

???????? C-246/08

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?????? ????? ?????????????? ????? – O????????? ?????????????? ????? ??? ?????? ???
?????? 4, ?????????? 1 ??? 2, ??? ?????? ??????

(?????? 77/388 ??? ????????????, ??? 2, ???????? 1, ??? 4 §§ 1, 2 ??? 5)

???? ?????????? ??? ??????????? ??? ?????? ??? ?? ?????? 2, ?????? 1, ?????? ??? 4,
????????? 1, 2 ??? 5, ??? ????? ??????? 77/388, ??? ?????????????? ??? ?????????? ???
????? ??????, ??? ??????? ?? ??? ????? ?????? ?????? ?????? ?????? ?????? ??? ??? ??????
????? ??? ?????????????? ?????? ??? ?????????? ?????? ?????? ??? ?????????? ???
????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????????? ?????? ?????? ?????????? ???
????? ?????????? ??? ???????????, ?????? ? ?????? ?????? ?????????? ?????? ?????????? ???
??? ?????????? ??? ??? ?????????? ?????? ??? ?????? ??? ?? ??? ????? ?????????? ???, ???????,
????????? ?? ?? ??? ?????????? ??? ?????? ??? ?? ??? ?????? ??? ?????????? ?????????? ??? ??
????? ??? ?????? 2, ?????? 1 ??? 4, ?????????? 1 ??? 2, ??? ?????? ??????.

???????????????, ?????? ?? ??? ???? ????? ?????????????? ??? ?????????????????? ??? ???
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???????????, ??? ?????????? ?????? ?????? ?????, ??????? ? ?? ?????? ??? ????? ?????????? ?????????? ?????
????????? ?????? ??? ?????????????? ??? ?????? ??? ?????????????? ?????????? ???, ?????? ? ?? ???
????? ?????? ??? ?????????????? ??? ?????? ??? ?????????????? ??? ?????? ?????????????? ??? ?????? ???
????????? ??? ?? ?????????????? ?????????? ??? ??????????????. ? ?????????????? ???
????????????? ??? ??? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ??????
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????????? ?? ?????????? ?????????????? ??? ?????????? ??? ?????????? ?????????? ???, ??? ????
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(???. ??????? 48-51)

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

?? 29?? ???????? 2009 (*)

«????????? ??????? ?????? – ??? ?????? ??? – ?????? 2, ?????? 1, ??? 4, ?????????? 1 ??? 2 – ?????? ??? ?????????? ?????????????? – ?????? ?????? ?????? ?????? – ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? »

???? ?????? C246/08,

? ? ?????????? ?????? ??? ?????? 226 ?? ??? ??????????, ? ?????? ?????? ??? 3
?????? 2008,

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

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?????????? ??? ??????????, ?????????????? ??? ??? A. Guimaraes-Purokoski,
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? ? ?????????? (????? ????),

????????? ??? ??? A. Rosas, ?????? ????????, A. Ó Caoimh (???????), J. N. Cunha Rodrigues, U. Löhmus ??? P. Lindh, ????????,

?????? ??????????: D. Ruiz-Jarabo Colomer

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

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??? 7?? ?????? 2009,

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1 ?? ? ?????????? ??? ?????????? ???, ? ?????????? ??? ?????????? ?????????? ????

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????????? ??? ???? ?????????????? ??? (?? ?????: ???), ??????? ?? ?? ??????????
?????????? ?????? ??? ?????? ??????, ??? ?????????? ??????? ?????? ??? ???????
????? ?????????? ??? ?????? ??? ?????? ?? ?????? ?????? ??????? ??????, ??? ??
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????? ??? ?? ?????? 2, ?????? 1, ?????? ?? 4, ?????????? 1, 2 ??? 5, ??? ?????? ??????
77/388/??? ??? ??????????, ??? 17?? ????? 1977, ??? ?????????????? ??? ?????????? ???
?????? ?????, ??? ??????? ?? ??? ?????? ?????? ??????? – ????? ?????? ?????? ???
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2 ?? ?????? 2 ??? ????? ??????? ?? ????:

«???? [??] ??????????:

1. ?? ?????????? ?????? ??? ?? ?????? ??????????, ??? ?????????????????? ??
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2. ?? ?????????? ??????..»

