Downloaded via the EU tax law app / web

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

??? 12?? ??????? 2012 (*)

«???? ?????? ??? — ????? 13, B, ???????? ??, ?? ????????? ?? ?? ????? 4, ?????????? 3, ???????? ?? — ???????? ??????? ??? ??? ??????????? ??????? — ???????? ??????? ??? ????? ?????????? ?? ??????? ???????? ????? ????????? ??? ?? ??? ?????? — ??????????? ??? ???????? ??? ???????? ??? ??? ???????? ???? ??? ???????? — ???????? ??? ??? ???»

???? ??????? C-326/11,

?? ??????????? ?????? ???????? ????????????? ????????? ??????? ??? ?????? 267 ????, ??? ??????? ?? Hoge Raad der Nederlanden (???? ?????) ?? ??????? ??? 10?? ??????? 2011, ? ????? ???????? ??? ?????????? ???? 29 ??????? 2011, ??? ??????? ??? ?????

J. J. Komen en Zonen Beheer Heerhugowaard BV

????

Staatssecretaris van Financiën,

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

?????????? ??? ???? J.-C. Bonichot, ??????? ????????, A. Prechal, L. Bay Larsen, C. Toader (??????????) ??? E. Jaraši?nas, ????????,

?????? ???????????: V. Trstenjak

??????????: M. Ferreira, ????? ????????? ??????????,

??????? ????? ??? ??????? ?????????? ??? ??????? ??? ??’ ??????????? ?????????? ??? 3?? ????? 2012,

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

– ? J. J. Komen en Zonen Beheer Heerhugowaard BV, ????????????? ??? ??? B. Jongmans, advocaat,

– ? ????????? ?????????, ????????????? ??? ?? C. M. Wissels ??? ??? J. Langer,

– ? ????????? ????????, ????????????? ??? ??? L. Lozano Palacios ????? ??? ??? ???? P. Van Nuffel ??? W. Roels,

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

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

???????

1 ? ?????? ???????? ???????????? ????????? ????? ??? ???????? ??? ?????? 13, B,

???????? ??, ??? ????? ??????? 77/388/??? ??? ??????????, ??? 17?? ????? 1977, ???? ??????????? ??? ?????????? ??? ?????? ?????, ??? ???????? ?? ???? ?????? ?????? ???????? — ????? ??????? ????? ???????????? ?????: ?????????? ?????????? ???? (?? ???. ???. 09/001, ?. 49, ??? ????: ???? ??????), ?? ????????? ?? ?? ????? 4, ?????????? 3, ???????? ??, ??? ?? ??? ???????.

2 ? ?????? ???? ?????????? ??? ??????? ???????? ?????? ??? J. J. Komen en Zonen Beheer Heerhugowaard BV (??? ????: J. J. Komen) ??? ??? Staatssecretaris van Financiën (?????????? ??????????) ?? ??????????? ??? ???????? ??? ??????? ???????? ??? ??? ???? ???????????, ???????? ? ????? ????????, ???? ?? ????????? ??????, ??? ??? ??????? ??? ?? ???? ??????? ???? ???? ???????????? ????? (??? ????: ???).

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

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

3 ?? ????? 2, ?????? 1, ??? ????? ??????? ????????? ???? ??? ??? ?????????? ?????? ??? ??? ??????? ????????? ??? ??????????????? ?? ???????? ?????? ??? ????????? ??? ????? ??? ?????????? ???? ????, ??? ??????? ??? ??? ???????? ??? ?????.

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

«?? ????? ???? ????? ??? ???????? ?? ??????? ?????? ?? ?????????? ???? ???? ??????????? ???????????? ??’ ???????? ????? ????????? ???? ???????????? ???? ????????? 2 ??????????????, ??? ????? ??? ??? ??? ???????? ???????:

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

?? ????? ???? ????? ??? ???????? ?? ?????????? ???? ????????, ????? ??? ????????? ??? ?????? ????????????, ???? ?? ???????? ??? ???????????? ???????? ??????????? ?????? ??? ?????? ???????????? ??? ??????? ??????????? ??? ??? ?????? ??? ?????? ?????????? ? ?? ???????? ??? ???????????? ???????? ??????????? ?????? ??? ?????? ??? ?????? ???????????? ??? ??? ?????? ??? ????????????? ??????????, ??’ ???? ?? ??????? ???? ?????????? ??? ??????????? ?? ????? ? ?? ??? ??? ???????????.

