

?????? C-544/07

Uwe Rüffler

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Dyrektor Izby Skarbowej we Wrocławiu O?rodek Zamiejscowy w Wa?brzychu

(?????? ??? Wojewódzki S?d Administracyjny we Wrocławiu
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«????? 18 ?? – ?????????? ??? ?????? ?????????????? – ??????? ??? ??? ?????? ?????????????? ???
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1. ??????? ?????????? ??? ?????????? – ?????????? – ?????????? ??? ?????????? –
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(????? 39 ??)

2. ?????????? ??? ?????????? ?????? – ?????????? ??? ?????????? – ?????????? ???
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(????? 17 § 1 ?? ??? 18 § 1 ??)

3. ?????????? ??? ?????????? ?????? – ?????????? ?????????? ?????????????? ??? ??????????
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(????? 18 ??- ?????????? ??? ?????????? 1408/71)

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

(???. ?????? 52)

2. ??? ?????? ?? ?????, ??? ?? ?????????????? ???, ?????????????? ?? ?????? ?????? ???
?????? ?????? ?????? ??? ??? ?????? ?????? ?? ?????? ??? ?????????????? ???
????????????? ??? ?? ?????????? ?? ?? ?????? 17, ?????????? 1, ?? ??, ???????, ???????, ?????? ??
????????? ?? ?????????? ??? ??? ?????? ?????? ?????? ?????? ??? ?????????? ???, ?????? ??
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????????? ?? ?????? 18, ?????????? 1, ?? ?? ??? ?????? ??? ??????.

(???. ??????? 55-56)

3. ?? ?????? 18, ?????????? 1, ?? ?????? ?????? ??? ?????? ?????????? ??? ??????.

? ?????? ? ?????? ??????? ?? ??????? ??? ???????????? ?????????? ??? ?? ???? ???? ????
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? ?????? ???, ??????, ? ?????? ?????????? ?????????? ??? ?????? ?????? ?????? ??????
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????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??,
????? ??? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
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??? ?????????? 1408/71, ?????? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??
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(?? ?????? 67-69, 72-73, 78, 85, 87 ?? ??????).)

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

?? 23?? ?????? 2009 (*)

«????? 18 ?? – ?????????? ??? ?????? ?????? ?????? – ?????? ??? ?? ??? ?????? ?????? ???

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??? ?????? ?? Wojewódzki S?d Administracyjny we Wroc?awiu (???????) ?? ?????? ??? 3??
????????? 2007, ? ?????? ?????? ??? ?????????? ??? 4 ?????????? 2007, ??? ??????
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Uwe Rüffler

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Dyrektor Izby Skarbowej we Wroc?awiu O?rodek Zamiejscowy w Wa?brzychu,

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

????????? ??? ??? A. Rosas (???????), ?????? ????????, J. Klu?ka, U. Löhmus, P. Lindh
??? A. Arabadjiev, ????????,

?????? ??????????: P. Mengozzi

?????????: R. Grass

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- ? U. Rüffler, ????????????,
- ? ??????? ????????, ?????????????? ??? ??? M. Dowgielewicz,
- ? ??????? ????????, ?????????????? ??? ??? K. ?????????? ??? ??? ?.
????????????? ??? M. ????????????,
- ? ??????? ??? ?????????? ????????????, ?????????????? ??? ??? R. Lyal ??? K. Herrmann,
- ? ?????????? ??? ??? ????????, ?????????????? ??? ??? P. Bjørgan ??? L. Young,

?????? ??? ?????????? ??? ???, ??? ?????? ??? ?????? ????????????, ?? ?????????? ???
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1 ? ?????? ?????? ?????????? ?????????????? ?????? ??? ?????? ??? ?????? 12 ??
??? 39 ??.

2 ? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? U. Rüffler,
????????? ?????? ? ?????? ????????, ??? ??? Dyrektor Izby Skarbowej we
Wroc?awiu O?rodek Zamiejscowy w Wa?brzychu (????????? ??? ?????????? ?????????? ???
Wroc?aw, ??????? ??? Wa?brzych, ??? ????: Dyrektor), ??? ?????? ??? ?????? ???

????????? ??????????? ???? ?? ??? ?????????? ??????? ??? ?? ??? ????? ??????????? ???
????????? ?????????? ??? ?????????? ??? ?????????? ?????? ?????? ?????? ??????, ??? ??????
????????? ?????????? ??? ?????????????? ??? ?????? ?????? ?? ?????????? ?????????? ??????????
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3 ?? ?????? 3, ?????????? 1, ??? ?????????? (??) 1408/71 ??? ???????????, ??? 14??
?????? 1971, ??? ?????????? ??? ?????????? ?????????????? ?????????? ?????? ???????????,
????? ?? ?????????? ??? ??? ??? ?????????? ?????????? ?????? ??? ?????????????? ?????? ???
??????????, ??? ?????????????? ??? ?????????? ?? ??? ?????????? (??) 118/97 ??
??????????, ??? 2?? ?????????? 1996 (?? 1997, L 28, ?. 1, ??? ????: ?????????? 1408/71),
????????? ??? ??? ??? ???????????????, ??????? ?? ??? ?????:

«?? ?????? ??? ?????????? ??? ?????? ??? ?? ??? ?????? ??? ?? ??? ?? ??? ?????? ?????? ??
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?? ??? ?????? ???, ??? ??? ?????????? ?????? ?????? ?????? ?????? ??? ?????????? ??? ?????????? ??????»

4 ?? ?????? 28 ??? ?????????? 1408/71, ?? ????? «????????? ??? ?????????? ?????????? ???
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?????????», ?????????? ???:

«1. ?? ?????????? ??? ?????????? ?????????? ??? ?? ?????????? ??? ?????? ?????? ???
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????????? ?????? ??? ?? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?? ?????? ??? ?????? ??? –????????? ???, ??? ?????????? ???, ??? ??????????
?? ?????? 18 ??? ?? ?????????? VI– ?? ?????????? ??? ?????? ?????? ??? ?????? ???
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?? ??? ?????? ??? ??????????, ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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?) ?? ?????? ??? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? 2 ??? ??? ?? ??? ?????? ??? ?????? ??? ??????????, ??? ?? ?????????? ?????????? ???
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?) ?? ?????? ??? ??? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 2, ??? ??' ???
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2. ??? ?????????? ??? ?????????? ??? ?????? ??? 1, ? ?????? ??? ?????? ??? ??????
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?) ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ??????, ?????????? ??? ?????? ??? ?????? ??? ??????.

