

kastel si espanT i s wi naaRmdeg

Castells v. Spain

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amonakrebi)

faqt obrivi mxare

6. batoni migel kastel si, erovnebiT espanel i, cxovrobs sebastianSi. igi praqtikosi iuristia, aRniSnul i movl enebis dros senatori iyo. igi aircies heri batasunas siiT; es gaxl daT basketis damoukidebl obis mxardamWeri daj gufeba.

A. saqmis konkretul i garemoebebi

1. sadavo statia

7. 1979 wl is 4-11 ivnisis gamoSveba - "Punto y Hora de Euskalherria"-Si daibeWda statia saTauriT "aRmaSfoTebel i dausj el oba", romel sac xel s awerda ganmcxadebel i. statiis Sinaarsi Semdegi iyo:

"ramdenime dReSi san fermenis dResaswaul ze erTi wel i gava Jerman rodrigesis mkvl el obidan paml onaSi da Jozepa barandiaranis mkvl el obidan san sebastianSi. xel isufl ebis mier jerac ar aris aRmoCenil i aRniSnul danaSaul Ta Camdeni; isic ki ar aris dadgenil i, Tu romel daj gufebebs miekuTvnebian isini; vin mokl a gregorio marixal ar aistarini 63 wl is, rafael gomez Jauregui, 78 wl is, renteriaSi, Joseé Luis kano irunSi da manuel fuentes mesa ortuel aSi; 1977 wl is 14 maiss, Joseé Luis aristizabal san sebastianSi, 10 ivl iss normi menkaka santurceSi; 16 wl is xose-emilio fernandes peresi da 15 wl is felipe karo fl oresi, 1978 wl is 24 da 25 ivl iss, erTi apatomonasterioSi, xol o meore - sestaoSi. me mxol od gardacvl il pirebs vasaxel eb da es maTi sia srul i ar gaxl avT. arc erTi, vimeoreb, baskebis qveyanaSi ganxorciel ebul i arc erTi faSisturi mkvl el oba am arasrul i siidan ar yofil a garkveul i saxel mwifo xel isufl ebis mxridan. iqneba Tu ara odesme dadgenil i yvel aze ufro bol o droindel msxverpl Ta - emilia l areas, roberto arambul is, xose mari iturius, agurZane aregis, argal as, xose ramon ansas da gl edis de l estas mkvl el obebi? rodesac vambob, bol odroindel , al baT, unda davazusto TariRi - 1979 wl is 9 ivnisi imitom, rom xval sxvebis jeri dadgeba. da kidev aris asobiT SemTxveva, rodesac SeiaraRebul i adamienebi SeiWrebian sofl ebisa da gareubnebis barebSi (amorebieta, durango, egvia, l osola da sxva) an ubral od darbian quCebSi da mzad arian daWran da scemon yvel a, visac gadaawydebian. popul arul adgil ebsa (punto ihora, bordaqso, al aibar, santibar, askatasuna da sxva) da manqanebSi datovebul i bombebi, Tavdasxmebi, Wirisufal i, romel ic mTel i cxovreba ver inel ebs tkivil s.

aRniSnul i danaSaul ebis Camdenebi arseboben, agrZel eben cxovrebas da isev Cveul Tanamdebobebze arian absol uturad dausj el ad. maT dasapatimrebl ad ar gacemul a sanqciebi. maTi suraTebi ar yofil a gamoqveynebul i an gamokrul i; arc eWvmitanil ebis sia an foto roboti gamoqveynebul a gazeTebSi da, ra Tqma unda, aranairi gasamrjel o yofil a dapirebul i, maT saxl ebSi ar Catarebul i Cxreka, gamoZieba da dpatimrebebi. sainformacio saSual ebebis daxmarebiT ar yofil a sazogadoebisagan Svel is Txovnis mcdel oba, rogorc

es sxva SemTxvevebSi xdeba xol me. aRsanisnavia, rom aRniSnul danaSaul ebebTan dakavSirebiT, daxmarebis miRebac ki ar xdeba. aranairi kavSirebi myardeba, ar gamarTul a oficial uri komunikeebi, rasac mohyveba xol me presaSi Ria kritika da gacicxva, rogorc es sxva SemTxvevebSi xdeba. memarj veneebS, roml ebic xel isufl ebis saTaveSi arian, yvel a saSual eba aqvT (pol icia, sasamarTl o da satusaRoebi) amdeni danaSaul is CamdenTa gamosavl enad da dasasj el ad. magram tyuil ad Rel avT, kaci TviTon ar daigebS maxes.

ukiduresi memarj vene organizaciebi? frankos gardacval ebamde baskeTSi veravin warmoidgenda, rom SesaZl ebel i iqneboda "arakanonieri kavSirebisaTvis" iseTi organizaciebis cal keul i wevris da, miT umetes, xel mZRvanel is dapatimreba an cixeSi Casma, rogoricaa "Triple A", "Batallón Vasco- Español", "Batallón Guezalaga", ATE, "Adolf Hitler commando", "Francisco Franco commando", "Mussolini commando", "New Order", "Omega", "Movimiento Social Español", "Acción Nacional Española", "Guerrilleros de Cristo Rey". amis dRes aravis sj era.

ETA-s wevrebi cixeSi sxedan? asobiT. ETA-s wevrobaze eWvmitanil i adamienebi? aTasobiT arian dakavebul i pol iciaSi. maTi pol itikuri gul Sematkivrebi? maTi siebis kiTxvas verc auxval T. da am dros "Triple A"-is arc erTi l ideri an wevri ar SeuwxebiaT.

dRes igive pirebi arian pasuxismgebel i sazogadoebriv wesrigsa da sasamarTl o devnaze, vinc adre iyvnen. baskeTSi araferi Secvl il a dausj el obasa da pasuxismgebl obis sakiTxebTan dakavSirebi T.

im periodSi, rodesac ibanez freiri samoqal aqo gardiis general uri direqtori iyo, xol o fraga - Sinagan saqmeTa ministri, es is dro gaxl daT, rodesac baskeTSi sagrZnobl ad imata e.w. ukidures memarj veneTa saqmianobam. igive xdeba dResac.

baskeTSi im daj gufebebis saqmianobebis gacxovel ebas, roml ebic sakuTari neba-survil is mixedvit iqcevan, rogorc wesi, Tan axl avs usafrTxoebis Zal ebis gaZl iereba.

aRniSnul i komandos razmebi (raRac xom unda davuZaxoT maT) Zal ian Sinaurad grZnoben TavS baskeTSi, sazogadoebaSi, romel ic metismetad mtrul ad aris maT mimarT ganwyobil i. es garemoeba absol uturad gaugebari iqneboda, aSkara axsna rom ar hqondes. maT zusti informacia gaaCniat Tavianti Tavdasxmebis gansaxorciel ebl ad, xSirad ufro zusti, vidre adgil obriv mosaxl eobas.

maT xel T aqvT detal uri piradi saqmeebi, roml ebic mudmivad axl deba; aqvT agreTve ful isa da iaraRis seriozul i rezervi. ase rom, maT xel Sia ganusazRvrel i raodenobis masal a da resursebi da isinic srul i dausj el obiT moqmedeben. Tuki maTi operaciebis drosa da pirobebs gaviTval iswinebT, SeiZl eba iTqvas, rom maT winaswar aqvT miRebul i l egal uri imunitetis garantia. xal xs yovel ive amis danaxvas ver aukrZal av.

yovel ive es metad mniSvnel ovania adamienebisaTvis. baskeTSi es ufro mniSvnel ovania, vidre TviTmmarTvel obis droebiti sqemebi, demokratiul i konsensusi da sxva uazro da abstraqtul i sisul el e, radgan yovel ive es Tval saCino, xel Sesaxebi real obaa, romel sac adamienebi yovel dRiur cxovrebaSi awydebian.

simarTl e rom giTxraT, piradad me ar mj era, rom Cems mier zemoT CamoTvl il i faSisturi organizaciebi damoukidebl ad arseboben, saxel mwifo aparatisgan damoukidebl ad. sxva

sityvebiT rom vTqvaT, me ar mj era, rom isini saerTod arseboben. sxvadasxva samkerde ni Snebis miuxedavad, es, rogorc wesi, yovel Tvis erTi da igive xal xia.

am qmedebebis ukan SeiZl eba idges mxol od mTavroba, mTavrobis partia da maTi Stati. CvenTvis cnobil ia, rom isini sul ufro da ufro xSirad cdil oben politikur instrumentad gamoiyenon bask disidentebze daundobel i nadiroba da maTi fizikuri ganadgureba. Tuki maT surT gamoiCinon amgvari politikuri araSorsmWvretel oba, es maTi nebaa! magram Cveni xal xis Semdegi msxverpl is gul isaTvis aucil ebel ia damnaSaveebis vinaoba axl ave gacxaddes maqsimal urad saj arod".

2. sisxl is samarTI is saqme ganmcxadebl is winaaRmdeg

(a). sasamarTI o gamoZieba

8. 1979 wl is 3 ivl iss prokuraturam aRZra saqme b-ni kastel sis winaaRmdeg SeuracxyofisaTvis (sisxl is samarTI is kodeqsi, muxl i 61; ix. par. 20 qvemoT). sagamoZiebo proceduris kompetenciis mqone sasamarTI om, uzenaesma sasamarTI om senats mostxova ganmcxadebl is sapaarlamento imunitetis moxsna, rac 1981 wl is 27 maiss ganxorciel da xmaTa umravl esobiT.

