

???????? C-43/07

D. M. M. A. Arens-Sikken

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Staatssecretaris van Financiën

(?????? ?? Hoge Raad der Nederlanden ??? ?? ?????? ?????????????????? ??????????)

«????????? ??????????? ??? ???????? – ????? 73 B ??? 73 ? ??? ???????? ?? (??? ????? 56
?? ??? 58 ??, ??????????) – ?????? ?????? ??? ?????? ????? ?????? ?????????????? ?? ??????????????,
? ?????? ??? ?????????? ??? ?? ?????????? ??? ?? ?????? ?????? ??? ?????????? ?? ?????? ???
????? ??? ?????????? ??? ?? ?????? ?????????????, ?????? ?????????? ??? ?????? ???
????????, ??? ? ?????????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ???
????? ??? ?????? ??? ?????????? ?? ?????????????? ?????? – ?????????????? – ??????????????????
????? – ??? ?????????? – ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????????? – ?????????? ??? ?? ?????????? ??? ?????? ?????? ?????????? ??? ?????????? ???
???? ?????????? ?????????????? ??? ?? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????
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[?????? ??, ????? 73 B ??? 73 ? (??? ????? 56 ?? ??? 58 ??)]

?? ?????? 73 ? ??? 73 ? ??? ???????? ?? (??? ?????? 56 ?? ??? 58 ??, ????????????) ?????? ??
?????????? ??? ??? ?????? ??? ??????????? ??? ?????? ??????? ??? ?????? ???
?????????? ??? ??????????? ??? ?????? ??????????? ??? ?????? ??????? ??? ?????? ?????
?? ??????? ??? ?????? ??? ??? ???????, ??? ??? ??????? ??? ?????? ??? ?????? ???, ??
?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????? ??? ?????? ??? ?????? ???????????
???? ??????? ??? ???????, ??? ? ??????????????? ??? ?????? ??????? ??? ?????? ??? ?????? ???
????????? ??? ??? ?????? ??? ??? ?????? ???, ???, ???????, ??? ? ???????????
????????? ??? ??????????? ??? ? ??????????????? ??????????? ??? ??? ??? ?????? ??? ??????
??? ??? ?????? ??? ??????????? ??? ?????? ???????, ??? ?????? ??? ? ???????????
????????? ??? ?????????? ??? ?????? ?????? ??? ??????????? ??? ???????????, ??????? ?? ??????
??? ??? ??????????? ??? ?????? ?? ?? ??? ???, ?? ??????????? ?? ??? ??? ?? ??? ???????????
?????????, ??? ??? ?? ??? ?????? ?? ??????????? ?? ??????????? ??? ??????????? ???
?????????? ??? ??? ??????? ?? ??????????? ??? ?????? ??? ??????????? ??? ???????.

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

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

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

(??, ?????? 46, 54, 57, 60, 65, 67, ??????. 1-2)

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

?? 11?? ?????????? 2008 (*)

«????????? ?????????? ??? ?????????? – ??? 73 B ??? 73 ? ??? ?????? ?? (?? ????? 56
?? ??? 58 ??, ??????????) – ??? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ??? ??????????
? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????? ??? ?????????? ??? ?????? ?????? ?????? ??????????, ?????? ??? ?????? ??? ?????? ???
????????? ???????, ??? ?????? ?????????????? ??? ?????????? ??? ?????? ??? ?????? ???
??? ??? ?????? ??? ?????? ?????? ?????? ?????? – ??? ?????? ?????? – ??? ?????? ?????? ???
??? ?????? ?????? – ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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????? ?????? C?43/07,

?? ??????????? ?? ?????? ??????? ?????????????? ?????????? ?? ?????? ?? ?????? 234 ??,
?? ??????? ?? Hoge Raad der Nederlanden (????? ?????) ?? ??????? ?? 12?? ???????????
2007, ? ?????? ??????? ?? ??????????? ?? 2 ??????????? 2007, ??? ??????? ?? ??????

D. M. M. A. Arens-Sikken

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Staatssecretaris van Financiën,

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

?????????? ?? A. Rosas, ??????? ???????, J. N. Cunha Rodrigues, J. Klu?ka, A. Ó
Caoimh (????????) ??? A. Arabadjiev, ???????,

?????? ??????????: J. Mazák

?????????: M. Ferreira, ????? ?????????? ????????????,

?????? ?? ?? ??????? ?????????? ??' ?????????? ??' ??' ?????????? ??' ?????????? ??
13?? ?????????? 2007,

?????????? ?? ?? ?? ??????????? ??' ??????????:

- ?? ?????????? ??????????, ?????????????? ??' ??? C. Wissels ??' M. de Mol,
- ?? ??????? ??????????, ?????????????? ??' ??? L. Van den Broeck, ?????????????? ??'
??' A. Haelterman, advocaat,
- ?? ?????????? ??' ??????????, ?????????????? ??' ??? R. Lyal, A. Weimar
??' R. Troosters,

???? ??????? ??' ??????? ?????????? ??' ?????????? ??' ?????????? ??' ??????? ??' ??????????
??' 13?? ??????? 2008,

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1 ??' ?????? ?????? ?????? ?????? ?????? ?????????? ?????????? ?????? ??' ?????????? ??'
?????? 73 B ??' 73 ? ??' ??????? ??' (??' ?????? 56 ??' ??' 58 ??, ??????????), ??' ??????
????????? ??' ??????? ?????????? ??' ??????????.

2 ??' ?????? ?????? ?????????? ??' ?????? ?????????? ?????????? ?????? ??' D. M. M. A.
Arens-Sikken, ??????? ??????? ?????? ??' ?????? ?????????? ??' ??????? ??' ??' ??'
Staatssecretaris van Financiën (????????? ?????????? ??' ?????? ??' ?????? ??'), ??' ?????????? ??'
????????? ??' ?????????? ??' ?????? ?????????? ??' ?????? ??' ?????? ??' ?????? ??'
????? ??' ??????.