[...]».

5 ?? ?????? 28? ??? ????? ????????????, ?? ????? «?????????? ???. ?????????? ?????????? ???.
????????? ???. ? ?????????? ?????? ?????? ?????? ???. ???. ???. ?????? ?????? ???. ?????? ???.
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«????? ???. ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ???. ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ???. ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
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????? ???. ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ???. ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 28,
????? ???. ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 2,
????? ???. ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ???. ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
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6 ??? ???. 95, ?????????? 1, ??? ???????? (???) 574/72 ??? ??????????, ???
21?? ?????? 1972, ??? ???. ?????? ?????? ?????? ??? ?????????? (???) 1408/71, ???
????????? ??? ?????? ??? ?????? 118/97:

«?? ??? ???. ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? 28, ?????????? 1, ???
????????? [1408/71] ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??????, ?? ??????
????????? ??? ?????? ?????? ?????? ?????' ?????? ?????? ??????, ??? ???. ?????? ?????? ??????????
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7 ??? ???. 18, ?????????? 1 ???. 2, ??? ?????? ??? 14?? ???. 2003 ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
(umowa z dnia 14 maja 2003 r. mi?dzy Rzeczypospolit? Polsk? a Republik? Federaln? Niemiec w
sprawie unikania podw?jnego opodatkowania w zakresie podatków od dochodu i od maj?tku, Dz.
U ??? 20?? ?????????? 2005, ????. 12, ?????? 90, ??? ????: ?????? ??? ?????? ???
????? ??????):

«1. ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???.
????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???.
????? ???. ?????? ???. ?????? ???. ?????? ???.

2. ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???.
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8 ?? ?????? 3, ??????????? 1, ??? ?????? ??? 26?? ??????? 1991, ??? ?????? ???????????????
??? ??????? ??????? (ustawa z dnia 26 lipca 1991 r. o podatku dochodowym od osób
fizycznych, Dz. U ??? 2000, ????. 14, ?????? 176, ??? ?: ?????? ??? ?????? ??????????????),
?????????? ?? ????:

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

9 ?? ?????? 21, ??????????? 1, ?????? 58, ??????? b, ??? ?????? ??? ?????? ?????? ???????????
?????? ?? ????:

«????????????? ??? ??? ?????? ?????????? [...] ?? ?????????? ?????? ??? ??????????????
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10 ?? ?????? 27b ??? ?????? ?????? ??????? ?? ????:

«1. ??? ??? ??? ?????????? [...] ???????? ???' ?????? ?? ??? ??? ?????? ?????????? ??????????
????????? ??? ?????????????? ??? 27?? ?????????? 2004, ??? ?? ??? ??????
????????????? ??? ?????????????? ?????????? [ustawa z dnia 27 sierpnia 2004 r. o
?wiadczeniach opieki zdrowotnej finansowanych ze ?rodków publicznych, Dz. U ??? 210,
????? 2135], ??? ?? ????: [...]»:

1) ?????????????? ??? ??? ?????????????? ??? ?? ?????????? ???, ?????? ??????? ??
??? ?????????? ??? ??? ?????????? ??? ?????????????? ??? ?? ?????????? ???, ???????????,

2) ?????????????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ?????????????? ??? ?? ?????????? ?? ???
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? ?????? ??? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????????? ?????????????? ???
?? ?????????? (?????) ??? ?????????????? ??? ?????? ?????? ??? ?????? 21, [...] ??? ?? ???
??? ?????? ??? ?????? ? ??? ?????? ?????? ?????????? ??? ?? ?????? ??? ?? ??? ??????
????????? ??? ?????? ??? ?????????? ??? ?????????? ???.

2. ?? ??? ??? ?????? ?????????? ??? ?????????? ??? ?? ?????????? ??? ?? ??? ??? [?? ??
????????????? ??? ?????? 1 ??????????] ??? ?????? ?? ?????? ?? 7,75 % ??
????? ?????? ??? ?? ??? ??????.

3. ?? ??? ??? ?????? ??? ?????????? ??? ?????????????? ??? ?? ??? ?????????? ??? ?????????? 1
????? ?????????? ??? ?????? ??? ?????????????? ??? ?????????????? ??? ??????»

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

11 ? U. Rüffler, ??? ?????? ??? ?????????? ??? ?????? ?????? ?????????? ??????????????,
????????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ?? ?????? ???, ??? ?? 2005. ??? ??
????????? ??? ?????? ??? ?????????? ??? ?????????? ?????????????? ?????? ?????? ???
?? ?????? ??? ?????? ???.

12 ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???, ? U.
Rüffler ????, ?? ??????? ??? ???????, ??? ?????????? ??? ?????? ??? ?????? ??? ??????? ??? ??
???????, ????:

