

saraiva de karva l o p o r t u g a l i i s winaaRmdeg

Saraiva De Carlo v. Portugal

strasburgi, 22 aprili, 1994 we l i

1994 w l i s 22 aprils, strasburgSi saraiva de karvalo portugaliis winaaRmdeg saqmeze gamotani l gadawvyetilebaSi adamanis uflebaTa evropis sasamarTlom erTsulovnad ganacxada, rom adamanis uflebaTa evropis konvenciis me-6 muxlis pirveli punqti ar darRveula. lisabonis sisxliis samarTliis sasamarTlos meoTxe ganyofileba, romelmac damnaSaved cno momCivani, warmoadgenda "miukerZoebe l sasamarTlos", miuxedavad imisa, rom misma Tavmjdomarem saqmistvis pasuxismgebeli mosamarTliis uflebamosilebiT manamde gamosca despacho de pronuncia. gadawvyetileba sajaro sxdomaze gamoacxada sasamarTlos Tavmjdomarem, b-nma rol f risda lma.

I. saqmis ga remoebebi

A. mTavari faqtebi

1984 w l i s 10 ivniss, momCivani, romelic eWvmitanili iyo "FP 25 de Abril" saxelwodebiT cnobili organizaciis damfuZnebel wevrobasa da mis xelmZRvanelobaSi, daakaves da moaTavses winaswar patimrobaSi teroristuli organizaciis Seqmnisa da xelmZRvanelobis braldebiT (sisxliis samarTliis kodeqsis 288-e muxli).

sasamarTlo gamoZieba Caatara lisabonis sisxliis samarTliis sagamoZiebo sasamarTlos mosamarTlem. 1985 w l i s 7 ianvars, prokuraturam oficialurad warmoadgina braldebebi. saqmis masalebi, braldebis mxaris mier Sedgenil sabraldebo daskvnasTan erTad, gaigzavna lisabonis sisxliis samarTliis sasamarTloSi. 1985 w l i s 22 ianvars, saqmistvis pasuxismgebelma mosamarTlem, b-nma salvadom gamosca despacho de pronuncia, romelic nawilobrivi eTanxmeboda braldebebs, gansakuTrebiT, braldebebs b-ni saraiva de karvalos winaaRmdeg.

sxdoma Sedga 1985 w l i s 7 oqtombers lisabonis sisxliis samarTliis sasamarTlos meoTxe ganyofilebaSi, romelic Sedgeboda sami mosamarTlisagan da romelsac Tavmjdomareobda b-ni salvado. sxdomis meore dRes momCivanma iCivla saapelacio sasamarTloSi im safuZvliT, rom sisxliis samarTliis sasamarTlo ar iyo miukerZoebeli, vinaidan despacho de pronuncia-s gamocemisas, b-ni salvados ukve winaswar hqonda Seqmnili mosazreba momCivnis bralis Sesaxeb, ramac saqmis garemoebze msjelobisas garkveuli zegavlena moaxdina.

sisxliis samarTliis sasamarTlom saCivari misaRebad gamoacxada da gadawvyita gadaeca igi saapelacio sasamarTlosaTvis pirveli instanciis sasamarTlos gadawvyetilebis gasaCivrevisaTvis dadgenil vadebSi.

1987 w l i s 20 maiss, sisxliis samarTliis sasamarTlom momCivani damnaSaved cno teroristuli organizaciis xelmZRvanelobaSi, miusaja samxedro wesiT TxuTmeti wliT Tavisuflebis aRkveTa da mas da sxva damnaSaveebs daakisra saxelmwifos sasargeblod erTi miliardi eskudos gadaxda. momCivanma es gadawvyetileba gaasaCivra lisabonis saapelacio sasamarTloSi, romelmac 1987 w l i s 25 noembers saCivari ar daakmayofila da sasjelis zoma gazarda Tvramet wlamde. 1988 w l i s 22 ivniss uzenaesma sasamarTlom momCivnis sasjelis vada Seamcira Cvidmet wlamde.

momCivanma iCivla sakonstitucio sasamarTloSi, daeyrdno ra konvenciis me-6 muxlis pirvel punqts da miuTiTa b-ni salvados arasaTanado miukerZoeblobaze. magram sakonstitucio sasamarTlom 1989 wlis 15 Tebervals saCivris es nawili ar daakmayofila da ganacxada, rom despacho de pronuncia gansxvavdeboda braldebis mxaris mier moTxovnili sisxlis samarTlis braldebebisagan da miznad isaxavda im pirTa gasamarTlebis Tavidan acilebas, romelTa winaaRmdeg ar arsebobda *prima facie* saqme. prokuraturis moTxovnis safuZvelze, 1989 wlis 12 aprilis gadawyvetilebiT, sakonstitucio sasamarTlom calke ganmarta mis mier adre miRebuli gadawyvetileba.

saqmis warmoeba adamianis uflebaTa evropis komisiaSi

strasburgi, 7 aprili, 1993 weli

saCivari, romelic Setanilia komisiaSi 1989 wlis 10 oqtombers, 1992 wlis 19 maiss misaRebad gamocxadda sisxlis samarTlis sasamarTlos savaraudo arasaTanado miukerZoeblobis nawilSi. saCivris danarCeni nawili miuReblad gamocxadda 1990 wlis 17 maiss.

saqmis morigebiT dasrulebis uSedego cdis Semdeg, komisiam 1993 wlis 14 ianvars Seadgina moxseneba, romelSic Camoayaliba faqtebi da gamoTqva Tavis mosazreba, rom konvenciis me-6 muxlis pirveli punqti ar darRveula (cxra xmit rvis winaaRmdeg).

saqme sasamarTlos gadaeca 1993 wlis 7 aprils.

