

saber ZneT i s navT obgadamacamuSavebel i qar xana "STRAN" da stratis
andr eadi si saber ZneT i s wi naaRmdeg

Stran Greek Refineries and Stratis Andreadis v. Greece

strasburgi, 9 dekemberi, 1994 wl i

1994 wl is 9 dekembers, strasburgSi saberZneTis navTobgadamacamuSavebel i qarxana "Stran"-i da stratis andreadisi saberZneTis winaaRmdeg saqmeze gamotanil gadawyvetil ebaSi adamianis ufl ebaTa evropis sasamarTI om erTsul ovnad ganacxada, rom adamianis ufl ebaTa evropis konvenciis me-6 muxl is pirvel i punqt darRveul ia sasamarTI iani sasamarTI o procesis ufl ebis mxriv, magram ara saqmis warmoebis xangrZI ivobasa da pirvel i oqmis pirvel punqtan dakavSirebiT.

gadawyvetil eba saj aro sxdomaze gamoacxada sasamarTI os Tavmj domarem b-nma rol f risdal ma.

I. saqmi s gar emoebebi

A. mTavari faqtеби

1972 wl is 22 ivl iss, saberZneTis saxel mwifosa da b-n andreadiss Soris dadebul i xel Sekrul ebis Tanaxmad, am ukanknel ma val debul eba aiRo aeSenebina da im kompaniis meSveobiT, romel ic SemdgomSi Seiqmneboda, aemuSavebina navTobgadamacamuSavebel i qarxana q. megaraSi. saxel mwifom, romel mac aiRo im miwis SeZenis val debul eba, romel zedac unda aSenebul iyo qarxana, xel Sekrul ebis kanonieri Zal a aRiara dekretiT, romel ic gamoqveynda oficial ur gazeTSi, magram val debul eba ar Seasrul a.

1977 wl is 14 oqtombers, mTavrobam xel Sekrul eba Sewyvita samxedro rejimis dros dadebul i preferenciul i xel Sekrul ebebis Sewyvetis Sesaxeb kanonis (# 141 (1975) safuzvel ze kompania "Stran-ma" saqme aRZra aTenis pirvel i instanciis sasamarTI oSi ganvl il i periodis ganmavl obaSi mis mier gaRebul i xarj ebis anazRaurebis Taobaze. saxel mwifom ganacxada, rom sasamarTI os ar gaaCnda aRniSnul saqmeze iurisdiqcia da saqme gadasca arbitraJs, sadac saqmis warmoeba momCivnebis sasargebl od dasrul da 1984 wl is 27 Teberval s. arbitraJis gadawyvetil eba acxadebda, rom "Stran-is" moTxovnebi dasabuTebul i iyo im Tanxastan dakavSirebiT, romel ic ar aRemateba 116 273 442 drahmas, 16 054 165 aSS dol ars da 614 627 frangul franks. 1985 wl is 2 maiss, saxel mwifom arbitraJis gadawyvetil eba gaasaCivra aTenis pirvel i instanciis sasamarTI oSi im motiviT, rom xel Sekrul ebaSi arbitraJis Sesaxeb daTqma gauqmebul i iyo da, Sesabamisad, misi gadawyvetil ebac Zal adakargul ad da baTil ad iTvl eboda. pirvel i instanciis sasamarTI om, xol o 1986 wl is 4 noembers, - aTenis saapel acio sasamarTI om gadawyvetil eba gamoitanes saxel mwifos sawinaaRmdegod.

1987 wl is 25 maiss, rodesac saqmes ixil avda sakasacio sasamarTI o da momxsenebel mosamarTI es mxareebisaTvis sakuTari mosazreba gagzavnil i hqonda (momCivanTa sasargebl od), parl amentma miro kanoni (# 1701/1987), roml is Tanaxmadac, samxedro rejimis dros dadebul preferenciul xel Sekrul ebebSi arsebul i yvel a debul eba, aseve, arbitraJis Sesaxeb CaiTval a gauqmebul ad da amasTan dakavSirebul i saarbitrajo gadawyvetil ebebi - Zal adakargul ad da baTil ad. kanoni aseve acxadebda, rom aseTi xel Sekrul ebebis Sewyvetis Sedegad warmoSobil i dava kanoniT dauSvebl ad iyo miCneul i.

1989 wl is 16 marts, sakasacio sasamarTI om srul i Semadgenl obiT # 1701/1987 kanoni konstituciurad gamoacxada.

