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adamianis uflebaTa evropuli sasamarTlo

didi palata

saqme n. gaerTianebuli samefos winaarmdag

(sarceli no. 26565/05)

gadawyvetileba

strasburgi

2008 wlis 27 maisi

*winamdebare gadawyvetileba saboloo,
Tumca SesaZlebelia daeqvemdebaros saredaqcio gadaxedvas*

winamdebare saqmeze n. gaerTianebuli samefos winaaRmdeg,

adamianis uflebaTa evropuli sasamarTlos didma palatam Semdegi SemadgenlobiT:

Jan-pol kosta, *prezidenti*
nikolas bratca,
per lorensen,
fransuaz tulkens,
jozef kasadeval,
jovani bonelo,
ireneu kabral bareto,
boStian m. zupanCiC,
rait maruste,
sneJana butuCarova,
xavier borego borego,
xanlar haiev,
liliana miioviC,
din spielman,
renate iaeger,
ian Sikuta,
mark viliger, *mosamarTleebi*,
da maikl o'boili, *sasamarTlo gamwesrigeblis moadgile*,

2007 wlis 26 seqtembersa da 2008 wlis 23 aprils ganmartoebiT iTaTbira,

gamoitana Semdegi gadawvyetileba, romelic miiRo bolos-miT iTebul dRes:

procedura

1. saqmes safuZvlad daedo sarCeli (No. 26565/05) didi britaneTisa da CrdiloeT irlandiis gaerTianebuli samefos winaaRmdeg, romelic adamianis uflebaTa da ZiriTad TavisuflebaTa konvenciis (~konvencia~) 34-e muxlis Sesabamisad, 2005 wlis 22 ivliss sasamarTloSi Seitana ugandis moqalaqem, q-nma n. (~mosarCele~). didi palatis prezidentma gamoxata Tanxmoba daekmayofilebina mosarCelis Txovna ar gaJRerebuliyo misi saxeli (sasamarTlos reglamenti muxli 47 § 3).
2. mosarCeles, romelmac miiRo iuridiuli daxmareba, warmoadgenda b-ni j. luqmani, advokati, romelic praqtikas eweva londonSi. gaerTianebuli samefos mTavroba ("mTavroba") warmodgenili gaxldaT misi agentis b-ni grenjeris mier sagareo da Tanamegobrobis ofisidan.
3. mosarCele, romelic gaxlavT aiv dadebiTi, acxadebs, rom ugandaSi dabrunebis SemTxvevaSi, misTvis xelmisawvdomi ar iqneba saWiro samedicino mkurnaloba, rac Sedegad gamoiwvevs konvenciis me-3 da me-8 muxlebis darRvevas.
4. sarCeli gadaeca sasamarTlos meoTxe seqcias (muxli 52, nawili 1 saamarTlos reglamenti). 2007 wlis 22 maiss am seqciis palatam Semdegi SemadgenlobiT: kasadevali, bratca, bonelo, traia, pavlovCi, miioviCi, Sikuta, *mosamarTleebi* da agreTve t.l. erli, *seqciis gamwesrigebeli*, daTmo iurisdqcia didi palatis sasargeblad, rac saqmis arcerT mxares ar gausaCivrebia (konvenciis 30-e muxli da reglamentis muxli 72).

5. didi palatis Semadgenloba ganisazRvra konvenciis 27-e muxlis me-2 da me-3 paragafebisa da sasamarTlos reglamentis 24-e muxlis mixedviT.
6. rogorc mosarCelem, ise mTavrobam warmoadgina mosazrebebi dasaSvebobasa da arsebiT mxaresTan dakavSirebiT. amasTanave, miRebul iqna mesame mxaris - helsinkis adamianis uflebaTa fondis - komentarebi, romelTa werilobiT proceduraSi CarTvazec nebarTva gasca prezidentma (konvenciis 36 § 2 muxli da sasamarTlo reglamentis 44 § 2 muxli).
7. mosmena Sedga sajarod, adamianis uflebaTa SenobaSi, strasburgSi, 2007 wlis 26 seqtembers (reglamentis muxli 59, nawili 3).

sasamarTos winaSe warsdgnen:

(a) *mTavrobis mxares*

b-ni j. grenjer,

q-ni m. qars-frisk qs

b-ni T. eiqe,

q-ni s. adams,

b-ni f. deler,

q-ni l. stoui,

agenti

mrCeveli

(b) *mosarCelis mxares*

b-ni d. feniq, qs

b-ni r. sqenel.

b-ni j. luqmani

advokati

solisitori

sasamarTlom mousmina q-n qars-frisqsisა da b-ni feniqis gamosvlebs, iseve rogorc maT pasuxebს mosamarTleebis borego-borego da miioviCis SekiTxebeze.

faqtebi

I. saqmis garemoebebi

8. mosarCele daibada ugandaSi 1974 wels. amJamad igi cxovrobs londonSi.
9. mosarCelem gaerTianebuli samefos sazRvari gadmokveTa 1998 wlis 28 marts yalbi saxeliT. igi seriozulad gaxldaT avad da miyvanil iqna saavadmyofoSi, sadac diaqnozad daudgines aiv dedebiToba, romelsac Tan axlda “mniSvnelovani imunodaqveiTebsა da ... gavrcelebuli mikobaqteriuli tuberkuliozi”.
10. 1998 wlis 31 marts iuristembma misi saxeliT Seitanes ganxadeba TavSesafris maZieblobaze, acadebdnen ra, rom ugandis erovnuli winaaRmdegobis moZraoba (National Resistance Movement) mas sastikad epyroboda da rom maT mosarCele mxolod imis gamo gaupatiures, rom asocirebuli iyo xelisuflebis winaRmdegobis

armiasTan (Lords Resistance Army). mosarCele miuTiTebda, rom dabrunebis SemTxvevaSi safrTze emuqreboda mis sicocxlesa da usafrTxoebas.

11. 1998 wlis agvistoSi mosarCeles ganuviTarda Sidsis meore generaciis daavadeba, kapoSis sarkoma da cd4 limfocitebi dauvarda 10-mde (maSin rodesac janmrTel adamians aqvs 500-ze meti). antiretrovirusuli wamlebiT mkurnalobisa da xSiri monitoringis Sedegad mosarCelis viTareba dastabilurda da 2005 wlisaTvis, rodesac lordTa palatam ganixila misi saqme, misi cd4 limfocitebi momatebuli iyo 414-mde.
12. 2001 wlis martSi, mosarCelis advokatis Txovnis safuZvelze, konsultantma Terapevtma moamzada saeqsperto daskvna, sadac gamoxata azri, rom gavrcelbuli kapoSis sarkomisa da infeqciebis riskis gamo antiretrovirusuli mkurnalobis gagrZelebhis gareSe, romliTac xdeboda cd4 raodenobis gaumjobeseba da SenarCuneba da gamosayenebeli wamlebis jerovani kombinirebis monitoringis gareSe, mosarCelis sicocxlis xangrZlivoba iqneboda erT welze naklebi. misTvis saWiro wamlebi iSovneba ugandaSi, Tumca sagrZnobad Zviri Rirs da mosarCelis mSobliuri qalaqi masaka wamlis erTob SezRuduli raodenobiT aris momaragebuli. moxsenebis avtorma aRniSna, rom ugandaSi ar arsebobda sajarod dafinansebuli sixlis monitoringis programa, sabaziso samedicino movla, socialuri usafrTxoeba, sakvebiTa Tu saxxovreblit uzrunvelyofa.
13. 2001 wlis 28 marts saxelmwifo mdivanma uari ganacxada TavSesafris miniWebaze sandoobis naklebobisa da imis gamo, rom ugandis xelisufleba ar iyo dainteresebuli mosarCeliT. mosarCeles aseve uari eTqva me-3 muxlis safuZvelze wardgenil saCivarze: saxelmwifo mdivanma aRniSna, rom ugandaSi Sidsis mkurnaloba Seesabameboda sxva afrikul qveynebSi arsebul viTarebas da rom yvela mTavari anti-retrovirusuli wamali ugandaSi xelmisawvdomi iyo subsidirebul fasad.
14. mosamarTlem mosarCelis saapelacio saCivari ganixila 2002 wlis 10 ivliss. man ar daakmayofila saapelacio sarCeli TavSesafarze da ganixila apelacia me-3 muxlis safuZvelze, daeyrdno ra ganaCens saqmeze *D v. the United Kingdom* (1997 wlis 2 maisis gadawyvetileba, *Reports of Judgments and Decisions* 1997-III). man daadgina, rom mosarCelis saqme xvdeboda TavSesafris direktoratis instruqciebis farglebSi, romelic gansazRvavda, rom gamonaklis SemTxvevebSi, gaerTianebul samefoSi darCenis an Semosvliis ufleba unda gaices:

“Tu arsebobs *sando* samedicino mtkicebuleba, rom dabruneba, mocemul qveyanaSi arsebuli samedicino saSualebebis gamo, Seamcirebs mosarCelis sicocxlis xangrZlivobas an dauqvemdebarebs mas mwvave fizikur da mentalur tanjvas, maSin, gaerTianebulma samefom unda ikisros valdebuleba izrunos mocemul pirze ...”

