

?????? C-400/02

**Gerard Merida**

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(????? ??? Bundesarbeitsgericht ??? ??? ?????? ?????????????? ??????)

«????? 39 ?? – ?????????? ?????? – ?????????? ?????????????? ?????? ??? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? – ?????????? ?????? ?????? – ?????????? ?????? ?????? – ?????? ?????? ?????? ?????? ?????? – ?????? ?????? ?????? ?????? ?????? – ?????? ?????? ?????? ?????? ?????? »

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

(????. 39 ??- ?????????? 1612/68 ??? ??????????, ??? 7 § 4)

?? ?????? 39 ?? ??? 7, ?????????? 4, ??? ?????????? 1612/68, ??? ??? ??????????  
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??????, ?????????? ??????  
????????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??????, ?????????? ?? ??? ?????? ?? ???  
????????? ??? ??????, ??? ?????? ?? ?????????? ?????? ?????????? ?????? ?????? ??? ?????? ???  
????????? ??? ??????, ?????????? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ??????????, ??  
????????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????????? ??? ?????????? ???  
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???.

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

(?. ?????? 29-30, 37 ??? ??????.)

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

??? 16?? ?????????? 2004 (\*)

«????? 39 ?? – ??????? ?????? – ??????? ?????????????? ??????? ??? ???? –  
????????? ?????????? ??? ?????????? ??????? ??? ??????? – ?????????? ?????????? –  
????????? ??? ?????? ?????????? ??? ?? ????? ?????????? – ?????????? ???  
????????? ?????????? ??? ?????? ?????????? »

???? ?????? C-400/02,

?? ?????????? ?????? ?????? ?????????? ?????????? ?????? ??? ?????? 234 ??,

??? ?????? ?????? ?? Bundesarbeitsgericht (?????????), ?? ?????? ??? 27?? ?????? 2002,  
??? ?????? ??? ??????????

### **Gerard Merida**

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**Bundesrepublik Deutschland,**

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

????????? ??? ??? C. W. A. Timmermans, ?????? ???????, J.-P. Puissochet, J. N. Cunha  
Rodrigues (?????????), R. Schintgen ??? N. Colneric, ???????,

????? ??????????: C. Stix-Hackl

?????????: M.-F. Contet, ?????? ?????????? ??????????,

????????? ??? ?????? ?????? ?????????? ??? ??????????:

- ? G. Merida, ?????????????? ??? ??? F. Lorenz, Rechtsanwalt,
- ? Bundesrepublik Deutschland, ?????????????? ??? ??? W.-D. Plessing, ??????????????  
??? ??? E. H. Neuert, Rechtsanwalt,
- ? ?????? ??? ?????????? ???????????, ?????????????? ??? ??? G. Braun, R. Lyal  
??? D. Martin,

???? ?????? ?? ?????? ?????????? ??? ?????? ??? ?????????? ??? ??? ?? ??????????  
??? 5?? ?????????? 2004,

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

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1 ? ?????? ??? ??? ?????? ?????????????? ?????????? ??? ?????? ??? ?????????? ??? ??????  
39 ??.

2 ? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? G. Merida, ??????  
??????, ??? ??? Bundesrepublik Deutschland (????????????? ?????????? ??? ??????????)  
?? ??? ??? ?????????? ??? ?????????? ?????????????? ??????????????

(Überbrückungsbeihilfe, ??? ????: ?????????? ????????) ??? ? ?????????? ?????????? ???  
????????????? ?? ??????? ??? Tarifvertrag zur sozialen Sicherung der Arbeitnehmer bei den  
Stationierungsstreitkräften im Gebiet der Bundesrepublik Deutschland (????????? ?????? ???  
??? ?????????? ?????????? ??? ?????????? ????? ?????????????? ??? ?????? ???  
????????????? ?????????? ??? ?????????? ?????????????? ???), ??? 31? ??????????  
1971 (??? ????: TV SozSich).

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

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

3. ??? ?? ??? 7 ??? ?????????? (???) 1612/68 ??? ??????????, ??? 15? ??????????  
1968, ??? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ??????????  
(?? ????. ????. 05/001, ?. 33):

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

[...]

