სამოქალაქო საზოგადოების ინსტიტუტი
CIVIL SOCIETY INSTITUTE

saqarTvelos kanonis „saaRsrulebo warmoebaTa Sesaxeb” monitoringis angariSi

(2007 wlis seqtembris mdgomareobiT)

ՍᲐᲛᲝᲥᲐᲚᲐᲥᲝ ՍᲐᲖᲝᲒᲐᲓᲝᲔᲑᲘᲡ ᲘᲜᲡᲢᲘᲢᲣᲢᲘ
CIVIL SOCIETY INSTITUTE

Sinaarsi

1. zogadi informacia-- 2

2. xarvezebi `saaRsrulebo warmoebaTa Sesaxeb~ saqarTvelos kanonSi -- 4

2.1. kanonis moqmedebis sfero--- 4

2.2 saaRsrulebo dawesebulebebi--- 5

2.3. sasamarTlo aRmasrulebeli-- 6

2.4. saaRsrulebo policia/funqciebi--- 10

2.5. aRsrulebis organizaciuli uzrunvelyofa-------------------------- 11

2.6. aRsruleba--- 16

2.7. aRsrulebis xarjebi-- 18

2.8. sasamarTlo kompetencia-- 23

2.9. aRsruleba moZrav qonebaze--- 25

2.10. moTxovnaTa aRsruleba -- 27

2.11. aRsruleba uZrav qonebaze--- 27

2.12. gadaxdevinebuli Tanxebis ganawileba kreditorTa Soris--- 30

2.13. aRsruleba nivTebis gadacemisa da moqmedebis Sesrulebis mizniT -- 30

2.14. zogierTi kategoriis saqmeebze aRsrulebis wesebi --- 31

2.15. aRsruleba sajaro samarTlis iuridiuli pirebis mimarT --- 32

3. saerTo daskvna--- 33

1. zogadi informacia

`saaRsrulebo warmoebaTa Sesaxeb~ kanoni, gasuli saukunis 90-iani wlebis miwuruls saqarTveloSi ganxorcielebuli mniSvnelovani samarTlebrivi cvlilebebis erT-erT Semadgenel nawils warmoadgenda. saqarTvelos samoqalaqo saproceso kodeqsis axali redaqciiT SemuSavebisas gadawyda, rom SemuSavebuliyo saaRsrulebo procedurebis maregulirebeli damoukidebeli sakanonmdeblo aqti. Tumca, sabolood saaRsrulebo warmoebasTan dakavSirebuli mravali norma sxvadasxva sakanonmdeblo aqtSi kvlav gabneuli darCa.

`saaRsrulebo warmoebaTa Sesaxeb~ saqarTvelos kanonze muSaobis procesi germanel mecnierebTan kooperirebiT warimarTa, Tumca, kanonis saboloo redaqcia 1999 wlis 16 aprils mainc mniSvnelovani xarvezebiT iqna miRebuli.

kanonis miRebidan bolo periodamde icvleboda saaRsrulebo dawesebulebebis statusi, mimdinareobda calkeuli procesualuri normebis ufro metad dakonkreteba da Sesworeba. kanonis arasrulyofilebaze da Sesabamisad misi praqtikuli implementaciis sirTuleze is faqtic metyvelebs, rom kanonma 27-jer ganicada cvlilebebi da damatebebi, Tumca igi dResac uamrav sakiTxs srulyofilad da naTlad ver aregulirebs.

amasTan, mniSvnelovania aRiniSnos, rom am sferos ganviTarebaze dakvirvebam da saerTaSoriso gamocdilebis gaTvaliswinebam dRis wesrigSi sakiTxi ufro konceptualurad daayena - sul ufro xSiria saubari aRmasruleblis profesiis `gaTavisuflebaze~, ramac ufro jansaRad unda moawesrigos es sistema, bunebrivad gazardos aRmasruleblis daintereseba aRsrulebis Sedegisadmi. saTanado sakanonmdeblo bazis arsebobis da saxelmwifos mxridan garkveuli regulaciebis (kontrolis) damkvidrebis pirobebSi, aseTi midgoma yvelaze perspeqtiulad SeiZleba CaiTvalos. arcTu didi xnis ukan

erTgvari skepticizmiT uyurebdnen notariusTa `gaTavisuflebasac~, maTTvis TviTmmarTvelobis maRali xarisxis miniWebasac, Tumca sabolood aseTma midgomam gaamarTla.

am sferoSi arsebuli problemebis da normebis araerTgvarovani, xSirad winaaRmdegobrivi gagebis mizezi, sakuTriv kanonis arasrulyofilebasTan erTad isicaa, rom ar arsebobs Sesabamisi instruqcia (romlis aucileblobazec Tavad sasamarTlo aRmasrulebIebic miuTiTeben), konkretulad gansaxorcielebeli saaRsrulebo procedurebis dawvrilebiTi aRwera-reglamentacia.

uSualod kanonis garda, saqarTvelos iusticiis ministris 2001 wlis 12 ianvris #19 brZanebiT damtkicebulia saqarTvelos iusticiis saministros adgilobrivi organoebis - saaRsrulebo biuroebis debulebebi, xolo 2003 wlis 4 agvistos #834 brZanebiT saqarTvelos iusticiis saministros saaRsrulebo departamentis debuleba. aRniSnuli normatiuli aqtebi, Sesabamisi rgolebis struqturul-funqcionalur sakiTxebs aregulirebs. agreTve saqarTvelos iusticiis ministris 2005 wlis 7 ivlisis brZaneba `saqarTvelos iusticiis saministros saaRsrulebo departamentis centralur aparatSi da q. Tbilisis saaRsrulebo biuroSi sajaro mosamsaxureTa sakvalifikacio moTxovnebis damtkicebis Sesaxeb~. unda aRiniSnos, rom aRniSnuli aqtiT dadgenili sakvalifikacio moTxovnebi sakmaod vrcelia, Tumca ratomRac misi dakmayofileba mxolod saministros saaRsrulebo departamentis centralur aparatSi da q. Tbilisis saaRsrulebo biuroSi dasaqmebis msurvel kandidatebs moeTxovebaT (savaraudoa, rom konkursi swored am struqturebSi tardeboda im droisaTvis). iusticiis ministris 2002 wlis 16 ivlisis #608 brZanebiT damtkicebulia saaRsrulebo policielis samsaxurebrivi formis atributika (CemTvis ucnobia arian Tu ara saasrulebo policielebi Semosilni damtkicebuli nimuSis formiT), xolo 1999 wlis 25 noembris #100 brZanebiT gansazRvrulia aRsrulebasTan dakavSirebuli xarjebis damatebiTi saxeobebi.

2. xarvezebi `saaRsrulebo warmoebaTa Sesaxeb~ saqarTvelos kanonSi;

2.1. kanonis moqmedebis sfero

`saaRsrulebo warmoebaTa Sesaxeb~ saqarTvelos kanoni awesrigebs saerTo sasamarTloebis, administraciuli organoebisa (Tanamdebobis pirebisa) da arbitraJis, restituciisa da kompensaciis komisiisa da misi komitetis, agreTve adamianis uflebaTa evropis sasamarTlos da sisxlis samarTlis saerTaSoriso sasamarTlos mier miRebuli aqtebis aRsrulebis wessa da pirobebs. es kanoni ar vrceldeba im SemTxvevebSi, roca xdeba gadasaxadis gadamxdelis sagadasaxado da sabaJo valdebulebebis dasafaravad misi qonebis amoReba da realizacia (am dros gamoiyeneba sagadasaxado kodeqsis 87-e da 88-e, agreTve sabaJo kodeqsis 211-e muxlebi).

kanonis gavrcelebis SezRudva am SemTxvevaSi absoluturad gamarTlebulia, radgan gasul wels kanonSi Sesuli am cvlilebiT gaimijna sasamarTlo aRmasruleblis da sxva fiskaluri struqturebis uflebamosil moxeleTa (Sesabamisi struqturuli erTeulebi ganisazRvreba saqarTvelos mTavrobis mier) moqmedebis areali da kompetencia, rac adre gaorebuli iyo da mraval gaugebrobas da aRusrulebeli saqmeebis gamo, samTavrobo uwyebebs Soris gadabralebis SesaZleblobas qmnida.

restituciisa da kompensaciis komisiisa da misi komitetis mier miRebuli aqtebis aRsrulebis raime praqtika ar arsebobs, imis gaTvaliswinebiT, rom Sesabamisi sakanonmdeblo aqti sul axlaxans amoqmedda.

kanonis gamoyenebis sferos ufro farTo gagebas iZleva uSualod kanoniT gaTvaliswinebuli aRsrulebis qvemdebare aqtebis CamonaTvali.

2.2 saaRsrulebo dawesebulebebi

saaRsrulebo departaments kanonis Sesabamisad aqvs saministros struqturuli erTeulis statusi. amdenad, misi damoukideblobis xarisxi dRevandel etapze metad SezRudulia. kanoni iTvaliswinebs afxazeTisa da aWaris avtonomiuri respublikebis saaRsrulebo departamentebis arsebobasac (me-4 muxlis me-4 punqti), Tumca aseTi struqturuli erTeulebi realurad ar arsebobs.

kanonis me-5 muxlis me-6 punqti iTvaliswinebs saaRsrulebo biuros materialur-teqnikur uzrunvelyofas, romelic xorcieldeba saxelmwifo biujetiTa da kanoniT gansazRvruli sxva SemosavlebiT. `sxva Semosavlebis sakiTxi~ realurad ar regulirdeba.

