

???????? C-513/03

?????????? ??? M. E. A. van Hilten-van der Heijden

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**Inspecteur van de Belastingdienst/Particulieren/Ondernemingen buitenland te Heerlen**

## (?????? ?? Gerechtshof te's-Hertogenbosch

???? ???? ??????? ?????????????????? ??????????)

?????????? ??? ??????? ?????????? P. Léger ??? 30?? ??????? 2005

?????? ?? ?????????? (????? ?????) ?? 23?? ?????????? 2006

????????? ??? ??????????

????????? ?????????? ??? ????????? — ??????????

[?????? ??, ????. 73 ? (??? ????. 56 ??)]

?? ?????? 73 B ??? ?????????? (???) ?????? 56 ??) ?????? ?? ?????????????? ??? ?? ?????? ?????? ??  
??? ?????????????? ?? ??????? ??????? ??????, ?????? ??? ?????? ? ?????????????? ??? ?????? ?????  
????? ??? ??????? ??????, ? ?????? ??????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ??????? ??? ??? ??? ??? ??? ?????? ??????, ?????????????? ?? ??? ?  
?????? ??? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????  
????????? ?? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????.

??????????????, ?????????? ?????????????? ?????????? ??? ?????????????? ?????????????? ???  
???? ?????????? ??? ????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
??? ?????? ?????????? ??? ?????? ??????, ??? ?????? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ?????? ?? ?????????????????? ?????????? ?? ??? ??? ?? ?????? ???  
???? ?????? ??? ?????? ?????? ?? ?????????????? ?????????? ?? ??? ??? ?? ?????? ???  
????? ?????? ???, ?????????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?? ??????????  
?????, ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ? ??????  
????????? ??? ?????????? ??? ?????? ??????.

? ?????????? ?? ??? ?????? ??????? ?????????? ?????????????? ?????????????? ?????? ??? ???????  
????????? ??? ??? ????? ??????? ??? ?????????? ?????? ?????? ??? ??? ?????????? ?????????? ???  
????? ??????? ?????? ?????? ?????? ??????, ?????????? ?????? ?????????????? ?  
????????????? ??? ?????????? ???????, ??? ??? ?????????????? ??? ?? ?????? ??? ?????? ???  
??????, ?????????? ? ???????, ?? ?????? ?????????? ??? ?????????? ??? ?????????? ???.  
????????? . ??? ?????? ??????? ??? ?????????? ??? ??? ?? ?????????? ??? ?????????? ???

????????? ? ??????? ?????????? ?? ?????????? ??? ?????????? ??? ?? ????? ??????, ??? ???  
????????? ?? ?????????? ?? ??????? ??? ?????????? ????????????, ??? ??????? ??? ??  
???? ?? ?? ??? ??? ????? ?? ?????????? ?????????? ??? ?? ?????? ?????? ?????????? ??? ??  
????? ??? ????? 73 B ??? ??????.

(???. ??????? 46-47, 50-51 ??? ??????).)

??????? ??? ?????????? (????? ????)

?? 23?? ?????????? 2006 (\*)

«????????? ????????? – ????? 73 B, ?????????? 1, ??? ??????? ?? (?? ????? 56,  
????????? 1, ??) – ????? ?????????? – ?????? ??????? ??? ?? ?????? ??? ??????  
?????? ?????? ? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????????? ??? ??  
????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? – ?????  
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???? ?????? C-513/03,

?? ?????????? ?????? ?????? ?????????? ?????????????? ?????????? ??? ?????? 234 ??,  
????????? ??? ?? Gerechtshof te 's-Hertogenbosch (????? ??????) ?? ??????? ??? 5??  
????????? 2003, ? ?????? ?????? ??? ?????????? ??? 8 ?????????? 2003, ??? ???????  
??? ????

**????????? ??? M. E. A. van Hiltén-van der Heijden**

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**Inspecteur van de Belastingdienst/Particulieren/Ondernemingen buitenland te Heerlen,**

?? ?????????? (????? ????),

????????? ??? ??? A. Rosas, ??????? ????????, J. Malenovský, S. von Bahr (?????????), A.  
Borg Barthet ??? U. Löhmus, ????????,

??????? ??????????: P. Léger

?????????: H. von Holstein, ?????? ??????????,

????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ???  
12?? ??? 2005,

????????? ??? ?????? ??? ?????????? ??? ??????:

– ?? ?????????? ??? ?. ?. ?. van Hiltén-van der Heijden, ?????????????? ??? ??? P.  
Kavelaars, belastingadviseur,

– ? ?????????? ???????, ?????????????? ??? ??? H. G. Sevenster ??? S. Terstal,

– ? ?????????? ???????, ?????????????? ??? ??? A. Tiemann ??? ??? M. Lumma,

- ? ?????????? ??? ?????????? ??????????, ?????????????? ??? ??? R. Lyal ??? A.  
Weimar,

???? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ??? ?? ??????????  
??? 30?? ?????? 2005,

?????? ??? ????????

