

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

JULIANE KOKOTT

?? 8?? ?????????? 2011 (1)

??????? C?594/10

T.G. van Laarhoven

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

«????? ?????????????? ?? — ??? ?????? — ??????? ?? ?????? ?????? — ???????????
— ?????? ?????? ?? ?????? ? ?????? ?????????? ?????????? ?? ?????? ?? ?????? ??????????
????????? — ?????????? ?????????? ?????????? ?? ?????????? ?? ?????????? ?? ??????????
????????? — ?????????? ?????? (?) ?????????? ?????????????? ?? ?????????????? ??
?? ?????????? — ?????????? ?? ??????»

I – ????????

1. ?? ??????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ???.
?????????, ?? ?????? ?? ?????? ?? ?????? ?? (2) ?? ? ?????????? ?? ?????? ?? ?? ?????? ?? ??????
?? (3) ?????????? ?? ?????????? ?? ?????? ?????????? ??????????, ?? ?????? ??????????
?? ??????? ?? ??????, ?????? ?? ?? ?????? ?????????? ?????? ?? ?????? ?? ?????? ?? ??????
?? ?????? ?? ?????? ??????? ?? ?????? ??.. ?? ?????????? ?? ?????? ?? ??????????????
????????? ?? ?????? ?????? ?????????? ?????????? ?? ?????????? ?? ?????????? ?? ??????
????????? ?? ?????? ?? ?????? ?? ?????; ?? ?????? ?? ?????? ?????????? ?? ?????????? ??
????????? ?? ?????????? ?? ?????? ?????? ??????.. ?? ?????? ?? ?????? ??, ?? ?????? ??
?????????, ?? ? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????????? ?? ?? ??
?? ?????????? ?? ?????? ?? ?????? ?????? ?????? ?????? ?????? ??, ?????????? ??, ?? ??
????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ?? ?????????? ?? ?? ??
?? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??, ?????????? ??, ?? ?? ??
?? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ?? ?????? ?? ?? ??.

II – ?????? ???????

? — ?????? ?? ?????????? ???

2. ?? ?????? 6 ??? ?????? ???????, ?? ?????? «????? ??????», ?????? ?????? ?? ??
?????????:

«2. ?????????? ?? ?????? ?????? ?????? ?? ?????? ?? ?????? ???

?) ? ?????????? ??, ?? ?????? ?????? ? ?????? ??, ?? ?????? ?????? ?? ?? ?? ?? ?? ?? ?? ?? ??

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

[...]

??. ?????? ??? ???? ?????? ?? ?????????? ?? ?????????????? ??? ??? ?????????? ??? ??????????
?????????, ??? ??? ??? ???? ?????????? ??? ??? ?????????? ?????????????? ???
?????????»

3. ? ?????? VIII «????? ??????? ?? ?????» ??? ?????? ??????? ?????????? ?? ?????? 11, ??
?????, ??? ?????? ?? ???????, ??????????:

«A. ??? ??????? ??? ???

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

[...]

?) ??? ??? ??????? ??? ?????????? ??? ?????? 6 ?????????? 2, ?? ??? ?????? ??? ?????? ???
????????????? ??? ??? ?????????? ??? ???, ??? ??? ?????????? ??? ?????? ??? ?????????? ???
?????????????.

[...]»

4. ?? ????? 17 ??? ????? ???????, ??? ?????????? «?????? ??? ?????? ???
?????????? ??? ????? ??????», ??????????, ??? ????? ?????????? ?? ?? ????? 28??,
????????? 1, ??? ????? ????? ??????, ?????? ????? ?? ???:

«2. ??? ????? ??? ?? ????? ??? ?? ?????????? ?????????????? ??? ??? ?????? ???
????????????? ??? ?????? ???, ? ?????????? ??? ?????? ??? ?????????? ?? ?????????? ??? ???
????????? ???:

?) ??? ?????????? ? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????????? ???
??? ?? ?????? ??? ??? ?????????? ? ?????????? ?? ??? ?????????? ??? ??? ?????? ???
??? ??? ?????????? ? ?????????? ?? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
?????????.

[...]

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

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

[...]»

5. ?? ????? 20 ??? ????? ???????, ?? ????? «????????????? ??????????», ???????????
??? ?????????? ???????:

«1. ? ?????? ?????????? ??????? ??????? ?? ?????????? ??? ?????? ??? ?????? ????????????

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

?) ???? ? ??????? ???? ? ??????? ? ??????? ? ?????????? ??? ?????????? ??? ??????? ???? ???? ???? ???? ???? ???? ????.

2. ??????? ?? ?? ?????? ????????????, ? ?????????????? ?????????? ?????? ?????????? ??????
????? ?????????????????? ?? ?? ???? ?, ???? ?? ???? , ???? ?? ???? ?????? ?? ???? ?????? ?????? ?
????????????? ?? ??????. ???' ???? ? ?????????????? ?????? ?????? ?? ??? ???? ?????? ??? ?????
?? ?? ???? ?????? ?????????????? ?? ???. ? ?????????????? ?????? ?????? ?????????????? ??????
?? ?? ???? ?????? ?? ???? ?????????? ????????????, ?? ?????? ?????????? ?????? ??? ???? ??????
?? ??????? ?? ?????? ?? ?????? ?? ?????? ?????? ?????? ?????????? ?? ?????? ?? ?????? ?? ?????
????????? ? ?????????? ?? ??????.

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

[...] »

? — ?????? ??? ??? ???? ?????