2.3. sasamarTlo aRmasrulebeli

`sxva SemosavlebSi~ unda vigulisxmoT e.w. saaRsrulebo mosakrebeli, romelsac iTvaliswinebs kanonis me-10 muxlis me-2 punqti. aseTi mosakreblis saxes aseve iTvaliswinebs kanoni `mosakreblis sistemis safuZvlebis Sesaxeb~ (me-5 muxlis me-2 punqtis `i~ qvepunqti). sakuTriv kanoni `saaRsrulebo warmoebaTa Sesaxeb~ miuTiTebs, (me-10 muxlis me-2 punqti) rom saaRsrulebo mosakreblebis odenoba da maTi gadaxdis wesi ganisazRvreba `saaRsrulebo mosakreblis Sesaxeb~ saqarTvelos kanoniT, romelic ar aris miRebuli.

dRes aRniSnuli sakiTxis reglamentacia xdeba `saaRsrulebo warmoebaTa Sesaxeb kanonis~ $113^1$ muxlis Sesabamisad - `saaRsrulebo mosakreblis Sesaxeb~ saqarTvelos kanonis miRebamde dawesebulia mosakrebeli Tanxis gadaxdevinebaze da misi odenoba

gansazRvrulia amoRebuli Tanxis 7%-iT. TavisTavad saaRsrulebo mosakreblis arseboba, misi moculoba samsjeloa. dRevandeli mdgomareobiT kreditoris mier misi gadaxda xdeba Tu iZulebiTi aRsruleba movalisagan Tanxebis iZulebiT gadaxdevinebas ukavSirdeba. Tanxebis gadaxdevineba zogierT SemTxvevaSi metad martivi saaRsrulebo moqmedebiT - movalis sabanko angariSze yadaRis (inkasos) wardgeniT SeiZleba Semoifarglos da didi Zalisxmevis gareSe, realurad ramdenime dReSic ki dasruldes. amave dros, zogierT sxva SemTxvevaSi gansaxorcielebelia gacilebiT ufro rTuli da Sromatevadi, amasTan droSi ganvrcobili saaRsrulebo procedurebi, ra drosac saaRsrulebo mosakrebeli ar gadaixdevineba. migvaCnia, rom sakiTxi swor da gaazrebul daregulirebas moiTxovs.

saaRsrulebo mosakreblis gadaxdevinebasTan dakavSirebiT kanoni ar scems pasuxs kiTxvas, romelic Zalzed xSiria praqtikaSi - unda moxdes Tu ara mosakreblis gadaxdis dakisreba movaleze, Tuki igi nebayoflobiTi aRsrulebis Sesaxeb winadadebis CabarebisTanave (an kanoniT dadgenili Semdgomi 5 dRis ganmavlobaSi) moaxdens kreditoris moTxovnis dakmayofilebas. am kiTxvaze pasuxis gasacemad jer aucilebelia vupasuxoT kiTxvas - rodidan iwyeba gadawyvetilebis iZulebiTi aRsruleba: 1) kreditoris mier saaRsrulebo biuroSi saaRsrulebo furclis wardgenidan da Sesabamisi gancxadebiT mimarTvidan, Tu 2) movalisaTvis nebayoflobiTi aRsrulebis Sesaxeb winadadebis Cabarebidan 5 dRis gasvlis Semdeg.

erTi SexedviT, pirvel SemTxvevaSi iZulebiTi aRsrulebis procesi dawyebulia (kreditors wardgenili aqvs saaRsrulebo furceli aRmasrulebelTan, dawerili aqvs Sesabamisi gancxadeba, SesaZlebelia gaRebuli hqondes saaRsrulebo xarji, xolo aRmasrulebels SesaZlebelia aseve ganxorcielebuli hqondes konkretuli iZulebiTi aRsrulebis RonisZieba - aRwerili da dayadaRebuli hqondes movalis qoneba).

meore SemTxvevaSi gasaTvaliswinebelia is garemoeba, rom kanoni damatebiT adgens gadawyvetilebiT nebayoflobiT aRsrulebis 5 dRian vadas. martivi daskvniT iqmneba erTgvari kolizia, rac saTanadod dauregulireblobis pirobebSi, sruliad bunebrivia, rom aRmasrulebelTa dabneulobas iwvevs.

vfiqrobT, iZulebiTi aRsrulebis procesis `dasawyisad~ mainc unda CaiTvalos nebayoflobiTi aRsrulebis Sesaxeb winadadebis Cabarebidan me-6 dRe, roca movale kidev erTxel gauSvebs `Sanss~, SesaZleblobas <u>nebayoflobiT</u> (da ara iZulebiT) Seasrulos sasamarTlo gadawyvetileba. saaRsrulebo mosakreblis gadaxda mas swored am vadis Semdeg unda daekisros da vfiqrobT, es pozicia Sesabamisad unda aisaxos kanonSic.

kanonis me-10 muxli winaaRmdegobaSia `mosakreblis sistemis safuZvlebis Sesaxeb~ saqarTvelos kanonTan, radgan am kanoniT mosakrebeli aris aucilebeli gadasaxdeli biujetSi. Sesabamisad, saqarTvelos prezidentis brZanebulebiT (rasac iTvaliswinebs `saaRsrulebo warmoebaTa Sesaxeb~ kanoni) ver moxdeba (ar unda xdebodes) mosakreblidan konkretuli Tanxis (procentis) iusticiis saministros specialur angariSze Caricxva. sayuradReboa, rom aRniSnulis Taobaze 2001 wlis 31 maiss gamocemuli saqarTvelos prezidentis #219 brZanebuleba, saqarTvelos zogadi administraciuli kodeqsis 61-e muxlis safuZvelze, saqarTvelos prezidentis 2006 wlis 6 oqtombris #592 brZanebulebiT sruliad marTlzomierad Zaladakargulad gamocxadda. Tumca, aseTi brZanebulebis gamocemis sakiTxs `saaRsrulebo warmoebaTa Sesaxeb~ kanoni kvlav iTvaliswinebs.

kanonis me-7 muxlis pirveli punqtis Tanaxmad, aRmasrulebels daniSvnisas ganesazRvreba samoqmedo teritoria. biuros ufrosis mier saqmeebis ganawileba swored aRmasruleblis samoqmedo teritoriis Sesabamisad xdeba.

kanoniT gaurkvevelia saaRsrulebo saqmisaTvis gansakuTrebiT mniSvnelovani saqmis statusis gansazRvris (miniWebis) kriteriumebi da procedura. saqmeebisaTvis amgvari kategoriisaTvis mikuTvnebis sakiTxs wyvets saqarTvelos iusticiis saministros saaRsrulebo departamentis Tavmjdomare. am kategoriis saqmeebze iusticiis ministris brZanebiT iqmneba specialuri jgufi, romelic moqmedebs saqarTvelos mTel teritoriaze (muxli 17^1).

aRniSnul sakiTxTan dakavSirebiT, respodentebTan saubrisas ori sawinaaRmdego midgoma gamoikveTa. respondentTa erTi nawili ambobs, rom saqmisadmi gansakuTrebuli kategoriis miniWeba xdeba, biujetis winaaRmdeg gamotanili gadawyvetilebebis aRsrulebis dros, xolo meore nawilis azriT, biujetis sasargeblo saqmeebis aRsrulebisas. Tumca aRmasrulebelTa Soris arsebobs mosazreba aseT kategorias ganekuTvneba rTuli da `rezonansuli~ saqmeebic.

kanonis me-8 muxlis Sesabamisad, sasamarTlo aRmasrulebeli muSaobis dawyebamde valdebulia departaments warudginos samsaxurebrivi beWedi. Cveni mosazrebiT samsaxurebriv beWeds daniSnuli aRmasrulebeli ki ar unda warudgendes departaments, aramed departamentma unda gadasces aRmasrulebels (muxli 13).

sasamarTlo aRmasrulebelis Tanamdebobidan gaTavisuflebis safuZveli ganisazRvreba `sajaro samsaxuris Sesaxeb~ saqarTvelos kanoniT (muxli 12). kanoni agreTve iTvaliswinebs Tanamdebobidan gaTavisuflebis damatebiT safuZvlebs. kerZod, `disciplinaruli pasuxismgeblobis Sesaxeb~ debulebiT gaTvaliswinebul Tanamdebobriv gadacdomas. aRniSnuli debuleba saqarTvelos iusticiis ministris brZanebiT unda iyos damtkicebuliyo, Tumca igi jerac ar aris damtkicebuli.

kanoni sasamarTlo aRmasruleblis gaTavisuflebis safuZvlad aseve miiCnevs `sxva gamovlenil garemoebebs, rac dauSvebels xdis sasamarTlo aRmasruleblad muSaobas~ (me-12 muxlis me-2 punqtis

`b~ qvepunqti). migvaCnia, rom kanonSi aseTi zogadi formulirebis arseboba gaumarTlebelia. amasTan, ar aris mizanSewonili `sajaro samsaxuris Sesaxeb~ saqarTvelos kanoniT dadgenili samsaxuridan gaTavisuflebis garda, damatebiT arsebobdes kidev disciplinaruli debuleba, romelic gaTavisuflebis sxva safuZvlebsac gaiTvaliswinebs. Tu samsaxuridan gaTavisuflebis damatebiTi safuZvlebis gansazRvra sasamarTlo aRmasruleblebisTvis, mizezTa gamo, mainc unda arsebobdes, es safuZvlebi `saaRsrulebo warmoebaTa Sesaxeb~ kanonma unda gansazRvros, xolo debuleba SesaZlebelia adgendes disciplinaruli warmoebis wess da procedurebs.

bolos migvaCnia, rom upriania sasamarTlo aRmasrulebeli, romelic institucionalurad aRmasrulebeli (da ara sasamarTlo) xelisuflebis struqturuli erTeulis sajaro mosamsaxurea, iwodebodes rogorc saxelmwifo aRmasrulebeli.

