

## Jersild daniis winaarmdeg

### Jersild v. Denmark

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faqto bri vi mxare

#### I. saqm is konkretul i garemoebebi

9. batoni jens ol af jersil di Jurnal isti gaxl avT da kopenhagenSi cxovrobs. im movl enebis dros, ramac safuzvel i misca winamdebare saqmes, igi muSaobda da kvl avac muSaobs daniis radioSi (daniis radiomauwebl obis korporacia, romel ic gadascems ara marto radio, aramed satel evizio programebsac), kviris axal i amebis tel eJurnal Si. es ukanasknel i cnobilia, rogorc kargad informirebul auditoriaze gaTvl ili seriozul i satel evizio programa, romel ic exeba farTo speqtris social ur da pol itikur probl emebs, maT Soris qsenofobias, imigraciasa da l tol vil ebs.

A

#### a. "mwvane qurTukebis" sakiTxi

10. 1985 w/ is 31 maiss gazeTma "informacia" dabeWda statia, sadac l aparaki iyo axal gazrdul i daj gufebis wevrebis rasistul damokidebul ebaze. isini TavS "mwvane qurTukebs" uwodeben da cxovroben kopenhagenSi, osterboroSi. aRniSnul statiasTan dakavSirebiT kviris axal i amebis tel eJurnal ma gadawyvita "mwvane qurTukebis" Sesaxeb dokumenturi fil mis gadaReba. Sesabamisad, ganmxcadebel i daukavSirda daj gufebis warmomadgenl ebs da sami maTgani baton per aqsol Tan - adgil obriv axal gazrdul centrSi momuSave social ur muSakTan, erTad moiwvia satel evizio interviuze. intervius ganmavl obaSi, romel ic ganmxcadebel s mihyavda, sami "mwvane qurTukel i" Seuracxmyofel da damamcirebel SeniSvnebs akeTebda daniaSi mxcovrebi emigrantebisa da eTnikuri j gufebis Sesaxeb. intervium 5-6 saaTi gastana, aqedan daaxl oebiT 2-2,5 saaTi videofirze iqna gadaRebul i. daniis radiom respodentebS, Tavisi Cveul ebrivi praqtikis Sesabamisad, gadauxada honorari.

11. Semdgomi redaqtirebisas ganmxcadebel ma intervius firi daiyvana ramdenime wuTamde. 1985 w/ is 21 ivl iss aRniSnul i firi gadmoica daniis radioTi, rogorc kviris axal i amebis tel eJurnal is nawil i. aRniSnul i programa Sedgeboda sxvadasxva sakiTxebisagan, magal iTad, samxedro mdgomareoba afrikaSi, debatebi daniaSi mogebis ganawil ebis Sesaxeb da aw gardacvl ili germanel i mwerl is, henrix biol is moRvaweoba.

#### b. procesi kopenhagenis saqal aqo sasamarTI oSi

12. programis Semdeg saCivrebi ar Semosul a arc radios gameobaSi, sadac amgvari sakiTxebis gamocdil eba aqvT, arc daniis radioSi, magram al borgis episkoposma iCivl a iusticiis ministrTan. gamoZiebis Catarebis Semdeg saxal xo prokurorma aRZra sisxl is samarTI is saqme kopenhagenis saqal aqo sasamarTI oSi ganmxcadebl is mier intervuiirebul i sami axal gazrdis winaarmdeg, sadac maT

bral ad edebodaT sisxl is samarTI is kodeqsis 266-e muxl is darRveva (ix. par. 19 qvemoT) amgvári gancxadebebis gamo:

"...Crdil oeT Statebs undodaT, rom Savebi Tavisufal i adamianebi yofil iyven, magram isini ar arian adamianebi, isini cxovel ebi arian".

"Sexede goril as suraTs da mere Sexede zangs, igive aRnagoba da yvel aferi, brtyel i Subl i da yvel aferi sxva".

"zangi ar aris adamiani, is cxovel ia, iseve rogorc yvel a sxva ucxoel i muSa, Turqebi, iugosl avebi da ra vici, rasac Tavis Tavs eZaxian".

"Cven ar mogwons is faqti, rom isini "perkerebi" arian, da kidev ar mogwons maTi mental iteti .... da kidev ar mogwons, roca im zimbabvur tanisamosSi dadian da Tavis sul el ur enaze raRacas I aparakoben..."

"egeni narkotikebiT vaWroben, naxevari cixe eg "vestrebi" arian, narkotikebis gamo rom zian... eg is xal xia, narkotikebis gamo rom ixdian sasj el s..."

"eg "perkerebi" iq narkotikebis gamo arian".

ganmcxadebel s bral ad daedo, 266-e da 23-e muxl ebis Sesabamisad (ix. par 19 qvemoT), sami axal gazrdis xel is Sewyoba da waqezeba; igive bral deba wauyenes daniis radios axal i amebis seqciis xel mZRvanel s – baton I ase iensens.

13. saqal aqo sasamarTI oSi ganmcxadebl isa da batoni iensenis advokatma moiTxova maTi gamarTI eba. misi TqmiT, ganmcxadebl isa da batoni iensenis saqciel i ar Seedreboda danarCeni sxva sami mopasuxis saqciel s, romel Ta mosazrebebs isini ar iziarebdnen. maT ubral od surdaT social uri probl emis real uri suraTis Seqmna; faqtobrivad, programam aRSfoTebis provocireba moaxdina da sibral ul is grZnoba aRZra sam sxva mopasuxesTan dakavSirebiT, romel Tac sasacil o mdgomareobaSi Caigdes Tavi. amrigad, daniis radios ar hqonia ganzraxul i daerwmunebina mayurebel i, gaeziarebinaT "mwvane qurTukebis" Sexedul ebebi, piriqiT, mas srul iad sapirispiro ganzraxva hqonda. Sesabamisi kanonis mixedviT, arsebobs gansxvaveba im adamianebs Soris, vinc akeTebis gancxadebebs da programis redaqtors Soris, Tanac es ukanasknel i gamoxatvis gansakuTrebul i Tavisufl ebiT sargebl obs. sargebl obda ra im dros monopol i iT radiomauwyebul obaSi, daniis radios moval eobas warmoadgenda sazogadoebisaTvis mtkivneul sakiTxebze yvel a saxis Sexedul ebebis gadacema ise, rom asaxul iyo mosaubris Gamoxatvis manera. sazogadoeba dainteresebul i iyo, mieRo informacia ybadaRebul i uaryofiTi (zogjer usiamovnoc ki) social uri Sexedul ebebis Sesaxeb, programa gadaica sajaro debatis konteqstSi, rasac Tan mohyva komentarebi presaSi, magal iTad "informaciaSi" da igi, faqtobrivad, warmoadgenda gul axdil angariSs aRniSnul i axal gazrdebis Rirebul ebebis Sesaxeb. advokatma, romel mac sxvaTa Soris "informaciaSi" dabeWdil statiazec miuTiTa, isic aRniSna, rom amgvári tipis saqmeebSi ar yofil a gatarebul i raim Tanmimdevrul i sasamarTI o pol itika.