15. saxelmwifo mdivanma gaasaCivra me-3 muxlze dafuZnebuli gadawyvetileba miuTiTebda ra, rom Sidsis yvela wamali, romelic erovnuli jandacvis servisis farglebSi xelmisawvdomi iyo gaerTianebul samefoSi, aseve xelmisawvdomi iyo ugandaSi. amasTanave umetesi wamali xelmisawvdomi iyo Semcirebuli fasiT gaeros mier dafinansebuli proeqtebisa da donorebis mier dafinansebuli Sidsis ormxrivi programebis daxmarebiT. Sesabamisad, mosarCelis dabruneba ar moxdeboda im pirobebSi sadac “saerTod ararosebobs samedicino mkurnaloba” da gamomdinare aRniSnulidan igi ar daeqvemdebareboda “mwvave fizikur da mentalur tanjvas”.

imigraciis saapelacio tribunalma ganixila apelacia 2002 wlis 29 noembers da daadgina:

“[mosarCelis] samedicino mkurnaloba SesaZlebelia ugandaSi, Tumca, tribunali iziarebs xedvas, rom ugandaSi arsebuli samedicino momsaxureba didwilad Camouvardeba gaerTianebul samefoSi arsebul standarts. aRniSnul CamorCenas adgili eqneba maSinac, rodesac xelmisawvdomi gaxdeba metad ganviTarebuli wamlebi, radganac amgvvari wamlebi pirvel rigSi maRalganviTarebul qveynebsi vceldeba xolme. miuxedavad amisa, uganda yovel Rones xmarobs raTa moagvaros Sidsis mxiv arsebuli viTareba – Sidsis samkurnalo wamlebi iSovneba, xdeba wamlebis sxadasxva saxeobebis miwodeba (Tumca dagvianebiT) da manamde, sanam ar gvecodineba [mosarCelis] konkretuli da cvalebadi saWiroebebi, rTuli iqneba misi saWiroebebis dadgena da Sesiferisi mkurnalobis xelmisawvdomobis gansazRvra.”

16. 2003 wlis 26 ivniss saapelacio sasamarTlom Tanxmoba gamoxata saapelacio sarCelis ganxilvaze da 2003 wlis 16 oqtombers mosarCelis saapelacio saCivari ar iqna dakmayofilebuli ori xmiT erTis winaaRmdeg ([2003] EWCA Civ 1369). D. saqmeze dayrdnobiT (citirebuli zemoT), mosamarTle losma (romelsac daeTanxma mosamarTle disoni) aRniSna:

"Cemi azriT – miuxedavad imisa, rom kontrasti Zalian didia xelmomwer saxelmwifoSi garkveuli droiT, SeiZleba didi xniTac, myofi mZimed avadmyofi piri SedarebiT kargad yofnasa da mis qveyanaSi dabrunebis SemTxvevaSi mis winaSe arsebul simwiresa da gaWirvebas (romelic ar ganixileba saerTaSoriso samarTlis darRvevad) Soris, warmoadgens Zalian sust arguments, raTa masze davafuZnoT an ganvavrcOT saxelmwifos mier mis teritoriaze datovebis samarTlebrivi valdebuleba. es ukanaskneli iqneba valdebuleba, romelic ar efuZneba qveynis demokratiuli xelisuflebis, aRmasrulebeli an sakanonmdeblo Stos arc erT gadawyvetilebas an politikas. saimigracio politikis SemuSaveba ... warmoadgens arCeuli mTavrobis pasuxismgeblobis paradigmas. SesaZlebelia CaiTvalos, rom amgvvari pasuxismgebloba, romelic ganixileba adamianis uflebaTa evropuli konvenciidan gamomdinare Tanmdev samarTlebriv valdebulebad, maSin rodesac mocemuli piri iTxovs dacvas wamebisagan an sxva arasaTanado mopyrobisagan, romelsac igi SeiZleba daeqvemdebaros mis qveyanaSi, warmoadgens me-3 muxliT dawesebuli standartebis darRevas, gansakuTrebiT ki Tu aRniSnuli ganxorcieldeba saxelmwifos mier. Tumca, sarCeli, romelic miznad isaxavs resursebis saWiroebisagan dacvas, miuxedavad imisa, rom es ukanaskneli kidev ufro mkacrdeba im pirobebTan SedarebiT, rac xelmisawvdomia mimReb saxelmwifoSi, sxva movlenas warmoadgens.

... me miviCnevdi, rom me-3 muxlis gamoyeneba, maSin rodesac sarCelis safuZvels warmoadgens resursebis saWiroeba samSobloSi (imasTan SedarebiT Tu ra aris xelmisawvdomi im qveyanaSi saidan gasaxlebazec aris saubari), gamarTlebulia mxolod maSin, rodesac saqme humanitarul WrilSi imdenad STambeWdavia, rom civilizebuli saxelmwifos ar SeuZlia misi ugulvebelyofa. aRniSnuli, vaRiareb, ar warmoadgens mkacr samarTlebriv tests ... amgvar SemTxvevaSi me-3 muxli unda efuZnebodes faqtebs, romelic aris aramarto gamonaklisi, aramed eqstremaluri;

eqstremaluri yvela an bevr im saqmesTan SedarebiT, romelic (msgavsad amisa) saWiroebs mxardaWeras misi ukiduresobis gaTvaliswinebiT...”

mosamarTle lord qernuoTma, gansxvavebuli pozicia gamoxata da aRniSna, ver ityoda viTomda saqmis faqtebi imdenad naTeli iyo, rom erTaderTi gonivruli daskvna miuTiTebda me-3 muxlis gamouyeneblobaze. pirobebis im aSkara gansxavebis mixedviT, romelic mosarCeles hqonda gaerTianebul samefoSi da praqtikuli siaSkarave imisa, rom misi cxovrebis xangrZlivoba mniSnelovnad Semcirdeboda ugandaSi dabrunebis SemTxvevaSi imis gaTvaliswinebiT, rom mas ojaxisagan daxmarebis miRebis saSualeba ar hqonda, saqme unda gadacemuliyo faqtebis damdgeni organos - saimigracio apelaciis tribunalisaTvis.

17. mosarCeles mieniWa lordTa palataSi apelaciis ufleba da 2005 wlis 5 maiss, lordTa palatam erTxmad ar daukmayofila mosarCeles saapelacio sarCeli ([2005] UKHL 31). lordma nikolsma birkenhedidan Seajama mosarCelis janmrTelobis mdgomareoba Semdeggvarad:

“... 1998 wlis agvistoSi [mosarCeles] ganuviTarda Sidsis meore generacia, kapoSi sarkoma. cd4 ujredebi normalur janmrTel adamanSi 500 aWarbebs, mas ki 10-ze naklebi hqonda.

Tanamedrove wamlebisa da xangrZlivi, kompetenturi mkurnallobis Sedegad, maT Soris sistematuri qimioTerapiis gaxangrZlivebuli kursis daxmarebiT, [mosarCele] axla bevrad ukeTaa. misi cd4 raodenoba gaizarda [10-dan] 414-mde. viTareba stabiluria. misi eqimi aRniSnavs, rom Tu avadmyofs mudmivad eqneba wamlebi da samedicino saSualebebi, romliTac mkurnalobs gaerTianebul samefoSi igi SeiZleba kargad iyos “aTwleulebis” ganmavlobaSi. Tumca, am wamlebisa da saSualebebis gareSe prognozi aris “Semzaravi”: igi daitanjeba avadmyofobiT, diskomfortiT, tkiviliT da gardaicvleba erT an or welSi. es ki imitom, rom maRalaqtiuri antiretrovirusuli medikamentebi, romlebsac igi axla iRebs, ar kurnavs mis daavadebas. igi ar aRadgens mis daavadebamdel mdgomareobas. medikamentebi axorcieleben daavadebuli imunuri sistemis funqcias da icaven im Sedegebisagan, rasac iwevs imunitetis nakleboba manamde da sanam, igi ganagrZobs maT miRebas.

sastiki sinamdvile isaa, rom Tuki [mosarCele] dabrundeba ugandaSi, mis mier saWiro medikamentebis miReba problemuri iqneba. anu, TuU igi dabrundeba ugandaSi da ver miiRebs imgvar samedicino daxmarebas romelic mas sWirdeba daavadebis sakontrolod misi viTareba iqneba msgavsi im SemTxvevisa, rodesac xdeba sicoclis SemanarCunebeli manqanis gamorTva.”

lordi houfi, romelsac daeTanxmnen lordi nikolsi birkenhedidan, lordi brauni iTon-anderheivudidan da lordi uokeri gestingtorpidan, detalurad Seexo sasamarTo praqtikas (ix. qvemoT paragrefebi 32-39) da aRniSna:

“... strasburgi ganuxrelad efuZneba or ZiriTad principals. erTis mxriv me-3 muxlis fundamenturi buneba, romlis garantiebic vrceldeba mosarCelis gasakicxi saqcielida miuxedavad. ... meores mxriv ucxo qveynis moqalaqeebi, romlebic deportacias eqvemdebarebian da ar arian uflbamოსილნი moiTxovon xelSemkvreli saxelmwifos teritoriaze darCena, raTa ganagrZon samedicino, socialuri an sxva formis daxmarebis miReba

gamZevebeli saxelmwifosagan. imisaTvis, rom gaZeveba ar Sedges, samedicino viTareba unda iyos gamonaklisi... SekiTxva, romelsac sasamarTlom pasuxi unda gasces exeba imas, Tu ramdenad aris mosarCelis janmrTelobis mdgomareoba imgvari, rom humanitarul safuZvelze dauSveblad CaiTvalos misi gaZeveba. gamonaklisi iqneba Tu damtkicdeba, rom misTvis aSkarad saWiro samedicino da socialuri pirobebi realurad xelmisawvdomia mimReb saxelmwifoSi. ramdenime im iSviaT SemTxvevaTagan, sadac mocemuli testi dakmayofilda gaxlavT saqmeebi *D. v. the United Kingdom ...* da *B.B. v. France ...* strasburgis sasamarTlo cdilobs, rom aRar ganavrcos im gamonaklis SemTxvevaTa kategoria rac dadgenil iqna *D. v. the United Kingdom* saqmeSi.