9. 1981 wl is 27 maiss uzenaesma sasamarTI om ganmcxadebel s bral ad wauyena mTavrobisa da saxel mwifo moxel eebis seriozul i Seuracxyofa (sisxl is samarTI is kodeqsis 161-e da 242-e muxl ebi). SemdgomSi moiTxova misi winaswar patimrobaSi ayvana gamoZiebis dasrul ebamde aRniSnul i danaSaul isaTvis dawesebul i sasjel is gaTval iswinebiT (6 wel ze meti vadiT Tavisuflebis aRkveTa, ix. par. 20 qvemoT); magram dauSva misi TavdebiT gaTavisufleba, misi senatoris statusisa da im garemoebis gamo, rom mis mier Cadenil i danaSaul i saSiSroebas ar warmoadgenda".

1981 wl is 28 seqtembers sasamarTI om Secval a Tavisi adrindel i gadawyvetil eba. man neba darTo ganmcxadebl is droebiT gaTavisuflebas mxol od im pirobiT, rom es ukanasknel i regul arul i interval ebiT wardgeboda xol me mosamarTI is winaSe. garda zemoT moyvanil i garemoebebisa, sasamarTI om xazi gausva im garemoebas, rom dakiTxvebis dros batonma kastel sma gamoiCina TanamSroml obis survil i da ganaxada, rom misi statiebi gamiznul i iyo mxol od politikuri kritikisaTvis da ara mTavrobisa da misi wevrebisaTvis Seuracxyofis misayenebl ad an dasamuqrebl ad.

10. 1981 wl is 12 dekembers ganmcxadebl is dacvam acil eba misca uzenaesisa sasamarTI os Sesabamisi pal atis xuTidan oTx wevrs. dacvis argumentacia mdgomareobda imaSi, rom maTi politikuri Sexedul ebebi da Zvel i reJimis dro maT mier dakavebul i Tanamdebobebis gamo isini diskval ificirebul i iyvnen im piris Tavisufal i azris Sesaxeb saqmis ganxilvisagan, romel ic ganmcxadebl is msgavsad, aRniSnul i reJimis ybadaRebul oponents warmoadgenda. dacvam aq miuTiTa sisxl is samarTI is saproceso kodeqsis 54-e muxl ze.

ramdenime damatebiTi gancxadebebis Semdeg, romel Tagan erT-erTis Sedegad, sakonstitucio sasamarTI om 1982 wl is 12 ivl iss uzenaes sasamarTI os daaval a dasaSvebad ecno dacvis mier Semotanil i gancxadeba, am ukanasknel ma (uzenaesi sasamarTI om) pl enarul sxdomaze 1983 wl is 11 ianvars ar miRo acil eba. sasamarTI om miCnia, rom, Tumca mosamarTI eebi

namdvil ad imyofebodnen uzenaesi sasamarTI os sisxl is samarTI is pal atis Semadgeni obaSi aRniSnul i reJimis periodSi da erT-erT maTgans 1966, 1968 wl ebSi ekava saxel mwifo wesrigis sasamarTI oSi Tavmj domaris Tanamdeboba, isini im dros mxol od da mxol od moqmed kanonmdebl obas axorciel ebdnen.

1983 wl is 4 maiss sakonstitucio sasamarTI om uari uTxra b-ni kastel sis mier wardgenil saapel acio ganacxads, sadac igi konstitucii 24-e muxl is me-2 paragrafis darRvevas asaCivrebda (miukerZoebel i gansj is ufl eba). sakonstitucio sasamarTI om miicnia, rom mosamarTI eebis mier ganmcxadebl isagan gansxvavebul i politikuri mrwamsis qona saproceso kodeqsis 54-e muxl is me-9 paragrafis safuZvel ze ar warmoadgenda pirdapir an arapirdapir garemoebas acil ebis misacemad.

11. amasobaSi saqm is gamoZieba dasrul da. 1982 wl is 2 Teberval s saxal xo prokurorma daaskvna, rom aRmoCeni i faqtebi warmoadgenda danaSaul s da seriozul Seuracxyofas mTavrobis mimarT da moiTxova Tavisufl ebis aRkveTa 6 wl iTa da erTi dRiT.

1982 wl is 2 april s wardgenil peticiaSi dacvam miuTiTa, rom statia moicavda zust informacias da gamoxatavda ara pirad Sexedul ebas, aramed sazogadoebriv azrs. maT Semoitanes winadadeba warmoedginaT mtkicebul eba statii WeSmaritebis dasadgenad, kerZod ki, SesTavazes sasamarTI os, kompetentur organos warmoedgina moxseneba statiaSi dagmobil saqmianobebze pasuxismgebel i ukiduresi memarj vene daj gufebebis wevrebis mimarT ganxorciel ebul sapol icio gamoZiebage, prokuraturaSi aRZrul saqmeebsa da sxva zomebze. rac Seexeba statiaSi aRweril faqtebs, ramdenadac maTTvis iyo cnobil i, isini Seuracxmyofel i xasiaTisa ar gaxl daT. garda amisa, advokatebma moiTxoves Cveneba yofil iyo Camortmeul i 52 mowmisaTvis, maT Soris: bel giis, safrangeTis, ingl isis, irl andiis daniisa da espaneTis parl amentebis wevrebisaTvis politikuri kritikis Tavisufl ebasTan dakavSirebiT parl amentebis gamocdil ebis gaTval iswinebiT. maTi sityebiT, bral debul i moqmedebda parl amentis arCeul i wevris statusis fargl ebSi da masze dakisrebul i val debul ebebis Sesabamisad.

12. 1982 wl is 19 maisis gadawyvetil ebiT, uzenaesma sasamarTI om ganmcxadebel s uari uTxra gavrcel ebul i informaciis WeSmaritebis damtkicebis safuZvl iT Semotanil i mtkicebul ebebis umetesi nawil is miRebaze. samecniero Teoriul i mosazrebebic ar iyo erTmniSvnel ovani da TviT saprecedento samarTalic ki ver miuTitebda cal saxad, SeiZl eboda Tu ara Suamdgoml obis dayeneba institutebis SeuracxyofasTan dakavSirebul i simarTI is dasacavad; magram, sisxl is samarTI is kodeqSi Setanil i cvl il ebebis safuZvel ze, nawil obriv moxerxda sakiTxSi sicxadis Setana: rigi institutebisa aRniSnul i dacvis fargl ebs gareT rCeboda da sisxl is samarTI is kodeqsis 461-e muxl i (ix. par. 21 qvemoT) dacvis ufl ebas iZl eoda mxol od saxel mwifo moxel eebTan mimarTebsaSi. Sesabamisad, mtkicebul ebebi, romel Ta wardgenac gadawyvetil i hqonda dacvas, ar iqneboda misaRebi sasamarTI o procesze, Tu bral debul s ar miecemoda saSual eba aReZra sisxl is samarTI ebrivi devna, rogorc es mas miaCnda sworad.

batonma kastel sma Seitana saapel acio sarCel i (recurso de suplica), magram 1982 wl is 16 ivni ss uzenaesma sasamarTI om Zal aSi datova sakuTari gadawyvetil eba im safuZvl iT, rom faqtebis sizuste ar gaxl daT gadamwyveti faqtori mTavrobis SeuracxyofisaTvis wayenebul i bral debisas.

SemdgomSi ganmcxadebel ma sakonstitucio sasamarTI oSi waradgina saapel acio sarCel i (amparo), sadac igi acxadebda, rom ignorirebul i iyo dacvis ufl ebebi. mas apel aciaze uari eTqva 1982 wl is 10 noembers im motiviT, rom aRniSnul i sakiTxis ganxil va SeiZl eboda mxol od mTI iani sasamarTI o proceduris konteqstSi da mxol od sasamarTI o gadawvyetil ebis miRebis Semdeg.

