

damouki debel i eqspertis daskvna

`arbitraJis Sesaxeb- saqarTvel os kanonis proeqtze

paata sal ia

saqarTvel oSi 90-iani wl ebis meore naxevarSi dawyebul i sasamarTI o reformis erT-rTi udavod progresul i nabiji iyo saarbitraJo sasamarTI oebis, roml ebic saxel mwifo marTI msaj ul ebis Semadgenel nawil s warmoadgenda, gauqmeba da 1997 wl is 17 april is `kerZo arbitraJis Sesaxeb- saqarTvel os kanonis miReba. Tumca, aRniSnul sferoSi praqtikam cxadyo, rom kanons aqvs maraval i nakl ovaneba, amasTanave, aucil ebel i gaxda misi harmonizacia evropul samarTal Tan. aRniSnul is gaTval iswinebiT, iusticiis saminstrom SeimuSava kanonproehti `arbitraJis Sesaxeb-, romel ic miznad isaxavs arsebul i xarvezebis gamosworebas. kanonproehti warmoadgens gaerTianebul i erebis organizaciis saerTasoris savaWro samarTI is komisiis (**UNCITRAL**) mier SemuSavebul model ur kanonTan daaxl oebis mcdel obas, Tumca, Cveni azriT, gaaCnia mniSvel ovani nakl ovanebebi, rac upirvel es yovl isa arbitraJis damoukidebl obis SezRudvasa da sasamarTI os rol is gazrdaSi gamoixateba. garda amisa, aris rigi procedurul i sakiTxebisa, romel ic ufro detal ur gansazRvras saWiroebs. `arbitraJis Sesaxeb- kanonproeqtTan erTad SemuSavda cvl il ebebisa da damatebebis proeqtobi saqarTvel os samoqal aqo saproceso kodeqsSi, `saaRsrul ebo warmoebaTa Sesaxeb- da `saerTasoris kerZo samarTI is Sesaxeb- saqarTvel os kanonebSi.

pirvel rigSi unda aRiniSnos, rom arbitraJi warmoadgens davis ganxil vis al ternatiul saSual ebas, romel sac gaaCnia maqsimal uri damoukidebl oba, moqnil oba, mxareebs Soris morigebis miRwevis didi al baToba da ganxil vis swrafad dasrul ebis Sesazl ebl oba, misi gadawyvetil eba SeiZl eba gasaCivredes mxol od mxareTa mier SeTanxmebul i procedurebis darRvevis gamo. swored aRniSnul i faqtorebi ganapirobebs msofi ioSi arbitraJis institutis popul arobas. samwuxarod, mocemul kanonproehti dadebiT cvl il ebebTan erTad aris rigi nakl ovanebebis, roml ebmac SeiZl eba momaval Si saqarTvel oSi arbitraJis institutisadmi interesi Seamciros.

dadebiT Sefasebas imsaxurebs kanonis saTauris Secvl a: saTauridan amoRebul ia sityva `kerZo-. aRniSnul i institutis samarTI ebrivi bunebidan gamomdinare, arbitraJi davebis gadawyvetis kerZosamarTI ebrivi saSual ebaa da amdenad, kanonis saTaurSi zemoaRniSnul i terminis arseboba zedmeti iyo. agreTve, SeiCval a saarbitraJo pretenziis cneba _ saarbitraJo sarCel iT. gaCnda axal i terminebi _ saarbitraJo mosarCel e da saarbitraJo mopasuxe. Tumca, es ukanasknel i cvl il eba nakl eb aqtual urad migvaCnia, vinaidan praqtikaSi am terminTa arasebobis gamo probl emebi ar Seqmnil a.

kanonproeqtma gaiTval iswina moqmedi kanonis pirvel muxl Si asebul i xarvezi, rac kanonis moqmedebis sferos Seexeba. `kerZo arbitrajis Sesaxeb-kanoniT arbitraji ganxil avs pirTa Soris wamoWril samoqal aqo davebs, xol o saproceso kodeqsSi arbitrajis moqmedebis sfero mxol od qonebrivi davebiT Semoifargl eba. es Seusabamoba gamosworebul ia gansaxil vel i kanonproeqtiT, rac udavod dadebiTi movl enaa.