2.4. saaRsrulebo policia/funqciebi;

`saaRsrulebo warmoebaTa Sesaxeb~ saqarTvelos kanonis III^{1} Tavi exeba saaRsrulebo policias, romelic saaRsrulebo departamentis erT-erT struqturul erTeuls warmoadgens. kanoniT gaTvaliswinebulia saaRsrulebo policielis ufleba saqarTvelos kanonmdeblobiT dadgenili wesiT Seinaxos, ataros da gamoiyenos cecxlsasroli iaraRi. kanoniT Tavad aRmasrulebels iaraRis gamoyenebis ufleba ar aqvs. amis ufleba mxolod saaRsrulebo policiels gaaCnia. gamokiTxulTa azriT, kargi iqneba Tu iaraRis gamoyenebis ufleba aRmasrulebelsac eqneba, radgan yvela biuros ar hyavs saaRsrulebo policia. Tumca, am mosazrebis gaTvaliswineba gaumarTleblad migvaCnia.

saaRsrulebo policielis mTavari amocana da movaleobaa daexmaros sasamarTlo aRmasrulebels gadawyvetilebis aRsrulebaSi (muxli 14^{3}), rac gulisxmobs rogorc aRsrulebisas

wesrigis uzrunvelyofas (saWiroebis SemTxvevaSi fizikuri iZulebiT, cecxlsasroli iaraRis da specialuri saSualebebis gamoyenebiT), aseve konkretuli saaRsrulebo moqmedebis ganxorcielebis uflebamosilebac - magaliTad kanonis Tanaxmad igi uflebamosilia sasamarTlo aRmasruleblis werilobiTi moTxovnis safuZvelze daakavos movalis kuTvnili avtomanqana (satransporto saSualeba) da waradginos igi sasamarTlo aRmasrulebelTan.

sasaaRsrulebo policielis kanoniT gaTvaliswinebuli funqciebidan gamomdinare, agreTve im garemoebebis mxedvelobaSi miRebiT, rom saaRsrulebo policiis moqmedebis areali faqtobrivad ver faravs saqarTvelos mTel teritorias da maTi SedarebiT aqtiuri gamoyeneba mxolod ramdenime qalaqSi xdeba, mizanSewonilad miviCnevT am institutis gauqmebas da saWiroebis SemTxvevaSi Sesabamisi funqciebis sapatrulo policiaze gadatanas, rac praqtikuli da finansuri TvalsazrisiT ufro gamarTlebulad gveCveneba.

igive movalis kuTvnili satransporto saSualebis dakavebisas (rac kanoniT saaRsrulebo policielis uflebamosilebas da valdebulebas ganekuTvneba) sasamarTlo aRmasruleblebis nawili xSirad mimarTavs sapatrulo policias. praqtikaSi xSiria faqtebi, roca sasamarTlo aRmasrulebeli mimarTavs Sinagan saqmeTa saministros sainformacio-analitikur departaments da amowmebs aris Tu ara satransporto saSualeba movalis sakuTreba. amis Semdeg, aRmasrulebeli akeTebs oficialur mimarTvas satransporto saSualebis dakavebis Taobaze.

2.5. aRsrulebis organizaciuli uzrunvelyofa

TviTaciilebis sakiTxTan dakavSirebiT raime arsebiTi saxis problema kvlevis dros ar gamokveTila. kanonis Tanaxmad, aRmasruleblis TviTaciilebis sakiTxs wyvets biuros ufrosi,

romlis gadawyvetileba SeiZleba gasaCivrdes sasamarTloSi (me-15 muxli).

kanonis Sesabamisad, saaRsrulebo moqmedebebs sasamarTlo aRmasrulebeli axorcielebs sakuTriv kanonis da `saaRsrulebo warmoebaTa Sesaxeb~ instruqciis Sesabamisad. aRniSnuli kanonqvemdebare normatiuli aqti ar aris damtkicebuli, rac seriozul problemebs qmnis sasamarTlo aRmasrulebelTa praqtikul saqmianobaSi.

iZulebiTi aRsrulebis proceSi, saaRsrulebo moqmedebebis ganxorcielebisas problemuria mowmis daswrebis sakiTxi. amasTan kanonis Sesabamisi normebi bundovani da winaaRmdegobrivia. magaliTad: 1) me-17 muxlis me-3 punqtis Tanaxmad, movalis binis daTvaliereba warmoebs sul mcire 2 qmedunariani piris TandaswrebiT da formdeba oqmiT. oqms xels aweren damswreebi, movale da sasamarTlo aRmasrulebeli. 2) me-17 muxlis me-7 punqtis Sesabamisad, `sasamarTlo aRmasruleblisaTvis winaaRmdegobis gawevis SemTxvevaSi, an Tu movalis binaSi Casatarebel saaRsrulebo moqmedebas arc movale eswreba da arc misi ojaxis srulwlovani wevri, sasamarTlo aRmasrulebeli adgens aqts damswreTa TandaswrebiT da agrZelebs saaRsrulebo moqmedebas ori mowmis, adgilobrivi TviTmmarTvelobis organoebis warmomadgenlis TandaswrebiT~, 3) 29-e muxlSi, romelic uSualod aRmasruleblis mier oqmis Sedgenis valdebulebas da ZiriTad rekvizitebs gansazRvravs, miTiTebulia, rom `oqms xels aweren sasamarTlo aRmasrulebeli, kreditori, movale da oqmis Sedgenis dros damswre pirebi. xelis moweraze uaris Tqma unda aRiniSnos oqmSi. movales unda gadaeces oqmis asli.~ 4) 90-e muxlSi, romlis Tanaxmad, Senobidan gamosaxlebis Taobaze gadawyvetilebis aRsrulebisas Sedgenil oqms aRmasrulebelTan erTad xels awers ori qmedunariani damswre.

zemoTmiTiTebul normebSi mravali momentia dasazustebeli. zogierT SemTxvevaSi ar aris miTiTebuli, rom oqms xels awers

kreditori (rac aucileblad unda xdebodes - Tundac momavalSi kreditoris mxridan dausabuTebeli pretenziebis wamoyenebis gamoricxvisaTvis), gaurkvevelia ratomaa kanoniT gaTvaliswinebuli oqmis aslis mxolod movalisaTvis gadacema (zogadad kreditorsac aqvs ufleba moiTxovos saaRsrulebo warmoebisas Seqmnili dokumentebis qseroaslebi).

praqtikaSi xSiria damswreTa mxridan xelmoweraze uaris Tqmis SemTxvevebi, rac abrkolebs da aWianurebs aRsrulebis process. ZiriTad SemTxvevebSi, sakmarisi unda iyos adgilobrivi TviTmmarTvelobis organos warmomadgenlis xelmowera, aRmasruleblis xelmowerasTan erTad. sxva xelmowerebi SeiZleba iyos fakultaturi da uaris Tqma xelmoweraze rogorc kreditorisa da movalis, aseve damswre pirTa mxridan unda aRiniSnos oqmSi. oqmis SedgenasTan da mis xelmowerasTan dakavSirebuli, kanonSi gabneuli normebi erT muxlad unda Camoyalibdes, romelSic ganisazRvreba oqmTan dakavSirebuli yvela sakiTxi.

praqtika adasturebs, rom damswreebi praqtikulad Tavs arideben saaRsrulebo moqmedebebis Catarebisas masze daswrebas, da Sesabamisad, xSiria SemTxvevebi, roca amis gamo saaRsrulebo moqmedebebi saerTod aRar tardeba.

gamokiTxuli aRmasruleblebi amboben, rom damswre pirebis SerCevis meqanizmi ar arsebobs, maTi SerCeva spontanurad xdeba, iq myof pirTagan. aRmasrulebelTa azriT winaswar gansazRvrulia mxolod gamosaxlebis procesze adgilobrivi TviTmmarTvelobis warmomadgenlebis daswreba (Tumca, TviTmmarTvelobis warmomadgenlebis daswreba movalis binis daTvalierebis SemTxvevaSicaa gaTvaliswinebuli). aseve bavSvis gadacemis saqmeze sasamarTlo gadawyvetilebis aRsrulebisas kanoni savaldebulod miiCnevs meurveobisa da mzrunvelobis organos warmomadgenlis daswrebasac.

respondentTa mosazrebiT, aRsrulebis procesis gasamartiveblad umjobesi iqneba kanonSi Sevides cvlileba da martivi saaRsrulebo moqmdebebis Catarebisas saerTod gauqmdes damswre pirebis mowveva.

