

62013CJ0266

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??? 19?? ??????? 2015 (*1)

«????????????? ?????????? — ?????????? ?????????? — ?????????? (???) 1408/71 — ??????????
?????? ??? ?????????? ?????????? ??? ??? ?????? ?????? ???, ??????, ??? ??? ??????????
???????????????, ????????, ??? ??? ?????????? ?????????? ??? ?????? — ???????
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?????? ?? Hoge Raad der Nederlanden (????? ?????) ?? ??????? ??? 12?? ?????????? 2013, ?
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L. Kik

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Staatssecretaris van Financiën,

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????????? ??? ??? T. von Danwitz, ?????? ????????, C. Vajda, A. Rosas, E. Juhász ??? D.
Šváby (?????????), ????????,

????????? ??????????: P. Cruz Villalón

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

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3?? ?????? 2014,

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? L. Kik, ?????????????? ??? ??? H. Menger,

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? ?????????? ????????, ?????????????? ??? ??? B. Koopman, K. Bulterman, C. Schillemans
??? M. Gijzen,

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?????????? ????????, ?????????????? ??? ??? M. van Beek ??? J. Enegren,
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??? 16?? ??????? 2014,
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????????? (??) 118/97 ??? ???????????, ??? 2?? ?????????? 1996 (?? 1997, L 28, ?. 1), ???
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????????? 1999 (?? L 38, ?. 1, ??? ????: ?????????? 1408/71).

2

? ?????? ??? ?????????? ??? ?????? ?????? ??? L. Kik ??? ??? Staatssecretaris
van Financiën (?????????? ???????????) ?? ??? ?? ??? ?????? ??? L. Kik ??? ???????
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????????? 2004.

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Montego Bay (?????????) ??? 10 ?????????? 1982, ?????? ?? ??? ??? 16 ?????????? 1994,
?????????? ??? ?? ?????????? ??? ??? ?????? ??? 28 ?????? 1996 ??? ??? ?? ???
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????????? ?? ??????? ??? ?????????? ?????????? ??? ??? ?????? 98/392/?? ???
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[?????????] ??? ??? ?????????? ?????????? ???» ??? 60 ????:
«1. ??? ?????? ??? ?????????????? ?????????? ???, ?? ?????? ??? ?????? ??? ??
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2. ?? ??????? ?????? ??? ?????????????? ?????????????? [??? ??? ?? ??? ????? ?????????? ???,
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«1. ?? ?????????? ?????? ??? ?????? ????? ?????????????? ?????????? ?????????? ??? ?? ???
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2. ?? [????? ??? ?????????? 1 ??????????] ?????? ?????????????? ??? ?? ?????? ???, ?? ??
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3. ?? ?????????? ??? ?????????? ?????? ??? ?? ?????????????? ??? ?????????? ??? ?? ???
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«1. ??? ?? ?????? ??? ?????? ?? ?????????? ?? ?????????? ?????????? ?????? ??? ?????? ???
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2. ?????????????? ??? ?????????? ??? ?? ?????????? ?????????? ?????? ??? ??
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3. ? ?????? ??? ?????? ??? ?? ?????????? ?????? ??? ?????????? [??? ???
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4. ?????? ?' ??? ?? ?????? ??? ?????? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???.

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? ? ?????????????? «????????? ????, ?????????????? ??? [?????????] ??? ??
?????????» ??? 80 ??? ?????????? ??? ?? ?????? ??? ?????????? ??? ?????? ??? ?? ???
60 ??? ?????????? ????, mutatis mutandis, ??? ??? ??? ?????? ????, ???
????????????? ??? ?? [?????????] ??? ?? ??????????????.

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? ? ?????????? 1408/71 ????????, ?????? ????, ??? ?????? 51 ??? ?????? ??? (?????????
????? 51 ??? ????????, ???, ???, ?? ????????, ?????? ??????????????, ?????? 42 ??), ???
????? ?????????? ??? ?? ?????????? ?? ?????? 48 ????. ?? ?????? ??? ??????, ??????, ???
????????? ??? ?? ?????????? ?????????? ?????????? ??? ?????? ??? ?? ??? ?????? ???
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«[?????????] ??? ?? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ??????????
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[?????????] ??? ??????? ??? ?????????? ?????? ??? ?????????? ??? ?????? ??? ??????
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????, ?????? ??? ?????? ? ?????????? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??????????
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[?????????] ??? ?????? ?? ?????????? ?? ?????????? ?????????????? ??? ??????
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[?????????] ??? ?????? ?? ?????????? ??? ?? ?????? ?????????? ??? ??????
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????????? ??? ?????? ?????? ??????, ??? ?????? ?? ?????????? ??? ?? ??????
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[?????????] ??? ??? ?? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?? ???
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?? ?????????? ???????, ??? ?????? ????, ? ?????? ??? ?????? ??? ?????? ??? ??????