SesaZlebelia, rom sasamarTlos *D. v. the United Kingdom* da *B.B. v. France* saqmeebis Semdeg aRar ganuxilavs samedicino teqniki ganviTarebis Sedegebi. dReisaTvis arsebuli poziciis mixedviT, aiv infeqciebis efeqtiani da ganusazRvrelis kontroli SesaZlebelia antiretrovirusuli medikamentebis daxmarebiT. TiTqmis yvela SemTxvevaSi, sadac amgvvari mkurnaloba warmatebulad xorcieldeba dadgenilia, rom pacienti janmrTelad grZnobs Tavs. Tumca, TiTqmis yvela SemTxvevaSi, rodesac mkurnaleba wydeba, Zalian mokle droSi xdeba yvela im simptomis xelaxali gamovlineba, romelic awuxebda patients da Sedegad mivdivarT naadrev gardacvalebamde. antiretrovirusuli mkurnaloba SeiZleba SevadaroT sicocxlis SemnarCunebel manqanas. marTalia, mkurnalobis Sewyvetis Semdgomi Cvnebebi ar aris meysieri, xangrZliv perspeqtivaSi isini fataluria. sasamarTlos mxridan aragulwrfeli qmedeba iqneboda gagvexila mosarCelis janmrTelobis arsebuli mdgomareoba, romelic, realuri analizisas Sedegad, srulad damokidebulia mkurnalobaze romlis gagrZelebac axla riskis winaSe dgas.

verc imas vityviT, rom sasamarTlom ar icis mocemul sferoSi samedicino mecnierebebis winsvlis Sesaxeb. *SCC v. Sweden* moyolebul yvela saqmeSi ikveTeba sasamarlos gaTviTcnobiereba. is faqti, rom sasamarTlo ar SeZra mocemulma saqmeebma, vgoneb, unda aixsnas misi erTgulebiT im principisadmi, romlis mixedviTac ucxo qveynis moqalaqeebs, romelTa gaZevebac ganixileba, ar aqvT ufleba moiTxovon xelSemkvrelis saxelmwifos teritoriaze darCena, raTa ganagrZon samedicino, socialuri an sxva formis daxmarebis miReba gamaZevebeli saxelmwifosagan. mizezi, Tu ratom moxda am principze miTiTeba da Semdeg misi gamoyeneba saqmeSi *Amegnigan v. the Netherlands...*, Cemi azriT, Zalian mniSvnelovania. sasamarTlo principSi aRniSnas is faqti, rom mkurnaloba mosarCelisaTvis ar iqneba xelmisawvdomi mimReb saxelmwifoSi, ar unda ganvixiloT gamonaklis SemTxvevad. SesaZlebelia viTareba gansxvavebuli yofiliyo, TuU vityodiT rom mimReb saxelmwifoSi samedicino mkurnaloba ar arsebobda da rom mosarCele gardaivali riskis winaSe dgeboda misi sruli ararsebobis gamo. magram amgvvari SemTxveva Zalian saeWvoa im samedicino daxmarebebis gamo, romelsac mesame samyaro iRebs, gansakuTrebiT ki sub-saharis afrika. amgvvari pirobebis gaTvaliswinebiT, rogorc es aRiniSna *Amegnigan v. the Netherlands* saqmeSi “ukidures gamonaklisad” rom CaiTvalos saqme, mosarCelem unda daadasturos, misi janmrTeobis mdgomareoba imdenad kritikulia, rom saxezea dauZleveli humanitaruli safuZveli, raTa ar moxdes misi gagzavna iseT adgilas, sadac saxezea samedicino da socialuri servisebis nakleboba, romelTa Sedegadac SesaZlebeli iqneboda mwveli tanjvis prevencia mis gardacvalebamde.

... manamde sanam [mosarCele] ganagrZobs mkurnalobas igi iqneba janmrTeli da datkbeba jansaRi cxovrebiT ramdenime aTwleulis ganmavlobaSi. misi axlandeli viTareba ver CaiTvleba kritikulad. mas SeuZlia mogzauroba da amis SesaZlebloba eqneba Tu Caitarebs saWiro mkurnalobas ugandaSi dabrunebis Semdeg. aSkaraa, rom misTvis saWiro mkurnaloba

xelmisawvdomia ugandaSi, Tumca SedarebiT mometebul fasad. mas jer isev hyavs naTesavebi iq, Tumca mosarCelis poziciis mixedviT arcerT maTgans ar surs da ar SeuZlia misi dabinaveba da masze zrunva. Cemi azriT misi saqme igive kategorias ganekuTvneba rogorsac *SCC. v. Sweden, Henao v. the Netherlands. Ndangoya v. Sweden da Amegnigan v. the Netherlands* saqmeebi. aRniSnul saqmeebSi sasamarTlo Tanmimdevrulad adgenda, rom gamonaklisi viTarebis testi dakmayofilebuli ar gaxldaT. Cemi azriT, sasamarTlos iurisprudencias mivyavarT gardauval daskvnamde, rom mosarCelis gagzavna ugandaSi ar daarRvevs konvenciis me-3 muxliT dadgenil garantiebs...”

lordma houfma daaskvna:

“[D. saqmis principebis arseboba] gamoiwvevda [mosarCelis] pirobebSi myofi yvela pirisaTvis TavSesafriS uflebis miniWebas am qveyanaSi manamde, sanam maT mSobliur qveyanaSi arsebuli aiv/Sidsis mkurnalobis samedicino standartebi ar gauTanabrdeboda evropasi arsebul. Sedegad, gaerTianebuli samefo aRmoCndeboda im riskis winaSe, rom aiv dadebiT pirTa didi raodenoba movidoda qveyanaSi im imediT, rom maTac SeeZlebodaT aq darCena da qveyanaSi arsebuli samecidino resursebiT sargebloba ganusazRvrel vadiT. aRniSnuli gamoiwvevda resursebis did da udavod ganusazRvrel raodenobiT gacemis valdebulebas, rasac, iolad rom vTqvaT, veWvob daTanxmebuliynen konvenciis xelSemkvreli saxelmwifoebi. umjobesi iqneba, Tu saxelmwifoebi ganagrZoben Zalisxmevis mobilizebas im zomebis gasatareblad rac axla gamoiyeneba medikamentebiT daxmarebis kampaniis farglebSi. aRniSnuli miznad isaxavs saWiro samedicino daxmarebis universalur da ufaso xelmisawvdomobis uzrunvelyofas mesame msflios qveynebSi, iq, sadac jer isev amdenad itanjebian aiv/Sidsis ulmobeli daavadebiT.”

baronesa heilma riCmondidan, ganixila erovnuli da sakonvencio principebi, daeTanxma, rom apelacia ar unda dakmayofilebuliyo da Semdeggvarad asaxa gamosayenebeli testi:

“... mosarCelis daavadeba miaRvevs imdenad kritikul stadias (anu gardacvalebis piras yofnas), rom araadamianur mopyrobad ganixileba misTvis im mZrunvelobis CamorTmeva, romelsac is axla iRebs da Sin gagzavna iqneba naadrevi gardacvalebis tolfasi; gamonaklisia SemTxveva, rodesac mimReb qveyanaSi arsebobs pirobebi, romlis Sedegadac beds igi Rirseulad Sexvdeba. ... mocemuli [testi] ar kmayofildeba winamdebare saqmis masalebis mixedviT.”

II. aiv da Sidsis mkurnaloba gaerTianebul samefosa da ugandaSi

18. sasamarTlos mier gamoTxovili informaciis Tanaxmad, aiv-s zogadad mkurnaloben antiretrovirusuli medikamentebiT. gaerTianebul samefoSi, msgavsad umetesi ganviTarebuli qveynebisa, aRniSnuli medikamentebi gaicema kombinirebulad, praqtika cnobilia saxeliT “maRalaqtiuri antiretrovirusuli Terapia” (maarT). antiretrovirusuli medikamentebis jerovani administrireba damokidebulia pacientis regularul, maT Soris sisxlis analizebis Semowmebaze da samedicino personalis unarze ganzazRvros misaRebi wamlebis donisa da tipis xSiri intervalebi. erovnul jandacvis sistemaSi mocemuli mkurnaloba zogadad ufasoa.
19. ugandaSi adgili hqonda mcdelobebs Semcirebuliyo qveynis damokidebuleba importirebul medikamentebze, maT Soris adgilobrivi wamlebis warmoebis gziTac.

