

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

CHRISTINE STIX-HACKL

??? 8?? ??????? 2004 (1)

????????????????? ???????? C-453/02 ??? C-462/02

# **Finanzamt Gladbeck**

???

## **Edith Linneweber (C-453/02)**

???

Finanzamt Herne-West

???

????? ??????? (C-462/02)

[?????? ?? Bundesfinanzhof (?????????) ??? ?? ?????? ?????????????? ??????????]

«???????????? ?????? – ????? ??????? ??? – ?????? 13, B, ?????????? ??? – ?????? ?????? – ?????????????? ??? ?????????? ????? – ?????????? – ?????????? ??? ?????????? ????? – ?????????? ??? ?????????? ?????? – ?????????? ??? ?????????? ?????? – ?????????? ??? ?????????? ??????»

I - ?????????

1. ?? ?????????????? ?????????? ??? ??????? ??? ?????????? ?? Bundesfinanzhof ???  
??????? ??? ??? ?????????????????? ?????????? ???????? ??? ???????? ??? ?????? 13, B,  
??????? ???, ??? ????? ?????? 77/388/??? (2) (??? ????: ??? ??????).
2. ?? ?????????? ????? ??????? ?? ??????? ?????? ??? ?????? ?????? ?? ?? ??? ??????? ??????? ??  
?????? ?????? ?? ??????????? ?? ??????????, ??? ?????? ??? ?????????? ??? ??????  
????????????? ???, ???, ???, ???, ??? ?????? ?????????, ??? ?????? ? ?????????? ??  
????? ??????????? ???, ??? ?????? ?????? ?????????? ??? ?????????????? ?? ?????? ??? ??????  
????? ???, ???, ???, ??? ?????? ?????????? ?? ?????? ?????????????? ??? ?????? ??? ??????????????  
????????? ???, ???????.
3. ???????, ?? ?????????? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????? ???  
Fischer (3), ??????? ?? ?? ?????????? ??? ?????? ??? ?????????????? ??? ?????? ??? ?????  
??? ??????? ??? ?????? ?????????? ???.

!! – ?? ??????? ????????

? – ?? ?????????? ??????

4. ?????? 13, B, ??????????????????????, ?????? ??????, ??? ??? ????? «?????? ??????????» ?? ????:

«?? ??? ?????????? ?????? ??????????? ??????????, ?? ?????? ??? ??????????????, ??? ???.  
????????????? ??? ???????, ??? ?? ?????????????? ? ??? ?????? ??? ????? ?????? ???  
????????????? ??????? ?????????? ??? ?? ?????????? ?????????????? ??????????????,  
????????????? ??? ????????:

[...]

??) ?? ????????????, ?????? ?? ????? ?????? ?????? ????????????, ?? ??? ??????????? ??????????? ??  
?????????????? ?? ??? ????? ?????? ????? ??????????????? ?? ??? ????? [...]»

? – ?? ?????? ??????

5. ?? ?????? 4, ?????????? 9, ??????? b, ??? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???? 1993 (Umsatzsteuergesetz, ??? ????: «UStG») ?????????? ??? ??????:

III – ??? ??????????? ????????????????, ? ?????????????? ??? ?? ??????????????? ????????????????

? - ???? ??????? C-453/02

6. ? ?. Linneweber ?????? ??????? ??????? ?? ?????????? ?? 1999 ?????? ???, ???  
(??????) ?????????? ????, ???, ? ?????, ????? ?????? ??? ?????, ????? ??? ??????  
??? ?????, ????? ??????, ?????? ?????? ?? ?????? ?????? ??? ?? ??????  
?????? ?????????? ???.

7. ? ?. Linneweber ??? ? ??????????? ??? ?? ???? ?????? ?? ???? ??? ???? ???????????  
??? ??????? ?? ?????? ?? ?? ??????????? ?? ??? ?? ?????? ?????? ???????, ??? ?? Finanzamt  
?????? ?? ?? ??? ?? ?????? ??? ??????????????? ?? ??? ?? ?????? ??????? ?? ?? ??? ?? 4,  
?????????? 9, ??????? b, ??? UStG.

8. ?? Finanzgericht Münster ??? ??????? ?? ?????????? ???????????, ??????????? ??  
?????? ?? ??????????? ?? Fischer (4) ??? ??? ??????? ?? ??????? ??  
?? ??????? ?? ??? ??????????? ?? ?????, ??? ??? ??????? ?? ?? ??  
?????? ?? ???????.

9. ?? Bundesfinanzhof, ??????? ????????????, ?? ?????? ?????????? ?????????? ?????????? ?????????? ??  
???? ?????????? ??????, ????, ??????????, ?????????? ?? ??? ??? ?????? ??? ?????? ??? ??????  
????????? ??????? ??? ?????? 13, B, ???????? ???, ??? ?????? ??????? ??? ?????? ??????  
?? Finanzgericht. ?? ?????? ?????????? ?????????? ???, ??? ?????? ??? Fischer, ??  
????????? ??????? ??? ?????? ?????????? ?????????? ??? ?????? ???????, ??? ??? ??? ?? ??????  
????????? ?????????? ??? ?????????? ?????????? ??? ??? ?????? ?????? ?????? ?????? ??? ?????.  
??????, ?? ?????????? ??????? ??? ?????????? ??? ?????? ???????, ??? ??????  
??????, ??? ???????????????, ??? ?????????? ???????, ??? ??? ?????? ??? ??????

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

10. ?? ?????? ?????????? ?????????? ?? ??? ?????? ?????? ?????? ?????? ?????? ??? ??????  
????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? . ??????  
????? ??? ?????? ?????? ?? ?????? 13, B, ?????? ???, ??? ?????? ?????? ?? ?????? ?? ?????? ??  
????????? ??? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?? ?????? ??? ??????  
????????? ??? ??? ?????? ??? (????? ? ??) ?????????? ?????? ?????? ?????? ??????, ??????  
????????? ??? ??? ?????? ?????????? ?????????? ?????? ?????? ?????? ??? ?????? ??? ??????  
??? ??? ?????? ?????? ??????????.

