

Torgeir Torgeirsoni i sl andi i s wi naaRmdeg

**Thorgeir Thorgeirson v. Iceland**

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faqt obr i vi mxare

I. saqmis konkretul i garemoebibi

a. arsebul i mdgomareoba

7. batoni Torgeir Torgeirsoni i sl andi i s moqal aqe gaxl avT. i gi mweral ia da cxovrobs reikiavikSi, i sl andiaSi.

8. 1979-dan 1983 wl amde i sl andiaSi adgill i hqonda mTel rig SemTxvevebs, rodesac pol i cias sisastikeSi adanaSaul ebdnen. aqedan aTi SemTxvevis Sesaxeb pol i ciasSi iqna gancxadebul i. bol o saCivari Seitana Jurnal istma - skafti j onsonma da Sedegad, sasamarTI oSi saqme aRizra pol i ciis sami TanamSroml is wi naaRmdeg, maTgan ori gamarTI ebul iqna, xol o erTi - dapati mrebul i. es saqme far Tod gaSuqda presaSi da seriozul i msj el oba gamoiwia sazogadoebasa da pol i cias Soris urTierTobis Taobaze. swored amis Sedegad, ganmcxadebel ma gamoaqveyna ori statia pol i ciis uxoSobis Temaze yovel dRiur gazeTSi "morgunbl adid", 1983 wl is 7 da 20 dekembars.

9. pirvel i statia Semdegi Sinaarsisa gaxl daT (Targmani):

Ria weril i iusticiis ministrs - ion hel gasons.

"..."

10. nawyvetebi meore stati idan:

"..."

11. aRniSnul i statiebis pasuxad iusticiis saministro ganmcxadebel s gaugzavna 1984 wl is 9 ianvriT daTariRebul i weril i, sadac saministro atyobi nebda, rom statiebSi wamoWril i probl emebi ganixil eboda sxvadasxva doneze da saki Txidayenebul i iyo parl amentis dRis wesrigSi, amrigad, iusticiis saministro aRniSnul sakiTxs uaxl oes momaval Si miubrundeboda am sferoSi Catarebul i kvl evisa da winadadebebis safuzvel ze.

**b. gamoZieba da cil i swamebis saqmeebi**

12. 1983 wl is 27 dekembbris weril iT reikiavikis pol i ciis asociaciam sTxova saxal xo bral mdebel s zemoT aRniSnul i damadanaSaul ebel i gancxadebebis gamoZieba. Sesabamisad, amasTanave, man saqme gaugzavna saxel mwifo sisxl is samarTI is sagamoZiebo pol i ciiaSi 1984 wl is 21 maiss, imis Sesamowmebl ad, Seicavda Tu ara publ ikaciebi cil i swamebas 1940 wl is sisxl is samarTI is kodeqsis 108-e muxl is ganmartebis Tanaxmad (kanoni # 19/1940 - "sisxl is

samarTI is kodeqsi"). 18 ivniss saxel mwiffo sisxl is samarTI is sagamoZiebo policiam daki Txa ganmcxadebel i, romel sac Tavisi advokati exmareboda.

13. amis Sedegad, 1985 wl is 13 agvistos saxal xo bral mdebel ma gamosca sabral debo aqt, sadac ganmcxadebel s bral i edeboda reikiavikis policiis daukonkretebel i wevrebis winaRmdeg cil i swamebaSi, sisxl is samarTI is kodeqsis sawi naaRmdegod.

14. pirvel i statiis Semdegi nawyvetebi miCneul iqna cil ismwamebl urad:

"uniformSi gamowyobil i mxcecebi" (par. 9(3);

"uniformSi gamowyobil i is mxcecebi" (par. 9(6);

"rogorc am axal gazrdas pal atis mezobl ebma mi Txres, misi travmebi restornis viSibl a-isa da ramdenime policiel is wyal obiT iyo gamoweul i. Tavdapi rvel ad venc ki davij ere, magram Semdeg saavadmyofos personal Tan gadavamowme da aRmoCnda, rom isini marTal s ambobdnen; Cven saqme reikiavikis Ramis razmis msxverpl Tan gvqonda" (par. 9(9);

"rogorc gairkva, adami anebi s umravl esobasac smenoda anal ogiuri ambebi maTze, visac msgavsi da uaresic gadaxdomodaT uniformSi gamowyobil i mxcecebi sagan. adami anebi axal Sobil i bavSvis gonebrivi Sesazi ebl obebis donemde qvei Tdebi an im mxecuri metodebis Sedegad, rom ebsac policiel ebi da "viSibl ebi" Tvi Tneburad iyeneben imis nacvl ad, rom adami anebs si frTxil iTa da keTil gonivrul ad moepyon. aseTi anal ogiuri Sinaarsis ambavi imdenia, rom SeuZl ebel ia maTi ignorireba mxol od im mizeziT, rom isini sinamdvil es ar Seesabameba" (par. 9(10);

"policiel i mxceebis msxverpl ni" (par. 9(11)

"neba miscen TavianT mxcecebsa da sadistebs sakuTari uzneobiS Sesabami sad imoqmedon" (par. 9(13)

15. miCneul i iyo, rom meore statiac Sei cavda cil ismwamebl ur gancxadebebs:

"maTi saqciel i imdenad tipuri iyo, rom nel nel a yal ibdeboda policiis sazogadoebrivi imij i: zewol a, siyal be, ukonono moqmedeba, mi kerZoeba, daufiqrebl oba da uunaroba" (par. 10(15)).

16. 1985 wl is 9 seqtembers ganmcxadebel s bral i wauyenes; meore dRes igi dai bares reikiavikis sisxl is samarTI is sasamarTI os pal atis sxdomaze, roml is erTaderTi wevri gaxl dat mosamarTI e petur gudgeirsoni. aRniSnul dRes gamarTul sasamarTI o sxdomaze ganmcxadebel i gamoxadda baton tomas gunarsonTan - uzenaes sasamarTI os iuristTan, erTad. saxal xo bral mdebel i sxdomas ar eswreboda. sxdoma Semdegnairad mimdinareobda:

a) 1974 wl is sisxl is samarTI is saprociso kodeqsis (kanoni #74/1974) 77-e muxl is meore paragrafis moTxovnis Sesabami sad, mosamarTI em ganumarta mopasuxes, rom igi dai ki Txeboda rogorc danaSaul Si eWvmi tanil i.

b) batoni tomas gunarsoni daini Sna ganmcxadebl is damcvel ad. saqmesTan dakavSi rebul i yvel a dokumenti gadaeca mas.

- c) mosamarTI em ganmcxadebel s hki Txa, misi daweril i iyo Tu ara gazeTis oristatia. ganmcxadebel ma dadebiTi pasuxi gasca, magram miuTiTa, rom bral debaSi citirebul i nawyvetebi Tumca zusti iyo, magram konteqstidan iyo amoRebul i.
- c) mosamarTI em ganmcxadebel s warudgina saxel mwifo sisxl is samarTI is sagamoZiebo policiisaTvis daki Txvaze micemul i Cvenebis 1984 wl is 18 ivnisis oqmi da ganmcxadebl is mier 19 ivniss matdami miweril i weril i. ganmcxadebel ma daadastura oqmis sizuste da aRni Snul i weril is avtoroba.
- d) rodesac mosamarTI em hki Txa ganmcxadebel s, SeeZl o Tu ara masdaesabuTebina Tavisi statiebis aRni Snul i nawyvetebi, ganmcxadebel ma upasuxa, rom bral debaSi moyvanil konteqstSi - razedac man ukve gaakeTa komentari - es mas arc SeeZl o da arc iyo val debul i; es gaxl daT ara misi literaturul i naSromi, aramed bral mdebl is produqtii.
- e) ganmcxadebel ma moiTxova dro, raTa gacnoboda saqmis dokumentacias da moemzadebina Tavisi komentarebi. ganmeorebiTi sxdoma dai ni Sna 1984 wl is 24 seqtembers.

17. aRni Snul dRes ganmcxadebel i da misi advokati gamocxaddnen sasamarTI os wi naSe, romel sac prokurori kvl av ar eswreboda. advokatma wamoayena Suamdgoml oba mosamarTI is asacil ebl ad im motiviT, rom mosamarTI is funqciis garda igi i Tavsebda prokuroris funqciiasac, vinai dan prokurori ar eswreboda arc aRni Snul da arc wi na sxdomas.

18. 1985 wl is 25 seqtembers mosamarTI em miRo Semdegi gadawyvetil eba: "sisxl is samarTI is saproceso kodeqsis 130-e muxl is mixedviT aRni Snul i SemTxveva ar aris dapi rispirebul i proceduris safuzvel i... ganmcxadebl is Suamdgoml oba mosamarTI is acil ebis Taobaze ar emyareba raime Rirebul arguments da amitomac usafuzvl oa. mosamarTI es ara aqvs ufl eba an val debul eba aicil os saqme".