???????

1 ? ?????? ??? ??? ?????? ?????????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? 73  
?, ?????????? 1, ??? 73 ?, ?????????? 3, ??? ?????? ?? (?? ?????? 57, ?????????? 1, ??  
??? 58, ?????????? 3, ??), ?? ?????? ?????? ??? ?????? ?? . ?. . van Hiltens-van der  
Heijden.

2 ? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????????? ??? M. E. A. van  
Hiltens-van der Heijden ??? ??? Inspecteur van de Belastingdienst/Particulieren/Ondernemingen  
buitenland te Heerlen (????????? ?????? ??? ?????????? ??? Heerlen ?????? ??????  
?????????, ??? ????: ?????????? ????) ?????? ?? ??? ?????? ?????? ?????????? ???  
????????? ??? ?????????? ??? ?????? ???).

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? ?????????? ???????

3 ?? ?????????? | ??? ?????? 88/361/??? ??? ??????????, ??? 24?? ?????? 1988, ??? ??  
????? ?? ?????????? ??? ?????? 67 ??? ?????? [????? ?? ?????? ?????????? ?? ?? ??????  
???? ??????????] (?? L 178, ?. 5), ?? ?????? ?????????? «????????????? ??? ??????  
????????? ??? ?????????? ??? ?????? 1 ??? ??????», ?????????? ??? ??????????  
????? ???:

«???? ?????? ??????????, ?? ?????? ?????????? ?????????? ?????????????? ?? ??? ??  
????????? ??? ??? ?????????? ??? ??????????, ?????????? ?? ??? ?????? ?????? ?? ??  
????? ??????????, ??? ?????? ??????.

? ? ?????????? ?????????? ??? ?????????????? ??? ?????? ?????? ?????????????? ?????????? ???  
????????? :

- ?? ?????? ??? ?????? ??? ?????? ?????????? ??? ??? ?????????????? ??? ??????????  
?????????: ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??? ?????????? ??????????. ?  
????????? ?????????????? ??? ?????? ?????????? ?? ?????? ?????????? ?????? ??????  
?????????, ??????, ?????????? ?????? ?????????? ?? ?????????? ??? ?????????????? ??? ??? ???  
????? ??? ??? ?????????? (?????????, ??? ??????????, ?????????? ??????????????  
????????? ??????????),

- ??? ?????? ??? ?????????????? ??? ??? ?????? ?????? ? ?????? ?????? [...],

- ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ?? ??? ???  
????????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ??? ??  
????????????? ??? ?????????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????????? ?????? ?????????? (?????????, ??? ??????????, ?????????? ??????????????  
????????? ??????????),

???????????? ?????. [...],

– ??? ??????? ?????????????? ? ?????? ??? ?????????? ??? ?????? ????????, ???  
????????????? ??? ?????????? ??? ?????? ??? ?????????????? [...] ? ?? ?????????????? ????????  
??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ????????????,

– ??? ??????? ?????????? ??? ?????????? ? ?????????? ????????

? ??????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???????????, ?? ?? ??? ?  
?????? ??? ?????? ??? “????? ?????? ?????? : ??????”. ??? ?????? ??????? ??  
????????? ??? ?????????? ?? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ???  
????????? ?????????? ??? ?????? ?????????????? ??? ?????? 1 ??? ?????? ???????.»

4 ? ??? ??? ?????????????? ?????????? ?????????? ?????????? ?????? ?????????? ??????????.  
?? ??? XI, ?? ??? ?????? «????????? ?????????? ?????????? ??????????», ??? ??  
????:

«[...]

?.. ???????????

[...]».

5 ??? ??? ???????, ??? 7 ?????????? 1992, ??? ??????? ??????? ??? ??? ????????  
??? ?????????????? ??? ?????????? ??? ??? ?????????? ???, ? ?????????? ???  
????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?? ??? ??????  
????????? ?? ?? ?????? 73 ? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????????? (?? C  
191, ?. 99, ??? ????: ?????? ?????? ??? ??? ?????? 73 ? ??? ??????), ? ?????? ??? ?? ????:

«? ?????????? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?? ?????????? ???  
????????? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????? 73 ?,  
????????? 1, ?????? ??, ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???  
????? ??? ?????? ??? ?????????? ?? ?????? ?????? ??? ?????? ??? 1993. ??????, ? ??????  
????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ???  
????????? ?????? ????.»

? ?????? ???????

