

prager i da oberSl iki avstri i s wi naaRmdeg

Prager and Oberschilick v. Austria

(1995 wl is 26 april i, seria A. #. 313,
amonakrebi)

saqmi s f aqto br i vi mi moxi l va

I. saqmis garemoebibi

7. b-ni prageri da b-ni oberSl iki arian Jurnal istebi venidan. ukanasknel i maTgani warmoadgens gazeT "forumis" gamomcemel s (Medieninhaber).

a. statia, romel ic daibewda "forumSi"

8. 1987 wl is 15 marts "forumis" 397/398 nomrebSi daibewda b-ni prageris statia saxel wodebiT "frTxil ad! sastiki mosamarTI eebi!" (Achtung! Scharfe Richter!). statia, romel ic 13 gverds moicavda, akritikebda avstriis sisxl is samarTI is sasamarTI oebis mosamarTI eebs. statiaSi moyvanil i fagtebis wyarod, garda sasamarTI o sxdomebis daswrebis Sedegad miRebul i sakuTari gamocdil ebisa, b-nma pragerma daasaxel a iuristebisa da samarTI is sferoSi momuSave Jurnal istebis gancxadebibi da universitetis mkvl evarTa mier Catarebul i gamokvl evebi.

sakuTari mosazrebebis reziumes saxiT gadmocemis Semdeg, romel sac win uZRoda Sesaval i, b-nma pragerma detal urad aRwera venis sisxl is samarTI is regional uri sasamarTI os (Landesgericht für Strafsachen) cxra mosamarTI is, maT Soris mosamarTI e j.-s, pozicia.

1. reziume

9. reziume formul irebul i iyo Semdegnairad:

"yovel bral debul s dasawyisi danve isini epyrobian ise, rogorc ukve msj avrdebul s. iyo SemTxvevebi, rodesac maT gasces ucxoetidan Camosul pirTa sasamarTI oSi dapati mrebris brZaneba, imis niadagze, rom TiTqosda arsebobda maTi mimal vis safrTxe. gul is wasvl is Semdeg ugonod myof pirebs mosamarTI eebi usvamen Seki Txvebs imis Sesaxeb, Tu ramdenad eTanxmebian isini maT mimarT gamotanil ganaCens. rodesac gansaj el ebi acxadeben, rom udanaSaul oni arian, mosamarTI eebi mxrebs iCeCaven da xSirad gamoaqvT umZimesi ganaCenebi mxol od imitom, rom gansaj el ma bral i ar aRiara. zogierti avstriel i mosamarTI e mzad aris yvel aferze wavides; es damkvidrebul i praqtikaa."

2. Sesaval i

10. Sesaval Si b-ni prageri, upirvel es yovl isa, Tavs esxmis im mosamarTI eebs, roml ebic, misi si tyvebit, axorciel ebdnen absol utur Zal aufl ebas "sakuTari sasamarTI os samfI obel o teritoriis fargl ebsi" da borotad iyenebdnen bral debul Ta yvel aze sust mxareebs. misi mtkicebit, mosamarTI eTa emociebs SeeZI o sasamarTI o sxdomis darbazi "brZol is vel ad"

gadaeqcia. msj avrdebul s, romel ic Tundac mcired xel yofda mosamarTI eTa Tavmooyvareobas, xSi rad es ukansknel ni e.w. "mtkicebul ebaTa Sefasebis SeuzRudavi ufl ebamosil ebis" Zal iT, usj idnen damatebit erTi wl iT Tavisufl ebis aRkveTas, an ukargavdnen pirobiti sasj el is moxdis SesazI ebl obas.

Semdeg b-ni prageri akritikebs mosamarTI eubs, roml ebic mxol od ukidures SemTxvevebSi amarTI ebdnen gansaj el ebs; romel Tac ufrø mkacri ganačeni gamohqondaT, vidre maT kol egebs; roml ebic advokatebs ise epyroboden, rogorc gaiZverebs; roml ebic ukiduresad Seuracxyofdnen da amcirebdnen bral debul ebs; roml ebic eWwmitanil ebs winaswari dakavebis vadas dadgenil ze metad ugrzel ebdnen; da roml ebic uTanxmoebis gamo ar amtkicebdnen Jiuris verdiqts. b-ni prageris mtkicebit, mosamarTI eTa damoukidebl oba mxol od maTi sakuTari mniSvnel obis gržnobisa da Tavdaj erebis ganmtkicebis saSual ebas warmoadgenda da es maT saSual ebas aZI evda gamoyenebinaT kanoni aramarTebul ad, mTel i sisastikit, yovel gvari sindisis qenj nisa da wi naaRmdegobis gareSe.

Semdeg b-ni prageri ixsenebs mosamarTI eebTan Sexvedrebisa da sasamarTI o sxdomebis daswrebis sakuTar gamocdil ebas, aseve aRniSnabs mosamarTI e j.-s "qedmaRI ur ampartavnobas" (menschenverachtende Schikanen).

3. mosamarTI eTa aRwera

11. statia agreTve Seicavda sxvadasxva mosamarTI eTa moqmedebebis aRwera-Sefasebas. mosamarTI e j. Semdegnairad iyo aRweril i:

"tipi: Smagi... [j .].

[j .-m] ramdenime wl is win venel advokats [k.-s] Semdegi si tyvebiT mimarTa: 'mokl ed mogvaxseneT, geTaya. me ukve miviRe gadawyetil eba.'

[j .] – mosamarTI e, romel ic pirobitad gasamarTI ebul msj avrdebul Ta zedamxedvel inspeqtorebs sakuTar samuSao oTaxSi daj domis ufl ebas ar aZI evs, faqtobrivad, igi uars ambobs maTTan saubarze.

[j .] – mosamarTI e, romel mac erTxeI učivl a mežavs, radganac es ukansknel i, Tavis suteniorTan erTad, Tanxis miRebis Semdeg gaučinarda ise, rom mosamarTI išTvis momsxureba ar gauwevia. al baT man CaTval a, rom misi kl ienti sakmaod mTvrail i iyo imisTvis, rom gansxvaveba Seemčnia.

[j .-s] sačivris Sedegad mežavi damnasaved cnes, xol o TviT j.-s wi naaRmdeg disciplinarul i devna aRiZra. j.-s uRirsi saqciel i, ris mixedviTac bevri ram SeiZI eba iTqvas mis utvinobaze, gazeTebSi gaxmaurda.

miuxedavad amisa, j. kinaRam prokurori gaxda. magram presam gamoamzeura erTi sisxl is samarTI is saqmis istoria, romel Sic j. monawil eobda da romel ic ukavSirdeboda iuridiul i rČeviš micemas saTanado ufl ebamosil ebis gareSe (Winkelschreiberei). or pirs, bn I.-sa da mis Svil s, bral i edebodaT TaRI iTuri xel Sekrul ebebis dadebis gziT ful is miRebaSi im xal xisgan, romel Tac surdaT binebis yidva Zvel SenobebSi. rodesac gamoaSkaravda, rom xel Sekrul ebebi dadebul i iyo [j .-s] mier, bral debam taqtika Secval a: aqcenti TaRI iTuri xel Sekrul ebebidan gadaitana maTi gamoyenebis ganzraxvaze.

[j .] mosamarTI ed darča. "kurieris" [yovel dRiuri avstriul i gazeTi] gamomceml ebi amJamad nanoben amis gamo, radganac prokurori nakl ebad saSiSia, rac "profil is" [avstriul i Jurnal i] seqtembris nomerma ačvena. isargebl a ra gamomziebel i mosamarTI is ufl ebamosil ebiT, j.-m erT wel iwadze meti vadit datova narkomani winaswar gamoziebaSi, miuxedavad imisa, rom am

ukanasknel is advokatma araerTxel ganucxada mas, rom mosamarTI es mcdari informacia gaañnda amoRebul i narkotikebis raodenobis Sesaxeb da rom amgvar SemTxvevaSi misaRebi ganañeni iqneboda Tavisufl ebis aRkveTa 4-dan 6 Tvende vadiT.

miuxedavad yovel ive amisa, imis magivrad, rom Suamdgoml oba gaTavisufl ebis Taobaze uzenaes sasamarTI osTvis gadaeca, rogorc amas saTanado wesebi moiTxovda, j.-m es Suamdgoml oba saapel acio sasamarTI os da am sasamarTI os Tavmj domares gadasca. amis Sedegad ki damatebit 3 Tve dasWinda imis garkvevas, iyo Tu ara es piri damnaSave da dauSva Tu ara raime Secdoma gamomZiebel ma mosamarTI em.

asl gadamRebi aparatis gamoyeneba patimars Tundac am 3 Tves mainc aCuqebda. igi martis dasawyissi gaaTavisufl a axal ma mosamarTI em, romel sac es saqme uzenaes sasamarTI os mosamarTI eebma gadases. patimars, romel mac 13 Tve gaatara sapyrobil eSi, sabol ood martis miwurul s miusaj es 5 TviT Tavisufl ebis aRkveTa.

orma saxazino advokatma, roml ebic icavdnen j.-s msxverpl is interesebs, gamoiangariSa, rom mxol od advokatis momsxurebis xarj ebi im droisTvis 85,000 Sil ings Seadgenda. Cans, rom amas mosamarTI e j. gul grill ar dautovebia. [maRaI da wverebian mosamarTI es aqvs Zi ieri boxi xma. marinis procesis mimdinareobisas indiferentul ganwyobas atyobdnen kol egebi]. SemdgomSi Jiuris verdiqti ar damtkicda da advokat g.-s wiinaRmdeg discipl inarul i devna aRizra."

b. sarçel i cil iswamebisTvis

12. 1987 wl is 23 april s mosamarTI e j.-m b-n pragers cil iswamebisTvis uçivil a (üble Nachrede, avstriis sisxl is samarTI is kodeqsis 111-e muxl i - ixil eT me-18 paragrafi, qvemoT). "forumis" zemoxsenebul i nomris amoRebis da sasamarTI os ganañenis gamoqveynebis garda, j.-m damatebit moiTxova zianis anazRaureba gazeTis gamomceml isgan, massa da statiis avtorze erTobi ivad da cal keul ad j arimis dakisreba da maT mier sasamarTI o xarj ebis dafarva (kanoni masmediis Sesaxeb - Mediengesetz, muxl ebi 33-36; ixil eT me-19 paragrafi qvemoT).

13. 1987 wl is 11 maiss mopasuxeebma acil eba misces venis sisxl is samarTI is regional ur sasamarTI os da venis saapel acio sasamarTI os (Oberlandesgericht). 5 agvistos uzenaesma sasamarTI om (Oberster Gerichtshof) ar daakmayofil a saapel acio sasamarTI os acil eba. 17 seqtembers venis sisxl is samarTI is regional uri sasamarTI os acil eba dakmayofil da da saqme gadaeca ainStadtis regional ur sasamarTI os.