19. 1985 wl is 26 seqtembers, sisxl is samarTI is saproceso kodeqsis 171-e muxl is Sesabami sad, bral debam uari uTxra ganmcxadebel s Txovnaze, miRo aRni Snul i gadawyvetil ebis uzenaes sasamarTI oSi gamartivebul i wesiT gasaCivreibis ufl eba. Semdeg man sTxova iusticiis saministros sagangebo prokuroris dani Svna imis gadasawyvetad, unda yofil iyo Tu ara miniWebul i aRni Snul i ufl eba, magram am moTxovnaze uari miRo 18 oqtombers.

20. 1985 wl is 9 oqtombridan 1986 wl is 28 april amde sisxl is samarTI is sasamarTI oSi Sedga kidev 6 sxdoma, roml ebsac eswreboda ganmcxadebel i da misi advokati. Cabarebul iqna dokumentebi, gakeTebul iqna zepiri gancxadebebi da daki Txul iqnen mowmeebi. yvel a sxdomas eswreboda saxal xo bral mdebel i 1986 wl is 17 Tebervl is sxdomis garda, rodesac sasamarTI os uCenes satel evizio gadacemis videofiri.

21. 1985 wl is 25 oqtombris sxdomaze mosamarTI e petur gundersonma ganmcxadebel s aCvena fotosuraTebi da hki Txa, iyo Tu ara matze aRbeWdl i is axal gazarra, romel sac ganmcxadebel i saavadmyofoSi Sexvda da visac igi Tavis pirvel statiaSi aRwerda (ix. par. 9(8)). ganmcxadebel ma upasuxa:

"garkveul i gamocdil ebis mqone zrdasrul i adamiani saTvis ucnaurad JRers, rodesac meore gamocdil i zrdasrul i adamiani amgvart Seki Txvas svams. yovel dRe asi dan orasamde adamians vxedav da vakvirdebi. es Svi di wl is gamavl obaSi i sl andi is mTel i mosaxl eobis tol fasi iqneboda. Sesabami sad, adamiani, romel sac ormocdaaTj er mainc ar vnavaxav, ar mamaxsovredeba, Tu amisaTvis raime

gansakuTrebui i mi zezebi ar arsebobs. Sesabami sad, absurdia da adami anis gonebis bunebis gauTval i swinebl obaa hki Txo kacs, amoicnobs Tu ara pirs, romel ic mas Svidi wl is win SeiZI eba nanaxi hyavdes. mi uxedavad amisa, SemiZI ia gi pasuxoT, rom ara, es ar aris is axal gazrda, romel sac me vgul isxmobdi Cems statiaSi - "modiT, erTad gadawyyi toT!"..

22. 1986 wl is 28 april is sxdomaze mxareebi SeTanxmdnen, rom sasamarTI os mier Semdgomi gamoZieba saWiro ar iyo. Sesabami sad, advokats mieca vada 1986 wl is 3 ivni samde, raTa waredgina gammcxadebl is weril obiT Sepasuxeba; prokurorma ganacxada, rom SemdgomSi igi ar gaagrZel ebda faqtebis Seswavl as.

23. Tavis SepasuxebaSi, romel ic 1986 wl is 3 ivni ss warudgina sasamarTI os, gammcxadebel i daubrunda Tavis saCivars (ix. par 17-19) imis Taobaze, rom saqme unda daxurul iyo, an mopasuxe unda yofil iyo gamarTI ebul i imis safuZvel ze, rom bral mdebel i ar eswreboda rig sasamarTI o sxdomes.

rac Seexeba TviTon saqmis arsebi T mxares, man, *Inter alia*, Semdegi ganacxada:

"ra Tqma unda, yvel aze ufro xSirad pol iciel ebi sagan sazogadoeba zaral deba.. amgvar usiamovno gancdebs advil ad ver i viwebs kaci da, rogorc wesi, erTi adami ani meores uziarebs gamocdl ebas. am procesSi xSirad ambis gazviadebas aqvs adgil i. rodesac SemTxveebis raodenoba izrdeba, sazogadoebrivi azri yal ibdeba, romel ic, bunebrivia, ki dev ufro radikal uria xol me, vidre TviT probl ema. Cemi statiaSi - "modiT, erTad gadawyyi toT!" - safuZvl ad, umTavresad, swored sazogadoebrivi azri gamovi yene. sazogadoebrivi azri, bunebrivia, TavisTavad faqts warmoadgens da misi gamomwvevi mi zezi, rogorc wesi, nakl ebad aris mni Svnel ovani da sakamaTodac nakl ebad naTel ia.. Tuki sazogadoebrivi azri uaryofiTia, pol iciel ebi sadmi rwmena qreba, maT Soris im pol iciel ebi sadmic ki, romel Tac buzisTvisac ki ar uwyeninebi aT. 1983 wl is Semdgomaze am rwmenis dakargvam iseTi masStabi miiRo, rom sazogadoebriv keTil dReobas seriozul i safrTxe daemuqra. ase rom, rodesac skafti ionsonis saqme amotivtivda, naTI ad SevigrZeni es safrTxe. 1983 wl is 7 dekembers "morgunbl adidSi" dabeWdil i Cemi statia swored am saSiS situaciaze reaqcia gaxl daT. statiaSi daweriT CavTval e, rom Sevasrul e Cemi, rogorc patiosani mwerl is, moval eoba, romel ic eris ganwyobas swavl obs da Tavis daskvnebs pirdapir da daufaravad asaxavs. es aSkaraa nebis mieri adami anisaTvis, visac sur s mTI i anobaSi statiaSi aRqma da romel ic cdl obs, real urad Cawdes mis arss.

magram statiaSi ZiriTadi misi I ogikuri Sedegi imasi mdgomareobda, rom ministri saTvis eTxova gamoZiebis ganxorciel eba imis Sesamowmebl ad, Tu ramdenad swori iyo sazogadoebrivi azri. statiaSi misi zanad i saxavda kanonieri, mni Svnel ovani saki Txis wamowras.

Tumca Cemi ganzraxva iyo, rom absol uturad kanonierebis fargl ebSi damewera aRniSnul i statia, ar davmal av im faqtsac, rom Sevecade imgvarad Semedgi na teqsti, rom masSi naxsenebi mxareebi sgan pasuxi mimeRo. saki Txi imasi mdgomareobda, Tu ramdenad Seesabameboda sinamdvil es uaryofiT sazogadoebrivi azri. Tuki yovel iye es ar iyo swori, maSin policiis xel mZRvanel obis (roml ebic, SesazI oa, erTaderTi adami anebi arian, vinc simarTI e icis aRniSnul i saki Txebis irgvli iv) mxridan mosal odnel i reagireba iqneboda auRel vebel i, mSvidi da damaj erebel i, rogorc es pativsacem da patiosan adami anebi SehferiT. policiis asociaciis sabwo da policiis ufrosi ubral od rekondacias miscednen ministrs, rom mas SeZI ebi sdagvarad mal e daewyo mi ukerzoebel i

gamoZi eba aRni Snul saki Txze. amgvari reaqcia sazogadoebazec damamSvi debi ad imqmedebda, radgan igi keTiL sindisi eri mowmis rol Si gamovi doda".

