel sis Seurigebl i mtrobisaTvis xazis gasmas.

53. sasamarTI o xazs usvams, rom Zal Ta uTanabroba – samarTI iani sasamarTI o procesis farTo cnebis erT-erTi komponenti – moiTxovs, rom yovel mxares mieces Tavisi saqm̄is iseT pirobebSi warmodgenis saTanado saSual eba, rom igi ar iyos Tavisi oponentTan SedarebiT aSkarad wamgebian poziciaSi (ix., *inter alia* ankerli Sveicariis winaaRmdeg, 1996 wl is 3 oqtombris gadawyvetil eba, moxsenebebi 1996-V, gv. 1565-66, par. 38).

54. sasamarTI o aRniSnavs, rom mosamarTI eebma da general urma advokatma briusel is pirveli instanciisa da saapel acio sasamarTI oSi wardgenil argumentaciaSi miuTites, *inter alia*, rom "humoSi" gamoqveynebul i maT winaaRmdeg mimarTul i kritika ar eyrdnoboda arc saqm̄is faqtebs da arc am saqmeze maT mier an maTi daxmarebiT gamotanil oTx gadawyvetil ebas, roml ebic arc gamxdara davis sagani. amrigad, im mizniT, rom daedasturebina Jurnal istebis argumentebis usafuZvl oba, maT miuTites im saqm̄is Sinaarsze, romel ic Tavadi mihyavdaT da agreTve am saqm̄is gadawyvetil ebebis Sinaarsze.

es gancxadeba im formiT, rogorc es saqmeSi monawil e mosamarTI eebisa da general uri advokatis mier iyo gakeTebul i, imdenad damaj erebl ad JRerda, rom misi gaprotesteba sasamarTI oSi metad Znel i iqneboda, Tuki mopasuxeebi ver warmoadgendnen aRniSnul sakiTxTan dakavSirebiT saTanado dokumentaciis nawil s mainc an mowmeebis mtkicebul ebebs.

55. amasTan dakavSirebiT, sasamarTI o ar iziarebs briusel is saapel acio sasamarTI os mosazrebas, rom dokumentaciis warmodgenis moTxovna ucvenebda, Tu ramdenad daufigrebl ad moiqcnen de haesi da jisel si statiebis dawerisas. sasamarTI o Tvl is, rom Jurnal istebis survil i, Tavistan SeenaxaT aRniSnul i dokumentacia Tavianti informaciis wyaros komprometirebisagan dacvis mizniT, absol uturad kanonieri iyo (ix., *mutatis mutandis*, gudvinis zemoxsenebul i gadawyvetil eba, gv. 505, par. 45). metic, maTi statiebi Seicavs imden detal s X-is bavSvebis bedze da maTi mier gavil il samedicino Semowmebebis Sedegebze, rom yovl ad SeuZl ebel ia imis daSveba, TiTqosda avtorebs raime saTanado informacia mainc ar gaaCndaT.

56. agreTve unda aRniSnos, rom Jurnal istebis argumenti ar SeiZl eba mTI ad usafuZvl od CaiTval os, vinaidan mosamarTI eebisa da general uri advokatis mier ganmcxadebl ebis winaaRmdeg saqm̄is aRZvramde antverpenis pirveli instanciisa da saapel acio sasamarTI om daadgina, rom bni X-is mier sakuTari meuRI isa da meuRI is mSobl ebis winaaRmdeg cil iswamebis Sesaxeb Setanil saqmeSi mopasuxeebs ar hqondaT mizezi, eWvi SeetanaT sakuTari bral debebis simarTI eSi (ix. par. 8).

57. nebismier SemTxvevaSi, mosamarTI eebisa da general uri advokatis mier ganmcxadebl ebis winaaRmdeg warmarTul procesSi saqme exeboda ara bni X-is

saqmis sasamarTI os gadawvyetil ebis arsebiT mxares, aramed mxol od im sakiTxebs, hqondaT Tu ara aRniSnul garemoebSi ganmcxadebl ebs imgvarad gamoxatvis Tavisufl eba, rogorc maT es ganaxorciel es. aRniSnul SekiTxvaze pasuxis gasacemad ar iyo aucil ebel i baton X-is saqmesTan dakavSirebul i mTel i dokumentaciis warmodgena, sakmarisi iqneboda mxol od is sabuTebi, roml ebic amtkicebda an ar amtkicebda ganmcxadebl ebis bral debebis simarTI es.