3 ?? ?????? 4 ??? ?? ??? ?????? ?????????? ?? ????:

«1. ?????????? ?? “????????????? ???” ?????????????? ???, ??? ?????? ?????????? ???
?? ?????????????? ???, ??? ??? ??? ?????????? ?????????????? ??? ?????????????? ???
????????? 2, ?????????????? ??? ?????????????? ?????? [?] ??? ?????????????? ???
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2. ?????????? ??????????????, ??? ?? ?????? ??? ?????? ?? ?????????? 1, ?????? ??? ??
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[...]

5. ?? ????, ?? ??????????, ?? ??????, ?? ?????, ?? ?????? ?? ?????????? ??? ?? ????
????????? ?????? ??? ??????, ??? ?????? ?????????????? ?? ?????????? ??? ?????? ??? ??,
??' ?????????? ?????? ??? ?????????????? ??? ??????, ?????????? ??????????, ???,
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????????? ?? ?????????? ?? ??? ?????? ??? ?????????????? ? ???????, ?????? ??? ??
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[...]»

4 ?? ?????? 6, ??????????? 1, ??? ?????? ??????? ?????:

? ?????? ?? ?? ??????? ?? ???????????, ?????? ??, ??:

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5 ??? ?????????? ?? ??????? ??? ??????? ??? ?????? ??????? ??????? ?????????? ???
?????? ?????????? ??? 2002, ????, ??? ?????? ?????? ?????? [oikeusapulaki
(257/2002)], ??? 5?? ???????, ??? ??? ?????? ?????? ?????? ?????? ?????? [laki
valtion oikeusaputoimistoista (258/2002)], ??? 5?? ??????? 2002, ??? ??????? ??????
???? ?????? ?????? [valtioneuvoston asetus oikeusavusta (388/2002)], ??? 23?? ????? 2002,
??? ??? ??????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??????
[valtioneuvoston asetus oikeusavun palkkioperusteista (389/2002)], ??? 23?? ????? 2002.

6 ? ?????? ?? ?????? ??????? ???? ??????????, ??? ?????? ??? ??????, ??? ?????? ???
?????????, ??? ?????? ????, ?? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ???
?????????, ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?? ?????????? ??? ??????
??? ?????????? ??? ?????????? ????. ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??????
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7 ????? ?? ?????? 8 ??? ?? ????? ??????, ??????? ?????? ?????????? ?????????? ?? ???????
????????? ?? ?????????? ?????????? ??????? (?? ?????: ??????? ??????). ??
????????? ????, 60 ?? 2008, ?????????? ?????? 220 ?????????? ??????????, ?? ?????? ????
????????? ?????????? ??? ?? ??????. ?? ?????????? ??????? ?? ?? ?????? ??????
????????? ?????????? ??? ?????????? ??????. ??????????, ?? ?????? ??? ?????????????? ??
????????? ?????? ?????? ?????? ?????????????????? ?? ?????? ?????? ?????????????? ???
?????????, ?? ?????????? ?? ??? ?????????????? ??????? ?????? ??? ?????? ??? ?????? ???

8 ?? ???? ?????? 8 ??? ?????? ??? ?????????? ??????? ???????????, ???? ????, ??? ??
????????? ?????????? ?????? ?????????? ?????????? ?????? ?????? ?????? ?? ?????????? ??????
????????? ???????????????, ???? ?????????? ? ?????? ?????????? ?????? ?????? ?????? ???????. ??
????????? ???? ??? ?????? ? ?????????? ?????????? ? ?????? ???? ??? ?????????? ???
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??????????, ???? ??? ?????????? ?????????? ?????? ???? ??? ??????????.

9 ?? ?????? 17 ??? ?????? ???? ??????? ?????? ?????????? ??? ?????? ??' ?????? ?' ??????
????????????? ?????? ??????????. ? ?????? ??? ?????????? ??? ?????? ??' ?????? ?' ??????
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????????????? ??? ???? ??????? ?? ???? ?????????? ??? ???? ?????????? ?????? ???
?????????. ??? ???? ?? ???? ??????????, ?? ?????????? ?????????????? ??????
????????? ??? ?????????? ?? ?????? ??? ?????? ? ?????????? ?? ?????? ???
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10 ? ?????????? ??????? ??? ?????? ?????? ?????? ?????? ?????????????? ??? ????
?????? ?????????? ?????? ??????.

