

Arrêt de la Cour
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?????????? ??? H. Barbier

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Inspecteur van de Belastingdienst Particulieren/Ondernemingen buitenland te Heerlen

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

« ??????? ??? ?????? 48 ??? 52 ??? ??????? ?O? (????????? ?????? 48 ??? 52 ???
????????? ??, ???, ?????? ??????????????, ??? ?????? 39 ?? ??? 43 ??), 67 ??? ??????
??? (????????? ?????? 67 ??? ??????? ??, ?? ????? ?????????? ?? ?? ?????? ???
?????????), 6 ??? 8 ? ??? ??????? ?? (??, ?????? ??????????, ?????? 12 ?? ??? 18
??) – ?????? 88/361/??? ??? 90/364/??? – ?????? ?????????? – ??????????
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????????? ??? ?????? ?????????? J. Mischo ??? 12?? ?????????? 2002 ?????? ???
????????? (????? ????) ??? 11?? ?????????? 2003

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1..????????? ?????????? ??? ??????? – ?????????? ??? ?????????? ?????????? – ??????
88/361 – ?????? ????????

(????? 88/361 ??? ???????, ??? 1 § 1)

2..????????? ?????????? ??? ??????? – ?????????? – ?????? ?????????? ?????? ???
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1.? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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????????? 1, ??? ?????? 88/361 ??? ?? ??? ?? ?????? ??? ?????? 67 ??? ?????? (??
????? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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????? ????. ??, ?????? 59, 61

2.? ?????????? ?????? ?????????? ?????? ?????? ?????????? ?????? ?? ?? ?????????? ???
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????????? ??? ?????? 48 ??? 52 ??? ???????? ?O? (?????????? ?????? 48 ??? 52 ???
????????? ??, ???, ??????? ??????????????, ??? ?????? 39 ?? ??? 43 ??), 67 ??? ??????
??? (????????? ?????? 67 ??? ??????? ??, ?? ????? ??????????? ?? ?? ??????? ??
???????????, 6 ??? 8 ? ??? ??????? ?? (???, ??????? ??????????????, ?????? 12 ?? ??? 18
??) – ??????? 88/361/??? ??? 90/364/??? – ?????? ??????????? – ??????????? ?????????? ?????? ??? ??????
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?? ?????? ?? ??????????? ?????? ??? Gerechtshof te 's-Hertogenbosch (????? ?????) ??? ??
??????????, ???' ??????? ?? 234 ??, ?? ??? ????? ???????, ??? ??????? ??
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????????? ??? H. Barbier

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Inspecteur van de Belastingdienst Particulieren/Ondernemingen buitenland te Heerlen ,
? ?????? ??????????? ??????? ?? ??? ?????? ??? ?????? 48 ??? 52 ???
????????? ??? (????????? ?????? 48 ??? 52 ??? ??????? ??, ???, ??????? ??????????????,
??? ?????? 39 ?? ??? 43 ??), 67 ??? ??????? ?? (????????? ?????? 67 ??? ??????? ??,
?? ????? ??????????? ?? ?? ??????? ?? ??????????), 6 ??? 8 ? ??? ??????? ?? (???,
?????? ????????????, ?????? 12 ?? ??? 18 ??), ?????? ??? ??? ?????????? ??? ???????
90/364/??? ??? ????????, ??? 28?? ??????? 1990, ??????? ?? ?? ??????? ??????? (?? L
180, ?. 26), ??? 88/361/??? ??? ????????, ??? 24?? ??????? 1988, ??? ?? ??? ??
????????? ??? ?????? 67 ??? ??????? (?? L 178, ?. 5),

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

?????????? ??? ??? P. Jann, ??????????? ??? ??????? ????????, D. A. O. Edward
(?????????) ??? A. La Pergola, ???????,
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?????????: H. A. Rühl, ?????? ??????? ??????????,
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?? ?????????? ??? ?. Barbier, ?????????????? ??? ??? P. Kavelaars, conseiller fiscal,
?? ?????????? ??? ??? ?????, ?????????????? ??? ??? H. G. Sevenster,
?? ?????????? ??? ?????????? ??????????, ?????????????? ??? ??? R. Lyal ??? H. M. H.
Speyart,
?????? ??? ??? ??????? ???????????,