4. ??? ??? ?????? ?????????? ? ?????? ?????????? ? ?????? ?????????? ?????????? ???  
????? ??? ?????????? ?? ??????????, ??? ??????????, ??? ?????? ??? ?????? ?????? ???  
????????? ??? ??????????, ??? ????? ?????????? ??? ?????? ??? ?????? ??? ??????????  
????????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?????????? ?????? ???  
?????.

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

4. ? TV SozSich ?????? ??? ??? ??? 4 ?????? ?? ?? ?????????? ?????? ?? ???:

«1. ?????????? ?????? ??????????:

[...]

b) ?? ?????????? ??? ?????? ??? Bundesanstalt für Arbeit (????????????? ??????????  
????????) ??? ?????????? ??? ?????? ?????? ??? ?????? ?????????????? ??????????????  
(????????? ?????????, ?????????? ?????????? ??? ?????? ?????????, ?????? ??????????????),

[...]

3. a) (1) ? ??? ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ??????????  
??? ?????? ??? ?????? ?????????? (?????? 1a) ?????? ? ?????????? ??? ?? ??????????  
?????? ?????? ????, ??? ????? 16, ?????? 1a, ??? [Tarifvertrag für die Arbeitnehmer bei  
den Stationierungsstreitkräften im Gebiet der Bundesrepublik Deutschland (?????????  
????????? ??? ?????? ?????????? ??? ?????????? ?????????? ?????? ?????????? ???  
????????????? ??? ?????????? ??? ?????????? ?????? ?????????? ?????????? ???), ??? 16? ??????????  
1966 (??? ????: TV AL II)], ??? ?????? ?????????? ? ?????? ?????????? ??? ??????  
????????? ??? ??????????, ??? ??? ????? ?????????? ???, ??? ?????? ?????????? ???, ???  
????????? ??? ?????? ??? ?????? ?????????? ??? [...].

[...]

3. b) ? ????? ?????????????? ??? ?????????????? ?????????????? ??? ?????????????????? ?? ?????????????? ???  
????????? ??? ?????????????? ?????????????? ?????????? (?????? 1 b) [...] ????? ? ??????????????  
??? ?? ?????????????? ?????? a ??? ??????????????, ?????????? ??? ?? ?????????? ??? ??  
?????? ??????????. ??? ?? ?????????????? ?????????? ??? ?????? ?????????? ?????????? ??? ??  
??? ?????????? ?????????? ?????? ?? ?????????? ??? ?????? ?? ?????????? ?? ?????? ??  
??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????????? ??? ?????????? ?????????? ???  
????????? ?????? –????? ?????? ?? ?????????? ?????? ?? ?????????? ?????? ??  
??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? (Lohnsteuerkarte).

4. ?? ?????????? ??????? ??????????:

- ??? ?? ?????? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????? ??? ?? 100 %,
- ??? ?? ??????? ??? ?? ??? ??, ??? 90 %
- ??? ??????? ??? ?? ?????? ??? ?? ?????? ?????????? (?????? 3 a ? b) ??? ?? ?????? ???  
?????? 1 ??? 2 ??? ???.

?? ?? ?????????? ??????? ?????????????? ?? ?????????? ??? ?????????? ??? ??????????????  
????????? ?????????? ? ??? ??????? ?????????? ?????????? ? ?????????? ? ?????????? ???  
????????? ?' ??? ?? ??????? ?????? ??? ?? ??? ?????? ??? ?????? ?????? ?????? ?????? ??????.

[...]»

5. ??????? ?? ?? ?????? 2 ??? Erläuterungen und Verfahrensrichtlinien zum TV SozSich –  
Neufassung 1992 (????????????????? ?????????????? ??? ?????????????? ?????????????????? ??????????  
????????? ?? ?? ?????????? ??????– ??? ?????????????? ?? 1992, ??? ????:  
????????????? ?????????? ??? ?????????????? ??? ?????????????? ???):

«??? ??? ?????? 4, ?????? 1:

2.6.5 ?? ??????? ??? ???????, ??? ?????? ??? ?????????? ?????? ?????????????? ?????????????? ??????????????  
??? ???? ??? ?????????? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???,  
????????? ???' ??? ?? ??? ?????? ??? ?????????? ?????? ?????????? ?????????? ??? ?????????? ??? ??  
????????????? ?????????? ?????????? ??? ?? ??? ?????????? ?????????? ??? ?? ?????????? ??? ??  
????????? ??? ?????????? ?????? ??????.

