

**evropis sabWo ministrTa komitetis rekomendacia Rec(2003)22 wevri
qveynebisadmi pirobiT gaTavisuflebis Sesaxeb (vadamde gaTavisufleba)
(miRebulia ministrTa komitetis mier 2003 wlis 24 seqtembers ministrTa moadgilebis 853-e
Sexvedraze)**

ministrTa komiteti evropis sabWos wesdebis 15.b muxlis safuZvelze,

iTvaliswinebs ra, rom evropis sabWos wevri qveynebis interesebSia, sapatimro sasjelebis aRsrulebasTan dakavSirebiT daadginon saerTo principebi am sferoSi saerTaSoriso TanamSromlobis gaZlierebisTvis;

aRiarebs ra, rom pirobiT vadamde gaTavisufleba ganmeorebiTi samarTaldarRvevis acilebisa da gansaxlebis ganviTarebis, patimarTaTvis dagegmvis, daxmarebisa da zedamxedvelobis gziT sazogadoebaSi integraciis erT-erTi yvelaze efeqturi da konstruqciuli saSualebaa;

iTvaliswinebs ra, rom es unda ganxorcieldes individualuri pirobebisadmi misadagebuli da marTlmsajulebisa da samarTlianobis principebTan Sesabamisi gzebiT;

iTvaliswinebs ra, rom Tavisuflebis aRkveTis xarji mZime tvirTad awveba sazogadoebas, amasTan, kvlevam aCvena, rom Tavisuflebis aRkveTas aqvs ukuSedegi, ra drosac ver xorcieldeba samarTaldamrRvevTa rehabilitacia;

Sesabamisad, iTvaliswinebs, rom sasurvelia sapatimro sasjelebis xangrZlivobis Semcireba SesaZleblobis farglebSi da, amasTan mimarTebiT, sasjelis srulad moxdamde pirobiT vadamde gaTavisufleba mniSvnelovani saSualebaa;

aRiarebs ra, rom pirobiT vadamde gaTavisuflebis RonisZiebebisTvis aucilebelia politikuri liderebis, administraciuli profilis saxelmwifo mosamsaxureTa, mosamarTleTa, prokurorTa, advokatTa da sazogadoebis mxardaWera, romlebic, Tavis mxriv, saWiroeben sapatimro sasjelTa adaptirebis mizezebis detalur axsnas;

iTvaliswinebs ra, rom vadamde gaTavisuflebis maregulirebeli kanonmdebloba da praqtika unda Seesabamebodes kanonis uzenaesobaze damyarebuli demokratiuli saxelmwifoebis ZiriTad principebs, romelTa upirvelesi amocanaa adamianis uflebebis garantireba adamianis uflebaTa evropuli konvenciisa da precedentuli samarTlis Sesabamisad;

pirobiT msjavrdebul da pirobiT vadamde gaTavisuflebul samarTaldamrRvevebze zedamxedvelobis Sesaxeb evropuli konvenciis (ETS No. 51) gaTvaliswinebiT;

aRiarebs ra Semdegi dokumentebis mniSvnelobas:

rezolucia (65) 1 gadavadebuli sasjelis, probaciisa da Tavisuflebis aRkveTis sxva alternativebis Sesaxeb;

rezolucia (70) 1 pirobiT msjavrdebuli an pirobiT vadamde gaTavisuflebuli samarTaldamrRvevebisTvis zedamxedvelobisa da Semdgomi zrunvis RonisZiebebis praqtikuli organizebis Sesaxeb;

rezolucia (76) 2 grZelvadianad TavisuflebaaRkveTil patimrebTan mopyrobis Sesaxeb;

rezolucia (76) 10 Tavisuflebis aRkveTis alternatiuli konkretuli sadamsjelo RonisZiebebis Sesaxeb;
rekomendacia R (82) 16 sapatimrodan droebiT gasvlis (Svebulebis) Sesaxeb;
rekomendacia R (87) 3 evropis cixis wesebis Sesaxeb;
rekomendacia R (89) 12 cixeSi ganaTlebis Sesaxeb;
rekomendacia R (92) 16 sazogadoebrivi sanqciebisa da RonisZiebebis evropuli wesebis Sesaxeb;
rekomendacia R (92) 17 sasjelis misjisas Tanmimdevrulobis Sesaxeb;
rekomendacia R (97) 12 sanqciebisa da RonisZiebebis aRsrulebaSi CarTul TanamSromelTa Sesaxeb;
rekomendacia R (99) 22 cixeebis gadatvirTulobisa da patimarTa ricxvis zrdasTan dakavSirebiT;
rekomendacia REC (2000) 22 sazogadoebrivi sanqciebisa da RonisZiebebis evropuli wesebis
implementaciis gaumjobesebis Sesaxeb,

rekomendacias uwevs wevri qveynebis mTavrobebs:

1. TavianTi kanonmdeblobiT SemoiRon pirobiT gaTavisufleba, Tu es RonisZieba manamde ar arsebobda;
2. pirobiT gaTavisuflebasTan dakavSirebiT, TavianT kanonmdeblobaSi, politikasa da praqtikaSi ixelmZRvanelon am rekomendaciis danarTSi miTiTebuli principebiT;
3. uzrunvelyon pirobiT gaTavisuflebis Sesaxeb am rekomendaciisa da misi ganmartebiTi memorandumis maqsimalurad farTod gavrcelba.

Rec(2003)22 rekomendaciis danarTi

I. pirobiT gaTavisuflebis ganmarteba

1. am rekomendaciis miznebisTvis pirobiT gaTavisufleba niSnavs msjavrdebuli patimris vadamde gaTavisuflebas gaTavisuflebis Semdgomi individualuri pirobebiT. es cneba ar moicavs amnistiasa da Sewyalebas.
2. pirobiT gaTavisufleba sazogadoebrivi RonisZiebaa. misi kanonmdeblobaSi damkvidreba da individualur saqmeebSi gamoyeneba regulirdeba sazogadoebrivi sanqciebisa da RonisZiebebis Sesaxeb evropuli wesebiT, rekomendacia R (92) 16 da, aseve, rekomendacia (2000)22-iT sazogadoebrivi sanqciebisa da RonisZiebebis evropuli wesebis implementaciis gaumjobesebis Sesaxeb.

II. zogadi principebi

3. pirobiT gaTavisufleba miznad unda isaxavdes patimris daxmarebas, cixis cxovreba gardaqmnas sazogadoebaSi kanonmorCil cxovrebad, gaTavisuflebis Semdgomi pirobebis SeqmniTa da zedamxedvelobiT, rac xels uwyobs am miznis miRwevas da wvlili Seaqvs sazogadoebrivi usafrTxoebis uzrunvelyofasa da danaSaulis SemcirebaSi.

4.a. patimrobis uaryofiTi Sedegebis Semicirebisa da sazogadoebis usafrTxoebis garantirebiT, patimarTa gansaxlebis xelSewyobisTvis, kanonma pirobiT gaTavisufleba xelmisawvdomi unda gaxados yvela msjavrdebuli patimrisTvis, maT Soris, uvadod TavisuflebaaRkveTili pirebisTvis.

4.b. Tu Tavisuflebis aRkveTa imdenad xanmoklea, rom pirobiT gaTavisufleba SeuZlebelia, am miznis miRwevis sxva saSualebebi unda gamoinaxos.

5. sasjelis moxdis dawyebisTanave patimrebisTvis cnobili unda iyos, rodis SeeZlebaT gaTavisuflebis TxovniT mimarTva mas Semdeg, rac moixdian minimalur vadas (romelic pirdapir gansazRvrulia da/an miTiTebulia sasjelis proporcia) da is kriteriumebi, romlebic gamoiyeneba gaTavisuflebis Sesaxeb gadawyvetilebis miRebisas („diskreciuli gaTavisuflebis sistema“), an rodis mieniWebat gaTavisuflebis ufleba, dadgenili periodis konkretul pirobebSi moxdis an/da sasjelis proporciaze miTiTebis Sedegad („savaldebulo gaTavisuflebis sistema“).

6. dadgenili periodis minimumi ar unda iyos imdenad xangrZlivi, rom pirobiT gaTavisuflebis mizani ver iqnes miRweuli.