Tumca, Cveulebriv, sub-saharis afrikis qveynebSi antiretrovirusuli wamlebis xelmisawvdomobas abrkolebs SezRuduli finansuri resursebi da jandacvis infrastruqturis uunaroba efeqtiani administrireba gauwios maT. Sedegad, msolfio jandacvis organizaciis mier Catarebuli kvlevis mixedviT ugandaSi antiretrovirusuli Terapiis saWiroebis winaSe mdgomTa mxolod naxevari iRebs mkurnalobas (msolfio jandacvis organizacia, “aiv antiretrovirusuli Terapiis globaluri xelmisawvdomobis progresi”, marti 2006, gv. 9, 11 da 72). gaerTianebuli erebis organizaciisa da msolfio jandacvis organizaciis erToblivma aiv/Sidsis programam, 2007 wels qveynebis analizisas, ugandis SemTxvevaSi daadgina, rom aiv prevenciis, mkurnalobis, zrunvisa da mxardaWeris ZiriTad baerierebs warmoadgenda SezRuduli saxelmwifo investicia, servisis SezRuduli dafarvis zona da politikis organizebis nakleboba. mniSnelovani Seusabamoba SeimCneva medikamentebis qalaqsa da soflad miwodebas Soris (msolfio jandacvis organizacia, qveynebis mimoxilva, ugandaSi aiv/Sidsis mkurnalobis masStabebis Sefaseba, dekemberi 2005). amasTanave, samedicino momsaxurebis uzrunvelyofis progress xels uSlis mkurnalobis saWiroebis mqone mosaxleobis zrda (UNAIDS/jandacvis msolfio organizacia, “Sidsis epidemiis mimoxilva”, 2006, gv.18). ugandaSi mosaxleobis swrafi zrdis gaTvalsiwinebiT, aiv SemTxvevebis stabiluroba gulisxmobs, rom ufro da ufro meti adamiani avaddeba aiv-iT yovelwliurad (UNAIDS/jandacvis msolfio organizacia, “Sidsis epidemiis mimoxilva”, 2006, gv.17).

kanonmdebloba

I. sarCelTa misaReboba

20. mosarCele davobs, rom misi avadmyofobisa da ugandaSi antiretrovirusuli da sxva samedicino mkurnalobis, socialuri daxmarebisa da samedicino zrunvis Tavisufali xelmisawvdomobis naklebobis gaTvalsiwinebiT, misi iq dabruneba gamoiwvevs mwvave fizikur da mentalur tanjvas, rasac mohyveba naadrevi gardacvaleba da gamoiwvevs konvenciis me-3 muxlis darRvevas. mTavrobam ar gaiziara mocemuli xedva.

me-3 muxlis mixedviT:

“aravin unda daeqvemdebaros wamebas an araadamianur an damamcimebel mopyrobas an sasjels.”

me-8 muxlis mixedviT:

1. yvelas aqvs ufleba, daculi iyos misi piradi da ojaxuri cxovreba, saxovrisi da mimowera.
2. dauSvebelia am uflebis ganxorcielebaSi sajaro xelisuflebis Careva, garda iseTi SemTxvevisa, rodesac aseTi Careva xorcieldeba kanonis Sesabamisad da aucilebelia demokratiul sazogadoebaSi erovnuli uSiSroebis, sazogadoebrivi usafrTxoebis, qveynis ekonomikuri keTildReobis interesebisaTvis, uwesrigobisa Tu danaSaulis Tavidan asacileblad, janmrTelobisa an moralis, anda sxvaTa uflebebis da Tavisuflebebis dasacavad.

21. sasamarTlo miiCnevs, rom sarCeli warmoSobs kanonisadmi imdenad seriozul SekiTxebs, rom maTi gansazRvra damokidebuli unda iyos saqmis arsobrivi ganxilvaze. saqmeSi ar gamoTqmula raime safuZveli saqmis miuReblad sacnobad. sarCeli, Sesabamisad, cxaddeba misaRebad. konvenciis 29 § 3 muxlis mixedviT, sasamarTlo saCivrebi arsebiT mxares ganxilavs qvemoT.

II. konvenciis me-3 muxlis savaraudo darRveva

a. mxareTa argumentebi

1. mTavroba

22. mTavrobam aRniSna, sasamarTlos praqtikis mixedviT naTeli iyo, rom msgavs samedicino davebSi me-3 muxli gamoiyeneba mxolod “gamonaklis” an “iSviaTi gamonaklis” SemTxvevebSi. me-3 muxlis gamoyenebis amgvარი SezRudva marTebulia principis doneze, imis gaTvaliswinebiT, rom safrTxis wyaro ar mdebareobda gamaZevebel saxelmwifoSi da rom igi ar gamo mdinareobda mimRebi saxelmwifos sajaro xelisuflebis pasuxismgeblobis momcvel faqtorebdan. sasamarTlo praqtikis mixedviT, “gamonaklisi pirobebi” dgindeba mxolod maSin, rodesac mosarCelis avadmyofoba miaRwevs Zalian mZime an saboloo stadias da rodesac samedicino momsaxurebisa da daxmarebis savaraudo naklebobა, maT Soris daxmareba ojaxis wevrebisagan, mimReb saxelmwifoSi imgvარი iqneboda, rom mosarCeles CamoarTmevda “yvelaze sabaziso adamianur Rirsebas _ maSin rodesac daavadeba mimdinareobs gardaულად mtkivneულად fataluri Sedegisaken” (ix. *D. v. the United Kingdom*, sarCelis # 30240/96, komisiis 1996 wlis 15 oqtombris moxseneba, § 60). msjelobisas, hqonda Tu ara adgili gamonaklis SemTxvevebs, winare saqmeebSi sasamarTlom aqcenti gaakeTa mosarCelis janmrTelobis viTarebis simZimeze im momentisaTvis, rodesac igegmeboda misi gaZeveba da mas dRemde ar uxelmZRvanelia imis detaluri ganxilviT Tu praqtikulad ramdenad xelmisawvdomi iqneba mosarCelisaTvis mimReb saxelmwifoSi arsebuli saWiro mkurnaloba da zrunva.

23. “gamonaklisi SemTxvevebi”-s zRvari ar aris dakmayofilebuli mocemul saqmeSi. mTavroba iziarebs, rom antiretrovirusuli medikamentebis gareSe mosarCelis viTareba swrafad gauaresdeba da is, daitanjeba avadmyofobiT, diskomfortiT, tkiviliT da gardaicvleba erT an or welSi. dReisaTvis daavadeba stabiluria da mosarCelisaTvis saWiro mkurnaloba xelmisawvdomia ugandaSi, Tumca SedarebiT maRal fasad. mosarCeles SeuZlia mgzavroba da amis SesaZlebloba eqneba manamde, sanam ganagrZobs saWiro mkurnalobas ugandaSi dabrunebis Semdeg. mas iq ojaxis wevrebi hyavs, Tumca acxadebs, rom maT ar surT da ar ZaluZT misi movლა seriozuli avadmyofobis SemTxvevaSi. aRniSnuli mizezebis gamo, saqme gansxvavdeba *D. v. the United Kingdom* saqmidan da xvdeba im samedicino saqmeebis kategoriaSi romlebic sasamarTlom ar daakmayofila me-3 muxlis safuZvelze (ix. qvemoT, paragrafebi 34-39).

24. ganviTarebul qveynebSi arsebuli winsvla aiv/Sidsis mkurnalobis sferoSi ar moqmedebs zemoTxsenebul zogad principze, rogorc es miTiTebulia *D. v. the United Kingdom* saqmidan moyolebuli, radganac mocemul saqmeebSi aqcenti keTdeboda Rirseul gardacvalebaze da ara sicocxlis gaxangrZlivebaze. konvenciis ganmarteba, msgavsad nebismieri saerTaSoriso xelSekrulebisa, damokidebulia xelmSemkvrel saxelmwifoTa Tanxmobaze. me-3 muxlis mosarCeleze gavrceliba Sedegad moitans sxva, uamrav SidsiTa da fataluri avadmyofobeiT daavadebul pirTa uflebas darCnen da ganagrZon sargebloba samedicino mkurnalobiT xelSemkvrel saxelmwifoebSi. warmoudgenlad JRers xelSemkvreli saxelmwifoebi dasTanxmdnen amgvar debulebas. konvencia pirvel rigSi gamiznuli gaxldaT samoqalaqo da politikuri uflebebis da ara ekonomikuri da socialuri uflebebis dasacavad. me-3 muxliT dadgenili dacva iyo absoluturi da fundamenturi, maSin rodesac jandacvasTan dakavSirebuli debulebebi sxvadasxva saerTaSoriso instrumentebSi, magaliTad evropis socialur qartiasa da ekonomikuri, socialuri da kulturuli uflebebis saerTaSoriso paqtSi ufro suliskveTebiTi xasiaTisaa da ar sTavazobs individs pirdapir aRsrulebad uflebas. mosarCelisaTvis jandacvis uflebis miniWebi me-3 muxlSi “ukana karidan” Semoparvis gziT saxelmwifoebis datovebs Tavisufali Sefasebis zRvaris gareSe, rac sruliad arapraqtikuli da konvenciis miznebis Seusabamo iqneba.