garkveuli winaaRmdegobaa me-16 muxlis me-2 punqtis `v~ qvepunqts, (romlis Sesabamisad, `aRsrulebis periodSi movalis sxva saaRsrulebo biuros samoqmedo teritoriaze gadasvlisas biuros ufrosi amis Taobaze acnobebs im saaRsrulebo biuros, romlis samoqmedo teritoriazedac gadavida movale. aRniSnulis Sesaxeb ecnobeba agreTve kreditors da saaRsrulebo departaments (am dros gaurkvevelia - saqme rCeba am saaRsrulebo biuros sasamarTlo aRmasruleblis warmoebaSi, Tu gadaecema im saaRsrulebo biuros, romlis samoqmedo teritoriazedac gadavida movale)~ da me-17 muxlis me-9 punqts Soris, romlis Sesabamisad, `sasamarTlo aRmasrulebels misi qvemdebare saaRsrulebo saqmis warmoebisas ufleba aqvs saaRsrulebo moqmedeba ganaxorcielos sxva saaRsrulebo biuros samoqmedo teritoriazedac.~

es norma gaurkvevelia imis gaTvaliswinebiTac, rom sasamarTlo aRmasrulebels daniSvnisas ganesazRvreba samoqmedo teritoria. am SemTxvevaSi ki mas ufleba eZleva gadavides sxva biuros samoqmedo teritoriazedac, an acnobos movalis sxva biuros samoqmedo teritoriaze gadasvlis Sesaxeb dainteresebul mxareebs. es normebi araTanmimdevrulad gveCveneba da kanonis xarvezebis garda, Sesabamisi instruqciis ararsebobis pirobebSi, aseve garkveuli `TviTSemoqmedebisken~ ubiZgebs aRmasrulebels, rac pirvel yovlisa aRsrulebis procesis forsirebul da efeqtian warmarTvaze aisaxeba.

kanoni (62-e muxli) `teritoriis~ principidan kidev erT gamonakliss uSvebs. kerZod, me-2 punqtis Tanaxmad, `Tu uZravi qoneba imyofeba sxvadasxva saaRsrulebo biuros samoqmedo teritoriaze, saaRsrulebo departamentis Tavmjdomares ufleba aqvs gadawyvetilebis aRsruleba daavalos erT-erTi saaRsrulebo biuros sasamarTlo aRmasrulebels.~

miuxedavad am sakanonmdeblo normebis araerTgvarovnebisa, unda aRiniSnos, rom gamokiTxul aRmasrulebelTa Soris arcerT aRmasrulebels ar hqonia samsaxurebrivi dava (rac pirvel rigSi savaraudod swored `teritoriebis gadafarvisas~ SeiZleba warmoiSvas). magram es ar niSnavs imas, rom qvemdebareobis sakiTxebs damatebiTi da zusti reglamentacia ar sWirdeba.

kanonis Sesabamisad, sasamarTlo aRmasruleblis moqmedeba kreditorisa da movalis mier SeiZleba gasaCivrdes saaRsrulebo moqmedebis ganxorcielebidan erTi Tvis vadaSi, (me-18 muxlis pirveli punqti). vadis aTvla iwyeba im momentidan, rodesac mxarisTvis cnobili gaxda an unda gamxdariyo misi uflebebis darRvevis Sesaxeb. miuxedavad amisa, rogorc CvenTvisaa cnobili, am vadis gasvlis miuxedavad, sasamarTlo praqtikaSi mainc xSiria aseTi saCivrebis warmoebaSi miRebis SemTxvevebi.

ar migvaCnia gamarTlebulad saaRsrulebo biurosaTvis kreditoris statusis miniWeba, rodesac gadawyvetileba gamotanilia saxelmwifo biujetis sasargeblod (me-18^{1} muxlis me-2 punqti). miT ufro, rom kanonSi mogvianebiT ganxorcielebuli cvlilebebis Sedegad, aseTi saqmeebis didi nawilis aRsrulebis valdebuleba Sesabamis fiskalur struqturebs daekisraT. saaRsrulebo biuroebi aseTi kategoriis saqmeebis nawils SeiZleba aRasrulebdnen kidec, magram isini kreditoris rolSi ar unda gamodiodnen.

movalis binaSi Sesvlisa da daTvalierebisTvis sasamarTlo aRmasrulebels ar sWirdeba raime damatebiTi, uflebamosilebis mimniWebeli aqti. misi es uflebamosileba kanoniTaa gansazRvruli. amasTan, aRmasrulebelTa mosazrebiT movalis binaSi Sesvla ukve iZulebiTi saaRsrulebo moqmedebaa, rac movalisaTvis micemuli 5 dRiani nebayoflobiTi aRsrulebis vadis gasvlis Semdeg xdeba.

2.6. aRsruleba

gaurkvevelia kanonis 21-e muxliT gaTvaliswinebuli saaRsrulebo warweris `avtoris vinaoba~ da am warweris mniSvneloba. am safuZvliT (roca kanonis moTxovnis miuxedavad saaRsrulebo furcels `saaRsrulebo warwera~ ar hqonda) xSirad saaRsrulebo moqmedebebi SeCerebula an saaRsrulebo moqmedebebi (Sedegebi) gabaTilebula sasamarTlos mier.

sayuradReboa, rom Tavad sasamarTlo aRmasrulebलebic saaRsrulebo warweras araerTgvarovnad ganmartaven. zogierTi miiCnevs, rom es warwera igive saaRsrulebo biuros rezoluciaa, saqmis aRmasrulebelze daweris an saaRsrulebo warmoebis dasrulebis Sesaxeb da a. S.

kanoni iTvaliswinebs `aRsrulebis Sesaxeb uwyebis~ (albaT unda vigulisxmoT Setyobineba konkretuli saaRsrulebo moqmedebis Catarebis, Casatarebeli moqmedebis droisa da adgilis Sesaxeb) Cabarebas movalis, kreditorisa da sxva monawile pirebisaTvis (25-e muxlis me-2 punqti), agreTve winadadebas, gadawyvetilebis nebayoflobiT Sesrulebis Sesaxeb, romelic, bunebrivia, mxolod movales egzavneba (28-e muxli).

gadawyvetilebis nebayoflobiT Sesrulebis Sesaxeb winadadebis CabarebasTan erTad SesaZlebelia saWiro gaxdes iZulebiTi aRsrulebis garkveuli RonisZiebebis Catareba - Tu arsebobs safuZveli, rom movales SeuZlia gaflangos an damalos qoneba. am dros aRmasrulebeli winadadebis CabarebasTan erTad, valdebulia aRweros da yadaRa daados movalis qonebas. imis gaTvaliswinebiT, rom movalisagan aseTi qmedeba TiTqmis yovelTvisaa mosalodneli, aRmasrulebelma am saaRsrulebo moqmedebas yovelTvis unda mimarTos, raTa Semdgomsi yovelgvari gaugebroba Tu garTuleba gamoiricxos. magram amis Taobaze kanonSi pirdapir unda iqnes gaTvaliswinebuli norma, romelic am saaRsrulebo moqmedebis Catarebis (romelic erTgvarad iZulebiTi aRsrulebis uzrunvelyofis RoniZiebad Seileba iqnes ganxiluli) valdebulebas aRmasrulebels imperatiulad daakisrebs.

aseTi moqmedebebi yvela SemTxvevaSi unda ganxorcieldes, roca xdeba dauyovnebliv aRsasrulebeli gadawyvetilebis aRsruleba. aseT dros unda mieces Tu ara movales nebayoflobiT aRsrulebisTvis 5 dRiani vada, kanoniT gansazRvruli ar aris, rac aRmasrulebblebSi dabneulobas iwvevs. aseT dros 5 dRiani vadis micema, vfiqrobT ewinaaRmdegeba gadawyvetilebis dauyovnebeliv aRsrulebis Sinaarss.

amasTan, mniSvnelovani da sadavoa kanonis norma (muxli 26-e), romlis Sesabamisad `sasamarTlo aRmasrulebels ufleba aqvs kreditoris mier kanoniT gaTvaliswinebuli winaswari xarjis gauReblobis SemTxvevaSi uari Tqvas gadawyvetilebis aRsrulebaze.~

am sakiTxs aRsrulebis xarjebze saubrisas (Sesabamisi normebis analizisas) SevexebiT, magram aqve unda iTqvas, rom kanoni unda iTvaliswinebdes SesaZleblobas (saproceso kanonmdeblobis analogiurad) gamonaklis SemTxvevebSi (rac konkretulad unda iyos kanoniT gansazRvruli) winaswari xarjebis gadaxdisagan gaaTavisuflos kreditori (iseve rogorc amis SesaZlebloba aris sasamarTloSi saxelmwifo baJis gadaxdis SemTxvevaSi).

unda aRiniSnos, rom kanonis 28-e muxlis me-5 da me-6 punqtebi arasamarTliania da arsebuli meqanizmi saxelmwifos SesaZleblobas aZlevs faqtobrivad gamoacxados sruli imuniteti mis winaaRmdeg gamotanili gadawyvetilebebis iZulebiT aRsrulebaze.

aseT SemTxvevebSi saxelmwifo anazRaurebs masze dakisrebul Tanxebs aRsrulebis fondis saxsrebiT. procedura ki aseTia - aRmasrulebeli Sesabamis saxelmwifo dawesebulebas da saqarTvelos finansTa saministros ugzavnis winadadebas gadawyvetilebis nebayoflobiT aRsrulebis Sesaxeb. bunebrivia aseT dros raime sxva iZulebis meqanizmi ar moqmedebs. Tu wlis ganmavlobaSi aRsrulebis fondiT gaTvaliswinebuli saxsrebi

sakmarisi ar iqneba kreditoris moTxovnis dasakmayofileblad, saqarTvelos prezidenti mimarTavs parlaments aRsrulebis fondSi damatebiTi asignebebis gamoyofis TxovniT. ramdenad dakmayofildeba saqarTvelos prezidentis aseTi Txovna saqarTvelos parlamentis gadasawyvetia.