11. ??? ??? ?????????? ?????????? ??? ?????? ??? ?????? ?? ?????? ?????????? ???  
?????????, ?? Bundesfinanzhof ?????? ??? ??????????, ?? ?????? ??? 6?? ??????????  
2002, ?? ?????? ?????????? ??????????;

«1) ??? ?? ?????? 13, B, ?????? ???, ??? ?????? ?????? 77/388/E?? ?? ?????? ???  
????????? ?? ?????? ??? ?????? ?? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???  
????? ?????? ??? ?????? ??? ? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???  
????? ?????? ??? ?????? ?????? ??????;»

2) ?????????? ?? ?????? 13, B, ?????? ???, ??? ?????? ?????? 77/388/E?? ?? ??????  
????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????? ?????? ??? ?????? ??? ? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ???  
????? ?????? ?? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???  
????? ?????? ?? ?????????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???, ?.?. ?? ??? ??  
????? ?????? ??? ?????????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ??????  
????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????;»

3) ??? ? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? 13, B, ?????? ???, ??  
????? ?????? 77/388/E??;»

? – ??? ?????? C-462/02

12. ?? A????????? ?????????????? ??? ?? 1987 ?? ?? 1991 ?? ?????? «Monte-Carlo» ???  
Herne-Eickel, ??? ?? ?????? ??????????, ?????? ?????? ??????, ?????? ?????? ?????? ??????  
??? ???????????. ???????, ?????? ???, ?? ?????????? ?????? ?????? ??? ?????? ??????  
«????????? ???», ?? ?????? ?????????? ?? ?????? ??? ?????? ?????? ??? ?????? ??????  
????? «????? ?????? ??????». ??????, ??? ?? ??? ?? ?????? ?????? ?????? ??? ??? ??  
????? ?? ???????????, ??? ?????????? ?? ??? ?? ?????? ?????? ??? ?????? ??? ??  
????????? ????. ??? ???????????, ??? ?????????? ??? ?????? ?????? ??? ??  
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??????????.

13. ??? ?????? ??? 1?? ?????? 1996, ?? Finanzamt ?????? ??? ?????? ???  
????????? ?? ?????? ??? ?? ?????? ?????? ?????? ?????? ??? ?? ???????????. ??????  
????????? ????. A??????, ?????????? ???, ?????? ??? ?????? ??? ?????? ??? ??????  
????? Fischer, ??? ?? ?????? ??? ?????? ?????? ???, ??? ?????? ??? ?????? ??? ??  
????? ??? ?? ?????? ?????? ?????? ??? ?????? ???.

14. ???????, ?? Finanzgericht, ?? ?????? ?????? ??? ?????? ?????? ???, ???'  
????????? ?? ?????? 13, B, ?????? ???, ??? ?????? ?????? ?? ?????? ??? ??  
????????? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????

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

15. ?? Finanzamt ??? ????? ?? ??????? ??? ?????????? ??? ?? Bundesfinanzhof, ??? ?????? ?? ?????? ??? ??????? ??????????. ??? ?? Finanzamt, ?? ??????????? ??? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? Fischer. ? ?. A?????????

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

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

16. ?? ?????? ?????????? ??? ?????????, ?????????? ??? ?????? Fischer –?? ???

????? ?? ?????????? ??? ?? (????????) ?????? ??? ?????????? ? Karlheinz Fischer

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

????????? ??? ?? ?????? ??????????–, ?? ?????, ??? ?? ?????? ? ?????? ??? ??????

13, B, ??????? ???, ??? ?????? ??????, ?? ??? ?? ?????????? ?????????????? ??? ????????

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

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

????? ?? ?????????? ??? ?????? ?????????? ?????????? ???;.

17. ??? ?????? ???, ?? Bundesfinanzhof ??????? ??? ?????????, ?? ??????? ??? 6??

????????? 2002, ?? ??????? ?????????? ??????:

«1) ??? ?? ????? 13, B, ??????? ???, ??? ?????? ?????? 77/388/E?? ?? ?????? ???

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

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

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

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

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

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

????????? ??? ?????? ??? ??????;»

2) ??? ? ?????????? ??? ?????? ?????????? ?? ?????????? ??? ?????????? ???

????? 13, B, ??????? ???, ??? ?????? ?????? 77/388/E??;»

#### IV – ??????? ??? ?????????? ????????

? – ??? ?? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ???

????????? ??? ?????? ?????? (????? ?? ?????? ?????? ??? ?????? C-453/02 ???

????? ?????? ??? ?????? C?462/02)

18. ?? ??? ?????? ?????????? ??? ?????? C-453/02 ??? ?? ?????? ?????? ??? ?????? C-462/02, ?? ?????? ??????, ??? ???????, ?? ?????????? ??? ?????? ??????, ?????? ??? ?????? ?? ???

????? ?? ????? 13, B, ??????? ???, ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????

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

????????? –??? ? ?????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

1. ?? ?????????? ?????????? ??? ??????;

19. ? ?. A????????? ??? ?????? ?????? ?????????? ??? ?? ?????? ?????????? ?????????????? ???

?????????.