- ??? ??????? ?????????? ?????????? ??? ?????????? ?????????? ??? ?????? ???
???????????, ??? Landesversicherungsanstalt (???????????, ??? ?????????? ??? ?????? ???),
???? ?????????? ?????? 70 %, ??? ??????? ?????????? ?????? ??? ??????????
????????? ?????????? ?????????? ?????????? ??? ?????????? ,
 - ??? ??????? ?????????????? ?????????????? ??? ??? ?????? Volkswagen.
- 13 ? ??????? ?? ??????? ?????????????? ??? ?????????? ?? ?????????? ?????????? ???
? U. Rüffler ??????? ??? ?????? ?????? ??? . ?? ?????????? ?????????? ?????????? ??????????
????????? ??? ??? ??? ?????? ??????, ?????? ??? ?????? ?????????? ?????????? ??
????????? ?????????? ?????????? .
- 14 ? ?????????? ??? ??????? ?????????? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ? U. Rüffler ??????? ??? ??????? ?????????? ?????????? ??? ?????? 14,3 %
???? ??? ?????????? ??? ?????????? ?????????? ??? Deutsche BKK-West ??? Wolfsburg.
????????? ?? ??? ?????????? ??? ?????? 28 ??? ?????????? 1408/71, ?? ?????? Rüffler ???
????????? , ?????????? ??? ? Narodowy Fundusz Zdrowia (????????? ?????? ??????
?????), ??? ?????? ?????????? ?????????? ??? ?????? ?????? ??????. ?? ?????? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? .
- 15 ? U. Rüffler ??????, ??? ??????, ?????????? ?????????? ?????????? ???, ???'
????????? ??? ?????? 3, ?????????? 1, ??? ?????? ??? ?????? ?????? ?????? ?????? .
- 16 ???' ?????????? ??? ?????????? ??? ?????? 18, ?????????? 2, ??? ?????????? ???
????????? ??? ?????? ?????????? , ? ?????? ?????????? ??? ??? ?????????? ??? ??????????
??? ??? Landesversicherungsanstalt ?????????? ??? ?????? ??? ?????? ?????? ????.
????????? , ??? ??? ?????????? 1 ??? ?????? 18, ? ?????? ?????????? ??? ?????? ???
????????? ??? ?????? ?????? Volkswagen ?????????? ??? ?????? ??? ?????? .
- 17 ?? 2006, ? U. Rüffler ?????? ??? ?????? ?????????? ?????????? ??? ?? ??? ??????????
????????? ??? ??? ?????? ?????????? , ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? , ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? .
- 18 ?? ?????? ??? 28?? ?????????? 2006, ? ?????? ?????????? ??? ?????? ???
????????? ??? ?????? ???, ?? ?? ?????????? ??? ?? ?????? 27b ?? ?????? ??? ??????
????????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
????????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????????? ??? ?????? ?????????? ??? ?????? . ???, ? U. Rüffler ??? ??????????
????????? ?????? ??? ?????? .
- 19 ?? ?????? ??? 2?? ?????????? 2007, ? U. Rüffler ?????? ?????????? ???
???? ??? ?????????? ??? ?????? ??? Dyrektor, ??? ?????? ??? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????????? ??? ?????? ???
??? ?????? ??? ?????? .
- 20 ?? ?????? ??? 23?? ?????????? 2007, ? Dyrektor ?????? ?? ?????????? ???
????????? ??? ?????????? ??? 28?? ?????????? 2006, ?????? ?? ??? ?????? ???
????? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? . ???' ??? ??? ?????? , ??????????
??? ?? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? 27b ??? ?????? ??? ???

????????????? ??? ?????? ??? ?? ??????????? ??? ?????? ??? ?????????????? ???, ???
????? ??????????? ?? ??????????? ??? ?????? ??? ?????????? ??? ??????, ?????????? ???
????? ?????????? ??? ?????? ???, ?? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? 27b ??? ?????? ??? ?????? ??????.

21 ? ??????????, ????, ???, ??? ?????? ??? ?????????? ??? ?????? ??? Dyrektor, ?
U. Rüffler ?????????? ??? ? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???
????????? ??? ???? ?????? ?????????? ??? ?????? ??? ?????? 21, ?????????? 1, ?????? 58,
????????? b, ??? ?????? ??? ?????? ?????????? . ? ?????????? ??? ?????? ?????????? ???,
?? ? ?????????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?? ??????????
????? ?????? ??? ?????? ??? ?????? ?????????? ?? ?????? ?????????? ?????????? ?????? ???,
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ?????? ???
???? «?????????» ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

22 ? U. Rüffler ?????? ?????? ??? Wojewódzki S?d Administracyjny we Wroc?awiu
(????????? ??? Wroclaw) ?????? ??? ?????? ??? 23??
????????? 2007, ?????? ??? ? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
27b ??? ?????? ??? ?????? ?????????? . ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ??? ?????????? ??? ?????????? ??? 28?? ?????? 2006, ?????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??????????.

23 ??? ? U. Rüffler, ??? ?????? ?????????? ??? ?????????? ??? ?????????? ???
????? ??????????, ??? ??? ???? ???? ?????? ??? ?????????? ??? ?????????? ???
????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ?? ?????? ?????????? ???, ?????????? ??? ?????? ??? ?????? ???
????????? ??????????, ??? ?????? ?? ??? ?????? ?????????? ??? ?????? ???
????????? ??????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??????.

24 ? U. Rüffler ?????? ?????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ???? ???? ?????? ???, ?????????? ???, ??? ?????? ??? ???? ???? ????
????????? ??? ?????? ??? ?????? 39 ?. ??? ?????? ??? ?????? ???, ???
????????? ??? ?????? ??? ?????? ??? ?????????? ??? 30?? ?????? 2007, C-150/04, ??????
????? ?????? (????? 2007, ?. I-1163).

25 ?? ?????? ?????????? ??? ???? ???? ?????? ??? ?????? ??? ?????????? ???
????????? ? U. Rüffler ?????? ??? ?????????? ??? ?????????? ??? ?????? ???
????????? ??? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ????
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ????
????????? ?????? ??? ?????? . ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? 14,30 % ??? ?????? ??? ??? 9 % ??? ?????? ??? ???? ????
????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

26 ?? ?????? ?????????? ??? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

27 ?? ?????? ??????????? ??????????? ?????? ? ??????? ?????? ??? ?????? 27b ??? ???
????? ??? ?????? ??????????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????????????? ??
??????, ??????? ?????? ?????? ??? ??????????? ???????????, ???????????, ?????? ??? ??????
?????? ??? ?????? ???????????, ??? ??????????? ??????????? ??? ??? ??? ?????? ??? ??????
?????????? ??????????? ??? ??????????? ?????? ?????? ?????? ???????, ??????????????? ??? ??
?? ??? ??????????????? ??? ?????? ??? ?????? ??? ?????? ??? ??? ?????? ?????? ??? ??
?????????? ??????????? ???.

28 ??? ??? ?????? ??? ??????????? ??? ??????????? ??????????? ???, ?? ??????? ??? ??
????????? 2007 (K 18/06, Dz. U ??? 2007, ????. 211, ?????? 1549), ?? Trybunal Konstytucyjny
(????????? ??????????? ??????) ?????? ??? ?? ?????? 27b, ??????????? 1, ??? ???
????? ??? ?????? ??????????? ??? ?????? ?????? ?????? ??? ?????? 32 ??? ?????????? ???????????,
?? ?????????? ?? ?? ?????? 2 ??? ??????????? ??????, ??? ?????? ??? ???????????, ???
????????? ???????????, ?? ??????????? ?????????? ??? ??? ??? ?????? ??????????? ???
????????? ??? ??? ??????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??????????? ???
????????? ???????????, ??? ?? ?????????? ?????? ??? ?????? ??? ?????? ??????????? ??? ??
????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ? ???????????
????. ??????? ??? ??? ?????? ???, ? ?????????? 1 ??? ?????? 27b ??? ?????? ??? ???
????????? ??? ??? 30 ?????????? 2008.

