

?????? C-70/09

Alexander Hengartner

???

Rudolf Gasser

????

Landesregierung Vorarlberg

[?????? ??? Verwaltungsgerichtshof (???????) ??? ??? ?????? ?????????????? ??????????]

«????????? ??????, ??????, ??? ?????????? ?????????? ??? ??? ?????? ?????? ??? ???,
????????, ??? ?????????? ?????????????? ??? ??? ?????? ?????????? ??? ?????? –
????????? ?????????? – ?????????? – ?????????? – ?????? ??? ??????????
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????????? ??? ??????????

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

2. ??????? ?????????? – ?????????? ??-????????? ??? ??? ?????? ?????????? ?????????? ???
????????? – ?????????? ?????? ??????????

(????????? ??-????????? ??? ??? ?????????? ?????????? ??? ??????????, ?????? 1, 2 ??? 15 ???
????????? ?, ?? ??? ???)

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

(??. ??????? 31-33)

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

????????? , ?? ??? 2 ??? ?????????? ?????????? ??? ??? ?????? ??? ?????? ??? ?????????????? ???

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

(???. ??????? 39-43 ??? ??????).

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

??? 15?? ?????? 2010 (*)

«????????? ??????, ??????, ??? ?????????? ?????????? ??? ?????? ?????? ?????? ??? ???,
?????????, ??? ?????????? ?????????????? ??? ??? ?????? ?????????? ?????????? ??? ?????????? –
????????? ?????????? ??? – ?????????? ??? – ?????????? ??? – ?????? ??? ?????????? –
????????? – ??? ??? ??? ??????????»

???? ?????? C?70/09,

??. ?????????? ??? ?????? ?????????? ?????????? ?????? ??? ?????? 234 ?,
?? ?????? ?? Verwaltungsgerichtshof (??????) ?? ?????? ??? 21?? ?????????? 2009, ?
????? ?????? ??? ?????????? ??? 17 ?????????? 2009, ??? ?????? ??? ???

Alexander Hengartner,

Rudolf Gasser

????

Landesregierung Vorarlberg,

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

????????? ??? ??? K. Lenaerts, ?????? ???????, R. Silva de Lapuerta (??????????), ?.
??????, J. Malenovský ??? T. von Danwitz, ???????,

???????? ??????????: N. Jääskinen

?????????: K. Malacek, ??????? ??????????,

???????? ????? ??? ??????? ??????????? ??? ??????? ??? ??' ??????????? ??????????? ???
27?? ?????????? 2010,

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

- ?? A. Hengartner ?? R. Gasser, ??????????????? ??? ??? A. Wittwer, Rechtsanwalt,
- ? Vorarlberger Landesregierung, ??????????????? ??? ??? J. Müller,
- ? ?????????? ???????, ??????????????? ??? ??? E. Riedl, E. Pürgy ?? W. Häammerle,
- ? ?????????? ???????, ??????????????? ??? ??? W. Mölls ?? T. Scharf,

???? ?????? ??? ?????? ?????????? ??? ??????? ??? ?????????? ??? ?????????? ??? ??? ?? ???????
??? 20?? ????? 2010,

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

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1 ? ??????? ??? ??? ?????? ?????????????? ?????????? ??? ?????? ??? ?????????? ??????????
??? ?????????? ??? ???? ???????, ??????, ??? ?????????? ??????, ??? ?????????? ?????????? ??? ???
?????? ?????? ??? ???, ???????, ??? ?????????? ?????????? ?????????? ??? ??? ??????????
????????? ??? ???????, ??? ?????????? ??? ?????????? ?????????? ??? 21 ?????? 1999 (??
2002, L 114, ?. 6).

2 ? ??????? ??? ?????????? ??? ??????? ?????????? ???, ??? A. Hengartner
??? R. Gasser, ??????? ???, ???, ???????, ??? Landesregierung Vorarlberg
(????????? ??? Land ??? Vorarlberg), ??????? ?? ??? ??????? ?????? ???, ??????????
??? ?????????? ??? ??????? ?????? ?????????? ???????, ?????????? ?????????? ??????????
????????? ??? ?????? ??? ?????? ?????? ???????, ?????? ???, ?? ?????? ??? ??????????
?????????.