1. pirvel instanciaSi

14. 1988 wl is 11 octomberts ainStadtis regional urma sasamarTI om damnaSaved cno b-ni prageri mosamarTI e j.-s cil iswamebaSi zemoxsenebul i sadavo statiis Semdegi nawyvetebisaTvis:

- (1) "yovel bral debul s isini dasawyisidanve ise epyrobian, rogorc ukve msj avrdebul s."
- (2) "zogierTi avstriel i mosamarTI e mzad aris yvel aferze wavides."
- (3) "mosamarTI e j.-s qedmaRI uri ampartavnoba...Seudarebel ia."
- (4) "tipi: Smagi... [j.]."
- (5) "miuxedavad amisa, j. kinaRam prokurori gaxda. magram presam gamoamzeura erTi sisxl is samarTI is saqmis istoria, romel Sic j. monawil eobda da romel ic ukavSirdeboda iuridiul i rCeviS micemas saTanado ufl ebamosil ebis gareSe (Winkelschreiberei). or pirs,

b-n I .-sa da mis Svil s, bral i edebodaT TaRI iTuri xel Sekrul ebebis dadebis gziT ful is miRebaSi im xal xisgan, romel Tac surdaT binebis yidva Zvel SenobebSi. rodesac gamoaSkaravda, rom xel Sekrul ebebi dadebul i iyo [j .-s] mier, bral debam taqtika Secval a: aqcenti TaRI iTuri xel Sekrul ebebidan gadaitana maTi gamoyenebis ganzraxvaze. [j .] mosamarTI ed darCa. "kurieris" [yovel dRiuri avstriul i gazeTi] gamomceml ebi amjamad nanoben amis gamo, radganac prokurori nakl ebad saSiSia."

sisxl is samarTI is kodeqsis 111-e muxl is safuZvel ze, regional urma sasamarTI om b-n pragers miusaj a 120 dRis gammavI obaSi dReSi 30 Sil ingis (ATS) gadaxda j arimis saxiT, xol o j arimis gadauxdel obis SemTxvevaSi - 60 dRiT Tavisufl ebis aRkveTa. b-n oberSI iks miesaj a mosamarTI e j .-sTvis zianis anazRaureba 30,000 Sil ingis odenobiT da mas b-n pragerTan erTad, erTobl ivad da cal keul ad, daekisra j arimis gadaxda da sasamarTI o xarj ebis dafarva (kanoni masmediis Sesaxeb, Tavebi 6(1) da 35).

sabol ood sasamarTI om gasca "forumis" zemoxsenebul i nomris amoRebisa da sasamarTI os ganaCenis gamoqveynebis brZaneba.

15. regional urma sasamarTI om Tavis mier gamotanil i ganaCenis dasabuTebaSi Tavidanve miutita, rom cil iswamebis obieqturi el ementebis arseboba aSkara iyo. zemoxsenebul i me-(2) da me-(4) nawyvetebi pirdapir miaweren mosarcel es saZul vel xasiaTs an damoki debul ebias (eine verächtliche Eigenschaft oder Gesinnung), xol o (1)-el i, me-(3) da me-(5) nawyvetebi mas bral s sdebdnen arakeTil sindisier da sasarcxvino saqciel Si, rasac SeeZI o mis mimarT zizri gamoewvia da misi saxel i sazogadoebis Tval Si SeebRal a. mokl ed rom iTqvas, amgvari gaafTrebui kritikis zemoqmedebis Sedegad miukerZobel mkiTxvel s sxva arafebi rCeboda, garda imisa, rom marTI ac gasCenoda ewvi, rom mosarcl e arakeTil sindisierad moiqa (ehrloses Verhalten) da rom mas saZul vel i xasiaTi hqonda (verächtliche Charaktereigenschaften), avtorma ki mSvenivrad icoda yovel i ve amis Sesaxeb.

Semdeg regional urma sasamarTI om ganxi l a bni prageris Suamdgoml oba im dokumentebisa da Cvenebabis warmodgenis Taobaze, roml ebic daadasturebdnen aRnISnul statiaSi moyvanil i gancxadebebis siswores da rom statiaze muSaobisas b-nma pragerma Jurnal isturi siFrTxil e gamoiCina. sasamarTI om miCnia, rom amgvari mtkicebul ebebis warmodgena Sesal ebel i iyo mxol od (1)-l, me-(3), da me-(5) nawyvetebTan mimarTebaSi, xol o sxva danarCeni gancxadebebi Sefasebebs warmoadgendifnen. am sakiTxis ganxil vis Semdeg sasamarTI om daadgina, rom verc erTi warmodgenil i mtkicebul eba asabuTebda b-ni prageris gancxadebebs.

amgvarad, pirvel i gancxadeba, roml is Tanaxmadac mosamarTI e j . yovel bral debul s dasawyisi danve ise epyroboda, rogorc ukve msj avrdebul s, ver dadasturda mxol od im faptiT, rom mosamarTI em advokats sTxova Seemokl ebina Tavisi sityva, radganac mosamarTI es ukve miRebul i hqonda gadawayetil eba. aseve, mosamarTI e j .-s mier gamotanil i sami gadawayetil eba, romel zec b-nma pragerma miutita Tavisi mesame gancxadebis dasasabuTebi ad, aRmoCnda sakmarisi imis dasamtkebl ad, rom mosamarTI em gamoiyena "qedmaRI uri ampartavnobis" taqtika. mosamarTI e j .-s mier gamotanil ma verc erTma gadawayetil ebam ver daadastura is mosazreba, rom mas ganzraxul i hqonda usafuZvl o tanj vis miyeneba. rac Seexeba me-(5) nawyvetSi moyvanil bral debebs, isini gaabaTil a venis saapel acio sasamarTI om 1982 wl is 6 dekembers gamotanil i disciplinarul i gadawayetil ebiT. is ori dokumenti, roml is warmodgenasac mopasuxi iTxovda, ar cvl ida saqmis viTarebas, vinaidan pirvel i maTgani ar Seicavda raime informacias mosamarTI e j .-s pirovnebis

Sesaxeb, xol o meore, romel ic exeboda mosamarTI is mier prokuroris Tanamdebobaze sakuTari kandidaturis wamoyenebas, konfidentialuri iyo.

sasamarTI os azriT, b-nma pragerma aseve ver daamtkica, rom man es statia masmediis Sesaxeb kanonis 29(1)-e muxl is dacviT dawera, romel ic Jurnal istur siffrTxil es exeba (ixil eT me-19 paragrafi qvemoT). garda imisa, rom b-nma pragerma mosamarTI e j.-s saSual eba ar misca pasuxi gaeca mis winaaRmdeg wamoyenebul bral debebz, misi gamokvl evebi mosamarTI is saqmianobis Sesaxeb zedapirul i iyo. metic, b-nma pragerma TviTonve aRiara, rom igi ar daswrebia mosamarTI e j.-s Tavmj domareobiT Catarebul arc erT sasamarTI o sxdomas, rom man informacia Zvel i gazeTebidan isesxa ise, rom ar Seumowmebia maTSi moyvanil i faqtebis siswore da rom yurmokvriT gagonil i ambebi WeSmaritebad warroadgina.

2. apelacia

16. 1989 wl is 26 ivniss venis saapel acio sasamarTI om Zal aSi datova zemoxsenebul i ganaCeni, magram asanazRaurebel i Tanxis odenoba 20,000 SiL ingamde Seamcira (ixil eT me-14 paragrafi qvemoT). kerZod, saapel acio sasamarTI om aRniSna, rom regional ur sasamarTI os ar daurRvevia mopasuxetea ufl eba maSin, rodesac man usafuZvl od cno b-ni prageris mier warmodgenil i mtkicebul ebebi. sasamarTI os gadawyvetil eba ganapiroba b-ni prageris kritikis formam. igi imdenad mravl ismomcvel i da zogadi iyo, rom SeuZl ebel i gaxda im mtkicebul ebis dadgena, romel ic daasabuTebda amgvari kritikis siswores. mocemul i saqme gansxavdeba saqmisgan "I engensi avstriis winaaRmdeg" (evropis adamianis ufl ebebis sasamarTI os 1986 wl is 8 ivl isis gadawyvetil eba, seria A, #103) imiT, rom igi exeba sxvadasxva faqtebis arsebobis gancxadebas da ara sakuTari Sefasebis gamoxatvas. rac Seexeba im siffrTxil es, romel ic Jurnal istebma unda gamoiCinon TavianT saqmianobaSi, igi unda Seesabamebodes princips - "audiatur et altera pars" (mosmenil iqnes meore mxarec (I aT.).

17. "forumis" aRniSnul i nomris darCenil i asl ebi, faqtobrivid, ar iqna amoRebul i (ixil eT me-14 paragrafi zemoT).

II. Sesabamisi Sidasaxel mwifoebriwi samarTali

1. sisxl is samarTI is kodeqsi

18. sisxl is samarTI is kodeqsis 111-e muxl i formul irebul ia Semdegnai rad:

1. pirs, romel ic mesame piristvis gasagebi gziT ganacxadebs, rom meore pirs saZul vel i xasiaTi an damokidebul eba gaaCnia, an rom misi saqciel i uRirsi, amoral uri an sxvagvarad miuRebel ia, rac iwevs zizRs meore piris mimarT an amcirebs mis Rirsebas sazogadoebis Tval Si, daekisreba sasj el i Tavisufl ebis aRkveTiT ara umetes 6 Tvis vadiT an jarima.
2. pirs, romel ic amgvar gancxadebas gaavrcel ebs nabewdi saxiT, mauwyebi obiT an imgvarad, rom aRniSnul i gancxadeba xel misawvdomi gaxdes sazogadoebis farTo fenebisTvis, daekisreba sasj el i Tavisufl ebis aRkveTis saxiT ara umetes 1 wl is vadiT an jarima.

3. piri, romel ic amgvar gancxadebas gaakeTeb, Tavisufl deba pasuxismgebl obisgan, Tuki dadasturdeba gancxadebaSi moyvanil i faqtebis siswore. rac Seexeba pirvel punqtSi aRniSnul samarTal darRveas, misi Camdeni piri aseve Tavisufl deba pasuxismgebl obisgan, Tuki, Seqmnii i viTarebis gamo, mas sakmarisi safuZvel i gaaCnda efigra, rom gancxadebaSi moyvanil i faqtebi swori iyo.

112-e muxl i formul irebul ia Semdegnirad:

"gancxadebis sisworisa da piris keTil sindisieri qmedobis damadasturebel i mtkicebul eba usafuZvl oa manam, sanam gancxadebis avtori sasamarTI oSi ar daamtkicebs, rom gancxadebaSi moyvanil i faqtebi sworia da rom igi keTil sindisierad moqmedebda."

114-e muxl is 1-el i punqtis Tanaxmad, "111-e muxl Si miTiTebul i qmedeba gamarTI ebul ia, Tuki mis mizans warroadgenda kanoniT dakisrebul i moval eobis Sesrul eba an kanonieri ufl ebit sargebl oba". imave muxl is me-2 punqtis Tanaxmad, "piri, romel sac sagangebo miznIT aizul eben 111-e muxl Si miTiTebul i qmedebis ... sagangebo formiT Sesrul ebas, Tavisufl deba pasuxismgebl obisgan, garda im SemTxvevisa, rodesac gakeTebul i gancxadeba simarTI es ar Seeferreboda, risi gaTval iswinebac mas SeeZI o, Tuki saTarnado siFrTxil es gamoiCenda".

2. kanoni "masmediis Sesaxeb"

19. "masmediis Sesaxeb" kanonis me-6 Tavi iTval iswinebs mkacr pasuxismgebl obas gamomceml isTvis, romel ic cil iswamebas mimarTavs. pirs, roml is mimarTac Cadenil ia amgvari samarTal darRveva, SeuZI ia moiTxovos miyenebul i zianis anazRaureba. metic, "masmediis Sesaxeb" kanonis darRvevisTvis gamomcemel s SesaZI oa daekisros erTobl ivi da cal keul i pasuxismgebl oba msj avrdebul Tan erTad j arimisa da sasamarTI o xarj ebis anazRaurebis saxiT (muxl i 35).

pirs, roml is winaaRmdegac mimarTul ia cil iswameba, SeuZI ia moiTxovos gamocemis im nomris konfiskacia, romel Sic gamoqveynda cil iswamebl uri cnobebi (muxl i 33). 36-e muxl is Tanaxmad, mas agreTve SeuZI ia moiTxovos amgvari gamocemis davyovnebl ivi dapatiTreba, Tuki 33-e muxl i garkveul i drois Semdeg gamoiyeneba, garda im SemTxvevebisa, rodesac amgvari dapatiTreba Seusabamoia mocemul i kanonieri interesis dacvasTan. nomris dapatiTreba ar gamoiyeneba, Tuki aRniSnul i interesis dacva SeiZI eba ganxorciel des sisxl is samarTI is saqmis aRZvris Sesaxeb sagangebo informaciis gamoqveynebis gziT (muxl i 37). garda amisa, dazaral ebul s SeuZI ia moiTxovos sasamarTI os ganaCenis gamoqveyneba, Tuki es gamarTI ebul ia sazogadoebis informirebis Tval sazrisiT (muxl i 34).