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[?????????] ??? ?????? ?? ?????? ?????????? ??? ?? ?????? ?????? ?? ??????

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???? ?? ????? 1 ??? ???????? 1408/71:

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?? “?????????” ??? “?? ????????” ???????, ???????????, ??? ??????:

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?? ?????????????? «????????????? ??????» ?????? 2 ??? ?????????? ?????? ?????? ?????? ???
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«? ?????? ?????????? ?????? ??? ?????????? ? ?? ?????????? ??? ?????? ??????????, ???
????????? ? ?????????? ??? ?????????? ??? ?????????? ??? ? ?????????????? ??? ?? ?????? ??? ??????
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11

? ?????? II ??? ?????????? 1408/71 ?????? ?? ?????? 13 ??? 17?, ?? ?????? ?????? ???
????????????? ??? ?????????? ?????? ??????????. ?? ?? ??? ?????? 13 ??????????, ???
????????? 1, ??? ?????? ??? ?????? ?? ?????? ?? ?????? ??? ?? ?????? ?????? ? ?????????? ?
????? ??????????, ???' ?????, ??? ?????????? ??? ?????? ?????? ??????, ??? ???
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«2. ?? ??? ???????? ??? ?????? 14 ??? 17:

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?? ?????? ??? ?????? ?????? ?????????????? ??? ?????? ?????? ?????? ?????? ?????????? ???
????????? ??? ?????? ?????, ??? ?????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????
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????????? ??? ?????? ??? ?????????? ??? ?????? 14 ??? 17, ?????????? ??? ?????????? ?????? ??? ??? ???
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12

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«? ?????? ??? ?????? 13, ?????????? 2, ??????? ??, ??????, ?? ??? ?????????? ???

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?? ??????? ??? ????? ?????? ?????? ?????????????? ??? ?????????? ??? ?????, ?????????? ? ???,
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?? ??? ??? [??] ??? ????? ?????? ???????, ?????????? ??? ?????????? ??? ?????????? ??? ??????????
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??, ?????????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??
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ii)

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

i)

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ii)

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[...]».

13

?? ?????? 14? ??? ?????????? 1408/71, ?? ?????? ?????????? ??????? ?????? ??? ???
?????????, ?????? ?? ???:

«? ??????? ??? ?????? 13, ?????????? 2, ??????? ??, ?????? ?? ??? ?????????? ???
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4)

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

????? ?? ?????????????? «?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ??????????» ??? 15 ??? ?????????? ???:

«1. ?? ?????? 13 ??? 14? ??? ?????? ??? ??? ?????????? ?????????? ? ??? ?????????? ???
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4, ??????? ?? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ??????.

2. ?? ?????????? ??? ??? ?????? ? ?????? ??? ?????????? ??? ?????????? ??? ? ?????????? ???
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15

? ???????? ?????? ??? ?????????? ?????????? ??? ??? ?????? ???, ??????, ??? ???.
????????? ????????????????, ????????, ??? ??? ?????? ?????????? ??? ??????????, ? ????
????????? ??? ?????????? ??? 21 ??????? 1999 ??? ?????? ?? ?????????? ??? ?????????? ???
????????? ?????????? ?? ??? ??????? 2002/309/E?, ??????? ??? ?????????? ??? ???
?????????, ??????? ?? ?? ??????? ?????????????? ??? ?????????????? ??????????????, ???
4?? ??????? 2002, ??? ?? ?????? ??? ?????????? ?? ??? ?????? ?????????? ?????????????? (?? L
114, ?. 1, ??? ????: ??????? ??-??????), ?????? ??? ????? 8:

«?? ?????????? ??? ??????????, ??????? ?? ?? ?????????? ??, ??? ?????????? ???
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16

?? ?????????? || ??? ?????????? ??-???????, ?? ?????? ??? ?????? ??? ?????????? ???
????????? ?????????? ??????????, ?????????? ??? ?????? 1:

«1. ?? ?????????????? ??? ?????????? ?? ?????????? ?????? ???, ??? ?????? ???
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????? ?????? [????? ?????? ??? ?????? ?????? ??????] ??? ?????? ???
????????????? ??? ?? ?????? ??? ?????????? ?????????????? ??? ?????? ?????????????? ????