20. ??????? ??? ??????????? -?? ??????????? ??? ?? ?????????? ??? ?????? ??? ?????- ?  
?. Linneweber ?????? ??? ? ??????? ?????? ??? ??? ?????? ?????????? ??? ?????????? ???  
??? ?????????? ??????? ??? ?????????????? ? ?????? ??? ??? ?????? ?????????? ??? ???????  
????? 13, B, ??????? ???, ?????? ?? ?????? ?????? ?????? ?????????? ?????? ??? ??? ??????  
?????? ??? ?????? ?????????????? ?????? ??? ?????????? ?????? ?????? . ??????? ?????? ??? ??  
????? ??? ?????? ?????? ?????????? ?? ?????????? ??? ?????????? ?????? ??? ?? ??? ??????  
??? ?? ??????? ??????? ??? ?????? 13, B, ??????? ???, ??? ?????? ???????, ??????, ???  
????????? ?? ?????????? ?? ??? ?????? Fischer, ??????? ? ??? ??? ?? ??????????  
?????????????. ? ??? ??? ?? ?????????? ?????? ??? ?????????? ?????? ?????????????? ??????  
????????? ?? ?????????? ?????? ?????? ?????? ??????. ??? ?????? ?????????? ?????????? ???  
????????? ?????? ?????? -?? ?????? ?????? ?????????? ?????? - ?? ??????? ???  
????????????? ?????? ?????? ?????.. ??? ??? ?????? ??? ?????????? ?????? ???, ?? ?????? ??  
?????? ??? ?????? ??? ?? ?????????? ??? ?????????? ?? ?????????? ??? ??? ??? ??? ??  
?????? ??? ??? ??????????, ?????? ?????????? ??? ?????? ?????????? ??? ?????????? ???  
??????, ??? ?? ?????????? ??? ?????????????? ??? ??? ?????? ?????? ?????? ?? ?????????? ??  
??????, ??? ?????????? ?????????? ??? ??? ?????????? ??? ??? ?????????? ?????? ?? ??????????  
??? ?????????? ?? ??? ?????? ??? ?????????? ??? ??? ?????????? ??? ??? ??????????.

21. Y?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ?????? ??? ??????????  
?????????? ??? ??????? ??? ?????? ?????? ??? ??? ?????? ??? ?????? ??? ?????????? ??? ??????  
????? ??? ?????????? ??????, ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????,  
??? ?????? ??? ?????????? ??? ?????? ??????, ??? ?????? ??? ?????? ??? ?????? (??????? ??? ??????  
???????, ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??????) ??? ??  
????????????? ??? ???????, ???, ??? ??? ?????? ??? ?????????? ??? ?????? ??? ??????????  
????????? ??? ?????????? ?? ?????????? ??? ??? ?????????? ??? ?????? ??? ??????????, ??  
????????????? ??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????????? ?????????????? ??????????  
????? ??? ?? ?????????? ??? ?? ??? ?????????? ?????? ?????? ?????? ?????????? ?, ?????? ???  
????? ?????????????? ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ???  
?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ???.

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

23. ? ??? ??? ?????????? ?????????? ?????? ??? ??????, ??? ?????? ??? ?????????? ??? ??  
?????? Fischer, ?? ?????????? ?????? ?????????? ?????? ??? ?????? ?????? ??? ??????????  
??????, ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ??????  
????? ??? ?????? ??? ??????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ????  
? ?????? ?????? ??? ??????, ??? ??????, ?? ?????????? ??? ?????? ?????? ?????? ?????????? ??  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??????  
????????? ?? ??? ??? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ??????  
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????

? ?????????????? ????, ?? ?????????? ?? ??????????????, ??????????????????, ?? ?????? ????  
????????????? ?? ?????????? ?????? ??? ???? ?????????? ?? «????????? ???», ??? ??????????????  
??? ??????????? ??????, ??? ??? ?????? ??? ?????? 82 E?.

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

25. ? ?????o?? ?????????? ???? ?? ?????? 13, B, ?????????? ???, ??? ?????? ?????????? ????  
???' ?????? ???? ?? ?????????? ??? «????????? ??????», ?????? ?? ?????????? ???? ??  
????????? ???? ?? ?????? ?????????? ? ?????????? ??? ??????????, ?????? ?? ?????????? ???  
????????? ???? ?? ?????? ??????????. ? ???? ??? ?????????? ?????????????? ??????????????,  
????? ????, ?? ?????????? ?? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??????????????  
????????????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???? ????. ??????, ???  
??? ?????? Fischer ?????????? ???? ??? ?????? ??? ?????? ??? ?????? ??? ?????????????? ???  
????????? ???? ??? ?????? ?????? ??? ?????? ??? ?????? ??????????. ??????????????, ??? ??  
????? ??? ?????? ??????, ?? ?????????? ?? ?????? ?????? ?? ?????? ??? ?????? ???, ?????????????? ???  
????????????? ?????????? ??? ?????????????? ?????????????? ??? ?????? ??? ??????????, ???'  
?????, ??? ??? ??? ?? ?????? ??????. ? ?????????? ??? ?????? ??? ?????? ???? ????.  
????????? ??? ?????? ?????????? ??? ??????.

2. ??????

26. ??? ?????? ?????? ?? ?????? ??? ?????????? ???? ?????? ??? ?????? ????, ??? ??  
???????? Fischer (5) ?????????? ???? ?? ?????? ??? ??????????, ?????????, ?????????? ?? ?? ????  
13, B, ?????????? ???, ?? ?????????? ??? ?????????????? ???? ??? ?????? ??? ?????????? ????  
????? ??????, ?????????? ??? ?????? ??? ?????? ??? ?????????????? ??????????????, ???? ????  
????????? ?? ?????? ?????????? ??? ?????? ?????????????? ????.

27. ??? ?????? ??????????, ? ???? ??? ?????????? ?????????????? ??????????????, ????  
?????, ??? ?????????????? ??? ?????? ??? ?????????? ??? ?????????????? ??? ??????????  
????????????? ??? ?????? ??? ?????????????? ??? ??????????, ?????? ?? ?? ??? ?????????????? ?  
?? ?? ??? ?????? ?????????? ?? ?????? ??? ?????????? ??? ?????????????? ???? (6).