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

3 ? ?????????? ?????????? ??? ?? ?????? ???, ??????, ??? ? ???????
??????????????, ???????, ?????????? ??? 21 ?????? 1999 ??? ??????????, ?????? ???
????? ? ??????? ??? ??? ??????? ?????????? ??? ??????? (?? ????: ???????). ??
?? ??????? 2002/309/??, ??????? ??? ?????????? ??? ??? ??????????, ??? 4?? ???????
2002 (?? L 114, ?. 1), ?? ??? ?????? ?????????? ?????????? ?? ??????? ??? ?????????? ???
?????? ?? ??????? ??? 1? ?????? 2002.

4 ??????? ?? ?? ????? 1, ??????? ?? ??, ??? ???????, ?????? ??? ??????, ??????
?????, ? ???????, ????? ??????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ??? ??
????????? ???????????????, ?????????????? ???????, ???????, ?????????? ?? ???????
????????? ???????????????, ?????????????? ?? ?????????? ?????????? ??? ??????????
???? ?????????? ??? ?????????????? ???, ?????? ??? ? ?????????? ??? ??????????
????????? ??? ?????? ?????????? ??? ?????, ?????? ??? ?????????? ??? ??????

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

5 ?? ??? 2 ??? ????????, ??? ?????????? «?? ??????», ?????????? ?? ???:

«?? ?????? ??? ?????????????? ?????? ??? ?????????? ?????? ?????????? ???
????? ?????????????? ??? ?????? ??? ?????????? ?????????? ?????? ??????????
??????? ?? ??? ?????????? ??? ?????????????? I, II ?? III.»

6 ?? ??? 4 ??? ????????, ??? ?????????? «????????? ?????????? ??? ?????????? ??
????????? ??????????????», ?????? ?? ????????

«?? ?????? ??? ?????????? ??? ?????????? ?? ??? ?????????? ?????????????? ?????????????? ??
??? ?????????? ??? ?????????? ??? ?????? 10 ??? ?????? ?? ??? ?????????? ??
????????? ?.»

7 ?? ??? 5 ??? ?????????? ?????????????? ?????????? ??? ?????????? ?? ??? ??????
?????????. ??????? ?? ??? ?????????? 3 ??? ?????? ???, «[?]????? ??????, ??????? ???
????? ?????? ??? ?????????? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????????????? ?????? ??? ?????? ?? ?????????? ?????????? ?????????? ???
????????? ??? ?????? ??? ??????». ? ?????????? 4 ??? ?? ??? ?????? ?????????? ???
?? ?????????? ??? ?????????? ??? ?????? 5 ?????????????? ?????? ?? ??? ??????
?? ?????????? ??? ??? ??? ??????.

8 ??? ?? ??? 15 ??? ????????, ?? ?????????? ??? ?????????? ??? ?????????? ??
????????? ?????????? ???.

9 ?? ??? 16 ??? ????????, ??? ?????????? «????????? ??? ?????????? ???», ????:

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

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

10 ?? ??? 17 ??? ?????????? ?? ??? ?????????? ?????????? ??? ?????????? ???
?????? 5 ??? ????????, ??? ?????????? ?? ??? ?????????? ??? ?????? ?????????? ???
????????? ??? ?????????????? ??? ?????? ??? ?????? ???, ??? ?????????? ?????????? ???,
????????? ??? ?????? ??? ?????????? ??? ?????? ???.

11 ?? ??? 23 ??? ?????????? ?? ??? ?????????? ??? ?? ??????????:

«1. ? ?????????? ?????????? ??? ?????????? ??? ?????? 5, ?????????? 3, ??? ?????????? ???
????????? ??? ?????????? ??? ?????????? ?????????? ? ??? ?????? ??? ?????? ????. ???
????????? ?????????? ??? ?????? ????, ? ?????????? ??? ?????????? ?????????? ?????????? ???
????????? ?????????? ??? ?? ???? ?????? ??? ??????. ?????? ?? ?????????? ??? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

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

12 ?? ??? 2 ??? ??? ??? ??? ??? Land ??? Vorarlberg (Vorarlberger Gesetz über das Jagdwesen, *LGBI.* 32/1988), ??? ?????? ??? ?????? ??? ?????????? ?????????? ???
????? ??? ?????? ??? (*LGBI.* 54/2008), ?????????? ?? ???:

«????????? ??? ?????? ??? ?????????? ??? ??????????

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

2. ? ?????????? ??? ??? ?????? ?? ?????????? ?? ?????????? ??? ?????????? ???
????? ?? ?? ?????????? ??? ?????????? ?????????? ?????????? ?????? (????? ???
??????????. ???????????.). ? ?????????? ?????????? ??? ?????????? ?????????? ???
??????????.

