

@import url(../../../../css/generic.css); EUR-Lex - 61998J0251 - EL

Avis juridique important

/

61998J0251

?????? ??? ?????????? (????? ?????) ??? 13?? ??????? 2000. - C. Baars ???
Inspecteur der Belastingen Particulieren/Ondernemingen Gorinchem. - ?????? ??? ??? ??????
????????????? ??????????: Gerechtshof 's-Gravenhage - ??? ??????. - E?????????
????????????? - ?????????? ?????????? ??? ????? ?????????? ?? ??????/?????????
?????? ?????? ?????????????? ??? ?????? ?????? ?????????? - ?????????? ??? ??? ???
????????? - ?????????? ?????????? ??? ?????? ?????? ?????????? ?? ??????/????????? ??????
????????? ?????????????? ?? ??? ?????? ?????? - ?????????? ??????????????. - ??????? C-
251/98.

?????? ??? ?????????? ??? ?????????? 2000 ?????? I-02787

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1 ??????? ?????????? ??? ??????? - ??????? ?????????????? - ?????????? ???
????????? - ????? ??????? - ?????????? ?????? ?????? ?????? ?????????? ?' ?????? ??
????????? ?? ??? ?????????????? ?????? ??? ?????????? ?????? ?????????? ?????????????? ??
???? ?????? ????? - ???????

[?????? ??, ??? 52 (??, ?????? ???????????, ??? 43 ??)]

2 ??????? ?????????? ??? ??????? - ??????? ?????????????? - ?????????? ?????????? -
????????? ??? ??? ????? ?????????? ??? ?????????? ?????? ?????????? ?????????? ??
?????/????????? ?????? ?????????? ?????? ??? ?????? ?????? ?????????? ?? ??????????
????????????? ??? ?????? ?????? ?????????? - ?????????? - ?????????? - ??? ??????????

[?????? ??, ??? 52 (??, ?????? ???????????, ??? 43 ??)]

?????????

1 A?? ?? ??? 52, ?????? ??????, ??? ??????? ?????????? ??? ? ??????????
????????????? ?????????? ?? ??????? ??? ?? ?????????? ?????? ??????????????, ??? ???
??????, ?? ??? ?????? ??? ??? ?????? ?????? ?????? ?????? ?????? ??????. ???, ??? ?? ??????
?? ?????????????? ? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??????????

? ?????????????? ?? ??? ?????? ?????? ?????????? ??? ?? ??????? ?? ?????????? ?? ???
????????????? ??? ?????? ??? ?????????? ??? ?? ??????? ?? ?? ?????????? ??
????????????? ????. (??, ??? 22)

2 ?? ??? 52 ??? ?????? (???, ?????? ??????????????, ?????? 43 ??) ??????????
????????? ?????????? ?????????? ?????? ?? ?????, ??? ?????????? ??? ? ?????????? ??
????????? ?????????? ?????? ?????? ??????/????????? ?????????? ?? ?????????? ??
???? ?????????????? ?????? ??? ?????????? ??? ?????????? ??? ?? ?????????? ??
????????????? ???,
- ?????? ??? ?????????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ??? ????? ?????????? ??? ?????? ?????????????? ?????????? ??? ?????? ??????????
?? ??????/????????? ?????? ??? ???????,
- ??? ?????? ??? ?????????? ??? ??? ?????? ?????????? ?? ?????????? ??? ?????????? ??
????????? ?????????????? ??? ?????? ?????? ?????, ??? ?????? ?????????? ??? ?? ?????? ??????????
???? ?????????? ??????/????????? ?????? ?????????? ?????????? ?????????????? ?? ??? ?????? ????.
?????????????, ? ?????????? ??? ?????????? ?????? ?????????? ?????????????? ?????????? ???
????????????? ?? ?? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???
?????/????????? ?????? ?????????? ?? ?????????????? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ??? ?????? ?????????? ?????? ??? ?????????? ??? ?????????? ?????????? ????. (??.
?????? 30, 37-38, 41 ??? ?????.)