14. 1987 wl is 24 april s saqal aqo sasamarTI om gamamtyunebel i ganaCeni gamoutana sam axal gazrdis, maTgan erTs im gancxadebisaTvis, rom "Savebi" da "ucxoel i muSebi" "cxovel ebi" arian, xol o ors - maTi gancxadebisaTvis narkotikebTan da "perkerebTan" dakavSirebiT. ganmcxadebel s, iseve rogorc programis koordinator s – baton iensens, bral ad daedo axal gazrdebis xel is Sewyoba da

waqezeba da miesaj a dRiuri jarimis gadaxda, rac utol deboda, Sesabamisad, an 1000 da 2000 daniur kronas, an 5 dRiT Tavisufl ebis aRkveTas.

rac Seexeba ganmcxadebel s, saqal aqo sasamarTI om daadgina, rom 1985 wl is 31 maisis "informaciaSi" dabeWdil i statiiis Semdeg igi ewvia "mwvane qurTukebs" da baton aqsol Tan da sxvebTan saubris Semdeg daTanxmda sami axal gazrdis mopatiJebaze satel evizio programaSi. programis mizani iyo osterboroSi "mwvane qurTukebis" rasistul i poziciis demonstrireba, rac ukve aRiniSneboda "informaciaSi" dabeWdil statiaSi da amasTan erTad maTi social uri konteqstis Cvneba. sasamarTI om daadgina, rom, Sesabamisad, ganmcxadebel ma TviTon gamoiCina satel evizio programis Seqmnis iniciativa, Tanac man winaswar kargad icoda, rom intervius dros gakeTdeboda rasistul i xasiaTis diskriminaciul i komentarebi. interviu ramdenime saaTs gagrZel da, am drois ganmavl obaSi daniis radio l udiT umaspinZl deboda axal gazrdebs. amrigad, ganmcxadebel ma waqezza "mwvane qurTukebi" Taviani rasistul i Sexedul ebebis gamoxatvaSi, rac, vinaidan es tel eviziiT iyo gadacemul i, warmoadgenda sisxl is samarTI is kodeqsis 266(b) muxl is darRvevas. gancxadebebi gadaica tel eviziiT yovel gvare kontrargumentebis gareSe, ganmcxadebl is mier Canawerebis redaqtirebis Semdgom. Sesabamisad, igi damnaSave iyo 266(b) muxl is darRvevis xel is Sewyobasa da waqezebaSi.

c. procesi aRmosavl eT daniis umaRI es sasamarTI oSi

15. ganmcxadebel ma da batonma iensenma, magram ara samma "mwvane qurTukel ma", gaasaCivres saqal aqo sasamarTI os gadawyvetil eba aRmosavl eT daniis umaRI es sasamarTI oSi. maT, ZiriTadad, gaimeores saqal aqo sasamarTI oSi wardgenil i argumentacia, garda amisa, ganmcxadebel ma ganmarta, rom Tumca mas hqonda eWvi, rom "mwvane qurTukebis" gancxadebebi eqvemdebareboda kanoniT dasjas, man Tavi Seikava aRniSnul i gancxadebebis gamotovebisagan programaSi, radgan miaCnda, rom maTi real uri poziciis Cvneba mniSvnel ovani iyo. man daaskvna, rom axal gazrdebma icodnen aRniSnul i gancxadebebisatvis SesaZl o sisxl is samarTI is pasuxismgebl obis Sesaxeb da, Sesabamisad, ar gaufrTxil ebia isini am faqtis Taobaze.

16. 1988 wl is 16 ivnisis gadawyvetil ebiT umaRI esma sasamarTI om xuTi xmiT erTis winaaRmdeg uari uTxra saapel acio gancxadebas.

gansxvavebul i azris mqone wevris azriT, miuxedavad imisa, rom "mwvane qurTukebis" gancxadebebi, sisxl is samarTI is kodeqsis 266(b) muxl is Sesabamisad, danaSaul s warmoadgens, ganmcxadebel sa da baton iensens ar daurRveiaT sityvis Tavisufl ebis fargl ebi, rom iTac sargebl obs tel evizia da informaciis sxvasaSual ebebi, vinaidan programis mizani aRniSnul i axal gazrdebis rasistul i Sexedul ebebisada maTi social uri konteqstis Taobaze informaciis miwodeba da saj aro diskusiebis wamowyeba iyo.

d. procesi uzenaes sasamarTI oSi.

17. ganmcxadebel ma da batonma iensenma umaRI esi sasamarTI os gadawyvetil eba gaasaCivres uzenaes sasamarTI oSi, romel mac 1989 wl is 13 Tebevli is oTxixmiT erTis winaaRmdeg miRebul i gadawyvetil ebiT uari uTxra saapel acio saCivars. umravl esobam daadgina:

"mopasuxeebis qmedebam gamoiwvia mcire raodenobis adamienebis mier gamoTqmul i rasistul i gancxadebebis gavrcel eba, ris Sedegad aRniSnul pirebs daekisraT pasuxismgebl oba da amrigad, saqal aqo da umaRl esi sasamarTl os dadgenil ebis Tanaxmad, mopasuxeebma daarRvies sisxl is samarTl is kodeqsis 266-e da 23-e muxl ebi. Cven ar migvaCnia, rom mopasuxeebis gamarTl eba SesaZl ebel ia sazogadoebrivi interesis mqone sakiTxebze Gamoxatvis Tavisufl ebis safuZvl iT, rac am SemTxvevaSi upirispirdeba rasistul i diskriminaciis winaarmdeg dacvas. aqedan gamomdinare, mxars vuWerT gasacivrebul i gadawyvetil ebis Zal aSi darCenas."

mosamarTl e pondopidani Tavis gansxvavebul mosazrebaSi miuTitebs:

"programis mizani gaxl daT informaciis gacema sakiTxze - ucxoel ebisadmi damokidebul eba, romelic farTo da zogjer gacxovel ebul i sazogadoebrivi debatebis Temas warmoadgens. programam daxata "mwvane qurTukebis" poziciis naTel i suraTi da amgvarad sazogadoebas gauCnda informaciis miRebisa da sakuTari azris Camoyal ibebis SesaZl ebl oba. aRniSnul i Sexedul ebebidan gamomdinare, nebismeri kontrargumenti programis msvl el obis dros, an uSual od mis win Tu Semdeg, ver miaRwevda saWiros mizans. miuxedavad imisa, rom programa exeboda adamienebis SedarebiT mcirericxovan jgufs, mas namdvil ad hqonda sakmaod maRal i sainformacio Rirebul eba. is faqti, rom mopasuxeebma gamoiCines amgvari Sexedul ebebis gavrcel ebis iniciativa, ar gaxl avT mniSvnel ovani faqtori maTi saqciel is Sefasebisas. aRniSnul viTarebaSi da im faqtis miuxedavad, rom gancxadebebi namdvil ad warmoadgenen 266(b) muxl is darRvevas, eWvis qveS vayeneb aRniSnul i muxl is darRvevaSi, daxmarebasa da waqezebaSi mopasuxeebis dadanaSaul ebis mizanSewonil obas. Sesabamisad, mxars vuWer mopasuxeebis gamarTl ebas."

18. rodesac uzenaes sasamarTl os gamoaqvs gadawyvetil eba mniSvnel ovan principul sakiTxze, Cveul ebriv, qveyndeba gadawyvetil ebis detal uri teqsti. am tradiciis Sesabamisad, mosamarTl e hermanma dabeWda aRniSnul i teqsti yovel kvireul sasamarTl o Jurnal Si (1989, gv. 399):

"rac Seexeba ganmcxadebl isa da batoni iensenis dadanaSaul ebas, ZiriTadi aqcenti keTdeboda im faqtze, rom es ukanasknel ni damnaSave iyvnen gancxadebebis saj arod gamotanaSi. ganmcxadebel s ar gaukeTebia pirdapiri moxseneba Sexvedraze. igi TviTon daukavSirda axal gazrdebs da gaakeTebina maT gancxadebebi, roml ebiC maT ukve gakeTebul i hqondaT gazeTis statiaSi da romel Ta Sinaarsic man ukve icoda da al baT el oda maT gameorebas. man TviTon gaukeTa redaqtireba interview, romelic ramdenime saaTs grZel deboda da daiyvana igi ramdenime wuTis xangrZl ivobis uxeS komentarebamde. gancxadebebi, roml ebiC ar daisj eboda sisxl is samarTl is kodeqsis 266(b) muxl iT, farTo sazogadoebisaTvis rom ar gamxdariyo cnobil i, eqvemdebareba kanoniT dasjas, radgan moxda maTi gadacema tel eviziiT ganmcxadebl is iniciativiTa da batoni iensenis TanxmobiT. Sesabamisad, eWvs ar iwvevs, rom gancxadebebis gavrcel eba moxda maTi daxmarebiTa da waqezebi T.

