

Conclusions

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

PHILIPPE LÉGER

??? 17?? ??????? 2003 (1)

?????? C-453/00

Kühne & Heitz NV

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Productschap voor Pluimvee en Eieren

[?????? ??? College van Beroep voor het bedrijfsleven (???? ???)??? ??? ?????
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1. ?????????? ?? ??????? ?????? ??? ?????? ?????? ?????????????? ?????? ?? ???????????
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??? ??? ?????? ?????? ??????????????;
2. ??? ?????? ???' ?????? ?? ?????? ?????? ??? ?????? ?? College van Beroep voor het
bedrijfsleven (?? ???: College) (???? ???) ??? ?????? ?????????? ??? ?????? ??
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3. ? ?????????? (???) 2777/75 ??? ????????, ??? 29?? ??????? 1995, ??? ??????

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4. ? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?????????? ?????????? ???
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????? ??? 1987) (3) .
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5. ?? ??? 4:6 ??? Algemene wet bestuursrecht (????? ??? ?????? ??? ?????? ??? ??????????)
?????????) (4) ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
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6. ??????, ??? 8:8, ?????? 1, ??? ?????? ???, ?? ??????????
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?) ?? ??????, ??? ??? ?????? ??? ?????? ??? ?????? ???, ?? ?? ?????? ??? ?????? ??? ??????

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7. ??? ??? 1986 ???? ??? ?????? ??? 1987, ? ?????? Kühne & Heitz NV,
??? ?????? ?????? ??? ?????? ???, ?????? ???' ?????? ??? ?????? ??? ?????? ??? ??????
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????? ?????? (????? ??? ??????), ?????? ?? ??? ?????? ??? ??????
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8. ?????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???' ?????? ???
????? ?, ? Productschap voor Pluimvee en Eieren (????? ??? ?????? ??? ?????? ??? ??????
??? ???, ??? ?: PVV) (5) ?????? ??? ?????? Kühne & Heitz NV ?? ??? ?? ???
????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
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????? ???, ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? (?????
?????) (6) .

9. ??? 1? ?????? 1990, ?????? ??? ?????? ??? ?? ?? ??? ?????? ??? ?????? ??? ?????? ???, ?
PVV ?????? ??? ?????? Kühne & Heitz NV ?? ?????? ?? ??? ?? 970 950,98
????? ?????? (NLG) ??? ?? ?????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????? (??? ?: ?????? ???). ??????, ?????? ?????? ??? ?????? ??? ??????
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????????????? ?????? 02.02 ? ?? ex ?), ??? ?????????????? ?????, ??? ?????? ?????????????????? ??
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?? ?????? ??? ?????? (7) .

10. ? ?????? Kühne & Heitz NV ?????? ?????????? ?????? ??? ?????? ??? ?????????? ??????
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????????? ?? ?????? ??? 13?? ?????????? 1990, ? PVV ?????? ??? ?????? ??? ?????? ??? ??
????????? (????? ??????).

11. ? ?????? Kühne & Heitz NV ?????? ?????????? ??? ?????? ??? ?????????? ?????? ??????????
????????? ??? College (8) . ?? ?????? ??? 22?? ?????????? 1991, ? ?????????? ???
????????? ?? ?? ?????? ??? ?????? 02.02 ? ?? ?) 3, ??? ?????????? ???
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02.02 ? ?? ex ?) ??? ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???
12. ?? ??? ?? ?????? ???, ?? College ?????? ???, ?????? ??? ?????????? ???, ?
????????? ??? ?????????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????????
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????????? ??? ?????????? ??? ?????????? (???) 2787/81 ??? ??????????, ??? 25??
????????? 1981, ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????????
????? (9) . ????????, ?? College, ?????????? ??? ?????????? ?????????? ?? ??????????,
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????????? ??? ????????, ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??????????
????? (10) .

13. ?? ??? ?????? ??? 5?? ?????????? 1994, Voogd (11) , ?? ?????????? ?????? ??? ? ???
[?????????] ??? ??? ????? ?????????? ?? ?????? ?????????????? ??? ?????? ?????????? ???
????????????? ?? ?????? ??? ?????? ??? ?????? 02.02 ? ?? ?) 3 ??? ??????
????????????? ??? 0207 41 51 000 ??? ???, ?? ?? ??? ?????? ?????? ??? ?????? ??? ??????
??????, ??? ?? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ??? (12) . ?? ??????????
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????????? ??? ???????, ???????, ?????????? ??? ?????? ??? ?????????? ??? ?????? ???
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14. ?????????? ??? ?????????? ??? ?????????? ???, ? ?????? Kühne & Heitz NV ??????
??? 13 ?????????? 1994 ??? ??? 3 ?????????? 1995 ?????? ??? PVV ?????? ?? ???
????? ?????? ?? ??? ?????????? ??? ?????? ??? ?????????? ?????? ?????????? ???, ?????? ???, ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????? 1986 ???
????????? 1987 ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????????? (???)
????: ??? ?????? ??? ??????). ? ?????? ?????? ?????? ?? ??? ?????????? ??? ??????
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????????? ??? ?????????? ?????????? ??? ?????? ??? ?????????? ??? 02.02 ? ?? ?) 3,
????????? ?? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??
????????? ??? ?????? ??? Voogd (???: ??? ?????? ??? ?????? ??? ??????).