2. ? ??? “?????(-?) ?????(-?)” ??? ?????????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? ??? ?????? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ??
????? ??? ?????????? ??? ?? ??? ?????? ?????????? ??? ??????, ??? ??? ??????»

17

?? ????? A ??? ?????????????? ?????????????? ??????????, ?????? ????, ???? ??????????
1408/71.

18

? ??????????? 1408/71 ?????????????????? ??? ??? ?????????? (??) 883/2004 ??? ??????????
????????????? ??? ??? ??????????, ??? 29?? ??????? 2004, ??? ??? ?????????? ???
????????? ?????????? ?????????? (EE L 166, ?. 1), ? ?????? ?????? ?? ?????????? ??? 1?
????? 2010, ?????????? ??? ??? ????? ?????????? ? ?????????? 1408/71. ?? ??????????
?? ??? ?????????? ??-????????? ?????????? ?? ??? ?????? 1/2012 ??? ?????? ??????????
??? ?????????? ?????? ??? ?????????? ?????? ??? ?????????? ?????????? ??? ??? ??????
????? ???, ??????, ??? ??? ?????????? ???????????????, ???????, ??? ??? ??????????
????????? ??? ???????, ??? 31?? ??????? 2012, ? ?????? ?????????? ?? ?????????? ??
??? ?? ??? ?????? ?????????? ??? ??? ?????????? ??? ?????????? ?????????? ?????????? (?? L
103, ?. 51), ??? ? ?????? ?????? ?? ??? ??? 1? ??????? 2012. ?? ?? ??? ??????????
????????? ??? ?????? ?????? 883/2004. ????????, ?? ?????????? ?????????? ???
????????? ??? ?????? ?????? ?? ??? ?????? ?????? ?????? ?????????? ?? ?????????? ???
????????? 1408/71, ???' ?????????? ??? ??? ?????? 90, ?????????? 1, ??? ??????????
883/2004, ??? ?? ??? ? ?????? ? ?????????? 1408/71 ?????????? ?? ??? ??? ?????????? ??
????????? ?????? ?????????? ??? ?????? ??????, ?????? ??????, ??? ??????????
?????????, ??? ??? ?????????????? ?? ??? ??? ??????, ??? ??? ??? ?????????? II,
????? A, ?????? 3, ??? ?????????? ?????? ??????????, ??? ??? ??? ?????????? ?, ???
????????? ?????? ??? ?????? 1408/71 «????? ?????????? ??? ?????????? ??? ??????????
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19

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????????? ????? ?? ??? ????? ??????????, ????? ?????? ??????, ?? ?????????????? ??????????
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????????? 1, ??? ?????????? ??? 1999 ??? ?? ?????????? ??? ??? ?????????? ??? ?????? ??????
??? ?????????? ??? ?????? ?????????? ?????????? (Besluit uitbreiding en beperking kring
verzekerden volksverzekeringen), ? ?????? ??? ?????????? ?????????? ?????? ??? ??????????
??? ? ?????????? ??? ?????? ??? ?????????? ?????????? ?????? ??? ?????? ??? ?????? ???,
????? ??? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ??
????? ?????? ????. ?????? ?? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??????????, ??
????????? ??? ?????????? ?????? (Besluit verzekeringsplicht
zeevarenden) ????????, ??? ????????, ?? ?????????? ??? ????????, ????????

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

20

????? ?? ??? 2004, ? L. Kik, ??????? ??????? ??? ??????? ??? ??????, ??????????? ??
????? ??????????? ?????? ??? ??????? ??????. ??? ??? 31 ????? ??? ????? ?????,
?????????? ??? ?????????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ???
????? ?????? ?????? ?????????? ?????? ??? ?? ??? ?????? ?????? ??????. ??? 1?? ?????? ???
????? ????, ?????????? ??? ?????????? ?????? ?????????? ?????? ?????? ?????? ?????? ???
????? ???????. ? ?????? ??? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ?????? ???
??????????. ?????? ?? ??? ?????????? ???????, ? ?????? ??? ?????????? ???
????? ?????????? ??? ?? ?????????? ?????????? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ???.