29 ??? ??? ??????? ???, ?? Wojewódzki S?d Administracyjny we Wroc?awiu ??????????
?? ??????????? ?? ??????????? ??? ?? ?????????? ??? ??????????? ?? ?????????? ??????????????
?????:

«????? ?? ??? 12, ??? 1, ?? ??? 39, ?????????? 1 ??? 2, ?? ??? ?????? ??? ???????????
????? ?? ?????? ?????? ??? ?????? ?? ?????? 27b ??? ????? [????? ?????? ???????????]
??? ? ?????? ?????????? ?? ?????? ?????? ??? ??? ?????? ??????????? ??? ?????? ???
????????? ?????????? ?????? ?????????? ??? ?????? ??? ?????????? ?????????? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ??? ??
????????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???
????????? ?????? ?????? ??????;»

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

31 ???, ?? ?????? ?????????? ??? ?????? ??? ???????, ?? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????????? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ???
????? ???, ??? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? 21, ?????????? 1, ?????? 58, ?????? b, ??? ?????? ??? ??????
????????? . ??? ?? ?????? ???, ?????????? ??? ?????? ?????? «?? ??????????
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? »..

32 ?? ??????????, ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?? ? ??????
????????? ??? ?????? Volkswagen ??? ?????? ???, ???

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

33 ?? ????????, ? ??????? ?????????? ??????? ?? ??????? ??????? ??????? ?? ??? ?????
?????? ??????????, ???? ??? ?? ?????????? ???????, ???? ??? ?????? ??? ?????? 234 ??,
????????? ?????????? ??????? ?? ??????? ?? ?????? ?????? ?????? ?????? ??????,
?????? ? ??????? ?? ?????? ?? ?????? ?????? ?????? ?????????????? ?? ??? ?????????? ??????.

34 ???, ??? ?? ??????? ??????????, ? ??????? ?????????? ??????? ?? ??? ?????????????? ??
??? ?????? Volkswagen, ?? ??????? ??? ?????? ???????, ??? ???????, ?? ???
????????? ??? ?????????????????? ??? ??????? ?????????? ??????????????????
????????????? ???????, ?? ??????? ?? ??????? ?? ??????? ?? ??? ?????? ?????? ??????????
?? ?????? 21, ?????????? 1, ?????? 58, ??????? b, ??? ?????? ??? ?????? ?????? ??????????????,
????? ??? ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????????????? ?????
????????? ?????????????? ?????????????? ?????????? ?? ??? ?????? ?????? ?????????? ??
????????? ??? U. Rüffler ??? ?????????? ??? ??? ?? ??? ?????? ?????? ?????? ?? ???
????????? ?????? ?????????? ??? ??????.

35 ? ??????? ?????????? ??????? ?? ??????? ?????????? ?? ??? ?? ??? 27b, ?????????? 1, ??????????
??????, ??? ?????? ??? ?????? ?????? ?????????? ?? ??????? ?? ??? ?????? ?????????? ??
??? ?????? ??? ?????????? ?????????? ??????????, ??????? ??? ?????? ??? ?????? ?????? ??????
U. Rüffler ??? ??????? ??? ?????????? ??? ?????? ??????, ??? ?? ?????????? ??????????
????????? ?????????? ?? ?????????? ??? ?????????? ?????? ?????? ?????? ?????? ??? ?????? 21
?? ?????? ??????. ???????, ?? ? ?????????? ??????? ?? ?????? ??? ?????? ??????????????
????????, ??? ?????? ??????, ???' ?????????? ??? ?????? 27b, ?????????? 1, ??????????
??????, ??? ?????? ??? ?????? ??????????, ?? ?????? ??? ?? ??? ?????? ??? ?????? ??????????
?? ??? ??? ?????? ?????? ??????????, ?????? ?? ??? ?????? ?????? ?????? ?? ??????
????? ??? ?????? ?????????? ?? ?????????? ??????. ??? ??????, ? ?????? ?????? ?????? ???
????????? ?????????? ?????? ?? ?????????? ?????????? ?????? ??? ?????? ?????????? ??????.

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

36 ?????????? ???, ??? ?????? ??????????, ??? ?????? ??? ?????????? ?? ??? ?????????? ??
234 ??, ?????????? ?????????? ?? ??? ?????? ?????????? ?? ??? ?????? ?????????? ??
????????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ?????????? ?? ??????????,
????????? ??? ?????? ??? ?????????? ??? ???????, ??? ?????? ?????????? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? (??., ?????? ???, ?????? ??? 13? ?????? 2001, C?379/98,
PreussenElektra, ?????? 2001, ?. I-2099, ?????? 38, ??? 4?? ?????????? 2008, C-221/07,
Zablocka-Weyhermüller, ??? ??? ??? ?????????? ??? ?????? ??? ??????, ??? 20, ??? ???
10? ?????? 2009, C-169/07, Hartlauer, ??? ??? ??? ?????????? ?????? ??? ??????,
????? 24).

37 ???????, ?? ?????????? ??? ?????? ?????? ???, ?? ?????????? ????????????,
?????? ?? ??????? ?? ??????? ?? ?????? ?? ?????? ?? ?????? ?? ??????? ??
?? ??????? ??????????? ?? ???????, ??????????? ?? ?????? ?? ?????? ??
????????? (??., ??? ?? ?????? ???, ?????? ?? 16?? ?????????? 1981, 244/80, Foglia,
?????? 1981, ?. 3045, ??? 21-??., ??????, ?????????????? ?????? PreussenElektra,
????? 39, ??? ?? ?????? ?? 21?? ?????????? 2003, C-318/00, Bacardi-Martini ??? Cellier
des Dauphins, ?????? 2003, ?. I-905, ??? 42).

38 ??? ?????? ??????? ?? ?????????? ?????? ?????????? ?? ?????????? ??????
?????? ?????????? ?? ?????? ?? ?????? ?????? ?? ?????????? ?????? ?? ?????????? ??
????????? ?? ?????? ?? ?????? ?????? ?? ?????????? ?? ?????? ?? ?????? ?? ?
????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????????? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
(????????????? ?????? PreussenElektra, ??? 39, ??? Zablocka-Weyhermüller, ???
20).