6 ??? ?? ?????????? ????, ??? ?????????? ???????????. ?? ??? 1, ?????????? 1,  
??? ??? 28? ?????? 1956 ??? ?????? (Successiewet) (Stb. 1956, ????. 362,  
??? ????: SW 1956) ?????????? ?????????? ??? ?? ?????????????? ??? ?????????? ???  
????? ? ???????????. ? ?????? ??? ??????:

«???' ?????????? ??? ??????? ???, ?????????? ?? ?????????? ??? ??????:

1. ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???  
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
??? ?????? ??? ?????????? ??? ?????? ???.

[...]»

7 ?? ??? 3, ?????????? 1, ??? SW 1956 ??????:

«? ???????, ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

?????? ????? ????? ?? ????? ?? ?????????? ?? ??????????? ????? ??????????, ??????????? ?? ??????? ??  
?????? ?? ??????? ?? ? ?? ??????? ?? ?????????? ????? ?????????? ??????»

8 ?? ?????? 2, ?????? ???????, ??? ?????????? ?????? ??? ?????????? ?????????????? ?????????????? ???  
??? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???  
????? ???????????, ? ??? ?????? ?????? ??? ?????? ??? 12 ?????? 1951 (???:  
??????), ????????:

«?? ??????? [...] ??????????? ?? ??? ?????????????? ?????? ?????? ??? ??????? ??? ?????????? ???  
???????????. [...]»

9      ?? ?????? 3, ?????? ???????, ??? ?????????? ??????????????:

«?? ?????????????? ?? ???? ?????? ?? ???? ?????????? ?? ???? 2 [...] ?????????? ?? ???  
????????????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????????? ?? ???? ?????????? ?? ???? ??????????..»

10    ??? ??? ??????? ??? ??????????, ?? ????? 3, ??????? ??????, ??? ??????????  
 ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ??? ??????????  
 ?????????????? ??? ??? ?????????? ??? ??? ?????? ??? ??? ?????? ??? ?????? ??? ?????????? ??? ??????  
 ?????????? ??? ??? ?????? ??? ????? ?????????? ??? ??????????.

11   ???? ???? ?????????? ??? ???????????, ?? ?????????????? ????? ?????????????? ??????????????  
 ??????? ?? ?????? ?????????? ?????????????? ?????? ??? ????? ??????????, ??? ?? ???  
 ?????? ?????? ?? ??? ????? ?????? 3.

12    ? ?????? ???? ??????????????:

«(1)   ????? ??? ??????????? ??? ?????? 3, ??????? ??????, ??? ??????? ?????????, ??  
?????? ??? ?????? ??? ?????????? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????????????? ?? ??? ???? ?????? ??? ?????? ??? ?????????? ??? ??? ?? ??? ??  
??????, ??? ??? ?????????? ??? ???? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??? ?? ??? ??  
????? ??? ??? ??? ?????? ??? ??? ??? ?????? ??? ?????????? ??? ?????????? ?????? ???  
????????? ??? ?????????? ???- ??? ?????????? ???, ?? ?????? ??? ?????? ?? ?????? ?? ??????  
????? ??? ?? ?????????? ?? ???? ?????? ??? ?????? ??? ?????????? ??? ?? ??? ?????? ?????? ???  
????????? ??? ?????????? ??? ???? ?????? ??? ?????? ??? ?????????? ??? ?? ??? ?????? ?????? ???  
????? ??? ?????? ??? ?????? ???.

(2) ? ??????? ?? ?????? ?????? ??????? ?? ?? ?? ??????? ?? ?? ?? ??????? ?? ?? ?? ???.»

13      ????. ?? ???.????? 13 ????.???????????. ??? 1989 ????. ????.????????? ????.?????.????????? (Besluit voorkoming dubbele belasting 1989, ??? 21???.????????? 1989, Stb. 1989, ??. 594, ????.?: ??.?????);

«1. ??? ?? ?????????????? ? ?????? ?????????????? ??? ?????????????? ??? ??? ????? ??????, ? ??????  
????????????? ??? ?????? ? ?????? ??? ?? ?????? 3, ?????????? 1, ??? SW 1956  
????????? ??? ??? ????? ?????????? ?????? ??? ?????? ?????? ?????????? ??????, ??? ??  
????????????? ??? ??? ?????? ?? ?????? 11, ?????????? ??? ?????? ?????? ?????? ?????? ??????????????  
? ?????? ??? ?? ????? ?????????? ?? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???  
????????? ??? ?????? ??? ?????? ????. [...]»

