

de kuber i s bel gi i s wi naaRmdeg
De Cubber v. Belgium

strasburgi, 26 oqtomberi, 1984 wel i

1984 wl is 26 oqtombers, strasburgSi adamianis ufl ebaTa evropis sasamarTI om gamoitana gadawyetil eba saqmeze de kuberi bel giis winaaRmdeg.

sasamarTI om erTsul ovnad ganacxada, rom dairRva adamianis ufl ebaTa evropis konvenciis me_6 muxl is pirvel i punqti, imis gamo, rom sisxl is sasamarTI os (tribunal correctionnel) miukerZoobl oba, romel mac 1979 wl is 29 ivniss gamoitana gadawyetil eba momCivnis winaaRmdeg wayenebul bral debaze, safuzvl ianad iqna saewvod miCneul i.

I. saqmi s gar emoebebi

A. mTavari faqtеби

1. b-ni al bert de kuberi daibada 1926 wel s. igi bel giis moqal aqea da cxovrobs briusel Si. b-ni al bert de kuberi daapatimres 1977 wl is 4 april s. momdevno dRes, udenaardis (Oudenaarde) sasamarTI os sagamoZiebo mosamarTI em, b-nma pil atem, gasca misi dapatireibis orderi dokumentebis gayal bebis bral debiT. mosamarTI em gamoizia kidev ori sxva saqme msgavs danaSaul Tan dakavSirebit, roml ebSic momCivans edeboda bral i.

1978 wl is 11 maiss, b-ni de kuberi pirvel saqmeze damnaSaved cno udenaardis sisxl is sasamarTI os (tribunal correctionnel) erTi mosamarTI isagan Semdgarma pal atam da miusaj a erTi wl iT Tavisufl ebis aRkveTa. danarCeni ori saqme gaerTianda da gadaeca igit sasamarTI os. 1979 wl is 29 ivniss, sami mosamarTI isagan Semdgarma sasamarTI o pal atam, b-ni pil ates monawil eobiT, momCivans miusaj a, Sesabamisad, xuTi wl iT da erTi wl iT Tavisufl ebis aRkveTa.

b-ni de kuberisa da saj aro bral mdebl is uwyebis mier gasaCivreibis Sedegad, jentis (Ghent) saapel acio sasamarTI om, 1980 wl is 4 Teerval s, pirvel i sasj el i Seamcira sam wl amde, meore Zal aSi datova da Seufarda mesame sasj el i.

momCivanma saCivari Seitana sakasacio sasamarTI oSi. igi, sxva sakiTxebTan erTad, acxadebda, rom am SemTxevaSi b-ni pil ate warmoadgenda ara marto mosamarTI es, aramed mxaresac. 1980 wl is 15 april s, sakasacio sasamarTI om arsebiTad ar daakmayofil a saCivari. man ganacxada, rom am funqciebis gaerTianebeit ar darRveul a arc bel giis samosamarTI o kodeksi, arc konvenciis me-6 muxl is pirvel i punqti da arc dacvis ufl ebebi.

2. sagamoZiebo mosamarTI eebi, roml ebsac niSnabs mafe "pirvel i instanciis sasamarTI os mosamarTI eebi sagan", atareben winaswar sasamarTI o gamoZiebas. mat aseve aqvT kriminal uri sagamoZiebo policiis TanamSroml is statusi da am statusiT moqmedebisas, imyofebian saxel mwifo bral mdebel is (procureur general) zedamxedvel obaSi.

WeSmari tebis dadgenisTvis xel Sesawyobad, sagamoZiebo mosamarTI eebi aRWurvil i arian farTo ufl ebamosil ebebiT. gamoZiebis dasrul ebis Semdeg isini saqmes ugzavnian saxel mwifo bral mdebel s (procureur du Roi), romel ic uk an abrunebs saqmes Tavisi mosazrebebiT. amis Semdeg,

bral debul is sasamarTI osTvis gadacemis sakiTxs wyets pirvel i instanciis sasamarTI os erTi mosamarTI isagan Semdgari pal ata (chambre du conseil) da ara sagamoZiebo mosamarTI e.

3. 1967 wl is samosamarTI o kodeksi krZal avs erTdrooul ad sxvadasxva sasamarTI o funciis ganxorciel ebas. amitom sasamarTI o Tanamdebobis piri, romel ic saqmeSi sagamoZiebo mosamarTI is saxiT monawil eobda, saqmes ver ganixil avs rogorc asizis sasamarTI os an saapel acio sasamarTI os Tavmj domare an mosamarTI e. meore mxriv, mas, bel giis sasamarTI o pragtikis mixedviT, SeuZI ia pirvel i instanciIT ganixil os saqme, romel ic man adre gamoizia.

