

pirseki belgiis winaarmdeg

Piersack v. Belgium

strasburgi, 1 oqtomberi, 1982 weli

1982 wlis 1 oqtombers, strasburgSi pirsekis saqmeze gamotani gadawvyetilebaSi adamanis uflebaTa evropis sasamarTlom erTsulovnad ganacxada, rom bni pirseki dazaralda adamanis uflebaTa evropis konvenciis me-6 muxlis pirveli nawilis darRvevis Sedegad: im sasamarTlos miukerZoebloba, romelsac unda daedgina momCivnis winaarmdeg wayenebuli sisxlis samarTlis braldeba, SeiZleboda saeWvod miCneuliyo.

gadawvyetileba sajaro sxdomaze gamoacxada sasamarTlos Tavmjdomarem, b-nma Jerar viardam.

I. saqmis garemoebebi

A. mTavari faqtebi

b-ni kristian pirseki daibada 1948 wels. igi belgiis moqalagea, profesiiT iaraRis xelosani. amJamad dakavebulia monsis (Mons) sapatimroSi. 1978 wlis 10 noembers mas braban asizis (Brabant Assize) sasamarTlom mkvlelobisaTvis miusaja Tvrameti wliT Tavisuflebis aRkveTa.

amis Semdeg, momCivanma saCivari Seitana sakasacio sasamarTloSi. saCivarSi, sxva sakiTxebTan erTad, aRniSnuli iyo, rom dairRva samosamarTlo kodeqsis 127-e muxli, romlis mixedviTac, dauSvebelia sasamarTlo Tanamdebobis piri, romelic aRniSnul saqmeze sajaro bralmdebels saxiT (ministere public) gamodioda, Tavmjdomareobdes saqmis warmoebas asizis sasamarTloSi. momCivani amtkicebda, rom asizis sasamarTlos Tavmjdomare, romelmac igi damnaSaved cno, monawileobda saqmis gamoZiebaSi sajaro bralmdebels (procureur du Roi) pirveli moadgilis uflebamosilebiT. pirvelma moadgilem, Tavis mxriv, aRniSna, rom gadawvyetileba unda gamotaniლი im safuZvlebiT, rasac momCivani asaxelebda, an im safuZvliT, rom dairRva konvenciis me-6 muxlis pirveli punqti, rac sasamarTlos mxedvelobaSi unda mieRo Tavisi Sexedulebisamebr.

1979 wlis 21 Tebervalis sakasacio sasamarTlom saCivari ar daakmayofila. man ganacxada, rom warmodgenili faqtebidan ver dadginda, rom aRniSnuli sasamarTlos Tanamdebobis pirma saqmeSi monawileoba miiRo sajaro bralmdebels saxiT, an sxva raime formiT, garda imisa, rom saqmeze mas Seeqmna piradi mosazreba sisxlissamarTlebrivi devnis, an gamoZiebis procesSi ganxorcielebuli konkretuli RonisZiebebis Sedegad.

B. warmoeba adamanis uflebaTa evropis komisiaSi

saqme daiwyo b-ni pirsekis mier 1979 wlis martSi komisiaSi saCivris SetaniT. igi acxadebda, rom dazaralda konvenciis me-6 muxlis pirveli punqtis darRvevis Sedegad, aseve amtkicebda, rom misi saqme ar ganuxilavs "kanonis Sesabamisad Seqmnil damoukidebel da miukerZoebel sasamarTlos", vinaidan asizis sasamarTlos Tavmjdomare, romelmac igi damnaSaved cno, monawileobas iRebda saqmis adreul etapze procureur du Roi-ის პირველი მოადგილის უფlebamosilebiT.

1981 wlis 13 maisis moxsenebaSi komisiამ gamoTqva erTsulovani mosazreba, rom dairRva me-6 muxlis პირველი პუნქტის erT-erტი მოTxovna, kerZod, rom sasamarTლო unda იყოს მიუკერZოებელი.

komisiam 1981 wl is 14 noembers saqme gadasca sasamarTlos.

II. gadawvyvet i lebis Sinaarsi

A. me-6 muxl is pirveli punqt is savaraulo darRveva

"damoukidebel i sasamarTlo"

1. momCivnis ganacxadi, rom sasamarTlo, romelmac igi damnaSved cno, ar iyo "damoukidebel i sasamarTlo", SemowmebiT ar dasabuTda. belgiis kanonmdebloba iTvaliswinebs mraval garantias asizis sasamarTlos mosamarTleebis gare zemoqmedebisagan dasacavad, xolo msajulTa dasaxeleba regulirdeba mkacri wesebiT.