3. ?? ?????? ?????????? ?????????? (????????? 2) ?????????? ???
????????? ?????? ??? ?????? ??? ?????? ?????? (????????? ?????????? ?????? ???
??????????.).»

13 ?? ??? 20 ??? ?? ??? ?????? ??? ?? ??????????:

«????? ?????????? ????

1. ? ?????? ?????????? ?????? ?? ?????????? ?????????? ?? ?????????? ?? ??????????, ??
????????? ?? ?? ??????????. ??? ?????? ??? ?????????? ?????????? ?? ??????????, ??
????? ?? ?????????? ?????????? ?? ?????????? ?? ?????????? ?? ?????? ?? ??? ??????????
????????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? 3.

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

3. ? ?????? ?????????? ?????????? ?????? ?????? ?????????? ?????????? ?? ??????????.
????????? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?????? ?????????? ??
?????????, ?? ?????? ?????? ?? ?????? ?? ?????? ?? ?????? ?????? ?? ?????? ??
?????????, ?? ?????? ?????? ?? ?????? ?? ?????? ?? ?????? ?????? ?? ?????? ??
?? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??

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

4. ??? ??? ??? ?????? ?????????? ?????????? ?????? ?????????? ?????? ?????????? ?????? ???
????????? ?????? ??? 10 ???????, ? ?????? ??? ?????????? ?????????? ??????..

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

6. ? ?????????? ??? Land ??????? ?? ?????????? ?????? ?????????? ?????????? ??????????
?????? ?? ?? ?????????? ?????????? ?????????? ??????????.

14 ??? ?? ??? 1 ??? ??? ??? Land ??? Vorarlberg ??? ?????? ??? ?????? ???
(Vorarlberger Gesetz über die Erhebung einer Jagdabgabe, *LGBI.* 28/2003, ??? ???: Vlbg.
JagdAbgG), ??? ??? ?????? ??? ?????????? ?????????? ?????????? ????.
????? ??? ?????? 2 ??? ?? ??? ???, ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ?????????? ???, ?? ?????????? ?????????? ??? ?? ?????????? ??? ?????????? ???
????????, ?? ?????????? ???.

15 ?? ??? 3 ??? Vlbg. JagdAbgG ?????????? ?? ?????????? ??? ?? ??????????:

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

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

3. ??, ?? ?????? ?????? ?????????? ???, ?? ?????? ??????, ?????????? ??? ?? ??? ???
????????? ?????? ??? ?????? ??? ?????? ?????????? ?????????? , ?????????? ???
??? ??? ??? ?? ?????? ??? ?????????? ??? ?????? ?????? , ? ?????? ??????????
????? ??? ??? ??? ??? ??? ??? ?????? ??????????.

[...]»

16 ??? ?? ??? 4, ?????????? 1, ??? Vlbg. JagdAbgG, ? ?????? ?????????? ??? 15 % ???
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
????? ?????? ??? ??????, ?????? ??? ??? ?? ?????? ? ?????? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? . ?? ?????? 4, ?????????? 2, ??? ??? ???
????? ???, ??? ??? ?? ??? ?????? ??????, ? ?????? ?????? ??? 35 % ??? ??????????

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

17 ??? 8 ?????????? 2002, ?? A. Hengartner ??? R. Gasser, ??????? ???????, ??????? ?? ?????? ?????????? ?????????? ?????????? ??????? ??????? ??????? ?? ??????? ??????? ?? ??????? 1? ??????? 2002 ??? ??? ??? 31 ??????? 2008. ?? ??????? ??????? ??????????? ?? 10 900 ???, ? ?? ?????????? ?????????? ??????? ?? ??????? 1 598 ???????.

18 ??? ?? ?????????? ??? ?????????? ??? ?????????? ?????????? ??? ?? ?????????? ??? Land ??? Vorarlberg ??? ?? ??????????.

19 ?? ?????? ??? 16?? ??????? 2002, ? ?????? ?????????? ??? ?? Land ??????? ??? ?????? ??? ?????? ??? ??????? ?? ??????? ??? ?????????? ??????? ??? ?????? ??? ?????? ??? ???????????.

20 ?? ?????? ??? ?????????? ??? Land ??? Vorarlberg ??? 1?? ?????? 2007, ?????????? ??? ?????? ??????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????? ??? 35 % ??? ?????????? ????, ??? ?????? 4 359 ???, ??? ?? ?????????? ??? 1?? ?????? 2007 ??? 31 ?????? 2008. ?? ?????????? ??? ?????? ??? ?????? ??? ???????????.

