saqarTvelos uzenaesi sasamarTlo

SUPREME COURT OF GEORGIA

marTlmsajuleba
JUSTICE

3

2008

sarCevi

axali ambebi

mecniereba

4

TanagrZnobis werili

saqarTvelos mosamarTleTa asociacias

2008 wlis 28 agvisto

Zvirfaso megobrebo,
pativcemulo mosamarTleTa asociaciis wevrebo!

gasuli wlis zafxul Si estoneTis mosamarTleebs mogveca araCveulebrivi saSualeba, vwveodiT saqarTvelos da gavcnobodiT Tqvens sasamarTlo sistemas. CvenTvis dauviwyari iqneba saqarTvelos buneba, xalxi da maTi maspinZloba. niSandoblivia qarTveli xalxis motivacia, romelic aSenebs Tavisufal, damoukidebel qveyanasa da sasamarTlo sistemas. neba gviboZeT, TanagigrZnoT am zafxuls saqarTveloSi ganviTarebuli movlenebis gamo. estoneTis mosamarTleTa asociacia, aseve, TanaugrZnobs yvela ojaxsa da sruliad saqarTvelos. dae, simtkice damoukidebl obisa da suverenitetisaTvis swrafvaSi yofiliyos Tqveni sayrdeni am mZime periodSi.

estoneTis mosamarTleTa asociaciis saxeliT,

მიღის ირიკი
estoneTis mosamarTleTa asociaciis prezidenti

saqarTvelos prezidenti uzenaes sasamarTloSi axali mosamarTleebis ficis dadebis ceremonias daeswro

2008 wlis 24 noembers saqarTvelos prezidenti mixeil saakaSvili saqarTvelos uzenaes sasamarTloSi 6 axali mosamarTlis ficis dadebis ceremonias daeswro.

iusticiis umaRlesi sabWos winaSe ficis dadebis Semdeg saqarTvelos prezidentma axlad daniSnul mosamarTleebs sityviT mimarTa da sasamarTlo sistemaSi gatarebuli reformebis mniSvnelobaze isaubra. rogorc prezidentma ganacxada, wina wlebTan SedarebiT sasamarTlo gaxda ufro metad damoukidebeli, miukerZoebeli da gamWvirvale.

mixeil saakaSvilma saqarTveloSi nafic msajulTa institutis SemoRebas erT-erTi wingadadgmuli nabiji uwoda. prezidentis gancxadebiT, gamWvirvalobis Tval sazrisiT, iusticiis umaRles sabWoSi opoziciuri warmomadgenlis arCevac reformis erT-erTi mniSvnelovani nawilia. mixeil saakaSvilma aseve isaubra mosamarTleTa uvadod daniSvis Sesaxeb. rogorc saqarTvelos prezidentma ganacxada, mosamarTleTa uvadod daniSvna maT daculobas, stabilurobasa da xel Seuxeblobas ufro metad ganamtkicebs.

`RirsmsaxurebdeT simarTles da samarTlianobas!~ _ ase daasrula axlad daniSnul mosamarTleebisadmi Tavisi mimarTva prezidentma.

giorgi ebanoiZe, giorgi arevaZe, nikoloz marsagiSvili, dimitri gvritiSvili, ioseb baRaTuria, giorgi tyavaZe _ is axali mosamarTleebi arian, romlebmac reformis `axali talRis~ farglebSi ufro damoukidebeli da ufro samarTliani sasamarTlo sistemis Camoyalibebas unda Seuwyon xeli.

axali kandidatebis umetesoba wlebis manZilze sasamarTlo sistemaSi muSaobda. iusticiis umaRles sabWoSi samosamarTlo gamocdisa da konkursis warmatebiT gavlis Semdeg isini Tbilissa da saqarTvelos sxvadasxva regionebSi mosamarTleebad ganwesdnen.

sasamarTlo reformis axaliTal Ris warmatebisTvis uzenaesi sasamarTlos Tavmjdomaris konsultaciebi opoziciasa da sazogadoebriv organizaciebTan

uzenaesi sasamarTlos Tavmjdomerem masmediisaTvis gamarTul brifingze sasamarTlo reformis axaliTal Ris mimdinareobis Sesaxeb angariSi waradgina.

saqarTvelos uzenaesi sasamarTlos Tavmjdomare konstantine kublaSvilis gancxadebiT, reformis warmatebisaTvis Zalian mniSvnelovania rogorc saxelisuflo, aseve, saparlamento opoziciuri jgufebis mxardaWera, amitom konstantine kublaSvili iwyebs konsultaciebs saparlamento opoziciis warmomadgenlebTan, raTa maTTan erTad ganixilos reformis mimdinare sakiTxebi da moipovos opoziciuri fraqciebis mxardaWera.

`sasamarTlo reformis warmatebisaTvis mniSvnelovania opoziciis mxardaWera. sasamarTlo ar ekuTvnis mxolod umravlesobas", – ganacxada konstantine kublaSvilma.

garda amisa, kublaSvilis gancxadebiT, sasamarTlo xelisufleba iwyebs sazogadoebriv, arasamTavrobo jgufebTan reformis axaliTal Ris ganxilvas.

`Cven gvinda, rom reformis SemuSavebis procesSi CavrToT sazogadoebrivi, arasamTavrobo organizaciebi, samarTlis damoukidebeli specialistebi da mecnierebi. sasamarTlo reformis axal tal Ras sazogadoebis mxardaWera sWirdeba, radgan misi mTavari momxmarebeli swored Cveni sazogadoebaa," – acxadebs uzenaesi sasamarTlos Tavmjdomare.

sasamarTlo reformis axali talRa

ufro samarTliani da damoukidebeli sasamarTlosTvis

2008 wlis seqtembridan xel isufl ebis, opoziciisa da sazogadoebrivi organizaciebis aqtiuri monawil eobiT daiwyo mimdinare sasamarTlo reformis axali talRa.

reformis mizania, saqarTvelos moqalaqe iyos ukeTesad daculi, cxovrobdes ufro samarTlian da warmatebul sazogadoebaSi.

reformis axali talRa iTval iswinebs mTeli rigi progresuli iniciativebisa da proeqtebis ganxorciel ebas marTlmsajul ebis damoukidebl obis gaZl ierebis, saqarTvelos pol itikuri da ekonomikuri winsvl is, qveynis dasavl eTTan integraciis, sazogadoebrivi ndobis da misi samarTl ebrivi Segnebis amaRl ebis kuTxiT.

aRniSnul is misaRwevad ukve gaxorciel da ramdenime mniSvnel ovani sakanonmdebl o iniciativa.

kerZod:

1. mosamarTl eTa uvadod daniSvna

erT-erTi yvel aze mniSvnel ovani nabij i damoukidebel i marTlmsajul ebis Camoyal ibebisTvis aris pol itikuri neba da gadawyvetil eba mosamarTl eTa uvadod daniSvnis Taobaze. es principi rogorc xel Seuxebl obis, stabil urobis da ucvl el obis konstituciuri garantia, Seqmnis mTavar winapirobas imisaTvis, rom mosamarTl eebi iyvnen ufro dacul ebi da, Sesabamisad ufro damoukidebl ni da Tamamni TavianT gadawyvetil ebebSi.

aRniSnul isTvis saWiroa saqarTvelos konstituciaSi Sesabamisi cvl il ebebis ganxorciel eba. cvl il ebebis proeqti SemuSavebul ia da uaxl oes momaval Si (saSemodgomo sesiaze) ganixil eba saqarTvelos parl amentis mier.

2. saqarTvelos axali sisxl is samarTl is saproceso kodeqsis miReba

axal i kodeqsis proeqtze muSaoba daiwyo 2004 wel s, mas Semdeg, rac saqarTvelos konstituciaSi Sevida cvl il eba, roml iTac saxel mwifos daeval a saerTo sasamarTl oebis sistemaSi nafic msajul Ta sasamarTl os Seqmna.

kodeqsis proeqti saqarTvelos parl amentma pirvel i mosmeniT miiRo 2006 wl is 8 dekembers. nafic msajul Ta sistemis gansazRvris garda, kodeqsis erT-erTi mTavari miRweva aris winaswari gamoZiebis da sisxl issamarTl ebrivi devnisas dacvis da bral debis mxaris absol uturi Tanasworoba.

kanonproeqtis mizania, Seqmnas sisxl is samarTl is saproceso kanonmdebl obis axal i sistema, romel ic agebul ia:

_ Sej ibrebiTobis,
_ saj aroobis,
_ mxareTa Tanasworobis,
_ mtkicebul ebaTa uSual o gamokvl evis,
_ bral debul is ufl ebaTa pativiscemis,

_ sxva progresul principebze.

axali sisxlis samarTlis saproceso kodeqsis sakvanZo principia SejibrebiToba mxareebs Soris rogorc winasasamarTlo gamoZiebis, ise saqmis sasamarTloSi ganxilvis stadiaze. sisxlis samarTlis saproceso kodeqsi Tanabar mdgomareobasa da pirobebSi ayenebs rogorc braldebis, ise dacvis mxares maT mier mtkicebulebaTa mopovebis, aseve, mosamarTlisaTvis maTi warmodgenisa da Sefasebis mizniT.

uqmdeba sasamarTlo gamoZiebis dros mowmis mier Cvenebis micemis saval debuloba. gamomZiebels, prokurors aRar eqneba mowmis dakiTxvis ufleba. mas SeuZlia nebismieri pirisagan nebayoflobiT safuZvelze mxolod informaciis miReba Cadenili danaSaulis Sesaxeb, magram amgvari nebayofloiTi gamokiTxvis Sedegad mopovebuli informacia ar miiReba saqmis arsebiTi ganxilvis dros rogorc mtkicebuleba. mowme gamocxaddeba da Cvenebas miscems mxolod sasamarTloSi orive mxaris Tandaswrebs.

kanonproeqtis erT-erT umTavres novacias warmoadgens operatiul-samZebro saqmianobis arsebiTi gardaqmna Cveulebriv sagamoZiebo moqmedebad. am novaciis mTavari arsi aris maqsimalurad mkacri sasamarTlo kontrolis daweseba iseT RonisZiebebze, romelic potenciurad yvelaze metad iWreba braldebulis (Tu sxva piris) pirad cxovrebaSi _ farul mosmena-miyuradebaze, vizualur kontrolze, kontrolirebul miwodebaze, konspiraciul saqmianobasa da sxva farul RonisZiebebze.

mniSvnelovnad aris waxalisebuli arasapatimro RonisZiebebis gamoyeneba, Sesabamisad, moqmed saproceso kodeqsTan SedarebiT ganaxevrebulia giraos minimaluri odenoba da Seadgens 1000 lars, nacvlad 2000-isa.

saqmis sasamarTloSi gadacemisTanave gauqmebulia saqmis winaswar (winasasamarTlo) gamoZiebaSi dabrunebis SesaZlebloba.

icvleba mosamarTlis roli saqmis arsebiTi ganxilvis dros _ mosamarTle aRar aris uflebamosili, sakuTari iniciativiT dakiTxos mowme, gamoiTxovos mtkicebuleba an dasvas SekiTxva, vinaidan procesis SejibrebiToba gulisxmobs mosamarTlis, rogorc miukerZoebeli arbitris (da ara procesis aqtiuri monawilis), rolis ganmtkicebas.

kanonproeqtis erT-erT umTavres novacias warmoadgens nafic msajulTa sasamarTlos SemoReba, romelic miznad isaxavs yvela moqalaqis pirdapir, demokratiul monawileobas marTlmsajulebis ganxorcielebaSi. Sesabamisad, 12 nafici msajulisagan Semdgari sasamarTlo gadawyvets braldebulis brals eulobis sakiTxs da miscems an ar miscems sasamarTlos rekomendacias sasjelis Semcirebis an damZimebis Taobaze.

nafic msajulTa gamamarTlebeli verdiqti ar saCivrdeba, xolo gamamtyunebeli verdiqti SeiZleba gasaCivrdes mxolod kasaciis wesiT.

kanonproeqtis SemuSavebaSi monawileobdnen:

_ saqarTvelos uzenaesi sasamarTlo,
_ saqarTvelos generaluri prokuratura,
_ saqarTvelos iusticiis saministro,
_ saqarTvelos Sinagan saqmeTa saministro,
_ saqarTvelos axalgazrda iuristTa asociacia,
_ `Tavisuflebis instituti”,
_ evropis sabWo.

mosamarTled uvadod daniSvnis pirveli kandidatebi iusticiis umaRlesi skolis msmenelebi iqnebian

2008 wlis 29 seqtembers uzenaesi sasamarTlos Tavmjdomarem iusticiis umaRles skolaSi JurnalistebisTvis brifingi gamarTa. konstantine kublaSvilma sazogadoebas informacia im kandidatebis Sesaxeb miawoda, romlebic reformis axal etapze mosamarTleebad uvadod dainiSnebian.

prezidentis mier inicirebuli axali proeqti mosamarTleebis uvado daniSnas iTvaliswinebs, rac, eqspertTa SefasebiT, kidev ufro gazrdis mosamarTleTa damoukideblobas da miukerZoeblobas, iusticiis umaRlesi skolis dRevandeli msmenelebi ki is pirveli mosamarTleebi iqnebian, romlebic kanonis miRebisa da amoqmedebis Semdeg uvadod dainiSnebian.

am iniciativas, `gansakuTrebiT mniSvnelovans~ uwodebs uzenaesi sasamarTlos Tavmjdomare: `mosamarTleTa uvadod daniSvnis sistemis SemoReba mosamarTleTa xel Seuxeblobis,ucvlelobisa da stabilurobis umTavresi garantia iqneba. am principis uzrunvel yofiT Cven davasrulebT mosamarTleTa SerCevisa da daniSvnis axali sistemis Seqmnas da am mimarTulebiT reforma dasrulebul ad CaiTvleba. axali sistemiT uvadod dainiSneba mxolod is kandidati, romelic warmatebiT Caabarebs gamocdas, warmatebiT gaivlis konkurss iusticiis umaRles sabWoSi, warmatebiT gaivlis iusticiis umaRlesi skolis srul saswavlo kurssa da moxvdeba specialur sareitingo siaSi,~ _ ganacxada brifingze konstantine kublaSvilma.

2005 wlis 28 dekembers miRebuli kanonis mixedviT, iusticiis umaRlesi skolis erT-erTi mTavari daniSnuleba saerTo sasamarTloebis sistemis maRalkvalificiuri kadrebiT dakompleqteba gaxda. axali kanonis Tanaxmad, mosamarTled daniSvnisTvis aucilebeli piroba iusticiis umaRles skolaSi swavlebis 14-Tviani kursis gavla da Sesabamisi gamocdebis Cabarebaa. dRes skolaSi msmenelebis ori nakadi swavlobs. sul samosamarTlo unar-Cvevebs 18 msmeneli eufleba. pirveli gamoSvebis 11 msmeneli saswavlo kurss 2009 wlis martSi daamTavrebs. 29 seqtembers maT Teoriuli kursis damamTavrebeli gamocda Caabares. swavleba skolaSi 14 Tves grZeldeba da igi sam etapad aris dayofili _ Teoriuli kursi 9 Tves moicavs, staJireba 3 Tves grZeldeba, xolo seminarul muSaobisTvis 2 Tvea gankuTvnili.

sasamarTlos saqmianobiT Cveulebriv moqalaqeTa da advokatTa 54,6%-ia kmayofili

2008 wlis 16 dekembers saqarTvelos uzenaesi sasamarTlos Tavmjdomare konstantine kublaSvilma brifingi gamarTa saqarTvelos sasamarTlo sistemis kvlevis Sedegebis gacnobis mizniT.

brifings sasamarTlo administrirebisa da menejmentis reformis proeqtis xelmZRvaneli albert szalic daeswro.

sasamarTlo sistemis SefasebiTi angariSi, sasamarTlos mimarT mosaxleobis ganwyobaTa kvlevis Sedegad Seiqmna. kvleva sasamarTlo administrirebis da menejmentis reformis proeqtis (USAID JAMR-is) dakveTiT 2008 wlis ivnisSi sazogadoebrivi kvlevisa da marketingis institutma Caatara.

sasamarTlo pirveli sajaro dawesebulebaa, romelmac amgvari kvleva ganaxorciela, rac wingadadgmul nabijad SeiZleba CaiTvalos, rogorc arsebuli problemebis ukeT Seswavlis, aseve, samomavlo strategiis SemuSavebaSi.

kvleva moicavda iseT sakiTxebs, rogorebicaa:

sasamarTlo Senobis adgilmdebareoba, ganlageba, komforti, TanamSromlebis mzadyofna daxmarebisTvis, TanamSromlebis Tavazianoba, sasamarTlo procedurebis simartive, informaciiT uzrunvelyofa, operatiuloba, sasamarTlos sandooba, miukerZoebloba.

rogorc uzenaesi sasamarTlos Tavmjdomarem brifingze ganacxada, `sasamarTlosadmi damokidebulebis safuZveli xdeba sasamarTlo procesis Sedegi. Tu mxare igebs process, maSin igi endoba sasamarTlos, xolo Tu agebs, maSin ar endoba. sasamarTlos saqmianobiT moqalaqeTa da advokatTa 54,6% kmayofilia, magram Cven gvinda, am reformebiT ufro gavaumjobesoT es monacemi."

aRniSnuli kvlevis farglebSi ukve gadaidga pirveli praqtikuli nabiji da sasamarTlom kidev erTi sainformacio Sinaarsis bukleti dabeWda, sadac sasamarTlos mimarT yvelaze xSirad dasmul SekiTxvebze pasuxi martivad da mosaxleobisTvis gasagebi eniT aris gacemuli.

konstantine kublaSvilis ganacxadebiT, sasamarTlo momaval saqmianobaSi aucileblad gaiTvaliswinebs kvlevis Sedegebs. `sazogadoebis azris gaTvaliswineba, maTi winadadebebis mosmena yovelTvis iyo da iqneba sasamarTlosTvis prioriteti~, _ ganacxada brifingze uzenaesi sasamarTlos Tavmjdomarem.

uzenaesi sasamarTl os Tavmj domarem pirvel nafic msaj ul ebs umaspinZl a

uzenaesma sasamarTl om nafic msaj ul Ta institutis popul arizaciis mizniT kidev erTi RonisZieba Caatara.

2008 wl is 18 dekembers uzenaesi sasamarTl os Tavmj domare satel evizio gadacema `verdiqtSi~ monawil e im nafic msaj ul ebs Sexvda, roml ebmac saqarTvel oSi satel evizio gadacemis formatSi pirvel ad „gamoi tanes verdiqti~.

gadacema mesame Tvea tel ekompania `imedis~ eTerSi gadis da mas sazogadoeba interesiT adevnebs Tval s.

gadacema maqsimal urad aris miaxl ovebul i real ur process da masSi monawil e nafici msaj ul ebic Cveul ebrivi moqal aqeebi arian, roml ebic saarCevno siidan SemTxveviTobis principis mixedviT SeirCnen.

gadacema nafic msaj ul Ta institutis popul arizacias eZRvneba. sisxl is samarTl is kanonmdebl obaSi Setanil i cvl il ebis Tanaxmad, mal e saqarTvel oSi nafic msaj ul Ta instituti amoqmeddeba. uzenaesi sasamarTl o ukve erT wel ze metia, rac am institutis popul arizacias sxvadasxva saSual ebebiT axdens, iqneba es Jurnal istebisTvis gamarTul i treningebi Tu sainformacio Sinaarsis interviuebi masmediaSi.

uzenaesi sasamarTl os Tavmj domarem dadebiTad Seafasa gadacemaSi monawil e nafic msaj ul Ta saqmianoba: `Tqven xarT pirvel i nafici msaj ul ebi, roml ebmac sakuTar Tavze aiReT verdiqtis gamotanis pasuxismgebl oba. nafic msaj ul Ta institutis SemoReba Zal ian seriozul i cvl il eba iqneba Cvens cxovrebaSi, amitom Zal ian mniSvnel ovnad mimaCnia am institutis popul arizacia. gadacema `verdiqtis~ meSveobiT Tqven gaxdiT is adamianebi, roml ebmac am mimarTul ebiT ukve gadadgiT pirvel i nabij ebi. imedia, momaval Si, Tuki real ur proceszec mogiwevT nafici msaj ul is moval eobis Sesrul eba, am saqmes Zal ian didi pasuxismgebl obiT moekidebiT~.

uzenaesi sasamarTl os Tavmj domarem mowveul stumrebs nafic msaj ul Ta sasamarTl os amoqmedebasTan dakavSirebiT kanonmdebl obaSi Setanil siaxl eebze esaubra da aseve upasuxa maTi mxridan dasmul SekiTxvebs. stumrebma daaTval ieres uzenaesi sasamarTl os Senoba. maT uzenaesi sasamarTl os Tavmj domarem damdegi axal i wel i miul oca da samaxsovro saCuqrebic gadasca.

saqarTvelos uzenaesi sasamarTlo da saerTaSoriso safinanso korporacia axal iniciativaze imuSavebs

msoflio bankis wevri saerTaSoriso safinanso korporacia (IFC) saqarTvelos uzenaes sasamarTlosTan TanamSromlobas iwyebs, romlis farglebSic IFC-sa da uzenaesi sasamarTlos organizebiT gudaurSi pirveli samuSao Sexvedra-seminari gaimarTa, sadac imsjeles saqarTvelos samewarmeo kanonSi Sesuli cvlilebebis Sesaxeb, ganixiles korporaciuli marTvis saukeTeso praqtika da SeimuSaves rekomendaciebi.

aRniSnuli rekomendaciebi IFC-sa da uzenaesi sasamarTlos mier gamocemul iqneba saxelmZRvanelos saxiT da xelmisawvdomi gaxdeba yvela moqmedi mosamarTlisaTvis.

mixeil gogiSvili, uzenaesi sasamarTlos Tavmjdomaris moadgile:

`saqarTvelos uzenaesi sasamarTlo miesalmeba saerTaSoriso safinanso organizaciis warmomadgenlobis iniciativas, romelic sasamarTlo praqtikis erTgvarovnebis uzrunvelyofisaTvis miznad isaxavs sasamarTlosTan TanamSromlobas mosamarTleTa gadamzadebis kuTxiT~.

`diskusiebi qarvel mosaamarTleebs da IFC-s eqspertebs Soris naTels mohfens samewarmeo kanonis mraval aspeqts, rac Semdeg praqtikul gamoyenebas hpovebs sasamarTlo procesebis msvlelobisas~, _ ganacxada IFC-s korporaciuli marTvis proeqtis xelmZRvanelis moadgile maia TevzaZem.

IFC-s korporaciuli marTvis proeqti xorcieldeba kanadis saerTaSoriso ganviTarebis saagentosa da misi navTobisa da gazis partniorebis finansuri mxardaWeriT.

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uzenaesi sasamarTlos Tavmjdomare universitetis studentebs Sexvda

2008 wlis 2 oqtombers uzenaesi sasamarTlos Tavmjdomare konstantine kublaSvili da misi moadgile zaza meiSvili ivane javaxiSvilis saxelobis saxel mwifo universitetis iuridiuli fakultetis pirveli kursis studentebs Sexvdnen.

Sexvedra sasamarTlos iniciativiT gaimarTa da misi mTavari mizani sazogadoebis yvela fenamde sasamarTlo reformis axali talRis Sesaxeb informaciis miwodeba da, Sesabamisad, reformis ganxorcielebaSi sazogadoebis CarTulobis uzrunvelyofa iyo. 150-mde pirvel kurselis konstantine kublaSvili reformis im axal mimarTulebebze esaubra, romelic sasamarTloSi unda ganxorcieldes. studentebis gansakuTrebuli interesis

sagans nafic msajulTa sasamarTlo, mosamarTleTa damoukideblobis garantiebi da sisxlis samarTlis axal kodeqsSi dagegmili cvlilebebi warmoadgenda. Sexvedras universitetis reqtori gia xubua da iuridiuli fakultetis dekani irakli burduli eswrebodnen.

studentebma kmayofileba gamoTqves SexvedriT da aRniSnes, rom msgavsi RonisZiebebi maTTvis, rogorc momaval iuristebisTvis, aucilebelic aris. gansakuTrebiT xazi gausves im faqts, rom reformis Sesaxeb isini informacias uSualod sasamarTlo xelisuflebis pirveli pirisgan iReben.

uzenaesi sasamarTlos Tavmjdomarem studentebs aRuTqva, rom msgavsi Sexvedrebi momaval Sic gaimarTeba.

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sazogadoebriv saqmeTa institutis studentebi stumrad uzenaes sasamarTloSi

2008 wlis 3 oqtombers uzenaesi sasamarTlos Tavmjdomare konstantine kublaSvili da misi moadgile zaza meiSvili sazogadoebriv saqmeTa institutis media menejmentis skolis pirvel kurslebs Sexvdnen.

Sexvedra sazogadoebriv saqmeTa institutis iniciativiT gaimarTa, romlis mTavari mizani iyo, pirvel kurslebi gascnobodnen sasamarTlo sistemaSi reformebis axali talRis mimdinareobas, Tu rogor viTardeba da ixveweba kanonmdebloba, rogor inergeba axali naficmsajulTa instituti saqarTveloSi da ra roli eqneba TiToeul moqalaqes am procesebis ganviTarebaSi.

Sexvedris dasawyisSi isini gaecnen uzenaesi sasamarTlos istorias, daaTvalieres Senoba, moinaxules biblioTeka da gaesaubrnen spiker-mosamarTles.

uzenaesi sasamarTlos Tavmjdomare konstantine kublaSvilma pirvel kurslebs gaacnois mimarTulebebi, romlic samomavlod sasamarTloebSi unda ganxorcieldes.

studentebis gansakuTrebul interesis sagans naficmsajulTa sasamarTlo, naficmsajulTa uflebebis dacva da maTi SerCevis sakiTxebi warmoadgenda.

ეკატერინე შენგელია
samarTlis doqtori, notariusi
ირაკლი ყანდაშვილი
ivane javaxiSvilis saxelobis Tbilisis
saxelmwifo universitetis iuridiuli fakultetis
asistent-profesori, advokati

saqonlis saerTaSoriso yidva-gayidvis xel SekrulebaTa Sesaxeb venis konvenciis moqmedeba saqarTveloSi

Sesavali

saerTaSoriso savaWro urTierTobaTa momwesrigebel normaTa Soris metad mniSvnelovania gaerTianebuli erebis organizaciis mier 1980 wlis 11 aprils venaSi miRebuli konvencia `saqonlis saerTaSoriso yidva-gayidvis xel SekrulebaTa Sesaxeb", romelic 1988 wlis 1 ianvridan Sevida ZalaSi. Tavisufali vaWrobis ganviTarebisaTvis mniSvnelovani iyo erTiani samarTlebrivi sivrcis Seqmna, romelic unificirebuli normebis safuZvelze uzrunvelyofda mxareTa mier saerTaSoriso nasyidobis xel Sekrulebis dadebas. mas Semdeg 20 weli gavida da msoflio sazogadoebis interesi venis konvenciis mimarT ki sul ufro da ufro izrdeba. dRevandeli mdgomareobiT konvencia aerTianebs 71 xel Semkvrel saxelmwifos.[1]

gaerTianebuli erebis organizaciis wevr saxemwifoebSi ara marto Teoriuli, aramed udidesi praqtikuli mniSvneloba SeiZina venis konvenciam, ris dasturadac SegviZlia movixmoT araerTi mecnieris mier SeswavliIi da gaanalizebuli saqonlis nasyidobis xel Sekrulebis samarTlebrivi buneba, aseve, sasamarTlo da saarbitraJo praqtika.[2] SedarebiTi samarTlis saerTaSoriso akademiis mier 2008 wlis noemberSi meqsikaSi gaimarTa saerTaSoriso konferencia `unificirebuli samarTlebrivi aqtebis gavlena nacionalur kanonmdeblobaze~, romelic venis konvencias daeTmo.[3]

winamdebare statiis mizania imis garkveva, Tu rogor moqmedebs saqarTveloSi venis nasyidobis konvencia, ra gavlena moaxdina qarTul kanonmdeblobaze am unificirebulma samarTlebrivma aqtma da rogor damkvidrda mecnierebasa da praqtikaSi aRniSnuli fuZemdebluri normebi.

saqarTvelo im saxelmwifoTa ricxvs miekuTvneba, sadac moqmedebs aRniSnuli konvencia (1994 wlis 3 Tebervals saqarTvelos parlamentma moaxdina misi ratificireba). aRsaniSnavia is garemoebac, rom saqarTvelosTvis zemoaRniSnuli konvencia mxolod 1994 wlidan ar gamxdara cnobili, rodesac Cveni qveyana oficialurad miuerTda mas. saqarTvelo sabWoTa kavSiris wevri respublika da, Sesabamisad, sabWoTa socialisturi saxelmwifo iyo, xolo sabWoTa kavSiri, Tavis mxriv, warmoadgenda

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[1] ix. internet gverdi http://www.cisg.law.pace.edu/cisg/countries/cntries.html, mocemulia dReis mdgomareobiT sruli CamonaTvali xel Semkvreli saxelmwifoebis.

[2] ix. saerTaSoriso saarbitraJo da sasamarTlo praqtika internet gverdze. http://www.uncitral.org/uncitral/ru/case_law/igests/cisg.html

[3] ix. saerTaSoriso konferenciis masalebi internet gverdze: www.iuscomparatum.org

venis konvenciis xel momwer saxel mwifos da amitomis Semadgenel respublikebzec vrcel deboda am konvenciis moqmedeba.

zemoaRniSnulis gaTvaliswinebiT SeiZleba davaskvnaT, rom qarTvel imecnierebisaTvis venis saerTaSoriso nasyidobis konvenciis normebi cnobili iyo rogorc mis ratifikaciamde, aseve, mis Semdgomac.

saerTaSoriso nasyidobis konvenciis moqmedebis sfero

saqonlis saerTaSoriso nasyidobis xelSekrulebaTa gaeros konvenciis moqmedebis sfero asaxulia pirvel eqvs muxlSi. venis konvenciis pirveli muxlis pirveli punqtis Tanaxmad, saqonlis nasyidobis xelSekrulebebi mxolod maSin eqceva konvenciis moqmedebis sferoSi, rodesac mxareTa komerciuli sawarmoebi sxvadasxva qveynebSi mdebareobs, amavdroul ad es qveynebi an konvenciis wevr qveynebs unda warmoadgendnen an saerTaSoriso kerZo samarTlis normebs erT-erTi aseTi qveynis samarTlis gamoyenebamde unda mivyavdeT.

imave muxlis meore punqtis Tanaxmad: `is garemoeba, rom mxareTa komerciuli sawarmoebi imyofeba sxvadasxva saxel mwifoebSi, ar miiReba mxedvelobaSi, Tu es ar gamomdinareobs arc xelSekrulebidan, arc mxareebs Soris saqmiani urTierTobebidan xel Sekrulebis dadebamde an dadebis momentSi, an informaciis gacvlis momentSi".

konvenciis gamoyenebis sferos gansazRvrisaTvis aseve didi mniSvnelobaa eniWeba pirveli muxlis mesame punqts, romlis Tanaxmad: `am konvenciis gamoyenebis sferos gansazRvrisaTvis mxedvelobaSi ar miiReba arc mxareTa erovnuli kuTvnileba, arc maTi moqal aqeobrivi an savaWro statusi, arc xelSekrulebis savaWro xasiaTi".

zemoaRniSnulis Tanaxmad, nasyidobis xelSekrulebis obieqts saqoneli unda warmoadgendes, xolo xel Sekrulebebi, romelTa SinaarsiC uflebebisa Tu uZravi qonebis gadacemaSi gamoixateba, ar eqceva konvenciis gamoyenebis sferoSi.

konvenciis pirveli muxlis Sinaarsis Sesabamisad cnebaSi `saqoneli" igulisxmeba moZravi fizikuri sxeulebi, ganmsazRvreli kiis momentia, rom miwodebis momentSi xelSekrulebis obieqti moZravi unda iyos.

venis konvencia ar vrcel deba nasyidobis im xelSekrulebaze, romlis obieqtsac fasiani qaRaldebi da gadaxdis saSualebebi warmoadgens, mag.: aqciebsa da valutiT vaWrobaze. sasaqonlo dokumentebis _ saordero sasawyobo mowmobis, zednadebis Tu sxva tradiciul i dokumentebis Sesaxeb dadebuli nasyidobis xelSekrulebebi ar eqceva am gamonaklisis qveS, radgan am saxis dokumentis myidvelis sinamdvileSi im qonebas yiduli obs, romel zec gacemul ia es ukanasknel i. aseT SemTxvevebSi xelSekrulebis WeSmarit obieqts ara Tavad sasaqonlo dokumenti, aramed masSi gansaxiereb ul i saqonel i warmoadgens. konvencia ar gamoiyeneba `wylisa da sahaero satransporto xomal debis, agreTve, haeris bal iSis principiT momuSave xomal debis gayidvisas~, vinaidan zogierT qveyanaSi arsebobs special uri wesebi da gansakuTrebul i saregistracio moTxovnebi, romel Ta mixedviTac isini uZrav qonebad ganixil ebian.

konvenciis moqmedebis sfero ar vrcel deba el eqtroenergiis miwodebis Sesaxeb dadebul xel Sekrulebebze, maSin, rodesac gazis, navTobisa da sxva energoresursebis nasyidoba swored venis konvenciis gamoyenebis sferoSi eqceva.

venis konvenciis gamoyenebaze zegavlenas ar axdens mxareTa SeTanxmeba safasuris ganvadebiT gadaxdis an saqonlis nawil-nawil miwodebis Sesaxeb.

venis konvenciasTan dakavSirebiT mniSvnelovania or sakiTxi, kerZod: konvenciis moqmedebis sferos ganekuTvneba xel Semkvrel i mxaris mier damzadebuli an warmoebuli qonebis Sesaxeb dadebuli nasyidobis xel Sekruleba, Tumca, rodesac aseTi saqonlis Sesaxeb dadebuli nasyidobis xel SekrulebaSi `myidveli" Tavis Tavze iRebs saqonlis damzadebasa Tu warmoebisaTvis saWiro masalis `arsebiTi nawilis" _ miwodebis valdebulebas, aseTi xel Sekrulebis mimarT venis konvencia ar gamoiyeneba. am SemTxvevaSi gadamwyveti mniSvnel oba eniWeba myidvelis zemoqmedebis formas xel Sekrulebis Sesrulebaze, mis mier gaweuli xel Sewyobis saxes, rac gulisxmobs `masalis~ miwodebas, xolo is, Tu ra unda miviCnioT xel Sewyobis arsebiT nawilad, yvela individualur SemTxvevaSi cal ke unda ganisazRvros.

aqedan gamomdinare, naTlad Cans, rom miwodeba-nardobis xel Sekruleba, romlis drosac mimwodeblma xel SekrulebiT gaTval iswinebuli qoneba sakuTari masaliT unda daamzados an awarmoos, gaTanabrebulia nasyidobis xel SekrulebasTan, Tumca qarTul samarTlisgan gansxvavebiT, konvenciis me-3 muxlis pirveli punqtis Tanaxmad: `yidva-gayidvis xel Sekrulebad iTvleba isaqonlis miwodebaze dadebuli xel Sekruleba, romelic mzaddeba an iwarmoeba, Tu saqonlis damkveTi mxare ar kisrulobs aseTi saqonlis damzadebisaTvis an warmoebisaTvis saWiro masalis mniSvnel ovani nawilis miwodebis valdebulebas", imave muxlis meore punqtis Tanaxmad: `konvencia ar gamoiyneba im xel SekrulebaTa mimarT, romlebSic saqonlis mimwodebeli mxaris valdebulebebs ZiriTadad warmoadgens samuSaoTa Sesruleba an sxva saxis momsaxureba~.

SegviZlia davaskvnaT, rom ganmsazRvreli mniSvneloba ar eniWeba imas, gvarovnulia Tu ara nivTi. ganmsazRvreli kriteriums warmoadgens is, rom xel Sekrulebis mxaris mier Sesasrulebeli moqmedebis umetesi nawili ar unda gamoixatebodes samuSaos Sesrulebasa Tu sxva msgavs momsaxurebaSi. amdenad, konvencia vrceldeba yvela im xel Sekrulebaze, romelSic ar Warbobs nasyidobisaTvis ucxo elementebi.

aRniSnuli konvencia awesrigebs mxol od yidva-gayidvis xel Sekrulebis dadebas, gamyidvelisa da myidvelis im uflebebsa da movaleobebs, romlebsac es xel Sekruleba warmoSobs, xolo konvenciis me-4 muxlis Tanaxmad, radgan konvenciaSi sxva ram ar aris gaTval iswinebuli, igi ar exeba:

a)TviT xel Sekrulebis an misi romelime debulebis an Cveulebis Zal aSi yofnas ;

b)Sedegebs, romlebic SeiZleba mohyves xel Sekrulebas gayidul saqonel ze sakuTrebis uflebasTan dakavSirebiT;

paralelebi qarTul kanonmdeblobasTan

konvenciis rigi muxlebis yuradRebiT wakiTxvis SemTxvevaSi advilad aRmovaCenT mraval msgavsebasa da paralels qarTul kanonmdeblobasTan. marTal ia, bevri magal iTis moyvana SeiZleba, Tumca aRniSnul i naSromiT Semovifarglebi Txmxol od ramdenime maTganiT.

venis konvenciis 30-e muxlSi mocemul ia gamyidvelis valdebulebebi, sadac vkiTxul obT: `gamyidvel i valdebul ia, myidvel s miawodos saqonel i, gadasces Sesabamisi dokumentebi da gadasces saqonel ze sakuTrebis ufl eba xel Sekrulebisa da am

konvenciis moTxovnaTa Sesabamisad". msgavsi Sinaarsis Semcvelia saqarTvelos samoqalaqo kodeqsis 477-e muxlis pirveli nawili, kerZod: `nasyidobis xel Sekrulebis gamyidveli movalea, gadasces myidvels sakuTrebis ufleba qonebaze, masTan dakavSirebuli sabuTebi da miawodos saqoneli".

naTladCans, rom, rogorc venis nasyidobis konvenciis 30-e muxli da saqarTvelos samoqalaqo kodeqsis nasyidobis xel Sekrulebis muxlis Sinaarsi TiTqmis identuria gamyidvelis valdebulebebis nawilSi, igive SeiZleba iTqvas myidvelis valdebulebebzec. kerZod, imave konvenciis 53-e muxlis Tanaxmad: `myidveli valdebulia, gadaixados saqonelSi fasi da miiRos miwodebuli saqoneli dadebuli xel Sekrulebis an am konvenciis Sesabamisad". msgavsi Sinaarsis matarebelia saqarTvelos samoqalaqo kodeqsis 477-e muxlis me-2 nawili, kerZod: `myidveli movalea, gadauxados gamyidvels SeTanxmebuli fasi da miiRos nayidi qoneba."

metad sainteresoa, Sinaarsobrivi Tval sazrisiT ram ganapiroba esodeni msgavseba Cveni Sida kanonmdeblobis normebsa da saerTaSoriso konvenciis debulebebs Soris. pasuxi, Cveni azriT, Semdegia: Cveni kanonmdebeli cdilobda, nacionaluri kanonmdebloba rac SeiZleba miaxloebuli yofiliyo saerTaSoriso, unificirebul standartebTan da srul harmonizaciaSi moeyvana qarTuli samarTlebrivi sivrce saerTaSoriso normebTan.

paralelebze saubars konvenciis me-14 muxliT gavagrZelebT, romelic metad msgavsia saqarTvelos samoqalaqo kodeqsis 329-e muxlisa da maTSi saubaria ofertis cnebasa da ofertze mowvevaze. ufro konkretulad, konvenciis 14-e muxlis Tanaxmad: „erTi an ramdenime pirisadmi SeTavazebuli winadadeba xel Sekrulebis dadebis Taobaze warmoadgens oferts, Tu igi sakmaod garkveulia xasiaTisaa da gamoxatavs oferentis ganzraxvas, valdebulad grZnobdes Tavs aqceptis SemTxvevaSi". imave muxlis meore nawilis Tanaxmad: `pirTa gaurkveveli wrisadmi SeTavazebuli winadadeba ganixileba mxolod rogorc miwvevad ofertis gasakeTeblad, Tu pirdapir sxva ram ar aris miTiTebuli im piris mier, visganac modis aseTi winadadeba". Sinaarsi metad naTeli da msgavsia saqarTvelos samoqalaqo kodeqsis 329-e muxlis pirveli da meore nawilebisa, kerZod: `xel Sekrulebis dadebis Sesaxeb winadadeba (oferti) iTvleba SeTavazebulad, Tu am winadadebaSi, romelic mimarTulia erTi an ramdenime pirisadmi, gamoxatulia, rom winadadebis mimcemi (oferenti) Tanxmobis (aqceptis) SemTxvevaSi mzadaa, Seasrulos Tavisi winadadeba", xolo `winadadeba, romelic mimarTulia pirTa ganusazRvreli wrisadmi, warmoadgens mowvevas ofertze, Tu am winadadebaSi sxva ram ar aris pirdapir miTiTebuli".

konvenciis Semdgomi muxlebic, kerZod, me-15 muxlidan 24-es CaTvliT, metad msgavsi Sinaarsobrivi datvirTvis matarebeli aris saqarTvelos samoqalaqo kodeqsSi xel Sekrulebis dadebis TaviT gaTvaliswinebuli muxlebisa (maT Soris, muxlebis, romlebic exeba aqcepts, dagvianebul aqcepts, axal oferts da dumils, rogorc aqceptis formas).

aseve msgavsia konvenciis 52-e muxli da saqarTvelos samoqalaqo kodeqsis 493-e muxli. kerZod, konvenciis aRniSnuli muxlis Tanaxmad: `Tu gamyidveli myidvels miawvdis imaze didi raodenobis saqonels, rac gaTvaliswinebulia xel SekrulebiT, myidvels SeuZlia miiRos miwodebuli saqoneli an uari Tqvas zedmeti raodenobis

miRebaze. Tu myidvel i mTlianad iRebs miwodebul saqonels an zedmeti raodenobis nawils, unda gadaixados masSi fasi saxel Sekrulebo ganakveTis mixedviT~;

saqarTvelos samoqalaqo kodeqsis 493-e muxlis Tanaxmad, `Tu saqonlis raodenoba aRemateba xel Sekrulebi T gaTvaliswinebuls, maSin myidvels SeuZlia miiRos es raodenoba da movalea gadaixados saxel Sekrulebo fasis proporciulad an miiRos mxolod is raodenoba, rac xel Sekrulebi Taa gaTvaliswinebuli, xolo zedmeti daabrunos ukanve gamyidvelis xarjze~.

msgavsia konvenciis da saqarTvelos samoqalaqo kodeqsis is muxlebi, romlebic Seexeba meorad moTxovnebs da sxva uflebebs, Tumca, aRniSnuli naSromiT amiT Semovifarglebi T.

konvenciis gamoyeneba praqtikosi iuristebis mier

rogorc wesi, normatiuli aqtebis ierarqiaSi, `normatiuli aqtebis Sesaxeb~ saqarTvelos kanonis Sesabamisad, saerTaSoriso konvenciebs saqarTvelos konstituciis, konstituciuri kanonisa da konstituciuri SeTanxmebis Semdgom upiratesi iuridiuli Zala gaaCnia qveynis sxva normatiul aqtebTan SedarebiT. Sesabamisad, msgavsi saerTaSoriso xel Sekrulebebis ratifikaciis Semdgom es normatiuli aqtebi, rogorc qarTuli kanonebi, praqtikuli gamoyenebis Tval sazrisiT, saval debulo xasiaTs iZens da iuristebisTvis gamosayenebel normatiul bazas warmoadgens.

venis konvenciis popularizacia gamoiwvia iman, rom savaWro-ekonomikuri, samecniero da sxva saerTaSoriso kavSirebis damyarebis procesSi, sxvadasxva saxel mwifoTa organizaciebsa da firmebs Soris formdeba xel Sekrulebebi, sadac gaTvaliswinebulia venis nasyidobis konvenciaSi Cadebuli pirobebi.

saerTaSoriso nasyidobis xel Sekrulebis SemTxvevaSi, rogor es konvenciaSia aRniSnuli, gamyidveli da myidveli gansxvavebuli samarTlebrivi wesrigis mqone saxel mwifoebSi cxovroben da, bunebrivia, sakuTari qveynis samarTlis gamoyenebis Sesaxeb SeTanxmebas moiTxoven. am ukanasknels, arc Tu ise iSviaTad, neitralur da xSirad orive mxarisaTvis ucxo qveynis kanonmdeblobis gamoyenebis Sesaxeb SeTanxmebamde mivyavarT, xolo mesame qveynis arasakmarisi codna da normebis Sinaarsis gansazRvrasa da ganmartebasTan dakavSirebuli garTulebebi dauZlevel problemebs warmoSobs xolme.

swored, aRniSnuli problemis mogvarebas gvTavazobs venis nasyidobis konvencia, vinaidan igi awesrigebs mxolod saqonlis nasyidobis Sesaxeb dadebul saerTaSoriso xel Sekrulebebs da gansazRvravs misi gamoyenebisaTvis aucilebel pirobebs. kerZod, saqarTve oSi venis nasyidobis konvenciis ratifikaciisa da Zal aSi Sesvlis Sedegad, romelic nasyidobis samarTalSi unificirebuli wesebis erTobliobas warmoadgens, saerTaSoriso nasyidobis xel Sekrulebis monawil e mxareebi, erTi mxriv, saqarTvelo *(fizikuri piri an kompania)* da, meore mxriv, sxva qveyana *(fizikuri piri an kompania)* avtomaturad venis nasyidobis konvenciis zemoqmedebis qveS eqceva.

aqedan gamomdinare, miuxedavad imisa, rom venis nasyidobis konvencia moqmedebs `avtomaturad~, srul iadac ar aris aucilebeli, rom mxareebma raime saxiT gamoTqvan survili, uSualod venis nasyidobis konveciis gamoyenebis Sesaxeb da es xel SekrulebaSi daafiqsiron, Tumca, rogorc praqtika gviCvenebs, mxareebi saerTaSoriso xel SekrulebaSi zogjer akeTeben daTqmas venis nasyidobis konvenciaze, rogorc moqmed da gamosayenebel samarTlze.

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venis nasyidobis konvenciis ZalaSi Sesvlis Semdeg iuristebs saSualeba eZlevaT, TavianT SuamdgomlobebSi, axsna-ganmartebebiT sityvebsa Tu sxva dokumentebSi, rac sasamarTlos an sxva uwyebas unda waredginos, moaxdinon miTiTeba aRniSnul konvenciaze, gamomdinare iqidan, rom igi gaxda Zlieri berketi nasyidobis wesebis dacvisaTvis. aseTi praqtika zrdis samarTlebriv garantiebs xelSekrulebis implementaciis an SesaZlo darRvevis nawilSi.

venis konvencia da sasamarTlo praqtika

rogorc ukve aRiniSna, saqarTvelos samoqalaqo kodeqsis nasyidobis xelSekrulebaTa maregulirebeli normebi msgavsia venis konvenciis normebisa. Sesabamisad, saqarTvelos sasamarTlo praqtikisaTvis cnobilia nasyidobis xelSekrulebis mxareTa darRveuli ufleba-movaleobaTa Sesaxeb, Tumca, rac Seexeba saerTaSoriso savaWro urTierTobebs da masTan dakavSirebul davebs, Cven mier ver iqna mopovebuli venis konvenciis safuZvelze davis gadawyvetis sasamarTlo praqtika, rac SeiZleba aixsnas imiT, rom saerTaSoriso nasyidobis xelSekrulebis maregulirebeli normebis gamoyeneba xdeba maSin, roca xelSekrulebis mxares warmoadgens sxva saxel mwifoSi arsebuli komerciuli sawarmo. saqarTvelos ki saerTaSoriso savaWro urierTobebSi monawileobis mcire xnis gamocdileba aqvs, gansxvavebiT aSS-s, germaniisa da sxva saxel mwifoebisagan.[4] amasTan, mosamarTleebi davebis ganxilvis dros saerTaSoriso xelSekrulebaTa da konvenciaTa gamoyenebis nacvlad upiratesobas erovnul kanonmdeblobas aniWeben. ra Tqma unda, ar vgulisxmobT davebs, romlebic erovnuli kanonmdeblobis regulirebis sferoSi eqceva.

mecnieri iuristebis mier konvenciis samarTlebrivi sakiTxebis Seswavla

gansakuTrebuli yuradReba eTmoba axal gazrda mecnierebis mier saerTaSoriso nasyidobis xelSekrulebiT gaTvaliswinebuli normebis Seswavlasa da samarTlebriv analizs. qarTvel iuristebis mier ara erTi samecniero monografia mieZRvna aRniSnul sakiTxs,[5] aseve, publikaciebi, romlebic sxvadasxva samecniero JurnalebSi ibeWdeba, exeba saerTaSoriso nasyidobis xelSekrulebis regulirebis sferos,[6] nebis gamovlenis (ofertis) gamoTxovasTan dakavSirebul samarTlebriv sakiTxebs,[7] meoradi moTxovnis uflebebs.[8]

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[4] ix. internet gverdi www.uncitral.org

[5] i.SafaqiZe, saerTaSoriso nasyidobis xelSekrulebis samarTlebrivi problemebi. Tb. 2000 w.;
z. ZlieriSvili, nasyidobis xelSekrulebis samarTlebrivi buneba. Tb. 2006w.

[6] **Ладо Чантурия**, Венская конвенция о договорах международной купли-продажи товаров: преимущества и предпосылки применения. ix.www.cac-civillaw.org.