21

? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???, ?????? ??? ?????????? 1408/71, ? L.
Kik ??? ???? ??????? ?? ??????? ??? ?????????? ??? ?????????? ?????? ??????????
????????? ??? ?? ?????? ??? 1?? ?????? ??? 24 ?????????? 2004. ???? ??? ?? ???
???????, ?? ?????? ??? ??? ?????? ?????????? ?????????? ?????????? ??? ???
????????????? ?????????????? ???????, ?? ?????? ?????? ??? ??? ?????? ???
????????????? ?????????????? ?????????? ?????? (????? ?????? ??? ?????? ??? ??????????).

22

? L. Kik ?????????? ??? ?? ??? ?????????? 1408/71 ?????????? ???, ??? ??
????????????? ???, ??? ?????? ??? ?????? ?????? ?????? ?????????? ??????????.

23

????????? ?????? ?????? ?????????? ?????????? ??? ??? L. Kik ??? ?? ?????????? ???
????????????? ???, ?? ?????? ?????? ??? ? L. Kik ?????? ?? ?????????? ??????????
?? ?????????? ?????? ?????????? ?????????? ??? ?? ?????? ?????? ??????, ?? Hoge Raad
der Nederlanden (??????? ?????????? ??? ??? ?????) ?????????? ?????? ?? ??
????????? ?????? ??? ?????????? ???.

24

? ? ?????? ?????????? ??????????, ???????, ??? ? ?????????? ?????? ?????? ??????????
????????????? ??? ?????? ?????????? ?????????? ???, ??? ?????? ?????? ???, ??? ??
? L. Kik ?????? ?? ?????????? ???, ?????????? ??? ?????? ??? ?????? ??? ??????
????????? ?? ?????????? ??? ?????? ?????? ?????? ??????, ??? ?????? ?????? ??? ??????
?? ?????? ?????????? ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
?????????, ??? ???, ??????????, ??? ?????????? ??? ?????? ??? ??????????.

25

??????????, ?? ?????? ?????????? ?????????? ??? ??? ?????????? ??? ?? ????
????? ?????????? ??? ?????? ??? ?????????? ?????????? ?????? ??? ??? ????
????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? L. Kik ?????? ?? ?????? ???
??? ??? ?????? ??? ?? ??? ?????? ?????. ?? ?????? ??? ?????? ??? ??? ?????? ???
????????? ?????? ??? ?????? ?????? ???, ??? ?????? ?? ?????? ??? ?????? ???
????? ??? ?????? ?????? ???, ? ?????????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ??? ?????? ?? ?????????? ?????? ?????? ??? ?????? ???
????????? ???, ?? ?? ??????, ??? ?????? ?????? ??? ?????? ?????? ??? 1408/71.

26

?????????, ?????????????? ??? ????? Aldewereld (C?60/93, EU:C:1994:271), ?? ??????
????????? ???, ??? ?????? ?? ?????? ?????? ?????????? ??????????????
????????????? ???, ??? ?????? ?? ?????? ?????? ?????????? ??????, ? ?????? ?????? ???
????????? ?? ?? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?? ??
????????? ???, ??? ?????? ???, ?????????? ??? ?????? ??? ?????? ??? ?????? ???.

27

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

28

????? ??? ?? ? L. Kik ?????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????????? 1408/71 ???
?????, ??????, ?? ?????????? ?? ?????? ??? ?????? || ??? ?????????? ??
????????? ?? ?????????? ?? ?????? ??? ?????? ?????????? ?????????? ??? ??????, ?? ??????
????????? ?????????? ?? ?????? ??? ?????? ?????? ??????.

29

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

30

? ? ?????????? ?????????? ??????????, ??? ?????? ?????? ??? ?????? || ??? ?? ??????????