2. mosarCele

25. mosarCele amtkicebda, _ imisaTvis, rom gaZevebis saqmeSi dadges saxelmwifos pasuxismgeblobis sakiTxi, saWiroa mosarCelem daamtikos, pirveli - saxelmwifosaTvis gonivrulad ganWvretadia, rom misi moqmedeba an umoqmedoba aisaxeba zianSi da, meore - rom ziani miaRwevs me-3 muxliT gansazRvruli mopyrobis sisastikis zRvars. sasamarTlos mier ganxiluli gaZevebis saqme arafrit gansxvavdeba nebismieri sxva saqmisagan, romelic moicavs savarudo momaval zians me-3 muxlis farglebSi; analizi Sidsi-s an sxva seriozuli daavadebis momcvel gaZevebis saqmeSi ar gansxvavdeba im SemTxvevebisagan sadac arasaTanadod mopyrobis safrTxe gamomdinareobs mimRebi saxelmwifos organoebisagan. metic, ar arsebobda ganyenebuli gansxvaveba mwvel tanjvas, romelic efuZneba sikvdilis karTan myofi piris gaZevebas, da im piris tanjvas Soris, romelic fsiqologiurad ar iyo mzad gadarCeniliyo sikvdils im mkurnalobiT, romlis Sewyvetasac axla sTavazoben.

26. mocemul saqmeSi aSkara gaxldaT kontrasti mosarCelis axlandel viTarebasa da im viTarebas Soris, romelSic SeiZleba igi aRmoCndes gaZevebis SemTxvevaSi. mosamarTlem daadgina, rom gaZevebis SemTxvevaSi mosarCele daeqvemdebareboda mwvel fizikur da mentalur tanjvas, rasac mohyveba naadrevi gardacvaleba. mocemuli daskvna ar Secvlila Sidasaxelmwifoebriwi warmoebis dros da naTlad iqna gaJRerebuli lord houfisi moxsenebaSi (ix. zemoT, paragrefebi 14-17).

27. mosarCelem aRniSna, rom ugandaSi misi eqvsi da-Zmidan xuTi gardaicvala aiv dakavSirebuli daavadebiT. igi TviTmxilveli gaxdaT maTi gardacvalebisa da icoda, rom ugandel eqimebs xelewifebodaT mxolod simptomebis Semsuubuqeba. mis mSobliur qalaqSi saavadmyofo Zalian patara iyo da ar SeeZlo Sids-Tan dakavSirebuli

daavadebebis marTva. igi Zalian dasustebuli iyo raTa emuSava da ar eqneboda saSualeba erCina sakuTari Tavi an gadaexada medikamentebis safasuri ugandaSi dabrunebis SemTxvevaSi. misi cxovrebis xarisxi SemaZrwunebeli iqneboda; igi maleve daubrundeboda janmrTelobisvis mZime mdgomareobas. amasTanave, mas aRar hyavda cocxali naTesavi raTa misTvis moeara. gaerTianebul samefoSi wlebis ganmavlobaSi yofnisas man Seiqlma piradi cxovreba im asociaciebs, xalxsa da organizaciebTan kontakts safuZvelze, romlebic mas exmarebodnen ebrZola avadmyofobasTan da uwevden misTvis saWiro samedicino, socialur da fsiqologur daxmarebas.

3. *mesame mxare*

28. adamianis uflebaTa helsinkis fondma, arasamTavrobo organizacia saTao ofisiT varSavaSi, poloneTi, aRniSna, rom sasamarTlos mier dadgenili standartebi zegavlenas iqoniebda Sidsi-T daavadebul pirTa did raodenobaze da rom sasamarTlos SeeZlo gamoeyenebina mis xelT arsebuli saSualeba da ganemarta is faqtorebi, romelic unda iqnas gaTvaliswinebuli aiv/SidsiT inficirebuli piris gaZevebisas. mocemuli faqtorebi unda iTvaliswinebdes maspinZel qveyanaSi myofi da antiretrovirusul mkurnalobas daqvemdebarebuli piris mier SeZenil uflebebs; gasaZevebeli piris samedicino mdgomareobas, ZiriTadad ki misi damokidebulebis xarisxs antiretrovirusul Terapiaze, aseve mocemuli individisaTvis warmoSobis qveyanaSi medikamentebis xelmisawvdomobas.

b. sasamarTlos Sefaseba

1. *me-3 muxli da gaZeveba, zogadi principebi*

29. sasamarTlos ucveleli praqtikis mixedviT, imisaTvis, rom cudad mopyroba ganxilul iqnas me-3 muxlis WrilSi, man unda miaRwios sisastikis minimalur zRvars. mocemuli sisastikis minimaluri zRvaris Sefaseba fardobiTia, igi damokidebulia saqmis yvela garemoebaze, maT Soris mopyrobis xangrZlivobaze, mis fizikur da mentalur Sedegebze, zogierT SemTxvevebSi, sqesze, asakze da msxverplis janmrTelobis mdgomareobaze (ix. sxva mravalTa Soris, *Jalloh v. Germany* [dp], # 54810/00, § 67, *ECHR* 2006). tanjva, fizikuri Tu mentaluri, romelic momdinareobs bunebrivad damdgari daavadebisagan SeiZleba moculi iyos me-3 muxliT maSin, rodesac saxezea, an arsebobs safrTxe, rom gamwvaveba efuZneba dakavebis, gaZevebis an sxva zomebidan gamomdinare mopyrobas, romelzec pasuxismgebloba SesaZlebelia xelisuflebas daekisros (*Pretty v. the United Kingdom*, 2346/02, § 52, *ECHR* 2002-III; *Kudła v. Poland* [GC], no. 30210/96, § 94, *ECHR* 2000-XI; *Keenan v. the United Kingdom*, no. 27229/95, § 116, *ECHR* 2001-III; *Price v. the United Kingdom*, no. 33394/96, § 30, *ECHR* 2001-VII).
30. sasamarTlos dadgenili praqtikiT, saerTaSoriso samarTliT dadgenili da xelSekrulebebiT gansazRvruli principis mixedviT, maT Soris mocemuli konvenciis

safuZvelzec, xelSemkvrel saxelmwifoebis aqvT ufleba akontrolon ucxoelTa Semosvla, cxovreba da gaZeveba. Tumca, xelSemkvreli saxelmwifos mier piri gaZeveba SesaZlebelia Seexos me-3 muxls da, Sesabamisad, saxelmwifos pasuxismgeblobas konvenciis safuZvelze, Tuki arsebobs myari niadagi imis dasajereblad, rom mocemuli piri, deportirebis SemTxvevaSi, dgas me-3 muxliT akrZaluli mopyrobis realuri safrTxis winaSe. amgvar SemTxvevaSi, me-3 muxli moicavs valdebulebas ar moxdes aRniSnuli piri deportireba calkeul qveyanaSi (*Saadi v. Italy*, [dp], # 37201/06, §§ 124-125, ECHR 2008).

31. me-3 muxli umTavresad gamoiyeneba im deportaciisa Tu gaZevebis Tavidan asacileblad, romlis drosac mimReb qveyanaSi sastiki mopyrobis safrTxe gamomdinareobs saxelmwifo organoebis mier Cadenili mizanmimarTuli qmedebebisagan an arasamTavrobo erTeulebisagan, maSin rodesac saxelmwifos ar ZaluZs ganmxcadeblis Sesafetisi dacva (*H.L.R. v. France*, gadawvyvetileba 29 aprili 1997, *Reports* 1997-III, § 32; *Ahmed v. Austria*, gadawvyvetileba 17 dekemberi 1996, *Reports* 1996-IV, § 44).

