

damouki debel i eqspertis daskvna

saqarTvel os kanonis proeqtebze:

„saqarTvel os sisxli is samarTli is saproceso kodeqSi cvl il ebebisa da damatebebis Setanis Sesaxeb”;  
„operatiul -samZebro saqmianobis Sesaxeb” saqarTvel os kanonSi cvl il ebis Setanis Sesaxeb”; „prokuraturis Sesaxeb” saqarTvel os organul kanonSi cvl il ebis Setanis Sesaxeb”

*eka besel ia*

warmodgenil i kanonproeqtebi: „saqarTvel os sisxli is samarTli is saproceso kodeqSi cvl il ebebisa da damatebebis Setanis Sesaxeb”, „operatiul -samZebro saqmianobis Sesaxeb” saqarTvel os kanonSi cvl il ebis Setanis Sesaxeb”, „prokuraturis Sesaxeb” saqarTvel os organul kanonSi cvl il ebis Setanis Sesaxeb”, gaxl avT l ogikuri gagrZel eba 2005 wl is 25 martis cvl il ebebisa, romel ic ganxorciel da moqmed sisxli is samarTli is procesSi.

2005 wl is 25 martis cvl il ebebma faqtiurad radikal urad da konceptual urad Secval a sisxli is samarTli is saproceso kodeqsi da umniSvnel ovanesi struqturul i cvl il ebebi moiTxova. aRniSnul i cvl il ebebi Zal aSi Sevida 2005 wl is 3 maiss da miuxedavad imisa, rom erTi Tvec ar gasul a aRniSnul i normebis praqtikaSi amoqmedebidan, ukve gamoikveTa araerTi sakanonmdebl o xarvezi, romel ic moiTxovs swrafad gamosworebas.

warmodgenil i kanonproeqtebi emsaxureba sakanonmdebl o xarvezebis gamosworebas da igi ZiriTadad teqnikuri xasiaTisaa, Tu ar CavTvl iT ramdenime saxis koreqtirebas.

ufro konkretul ad warmogidgenT mosazrebas ramdenime muxl Tan dakavSirebiT:

1) warmodgenil i kanonproeqtiT SemoTavazebul ia cvl il eba sisxli is samarTli is saproceso kodeqsis 24-e muxl Si. aRsaniSnavia, rom es muxl i ramdenjerme Seierval a 2004 wl is 13 Teberval s, 2004 wl is 24 ivniss da 2005 wl is 25 martis kanoniT. bol o cvl il ebiT novaciurad Seierval a gamoZiebis dawyebisa da bral debis wardgenis procedura. anu Tu gamoZieba aWianurebs pirs mimarT sisxli is samarTli ebrivi devnis dawyebas, pirs ufl eba aqvs saCivrit zemdgom prokurorTan an sasamarTli oSi moiTxovos mis mimarT

sisxl issamarTI ebrivi devnis dawyeba. aRniSnul ma praqtikos iuristebSi araerTgvarovani, SeiZl eba iTqvas negatiuri reaqcia gamoiwvia da gamoiTqva araerTi kritika aRniSnul i normis praqtikaSi gamouyenebl obis Tval sazrisiT.

probl ematuri gaxl avT is, rom adamianis ufl ebaTa dacvis Tavl sazrisiT Sesazl oa gauaresdes viTareba.

kerZod:

Cven didi xnis ganmavl obaSi gvqonda probl ema dacvis Tval sazrisiT, rodesac mokvl eva iwyebs 20 dRis ganmavl obaSi piris mimarT mtkicebul ebebis Sekrebas, pirs ar gaaCnia statusi da Sesabamisad dacvis ufl ebac. faqtiurad irRveoda mxareTa Tanasworobisa da Sej ibrebiTobis principi. igive xdeboda, rodesac gamoZiebas ramdenime Tvis ganmavl obaSi piri hyavda mowmis statusiT, agrovebda mis mimarT mamxil ebel mtkicebul ebebs, xol o mowme ver axorciel ebda dacvas.

anal ogiuri saSiSroebis Semcvel ia sssk 24 muxl i, rogorc arsebul i formul irebiT, aseve warmodgenil i cvl il ebebis ganxorciel ebis SemTxvevaSiC, radgan piris mimarT rodesac iwyeba gamoZieba, grovdeba mtkicebul ebebi, pirisatvis aRniSnul i ucnobia da Sesabamisad igi ver axorciel ebs dacvas. rodesac gamoZieba moipovebs utyuar mtkicebul ebebs da warudgens pirs bral debas, faqtiurad piri bral debis wardgenis momentSi real urad ver ganaxorciel ebs dacvas, radgan dacvis mtkicebul ebebis Segroveba man unda daiwyos bral debis wardgenis Semdeg. es ki ewinaaRmdegeba rogorc Sej ibrebiTobis princips, aseve xel yofs dacvis ufl ebasac.

