

eqspertul i anal izi
saqarTvel os konstituciuri kanonis proeqtze
`saqarTvel os konstituciaSi cvl il ebebisa da damatebebis Setanis
Sesaxeb-

avTandil demetraSvili

2004 wl is reformebi saqarTvel oSi sakmaod dinamiurad mimdinareobs da sazogadoebrivi Tu saxel mwifoebrivi cxovrebis TiTqmis yvel a sferos exeba. amis kidev erTi dasturia saqarTvel os prezidentis mier saqarTvel os konstituciis 102-e muxl is Sesabamisad 2004 wl is dekemberSi saqarTvel os parl amentSi gansaxil vel ad Setanil i saqarTvel os kanonis proeqti "saqarTvel os konstituciaSi cvl il ebebisa da damatebebis Setanis Sesaxeb". Tu aqamde ganxorciel ebul i cvl il ebebi (ZiriTadad 2004 wl is 6 Tebevli s sakonstitucio kanoniT ganxorciel ebul i) arsebiTad axl eburad gansazRvradnen saqarTvel os prezidentis, sakanonmdebl o da aRmasrul ebel i xel isufl ebis konstituciur ufl ebebisa da urTierTobebs, amJamad saqarTvel os parl amentSi wardgenil i proeqti saxel mwifo meqanizmis sxva konstituciur segmentebs, upiratesad ki, sasamarTl o xel isufl ebas exeba.

konstituciuri kanonis proeqtis ZiriTadi debul ebebi gasagebi da l ogikuria, rameTu isini saqarTvel os saxel mwifos Tanamedrove ganvitarebis tendenciebidan gamodinareoben, Tumca zogierTi norma, Cveni azrit, ufro Rma gaazrebasa da srul yofas moiTxovs.

exl a ki konkretul ad warmodgenil i proeqtis zogierTi muxl ebis Sesaxeb.

49-e muxl is 1 punqti:

saqarTvel os parl amentis wevrTa raodenobis 235-dan 150-mde SemcirebiT rogorc iqna, Tumca mniSvnel ovani dagvianebiT, SeiZl eba aRsrul des 2003 wl is 2 noembris referendumze amomrCvel Ta mier gamoxatul i neba. vfiqrobT, es novel a misasal mebel ia agreTve im kuTxiTac, rom igi xel s Seuwyobs saqarTvel os parl amentis profesiul i donisa da misi saqmi anobis qmediTobis amaRl ebas.

49 muxl is 1 punqtis axal redaqciaSi ar aris gansazRvrul i parl amentis wevrTa ufl ebamosil ebebis vada. Znel i dasj erebel ia, rom teqstis beWdvis dros operators erTdroul ad sami sityva ("4 wl is vadiT") gamorCa da saqarTvel os prezidentmac, ver SeamCnia es xarvezi, rodesac xel s awerda da saqarTvel os parl amentSi agzavnida konstituciur kanonproeqts. waraudobT, rom ufl ebamosil ebaTa vada Segnebul ad ar aris gansazRvrul i, raTa:

a) orpal atiani parl amentis dafuZnebis SemTxvevaSi pal atis wevrTa ufl ebamosil ebis erTmaneTisagan gansxvavebul i vada ganisazRvros;

b) ufl ebamosil ebaTa vada ganisazRvros organul i kanonis (vTqvaT, saarCevno kodeqsis), ordinal uri kanonis (vTqvaT, parl amentis wevris statusis Sesaxeb) an sul ac parl amentis regl amentis doneze.

Tu pirvel i Cveni varaudi (bikameral uri parl amentis dafuZneba) sworia, maSin ra azri aqvs 49 muxl is 1 punqtis saswrafod, am etapze gadasinj vas?

Tu parlamentis wevra ufl ebamosil ebis vada ara konstituciis, aramed kanonis doneze unda ganisazrvros, es iqneba saqartvel os konstituciur ganvitarebaSi ukan gadadgmul i nabiji.

saxel mwifo organoebidan parlamenti yvelaze metad axl osaxel isufl ebis wyarostan – xal xtan, da aris saxal xo suverenitetis ganxorciel ebis erterti saimedo garanti, xol o misi ufl ebamosil ebis vada – parlamenti damoukidebl obis erterti meqanizmia. Cveni am azris damajerebl obisatvis, rogorc ertert arguments arvniSnavT, rom evropis 50-ze meti saxel mwifodan mxol od safrangetis mexute respublikaSi da maltaSi es sakiTxi ara konstituciiT, aramde organul i kanonit regulirdeba.

64-e muxl i 1-4 punktobi:

impimentis wesit im Tanamdebobis pirta wris gafarToeba, roml ebic SeiZleba gadayenebul iqnen Tanamdebobidan, arsebitad misaRebia, Tumca aris ramodenime kiTxva:

a) pirveli punktis axal i redaqciidan ar cans eqvemdebareba Tu ara impimentis proceduras saqartvel os sakonstitucio sasamarTl os Tavmj domare?

b) im SemTxvevaSi, Tu saqartvel os sakonstitucio sasamarTl os Tavmj domare an wevri, parlamentarta azrit arRveven saqartvel os konstitucias (Znel i warmosadgenia), vis unda mimarTon daskvnis misaRebad parlamenti wevrebma?

g) Tu parlamentarebs miaCniat, rom uznaesi sasamarTl os Tavmj domarem an mosamarTlem Caidines danaSauli, vis unda mimarTon Sesabamisi daskvnis misaRebad?

