

kraCunova bulgareTis winaaRmdeg

KRACHUNOVA V. BULGARIA

saCivari #18269/18

gadawvyvetileba

28.11.2023

muxli 4

monobisa da iZulebiTi Sromis akrZalva pozotiuri valdebulebebi/adamianTa trefikingi

faqtebi

2012-2013 wlebSi momCivani iyo seqsmuSaki policiis mier mis dakavebamde da dakiTxvamde xolo misi suteniori (X) gaasamarTles adamianebiT vaWrobisTvis. miuxedavad imisa, rom erovnulma sasamarTloebma dasaSvebad cnes momCivnis moTxovna X-is mimarT aramaterialuri zianis anazRaurebis Taobaze, misi moTxovna materialuri zianis anazRaureb?ze, prostituciidan miRebuli savaraudo Semosavlis safuZvelze, romelic X-ma savaraudod, misi meSveobiT gamoimuSava, ar dakmayofilda im safuZvliT, rom igi miekuTvneboda ukanono da amoraluri gziT miRebuli fulis kategorias. momCivnis yvela saCivari am kuTxiT ar dakmayofilda.

samarTali

me-4 muxli

iyo Tu ara momCivani adamianebiT vaWrobis msxverpli me-4 muxlis mixedviT? sasamarTlom miiCnia, rom winamdebare saqmeSi me-4 muxli gamoyenebadia, radgan adamianebiT vaWrobis saerTaSoriso definiciis samive elementi, romelic mocemulia palermos oqmis me-3(a) da evropis sabWos trefikingis winaaRmdeg arsebuli konvenciis me-4(a) muxlebSi _ `moqmedeba~, `saSualeba~ da `mizani~ \_ momCivnis mimarT arsebobda. rac Seexeba `moqmedebas~ da `mizans~, erovnulma sasamarTloebma daadgines, rom X-ma orjer Caaba momCivani aRniSnul qmedebaSi da gangrZobiTad axdenda mis transportirebas gadaxdis sanacvlod misi seqsualuri eqspluataciis mizniT.

rac Seexeba `saSualebebs~, is faqti, rom X-s brali wauyenes da gaasamarTles sixlis samarTlis kodeqsis danaSaulisTvis romlis mixedviTac trefikingis danaSauli saxezea maSinac ki Tu `saSualebis~ elementi ar arsebobs ar iyo gadamwyveti. ar arsebobda mtkicebuleba, romelic miuTiTebda Zaladobis an Zaladobis muqaris Cadenas X-is mier, romelic mimarTuli iyo momCivnis seqsualur saqmianobaSi Casabmelad misgan sargeblis miRebis mizniT. adamianebiT vaWrobis winaaRmdeg brZolis Sesaxeb konvenciazე miTiTebiT, sasamarTlom aRniSna, rom saerTaSoriso samarTali naTlad asaxavs, rom Tanamedrove samyaroSi adamianebiT vaWroba xandaxan xdeba ufro daxvewili saSualebebiT, rogoricაa motyue ba, fsiqologiuri zewola da mowyvlabodis borotad gamoyeneba taqtika, romelic ar unda iyos calke ganxiluli. momCivani, Raribi da emociurad arastabiluri axalgazrda qali, warmoSobiT patara soflidan, Tavs X-ze damokidebulad grZnobda,

romelic mis saxlSi cxovrobda, inaxavda mis piradobis mowmobas da iRebda misi Semosavlis mniSvnelovan nawils. maT aSkarad hqondaT intimuri urTierTobebi (adamianiT movaWreebi xandaxan qmnian emociur kavSirs da damokidebulebis gancdas imiT, rom TavianT msxverpls intimur urTierTobebSi atyueben da TavianT romantikul partniorebad warmoaCenen). garda amisa, X-ma moatyua igi, CamoarTva Tavisuflad gadaadgilebis an ojaxTan dakavSirebis SesaZlebloba da aseve arsebobda mtkicebuleba, rom man borotad gamoiyena misi emociuri da socialuri daucveloba misi qcevis gasakontroleblad. ufro konkretulad ki, daemuqra, rom seqsmuSakad muSaobis Sesaxeb informacias gaumxelda Tanasoflelebs. mocemul viTarebaSi, is faqti, rom momCivans SesaZloa, Tavidanve hqonoda micemuli Tanxmoba X-is sasargeblad seqsmuSakobaze, ar iyo gadamwyveti. nebismier SemTxvevaSi, adamianebiT vaWrobis (trefikingis) winaaRmdeg brZolis konvenciis ganmartebiT, aseTi Tanxmobis arseboba ararelevanturia, Tu gamoyenebuli iyo adamianiT vaWrobis romelime `saSualeba~. arc is iyo gadamwyveti, rom momCivans SeeZlo X-gan adre gaTavisufleba. Sesabamisad, mTavrobis saCivari ratione materiae SeuTavseblobis Sesaxeb, romelic SeuerTda saqmis arsebiT nawils, ar dakmayofilda.