ganmcxadebl isa da batoni iensenis gamarTl eba SesaZl ebel i iqneba mxol od iseTi mizeziT, rac aSkarad gadawonis maTi moqmedebis aramarTebul obas. amastan dakavSirebiT, aRniSnul i gancxadebebiT mZimed Seuracxyofil Ta dacvis interesi unda Sedarebul iqnes gancxadebebis Sesaxeb sazogadoebis informirebis interesTan.

svadasxva interesebs Soris wonasworobis dacvis mcdel obisas umravl esoba iTval iswinebs, rom farTo sazogadoebisaTvis miwodebul i gancxadebebi Sedgeboda j gufis im wevrebis mier gakeTebul i cil ismwamebl uri Seni Svnebisagan da Seuracxyofisagan, romel Ta mosazreba bevristvis ar iqneboda saintereso. maT mier gadmocemul i informaciis Rirebul eba ar iyo imdenad mniSvnel ovani, rom gaemarTI ebina aRniSnul i informaciis gavrcel eba da, Sesabamisad, ar warmoadgenda gamamarTI ebel i ganaçenis safuZvel s. es ar niSnavs, rom eqstremistul i Sexedul ebebi ver moxvdeba presaSi, magram amgvari reportaJi ufro mraval mxrivad unda iyo gaSuqebul i, vidre es moxda aRniSnul satel evizio gadacemaSi. daSvebul i unda iyos pirdapiri reportaJi sazogadoebisaTvis saintereso sakiTxebze gamarTul i Sexvedrebidan.

meores mxriv, umciresobis azriT, informaciis simarTI e gadawonida sisxl is samarTI is kodeqsis 266(b) muxl iT dacul interesebs."

dabol os, mosamarTI e hermanma aRniSna, rom sasamarTI o procesis dros ar iqna wamoWril i sadavo zomebis konvenciis me-10 muxl Tan Sesabamisobis sakiTxi.

## II. Sesabamisi adgil obrivi kanonmdebl oba

### a. sisxl is samarTI is kodeqsi

19. sisxl is samarTI is kodeqsis 266(b) muxl i iTval iswinebs:

"nebismier pirs, romel ic saj arod an farTo sazogadoebisTvis gasacnobad akeTebis gancxadebas an gadascems nebismier sxva informacias, romel ic gamoxatavs muqaras, damcirebas an Seuracxyofas adamianebis j gufis winaaRmdeg maTi rasis, feris, erovnebis, rwmenis an eTnikuri warmoSobis safuZvel ze, ekisreba j arima an isj eba dakavebiT an Tavisufl ebis aRkveTiT araumetes ori wl is vadisa".

muxl i 23, paragrafi 1 adgens:

"sisxl is samarTI is danaSaul is ganmsazRvrel i debul eba exeba yvel a pirs, visi daxmarebiTac moxda aRniSnul i danaSaul is ganxorciel eba, iqneboda es waqezeba, rCeva Tu moqmedeba. sasjel i SeiZl eba Semsuqdes im SemTxvevaSi, Tu aRniSnul i piri apirebda mxol od mcire saxis daxmarebas, an Tu man gaaZl iera ukve miRebul i gadawyvetil eba, an Tu danaSaul i ar iqna ganxorciel ebul i, an ganzraxul daxmarebas warmateba ar mohyol ia".

### b. 1991 wl is aqti sainformacio saSual ebebis Sesaxeb

20. 1991 wl is aqti sainformacio saSual ebebis Sesaxeb, romel ic Zal aSi Sevida 1992 wl is 1 ianvars, anu aRniSnul i movl enebis Semdeg, *Inter alia*, adgens pasuxismgebl obas satel evizio mauwyebel obisaTvis. seqcia 18 gansazRvavs:

"piri, romel ic arapirdapiri eTeriT gasul gadacemaSi akeTebis gancxadebas, pasuxismgebel ia gakeTebul i gancxadebisTvis zogadi kanonmdebl obis debul ebebis Sesabamisad garda im SemTxvevebisa, rodesac:

1. gadacemidan ar Cans piris vinaoba;
2. aRniSnul pirs ar miucia Tanxmoba gancxadebis gadacemaSi gaSvebaze; an

3. mas dapirdnen, rom mas SeuZl ia gadacemaSi monawil eoba misi vinaobis gamxel is gareSe da am mxriv miRebul iqna garkveul i zomebi.

pirvel i paragrafis 1-el da me-3 qveparagrafebSi aRweril SemTxvevebSi gancxadebebis teqstze pasuxismgebel ia redaqtori maSinac ki, rodesac kanonis darRveva misi ganzraxvis an uyuradRebobis gamo ar momxdara..."

22-e seqciis Tanaxmad:

"piri, romel ic waikiTxavs an raimo sxva saxiT gadascems teqsts an gancxadebas, ar aris pasuxismgebel i aRniSnul i teqstis an gancxadebis Sinaarsze".

III. gaerTianebul i erebis aqtebi

21. rasistul i Sexedul ebebisa da mosazrebebis propagandis akrZal vasTan da Tavidan acil ebasTan dakavSirebul i debul ebebi Sesul ia mTel rig saerTaSoriso aqtebSi. mag., 1945 wl is gaerTianebul i erebis wesdeba (preambul is par. 2, muxl ebi 1-3, 13; par. 1(b), 55(g), 767 (g)); 1948 wl is adamianis ufl ebaTa sayovel Tao dekl aracia (muxl ebi 1, 2, da 7); 1966 wl is samoqal aqo da pol itikuri ufl ebebis Sesaxeb paqti (muxl ebi 2.1, 20; par. 2 da 26). yvel aze ufro rel evanturi SeTanxmeba gaxl avT yvel a formis rasizmis aRmofxvris saerTaSoriso konvencia ("gaeros konvencia"), romel ic ratificirebul i iyo evropis konvenciis monawil e qveynebis umravl esobis mier, daniis CaTvl iT (1971 wl is 9 dekemberi). konvenciis me-4 da me-5 muxl ebi iTval iswinebs:

muxl i 4

monawil e mxareebi gmoben yvel a saxis propagandas da yvel a organizacias, romel ic emyareba erTi rasis, erTi feris an erTi eTnikuri warmoSobis adamianta jgufis meoreze upiratesobis ideas, an romel ic cdil obs gaamarTl os rasistul i zizRi da diskriminacia nebismieri formiT, da val debul ebas iReben miiRon nebismieri dadebiTi zoma aRniSnul i diskriminaciis yvel a aqtis an waqezebis winaarmdeg da amasTan dakavSirebiT saTanadod iTval iswinebs ra adamianis ufl ebebis sayovel Tao dekl araciaSi gansazRvrul principebs da winamdebare konvenciis me-5 muxl Si dadgenil ufl ebebs, maT Soris:

(a). adgens, rom rasistul upiratesobasa da zizRze damyarebul i ideis gavrcel eba, rasistul i diskriminaciis waqezeba, agreTve nebismieri rasis an sxva feris Tu eTnikuri warmoSobis adamianebis jgufis winaarmdeg mimarTul i Zal adoba an Zal adobis waqezeba, da agreTve rasistul i saqmianobaSi daxmareba, dafinansebis CaTvl iT, iTvl eba danaSaul ad da isj eba kanoniT".

muxl i 5.

