

Arrêt de la Cour  
?????? C-212/01

**Margarete Unterpertinger**  
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**Pensionsversicherungsanstalt der Arbeiter**

(?????? ??? Landesgericht Innsbruck??? ??? ?????? ?????????????? ??????????)

«????? ?????? ??? – ??????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ???  
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????????? ??? ?????? ?????????? C. Stix-Hackl ??? 30?? ?????????? 2003      ?????? ???  
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(????? 77/388 ??? ????????, ??? 13, ?, § 1, ?????. ??) ?? ??? 13, ?, ?????????? 1,  
????????? ??, ??? ?????? ?????? 77/388, ?? ?????? ?????? ??? ?????????? ?????????? ??????  
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?????? ?????? ?????? . ???, ?? ??? 13, ?, ?????????? 1, ?????? ??, ?????? ?? ??????????  
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??? ??? ?? ?????????? ??? Landesgericht Innsbruck (???????) ??? ?? ??????????,  
???' ?????????? ??? ?????? 234 ??, ?? ??? ????? ???????, ??? ?????? ??? ?????? ???  
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**Margarete Unterpertinger**

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**Pensionsversicherungsanstalt der Arbeiter,**

? ?????? ?????????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? 13, ?, ?????????? 1,  
????????? ??, ??? ?????? ?????? 77/388/??? ??? ??????????, ??? 17?? ????? 1977, ???  
????????????? ??? ?????????? ??? ?????? ?????, ??? ?????????? ?? ??? ?????? ??????  
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???. ???. 09/001, ?. 49), ?????? ??? ??? ?????????? ??? ?????????? ??? ?????????? ???  
??? ??? ?????? ??? 14?? ?????????? 2000, C-384/98, D. (?????? 2000, ?. ?-6795),

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

????????? ??? ??? A. Rosas (??????), ?????????? ??? ?????? ??????????, D. A. O.  
Edward ??? A. La Pergola, ???????,  
?????? ??????????: C. Stix-Hackl  
?????????: M.-F. Contet, ????? ?????? ??????????,  
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?? ?????????? ????????, ?????????????? ??? ?? C. Pesendorfer,  
?? ?????????? ??? ?????? ??????????, ?????????????? ??? ?? J. E. Collins,  
????????????? ??? ??? N. Paines, QC,  
?? ?????????? ??? ?????????? ??????????, ?????????????? ??? ??? K. Gross ??? E.  
Traversa,  
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1 ?? ?????? ??? 9?? ??? 2001, ??? ?????? ??? ?????????? ??? 23 ??? 2001, ??  
Landesgericht Innsbruck ???????, ???' ?????????? ??? ?????? 234 ??, ??? ??????????????

?????????? ?? ??? ???? ??????? ?? ?????? 13, ?, ??????????? 1, ??????????? ??, ??? ??????  
?????? 77/388/???, ??? ???????????, ??? 17?? ????? 1977, ??? ??????????????? ??  
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?????? ?????? ?????????????? ???: ?????????? ?????????? ?????? (?? ????. ???.. 09/01, ?.  
49, ??? ?: ??? ?????), ??? ?????? ??? ?????????? ??? ?????????? ?????? ??? ?????????? ??  
????? ??? ??? ?????? ??? 14?? ??????????? 2000, C-384/98, D. (????????? 2000, ?. ?-6795).  
2 ?? ?????????? ??? ?????????? ??? ??????? ?????????? ??????, ???????, ??? M. Unterpertinger  
??? ??? Pensionsversicherungsanstalt der Arbeiter (????????????? ??? ????? ??? ???????????  
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??? ?????? ??? M. Unterpertinger, ? ??????? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ??  
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(?? ?: ???).  
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3 ??????? ?? ?? ????? 2, ?????? 1, ??? ????? ???????, ??? ??? ??????????? ??  
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4 ?? ??? 4, ?????????? 1 ??? 2, ??? ????? ?????? ?????????? ?? ?????:  
1.????????? ?? ?????????? ??? ?????????? ??? ?????? ?????????????? ????, ??? ??????  
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2.????????? ??? ???????????, ??? ??? ?????? ??? ?????????? 1, ?????? ??? ??  
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5 ?? ??? 13, ?, ?????????? 1, ??????? ?? ??? ??, ??? ?????? ?????? ?????????? ??????????? ??  
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6 ??? ?????????? ??? D., ?? ?????????? ?????? ??? ?? ??? 13, ?,  
????????? 1, ??????? ??, ??? ?????? ?????? ??? ?? ?????? ??? ?????? ??? ?? ??????????  
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7 ?? ??? 1, ?????????? 1, ??? 6, ?????????? 1, ?????? 19, ???  
Umsatzsteuergesetz ??? 1994 (????? ??? ?? ?????? ?????? ?????? ???????, BGBl. ????.  
1994/663, ??? ????: UStG ??? 1994) ?????????? ?? ????: ?????? 1?????????????