[...]

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

[...]

2.8.5 ?? ? ???????????, ??? ??? ?????? ??? ??????????, ??? ?????????????? ??? ?????  
????????? ?????????? ???' ?????????? ?????????? ??? ?? ?????? ??? ?????? ??? ?????????? ??????????????  
????????? ???, ??? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ??  
????? 3 b, ?? ?????????????? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??  
????? ?????????????? ?????????? ?????????? ?????????? ??? ?????????? ??? ??????.

[...]

??? ??? ?????? 4, ?????? 4:

[...]

2.9.4 ?? ? ??????????? ?????????? ?????????? ??? ??????? 2.6.5 ?????????? ?????????? ??  
?????????? ??? ??????? ?????????? ?????????? ?????????? ???????????, ??? ?? ??? ??  
????????? ?????????? ?????????? ?????????? ?? ??? ?????? ??? ?????????? ??? ??  
????????? ?????? ??? ?????? ?? ??? ?????? ?????????? ?? ??? ?????? ??? ?????? ??? ??  
??? ?????? ??? ?????????? ?????????? ?? ? ?????? ??? ?????? ?????? ?????? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????????? ?? ?? ?????? 5.»

6      ? ??????? ?? ?? ?????? 5 ??? TV SozSich, ?????? ??????? ?????? ?????? ??? ??????????????  
??? ?? ?????? 4, ?????? 1, ??? ?????? ? ??????? ??????????, ?????????? ?????? ??? ??  
????????? ??? ?????????? ??????????.

7      ? ??????? ?????? ??? ??????? ?????????? ?????????? ??? ?? ?????????????? ??????????????  
??? ??????? ??? ??? ?????? ??? ?????? ?????????? ??? ?? ??????? ?????? ??????????  
????????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????????? ???  
?????????, ?? ??? ??? ??? ??????????????, ??? ?????? ??? 21 ?????? 1959 ???  
????????????? ??? ?????? (??? ????: ???), ??? ?????? ??? 14, ?????????? 1, ?????? ??  
????:

«?? ????, ??? ?????? ??? ??????? ???????, ??? ?????? ??? ?? ???????, ??? ??????????????  
??? ??? ??? ?????????? ??? [...] ?? ?????? ??????? ??? ?????????? ??? ??? ??? ??????  
??? ??????? ? ?????????? ??? ?????? ?????? ??? ?????????? ??????????, ??????????????  
???? ??? ??? ?????? ??????. ??????, ? ?????? ??? ?????? ?????? ??? ?????????? ?????? ?? ??????  
????????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ??  
????? ?????? ??? ?????? ?????? - ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ???  
??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

8      ? G. Merida ?????????? ?? ??? 30 ?????????? 1999 ?? ?????????? ?????????? ???  
????????????? ??? Baden-Baden (?????????) ?????????? ?????????? ???????, ??? ??  
????????? ??????. ? TV AL II ??? ?????? ??????? ??? ?????? ?????????? ??? ?????????????? ???  
?? ?????????? ??? ?????? ?????? ?????? ??? ?????? ???' ?????? ??? ?? ?????? ??? ?????? ???  
????????? ???.

9      ?????? ?? ?? ?????? 14, ?????????? 1, ??? ???, ? ?????????? ?????? ??? ??????  
????? ? G. Merida ??? ??? ?????????? ??? ?????????? ??? ?????????? ???, ??? ??? ?????????? ???  
????? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???, ?????????? ??? ???  
?????. ?????? ? ?????????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ???  
????? ??? ?????????? ??? ???????, ? G. Merida ??? ?????????? ?????? ?????? ?????? ???  
????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ??? ???  
????????? ??? ?????????? ??? ?????? ??? ?????? ???.

10     ??? ?? ??? ??? ?????????? ??? ???????, ? G. Merida ?????? ?????????? ???????  
????? ?? ?? ?????? 4 ??? TV SozSich. ?????????? ?? ??? ?????????? ??? ?????? ??? ??????????  
?????, ?? ?????????? ???, ?' ??? ?????????? ??????????, ?????????? ??? ??? ??????  
????? ??? ?????????? ??? ??? TV AL II, «??? ?????????? ? ?????????? ??? ???  
????????? ??? ?????????? ??? ??? ?????? ?????? ?????????? ???», ??? ??? ?? ??? ???  
????????? ??? ?????????? ?????????? ???, ??? ?????? ??? ?????????? ??? ?????????? ???.