B. saqmis warmoeba adami anis ufl ebaTa evropis komisi aSi

saCivari Setanil ia komisiaSi 1987 wl is 20 noembers. igi misaRebad gamocxadda 1991 wl is 4 ivl iss.

saqmis morigebiT dasrul ebis uSedego cdis Semdeg, komisiam 1993 wl is 14 ianvars Seadgina moxseneba, romel Sic Camoayal iba faqtebi da gamoTqva Semdegi mosazreba:

(a) dairRva konvenciis me-6 muxl is pirvel i punqt i sasamarTI os mier samarTI iani ganxil vis ufl ebaze (erTsul ovnad), magram ara saqmis warmoebis xangrZI ivobaze (Tormeti oris winaaRmdeg)

(b) darRveul ia pirvel i oqmis pirvel i muxl i (erTsul ovnad).

komisiam sasamarTI os saqme gadasca 1993 wl is 12 ivl iss.

II. gadawyvet il ebi s Si naa si

I. mTavr obi s wi naswar i protesti

mTavrobas uari eTqva mieTiTebina momCivnebis mier saxel mwifos Sida dacvis saSual ebebis amouwuraobaze, radgan man komisias sakmaod gasagebad ver ganumarta, Tu efektiani dacvis romel saSual ebebs ar mimarTes momCivnebma.

(ix. gadawyvet il ebi s 31-36-e punqtebi da operatiul i debul ebebis pirvel i nawil i)

II. konvenci i s me-6 muxl i s pirvel i punqt i s savraudio dar Rveva

A. me-6 muxl i s pirvel i punqt i s gamoyenebi s dasaSveboba

sasamarTI om aRniSna, rom momCivnis ufl eba - amoero saarbitraJo sasamarTI os mier mikutvnebul i Tanxa, warmoadgenda "samoqal aqo ufl ebas" me-6 muxl is gagebiT, miuxedavad imisa, Tu ra xasiaTis iyo berZnul i kanonndebl obis mixedviT momCivnebsa da saxel mwifos Soris dadebul i xel Sekrul eba. Semdeg, sasamarTI om ganacxada, rom Sedegs im saqmis warmoebisa, romel ic saxel mwifom aRZra, Cveul ebri, sasamarTI oebSi saarbitraJo gadawyvet il ebi s gasauqmebl ad, gadamwyveti mniSvnel oba hqonda "samoqal aqo ufl ebas" Tval sazrisiT. Sesabamisad, dasaSvebi iyo me-6 muxl i s pirvel i punqt i s gamoyeneba.

(ix. gadawyvet il ebi s 37-41-e punqtebi da operatiul i debul ebebis meore nawil i)

B. me-6 muxl i s pirvel i punqt i s Sesrul eba

1. samarTI iani sasamarTI o procesi

sasamarTI om gamoTqva mosazreba, rom saqmis warmoebas, romel ic aRdga # 1701/1987 kanonis Zal aSi Sesvl is Semdeg, rodesac saqme ganxil vis procesSi iyo sakasacio sasamarTI oSi, gadamwyveti mniSvnel oba hqonda misi Semowmebis Tval sazrisiT. magram imis Sesafasebl ad, hqondaT Tu ara momCivnebs samarTI iani procesi am sasamarTI oSi, aucil ebel ia mxedvel obaSi iqnes miRebul i wina saqmis warmoeba, misi ganxil vis sagani da mxareTa damoki debul eba.

#1701/1987 kanonis miReba udavod gadawyeti mniSnel obisaa arbitraJis Sesaxeb debul ebasTan dakavSirebul i saqmis warmoebis dros, romel ic kanonis miRebamde saxel mwifos winaaRmdeg warimarTa.

evropis sabWOSi 1974 wl is 28 members xel axl a gaweVrianda ra da moaxdina ra konvenciis ratifikacia, saberZneTma val debul eba aiRo pativi eca kanonis uzenaesobis principisaTvis, rac gamoxatul ebas hpovebs, inter alia, konvenciis me-6 muxl Si. samarTal warmoebis dros, romel ic SeexeBoda kerzo interesebis saxel mwifosaTvis dapiriSpirebas, dacvis saSual ebaTa Tanasworoba, romel ic samarTI iani sasamarTI o procesis umniSnel ovanesi komponentia, gul isxmobda, rom TiToeul mxares unda hqondes gonivrul i SesaZI ebl oba warmoadginos misi saqme iseTi pirobabis safuzvel ze, roml ebic mas Tavis oponentTan uTanasworo mdgomareobaSi ar ayenebs.