11 ?? ?????? ?????? ?? ???? ?????????? ?????????? ?????? ??? ???? ?????? ???
????????? ?? ?????????? ??? ?????? ?? ?????????? ?????? ??? ?????????? ???, ??
?? ??????, ?????? ?????? ?? ?????????? ?? ?????? ??? ?????? ???, ?????? ??????
?????????, ?????? ?????????????? ?? ?????????????? ?????? ?????????? ?????? ??????
????????????? ?? 2002. ? ?? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ?????? ?????? («perusomavastuu») ??? ?????? ?????? ?????? ?????? ??????
(«lisäomavastuu»).

12 ??? ???? 5 ??? ?????????? ?????????? ??? ?????? ???, ? ?????? ???
????????? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ???, ?????????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??????. ?? ?????? ?????? ?????????? ?? ?????? ??? ?????? ??? ?????? ???
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«????? ?????? ??? ??????:

650 ??? ????': 0 %

850 ??? ????': 20 %

1 000 ??? ????': 30 %

1 200 ??? ????': 40 %

1 300 ??? ????': 55 %

1 400 ??? ????': 75 %

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

550 ??? ????': 0 %

650 ??? ????': 20 %

800 ??? ????': 30 %

1 000 ??? ????': 40 %

1 100 ??? ????': 55 %

1 200 ??? ????': 75 %».

13 ?? ?????? 6 ??? ?????????? ?????????? ??? ?????? ?????? ?????? ?????? ???, ??
???????????, ?????? ??? ?????????? ?? ?????????? ??? ? ?????????? ?????????? ??????????

14 ??? ???? 7 ??? ???? ?????????? ??????????, ?????????? ??? ?????? ??????????

? ?????????? ?? ?????????? ??? ? ?????????? ?????????? ?????????? ?????????? ? ??????????
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????. ? ?????????? ??? ???? ?????? ?? ???? ?????? ??? ???? ?????????? ??? ??????????????
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15 ? ?????????? ??????? ??? ?????? ??? ?????????? ?????? ??? ?????????? ?????? ??????
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7 ??? ?? ??? ?????????? ?????? ?????? ?????????? ?????? ?????? ?????????? ?????? ??????
????? ??? ?????????? ??? ?????? ??????, ??? ?? ????? 8 ??? 9 ?????? ??? ??????????
??? ?? ?????? ?????????? ?? ??? ?????? ?????? ?????? ?????? ?????? ??? ??? ???
????????? ??????. ??? ?? ????? 11 ??? ?? ????? ??????????, ?? ??? ????? ?????? ??????????
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? ?????????? ?????? ?? ??? ???

16 ??? ?? ??? 1 ??? ??? ??? ??? ?????? ?????? ?????? ?????????????? ??? [arvonlisäverolaki
(1501/1993), ??? 30?? ?????????? 1993, ? ?????????? ??? ?????? ?????????? ??????????
????????? ?????????? ?????? ?????? ?????? ??? ?????? ?????????? ?????? ?????? ??????????
????????? ??? ?? ??? ?????? ?????? ?????????? ??????????, ? ?????? ? ?????? ??????
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17 ??? 13 ?????????? 2004, ? ?????????? ?????????? ??? ?????????? ?????? ?????? ??????
????????? ?? ?? ?????????? ?????????? ?????? ??? ?????? ?? ?????????? ???, ??? ?????????? ??
????????? ?????? ?????? ?????? ??????, ?????????? ??? ?? ?????????? ??? ?????? ??????????
????????????? ? ?????????? ??? ?????????? ?? ?????????? ?? ?????????? ?????? ?????? ?????.
????????????? ??? ??????????, ?? ?????????? ??? ?????????? ?????? ?????? ?????? ?????? ???
??? ?????????? ?? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??????.

18 ?? ?????? ??? 17?? ?????????? 2004, ?? ?????????? ?????? ?????? ?????????? ??
????????? ??? ?????????? ?????? ?????? ?????? ?????? ???, ?????????????? ??? ??
????????? ??? ?????????? ?? ?????? ?????? ??????, ?????? ?????????? ??? ??????, ??? ?? ??? ??,
???? ? ?????????? ?????? ?? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????
?????, ??? ?????? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?
??? ??? ?????????? ??? ?????? ??????.