58. swored amgvari formiT waradgines TavianTi ganacxadi batonebma de haesma da jisel sma. maT briusel is pirvel i instanciisa da saapel acio sasamarTI os sTxoves im sami profesor is mosazrebebis Seswavl a, romel Ta daskvnebis safuZvel zec daweres TavianTi statiebi (ix. par 10). aRniSnul i ganacxadebaze uaris gamo Jurnal istebis mosarCl eebTan SedarebiT gacil ebiT wamgebian situaciaSi aRmoCndnen. Sesabamisad, aq adgili i aqvs Zal Ta Tanasworobis principis darRvevas.
59. TavisTavad es faqti ukve warmoadgens me-6 muxl is 1-el i paragrafis darRvevas. Sesabamisad, sasamarTI o ar miicnevs saWi rod ganmcxadebl ebis mier gasacivrebul i aRniSnul i debul ebiT gansazRvrul i sxva sakiTxebis ganxil vas.

aRniSnul i mizezebis gamo sasamarTI o

1. adgens Svidi xmiT oris winaarMdeg, rom adgili i aqvs konvenciis me-10 muxl is darRvevas;
2. erTsul ovnad adgens, rom adgili i aqvs konvenciis me-6 muxl is 1-el i paragrafis darRvevas;
3. erTsul ovnad adgens, rom respodentma saxel mwifom unda gadauxados ganmcxadebl ebs sami Tvis ganmavl obaSi 113,101 bel giuri franki material uri zaral isaTvis da 851,697 franki xarj ebis dasafarad; aRniSnul Tanxebze wl iuri 7 martivi procenti gadasaxdel i iqneba aRniSnul i sami Tvis gasvl is Semdeg da angariSsworebamde.
4. erTsul ovnad adgens, rom winamdebare gadawvyetil eba, TavisTavad, warmoadgens sakmaris samarTI ian dakmayofil ebas aramaterial ur zaral Tan mimarTebsi.

mosamarTI e matCeris nawil obriv gansxvavebul i mosazreba

me ver veTanxmebi pal atis wevrTa umravl esobis mosazrebas, rom adgili i aqvs me-10 muxl is darRvevas. Tumca srul ad viziareb imas, rasac pal ata adgens gamoxatvis Tavisufl ebasTan dakavSirebiT, gansakuTrebiT ki demokratiul sazogadoebaSi presis Tavisufl ebis mniSvnel obis Taobaze, vfiqrob, rom pal atam ver SeZl o im fargl ebis gaazreba, rac mohyveba amgvar Tavisufl ebas da rac aseve mniSvnel ovania civilizebul demokratiul sazogadoebaSi. rogorc Cans, presis Tavisufl ebasTan dakavSirebul "moval eobebsa da pasuxismgebl obebze" me-10 muxl is me-2 paragrafiT gansazRvrul miniSnebas didi wona ar aqvs sasamarTI os saproceso samarTal Si.

winafdebare saqmeze aRniSnul i principebis miyenebis safuZvel ze vakeTeb Semdeg daskvnebs:

ganmcxadebl ebs ufl eba hqondaT gaekritikebinaT antverpenis saapel acio sasamarTI os gadawyvetil eba batoni X-sTvis bavSvebze meurveobis miniWebis Taobaze, vinaidan maTTvis xel misawvdomi informaciis safuZvel ze gadawyvetil ebs umkacresi gaki cxva gamarTI ebul i iyo; saqmis garemoebebis gaTval iswinebiT namdvil ad kanonieri iyo im sakiTxis wamoWra, Tu rogor SeeZl o aRniSnul sasamarTI os amgvani gadawyvetil ebs miReba.

vfiqrob, rom presis statiebis danaSaul i, ramac gamoiwvia ganmcxadebl ebze jarimis - Tumca ki nominal uri jarimis - daweseba, gamoixateba insinuaciebSi, TiTqosda saqmis ganmxil vel i mosamarTI eebi ganzrax arakeTil sindisierad moqmedebdnen Taviani pol itikuri Tu ideol ogiuri simpaTiebis gamo da amrigad daarRvies Taviani damoukidebl obisa da miukerZoebli obis val debul eba msgavsi pol itikuri Sexedul ebebis mqone piri interesebis dacvis mizniT. aRniSnul i insinuacia arafriT sabuTdeboda, kidevac rom dadgenil i yofil iyo aRniSnul i mosamarTI eebis pol itikuri Sexedul ebebi.