b) arsebobs Tu ara me-4 muxlis mixedviT pozitiuri valdebuleba, trefikingis msxverplebs mieceT saSualeba, moiTxovon kompensacia TavianTi movaWreebisgan dakarguli Semosavlis gamo?

sasamarTlo pirvelad dadga sakiTxis winaSe, arsebobs Tu ara me-4 muxlis mixedviT pozitiuri valdebuleba imis Sesaxeb, unda mieceT Tu ara adamianiT vaWrobis msxverplebs saSualeba dakarguli Semosavlis miRebis safuZvelze moiTxovon kompensacia TavianTi movaWreebisgan.

me-4 muxlidan gamomdinare pozitiuri valdebulebebi SeiZleba gavrceldes imgvarad, rogorc erovnuli kanonmdebloba aregulirebda garkveul sakiTxebs. sasamarTlom ukve daadgina, rom (Sesabamisi erovnuli wesebis mixedviT) garkveuli saxis zianis anazRaurebis moTxovnis wardgenis SeuZleblobis faqti arRvevs me-2 muxls. is faqti, rom me-4 muxlis teqsti arafers ambobs imis Sesaxeb, arsebobs Tu ara pozitiuri valdebuleba, raTa msxverpls mieces saSualeba moiTxovos Tavis movaWrisgan dakarguli Semosavali, ar aris gadamwyveti; am xasiaTis konkretuli valdebulebebi ikiTxeba konvenciis sxva debulebebSi, romlebic erTnairad dumdnen am sakiTxebze. arsebobda Zlieri argumentebi me-4 muxlis me-2 muxlis analogiurad ganmartebis sasargeblad. me-2 da me-3 muxlebTan erTad, me-4 muxlSi ganisazRvra demokratiuli sazogadoebis erT-erTi ZiriTadi Rirebulebebi romlebic qmnian evrosabWos, xolo adamianebiT vaWroba (romelic safrTxes uqmnida mis msxverplTa Rirsebasa da fundamentur Tavisuflebebs) SeuTavsebeli iyo am RirebulebebTan. garda amisa, didi xania aRiarebulia, rom xelSemkvreli saxelmwifoebis valdebulebebi trefikingis mimarT, me-4 muxliT unda aRsruldes yovlismomcveli midgomis gamoyenebiT, rac Tavis mxriv moTxovnilia palermos protokoliT da adamianebiT vaWrobis winaaRmdeg arsebuli konvenciiT da am mxriv, mxolod zomebis erToblioba SeiZleba iyos efeqturi. erovnuli kanonmdeblobis garantiebis speqtri aseve sakmarisi unda yofiliyo trefikingis msxverplTa uflebebis efeqturi dacvis uzrunvelsayofad. ramdenadac me-4 muxlis bolo saqmeebi exeboda pozitiuri valdebulebebis Sesrulebas, miT ufro mniSvnelovani iyo am pozitiuri

valdebulebebis ise gageba, rom uzrunvelyofili yofiliyo masSi gaTvaliswinebuli uflebebis efeqturi dacva.