2) aqve gasaTval iswinebel ia kidev erTi sayuradRebo garemoeba, piris ufl eba - sasamarTI oSi gaasaCivros mis mimarT sisxl issamarTI ebrivi devnis dawyebis Segnebul ad gaWianureba - unda iyos sssk 242-e muxl is CamonaTval Si, sadac miTiTebul ia ra SemTxvevebi SeiZl eba gasaCivrdes sasamarTI oSi. winaaRmdeg SemTxvevaSi gasaCivrebis ufl eba darCeba trafaretad, rogorc es iyo sisxl is samarTI is saproceso kodeqsis mTel rig muxl ebSi.

3) rac Seexeba sssk 72-e muxl Si warmodgenil cvl il ebas, bol o winadadeba unda Camoyal ibdes Semdegnairad - „agreTve ufl eba aqvs misi eWvmitanil ad cnobisaTanave xel ze mi iRos eWvmitanil ad cnobis Sesaxeb dadgenil ebis asli misi SedegnisTanave.”

aseve, sssk 72-e muxl is me-5 nawil idan amoRebul i unda iqnas sityvebi „axsna-ganmarteba”, radgan mokvl evis etapis gauqmebis Semdeg, am saxiT Cvenebis miRebis wesad qceul praqtikaze uari unda vTqvaT.

me-5 nawil i unda Camoyal ibdes Semdegi redaqqi iT - „piris moTxovna damcvel is mowvevis Taobaze unda dakmayofil des dakavebisTanave, dauyonebl iv Cvenebis micemamde an Tu es obieqturi mizezebis gamo ver xerxdeba, maqsimal urad gonivrul vadaSi, raTa eWvmitanil s mieces sakmarisi dro da saSual eba ganaxorciel os Tavisi dacva.

4) sssk 73-e muxl is I nawil is „a” qvepunqti amoRebul i unda iqnas, radgan mokvl evis organo gauqmebul ia da 12 saatiani vada sisxl is samarTl is saqmis aRZvrisa ar arsebobs.

SesabamisobaSi unda movides axal cvl il ebebTan sssk 73-e muxl is I nawil is „a” qvepunqti.

5) sssk 102-e muxl Tan dakavSirebiT maqvs Semdegi mosazreba:

damswris instituti didi xnis ganmavl obaSi iyo praqtikosTa gansj is sagani da sabol ood mainc ver moxerxda am institutis imdagvarad Camoyal ibeba, rom dacul i iyos adamianis ufl ebebi.

momzadebul i cvl il eba iZl eva damatebiT sakanonmdebl o garantias, raTa piri informirebul i iyos misi survil iT damswris mowvevis ufl evis Taobaze, magram sssk 102-e muxl is me-4 nawil is CamonaTval i, romel ic gansazRvravs damswris gareSe sagamoZiebo moqmedebis Catarebis SemTxvevebs, imdenad zogadia da bevri, rom faqturad piris zemoT aRniSnul i ufl eba ar iqneba real izebul i.

amdenad, unda SeizRudos sssk 102-e muxl is me-4 nawil isa da sssk 290-e muxl is me-4 nawil is CamonaTval i, raTa piradi Cxreka, amoReba da a.S. damswris gareSe Catarades mxol od maSin, Tu aSkaraa danaSaul ebrivi kval i da am RonisZiebaTa gadadebis SemTxvevaSi safrTxe Seeqmneba adamianis sicocxl esa da j anmrTel obas.

6) sssk 140-e muxl is me-6 nawil i inkviziciuria da arRvevs mxareTa Tanasworobasa da SejibrebiTobis princips, radgan miTiTebul ia, rom „mosamarTl e Suamdgoml obas ganxil avs erTpirovnul ad prokuroris monawil eobiT”. mimaCnia, rom unda Camoyal ibdes Semdegi formul irebiT „sasamarTl o Suamdgoml obas ganxil avs mxareTa monawil eobiT.”