21 ?? ?????? ??? 17?? ??????? 2007, ? ?? ??? ?????? ??????? ??? ?????? ??? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

22 ?? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????? ??? Verwaltungsgerichtshof ???????????, ???' ??????, ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???, ??? ? ????? ? ? ??????, ? ??? ?????? ?????????? ??? ?????? ??????. ??????????? ???, ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? 15 % ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

23 ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

24 ?????? ???, ?? Verwaltungsgerichtshof ?????? ?? ?????????? ?? ?????????? ?? ?????????? ??? ?? ??????:

«????? ? ???, ??? ? ?????? ?????????? ?????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???? ?????? ???? ?????? ??? ?????? ???? ?????????? ?? ?????? ?????? ???, ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? 43 ??, ?????? ??? ?????? ?????????? ???, ???????, ?? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????;»

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

??? ??? ?????????? ??? ?????? 43 ??

25 ??????????, ?????? ?? ?????????? ???, ?????? ?? ?????? ??? (??? ??? 49 ???), ??? ???????????

????????????? ??????? ?? ??????? ?? ?????? ?? ?????????????? ?????? ??????? ??????? ???????
????? ??? ?????? ? ?????? ?????? ?????? ?? ?????????????? ??? ?????? ?????? ??????? ???????
? ?????? ??? ?????? ?????? ?????? ?? ?????????????? ??? ?????? ?????? ??????? ??????? ??
????? ??? ?????? ?????? ?????? ?????? ?? ?????????????? ??? ?????? ?????? ?????? ?????? (?)
????? ???, ?????? ??? 25? ?????? 1992, C?147/91, Ferrer Laderer, ?????? 1992, ?. I?4097, ??? 7).

26 ??? ??? ??????? ??????, ?? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ???????
??? ??????? ?? ?????? ?????????? ?? ?????? ?????? ??????, ??? ? ???????
?????????????.

27 ??????, ?? ???????????, ?????????????? ?? ?????????? ??? ?????? ?????????? ?????????? ???????
????????? ?????? ?? ??? ?????? ??????, ?????? ?? ?????? ?????? ?????? ?????? ??? ??????
????? ??? ?????? ?????? ?????? ?? ?????????? ?? ?????? ?????????? ?????????? ??????????????
?? ?????????????? ?????? (?) (?. ?????????? ??? 12? ?????????? 1990, C-241/89, SARPP,
????? 1990, ?. I?4695, ??? 8, ??? ??? 26? ?????????? 2008, C?506/06, Mayr, ??????
2008, ?. I?1017, ??? 43).

28 ??? ???????, ?????????????? ??? ?????? ??? ?????????????? ??? ?????? ?????? ?????????? ???
????????? ??? ?????? ???, ?? ?????????? ?????? ??? ?????? ?? ?????????? ??? ?????? ??? ??? ??????
????? ??? ?????????? ??? ??????.

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

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

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

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

31 ??? ?????? ?? ?????????? ??? ? Vlbg. JagdAbgG ?????????? ??? ?????? ??? ?? ??????
??? ?????????? ?????????? ??? ?????? ??? Land ??? Vorarlberg. ??????, ??????, ??????,
?? ?????????? ?????????? ?????????? ??????????, ?????????? ??? ?????? ??? ?????? ???
????????? ???, ???????, ? ?????? ?????????? ?????????? ??? ?? ??? ?????? ?????? ??? ??????
?? ?????????? ??????????????, ?????? ?? ?????? ???, ?? ?????????? ??? ?????? ??? ??????
?????, ? ?????????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? Land ??? Vorarlberg.

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

?????????????? ??? ?????? ??????, ??????? ??? ??????????? ??????????? ??? ?? ?
???? ???????, ??? ?????????????? ?? ??????????? ??? ?????? ??? Land ??? Vorarlberg
?????????? ?? ??????? ?? ??????? ???.

33 ?? ?? ??? ?????????????? ??????, ??????, ?? ?????????? ?? ?????????? ???????????, ?
????? ?????????? ??? ?????????? ??? ?????????, ?????? ???????, ??????????
??????????, ?????????? ??? ???????, ?? ??? ?????????? ?????? ?????? (??., ??? ??
????? ???, ?????? ??? 21?? ??????? 1999, C?97/98, Jägerskiöld, ?????? 1999, ?.
I?7319, ??? 36).