29(1) muxl i miuTiTeb, rom gamomceml ebs da Jurnal istebs ar ekisrebaT pasuxismgebl oba im informaciis gamoqveynebisTvis, roml is sisworis dadastureba SesaZI ebel ia, ara marto im SemTxvevebSi, rodesac isini warroadgenen amgvar mtkicebul ebebs, aramed im SemTxvevebSiC, rodesac sazogadoeba ZI ier dainteresebul ia amgvari informaciis gamoqveynebaSi da rodesac arsebobs mizezebi, roml ebic asabuTeben gamomcemel Ta da Jurnal istTa rwmenas gakeTebul i gancxadebis sisworeSi. amasTanave igul isxmeba, rom amgvari gancxadeba gakeTebul ia "Jurnal isturi siFrTxil is" normebis dacviT.

komisiis gadawyetil eba

20. 1989 wl is 21 dekembers b-nebma pragerma da oberSI ikma mimarTes komisias Suamdgoml obiT (#15974/90), romel Sic naTqvami iyo, rom maT mimarT gamotanil i ganaCeni xel yofda azris gamoxatvis Tavisufl ebis, rac garantirebul ia konvenciis me-10 muxl iT da rom "forumis" aRniSnul i nomris darCenil i asl ebis konfiskaciis brZaneba warmoadgenda me-10 da me-14 muxl ebiT erTobl ivad akrZal ul diskriminacias. Suamdgoml obaSi agreTve miTiTebul i iyo, rom adgil i hqonda konvenciis me-6 da me-13 muxl ebis darRveas.

21. 1992 wl is 29 marts komisiam ganacxada, rom Suamdgoml oba dakmayofil ebul iqna mxol od im nawil Si, romel ic exeboda me-10 da me-14 muxl ebs. 1994 wl is 28 Teberval s gakeTebul i moxsenebis (31-e muxl i) Tanaxmad, komisiam miRo gadawyetil eba 15 xmiT 12-is winaaRmdeg, rom me-10 muxl is darRveas adgil i ar hqonia, da erTsul ovani gadawyetil eba, rom me-10 da me-14 muxl ebi aseve erTobl ivad ar darRveul a.

samarTI ebrivi mxare

I. gancxadeba konvenciis me-10 muxl is darRvevis Taobaze

24. Suamdgoml obis Tanaxmad, adgil i hqonda konvenciis me-10 muxl iT garantirebul i azris gamoxatvis Tavisufl ebis xel yofas.

a. winaaRmdegoba xel isufl ebis mxridan

25. uSedegod cdil obda ra daemtkicebina komisiisTvis, xel isufl ebam ganacxada, rom b-nma oberSI ikma ver daasabuTa, rom igi warmoadgenda dazaral ebul s konvenciis 25-e muxl is 1el i punqtis safuzvel ze. imdenad, ramdenadac man ubral od dabeWda statia, romel ic mas ar dauweria, azris gamoxatvis Tavisufl eba aq arafer Suasi iyo. garda amisa, mas ar ganucdia raime saxis finansuri zaral i mis winaaRmdeg wamowyebul i samarTal warmoebis Sedegad: mas, rogorc erTobl ivmoval es, ar mouwia raime Tanxis gadaxda j arimis an sasamarTI o xarj ebis saxiT da SeeZI o b-ni pragerisgan moeTxova bral debul ad cnobasTan dakavSirebul i sxva xarj ebis anazRaureba (ixil eT paragrafebi me-14 da me-15 zemoT).

26. 25-e muxl is Tanaxmad, "dazaral ebul i" niSnabs pirs, romel sac uSual od Seexo qmedoba an gadacdoma, romel ic darRvevad iTvl eba, Tundac amas ar gamoewvia raime zaral i. zaral is arsebobis SemTxvevaSi gamoyenuba 50-e muxl i (ixil eT gadawyetil eba saqmeze "radio "gropera" da sxvebi Sveicariis winaaRmdeg", 1990 wl is 28 marti, seria A, #173, me-20 gverdi, paragrafi 47).

27. komisiisa da Suamdgoml obis avtorTa msgavsad, sasamarTI o aRniSnabs, rom mosamarTI e j.-s sarcel is safuzvel ze aRzrul i sisxl is samarTI is saqme mimarTul i iyo rogorc b-ni prageris, aseve b-ni oberSI ikis winaaRmdeg. es ukansknel i individual urad iqna cnobil i damnaSaved sakutar gamocemaSi aRniSnul i statiis dabeWvisaTvis (ixil eT paragrafi 14 zemoT). mas uSual od Seexo ainStadtis regional uri sasamarTI osa da venis saapel acio sasamarTI os gadawyetil ebebi. Sesabamisad, b-n oberSI iks gaaCnia safuzvel i amtkicos, rom igi dazaral ebul s warmoadgens. Sedegad, protesti mTavrobis mxridan usafuzvl o iyo.

b. Suamdgoml obis detal ebi

28. udavoa, rom b-ni prageris dammaSaved cnoba cil iswamebisTvis da mis mimarT miRebul i sxva zomebi, romel Ta gamoc man da b-nma oberSI ikma waradgines Suamdgoml oba, warmoadgenda azris gamoxatvis Tavisufl ebis "xel yofas". amgvari xel yofa ewinaaRmdegeba me-10 muxl s, garda im SemTxvevebisa, rodesac igi "gaTval iswinebul ia kanoniT", emsaxureba me-10 muxl is me-2 punqtit gaTval iswinebul kanonier miznebs, an "aucil ebel ia amgvari miznebis misaRwevad demokratiul sazogadoebaSi".

1. "kanoniT gaTval iswinebul i"

29. Suamdgoml obis avtorTa gancxadebiT, avstriis sisxl is samarTI is kodeqsis 111-e muxl i da "masmediis Sesaxeb" kanonis 29-e paragrafi ar SeiZI eba ganvixil oT rogorc "kanoni" im mniSnel obiT, rogorc es miTiTebul ia konvenciaSi. imdenad, ramdenadac aRniSnul i debul ebebi saSual ebas aZI evs mosarcel es TviTon gansazRvros, teqstis romel i nawyvetebi gaxdeba samarTal warmoebis sagani da saSual ebas arTmeven mopasuxes warmoadginos material uri faqtebis damadasturebel i mtkicebul ebebi, maTi Suamdgoml obis Sedegis winaswar ganWvreta Znel i iyo.

30. ramdenime adre ganxil ul saqmeSi sasamarTI om miicnia, rom sisxl is samarTI is kodeqsis 111-e muxl s gaaCnda "kanonis" Tvisetebi (ixil eT gadawyvetil ebebi Semdeg saqmeebze: "I ingensi", moxseniebul i zemoT, 24-e gverdi, paragrafi 36; "oberSI iki avstriis winaaRmdeg", 1991 wl is 23 maisi, seria A, #204, 24-e gverdi, paragrafi 54-e; "Svabe avstriis winaaRmdeg", 1992 wl is 28 agvisto, seria A, #242-b, 31-32 gverdebi, paragrafi 25-e). metic, ar arsebobda raime xel CasaWidi safuzvel i "masmediis Sesaxeb" kanonis 29-e muxl Tan mimarTebaSi sxva gadawyvetil ebis miRebisTvis. am or debul ebasTan dakavSirebul i gaurkvev obis gamo, Suamdgoml obis avtorebisTvis moul odnel i ar yofil a miRebul i Sedegi (ixil eT saqme "Vereinigung demokratischer Soldaten Österreichs da gubi avstriis winaaRmdeg", 1994 wl is 19 dekembris ganaCeni, seria A, #302, me-18-19 gverdebi, paragrafi 46).

2. iyo Tu ara dasaxul i mizani kanonieri

31. komisiis msgavsd, sasamarTI o eTanxmeba im azrs, rom miRebul i gadawyvetil ebebi, rogorc es xel isufl ebam ganacxada, emsaxureboda sxva pirTa, am SemTxvevaSi ki mosamarTI e j.-s, reputaciis dacvasa da sasamarTI o xel isufl ebis avtoritetis SenarCunebas, rac, me-10 muxl is me-2 punqtis Tanaxmad, savsebiT kanonier miznebs warmoadgens.

3. SezRudvis aucil ebl oba

32. Suamdgoml obis avtorTa gancxadebiT, maT mimarT gamotanil i gamamtyunebel i gadawyvetil ebebi usamarTI o iyo. mokl ed aRwera ra venis sisxl is samarTI is regional uri sasamarTI os ssvadasxva wevrTa Tvisetebi da xasiaTis Taviseburebebi, b-ni prageri Seexo im konkretul seriozul probl emebs, roml ebic arsebobda avstriis sisxl is samarTI is sistemaSi. karikaturebsa da

informaciis gabuqvas msgavs gazeTebSi xSirad mimarTavdnen rogorc mkiTxvel Ta yuradRebis mi pyrobisa da ama Tu im sakiTxze sazogadoebrivi Segnebis amaRI ebisaTvis. mocemul SemTxvevaSi avtors borotad ar gamouyenebia msgavsi meTodebi, miT umetes, rom statia daibeWda gamocemaSi, romel ic gankuTvnii i iyo gansj is unaris mqone intel eqtual uri pirovnebebisTvis. metic, statiaSi aRweril i cxra mosamarTI idan mxol od j.-m aRZra sarcel i.

amasTan, b-nma pragerma da b-nma oberSI ikma gaakritikes maT winaaRmdeg warmarTul i sasamarTI o procesi. maT ar miecaT sakuTari interesebis dacvis saSual eba. mosamarTI e j.-m TviTon airCia statiis is nawyvetebi, roml ebic safuZvl ad daedo mopasuxete mimarT gamotanil gamamtyunebel ganaCens. amgvarad, man konteqsts Camoacil a konkretul i zogadi winadadebebi da frazebi, ganskutrebit 1-el i da me-2 nawyvetebi (ixil eT me-14 paragrafi zemoT) da arasworad warmoadgina isini mis winaaRmdeg mimarTul gancxadebebad. regional urma sasamarTI om ara marto arasworad ganasxava gancxadebebi (1-el i, me-3 da me-5 nawyvetebi) Sefasebebisgan (me-2 da me-4 nawyvetebi), aramed man agreTve aramarTI zomierad waartva mopasuxeebs ufl eba mietiTebinaT im garemoebbez, roml ebic daadasturebda gancxadebebis siswores, xol o Sefasebebi mxol od komentarebis saxiT iyo warmodgenil i (ixil eT paragrafi 15 zemoT). maSin, rodesac sasamarTI om neba darTo mopasuxeebs warmoedginaT konkretul fagtebTan dakavSirebul i mtkicebul ebebi, igi kanonis sawinaaRmdeg god moqmedebda, radganac man kritikis obieqtis winaaRmdeg mimarTul i fagtebis damtkicebis tvirTi mopasuxeebs daakisra. amgvar midgomas SeeZl o sabol ood gaefanta Jurnal istebis interesи marTI msaj ul ebis sistemis mimarT.

dabol os, aramarTI zomieri iyo imis mtkiceba, rom statiaze muSaobisas b-nma pragerma ar gamoiCina saTanado Jurnal isturi sifrTxil e. piriqiT, misi naSromi eyrdnoboda 6-Tvian gamokvl evas, roml is ganmavl obaSic mas kavSiri hqonda advokatebTan, mosamarTI eebsa da pedagogebTan. garda amisa, igi 3 Tvis ganmavl obaSi yovel dRiurad eswreboda sasamarTI o sxdombebs venis sasamarTI oSi.