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????????????? ??? ??? P. Kavelaars, ??? ?????????? ??? ??? ?????, ??????????????
??? ??? C. Wissels, ??? ??? ??? ???????, ?????????????? ??? ??? R. Lyal ??? H. M.
H. Speyart, ??? ?? ?????????? ??? 24?? ??????? 2002,

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1 ?? ?????? ??? ?? 5?? ?????????? 2001, ? ?????? ??????? ??? ?????????? ??? 24
????????? 2001, ?? Gerechtshof te 's-Hertogenbosch ??????, ???' ?????????? ??? ??????
234 ??, ?????? ?????????? ?????? ??????? ?? ??? ??????? ??? ?????? 48 ??? 52 ??
????????? ??? (????????? ?????? 48 ??? 52 ??? ??????? ?? ???, ?????? ??????????????,
??? ?????? 39 ?? ?? 43 ??), 67 ??? ??????? ??? (????????? ?????? 67 ??? ??????? ??,
?? ?????? ?????????? ?? ?? ?????? ??? ??????????), 6 ??? 8 ? ??? ??????? ?? (??,
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90/364/??? ??? ??????????, ??? 28?? ?????? 1990, ?????? ?? ?? ?????????? ?????? (?? L
180, ?. 26), ??? 88/361/??? ??? ??????????, ??? 24?? ?????? 1988, ??? ?? ??? ??
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2 ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????????? ??? ?. Barbier
??? ??? Inspecteur van de Belastingdienst Particulieren/Ondernemingen buitenland te Heerlen
(???: ???) ?? ?????????? ??? ?????? ?????, ??? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?. Barbier ??? ??? ?????, ?? ?????????? ??? ? ?????????? ?????????????? ???
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3 ?? ????? 67, ?????????? 1, ??? ???????, ?? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ?. Barbier, ?????????? ?? ????: ?? ?????? ??? ?????????? ??????????????
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4 ? ?????? ??? ?????? ??? ?????? ?? ?????? ?? ?????? ??? ?????? ??????, ?????? ??? ?????? ?
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1, ??? ?????? ????: ?? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ???
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5 ?????? ??? ?????? ??? ??????? ???????, ?? ?????????? ? ??? ?????? 88/361, ?? ???
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1.????' ?????????? ??? ??????? ??????, ?????????????? ?? ?????? ??????:
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2.????? ?????????? ??? ??? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????? 5,
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[...].
11 ?? ??? 5, ?????????? 2, ??? SW 1956 ?????? ?? ????:
2.?? ??? ?????? ?????????? ?????????? ??? ??? ????:
1. ??? ??? ?? ??? 13 ??? Wet op de vermogensbelasting 1964 (Stbl. 520)
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ??? ??? ??????
????? [...].
12 ?? ??? 13, ?????????? 1, ??? ?????? ???, ??? Wet op de vermogensbelasting
1964 (????? ??? 1964 ??? ?????? ??? ??? ??????????), ??? 16?? ?????????? 1964
(Stbl. 1964, ?. 513, ??? ???: WB 1964), ?????? ?? ?????????? ?????? ???
????????? ?? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ?? ?? ?????????? ???
????? (?? ?? ??? ??? ??? ??? ?????? ?? ?????????? ??? ??????????).
13 ?? ??? 13, ?????????? 2, ?????? ?, ??? WB 1964 ?????????? ??? ??
????????? ?? ?? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???,
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????? ??? ?????? 49 ??? Wet op de Inkomstenbelasting 1964 (????? ??? 1964 ???
????????? ??? ??????????), ??? 16?? ?????????? 1964 (Stbl. 1964, ?. 519, ??? ????: ???
1964).
14 ?????? ??? ?????? 49 ??? B 1964, ?? ?????????? ?????????? ??? ??????????, ???
??? ?????? ??? ?????????? ???, ?????????????? ?? ?????? ??? ?????? ??? ?? ?? ??????????
????? ??? ??? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?? ??
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15 ?? ??? 13 ??? WB 1964, ??? ?????????? ??? ?? Hoge Raad der Nederlanden
(????? ????) (????? ??? 5?? ?????????? 1962, ??? 1963/23), ?????????? ???
????????????? ?? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??
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16 ??????, ?? Hoge Raad ?????? ???, ?? ?????????????? ?????? ?????? ?????????? ???
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????????? ?? ??????, ??? ?? ?????????? ?? ?????? 13, ?????????? 2, ?????????? ??,
??? WB 1964 (????? ??? 23?? ?????????? 1992, ??? 1993/78).
17 ??? ??????, ?? ?????????? ?????????? ?????????? ?????????????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???, ? ??????????
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??? ?????? ?? ?????? ??? ?????? ?????? ?????????? ?????? ??? ?? ?????? 5, ??????????
2, ??? SW 1956. ??????, ?? ?????????? ?????? ?????? ?? ?????? ??? ?????? ??? ??
?? ??? ??? ??????, ? ?????????? ??? ?????? ?? ?????? ??? ?????? ??? ?? ??????
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? ??????? ?? ???? ???? ???? ?? ?? ?????????????? ??????????