????? ??????????????? ??? ???????????, ?????????? ?????????? ??? ???????????????
???????????, ??? ???? ?? ?????????? ?????????? ??? ?????????? ??? ??????????????? ???
????????????? ???, ??? 24 % ??? ?????????? ??? 25 %. ??? 1?? ?????????? 2004 ??? ??? ???
????? ??? ?????? ?????? ?????? ?????, ?? ??? ?????????? ?????????? ?? ???' ?????????? 22
%, ??? ??? ???? ? ?????????? ??? ?????? ?? 500 ?????????? ??????. ? ?????? ???
????????????? ??? ?????? ??? ?????????? ?? ?????????? ?? ?????????? ? ?????????????? ???????,
??????, ?? ??? ???? ?? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ???????
?????????.

III – ?????????? ?????????? ??? ?????????? ??????????

9. ? T.G. van Laarhoven ??????? ?????????? ?????????? ??? ?????? ??? ???
????????? ?????????? ?? 2006, ??? ?????????? ??? ?????????? ??? ?????????? ???
??? ?????????? ?????????? ???, ?? ??? ?????????????? ??? ?????? ??? ??????????????
??? ??? ??? ?????????? ??? ??????. ??? ?????? ??? ?????? ?????????????? ??? ??
????????? ?????? ??? 2006, ? T.G. van Laarhoven ?????? ??? ?????????? ??? ?? 538
???? ??? ?????????? ??? 500 ??????????, ??? ?????????? ??? ?????????????? ???
????????? ?????? ??? ?????? ?????????? ??? ?????. ??? ??? ?????????? ??? ??
??? ??? ??? ?????? ?????????? ??? ??? ??? ?????????? ??? ??? ?? ??????????
??????, ? ?????????? ?????? ?????? ?????????? ?????? ??? Hoge Raad der
Nederlanden ???????????, ?????? ???, ??? ?? ?????? ?????????? ?????????? ???
????????? ?????? ??? ?????? ?????? ?????? ??? ?? ?????? ?????????? ??? ??????????
????????? (standstill clause) ??? ?????????? ??? ?????? 17, ?????????? 6, ??????? ???,
??? ??? ?????? ??????.

10. ?? ??? ???? ?? ???????, ?? Hoge Raad ?????? ?? ?????????? ?? ???????
????????? ??????:|

«1) ?????????? ??? 17, ?????????? 6, ??????? ??????, ??? ?????? ???????,
?? ?????? ?????? ?????????? ?? ?????? ?????????? ??? ??????? ?????, ??? ??????????
?? ??? ?????? ???????, ??? ??? ?????? ??? ?????? ?????? ?????? ?? ??????? ???
????????? ??? ?? ??? ?????? ?????????? (?????????) ??? ?????????? ???
????????? ??? ??? ?????? ?????? ??? ?????????? ?? ?????? ??? ?????????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??? ?????? ??? ??????????
??? ?? ??? ?????? ??? ?????? ??? ?????????? ??????????;»

2) ?? ?????????? ?????????? ?????????? ??? ?????? ??????, ?????? ??? ????
????????? ?? ?????? ?????????? ?????? ?? ?????? ??? ?????????? ??? ?????????? ???
? ??? ?? ?????? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????????? ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??????;»

11. ??? ?????????? ??? ?????? ??? ?????????? ?????????? ? T.G. van Laarhoven, ?
????????? ???????, ? ?????????? ??? ?????? ?????????? ??? ? ?????????? ???????, ??
??? ??????, ? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ??????
??????.

IV – ?????? ???????

? — ?????????? ??????????

12. ??? ?????? ??????????, ?? ??? 17, ?????????? 2, ??? ?????? ??????, ??? ???
?????? ??? ?????? ?????????? (5), ??????? ?????? ?????? ??? ??????

???????????? ???? (6). ?? ??????????? ?? ?? ????? ?????? ????? ?????????? ?????????? ????? ?? ?????? ??
????????? ?????? ?? ?????? ?? ?????????????? ?? ?????? ?? ?????? ?? ?????? ?????? ? ?????????? ??
????????? ?? ?????? ?? ?????????????? ?? ?????????????????? (7), ?????????? ?????? (8) ??? ??????????
?? ??? ?????? ?? ?????? ?? ?????????????? ?? ?????????????????? ?????? (9). ??? ??? ?????? ?????? ??????
????????????? ?????? ??? ?????????????? ??? (10).

13. ? ????? ???? ?????????????? ???? ??????? ???? ???? ???????????, ???????????, ????
????????? ?????????? ???? ?????? ???? ?????????????? ???? ?????? 17, ?????????? 6, ??? ????
???????, ??? ?????????? ???? ?????? ?????? ???? ?????????? ?????? (11), ??? ???? ??? ????? ??
????? ??? ???? ?????? ?? ?????????? ???? ?????????? ???? ?????? ?? ?????????? ?????? ??????? ??
??? ??????? ???? ?? ??????? ???? ???????, ???? ?????? ?????? ??? ???? ?????????? ??????? ??
?????? ???? ?? ??? ?????? ???????, ??? ?????? ?? ?????????? ??????? ???? ?????????? ??????? ??
?????? ???? ?????? (12). ??????? ???? ??? ?????? ?????? ?????? ?????? ?????? (13), ?? ??????
???? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???? ?????? ?????? ?? ?????????? ?? ????????????
???? ??? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ???? ?????????? ??? ????????????