28. ??? ??????, ?????????? ? ??????????, ???' ??????, ??? ? ???? ??? ??????????  
????????????? ?????????? ?? ??? ?????? ??? ?????????? ??? ?????? ??? ?? ?? ?????? ?? ??  
????? ???? ??? ?????????????? ??? ?????????????? ??? ?????????? (7).

29. ??????, ? ???? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ???? ??? ?????? ????  
????? ??? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????  
??? ??????, ??? ?????? ?????? ???? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???  
????????? ??? ?????? ?????? ?????? ?????? ???? ??? ?????? ?????? ??? ?????? ?????? ?????? ????  
?? ?????? ??? ?????? ??? ??????.

30. ?????????? ?????????? ???????, ???????, ??? ? ?????????? ?????? ??? ?????? ?????? ?????  
????????? ?????????? ??? ?????????????? ?????? ??? ?????? ??? ?????????????????? ???  
??? ?????? ??? ?????????? ?????? ??? ?????????????? ??????, ??? ?????????????? ??? ?????????? ,  
?????? ?????? ??? ?????????? ?????? ??? ?????????? ??????, ??? ? ?????????? ?????? ??? ??????????  
????????? ??? ?????????? ?????????? ?????? ??? ?????? ??? ?????? ??? ??????  
-????????????? ??? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ???  
????? ??? ?????? ???.- ??? ???, ??? ?????? , ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??????????.

31. ?????????? ?? ?????????? ??? ?????????????? ?????? ??? ?????????? ??????.

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

33. E??????, ??? ??? ?????? Fischer ?????????? ?????? ??? ?? ?????? ?????? ???  
????????? ?????? ??? ? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????????? ?????? ???  
????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????????? ???  
????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???  
????? ??? ?????? ???.

34. ? ?????? Fischer ?????????? ?? ?????? ??? ?????? ?????? ??? ?????????? ?????? ??????????  
????????? ?????? ??? ?????????? ?????? ??? ?????????? ?????? ??? ?????? ?????? , ?????? ???  
?? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ???  
????? ??????.

35. ?????????? ?????? ? ?????????? ???, ??? ?????? ?????? , ? ?????????? ???  
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????????? ?????? ?????? ???  
????????? ??? ?? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ???  
????????? ??? ?? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ???  
????????? ???' ?????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ???  
????????? . ?????????? , ?????? , ?????????? ??? ?????? ??? ?????? ??? ?????? C-111/92  
(8), ??? ? ???? ??? ?????????? ?????????? ?????? «?? ?????? ?????????? ??? ??,  
????????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??????» (9).

36. ???????, ?????? , ?? ?????? ?????? ??? ?????? ?? ?????????? ??????????  
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? . ?? ?????? ??? ?????? ?? ?????? ?????? ??? ?????? ??? ?????? C-462/02, ?  
????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ???.

37. ???????, ?????? ?????? , ??? ??? ?????? Fischer, ?? ?????????? ? ???? ??? ??  
????? ?????? ?????? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? , ??? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???  
????? . ?????? , ?? ?????? ?????? ?????? , ?? ??? ?????? ?????? , ??? ??? ??????  
????? -????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? - ???  
????? ?? ?????? ???, ?????? ? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ?????? ?????? ?????? (10).

38. ?? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??????  
????? ???, ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ?????? ???, ???

«????????????????????????? ??? ?????????? ??? ?????????, ?? ?????????? ?????????? ???  
????????????? ?? ?????????? ?????? ?????????? ?????????? ??? ?? ?????????? ?????????? ??? ??????????????  
?? ?????????????????.

39. ??????, ??????, ?? ?????? ?????????? ??? ?????? ?????????, ?????? ?? ??? ??? ?????  
????????????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? –????????? ?????????? ???  
????????? – ?????? ?? ?????????? ?? &?????????» ??????, ??? ?????????? ???  
????????? Fischer, ??? ?????? ??? ?????????????? ??? ?? ?????????? ?????? ?????? ???  
????????? ?????????? ??????????.

40. ??? ?????? ?????????????? ??????, ?????????????? ? ?????? ??? ?????? ??? ??????  
?????????, ??? ?????? ?????? ?????? ?????????? ??? ?????????? ??? ?????? ?????? Town & County Factors  
(11), ?????????????? ??? ?????? ?????? ?????? ?????? ??? ?????????? ??? «?????????» ???  
?????, ??? ?????? ??? ?? ??? ?????? ??????????, ??? ?????? ?????? ??????????, ???  
??? ?????????? ?????????? ???????. ??? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????? ??  
????????? ?????? ??? ?? ?????????? ?????? ??? ?????? ?????? ?? ??? ?????? ??? ?????? ?????? ??  
????????? ???;

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

42. ??? ?? ?????????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ?? ?????????? «??  
????????? ??? ?? ???» ??? ?????????? ?????? ?? ?? ??? 13, B, ?????????? ????. ?  
????????? ??? ??????, ??????????, ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?? ??????????  
????????? ??? ?? ?????????? ??? ?????? ?????? (12).

43. ?? ??? ??????, ??? ?????? ?????? ?????? ?????????? ?? ?????????? ?? ?????????? –?  
????????? ??? ?????? – ?????? ?????? ??? ?????? ??? ?????? ??? ???????. ? ??? ???  
????????? ?????? ??? ??????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?? ??? «?? ? ??????», ?????????????? ??, ?????? ?? ?????????? ??? ?? ?????????? ???  
????????? ??? ?????? ??? ?????? ?????? ?????????, ?? ?????????? ??? ?? ?????? ???  
????????? ??? ?????? ??????.