18 ??? 24 ?????????? 1993 ??????? ? H. Barbier, ? ?????? ??? ?????? ?? 1941.
????? ?? ?????????????? ?? ?????? ??? ??? ?????? ??? ??? (??? ???:
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19 ?? 1970 ? H. Barbier ?????????? ??? ??? ??? ?????? ??? ??????, ??' ???
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20 ??? ?? ??????? ?? 1970 ??? 1988, ??? ?? ?????????? ??? ??????, ? H.
Barbier ??????? ??? ?????? ?????? ???????, ??? ?? ?????? ??????????
?????????. ??????? ?? ?? ????? 49, ?????????? 1, ??????? b, ?????? 2, ?? ?? 1964,
?? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ?????????? ???
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21 ?? ?????????? ??? ?????? ?????????? ?? ?????????? ?????????? ??? ??????????
????????? ??? ?????????? ?? ?? ?????????? ?????????? ?????????? ????. ?? 1988,
? ?. Barbier ?????????? ??? ?????? ??????????, ?????? ??? ?????? ??? ??
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?. Barbier. ? ?????????? ??????, ?????????? ???, ??? ?????????? ?????? ???
????????? ??? ?? ?????????? ?? ?????????? ?????? ?????? ?????? ?????? ???
?? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ???????.
22 ?? ?????????? ??? ?????? ?. Barbier ?????????? ????????????,
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23 ??? ?? ?????? ??? ?. Barbier, ? ?????????????? ??? ??????, ?????? ???
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????????? ??? ?. Barbier, ?????????? ?? ?????????? ??? ?????? ??? ?????? ??????????
?? ??? ?????? ??? ?????? ????.
24 ? ??? ?? ?????? ??? ?????? ? ?. Barbier ??? ?????????? ??? ??????????
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25 ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
?? ???, ?????????? ???, ??? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ??????????, ? ??? ??? ?? ??? ?????????? ??? ?????? ?? ?????? ??????????.
?????????, ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ??????.
?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ???
??? Gerechtshof te 's-Hertogenbosch, ?????????? ?? ?????? ??? ?????? ??? ??????
????????? ??? ??? ?????? ??? ?????? ??? ?????? ????.
26 ??? ?? ?????? ??? ?????? ?? Gerechtshof te 's-Hertogenbosch ?????????? ??
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1)????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
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2)????????? ?? ?????????? ?????? ?? ?????? ?????? (?? ?????? ?????????? ??
????????), ??? ?????????? ??? ?????? ?????????? ?????? ?????????? ??? ?????? ??????????
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3)?????????? ??? ??????? ?? ??????? ??????? ?? ?? ??? ????? ?? ?????? ?????? ???????????
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4)????????? ??? ??????? ?? ??????? ??????? ? ??????? ?????????? ??? ?????????? ??? ?????????? ???
????????????? ??? ?????? ??????? ??????? ??? ???????, ??? ?????? ?????????? ???
??? ?????????? ?? ??? ?????? ???;
5)?? ??????? ?????????????? ???????????, ??? ?????? ??????? ?????????? ??????????????
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????? ??? ?????????? ??? ?????? 2.4 [??? ?????????? ??????????];
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27 ?? ?? ??????? ???, ?? ?????? ?????? ??????? ?? ??????????????, ?? ??????????
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? ?????? 88/361, ?????????? ?????? ?????? ?????????? ??? ?????? ??? ?????????? ???
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28 ??? ??????? ???, ?? ?????????? ?????????? ?????? ?? ? ?????????? ??
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??? ??????? ?????? ?? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? 90/364.
??????, ??? ?????? ?? ?????????? ?? ?????? ?????????? ??? ?????? ?????? ?? ?????????? ???
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29 ?? ?????????? ?????????? ??? ? ?????????? ???, ?????????????? ???
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1993, C-330/91, Commerzbank, ?????? 1993, ?. ?-4017, ??? 12?? ?????? 1994, C-1/93,
Halliburton Services, ?????? 1994, ?. ?-1137, ??? ??? 21?? ?????????? 1999, C-307/97,
Saint-Gobain ZN, ?????? 1999, ?. ?-6161).
30 ? ?????????? ??? ??? ?????? ??? ?????????? ??? ?????? ??????????????
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????? ??? ?????????? ??? ?????? ???, ? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ???, ??? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???.
31 ??????, ? ?? ??? ?????????? ?????????? ??? ??? ?????? ?????? ??? ?????? ???
????????? ?????????? ???' ?, ?? ?? ?????? ?????? ?????? ?????????? ???
????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???
????? ? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???