39 ??????, ??? ?????? ?? ?????????? ??? ?? Wojewódzki S?d Administracyjny we
Wroc?awiu ??????, ?????????????? ?? ??? ?? ?????? ??? ?????????? ????? ?????????? ???
??? ? ?????? ?? ?????? ?? ??? ?? ?????????? ?????? ?? ?????? ?? ?????? ?? ?????
??? ?????????? ?? ??? ?????????? ?? ??? ?? ?????? ?? ?????? ?? ?????????? ?????? ??
??? ?????? ?????????? ?? ??? ?????????? ?????? ?? ?????? ?? ?????????? ?????? ??
?????????????.

40 ??????????, ? ?????????? ??? U. Rüffler ??? ? ?????? ?????????? ??? ??
????????? ?????? ?? ???????????, ??? ???????, ??? ?????? ???????????, ?????????? ?
????????? ?????? ?? ?? ?????????? ?????? ??? ??? ?? ?????????? ?????? ?? ?????????? ??
????????? ?????? ??? ?????????? ??? ??? Dyrektor, ??? ?????????? ??? ?????????? ??
????????? ??? ?????? U. Rüffler ?????? ??? ?????????? ??????????. ?? ??? ??????
???? ???????, ???????????, ? ?????? ??? ?????????? ??? Dyrektor ??????
????????????? ??? ???????, ?? ??? ??? ?????????? ??? ?????????? ??? ?????????? ???
????, ?????????? ?????????? ??? ??? ?????????? ??? ?????? 27b ??? ?????? ??? ???
?????????.

41 ??????, ?? ?????????? ??? ?????? ??? ??? ?????????? ?????? ??? ?????? ???
????????? ??? U. Rüffler ??? ? ?????? ??? ?????????? ??? ??? ?????????? ???
????????????? ??? ?????????? ??? ?? ?????????? ?? ?????? ??? ?????? ??? ??????
?????????.

42 ?? ?????? ?????????? ???????????, ???????, ?? ??? ?????? ??? ??? ?
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? «????????? ?
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? 18, ??????? 1, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?? ?????? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ??? U. Rüffler ?????? ??? ?????????? ??? ?????? ???
??????, ??? ?????????????, ??? ?? ??? ??? ?????? ???, ?? ??? ?????????? ???
????????? ?? ?????? ?????????? ??? ?????? ??? ?????? ???.

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

44 ????????, ?? ???????? ?????? ?????? ?????? ????????.

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45 ? U. Rüffler, ? ??????? ???????????, ? ??????? ??? ?????????? ?????????????? ??? ?
????????????? ??? ?? ?? ?????? ??? ?? ?????????? ??? ?? ?????????? ?????????? ?? ?? ?? ???????????
? ?????????? ??? ?????? ???????, ?? ?????????? ??? ?????? ?????????? ?????? ??? ?????? ??? ??
????????? ???, ?? ??????? ?????????? ??? ?? ??? ?????? ?????????? ??? ?????? ??? ??????
????????? ?????????? ??? ?????? ?????????? ?????????? ?????????? ??? ?????? ??? ??????
????????? ??? ?????? ?????? ??? ?????????? ?????????? ?????????? ?????????? ??? ?????? ??? ??????
????????? ??? ?????? ?????? ??? ?????????? ?????????? ?????????? ?????????? ??? ?????? ??? ??????.

46 ??? ?? ?? ?????????? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ??, ?? ?????? 12 ?? ??
39 ?? ?????????? ?? ?? ?????? ???, ?????? ?? ?? ?????? ? ?????????????? ??? ?? ??
????????? ??? ?? ?? ?????? ?????????? ?????????? ?????????? ?????????? ?? ?? ?????????? ?? ??????????
???? ?????????????? ??? ?????? ?????? ?????? ?????????? ?????? ?????????? ??? ?????? ?????? ??????????
???? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ????. ??? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????????? ?????? ???, ?????? ?? ?? ?????? ?????? ?????? ???, ??? ?????????? ??? ?????? ??????????
??? ?? ?? ?? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????????
????????? ??? ?????? ??? ??????.

47 ? ??????? ?????? ??? ?? ??????? ??? ?? ??????? ??? ?????? ?????? ?????? ?????? ??? ?
U. Rüffler ??? ?????? ?????????? ?????? ?????? ??? ?? 2005 ?????? ?????? ??? ?????? ??? ?????? ???
????? ?????? ???, ?????? ???, ??? ?? ?? ?????? ?????? ?????? ?????????? ??? ?????? ?????? ??? ?? ??
????? ?????? ???, ??? ?? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?? ?? U.
Rüffler ??? ?????? ??? ?????? ??? ?? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???, ?
????????? ??? ?? ?? ?????? ??? ?????? ??? ?????? ??? ?????? 39 ?? . ? ?????? ??? ??????
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 12 ?? ?? 18 ??.

48 ??? ?? ???????, ?? ?? 12, ?????? ??????, ?? ?? 18, ?????????? 1, ??
????????? ???, ??? ?? ?? ?????? ???, ??? ?? ?? ?????? 27b ??? ?????? ??? ??????
????????? ???, ? ?????? ?????? ?? ?? ?????? ?????? ?????? ??? ?? ?? ?????? ??? ??????
????????? ???, ??? ?? ?? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ??????
????????? ???, ??? ?? ?? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ??????
????????? ???, ??? ?? ?? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??????.

49 ? ??????? ?????? ?????? ???, ?????? ??? ?? ?? ?????? ?????? ?????? ?????? ?????? ???, ???
????????? ???, ??? ?? ?? ??????.

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- ??? ??? ???????????? ?????????? ??? ???????? ??

50 ??? ??? ?????? ?????? ?????????????? ?????????? ??? ??? ?? 2005 ? U. Rüffler ?????????
?????? ????? ?????????? ?? ?? ??????? ???, ?? ??????????????, ??????? ?????????? ??????????
????????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????????????, ??? ?? ??? ??????
????????? ??? ?????????? ??? ?????? ??????, ? U. Rüffler ????????? ?? ?????????????? ??????????
??? ?????????? ??????? ??? ??? ?????? ??????????, ??? ?????? ?????????? ?????????? ??????????
?????????. ???????, ? U. Rüffler ??? ?????? ?????????????? ?????????????? ??? ?? ??
????? ??????? ??? ??????? ??? ?????? ???.