2.7. aRsrulebis xarjebi/saaRsrulebo mosakrebeli

saaRsrulebo mosakreblis sakiTxi kanonmdeblobiT arcTu srulyofiladaa daregulirebuli (amis Taobaze zemoT nawilobriv ukve gvqonda saubari).

am kuTxiT asve sayuradReboa kanonis 82^1-e da 82^3-e muxlebis pirveli punqtebi. pirvel SemTxvevaSi sasamarTlo aRmasrulebis mier movalisagan gadaxdevinebuli (misi qonebis realizaciidan miRebuli) TanxiT jer unda daifaros saaRsrulebo mosakrebeli, aRsrulebaze gaweuli xarji da sasamarTlo xarji, xolo darCenili Tanxa gaicema kreditorTa moTxovnebis dasakmayofileblad. meore SemTxvevaSi, gansazRvrulia kreditorTa pirveli, meore da mesame rigis moTxovnebi. marTalia am SemTxvevaSi igive ipoTekiT datvirTuli da dagiravebuli qonebis realizaciidan miRebuli TanxiT, pirvel rigSi dakmayofildeba ipoTekiTa da giraoTi uzrunvelyofili moTxovnebi, magram saboloo jamSi igive mosakrebeli upiratesia kreditorTa moTxovnebis dakmayofilebisas pirveli rigis moTxovnad miCneul ipoTekiTa da giraoTi uzrunvelyofil moTxovnebTan SedarebiTac ki. migvaCnia, rom aseT SemTxvevaSi saaRsrulebo mosakrebelze metad unda prevalirebdes ipoTekarisa da mogiravnis moTxovnebis dakmayofilebis upiratesi interesi.

aRsrulebis xarjebTan dakavSirebuli problemebi erT-erTi yvelaze aqtualuria rogorc sakanonmdeblo, aseve Sesabamisad praqtikuli TvalsazrisiTac. miT ufro imis gaTvaliswinebiT, rom xarjebis gauReblobis SemTxvevaSi aRmasrulebels ufleba aqvs

uari uTxras kreditors gadawyvetilebis aRsrulebaze. Tu 35-e muxlis `d~ qvepunqtiT gaTvaliswinebul kreditorisadmi dakisrebuli `uflebamovaleobebis~ SeusruleblobaSi (rac SeuZlebels xdis gadawyvetilebis aRsrulebas), swored xarjebis gaRebis valdebulebis Seusruleblobas vigulisxmebT, kanonis Sesabamisad es saaRsrulebo sabuTis kreditorisadmi dabrunebis kanonismieri safuZveli SeiZleba gaxdes. amave normidan irkveva, rom kreditors am `uflebamovaleobebis~ Sesrulebis vadad ganesazRvreba erTi Tve, sasamarTlo aRmasruleblis mier misTvis gafrTxilebis micemidan.

kanoni xarjebis kuTxiT ramdenime normas iTvaliswinebs: 1) me-10 muxlis pirveli punqtis Tanaxmad, `sasamarTlo gadawyvetilebaTa aRsrulebis xarjebis odenoba ganisazRvreba sasamarTlo aRmasruleblis mier Sedgenili gaangariSebiT, romelic SeiZleba Seicvalos aRsrulebis mimdinareobis procesSi.~ 2) 38-e muxlis pirveli punqtis Tanaxmad, `aRsrulebis xarjebi ekisreba movales. isini amoRebul unda iqnes aRsasrulebel pretenziasTan erTad~; 3) 38-e muxlis me-2 punqtis Tanaxmad, `Tu saaRsrulebo sabuTi uqmdeba aRsrulebis xarjebi kanonmdeblobiT dadgenili wesiT unda aunazRaurdes movales~ (Tumca, xarjebis movalisTvis dabrunebis wesi gansazRvruli ar aris); 4) 49-e muxlis pirveli punqtis Tanaxmad, `yadaRadadebul an movalis mier nebayoflobiT gadaxdil fuls, aRsrulebis xarjebis gamoklebiT, sasamarTlo aRmasrulebeli gadascems kreditors~. (es norma kuriozulia - gaurkvevelia, ratom, ra mizniTa da daniSnulebiT aklebs sasamarTlo aRmasrulebeli movalisagan amoRebul fuls xarjebis Tanxas. es xarjebi xom kreditorma gaiRo iZulebiTi aRsrulebis procesis dawyebisas da masve unda daubrundes) 5) 39-e muxlSi mocemulia aRsrulebasTan dakavSirebuli xarjebis CamonaTvali, romlis damatebiTi saxeebi aseve dadgenilia saqarTvelos iusticiis ministris brZanebiT.

kanonis 26-e muxlSi aRsrulebis xarji moxseniebulia rogorc `winaswari xarji.~ igive terminia gamoyenebuli kanonis 90-e muxlSi, romelic ukanono mSeneblobasTan dakavSirebul iZulebiT aRsrulebas exeba. Sesabamisad migvaCnia, rom kanonSi erTgvarovani terminebi unda iqnes gamoyenebuli.

xarjebTan dakavSirebiT praqtikul problemasTan erTad dgas movalisagan misi amoRebis samarTlebrivi problemac. yvela moqmedeba, romelic xorcieldeba movalis winaaRmdeg, gamomdinareobs kreditoris moTxovnidan (maT Soris dakisrebuli Tanxebis moculobac), rac Tavis mxriv dadasturebulia sasamarTlos kanonier ZalaSi Sesuli gadawyvetilebiT da dafiqsirebulia saaRsrulebo furcelSi. xarjebis odenoba ki aramdgradia da srul saxes is aRsrulebis dasrulebis stadiaze iRebs. gaweuli xarjebis konkretuli Tanxobrivi moculoba aRmasruleblis gaangariSebaSia mxolod mocemuli. am Tanxis gadaxdevineba, yvela sxva gadaxdevinebisagan gansxvavebiT, xdeba ara sasamarTlos, administraciuli organos an Tanamdebobis piris kanoniT gaTvaliswinebuli aqtis da saaRsrulebo furclis safuZvelze, aramed aRmasruleblis mier Sedgenili gaangariSebidan gamomdinare. es sakiTxic ufro dazustebiT da mkafiod reglamentacias moiTxovs.

mTavari problema isaa, rom saaRsrulebo xarjebis gawevis aucilebloba, am Tanxebis xarjvis procedurebi sakmaod qaoturia, xolo xarjvis procesi arasakmarisad kontrolirebadi da gaumWvirvalea.

kanonis me-8 muxlis Sesabamisad, sasamarTlo aRmasrulebeli muSaobis dawyebamde saaRsrulebo departamentSi waradgens bankSi gaxsnili angariSis damadasturebel dokuments, Tumca am angariSze Tundac saaRsrulebo xarjebis (Sesabamisi Tanxebis) `moZraobasa~ da aRricxvaze kanonSi araferia naTqvami. Sesabamisad gaurkvevelia, Tu ra aris sasamarTlo aRmasruleblis sabanko angariSis daniSnuleba.

kanoni iTvaliswinebs kidev erT - saaRsrulebo biuros sadepozito angariSs, sadac kreditorisaTvis gadasacemi da movalisagan amoRebuli Tanxebi akumulirdeba.

gamokiTxulTa umravlesobis gancxadebiT, winaswari xarjebi da aRsrulebis xarjebi identuria da masSi Sedis aRsrulebis uzrunvelsayofad, kreditoris mier gadaxdili Tanxebi. Sesabamisad, rogorc aRvniSneT, kanonis Sesabamisi terminebi erTgvarovnad unda Camoyalibdes.

aRmasrulebl ebis gancxadebiT, aRniSnuli xarjebis gaangariSebas aRmasrulebeli axorcielebs da ar arsebobs xarjebis gaangariSebisa da Semdeg misi gakontrolebis erTiani meqanizmi. xarjebis moculobis (odenobis) erTgvarovnad dadgena ama Tu im kategoriis saqmeebisaTvis albaT marTlac rTuli iqneba (regionaluri Taviseburebebis, saqmis aRsrulebisadmi subieqturi Tu obieqturi winaaRmdegobebis Seqmnis, aRsrulebis procesSi gauTvaliswinebeli garTulebebis gaTvaliswinebiT). magram xarjebis adeqvaturi odenobiT moTxovnis, misi aRricxvis, xarjvis kontrolis meqanizmebis SemuSaveba aucilebelia. amasTan, arsebulze (rac kanoniT da ministris brZanebiTaa dadgenili) ufro yovlismomcvelad unda ganisazRvros aRsrulebis xarjebis saxeebi.

praqtikuli problemebia xarjebis gakontrolebis mxriv. regionebSi (soflebSi) aRmasruleblebs uWirT Sesabamisi dokumentaciis Segroveba, Tu raSi gaixarja kreditoris mier gadaxdili Tanxebi. amis dasamtkicebl ad arsebobs mxolod aRmasruleblis mier Sedgenili oqmi, TiToeuli saaRsrulebo moqmedebis Catarebis Sesaxeb. mag: transportirebis dros, gamosaxlebis dros muSaxelis daqiravebis SemTxvevaSi aRmasruleblebs uWirT Sesabamisi qviTris mopoveba.

SesamuSavebelia xarjebis gansazRvris samarTliani da realurad adaptirebadi meTodologia. kanoni aRmasrulebelis mier

gaangariSebis SedgenasTan erTad unda iTvaliswinebdes mis xelmoweras kreditoris mier. xarjebis odenobis Sesaxeb (gaangariSebis Sesaxeb) unda ecnobos movalesac (romelic aRsrulebis dasrulebisas mas gadaxdeba).