24. 1986 wl is ivniSSi, sxdomaze, romel sac ganmcxadebel i eswreboda, mosamarTI e petur gudgeirsonis mier gamotanil i iqna gadawyvetil eba, romel Sic man ar daakmayofil a garkveul sasamarTI o sxdombeze prokuroris dauswrebl obis safuZvel ze Semotanil i sarcel i. rac Sexeba saqmis arsebiT mxares, man, *Inter alia*, ganacxada Semdegi:

"warmodgeniL i faqtebis Tanaxmad, mopasuxe gadioda mkurnal obas reikiavikis saqal aqo saavadmyofoSi 1978 wl is 19 ivnisi dan 11 ivl isamde. amave dros iq imyofeboda pacienti saxel ad trausti el idasoni, romel ic mTI i anad paral izebul i iyo Tavisi nacnobis mxridan fizikuri Zal adobis Sedegad. mopasuxes uCvenes trausti el idasonis fotosuraTebi, roml ebic saqal aqo saavadmyofoSi iyo gadaRebul i Zal adobis meore dRes. mopasuxem ganacxada, rom es ar iyo is adamiani, romel zec igi werda "morgunbl adidSi" dabeWdil statiaSi".

mtkicebul ebis saxiT Semotanil iqna 1983 wl is 13 dekembers gadacemul i satel evizio programis - "gansxvavebul i Tval sazrisebi", videofiri, sadac msj el obdnen saki Txebze, roml ebic exeboda samarTal damcavi organoebis qmedebebs da sazogadoebasa da policias Soris urTierTobebs, agreTve, "skaftis" saqmes. gadacemis bol os einer biarnsonma, policiis serJantma da reikiavikis policiis asociacis Tavnj domarem, aRni Sna, rom mopasuxis statia usafuzvl o iyo, vinai dan maT xel T hqondaT im axal gazrda gancxadeba, viszedac mopasuxe "morgunbl adidSi" werda. serJantma wai ki Txa aRni Snul i gancxadeba masSi, *Inter alia*, weria: "is, rasac Torgeir Torgeirsoni wers Tavis statiaSi, Tavidan bol onde tyuil ia". Seiswavl es ra aRni Snul i saki Txi, batoni biarnasoni da policiis konstebli biarki el iasoni mi vi dnen im daskvnande, rom gancxadeba swored im adamiani mier iyo gakeTebul i, romel zedac mopasuxe werda.

mopasuxis advokatis moTxovniT, Cvenebis misacemad gamoZaxebul iqna batoni ei ner biarnasoni. misi TqmiT, gacxadeba gakeTebul i iyo axal gazrda inval idis kacis mier, romel ic trausti el idasonad iwodeboda... rom mas hqonda informacia, Tu rodis imyofeboden saavadmyofoSi mopasuxe da t. e., aSkara iyo, rom mopasuxe Tavis statiaSi t.e.-ze werda. swored amgvarad moi poves maT aRni Snul i gancxadeba. metiC, mowmem ganacxada, rom ramdenadac misTvis iyo cnobil i, reikiavikis arc erT policiel s arasodes miuyenebia vimesTvis fizikuri ziani Tavisi moval eobis Sesrul ebis dros, rogorc amas aRwerda mopasuxe 1983 wl is 7 dekembers gamoqveynebul statiaSi.

weriL obiT warmodgeniL SepasuxebaSi aRni Snul ia, rom ori statiis gamoqveynebiT mopasuxe asrul ebda mwerl is moval eobas sazogadoebis winaSe, amaxviL ebda ra yuradRebas adamianebsaTvis policiis mier mi yenebul fizikur zianze, saaSkaraoze gamohqonda aRni Snul i saki Txi da moi Txovda oficial ur moqmedebas msgavsi faqtebis Tavidan asacil ebl ad. TavisTavad es ar mi iqcevda did yuradRebas, sainformacio saSual ebebSi rom ar yofil iyo gamoqveynebul i, da TviT es SemTxevac SesaZI oa SeumCnevel i darCenil iyo. mZafri si tyvebi da stil isturi xerxebic, rac ase kargad exerxebat mwerl ebs, sagangebod iyo gamoyenebul i. mopasuxe ukve mral i wel ia, Tavs mwerl obiT irCens, misi Sroma aRiarebul ia xel isufl ebis mier, romel ic mas xel fass uxdis. misi Sroma dacul ia konstituciis 72-e muxl iT, romel ic krZal avs cenzurasa da presis Tavisufl ebis sxva SezRudvebs. TumcaRa aRni Snul i konstituciis debul eba amiT

ar amoiwureba da igi iTval i swinebs pirze pasuxi smgebl obis dakisrebas dabeWdil i gancxadebebi saTvis, Tumca es norma arasodes gamxdara i sl andi is samarTI is gansj is sagani. arsebobs kanoniT gaTval i swinebul i rigi debul ebebi, romel Ta Tanaxmadac azrisa da gancxadebebis saj arod gamoxatva, mag., rogoricaa beWdva, warmoadgens danaSaul s da kanoniT i sj eba. sisxl is samarTI is kodeqsis 108-e muxl is garda, aq SeiZI eba mivutiToT imave kodeqsis 88, 95, 121, 125, 210, 229 da 233 (a) - 237 muxl ebze. vera da ver mi viCnevT, rom mopasuxes SeiZI ia isargebl os raime sxva privil egiebiT an gamoxatvis meti Tavisufl ebiT, vidre sxvebs, mxol od im faqtis gamo, rom igi mweral i gaxl avT. mopasuxis statiebi "morgunbl adidSi" iqna dabeWdil i, man Tavi maT avtorad scno. 1956 wl is publ ikaciebis ufl ebis aqtis me-15 muxl is Tanaxmad, mas Sesabami sad ekisreba rogorc sisxl is samarTI is pasuxi smgebl oba, ise pasuxi smgebl oba misi statiiT mi yenebul i zianisaTvis.

aRniSnul i iyo, rom is gancxadebebi, romel ic sabral debo aqtSi waynebul i bral is safuZvel s qmnian, ar iyo mimarTul i reikiavikis pol iciis konkretul i TanamSroml ebis winaaRmddeg.

mi uxedavad imisa, rom sisxl is samarTI is kodeqsis 108-e muxl i iTval i swinebs konkretul i saxel mwifo moxel eebisTvis Seuracxyofis mi yenebis SemTxvevebs, i give debul eba iTval i swinebs saxel mwifo moxel eebis gansazRvrul i j gufisaTvis Seuracxyofis mi yenebis SemTxvevebsac (ix. uzenaes sasamarTI os ganCineba, tomi LIV, gv. 57). si tyvebi - "uniformaSi gamowyobil i mxcecebi", "uniformaSi gamowyobil i is mxcecebi", im konteqstSi, rogorc isini gamoqveynda, reikiavikis pol iciis daukonkretebel i wevrebis winaaRmddeg mimarTul i I anZRvisa da maTi Seuracxyofis tol fasia. aRniSnul i gancxadebebi i sj eba kanoniT sisxl is samarTI is kodeqsis 108-e muxl is Tanaxmad. sabral debo aqtSi aRniSnul i gancxadebebi mi Cneul ia cil ismwamebl ur bral debebad. sisxl is samarTI is saproceso kodeqsis 118-e muxl is gaTval i swinebit, mopasuxes SeiZI eba daekisros pasuxi smgebl oba maTi gamoqveynebi saTvis; misi qmedebebi sworad iqna aRweril i da igi ar iyo tendenciuri.

si tyvebi - "am axal gazrdas pal atis mezobl ebi" ... "reikiavikis Ramis razmi, "Semdeg aRmovaCine ufro meti tyuil i", "pol i ciel i mxcecebis msxverpl i", TavisTavadac da gazeTis statiis konteqstSiC, mi Cneul ia bral debad reikiavikis pol iciis daukonkretebel i wevrebis winaaRmddeg, rom maT Zal a ixmares da fizikurad gauswordnen adami anebs, roml ebiC amis Sedegad dai nval i ddnen. es gaTval i swinebul ia sisxl is samarTI is kodeqsis 218-e muxl iT, roml is darRvevasac SeiZI eba maval i wl iT Tavisufl ebi aRkveTa mohyves. mopasuxis bral debebi ar iqna dasabuTebul i da maTi gamoqveynebis gamo mas SeiZI eba daekisros sasj el i sisxl is samarTI is kodeqsis 108-e muxl is Tanaxmad. frazebi - "uniformaSi gamowyobil i mxcecebi" da "pol i ciel i mxcecebi", agreTve unda Cai Tval os reikiavikis pol iciis daukonkretebel i wevrebis winaaRmddeg mimarTul Seuracxyofad da I anZRvad. bral debaSi aRniSnul i gancxadebebi moxsenebul ia rogorc cil ismwamebl uri, magram, mi uxedavad amisa, mopasuxes SeiZI eba daekisros pasuxi smgebl oba sisxl is samarTI is kodeqsis 108-e muxl is Tanaxmad.

si tyvebi - "nebas aZl evs mxcecebsa da sadistebs, imoqmedon sakuTari uzneobis Sesabami sad", aRniSnul i statiis konteqstSi, mi Cneul ia daukonkretebel i wevrebis winaaRmddeg mimarTul Seuracxyofad da I anZRvad. bral debaSi aRniSnul i gancxadebebi moxsenebul ia rogorc cil ismwamebl uri, magram, mi uxedavad amisa, mopasuxes SeiZI eba daekisros pasuxi smgebl oba sisxl is samarTI is kodeqsis 108-e muxl is Tanaxmad.

nawyveti - "maTi saqciel i imdenad tipiuri iyo, rom nel -nel a yal ibdeboda, rogorc pol iciis sazogadoebrivi imij i", si tyvebi - "zewol a, siyal be, ukanono moqmedeba, miker Zoeba, daufiqrebl oba da uunaroba", reiki avikis pol iciis wevrebs gayal bebas da sisxl is sasamTI is sxva danaSaul Si debs bral s. es gaTval i swinebul ia sisxl is sasamTI is kodeqsis me-14 da me-17 muxl ebSi, romel Ta darRvevasac SeiZI eba maval i wl iT Tavisufl ebis aRkveTa mohyes. aRni Snul i gancxadebebis gakeTebiT mopasuxes pasuxi smgebl oba ekisreba 108-e muxl is Tanaxmad. meores mxriv, miCneul ia, rom si tyvebi - "miker Zoeba, daufiqrebl oba da uunaroba", eqceva dasaSvebi kritikis fargl ebSi da, Sesabami sad, mopasuxe maTze pasuxs ar agebs..."