?????????. ???????, ???' ???????? ??? ?????????? ??? ?????? 5 ??? TV SozSich ??? ???  
?????? 2.9.4 ??? ?????????????????? ?????????? ??? ?????????????????? ???????, ??  
????????? ??? ????? ?????????? ??? ?? ?????????????? ??? G. Merida ?????????? ??????? ??  
???? ??? ?????????? ??? ?????? ??? ? ?????????? ?????? ??? ?????? ?????? ??? 22??  
????????? ??? ??? ?????? ??? ?????? ?????? ??? ?????? 2000.

11      ????. ????. G. Merida, ? ??????????? ?????????? ????. ??????????? ??????. ??????????  
????????? ????. ????. ??????, ??????????? ?? ?????????? ? ?????? ?????????? ????.  
????????? ???????????, ?????? ??????????. ???????????????, ??????? ?? ?? ???, ?? ??????  
????? ???????????, ????. ????. ??????? ???, ?? ??????????, ?????????? ?????????? ??????????  
????? ????????????. ? ??????????? ??????????? ????. ?????????? ?????? ???' ??????? ???  
????????? ??????????? ??????? ??????????? ?? ?????????? ?? ?????? ????. ????.  
?????????, ????. ????. ????. ??????????? ????. ????. ??????????? ????. ????. ????. ????. ? ??????  
????????? ????. ????. ??????????? ????. ??????????????? ????. ????. ??????. ????. ????.  
????????? ????. ????. ???????????, ?????? ?????????? ????. ????. ????. ??????. ????.

12      ????? ?? ?????????????? ??? ?? ????? ?????????????? ?????????????? ?????????????? ??? ??????????  
??? G. Merida, ? ??????? ??????? ??????? ?????????????? ??????? ??? ?????????????? ??????????????.

13 ??????? ?? ?? ??????????, ?????????????? ?? ?????? ??????, ?? ??????????????  
?????????? ??????? ?? ??????? ??? ??????? ??? ?????? ??? ??????????. ?? ??? ??????  
???? ?????????? ?? ?????????? ??? Bundesarbeitsgericht, ??????? ?? ??? ??????  
?????????? ??????? ??, ?? ??? ?????????????? ?? ?????????? ???????????, ??????? ??  
?????????? ??? ?? ?????? 4, ?????? 3, ??????? b, ??? TV SozSich. ??????, ?  
?????????? ?????????? ?? ?????????? ?? ?????????? ?????? ?? ?????? ??????, ???????????, ???  
????????? ??? ?????????? ??????????, ?????? ??? ????? ?????????? ??? G. Merida, ???' ???  
?? ?????? ?????????? ??? ??????????? ??? ??????.

14      ???????, ??? ??????? ?? ?????????????? ??? ?? ??????????? ??????? ?????????? ?? ???  
 39 ?? ??????????? ??????????? ????, ??? ???? ?? ????? ??????????? ????? ?? ????? ???????  
 ??????? ???????????, ??? ?????????? ??? ?????????? ??????????? ??????????? ?? ??????????? ?  
 ??? ??????????? ??? ?????????? ??????????.

15 ?? ?????? ?????????? ?????????? ??????? ? G. Merida ?????? ??? ????? ???  
????????? ?????????? ??? ????? ???, ???, ??? ????? ??? ?????? ??? ?????????? ???  
????????? ?????????? ??? ?????????, ?????????? ??? ?????????? ??? ?????? ??? ??????????  
??? ??? ?????? ??? ?? ?????? ?????????? ?????? ??? ?????? ??? ?????? ?????? ???  
????????? ??? ?????? ??? ?? ?????????? ?????? ??? ?????????, ?????? ?????????? ??  
????? ?? ?????????? ?? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??  
????????? ??? ?????????? ?? ??? ?????? ?????? ??? ?????, ? ?????? ?????????? ??? ?????????? ??  
????????? ??? ?????? ?? ?? ?????????? ?????? ??? ??????. ????????, ?????????? ??????????  
?? ?????????? ??? ?????? ??? ?????? ???, ?????? ??? ?????? ?????????? ??? ?? ?????? 39 ??.

