

hausSildti daniis winaaRmdeg

Hauschildt v. Denmark

strasburgi, 24 maisi, 1989 we l i

1989 wlis 24 maiss, strasburgSi hausSildtis saqmeze adamanis uflebaTa evropis sasamarTlom gamoitana gadawvyetileba daniis winaaRmdeg. sasamarTlom Tormeti xmiT xuTis winaaRmdeg ganacxada, rom dairva adamanis uflebaTa evropis konvenciis me-6 muxlis pirveli punqti, vinaidan im sasamarTloebis miukerZoebloba, romlebmac gaasamarTles b-ni hausSildti, SeiZleboda saeWvod miCneuliyo. 50-e muxlis safuZvelze, sasamarTlom mas erTsulovnad miakuTvna 20 aTasi girvanqa sterlingi mis xarjebSa da danaxarjebTan dakavSirebiT.

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

I. saqmis garemoebebi

A. mTavari faqtebi

b-ni hausSildti daapatimres 1980 wlis 31 ianvars da brali dasdes ekonomikur danaSaulebSi. kopenhagenis qalaqis sasamarTlos mosamarTlem mas droebiTi patimroba Seufarda, magram misi dakaveba eqvemdebareboda sasamarTlo kontrols ara umetes oTxi kviris intervalebiT. momCivani uwyvetad imyofeboda patimrobaSi rogorc sasamarTlo procesis dawyebamde, ise mTeli procesis ganmavlobaSi.

droebiTi dakavebis gaxangrZlivebis Sesaxeb brZanebebis umetesoba, romlebic efuZneboda marTlmsajulebis ganxorcielebis Sesaxeb kanonis 762 (1) da (2) nawilebs, gacemuli iyo qalaqis sasamarTlos im mosamarTlis mier, romelmac SemdgomSi monawileoba miiRo saqmis ganxilvaSi. 1982 wlis 1 noembers b-ni hausSildti damnasaved cnes da miusajes Svidi wliT Tavisuflebis aRkveTa.

momCivanma gadawvyetileba gaasaCivra. saapelacio samarTaliwarmoebamde da mis ganmavlobaSi, 762 (1) da (2) nawilis safuZvelze, miRebul iqna ramdenime gadawvyetileba misi droebiTi patimrobis gagrZelebis Sesaxeb zemdgomi sasamarTlos erT-erTi mosamarTlis mier, romelmac ganixila saapelacio saCivari. 1984 wlis 2 marts zemdgomma sasamarTlom daadastura b-ni hausSildtis braleuloba rvidan eqvsi xmiT da momCivans miusaja xuTi wliT Tavisuflebis aRkveTa.

B. saqmis warmoeba komisiaSi

komisiaSi saCivari Sevida 1980 wlis 26 agvistos. 1986 wlis 9 oqtombers komisiAm saCivari misaRebad gamoacxada me-6 muxlis pirvel punqtTan mimarTebsa, magram uaryo yvela sxva moTxovna.

1987 wlis 16 ivlisis moxsenebaSi komisiAm cxra xmiT Svidis winaaRmdeg gamoTqva mosazreba, rom darRveulia konvenciis me-6 muxlis pirveli punqti.

komisiAm saqme gadasca sasamarTlos 1987 wlis 16 oqtombers.

II. gadawvyeti lebis Sinaarsi

A. winaswari protesti dacvis Sidasaxelmwifoebriwi saSuallebebis amouwuraobis Sesaxeb

1. sasamarTlom uaryo mTavrobis winaswari protesti imis Taobaze, rom bn hausSildts ar gausaCivrebia qalaqis sasamarTlos mosamarTlisa da zemdgomi sasamarTlos mosamarTleebis moqmedeba, anu ar amouwuravs dacvis Sidasaxelmwifoebriwi saSuallebebi. mxedvelobaSi miiRo ra Sesabamisi kanonmdeblobis debulebebi da daniaSi damkvidrebuli praqtika, sasamarTlom gamoarkvia, rom dacvis mxaris warmomadgenels SeeZlo safuZvlidanad evarauda, rom misi nebismieri protesti im faqtTan dakavSirebiT, rom calkeulma mosamarTleebma randenime gadawvyetileba miiRes sasamarTlo procesis dawyebamde, Tavidanve ganwiruli iyo uSedego dasasrulisaTvis.

(ix. gadawvyeti lebis 39-42-e punktobi da operatiuli debulebebis pirveli nawili)

B. me-6 muxlis pirveli punqtis savaraudo darRveva

2. sasamarTlom aRniSna, rom mis amocanas Seadgenda ara Sesabamisi kanonmdeblobisa da praqtikis gadasinjva, aramed imis gamorkveva, dairva Tu ara me-6 muxlis pirveli punqti im gzebiT, ra saxiTac gamoiyenes isini an ra saxiT moaxdines maT zegavlena b-n hausSildtze.

(ix. gadawvyeti lebis 43-45-e punktobi)

3. miukerZoebloba unda dadgeniliyo rogorc subieqturi SemowmebiT (aRniSnul saqmesTan dakavSirebiT calkeuli mosamarTleebis sakuTari rwmenis safuZvelze), ise obieqturi SemowmebiT (imis dadgeniT, uzrunvelyofda Tu ara mocemuli mosamarTle sakmaris garantiabs imisaTvis, rom am sakiTxSi gamoricxuliyo yovelgvari eWvi).

pirveli, subieqturobis testis Semowmebisas, sasamarTlom daadgina, rom ar arsebobda mtkicebuleba aRniSnuli mosamarTleebis mxriv raime mikerZoebis gamovlenisa.