"winamdebare konvenciaSi gansazRvrul i ZiriTadi moval eobebis Sesabamisad, monawil e mxareebi val debul ebas iReben akrZal on da aRmofxvran nebismieri formis rasistul i diskriminacia da yvel asaTvis uzrunvel yon kanonis winaSe Tanasworobis ufl eba, ganurCevl ad maTi ferisa, rasisa, erovnebis Tu eTnikuri warmoSobisa, gansakuTrebiT ki aRniSnul ufl ebebTan dakavSirebiT....."

viii. Tavisufal i azrisa da gamoxatvis Tavisufal eba

"....."

me-4 muxl Si aRniSnul ma "saTanado gaTval iswinebam" gamoiwvia misi gansxvavebul i interpretacia da rasistul i diskriminaciis gaeros komitetis (Seiqmna gaeros konvenciis implimentaciisaTvis) wevrebis mosazrebebi gaiyo ganmcxadebl is ganaCenTan dakavSirebiT. es saqme, romel ic wardgenil i iyo daniis mTavrobis mier, CarTul i iyo gaeros komitetisadmi moxsenebaSi. komisiis rigi wevrebi miesal mnen mas, rogorc "Tavisufal i Gamoxatvis ufl ebasTan SedarebiT rasistul i diskriminaciis winaaRmdeg dacvis ufl ebis upiratesobis yvel aze ufro aSkara da naTel magal iTs", sxvebi Tvl idnen, rom "amgvar SemTxvevebSi faqtebi unda ganxil ul iyo orive ufl ebis konteqstSi" (komitetis moxseneba general uri asambl eisadmi, oficial uri Canawerebi, 455-e sesia, damateba # 18 (a/45/18), gv. 21, par. 56)

### **komisiis winaSe warmarTul i procesi**

22. komisiisadmi mimarTul 1989 wl is 25 ivl isis ganxcadebaSi (# 15890/89) ganmcxadebel i aRniSnavs, rom maT mimarT gamotanil i gamamtyunebel i ganaCeni warmoadgens konvenciis me-10 muxl Si gansazRvrul i gamoxatvis Tavisuflebis ufl ebis darRvevas.

23. 1992 wl is 8 seqtembers komisiam Tanxmoba ganacxada ganxcadebis miRebaze. 1993 wl is 8 ivl iss (muxl i 31) komisiam gamoTqva mosazreba (12 xmiT 4is winaaRmdeg), rom adgil i hqonda me-10 muxl is darRvevas.

mTavrobis mier komisiisadmi wardgenil i sabol oo argumentacia

24. 1994 wl is 20 april is sxdomaze mTavrobam mouwoda sasamarTl os daedgina, rom maT mier wardgenil i memorial is Sesabamisad konvenciis me-10 muxl is darRvevas adgil i ar hqonia.

### **samarTl ebrivi mxare**

I. ganxcadeba me-10 muxl is darRvevis Taobaze.

25. ganmcxadebel ma aRniSna, rom misi ganaCeni da sabral debo daskvna rasistul i komentarebis gavrcel ebaSi, daxmarebasa da waqezebaSi arRvevs gamoxatvis Tavisuflebis ufl ebas, romel ic gansazRvrul ia konvenciis me-10 muxl Si:

"..."

26. aRniSnul i saCivari miRebul i iyo komisiis mier, magram uaryofil iqna mTavrobis mier.

27. saCivris zogad safuZvel s warmoadgens is faqti, rom zomebi, romel Ta safuZvel zec aRiZra ganmcxadebl is saqme, warmoadgens Carevas gamoxatvis Tavisuflebis ufl ebaSi.

sadavo ar aris, rom es Careva "kanoniT iyo gansazRvrul i" da ganmcxadebl is ganaCeni eyrdnoboda sisxl is samarTl is kodeqsis 266(b) da 23(1) muxl ebs. am konteqstSi mTavrobam aRniSna, rom pirvel i debul eba miRebul iqna gaeros konvenciasTan kanonmdebl obis SesabamisobaSi mosayvanad. rogorc sasamarTl os esmis, mTavrobis argumenti imaSi mdgomareobs, rom Tumca aq gasaTval iswinebel ia konvenciis me-10 muxl i, sasamarTl om 10-2 muxl is gaTval iswinebisas unda

detal urad ganixil os da imsjel os sixl is samarTl is kodeqsis Sesabamis debul ebezze gaeros konvenciis Sesabamisad (ix. par. 21). sxva sityvebiT rom vTqvaT, me-10 muxl i ar unda iqnes interpretirebul i imgvarad, rom moxdes gaeros konvenciit gansazRvrul i rasobrivi diskriminaciisagan dacvis ufl ebis SezRudva, Semcireba an ganadgureba.

dabol os, sadavo ar gamxdara, rom Carevas hqonda kanonieri mizani, kerZod ki "reputaciis an ufl ebis dacva".

erTaderTi sadavo sakiTxi aris is, warmoadgenda Tu ara miRebul i zomebi "aucil ebl obas demokratiul sazogadoebaSi".

28. ganmcxadebel i aRniSnavs da komisia iziarebs im azrs, rom daniis, rogorc gaeros konvenciis erT-erTi monawil is, val debul ebebis miuxedavad (ix. par. 21), wonasworo ba unda iqnes dacul i "sxvaTa reputaciisa da ufl ebebis dacvas" da ganmcxadebl is "informaciis qonis ufl ebas" Soris. ganmcxadebl is aRniSvniT, es momenti gaTval iswinebul ia gaeros konvenciis me-4 muxl is debul ebaSi, roml is mixedviTac, "saTanadod unda iqnes gaTval iswinebul i adamiანis ufl ebebis sayovel Tao dekl araciaSi gansazRvrul i principebi da winamdebare konvenciis me-5 muxl Si dadgenil i ufl ebebi". debul eba imyofeboda daproeqtetebis stadiaSi, radgan arsebobda mosazreba, rom me-4 (a) muxl is moTxovna, rom "rasistul upiratesobasa da zizRze damyarebul i ideis gavrcel eba, rasistul i diskriminaciis waqezeba, agreTve nebismieri rasis an sxva feris Tu eTnikuri warmoSobis adamiანebis jgufis winaaRmdeg mimarTul i Zal adoba an Zal adobis waqezeba da agreTve rasistul i saqmianobaSi daxmareba, dafinansebis @Tvl iT, iTvl eba danaSaul ad da isjeba kanoniT", metad farTo xasiaTis aris da Sesazl oa warmoSvas siZnel eebi adamiანis sxva ufl ebebtan, gansakuTrebiT ki azrisa da gamoxatvis Tavisufl ebasTan, dakavSirebiT. ganmcxadebl is argumentaciis Tanaxmad, swored es iyo imis mizezi, rom evropis sabWos ministrebis komitetma, rodesac saxel mwifoebma mas sTxoves gaeros konvenciebis ratificireba, winadadeba Seitana konvenciaSi damatebul iyo ganmarTEbiTi debul eba, romel ic, *Inter alia*, xazs gausvamda imas, rac agreTve exeboda 1968 wel s ministrTa moadgil eebis mier evropis (68)30 rezol uciit gansazRvrul ufl ebebsac.

ganmcxadebel ma da komisiამ xazi gausves, rom gakeTebul i Seuracxmyofel i komentarebi, mTl iანი gadacemis konteqstidan gamomdinare, miznad isaxavda ufro maTi avtorebis sasacil od agdebas, vidre rasizmis popul arizacias. ZiriTadi STabelWdil eba gaxl daT is, rom programis amocana iyo sazogadoebisaTvis mtkivneul sakiTxe, kerZod ki rasizmsa da qsenofobiaze, yuradRebis mipyroba. ganmcxadebel ma Segnebul ad CaurTo aRniSnul i gancxadebebi programaSi ara rasistul i mosazrebebis popul arizaciis, aramed maTTan dapirispirebis mizniT. ganmcxadebel ma miuTiTa, rom igi Seecada gaeanal izebina da eCvenebina Tavisufl mayurebl ebisaTvis im dros daniaSi arsebul i axal i fenomeni, ukiduresi rasizmi, romel sac gamoxatavdnen dabali social uri jgufebi, roml ebic Zl ivs axerxebdnen sakuTari azrebis gamoxatvas. man aRniSna da komisiac daeTanxma, rom gadacemas ar mouxdenia mniSvnel ovani uaryofitiT gavl ena sxvaTa ufl ebebsa da reputaciaze. Sesabamisad, am ukanasknel is dacvis interesi gadawona ganmcxadebl is gamoxatvis Tavisufl ebis ufl ebis dacvis interesma.

garda amisa ganmcxadebel ma aRniSna, rom 1991 wl is sainformacio saSual ebebis pasuxismgebl obis Sesaxeb aqtis Zal aSi yofnis SemTxvevaSi mas ar Seexeboda sasamarTl o devna, radgan aRniSnul i aqtis Tanaxmad, pirs pasuximgebl obas



akisrebs mxol od is gancxadeba, romel ic isj eba kanoniT. amiT safuZvel i gamoecal a mTavrobis arguments, rom gamamtyunebel i ganaCeni moTxovnil i iyo gaeros mier da warmoadgenda aucil ebl obas me-10 muxl is Sesabamisad.