15. ? PVV ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? 11?? ?????? 1995
(?????? ??????). ? ?????? Kühne & Heitz NV ?????? ?????????? ?????? ??? ??
????????? ??? ?????? ??? PVV, ? ?????? ?????? ?????????? ?? ?????? ??? 21??
????? 1997 (?????? ??????, ??? ???: ?????????? ??????).

16. ????? ? ?????????????? ????????, ????? ?????? ?? ?????? ?????? ??? ????????,
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College (????? ?????? ? ??????? ?? 22? ?????????? 1991) ?????????? ?? ?????????? ?? ?????????? ??
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????? ?????? ?? ??????? ?????? ??? ?????????, ?????????? ??? ?? ?????? ?????? ?????????? ??,
????????????? ??? ?????? ??? ?????? ?????? ??? ?????? Kühne & Heitz NV ??? ??, ???
?? ?????, ? ??????? ??? ?????? ?????? ?????? ?????????? ?????? ??? ?????? ??????????????
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17. ? ?????? Kühne & Heitz NV ?????? ??????? ?????? ??? ?????????????? ?????? ??????????
????????? ??? College.

18. ?? ??? ???? ???? ?????? ??? ??????? ???, ? ?????????????? ?????? ?????????? ?????????? ??
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Voogd, ?????? ?? ??? ?????????? ??? ?????????? ?? ?????? 4:6, ?????????? 1, ??? Algemene
wet bestuursrecht. ??? ?????? ??? ?????? ?????? ??? ?????????? ?? ?????? ?????????? ??????????
??????????, ? ?????????? ?????? ?????? ?????? ??? PVV ??? ?? College ??????????,
????????????? ??? ?????? ??? ?????????????? ?????? Ekro ??? Voogd, ?????????? ???
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??? 1987.

19. ? PVV ?????? ?? ?????? ??? ?????? Kühne & Heitz NV. ?? ??? ???? ???? ??????,
????????? ??? ? ?????? ??? College ??? 22? ?????????? 1991 ?????? ?????????? ??,
????????? ?? ?? ?????????? ???, ??? ?????? ?? ?????????? ??? ?????? ??????????
????????????? ?????? ?????????? ??? ?????? ??? ?????? ???, ?? ??? ?????? ?????????? ??,
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????????? ??? ?????? ?????? Brasserie du pecheur ??? Factortame ??? Hedley Lomas (14).
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20. ??? ???? ???? ??? ?????? ?????? ??? ?????? ??? ?????????? ?? College van Beroep voor het
bedrijfsleven ?????? ?? ?????????? ?? ?????????? ??? ?????????? ??? ?? ?????????? ??? ?????????? ??
????????? ?????????? ?????? ?????? ?????? ?????? ?? ?????? 10 ?? ??? ???? ??? ?????????? ??????,
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??????, ??? ?????? ?????? ??? ?????????? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????? ??????
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21. ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??
????????? ?? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??????
????? ?? ?????? (15). ??????, ?? ??? ?????? ?????? ?????? ??? ??????, ?? College ???????, ?? ??
?? 22 ?????? 1991 ?????? ???, ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
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????????? ?????? Voogd ??? ?????? ?????? ?????? ?????????? ?????? ??? ?????? ???

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????????? ?????????? ??? ?????????????? (16). ???????, ? ?????????????? ??????
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????????????? ?????? Voogd.
22. ??? ?? ??????? ?????????? ??? ?? ?? ??????? ?????? ?? ?????? ?????????? ?????? ??? ??
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??? ??????? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?
?????? ???, ? ?????? ?????? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????
??? ?????????? ??????, ?????? ?????????? ??? ?? ?????????? ?????? ?????? ?????? ??? ????
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??????????.
23. ??? ?? ??????? ?????? ?????? ?????????? ?????? ??? ?? ?????????? ??? College
????????? ???, ??????, ? ?????????? ???, ? ?????? ??? ? ???????, ??????, ?????? ???
????? ??????? ?????????? ??? ?????? ?????? ?????? ?? ?????? ?????????? ??????, ??????, ?????? ???
????????? ??????, ?? ??? ?????????? ?????? (17).
24. ?? ??? ?? ?????? ???, ?? ?????? ?????????? ?????? ??? ? ?????????? ?????? ??????
?????? ?? ??????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?? ?????????? ?????? ???
?????? ??????, ?????????? ???, ?????????? ?? ??? ?????? ??? ?????? ?????? ???, ?????? ?????? ??????
??? ?????????? ?????? ??????????, ???' ?????, ??? ?????????? ?????? ??? ?????????? ??? ??????????
?????? ???, ???? ??? ?? ?????? ??? ?????? ?????? ?????????? ?????? ?????? ?????? ?????????? ???
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25. ?????? ??????? ?? ??????????, ?? ?????? ?????????? ?????? ??? ? ??????? ???
????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ??? ? PVV ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????? ?????? ???,
????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ???
????????? ?????? ???, ?? ?????????? ?????????? ??????????, ?????? ?????? ?????? ???
????????? ??? ? PVV ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????? ???
????????? ???, ?? ?????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
(18).
26. ??????, ??? ?? ?????????? ?????????? ??? ?? ?????????? ?????? ??? ?????? ???
????????? ??? ? ?????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? (?????????). ??????, ? ??? ??
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????????? ???' ????.
27. ??? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ?? ?????????? ? ?????? ???
????????? ???, ??? ?? ?????? ???, ? ?????? ??? College ?????????? ???
????????? ?? ?? ?????????? ??? ?????? ?? ?????????? ?? ?????? ??? ?????? ??? ?????? ???, ?
PVV ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??
????? 8:8 ??? Algemene wet bestuursrecht, ??? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ??? College, ??? ? ?????????? ???
????? Voogd ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? (19). ??? ???? PVV,
??? ?? ?????? ??? ?????? ??? ? ?????? ??? College ?????? ??? ?????? ???, ??
?? ??????, ??? ?????? ?? ?????? (20). ??? ?? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ?????????? ?? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ???, ???
??? ?? ?? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????? (21) ?????? ?? ??? ?????????? Voogd.