33. xel isufl ebis mtkicebit, statiis mocemul i nawyvetebi aratu xel s uw yobda avstriis marTI msaj ul ebis sistemis saj aro ganxil vas, aramed piradad Seuracxyofda mosamarTI e j.-s, miuxedavad imisa, rom am ukanknel s arafeli gaukeTebia b-ni prageris provocirebisTvis. amgvarad, aRniSnul gancxadebebz ar vrcel deboda is garantiebi, roml ebic gaTval iswinebul ia pol itikuri Sexedul ebebis gamoxatvisTvis. avtorma ver daamtkica sakuTari gancxadebebis siswore im ubral o mizezis gamo, rom isini safuZvel s mokl ebul i iyo. b-ni prageris mier gamoxatul i Sexedul ebebi ver isargebl ebda srul i imunitetiT mxol od imitom, rom maTi siswore damtkicebas ar eqvemdebareboda. bn prageris winaaRmdeg gamoyenebul iqna kanoniT gaTval iswinebul i sanqciebi, radganac misma gancxadebebma gadaaWarba misaRebi kritikis zRvars. b-nma pragerma ver daamtkica, rom igi ketil sindisierad moqmedebda, vinaidan man ugul ebel yo Jurnal istikis yvel aze el ementarul i normebi, ganskutrebit ki is, rom Jurnal isti val debul ia piradad gadaamowmos mopovebul i informaciis siswore da komentaris gakeTebis saSual eba misces im pirebs, romel Tac es informacia exebaT.

34. sasamarTI o adasturebs, rom samarTI ebriiv saxel mwifosi presas udidesi rol i akisria. Tumca man ar unda gadal axos garkveul i fargl ebi, roml ebic dawesebul ia sxvaTa reputaciis dasacavad. misi funciaa gaavrcel os informacia da Sexedul ebebi pol itikur da sxva sakiTxebze, roml ebic sazogadoebis interesiT sargebl oben, im saSual ebebiT, roml ebic Seesabameba masze dakisrebul moval eobebs (ixil eT saqme "kastel si espaneTis winaaRmdeg", 1992 wl is 23 april i, seria A, #236, 23-e gverdi, paragrafi 43-e).

es uelvel ad exeba marTI msaj ul ebis sistemis funqcionirebis sakiTxsac, romel ic aucil ebel ia nebismieri demokratiul i sazogadoebisTvis. presa erT-erTi saSual ebaa politikosebisa da sazogadoebisaTvis imaSi dasarwunebl ad, rom mosamarTI eebi asrul eben maTze dakisrebul sapasuxismgebl o moval eobas samsaxurebrivi amocanis miznebis Sesabamisad.

am mxriv, agreTve, aRsani Snavia sasamarTI o xel isufl ebis gansakuTrebul i rol i sazogadoebaSi. rogorc marTI msaj ul ebis garanti, rac samarTI ebrivi saxel mwifos ZiriTad faseul obas warmoadgens, sasamarTI o xel isufl eba unda sargebl obdes sazogadoebis ndobiT, raTa efekturad Seasrul os masze dakisrebul i moval eobebi. amgvarad, mas SeuZl ia saWirod CaTval os amgvari ndobis dacva usafuZvl o da destruqciul i Tavdasxmebisgan, gansakuTrebiT im faqtis gaTval i swinebiT, rom mosamarTI eebs, roml ebic kritikis obieqtad iqcevian, maTi samsaxurebrivi mdgomareoba ukrZal avs amgvar kritikaze pasuxis gacemas.

35. am faqtorebis Sefaseba qveynis xel isufal Ta erT-erT upirvel es funqcas warmoadgens. isini garkveul wil ad gansazRvraven, Tu ramdenad arsebobs azris gamoxatvis Tavisufl ebis SezRudvis aucil ebl oba. Tumca amgvari gansazRvra eqvemdebareba kontrol s evropul i structurebis mxridan, misi avtori Tundac damoukidebel i sasamarTI o iyos (ixil eT saqme "barfordi daniis winaaRmdeg", 1989 wl is 22 Tebervl is ganaCeni, seria A, #149, me-12 gverdi, paragrafi 28).

36. sasamarTI os azriT, mocemul i nawyvetebis Sefasebebad da faqtebis arsebabis Sesaxeb gancxadebebad kl asifikasiacia xel isufl ebis zemoaRniSnul i funqciis fargl ebSi xvdeba. b-ni prageris mier gakeTebul i gancxadebebi zogiert Zal ze seriozul bral debas Seicavda. amgvarad, maT avtors ar unda gahkvirveboda, rom misgan axsna-gamartebeps moiTxovdnen. sakuTari mtkicebebiT, rom venel i mosamarTI eebi "yovel bral debul s dasawyisidanve ise epyrobian, rogorc ukve msj avrdebul s", an rom mosamarTI e j. "qedmaRI ur ampartavnobas" iCenda sakuTari moval eobebis Sesrul ebis, - b-nma pragerma iribad daadanaSaul a mosamarTI eebi kanonis darRvevaSi, an, sul mcire, TavianTi profesiul i moval eobebis ugul ebel yofaSi. amgvarad, man ara marto Sel axa maTi reputacia, aramed, agreTve, safrTxe Seuqma sazogadoebis ndobas sasamarTI o xel isufl ebis mimarT.

37. imis mizezi, rom b-nma pragerma ver daamtkica, rom misi gancxadebebi WeSmari tebas Seeferreboda, an rom misi Sefasebebi mxol od da mxol od komentarebs warmoadgenda, unda veZioT ara imdenad sasamarTI os mier kanonis gamoyenebis TaviseburebaSi, aramed b-ni prageris gancxadebebis Zal ze zogad xasiaTSi. swored am aspeqtma iTamaSa rol i mis mimarT amgvari ganaCenis gamotanaSi. rogorc komisiam miuTiTa, mtkicebul ebebi adasturebs, rom gamotanil i ganaCeni mimarTul i iyo ara marTI msaj ul ebis sistemis mimarT msj avrdebul is azris gamoxatvis Tavisufl ebis winaaRmdeg, an Tundac dasaxel ebul mosamarTI eTa kritikis winaaRmdeg, aramed igi ganpi robebul i iyo kritikis Zal ze zogadi formiT. amgvari kritika, sakmarisi faqtobrivi safuZvl is ararsebabis gamo, gadaWarbebul ad da sazianod iqna miCneul i. ainStadtis regional urma sasamarTI om mis mier gamotanil ganaCenSi aRniSna, rom "amgvari mwave kritikis zemoqmedebis Sedegad, miukerZoebel mkiTxvel s sxva arafebi rCeboda, garda imisa, rom marTI ac gasCenoda elWi, rom mosarCI e arakeTi sindisierad moiqca da rom mas saZul vel i xasiaTi hqonda" (ixil eT paragrafi 15 zemoT). amasTan dakavSirebiT, sakmarisia aRniSnos, rom b-ni prageri, rogorc es TviTon aRiara, ar daswrebia arc ert sasamarTI o sxdomas mosamarTI e j.-s Tavmj domareobiT. metic, man saSual eba ar misca mosamarTI es pasuxi gaeca mis winaaRmdeg gamoTqmull bral debebze.

38. ellvgareSea, rom me-10 muxl is me-2 punqtis Tanaxmad, azris gamoxatvis Tavisufl eba gul isxmobs ara marto im "informacias" an "ideebs", romel Tac obieqti moiwonebs, Seuracxyofad ar CaTvl is an sul ac yuradRebas ar miaqcevs, aramed, agreTve, im "informacias" an "ideebs", roml ebic Seuracxmyofel ia an SemaZrwunebel ia, an iweven saxel mwifos an misi mosaxl eobis romel ime nawil is SeSfoTebas (ixil et gadawyetil eba zemoxsenebul "kastel sis" saqmeze, 22-e gverdi, paragrafi 42, da gadawyetil eba zemoxsenebul saqmeze "Vereinigung demokratischer Soldaten Österreichs da gubi avstriis winaaRmdeg", me-17 gverdi, paragrafi 36). garda amisa, sasamarTI o iTval iswinebs, rom Jurnal isturi saqmianobis Tavisufl eba gul isxmobs garkveul gadaWarbebas an Tundac provokacias.

mi uxedavad amisa, zemoxsenebul i garemoebebisa da xel isufl ebisTvis miniWebul i Sefasebis funqiis gaTval iswinebiT, ver vityiT, rom es sadavo SezRudva kanonier miznebs ewinaaRmdegeba. amgvarad, SeiZI eba iTqvas, rom igi "saWiRo iyo demokratiul i sazogadoebisTvis".

39. sabol oo j amSi, me-10 muxl is darRveva ar dadasturda.

am mizezebis gaTval iswinebiT, sasamarTI om:

1. erTsul ovnad uaryo xel isufl ebis protesti;
2. xuTi xmiT oTxis winaaRmdeg gadawyita, rom konvenciis me-10 muxl is darRvevas adgil i ar hqonia;
3. erTsul ovnad gadawyita, rom ar arsebobs Suandgoml obis ganxil vis saWiRoeba im nawil Si, romel ic eyrdnoba konvenciis me-10 da me-14 muxl ebs erTobl iobaSi.

mosamarTI e martensis gansxvavebul i azri, romel sac daeTanxmen mosamarTI eebi pekaneni da makarCiki:

1. sasamarTI os wevrTa umravl esobas mxol od erT sakiTxSi ar veTanjmebi. "bartol dis" saqmeze gadawyetil eba gamotanidan dawyebul i sasamarTI os miaCnda, rom me-10 muxl is 1-el i punqtii garantirebul i ufl ebebisa da Tavisufl ebebis udidesi mniSvnL obidan gamodinare, zedamxedvel oba sasamarTI os mxridan mkacri unda iyo, rac niSnabs imas, rom aRniSnul i ufl ebebisa da Tavisufl ebebisa SezRudvis aucil ebl oba damaj erebl ad unda iyo dasabuTebul i. Tumca sasamarTI os wevrTa umravl esobis mier gamoyenbul i sityvieri formul ireba SesalZI oa eWvs iwevdes, unda vigul isxmoT, rom maT ar surdaT aRniSnul i doqtriniidan gadaxveva da, Sesabamisad, miaCndaT, rom mopasuxis azris gamoxatvis Tavisufl ebis es sadavo SezRudva damaj erebl ad iyo dasabuTebul i, rogorc "aucil ebel i demokratiul sazogadoebaSi". zemoxsenebul mizezTa gamo, me sabol ood mivedi im daskvnamde, rom ver gaviziareb am azrs.
2. "sabol ood", Tumca unda aRniSno, rom b-ni prageris statis Tavdapi rvel ad wakiTxvam¹ uaryofiTi STabeWdil eba damitova. vifigre, rom saqme exeboda Tavdaj erebul da Tavis simarTI eSi darwmunebul Jurnal ists, romel sac aSkarad ar hqonda iuridiul i ganaTI eba an raime gamocdil eba mocemul sferoSi da romel ic mkveTrad mikerZoebul ad iyo ganwyobil i

¹ samwuxaroa, rom statia srul ad ar aris naTargnni; is, vinc sasamarTI os ganaCens waikiTxavs, kmayofil i unda darces sasamarTI os mier momzadebul i mokl e mimoxil viT (ganaCenis me-8-11 muxl ebi), romel ic, marTal ia, Secdomebs ar Seicavs, magram, garkveul wil ad, Sel amazebul ia sasamarTI os mier statis saerTo SefasebiT da ver iZI eva naTel warmodgenas mocemul 13-gverdian statiazze.

samarTI is winaaRmdeg. miuxedavad amisa, igi Rrmad iyo darwmunebul i, rom mas hqonda aRniSnul Temaze RvarZI iani statiis dawerisa da cxra mosamarTI is samarcxvino boZze gakvris ufl eba. es iyo Jurnal isti, romel ic upiratesobas aniWebda ufro stil istur da RvarZI ian meTodebsa da efeqtebs, vidre sicxadesa da zomierebas.

amgvari pirvel i STabeWdil eba, romel ic mkveTrad uaryofiTia, saxifaToa mosamarTI isaTvis. igi sifrTxil iT unda ekidebodes amgvari STabeWdil ebis zegavl enas, rac, rogorc wesi, mikerZoebas warmoSobs. sakiTxavia, ase moiqnen Tu ara avstriel i mosamarTI eebi.

