

C-384/04

Commissioners of Customs & Excise v Attorney General

v

Federation of Technological Industries Ltd.

[Court of Appeal (England & Wales) (Civil Division)]

[Case summary]

«The applicant, a company, was granted a licence to import and sell in the United Kingdom certain types of electronic equipment which were subject to a special licence scheme. The respondent, the Commissioners of Customs and Excise, sought to enforce the provisions of the Customs and Excise Act 1951, which required such licences to be held by the importer. The applicant argued that the provisions were ultra vires. The House of Lords, by a majority of 3 to 2, held that the provisions were valid. The majority considered that the provisions were necessary to ensure the proper collection of customs duty and that they did not interfere with the applicant's fundamental rights. The dissenting minority considered that the provisions were disproportionate and therefore ultra vires. The majority's decision was affirmed by the House of Lords.»

Case summary of M. Poiares Maduro 2005

Case summary (???) 11?? 2006

Case summary

1. The applicant, a company, was granted a licence to import and sell in the United Kingdom certain types of electronic equipment which were subject to a special licence scheme. The respondent, the Commissioners of Customs and Excise, sought to enforce the provisions of the Customs and Excise Act 1951, which required such licences to be held by the importer. The applicant argued that the provisions were ultra vires. The House of Lords, by a majority of 3 to 2, held that the provisions were valid. The majority considered that the provisions were necessary to ensure the proper collection of customs duty and that they did not interfere with the applicant's fundamental rights. The dissenting minority considered that the provisions were disproportionate and therefore ultra vires. The majority's decision was affirmed by the House of Lords.

(Case summary 77/388, section 21 § 3)

2. The applicant, a company, was granted a licence to import and sell in the United Kingdom certain types of electronic equipment which were subject to a special licence scheme. The respondent, the Commissioners of Customs and Excise, sought to enforce the provisions of the Customs and Excise Act 1951, which required such licences to be held by the importer. The applicant argued that the provisions were ultra vires. The House of Lords, by a majority of 3 to 2, held that the provisions were valid. The majority considered that the provisions were necessary to ensure the proper collection of customs duty and that they did not interfere with the applicant's fundamental rights. The dissenting minority considered that the provisions were disproportionate and therefore ultra vires. The majority's decision was affirmed by the House of Lords.

(Case summary 77/388, section 21 § 3, section 22 § 8)

1. The applicant, a company, was granted a licence to import and sell in the United Kingdom certain types of electronic equipment which were subject to a special licence scheme. The respondent, the Commissioners of Customs and Excise, sought to enforce the provisions of the Customs and Excise Act 1951, which required such licences to be held by the importer. The applicant argued that the provisions were ultra vires. The House of Lords, by a majority of 3 to 2, held that the provisions were valid. The majority considered that the provisions were necessary to ensure the proper collection of customs duty and that they did not interfere with the applicant's fundamental rights. The dissenting minority considered that the provisions were disproportionate and therefore ultra vires. The majority's decision was affirmed by the House of Lords.

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Federation of Technological Industries ?..?,

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U. Löhmus ??? A. Ó Caoimh, ?????????,

????????? ??????????????: M. Poiares Maduro

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5?? ????????????? 2005,

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– ? Federation of Technological Industries ?..?, ?????????????????????? ??? ?????? A. Young,
barrister, ??? D. Waelbroeck, avocat,

– ? ?????????????? ??? ?????????? ?????????????, ?????????????????????? ??? ??? C. Jackson,
????????????????????? ??? ?????? J. Peacock, QC, ??? T. Ward, barrister,

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– ? ??????????, ?????????????????????? ??? ??? D. J. O'Hagan, ?????????????????????? ??? ??? G.
Clohessy, SC, ??? ??? ?. Conway, barrister-at-law,

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ten Dam,

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1 ? ??????? ?????????? ?????????????????? ?????????????? ?????? ??? ?????????? ??? ??????? 21,
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17?? ?????? 1977, ?????? ?????????????????? ??? ?????????????? ??? ??????? ??????, ??? ?????????? ??
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2000/65/E? ??? ??????????????, ??? 17?? ?????????????? 2000 (?? 2000, L 269, ?. 44), ???
2001/115/E? ??? ??????????????, ??? 20?? ?????????????? 2001 (?? 2002, L 15, ?. 24) (??? ??????:
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2 ? ?????? ????? ?????????????? ??? ?????????? ?????????????? ?????????????? ????? ?????????????? ?????????? ????? ?????????? («judicial review») ??? ?????????? 53 ?????????? ??? ?????? ??? ?????????? ?????????????? ??? ??? ?????????????????? ?????????????????? ??? ? ?????????????????????? ?????? ??????, ? Federation of Technological Industries (??? ?????: ??????) ????? ??? Commissioners of Customs & Excise ??? ??? Attorney-General (??? ?????: Commissioners), ?????????? ?? ?? ?????????? ????? ?? ?????????????? ?????????? ??? ?????????????? ??? ?????????? 17 ??? 18 ??? ?????????????????????? ??????? ??? 2003 (Finance Act 2003), ?? ?????????? ?????????????????? ??? ?? ?????????????????????? ? ?????????????????????? ??? ?????????????????? ??? ?????? ?????????????????????? ?????? (??? ?????: ???).