28. ????? ????????, ??? ? ? ?????????????? ?????? ?????? ?? ?????????? ??? ??
?????? ?? ???? ?????? ???' ?????? ?? ??????? ?? ?? ?????????? ??????, ??? ?????? ?? ?????? 10
??, ?????????? ??? ?????? ?????? ?????????? ?????? ?? ?????????? ?????? ?????? ??????
????????? ??? ?????? ?????? ?? ?? ?????????? ??? ?? ??? ?????? ?????? ???
????????? ?? ???? ?????????? ?????? ?????????? ?????? ?????? ? ?????? ??????
????????? ?????? ?????? ?????? ?? ??' ?????? ?????????? ?????? ?? ?????? ???
????? ????????, ?????? ? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ?? ?????????? ?? ?????????? ?????? ???
????????? ???.

29. ??????, ??????????? ?? ?????? ??????????? ??????? ?? ??? ???? ?????? ??? ??
?????????? ?? ??????????????? ???????????, ??????????? ?? ??????????? ??
?????????? ?? ?????? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
?????????? ?? ?????? ?????? ?? ??????. ?????? ?????? ??????????? ?????? ?? ?? ???? ??
?????? ?? ?? ?????? ??????????. ??? ?? ?????, ??? ?????? ?? ?????????? ?? ?????????? ??
???? ?? ?? ??' ?????????? ?? ???????, ?? College ?????? ?????????? ?? ?????????? ??
????????? ?? ??, ?????????? ?? ?? ?????? ?????? ?????? ?? ?????? ?? ?? ?????? ??
????????? ?? ?????? ?????????? ?? ?????????? ???????????.

IV ? ?????????????? ??? ?????????????? ??? ??????????????
30. ? ????????? Kühne & Heitz NV ?????????????? ??? ? ????????? ?????????? (? ?????? ??????????)
??? ?????????? ??? ?? ??? ????? ??????????), ? ?????? ??? ?????????? ??? ?? College, ??????????
?? ?????????? ??? ?????????????? ??? ?????????? ??? ?????? ??? ?????? (????? ??
????????????? ?????? Ekro) ??? ? ?????? ?????????????? ?????????????????? ??? ???
????????????? ?????? Voogd. ? ?????????????? ?????? ?????????????? ??? ? PVV ???
????????????? ?? ?????????????? ??? ?? ?????????? ??????????, ?????????? ??? ?????????? ??? ??
????????? ??? ?????? ?????? ?????????? ?????????????? ??? ?????? (????? ?? ?????????? ??? ??
????????? ??? ?????????? ??????) ? ?????????? ??? ?????? ?????????????????? ??? ??
????? ?????????? ??? ?????????? ?????? (????????? ??? ?????????? ?????????? ?????????? ??? ??
??' ?,?? ? ?????? ?????? ?????????????? ??? ?????? ?????????? ??? ?????????? ?????????? ???).
??????????, ? ?????????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??????????
??? ?????????? ?????? ?????????????????? ?????? ??? ?????? ?????????? ?????? ??? ??????
????? ??? ?????????? ?????? (?? College) ??? ?????????? ??? ?????? ??? ?????????? ???
????????? (?? PVV).

31. ? PVV ?????????????? ??? ? ??????? ?? ? ?????????????? ?????????????????? ??? ?????????????? ??????????????, ?? ?????????? ?? ?????????? ?????? ?????? ??? ?????????? ?? ???? ?????? Voogd, ?????????? ??? ???? ?????? ?????? ?????? ?????? ?????? ?????? ??? ???? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

32. ? ?????????? ????????, ??? ???? ? PVV, ??????? ?? ???? ?????? ?? ???? ???? ?????? ??
????? ??? ?????? ??? ?????? ?????? ?????????? ?? ???? ?????????? ?? ???? ??????????
?????????. ?????????????? ??? ?????? ??? ?????????? ?????????? ??? ??? ??????????
??????, ?????????? ??? ? ?????????? ???' ?????? ?????????? ??? ??????????
????????? ?????????? ??? ??? ?? ?????????????? ? ?? ?????????? ??????????
?????????, ??? ?????????? ??? ?????? ??? ?????????? ??????, ??? ?????? ?????????? ?? ??? ??? ???
?? ?????????? ??? ??? ?????????? ?????????? ??? ?????? ??? ?????? ?? ???????????. ???????,
?? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?? ?????????????? ??? ?????????? ???
?? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?? ??????????.

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

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

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

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

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

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

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

34. ? ?????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????

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

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

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

35. ??? ? ?????????? ?????? ??? ?????? (????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????) ????????????

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

V ? ??????