19 ??? 19 ?????????? 2005, ? ???????, ?????????? ?????????? ??? ?????????????? ??
?????????, ??????????, ???' ??????? ?? ?????? 226 ?? ??? ?????????? ??? ?????? ??????????
????????????? ??? ??????, ?? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??????
??? ? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ??????????, ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ??????
????????? ??? ?????????? ???, ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?? ?????????? ???, ??? ??? ?????? ??? ?????? ??? ?????? 4, ?????????? 5, ??? ??????
??? ?????? ??????, ??? ? ?????? ??? ?????? ??? ?? ?????? ?????????? ?????????? ?????? ???
????????? ??? ??? ?????? ?????????? ???, ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ???.

20 ??? ?????????? ???, ??? 16?? ?????????? 2006, ? ?????????? ??? ??????????
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?????????? ?? ?????? ?? ??????????, ??? ???? ????? ?? ??????? ?????????? ??????? ?? ???????
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?? ???? ? ?????? ?? ????? ?????????? ??????, ??? ???? ????? ?? ?????????? ??????? ?? ???????
?????????? ?? ?????????? ?? ?????????? ???????.

21 ?? ?????????????????? ??? ???. ???? ?????????? ????, ? ?????????? ??????????, ????. 15 ???????????
2006, ?????????????? ????. ??? ?????????? ????. ???? ??????????, ????. ???? ??????, ????. ???? ??????
??? ?????????? ????. ??? ?????? ???. ???? 2, ????. 1, ????. 4, ?????????? 1, 2 ???. 5, ????. ????
???????. ?????????? ???. ??? ?????????? ?????????? ????. ???? ?????????? ???. ???? ?????? ?????????? ??????????
???????. ????????. ????. ??????????, ????????, ????????. ???. ???. ??????. ????????. ????????. ???.
???????????. ????. ???. ??????. ????. ??????. ????. ??????. ????. ??????. ????. ????. ??????. ????.

22 ????????? ??? 15?? ???????????? 2007, ? ?????????? ??? ?????????? ?????????? ???
????????????? ????, ?????????? ??? ???. ??? ?????? ?????????? ??? ?????? ?????? ??? ???.
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23 ????? ???? ?????????? ??????, ? ?????????? ?????????? ?? ?????????? ??? ??? ?????? ??????.

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24 ?? ??? ??? ????? ??????? ? ?????????? ?????????????? ??? ? ??? ???? ??????? ??
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?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??????. ??
??? ??????? ??? ??? ??? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??? ???
??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?? ??????? ??? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?? ???, ??????? ??? ?? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??? ??? ??? ???
?????????. ??????????, ?? ??? ?????? ??? ?????? ?????? ?????????? ??????????, ??? ??????????
?????????, ??? ?????? ??? ?? ?? ??? ?????? ?????????? ?????????? ??? ?????? ??????????
????????? ??? ?????????? ?????? ??? ??????, ?????? ?? ?????? ??? ?????? ??? ?????????? ?? ??? ??????
???? ?????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????. ???????, ??????? ??????
????????? ??? ?????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? 2, ??? 1, ??? ?????? ??????.

26 ??? ?????? ??? ????????, ? ?????????? ?????? ??? ????? ???????????? ?? ?????????? ?
????????? ?????????? ??? ?????????? ??? ?????????? ?? ?????? 4, ?????????? 5, ???
???????.

27 ??????????? ??????? ?? ???? ?????? ?? ?????????? ??????????, ?? ??????? ??????
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????????? (?? . ?????, ??????? ?? 14?? ?????????? 2000, C?446/98, Fazenda P?blica, C?446/98, ??????? 2000, ?. I?11435, ??? 17 ??? ??? ?????????????? ??????????).
?????????????, ?? ??????? ??????? ??? ?????????? ?????? ?????????? ?????????? ??????????
?????? ?????????? ??? ??? ?????????? ?????? ?????? ?????????? ?????????? ??????????
????????? ??????????, ??? ?????????? ??? ?? ??? ?????? ?????? ?????? ?????????? ??? ?????????? ??? ??????.
? ?????????? ?? ??? ?????????????? ?? ?? ?????? ?????? ?????? ?????????? ?????????? ??????????
????? ?????? ??? ?????????? ?????????? ?????????? . ???????, ?????????? ??? ??? ??????
????????????? ??? ?????? ??? ?????? ?? ??? ?????? ?? ?????????? ?????????????? ?? ??????
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28 ?? ??? ??????????, ? ??????? ?????? ??? ? ?????????? ??? ?? ??? ?????? ??? ?????? ??? ??????????
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????????? 5, ??????? ??????, ??? ?????? ??????. ??????????, ?????????? ??? ??????????
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????????? ?????? ??????, ?????? ?????? ??? ?????????? ?????? ???, ?? ?????????? ?????? ??? ??????
??? ???????????, ?????? ?????? ?? ?????? ?????????? ?????? ??? ?????? ??????????
????????? ??? ??????. ? ?????????? ??? ??? ??? ?????????? ??? ?????? ??? ??????
????????? ?? «????? ??????», ??? ???? ?????? ??? ?????????? (?. ?????? ??? 16??
????????? 2008, C?288/07, Isle of Wight Council ???, ?????? 2008, ?. ?-7203, ??? 79),
????? ?????????? ??? 4 000 ??? ?????? ?????? ?????????? ?????????? ?????????? ?????? ??????
????? ?????? ??????????.