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

3 ??' ?????? ??' ??' ?????? 1 ??' ?????? 88/361/??' ??' ?????????? ??' 24?? ????????

1988, ?? ?? ?? ????? ?? ??????? ?? 67 ?? ??????? ?? 67 ?? ??????? ??, ?? ?? ?? ?? ??????????? ?? ?? ?? ?? ?? ?? ?? ?? ?? ?? ??, ?? L 178, ?. 5):

2. ?? ?????????? ?? ?????? ?????? ?? ?????????? ?????????? ?????????????????????? ?? ?????? ??
?? ?????? ?????????????????? ?????????????? ?? ?????? ??? ?????? ??? ?????? ??? ??? ?????? ??
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4 ??????? ??? ?????????? ?????????? ??? ?????????????? ??? ?????????? ? ??? ???????
88/361 ????????????????, ??? ??????? ??, ?? «????????? ?????????? ?????????? ??????????»,
???? ?????? ????????????????, ?? ??????????.

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

5 ????? ?? ?????????? ??????, ????. ????? ?????????? ??????????????. ?? ????? 1, ?????????? 1,
??? ????? ?? 28?? ?????? 1956 ????. ?????????? (Successiewet) (Stb. 1956, ????. 362,
??? ?: SW 1956) ?????????? ??????? ?? ? ? ?????????? ????. ????. ????. ????. ????.
???????. ????. ?????????? ????. ????. ????. ? ??????????.

6 ? ??????? ???, ????, ??? ???? ???? 1 ?????????? 1992 ?? 31 ??????????
2001, ?? ???:

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

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

3. ????? ?????? [...]»

7 ?? ?????? 5, ??????????? 2, ??? SW 1956, ??? ?????? ??? 8 ?????????? 1995 ??? 31
?????????? 2000, ??? ?? ????:

«? ?????? ?????????????? ?????????????? ??? ???:

1. ??? ?????????????? ?????????? ??? ?????????? ??? ?????????? ?? ?????? 13 ??? ?????? ???
16?? ?????????? 1964 ??? ?????? ??? ?????????? [Wet op de vermogensbelasting] [(Stb.
1964, ? 520, ??? ???: W 1964)], ??? ?????? ?????? ?????? ??? ?????? ?? ?????? ??? ?????? ????

[...] »

8 ?? ?????? 13, ?????????? 1, ????? ???????, ??? WB 1964, ??? ?????? ?? 1
????????? 1992 ?? 31 ?????????? 2000, ?????? «????????? ?????? ??? ??????»
?? «?? ?????? ??? ?????????? ??? ?????? ??? ?????? ?? ???? ?????? ??' ???» (????? ???
??? ?????? ?? ?????? ??? ?????????? ??????????).

9 ?? ?????? 13, ?????????? 2, ??????? b, ??? WB 1964 ?????????? ?????? ??? ??????
??? ?????? ??? ?????????? ?? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ???,
??? ?????? ??? ?? ?????? ??? ?? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ???
????????? ??? ?????????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? 49
??? ?????? ??? ?????????? ?????????? (Wet op de inkomstenbelasting), ??? 16??
????????? 1964 (Sbtl. 1964, ?. 519).

10 ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
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11 ??? ??? ?????????? ??? ?????????? ?????????? ??? ?????? ??? ?? ??? ?????? ???
????????? ??? ?????? ?????? ?????????? . ??????, ?????????? ??? ??? ?????????? ???
????? ??? ?????????? ??? ??? ?????????? . ??????, ?????????? ??? ?????? ???
??? ??? ??? ?????????? ??? ??????.

12 ??? ??? ?? ??? ?????????? ??? ?????????? ???, ??? ??? 1? ?????????? 1985, ?
????????? ??? ?????????? 6 % ??? ?????? ??? ??? ?????? ?????????? ??? ?????????? ???
????????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ???
????????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??????????
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
??? ?????????? ??? ?????? ?????????? ???, ??? ??? ?????????? ???, ??? ??? ?????? ???
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13 ? ?????? ??? D. M. M. A. Arens-Sikken ?????? ??? 8 ?????????? 1998. ??? ??
????? ??? ?????? ??? ??? ??? ??? ??? ??? ?????? ??? ?????? ??? ?????? ??? ??
????? ??? ??? ???.

14 ? ?????? ??? ?????? ??? ?????? ?? ??? ?????? ?????????? ??? ?????????? ??? ??
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??? ?? ??? ???.

15 ???????, ??? ?????? ??? ?????? ?? ?????? ?????? ?? ?? ?????? ??? ?? 1167 ??
????????? ??? ?????? ???, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ???, ?????? D. M. M. A. Arens-Sikken.

16 ?????? ?? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??????????
????????? , ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ???, ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ???, ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????????? . ?????? ??? ?????? ??? ?????? ?????? ?????? , ??? ?????????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ???, ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

17 ????? ??????????? ?????, ?????? ?????, ?? ??????? ??? ?????????????????? ?? ???????
????????????? ??? ?????? ?????, ??????? ??? ?????? ???? ?????? ?? 475 000 ????????
????????? (NLG).

18 ?????????????? ??? ?????????? ?????????? ?????? ?????? ?????????????? ?????????????? ??
????????????? ??? ?????? ??? ?????? ?????????? ?????????????? ??????????, ??? 95 000 NLG, ??? ??
?? ?????? ??? ?????? ??? ??????, ? ??? ?????? ?????????? ?? 475 000 NLG.