(ix. gadawvyeti lebis 46-47-e punktobi)

4. obieqturobis testis kvlevisas, sasamarTlom Seiswavla, SeiZleboda Tu ara iseTi faqtebis dadgena, romlebic eWvs Seitanda aRniSnuli mosamarTleebis miukerZoeblobaSi. am mxriv, TvIT garegan gamovlinebebs SeiZleba hqonodaT garkveuli mniSvneloba: saeWvo iyo swored is ndoba, romelic demokratiul sazogadoebaSi sasamarTloebma unda Caunergon xalxs da, upirvels yovlisa, - vinaidan saqme exeboda sisxlis samarTl warmoebas - braldebuls. imis gadawvyetisas, aRniSnul saqmeze arsebobda Tu ara kanonieri eWvi mosamarTlis arasakmarisi miukerZoeblobis varaudisaTvis, sasamarTlos unda gamoerkvia, SeiZleboda Tu ara momCivanis varaudis obieqturad dasabuTebs.

(ix. gadawvyeti lebis 48-e punqti)

5. sasamarTlom gamoTqva mosazreba, rom sisxli samarTlis procesis iseT sistemaSi, rogorc daniaSia, mxolod is faqti, rom pirveli instanciis mosamarTlem an saapelacio mosamarTlem miiRo winasaproceso gadawyvetilebebi, droebiTi patimrobis Sesaxeb gadawyvetilebaTa CaTvlit, ar SeiZleba miCneuliyo mis miukerZoeblobasTan dakavSirebiT uaryofitiT varaudis dasabuTebad.

Tumca, aRniSnul saqmeze arsebobda gansakuTrebuli garemoebebi, romlebmac sxvagvari daskvnis gamotanis SesaZlebloba ganapiroba. Sesabamisi sasamarTlo warmoebis dawyebamde qalaqis sasamarTlos mosamarTlem da saapelacio mosamarTlemac b-ni hausSildtis droebiTi patimrobis gadawyvetilebebi uSualod martlmsajulebis ganxorcielebis Sesaxeb kanonis 762(2) nawilis safuZvelze miiRes. aRniSnuli debulebis gamoyenebamde, mosamarTle unda darwmunebuliyo, rom arsebobda "gansakuTrebulad dadasturebuli eWvi", rom braldebulma Caidina danaSauli. es sityvebi ganmartebul iqna rogorc bralTan "aSkarad gamovlenili maRali xarixsis" moTxovna. amgvarad, gansxvaveba am nawilis gamoyenebisas, gadasawyvet sakiTxebSa da gadawyvetilebis gamotanisas, gadasawyvet sakiTxebS Soris naklebmniSvnelovnad iqna miCneuli.

(ix. gadawyvetilebis 50-52-e punqtebi)

6. aqedan gamomdinare, sasamarTlom daadgina, rom aseT garemoebebSi aRniSnuli sasamarTloebis miukerZoebloba SeiZleboda saeWvod miCneuliyo, xolo momCivnis uaryofitiT varaudi miukerZoeblobis Taobaze - obieqturad dasabuTebulad. amgvarad, dairva konvenciis me-6 muxlis pirveli punqti.

(ix. gadawyvetilebis 52-53-e punqtebi da operatiuli debulebis meore nawili)

A. 50-e muxlis gamoyeneba

7. sasamarTlom ar daakmayofila b-ni hausSildtis mier kompensaciis moTxovna. rac Seexeba materialur zians, romelzec miuTiTebda momCivani, ar arsebobda mizezobrivi kavSiri moTxovnilsa da me-6 muxlis pirveli punqtis darRvevas Soris. rac Seexeba aramaterialuri xasiaTis zians, romelzec momCivani miuTiTebda, darRvevis aRiareba ukve Tavad iyo adekvaturi samarTliani anazRaureba.

(ix. gadawyvetilebis 55-58-e punqtebi da operatiuli debulebis meoTxe nawili)

8. sasamarTlom aseve ar daakmayofila momCivnis moTxovna strasburgis gareT gaweuli xarjebisa da danaxarjebis anazRaurebis Sesaxeb. konvenciiT gaTvaliswinebul dawesebulebebSi warmoebisTvis sasamarTlom mas miakuTvna 20 aTasi girvanqa sterlingi, moTxovnili 26 463-is nacvlad.

(ix. gadawyvetilebis 59-63-e punqtebi da operatiuli debulebis mesame da meoTxe nawilebi)

sasamarTlom gadawyvetileba gamoitana plenarul sxdomaze wesebis 50-e muxlis Sesabamisad, Semdegi SemadgenlobiT;

Tavmjdomare: b-ni risdali (norvegia). mosamarTleebi: b-ni J. kremona (malta), b-ni Torvilliamsoni (islandia), b-ni f. gulCuRlu (Turqeti), b-ni f. matSeri (avstria), b-ni l.-e.

petiti (safrangeTi), b-ni b. valSi (irlandia), ser vinsent evansi (britaneTi), b-ni r. makdonaldi (kanada), b-ni k. ruso (italia), b-ni r. bernhardti (germania), b-ni a. Spilmani (luqsemburgi), b-ni J. de meieri (belgia), b-ni n. valtikosi (saberZneTi), b-ni s.k. martensi (niderlandi), qni palmi (SvedeTi), ad hoc mosamarTle b-ni m. gomardi, aseve, batonebi m.a. aiseni (mdivani) da h. petzoldi (mdivnis moadgile).