29. mTavrobam wamoayena kontrargumenti, rom ganmcxadebl is mier redaqtirebul programis hqonda ufro sensaciuri, vidre informaciul i xasiaTi da rom misi informaciul i Rirebul eba minimal uri gaxl daT. tel evizia aris sainformacio saSual eba da daniel ebis umravl esoba, rogorc wesi, uyurebs axal i amebis gadacemas, sadac naCvenebi iyo aRniSnul i gadacema. miuxedavad amisa, ganmcxadebel ma waageza axal gazrdebi gaeketebinaT rasistul i gancxadebebi maTi gafRTxil ebis gareSe imis Taobaze, rom amisaTvis maT SeiZl eba dakisrebodaT sisxl is samarTI is pasuxismgebl oba da Tanac ar gauketebia raime sapirapiro komentarebi aRniSnul gancxadebebtan dakavSirebiT. Zal ian rTul i saTqmel i iyo, rom mayurebl ebi ar aRiqvamdnen gancxadebebs pirdapiri mniSvnel obiT. arc is faqtia maincdamainc mniSvnel ovani, rom programis Sedegad bevri saCivari ar mohyol ia, radganac informaciis nakl ebobis, daniuri enis arasakmarisi codnis an Zal adobis aqtebis SiSis gamo Seuracxmyofel i komentarebis msxverpl ni, rogorc Cans, Tavs ikavebdnen saCivrebisagan. amrigad, ganmcxadebel ma ver Seasrul a "val debul eba da pasuxismgebl oba", romel ic ekisreboda mas, rogorc satel evizio Jurnal ists. masze dakisrebul i jarima umciresi iyo 226(b) muxl iT gaTval iswinebul sanqciebs Soris da amitom xel sver SeuSl ida Jurnal ists wvl il i Seetana rasizmisa da qsenofobiis Sesaxeb saj aro ganxil vebSi. aRniSnul i sanqcia miznad isaxavda Seexsenebina sazogadoebisaTvis, rom rasizmi seriozul ad unda iqnes aRqmul i da masTan Segueba ar SeiZl eba. mTavrobam sadavod CaTval a is sakiTxic, rom 1991 wl is sainformacio saSual ebebis pasuxismgebl obis Sesaxeb aqtis Zal aSi yofnis SemTxvevaSi saqme sxvagvarad ganxil eboda. debul eba imis Taobaze, rom mxol od gancxadebis avtors SeiZl eba daekisros val debul eba, gul isxmobs gamonakl isebs (ix. par. 20); Cven SegviZl ia mxol od vimsj d oT saqmis savarauo ganxil vis Sesaxeb 1991 wl is aqtis safuZvel ze.

mTavrobam xazi gausva, rom samive donis sasamarTI om Seafasa programis zemoqmedebis xarisxi da yuradRebiT ganxil a yvel a SesaZl o interesi. rogorc ganxil vam aCvena, sasamarTI oebis mier miRebul i gadawyvetil ebebi Seesabameboda me-10 muxl s; maTi gadawyvetil eba Caj da muxl is interpretaciis im Tavisufl ebis fargl ebSi, romel sac saerTaSoriso konvencia utovebs erovnul xel isufl ebas, da warmoadgenda aucil ebl obas.

30. sasamarTI om Tavidanve gausva xazi rasobrivi diskriminaciis nebismeri gamoxatul ebis winaaRmdeg brZol is aucil ebl obas. SesaZl oa ganmcxadebel i marTal i iyos imis Taobaze, rom bol odroindel i movl enebis Sedegad rasobrivi diskriminaciis safrTxe dResdReobiT ufro didia, vidre am aTi wl is winaT. miuxedavad amisa, es sakiTxi maSinac sakmaod mniSvnel ovani iyo, rac dasturdeba im faqtiT, rom gaeros konvencia 1965 wel s Seiqmna. Sesabamisad, gaeros konvenciis mizani ufro mniSvnel ovania, vidre ganmcxadebl isaTvis gamotanil i ganaCeni, romel ic me-10 muxl is me-2 paragrafis konteqstSi aucil ebl obas warmoadgenda. ganaCeni emyareboda debul ebas, romel ic Seiqmna daniis kanonmdebl obis gaeros konvenciasTan SesabamisobaSi moyvani saTvis.

daniis val debul ebebi me-10 muxl is safuZvel ze SeiZl ebisdagvarad unda iyos interpretirebul i gaeros konvenciit gansazRvrul i val debul ebebis Sesabamisad. am SemTxvevaSi sasamarTI os prerogativa ar aris "saTanado gaTval iswinebis" Sesaxeb gaeros konvenciis me-4 muxl is debul ebis interpretireba, romel ic sxvadasxvanairad SeiZl eba iyos gagebul i. Tumca sasamarTI o iziarebs im

mosazrebas, rom evropis konvenciis me-10 muxl is miseul i interpretacia SesabamisobaSia gaeros konvenciit GansazRvrul daniis val debul ebebTan.

31. aRniSnul i saqmis damaxasiaTebel i niSani imaSi mdgomareobs, rom ganmcxadebel s TviTon ar gaukeTebia sadavo komentarebi. igi, rogorc daniis radios axal i amebis programis pasuxismgebel i satel evizio Jurnal isti, daexmara sxvebs aRniSnul i gancxadebebis gavr cel ebaSi (ix. par. 9 da 10). imaze msj el obisas, warmoadgenda Tu ara misdami gamotanil i gamamtyunebel i ganaCeni da sabral debo daskvna aucil ebl obas, sasamarTI o gaiTval iswinebs presis rol Tan dakavSirebul i saprecedento samarTli is mier dadgenil principebs O(mag., "obzerveri" da "gardiani" gaerTianebul i samefos winaaRmdeg, 1991 wl is 26 noembris gadawyvetil eba, seria A; #216; gv. 26-30; par. 59).

sasamarTI o aRniSnavs, rom gamoxatvis Tavisufl eba warmoadgens demokratiul i sazogadoebis erT-erT umniSvnel ovanes qvakuTxeds da presisaTvis miniWebul i garantiebi metad mniSvnel ovania; Tumca presam ar unda gadaabijos dadgenil fargl ebs, maT Soris "sxvaTa reputaciis dasacavad", swored mas awevs sazogadoebisaTvis interesis mqone informaciisa da azrebi gadacemis misia. garda imisa, rom presis amocanas warmoadgens aRniSnul i informaciisa da azrebi gavr cel eba, sazogadoebasac aqvs misi miRebis ufl eba, winaaRmdeg SemTxvevaSi, presa ubral od ver Seasrul ebda Tavis sasicocxl o mniSvnel obis - "modaraje ZaRI is" - funqcias; marTalia, ZiriTadad, es presas exeba, igive principebi gamoiyeneba audiovizual ur saSual ebebTan mimarTebaSic.