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

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

35 ??? ??? ?? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
??????, ??? ?? ?????????? ?? ??? ?????????? ??? ?????????? ??? ??????? ?? ??? ??
????????? ??? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
??????, ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???,
????????? 15 % ? 35 % ??? ?????? ??????? ??? ?? ??? ???.

36 ?????????? ???, ??? ?????? ???????, ??? ?????? ???????, ??? ?????? ??????? ???
????????? ??? ?? ??? ?????? ??? ?????????? ???, ??? ??? ?? ??? ?? ??? ?? ??? ??
????? 31 ??? ??????? ??? ?????? ??? ?????? ??? ??????? ??? ???????, ??? 23?? ???
??????????, ??? ??, ??? ?? ?????? ?????? ??? ?????? ?? ?????????? ??? ?????? ???,
?? ?? ?????? ?????? ??? ?? ???, ?????????? ??? ?????? ??? ?????????? ??? ?????? ???
??? ?????????? ??? ?? ??? ?????? ??? (??, ???????, ?????? ???, ?????????? 1/91, ???
14?? ??????? 1991, ??????? 1991, ?. ?-6079, ??? 14- ??????? ??? 2?? ??????? 1999,
C-416/96, Eddline El-Yassini, ??????? 1999, ?. I-1209, ??? 47, ??? 20?? ??????? 2001,
C?268/99, Jany ?.??., ??????? 2001, ?. I?8615, ??? 35, ??? ??? 25?? ?????????? 2010,
C?386/08, Brita, ? ?????? ??? ?????? ?????? ?????????? ??? ???????, ??????? 42 ??? 43 ???
???? ?????????? ???????).

37 ??????, ??????, ?? ??????? ???, ??????? ?? ?? ??? 1, ??????? ??, ???
?????????, ?????? ?? ?????? ?? ?????????? ??? ?????? ?????????? ??? ??????????? ??
?????????? ??, ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????? ??
????????, ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????? ??.

38 ?????, ?????, ?? ?????????? ??? ?? ?? ??? 5, ?????????? 3, ??? ???????
????????? ??? ?????? ??? ?????????? ?? ?????????? ?????? ???????, ??? ??? ??
?????????, ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??????. ?? ???
23 ??? ?????????? ? ??? ?????? ?????? ?????????? ?????? ?????? ?????? ??? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????.

39 ??? ?????? ?? ?????? ???, ?????? ??? ?????????? ??? ?????? ?? ???????
????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????????? ???, ??? ???????
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
?? ?????????? ??? ?? ??? 2 ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????????? ???, ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???

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

40 ? ?????????? ??? ? ??????????? ??? ??? ?????????? ?????? ?????? ?????? ?????? ??? ??
????? ??? ? ?????????? ?????????? ??? ?????? ??? ?????????????? ??? ?????????? ???
????? ??? ?????????? ?????????? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ???
?? ?????????? ?????? ??????.

41 ???????, ?? ?????????? ?????????? ??? ? ?????????? ?????????????? ??? ?????????? ???
????? ?????????? ??? ?????? ??? ?????????? , ? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????????? ?????????? ?????????? , ?????????? ?? ?????? ??? ?????? ???
??????, ? ?????? ?????????? , ?????? ???, ??? ?????? ?????? ?????? ?????? ?????? ??? ??
????????? ?????????? (??. ?????? ??? 12? ?????? 2009, C?351/08, Grimme, ?
????? ??? ??? ?????? ?????? ?????????? ??? ?????? , ?????? 27).

42 ?? ?????????? ?????????? ???, ??? ??? ?????? ?????? ???, ? ?????????? ???, ? ?????????? ???
????? ??? ???? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (???. ?????? ??? 11? ??????????
2010, C-541/08, Fokus Invest, ? ?????? ??? ?????? ?????????? ??? ?????? , ?????? 28).

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

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

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

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

? ? ?????????? ??? ?????????? ??????, ??????, ??? ?????????? ?????????? ??? ??
????? ???, ??????, ??? ??????, ??? ?????????? ?????????????? ??? ??? ??? ??????????
????????? ??? ?????????? , ??? ?????????? ??? ?????????????? ??? 21 ?????? 1999,
??? ?????????? ?? ?????????????? ?? ?????? ??? ?????? ??? ?????????????? ???, ???
????? ??? ?????? ?????????????? ??????, ??? ??? ?????? ??? ?????? ??? ?? ??????????
????????? , ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????
??? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? , ??? ?????? ??? ?????? ??? ??????
????? ??? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
??????, ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ?????? , ???
????????? ?????????? ??????????.

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

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