25. ganmcxadebel s daekisra 10 000 isl andiuri kronis gadaxda saxel mwi fo xazinaSi an, gadawyvetil ebis Setyobi nebi dan 4 kviris ganmavl obaSi aRni Snul i Tanxis gadauxdel obis SemTxvevaSi, miesaj a 8 dRiT Tavisufl ebis aRkveTa. mas agreTve daekisra saqmesTan dakavSirebul i yvel a xarj is dafarva, sakuTari advokatis honoraris CaTvl iT.

26. rogorc ganmcxadebel ma, aseve Tavis mxriv prokurorma, saapel acio saCivari Seitanes isl andiis uzenaes sasamTI oSi, romel mac saqme ganixil a 1987 wl is 22 seqtembers. ganmcxadebl is advokati iTxovda, gauqmebul iyo ara mar to sisxl is sasamTI is sasamTI os gadawyvetil eba, aramed mTel i sasamTI o procesi, bral debis saki TxiT dawyebul i, da saqme dabrunebul iyo sisxl is sasamTI is sasamTI oSi xel axl a gansaxil vel ad. al ternatiul variantad igi iTxovda Tavisi kl ientis gaTavisufl ebas yvel a bral debisagan. prokurori ki moi Txovda sasj el is damZimebas.

27. 1987 wl is 20 oqtombers gamotanil gadawyvetil ebaSi sasamTI o, *Inter alia*, askvnis: sasamTI o ganxil vebis gauqmebis Taobaze moTxovna efuzneba i mave argumentebs, roml ebic wardgenil i qna sisxl is sasamTI is sasamTI osaTvis 1985 wl is 24 seqtembers, rodesac mopasuxis advokatma Semdegi gancxadeba gaakeTa: "am saqmis wina sxdombebs ar eswreboda prokuraturis warmodgenel i... sisxl is sasamTI is saproceso kodeqsis 20 (1) da 36 (1) (1) muxl ebis Tanaxmad, erTi da i mave adami anis mier mosamarTI isa da prokuroris funciebis SeTavsebas erT saqmeSi mopasuxe ukanonod miCnevs. imis gaTval i swinebiT, rom mosamarTI e ar iCens iniciativas mdgomareobis gamosasworebl ad, saWi roa misi Secvl a..." sisxl is sasamTI is sasamTI os mosamarTI em ugul ebel yo aRni Snul i moTxovna da saxal xo prokurormac uari ganacxada gamartivebul i wesit uzenaes sasamTI oSi gasaCivrebis sanpcionirebaze. araviTari sabuTi ar yofil a warmodgenil i daupiri spirebul i (uprokuroro) saqmis msyl el obis procesSi, rogorc es aris kl asificirebul i zemoT aRni Snul i kodeqsis 130-e muxl is Sesabami sad, rac gaamarTI ebda mosamarTI is diskval ifikacias an gamamtyunebel i ganaCenis gauqmebas. Zal aSi rCeba sisxl is sasamTI is sasamTI os mier gamotanil i ganCineba mopasuxis damnaSaved cnobis Taobaze, misTvis miyenebul i sisxl is sasamTI is muxl ebi da, agreTve dakisrebul i sasj el i... agreTve, ucvl el i rCeba sisxl is sasamTI is sasamTI os gadawyvetil eba saqmesTan dakavSirebul i xarj ebi s dafarvis Taobaze".

28. sasamTI os erT erTi wevris mier gamoTqmul i gansxvavebul i mosazreba Semdegnairi Sinaarsis aris: "sisxl is sasamTI is saqmeSi, romel ic cil i smwamebl ur gancxadebebs exeba, aucil ebel ia im pirTa naTI ad gansazRvra, visac ziani miadga aRni Snul i gancxadebebiT. es saWi roa rogorc dacvisTvis, i se

imisaTvis, rom gadaiWras sazogadoebrivi mRel varebis gamo msj el obis SezRudvis aucil ebl obis rTul i saki Txi ...

bral debaSi aRniSnul ia, rom saqme aRZrul ia "policiel ebis winaaRmdeg cil ismwamebl uri bral debebis safuZvel ze" ... da rom aRniSnul i bral debebi mimarTul ia 'rei kavi kis policiis daukonkretebel i wvrebis winaaRmdeg'. Sesabami sad, ise unda gavigoT, rom sabral debo aqti exeba sazogadod reikiavi kis policiis winaaRmdeg Cadenil danaSaul s. veTanxmebi ra im mosazrebas, rom sabral debo aqtSi citirebul i si tyvebi sakmaod mZafria da ramdenadme dausabuTebel i, imis safuZvel ze, Tu rogor aris warmodgenil i saqme sabral debo aqtSi, vTI i, rom aq adgil i ar aqvs 108-e muxl is pirobebis darRveas..., romel ic unda ganimartos isl andiis konstituciuri kanonis ZiriTadi principis mixedviT, rac exeba si tyviTa da werii obiT gamoxatvis Tavisufl ebas. Cemi azriT, zemoaRniSnul i dan gamomdinare, mopasuxe unda gamarTI des da sisxl is samarTI is sasamarTI osa da uzenaes sasamarTI os procesebTan dakavSi rebul i xarj ebi unda dafaros saxel mwifo xazinam; aq unda Sediodes mopasuxis mier uzenaes sasamarTI osaTvis daniSnul i advokatis honorariC."

## II. Sesabami si adgil obrivi kanoni

### a) **gamoxatvis Tavisufl eba da saxel mwifo moxel eebis cil iswameba.**

29. isi andiis respublikiis 1944 wl is 17 ivnisis konstituciis 72-e muxl i ase i ki Txeba: "yovel adamians aqvs Tavisi azris beWdviT gamoxatvis ufl eba. miuxedavad amisa, mas SeiZI eba amisaTvis daekisros pasuxismgebl ova sasamarTI os mier. cenzurisa da presis Tavisufl ebiis sxva SezRudvebis daweseba nebis mieri formiT dauSvebel ia."

am debul ebiT gaTval i swinebul pasuxismgebl obas SemdgomSi ufro far Tod ganmartavs kanoni.

30. publ ikaciebis ufl ebiis Sesaxeb 1956 wl is aqtiis (kanoni # 57/1956) me-15 muxl is Sesabami sad, avtors SeiZI eba daekisros rogorc sisxl is, ise samoqal aqo samarTI is pasuxismgebl ova misi saxel iT dabeWdil i publ ikaciebi saTvis im SemTxvevaSi, Tu igi binadrobda isl andiaSi publ ikaciebis gamoqveynebis dros, an Tu igi imyofeboda isl andiis sasamarTI os iurisdiqci aSi, rodesac mis winaaRmdeg aRizra saqme. Tu publ ikaciebi ar iyo gamoqveynebul i misi saxel iT, maSin aRniSnul i pasuxismgebl ova SeiZI eba daekisros gamomcemel s, redactors, gamiydvel s, gamavrcel ebel s an mbewdavs.

31. cil ismwamebl uri publ ikacia warmoadgens sisxl is samarTI is danaSaul s sisxl is samarTI is kodeqsis Tanaxmad. muxl i 108, konkretul ad, exeba cil iswamebas saxel mwifo moxel eebis mimarT: "nebis mieri piri, romel ic gal anZRavs an sxvagvarad miayenebs Seuracxyofas saxel mwifo moxel es si tyvierad an sxva saxis moqmedebiT, an wamoayenebs cil ismwamebl ur bral debebs mis winaaRmdeg an masTan dakavSi rebiT, rodesac igi asrul ebs Tavis moval eobas, an misi moval eobis Sesrul ebasTan dakavSi rebiT, unda daj arimdes, dakavebul an dapati mrebul iqnes sami wl is vadit. Tavxedurad gamoTqmul i si tyvieri bral deba, misi damtkicebis SemTxvevaSi c ki, SeiZI eba gaxdes daj arimebis safuZvel i".