?? “??????” ??????? ???? ????????? ??? ????????? ???????? ?? ?? ???????

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

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

5 ?? ????? 13 ??? ????? ???????, ??? ????? ??? ????? «????????? ??? ????????? ??? ?????», ????????? ??? ??? ????? ??? B, ??? ??????????? «?????? ?????????», ?????? ?????, ?? ????:

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

[...]

?) ??? ?????????? ??????? ? ?????? ??????? ??? ??? ??????????? ?? ???? ???????, ???? ??? ????????????? ??? ????? 4, ?????????? 3, [????????] ???

?) ??? ?????????? ?? ???????????? ???????, ???? ??? ???????????? ??? ????? 4, ????????? 3, [????????] ??, ??????? ???? ??????????.»

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

6 ?? ????? 11 ??? ????? ???? ????? ?????? ???????? (Wet op de omzetbelasting), ??? 28?? ??????? 1968 (*Staatsblad* 1968, ?. 329), ?????? ?? ????:

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

a) ? ???????? ???????? ??? ? ?????????? ??????????? ??? ??? ?? ???? ????????, ?? ??? ???????? ??? ????????? ???????????:

1) ??? ?????????? ??????? ? ???????? ??????? ??? ??? ??????????? ???????, ?? ?????? ?????????????????? ???? ??? ??? ????? ??????????? ?? ???? ? ????? ??? ???? ??? ??? ?? ???? ????? ??????????? ????? ??? ??? ?????????? ??????? ???? ???????????

2) ??? ??????????, ????? ??? ??????? ??? ???????????? ??? ?????? 1, ?? ??????? ??? ???????????? ?? ??????? ??? ??????? ?? ?????? ???????? ???????? ?? ????? ? ?????? ????? ??????? ??? ????? ??????? ??? ?????? 15, ??? ??? ?????????? ??? ? ????????? ? ?????? ????????? ???? ???????? ??? ??????? ???? ??? ????? ??????? ???????? ??? ?????? ??????? ?????? ???? ?????????? ????? ??? ???????? ?????? ??? ??????????? ??? ??????????? ?? ????????? ????????

[...]

3. ??? ??? ???????? ??? ?????????? 1, ???????? a, ?????? 1:

a) ?? ?????? ??????? ???? ????????? ??? ????????? ???????? ?? ?? ???????

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

c) ?? ?????????? ?????? ??????? ???? ?????? ??? ???? ??? ????? ???????? ????????? ??? ?????? ??? ?????? ? ??? ?? ??????????.

4. ??? ??? ???????? ??? ?????????? 1, ???????? a, ?????? 1, ?? ?????? ???? ?????????? ??????? ???? ?? ??????????? ??????:

a) ?? ????? ????????? ? ?????? ??????????

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

c) ????? ??? ?????? ?????????????????? ? ?????????????????? ????????????, ?

d) ??? ?? ????? ?????????? ?????????? ?????,

?????? ??? ?????????????? ?????.»

7 ?? ????? 2, ?????????? 1, ??? ????? ???? ?????????? ??? ??????? ??????????? (Wet op belastingen van rechtsverkeer) ?????? ??? «“????? ???????????” ????? ????? ??? ?????????? ??? ??? ???????? ???????? ?? ????? ?????????? ???? ???? ????? ? ?????????? ??? ??? ???????? ?????».