[7] d. kereseliZe, saqonlis saerTaSoriso nasyidobis xelSekrulebaTa Sesaxeb gaerTianebuli erebis organizaciis konvenciis gamoyenebis sfero da pirobebi, Jur. `qarTuli samarTlis mimoxilva" _ 1998 wlis meore da mesame kvartal i. i. yandaSvili, venis 1980 wlis konvenciis `saqonlis saerTaSoriso yidva-gayidvis xelSekrulebaTa Sesaxeb" regulirebis sfero. Jur. `inteleqtuali" #2, 2006w.
e. baRiSvili, nebis gamovlenis (ofertis) gamoTxova unificirebul kerZo samarTalSi. Jur. `qarTuli samarTlis mimoxilva" _ special uri gamoSveba 2007

[8] i.yandaSvili, meoradi moTxovnis uflebebi venis 1980 wlis konvenciis `saqonlis saerTaSoriso yidva-gayidvis xelSekrulebaTa Sesaxeb" mixedviT. Jur. `inteleqtuali" #3, 2007w. s. CaCava, myidvelis meoradi uflebebis SedarebiT samarTlebrivi analizi, Jur. `qarTuli samarTlis mimoxilva" _ special uri gamoSveba 2004.

naSromebis simravlis miuxedavad, jer kidev amouwuravia problemaTa wre, romel sac venis konvencia exeba. miuxedavad amisa, yvela samecniero publikacia da monografia kidev erTxel xazs usvams mis rolsa da mniSvnelobas saerTaSoriso kerZo samarTlSi.

venis konvenciis mimarT interesi umaRles saganmanaTleblo dawesebulebebSic matulobs. aRniSnuli konvenciis Seswavlas saerTaSoriso kerZo samarTlis saswavlo programiT calke sal eqcio saaTebi aqvs daTmobili da studentebi Teoriul codnasTan erTad misi praqtikulad gamoyenebis meTodsac euflebian.[9]

daskvna

„saqonlis saerTaSoriso yidva-gayidvis xelSekrulebaTa Sesaxeb~ gaerTianebuli erebis organizaciis venis 1980 wlis konvenciis dakavSirebuli sakiTxebis farTo wris ganxilvis Sedegad SeiZleba davaskvnaT, rom konvenciis roli da mniSvneloba XXI saukuneSi kidev ufro gaizrdeba misi regulirebis sferosa da savaWro urTierTobaTa samarTlebrivi mniSvnelobidan gamomdinare;

naSromSi naTlad gamoCnda is garemoebac, rom konvenciis rig debulebebsa da saqarTvelos samoqalaqo kodeqsis rig muxlebs mravali saerTo aqvs, rac erTgvarad kidev ufro aaxloebs qarTul kanonmdeblobas saerTaSoriso standartebis moTxovnebTan da xels uwyobs qarTuli samarTlis saerTaSoriso samarTlis moTxovnebTan harmonizaciis process.

amdenad, `saqonlis saerTaSoriso yidva-gayidvis xelSekrulebaTa Sesaxeb~ venis 1980 wlis konvenciis roli metad mniSvnelovania, Tu gaviTvaliswinebT im garemoebas, rom sabazro ekonomikis da kapitalizmis mTavar moTxovnas swored qveynebs Soris aqtiuri savaWro urTierTobebi warmoadgens, rac, Tavis mxriv, yidva-gayidvas moicavs. advili misaxvedria, Tu ra rols TamaSobs aRniSnuli konvencia dRevandel realobaSi. unda aRiniSnos, rom venis konvenciis mecnierul kvlevas ufro meti yuradReba eTmoba, vidre mis praqtikul gamoyenebas da vimedovnebT, rom qveynebs Soris urTierTobebisa da TanamSromlobis mzardi ganviTarebis fonze uaxloes momavalSi misi funqcia kidev ufro gaizrdeba.

SUMMARY:

The role and purpose of this convention is of a great importance in current reality in the world, taking into consideration the process of globalization and further economic development and interactive collaboration of the countries throughout the world. The right understanding and usage of this convention is vital for each country which is a party of the convention.

The main goal of this article was to show to Georgian society the conditions which must exist in nature for the "Vienna Convention on Contracts for the International Sale of Goods" to have legal force and on the other hand, mainly we tried to represent what is the sphere of use of this convention in Georgia.

Georgia is the part of the Europe and step by step is returning the deserved place in European Family that is associated with the economic and business development through deals with foreign companies and entities where the CISG clauses should prevail.

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[9] ix. umaRlesi iuridiuli ganaTlebis Sesaxeb veb. gverdi www.legaleducation.ge

ზაზა ნაჭარაია
krassau-s iuridiul i fakul tetis
sisxl is samarTl isa da procesis
kaTedris ufrosi maswavl ebel i

Tavisufl ebis, sindisis da sarwmunoebis sakiTxebis samarTl ebrivi daregul ireba

sindisis Tavisufl ebisa da sarwmunoebis sakiTxi, romel ic aTaswl eul ebis manZil ze kacobriobis saukeTeso moazrovneebs gonebas uforiaqebda, saerTaSoriso doneze pirvel ad 1948 wl is 10 dekembers gaeros asambl eis mier miRebul adamianis ufl ebaTa sayovel Tao dekl araciaSi aisaxa: „miRebul ia mxedvel obaSi is, rom adamianis ufl ebaTa ugul ebel yofam da siZul vil ma gamoiwvia barbarosul i aqtebi, roml ebic aRaSfoTebs kacobriobis sindiss, da rom iseTi msofl ios Seqmna, romel Sic adamianebs sityvis da rwmenis Tavisufl eba eqnebaT da Tavisufal ni iqnebian SiSisa da gaWirvebisagan,....~[1].

kacobriobas rel igiuri omebis, sarwmunoebis sakiTxTan dakavSirebul i damamcirebel i erovnul i kanonmdebl obebis, gansxvavebul i sarwmunoebisa da erovnebis adamianebis devnis, ori msofl io omis gamovl a dasWirda, raTa misul iyo iuridiul SeTanxmebamde adamianis ufl ebaTa sferoSi da yvel a saxel mwifosa da xal xTa winaSe daesaxa amocanebi, romel Ta Sesrul ebiskenac isini unda miiswrafodnen WeSmariti Tavisufl ebis miRwevis mizniT. sayovel Tao dakl araciis me-18 muxl i asaxel ebs am amocanaTagan erT-erTs, Tvl is ra mas umniSvnel ovanesad: „yovel adamians aqvs azris, sindisis da sarwmunoebis Tavisufl ebis ufl eba; es ufl eba moicavs sakuTari sarwmunoebis an mrwamsis Secvl is Tavisufl ebas, sakuTari sarwmunoebisa da mrwamsis aRmsarebl obis Tavisufl ebas rogorc erTpirovnul ad, ise sxvebTan erTad, saj aro an kerZo wesiT swavl ebaSi, RvTismsaxurebaSi, rel igiuri da saritual o wesebis Sesrul ebaSi~.

kacobriobis sindisis Camoyal ibebisaTvis saWiro principebis gamocxadebiT,moral isa da samarTl ianobis Sesaxeb zogadsakacobrio warmodgenaze dayrdnobiT, kacobriobis civil izaciis sirTul is gaTval iswinebiT, adamianis ufl ebaTa sayovel Tao dekl aracia TiTqmis ar gansazRvravs, Tu ra fargl ebSi SeiZl eba pirovnebis Tavisufl ebis SezRudva rwmenis sakiTxebSi (me-14 da 29-e muxl ebis garda, roml ebic exeba zogad sakiTxebs).

zemoT xsenebul i dokumentisgan gansxvavebiT, „adamianis ufl ebaTa dacvisa da ZiriTadi Tavisufl ebebis Sesaxeb~ konvencia (miRebul i evrosabWos wevri qveynebis mier), gamocxadebul Tavisufl ebebTan erTad iTval iswinebs maT SezRudvebsac im fargl ebSi, roml ebic aucil ebel ia samarTl iani sazogadoebis SeqmnisTvis, maT Soris, rel igiuri rwmenis sakiTxebSic. magal iTad, konvenciis me-9 muxl is me-2 punqtiT, „sakuTari rel igiis an mrwamsis aRmsarebl obis Tavisufl eba eqvemdebareba mxol od im SezRudvebs, roml ebic gaTval iswinebul ia kanoniT da aucil ebel ia demokratiul sazogadoebaSi sazogadoebrivi uSiSroebis interesebis, sazogadoebrivi wesrigis, j anmrTel obis an zneobis dacvisTvis, an sxva piraTa Tavisufl ebisa da ufl ebebis

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[1] adamianis ufl ebaTa sayovel Tao dekl aracia. [miRebul ia gaeros general uri asambl eis mesame sesiis mier 217-e rezol uciiT (III) 1948 wl is 10 dekembers] – М.: РИОР,2005.-C.25.

dacvisTvis~.[2] udavoa, rom mocemul nawilSi konvencia miuTiTebs religiur gaerTianebebze, romelTa moRvaweobac antisocialuria, xandaxan ki ukanonoc.

saerTaSoriso doneze Tezisebi sarwmunoebisa da sindisis Tavisuflebis Sesaxeb ganmtkicebulia sxva dokumentebSic:

saerTaSoriso paqti samoqalaqo da politikuri uflebebis Sesaxeb (1966w.), romlis me-18 muxlis me-3 punqtSi naTqvamia: „mwarmsis an religiis aRmsareblobis Tavisufleba eqvemdebareba mxolod kanoniT gaTvaliswinebul SezRudvebs, romlebic aucilebelia sazogadoebis usafrTxoebis, wesrigis, janmrTelobis da zneobis dacvisaTvis, iseve, rogorc sxva pirTa ZiriTadi uflebebis da Tavisuflebis dacva~[3];

„demokratiul sazogadoebaSi religiuri Semwynareblobis Sesaxeb~ evrosabWos rezolucia #1202 (1993w.)[4]

„dasaqmebisa da Sromis dargSi diskriminaciis Sesaxeb" Sromis organizaciis konvencia #111 (Jeneva, 1958w.), evropuli qartia bavSvTa uflebebis Sesaxeb (1992w.) da sxva.[5]

miuxedavad zemoxsenebuli dokumentebisa, romlebic iZleva sindisisa da sarwmunoebis Tavisuflebis garantias zogadsakacobrio zneobis farglebSi, 1984 wl amde msoflio sazogadoebas ar hqonda miRebuli arc erTi dokumenti, romelic gakicxavda atipuri religiuri gaerTianebebis saqmianobas. 1984 wlis aprilSi evroparlamenti pirvelad akeTebs gancxadebas „munis destruqciul seqtastan dakavSirebiT."[6] evroparlamentis gancxadeba kicxavs „Rirsi munis gaerTianebis eklesiis" saqmianobas evropis qveynebis teritoriasa da aSS-Si, agreTve, mouwodebs am qveynebis mTavrobebs, „ar mianiWon araviTari gansakuTrebuli statusebi, ar dauSvan maTi nebaze miSveba, ar miscen gansakuTrebuli privilegiebi….~ am religiur organizacias, xolo 1984 wlis maisSi es saxel mwifoebi iReben „evropuli Tanamegobrobis wevri qveynebis sazogadoebrivi midgomis rezolucias kanonis darRvevis mimarT im axali organizaciebis mier, romlebic funqcionireben religiuri gaerTianebebis mfarvelobis qveS~, sadac eWvis qveS dadga „Rirsi munis gaerTianebis eklesiis~ religiuroba da SeTavazebul iqna rigi RonisZiebebis gatareba momavalSi analogiuri situaciebis Tavidan asacileblad.[7]

1995 wels verkorSi (safrangeTi) 16 adamianis (maT Soris, 3 bavSvis) daRupvis Semdeg evroparlamentma miiRo gadawyvetileba, romlic mieZRvna „religiuri seqtebis~ problemas (1996w.). dokumentSi msgavs organizaciebs bralad edebaT „adamianis uflebaTa darRveva da iseTi danaSauli ebrivi qmedebebis Cadena, rogoricaa: adamianebTan

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[2]evropuli sabWos konvencia `adamianis uflebaTa dacvis da ZiriTadi Tavisuflebebis Sesaxeb~, 1950 wlis 4 noemberi. m.: 2005.- .67

[3]i.v.tixonravovi, sasamarTlo religiamcodneoba - М., 1998.- C 116.

[4]ixileT iqve.

[5]bavSvis uflebebis evropuli qartia//konsul tantplusi

[6]„Rirsi munis gaerTianebis eklesia~, Seqmnilia koreis moqalaqis san men munis mier 1946 wels. gavrcelebulia rf Soreul aRmosavleTSic. v.l.kornaceviCi - 50 cnobili seqta, xarkovi, 2004-215.

[7]enciklopedia. `ruseTis destruqciuli, okulturi da neokerpTayvanismcemeluri xasiaTis axali religiuri organizaciebi~: [eleqtronuli resursi]. -, 2002, marti. – wvdomis reJimi; http//iriney.vinchi.ru.htm.

sastiki moqceva, sqesobrivi Zaladoba, Tavisuflebis ukanono aRkveTa, adamianebiT vaWroba, Zaladobisken waqezeba, rasistuli Sexedulebebis gavrceleba, gadasaxadebis gadaxdisgan Tavis arideba, kapitalis ukanono gadaadgileba, iaraRiTa da narkotikebiT vaWroba, SromiTi kanonmdeblobis darRveva, ukanono samedicino saqmianoba....". miRebul iqna gadawyvetileba, ZiriTadi Tavisuflebebisa da Sinagan saqmeTa sakuTari komitetisTvis mieniWebinaT uflebamosileba, „miemarTaT winadadebiT erovnuli parlamentarebis Sesabamisi komitetebisTvis, raTa maTi Semdgomi erTobliv sxdoma mieZRvnaT seqtebis problemebisTvis", informaciis gacvlisa da am organizaciebis arasasurveli saqmianobis aRsakveTi saukeTeso meTodebis gamovlenis mizniT.

universalur dokumentad, maT Soris, sindisis Tavisuflebis da sarwmunoebis sakiTxebSi SeiZleba iqces gaeros asambleis generaluri rezolucia 56/589[8], gansakuTrebiT maSin, rodesac saubaria saxelmwifos mxridan atipiuri religiuri organizaciebis saqmianobis gamoyenebis an Seqmnis Sesaxeb.

ruseTis istoriaSi pirvelad, droebiTi mTavrobis deklaraciaSi, gamocxadda sindisis sruli Tavisufleba „misi Semadgenlobisa da amocanebis Sesaxeb~, kerZod ki deklariciis me-3 punqtiT gauqmebulia yvela wodebrivi, sarwmunoebrivi da erovnuli SezRudva. unda aRiniSnos, rom ruseTis imperiaSic `ucxouri warmoSobis aRmsareblobebis~mimarT sakmaod loialuri damokidebuleba hqondaT.[10]

pirvlma sabWoTa konstituciebma, romlebic wyvetdnen axali tipis saxelmwifos mSeneblobis sakiTxebs, gverdi arc religias auares:

1918 wlis 10 ivliss miRebuli rsfsr-is konstitucia „rsfsr konstituciis zogadi debulebebis~ meore nawilSi demokratiulad wyvets Semdeg sakiTxs: „mSromel TaTvis namdvili sindisis Tavisuflebis uzrunvelyofis mizniT eklesia gamoeyofa saxelmwifos, xolo skola _ eklesias, religiuri da antireligiuri propagandis Tavisufleba ki eZleva yvela moqalaqes~. samwuxarod, saxelmwifom ar Seasrula sakuTari valdebulebebi, maT Soris, ZiriTadi Tavisuflebebis sakiTxSic.

ssrk-is pirveli konstitucia (1924w.) Tavis miznad acxadebda „msofliis sabWoTa socialisturi respublikis" Seqmnas da ar exeboda iseT sakiTxebs, romlebic aregulirebda saxelmwifosa da religiebis urTierTobas.

ssrk 1936 wlis (mux. 124-e) ZiriTadi kanoni ssrk-s moqalaqeebs umtkicebda sindisis srul Tavisuflebas: „moqalaqeTaTvis namdvili sindisis Tavisuflebis uzrunvelyofis mizniT ssrk-Si eklesia gamoeyofa saxelmwifos, xolo skola _ eklesias. religiuri kultebis gamarTvis Tavisufleba da antireligiuri propagandis Tavisufleba eZleva yvela moqalaqes~.[11]

ssrk-is ukanasknel i konstitucia (1977w.) 52-e muxlSi iZleoda sindisisa da sarwmunoebis Tavisuflebis garantias sabWoTa saxelmwifos gagebiT: „ssrk-s moqalaqeebs eZlevaT sindisis Tavisuflebis garantia, anu nebismieri religiis an arcerTis

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[8] saxelmwifoTa pasuxismgebloba saerTaSoriso-samarTlebrivi qmedebebisTvis: gaeros gen. asambleis rezolucia. 2001 wlis 12 dekemberi//konsul tantplusi.

[9] i.p.titovi, ruseTis saxelmwifos da samarTlis istoriis qrestomaTia. m., prospeqti, 1999. 273.

[10] a.s.pavlovi, saeklesio samarTlis kursi.-spb., 2002. 123.

[11] i.p.titovi, ruseTis saxelmwifos da samarTlis istoriis qrestomaTia. prospeqti, 1999. 23.

aRmsareblobis ufleba, religiuri kultebis mimdevrobis an aTeisturi propagandis ufleba. sarwmunoebebTan dakavSirebuli SuRlisa da siZulvilis gaRviveba akrZalulia. ssrk-Si eklesia gamoyofilia saxelmwifosgan da skola – eklesiisgan~.[12]

ssrk-Si ZiriTadi kanonis doneze pirvelad aikrZala SuRli religiur niadagze.

ssrk-is yvela konstitucia iZleoda sindisis Tavisuflbis iuridiul garantias, magram erTi ideologiis batonobis pirobebSi es SeuZlebeliyo da SeuTavsebeli mcnebasTan _ Tavisufleba, rogorc zogadsakacobrio Faseulob-asTan. isini gamocxadebul principebs uaryofdnen imave konstituciis sxva nawilebiTac. mxolod sabWoTa xelisuflebis dasasruls iyo arsebuli winaaRmdegobebis moxsnis mcdeloba, (1990 wlis 26 dekembers miRebul iqna ssrk-is konstituciis me-6 muxlis axali redaqcia), xolo rsfsr-Si gaCnda pirveli kanoni „sarwmunoebis Tavisuflebis Sesaxeb~, romelic moqmedebda 1998 wlmde.[13]

sabWoTa kavSiris daSlis Semdeg mis sivrceSi gaCndnen axali saxelmwifoebi yofili sabWoTa respublikebis ricxvidan, Tavisi erovnuli kanonmdeblobebiT. saxelmwifoebis momdevno qmedebebis koordinaciisaTvis Seiqmna damoukidebeli saxelmwifoebis Tanamegobroba. dsT-s wesdebis me-2 muxli Tavis miznad asaxelebs „adamianis uflebebis da ZiriTadi Tavisuflebebis uzrunvelyofas euTo-s saerTaSoriso dokumentebisa da uflebis sayovelTaod aRiarebuli principebisa da normebis Tanaxmad", magram specialuri aqtebi sindisisa da sarwmunoebis Tavisuflebis sakiTxebSi Tanamegobrobis CarCoebSi jer ar arsebobs.[14]

1991 wlis noemberSi rsfsr-s umaRlesi sasamarTlo iRebs „moqalaqisa da adamianis uflebaTa da TavisuflebaTa deklaracias". dokumenti gaxda ruseTis federaciis axali konstituciis Taviseburi prototipi moqalaqisa da adamianis uflebaTa da TavisuflebaTa sakiTxSi.

rf-s konstitucia acxadebs adamians, mis uflebebs da Tavisuflebas umaRles Faseulobad (muxli me-2). me-13 muxlSi aRiarebulia ideologiuri mravalsaxeoba da ikrZaleba erTi ideologiis batonoba. ruseTis ZiriTadi kanoni TiToeul adamians aZlevs sazogadoebrivi gaerTianebis saqmianobaSi monawileobis uflebis (muxli 30-e), azris da sityvis Tavisuflebis garantias (muxli 29-e). gamocxadebuli Tavisuflebebis dacvis garantia, miuxedavad sqesis, rasis, erovnebis, enis, warmoSobis, qonebrivi da Tanamdebobrivi mdgomareobis, sacxovrebeli adgilis, religiisadmi damokidebulebis, mrwamsis, sazogadoebrivi gaerTianebebisadmi mikuTvnebis, agreTve, sxva movaleobebisa" ekisreba saxelmwifos (muxli me-19). rogorc ukve aRiniSna, konstituciis 28-e muxli mTlianad eZRvneba religiur da aTeistur Tavisuflebebs.[16]

rf-s konstituciis 28-e muxlSi ganmtkicebuli Tavisuflebebi regulirdeba rf-is konstituciis mier ruseTis federaciis kodeqsiT administraciuli kanondarRvevebis

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[13]sarwmunoebis Tavisuflebis Sesaxeb: 1990 wlis 25 oqtombris rsfsr kanoni #267-1 (1995 wlis 27 ianvris cvlilebebiT)//konsultantplusi.

[14]damoukidebeli saxelmwifos Tanamegobrobis wesdeba (minski, 1933 wlis 22 ianvari)// konsultantplusi.

[15]adamianisa da moqalaqis uflebebisa da Tavisuflebebis deklaracia.m.,2005.45.

[16]ruseTis federaciis konstitucia: miRebulia sayovelTao saxalxo krebis kenWisyriT 1993 wlis 12 dekembers.,moskovi,iuristi,1997w. 43.

Sesaxeb rf-is sisxlis samarTlis kodeqsiT, rf-is sagadasaxado kodeqsiT, „sindisis TavisuflebisadareligiurigaerTianebebisSesaxeb" federaluri kanoniT, agreTve, rf-s da rf-s subieqtebis sxva normatiul-uflebrivi aqtebiT.[17][18]

samoqalaqo kodeqsi (SemdegSi _ rf-is sk) me-4 TavSi (iuridiuli pirebi) religiur gaerTianebebs aRiarebs iuridiuli piris komerciul formad (48-e mux. naw. 1-3, 50-e mux. naw. 3, 117-e mux. naw. 1), romlis mimarTac maT damfuZneblebs ara aqvT qonebrivi uflebebi. amasTan, 117-e muxlis 2-3 naw. am organizaciebs aZlevs samewarmeo saqmianobis ganxorcielebis uflebas sakuTari sawesdebo miznebis miRwevis farglebSi. rf-is sk-is 212-e muxlis 1-li nawilis Tanaxmad, „ruseTis federacia cnobs sakuTrebis kerZo, saxelmwifo, municipalur da sxva formebs,~, anu igi cnobs religiuri organizaciebis sakuTrebis uflebasac (mux. 213-e, naw. 4). sakuTreba SeiZleba miRebul iqnes Sewirulobis saxiTac, amasTan, 582-e muxlis me-2 nawilis Tanaxmad, „Sewirulobebis miReba ar saWiroebs vinmesgan Tanxmobis an nebarTvis miRebas". rf-is sk-s Tanaxmad, religiuri organizaciebis (gaerTianebebis, jgufebis) likvidacia daSvebulia mxolod Semdeg SemTxvevebSi:

_ misi damfuZneblebis (monawileebis) gadawyvetilebiT;

_ sasamarTlos gadawyvetilebiT, misi Seqmnis dros daSvebuli uxeSi da aRmoufxvreli darRvevebis arsebobis, kanonmdeblobiT akrZaluli saqmianobis ganxorcielebis, agreTve, am organizaciebis sawesdebo miznebis sawinaaRmdego saqmianobis sistematuri ganxorcielebis SemTxvevaSi (mux. 61-e, naw. 2).

zemoT dasaxelebuli mizezebis gamo, religiuri organizaciebis likvidaciis Sesaxeb moTxovna SeiZleba waredginos sasamarTlos saxelmwifo organoebis an adgilobrivi TviTmmarTvelobis organoebis mier (rf-is sk-is 61-e mux. naw. 3).[19]

ruseTis federaciis kodeqsi administraciuli samarTaldarRvevebis Sesaxeb (SemdegSi _ asko) sakuTari amocanebis Sesabamisad ayenebs administraciuli pasuxismgeblobas sindisisa da sarwmunoebis Tavisuflebis Sesaxeb kanonmdeblobis darRvevisTvisac, kanonis winaSe Tanasworobis principis gaTvaliswinebiT (1.2 da 1.4 muxlebi). aseTi pasuxismgebloba dgeba religiuri gaerTianebis saqmianobis organizaciisa da masSi monawileobis drosac, romlis mimarTac moqmedebs uflebamosili organos gadawyvetileba misi saqmianobis droebiT SeCerebis Sesaxeb (muxli 20.2.1). aRsaniSnavia, rom asko-s 28.3 mux. me-4 naw. Tanaxmad, Tanamdebobis pirebs, romlebic axorcieleben religiuri gaerTianebebis saqmianobis kontrolsa da registracias, calke eniWebaT administraciuli kanondarRvevisTvis oqmis Sedgenis uflebamosileba Semdeg SemTxvevebSi:

„sindisis Tavisuflebisa da sarwmunoebrivi Tavisuflebis uflebaTa ganxorcielebis dabrkoleba, maT Soris, religiuri an gansxvavebuli mrwamsis miReba an maTze uaris Tqma, religiur gaerTianebaSi Sesvla an iqidan gamosvla", agreTve, religiuri grZnobebis Selaxva (muxli 5.26);

Tanamdebobis piris an organos mier saxelmwifo zedamxedvelobis ganmaxorcieleba kanonieri gankargulebebis Seusruleblloba (mux. 19.4, naw. 1);

[17] „sindisis Tavisuflebisa da religiuri gaerTianebebis Sesaxeb: feder.kanoni" #125-fk 1997wlis 26 seqtemberi. konsul tantplusi.

[18] ruseTis pederaciis sruli krebuli. novosibirski. 2006 weli. 125.

[19] ruseTis federaciis samoqalaqo kodeqsi. aq.1,2,3: 2006 wlis 15 ianvris mdgomareobiT. prospeqti; velbi, 2006, 241

amave organos kanonieri gankargulebis (dadgenilebis, gadawyvetilebis) droul ad Seusruleblоba (mux.19.5,naw.1);

administraciuli kanondarRvevebis Cadenis xel Semwyobi pirobebisa da mizezebis aRsakveTi RonisZiеebebis miuReblоba (mux. 19.6);

cnobebis (informaciis) warmoudgenlоba (mux.19.7)[20,21]

„sindisis Tavisuflebisa da religiuri gaerTianebebis Sesaxeb- federaluri kanoni (SemdegSi _ fk-#125) aregulirebs uflebriv mdgomareobas rogorc ukve arsebuli religiuri gaerTianebebisa (organizaciebis, jgufebis), aseve, momaval Si Sesaqmnelebis. amasTan, is iZleva samarTlian istoriul Sefasebas ruseTis saxel mwifoebriobis CamoyalibebaSi marTlmadideblоbisa da sxva tradiciuli religiebis gansakuTrebuli rolis aRiarebiT. ase, magaliTad, kanonis preambulaSi naTqvamia: „… qristianobis, islamis, budizmis, iudaizmis da sxva religiebis pativiscemiT, romlebic Seadgenen ruseTis xalxTa istoriuli memkvidreobis nawils~.

ruseTis federaciis saero xasiaTis aRiarebiT, anu religiuri gaerTianebebis saxel mwifosgan gamoyofis konstituciuri principis dacviT, fk-#125 iZleva religiuri gaerTianebebis saqmianobaSi saxel mwifos Caurevlоbis garantias im pirobiT, rom daculi iqneba rf-is kanonebi mocemul sferoSi. saxel mwifos Caurevlоba ar iTval iswinebs am gaerTianebebSi monawile moqalaqeTa sxva ufl ebebis SezRudvas. im SemTxvevaSi, Tu rf-is moqalaqis mrwamsi an sarwmunoeba xel s uSl is samxedro samsaxurs, mas aqvs al ternatiuli samoqalaqo samsaxuris ufl eba.[22] religiuri gaerTianebebaTvis saxel mwifo iTval iswinebs sagadasaxado da sxva SeRavaTebs, material ur da sxva daxmarebebs; ar akisrebs saxel mwifo xel isufl ebis funqciebs Sesrulebas da urTierTCaurevlоbis srul i dacvisTvis aZl evs saSual ebas, ar miiRos monawil eoba saxel mwifo xel isufl ebis organoebis arCevnebSi, pol itikuri partiebisa da moZraobebis moRvaweobaSi, agreTve, ar daafinansos isini (fk-#125-s mux. 3, 4). anal ogiuri ufl ebebiT sargebl oben ucxouri religiuri gaerTianebebic (mux. me-13).

fk-#125-s mux. me-3 me-6 nawil iT, `sindisis Tavisufl ebisa da sarwmunoebis Tavisufl ebis ufl ebis ganxorciel ebis dabrkol eba, romel ic dakavSirebul ia pirovnebaze Zal adobasTan, rel igiisadmi damokidebul ebis gamo maqal aqis grZnobebis ganzrax Seuracxyofasa Tan, rel igiuri upiratesobis propagandasTan, qonebis dazianebasa da ganadgurebasTan, an aseTi qmedebebis Cadenis saSiSroebasTan, ikrZal eba da idevneba federal uri kanonis Tanaxmad. saj aro RonisZiebebis gatareba, moqal aqeTa rel igiuri grZnobebis Seuracxmyofel i teqstebisa da gamosaxul ebebis moTavseba rel igiuri Tayvaniscemis obieqtebis maxl obl ad akrZal ul ia”. sindisisa da sarwmunoebis Tavisufl ebis garantirebiT, maT Soris, ruseTis moqal aqeTa aRsarebis saiduml os dacviT, mocemul i sferos ufl ebebSi kanoni maT uTanabrebs ucxoel, moqal aqeobis armqone moqal aqeebs da pirebs, roml ebic kanonierad imyofebian ruseTis federaciis teritoriaze (mux. me-3, naw.1).

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[20]avtoris SeniSvna. rf. iusticiis saministros federal uri saregistracio samsaxuris Tanamdebobis pirebi.

[21]ruseTis federaciis kodeqsi administraciuli samarTal darRvevebis Sesaxeb: 2006 wl is 15 april is mdgomareobiT.- novosibirski: cimb. gamom. 2006w. .67.

[22]federal uri kanoni samxedro val debul ebisa da samxedro samsaxuris Sesaxeb #53-fk, 1998 wl is 28 marti // konsul tantpl usi.

saxelmwifo da municipalur skolebSi saero xasiaTis ganaTlebis miRebis konstituciuri principis daurRvevlobiT,rf-is sk-#125, me-5 muxli iZleva religiuri ganaTlebis miRebis saSualebas `sakuTari individualuri an erToblivi arCevanis safuZvelze" religiuri dawesebulebis farglebSi, saxelmwifo saganmanaTleblo programebis CarCoebs gareT da zianis gareSe. me-19 muxlis Tanaxmad, religiur organizaciebs ufleba aqvT (sakuTari wesdebisa da kanonmdeblobis Tanaxmad), registraciisa da saxelmwifo licenziis qonis SemTxvevaSi, Seqmnan sasuliero-saganmanaTleblo dawesebulebebi sasuliero msaxurebis da personalis mosamzadeblad. amasTan, saxelmwifo Tavs ikavebs rf-s im moqalaqeebis jarSi gawvevisgan, romlebic swavloben aseT dawesebulebebSi (mux. me-19). [24,25,26].

Tavi meore – `religiuri gaerTianebebi," rf-is sk-#125 mTlianad eZRvneba religiuri jgufebisa da organizaciebis formebs, miTiTebulia saxelmwifo registraciis pirobebi, maT Soris, `cnobebi religiis swavlebis safuZvlebisa da masTan dakavSirebuli praqtikis Sesaxeb, agreTve, religiisa da mocemuli gaerTianebis Seqmnis Sesaxeb, misi saqmianobis formebisa da meTodebis Sesaxeb, ojaxisa da qorwinebis, ganaTlebis, urTierTobebis Taviseburebebis, mocemuli religiis mimdevrebis, organizaciis msaxurebis da wevrebis moqalaqeobrivi uflebebisa da valdebulebebis SezRudvebis mimarT damokidebulebis Sesaxeb" (mux. me-11), agreTve, likvidaciis Sesaxeb – es aris TviTlikvidacia sasamarTlos ganaCenis Tanaxmad, rf-is kanonmdeblobis uxeSi da araerTgzis darRvevis SemTxvevaSi (mux. me-14), agreTve, me-10 muxlis Tanaxmad, aucilebeli moTxovnebi am gaerTianebebis wesdebebis ganmtkicebisaTvis, esaa:

dasaxeleba, adgilmdebareoba, religiuri organizaciis saxeoba, sarwmunoeba, ukve arsebuli centralizebuli religiuri organizaciis mikuTvnebis SemTxvevaSi _ misi dasaxeleba;

saqmianobis miznebi, amocanebi da ZiriTadi formebi;

saqmianobis Seqmnisa da Sewyvetis wesi;

organizaciebis stuqtura, maTi marTvis organoebi, maTi formirebis da kompetenciis wesi;

fuladi saxsrebisa da organizaciis sxva qonebis wyaroebis warmoqmna;

wesdebaSi damatebebisa da cvlilebebis Setanis wesi;

qonebis gankargvis wesi saqmianobis Sewyvetis SemTxvevaSi;

sxva cnobebi, romelic exeba mocemuli religiuri organizaciis saqmianobis Taviseburebebs.

SromiTi samarTlebrivi urTierTobebi religiur organizaciebSi Sendeba rf-s SromiTi kodeqsis safuZvelze (SromiTi xelSekrulebebi da kontraqtebi), iseve, rogorc rf-s yvela moqalaqe, mRvdel msaxurebic eqvemdebarebian socialur sapensio uzrunvelyofas, agreTve, socialur dazRvevis saerTo safuZvlebs (mux. 24-e). [27]

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[23]rf. sagadasaxado kodeqsi // ruseTis federaciis sruli krebuli. novosibirski: cimb. gamom. 2006w. mux. 3, 149, 217, 219, 251, 270, 333, 35, 381, 395.

[24]ganaTlebis Sesaxeb: rf kanoni #3266-1//1992 wlis 10 ivlisi // konsul tantplusi.

[25]umaRlesi da umaRlesi saswavleblebis Semdgomi profesiuli ganaTlebebis Sesaxeb: federaluri kanoni #125-fk // konsul tantplusi.

[26]samxedro valdebulebisa da samxedro samsaxuris Sesaxeb: federaluri kanoni #53-fk, 1998 wlis 28 marti // konsul tantplusi.

[27]rf SromiTi kodeqsi // konsul tantplusi.

sakuTrebis, qonebis gankargvisa da sargeblobis ufleba mTlianad regulirdeba rf-is sk-s mier.[28] mocemul organizaciebs aqvT warmoebis, yidvis, eqsportirebis, importirebis, maT Soris, saqvel moqmedo da kulturul -saganmanaTleblo miznebiTac, religiuri literaturis, beWduri, audio-video masalebis da, agreTve, religiuri daniSnulebis sxva nivTebis gavrcelebis ufleba (mux. me-17, me-18). rf-s kanonebis Tanaxmad, maT aqvT ufleba, ganaxorcielon samewarmeo saqmianoba da Seqmnan sakuTari sawarmoebi (mux. 23-e).

kanonis me-16 muxlis Tanaxmad, religiur organizaciebs ufleba aqvT, Seasrulon Tavisi wesebi da ceremoniebi Tavis sakulto Senobebsa da nagebobebSi, agreTve, calke gamoyofil adgilebSi, maT Soris, momlocvelobis adgilebSi, sasaflaoebze, krematoriumebSi sacxovrebel SenobebSi da a.S.

mocemul sferoSi kanonmdeblobis aRsrulebis zedamxedvalobas axorcielebs rf-s prokuraturis organoebi, xolo mocemuli organizaciebis wesdebasTan maTi qmedebebis Sesabamisobas _ rf-s iusticiis saministros federaluri maregistrirebeli samsaxuri (muxli 25-e). religiur gaerTianebebSi sindisis Tavisuflebis kanonmdeblobis darRvevas mohyveba sisxlis, administraciuli da sxva pasuxismgebloba (rf-is sk-#125 mux. 26-e).

zemoTqmuli idan gamomdinare, SeiZleba gakeTdes daskvna, rom rf-is sk-#125 moicavs rf-is konstituciis mier miTiTebul normebs, romlebic sistematizirebulia rf-is sakanonmdeblo aqtebisa da sxva federaluri kanonebis mier.

rf-is subieqtebis doneze arsebobs, agreTve, normatuiuli -samarTlebrivi aqtebi, romlebic areguli irebs samarTlis mocemul dargs. magaliTad TaTarstanis respublikis kanoni `sindisis Tavisuflebis Sesaxeb da religiuri gaerTianebebis Sesaxeb~, daRestnis respublikis kanoni `vahabituri da sxva eqstremistuli saqmianobis akrZalvis Sesaxeb~ daRestnis respublikis teritoriaze~ da sxva.[29]

`sindisis Tavisuflebisa da religiuri gaerTianebebis Sesaxeb" federaluri kanonis liberaluri miRwevebi iTval iswinebs mraval mxriv konsul taciebs ruseTis yvela religiur gaerTianebasTan mocemuli normatiuli aqtis momzadebisas da religiis saxelmwifosgan gamoyofis konstruqciul princips (rf-is konstituciis mux. me-14, naw.1,2), agreTve, imas, rom saxel mwifos mxridan kanoni Tavisi arsiT yovel Tvis calke mxrivi aqtia. aqedan gamomdinare, Cven gadavwyviteT sxva qveynebis gamocdilebis Seswavla, religiuri da istoriuli msofli mxedvelobis mqone mosaxleobis miaxloebiTi analogiuri SemadgenlobiT, maT Soris, sabWoTa, aTeisturi, ukrainisa da saqarTvelos warsuliT.

ukrainis konstitucia 35-e muxlSi acxadebs: „yovel adamians aqvs msofli mxedvelobisa da sarwmunoebis Tavisuflebis ufleba. es ufleba moicavs nebismieri sarwmunoebis aRmsareblobis an araRmsareblobis Tavisuflebas, dabrkolebis gareSe religiuri kultebis an saritual o wesebis erTpirovnul an koleqtiur gamarTvas, religiuri saqmianobis warmarTvas.

am uflebis ganxorcieleba SeiZleba SeizRudos kanonis mier mxolod sazogadoebrivi wesrigis, mosaxleobis janmrTelobisa da zneobis dacvis an sxva adamianebis uflebebis da Tavisuflebebis dacvis mizniT.

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[28] rf.samoqal aqo kodeqsi//konsul tantplusi.
[29] saerTaSoriso terorizmTan brZol a, dokumentebis krebul i. m., 2005. garant master praimi.

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 eklesia da religiuri organizaciebi ukrainaSi gamoyofilia saxelmwifosgan, xolo skola — eklesiisagan. saxelmwifo arc erT religias ar aRiarebs savaldebulod. aravin SeiZleba ganTavisufldes Tavisi movaleobebisagan saxelmwifos winaSe an uari Tqvas kanonebis Sesrulebaze religiuri mrwamsis motiviT. im SemTxvevaSi, Tu samxedro samsaxuris Sesruleba ewinaaRmdegeba moqalaqis religiur mrwamss, maSin amvaldebulebis Sesruleba unda Seicvalos alternatiuli (arasamxedro) samsaxuriT".[30] ukrainis konstituciis mniSvnelovani muxli asaxavs TiTqmis yvela Tavisuflebas, romlebic gaTvaliswinebulia mocemul sferos regulirebisaTvis rf-s normatiul-samarTlebriv aqtebSi. amasTan, `sindisis Tavisuflebisa da religiuri organizaciebis Sesaxeb" ukrainis kanoni ukraineli parlamentarebis azriT, saWiroebs daxvewas.[31] safiqrebelia, rom mocemul etapze ukrainis sistematizirebul sakanonmdeblo aqtebSi ganmtkicebuli normebi awyobs orive mxares.

saqarTvelos konstituciaSi ganmtkicebulia sarwmunoebis sferoSi sayovelTaod aRiarebuli Tavisuflebebi, `sadac saxelmwifo aRiarebs qarTuli marTlmadidebluri eklesiis gansakuTrebul rols saqarTvelos istoriaSi da amasTan erTad acxadebs religiuri mrwamsis da aRmsareblobebis srul Tavisuflebas da eklesiis damoukideblobas saxelmwifosagan" (me-9 da me-19 muxlebi), `romelSic yovel adamians eZleva sityvis, azris, sindisis, sarwmunoebis da mrwamsis Tavisuflebis garantia… ikrZaleba Tavisuflebebis SezRudva, Tuki maTi gamovlineba ar zRudavs sxva pirebis uflebebs da Tavisuflebebs".[32]

saqarTveloSi napovnia axali forma urTierTobisa saxelmwifosa da religias Soris Tanabaruflebian sawyisebze, konstituciuri SeTanxmebis saxiT (SemdegSi _ teqstSi SeTanxmeba) saqarTvelos saxelmwifosa da qarTul samociqulo marTlmadideblur eklesias Soris.

SeTanxmebis preambula qarTul marTlmadideblur eklesiaze (SemdegSi _ eklesia) saubrobs rogorc msoflio marTlmadidebluri eklesiis Sesaxeb, xolo marTlmadideblobaze _ rogorc saqarTvelos mosaxleobis udidesi nawilis tradiciuli religiis Sesaxeb. amas adasturebs sasuliero-administraciuli centris mdebareoba q.mcxeTaSi, aRniSnavs marTlmadideblobis gansakuTrebul rols qveynis istoriaSi da saxelmwifosganmis damoukideblobas.

saxelmwifo da eklesia adastureben mzadyofnas urTierT TanamSromlobisaTvis mTeli qveynis mosaxleobis sakeTildReod. mxareebi erTmaneTs aniWeben uflebamosilebas, dadon xel Sekrulebebi erTmaneTis interesebis sferoebSi (1-li SeTanxmebis me-2 muxlis 1-li nawili). eklesia aRiarebulia istoriulad Camoyalibebul, samoqalaqo samarTlis srul uflebian subieqtad, romelic moqmedebs eklesiuri samarTlis, saqarTvelos konstituciis, winamdebare SeTanxmebis da saqarTvelos kanonmdeblobis Tanaxmad (mux. 1-li naw.3). eklesiis warmodgenis ufleba specialuri nebarTvis

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[30]ukrainis konstitucia. miRebulia ukrainis umaRlesi radis V sesiaze 1996 wlis 28 ivliss, //dsT-s da baltiispireTis qveynebis konstituciebi. 1998 wlis. 508-566.

[31]avtoris SeniSvna mocemuli naSromis daweris momentisTvis.

[32]saqarTvelos konstitucia [miRebulia 1995 wlis 24 agvistos 1921 wlis saqarTvelos demokratiuli respublikis konstituciis safuZvelze//dsT-s da baltiispireTis qveynebis axali konstituciebi — m., 1998w. 175-209.

gareSe aqvT saeklesio krebas, sruliad saqarTvelos kaTalikos-patriarqs, wminda sinods da saqarTvelos sapatriarqos. saqarTvelos patriarqi xelSeuxebelia (mux. 1-li i naw. 4,5). eklesiis moTxovniT saxelmwifo eklesiur dResaswaulebs acxadebs gamosasvlel (uqme) dReebad (mux. 1-li i naw. 6). saxelmwifo mxars uWers aRsarebis saidumlos da eklesiur saidumlos mRvdelmsaxuri valdebulia, ar gasces informacia, romelic misTvis, rogorc eklesiuri pirisTvis, gaxda cnobili saxelmwifo, agreTve, aRiarebs eklesiaSi jvris weras da uTanabrebs mas qorwinebis saxelmwifo registracias (mux. me-2-3). wminda msaxurebi Tavisufldebian samxedro-savaldebulo samsaxuridan, saxelmwifo iRebs valdebulebas, Seqmnas wmindamsaxurebis instituti SeiaraRebul Zalebsa da Tavisuflebis aRkveTis adgilebSi.

saxelmwifos da eklesias ufleba aqvT, erToblivad SeimuSaon socialuri programebi mosaxleobisaTvis (mux. me-4). ruseTis kanonmdeblobisgan gansxvavebiT, saganmanaTleblo dawesebulebebSi daSvebulia sagnis swavleba marTlmadideblur sarwmunoebis Sesaxeb, risTvisac erTobliviad SeimuSaveben saganmanaTleblo da samecniero programebs (mux. me-5).

ufleba qonebaze, uZravi qonebaze, miwaze, agreTve warmoebul, SeZenil, eklesiis mier usasyidlod miRebul produqciaze srulad regulirdeba saqarTvelos samoqalaqo kanonmdeblobis mier da Tavisufldeba gadasaxadebis gadaxdisagan (mux. me-6). winamdebare SeTanxmeba cnobs eklesiis sakuTrebad eklesiur faseulobebs, romlebic imyofeba saxelmwifos dacvis qveS (mux. me-8). saxelmwifo da eklesia erTobliviad zrunaven eklesiur nagebobebsa da faseul obebze, romlebsac aqvs istoriul-kulturuli da arqeologiur-arqiteqturuli mniSvneloba. saxelmwifo Tavis Tavze iRebs valdebulebas, awarmoos sxva qveynebTan maT teritoriaze mdebare analogiuri faseulobebis dacvasTan dakavSirebuli molaparakebebi (mux. me-9-me-10).

Taviseburi unikalur movlenas postsabWoTa sivrceSi warmoadgens saxelmwifos Semdegi aRiareba: `XIX-XX saukuneebSi (gansakuTrebiT 1921-1990ww.) damoukideblobis dakargvis da saxelmwifos mxridan eklesiisaTvis zaralis miyenebis aRiarebiT. saxelmwifo, rogorc eklesiisTvis warTmeuli qonebis mflobeli, iRebs valdebulebas, nawil obriv aunazRauros mas miyenebuli zarali" (SeTanxmebis 11-e muxli).[33]

amJamad saqarTvelos parlamentSi mimdinareobs debatebi saxelmwifoSi registrirebul yvela religiur gaerTianebasTan analogiuri SeTanxmebebis xelmowerasTan dakavSirebiT.

zemoTqmulidan gamomdinare, SeiZleba im daskvnis gamotana, rom sami qveynis magaliTzec ki, romlebic adre erTi qveynis SemadgenlobaSi Sediodnen, arsebobs erTi amocanis gadawyvetis sxvadasxva varianti. agreTve, cnobilia, rom qveynebSi, sadac saxelmwifo da religia ar aris gayofili, es amocana wydeba sxva xerxebiT – saxelmwifos mier

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mosaxl eobis umravl esobisaTvis tradiciul i rel igiis, rogorc saxel mwifo rel igiis, aRiarebiT, magram TviT saxel mwifoSi dominirebs saero kanonebi da pol itikuri Tavisufl ebebi (magal iTad, saberZneTi an didi britaneTi, sadac monarqi meTaurobs tradiciul rel igias), an saxel mwifos mier rel igiuri (rogorc saxel mwifoebrivi) ufl ebis aRiareba (magal iTad, irani, gaerTianebul i arabeTis emiratebi da sxva).[34,35,36]

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[34]msofl ios qveynebis kostitucia [el eqtronul i resursi]. 2006 wl is maisi. Wvdomis reJimi: http://www.rusoir.ru.

[35]SeniS.: neirol ingvistika – codnis sfero nevrol ogiisa da l ingvistikis pirapirze, romel ic dakavebul ia darRveul i enobrivi unar-Cvevebis Seswavl iTa da aRdgeniT. didi encikl opediuri l eqsikoni, m., spb., 2001. gv. 36.

[38]SeniS.: eqstrasensi – termini, romel ic gamoiyeneba adamianis aRsaniSnavad, romel ic fl obs zemgrZnobiare aRqmisa da zemoqmedebis unariT. arafsiqol ogia – e.w. paranormal uri fsiqofizikuri movl enebis kvl evis dargi: eqstrasensorul i aRqmisa, grZnobis organoebis monawil eobis gareSe (tel epaTia, naTel mxil vel oba, l ozomaZiebl oba, paradiagnostika da a.S.) da sxva. ver miiRo damakmayofil ebel i mecnierul i axsna da iwvevs mZafr diskusiebs. ixil eT iqve, gv. 446.

კახა წიქარიშვილი
sasamarTlo administrirebasa da menejmentis
reformis proeqtis direqtoris moadgile

eventualuri ganzraxva Tanamedrove dasavleT evropul da amerikul sisxlis samarTalSi.

saqarTvelos sisxlis samarTlis kodeqsis me-9 muxli iZleva rogorc pirdapiri, aseve, arapirdapiri (eventualuri) ganzraxvis definicias. kerZod, am muxlis me-2 nawilis mixedviT, `qmedeba pirdapiri ganzraxviTaa Cadenili, Tu pirs gacnobierebuli hqonda Tavisi qmedebis marTlwinaaRmdegoba, iTvaliswinebda marTlsawinaaRmdego Sedegis dadgomis SesaZleblobas da surda es Sedegi, anda iTvaliswinebda aseTi Sedegis ganxorcielebis gardauvalobas~.

amave muxlis me-3 nawilis mixedviT, qmedeba arapirdapiri ganzraxviTaa Cadenili, Tu pirs gacnobierebuli hqonda Tavisi qmedebis marTlwinaaRmdegoba, iTvaliswinebda marTlsawinaaRmdego Sedegis dadgomis SesaZleblobas da ar surda es Sedegi, magram Segnebulad uSvebda an gulgrilad ekideboda mis dadgomas.

bralis formebis erTmaneTisgan gamijvnis, aseve, eventualuri ganzraxvis Sesaxeb bevri daiwera rogorc sabWoTa periodis rusul, aseve, qarTul literaturaSi[1]. kodeqsSi dRes arsebuli formulireba samarTlebrivi azrovnebis xangrZlivi ganviTarebis Sedegia. Tumca interess moklebuli araa am sakiTxis Seswavla SedarebiT samarTlebrivi kuTxiT, miT umetes, qveynebi Tu gaviTvaliswinebT imas, rom eventualuri ganzraxvis amdagvar koncefcias Tanamedrove dasavleT evropuli bevri sistema ar iziarebs.

Tanamedrove dasavleT evropul da amerikul samarTalSi eventualuri ganzraxvis problemis Seswavla iZleva imis saSualebas, rom samarTlebrivi sistemebis mixedviT qveynebi davyoT sam jgufad: 1) qveynebi, romlebic eventualur ganzraxvas miakuTvneben ganzraxi bralis kategorias (mag.: germania, italia, espaneTi, niderlandebi, Sveicaria, portugalia), 2) qveynebi, romlebic eventualur ganzraxvas miakuTvneben gaufrTxileblobas (mag. safrangeTi) da 3) qveynebi, romlebic eventualur ganzraxvas gamoyofen bralis calke formad, romelic mdebareobs ganzraxvasa da gaufrTxileblobas Soris (inglisi, aSS).

sakiTxi aseve garkveul wilad ukavSirdeba dRevandel qarTul literaturaSi arsebul davas imis Sesaxeb, SesaZlebelia Tu ara eventualuri ganzraxviT Cadenili iqnes danaSaulis mcdeloba[2].

sanam TiToeuli am jgufis ganxilvas SevudgebodeT, oriode sityviT gvinda SevexoT sakiTxis problematurobas. dRes arsebuli samarTlis yvela mowinave sistema icnobs bralis minimum or formas – ganzraxvas da gaufrTxileblobas. am gayofas, pirvel rigSi, safuZvlad udevs nebelobiTi (voluntatiuri) elementi, anu ganzraxvis

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[1] maT Soris, yvelaze vrclad ix. aleqsandre vaCeiSvili _ `danaSaulis subieqturi mxare\ sabWoTa sisxlis samarTalSi" (Tbilisi, 1957).