51 ????????, ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?? U.
Rüffler ?????????? ??? ?? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????
????????? ???????.

52 ?? ?????????? ??? ??????, ?? ??? ?????? ??? 9?? ?????????? 2006, C?520/04,
Turpeinen (?????? 2006, ? I-10685, ??? 16), ??? ?? ?????? ?? ?????? ?????? ??????? ??
?????? ??? ?????????????? ?????????????? ??? ?????? ??? ?????? ?????? ?????? ??? ??????
????? ??????? ??? ?? ?????? ??? ?????? ?????? ?? ?????? ?????? ?????????? ?????? ?????? ??????
????? ?????? ??? ?? ?????? ?????????????? ???, ?????? ?????? ?????? ?????????? ?????? ?????? ??????
????????????? ?' ??? ?? ??? ?????? ???, ??? ?????? ?? ?????????? ??? ?????????????? ??? ?????? ??????
????????? ??? ??????????.

53 ?????? ??????? ?? ?????? ? ?????? ??? U. Rüffler, ?? ??? ?? ??????????
????????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?? ?????? ???
?????????.

54 ??????? ?? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 39 ??, ?????? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
U. Rüffler.

55 ? U. Rüffler, ?? ??????? ???????, ??? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ?? ?? 17, ?????????? 1, ?? ???, ???????, ?????? ?? ???????,
??????????, ?? ?????????? ??? ?? ?????? ?????? ??? ???????????, ?????? ?? ????????
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ???
18, ?????????? 1, ?? (?., ??????, ?????????? ??? 22? ??? 2008, C?499/06, Nerkowska,
??? ?? ??? ?????? ?????????? ??? ?? ??????, ?????? 22, ??? Zablocka-Weyhermüller,
????????????? ??? 26).

56 ??? ??????? ??? ?????? ??? U. Rüffler ??????? ??? ?????? ??? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?? ?????, ??? ?? ?????????????? ???, ?????????? ?? ?????? ??? ?????? ??? ??????
????? ?????? ??? ?? ?????? ?????? ?? ?????? ??? ?????????????? ??? ?????? ??????????????
??? ?? ?????????? ??? ?????? ?????, ?????? ?? ?????? ??? ?????? ??? ?????? ??????????????
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 18, ?????????? 1, ?? ??
????? ?????? ??? ?????? (?., ??????, ?????????????? ??? Turpeinen, ?????? 16 ??
19).

57 ?????? ?? ?????????? ???, ??????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????? 18 ?? ??? ?? ?????????? ??? ?????????? ???, ?? ?????? ??? ?????? ??? ?????? ???
????????? ?? ??? ?????? ??? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ???

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

??? ?????????? ??? (??., ??? ??? ????? ????, ?????????? ??? 12?? ?????????? 1990, C-241/89, SARPP, ?????? 1990, ?. I-4695, ??? 8, ??? 21?? ?????????? 2006, C-152/03, Ritter-Coulais, ?????? 2006, ?. I-1711, ??? 29, ??? ??? 26? ?????????? 2007, C-392/05, ??????, ?????? 2007, ?. I-3505, ??? 64).

58 ???????, ? ??????? ??? U. Rüffler ?????? ?? ??????? ??? ?? ??? ?? ?????? ??? ??????? ???

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

????, ??? ????????? ?? ??? 18 ??.

59 ??? ????? ?? ????? 12 ??, ?? ?????? ?????? ??? ??????? ?????? ?????? ???, ?????? ???

?????????? ??? ??????? ?? ?? ??????? ??? ??????? ?? ??? ?????? ??????? ??????? ??,

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

??? ?????????? ?? ??? ???????, ??? ??????? ?? ?????? 12 ??, ?????????? ?? ???

????????? ?????? ?????????? ?????????? ??? ?????? ??????? ???????, ?????? ?? ??? ??????

????????? ?????? ?????????? ?????????? (????? ??? 12?? ?????? 2005, C-403/03, Schempp, ?????? 2005, ?. I-6421, ??? 28).

- ??? ??? ??????? ??? ?? ?????? 18 ??

60 ?? ?? ?????? ??, ?? ?????? ?????????? ?????, ???' ??????, ?? ?? ????? 18 ??

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

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

????????? ?? ?? ??????? ?? ?????? ?????? ?????? ?????????? ?????? ??? ??????? ?????? ???, ???

?? ?? ??????? ?? ?? ??????? ?????? ??????, ?? ??? ?? ?????????? ??? ??????? ?????? ?????? ???

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

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

61 ??? ?? ?????????? ?? ?????????? ???, ??? ?????? ??? ?????????? ???, ??

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

??????, ??? ?????? ?????? ?? ??????? ??? ?????? ?? ??????? ??? ?????? ??? ??????? ???, ???

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

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

62 ??? ?????????? ?? ?? ?????????? ??? ?????????? ?, ? ?????? ??? ?? ?????? ???

?????? ??? ?????? ?? ?????????? ?? ??????? ?????? ??? ??????? ?? ??? ?????? ???, ?

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

????????? ??? ?????? ?????? ratione materiae ??? ??????, ?????????? ??? ???

????????? ??? ??? ??? ?????????? ??? ??? ????? ?????????? ?????? ???????, ???

????????? ??? ?????????? (??., ??? ???, ???, ??????? ?? 29?? ??????? 2004, C-224/02, Pusa, ?????? 2004, ?. I-5763, ??? 16, ??? 11?? ??????? 2007, C-76/05, Schwarz ??? Gootjes-Schwarz, ?????? 2007, ?. I-6849, ??? 86, ??? ??? 16??

????????? 2008, C-524/06, Huber, ??? ??? ??? ?????????? ??? ??? ???????, ??? 69).

63 ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ???????????

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

?? ?? ?????? ?????? ?? ??????, ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ???????????

????????? ??? ??????? ??? ?????? ??? ?????? ??? ??????? ???, ?? ?????? ?????? ??? ?????? 18 ??

(????????????? ?????? Pusa, ??? 17, ??? Schwarz ??? Gootjes-Schwarz, ??? 87).