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???? ?????? C-251/98,

??? ??? ?? ?????????? ??? Gerechtshof te 's-Gravenhage (????? ????) ??? ??
?????????, ???' ?????? ??? ?????? 177 ??? ??????? ?? (?? ?????? 234 ??), ?? ??
????? ???????, ??? ?????? ??? ??????? ??? ??????? ?????? ??? ??????? ??? ??????????
????????? ??????

C. Baars

???

Inspecteur der Belastingen Particulieren/Ondernemingen Gorinchem,

? ?????? ?????????? ??? ?????? ?? ??? ?????? ??? ?????? ??? ?????? 6 ??? 52 ???
????????? ?? (???, ?????? ??????????, ?????? 12 ?? ??? 43 ??) ??? ??? ?????? 73 ? ??
73 ? ??? ?????? ?? (?? ?????? 56 ?? ??? 58 ??),

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

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

????????? ??? D. A. O. Edward, ?????? ???????, C. Gulmann, J.-P. Puissochet, P.
Jann ??? M. Watheler (??????), ???????,

?????? ??????????: S. Alber

?????????: D. Louterman-Hubeau, ????? ??????? ??????????,
????????? ??? ?????? ?????? ?????????????? ??? ??????????:
- ? ?????????? ??????????, ?????????????? ??? ?? M. Fierstra, ?????? ??????? ??????????
????????? ?????????????? ??? ?????? ?????????? ?????????? ??? ?????????? ??????????????
- ? ?????????? ??? ?????????? ??????????, ?????????????? ??? ?? ?. Michard ??? ?? P.
van Nuffel, ??? ?? ?????? ??????????,
?????? ??? ?? ?????? ??????????,
???? ?????? ??? ?????? ?????????????? ??? ?????????? ?????????????? ?????????????? ??????????????
?? ?? M. Fierstra ?? ?? J. van Bakel, ?????????? ?????? ?????????? ??? ?????? ??????????
?????? ?? ?????????? ??????????, ?????????????? ??? ?? S. Verheij, ?????????? ??
????????? ??????????, ??? ?? ??????????, ?????????????? ??? ?? P. van Nuffel, ???
?? ?????????? ?? 24?? ?????? 1999,
???? ?????? ?? ???????
??????

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1 ?? ??????? ?? 8?? ?????? 1998, ? ????? ??????? ?? ?????????? ?? 10 ??????
1998, ?? Gerechtshof te 's-Gravenhage ??????? ?? ??????????, ????? ?? ?????? 177 ??
???????? ?? (?? ?????? 234 ??), ??? ?????????? ?????????? ?? ?? ?? ?? ??????? ??
?????? 6 ?? 52 ?? ??????? ?? (??, ?????? ??????????????, ?????? 12 ?? ?? 43 ??) ??
?? ?????? 73 ? ?? 73 ? ?? ??????? ?? (?? ?????? 56 ?? ?? 58 ??).

2 ?? ?????????? ?? ?????????? ?? ??????? ?????????? ??????? ?? C. Baars, ????????
??????, ?? ?? ?????????? ??????? ?? ??????? ?? ?? ??????? ?? ?????????? ?? ?? ?????????? ??
?? ?? ?????????? ?? ?????????? ?? ?? ??????? ?? ?? ??????? ?? ?????????? ??.

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

3 ??? ?????? ?? ?????? ?? ?????? ?????????? ?? ?????????? ?? ?? Wet op de vermogensbelasting
1964 (??? ?? 16?? ?????????? 1964 ??? ?????? ??????????, Stbl. 1964, ? 520, ??? ???:
????? ?? ?????? ?????? ?????????). ?????????? ?? ?? ?????? ?????? ?????? ?? ?? ?? ??
??????????, ?? ?????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?? ?? ??????????
??????????.