14. ?? Hoge Raad ?????? ??? ?? ??????????? ?? ??????? ?? ?????????? ?? ??????? 17,
?????????? 6, ??????? ??????, ??? ????? ??????? ?? ?????? ??? ?????? ?????? ?????????
??? ??? ??????? ??? ?? ??????????? ??? ?????????????????? ??? ??? ??? ?????????????? ???
??? ??? ?????????? ??????. ?? Hoge Raad ?????? ??? ?? ??? ???????, ? ?????? ???
??? ??? ??? ????? ??????? ??? ?????? ??? ???????, ?????? ?? ?????????? ???
?????????? ??? ??????? ??? ??????. ??????????, ?? ??????????? ??? ?? ??????? ???
?????? ??? ??????? ?? ??? ??? ????? ??????? ??? ??????? ??? ??????? ??? ? ??????? ???
????????????? ?????????????? ??? ??? ??? ?????? ??? ??????? ??? ???????, ?? ?????????? ???
?????????? ??? ?????????? ?? ??? ???????????.

16. ??????????????? ?? ? ????????, ? ?????????? ?????? ?????????? ???
????????? ?? ??????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ???????, ?? ?????? ?????????? ??? ?????? ??? ?????????????? ??? ??? ??? ???
????????? ????. ?????? ?????? ?? ??? ?????? ?????????? ??? ????????????, ? ????
?????????? ??, ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????????????? ??? ??
????????????? ??? ?? ??? ?? ?????????? ??? ??????, ? ?????????????? ??? ?????? ?? ??
????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? (15)- ??? ?????? ???, ?
??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????????? ??? ?????? ?????????? ???
????????? ?? ??? ?? ?????? 17 ??? 18 ??? ?????? (16).

17. ????? ??? ?????? ?????? ??? ??????????? ??????????????, ?????????????? ??? ?????????????? ???
????????? ??????? ?? ??????? ??? ? ?????????? ?????? ??????? ?????????? ??? ??????
?????????????? ?? ??? ?????? ?????????? ??????????? ??? ?????? ?????? ??? ?????????? ?????? ???
?????????????, ??????? ??? ?????? ?????? ?????? ?????? ?????????????? ??? ??? ??? ?????????? ??????
??? ???????????, ? ?????? ?????????????? ?? ?????? ??????? ??? ???' ??????? ??????
??????, ?? ?????? ?? ?? ?????? ??? ?????? ?????? ??????? ??? ??? ?????? ?????????????? ???
????? ??? ???????????.

18. ????????, ?? ??? ???? ?????? ??? ????? ??????, ??? ?????? ?? ??? ?????
?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?? ?????? ?? ???' ?????? ???
????????? ?????? ?????? ?????????? ?????????? ??? ?????????? ?????? ?????? ?????? ??? ?????
??? ?????? 17, ?????????? 6, ??? ??????. ?????????, ??? ?????? ?? ??? ?????? ?????? ??????

????? ??? ???? ?????????? ??????? ??? ????? ?????????? ?? ??? ?????? ?????????? ?????? ?????? ???
????????? ??? ?????????? ??? ??? ?? ??? ?????? ?????????? ?????? ?????? ??? ?????? ??? ??????
????????? ??? ?????, ??? ?????? ?????? ?? ?? ?????? ??? ?????????? ?????? ??? ?????? ??? ??????
????????? (17).

19. ? ??? ???? ? ?????? ?????????? ???, ?? ?????? ?????????? ???, ?? ?????????? ???? ???
????????? ?????????? ??? ?? ?????????? ?????? ?????????? ?????? ?????????? ?????? ??? ?????? ???
????????? ?????? ??? ?????????? ??? ?????? ?????? ?????????? ???, ?????? ??? ?????? 6,
????????? 2, ????, ?????, ??????? ??, ??? ??????, ??? ?????? ??? ?????? ?????? ???
????????? ????, ??? ?????? ??? ? ?????????? ??? ?????? ?????? ?? ?? ?????? 11, ??? A,
????????? 1, ????, ???, ??? ?????? ?? ?????????? ?? ?????????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? (19).

20. ??? ??? ???? ???? 20 ??? ??????, ?? ??? ?????? ?????? ??? ?????? ???
??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? 6, ?????????? 2, ????
??????, ??????? ??, ??? ??????, ?????????? ??? ?????? ??? ?????? ?????????? ??????????
??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????? ?????? (20).

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

22. ?? Hoge Raad ??????????, ????, ??? ?? ?????????? ?????????? ??? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? 1?
????????? 2007, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? 6, ?????????? 2, ??????? ??, ??? ?????? ??????. ?????????? ??? ?????? ???
????????? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ????. ??????????, ????, ?? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ? ?????? ??? ?????? ??? ?????? 6, ?????????? 2, ?????? ????, ?????? ??, ??? ??????
??????, ??? ??? ??? ?????? 17, ?????????? 6, ??? ?????? ???.

23. ??????, ???? ?? ?????????? ?????? ??? ?????? ??? ?????? ?????? ???, ??
????? ??? ?? ?????? ?????? ??? ?????? ??? ?? ?????? ??? ?? Hoge Raad ??????
??? ?????? 17, ?????????? 6, ??? ??????.

? — ??? ?? ?????????? ??? ?????? 6, ?????????? 2, ?????? ????, ?????? ??, ??? ??
????? 20 ??? ?????? ????