(b). sasamarTI o procesi

13. uzenaesi sasamarTI os sisxl is samarTI is pal ataSi saqm is mosmena gaimarTa 1983 wl is 27 oqtomers. man ganmcxadebel s miusaj a Tavisufl ebis aRkveTa erTi wl iTa da erTi dRiT mTavrobis SedarebiT msubuqi formis SeuracxyofisaTvis. damatebiTi sasjel is saxiT mas aukrZal es imave periodis ganmavl obaSi raime saxel mwifo Tanamdebobis dakaveba da profesiul i saqmianoba, da agreTve daakisres xarj ebis dafarva. sasamarTI om miicnia, rom statiaSi gamoyenebul i frazebi sakmaod mZafri xasiaTisa iyo, amJRavnebda upativcemul obas da SeeZl o ziani miyenebina dazaral ebul is reputaciisaTvis. rac Seexeboda ganmcxadebl is samarTI ebriv status, sasamarTI om CaTval a, rom baton kastel ss xel T hqonda sakmaod farTo saSual ebebi, rac gaTval iswinebul ia asambl eis saproceso debul ebebSi da rac saWi ro iyo misi moval eobis gansaxorciel ebl ad mTavrobis saqmianobis monitoringTan dakavSirebiT; vinaidan man arsebul i saSual ebebi marTebul ad ver gamoiyena, verc imas ityoda, rom sakuTari val debul ebebis Sesabamisad moqmedebda. dacvis meore argumentis - kritikis mizantan dakavSirebiT, detal uri ganxil visas dadginda, rom pol itikuri kritikis mizniT ganxorciel ebul i Seuracxyofa scdeboda aRniSnul i kritikis fargl ebs da xel yofda Rirsebas. Sesabamisad ufro marTebul i iqneboda sisxl is samarTI is kodeqsis ara 161-e, aramed 162-e muxl is gamoyeneba, romel ic iTval iswinebs mTavrobis winaaRmdeg mimarTul i Seuracxyofis SedarebiT msubuq formas. rac Seexeba gamoxatvis Tavisufl ebis konstituciuri ufl ebis sakiTxs (konstituciis muxl i 20; ix. par. 19 qvemoT), aRniSnul ufl ebas garkveul i SezRudvebi hqonda Rirsebisa da piradi cxovrebi ufl ebis mimarTebaSi. TviT is faqtic, rom aRniSnul i Seuracxyofa gazeTSi gamoqveynda, miuTitebda imaze, rom igi sakmaod rTul i procesis da nafiqri dasabuTebis nayofi gaxl daT. sabol ood, uzenaesma sasamarTI om Zal aSi datova 1982 wl is maisis sakuTari gadawvyetil eba WeSmaritebis dacvis sakiTxis daSvebasTan dakavSirebiT.

ganmcxadebel ma uzenaes sasamarTI oSi kvl av aRniSna gadawvyetil ebis gasacivrebis ganzraxva, *inter alia*, konstituciis me-14, me-10, 23-e da 24-e muxl ebis safuZvel ze. 1983 wl is 22 noembers man Seitana saapel acio saCivari (amparo).

14. 1983 wl is 6 dekembers uzenaesma sasamarTI om saqm is garemoebobis gaTval iswinebiT ori wl iT SeaCera Tavisufl ebis aRkveTis sasjel is aRsrul eba (sisxl is samarTI is kodeqsis muxl i 93), magram moiTxova damatebiTi sasjel is mainc aRsrul eba. sakonstitucio sasamarTI os mier 1984 wl is 22 Teberval s sasjel is aRsrul eba SeCerda.

3. sakonstitucio sasamarTI oSi wardgenil i saapel acio saCivari (amparo)

15. 1983 wl is 22 noembers wardgenil saapel acio saCivarSi bnma kastel sma ganacxada, rom man ver SeZl o uzenaesi sasamarTI os gadawyvetil ebis gadasinj vis miRweva ufro maRal i instanciis sasamarTI oSi da iCivl a sasamarTI o warmoebis procesis gaWi anurebaze.

SemdgomSi man aRniSna, rom mtkicebul ebebis wardgenis ufl ebaze uaris TqmiT sasamarTI os mier darRveul i iyo udanaSaul obis prezumfcia. igi Tvl ida, rom samarTI is debul ebebis umravl esobasTan winaaRmdegobaSi modioda adamanis - miT umetes, senatoris - dpatimreba im gancxadebebis gakeTebisaTvis, roml ebic iyo zusti da mniSvnel ovani, radgan aucil ebel i iyo maTze sazogadoebis yuradRebis mipyroba; da amave dros misTvis WeSmaritebis dadgenaze ufl ebis armicema. amasTan erTad, man ganacxada kanonis winaSe Tanasworobis principis darRvevaze (konstituciis muxl i 14) cal ke an gamoxatvis Tavisufl ebasTan erTad (muxl i 20), vinaidan sxva pirebs hqondaT gamoqveynebul i anal ogiuri statiebi yovel gvare garTul ebebis gareSe. garda amisa, man aRniSna, rom adgil i hqonda mis mier kritikis gamoxatvis ufl ebis darRvevas, romel ic, misi TqmiT, gansazRvrul i iyo 23-e muxl Si da Seesabameboda misi, rogorc senatoris, status. misi TqmiT, is debul ebebi, roml ebic mas saxel mwifo saqmeebSi Carevis nebas rTavdnen, aseve aniWebdnen ufl ebas ganexorciel ebina detal uri Semowmebis sapaarl amento moval eoba nebismeri sazogadod xel misawvdomi saSual ebiTa da gziT.

ganmcxadebel ma Tavisi saCivrebis daskvniT nawil Si gaakeTa konstituciis me-20 muxl ze miniSneba:

16. 1984 wl is 22 martis msjel obisas saxal xo prokurorma aRniSna, rom muxl i 14 uzrunvel yofda Tanasworobas kanonis winaSe da ara mis fargl ebs gareT. rac Seexeba me-3 muxl is safuzvel ze wayenebul saCivars, misi sagani nawil obriv igive iyo, rac wina sarCel isa, an aq adgil i hqonda gaugebrobas: cxadia, rom parl amentis wevri Tavis moval eobas axorciel ebs mxol od asambl eaSi, xol o mis fargl ebs gareT igi ar sargebl obs raime imunitetiT. Tumca mas SeeZl o iseve, rogorc nebismer moqal aqes, Seemowmebina mTavrobis moqmedeba, mas ar unda daviwyeboda, rom gamoxatvis Tavisufl ebis ufl ebas kanonis mier dadgenil i garkveul i fargl ebi gaaCnda.

Tavis mxriv, 1984 wl is 21 maisis weril Si batonma kastel sma winadadeba wamoayena daemtkicebina sakuTari gancxadebebis simarTI e, radgan, misi azriT, sadavo gadawyvetil eba arRvevda mis ufl ebas "nebismeri formiT gaevrcel ebina, mieRo da gadaeca WeSmariti informacia" (muxl i 20). man kidev erTxel gausva xazi aRniSnul ufl ebas Tavis saapel acio saCivarSi sasamarTI os mier mis winadadebaze uaris TqmasTan dakavSirebiT (1984 wl is 20 ivl isi) da 1985 wl is Tebevli is SeniSvnebiSi.

17. sakanstitucio sasamarTI om ar daakmayofil a saapel acio saCivari 1985 wl is 10 april s.

Tavisi gadawyvetil ebis "samarTI ebrivi mxaris" nawil is me-2 punqtSi ganmcxadebl is saCivrebis Sejamebisas, man, iseve rogorc saxal xo prokurorma, erTad Sekriba is saCivrebi, roml ebic me-14 da 23-e muxl ebs exeboda me-20 punqtTan minisnebis gakeTebis gareSe: ganxadeba kanonis winaSe Tanasworobis ufl ebis darRvevis Sesaxeb, rasac iTval iswinebs muxl i 14 cal ke an 23-e muxl Tan erTad, vinaidan sadavo gadawyvetil eba zRudavda misi, rogorc senatoris statusis mqone piris monitoringis, Semowmebisa da kontrol is ufl ebas. me-6 punqtSi sasamarTI om daadgina, rom parlamentaris privilegiebi mkacrad unda yofil iyo gansazRvuli, radgan sxvagvarad aRniSnuli privilegia SeiZl eba gamoyenebul i yofil iyo sxvebis ufl ebebis dasarRvevad; privilegia mcirdeboda, rodesac maTi matarebel i moqmedebda rogorc rigiTi moqal aqe, da Tundac rogorc politikasi. me-9 da me-10 punqtSi sasamarTI om ganixil a central uri sakiTxi: saqmisdacvis warmarTvisas rel evantur mtkicebul ebebze dayrdnobis ufl eba, kerZod ki, WeSmaritebis dasacavad Suamdgoml obis wardgena aRniSnuli tipis danaSaul Tan kavSiriSi. amasTan dakavSirebiT, sasamarTI om daadgina:

"imisatvis, rom dadgindes, aris Tu ara Suamdgoml obaSi aRniSnuli mtkicebul eba rel evanturi, aucil ebel ia damyardes kavSiri mtkicebul ebas da thema decidendi-s Soris, romelic, pirvel rigSi, unda ganisazRvros mxareebis mier wamoyenebul i bral debebis safuzvel ze. garda im SemTxvevebisa, rodesac faqtebi aSkaraa da sayovel Taod cnobil i, sasamarTI o ar unda Caerios am kuTxiT, rameTu sxvagvarad igi, Tundac nawil obriv, winaswar imsj el ebs saqmisdacvis arseze....j obs, rom sasamarTI om Tavi aaridos amgvar winaswar Sefasebas; Tumca Tavistavad es ar warmoadgens konstituciuri ufl ebebis darRvevas, Tuki dacul ia dacvis sxva ufl ebebi. Tumca, Sesazl oa, am konkretul saqmeSi sasamarTI os winaswar ar unda gamoetana gadawyvetil eba simarTI is dacvis Taobaze mtkicebul ebis rel evanturobis Sefasebisas, es qmedeba rel evanturi mtkicebul ebis gamoyenebis konstituciur ufl ebas arRvevs - gansakuTrebiT, rodesac, rogorc am SemTxvevaSi, gadawyvetil eba miReba iurisdicciis erT doneze - mxol od maSin, Tuki irRveva material uri ufl eba.