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3 ?? ?????? 21 ??? ?????? ?????????? ?????????? ???:

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?) ??? ??? ?????????????????? ?????? ?????? ?????????? ?????? ??? ?????????? ?????????????????? ?????????????????? ??? ?????????????????? ??? ?? ?????? 9, ?????????????????? 2, ?????????????? ??, ? ??? ??? ?????????? ??? ?????????????????????? ?? ?????????? ?????????????????????? ?????????????? ??? ??? ?????????????????? ??? ?????????, ?????? ??? ?????????? ?????????????????? ??? ?????????????????????? ??? ?? ?????????? 28?, ?????????? ?, ?, ? ??? ??, ??? ?? ?????????????????? ?????????????????? ??? ?????????????????? ?????? ?????? ?? ?????????????????????? ??? ?????????????????? ??????????.

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(1A) ?????? ?? ?????????? ?????????? ??? ?? ?????????????? ?? ?????????? ??????, ??
Commissioners ?????????? ?? ??????????, ?? ?????????????? ?????????????????? ?????????????? ???, ??
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(2) ?????? ?? ?????????? ?????????? ??? ?? ?????????????? ?? ?????????????? ??????, ??
Commissioners ?????????? ?? ?????????? ??? ?? ?????????????? ?????? ?????, ?? ?????????????? ??? ??
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a) ??? ?????? ??? ?????????????? ?????? ?????, ?

(b) ????? ?????????? ?? ?????? ?????????? ? ?? ?????? ?????????????? ?????????? ?????? ? ??????????????

(3) ?? ??? ??? “????????? ?????? ??? ??????????” ????? ?????????? ????????????? (2) ?????????? ??
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(4) ?? ?????? ??? ?????? ??? ? ?????????? ?????????????? ??? ?????? ??? ?????????????? (2) ?????????????? ??
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(5) ?? ?????????????????? ??? ?????????????????? ?????? Commissioners ?? ??? ?????????? ?????????????
(2) ??? ?????????? ??? ?????? ?? ?????? 48, ?????????????? 7, ?????????????????? ?????.»

6 ?? ?????? 77A ??? VAT Act 1994, ?? ?????? ?????????????? ?? ?? ?????? 18 ???
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(1) T? ?????? ?????? ?????????????????? ??? ?????????? ??? ?????????????????????? ?? ??? ??? ??? ??????
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(a) ?????????????????? ?????????????? ??? ?????? ??????????????, ?????????????????????? ?????????????? ??????
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(b) ?????????????????? ?????????????????? ??? ?????? ??????????????, ?????????????????????? ??????????????
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(2) ?????????:

(a) ?????????????????????? ?????????????????? ?????????? ?????????? ??? ?????? ?????????????????? ?? ??????
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(b) ?????? ?? ?????? ??? ??????????????, ? ?????????????????? ?????? ?????? ?????????? ? ?????? ??????????
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?? Commissioners ?????????? ?? ??? ?????????????????? ?????????? ?????????? ?? ?? ?????? ?????????????? ??
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(3) ? ?????? ?????????? ?????????? ?????????? ?????? ?? ?????? ?????? ?????? ?????? ????:

(a) ?? ?????????? ??? ?????? ?????????????? ?? ?????????? ???

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

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(4) ?????? ??? ?????????? ?????????????? (2), ?? ?????????????????? ?????? ??? ??? ?????????????? ?????????? ?????? ?? ?????????????? ?? ??? ??? ?????????????? ??????:

(a) ?? ?????? ?????? ??? ?????????????? ??? ??? ?????????????? ?????????? ?