24. ??? ?????????? ??, ?? ?????? ??? ?????? 6, ?????????? 2, ?????? ????,
????????? ??, ??? ?? ?????? 20 ??? ?????? ?????? ??? ?????????? ??? ?? ?????? ???
??????????????. ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ????, ??? ?? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ???, ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

25. ??? ?????? ??????????????, ?? ????? 6, ?????????? 2, ????? ?????, ?????????? ?,
??? ??????, ?????????? ?????? ??? ?????????? ??????, ????? ???? ?????? ?????? ???
????????? ?????????????? ??? ?????? ??? ?????? ?????? ?????? ?, ?? ?????, ?????? ?????? ??????
????? ??? ??????????, ??? ???, ??? ??????????, ?? ?????????? ?????????????? ???
????????????? ??? ??? ??? ?????????????? (23). ???????, ? ?????????? ??? ?? ???
????????? ??? ?????? ??? ?????????? ??? ? ?????????? ?????? ?????????? ?????????? ???
????? ??? ?????? ??? ?????? 17, ?????????? 2, ??? ?????? (24). ?? ?????????? ??? ?? ???
????????? ? ?????????? ??? ???? ?? ??? ?????? ?????? ?????? ?????? ??? ?? ?????? ???
????? ??? ?????????? ???' ?????????? ??? ?????????? ??? (25), ?????? ?? ??????????
????????????? ??? ??? ?????? ??? ?????? 20 ??? ??????, ?? ?????????? ??? ??
????????? ??? ?????? ??? ?????? ?????? ?? ?????????? . ??????, ?? ????? 6, ??????????
2, ????? ??????, ????????, ??, ??? ??????, ?????????? ??? ?????????????? ?????
????????? ?? ?????? ?? ???? 20 ??? ??????, ?? ?????? ?????????? ??? ?????????????? ??
????????? ???.

26. ? ?????????? ?????? ?????? ?? ???? ?????????? ??? ?????????? ?????????? ??????????
??? ?????????????? ??? ??? ?????? ??? ?????????? ??? ?????????? ??????????, ???????,
????????? ??? ?????????????? ??? ???? 20 ??? ?????? ??????, ??? ??? ?????? ??? ?
??? ?????? ?????????? ??? ?? ??? ?????? ?????????? ?? ?????? ???, ?? ?? ?????? ???
????????? ??? ??????????, ??????, ?? ?????? ????. ??????????????, ??????????, ???,
????????? ?? ??? ?????? Wollny (26), ?? ?????? ??? ?????????? ?????????? ?????????? ???
??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ???
?? ??? ?? ?????? 6, ?????????? 2, ?????? ??????, ?????????? ??, ??? ?????? ??????, ??
????????? ??? ???????, ??? ??? ?????????? ??? ?????? ?????? ?????? ??? ??????, ??
????????? ?? ??? ?????????? ??? ?????????? ??? ?????? ?????? ?????? 20.

27. ? ?????? ?????? ??????, ??????, ??? ?????????? ?????? ??? ?????????? ???
????????? ?????? ??? ?????? 6, ?????????? 2, ?????? ??????, ?????????? ??, ??? ???
????????, ??? ??? ?????? 20 ??? ?????? ??????. ?????????????? ?????? ??? ?????? ???
??? ?????????? (27), ?????? ??? ??? ?????? ?????????? ?????????? ??? ? ?????????? ???
????????? (28), ?????? ?????? ??? ?????????? ??? ?????????? ?? ?????????? ??????????,
????? ??? ?? ?????? ?? ?????????? ??? ??????, ??? ?????????? ??? ?????? ?????????? ???
????????? ??? ?????????? (29). ??? ?? ?????????? ??? ? ?????????? ???, ??
????????? ??? ?????????????? ??? ?????? ?????? ??? ?? ??? ??? ?????????? ???
????? ??? ?? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????? ???, ?????, ? ?????????? ??? ?????? ??? ?????? ?????????? ?????????? ??????????
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ???
????? ??? ?????? ??? (30).

28. ?????? ?? ???? 6, ?????????? 2, ?????? ??????, ?????????? ??, ?? ?????????? ?? ??
????? 11, ????? ?, ?????????? 1, ????????, ??, ??? ?????? ??????, ?? ?????????? ??????????
??, ??? ?? ?????? ??? ???? «????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? » ?????????? ?????? ??? ?????? ???
??????, ?? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ??????. ?????????? ?????? ???
????? ??? ?????? ??? ?? ???? 20, ?????????? 1 ??? 4, ??? ?????? ??????, ?????????? ???
? ?????? ?????? ?????? ??? ?????? ??? ?????? «????? ??? ?????? ?????????? ???

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

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

31. ?????? ??? ??????????? ?? ?????? ??????????? ?? ?????? ??????, ?????????? ??? ??
??? ?????? ??????? ?? ??????????? ?? ?????????? ?? ?????? ?? ??????? ?? ?????? ??
????? 2006 ?? ??? ??????????? ?? ?????? ??????????? ?? ?????? ?? ?????? ??????????????? ? ??????
??? ??????????? ?? ?????? ?? ????????????. ??????, ? ?????? ?? ?????? ??????????? ??
????????? ??????????? ?? ??????????? ?? ?????? ?? ?????? ?? ?????? ?????????? ?? ?????? ??
2006 ??????????? ?? ?????? ??????????? 22 ????, ??? ?????????? ?? ???
?????????? ?? ?????? ?????????? ?? ??????????? ?? ?????? ?? ??? ?????? ?? ?????????? ??