2.    ?? ???? ??? ?????? ?? ?????????? 1 ?????????? ?????? ?? ?????????? ??? ?? ??????? ???:

a. ?? ??? ???? ?????? ??? ??????????????? ??? ??? ???? ????.

b. ?? ??? ???? ?????? ???? ??? ??? ??? ?????????????? ??? ?? ???? ???? ???? ???? ??  
SW 1956 ?? ??? ???? ?????????? ?? ??? ??? ?????????? ?????? ??? ?? ??? ???? ??? ???? ????  
????? ??? ?????????????? ??? ??? ??? ?????????? 1 ??? ?????????? ?????? ??? ?? ??? ????  
????????? ??? ?????????????? ?????????? ??? ??? ??? ?????? ??? ?????? ??? ??????????????, ???  
????? ?????????????? ?? ??? ??? ??? ??? ?????? ??? ??? ?????? ??? ?????? ??? ??????/?????  
????????? ??????????, ??? ??? ??? ??? ??? ?????? ??? ??? ?????? ??? ?????? ??? ??? ???? ???? ????  
??? ?????????? ?? ??????? ?? ??????? ??? ?????????? ??? ?????????????? ?? ??? ??? ?????? ??? ??  
????? ??? ??? ?????????? ????»

? ??????? ?? ?????? ?????? ??? ?? ?????????????? ??????????

14 ? M. E. A. van Hilten-van der Heijden ?????????? ??? 22 ?????????? 1997. ??? ????  
????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 1988, ??? ????  
????? ??? ?? 1991 ??? ??????.

16      ?????? ?????????????? ??? ??? ????? ?????????? ?????????????? ?????? ?????????????? ?? ????  
????????????? ?????? ??? ?????? 3, ?????????? 1, ??? SW 1956. ?? ?????? ??????  
????????????? ??? ??? ?????????? ?????? ??? ?????? ?????????? ?????????? ?????????? ???  
????????? ??? ??? ?????? ?????? ??????????????.

19    ??? ????????, ?? ?????? ?????????? ?????????? ??? ?? ?????? ??? 12?? ??????????  
2002 ?????????? ??? ?? ?????? 3, ?????????? 1, ??? SW 1956 ?????????? ?????? ?????? ??  
????? ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ?????? ??  
?????????. ??? ????' ????, ? ??? ??? ?????? ?????????? ?????????? ??? ?????????? ??? ??  
????????????? ??? ?? ?????? ???????, ?? ????? ?????????, ?????????? ??? ??? ??? ????????  
??? ?????????? ??? ?? ?????????? ?????????? ??? ?????? ??? ?????? ?????????? . ??  
????????? ??? ??? ?????? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ??? ??? ??  
??? ?????????? ?????? ??? ?????? ?????????? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ???  
??? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ???,  
??? ??? ?????????? ?????? ?????????? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ???,  
??? ??????????. ????????, ??? ??? ??? ??? ?????????? ??? ?????? ?????????? ?????? ?????????? ??? ?????? ???,  
3, ?????????? 1, ??? SW 1956 ?????? ?????????? ?????? ??? ??? ??????????.

20      ?????? ?????? ????????, ?? ??????? ??????????? ??????????? ?????????? ??? ?? ?????? 3,  
?????????? 1, ??? SW 1956 ??????? ??? ?????????? ?????????? . ??????????????, ?? ??????????

?????? ?????????? ?????? ?????????? ?????????? ??? ??????? ?????? ??????, ??????? ?????  
????????? ?????? ?????? ?? ?????????? ??? ?????????? ??? ???? ????? ?????????? ?????? ??  
????????? ??? ?????? ?????? ??? ?????????? ??? . ?????????? , ? ??? ?????????? ??? ?????? ??  
????????? ?????? ?????? ?????? ?????????? ?????? ?????????? ??? ???? ?????? ?????? ??  
????????? ??? ?????? ?? ?????????? ?? ???? ?????? ?? ?????????? ??? ?????? ?????? ??  
????????? ??? ?????? ?? ?????????? ??? ?????? ?? ?????????? ??? ?????? ?????? ??  
????????? ??? ?????? ?? ?????????? ??? ?????? ??.

21    ??????, ?? ?????? ?????????? ?????????? ??? ??? ?? ?????????? ??? ?????????? ???  
????????? ?????? ?? ??? ?????? ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ?????? ???  
73 ?, ?????????? 1, ??? ??????.

22    ????????, ?? ?????? ?????????? ?????? ?? ???? ?????? ??????? ?? ?? ?????? 73 ? ??  
????????? ?????????? ??? ???? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??????  
????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? 73 ?,  
????????? 1, ????????, ??, ??? ?????? ?? ???? ?????? ?????? ?????? ?????? ?????? ?????? ??  
????????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??  
????????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? 1993.