8 ???? ?? ????? 15, ?????????? 1, ???????? a, ??? ?? ??? ?????, ??? ??????????? ??? ??????????? ?? ?????????? ????? ??? ??????????, ??????????? ??? ??? ???? ??????????? ? ???????? «??? ?????????? ???? ??? ?????? ??? ?????? 11, ?????????? 1, ???????? a, ?????? 1, ??? [????? ???? ????? ?????? ????????] [...] ??? ??? ????? ?????????? ????? ?????? ????????, ????? ?? ?? ??????? ?????????????? ?? ????? ???? ??????????? ??? ? ????????? ??????? ?? ??????? ?? ??? ? ?? ????? ??? ???? ?????? ???????? ??????? ?? ?? ????? 15 ??? [????? ???? ????? ?????? ????????]».

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

9 ? J. J. Komen ???????? ?? ?????????????? ????? ??? 6?? ?????????? 2004 ??? ????????? ?????????? ?????????? («appartementsrechten») ??? ??????????? ?????? ??????????? ????? ??? ????????? ????? De Blauwe Steen ??? Hoorn. ? ???????? ??? ?? ??? ???????? ????????? ??? ????? ???? ??? ???? ??????????.

10 ??? ??? ??????? ???? ?????????? ????????? ???, ?????? ??? ?????????? ??? ???????? ???????? ?? ??? ??????, ???? ?????????????? ??? ????? ??? ???????? ???????????? ???’ ?????? ??? ??? ?????????? ??? ?????? ???? ??? ????? ??? ?? J. J. Komen ??? ????? ????????????. ???? ??? ????? ????, ? J. J. Komen ???????????? ??? ???????? ???????????? ??? ??????????, ????? ?? ?????? ??? ???????? ??? ????????????????, ???? ??? ?????????? ??? ?????? ??? ??? ??? ?????????? ??? J. J. Komen, ????? ?? ?????????? ??? ???????? ???? ???????. ????????, ??? ??????? ??? ?????????? ????? ?????????? ??? ????????, ???????? ???? ??? ???????? ??? ?? ???????????? ??????.

11 ???? ??? ?????????? ??? ????????, ???????? ??? J. J. Komen ?????????? ????? ?????????? ????? ??? ??? ?????????????? ????????????. ??????? ???????? ?????????? ????????? ???’ ????? ??????? ??? ??????, ? ?? ???? ????? ???????????? ?? ??????? ???.

12 ? ???????? ??? ????? ?????? ? J. J. Komen ???? ??? ????????? ????? ??????? ??? Rechtbank te Haarlem (?????????? ?????????? ??? Haarlem) ?????????? ?? ???????. ?? ?? ??? ?????????? ????? ????? ????? ??? ???, ???? ?? ??????? ?????? ??? ??????????, ? ???????? ???? ???? ????? ?? ????? ??? ??? ?? ???????? ??? ????? ?????????? ?????? ???? ?? ?????? ?? ?????????? ??? ???????? ??? ??????.

13 ? ????? ??? ????? ?????? ???? ??? ????????? ????? ? J. J. Komen ??????? ??? Gerechtshof Amsterdam (???????? Amsterdam) ?????????? ?? ??????? ??? 19?? ????? 2008, ?? ??? ????? ?????????????? ?? ?????????? ???????? ??? ????? ????? ????? ???? ????? ????? ??? ??????? ??? ? ???????? ??? ???????? ??????????? ??? ??? ??? ??????? ?? ?? ????? 11, ?????????? 1, ???????? a, ??? ????? ???? ????? ?????? ???????? ??? ???????? ???????? ???? ???? ???????????.

14 ????????, ??? ?? ?????????? ??? ?????????? ??????? ??? ?????????? ????????

??? ???? ??? ?????? ??? ?????? ?? ??????? ???? ????? ???? ?????? ???????? ??? ???????? ??????????? ??? ????? ??????? ??? ?????????? ??? 2003, ??? ??? ?? ?????????? ??? ?????????? ?? ???? ???? ?????? ?? ?????????? ??????? ??? ??? ???????? ??? 2003. ??????????, ? ???????? ??? ?? ???? ?????? ????? ??????????? ??? ??? ??????? ????? ????????.