16 ?? ??????? ??????????? ?????????? ??? ? ??????????? ??? ??????????? ??? ??????????? ??? ???????????  
? ??????????? ?????????? ??? ?????????? ??? ?????????? ??? G. Merida ??? ??? ?????? ??? ??????????  
??? ??????? ???????, ??? ???????????????, ??? ??? ?????????? ??? ??? . ? ???????????????  
?????????? ??????? ??? ??? ??? ??? ??? ??? ? ??? ??????????? ??? ??????????? ??? ??????????? ???  
?????????? ??? ??? ??? ??????????? ??????????? ??? ??????????? ??? ????? ??? ????? ???????????  
?????????? ??? ??? ???' ?? ??? ??? ??????????? ??? ??????????? ??? ??? ????? ????? ???????????  
??????????.

17 ??????????, ?? Bundesarbeitsgericht ??????? ?? ?????????? ?? ?????????? ?? ??  
????????? ?? ?????????? ?? ?????????? ?????????? ??????:

«????????? ??????? ?? ?????? 39 ?? ?? ??????? ???, ??? ?? ?????????? ?? ?? ??????  
????????? ?? ?????????? ?????????? ?????? ?????????? ?? ?? ?????? 4, ?????? 1, ??????  
b, ??? TV SozSich (????? 4, ?????? 3, ?????? b, ?????? ??????, ??? TV SozSich),  
????????? ?? ??? ? ?????????? ?????????? ?????? ?????? ?????????? ??????????, ?? ? ??????  
????????? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???;»

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

18 ?? ??? 39 ?? ?????????? ??? ?????????? ??? ?????? ?????????? ?? ?????? ?? ?? ??????????  
?? ?????? ????, ??? ?????? ??? ??????????, ??? ?????? ?? ?????? ?? ?? ?????? ?? ??  
?????????.

19 ??????, ?? ??? 7, ?????????? 4, ??? ?????????? 1612/68, ?? ??? ??????????????  
?? ?????? ?? ?????????? ?????????? ?????????? ?? ?? ?????????????? ?????????????? ??????  
?? ?? ?????? 39 ?? (?????? ?? 15?? ?????????? 1998, C-15/96, Schöning-  
?????????????, ?????? 1998, ?. I-47, ??? 12), ?????? ?? ?????? ?????? ??????????  
????????? ?? ?????? ?????? ??? ??????, ?????? ?? ?????? ?????? ?????? ?????? ??????  
?????????, ????? ?????????? ??? ?????? ?? ?????? ?? ?????? ?????? ?????? ?????? ??? ??????  
????????? ?????? ??? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??????  
????????? ?????? ??? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???.

20 ??? ?????????????? ??? ?? ??????, ??? ?? ?????????? ???????, ??? ?????????? ????  
?? ?????????? ??? ?????????? ??? ?? ?????????? ?? ?????? ?????????? ??????????, ??? ?????? ???  
??' ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????????? ????  
?? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? G. Merida ?????? ??  
????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ?????????? (??.,  
?? ??? ?????? ???, ?????? ???, ??? ?????? ??? 24?? ?????????? 1998, C-35/97,  
????????? ??? ??????, ?????? 1998, ?. I?5325, ?????? 36, 40 ?? 41).

21 ??? ??? ?????? ?????????? ??? ?????????? ?, ??? ?? ?????? ??? ?????????????? ???  
????????? ??? 39 ?? ??? ?? ?????? 7 ??? ?????? 1612/68,  
????????? ??? ?? ?????? ??? ?????????? ?????? ?????? ??????????, ??? ?? ?????? ????  
????????????? ??? ??????????, ? ????, ???' ?????????? ??? ?????? ?????????? ??????????,  
????????? ??? ?????? ??? ?????? ?????? (??., ?????? ???, ?????? ??? 23?? ????  
1996, C-237/94, O' Flynn, ?????? 1996, ?. I-2617, ?????? 17).

22 ? ??? ??? ?????????? ??? ?????????? ?????????? ??? ?????? ?? ???  
????????????? ??? ?????????? ?????????? ??? ?????? ?????????? ??? ?????? ?? ???  
????????????? ??? ?????????? ??? ?????? ???' ?????? (??., ?????? ???,  
????? ??? 17?? ?????? 1997, C-354/95, National Farmers' Union ??., ?????? 1997, ?. I-  
4559, ?????? 61).