33. ? ?????????? ?? Hoge Raad ?? ?????? ??????? ?? ?????? ?? ?????? ?? ????????, ?
????? ?????????? ?? ???? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ???? ?? ??????????
????????????????? ?? ???? ?? ???? ?? ??????? ?? ?????????????? ?? ???? ?? ???? ?? ?????? ?? ????
????????? ?? ???? ?? ?????????? ?? ???? ?? ?????????? ?? ?????? ?? ?????????? ?? ???? ?? ????
????? ?? ???? ?? ?????????? ?? ???? ?? ?????????? ?? ?????? ?? ?????????? ?? ???? ?? ????
????????????? ?? ???? ?? ?????????? ?? ???? ?? ?????? 6, ?????????? 2, ?????? ??????, ?????????? ??,
?? ???? ?? ?????? 20 ?? ???? ?? ??????. ??? ? ?????? ?????????? ?? ?????? ?????????? ?? ???? ?? ????
?? ???? ?? ??????, ? ?????? ?? ???? ?? ?????????? ?? ???? ?? ?????????? ?? ???? ?? ????
?? ???? ?? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ???? ?? ????
?? ???? ?? ?????? ?? ???? ?? ???? ?? ?????????? ?? ?????????? ?? ???? ?? ????
??????.

34. ?????????? ??? ??????? ?????????? ?????????? ?? ??? ?????????? ?????? ??? ?????? ??
?????????, ??? ? ?????? ??? ?????? ??? ? ??? ?????? ?????????? ?????? ?????????? ??? ?????? ??
????? ?????? ??? ?????? ??? ???? ?? ?????? ?????? ?????? ?????? ??? ???? ?????? ??? ?????? ??
??????, ?????? ?????????? ?? ???? ?????????? ??? ?????????? ?????? ?????????? ??? ???? ?????? ??
??? ? ??? ?????????? ?????? ?? ?????????? ?????? ??? ?????????? ?????? ??? ?????? 17, ?????????? 6, ???
????? ??????. ??? ???? ?????? ?????? ?? ?????????? ??? —????????? ??? ???? ?????? ??? ?????? ??—
????????? ??? ?????? ?????? ?? ?????? ??????????, ??? ? ?????????? ?????? ?????? ?????? ??
????????? ??? ?????? ?????? ??.

35. ??? ??????????, ?? ??? ?????? ??? ?????????? ?? ??? ???? 17, ?????????? 6,
????????? ??????, ??? ?????? ??????, ?? ?????????? ?? ??? ???? ??? ?????????? ??? ???? ???
????? ?????? ?? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????????? ??? ???? ?????????? ???
????????? ??? ?????? (33).

36. ??? ?????? ???, ?? ?????????? ??? ?????? ?????????? ?????? ??? ???? ?????? ??? ????
????????? ???, ???? ???? ?????? ??? ?????? ?????????? ?? ?????? ??? ?????? ???, ???
????????? ??? ???? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???, ??? ?????? ??? ???? ??? ????
????????? ??? ???? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????????? ???
????? 17, ?????????? 6, ??? ?????? ??????. ??????????, ?????? ?? ?????????? ??? ?????? ???
?????, ???' ??????, ?????????? ?? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ???
??? ?????????? ??? ?????????? ?? ??? ?????? 17, ?????????? 6, ??? ?????? ?????? (34).

37. ??????, ??? ?????? ?????? ??? ?????????? ??? ?????????? ?????????? ??? ???? ??
????? 17, ?????????? 6, ?????? ???, ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? 17, ?????????? 2, ??? ?????? ???, ?? ??? ???? ?? ?????????? ?? ??? ?????? ???, ???
??? ?????? ?????? ??? ?????? ??????, ??? ?????? ??? ?????? ?????? ?????? ?????? ???
?????????, ?????????? ???' ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (35).

38. ??????, ?? ?????????? ??? ?????? ?????? Puffer (36) ??? ??? ?????? ???
????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ???, ?????? ?????? ???
?????????, ??? ?????? ?? ?????????? ?? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ???.

39. ?? ?????? ??? ?????? ??? ?????????? ??????????, ??? ?????? ??? ???? Puffer ??? ????
????? ??? ???? ?????? ?????????? ?? ?????????? ??? ?????? ??? ???? ?????? ??? ???? 17,
????????? 6, ?????? ???, ??? ?????? ???, ?? ?????? ?????? ??? ?????? ??? ???? ?????? ???
????????? ?? ?????????? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ???, ???,
?????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???, ???
????????? ??? ?????? ??? ?????? ???.

40. ??? ?????????? ??? ?????? ?? ?????????? ?????????? ??? ?????? ??? (37), ??? ??????
????? ??? ?????? ??? ?????? ?? ??? ???? ?????? ???, ??? X Holding (38), ? ???
????????? ??? ?????? Puffer. ?? ?????????? ??? ???? ?????? ??? ?????? ???, ?? ??????
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.
?????????, ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ??
????? ??? ?????? ??? ?????? ??? ?????? 17, ?????????? 6, ?????? ???, ??? ?????? ???.

41. ?????????? ??? ???? ?????? ?????????? ?????? ??? ?????? ??? ???? ??? ????
????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

? ?????????????? ? ?????????? ??????? ??? ?????? ??? ?????????? ?????? ?????????? ?????? ?????? . ??? ?????? ??????
?????? ??????? ??????? ????????, ??? ?????? ??? ?? ?????? ??? ?????? ?????? ?????????????? ???
????????????????? ??? ?????? 17, ??????????? 2, ??? ?????? ???????, ?????????????? ??? ?????? ???????,
?? ?????????????? ?? ?????????? ?????? ?????????????? ??? ?????? ?????? 17, ?????????? 6, ???
?????? ?????? ????. ?? ??????? ?????? ??? ?????? ??? ?????? ??? ?????????????? ??? ??????????????
????????????? ?????????????? ?????????????? ?? ?????????????? ?????? ?????????? ??? ??????????
????????? ??? ?????????? ??? ?????? 17, ?????????? 6, ??? ???????. ?????????? ???? ? ??????
??? ?????????? ??? ?????????????? ?????.