Jurnal istis "moval eobebisa da pasuxismgebl obebis ganxil visas gaTval iswinebul ia konkretul i masobrivi sainformacio saSual ebebis potenciuri zegavl ena; ukve sazogadod aRiarebul ia, rom audiovizual ur sainformacio saSual ebebs ufro didi zegavl enis moxdena SeuZl ia, vidre presas (ix. pursel i da sxvebi irl andiis winaaRmdeg, komisiis 1996 wl is 16 april is gadawyvetil eba saqmis miRebis Sesaxeb, gancxadeba #15-404/89, gadawyvetil ebebi da moxsenebebi 70, gv. 262). audiovizual uri sainformacio saSual ebebi informacias gadascemen Sinaarsobrivad datvirTul i Tval saCinoebiT, rac presas ar SeuZl ia. amave dros, gasaSuqebel i sakiTxis Sinaarsis mixedvit reportaJis meTodebi da miznebi SeiZl eba Zal ian gansxvavebul i iyos. arc am sasamarTI os da arc erovnul i sasamarTI os gadasawyvetia, reportaJis romel i teqnika unda gamoeyenebina Jurnal ists. am konteqstSi sasamarTI o miuTiTebis, rom me-10 muxl is debul ebiT dacul ia ara mxol od gamoxatul i mosazrebebis da informaciis arsi, aramed maTi formac (ix. oberskliki avstriis winaaRmdeg, 1991 wl is 23 maisis gadawyvetil eba, seria A, #204 gv. 25, par. 57). sasamarTI o ganxil avs gasaCivrebul Carevas mTl ianobaSi da imas, aris Tu ara rel evanturi da sakmarisi saxel mwifo xel isufl ebis mier am Carevis gasamarTI ebl ad warmodgenil i sabuTebi, agreTve aris Tu ara miRebul i zomebi kanonieri miznis Sesabamisi (ix. zemoT aRniSnul i "obzerverisa" da "gardianis" gadawyvetil eba, gv. 29-30, par. 59). am sakiTxis ganxil visas sasamarTI o unda darwmundes, rom saxel mwifo xel isufl ebis mier gamoyenebul i standartebi SesabamisobaSia me-10 muxl is principebTan (ix. skvabe avstriis winaaRmdeg, 1912 wl is agvistos gadawyvetil eba, seria A, # 242 b, gv. 32-33 par. 29).

Sefasebisas sasamarTI o iTval iswinebs, Tu rogor iqna momzadebul i siuJeti "mwvane qurTukebis" Sesaxeb, siuJetis Sinaarss, konteqsts, romel Sic is iyo gadacemul i da programis mizans. iTval iswinebs ra gaeros konvenciit da sxva aqtebiT gansazRvrul monawil e qveynebis val debul ebas, miiRon efeqturi zomebi yvel a saxis rasobrivi diskriminaciis aRmosafxvrel ad, rasizmTan sabrZol vel ad

da rasistul i aqtebis Tavidan asacil ebl ad (ix. par. 21), sasamarTl o, Tavis mier gakeTebul SefasebaSi, yuradRebas amaxvil ebs imaze, obieqturad hqonda Tu ara miznad aRniSnul siuJets mTlianobaSi rasistul i mosazrebebisa da Sexedul ebebis propaganda. erovnul ma sasamarTl oebma xazi gausves im faqts, rom ganmcxadebel ma TviTon gamoiCina siuJetis momzadebis iniciativa da rom man ara marto winaswar icoda, rom intervius msvl el obis dros gakeTdeboda rasistul i gancxadebebi, aramed mas ukve mosmenil i hqonda aRniSnul i gancxadebebi. man imgvari redaqtireba gaukeTa programis, rom masSi CarTul i yofil iyo Seuracxmyofel i komentarebi. misi monawil eobis gareSe es komentarebi ar gavrcel deboda adamianebis farTo wreSi da, Sesabamisad, ar daeqvemdebar eboda kanoniT dasj as (ix. par. 14-18). sasamarTl o daakmayofil a am mizezebis rel evanturobam me-10 muxl is me-2 paragrafis Sesabamisad. meores mxriv, rac Seexeba "mwvane qurTukebis" siuJetis Sinaarss, aRsaniSnavia, rom tel ewamyvanis Sesaval i daiwyo miniSnebiT bol odroindel sajaro diskusiebze da presaSi gamoqveynebul komentarebze daniaSi rasizmis winaarmdeg da amgvarad mouwoda mayurebl ebs eyurebinaT programisaTvis am konteqstSi. SemdgomSi man aRniSna, rom programis mizani iyo probl emaze reagireba, konkretul i rasistul i orientaciis mqone pirebis gamovl ena maTi mental itetisa social uri warmomavl obis CvenebiT. eWwvs ar iwvevs, rom aRniSnul i interviuebi namdvil ad emsaxureboda am mizans. mTlian konteqstSi siuJets, obieqturi Tval sazrisiT, namdvil ad ver eqneboda miznad rasistul i Sexedul ebebisa da Tval sazrisebis propaganda. piriqit, igi aSkarad cdil obda - intervius saSual ebiT - eCvenebina da ganemarta, Tu rogori damokidebul eba hqonda sazogadoebisaTvis mtkivneul i sakiTxisadmi axal gazrdebis konkretul jgufs. isini, ZiriTadad, warmoadgendnen dabal social uri fenas, iyvnen SezRudul i ganvitarebis, Zal adobas SeCveul i da kriminal uri gamocdil ebis mqone. uzenaesma sasamarTl om daadgina, rom siuJetis sainformacio Rirebul eba ar iyo imdenad maRali, rom gaemartl ebina gancxadebebis gavrcel eba (ix. par. 18). magram 31-e paragrafidan gamomdinare sasamarTl o ar Tvl is, rom kviris axal i amebis Jurnal istebis mosazrebebi sadavo siuJetis informaciul i Rirebul ebis Sesaxeb, romel sac emyareboda maTi gadawyvetil eba am siuJetis momzadebisa da gadacemis Taobaze, eWwvs safuZvel s badebs.

34. metic, aRsaniSnavia is faqti, rom siuJeti warmoadgenda qveyanaSi mimdinare seriozul i axal i amebis programis nawils da igi gansazRvrul i iyo kargad informirebul i auditoriisaTvis (ix. par. 9). sasamarTl o saTvis aradamaj erebl ad JRers erovnul i saxel mwifoebis sasamarTl oebis mier moyvanil i argumenti (ix. par. 14 da 18), rom siuJeti gadacemul i iyo masSi asaxul i mosazrebebis yovel gvare kritiki mcdel obis gareSe. rogorc tel ewamyvanis Sesaval i, ise ganmcxadebl is saqciel i gadacemis msvl el obisas aSkarad mijnavda maT respodentebisagan (mag., man aRwera respodentebi, rogorc eqstremist axal gazrdaTa jgufi, romel ic mxars uWerda ku-kl uqs-kl ans; agreTve miniSnebul i iyo zogierTi maTganis kriminal uri warsul i). aseve man gaaprotesta ramdenime rasistul i gancxadeba, magal iTad, imis aRniSvniT, rom zogierT Savkanians sakmaod mniSvnel ovani samuSao aqvs. sabol ood ar unda dagvaviwydes, rom mTlian konteqstSi siuJets namdvil ad hqonda is datvirTva, rom rasistul i gancxadebebi warmoadgenda "mwvane qurTukebis" sazogadoebs antisocial uri damokidebul ebis nawils. SesaZl oa siuJeti aSkarad ar miuTitebda rasobrivi zizRisa da erTi rasis meoreze upiratesobis Tval sazrisis popul arizaciis amoral urobasa da ukanonobaze, magram zemoaRniSnul idan gamomdinare, imis gaTval iswinebiT, rom didmasStabiani programis cal keul mokle siuJetebs Tavis bunebrivi SezRudvebi gaaCniaT, agreTve Gamoxatvis formis Tavisuflebis

mxedvel obaSi miRebiT, sasamarTl o ar Tvl is, rom amgvari SefasebiTi komentarebis Sesazl ebl oba seriozul faqtors warmoadgenda.