dRemde, sasamarTlos precedentuli samarTali, romelic exeba trefikingis faqtebis Semdgom reagirebas, fokusirebuli iyo gamoZiebas da dasjaze. Tumca, amgvarma RonisZiebebma ver gaaqarwyla trefikingis msxverplTa mimarT damdgari materialuri ziani an praqtikulad ver Seuwyo xeli maT sawyis mdgomareobaSi dabrunebas. bolo saqmeebSi V.C.L. and A.N. v. the United Kingdom Uda J. and Others v. Austria sasamarTlom xazi gausva Post Factum trefikingis msxverplTa dacvis aucileblobas, maTi gamojanmrTelebisa da sazogadoebaSi reintegraciis perspeqtividan. swored am gadmosaxedidan, msxverplTa SesaZlebloba, moiTxovon kompensacia dakarguli Semosavlis gamo, warmoadgens maTTvis restitutio in integrumis uzrunvelyofas, miyenebuli zianis sruli odenobis anazRaurebiT. es aseve relevanturi gza iqneboda (maTi finansuri saSualebebiT uzrunvelyofa sakuTari cxovrebis aRsadgenad) Rirsebis dasacavad, maTi gamojanmrTelebis xelSewyobisa da trefikingis msxverplad xelaxla gaxdomis riskebis Sesamcireblad. amas garda, aseTi SesaZlebloba uzrunvelyofda, rom trefikerebi ver SeZlebdnen sargebeli mieRoT TavianTi danaSaulis SedegebiT, rac Seamcirebda maTi Cadenis ekonomikur stimul. mas aseve SeuZlia Seamciros tvirTi sajaro resursebze, romlebic gamoiyeneba trefikingis msxverplTa gajansaRebis mxardasaWerad da misces msxverpls damatebiTi stimuli gamoavlinos trefikingi, riTac gazrdis trefikerebisTvis pasuxismgeblobis dakisrebis Sansebs da amiT Tavidan aicilebs samomavlo SemTxvevebs. maSasadame, es SesaZlebloba unda CaiTvalos me-4 muxliT saxelmwifosgan trefikingis mimarT moTxovnili integrirebuli reagirebis arsebiT nawilad. amas garda, msxverplis kompensacia unda iyos mTavari ganxilvis sagani adamianis uflebebis perspeqtividan. sxva RonisZiebebi gansakuTrebiT sisxlis samarTlisa da zogjer saimigracio kanonmdeblobis sferoSi aseve iyo saxelmwifos reagirebis ganuyofeli nawili trefikingis sakiTxebTan dakavSirebiT Tumca isini iyo komplementaruli (damatebiTi) xasiaTis.

am midgomam mxardaWera moipova Sesabamis saerTaSoriso instrumentebSi, kerZod, palermos oqmSi da trefikingis winaaRmdeg konvenciaSi, aseve gaeros organoebis rekomendaciebsa da angariSebSi, evropis sabWos eqspertTa jgufSi adamianebiT vaWrobis winaaRmdeg brZolis Sesaxeb (GRETA) da evropis sabWos saparlamento asambleasi (PACE). aseve xelmisawvdomi SedarebiTi samarTlis masalebidan irkveva, rom bolo wlebSi arsebobda tendencia, gansakuTrebiT amerikis SeerTebul Statebsa da kanadaSi, da zogierT xelSemkvrel saxelmwifoSic rogoricaa avstria, belgia, dania, safrangeTi, germania, niderlandebi, norvegia da gaerTianebuli samefo, sadac trefikingis msxverplebs saSualeba eZleodaT moeTxovaT TavianTi trefikerebisgan mieRoT maTi eqspluataciis Sedegad miRebuli Semosavali, maSin rodesac savaraudod, mxolod erTma xelSemkvrelma saxelmwifom, garda bulgareTisa, konkretulad akrZala aseTi moTxovnebi. yvela zemoaRniSnuli mosazrebis gaTvaliswinebiT, sasamarTlom daaskvna, rom me-4 muxli ganmartebuli imgvarad, rom misi garantiebi praqtikuli da efeqturi iyos, xelSemkvreli saxelmwifoebis mxridan adgens pozitiur valdebulebas, trefikingis msxverplebs mieceT saSualeba moiTxovon dakarguli Semosavlis kompensacia maTi trefikerebisgan. es valdebuleba aZlierebs am muxlSi ukve gaTvaliswinebuli uflebebis dacvas dRevandeli realobis gaTvaliswinebiT da es dacva

SesabamisobaSi modis am sferoSi arsebul gansakuTrebiT maRal standartTan da Secvlil socialur konteqstTan, romelSic es muxli saWiro iyo, rom gamoyenebuliyo.

g) warmoadgenda Tu ara momCivnis moTxovnaze uari X-is mimarT zianis anazRaurebis Sesaxeb am pozitiuri valdebulebis darRvevas?

bulgareTis sasamarTloebma, rodesac momCivnis moTxovna X-gan kompensaciis miRebaze ar daakmayofiles, miuTiTebdnen im faqtze, rom man Semosavali moipova prostituciiT, romelic winaaRmdegobaSi modis (a) sisxlis samarTlis kodeqsis 329-e 1-el punqtTan da (b) zneobasTan.

pirvel safuZvelTan dakavSirebiT, arcerT erovnul organos ar gamouTqvams varaudi, rom momCivnis qmedeba akmayofilebda 329-e muxlis 1li punqti gaTvaliswinebuli danaSaulis yvela Semadgenel elements da arasdros dawyebula gamoZieba an sisxlissamarTlebrivi devna aseTi danaSaulisTvis. garda amisa, es debuleba efuZneboda moZvelebul socialur damokidebulebebs da politikur mosazrebebs, romlebic darCenili iyo totalitaruli komunisturi reJimidan da SeuTavsebeli iyo kanonis uzenaesobasa da adamianis uflebebis pativiscemaze dafuZnebul konstituciur CarCosTan, ramac gamoiwvia sakonstitucio sasamarTlos mier misi arakonstituciurad cnoba. momCivnis Semosavlis savaraudo ukanonoba ar SeiZleba CaiTvalos sarCelis dakmayofilebaze uaris Tqmis sakmaris safuZvlad.