15 ?????????, ?????????? ????? ????? ??? ???????? ??? ???????? ??????, ?? Gerechtshof Amsterdam ???????? ???, ???? ?? ??????? ?????? ??? ??????????, ?? ????? ???????????? ?? ???? ???????? ???? ???????? ???? ??? ??? ??? ?????????? ????????? ???? ????? ?? ???????????, ????? ?? ?????????? ?????? ?????? ?? ???????????? ?? ????????? ?? ????????? ???? ?????.

16 ? J. J. Komen ?????? ???????? ???? ??? ?? ???? ????????? ????????????? ??? ? ???? ??????, ??? ?????????? ?? ????? 13, B, ???????? ??, ??? 4, ?????????? 3, ???????? ??, _____, ???? ??? ?????? ??? ? ???????? ???????? ???? ?? ??????? ???? ????? ???? ????????? ???? ???.

17 ???? ??? ?????? ?????????? ??????? ??? ????????? ??????????, ? ???????? ?????? ?? ????? ????? ????? ????? ??? ???????????? ??? ?????????? ??? ??? ??????? ??? 19?? ????????? 2009, C-461/08, Don Bosco Onroerend Goed (??????? 2009, ?. I-11079), ???? ????? ?? ?????????? ????? ????? ?? ???????? ??? ??? ???????? ??? ??????? ??? ?? ?????? ??? ??? ??? ??? ??? ??????? ??? ????? ????? ?? ??????????? ????. ??????? ?????? ?? ??? ????????? ??? ?? ???? ??????? ??????????, ?????? ? ??????????? ?????? ??? ??????????? ?? ??? ???????? ??????????? ?? ?????? ????? ??????? ???? ??? ?????? ??? ???????? ???? ?? ??????????? ??? ??????, ? ??????? ??? ???????? ???? ?? ??????? ?????? ??? ???????? ??? ???? ????? ???????, ?? ?????????? ? ????? ?? ?????? ?? ???????????? ?? ?????????? ???? ???.

18 ??????? ??? ?? ???? ????????? ??? ????????? ??? ????????? ????????? ??? ??????????? ??? ???????? ??? ??? ????????????? ??????? Don Bosco Onroerend Goed, ?? ?????? ????????? ????????? ?? ? ???????? ??????? ?? ????? ????????? ??? ????????? ?? ????? ?? ?????????? ???? ??????? ?????? ?? ???????? ?? ???????? ???? ??????? ???? ??? ????? ??????????? ?? ???? ? ?? ???????? ???????? ??? ??????? ??????? ? ????? ??????????? ??? ????? ???? ?????????????? ???? ?? ????????. ?? ?? ??? ????????? ????????? ?????? ?? ? ???????? ??? ?? ??? ??????? ??????????? ??? ??? ?????? ??? ???????? ????????? ???? ?? ??????? ?????? ??? ????????? ? ??? ?? ?? ? ????????????? ??? ???????? ????????? ???????? ???????? ??? ?????? ? ??? ???????? ??? ??? ?? ?? ?? ?? ???? ???????? ??????????????? ???’ ?????? ??? ??? ????????? ??? ??????, ??? ????????, ? ??? ??? ???.

19 ??’ ????? ??? ????????, ?? Hoge Raad der Nederlanden ????????? ?? ?????????? ?? ????????? ??? ?? ???????? ??? ?????????? ?? ???????? ??????????? ???????:

«???? ?? ????? 13, ?, ???????? ??, ?? ????????? ?? ?? ????? 4, ?????????? 3, ???????? ??, ??? ????? ??????? [...] ??? ?????? ??? ??? ??????????? ??? ??? ??? ? ???????? ???? ???????, ??? _____, ???? ??? ???????? ???, ??????????????? ??? ??? ?????? ???????? ????????? ?? _____ ?? ????????? ???? ??????? (???????? ???????????), ??? ?????? ? ????????? ???????? ??? ????????? ???? ??? ????????;»

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

20 ????????, ????????????? ???, ???? ????? ????????, ?? ???? ??? ??????????????? ??? ??? ????????? ??? ????????? ??? ?????? 13 ??? ????? ??????? ?????? ??