saintereso siaxl ea momxmarebel is, rogorc kerZosamarTl ebrivi davis monawil e mxaris dacvis damatebiTi meqanizmis Cadeba proeqtSi, magram vinaidan saqme gvaqvs specifikur terminTan (momxmarebel i-), sasurvel i iqneboda am terminis ganmartebac yofil iyo mocemul i proeqtis meore muxl Si. aRsaniSnavia, rom moqmedi kanonisagan gansxvavebiT, proeqtSi mocemul ia terminTa ganmarteba.

kanonproeqtiT gazrdil ia saarbitraJo ganxil vis vadebi. kerZod nacvl ad moqmedi kanoniT gaTval iswinebul i erTTviani vadisa, arbitrajs ufl eba aqvs gadawyvetil eba ganxil vis dawyebidan sami Tvis ganmavl obaSi gamoitanos. am sferoSi praqtikam cxadyo, rom erTi Tve savsebiT sakmarisia davis ganxil visaTvis, miT ufro, rom mxareebis saSual eba aqvT Tavad gansazRvron damatebiTi vada. Cveni azriT, ganxil vis vadebis sam Tvemde gazrda xel s Seuwyobs procesis gaWianurebas, rac ar waadgeba saarbitraJo institutis ganvitarebas saqarTvel oSi.

mniSvnel ovnad wingadadgmul i nabijia arbitrajisaTvis sakuTari ufl ebamosil ebis gansazRvris ufl ebamosil ebis miniWeba, rac sayovel Taod aRiarebul i principia (**KOMPETENZ-KOMPETENZ**-is principi). proeqti iTval iswinebs mxaris mier arbitrajis qvemdebareobis gasaCivrebis sakiTxs, Tumca mxares ar arTmevs ufl ebas airCios arbitri. migvaCnia, rom l ogikuria, Tu mopasuxe airCevs arbitrs, igi eTanxmeba davis ganxil vas arbitrajis mier. winaaRmdeg SemTxvevaSi, mas aqvs sxva saproceso saSual ebebi daiavas Tavi. aqedan gamomdinare, sasurvel ia, aRniSnul i punqti amoRebul i iqnes proeqtidan.

kanonproeqtis avtorebma gaiTval iswines moqmedi kanonis yvel aze didi nakl ovaneba, rac saarbitraJo gadawyvetil ebis gasaCivrebis da gauqmebis procedurebs exeba. `kerZo arbitrajis Sesaxeb kanonSi- zemoaRniSnul i sakiTxebis maregul irebel i normebi Zal ian bundovani da zogadia, rac praqtikaSi mraval probl emas iwvevs. am mxriv, kanonproeqtma gaiTval iswina arsebul i nakl ovanebebi da detal urad gansazRvra saarbitraJo gadawyvetil ebis gasaCivrebis safuZvl ebi. kanonproeqtSi asaxul i mocemul i sakiTxis maregul irebel i normebi srul SesabamisobaSia iunsiTral is model ur kanonTan da saerTaSoriso praqtiskasTan. Tumca, kanonproeqtSi aris erTi xarvezi, romelic gadawyvetil ebis gasaCivrebis procedurasTan aris dakavSirebul i. kerZod, 36-e muxl is pirvel is punqti iTval iswinebs saarbitraJo gadawyvetil ebis gasaCivrebas saapel acio saCivris saSual ebiT. migvaCnia, rom es arasworia da mTlianad ewinaaRmdegeba arbitrajis instituts. arc mocemul i kanonproeqti da arc model uri kanoni, an nebi smieri sxva qveynis kanonmdebl oba ar icnobs saarbitraJo gadawyvetil ebis gauqmebas apel acii s gziT. apel acia samoqal aqo saproceso