19 ???????, ? ??????????? ????? ?????? ??? ? ?????????????????? ??? ?????????? ??? ?????
????? ??? ?????????? ??? ??????? ?? ?????? ??? ?????????????????? ??? ????? ?????????? ??? ???
????? ?? ?????????? ??? ?????????????? ?????????????????? ??? ??? ????? ??? 475 000 NLG. ?
????????? ??? ??? ???????? ??? ?????? ??? D. M. M. A. Arens-Sikken ??? ???????
????? ??????????.

20 ? ??????? ?? ?????????? ?????? ?????? ?????????????? ??? ? ? ?????????? ?????? ???
?????? ? ?????????? ??? ?????? ??? ?????? ??? ?????? ???.

21 ? D. M. M. A. Arens-Sikken ?????? ??????? ??? Gerechtshof te 's-Hertogenbosch
????????? ??? ?? ??????? ?????????? ??? ??????????. ?? ??? ?????????? ???, ??????????
??? ??? ?????? ?? ??????????? ?? ?????????? ??? ?????????????? ?????????????? ??? ??
????? ??? 475 000 NLG, ??? ?? ?????? ?? ??????? ?? ??? ??? ??? ??? ??? ??? ??? ??? ??
??? ?????????? ??? ?? ?????? ?? ?????? ?????????? ??????????.

22 ?? Gerechtshof te 's?Hertogenbosch ??????????? ??? ? ????? ??????????? ???????????,
????? ????? ??? ??????????????? ??? ?????????? ??? ?????? ??????, ?? ??? ????? ??? ???????
????? ??? ??????????????? ????????. ??? ??????? ??? ?????????? ????????, ?????? ??? ??
?????? ??? ??????? ??? ??????????????? ??????????????? ?? ??????? ??? ??????? ??? ??????? ???
?????? ??? ???????.

23 ? ?????????????? ?????? ?????????? ??? ???? ?????????? ??? Gerechtshof te
's-Hertogenbosch ?????? ??? Hoge Raad der Nederlanden. ?? ??? ?????? ?????? ??? ???????????,
?? ?????????? ??? ????? ?????????? ??? ?? Gerechtshof te 's-Hertogenbosch ?????? ???
????? ??? ?????? ??? ????? ?????????? ??? ? ?????????????? ??? ?????? ?????? ??? ??????
????? ????????, ?????? ?? ?? ?????????? ?????????? ????????, ??? ?????????? ??? ??????
?? ?????? ??? ?????? ??? ?????? ??? ?????????? ???????????. ?? ?????????? ???
????????? ???, ?????? ?? ??? ?????????? ?????????? ??? ?????? ??? ?????? ???
????????? ?, ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ????????, ??
????????? ?? ??? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ?????? (????
????? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????).
?????????, ?? ? ?????? ??? D. M. M. A. Arens-Sikken ??? ??? ?????????? ??? ?????? ???
????? ??? ??? ?????? ??? ?????? ???, ???, ??? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ?????? ?????????? ??? ?????????? ??? ?? ?????? ??? ?????? ??? ?? ??
????????? ??? ?????? ?????? ?????????? ??? (????? ??? ???).

24 ??? ??? ?????????????? ????, ?? ?????? ?????????????? ?????????????? ?? ? ?? ???????????
?????????, ???? ??? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??????????????, ??? ??? ??
????????? ??? ?????????????? ?????? ??? ?????? ?????? ?????????????? ?????????? ??????????
????????????? ??? ?????????? ?????????????? ??? ??????????. ????????, ?????????? ?????? ??
????????? ?????? ?????? ?????? ??? ?????? ??? ?? ?????? ??? ?????????????? ?????? ??? ???
????? ?????????????? ??? ??? ?????? ???????, ???????? ?? ? ?? ?????????? ???

????????????? ??? ???????? ??? ??? ?????????? ??? 12?? ??????? 2003, C-234/01, Gerritse (?????? 2003, ?. I?5933), ??? ??? 11?? ?????????? 2003, C-364/01, Barbier (?????? 2003, ?. I-15013).

25 ?????????? ??? ?? ??????? ?? ?????????? ?????? ?????? ?? ??????? ?? ?????????? ??????????
????????? ?????????? ?? ?????????? ??????, ?? Hoge Raad der Nederlanden ?????????? ??
?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ??
?????????:

«1) ??????? ?? ?????? 73 ? ??? 73 ? ??? ?????????? [...] ?? ?????????????? ??? ?? ?????????? ???
????????????? ??? ?????? ??? ?? ?????????????? ?? ?????????????? ?????????? ??? ??????????
????? ?????????????? ?????????????? ?? ?????????????? ??? ?????????? ?????? ?????? ??? ??????
????? ?????? ?????????????? ??? -??? ???? ?????? ??? ?????????? ???- ??? ?????? ?????? ??????
????? ??????? ?? ??? ?????? ??? ??????????, ?????? ?? ?????????? ?????? ?? ??? ????
????????? ??? ?????? ??? ?????? ?????????????? ?? ?????? ?????????? ??? ?? ?????? ??????????;

2) ?? ?????????? ??????????? ?????????? ??? ?? ???? ?????? ???, ????????, ??
????????? ?? ???? ?????? ?? ?????????? ?????? ?????????? ?? ???? ?? ???? ?????? ?????? ??
????????? ?????? ?? ???? ?? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ??????
????????? ?, ??? ?????? ?????? ?????? [...] ?????? ?? ?????????????? ?? ???? ?????? ??
?? ?????????? ?? ???? ?????? ??????????, ??? ?? ?????????? ?? ???? ?????? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ????? ?????? ??? ?????? ??? ??????
?????????;