??????????? ??????????, ????????? ??? ?? ?? ??? ????????? ????????? ???????????? ??? ?? ?????? ???? ??? ? ??? ??????????? ?? ???? ???????? ?????? ??? ?????? ????????? ??? ??????????????? ?? ???????? ?????? ??? ?????????? ???? ????. ??????, ? ???????? ??? ???? ????? ?????? ?? ????? ??????? ???? ???? ??????? ???? ??????? ?????????? ?? ?? ???? ????????? ??? ?? ????? ??? ?????????? ??? ???????? ??? ????? ??????? ??? ??? ????? ??? ??????????? ????????????. ????, ? ??????? ????? ??? ??????????? ????????? ??? ???????? ??? ?? ???? ??? ??????????????? ??? ??? ????????? ??? ????????? ??? ?? ???? ?????? 13 ?????? ?? ???????????? ???? ????? ??? ?? ??? ?????????? ???? ???????????? (??. ?????????????? ??????? Don Bosco Onroerend Goed, ????? 25 ??? ???? ???????????? ?????????).

21 ? ???????? ??? ??? ??? ? ????? ??????????? ??? ????? 13, B, ???????? ??, ??? ????? ??????? ?????? ??? ??? ?????????? ??????? ??????? ? ???????? ??????? ??????? ??? ??? ??????????? ???????. ?????????, ??????? ?? ?? ????? 4, ?????????? 3, ???????? ??, ??? ?? ??? ???????, ?? ????? ???? ????? ??? ???????? ?? ?????????? ???? ??? ??? ???????? ??????? ? ???????? ??????? ??? ??? ??????????? ??????? ??? ??????????????? ??? ??? ?????? ???????????? ?? ????.

22 ??????? ?? ?? ?? ???? ????? 4, ?????????? 3, ???????? ??, ?? ????? ???? ???????? ?? ?????????? ??? ??????????? ????????? ??? ??? ?????????? ???????? ??? ????????? ??? ?????? ????????????, ????? ??? ??? ?????? ??? ??????????? ???????.

23 ?? ????? 11 ??? ????? ???? ????? ?????? ???????? ????????? ??? ? ???????? ???????? ??????????? ?? ??? ?? ????????? ?????????? ??????? ??????? «?????? ??? ??? ???????? ?????????? ? ??????????? ????????? ?????????????? ???????».

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

25 ???? ?????, ?????? ?? ?????? ??, ??? ??????? ???, ? ???????? ? ????? ???????? ???? ??? ????? ?????????????? ??? ??? ?????? ???? ???????? ??????? ???????????, ?? ?? ?????????????? ???????? ??????????????????? ??? ??? ???????? ???? ??? ?? ???? ????????, ??????????? ??? ??? ??? ??????? ?? ?? ????? 13, B, ???????? ??, ??? ????? ??????? ? ??, ?????????, ????????? ???? ?? ???? ???? ????? ??? ?????? 4, ?????????? 3, ???????? ??, ??? ?? ???? ???????.

26 ????????????, ???????, ??? ?? ??????????? ??? ????????? ??? ?????? ????? ????????? ??? ??? ??????????? ??????? ??? ?????? ?????? ??? ??? ?????? ??? ?????????????? ????????? Don Bosco Onroerend Goed. ??????????, ???? ??????? ??? ??? ?????? ???????? ? ??????? ??????, ???????? ? ??????? ???? ????????? ???????? ?? ??????, ???? ?????? ????? ????????? ?????? ??? ???????? ?? ?????? ???? ?????????? ??? ?????????, ?? ???????? ?? ?????????? ?? ??????????, ??? ????? 39 ??? ?? ???? ?????????, ??? ? ???????? ???????? ???? ????????????? ?????? ???? ?????????? ??? ?? ????????, ??? ????? 42 ??? ????? ?????????, ??? ?????? ?????????? ?? ??????? ?? ??? ?????? ?????, ? ????? ??? ???????? ?? ???????? ??? ????? 4, ?????????? 3, ???????? ??, ??? ????? ???????, ???????? ????????? ?? ???????? ??? ??????? ??? ?????? 4, ?????????? 3, ???????? ??, ??? ?? ??? ??????? ?? ???????? ??????? ???? ??????????.