23    ?????? ??? ??????, ?? Gerechtshof te 's-Hertogenbosch ?????????? ?? ?????????? ??  
????????? ??? ?? ?????? ??? ?????????? ?? ?????????? ?????????? ??????????:

«1)    ??????? ?? ?????? 3, ?????????? 1, ??? SW [1956] ?????????? ?????????? ??? ??  
????? ??? ?????? [73 ?, ?????????? 1, ??? ??????];

2)    ??????? ?? ?????? 3, ?????????? 1, ??? SW [1956] ?????????? ?????? ??????????  
????????? ? ?????????? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ??  
????? ??? ?????? [73 ?, ?????????? 3, ??? ??????] ?? ??? ?????? ?????? ??? ??????  
????????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??  
????????? ?????? ?? ?? [????? 73 ?] ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ?????? ?????? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? “????? ?????? ???  
?? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???” ??? 7??  
????????? 1992;»

?? ? ? ?????????? ??????

????????????? ??????????

24    ?? ?? ?????? ???, ?? ?????? ?????????? ??? ?????? ??? ?????? ?? ?? ?????? ???  
????? ? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? 73 ?,  
????????? 1, ??? ?????? ???/? ?? ??? ?????? ??? ?????? 73 ?, ?????????? 3, ??? ??????.

25    ??????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??????  
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???, ???  
????????? , ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???, ?? ?????? ???  
????????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???  
????? 73 B ??? ?????? ?? (??? ?????? 56 ??).

26 ??????, ??? ????? ???????????, ??????????? ?? ??? ????? ?????? ??????? ???  
?????????? ?? ??? ?????? ??? ?????? ?????????????? ???????????, ?? ??????????? ??????? ??  
????? ?????? ??????? ?? ??? ?????????? ?????? ?????? ??????? ?? ??? ?????? ?????????? ??  
?????????? ?? ?? ??????????? ??? ?????? (??., ?????? ???, ??? ??????? ?? 12??  
?????????? 2004, C-60/03, Wolff & Müller, ??????? 2004, ?. ?-9553, ????? 24, ??? ?? 7??  
?????????? 2005, C-153/03, Weide, ??? ??? ??? ????? ??????????? ??? ???????, ????? 25).

27 ??? ???????, ??????? ?? ?????????? ?? ?? ??? 73 B ??? ??????? ??????? ??  
?????????? ?? ??? ?????? ??? ??????????? ?? ??????? ???????, ??? ?? ???????,  
????? ????, ????, ??? ?????? ?? ?????? ??????? ?? ??????? ???????, ??? ??????? ??  
? ?????? ??????? ?? ?????? ??? ?????? ??? ?????? ??? ??????? ??????? ?? ??????? ??  
?? ?????? ?? ??? ?????? ?????, ??????????? ?? ?? ??????? ?????? ??? ??????? ??  
?? ??????? ?? ??? ??? ?????? ?????? ??? ??????? ?? ??????? ?? ?????? ??????????? ??  
??? ??????? ?? ?????? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ??  
????? ??? ?????? ??????????? ?? ??????? ?? ??????? ??.

?????????? ?? ??????????? ?? ??????? ?? ??????? ??.

28 ?? ?????????? ?? M. E. A. van Hiltén-van der Heijden ??????????? ?? ?? 3,  
?????????? 1, ??? SW 1956 ??????????? ?? 73 B ??? ??????. ???????????,  
?????????? ?? ?????? ??????? ??????? ??, ??????????? ???????????, ??? ??????  
?????????? ???????, ???????, ??????? ??????? ??????? ?? ?? ?? ??????? ??  
?????????? ?? ??? ?????? ?????? ??? ?? ??????? ?? ??, ???????, ? ?? ??? ??????? ??  
?????????? ?? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ??  
?????????? ??.

29 ? ?????????? ?? ? ?????????? ?????????? ??????????? ??, ??? ??????? ?? ??  
????????? ?? ?????????? ??, ??????? ?? ?????????? ?? ?? ?? ?????? 73 B ???  
????????? ?????????? ?? ??? ?????? ??????? ?? ?? ?????? 3, ?????????? 1, ??? SW 1956  
????????? ??????? ?? ??? ??????? ??.

30 ?? ??????????, ? ??????? ?????????? ?????????? ??, ?????? ?? ?? ??????? ??  
??????????, ?????? ??????? ?? ?????????? ?? ?????????? ???????????, ???????, ??  
?????????? ???????, ? ?????????? ?????????? ??, ?????? ?? ?? ??????? ?? ??????? ??  
?? ? ?????? ?????????? ?????????? ??, ?????? ?? ?? ?????? . ?????? ??????? ??  
????? ?????????? ?? ?????? ?????????? ?? ??????? ?? ???????, ??? ??????? ??  
????? ??? ?? ??????? ?? ?????? ??????? ?? ??????? ??.