29 ? ?????????? ?????????? ?????????? ??? ?? ?????????? ?????? ?????? ???
????????? ?? ??????? ??????? ?????????? ?????????? ?????? ?? ?????????? ?? ?????????? ??
????????? ?????????? ??? ??? ?????? ??? ?????? 2, ?????? 1, ??? ?????? ??????.
?????????, ?? ?????????? ??? ??? ?????????? ??? ?????? ??? ?? ?????????? ?? ??????
??? ???????????, ??? ?????????????? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????????????? ??? ??? ?????? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ???
????????? ??? ???????, ??? ?????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ???
????????? ??? ???????, ??? ?????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ???
????????? ??? ?????????? ??? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ???
????????? ??? ?????????? ??? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ???
????????? ??? ?????????? ??? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ???

30 ??? ??? ?????? ??? ??????? ??? ?????? 4, ?????????? 5, ??? ?????, ??? ??????
??????, ? ?????????? ?????? ?????????? ?????????? ??? ? ?????? ?????? ??????????
????????????? ??? ??? ?????????? ?????? ??? ?????? ?????????? ??? ??? ??????????.
??????????, ?? ??????? ?????? ?????? ?? ?????? ?????????? ??? ?????? ??? ?????? ??????????
????? ??? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????????? ?????????? ??????????
????? ??? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?
????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

31 ?? ??? ??????????, ? ?????????? ?????? ?????????? ??? ? ?? ?????? ??? ??? ???
?? ??????? ?????????? ??? ?????????? ?????? ?????????? ??? ??? ??? ?????? ??? ??????

????? ??? ??????? ??? ??????? 4, ??????????? 5, ??????? ?????? ??? ????? ??????.
???????????, ??? ? ?? ??????? ??? ?? ?????? ?????? ??? ??????????? ?? ????????????.
??? ? ????????????, ??????? ??????????? ??? ?? ?????? ??? ????????????, ?????????? ???
?? ?????????? ??? ??????? ?????? ??????? ??????????? ??? ?????? ??? ?? ????????
???????????, ????????????, ??? ?? ??????? ?????? ??????? ??? ?? ??????? ???
???????????, ??????? ??? ??????? ??? ?????? ??? ??????? ??????? ??? ????????
????????? ??????? ??? ??????? ??? ??????? ??????? ??? ?????? ??? ????????????
????????? ????????. ???????, ??? ?????? ??? ?????? ??????????? ??? ?????? ??? ????????????
??????, ? ??????? ??? ?????? ??? ?????? ??? ?????? ??????????? ??? ?????? ??? ????????????
????????? ??????? ??? ??????? ??? ?????? ??? ?????? ??????????? ??? ?????? ??? ????????????
??? ??????? ??? ?? 2004 ??? ?? 2006. ????, ??????? ??? ?????? ??? ??? ??????????? ???
?????? ????????, ?????? ? ?????? ??????????? ??? ??????????? ??? ?????? ??? ? ????????????
???.

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

32 ?????????? ?????? ? ?????????? ??? ?? ??? ??? ????? ?????? ?????????? ? ?????????? ???
????????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?? ?? ?????? ?????????? ?????????? ?????? ??? ?????? ??? ??????
????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ???.