23 ??? ?????? ??? ?????? ??? ??????, ? ???? ??? ?????? ?????????????? ??????????????  
?? ?????? ??? ?????? ?????? ?????? ??????, ?????? ?? ?????? ??? ?????????? ??? ??????  
????????? ??????????, ?????? ???, ??? ?? ??? ???, ?? ?????? ?????????? ??? ??????  
????????????? ?????????? ??' ?? ?????? ?????????? ?????????? ??? ?????? ??????, ??????,  
?? ?????? ?? ?????? ?? ?????????? ?????? ?????? ?????? ?????? ?????????????? ?????? (??.,  
????? ???, ?????? ?????? O'Flynn, ?????? 20).

24 ?? ??????????, ? ???? ??? ??? ?????? ?????????? ?????????? ??? ??? ?????? ???

????????? ?????????? ??? ??????????? ??? ?????????????? ?????????????? ??????????, ? ?????????????  
????????? ??? ?? ??? ????? ??? ????? ?? ?????????? ??? ?????? ?????????????? ??? ??????????  
????????????? ?????????? ?? ???????, ??? ? G. Merida, ?????????? ??? ??????????????  
????? ?????? ?????? ?????? ?????? ??? ?????????????? ?????????????? ??? ??????????, ??  
????? ?? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??? ?????????????? ???  
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25 ??? ?????????? ??? ???????????, ? ??? ?????????????? ??? ?????????????????? ??? ???  
????????? ??? ?????? ??? ??????????? ?????????? ?????????????? ??? ?????? ?????? ???  
?? ??? ?????? ??????????? ?????? ?????? ???, ?? ?????????? ?? ??????????, ??  
????????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? ??? ?????? ??????????. ??  
????????? ??? ?????????????? ???????????, ?? ??? ?????????? ?????????? ??? ?????? ???  
????????? ?????????? ???????????, ?? ??? ?????? ?????????? ?????? ???' ?????????? ???  
????????? ?????????? ???????????, ?? ??? ?????? ?????????? ?????? ??? ?????????? ???  
????????? ?????????? ??????????? ??? ?????? ??? ?????????? ??? ?????????? ???.

26 ??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???  
????????? ??? 100 % ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???  
????????? ??? (????????? ??? ?????? 4, ?????? 3, ?????? b, ??? TV SozSich). ??  
????? 4, ?????? 4, ?????? ???????, ??? TV SozSich ?????????? ?????????? ??? ??????????????  
???? ?????????? ???????????, ?????????? ??? ?????? ??? ?????????? ?? ?????????? ??? ?????? ??  
????????? ???????, ??? ?????? ??? ?????????? ??? ?????????? ?????????? ??? ?????????? ???  
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27 ????, ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???,  
?? ?????????? ??? ?????? ??????????? ??? ?????????? ??? ?????????? ??? ?????????? ?? ??? ??  
?? ?????????? ?? ??????????? ??? ??????.

28 ????????, ??? ?????? ??? ?????????????? ??? ?????????????? ??? ?????????????? ???  
????????? ??? G. Merida, ? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ???  
????? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???  
????????? ?? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??  
????????? ??? ?????? ?????????? ??? G. Merida ??? ?????? ?????? ??? ?? ???  
14, ?????????? 1, ??? ???.

29 ??? ?? ?????????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???  
????????????? ??? ???????????, ?? ?????????? ??? ?????? ?????????????? ??? ??????????????  
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30 ???, ?? ?? ??? ???????????, ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???  
????????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?? ???????????.  
????????, ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????????? ??  
?? ?????? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???  
?? ?????? ?? ?????????? (??., ?????? ???, ?????? ??? 15? ?????????? 2002, C-  
55/00, Gottardo, ?????? 2002, ?. I-413, ????? 38).

31 ??? ??? ??' ?????????? ??? ???????, ? ?????????? ?????????? ??? ?????? ??? ?? ??? 4,  
????? 4, ?????? ???????, ??? TV SozSich ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ??  
??? ?????? ??? ?????????? ??? ?????? ??? G. Merida ?????? ?? ?????????? ???  
????????? ?? ??? ?????? ?????????? ???, ?????????? ???, ?? ?????????? ??? ?????? ???  
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?????, ??????????? ??? ?????? ??? ?????? ??? ?????? ??? ???????????????.