4 ??? ?? ?????? 1 ??? ?????? ?? ?????? ?????? ??????????, ??? ?? ?????? ?????? ?????????? ?? ?? ??
?????? ??????? ?? ?????? ?????? ?????? ?????? (?? ??????? ??????????????) ?? ?? ??
?? ?? ?????? ?????? ??, ??????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ???????,
????????? ?? ?????? ?????? (?? ??????? ??????????????). ?? ??????? ??????????????
????????, ??' ????, ?? ?? ?????? ?????? ??? ?? ?????? ??? ?????? ?????? ?????? ?? ?? ?? ??
?? ?? ??????????. ?? ?????????? ?????????????? ?????????? ??? ?????? ?????? ?? ?? ?? ??
?? ?????????? ??? ?? ?????????? ?????????? ??? ?? ?????? ??? ?????? ?? ?? ?? ?? ??.

5 ????? ?? ?????? 3, ??????????? 2, ??? ?????? ???? ?????? ???????????, ? ???????????
????????? ??????? ?? ??? ?????? ??? ??????, ??????????????? ?? ?????????? ???????
??? ???????, ?????? ??? ?????? ??? ?????.

6 O Wet tot uitbreiding van de ondernemingsvrijstelling in de vermogensbelasting 1986 (?????
??? 24?? ??????? 1986 ??? ??????????? ??? ?????????????? ?????????????? ??? ???
??????????, Stbl. 1986, ?. 248) ??????? ??? ?????? ??? ?????????????? ???
????????????? ??? ??????????? «????????????? ???????????».

7 ?? ?????? 7 ??? ?????????????? ??? ?????? ??? ?????? ???????????, ?? ?????? ??????????? ???
??? ?????????????? ?? ??????????? ???????????, ?????? ??? ?????????????? ??? 2 ??? 3,
?????? c:

«2. ??? ?????? ??? ??????????? ??? ?????????? ??? ?????? ??? ? ???????????
?????????? ??? ?????????? ?????????? ?????????? (...) , ?? ??????????? ?????????? ???
????? ?????????? ??? ?????????? ??? ? ??? ?????????? ?????? ?????????? ???
?????????? ??? ?????????? , ? ??? ?????? ??? ?????:

a) ?? ?? ??????????? ??? ?????? ??? ?????????? ??? ??????????? ?? ??? 135 000 ??????????: 100
%,

b) ?? ?? ??????????? ??? ?????? ??? ?????????? ??? ??????????? ?? ??? 135 000 ??????????: 135 000
????????? ??? ?? 50 % ?? ?????????? ??? ??? ?????? ?????, ?????? ??? ? ?????? ?? ??????? ?? ??????
?? ?????? ?? ??? ??? 1 541 000 ??o??????.

3. ??? ?? ??????????? ??? ?????? ??? ?????? ?????????? ?? ??? ? ???????????
?????????? ??? ??? ?????? ??? ??????????? 2 ?????? ??????? ?? ??? ?????? ??? 2 947 000
????????? ? ??? ?????? ?????????? ?????????? ?????????? ?????????? ?????????????? ???
????????? ??? ?????????????? , ? ?????????? 2 ??? ?????? ?????? mutatis mutandis ???, ???
????, ?????????????? ?? ??????????? ?????????? ??? ?????? ?????????? ?? ?????????? ?? ?????????? ??,
???????:

(...)

c) ?????? ? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??????????
????????? ??? ??? ?????? ??? Wet op de inkomstenbelasting 1964 ?? ??????
????????????? ??? ??? ?????? ??? ?????? ??? ?????????? ?????????? ??? ??? ?????? ??? ?????? 28
??? Wet op vennootschapsbelasting.

(...)».

8 ? ?????? ??? «?????????? ??????????» ??? ?? ?????? 7, ?????????? 3, ??????? c, ???
????????????? ??? ??? ?????? ?????? ?????????? ?????????? ??? ?????? 39, ?????????? 3, ???
Wet op de inkomstenbelasting 1964 (????? ??? 16?? ?????????? 1964 ??? ???
??????????, Stbl. 1990, ?. 103). ??? ?? ?????? ???:

«????????? ??? ?????????? ?????????? ?????????? ??? ?????? ??? ? ?????? ?????????? ??? ?
????????????? ??? ?????? ??? ?????? ?????? , ??? ?????? ??? ?????? ??? ???? ?????? ??? ??? ???
????????? ??? ?? ?????? ??? ?????????? ???' ?????? ??? ?????? ?????????? ?????????? ???
????????? ??? ?????? ??? ?????????? ???, ?????????? ??? ?? ??? ?????? ??? ??????/?????????
????????? ???, ??? ?????? ??? ?????? ??? ?? ??? ?????? ???, ??? ?????? ??? ?? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? (....)».