3. statiis meored wakiTxvam maiZul a Semecval a Cemi pirvel i STabeWdil eba. davrmundi, rom mas Semdeg, rac masSi aRiZra interesi mocemul i Temis mimarT, b-nma pragerma sociol ogebis mier aRweril i fenomenis mizezebis adgil ze dasadgenad ara marlo didi dro da energiia daxarj a, aramed igi agreTve gul wrfel ad SeZrwunda sakuTari aRmoCeniT. sociol ogebma aRniSnes, Tu rogori mkveTri sxvaoba arsebobs venis saapel acio sasamarTI osa da avstriis sxva sasamarTI oebis mier samarTI is aRsrul ebis meTodebSi. venis saapel acio sasamarTI o ufro advil ad da swrafad gascemda piris winaswar patimrobaSi ayvanis brZanebas da ufro xangrZI ivi periodiT, vidre sxva sasamarTI oebi, xol o mis mier gamotanil i ganaCenebi orj er ufro mZime iyo, vidre sxva sasamarTI oebisa².

b-ni prageri estumra venis sisxl is samarTI is regional ur sasamarTI os, raTa moeZebna axsna amgvari sxvaobisaTvis. eqvsTviani gamokvl evis Sedegad³ man daaskvna, rom yovel ive amis mizezi sasamarTI os wevrTa pirovnul i Tvisebebi da maTi mundiris Rirsebis SenarCunebisken swrafva iyo.

rogorc es aRniSnul ia mis statiaSi, b-ni prageri ara marlo SeZrwunda, aramed ukiduresad da gul wrfel ad aRSfoTda. es eWvgareSea. igi didxans figrobda, cdil obda aexsna zogierTi momenti, roml is mowmec igi gaxda, da yovel ive es daekavSirebina avstriis samarTI is sistemis specifikur damaxasiaTebel niSnebTan. swored asea warmoCenil i statiis Sesaval Sic, sadac b-ni prageri mkiTxvel Ta yuradRebas miapyrobs sisxl is samarTI is mosamarTI is farTo ufl ebamosil ebasa da amis fonze im safrTxeze, rac Tan axl avs amgvar Tanamdebobaze wl ebis ganmavl obaSi yofnas, maSin, rodesac sinamdvil eSi ar arsebobs zedamxedvel obis raime meqanizmi. b-ni prageri miuTiTebs, rom sisxl is samarTI is sasamarTI oebSi gavrcel ebul ia xel isufl ebis borotad gamoyeneba. amgvarad, gareSe kontrol i aucil ebel ia. misi amgvari gancxadebebi safuZvel s mokl ebul i ar aris da isini gasaTval iswinebel ia⁴. meores mxriv, unda gvaxsovdes I ord deningis mtkiceba, rom mosamarTI eebs, maTi samsaxurebrivi mdgomareobidan gamodinare, ar SeuZI iaT kritikaze pasuxis gacema⁵.

4. manam, sanam Sevudgebode am sadavo statiis anal izs, marTebul i iqneboda imis gaxseneba, rom mosamarTI e j.-m, erT-erTma maTganma, vinc kritikis obieqtii gaxda, miicnia, rom b-ni prageris statia cil ismwamebl uri iyo da Seitana kerzo sarcel i avstriis sisxl is samarTI is kodeqsis 111-e muxl is safuZvel ze⁶. eWvgareSea, rom zogierTi nawyveti aRniSnul i statiidan,

² aRsaniSnavia, rom xel isufl ebias sasamarTI os winaSe arc ki ucdia zemoxsenebul i aRmoCenebis uaryofa.

³ b-ni prageri amtkicebs, rom mis mier Catarebul gamokvl evas 6 Tve dasWinda; sul mcire, samTvenaxevris ganmavl obaSi igi yovel dRiurad dadioda sasamarTI oSi.

⁴ ixil eT sasamarTI os ganaCenis 34-e muxl i, romel ic imave azrs gamoxatavs.

⁵ veTanjmebi im azrs, rom didi mniSvnel oba eniWeba sazogadoebis ndobas sasamarTI o xel isufl ebis mimarT (ixil eT gadawyetyl ebis 34-e muxl i), magram veWwob, rom am ndobis SenarCuneba unda moxdes kritikis winaaRmdeg sisxl is samarTI is saqmis aRZvris gziT, Tundac igithe sasamarTI o xel isufl eba am kritikas "destruqciul ad" miicnevdes.

⁶ ixil eT ganaCenis me-19 muxl i.

gansakuTrebiT ki isini, roml ebic mosamarTI e j.-s exeboda⁷, marTI ac cil ismwamebl uri iyo. miuxedavad amisa, konvenciis safuZvel ze, b-ni prageris damnaSaved cnoba da mis mimarT gamamtyunebel i ganaCenis gamotana cil iswamebisTvis SesaZI ebel i iqneboda mxol od im SemTxvevaSi, Tuki mocemul i qveynis sasamarTI oebi, mas Semdeg, rac saTanadod ganixil avdnen da Seafasebdnen sadavo statias mTI ianobaSi, si tyvis Tavisufl ebisa da sxvaTa reputaciis dacvis bal ansis safuZvel ze miiCnevnden, rom am ukansknel faqtors ufro didi mniSvnel oba eniWeboda mocemul saqmeSi. rodesac sasworze devs azris gamoxatvis Tavisufl eba, sasamarTI o "sadavo SezRudvas erTianobaSi gani xil avs saqmis garemoebabis fonze da gansazRvrav, Tu ramdenad misaRebi da sakmarisia xel isufal Ta mier aRniSnul i SezRudvis gasamarTI ebl ad warmodgenil i mizezebi".

sxva si tyvebiT, sasamarTI os gul dasmiT unda Seemowmebina im garemoebaTa sarwmunooba, roml ebic safuZvl ad daedo b-ni prageris damnaSaved cnobasa da mis mimarT gamamtyunebel i ganaCenis gamotanas. "amgvarad, sasamarTI o unda darwmundes, rom qveynis xel isufal T gamoiyenes is standartebi, roml ebic Seesabameba me-10 muxl iT gansazRvrul principebs da rom isini eyrdnoboda saTanado faqtebis keTil sindisier Sefasebas"⁸.

azris gamoxatvis Tavisufl ebasa da sxvaTa reputaciis dacvas Soris bal ansis damyareba SesaZI ebel ia mxol od maSin, rodesac gamoxatul i azri sworad aris aRqmul i da Sefasebul i mTI ian konteqstSi. amgvarad, azris gamoxatvis Tavisufl ebis garantis moval eobis Sesasrul ebl ad, evropis adamianis ufl eebabis sasamarTI o ara martoval debul ia ganixil os adgil obrivi sasamarTI oebis mier amgvari bal ansis damyarebis praqtika, aramed, upirvel es yovl isa, man aucil ebl ad unda Seamowmos, Tu rogor aris ganmartebul i da Sefasebul i mocemul i gancxadebebi. mxol od amgvari gul modgine Semowmeba miscems saSual ebas sasamarTI os darwmundes, rom azris gamoxatvis Tavisufl ebis aramarTI zomier SezRudvas adgil i ar hqonia⁹.

5. ganvagrZob sadavo statiis anal izs. zemoxsenebul i "Teoriul i" Sesavl is Semdeg statia mimoixil avs b-ni prageris samTvenaxevrian gamokvl evas regional ur sasamarTI oSi. am (meore) "Tavis" aSkara mizania Sesaval Si moyvanil i gancxadebebis il ustrireba da avtoris aRSfoTebis mkiTxvel TaTvis gadacema.

es (meore) "Tavic" Sesavl is stil Si iwyeba da moicavs zogad informacias, sxvadasxva advokatebisa da stenografistebis mier avtorisTvis winaswar miwodebul cnobebs, sasamarTI oSi arsebul i atmosferos aRweras, zogierT mosamarTI estan pirvel ad Sexvedris Sedegad miRebul zogad STabeWdil ebasa da ironiul SeniSvnebs sasamarTI o xel isufl ebis sakiTxebze momuSave axal gazrda Jurnal istze avtocenzuris dawesebis Taobaze.

⁷ im nawyvetebis saTargmnel ad, romel Ta safuZvel zec aRiZra kerzo sarcel i, ixil eT ganaCenis me-14 muxl i.

⁸ sasamarTI om es ramdenj erme aRniSna, magram es da zemoxsenebul i citireba moyvanil ia "j ersil dis" saqmeze didi pal atis gadawyvetil ebidan, 23-24-e gverdebi, paragrafi 31.

⁹ ganaCenis 36-e muxl is 1-el i puntis Tanaxmad, imis gadawyveta, aRniSnul i gancxadebebi faqtebis arsebobas amtkicebs Tu Sefasebas warmodgens, adgil obrivi sasamarTI os funciaSi Sedis. Cemi Tval sazrisiT, amgvari mosazreba SeuTavsebel ia im dadgenil wesTan, roml is Tanaxmadac, sasamarTI o unda darwmundes, rom qveynis xel isufal T gamoiyenes is standartebi, roml ebic Seesabameba me-10 muxl iT gansazRvrul principebs da rom isini eyrdnoboda saTanado faqtebis keTil sindisier Sefasebas (ixil eT teqsti zemoT); metic, gadawyvetil ebaSi moyvanil i mosazrebebi ewinaaRmdegeba I ingensis (seria A, #103), oberSI ikis (seria A, #204) da Svabes (seria A, #242-B) saqmeebze gamotanil ganaCenebs.

amas mosdevs cxra mosamarTI is met-nakl ebad amomwuravi "portreti". yovel portrets win užRvis sagangebo saTauri, romel ic ara marto mokl ed aRwers im saqmeebs, roml ebsac mocemul i mosamarTI e gansj is, aramed TiToeul maTgans miawers garkveul "tips". es cxra portreti, maT Soris mosamarTI eTaTvis miwebebul i iarl iyebi saTauriT "tipi", aSkarad miZNad isaxavs venis regional uri sasamarTI os mier samarTI is aRsrul ebis meTodebis bni prageriseul i kritikis reziumirebasa da am kritikis damaj erebl obis gaZl ierebas saxel ebisa da saxeebis gamoyenebis gziT.

6. es, ra Tqm unda, gemovnebis sakiTxia, magram, Cemi Tval sazrisiT, zogierTi sxva mosamarTI e ufro RvarZl ianad aris aRwerili i, vidre mosamarTI e j. savaraudoa, rom ainStadtis regional uri sasamarTI os mosamarTI ec ase fiqrobda. man Tavis ganaCenSi isic ki miuTiTa, rom yvel a mosamarTI es, romel sac Seexo kritika da roml is saxel ic moxseniebul i iyo statiaSi, SeeZl o sarCel is aRZvra cil i swamebisTvis. SesaZl oa es marTal i iyos, magram faqtia, rom isini ase ar moiqcnen. es, ra Tqm unda, ar niSnavs imas, rom maTi portretebi sworad iyo Sedgenil i. es is faqtoria, romel ic, garkveul wil ad, mxedvel obaSia misaRebi mosamarTI e j.-sadmi miZrvnil i nawyvetebis Sefasebisas. aravis daumtkicebia, rom sxva mosamarTI eTa aRwera WeSmaritebas iyo mokl ebul i, an rom sasamarTI oSi arsebul i atmosferos suraTi srul iad yal bi iyo.
7. imaze rom araferi vTqvaT, rom sxva mosamarTI eebis ar miumarTavT sasamarTI osTvis, xel isufl ebas arc ki ucdia daemtkicebina b-ni prageris zogadi gancxadebis usafuZvl oba, roml is Tanaxmadac, venis sisxl is samarTI is marTI msaj ul eba pirvel instanciaSi ara marto Zal ze mkacria, aramed miuRebl ad sastiki.