7. yuradReba unda mieqces resursis dazogvas, rac SeiZleba ganxorcieldes savaldebulo gaTavisuflebis sistemis gamoyenebiT sasjelebTan mimarTebiT, rodesac uaryofiTma individualurma Sefasebam SeiZleba mxolod mcired Secvalos gaTavisuflebis TariRi.

8. imisaTvis, rom Semicirdes pirobiT gaTavisuflebul patimarTa mxridan recidivis riski, SesaZlebeli unda iyos maTze individualuri pirobebis daweseba, rogoricaa:

- dazaralebulisTvis kompensaciis gadaxda zianis anazRaurebis mizniT;
- narkotikuli nivTierebis an alkoholis borotad gamoyenebasa an danaSaulis CadenasTan aSkarad dakavSirebuli da mkurnalobas daqvemdebarebuli mizezebis aRmosafxvrelad, samkurnalo RonisZiebebSi CarTva;
- muSaoba an sxva gansazRvrul saqmianobaSi Cabma, magaliTad, ganaTlebis an profesiuli gadamzadebis programebSi;
- pirovnuli ganviTarebis programebSi monawileoba;
- konkretul adgilebSi cxovrevisa da am adgilebSi vizitis akrZalva.

9. pirobiT gaTavisuflebas aseve Tan unda axldes zedamxedveloba, romelic Sedgeba daxmarebisa da kontrolis RonisZiebebigan. zedamxedvelobis buneba, xangrZlivoba da intensivoba unda ganisazRvros TiToeuli saqmisTvis cal-calke. pirobebisadmi morgeba SesaZlebeli unda iyos pirobiTi msjavris mTeli periodis ganmavlobaSi.

10. pirobebi an zedamxedvelobis RonisZiebebi unda ganisazRvros im periodisTvis, romelic ar aWarbebs sapatimro sasjelis mouxdeli nawilis proporcias.

11. pirobebi da zedamxedvelobis RonisZiebebi SeiZleba ganusazRvreli vadiT dadgindes mxolod im SemTxvevaSi, rodesac es absoluturad aucilebelia sazogadoebis dasacavad da Seesabameba rekomendacia Rec(2000) 22-iT Sesworebuli sazogadoebrivi sanqciebisa da RonisZiebebis Sesaxeb evropuli wesebis me-5 wesSi formulirebul garantiებს.

III. pirobiT gaTavisuflebisTvis momzadeba

12. pirobiT gaTavisuflebisTvis momzadebis organizeba unda moxdes sapatimroSi momuSave yvela Sesabamisi pirisa da gaTavisuflebis Semdgom zedamxedvelobaSi CarTul pirTa mWidro TanamSromlobiT da dasruldes minimalur an winaswar gansazRvrul vadaSi.

13. sapatimros Sesabamisma samsaxurebma unda uzrunvelyon, rom patimrebs hqondeT gaTavisuflebis wina programebSi monawileobis SesaZlebloba. aseve, xeli Seuwyon maT CarTvas saganmanaTleblo da saswavlo kursebSi, romelTa meSveobiTac isini sazogadoebaSi cxovrebisTvis moemzadebian. maqsimalurad unda iqnes gamoyenebuli sapatimro sasjelis aRsrulebis sxvadasxva saxe, rogoricax naxevrad Tavisufali, Ria reJimebi an eqstramuraluri ganTavseba, imisaTvis rom momzaddes patimarTa gansaxleba sazogadoebaSi.

14. pirobiT gaTavisuflebisTvis momzadeba aseve unda moicavdes patimrebisTvis SesaZleblobis Seqmnas, raTa SeinarCunon, daamyaron an ganaaxlon urTierTobebi ojaxis wevrebsa da axlo naTesavebTan. aseve, kavSiri daamyaron im samsaxurebTan, organizaciebsa da moxaliseTa asociaciebTan, romelTac SeuZliaT vadamde gaTavisuflebul patimrebs daexmaron sazogadoebaSi cxovrebasTan SeguebaSi. am miznebisTvis sapatimrodan droebiT gaTavisuflebis sxvadasxva forma unda iqnes gamoyenebuli.

15. gaTavisuflebis Semdgomi pirobebisa da zedamxedvelobis adreuli ganxilva unda waxalides. aRniSnuli pirobebi, SesaZlo daxmarebis formebi, kontrolis moTxovnebi da maTi Seusruleblobis Sedegebi guldasmiT unda ganemartoT patimrebs da ganxilul iqnes maTTan erTad.