44. ?? ??? ?????? ?????? ?????????? ?????????? ? ?????? ?????? ?????????? ?????? –?????????, ?? ???  
????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? – ?????? ??????, ?? ??????, ??????  
?? ??????????. ??? ?? ??? ?? ?????? ??? ??????, ??? ??????????, ?? ??????????????, ??  
????????? ??? ?? ?????? ?????? ?????? ?????????? ?????? ??? ?? ?????? ??? ??????????  
????????? ??? ?????? ?????? ?????????, ?? ?????? ??? ?????? ?????? ??? ?????????? ???  
????? ?????? ?????, ?????? ?? ???????. Linneweber ?????? ??? ?????????? ?????????? ??? ?  
????????? ?. A????????? ?? ??????????.

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

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

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

???? ?????????? ??? ??????? ????????, ? ??? ?????? ?????????????? ?????????????????? ??  
?????????, ????????, ?? ?????????????????? ?????? ??? ?? ?????? ??? ?????? ?? ??????????????  
?? ????????????, ??? ?????? ??? ??????? ???, ??? ?????? ?????????? ??? ????, ???  
???????????, ??? ?????? ??????? ?????? ??????. ??? ?????? ?? . Linneweber, ??  
???????????, ?????????? ?? ?????? ??????, ?? ??? ?????????? Glawe ?? Town & County  
Factors, ??? ????????????, ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??? ?????????? ??? (13).  
??? ??????????, ???????, ??? ?????? ??? ?????? ??????????, ??? ?? ?????? ??? ?????????? ???  
????????? ????????, ??? ?????? ??? ?????? ?????????? ?????????????? ??? ?? ?????? ???  
???????????, ??? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ???  
???????????, ??? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ???????,  
??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???.

48. ??? ?????? ??? ????????, ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???  
????????????? ??????????????, ???????, ??????????, ?? ?????? ?????? ??? ? ??? ??????  
????????? ??? ??? ?????????? «?????????» ?????????? ? ?????? «??? ?????????? ??  
?????????» ??? ????????, ??? ????????, ??? ?????? ?????????? ?? ??????????,,  
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? (14).

49. ??? ????????, ?? ?????????? ????????, ??? ?????????? ?? ??? ?????? ?????????? C-481/98  
(15) ??? C-384/01 (16), ??? ?????????? ?????????? ?????????? ?? ?? ?????????? ??????????  
????????? ?? ?????????????? ?????? ?????? ??? ?? ?????????? ??????????  
????????? ???, ??? ????????, ??? ?????? ?????????? ??? ?????????? ??? ??????????.

50. ?? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ?? ?????????? ??? ??  
????????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ??????????  
????? ??? ?????????? ?? ?????????? ??? ?????? ?????? ??? ?? ?????? ??? ?????? ??????????,  
????? ?????????? ?? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ?????????? ??????  
????? ?????????? ?????? ?? ??? ?? ?????????? ??? ?????? ?????? ?????????? ?????????? ??????  
????? ??? ?????? ??? ?????????? ??? ??????????.

51. ?? ? ?????????? ??? ?????????????? ??? ?????????? ??? ?????????? ??????????, ????????, ??? ?? ???  
????? ?????? ?? ?????? ?????????????? ?????? ???, ?????? ?????????? ?????? ?? ??????????  
????????? ?? ??????? ?? ?? ?????? 90, ??????? ??????, E?, ?????????? ??? ?????????? ???  
??? ?????? ?????????? ?? ?????????? ?? ?????? «?????? ?? ?????????? ?? ?? ?????? ???  
????????? ??? ?????????????? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ???  
???????????, ??? ?????? ?????? ??? ?????????? ??? ?????? ?????? ?????????? ?????? ???  
????? ??? ?????????? ?????? ??? ?????????? ??? ?????? ?????? ?????????? ?????? ???» (17).

52. ??? ????????????, ?? ?????????? ??????? ??? ?? ??? ?????? ?????????? ??? ?????????? ??  
??? ?????? ??????? ?? ??? ???????, ??????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??  
????? ?? ???, ??????????? ?? ??? ??????? ?? ?????? ??? ?????? ??? ?????? ??? ??????????  
??? ??????? ?? ??? ?????? ??? ?????? ??? ?????????? ?????? ?? ?????? ??? ?????? ???  
?????????? ?? ??? ?????????? ?? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???  
????? ??? ?????????? ??? ?????????? (18).

53. ?? ? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??????, ??? ??????, ??? ??????,  
?? ?????????? ?????? «????????? ??? ?????? ?????? ??????» ??? ??????????, ????????  
??? ??????, ??? ?????, ??? ???????, ??????????? ?????????? ??????, ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????????? ??? ?????? ??????, ??? ?????????? ??? ?????? ???  
???????????????, ??? ?????? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ???  
??? ??? ? ??? ?????? ??? ?????? ????. ??? ?????????? ???, ?? ??? ?????? ??????  
?????, ???????, ??? ?????? ?????? ??? ?????? ??????????, ?????????? ????, ?????? ???  
????????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????????? ??? ?????? ???

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

54. ?? ??????? ?? ?????????? ???, ??? ???? ?????????? ??? ???? ????? ?????? ?????? ?? ???????  
 ?????? ?????????? ??? ???? ?????? ??? –????? ?? ?????? ??? ?????? ?????? ?????????? ???  
 ??????? ??? ?????? ?????????? ??? ?????? ?????????????? ??? –, ?????????? ??? ???????  
 ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ??????  
 ?????? ??? ?????? ?????????? (19).

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

56. ????? ?? ??????? ??????? ?????? ?????????? ??? ?????? ?????? -????????? ?????????????? ?  
????????? ??????- ?? ?????? ??? ?????? ?????? ??? ?????? ?? ?????? ?? ?????? ?????? ?????? ???  
????????????? ?? ??????? ?? ?????? ?????? ?????? ?????? -?? ?????????? ?? ? ?????????????? ???  
????????? ??????? ?????? ???' ?????? ??? ?????????? ?????????????? ?????????? - ?? ??????  
????????? ?????? ??? ?????? ??? ?????? ?????????? ?? ?????? ?????? ??? ?????? ?????? ??? ??????.