(b) ?? ?????? ??? ?????????????????? ?? ?????????????????? ??? ?????????? ??? ?????????????????? ??? ??? ?????? ?????????? ?????????????????? ?????????????????? (??? ?????????????????? ??????????), ?????????????????????? ?????????????????????? ?????????? ?????? ??? ?????? ?????????????????? ?? ?????????????????? ??? ?????????? ??? ??? ?????? ?????????????? (?? ??? ?????????????????? ??? ?? ?????????? ??? ?????????????????? ?????????????????????? ?????????????????? ? ?????????? ??????).

(5) ? ??????????, ?????? ?????????????? 4, ?????????????? b, ??????????, ??? ?????????????? ?????? ?? ?????????????????????? ??? ??????????, ?????????????????????? ??? ??? ?????????????????? ?????? ?????? ?? ?????? ??? ?????????????????????? ?????? ??????????, ?????? ?????? ?????? ?????????????? ??????????..

6) ?????? ??? ?????????????? 2 ??????????, ?????????????????? ??? ??? ?????????????? ?????????? ? ?????? ?????????????? ?????????? ?? ?????????????????? ?? ?????????????????? ??? ?????????????? b ??? ?????????????? ?????????????????? ?? ?? ?????????????????? ??? ?????? ?????????? ??? ?? ?????????? ??????:

a) ?????? ?????????????????? ??? ?? ?????????????????? ?????? ??? ?????? ?? ?????????????? ?????????? ?? ?????????????? ??? ?? ?????????????????? ??' ?????? ?????? ?????????????? ??????,

b) ?????????????????? ??? ?????? ??? ?????? ?????????????????? ?? ?????????????????????? ?????????????????? ??? ?????? ??????????

(7) T? ?????????????????????? ?????? ?????????? ?????????????? 6 ?????????????? ?????? ?????????? ??? ?????????? ?????????? ?????????????????? ??? ?? ?????????? ?????????? ??? ?????????????????? ?????? ?????????????????? ?????? ?????????????????? ?????? ?????????????????? ?????? ??????.

(8) ? ?????????? ?????????????????? (6) ??? ?????????????? ?????????????????????? ?????? ?????? ?????????????????? ??? ?????????????????? ?????????? ?????????? ??? ?????????????????? ?????????? ?????? ?? ?????????????????? ???.

(9) T? ?????????????????? ?????????????????? ?????????? ?? ?????????????????????? ?????????? ?? ?????????????????????? ??? ?????????? ?????????????????? 1. ? ?????????? ?????? ?????????? ?? ?????????????????? ?????????????????? ??????????????????, ??????????????????????, ?????????? ? ?????????????????? ?????????? ?????????????? ??? ?? ?????????????????? ?????????????????? ?? ??????????????

(10) ?????? ?? ?????? ??????:

(a) ? ?????? "?????" ?????????????????????? ??? ??? ??????????????.

(b) ?????? ??? ?????????????????? ?? ?? ?????????????????? ?????? ??? ?????? ??? ?????????????????? ?? ?????? ?????????????????????? ?????????????????? ?????????????????? ??????».

14 ? ?????? ?????? ??? ?????? ?????????????? ??? ?? ?????????? ?????? ??? ?????????? ?????????? ?????????? ?????????? ?? 1,5 ?????????????????? ?????? ?????????????? ??????????.

15 ??? ??? ?????????? ?????? ?????????????? ?????????????? ??? ?? Commissioners ?????????????????? ??? ?? ?????? 17 ??? 18 ??? ?????????????????? ?????? ??? 2003 ?????????????????? ?????? ??? ?????? 21, ?????????????? 3, ??? 22, ?????????????? 8, ??? ?????? ??????????.

16 ? ?????? ?????????????????? ??? ?????? ?? ?????? 21, ?????????????? 3, ??? ?????? ?????????? ?????? ?? ?????? 22, ?????????????? 8, ??? ?????? ?????????? ?????????? ??? ?????? ?????? ??? ?????????? ?? ?????????????? ?????????????? ?????????????? ?????? ?? ?????? ?????????? 17 ??? 18.

17 ?????????? ??? ??????????, ?? Court of Appeal (England & Wales) (Civil Division) ?????????????? ?? ?????????????????? ??? ?????????? ??? ?????????????????? ??? ?? ?????????????? ??? ?????????????????? ?? ?????????????? ?????????????????? ??????????????:

«1) ?????????????? ?? ?????? 21, ?????????????? 3, ??? [?????? ?????????? 77/388] ??? ??????????????, ?????? ?????????????????????? ?? ??? ?????????? [2000/65] ??? ??????????????????, ??? ?????? ?????? ?? ?????????? ??? ?????????????????? ?????????? ?????????? ?? ?????????????? ?????????????????? ??? ??? ?????????????? ?????????????? ?????? ?? ?????????????? ?????? ?? ?????? ?????? ??? ?????? 21, ?????????????? 1 ? ?????????????? 2, ??? ?? ?????? ?????????????? ??? ?????????? ?????? ??? ?????????????????? ?????????? ??? ?????????????????????? ??? ?? ?????? ?????? ?????????? ?? ?????????????????????? ??????????????????????, ?? ?????? ?????????????? ??? ?? ?????? ??? ?????? ??? ?????????????????????? ??? ??? ?????????????? ??????????;

2) ?????????????? ?? ?????? 22, ?????????????? 8, ??? [??????] ?????????? [77/388, ??? ? ??????????????????????], ??? ?????? ?????? ?? ?????????? ??? ?????????????????? ?????????? ?????????? ?? ?????????????? ?????????????? ?????? ?? ?????????? ? ??? ??? ?????????? ?????????? ?? ?????????????????? ?? ?????????????? ?????????????? ?????? ?? ?????? ?????? ?????????? ??? ?????????????????? ?????????????????????? ?????????? ??????;

3) ?? ? ?????????????? ??? ?????? ?????????? ?????? ??????????????, ?? ?????? ?????? ?????? ?????? ??? ?????????????????? ?? ?????????????????????? ?????????? ?????? ?????????????? ? ?????????? ??? ?????????? ?? ?????? 21, ?????????????? 3;

4) ?? ? ?????????????? ??? ?????????? ?????????? ?????? ??????????????, ?? ?????? ?????? ?????? ?????? ??? ?????????????????? ?? ?????????????????????? ?????????? ?????? ?????????????? ? ?????????? ??? ?????????? ?? ?????? 22, ?????????????? 8;

5) ?????????????? ? [?????] ?????????? [77/388], ?????? ?????? ??????????????????, ??? ?????????? ??? ?????????? ?????? ?? ?????????????????? ??? ?? ?????????????? ?????? ?????????????? ?????? ?????????????????? ?????????????????? ??? ?????? ?????????????? ? ??? ?????? ?????????????? ?????????? ?? ?????????????? ?????????????? ??? ??? ?????? ??? ?????????? ?????? ?????????? ?????? ?????????????? ?????????????????????? ?????? ?????????????????? ?????? ??? ?????? ??? ?????????????????? ?????? ?????????????????? ??????, ?? ?? ?????? ?????? ?????? ??? ?????????????????????? ?????????? ??????;»

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18 ?? ?? ?????? ??? ?? ?????? ??????????, ?? ?????? ?????????????????? ?? ?????????????????? ??? ??????, ?? ?????? ?????????????????? ?????? ???' ?????? ?? ?? ?????? 21, ?????????????? 3, ??? ?????? ?????????? ?????? ??? ?????? ??? ?????????????????? ?? ?????? ?????? ?? ?????????? ??????????, ?????? ? ?????????? ?????? ?????? ??????, ??? ?? ?????????????? ??? ?????????????????? ?????? ??????, ?????? ??? ?????? ?????????????????? ?????? ? ?????????????????? ?????????????? ??? ? ?????? ??????????, ? ?????? ?????????? ?????? ??

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19 ?? ????? ?? ?????? ??? ?? ?????? ????????????????? ?????????, ? ?????? ?????????????? ??? ??
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20 ????? ?? ??????, ?? ?? ?????? ?????????? ?????? ?????????????????? ??? ?????? ?????? ?? ?????
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21 ? ?????????????? ??? ?????????? ?????????????? ??? ? ?????????????? ??????????????, ? ??????????, ?
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????????????? ??? ?? ?????? 21, ?????????????? 3, ??? ?????? ?????????? ?????????????? ??? ?????? ?????? ??
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????????????? ??? ??? ?????????????? ??? ??? ?? ?????? ?????? ?????????? ?????????? ??? ?????? ?????? ???
????????????? 1 ? 2 ??? ?? ?????? ???????, ?? ?????? ?????????????? ??? ?????????? ?????? ??? ??????????????
??????????.