rac Seexeba meore safuZvels, moralur mosazrebebs dafuZnebuli SeSfoTeba mxedvelobaSi unda iqnas miRebuli iseT mgrZnobiare sferoSi, rogoric aris prostitucia, romlis mimarTac sxvadasxva samarTlebriv sistemaSi gansxvavebuli midgoma arsebobs, imisda mixedviT, Tu rogor aRiqvavda mas sazogadoeba. adamianis uflebebi unda yofiliyo mTavari kriteriumi prostituciisa da trefikingis politikis SemuSavebisa da ganxorcielebisas. rTuli iqneboda im mosazrebis mxardaWera, rom gadawyve tileba, romelic X-s avaldebulebda, daebrunebina momCivnisTvis is Semosavali, romelic man waarTva, bulgareTSi CaiTveleboda moralis Seuracxyofad, miuxedavad imisa, rom es Semosavali prostituciiT iyo miRebuli. momCivnis saCivari exeboda ara nebayoflobiT seqsualur muSaobas, aramed eqspluatacias iZulebiTi prostituciis miznebisTvis rac rogorc sasamarTlom aRiara, SeuTavsebeli iyo adamianis RirsebasTan. amgvarad, winamdebare saqme ar exeboda seqs-muSakobasTan dakavSirebuli xelSekrulebis, rogorc TavisTavad iuridiulad dasaSvebi urTierTobis aRiarebas an ufro zogadad, gamoricxavda Tu ara konvencia prostituciis an misi zogierTi aspeqtis ukanonod cnobis akrZalvas. sasamarTlos analizi imiT Semoifargleboda, SeiZleboda Tu ara pozitiuri valdebulebis Tavidan acileba sajaro politikis safuZvelze, gansakuTrebiT ki rom sadavo Semosavlebi miRebuli iyo amoraluri gziT. saerTaSoriso samarTlis instrumentebSi trefikingis msxverplTa uflebebs mniSvnelovani aqcentis fonze, iseve rogorc bulgareTis sakonstitucio sasamarTloSi ganxilvisas da am sasamarTlos mier warmodgenili mizezebis gaTvaliswinebiT, ar SeiZleba dasvebuli iyos, rom martivi miTiTeba momCivnis Semosavlis `amoralur~ xasiaTze warmoadgenda sakmaris gamarTlebas am valdebulebis SeusruleblobisaTvis. maSinac ki, Tu arsebobda safuZvlani sajaro politikidan gamomdinare mizezebi prostituciiT miRebul SemosavalTan dakavSirebiT deliqturi sarCelis dakmayofilebaze uaris TqmisTvis, mocemul SemTxvevaSi aseTi mizezebi winaaRmdegobaSi modioda trefikingis winaaRmdeg arsebul saxelmwifo politikasTan da msxverplTa dacvis principTan, romelsac aramarto

sasamarTlo, aramed Tavad bulgareTis xelisuflebac did mniSvnelobas aniWebda. rogorc Cans, momCivans ar hqonda kompensaciis moTxovnis sxva gzebi an SesaZlebloba moeTxova da mieRo aseTi kompensacia danaSaulis msxverplTa kompensaciis zogadi sqemiT.

amgvarad, sasamarTlom daaskvna, rom X-is mimarT momCivnis mier Setanili sarCelis, sadac igi iTxovda dakarguli Semosavlebis anazRaurebas, dakmayofilebaze uari, ver iqneba aRqmuli rogorc balansis damyareba konvenciis me-4 muxliT dacul mis uflebebsa da sazogadoebriv interess Soris, miuxedavad mopasuxe saxelmwifos Tavisufali Sefasebis farTo zRvrisa.

daskvna: darRveva (erTxmad) 41-e muxli 6000 evro aramaterialuri zianis asanazRaureblad; moTxovna materialur zianTan dakavSirebiT ar dakmayofilda, radgan sasamarTlom ver dainaxa sakmarisi pirdapiri mizezobrivi kavSiri me-4 muxlis darRvevasa da momCivnis mimarT savaraudo miyenebul materialur zians Soris misi sasarCelo moTxovnis odenoba X-is winaaRmdeg. erovnuli samarTalwarmoeba da sakiTxis xelaxali ganxilva erovnul doneze principSi iqneba darRvevis materialuri Sedegebis gamosasworeblad saTanado saSualeba.