? ????? ? ????????. ?? ?? ?????, ?????????? ??? ?? ??? ????? ?????????????? ??? ? ?????????????? ??
????? ??? ???? ?????????????? ? ?????????? 1408/71 ?? ?? ???? ?????? ?? ???? ???? ??????
?????????? ???????????, ?? ?????? ?? ?????????????? ? ??? ?????? ?????????? ??????????
?????????. ?? ???????????, ??? ????? ??????? ?? ?????? ?????? ?????? ?????? ?????????? ???
????????????? ?????????? ??? ??? ?????? ??????? ?????? ??? ?????? ?????????? ?????????? ?????
????? ??? ??? ??????? ??????????. ?? ??? ?????? ??? ??? ??? ?????? ?????????? ?????????? ???
????????????? ???????????, ?????? ? ?????????? 1408/71 ?????? ?????????? ?????????? ??
????????? ????. ??? ??? ??? ?????? ??????????, ?????? ?????? ?????????? ?????????? ?????? ???
????????????? ??? ???????, ?????? ?????? ?????????? ?????????? ??? ?????? ????? Aldewereld
(EU:C:1994:271).

31

? ??? ? ?????????? ??? ? ??????? ?????????????? ? ??? ???? ?????? ??? ???? ???? ??????????
?????? ??? ?????????????? ??? ???? ?????? ??? ?????????? ?????????????? ?????????? ??????
????? ?? ?????? ?? ?????????? ?? ?????? ?????? ?????????? ??? ??? ?????? ??? ?????? ???
????? ??????, ?? Hoge Raad der Nederlanden ?????????? ??? ?????? ?????? ??????.

32

? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????? 13, ?????????? 2,
????????? ??, ??? ?????????? 1408/71, ? ?????? ?????????? ?? ?????????? ?? ?????????? ??
??? ?????? ???????, ???, ?? ?? ??????, ??? ?????????? ??? ?????????? ?????????? ?? ?????????? ??
????????? ??? ?????????? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ? ?????????? ??
????? ?? ?????????? ?? ?????????????? ??? ??? ?????? ?????? ??? ??? ?????? ?? ??? ?????? ???
????????????? ??? ?? ?????? ??? ?????? ?????? ?????????? ??????????, ??? ??? ?????? ??? ?????? ???
????? ??? 30 ??? ?????? ??????????.

33

? ??? ? ??????? ????, ?????? ?? ?????? ?????? ??? ? ?????? ?????????? ?????????? ??? ??
????????? ?????????? ????, ??? ???? ?????? 14, ?????? 2, ???
????????? ????, ???, ?? ?? ??????, ?????? ?? ?????????? ? ?????? ??? ?? ?????? ??? ?????? ???
2, ??????? ??, ?????????? i, ????? ?????????? , ??? ??? ?????????? ??? ?????? ??? ?????????? ???
????? ??? ?????? ?????? ?????? ??????????, ?????????? ??? ?????? ??? ?????????? ?????????? ???
????? ????.

34

? ? ?????? ?????????? ?????? ??? ?? ??????? ???, ??? ???? ?????? ???, ?? ?????? 14 ??
????????? 1408/71 ?????? ?????? ?????? ??? ?????? ??? ???? ?????? ??? ???? ?????? ??? ????
????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ???? ?????? ?????????? ???
????????? ?????? ??? ?? ?????? 14? ????, ??? ?????????? ?????? ?????? ??? ?????????? ???
????? ??? ??? ?????? ?????????? , ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ???.

35

? ??????????, ?????????? ?? ??? ???? ?? ??????? ??? ?????? ?? ?????????? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ?????? ??? ???? ?? ???
????? ??? ?????? ??? ?????? ??? ?????? ?????? ??????, ?????????? ??? ?????? ?????????? ?? ???
13, ?????????? 2, ??????? ??, ??? ?????????? 1408/71, ????, ?????????? ???
????????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ???? ?????? ?????? ??
??? ?????????? ?????? ??????. ??? ?????? ?????? , ? ?????? «????? ?????? ?????? ???

?????????????? ??? ?????? ??? ? ???????????? ?????? ?????» , ? ?????? ??????????????????
??? ?? ??? ??? 14, ??? 2, ??? ???????? ?????? ?????? ??????????, ??????, ??
????????????? ??? ?????? ?????? ?????? ?????? ?????????? ?????? ?????? ??????. ???
????????? ??????????, ???, ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????????? ??? ?????????? ?????? ?????? ?? ?????????? ??? ?? ?????????? ???
??? ?????????? ??? ??? ?????? ?????? ??? ?????? 14, ??? 2, ?? ?????? ??? ??? ??????
13, ?????? 2, ?????? ??, ??? ?? ??? ?????? ?????? ???, ?? ?? ??????, ??
????????? ?????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??????.