[2] Cven am sakiTxze arsebul Teoriul debatebs ar SevexebiT, ubralod mimovixilavT dasavluri sistemebis mier am sakiTxis praqtikul gadawyvetas.

dros pirs surs sazogadoebrivad saSiSi (marTl sawinaaRmdego) Sedegis gamowveva, xolo gaufrTxileblobis dros mas es Sedegi ar surs[3].

bralis formebi rom mxolod nebelobiT elements efuZnebodes, maSin sakiTxi SedarebiT advilad gadasawyveti iqneboda, magram saqme maSin rTuldeba, rodesac `asparezze gamodis~ SemecnebiTi (kognitiuri) elementi, kerZod, piri SeiZleba iTval iswinebdes sazogadoebrivad saSiSi Sedegis dadgomis:

1) aucileblobas,

2) albaTobas,

3) gamoricxavdes aseTi Sedegis dadgomas,

4) ar iTval iswinebdes misi dadgomis albaTobas, Tumca amis gaTval iswineba mas eval eboda da SeeZlo kidec[4].

magal iTisaTvis SeiZleba moviyvanoT aseTi SemTxveva: mraval sarTul iani saxl is me-6 sarTul ze samSenebl o samuSaoebis dasrulebis Semdeg piri gadawyvets, darCenil i agurebi Zirs gadmouxedavad ezoSi gadayaros. am SemTxvevaSi SesaZlebel ia, piris SegnebaSi arsebobdes mavne Sedegis (sikdil i an sxeul is daziane ba) dadgomis albaTobis sxvadasxva xarisxi, rac garkveul wil ad gavl enas axdens bralis formaze.

kazusi I: Tu pirma icis, rom saxl is ezo savsea iq Sekrebil i xal xiT: (mitingi, demonstracia, raime RirsSesaniSnavi movlena), maSin SeiZleba arsebodes pirdapiri ganzraxva *(Sedegis dadgomis gardauvaloba)*

kazusi II: Tu pirma icis, rom mis mier arCeul i teritoriaze xal xi naklebad moZraobs *(Sedegis dadgomis albaToba)*, maSin SeiZleba arsebobdes:

a. eventual ur ganzraxva (im SemTxvevaSi, Tu piri egueba Sedegis dadgomas) an

b. TviTimedovneba (im SemTxvevaSi, Tu piri imedovnebs, rom Sedegi ar dadgeba adgil is miuval obis an sxva garemoebebis gamo).

kazusi III: Tu saxl is ezo Semofargl ul ia da dacul ia samuSaoebis mimdinareobis gamo, magram pirs daaviwyda im dRes ezoSi mimdinare sxva samuSaobis Sesaxeb, ris gamoc aguri Tavze daeca ezoSi myof muSas (ar iTval iswinebs albaTobas). aseT SemTxvevaSi pirma SeiZleba pasuxi agos daudevrobisaTvis (unda gaeTval iswinebina da SeeZl o gaeTval iswinebina Sedegi).

Tu meore kazus samarTl ebrivi sistemebis zemoTmoyvanil i klasifikaciis fonze ganvixil avT, maSin miviRebT imas, rom rigi qveynebisa am SemTxvevas miakuTvnebs eventual uri ganzraxvis an gaufrTxileblobis sferos. qveynebis meore jgufi mas cal mxrivad akval ificirebs gaufrTxileblobad, xol o qveynebis mesame jgufi aRiarebs bralis cal ke formad, romel ic mdebareobs ganzraxvasa da gaufrTxileblobas Soris.

qveynebis pirvel jgufSi wamyvani adgil i germanias uWiravs. germaniis sisxl is samarTl is kodeqsi bralis formebis definicias ar iZleva, magram samarTl is Teoria da praqtika erTmaneTisgan gamoyofs ganzraxi bral is sam sxvadasxva saxes (**Arten der Vorsatz**):

1. gamizvna (**Absicht**) gul isxmobs imas, rom moqmedi piri miiswrafvis danaSaul is Semadgenl obaSi gaTval iswinebul i Sedegis ganxorciel ebisaken.

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2. pirdapiri ganzraxva (directer Vorsatz - dolus directus) gul isxmobs imas, rom subieqti darwmunebul ia danaSaul is Semadgenl obis ama Tu im el ementis arsebobasa an qmedebis ganxorciel ebisas danaSaul is Semadgenl obiT gaTval iswinebul i Sedegis dadgomaSi.

3. arapirdapiri ganzraxva (bedingter Vorzat – dolus eventualis) gul isxmobs imas, rom moqmedi piri seriozul ad aRiqvams Semadgenl obis Sesabamisi Sedegis dadgomis al baTobas da egueba mas.

rac Seexeba gaufrTxil ebl obas, aq erTmaneTisgan asxvaveben Secnobil da Seucnobel gaufrTxil ebl obas (bewuste und unbewuste Fahrlassigkeit). Secnobil i gaufrTxil ebl obis dros pirs gacnobierebul i aqvs kanoniT dacul i obieqtis dazianebis safrTxe, magram safrTxis araswori Sefasebis an sakuTari Zal ebis gadaWarbebul i ndobis, an sakuTari iRbal is gamo varaudobs mis Tavidan acil ebas. rac Seexeba Seucnobil gaufrTxil ebl obas, am SemTxvevaSi, windaxedul ebis normis darRvevis gamo, piri ar acnobierebs danaSaul is Semadgenl obis ganxorciel ebis safrTxes[5].

maSasadame, rogorc eventual uri ganzraxvis, aseve, Secnobil i gaufrTxil ebis dros pirs gacnobierebul i aqvs sazogadoebrivad saSiSi Sedegis dadgomis safrTxe. maS raSi mdgomareobs gansxvaveba maT Soris? germanul l iteraturaSi arsebobs mraval i Teoria, roml ebic eventual ur ganzraxvas Secnobil i gaufrTxil ebisgan ganasxvavebs, zogierTi avtori aT maTgansac ki moixseniebs. profesori hans hainrix ieSeki erTmaneTisgan gamoyofs sam ZiriTad Teorias:

a. al baTobis Teoriis mixedviT, bral is formas gansazRvravs piris arsebul i mavne Sedegis dadgomis, al baTobis xarisxi (Grade der Wahrscheinlichkeit). am Teoriis mowinaaRmdegeebi Tvl ian, rom misi gaziarebis SemTxvevaSi SeuZl ebel i xdeba zRvaris gavl eba eventual ur ganzraxvasa da Secnobil gaufrTxil obas Soris, vinaidan SesaZl ebel ia al baTobis maRal i xarisxis drosac piri SeiZl eba imedovnebdes Sedegis Tavidan acil ebas. im SemTxvevaSi, Tu mavne Sedegis dadgomis al baTobis yvel a SemTxvevas movaqcevT eventual ur ganzraxvaSi, an mTl ianad gadavitanT gaufrTxil ebl obaSi, maSin winaaRmdegobaSi moval T samarTl ianobis grZnobasTan da sasamarTl o praqtikasTan. am SemTxvevaSi usamarTl od da dausabuTebl ad gafarToveba ganzraxvis an gaufrTxil ebl obis sfero[6].

b. Tanxmobis Teoriis (Einwilligungstheorie) mixedviT, moqmedi piri egueba mavne Sedegis dadgomas, anu is imoqmedebda `im SemTxvevaSic, Tu ecodineboda, rom Sedegis dadgoma gardauval ia". am Teoriis mowinaaRmdegeTa azriT, is metad zRudavs eventual uri ganzraxvis sferos, axdens moqmedi piris da ara qmedebis Sefasebas. es Teoria eventual uri ganzraxvis sferodan gamoricxavs im SemTxvevebs, roca piris mier dasaxul i mizani da savaraudo mavne Sedegi erTmaneTs gamoricxavs[7].

g. grZnobis Teoriis (Gefuhltheorie) mixedviT, eventual uri ganzraxva arsebobs maSin, roca piri gul gril ia danaSaul ebrivi Sedegis dadgomisadmi. ieSeki miiCnevs,

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[5] **Hans Heinrich Jescheck** *"Lehburch des Strafrechts"* (Duncker und Humblot/Berlin). gv. 460.

[6] iqve.

[7] iqve ieSeks magal iTad mohyavs is SemTxveva, rodesac cudi msrol el i sanaZl eos debs, rom meore pirs xel idan gaagdebinebs SuSis sferos, magram sferos nacvl ad tyvia adamians xvdeba. am SemTxvevaSi Tanxmobis Teoriis formul is mixedviT, eventual uri ganzraxva gamoricxul ia, vinaidan msrol el is mizani niZl avis mogebaa, rac gamoricxavs mis Tanxmobas sxeul is dazianebaze.

romgulgriloba mxolod safuZvladudevs moqmedi piris gadawyvetilebas. ganzraxvasa da gaufrTxileblobas Soris gansxvaveba efuZneba imas, Seaqvs Tu ara piris arasasurveli Sedegis dadgoma Tavisi gadawyvetilebis safuZvlebSi.[8]

dResdReobiT germaniis uzenaesi sasamarTlos praqtikiT eventualuri ganzraxvad miCneulia iseTi SemTxveva, rodesac piri iTvaliswinebs mavne Sedegis dadgomis SesaZleblobas (kognitiuri elementi) da egueba mis dadgomas (nebelobiTi elementi)[9].

eventualuri ganzraxvisa da cnobieri gaufrTxileblobis erTmaneTisagan gamijvnis Sesaxeb germanul midgomas iziareben dasavleT evropis mTeli rigi qveynebi - italia, espaneTi, niderlandebi, Sveicaria, portugalia, Tumca maT Soris eventualuri ganzraxvis sakanonmdeblo definicias mxolod portugalia icnobs[10], danarCeni qveynebSi ki bralis formebi ganmartebulia sasamarTlo praqtikiT an doqtrinaluri wesiT[11]

unda iTqvas, rom zemoT CamoTvlili zogierTi qveyana cdilobs eventualur ganzraxvasa da gaufrTxileblobas Soris gansxvaveba nebelobiT momentTan erTad kognitiuri elementSic (albaTobis xarisxi) ipovos. magaliTad, niderlandebis sasamarTlo praqtikiT eventualuri ganzraxvis dros piri egueba Sedegis dadgomis `mniSvnelovan risks". Sveicariis sasamarTlo praqtikiT eventualur ganzraxva arsebobs maSin, rodesac `subieqtis mier Secnobili mavne Sedegis dadgomis albaToba imdenad maRalia, rom misi qmedeba sxvagvarad ver ganimarteba, Tu ara am Sedegze misi Tanxmoba". albaTobis analogiurad maRal xarisxs iTxovs espanuri sisxlis samarTlebrivi doqtrina eventualuri ganzraxvis dadgenisas[12].

Cven moklednimovixileT samarTlebrivi sistemebis is jgufi, romlebic Cvens mier moyvanil meore kazuss akvalificireben eventualur ganzraxvad an gaufrTxileblobad imis mixedviT Tu rogoria subieqturi mxaris volunatiuri an kognitiuri elementi.

samarTlebrivi sistemebis meore jgufs miekuTvnebian is qveynebi, romlebic mavne Sedegis dadgomis albaTobas (Sedegis gamowvevis survilis ar arsebobisas) gaufrTxileblobad akvalificireben. maT Soris wamyvani adgili safrangeTs uWiravs.

safrangeTis sisxlis samarTlis kodeqsi arc ganzraxvis, arc gaufrTxileblobis definiciebs ar iZleva. Tumca, samarTlis Teoria erTmaneTisgan mkafiod asxvavebs ganzraxvas da gaufrTxileblobas da maT moixseniebs sxvadasxva terminebiT – dol da faute.

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[8] iqve, gv. 243. eventualuri ganzraxvisa da gaufrTxileblobis gamijvnis germanuli Teoriebis ufro detaluri mimoxilva ix. m. turava, `sisxlis samarTali, zogadi nawilis mimoxilva~, Tbilisi, 2008, gv. 141-144

[9] **Jean Pradel,** Alberto Cadoppi *"Droit Penal Général Comparé" (editions CUJAS 2005)*

[10] portugaliis sissxlis samarTlis kodeqsis me-14 muxli adgens :
`1. ganzrax moqmedebsis, vinc miznadisaxavs, Caidinos kanoniT gaTvaliswinebuli danaSaulebrivi qmedeba.
2. ganzrax moqmedebs aseve is, vinc iTvaliswinebs rom mis qmedebas aucilebelad Sedegad mohyveba kanoniT gaTvaliswinebuli danaSaulis Semadgenlobis ganxorcieleba
3. ganzrax moqmedebsis, visac Secnobili aqvs, rom mis qmedebas SesaZlebelia mohyves kanoniT gaTvaliswinebuli danaSaulis Semadgenlobis ganxorcieleba da eTanxmeba mas".
http://www.verbojuridico.net/download/portuguesepenalcode.pdf

[11] ix. Jean Pradel, SeniSvna 9.

[12] iqve. gv. 135, 151.

Jan largie, sisxlis samarTalis zogadi nawilis saxel mZRvanel oSi ganzrax bralis axasiaTebs sami elementiT: I. Sedegis gaTval iswinebiT, II. Sedegis survil iT, III. qmedebis kanonsawinaaRmdego xasiaTis SecnobiT[13].

konti da mestr diu Samboni miiCneven, rom danaSaul ebrivi ganzraxva SeiZl eba Sedardes isris mtyorcnels, romelic Tavis isars garkveuli miznisaken mimarTavs. am mosazrebiT, isini akritikeben im avtorebs, roml ebic ganzraxvas ganmartaven rogorc mavne Sedegis gamowwevis survils. maTi azriT, ganzraxva aris ara mxolod survili, aramed nebel obiTi miswrafeba garkveuli Sedegebis gamowwevisaken. Sesabamisad, SesaZl ebel ia pirs arc ki hqondes garkveuli Sedegebis `aqtiuri” survil i, magram is nebel obiT iswrafvodes am Sedegebisaken. magal iTad, pirs romel ic Segnebul ad Cadis cru dasmenas misi mier Cadenil i danaSaulis sxvaze gadabral ebis da pasuxismgebl obis Tavidan acil ebis mizniT, SesaZl ebel ia arc surdes sxvisTvis zianis miyeneba, magram is Cadis ganzrax danaSaul s[14].

rac Seexeba eventual uri ganzraxvasa, frangul i samarTal i mas (dol eventuel) ganzraxvis formad ar miiCnevs da gadaaqvs gaufrTxil ebl obaSi. frangul l iteraturaSi xSirad ixsenieben kazuss sahaero kompaniis direqtorze, romel mac winaswari SecnobiT eqspl oataciaSi gauSva gaumarTavi TviTmfrinavi. aseve kazuss avtomobil is mZRol ze, romel mac nisl is pirobebSi mosaxvevSi gadauswro meores avtomanqanas, mZime, gadavida gzis marj vena mxares da Seejaxa pirispir momaval avtomobil s. frangi avtorebis mosazrebiT, bral is es forma ganzraxvasa da gaufrTxil ebl obas Soris mdebareobs, magram misi ganzraxvasTan gaigiveba dauSvebel ia anal ogiis akrZal vis gamo[15].

miuxedavad imisa, rom eventual uri ganzraxva, frangul i sisxl is samarTl is mixedviT, ekuTvnis gaufrTxil ebel i bral is kategorias, sisxl is samarTl is kodeqsSi arsebobs cal keul i Semadgenl obebi, sadac simZimis mixedviT eventual uri ganzraxva pirdapir ganzraxvas utol deba, aseTia mag. ganzrax cecxl is wakideba, romel mac gamoiwvia sikvdil i, an erTi an ramdenime piris sxeul is dazianeba (322-10-e muxl i), aseve, 15 wl is bavSvis mimarT ganxorciel ebul i Zal adoba, romel mac misi sikvdil i gamoiwvia (mux. 224-7), Zal adoba, romel mac gamoiwvia Sromisunarianobis samudamo dakargva (muxl i 223-1), TviTmfrinavis, gemis an saj aro transportis gataceba, ramac gamoiwvia sikvdil i (mux. 224-7) am Semadgenl obebSi danaSaul ebrivi Sedegis gamowweva eventual uri ganzraxviT an gaufrTxil ebl obiT utol deba Sedegis ganzrax gamowwevas da TiTqmis igive an miaxl oebul i simkacriT isj eba.

aseve arsebobs sakmaod farTod formul irebul i muxl i 222 -7, romel ic adgens:
`Zal adoba, romel mac gamoiwvia msxverpl is unebl ie sikvdil i, isj eba 15 wl iT Tavisufl ebis aRkveTiT”. es muxl ic aseve erT kategoriaSi aqcevs da erTnairi simkacriT sj is eventual ur ganzraxvasa da gaufrTxil ebl obas Sedegis mimarT.

maSasadame, frangul i samarTal i, romel ic eventual ur ganzraxvas ar cnobs ganzraxi bral is formad, cdil obs garkveul wil ad, kazuisturad Seavsos amiT gamowweul i sakanonmdebl o vakuumi, Tumca zogierTi frangi avtori cdil obs, miaRwios eventual uri

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[12]**Jean Largunier**: *Droit Pénal General (*Dalloz 1999) p.42.

[13]**Jean Largunier**: *Droit Pénal General (*Dalloz 1999) p.42.

[14]**И. Д.Козочкина:** *Уголовное право зарубежных государств.* ст. 275-277.

[15]**Michele-Laure Rassat**: *Droit PénalGeneral* (Ellipses, 2004) p. 338.

ganzraxvis sakanonmdeblo wesiT aRiarebas, magram am mcdelobebs jerjerobiT Sedegi ar moutania[16].

axla ganvixilavT samarTlebrivi sistemebis im jgufs, romlebic eventualur ganzraxvas bralis cal ke formad gamoyofen kl asikur ganzraxvasa da gaufrTxileblobas Soris. bralis es forma romelsac `recklessness" (ugunureba, udardeloba) ewodeba miRebulia ZiriTadad saerTo samarTlis sistemis qveynebSi (aSS-Si, inglisSi).

amerikis SeerTebul i Statebis modeluri sisxlis samarTlis kodeqsi (**model penal code**), erTmaneTisgan gamoyofs bralis oTx formas:

1. piri moqmedebs gamiznulad (**with purpose**), Tu misi mizania konkretuli qmedebis Cadena an konkretul i Sedegis gamowveva.

2. piri moqmedebs Secnobilad (**knowingly**), rodesac man icis, rom praqtikulad udavoa (**practically certain**) misi qmedebiT konkretul i Sedegis gamowveva[17].

3. piri moqmedebs ugunurad (**recklessly**), rodesac is cnobierad ugulvebelyobs konkretul i materialuri elementis arsebobis an Sedegis dadgomis arsebiT da gaumarTlebel risks.

4. piri moqmedebs gaufrTxileblobiT (**negligently**), Tu mas ar surs Sedegis dadgoma, magram ar axorcielebs am Sedegis Tavidan asacilebel gonivrul windaxedulobis movaleobas (rac aseve gul isxmobs Sedegis dadgomis safrTxis arcodnas).

rac Seexeba inglisis sisxlis samarTals, aq ganzraxvisa da ugunurebis (**recklessness**), ugunurebisa da gaufrTxileblobis (**negligence**) erTmaneTisgan gamijvna sakanonmdeblo, sasamarTlo da akademiur doneze, aseve, dausrulebeli debatebis sagans warmoadgens.

gasuli saukunis 80-ianwlebamde lordTa palata ganzrax danaSaulad akval ificirebda im SemTxvevas, rodesac bral debuli iTvali iswinebda sazogadoebrivad saSiSi Sedegis dadgomis maRal albaTobas, magram lordTa palatis gadawyvetilebiT saqmeze - `**Moloney~ _** yvela es SemTxveva CaiTvala ugunurebis (**recklessness**) sferod. sasamarTlo praqtikis Semdgomi ganviTarebis Sedegad ganzraxi bralis definicia Semoifargla im SemTxvevebiT, roca pirs an surs Sedegis gamowveva, an praqtikulad darwmunebulia mis dadgomaSi (**virtual certainty**), an icis rom es Sedegi dadgeba movlenaTa Cveulebrivi ganviTarebis gziT, Tu moqmedi piri dasaxul mizans miaRwevs[18].

am klasifikaciidan gamomdinare, rogorc inglisuri, aseve, amerikuli samarTliT (modelur kodeqSi asaxuli pozicia) Cven mier zemoT moyvanili meore kazusi

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[16] iqve. miSel -lor rasa mwuxarebas gamoTqvams imis gamo, rom frangul i samarTlis mixedviT, Cven mier moyvanili meore kazusis msgavsi SemTxveva (Tundac, rodesac moqmedi piri egueba Sedegis dadgomas) gaufrTxileblobad unda dakval ificirdes. gv.336.

[17] ganzrax bralis am ori formis gradacia praqtikul mniSvnelobas iZens zogierTi Statis samarTalSi. magal iTad alaskas da luizianas StatebSi sxvisi sicocxl is gamiznuli xelyofa warmoadgens pirvel i xarisxis, xol o Secnobil i xel yofa — meore xarisxis mkvl el obas ix. **C. Clarkson** and **H. Keating,** "*Criminal Law*" (fourth edition, 1998), gv.153.

[18] samarTlis komisiis mier SemuSavebuli 1989wlis sisxlis samarTlis kodeqsis proeqtiT: `piri moqmedebs ugunurad (**recklessness**) Sedegis mimarT, roca man icis, rom arsebobs am Sedegis dadgomis safrTxe da mis mier Secnobil garemoebebSi aragonivrulad warmoqmnis am safrTxes". rac Seexeba ugunurebis gamijvnas gaufrTxileblobigan, is aseve dausrulebeli davis sagania da sakiTxis moculobis gamo masze ar SevCerdebiT. am sakiTxis farTo mimoxil va ix. **C. Clarkson** and **H. Keating** "*Criminal Law*" fourth edition, 1998.

moeqceva ugunurebis (recklessness) kategoriis qveS, romelic dafaravs rogorc eventualur ganzraxvas, aseve, TviTimedovnebas[19].

probl emis amdagvari gadawyvetis miuxedavad, rogorc frangul i sistemis msgavsad ingl isur-amerikul i samarTal ic cdilobs Seavsos is vakuumi, rac gamowveul ia eventualuri ganzraxvis ganzraxi bralis gareT gamotaniT.

inglisur samarTal Si upirvelesyovlisa bevri danaSaul i SeiZl eba Cadeni l iqnes rogorc `ganzrax, aseve, ugunurebiT", Sesabamisad qmedebis kval ifikaciisaTvis mniSvnel oba aRar aqvs, bral is am ori formidan romel i iqna warmodgenil i[20]. magal iTad, qonebis ganadgureba cecxl is wakidebiT (crime of arson) SeiZl eba Cadeni l iqnes rogorc ganzrax, aseve, ugunurebiT, Sesabamisad qmedebis kval ifikaciisaTvis mniSvnel oba ar aqvs bral is formas.

rac Seexeba sicocxl is winaaRmdeg mimarTul danaSaul ebs, rogorc amerikul i, aseve, ingl isuri samarTal i erTmaneTisgan ganarCevs ganzrax (murder) da gaufrTxil ebel (manslaughter) mkvl el oba. adamianis sicocxl is mizanmimarTul i an Secnobil i xel yofa kval ificirdeba rogorc `murder", xol o ugunuri an gaufrTxil ebel i xel yofa – rogorc `manslaughter".

miuxedavad am dayofisa, model uri sisxl is samarTl is kodeqsi ganzrax mkvl el obad akval ificirebs im SemTxvevas, rodesac sicocxl is xel yofa xdeba iseT garemoebaSi romel ic avl ens damnaSavis `eqstremal ur gul gril obas adamianis sicocxl is mimarT"[21].

mas Semdeg, rac mimovixil eT eventualuri ganzraxvis probl ema da misi gadawyveta sxvadasxva samarTl ebriv sistemebSi, gvinda oriode sityviT SevexoT eventualuri ganzraxviT Cadeni l i danaSaul is mcdel obis sakiTxs. zemoT dasaxel ebul i qveynebidan meore da mesame jgufis sistemebSi rogorc samarTl is Teoria, aseve, praqtika cal mxrivad gamoricxavs eventualuri ganzraxviT mcdel obis Cadenis SesaZl ebl obas, rac gasagebicaa imis gamo rom danaSaul is mcdel oba l ogikurad moiTxovs ganzrax bral s. rac Seexeba, pirvel i jgufis qveynebs, Cvens xel T arsebul i l iteraturiT, eventualuri ganzraxviT danaSaul is mcdel obas dasaSvebad miiCnevs germanul i sisxl is samarTl ebrivi dogmatika[22] da aseve aRiarebul i iqna ital iis sakasacio sasamarTl os 1983 wl is gadawyvetil ebiT, Tumca Semdgom 1992 wel s, miRebul iqna sxva gadawyvetil eba, romel mac uaryo eventualuri ganzraxviT mcdel obis Cadenis SesaZl ebl oba[23].

dasasrul s, daskvnis saxiT gvinda aRvniSnoT, eventualuri ganzraxvis SedarebiT samarTl ebriv anal izs mniSvnel oba aqvs saerTod bral is, rogorc sisxl is samarTl is erT erTi umTavresi institutis, misi formebis kargad Seswavl isa da gaazrebisaTvis, vinaidan, rogorc zemoT vnaxeT, eventualuri ganzraxva ganzraxvisa da gaufrTxil ebl obis zRvarze imyofeba da misi swori gaazreba mniSvnel ovania danaSaul is kval ifikaciisa da sisxl is samarl ebrivi marTl msajul ebis ganxorciel ebis procesSi.

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[19] anal ogiur daskvnas iZl eva markus duberi Tavis wignSi *"Einfuhrung in das US- Americanische Strafrecht"*, (**Verlag C. H.** Beck Munchen 2005).

[20] gv. 154.

[21] ix. **C. Clarkson and H. Keating**, p. 649.

[22] **Hans Heinrich Jescheck**. dasaxel ebul i naSromi. gv. 417.

[23] **Jean Pradel**, **Alberto Cadoppi** dasaxel ebul i naSromi gv. 139.

giorgi lancava

saqarTvelos advokatTa asociaciis wevri
advokati saerTo special obiT

ukrainis, saqarTvelos, azerbaijanis, yazaxeTis respublikebisa da ruseTis federaciis sisxlis samarTlis kodeqsebSi kompiuteruli danaSaulis normebi

> `erTs abrZolebs fxizeli angariSi, meores-
> uflebis Sel axviT gamowveuli tkivili, mesames-
> SegrZneba Tavisi movaleobis, anu uflebis
> wminda idea da sxva, xolo yvela isini
> ebrZvian Zaladobas da usamarTlobas"
> *rudolf fon ieringi*

Sesavali

ukrainis, saqarTvelos, azerbaijanis, yazaxeTis respublikebisa da ruseTis federaciis saxelmwifoTa sisxlis samarTlis kodeqsebSi[1] kompiuteruli danaSaulis arsebobisa da ganviTarebis istoria saSualod aTiode wels iTvlis. aRniSnuli saxelmwifoebi dsT-is wevr saxelmwifoebs Soris SevarCieT im niSniT imitom, rom maTma sisxlis samarTlis kodeqsebma yvelaze metad ganicada ruseTis federaciis sisxlis samarTlis kodeqsis kerZo nawilis 28-e Tavis recefcia. msoflio samarTlebrivi ganviTarebis Tval sazrisiT, danaSaulTan brZolisaTvis es normebi dRevandel realobasTan Seusabamo da arasakmarisia.[2] vidre aRniSnuli saxelmwifoebis sisxlis samarTlis kodeqsSi kompiuteruli danaSaulis Sesaxeb normebi SemuSavdeboda, manamde, ramdenime aTwleuliT adre, evropis rigi saxelmwifoebisa da aSS-s kanonmdeblebma TavianTi qveynebis sisxlis samarTlis kanonmdeblobaSi asaxes aw ukve kompiuteruli danaSaulad wodebuli dasjadi qmedebebi. jer kidev XX saukunis 70-ian wlebSi,[3] arsebuli realobidan gamomdinare, miRebul iqna calke kanonebi imisaTvis, rasac kompiuteruli danaSaulTan

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[1] ix.: http://www.cybercrimelaw.net

[2] magaliTad, saqarTvelos samarTal damcav organoebSi jer kidev ar arsebobs erTiani gamocdileba da sagamoZiebo praqtika amgvari danaSaulis mimarT, rac elementaruladqarTul samarTal damcav organoebSi samarTlebriv ucodinrobasa da samarTlebriv ukul turobaze metyvelebs. aseve ar arsebobs sasamarTlo gamocdileba da sasamarTlo praqtika saqarTvelos sisxlis samarTlis kodeqsis 284-e, 285-e, 286-e muxlebis mimarT (kompiuteruli danaSauli). ix.: saqarTvelos uzenaesi sasamarTlo. samecniero-praqtikuli recenzirebuli Jurnali `marTlmsajuleba~, #2, 2008. gv. 65-66. (saqarTvelos generaluri prokuraturis mier gacemuli sajaro informacia, statistikuri monacemebi saqarTveloSi 2001 wlidan 2008 wlis pirveli kvarTlis CaTvliT kompiuteruli danaSaulis Sesaxeb.)

[3] XX saukunis 70-iani wlebis bolos aw ukve yofil ssrk-is samarTal damcav sistemaSi daregistrirda pirveli kompiuteruli danaSauli q.vilniusSi (riga). ix.: saqarTvelos uzenaesi sasamarTlo. samecniero-praqtikuli recenzirebuli Jurnali `marTlmsajuleba~, #2, 2008. gv-69.

brZola, erTi mxriv, unda gaeadvilebina, xolo, meore mxriv, garkveuli, drouli biZgi unda mieca saxel mwifoebSi samomavlo samarTlebrivi bazis ganviTarebisaTvis amgvar danaSaulTa aRsakveTad anda prevenciisaTvis.[4] Sesabamisad, aseTi mciredi samarTlebrivi gasaqanis mqone kanonmdebl obiT, risi istoriul-obieqturi mizezebic ase Tu ise ukve cnobilia, kompiuterul danaSaulTan brZola arasakmarisia, miTumetes, sakanonmdeblo doneze.

imisaTvis, rom ganviTardes da ufro daixvewos xsenebuli xuTive saxel mwifos sisxlis samarTlis kanonmdebloba amgvari danaSaulis aRmosafxvrelad, saWiro iqneba aRniSnul saxel mwifoTa kompiuterul danaSaulTan brZolis mimarT sisxlis samarTlebriv midgomaTa zogadi komparativistuli analizi sisxlis samarTlis kodeqsebis mocemuli muxlebis mixedviT. dReisaTvis kompiuteruli usafrTxoebis problema pirvel xarisxovani xdeba.[5] zemoaRniSnulis simarTles kidev erTxel adasturebs 2008 wlis agvistoSi saqarTvelos saxel mwifos mimarT ruseTis federaciis da misi specsamsaxuris (usafrTxoebis federaluri samsaxuris) mier ganxorcielebuli agresia da pirdapiri terori yoveli SesaZlo mimarTulebiT da yvela SesaZlo saSualebiT saqarTvelos kibersivrcezec _ virtualuri realobis saomar frontze:[6] moxda saqarTvelos saxel mwifo uwyebebis vebsaitebis da kerZo vebsaitebis blokireba. maTze danaSaulebrivi zemoqmedeba iqna ganxorcielebuli. aqve unda aRiniSnos, rom Tanamedrove msoflioSi qveynis ganviTarebis dones misi kompiuterizaciis doniT gansazrvraven[7], igive kompiuterizaciis doniT ganisazRvreba Tanamedroveobaze pretenziis mqone qveynis Tavdacvisunarianobis donec, rac, rogorc viciT, erT-erTi umTavresia saxel mwifos arsebobisaTvis.

zemoT CamoTvlili respublikebis da ruseTis federaciis sisxlis samarTlis kodeqsebidan yazaxeTis sisxlis samarTlis kodeqsi erTaderTia, romelic kerZo nawilis me-7 TavSi yvelaze mcire adgils uTmobs kompiuterul danaSauls. es ukanasknel kompiuteruli danaSaulis Sesaxeb mxolod 227-e muxliT Semoifargla im dros, rodesac danarCeni oTxi qveynis, kerZod, azerbaijanis, ruseTis, ukrainis da saqarTvelos sisxlis samarTlis kodeqsebi kompiuteruli danaSaulis Sesaxeb sam-sam normas iTvaliswinebs, magaliTad, saqarTvelos sisxlis samarTlis kodeqsis kerZo nawilis me-9 karSi „danaSauli sazogadoebrivi uSiSroebisa da wesrigis winaaRmdeg" XXXV Tavi _ `kompiuteruli danaSauli" _ Tavis mxriv Seicavs sam muxls, esenia: muxli 284-e _ `kompiuter informaciasTan aramarTlzomieri SeRweva", muxli 285-e _ `egm-is damazianebeli programis Seqmna, gamoyeneba an gavrceleba" da muxli 286-e _ `egm-is, egm-is sistemis an maTi qselis eqspluataciis wesebis darRveva". ukrainis sisxlis samarTlis kodeqsis kerZo nawilis XVI kari _

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[4] lamara surguladZe, kompiuteruli danaSauli, komentari, Tbilisi, 2003w. gv.68-70.

[5] Компьютерная преступность и компьютерная безопасность. **Батурин Ю.М., Жодзишский А.М**. Москва.,1991г. Стр.71

[6] ix.: http://forum.ge/?showtopic=33880262 /5 seqtemberi, 2008 weli/ http://presa.ge/index.php?text=news&i=3473 /16 agvisto, 2008 weli/ http://forum.rustavi2.com/lofiversion/index.php/t6529-1250.html /8 agvisto, 2008 weli/ http://presa.ge/index.php?text=news&i=3474 /16 agvisto, 2008 weli/ http://pirveli.com.ge/index.php?option=com_content&task=view&id=6150&Itemid=52 /08 seqtemberi, 2008 weli/ http://presa.ge/index.php?text=news&i=4413 /19 seqtemberi, 2008 weli/ da a.S.

[7] Компьютерная преступность и компьютерная безопасность. Батурин Ю.М., **Жодзишский** А.М. Москва.,1991г. Стр.156.

„danaSaulebi eleqtro-gamomTvleli manqanebis (kompiuterebis), sistemebisa da kompiuterul i qselebis gamoyenebis sferoSi", moicavs sam muxls, esenia: muxli 361-e _ `ukanono Careva eleqtrogamomTvleli manqanebis (kompiuterebis), sistemebis, kompiuteruli qselebis da eleqtrokavSiris qselebis muSaobaSi", muxli 362-e _ `kompiuteruli informaciis gataceba, miTviseba, gamoZalva an misi xelSi Cagdeba TaRliTobis an samsaxurebrivi mdgomareobis borotad gamoyenebiT" da muxli 363-e _ `avtomatizebuli eleqtro-gamomTvleli sistemebis eqspluataciis wesebis darRveva". ruseTis federaciis sisxlis samarTlis kodeqsis kerZo nawilis XXVIII Tavis (`danaSaulebi kompiuterul informaciis sferoSi")sami muxli exeba aRniSnul problemas: muxli 272-e _ `kompiuterul informaciasTan aramarTlzomieri SeRweva", muxli 273-e _ `egm-is damazianebeli programebis Seqmna, gamoyeneba da gavrceleba" da muxli 274-e _ `egm-is, egm-is sistemis an maTi qselebis eqspluataciis wesebis darRveva". azerbaijanis respublikis sisxlis samarTlis kodeqsis kerZo nawilis XXX TavSi _ „danaSaulebi kompiuterul informaciis sferoSi" _ sami muxlia: muxli 271-e _ `aramarTlzomieri SeRweva kompiuterul informaciasTan", muxli 272-e _ `egm-is damazianebeli programebis Seqmna, gamoyeneba da gavrceleba" da muxli 273-e _ `eleqtrogamomTvleli manqanebis (egm-is), egm-is sistemebis an maTi qselebis eqspluataciis wesebis darRveva". yazaxeTis respublikis sisxlis samarTlis kodeqsis kerZo nawilis VII TavSi _ „danaSaulebi ekonomikuri danaSaulebis sferoSi", am sakiTxs exeba mxolod erTi muxli _ 227-e _ `aramarTlzomieri SeRweva kompiuterul informaciasTan, egm-is damazianebeli programebis Seqmna, gamoyeneba da gavrceleba".

Tumca kompiuteruli danaSaulis Sesaxeb muxlebs gacilebiT meti adgili SeiZleba ekavos xuTive qveynis sisxlis samarTlis kodeqsSi iseve, rogorc SesaZlebelia miReba calke samarTlebrivi aqtebisa, romlebic saWiroebisamebr damxmare da Semavsebeli xasiaTis iqneba amave sisxlis samarTlis kodeqsebisa da aRniSnul saxel mwifoebSi zogadad kompiuterul danaSaulTan brZolaSi, magram istoriuli da samarTlebrivi procesebis Tanaxmad, am saxel mwifoebs ar hqondaT samarTlebrivi ganviTarebis dro da saSualebebi, romlebic gaaCnda evropul qveynebis umravlesobas. rigi istoriuli-samarTlebrivi mizezebis gamo, rodesac kompiuteris, rogorc kacobriobis udidesi nabijisa da, aseve, Cveulebrivi materialuri sikeTis saSualebiT pirveli marTl sawinaaRmdego qmedeba registrirebul iqna amerikis SeerTebul Statebis iusticiis sistemaSi[8]. im dros aRniSnuli xuTi saxel mwifos samarTal damcavi organoebi, elementarulad, aseTi samarTal darRvevis Cadenis SesaZleblobis Sesaxeb umetes SemTxvevaSi (99%) fantastikis donezec ki ar flobdnen informacias. amdenad, sabWoTa kavSiris daSlis Semdeg warmoqmnil am xuTi damoukidebeli axal gazrda saxel mwifos kanonmdeblebs 90-iani wlebSic ar SeeZloT mieRoT kompiuteruli danaSaulis Sesaxeb iseTi daxvewili xasiaTis calkeuli normebi Tu samarTlebrivi aqtebi, rogorc es evropam da aSS-m SeZlo 70-iani wlebidan.

yazaxeTis sisxlis samarTlis kodeqsis 227_e muxli dasjad qmedebad acxadebs `aramarTlzomier SeRwevas kompiuterul informaciasTan, egm-is damazianebeli programis Seqmnas, gamoyenebasa da gavrcelebas". aRniSnuli norma aerTianebs

[8]saqarTvelos uzenaesi sasamarTlo. samecniero-praqtikuli recenzirebuli Jurnali `marTl msajuleba~, #2, 2008. gv-69.

im sxvadasxva qmedebaTa erTobliobas, romlebic Tavisi logikuri da samarTlebrivi xasiaTis gamo saqarTvelos, ruseTisa da azerbaijanis sisxlis samarTlis kodeqsebSi or-or normaSia gadanawilebuli, magaliTad, `aramarTlzomieri SeRwreva kompiuterul informaciasTan" gaTvaliswinebulia saqarTvelos sisxlis samarTlis kodeqsis 284-e muxliT calke da `egm-is damazianebeli programis Seqmna, gamoyeneba da gavrceleba" gaTvaliswinebulia calke _ amave kodeqsis 285-e mulxiT. aseve, ruseTis sisxlis samarTlis kodeqsis 272-e muxliT `kompiuterul informaciasTan aramarTlzomieri SeRweva~ gaTvaliswinebulia calke da calke 273-e muxliT _ `egm-is damazianebeli programis SeZena, gamoyeneba da gavrceleba~. asevea azerbaijanis sisxlis samarTlis kodeqsSi, sadac `aramarTlzomier SeRwevas kompiuterul informaciasTan~ Seicavs kerZo nawilis 271-e muxli calke da `egm-is damazianebeli programebis Seqmnas, gamoyenebasa da gavrcelebas,~ _ 272-e muxli calke. aqve unda aRiniSnos, rom ruseTis sisxlis samarTlis kodeqsis 272-e, 273-e muxlebi da azerbaijanis sisxlis samarTlis kodeqsis 271-e, 272-e muxlebi TiTqmis analogiuria normaTa Tanmimdevrobit, raodenobiT da identuri saxel wodebebiT saqarTvelos sisxlis samarTlis kodeqsis 284-e, 285-e muxlebisa.

ukrainis sisxlis samarTlis kodeqsi, romelic ruseTis (272-e muxli), saqarTvelosa (284-e muxli) da azerbaijanis (271-e muxli) kodeqsebis Sesabamisi normebis mixedviT `aramarTlzomier SeRwevas kompiuterul informaciasTan", aRwers kodeqsis 362-e muxliT _ `kompiuteruli informaciis gataceba, miTviseba, gamoZalva an misi xelSi Cagdeba TaRliTobis an samsaxurebrivi mdgomareobis borotad gamoyenebiT", rac, yazaxeTis sisxlis samarTlis kodeqsis msgavsad, aerTianebs sxvadasxva qmedebebs, romlebic, Tavisi logikuri da gansxvavebuli samarTlebrivi xasiaTidan gamomdinare, saqarTvelos, ruseTisa da azerbaijanis sisxlis samarTlis kodeqsebSi or-ori normiT aris warmodgenili. ukrainis sisxlis samarTlis kodeqsi saqarTvelos, ruseTisa da azerbaijanis sisxlis samarTlis kodeqsebis kompiuteruli danaSaulis Sesaxeb normebisagan gamoirCeva kidev imiTac, rom ukrainis sisxlis samarTlis kodeqsis 362_e muxli iZleva normis saTauriTa da misi dispoziciiebis SinaarsiT qmedebaTa iseT kvalificiur Semadgenlobas, rogorsac ar icnobs arc saqarTvelos, arc azerbaijanisa da arc ruseTis sisxlis samarTlis kodeqsis normebi kompiuteruli danaSaulis Sesaxeb. magaliTad, ukrainis kodeqsis 362-e muxli dasaTaurebulia Semdegnairad: `kompiuteruli informaciis gataceba, miTviseba, gamoZalva an misi xelSi Cagdeba TaRliTobis an samsaxurebrivi mdgomareobis borotad gamoyenebiT", maSin, rodesac saqarTvelos, azerbaijanis, ruseTisa da yazaxeTis sisxlis samarTlis kodeqsebis Sesabamisi muxlebi: `kompiuteruli informaciis gatacebas, miTvisebas, gamoZalvas an misi xelSi Cagdebas" TaRliTobiT ar exeba, amgvari Sinaarsis dispozicias da saxel wodebis normas ar icnobs.

rac Seexeba aRniSnuli xuTi saxel mwifos sisxlis samarTlis kodeqsebSi kompiuteruli danaSaulis Sesaxeb normebis sanqciebis saxeebs, SeiZleba iTqvas, rom normebis umravlesobas gaaCnia sanqciis alternatiuli saxe. magaliTad, saqarTvelos sisxlis samarTlis kodeqsis 284-e muxlis pirveli nawilis dispoziciiT kriminalizebuli qmedebisaTvis gankuTvnili sanqcia Seicavs sasjelis ramdenime

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sxvadasxva, erTmaneTisagan damoukidebel saxes: jarimas, gamasworebel samuSaos an Tavisuflebis aRkveTas. aseTive saxis sanqciebia gaTvaliswinebuli, magaliTad, ukrainis sisxlis samarTlis kodeqsis 362-e muxlis meore nawiliT, 363-e muxlis meore nawiliT, ruseTis sisxlis samarTlis kodeqsis 272-e muxlis pirveli nawiliT, azerbaijanis sisxlis samarTlis kodeqsis 271-e muxlis 271.1 nawiliT yazaxeTis sisxlis samarTlis kodeqsis 227-e muxlis pirveli nawiliT, sisxlis samarTlis kodeqsebis muxlebSi alternatiuli saxis sanqciebis arseboba iZleva saSualebas, marTlmsajuleba ganxorcieldes gacilebiT efeqturad da nayofierad, vidre mxolod erTi saxis sasjelis Semcveli sanqciiTaa SesaZlebeli es.

naSromSi SevecadeT, zogadad gveCvenebina, Tu ra msgavseba da gansxvavebaa ukrainis, saqarTvelos, azerbaijanis, yazaxeTis respublikebis da ruseTis federaciis sisxlis samarTlis kodeqsebis muxlebs Soris kompiuterul danaSaulis Sesaxeb. zemoaRniSnuli normebis redaqciebi Tavisi samarTlebrivi ganuviTareblobiT, samarTlebrivi teqnikis gaumarTaobiT da aseve Tavis droze ruseTis federaciis sisxlis samarTlis kodeqsis 272-e, 273-e da 274-e muxlebis saqarTvelos, azerbaijanis, ukrainisa da yazaxeTis kodeqsebSi kanonmdeblebis mier recefciis Sedegad miRebuli normebiT SeuZlebelia amgvar danaSaul obasTan real urad brZola. garda amisa, aRsaniSnavia isic, rom, samwuxarod, saqarTvelosa da azerbaijanSi kiberdamnaSaveobis Sesaxeb evropis sabWos 2001 wlis konvencia mxolod xelmoweris donezea dafiqsirebuli. axlo momaval Si aRniSnuli konvenciis ratificireba saqarTvelos parlamentis mier gamoiwvevs ganaxlebasa da cvlilebebs qarTul kanonmdeblobaSi kompiuteruli danaSaulis winaaRmdeg brZolaSi, riTac Cven kidev erT did nabijs gadavdgamT msoflios ganviTarebul qveynebTan Tanaswori urTierTTanamSromlobisaken, raSic kompiuteruli teqnologiebi cal saxad dadebiTad daexmareba Cvens qveyanas.

http://forum.rustavi2.com/lofiversion/index.php/t6529-1250.html

ზუხრა მაცაბერიძე
saqarTvelos teqnikuri universitetis
humanitarul-sociauri fakultetis samarTalcodneobis
departamentis asistent-profesori

kvleviTi orientaciebi da kriminologiis sagnis formireba

danaSaulobis Semswavleli mecnierebani erTmaneTs kvleviTi orientaciis mixedviT emijnea. kvleviTi orientacia warmoadgens mizans, ris miRebac surs mecniers saboloo jamSi kvlevis Sedegad. amasTan, kvleviTi orientaciebis meSveobiT xdeba im winaaRmdegobebis daZleva, romlebic SeiZleba arsebobdes ama Tu im mecnierebis sagnis formirebis procesSi. gamomdinare iqedan, rom xSirad rTuli sociauri obieqtebi sxvadasxva mecnierebaTa interesis sferoSi xvdebian, kvleviTi orientacia im erTgvar kompass emsgavseba, romlis saSualebaTac SesaZlebelia saWiro mimarTulebis gansazRvra, miT ufro, rom miznisken mimavali gza yovelTvis pirdapiri rodia da gamudmebiT gvixdeba am gzidan gadaxveva. am dros ki kompasis isari jiutad gviCvenebs saWiro mimarTulebas da gvaxsenebs, viyoT mizanmimarTulni da mobilizebulni morig winaaRmdegobebTan Sejaxebisas.

aSkaraa, rom pirveli kriminologebi, garofalos CaTvliT, Sepyrobili iyvnen bundovani ideiT imis Sesaxeb, rom danaSauli mxolod gulgrili arCevanis, `Tavisufali nebis~, gamomJRavnebis aqts ar warmoadgenda, rom igi winaswar iyo gapirobebuli im TaviseburebebiT, romlic imaviTve ido adamianSi da garkveul zewolas axdenda mis Tavisufali nebis gamovlinebaze. rogorc aRiniSna, CanasaxSi arsebuli ideis xorcSesxmas ki xeli Seuwyo SemdgomSi adamianTa Semswavlel mecnierebaTa ganviTarebam da kerZod kriminologiis fuZemdeblebma. dRes ukve arsebuli rekonstruirebuli codnis safuZvelze did sirTules aRar warmoadgens sisxlis samarTlis, samarTlis sociologiis, sasjel aRsrulebiTi samarTlis, sociologiisa da, raRa Tqma unda, kriminologiis mecnierebaTa kvleviTi orientaciebis gansazRvra.

sisxlis samarTlis mecnierebis kvleviTi orientacia ukavSirdeba mosazrebas, romlis Tanaxmad, arsebuli sazogadoebrivi wyoba samarTliania da iseT urTierTobebs warmoqmnis, romelTac dacva esaWiroeba. gamomdinare aqedan, yoveli moqalaqe valdebulia, iyos kanonmorCili. sruli WeSmaritebaa, rom sazogadoeba dinamiurad cvalebad organizms warmoadgens. masSi xdeba revoluciebi, xorcieldeba Zireul reformebi da ukve axal anda Tvisobrivad gardaqmnil sazogadoebaSi saWiroa xazi gaesvas samarTlianobis ideals, rogorc simtkicisa da uryeobis garants. winaaRmdeg SemTxvevaSi axlad Camoyalibebul sazogadoebriv urTierTobebSi sisxlissamarTlebrivi marTlmsajuleba ganwirulia TviTnebobisa da angariSsworebisaTvis.

sisxlis samarTlis kvleviTi orientaciis Tanaxmad, sazogadoeba ganixileba rogorc saxelmwifoebrivad organizebuli erToba, romlic aerTianebs uklebliv yvela moqalaqes. danaSauli ki gagebulia, rogorc disfunqcia, romlic xels uSlis sociauri organizaciis normalur saqmianobas. rac Seexeba danaSaulis subieqts _ igi

aRniSnuli disfunqciis matarebeli piria, misi personaluri gansaxierebaa. imisaTvis, rom socialuri meqanizmi normalur funqcionirebas ganagrZobdes, saWiroa misi gaTavisufleba uvargisi detalebisgan. asec iqceodnen yovel Tvis. am Tval sazrisiT, civiluri sazogadoeba bevrad ar gansxvavdeba misi winamorbedisagan. ase, magaliTad, Zvel germanul, kavkasiur tomebSi, Zvel saberZneTSi da sxva. wesrigis damrRvevT tomidan moikveTdnen. odnav mogvianebiT, rodesac aRmoCenil iqna amerika, avstralia, wynari okeanis kunZulebi, xelisufleba kvlav daubrunda Cveul meTodebs: metropoliebidan koloniebSi iwyes damnaSaveTa gadasaxleba. inglisi am miznisaTvis Crdiloer amerikas, mogvianebiT ki avstralias iyenebda, ruseTi _ cimbirs da Soreul aRmosavleTs.

droTa ganmavlobaSi dedamiwaze swrafma totalurma dasaxlebam, sazogadoeba aiZula uari eTqva iafasian da imavdroul ad garkveuli xarisxiT misTvis xel sayrel sasjelis aRsrulebis amgvar poziciaze da mogvianebiT damnaSaveTa cixeebSi gamomwyvdevis, an, ubralod, maTi fizikuri ganadgurebisaken ubiZga. rogorc vxedavT, kavSiri awmyosTan aSkaraa.

danaSauloba sisxlis samarTalSi gagebulia, rogorc calkeul danaSaulTa, disfunqciaTa erTobliioba, romel Tanac brZola calkeul elementebze zemoqmedebis gziTaa SesaZlebeli.

sisxlissamarTlebriv orientaciaTa SezRuduloba mdgomareobs imaSi, rom mkvlevaris yuradRebas ar warmarTavs danaSaulobis gamomwvev da xelSemwyob pirobebze da amas ar akeTebs imitom, rom sisxlis samarTlis mecnierebaSi pirobiTad miCneulia, rom arsebuli sazogadoebrivi mowyoba samarTliania da aqedan gamomdinare _ myaric. maS, ra saWiroa SeviWraT iq, sadac wesrigi sufevs?! pirobiToba aSkarad arsebobs. swored es iyo mizezi, sisxlis samarTals xSir SemTxvevaSi uari eTqva danaSaul obasTan brZolaze. gansakuTrebiT ki maSin, rodesac sisxlissamarTlebriv zemoqmedebis RonisZiebebs socialuri dacvis RonisZiebebi cvlida. Tuki sazogadoebis arsebuli forma samarTliania da aseT mdgomareobaSi mas SeuZlia saukuneebi iarsebos, maSin raRa saWiroa am Tavsatexi kanonebis miRebis mkacrad daTqmuli procedura? isRa dagvrCenia, rac SeiZleba operatiulad movaxdinoT damnaSaveTa sazogadoebisgan izolireba. sisxlissamarTlebrivi meTodebiT danaSaulobaze zemoqmedebis uaris Tqmis mcdeloba, rogorc cnobilia, sazogadoeba savalalo Sedegebamde miiyvana, rac mogvianebiT progresuli sazogadoebis msjelobis sagnad iqca. sxva saqmea sisxlissamarTlebrivi kvleviTi orientaciis SezRudulobis problema, romelic SesaZloa daZleul iqnes danaSaulobaze zemoqmedebis sxva meTodebis SemuSavebis gziT.

erT-erT aseT meTods kriminologia warmoadgens. es ukanaskneli sisxlis samarTlisagan iTavsebs kvlevis obieqts anu qmedebas, romelic danaSaul adaa miCneuli. es misTvis iseTive konstantaa, rogorc dedamiwa mrgvalia da mzis garSemo brunavs.

rac Seexeba sazogadoebasa da mis mowyobas, kriminologiaSi, sisxlis samarTlisagan gansxvavebiT, miiCneven, rom igi cvalebadi da mraval ferovani organiznia, romelic sxvadasxva jgufebis, fenebisagan Sedgeba, aqedan gamomdinare, masSi Semecnebis gansxvavebuli formebi da saxeebi arsebobs. kriminologiaSi individi gagebulia rogorc warmomadgeneli rTuladmowyobili sazogadoebisa. damnaSavis pirovneba da danaSaulis subieqti, Tavisi Sinaarsis Semcvelobidan da mocul obidan gamomdinare, gansxvavebuli cnebebia.

kriminologiis kvleviTi orientacia safuZvels iRebs ra zustad dadgenil danaSaul Ta wridan, mowodebulia gamoavlinos maTi gamomwvevi mizezebi. rac Seexeba damnaSavis pirovnebaze zemoqmedebis problemas, misi gadaWris erTaderT gzas, es ukanasknel i swored im sazogadoebriv urTierTobebsa da sazogadoebriv cnobierebaze zemoqmedebaSi xedavs, romlis matarebelsac, rogorc sociumis wevri, TviT pirovneba warmoadgens.

sisxlis samarTlis mecnierebis kvleviTi orientaciisagan gansxvavebiT, kriminologiis kvleviTi orientacia sxvagvarad xsnis danaSaul obisa da danaSaulis arss. danaSaul oba, kriminologiis Tval sazrisiT, mxolod calkeul danaSaulTa erTobl ioba rodia, aramed igi arsebuli sazogadoebrivi mowyobis gardaualObis movlenaa, romlic mWidrodaa masTan dakavSirebuli da Tavis gamovlinebebSi _ masze damokidebuli. rac Seexeba danaSaul s, es ukanasknel i kriminologiaSi gagebulia rogorc realizebul i qcevis erT-erTi varianti, ramdenadac individebs msgavs situaciaSi SeswevT unari, sxvadasxvagvarad imoqmedon. amasTan, kriminologia, ra Tqma unda, ar uaryofs danaSaulis disfunqciurobas da aRiarebs, rom marTl sawinaaRmdego qcevis Sesabamis variantTa realizebas safuZvl ad swored sazogadoebrivi cxovrebis kanonzomierebani udevs, romelTa arsebobiTa da Zal isxmeviT isini xel s uSl is sazogadoebrivi organizmis normal ur funqcionirebasa da ewinaaRmdegeba masSi arsebul social ur Rirebul ebebs.