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

9 ? C. Baars ????? ?????????? ??? ??????. ??????? ?? ?????? ??? ?????????? ?????????? ???
Ballyard Foods Limited (??? ????: Ballyard), ??????? ?????????? ?????? ?????????????? ???
??? ???????, ??? ???????.

10 ??? ?? ??????? ??? ?????????? ????? ??????? ?? ?????? ??? ?????? ??? ?????? ??????????
????????? ??????? ?? ??????? ??? ?????? ??? ?????? ??? ?????????? ???????.

11 ??? ?? ?????????? ??? ????? ?????????? ??? ?? ??? 1994, ? C. Baars ??????
????????? ??? 1? ?????????? 1994 ?????????? ?? 2 650 600 ?????????? ?????????? (NLG).
??? ??? ?? ?????????????? ?? ??? ??? ?????????? ??? ?????????? ??? Ballyard, ? ???
??? ??? ?????????? ?? 749 800 NLG.

12 ?????????? ??? ?? ??????? ??? ?????? ??? Ballyard ?????????? ??????????
????????? ??? ?? ?????? ??? ?????????? ??????, ? C. Baars ?????? ?? ??? ??? ??
????????????? ?????????? ??? ?????????? ??? ?????? 7, ?????????? 3, ???
????????????? ??? ?????? ??? ????? ??????????, ??? ?????????? ?????? ?? ?????? ???
????????????? ??? ?????? 442 400 NLG.

13 O Inspecteur der Belastingen Particulieren/Ondernemingen Gorinchem (????????? ????
????????/????????? ??? Gorinchem, ??? ????: ?????) ??? ?????????? ??? ? ??????????
??? C. Baars ??? Ballyard ?????? ?????????? ?????????? ??? ??? ?????? ??? ??????????
??????. ???' ??' ???, ??????? ?? ?????????? ?? ?????????? ??????????????, ?? ???
????????? ??? ? Ballyard ??? ?????? ?? ?????????? ?????????????? ??? ??? ??? ??? ???
????? ?????? ?? ?????? 7, ?????????? 3, ?????? c, ??? ?????????????? ?????? ??? ???
?????????.

14 ? ?????????? ??? ? C. Baars ?????? ??? 9 ?????????? 1995 ??? ?? ??????
????? ?????????? ??? ??? ??? ?????? 27 ?????????? 1996.

15 ? C. Baars ?????? ??? ?????????? ??? ?????? ?????????? ?????????? ?????????? ???
Gerechtshof te 's-Gravenhage. ??? ?????? ??? ?????????? ???, ? C. Baars ??????????
????? ??? ?????? ?????????? ??? ?? ??? 52 ??? ??????, ?? ??? ?????? ?????????? ???
????????? ??????????????, ??? 73 ? ??? ??????, ?? ??? ?????? ?????????? ??? ??????????????
??? ?????????? ?????????? ??? ?????? ??? ?????, ?? ?????????? ?????????? ??? ??????????????
????????? ??? ??? ?? ?????????? ?? ?????? ??? ?????? ??? ?????? ?????????????? ??? ???
?????.

16 ?????????? ??? ? ??????? ??? ?????? 6, 52, 73 ? ??? 73 ? ??? ?????? ??? ???
????????? ??? ?? ?????? ?? ??????, ?? Gerechtshof te 's-Gravenhage ?????????? ??
????????? ?? ?????????? ??? ?? ?????????? ??? ?????????? ?? ?????????? ??????????????
?????????:

«1) ?????? ?? ?????? 6 ???/ 52 ??? ?????? ?? ?? ?????????? ??? ?? ?????? ??? ??????
????????? ?? ?? ?????? ??? ? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????????
????? ?????? ??? ?????? ??????????, ? ?????? ?????? ?? ?????????? ??? ?????????? ???
????? ?????????? ?? ??????/????????? ?????? ?????? ?????????? - ?? ??? ??? ??? ???
?????/????????? ?????? ?????? ?????????? ?????? ?????? ??? ?????????? - ??? ???
????? ?????????? ??? ??????/????????? ??? ?????? ?????????? ??? ?????????? ??? ??????
????? ?????? ??? ??????/????????? ??? ?????? ?????????? ??? ?????????? ??? ??????
????????? ??? ?? ??????/????????? ??? ?????? ?????????? ??? ?????????? ??? ?????;

2) ??? ?????? ?????? ??????? ?? ?????? ?????????? ????????, ?????? ?? ?????? 73 ? ??? 73
? ??? ??????? ?? ?? ?????????? ??? ?? ?????? ?????? ??? ?????? ?????????? ?? ?? ?????? ???
??? ?????????? ??? ?????? ?????? ?????? ?????????? ??? ?????? 1;»

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

17 ?????? ?? ?????????? ?? ?????????? ???, ??? ??? ? ?????? ?????????? ?????????? ???
????????? ??? ?????? ???, ??? ??? ?? ?????? ??? ?????? ?? ?????? ???
????????? ??? ?????? ??? ?????????? ?? ?????????? ??? ?? ?????? ??? ??????????
????????? ??? ?????? (????????? ??? 11?? ?????? 1995, C-80/94, *Wielockx*,
?????? 1995, ?, I-2493, ??? 16, ??? ??? 29?? ?????? 1999, C-311/97, *Royal Bank of*
Scotland, ??? 1999, ?, ?-2651, ??? 19).

18 ??? ?????? ?? ?????? 52 ??? ???????, ? ?????????? ?????????? ?????????? ??? ??
????????? ?? ??? ?????????? ?????????????? ?????????? ??? ?????????? ??? ?????? ?????????? ??
??? ?????????? ??? ??? ??? ?????????? ??? ?????? ???, ???? , ??? ??? ?? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ??? ?????? ?????? ??? ??????????
????????? ??? ??????.

19 ???????, ?????? ?? ?????????? ?? ?? ??????? ?? ?? ?????????? ??????????????
????????? ??? ???????, ??? ?????? ?? ?????? 52 ??? ???????, ?????? ??????? ?? ??
????????? ??? ??? ??? ?????????? ??? ?????? ???, ?????? ??? ?????? ?????????? ??
????????? ??? ?????? ?????? ?????? ?????? ??????.

20 ?? ??????????, ?????? ?? ?????????? ??? ? ?????????? ?????????? ??? ?? ?????? ???
????????? ???, ? ??? ?????? ??? ?????? ?????????? ??? ?? ?????? ??? ?????? ?????????? ???
????? ?????????? ??? ?????? ?????? ??? ??????/????????? ?????????? ??? ?????? ?????????? ???
??? ??? ?????? ?????????? ??? ?????????? ?????? ?????????? ??? ?????????? ??? ??????????
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ?????? ??? ?????? ?????????? ???
????? ??? ?????????? ?????? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??????
??? ?????? ??? ?????? ?????? ?????????? ??? ?? ?????????? ?????? ??? ?????? ??????????
????????? ???, ??? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ??
????? ??? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ??.

21 ???, ?????? ?? ?????????? ??? ? ?????????? ?????? ??? ?????? ?????????? ? ??????? ???
????? ??? ???? ? ?????????? ??? ?????? ?????? ?????????? ?????? ?????? ?????? ??? ??????
????????? ?? ??? ?? ?????? ?????? ??? ?????? ?? ?????? ??? ?????? ?????? ?????? ??? ??????
????????? ??? ?????? ?????????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??? 100 %
??? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????
??? ? ?????????????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?? ??????
????????? ??? ?????? ??? ??????.

22 ???????????, ??? ?? ?????? 52, ?????? ??????, ??? ?????? ?????? ??? ??
????????? ?????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???, ???
????? ???????, ?? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????. ???, ??? ??
????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?? ?????? ??? ?????? ??? ??????
?? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?? ?????? ??? ??
????????? ??? ???.