32. ganmcxadebl is SemTxveva orive, sisxl is samarTI is a da uzenaes sasamarTI os umravl esobis, mier 108-e muxl is interpretaciiT, Seicavs Seuracxmyofel

gamonaTqvamebs ara mxol od konkretul i saxel mwifo moxel eebis mimarT, aramed saxel mwifo moxel eebis daukonkretebel i j gefis mimarT. precedentebi, roml ebsac es saqme eyrdnoba, SegiZl iaT moiZioT uzenaesi sasamarTI os or ganCinebaSi: saxal xo prokurori ionas kristianonis winaRmdeg, 1983 wl is 19 ianvari da saxal xo prokurori agnar bogasonis winaRmdeg, 1952 wl is 31 oqtomberi.

#### b) sisxl is samarTI is procesi

33. sisxl is samarTI is saproceso kodeqsis me-20 muxl i sasamarTI o devnis ufl ebas aniWebs saxal xo bral mdebel s, romel sac exmarebian saxal xo bral mdebl is TanaSemwe, sxva prokurorebi da prokuroris moadgil eebi. i gi adgens, rogor unda warimartos sisxl is samarTI is saqmis gamoZieba da zedamxedvel obas uwevs mas.

34. 155-e muxl is mixedviT, saxal xo bral mdebel s SeuZl ia sisxl is samarTI is procesis wamowyeba eWvimi tanil ze bral debis aqtis gacemiT. masSi naTI ad unda iyos gansazRvrul i, *Inter alia*, sasamarTI o, romel Sic Setanil i iqneba saqme, dasaxel ebul i danaSaul i da potenciuri sasj el i. SemdgomSi sabral debo ahti, Tvi Ton saqmesTan erTad, Sesabamis sasamarTI os gadaecema. mosamarTI e, romel sac daewereba saqme, aRni Svnas gaakeTebs bral debaze, romel ic SemdgomSi waeyeneba mopasuxes, maSin, rodesac saqme oficial urad gaxsnil ad CaiTvl eba.

35. 121-e muxl is Tanaxmad, saqme oficial urad ixsneba sasamarTI o sxdomaze, rodesac sisxl is samarTI is sasamarTI os mier mopasuxisaTvis misawvdomi xdeba bral debis ahti da sxva dokumentacia. im SemTxvevaSi, Tu mopasuxe am etapze mTI ianad aRiarebs danaSaul s, sasamarTI o gadawyvetil ebas am saqmeze ique da maSin ve mi Rebs. winaRmdeg SemTxvevaSi, mopasuxes unda mieces saSual eba, warmoadginos mtkicebul ebebi da moamzados dacva, si tyvierad Tu weril obiT, advokatis daxmarебiT, Tuki es ukansknel i mas daeni Sneba.

36. saxal xo bral mdebl is prerogativas warmoadgens imis gadawyeta, iZl eva Tu ara saqme dapi rispirebul i proceduris safuzvel s 131-e da 136-e muxl ebis ganmartebebis Tanaxmad. aseT SemTxvevebSi, bral mdebel i cxaddeba sisxl is samarTI is sasamarTI os mosamarTI is winaSe. 130-e muxl is Tanaxmad, aRni Snul i procedura unda dacul iques im SemTxvevaSi, Tu:

(a). danaSaul i isj eba 8 wel ze meti vadiT Tavisufl ebris aRkveTiT;

(b). danaSaul i isj eba 5 wel ze meti vadiT Tavisufl ebris aRkveTiT da masTan dakavSi rebul i kanoni da faqtebi moiTxovs aRni Snul proceduras; an

(c). saqme dakavSi rebul ia gansakuTrebul i mni Svnel obis mqone saki TxebTan, an saqmis Sedegebi rai me saxiT udi des sazogadoebri v mni Svnel obas warmoadgens.

im SemTxvevaSi, Tu dapi rispirebul i procedura ar aris dacul i, saqmis warmarTva regul irdeba 123-e da 129-e muxl ebiT. mopasuxe saqmes warudgens mosamarTI es bral mdebl is dauswrebl ad, Tu saxal xo bral mdebel i sxvagvarad ar gadawyets.

37. rodesac bral mdebel i ar cxaddeba sasamarTI os winaSe, mosamarTI em, Tavis TanaMdebobidan gamodinare, damouki debi ad unda gamoiZios saqmis yvel a faqti da saki Txi, Tundac prokurors ukve gamoZiebul i hqondes es da momzadebul ic hqondes maT Sesaxeb angariSebi. garda amisa, mosamarTI em unda gaiTval i swinos

ewmi tani l is danaSaul Tan an udanaSaul obasTan dakavSi rebul i yvel a faqtori, i seve, rogorc Semamsubuqebel i da damamZmebel i garemoebibi. mas Semdeg, rac dasrul deba gamoZieba da mopasuxe an misi advokati warmoadgenen mtkicebul ebas da weril obiT Seni Svnebs, mosamarTI e mTel i mtkicebul ebis safuzvel ze gani xil avs saqmes.

38. sisxl is samarTI is sasamarTI os mier gamotanil i gamamtyunebel i ganaCenis gasaCivreba xdeba uzenaes sasamarTI oSi. saxal xo bral mdebel i unda gamocxaddes saapel acio ganxil vaze im SemTxvevaSic ki, Tu igi ar eswreboda sisxl is samarTI is sasamarTI os sxdomas.

39. uzenaes sasamarTI o ufl ebamosil ia gani xil os rogorc samarTI ebrivi, aseve faqtobrivi saki Txebi (ganaxorciel os saqmis rogorc procedurul i, i se arsebi Ti ganxil va). 185-e muxl is Tanaxmad, mas SeuZl ia gaaqmos mTel i sasamarTI o warmoebis procesi an, zogiert SemTxvevaSi, sisxl is samarTI is sasamarTI os gadawyvetil eba, Tu igi CaTvl is, rom saqmis pirvel instanciaze garCevi sas seriozui i Secdomebia daSvebul i. aseT SemTxvevaSi saqme SeiZl eba dabrunebul iqnes, mTI i anad an nawil obriv, uro dabal sasamarTI o instanciaze xel axal i garCevi satis.

40. 171-e muxl is mixedviT, mopasuxes SeuZl ia, saxal xo bral mdebl is nebarTviT, Seitanos gamartivebul i saapel acio saCivari uzenaes sasamarTI oSi sisxl is samarTI is sasamarTI os mosamarTI is mier mosamarTI is acil ebaze uaris Tqmis SemTxvevaSi. aseTi nebarTvis ararsebobiS SemTxvevaSi mopasuxes SeuZl ia Cveul ebrivi wesit mimarTos uzenaes sasamarTI os, raTa gauqmdes sisxl is samarTI is sasamarTI os procedura imis safuzvel ze, rom mosamarTI es unda mieRo acil eba.

41. samoqal aqo samarTI is saproceso kodeqsis 36-e muxl i (kanoni # 85/1936) sisxl is samarTI is saproceso kodeqsis me-15 muxl is Sesabamisad, agreTve gamoiyeneba sisxl is samarTI is saqmeebze da iTval i swinebs, rom mosamarTI e unda acil ebul iqnes Semdegi garemoebabis dros.

- a) Tu igi aris sasamarTI oze warmodgenil i mxare, mxaris warmomadgenel i an urTierToba aqvs mxaresTan;
- b) Tu mas Cveneba aqvs micemul i saqmis fagtebTan dakavSi rebiT an Semfasebl is, eqspertis funqci as asrul ebda aRni Snul saqmesTan dakavSi rebiT;
- c) Tu mas umsj d ia arsebul saqmeze an rCeva mi ucia mxarisatvis;
- d) Tu is dapiri spirebul ia mxaresTan;
- e) Tu saqme finansurad an moral urad exeba mas an mis naTesavebs;
- f) Tu arsebobs sxva saxis saSiSroeba, rom igi ver SeZl ebs saqmis ganxil vas samarTI i anad.

im SemTxvevaSi, Tu mosamarTI e diskval ificirebul i iqneba romel im zemoT aRni Snul i sababiT, iusticiis ministrma unda dani Snos sxva mosamarTI e saqmis mosasmenad.