34 ??????? ?????????????????? ???, ???????? ? ??? ????? ?????? ?????????? ??? ?? ?????? ?????
?????? ????????, ??? ?????? ??? ?????????????? ?????? ?? ?????????????? ?? ?????? ??????
????????? ?????????? (?. ??????? ?????????? ??? 11?? ??????? 1996, C?306/94, Régie
dauphinoise, ??????? 1996, ?. I?3695, ????? 15, ??? 26?? ??????? 2003, C?305/01, EDM,
?????? 2004, ?. I?4295, ????? 47, ??? ??? 26?? ????? 2005, C?465/03, MKG-Kraftfahrzeuge-
Factoring, ??????? 2005, ?. ??6729, ????? 39, ????? ??? ??? 26?? ??????? 2007, C?369/04,
Hutchison 3G ???., ??????? 2007, ?. I?5247, ????? 28).

35 ??????? ?? ???? 2 ??? ????? ????????, ??????? ?? ?? ?????????????? ???????,
?????????? ?? ??, ????? ?? ?? ?????????????? ???????, ?? ?????????????? ??????? ??
????????? ?????????? ?? ?? ?????????????????? ?? ?????????? ??????? ?? ?????????? ??
????????, ??????? ?? ?????? 4, ?????????? 1, ??? ?? ?? ????? ???????, ?????????? ??
????????????? ?? ?? ????? ?????????????? ???????, ??? ?????? ?????????????? ?? ?? ??????????????
??????, ?????????? ?????????????? ???????, ?????????? ?? ?? ?????????????? ??????? ??
????????????? ?? ?? ?????????????? ??????. (??., ??????, ?????????? ?? ?? 26?? ??????? 1987,
235/85, ??????? ?? ?? ???????, ?????? 1987, ?. ?-1471, ????? 5, ??? 12?? ??????????
2000, C?260/98, ??????? ?? ?? ???????, ??????? ??. ?-6537, ????? 24 ??? ??????????????

?????? Isle of Wight Council ??., ?????? 26 ?? 27).

36 ? ??????? ??? ?????????????? ?????????????????? ?????????? ??? ?????? 4, ?????????????? 2, ???
????? ???????? ??? ?????????????? ??? ?????? ??? ?????????????????? ??? ??????????, ??? ???????? ?
??? ?????????? ??? ???????, ?????????? ?? ??????? ??? ?????????????? ??? ?????????????? ??? ??????????????
????????? ? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ?????? ?????? ?????????? ??????????. (??.
????? ????, ?????????? ??? 26?? ????? 2005, C?465/03, Kretztechnik, ?????? 2005, ?.
I?4357, ??? 18 ??? ?????????????? Hutchison 3G ???., ??? 27).

38 ??????????, ??? ?? ?????????? ?????????? ??? ? ?????????? ?????? ??? ?????? ??????????
????? ?? ?????????? ?????????? ?????????? ?? ?????????? ?????????????? (??.
????????????????? ?????????? Hutchison 3G ???., ??????? 39 ??? ??? ????? ??????????????
?????????, ??? ?? Götz, ??? 21).

39 ??? ?? ?????????? ?? ??????? ??? ?????????? ??? ??????????, ?????? ?? ??????????,
????? ??????, ?? ?? ?????????? ??????? ?????? ??? ?????????? ?? ??????? ?????? ???
?????? ?????????????? ??????? ?????????????? ?????? ?????? ?????? ?????????????? ??????????
????????????? ?????????????? ?????? ??? ?????? ??? ?????? 2, ?????? 1 ??? 4, ?????????? 1
??? 2, ??? ?????? ??????.

40 ??????????????? ?????? ??????? ??? ?????????? ??? ?????????????????? ?????????? ???
 ????? ? ?????? ??? ??????????? ??????????????????, ??? ????? ?????? ?? ?????? ??? ???? ?
 ?????????????? ??? ?????????? ?????????? ?????????? ??? ?????? ?????? ?????????? ???
 ??????????, ? ?????? ??? ?????? ?????????????? ??????????????, ?? ?????? ?? ??????
 ?????? ??? ?????????? ??? ?????????????? ??? ?????????????? ??? ??????. ????????, ?? ?????? 6 ???
 ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
 ?????????????? ??? ?????????????????? ?? ?????????? ??? ?????? (????????????? ??????
 ?????? ??? ?????? ???, ??? 10).

41 ???????, ??? ?????????????? ??? ?? ??????? ?????????? ??????? ?????? ?????? ??????????
?? ?????? ??? ?? ?????? ??????.

42 ??' ?????? ??? ????????, ??????? ?????? ?? ?????????????? ?? ?? ?? ?? ??? ?????? ????????