3) ??? ?? ??????? ?? ?? ??????? ?????? ??? ?????? ??????????? ?? ??????? ?????? ??? ??
????????? ?? ??? ??????????? ?? ??????????? ?? ??? ???? ? ?? ?????? ??? ?????????? ?? ??? ??? ? ?? ???????
??? ??????????? ?????? ??? ?????? ?????? ?????? ??????????????, ??? ?????????? ?? ??? ? ?? ???????
????? ??????, ??? ?????? ??? ??????? ?? ??? ?????? ?????? ???????????, ??? ?????????? ???????????
????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??????????? ??????????? ??? ??? ? ?? ??????????
????? ??? ?????? ???????????;»

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

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

27 ?? ?????????? ??????????? ?????????? ??? ?????? ???, ?????????????? ?????? ???
????????????? ?????? Gerritse ?? Barbier, ?? ?????? ?????????? ???, ??????,
????? ?????? ?????? ?????? ?? ?????????????? ?? ?????????? ??? ? ?????? ???
????? ?????, ??? ?? ?????????? ?? ? ?????? ?????????? ???, ??? ?? ?????????? ??
????????? ??? ? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????, ?? ??? ?????????? ??? ??? ??????????.

28 ?? ??? 56, ?????????? 1, ?? ?????????? ?????? ??? ?????????? ??? ?????? ???
????????? ?????? ??? ?????? ??? (?. ?????? ??? 6?? ?????????? 2007,
????????????? ??? C-463/04 ??? C-464/04, Federconsumatori ?.??., ?????? 2007,
. ?-10419, ??? 19 ??? ??? ??? ?????????? ??????????).

29 ?????????? ??? ? ?????? ??? ?????????? ??? ?????? ??? ?????? «????????? ??????» ???
????? 56, ?????????? 1, ??, ?? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???
??? ?????????? ??? ?????? ??? ?????? 88/361, ?????? ? ?????? ??? ??????
????? ?????? ??? ?????? 69 ??? 70, ?????????? 1, ??? ?????? ??? (?? ??????
????????? ??? 69 ??? 70, ?????????? 1, ??? ?????? ???, ?? ?????? ?????????? ??? ??
????? ??? ??????), ?????????? ???, ?????? ?? ? ?????????? ??? ??
?????????????, ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ??????????
????????? (?., ?????? ???, ?????? ??? 23?? ?????????? 2006, C-513/03, van Hilten-
van der Heijden, ?????? 2006, ?. I-1957, ??? 39, ??? 3?? ?????? 2006, C-452/04, Fidum
Finanz, ?????? 2006, ?. I-9521, ??? 41, ?????????????? ?????? Federconsumatori ?.??.,
????? 20, ??? ?????? ??? 17?? ?????? 2008, C-256/06, Jäger, ??? ??? ??? ??????
????????? ??? ??????, ??? 24).

30 ??????, ?? ????????, ???????????, ?????????????? ?????? ??? ?????? ??? ?? ?????????? ???
????????? ??? ?????????? ??? ?????? ??? ? ?????????? ??? ?????? ??? ?????????? ???
????? ? ?????? ?, ?? ??? ?????, ?? ?????????? ??? ?????? ?????????? ??? ?????? ???
?????, ?????????? ??? ?. ?? ? ?????? ?????? ?????????? ??? ?????? ???, ?????????? ???
????? ?? «????????? ?????? ?????? ?????? ??????» ??? ?????????? ??? ? ??? ??????
88/361, ?????? ??? ?? ?????????? ?????? ?????? ?????? ??? ?? ?????? ??? ?????? ???
????? 56 ??, ?????????? ??? ?????????? ??? ?? ?????????? ??? ?? ?????? ??? ?????? ???
????? ??? ??? ?????? ?????? ?????? (?. ?????????????? ??? Barbier, ??? 58,
van Hilten-van der Heijden, ??? 42, ??? Jäger, ??? 25).

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

32 ??????, ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????
????????? ??? ?????? ?????? ??? ?????? ??? ?????? 56, ?????????? 1, ??.

33 ??????, ???' ?????, ?? ?????????? ??, ??? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ???.

34 ??????, ??????????, ???' ?????, ? ?????? ???, ?????? ??? ?????? ??? ?????? ???
?????????, ??? ? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????, ?? ??? ??? ??? ?????????? ??? ???
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ? D.

M. M. A Arens-Sikken ???? ??????? ??? ?????? ??????, ??? ?????????? ??? ????? ??? ??????????
??? ?????? ?????????? ??? ?????? ?? ?????????? ??????. ????????, ? ??????
????????? ??? ?????? ?? ?????? ? ?????????? ??? ?????????? ??? ?????? ?????? ??? ??????
??? ?????? ??? ?????????? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? 475 000 NLG,
????? ??? ??? ?????????? ?????? ??? ?? ??? ??????.

37 ????? ?????? ??? ??????????????, ? ?????????? ??? ?????????????? ??? ?? ?????? ???
 ?????????????? ??? ?? ?????? 56, ?????????? 1, ??, ?????? ?????????? ?????????? ???
 ?????????? ??????????, ?????????? ??? ?????? ??? ?????? ?? ?????????? ?? ?????? ??? ??????
 ??? ?????????? ??? ?????????? ? ?????????? ?????? ?????????? ?????????? ??? ?? ?????? ???
 ??? ?????? ?????????? ?? ?????? ?????????? ?????????? ??? ?? ?????? ?????????? ???
 ?????????? ??' ????? (????????????????? ?????????? van Hilten-van der Heijden, ??? 44,
 ??? Jäger, ??? 31).