samarTal Si niSnavs gadawyvetil ebis gasaCivrebas zemdgom sasamarTI o instanciaSi, romel sac ufl eba aqvs arsebiTad ganxil os saqme. kanonproeqtis sxva 36-e muxl is meore punqtis (romel ic srul SesabamisobaSia iunsitral is kanonis anal ogiur normasTan) anal izidan gamomdinare, mxaris mier gadawyvetil ebis gasaCivrebas sasamarTI os ar SeuZl ia imsjel os davis arsebiT sakiTxebze. sasamarTI os SeuZl ia gaaugmos sarbitraJo gadawyvetil eba mxol od im SemTxvevebSi, rodesac sarbitraJo SeTanxmeba ar arsebobs, baTil ia an Zal adakargul ad aris gamocxadebul i, darRveul ia mxareTa SeTanxmebiT dadgenil i ganxil vis wesebi, dava ar SeiZl eba iyos sarbitraJo ganxil vis sagani an ewinaaRmdegeba sajaro wesrigs. aqedan gamodinare, saapel acio saCivriT sasamarTI osaTvis mimarTva dauSvebel ia. misal mebel ia kanonproeqtis avtorTa ganzraxva, sarbitraJo gadawyvetil ebis gasaCivrebis gancxadeba ganxil os ara raionul ma sasamarTI om (rasac moqmedi kanoni gul isxmobs), aramed zemdgomma instanciam da misi gadawyvetil eba iyos sabol oo, magram am nawil Si kanonproeqt i aSkarad moiTxovs daxvewas. siaxl ea, agreTve gadawyvetil ebis gasaCivrebi saTvis samTviანი vadis daweseba, rac Seesabameba iunsitral is moTxovnebs, Tumca, Sesazl ebel ia ufro mcire vadis gansazRvrac.

uaryofiTad unda Sefasdes is garemoeba, rom mocemul i kanonproeqt iT model uri kanonisagan gansxvavebiT, arbitraJs ufl eba ara aqvs gaataros sarCel is uzrunvel yofis RonisZiebebi. aRniSnul i ufl ebamosil eba proeqtis me-17 muxl idan gamomdinare, mxol od sasamarTI os aqvs. am mxriv, araerTgvarovania sxva qveynebis praqtikac, Tumca bevrgan arbitraJis mier uzrunvel yofis RonisZiebebis gatareba kanoniT daSvebul ia. sasurvel i iqneboda, kanonproeqtis avtorebs gaETval iswinebinaT es garemoeba.

kanonproeqt iT gartul ebul ia sarbitraJo gadawyvetil ebis iZul ebiT aRsrul ebis procedurebi. moqmedi kanoni iTval iswinebs arbitraJis Tavmj domaris mier saaRsrul ebo warweris safuZvel ze saaRsrul ebo warmoebis dawyebas. amastan dakavSirebiT arsebobs azrTa sxvadasxaoba. marTal ia, TiTqmis arc erTi qveynis kanonmdebl oba ar icnobs arbitraJis mier saaRsrul ebo furcl is gacemas, magram am mxriv praqtikaSi probl emebi nakl ebad iyo. mocemul i kanonproeqt iTval iswinebs saaRsrul ebo furcl is gacemas sasamarTI os mier, rac miRebul i praqtikaa msofli oSi. sxva qveynebis kanonmdebl obisagan gansxvavebul ad regul irdeba saaRsrul ebo furcl is gacemis vadebi da wesi. am samarTal urTierTobis momwesrigebel i normebi asaxul ia samoqal aqo saproceso kaodeqsis cvl il ebebisa da damatebebis proeqtSi. aRniSnul i proeqt iTval iswinebs (Tavi **LIV**) 10 dRian vadaSi sasamarTI os mier saaRsrul ebo furcl is gacemas, rac dRevandel i sasamarTI o praqtikidan gamomdinare, garkveul sirTul eebTan iqneba dakavSirebul i. ar aris miTitebul i Tu ra aucil ebel rekvizitebs unda Seicavdes gancxadeba saaRsrul ebo furcl is gacemis Sesaxeb. kanonproeqtis avtorebma mizanSewonil ad CaTval es saaRsrul ebo furcl is gacemamde sasamarTI o sxdomis Catareba, rac srul iad zedmetad migvaCnia. gaurkvevl ia isic, Tu vis mier da ra procedurebis dacviT iqneba gacemul i saaRsrul ebo furcel i im SemTxvevaSi, Tu sasamarTI os kanoniT gansazRvrul vadaSi ar

miiRo gadawyvetl eba (ganCineba). kanonproehti aSkarad saWiroebs daxvewas am kuTxiT.