(ix. gadawvyvet i lebis 27-e punqti)

"miukerZoebel i sasamarTlo"

2. vinaidan miukerZoebloba, Cveulebriv, winaswari uaryofiTi mosazrebi an mikerZoebis ararsebobas niSnavs, konvenciis me-6 muxl is pirveli punqt is mixedviT, misi arsebobis sakiTxi Sesazlebelia dadgindes sxvadasxva gziT.

sasamarTlom ver aRmoacina imis mizezi, rom eWvi Seetana aRniSnuli mosamarTl is pirad miukerZoeblobaSi. sawinaaRmdegos damtkicebade unda CaiTvalos, rom piri namdvilad moqmedebda piradi miukerZoeblobidan gamomdinare. Tumca, sasamarTlom aRniSna, rom am sferoSi garegan gamovlinebsac SeiZleboda hqonoda garkveuli mniSveloba da ganacxada, rom mosamarTle, roml is mimarTac arsebobs safuZvl iani da dasabuTebuli mizezi mikerZoebulobis varaudisa, acilebul unda iqnes.

meore ukiduresobasTan mimarTebiT sakmaod Sors wavida imis mtkiceba, rom sajaro bralmdebli s rolsi myof yofil sasamarTlo Tanamdebobis pirebs ar SeuZliaT gamovidnen mosamarTled im saqmeze, romelic, Tavdapirvelad, gamoZiebuli iyo maTi uwyebis mier, Tundac maT piradad arasodes hqonodaT saqme warmoebaSi. sakiTxis aseTi radikaluri gadawvyeta, marTlac, gadaulaxav barriers qmnis sasamarTlos Semadgenlobasa da sajaro braldebis Soris da gadatrialebas gamoiwvevs mTeli rigi monawile saxelmwifoebis sasamarTlo sistemaSi. amitom mxolod is faqti, rom mosamarTle erT dros muSaobda sajaro bralmdebli s uwyebaSi, ar aris mis miukerZoeblobaSi eWvis Setanis safuZveli.

3. belgiis sakasacio sasamarTlom mimdinare saqmeze gamoiyena ganxorcielebuli funqciebis kriteriumi. kerZod, adre miiRo Tu ara konkretulma mosamarTlem "sajaro bralmdebli s uwyebaSi myofi sasamarTlo Tanamdebobis piri s uflebamosilebiT" monawileoba braldebis funqciebis ganxorcielebaSi.

4. bunebrivia, mxolod es kriteriumi srulad ver akmayofilebs me-6 muxl is pirveli punqt is moTxovnebs; aseve, mxedvelobaSi misaRebia Sida organizaciuli sakiTxebic. Tu sajaro bralmdebli s uwyebaSi iseT Tanamdebobaze yofnis Semdeg, roml is xasiaTidan gamomdinare, mas SeiZleba warmoebaSi gadaecis aRniSnuli saqme, piri SemdgomSi saqmeSi monawileobas miiRebs rogorc mosamarTle, sazogadoebas SeuZlia ivaraudos, rom igi ver daakmayofilebs miukerZoebulobis garantiებს.

5. swored es moxda mocemul SemTxvevaSi. sasamarTlos azriT, naklebad aris saWiro im roli s farglebis zusti Sefaseba, romelic mosamarTlem misi yofili uflebamosilebiT Seasrula.

sakmarisia dadgindes, rom im "sasamarTlos" miukerZoebloba, romIsac sisxlis samarTlis braldebis garemoebebi unda gamoerkvia, Seizleboda saeWvod miCneu liyo.

6. aqedan gamomdinare, sasamarTlom erTsulovnad daadgina, rom dairRva me-6 muxlis pirveli punqti.

(ix. gadawyvetilebis 28-62-e punqtebi da operatiuli debuლებების პირველი ნაწილი)

"kanonis Sesabamisad Seqmnili sasamarTlo"

7. Tavdapirvelad, momCivani acxadebda, rom braban asizis sasamarTlo ar iyo "kanonis Sesabamisad Seqmnili sasamarTlo" da argumentad mohyavda is, rom misi Semadgenloba ewinaaRmdegeboda samosamarTlo kodeqsis 127-e muxlis.

sasamarTlom saWirod ar CaTvala am moTxovnis ganxilva.

(ix. gadawyvetilebis 33-e punqტი)

B. 50-e muxlis gamoyeneba

8. b-ni pirsekis iuridiulma warmomadgenელმა aRniSna, rom misi klienti moeloda dauyovnebliv gaTavisuflebas "gansaxilveli RonisZieebis" mixedvit da, agreTve, materialur kompensacias. sasamarTlom daadgina, rom es sakiTxი jerjerobiT mzad ar iyo gadawyvetilebis misaRebad da, Sesabamisad, is droebiT gadado.

(ix. gadawyvetilebis 34-35-e punqtebi da operatiuli debuლებების მეორე ნაწილი)

sasamarTlom gadawyvetileba gamoitana plenarul sxdomaze Semdegi SemadgenlobiT:

Tavmjdomare: b-ni g. viarda (niderlandi). mosamarTleebi: b-ni v. ganshof van der meerSi (belgia), b-ni g. lagergreni (Svedeti), b-ni l. liSi (luqsemburgi), b-ni f. gulCuRlu (Turqeti), b-ni pineiro farina (portugalia), b-ni r. bernhardt (germania), aseve, batonebi m.a. aiseni (mdivani) da h. petzoldi (mdivnis moadgile).