???? ??????? ??? ?????? ??????, ??? ????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ???????
??? ?????? ????. ??? ??????????? ??? ??????????? ??? ???????????, ? ?????? ??? ?????? ??? ?????? ???
?????????? ?? ?????? ??????????? ?? ?????? ?????? ??????? ???????, ?????? ???
???????, ??? ?????? ??????????? ??? ?????? ??????, ?????? ?????? ??????? ??? ??
?????????? ?????? ??????????? ?? ?? ??????.
32 ??????????? ??? ?????????? ????, ? ?????????? ??? ?????? ?????? ?????? ??????????? ???
?????? ?? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??????????? ??????? ???????
?? ??? ??????????? ??? ?????????? ?????? ??????????? ??????? ??? ??????, ??????
??? ?????? ?? ?????????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ??????
????????? ??? ?????? ?????? ?????? ??????, ??? ?????? ?????? ?????????? ?????? ?????? ??????
????????? ??? ?????? ?????? ?????? ??????, ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????
?????????.
33 ?? ?? ??????, ??????????? ??? ?????? ??? ?????? ??????, ? ?????????? ???
????????????? ??? ?????????? ?? ??? ?????? ??? ?????? ?????? ?????? ?????????? ???
????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?? ??? ?? ?????? ?????? ?????? ????. ???
????? ???????, ?? ?????? ??? ?????????? ?????? ?????????, ?????????????????????
??? ?????? ??????????, ?????? ?????? ??? ?????? ?????? ?? ??? ??? ?????? ??????, ?? ??????
????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???.
34 ????????, ??? ?????? ???????, ?????? ?? ?????????? ?????????? ?????????? ???
????????? ??? ?????????? ??? ?????? ??? ??????, ?? ?????? ?????? ?????????? ???
???????, ??? ?? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????????? ???
??? ?????? ???????. ?????? ?????? ?????? ???, ?? ?????? ?????? ?????? ?????? ???,
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???,
????????? ?????????? ?? ?? ??????, ?????????????????? ??? ?????? ???
????????? ?? ??? ??????, ?? ??????, ??? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ?????? ???, ?????? ?????? ??? ?????? ?????? ???
????? ?????, ?????????? ?????? ???, ?????? ?????? ???, ?????? ?????? ???, ?????? ???
????????? ?????????? ??????, ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ???????.
35 ????????, ??? ?????????? ??? ?????? ?? ??? ?????? 73 ?, ?????????? 1, ?????????? ??,
??? ?????? ?? (? ?? ?????? 58, ?????????? 1, ?????? ??, ??) ??? ??? ??? ??? ??????
????????? ??? ?????????? (? ?????????? ?? 28?? ?????????? 1992, C-204/90,
Bachmann, ?????? 1992, ?. ?-249, ??? C-300/90, ?????? ??? ??????, ??????
1990, ?. ?-305, ??? 14?? ?????????? 1995, C-279/93, Schumacker, ?????? 1995, ?. ?-
225, ??? 14?? ?????????? 1999, C-391/97, Gschwind, ?????? 1990, ?. ?-5451, ?????
??? ??? 6?? ?????? 2000, C-35/98, Verkooijen, ?????? 1998, ?. ?-4071, ????? 43)
????? ?? ?????????? ??? ?????? ?????? ?????? ?????????????? ?????? ??????
????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ???????.
36 ? ??????? ?????????? ???, ?????? ? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ???, ?? ?????? ??? ?????? ?????? ?????? ?? ?????? ???
????????? ??? ?????? ?????? ?????? (????????????? ?????? ???
Verkooijen, ????? 32).
37 ?????????? ??? ???? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
??? ??????? ??? ?????? ??? ?????????? ?????? ???????????, ??? ??? ??? ??? ??
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ??
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ??
????????? ????.
38 ??????? ??? ???? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?
????????? ?????? Schumacker, ??? ?????? ??? ?????? ?????? ?????? ??? ??????
????? ?????????? ?????? ??? ?? ?????????? ?????? ?????? ?????? ??????????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???????.
39 ???????, ??????? ??? ???? ?????????? ? ?????? ?????? ??? ?????? ?????? ??? ??
????? ??????, ??? ?????? ?????? ??????, ?? ?????? ?????? ? ?????? ?????? ??? ??????
????????? ??? ??? ???? ?????????? ?????? ?????? ?????? ??? ?????????? ??? ??
????????? ?????? ?????????? ??? ? ?? ??? ?????? ?????? ?????? ?????? ??? ?????? ???.