..." sisxl is samarTI is kodeqsis 161-e muxl ma mecnerebisa da mwerlebis kritika daimsaxura, vinaidan igi zRudavda gamoxatvis Tavisufl ebis ufl ebas; yovel SemTxvevaSi, es debul eba interpretirebul i unda yofil iyo me-20 muxl Tan erTad, romelic iTval iswinebs aRniSnul Tavisufl ebas. amasTan dakavSirebiT SeiZl eba CaiTval os, rom sisxl is samarTI is kanonmdebl oba warmoadgens ZiriTadi ufl ebebis ganxorciel ebis maregul irebel instruments, im pirobiT, rom igi aRiarebs konstituciaSi gansazRvuli ufl ebebis arsebiT Sinaarss. informaciis gadacemis Tavisufl ebis farglebi, albaT, dakavSirebul i aris usafrTxoebasTan, rac gamoixateba institutebis diskreditirebis mcdel obiT. dabol os, WeSmaritebis dasvebisa da ardasvebis sakiTxi, am saqmesTan dakavSirebiT, kanonis interpretirebas exeba da aRniSnul saqmesTan mimarTebaSi 161-e muxl is konkretul i interpretacia uzenaesi sasamarTI os iurisdicciaSi ar Sedis.

18. 1986 wl is 1 april s uzenaesma sasamarTI om daadgina, rom sasjel i moxdil i iyo. Sesabamisad, gasamarTI ebis Canaweri gauqmebul i iyo sisxl is samarTI is kodeqsis 118-e muxl is safuZvel ze. igi aRar gamoCndeboda ganmcxadebl is kriminal uri Canawerebidan, Tuki mosamarTI eebisagan an sasamarTI osagan ar movidoda special uri moTxovna sisxl is samarTI is axal ZiebasTan dakavSi rebiT.

b. Sesabamisi kanonmdebl oba

1. 1976 wl is konstitucia

muxl i 14. "espaneTis yvel a moqal aqe Tanasworia kanonis winaSe. akrZal ul ia nebismeri diskriminacia dabadebis, rasis, sqesis, rel igiis, Sexedul ebis an raime sxva piradi Tu social uri garemoebze an pirobebis safuZvel ze".

muxl i 18. "1. Rirsebis, piradi cxovrebis, oj axuri cxovrebisa da sakuTari Tavis Tavisufal i ganviTarebis ufl eba dacul i unda iyos".

muxl i 20.

"1. aRiarebul da dacul unda iqnes Semdegi ufl ebebi:

(a). sityvierad, weril obiT an raime sxva saSual ebiT azrebis, Sexedul ebebisa da mosazrebebis Tavisufl ad gamoxatvisa da gavrcel ebis ufl eba.;

(c). WeSmariti informaciis miRebisa da gadacemis ufl eba misi gavrcel ebis gziT. vinmes sindisadmi mimarTvisa da profesiul i konfidencial urobis moTxovnis ufl eba unda imarTebodes kanonis mier.

2. aRniSnul i ufl ebebis ganxorciel eba ar unda izRudebodes nebismeri cenzuriT.

4. aRniSnul i Tavisufl ebebi unda SeizRudos am nawil Si gaTval iswinebul i ufl ebebisadmi pativiscemiT, Sesabamisi aqtebis debul ebebiT da gansakuTrebiT ki Rirsebisa da piradi cxovrebis pativiscemis ufl ebiT, agreTve sakuTari Tavis Tavisufal i ganviTarebis ufl ebiTa da mozardebisa da bavSvebis dacvis ufl ebiT".

muxl i 23. 1. moqal aqeebs unda hqondeT sazogadoebriv cxovrebaSi monawil eobis ufl eba pirdapir an sayovel Tao arCevnebze periodul ad arCeul i warmomadgenl is meSveobiT".

2. sisxl is samarTI is kodeqsi

20. 1983 wl is 25 ivnisi #8/1983 instituciuri aqtis safuZvel ze sisxl is samarTI is kodeqsi Setanil iqna cvl il eba. igi aRniSnavs, rom mTavrobis Seuracxyofa warmoadgens danaSaul s da iTval iswinebs Semdeg sasjel s:

muxl i 161

"qvemoT CamoTvl il i qmedebebi iTval iswinebs xangrZl ivi vadiT Tavisufl ebis aRkveTas (6 wl idan da erTi dRidan 12 wl amde – sisxl is samarTI is kodeqsis muxl i 30).

1. mTavrobis winaarmdeg mimarTul i seriozul i Seuracxyofa, mcdari bral deba an muqara.....

muxl i 162.

"rodesac wina muxl Si miTitebul i Seuracxyofa an muqara seriozul xasiaTs ar atarebs, igi iTval iswinebs mokle e vadiT Tavisufl ebis aRkveTas (6 Tvidan da erTi dRidan 6 wl amde – sisxl is samarTI is kodeqsis muxl i 30)."

es debul ebebi kodeqsis cal ke TavSia gamoyofil i. es Tavi emyareba avtoritetis principis (1982 wl is 19 maisis uzenaesi sasamarTI os gadawyvetil eba; ix. par. 12) da iTval iswinebs saxel mwifos maral i rangis moxel eebis sicocxl is, Tavisufl ebisa da Rirsebis gaZl ierebul dacvas. mTavrobis mimarT mcdari bral debis cneba ar iyo Setanil i 1983 wl amde.

21. sisxl is samarTI is kodeqsis II wignis X nawil Si gansazRvrul ia Seuracxyofis miyenebisa da mcdari bral debis danaSaul i. pirovnebis winaarmdeg mcdari bral deba, Tundac ubral o saCivari, warmoadgens iseTi kategoriis danaSaul s, romel sac mohyveba sasamarTI o devna (sisxl is samarTI is kodeqsis muxl i 453). meores mxriv, Seuracxyofa, gamoxatul i nebsmieri formiT an qmedebiT, gansakuTrebit rodesac mas Seuracxyofil i piris dagmoba da patiosnebis Sebral va mosdevs, sasamarTI o devnaSi mohyveba, Tuki

Setanil iqneba saCivari (sisxl is samarTI is kodeqsis muxl ebi 457 da 458), am or kategorias Soris mniSvnel ovani gansxvaveba imaSi mdgomareobs, rom samarTI is dacva dasaSvebia mxol od mcdari bral debis SemTxvevaSi (muxl i 456) da ara Seuracxyofis miyenebis danaSaul isas, garda im SemTxvevebisa, rodesac Seuracxyofa miyenebul ia saxel mwifo moxel eebis mimarT maTi samsaxureobrivi moval eobis Sestrul ebasTan dakavSirebul qmedebebTan mimarTebaSi (sisxl is samarTI is kodeqsis muxl i 461). 1983 wl is gadawyvetil ebaSi uzenaesma sasamarTI om daadgina, rom Suamdgoml oba samarTI is dacvisaTvis ver iqneba dakmayofil ebul i am SemTxvevaSi, rodesac saqme exeba saxel mwifos maRal i rangis moxel eebis Seuracxyofas: j er erTi, araviTari oficial uri moval eobis Sestrul ebaze aq ar aris l aparaki da meorec, aRniSnul i dawesebul ebebi sisxl is samarTI is kodeqsis safuZvel ze am sferoSi dacul ia kanoniT (ix. 12 da 13).

saqmis ganxil va komisiaSi

22. 1985 wl is 17 seqtembers komisiis winaSe wardgenil gancxadebaSi batoni kastel si eyrdnoba konvenciis 6, 7, 10 da 14 muxl ebs. 1989 wl is nawil obrivi gadawyvetil ebiT komisiam konvenciis me-6 da me-7 muxl ebze damyarebul i saCivari aramarTebul ad miCnia. 1991 wl is moxsenebaSi (muxl i 31) man miuTiTa (erTsul ovnad), rom adgil i hqonda me-10 muxl is darRvevas da me-14 muxl is safuZvel ze cal ke sakiTxi ar wamoiWreboda.

samarTI ebrivi mxare

3. gancxadeba me-10 muxl is darRvevis Taobaze.

23. batoni kastel si amtkicebs, rom igi gaxda konvenciis me-10 muxl is darRvevis msxverpl i, romel Sic aRniSnul ia, rom:

"...".

aRniSnul i saCivari miRebul i iyo komisiis mier, magram uaryofil iqna mTavrobis mier.

A. mTavrobis winaswari Sepasuxeba

24. mTavrobam miuTiTa, rom ganmcxadebel ma ver moaxerxa adgil obrivi kanonmdebl obis srul ad gamoyeneba erovnul sasamarTI oebSi (konvenciis muxl i 26). Sesazl oa "garkveul i mizezebiT" mas sasamarTI oSi konkretul ad ar wamouWria sakiTxi Tavis sarCel Si

konstituciis me-20 muxl iT dacul i gamoxatvis Tavisufl ebis ufl ebis Sesazl o darRvevis Taobaze. Tavis amparo saapel acio saCivarSi man mxol od arapirdapir moixsenia aRniSnul i debul eba, iCivl a ra diskriminaciaze aRniSnul i ufl ebis ganxorciel ebisas. garda amisa, mas ar miuTiTebia konvenciis me-10 muxl ze an sxva saerTaSoriso aqtebis debul ebebze. Amparo saapel acio saCivris maregul irebel i aqti # 2/1979-is safuZvel ze mas unda mieTiTebina rogorc faqtebze, ise Sesabamisi debul ebebis darRvevaze. aqedan gamomdinare, batonma kastel sma sakonstitucio sasamarTI os ar warudgina safuZvel i, raTa mas gamoetana gadawyvetil eba sakiTxze, romel ic amJamad komisiis winaSe imyofeboda.