2. *sasamarTlo praqtika me-3 muxlsa da seriozulad avadmyof pirTa gaZevebasTan dakavSirebiT*

32. konvenciis sistemaSi me-3 muxlis fundamenturi mniSvnelobasTan erTad, sasamarTlom zemoTxsenebul saqmeSi *D. v. the United Kingdom* (§ 49), daitova sakmarisi sivrce lavirebisaTvis me-3 muxli gamoeyenebina sxva konteqstebSi, romelic SeiZleba warmoiSvas im SemTxvevaSi, rodesac mimReb saxelmwifoSi akrZaluli mopyrobis safrTxis wyaro SeiZleba ar gaxldeT mocemuli saxelmwifos mTavrobis pirdapiri an arapirdapiri pasuxismgeblobis safuZveli an romelic, calkeulad aRebuli TavisTavad ar arRvevs me-3 muxlis standartebis.
33. mosarCeles saqmeSi *D. v. the United Kingdom* iyo sent-kitsis moqalaqe, romelic pasuxisgebaSi mieca da sasjeli ganesazRvra gaerTianebul samefoSi narkotikebTan dakavSirebuli danaSaulis gamo. patimrobis vadis moxdis Semdeg, gaerTianebuli samefos xelisuflebam moiTxova misi deportireba sent-kitsSi. mocemuli droisaTvis mosarCeles hqonda Sidsis saboloo etapi. sasamarTlos mier saqmis ganxilvis droisaTvis misi “cd4” ujredobis raodenoba 10-ze naklebs Seadgenda da mis imunur sistmas sastiki da aRudgenadi ziani hqonda miyenebuli, prognozi Zalian arasaimedo gaxldaT - rogorc Canda, igi axlos iyo gardacvalebasTan. mas gaweuli hqonda konsultacia gardacvalebis Sesaxeb da mWidro kavSiri hqonda damyarebuli masze mZrunav pirebTan. sasamarTlos winaSe arsebuli mtikebulebebiT, sent-kitsi ar iyo saTanadod aRWurvili samedicino saSualebebiT raTa mosarCelisaTvis gaewia misTvis saWiro mkurnaloba; adgilze mosarCeles arc saxli hqonda da arc axlo naTesavebi hyavda, romelTac SeeZlebodaT masze zrunva. sasamarTlom daadgina (§§ 53-54), rom:

“aRniSnuli gamonaklisi garemoebebisa da imis gaTvaliswinebiT, rom mosarCelis sasikvdilo daavadebam kritikul zRvars miaRwia, sent-kitsSi misi gaZevebis gadawyvetilebis implementacia gautoldeba araadamianur mopyrobas mopasuxe saxelmwifos mxridan da warmoadgens me-3 muxlis darRvevas.

... mopasuxe saxelmwifom ikisra mosarCelis mkurnalobis valdebuleba 1994 wlis agvistos Semdeg. igi damokidebuli Seiqla samedicino da viTarebis Semamsubuqebel zrurvaze romelsac axla iRebs da aSkaraa, rom mzad aris gardaicvalos im garemoebaSi, romelic misTvis cnobili da misadmi TanagrZnobis gamomxatvelia. marTalia ver vityviT, rom mimReb saxelmwifoSi arsebuli pirobebi TavisTavad warmoadgenen me-3 muxlis standartebis darRvevas, magram mosarCelis gaZevebis Sedegad igi aRmoCndeba yvelaze mZime pirobebSi gardacvalebi safrTxis winaSe, rac Sesabamisad, araadamianuri mopyrobis tolfasia.

...

mocemuli viTarebis gaTvaliswinebiT sasamarTlo aRniSnavs, rom ucxoelebs, romlebmac sapatimro sasjeli moixades da eqvemdebarebian gaZevebas, ar aqvT zogadi ufleba moiTxovon xelSemkvreli saxelmwifos teritoriaze darCena raTa ganagrZon misi samedicino, socialuri an sxva formis daxmarebiT sargebloba, romelsac gamaZevebeli saxelmwifo maT sTavazobda patimrobis dros.

Tumca, mocemuli saqmis iSviaTi gamonaklisi garemoebebisa da dauZleveli humanitaruli viTarebis gaTvaliswinebiT, miviCnevT, rom mosarCelis gaZevebis Sesaxeb gadawyvetilebis aRruleba ganixileba me-3 muxlis darRvevad.”

34. *D. v. the United Kingdom* saqmis gadawyvetilebis Semdeg, sasamarTlos aRar daudgenia me-3 muxlis darRveva xelSemkvreli saxelmwifodan ucxoelis gaZevebis gamo mosarCelis avadmyofobis safuZvelze.
35. saqmeSi *B.B. v. France*, N. 30930/96, *Reports* 1998-VI, mosarCele, romelmac sapatimro sasjeli moixada safrangeTSi, daavadebuli iyo SidsiT da imunitetis mwvave daqveiTebiT. misi viTareba damZimda da saWiroebda saavadmyofoSi ganmeorebad ganTavsebas, Tumca antiretrovirusuli mkurnaobis safuZvelze, romelic misi ganxadebiT misTvis ar iyo xelmisawvdomi samSobloSi, kongos demokratiul respublikaSi, viTareba dastabilurda. komisiამ მოხსენებასი დაადგინა, რომ დიდი ალბათობით, მოსარცელის დეპორტირების შემთხვევაში მას არ მიუვდებოდა ხელი ვირუსის შემაკაველ მკურნალობაზე და რომ მისი გვეყანასი არსებული მრავალი ეპიდემია დიდუღად გავრცედა ინფიცირების რისკს. მოსარცელის მიერ ავადმყოფობის მართო გამკლავება, ოჯახის წევრების დამხმარების გარეშე, სავარაუდოდ შეუზღებელს გახდოდა ადამიანური ჩირსების სენარცუნებას იმის გატვალისwineბიტი, რომ დაავადება ვიტარდებოდა. მან დაასკვნა, რომ მისი დეპორტირება იყნებოდა მე-3 მუღლის დარRვევა. საყმე გადაეცა სასამარტლოს, მაგრამ მანამდე, სანამ საყმეს სასამარტლო განიღილავდა, საფრანგეთის მტავრობამ იკისრა ვალდებულა აRარ მოეღდინა მოსარცელის დეპორტირება. შესაბამისად, საყმე მოიღსნა სასამარტლოს სიდან.
36. საყმეSi *Karara v. Finland*, (#40900/98 კომისიის გადაყვეტილება 29 მაისი 1998), მოსარცელე, უგანდის მოღალაე, fineTSi მკურნალობდა აივ ინფეციას 1992 უღიდან.

komisiam mocemuli saqme ganasxvava *D. v. the United Kingdom* da *B.B. v. France* saqmeebidan, radgan mosarCelis daavadeba ar iyo im stadiaze, rom misi deportacia ganxiluliyo me-3 muxlis darRvevad. Sesabamisad, saqme miuReblad gamocxadda.

37. mosarCele saqmeSi *S.C.C. v. Sweden* (gadawvytileba), # 46553/99, 15 Tebervali 2000, gaxldaT zambiis moqalaqe romelsac uari ganucxades SvedeTis teritoriaze Sesvlaze, sadac is winaT cxovrobdada da mkurnalobda aiv-s. mosarCelem warmoadgina samedicino mtkicebuleba, romlis mixedviTac sicocxlis gamaxangrZlivebeli mkurnaloba mravalgzis ufro warmatebuli iqneboda, Tuki mas miecemoda mkurnalobis SvedeTSi gagrZelebisi saSualeba, radgan samedicino daxmarebisa da monitoringis saSualebebi zambiaSi mniSnelovnad CamorCeboda Svedurs. sasamarTlom sarCeli miuReblad CaTvala, radgan zambiaSi SvedeTis saelCos mixedviT iq, marTalia ufro met fasad, magram mainc xelmisawvdomi iyo Sidsis igive tipis mkurnaloba da rom gamcxadeblis Svilebi da ojaxis wevrebisi iq cxovrobdnen. mosarCelis janmrTelobis arsebuli mdgomareobis gaTvaliswinebiT, misi gagzavna zambiaSi ar udrida me-3 muxlSi aRweril mopyrobas.
38. Semdeg wels, sasamarTlom gamoitana gadawvytileba saqmeze *Bensaid v. the United Kingdom*, # 44599/98, ECHR 2001-I. mosarCele, alJiris moqalaqe, daavadebuli gaxldaT SizofreniiT da ukve ramdenime wlis ganmavlobaSi mkurnalobda gaerTianebul samefoSi. sasamarTlom erTxmad ar daakmayofila sarCeli me-3 muxlis safuZvelze da aRniSna (\$\$ 36-40):

“winamdebare saqmeSi, mosarCele daavadebulia grZelvadiani gonebrivi daavadebiT – SizofreniiT. igi amJamad iRebs medikaments, olanzafins, romelic mas exmareba simptomebis marTvaSi. Tu is dabrundeba alJirSi, mocemuli wamali misTvis, rogorc ambulatoriuli pacientisaTvis ufasod xelmiawvdomi aRar iqneba. igi ar aris socialuri dazRvevis fondis monawile da ver moiTxovs anazRaurebas. Tumca, wamali misTvis xelmisawvdomi Seiqneba Tuki gaxdeba stacionaruli patienti. savaraudod, gadaxdis Sedegad, wamali misTvis xelmisawvdomi iqneba rogorc ambulatoriuli pacientisTvisac, msgavsad sxva medikamentebisa, romelic gamoiyeneba gonebrivi daavadebis samkurnalod da isic, savaraudod, xelmisawvdomi iqneba. mkurnalobis ganmaxorcielebeli uaxloesi saavadmyofo mdebareobs blidaSi, 75 – 80 kilometrSi im soflidan, sadac mosarCelis ojaxi cxovrobs.

medikamentebis mopovebis sirTule da stresi, romelic Tan sdevs alJiris im nawilSi dabrunebas, sadac mZvinvarebs Zaladoba da terorizmi, rac, mosarCelis mixedviT, mniSnelovan safrTxes uqmnis mis janmrTelobas. misi ukve arsebuli gonebrivi daavadebis gauaresebam SesaZlebelia gamoiwvrios halucinaciebis dabruneba da fsiqozuri iluziebi, romelic iwvevs TviTdazianebas an sxvaTa winaaRmdeg agresii gamovlinebas, rac Sedegad zRudavs mis socialur arsebobas (magaliTad xelis Caqneva da motivaciis naklebobas). sasamarTlo miiCnevs, rom viTarebis gauaresebasTan dakavSirebuli tanjva, principSi, xvdeba me-3 muxlis farglebSi.