### **c) sisxl is samarTI is saproceso kodeqsis gadasinj va**

42. sisxl is samarTI is ganaxl ebul i kodeqsis amoqmedeba mosal odnel ia 1992 wl is 1 ivl isidan. kanonproiectis 123-e muxl is Tanaxmad, Tu prokurori ar gamocxaddeba sasamarTI o sxdomaze, saqme unda Sewydes.

samarTI ebr i vi mxare

## I. gancxadeba me-6 muxl is 1-el i paragrafis (muxl i 6-1) darRvevis Taobaze

46. bnma torgenir torgenirsonma ganacxada, rom misi saqme ar iyo ganxil ul i "miukerZoebel i tribunal is mier", rogorc es gansazRvrul ia konvenciis me-6 muxl is 1-el i paragrafiT (muxl i 6-1), romel ic iTval i swinebs, rom "nebis mier adami ans, mis winaaRmdeg aRZrul i sisxl is samarTI is saqmis ganxil visas aqvs miukerZoebel i tribunal is mier samarTI iani ganxil vis ufl eba".

ganmcxadebel i Cioda, rom isl andiis arsebul i kanonmdebl obis Sesabamisad (ix. par. 36), saxal xo bral mdebl is daswrebis gareSe SeiZI eboda ganxil ul iyo SedarebiT nakl ebnni Svnsl ovani saqmeebi, roml ebic ar warmoadgenda dapiri spirerebul i proceduris safuzvel s. ganmcxadebel is TqmiT, es imas ni Snavs, rom raionul i sasamarTI os mosamarTI eebi aseT SemTxvevaSi ufl ebamosil i iyvnen SeeTavsebinat prokuroris funciebi. aRni Snul i viTareba gakritikebul i iyo mTel i rigi raionul i sasamarTI os mosamarTI eebis mier. metic, igi is-is iyo unda Secvl il iyo: sisxl is samarTI is saproceso kodeqsis ganaxl ebis Sesaxeb kanonproeqtis 123-e muxl is Tanaxmad, romel ic 1992 wl is 1 ivl iss unda amoqmedebul iyo, saqme unda Sewyvetil iyo im SemTxvevaSi, Tu bral mdebel i ar gamocxaddeboda. ganmcxadebel i amtkicebs, rom mis SemTxvevaSi, rodesac saxal xo bral mdebel i ar eswreboda reikiavikis sisxl is samarTI is sasamarTI os mTel rig sxdombebs, aRni Snul i kanonmdebl obis ganmartebis Sedegad, mosamarTI e petur gudgeirsonma – sasamarTI os erTaderTma wevrma – ara marto Caatara sasamarTI o gamoZieba, aramed aiRo bral debis warmoadgenl is rol i. Sesabamisad, sisxl is samarTI is sasamarTI o ar akmayofil ebda konvenciis me-6 muxl is 1el paragrafs (muxl i 6-1).

47. aRni Snul i saCivari uaryofil i qna mTavrobis mier da ar i qna mi Rebul i komisiis mier.

48. unda gavixsenoT, rom sasamarTI os amocana aris ara rel evanturi kanoni sa da praqtkul i saqmi anobis zogadi ganxil va, aramed imis gansazRvra, Tu rogor iyo gamoyenebul i es kanoni ganmcxadebel Tan mimarTebaSi, ra zegavl ena moaxdina man masze da warmoadgenda Tu ara zemoTaRni Snul i me-6 muxl is 1el i paragrafis (muxl i 61) darRvevas (ix., sxva avtorebTan erTad, hausSi l di daniis winaaRmdeg, 1989 wl is 24 maisis gadawyvetil eba, seria A #154, gv 21, par 45).

49. me-6 muxl is 1-el i paragrafiT (muxl i 6-1) gansazRvrul i miukerZoebel obis arseboba unda ganiSazRvros subieqturad anu, yovel kerzo SemTxvevaSi - konkretul i mosamarTI is Sinagani rwmenis safuzvel ze da obieqturad, anu imis dadasturebiT, iyo Tu ara mosamarTI is mxridan sakmarisi garantia am saki TxTan dakavSi rebiT kanonieri elwiis gamosaricxad (iqve., par. 46).

50. rac Seexeba subieqtur mxares, mosamarTI is piradi miukerZoebel oba unda igul isxmebodes, sanam ar damtkicdeba sapi rispiro faqt (iqve., par. 47); ganmcxadebel s ar warudgenia raime mtkicebul eba, romel ic gvafiqrebinnebda, rom aRni Snul i mosamarTI e pirovnl ad iyo dainteresebul i am saqmi T.

51. rac Seexeba obieqtur mxares, unda dadgindes, mosamarTI is piradi qcevi sagan damouki debl ad arsebobs Tu ara dadasturebadi faqtebi, romel Tac SeuZI ia gaaCin nos elwi mis miukerZoebel obaSi. am SemTxvevaSi garegnul mxaresac ki didi

mni Svnel oba SeiZI eba hqondes. sasworze devs is rwmena, romel ic demokratiul sazogadoebaSi sasamarTI om unda Caunergos xal xs, xol o roca saqme exeba si sxl is samarTI is process - eWvni tani l s. Sesabami sad, acil eba unda mi Ros nebi smi erma mosamarTI em, romel Tan mimarTebaSi arsebobs misi mi umxrobl obis nakl ebobis saSi Sroebis kanonieri safuZvel i.

es ni Snavs, rom imis gansazRvrisas, arsebobs Tu ara kanonieri safuZvel i konkretul i mosamarTI is mi umxrobl obis nakl ebobis saSi Sroebis, eWvni tani l is pozicia mni Svnel ovania, magram ar aris gadamwyveti. gadamwyveti mni Svnel oba aqvs imas, SeiZI eba Tu ara aRni Snul i eWvis obieqturad dasabuTeba (iqve, par. 48).

52. sasamarTI o aRni Snavs, rom reikiavikis sisxl is samarTI is sasamarTI oSi aRni Snul saqmeze Sedga 12 sxdoma 1985 wl is 10 seqtembersa da 1986 wl is 16 ivnisi Sual edSi. saxal xo bral mdebel i ar eswreboda Semdeg eqvs sxdomas, roml ebic exeboda qvemoT CamoTvl il sakiTxebs:

- a) 1985 wl is 10 seqtemberi, ganmcxadebl is TxovniT (romel ic agreTve ar gamocxadda), sasamarTI om gadawyvi ta Seewyvi ta saqme (ix. par. 16);
- b) 1985 wl is 17 seqtemberi, aRni Snul sxdomas hqonda winaswari ganxil vis xasiaTi (ix. par. 16);
- c) da d) 1985 wl is 24 da 25 seqtemberi, sasamarTI o msj el obda mxol od procedurul sakiTxebze, rac ar iyo dakavSirebul i saqmis arsebiT mxareshTan (ix. par. 17 da 18);
- e) 1986 wl is 3 ivnisi, ganmcxadebel ma waradgina Tavisi dacvi Ti si tyva weril obiT formiT (ix. par. 23);
- f) 1986 wl is 16 ivnisi, sasamarTI om gamoitana ganaCeni (ix. par. 24).

meores mxriv, saxal xo bral mdebel i, erTi gamonakl issis garda, eswreboda yvel a sxdomas, roml ebzec warmodgenil i iyo mtkicebul ebebi da dai ki Txnen mowmeebi (1985 wl is 9 da 25 oqtoberi, 1985 wl is 15 noemberi, 1986 wl is 31 ianvari da 1986 wl is 17 Teberval i; ix. par. 20-21). gamonakl iss warmoadgenda 1986 wl is 17 Tebervl is sxdoma, romel ic, ZiriTadar, eTmoboda satel evizio gadacemis videofiris Cvenebas. rogorc ganmcxadebel i, ise bral mdebel i gamocxaddnen Semdeg sxdomaze, romel ic Sedga 1986 wl is 8 april s, sadac isini SeTanxmdnen, rom Semdgomi gamozieba sawiro aRar iqneboda (ix. par. 22).

54. Sesabami sad, me-6 muxl is tel i paragrafis (muxl i 61) darRvevas adgil i ar hqonia.

### **III. gancxadeba me-10 muxl is darRvevis Taobaze**

55. bni Torgeir Torgeirsoni amtkicebs, rom igi gaxda konvenciis me-10 muxl is darRvevis msxverpl i, romel Sic aRni Snul ia, rom:

"..."

aRni Snul i saCivar i miRebul i iyo komisiis mier, magram uaryofil iqna mTavrobis mier.

56. sasamarTI o Tvl is, - da es ar gamxdara kamaTis sagani - rom ganmcxadebl is gamamtyunebel i ganaCeni cil iswamebi saTvis da sabral debo daskvna, romel ic

gamoitana reikiavikis sisxl is sasamartI om 1986 wl is 16 i vni ss da ucvl el ad datova uzenaesma sasamartI om 1987 wl is 20 oqtombers (ix. par 24, 25 da 27), warmoadgenda ganmcxadebl is Tavisufl ad gamoxatvis Tavisufl ebi s ufl ebaSi Carevas. aRni Snul i Careva gul isxmobs me-10 muxl is dar Rvevas, Tu i gi "ar iyo gansazRvrul i kanonis mier", hqonda mizani an mi znebi, roml ebic dakanonebul ia me-10 muxl is meore paragrafiT da aucil ebel i iyo "demokratiul sazogadoebaSi" zemoaRni Snul i mi zniT an mi znebi T.