42. ?????????? ???, ??? ?????? ??? ?????? ??? ?????????? ??????????????, ?? ?????????? ????
????????? ??? ?????????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????
??? ?????? ???????, ?????????? ?? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ?,
????????? ?????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ????
????????? ?? ?????? ?????????? ??? ?????????? ??? ?????? ??????.

43. ??? ?????????? ???????, ??? ?????????? ?????????? ?????????? ??????????????, ? ?????? ???
????? ??? ?????? ?????????? ????????????, ??? ?????? ??? ?? ?????????? ?? ?????????? ???
????????? ??? ?????? ?????????? (39).

44. ??????????, ?? ??? ?????????? ?? ??? ?????? ?? ?????? ?? ?????? ?? ?????? ?????????? ???
????????? ??? ? ?????????? ?????????? ?? ?????? ?? ??? ?????? ?? ?????? ??? ?????? ?????????? ???
??? ??? ?????? ??? ?????? ??????.

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

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

47. ??? ??? ?????????? ??? ? ?????????? ?????????? ??? ?????? ?? ?????? ??? ?????? ??? ?? ???
????????? ?????????? ??? ?????? ?????????? ??? ?????? ???, ??? ?????? ??? ?????? ?????????? ?,
????????? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ?? ?????????? ???
????????? ?????????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ? ?????? ??? ?????? ??? ?????? 17, ?????????? 6, ?????? ??? ?????? ????
????????? ?. ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??????????
????????? ??? ?????? ??????.

48. ?????????? ?????? ??? ?????????????? ??????, ?????????? ??? ?????????? ???
????????? ?? ?????????? ??? ?????? ?????????? ?????? ?? ???: ?? ?????? 17,
????????? 6, ?????? ???, ??? ?????? ??????, ?????????? ??? ?????? ?????? ??? ?????????? ???

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

— ?????????? ??? ?????? ??? ?????? ?? ?????? ?? ?????? ??? ?????? ??? ?????? ???
??????????, ?????????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????????? ??? ??? ???
????? ???????, ?????????????? ??? ?????? ??? ?????? ??? ?????, ?????? ??? ?????? ??? ?????? ???
??????, ?????? ?????????? ?? ??? ?????? ?????? ??? ??? ??? ?????????? ??? ??????,

— ???, ??, ??? ?????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ?????????? ??? ???????, ??? ?? ?????? ??? ?????? ??? ? ?????????? ???
????????? ?????????? ???????????,

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

? — ?????? ??????????: ??? ?? ?????? ??????????

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

50. ?? ?? ?????? ?????? ??? ?? ?????? ?????????? ??? ?? ?????? ?????????? ??? ?????? ???
????????? ??? ? ?????? ?????? ??? ?????????? ???, ??? ??? ?????????? ???, ??? ?? ???
17, ?????????? 6, ??????? ??????, ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ???
17, ?????????? 2, ??? ?????? ??????, ? ?????? ?????? ?????? ??? ?????? ??? ?????? ??????????
????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ?? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ?? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

51. ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????????.

52. ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?? ??? 17, ?????????? 6, ?????? ??????, ??? ?????? ??????, ?????? ???
????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ??????????.

53. ??? ? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ???, ?? ?? ??????, ?? ?? ?????? ?????????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ???, ?? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (40) ???
?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

54. ?? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

55. ????? ??????????, ???????? ??? ??????????? ?? ?????????? ??? ????????? ??????????????
???????? ??????????? ?? ????: ??? ? ??? ??? ?????????????? ??? ?????????? ??????????
????????? ?????????? ?????????? ??? ?????????? ?????????? ?????????? ?? ?????????? ??? ??? ??????
????????? ??? ?????????? ?????? ???, ?? ?? ??????, ? ?????????????? ?????? ???
????????? ??? ??? ?? ?????? 17, ?????????? 6, ??? ?????? ??????, ? ?????? ??????
????? ?? ?????????? ??? ?????????????? ?????? ??? ?????? ??? ?????????? ??? ?? ??????????
????? ??????. ? ?? ?????? ?? ?????????? ??? ?????? /??? ??? ?????? ?????????? ?? ??? ??
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??? ???, ??? ??? ??????????????
?? ??? ??? ?????.

V - ???????

?????? ???????, ? ????? ?????????? ??? ???. ?????? ??? ?????? ?????? ?????? ??? ???.
????????? ?????????????????? ??? ???. ??? ?????? ?????? ??? ?????? ?????? ??? ???.
??????, ??? ??????? ??? ?????? ?????? ??? ???. ??? ?????? ?????? ???' ????????
????????????? ????, ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ???,
??? ?????????? ?? ??? ?????? ??? ?????? 6, ?????????? 2, ????? ??????, ??????
??, ??? ??? ?????? 20 ??? ????? ??????. ??? ? ?????? ?????? ?????? ?????? ??????
?? ??? ?????? ?????? ??? ? ?????? ??? ?????? ?????? ?????? ??? ?????? ??????
??? ?????????? ?????? ?????? ???????????, ?????? ?? ?????? ?????? ?????? ???
????? ?????? ??? ?????? ??? ?????? ?????? ?? ?????? ?????? ?????? ??? ??????
??????.

57. ??????????? ??????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ??

Hoge Raad ?? ????:

«1) ?? ?????? 17, ?????????? 6, ??????? ??????, ??? ?????? ???????, ?????????? ???
????????? ??????? ?????????? ? ?????? ?????? ??? ?????? ??? ?????? ??? ??????? ??? ?????? ??? ???????,
???»