25. Tavis ganmartebaSi Sepasuxebaze ganmcxadebel ma aRniSna, rom man garkveviT miuTiTa sakonstitucio sasamarTI os winaSe wardgenil Tavis saapel acio saCivarSi konstituciis me-20 muxl ze. j er erTi, saapel acio saCivarSi warmodgenil i faqtebi metyvel ebdnen imaze, rom aq l aparaki iyo gamoxatvis Tavisufl ebis ufl ebis ganxorciel ebaze, da aSkarad hqonda adgil i Carevas aRniSnul i ufl ebis ganxorciel ebaSi. meorec, Tavis suplico saapel acio saCivarSi, sxva debul ebebs Soris, man miuTiTa aRniSnul muxl zec da sasamarTI o paeqrobis dros ganaxada me-20 muxl is darRvevis Taobaze (me-14 muxl Tan erTad, romel ic iTval iswinebs kanonis winaSe Tanasworobas). marTalia, Tavis argumentaciIT, igi arCeul i warmomadgenl is mier politikuri kritikis ufro viwro ufl ebas exeboda, magram sakonstitucio sasamarTI os 1985 wl is 10 april is gadawyvetil ebaSi "samarTI ebrivi mxaris" nawil is me-10 punqtis wakiTxvidan naTel i iyo, rom probl ema real urad mdgomareobda gamoxatvis Tavisufl ebis ufl ebis darRvevaSi. aRniSnul monakveTSi sakonstitucio sasamarTI o gansazRvavs sisxl is samarTI is kodeqsis 161-e muxl is Sesabamisobas TviTgamoxatvis Tavisufl ebase da am ufl ebaseTan mimarTebiT aRZrul samarTI ebriv devnasa da ganaCenis gamotanas Soris (ix. par. 15 da 17).

26. daeTanxma ra ganmcxadebel s, komisiam daimowma sasamarTI o, rom mas ar hqonda safuZvel i, gaeTval iswinebina warmodgenil i Sepasuxeba.

27. amasTan dakavSirebiT sasamarTI o Semoifargl a miniSnebiT Tanmimdevrul saprecedento samarTal ze, roml is bol o saqme iyo B. espanetis winaaRmddeg 1992 wl is 25 martis gadawyvetil eba (seria A; # 232-g; gv. 45; par. 35-36). sasamarTI om daadgina, rom muxl i 26 unda gamoyenebul iyo "garkveul i xarisxiT da zedmeti formal obis gareSe"; da rom "Sesabamisi organoebis mier warsadgeni saCivari unda Setanil iyo, ZiriTadad mainc, oficial uri moTxovnebis Sesabamisad da adgil obrivi kanonmdebl obiT dadgenil vadebSi" (ix. guzardi ital iis winaaRmddeg; 1980 wl is 6 noembris gadawyvetil eba, seria A. # 39; gv. 26; par. 72; da guzardi safrangeTis winaaRmddeg; 1991 wl is 19 martis gadawyvetil eba, seria A; # 200; gv. 18; par. 34).

28. ganmcxadebel i eyrdnoba konvenciis me-10 muxl s or sakiTxTan dakavSirebiT: misi gancxadebiT, mas ganaCeni gamoutanes im gancxadebebis gakeTebisaTvis, roml ebic simarTI es warmoadgenda da romel Ta simarTI is dadgenis saSual ebac mas ar mieca; garda amisa, sadavo muxl is moqmedebis sferos warmoadgenda agreTve politikuri kritikac, romel ic parl amentis nebismieri wevris moval eoba iyo.

29. rogorc Cans, batonma kastel sma orive es sakiTxi wamoWra uzenaes sasamarTI oSi. 1983 wl is 31 oqtombris gadawyvetil ebaSi sasamarTI om ar daakmayofil a Suamdgoml oba simarTI is dacvis Taobaze mTavrobis Seuracxyofis danaSaul Tan dakavSirebiT da daadgina, rom ganmcxadebel ma gadaabij a dasaSvebi pol itikuri kritikis fargl ebs (ix. 13).

30. Tavis amparo saapel acio sarCel Si 1983 wl is noemberSi ganmcxadebel ma mxol od arapirdapiri da mokl e miniSneba gaakeTa konstituciis me-20 muxl ze (ix. par. 15). aq ar yofil a cal ke gamoyofil i zemoT ganxil ul i argumentebi. aq saCivari, ZiriTadad, eyrdnoboda ufro viwro debul ebas, da konstituciis 23-e muxl is safuZvel ze ganmcxadebel i miuTiTebda Tavis, rogorc senatoris, ufl ebaze, gaekritikebina mTavrobis moqmedeba, ufl ebaze, romelic aSkarad warmoadgens piris, am konkretul SemTxvevaSi arCeul i warmomadgenl is, gamoxatvis Tavisufl ebis ganuyofel nawil s. metic, sasamarTI om me-14 da 23-e muxl ebTan dakavSirebul i saCivari me-20 muxl is safuZvel ze wardgenil saCivarTan erTad ganxil a. ganmcxadebel ma agreTve miuTiTa prezumfciis ufl ebasa da misi ganxcadebebis simarTI is damasabuTebel i mtkicebul ebebis warmodgenis ufl ebaze. amrigad, misi saCivari pirdapir iyo dakavSirebul i konvenciis me-10 muxl Tan. swored amgvarad iyo gagebul i saCivari sasamarTI os mier; man SeaerTa mtkicebul ebebis rel evanturoba saqmis arsebiT mxaresTan, kerZod ki sisxl is samarTI is kodeqsis 161-e muxl Si gaTval iswinebul danaSaul Tan, da ganxil a misi Sesabamisoba gamoxatvis Tavisufl ebasTan sakonstitucio sasamarTI os 1985 wl is 10 april is gadawyvetil ebaSi "samarTI ebrivi mxaris" nawil is me-9 da me-10 punqtebTan (ix. par. 17).

sabol ood sasamarTI o aRniSnavs komisiis msgavsad, rom batonma kastel sma konstituciis muxl i 20 moyvana rogorc uzenaes sasamarTI oSi wardgenil amparo, ise 1983 wl is 22 noembris suplico saapel acio saCivrebSi (ix. par. 13 da 15). SemdgomSi, sakonstitucio sasamarTI oSi wardgenil rig argumentebSi, simarTI is dacvasTan dakavSirebiT man agreTve miuTiTa "informaciis miRebisa da gacemis ufl ebaze" (ix. par. 16). eWvgareSea, rom saapel acio saCivris dakmayofil eba ar moxda, radganac sakonstitucio sasamarTI om maSin SezRuda Tavis iurisdicciis fargl ebi. misi azriT, simarTI is dacvis probl ema mTavrobis SeuracxyofasTan kavSirSi wamoWrida ufro kanonis interpretaciis, vidre masTan Sesabamisobis sakiTxs da sisxl is samarTI is kodeqsis 161-e muxl is gamoyeneba am saqmeSi mxol od sasamarTI os gadasawyveti iyo (ix. par. 17; da mutatis mutandis, zemoT moyvanil i, gadawyvetil eba guzardi ital iis winaaRmdeg; seria A. # 39. gv. 7; par. 72).

32. Sesabamisad, sasamarTI o Tvl is, rom ganmcxadebel ma, "ZiriTadad mainc", saCivrebi aRZra konvenciis muxl is safuZvel ze. Sesabamisad, mTavrobis argumentacia imis Taobaze, rom batonma kastel sma mTli anad ver gamoiyena adgil obrivi kanonmdebl obi T gaTval iswinebul i zomebi, ar unda iyos miRebul i.

B. saCivris arsebiTi mxare

33. batoni kastel si aRniSnavs, rom mis winaaRmdeg aRZrul i sasamarTI o procesi da misi Semdgomi gasamarTI eba warmoadgens Carevas mis mier gamoxatvis Tavisufl ebis ufl ebis ganxorciel ebaSi, miT umetes, rom mas neba ar darTes daemtkicebina Tavis statiaSi gakeTebul i gancxadebebis simarTI e.

34. mis mier gasaCivrebul i SezRudvebi da sasj el i namdvil ad warmoadgens "Carevas" aRniSnul i ufl ebis ganxorciel ebaSi. imisaTvis, rom amgvarma Carevam ar daarRvios muxl i 10, igi unda iyos "gansazRvrul i kanoniT", emsaxurebodes me-10 muxl is me-2 paragrafiT gaTval iswinebul erT an ramdenime mizans da warmoadgendes "aucil ebl obas demokratiul sazogadoebaSi" aRniSnul i mi znebis mi saRwevad.

1. "kanoni T gansazRvrul i"

35. eWvs ar iwevs is faqti, rom aRniSnul sasamarTI o devnas hqonda iuridiul i safuZvel i. ganmcxadebel s es garemoeba sadavod ar gauxdia; magram man ganacxada, rom igi el oda simarTI is dasacavad Suamdgoml obis dakmayofil ebas, gansakuTrebiT 1978 wl is kanonis miRebis Semdeg. man aRniSna, rom 1982 wl is 19 maisamde uzenaes sasamarTI os ar miuRia gadawyvetil eba mTavrobis SeuracxyofasTan dakavSirebul sakiTxze da amgvar SeuracxyofasTan dakavSirebiT simarTI is dacvis marTebul oba (muxl i 240) urTierTsawinaaRmdego Sexedul ebebs iwevda rogorc mecnierebs Soris, ise saprecedento samarTal Si.