TeoriaSi sakmao sirTul iT gamoirCeva damnaSaveobisa da danaSaulis cnebaTa urTierTdamokidebul obis probl ema. aRniSnul i sakiTxi araerTgvarovnadaa gagebul i kriminologiasa da sisxlis samarTl Si. kriminologiuri azrovnebis Tanaxmad, danaSaul oba, rogorc social uri qcevis (ufro zustad ki _ antisocial uri qcevis) gansakuTrebul i saxeoba calkeul danaSaulTa saxiT arsebobs da TiToeul danaSaul ebriv xel yofaTa erTobl iobaSi vl indeba. am Tval sazrisiT SegveZl o mxari dagveWira nominal istisTvis, romel ic disputSi ganacxadebda, rom danaSaul oba gamogonil i cnebaa da mxol od calkeul i danaSaul ebi arsebobsa, magram ukve Semecnebul i sakiTxi saSual ebas gvaZl evs im real istsac daveTanxmoT, romel ic daamatebda, rom zogadi arsebobs, magram mxol od erTeul Ta saxiT gamovl indeba. aRniSnul Tan dakavSirebiT karga xnis win ketl em SeZl o daesabuTebina, rom danaSaul oba damoukidebel i saxiT arsebobs da misma gansazRvrebam ar SeiZl eba amowuros is damaxasiaTebel i Taviseburebebi, roml ebic calkeul danaSaul ebs axl avs Tan.

dRes ukve Semecnebul ia kriminologiis is nakl ovaneba (arasakmarisoba), romel ic mis ZiriTad ideas ukavSirdeba. ase, magal iTad: Tuki vadasturebT sazogadoebis mudmiv cval ebadobas, l ogikuria, sisxlis samarTl is kanonTa sistematur cvl asac vuWerT mxars. erTi ram cxadia, xSirad kanonebi ise swrafad icvl eba, rom verc ki aswrebs cxovrebis ferxul Si Cabmas. arcTu ise didi xnis win sisxl issamarTl ebriv pasuxismgebl obas akisrebdnen im pirebs, roml ebic kerZo samewarmeo saqmianobas eweodnen. dRes ki maT `sabazro ekonomikis pionerebs" uwodeben. aRniSnul idan gamomdinare, erTi mxriv, isRa dagvrCenia, rac SeiZl eba swrafad movargoT kanoni mudmivad cval ebad sazogadoebriv movl enebs, meori mxriv, kanonTa xSiri cvl a sisxlis samarTl is pol itikis sisusteze migvaniSnebs. Zvel romael ebs, ganTqmul T l akonurobiTa da paradoqsul i msjel obiT, ekuTvniT gamoTqma: `dae, daiqces samyaro, magram kanonma izeimos~. magal iTad, sabWoTa kavSirSi, raoden paradoqsul ic ar unda iyos, sisxlis samarTl is kanonis meSveobiT cdil obdnen aRmosavl uri orTabrZol ebis akrZal vas,

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katebisa da Citebis puriT gamokvebas da sxva. saboloo jamSi, amgvar politikas Sedegad mohyva arsebuli reJimis ngreva da masTan erTad im kanonebisac, romlebic aRniSnul reJims icavda.

imavdroulad vadasturebT, rom kanonebi cvalebadobas unda eqvemdebarebodes. amasTan, sasurvelia, aRniSnuli procesi mecnierul kvlevebs efuZvnebodes. magram, rac Seexeba sisxlis samarTlis kanonTa efeqturobasTan dakavSirebul kvlevebs, es ukanasknel ara kriminologiis, aramed ukve sxva mecnierebis sferoSi unda mimdinareobdes. kriminologi, romelic cdilobs sakuTari mecnierebis farglebSi daasabuTos kanonTa cvalebadobis aucilebloba, rogorc ityvian, im tots Wris, romel zedac zis. danaSaulebriv qmedebaTa wris intensiuri cvalebadoba kriminologs arTmevs SesaZleblobas, gamoimuSaos sakuTari samecniero kanonebi da mecnierul brunvaSi SemoiRos mudmivi kriminologiuri faqtebi. kriminologiis SezRuduloba aRniSnuli Tval sazrisiT SesaZlebelia daZleul iqnes sxva mecnierebis, kerZod ki sisxlis samarTlis sociologiis daxmarebiT.

sisxlis samarTlis sociologiis ZiriTadi idea mdgomareobs imaSi, rom gamudmebiT icvleba sazogadoeba da socialuri pirobebi, ris gamoc aucilebelia sakanonmdeblo cvlilebaTa ganxorcieleba. imavdroulad, sakuTriv sazogadoeba Tavisive wevrebis mimarT miznad iseT moTxovnebs saxavs, romlebic mudmivia, rogorc mocemuli tipis sazogadoebisTvis, aseve, civilizebuli kacobriobisTvis. icvleba ra sazogadoebrivi wyoba, masTan erTad icvleba sisxlis samarTlis kanonmdebloba. ubralo Sedarebac ki Zveli da dRes moqmed sisxlis samarTlis kodeqsTa struqturebisa, Tval naTliv adasturebs RirebulebaTa orientaciis cvlas, amitom, sisxlis samarTlis sociologiis Tanaxmad, kanonis konstruireba unda xorciel debodes iseTi moTxovnebis dacviT, rogorebicaa: misi Sesabamisoba miznis miRwevis aucileblobasTan, mosaxleobis optimaluri mxardaWeris uzrunvelyofa da, rac mTavaria, igi ar unda axdendes samarTal darRvevaTa provocirebas.

aSkaraa, rom sisxlis samarTlis sociologiis kvleviTi orientacia gansxvavebulad ayalibebs identuri terminebiT aRniSnul cnebaTa Sinaarss. ase, magaliTad, Tu kriminologiaSi danaSaulobis klebas ZiriTadad cxovrebiseuli pirobebis Secvlas ukavSireben, sociologiaSi aRniSnuli movlena kanonis gamafrTxilebeli funqciiT aixsneba.

 mxedvelobaSi miiReba ra mosaxleobis farTo fenebis damokidebuleba kanonisadmi, rogorc samarTliani kategoriis mimarT, sisxlis samarTlis sociologiaSi sxvagvaradaa aRqmuli individi: igi arc danaSaulis subieqtad aRiqmeba da arc im personad, romlis qmedebaSic danaSaulis mizezi gansaxierdeba. individi, sisxlis samarTlis sociologiis Tanaxmad, tipiuri warmomadgenelia im socialuri jgufisa, romlis reaqciac axal kanonTa mimarTebaSi misive jgufis reaqciis prezentacias warmoadgens.

erTi ram cxadia _ yvelaze samarTlian kanonsac ki ar Seswevs Zala, iyos upirobo moraluri avtoriteti yvela moqalaqisTvis. faqtia, adamianTa garkveuli nawili Cadis danaSauls, romelsac Sedegad sasjeli mosdevs. Tu mxedvelobaSi miviRebT im realobas, rom faqtobrivad SeuZlebelia saboliood gaTavisufldes sazogadoeba damnaSaveTagan da rom adre Tu gvian (sasjelis moxdis Semdgom) isini mainc Tavisufali moqalaqeni xdebian, aucilebelia maT resocializaciaze zrunva. sasjel aRsrulebiTi samarTlis sferos mkvlevarTa interesi koncentrirebulia

msjavrdebul is pirovnebaze. amasTan, igi iZul ebul ia, gamoikvl ios es ukanasknel i im
cxovrebiseul i pirobebidan mowyvetiT, romel Sic Camoyal ibda msjavrdebul i da romel Ta
zegavl enis Zal iTac SerCeul iqna danaSaul ebrivi qcevis esa Tu is varianti. maSasadame,
sasjel aRsrul ebiTi samarTl is kvl eviTi orientaciis Tanaxmad, pirovnebis koreqcia
SesaZl ebel ia im urTierTobaTa monawil eobis gareSe, romel Sic piri aqtiurad iyo
adre CarTul i, amasTan, im axal , misTvis mniSvnel ovnad Secvl il urTierTobebTan
Seguebis gziT, romel ic sasjel is moxdis procesSi yal ibdeba.

amgvari orientaciis winaaRmdegobrioba gansakuTrebiT SesamCnevia Tavisufl ebis
aRkveTis saxiT sasjel is moxdis SemTxvevaSi. aRniSnul is brwyinval e il ustrirebas
warmoadgens erT-erTi yofil i patimris monaTxrobi, romel mac cixidan gaTavisufl ebis
Semdeg karga xans ver SeZl o quCis gadakveTa im mizeziT, rom gadaCveul ma avtomobil is
moZraobis siCqares sakuTari moZraobis siCqare ver Seufarda. arada, sasjel is
erTerT mizans xom swored damnaSavis resocial izacia, misi sazogadoebis srul yofil i
da Tanabarufl ebian wevrad gardaqmna warmoadgens.

amgvari orientacia sociol ogiisa da fsiqol ogiis postul atsac ewinaaRmdegeba,
sadac prioriteti pirovnebis formirebisa da pereformirebis procesSi swored
garemo pirobebs eniWeba. garda amisa, aRniSnul i orientacia ganamtkicebs rwmenas
damnaSavis gamouswoerebl obis Sesaxeb. amasTan, unda SevniSnoT, rom damnaSavis
resocial izaciis procesTan dakavSirebul i mTel i rigi siZnel eebi penitencial ur
garemosTanaa dakavSirebul i.

sasjel aRsrul ebiTi samarTl is aRniSnul i kvl eviTi orientaciis winaaRmdegobrivi
xasiaTis gacnobiereba, special istebs ar aZl evT ufl ebas, gamudmebiT ifiqron e.w.
sasjel Ta `kibeze." mxedvel obaSi gvaqvs mkacri sasjel is SedarebiT msubuqi sasjel iT
TandaTanobiTi cvl a, rac, vfiqrobT, ufro metad uwyobs xel s Tavisufal cxovrebasTan
adaptirebis process. erTi sityviT, iseT sasjel Ta Zieba, romel ic SedarebiT
nakl ebwinaaRmdegobrivi iqneboda, mainc ar gvaZl evs damSvidebis safuZvel s manam,
sanam ar gamoiZebneba ufro efeqturi, srul iad arawinaaRmdegobrivi gza damnaSavis
Tavisufal da srul ufl ebian wevrad gardaqmnisa.

danaSaul obasTan brZol is probl emiT dakavSirebul sxvadasxva codnis sferoTa
Sedarebam aCvena, rom yovel i maTgani erTi da igive procesebsa da movl enebs ikvl evs.
amasTan, maT TiToeul i ganixil avs Taviseburad da Tanac ise, rom erT-erTi maTgani
ucvl el i rCeba. es, ra Tqma unda, pirobiToboa, radgan sxva codnis sferoSi igive
movl ena cval ebadia. erTi ram cxadia, rom amgvar pirobiTobas vercerTma mecnierebam
gverdi ver auara. sayovel Taod cnobil ia, rom niutonis kanonebs mxol od dedamiwaze
aqvT Zal a, sadac dro da sivrce mudmivia _ wuTi tol ia wuTisa da metri _
metrisa. sxvagvarad rogor SevqmnaT kanonebi dedamiwis miRma arsebul i mTel i
samyarosTvis, sadac, rogorc einSteinma daamtkica, dro da sivrce urTierTdamokidebul ia
da amasTanave _ aramudmivi. amitom iq niutonis kanonebi Zal as kargavs.

gamomdinare iqedan, rom sazogadoebaSi urTierTobaTa cval ebadoba ufro mniSvnel ovani
da SesamCnevia, ucvl el i wertil idan aTvl is saWiroeba sul ufro matul obs. sxvagvarad
al baT SeuZl ebel i iqneboda ara mxol od samecniero kanonebis, aramed im konkretul
rezul tatTa miReba, romel Ta dadasturebasac nebismieri sxva mkvl evaric SeZl ebda.
mecniereba yvel a sxva saxis SemoqmedebiTi saqmianobisagan swored imiT gansxvavdeba,

rom erTi da igive amocanis winaSe mdgomi nebismieri mecnieri, romelic problemis gadaWras identuri meTodebiT cdilobs, saboloo jamSi, erTnair Sedeges iRebs.

sazogadoebrivi mecnierebebi ar gamoirCeva iseTi `simkacriT~, rac, vTqvaT, zusti mecnierebebisTvisaa damaxasiaTebeli. isini mxolod iTvisebs maTematikur meTodebs. erTi ram ki cxadia _ cxovrebaSi yvelaze warmatebul ad aTvisebuli maTematikuri meTodic ki ver SeZlebs, frTebi Seasxas poetis ocnebas _ samyaro erT striqonSi aRweros. cxovreba sakmaod mraval ferovani da, amasTan, winaaRmdegobebiT aRsavsea. sazogadoebrivi mecnierebebi ki am mudmivad cvalebadi samyaros mxolod nawils asaxavs. amitom pirobiTobisa da dasaSveblobis fenomenis saWiroeba maTSi ufro mwvaved dgas, vidre sabunebismetyvelo mecnierebebSi. maT gareSe sakmaod rTuli iqneboda cvalebadi samyaros codnis erTian badeSi moqceva. aqedan gamomdinareobs swored is, rom dRes sazogadoebriv mecnierebebSi sakmaod aqtualuria moTxovna kvleviT orientaciebze.

kvleviTi orientacia gvexmareba, ganvsazRvroT saWiro mimarTulreba faqtebis labirinTSi. pirobiToba, mocemul SemTxvevaSi, (kvlevis obieqtTan dakavSirebiT winaswar gansazRvruli Sexeduleba) swored im amosaval wertils warmoadgens, saidanac safuZvels iRebs esa Tu is konkretuli mecniereba. amasTan, igi xazs usvams im sirTuleebs, romelic Tan axlavs danaSaulobasTan brZolas, gamomdinare iqedan, rom pirobiToba da daSvebuloba Cveni codnis SezRudulobis maCvenebelia.

nebismier mecnierebas da maT Soris _ kriminologias Sinaganad Tan sdevs garkveuli winaaRmdegobrioba, rac udaoa, maT ganviTarebaze sasikeTo zemoqmedebas axdens. amboben: genia paradoqsis megobaria, xolo rac Seexeba TviT paradoqss, igi praqtikuli saqmianobis mteria. Tu winaaRmdegobrioba dauZlevelia, maSin unda SevurigdeT danaSaulobas, vaRiaroT misi mudmivi xasiaTi da visaubroT mxolod mis SezRudvaze, socialurad mosaTmen donis SenarCunebaze da saerTod daviviwyoT fraza _ `danaSaulobis aRmofxvra.~

Sexeduleba danaSaulobis mudmiv xasiaTze iseTive Zvelia, rogorc saubrebi sikeTesa da borotebaze. miuxedavad imisa, ra Tval sazrisanic ar unda iyvnen mecnierebi, mainc Tanxmdebian imaze, rom danaSaulobasTan brZolis sxvadasxva saSualebebi mecnierulad dasabuTebuli, praqtikul gamoyenebaSi _ dabalansebuli da arawinaaRmdegobrivi unda iyos.

მარინა იომპანოვიჩ

saqarTvelos patentrwmunebuli,
maqs plankis saxelobis inteleqtualuri sakuTrebis,
konkurentuli da sagadasaxado samarTlis samecniero-kvleviTi
institutis stipendianti, q. miunxeni, germania.
iv.javaxiSvilis saxel mwifo universitetis iuridiuli
fakultetis doqtoranti

kompiuteruli programebis samarTlebrivi dacvis uzrunvelyofis sakiTxebi

qonebrivi uflebebi

saqarTvelos kanoni saavtoro da momijnave uflebebis Sesaxeb[1] (SemdgomSi _ kanoni) adgens nawarmoebis nebismieri saxiT gamoyenebis mTel rig gansakuTrebul uflebebs, romlebic qonebrivi uflebebis saxiT aris cnobili[2]. am uflebaTagan kompiuteruli programebis mimarT zogierTi ar gamoiyeneba, xolo zogi ki gamoiyeneba special uri debulebebis Sesabamisad[3].

gansakuTrebuli ufleba nawarmoebis gamoyenebaze (maT Soris, kompiuteruli programazec), sxva uflebebis msgavsad, warmoiSoba saavtoro samarTlis sferoSi arsebuli standartebis dacviT, anu igi saavtoro uflebis mflobelis nebarTvis an akrZalvis uflebas warmoadgens. marTlzomier momxmarebels (ar igulisxmeba avtori an misi uflebamonacvle) kompiuteruli programis gamoyenebis SesaZlebloba salicenzio xelSekrulebis safuZvelze warmoeSoba da ganisazRvreba qonebrivi uflebebiT sargeblobis fargl ebi. saavtoro uflebis mflobels, am obieqtis dacvis specifikidan gamomdinare, kompiuteruli programis gamoyenebisas ar SeuZlia marTlzomier momxmarebels zogierTi moqmedeba aukrZalos[4]. am specifikuri SezRudvebis fonze imasac unda mieqces yuradReba, rom literaturuli nawarmoebis mimarT (kompiuteruli programa ganixileba literaturuli nawarmoebis obieqtad, aRniSnuli kanonis farglebSi[5]) zogadad dadgenil SezRudvaTa Soris zogierTi ar vrceldeba kompiuter programebze[6]. saerTo wesis Tanaxmad, gansakuTrebuli uflebebiT sargeblobisas kompiuteruli programis momxmarebels ekisreba saavtoro honoraris gadaxda[7].

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[1] `saavtoro da momijnave uflebebis Sesaxeb" 1999 wlis 22 ivnisis kanoni #2112 (saqarTvelos sakanonmdeblo macne, 1999, # 28 (35)) cvlilebebiT da damatebebiT (09.09.1999 #2388, 05.12.2000 #651, 10.10.2002 # 1693, 03.06.2005 #1585).

[2] kanonis me-18 muxlis me-2 punqtis „a"-„k" qvepunqtebi.

[3] kanonis 19-e muxlis 1-li punqti.

[4] kanonis 28-e da 29-e muxlebi.

[5] kanonis me-6 muxlis pirveli punqtis „a" qvepunqti. aRniSnul Tan dakavSirebiT ix. "kompiuteruli programebis samarTlebrivi dacvis uzrunvelyofis sakiTxebi", m. CxituniZe, J. `marTl msajuleba~, saq. uz. sas., 2007/1, gv. 124, 125.

[6] kanonis 21-e muxlis 1-li punqti da me-2 punqtis „g" qvepunqti da 22-e muxlis „b" da „g" punqtebi.

[7] kanonis me-18 muxlis me-3 punqti.

sanam kompiuterul programebTan mimarTebaSi TiToeul i qonebrivi ufl ebis dasaxasiaTebas SevudgebiT, avRniSnavT, rom maT Sesaxeb debul ebebis Camoyal ibebaSi, ra saxiTac isini moyvanil ia kanonSi, ZiriTadi rol i miuRvis saerTaSoriso xel Sekrul ebebs intel eqtual uri sakuTrebis dacvis sferoSi, romel Ta monawil ec aris saqarTvel o[8], da 1991 wl is 14 maisis evropis sabWos 91/250/**EEC** direqtivas „kompiuterul i programebis samarTl ebrivi dacvis Sesaxeb"[9] (SemdgomSi _ evropis direqtiva).

reproducirebis ufl eba

reproducirebis ufl eba erT-erTia saavtoro ufl ebis mfl obel is mier nawarmoebis gamoyenebis gansakuTrebul qonebriv ufl ebaTa Soris[10] da mas icnoben rogorc „ZirZvel s". reproducirebis ufl eba Camoyal ibda nawarmoebis (an misi gadamuSavebul i variantis) unebarTvo asl is damzadebisgan dacvis mizniT. ar aris gasakviri isic, rom saavtoro ufl ebis samarTl ebrivi dacvis SemTxvevaTa umetesoba dakavSirebul ia zustad am ufl ebis darRvevasTan[11].

zogadi debul eba reproducirebis ufl ebis Sesaxeb pirvel ad Camoyal ibda „l iteraturisa da xel ovnebis nawarmoebebis dacvis bernis konvenciis" (SemdgomSi _ bernis konvencia) me-9.1 muxl Si[12], roml is Sesabamisad, es ufl eba gul isxmobs nawarmoebis asl ebis nebismieri raodenobiT damzadebas fizikuri (an iuridiul i) piris mier

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[8] saqarTvel o monawil ea: 1995 wl is 16 maisidan _ l iteraturisa da xel ovnebis nawarmoebebis dacvis Sesaxeb 1886 wl is 9 seqtembris bernis konvencisa (**Berne Convention for the Protection of Literary and Artistic Works**) (konvenciis 1971 parizis aqti), xel misawvdomia http://www.wipo.int/ treaties/en/ip/berne/trtdocs_wo001.html, (2008 wl is 14 oqtomberi); 2000 wl is 14 ivnisidan _ vaWrobasTan dakavSirebul i intel eqtual uri sakuTrebis ufl ebebis aspeqtebis Sesaxeb 1994 wl is 15 april is SeTanxmebisa (**Trade Related Aspects of Intellectual Property Rights** _ TRIPS), xel misawvdomia http://www.wipo.int/clea/en/text_html.jsp?lang=en&id=4064, (2008 wl is 14 oqtomberi); 2002 wl is 6 martidan _ intel eqtual uri sakuTrebis msofl io organizaciis saavtoro ufl ebebis Sesaxeb 1996 wl is 12 dekembris xel Sekrul ebisa (**WIPO Copyright Treaty - WCT**), xel misawvdomia http://www.wipo.int/treaties/en/ip/wct/trtdocs_wo033.html, (2008 wl is 14 oqtomberi).

[9] OJ EC L 122, 17.5.1991, p.42, xel misawvdomia http://ec.europa.eu/internal_market/copyright/docs/docs/ 1991-250_en.pdf, (2008 wl is 14 oqtomberi).

[10] kanonis me-18 muxl is me-2 punqtis „a" qvepunqti.

[11] reproducirebis ufl eba, rogorc cnobil ia, aramxol od aRniSnul mizans emsaxureboda, aramed am ufl ebas yovel Tvis iyenebdnen avtoris mier gaweul i Sromis kompensaciis mizniT. amitomac am ufl ebas xSirad ixsenieben rogorc „meqanikur" ufl ebas (magal ioTad, aSS-Si, espaneTSi). reproducirebis ufl eba aris rogorc Caweris meqanikuri (audio-reproducirebis) saSual ebebis gamoyenebiT asl ebis damzadebis ufl eba, e. w. „meqanikuri ufl eba". am ufl ebas iyeneben iZul ebiTi l icenziebis gacemis mizniT da gadaRebul i asl ebis raodenobis kontrol is gasawevad (aSS-Si 1909 w. pirvel ad SemoRebul iqna am l icenziebis saxeoba).

[12] 1967 wel s reproducirebis ufl eba stoqhol mis konferebciaze pirvel ad Camoyal ibebul i. miuxedavad amisa, konvenciis monawil e yvel a qveyana scnobs, rom es ufl eba am konvenciisaTvis araa axal i da igi arsebobda Tavidanve 1886 wl idan _ bernis konvenciis amoqmedebian.

kopirebis (asl is damzadebis) nebismieri arsebul i "saSual ebiTa da formiT"[13]. moqmed kanonSi Setanil i bol o cvl il ebebis mixedviT Tavad termini "reproducireba"[14] ganimarta metad detal urad, rac ganapiroba saavtoro samarTl is obieqtebis nairsaxeobaTa simravl em da maTi reproducirebisaTvis Tanamedrove teqnikur saSual ebaTa (magal iTad, kompiuterul i qsel ebis) gamoyenebam. Sedegad, saavtoro samarTl is dacvis obietis specifikidan gamomdinare, mogveca reproducirebis ufl ebis farTo interpretaciis saSual eba. reproducirebis ufl eba kompiuterul programebTan mimarTebaSi kanonSi warmodgenil ia qonebriv ufl ebaTa Sesaxeb special ur muxl Si (kanonis me-19 muxl is pirvel i punqtis „a" qvepunqti) evropis direqtivis me-4 muxl is „a" punqtze dayrdnobiT.

reproducirebis mizans saavtoro samarTl is fargl ebSi emsaxureba, pirvel rigSi is, rom nawarmoebi iqmneba yovel Tvis raRac material ur matarebel ze, saidanac SemdgomSi xdeba am nawarmoebis kopireba (asl is damzadeba). amasTan, nawarmoebis Sesrul ebis varianti SeiZl eba yovel Tvis ar iyos Tval iT aRqmadi[15]. asl is damzadeba (kopireba) aramxol od fotokopirebas moicavs, aramed reproducirebis sxva saSual ebebs da sxvadasxva arsebul teqnol ogiebsac, rogoricaa, magal iTad, beWdva, reprografiul i gamravl eba, Senaxva magnitur matarebel ze (**magnetic storage**) da cifrul i saxiT warmodgena (**digitization**)[16]. garda amisa, reproducirebisas SeiZl eba icvl ebodes nawarmoebis gamocemis formatic an redaqciul i xasiaTis cvl il eba xdebodes[17]. reproducirebad warmogvidgeba, agreTve, kompiuterSi Senaxul i nawarmoebis samganzomil ebiani garegnul i saxis amsaxvel monacemTa bazis fail is transformacia Tavad am nawarmoebSi[18], an anal oguri saxiT warmodgenil i nawarmoebis asaxva cifrul i saxiT, Tumca nawarmoebis transformaciisas SeiZl eba arsebiTi cvl il ebebi Sevides nawarmoebSi da Sedegad gadamuSavebul i an axal i nawarmoebi Seiqmnas. mniSvnel ovania, rom iseTi qmedeba, rogoricaa nawarmoebis Cawera mowyobil obaze (teqnol ogiur saSual ebaze), roml is gamoyenebiTac SesaZl ebel ia nawarmoebis reproducireba, aseve ganixil eba rogorc asl ebis damzadeba da saWiroebs saavtoro ufl ebis mfl obel is nebarTvas.

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[13]aRsaniSnavia, rom 1952 w. saavtoro ufl ebebis Sesaxeb msofl io konvenciis (**universal Copyright Convention – UUC**, roml ic monawil ec iyo, agreTve, yofil i sabWoTa kavSiri) me-4*bis* muxl is pirvel i punqtis Sesabamisad, reproducirebis ufl ebis Sesaxeb debul eba gansxvavdeba bernis konvenciaSi Camoyal ibebul isagan: . . . avtoris an saavtoro ufl ebis sxva mfl obel is ". . . ufl ebebi moicavs ZiriTad ufl ebebs, romel ic avtoris qonebrivi interesebis dacvas uzrunvel yofs reproducirebaze gansakuTrebul i ufl ebis CaTvl iT nebismieri saSual ebebis gamoyenebiT, saj aro CvenebiT an gadacemis gziT."

[14]reproducirebis Sesaxeb ganmarteba moyvanil ia kanonis me-4 muxl is „o"punqtSi.

[15]kanonis me-9 muxl is pirvel i punqtis me-2 winadadeba.

[16]CamoTvl il Ta Soris asl ebis damzadebis bol o or SemTxvevaSi igul isxmeba, pirvel rigSi, kompiuterul i mexsiereba. mniSvnel ovania, rom kompiuterul i teqnol ogiebis swrafi ganviTarebis fonze asl ebis dasamzadebl ad gamoyenebul i saSual ebaTa saxeobac icvl eba.

[17]kompiuterul i programis transformaciis magal iTs warmoadgens sawyisi teqstis an obieqturi kodis saxiT warmodgenil i programis urTierTgardaqmna nebismieri procesis, maT Soris, dekompil aciis an kompil aciis dros.

[18]xSiria SemTxveva, rodesac nawarmoebis gadamuSavebas (kerZod, adaptirebas) iyeneben reproducirebis gverdis avl is saSual ebad.

axl a ganvixil oT, Tu ras warmoadgens reproducireba kompiuterul i programebis dacvis SemTxvevaSi. l iteraturul i nawarmoebebisagan gansxvavebiT, reproducirebis gareSe kompiuterul i programa ver Seasrul ebs Tavis funqcis. Sesabamisad, kompiuterul i programis Cveul i wesiT gamoyenebisas reproducireba (rac gul isxmobs mis kopirebas kompiuteris meSveobiT, an el eqtronul matarebel ze, an gavrcel ebis mizniT kompiuterul i programebis transmisia) ganuwyvetl iv xdeba. amasTan, ar aris mniSvnel ovani arc misi Catarebis xasiaTi (mudmivia igi, Tu droebiTi), arc material uri matarebel i, roml is gamoyenebiTac igi xorciel deba da arc is, mTl iani programis Tu misi nawil is mimarTaa reproducireba Catarebul i (aqve unda avRniSnoT, rom kanonis me-19 muxl Si gamotovebul ia miTiTeba kompiuterul i programis reproducirebis droebiT an mudmiv xasiaTze[19]). Tumca imas, moxda Tu ara programis arsebiTi nawil is kopireba, aqvs gadamwyveti mniSvnel oba TviT reproducirebis faqtis dasadgenad. kompiuterul i programis reproducirebad ar ganixil eba SemTxveva, rodesac programa droebiT mexsierebaSia _ **RAM-Si (Random Access Memory)**, saidanac misi Semdgomi kopireba ar xerxdeba[20]. RAM-Si Caweras wignis kiTxvas adareben xol me, rac ufro gasagebs xdis imas, Tu ratom ar ganixil eba igi reproducirebad, maSin, roca kompiuterSi dainstal irebul i programa kopirebisaTvis vargisiania da misi amgvari gamoyeneba (dainstal ireba) iTvl eba reproducirebad.

reproducirebis gareSe ver xorciel deba kompiuterul i programis erTi enidan meoreze gadatana (Targmna), adaptireba, sistematizireba an cvl il ebaTa Setana. gamodis, rom reproducirebis ufl eba imdenad farToa, rom iTval iswinebs programis gadamuSavebis (maT Soris _ Targmnis) da sxva ufl ebebsac. am TiToeul i gansakuTrebul i ufl ebis gamosayenebl ad kompiuterul i programis marTl zomier momxmarebel s esaWiroeba reproducirebis ufl ebis gamoyenebis nebarTvac, anu, qonebriv ufl ebaTa Soris yvel a (gavrcel ebis, importis, da gaqiravebis ufl ebis garda) moicavs, garkveul i xarisxiT, reproducirebis ufl ebas.

programis teqnikuri xasiaTidanaa gamomdinare, rom kanonmdebl obiT daiSveba garkveul i SezRudvebi qonebrivi, kerZod, reproducirebis da gadamuSavebis, ufl ebis gamosayenebl ad[21]. gansazRvrul ia pirTa wre (magal iTad, yvel a marTl zomieri momxmarebel i), romel ic ar saWiroebs nebarTvas TiToeul reproducirebaze programis Cveul i wesiT gamoyenebisas (magal iTad, piradi sargebl obisaTvis sarezervo egzempl aris damzadebis an programaSi daSvebul i aSkara Secdomebis gasworebebis dros). marTl zomieri momxmarebl is mier Tavis kompiuterze programis gamoyenebiT ar irRveva reproducirebis ufl eba, magram

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[19]avstriaSi, daniaSi, fineTSi, niderl andebsa da SvedeTSi „droebiT da mudmivi SenaxvisaTvis reproducirebas" kanonebSi gansakuTrebul ad ar gamoyofen, Final Report from the Commission to the Council, the European Parliament and the Economic and Social Committee on the implementation and effects of Directive 91/250/EEC on the legal protection of computer programs, Brussels, 10.04.2000, COM(2000) 199, p.1, xel misawvdomia http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2000: 0199:FIN:EN:PDF, (2008 wl is 14 oqtomberi).

[20]ukve 1988 wel s iaponiam aRiara, rom droebiT mexsierebaSi programis CatvirTva aucil ebel proceduras warmoadgens, romel ic programis gamoyenebisas modam xdeba da rom droebiT mexsierebaSi – RAM-Si programebis CatvirTva (an Senaxva) ar warmoadgens reproducirebas (iaponiis saavtoro ufl ebebis Sesaxeb kanonis 113-e muxl is me-2 punqti).

[21]kanonis 28-e da 29-e muxl ebi.

im SemTxvaSi, Tu igi ufl ebaTa mfl obel is nebarTvis gareSe daainstal irebs programas sxva kompiuterzec an/da ganaTavsebs mas kompiuterul qsel Si, reproducirebis ufl eba dairRveva (detal urad amis Sesaxeb ix. qvemoT).

kanonmdebl obaSi metad detal urad aris interpretirebul i kompiuterul i programis reproducirebis ufl eba da misi samarTl ebrivi fargl ebi iseTi gansakuTrebul i qmedebebis Catarebisas, rogoricaa kompiuterul i programis CatvirTva, muSaoba, gadacema (transmisia) an Senaxva. am CamoTvl il i qmedebebis Catareba xSir SemTxvevaSi moiTxovs reproducirebas, xol o programis momxmarebel s esaWiroeba programis reproducirebis ufl eba am qmedebebis Casatarebl ad[22]. Sesabamisad, ar gamoiricxeba reproducirebis ufl ebis daurRvevl ad programaze zemoT CamoTvl il i qmedebebis Catarebis SesaZl ebl obac (magal iTad, rogorc zemoT avRniSneT, droebiTi an umniSvnel o reproducirebis dros programis CatvirTva **RAM**-Si)[23].

gadamuSavebis ufl eba _ kompiuterul i programis erTi enidan meore enaze gadatanis, adaptirebis, sistematizebisa da sxvagvari cvl il ebis Setanis ufl eba

reproducirebis ufl ebis Semdeg, dacvis obieqtis specifikidan gamomdinare, ganvixil avT kompiuterul i programis gadamuSavebis (anu adaptirebis, sistematizebis, sxva cvl il ebebis Setanisa da programirebis erTi enidan meoreze gadatanis – dekodirebis an Targmnis) ufl ebas[24]. es ufl eba Camoyal ibebul ia bernis konvenciis me-8 da me-12 muxl iT dawesebul i ori qonebrivi ufl ebis - nawarmoebis „Targmnis" da „gadamuSavebis" ufl ebis Serwymis safuZvel ze[25]. es ufl ebebi, msgavsad reproducirebis ufl ebisa, saavtoro ufl ebaTa mfl obel Tan axl os mdgomi qonebrivi ufl ebebia. gansakuTrebiT es kavSiri Tavs iCens am ufl ebebis gamoyenebisas kompiuterul programebTan mimarTebaSi. kompiuterul i programebis gadamuSavebis ufl ebis Sesaxeb debul eba pirvel ad evropis direqtivaSi Camoyal ibda me-4 muxl is „b" punqtis saxiT[26]. SemdgomSi igi ucvl el ad iqna gadmotanil i Cvens kanonmdebl obaSic.

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[20]kanonis me-19.1 muxl is a) qvepunqtis me-2 winadadeba.

[21]Tavisi mosazreba am sxva qmedebebis (gadacema (transmisia), Senaxva da sx.) Catarebaze j er kidev 1991 wel s *fransua verstrij ma* gamoTqva. es qmedebebi TavisTavad man nebadarTul ad CaTval a, Tu maT Casatarebl ad ar moiTxoveboda reproducireba. manve gamoTqva winaswarmetyvel i mosazreba: „... arc ise Soreul momaval Si am qmedebebis Catareba SeiZl eba moxdes reproducirebis gareSe da isini saavtoro samarTl is ufl ebaTa mfl obel is regul irebis fargl ebs gareT aRmoCndeba, xol o, Tu qmedebebi reproducirebas iTval iswineben, Tundac droebiTs, isini gansakuTrebul i ufl ebebis fargl ebSi moxvdeba",aRweril ia International Computer Law,Lexis Nexis, Vol.I Part III, Chapter 7, August 2003, $7.20[E], p.7-87.

[22]kanonis me-19 muxl is „b" qvepunqtiT dawesebul i ufl eba kompiuterul programebTan mimarTebaSi gadamuSavebis ufl ebis saxiT iqneba moxseniebul i statiaSi.

[25]nawarmoebis Targmisa da gadamuSavebis ufl ebebis Sesaxeb debul ebebi gancal kevebul ad warmodgenil ia kanonis me-18 muxl is me-2 punqtis „z" da „T" qvepunqtebSi. Targmanis ufl eba da adaptirebis, gadamuSavebisa da sxva cvl il ebis Setanis ufl eba bernis konvenciaSi dadgenil ia l iteraturisa da xel ovnebis nawarmoebebis mimarT.

[26]direqtivis Sesabamisad, ufl ebaTamfl obel is gansakuTrebul i ufl eba vrcel deba kompiuterul i programis dekodirebaze (programirebis erTi enidan meore anaze gadatana), adaptirebaze, sistematizirebaze da nebismier sxva gardaqmnaze da maTi Sedegebis reproducirebaze im piris ufl ebebis dacviT, romel ic cvl is kompiuterul programas.

cnobil ia, rom saavtoro samarTal i vrcel deba nebismieri nawarmoebis gadamuSavebul variantze (Targmanze) da am gadamuSavebul nawarmoebze mopovebul i avtoris ufl ebebi sxva nawarmoebebisaTvis miniWebul i saavtoro ufl ebebis Tanabaria[27]. nawarmoebis saavtoro ufl ebis mfl obel isgan gadamuSavebis (Targmnisa) ufl ebis mopovebis Semdgom (Tu nawarmoebi ar warmoadgens saavtoro ufl ebis obieqts, aseTi nebarTva ar esaWiroeba gadammuSavebel s) piri SemoqmedebiTi saqmianobis (Targmnisa, Tu gadamuSavebis) gawevis Sedegad Tavad xdeba am gadamuSavebul i nawarmoebis (Targmanis) avtori yvel a gamomdinare ufl ebebiTa da val debul ebebiT. amasTan igi, upirvel es yovl isa, sawyisi nawarmoebis saavtoro ufl ebis mfl obel is qonebrivi ufl ebebisa da avtoris araqonebrivi ufl ebebis damcvel ad gvevl ineba maTi moqmedebis vadis ganmavl obaSi[28].

mTargmnel is mier nawarmoebis Targmanze ufl ebis mopoveba arasdros iwwevda eWvs, maT Soris arc maSin, roca dacvis obieqtad kompiuterul i programa gaxda. xol o rac Seexeba gadamuSavebul i (adaptirebul i, sistematizirebul i an sxva cvl il ebebis Semcvel i) kompiuterul i programis saavtoro ufl ebas da mis fargl ebs, isini TiToeul i programis gadammuSavebl is mier gaweul i SemoqmedebiTi saqmianobidan gamomdinareobs.

aRsaniSnavia, rom kompiuterul programaze saavtoro ufl ebebis mfl obel ebi gansakuTrebul i sifrTxil iT ekidebian maT programaSi sxva pirebis mier Catarebul cvl il ebebs, Tu Carevebs, rom araferi vTqvaT uSual od avtor-programistebze. yovel Tvis usazRvrod didi iyo maTi interesi, Tval yuri edevnebinaT maT mier Seqmnil i programis modificirebul i Tu ganaxl ebul i versiis Camoyal ibebis SemTxvevebisaTvis. teqnikurad gansaxorciel ebl ad raoden rTul i ar unda iyos Tval yuris devnebis es procesi, aRniSnul i subieqtebi amas mainc axerxeben. amave dros, momxmarebl is interesebic unda iyos dacul i, arc mas unda Seeqmnas uxerxul oba programis gaSvebisas da muSaobisas. nebismier programul produqts, rogorc moxmarebis el ements, waeyeneba maRal i xarisxobrivi moTxovnebi. amas misi util itarul i (garkveul i miznisaTvis Seqmnil i) xasiaTi ganapirobebs[29]. kompiuterul i programis xarisxobrivi Sefasebis maxasiaTebl ebi ZiriTadSi Sesabamisobas unda iqnes moyvanil i saerTaSoriso ISO/IEC 9126 standartiT dadgenil Tan[30], xol o programis xarisxobrivi moxmarebis moTxovnebi

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[27]kanonis me-6 muxl is 1-l i punqtis „l “ qvepunqti, me-2 da me-3 punqtebi da me-13 muxl i, agreTve, ix. bernis konvenciis me-2 muxl is me-3 punqti.

[28]bernis konvenciis me-2 muxl is me-3 punqtis Sesabamisad, saavtoro ufl ebebi nawarmoebisa, romel ic ganicdis gadamuSavebas, unda iqnes dacul . sawyisi nawarmoebis erT-erTi saxis moral uri ufl ebebis dacvis martiv magal iTad, kompiuterul i programebis adaptirebis SemTxvevaSi, gamodgeba programis adaptirebul i variantze sawyisi kompiuterul i programis avtoris vinaobis saval debul o aRniSvna.

[29]detal urad amis Sesaxeb Shinto Teramoto, Copyrightability function as Determinant of Copyrightability and Scope of Copyright Protection in Japan, IIC1997/1, p. 52-55.

[30]maT Sorisaa *muSaunarianoba (funqcional uroba)* (Sesabamisoba mizanTan, romel sac igi emsaxureba, sizuste, SeTevsebadoba da usafrTxoeba), *saimedooba* (srul yofil i, defeqtebis momarT amtanianoba), *gamoyenebaunarianoba* (gasagebi unda iyos, Seswavl isa da marTvis SesaZl ebl obas unda iZl eodes), *rentabil uroba* (droisa da resursebis efeqturi muSaobis reJimebs iTval iswinebs), *aRdgenaunarianoba* (gaanal izirebis SesaZl ebl obis mqone, cvl il ebisa da stabil urobis mqone, anu Secvl is Sedegad inarCunebs stabil urobas), *portatiul oba* (adaptirebisa da instal irebis SesaZl ebl obas unda iZl eodes, Sesabamisoba dadgenil standartebTan, amtanianoba Sidaprogramul i cvl il ebebis mimarT), ix. standartis ISO/IEC 9126 mokl e daxasiaTeba xel misawvdomia http://www.cse.dcu.ie/essiscope/sm2/9126ref.html, (2008 wl is 15 oqtomberi).

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xSirad ver kmayofil deba programaSi cvlilebebis Setanis gareSe da am cvlilebaTa Soris iseTebicaa, roml ebic aSkara Secdomebis gasworebas emsaxureba. aRsaniSnavia, rom aseTi Secdomebis gasworebas ar esaWiroeba saavtoro uflebis mflobelis Tanxmoba (ix. qvemoT qonebrivi uflebis SezRudva).

saavtoro uflebis mflobeli yovel Tvis itovebs uflebas, izrunos programis stabilurobaze, magram es praqtika unda Seesabamebodes saavtoro samarTlis im zogad normas, romlis Sesabamisadac nawarmoebis modificireba nebadarTul ia, da avtors ar SeuZlia amis uaryofa momxmareblis keTil sindisierebidan gamomdinare. es aSkarad avlens imas, rom avtoris pirad araqonebriv uflebebsac (moralur uflebebs) qonebrivi uflebebis el feri dahkravs, rogorc nebisdamrTveli uflebisa. magaliTad, avtor-programistis nawarmoebis xelSeuxeblobis uflebas, anda reputaciis pativiscemis uflebas[31], maTSi aSkarad SeimCneva komerciuli xasiaTi, radgan isini gavlenas axdens avtoris mier Seqmnili produqtis sabazro fasze da SeuZliaT imoqmedos qonebrivi uflebebis gamoyenebis ekonomikur pirobebze. aqedan gamomdinareobs saavtoro uflebis mflobelis mcdeloba, SeinarCunos ufleba, monawil eoba miiRos kompiuterul i programis yoveli ganaxlebul i versiis damuSavebaSi iseve, rogorc avtori monawil eobs Tavisi wignis yoveli axal redaqciis gamocemaSi.

uflebaTmflobelis TanxmobiT marTl zomier momxmarebel s SeuZlia programis adaptireba, rodesac, Tavisi saqmianobidan gamomdinare, amas karnaxobs programis gamoyenebis mizani[32]. amasTan, Tu programaSi Cadebul ia misi Semdgomi adaptirebis SesaZleblobebi, momxmarebel s unda miewodos monacemebi da ganmartebebi amis gansaxorciel ebl ad. momxmarebel s SeuZlia am muxl is fargl ebSi moaxdinos programis iseTi sxva gadamuSaveba da sistematizeba, rom SenarCunebul iqnes programis el ementebi da gadamuSavebis Sedegad Seqmnili programa ar CaiTvl eba axal nawarmoebad, anu kavSiri Zvel programasTan ar gawydeba. kanoni aseTi gadamuSavebul i programis reproducirebis nebas rTavs da icavs, agreTve, gadamuSavebul programaze saavtoro uflebebis mflobelis interesebs. Tumca SeiZl eba moxdes isec, rom programaSi Setanil i cvl il ebebis Semdeg igi damoukidebel , original ur nawarmoebad warmoCndeba. damoukidebel i dacvis obieqtad gvevl ineba, agreTve, sxva nebismieri programa, romel sac sawyis programasTan mxol od funqcional uri an miznobrivi msgavseba akavSirebs. gasaTval iswinebel ia, rom kompiuterul i programis adaptirebas xandaxan mimarTavs arakeTil sindisieri momxmarebebl ic, rogorc programis reproducirebis gverdis avl is

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[31]kanonis me-17 muxl is 1-l i punqtis „e" da „d" qvepunqtebi.

[32]saavtoro samarTl is kanonmdebl obebSi kompiuterul i programis modificireba gamoyofil ia rogorc programis gadamuSavebis qmedeba, magram mkveTrad gasxvavebul i programis adaptirebisagan. amasTan, „kompiuterul i programis adaptirebas iseT cvl il ebaTa ricxs miakuTvneben, romel ic gadamuSavebis uflebis fargl ebs gareT moaqcevs am qmedebasTan davavSirebul urTierTobebs. ase magal iTad, programis gadamuSaveba (modificiraba) xSir SemTxvevaSi gul isxmobs masSi Setanil i nebisamier cvl il ebas, maT Soris, programis Targmnas erTi enidan meoreze, adaptaciis gamokl ebiT, romel ic iTval iswinebs iseTi cl il ebebis Setanas programaSi, romel ic xorciel deba gansakuTrebul ad kompiuterul i programis finqcionirebis miznebisaTvis momxmarebl is teqnikur saSual ebebze gamosayenebl ad an momxmarebl is konkretul i programebis mmarTvel obiT.

saSualebas[33]. imasac unda mieqces yuradReba, rom yofili samuSaos Semsruleblis mier savsebiT uneblied SeiZleba Seiqmnas programa, romelic arsebiTad msgavsi aRmoCndeba mis mier adre Seqmnili programisa, ramac SeiZleba gamoiwvios seriozuli uflebaTa darRveva.

kompiuteruli programis momxmarebelma jerovani yuradReba unda miaqcios saavtoro uflebis mflobel Tan dadebul salicenzio xelSekrulebas programis miznobrivi gamoyenebis Sesaxeb, kerZod, gadamuSavebis uflebas da maT farglebs. gadamuSavebuli programis gamoyenebis pirobebis daTqmas xelSekrulebaSi gansakuTrebuli adgili ukavia. xelSekruleba uflebamosils xdis momxmarebels (gadamuSavebis Semsruleblers), gamoiyenos gadamuSavebis ufleba mxolod konkretulad CamoTvlili qmedebebisa da TiToeulis SesaZlo gamoyenebis pirobebis moyvanis SemTxvevaSi.

reproducirebisa da gadamuSavebis uflebebis Semdeg ar iqneboda urigo kompiuteruli programis Tavisufali gamoyenebisa da qonebrivi uflebebis SezRudvebis Sesaxeb gagvegrZelebina saubari, radgan programis gamoyenebis es SemTxvevebi ganxiluli ori uflebis SezRudvaTa ricxvs miekuTvneba. amis miuxedavad, Cven gavagrZelebT kompiuterul programebze sxva qonebrivi uflebebis (gavrcelebisa, importisa da gaqiravebis uflebebis) daxasiaTebas.

gavrcelebis ufleba da misi amowurva
nawarmoebis originali an misi aslebi SeiZleba gaxdes samoqalaqo brunvis sagani. saavtoro uflebis mflobeli (an sxva uflebaTamflobeli) sargeblobisaTvis mogebas iRebs gavrcelebis, maT Soris, importisa da gaqiravebis (an Txovebis) uflebebis meSveobiT. am dros sazogadoebis gonivrul moTxovnebis damakmayofileblel raodenobiT gamocemul nawarmoebis TiToeul aslsa[34] da Tavad nawarmoebis originali ze sakuTrebis an/da mflobelobis uflebis gadacema xdeba.