aRniSnul garemoebebSi Careva, rasac warmoadgenda ganmcxadebl ebs winaaRmdeg miRebul i gadawyvetil eba, "aucil ebel i" iyo demokratiul sazogadoebaSi me-10 muxl is me-2 paragrafis gansazRvris Tanaxmad da ar warmoadgenda Seusabamobas.

mosamarTI e morenil as nawil obriv gansxvavebul i mosazreba

1. samwuxarod, ver veTanxmebi pal atis wevrTa umravl esobis mosazrebas, rom adgil i aqvs me-10 muxl is darRvevas. Cemi azriT, bel giis samoqal aqo sasamarTI oebis mier ganmcxadebl ebs winaaRmdeg miRebul i gadawyvetil eba cil iswamebisaTvis aucil ebel i iyo demokratiul sazogadoebaSi da srul iad Seesabameboda me-10 muxl is me-2 paragrafis Sinaarss.

briusel is pirvel i instanciis sasamarTI os, briusel is saapel acio sasamarTI osa da sakasacio sasamarTI os sadavo gadawyvetil ebebsi mopasuxeebi - batonebi da haesi da jisel si, damnaSaveebad iqnen cnobil ni arakanonieri qmedebisaTvis. maT daekisraT TiToeul i mosarCl esaTvis - antverpenis saapel acio sasamarTI os sami mosamarTI isa da general uri advokatisaTvis TiTo frankis gadaxda aramaterial uri zaral is asanazRaurebl ad da aRniSnul i gadawyvetil ebs dabeWdva yovel kvireul Jurnal "humoSi", romel Sic 1986 wl is ivl isidan noembers Soris periodSi maT mier iyo gamoqveynebul i aRniSnul i 5 statia; aRniSnul statiebSi isini akritikebdnen am sasamarTI os mesame ganyofil ebs mier miRebul gadawyvetil ebebs iseT terminebSi, rac ganyofil ebs wevrebis mier aRweril i iyo rogorc cil iswamebl uri. garda amisa, mosarCl eebis ufl eba miecaT, gamoqveynebinaT aRniSnul i gadawyvetil eba eqvs yovel dRiur gazeTSi ganmcxadebl ebs xarj ze.

ganmcxadebl ebs mier gakritikebul i gadawyvetil ebebi miRebul iqna ganqorwinebis procesze, sadac saapel acio sasamarTI om mamas mi aniWa

meurveoba bavSvebze, miuxedavad bavSvebis dedis gancxadebisa, sadac igi bral s sdebda mamas incestsa da bavSvebis mimarT cudad mopyrobaSi.