64 ??? ??? ??? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????????? ??? ???

???? ?????? ????? ???? ????? ?????????????? ??? ?????? ??? ????? ?????????? ??? ?????
????? ?????? ??? ?????? ??? ????? ???????, ?? ??? ????? ?????? ??? ?? ?????????? ???
????????? ?????????? ?? ???? ?????? ?? ??????, ?????? ??? ?????? ?????? ?????? ???????,
????????? ?????? ?????????? ??? ???? ?? ??? ?????? ?????? ?????? ??? ?????????????? ???
????? ? ?????? ?????? ??? ?????? ??? ?????????? (??., ???' ???????, ???? ?????? ??
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ???????,
????????????? Pusa, ??? 18, ??? Schwarz ??? Gootjes-Schwarz, ??? 88,
????? ??? ?????? ??? 11?? ?????????? 2007, C-318/05, ???????? ??? ?????? ???????,
????? 2007, ?. I-6957, ??? 127).

65 ?? ?????????????? ??? ???? ?? ?????????? ?????????? ?? ?????????? ??? ?????????? ??
????????? ???, ?? ?????? ?????????? ?? ?????????? ?? ?????????? ?????????? ?????? ??? ??
????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???????
????????? ??? ?????? ??? ?????????????? ?????????? ?? ?????????? ??? ?????? ???
????????? ??? (??., ??? ?? ?????? ???, ?????????????? ?????? Pusa, ??? 19.
?? . ?????? ?????? ??? 26?? ?????????? 2006, C-192/05, Tas-Hagen ??? Tas, ?????? 2006,
. I?10451, ??? 30, ??? ??? ?????????? ?????? Zablocka-Weyhermüller, ??? 34).

66 ???????, ??? ???? ?? ?????????? ?? ??? ?????????? ?????????? ??? ???? ? ??????? ??
????? ??? ??????, ??? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ???????,
????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ???????
????????? ??? ?????????? ??? ?? ???? ?????????? ??? ?????? ?????????? ?????? ???????
????????? ???, ??? ?????? ?????????? ?? ?????? ??????????.

67 ??? ?????????? ??? ???? ? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??????????
????????? ??? ?????? ?????????? ?????? ???????, ?????? ?? ?? ?? ?? ???????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????????
????? ?????? ??? ???? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??????????????
????????? ????. ???' ?????????? ??? ?????? ?????? ???????, ?? ?????? ??? ??????
????? ?????? ??? ?????????? ??? ??? ?????? ?????? ??? ?????? ?????? ?????????????? ???
????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???
?????.

68 ???, ??? ?????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ??????.

69 ??????????, ? ?????? ??? ?????? ?????? ?????? ?????? ??????????????, ??? ? U. Rüffler, ?
????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???
????? ???, ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ???.

70 ???, ? ?????? ??? ?????? ??? ?????? ?????? ?????? ???, ?? ??? ???? ???? ???? ???? ?
????????????? ??? ?????? ?? ??? ?????? ???, ?? ?? ??????, ?????? ??? ??????
????????? ??? ?????? ???, ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???, ???
????????? ??? ?????? ??? ??? ??? ??????.

71 ????????, ????, ?? ????????????, ???, ??? ?????????? ??? U. Rüffler, ?? ????????
??? ?????????? ??? ?????????? ?????????? ??? ?????????? ?????????? ?????????? ???
????????? . ?? ?????????? ?????? ?????????????? ?????? ??? ?? ?????????? ?? ?????? ??????,
????? ?? ?????????? ?????????????? ??? ?? ?????????? ?????????? , ??? ?????????? ???
????????? ?????? ?????? ?????????? ??????. ??? ?? ?????????? ??? ?????????? ??? ????
????????? , ? U. Rüffler ??????? ?? ?????????? ?? ?????????? ?????????????? ??? ?? ??????
????????? ??? ?? ?????????? ???, ??????? ?? ?? ?????? 28 ?? 28? ??? ?????????? 1408/71,
????????? ?? ?????????? ??? ?????????? ????? ?????????? ?????????????? ??????????, ??? ?????? ??
????? ?????????? ??? ?????????? ????? ?????????? ?????? ?????????? ?????????? ??????????.

72 ?????? ?? ????????, ???, ??? ?????? ??? ??????? ?? ?????????? ??? ??????????????
????????????? ??? ?????????? ??? ?????????? ?????????? ?????????? ?? ??? ?????????? ???
?? ?????????? ??? ?????????? ?????? ??? ?????????? ?????? ?????????? ?????????? ??? ???? ??
????????? ?? ?? ?????????? ??? ?? ?????????? ?????????? ?????? ?????????????? ???
????????? ?????????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? , ? ??????? ??? ????
????? ?????? ?????? ?????????????? ?????? ?????? ?????????????? ?? ????????, ??? ???? ?
U. Rüffler, ??????? ?? ?????????? ?????????? ?????????? ?????????????? ?? ?????? ??? ????
?? ?????? ?????? ?? ?????? ??? ?????????? ?????????? ?????????????? ?????????? ??? ?? ??
????????? ??? ??????.

73 ??????? ?????? ??????, ??? ?????????????? ?????????? ?????????? ?????????? ???????
??? ??? ??? ??? ??? ?????? ?? ?????????? ??? ?????????? ????? ?????????? ??? ?????? ?? ???
?????? ????, ??????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?? ??? 18,
????????? 1, ?? ?? ??? ?????? ??? ??????.

74 ??? ?????? ?????? ?????????? ??? ?????? ?? ?????????????? , ??? ?????? ??????????
??????, ??? ?? ?????????? ?? ?????????????? ?????????? , ?????????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ?? ?????? ?????? (??????? ??? 18?? ?????? 2006, C-406/04, De
Cuyper, ?????? 2006, ?, I-6947, ??? 40, ??? ??? ?????????????? ?????????? Tas-
Hagen ??? Tas, ??? 33, ??? Zablocka-Weyhermüller, ??? 37).

75 ??????? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ?????????????? ?????????? ???
????????? ??? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???.

76 ? ??????? ?????? ??? ?????? ?????????? ??????????.