27 ???? ??? ????????? ?????????, ????? ??? ???? ????? ? ??????????? ??? ??? ?????????? ?????, ? ???????? ???????? ?? ????? ??????????? ??? ?????? ??? ?? ????? ??????????? ?????? ?????? ?? ????????? ?? ???????? ??????????? ???????, ? ????? ???????????, ?? ??????, ??? ??? ???. ???? ???? ??????????? ? ???????? ????? ????? ?

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

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

29 ? J. J. Komen ??????????? ???, ?????? ?? ???????? ?????????? ??????? ???? ??? ?????????? ??? ??????????, ? ?? ?????? ??? ?????????? ????? ???? ? ?????????? ???? ???????, ? ??????? ??? ???????? ???? ?? ??????? ?????? ??? ?????????? ??? ????????? ??? ???????? ??? ??????????? ???????.

30 ? J. J. Komen ?????????? ?????? ???? ??? ??’ ??????????? ???????? ??? ? ????? ??????? ??? ???????????? ??? ?? ?????????? ???? ???? ??????? ????????? ????? ??? ?? ??????? ??? ? ??????? ?????, ???? ??? ???????? ??? ??? ???? ??????????, ?????????? ????? ????? ??? ?????? ?? ???????? ??????????? ??? ??? ???????? ???? ??? ????????. ?? ???????? ???? ????????????? ??? ?? ???????????????? ????? ?????????? ??? 6?? ??????????? 2004.

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

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

33 ???? ????? ?? ?????????? ??? ?? ?????? ?? ?????? ????? ??? ? ????? ??????? ??? ????????????, ? ????? ???? ?? ??????????? ??? ??????????, ???? ??????????, ???? ???? ???????, ???????????? ??? ?? ?????????? ???? ?????? ??? ? ?????????? ??????? ??? ???????????? ?? ?,?? ????? ??? ??????? ???? ??????? ???? ??? ?????? ?? ?????? ?????, ???? ?? ???????? ???????? ??? ??????????? ??? ??????? ?????, ??? ??? ?????????? ??? ????????????? ??? ???????????? ???????? (??., ???’ ????????, ????????? ??? 14?? ??????????? 1985, 268/83, Rompelman, ??????? 1985, ?. 655, ????? 24, ??? ??? 10?? ????????? 2011, C-444/10, Schriever, ??????? 2011, ?. I-11071, ????? 38).

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

35 ??? ??????? ????, ????????, ?????? ????????? ??????, ??? ??????? ?????? ?????????? ?? ?????????? ??? ? ????? ??? ???????? ?????? ??????? ?????, ????? ?????????? ?????????? ????????, ?? ????? ?????????? ?? ???? ????? ??? ???????? ?????????? ????????????? (??., ??’ ?????, ??????? ??? 27?? ????????? 2011, C-504/10, Tanoarch, ??????? 2011, ?. I-10853, ????? 51 ??? ???? ??????????? ?????????).

36 ?? ???? ??????????, ??? ?? ?????? ??? ?????? 4, ?????????? 3, ???????? ??, ??? ????? ??????? ????????? ??? ??? ????? ????????? ??? ??? ???????? ???? ? ???????? ??????? «???? ??? ????? ?????????? ?? ????», ???????? ??? ?????? ? ?????????? ??? ??????????? ????????? ?? ????????? ?????????? ???????? ????????? ??? ????? ????.