Cvens kanonSi nawarmoebze saavtoro uflebis mflobelis qonebriv uflebaTa CamonaTvalSi nawarmoebis gavrcelebis ufleba rigiT meorea[35]. am uflebis Sesaxeb debulebas, ra saxiTac igi warmodgenilia Cvens kanonmdeblobaSi (termini `gavrceleba~ ar aris ganmartebuli kanonSi), ayal ibebs **WCT** xelSekrulebis me-6 muxlis pirveli punqti. amasTan, xelSekrulebis imave muxlis me-2 punqtSi moyvanilia am uflebis moqmedebis amowurvis piroba, romelic dgeba nawarmoebis originalis an misi aslebis pirveli gavrcelebis (kerZod, gayidvis) Semdeg. anal ogiur debulebas saqarTvelos teritoriaze gavrcelebis uflebis amowurvis Taobaze amovikiTxavT Cvens kanonSic[36].

nawarmoebis originalis (an misi aslebis) sazogadoebaSi gavrceleba kanonSi bolo cvlilebebis Setanamde gulisxmobda sakuTrebisa an/da mflobelobis gadacemas

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[33]advili saSualeba adaptirebisa, reproducirebis mizniT adaptireba. mniSvnel ovania, gaeces pasuxi kiTxvaze, ra Warbobs gadamuSavebul programaSi Tavad adaptireba, Tu reproducireba (aq adaptirebaSi igul isxmeva gadamuSaveba).

[34]kanonis me-2 muxlis „e“ punqtSi ganmartebul ia termini `gamocema~.

[35]kanonis me-18 muxlis me-2 punqtis „b“ qvepunqti.

[36]kanonis me-18 muxlis me-4 punqti.

da maT Soris, pirvel rigSi, gayidva da gaqiraveba iyo nagul isxmevi[37]. amave dros kanoni specialuri debulebis saxiT calke aregulirebda kompiuterul i programis gavrcelebis uflebas[38]. es debuleba iyo gadmotanili evropis direqtividan[39]. masSi aseve integrirebuli iyo debuleba gavrcelebis uflebis amowurvis Sesaxeb da iyo miniSneba kompiuterul i programis gaqiravebis uflebis gansakuTrebul statusze (gaqiravebis uflebis amowurvis da gaqiravebis uflebis Sesaxeb ix. qvemoT). kanonSi Setanili cvlilebis Sedegad gavrcelebis uflebis farglebi `Seviwrovebul ~ iqna nawarmoebis gaqiravebis (an mfl obelobis sxva saxiT gadacemis) uflebis gamocalkevebis xarjze[40]. rac Seexeba kompiuterul i programis gavrcelebis uflebas, igi amjamad, sxva literaturul i nawarmoebis msgavsad, zogadi debulebis safuZvelze regulirdeba da gul isxmobs nebismieri formiT gamosaxul i programis originalis (an misi aslebis) mxolod gavrcelebas, kerZod, gayidvis, an sakuTrebis sxva formiT gadacemis gziT.

rogorc wesi, gavrcelebis uflebis gadacema xdeba sal icenzio xel Sekrulebis safuZvelze reproducirebis uflebasTan erTad. gamoqveynebis xel Sekrulebebi tipuria am uflebaTa gadasacemad[41]. gavrcelebis ufleba, msgavsad reproducirebis uflebisa, advilad kontrolirebadi uflebaa da xel SekrulebaSi maTi gansazRvra metad mniSvnel ovania[42]. kompiuterul i programis SemTxvevaSi, rogorc wesi, ar ganasxvaveben programis originalsa da asls. programis gamomcemels SeuZlia identuri programebi (programebis aslebi) SesTavazos momxmarebel s gansxvavebul fasad. mas survil isamebr SeuZlia daadginos specialuri fasdakleba kompiuterul saswavlo dizainerul programebze rogorc saswavlo egzemplarebze, romlebic studentebisaTvis aris gankuTvnil i. Sesabamisad, am programis aslis gavrcelebis l icenzia SezRudavs mis gamoyenebas mxolod sasawavlo miznebisaTvis.

programul i uzrunvel yofis damamzadebl ebi, rogorc wesi, programis momxmarebl ebs sTavazoben SesaZenad **CD-ROM**-ze damzadebul programebis asl ebs dadgenil i fasis

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[37]„saavtoro da momij nave uflebebis Sesaxeb" 1999 wl is 22 ivnisis kanoni #2112 (saqarTvel os sakanonmdebl o macne, 1999, # 28 (35)) cvl il ebebiT da damatebebiT (09.09.1999 #2388, 05.12.2000 #651, 10.10.2002 # 1693-ls) me-18 muxl is me-2 punqtis „b" qvepunqti.

[38]kanonis me-19 muxl is 1-l i punqtis „g" qvepunqti.

[39]evropis direqtivis me-4 muxl is „g" punqtis Tanaxmad, gansakuTrebul uflebebs miekuTvneba „....nebismieri formiT sazogadoebisaTvis kompiuterul i programis an misi aslebis gavrcel eba, gaqiravebis CaTvl iT. evrokavSiris sivrceSi programis aslis pirvel i gayidva uflebaTamfl obel is mier, an misi TanxmobiT, amowuravs am aslis gavrcelebis uflebas gaerTianebis farglebSi, programis an misi aslis Semdgom gaqiravebaze kontrol is gawevis uflebis gamokl ebiT".

[40]kanonis me-18.2 muxl is „b" punqtis safuZvelze; programul i uzrunvel yofis avtoris piradi araqonebrivi (moraluri) ufleba aisaxeba gavrcelebis uflebaSi, radgan TiToeul i Semoqmedi Tavisufal ia, gansazRvros _ amyofos Tu ara brunvaSi Tavisi inteleqtualuri sakuTreba, miuxedavad imisa, igi komerciul Tu pirad miznebs emsaxureba.

[41]gamoqveynebis xel Sekrulebis safuZvelze avtori gadascems gamomcemel s Tavisi nawarmoebis reproducerebisa da gavrcelebis uflebebs, xol o gamomcemel i, Tavis mxriv, iRebs val debulebas Seasrul os es qmedebebi da gadauxados avtors Sepirebul i gasamrj el o (honorari).

[42]metad mniSvnel ovania sanqciebis gaTval iswineba damrRvevis mimarT Warbi (arakontrol irebadi an mal ul i) raodenobis asl ebis warmoebasa da gavrcelebisas, radgan xel Sekrulebis Sewyvetis SesaZl ebl oba SeiZl eba ar arsebobdes.

gadaxdis sanacvlod. amasTan, sakuTrebis uflebis gadacemis yvelaze gavrcelebul formad am SemTxvevaSi e. w. „SemfuTavi licenzia" gvevlineba[43]. garkveuli xnis ganmavlobaSi am saxis xelSekrulebis marTebul oba evropaSi kiTxvebs badebda, kerZod ki is, Tu ramdenad Seefardeboda igi standartul nasyidobis xelSekrulebas (**Kaufvertrag**); konkretulad ras gulisxmobs „gayidva" da programebis gavrcelebis es forma Tu amowuravs gavrcelebis uflebas. 80-ian wlebSi germaniis umaRlesi sasamarTlos mier miRebuli sami gadawyvetilebis safuZvelze aRiarebul iqna, rom programuli uzrunvelyofis gatana bazarze xdeba nasyidobis xelSekrulebis saxiT, miuxedavad imisa, rom am xelSekrulebaze datanilia aRniSvna „licenzia"[44]. amis Semdgom, mal eve, niunbergis sasamarTlos gadawwyvetilebis safuZvelze salicenzio xelSekrulebaSi programuli uzrunvelyofis Semdgom gayidvaze Setanili yovel gvari amkrZalavi pirobebi iqna miCneuli baTilad da, amrigad, gavrcelebis uflebis amowurvis doqtrina gavrcel da salicenzio xelSekrulebis safuZvelze gavrcelebuli programebis mimarTac[45]. programis aslis sruli gadacema xdeba da uflebaTamflobelis gavrcelebis ufleba gayidul aslebze iwureba maSinac, rodesac kompiuteruli programis gadacemis xelSekrulebaSi ar aris Setanili programis gamoyenebis vadis SemzRudveli piroba. am dros, Sesabamisad, verc saavtoro uflebis mflobeli gaakontrolebs amgvarad gayiduli programuli produqtis Semdgom gavrcelebas, Tugind amis Taobaze xelSekrulebaSi Setanili iyos aRniSvna.[46] im SemTxvevaSi, rodesac xelSekrulebaSi aisaxeba programis gamoyenebis vadebi, es aris ara nasyidobis, aramed qiravnobis xelSekruleba (**Meitvertrag**)[47].

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[43]**Shrink-wrap license** – salicencio xelSekruleba, romel zec datanilia programuli produqtis fuTis garekanze da Seicavs CamonaTval is saxiT xelSekrulebis tipiur pirobebs _ programis myidvelis uflebebi da movaleobebi da, agreTve, programis gamomcemlis pasuximgeblobis sazRvrebi. rogorc wesia, misi gacnoba xdeba SemfuTavi garekanis gaxsnis mere. masiur-samomxmarebl o bazarze programis momxmarebl ebisaTvis gankuTvnili gasayidad produqtis SemoTavazeba ver xerxdeboda tradiciuli nasyidobis xelSekrulebis gamoyenebis safuZvelze. xSir SemTxvevaSi licenzia aris daweril i inglisur enaze.

[44]Judgement of 18 October 1989 (VIII ZR 325/88), Computer und Recht 1990, p. 24 – Juristenzeitung 1990, p. 236 ; Judgement of 4 November 1987 (VIII ZR 314/86), BGHZ 102,135- Juristenzeitung 1988, p. 460 (with comment of Junker) ; Judgement of 2 May 1985 (IZB 87/84), Gewerblicher Rechtsschutz und Urheberrecht 1985, p 1055. am gadawyvetilebebze miTiTeba gakeTebulia International Computer Law, Copyright Protection System, Lexis Nexis Vol.I Part III, Chapter 7, August 2003, §7.20[E], p. 7-88; §7.23, p. 7-121.

[45]Oberlandesgericht Nurnberg, Judgement of 20 June 1989, (3 U 1342/88), Neue Juristische Wohenschrift 1989, p. 2634 – Computer und Recht 1990, p. 118. am gadawyvetilebaze miTiTeba gakeTebulia International Computer Law, Copyright Protection System, Lexis Nexis 2003, §7.23, p. 7-121.

[46]gavrcelebis uflebis amowurvis Taobaze ix. 2003 w. 3 oqtombris fineTis umaRlesi sasamarTlos gadawyvetileba, saqme # KKO 2003:88; R 2001/192, 1090-1092, IIC Vol.35 (2004) (ingl.).

[47]Decition of District Court of Cologne on 25 October 1995 – 20 S 9/95, CR 1996, 154, romelic iyo gamyarebuli gadawyvetilebiT German Federal High Court of Justuce on 15 November 2006 – XII ZR 120/04, NSW BGB § 535. programuli uzrunvelyofis xelSekrulebebis Taobaze ix. James M. Kunick, Andrea Patzak, Issue to Consider When Licensing Us Software in Germany, Computer Law Review International (CRi), Issue 1, 15 February 2007, p. 3, 4.

ras warmoadgens gavrcelebis uflebis amowurva?

tradiciul ad gavrcelebis uflebis amowurvis doqtrina literaturul i nawarmoebis gamoqveynebas ukavSirdeba. magram amaJamad kompiuterul i programis SemTxvevaSi igi programis gayidvas daukavSirda. gayidva gvevl ineba, agreTve, nawarmoebze sakuTrebis uflebis gadacemis yvel aze gavrcelebul formad, roml is drosac mogebis miReba xdeba. gavrcelebis uflebis amowurviT nawarmoebis asl is pirvel i gayidviT erTj eradi mogebis mizani miiRweva, Tumca uflebis amowurvis pirobis dasadgenad nawarmoebze sakuTrebis gadacemis sxva formebic SeiZl eba iqnes gaTval iswinebul i.

kompiuterul i programis TiToeul i asl is pirvel i gayidvis Semdeg (bazarze an uSual od konkretul i momxarebl isaTvis miwodebis gziT) avtori (an misi uflebaTmonacvl e) saqarTvel os fargl ebSi kargavs am asl is gavrcelebis uflebas. es imas niSnavs, rom gavrcelebis ufleba „amoiwureba" kompiuterul i programis pirvel i real izaciis Semdeg, anu nebadarTul ia kompiuterul i programebis yovel i Semdgomi gavrcel eba avtorisagan nabarTvisa da misTvis kuTvnil i honoraris gadaxdis gareSe[48]. magal iTad, Tu saqarTvel os fargl ebSi gavrcelebis uflebas kompiuterul i programebis mimarT ganxorciel da kompiuterul i programis asl is pirvel i gayidviT, maSin isev qveynis fargl ebSi Cndeba am asl is xel axal i gayidvis SesaZl ebl oba aRniSnul i pirobebis gaTval iswinebiT. kompiuterul i programis axal mesakuTres, kerZod, myidvel s, ver aekrZal eba misi gadayidva da yovel i Semdgomi myidvel i keTil sindisieri momxmarebel ia. amasTan, gavrcelebis uflebas iwureba ara mxol od kompiuterul i programis konkretul i asl is, aramed misi sarezervo egzempl aris mimarTac[49], romel ic iyideba rogorc kompiuterul i programis Semadgenel i (ganuyofel i) nawil i. gasaTval iswinebel ia, agreTve, is, rom amoiwureba mxol od gavrcelebis uflebas da ara reproducirebis an kompiuterul i programis gadamuSavebis uflebas. igive exeba asl ebis gaqiravebas, mfl obel obis gadacemis sxva uflebebs da kompiuterul i programis importis uflebas.

gaqiravebis uflebas

kanonis Sesabamisad nawarmoebis original ze (an mis asl ebze) mfl obel obis gadacemis erT-erT formad gaqiraveba ganixil eba. saavtoro uflebis mfl obel i am qmedebis Catarebis nebarTvas amjamad iZl eva kanonSi warmodgenil i nawarmoebis gaqiravebis (an/da mfl obel obis sxva formiT gadacemis) uflebis safuZvel ze.[50]

gaqiravebis uflebis Sesaxeb debul ebebi evropis direqtivebisa da saerTaSoriso xel Sekrul ebebis amoqmedebamde regul irdeboda araerT qveyanaSi[51]. ganviTarebad qveynebSi

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[48] ix. kanonis me-18 muxl is me-4 punqti. pirvel i gayidva yovel Tvis gul isxmobs am mfl obel isaTvis kuTvnil i honoraris miRebas, xol o yovel i Semdgomi gavrcel ebidan ki — ara.

[49] kompiuterul i programis sarezervo eqzempl aris Taobaze ix. uflebebis SezRudvis TavSi.

[50] kanonis me-18 muxl is me-2 punqtis „i" qvepunqti.

[51] saavtoro samarTl is kanonmdebl obebSi cvl il ebebi Seexo: aSS _ 1984 wel s „pirvel i gayidvis doqtrinas xmis Camwerebze", 1990 wel s „kompiuterul i uzrunvel yofis gaqiravebas"; kanada — 1984 wel s „kompiuterul i programebis gaqiravebas"; ungreTi _ 1983 wel s „kompiuterul i programebis dacvis sakiTxebi".

am uflebis gamoyeneba saavtoro samarTlis sferoSi ar xdeba iseTi intensivobiT, rogorc sxva qveynebSi, sadac arsebobs am uflebis ufro farTo gamoyenebis praqtika. gansakuTrebiT es ufleba farTod gamoiyeneba kompiuteruli programebisa da kinematografiuli (audiovizualuri) nawarmoebebis mimarT. gaqiravebis uflebis Sesaxeb debulebebs Cven vxvdebiT WCT-sa[52] da TRIPS-Si[53], maSin, rodesac am uflebis Taobaze bernis da romis konvenciebSi[54] araferia naTqvami. evropis saavtoro samarTlis farglebSi 1992 wlis 19 noembris evropis 92/100/EEC direqtivis „gaqiravebis da Txovebis uflebaTa da inteleqtualuri sakuTrebis farglebSi saavtoro samarTlis sxva momijnave uflebebis Sesaxeb" (SemdgomSi – gaqiravebis direqtiva) amoqmedebiT pirvelad harmonizirebul iqna nawarmoebebis gaqiravebasTan dakavSirebuli urTierTobebi[55]. unda iTqvas, rom am direqtivis farglebi ar gavrcel da kompiuterul programebze, radgan es sakiTxi manamde ukve daregulirebuli iyo 1991 wlis 14 maisis evropis sabWos „kompiuteruli programebis samarTlebrivi dacvis Sesaxeb" 91/250/EEC direqtiviT[56].

gvinda avRniSnoT, rom saerTaSoriso xel SekrulebebSi ar aris ganmartebuli `gaqiravebis~ terminis mniSvneloba, aramed xazgasmul ad miTiTebul ia gaqiravebis komerciul xasiaTze. miznad iyo dasaxul i gaqiravebis ganmij vna nawarmoebze mflobelobis gadacemis iseTi formisagan, rogorcaa `Txoveba~. gaqiravebis direqtivaSi pirdapiri an arapirdapiri ekonomikuri, an komerciuli mogebaa gaTval isiwinebul i garkveul i vadis ganmavl obaSi nawarmoebis xel misawvdomobisaTvis, anu gaqiravebisaTvis.[57] evropis direqtivaSi, romel ic aregul irebs kompiuterul programebTan dakavSirebul urTierTobebs, sargebl obis miRebis miznebia dasaxel ebul i gaqiravebisas, magram ara direqtivis debul ebaSi, aramed _ mis preambul aSi.[58] Cveni kanonis me-4 muxl is „v" punqti imeorebs direqtivis am pirobas.

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[52] WCT xel Sekrul ebis me-7 muxl i. am urTierTobebis regul irebis ZiriTadi mizans warmoadgenda saavtoro ufl ebaTa mfl obel is kanonieri interesebis dacvis saSual ebaTa samarTl ebrivi gamyareba, raTa advil ad reproducirebadi nawarmoebebis gaqiraveba ar yofil iyo zaral is momtani. ufl ebaTmfl obel s mieca ufl eba, gaakontrol os nawarmoebebis gaqiravebasTan dakavSirebul i urTierTobebi da miiRos samarTl iani honorari.

[53] TRIPS-is SeTanxmebis me-11 muxl i.

[54] 1961 wl is 26 oqtombris konvencia, romel ic aregul irebs Semsrul ebl ebis, fonogramebis damamzadebl ebisa da mauwyebl obis organizaciebis ufl ebebis dacvasTan dakavSirebul i urTierTobebs (Rome Convention for the protection of Performers, Producers of Phonograms and Broadcasting Organizations), roml is monawil e saqarTvel o gaxda 2004 wl is 18 maisidan.

[55] 1992 wl is 19 noembris evropis direqtiva 92/100/EEC (OJ L 346, 27/11.1992, P.0061-0066, xel misawvdomia http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992L0100:EN:HTML, (2008 wl is 15 oqtoberi) Zal adakargul ad gamocxadda mis sanacvl od amoqmedebul i igive saxel wodebis mqone direqtivis safuZvel ze _ 2006 wl is 12 dekembris evropis direqtiva 2006/115/EC "gaqiravebis da Txovebis ufl ebaTa da intel eqtual uri sakuTrebis farglebSi saavtoro samarTl is sxva momijnave ufl ebebis Sesaxeb", OJ L 376/28, 27.12.2006, P.0028-0035, xel misawvdomia http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:376:0028:0035:EN:PDF, (2008 wl is 15 oqtomberi).

[56] gaqiravebis direqtivis me-4 muxl i.

[57] aRniSul i ganmarteba SesaZl ebel ia gadmosul iyo moqmed kanonSi.

[58] direqtivis preambul is me-16 paragrafi.

kanonSi bol odroindel i cvl il ebebis Setanamde kompiuterul i programis gaqiravebas (gavrcel ebis fargl ebSi) special uri debul eba aregul irebda[59] evropis direqtivaze dayrdnobiT. amJamad kompiuterul i programis gaqiraveba xdeba qonebrivi ufl ebebis Sesaxeb zogadi debul ebis Sesabamisad. gaqiravebis ufl ebis gansakuTrebul i statusi, romel ic gatarebul ia evropis direqtivaSi kompiuterul i programebis mimarT, imaSi mdgomareobs, rom kompiuterul i programis original is an/da misi TiToeul i asl is gaqiravebis ufl ebas inarCunebs kompiuterul i programaze gansakuTrebul i ufl ebebis mfl obel i maSinac, roca gavrcel ebis Sedegad, kerZod, gayidvis Semdeg kompiuterul i programa gadava axal mesakuTreze (an roca gavrcel ebis ufl eba amoiwureba).[60] gaqiravebis ufl eba warmoadgenda erTgvar gamonakl iss gavrcel ebis ufl ebis fargl ebSi. amjamad igi cal ke regul irebis sagania, romel ic garkveul i obieqtis (maT Soris, kompiuterul i programebis) mimarT gamoiyeneba da mxol od saavtoro ufl ebis mfl obel is mier, amasTan, gavrcel ebis ufl ebis safuZvel ze axal i mesakuTrisaTvis programis gadacema ar iqoniebs gavl enas saavtoro ufl ebis mfl obel is gaqiravebis ufl ebaze.

ar SeiZl eba ar avRniSnoT, rom xel Sekrul ebebSi, agreTve, gatarebul ia kompiuterul i programis gaqiravisaTvis mniSvnel ovani piroba, romel ic ar aisaxa Cvens kanonmdebl obaSi. igi exeba kompiuterul i programebis gaqiravebis ufl ebis SezRudvas, anu gaqiravebis ufl eba moqmedebs im kompiuterul i programebis mimarT, roml ebic warmoadgens gaqiravebis sagnis arsebiT nawil s[61]. es gamonakl isi ganapiroba iman, rom gaqiravebis mraval sagans erTi an meti kompiuterul programa erTvis, magal iTad, manqanis gaqiravebisas, sadac uxvadaa gamoyenebul i Cipebi, an dainstal irebul ia sxva programebi (sanavigacio sistemebi). es gamonakl isi ar gavrcel deba kompiuteris gaqiravebis SemTxvevaSi, romel Sic gaqiravebamde iyo dainstal irebul i garkveul i programebi. gaqiravebis ufl ebis es SezRudva gasaTval iswinebel ia Cvens kanonmdebl obaSic.

nawarmoebze mfl obel obis gadacemis sxva forma, romel ic gamoiyeneba saavtoro da momij nave ufl ebebis obieqtebis mimarT, Txovebaa. Cvens kanonSi ar aris special uri ganmarteba termin „Txovebis" Sesaxeb, magram Tu vixel mZRvanel ebT gaqiravebis direqtivaSi arsebul i terminis ganmartebiT, Txoveba gul isxmobs nawarmoebis xel misawvdomobas gansazRvrul i vadis ganmavl obaSi sargebl obisaTvis pirdapiri an arapirdapiri ekonomikuri an komerciul i mogebis miRebis gareSe[62]. rogorc aRvniSneT, ufl ebis gamoyenebis aucil ebel pirobebs aRniSnul i direqtiva adgens mxol od SemosazRvrul i obieqtebis mimarT da, Sesabamisad, am urTierTobis monawil e mxared igi warmoaCens pirTa metad viwro wres. kompiuterul i programebis mimarT mfl obel obis gadacemis am formis regul ireba miTiTebul i direqtivis fargl ebSi ar xdeba. igi ar iyo gaTval iswinebul i arc evropis direqtiviT kompiuterul i programebis dacvis

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[59]unda miviCnioT, romkanonis teqnikuri xarvezis gamo, kanonSi kompiuterul i programis gaqiravebis mimarT gavrcel ebis ufl ebis amowurvis SezRudvaze miniSneba iyo gakeTebul i orjer (ix. 2005 wl amde moqmedi kanonis me-18 muxl is me-5 punqti da me-19 muxl is 1-l i punqtis „g"qvepunqti). amJamad es xarvezi aRmofxvril ia.

[60]kanonis me-18 muxl is me-5 punqti da kanonis igive muxl is redaqcia kanonSi 2005 w. cvl il ebebis Setanamde.

[61]**TRIPS**-is SeTanxmebis me-11 muxl isa da **WCT** xel Sekrul ebis me-7 muxl is me-2 punqtis (i) qvepunqtis Sesabamisad.

[62]gaqiravebis direqtivis me-2 muxl is pirvel i punqtis „b" qvepunqti.

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Taobaze. Cveni kanonmdebl obis fargl ebSi, agreTve, SeuZl ebl ad migvaCnia kompiuterul i programebis mimarT mfl obel obis gadacemis sxva formebis gamoyeneba gaqiravebis garda (miuxedavad imisa, rom kanonis SemoTavazebul i redaqcia ar gamoricxavs kompiuterul i programebis mimarT mfl obel obis gadacemis am formis gamoyenebas[63]), amitomac statiaSi detal urad ar ganvixil avT kompiuterul i programebis mimarT mfl obel obis gadacemis formas — Txovebas. saavtoro samarTl is fargl ebSi mfl obel obis SesaZl ebel i formebis gamoyenebis Taobaze pirdapiri miniSneba ufro marTebul i iqneboda Tundac imaze, rom kompiuterul i programebis mimarT gaqiravebis garda mfl obel obis gadacemis sxva saxeebi ar gamoiyeneba[64].

imisaTvis, rom ganvsazRvroT sal icenzio xel Sekrul ebis pirobebi gaqiravebis ufl ebis mimarT kompiuterul i programis momxmarebel ma unda gaiTval iswinos, rom kompiuterul i programa samoqal aqo brunvis sagania. misi TiToeul i asl is gaqiraveba moiTxovs gansakuTrebul nebarTvas saavtoro ufl ebebis mfl obel isagan. gamodis, rom kompiuterul i programis myidvel i (momxmarebel i) an gavrcel ebis ufl ebis mqone l icenziati sargebl obs gaqiravebis ufl ebiT mxol od im SemTxvevaSi, Tu xel Sekrul ebaSi Setanil ia am ufl ebis gamoyenebis special uri piroba. winaaRmdeg SemTxvevaSi es ufl eba mopovebul ad ar iTvl eba.

importis ufl eba

gansakuTrebul ufl ebaTa Soris, romel ic SeiZl eba gavrcel des kompiuterul programazec, aris importis ufl eba[65]. rogorc cnobil ia, sazRvargareT gamoSvebul ia an gamoqveynebul i saavtoro samarTl iT dacul i nawarmoebebis unebarTvo importirebis dros saqarTvel os sazRvrebze gamoiyeneba special uri sasazRvro RonisZiebebi, romel ic efuZneba **TRIPS**-is SeTanxmebis debul ebebs.[66] raRac material ur matarebel ze Sesrul ebul i kompiuterul i programis asl is importi saqarTvel oSi nebisamieri saxel mwifodan da misi Semdgomi komerciul i gavrcel eba da reproducireba saavtoro ufl ebis mfl obel isagan nebarTvis gareSe CaiTvl eba kontrafaqciul ad.

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[63]kompiuterul i programaze Txovebis ufl ebis sargebl obisaTvis ufl ebaTa mfl obel i, agreTve, unda iyos ufl ebamosil i, moiTxovos honoraris daweseba (rekomendirebul ia gaqiravebis direqtivis me-6 muxl is Sesabamisad), rac winaaRmdegobaSi mova moqmed kanonmdebl obasTan. am saxis arsebiTad axal i samarTl ebrivi urTierTobebi moiTxovs special ur regul irebas maT gamosayenebl ad kompiuterul i programebTan mimarTebaSi. Txovebis ufl ebiT mosargebl e-monaTxovres, magal iTad bibl ioTekas mesargebl eebisaTvis programis asl is Txovebis dros (uSual od bibl ioTekis Senobis fargl ebSi sargebl obis uzrunvel yofiT) ar unda gaaCndes asl is gamravl ebis saSual ebebi (kopirebisagan dacvis teqnikuri saSual ebebis gamoyeneba saval debul oa).

[64]kompiuterul i programebis mfl obel obis gadacemis formebis gamoyenebis Taobaze pirdapiri miTiTebiT dawesebul ia, magal iTad, ungreTis saavtoro samarTl is Sesaxeb kanonis 23-e muxl Si da sl oveniis saavtoro da momij nave ufl ebebis dacvis Sesaxeb kanonis 25-e muxl Si. roca kompiuterul i programa warmoadgendes saavtoro samarTl iT dacul i nawarmoebis nawil s (kompiuterul i TamaSebi da sxv.), maSin igi SeiZl eba iyos Txovebis obieqti da es urTierTobebi moiTxovs maT mimarT special uri regul irebis meqanizmis amoqmedebasac.

[65]me-18 muxl is me-2 punqtis „g" qvepunqtis Sesabamisad. kompiuterul i programebis mimarT kanonis me-18 muxl iT dadgenil i qonebrivi ufl ebebis gamoiyeneba me-19 muxl is pirvel i punqtiT dadgenil i dabul ebebis gaTval iswinebiT.

[66]**TRIPS**-is SeTanxmebis 51-e-me-60 muxl ebi.

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zogierTi qveynis kanonmdebl obebSi importis ufl eba gavrcel ebis ufl ebis fargl ebSia moqceul i,[67] rac l ogikuria, radgan igi am SemTxvevaSi nawarmoebis asl ebis gavrcel ebas gul isxmobs sakuTrebisa da mfl obel obis gadacemis gziT. gavrcel ebis ufl ebis amowurvis Semdeg importis ufl eba (gaqiravebis ufl ebis msgavsad) ar amoiwureba garkveul i saxis nawarmoebebis, maT Soris, kompiuterul i programebis mimarTac[68]. Cveni kanonis Sesabamisadac, importis ufl eba ar unda amoiwuros gavrcel ebis Sedegad kompiuterul i programis gayidvis Semdeg.

sajaro gadacemis ufl eba

es ufl eba, ra saxiTac igi Cvens kanonSia warmodgenil i, Camoyal ibebul ia **WCT** xel Sekrul ebis me-8 muxl Si da warmoadgens erTgvar teqnol ogiurad-neitral ur ufl ebas, romel ic iTval iswinebs sxvadasxva saSual ebaTa gamoyenebis gziT nebismieri adgil idan piris mier individual urad arCeul dros nawarmoebis xel misawvdomobas sadeniT an umavTul o kavSirgabmul obis meSveobiT[69]. gafarToebul is saxiT amJamad warmodgenil i es ufl eba iZl eva misi gamoyenebis SesaZl ebl obas mraval i kategoriis nawarmoebebis, maT Soris, kompiuterul i programebis mimarT, rac miakuTvnebs maT sajaro gadacemisaTvis gankuTvnil nawarmoebTa kategorias. cxadia, es ufl eba vrcel deba kompiuterul i qsel is saSual ebiT nebismieri dainteresebul i piris mier kompiuterul i programis moTxovnisas gaweul interaqtiul momsaxurebazec. yuradReba unda mieqces imas, rom sajaro gadacemis ufl eba TavisTavad ar moicavs nawarmoebis gavrcel ebis ufl ebas, anu am ufl ebis mfl obel i ar iZens ufl ebas, samoqal aqo brunvaSi CarTos kompiuterul i programa[70].

internetisa Tu romel ime el eqtronul i qsel is sivrceSi damkvidrebul ia principi, roml is Tanaxmad, nebismieri individual uri momxmarebel i Tavisi kompiuteris terminal ze saavtoro an momijnave ufl ebis samarTl iT dacul i nawarmoebis miRebisas, Tavad xdeba iseTi sazogadoebis wevri, roml is winaSec garkveul i val debul ebebi warmoiSoba. amasTan, real ur droSi miRwevadobisaTvis mniSvnel ovani ar aris, Tu ramdenad dakmayofil da am nawaramoebiT an Sesrul ebiT momxmarebel i. sajaro gadacema xdeba, rodesac nawarmoebi an warmodgena xel misawvdomi xdeba sazogadoebisaTvis mesame piris meSveobiT.

kompiuterul i programis asl ze sakuTrebis ufl ebis gadacemisas, anu, kerZod, misi asl is gayidvis Sedegad, gavrcel ebis ufl eba amiowureba maSin, roca **on-line** momsaxurebis

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[67] ix. ungreTis saavtoro ufl ebebis Sesaxeb kanonis 23-e muxl is me-5 punqti, sl oveniis saavtoro da momijnave ufl ebebis dacvis Sesaxeb kanonis 24-e muxl is me-2 punqti.

[68] maSin, roca zogierTi nawarmoebis gavrcel ebis Semdeg es ufl eba iwureba aramxol od am saxel mwifoSi, aramed mTel msofl ioSi (l iterturul i nawarmoebebi – niderl andebi; Sveicaria, rodesac nawarmoebi aris gavrcel ebul i kibersivrceSi).

[69] kanonis me-18 muxl is me-2 punqtis „v"qvepunqti. amasTan, kanonis me-4 muxl is „j " punqti agreTve ganmartavs sajaro gadacemis mniSvnel obas. kanonSi 2005 wel s, cvl il ebis Setanis Semdeg, miuxedavad ufro farTo Sinaarsisa, terminma ar Seicval a Tavisi dasaxel eba. unda iTqvas, rom anal ogiur ufl eba aris Camoyal ibebul i bernis konvenciis me-11, me-11*ter*, me-14 da me-14*bis* mxol od garkveul i kategoriis nawarmoebebis mimarT.

[70] kanonis miznebisaTvis sajaro gadacema ar vrcel deba nawarmoebis gavrcel ebaze, kanonis me-4 muxl is `j ~ punqtis Sesabamisad.

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gamoyenebiT programis SemoTavazeba ar iwvevs am uflebis amowurvas, Tumca programis am gziT gamavrcelebeli SeiZleba aRmoCndes am programaze gavrcelebis uflebis iribi damrRvevi.

gasaTval iswinebel ia, rom, evropis direqtivis me-4 muxlis „c" punqtis Sesabamisad, kompiuterul i programis sazogadoebaSi nebismieri saSual ebaTa da formebis gamoyenebiT gavrcel ebas iTval iswinebs, anu materialuri matarebeli, romel zec datanil ia kompiuterul i programa, ar aris asl is Sesrulebis aucil ebel i piroba. amave dros naTel ia, rom, saqarTvel os kanonis Sesabamisad, msgavsad mraval i qveynis kanonmdebl obebisa, gavrcel ebis ufl eba gul isxmobs raRac aRqmadi formiT arsebul i nawarmoebebis asl ebis gavrcel ebas (yovel SemTxvevaSi isini xdebian samoqal aqo brunvis sagani, rodesac raime material ur matarebel zea Sesrul ebul i, aramaterial uri sagnebis gatana ar xdeba gasayidad).

qonebrivi uflebebis SezRudva

saavtoro samarTal Si qonebrivi uflebebis SezRudvas udidesi mniSvnel oba eniWeba. kompiuterul i programebis samarTl ebrivi dacvis sfero am SezRudvebis gareSe ar ganixilebA. bernis konvencia, **TRIPS**-is SeTanxmeba da **WCT** xel Sekrul eba ayal ibebs uflebaTa SezRudvebis ZiriTad principebs[71]. Cveni kanonis me-18 muxl is (qonebrivi uflebebi) bol o punqti, agreTve, imeorebs saerTaSorios samarTl is am principebs: mxol od gansazRvrul i SemTxvevebis mimarT aris dadgenil i gansakuTrebul i (qonebrivi) uflebebis Sezrudvebi (kanonis me-III Tavi detal urad asaxavs qonebrivi uflebebis TiToeul SezRudvas saavtoro samarTl is dacvis obieqtebTan mimarTebaSi); maTi amoqmedebiT xel i ar unda SeeSal os nawarmoebebis normal ur gamoyenebas (im miznebidan gamomdinare, risTvisac nawarmoebi iqmneba); amave dros saavtoro uflebis mfl obel is kanonieri interesebi dacul i unda iyos, uflaba ar unda iqnes gamoyenebl i borotad.

kompiuterul i programebis (da Tavad kompiuterul i teqnologiebis dargis) teqnologiuri da komerciul i buneba[72] mkveTrad ganasxvavebs mas intel eqtualuri sakuTrebis sxva nawarmoebebisagan, rac ganapirobebs, agreTve, kompiuterul i programis Semqmnel ebisaTvis dadgenil i intel eqtualuri sakuTrebis uflebebis ganmijvnas. amis dasadasturebl ad gamodgeba Semdegic: miuxedavad imisa, rom programebis dacva saavtoro samarTl is fargl ebSi sxva l iteraturul i nawarmoebebis msgavad xdeba, kanoni arazogadi, aramed special uri debul ebis safuZvel ze zRudavs programebze saavtoro uflebis mfl obel is qonebriv uflebebs.

evropis direqtivis me-5 da me-6 muxl ebis Tanaxmad kompiuterul i programis marTl zomieri momxmarebl isaTvis dadgenil ia oTxi saxis privil egia, roml ebic nebadarTul ia maTTvis programebis gamoyenebisas. daSvebul i qmedebebis gansaxorciel ebl ad mas ar esaWiroeba uflebaTamfl obel is nebarTva da honoraris gadaxdac ar eval eba. mniSvnel ovania, rom es nebadarTul i qmedebebi ar aris damrRvevad miCneul i, radgan reproducirebisa da gadamuSavebis uflebebis (direqtivis me-4 muxl is „a" da „b"

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[71]bernis konvenciis me-9 muxl is me-2 punqti ayal ibebs SezRudveb reproducirebis uflebis mimarT, **TRIPS**-is SeTanxmebis me-13 da **WCT** xel Sekrul ebis me-10 muxl ebSi warmodgenil ia SezRudvebi gansakuTrebul i uflebebis mimarT. yvel a gansakuTrebul i uflebebis mimarT SezRudvebis SemoRebiT garantirebul i iqna yvel a SesaZl o uflebaTa darRvevebis SemTxvevebi.

[72]evropis direqtivis preqmbul is 21-e da 23-e paragrafebi.

punqtebiT dadgenilis) mimarT isini ar iTvlebian damrRvevebad. es aris Semdegi saxis gamoyenebebi: (1) programis gamoyeneba misi daniSnulebisamebr, maT Soris, daSvebuli Secdomebis gaschorebis mizniT; (2) sarezervo egzemplaris nebadarTuli damzadeba; (3) programis gamoyeneba masze kvlevis Catarebisa da Seswavlis mizniT; (4) obieqturi kodis kvl avwarmoeba da gardaqmna sawyis teqstSi (riverse-engineering) dekompilacia. am nebadarTuli qmedebaTa CamonaTvali warmodgenilia uklebriv yvela evropis da mravali sxva qveynis kanonmdeblobebSi (aSS da iaponiacaa maT ricxvSi). pirveli punqtSi moqceuli SezRudvebi SesaZlebelia xel Sekrulebis safuZvelze dazustdes momxmarebl isaTvis. msgavsi ram ar SeiZleba gatardes momxmareblis im uflebebis mimarT, romelic imperatiul xasiaTs atarebs (sarezervo egzemplari, ufleba Seiswavlos da gamoikvlios programis muSaoba ideebisa, principebis Sesaswavlad da dekompilireba). aqedan gamomdinare, uflebis mflobels ar SeuZlia Tavis arideba am bolo sam gamonaklisze da maTi SezRudva xel SekrulebiT baTilad CaiTvleba. dekompilaciis nebadarTuli SesaZlo SezRudvebi SeiZleba garkveuli saxiT win aRudges saavtoro samarTlis im ZiriTad princips, romlis Tanaxmad, saavtoro ufleba ar vrcelldeba ideebsa da principebze[73]. amitomac kanonmdeblobaSi Caido iZulebiTi wesis saxiT dacviTi meqanizmi, raTa ar moxdes uflebis borotad gamoyeneba. Tavis mxriv, kompiuteruli programis TiToeul marTl zomieri momxmarebeli, aucileblobis SeTxvevaSi, sargeblobs uflebiT, Seasruluos gardauvali, winaswar dasaxuli mizniT programis gamosayeneblad aucilebeli qmedebebi, xel SekrulebaSi specialuri aRniSvnis uqonlobis SemTxvevaSic.[74] qonebrivi uflebebis SezRudvebi ar gamoiyeneba, rodesac momxmarebels ar gaaCnia programis gamoyenebis ufleba an programis gamoyenebis ufleba Sewyda.

SezRudvebi kanonis 28-e muxlis Sesabamisad

am muxlis Tanaxmad, kompiuteruli programis marTl zomier momxmarebels warmoeqmneba e.w. „minimaluri uflebebi". moyvanil SezRudvaTa Soris zogierTi pirdapir kavSirSia teqnikuri saSualebebisa da programis fuqcionirebas da im qmedebebTan, romlis gareSec ver xerxdeba normaluri moxmarebis farglebSi programis gamoyeneba. am muxls safuZvlad udevs evropis direqtivis me-5 muxlis debulebebi.

SezRudvaTa Soris, pirvel rigSi, aRsaniSnavia momxmareblisaTvis nebadarTuli yvela is qmedeba, romelic warmodgenilia evropis direqtivis me-4 muxlis „a" da „b" punqtebSi (romlebic warmodgenilia kanonis me-19 muxlis pirveli punqtis „a" da „b" qvepunqtebSi). maT Soris gansakuTrebulad gamoofen aSkara Secdomebis gaschorebas. momxmarebels ara aqvs Secdomebis gaschorebis ufleba, garda iseTebisa, romlebic exeba zogadad kompiuteruli programis stabiluri saxiT SenarCunebas. aSkara Secdomebis gaschoreba ar gulisxmobs iseTi saxis cvlilebebis Setanas, romlic moiTxovs programis dekompilacias an ganaxlebas. Semdegi SezRudva exeba kompiuteruli programis sarezervo egzemplaris damzadebas.[75] marTl zomier momxmarebels am qmedebis Catareba

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[73] kanonis me-5 muxlis me-3 punqti.

[74] direqtivis preambulis me-18 paragrafi.

[75] daniaSi, magal>Tad, nebadarTuli erTze meti sarezervo aslis damzadeba, mxol od am aslebis damzadebis mizani ara piradi, aramed saTanado wesiT gamoyenebaa (2006 wlis saavtoro samarTlis Sesaxeb aqtis 36-e muxlis 1(i) punqti).

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ar ekrZal eba, radgan kompiuterul i programis normal uri moxmarebisaTvis am egzempl aris qona ukidures saWiroebas warmoadgens. kompiuterul i programis damamzadebl is magal iTi, romel ic yovel Tvis momaragebul ia Tavis mier Seqmnil i programis sarezervo egzempl arebiT (mraval i da araerTiT), am mZafri aucil ebl obis dasturad gamodgeba. programis es egzempl ari gamoiyeneba rogorc Semcvl el i im SemTxvevaSi, Tu programis pirvel i piri daikarga, ganadgurda an sxva gziT gaxda gamousadegari. Tu saavtoro ufl ebis mfl obel s gamosayenebl ad gadaeca ori asl i (erTi yovel dRiuri moxmarebisaTvis, xol o meore _ rogorc sarezervo), mas ara aqvs ufl eba, daamzados sxva sarezervo egzempl ari. aucil ebel ia, aRiniSnos, rom am asl is ganadgureba eval eba momxmarebel s, rodesac kompiuterul i programis gamoyenebis ufl eba amoiwureba, magal iTad, programis droebiTi sargebl obis ufl ebis SemTxvevaSi (sal icenzio xel Sekrul ebaSi gamoyenebis vada aris dadgenil i, an qiravnobis ufl ebis safuZvel ze programis gamoyenebisas).

unda ganvasxvavoT, agreTve, kompiuterul i programis sarezervo egzempl ari im asl ebisagan, roml ebic am muxl is „a" qvepunqtSia gaTval iswinebul i. programis es asl ebi iqmneba programis gamoyenebisas, anu „a" qvepunqtSi CamoTvl il i qmedebebis Catarebisas. sarezervo egzempl ari yovel Tvis aris im versiis saxiT, roml iTac programa iyo warmodgenil i (Sesrul ebul i) masze ufl ebis (programaze gamoyenebis ufl ebis) mopovebisas.

am SezRudvis fargl ebSi gvinda saavtoro samarTal Si arsebul i qonebrivi ufl ebebis zogad Sezudvebze yuradReba gadavitanoT. am SezRudvaTa Soris kanonSi warmodgenil ia nawarmoebebis reproducirebis SesaZl ebl oba fizikuri pirebis mier piradi sargebl obisaTvis[76]. kompiuterul i programebis mimarT amdagvari gamonakl isi ar gamoiyeneba im ubral o mizezis gamo, rom reproducirebis special ur wess adgens kanonis 28-e da 29-e muxl ebi programis gamoyenebis special urad gansazRvrul i SemTxvevebisaTvis. agreTve, ar daiSveba erTeul asl ad arsebul i kompiuterul i programebis reprografiul i gamravl eba bibl ioTekisa da arqivebis mier, fizikur pirTa moTxovniT, saswavl o, samecniero an piradi mizniT. cnobil ia, rom bibl ioTekebi da arqivebi, romel Ta gankargul ebaSic SeiZl eba iyos kompiuterul i programebi SezRudul ebi kopirebis saSual ebebis gamoyenebisagan.[77] l ibanis kanonmdebl obiT cal keul i bibl ioTekebis mier kompiuterul i programebis nebadarTul i kopireba erT-erT uCveul o faqtad iyo aRiarebul i axl axans Catarebul saerTaSoriso Sexvedraze. amasTan, asl ebis kopireba studentebisa da sxva momxmarebl ebisaTvis programebis Txovebis mizniT xorciel deba[78].

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[76]kanonis 21-e muxl is pirvel i da me-2 punqtebis Sesabamisad, daiSveba nawarmoebis reproducireba fizikur piris mier avtoris an saavtoro ufl ebis sxva mfl obel is Tanxmobisa da misTvis saavtoro honoraris gadaxdis gareSe. es asl i unda iqnes gamoyenebul i mxol od piradi sargebl obisaTvis da ara sxva, magal iTad, profesiul i interesebis dasakmayofil ebdad. es gamoyeneba ar SeiZl eba win aRudges nawarmoebis normal ur gamoyenebas. es gamonakl isi srul saxes iZens avtoris moer an saavtoro ufl ebis mfl obel is mier honoraris miRebis gansakuTrebul i wesis dadgeniT, magram es debul eba ar vrcel deba kompiuterul i programebis mimarT, kanonis 21-e muxl is me-2 punqtis „ g" qvepunqtis safuZvel ze.

[77]kanonis 22-e muxl is „b" da „ g" qvepunatebis Sesabamisad. sazogadoebrivi aucil ebl obisaTvis gadacemul i kompiuterul i programebiT sargebl obis sakiTxi moiTxovs ufro detal ur Seswavl as.

[78]1999 wl is kanoni l iteraturul i da mxatvrul i sakuTrebis dacvis 25-e muxl i. Study on Copyright limitation and exceptions for libraries and archives prepared by Kenneth Crews, Columbia University, August 26, 2008, SCCR/17/2, Standing Committee on Copyright and Related rights 17-th Session Geneva, November 3-7, 2008.

rac Seexeba kompiuterul i programis kodis raRac garkveul i nawil is citirebas, magal iTad, samecniero-kvl eviTi miznebidan gamomdinare, l iteraturul an samecniero naSromebSi nebadarTul ia.[79] samarTl is zogadi principebis dacva friad rekomendirebul ia am SemTxvevaSi.

evropis direqtivis qonebriv SezRudevaTa Soris vxvdebiT erT debul ebas, romel ic ar aisaxa Cvens kanonmdebl obaSi[80]. mis safuZvel ze marTl zomier momxmarebel s ufl ebaTamfl obel is nebarTvis gareSe eZl eva SesaZl ebl oba, awarmoos yovel gvari dakvirveba, Seiswavl os da gamoscados programis moqmedeba (misi testireba Caataros) kompiuterul i programis nebismier nawil Si Cadebul i ideebisa da principebis dasadgenad. amis ufl ebas igi iZens kompiuterul programaze aucil ebel i qmedebebis Catarebisas, magal iTad, kompiuterSi programis CatvirTvisas, ekranze misi asaxvisas, gaSvebisas, gadacemisas an misi Senaxvisas da sxva. es aris yvel a qmedeba, roml is Catarebac aris nebadaTul i gamosayenebl ad (an SeiZl eba miCneul iqnes nebadarTul ad, aucil ebl obidan da momxmarebl is kaTil sindisierebidan gamomdinare), radgan is programis marTl zomieri momxmarebel ia. xSirad qonebrivi ufl ebis am SezRudvas akavSireben kanonis momdevno muxl Si warmodgenil SezRudvasTan (dekompil ireba), radgan igi mWidrodaa dakavSirebul i kompiuterul i programis obieqturi kodis gardaqmnasTan. saavtoro samarTl is principidan gamomdinare, ideebsa da principebze saavtoro samarTl is dacvis fargl ebi ar vrcel deba. amas arc aravin uaryofs, saqme rom l iteraturul nawarmoebebs exebodes. misi gacnoba da misgan gamomdinare ideis Secnoba metad martivia. kompiuterul i programaSi Cadebul ideebs da gatarebul principebs rom gavecnoT, saWiroa TiTqmis yvel a qonebrivi ufl eba davarRvioT, amitomac amis nebarTva mieca mxol od pirTa garkveul wres. mxol od maT mier Catarebul i amgvari kvl eva da programis Seswavl a CaiTvl eba nebadarTul ad. Cvens kanonSi arsebul i zogadi principebis gaTval iswinebiT marTl zomieri momxmarebl is ufl ebebis dacvam aRniSnul i qmedebebis Casatarebl ad SeiZl eba gamoiwwios sirTul eebi, amitomac mizanSewonil ad migvaCnia misi gaTval iswineba Cvens kanonmdebl obaSic evropis direqtivis anal ogiuri debul ebis saxiT.

dekompil ireba

kanonSi detal urad warmodgenil ia mkacri pirobebi kompiuterul i programis marTl zomieri dekompil irebis (**Reverse engineering**) mimarT.[81] mxol od piri, romel sac gaaCnia programis gamoyenebis ufl eba (Tavad an misi daval ebiT sxva piri), sargebl obs ufl ebiT, Sebrunebul ad (ukusvl iT) daamuSavos programa. programis momxmarebel i faqtiurad sargebl obs ufl ebiT, gardaqmnas dabal i donis enaze myofi programa maRal i donis enaze myof programad da am procesis ganxorciel ebisas igi programis reproducirebasac iyenebs. momxmarebel s aqvs ufl eba, gaaanal izos da Seiswavl os

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[79]kanonis 23-e muxl is „a" punqti.

[80]direqtivis me-5 muxl is me-3 punqti.