39 ??????????????, ??? ?????????? ?? ???? ??????? 34 ??? 35 ??? ?????????? ??????????,
?? ??? ?????????? ?????????? ?????????? ?? ??? ????? ?????????? ?? ??? ?????? ??????????
????? ??? ?????? ??? ?????????????????? ?????????? ?????? ???????, ? ??????????
?????????? ?????????? ??? ?? ?? ??? ?????? ?? ?????????? ?????? ?????? ??? ??
??????????, ??? ??? ??? ??? ?????? ??? ?????????? ???????????, ??? ? ??????? ???
????????????? ??? ?????????? ??? ?????? ?????, ? ?????????? ?????????? ???????????
????????? ??? ?????? ??????????. ??? ????? ?????????? ? ??????????, ??? ?????? ??????????
????????? ?????????????? ??? ??? ?????????? ??? ?? ??? ??? ??? ?????????? ?????????? ?? ???
??? ?????????? ??????????????, ?????????????? ??? ????? ??? ????? ??? ?????? ??????????, ??
????????? ??? ? ?? ?????? ??? ?????? ?????? ?????????? ?????????? ??????????.
??????????, ? ?????? ??? ?????????????? ??? ?? ??? ?????????? ?????? ??? ?????????? ?? ??????

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

40 ????? ????????, ???? ?? ?????????????????? ???? ?????????????? ?????????? ???
????????? ? ?????????? ???????, ?????, ???? ?????????? ? ?????????? ???? ???'?
????????? ???????, ??? ?????? ???? ??????? ??????????, ??? ?????? ???????, ??? ?
????? ???? ?????? ???? ?????? ????, ?????? ?? ?????????? ???? ?????????? ??????
????????? ?? ?????????? ?????? ????.

41 ? ?????????? ??? ??????????????? ?????? ??? ?????????????? ??? ?? ?????????????? ???
 ?????????? ??????????, ??? ?????? ?? ?? ?????? ? ??????? ?????? ??? ?????????????? ??? ?? ?????? ???
 ??? ?????????? ?????? ??????????, ??? ?????? ? ?????????? ?????? ?????????????? ??? ?? ?????? ???
 ?????????? ? ?????????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?? ?????? ???
 ??? ?????????? ?????????? ??? ?????? ??? ?????? ??????. ?? ?????? ??? ?????? ?????
 ??????????, ??? ?????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????????? ???
 ?????????? ??? ?????? 36 ??? 37 ??? ?????? ?????? ??????, ? ??????, ? ??????????
 ?????????? ??? ?????? ?? ?? ?????????? ??? ?????? ?? ??? ?? ?????? ??? ?????? ??? ?????????? ???
 ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ???
 ?????? (?? ??????, ??????, ?????????? ?????? Jäger, ??? 34).

42 ? ?????????? ?????????? ????????????, ??????, ??? ?? ??? ?? ??????? ??? ?????????
????? ??? ?????? ?????? ?????????????? ??? ??????? ?? ?????????? ?? ?????????????? ???
????? ?? ??????? ??? ??? ?????? ??? ?????????????? ?????????? Gerritse ??? Barbier. ??
????? ??? ??? ?????? ??? ?????????????? ??? ?????? ??? ?????????????? , ??? ??? ??? ??? ??????? ?
????????? ???????, ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????????? ??? ??? ???
????????? ????. ?? ?? ??? ?????? ??? ?????????? ?? ??????? ?? ?????????? ??? ?? ?????????? ??? ??????????
???????, ??? ?????????????? ?? ??? ?? ??????? ??? ?????????????? ????, ??? ??????? ??
????????????? ??? ??? ?????????? ??? ??????? ??? ??????? ??? ?? ?????????? ???.

43 ???????, ?????????? ? ??????? ???, ??? ?????????????????? ?????? Barbier, ??
????????? ?????? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ????
????????? ??? ??? ?????????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ????,
????? ??? ?? ?????? ??, ?????????? ?? ?????????? ???? ?????? ??? ?????? ???, ?????? ??
????? ?????? ? ??? ?????????? ?????? ??? ?????? ??? ?????????? ?????????? ???
????????? ?? ?????? ??? ?????? ???, ?? ?????? ??? ??? «?????????»
?????????» ??? ?? ??? ?????? . ???????, ?? ?????? ??? ?????? ??? ?????? ???
????????? ????

44 ??????, ??? ??????? ?? ?????? 49 ?? ??? 50 ??, ?? ??????????? ??????????? ??? ?
?????? ??????? ??? ?? ??????????? ????? ?? ??????????? ???????????, ??? ??????? ???
??????????, ?? ??????? ??????? ??? ??????????????? ??????? ??? ??????????? ??????? ??
?? ??????????? ??? ?? ????? ??????? ?? ??????????? ??????? ??? ??????????? ??? ??????? ???
?????, ???, ???????, ??????? ?? ??????? ??? ??????? ????? ??????????? ??? ??????? ???,
?????????? ??? ??????? ?? ??????? ??? ??????? ??????? ??? ????? ??????????? ??? ??????? ???
????? ??????? ??? ?? ????? ?? (??., ???????, ??????????????? ??????? Gerritse,
?????? 27 ??? 28).