32    ??????, ?? ??????? ??? ???? ??? ?????? ??? ?????????????? ?????? ??? ???????  
?????? ?????????? ?????????????? ?? ??? ?????? ??? ?????? ??? ?????? ??????????????, ??  
?????? ??? ??? ??? ?????? ?? ?????????? ?? ?????????? ?????? ?? ?? ?????? ? ??????????  
???? ??? ??? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ???  
??? ?????????? ??? ?????????? ??? ?????? ?????? ??? G. Merida.

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

34    ??????, ??? ?????????????? ??? ??? ?????????? ?????? ?????? ?????? ??? ?????? ???,  
???? ?? ??? ??? ? ?????????? ??? ?????????? ??? ?????????? ?????? ?????????? ?????? ??????????  
????????? ??? ?????? ?????????? ?????? ?????? ??? ?????????? ?????? ??? ?????? ??? ??????  
Merida ?????????? ?????????? ?? ?????????? ?????? ?? ?????????? ?????? ??? ?????? ??? ??????  
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????????, ??? ?? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??  
????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ???.

35    ???, ??? ?????????? ??? ?????????? ?????? ?????????? ??? ?????????? ??? ??????????  
????????? ??? G. Merida, ??? ? ?????????? ?????? ??? ?????????? ?????????? ??????????  
????????? ??? ?????? ?????????? ?????? ??? ??????????, ??? ?? ?????? ??? ?????? ??? ??????  
????? ??? ??? ?????? ??? ?????? ???????, ? ?????? ??? ?????? ?????? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
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36    ??? ? ?????????? ?? ?????? ?????? ?????????? ?? ?????????? ?????? ??? ??????????  
????? ?????????? ?? ??? ?????? ?????????? ??? ?????????? ?????? ??????????, ?? ??? ?????? ??????????  
?? ?????? ?????? ?? ?? ??? 14, ?????????? 1, ??? ???, ?????? ?? ?????? ??????????  
?? ?????????? ??? ?????? ?????? ?????? ??????, ? ?????? ??? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????????? ??? ??????????  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????? ??? ??????????

37    ??? ??? ??????? ??????, ??? ???????? ?????? ?????? ?? ?????? ?? ??????? ??? ??  
????? 39 ?? ??? 7, ?????????? 4, ??? ?????????? 1612/68 ?????????? ?????? ??????????  
????????? ?????????? ?????? ?????????? ??????, ?????? ?? ??? ?????? ?? ?????? ??  
????? ?????? ?? ?????? ?? ?????? ??????, ?? ????? ?????????? ??? ?? ?????? ??  
????????? ??????, ?????????? ?????? ?????? ?????? ?????? ?? ?????????? ?????????? ?  
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????????? ??? ?? ?????? ??????, ???, ?????? ?? ??? ?????? ?????? ??? ?? ?????? ???  
????? ??????????, ?? ??????, ?????? ??? ?????? ??????, ??? ?????????? ?????? ???  
????????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????????? ??????, ?????????? ???  
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38    ?????????? ??? ? ?????? ?????????? ??? ?? ??? ?????? ?????? ?????????? ???  
??? ?????????? ?????????? ??? ?? ?????? ?????? ?????? ??? ?????? ?????????? ???, ?' ???  
????????? ?' ?????????? ??? ?? ?????? ?????? ??????. ?? ?????? ??? ?????? ??????????  
????, ?????? ??? ?? ??? ?????? ??????, ?????????? ?????????? ??? ?????????? ???  
?????????.

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

?? ??? 39 ?? ??? 7, ?????????? 4, ??? ?????? (???) 1612/68 ??? ??????????,  
?? 15?? ?????????? 1968, ??? ?? ?????? ?????? ?????????? ??? ?????????? ???  
????????? ??? ??????????, ?????????? ?????? ?????? ?????????? ??????  
????????? ??? ?????? ?????? ?????? ?????? ?????? ?? ??? ?????? ?? ?????? ??????????  
????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? (Überbrückungsbeihilfe),  
?? ??? ?????? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????????? ??? ?????????? ???  
????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?? ???  
?????????, ???, ?????? ?? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??????????,  
?? ??????, ?????? ??? ?????? ?????? ??????, ??? ?????????? ?????? ?????? ??????????  
????????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ??????, ?????????? ???  
????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ??????.

(?????????)

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