B. warmoeba adami anis ufl ebaTa evropis komisi aSi

saqme daiwyo bani de kuberis mier 1980 wl is oqtomberSi komisiaSi saCivris SetanIT. igi acxadebda, rom udenaardis sisxl is sasamarTI is sasamarTI o ar iyo miukerZoebel i sasamarTI o, radgan erT da imave saqmeze adre monawil eobda erT-erTi mosamarTI e, sagamoZiebo mosamarTI is saxiT.

1982 wl is 9 marts, komisiam am sakiTxTan mimarTebaSi saCivari miRo warmoebaSi. 1983 wl is 5 ivl isis moxsenebaSi komisiam gamotQva erTsul ovani mosazreba, rom dairRva me-6 muxl is pirvel i punqti.

II. gadawyvet il ebi s Si naars i

A. me-6 muxl is pirvel i punqti s savraudo dar Rveva

1. mTavrobis ZiriTadi moTxovna

1982 wl is 1 oqtombers pirsekis saqmeze gamotanil gadawyvetil ebaSi sasamarTI om gansazRvra, rom miukerZoebel oba SeiZI eba Semowmdes sxvadasxva gziT: unda canvasxaoT subieqturi midgoma, e.i. aRniSnul saqmeze mocemul i mosamarTI is Sinagani rwmenis dadgenis cda, da obieqturi midgoma, e.i. imis dadgena, hqonda Tu ara mas amasTan dakavSirebiT kanonieri elvis gamoricxvis sakmarisi garantia.

rac Seexeba subieqtur midgomas, ivaraudeba, rom mosamarTI e miukerZoebel ia, vidre ar damtkicdeba sawinaaRmdego, xol o am saqmeze sasamarTI osTvis wardgenil mtkicebul ebaTa Soris amgvari mtkicebul eba ar aRmoCnda.

rac Seexeba obieqtur midgomas, garegan gamovl inebebsac SeiZI eba mniSvn oba hqondes: nebismeri mosamarTI e, roml is mimarTac arsebobs kanonieri safuZvel i arasaTanado miukerZoebel obis varaudisa, acil ebul unda iqnes. safrTxis qveS dgeba ndobac, romel ic demokratiul sazogadoebaSi sasamarTI oebma unda Caunergon xal xs.

(ix. gadawyvetil ebis 24-26-e punqtebi)

mTavrobam warmoadgina mTel i rigi argumentebisa, raTa daemtkicebina, rom arsebul i funciebis kombinacia, romel ic samosamarTI o kodekss Seesabameboda, Seesatyviseboda konvencias; sagamoZiebo mosamarTI e iyo damoukidebel i, mas ar hqonda mxaris statusi, mtkicebul ebebi Sekriba bral debul is rogorc sasargebl od, aseve sawinaaRmdegod da ufl ebamosil i ar iyo gadaeca bral debul i sasamarTI osTvis an gamoeTqva Tavisi azri mis bral Tan dakavSirebiT.

sasamarTI om cno am msj el obis damaj erebl oba da I ogika, Tumca isic aRiara rom arsebobda mniSvnel ovani faqtorebi sawinnaRmdego daskvnis gamotanis sasargebl od. rogorc kriminal uri sagamoZiebo pol iciis TanamSromel i, sagamoZiebo mosamarTI e imyofeboda saxel mwifo bral mdebl is (procureur general) zedamxedvel obaSi. rogorc sagamoZiebo mosamarTI es, mas hqonda farTo ufl ebamosil ebebi, roml ebic unda gamoeyenebina aRniSnul saqmeSi. garda amisa, winaswari gamoZieba miznad isaxavda informaciis moZiebas, iyo saiduml o da ar mimdinareobda orive mxaris TandaswrebiT - misma warmmarTvel ma mosamarTI em sasamarTI o sxdomamde didi xniT adre zedmiwevnit icoda saqmis garemoebebi; mxol od am mizezitac ki, bral debul is Tval sazrisiT, martivad SeiZI eba aRmoCenil iyoiset viTarebaSi, romel ic mas gadamwyvet rol s mianiWebda sasamarTI oSi saqmis warmoebisas da winaswar mosazrebasac Seuqmnida, rac saerTo j amSi, mniSvnel ovan gavl enas moaxdenda sabol oo gadawyvetil ebis miRebaze.

aqedan gamodinare, udenaardis sasamarTI os miukerZoebi oba momCivans srul iad safuzvl ianad SeiZI eboda saewvod mieCnia.