Sesabamisad, mosamarTI e j.-s b-ni prageriseul i aRwera unda SevafasoT im faqtis gaTval i swinebiT, rom mosamarTI e j. gaxl avT sisxl is samarTI is sasamarTI os wevri, anu warmoadgens im organos, romel ic sakuTari gadawyvetil ebebiTa da moqmedebiT bral debul Ta da advokatTa mimarT amarTI ebs presis mxridan masze kontrol s. b-ni prageris statia unda ganvixil oT rogorc im sakiTxebis gamSuebel i, roml ebic farTo sazogadoebis interesiT sargebl obs. amitomac igi marTebul ad daibewda gazeTSi "forumi", romel ic agviweres, rogorc "gamocema, roml is mizania demokratiul i principebis, kanonis uzenaesobisa da RatakTa interesebis popul arizacia" da "tipiuri gazeTi intel eqtual TaTvis" ("ein typisches Blatt der intellektuellen Szene"). arc erTi am aRweraTagan ar gamxdara xel isufl ebis mxridan Semodavebis sagani. neba momeciT kvl av gavimeoro, rom amgvar Sefasebas ver ipoviT avstriul i sasamarTI oebis mier gamotanil ganaCenebSi: isini arsad miuTiTeben, rom maT daupiri spires mosamarTI e j.-s ufl eba daecva sakuTari reputacia b-ni prageris (da "forumis") me-10 muxl iT gaTval i swinebul ufl ebas daewera kritikul i statia sazogadoebisTvis Zal ze saintereso Temaze!

8. b-ni prageris statiis zemoT moyvanil i anal izi (ixil eT paragrafebi 3 da 5 zemoT), is faqt, rom statia daibewda seriozul gazeTSi, romel ic gankuTvnil ia intel eqtual uri mkiTxvel isTvis (ixil eT paragrafi 7 zemoT), e.i. maTTvis, visac Zal uzs gaakeTos sakuTari daskvnebi, da is garemoeba, rom statia Seexeboda sazogadoebisTvis Zal ze saintereso Temas avtoris Tval sazrisiT, samarTI is aRsrul ebis skandal ur meTodebs - mxedvel obaSia misaRebi ara marto SezRudvis aucil ebl obis sakiTxis gadawyvetisas, aramed agreTve im xuTi specifikuri da konteqstidan izol irebul i nawyvetebis teqstis ganmartebis, roml ebic safuZvl ad daedo mosamarTI e j.-s kerzo sarCel s (ixil eT paragrafi 4 zemoT).

9. yovel i ve amis fonze bevri ram SeiZI eba iTqvas im gancxadebis Sesaxeb, rom yvel a mocemul i nawyveti, garda me-5 nawyvetisa, unda kl asificirebul iqnes rogorc Sefaseba. aSkaraa – da es daadastura ainStadtis sasamarTI os mosamarTI em, – rom me-4 nawyveti, romel ic Seicavs mosamarTI is garkveul i "tipisadmi" mikuTvnebas, warmoadgens Sefasebas. es simarTI ea, radgan b-nma pragerma araerTxel miakuTvna ramdenime mosamarTI e garkveul tips. magal iTad, man aRniSna, rom mosamarTI e j. miekuTvneboda tips "Smagi", i seve, rogorc erT-erTi misi kol ega - mosamarTI e a. rac Seexeba pirvel or nawyvets, unda aRviSno, rom isini warmoadgenen ara statiis mTavari teqstis nawil s, aramed mokl e reziumes, romel ic saTaurTan ("frTxil ad! sastiki mosamarTI eebi!") da qvesaTaurTan ("moxseneba im adgil is vizitisa, sadac") erTad moqceul ia CarCoSi¹⁰. es aSkarad gakeTda mkiTxvel is yuradRebis misapyrobud da es asec moxda. mocemul i winadadebebi, rogorc reziumes nawil i, aSkarad gamoxataven bni prageris mier sisxl is sasamarTI os gakicxvis arss da dasabuTebas hpoveben mTavar teqstSi.

am garemoebaTa gaTval iswinebiT, sakiTxavia, Tu ramdenad misaRebia am aSkarad zogadi winadadebebis ase mKacrad ganxil va, TiTqos isini mxol od mosamarTI e j.-sadmi miZRvnili i statiis nawil s warmoadgendas. magram zustad amgvarad moiqnens avstriis sasamarTI oebi, romel Tac TavianTi midgomis Taobaze axsna-ganmartebebis micemiT Tavi ar Seiwuxes¹¹.

igive exeba me-3 nawyvets. igi warmoadgens Sesavl is me-2 "Tavis" konteqstSi gakeTbul SeniSvnas (ixil eT paragrafi 5 zemoT). Znel ia im Tavis zusti mniSvnel obis gageba, roml idanac amoRebul ia es nawyveti. Cemi Tval sazrisiT, yvel aze ufrro mosal odnel ia, rom nawyveti, garkveul wil ad, agrZel ebs zemoxsenebul ironiul SeniSvnebs avtocenzuris Taobaze (ixil eT paragrafi 5). am versiis Tanaxmad, me-3 nawyvetSi moyvanil i SeniSvna gul isxmobs, rom mosamarTI e j.-s saqciel i imdenad Seuwynarebel ia, rom Znel ia Tavi Seikavo misi dagmobiisan. es saqciel i SemdgomSi daxasiaTebul ia rogorc "menschenverachtende Schikane", romel ic Znel ad iTargmneba¹², magram, yovel SemTxvevaSi, igi sakmaod Seuracxmyofel ia. Tumca teqstSi moyvanil i SeniSvna miuTiTebs, rom daxasiaTeba warmoadgens SemdgomSi moyvanil i detal uri portretis reziumes. eWvgareSea, rom am SemTxvevaSi saqme gvaqvs SefasebasTan, rogorc aseTTan. metic, Tuki mas ganvixil avT statiis erTian konteqstSi, Znel ia (rbil ad rom vTqvaT) gaviziaroT ainStadtis regional uri sasamarTI os mosamarTI is mosazreba, roml is Tanaxmadac, "Schikane" ise unda gavigoT, rom mosamarTI e j. Tavis samsaxurebriv mdgomareobas bral debul TaTvis gangeb zianis misayenebl ad iyenebs. marTal ia, I eqskonebis mixedviT, sityvas - "Schikane", SesaZI oa hqondes amgvari konotacia, magram mimaCnia, rom sisxl is sasamarTI os aRwerisa da mTI ianad statiis konteqstSi igi unda gagebul iqnes, rogorc sisxl is kanonmdebl obis Zal ze sastiki formiT gamoyeneba adamianis Semdgomi tanj vis gauTval iswinebl ad. aqac i seve, rogorc sxva nawyvetebis ganmartebebis, ainStadtis sasamarTI os mosamarTI em ganmartebebis ori SesaZI ebel i variantidan airCia is varianti, romel ic amtyunebda bral debul s da sabol ood gamoiwwia misi clamnaSaved

¹⁰ ixil eT reziumes teqsti: gadawyvetil ebris me-9 paragrafi.

¹¹ me-2 nawyvetTan mimarTebaSi aRviSne, rom avstriis sasamarTI oebma arc ki miiRes mxedvel obaSi nawyveti mis mTI ianobaSi: moviyvan sasamarTI os ganaCenis me-9 paragrafis srul teqsts:

"zogierTi avstriel i mosamarTI e mzad aris yvel aferze wavides; yovel i maTgani mzad aris bevr rameze wavides: es damkvidrebui i praqtikaa". am teqstis erTianobaSi aRqmis magivrad, avstriis sasamarTI oebma miiCnies, rom igi cil s swamebda mosamarTI e j.-s.

¹² mopusaxis mier SemoTavazebul i Targmani iyo "autanel i Cakirkiteba", magram sasamarTI om airCia varianti "qedmaRI uri ampartavnoba".

cnoba. amasTanave, mosamarTI em Tavi ar Seiwuxa ganemarta, rom man ganixil a meore variantic, an raTa aexsna am ukansknel is uaryofis mizezi.

yuradRebas vamaxvil eb mis mier miRebul i gadawyvetil ebis am aspeqtze, radganac am sakiTxSi mTel i arsebit veTanzmebi germaniis konstituciur sasamarTI os. am sasamarTI os precedentis Tanaxmad, mosamarTI e, romel ic damnaSaved cnobs pirs, roml is siyyieri an weril obiTi gancxadebis gamarteba sxvadasxvagvarad SeIZI eba da, amasTanave, ar iZI eva damaj erebel mizezs, Tu ratom maniWa upiratesoba gamartebis im variants, romel mac gamoiwwia am piris damnaSaved cnoba, arRvevs azris gamoxatvis Tavisufl ebas.

10. avstriis sasamarTI oebma¹³ arsebitad gansxavebul i midgoma arcies. maT ganixil es mxol od xuTi specifikuri da konteqstidan amoRebul i nawyveti, roml ebzec miTiTebul i iyo mosamarTI e j.-s kerzo sarCel Si¹⁴. eWvgareSea, rom sasamarTI oebis mier miRebul i gadawyvetil ebebi gamsWval ul ia amgvari midgomiT. magal iTad, ainStadtis sasamarTI os mosamarTI em uari ganacxada mxedvel obaSi mieRo is (udavo) faqti, rom erTxel mosamarTI e j.-m gaafTxil a advokati "mokl ed moxsenebina misi siyyva", radganac mosamarTI es "ukve miRebul i hqonda gadawyvetil eba". ra Tqma unda, es faqti ar metyvel ebs "zogad mikerZoebaze", an imaze, rom mosamarTI e j. yovel bral debul s dasawyisi danve epyroboda ise, rogorc ukve msj avrdebul s, magram igi Tundac imaze miuTiTebs, rom mosamarTI e j.-m gamoamJRavna sakuTari damokidebul eba "mundiris Rirsebisadmi", romel ic b-nma pragerma daafiqsira sakuTari Jurnal isturi gamokvl evis msvl el obis dros. amgvarad, b-n pragers gaaCnda garkveul i safuZvel i, raTa portretebis gal ereaSi mosamarTI e j.-c Seeyvana.
11. Cans, rom es magal iTi Seesabameba damkvidrebui praqtkas. Tuki Seviswai iT ainStadtis sasamarTI os mosamarTI is reaqcias bni prageris Txovnaze warmoadginos misi Sefasebebis safuZvl ianobis damadasturebel i mtkicebul ebebi, aRmovaCent, rom igi ramdenj erme meordeba. pirvel rigSi, mosamarTI e, yovel gvari mizezis gamartebis gareSe, upiratesobas aniWebs mocemul i Sefasebebis interpretaciis im variants, romel ic amtyunebs mopasuxes, xol o Semdeg am ukansknel s uars eubneba zemoxsenebul i mtkicebul ebebis warmodgenaze im motiviT, rom mopasuxe ver daarrwmunebs sasamarTI os imaSi, rom mosamarTI e j.-s amoZravebda tanj vis miyenebis boroti ganzraxva¹⁵.