35. redaqtirebul Tu araredaqtirebul interviuebze damyarebul i axal i amebis reportaJebi warmoadgens erT-erT yvel aze mniSvel ovan gzas, roml is meSveobiTac presa asrul ebs "modaraje ZaRl is" sasicocxl od mniSvel ovan funqcias (ix. "gadianis" da "obzerveris" gadawyvetil eba, gv. 29-30, par. 59). Jurnal istis dasja intervius dros sxva piris mier gakeTebul i gancxadebis gavrcel ebaSi daxmarebisaTvis seriozul ad Seamcirebs presis wlil s sazogadoebisaTvis mtkivneul i sakiTxebze diskusiebSi da es zomebi ar unda iyos miRebul i, Tu amisaTvis gansakuTrebul i mizezebi ar arsebobs. am konteqstSi sasamarTl o ar iRebs mTavrobis arguments imis Taobaze, rom dakisrebul iqna jarimis yvel aze msubuqi forma. mniSvel ovan i s aris, rom Jurnal isti gamtyunebul iqna. eWvs ar badebs garemoeba, rom gancxadebebeze, romel Ta safuZvel zec gamotanil iqna gamamtyunebel i ganaCeni (ix. par. 14), ufro Jurnal isti iyo pasuxismgebel i, vidre miznobrivi jgufi, roml is wevrebic ar sargebl oben me-10 muxl iT gansazRvrul i ufl ebebiT. (ix., mag., komisiis gadawyvetil eba, gl imervini da hagenbiki hol andiis winaaRmdeg. gancxadeba # 8348/78 da 8406/78 gadawyvetil ebebi da moxsenebebi 18; gv. 187; da kuneni germaniis winaaRmdeg, gancxadeba # 12194/86, gadawyvetil ebebi da moxsenebebi 56; gv. 205). magram imis gaTval iswinebiT, Tu rogor moamzada ganmcxadebel ma siuJeti "mwvane qurTukebze", ar SeiZl eba imis Tqma, rom siuJeti, rogorc is gadaica mTl ian konteqstSi, amarTl ebs ganmcxadebl is gamtyunebas da masze dakisrebul sasjel s sisxl is samarTl is kodeqsiT gaTval iswinebul i danaSaul isaTvis.

36. metic, saeWvo ar aris garemoeba, rom ganmcxadebl is mizani mis mier momzadebul gadacemaSi rasistul i ar gaxl daT. miuxedavad imisa, rom man aRniSna es garemoeba erovnul sasamarTl oebSi warmarTul i procesebis dros, rel evanturi gadawyvetil ebebidan ar Cans, rom aRniSnul i faqtori mxedvel obaSi iqna miRebul i (ix. par. 14, 17 da 18).

zemoaRniSnul is gaTval iswinebiT, ganmcxadebl is gamamtyunebel i ganaCenisa da masze dakisrebul i sasjel is warmodgenil i mtkicebul ebebi ar iyo sakmarisi imis damaj erebl ad dasasabuTebL ad, rom Careva ganmcxadebl is mier gamoxatvis Tavisufl ebis ufl ebis ganxorciel ebaSi warmoadgenda 'aucil ebl obas demokratiul sazogadoebaSi"; gansakuTrebiT ki, rom gamoyenebul i zomebi iyo "sxvaTa ufl ebebis an reputaciis" dacvis miznis proporciul i. Sesabamisad, miRebul i zomebi warmoadgens konvenciis me-10 muxl is darRvevas.

## II. 50-e muxl is gamoyeneba

38. bni jersil di iTxovda samarTl ian dakmayofil ebas konvenciis 50-e muxl is safuZvel ze, romel ic miuTitebs:

"Tu sasamarTl o miCnevs, rom monawil e saxel mwifos iuridiul i xel isufl ebis an raime sxva xel isufl ebis mier miRebul i gadawyvetil eba an zomebi mTl ianad an nawil obriv winaaRmdegobaSia konvenci iT gansazRvrul val debul ebebTan ..... da Tu Sida kanoni da monawil e saxel mwifo aRniSnul i gadawyvetil ebis da zomis Sedegebeze mxol od nawil obrivi kompensaciis saSual ebas iZl eva, sasamarTl o gadawyvetil ebam saWi roebis SemTxvevaSi unda uzrunvel yos dazaral ebul i mxaris samarTl iani dakmayofil eba".

39. mTavrobam nawil obriv miRo misi sarCel i. komisiis komentarebi ar gaukeTebia.

a. material uri zaral i

40. ganmcxadebel ma moiTxova masze dakisrebul i jarimis, aTasi kronis, kompensireba, romel ic mis magivrad gadaixada daniis radiom.

41. mTavrobas amaze winaaRmdegoba ar gauwevia da sasamarTI o miiCnevs aRniSnul i Tanxis kompensirebis marTebul obas.

b. aramaterial uri zaral i

42. ganmcxadebel ma moiTxova oci aTasi krona aramaterial uri zianisaTvis. man aRniSna, rom misi profesiul i reputacia Seryeul iqna da igi aRmoCnda mZime mdgomareobaSi gamtyunebis Sedegad.

43. sasamarTI om daadgina, rom ganmcxadebel i kvl av muSaobs kviris axal i amebis Jurnal Si, daniis radioSi da misi damqiravebel i mis gverdiT iyo mTel i sasamarTI o procesis periodSi, kerZod, gadauxada mas dakisrebul i jarima (ix. par. 9 da 40), agreTve gadaixada procesTan dakavSirebul i honorarebi da gadasaxadebi (ix. par. 44). igi eTanxmeba mTavrobas, rom konvenciis me-10 muxl is darRvevis dadgena Tavistavad ukve warmoadgens saTanado samarTI ian dakmayofil ebas am sakiTxTan dakavSirebiT.

c. xarj ebi

44. ganmcxadebel ma xarj ebTan dakavSirebiT moiTxova:

- (a) 45000 krona misi advokatis, b-ni j. stokhol mis mier adgil obriv sasamarTI oSi Catarebul i samuSaosaTvis;
- (b) iuristebis honorarebi strasburgis sasamarTI os procesisaTvis, aqedan 13 126,80 krona q-ni iohanesenisaTvis, 6 900 funti sterlingi b-ni boil isaTvis da 50 000 krona (25% d.R.g.-s garda) b-ni trierisaTvis;
- (c) 20 169,20 krona Tarj imnisa da eqspertebis xarj ebi;
- (d) 25 080 krona, 965,40 funti sterlingi da 40 075 frangul i franki mgzavrobisa da dRiuri xarj ebisaTvis, roml ebic dakavSirebul i iyo komisiisa da sasamarTI os procesebTan da sxva xarj ebi.

aRniSnul i xarj ebi nawil obriv gacemul i iyo daniis radios mier. mTavrobas winaaRmdegoba ar gauwevia aRniSnul moTxovnebze. sasamarTI o miiCnevs, rom ganmcxadebel s ufl eba aqvs mTI ianad miiRos kompensireba aRniSnul Tanxaze. es Tanxa unda gaizardos saWi roebis SemTxvevaSi d.R.g.-s procentis odenobiT.

**aRniSnul i mizezebis gamo sasamarTI o**

- 1. adgens 12 xmiT 7-s winaaRmdeg, rom adgil i hqonda konvenciis me-10 muxl is darRvevas;
- 2. adgens 17 xmiT 2-is winaaRmdeg, rom daniam unda gadauxados ganmcxadebel s 1000 daniuri krona sami Tvis ganmavl obaSi material uri zaral is asanazRaurebl ad; agreTve yvel a xarji, romel ic gamoTvl il i unda iyos 45 paragrafis Sesabamisad;
- 3. erTsul ovnad ambobs uars sarCel is danarCeni nawil is samarTI ian dakmayofil ebaze.

**mosamarTI eebis, risdal is, bernardis, spil menisa da l uazus erTobl ivi gansxvavebul i mosazreba**

1. es pirveli SemTxvevaa, rodesac sasamarTI o ganxil avs saqmes rasistul i gancxadebebis gavr cel ebis Taobaze, sadac adami anTa didi j gufis "adami anur" Rirsebas l axaven. adrindel gadawyvetil ebebSi sasamarTI om - Cveni azriT marTebul ad - gausva xazi masobrivi sainformacio saSual ebebis udides mniSvnel obas demokratiul sazogadoebaSi, magram mas arasodes ganxil avs situacia, sadac "sxvaTa ufl ebebi da reputacia" (muxl i 10, par. 2) iseTi didi xarixiT yofil iyos warmodgenil i, rogorc aq.
2. veTanxmebiT umravl esobas (gadawyvetil ebis par. 35), rom "mwvane qurTukebi" TavisTavad "ar sargebl oben me-10 muxl iT gaTval iswinebul i dacviT". igive unda iTqvas Jurnal istebzec, vinc avrcel ebs amgvar gancxadebebs maTi mxardaWer iT an mowonebiT. es ar exeba ganmcxadebel s, magram aucil ebel ia saTanado wonasworobis daWera presis Tavisufl ebas da sxvaTa dacvas Soris. magram umravl esoba upiratesobas aniWebs Jurnal istis Tavisufl ebas, vidre imaT dacvas, vinc rasobrivi zizRisagan zaral deba.
3. arc intervius weril obiTi teqsti (par. 11), arc videofil mi, romel ic vnaxet, acvenebs naTI ad, rom "mwvane qurTukebis" mier gakeTebul i gancxadebebi miuRebel ia adami anis ufl ebebis mimarT pativiscemaze agebul sazogadoebaSi. ganmcxadebel ma mTI iani interviu ramdenime wuTamde daiyvana, sadac ganzrax iyo datovebul i yvel aze uxeSi komentarebi. aseT SemTxvevaSi aucil ebel i iyo naTel i uaryofiT i Sefasebis damateba. sasamarTI os umravl esobas miaCnia, rom amgvარი uaryofiT i Sefaseba TviT siuJetis konteqstidan gamomdinareobs, magram es gaxl avT farul i Sinaarsis interpretireba. veravin uaryofs, rom sazogadoebis nawil ma tel eviziiT moismina Taviant i rasistul i azrebi s dasturi.