36. mTavroba Tavis SepasuxebaSi, meores mxriv, miuTiTebis, rom espanetis kanonmdebl obidan, kerZod ki sisxl is samarTI is kodeqsis 461-e muxl idan, aSkarad Cans, rom simarTI is dacva daSvebul ia mxol od im SemTxvevebSi, rodesac Seuracxyofa miyenebul ia saxel mwifo moxel eebis mimarT maT mier samsaxureobrivi moval eobis ganxorciel ebis. arc 1978 wl amde, arc mas Semdeg uzenaes sasamarTI os mier ar yofil a gamotanil i gadawyvetil eba iseT SemTxvevebze, rodesac saqme ar exebodaT cal keul pirebs. xol o batonma kastel sma ki daadanaSaul a mTavroba mTI ianobaSi.

37. kodeqsis 461-e muxl is safuZvel ze sasamarTI o Tvl is, rom aRniSnul i interpretacia racional uri iyo. rogorc Cans, marTI ac ar yofil a amgvari precedenti – swored amiT aixsneba 1982 wl is 19 maisis gadawyvetil ebaSi uzenaesi sasamarTI os yoymani (ix. par. 12) – magram amas didi mniSvnel oba ara aqvs: es gaxl daT zogadi xasiaTis teqsti, romel ic ramdenime SesaZl o variants moicavda da roml is gamoyeneba udavod dasaSvebi iyo sxvadasxva garemoebebSi (ix., mutandis, "Observer" da "Guardian" gaerTianebul i samefos winaaRmdeg, 1991 wl is 26 noembris gadawyvetil eba, seria A #216 gv. 27-28, par. 53).

Sesabamisad, sasamarTI o miicnevs komisiis msgavsad, rom aRniSnul i Carevis debul ebebi akmayofil ebda konvenciis me-10 muxl is me-2 paragrafis moTxovnebs.

2. iyo Tu ara kanonieri dasaxul i mizani?

38. ganmcxadebl is Tanaxmad, arc mistvis wayenebul i bral i da arc misi Semdgomi gamamtyunebel i ganaCeni isaxavda me-10 muxl is me-2 paragrafis Tanaxmad dadgenil kanonier mizans. rogorc Tavad uzenaesma sasamarTI om aRiara, mistvis dabral ebul i qmedebebi ar warmoadgenda safrTxes (ix. par. 9). garda amisa, rogorc Canda 1983 wl is 31 oqtombris gadawvyetil ebidan, Carevis mizani iyo ara saxel mwifo wesrigisa da saxel mwifo uSiSroebis uzrunvel yofa, aramed, faqtobrivad, respodenti mTavrobis Rirsebis SenarCuneba.

39. magram 1985 wl is 10 april is gadawvyetil ebaSi, romel sac eyrdnoba mTavroba, sakonstitucio sasamarTI om xazi gausva, rom saxel mwifos uSiSroebas SeiZI eba safrTxe Seeqmnas demokratiul i institutebis winaarMdeg mimarTul i mcdel obebiT (ix. par. 17). Tavis statiaSi b-nma kastel sma ara marto aRwera Zal ian seriozul i mdgomareoba baskeTSi sxvadasxva mkvl el obebisa da Tavdasxmehis CaTvl iT; igi Cioda saxel mwifos, gansakuTrebiT ki pol iciis pasiurobaze da Sekrul obaze damnaSave partiebTan da aqedan gamomdinare daaskvna, rom saxel mwifo iyo pasuxismgebel i aRniSnul qmedebebze.

Sesabamisad SeiZI eba iTqvas, da es Seesabameba mTavrobisa da komisiis gadawvyetil ebas, rom 1979 wels espanetsi sasamarTI oSi saqme aRizra ganmcxadebl is winaarMdeg "uwesrigobis Tavidan asacil ebl ad" konvenciis me-10 muxl is me-2 paragrafis Sesabamisad da ara mxol od "sxvaTa reputaciis dasacavad".

3. Carevis aucil ebl oba

40. batonma kastel sma aRniSna, rom igi eTanxmehoda komisiis da miuTiTa arCeul i warmomadgenl is, rogorc el eqtoratis azrebiis gamomxatvel is, gamoxatvis Tavisufl ebis ufl ebis udides mniSvnel obaze. garda amisa, aRniSnul i ufl eba saWiroebda garkveul garantiibs, rodesac diskusia exeboda sazogadoebisaTvis mtkivneul sakiTxs. swored aseT SemTxvevasTan gvqonda aq saqme; sadavo statia gaxl daT baskeTSi am ukanasknel arasaimedo garemoze farTo debatebis nawili. ganmcxadebl is gasamarTI eba gamiznul i iyo xel isufl ebis dasacavad opoziciis Tavdasxmehisagan da ara mTavrobis dasafarad dausabuTebel i da cil ismwamebl uri bral debebisagan; Tumca aRniSnul i faqtebis gaxsna an gamoaSkaraveba mTavrobisaTvis uxerxul i iyo, magram es emsaxureboda sazogadoebis interesebs.

41. mTavrobam xazi gausva, rom gamoxatvis Tavisufl eba ar iyo absol uturi; mas Tan axl da garkveul i val debul ebebi da pasuxismgebl obebi konvenciis me-10 muxl is me-2 paragrafis Sesabamisad. b-nma kastel sma daarRvia pol itikuri debatebis normal uri sazRvrebi; man Seuracxyofa miayena demokratiul mTavrobas misi destabilizaciis mizniT da Tanac espanetisaTvis metad mtkivneul , SeiZI eba iTqvas kritikul periodSi, konstituciis miRebis Semdeg Zal ian cota xanSi, rodesac gansxvavebul i pol itikuri mrwamsis daj gufebebi gaerTianebas cdil obdnen.

42. sasamarTI o miiCnevs, rom TviTgamoxatvis Tavisufl eba warmoadgens demokratiul i sazogadoebis erT-erT umniSvnel ovanes qvakuTxeds; me-10 muxl is me-2 paragrafis Tanaxmad, igi exeba ara mxol od im "informaciisa" da "mosazrebebs", roml ebic kargad an gul gril ad aris miRebul i, an ar aris CaTvl ili Seuracxmyofel ad, aramed im "informaciisa" da "mosazrebebsac", roml ebic Seuracxmyofel i, Semawuxebel i da gamaognebel ia. amgvaria pl ural izmis, tol erantul obisa da farTo azrovnebis moTxovnebi, roml is gareSe

warmoudgenel ia "demokratiul i sazogadoeba" (ix. "Observer" da "Guardian" gaertianebul i samefos winaarmdreg; 1991 wl is 26 noembris gadawyvetil eba seria A. # 216. gv. 29-30, par. 59(a)).

Tumca gamoxatvis Tavisufl eba yvel asaTvis mniSvnel ovania, igi gansakuTrebit kritikul ia adami nebis arCeul i warmomadgenl ebisaTvis. arCeul i piri warmoadgens Tavis el eqtorats, yuradRebas aqcevs maT saWiroebebs da icavs maT interesebs.

43. aRniSnul saqmeSi bn kastel ss Tavisi mosazrebebi ar gamoutqvams senatis tribunidan, rac mas SeeZl o gaektebina sanqciebis SiSis gareSe, amisaTvis man periodul i gamocema arCia. Tumca es ar niSnavs, rom amit man dakarga ufl eba gaekritikebina mTavroba.

amasTan dakavSirebit ar unda dagvaviwydes, rom presa mniSvnel ovan rol s asrul ebs saxel mwifoSi, romel ic kanonis uzenaesobit imarTeba. Tumca man ar unda gadaabijos 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 nebis mier sakiTxTan dakavSirebit (ix. Sunday Times gaertianebul i samefos winaarmdreg, 1979 wl is 26 april i gadawyvetil eba; seria A. # 30; gv. 40; par. 65 da "Observer" da "Guardian" gaertianebul i samefos winaarmdreg; 1991 wl is 26 noembris gadawyvetil eba seria A. # 216. gv. 29-30, par. 59(b)).

presis Tavisufl eba sazogadoebas aZl evs sakuTari, politikuri liderebisagan damoukidebel i, azrebisa da Sexedul ebebis gamorkvevis da Camoyal ibebis saSual ebas. gansakuTrebit igi iZl eva sazogadoebrivi azris analizisa da masze reagirebis saSual ebas; amgvarad misi saSual ebit yvel as SeuZl ia monawil eoba miiRos politikur debatebSi, rac warmoadgens demokratiul i sazogadoebis ZiriTad koncepcias (ix. I ingensi avstriis winaarmdreg, 1986 wl is 8 ivnisis gadawyvetil eba, seria A, #103 a, gv. 26, par. 42).

44. 1983 wl is 31 oqtombris gadawyvetil ebaSi uzenaesma sasamarTl om miCnia, rom garkveul i frazebis gamoyenebit sadavo statias darRveul i iyo sazRvari, Tumca msubuqad, politikur kritikasa da Seuracxyofas Soris (ix. par. 13).