sasamarTlo aRniSnavs, rom mosarCele viTarebis gauaresebis safrTxis winaSe dgas im SemTxvevaSi, Tuki darCeba gaerTianebul samefoSi, radganac misi daavadeba xangrZlivia da saWiroebs mudmiv yuradRebas misi gaZeveba, iseve rogorc gansxvaveba personalur mxardaWerasa da mkurnalobis xelmisawvdomobaSi, savaraudod gazrdis safrTxes. mosarCele amtkicebs, rom sxva wamblebi nakleb savaraudoda iyos misi mdgomareobisaTvis Svebis momgvreli da rom stacionarul mkurnalobas unda mimarTos rogorc ukanasknel zomas. miuxedavad amisa, samedicino mkurnaloba mosarCelisaTvis xelmisawvdomia alJirSi. is faqti, rom mosarCelis pirobebi alJirSi naklebad xelsayreli iqneba vidre gaerTianebul samefoSi, ar aris gadawvyveti konvenciis me-3 muxlis gadasaxedidan.

sasamarTlo miiCnevs, rom mosarCelis janmrTelobis mdgomareobis gauaresebis safrTxe alJirSi dabrunebis SemTxvevaSi da am SemTxvevaSi adeqvaturi daxmarebis an zrunvis ar gaweve didwilad spekulaciuria. argumentebi, romelic exeba misi ojaxis wevrebis, rogorc RmrTismoSiSi musulmanebis damokidebulebas, blidaSi mgzavrobis sirTulesa da am faqtorebis zemoqmedebas mis janmrTelobaze, aseve spekulaciuria. mxareebis mier mowodebuli informacia ar asaxavs, rom saavadmyofomde mgzavroba realurad ferxdeba regionSi arsebuli viTarebis gamo. mosarCele Tavad ar warmoadgens teroristuli saqmianobis savaraudo mizans. im SemTxvevaSic ki, Tu mis ojaxs ar gaaCnia avtomobili, aRniSnuli ar gamoricxavs sxva saSualebebiT gadadgilebis SesaZleblobas.

sasamarTlo iziarebs mosarCelis janmrTelobis viTarebis seriozulobas. amasTanave, iTvaliswinebs ra me-3 muxliT dadgenili zRvaris simaRles, gansakuTrebiT ki im SemTxvevebSi, rodesac zianis miyenebis saqme ar exeba xelSemkvreli saxelmwifos pirdapir pasuxismgeblobas, sasamarTlo ar miiCnevs, saxezea sakmarisad realuri safrTxe imisa, rom mosarCelis gagzavna mocemul pirobebSi daarRvevs me-3 muxliT dadgenil standartebis. saqme ar warmoadgens *D. v. the United Kingdom* saqmeSi (citirebuli zemoT) dadgenil gamonaklis viTarebas, sadac mosarCele gaxldaT sasikvdilo daavadebis, Sidsis, bolo stadiaze da ar gaaCnda samedicino zrunvis an ojaxis mxardaWeris aranairi perspeqtiva sent-kitsSi gaZevebis SemTxvevaSi.”

39. saqmeSi *Arcila Henao v. The Netherlands* (gadawyvetileba # 13669/03, 24 ivnisi 2003), mosarCele gaxldaT kolumbiis moqalaqe; narkotikebiT vaWrobis gamo sapatimro sasjels moxdisas igi aiv dadebiTi aRmoCnda da, Sesabamisad, daeniSna antiretrovirusuli mkurnaloba. sasamarTlom daadgina, rom mosarCelis arsebuli mdgomareoba normaluri iyo, Tumca, mkurnalobis Sewyvetis SemTvevaSi, SeiZleba gauaresebulo. man aRniSna, rom saWiro mkurnaloba “principSi” xelmisawvdomi iyo kolumbiaSi, iq sadac cxovroba mosarCelis mama da eqvsi dedmamiSvili. sasamarTlom mocemuli *saqme* ganaxvava *D. v. the United Kingdom da B.B. v. France* saqmeebidan (orive citirebuli zemoT), imdenad, ramdenadac mosarCelis daavadeba ar iyo mZime an saboloo stadiaze da warmoSobis qveyanaSi mas hqonda samecidino zrunvisa da ojaxuri mxardaWeris saSualeba. Sesabamisad, mosarCelis viTareba ar dadginda imdenad gamonaklisi xasiaTis mqoned, rom misi gaZeveba ganxilulo konvenciiT gaTvaliswinebul mopyrobad; Sesabamisad, sarCeli miuReblad CaiTvala.
40. mosarCele saqmeSi *Ndangoya v. Sweden* (gadawyvetileba), # 17868/03, 22 ivnisi 2004, gaxldaT tanzaniis moqalaqe romelic gadioda antiretrovirusul mkurnalobas, romlis Sedegadac misi aiv done imdenad warmatebiT Sencirda, rom misi dadgena Wirda. aRiniSna, rom tanzaniaSi am mkurnalobis miRebis perspeqtiva Zalian mcire iyo da rom misi Sewyveta gamoiwvevda misi imunuri sistemis SedarebiT swraf gauaresebas, erT-or welSi Sidsis ganviTarebas da sam-oTx welSi ki gardacvalebas. sarCeli miuReblad CaiTvala, radgan mosarCelis daavadeba ar iyo mZime an saboloo stadiaze; adeqvaturi mkurnaloba SesaZlebeli iyo tanzaniaSic, Tumca meti Rirda da SezRudulad xelmisawvdomi iyo mosarCelis warmoSobis qalaqqare regionSi; da rom igi inarCunebda kavSirs naTesavebTan, romlebsac SeeZloT misi daxmareba.
41. igive daskvna iqna gamotanili saqmeSi *Amegnigan v. the Netherlads* (gadawyvetileba), # 25629/04, 25 noemberi 2004, sadac mosarCele, warmoSobiT

togodan, gadioda antiretrovirusul mkurnalobas niderlandebSi. samedicino masalis mixedviT, Terapiis SeCerebisTanave igi daubrundeboda daavadebis ganviTarebul stadias, romelic, misi ganukurnebeli xasiaTis gamo, pirdapir safrTxes Seuqmnida mosarCelis sicocxles. togoSi arsebuli pirobebis Sesaxeb angariSis mixedviT, marTalia mkurnaloba xelmisawvdomi iyo, magram pirs, romelsac ar gaaCnda janmrTelobis dazRveva, Zalian gauWirdeboda masze wvdoma naTesavebisagan finansur daxmarebis miRebis gareSe. sarCeli me-3 muxlze dayrdnobiT CaiTvala aSkarad usafuZvlod radgan mosarCelis daavadeba ar aRwevda Sidss da arc aiv-dakavSirebuli gaxldaT. miuxedavad imisa, rom sasamarTlo iziarebda mosarCelis mkurnali eqimis Sefasebas maszed, rom misi janmrTeloba gauaresdeboda mkurnalobis Sewyvetis SemTxvevaSi, sasamarTlom aRniSna, adeqvaturi mkurnaloba, principSi, xelmisawvdomi iyo togoSi, miuxedavad misi siZvirisa.

3. sasamarTlo praqtikidan gamomdinare principebi

42. daskvnis saxiT, sasamarTlo aRniSnavs rom *D. v. the United Kingdom* saqmis Semdeg, igi Tanmimdevruld iyenebs Semdeg principebs.

ucxoelbs, romlebic eqvemdebarebian gaZevebas, zogadad, ar aqvT ufleba moiTxovon xelSemkvreli saxelmwifos teritoriaze darCena, raTa ganagrZon gamaZevebel saxelmwifoSi arsebuli samedicino, socialuri an sxva formis daxmarebisa da momsaxurebis miReba. is faqti, rom mosarCelis viTareba, maT Soris sicocxlis xangrZlivoba, mniSnelovnad Semcirdeba Tuki igi gaZevebuli iqneba xelSemkvreli saxelmwifodan, ar warmoadgens sakmaris safuZvels me-3 muxlis darRvevis dasadgenad. gadawyvetileba ucxoelis, romelic itanjeba mniSnelovani gonebrivi an fizikuri daavadebiT, gaZevebaze im qveyanaSi, sadac mocemuli daavadebis mkurnalobis pirobebi xelSemkvrel saxelmwifoSi arsebulze naklebia, SeiZleba ganxilul iqnes me-3 muxlis farglebSi, mxolod ukiduresad gamonaklis SemTxvevaSi, kerZod ki im SemTxvvevaSi, rodesac gaZevebis sawinaaRmdego humanitaruli safuZvlebi dauZlevelia. *D.* saqmeSi ukiduresad gamonaklis pirobebs warmoadgenda is faqti, rom mosarCele kritikulad iyo avad da, rogorc Canda, male gardaicvleboda, mis warmoSobis qveyanaSi ar iyo garantirebul masze zrunva an samedicino movla da adgilze ar yavda ojaxi, romelsac surda an SeeZlo misi movla, an romelic uzrunvelyofda mas elementaruli sakvebiT, TavSesafriTa da socialuri daxmarebiT.