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

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

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

37. ??????????, ??? ?????? ?????????? , ? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????

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

?? ?????? 177 ??? ?????? [??? ??? 234 ??] ?????????? ??? ?????? ?????? [...] ??? ?????? ?????? ??? ?????? ?????? ???

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

????????? ??? ? ?????? ?????? ??? ?????? ??? ?????? ??? ? ??? (23) .

38. ?????????? ??? ? ?????? ?????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???

??? ?????????? , ?? ?????????? ??? ?????? [??' ???] ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ???

??? ?????? ??? ?????????? ?????? (24) . ?????? ??? ?????? ?????? ?????? ?????? ?????? ,

????????? , [?]????? ??? ?????? ?????? ??? ? ?????? ??? ?????? ?????? ?????? ???' ?????? ??? ?????? ??? ?????? ???

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

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

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

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

?? ?????? ?????? (25) .

39. ? ??? ?????? ??? ?????? ?????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???

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

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

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

??? ?????? ??? , ??? ?' ??? ?????? ?????? ?????? ?????? ?????? ?????? , ??? ?????? ?????? ???

????????? ??? ?????? ?????? ?????? ??? ? ?????? ??? ?????? ??? ?????? ?????? ?????? (26) .

40. ?? ?????????? ?????? ??? ?????? ?????? ?? ?????? ?????? ??? ?????? ?????? 8?? ?????? 1976,

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

??? ?????????? ??? ?????? 234 ??) (27) ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???

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

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

????????? ??? ??? ??? ?????? (28) .

41. ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? Roders ?.?. ?????

??? Bautiaa ??? société française maritime, ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ???

????????? ?????? ?????? (29) . ?? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???

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

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

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

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

? ??????????, ?????????????? ??? ?????????? ??? ?????? ?????????? ???? ?????? ?????????????? ???? ?????? ?????????????? ???? ?????? ?????????? (30) . ?????????????? ??? ?????? ??? ?????? ?????????????? ???? ?????? ?????????? ???? ?????????? ???? ?????? ?????????? ???? ?????? ?????????? ???? ?????? ?????????? ???? ?????? ?????????? ???? ?????? ?????????? (31) .

42. ????? ?????? ?????????? , ? ?????????? (32) .

????????? , [?] ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? (33) .

43. ????? ?????? ?????? , ?????????? Voogd. ???????, ?

????????? ?????? ?????? ?????' ?????? ?????????? ?????????? ???, ?? ?? ?????? , ?????? ??

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

??, ?????? ?????? ?????? ?????? ??? ?????? Kühne & Heitz NV ?? ?? PVV ?? ??? ???

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

????????? ??? 1986 ??? ??? ?????? ??? 1987).

44. ?????? ??? PVV ?????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? .

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

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

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

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

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

????????? ??? ?????? ???' ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

????????? ?????? (34) .

45. ?????????, ?????????? ?? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????

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

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

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

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

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

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

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

????? (35) .

46. ? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? (36) ???

??? ?????? ??? ?????? ??? ?????? (37) .

47. ? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???

????????? , ??? ?????? 10 ?? . ?? ??? ?????????? ?????? ?????? Factortame ???., ??

????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? , ???' ?????? ??? ?????? ???

??? ?????? ??? ?????? 5 ??? ?????? [??] ?????? 10 ??], ?? ?????? ???

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

????????? ??? ?????? ?????? (38) . ? ?????? ??? ?????? ?????? ?????? ?????? 10 ??

????????? ?????? ?????? ??? ?????? 19?? ?????? 1991, Francovich ???.. (39) ,

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

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

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

????? 10 ??, ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???

????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? (40) .

?? ?????? ?????? ?????? ??? [?]????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???

????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? (41) .

48. ?? ?????? , ?? ?????? Simmenthal ??? Factortame ???.. ????????

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

49. ?????????? ??? ?????????????? ??? ?????????? Simmenthal ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ??????, ?? ?????????? ?????????? ?????? ?????? ???
????????? ??? ?????????? ??? ??????, ? ?????? ??? ?????????? ?????? ?????? ???????
????????????? ??? Corte costituzionale (??????), ?????????????? ??? ?????? ?????? ???????, ?
????? ??? ?????? ?????????? ??? ?????? ?? ?????? ??? ?????? ??? ?????????????? ???
?? ??? ?????.

50. ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????? ??? ?????????? ?? ?????????? ??? ?????????? ?????????? ??? ???????, ?? ??? ?????? ???
????????? ?? ?????? ??? ?????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ???
????????? ??? ?????????? ?????????? ?????????? . ???????, ?? ?????????? ?????? ??? ?
????????? ?????????? ?????? 234 ??, ??? ?????? ??
????????? ?????? ?????????? ?????????? ?????????? ?? ?????? ?????? ??? ?????? ?????? ?????? ??
????????? ?? ?????????? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ?? ??? ?????????? ??? ?????????? (42) .

51. ?? ?????????? ???, ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 10 ?? ??? 234 ??, ??? [?]
????????? ?????? ??? ?????? ??? ?????? ??? ???????, ??? ?????? ??? ?????????? ???, ??
????????? ??? ?????? ??? ?????????? ??? ?????????? ???????, ??? ??? ?????? ??? ?????????? ??
??? ?????? ?????????? ?????? ??? ?????? ??? ???????, ?????????? ?? ?????? ??????????
????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ?????????? , ??? ??? ?????????? ???
????? ?? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????? ???
??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?????? ?????????? (43) .