amasTan dakavSirebiT, sasamarTI om gaiTval iswina #1701/1987 kanonis me-12 muxl is miRebis dro da forma. man SeniSna, rom sakanonmdebl o xel isufl ebis Careva moxda maSin, rodesac samarTal warmoebis procesi, roml is monawil ecaa saxel mwifo, jer ar iyo dasrul ebul i.

kanonis uzenaesobis principi da samarTI iani procesis cneba krZal avs marTI msaj ul ebis ganxorciel ebaSi sakanonmdebl o xel isufl ebis nebismer iseT Carevas, roml is mizania sasamarTI os mier davis gadawyetis bedze zegavl enis moxdena.

Caeria ra iseTi formiT, romel ic gadawyeti aRmoCnda misi monawil eobit mindinare samarTal warmoebis Sedegis mis sasargebl od gadawyetis uzrunvel yofis Tval sazrisiT, saxel mwifom daarrvia momCvnis ufl ebebi, roml ebic gaTval iswinebul ia me-6 muxl is pirvel i punqtiT.

(ix. gadawyetil ebis 42-50-e punqtebi da operatiul i debul ebebis me-3 nawil i)

2. samarTal warmoebis xangrZI ivoba

momCvnебма ganacxades, rom samarTal warmoebisas moxda "gonivrul i vadis" gadawarbeba. drois periodi, romel ic mxedvel obaSi unda iqnas miRebul i, moicavda oTx wel iwads, oTx Tvesa da oc dRes.

saqmis warmoeba sakasacio sasamarTI oSi gagrZel da sam wel ze met xans, magram es xangrZI ivoba gamarTI ebil ia # 1701/1987 kanonis da samoqal aqo saproceso kodeqsis Sesabamisi debul ebebis mxedvel obaSi miRebis saWiroebis Tval sazrisiT.

aqedan gamodinare, aRniSnul sakiTxTan dakavSirebiT, me-6 muxl is pirvel i punqti ar darRveul a.

(ix. gadawyetil ebis 51-56-e punqtebi da operatiul i debul ebebis me_4 nawil i)

III. pirvel i oqmis pirvel i muxl is savraudo dar Rveva

1. iyo Tu ara "mfl obel oba" pirvel i muxl is gagebit

sasamarTI om aRniSna, rom 1984 wl is saarbitrajo sasamarTI os gadawyetil ebam naTI ad aRiara saxel mwifos pasuxismgebl obis fargl ebi konkretul i Tanxis odenobaTa gansazRvriT sami saxis val utiT. sasamarTI os funqciebSi ar Sedis am gadawyetil ebis arsebiTi nawil is WeSmari tebis dadastureba an uaryofa. Tumca igi val debul ia mxedvel obaSi miRos is samarTI ebrivi mdgomareoba, romel Sic mxareebi am gadawyetil ebis Sedegad aRmoCndnen.

gadawyvetil ebis teqstis Tanaxmad, mocemul i gadawyvetil eba sabol oo da saval debul oa. igi ar moiTxovda sxva aRsrul ebiT RonisZiebebs da kanonmdebl oba ar iTval iswinebda mis gasaCivrebas Cveul ebrivi an gansakuTrebul i wesiT. berZnul i kanonmdebl obis Tanaxmad, saarbitraJo gadawyvetil ebebs sabol oo gadawyvetil ebis Zal a hqonda da aRsrul ebas eqvemdebareboda.

arbitraJis gadawyvetil ebiT mikuTvnebul i Tanxis miRebis ufl eba, rogorc wesi, ar iyo udavo xasiaTis, magram Cveul ebrivma sasamarTI oebma orj er daadastures, rom ar arsebobda am gadawyvetil ebis gauqmebis safuzvel i. aqedan gamodinare, sasamarTI om daaskvna, rom aRniSnul i ufl eba warmoadgenda "mfl obel obas" pirvel i oqmis pirvel i muxl is gagebiT.

(ix. *gadawyvetil ebis 57-62-e punqtebi*)

2. moxda Tu ara xel yofa

sasamarTI om daadgina, rom momCivnebisTvis SeuZI ebel i iyo sabol oo Zal is mqone saarbitraJo gadawyvetil ebis aRsrul ebis uzrunvel yofa, roml is Tanaxmadac, saxel mwifos unda gadaexada garkveul i Tanxa im danaxarj ebis asanazRaurebl ad, roml ebic momCivnebma gaswies maTTvis xel Sekrul ebiT dakisrebul i val debul ebis Sesasrul ebl ad. sasamarTI om aseve miCnia, rom momCivnebisaTvis SeuZI ebel i iyo sasamarTI oebis meSveobiT raime zomis miReba aRniSnul i Tanxis amoRebis miZniT. aqedan gamodinare, moxda momCivanTa sakuTrebis ufl ebis xel yofa.