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

43 ???????, ?????? ?? ?????????????? ??? ?? ?????????? ??? ?? ???????, ??? ??????
??? ?????????? ???, ??? ?? ?????????????? ??????? ?????????? ??? ?? ?????? ??????????
?????? ?????? ??? ????? ?????????????? ??????? ?????? ??? ??????????????. ???
?????????, ??? ? ?????????????? ??? ?????????? ?????????? ?????????? ??????????????
???? ??? ????? ?????????????? ??????? ??????????, ??? ?????? ??? ??? ??? ??????
????????? ???, ???????, ? ?????? ??? ?????????? ?????? ??? ?????????? ??? (?)
????????? ??? 1? ?????? 1982, 89/81, Hong Kong Trade Development Council, ??????

1982, ?. 1277, ??????? 9 ??? 10, ????? ??? ??? 3?? ??????? 1994, C?16/93, Tolksma, ???????
1994, ?. ?-743, ????? 12).

44 ??? ?? ?????????? ??? ??????????? ?????????????? ??? ??????? ??? ?????? ?????????? ??????????
????????????????? «?? ??????? ??????», ??? ???? ?????? ??? ?????? 2, ?????? 1, ???
????? ???????, ??? ??????? ?????? ?????? ???????????, ??? ???? ???? ?????????? ?????? ???
????????? ??? ??????? ??? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ??? ??????
????????????? ?????? ???????, ? ?? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????????
?????? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? (?).., ???
?????, ?????????? Tolsma, ???????????????, ??? 14, ??? 5?? ?????? 1997, C-2/95, SCD,
?????? 1997, ?. .?-3017, ??? 45 ??? MKG-Kraftfahrzeuge-Factoring, ???????????????, ????

45 ????? ????????, ?????? ?? ?? ?????????? ??? ????????????, ? ?????? ??? ??????
????????? ??? ??????????????? ?? ??????? ??????, ??? ?? ?????? 2, ?????? 1, ???
????? ????????, ??????????? ?? ?????? ?????? ?????? ?????? ??? ???????????
????????? ??? ?? ??????????? ?????????? (?. ????, ?????????? ?? 8?? ??????
1988, 102/86, Apple and Pear Development Council, ??????? 1988, ?. 1443, ????? 12, ??? ??
16?? ???????? 1997, C?258/95, Fillibeck, ??????? 1997, ?. ??5577, ????? 12, ????? ??
?????? ??? ??????, ???????????????, ??? 29).

46 ?? ????????????, ??????????????? ?? ? ? ?????????? ??????? ?????? ??? ?????????
?????????? ?? ?? ???? ????? ???????, ?? ?????????? ??????? ?? ???? ?? ??????? ???????,
??, ???????, ??? ????????????, ??????? ?? ?????????? ?????????????? ?? ??????????
?????? ?? ??????? ???????.

47 ??? ?????????????? ?????????? ??? ? ?? ??? ????? ?????? ?????? ?????? ?????? ??? ???
?????? ??? ??? ???????? ???????? ?? ??? ??? ??? ?????? ??? ?????? ??? ?????? ? ?????? ????????,
??????? ?? ?? ??? ??? ???????, ?? ?????? ??? ?????????? ??????? ??????? ?????? ???
??????? ?? ??????? ??????? ??? ?? ?????? ?????? ?????? ?????????? ????????????. ????????????,
???? ???????? ??? ?? ?????? 12 ??? 14 ??? ??????? ???????????, ? ?????? ???
?????????? ?? ?????? ??? ?????????? ?????????? ???????????, ????????, ??????????? ??? 20 ???
75 % ??? ?? ??? ??????. ???????, ?????? ??????, ?????????? ??? ?????????? ?????? ??????????
??? ??????????, ? ?????? ??? ?? ?????????????? ??? ?????????? ??? ??????????.
?????????, ? ?????????? ??? ?????????? ???, ?????? ?????????? ? ?????????? ?????????????? ???
?????? 48 ??? ???????? ???, ?????? ??????, ?????????? ?????? ??? ?????? ?????? ???????, ? ??????
?????????? ??? ?????? ? ?????? ?????????? ??? ??? ?????? ?????????? ??? ?????? ?????? ???????, ? ????????
???? ??? ?????? ?????????? ?? ??? ?? ?????????? ??? ?????????? ??? ?????? ?????? ?????????? ???
????????? ?? ?????????? ?? ??? ??? ?????? ??? ?????????? ??? ?????????? ? ?????? ?????????? ??? ???
????????? ?????? ???????.