45. sasamarTl o msjel obs, iseve rogorc komisia, rom b-nma kastel sma dagmo eqstremistul i jgufebis wevrebis dausjel oba, maTi, vinc 1977 wl idan moyol ebul i baskeTSi mraval ricxovan Tavdasxmebze iyo pasuxismgebel i. man asaxa am regionSi, sadac vrcel deboda aRniSnul i periodul i gamocema, sazogadoebisaTvis mniSvnel ovania faqtebi. daskvniT nawil Si seriozul i bral deba wauyena mTavrobas, romel ic pasuxismgebel i iyo aRniSnul qmedebebze (ix. par. 7).

46. politikuri debatebis Tavisufl eba Tavisi bunebit udavod absoluturia. monawil e saxel mwifos SeuZl ia dauqvemdebaros igi SezRudvebsa da sasjel ebs, magram sabol ood mxol od sasamarTl o iZl eva gadawyvetil ebas aRniSnul i zomebis Sesabamisobaze me-10 muxl Si gaTval iswinebul gamoxatvis Tavisufl ebasTan. (ix., mutandis "Observer" da "Guardian" gaertianebul i samefos winaarmdreg; 1991 wl is 26 noembris gadawyvetil eba seria A. # 216. gv. 29-30, par. 59 (g)). dasaSvebi kritikis sazRvrebis ufro farToa mTavrobasTan, vidre cal keul moqal aqestan an Tundac cal keul politikosTan mimarTebsi. demokratiul sazogadoebaSi mTavrobis qmedebebi detal urad unda gaanal izdes ara mxol od

sakanonmdebl o da sasamarTI o xel isufli ebis mier, aramed presaSi sazogadoebrivi azris meSveobiT. metic, is gansakuTrebul i rol i, romel sac presa asrul ebs, aval debul ebs mas, ganxil os sisxl is samarTI ebrivi devna (procesi), imis gaTval iswinebiT, rom presas gaaCnia sxva saSual ebebic, imisaTvis, rom pasuxi gasces usamarTI obasa da kriticizms Tavisi mtrebis mxridan. saxel mwifos Sesabamis organoebis, rogorc sazogadoebrivi wesrigis garants, rCeba ufl eba airCios, Tundac sisxl is samarTI is kanonmdebl obis bunebidan gamomdinare, moaxdinos Tu ara reagireba (gadaWarbebis gareSe, anu arsebul i moTxovnebis fargl ebSi) cil ismwamebl ur bral debebze, roml ebic mokl ebul ia faqtobrivi safuZvel s an Camoyal ibebul ia arakeTil sindisierad.

47. am kuTxiT b-nma kastel sma wamoayena winadadeba, j er uzenaesSi da Semdeg sakonstitucio sasamarTI oSi, dadgenil iyo mis mier moyvanil i faqtebis marTebul oba. misi azriT, amis Semdeg misi ganxadebebi dakargavda yovel gvar Seuracxmyofel efeqts.

1982 wl is 19 maisis gadawyvetil ebaSi uzenaesma sasamarTI om daadgina, rom Suamdgoml oba simarTI is dacvasTan dakavSirebiT ver iqneboda dakmayofil ebul i, vinaidan Seuracxyofa mimarTul i iyo saxel mwifo institutebis winaaRmddeg. es mosazreba damtkicebul i iyo 1983 wl is 31 oqtombris gadawyvetil ebaSi (ix., par. 13). sakonstitucio sasamarTI om miicnia, rom es ufro kanonis interpretaciis sakiTxi iyo da mis iurisdicciaSi ar Sedioda (ix. par. 17). Sesabamisad, ganmcxadebel s ar SeeZl o sisxl is samarTI is kodeqsis 161-e muxl is mixedviT mis winaaRmddeg aRZrul saqmeSi Suamdgoml oba wamoeyenebina simarTI isa da keTil sindisierebis dasacavad.

48. mTavrobis SepasuxebaSi aRniSnul ia, rom vinaidan bni kastel sis bral debebi ar iyo sakmarisad zusti, ar SeiZl eboda maTi marTebul obis Cveneba. garda amisa, isini unda miCneul iyo Rirebul mosazrebebad, romel Ta mimarTebaSi simarTI is dacva ar aris rel evanturi.

aRniSnul i argumenti ar gaxl avT damaj erebel i. gazeTSi gamoqveynebul i statia (ix. par. 7) mTI ianobaSi unda iyos aRqmul i. ganmcxadebel ma statiis dasawyisSi j er CamoTval a baskeTSi ganxorciel ebul i mkvl el obebisa da Tavdasxmehis vrcel i sia, Semdeg ki xazi gausva aRniSnul i qmedebebis dausjel obas; garda amisa, man aRniSna sxvadasxva eqstremistul i daj gufebebis monawil eoba, roml ebic konkretul ad daasaxel a da sabol ood saxel mwifos miawera pasuxismgebl oba aRniSnul garemoeebebze. faqtobrivad, rigi am mtkicebul ebebisa warmoadgens simarTI is dadgenis mcdel obas, ris gakeTebasac apirebda b-ni kastel si Tavisi keTil sindisierebis dasamtkicebl ad.

SeuZl ebel ia imis gansazRvra, rogor damTavrdeboda sasamarTI o procesi, uzenaes sasamarTI os rom daerTo ganmcxadebl isaTvis im mtkicebul ebebis warmodgenis neba, romel sac ganmcxadebel i iTxovda, magram sasamarTI o gadamwyvet mniSvnel obas aniWebs faqts, rom aRniSnul danaSaul Tan mimarTebaSi (ix. par. 12) simarTI is dacva aramarTebul ad iqna miCneul i. igi agreTve Tvl is, rom aRniSnul i Careva ganmcxadebl is mier gamoxatvis Tavisufl ebis ufl ebis ganxorciel ebaSi ar warmoadgens aucil ebl obas demokratiul sazogadoebaSi.

49. mTavroba agreTve eyrdnoba miyenebul i sasjel is msubuq formas, magram zemoaRniSnul idan gamomdinare, sasamarTI o ar Tvl is saWirod am argumentaciis ganxil vas.

50. zogadad, aq saqme gvaqvs me-10 muxl is darRvevasTan.

4. gancxadeba me-10 da me-14 muxl ebis erTobl iv darRvevaze

51. b-nma kastel sma agreTve wamoWra saCivari imis Taobaze, rom igi gaxda diskriminaciis msxverpl i, vinaidan sxva pirebs gamoTqmul i hqondaT anal ogiuri mosazrebebi ise, rom maT mimarT ar gamoyenebul a sisxl is samarTI is sanqciebi. igi eyrdnoba me-14 muxl s, sadac aRniSnul ia: "konvenciaSi gaTval iswinebul i ufl ebebiTa da Tavisufl ebebiT sargebl oba garantirebul i unda iyos diskriminaciis gareSe sqesis, rasis, kanis feris, rel igiis, pol itikuri Tu sxva mrwamsis, erovnul i Tu social uri warmoSobis, erovnul umciresobaze mikuTvnebis, qonebis, dabadebisa Tu sxva statusis miuxedavad."

mTavrobam gaaprotesta aRniSnul i mtkiceba.

52 vinaidan aRniSnul i sakiTxi ar warmoadgens saqmis ZiriTad aspeqts, sasamarTI om ar CaTval a saWi rod misi cal ke ganxil va (ix., inter alia, airi irl andiis winaaRmdeg, 1979 wl is 9 oqtombris gadawyvetil eba, seria A, #32, gv. 16, par. 30).

I. 50-e muxl is gamoyeneba

53. 50-e muxl is Tanaxmad: "Tu sasamarTI o miicnevs, rom monawil e saxel mwifos iuridiul i xel isufl ebis an raime sxva xel isufl ebis mier miRebul i gadawyvetil eba an zomebi mTI ianad an nawil obriv ewinaaRmdegeba konvenciit gansazRvrul val debul ebebs da Tu Sida kanoni da monawil e saxel mwifo aRniSnul i gadawyvetil ebis da zomis Sedegebze mxol od nawil obrivi kompensaciis saSual ebas iZl eva, sasamarTI o gadawyvetil ebam saWi roebis SemTxvevaSi unda uzrunvel yos dazaral ebul i mxaris samarTI iani dakmayofil eba".