(ixi I eT *gadawyvetil ebis 63-67-e punqtebi*)

3. iyo Tu ara xel yofa gamarTI ebul i

sasamarTI om aRniSna, rom berZnul i samarTI is sistema aRiarebda saarbitraJo daTqmoris avtonomiurobis princips - xol o aTenis pirvel i instanciis sasamarTI om, aTenis saapel acio sasamarTI om da sakasacio sasamarTI os momxsenebel ma mosamarTI em aRniSnul saqmeze es principi gamoyenes. garda amisa, orma sasamarTI om daadgina, rom xel Sekrul ebis Sewyvetamde warmoSobil i momCivnebis moTxovnebi ar iyo kanonierad dausabuTebel i.

aqedan gamodinare, saxel mwifos ekisreboda val debul eba gadaexada momCivnebisaTvis Tanxa, romel ic mas daekisra saarbitraJo proceduris Sedegad. es ukanknel i procedura ki, saxel mwifom Tavad airCia da misi kanoniereba aRiarebul i iyo sakasacio sasamarTI oSi saqmis ganxil vamde.

gadawyvita ra sakasacio sasamarTI oSi saqmis warmoebis am etapze Careul iyo iseTi kanonis meSveobiT, romel mac gamoiwwia zemoaRniSnul i xel Sekrul ebis Sewyveta saarbitraJo daTqmoris baTil ad gamocxadebisa da 1984 wl is 27 Tebervl is saarbitraJo gadawyvetil ebis gauqmebis miZniT, sakanonmdebl o xel isufi ebam momCivnebis sazianod daaRvia bal ansi sakuTrebis ufl ebis dacvasa da saj aro interesis moTxovnebs Soris.

aqedan gamodinare, dairRva pirvel i oqmis pirvel i muxl i.

(ixi I eT *gadawyvetil ebis 68-75-e punqtebi da operatiul i debul ebebis me-5 nawil i*)

IV. konvenci i s 50-e muxl i s gamoyeneba

A. materialuri ziani

sasamarTI om aRniSna, rom saarbitraJo gadawyvetil ebis operatiul nawil Si naTqvamia: "Stran-is" moTxovna dausabuTebel ia, Tu igi aWarbebs 116 273 442 drahmas, 16 054 165 aSS dol ars da

614 627 frangul franks. mxedvel obaSi miRo ra Tavisi gadawyvetil eba pirvel i oqmis pirvel muxl Tan dakavSirebiT, sasamarTI om ganacxada, rom momCivnebs ufl eba hqondaT mieRoT anazRaureba zemoaRniSnul i odnobiT.

garda amisa, man gaiTval iswina, rom momCivnebs aseve unda mikuTvnebodaT aRniSnul i Tanxis 6 procenti 1984 wl is 27 Tebervl idan gadawyvetil ebis gamotanis TariRamde ganvl il i periodisTvis.

B. xarj ebi da danaxarj ebi

Seafasa ra proporciul obis principis safuzvel ze da am sferosi mis mier gamoyenebul i kriteriumebis gaTval iswinebiT, sasamarTI om mizanSewoni l ad miicnia momCivanTa Tavdapi rvel moTxovnaSi mitiTebul i Tanxis Semcireba. sasamarTI om maT makuTva 125 000 girvanqa sterl ingi, procentis daricxvis gareSe.

(ix. gadawyvetil ebis 76-78-e punqtebi da operatiul i debul ebebis me-6 da me-7 nawil ebi)

sasamarTI om gadawyvetil eba gamoitana pl enarul sxdomaze Semdegi Semadgeni obiT:

Tavmj domare: b-ni risdal i (norvegia), mosamarTI eebi: b-ni b. val Si (irl andia), b-ni r. makdonal di (kanada), b-ni k. ruso (ital ia), n. val tikosi (saberZneTi), b-ni s.k. martensi (niderl andi), b-ni r. pekaneni (fineTi), b-ni f. bigi (sent-marine) da b-ni l. zil dhaberi (Sveicaria), aseve, batonebi m.a. aiseni (mdivani) da h. petzol di (mdivnis moadgil e).