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

50 ????? ?????????? ? ??????? ?????????????? ??? ?????? 50 ??? 51 ??? ?????????? ???, ?
????????? ??? ?????????????? ??? ?? ??????? ???, ??? ???? ?????? ??? ?????????? ??? ??????????
???? ?????????? ??? ?????????? ??? ?????? ?????? ??????????, ?? ??? ?????? ?????? ??????????
??? ?????????????? ?? 2007 ??? ??? ?????? ?????????? ?????????????? ??? ?????? ?????? ??????, ??
????? ?????????????? ??? ??? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????,
????????? ?? 1,9 ?????????? ???, ??? ?? ?????? ?????? ?????? ?????????? ??? ?????????? ??? ??????????
?? ?? ??? ?????? ?????? ??? 24,5 ?????????? ????. ?????? ?? ?????? ?????? ?????? ??????
??? ?????????? ?????? ?????? ?????????????? ??? ?????? ??? ?????? ?????? ?????? ??????????
????????? ?, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ????
????????? ?????? ?????? ?????????? ??? ?????? ?, ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?? ?????? ?????? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ??????.

51 ???????, ??? ?? ?????? ??? ?????????? ???, ??? ?????????? ??? ? ???? ?????? ??????
????? ?????????? ?????? ??? ?????? ??? ?????????? ??? ?? ?????? ?????? ?????? ??? ??
????????? ??? ?? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ??????????
??? ?? ?????????? ??? ?? ?????? ??? ?? ?????? ?????????? ???, ???????, ?????????? ?? ??
????? ?????????? ?? ?????????? ?? ?????????? ?????????????? ?????? ??? ?????? ??? ?????? ??? ??????
2, ?????? 1 ??? 4, ?????????? 1 ??? 2, ??? ?????? ??????.

52 ??????, ??? ?????????? ???, ? ?????????? ??? ?????????? ??? ?????? ??????
????? ?? ?????????? ??? ?? ?????? ??? ?????????? ?????????? ?????????? ???????????????.
?????????, ?? ? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????????? ?? ?????????? ??? ?? ?????????? ??? ?? ?????? ???
????????? ??? ??????, ??? ?????? ??? ?????? ??? ?????????? ???, ??? ?????? ??? ??????
????????????? ??? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ???
????????????? ??? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ???, ???
??? ?????????? ??? ?? ??? ?????? ??? ?????? ??????????, ?????????? ??? ?????? ?? ??? ??
????????? ??? ?? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ?????? ???
????????? ??? ?? ?????? ??? ?????? ?????? 226 ??, ? ?????? ??? ?????? ?? ??? ?? ??? ??
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?. ??? ?????? ??? ?????? ??? ?????? ???
????????? ?? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?? ?????????? ?? ?????????? ??? ?????? ?????? (??, ??? ?????? ??? ?????? ??? 26??
????????? 2005, C-494/01, ?????? ??? ?????? ?????? 2005, ?. ?-3331, ??? 41 ??
???? ?????????? ??????).

53 ??? ?? ?????? ???, ?????? ?????? ?????????? ?????????????? ??? ??????
????????? ??? ?????????? ??? ? ?????? ??? ?????? 4, ?????????? 5, ?????? ??????, ???
????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????????? ? ??????????
????????? ??? ?????? ?????? ?????? ?????? (??, ??' ???? ??? ?????? ???
????????????? ?????? Götz, ??? 15, ??? Hutchison 3G ???., ??? 42), ???
????? ?????? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ??????????
????? ?????? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ??????
??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

54 ?????????? ??? ?????? ??? ??????, ? ??? ?????? ?????? ??? ?????? ?? ??????????
??? ??? ?????? ???

55 ??? ? ? ???? 69, ?????????? 2, ??? ?????????? ????????????, ? ?????????? ??????????
????????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ??????????
?????????. ?????????? ??? ? ?????????? ??? ?????????? ?????? ??? ?????????? ???
????????? ??? ? ?????????? ??? ????????, ?????? ?? ?????????? ??? ?????????? ???.

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

1) ?????????? ??? ???????.

2) ?????????? ??? ???????? ??? ?????????? ??? ?????????? ?????????? ??? ?????????? ???.

(?????????)

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