¹³ mocemul saqmeSi yvel aze ufro mniSvnel ovania ainStadtis regional uri sasamarTI os mosamarTI is mier gamotanil i gadawyvetil eba: ar iqna gamoyenebul i ganmeorebiti apel acia; saapel acio sasamarTI om ganixil a mxol od apel aciis safuZvel i; mis mier ainStadtis sasamarTI os mosamarTI is argumentebis ganxil va zedapirul i iyo; miuxedavad amisa, saapel acio sasamarTI om moiwona isini da ar daakmayofil a apel acia.

¹⁴ mxedvel obidan ar gamomrCenia is faqti, rom ainStadtis sasamarTI os mosamarTI em, mas Semdeg, rac gamarta zemoxsenebul i xuTi nawyveti ise, rogorc es me maqvs miTiTebul i, Semdegna rad Seaj ama sakuTari Sexedul eba imis Taobaze, Tu ramdenad warmoadgenda es xuTi nawyveti cil iswamebas:

"eWvgareSea, rom is xuTi nawyveti, romel Ta winaaRmdegac mimarTul ia kerzo sarCel i, cal ke aRebul i, Tu statiis erTian konteqstsSi ganxil ul i, warmoadgens cil iswamebas, sisxl is sasamarTI is kodeqsis 111-e muxl is Tanaxmad".

mas Semdeg, rac gul dasmiT Seviswai e misi gadawyvetil eba da davrmundi, rom es pirvel i da ukansknel i SemTxveaa, rodasac igi "statiis konteqsts" axsenebs, CemTvis naTel i gaxda, rom am gziT man zerel ed mouxada xarki princips, romel ic, jaMSi, faqtobrisad, srul iad uaryo.

¹⁵ Exceptio veritatis-is (gamonakl isi adasturebs WeSmari tebas (I aT.) damtkicebisTvis warmodgenil i winadadebisTvis dadgenil i moTxovnebi ixil eT me-13 paragrafsi qvemoT.

mosamarTI e j.-s portretis¹⁶ aRwerisas didi yuradReba eTmoba SemTxvevas, rodesac mosamarTI e j.-s daJinebiT da yovel gvari saWiroebis gareSe pirs gaugrZel es winaswari patimrobris vada, da rodesac mosamarTI e j.-m Suamdgoml oba am vadis gauqmebis Sesaxeb ar gadasca saTanado organos. mosamarTI e j.-m arcia ar moexseniebina es SemTxveva Tavis sarCel Si, magram igi mainc gamomzeurda, rodesac b-nma pragerma ganacxada, rom zustad es epizodi daedo safuZvl ad mosamarTI e j.-sTvis "menschenverachtende Schikane"-s wodebas (ixil eT paragrafi 9 zemoT), ris dasabuTebasac igi iTxovda. misi Txovna ar daakmayofil a ainStadtis sasamarTI os mosamarTI em im motiviT, rom man srul iad daju erebl ad miicnia, rom mosamarTI e j.-s Segnebul ad da boroti ganzraxviT surda winaswari patimrobris vadis gagrZel eba.

12. msurs moviyvano msgavsi meqanizmis kidev erTi magal iTi, amj erad mosamarTI e j.-s mier SerCeul me-5 nawyvetTan mimarTebaSi. es nawyveti udavod Seicavs gancxadebas faqt(eb)is arsebobis Sesaxeb. upirvel es yovl isa, ra Tqma unda, dasadgenia, Tu romel faqtebzae saubari. am SemTxvevaSi viTareba sakmaod naTel ia. bni prageris mtkicebit, mosamarTI e j. kinaRam daniSnes prokurorad – al baT garkveul i xnis win, magram, Tu b-n pragers davuj erebT, man es Tanandeboba ver moipova im mizeziT, rom misi saxel i kvl av¹⁷ gaxda presis ganxil vis sagani. am SemTxvevaSi saqme exeboda eWVs, rom mosamarTI e j. gareul i iyo arakeTil sindisier saqmianobaSi¹⁸. aravin uaryofda, rom msgavsi statiebi daibeWda presaSi. miuxedavad amisa, ainStadtis sasamarTI os mosamarTI es warmodgeniT, nawyveti Seicavda gancxadebas, rom msgavsi eWVi kvl av arsebobda statiis gamoqveynebis momentisTvis. amasTanave, mosamarTI em kvl av ar miRo mxedvel obaSi nawyvetis sxvagvari interpretaciis SesaZl ebl oba. Semdeg mosamarTI e miuTiTeb, rom venis saapel acio sasamarTI os mier garkveul i xnis win miRebul ma gadawyetil ebam gafanta zemoxsenebul i eWvebi mosamarTI e j.-s garSemo. kargi iqneboda, Tu mosamarTI e axsnida, Tu rogor unda scodnoda b-n pragers am gadawyetil ebis Sesaxeb, magram es amj erad ar warmoadgens Cemi ganxil vis sagans. mniSvn ovania is, rom aqac saqme gvaqvs im midgomasTan, romel ic SeimCneva me-10 da me-11 paragrafebTan mimarTebaSi: (a) dausabuTebel i interpretacia, romel ic (rbil ad rom vTqvaT) aSkarad amZimebs mopasuxis mdgomareobas, da (b) amis safuZvel ze, Exceptio veritatis-is damtkicebis Taobaze b-ni prageris Txovnis uaryofa.
13. al baT sakiTxavia, ramdenad Seesabameba me-10 muxl s¹⁹ amgvar saqmeSi mtkicebis tvirtis Jurnal istze dakisreba, magram, radganac aravis ganucxadebia protesti am sakiTxze, misi ganxil visgan Tavs vikaveb. Tumca xazi unda gaesvas im garemoebas, rom saapel acio sasamarTI os gadawyetil ebidan naTel ia, Tu ramdenad zedmetad momTxovni da skrupul ozuria avstriis kanonmdebl oba Exceptio veritatis-is mtkicebul ebebis warmodgenasTan mimarTebiT. bral debul ma zustad unda miuTiTos, romel i faqtebis damtkiceba surs. metic, man ara marto zustad unda miuTiTos, Tu ratom asabuTebis es faqtebi mis naTqvams da rogor daamtkicebs mis mier

¹⁶ ixil eT ganaCenis me-11 paragrafi.

¹⁷ "kvl av", radgan, rogorc b-ni prageri miuTiTeb, mosamarTI e j. warsul Si gareul i iyo meZavTan dakavSirebul erTob usiamovno incidentSi.

¹⁸ im STabelWdil ebis gasaqarwyl ebl ad, rom b-nma pragerma SesaZl od CaTval a mosamarTI e j.-s mier saSinel i saqmeebis Cadena, minda aRvnisno, rom tegstis original Si mocemul i saqciel i daxasiaTebul ia rogorc "Winkel schreiberei", rac, rogorc Cven agvixsnes, niSnabs, rom mosamarTI e j. eWvmitanil i iyo iuridiul i konsul taciis gawevasi garkveul i anazRaurebis sanacvl od, risi ufl ebac mas ar hqonda.

¹⁹ germanis Bundesgerichtshof-Si damkvidrebul i precedentis Tanaxmad, rodesac presa aSuqebs sazogadoebrii interesis sferos mikuTvnebul sakiTxeb da asabuTeb, rom Jurnal isturi sfrTxil is ugul ebel yofas adgil i ar hqonia, siyal bis damtkicebis val debul eba mosarCI es ekisreba. magal iTisTvis ixil eT j. zoringi, "Die neue Rechtsprechung zum Presserecht", NJW, 1994 w., me-16 da Semdgomi gverdebi.

warmodgenil i mtkicebul eba am fagtebis arsebolas, aramed man, agreTve, winaswar unda daarrwmunos sasamarTI o, rom arsebols am fagtebis damtkicebis SesaZI ebl oba.

14. garda imisa, rom b-n pragers ar misces im fagtebis damadasturebel i mtkicebul ebis warmodgenis saSual eba, romel sac eyrdnoboda misi Sefasebebi (garda erTaderTi SemTxvevisa), sasamarTI om miCnia, rom man ar gamoiCina saTanado Jurnal isturi siffrTxil e.

es ar aris usafuZvl o Tval sazrisi, radganac b-nma pragerma mosamarTI e j.-s ar misca statiis proeqtze sakuTari komentarebis gakeTebis saSual eba. udavoa, rom es Jurnal isturi siffrTxil is ugul ebel yofis seriozul i SemTxveva iyo²⁰ da ara aqvs mniSvnel oba, ramdenad gamoiyenebda mosamarTI e j. komentaris gakeTebis SesaZI ebl obas.

-
15. ainStadtis sasamarTI os mosamarTI is mtkicebiT, "aSkara" iyo, rom b-n pragers amoZravebda mosamarTI e j.-s cil iswamebis (boroti) ganzraxva. igi ufro Sors wavida da b-ni prageris boroti ganzraxva aRwera rogorc "winaswar gamiznul i". misi erTaderTi argumenti iyo is, rom b-ni prageri saSual o adamianze ufro ganaTI ebul ia da, garda amisa, gamocdil i Jurnal istia. Semdeg man ganacxada, rom b-n pragers unda gaeTval iswinebina, rom zemoxsenebul i xuTi nawyveti mosamarTI e j.-s Sesaxeb negatiur STabeWdil ebas moaxdenda da, Sesabamisad, masze uaryofiTad imoqmedebda.

Cemi Tval sazrisiT, am SemTxvevaSi saqme gvaqvs gamocdasTan da amitomac arCevanSi ar unda SevcdeT. ar uavyof, rom aris SemTxvevebi, rodesac konkretul i piris mimarT gakeTbul i

²⁰ avstriis xel isufl ebis argumenti imis Sesaxeb, rom b-ni prageris mier gamocenil i ugul ebel yofis Sedegad, misi statia ar SeiZI eba ganixil ebodes rogorc sazogadoebisTvis Zal ze saintereso Temaze gamarTul kritikul diskusiaSi Setanil i wvl il i, aSkarad usafuZvl oa.

ramdenadac seriozul i ar unda iyos b-ni prageris mier Jurnal isturi siffrTxil is ugul ebel yofa, igi ar amarTI ebs ainStadtis sasamarTI os mosamarTI is mier mis mimarT gamocenil simkacres. marTal ia, igi am simkacres asabuTebs ori damatebiT argumentiT, unda aRiniSnos, rom maT safuZvl ad udevs mikerZoebul i midgoma, romel ic ganxil ul ia winamdebare paragrafSi. ainStadtis sasamarTI os mosamarTI em ignorireba gaukeTa statias erTianobaSi. metic, man me-9 paragrafSi moxseniebul i reziumes konteqstidan amoRebul i ori izol irebul i winadadeba ganixil a rogorc mxol od mosamarTI e j.-sadmi mIZRvnii i statis mTavari teqstis Semadgenel i nawil i.

erTianobaSi ganxil ul i statia sakmoed naTel s xdis, rom igi emyareba xangrZl ivi periodis ganmavl obaSi ganxorciel ebul pirad dakvirvebebs da im mowmeebisgan miRebul informacias, roml ebic miCneul i arian konkretul sasamarTI osTan da mis wevrebTan muSaobis profesiul i gamocdil ebis mqone pirebad, rogoreibic arian sisxl is samarTI is advokatebi, stenografistebi da pirobiTad gasamarTI ebul msj avrdebul Ta zedamxedvel i inspeqtorebi. ainStadtis sasamarTI os mosamarTI e amtkicebs, rom am gziT mopovebul i informacia Worebze dafuznebul mtkicebul ebas warmoadgens, magram, Cemi Tval sazrisiT, ar SeiZI eba iTqvas, rom b-nma pragerma sakuTari meTodebiT ugul ebel yo Jurnal isturi siffrTxil e. is argumenti, rom bni prageri, rogorc man es TviTon ganacxada, ar daswrebia mosamarTI e j.-s Tavmj domareobiT warmarTul romel ime sxdomas, aradamaj erebel ia, radganac b-ni prageri arsad akritikebs imas, Tu rogor Tavmj domareobs mosamarTI e j. sxdomas, Tuki mxol od vinme SecdomiT ar miCnevs, rom reziume mosamarTI e j.-s Sesaxeb garkveul i fagtebis arsebolas amtkicebs. Tumca b-ni prageris statia Seicavs erT anekdotur SemTxvevas, rodesac mosamarTI e j.-m advokatisgan moiTxova moxsenebis Semokl eba (ixil eT paragrafi 10 zemoT). vfigrob, Jurnal isti ar ugul ebel yofs siffrTxil es im istoriis gamoqveynebiT, romel ic moismina im advokatisgan, romel sac mosamarTI em amgvarad mimarTa; miT umetes, rom es SemTxveva warmoadgens "mundiris Rirsebisadmi" damokidebul ebris brwyinval e il ustracias, risi mowmec b-ni prageric gamxdara da ris Sesaxebac mas araeTxeL gaugia sxva mowmeebisgan.