- ?????????? ??? ?????? ??? ?????? ?? ?????? ?? ?????????? ?????? ??? ?????? ??? ?????? ???
??????????, ?????????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????????? ??? ??? ???
????? ???????, ?????????????? ??????? ??? ?????? ??? ??????, ??????? ??? ?????? ?? ?????? ???
??????, ?????? ?????????? ?? ??? ?????? ?????? ??????? ??? ??? ??? ?????????? ???????,

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

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

2) ??? ? ??? ?????????????????? ??? ?????????? ?????????????? ?????????????? ?????????????
????????????? ??? ?????????? ?????????????? ?? ?????????? ??? ??? ?????? ?????????????? ???
????????? ??? ?????? ??? ??, ?? ?? ??????, ? ?????????????? ?????? ??? ??????????

????? ??? ?? ?????? 17, ?????????? 6, ??? ????? ??????, ? ??????? ??????? ??????? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ?? ?????? ?? ?????? ?? /??? ?? ?????? ??????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ??????.

1 – ?????? ??? ??????????: ? ???????.

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

3 – ?????? 2006/112/?? ?? ??????????, ??? 28?? ?????????? 2006, ??????? ?? ?? ??? ?????? ?????? ?? ?????????? ?? ?????? (?? L 347, ?. 1). ??????? ?? ?????????? ?????????? ?? ??????.

4 – ??? 15, ?????????? 6, ??? Wet op de omzetbelasting 1968 (????? ??? 1968 ??? ?????? ?????? ?????? ??????) ?? ?????????? ?? ?? ??? 15 ??? Uitvoeringsbeschikking omzetbelasting 1968 (????????? ?????????? ??? ?? ?????? ??? ?????? ??? 1968 ??? ?????? ??????).

5 – ?????????? ??? 14?? ??????? 2001, C?345/99, ??????? ??? ?????? (?????? 2001, ?. ??4493, ??? 18), ??? 23?? ??????? 2009, C?460/07, Puffer (?????? 2009, ?. ??3251, ??? 82), ??? C?74/08, PARAT Automotive Cabrio (?????? 2009, ?. ??3459, ??? 17).

6 – ?????????? ??? 6?? ??????? 1995, C?62/93, BP Soupergaz (?????? 1995, ?. ??1883, ??? 18), ??? 22?? ??????? 2008, C?414/07, Magoora (?????? 2008, ?. ??10921, ??? 28), ??? ??? 28?? ??????? 2011, C?274/10, ??????? ??? ?????? (?????? 2011, ?. ??7291, ??? 43).

7 – ?????????? ??? 15?? ?????????? 1998, C?37/95, Ghent Coal Terminal (?????? 1998, ?. ??1, ??? 15), ??? 1?? ??????? 2004, C?90/02, Bockemühl (?????? 2004, ?. ??3303, ??? 39), ??? ??? 29?? ??????? 2009, C?174/08, NCC Construction Danmark (?????? 2009, ?. ??10567, ??? 27).

8 – ?????????? ??? 21?? ??????? 2000, C?110/98 ??? C?147/98, Gabalfrisa ?.?. (?????? 2000, ?. ??1577, ??? 43), ??? 29?? ??????? 2004, C?152/02, Terra Baubedarf-Handel (?????? 2004, ?. ??5583, ??? 35), ??? ??? 15?? ??????? 2010, C?368/09, Pannon Gép Centrum (?????? 2010, ?. ??7467, ??? 37).

9 – ?????????? ??? 8?? ?????????? 2002, C?409/99, Metropol ??? Stadler (?????? 2002, ?. ??81, ??? 59), ??? 11?? ??????? 2008, C?371/07, Danfoss ??? AstraZeneca (?????? 2008, ?. ??9549, ??? 26), ??? Magoora (????????????? ??? ?????????? 6, ??? 28).

10 – ?. ?????????? Magoora (????????????? ??? ?????????? 6, ??? 28), Pannon Gép Centrum (????????????? ??? ?????????? 8, ??? 37) ??? ?????????? ??? ?????????? (????????????? ??? ?????????? 6, ??? 43).

11 – ?. ?????????? ??? ??????? ??? ?????? (????????????? ??? ?????????? 5, ??? 19)

??? Magoora (?????????????? ??? ?????????? 6, ??? 29).

12 – ?. ?????????? ??????? ??? ?????? (????????????????? ??? ?????????????? 5, ??? 19), Danfoss ??? AstraZeneca (????????????????? ??? ?????????????? 9, ??? 28) ??? ??? 15?? ??????? 2010, C?538/08 ??? C?33/09, X Holding (????????? 2010, ?. ??3129, ??? 38).

13 – ?. ?????????? Puffer (????????????????? ??? ?????????? 5, ??? 83), X Holding (????????????????? ??? ?????????? 12, ??? 39) ??? ??? 30?? ?????????? 2010, C?395/09, Oasis East (????????? 2010, ?. ??8811, ??? 20). ? ?????? ??? ?? ?????? ??????? ?????? ?????????????? ??? ?????? ?????????? ?????? ??? ?????? 17, ?????????? 6, ??? ?????? ??????, ??? ??? 176.

14 – ?????? ?? ?????????????? ??? ?????? ??? ?????????? ?????? ?????????? ?????????? ??? ??? ?????? ??? ?????????? ??????????????, ?. ?????? X Holding (????????????????? ??? ?????????????? 12, ??? 40 ??? 45).