52. ?????????? ??? ?????????? ?????? Factortame ??? . ??? ?????? ?????? ??????????
????? ??? common law ?????? ??? ?????? ?? ?????????? ?????????? ??? ?????? ???
????? ?? ?????????? ?? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ?? ??????, ???
????????? ??? ??? ?????? ??? ?????? ?????????? ?????? ?????? ??? ?????? ??? ?????? ???.

53. ?????????? ??? ?????? Simmenthal, ?? ?????????? ??? ?????? ??? ?
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? 234 ?? ?? ??????
?? ?? ?????? ??? ???????, ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? «?? ????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (44) . ???????, ?? ?????????? ??? ?????? ??? «?? ????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (45) .

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

55. ?????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? Simmenthal, ?? ??????????
????? ?? ??? ?????? ??? 13?? ?????? 1972 (46) , ??? ? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? [...] ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??, ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????? ??? ?????? ??? ?????? ??? ?????? (47) .

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

?????? ???? ??? ?????? ??????????? ?????????? ?????????? ?????????? ?????????? ??
?????????? ??? ?? ??????? ?? ???????, ??? ?????? ?????????? ?????????? ?????????? ??
????????? ??? ?????? ???????????, ??? ? ?????? ?????? ??? ??????????.
57. ??????????? ?? ?????????? ??? ?? ?????????? ?????? ?????? ?????? ??? ???? ??
?????? ? ??????? ??? ?????? ?????????? ?????????? ?????? ?????? ??? ???? ??
?????? ??? ??????????? ?????? ?????????? ?????? ?????????? ?? ?????????? ? ??????????
?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????????? ??? ??????????
?????? ??? ?????????? ??? ?? ?????? ?????? ?????? ?????? ???, ??????????, ??? ???? ?
????????? ?? ??? ?????? ?????? ?? ?????????? ??? ?????? ?????? (48) . ?? ??????????
????????? ??? ? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??????????,
????????? ??? ?? ?????? ?????????? ?????? ?? ??? ??? ?????? ??? ?????? ??? ???? ??
????????? ??? ?????? ??? ?????? ?????? ?????? [...] ??? ???? ?? ?????? ??? ???? ??
????????? ?????? ?????????? ?????? ?????? (49) . ??? ??? ?????? ?? ?????? ??? ???? ??
??? ? ?????????? ?????????? ??? ?????? ??? ???? ?? ?????? ??? ?????? ??? ???? ??
????????? ??? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ???? ??
????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? (50) .
58. ??? ??? ?????? ?????????? ?????????? ??? ?? ?????????? ?????? ?????? ?????????? ??
????????? ?????????? ?????? ??????, ????? ??? ?????????? ?????? ?????? ??????????
????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? . ?? ?????????? ???
??? ?????????? ?? ?????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??
??? ?????????? ??? ??? ?????? ?????? ??? ?????? ?????? ?????? (51) .
59. ???????, ? ?????????????? ?????? Lalsy ?????? ?????????? ????????, ???
????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????? ??? ?????? ???
????????? ??? ?????????? . ?? ?????? ??? ?????? ?????? ?????????? ?? ??? ??? ??? ?????????? ??
??????????.
60. ??????? ?????????? ??? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????????
??? ??? ?????????? ??? ?????? ???, ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ??????????
?? ?????????? ?? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?? ???
?? ?????? ????.
61. ?? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ???? ??
????????? ?????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
??????????. ??? ? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????
??????, ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ???, ?????????? ??? ??? ??? ??? ???
????????? ??? ?????? ??? ??? ?????? ?????? ????. ? ?????????? ?????? ?????? ?????? ?????? ??? ??
????????? ??? ?????? ?????? ?????? ?????? ??? Tribunal du travail de Tournai (?????). ?
????????? ??? ?????? ???????. ?????????? ??? ??? ?????? ?, ? ?????? ??? ??? ??? ??????
??????????.
62. ??? ??? ?????? ?????? ????????, ?????? ?????? ?????????? ?????? ?????? ??? ????
????????? ??? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ???? ??
??????????. ?? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ???? ??
????????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ???? ??
????????? ??? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ???? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ???? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ???? ??
63. ?????????? ??? ?????? ??? ?????????? ??????, ? ?????????? ?????? ?????? ??? ????
????????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ???? ??
??? ?????????? ?? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ???? (????)
??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???
??? ?????? ?????? ?????? (???' ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
?????? ?? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ???). ?
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

65. ???????, ?? ?????????? ?????? ??? ?? ?????????? ??? ?????????????? ??? ?????????????? ??? ?? ???????
??? ?? ?? ??? ?????????????? ??? ?????????? ?? ??? ?????? ??? ?????????????? ?????????????? ???
????????? ??? (52) . ?????? ?????? ??? ??????????, ?? ?????????? ??? ?????????? ??? ?????????????? ???
????????? ????. ???????, ??????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?? ???????
????????? ?????? [?????? ?? ??? ?????? ??? ??????????] ?????????? ???
????????? ?????? ?????????? ??? ?????????? ??? ?????????? ??? G. Lalsy [? ??????????] ???????
??? ??? ?????????? ?????????????? ??? ?????????? ??? ?????????, ?? Inasti [? ?? ??? ???
????????? ???] ??? ?????? ?? ??? ?????? (53) . ?? ?????????? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??????. ?? ?????????? ??????
??? ??? ??? ?????? ??? ?????????? ??? ?????????????? ??? ?????? ?????????? ?????? ??? ??
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ???' ???????
????? ??? ?????? ??? (54) .