36

??? ?????? ???, ?? Hoge Raad der Nederlanden ?????? ?? ?????????? ?? ??????????:

«1)

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????? ?? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????? (??) 1408/71 ??? ??
????? ??? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?? ?????? ??? ?????? ?????? ???
????? ?? ?? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ?? ??? ?????? ?????? ??? ?????? ?????, ? ?????? ????? (?) ?????????? ?? ???
????? ??? ?????? ?????? (?) ??? ?? ?????? ?????? ?????? (?) ?? ???
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? (?)
????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? (?)
????? ?? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????
????? ??? (?) ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????? (?) ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? (?) ??? ?? ?????? ??? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? (?) ??? ?????? ??? ?????? ???
????? (?) ??? ?? ?????? ?????? (?) ??? ?????? ?????? ?????? ?????? (?) ??
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
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? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ? ?????? ?
1408/71 ??? ?? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????? ??? ??? ??????;

2)

? ?????? ??? ? ?????? 1408/71 ??? ?????? ?????? ?? ?????? ? ?????? ??????
?? ?????? ??? ? ?????? 1?, ??? ? ?????? ??????;»
?? ?? ?????? ?????? ??

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37

?? ?? ?????? ??? ???????, ?? ?????? ??????????? ??????, ???' ??????, ?? ??????????????? ????
? ??????????? 1408/71 ???? ??? ?????? ??? ??????? ??? ?????? ?????? ?????? ?????? ???
?????? ?????? ??????????? ? ??????, ??? ? L. Kik, ???? ?????? ?????? ?????? ?????? ???
????? ?????? ??????? ??? ?? ?????? ??????????? ?? ?????? ???, ?????????? ?? ??????
?????????? ??? ?? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ?? ?????? ??? ??????
????? ??? ??????, ?????? ??? ?????? ?????? ??? ?????????? ?????? ?????????? ?????? ???
????? ??????, ??? ? ??????, ?????? ?????????? ?????? ??? ?????????? ?????? ??? ??????????
????? ?????? ???, ?????? ?????? ?????? ??? ?????? ?????? ??? ?????????? ?????? ??? ??????
????????????? ?? ??? ?? ???????, ???????????????, ???, ?? ??????? ?? ??? ?? ??????
????? ??? ?? ?????????? ??? ?? ??????.

38

??? ??????? ???, ?????? ?? ?????? ???, ??????, ???, ??? ?? ??? 2, ?????????? 1, ???
?????????? 1408/71, ? ?????????? ???, ?????? ?????, ?????? ?????, ??? ??????????
????????????? ??? ?????????? ? ?????????? ??? ?????????? ?????? ?????????? ??? ??
????? ??? ?? ?????? ?????? ?????? ??????.

39

??? ?? ??????? ??? ?????????? ??? ??????? ??? ?????? ??? ? ?????????? ??? L. Kik ???
??? ??????? ??? ?????? ??? ?????? . ???????, ? L. Kik ??? ?????? ??????? ???, ???
??? ??????? ???, ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?????? ??? ??? ?????????? ??? ??? ?????? ?????? ?????? ??? . ???????, ?????? ? ??????
??? ?????? ??? ??? ??? ?????? ?????? ?????? ??? ? L. Kik ???????, ??? ??? ??????????
??????, ??? ?????????? ? ??? ?????? ?????? ???????, ???????, ??? ?????????? ???
????????? ?? ??? ?? ??? ?? ?????? ??????????.