57. ??????, ??? ?????? ?????? ????? ?????????????? ??? ?. Linneweber ??? ??? ???????????  
?????????????, ??? ???? ?????? ? ?????????? ?????? ??? ?????? ?????? ?????????? ??? ??????????????  
????? ??? ?????????? ?????? ?? ??? ?????? ?????? ??? ??? ??? ??? ??????????  
?????????????, ??? ???? ?????? ?????????? ??? ??? ??? ??? ??????, ? ?????? ?????? ??? ???  
??? ??? ??? ??? ?????? ???????, ?????? ? ?????????? ??? ?? ?????????? ??? ??? ?????????? ??? ???  
???? ?????? ?????? Fischer (20).

58. ?????? ??? ?????????????? ???????, ??? ??? ????? ?????????? ??? ?????? C-453/02  
?????? ?? ??? ???? ? ??????? ??? ?? ??? ???? 13, B, ??????? ???, ??? ????? ??????  
?????????? ?? ??? ???? ????? ?? ?????????? ????? ????? ?????????????? ?????????? ??????  
????????? ??????? ??? ???? ?????????? ?????? ?????? ?????????????? ?????????? ??????  
?????????? ??? ????. ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ??? ?????????? ??????,  
?? ?????? ?????????? ?? ?????? ?? ?????????? ??, ??? ??? ??? ????? ??????????, ?? ??????????  
????????? ??? ?????????? ?? ?????? ?? ?????? ??? ?????????? ?????? ?????? ?????????? ????  
?? ??????????, ??? ?????????, ?? ??? ????? ?????????? ?????? ???, ?????????????? ????  
????? ?????????? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????????? ???  
????????.

59. ???????, ??? ?????? ??????? ?? C-462/02 ?????? ?? ?????? ? ??????? ??  
????? 13, B, ??????? ??, ??? ?????? ??????? ?????????? ?? ?????????? ?? ??????????????  
????????????? ?? ?????? ? ?????????? ?????????? ?????????????? ?? ?????????????? ??  
????? ?????????????? ?? ?????? ???? ??????. ?????????? ?? ?????????? ?? ?????????? ??  
?????????????, ?? ?????? ?????????? ?????? ?? ?????????? ??, ??? ??? ????? ??????????, ??  
????????????? ?? ?????????????? ?????? ??? ?????? ??? ?????????? ?????????? ?????? ??????????  
????? ??? ??????????, ??? ??????, ?? ?????? ?????????????? ?????? ???, ??????????????  
????? ??? ?????? ?????????? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????  
?? ??????

60. ??????, ??? ?????? ?????? ????? ?????????????? ??? ?????????????? ?????????????? ??? ??? ???? ??????????

????????????? ?????????? ??? ?? ???? ?????????????? ??????????????. ??? ??  
????????? ? ????????, ? ??????? ???? ?????????????? ??? ?????? Glawe (21) ??? ??????  
?? ?????????????? ?????????????? ?????????????? ?? ??? ?? ?????? ?????????? ??? ??  
????????? ?????? ??? ?????????? ?????????? ?????? ?????? ?????? ?????? ?????? ??  
????????? ??? ?????? ??????, ?????? ? ?????? ?????? ?????? ?????? ?????????? ?????? ???  
????????? ??? ?????????? ??????. ? ?????????? ?????? ??? ?????? ?? ?????? ?????? ??  
-????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???  
?????- ??? ?? ?????? ??? ? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???  
????????? ??? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ???  
????????? ??? ?????? ??????.

? - ??? ?? ?????? ?????????????? ??? ?????????? ??? ?? ?????? 13, B, ?????????? ??,  
??? ?? ?????? (????? ?????? ??? ?????? C-453/02 ??? ?????? ?????? ???  
????? C-462/02)

1. ?? ?????? ?????????????? ??? ?????????? ??? ??????????

61. ??? ?? ?????????? ??????????, ? ?????????? ??? ?????????? ?? ??? 13, B, ??????????  
???, ??? ?? ??????????, ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?? ??? ??,  
?????????, ?????? ??? ?????? ??? ?? ?????? ?????????????? ?????????????? ???, ???  
?????????, ?????????? ??????????. ? ??? ??? ?????? ?????????? ?????????????? ??? ??????????  
?? ?????? ??? ?????? ??? ?????? 13, B, ?????????? ???, ??? ?????? ??????.

62. ? ?????????? ??????????, ???????, ??? ?? ?????? ??? ?????????? ?????? ??????  
????????? ??? ?????? ?? ?????????? ??? ?????? ?????? ?????? - ??????, ??? ?????? ?????? ???  
????? ?? ?????????? ?? ??????????????, ? ?????? ?????? ?? ??? ?? ?????????? ???  
????????? ?? ??? ??? ?????? ?????????? ??? ?????? ?????? ??????, ??? ??? ???  
????????? ?????? ?????? ?????? ?????? ??????. ? ?????? ?????? ?????????? ?????? ???  
????? Kögler (22) ??? ??????, ?????????? ?' ?????, ??? ?????????? ?????????? ???  
????? ??? ?????? ?????? ??? ?????? ?????? ??? ?? ?????????? ??? ?????? ???  
????????? ?? ??? ?????? ??????.

63. ? . Linneweber ?????????? ??? ?? ?????? ?????? ?????????? ??? ?????????? ???  
????? ??? ?????? ??? ??????.

2. ???????