II. gadawyvetilebis Sinaarsi

mTavrobis gancxadebis Tanaxmad, momCivnis uaryofiti varaudi bni salvados miukerZoeblobis Taobaze ar SeiZleba CaiTvalos obieqturad dasabuTebulad. mosamarTle, romelmac gamosca despacho de pronuncia, sargeblobda sruli TavisuflebiT sxdomaze saqmis garemoebebis Sesaxeb sakuTari daskvnis gamosatanad, SejibrebiTobis principiT wardgenili mtkicebullebis safuZvelze.

sasamarTlom miuTiTa, rom me-6 muxlis miznebisaTvis miukerZoeblobis arseboba unda dadgindes subieqturi testiT, e.i. aRniSnul saqmesTan dakavSirebiT calkeuli mosamarTlis Sinagani rwmenis safuZvelze da obieqturi testiT, e.i. imis dadgeniT, hqonda Tu ara mosamarTles am sakiTxSi kanonieri eWvis gamoricxvisti sakmarisi garantia.

b-ni salvados piradi miukerZoeblobis winaaRmdeg protesti ar gamoTqmula. meore testis mixedvit, mxolod is faqti, rom mosamarTles ukve sxdomamde hqonda gadawyvetilebebi miRebuli, ar SeiZleba CaiTvalos mis miukerZoeblobasTan dakavSirebuli eWvis dasabuTebad. mniSvneloba hqonda mosamarTlis mier sxdomamde gatarebuli RonisZiebebis moqmedebis sferosa da xasiaTs.

mocemuli saqme gansxvavdeboda pirsekis saqmisgan (1982 wlis 1 oqtombris gadawyvetileba, seria A, # 53) da de kuberis saqmisagan (1984 wlis 26 oqtombris gadawyvetileba, seria A, # 86) im mosamarTleTa mier Sesrulebuli funciebis xasiaTit, romelTac saqme ganixiles sxdomamde. despacho-s Sedgenisas, b-ni salvado moqmedebda meoTxe ganyofilebis mosamarTlis uflebamosilebiT. mas araviTari RonisZieba miuRia sagamoZiebo an sisxlissamarTlebrivi devnis TvalsazrisiT. mis mier saqmis dawvrilebiT codna ar niSnavda, rom mas Seeqmna iseTi uaryofiti mosazreba, ris zegavlentiTac igi miukerZoebeli ver iqneboda sxdomaze saqmis ganxilvisas. misi

funqcia saqm̃is warmoebis sawyis etapze mdgomareobda ara imaSi, rom darwmunebuliyo "gansakuTrebulad dadasturebuli eWvis arsebobaSi", aramed *prima facie* mtkicebulebis arsebobaSi.

b-ni salvados mier arsebuli mtkicebulebebis winaswari Sefaseba ar SeiZleba CaiTvalos mis mier formalurad bralis dadgenad.

braldebulis winaswar patimrobaSi datovebis Sesaxeb gadawyvetileba gaamarTlebdam samarTlis miukerZoeblobasTan dakavSirebul uaryofiT varauds mxolod gansakuTrebuli garemoebების arsebობის SemTxvevaSi. aRniSnul saqmeze b-ni salvados ar gaukeTebia raime naCqarevi Sefaseba, rac gadamwyvet zegavlenas iqoniebdam saqm̃is garemoebების Sesaxeb misi mosazrebis Camoyalibebaze. man Caatara mxolod informaciuli xasiaTis Semowmeba, ris Sedegadac ar gamovlinda iseTi faqtebi, romlebic imoqmedebdam momCivnis gaTavisuflebis sasargeblod.

bolos, b-ni salvados monawileobas 1987 wlis gadawyvetilebis miRebaSi xeli ar SeuSlia sisxlis samarTlis sasamarTლოს meoTxe ganyofilebis miukerZoeblობისTvis, radgan momCivnis uaryofiTi varaudi ar SeiZleboda miCneuliyo obieqturad dasabuTebulad. aqedan gamomdinare, me-6 muxlis pirveli punqti ar darRveula.

samarTlom gadawyvetileba gamoitana plenarul sxdomaze Semdegi SemadgenlobiT:

Tavmjdomare: b-ni risdali (norvegia). mosamarTleebi: f. gulCuRlu (Turqeti), a. Spilmani (luqsemburgi), b-ni s.k. martensi (niderlandi), b-ni i. fuageli (dania), b-ni bigi (sent-marine), b-ni a.b. baka (ungreti), b-ni a. lopes roCa (portugalia) da J. makarCiki (poloneTi), aseve, batonebi m.a. aiseni (mdivani) da h. petzoldi (mdivnis moadgile).