

de haani nider landebis winaARmdeg

De Haan v. The Netherlands

strasburgi, 26 agvisto, 1997 weli

1997 wliis 26 agvistos, strasburgSi de haani nider landebis winaARmdeg saqmeze gamotani l gadawvyetilebaSi adamianis uflebaTa evropis sasamarTlom eqvsi xmit samis winaARmdeg ganaxada, rom dairRva adamianis uflebaTa evropis konvenciis me-6 muxlis pirveli punqti imis gamo, rom momCivnis saqme ar ganuxilavs "miukerZoebe l sasamarTlos".

gadawvyetileba sajaro sxdomaze gamoacxada sasamarTlos Tavmjdomarem, b-nma rolf risdalma.

I. saqmis garemoebebi

A. mTavari faqtebi

momCivani nider landebis moqalagea da cxovrobs ude pekelasi.

q-ni de haani muSaobda qimwmendaSi. garkveuli drois ganmavlobaSi, 1989-idan 1990 wlamde, igi ver akmayofilebda samuSaosTvis vargisianobis moTxovnebs. am periodSi igi iRebda avadmyofis daxmarebas. 1990 wliis 14 maiss, qimiuri mrewvelobis profesiulma asociaciam daadgina, rom q-n de haans SeeZlo muSaobis ganaxleba. Sesabamisad, man dakarga avadmyofis daxmarebis miRebis ufleba.

q-nma de haanma es dadgenileba gaasaCivra saapelacio sasamarTloSi. igi Seamowma mudmivmoqmedma samedicino eqspertma, romelmac daadgina misi samuSaosaTvis vargisianoba. am daskvnis safuZvelze, saapelacio sasamarTlos moqmedma Tavmjdomarem, mosamarTle Sma, ar daakmayofila misi saCivari zepiri ganxilvis gareSe saqmis warmoebis gamartivebuli wesiT warmarTvaze.

q-nma de haanma moqmedi Tavmjdomaris gadawvyetileba gaasaCivra saapelacio sasamarTloSi. amave dros, man moiTxova, rom mosamarTle Ss aRar mieRo monawileoba saqmis Semdgom warmoebaSi. magram es moTxovna ar dakmayofilda.

saqmis Semdgomi warmoebis Sedegad, romelSic momCivani warmodgenili iyo advokatis mier, sajaro sxdomis CaTvliT, saapelacio sasamarTlom, mosamarTle S-is TavmjdomareobiTa da ori araprofessionali mosamarTlis SemadgenlobiT, aseve ar daakmayofila q-ni de haanis saCivari.

Semdeg, man iCivla centralur saapelacio sasamarTloSi da miuTiTa, inter alia, rom dairRva konvenciis me-6 muxlis pirveli punqti, vinaidan mosamarTle Sma jer gadawvyetileba miiRo misi saCivris Taobaze, xolo Semdeg monawileoba miiRo am saCivris winaARmdeg Setanili saCivris Taobaze gadawvyetilebis gamotanaSi. 1993 wliis 26 aprils misi saCivari ar dakmayofilda.

B. saqmis warmoeba adamianis uflebaTa evropis komisiaSi

saCivari, romelic Sevida komisiaSi 1993 wliis 5 agvistos, misaRebad gamocxadda 1995 wliis 18 maiss.

saqmis morigebiT dasrulebis uSedego cdis Semdeg, komisiam 1996 wliis 15 maiss Seadgina moxseneba, romelSic Camoayaliba faqtebi da gamoTqva Tavisi erTsulovani mosazreba, rom dairRva konvenciis me-6 muxlis pirveli punqti.

II. gadawyvetilebis Sinaarsi

A. konvenciis me-6 muxlis pirveli punqti

miuTiTa ra feldbrugi niderlandebis winaarmdeg saqmeze 1986 wlis 29 maisis gadawyvetilebaze, romelic Seexeboda arsebiTad imave kanonmdblobasa da saqmis warmoebas, sasamarTlom daadgina me-6 muxlis pirveli punqtis gamoyenebis dasaSvebad miCneva.

sasamarTlom gamoarkvia am saqmesTan dakavSirebiT gamarTuli gamartivebuli warmoebis Semdegi maxasiaTeblebi:

pirveli - gadawyvetilebis miRebis pasuxismgebloba ekisreboda saapelacio kolegiis Tavmjdomares (anu moqmed Tavmjdomares), miuxedavad imisa, rom aRniSnul saqmeSi mas raime sxva saxiT monawileoba ar miuRia, garda samedicino eqspertis daskvnis kanonieri Zalis dadasturebisa.

meore - sasamarTlom miuTiTa, rom gansxvaveba arsebobda am saqmis warmoebasa da in absentia sisxlis samarTlis warmoebas Soris, sadac braldebuli arc eswreboda da arc warmodgenili iyo, ris Taobazec sasamarTlos, Tavisi wina gadawyvetilebiT (1996 wlis 10 ivniss gamotanili gadawyvetileba, saqmeze: Tomani Sveicariis winaarmdeg Reports 1996-III), ar daudgenia miukerZoeblobis moTxovnis darRveva. aRniSnul saqmeze Catarebuli procedura moicavda momCivnis samedicino Semowmebas. mas hqonda iseTi SeniSvnebis gamoTqmis SesaZlebloba, rasac saWirod miicnevda, magram eqspertis da ara mosamarTlis mimarT. amdenad, igi aqtiurad monawileobda eqspertis daskvnis gamotanaSi, rac moqmedi Tavmjdomaris mier gadawyvetilebis gamotanis safuZveli unda yofiliyo.