### a iyo Tu ara Careva kanoniT gansazRvrul i?

57. mi uTi Tebs ra uzenaes sasamartI os erTi wevris gansxvavebul mosazrebaze (ix. par. 28), ganmcxadebel i aRni Snavs, rom sisxl is sasamartI is kodeqsis 108-e muxl i, ganxil ul i gamoxatvis Tavisufl ebi s konstituciuri ufl ebi s Sesabami sad, ar iZI eva safuZvel s misi gamamtyunebel i ganaCenisaTvis.

58. mi uxedavad amisa, sasamartI o aRni Snavs, rom reikiavikis sisxl is sasamartI is sasamartI os da SemdgomSi uzenaes sasamartI os umravl esobis mier (ix. par. 24 da 27) aRni Snul i muxl is interpretacia da gamoyeneba ar gamoiricxeba misi SinaarsiT (ix. par. 31) da metic, iki eyrdnoba precedents. upirvel es yovl isa, swored erovnul i xel isufl ebi s, gansakuTrebit ki sasamartI oevis, saqmes warmoadgens adgil obrivi kanonebis interpretireba da gamoyeneba (ix., *Inter alia*, krusl ini safrangeTis winaaRmdeg, 1990 wl is 24 april is gadawyvetil eba, seria A #176-a, gv. 21, par. 29). Sesabami sad, sasamartI o eTanxmeba mTavrobasa da komisijs, rom Careva "gansazRvrul i iyo kanoniT".

### b hqonda Tu ara Carevas kanonieri mizani an mi znebi?

59. sakamaTo ar gamxdara is garemoeba, rom ganmcxadebl is gamamtyunebel i ganaCeni da sabral debo daskvna miznad isaxavda "sxvaTa reputaciis dacvas" da, Sesabami sad, hqonda mizani, romel ic kanonieria am debul ebi s Tanaxmad.

### c iyo Tu ara Careva "aucil ebel i demokratiul sazogadoebaSi"?

60. gaaprotesta ra ganmcxadebl isa da komisijs mosazreba, rom Careva ar iyo "aucil ebel i demokratiul sazogadoebaSi", mTavrobam warmoadgina ori kategoriis argumentacia. pirvel i kategoria moicavs zogad principTan dakavSirebul saki Txebs, xol o meore saqmis konkretul garemoebetan aris dakavSirebul i.

61. pirvel i kategoriis argumentacia SeiZI eba Semdegnairad iqnes Sej amebul i.

(a) I ingensi avstriis winaaRmdeg, 1986 wl is 8 ivl isis sasamartI o gadawyvetil eba (seria A # 103); barfordi dani is winaaRmdeg, 1989 wl is 22 Tebervl is sasamartI o gadawyvetil eba (seria A # 149); oberSI iki avstriis winaaRmdeg, 1991 wl is 23 maisis sasamartI o gadawyvetil eba (seria A # 204); aRni Snul i imis il ustracias warmoadgens, rom pol itikuri diskusiebis dros dasaSvebi kritikis farTo sazRvrebi imave xarisxiT ar gamoyeneba sazogadoebrii interesis sxva saki Txebeze msj el obisas. sazogadoebrii interesis mqone saki Txi, romel ic wamoWril i iyo ganmcxadebl is statiaSi, ar moiazreba pol itikuri diskusiebis kategoriisi, romel ic gul isxmobs demokratiul sazogadoebaSi gadawyvetil ebi s miRebis processi moqal aqeebis pirdapir da arapi rdapir monawi l eobas.

(b). saxel mwi fo moxel eebis moqmedebebi ganuwyvetl iv unda iyos gadasinj visa da msj el obis sagani, amasTan, Ria unda iyos kritikisaTvis. magram vinai dan maT ar aqvT pasuxis gacemis saSual eba, nebadarTul i ar aris maTi dadanaSaul eba kriminal ur moqmedebaSi kanonieri safuZvl is gareSe.

(c) paragraf aSi gaTval i swinebul i gansxvavebebis miTiTebis gareSec, zemoT moxsenebul i sami gadawyvetil ebi dan aSkarad Cans, rom pi rs, romel ic acxadebda, rom misi gamoxatvis Tavisufl ebis ufl eba aucil ebl obis gareSe i qna SezRudul i, aRniSnul i ufl eba unda ganexorciel ebina demokratiul i principebis Sesabami sad: i gi keTil sindisierad unda mohki deboda sakutari gancxadebebis kanonierebas, roml ebic demokratiul i mi znebis Sesabami sad unda Camoeyal i bebin; garda ami sa, gancxadebebs efekturad unda SeewyoT xel i aRniSnul i mi znebi saTvis da unda hqonodaT faqtobrivi safuZvel i.

62. aRniSnul i saqmis konkretul garemoebetan dakavSi rebi T mTavrobam warmoadgina Semdegi argumentacia.

(a) ganmcxadebl is statiebSi gakeTebul gancxadebebs akl da obiecturoba da ar hqonda faqtobrivi safuZvel i. policii is sisastike metad uveul o gaxl dat i sl andisaTvis. gasul i 15 wl is ganmavl obaSi mxol od ori SemTxeva iyo, rodesac policiel ebi fizikuri Zal adobisaTvis daisaj nen. saavadmyofosi myofi axal gazrda kacis ambavi, romel ic pirvel statiaSi iyo aRweril i (ix. par. 9(8)-9) absol uturad ar Seesabameboda simarTI es da mogonil i iyo policii is winaaRmdeg kampaniis argumentirebis mi zniT. ganmcxadebel ma uari ganacxada aRniSnul i sakiTxis garkvevaSi TanamSrroml obaze da ar warmoadgina raime sabuTi Tavisi versiis dasamtkeceb ad. amasTan dakavSi rebi T mTavrobam mi uTiTa vi nme b-ni trausti el idasonis gancxadebaze, romel ic aRniSnul dros saavadmyofosi imyofeboda da agreTve mi uTiTa reikiavikis sisxl is samarTI is sasamarTI oSi Catarebul procesebze (ix. par. 21 da 24). mi uxedavad i misa, rom ganmcxadebl is moqmedebas biZgi skafti ionsonis saqmem misca (ix. par. 8), misi pirvel i statia ar eyrdnoboda aRniSnul saqmes, i gi masSi aRweril i iyo rogorc "umniSvnel o". statia exeboda policii is sisastikes, romel zec araferi icoda sazogadoebri obam da amtkicebda, rom "real uri probl ema bevrad ufro didi da saSinel i" iyo (ix. par. 9(4). meore statiaSi ganmcxadebel i saubrobda ara kerzo SemTxvevbeze, aramed saerTo mdgomareobaze, romel ic, misi si tyvebi T, daaxl oebi T Svi das saqmes moi cavda (ix. par. 10(8).

(b) ganmcxadebl is statiebi ar Semoifargl eboda imis kritikiT, Tu rogor asrul ebda policia Tavis moval eobas. avtoris ZiriTad mi zans warmoadgenda ara policii is winaaRmdeg saCivrebis gamoziebis axal i meTodebis propaganda, aramed, konkretul i si tyvieri bral debebis saSual ebi T, aramarTebul saqciel Si da seriozul danaSaul Si mTI ianad reikiavikis policii is reputaciis Sel axva.

(c) mopasuxis gancxadebebs ki devac rom hqonodaT faqtobrivi safuZvel i, man aSkarad gadaabij a yvel a dasaSveb sazRvars mware, Seuracxmyofel i da saqil i ko si tyvebis gamoyenebi T da policii is faqtobrivad usafuZvl o gal anZRviTa da dagmobi T.

(d) dadebul i sanqciebi, romel ic ar moi cavda aRniSnul i statiebis konfiskacias, sakmaod umniSvnel o xasiat s atarebda da ver gamoiwvevda sazogadoebi saTvis mtkivneul saki Txebze Ria di skusiebis CaCumebas.

