nortieri niderlandebis winaaRmdeg

Nortier v. The Netherlands

strasburgi, 24 agvisto, 1993 weli

1993 wlis 24 agvistos, strasburgSi nortieri niderlandis winaaRmdeg saqmeze gamotanil gadawyvetilebaSi adamianis uflebaTa evropis sasamarTlom erTsulovnad ganacxada, rom momCivnis gasamarTleba imave mosamarTlis mier, romelmac gadawyvetilebebi miiRo sasamarTloswina etapze, ar iyo adamianis uflebaTa evropis konvenciis me-6 muxlis pirveli punqtis darRveva.

gadawyvetileba sajaro sxdomaze gamoacxada sasamarTlos Tavmjdomarem, b_nma rolf risdalma.

I. saqmis garemoebebi

A. mTavari faqtebi

b-ni erik hans nortieri, dabadebuli 1972 wels, daakaves sisxlis samarTlis danaSaulSi eWvis safuZvelze 1987 wlis seqtembris bolos. man danaSauli aRiara policiis winaSe, ris Semdegac winaswar dakavebaSi datoves.

1987 wlis 2 oqtombers sajaro bralmdebelma midelburgis arasrulwlovanTa mosamarTle M-s mosTxova droebiT patimrobaSi aeyvana momCivani. mosamarTlem moTxovna daakmayofila da Tanxmoba ganacxada winaswari sasamarTlo gamoZiebis dawyebaze.

vinaidan dacvis mxares eSinoda, rom momCivanma policiis ganyofilebaSi danaSauli aRiara iZulebis gamo, mosamarTles sTxoves mowmis mosmena. niderlandSi arsebuli praqtikis Sesabamisad, man Cvenebis miRebis saqme miando sxva mosamarTles. man aseve patimrobis periodSi momCivnis fsiqiatriuli Semowmeba moiTxova.

momCivani gamoiZaxes mosamarTle M-Tan sasamarTlo sxdomaze. 1988 wlis 5 ianvars man gaasaCivra mosamarTle M-is moqmedeba im safuZvliT, rom igi ar iyo miukerZoebeli, radgan miiRo mis dakavebasTan dakavSirebuli sasamarTloswina gadawyvetilebebi. mosamarTle M-ma saCivari ar daakmayofila. misi gadawyvetileba, saapelacio gadawyvetilebiT daadastura, midelburgis regionalurma sasamarTlom. 1988 wlis 25 ianvris sxdomaze momCivanma aRiara danaSauli da moTavsebul iqna arasrulwlovan damnaSaveTa dawesebulebaSi.

warmoeba adamianis uflebaTa evropis komisiaSi

1988 wlis 28 aprils komisiaSi Setanili saCivari misaRebad gamocxadda 1991 wlis 9 oqtombers.

saqmis morigebiT dasrulebis uSedego cdis Semdeg, komisiam, 1992 wlis 9 ivliss, Seadgina moxseneba, romelSic Camoayaliba faqtebi da gamoTqva mosazreba, rom me-6 muxlis pirveli punqti ar darRveula, (Tormeti xmiT samis winaaRmdeg).

komisiam sasamarTlos saqme gadasca 1992 wlis 11 seqtembers.

II. gadawyvetilebis Sinaarsi

momCivanma aRniSna, rom mTeli warmoebis ganmavlobaSi, e.i. winasasamarTlo etapze da sasamarTlo warmoebis dros, mis saqmes ganixilavda arasrulwlovanTa saqmeebis erTi da igive mosamarTle, romelmac, Sesabamisad, miiRo saqmesTan dakavSirebuli yvela gadawyvetileba. momCivans eWvi ar Seutania mosamarTlis pirad miukerZoeblobaSi, magram miuTiTa im faqtze, rom es ukanaskneli moqmedebda rogorc sagamoZiebo mosamarTle da momCivnis droebiTi patimrobis Sesaxeb gadawyvetileba miiRo oTxjer. aqedan gamomdinare, momCivans hqonda kanonieri safuZveli evarauda, rom igi ar SeiZleboda yofiliyo miukerZoebeli.

mTavrobam da komisiam ganacxades, rom momCivanis varaudi ar SeiZleba miCneuliyo obieqturad da safuZvlianad.