31 ??????, ??? ??????? ?????????? ?????????? ??, ?????? ??????? ??????? ??  
????????? ?????????? ??, ???????, ???????????, ??? ??????? ?????????? ??  
????????? ??????? ?? ?????? ??????? ??, ?????? ??????? ??????? ??  
????????? ? ?????? ?????????? ??, ?????? ???????, ?????, ???????, ? ??????? ??????? ??  
????????? ??????? ?? ?????? ?????? ??????? ?? ?????????? ??, ??? ??????? ??  
????????? ??????? ? ?????? ?????????? ?? ??????? ?? ??????? ??.

32 ??????, ?? ??? 73 B ??? ??????? ?? ??????????? ??, ??? ??????? ??????? ??  
????? 3, ?????????? 1, ??? SW 1956 ?????????? ??, ??? ??????? ??.

33 ? ?????????? ?????????? ??, ??? ??????? ??, ??? ?????? 73 ?, ?????????? 1, ??? ??????? ??  
????? ?????????? ??, ??? ?????? ?????????? ??, ??? ?????? 3, ?????????? 1, ??? SW 1956, ???????  
?? ??????? ??, ??? ??????? ??, ??? ??????? ??, ??? ??????? ?????????? ??, ??? ??????? ??.

34 ? ?????????? ??, ??? ?????????? ?????????? ??, ??? ??, ??? 3, ?????????? 1, ???

SW 1956 ??? ?????????? ???????? ??? ?????? ??? ? ??????????? ? ??? ?????? ??? ?????????? ???  
????? ??? ?????? ??? ??????? ??? ??????? ?????? ??????. ????????, ?? ?????? ??? ?????? ??? ??????  
????????????? ??? ??? ?????? ??????? ??? ??? ?????? ??? ?????? ??? ??????. ????????, ?  
????????? ?????????? ??? ??????? ??? ?????? ?????? ?????????????? ??? ?? ?????? 73 ? ?. ???  
????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ???.

35 ??? ??? ?? ?????????? ?????????? ??? ?????????? ??? ?????????? ?? ?????? ??? ?????? ???  
????????? ?????????? ??? ??????? ??? ??? ?????????? ?????? ??? ?????????? ??????????????, ? ??????????  
????????? ??? ?? ?????????? ??? ?????? ?????????????? ??? ?????????? ??? ?????? ???  
????????? ??? ??????.

????????? ??? ????????????

36 ???' ????, ?????? ?? ?????????? ???, ??? ??? ?? ?????? ??? ?????? ?????? ???  
????????? ??? ?????? ???, ??? ??? ?? ?????????? ?????? ?? ?????? ??? ?????????? ???  
???? ?????????? ??? ?????????? ?????? (??., ?????? ???, ??? ?????????? ??? 11??  
????????? 1995, C-80/94, Wielockx, ?????? 1995, ?. ?-2493, ????? 16, ??? ??? 10?? ??????  
2005, C-39/04, Laboratoires Fournier, ?????? 2005, ?. ?.-2057, ????? 14).

37 ??????, ?????? ?? ?????????? ??? ?? ?????? 73 ?, ?????????? 1, ??? ?????? ???  
?? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???  
??? ?????? ??? ??? ?? ?????? ??????. ??? ?????, ?????? ??? ?????? ??? ??????????  
??? ?????????? ??? ?????? ?????? «????????? ??? ??????» ???  
????????????? ??? ?? ?????????? ??? ??? ?????? ?????????? ??? ?????? ??? ?????? ???  
??? ?????? ??? ?????? ??? ??? ?????? ??? ??????.

38 ??? ??????, ?????? ?? ?????????? ?????? ?? ?? ?????????? ?????????? ???  
????????? ??? ?? ?????? ??? ?????? 73 ? ??? ??????.

39 ?? ??????????, ?????? ?? ?????????? ??? ? ?????? ??? ?????? ??? ?????? ???  
«????????? ??????» ??? ?? «?????». ??????, ??? ?????? ????????, ?????? ???  
73 B ??? ?????? ??? ?????? ?????? ?????????? ?? ?????????? ??? ?????? 1 ??? ??????  
88/361 ??? ?? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? 69 ?? 70, ?????????? 1, ??  
????????? ??? (?? ??? 67 ?? 73 ??? ?????? ??? ?????????? ??? ?????????????? ?? ?? ??? 73 ?  
?? 73 ? ??? ?????? ??, ??? ?????? 56 ?? ?? 60 ??), ? ?????????? ??? «?????????  
?????????» ? ??? ?????? ?????? ??? ?????? ??? ??? ?????? ?????? ??? ??????????  
???? ??? ???, ??? ??? ?? ??? ??? ???, ??? ??? ?????? ??? ?????????? ??? ??????????  
????????? ???, ?????? ?? ?????? ?????? ??? ?????? ??? ?????????? ??? ??????????  
???? ? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? (??., ??? ??? ???,  
????? ??? ?????? ?????? ??? ?????? ??? 16?? ?????? 1999, C-222/97, Trummer ???  
Mayer, ?????? 1999, ?. I-1661, ????? 21, ??? ??? 5?? ?????? 2002, C-515/99, C-519/99 ???  
C-524/99 ??? C-526/99 ??? C-540/99, Reisch ?.?, ?????? 2002, ?. I-2157, ????? 30).