??? ?????????????? ??????? ??????? ?????? ? ?????????????????? ?????? ?????????? ???
????? ?????. ?? ??????? ?? ??????? ?????????? ?????????? ??? ?????????? ?????????? ???
????????? ??????.
??? ??? ?????????? ?????????? ??? ??????????
40 ?? ?????????? ?????????? ??? ?? ??????? ?????????? ?????????? ??? ?? ?????????? ???
????????? ?????? ?????????? ??? ?? ?????????? ?????? ?????????? ??? ?????????? ?? ?????? ???
????????? ??? ?????????? ??? ?????????? ?????? ?????????? ??? ?????????? ?? ?????? ???
?????????. ?????????? ?????? ?????? ?????? ?????????????? ?????? Verkooijen.
41 ?????????? ??? ? ?????????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ???
??? ?????????? ?? ?????? ?????? ?????? ?????? ??? ??????????, ?????? ??????????
????????? ?? ?????????? ?? ?????????? ?????? ?????? ?????? ?? ?????? ??????????,
????????? ???, ??? ?????????? ???, ?? ?????????? ??? ?? ?????? ?????? ?????????? ??
????????? ?????????? ?????????? ?????????? ??' ?,?? ??? ??? ?????? ?????????? ??
???? ?? ?????? ?????? ??' ?,?? ??? ??? ?????????? ?? ?????? ?? ?????????? ??????.
42 ????????, ? ?????????? ??? ?????? ?????? ?????????? ??? ?? ?????? ??????????
????????? ?????? ??? ?????????? ?????? ?????? ?????????? ?????? ??????????
?????????. ??????????, ? ?????? ??? ?????? ?. Barbier ?????? ??? ?????? ???
????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???
????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ???, ?? ?????? ??? ??????
???? ?? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????
43 ????????, ? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ?????? ??????????
????????? ???????????. ? ?????????? ?? ?????? ?????? ?. Barbier ?????? ??? ?????? ???
????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???
????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??????
????, ? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?. Barbier ?????? ???
????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???????.
44 ??? ??' ?????????? ??? ?????? ?, ? ?????????? ??? ?????? ?????? ?????????? ???
? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??????
????????? ??? ?????? ?. ? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????
???? ?? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??????
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??????
45 ????????, ? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ???
????? ??? ? ?. Barbier ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
Barbier ??? ?????????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??????
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46 ????????, ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
???? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
? ?????? ??? ?????? ?????? ?, ? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???, ?? ?? ??????, ???
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???, ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???, ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???, ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???, ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???, ???
47 ? ?????? ?????? ?????????? ???' ?????? ??? ?? ?????? 1, ?????????? 1, ??? ??????
88/361, ? ?????? ??? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
48 ????????, ? ?????????? ??? ?. Barbier ?????????? ??? ?? ?????? ???, ??? ??????
????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ??????
??? ???, ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ???, ???
?? ?????? ?????? ??? ?????? ?????? ???, ?????? ?????? ??? ?????? ?????? ???, ??? ??????