(ix. gadawyvetil ebis 27-30-e punqtebi)

2. mTavrobis pirvel i al ternatiul i moTxovna

miutiTa ra sasamarTI os ramdenime gadawyvetil ebaze, mTavrobam arsebiTi winaaRmdegoba gamoTqva samarTal warmoebis mimarT pirvel instanciaSi me-6 muxl is pirvel i punqtis gamoyenebaze. man aRniSna, rom b-ni de kuberis saCivari, faqtobrivid, mimarTul i iyo mxol od udenaardis sasamarTI os winaaRmdeg da rom mas pretenziebi ar gaaCnda jentis saapel acio sasamarTI os mimarT.

sasamarTI om, pirvel rigSi, SeniSna, rom aRniSnul i moTxovna paradoqsul i xasiaTis iyo. me-6 muxl is pirvel i punqti, upirvel es yovl isa, Seexeba pirvel i instanciis sasamarTI oebs. muxl i ar moiTxovs Semdegi instanciebis sasamarTI oebs arsebobas. marTal ia, ZiriTadi garantiebi uzrunvel yofil i unda iyos nebismieri saapel acio Tu sakasacio sasamarTI oebs mier, romel Tac monawil e saxel mwifo Tavisi nebit qmnis, magram Tundac am SemTxvevaSi, es ar niSnabs, rom qvemdgomma sasamarTI oebs es garantiebi ar unda uzrunvel yon.

garda amisa, mTavrobis mier aRniSnul i saqmeebisagan gansxvavebit, arsebul i saqme gul isxmobda sisxl is samarTal warmoebas saTanado sasamarTI oSi, am terminis rogorc formaluri, ise arsebiTi gagebit. dauSvebel ia misi gamoyenebis tradiciul i an Cveul i gamoyenebis sferosi me-6 muxl is pirvel i punqtiT gaTval iswinebul i garantiebis SezRudvis gamarTI eba.

(ix. gadawyvetil ebis 31-32-e punqtebi)

sasamarTI om aseve aRniSna, rom pirvel instanciaSi saqmis warmoebis wyaro swored udenaardis sasamarTI os Semadgenl oba iyo da rom saapel acio sasamarTI om es nakl i ar gamoaswora, vinaidan man amis safuzvel ze mTI ianad ar gaaugma 1979 wl is 29 ivnisis gadawyvetil eba.

(ix. gadawyvetil ebis 33-e punqti)

3. mTavrobis Semdgomi al ternatiul i moTxovna

mTavrobam yuradReba gaamaxvil a im Sedegebze, rasac darRvevis aRiareba moutanda mcireStatian sasamarTI oebs. sasamarTI om aRniSna, rom monawil e saxel mwifoebi ekisrebodaT val debul eba,

TavianTi samarTI ebrivi sistemebis organizacia moexdinaT me-6 muxl is pirvel i punqtis moTxovnebis Sesabamisad.

sabol ood, dadginda, rom b-ni de kuberi dazaral da me-6 muxl is pirvel i punqtis darRvevis gamo.

(ix. gadawyvetil ebis 34-36-e punqtebi da operatiul i debul ebebis pirvel i nawil i)

4. 50-e muxl is gamoyeneba

momCivanma moiTxova materialuri da aramaterialuri zianis samarTI iani anazRaureba. sasamarTI om ganacxada, rom sakiTxi mzad ar iyo gadawyvetil ebis gamosatanad da droebiT gadado.

(ix. gadawyvetil ebis 37-e punqti da operatiul i debul ebebis me-2 nawil i)

sasamarTI om gadawyvetil eba gamoitana pl enarul sxdomaze Semdegi Semadgeni obiT; Tavmj domare: b-ni g. viarda (niderl andi), mosamarTI eebi: b-ni risdal i (norvegia), b-ni v. ganshof van der meerS (belgia), qni d. bindSedl er-roberti (Sveicaria), b-ni f. gul CuRI u (TurqeTi), b-ni f. matSeri (avstria), ser vincent evansi (britaneTi), b-ni r. bernhardt (germania), aseve, batonebi m.a. aiseni (mdivani) da h. petzol di (mdivnis moadgil e).