sasamarTlom miuTiTa, rom gadamwyveti iyo ara eWvmitanilis subieqturi, Tumca gasagebi, SiSi, aramed imis mtkiceba, saqmis mocemuli garemoebebis mixedviT SesaZlebeli iyo Tu ara misi SiSi miCneuliyo obieqturad da safuZvlianad. am mxriv, mxolod is faqti, rom arasrulwlovanTa mosamarTlem miiRo sasamarTloswina gadawyvetilebebi, ar SeiZleba CaiTvalos mis miukerZoeblobasTan dakavSirebuli SiSis erTaderT dasabuTebad. arsebiTi mniSvneloba hqonda am gadawyvetilebebis moqmedebis sferosa da xasiaTs.

momCivnis droebiT dakavebasTan dakavSirebuli gadawyvetilebebis garda, mas ar miuRia sxva sasamarTloswina gadawyvetileba, garda imisa, rom daakmayofila braldebis mxaris moTxovna momCivnis fsiqiatriuli Semowmebis Taobaze (romelic momCivans ar gausaCivrebia). mas sxvagvarad ar gamouyenebia Tavisi, rogorc sagamoZiebo mosamarTlis, uflebamosileba. rac Seexeba mis gadawyvetilebebs momCivnis droebiT dakavebasTan dakavSirebiT, isini asabuTeben mosamarTlis miukerZoeblobis saeWvoobas mxolod gansakuTrebuli garemoebebis arsebobisas. aRniSnuli saqmis SemTxvevaSi kiTxvebi, romlebzec mosamarTles pasuxi unda gaeca aRniSnuli gadawyvetilebis misaRebad, gansxvavdeboda im kiTxvebisagan, romlebic gadamwyveti iqneboda mis mier saboloo gadawyvetilebis gamosatanad. momCivnis winaaRmdeg "mniSvnelovani safuZvlebis" arsebobis dadgenisas, mas daCqarebuli wesiT unda daedgina mxolod is, rom braldebis mxares hqonda *prima facie* safuZveli momCivnis winaaRmdeg braldebis wayenebisaTvis, miT umetes, rom momCivanma braldeba aRiara da am etapze braldebas mxars uWerda kidev damatebiTi mtkicebulebebi.

sasamarTlom aseve aRniSna, rom braldebulis interesebs icavda advokati, romelic mas daxmarebas uwevda saqmis warmoebis yvela etapze. sasamarTlom SeniSna, rom momCivans hqonda gasaCivrebis SesaZlebloba, ris Sedegadac saapelacio sasamarTlos sami mosamarTle xelaxla, sruli moculobiT ganixilavda saqmes.

aRniSnuli garemoebebis safuZvelze momCivnis varaudi, rom arasrulwlovanTa mosamarTle arasakmarisad miukerZoebeli iyo, ar SeiZleba CaiTvalos obieqturad dasabuTebulad. Sesabamisad, sasamarTlo mivida daskvnamde, rom me-6 muxlis pirveli punqti ar darRveula.

am daskvnidan gamomdinare, sasamarTlom ar CaTvala mizanSewonilad dawvrilebiT ganexila sakiTxi, unda gamoeyenebinaT Tu ara arasrulwlovanis monawileobiT sisxlis

samarTalwarmoebis procesis mimarT me-6 muxli imave wesiTa da proceduriT, rogorc srulwlovanis winaaRmdeg sisxlis samarTalwarmoebis dros.

(ix. gadawyvetilebis 30-38-mde punqtebi da operatiuli debuleba)

sasamarTlom gadawyvetileba gamoitana plenarul sxdomaze Semdegi SemadgenlobiT:

Tavmjdomare: b-ni risdali (norvegia). mosamarTleebi: b-ni Tor viliamsoni (islandia), b-ni b. valSi (irlandia), b-ni J. de meieri (belgia), n. valtikosi (saberZneTi), b-ni s.k. martensi (niderlandi), b-ni i. fuageli (dania), b-ni J.m. morenila (espaneTi) da ser jon frilendi (britaneTi), aseve, batonebi m.a. aiseni (mdivani) da h. petzoldi (mdivnis moadgile).

orma mosamarTlem gadawyvetilebas daurTo zogadi xasiaTis damatebiTi mosazrebebi, romlebic mocemulia gadawyvetilebis danarTSi.