IV. pirobiT gaTavisufleba

diskreciuli gaTavisuflebis sistema

16. pirobiT gaTavisuflebis uflebis mopovebisTvis mosaxdeli sasjelis minimaluri vada unda ganisazRvros kanoniT.

17. Sesabamisma Tanamdebobis pirebma patimris mier minimaluri sasjelis moxdisTanave unda daiwyon pirobiT gaTavisuflebis Sesaxeb gadawyvetilebis miRebisTvis aucilebeli procedura.

18. kriteriუმეbi, romlebsac patimari unda akmayofilebdes pirobiT gaTavisuflebisTvis, unda iyos naTeli da konkretuli. isini aseve unda iyos realisturi im gagebiT, rom unda iTvaliswinebdes patimris pirovnuლ maxasiaTeblebs da socialur da ekonomikur garemoebebs, aseve gansaxlebis programebis xelmisawvdomobas.

19. gaTavisuflebaze muSaobis pirobebis ararseboba ar unda iyos pirobiT gaTavisuflebaze uaris an gadavadebis safuZveli. Zalisxmeva unda iyos mimarTuli imisken, rom gamoinaxos dasaqmebis sxva formebi. mudmivi sacxovreblis ararseboba ar unda warmoadgendes pirobiT gaTavisuflebaze uaris an gadavadebis safuZvels. aseT SemTxvevaSi, unda moxdes droebiTi sacxovrebliT uzrunvelyofa.

20. pirobiT gaTavisuflebis kriteriუმეbi ise unda iyos gamoyenebuli, rom pirobiT gaTavisuflebis uflebas aniWebdes yvela im patimars, romlebic akmayofileben kanonmorCili moqalaaqebis minimalur moTxovnebs. Sesabamis Tanamdebobis pirTa valdebulebaa, daamtკicon, rom patimari ar akmayofilebs dadgenil moTxovnebs.

21. Tu gadawvytylebis mimRebi Tanamdebobis piri gadawyvets, rom ar daakmayofilos pirobiT gaTavisuflebis moTxovna, man unda daadginos sakiTxis xelaxali ganxilvis vada. nebismier SemTxvevaSi, patimrebs saSualeba unda hqondeT, xelaxla mimarTon gadawvytylebis mimRebT, rogorc ki mdgomareoba arsebiTad maT sasikeTod Seicvleba.

savaldebulo gaTavisuflebis sistema

22. kanoniT unda ganisazRvros sasjelis is periodi, romelic patimarma unda moixados imisaTvis, rom gaTavisuflebis ufleba moipovos.

23. mxolod kanoniT gansazRvrul sagamonakliso SemTxvevebSi unda iyos SesaZlebeli gaTavisuflebis gadavadeba.

24. gaTavisuflebis gadavadebis gadawvytylebiT unda ganisazRvros gaTavisuflebis axali TariRi.

V. pirobebis dadgena

25. pirobebis dadgenis da zedamxedvelobis saWiroebis gansazRvrisas, gadawvytylebis mimRebi Tanamdebobis piriTvis xelmisawvdomi unda iyos angariSebi, maT Soris, cixeSi momuSave personalis zepiri gancxadebebi, romlebic icnoben patimrebs da maT pirad monacemebs. gaTavisuflebis Semdgom zedamxedvelobaSi CarTulma profesionalbma an sxva pirebma, romelTaTvisac cnobilia patimrebs socialuri garemoebebi, xelmisawvdomi unda gaxadon es informacia.

26. gadawvytylebis mimRebi Tanamdebobis pirebi unda darwmundnen, rom patimarma gaigo misTvis dadgenili pirobebi, is daxmareba, rac SeiZleba mas gauwion, kontrolis moTxovnebi da pirobebis Seusruleblobis SesaZlo Sedegebi.

VI. pirobiT gaTavisufleba

27. Tu pirobiT gaTavisufleba unda gadaidos, patimrebi unda imyofebodnen maqsimalurad iseT pirobeSi, rogoric sazogadoebaSi dabrunebisas eqnebodaT.