43. sasamarTlo ar gamoricxavs sxva ukiduresad gamonaklisi saqmeebis arsebobas, sadac humanitaruli safuZvlebi analogiurad dauZlevelia. Tumca, miiCnevs rom is maRali zRvari, romelic dadgenilia saqmeSi *D. v. the United Kingdom* unda SenarCundes da gamoyenebul iqnas sasamarTlos momdevno praqtikaSi, romelsac igi, zogadad, marTebulad miiCnevs imis gaTvaliswinebiT, rom msgavs saqmeebSi savaraudo momavali ziani gamomdinareobs ara saxelmwifo moxeleTa an ara-saxelmwifo erTeulebis mizanmimarTuli qmedebebisa Tu umoqmedobebisagan, aramed bunebrivad damdgari daavadebisagan da mimReb saxelmwifoSi masTan gamklavebis sakmarisi resursebis naklebobisagan.

44. marTalia konvenciaSi arsebul mraval uflebas gaaCnia socialuri Tu ekonomikuri xasiaTis gavlena, Tumca, es ukanaskneli ZiriTadad samoqalaqo da politikuri uflebebis

dacvisaken aris mimarTuli (*Airey v. Ireland*, gadawyvetileba 9 oqtomberi 1979, *Sries A*, # 32, \$ 26). konvencia srulad efuZneba balansis Ziebas sazogadoebis zogadi interesebis moTxovnebsa da individebis fundamentur uflebaTa dacvis moTxovnebs Soris (ix. *Soering v. the United Kingdom*, gadawyvetileba 7 ivlisi 1989, *Series A*, # 161, \$ 89). samedicino mecnierebaSi arsebuli winsvla, qveynebs Soris arsebul socialur da ekonomikur sxvaobasTan erTad, iwvevs xelSemkvrel saxelmwifosa da warmoSobis qveyanas Soris mkurnalobis donis mniSvnelovan gansxvavebas. konvenciis sistemaSi me-3 muxlis fundamenturi mniSvnelobis gaTvaliswinebiT, sasamarTlo saWiroebs lavirebis garkveuli donis SenarCunebas, raTa aicilos gaZeveba ukiduresad gamonaklis SemTxvevebSi, Tumca, me-3 muxli xelSemkvrel saxelmwifoebis ar akisrebs valdebulebas yvela im ucxoels, romelTac ar gaaCniaT qveynis iurisdicciis farglebSi yofnis ufleba, Seumsbuqos viTareba ufaso da SeuzRudavi jandacvis uzrunvelyofis gziT. sawinaaRmdegos dadgena gamoiwvevda xelSemkvrel saxelmwifoebze zedmeti tvirTis dakisrebas.

45. sabolood, sasamarTlo miiCnevs, rom marTalia winamdebare sarCeli, msgavsad umetesi zemoTmoxmobili saqmisa, exeba aiv da Sids-Tan dakavSirebiT daavadebuli piris gaZevebas, igive principebis unda iqnas gamoyenebuli nebismier pirze, romelic daavadebulia seriozuli, bunebrivad damdgari fizikuri Tu gonebrivi avadmyofobiT, romelmac SesaZlebelia gamoiwvios tanjva, tkivili, Seamciros sicocxlis xangrZlivoba da moiTxovos specializirebuli samedicino mkurnaloba, romelic SesaZlebelia iolad xelmisawvdomi ar iyos mosarCelis warmoSobis qveyanaSi, an SesaZlebelia xelmisawvdomi iyos mxolod mniSvnelovani xarjis gawevis Sedegad.

4. *zemoTmocemuli principebis gamoyeneba winamdebare saqmeSi*

46. sasamarTlo dasawyisSive aRniSnavs, rom marTalia mosarCelem moiTxova TavSesafari gaerTianebul samefoSi, romelzec uari eTqva, sasamarTlos winaSe igi ar Civis maszed, rom misi gagzavna ugandaSi mas Caayenebda mizanmimarTuli, politikurad motivirebuli sastiki mopyrobis safrTxis winaSe. misi saCivari me-3 muxlze dayrdobiT emyareba mxolod mis seriozul avadmyofobas da mSobliur qveyanaSi arsebuli saTanado mkurnalobis naklebobas.
47. 1998 wels mosarCeles daudginda Sidsis ganmsazRvrel ori daavadeba da imunuri sistemis daqveiTebis maRali done. gaerTianebul samefoSi miRebuli mkurnalobis Sedegad misi mdgomareoba axla stabiluria. mas SeuZlia mgzavroba da amis SesaZlebloba eqneba manamde, sanam ganagrZobs saWiro sabaziso mkurnalobas. erovnuli sasamarTlos winaSe arsebuli mtkicebulebebis mixedviT, mosarCelis mkurnalobis Sewyvetis SemTxvevaSi misi mdgomareoba swrafad gauaresdeba, daitanjeba avadmyofobiT, diskomfortiT, tkiviliT da ramdenime welSi gardaicvleba (ix. zemoT, paragrafebi 14-17).
48. msflios jandacvis organizaciis mier ganxiluli informaciiT (ix. zemoT, paragrafi 19), antiretrovirusuli medikamentebi ugandaSi xelmisawvdomia, Tumca resursebis naklebobis gamo, saWiroebis winaSe mdgari mosaxleobis mxolod naxevari iRebs mas. mosarCele amtkicebs, rom igi finansurad ver gaswvdeba mkurnalobas da rom

misi warmoSobis qalaqgare regionSi igi ar aris xelmisawvdomi. rogorc Cans, mas ugandaSi hyavs ojaxis wevrebi, Tumca, igi amtkicebs, rom maT ar gaaCniaT survili da SesaZlebloba mas mouaron seriouli avadmyofobis SemTxvevaSi.

49. gaerTianebuli samefos xelisuflebam mosarCele uzrunvelo samedicino da socialuri daxmarebiT sajaro xarjebze dayrdnobiT im cxra wlis ganmavlobaSi, romelic saWiro gaxldaT misi TavSesafris maZieblobisa da konvenciis me-3 da me-8 muxlebis safuZvelze wardgenili saCivrebis gansaxilvelad erovnuli sasamarTloebisa da winamdebare sasamarTlos mier. Tumca, aRniSnuli TavisTavad ar moicavs mopasuxe saxelmwifos valdebulebas ganagrZos misTvis aRniSnuli momsaxurebis miwodeba.
50. sasamarTlo iazrebs, rom mosarCelis cxovrebis xarisxi da misi sicocxlis xangrZlivoba dazaraldeba ugandaSi dabrunebis SemTxvevaSi. Tumca, mocemuli droisaTvis mosarCele ar gaxlavT kritikulad avad. savaraudo mdgomareobis gauareseba, da is garemoebani, Tu rogor gauWirdeba mas samedicino mkurnalobis, mxardaWerisa da zrunvis, maT Soris naTesavebis mxridan daxmarebis, mopoveba moicavs spekulaciis garkveul dones, gansakuTrebiT ki moflioSi aiv da Sidsis mudmivad ganviTarebadi mkurnalobis gaTvaliswinebiT.
51. sasamarTlos azriT, mosarCelis saqme ar gansxvavdeba 36-41 paragrafebSi citiebuli saqmeebisagan. igi ar amJRavnebs ukiduresad gamonaklisi viTarebis arsebobas, rogorc es iyo saqmeSi *D. v. the United Kingdom* (citirebuli zemoT) da mosarCelis ugandaSi gaZevebis gadawyvetilebis aRruleba ar gamoiwvevs konvenciis me-3 muxlis darRvevas.

III. konvenciis me-8 muxlis savaraudo darRveva

52. me-8 muxlze dayrdnobiT mosarCele amtkicebda, rom ugandaSi dabrunebis SemTxvevaSi mis winaSe arsebuli pirobebi Seexeboda misi piradi cxovrebis pativiscemis uflebas.
53. sasamarTlo ar Tvlis, rom konvenciis me-8 muxlis safuZvelze warmoiSveba calkeuli sakiTxi. Sesabamisad, am saCivris ganxilvas igi saWirod ar miiCnevs.

aRniSnulis safuZvelze, sasamarTlo

1. *acxadebs*, erTsulovnad, sarCels misaRebad;
2. *adgens*, ToTxmeti xmiT samis winaaRmdeg, rom konvenciis me-3 muxli ar dairveva mosarCelis ugandaSi gaZevebis gamo;
3. *adgens*, ToTxmeti xmiT samis winaaRmdeg, rom ar aris saWiro saCivris ganxilva konvenciis me-8 muxlis safuZvelze;

Sesrulebulia inglisur da frangul enebze da gaxadebulia sajaro mosmenaze adamianis uflebaTa SenobaSi, strasburgSi, 2008 wlis 27 maiss.

maikl o'boili

Jan-pol kosta

gamwesrigeblis moadgile

prezidenti

konvenciis 45-e muxlis me-2 nawilisa da sasamarTlos reglamentis 74-e muxlis me-2 nawilis Sesabamisad, am gadawyvetilebas Tan erTvis mosamarTle tulkensis, bonelosa da spielmanis gansxvavebuli mosazrebani.

J.-p. k

v.b.

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