66. ?????? ??? ? ?????????? ??? ?????? ?? ?????????? ??? ?????????????? ??? ?????? Lalsy
????? ?? ?????????? ??? ?????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ??????????
????????? ??? ?????? ???, ??? ??? ?? ? ?????? ?????????? ??? ?????? ??? ??????
????????? ??? ?? ??? ?????? ?????????? (????? ?????????? ??? Lalsy)
????????? ??? ?? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?? ?????? ??? ?????? ???
????????? ???, ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ??????. ?????? ??? ? ?????? ??? ?????? ???, ? ?????? ??? ?????? ??? ?????? ???
????????? ??? ????????, ??? ??? ?????? ?????????? ??? ??????. ? ???? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ?????????? (55) . ??? ? ??? ??? ?????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ?????????? ??? ?? ?????? ??? ?????? ?????? ?????? ?????????? ???
????????? ??? ?????? ?? ?? ?????????? ??? ? ?????? ??? ?????? ?????? ?????? ??? ??????
????????? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??????
????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
67. ?? ??? ?????? ?????????? ?????????? ??? ??? ?? ??? ?????? ??? ?????? ??? ?????? ??????????
????? ??? ?? ??? ?????? ??? ?????????? ??? ?????? 10 ??, ??? ?????????? ???
????????????? ??? ?????? Simmenthal ??? Factortame ??? . ??? ? ??? ?????????? ??? ???
????????????? ??? ?????? Francovich ???.

68. ?????? ??? ? ?????????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???
????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????????.

69. ???????, ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????
??? ??? ?????? ?????????? ? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ???
??????, ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????????? (56) . ??
????????? ?????? ??? ?????? ??? ?????? ???, ?????? ???, ??? ??? ?????? ?????? ???
????????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? (57) ? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? (58) .

70. ??? ??? ?????? ?????????? ??? ?????? ??? ? ??? ?????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

1 – ??????? ??? ??????????: ? ??????.

2 – ?? ????. ??? 03/014, ?. 71.

3 – ?????????? (???) 3176/86, ??? 17?? ?????????? 1986 (?? L 295, ?. 14), 267/87, ??? 28??
????????? 1987 (EE L 26, ?. 33), 1151/87, ??? 27?? ?????????? 1987 (EE L 111, ?. 21),
2800/87, ??? 18?? ?????????? 1987 (EE L 268, ?. 47), ??? 3205/87, ??? 27?? ??????????
1987 (EE L 306, ?. 7) ??? ????????, ??? ?????????? ??? ?????????? ??? ?????????? ???
????? ??? ?????? ??? ??????????.

4 – ?????? ??? 4?? ?????? 1992 (Stb. 1992, ?. 315), ??? ?????????????? ???????????????,
????????? ?? 12? ?????????? 2001 (Stb. 2001, ?. 664).

5 – ? ?????????????? ????? ?????????????? ??? ?????????????????? ?????? ??? ??????????????
?? ??? ?????? ???, ?? ??? ?????????? ?????? ??? ?????? ??? ?????? ?? ?????? ???
????????? ??? ?????????? ??? ?????????? ??? ?????????????? ?????? ?????? ?????? ??????.

6 – ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ??? ?????????? ??? ?????? ???, ?? ?????? ?? ?????????? ???
????????? ?????????? ??? ?????????? ??? ?????? ??? ?????????????? ??? ?????????? ???
????????? ??????????.

7 – ??? ??? ?????????????? ??? ?????????? ??? ??????????, ??? ?????? ??? ?????? ???
????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
?????, ??? ?????? ??? ?? ??? ??? ?????????? ??? ?????????? ??? ?????????? ???
02.02 ? ?? ex ?) ?????? ?????? ??? ??? ?????? ?????? ?????????? ??? ?????? ???
??? ?????????? 02.02 ? ?? ?) 3 ??? ?????????? ??? ?????????? ???
8 – ?? ?????????? ??? ??? ?????????????? ??? ?????????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???
????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????? ?????? ? PVV. ?????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ???
?????, ?????????? ?? ?????? ?????????? ??? ?????? ?? ?????????? ??? ??? ?????????? ??
????? ???.

9 – ?? L 271, ?. 44.

10 – ?? ?????????? ?????? ?' ??? ?? ?????????? ?????? ?? ?????? ??? 18??
????????? 1984, 327/82, Ekro (?????? 1984, ?. 107).

11 – C-151/93 (?????? 1994, ?. ?-4915). ? ?????? ??? ?????????? ?? ?????????? ???
????????? ??? ?????? ??? ?????? ?????????? ?????????? ??? ?????? ?????? ???
?????, ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ? ?????? ??? ??? ?????? ?????? ?????????? ?????? ?????? ?????? ???
????????? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
?? ?????????? ?? ??? ??? ??????????.

12 – ?????? 20. ? ?????? ?????????? ? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ?? ?????????? ??? ?????? ?????????? 267/87, 1151/87 ???
2800/87 (?? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???
????? ????).

13 – ?????? 21.