22 ? ?????????????? ?????????????? ?????????? ??? ?????? ?????? ??? ?????? 18 ???
????????????????????? ?????? ??? 2003 ??? ?????????? ??? ?????? ?????????????? ??? ?????? ?????????? ???,
????????????, ??? ?????? ?????????? ?? ?????????????? ?? ??????. ?????????????????, ?? ?? ?????? ??????
??? ?????? ??? ?????????? ??? ???, ?????? ??? ?? ??? ?????????? ?????????????? ????. ?? ??????????????
????????????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ???
?????????????????, ???' ??????, ??? ?????? ?????? ?? ?????????????? ??? ?????????????????? ??? ??? ???????
?????? ??????? ? ?? ??? ?????????? ?????????? ??? ?????? ?????? ??? ?????? ??? ??????????????
?????, ?????????????? ?????? ??? ?????? ??? ?????? ?? ?????????????? ?????? (?? ?????????? ??? 18??
???????????????? 1997, ????????????? C?286/94, C?340/95, C?40I/95 ??? C?47/96, Molenheide ?..?,
????????? 1997, ?. I?7281, ?????? 43, ??? ?????????? ??? 3?? ?????????? 2004, C?395/02, Transport
Service, ?????????? 2004, ?. I?1991, ?????????? 27 ?? 29).

23 ??? ??? ?????????????, ???????, ??? ?? ?????????????? ?????????? ??? ?? ?????????? ?????? ??????
????? ?????? ?????????????? ??? ?????? ?????????????? ??? ?????? ??????????, ? ?????????????? ??????????????
????????? ??? ?? ?????????? ?????????? ??? ?????????? ?????? ?????? ?? ?????? 21, ?????????????? 3, ? ??
?????? 22, ?????????????? 8, ??? ?????? ??????????

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

24 ?????????????????? ?????????? ? ?????????????????? ???, ?????????????? ?????? ??? ?????????????????? ?
????????????????? ??????????????, ?????????? ??????????, ?????? ?????? ??? ?????????????? ?? ?????? 18 ???
????????????????????????? ?????? ??? 2003, ? ?????? ?????????????? ?????? ?????????? ?????? ??? ?????????? ??????????
????? ?????????????????? ?????? ?????? ?? ?????????????? ?????????????????? ??? ??? ?????????????? ?????????????? ???

??? ????????? ???? ???? ???? ????????? ????????? ????????????????? ????? ?????, ?????? ??? ??????????
???? ?????????? ??? ??????? ?? ?????????? ?????????? ??? ?????????????? ??? ?????? ?????? ??????? ???
?????????? ????????????????? ?????? ??? ??? ??? ?????????? ???. ?? ?????? ?????????????? ??? ? ?????????
????????????? ??? ?????? ?????????????? ??? ????????? 21 ??? ?????? ?????????.

25 ?? ??????????, ?????????????? ?? ?????????? ??? ?? ?? ?????? ?????? 21, ?????????????? 3,
????????????? ??? ?????? ?????, ????? ?????????????????? ??? ?????????????????? ??? ??? ?????????????????? 1 ???
2 ??? ?????? ???????, ?? ?????????????? ??? ?????????? ?????? ??? ??? ?????????? ??????????????
????????????????? ??? ??? ?????????????? ?????????????? ??? ??? ?????????????? ??? ???.

26 ?????????? ?????? ??? ?????????????? ? ??????, ?????????? ?????????????? ??? ?? ?????????? ?????? ???
????????? 21, ?????????????? 3, ??? ?????? ??????????, ??? ??? ??? ?????????????? 1 ??? 2 ??? ??????
?????????, ??? ? ?????????? ??? ?????????????? 3 ?????????????????? ?????????????????? ?? ?????????????? ?? ???
????????????????? ??? ?????????????????? ?????? ??? ??????? ??????????????????. ?????????????, ??? ?? ??????
????????????? ??? ?? ?????? ????????? 21, ?????????????? 3, ?????????????? ??? ? ?????????? ?????? ??????
????????????????? ?? ?????? ??? ?????????????????????? ??? ??? ??? ?????????? ?????????????????? ?????????????????.

27 ?????????? ??????, ?? ?????????????? ??? ?????????? ???, ?????? ??? ??? ?????????????????? ??? ???????
21 ??? ?????? ?????????? ?? ??? ????????? 2000/65, ? ?????????????? ?? ?????????? ?????? ???????
????????????????? ??? ??? ?????????????? ?????????????? ??? ??? ?????????? ??? ??? ?????? ??????????????????
??? ???, ???' ??????, ? ??? ?????????????? ??? ?????? ?????????????????? ?? ?????????????? ??? ??????????????????
??????, ??? ??????? ?? ?????? ???????.

28 ?? ?????? 21, ?????????????? 3, ??? ?????? ?????????? ?????????????? ??????????, ???' ??????, ???
?????? ?????? ?? ?????????????? ?????????????? ?????? ??? ??????? ??? ?????????? ??????????????
????????????????? ??? ??? ?????????????? ?????????????? ??? ??? ?????????????? ??? ??? ?????????? ?????? ?????????
??? ?????? ?????????? ?? ?????????? ?????? ??? ?????????????? ??? ?????????????????? 1 ??? 2 ??? ?? ??????
????????.