2. umravl esobis msgavsad mec vTvl i, rom sadavo gadawyvetil ebebi namdvil ad warmoadgenda Carevas ganmcxadebl ebis mier gamoxatvis Tavisufli ebis ganxorciel ebaSi, rac iTval iswinebs azris qonisa da informaciis gadacemis Tavisufli ebas, konvenciis me-10 muxl is Sesabamisad. aRniSnul i Careva gaTval iswinebul ia bel giis samoqal aqo kodeqsis 1382-e da momdevno muxl ebiT da miznad isaxavs sxvaTa reputaciis dacvas – am SemTxvevaSi saapel acio sasamarTI os ganyofil ebis mosamarTI eebis reputaciis dacvas, romel Ta mierac iqna gamotanil i gadawyvetil eba – da mosamarTI eebis ufl ebamosil ebisa da miukerZoebl obis SenarCunebas; aRniSnul i miznebi savsebiT kanonieria konvenciis me-10 muxl is me-2 paragrafis Tanaxmad.
3. ganmcxadebl ebis winaaRmdeg miRebul i gadawyvetil ebis aucil ebl oba demokratiul sazogadoebaSi gaxl avT umTavresi piroba, romel sac unda akmayofil ebdes Careva, raTa igi gamarTI ebul i iyos konvenciis me-10 muxl is me-2 paragrafis Sesabamisad. es gaxl avT erTaderTi mizezi imisa, rom me ar gaviziare umravl esobis azri, rom miRebul i zoma arc aucil ebel i iyo da arc Sesabamisi kanonis uzenaesobiT marTul saxel mwifoSi, gamomdinare presis fundamenturi rol idan da sasamarTI os sistemis funqcionirebis kritikis rel evanturobidan.
4. magram, Cemi azriT, aRniSnul i statiebi moicavda ara marto ganqorwinebis saqmeSi bavSvebis meurveobis Taobaze sasamarTI o gadawyvetil eebis kritikis, aramed zogadad, bel giis sasamarTI o sistemisa da antverpenis saapel acio sasamarTI os wevrebis pol itikuri Sexedul ebebis kritikisac, roml ebic konkretul ad iyvnen dasaxel ebul i da erT-erTi maTganis mamis warsul is detal ebic ki iyo moyvanil i. avtorebis mier mosamarTI eebisa da general ur advokats miwerebodaT meurveobis mimRebi mamis msgavsi pol itikuri mrwamsi. vgoneb, aRniSnul i komentarebi metad Seuracxmyofel i xasiaTisaa bel giis sasamarTI osaTvis da warmoadgens cil iswamebas saapel acio sasamarTI os mosamarTI eebisa da general uri advokatis winaaRmdeg. es ukanasknel ni Segnebul ad iqnen dadanaSaul ebul i usamarTI o gadawyvetil ebebis miRebaSi procesis erT-erT mxaresTan megobrobis Tu misi pol itikuri Sexedul ebebis gaziarebis gamo, rac warmoadgens Zal aufl ebis borotad gamoyenebas.
5. statia Seicavda iseT frazebs, rogoricaa "brma samarTI is mier gasresil i ori bavSvi, fl andriaSi nebadarTul i incesti", an "saapel acio sasamarTI os mesame ganyofil ebis mosamarTI eebis umravl esoba, roml ebnac meurveoba notariuss mianiWes, agreTve ekuTvniian ukidures memarjvene frTas. mosamarTI e i.b. gaxl avT Svil i Jandarmeriis erT-erTi xel mZRvanel isa, romel ic 1948 wel s TanamSroml obisaTvis iqna gasamarTI ebul i... ise moxda, rom ufrosi samefo mrCevel ic imave pol itikur simpaTiebs iziarebs, ræac X-is oj axi" (pirvel i statia, 1986 wl is 26 ivnisi); "naxevari fl andria SokSia amgvari damaxinj ebul i samarTI iT"; "amgvari uxeSi zewol a, rogorc Cans, kargad muSaobs sasamarTI o sistemaSi". "uaxl esi monacemebis safuZvel ze SegviZl ia ukeT warmovidginoT, Tu randenad xSirad da muxanaTurad xdeboda saqmis manipul ireba" (meore statia, 1986 wl is 17 ivl isi); "Cveni demokratiis umTavres garants, damoukidebel sasamarTI o sistemas, mTI ianad Ziri aqvs gamoTxril i" (mesame statia, 1986 wl is 18 seqtemberi); "samarcxvinoa, rom antverpenis sasamarTI oebi agrZel eben uaris

Tqmas am mtkicebul ebebis gaTval iswinebaze" (mexuTe statia, 1986 wl is 27 noemberi).