14 – ??????? ??? 5?? ?????? 1996, C-46/93 ??? C-48/93 (?????? 1996, ?. ?-1029), ???
?? 23?? ?????? 1996, C-5/94 (?????? 1996, ?. ?-2553).

15 – ?? . ?????? 6.4, ?????? ??????, ??? ?????????? ?????? ??????????.

16 – ??., ?????? ??????, ??? ?????????? ?????? Ekro.

17 – ?? . ?????? 6.4, ?????? ??????, ??? ?????????? ?????? ??????????.

18 – ?? . ?????? 6.4, ?????? ?????? ?????? ??????, ??? ?????????? ?????? ??????????.

19 – ?? . ?????? 5, ?????? ??????, ??? ?????????? ?????? ??????????.

20 – ??????.

21 – ??????.

22 – ?? . ?????? ?? 26?? ?????? 1994, C-228/92, Roquette Frères (?????? 1994, ?. ?-1445, ??? 17).

23 – ????? ????? ?????????????? ?? ??? ?????????? ??? 27?? ??????? 1980, 61/79, Denkavit
italiana (????????? ??? 1980/?, ?. 605, ????? 16), ??? 66/79, 127/79 ??? 128/79, Salumi ??.
(????????? ??? 1980/?, ?. 627, ????? 9) ??? ?????????????? ????????????????, ?????? ????,
?? ??? ???????? ??? 10?? ??????? 1980, 811/79, Ariete (????????? ??? 1980/??, ?. 637,
????? 6), 826/79, Mireco (????????? ??? 1980/??, ?. 643, ????? 7), ??? 2?? ???????????
1988, 309/85, Barra ??. (????????? 1988, ?. 355, ????? 11), 24/86, Blaizot ??. (????????? 1988,
. 379, ????? 27), ??? 6?? ??????? 1995, C-62/93, BP Soupergaz (????????? 1995, ?. ?-1883,
????? 39), ??? 11?? ?????????? 1995, C-367/93 ??? C-377/93, Roders ??. (????????? 1995, ?. ?-
2229, ????? 42), ??? 19?? ?????????? 1995, C-137/94, Richardson (????????? 1995, ?. ?-3407,
????? 31), ??? 15?? ?????????? 1995, C-415/93, Bosman (????????? 1995, ?. ?-4921, ????
141), ??? 13?? ?????????? 1996, C-197/94 ??? C-252/94, Bautiaa ??? Société française
maritime (????????? 1996, ?. ?-505, ????? 47), ??? 2?? ?????????? 1997, C-188/95, Fantask
??. (????????? 1997, ?. ?-6783, ????? 36), ??? 15?? ?????????? 1998, C-231/96, Edis
(????????? 1998, ?. ?-4951, ????? 15), ??? 4?? ????? 1999, C-262/96, Sürül (????????? 1999, ?. ?-
2685, ????? 107), ??? 20?? ?????????? 2001, C-184/99, Grzelczyk (????????? 2001, ?. ?-6193,
????? 50), ??? ??? 3?? ?????????? 2002, C-347/00, Barreira Pérez (????????? 2002, ?. ?-8191,
????? 44).

24 – ??., ?????? ??????, ??? ?????????????????? ??????? Richardson (????? 33).

25 – ???. ??? ?????????????????? ????. ?????????????? 24 ??????????.

26 – ??., ?????? ??????, ??? ??????????? ??? 16?? ??????????? 1974, 166/73, Rheinmühlen
(?????? ?????? 1974, ?. 17, ????? 2) ??? ??? 6?? ?????????? 1982, 283/81, Cilfit ?...
(?????? 1982, ?. 3415, ????? 7). ??? ? ??????? ??????????? ?????????? ??? ???????? ??? ??????????
?????? ????? ??????????? ??????????? ?????? ?????????? ??? ?? ?????? ??? ???????????
?????? ??? ??? ????? ??? ??? ??????? ????. ??., ??? ??? ???????, ??? ??????? ??? 22??
????????? 1987, 314/85, Foto-Frost (?????? 1987, ?. 4199, ????? 15).

28 – ??????? 43/75 (?????? ?? 1976, ?. 175, ??????? 69 ?? 75).

29 – ????????????????? Roders ??. (???? 43) ????? ??? Bautiaa ??? Société française maritime (???? 48).

30 - ??????

31 – ??? ??? ?????????????? ??? ?????????????? ?????????? Defrenne ??, ?? ???????????
????? ??????? ?? ?????????? ??? ?' ??? ?????????? ?????? ?????????? ?????????? ??
????? ?????????????? ??., ??? ??? ??????, ??? ?????????? ??? 17?? ????? 1990, C-262/88,
Barber (?????? 1990, ?. ?-1889), ??? 16?? ?????? 1992, C-163/90, Legros ??. (???????
1992, ?. ?-4625), ??? 7?? ?????? 1996, C-126/94, Cadi Surgelés ??. (??????? 1996, ?. ?-
5647), ??? 9?? ?????? 2000, C-437/97, EKW ??? Wein & Co (?????? 2000, ?. ?-1157) ????
??? ??? ?????????????? ?????????? Blaizot ??., Bosman ??? Sürül. ??? ??????????
?????, ?? ?????????? ?????????? ?? ?????? ?? ??? ?????????? ?? ?????????? ?? ??????????
??? ?????????? ?????????? ??? ?????? ?? ??? ????? ?????????? ??? ?????? ??? ?????? ??? ???
?? ???? ?? ??????? ?? ??????, ??? ??? ??? ?????????? ?????????? ??? ?????? ??? ?? ???
????????? ??? ?????? ?????? ?????? ?? ?????? ?????????? ?????????? ??????????