45 ???????, ??? ?????????? ??? ??????? ??????, ?????????? ?????? ???????, ??? ?????????? ?????? ???????, ??? ??????????????
?? ??? ?? ???? ?????? ???????????, ??? ?? ??? ?? ???? ?????? ??? ?????????? ??? ??????????? ??? ??? ?? ??? ?? ????
?????? ?????????????? ?????????????? ?? ?? ??????? ????????, ??? ??????? ??? ?? ?????????? ?????????? ??? ??????? ????
????? ??? ?? ??? ?? ???? ?????? ??? ?? ?? ??? ?????? ??????? ?????????? ?????????? ??? ??????? ??? ?? ??? ?? ????
????????????? ??? ?????? ??????, ??? ??? ?????????? ????????, ??? ?????? ?????????? ??????????, ??? ?????? ??????????,

? ??????????? ?? ??????????? ? ?????? ??????????????, ????????, ??? ?? ??? 56,
?????????? 1, ?? ???????????, ?? ??????? ?? ?????? ?????? ?????????? ?????? ??? ??
?? ??????? ?? ??????????? ?????? ??? ?????? ?????? ?????????? ?????? ??? ?? ??????????????
?????????. ???????????, ?????????? ??? ?????? ?????? ?????????????? ?????? ??? ?? ??????????
???????? ?? ??? ??????????? ?????? ??? ?????? ?????????? ?????? ?????? ?????? ??????
? ?????? ???????, ??? ?????? ??? ?????? ?????? ?????? ?????????? ?????? ??? ?? ?????? ???
????? ???????, ??????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??
??? ?????? ???????, ??????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?? ?????? ??? ??????
?? ?????? ???????, ??????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?? ?????? ??? ??????.

46 ?? ???????????, ??? ??????????? ??? ?? ?????? 38 ?? 40 ?? ?????????? ???????????, ?
?????????? ??? ?????????? ?????????????? ??? ?????????? ?????????? ??? ?? ??????? ??? ??
????? ??????? ??? ?????? ??? ?????? ?????? ??? ?????? ???, ?? ?????????? ?? ??? ??????? ??? ??
????? ??????????? ?????????? ???????????, ?????????? ?? ?????????? ???????????, ?? ??????? ???
????? ??? ??????? ??? ??????????? ???????????, ??? ?????????? ???????????, ?? ??????? ???
????? ??? ??????? ??? ?????? ??? ?????? ?????? ?????? ??? ?? ?????????? ???????????, ?? ??????? ???
??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?? ?????????? ???????????, ?? ??????? ???
?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?? ?????????? ???????????, ?? ??????? ???.

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

48 ??????????? ?????? ? ??????????? ???, ?? ??????????? ??? ?????? ??? ?? ??????? ???,
? ??????????? ??? ??????? ??? ?? ??????? ??? ? ?????? ?????? ?????? ??? ??????? ?? ???????????
????? ??????????? ??? ?? ?????????? ??? ?????? ?????? ??? ?????? ?? ??????????? ??? ??
??? ?? ??????? ??? ??????????? ??? ?????? ??? ?????? ?????? ??????????? ??? ??????????? ???
?????????? ??? ?? ??????? ???, ??? ?????????? ??? ?? ?????? 12 ?? ?????????? ???????????
??? ?? ??????? ??????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?????? ??? ??????????? ??? ?? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?????? ??? ??????????? ??? ?? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?????? ??? ?????? ?????????? ??? ?? ?????? ?????????? ?????? ??? ?????? ??? ??????.

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

50 ??????, ?????? ?? ??????????? ???, ??? ?? ?????? 58, ?????????? 1, ??????? ??, ??,
«?? ??? 56 ??? ?????? ?? ??????? ??? ?????? [...] ?? ?????????? ??? ??????
????????? ??? ??????????? ??? ?????? ?????????? ?? ?????? ?????????? ?????? ??? ??????
????????????? ??? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
??? ??? ?????? ?????? ??????????? ??? ?????? ???».

51 ? ?????? ??? ?????? 58 ?? ??????, ?? ?????????? ??? ?? ?????????? ??? ??
????????? ??????????? ??? ??????????, ?? ?????????? ??? ??????. ???????, ?? ??????? ??
????????? ??? ??? ?????? ??? ?????? ?????????? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? (?)
????????? ??? ?????? Jäger, ??? 40).

52 ???????, ? ??????? ??? ?????? ?????????? ?? ?????? 58, ?????????? 1, ??????? ??,
?? ??????????? ?? ?? ??? 58, ?????????? 3, ??, ??? ?????? ??? ?? ?????? ???????????
????? ??? ?????? ?????????? ? ?????? 1 ??? ?????? «??? ?????? ?? ?????????? ???

????? ??????????? ??????????? ??? ??????????????? ??????????? ??? ??????????? ??????????? ???
?????????? ??? ??? ??????? ??? ??????? ??? ?????? 56» (???. ??????????? ??? 6?? ???????
2000, Verkooijen, C?35/98, ??????? 2000, ?. I-4071, ????? 44, ??? 7?? ??????????? 2004,
C?319/02, Manninen, ??????? 2004, ?. I-7477, ????? 28, ??? ?????????????? ?????? Jäger,
????? 41). ???????, ? ?????????? ?????????????? ??? ?????????? ?????? ?????????????? ???
?????????? ??????? ?????????? ??? ??????? ??? ?????? ??? ?????????? ??? ?????? ?????? ??????
??? ?? ? ?????????????? ???, ??? ?????? ??? ?????? ??? ?????????? ???, ?????????? ??? ?? ???
????????? ?????? ? ?????? ??????? ?????? ?????? ?? ?????????????? ?????? ?????? ??? ??????
????? ?????? ??? ?????? ??????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????? ??????
????? (??., ???????, ?????????????? ?????? Manninen, ????? 29).