64. ?? ?? ?????? ?????? ??? ?????? C-453/02 ??? ?? ?????? ?????? ??? ?????? C-  
462/02, ?? Bundesfinanzhof ?????? ?? ?????????? ??, ??? ?????? ??? ?? ??? ??  
????????? ??? ?????? ???, ? ?????? ?????? ?? ?????? ?? ?????????? ?? ?????? ??? ??  
B, ?????? ???, ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

65. ??? ?????? ????????, ?? ??? ??? ?????????? ??? ?? ?????????? ?????? ?????? ??????  
?????????, ??? ?????? ??????????????, ?????????????? ??? ?????? ??????, ?????? ??  
????? ?????? ???, ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??  
????? ?????? ?? ?????? ??? ?????? ?????? ?, ? ?????? ?????? ?? ?????? ??? ?????? ??  
????????? ?????? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??  
(23).

66. ??????, ??????????, ???' ????, ? ?????????? ??? ?? ?????? ??? ?? ?????? ???  
????????? ?????? ?????? ?? ?????? -???, ?????????? ??? ?? ?????? ?????? ???  
????? ??? ?????????? ?????????? -???, ?????????? ??? ?? ?????? ?????? ?????? ???  
????????, ??? ? ?????? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????? (24).

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

67. ?? ??? ??????????, ??? ?????? ??? ?? ?????? ??? ?????? ?????? ?????????? ?????????? ??????????  
????? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?? ?????? 13,  
B, ?????? ??? (26).

68. ?? ??????????, ??????, ??????, ?? ?????? ??????????, ???, ?????? ??? ?? ??? ??????  
????????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ?????????? ?????????? ??? ???  
????????? ?????????? ??? ??? ?????????? ???, ??? ?????? ?? ??? ?????????????? ????  
????????? ?? ?????????? ?? ?????????????? ?????? ??? ?????? ??? ?????????? ?? ??????, ??????????????  
????? ??? ?????????????? ??? ?????? ??? ?????, ?????? ?? ?????????? ??? ?? ?????????? ??? ?? ?????? ???  
?? ?????????? ?? ?????? (27).

69. ??? ??????, ?????? ?? ??? ?????? ??? ??????, ??? ?????? ??? ?????????? ??? ??????????????  
??? ??? ?????? ??? ?????????? ??? ?????? ??? 13, ?, ?????? ??? ??, ??  
????????? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ???, ? ?????? ??? ?? ??? ?????????? ???  
????? ?????????? ??? ?????????? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ??? ?? ??? ?????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
(28).

70. ??? ?????????? ??? ?????? ?? ?????????? ? ?????? ?? ?????? ??? ?????? ??? ?? ??????????  
??? ?????? ??? ?????? ??????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??????????  
??? ?????????? ??? ?????? ??? ? ?????? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ??????.

71. ??? ??????, ?? ?????? 13, B, ?????? ???, ?????? ?? ?????????? ??? ?? ??? ??????  
??? ?? ?????? ??? ?????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?? ??? ?????? ??? ??????????  
??? ?? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? (29).

72. ??? ??????, ??? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????????? ?? ?????????? ??? ?????????? ???  
?? ?????? ?????? ??? ?????? ?? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????????? ??? ?????? ???  
????? ?????????? ? ???????, ?? ?????????? ??? ?????? ??? ?????? ??? ?? ??? ?????? ???  
????????? ?? ?????????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? (30).

73. ?? ?????? ?? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?? ?????? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? C-453/02 ??? ?? ???  
????? ??? ?????? C-462/02.

74. ??? ??????, ??? ?????? ?????? ??? ?????? C-453/02 ??? ?? ??? ?????? ???  
????? ?????? C-462/02 ??? ?? ?????? ? ?????? ? ?????? ??? ? ?????? ?????? ??? ?????? ?? ??????????  
????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? 13, B, ?????? ???, ?? ??? ??????  
????? ??? ?? ?????????? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ??????.

V – ??????

75. ?????? ??? ?????????? ???, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ??????:

????? ??????? C-453/02

«1. ?? ?????? 13, B, ???????? ???, ??? ????? ?????? ??????????? ?? ?????? ?????? ??  
????????? ??? ????? ?????????????? ?????????? ?????? ?????? ?????????? ?????? ?  
????????? ?????? ?????? ?????? ?? ?????????? ?????? ?????? ?????????? ?????? ?  
????????? ?? ?????? ??, ??? ??? ??? ??????????, ?? ?????????? ?????? ?????? ??? ??????  
????? ??? ?????? ??? ?????????? ?????? ?????? ?????????? ?????? ??? ?????????? ???  
????????, ?? ?????? ?????????????? ?????? ?????, ?????????????? ?????? ?????? ?????  
????????? ??? ?? ?????? ?????? ??? ?????? ??? ?? ?????? ?????????? ??? ?????? ?????.  
????????? ??? ?? ?????? ?????? ??? ?????? ??? ?? ?????? ?????????? ??? ?????? ?????.

2. ? ??????? ?????? ?? ?????????? ?????? ?????? ?????? ?????????????? ??? ?????? ???  
????? 13, B, ??????? ???, ??? ??? ?????? ?????? ??? ?? ?????????? ?? ?????? ??????????  
??? ??? ?????? ??? ?????? ??? ?????? ????.»

????? ??????? C-462/02

«1. ?? ?????? 13, B, ???????? ???, ??? ????? ?????? ?????? ??????????? ?? ?????? ?????? ??  
????????? ??? ?????? ?????????????? ?????? ?????? ?????????????? ??? ?????? ?????????? ??  
????????? ?? ?????? ?????? ?????? ??????????????, ?? ?????? ?????????? ?????? ?? ?????? ??,  
??? ??? ??? ??????????, ?? ?????????????? ??? ?????????????? ?????? ??? ?????? ??? ??????  
????????? ?????? ?????????? ?????? ??? ??????????, ??? ??????????, ?? ?????? ??????????????  
????? ???, ?????????????? ?????? ?????? ?????? ?????????? ?????? ??? ?????? ?????? ????  
????? ??? ?? ?????? ?????? ??? ?????? ??? ??????.