29 ?????????????, ?????? ??? ??????? ??? ?????????????? ??? ?????? ?????????????? ?? ??????????????
?????????, ?? ?????? ?????? ?????????????? ?? ?????????? ??? ?????????? ??????? ??? ?????????? ??? ??????????????
?????? ??? ?????????????????? ?????????? ???????, ?????? ?? ??? ?????? ??? ?????????????? ?????????? ??? ???
???????????????????????? (??., ??? ??? ??????? ?????, ?????????????? ??? 8?? ?????????? 2000, C-396/98,
Schlossstrasse, ????????? 2000, ?. I-4279, ?????? 44, ??? ??? 26?? ?????????????? 2005, C-376/02,
«Goed Wonen», ????????? 2005, ?. I-3445, ?????? 32).

30 ?? ?,?? ?????? ?????????????? ??? ?????? ??? ?????????????????????, ?????????? ?? ?????????????????? ???,
????????????? ?????? ?????????? ?? ?????????????? ?? ?? ?????? ??? ?????????????? ?????????? ??????, ?????? ???
????????? 21, ?????????????? 3, ??? ?????? ??????????, ? ?????????????????????????????????? ?????????? ??????????????
??? ?????????????????? ??? ?????????????, ?? ?????? ?????? ??? ?????????? ?? ?????????? ?????? ??? ??????????????
??? ??? ?????????????? ??? ?????????? ?????? ?????????? (??., ??? ??? ?????????? ?????, ?????????????????????
????????????? Molenheide ?..?, ?????? 47).

31 ?? ??????????????, ?? ?????????? ?????? ?????? ?????? ?????????? ?????? ?????????????????? ???
????????????????????? ?????? ?????? ?????? ??? ??? ?????????? ?????????? ?? ?????????????? ?????????????????? ??? ???
????????????????? ?????????????? ??? ??? ?????????????? ??? ??? ?? ??? ??????????, ?????????, ?????? ??? ??????
????? ?????? ?????? ?????????????????? ?????????, ? ?? ??? ?????????????????????? ?????? ?????? ?????????? ? ??????
????????????? ?????????? ?? ?????????????????????? ??? ?? ?????????? ? ?????? ??? ??? ??? ?????????????? ?????? ?????????
????????????? ? ?? ?????????????????? ? ?????????? ?????????????? ?????????? ?????????? ??? ?? ??????????????????
????????????????????? ??? ??? ?????????????? ?????? ?????????????? ?????????? ?? ?????????????????????? ??? ?????????????????? ??
????????????? ?? ?? ?????????????????? ??? ?????? ?????????? ?????? ?????????????????? ??? ?? ?????????????????? ?????? ???
????????? ?? ?????????????? ?????????? ?? ?????????????? ??? ?? ?????????????????? ??' ?????? ?? ?????? ?????? ?????????????
??????, ? ?????????????????? ??? ?????? ??? ?????????? ?? ?????????????????? ??????????????????

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

32 ??????, ?????????? ?? ?????? 21, ?????????????? 3, ??? ?????? ?????????? ?????????????? ?? ???????
?????? ?? ?????????? ??? ?????????? ?????????????? ??? ??? ?????????????? ?????????? ??? ??? ??????????
??? ??? ???????, ????? ?? ?????? ??? ?????????????? ?' ????, ?????????? ? ?????????? ?? ?????????? ??? ?
??? ??? ?????????? ?????? ?????? ?????, ? ?? ?????????????? ? ?????????? ??????, ??? ?? ??????????????
??? ?? ?????????????? ?????????? ?? ??????????, ?????????????, ????????????? ?????? ??? ?????????? ??? ??????
????????? ?? ?????? ?????????? ?????????? ?????? ?? ?????????????? ?????????????? ?????????? ? ??????????????
????????????? ??? ??? ?????????????? ?????? ?????? ?? ?? ?????? ??? ?????????????? ??? ??????????????. ?????
????????????? ? ?????????? ?????????????????? ??? ??????? 27 ??? ?????????????? ???, ?????????? ?????????????? ??
????????????? de facto ??? ?????????? ?????? ?????????????? ?????????????????????? ??????????, ?? ?????? ??
????????? ?????? ??? ?????????????? ??? ?? ?????????????? ??? ?????????????????? ??? ?????????????? ???????.