54. ganmcxadebel i pirvel rigSi iTxovda sasamarTI os gadawyvetil ebis daskvnis gamoqveynebas basketis, madridisa da saxel mwifos danarCeni regione bis gazeTebSi, agreTve misi gasamarTI ebis Taobaze nebismieri miniSnebis amoRebas central uri sisxl is samarTI is reestridan.

sasamarTI o miuTitebs, rom mis iurisdiciaSi ar Sedis amgvari brZanebebis gamoSveba (ix., mutatis mutandis, manifatura ital iis winaaRmdeg, 1992 wl is 27 Tebervl is gadawyvetil eba, seria A, #230 b, gv 21, par. 22).

a. material uri zaral i

55. b-nma kastel sma agreTve moiTxova 375 000 peseta Semosavl ebis dakargvasTan dakavSirebiT. rogorc TavdebiT gamoSvebul s, mas ormocdaaTjer mouwia gamocxadeba sasamarTI os winaSe Tavisi sacxovrebel i adgil idan daSorebiT da agreTve samjer mouwia misvl a uzenaes sasamarTI oSi madridSi (ix. par. 8 da 9), ris gamoc man dakarga dro da ver Seasrul a Tavisi, rogorc iuristis, profesiul i saqmianoba. sasamarTI om miicnia, rom aRniSnul i garemoeba mas ver miayenebda zaral s, vinaidan rogorc iurists, mas isedac

uxdeboda aRniSnul sasamarTI oebSi gamocxadeba. Sesabamisad dadgina, rom mas ar ganucdia material uri zaral i.

b. aramaterial uri zaral i

56. ganmcxadebel ma agreTve moiTxova aramaterial uri zaral is anazRaureba konkretul i ricxvebis dasaxel ebis gareSe. sasamarTI os ar gamouricxavs mis mier aramaterial uri zaral is gancdis SesaZI ebl oba, magram am saqmis garemoebebi da am gadawyvetil ebaSi dadgenil i darRveva Tavistavad warmoadgens sakmaris samarTI ian dakmayofil ebas.

d. xarj ebi

57. sasamarTI oebSi gaweul xarj ebTan dakavSirebiT bnma kastel sma moiTxova 2 181 476 peseta. sasamarTI om daagina am Tanxidan mxol od erTi milionis kompensireba, vinai dan Tanxis garkveul i nawil i dakavSirebul i iyo "amparo" apel aciebTan, roml ebi ar iqna miRebul i komisiis mier.

58. sabol ood ganmcxadebel ma moiTxova 3 328 000 peseta konvenciis organizaciebis winaSe gaweul i xarj ebisatvis, b-ni korfisa da b-ni vervel is honorarTan erTad, rac Seadgenda 20 000 germanul markas. mTavrobis msgavsad komisi am gadaWarbebul ad miCnia b-ni kastel sis warmomadgenel i advokatebis raodenoba (4). unda gaviTval iswinoT isic, rom komisi am miRo Tavdapirvel ad wamoWril i ramdenime saCivari. sabol oo Sefasebisas sasamarTI om b-ni kastel ss daudgina 2 000 000 pesetis anazRaureba.

aRniSnul i mizezebis gamo sasamarTI o erTsul ovnad adgens:

1. rom mis iurisdiciaSi Sedis mTavrobis winaswari gaprotestebis ganxil va, magram ar iRebs mas;
2. rom adgil i aqvs me-10 muxl is darRvevas;
3. rom ar aris aucil ebel i me-14 muxl is ganxil va me-10 muxl Tan erTad;
4. rom aramaterial ur zaral Tan mimarTebsi es gadawyvetil eba warmoadgens sakmaris samarTI ian dakmayofil ebas 50-e muxl is konteqstSi;
5. rom espanetis samefom ganmcxadebel s unda gadauxados sami Tvis ganmavl obaSi 3 000 000 (sami milion) peseta xarj ebis dasafarad.
6. rom ar akmayofil ebs ganmcxadebl is sarCel s danarCen nawil Si.

mosamarTI e meieris Tanxvedri mosazreba

sadavo statiaSi bnma kastel sma warmoadgina baskeTSi ganxorciel ebul i mkvl el obebisa da Tavdasxmehis grZel i sia da aRniSna maTi Camdenebis srul i dausjel oba. man agreTve miuTiTa xel isufl ebis umoqmedobaze, romel mac, misi TqmiT, araferi gaakeTa damnaSaveTa gomasavl enad, Tumca imave xel isufl ebam did mondomeba gamoiCina sxva SemTxvevebSi. misi azrit, es garemoeba miuTitebda mTavrobis Setqmul ebaze aRniSnul partiebTan da, Sesabamisad, am moqmedebze pasuxismgebl obas mTavrobas da mis mxardamWerebs miawers. ra Tqma unda, es sakmaod seriozul i bral debebia, magram maTi wayenebisas ganmcxadebel i axorciel ebda TviTgamoxatvis ufl ebas. es ufl eba dairRva, radganac kastel sis winaaRmdog aRZres saqme da igi gaasamarTI es sazogadoebisatvis mtkivneul sakiTxze sakuTari mosazrebis gamoqveynebisatvis. "demokratiul sazogadoebaSi" dauSvebel ia

amisaTvis moqal aqis gasamarTI eba, am mimarTebaSi ara aqvs mniSvnel oba, marTal i iyo Tu ara kastel si. simarTI is dacva mis saqmeSi ar gaxl avT mis mier situaciis Sefasebis rel evanturi. es sworia miT umetes, rom statiaSi aRweril mkvl el obebs da Tavdasxmebs marTI ac hqondaT adgil i da maTi Camdenebis dausjel obis sakiTxi sadavoc ki ar gamxdara. rac Seexeba Seuracxyofas, mcdar bral debasa da cil iswamebas, ar arsebobs saxel mwifo institutebisagan da mTavrobisagan ukeTesi dacva, vidre opozicia. Tavis statiaSi b-ni kastel si jer CamoTvl is baskeTSi momxdari jer kidev gauxsnel i da dausjel i mkvl el obebisa da Tavdasxmebis sias da mere miuTitebs ukiduresi memarj vene daj gufebebis monawil eobaze am aqtebSi. am faqtebidan mas gamoaqvs daskvna: aRniSnul i aqtebis ukan SeiZl eba idges mxol od mTavroba, maTi mxardamWerebi da mTavrobis Stati.

uzenaesma sasamarTI om b-ni kastel si gaasamarTI a SedarebiT msubuqi Seuracxyofis miyenebisaTvis. uzenaesma sasamarTI om miiCnia, rom politikuri kritikis mizniT ganxorciel ebul i Seuracxyofa gascda dasaSvebi kritikis fargl ebs da Seexo mTavrobis Rirsebas. uzenaesma sasamarTI om agreTve miiCnia, rom aseT SemTxvevebSi kanoni ar uSvebda simarTI is dacvas. sasamarTI om gadamyveti mniSvnel oba mianiWa im faqts, rom espanetis uzenaesma sasamarTI om ar daakmayofil a Suamdgoml oba aRniSnul saqmeSi simarTI is dacvis Sesaxeb. samwuxarod, ver veTanxmebi am mosazrebas. Cemi azriT, konvenciis ZiriTadi faqtori is iyo, rom kastel si gasamarTI ebul i iqna azris qonisaTvis, rom aRniSnul incidentze Tavad is iyo pasuxismgebel i. rac Seexeba sakiTxs, romel ic detal urad aris ganxil ul i sasamarTI o gadawyvetil ebaSi, vTvl i, rom b-n kastel ss SeeZl o Tavisi simarTI is damtkiceba, im mosazrebebis, rogorc politikuri debatebis Semadgenel i nawil is, damtkicebiT, rom mTavroba dgas Tavdasxmebisa da mkvl el obebis sakiTxis ukan. Exceptio veritatis am SemTxvevaSi rel evanturi ar aris. konvenciis me-10 muxl is darRvevis aRmosaCenad sakmarisia, rom b-ni kastel si daisaja mTavrobis imgvari kritikisaTvis, rogoric daSvebul i unda iyos demokratiul sazogadoebaSi.

mosamarTI e karil io sal gedos Tanxvedri mosazreba

srul ad viziareb sasamarTI o gadawyvetil ebis 46-e punqts. minda xazi gausva, rom TviTgamoxatvis ufl eba aris erT-erTi umTavresi demokratiul i sazogadoebisaTvis. magram agreTve unda aRvniSno, rom TviTgamoxatvis ufl ebas "Tan axl avs val debul ebebi da pasuxismgebl oba" konvenciis me-10 muxl is me-2 paragrafis Sesabamisad, da gansakuTrebiT rTul ia wonasworobis dacva TviTgamoxatvis ufl ebis moTxovnebsa da demokratiul i saxel mwifos dacvis moTxovnebs Soris iseT SemTxvevebSi, rodesac politikuri motivaciis mqone Zal ebi warmoadgenen mudmiv saSiSroebas sxvebis sicocxl isa da usafrTxoebisaTvis. me-10 muxl is me-2 paragrafSi mocemul i debul ebiT, rom TviTgamoxatvisa da informaciis, aseve mosazrebebis qonebis, miRebisa da gacemis ufl ebas SesaZl oa Tan axl des "iseTi moTxovnebi, pirobepi da SezRudvebi, roml ebic gansazRvrul ia kanoniT da aucil ebel ia demokratiul sazogadoebaSi", konvencia aRiarebs, rom aRniSnul i ufl ebebi ar aris absol uturi. metic, konvencia aRiarebs im princips, rom arc erT daj gufebasa Tu pirs ar aqvs ufl eba ganxorciel os moqmedebebi masSi (muxl i 17) dadgenil i ufl ebebis Sel axvis mizniT; esec, Cemi azriT, warmoadgens mxareebisaTvis dakisrebul dadebiT val debul ebebs.

ამგვარად, მონაწილე სახელმწიფოებს რეგულაციები უნდა ეხმარებოდეთ მოახდინონ რეაგირება (გადართვის გარეშე, ანუ არსებულ მოთხოვნებზე ფარგლებში) იმ შემთხვევებში, როდესაც მათ უნდა შეეძლოს უსაფრთხოდ დარჩენა ან გამოყენება იმ შემთხვევაში, როდესაც მათ უნდა შეეძლოს უსაფრთხოდ დარჩენა.