28. pirobiT gaTavisuflebisa da zedamxedvelobis RonisZiebebis aRsruleba unda iyos aRmasrulebeli organoebis pasuxismgebloba sazogadoebrivi sanqciebisa da RonisZiebebis Sesaxeb evropuli wesebis me-7, me-8 da me-11 wesebis Sesabamisad.

29. aRsruleba da misi organizeba unda ganxorcieldes sazogadoebrivi sanqciebisa da RonisZiebebis Sesaxeb evropuli wesebis 37-e da 75-e wesebis da sazogadoebrivi sanqciebisa da RonisZiebebis Sesaxeb evropuli wesebis implementaciis gaumjobesebis Sesaxeb rekomendacia Rec(2000)22-is 9-13 principebSi asaxul efeqturobis ZiriTad moTxovnebTan SesabamisobaSi.

VII. dadgenili pirobebis darRvevis Sedegebi

30. dadgenili pirobebis mcired darRvevebze aRsrulebis organoebma reagireba unda moaxdinon rCeviTa da gafrTxilebiT. nebismieri mniSvnelovani darRvevis Sesaxeb aRsrulebis organom

angariSi unda warudginos gauqmebis Sesaxeb gadawyvetilebis mimReb organos. am organom unda gadawyvitos, Sesabamisi pasuxismgeblobis zoma iqneba rCevis micema, gafrTxileba, mkacri pirobebis dadgena Tu pirobiT gaTavisuflebis droebiT Sewyveta.

31. zogadad, dadgenili pirobebis Seusruleblobaze reagireba unda moxdes sazogadoebrivi sanqciebisa da RonisZiebebis Sesaxeb evropuli wesebis 85-e wesisa da, aseve, amave wesebis X Tavis debulebebis Sesabamisad.

VIII. proceduruli garantiebi

32. pirobiT gaTavisuflebis miniWebis, gadavadebis an Sewyvetis, aseve, pirobebis da masTan dakavSirebuli RonisZiebebis dadgenis an Secvlis Sesaxeb gadawyvetilebebi kanoniT gansazRvrulma Tanamdebobis pirebma unda miiRon Semdegi garantiebis safuZvelze, konkretuli proceduris Sesabamisad:

- a. patimars unda hqondes ufleba, mas piradad mousminon da miiRos daxmareba kanonis Sesabamisad;
- b. gadawyvetilebis mimRebma organom yuradRebiT unda ganixilos nebismieri detali, maT Soris, msjavrdebuli piris mier Tavis saqmesTan dakavSirebiT warmodgenili ganxadebebi;
- g. msjavrdebuls adekvaturi xelmisawvdomoba unda hqondes Tavis pirad saqmesTan;
- d. gadawyvetileba unda Seicavdes Sesabamis safuZvlebs da ecnobos msjavrdebul pirs werilobiT.

33. msjavrdebuls unda hqondes SesaZlebloba, saCivriT mimarTos kanonis safuZvelze Seqmnil zemdgom damoukidebel da miukerZoebel gadawyvetilebis mimReb organos, gadawyvetilebis arsTan dakavSirebiT, aseve, proceduruli garantiebis dauvelobis Taobaze.

34. aseve xelmisawvdomi unda iyos pirobiT gaTavisuflebis aRsrulebasTan dakavSirebuli saCivris procedura.

35. saCivris yvela procedura unda Seesabamebodes sazogadoebrivi sanqciebisa da RonisZiebebis Sesaxeb evropuli wesebis me-13-dan me-19 wesebSi asaxul garantiebs.

36. 32-edan 35-e paragrafis CaTvliT, araferi unda ganimartos ise, rom zRudavdes an gadauxvedes nebismieri im uflebidan, romlebic garantirebulia adamianis uflebaTa evropul konvenciasTan mimarTebiT.

IX. gadawyvetilebis miRebis gaumjobesebis meTodebi

37. riskisa da saWiroebebis gansazRvris sarwmuno instrumentebis ganviTareba, romlebic sxva meTodebTan erTad xels Seuwyobs gadawyvetilebis miRebas, unda iyos waxalisebuli.

38. sainformacio Sexvedrebi da/an saswavlo programebi unda Sedges gadawyvetilebis mimRebi pirebisTvis, samarTlisa da socialuri mecnierebis specialistebisa da pirobiT gaTavisuflebulTa gansaxlebis procesSi CarTul pirTa monawileobiT.