23 ??? ?????? ?? ?????? 6 ??? ???????, ??? ?? ?????????? ??? ?????????? ?????? ?????????? ???
?? ?????? ???, ?? ?????? ?????????? ?? ?????? ??? ?????? ??? ?????????? ?????? ??? ??
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?? ?????? ??? ??
????????? ??? ?????? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??

???? ?????????????? ??? ??????? ?????????? (????????? ??? 30?? ??? 1989, 305/87, ??????? ??? ??????, ??????? 1989, ?. 1461, ??????? 12 ?? 13- ?? 12?? ??????? 1994, C-1/93, Halliburton Services, ??????? 1994, ?. ?-1137, ????? 12, ??? Royal Bank of Scotland, ??????????????, ????? 20).

24 ????, ??? ?????????????? ???, ??? ?????? ?? ???????? ??????????????, ? ???? ??? ?????????? ??? ???????? ?????? ?????? ?????? ?? ?????? ?? ?????? 52 ??? ?????? (????????? Halliburton Services, ??????????????, ????? 12, ??? ??? 29?? ?????????? 1996, C-193/94, ??????? ??? ??????????????, ??????? 1996, ?. ?-929, ??? 21).

25 ??? ??????????, ?? ????? 6 ??? ?????? ??? ?????? ?? ??? ?????? ?????? ?????? ?????? ??? ?????? ???.

26 ????????, ?????? ?? ????????????, ??? ?????? ?????? ?????? ?????? ?? ?????? ??????????? ?? ?? ?????? ??????? ???, ?? ?? ?????? 52 ??? ??????? ??????????? ??????????? ?????? ???????, ??? ?????? ?????? ?????? ?????? ???, ? ?????, ??? ?????????? ??? ? ?????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 100 % ??? ??????? ??? ????????,

- ??????? ?????? ?????? ?????????????? ??? ?????? ??????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????/????????? ?????? ??? ????????,

- ??? ?????? ??? ??????? ??? ?????? ??? ?????? ?????????? ?? ?????????? ??? ?????????? ?? ?????? ??? ?????? ?????? ?????? ??????/????????? ?????? ??? ????????, ????.

27 ?? ??? 52 ??? ??????? ??????? ??? ??? ??? ?????????? ?????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? . ?????? ??? ?????? ?????? ?????? ???, ? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? (????????? ??? 28?? ?????????? 1986, 270/83, ??????? ??? ??????, ??????? 1986, ?. 273, ??? 13, ??? Royal Bank of Scotland, ??????????????, ????? 22).

28 ?????? ?? ?????????????? ???, ??? ??? ?? ?????? 52 ??? ???????, ??? ?????? ?????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???, ?? ?????????? ?? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? (?? ?? ??? ?????? ???????????, ?????????? ??? 27?? ?????????? 1988, 81/87, Daily Mail and General Trust, ??????? 1988, ?. 5483, ??? 16- ?? 16?? ?????? 1998, C-264/96, ICI, ??????? 1998, ?. ?-4695, ??? 21, ??? ??? 18?? ?????????? 1999, C-200/98, ? ??? ?, ??? ??? ?????? ?????? ?????????? ??? ???????, ????? 26).

29 ?? ??? 52 ??? ??????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???.

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

31 ? ?????????? ??? ?????? ?????????? ?????? ?????????????? ?????? ???' ?????? ??????????
????? ?? ?????? 52 ??? ??????.

32 ??? ??????????, ?????? ?? ?????????? ?? ?????????? ?????????????? ?????? ??? ??????????????
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33 ??????, ? ?????????? ?????????? ?????????????? ??? ?? ?????????? ??? ? ??????????????
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????????? ??? ?????? ??? ?????? ?????????????? ??? ?? ?????? ?????????? ?????????????? ???
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34 ??? ?? ?????????? ???, ? ?????????? ?????? ?????????????? ??? ?? ?????????? ??? ? ?????????????? ???
????????? ??? - ??? ?????????? ??? - ??? ?????? ??????????, ? ?????? ?? ?????????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????????? ???
????????? ?????????? ??? ?????? ??? ??????/????????? ?????????? ?????????? ??? ?????????? ???
????????? ???, ?? ??? ??????.