2. ? ??????? ?????? ?? ?????????? ?????? ?????? ?????????????? ??? ?????? ???  
????? 13, B, ??????? ???, ??? ??? ?????? ?????? ??? ?? ?????????? ?? ?????? ??????????  
??? ??? ?????? ??? ?????? ????.»

1 – ?????? ??? ??????????: ? ??????????.

2 – ??? ?????? 77/388/E?? ??? ???????????, ??? 17?? ????? 1977, ??? ?????????????? ???  
????????? ??? ?????? ?????, ??? ?????????? ?? ??? ????? ?????? ?????? ?????? – ???  
????? ??? ?????? ?????????????? ?????: ?????????? ?????????? ??? (?? ????. ????. 09/001, ?. 49).

3 – ?????? ??? 11?? ?????? 1998, C?283/95 (?????? 1998, ?. I?3369).

4 – ?????? Fischer (????????????? ??? ?????????? 3).

5 – ?????? Fischer (????????????? ??? ?????????? 3), ????? 27.

6 – ?????? ????, ?????????? ??? 8?? ????? 2003, C?384/01, ??????? ??? ?????? ??????  
(?????? 2003, ?. I?4395, ????? 25)- ??? 11?? ?????? 2001, C?267/99, Adam (??????  
2001, ?. I-7467, ????? 36), ??? ??? 3?? ????? 2001, C?481/98, ??????? ??? ??????  
(?????? 2001, ?. I-3369, ????? 22).

7 – ??., ?????? ????, ??????, ??? ?????????? ??? 3?? ?????? 2003, C?144/00, Hoffmann  
(?????? 2003, ?. I-2921, ????? 27)- ??? 10?? ?????? 2002, C?141/00, Kügler (??????  
2002, ?. I-6833, ????? 30), ??? ??? 7?? ?????? 1999, C?216/97, Gregg (?????? 1999, ?. I-4947, ????? 20).

8 – A?????? ??? 2?? ???????? 1993, Lange (?????? 1993, ?. I-4677, ?????? 16 ??? 17).

9 – ??????? Fischer (????????????????? ??? ?????????????? 3), ????? 28.

10 – ??????? Fischer (????????????????? ??? ?????????????? 3), ????? 31.

11 – ?. ??? ?????????? ??? ??? ?????? C?498/99, Town & County Factors (????????? ?? 17?? ?????????? 2002, ?????? 2002, ?. I-7173, ?????? 70).

12 – ?. ??? ?????????? ??? ??? ?????? Town & County Factors, ??????????????, ?????? 69. ?. ?????? ??? ?????????? ??? ?????? ?????????? F. Jacobs ??? ?????? C?38/93, Glawe (????????? ??? 5?? ????? 1994, ?????? 1994, ?. I-1679, I-1681, ?????? 10).

13 – ?. ?? ??? ???? ?? ?????? ??? ?????? ??? ?????? ??? ?????????????? ??? ?????????????? ??? ?????? Town & County Factors (????????????? ??? ?????????? 11, ?????? 68 ??? 74) ?????? ??? ??? ?????????????? (????????????? 12) ?????? Glawe.

14 – ??? ?????? ??? ?????? ??? 3?? ?????? 2001, ?????????? ??? ?????? (????????????? 6, ?????? 22)- ?. ??? ?????? ?????? 27.

15 – A?????? ??? 3?? ?????? 2001, ?????????? ??? ?????? (????????????? 6, ?????? 27 ??? 28).

16 – A?????? ??? 8?? ?????? 2003, ?????????? ??? ?????? (????????????? 6, ?????? 30).

17 – ?????? ?????, ?????????? ??? 27?? ?????????? 2002, C?302/00, ?????????? ??? ?????? (????????? 2002, ?. I-2055, ?????? 23), ??? ??? 11?? ?????? 1995, C?367/93 ??? C?377/93, Roders ??. (????????? 1995, ?. I-2229, ?????? 27).

18 – A?????? ??? 3?? ?????? 2001, ?????????? ??? ?????? (????????????? 6, ?????? 27).

19 – ?. ??? ??????? ??? 25?? ?????????? 1999, C?349/96, CPP (????????? 1999, ?. I-973, ?????? 29).

20 – A?????? Fischer (????????????? ??? ??o????????? 3), ?????? 29 ??? 30.

21 – ?. ???????, ?????? 47.

22 – A?????? Kügler (????????????? ??? ?????? 7), ?????? 57.

23 – ?., ?????? ?????, ??? ?????? ??? 22?? ?????? 1989, 103/88, Fratelli Costanzo (????????? 1989, ?. 1839, ?????? 29)- ?????? Kügler (????????????? ??? ?????? 7, ?????? 51), ??? ?????? ??? 20?? ?????? 2003, C?465/00, C?138/01 ??? C?139/01, Österreichischer Rundfunk ??. (????????? 2003, ?. I-4989, ?????? 98).

24 – ?. ??? ??????????, ??????????, ??? ?????? ??? 29?? ?????? 2004, C?102/02, Beuttenmüller (????????? 2004, ?. ?-5405, ?????? 37).

25 – ?. ??? ??? ?????? ??? ?????? ??? 5?? ?????????? 1963, 26/62, Van Gend en Loos (????????? 1954-1964, ?. 863, ?????? 26).

26 – ?. ???????, ?????? 26 ??? 42 ??.

27 – ?. ??? ??? ?????? ??? ?????????? ??? 10?? ?????? 1999, C?346/97, Braathens  
(?????? 1999, ?. I-3419, ???? 30), ??? ??? 19?? ?????????? 1982, 8/81, Becker (??????  
1982, ?. 53, ???? 30).

28 – ?. ??? ?????? Kügler (????????????? ??? ?????????? 7), ????? 55.

29 – ?. ???????, ?????? 26.

30 – ?. ??? ?????? Kügler (????????????? ??? ?????????? 7), ????? 60.