Cveni azrit, saqartvel os premier-ministris, saqartvel os sakonstitucio sasamarTl os Tavmj domaris, saqartvel os uznaesi sasamarTl os Tavmj domarisa da saqartvel os saxal xo damcvelis Tanamdebobidan gadayenebis saimpimento procedurebi (Tu saWiroa saertod es procedurebi maT mimarT), am TanamdebobaTa maRali saxel mwifoebrivi donis gaTvaliswinebit, daaxloebit iseTive unda iyos, rogorc saqartvel os prezidentisatvis aris dadgenili. gaumarTlebeli da msolfio konstitucional izmis praqtikaSi naklebad gaziarebulia wesi, romlis mixedvit kvalificiuri umravlesobit arCeuli sakonstitucio sasamarTl os Tavmj domare da wevrebi, uznaesi sasamarTl os Tavmj domare da a.S. Tanamdebobidan SeiZleba gadayenebuli iqnen parlamenti wevra siiti Semadgenlobis umravlesobit.

d) saxel mwifo Ralati rogorc impimentis erterti safuzveli an unda darces 64-e muxl is 1 punktSi, an amoRebuli iqnes 75-e muxl is me-2 punktidan (meore varianti uketesia);

e) 64-e muxl is me-3 me-4 punktobis mixedvit saqartvel os kontrolis palatis Tavmj domare da saqartvel os erovnuli bankis sabWos wevrebi Seuferebl obis gamo Tanamdebobidan SeiZleba gadayenebulni iqnen arasaimpimento wesit, amastan, gadayenebis sakiTxis arZvris ufl eba aqvs parlamenti siiti Semadgenlobis aranaklebi 1/4-s, xolo saboloo gadawyvetilebis miRebisatvis gadayenebas mxari unda dauwiros siiti Semadgenlobis 3/5-ma (al bat unda iyos aranaklebi 3/5-ma).

Cveni azrit, Tu mainc da mainc saWiroa am damoukidebel konstituciur organoebze saqartvel os parlamenti arsebitad sruli

kontrol is damyareba, maSin maT mimaRT impiCmentis proceduris arsebobas azri aRar aqvs.

v) etyoba 64-e muxl is me-4 punqtis axal redaQciaSi unda eweros “am muxl is me-3 punqtSi” da ara “am muxl is me-4 punqtSi”.

82 muxl is 1 punqti, 83 muxl i

miuxedavad imisa, rom saqarTvel os sakonstitucio sasamarTI o xel isufl ebis erT nawil ad iTvl eba, garda misi saqmianobis arsebitad sasamarTI o procesual uri formisa, igi mxol od formal urad aris am sistemaSi, mas aravitari kavSiri ara aqvs iusticiis sabWosTan, mosamarTI eTa konferenciasTan da aS., amitom misi sasamarTI o xel isufl ebis gareT gamoyvana TiTqos ar unda iwvevdes winaaRmdogobas. aq mxol od erT kiTxvaze unda gavceT pasuxi:

- xel isufl ebis romel ganStoebas unda mivakuTvnoT igi konstituciis am nawil is gadasinj vis Semdeg da ramdenad Seesabameba es novel a konstituciis me-5 muxl is me-4 punqts, roml is mixedviT: “saxel mwifo xel isufl eba xorciel deba xel isufl ebis danawil ebis principze dayrdnobiT”.

86-e muxl i:

mxurval ed mivesal mebiT momrigebel i mosamarTI is institutis SemoRebas. amit Sencirdeba is didi datvirTva, romelic amJamad mosamarTI eebze modis, moxdeba sasamarTI os mosaxl eobasTan daaxl oeba, gamartivdeba social urad nakl ebad mniSvel ovani davebisa da konfl iqtebis ganxil vis procedurebi.

Znel ia davetanxmOT im azrs, rom mosamarTI e SeiZl eba iyos piri, romel sac arc erTi dRe ar umuSavia iuridiul i special obiT (86 muxl is 1 punqtis axal i redaQcia).

miuxedavad imisa, rom Cvens xel T arsebul i informaciT parl amentSi gansaxil vel ad Setanilia kanonis proeqti “iusticiis umaRl esi skol is Sesaxeb”, roml is mixedviTac mosamarTI ed al baT mxol od am skol is kursdamTevrebul ebs ganaweseben, mosamarTI eTa korpusi, vidre am skol as pirvel i nakadi (20-30 kaci) daamTavrebs (es ori wl is Semdeg moxdeba) aTi wl iT yovel gvare special uri gamocdil ebisa da ganaTI ebis mqone pirebit Seivseba, rac marTI msaj ul ebis donis daqvei Tebas gamoiwvevs.