[81]kanonis 29-e muxl Si dekoml il ireba unda iqnes ganmartebul i, rogorc kompiuterul i programis obieqturi kodis gardaqmna sawyis teqstSi. rac Seexeba programis kvl evwarmoebas, ufro sworad, reproducirebas, am qmedebis Catarebaze marTzomier momxmarebel s, agreTve, ar esaWiroeba programaze ufl eba mfl obel is nebarTva, maSin, roca programis reproducireba am muxl is miznebs emsaxureba. migvaCnia, rom muxl Si mkafioT unda gamoikveTos programis reproducirebis ufl ebis Semzudvel i norma.

programis miRma Cadebul i l ogika, amasTan, mas ar CamoerTmeva amis ufl eba mxol od im SemTxvevaSi, roca samuSao pirobebi moiTxovs interfeisis[82] aRweril obis Seswavl as da e.w. „urTierTmoqmedebis unaris"[83] miRwevas. dekompil irebis Sedegad miRebul i informacia unda emsaxurebodes mxol od marTl zomieri momxmarebl is winaswar mizandasaxul interesebs da ara sxvisas, aseve, arc misi sxvagvarad gamoyenebaa dasaSvebi, magal iTad, axal i konkurentunariani programebis dasawerad. Tumca SeTavsebadobis misaRwevad Catarebul i samuSaoebis Sedegad SeiZl eba Seiqmnas axal i kompiuterul i produqti, romel ic aSkarad saavtoro ufl ebebis damrRvevi iqneboda, rom ara nebadarTul i dekompil ireba, roml is kval obiTac igi kanonierad CaiTvl eba.

   ufl ebaTaSemzRudvel am muxl Si saavtoro samarTl is ZiriTadi principi iqna gatarebul i - saavtoro samarTal i ver iqneba gamoyenebul i kompiuterul i programaSi Cadebul i ideebisa da meTodebis monopol izaciis mizniT. amave dros isaxeboda miznad kompiuterul i programebisaTvis maRal i donis dacvis uzrunvel yofa da samomxmarebl o bazarze stabil uri, garantirebul i da jansaRi konkurenciisaTvis xel Semwyobi pirobebis Seqmna. mxedvel obaSi iqna miRebul i is, rom momxmarebel is interesebis dacvis gareSe kompiuterul programaze saavtoro ufl ebebis darRveva yovel Tvis moxdeboda, roca igi programul i interfeiss mimarTavda.[84]. saavtoro ufl ebis mfl obel sac SeuZl ia gamoiwvios saavtoro ufl ebis darRveva, roca igi momxmarebel s ar miawvdis interfeisis Taobaze informacias da yovel i SeRweva momxmarebl is mxridan interfeisze iqneboda, agreTve, ufl ebis damrRvevi. kanonis 29-e muxl is „b" punqti aval debul ebs kompiuterul i programis saavtoro ufl ebis mfl obel s, yvel a marTl zomier momxmarebel s programaSTan erTad gadasces saWiro, srul i informacia urTierTmoqmedebis unaris misaRwevad. winaaRmdeg SeTxvevaSi misi programis dekompil ireba SeiZl eba ar CaiTval os ufl ebaTa darRvevad. amave dros, am informaciis uqonl oba ar aTavisufl ebs momxmarebel s val debul ebisagan, moiTxovos es informacia saavtoro ufl ebis mfl obel isagan. amasTan, is faqti, rom momxmarebel ma, sanam mimarTavda dekompil irebas, ar gamoiyena yvel a miRebul i saSual eba informaciis mosapovebl ad (garda im SemTxvevisa, roca amoiwura informaciis gadacemis yvel a arsebul i SesaZl ebl oba) SeiZl eba iqces saavtoro ufl ebebis darRvevis safuZvl ad.

   direqtivis me-6 muxl is me-3 punqtSi Camoyal ibebul ia nebadarTul i dekompil aciis Sesaxeb debul ebebis interpretaciis principebi. am muxl is debul ebebi unda iqnes gamoyenebul i dekompil irebis Catarebaze saavtoro ufl ebis mfl obel is mxridan nebismieri xel SemSl el i dabrkol ebis dasaZl evad. amasTan, dacul unda iqnes qonebrivi ufl ebebis mfl obel is interesebi ganzrax boroti qmedebebisagan. direqtivis es muxl i Camoyal ibebul ia imperatiul ad da xel Sekrul ebis nebismieri piroba, romel ic

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[82]interfeisi _ programul i uzrunvel yofis nawil i, romel ic asrul ebs SemakavSirebel funqcias da uzrunvel yofs Seqmnil i programis urTierTkavSirs da urTierTmoqmedebas sxva programul i uzrunvel yofasa da aparaturul mowyobil obasTan.

[83]urTierTmoqmedebis unari gul isxmobs funqciur urTierTSekavSirebasa da urTirTqmedebas, romel ic aucil ebel ia programul i da aparaturul i uzrunvel yofis el ementebisaTvis sxva programul i da aparaturul i uzrunvel yofis el ementebTan da, aseve, momxmarebel Tan samuSao pirobebis misaRwevad. urTierTmoqmedebis unari uzrunvel yofs sxvadasxva mwarmoebl is mier gamoSvebul i aparaturul i da programul i saSual ebebis daubrkol ebl ad muSaobas.

[84]evropis direqtivis preambul is me-11 paragrafi.

winaaRmdegobaSia am muxl is debul ebebTan baTil ad unda iqnes cnobil i. migvaCnia, rom damatebiTi debul ebis Setana Cvens kanonSi, romel ic gaamyarebda saavtoro samarTl is am principebs, mizanSewonil i iqneboda.

da bol os, kompiuterul i programebis mimarT momxmarebl is aq CamoTvl il i „minimal uri ufl ebebidan" saxel Sekrul ebo urTierTobebSi saavtoro ufl ebis mfl obel i da marTl zomieri momxmarebel i xSirad iyeneben Semdegs:

_ saavtoro ufl ebis mfl obel i, rogorc wesi, gadascems ara erT kompiuterul i programis, aramed or asl s: ZiriTads da sarezervos. Tu gadaecema erTi asl i, momxmarebel s aqvs ufl eba, daamzados sarezervo erTi asl i. Tu asl i dacul ia kopirebisagan, maSin mimwodebel s yovel Tvis SeuZl ia miawodos asl i momxmarebel s, rodesac amis saWiroeba dadgeba (Tu dazianda samuSao asl i). nebismieri xel Sekrul ebis is piroba, romel ic krZal avs sarezervo egzempl aris reproducirebas, uaryofil an cnobil unda iqnes baTil ad aRniSnul i debul ebis safuZvel ze;

_ marTl zomier momxmarebel s yovel Tvis aqvs ufl eba, Seamowmos, gauSvas, daainstal iros, gadagzavnos da Seinaxos programa. reproducireba da programis dekompil acia ar aris daSvebul i am ubral o SemTxvevebisaTvis;

_ programaSi Cadebul i ideisa da principebis Sesaswavl ad SesaZl ebel ia misi mTl ianad an nawil -nawil gamokvl eva;

_ saavtoro samarTal i ar icavs im ideebs, roml ebic safuZvl ad udevs kompiuterul programebs;

_ xel Sekrul ebaSi, aseve, SesaZl ebel ia imis aRniSvna, rom programis keTil sindisieri momxmarebel i val debul ia, kompiuterul programaSi Seitanos Sesworebebi, gaaTavisufl os igi virusebisagan da nebadarTul ia ganaxorciel os programis garkveul i, samomxmarebl o miznebiT gapirobebul i nawil is dekompil ireba. ufl ebaTa mfl obel i ar Tavisufl deba programaSi Sesworebebis Setanis val debul ebisagan, garda amisa, igi unda Rebul obdes Sesworebebs, roml ebsac miawvdis mas mesame piri;

_ yvel a CamoTvl il i ufl eba gamij nul unda iqnes kompiuterul i momsaxureobisaTvis gasawevi ufl ebisagan ganurCevl ad imisa dakavSirebul ia es mis srul yofasTan, dainstal irebasTan, Tu axal i versiis SemuSavebasTan. gasaTval iswinebel ia programis Semqmnel is interesebi da survil ebic.

qonebrivi ufl ebebis CamonaTval i ar aris zRvrul i kanonis Sesabamisad, magram komputerul i programebis mimarT igi zRvrul ad unda miviCnioT, radgan garda moyvanil isa sxva ufl ebis regul ireba ganxil ul i kanonis fargl ebSi ar xdeba.

imisaTvis, rom kompiuterul i programebis dacva uzrunvel yofil i iyos, erTi ram saavtoro samarTl is fargl ebSi, agreTve, gasaTval iswinebel ia. Tu programa iqmneba SromiTi xel Sekrul ebiT gaTval iswinebul i moval ebis Sesrul ebisas an igi special uri dakveTis Sedegia, qonebrivi ufl ebebi gansakuTrebul i regul irebis sagani xdeba aRniSnul i kanonis Sesaabmisad. es sakiTxi cal ke imsaxurebs detal ur ganxil vas Tundac imitom, rom kompiuterul i programebis umravl esoba, zustad amdagvari urTierTobebis Sedegs warmoadgens.

daskvna

saqarTvelo aramxolod aRiarebs saerTaSoriso samarTliT damkvidrebul ZiriTad principebs saavtoro samarTlis farglebSi kompiuterul i programebis dacvis uzrunvelsayofad, aramed am obietis mimarT Tavis kanonmdebl obaSi evropis direqtivis ZiriTad debulebebsac iTvaliswinebs[85]. fundamenturi koncepciebis msgavseba am samarTlebrivi institutis farglebSi ganviTarebis erTian gzaze ayenebs Cven qveyanasac.

cnobilia, rom harmonizirebuli evropuli samarTlis qveynebis kanonmdebl obebSi kompiuterul programaze qonebrivi (ekonomikuri) uflebebisa da maTi SezRudvebis Sesaxeb debulebebi Camoyalibebulia sxvadasxvagvarad, magram isini mainc erTi da igive ideebis amsaxveli ia.

warmodgenil statiaSi miznad visaxavdiT, gagverkvia, ra azri aris Cadebuli an SeiZleba gatardes Cvens kanonSi kompiuterul i programebis qonebrivi uflebebisa da maTi dacvis farglebis mimarT. saavtoro samarTlis am uCveulo (amjamad ki savsebiT Cveulad qceul) obieqtis dacvasTan dakavSirebiT kanonSi debulebebis asaxva xom yovelTvis ar iZleva naTel warmodgenas am sakiTxTan dakavSirebiT. gansakuTrebiT gvinda aRvniSnoT kanonSi gamoyenebul i muxlebi qonebrivi uflebebis SezRudvebis Sesaxeb, romlebic Tavis droze asaxuliyo kidev 1997 wlis saqarTvelos samoqalaqo kodeqsSi. am debulebebma ar ganicada cvlileba arc maTi specialur kanonSi asaxvisas 1999 wels da arc momdevno wlebSi.

kanonmdebl oba Tavisi garegnul i saxiT Seesabameba saerTaSorisod miRebul principebs, debulebebis teqstebic miaxloebul ia, magram isini mainc arasrul ad asaxavs qonebrivi uflebebis SezRudvebis bunebas kompiuterul programebze. mizanSewonil i iqneboda SezRudvebis Sesaxeb muxlebi evropis direqtivis me-5 da me-6 muxlebis srul i analogiiT Camoyal ibebul iyo Cvens kanonSic, rac xels Seuwyobda maT swor aRqmas. agreTve, imedi gvaqvs, rom am kanonis gamoyenebis praqtika da debulebebis interpretaciis saSual ebebi gviCveneben, Tu ra mimarTul ebiT SeiZleba ganviTardes kanonmdebl oba da iqneba Tu ara uzrunvel yofil i kononmdebl is mxridan kompiuterul i programebis dacva.

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[85]1995 wels prof. a. dicma Tavis statiaSi aRmosavl eTi evropis qveynebis kanonmdebl obebis Taobze aRniSna: „... rac ufro uaxl esia saavtoro samarTlis Sesaxeb kononebi, miT ufro pirdapir da TiTqmis ucvl el ad isini aRiareben kompiuterul i programebis dacvis evropis direqtivis debul ebebs", **Adolf Dietz,** Intellectual Property and Desocialization in Eastern Europe, IIC 1995/6, p. 870.

CONCLUSION

Georgia not only recognises foundations established by the International law for copyright protection of computer programs, but in its legislation also implements basic provisions stated by the European Directive on the legal protection of computer programs[86]. Similarity of fundamental principles within this legal institution puts our country to the join way of development.

It is understood that in the countries of Harmonized European Legislation provisions on property (economic) rights on the computer programs and limitations and exceptions of these rights are formulated in a different ways but all of them convey same ideas.

In the presented article we aim at determining the meaning of property rights and their scope of protection which is or could be presented in our law. Formulation of the provision in the law on protection of this unusual (by nowadays as it appeared quiet a usual) object of property rights does not always provide a clear understanding of this question. Especially we would like to stress those articles of law on limitation and exceptions of property rights which were envisaged by the Civil code of Georgia back in 1997. These provisions did not undergo any changes when they appeared in the special Law of Georgia on Copyright and Neighbouring Rights of 1999 and nor were they changed in the following years.

Georgian legislation is in outward resemblance with the international principles and provisions of European directive. However, the description of the nature of limitations and exceptions of property rights on computer programs is incomplete. It would be appropriate if the articles on limitations and exceptions in our law were formulated on the complete analogy of Articles 5 and 6 of the European Directive, which would promote their better understanding. In addition, we hope that practice of application of this law and means of interpretation of its provision will show possible directions of the improvement of the existing copyright legislation and demonstrate whether or not the protection of computer programs will be provide and maintained by the legislators.

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[86]In 1995 Prof. A Dietz brought a notice in his article concerning Eastern European Countries laws: „. . . the more recent these laws are, the more directly and without almost any change they adopted the relevant rules provided in the European Software Directive ", Adolf Dietz, Intellectual Property and Desocialization in Eastern Europe, IIC 1995/6, p. 870.

nana naWyebia
iv. javaxiSvilis saxelobis Tbilisis
saxelmwifo universitetis
iuridiuli fakultetis doqtoranti

meuRleTa saxelSekruli ebo qonebrivi urTierToba: uZrav qonebaze uflebaTa registraciis wesi da pirobebi saqorwino kontraqtis mixedviT.

vuZRvni dedis naTel xsovnas

arsebobs meuRleTa kanonismieri qonebrivi da saxelSekrulebo qonebrivi urTierTobebi. saqorwino kontraqtis dadebiT meuRleebis qonebis kanonismieri reJimi SeiZleba Secvlil iqnes maTive SeTanxmebiT.

meuRleebs SeuZliaT dadon saqorwino xelSekruleba, romliTac ganisazRvreba maTi qonebrivi uflebebi da movaleobebi rogorc qorwinebis, ise ganqorwinebisas (ssk-is 1172-e muxli). meuRleTa saxelSekrulebo qonebrivi urTierTobis gaCena saqarTvelos samoqalaqo kodeqsSi erTgvari novaciaa da masSi nawilobriv gaziarebulia dasavleTis qveynebis gamocdileba, sadac saqorwino kontraqti, rogorc samoqalaqo samarTlebrivi garigebis erT-erT saxes, sakmaod gavrcelebulia da popularobiT sargeblobs.

sabWoTa kavSiris droindel iuridiul literaturaSi saqorwino xelSekrulebis Sesaxeb werdnen: is farTod gavrcelebulia burJuaziul qveynebSi, socialisturi qveynebis kanonmdebloba ki aseTs ar icnobo. ruseTSi kerZo sakuTrebis institutis ganviTarebam saojaxo urTierTobis sferoSic moiTxova samarTlebrivi garantiebi. aseT garantiebs safuZveli daudo axalma saojaxo kodeqsma `burJuaziuli kontraqtis- saxiT.[1]

dasavleTSi ar moiZebneba arc erTi ganviTarebuli qveyana, sadac meuRleTa qonebrivi uflebebis regulireba, garda kanoniT dadgenili wesisa, ar xdebodes saqorwino xelSekrulebis dadebis gziT. ra Tqma unda, es instituti sxvadasxva qveyanaSi Taviseburi specifikurobiT xasiaTdeba, magram arsi yvelgan erTia: meuRleebs eZleveT SesaZlebloba saqorwino xelSekrulebis safuZvelze gansazRvron TavianTi qonebrivi uflebebi da movaleobebi, da am gziT gverdi auaron meuRleTa qonebrivi urTierTobebis mowesrigebis kanonmdeblobiT dadgenil wesrigs, romelic avtomaturad warmoiSveba daqorwinebis _ misi registraciis momentidan.[2]

pasuxobs ra drois moTxovnebs, saojaxo kanonmdeblobac iZulebulia, fexdafex ahyves qveynebSi arsebul ekonomikur realobas, mxedvelobaSi iRebs SeZlebuli fenis kapitalis dacvis garantiebs. meuRleTa qonebrivi urTierTobis regulirebisas imperatiuli meTodebis gverdiT Cndeba dispoziciuri normebi. maT Soris klasikur magaliTs warmoadgens normebi saqorwino kontraqtis Sesaxeb.

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[1] ix.**Кузнецова И. М**, Семейное право, 1998 г. ст 30.
[2] ix.maka kartozia, `saqorwino xelSekruleba, rogorc samoqalaqo-samarTlebrivi garigeba", Jurnali `samarTali" #6-7, 2003, gv.32.

saqorwino kontraqtis institutma wyvilebs (rogorc dasaqorwinebel, ise qorwinebaSi myofT) aZlevs saSualebas, Tavad airCion qonebrivi urTierTobis maTTvis sasurveli reJimi, rac momaval qorwinebaSi maTi qcevis orientiri iqneba rogorc erTad yofnis periodSi, ise ganqorwinebisas.

vfiqrobT, saqarTveloSi ekonomikuri urTierTobebis gaZlierebam da fizikuri pirebis mier kapitalis dagrovebam aqtualuri gaxada maTi SenaZenis dacvis berketebis SemoReba saojaxo urTierTobebSi, miuxedavad imisa, rom am yvelaze metad faqiz sferoSi ndobis koeficienti maqsimums aRwevs, qonebriv interesebze zrunva interes moklebuli arasdros yofila da saqorwino kontraqti qonebrivi urTierTobebis mowesrigebis yvelaze civilur da samarTlebrivad daxvewil formas warmoadgens.

saqorwino kontraqtis samSoblod iTvleba inglisi. XVII saukuneSi saqorwino kontraqtis msgavsi dokumentebi miznad isaxavda gaTxovili qalis uflebebis da misi sisxlismieri naTesavebis sagvareulo qonebis dacvas.

Cveni kanonmdeblobiT saqorwino kontraqti warmoadgens qonebriv sakiTxebze meuRleTa nebis Tavisufali gamovlenis SesaZleblobas.[3] ssk-is mixedviT, meuRleebs SeuZliaT dadon saqorwino xelSekruleba, romliTac ganisazRvreba maTi qonebrivi uflebebi da movaleobebi rogorc qorwinebis ganmavlobaSi, ise ganqorwinebisas.

am ganmartebidan ikveTeba saqorwino xelSekrulebisTvis damaxasiaTebeli niSnebi:

- xelSekrulebis mxareebi arian meuRleebi, Tumca SeiZleba iyvnen pirebi, romlebsac gadawyvetili aqvT daqorwineba;

- saqorwino kontraqti exeba mxolod qonebriv urTierTobebs;

- qonebrivi urTierTobebis regulirebis SeiZleba iyos rogorc qorwinebis periodi, ise ganqorwinebis Semdgomi periodi.

ssk-is momdevno muxli eZRvneba saqorwino xelSekrulebis dadebas: saqorwino xelSekruleba SeiZleba daidos nebismier dros _ rogorc qorwinebis registraciamde, ise misi registraciis Semdeg (1173-e muxli).

zemoTqmulidan gamomdinare, saqorwino xelSekrulebis dadeba SeuZliaT dasaqorwinebel pirebsac, rac sababs gvaZlevs, vivaraudoT, rom kanonmdebeli uSvebs mcired xarvezs saqorwino kontraqtis definiciaSi, kerZod, roca saubaria xelSekrulebis mxareebze, upriani iqneba konteqstSi CavrToT ara mxolod meuRleTa, aramed dasaqorwinebel pirTa Tanxmobac.

saqorwino kontraqti Tavisi iuridiuli bunebiT samoqalaqo samarTlebriv garigebaTa ricxvs miekuTvneba da amdenad mTlianad unda pasuxobdes im moTxovnebs, rasac samoqalaqo kodeqsi zogadad garigebebs uyenebs, Tumca arcis faqti unda dagvaviwydes, rom saqorwino kontraqti specifiurobiT xasiaTdeba da sxva xelSekrulebisgan met-naklebad gansxvavebulia. rogorc m. antakolskaia aRniSnavs, saqorwino xelSekrulebis Taviseburebas misi kompleqsuri xasiaTi gansazRvravs, is SeiZleba Seicavdes ara mxolod meuRleTa qonebis samarTlebrivi reJimis Semcvel samarTlebriv normebs, aramed Seswevs unari, daareguliros meuRleTa mier erTmaneTis rCenis sakiTxebi. saqorwino kontraqtis iuridiuli bunebis analizi saSualebas gvaZlevs davaskvnaT, rom saojaxo urTierTobis samarTlebrivi regulirebisas yvelaze metad vlindeba dispoziciuri sawyisi.[4]

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[3] ix. saqarTvelos samoqalaqo kodeqsis komentari, wigni mexuTe, saredaqcio kolegia Wanturia l., zoiZe b., niniZe T., Sengelia r., xecuriani j., 2000 w, gv. 129.

[4] ix. **Антокольская М. В.,** Семейное право, М, 2002 г, Ст. 157.

i. funkic Tavis naSromSi saubrobs saqorwino kontraqtis iuridiuli bunebis araerTgvarovnebaze. `igi warmoadgens sakmaod rTul samarTl ebriv Semadgenl obas Tavis TavSi, moicavs ra sxvadasxva samarTl ebrivi institutis niSnebs~.⁵ saqorwino kontraqti SeiZl eba Seicavdes pirobebs, romel ic Zal ian hgavs Cuqebis, gacvl is, Txovebis, qiravnobis urTierTobebs.

iuridiul i bunebiT saqorwino kontraqti ormxrivia. mis mxareebs warmoadgenen meuRl eebi an dasaqorwinebel i pirebi. marTal ia, saqorwino kontraqti warmoudgenel ia notariusis monawil eobis gareSe, magram igi mxares ar warmoadgens, Tumca misi rol i sakmaod mniSvnel ovania. notariusma mxareebs unda ganumartos xel Sekrul ebis Sinaarsi.

kanoni iTxovs saqorwino kontraqtis sanotaro wesiT dadasturebas. xel Sekrul ebis erTi egzempl ari rCeba notariusTan (sanotaro biuroSi); Sinaarsi unda iyos naTl ad da araorazrovnad Camoyal ibebul i, ar unda Seicavdes bundovan muxl ebs.

saqorwino kontraqti konsensual ur garigebaTa ricxvs miekuTvneba. misi aRmocenebisTvis sakmarisia mxareTa SeTanxmebam, kauzal uri bunebisaa da misi namdvil oba damokidebul ia safuZvl is arsebobaze.

saqorwino kontraqtis iuridiul i bunebis gaSifvrisas Tavs iCens saojaxo-samarTl ebrivi regul irebis meTodis Taviseburebani:

- saojaxo samarTl ebrivi urTierTobis monawil eTa iuridiul i Tanasworufl ebianoba;

- saojaxo samarTl ebrivi urTierTobis monawil eTa nebis gamovl enis avtonomia;

- dispoziciuri sawyisis gaZl iereba saojaxo samarTl ebriv urTierTobaSi;

- individual ur situaciuri regul ireba.⁶

Tanasworufl ebianoba gamoxatul ebas hpovebs saqorwino kontraqtSi, roml is qvakuTxedad SegviZl ia miviCnioT monawil eTa urTierTobis horizontal uroba. maSinac ki, roca Sinaarsi SeiZl eba aseTi daskvnis saSual ebas ar gvaZl evdes, gadamwyveti mniSvnel oba eniWeba mxareTa nebis gamoxatvis Tavisufl ebas, rac mWidro kavSirSia nebis gamovl enis avtonomiasTan. mag. meuRl eebs saqorwino kontraqtiT SeuZl iaT daadginon qonebis saxel Sekrul ebo reJimi, xol o Tu isini amgvar SeTanxmebas ver miaRweven, maSin amoqmedeba qonebis kanonismieri reJimi.

samoqal aqo samarTl ebrivi urTierTobis monawil eTa Tanasworoba gul isxmobs samoqal aqo ufl ebebis warmoSobis, Secvl is da Sewyvetis Tanabar kriteriumebs, miuxedavad maTi mfl obel ebis material uri social uri uTanasworobis, organizaciul - samsaxurebrivi damokidebul ebisa erTmaneTisadmi da aseve, samoqal aqo samarTal darRvevisaTvis pasuxismgebl obis Tanabar kriteriumebs.⁷

saqorwino kontraqtis momwesrigebel i normebi da mTl ianad saojaxo urTierTobebi ZiriTadad dispoziciur xasiaTs atarebs. rac Seexeba individual ur situaciur regul irebas, aq saubaria e.w. ganusazRvrel normebze.

⁷ix.**Функ Я.И**., Брачный Договор. Имущественные отношения супругов, их участие в хозяйственных обществах и товариществах по законодательству Российской Федерации и Республики Беларусь, 2003 г, Ст. 35.

⁸ix.**Муратова С. А., Тарсамаева Н. Ю,** Семеиное право, М, 1999 г, Ст. 90.

⁷ix."Гражданское Право", Часть 1, 2002 г. Под редакцией **А. Г. Калпина и А. И. Масляева,** Ст. 23.

es is SemTxvevebia, roca situaciuri anal izis safuZvel ze unda moxdes samarTl is normis interpretireba. mag. ssk-is 1179-e muxl is me-2 punqtis mixedviT, xel Sekrul ebiT ar SeiZl eba gaTval iswinebul iqnes iseTi pirobebi, roml ebic mZime mdgomareobaSi ayeneben erT-erT meuRl es. Tu ra igul isxmeba mZime mdgomareobaSi, es individual uri Sefasebis sakiTxia, romel ic mraval i faqtorisa Tu garemoebis Seswavl is Sedegad unda ganisazRvros.

rogorc m. antakol skaia aRniSnavs, saojaxo urTierTobis regul irebaSi dispoziciuri sawyisis gaZl ierebiT gafarTovda saojaxo urTierTobis monawil eTa mxridanac situaciuri regul irebis SesaZl ebl oba.[8]

zogadad saqorwino kontraqti ideba uvadod, Tumca mxareTa SeTanxmebiT SeiZl eba misi moqmedebis Semofargvl a garkveul i vadiT, magal iTad, 5 an 10 wl iT.

saqorwino xel Sekrul ebiT gaTval iswinebul i ufl ebebi da moval eobebi SeiZl eba SeizRudos gansazRvrul i vadiT anda ama Tu im pirobebis dadgomiT.

kanonmdebl obidan gamomdinare Teoriul ad arsebobs imis SesaZl ebl oba, rom, Tu saqorwino kontraqti daido qorwinebis registraciamde, sakmaod didi xnis ganmavl obaSi an saerTod ar Sevides iuridiul Zal aSi. am dros igi arsebobas ganagrZobs, magram aranair samarTl ebriv Sedegs ar iwvevs. Tu mxareebi qorwinebas daaregistrireben, vTqvaT, 5 wl is Semdeg, maTTvis 5-wl iani xandazmul obis mqone xel Sekrul eba SeiZens iuridiul Zal as.

bel orusiis kanonmdebl obiT, saqorwino xel Sekrul eba SeiZl eba daidos mxol od qorwinebis registraciis Semdeg nebismier dros. vfiqrobT, praqtikaSi Zal ze iSviaTad iqneba imis aucil ebl oba, rom saqorwino kontraqti daidos qorwinebis registraciamde. vinaidan, saqorwino kontraqti qorwinebis registraciis gareSe aranair ufl eba-val debul ebebs ar warmoSobs, ssk-is 1173-e muxl i SeiZl eba CavTval oT yvel aze nakl ebad real izebad normad.

saqorwino kontraqtis mxareebi arian dasaqorwinebel i pirebi an meuRl eebi, anu samarTal subieqtobis moments mivyvavarT im pirobamde, rac aucil ebel ia daqorwinebisTvis. samoqal aqo kodeqsis mixedviT, esaa srul wl ovaneba da qmedunarianoba. piri srul wl ovani xdeba 18 wl is asakidan, magram kanoni iTval iswinebs gamonakl iss, rodesac saqorwino asaki SeiZl eba Semcirebul iqnes 16 wl amde. sainteresoa, Tu arasrul wl ovani piri gadawyvets saqorwino kontraqtis dadebas, iqneba Tu ara misi Tanxmoba sakmarisi? upriania aseT SemTxvevaSi moviTxovoT mSobl ebis an kanonieri warmomadgenl is Tanxmoba. Tu arc mSobl ebis da arc kanonieri warmomadgenl is Tanxmoba arsebobs, maSin sabol oo sityva sasamarTl os eTqmis. Tu sasamarTl o gascems nebarTvas saqorwino asaks miuRwevel pirTa qorwinebaze, maSin es sakmarisi samarTl ebrivi safuZvel i iqneba saqorwino kontraqtis dadebisTvis. gansxvavebul i mosazrebaa gamoTqmul i samoqal aqo kodeqsis komentarebSi. avtoris azriT, roca mSobl ebi arasrul wl ovani Svil is daqorwinebis winaaRmdegi arian da sasamarTl o rTavs daqorwinebis nebas, es ar niSnavs imas, rom arasrul wl ovan pirs amiT qorwinebis registraciamde eZl eva saqorwino xel Sekrul ebis dadebis ufl eba. es SesaZl ebel ia mxol od maSin, Tu sasamarTl o Tavis gadawyvetil ebaSi special urad miuTiTebs amis Taobaze.

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[8] ix.**Антокольская М. В**., Семейное право, М, 1998 г. Ст. 13-21.

qorwinebis registraciis Semdeg, rogorc cnobil ia, arasrul wl ovani piri (meuRl e) iZens srul qmedunarianobas da SeuZl ia damoukidebl ad dados saqorwino xel Sekrul eba.

sainteresoa, aqvs Tu ara emansipirebul arasrul wl ovans, Tu igi daqorwinebas gadawyvets, dados saqorwino kontraqti? vfiqrobT, kiTxvas uaryofiTi pasuxi unda gavceT. vinaidan da radganac emansipacia gul isxmobs SeuzRudavad qmedunarianobas mxol od da mxol od samewarmeo urTierTobebSi, sxva sferoSi igi Cveul ebriv saWiroebs kanonieri warmomadgenl is aucil ebel Tanxmobas.

faqtobriv qorwinebaSi myofi pirebi ar SeiZl eba saqorwino kontraqtis mxareebad mogvevl inon. Tu isini gaaformeben am xel Sekrul ebas, xol o Semdeg daaregistrireben qorwinebas samoqal aqo aqtebis registraciis organoSi, mxol od registraciis Semdeg SeiZens kontraqti iuridiul Zal as.

amdenad, saqorwino kontraqtis subieqtebi arian meuRl eebi da pirebi, roml ebsac ganzraxul i aqvT daqorwineba. iuridiul l iteraturaSi gamoTqmul ia araerTgvarovani azri, daiSveba Tu ara saqorwino kontraqtis gaformeba mindobil obis safuZvel ze. s. bondovi Tvl is, rom saqorwino xel Sekrul ebis dadeba warmomadgenl is meSveobiT, Tu mindobil oba saTanado doneze iqneba Sedgenil i da Seicavs saqorwino xel Sekrul ebis ZiriTad pirobebs, savsebiT dasaSvebia garigebis qonebrivi xasiaTidan gamomdinare.[9]

Cven viziarebT rigi avtorebis azrs, rom saqorwino xel Sekrul eba ganekuTvneba piradi xasiaTis xel Sekrul ebaTa ricxvs da igi ar SeiZl eba daidos meuRl is kanonieri warmomadgenl is an rwmunebul is mier.[10]

Tanaavtorebisa muratova-tarsamaevas azriT ki saoj axo urTierTobebis specifika imaSi mdgomareobs, rom isini pirad xasiaTs atarebs da sxva pirisTvis saoj axo ufl ebebisa da moval eobebis gadacema SeuZl ebel ia, amitom saqorwino xel Sekrul eba ar SeiZl eba daidos mindobil obis safuZvel ze.[11]

qorwineba esaa saoj axo samarTal urTierTobis aRmocenebis yvel aze tipuri saSual eba. qorwinebas mosdevs oj axis Seqmna. samarTal urTierTobaSi qorwinebas eniWeba iuridiul i faqtis mniSvnel oba, romel sac aqvs rTul i kompl eqsuri xasiaTi. erT-erTi el ementTagani, romel ic Sedis iuridiul i faqtis Semadgenl obaSi, esaa qorwinebis registracia.[12]

saqarTvel os samoqal aqo kodeqsis Tanaxmad, saqorwino xel Sekrul eba SeiZl eba daidos nebismier dros rogorc qorwinebis registraciamde, ise misi registraciis Semdeg, oRond kanonmdebel i aq erT daTqmas akeTebs, rac srul ebiT bunebrivia: saqorwino xel Sekrul eba, romel ic daido qorwinebis registraciamde, Zal aSi Sedis registraciidan.

amdenad, xel Sekrul eba rom daidos, amisTvis aucil ebel ia qorwinebis arseboba. saubaria registrirebul qorwinebaze, rac Seexeba faqtobriv urTierTobebs (registraciis gareSe) meuRl eebi mokl ebul i arian SesaZl ebl obas, dadon saqorwino xel Sekrul eba. ver daveTanxmebiT m. antakol skaias, romel ic fiqrobs, rom raxan samoqal aqo kanonmdebl oba ar icnobs xel Sekrul ebaTa amomwurav CamonaTval s, faqtobriv meuRl eebsac SeuZl iaT dadon xel Sekrul eba, romel ic mimarTul i iqneba qonebrivi urTierTobis regul irebisken. `Tu aseTi SeTanxmebebi iqneba kanonis Sesatyvisi, maSin SeiZl eba maTi samarTl ebrivad sworad miCneva. maT ricxvs kanonis anal ogiiT SeiZl eba

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[9] ix.**Бондов С. Н,** Брачный Договор, 2001 г, ст. 58.

[10] ix.CikvaSvil i Sal va, saoj axo samarTal i, Tb. 2000w., gv.143.

[11] ix.**Муратова С. А., Тарсамаева Н. Ю.**, miTiTebul i naSromi, gv.93.

mivakuTvnoT normebi saqorwino kontraqtis Sesaxeb. Tumca aucilebel ia gvaxsovdes kodeqsis moTxovna, rom erTobl ivi sakuTreba warmoiSoba kanonis Zal iT da, Sesabamisad, ar SeiZl eba aRmocendes xel Sekrul ebis safuZvel ze. gamodis, faqtobriv meuRl eebs ar SeuZl iaT SeTanxmebiT daadginon saerTo Tanasak
uTreba qonebaze, romel ic faqtobrivi qorwinebis ganmavl obaSi SeiZines, Tumca faqtobrivi qorwinebis ricxvis mkveTri matebis gaTval iswinebiT, sakmaod gonivrul i iqneba, faqtobriv meuRl eebs davrToT saqorwino kontraqtis dadebis neba."[13]

saqorwino xel Sekrul ebis Secvl a an Sewyveta xdeba zustad igive wesiT, rogorc misi dadeba _ weril obiTi formiT da aucil ebel i sanotaro wesiT dadasturebiT.

saqorwino xel Sekrul ebis weril obiT formas evropis qveynebis kanonmdebl obac iTxovs. safrangeTSi aucil ebel ia misi notariul i damowmeba, ital iaSi igi unda daregistrirdes xel isufl ebis adgil obriv organoSi, xol o Tu es exeba uZrav qonebas, im organoSi, romel sac exeba uZravi qonebis daregistireba.[14] aqve gvinda SevexoT erT metad saWirboroto sakiTxs _ romel ic exeba _ saqorwino kontraqtSi miTiTebul i uZravi qonebis mesakuTrisa da sajaro reestrSi arsebul Canawerebs Soris urTierTkavSirs, saojaxo da sanivTo samarTl is normebs Soris kol izias. aRniSnul Tan dakavSirebiT sainteresoa amJamindel i sasamarTl o praqtika.

uzenaesi sasamarTl os didma pal atam 2002 wl is 9 dekembris ganCinebiT CaTval a, rom SemZenis interesebidan gamomdinare, meuRl eTa qorwinebis ganmavl obaSi erTad SeZenil, ssk-is 1158-e muxl iT gaTval iswinebul uZrav qonebaze meuRl eTa sakuTrebis ufl eba warmoiSoba mxol od sajaro reestrSi orive maTganis registraciis Semdeg, winaaRmdeg SemTxvevaSi mesame pirebis mimarT sajaro reestris Canawerebi iTvl eba sworad.[15]

praqtikaSi dgeba sakiTxi, rodesac meuRl e iTxovs meore meuRl is mier dadebul i uZravi qonebis nasyidobis xel Sekrul ebis baTil ad cnobas, rodesac qoneba SeZenil ia qorwinebis ganmavl obaSi da, Sesabamisad, iTvl eba maT Tanasakuu

Trebad, xol o sajaro reestrSi mesakuTred miTiTebul ia erT-erTi meuRl e, romel ic meore meuRl is Tanxmobis gareSe asxvisebs mas. romel normas unda mieniWos am SemTxvevaSi upiratesoba _ sanivTo samarTl ebrivs, romel ic ambobs, rom gamsxvisebel i iTvl eba mesakuTred, Tu aseTad registrirebul ia sajaro reestrSi, garda im SemTxvevisa, roca SemZenma icoda, rom gamsxvisebel i ar iyo mesakuTre da Sesabamisad, qorwinebis ganmavl obaSi SeZenil i uZravi qonebis erTaderT mesakuTred CaiTvl eba is meuRl e, romel ic reestrSia miTiTebul i da mis mier qonebis gankargvis garigeba ar iqneba damokidebul i meuRl is nebaze, saojaxo samarTl ebriv normebis mixedviT, qorwinebis ganmavl obaSi SeZenil qonebaze _ erT-erTi meuRl is saxel ze registrirebul uZrav qonebaze sakuTrebis ufl eba warmoeSoba meore meuRl esac da baTil i iqneba reestrSi erTaderT mesakuTred registrirebul i meuRl is mier am uZrav qonebaze dadebul i garigeba, Tu dadgindeba, rom meore meuRl e am garigebaze ar iyo Tanaxma da garigebis damdebma pirma icoda amis Sesaxeb. iuridiul l iteraturaSi ar arsebobs am sakiTxisadmi erTgvarovani midgoma. zogierTi mecnieri Tvl is, rom `sasamarTl o upiratesobas aniWebs samoqal aqo kodeqsis zogad normas, romel ic sajaro reestris safuZvel ze miuTiTebs uZrav

[13] ix.**Ворожейкин**, Правовые основы брака и семьи, М., 1969 г, Ст. 18.
[14] ix.**Антокольская М. В**, Семеиное право, М, 2002 г., ст. 158-159
[15] ix.**Дамирчиева Маххабат Даирман Кизы** , Брачный Договор, 2003 г, gv. 85.

nivTebze mesakuTres riTac sruliad marTebulad icavs mesame pirTa interesebs, Tumca daucveli rCeba meuRle, romelsac, saojaxo kanonmdeblobis mixedviT, iseTive uflebebi aqvs am qonebaze, rogorc mis registrirebul meuRles".[16]

aRniSnuls ar eTanxmeba profesori eka zarnaZe da miaCnia, rom saqmis amgvarad gadawyvetiT ar xdeba meuRlis interesebis xelyofa. `qorwinebis ganmavlobaSi uZravi qonebis SeZenis faqti, rodesac araa saqorwino xelSekruleba dadebuli, TiToeul meuRles aniWebs TanasakuTrebis moTxovnis uflebas, rac SeuZliaT ganaxorcielon rogorc SeZenis momentSi TanamesakuTred registraciis, ise SemdgomSi reestris CanawerebSi cvlilebebis Setanis gziT. marTebuli iqneboda, Tu ssk-is saojaxo samarTlis normebSi garkveviT aisaxeboda aRniSnuli Sinaarsi, kerZod, is, rom kanonismieri reJimi TiToeul meuRles qorwinebis ganmavlobaSi SeZenil iseT qonebaze, romel zec sakuTrebiTi urTierToba sajaro reestridan vlindeba, aniWebs Tanaziari sakuTrebis moTxovnis uflebas, romelic SeiZleba ganaxorcielos sajaro reestrSi registraciis gziT da meuRleTa TanasakuTreba mocemul saxis qonebaze warmoiSoba mxolod sajaro reestrSi registraciis momentidan."[17]

uzenaesi sasamarTlos praqtikaSi prioriteti sajaro reestris monacemTa utyuarobisa da sisrulis prezumfcias eniWeba, riTac aRiarebulia ucxoeTis sxvadasxva qveynis kanonmdeblobiT ganmtkicebuli principi,romelic SemdegSi mdgomareobs:nebismieri piri, romelic debs garigebas meuRleTa mier SeZenil iseTi qonebis Taobaze, romel zec sakuTrebiTi urTierTobis xasiaTi sajaro reestridan vlindeba, SeiZleba daeyrdnos mxolod sajaro reestrSi mocemul informacias, anu rogorc profesori beso zoiZe ganmartavs: `dauSvebelia mesame pirTa mimarT dadges samarTlebrivi Sedegebi, Tu am samarTlebrivi Sedegebis gamomwvevi informacia ar aris dadgenili formiT sajarod gacxadebuli, xel misawvdomi kontrahentisaTvis~.[18]

amdenad, meuRleTa qonebrivi interesebis ukeT dacvis miznIT da `Sesabamisad, samarTlebrivad misi ukeT mowesrigebisaken mimarTul nabijia kanonier ZalaSi Sesuli saqorwino xelSekrulebiT gaTvaliswinebuli im qonebrivi uflebebis saval debulo registraciis wesis SemoReba, romelic uZrav nivTebs Seexeba~.[19]

misasalmebeli iqneba, Tu ssk-is saqorwino xelSekrulebis momwesrigebel normebSi aisaxeba moTxovnebi saval debulo registraciis wesis Sesaxeb.

rekomendaciis saxiT gvinda SemogTavazoT, rom kargi iqneba, Tu saqarTveloSi notariusi, daamowmebs ra saqorwino xelSekrulebas, sadac saubari iqneba uZravi

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[15]saqarTvelos uzenaesi sasamarTlos gadawyvetilebani samoqalaqo, samewarmeo da gakotrebis saqmeebze, #2, 2005, gv. 35 vuTiteb:eka zarnaZe `meuRleTa mier qorwinebis ganmavlobaSi SeZenili uZravi qonebis marTvisa da gankargvis sakiTxebze sasamarTlo davebis gadawyvetis zogierTi Tavisebureba", Jurnali `qarTuli samarTlis mimoxilva" #10, 2007. 120-124

[16]CikvaSvili Salva, `meuRleTa TanasakuTrebaSi arsebuli qonebis gankargvis samarTlebrivi problemebi. Jurnali `samarTali" 2002, gv. 44, vuTiteb: eka zarnaZe `meuRleTa mier qorwinebis ganmavlobaSi SeZenili uZravi qonebis marTvisa da gankargvis sakiTxebze sasamarTlo davebis gadawyvetis zogierTi Tavisebureba", Jurnali `qarTuli samarTlis mimoxilva" #10, 2007, gv. 134

[17]ix.eka zarnaZe, miTiTebuli statia, gv.134-136.

[18]is.zoiZe besarion, meuRleTa qonebrivi urTierTobebis reJimi, Jurnali `saqarTvelos notariati", 2002 w. gv.27.

[19]ix.eka zarnaZe, miTiTebuli statia, gv. 136.

qonebis gadacemis pirobaze, aRniSnuli xelSekrulebis asls gadaugzavnis sajaro reestris erovnul saagentos, sadac amonawerSi dafiqsirebuli iqneba samomavlo valdebuleba. amiT momavali myidveli informirebuli iqneba nasyidobis sagnis naklis Sesaxeb. Tumca sainteresoa, ramdenad CaiTvleba mocemul SemTxvevaSi uZravi nivTi uflebrivad naklianad?

ganvixiloT SemTxveva: meuRleebma dades saqorwino kontraqti da gadawyvites, rom ganqorwinebisas cols gadaecemoda agaraki. meuRleebi ganqorwindnen. manamde qmarma agaraki mihyida X-s, romelic keTili sindisieri SemZenia, ganqorwinebis Semdeg colma moiTxova agarakis Tavis sakuTrebaSi gadacema. kanoni realuradmas mxolod zalis anazRaurebis moTxovnas utovebs.

rogorc erT-erTi avtori Tavis naSromSi aRniSnavs, bevr qveyanaSi uzrunvel yofilia dainteresebul pirTa Tavisuflad vvdoma saqorwino kontraqtis SinaarsTan. monacemebi sajaroa da nebismier pirs SeuZlia gaecnos xelSekrulebis Sinaarss. es wesi, upirvel es yovlisa, icavs meuRleTa kreditorebs da mniSvnelovania samewarmeo sferoSi urTierTobebisTvis.[20]

ruseTis saojaxo kodeqsi iTval iswinebs normas, romelic exeba kreditorTa interesebis dacvas. meuRle valdebulia, saqmis kursSi acnobos Tavis kreditors saqorwino kontraqtis dadebis, Secvlis an Sewyvetis Taobaze. am valdebulebis Seusruleblobisas meuRle pasuxs agebs valdebulebze saqorwino kontraqtis Sinaarsisgan damoukideblad. gamodis, ruseTis kanonmdebloba zrunavs kreditorebis interesebze da aZlevs maT uflebamosilebas, moiTxovon maT Soris dadebuli garigebis pirobebis Secvla an Sewyveta, Tu garemoebebi arsebiTad Secvala. saqorwino kontraqti qonebrivi urTierTobis momwesrigebeli garigebaa, kontragentis kreditorisTvis ki sul erTi namdvil ad araa, ramoculobis valdebuleba ekisreba moval es meuRlesTan gaformebuli xelSekrulebiT.

samarTali esaa formaluri Tanaswaroba, samarTali esaa xalxis sazogadoebriv urTierTobaTa Tavisuflebis sayovel Tao da aucilebeli forma, samarTali es sayovel Tao samarTlianobaa.[21] Tanaswaorobisa da adamianTa urTierTobis erT-erT civilur, Tanamedrove da progresul nabijs warmoadgens saqorwino kontraqtis institutis SemoReba samoqalaqo kanonmdeblobaSi.

erT-erTi yvelaze zusti daxasiaTeba saqorwino kontraqtisa aris Semdegi: qonebrivi urTierTobebis sferoSi xelSekrulebis ZalaSi Sesvlis Semdeg meuRleTa qcevis nebelobiTi modeli.[22]

isev iarsebebs saqorwino kontraqtisadmi skeptikurad ganwyobili sazogadoeba, romlis warmomadgenlebic Tvlian, rom misi SemoRebiT gaizrdeba meuRleTa Soris sasamarTlo davebis ricxvi, rom saqorwino xelSekruleba ganqorwinebisken ufro ubiZgebs wyvils, vidre ojaxis SenarCunebisken. Cven ki gvgonia, rom saqorwino kontraqti maT mravali sakiTxis mogvarebis SesaZleblobas miscems. yvela dasaqorwinebeli/ daqorwinebuli wyvili SeZlebs moirgos qonebis maTTvis sasurveli da misaRebi samarTlebrivi reJimi. amaSi skeptikosebic darwmundebian mas Semdeg, rac Seiqmneba saqorwino kontraqtebis dadebis mciredi praqtika mainc.

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[20] ix.**Дамирчиева Маххабат Даирман Кизы**, miTiTebuli naSromi, gv. 85.

[21] ix.**Нерсесянц В.С.,** Философия права, M, 2001 г, Ст. 35.

[22] ix.**Пчелинцева Л. М,** Семейное право России, M, 2002 г, Ст. 209.

winamdebare statiaSi SevecadeT rac SeiZleba amomwuravad gvesaubra saojaxo samarTlis am SedarebiT axali institutis Sesaxeb, warmogveCina misi mniSvneloba da gagvemtkicebina azri imis Sesaxeb, rom saqorwino xel Sekrulebis arsebobam xel i unda Seuwyos meuRleebs gadawyviton qonebrivi davebi sasamarTlo ganxilvis gareSe, urTierTSeTanxmebiT da rac mTavaria, airCion qonebrivi urTierTobebis maTTvis misaRebi forma.

migvaCnia, rom dadebiTi iqneba, Tu saqarTvelo gaiziarebs sxva qveynebis gamocdilebas saqorwino kontraqtis safuZvelze warmoSobili uflebebis registraciis Sesaxeb da meuRleTa qonebrivi interesebis ukeT dacvis mizniT srulyofilad ganxorciel deba saqorwino xel SekrulebiT gaTval iswinebuli im qonebrivi uflebebis saval debulo registracia, romlebic uZrav nivTebs Seexeba.

vfiqrobT, droTa ganmavlobaSi saqorwino kontraqti saTanado dafasebas povebs qarTul samoqalaqo sivrceSi da literaturaSi Sesabamisi diskusiebic ufro mraval ferovani da saintereso gaxdeba.

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CONTRACTUAL PROPERTY RELATIONS OF THE SPOUSES: REGULATIONS AND CONDITIONS OF REGISTRATION OF RIGHTS ON THE REAL PROPERTY ACCORDING TO MARRIAGE AGREEMENT

To blessed memory of my mother

There exist statutory property and contractual property relations between the spouses. Through marriage agreements the statutory regimen with respect of the property of spouses may be changed by their agreement.

Spouses may make the marriage agreement, which would establish their property rights and obligations both, at a time of marriage and divorce (Article 1172 of Georgian Civil Code) Contractual property relations of the spouses is some kind of innovation in the Civil Code of Georgia and it partly shares experience of the western countries, where the marriage agreement, as one of the types of civil legal deal, is quite widespread and popular.

In the juridical literature of the times of Soviet Union, there was stated about the marriage agreement: it is widespread in the bourgeois countries and legislation of the socialist countries does not recognize it. In Russia, development of the institute of the private property demanded legal guarantees in the sphere o the family relations. Basis for such guarantees was provided by the new Family Code in a form of "bourgeois contract".[1]

In the west, there was no developed country, where regulation of the property rights of the spouses is not provided by the marriage agreement, in addition to the rules established by the law. Of course, this institute has different specific characteristics in the different countries, but the essence is one and the same everywhere: the spouses have opportunity, on the basis of the marriage agreement, determine their property rights and obligations and thus avoid regulation of the property rights of the spouses established by the legislation, which automatically emerge from the moment of registration of marriage.[2]

In response to the requirements of time, family legislation should correspond to the developed economy, entrepreneurship of the countries and take into consideration the guarantees of protection of the property of the wealthy stratum. IN addition to the imperative methods in regulation of the property relations between the spouses, there appear the disposition norms, the classical example of which are the regulations on marriage agreement.

The institute of marriage agreement allowed the pairs (both, to be married and already married) to make choice of the desired regime of the property relations, what, in the future, will provide the guideline for their behavior in the period of their marriage, as well as at a time of divorce.

We regard that strengthening of economic relations and accumulation of the capital by the physical persons made significant introduction of the levers for protection of their assets in the family relations, though, in this most delicate sphere, the indicator of trust achieves its maximum. Taking care of the property interests have never lacked interest and the marriage contract is the most civil and legally refined form of regulation of the property relations.

England is regarded as the place of origin of the marriage agreement. In the 17th century, the deeds similar to the marriage agreements were intended for protection of the rights of the married women and the family property of her blood relatives.