77 ?? ?????? ?????????? ?????????? ?????? ?? ?????? ??? ?? ?????? ??? ?? ?????????????? ???
????????? ??? ?????? ?????? ?????? ?????????? ?????? ?????????? ?????????? ?? ??????????
????? ??? ?????? ?????? ?????? ?????? ?????? ?????? , ?????? ?????? ?????? ??? ?????? ???
????????? , ?????? ? ?????? ?????? ?????? ?????? ?????? , ?????? ?????? ?????? ??? ?????? ???
????? ??? ?????????? ??? ?????? , ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????? , ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? 27b ??? ?????? ??? ?????? ?????? ??????.

78 ?????? ??????? ?????????? ?????????????? ??? ?????? ?? ?????? ?????. ??????????????, ??
?????? ??, ??????, ? ?????????? ?????? ?????? ?????????????? ?????????? ?????? ????? ??
????? ?? ?????????? ?????????????? ??? U. Rüffler ?????????? ??? ??, ????????, ??? ??
????????? ?? U. Rüffler ?????????? ?????????? ?????? ?????? ?? ??????? ?? ??
????????? ?? ?????????????? ??? ?????????? ?????? ?????????? ?????????? ?????????? ???
????? ?? ?????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ???.

79 ??? ?????? ?? ?????? ?? ?????? ???????????, ?????? ??? ? ?????????? ??? ? ???????????
??? ?? ??, ?? ?????? ?? ?????? ?? ?????? ?????????? ?????????? ?????????? ???
????????? ?? ?????? ?????? ?????? ??? ?? ?????? ?????????? ?????? ?????????? ??????????
????? ?? ?????? ?????? ?????? ??? ?? ?????? ?????????? ?????? ?????? ?????????? ??????????
????????? ?????? ?????? ??? ?? ?????? ?????????? ?????? ??? ?? ?????? 28 ?? 28? ?? ??
1408/71, ?????? ?? ?????? 95 ??? ?????????? 574/72, ??? ?????????? ???
????????? ?? ?? ?????? 118/97.

80 ??? ?????? ?? ?????? ?????, ??? ?? ?????? ?????????, ?????? ???, ???,
????????? ?? ?????? ?????????? ?????????? ?????????? ?????? ??? ? U. Rüffler ???
????????????? ?? ?????? ??? ?????? ?????? ?????? ??????, ?? ?????? ?????? ??? ??
????????? ?? ?????? ??? ?????? ?????????? ?????? ??? ?? ?????? ?????? ?????? ???.

81 ? ?????????? ?? ?????? ??? ?????? ?????? ?????? ??? ?????????? ?? ??????????
????????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ?? ?????????? ??
????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ??
????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??.

82 ??????, ?? ??? ?????? ??? 27? ?????? 1996, C-107/94, Asscher (?????? 1996, ?. I-
3089, ??? 64), ?? ?????????? ??? ?????? ??? ? ?????? ?????????? ?????????? ???
??????????, ??? ?????????? ?????????? ?????????? ?????????? ?????? ?????????????? ?? ??
????? ??????? ?????? ??? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ??????????
????????? ?? ??? ?????? ?????? ?????? ?????? ?????? 52 ??? ?????? ??? ??
????????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ?????? ?????? ?????? Asscher, ??? 60).

83 ?? ?????????? ?????????? ???, ??? ?? ?????? ??? ?????? ??? ?? ?????? ??? ??
??? ?????? ?? ?????????? ?? ??? ?????? ?????? ?????? ?????? ?????? ?? ??
????????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?? ??

????????? ??? ?? ?? ?????????? ?????????????? ?????????? ??? ??????? ??? ??????????
????????? (????????????????? ?????? Asscher, ??? 61).

84 ??? ?????????????? ? ?????????? ??? ? ?????????????? ??? ?????? ??? ???? , ? ??? ??????????????
??????, ???' ????????, ??? ??? ??? ??????? ??? ?????? ??? ?????? ??? ?????? ?????? ??????????
??? ?????????? ?????????? ??? ??? ??? ??? ?????????????? ??? ??? ?????????? ?????? ??????????
?????????.

85 ??? ????????, ??? ??? ?? ???????, ??????, ??? ??????? ? ? ?????????? ?? ??????????????
?????? ?????????? ?????????? ??? ??????? ??? ??????? ?????????? ?????????? ?????????? ??? ???? ,
????????? ??? ?????????? ??? ??????? ?????????? ?????????? ?????????? ?????????? ??? ??????????
???? ?????????? ??? ??????? ??? ?????????? ??? ?????????? 1408/71, ?????? ?? ?????????? ???
??? ?????? ??? ??????? ??? ?????????? ?????????? ?????????? ?????? ?????? ?????????? ??? ??????????
??? ?? ?????????? ?????????????? ?????????? ?????????? ?? ??????, ??? ?????, ??? ??? ??????????
??? ?????????? ????, ?????????? ?????????? ?? ?????? ?????????? ?????????? ?????????? ??????
????????? ??????.

86 ?????????? ??? ?? ?????????? ?????? ??? ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??
????????????? ?????????????? ?????????? ??? ?????? 18 ??, ??? ?????? ?????????? ??
????????? ?? ?????????? ??? ??? ?????????? ??? ?????? ?? ?????? 12 ??.

87 ??? ??? ????????, ??? ?????????? ???????, ??? ?????????? ??????? ? ? ?????????? ??? ??
????? 18, ?????????? 1, ?? ?????? ??????? ??? ?????????????? ?????????? ?????????? ?????????? ??????????
????? ??????? ?? ??????? ??? ?????????? ?????????????? ?????????? ??? ??? ?????? ?????????????? ???
????????????? ??????? ??? ?????????? ?????????? ??? ?????????? ??? ??? ?????????? ??? ?? ??????????
????? ?????????????? ?????? ??? ??????? ??? ?????? ?????, ?????? ??? ?????????? ??? ?? ??????????
??????, ??? ??? ?? ?????????? ?? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?? ??????????
?? ??????? ?? ??????? ?? ?????????? ??? ?? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?? ??????????
????? ??? ??????? ?????? ?????? ?????????????? ??? ?????????? ?????????? ?????????? ??????????????
????????? ?????????? ?????? ?????? ??????????.

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

88 ?????????? ??? ? ??????? ?????????? ?????? ?? ??? ?????? ?????? ?????????? ??? ?????? ???
??? ?????????? ?????????????? ??? ?????? ?????? ?????? ?????? ?????????? ?????????????? , ?' ???
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(?????????)

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