2.8. sasamarTlo kompetencia

sayuradReboa mesame piris interesebis dacva, rodesac igi daamtkicebs, rom mas aRsrulebis saganze ufleba gaaCnia. magram kanoni iTvaliswinebs iseT SesaZleblobasac, roca piri garkveul mizezTa gamo ver uzrunvelyofs (ver moaswrebs) misi qonebis yadaRisagan gaTavisuflebas da moxdeba am qonebis realizacia. am dros uTuod gasaTvaliswinebelia saqarTvelos samoqalaqo kodeqsis 187-e muxli, miT ufro nivTis (qonebis) auqcionis wesiT realizebis SemTxvevaSi.

sakamaTo da dasazustebelia erTi momenti - kanonis 33-e muxli akeTebs miTiTebas 34-e da 35-e muxlebze da ganmartavs, rom am muxlebiT gaTvaliswinebul SemTxvevebSi aRmasrulebels sakuTari gadawyvetilebiT SeuZlia SeaCeros an Sewyvitos aRsruleba, daubrunos kreditors saaRsrulebo sabuTebi, sxva droisaTvis gadados saaRsrulebo moqmedebis Sesruleba, amoricxos yadaRadadebuli qoneba aRweris siidan. yvela sxva SemTxvevaSi aseTi gadawyvetilebis misaRebad sasamarTlo aRmasrulebels sWirdeba a) kreditoris Sesabamisi gancxadeba, b) sasamarTlos ganCineba.

am normebis Sinaarsidan gamomdinareobs, rom magaliTad aRmasrulebels kreditoris gancxadebis da sasamarTlos ganCinebis gareSec, sakuTari Sexedulebit SeuZlia aRsrulebis Sewyveta, Tu `kreditoris an movalis sikvdilis Semdeg gadawyvetilebiT dadgenili moTxovnebi an movaleobebi ver gadava gardacvlili piris uflebamonacvleze~ (34-e muxlis, pirveli punqtis `g~

qvepunqti). magram aRniSnuli rTuli samarTlebrivi sakiTxis gadawyveta sasamarTlos gareSe ar unda xdebodes, miT ufro imis gaTvaliswinebiT, rom 36-e muxlis `a~ qvepunqtidan gamomdinare aseT SemTxvevaSi aRsruleba unda SeCerdes uflebamonacvlis dadgenamde. am sakiTxTan mimarTebaSi zogadad gasaTvaliswinebelia kanonis kidev erTi norma - kerZod 37-e muxli, romlis Sesabamisad Tu sadaoa aRsrulebis Sewyvetis an saaRsrulebo sabuTis ukan dabrunebis marTlzomiereba, gadawyvetilebas aRmasrulebLis, kreditoris an movalis gancxadebis safuZvelze iRebs sasamarTlo.

saaRsrulebo moqmedebebis SeCerebis kuTxiT aseve sayuradReboa 36-e muxlis `v~ qvepunqti, romlis Tanaxmad aRsruleba SeCerdeba `sarCelis wardgenisas im qonebis yadaRisagan gaTavisuflebis Sesaxeb, romelzedac miqceulia gadaxda - sadavo qonebaze aRsrulebis nawilSi da Sesabamisi gadawyvetilebis miRebamde.~ am normis Sinaarsi mniSvnelovania vTqvaT mesame pirisaTvis, romlis qonebac araswrorad dayadaRda moTxovnis uzrunvelsayofad, magram meores mxriv es norma savaraudod arakeTilsindisier movales, yovelTvis miscems SesaZleblobas gamogonil mesame pirs xelovnurad daawyebinos saqmis warmoeba qonebis yadaRisagan gaTavisuflebis Sesaxeb da amiT seriozulad gaarTulos da gaaWianuros gadawyvetilebis aRsruleba (anu daukmayofilebeli darCes moTxovna, romelic dadasturebulia sasamarTlos kanonier ZalaSi Sesuli gadawyvetilebiT).

praqtikaSi problemuria aRsasrulebeli gadawyvetilebis ganmartebis sakiTxi. kanonSi Sesuli cvlilebis Semdeg sasamarTlo aRmasrulebelsac mieca SesaZlebloba mimarTos sasamarTlos SuamdgomlobiT aRsasrulebeli gadawyvetilebis ganmartebis Taobaze.

aqve SevexebiT samoqalaqo saproceso kodeqsis erT-erT normas, romelic garkveulwilad ukavSirdeba sasamarTlo gadawyvetilebebis aRsrulebis problemas, kerZod, samoqalaqo saproceso kodeqsis 261-e muxls, romelic aregulirebs damatebiTi

gadawyvetilebis gamotanis sakiTxs. kodeqsis Sesabamisad, aseTi aucilebloba ramdenime SemTxvevaSi dgeba. maT Soris maSin, Tu sasamarTlom gadawyvita uflebis sakiTxi, magram ar miuTiTebia gadasaxadeli Tanxis odenoba, gadasacemi qoneba an moqmedeba, romelic mopasuxem unda Seasrulos. kodeqsiT damatebiTi gadawyvetilebis gamotanis sakiTxi SeiZleba daisvas gadawyvetilebis gamocxadebidan 7 dRis ganmavlobaSi. migvaCnia, rom gasaCivrebis am vadis aTvla gadawyvetilebis mxarisaTvis gadacemidan unda moxdes. winaaRmdeg SemTxvevaSi, didia albaToba, rom gadawyvetileba misi arasrulyofilebis gamo, aRusrulebeli darCeba.

2.9. aRsruleba moZrav qonebaze

kanonis 43-e muxlis pirveli punqtis Sesabamisad, fuls, fasian nivTebs iRebs sasamarTlo aRmasrulebeli da inaxavs specialur sakanSi. es exeba sxva yadaRadadebul nivTebsac, Tu arsebobs yadaRadadebuli nivTebis xelyofis saSiSroeba. am SemTxvevaSi sakanonmdeblo problema ar arsebobs. realurad es praqtikuli problemaa, romelsac aRmasrulebelebi awydebian. ufro sworad am moTxovnis Sesruleba maT mier zogjer ver an ar xdeba.

sainteresoa kanonis 46-e muxlis pirveli punqti, roca aRmasrulebelma unda gaiTvaliswinos movalis pirovneba, miuxedavad imisa, rom Tavad kreditori iTxovs yadaRadadebuli nivTebis realizaciis droebiT SeCerebas.

47-e muxlis me-2 punqtis Sesabamisad, sabazro fasi TiToeul dayadaRebul nivTze unda mieTiTos qonebaze yadaRis dadebis aqtSi. aseTi Sefaseba uSualod yadaRis dadebis procesSi TiTqmis arasdros ar xdeba. aRmasrulebels aqvs SesaZlebloba am mizniT moiwvios eqsperti an auditi. aRwerili qonebis Sefaseba unda ganxorcieldes ara ugvianes 2 Tvis vadaSi. maSin roca dayadaRebuli nivTebis realizacia auqcionis wesiT unda moxdes 2 kviris vadaSi (50-e muxlis pirveli punqti); Tumca, aRmasrulebels

SeuZlia movalis gancxadebis da kreditoris Tanxmobis safuZvelze realizacia droebiT SeaCeros gadaxdis ganvadebiT (albaT ufro gamarTuli iqneboda Tu kanonSi iqneboda sityvebi `ganvadebiT gadaxdis pirobiT~). am dros aRsrulebis droebiT SeCerebis Sesaxeb gankargulebebi SeiZleba ramdenjerme gaices, magram realizacia ar SeiZleba gadaidos yadaRis dadebis Semdeg sam Tveze meti vadiT.

am SemTxvevaSic vadebis sakiTxi aseve aRreulia da gaurkvevelia. amasTan, Tu aRmasrulebelma ar Caatara auqcioni 2 kviraSi (rasac kanoni iTvaliswinebs) da (aseve kanonis Sesabamisad) 3 Tvemde vadiT gadado realizaciis procesi, xolo Sefaseba moaxdina 2 Tvian vadaSi, SesaZlebelia moxdes ise, rom realizaciis periodisaTvis nivTebis realuri sabazro Rirebuleba gansxvavebuli iyos Sefasebis periodisTvis arsebul fasebTan SedarebiT.

kanonis 49-e muxli iTvaliswinebs, rom yadaRadadebuli nivTebi SeiZleba mxolod im fasad gaiyidos, rac sul mcire nivTebis Rirebulebis naxevars Seadgens. kanoni arafers ambobs Tu ra xdeba maSin, roca nivTebis gayidva am fasad ar xerxdeba. am dros ki ukve warmoqmnilia nivTebis Senaxvisa da transportirebis, agreTve auqcionis Catarebis da sxva xarjebic.

kanonis 53-e muxli iTvaliswinebs, rom kreditorisa da movalis SeTanxmebis SemTxvevaSi aRmasrulebels SeuZlia nivTis sxvagvari realizacia daadginos. Tumca kanonSi araferia naTqvami Tu vis mier xdeba am dros nivTis realizacia. amasTan, Tu kreditori movalesTan SeTanxmebul pirobebze da realizaciis wesze Tanaxmaa, vis ekisreba aseT dros kreditoris interesebis dacvis valdebuleba (rasac kanoni iTvaliswinebs).