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[1]See **Kuznetsova I. M.**, Family Law, 1998, p. 30.
[2]See **Kartozia Maka** «Marriage Agreement as Civil Legal Deal" Magazine "Samartali (The Justice), # 6-7, 2003, p. 32.

According to our legislation, the marriage agreement provides the opportunity of free expression of will by the spouses with respect of the property issues.[3]

According to Georgian Civil Code, the spouses may make the marriage agreement, which will determine their property rights and obligations, during the period of their marriage and at a time of divorce.

From this definition the characteristic features of the marriage agreement are seen:

- Parties to the agreement are the spouses, though they may be the persons, who intend to get married.
- Marriage agreement deals with the property relations only.
- Period of regulation of the property relations may be as the period of marriage, also the period after divorce.

Following article of Georgian Civil Code is dedicated to execution of the marriage agreement: marriage agreement may be executed both, before marriage registration and after registration, at any time (Article 1173).

Based on the above, the persons to be married may make the marriage agreement, what offers that there is some gap in the legislation with respect of definition of the marriage agreement; in particular, dealing with the parties to the agreement, it would be reasonable to include into the context the consent not only of the spouses, but also the one of the persons to be married.

The marriage agreement, with its juridical nature, is the civil legal deal and therefore, it should fully comply with the requirements of Civil Code to the deals in general, though, we should bear in mind the fact that the marriage agreement is characterized with the specific features and is more or less different from the other agreements. As notes M. Antakolskaia, the specific features of the marriage agreement is determined by its complex nature. It may contain not only legal regulations replacing legal norms dealing with the juridical regime of the spouses' property, but it is also able to regulate the issue of support of the spouses by one another. Analysis of the juridical nature of the marriage agreement allows to make conclusion that in regulation of the family relations the disposition principles are revealed most apparently.[4]

U. Funk, in his works, considers non-uniformity of the juridical nature of the marriage agreements. "It is a document of quite complex legal composition, containing the signs of various juridical institutes".[5] Marriage agreement may contain the conditions, which are very close to the gift, exchange, lend, hire relations.

By its legal nature, the marriage agreement is bilateral. Its parties are the spouses or persons, who intend to get married. While the marriage agreement could not be imagined without participation of the notary, he/she is not a party to the agreement, though his/her role is quite significant. The notary shall explain to the parties the content of the agreement. The law requires notarization of the marriage agreements. One of the copies of the agreement shall be maintained with the notary (in the notary's office). Contents shall be clearly and unambiguously formulated. It shall not contain unclear provisions.

Marriage agreement is a consensual deal. Agreement between the parties is enough for its creation. It is of casual nature and its validity depends on existence of the basis.

In transcribing of the juridical nature of marriage agreement the following specific features of family-legal regulation methods are arisen:

- Legal equality of the participants of family legal relations
- Autonomy of expression of will of the participants of family legal relations
- Strengthening of disposition principles in family legal relations
- Individual situational regulation.[6]

Equality of rights finds its expression in the marriage agreement, where the horizontal relations between the participants could be regarded as cornerstone. Even when the contents do not allow to make such

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[3]See Comments to the Civil Code of Georgia, Book Five, Editorial Board: **Chanturia L., Zoidze B., Ninidze T., Shengelia R., Khetsuriani J.**, 2000, p 129.

[4]See. **Antokolskaia M. B**., Family Law, 2002, p. 157.

[5]**Funk Ya. I.** Marriage Agreement. Property Relations of the Spouses, their Participation in the Economic Companies and Partnerships in Accordance with Legislations of Russia and Belarus. 2003, p.35.

[6]See **Muratova S. A., Tarsamaeva N. Yu.**, Family Law, 1999, p.90.

conclusion, the decisive significance is given to freedom of expression of the will by the parties, what is closely related to autonomy of expression of will. E. g. the spouses, by the marriage agreement, may determine the agreement regime of the property. If they fail to achieve such agreement, the property regime provided for by the law shall apply.

Equality of the participants of the civil legal relations implies equal criteria of emergence, change and termination of the civil rights, irrespective of material social inequality of their carriers, irrespective of the organizational-employment relations with one another, as well as equal criteria for civil delinquency.[7]

The norms regulating the marriage agreements and generally, the family relations, have basically dispositional nature. As for individual situational regulation, here are considered so called unlimited norms.

These are the cases, when the legal norms shall be interpreted on the basis of situational analysis. E. g. in accordance with Section 2 of Article 1179 of the Civil Code of Georgia: the agreement may not provide for such conditions, which put one of the spouses into the heavy condition. What is implied under the heavy condition, is thew issue of individual assessment, which should be determined as a result of study of various factors and circumstances.

As M. Antakolskaia notes, by strengthening of the dispositional principle in regulation of the family relations therpossibility of situational regulation from the side of the participants of family relations was widened as well.[8]

Generally, the marriage agreement is made for unlimited period, though, upon agreement between the parties, its effectiveness may be limited to certain term, e. g. 5 or 10 years.

Rights and obligations provided for by the marriage agreement may be limited to certain term or by emergence of one or another condition.

Based on the legislation, theoretically, there is possibility that if the marriage agreement was made before registration of marriage, it did not become legally effective at all, or for quite long period of time. For this time, it continues to exist, but it does not cause any legal outcomes. If the parties register their marriage e. g. after 5 years, for them, the agreement of 5-year age will obtain legal force.

In accordance with legislation of Belarus, marriage agreement may be executed only after marriage registration, at any time. We regard that in practice there will be very rare cases, when execution of the marriage agreement is necessary before marriage registration, as the marriage agreement without registration creates no rights and obligations, Article 1173 could be regarded as the least realized regulation.

Parties to the marriage agreement are spouses, or persons to be married, or the point of law subject leads to the condition necessary for marriage. According to the Civil Code, this includes maturity and legal capacity. A person becomes mature from 18-year age though the law provides for the exception, when marriage age is decreased to 16. It is interesting, if a person, who is not mature, decides to make the marriage agreement, whether his/her consent will be enough? It would be reasonable to require consent of the parents or the legal representative. If neither parents and nor legal representatives' consent is provided, the final decision should be made by the court. If the court issues permission on marriage of the under-aged persons, it would provide adequate legal basis for the marriage agreement. Comments to the Civil Code provide the different opinion. The author thinks that if the parents are against marriage of under-aged child and the court issues the permission for marriage, this should not imply that this person has right to make the marriage agreement before registration of marriage. This is possible only when the court expressly provide for this, in its decision. Upon registration of marriage, as it is well known, the under-aged person (spouse) acquires full legal effectiveness and he/she may make marriage agreement indecently.

It is interesting, whether the emancipated under-aged person, if he/she decides to get married, has right to make the marriage agreement? We think that to this question we should give the negative answer. As emancipation implies unlimited legal effectiveness only in the entrepreneurial relations, in the other spheres, such person, generally, requires the necessary consent of the legal representative.

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[7]See «Civil Law:, part I, 2002, editors: **A. G. Kalpin** and **A. I. Maslyaev**, p. 23.
[8]See. **Antokolskaia M. B.**, Family Law, 1998, pp. 13-21.

Persons in the actual marriage may not be the parties to the marriage agreement. If they execute such agreement and later they register the marriage with the body of registration of the civil acts, the agreement will acquire the legal force only after such registration.

Thus, the subjects of the marriage agreement are the spouses and the persons, who intend to get married. In the law literature there are stated different opinions, whether it is acceptable to make marriage agreement based on the power of attorney. S. Bondov thinks that execution of the marriage agreement through the attorney, if the power of attorney is executed adequately, containing key terms and conditions of the marriage agreement, is fully acceptable, regarding the property nature of the deal.[9]

We share the opinion of the number of authors, stating that the marriage agreement is an agreement of private nature and it should not be executed by lawful representative or attorney of a spouse.[10]

Co-authors – Muratova – Tarsamaeva regard that the specific nature of the family relations is their personal nature and it is impossible to transfer the family rights and obligations. Therefore, the marriage agreement should not be made on the basis of the power of attorney.[11]

Marriage is the most typical way of creation of the family legal relations. Marriage is followed by creation of a family. In legal relations, the marriage has the significance of the juridical fact with complicated complex nature. One of the elements of the composition of legal fact is registration of marriage.[12]

In accordance with Georgian Civil Code, the marriage agreement may be executed at any time, both, before and after registration of marriage, though, the legislator makes a proviso, which is absolutely reasonable: a marriage agreement executed before registration of marriage shall enter into force from the date of registration.

Thus, for execution of the agreement marriage is required; implying registered marriage. As for the actual relations (without registration) they lack the opportunity of making the marriage agreement. We can not agree with M. Antakolskaia, who thinks that as the civil legislation does not know the full list of the agreements, the actual spouses may make the agreement directed to regulation of the property relations as well. "If such agreements comply with the law, than they could be regarded as legally correct. By similarity of law, the regulations on the marriage agreements could be categorized as such. Though, it is necessary to bear in mind requirement of the Code stating that the joint property emerge by virtue of law and may not be created on the basis of the agreement. Consequently, the actual spouses may not establish co-ownership of the property, acquired during the actual marriage, though, taking into consideration dramatic growth of the number of actual marriages, it would be quite reasonable to allow the actual spouses to make the marriage agreements".[13]

Modification and termination of the marriage agreement is provided just in the same way as its execution – in written, with necessary notarization.

Written form of the marriage agreement is required by the legislations of European countries as well. In France, it is necessary to notarize the marriage agreement, in Italy it shall be registered with local governmental body in charge of registration of real property.[14] Here we should mention an issue of great significance, dealing with the relation between the owner of real property specified in the marriage agreement and records in the public registry - collision between the family law and material law regulations. With respect of the above, current court practice is of interest.

Great Department of the Supreme Court, by the decision of 9th December 2002, deemed that regarding the interests of the acquirer, the property rights of the spouses on the real property specified in Article 1158 of Georgian Civil Code, acquired jointly, is created only upon registration of both of them in the public registry, otherwise, the records of the public registry, with respect of the third parties shall be deemed correct[15]

[9]See: **Bondov S. N.,** Marriage Agreement, 2001, p. 58.
[10]See: **Chikvashvili Shalva**, Family Law, Tbilisi, 2000, p.143.
[11]See **Muratova S. A., Tarsamaeva N. Yu.,** work specified above, p.93.
[12]See: **Vorozheikin**, Legal Principles of the Marriage and Family, 1969, p. 18.
[13]See. **Antokolskaia M. B.**, Family Law, 2002, pp. 158-159.
[14]See: **Damirchieva Makhabat, Dairman Kizi,** Marriage Agreement, 2003, p. 85.
[15]Decisions of the Supreme Court of Georgia, on the Civil, Entrepreneur and Bankruptcy Cases, #2, 2005, p.35 I refer to: **Eka Zarnadze** "Some Peculiarities of Resolution of the Disputes on Management and Disposal of the Real Property Acquired jointly, in the period of marriage". Magazine "Overview of Georgian Law", #10, 2007, pp. 120-124.

In practice, there arises the question: when a spouse demands to invalidate the real property purchase agreement made by the other spouse, when such property was acquired during the period of marriage and consequently is regarded as their joint property and in the public registry only one of the spouses is recorded as an owner, which disposes of it, without consent of the other spouse, which regulations should prevail – of the material law, which state that the disposer is regarded as the owner, if he/she is recorded in the public registry as such, with the exception of the case, when the purchaser was aware that the disposer was not the owner and hence, the spouse, specified in the registry shall be regarded as sole owner of the property and his/her deal on disposal of the property does not depend from the will of his/her spouse. According to the regulations of the family law, on the property acquired jointly in the period of marriage and registered in the name of one of the spouses, the ownership rights shall emerge for the other spouse as well and the deal made by the spouse registered as the sole owner of this property with the public registry shall be invalidated, if there is established that the other spouse has not given his/her consent to such deal and the person who has made such deal was aware of such absence of consent.

In the law literature, there is no uniform approach to this issue. Some of the scientists regard that "the court gives preference to the general regulations of civil code, stipulating the fact of revealing of the real property owner through the public registry, thus reasonably protecting the interests of the third parties, though leaving the spouse without any protection, who, in accordance with the family law, has the same rights on the property as his/her registered spouse."[16]

Eka Zarnadze does not agree with the above and she regards that it is unacceptable to make such decision on the case, with the prejudice to the interests of the spouse. "The fact of acquisition of real property during the period of marriage, when no marriage agreement is made, awards to each spouse the right to claim for the joint property and they may execute this right as at a time of acquisition, through registration as a co-owner, also afterwards, through amendment of the registration record. It would be reasonable that in the regulations of the family law of Georgian Civil Code there was clearly reflected the mentioned contents, in particular, that the legal regime provides to each of the spouses, on the property acquired during the marriage period, on which the ownership relations are revealed from the public registry, the right of claiming for the joint property, which may be executed through registration with the public registry and joint ownership of the spouses shall be created on the given type of property only from the moment of registration with the public registry."[17]

In the practice of Supreme Court, the priority is given to presumption that the data of public registry are true and full, thus recognizing the principle established by the legislation of various foreign countries stating the following: Any person making the deal on such property acquired by the spouses, the nature of ownership relations is revealed from the public registry, may rely only on the information provided in the public registry, or, as Mr. Beso Zoidze explains: "it is unacceptable that the legal outcomes emerge for the third persons, if the information conditioning such outcomes is not made public, in the established form, available for the counteragents".[18]

Thus, for better protection of the interests of spouses and "correspondingly, the step intended for their better regulation, is establishment of the rule of obligatory registration of the property rights provided for by the marriage agreement, dealing with the real property."[19]

It would be desirable that in the provisions of Georgian Civil Code, regulating the marriage agreements there were reflected the requirements of obligatory registration.

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[16]**Chikvashvili Shalva,** Legal Problems of Disposal of the Property in Joint Ownership of the Spouses. Magazine "The Law" 2002, p. 44. I refer to: Eka Zarnadze "Some Peculiarities of Resolution of the Disputes on Management and Disposal of the Real Property Acquired jointly, in the period of marriage". Magazine "Overview of Georgian Law", #10, 2007, p. 134.

[17]See mentioned article by **Eka Zarnadz**e, pp. 134-136.

[18]See: **Zoidz**e **Besarion**, Regime of Property relations of the Spouses, Magazine "Georgian Notariate:, 2002, p. 27.

[19]See mentioned article by **Eka ZArnadze**, p 136.

As recommendation, we would like to mention that if the notary attests the marriage agreement, containing provision of transfer of the real property, it would be desirable that he/she sent the copy of such agreement to the National Agency of Public Registry, where, in the extract, there will be stated the future obligations and thus the future buyer will be informed on the blemish of the subject of purchase, though, it is of interest, at what extent the mentioned real article will be regarded as legally blemished?

Let us consider the following case: the spouses have executed the marriage agreement and decided that in the event of divorce the wife would receive the country cottage. The spouses divorced. Earlier, the husband has sold the cottage to X, who is a honest buyer. After divorce the wife claimed to transfer the cottage to her ownership. Actually, the law leaves her the right to claim compensation of losses only.

As one of the authors mentions in his work, in many countries there is provided free access to the marriage agreements for the interested persons. The data are public and any person may familiarize himself with the content of the agreement. This regulation, primarily, protects the creditors of spouses and it is significant for relations in the entrepreneurship sphere.[20]

Russian Family Code provides for the regulation dealing with protection of the creditors' interests. The spouse shall inform his/her creditor about execution, modification or termination of his/her marriage agreement. Failure to fulfill this obligation causes responsibility of the spouse, irrespective of the contents of marriage agreement. Consequently, Russian legislation takes care of the interests of creditors and provides them right to claim change of the terms and conditions of the deal or termination thereof, in the event of substantial change of the circumstances. Marriage agreement, as it is the deal regulating the property relations, for the creditor of counteragent is really significant for the creditor, as it determines the extent of obligations on the basis of the agreement made with his/her spouse.

Law – this is a formal equality, law – this is universal and necessary form of freedom of social relations; law – this is universal justice.[21] Introduction of the institute of marriage agreements into the civil legislation is one of the civilized, modern and progressive steps of equality and human relations.[22]

Perhaps one of the most accurate descriptions of the marriage agreement is the following: arbitrary model of souses' behavior upon effectiveness of the agreement in the sphere of property relations.

Perhaps, there is part of the society, skeptical towards the marriage agreements, representatives of which think that their introduction would cause growth of number of lawsuits between the spouses, that the marriage agreement directs the pair to divorce, rather to creation of the family, though we regard that the marriage agreement would allow for regulation of numerous issues. All pairs, whether already married or intending to get married, would be able to select legal property regime, acceptable and reasonable for them. The skeptics will believe in this, when the practice of conclusion of the marriage agreements would be introduced.

In this article we made attempt to discuss as fully as possible, the comparatively new institute of family law, show its significance and strengthen the opinion that the marriage agreements would contribute to resolving of property disagreements between the spouses without litigation, through mutual agreement and, what is most important, select the form of property relations acceptable for them.

We regard that it would be positive if Georgia shares experience of the other countries dealing with registration of the rights created on the basis of marriage agreement and for the purpose of better protection of the spouses' rights and obligatory registration of the property rights dealing with the real articles provided for by marriage agreements will be fully implemented.

We regard that the marriage agreements would be adequately appreciated in Georgia civil sphere and the discussions in the literature would become more versatile and interesting

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[20]See: Mentioned work by **Damirchieva Makhabat, Dairman Kizi,** p. 85
[21]See: **Nersesyants V. S.,** Philosophy of the Law, M., 2001. p. 35
[22]**Pchelintseva L.M,** Family Law of Russia, M, 2002, p. 209

მარიამ ჯიქია
ivane javaxiSvilis saxelobis Tbilisis
saxelmwifo universitetis
iuridiuli fakultetis doqtoranti

individualuri pasuxismgebloba romis
statutis mixedviT

Sesavali

2002 wlis 1 ivlisi ukve istoriis kuTvnileba gaxda. am dRes istoriaSi pirvelad amoqmedda sisxlis samarTlis saerTaSoriso sasamarTlos statuti, e.w. `romis statuti" _ dokumenti, romelic moicavs aTwleulebis ganmavlobaSi saerTaSoriso sazogadoebebis mcdelobebs, aRkveTil iyo yvelaze saSiSi danaSaulebi, bolo moeReboda am qveynad yvelaze didi Rirebulis _ adamianis sicocxlis masobrivi gaufasurebis SemoqmedTa dausjelobas. aRsaniSnavia, rom `romamde~ savali gza sakmaod mZime gamodga. saxelmwifoebi didi xnis ganmavlobaSi yoymanobdnen universaluri da mudmivmoqmedi saerTaSoriso sisxlis samarTlebrivi meqanizmis Seqmnis Taobaze da kmayofil debodnen konkretul SeiaraRebul konfliqtebsa da drois konkretul monakveTSi Cadenili danaSaulebis dasasjelad ***ad hoc*** tribunalebis amoqmedebiT.

winamdebare statiaSi ganxilulia individualuri sisxlis samarTlebrivi pasuxsmgeblobis sakiTxi, romelic swored romis statutis 25-e muxliTaa gansazRvruli.

zemoaRniSnuli sakiTxi Zalze aqtualuria, vinaidan arsebobs urTierTsawinaaRmdego mosazrebebi saerTaSoriso sisxlis samarTalSi individualur pasuxismgeblobis Sesaxeb. mosazrebani ki gansxvavdeba imiT, Tu ramdenad kargad aris Camoyalibebuli romis statutSi individualuri pasuxismgeblobis sakiTxi da misi ganmsazRvreli pirobebi; ramdenad progresulia zemoaRniSnuli statuti am sakiTxTan mimarTebaSi da saerTod, aucilebeli iyo Tu ara saerTaSoriso sisxlis samarTlis normebis kodifikacia da zogadi nawilis erT samarTlebriv dokumentad Camoyalibeba.

statiis ZiriTad nawili eTmoba zemoT dasmuli sakiTxebis Seswavlas romis statutis 25-e muxlis _ Cveulebebiti precedentuli samarTlis SedarebiTi analizis safuZvelze.

1. individualuri pasuxismgeblobis zogadi mimoxilva

saerTaSoriso samarTliT gansazRvruli danaSaulebis Cadenis procesSi, rogorc wesi, bevri adamiani monawileobs. Tumca saerTaSoriso samarTliT gansazRvrul danaSaulTa jgufuri xasiaTi ar uSlis xels, ganisazRvros individualuri sisxlis samarTlebrivi pasuxismgebloba. yvela SemTxvevaSi individebi moqmedeben erTad. maT gansazRvruli hyavT msxverpli, danaSauli dagegmilia, oragnizebulia da Sesrulebuli.

aRsaniSnavia is faqti, rom individualuri sisxlis samarTlis pasuxismgeblobis xarisxi ar mcirdeba maSin, rodesac konkretuli danaSaulebrivi qmedebis adgili

distanciurad Sorsaa, piriqiT, is izrdeba. adolf hitlerma milionobiT adamiani gaagzavna brZolis velze dasaRupad, Tumca TviTon xeli ar daukarebia arc erTi msxverplisaTvis. iugoslaviis sisxlis samarTlis tribunalis mier Semdegi gansazRvreba iqna gakeTebuli: `am danaSaulTa umravlesoba ar warmoadgens calkeuli individebis sisxlissamarTlebrivi danaSaulisadmi midrekilebis Sedegs, aramed moicavs jgufuri danaSaulis elementebs. danaSaulebi xSir SemTxvevaSi Cadenilia individTa jgufebis mier, romlebic moqmedeben saerTo danaSaulebrivi gegmis sisruleSi mosayvanad. marTalia,jgufis zogierTi wevri fizikurad monawileobs danaSaulebrivi qmedebis aRsrulebaSi, sxva wevrebis monawileoba da wvlili xSirad sasicocxlod mniSvnelovania gansaxilveli danaSaulis ganxorcielebis Semsubuqebisatvis. aqedan gamomdinareobs, rom amgvari monawileobis moraluri mniSvneloba xSirad aranakleb arsebiTia an, marTlac, ar gansxvavdeba im pirTa monawilebis moraluri mniSvnelobisgan, romlebic uSualod aRasruleben aRniSnul qmedebebs."[1]

saerTaSoriso sisxlis samarTlis Camoyalibebis dasawyisSi, maSin, rodesac individis sisxlis samarTlebrivi pasuxismgeblobis aucilebloba da misi dadgenis sirTule cxadi iyo, monawileobis wesebi iyo mxolod sawyis etapze da arasruli saxis.[2] niurnbergis wesdeba moicavda misi regulirebis Zalze arqaul formebs. magaliTad, omis gamowvevis mizniT gegmis SeqmnaSi monawileoba warmoadgenda danaSauls.[3] niurnbergis wesdebis me-6 muxlis Tanaxmad, meTaurebi, aRmsrulebelni, wamqezebelni, romlebic monawileobdnen konkretuli gegmis an konspiraciis sisruleSi moyvanaSi, raTa CaedinaT danaSuali saerTaSoriso samarTlis winaaRmdeg, iyvnen pasuxismgebelni im qmedebebisaTvis, romelic Cadenil iqna sxvebis mier gegmis sisruleSi moyvanis mizniT.[4] niurnbergis principebis Sesabamisad, omis danaSaulis, mSvidobisa da adamianurobis winaaRmdeg danaSaulis Cadena warmoadgens saerTaSoriso samarTlis winaaRmdeg danaSauls.[5]

niurnbergis procesis mTavar mizans warmoadgenda pasuxismgeblis pirebis dasja da amis gakeTeba rac SeiZleba amomwuravad. saerTaSoriso sisxlis samarTlis damnaSveTa pirveli gamsamarTleblebi yuradRebas ar aqcevdnen monawileobis sxvadasxva saxes, isini mimarTavdnen e.w. danaSaulis Cadenis unificirebul models. saxelmZRvanelo princips warmoadgenda is, rom yovel gvari mxardaWera da popularizacia danaSaulisa miCneul iyo danaSaulebriv aqtSi monawileobad.[6]

danaSaulebrivi monawileobis ufro sruli yofili doqtrina Camoyalibda ad hoc tribunalebis mier. iugoslaviis sisxlis samarTlis tribunalis statutis me-7(1) da ruandis sisxlis samarTlis tribunalis statutis me-6(1) muxlebis Tanaxmad, ganasxvaveben Semdeg qmedebebs: danaSaulis Cadena, dagegmva, SekveTa, waqezeba da daxmareba.

ad hoc tribunalis iurisdiqciaSi monawileobis TiToeuli forma daxasiaTebulia sxvadasxva elementebiT: `aqtus reus~ (actus reus) da `mens rea~ (mens rea).

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[1]Judgment, Tadic (IT-94-1-A), Appeals Chamber, 15 July 1999, paragraph 191.

[2]**Cassese A.**, International Criminal Law, Oxford, 2003, p. 180.

[3]Nuremberg Charter, article 6; also see Tokyo Charter, Article 5(a).

[4]Nuremberg Tribunal, Judgment of 1 October, 1946, in the Trial of German Major War Criminals, Proceedings of the International Military Tribunal Sitting at Nurnberg, Germany, Part 22, p. 449.

[5]Nuremberg Principle VII.

[6]**Werle G.**, Principles of International Criminal Law, Hague, 2005, p. 339.

Tanamonawil eobrivi val debul ebebi gul isxmobs, rom erTi adamianis qmedebas mohyveba arsebiTi gavlena sxva adamianis mier garkveul i danaSaul ebrivi qmedebis Cadenaze, xol o principul i val debul ebis SemTxveva dgeba, rodesac individi TviTon Caidens danaSaul s. **ad hoc** tribunal ebma didi mniSvnel oba mianiWa am gansxvavebas ara marto individual uri sisxl issamarTl ebrivi pasuxismgebl obis gasarkvevad, aramed sasjel is gansazRvris mizniT. magal iTad, iugosl aviis tribunal is mier ganxil ul `vasil ieviCis saqmeSi" tribunal i aRniSnavs, rom daxmareba da waqezeba iwvevs pasuxismgebl obis iseT saxes, romel ic nakl eb sasjel s imsaxurebs, vidre danaSaul is Tanamonawil eobrivi aRsrul eba.[7] danaSaul ebriv qmedebaSi monawil eobis diferenciacia gansazRvravs sisxsl isamarTl ebrivi pasuxismgebl obis simZimes. zemoaRniSnul i aseve dadasturebul ia **ad hoc** tribunal ebis ukanasknel gadawyvetil ebebSi. `semancas" saqmeSi tribunal ma daadgina: imis gamo, rom am saqmeSi danaSaul ebrivi qmedeba gamoixateboda waqezebaSi, daxmarebasa da brZanebis gacemaSi, is unda iqnes kval ificirebul i, rogorc brZanebis gacema.[8] am gadawyvetil ebis safuZvel i is aris, rom brZanebis gacema individual uri sisxl is samarTl ebrivi pasuxismgebl obis yvel aze mZime xarisxia da, Sesabamisad, yvel aze mZime sasjel i. jamSi, **ad hoc** tribunal ebis praqtika amtkicebs, rom saerTaSoriso sisxl is samarTal Si unificirebul i danaSaul is monawil eobis model i kargavs safuZvel s, maSin, roca monawil eobis diferencirebul i sistema, romel ic moicavs pasuxismgebl obis doneebs, iZens mniSvnel obas.

2. romis statutis 25-e muxl i

sisxl is samarTl is saerTaSoriso sasamarTl os statutis 25-e muxl i aregul irebs individis sisxl is samarTl ebriv pasuxismgebl obas detal urad. 25-e muxl is 1 punqtis mixedviT sasamarTl os iurisdiqcia vrcel deba individebze da ara saxel mwifoebsa da organizaciebze. 25-e muxl is meore punqti imeorebs individual uri sisxl is samarTl is pasuxismgebl obis princips, xol o mesame punqti ganasxvavebs individual uri sisxl issamarTl ebrivi pasuxismgebl obis saxeebs. 25-e muxl is mesame punqtis `a"-`d" qvepunqtebi exeba danaSaul ebriv monawil eobas, qvepunqti `e" — genocidis gamowvevasa da waqezebas, xol o qvepunqti `v" — zemoaRniSnul i danaSaul ebis Cadenis akrZal vas. 25-e muxl is me-4 punqtis Tanaxmad, individual uri sisxl is samarTl ebrivi pasuxismgebl oba ar axdens gavl enas saerTaSoriso sisxl is samarTl iT gaTval iswinebul saxel mwifoTa pasuxismgebl obaze.

mTavari gansxvaveba wina samarTl ebriv CarCoebsa da romis statutis 25-e muxl s Soris mdgomareobs monawil eobis saxeebis sistematizaciaSi. **ad hoc** tribunal ebis statutebisgan gansxvavebiT, 25-e muxl i marto Tanamonawil eobis sxvadasxva formebis dasaxel ebiT ar amoiwureba. is axdens maT kl asifikacias da ganasxvavebs sisxl is samarTl ebrivi pasuxismgebl obis 4 saxes:

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[7] Judgment, Vasiljevic (IT-98-32-A), Appeals Chamber, 25 February 2004, paragraph 182; Judgment, Krstic (IT-98-33-A), Appeals Chamber, 19 April 2004, paragraph 268;

[8] Judgment, Semanza (ICTR-97-20-A), Appeals Chamber, 20 May 2005, Paragraph 355;

1. *pasuxismgebloba danaSualis amsrulebl obisaTvis* (**Commission**);

2. *pasuxismgebloba danaSaul ebrivi brZanebis gacemisa da waqezebisaTvis* (***Instigation and Ordering***);

3. *pasuxismgebloba danaSaulSi daxmarebisaTvis* (**assistance**)

4. *pasuxismgebloba jgufuri danaSaulis CadenaSi Tanamonawil eobisaTvis* (***Contribution to a group crime***)

aRsaniSnavia, rom pasuxismgebloba gamowveuli danaSaulis amsrulebl obiT gansxvadveba danarCeni sami qmedebiT gamowveuli pasuxismgebl obisagan. *ad hoc* tribunalebis precedentuli samarTlis mixedviT, danaSaul ebrivi brZanebis gacema, waqezeba, daxmareba da jgufur danaSaulis CadenaSi monawil eobisaTvis pasuxismgebl obisaTvis aucilebel ia, rom danaSauli Cadenil iqnes an Tundac iyos misi Cadenis mcdeloba.

saerTaSoriso samarTliT gaTval siwinebul i danaSaulebis Cadena ZiriTadad xdeba adamianTa didi jgufis TanamSroml obiT, amitom individis bral eul obis donis gansazRvra saerTaSoriso samarTalSi ufro mniSvnel ovania, vidre Sida samarTlebriv sistemebSi. zemoaRniSnul i gagebul unda iqnes ara marto aRwerili obiTi Tval sazrisiT individis sisxl is samarTlebrivi pasuxismgebl obis dasadgenad, aramed rogorc individis damnaSaveobis donis indikatori, vinaidan Zal ze mniSvnel ovan rol s asrul ebs sasjel is dadgenisas.

3. *danaSaulis amsrulebloba*

sisxl is samarTlis saerTaSoriso sasamarTl os statutis 25-e muxl is me-3 punqtis `a" qvepunqtis mixedviT, arsebobs danaSaulis amsrulebl obis sami forma: danaSaulis amsrulebel i individual urad, danaSaulis jgufuri amsrulebel oba da danaSaulis amsrulebel oba sxva piris meSveobiT.[9]

individs, roml is qmedebac pirdapir jdeba statutis 25-e muxl iT gaTval iswinebul i danaSaulis definiciaSi, ekisreba saerTaSoriso sisxl is samarTl iT gaTval iswinebul i pasuxismgebl oba.

25-e muxl is Sesabamisad, jgufuri danaSaulis amsrulebl obis idea Zal ze naTel ia: saerTaSoriso samarTl iT gaTval swinebul i danaSaulis amsrulebl obis procesSi monawil e yvel a adamiani pasuxismebel ia Cadenil i danaSaul isaTvis.

danaSaulis amsrulebl obaSi monawil eobisaTvis pasuxismgebl obis specifikuri koncefcia Camoyal ibda iugosl aviis tribunal is precedentul i samarTl is mier. esaa jgufuri danaSaulis koncefcia.[10] jgufuri danaSaulis doqtrina erT-erTi umniSvnel ovanesia iugosl aviis tribunal is muSaobis procesSi. is aseve miRebul iqna ruandis sisxl is samarTl is tribunal is mier.[11] am doqtrinis Tanaxmad, iugosl aviis tribunal is mier Camoyal ibda sami winapiroba, anu 3 el ementi jgufuri danaSaul isaTvis:

Ø adamianTa jgufi;

Ø gegma;

Ø wvl il is Setana gegmis Sesabamisad.[12]

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[9]Rome Statute of International Criminal Court, 1998, Article 25(3)(a);

[10]Judgment, Tadic (IT-94-1-A), Appeals Chamber, 15 July 1999, paragraph 194;

[11]Judgment, Simba (ICTR-01-76-T), Trial Chamberm 13 december 2005, paragraph 385;

[12]Judgment, Krnojelac, (IT-97-25-A), Appeals Chamber, 17 September 2003, Paragraph 31; Judgment, kvocka (IT-98-30/1-A), Appeals Chamber, 28 February 2005, Paragraph 81

gegmiT unda iyos gaTval iswinebul i erTi an ramdenime saerTaSoriso danaSaul is Cadena, Tumca am gegmis arseboba danaSaul is Cadenamde arcaa aucil ebel i, is SeiZl eba spontanuric iyos. misi arseboba ukve gul isxmobs ramdenime adamianis TanamSroml obas, rasac mohyveba danaSaul ebrivi Sedegi.[13]

iugosl aviis tribunal is precedentul i samarTl is Tanaxmad, jgufuri danaSaul is sami kategoria arsebobs:

1) ZiriTadi forma;
2) sistematuri forma;
3) gangrZobiTi forma.

I kategoria moicavs adamianTa jgufis mier garkveul i gegmis Sesabamisad Cadenil danaSaul ebs, roml ebic gaTval iswinebul ia saerTaSoriso samarTl is mier. am SemTxvevaSi yvel a monawil e moqmedebs saerTo ganzraxviT da Tanabrad agebs pasuxs Cadenil i danaSaul isaTvis.

II kategoria moicavs e.w. sakoncentracio banakebis saqmeebs, sadac danaSaul ebi Cadenil ia samxedro da adaministraciul i personal is mier. iugosl aviis tribunal is precedentul i samarTl is Tanaxmad, danaSaul Si monawil e pirma icis sistemis danaSaul ebrivi xasiaTi da moqmedebs misi gagrZel ebis ganzraxviT.

III kategoria, anu gangrZobiTi forma gul isxmobs erT-erTi Tanamonawil is mier arsebul i gegmidan gadaxvevas.

zemoaRniSnul idan gamomdinare, pirvel i ori kategoriis dros adamianTa jgufi moqmedebs winaswar arsebul i gegmis Sesabamisad, xol o mesame kategoriis dros xdeba gegmis CarCoebidan gadaxveva erT-erTi monawil is mier. im dros, rodesac ***actus reus*** SeiZl eba erTnairi iyos jgufuri danaSaul is samive kategoriisaTvis, es kategoriebi erTmaneTisgan gansxvavdeba `*mens reasTan~ (mens rea)* mimarTebaSi.

danaSaul is jgufuri amsrul ebl oba moicavs or el ements: `amsrul ebl obas" da `sxvasTan erTad". aqedan gamomdianre, is moicavs rogorc obieqtur, aseve, subieqtur el ements. obieqturi el ementi gul isxmobs danaSaul is amsrul ebl obaSi fizikuri wvl il is Setanas, xol o subieqturi el ementi – danaSaul is amsrul ebel Ta TanamSroml obas, romel sac SeiZl eba ewodos garkveul i gegma.[14] vidre Camoyal ibul a am ZiriTadi el ementebis amomwuravi ganmarteba, maTi interpretacia gansxvavdeba sxvadasxva erovnul samarTl ebriv sistemebSi.

romis statutis 25-e muxl is me-3 punqtis Tanaxmad, danaSaul is Cadena moicavs jgufur amsrul ebl obas da iTval iswinebs umaRl es individual ur sisxl is samarTl ebriv pasuxismgebl obas. danaSaul is jgufuri amsrul ebl obis dros aucil ebel ia `aqtus reusisa~ (actus reus)* da `mens reas~ (mens rea)* arseboba, rac ganapirobebs danaSaul is jgufuri amsrul ebl obis sxvadasxva el ementis interpretacias, romel ic Zal zed gansxvavdeba ***ad hoc*** tribunal ebis precedentul i samarTl isagan.

danaSaul is jgufuri amsrul ebl obis `aqtus reusi~ (actus reus)* gul isxmobs adamianTa simravl es, gegmis arsebobas, roml is Tanaxmadac unda iqnes Cadenil i saerTaSoriso danaSaul i da gegmis gansaxorciel ebl ad daxmarebis gaweva. rac Seexeba

[13]Judgment, Tadic (IT-94-1-A), Appeals Chamber, 15 July 1999, paragraph 227

[14]**Werle G.,** Individual Criminal Responsibility in Article 25 ICC Statute, "Journal of International Criminal Justice~, 2007, p. 958

mens rea-s, yvela TanaamsrulebelI unda moqmedebdes mentaluri elementis daxmarebiT. Tu SevadarebT iugoslaviis tribunalis mixedviT gansazRvrul jgufuri danaSaulis koncefcias, Tanaamsrulebelis pasuxismgeblobis zRvari SedarebiT ufro viwroa *actus reus*-sa da *mens rea*-s Tval sazrisiT.

Tu piri iyenebs meore adamians, rogorc danaSaulis CadenisaTvis saWiro iaraRs, mas ekisreba pasuxismgebloba romis statutis 25-e muxlis mesame punqtis `a" qvepunqtis Tanaxmad. amgvari amsrulebloba aRiarebulia msoflios TiTqmis yvela ziriTadi samarTlebrivi sistemis mier, Tumca manamde, sanam romis statuti Sevidoda ZalaSi, am saxis monawileoba ar regulirdeboda arc saerTaSoriso sisxlis samarTliT da arc saerTaSoriso sasamarTloebis mier.

statutis 25-e muxlis me-3 punqtis `a" qvepunqtis Sesabamisad, pirdapiri amsruleblis sisxlis samarTlebrivi pasuxismgebloba damoukidebelia imisgan, aris Tu ara sxva piri pasuxismgebeli. am normis Tanaxmad, piri SeiZleba iyos pasuxismgebeli Cadenili danaSaulisaTvis maSinac ki, rodesac danaSaulis uSualo Camden pirs ar ekisreba pasuxismgebloba, magaliTad, Tu uSualo amsrulebeli ar aris srul wlovani. es norma gulisxmobs `damnaSave damnaSavis ukan" koncefcias, romlis Tanaxmadac, uSualo amsrulebeli SeiZleba manipulirebadi iyos sxva piris mier. es doqtrina iqna gamoyenebuli germaniis uzenaesi sasamarTlos mier 1961-1989 wlebSi germaniis farglebSi momxdari mkvlelobebisaTvis.

sisxlis samarTlis saerTaSoriso sasamarTlos statuti ar akonkretebs daudevrobiT Cadenili danaSaulisaTvis pasuxismgeblobis arsebobas. romis statutis proeqti moicavda amgvar normebs, magram arc erTi maTgani ar iqna Setanili statutis saboloo variantSi, vinaidan saxel mwifoebi, kerZod ki safrangeTi kategoriulad winaaRmdegi iyo daudevrobisaTvis zogadi pasuxismgeblobis dakisrebisa.

miuxedavad amisa, eWvgareSea, rom garkveuli garemoebebis gaTvaliswinebiT umniSvnelo daudevrobas SeiZleba mohyves uamravi saerTaSoriso danaSauli. erT-erT magaliTs warmoadgens romis statutis 28-e muxliT gaTvaliswinebuli zemdgomis pasuxismgebloba: sisxlis samarTlebrivi pasuxismgeblobis safuZvels am SemTxvevaSi warmoadgens saerTaSoriso danaSaulis Tavidan acilebis warumatebloba (SesaZleblobis uqonloba).

iugoslaviisa da ruandis tribunalebis precedentuli samarTlis mier gansazRvrul iqna, rom pasuxismgebloba SeiZleba dadges daudevrobis SemTxvevaSic. es normebi arsebobs Cveulebis samarTalSi. rac Seexeba saxel Sekrulebo samarTals, Jenevis konvenciis pirveli damatebiTi oqmis 86-e muxlis Sesabamisad, `maRal ma xel Semkvrel ma da konfliqtis monawile mxareebma unda aRkveTon mZime darRvevebi, miiRon yvela aucilebeli zoma konvenciebis an am oqmis yvela sxva darRvevis aRsakveTad, romelic saval debulo moqmedebis Seusruleblobis Sedegia."[15] niurnbergis Semdgomma procesebma aseve aRiara daudevrobisaTvis sisxlis samarTlebrivi pasuxismgebloba. sabol ood daudevrobisaTvis pasuxismgebloba SeiZleba kvalificirebul iqnes rogorc zogadi samarTlis principi, vinaidan SedarebiTi analizis safuZvelze gairkva, rom safrangeTis samarTlis garda yvela sxva samarTlebrivi kulturebi cnoben aseT pasuxismgeblobas.[16]

[15] 1949 wlis Jenevis konvenciis pirveli damatebiTi oqmi, 1979, muxli 86-e;

[16] **Duttwiler M.,** Liability for Omission in International Criminal Law, "International Criminal Law Review", 2006, p.30.

4. danaSaul ebrivi brZanebis gacema da waqezeba

romis statutis 25-e muxl is me-3 punqtis `b" qvepunqtis Sesabamisad, pirs, romel ic gascems brZanebas an waaqezebs sxvas danaSaul is Casadenad, ekisreba sisxl is samarTl is pasuxismgebl oba.

ad hoc tribunal ebis iurisdiqciis mixedviT, wamqezebel i ewodeba pirs, romel ic ubiZgebs sxvas, Caidinos danaSaul i.[17] es SeiZl eba moxdes daudevrobiTac.[18] aucil ebel ia arsebobdes kavSiri waqezebasa da Cadenil danaSaul s Soris, rac gul isxmobs, rom wamqezebel ma icoda, rom mis mier waqezebul i adamianis qmedeba gamoiwvevda danaSaul ebriv Sedegs.

Zal ze sainteresoa waqezebasTan mimarTebaSi specifikuri ganzraxvis sakiTxi. ***ad hoc*** tribunal ebis mier es sakiTxi ar aris naTl ad Camoyal ibebul i. Tumca sisxl is samarTl is saerTaSoriso sasamarTl om daadgina, rom wamqezebel ma unda icodes amsrul ebl is specifikuri ganzraxva, magram aucil ebel i araa misi gaziareba. imis gamo, rom waqezebisaTvis araa aucil ebel i ***mens rea***-s arseboba, pasuxismgebl obac nakl ebad mZimea, vidre amsrul ebl is pasuxismgebl oba.

danaSaul ebrivi brZanebis gacema gul isxmobs subordinaciis arsebobas brZanebis gamcemsa da amsrul ebl s Soris. piri, romel ic gascems brZanebas, sargebl obs Tavisi Zal aufl ebiT, raTa Caadeninos misdami daqvemdebarebul pirs danaSaul i. danaSaul ebrivi brZanebis gacemis SemTxvevaSi arsebobs danaSaul ebrivi ganzraxva da piri, romel ic gascems brZanebas, aTvicnobierebs am qmedebiT gamowveul Sedegebs.

5. danaSaul ebrivi qmedebis CadenaSi daxmareba

nebismieri piri, romel ic exmareba sxvas danaSaul is asrul ebaSi, pasuxs agebs Cadenil i danaSaul isaTvis sisxl is samarTl is saerTaSoriso sasamarTl os statutis 25-e muxl is mesame puqntis `g" qvepunqtis mixedviT.

pasuxismgebl oba daxmarebisaTvis gansazRvrul ia ***ad hoc*** tribunal ebis samarTl iT. precedentul i samarTl is Sesabamisad, daxmarebas unda hqondes gavl ena danaSaul is CadenaSi. rac Seexeba sisxl is samarTl is saerTaSoriso sasamarTl os mosazrebas, statutis 25-e muxl is me-3 punqtis `g" qvepunqti ar moiTxovs, rom daxmarebas hqondes arsebiTi gavl ena danaSaul is amsrul ebl obaze.

danaSaul Si monawil eobis done da, Sesabamisad, individual uri sisxl is samarTl ebrivi pasuxismgebl obis simZime damokidebul ia danaSaul Si monawil eobaze. daxmareba moicavs qmedebebs, romel Tac arsebiTi wvl il i ar miuZRviT danaSaul is CadenaSi, Tumca daxmareba miiCneva danaSaul Si Tanamonawil eobad da misTvis gansazRvrul ia SedarebiT msubuqi sisxl is samarTl ebrivi pasuxismgebl oba, vidre amsrul ebl obisa da danaSaul ebrivi brZanebis gacemisaTvis.

6. jgufur danaSaul Si Tanamonawil eoba

sisxl is samarTl is saerTaSoriso sasamarTl os statutis 25-e muxl is me-3 punqtis `d" qvepunqti aregul irebs jgufur danaSaul Si Tanamonawil eobis sakiTxs. jgufi

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[17]Judgment, Kordic and Cerkez (IT-95-14/2-A), Appeals Chamber, 17 December 2004, paragraph 27;

[18]Judgment, Blaskic (IT-95-14-T), Trial Chamber, 3 March 2000, paragraphs 280, 339;

warmoadgens sul mcire sami adamianis asociacias, romlebic moqmedeben saerTo
mizniT.

formulireba aSkarad moicavs nebismier monawileobas jgufur danaSaulSi. aq
saqme exeba daxmarebis irib formebs (magaliTad, jgufis finansirebas), romlebic ar
warmoadgens sasjelis garantias danaSaulSi Tanamonawileobisa Tu daxmarebisaTvis,
vinaidan maT ar gaaCnia araviTari arsebiTi efeqti danaSaulis Cadenaze saerTaSoriso
samarTlis farglebSi.

daskvna

sisxlis samarTlis saerTaSoriso sasamarTlo warmoadgens yvelaze inovaciur
movlenas saerTaSoriso samarTalSi gaerTianebuli erebis organizaciis Seqmnis Semdeg.
statuti aris erT-erTi yvelaze rTuli saerTaSoriso instrumenti, romelic odesme
SemuSavebula.

sisxlis samarTlis saerTaSoriso sasamarTlos statuti ar Semoifargleba im
pirTa sisxlis samarTlebrivi pasuxismgeblobiT, romlebmac uSualo od Caidines statutiT
gaTval iswinebul i danaSaulebi. is vrceldeba pirebze, romlebmac iribi formiT
miiRes monawileoba danaSaulis CadenaSi.

maSasadame, romis statutis 25-e mulis Tanaxmad, pirs pasuxismgebloba ekisreba,
Tu man danaSauli Caidina marto, sxva pirTan erTad an sxva piris meSveobiT, aseve,
piri, romelic gascems braZanebas, waaqezebs an sxvagvarad aizulebs sxvas danaSaulis
Cadenas, Tu es danaSauli an misi mcdeloba iqna Cadenili. romis statuti aseve
iTvaliswinebs sisxlis samarTlebriv pasixusmgeblobas im pirTaTvis, romlebic
daexmarebian an xels Seuwyoben pirTa jgufs danaSaulis CadenaSi.

romis statutis 25-e muxlis mniSvnelobas aZliierebs is faqtic, romis iTval iswinebs
Tanamonawileobis ara unificirebul, aramed diferencirebul models, romelic gulisxmobs
Tanamonawileobis sxvadasxva formebis arsebobas. Tanamonawileobis diferencirebuli
modeli ki, Tavis mxriv, mniSvnelovan rols TamaSobs sasamarTlos mier individual uri
sisxlis samarTlebrivi pasuxismgeblobis gansazRvraSi.

yovelive zemoTqmulidan gamomdinare, SeiZleba aRiniSnos, rom individual uri
sisxlis samarTlebrivi pasuxismgeblobis sakiTxi ufro metad daixvewa meore msflio
omis Semdgom periodSi, rac ganpirobebul iiyo niurnbergis, tokios, yofil i iugoslaviisa
da ruandis tribunalebis precedentuli samarTliT.

obieqturoba moiTxovs iTqvas, rom, miuxedavad zemoxsenebul i tribunalebis samoqmedo
arealis SezRudulobisa, maT mainc mniSvnelovani roli Seasrules (da kvlavac
asruleben). TviT is faqtic, rom romis statuti da, kerZod, am statutis 25-e
muxli i dRes realobaa, did wil ad am tribunalebis damsaxurebaa. maT mier zogierT
saqmeze gamotanil i ganaCeni ki saerTaSoriso sisxlis samarTlisa da saerTaSoriso
humanitarul i samarTlis ganviTarebisa da saerTaSoriso sisxlis samarTlis
pasuxismgeblobis sakiTxis ganmtkicebisaTvis uaRresad mniSvnelovania da eWvgareSea,
rom didad waadgeba mudmivmoqmed sasamarTlos.

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normatiuli aqtebi da sasamarTlos mier ganxiluli saqmeebi:

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INDIVIDUAL CRIMINAL RESPONSIBILITY IN ARTICLE 25 OF ICC STATUTE

Introduction

July 1, 2002 already become history. Exactly at this date Statute of International Criminal Court entered into force. ICC Statute (Rome Statute) is legal document, containing whole effort of mankind against the abolishment of dangerous crimes and for punishment the criminals that depreciate most important value such as human life. It,s important to mention that the way to Rome Statute was really hard. States for a long time were hesitating to create universal and permanent mechanism of International Criminal Law. They used to create temporary criminal mechanisms, exactly ad hoc tribunals due to concrete conflicts. Nuremberg, Tokyo, International Criminal Tribunal for Former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) – are all efforts made by mankind till 1998.

In this Article author reviews Individual Criminal Responsibility, that is determined by the article 25 of ICC Statute.

Since there are opposite opinions about individual criminal responsibility above mentioned issue is very urgent. The considerations differ towards the following issue: are individual criminal responsibility and its,preconditions clearly determined by ICC Statute; Is ICC statute is progressive in relation with individual criminal responsibility; was codification of international criminal law and creation of general part in one legal document necessary.

The main part of this article includes the research of above mentioned issues due to the comparative analysis of article 25 of ICC Statute, customary law and international case law.

1. General Review of Individual Criminal Responsibility

Committing Crimes under international law typically entails the cooperation of several persons. However, the collective nature of crimes under international law does not free us of the need for individual criminal responsibility. In all cases individuals work together, that means determination of victims, planning, organizing and implementing the use of force against their victims.