40 ??????, ?? ?????????? ?????????? ??? ?????? XI ??? ?????????? | ??? ??????  
88/361, ?????? ?? ?????? ?????????? «????????? ?????? ?????????? ?????????? ». ??? ?  
????????? ?????????? ?????? 53 ??? ?????? ???, ?? ?????? ??? ??????  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??????????  
?? ?????? ??? ?????? ??? ??????.

41 ??????????????, ? ?????????? ?????????? ??? ?????????? ?? ??? ? ??????????????  
?????? ??? ?????????? ??? ?????????? ??? ??? ?????? ?, ?? ??? ???? , ??? ??????????  
????? ?????????? ??? ?????? ?????, ?????????? ??? . ??? ?? ????? ?????????? ???  
????????? ???.

42 ???????, ?? ?????????? ?????????? ?????????? ?????????? ??? ??? ?????? ??? ??????  
73 B ??? ?????? (??., ??? ??? ?????, ??? ??? ?????? ??? 11?? ?????????? 2003, C-  
364/01, Barbier, ?????? 2003, ?. I-15013, ??? 58), ?????????? ??? ?????????? ??? ??  
????????? ??? ?????? ?????????? ?????????? ??? ?????? ?????? ?????? ?????? ??????.

43 ???????, ?????? ?? ???????? ?? ??? ?????? ?????? ??? ? ?????? ??? ?????? ??? ??????  
????? ?????? ?????????? ??? ??? ?????? ??????.

44 ?? ??????????, ??? ?? ?????????? ?????????? ??? ?? ?????? ??? ?? ?????????? ??? ??  
????????? ?????????? ?????????? ??? ?? ?????? 73 B, ?????????? 1, ??? ??????  
????????? ??? ?? ?????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??  
????????? ?????? ??? ?? ?????? ?????? ??? ?? ?????? ?????? ?? ?? ?????????? ??? ?????? ???  
????????? ?????? ??? ?? ?????? ?????? ?????? ??? ?? ?????? ?????? ?????? ?????????? ???  
????????? ?????? ??? ?? ?????? ?????? ??? ?? ?????? ?????? ??? ?????? ?????? ?????? ???  
????????? ?????? ??? ?? ?????? ?????? ??? ?? ?????? ?????? ??? ?????? ?????? ?????? ???  
????????? ?????? ??? ?? ?????? ?????? ??? ?? ?????? ?????? ??? ?????? ?????? ?????? ???  
????????? ??? ?? ?????? ?????? ??? ?? ?????? ?????? ??? ?????? ?????? ?????? ???  
????????? ??? ?? ?????? ?????? ??? ?? ?????? ?????? ??? ?????? ?????? 14 ?? ?????? 1995, C-484/93, Svensson ??? Gustavsson, ?????? 1995, ?. I-  
3955, ??? 10- ??? ?????????? Trummer ??? Mayer, ??? 26- ??? ??????  
??? 14?? ?????? 1999, C 439/97, Sandoz, ?????? 1999, ?. I-7041, ??? 19, ??? ??  
????????? ??? Barbier, ??? 62).

45 ??????, ??? ?????? ??????, ??? ? ?????? ?????? ??? ?????? ???, ? ?????? ?????? ??? ?  
????????? ??? ?????? ?????? ??????, ? ?????? ?????? ?????? ??? ?????? ??? ???? ??? ????  
??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ????  
????????? ??? ?? ??? ? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
? ?????? ?????? ??? ?????? ???, ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?????????.

46 ??????????, ?????????? ?????????? ?????????? ??? ?????????? ??? ?????????? ??????????  
??? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ????  
????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ??????  
?? ?????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ????  
????? ?????? ??? ?????? ??? ?????? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ????  
????????? ??? ?????? ???, ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?????, ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ????  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ????  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ????  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ????  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ????  
?????????. ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ????  
????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ????  
????? ???.

47 ??? ??? ???? ?????? ??? ?????? ??? ?????? ??? ??????, ??? ? ?????? ??? ????  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ????  
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ????  
?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ????.