Seni Svnebis forma saSual ebas gvaZI evs davaskvnaT, rom am Seni Svnebis gakeTebis as pirs amoZravebda cil iswamebis boroti ganzraxva. magram amgvari daskvnis gamotana im statiis konteqstidan amoRebul xuT izol irebul winadadebaze dayrdnobiT, romel ic daibeWda seriozul gazeTSi da Seexeboda sazogadoebisTvis Zal ze saintereso Temas, azris gamoxatvis Tavisufl ebas arRvevs. garda imisa, rom daskvna eyrdnoboda am xuti nawyvetis mikerZoebul interpretacias, miuRebel ia is faptic, rom sazogadoebisTvis saintereso Temaze gakeTebul i kritikul i komentaris formam ganapiroba mosazreba, rom pirs am komentaris gakeTebis as cil iswamebis boroti ganzraxva amoZravebda. es niSnavs, rom sasamarTI oebi srul iad ugul ebel yofdnen avtoris ganzraxvas wamoewyo saj aro diskusia; es niSnavs, rom, faqtobrivad, gaTval iswinebul i iqneboda mxol od mosarCI is interessebi, rac SemaSfoTebel i masStabebiT SezRudavda azris gamoxatvis Tavisufl ebas. ramdenadac maxsovs, "me-10 muxl i icavs ara marto gavrcel ebul i ideebisa da informaciis Sinaarss, aramed, agreTve, gavrcel ebis formas"²¹. am mizezTa gamo, mimaCnia, rom, Tuki saqme gvaqvs sazogadoebisTvis saintereso Temaze gakeTebul kritikul Seni SvnaSTan, Zal ze gadaWarbebul i da mwave Tavdasxmecic ki ar gvaZI evs sababs davaskvnaT, rom Seni SvniS avtors amoZravebda cil iswamebis boroti ganzraxva.

gadamwyeti sakiTxo mdgomareobs imaSi, SesaZI ebel ia Tu ara mocemul i sadavo formul ireba, Tundac igi Tavxeduri an uxesi iyos, gamomdinareobdes aRniSnul sakiTxze Camoyal ibebul i gul wrfel i mosazrebidan – Tundac es formul ireba gadaWarbebul ad an usiamovnod JRerdes, Tu piriqiT, – erTaderTi SesaZI o daskvna aris is, rom mis avtors mxol od an umeteswil ad Seuracxyofis miyenebis ganzraxva amoZravebda.

ki dev erTxel davrmundi, rom avstriis sasamarTI oebi xel mZRvanel obdnem standartebiT, roml ebic ewinaRmdegeba me-10 muxl Si gadmocemul principebs da, amasTan dakavSirebit, eWvqves vayeneb im mosazrebas, rom sxvagvari midgoma romc gamoeyenебinaT, isini mainc imave gadawyetil ebas gamoi tandnen. rogorc ukve miuTiTe, darwmunebul i var, rom b-ni prageri gul wrfel ad SeZrwunda venis regional ur sasamarTI oSi nanaxiT da gagonil iT. igi ara marto SeZrwunda, aramed ukiduresobamde aRSfoTda. mas esmoda, rom sakuTar aRSfoTebas uCveul od mwave formiT gamoxatava, magram amjerad misTvis yvel aze mniSven ovani iyo informaciis mkiTxvel TaTvis miwodeba, mis mier mizanSi amoRebul i cxra mosamarTI is reaqciis miuxedavad. misi Tval sazrisiT, isini ar imsaxurebdnen Semwynarebl ur mopyrobas²². amgvari damoki debul eba SesaZI oa rogorc moral uri, ise iuridiul i Tval sazrisiT Tac gasakicxi iyos, magram igi ar SeiZI eba mivCnioT borot ganzraxvad.

²¹ es citatac "jersil dis" saqmeze gamotanil i gadawyetil ebidan aris moyvanil i (gverdebi 23-23, paragrafi 31); ixil eT me-2 Seni Svna zemoT. rodesac xel isufl ebam ganaxada, rom bn pragers SeeZI o sakuTari mosazrebebi nakl ebad agresiul ad gamoxata, mas aSkarad mxedvel obidan gamorca sasamarTI o doqtrina, roml is Tanaxmadac, aucil ebel ia gadaisinj os qveynis sasamarTI oebSi damkvidrebul i praptika, rodesac es ukansknel ni ayeneben sakiTxs, ramdenad SeeZI o avtors sakuTari mosazrebebis "ufro zomieri" terminebiT gamoxatva, da mis winaRmdeg gamamtyunebel i ganaCeni gamoqvT, Tuki miiCneven, rom es SesaZI ebel i iyo.

²² Cemi mxridan es ar warmoadgens mxol od erTmxriv interpretacias. mocemul i statia Seicavs, sul mcire, erT Seni Svna, romel ic asabuTebs Cems Teziss. b-ni prageri komentars ukeTebs momakvdinebel i seniT daavadebul i mxatvris mimarT gamotanil ganaCens, romel ic damnaSaved cnes finansur maqinaciebSi. igi ganaCens ukiduresad mZimed miiCnevs. b-ni prageri amgvar simkacres miawers sasamarTI os survils gaqarwyl os warmodgena, rom SesaZI ebel ia zogierT adamians ufro rbil ad moeypyron, vidre sxvebs. amasTan dakavSirebit igi svams ritorikul SekiTxvas imis Sesaxeb, Tu ramdenad "imsaxureben gagebas mosamarTI eebi da sasamarTI o xel isufl eba erTianobaSi, rodesac maT saqmianobaSi "marTebul ad" ar Cans iotisodena gagebac ki".

16. yovel i ve amas me Semdegnai rad Sevaj amebdi:

- (a) avstriis sasamarTI oebma mxedvel obaSi mi iRes mxol od xuTi specifikuri da izol irebul i winadadeba da ignorireba gaukeTes maT konteqsts. xel isufl ebis argumenti iyo is, rom sasamarTI os ar SeeZI o sxvagvarad moqceul iyo, radganac igi xel mZRvanel obda kerzo sarcel iT, Tanaxmad avstriis sisxl is sasamarTI is kanonmdebl obisa. es argumenti damaj erebl ad ar mimaCnia, radganac: konvenciis me-10 muxl i moiTxovs konteqstis gaTval iswinebas da avstriaSi konvencia sargebl obs imave statusiT, rogorc sakonstitucio sasamarTal i²³, avstriis sasamarTI oebs ignorireba unda gaekeTebinaT sisxl is sasamarTal warmoebis im debul ebebisTvis, roml ebic ar iZI eva Jurnal istis statiis erTianobaSi ganxil vis SesaZI ebl obas.
- (b) avstriis sasamarTI oebma am xuT navyrets Zal ze mikerZoebul i interpretacia gaukeTes da arc erT SemTxvevaSi ganmartes imis mizezi, Tu ratom ar SeACeres sakuTari arCevani interpretaciis sxva, bral debul isTvis ufro sasurvel variantze.
- (c) am mikerZoebul i interpretaciisa da avstriis zedmetad mukaci debul ebebis gamo, roml ebic ar iTval iswinebs exceptio veritatis-is mtkicebul ebebis warmodgenas, b-n pragers waertVva amgvari mtkicebul ebebis warmodgenis yovel gvari saSual eba²⁴.
- (d) zemoxsenebul ma xarvezebma gavl ena moaxdina ainStadtis sasamarTI os gadawyvetil ebazec, roml ic Jurnal isturi siffrTxil is sakiTxs Seexebeda. garda amisa, am sakiTxis gadasawyvetad gamoyenbul i kriteriumi nawil obriv miuRebel ia.
- (e) miuRebel ia is kriteriumi, roml ic gamoyenbul iqna imis dasadgenad, Tu ramdenad amoZravebda b-n pragers boroti ganzraxva.
- (f) yvel a am xarvezis Sedegi, jaMSi, aris is, rom avstriis sasamarTI oebma ver moaxerxes reputaciis dacvisa da si tyvis Tavisufl ebis moTxovnebis saWiro bal ansireba.

17. b-ni prageris damnaSaved cnoba warmoadgens presis Tavisufl ebis seriozul Sel axvas. ainStadtis sasamarTI os mosamarTI em Riad ganacxada, rom mas ganzraxul i hqonda b-ni pragerisa da misi TanamoZme Jurnal istebisTvis Wkuis swavl eba.

presis Tavisufl ebis amgvari ganzrax Sel axva im statiaze dayrdnobiT, roml ic exeboda sazogadoebisTvis mniSvnel ovan sakiTxebs da roml ic daibelWda seriozul gamocemaSi, Zal ze damaj erebl ad unda iyo dasabuTebul i, raTa adamianis ufl ebebis sasamarTI om misaRebad CaTval os igi. zemoT moyvanil i mizezebis gamo, roml ebic Sej amebul ia me-16 paragrafSi, vTvl i, rom avstriis sasamarTI oebis mier gamotanil ma gadawyvetil ebebma ver daakmayofil es es moTxovna.

Sesabamisad miviCnev, rom b-ni prageris damnaSaved cnoba da mis mimarT gamamtyunebel i ganaCenis gamotana warmoadgens me-10 muxl is darRvevas.²⁵

²³ ixil eT m. novakis "evropis adamianis ufl ebebis konvenciis danergva Sidasaxel mwifoebriv sasamarTal Si", adamianis ufl ebebis kopenhagenis me-4 konferenciis Canawerebi, 1988 wl is 28-29 oktoberi, gverdi 33.

²⁴ Sesabamisad, me gamakvirva sasamarTI os mosazrebam (paragrafi 37) imis Sesaxeb, rom b-ni prageris damnaSaved cnoba gamarTI ebul i iyo imdenad, ramdenadac, "sakmarisi faqtobrivi safuzvl is ararsebabis gamo", misi bral debebi "zedmetad saziano" iyo!

²⁵ gaugebrobis Tavidan asacil ebl ad, msurs aRvnisno, rom Cemi daskvna ar gul isxmobs, rom b-ni prageris statia akmayofil ebs mocemul i debul ebis moTxovnil ebebs; igi mxol od gul isxmobs, rom avstriis sasamarTI oebis gadawyvetil ebebma ver daakmayofil es es moTxovnebi. sxva si tyvebit rom vTqaT, ar vambob imas, rom sadavo statiis gamo aRZrul i nebismieri sisxl is sasamarTI is saqme uSedegod damTavrdeba imdenad, ramdenadac mosarCI isTvis xel sayrel i nebismieri aRmoCena daarrRvevs me-10 muxl s; me vambob mxol od imas - da ara var val debul i raime davumato - rom mocemul SemTxvevaSi adgil i hqonda me-10 muxl is darRvevas.