7) gaugebaria dasabuTeBa, warmodgenil i kanonproeqt iT ratom unda iqnes amoRebul i sssk 180-e muxl is me-2 nawil i.

8) erT-erTi yvel aze mniSvnel ovani cvl il eba exeba sssk 242-243-e muxl ebs.

sakonstitucio sasamrTl os 2005 wl is 17 mart is gadawyvetil ebiT, arakonstituciurad iqna cnobil i is akrZal va, roml iTac Cxrekisa da amoRebis Taobaze sasamarTl o

gadawvyetil ebis gasacivrebena ar xdeboda. 2005 wl is 25 martis cvl il ebebma ar gaiTval iswina sakonstitucio sasamarTI os aRniSnul i gadawvyetil eba da ar Sevida cvl il eba sssk 242-243-e muxl ebSi. Sesabamisad, zemdgomi sasamarTI o am dromde ar ixil avsaCivrebs Cxrekisa da amoRebis Taobaze sasamarTI o brZanebis gadasinj vis moTxovniT im argumentiT, rom es ar aris miTitebul i sisxl is samarTI is saproceso kodeqsSi.

amdenad, cvl il eba am Tval sazrisiT uaRresad mniSvnel ovani da saCqaroa. Tumca warmodgenil i formul ireba garkveul koreqtirebas moiTxovs:

sssk 242-e muxl i gansakuTrebul i datvirTvis mqonea, radgan am muxl Si Tavs iyris yvel a SemTxveva, roml is drosac Sesazl ebel ia gasacivrdes sasamarTI oSi gamomZiebl is an prokuroris moqmedeba. ramdenadac es aris special uri norma, aucil ebel ia yvel a SemTxveva Tavmoyril i iyos aRniSnul muxl Si.

aqedan gamomdinare, sssk 242-e muxl i unda Camoyal ibdes Semdegnairad:

„am kodeqsiT dadgenil i wesiT sasamarTI oSi SeiZl eba gasacivrdes gamomZiebl is an prokuroris moqmedeba da gadawvyetil eba, roml ebic momCivanis azrit ukanono da dausabuTebel ia, kerZod:

a) sisxl issamarTI ebrivi devnis an\da winaswari gamoZiebis Sewvyetis Sesaxeb prokuroris dadgenil eba.

b) sisxl issamarTI ebrivi devnis dawyebis Segnebul ad gaWianurebis Taobaze (sssk24-e muxl i)

g) eWvmitanil is, bral debul is dacvis ufl ebis darRveis Taobaze gamomZiebl is an prokuroris moqmedeba an gadawvyetil eba (sssk 48-e muxl is me-5 nawil i, 84-e muxl is „n” qvepunqti)”

Sesabamisad, sssk 242-e muxl is me-5 nawil i unda Camoyal ibdes Semdegi saxiT:

„saCivris ganxil vis Semdeg mosamarTI es gamoaqvs dadgenil eba saCivris dakmayofil ebaze uaris Tqmis an saCivris dakmayofil ebis Sesaxeb da auqmebs gasacivrebul gadawvyetil ebas.”

aRniSnul i cvl il eba xel s Seuwyobs adamanis ufl ebaTa dacavas da iqneba prevencia gamomZiebl isa da prokuroris ukanono gadawvyetil ebaTa da moqmedebaTa Tavidan asacil ebl ad. aseve, es iqneba garanti real urad ganxorciel des yvel a im ufl ebis gamoyeneba, rac miTitebul ia sxvadasxva normebSi.

9) rac Seexeba sssk 243-e muxl s, romel ic ganmartavs aRkveTi RonisZiebis Taobaze sasamarTI o brZanebis gasacivrebis

proceduras, unda daematos Cxrekisa da amoRebis Taobaze sasamarTI o brZanebis gasaCivrebis wesic (Tanaxmad sssk 290-293-e muxl ebi sa). winaaRmddeg SemTxvevaSi, Sei qmneba sakanonmdebl o xarvezi am wesisa da proceduris miuTitebl obis gamo.