15 – ?????????? ?? 21?? ?????????? 2005, C?25/03, HE (????????? 2005, ?. ??3123, ??? 46), ??? 14?? ?????????? 2006, C?72/05, Wollny (????????? 2006, ?. ??8297, ??? 21), ??? Puffer (????????????? ??? ?????????? 5, ??? 39).

16 – ?????????? ?? 14?? ?????? 2005, C?434/03, Charles ??? Charles-Tijmens (????????? 2005, ?. ??7037, ??? 24), Wollny (????????????? ??? ?????????? 15, ??? 22) ??? Puffer (????????????? ??? ?????????? 5, ??? 40).

17 – ?????? Wollny (????????????????? ??? ?????????????? 15, ??? 33).

18 – ?????????? Charles ??? Charles-Tijmens (????????????? ??? ?????????? 16, ??? 30) ??? Wollny (????????????? ??? ?????????? 15, ??? 24, 31 ??? 33).

19 – ?. ?????????? ?? 8?? ??? 2003, C?269/00, Seeling (????????? 2003, ?. ??4101, ??? 42 ??.), Charles ??? Charles-Tijmens (????????????? ??? ?????????? 16, ??? 25) ??? Puffer (????????????? ??? ?????????? 5, ??? 41 ??.).

20 – ?????? Wollny (????????????????? ??? ?????????????? 15, ??? 34).

21 – ?????? Wollny (????????????????? ??? ?????????????? 15, ??? 35 ??.).

22 – ?. ??????, ??? 20.

23 – ?. ?????? ?? 30?? ?????? 2006, C?184/04, Uudenkaupungin kaupunki (????????? 2006, ?. ??3039, ??? 33).

24 – ?????? Puffer (????????????? ??? ?????????? 5, ??? 41).

25 – ?. ?????? Puffer (????????????? ??? ?????????? 5, ??? 42).

26 – ?????????????? ??? ?????????????? 15, ??? 37.

27 – ?????? Wollny (????????????????? ??? ?????????????? 15, ??? 37).

28 – ?????? Uudenkaupungin kaupunki (????????????? ??? ?????????? 23, ??? 30).

29 – ?, ?? ??? ?? ?????? 20 ??? ??????, ?????? Uudenkaupungin kaupunki (????????????? ??? ?????? 23, ??? 26).

30 – ?. ?????? Wollny (????????????????? ??? ?????????????? 15, ?????? 32 ??? 36).

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

32 – ?. ?? ?????? 72 ??? ?????????? ??? ??? 13?? ?????????? 2007 ??? ??????????? ?? ???
?????? ??? 10?? ??????? 2008, C?309/06, Marks & Spencer (?????? 2008, ?. ??2283).
?????????, ??? ????? Magoora (????????????? ??? ?????????? 6, ??? 44) ??
????????? ?????? ??? ?????????? ??? ?????????? ?? ?? ?????? ??? ?????? ?????????? ???
????????? ??????????.

33 – ?. ??????, ?????? 13.

34 – ?????? Puffer (????????????? ??? ?????????? 5, ?????? 85 ??? 87). ?????? ??
?? ?????? ?????????? ??? ?????????? ?????????? (standstill clause) ??? ?????? 57,
????????? 1, ???, ??? ??? ?????????? 64, ?????????? 1, ???, ?????? ?? ???
????????? ?????????? ?????????? ?????? ?????, ?? ??? ?????????? ??? 24?? ???
2007, C?157/05, Holböck (?????? 2007, ?. ??4051, ??? 41), ??? ??? 11?? ??????????
2010, C?541/08, Fokus Invest (?????? 2010, ?. ??1025, ??? 42).

35 – ?????? ??? 14?? ?????? 2001, C?40/00, ???????? ??? ?????? (?????? 2001, ?. ??
??4539, ??? 17), Metropol ??? Stadler (????????????? ??? ?????????? 9, ??? 46), ???
11?? ?????????? 2003, C?155/01, Cookies World (?????? 2003, ?. ??8785, ??? 66),
Magoora (????????????? ??? ?????????? 6, ??? 37), Danfoss ??? AstraZeneca
(????????????? ??? ?????????? 9, ??? 28) ??? Puffer (????????????? ???
????????? 5, ??? 86).

36 – ?????????? ??? ?????????? 5, ??? 87. ??., ??????, ??? ?????? Cookies World
(????????????? ??? ?????????? 35, ??? 63), ????? ???, ?? ?????? ?? ?? ???
????????? ??? ?????????? ?????????? (standstill clause) ??? ?????? 57, ?????????? 1, ?? ?
?? ?????? 64, ?????????? 1, ??? ?????? ?? ?? ?????????? ?????????? ?????????? ??????
????? ???, ??? ?????????? Holböck (????????????? ??? ?????????? 34, ??? 41) ???
Fokus Invest (????????????? ??? ?????????? 34, ??? 42).

37 – ?????????? ??? ?????????? 35, ?????? 17.

38 – ?????????? ??? ?????????? 12, ?????? 62 ??.

39 – ?. ??????, ?????? 40.

40 – ?. ?????? Magoora (????????????? ??? ?????????? 6, ??? 44). ??., ??????,
Kokott/Henze, «Das Zusammenwirken von EuGH und nationalem Richter bei der Herstellung eines
europarechtskonformen Zustands», ??: *Steuerrecht im Rechtsstaat: Festschrift für Wolfgang
Spindler*, 2011, ?. 279, 290.

41 – ?. ?????? ?????? ??? ?????? (????????????? ??? ?????????? 35, ??????
17 ??, ??? 24).