2.10. moTxovnaTa aRsruleba

kanonis es nawili SeiZleba iTqvas, rom yvelaze gamarTulia. Sesabamisi normebis aqtiurad gamoyenebis SemTxvevaSi aRsrulebis efeqtianad warmarTvas didad Seewyoboda xeli. Tumca, Cveni

informaciiT aRmasrulebelTa didi nawili gaurkveveli mizezebis gamo iSviaTad mimarTavs am normebiT dadgenil iZulebiTi aRsrulebis meqanizmebs.

2.11. aRsruleba uZrav qonebaze

kanonis 71-e muxlis pirveli punqtis Sesabamisad, `auqcionis Catarebis drosa da adgils adgens sasamarTlo aRmasrulebeli, ris Sesaxebac igi auqcionis Catarebamde 7 dRiT adre akeTebs specialur gancxadebas.~ migvaCnia, rom uZravi qonebis realizaciisas 7 dRiani vada arasakmarisia.

amave muxlis me-3 punqtis Tanaxmad, `sasamarTlo aRmasrulebeli auqcionis droisa da adgilis Sesaxeb mxareebs acnobebs uwyebis gadacemiT.~ auqcionamde ramdeni xniT adre unda moxdes uwyebis Cabareba, kanoni ar gansazRvravs. Tu am SemTxvevaSic (iseve rogorc kanoniT gaTvaliswinebul yvela sxva SemTxvevaSi) uwyebis Cabareba xdeba saqarTvelos samoqalaqo saproceso kodeqsiT dadgenili wesiT, logikurad aRmasrulebelma unda ixelmZRvanelos aRniSnuli kodeqsis 70-78-e muxlebiT. kerZod, kodeqsis 78-e muxlis Tanaxmad, Tu mopasuxis (movalis) adgilsamyofeli ucnobia (ra SemTxvevebic arcTu iSviaTia), uwyeba bardeba adgilobrivi TviTmmarTvelobis organos anda sasamarTlos gamoaqvs ganCineba Setyobinebis Sesaxeb publikaciis meSveobiT. aseT SemTxvevaSi uwyeba Cabarebulad iTvleba adgilobrivi TviTmmarTvelobis organosTvis misi gadacemidan anda publikaciidan erTi Tvis vadaSi. aseT pirobebSi aRmasrulebelma winaswar unda gansazRvros auqcionis Catarebis TariRi (ase vTqvaT `TavisTvis~, gamocxadebis gareSe) da Catarebis Taobaze gancxadebis gakeTebamde (anu auqcionamde erTi kviriT adre) sul mcire erTi TviT adre mainc unda imoqmedos saproceso kodeqsis 78-e muxlis Sesabamisad - anu Caabaros Setyobineba adgilobrivi TviTmmarTvelobis organos an moaxdinos gancxadebis publikacia. Tumca gasaTvaliswinebelia, rom

am droisTvis auqcioni gamocxadebuli jer ver iqneba. winaaRmdeg SemTxvevaSi uwyeba mxareTaTvis Cabarebulad ar CaiTvleba, rac auqcionis Sedegebis gabaTilebis safuZvels qmnis. samwuxarod, kanonmdeblobidan gamomdinare vadebis amgvarad gansazRvris pirobebSi, aRmasruleblebi, rogorc wesi am mniSvnelovan moments ar/ver iTvaliswineben. Sesabamisad, auqcionis vadebs koreqcia sWirdeba an saaRsrulebo warmoebaTa Sesaxeb kanonis miznebisaTvis mxareTaTvis uwyebis gadacemis gansxvavebuli vadac SeiZleba dadgindes.

aseve gaurkvevelia (sasurvelia es kanoniT dgindebodes) Tu gadasaxdeli Tanxis ra nawili unda Seitanos auqcionze qonebis SemZenma saaRsrulebo biuros sadepozito angariSze, auqcionidan erTi kviris ganmavlobaSi.

auqcionze qonebis SemZens kanonis 75-e muxlis pirveli punqtis Sesabamisad, gadaecema sasamarTlo aRmasruleblis Sesabamisi gankarguleba, romelSic aRniSnuli unda iyos qonebis SemZeni, SemoTavazebuli fasi da auqcionis pirobebi. gankarguleba SesaZlebelia gamocxaddes Tanxis gadaxdamde, maT Soris uSualod auqcionzec, romelic gamocxadebisTanave Sedis ZalaSi. marTalia kanoni miuTiTebs, rom SemZens qonebaze Tavisi kanonieri uflebebis gamoyeneba mxolod fasis srulad gadaxdis Semdeg SeuZlia, magram Tu vigulisxmebT, rom aRniSnuli gankarguleba (romelic miuxedavad Tanxis gadaxdisa mainc ZalaSia Sesuli) qonebis SemZenze registraciis safuZvels warmoadgens, savaraudoa rom aman garkveuli problemebi warmoSvas, anu SemZenma aseT situaciaSic moaxerxos mis sakuTrebaSi qonebis daregistrireba. amitom gankarguleba SesaZlebelia gamocxaddes kidec auqcionze, magram igi ZalaSi unda Sevides da SemZens unda gadaeces fasis srulad gadaxdis Semdeg.

76-e muxlis Sesabamisad, Tu Tanxa dadgenil vadaSi ar iqneba gadaxdili, sasamarTlo aRmasruleblis gankargulebis gauqmeba xdeba sasamarTlos ganCinebiT. kanonSi ar Cans Tu vin mimarTavs am

dros sasamarTlos. vfiqrobT, ufro gamarTlebulia aseT SemTxvevaSi Tavad aRmasrulebels mieces mis mier gamocxadebuli gankargulebis gauqmebis ufleba.

kanoniT dadgenilia auqcionis gziT nivTis realizaciis SeuZleblobis SemTxvevaSi misi kreditorisTvis naturiT gadacema. SesaZlebelia, rom nivTis sabazro Rirebuleba aRematebodes an gacilebiT mcire iyos vidre moTxovnis moculobaa. aseT dros SeiZleba Seilaxos rogorc kreditoris, aseve movalis interesebic. aRniSnul sakiTxebs kanoni aseve ar aregulirebs.

kanonis 79-e muxlis Sesabamisad, sasamarTlo uflebamosilia daniSnos uZravi qonebis (sekvestris) mmarTveli, romelic ar SeiZleba iyos sasamarTlo aRmasrulebeli. Tumca, saqarTvelos samoqalaqo saproceso kodeqsis 198-e muxlis me-2 nawilis `g~ qvepunqtis Tanaxmad, sarCelis uzrunvelyofis erT-erT RonisZiebis saxiT sasamarTlom SeiZleba daavaldebulos mopasuxe gadasces mis mflobelobaSi arsebuli nivTi sasamarTlo aRmasrulebels sekvestris (qonebis iZulebiTi marTva) saxiT. vfiqrobT, es ori norma winaaRmdegobaSi modis erTmaneTTan, radgan sarCelis uzrunvelyofis RonisZieba da zogadad sekvestri iZulebiTi aRsrulebis gziT xorcieldeba da Sesabamisad unda efuZnebodes da Seesabamebodes `saaRsrulebo warmoebaTa Sesaxeb~ kanonis normebs.

2.12. gadaxdevinebuli Tanxebis ganawileba kreditorTa Soris

aRniSnul sakiTxebze zemoT ukve gvqonda nawilobriv saubari (Tavi 2.7. aRsrulebis xarjebi/saaRsrulebo mosakrebeli).

2.13. aRsruleba nivTebis gadacemisa da moqmedebis Sesrulebis mizniT

meti rom ar vTqvaT, kanonis 83-e da 84-e muxlebSi mocemuli danawesebi kuriozulad JRers. magaliTad, a) `Tu movalem unda

gadasces moZravi nivTi an moZravi nivTebis garkveuli raodenoba, maSin sasamarTlo aRmasrulebeli nivTebs arTmevs movales da gadascems maT kreditors.~ an 2) `Tu gadasacem nivTs ver ipovnian, maSin movalem unda acnobos sasamarTlo aRmasrulebels, Tu sad imyofeba nivTi~ (iqneb jer ekiTxaT movalisaTvis da mere moeZebnaT). 3) `Tu movale ganacxadebs, rom mas es ar SeuZlia, maSin is valdebulia aRsrulebis oqmSi werilobiT miuTiTos, rom is ar flobs am nivTs~. aseT dros 50 lariani jarimis gamoyenebac sakmaod kuriozulad gamoiyureba (Tumca kanoniT gaTvaliswinebuli pasuxismgebloba mis mimarT mainc dgeba). aseve sainteresoa Semdegi norma - `Tu movalem kreditors unda gadasces an gaaTavisuflos miwis nakveTi, maSin sasamarTlo aRmasrulebelma qoneba mflobelobaSi unda gadasces kreditors.~

igive 84-e muxli gafrTxilebidan 1 Tvian vadas iTvaliswinebs movalisaTvis sadgomis dasaclelad. me-5 punqtSi ki miTiTebulia, rom `sadgomis daclis vada ganCinebiT SeiZleba gagrZeldes an Semcirdes, Tu Setanili iqneba gancxadeba saapelacio an sakasacio instanciaSi. gadawyvetilebas iRebs Sesabamisi sasamarTlo.~ am SemTxvevaSic gaurkvevelia Tu ratom unda iqnes gancxadeba Setanili saapelacio an sakasacio instanciaSi.

aseve gaurkveveli da bundovania 87-e muxli. Tu qmedebis Sesruleba movalis nebazea damokidebuli, sasamarTlo mis mimarT iyenebs iZulebiT RonisZiebas, kerZod akisrebs jarimas. movalis mimarT wayenebuli moTxovnebis Seusruleblobis SemTxvevaSi mas SeiZleba daekisros saqarTvelos kanonmdeblobiT gaTvaliswinebuli sisxlis samarTlis pasuxismgebloba. sasamarTlos mxridan aRniSnul qmedebebs, kanonis Sesabamisad win unda uswrebdes CvenTvis gaurkveveli daniSnulebisa da Sinaarsis dokumentis (albaT ufro movalis mavaldebulebeli dokumentia, romelSic weria Tu ra qmedeba unda ganaxorcielos movalem) - gankargulebis gamocema, romelsac rogorc kanonidan Cans, Tavad sasamarTlo

gadawyvetilebac SeiZleba Seicavdes, xolo Tu ar Seicavs, maSin mas kreditoris gancxadebis safuZvelze gamoscems sasamarTlo.

sabednierod kanoni ar iTvaliswinebs movalis davaldebulebas Tu gamotanilia gadawyvetilebebi saqorwino urTierTobebze da SromiTi xelSekrulebis safuZvelze momsaxurebis gawevaze.