39. garkveuli nabijebi unda gaidgas gadawyvetilebis miRebis procesSi Sesabamisi xarixxis Tanmimdevrulobis misaRwevad.

X. informacia da konsultacia pirobiT gaTavisuflebis Sesaxeb

40. politikosebi, marTlmsajulebis warmomadgenlebi, gadawyvetilebis mimRebi da aRmasrulebeli organoebi, sazogadoebrivi liderebi, dazaralebulebisa da patimrebis damxmare asociaciebi, aseve, universitetebis maswavleblebi da am sakiTxiT dainteresebuli mkvlevarebi informirebuli unda iyvnen da maTgan konsultacia miiRon pirobiT gaTavisuflebis funqcionirebisa da am sferoSi axali kanonmdeblobis/praqtikis damkvidrebis Sesaxeb.

41. gadawyvetilebis mimRebma pirebma unda miiRon informacia pirTa raodenobis Sesaxeb, romelTa mimarTac warmatebiT da warumateblad iqna gamoyenebuli pirobiT gaTavisufleba, aseve, im garemoebebis Sesaxeb, romlebmac ganapiroba warmateba an warumatebloba.

42. media da sxva saxis kampania unda warmoebdes imisTvis, rom sazogadoeba informirebuli iyos pirobiT gaTavisuflebis institutis funqcionirebis, misi gamoyenebis sferoSi siaxleebisa da sixlis samarTlis marTlmsajulebis sistemaSi misi rolis Sesaxeb. es informacia maleve unda miewodos sazogadoebas pirobiT gaTavisuflebis periodSi dramatuli da gaxmaurebuli darRvevebis SemTxvevaSi. radganac aseTi SemTxvevebi mediis yuradRebas ipyobs, unda gamoikveTos pirobiT gaTavisuflebis dadebiTi mxareebi.

XI. kvleva da statistika

43. imisaTvis, rom dagrovdes meti codna pirobiT gaTavisuflebis sistemebis Sesabamisobisa da maTi ganviTarebis Sesaxeb, unda ganxorcieldes Sefaseba da Segrovdes statistikuri monacemebi pirobiT gaTavisuflebis miznebis SesrulebasTan dakavSirebiT, am sistemebis funqcionirebisa da efeqturobis Sesaxeb informaciis misaRebad.

44. zemoT rekomendebul SefasebasTan erTad, unda waxalides kvlevebi pirobiT gaTavisuflebis sistemis funqcionirebis Sesaxeb. aseTi kvlevebi unda moicavdes pirobiT gaTavisuflebis Sesaxeb marTlmsajulebisa da gadawyvetilebis mimRebi organoebis, aRmasrulebeli organoebis, dazaralebulebis, sazogadoebis warmomadgenelTa da patimarTa Sexedulebebs, damokidebulebebsa da mosazrebebs. Semdegi aspeqtebi, rac gaTvaliswinebuli unda iyos, aris pirobiT gaTavisuflebis Rirebuleba, aris Tu ara misi xarji gonivruli, amcirebs Tu ara is ganmeorebiT samarTaldarRvevebs, rogoria pirobiT gaTavisuflebuli patimris sazogadoebriv cxovrebase morgების xarisxi da is gavlena, rac pirobiT gaTavisuflebis sqemis ganviTarebas SeiZleba hqondes sanqciebisa da RonisZiebebis dakisrebasa da sasjelis aRsrulebaze. gaTavisuflebisTvis mosamzadebeli programebis buneba aseve unda gaxdes detaluri kvlevis sagani.

45. unda warmoebdes statistika iseT sakiTxebze, rogoricaa patimarTa raodenoba, romlebic pirobiT gaTavisufldnen, akmayofilebdnen Tu ara isini gaTavisuflebis moTxovnebs, sasjelis xangrZlivoba da danaSaulis saxe, pirobiT gaTavisuflebamde moxdili sasjelis proporcია, pirobiT gaTavisuflebis Sewyvetis raodenoba, xelaxali msjavrdebis maCveneblebi, pirobiT gaTavisuflebuli piris kriminaluri istoria da socio-demografiuli maxasiaTeblebi.