siaxl ea, agreTve, ucxoeTis saarbitraJo gadawyvetil ebebis cnobisa da aRsrul ebis maregul irebel i normebis asaxva proehtiSi, rac SeiZl eba mis dadebiT mxared CaiTval os. es cvl il eba srul SesabamisobaSia 1958 wl is 31 dekembris `ucxoeTis saarbitraJo gadawyvetil ebaTa cnobisa da aRsrul ebis Sesaxeb- niu-iorkis konvenciis normebTan, roml is monawil e saqarTvel oc aris.

mniSvel ovani da dadebiTi cvl il ebaa is, rom moqmedi kanonisagan gansxvavebiT, sasamarTl os SeuZl ia misces arbitraJs SesaZl ebl oba aRmofxvras gadawyvetil ebis gauqmebis safuZvl ebi, xol o im SemTxvevaSi, Tu Tu saarbitraJo SeTnxmeba ar arsebobs, baTil ia an Zal adakargul ia, mxareebis saSual eba aqvT SeTanxmdnen davis arbitraJisaTvis gadacemis Sesaxeb. aqac aris teqniki xasiaTis erTi SeniSvna. kerZod, proehtis 36-e muxl is me-4 punqti imeorebs saproceso kodeqsSi cvl il ebebis proehtis 432(12) muxl is mesame nawil s. Cveni azriT, umj obesia saproceso kodeqsSi gakeTdes miTiTebebi arbitraJis Sesaxeb kanonze.

moqmedi kanonisagan gansxvavebul ad aregul irebs saarbitraJo ganxil vis dawyebis moments proehtis me-20 muxl i. aRniSnul i normis Tanaxmad, ganxil va iwyeba mopasuxis mier sarCel is miRebis momentidan. 21-e muxl is meore punqti ewinaaRmdegeba pirvel s da saWiroebs daxvewas, vinaidan pirvel i puqhtis Tanaxmad Setyobinebis Cabarebis mcdel obasac Cabarebad miCneva, xol o meore punqtiT ki Setyobineba Cabarebul ad iTvl eba gadacemis dRes. aq mizanSewonil i iqneba `gadacemis- nacvl ad gamoyenebul iqnes termini `Cabareba-.

dasaxvewia 25-e muxl is formul irebac. es norma faqtiurad imeorebs moqmedi kanonis 28-e muxl s, mxol od enobrivi Taval sazrisiT nakl eb gamarTul ia.

proehtis 30-e muxl is pirvel i punqti saWiroebs dakonkretebas, rogorc es model ur kanonSia. cal saxad unda ganisazRvros, rom aRniSnul i normiT gaTval iswinebul i mxareTa ufl eba aircion sxva qveynis samarTali, gul isxmobs mxol od material uri samarTl is arCevis ufl ebas da ara sxva qveynis saproceso da kol iziuri samarTl is arCevis SesaZl ebl obas.

kanonproehti ar iTval iswinebs saarbitraJo gadawyvetil ebaze arbitraT xel mowerebis notariul ad damowmebis wess. moqmedi kanoniT, es aucil ebel i moTxovnaa. migvaCnia, rom es cvl il eba garkveul sirTul eebis gamoiwvevs, gansakuTrebiT ki **Ad Hoc** arbitraJebis mier gamotanil i gadawyvetil ebebis aRsrul ebis. aRsaniSnavia, rom notariusis mier arbitraT xel mowerebis damowmeba praqtikaSi aranair probl ebas ar qmnis da arc procedurebis gaWianurebas iwvevs. amdenad, migvaCnia, axal ma proehtmac gaiTval iswinos xel mowerebis namdvil obis notariul ad damowmebis aucil ebl oba.

moqmedi kanonisagan gansxvavebiT gaumj obesebul ia proehtis teqniki mxare. dasaTaurebul ia kanonproehtis Tavebi da muxl ebi, rac aadvil ebs masze muSaobas.

Cveni azrit, daskvnis saxiT SeiZl eba iTqvas, rom kanonproeqti
mTI ianobaSi SeiZl eba dadebiTad ganvixil oT, Tu gamoswordeba zemoT
aRniSnul i mniSvnel ovani xarvezebi.