32 – ??., ?????? ????, ??? ?????????????????? ?????????? Denkavit italiana (?????? 18), Ariete (?????? 8), Mireco (?????? 9), Blaizot ??. (?????? 28), Legros ??. (?????? 30), Bosman (?????? 142), ??? EKW ??? Wein & Co (?????? 57).

33 - ??????

34 – ??????? ?????? ?????????? ??? ??? ??????????, ??? ??? ?????????? ????????. ????????. ??? ????????. ?? ?????????? ??? College ??? ?????????? ?? ??? ?????? ??? (????)

????????????? ??? ??????? ??????? ?????? ??? ????????????. ?? ??? ?? ?????????? ?????? ???
??? ???????, ?. ?? ?????? 96 ??? ??????? ??? ?? 8?? ??????? 2003 ??? ?? ??????????
Köbler (C-224/01), ? ?????? ??????? ??????? ??? ???????????.
35 – ?. ??? ?????????? ??? 9?? ?????? 1978, 106/77, Simmenthal (???????) ??? 1978, ?.
239, ?????? 22), ??? ?? 19?? ?????? 1990, C-213/89, Factortame ??. (???????) 1990, ?. ?-
2433, ?????? 20).
36 – ?. ??? ?????????????? ?????? Simmenthal (???????) 14 ??? 16) ??? Factortame
??. (????? 18).
37 – ?. ??? ?????????????? ?????? Simmenthal (???????) 17 ??? 18) ??? Factortame
??. (????? 18).
38 – ?????? 19.
39 – C-6/90 ??? C-9/90 (???????) 1991, ?. ?-5357).
40 – ?????????????? ?????? Francovich ??. (????? 36).
41 – ??????.
42 – ?????????? ?????? Simmenthal (????? 20).
43 – ??????, ?????? 24.
44 – ?????????? ?????? Factortame ??. (????? 22).
45 – ??????, ?????? 23.
46 – ??????? ??? ????????, 48/71 (???????) ??? 1972-1973, ?. 85).
47 – ?????????? ?????? ??????? ?????? ??? ?????? (????? 7).
48 – ??????, ?????? 6.
49 – ??????, ?????? 8.
50 – ??????, ?????? 9.
51 – ?, ?????? ???, ??? ??????? ??? 22?? ?????? 1989, 103/88, Fratelli Costanzo
(???????) 1989, ?. 1839, ??? 33), ?? 19?? ??????? 1993, C-101/91, ??????? ???
?????? (???????) 1993, ?. ?-191, ??? 24), ?? ??? 28?? ?????? 2001, C-118/00, Larsy
(???????) 2001, ?. ?-5063, ??? 52).
52 – ?????????? ?????? Larsy (????? 54).
53 – ??????, ?????? 53.
54 – ??????, ?????? 51 ??? 52.
55 – ??? ?????????? ??? ??? ??? ?????????????? ?????????? Köbler (???????) 106) ???
??? ??????? ?? ?????? ???, ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
?????? ?? ?????????? ?? ?????? ??????? ??? ?????? ???????, ??? ?????? ??? ?????? ??
?????? ?? ?????????? ??? ??????? ??? ?????? ??????? ??? ?????????? ???????, ??? ?????? ???
?????? ?? ?????????? ??? ??????? ??? ?????? ??????? ??? ?????????? ???????, ??? ?????? ???
?????? ?? ?????????? ??? ??????? ??? ?????? ??????? ??? ?????????? ???????, ??? ?????? ???
?????? ?? ?????????? ??? ??????? ??? ?????? ??????? ??? ?????????? ???????, ??? ?????? ???
56 – ?, ?????? ???, ??? ??????? ??? 16?? ??????? 1976, 33/76, Rewe (???????)
????? 1976, ?. 747, ??? 6) ??? 45/76, Comet (???????) ??? 1976, ?. 765, ??? 19), ???
??? ??? ?????????????? ?????? Fantask ??. (????? 52) ??? Edis (????? 26).
57 – ?????????? ?????? Francovich ??. (???????) 42 ??? 43) ?????? ??? Brasserie
du pêcheur ??? Factortame (????? 67).
58 – ?. ?????????? ??? 14?? ??????? 1995, C-312/93, Peterbroeck (???????) 1995, ?. ?-
4599, ??????? 12 ??.) ?????? ??? C-430/93 ??? C-431/93, Van Schijndel ??. (???????) 1995, ?. ?-4705,
?????? 17 ??.).
59 – ??? ?????? ??? ?????????? ??? ??? ?????? ??????????, ?. ??? ??????????????
????????? Rewe (???????) 5 ??? 7), Comet (???????) 17 ??? 18), Denkavit italiana (???????) 23),
Fantask ??. (????? 48), Edis (????? 20), ?????? ??? ?????????? ??? 10?? ?????? 1997,
C-261/95, Palmisani (???????) 1997, ?. ?-4025, ??? 28), ??? 17?? ?????? 1997, C-90/94,
Haahr Petroleum (???????) 1997, ?. ?-4085, ??? 48), ??? Roquette Frères, ??????????????
(???????) 22 ??? 36).