87¹ muxl i:

veTanxmebiT gadawyvetil ebas, rom saqarTvel os uzenaesi sasamarTI o aRar ganxil avs saqmeebs pirvel i instanciit da mxol od da mxol od sakasacio sasamarTI o iqneba.

metad sadavod, sasamarTI oTa damouki debl obis xel yofad migvaCnia 87¹ muxl is me-6 punqtisa da 90-e muxl is normebi im nawil Si, roml is Sesabamisad uzenaesi da sakonstitucio sasamarTI oebis Tavmj domareebisa da wevrebis sisxl is samarTI is pasuxisgebaSi micema, dakaveba an daptimreba, maTi binis, manqanis, samuSao adgil is an piradi Cxreka unda ganxorciel des ara am sasamarTI oebis, aramed ratomRac saqarTvel os parl amentis TanxmobiT (Tu ar vcdebit Tanxmoba miireba dadgenil ebis saxiT, e.i. damswre deputatTa ubral o umravl esobiT).

88-e da 89-e muxl ebi:

veTanxmebiT sakonstitucio sasamarTI os kompetenciis gafarToebas (89-e muxl i 1 punqtis 3' qvepunqti), saarCevno davebis ganxilvis ufl ebamosil ebis dazustebas (89-e muxl is 1 punqtis "d" qvepunqti), nakl ebad viziarebT sakonstitucio sasamarTI os formirebis axal wess da ar veTanxmebiT sakonstitucio sasamarTI os wevrad erTi da imave piri orjer arCevas.

Cveni azriT, sakonstitucio sasamarTI os dRes arCeul i formirebis paritetul i wesi ufro metad pasuxobs xel is ufl ebis danawil ebisa da sasamarTI os damoukidebl obis ideebis, Tumca konstituciuri kanonproeqtiT SemoTavazebul i wesi sakmaod gavrcel ebul ia msoufl ioSi da aqvs arsebobis ufl eba.

sasamarTI os damoukidebl obas, Cveni azriT, seriozul safrTxes Seuqmni orjer erTi da imave pirovnebis sakonstitucio sasamarTI os wevrad arCeva, vinaidan pirvel i vadiT arCeul i piri meore vadiT arCevs survil iT al baT Seecdeba ar Sevides konfliqtSi rogorc prezidentTan, aseve saqarTvel os parlamentTan, rac Seasustebis sakonstitucio sasamarTI os SesaZl ebl obas efeqturad ganaxorciel os am organoTa aqtebis konstituciuri konstoli.

Tu mainc da mainc gvinda profesional mosamarTI eTa fena Sevqmnat maSin an gausazRvrel i vadiT avirciot isini an vTqvat erTxel 12, 15 wliT.

agretve dafiqrebas moitxovs erTi da imave piri SesaZl ebl oba iyos sakonstitucio sasamarTI os Tavmj domare 20 wliS ganmavl obaSi.

da kidev erTi: al baT upriani iqneboda konstituciis doneze ufro detal urad mowesrigebul iyo sakonstitucio sasamarTI os Tavmj domaris arCevnebis sakiTxi.

konstituciuri kanonproeqtis me-3 muxl is me-2 punqti:

sasurvel ia saqarTvel os parlamentis wevrTa raodenobis Semcirebis Sesaxeb "saqarTvel os saarCevno kodeqsSi" cvl il ebebi rac SeiZl eba male iqnes miRebul i. amisaTvis me-2 punqts daematos Semdegi sityvebi: "...magram ara ugvianes 2006 wliS 1 ianvrisa".

da bol os, Zal ze sasurvel ia saqarTvel os konstituciaSi im Seusabamobis gamosworeba, romelic masSi 2004 wliS 6 Tebervl is konstituciuri reformisa da sul axl axan saqarTvel os mTavrobis reorganizaciasTan dakavSirebiT warmoiSva.

1) vinaidan saprezidento arCevnebSi gauqmda amomrCvel Ta kvorumi azri daekarga 70-e muxl is me-7 punqts da igi unda SeiCval os;

2) cnobilia, rom sagangebo da saomari moqmedebis dros saqarTvel os prezidents SeuZl ia SezRudos konstituciis zogierTi normis moqmedeba, magram es gadawyvetil eba unda daamtkicos parlamentma. Tu parlamenti am dros daTxovnil i iqneba, maSin SeuZl ebel i iqneba am normis amoqmedeba, amitom saWiroa 50-e muxl is me-3 punqtisa da 46-e muxl is 1 punqtebs Soris arsebul i Seusabamobis gamosworeba.

3) ukve ganxorciel ebul i samTavrobo struqturis reorganizaciasTan dakavSirebiT dagvianebiT mainc unda gadaisij nos konstituciis 73-e muxl is 1 punqtis "g" qvepunqtis redaqcia.

vfiqrobT, zemoTmoyvanil mosazrebaTa gaTval iswineba xel s Seuwyobs saqarTvel os konstituciis rogorc politikur-iuridiul i nawarmoebis Semdgom srul yofas.