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

?? ?? ?????? 1 ??? ?????? 887361 ?????? ?????? ?????? ?????? ?????? ?????? ??????.

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

49 ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??????.

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????????? ??? ?????? ?????? ??? ?. Barbier. ?????????? ??? ??????.

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

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

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

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50 ? ?????????? ??? ?????? ?????? ??? ?????? ??? ? ?????? ??? ?????? ??? ?????? ??? ??????.

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

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

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

????????? . ?????? ?????? ??? 26? ?????? 1993, C-112/91,

Werner (????? 1993, ?.-429), ? ?? ??? ?????? ??? ??????.

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

51 ?????? , ?????????? , ???' ????, ??? ??? ?????? ??? ??????.

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

??? ?. Barbier ??? 24 ?????? 1993. ?? ?????? 8 ? ??? ??????.

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

????? 1993.

52 ?????? , ? ?????? 90/364 ?????? ?????? ??? ?????????? ??? ??????.

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

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

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

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

????? ?????? ??? ?????? Barbier ?? ??????.

53 ? ?????? ??? ?????? ??? ?????? ??? ??????.

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

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

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

54 ?????? ??? , ? ?????? ??? ??????.

????? ?? ?. Barbier ??? ??? ??????.

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55 ??? ??? ?????? ??? ??????.

????????? ??? ?. Barbier ??? ?? ??????.

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

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

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????? ?????? ??? 16? ?????? 1998, C-264/96, ICI, ?????? 1998, ?.-4695, ??? 21, ???

??? 21? ?????? 1999, C-378/97, Wijzenbeek, ?????? 1999, ?.-6207, ??? 21).

????????? ??? ???????????
56 ?????? ?? ??????????, ????, ????? ???? ????? ?????????? ?????????? ????
????????? ??? ?????? ????, ?? ?????? ??? ?????? ?????? ?????? ?? ?????? ???
????????? ??? ?????? ?????? ?? ?????? ?????? (?. ?????????????? ??????
Schumacker, ??? 21, ?????? ??? 11? ?????? 1995, C-80/94, Wielockx, ??????
1995, ?. ?-2493, ????? 16, ?????? ??? ??? ?????????????? ?????? Gschwind,
????? 20, ??? Verkooijen, ??? 32).
57 ???????, ?? ??? ?????????? ??? ???? ?????? ??? ?????? ??? ??????
????????? ?????? 88/361 ?????????????? ???? ?????? ?????????? ??? ??????
????????? ??? ?????????? ??? ?????? ???, ?? ???? 1, ?????????? 1, ??? ???
????????? ??? ?????? ??? ?????? ? ?????????? ?? ?????????? ?????? ??? ??????????
???? ?????? ?????? (????????? ?????? Verkooijen, ??? 33). ?? ???
????????? ??? ?????? ??? ?????????? ?????????????? ??? ?? ?????????? ?? ???
????????? ??? 23? ?????????? 1995, C-358/93 ??? C-416/93, Bordessa ??. (?????
1995, ?. ?-361, ??? 33).
58 ?? ?????????? ?? ??????, ??? ?????? ??? ?????????????? ?. Barbier ???
????????? ??? ?? ??????, ?????????? ?????? ?????????? ?????????? ?????????? ???
?? ?????? ?? ?????? 1, ?????????? 1, ??? ?????? 88/361, ??? ?????? ??? ??
????????? ??? ?????????? ??? ?????? ?? ?????? ??? ?????? ? ?????? ?????? ???
????????? ??? ?????????? ?????? ??? ?????????? ?????? ?????? ?????? ??? ?
????????? ?????????? ??? ?????????? ?????.
59 ? ?????? ??? ?????????? ??? ?????? ???? ?????? ??? ?????? ??? ?????????? ??? ??
????? ??? ?????????????? ???????. ?? ?????? ??? ?????? ??? ?????? ??? ?? ??????
????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ??? ?? ?????????? ?????????? ??? ?????? 1, ?????????? 1, ???
????? 88/361.
60 ??? ??????, ??? ?????? ??? ?????? ??? ??. Barbier ?????? ??? ?????????? ??? ??
????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? ?????? ?????????? ??? ? ??????????
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ??
????????? ??? ?? ??? ?????????.
61 ??????, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
??? ?? ?????? ??? ?????????? ??? ?????????????? ??? ?????? ?????? ??? ?????? ???
????? (?. ?????? ??? ?????? ??? ?????? ??? 7? ?????????? 1979, 115/78, Knoors,
????? 1979, ?. 399, ??? 24, ??? 3? ?????? 1990, C-61/89, Bouchoucha, ??????
1990, ?. ?-3551, ??? 13, ??? 31? ?????? 1993, C-19/92, Kraus, ?????? 1993, ?. ?-
1663, ??? 15, ??? 23? ?????????? 1994, C-419/92, Scholz, ?????? 1994, ?. ?-505,
????? 8 ??? 9, ?????? ??? ?? 27? ?????? 1996, C-107/94, Asscher, ?????? 1996, ?. ?-
3089, ??? 32).
62 ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? 1, ??????????
1, ??? ?????? 88/361, ?? ?????? ??????, ??? ?????? ??? ?????????? ??? ??????
???, ?? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ??????
????????? ?? ??? ?????? ??? ?????????? ??? ?????? ?? ?????? ?????????? ??? ??????
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????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ???
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????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?.
Barbier.
63 ??????, ?? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ??????????
?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
64 ???????, ? ?????????? ??? ?????? ??? ?????, ??? ?????, ??? ?????, ?? ?????????? ??? ??
????? 88/361, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????