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

36 ? ?????????????????? ??? ?? ?????? ?? ?????? ???.

37 ??? ?????? ??? ?????? ??? ?? ?????????? ??? ?????? ?????? ??? ? ?????? ?????????????? ??? ??????
??? ?????????? ?????????? ??? ?????? ??? ?????????? ?????? ?????? ??? ?????? ??? ?????????? ???
????????? ?????? (????????? ??? 28?? ?????????? 1992, C-204/90, Bachmann,
????????? 1992, ?. ?-249, ??? C-300/90, ?????????? ??? ??????, ?????? 1992, ?. ?-305).

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

39 ??????, ??? ?????????? ?????? ?????????? ??? ??????, ??? ?? ??? ?????????? ????,
????????? ? ?????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ??????/????????? ?????????? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ??????/????????? ?????????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??????.

40 ????????, ??? ??? ?????????????? ???????? Bachmann ??? ??????? ??? ?????
?????? ?????? ?????? ?????????? ?????? ??? ?????????? ?????????? ??? ?????? ???
????????????? ??? ?????? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????????? ??? ?? ?????????? ? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ???
??????, ?????? ?????? ?????? ??? ??? ?????????? ?????????? ?????????? ??? ?????? ???
????????? ?????? ?????????????? ???????, ??? ?? ?????????? ?????? ?????? ??????/?????????
????????? ?????? ?????? ?????? ?????????? ??? ??? ?????? ?????? ?????? ??? ?????? ???
?? ??? ?? ?????????? ??? ?????? ?????????????? ??? ?????? ??? ?????? ?????? ?????? ???
??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??????/?????????
?? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???.

41 ??? ????????, ??? ??? ?????? ?????? ?? ?????? ? ?????? ? ?????? ??? ?? ?????? 52 ???
?????? ?????? ?????????? ?????????? ?????????? ???????, ??? ? ?????? ??? ??????
???, ? ?????, ??? ?????????? ??? ? ?????????? ??? ?????? ?????? ?????? ???
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????????? ??? ?????????? ??? ?? ?????????? ??? ?????????????? ??? ??,
- ?????? ??? ?????? ?????????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ??? ?????? ?????????? ??? ?? ?????????? ?????????? ??? ?????? ??? ?????? ???
?? ??????/????????? ?????? ??? ???????,
- ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?? ?????????? ??? ?????? ??? ??????
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????? ?????? ??????/????????? ?????? ?????? ?????????? ?????????? ?????? ??? ?????? ???
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42 ??? ??? ?????????? ??? ?????? ??? ?????? ???????, ??? ??? ?????? ?????????? ?? ???
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43 ?? ??? ?????? ??? ?????? ?????????? ? ?????? ?????? ?????????? ??? ? ????????, ??? ??????????
????????????? ??? ??????????, ??? ??????????. ?????????? ??? ? ?????? ??????????
????? ?? ??? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????????? ?????????????? ???
????????? ?????? ??? ?????? ?????????? ???????, ?' ??? ?????? ?????????? ?? ?????????? ??? ???
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(?????? ?????),

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Gerechtshof te 's-Gravenhage, ??????????:

?? ????? 52 ??? ??????? ?? (???, ??????? ??????????????, ????? 43 ??) ???????????
?????????? ?????????? ??????? ???????, ??? ? ??????? ??? ??????? ???, ? ????, ???
????????? ??? ? ?????????? ??? ??????? ??????? ??????? ??? ??????
??????/????????? ??????? ?? ?????????? ?? ??? ?????????????? ??????? ???
????????? ??? ??????? ??? ?? ??????? ??? ?????????????? ???,
- ??????? ??? ?????????????? ??? ??????? ??????? ??? ??????? ??????? ??? ???????
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?? ???????/????????? ??????? ??? ???????,
- ??? ??????? ??? ??????? ??? ??????? ??? ??????? ??? ??????? ??? ??????? ???
?????? ?????????????? ??? ??????? ??????? ???, ????? ??????? ??? ?? ??? ????? ???????
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