37 ?? ??????????, ???????? ?? ?????????, ??????, ??? ??? ??????? ???? ??????????, ??? ?? ?????????????????? ??? ??? ?????? ???????? ????????? ???? ?? ?????? ????????? ??? ???????? ??? ???? ??????????? ??? ????????? ???, ????????, ??? ??? ??????????????? ???? ?? ???? ??????? ????????? ??? Rechtbank te Haarlem ??? ??? Gerechtshof Amsterdam, ??? ?? ?? ??? ?????????? ??????????, ??????? ????????? ??? ??????????? ??????????? ??? ??? ????? ???? ???????????? ???????, ??? ?? ??????? ???? ????? ???? ?????? ?????? ???????????????, ?? ????? ??????????, ?? ?????? ???? ?? ??????? ?????? ??? ??????????, ????? ?? ????? ???????????? ?? ???? ???????? ???? ??????? ???????? ????, ??? ??? ??????????? ????????? ???? ????? ?? ???????????.

38 ???????????? ???? ??????? ??? ???? ????????? ???, ???? ?? ??????? ?????? ??? ?????????? ??? ????????, ????? ???????? ??????? ??????????? ????? ?????????????? ??? ??? ?????? ??? ?????? ???????, ?? ????? ???????? ????????? ?? ????? ??????????, ??? ?? ??????????????? ???????? ??? ???? ????????? ?? ??????????, ??????????, ?? ?? ???? ??????? ?? ??? ??????? ?? ??????????????? ?? ????????? ??? ??? ???????? ???? ????? ???? ? ?? ???? ????????, ? ???????? ???? ??? ?????? ?? ????????????? ?? ???????? ??????? ??? ??? ?????????? ??????? ??? ??????????????? ??? ??? ?????? ???????????? ?? ????, ??? ??????? ?????????? ???????? ???? ??? ?????? ??? ?????? 4, ?????????? 3, ???????? ??, ??? ????? ???????.

39 ????? ??? ??????? ???????, ??? ??????????? ??????? ?????? ?? ????? ? ???????? ??? ?? ????? 13, B, ???????? ??, ??? ????? ???????, ?? ????????? ?? ?? ????? 4, ?????????? 3, ???????? ??, ??? ?? ??? ???????, ???? ??? ?????? ??? ? ??????????? ???? ????? ??????? ???????? ??? ??? ??? ???????? ????????, ???? ? ??????? ???? ????? ????, ???????? ???????????? ??? ?????? ??? ?????? ?????? ?? ????? ?????????? ?? ???? ?????????? ?? ??? ??????, ??????, ???? ?? ??????? ?????? ??? ?? ??? ??????????, ????? ?????????????????? ??? ?????? ?????? ???? ???????? ??????? ??????????? ??? ?? ?????? ????, ?? ????? ??????????, ???????????? ?? ?????????????????? ?? ??????.

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

40 ????????? ??? ? ??????? ?????????? ???? ?? ???? ???? ????????? ??? ?????? ????? ??? ????????? ????????????? ??? ??????? ??????? ??? ????????? ??????????, ?’ ???? ?????????? ?? ????????? ??? ??? ?????????? ??????. ?? ????? ??? ????? ?????????? ???? ???????? ??????????? ??? ??????????, ???? ??? ?? ??? ????????, ??? ??????????.

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

?? ????? 13, B, ???????? ??, ??? ????? ??????? 77/388/??? ??? ??????????, ??? 17?? ????? 1977, ???? ??????????? ??? ?????????? ??? ?????? ?????, ??? ???????? ?? ???? ?????? ?????? ???????? — ????? ??????? ????? ???????????? ?????: ?????????? ?????????? ????, ?? ????????? ?? ?? ????? 4, ?????????? 3, ???????? ??, ??? ?? ??? ???????, ???? ??? ?????? ??? ? ??????????? ???? ????? ??????? ???????? ??? ??? ???? ???????????? ????? ???????? ????????, ???? ? ??????? ???? ????? ????, ???????? ???????????? ??? ?????? ??? ?????? ?????? ?? ????? ?????????? ?? ???? ?????????? ?? ??? ??????, ??????, ???? ?? ??????? ?????? ??? ?? ??? ??????????, ????? ?????????????????? ??? ?????? ?????? ???? ???????? ??????? ??????????? ??? ?? ?????? ????, ?? ????? ??????????, ???????????? ?? ?????????????????? ?? ??????.

(?????????)

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