53 ????????, ? ?????????? ?????????????? ??? ?????? ?????????? ?????? ??? ?????? 58,
????????? 1, ????????, ??, ?? ?????? ?? ?????????? ??? ?????? ?????????? ?????? ???
????????? ? ?????????? 3 ??? ?????? ?????. ??????, ??? ?? ?????????? ?????????? ??? ??
????? ?????????? ?????? ??? ? ??????? ??? ?????? ??? ?????? ??? ?????? ?, ???, ???
????????? ??? ?????? ?????????? , ????? ???????, ??? ?????? ?? ?????????? ??????????
??? ??? ?? ??????? ?????????? ???, ??????? ??? ?? ?????? ??? ?????????? ?????? ???, ??? ??
????? ??? ?????? ???, ??????? ??? ?? ?????? ??? ?????? ?????? ? ?????? ?????? ??????,
????? ?? ??????? ??? ?????????? ?? ??? ?????????? ??? ?? ?????? ?????? ??? ?????? ??????
????????? ??? ??????? ??? ? ?????????? ?? ? ?????????? ?????? ?????? ?????? ?????? ???
??? ?????? ?????????? ?????? ?????? ??? ?????????? ?????? ??? ?????? ?????? ?????? ???
????? ?????? ?????????? (???. ?????????????? ?????? Verkooijen, ??? 43, Manninen,
????? 29, ??? Jäger, ??? 43).

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

55 ????????, ? ?????????? ??? ?????????? ??? ?????? ??? ?????? ? ?????? ??? ??????
????? ?????? ?? ?????????? ?? ?????? ?????????? ?????? ?????? ?????????? ??? ??????????
????? ?????, ??????? ?????? ??? ?????? ???, ?? ?????? ??? ?????? ?????? ?????? ??? ??
??? ?????? ??? ?' ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

56 ? ?????????? ???????, ???????, ???????, ??? ?????? ?????????? ?????????? ??? ???
??? ?????? ??? ??????? ??? ?????? ?????? ?????? ?????? ??? ??? ?????? ?????????? ??????????
??? ??? ?????????? ???????, ?? ?????????? ??? ?????? ?????????? ???/? ??????????
????????? ?????????? ??? ?????? ?????. ? ?????????? ?????? ?????????? ?????? ??? ??
????????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ?????? ???.

57 ?????? ??? ?????? ?????? ???, ??? ?????? ?? ?????????? ?????????? ??? ??????
??? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?????, ??? ?????? ?????? ???
????????? ?????? ?? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???

????????? ??? ??????????? ????????????, ?????????? ??? 28?? ?????????? 1986, 270/83,
????????? ??? ??????, ??????? 1986, ?. 273, ???? 20, ????? ??? ??? 14?? ??????????
2006, C-170/05, Denkavit Internationaal ??? Denkavit France, ??????? 2006, ?. I?11949, ???
35, ???, ??? ??????? ??? ??????? ?????????? ?????????? ??? ??????? ??? ??? ???
???????????, ??????? ??????? ??? ?????? C?11/07, Eckelkamp, ??? ??? ??? ???
???????????, ??? ??????? ??? ???????, ???).

58 ????, ????, ?? ??????? ?? ? ??????????? ??? ?????????? ?????????? ??? ???
???????????, ? ?????????? ??????? ??????? ??? ? ??????? ??? ?????????? ??? ??????? ???
?????? ?? ??????????? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ???????????,
???????????, ? ?????????? ???, ??? ?? ?????????? ??? ?????????? ??? ?????????? ???
??? ?????? ???????????, ??? ?????????? ?????????? ??? ?????????? ??? ???????????
?????????????? ??? ??????? ??? ?????????? ??????????.

59 ????, ????, ?? ??????? ???????, ??????????? ?? ?????????? ??? ? ?????????? ???
??????????, ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????? ??? ???????????,
????? ??? ?????? ??? ?????? ???????????, ?? ??????? ?? ??????? ??? ???????????
????? ??? ?????? ??? ?????? ???????????, ?? ??????? ?? ??? ?????????? ??? ??????? ???
??????????, ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????? ???
??????????, ??? ?????? ???????????, ??? ???????, ?? ?????? ?????????? ??? ?????????? ???
??????????, ??? ?????? ???????????, ??? ?????????? ?????? ?????????? Gerritse ??? Barbier, ??
??????, ??? ?????????? ??? ?? ?????? 45 ??? ??????? ?????????, ??? ?????? ?????????? ??
?????????. ??? ??? ?????????? ???, ??????? ? ?????????? ??? ?????????? ??? ??????????.

60 ??????? ??? ??????? ???????, ??????? ?? ?????? ??? ?????? ?????? ??????? ? ?????????? ??? ??
????? 73 ? ??? 73 ? ??? ??????? ?? ?????? ?? ?????????? ??? ??????? ??? ?????? ???
??????????, ??? ?????? ???????, ??? ? ??????? ??? ?????? ?????? ?????? ??? ??????? ???, ? ???
????? ??? ?????????? ??? ?????????? ?????? ?????? ?????? ?????? ??? ?????????? ??? ???????
??????????, ??? ?????????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ??????? ???
????? ???, ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ???
????? ?????? ??? ?????????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ???????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ???, ???,
????????, ??? ? ?????????? ?????? ?????????? ??? ?????? ??? ?????????? ?????? ??????????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ???????, ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
??????????, ??? ?????? ?? ??????? ??? ??? ?????????? ??? ?????? ?? ??? ?????? ???, ?? ??????????
?? ??? ?? ??? ???????????, ??? ?????? ?? ??? ?????? ??? ?????? ??? ?????????? ?? ??????????
??????????, ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
??????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????

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

61 ?? ?? ??????? ???, ?? ?????? ?????????? ???' ?????? ?? ? ?????????? ???
??????????, ??? ?????? ??? ?????? ???????????, ?????? ?? ?????? ?????? ??? ???????
??????????, ??? ?????????? ?????? ??? ?????? ??? ?????? ?????? ??? ???????, ???????
??????????, ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???, ???????
????? ??? ?????? ?????????? ?? ??? ?????? ?????? ?????? ?????????? ?????? ?????????? ???????????
?? ??? ?? ??? ???????????, ??? ?????? ?? ??? ?????? ??? ?????? ??? ?????????? ?? ??????????.