33 ?????????????????, ?? ?????????? ??? ?????????????? ?????? ?????????????????????? ?????????? ??????
????????????????? ?? ?????????????????? ??? ?? ?????????? ?????? ??? ?????????????????? ?? ?????????? ??????
?????? ?????????????????????? ??? ?????? ??? ?????????? ?????? ?????? ??? ??, ?????????? ?? ?????????? ??
????????????????????? ??? ?????????????????? ??? ?????????? ?????? ?????? ?? ?????????????????????? ?? ??????????????
????????????????????? ??? ??? ?????????????? ?????????????? ??? ??? ?????????????? ??? ?????? ?????? ???
????????????? ??? ?????? ?????????????? ?????? ?????? (??., ??? ??? ?????? ?????????, ?????????? ??? 12??
????????????????? 2006, C-354/03, C-355/03 ??? C-484/03, Optigen ?..?, ??? ?????? ??????????????????
?????? ??? ??????????, ?????? 52).

34 ?????????????????? ??? ?????????? ?????????????????? ?? ?????????????? ?? ? ?????????? ?????? ?????? ?????
????????? ?????????? ?????? ?????????? ?? ??? ?????????? ?????? ??? ?????????????????? ??????????

35 ?????????, ??? ?????? ??? ??? ?????? ?????????????????????? ?????????? ?????????? ?? ?????? ? ??????????
??? ?? ?????? 21, ?????????????????? 3, ??? ?????? ?????????? ?????? ??? ?????????? ??? ?????????????? ??
????????? ?????? ?? ?????????????? ??????????, ?????? ? ?????????? ?????? ?????? ??????, ??? ?? ?????????????? ???
????????????????????? ?????? ??????, ????? ??? ?????? ?????????????????????? ?????? ? ?????????????????? ?????????????? ??? ?
????????? ??????????, ? ?????? ?????????????? ?????????? ?? ??????????????????, ??? ?? ?????????? ? ?????? ???
????????????????????? ??? ??? ?????????? ?????????????? ? ?????????? ???, ? ??? ?????????????????? ?????????????????? ?
????????? ?????????????? ? ?????????, ??? ?? ??????????????????, ?????????? ?? ??????????????, ?? ??? ?????????? ???
??????, ?????????????????? ??? ??? ?????????????? ?????????????? ??? ??? ?????????????? ?????? ??? ??????
?????????????, ??? ?????????? ?????????? ?????????? ?? ?????? ?????????? ?? ??? ?????????? ?????? ???
????????????? ??? ?????????????? ?????? ??? ?????????????????? ?????????? ?????????, ?????? ??? ?????? ???
????????????????? ?????????? ??? ??? ??????????????????????

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36 ?? ?? ?????????? ??? ?? ?????????? ??????????, ?? ?????? ?????????????????? ?? ?????????????????? ???
????????, ?? ?????? ?????????????????? ?????? ???' ?????????? ?? ?? ?????? 22, ?????????????????? 8, ??? ??????
????????????? ?????? ??? ?????????? ??? ?????????????? ?? ?????????? ?????? ?? ?????????????? ??????????, ?????? ?
????????????? ?????? ?????? ?????, ??? ?? ?????????????? ??? ?????????????????? ?????? ?????, ?????? ??? ??????
????????????????????? ?????? ? ?????????????????????? ?????????????? ??? ? ?????????? ??????????, ? ?????? ??????????
????????? ?? ??????????????????, ??? ?? ?????????? ? ?????? ??? ??? ??? ?????????????? ??? ??? ??????????
????????????? ? ?????????, ? ??? ?????????????????? ?????????????????? ? ?????????? ?????????????? ? ?????????, ??? ??
?????????????????, ?????????? ?? ??????????????, ?? ??? ?????????? ??? ??????, ?????????????????? ??? ???
????????????????? ?????????????? ??? ??? ?????????????? ??? ?? ?????? ?????? ???/? ?????????? ??? ?? ??????????????
??? ?????????????????? ?????? ?????? ?????????? ?? ?????????????????? ?? ?????????????? ?????????????? ??? ??? ??????????????
??? ??? ? ?????????? ?????? ? ?????????? ?? ?????????????? ?????????????????? ??? ??? ?????????????????? ?????? ?????
????? ?????? ?????????????????? ?? ?????? ? ?????????? ??? ?????????????????? ? ??? ??? ?????? ???