miuTiTa ra Tavisi sasamarTlo praqtikaze, sasamarTlom aRniSna, rom me-6 muxlis pirveli punqtis miznebisTvis sasamarTlos miukerZoeblobis dadgenisas, mxedvelobaSi unda mieRoT ara marto aRniSnul saqmeze konkretuli mosamarTlis Sinagani rwmena da moqmedeba - subieqturi mxare, aramed isic, es mosamarTle uzrunvelyofda Tu ara sakmaris garantiebs am sakiTxSi kanonieri eWvis gasabaTilleblad.

warmodgenili ar yofila raime varaudi mosamarTle S-is mxridan winaswar uaryofiti mosazrebis an mikerZoebis Sesaxeb. amitom saWiros iyo mxolod obieqturi testis gamoyeneba.

sasamarTlos azrit, saqmisaTvis gadawyveti garemoeba iyo is, rom mosamarTle S-i Tavmjdomareobda im sasamarTlos, romelsac gadawyvetileba unda gamoetana im saCivris winaarmdeg, romelic mimarTuli iyo mis mier gamotanil gadawyvetilebaze. aseve aRsanisnavia, rom sasamarTlo Sedgeboda erTi profesionali mosamarTლისagan, romelsac daxmarebas uwevda ori mosamarTle. ufro maRal organos raime gadawyvetileba ar miuRia.

winamdebare saqme, Tavisi SinaarsiT, garkveulwilad, uaxlovdeba oberSlikis saqmes (oberSliki avstriis winaarmdeg saqmeze (# 1) 1991 wlis 23 maisis gadawyvetileba, A seriis # 204), sadac mosamarTle, romelmac monawileoba miRo pirvel instanciaSi gadawyvetilebis gamotanaSi, aseve monawileobda amave gadawyvetilebis winaarmdeg Setanili saCivris saapelacio wesiT ganxilvaSi. Sesabamisad, sasamarTlom daadgina, rom momCivnis varaudi, aRniSnul sakiTxTan dakavSirebiT, obieqturad dasabuTebuli iyo.

me-6 muxlis pirveli punqti ar dairveoda im SemTxvevaSi, Tuki saapelacio sasamarTlos gadawyvetileba iqneboda iseTi sasamarTlo organos Semdgomi kontrolis qvemdebare, romelsac sruli iurisdiccia eqneboda da uzrunvelyofda me-6 muxliT dawesebuli garantiebs.

centraluri saapelacio sasamarTlos gadasinjvis moculoba sakmarisi ar iyo saapelacio sasamarTloSi gamartuli procesis danaklisebis armosafxvrelad. kerZod, centralurma saapelacio sasamarTlom ver Sezlo samedicino mtkicebulebis xelaxali Sefaseba da sadavo sakiTxis sakuTriv TviTon gadawyveta.

meore mxriv, centraluri saapelacio sasamarTlo uflebamosili iyo gaeuqmebina gasacivrebuli gadawyvetileba im safuzvliT, rom saapelacio sasamarTlos Semadgenloba ar iyo ingvari, rom uzrunvelyo sakuTari miukerZebloba da, saWirobebis SemTxvevaSi, ukan daebrunebina saqme saapelacio sasamarTloSi xelaxali ganxilvisaTvis. magram igi ase ar moiqca da Sedegad, ver gamoaswora arniSnuli nakli.

aqedan gamomdinare, dairva konvenciis me-6 muxlis pirveli punqti.

(ix. gadawyvetilebis 43-55-e punqtebis da operatiuli debuლებების პირველი ნაწილი)

B. konvenciis 50-e muxli

momCivanma moTxova materialuri da aramaterialuri xasiaTis zianis, agreTve, xarjebisa da danaxarjebis anazRaureba.

sasamarTlom ver daadgina mizezobrivi kavSiri momCivnis mier moTxovnil materialuri xasiaTis ziansa da darvevas Soris da, Sesabamisad, ar daakmayofila misi moTxovna am nawiSi. garda amisa, warmodgenili ar yofila aramaterialuri xasiaTis zianis anazRaurebis safuzvebi da, Sesabamisad, sasamarTlom daadgina, rom darvevis aRiareba ukve Tavistavad am sakiTxSi samartlian anazRaurebas warmoadgenda.

momCivnis moTxovna misi xarjebisa da danaxarjebis anazRaurebis Taobaze dakmayofilda sruli moculobiT.

(ix. gadawyvetilebis 56-63-e punqtebi და operatiული დებულებების მეორე და მესამე ნაწილები)

sasamarTlom gadawyvetileba gamoitana plenarul sxdomaze Semdegi SemadgenlobiT;

Tavmjdomare: b-ni risdali (norvegia), mosamarTleebi: b-ni f. matSeri (avstria), b-ni J. de meieri (belgia), b-ni i. fuageli (dania), b-ni a.n. luazu (kviprosi), b-ni a.b. baka (ungreTi), b-ni a. lopes roCa (portugalia), b-ni d. goCevi (bulgareTi) da b-ni p. van deiki (niderlandi), aseve, batonebi m.a. aiseni (mdivani) da h. petzoldi (mdivnis moadgile).

samma mosamarTlem gamoTqva gansxvavebuli azri, romlebic mocemulia gadawyvetilebis danarTSi.