62 ??? ?? ?????????? ??? ?????????? ?????? ?????????? ??? ?????????? ??? ???????
??????????, ??? ?????? ??? ?????? 293, ??????? ?????????, ??, ??? ?? ?????? ????. ???????

?????????? ?????? ??????????? ? ??????????? ??? ?????? ??????????? ??? ?? ?????? ???????????
??? ?????? ???????????, ?? ???? ??? ??????????? ?? ?????? ?????? ?????? ??? ?? ?????? ???????????
??? ?????????? ??????????? ??? ??????????? ?? ??? ?????? ?????????? ??????????? ??? ??
??????????, ?????????? ??? ??? ?????????? ???, ? ?????? ?????????? . ???????, ?? ????
????? ??? ?????? ???????, ??? ?????? ?????? ???????, ?? ?????????? ?? ?????????? ??? ?? ???
????????? ??? ?????????? ?????????? (?? . ?????????? ??? 12?? ?????? 1998, C?336/96,
Gilly, ?????? 1998, ?. I?2793, ?????? 24 ??? 30, ??? 21?? ?????????? 1999, C-307/97,
Saint-Gobain ZN, ?????? 1999, ?. I-6161, ??? 57, ??? 19?? ?????????? 2006, C-265/04,
Bouanich, ?????? 2006, ?. I-923, ??? 49, ??? ??? ?????????? ?????? Denkavit
Internationaal ??? Denkavit France, ??? 43).

63 ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?? ??? ??????
????, ?? ???? ??? ?????? ??? ???????, ????????, ?? ?????????? ??? ?? ??? ?????????? ???????
??? ?????????? ?????? (?? . ?????????????? ?????? Saint-Gobain ZN, ??? 58,
Bouanich, ??? 50, ??? Denkavit Internationaal ??? Denkavit France, ??? 44).

64 ??????, ???? ?? ???? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ??????
????? ??? ?????? ?????????? ? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
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????????????? ??? ?????????? ??? ?????????? ?????? ?????????? ??? ?????????? ?? ??????
????????????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ??????, ?????????????? ??? ??
????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ?????????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ?????????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ?????????? ??? ??.

65 ??? ??? ??????? ????, ???? ? ?????????? ??? ?? ?????????? ??? ?? ?????? ??? ??????
????????? ?? ??????? ??? ??????, ?????????? ?? ?????????? ??? ?????????? ??? ?????? ?????????? ???
????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???, ?? ?????????? ???
??? ?????? ??? ?????????? ??? ?? ?????? ??? ?????????? ??? ?????????? ?????? ?????????? ??? ??
???? ?????? ????, ??? ?? ?????? ??? ?????? ??? ?????? ?????????? ? ?????????? ?????????? ??? ??
??? ?????? ??? ?????? ???, ? ?????? ??? ?????????? ?? ?????????? ??? ?????? ??? ?????? ??? ??
????? ??? ?????????? ?? ?????????? ??? ?????? ??? ??, ??? ?????? ??? ?????????? ??? ?????? ??? ??
????????? ??? ?????????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ??
????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ??
????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????????? (??.,
???????, ?????????? ?????? Eckelkamp, ??? 68).

66 ???????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?? ?????????? ??? ??
????????? ?????????? ??? ?????? ???, ?? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ??
????????? ? ?????????????? ??? ?????? ??? ?????? ??? ?????? ???, ?????????? ??? ??
????????? ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?? ?????? , ?????????? ??? ?? ??? ?????? ???
??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? 8??
????????? 2007, C-379/05, Amurta,????? 2007, ?. ?-9569, ??? 78).

67 ?????? ??? ?????? ??? ??????, ???? ?? ?????? ??? ?????? ??? ?????? ?????? ? ?????????? ??? ?
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? ?????? ??? ?????? ??? ? ??????
??? ?????? ??? ?????? ??? ?????? ?????????? ? ?????????????? ??? ?? ?????? ??? ?????? ??? ??????
??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
?? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??????
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68 ?????????? ??? ? ?????? ?????????? ??? ?? ?????? ??? ?????? ?????????? ??? ?? ?????? ???
??? ?????????? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? , ?' ???

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

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

1) ?? ?????? 73 ? ??? 73 ? ??? ??????? ?? (??? ?????? 56 ?? ??? 58 ??, ??????????)
?????? ?? ??????????? ??? ??? ?????? ??? ?????????? ??? ??????? ???????, ???
? ??????? ??? ?????? ??? ?????? ???, ? ?????? ??? ?????? ??? ?????????? ???
?????????? ?????? ?????????? ??? ?????????? ?????? ?????????? ?????????? ???
????????? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????????? ?????? ?????? ???
?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????????? ??? ?????? ?????? ??? ??????, ??? ? ?????????????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???,
????????, ??? ? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??
????????????? ??? ??????, ??? ?????? ??? ? ?????? ??? ?????? ??? ?????????? ??? ?????
???? ?????????? ?????? ??? ?????? ???, ?? ?????????? ?? ??? ?????? ??? ?????? ??????????
?????????, ?????? ?? ??? ?????? ?? ?????????? ?? ?????????? ?????????? ??????????
?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??????????

2) ? ?????????? ??? ?????? ??? ?????? 1 ??? ?????????? ??? ?????????? ??????????
?? ?????????? ??? ?? ?????? ??? ? ?????? ??? ?????????? ?????? ??? ?????? ???
??? ?????? ?????????? ? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ?? ?????? ?????? ?????? ?????? ?????????? ?????? ??? ??????
????????????? ?? ??? ?????? ??? ?????? ?????? ?????? ?????????? ?????? ?? ???
????????? ?' ??? ???? ?????? ??????.

(?????????)

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