43 ????????, ?? ????? 22, ?????????? 8, ??? ????? ????????? ?????????? ?? ????? ???? ??
???????????? ????? ????????????? ?? ?? ?? ?? ????????? ???? ????? ?????????????? ?? ????
???????????? ?????????? ?? ?? ?????????? ???, ??? ?????????? ????? ? ? ????? 21 ?? ? ? ?
????????, ????????????? ????? ???? ???? ????????????????? ????? ????????????????? ????????????? ?
? ????? ??????? 22, ????? ???? ???? ????????? ????????????? ???? ???? ?????????? ???? ?????????????
???, ??? ?????? ????????? ????????????? ???? ? ? ????????????? ???? ????????????? ????? ????
???? ?????????? ???? ?????????????????.

44 ??????????, ??????, ??? ? ????????? ?????????????? ???? ???? ????????????? ????????? ???? ????
???????????? ???? ???? ???? ????????? ? ? ?????????????? ????????? ???? ????? 22, ?????????????? 8, ???
?????? ?????????? ???? ???? , ??????????, ????? ? ? ???? ????????? ????????????? ???? ????? ???? ?
????????? ???? ????????? ???? ???? ?????? ?????????? ???? ???? ? ????????????????? ???? ???? ?????????????
???????????? ???? ???? ?????????? ???? , ????? ? ? ????? 21 ???? ?????? ?????????, ? ? ??????????
???????????? ???? ???? ?????????? ???? ???? ???? ?????????? ???????.

45 ??????, ??????, ?? ?????????????, ????? ????????????? ???? ???? ?????????? ???? ????? ????
?????? ?????????????????? ?????????, ???, ????? ???? ?????? ???? ????????? ???? ?????? ?????? ????
????????????? ?????????, ? ? ????? ???? ????????? ?????? ???? ??????? 21, ?????????????? 3, ??? ??????
????????? ? ? ????????????? ?????????????? ???? ???? ????????????? ????????? ???? ???? ?????????? ???? ????.

46 ?????????, ?? ????????? ???? ????????????? ?????????????? ???? ???? ????????????? ????????? ????
???? ?????????? ???? ???? , ????????? ?????????? ????????????????? ????????????? ???? ????????????? ??????
???? ??????? 21, ?????????????? 3, ??? ?????? ?????????, ??????? ? ? ????????????????? ???? ? ? ??????
????, ????? ? ? ????? 22, ?????????????? 8, ??? ?????? ?????????, ? ? ????????????? ?????????? ???? ????
???????????? ???? ????????????????? ????.

47 ?? ??? ????????? ????????????? ???? ???? ????????? ???? ???? ????????? ????????????????? ?????????
???????? ? ? ?????? ? ?????????? ???? ? ? ????? 22, ?????????????? 8, ??? ?????? ????????? ????? ????
???????? ???? ???? ????????????? ? ? ?????? ?????? ? ? ?????????? ????? ?????????, ????? ? ????????? ????
?????? ?????, ??? ? ? ????????????? ???? ????????????????? ????? ???? , ????? ???? ?????? ??????????????
?????? ? ????????????????? ????????????? ???? ? ?????? ?????????, ? ????? ?????????? ??????? ?
????????????????, ??? ? ? ?????? ? ?????? ???? ???? ???? ????????????? ???? ???? ??????? ?????????? ?
????????, ? ??? ????????????????? ?????????????? ? ????????? ?????????? ? ??????, ??? ? ? ?????????????,
???????? ? ? ??????????, ? ???? ????????? ???? ?????, ????????????????? ???? ???? ????????????? ??????????
???? ???? ?????????? ???? ? ? ????? ??????, ????? ????????? ???? ? ? ????????????? ???? ?????????????? ?????
????? ?????? ? ? ????????????? ? ? ?????????? ?????????? ???? ???? ?????????? ???? ???? ? ??????
?????? ? ?????? ? ? ?????????? ????????????? ???? ???? ????????????????? ????? ????? ??????
????????????? ? ? ????? ? ????????? ???? ????????????? ? ???? ???? ?????? ???? ????????????????? ? ? ????? ?
???? ?????????????? ? ? ?????????????.

48 ??????????, ? ????????? ????? ???? ????????????? ????????? ????????? ???? ????????????? ?
???????????????? ????????? ???? ?????????? ????????????????? ???? ???? ????????????? ?????????? ???? ????
???????????? ???? ???? , ????????? ? ? ?????? ?????? ???? ????????????????? ?????? ???? ??????? 21,
????????????? 3, ??? ?????? ?????????, ??? ????????????? ? ? ?????????? ?????????? ???? ???? ??????????
???? ????????????????? ????.

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

49 ????????? ???? ????????????? ???? ????????? ???? ????????? ?????? ????????????????? ?????????????,
???????????? ? ?????????? ???? ?????????.