da rogor unda egrZnoT Tavi imaT, romel Ta adami anur Rirsebas Tav s daesxnen da visi adami anuri Rirsebac uaryves "mwvane qurTukel ebma"? aqVT Tu ara maT SegrZneba, rom tel eviziaSi gadmocemul i siuJeti mTI ian konteqstSi icavs maT ufl ebebs? Jurnal istis keTil i zraxvebi ar aris sakmarisi, gansakuTrebiT im SemTxvevaSi, rodesac man TviTon gaukeTa provocireba rasistul gancxadebebs.

4. saerTaSoriso konvencia yvel a formis rasobrivi diskriminaciis aRmofxvris Sesaxeb al baT ar moiTxovs aRniSnul i tipis satel evizio siuJetze pasuxismgebel i piris dasj as. meores mxriv, igi iziarebs mosazrebas, rom aucil ebel ia sainformacio saSual ebebma mtkice pozicia iqonion rasobrivi diskriminaciisa da zizRis sakiTxTan dakavSirebi T.
5. rasobrivi diskriminaciisa da devnis safrTxe namdvil ad seriozul ad dgas Cvens sazogadoebaSi da sasamarTI om marTebul ad gausva xazi nebismieri formisa da gamoxatul ebis rasobrivi diskriminaciis winaaRmdeg brZol is sasicocxl o mniSvnel obas (ix. gadawyvetil ebis par. 30). dani as srul ad aqvs gacnobierebul i, rom saWi roa wonasworobis dacva gamoxatvis Tavisufl ebis ufl ebas da imaTi dacvis ufl ebas Soris, visi adami anuri ufl ebac Seil axa. dani is sasamarTI oebma yuradRebiT ganxil es ganmcxadebl is

pasuxismgebl oba da maTi daskvnebis mizezebi rel evanturi gaxl avT. rasobrivi umciresobis ufl eba ar SeiZl eba nakl ebmniSvnel ovani iyos, vidre informaciis gadacemis ufl eba da am konkretul situaciSi, Cveni azriT, am sasamarTI os prerogativas ar warmoadgens daniis uzenaesi sasamarTI os magier imis gadawyveta, am konfliqturi interesebidan romelia ufro mniSvnel ovani. darwmunebul i varT, rom daniis sasamarTI oebi im Tavisufli ebis fargl ebSi moqmedebdnen, romel sac am sakiTxTan dakavSirēbiT datovebul i aqvT monawile saxel mwifoebS. Sesabamisad, daniis sasamarTI oebis dadgenil eba ver iqneba miCneuli konvenciis me-10 muxl is darRvevad.

### **mosamarTI eebis, giokiukl ius, rusosa da val tikosis erTobl ivi gansxvavebul i mosazreba**

Cven ver gaviziarebT j ersil dis saqmeSi umravl esobis azrs.

am saqmeSi marTI ac or ZiriTad princips vxvdebiT; erT-erTi maTgani gaxl avT konvenciis me-10 muxl iT gansazRvrul i gamoxatvis Tavisufli ebis ufl eba, meore ki rasobrivi zizRis propagandis akrZal va, rac aSkarad warmoadgens me-10 muxl is me-2 paragrafis erT-erT SezRudvas, da metic, warmoadgens gaerTianebul i erebis organizaciis general uri asambl eis mier miRebul i adamianis ufl ebebis Sesaxeb dokumentebis, kerZod ki nebismieri formis rasobrivi diskriminaciis aRmofxvris Sesaxeb 1965 wl is konvenciis, debul ebas. aRniSnul i konvenciis ignorireba ar SeiZl eba evropis konvenciis debul ebebis ganxorciel ebisas. metic, igi saval debul oa daniisaTvis. am konvenciiTve unda ixel mZRvanel os evropis adamianis ufl ebebis sasamarTI om Tavis gadawyvetil ebebSi, gansakuTrebiT iseT SemTxvevebSi, rodesac aRniSnul i konvencia ganmartavs evropis konvenciis ufro zogad da farTo debul ebebs.

j ersil dis saqmeSi gamoTqmul i gancxadebebi, roml ebic yovel gvare komentarebis gareSe gadaica tel eviziiT, namdvil ad axdenda zizRis provocirebas ara marto zogadad ucxoel ebis, aramed Savkanianebis mimarT, roml ebic aRweril i iyvnen rogorc dabal i rasa ("Sexede goril as suraTs da mere Sexede zangs, igive aRnagoba da yvel aferi, brtyel i Subl i da yvel aferi sxva"... "zangi ar aris adamiani, is cxovel ia, iseve rogorc yvel a sxva ucxoel i muSa, Turqebi, iugosl avebi da ra vici, rasac Tavis Tavs eZaxian").

Cven j erovnad vafasebT im faqts, rom zogierTi mosamarTI e did mniSvnel obas aniWebs gamoxatvis Tavisufli ebas, gansakuTrebiT imis gamo, rom maT mSobl iur qveynebsi am bol o dromde am Tavisufli ebis sakmaod didi nakl eboba SeiniSneboda, magram amave dros ver Seveguebit imas, rom es Tavisufli eba iqamde mivides, rom Sesazl ebel i gaxdes sxva rasebisadmi zizRs waqezeba da aman gadawonos im pirTa dacvis ufl eba, roml ebic gansxvavebul rasas miekuTvnebian. ganmcxadebel i cdil obs daicvas siuJeti im motiviT, rom mas unda gamoewvia mayurebl ebs Soris jansaRi uaryofiti reaqcia. es metad optimisturi Sexedul ebaa, romel ic praqtikiT ar marTI deba. dRes axal gazrdebis, da Sesazl oa mTel i mosaxl eobis, umetesoba, cxovrebis sirtul eebita da siRaribit daRl il i, cdil obs ipovos gantevebis vaci maT Soris, viszedac miuTiteben yovel gvare gamafRTxil ebel i komentarebis gareSe; sayuradReboa - da es mniSvnel ovania - rom siuJetze pasuxismgebel Jurnal ists raime saxis uaryofiti Sefaseba ar gaukeTebia imaT Sexedul ebebze, visi gancxadebebic gadmosca, risi gakeTebac aucil ebel i iyo, raTa aRniSnul gancxadebebs sasurvel i Sedegi moexdina mayurebl ebze.

Sesabamisad migvaċnia, rom aRniSnul i, Tanac sakmaod zomieri zomebis miRebiT, daniis sasamarTI oebs araviTar SemTxvevaSi daurRveviaT konvenciiis me-10 muxl i.

**mosamarTI eebis, giokiukl iusa da val tikosis erTobl ivi damatebiTi gansxvavebul i mosazreba**

Oven gadawyvetil ebis debul eebis me-2 punqtis winaaRmdegi varT; mtkiced gwams ra, rom ganmcxadebel s ar unda emogmeda rasizmis winaaRmdeg dacvis ufl ebis sawinaaRmdegod, gaumarTI ebl ad migvaċnia miSTvis raime kompensaciiis gadaxda.