??????????.

65 ????????????, ????, ??? ?? ?????????? ??? ?????? ?????? ?????????? ???
????????? ?????? ?????????? ?????? ?????????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
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?????, ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??????.

66 ??????, ?? ?????????? ?????????? ?????????? ?????? ?????? ?????????????? ???
?????, ??? ???? ??? ?????? ??? ?????? ?????????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ??? ???? ?????? ??? ???? ?????????? ?????? ?????? ?????????? ????
????? ??? ?????? ??? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ???? ??????
?????. ?? ?????????? ?????????? ??????, ??????, ??? ?????? ?????? ??? ??????
????????? ??? ?????????? ?????? ??????, ?????? ??? ?????? ?????? ?????? ?????? ??????
????????? ?????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ???
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67 ?? ?????? ?????????? ??? ?????? ?????? ?????????? ?? ?????????? ??????????
????????? ??? ?????? ?? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ??????
????? ?. Barbier, ?????????? ??? ?????????? ?????? ?????????? ??? ?????? ?????? ????
????????? ?????????? ?????? ???, ?????????? ?????? ?????? ??? ?????? ?????? ???
?????????. ?? ?????????? ??? ?? ?????????? ?????? ?????? ??? ?????? ?????? ??? ??????
????????? ? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???, ??? ??????
????????? ?????? ??? ?????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?? ??????
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???, ??? ??????????
?? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????.

68 ?? ??? ?????? ??????, ?????? ?? ?? ?????? ?????? ??? ?????????? ???
????????? ??? ??' ?????????? ?????? ??????, ? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ??????
????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ??????
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?
????????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???, ??

????????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?
????????? ??? ?????? ?????? ?????? ?????? ???, ?? ?????? ?????? ?????? ??? ??????
??? ?????????? ?????? ?????? ???, ??? ?? ?????? ?????? ?????? ???, ??? ?????? ???
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70 ??????, ??? ?????????? ? ??????, ? ?????? ?????????? ??? ????
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71 ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???, ??? ?? ?????? ???
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72 ? ?????????? ??? ??? ????? ?????????? ?????? ??? ?????????? ??? ?? ??????? 73 ?,
????????? 1, ??????? ??, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??????
?? ??? ?????? ?????? ?? ?????????? ?????? ??? ?????? ?????? ?????? ? ?????? ?????? ????
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73 ??????, ??? ?? ??? ?? ?????? 73 ? ??? ?????? ?????? ?? ??? ?? ??? ?? ??
????? ??? ?. Barbier, ?????? ?????? ? ?????? ??? ? ?????? ?????? 3 ?????
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74 ? ?????????? ??? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????
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????????? 1, ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
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75 ??? ?? ?????? ?????? ?????? ??? ?? ?????? ?????? ?????? ?????? ???
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76 ??????, ??? ?? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????
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77 ?? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ? ???????,
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2001 ?? Gerechtshof te 's-Hertogenbosch, ??????????:
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Edward

La Pergola

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R. Grass

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1 – ?????? ??????????: ? ??????????.