6. sxva SemTxvevaSi, sadac Jurnal isti da gamomcemel i damnaSaved iqnen cnobil i mosamarTI is cil iswamebisaTvis, Cveni SemTxvevis msgavsad, im gansxvavebiT rom aRZrul i iyo sisxl is samarTI is saqme (prageri da oberSI iki avstriis winaaRmdeg, 1995 wl is 26 april is gadawyvetil eba, seria A #313), sasamarTI om xazi gausva, wonasworobis dacvis aucil ebl obas erTi mxriv, sazogadoebisaTvis mtkivneul sakiTxebze (magal iTad, sasamarTI o sistemis funqcionireba) informaciis gadacemaSi presis rol sa da meores mxriv, sxvaTa ufl ebebis dacvasa da "mosamarTI eebis gansakuTrebul rol s sazogadoebaSi" Soris, sadac, "rogorc samarTI ianobis garantma, rac umniSvel ovanes Rirebul ebas warmoadgens kanonis uzenaesobiT marTul saxel mwifoSi, man unda isargebl os sazogadobis ndobiT Tavisi val debul ebebis warmatebit gansaxorciel ebl ad" (par. 34).
7. presis Tavisufl ebis aRniSnul i niSnebi, ara marto Seesabameba gamoxatvis Tavisufl ebas, aramed moiTxovs misgan obieqturobas sasamarTI o sistemis funqcionirebis Taobaze zusti da seriozul i informaciis garantirebis mizniT. rogorc sasamarTI om daadgina pragerisa da oberskl ikis SemTxvevaSi, "man SeiZl eba daamtkicos destruqciul i, usafuZvl o Tavdasxmebis winaaRmdeg konfidencial obis dacvis aucil ebl oba, gansakuTreb iT imis gaTval iswinebiT, rom gakritikebul mosamarTI eebis akisriaT keTil gonierebis val debul eba, rac maT xel s uSl is reagirebaSi".
8. imave gadawyvetil ebaSi sasamarTI o aRniSnavs: "aRniSnul i faqtebis Sefaseba, pirvel rigSi, exeba saxel mwifo xel isufl ebas, roml is prerogativas warmoadgens gamoxatvis Tavisufl ebaSi Carevis aucil ebl obisa da xarixsis gansazRvra". Tumca saxel mwifos es prerogativa eqvemdebareba zedamxedvel obas evropis mxridan (par. 35). konvenciasTan Tavisi gadawyvetil ebis Sesabamisobis dadgeni sas sasamarTI om unda gaiTval iswinos, rom "presa gaxl avT erT-erTi saSual eba, roml iTac pol itikosebsa da sazogadobriv azrs SeuZl iaT imis Semowmeba, asrul eben Tu ara mosamarTI eebi Taviant val debul ebas Tavisi misiis Sesabamisad (par. 34).
9. Cemi azriT, gadawyvetil eba imis Taobaze, Tu rogor unda iyos kl asificirebul i antverpenis sasamarTI os mosamarTI eebisa da general uri advokatis araobieqturobasTan da bel giis sasamarTI o sistemasTan dakavSirebul i gancxadebebis Sesaxeb sasamarTI o gadawyvetil ebebSi aRniSnul i nawyvetebi erovnul i sasamarTI os prerogativas warmoadgens. ganmcxadebl ebis mier gakeTebul i gancxadebebi warmoadgens Rirebul mosazrebas mosamarTI eebisa da general uri advokatis pol itikur Sexedul ebebs an imaze, Tu ra gavlena hqonda aRniSnul Sexedul ebebsa da oj axur tradiciebs miRebul gadawyvetil ebebs. amgvari Rirebul i mosazrebebi ar dasturdeboda da ver gaamarTI ebda mosamarTI eebis dadanaSaul ebas araobieqturobaSi, an bral debebis xel aRebiT xasiaTs, an gamoyenebul i terminebis RvarZl ianobasa da gesl ianobas.
10. gasaCivrebul i sasamarTI o efuZneboda ganqorwinebaSi dadgenil i faqtebis ara "obieqturi WeSmaritebis" an mosamarTI eebis mier miRebul i

gadawyvetil ebebis kritikas, aramed statiebSi gakeTebul Seuracxmyofel i gancxadebebs. Tumca Jurnal istebma wamowres mniSvnel ovani sakiTxebi sasamarTI o sistemis funqcionirebis kritikasTan dakavSirebiT; sasamarTI oebis srul ad unda gaetval iswinebinaT es sakiTxebi gadawyvetil ebebis gamotanisas. Cemi azrit, aRniSnul i xarvezis gamo ganmcxadebl ebis winaaRmdag cil iswamebebisatvis gamotanil i gadawyvetil eba ar kargavs Zal as, vinaidan gadawyvetil eba efuzneba statiebSi gamoqveynebul Seuracxmyofel gancxadebebs. aRniSnul i xarvezi warmoadgens me-6 muxl is darRvevas, rac sasamarTI os mier erTsul ovnad iqna dadgenil i.

11. sadavo gadawyvetil ebebis kontekstSi vTvl i, rom bel giis samoqal aqo sasamarTI oebis daskvna imis Taobaze, rom statiebSi gamoyenebul i terminebi da gancxadebebi Zirs uTxrian saapel acio sasamarTI oSi gadawyvetil ebis mimRebi mosamarTI eebis reputaciasa da miukerZoobl obas da sasamarTI o sistemis Zal aufl ebasa da damoukidebl obas, srul iad Seesabameba konvenciis me-10 muxl is me-2 paragrafs, raSic mosarCl eebis moTxovna dakmayofil da.