10) sssk 290-e muxl idan amoRebul i unda iqnas me-7 nawil is bol o winadadeba da Camoyal ibdes Semdegi saxiT:

„am muxl is me-2 da me-3 nawil ebiT gaTval iswinebul SemTxvevebSi sasamarTI o sxdomis oqmi dgeba, mosamarTI is dadgenil eba ki saCivrdeba sssk 243-e muxl iT dadgenil i wesiT”.

amave muxl is me-2 nawil Si, sadac saubarია sasamarTI os mier Catarebul i sagamoZiebo moqmedebis kanonierebis Semowmebis Taobaze, prokuroris nacvl ad unda iyos miTitebul i mxareebi, raTa uzrunvel yofil i iqnes dacvis ufl eba im pirs, visac Seexo sagamoZiebo moqmedeba. es muxl i ase unda Camoyal ibdes:

„mosamarTI e masal ebis Semosvl idan ara ugvianes 24 saatisa mxareebis monawil eobiT amowmebs sasamarTI o gadawyvetil ebis gareSe Catarebul i sagamoZiebo moqmedebis kanonierebas”.

dRes arsebul i real obiT eWvmitanil i, bral debul i moklebul ia SesaZl ebl obas gasaCivros da monawil eoba miRos mis mimarT Catarebul i sagamoZiebo moqmedebis kanonierebis Semowmebis procesSi sasamarTI o instanciaSi. amdenad, sasamarTI os unda hqondes val debul eba acnobos pirs, rodesac ixil eba aRniSnul i sakiTxi, mxareTa gamoucXadebl oba ki ar daabrkol ebs sakiTxis ganxil vas. amit aRmoifxvreba is arsebiTi darRvevbi, rac am kuTxiT arsebobs praqtikaSi.

11) Sesabamisad unda Seicval os sssk 293-e muxl i da am muxl is me-2 nawil i amoRebul i iqnas.

12) rac Seexeba cvl il ebis proeqts sssk 420-e muxl Tan dakavSirebiT, termini „bral debul i” amoRebul i unda iqnas, radgan warmodgenil i cvl il ebebiT piri aris gansasjel i samarTal Si micemis sakiTxis ganxil vis etapze.

13) rac Seexeba sssk 596-e muxl s, romelic exeba axl ad aRmoCenil garemoebaTa gamo warmoebis aRZvrasa da gamoZiebas, saWiroa misi daxvewa da vadebis miTiteba. kerZod:

aucil ebel ia ganisazRvros ra vadaSi unda daamTavros saCivris Seswavl a da gamoZiebis Catareba prokurorma.

vadebis ar arsebobis gamo aRniSnul i warmoeba araefekturia da seriozul probl emebs qmnis praqtikaSi. amdenad saWiroa seriozul i gadasinj va am Tavis Sesabamisi muxl ebis, raTa uzrunvel yofil i iqnes swrafi da efekturi marTI msaj ul ebis ganxorciel eba.

14) warmodgenil i kanonproeqtis cvl il eba sssk 680<sup>4</sup>-e muxl Tan dakavSirebiT, kerZod pirvel i muxl is redaqla gadasaxedia, radgan gaurkvevel ia am formul irebiT sssk 162-e muxl is me-10 nawil is amoqmedebis sakiTxi.

rac Seexeba cvl il ebas sssk 681-e muxl Si, roml iTac saxel mwifo iTxovs 2007 wl is 1 ianvridan amoqmeddes sssk 33-e muxl is me-4 nawil i (e.i. ufl eba pirisa saxel mwifos warudginos samoqal aqo sarCel i zianis anazRaurebis Taobaze bral debul i miimal a an daudgenel ia adgil samyofel i an vinaoba), unda amoqmeddes droulad, raTa dacul i iqnes adamianis ufl ebebi saxel mwifo struqturebis araefekturi da arakval ificiuri qmedebis SemTxvevebSi, risi araerTi magal iTia praqtikaSi.

vfiqrob, am rekomendaciaTa gaTval iswineba Zal zed mniSvnel ovani iqneba im Tval sazrisiT, rom sisxl is samarTI is saproceso kodeqsis normaTa moqmedeba praqtikaSi iyos daxvewil i, srul yofil i da iZl eodes Sesazl ebl obas davicvaT adamianis sayovel Taod aRiarebul i ufl ebebi.