????? ?????? ?? ??????????????? ??? ?????? ?? ?????????? ??? ????? ?????????? ??? ??  
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11 ? M. Unterpertinger ???????? ??? 10 ?????????? 2001, ??? ? ???????????????????  
????? ??? ?????????? ??? ?????????? ??? Landesgericht Innsbruck. ??? ? ? ??????  
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???, ??? ?????? ??? ??????, ?? ??? ???? ?? ?????? ?????????? ?????? ?  
????????????? ??? ? Pensionsversicherungsanstalt der Arbeiter.

12 ?????? ?? ???? 77 ??? Arbeits- und Sozialgerichtsgesetz (????? ??? ???? ??  
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Pensionsversicherungsanstalt der Arbeiter, ?????????? ??? ??? ?????? ?????? ??? ?????.  
????? ?? ?????????? ??? 28?? ?????????? 2001, ? ?? ??? ?????? ??? ??????  
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13 ? Gebührenanspruchsgesetz (????????? ??? ?????? ??????) ?????? ???  
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14 ??? ?????? ???, ?? Landesgericht Innsbruck ?????????? ?? ?? ?????????? ???  
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????????? 1, ?????? 19, ??? UStG ??? 1994. ???????, ?? ?????? ??????????  
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13, ?, ?????????? 1, ??????? ??, ??? ?????? ?????? ???, ???????, ? ?? ??  
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15 ??? ??????, ?? Landesgericht Innsbruck ?????????? ?? ?????????? ???  
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1)?? ??? 13, ?, ?????????? 1, ??????? ??, ??? ?????? ?????? ??? ?????? ??? ?????? ???  
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2)???? ? [?????????????] ?????? [D.] ??? ?????? ??? ?????? ?????? ?????? ??? ??  
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16 ?? ?? ??? ?????????? ???, ?? ?????? ?????? ?? ?????????? ???  
??????, ?? ?????? ?????????? ??? ?????? ???' ??????, ?????????? ???, ?????, ???  
????????????? ??? ?????? D., ?? ?? ??? 13, ?, ?????????? 1, ?????????? ??, ???  
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17 ? ?????????? ?????????? ??? ? ?????????? ?????? ??? ? ?????????????? ?????? ???  
D. ?????? ?? ?????? ?????????? ??? ?????????? ??? ?????? ?? ?????????? ??? ???? ??  
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18 ?????????? ??? ??? ?????????? ??? ?????? ?? ??? ?????????? ?????? ?????? D. ???  
?????????, ??????????, ??? ?????? ??? ?? ?????????? ?????? ?????? ?????? ??? ??? ???  
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19 ? ?????????? ?????????? ???, ??? ?????????? ?????? D., ?? ??????????  
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????????? ??, ??? ?????? ??????, ?????????? ?????? ?????? ?? ?? ?? ?? ?? ??????  
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?? ??? ?????????? ?????????? ??? ?????? ??? 11?? ?????????? 2001, C-76/99,  
????????? ??? ?????? (????????? 2001, ?. ?-249, ?????? 24), ???, ??? ???????, ???  
????????? ??? 10?? ?????????? 2002, C-141/00, Kügler (????????? 2001, ?. ?-6833,  
????????? 38 ??? 39).  
20 ??????????, ??? ?????????? ??? ?????? ???, ?????? ??? ???? ??????????, ???  
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????? (????????? ??? 15?? ?????? 1989, 348/87, Stichting Uitvoering Financiële Acties,  
????????? 1989, ?. 1737, ?????? 12 ??? 13, ??? ??? 12?? ?????????? 1998, C-149/97,  
Institute of the Motor Industry, ?????? 1998, ?. ?-7053, ?????? 17 ??? 18).  
21 ??? ?????? ??? ???????, ??? ?????? ?????????? ??? ?????? ?? ?????????? ??? ??????????  
?? ??????????, ??? ?????? ?????????? ?????????, ?? ??? ?????? ??? ?????? ??  
?? ?????????? ?????? ?????? ?????? ??????. ? ?????????? ?????? ?????? ?????? ??  
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22 ? ?????? ??? ?????? ??? ?? ?????? ??? ? ?????? ?? ?????????? ?????? ??????  
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23 ? ?????????? ??? ???????? ?????????? ?????????? ??? ?? ?????????? ???  
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????????? ?????? D. ??? ?????? ?????? ??? ?????? ?, ??? ?????? ??? ??????, ??  
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??? ??? 13, ?, ?????? 1, ?????? ??, ??? ?????? ??????. ? ??? 18 ???  
????????? ?????? D. ?????? ?????? ??? ?????? ?????? ?????? ??????  
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24 ? ?????????? ??? ???????? ?????????? ?????? ??? ?? ?????????? ??? ?????? ??  
Landesgericht Innsbruck ?????????? ??? ?? ?????????? ??? ?? ?????? ???  
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25 ??? ? ?? ?? ?????? ?, ??? ?? ?????? ??? ?????? 13, ?, ?????? 1,  
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D.