2.14. zogierTi kategoriis saqmeebze aRsrulebis wesebi

kanonis 89-e muxlis Sesabamisad, `Tu alimentis gadaxdevinebis saqmeze gadawyvetilebis aRsrulebisas gadasaxdeli Tanxa, romelic gadaexdevineba movales yovelTviurad SeTanxmebisamebr (CvenTvis gaurkvevelia ra SeTanxmebazea saubari), kanoniT dadgenil minimalur zRvarze naklebia, alimentis gadaxdis davalianebisas gadaxdevineba SeiZleba moxdes movalis qonebidan, dadgenili wesiT.~ garda imisa, rom sxva mravali normis msgavsad es muxlic arcTu dalagebuladaa Camoyalibebuli, isic aRsaniSnavia, rom alimentis kanoniT dadgenili minimaluri zRvari saerTod ar arsebobs.

rac Seexeba saqarTvelos teritoriaze ucxo qveynis sasamarTlo gadawyvetilebis aRsrulebas, aseTi faqtebi arcTu xSiria praqtikaSi (ZiriTadad, alimentis saqmeebi). kanonis 91-e muxlis Sesabamisad, ucxo qveynis gadawyvetilebis aRsrulebas uzrunvelyofs iusticiis saministro, romelic dadgenili wesiT cnobili gadawyvetilebis safuZvelze saqarTvelos kompetenturi sasamarTlos mier amoweril saaRsrulebo furcels movalis adgilsamyofelis mixedviT agzavnis Sesabamis biuroSi. Tumca, aseT dros ar Cans vin warmoadgens saqarTveloSi saaRsrulebo procedurebis warmoebisas kreditors.

2.15. aRsruleba sajaro samarTlis iuridiuli pirebis mimarT

kanoni, garda im normebisa, romlebic aRsrulebis fonds exeba (razec ukve gvqonda saubari), kidev erTxel areglamentirebs im Taviseburebebs, romlebic axasiaTebs iZulebiT aRsrulebas sajaro samarTlis iuridiuli pirebisa da sabiujeto organizaciebis mimarT.

92-e muxlidan gamomdinareobs, rom kreditorma jer Tavad unda mimarTos (kanonis eniT - **`ganucxados Tavisi ganzraxva aRsrulebis saqmis Taobaze~)** movale sajaro samarTlis iuridiul pirs da mxolod amis Semdeg SeuZlia mimarTos aRmasrulebels iZulebiTi aRsrulebis dasawyebad. swored es azri gamomdinareobs kanonis normidan, Tumca aseTi procedura erTob gaugebari da iZulebiTi aRsrulebis procesSi monawile sxva kategoriis movaleebTan SedarebiT araparitetulia.

rac Seexeba sabiujeto organizaciebis mimarT, Tanxis gadaxdevinebis nawilSi iZulebiTi aRsruleba SeiZleba daiwyos sasamarTlo gadawyvetilebis nebayoflobiT aRsrulebis Sesaxeb winadadebis micemidan 3 Tvis Semdeg, an mas Semdeg, rac saqarTvelos parlamenti uars ganacxadebs sasamarTlo gadawyvetilebis aRsrulebis mizniT sabiujeto wlis ganmavlobaSi saxelmwifo biujetiT gaTvaliswinebuli aRsrulebis fondSi damatebiTi asignebebis gamoyofaze. 92^{1}-e muxlis me-2 punqtis Tanaxmad, saqarTvelos finansTa saministro movaleebze Tanxebs gascems sasamarTlo gadawyvetilebis nebayoflobiT aRsrulebis Sesaxeb micemuli winadadebebis rigiTobis mixedviT. unda vigulisxmoT, rom aRniSnuli rigiTobis wesi gamoiyeneba, roca aRsruleba xdeba aRsrulebis fondidan. rac exeba SemTxvevas, roca fondSi Tanxebi arasakmarisia an sulac ar aris, aseT dros gaurkvevelia ra wyarodan da ra wesiT xdeba konkretuli sabiujeto dawesebulebis valdebulebis Sesruleba.

3. saerTo daskvna

saxelmwifo aRmasrulebeli

`saaRsrulebo warmoebaTa Sesaxeb~ saqarTvelos kanonis arsebuli redaqcia mniSvnelovan gadamuSavebas da cvlilebebs saWiroebs. SesaZlebelia ganxiluli iqnes cvlilebaTa ori varianti:

1) arsebuli sitemis da saaRsrulebo organoTa mowyobis arsebuli principebis SenarCuneba. kanonis srulyofa.

2) saaRsrulebo organoTa sistemis konceptualuri gadaxedva, sasamarTlo aRmasruleblis profesiis `gaTavisufleba~. Tumca aseT SemTxvevaSic saaRsrulebo procedurebTan dakavSirebuli xarvezebi seriozulad gasaazrebeli da aRmosafxvreli iqneba.

dRes moqmed kanons mravali problema aqvs - dawyebuli imiT, rom igi Zalzed arasrulyofili da dabali donis dokumentia iuridiuli teqnikis, sistematizebis TvalsazrisiT, elementaruli SeusabamobebiT, dauregulirebeli sakiTxebis simravliT, aRreuli terminologiiT, da elementarulad gaugebari winadadebebiT damTavrebuli.

problemebia konkretul saaRsrulebo procedurebis sworad gagebis TvalsazrisiT, maTi arasrulyofilad da gaumarTavad Camoyalibebis gamo. ar arsebobs zusti instruqciebi. Riad dgas saaRsrulebo (winaswari) xarjebisa da saaRsrulebo mosakreblis sakiTxi.

gadasaxedia da mosafiqrebelia aRmasrulebelTa Soris rangirebis da Sesabamisi ierarqiuli safexurebis gavlis procedurebi. gasamkacrebelia ganaTlebis (sasurvelia iuridiuli) cenzi.

aqve mciirediT SevCerdebiT saaRsrulebo sistemis mowyobis im modelze, romelic ufro perspeqtiulad da gamarTlebulad gveCveneba.

uamravi evropuli (mag. safrangeTi) da aziuri (mag. yazaxeTi) qveynis magaliTze, ufro misaRebad gamoiyureba aRmasruleblis profesiis gaTavisuflebis sakiTxi. sayuradReboa, rom safrangeTSi arsebobs rogorc saxelmwifo, aseve kerZo aRmasruleblis instituti. statistikis Tanaxmad, aRsrulebuli saqmeebis raodenobis procentuli maCvenebeli aseTia - 85% da 35% - kerZo aRmasrulebelTa sasargeblod. Tumca, saxelmwifoTa ZiriTadi nawili kerZo da saxelmwifo aRmasruleblis instituts erTdroulad inarCunebs da alternativis, arCevanis SesaZleblobas tovebs. amave dros, alternativis pirobebSi SeiZleba moxdes saqmeTa kategoriebis mixedviT gadanawileba. magaliTad, rodesac aRsruleba ukavSirdeba saxelmwifos finansur interesebs an gaaCnia gansakuTrebuli socialur-ekonomikuri xasiaTi, es saqme SeiZleba saxelmwifo aRmasrulebels daeqvemdebaros. amasTan, SesaZlebelia dadgindes vada, romlis ganmavlobaSic piri valdebuli iqneba kerZo aRmasruleblad muSaobis dawyebamde imuSavos saxelmwifo aRmasruleblad.

metad seriozuli da mkacria moTxovnebi, romelic sasamarTlo aRmasrulebels Tanamdebobaze gasamweseblad waeyeneba. igive safrangeTSi aRmsrulebeli unda iyos iuridiuli ganaTlebiT, unda gaiaros 2 wliani staJireba Sesabamis kantoraSi, da Caabaros saxelmwifo sakvalifikacio gamocda.

es forma aseve gavrcelebulia beniluqsis qveynebSi, italiaSi, saberZneTSi, poloneTSi, portugaliaSi. mravalma maTganma franguli modelis implementacia moaxdina. es modeli ufro eTanadeba sabazro ekonomikis principebs da saxelmwifo xarjebis dazogvasac uwyobs xels. aseT dros saxelmwifo Tavisufldeba xarjebisagan, izrdeba dawola movaleebze, rac savaraudod gazrdis gadawyvetilebebis nebayoflobiT Sesrulebis

precedentebs. moxdeba kvalificirebuli da motivirebuli kadrebis mozidvac. SesaZlebelia dadgindes aRmasruleblis sruli qonebrivi pasuxismgeblobis (dazRvevis) principi klientisaTvis zianis miyenebis SemTxvevaSi - profesiuli riskis dazRvevis principi.