It should be mentioned that the degree of criminal responsibility does not diminish when distance from the actual act increases. (Adolph Hitler sent millions of people to their deaths without ever laying hand on a victim himself). The ICTY summarized this problem as follows: "Most of These crimes do not result from the criminal propensity of single individuals but constitute manifestations of collective criminality: the crimes are often carried out by groups of individuals acting in pursuance of a common criminal design. Although some members of the group may physically perpetrate the criminal act, the participation and contribution of the other members of the group is often vital in facilitating the commission of the offence in question. It follows that the moral gravity of such participants is often no less – or indeed no different – from that of those actually carrying out the acts in question".[1]

In the beginning of development of international criminal law, while the necessity and difficulty of allocating individual criminal responsibility were clear, the rules on participation were only elementary and

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[1]Judgment, Tadic (IT-94-1-A), Appeals Chamber, 15 July 1999, paragraph 191;

incomplete[2]. The Nuremberg Charter contained rather archaic forms of regulation on participation. Participation in a common plan or conspiracy to wage a war of aggression was a crime.[3] Under article 6 (c) of the Nuremberg Charter, leaders, organizers, instigators and accomplices who took part in the formulation or execution of a common plan or conspiracy to commit a crime against international law were responsible even for acts performed by others in execution of the plan.[4] According to Nuremberg principles, war crime, crime against peace, crime against humanity – all these are crimes against international law.[5]

For Nuremberg Tribunal the main aim was to punish persons committed crimes under international law. They didn,t pay attention to the different modes of participation; they applied to the unified perpetrator model. The guiding principle was that any support or promotion of the crime was considered as criminal participation.[6]

More complicated doctrine of criminal participation was achieved by the tribunals. Article 7(1) of ICTY Statute and article 6(1) of ICTR Statute differ the following modes of participation: committing, planning, ordering, instigating and aiding. According to jurisdiction of ad hoc tribunals, all modes of participation are characterized with actus reus and mens rea.

Accessory liability means that the act of one person has an effect on the commission of a crime by someone else. In case of a commission as a principal the crime is qualified to one,s own conduct. The ad hoc tribunals pay a great attention to this distinction not only as a matter of clarifying individual criminal responsibility, but also in sentencing. The ICTY Appeals Chamber has stated in Vasiljevic that "aiding and abetting is a form of responsibility which generally warrants a lower sentence than is appropriate to responsibility as a co-perpetrator".[7] The differentiation between modes of participation is no longer only descriptive, but indicates the heaviness of individual responsibility. This is also confirmed by recent decisions of the ad hoc Tribunals. In Semanza, the Appeals Chamber stated that, since the conduct of an accused in the commission of a crime fulfils the requirements of both aiding and abetting and ordering, it must be qualified as ordering.[8] The essential principle of this statement is that ordering generally requires a higher degree of individual criminal responsibility and therefore a heavier sentence than aiding and abetting. In sum, the practice of the ad hoc Tribunals suggests that in international criminal law the unified perpetrator model is loosing ground while a differentiated system of participation involving value-oriented levels of responsibility, is gaining ground.

2. Article 25 of ICC Statute

Individual Criminal Responsibility is regulated by Article 25 of the ICC Statute in detail. Paragraph 1 of Article 25 states that the ICC has jurisdiction over persons, not over states or organizations. Paragraph 2 of Article 25 reiterates the principle of individual criminal responsibility while paragraph 3 distinguishes various modes of individual responsibility. Article 25(3)(a) to (d) refers to modes of criminal participation, subparagraphs (e)– to the incitement to genocide; subparagraph (f) - to attempt and abandonment. According to Paragraph 4 of Article 25 provisions on individual criminal responsibility do not affect the responsibility of states under international criminal law.

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[2]**Cassese A.**, International Criminal Law, Oxford, 2003, p. 180

[3]Nuremberg Charter, article 6; also see Tokyo Charter, Article 5(a)

[4]Nuremberg Tribunal, Judgment of 1 October, 1946, in the Trial of German Major War Criminals, Proceedings of the International Military Tribunal Sitting at Nuremberg, Germany, Part 22, p. 449

[5]Nuremberg Charter, article 6; also see Tokyo Charter, Article 5(a)

[6]Nuremberg Principle VII

[7]**Werle G.**, Principles of International Criminal Law, Hague, 2005, p. 339

[8]Judgment, Vasiljevic (IT-98-32-A), Appeals Chamber, 25 February 2004, paragraph 182; Judgment, Krstic (IT-98-33-A), Appeals Chamber, 19 April 2004, paragraph 268; Nuremberg Principle VII

The significant difference between prior legal frameworks and article 25 of ICC Statute is systematizing of modes of participation. Unlike the Statutes of Tribunals statutes Article 25(3) does not simply list the different modes of participation. It distinguishes and classifies four levels of individual criminal responsibility:

1. Individual criminal responsibility for commission of a crime;
2. Individual criminal responsibility for ordering and instigating;
3. Individual criminal responsibility for assistance;
4. Individual criminal responsibility for contribution to a group crime.

It should be mentioned that liability for commission is different from the liability of other modes of participation. In accordance with the case law of the ad hoc Tribunals, ordering, instigating, assistance and contribution to group crimes - all require that the crime itself has in fact been committed, or at least attempted.

Committing crimes under international law generally entails the cooperation of a large number of persons. It means that the need for determination of the degree of individual culpability in international criminal law is more essential than in national legal systems. Above mentioned should be understood not only as descriptive concepts to establish individual criminal responsibility, but also as indicators of the degree of individual guilt, since they are helpful guidelines in case of sentencing.

3. Commission of Crime

Article 25 (3)(a) of ICC Statute entails three different types of commission: commission as an individual, joint commission and commission through another person.[9]

Person whose conduct is covered by the definition of the crime in terms of Article 25 (3)(a) is liable under international criminal law.

The fundamental idea of joint commission pursuant to Article 25(3)(a) is clear: if several people act together in committing a crime under international law, each one is individually responsible for the crime.

A specific concept of liability has been developed in the case law of the ICTY: participation in a "joint criminal enterprise".[10] The doctrine of joint criminal enterprise is of great importance in the process of work of ICTY. It has also been adopted by the ICTR.[11] As the ICTY has stated the three requisite elements of the joint criminal enterprise,s actus reus:

Ø a group of persons;
Ø the existence of a common plan;
Ø the contribution of the accused within the common plan.[12]

The common plan must include committing one or more crimes against international law. But, the plan need not be formed before the commission of the crime; it can also be spontaneous. Its presence already means the co-operation of several persons that is followed by criminal result.[13]

According to case law of ICTY joint criminal enterprise is divided in three categories:

Category I – basic form;
Category II – Systematic form;
Category III – extended form.

The first category includes cases in which a group of persons plans the commission of a crime under international law. Since each participant shares the same intent to commit the crime, each of them is responsible for it.

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[9]Judgment, Semanza (ICTR-97-20-A), Appeals Chamber, 20 May 2005, Paragraph 355;

[10]Rome Statute of International Criminal Court, 1998, Article 25(3)(a);

[11]Judgment, Tadic (IT-94-1-A), Appeals Chamber, 15 July 1999, paragraph 194;

[12]Judgment, Simba (ICTR-01-76-T), Trial Chamberm 13 december 2005, paragraph 385;

[13]Judgment, Krnojelac, (IT-97-25-A), Appeals Chamber, 17 September 2003, Paragraph 31; Judgment, kvocka (IT-98-30/1-A), Appeals Chamber, 28 February 2005, Paragraph 81.

The second category entails cases concentration camp, where the perpetrators are mostly or administrative personal. According to the Yugoslavia Tribunal, the perpetrator must be aware of the criminal character of the system and act with intent to further it.

The third category, named extended form, concerns the attribution of criminal responsibility for crimes committed by other participants exceeding the framework of the common plan.

According to abovementioned under first two categories the participants are responsible for crimes committed within the framework of the common plan; the third category of joint criminal enterprise goes beyond the framework of the common plan. While the actus reus can be the same for each of the three categories, they differ in respect of the mens rea.

Commission is characterized with two elements: "committing" and "jointly with another". It entails both an objective and a subjective element. Objective element means the contribution to the physical commission of the crime, subjective element - an agreement between the co-perpetrators.[14] While the definition of above mentioned elements will be clearly established, its interpreting is different in various national legal orders.

According to Article 25 (c) of ICC Statute joint commission requires the highest level of individual criminal responsibility. For joint commission the existence of actus reus and mens rea are necessary. Actus reus and mens rea provides some interpretations of different elements of commission, that are different from the case law of ad hoc Tribunals.

Actus reus of joint commission means the existence of a group of person, common plan and the contribution of the accused within the common plan. As for mens rea, all persons committing crime, should act with the existence of mental element. In comparison with the concept of joint commission defined by ICTY case law abovementioned concept is more specific in relation with actus reus and mens rea.

If the perpetrator uses another person as an instrument to commit a crime under international law, this is a basis for criminal responsibility under Article 25(3)(a) of the ICC Statute. This type of commission is recognized by the major legal systems in the world. However, before the ICC Statute entered into force, the responsibility for perpetrator -by-means had not been regulated neither by international criminal law nor by international courts.

Criminal responsibility under Article 25(3)(a) is independent regardless of whether that other person is criminally responsible. Under the norm a perpetrator-by-means can be liable if the direct perpetrator is not responsible, for example, if he or she is not yet of legal age. This norm implies the concept of the "perpetrator behind the perpetrator", what means that the direct perpetrator can be manipulate.. This doctrine was recently used by the German Supreme Court in the cases of the killings at the inner-German border between 1961 and 1989.

ICC Statute doesn,t regulate the commission of crime by omission. ICC Statute drafts included such norm, but finally it didn,t become part of the ICC Statute, as some states, especially France, expressed serious reservations about establishing general liability for omissions.

However, there is no doubt that in certain circumstances, a simple omission can cause a crime under international criminal law. One example relates to command responsibility under Article 28; the basis for criminal liability in this case is the failure to prevent or to report a crime under international law.

Case Law of the ad hoc Tribunals (both the Yugoslavia and the Rwanda Tribunals) determined that liability can arise from omission. In treaty law, Article 86 of Additional Protocol I provides that breaches of the Geneva Conventions can result "from failure to act when under a duty to do so" as well as from acting[15]. Furthermore, some of the Nuremberg follow-up trials also recognized criminal responsibility for omission. Finally, liability for omission can be qualified as a general principle of law, as comparative analysis shows that with the exception of French law, almost all legal cultures establish such liability.[16]

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[14]Judgment, Tadic (IT-94-1-A), Appeals Chamber, 15 July 1999, paragraph 227.
[15]**Werle G.**, Individual Criminal Responsibility in Article 25 ICC Statute, "Journal of International Criminal Justice", 2007, p. 958.
[16]Additional Protocol I of Geneva Conventions, article 86.

4. Instigation and Ordering

Anyone who orders the commission of a crime under international law or who instigates another to commit such a crime is criminally liable under Article 25(3)(b) of the ICC Statute.

According to the case law of ad hoc Tribunals, an instigator is someone who prompts another to commit a crime under international law.[17] Abovementioned can also be achieved by omission.[18] The existence of casual link between the instigation and the commission of the crime is an important matter. It means that the instigation has contributed to the conduct of the person committing the crime.

The question about the sharing special intent in relations with instigation is very interesting. Ad hoc Tribunals have not clear position about the issue. According to International Criminal Court the instigator must be acquainted with the perpetrator,s special intent, but need not share it. Under this approach, lesser degree of responsibility is provided for instigation than perpetration, since it is not necessary that the instigator fulfill the mens rea of the crime.

Ordering requires the existence of subordinate-relations between person giving and person receiving the order. Person who gives the order is using his/her authority to cause another person to commit the crime. In case of ordering there is intent for the crime to be committed, and the person who orders to commit crime acknowledges the criminal result.

5. Assistance

Anyone who aids in the commission of a crime under international law is criminally liable under Article 25(3)(c) of the ICC Statute. The responsibility for the assistance is also determined by the case law of ad hoc Tribunals. According to case law of ad hoc Tribunals assistance should have a significant effect on the commitment of crime.

As for the ICC Article 25(3)(c) does not require that the assistance has a substantial effect on the commission of the crime.

The level of personal involvement in the criminal events and the degree of individual criminal responsibility is determined by the mode of participation. Assistance covers acts that were not essential in causing the criminal result. Thus assistance is one of the modes of participation and it,s provided rather low degree of individual criminal responsibility than commission of crime or instigating and ordering.

6. Contribution to a Group Crime

Article 25(3)(d) of the ICC Statute regulates one of the modes of criminal participation: contributing to the commission of a crime by a group. Group means the association of at least three persons acting for the same purpose.

The wording covers any contribution to the group crime. This provision applies to indirect forms of assistance (for example, financing the group), that do not warrant liability for either co-perpetration or aiding and abetting, as they have no substantial effect on the commission of the crime under international law.

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[17]**Duttwiler M.,** Liability for Omission in International Criminal Law, "International Criminal Law Review", 2006, p.30.
[18]Judgment, Kordic and Cerkez (IT-95-14/2-A), Appeals Chamber, 17 December 2004, paragraph 27.
[19]v Judgment, Blaskic (IT-95-14-T), Trial Chamber, 3 March 2000, paragraphs 280, 339.

Conclusion

The creation of the ICC is the most innovative event in the international law after establishing United Nations. ICC Statute is one of the complicated instruments that was ever adopted.

Statute of ICC doesn,t stop on the criminal responsibility of individuals that commit crimes under Statute. It also spreads on the individuals that indirectly take part in committing crime under international law.

According to abovementioned individual criminal responsibility under the article 25 of Statute arises if crime is committed by individual alone, with other person, through other person, by instigating and ordering, assisting or in case of contribution to a group crime.

The importance of article 25 of ICC Statute is strengthened by the existence of the differentiated model of participation, which means the existence of different modes of participation in crime. Differentiated model in its turn plays a significant role for International Criminal Court in relations with determination of individual criminal responsibility.

The issue of individual criminal responsibility became more improved after World War II, that was determined by the development of Nuremberg, Tokyo, ICTY and ICTR case law.

From the objective point of view, despite the limited jurisdiction of Nuremberg, Tokyo, ICTY and ICTR, they played and still are playing a significant role. The fact of existence of Rome Statute and its article is mostly the merit of abovementioned tribunals. Decisions made by these tribunals are very important for further development of international criminal and international humanitarian law, also for the strengthening the issue of individual criminal responsibility.

მიხეილ გაბუნია

ivane javaxiSvilis saxelobis Tbilisis
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fakultetis doqtoranti

danaSaulobis cneba da danaSaulobis Tavidan acilebis sakiTxi kriminologiaSi

Sesavali:

kriminologia (laT. `**Crimen**~-danaSauli da berZn. `**Logos**~-swavleba) aris mecniereba, romelic Seiswavlis danaSaulobas rogorc social ur movlenas. termini `kriminologia~ 1879 wels xmarebaSi Semoitana italielma mecnierma, anTropologma topinardom. 1885 wels gamoCenilma, aseve, italielma iuristma, mecnierma rafaelo garofalom gamosca pirveli monografia saxelwodebiT `kriminologia~. aRsaniSnavia isic, rom swavleba danaSaulobisa da misi Tavidan acilebis RonisZiebaTa Sesaxeb gacilebiT ufro adre iRebs saTaves, risi dasturicaa Cezare bekarias monografia `danaSaulebisa da sasjelebis Sesaxeb~ (1764w.), sadac sasjelTa sisxlis samarTlebriv swavlebasTan erTad warmoCenilia Sexedulebani danaSaulobis Sesaxeb da ganxiluliaa iseTi sakiTxebi, rogoricaa danaSaulobis Tavidan acileba da saxelmwifos mxridan danaSaulobasTan brZolis meTodika. danaSauloba kriminologiis mecnierebis sagnis umniSvnelovanes komponents warmoadgens, xolo danaSaulobis Tavidan acileba aRniSnuli mecnierebis ZiriTadi mizania.

danaSaulis cneba

sociologiuri midgoma:
sociologebi danaSaulobas ganixilaven deviaciaTa gansakuTrebul saxesxvaobad. d. J. masionisi amasTan dakavSirebiT aRniSnavs, rom `deviacia kulturuli normebis darRvevis gacnobierebaa, misi gageba sakmaod vrcelia. erT-erTi saxesxvaoba deviaciisa aris danaSauloba _ darRveva sazogadoebaSi oficialurad miRebuli sisxlis samarTlis kanonmdeblobisa.~[1] am SemTxvevaSi avtori konkretdeba da danaSaulobad miiCnevs deviaciaTa im nawils, romelic arRvevs mxolod sisxlis samarTlis kanonmdeblobas.

danaSaulobis originalur da ufro daxvewil ganmartebas gvTavazobs amerikeli sociologi a. gidensi. misi azriT, `danaSauloba nebismieri saxis moqmedebaa, romelic arRvevs kanons.~[2] am SemTxvevaSi gidensi nawilobriv upirispirdeba masioniss da ganmartavs, rom danaSauloba deviaciis iseTi Semadgeneli nawilia, romelic ara mxolod sisxlis samarTlis kanonmdeblobas arRvevs, aramed yvela im kanons, romelic

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[1] ix. **Д.Ж. Массионис**. „Социология". СПТ 2004. С. 259.

[2] ix. **А. Гидденс.** „Социология". М 1999. С. 259.

dadgenili an sanqcionirebulia saxelmwifos mier. amdenad, marTalia, sociologebi danaSaul obas deviaciaTa ricxvs miakuTvneben, magram mis `gansakuTrebul obaSi~ gulisxmoben danaSaulobis Semxeblobas kanonmdeblobasTan.

iuridiuli midgoma:

danaSaulobis iuridiul ganmartebaSi xazgasmulia, rom `danaSauloba sisxlissamarTlebrivi movlenaa, vinaidan masSi Semaval danaSaulTa wres gansazRvravs sisxlis samarTlis kanonmdebloba, xolo danaSaulobis samarTlebrivi elementi ganasxvavebs mas iseTi socialuri movlenisagan, rogoricaa amoraluri gamovlineba, xolo marTlwinaaRmdegobis xarisxi ganasxvavebs mas iseTi samarTal darRvevebisagan, rogoricaa administraciul-samarTlebrivi, disciplinaruli da samoqalaqo-samarTlebrivi.~[3] aRniSnul ganmartebaSi warmoCenilia danaSauloba sisxlis samarTlebriv movlenad, Tumca es arc aris gasakviri, vinaidan kriminologia sabWoTa mecnierebis mier sisxlis samarTlis Seswavlis kompenciad miiCneoda. gercenzoni da SliapoCnikovi kriminologias sisxlis samarTlis mecnierebis Semadgenel nawilad ganixilavdnen, aRniSnul sakiTxs exmaureba profesori g. naWyebia, rodesac aRniSnavs, rom `...imxanad, kriminologiis ugulebel yofis gamo, sisxlis samarTlis mecnierebis saganSi Setanilia danaSaulobaTa mizezebic.~[4] xangrZlivi drois ganmavlobaSi danaSauloba gagebul iyo rogorc istoriulad cvalebadi, socialur-samarTlebrivi movlena damaxasiaTebeli klasobrivi sazogadoebisaTvis, danaSauloba moicavda danaSaulTa erTobliobas, Cadenils gansazRvruli drois monakveTSi gansazRvrul teritoriaze.

danaSauloba ganisazRvreba ori urTierTgansxvavebuli kriteriumiT: 1) sazogadoebrivi saSiSroebiT, realuri zianiT da 2) gaTvaliswineb sisxlis samarTlis kanonmdeblobiT (**nullum crimen sine lege**).[5] danaSaulobisa es `ormagi~ buneba, erTi mxriv, realuri ziani, xolo meore mxriv — gaTvaliswineba sisxlis samarTlis kanonis mier (konvencialuroba), ganapirobebs danaSaulobis gansazRvris sirTuleebs.[6] danaSaulobis ormag bunebas msofl io kriminologia xsnis Semdegnairad, kerZod, klasikurad iTvleba formula, SemoTavazebuli tapenis mier: `danaSauli aris ganzrax darRveva sisxlis samarTlis kanonisa, Cadenili ara Tavdacvisa da gamarTlebisaTvis da dasjadi saxelmwifos mxridan~.[7] sxvagvarad Tu vityviT, `moqmedebiTi aqti gvevlineba danaSauload, imdenad, ramdenadac igi arRvevs sisxlis samarTlis kanons~[8]

kriminologiuri midgoma:

kriminologiuri Sexedulebit, realobaSi ar aris iseTi obieqti, iseTi qmedeba, romelic TavisTavad, Sinaganad (**sui generis, per se**), iyos danaSaulebrivi. danaSauls, rogorc individualur qceviT aqts da danaSaulobas, rogorc socialur fenomens, ar gaaCnia

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[3] ix. z. wuluaia. „kriminologia~. zogadi nawili. Tb. 2003. gv. 45.

[4] ix. g. naWyebia. „sisxlis samarTlis mecnierebis sagani~. Tb. 1998w. gv. 28.

[5] ix. **Я.И. Гилинский.** "Девиантность, Преступность, Социальный контроль~. СПТ. 2004. С. 156.

[6] ix. "Преступность и ее предупреждение". Под ред. **Я.И. Гилинского.** Л., 1978. С. 15.

[7] ix. **Tappan P.** Who is Criminal? American Sociological Review. 1947. # 12. P. 100.

[8] ix. **Brown S., Esbensen F.-A.,** Geis G. Criminology: Explaining Crime and its Context. P. 18.

bunebrivi, ontologiurad (arsebiTad) gansazRvruli referenti social ur sinamdvileSi; danaSauli mxolod kriminaluri politikis produqtia, vinaidan, Tu ra aris danaSauli (da saerTo jamSi _ danaSauloba), gansazRvravs konkretuli kanonmdebeli konkretul saxel mwifoSi da konkretul dros, romelic upirveles yovlisa, gamoxatavs mmarTveli fenis, umciresobis interesebs.[9] danaSauli da danaSauloba relaciuri (SefardebiTi), konvencialuri, socialuri konstruqtebia. ase magaliTad, erTi adamiani klavs meores, zogierTi sxvis qonebas itacebs, sxva yaCaRobs da a.S. yoveli aseTi qmedeba danaSauli adaa miCneuli da isjeba sisxlis samarTlis wesiT, magram Sinaarsobrivad analogiuri xasiaTis qmedebebi SesaZlebelia ar iqnes cnobili danaSauladda, piriqiT, gamarTlebul da Rirseul qmedebebadac ki CaiTvalos; mag.: mowinaagmdegis mkvleloba saomari moqmedebebis dros, jaSuSoba mowinaaRmdege qveynis teritoriaze, sikvdiliT dasja sasamarTlos gamamtyunebeli ganaCeniT (sakmaod gavrcelebulia aSS-s mTel rig StatebSi), sasamarTlos gadawyvetilebiT qonebis konfiskacia da a.S.

Tanamedrove kriminologiaSi danaSauobis gageba-Semecnebis sami ZiriTadi midgoma arsebobs: 1) legalisturi — danaSauloba aris is, rac akrZalulia kanoniT (aq igulisxmeba ara marto sisxlis samarTlis kanoniT akrZaluli qmedebani, aramed kanondarRvevebi, disciplinaruli da administraciuli gadacdomebi; 2) social ur-reaqciuli, romlis Tanaxmad, danaSaulebrivia is, rac ikicxeba sazogadoebis, saxel mwifos mier da risTvisac dawesebulia sasjelebi da 3) kritikuli — romelic ar iziarebs xsenebul or midgomas.[10]

sazRvargareTis kriminologiaSi didi gavrceleba pova Tval sazrisma, romlis Tanaxmad, kriminologiis interesebi moicavs ara marto danaSaulebs, aramed deviantur moqmedebebsac,[11] rac ganpirobebulia danaSaulobasa da deviaciaTa mWidro kavSiriT. garda amisa, danaSauloba ganixileba rogorc saxesxvaoba socialuri deviaciebisa. amdenad, sazRvargareTis kriminologiis saganSi saerTo adgili ukavia danaSaulobasa da deviaciebs, romlebic `umsxverplo danaSaulebad~ iwodeba.[12] e.w. `umsxverplo danaSaulobis~ arsi mdgomareobs SemdegSi: obieqturi ziani, romelic moaqvs uaryofiT, gadaxriT qcevas (deviacias) da subieqturi Sefaseba sazogadoebisa aRniSnuli zianis mimarT, xSirad erTmaneTs ar emTxveva. aseTi SeuTavsebloba dakavSirebulia sazogadoebaSi zneobrivi principebis cvalebadobasTan, mag.: sazogadoeba saTanadod ver afasebs narkomaniis gavrcelebas, prostituciisgan miRebul zians, TviTmkvlelobaTa ricxvs da sxva msgavs movlenebs. 90-ian wlebSi aSS-sa da dasavleT evropis mTel rig qveynebSi safuZveli Caeyara mimdinareobas, romlis Tanaxmad, e.w. `umsxverplo danaSaulebi~, rogorebicaa narkotikebis moxmareba, pornografia, prostitucia, azartuli TamaSebi, mamaTmavloba da sxva, amoRebuliyo sisxlis samarTlis kanonmdebl obidan da momxdariyo maTi dekriminalizacia, Tumca aRsaniSnavia is garemoeba, rom aseT dros swored msxverplTan gvaqvs saqme da ara sxva movlenasTan, kerZod, msgavsi individebi, romlebic ewevian xsenebul saqmianobas, upirveles yovlisa, zians ayeneben sazogadoebas, TavianT da sxvis ojaxebs, mozard-axal gazrdobas[13] Tezisi imis Sesaxeb ki, rom narkotikebis moxmareba, alkoholizmi, TviTmkvleloba da sxva devianturi movlenebi, uaRresad

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[9] ix.**Я.И. Гилинский.** „Девиантность, Преступность, Социальный контроль". СПТ.2004. C. 194.

[10] ix.Труды СПТ Юридического института Генеральной прокуратуры РФ. 2001. №3. C. 74-75.

[11] ix.i. goZiaSvili. „kriminologia~. Tb. 1998. gv. 23.

[12] ix.„Социальные Отклонения". М. Юридическая литература. 1989. C. 106.

[13] ix.iqve.

piraduli problemaa subieqtisa, misi moraluri ufleba, Cveni mosazrebiT, mcdari logikaa. marTalia, cxovrebiseuli pirobebi yovel konkretul individs sxvadasxvagvari aqvs (ukeTesi an mZime, rTuli da tragikuli cki), magram Tuki maT mTlianobaSi ganvixilavT, maSin ar SeiZleba, rom isini ar miviCnioT socialur borotebad, romel sac ar gaaCnia arc moraluri da arc kanonismieri gamarTleba. pirebi, roml ebic xdebian narkomaniis, alkohol izmisa Tu sxva deviaciuri gamovlinebebis msxverpli ni, albaTobis maRali xarisxiT, SeiZleba vivaraudoT, rom saboloo jamSi yalibdebian potenciur damnaSaveebad. isini veRarumklavdebian cxovrebiseul sirTuleebs (mag. ver gamoimuSaveben saarsebo minimums), amave dros ar gaaCniaT SesaZlebloba TavianTi gadaxriTi moTxovnilebebis dakmayofilebisa da Zalauneburad, TavisTavad, xdebian damnaSaveebi (dauokebeli moTxovnilebidan alkoholis, narkotikis miRebidan gamomdinare, iZulebuli arian, Caidinon qurdoba, yaCaRoba, Zarcva da a.S.), xolo iseTi movlena, rogoricaa TviTmkvleloba, Suasaukuneebis ruseTSi miCneuli iyo danaSauladda da kvalificirdeboda sisxlis samarTlis wesiT. TviTmkvleloba obis nebismieri mcdelobisaTvis dawesebuli iyo umacresi sisxlissamarTlebrivi sanqciebi, radgan TviTmkvleloba, iseve, rogorc sxva saxis deviaciuri movlenebi, miCneuli iyo mometebul sazogadoebriv saSiSroebad, rac, saboloo jamSi, aferxebs sazogadoebis normalur funqcionirebas.[14] amdenad, zogierTi kriminologis miswrafeba imisken, rom `gaTavisufldes~ iurisprudencia msgavsi qmedebebisa da maT winaaRmdeg brZolisagan, mcdaria da safuZvels moklebuli, Tumca amave dros unda aRvniSnoT, rom nebismieri devianturi gamovlinebis danaSauladad miCneva da misi daregulireba sisxlis samarTlis wesiT, bunebrivia, utopiamde migviyvans. kanonTa simravle saxel mwifoSi igivea, rac didi raodenoba mkurnalebisa: niSani avadmyofobisa da uZlurebisa.[15]

danaSaulobis saxel mZRvanelo cneba Tanamedrove kriminologiaSi:

ukanaskneli aTwleulebis ganmavlobaSi mecnierebaSi mimdinareobda sistematuri kvlevebi danaSaulobis fenomenis Sesaxeb, sul axlo warsulSi ki, kriminologiis mecnierebis ganviTarebasTan erTad, Camoyalibda da ganisazRvra danaSauloba, rogorc `uaryofiTi socialur-samarTlebrivi movlena, romelic arsebobs adamianTa sazogadoebaSi, gaaCnia Tavisi kanonzomierebani, Tvisobrivi da xarisxobrivi maxasiaTeblebi, moaqvs sazogadoebisa da adamianebisaTvis negatiuri Sedegebi da moiTxovs specifikur controls saxel mwifosa da sazogadoebis mxridan.~[16]

<u>danaSaulobis Tavidan acileba</u>

danaSaulobis Tavidan acileba kriminologiis mecnierebis sagnis mniSvnelovani Semadgeneli nawili da amave dros am mecnierebis ZiriTadi mizania.
saqme is gaxlavT, rom `danaSauli socialuri movlenaa, romel sac socialur-ekonomikuri faqtorebi ganapirobeben. amitom dgeba sakiTxi imis Sesaxeb, Tu ramdenad

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[14] ix."Социальные Отклонения". М. Юридическая литература. 1989. С. 106.

[15] ix."Криминология". Учебник для юридических институтов и факултетов. М. 1992. С. 32.

[16] ix.**Я.И. Гилинский.** "Девиантность, Преступность, Социальный контроль". СПТ.2004. С. 155-156.
  aseve, z. wulaia. `kriminologia~. zogadi nawili. Tb. 2003. gv. 54.

mizanSewonilia aseT dros danaSauls vebrZoloT sasjelis meSveobiT, maSin, rodesac danaSaul obaTa winaaRmdeg brZolis efeqturobisaTvis gadamwyvetia social ur-ekonomikuri, ideologiur-politikuri da sxva amgvari RonisZiebebis ganxorcieleba. saxel mwifom, upirveles uovlisa, am RonisZiebaTa efeqturobisaTvis unda izrunos da mxolod amis Semdeg daawesos sisxlissamarTlebrivi sasjeli, rogorc danaSaulis winaaRmdeg brZolis damxmare saSualeba.~[17]

danaSaulobis Tavidan acilebis problematikaSi ganixileba ori ZiriTadi kriteriumi: saerTo-social uri da individualuri.[18]

danaSaulobis Tavidan acilebis saerTo-social uri midgoma:

danaSaulobis Tavidan acilebis saerTo-social uri midgoma moicavs, erTi mxriv, ekonomikur urTierTobaTa ganviTarebis srulyofas; teqnologiuri da teqnikuri procesebis, mrewvelobis, soflis meurneobis, sabazro ekonomikis, biznesis ganviTarebas da msgavs procesebs, rac uSualodaa dakavSirebuli sazogadoebrivi cxovrebis donis amaRlebasa da materialuri pirobebis gaumjobesebasTan; xolo, meore mxriv, sazogadoebis kulturuli donis amaRlebas, ganaTlebis sistemis gaumjobesebas, aRmzrdelobiTi, zneobrivi da religiuri Sexedulebebis damkvidrebas.[19] dasaxelebuli midgoma, marTalia, pirdapir ar aris dakavSirebuli danaSaulobis problemasTan (adamianebi kulturisa da xelovnebis ganviTarebisas naklebad fiqroben danaSaulobasTan brZolaze), magram maRali kulturuli da inteleqtualuri done sazogadoebisa saimedo garantebia danaSaulobis Tavidan asacileblad. dasaxelebuli zomebi iribad, arapirdapir axdens zegavlenas danaSaulobaze, xolo rac ufro maRalia ekonomikuri da kulturuli done sazogadoebisa, miT meti safuZveli arsebobs, vivaraudoT, rom danaSaulobis saerTo maCvenebeli aseT sazogadoebaSi iqneba dabali.[20] danaSaulobis Tavidan acilebis saerTo-social uri struqtura diferenciaciulia; mis farglebSi wydeba iseTi sakiTxebi, rogoricaa optimaluri fizikuri, sulieri, zneobrivi, religiuri ganviTareba momavali Taobebisa, aseve, efeqturi social izacia pirebisa, romelTac gaaCniaT esa Tu is fsiqo-fiziologiuri negatiuri Taviseburebebi. determinaciisa da mizezobriobis procesebis marTva xdeba sxvadasxva gziT: negatiuri movlenebisa da procesebis likvidaciiT, maTi neitral izaciiT sazogadoebriv cxovrebaSi pozitiuri cvlilebebis Setanis gziT; sazogadoebrivi cxovrebis sxvadasxva sferoebis urTierTqmedebis faqtorebis gaTval iswinebiT. Tuki romel ime uaryofiTi ekonomikuri movl enis dauyovneblivaRmofxvra ver xerxdeba, SesaZlebelia misi garkveul donemde neitral izeba dadebiTi politikuri da sulieri cxovrebis faqtorebis Carevis, Canacvlebis gziT; magaliTad, umuSevrobis pirobebSi, mniSvnelovania dasaqmebis samTavrobo da arsamTavrobo seqtoris efeqturi saqmianoba, regularul i Semweobebis gacema, romelic uzrunvelyofs umuSevari, social urad daucveli piris cxovrebiseuli

[17]ix.g.naWyebia. `sisxlissamarTlebrivi urTierToba da danaSaulis cneba~. Tb. 2002. gv. 3.
[18]Sead. **Д.А. Шестаков**. "Криминология". СПТ. 2006. С. 252-254.
[19]ix."Криминология". Учебник для юридических институтов и факултетов. М. 1992. С. 27.
[20]ix. iqve.

saarsebo minimumiT dakmayofil ebas.[21] danaSaul obis Tavidan acil ebis saerTo-social uri zomebi im kompl eqsur RoniZiebaTa erTobl iobaa, roml ebic, sabol oo jamSi, mimarTul ia sazogadoebis ekonomikuri, pol itikuri, zneobrivi, sul ieri cxovrebis winsvl isa da gaj ansaRebisaken. am mxriv, danaSaul obis Tavidan acil ebis saqmeSi CarTul i unda iyos mTel i samoqal aqo sazogadoeba, samTavrobo da arasamTavrobo seqtorebi. saerTo-social uri zomebi gvevl ineba adamianTa Tanacxovrebis Rirseul i pirobebis Seqmnis winapirobad, amasTan, safuZvl ad imisa, rom adamianebs Seuwyd**e**T formireba mavne moTxovnil ebebisa (mag.: narkotikebis moxmarebiss, al kohol izmi, prostituciis da a. S.), gauCndeT survil i, efeqturad gadawyviton TavianTi probl emebi kanonis fargl ebSi, mieceT stimul i sazogadoebrivad sasargebl o, marTl zomieri qmedebebis ganxorciel ebisa.[22] danaSaul obis Tavidan acil eba odiTganve ayvanil i iyo saxel mwifo pol itikis rangSi. civil izaciam, kul turis ganviTarebam gamoiwwia aRmzrdel obiTi sistemebis Camoyal ibeba. praqtika gviCvenebs, rom mozard-axal gazrdobas unda gadavceT ara marto tradiciul i unar-Cvevebi da rel igiuri dogmatebi, aramed gansazRvrul i msofl xedvel oba, fil osofiuri Sexedul ebebi, roml ebic SemdgomSi aucil ebl ad moaxdens zegavl enas maT cal keul qmedebebsa da saqciel ze mTl ianad. aRmzrdel obiTi zomebis gamoyeneba ki mozard-axal gazrdobaSi sakmaod efeqturi meTodia sazogadoebrivi cxovrebis regul irebisa. danaSaul obis Tavidan acil ebis saqmeSi swori aRmzrdel obiTi saqmianoba erT-erT yvel aze mniSvnel ovan RonisZiebad iyo miCneul i Zvel i berZeni fil osofosebis mier. mizanSewonil ad iTvl eboda, rom xel isufl ebas didi yuradReba daeTmo xal xis swavl a-aRmzrdel obiTi saqmianobisaTvis.[23] gansaxil vel sakiTxTan mimarTebaSi mizanSewonil ad migvaCnia, aRvniSnoT, rom erT-erT, Zvel i drois yvel aze metad ganviTarebul el inur saxel mwifoSi — spartaSi — moqmedebda original uri sistema sazogadoebriv urTierTobebze zemoqmedebisa, saxel mwifos mxridan oj axur urTierTobebSi aqtiuri Carevis saxiT. spartaSi iTvl eboda, rom qorwineba aris `dawesebul eba~, romel sac gaaCnia erTaderTi mizani — fizikurad da zneobrivad ganviTarebul i, j anmrTel i moqal aqeebis `warmoebisa~; saxel mwifo araTu aqtiurad akontrol ebda mozard-axal gazrdobis gonebriv da fizikur aRmzrdel obiT process, aramed awarmoebda dasaqorwinebel i wyvil ebis mkacr SerCevasac. qorwineba, roml is Sedegadac ar daibadebodnen bavSvebi, gauqmebul ad iTvl eboda da moqal aqeebi val debul i iyvnen, sxvasTan eqorwinaT. dauqorwinebl oba danaSaul ad iTvl eboda; bavSvebis raodenoba, romel ic spartanel oj axebs unda hyol odaT, mkacrad gansazrvrul i iyo. qveyanaSi moqmedebda mkacri kriteriumebi mozard Taobis gonebriv, zneobriv da fizikur ganviTarebasTan mimarTebaSi.[24] spartam daumtkica msofl ios, rom oj axuri urTierTobani da mozard-axal gazrdobis aRmzrdel obiTi procesi, SesaZl ebel ia efeqturad yofil iyo kontrol irebadi saxel mwifos mier sxvadasxva miznebisaTvis, maT Soris, danaSaul obis Tavidan acil ebis umniSvnel ovanesi miznisaTvis. vfiqrobT, spartis zogierTi miRwevis gaanal izeba da impl ementacia qarTul pol itikaSi, mniSvnel ovnad waadgeba saxel mwifos ara marto danaSaul obis Tavidan asacil ebl ad, aramed saqarTvel os gamTl ianebis

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[21]ix.“Криминология”. Уебник для вузов. М. 2001. C. 440.

[22]ix.“Криминология”. Уебник для вузов. М. 2001. C. 440.

[23]ix.“История философии”. М. 1957. Т. 1. С. 61.

[24]Sead.**H. Michell**. “Sparta~. Camb, 1952.

processac. miT umetes, roca Tanamedrove amerikeli swavluli kriminologebis, maT Soris, koganis, gamokvlevebma daadastures Zveli WeSmaritebis sisswore, rac imaSi mdgomareobs, rom ojaxis simtkices da mozard-axal gazrdobis swor aRmzrdelobiT saqmianobas upiratesi mniSvneloba eniWeba danaSaulobis winaagmdeg brZolaSi, mis Tavidan acilebasa da aRkveTaSi.[25]

danaSaulobis Tavidan acilebis individualuri midgoma:

danaSaulobis Tavidan acilebis individualur midgomaSi igul isxmeba zemoqmedeba konkretul pirovnebaze da mis garemocvaze, romelic gamoixateba konkretuli pirovnebis mimarT socialuri da fsiqologiuri daxmarebis aRmoCenaSi, xolo gadaudebeli aucileblobis SemTxvevaSi _ mis saqcielze kontrolis dawesebaSi. individualuri profilaqtikis arsi mdgomareobs: 1) pirovnebisaTvis kriminogenuri socialuri problemebis mogvarebaSi, mag. umuSevrobasTan. 2) daxmarebis aRmoCenaSi, gadalaxos aRmzrdelobiTi da fsiqologiuri siZneleebi da 3) saqcielis kontrolSi (mag. im pirTa saqcielis kontroli, romel Tac sasamarTlos mier daniSnuli aqvT pirobiTi msJavri).[26] garda amisa, danaSaulobis Tavidan acilebis individualuri zomebi iyofa adreul, uSualo da recidivistTa profilaqtikur zomebad.[27]

adreuli profilaqtika moicavs gamafrTxilebeli samuSaoebis warmoebas zogad formatSi im mizniT, rom gamoiricxos konkretuli piris an romelime socialuri jgufis mier momavalSi SesaZlo kriminaluri saqmianoba adreuli profilaqtikis Tval saCino magaliTia amerikis SeerTebul StatebSi damkvidrebuli da gavrcelebuli kriminologiuri saskolo da skolamdeli programebi, romelic mimarTulia mozard-axal gazrdobis xasiTis dadebiTi mxareebis Camoyalibebaze, maTSi agresiuli Tvisebebis formirebis aRmofxvraze. uSualo profilaqtika gamoixateba mizanmimarTul saqmianobaSi konkretuli pirebisa da maTi axlo garemocvis mimarT. aRniSnuli saqmianobis obieqtebad gvevlinebian individebi, romelTa cxovrebis wesi da unar-Cvevebi mowmoben, rom maTi mxridan didia albaToba danaSaulTa da calkeuli samarTaldarRvevebis Cadenisa.[28]

recidivisTa profilaqtik (kriminologiuri gagebiT) igul isxmeba profilaqtikuri saqmianobis warmoeba im pirebis mimarT, romel Tac ukve Cadenili aqvT danaSaulebi Tu calkeuli samarTaldarRvevebi. aseTebs ganekuTvnebian msjavrdebulebi, romlebic real urad ixdian sasjels, pirobiT msjavrdebulebi da Tavisuflebis aRkveTis adgilebidan pirobiT vadamde gaTavisuflebuli pirebi, adamianebi gaTavisuflebuli sisxlis samarTlis pasuxismgeblobisagan, arasrulwlovanebi, romel Tac daniSnuli aqvT aRmzrdelobiTi xasiaTis iZulebiTi RonisZiebani.[29] amasTan, individualuri profilaqtikis obieqtebad gvevlinebian calkeuli kriminogenuri pirebi, mikrogaremo, sadac xdeba negatiuri xasiaTis zemoqmedeba individebze, rac, saboloo jamSi, maT

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[25] ix.**У. Коган.** "Криминологические исследование в мире". М. 1995. С. 160.

[26] ix. **Д.А. Шестаков.** "Криминология". СПТ. 2006. С. 255.

[27] ix.iqve.

[28] ix.iqve.

[29] ix.**Д.А. Шестаков**. "Криминология". СПТ. 2006. С. 256.

ubiZgebT danaSauI is an sxva devianturi qcevis ganxorcieI ebisaken. individuaI uri profiIaqtika aseve moicavs desociaI izirebul pirebs, romelTac ganekuTvnebian usaxIkaro adamianebi, pirebi, romelTac ar gaaCniaT mudmivi SemosavIis wyaro, umuSevrebi, aIkohoIikebi, narkomanebi, meZavebi, `uweso~ ojaxebidan gamosuIi mozardebi.[30] Tanamedrove mecnierebaSi, individuaI uri profiIaqtikis aqtualur mimarTuIebad gvevIineba samarTaIdarRvevaTa da deviaciaTa gafrTxiIeba mozard-axaI gazrdobaSi, raSic upiratesi mniSvneIoba eniWeba narkomanias da ojaxur Zaladobas; dasavIeTis mTIri g qveynebSi didi yuradReba eqceva profiIaqtikur RonisZiebaTa iseT Semadgeneı nawiIs, rogoricaa e.w. `komunaIuri prevencia~.[31] misi arsi mdgomareobs kompaqturad dasaxIebuI i adamianebis TviTorganizaciaSi, poIiciasTan mWidro TanamSromIobiT akontrolon sazogadoebrivi wesrigi TavianT dasaxIebuI teritoriaze. aseT viTarebaSi sazogadoeba erTobIivi ZaIisxmeviT xeIs uwyobs axaIgazrdobis mier kanonis fargIebSi, zneobrivi Rirebulebebis dacviT, Tavisufali drois moxmarebas, iCens mzrunveI obas sociaI urad daucveI i mezobIebis mimarT da a.S.

`mediatoris~ instituti danaSauIobis Tavidan aciIebis probIematikaSi:

msofIio praqtikaSi individuaIuri profiIaqtika dayvaniIia damnaSavesa da dazaraIebuI s Soris konfIiqtis daregulirebis donemde. dazaraIebuI Tan `Serigeba~ sxvadasxva formebiT Cadebulia dasavIeTis bevri ganviTarebuli qveynis Sida kanonmdebIobaSi da gvevIineba Tavisuflebis aRkveTisa da sasjelis yveIa sxva saxis aIternatiuI RonisZiebad. aseTi praqtika danergiIia da warmatebiT moqmedebs niderIandebSi; ucxo qveynebis gamocdiIeba gviCvenebs, rom WeSmariti, namdviIi Serigeba danaSauIis Tavidan asaciIebIad SesaZIoa miRweuI iqnes mxoIod speciaIistis (mediatoris) monawiIeobiTa da aqtiuri ZaIisxmeviT. aRniSnuIis gaTvaIiswinebis safuZveIze dasavIeTis ganviTarebuI qveynebSi warmoiSva axaIi profesia - `mediatori~, romeIic, bunebrivia, Sesabamis codna-gamocdiIebas moiTxovs, Tumca evropis mTIrig saxeImwifoebSi es probIemac mogvarebuIia da iusticiis saministroebis struqturebSi moRvaweoben `saStato~ mediatorebi.[32]

kIinikuri kriminoIogia:

gansaxiIveI sakiTxTan mimarTebaSi aseve sayuradReboais garemoeba, rom dasavIeTis mTIrig demokratiuI qveynebSi (mag. itaIiaSi, safrangeTSi) didi popuIarobiT sargebIobs iseTi dargi kriminoIogiisa, rogoric aris e.w. `kIinikuri kriminoIogia~. mis bazaze warmoiqmna da realizebuIiqna praqtikaSi arasadamsjeIo zemoqmedeba damnaSaveebze. aRniSnuI qveynebSi dainerga `kriminoIog-kIinicistebis~ profesia, romIebic didi avtoritetiT sargebIoben sazogadoebaSi da mniSvneIovan gavIenas axdenen saxeImwifo poIitikis formirebze patimarTa reabiIitaciis sakiTxebTan mimarTebaSi. kriminoIogiis aRniSnuIi dargis ganviTarebam gamoiwvia sadamsjeIo

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[30] ix.iqve.

[31] ix.iqve.

[32] ix. **Д.А. Шестаков.** "Криминология". СПТ. 2006. С. 257-258.

politikis humanizacia evropis TiTqmis yvela saxelmwifoSi. safrangeTSi amas mohyva penitencialuri sistemis reforma, romlis farglebSic penitencial ur sistemaSi Seiqmna socialur-aRmzrdelobiTi samsaxuri, patimrebs gauCndaT SesaZlebloba profesiuli ganaTlebis miRebisa, sxvadasxva saswavlo dawesebul ebebSi swavlisa da aucilebeli samedicino daxmarebis miRebisa Tavisuflebis aRkveTis adgilebis farglebs gareT.[33] vfiqrobT, aRniSnuli modelis SeTavazeba qarTuli penitencialuri sistemisaTvis dRes Zalze mniSvnelovani iqneba. jer erTi, pirTa xangrZlivi yofna Tavisuflebis aRkveTis adgilebSi iwvevs Seuqcevad cvlilebas maTi fsiqikisas, ris Semdegac sasjelmoxdili pirebis sruli umravlesoba agrZelebs kriminalur saqmianobas ufro srulyofilad da profesionalur doneze, vidre amas aqamde sCadionenda, Sesabamisad, sazogadoebas ayeneben ufro met zians gaTavisuflebis Semdeg, xolo, meore mxriv, sisxlis samarTlis represia wamoSobs axal danaSaulebs, romelTa Cadena xdeba sasjel aRsrulebiT dawesebulebebSi, rac xSir SemTxvevaSi latentur xasiaTs atarebs.

kriminologiuri politika:

kriminologiuri politika gamoixateba saxelmwifos mxridan koncefciis SemuSavebaSi, sadac asaxul unda iqnes danaSaulobis Tavidan acilebis taqtika da strategia. igi moicavs or ZiriTad mimarTulebas: sisxlissamarTlebrivs da sakuTriv kriminologiurs.[34] amaTgan, pirveli mimarTuleba dakavSirebulia materialuri sisxlissamarTlebrivi, sisxlis samarTlis saproceso da sasjel aRsrulebiTi kanonmdeblobis ganviTarebasTan, aseve, igi uzrunvelyofs sisxlissamarTlebriv pasuxismgeblobas pirebisas, romelTac Caidines danaSauli; meore midgoma _ uSualod kriminologiuri mimarTuleba moicavs saxelmwifos mxridan danaSaulobis ganviTarebis kanonzomierebebis sistemur gaanalizebas, danaSaulobis Tavidan acilebas, danaSaulis msxverpl TaTvis saTanado materialuri da fsiqologiuri daxmarebis aRmoCenas, aseve, normaluri pirobebis Seqmnas im pirTaTvis, romlebic gaTavisuflebulebi arian Tavisuflebis aRkveTis adgilebidan, raTa saSualeba mieceT, daubrundnen normalur, kanonier cxovrebas.[35]

dasasruls unda aRiniSnos, rom danaSauloba, rogorc saerTaSoriso problema, gaeros specialuri rezoluciis Tanaxmad, Seiswavleba ekonomikuri, socialuri, kulturuli da humanitaruli programebis farglebSi. gaeros egidiT, msoflios TiTqmis yvela regionSi moqmedebs kriminologiuri kvleviTi institutebi, maT Soris aRsaniSnavia `danaSaulobaTa Tavidan acilebisa da danaSaulobaTa kontrolis gaeros evropuli instituti (HEUNI - helsinki, fineTi), romlis saqmianobis erT-erT mniSvnelovan mimarTulebas Seadgens kriminologiuri swavlebis ganxorcieleba sxvadasxva qveynebSi; vfiqrobT saqarTvelos saxelmwifos TanamSromloba aRniSnul institutTan mizanSewonilia da Zalze mniSvnelovani iqneba maTi gamocdilebis gaziareba qarTveli kriminologebisaTvis, rac, saboloo jamSi, waadgeba qarTul saxelmwifosa da sazogadoebas.

[33] ix.**С.М. Иншаков.** "Зарубежная Криминология". М. 1997. С. 199-200.
[34] ix.**Д.А. Шестаков.** "Криминология". СПТ. 2006. С. 398.
[35] ix.**Д.А. Шестаков.** "Криминология". СПТ. 2006. С. 399-400.

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kiberdamnaSaveobis Sesaxeb evropuli konvencia da masTan dakavSirebuli saerTaSoriso dokumentebi

saqarTveloSi kiberdanaSaulis Sesaxeb pirvel ad gamovida saerTaSoriso aqtebis krebuli wignis saxiT _ „kiberdamnaSaveobis Sesaxeb evropuli konvencia da masTan dakavSirebuli saerTaSoriso dokumentebi~. wigni gankuTvnilia msoflioSi informaciuli teqnologiebis sferoSi, samarTlebrivi ganviTarebis miRwevebis, kerZod, saerTaSoriso samarTlebrivi aqtebis gasacnobad. „kiberdamnaSaveobis Sesaxeb evropuli konvencia da masTan dakavSirebuli saerTaSoriso dokumentebi~ wigni upirvelesad saWiroa saqarTveloSi kompiuteruli informaciis sferoSi adamianis uflebebisa da Tavisuf- lebebis dacvisaTvis.

wigni gankuTvnilia rogorc iuristTa farTo wrisaTvis, aseve, kiberdamnaSaveobiT dainteresebul pirTaTvis.