63. sasamarTI o aRni Snavs, rom gamoxatvis Tavisufl eba warmoadgens demokratiul i sazogadoebis erT erT umni Svnel ovanes qvakuTxeds; me-10 muxl is me-2 paragrafis Tanaxmad, igi exeba ara mxol od im "informaciasi" da "mosazrebebs", roml ebic kargad an gul gril ad aris miRebul i an ar aris CaTvl il i Seuracxmyofel ad, aramed im "informaciasi" da "mosazrebebsac", roml ebic Seuracxmyofel i, Semawuxebel i da gamaognobel ia. gamoxatvis Tavisufl eba, romel ic esoden sasoebiT aris ganmartebul i me-10 muxl Si, eqvemdebareba rig gamonakl isebs, roml ebic sakmaod viwrod unda iyos interpretirebul i da TiToeul i cal keul i SezRudvis aucil ebl oba damaj erebl ad unda iyos dadgenil i (ix. "Observer" da "Guardian" gaerTianebl i samefos wi naaRmdeg; 1991 wl is 26 noembbris gadawyvetil eba seria A # 216. gv. 29-30, par. 59). wi namdebare saqmeSi ganmcxadebel ma Tavisi mosazreba gamoxata gazeTSi maTi gamoqveynebiT. Sesabami sad, gaTval i swinebul i unda yofil iyo presis gansakuTrebui rol i saxel mwifosi, romel ic kanonis uzenaesobiT imarTeba (ix. kastel si espaneTiS wi naaRmdeg; 1992 wl is 23 april is gadawyvetil eba seria A # 236. gv. 23, par. 43). Tumca presam ar unda gadaabij os dadgenil fargl ebs, maT Soris "sxvaTa reputaciis dasacavad", swored mas awevs sazogadoebisaTvis interesis mqone informaciisa da azrebis gadacemis misia. garda imisa, rom presis amocanas warmoadgens aRni Snul i informaciisa da azrebis gavrcel eba, sazogadoebasac aqvs misi miRebis ufl eba, wi naaRmdeg SemTxvevaSi presa ubral od ver Seasrul ebda Tavis sasicocxl o mni Svnel obis - "modaraj e ZaRI is" - funqcas (ix. zemoT aRni Snul i "Observer" da "Guardian" gaerTianebl i samefos wi naaRmdeg; 1991 wl is 26 noembbris gadawyvetil eba seria A # 216. gv. 29-30, par. 59).

64. mTavrobiS mier wamowril zogad saki Txebze sasamarTI o miuTiTebs, rom saprecedento samarTal Si ar Cans safuZvel i pol itikuri diskusiebisa da sazogadoebisaTvis mtkivneul sxva saki Txebze diskusiebis gasamij nad, rogorc amas mTavroba gvTavazobs. mTavrobiS mier warmodgenil i argumentacia, romel ic mi znad i saxavs gamoxatvis Tavisufl ebiS ufl ebiS SezRudvas me-10 muxl Si miTiTebul i frazis - "mas Tan axl avs garkveul i val debul ebebi da pasuxi smgebl oba"- safuZvel ze, ver iTval i swinebs, rom aRni Snul i ufl eba SeiZI eba SeiZRudos mxol od aRni Snul i muxl is meore paragrafSi (muxl i 10-2) gansazRvrul i pirobiT.

62. rac Seexeba saqmis konkretul viTarebas, sasamarTI o ver miRebs mTavrobiS argumentacias, rom ganmcxadebl is statiebSi gakeTebul i gancxadebebi araobieqturia da mokl ebul ia faqtobriv safuZvel s. pirvel i statiis amosaval wertil s warmoadgens aramarTebul i qcevis konkretul i SemTxveva - skafti ionsonis saqme, - romel ic farTo sazogadoebri i msj el obis sagani gaxda da risTvisac pol i ciel i pasuxi sgebaSi misces. sakamTo ar aris, rom aRni Snul SemTxvevas namdvil ad hqonda adgil i. rac Seexeba statiis sxva faqtobriv el ementebs, sasamarTI o aRni Snavs, rom i sini ZiriTadad warmoadgenen mi ni Snebebs ara avtoris, aramed sxvaTa mier gamoTqmul "Worebsa" da "mi Tqma-moTqmaze", anu "sazogadoebri azrze", romel ic exeboda pol i ciel ebiS sisastikeSi dadanaSaul ebas. ase magal iTad, axal gazrda kacis pal atis mezobl ebma Tqves da saavadmyofos personal ma daadastura, rom igi pol i ciel ebiS mier iqna daSavebul i (ix. par. 9(9)). rogorc komisiam aRni Sna, ar iyo dadgenil i, rom es ambavi absol uturad ar Seesabameboda si namdvil es da gamonagons warmoadgenda. garda amisa, pirvel i statiis Tanaxmad, ganmcxadebel ma aRmoaCina, rom adami anebiS umravl esobas smenia amgvari ambebis Sesaxeb, roml ebic imdenad waagavda erTmaneTs, rom ar SeiZI eboda maTi ignorireba sicruis sababiT (ix. par. 9(10)). mokl ed rom vTqvaT, gammcxadebel i, ZiriTadad, yveboda imas, rac sxvebis mier iyo naTqvami pol i ciis sisastikis Sesaxeb. reikiavikis sisxl is samarTI is

sasamarTI om mas ganaCeni gamoutana danaSaul is CadenisaTvis sisxl is samarTI is kodeqsis 108-e muxl is Sesabami sad, vinai dan man ver SeZI o daesabuTebina is, rac CaTvl il i iyo mis si tyvier bral debad, kerZod, faqt, rom reikiavikis pol iciis daukonkretebel i wevrebis mxridan adgil i hqonda mTel i rigi seriozul i Zal adobis aqtebs, rasac mohyva msxverpl Ta dainval ideba, amasTanave, siyal bisa da sisxl is samarTI is sxva danaSaul ebis faqt (ix. par. 9(9-10), 10(15) da 24). ganmcxadebl isagan aRniSnul i gancxadebebis WeSmari tebis damtkicebis moTxovni T, sasamarTI os azriT, mas dauenies usafuZvl o, TiTqmis SeuZI ebel i amocana.

66. sasamarTI o aseve ver gai ziarebs mTavrobis mosazrebas imis Taobaze, TiTqosda ganmcxadebl is statiebis ZiriTadi mizani iyo mTI ianad reikiavikis pol iciis reputaciis Sel axva pirvel rigSi, misi kritika ar SeiZI eba miCneul i iyo reikiavikis pol iciis yvel a, an romel im konkrekul i wevris winaaRmdeg mimarTul ad. rogorc aRniSnul ia pirvel statiaSi, ganmcxadebel i askvnis, rom "Sedarebi T umni Snel o raodenoba aris pasuxismgebel i" da imeds gamoTqvamda, rom gamoZiebac aCvenebda amas. meorec, rogorc sasamarTI om Sei tyo 65e paragrafidan, ganmcxadebel i, ZiriTadad, sxvebis naTqvams gadmoscenda. aRniSnul i garemoebetiTa da pirvel i statii yuradRebiT Seswavl iT dasturdeba ganmcxadebl is argumenti, rom mis ZiriTad mizans warmoadgenda iusticiis ministris izul eba, raTa mas Seeqma damouki debel i da obieqturi organo pol iciis sisastikis saCivrebis gamosaZiebl ad. meore statia, romel ic satel evizio gadacemaSi pol iciis oficris mier gakeTebul i konkretul i gancxadebebis sapasuxod daiwera, pirvel i statii gagrZel ebas warmoadgens.

67. statiebi asaxavdnen, da es faqt ar gamxdara kamaTis sagani, sazogadoebisaTvis seriozul probl emas. srul simarTI es warmoadgens, rom orive statia sakmaod mZafraJ Renda. Tumca, iTval i swinebs ra maT mizans da im Sedegs, roml is misaRwevadac i yvnen isini gamiznul i, sasamarTI o miCnevs, rom maTSi gamoyenebul i stil i da si tyvebi ar SeiZI eba gadaWarbebul ad CaiTval os.

68. dabol os, sasamarTI o miCnevs, rom gamamtyunebel ganaCensa da sabral debo daskvnas SeeZI o sazogadoebisaTvis mtkivneul saki Txze Ria diskusiis CaxSoba.

69. zemoaRniSnul is gaTval iswinebiT, sasamarTI o mi vi da daskvnamde, rom mTavrobis mier warmodgenil i argumentacia ar aris sakmarisi imis dasasabuTebi ad, rom Careva Seesabameboda dasaxul kanonier mizans. Sesabami sad, igi ar warmoadgenda "aucil ebl obas demokratiul sazogadoebaSi".

70. Sesabami sad, aq saqme gvaqvs konvenciis me-10 muxl is darRvevasTan.

#### **aRniSnul i mizezebis gamo sasamarTI o:**

1. erTsul ovnad miCnevs, rom adgil i ar hqonia konvenciis me-6 muxl is 1-el i paragrafis darRvevas;
2. rva xmiT erTis winaaRmdeg miCnevs, rom adgil i hqonda konvenciis me-10 muxl is darRvevas;
3. erTsul ovnad miCnevs, rom isl andiam sami Tvis ganmavl obaSi ganmcxadebel s unda gadauxados 530 000 isl andiuri krona xarjebis dasafarad;
4. erTsul ovnad abrunebs sarcel s danarCen nawi Si samarTI iani dakmayofil ebisaTvis.