26 ??? ?????? 21 ??? 23 ??? ?????????? ?????? ??? ?????? ??? ?? ?????? ???  
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????? ??? ?????? 13, ?, ??, ??? ?????? ??? ?????? ??? ?????? ??? ?? ?? ??  
????? ??? 1, ?????? ??, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?? ??  
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27 ??? ?????? ??? ?????????? ??? ? ?????? ??? ?????????? ??? ?????? 13, ?,  
????????? 1, ?????? ??, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?,  
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????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 93/16/???, ??? ?????? ??? ??  
????? 1993, ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??  
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??  
(?? L 165, ?. 1). ?? ??? ?????? ??? 25? ?????????? 1999, C-349/96, CPP (??????  
1999, ?. ?-973, ????? 18), ?? ?????? ??? ?????? ??? ? ?????? ??? ?? ?? ??  
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???? ?????????? ??? ??????????? ??? ?????? 13, ?, ?????????? 1, ?????????? ??, ???  
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33 ? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?? ?????? ???  
????? 13, ?, ?????? 1, ?????? ??, ??? ?????? ?????? ??? ?????????? ??? ??, ???  
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????????? 1993, C-281/91, Muys' en De Winter's Bouw- en Aannemingsbedrijf, ??????  
1993, ?. ??-5405, ??? 13, ??? ?? 5?? ?????? 1997, C-2/95, SDC, ?????? 1997, ?. ??-  
3017, ?????? 38). ??????, ?? ?? ??? ?????? ?????? ?????? ??? ?? ?????? ??? ??  
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34 ??? ?? ?????????? ??? ???????????, ?? ?????????? ??? ?????? 13 ??? ??  
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(??., ?????? ???, ??? ?????????? ?????? ?????????? SDC, ??? 20, ??? Kügler,  
????? 28). ?? ?? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????????  
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CPP, ??? 15, ??? ?????? ??? ??????, ??? 21).  
35 ??? ?????? ?????? ? ????????, ?? ?????? 13, ?, ?????? 1, ?????? ??, ???  
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????? 1, ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??, ??? ??  
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36 ???????????, ??? ?? ?????? ?????? ?????? ?????????? ??? ??????????????????  
?? ?????? ?????? ?? ?????? ??? ?????? ?????? ?????? ?????????? ?????????? ??? ??  
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????????? ??? ?????? (????????? ?????? ?????? Institute of the Motor Industry, ???  
18, ??? D., ??? 20).  
37 ??? ??????, ??? ?? ?????? ?????? ? ?????? ?????? ??? ?????????? ??? ??  
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? ?????????? ??? ?????? ??? ????? ???? ?????? ?????????? ???? 93/16. ?? ?????? ???  
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38 ??????, ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ???  
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????????? 5, ??? 19 ??? ?? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
39 ??? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???  
??? ??????, ??? ?????? 18 ??? ?????? ?????? ?????? D., ??? ???  
?????????, ??? ?????? 38 ??? ?????? ?????? ?????? KÜgler, ??? ? ??????  
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40 ?????? ??? ??? ?? ??? ?????? ?????? ??? ?????? ??? ?? ?????? ??? ??????  
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??????, ??? 23). ?????? ???, ??? ?? ?????? 40 ??? ?????? ?????? ?????? ??????  
KÜgler ?????? ??? ?? ??? ?????? ?????? ??? ?????? ??? ?? ?????? ??? ??????  
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????????? ??, ??? ?????? ??????. ??? ?????? ??? ?????? ?????? ??? ?????? ??????  
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????????? 1, ?????? ??, ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ?????? ?? (??. ??? ?????? ??????)  
????????? ?????? ??? ?????? ?????? 23, ??? KÜgler, ??? 29).  
41 ??????, ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ???  
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42 ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 66 ??? 68 ??? ??????  
???, ?????? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??????  
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? ??????, ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ???, ???  
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46 ?? ?????? ?? ?????? ?????????????? ? ?????????? ?????????? ??? ? ?????????? ???  
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Landesgericht Innsbruck, ??????????:

Rosas

Edward

La Pergola

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R. Grass

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1 – ?????? ??????????: ? ??????????.