??? ??????????? ????????????, ??? ??????? ?? ?????????? ?????????? ?????????? ???  
????????????? ??? ??????? 73 B ??? ??????. ????????????, ?????????? ???  
????????? ? ??????????? ??? ??????? ????????, ?????????? ??? ??? ?????????? ???  
?? ?????? ??? ?????? ?? ???????, ?????????? ?? ????????, ?? ?????? ?????????? ???  
????????? ??? ?????? [??., ??? ?????? ??????, ??? ?????? ?? ?????? 48 ??? ??????? ??  
(???, ??????? ????????????, ??? 39 ??), ??? ??????? ??? 12?? ?????? 1998, C-336/96,  
Gilly, ??????? 1998, ?. I-2793, ??? 30, ???, ??? ?????? ?? ?????? 52 ??? ??????? ?? (???,  
?????? ????????????, ??? 43 ??) ??? 58 ??? ??????? ?? (???, ??? 48 ??), ???  
?????? ??? 21?? ?????????? 1999, C-307/97, Saint-Gobain ZN, ??????? 1999, ?. I-6161,  
????? 57].

48    ????????, ?? ?????????? ??? ?????? ?? ??????? ?? ?????????? ???, ??? ??????? ??  
????????? ??? ?????????? ????????????, ??? ?????? ??????? ?? ?????????? ???  
????? ??? ?? ?????? ??????? ??? ?????? ??????? ?? ?????????? ?????????? ??? ???  
????????? ??? ?????????? ??? ?????? ?????????? ?????????? ??? ??????? (?????) (???. ???  
????????? ?????? Gilly, ??? 31). ??????, ??? ?????????? ? ?????????? ????????????, ?  
?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?? ?? ?????? ??? ???????????  
????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????? ?? ??? ?????????? ??? ???  
????? (?????? ??? ?????????? ?????????? ??? ?????????? ??? ??????, 1982). ??? ?? ?????? ???  
?????? 4, 7, 9 ? ??? 9 ? ??? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??? ??????  
????????? ?????????? ??? ?? ?????? ?? ?????????? ??? ?????????? ??? ?????? ?????????? ???  
????? ??? ?????? ??? ??????, ?? ??? ?????? ??? ?????? ???, ?????????? ??? ?????????? ???  
?? ??? ?????? ??? ?????? ??? ?????? ?????????? ?? ?????? ?????????? ??? ?????? ??? ??????  
????????? ??? ?????????? ?? ??? ?????? ?????? ?????????? ??? ???, ?????? ??? ?????????? ???  
????????? ??? ?????????? ?????? ?? ?????? ?????? ?????? ??? ???, ?????? ??? ?????????? ???  
????????? ??? ?????????? ?????? ??? ?????? ?????? ?????? ??? ???, ?????? ??? ?????????? ???  
????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ???.

49    ??? ?????? ???, ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ?? ??? ?????? ??? ?????? ??? ?????? 73 B ??? ??????.  
??????????, ??? ? ?????? ?????????? ??????? ??? ?????? 58 ??? ?????????? ???,  
???? ??' ?????? ? ??? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??????????????????  
????????? ? ?????????????? ?????????? ??? ?????? ??? ?????????????? ??? ??????????  
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? 88/361.

50    ????????, ??? ?????? ??????? ??? ?????????? ??? ?????? ?? ?????????? ?? ???????????  
???? ?????? ? ?????? ??????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ???  
????????? ?? ?????????? ?? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???  
???? ??? ??? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???  
????? ??? ??? ?????? 73 B ??? ??????.

51    ??? ????????, ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ? ?????????? ??? ?? ??????  
73 B ??? ??????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ????, ??? ? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ? ?????????? ???  
????????? ??? ?????? ??? ?????? ???, ? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?? ??? ? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

52    ????????, ??? ?????? ?? ?????? ??????? ??? ?????????? ??? ?????????? ??? ?? ???

??? ??????? ?? ??? 73 ? ??? 73 ? ??? ???????.

??? ??? ?????????? ????

53    ?????????? ??? ? ?????????? ??? ???? ????? ?????????? ??? ?????? ??? ?????? ???  
????????? ?????????? ??? ???? ?????? ?????? ??? ?????? ?????? ??????????, ?' ???  
????????? ??? ???? ?????? ??? ???? ?????.. ?? ?????? ??? ?????? ?????????? ??? ?????? ??????  
????????? ??? ??????????, ??? ???? ?? ??? ?????? ??? ?????? ??? ?????? ???.

??? ??? ?????? ????, ?? ?????????? (????? ????) ??????????:

?? ??? 73 B ??? ?????? ?? (?? ?????? 56 ??) ?????? ?? ?????????? ??? ??  
????? ??? ?? ?????????? ?? ?????? ?????? ??????, ??? ? ?????? ???  
????? ???, ????, ??? ???? ???? ?????? ?????? ??? ?????? ??? ?????? ??? ??????  
?????, ? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
?? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?????????? ??? ?? ??? ???? ??????  
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

(?????????)

\* ?????? ??????????: ? ????????.