40

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

41

?????????, ? ?????????? ??? ?????? ?? ?????? 79, ?????????? 4, ??? ?????????? ??? ??
?????? ??? ??????? ?????????? ??? ?????? ?????? ?????????????? ??? ?????? ???
????? ??????? ??? ?????????????? ? ?????????????? ??? ?????? ??? ?????? ?????????? ???
????????????? ??? ? ?????????????? ??? ?????? ???, ??? ??? ?????????? ???, ???????, ??
????? ??? ?????????? ?? ?????????? ??? ?????? ?????? ??? ??????. ???????, ??? ?????? ??? ???
????? ??? ?????????? ?? «?????? ???», ?? «?????????» ? ?? «?????????» ??? ??
??????????, ??? ??? ?????? ??? ?????? 80 ??? ?????????? ????. ?? ??? ??????????
??? ??? ?????? ??? ?????????? ??? ?????????? ??? ?? ?????? ??? ?????? ??? ??????????
?? ??? ??? ?????? ??? ?????????? ? L. Kik ??? ?????? ??? ?????????? ??? ??? ?????????? ???
????????? ??? ?????????????? ?????????????? ??? ?????? ??? ?????? ?????????? ??? ??
????????? ??? ?????????????? ??? ?????????? ??? ?????? ??? ?????? ???.

42

??????????, ?? ??? ?????????? ??? ???? ??? L. Kik, ? ?????????? ??? ? ??????? ???
????????? ??? ?????? ?????????????? ??? ?????? ??? ?????? ?? ?????????? ?? ??????? ???
????????????????? ??? ???? ??? ?????? ?????? ??????, ??? ???? ??? ?????? ?? ??????? ???
????????? ??? ??? ?????????? ??? ?????????????? ?????????????? ??? ?????????? ?????? ???
??? ?????, ??? ???????, ??? ???? ?? ?????? ?? ?????? ?? ?????????? ?? ?????????? ???
????????? 1408/71. ???????, ?? ?????? ??? ?????? ??? ?? ?????????????? ???
????????? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? (?????? Aldewereld, EU:C:1994:271, ??? 14).

43

??????, ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ??? ?????????? ???
????? ??? ??????? ??????? ??????? ??? ?????? ??? ?????? ??? ?????? ???????, ???
????, ??? ?? ??????? ??? ?????? ?????? ?????, ??????? ?????? ??????? ???, ???????
??? ?????????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ???
??? ?????????? ??? (??., ???????, ??????? Petersen, C?544/11, EU:C:2013:124, ??? 42).

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???? ?? ?????????? ? ??????? ?????????? ??? ?????? 40 ??? ??????? ???, ? ??????? ???
?????? ? L. Kik ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????????? ???
????????? ?????????? ?????????? ?? ?? ?????? ??? ?????????? ??? ?????? ?????? ??? ??
????? ??? ?????????? ??????????????, ?????? ??? ?????????? ?? ?????? ?????? ??? ??
???? ??????? ??? ?????????? 1408/71. ?????? ? ??????????, ???????, ??? ? L. Kik
????????? ??? ?????? ??? ?????? ??? ???? ?????????? ??? ?????????? ??? ?????? ???
??????.

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????????????? ??? ???? ?????????? ??? ??????, ??? ?????? ?????? ?????? ?? ?????? ?
????????? ??? ? ?????????? 1408/71 ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??????????, ??? ? L. Kik, ? ?????? ?????? ?????? ?????? ???
????? ??? ?????? ??? ?????? ?????? ??? ??? ?????? ?????????? ?? ?????? ???,
????????? ?? ?????? ?????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ???, ??? ? ?????? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ???,
????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???
??????, ??????????????, ???, ?? ?????? ??? ?????? ?????? ?????? ??? ?? ?????? ???
????? ???.

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46

? ? ? ?????? ?????? ???, ?? ?????? ?????????? ??? ??? ?????? ?????? ??? ?????? ???
????????? 1408/71 ??? ?????? ??? ?????? ??? ?????? ? L. Kik, ??? ??? ?????? ???

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

47

? ??????, ??? ???? ?? ?????????? ???, ??? ???? ??? ?????? ?????? ??? ?????????? ???
????????? ??? ?????????? 1408/71, ??? ???? ?????? ??? ?????? 2 ?????, ?????? ???'
????? ? ?????????? ??? ???? 13, ?????????? 1, ??? ?????????? ??? ?????? ?????? ???
????????? ??? ???? ?????? ?????????, ?? ?????????? ?????? ?????? ??????????
????????? ??? ???? ?????? ??? ?????? ?????????? ??? ?????? ?? ??? ?????????? ?????? (??????
Aldewereld, EU:C:1994:271, ??? 10).

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?? ???? 11 ?? ??????? ?? ??????? ?? ?????? ?? ?????????? ?????????? ?? ???? ?? ???? ?? ???? ??
?? ?????? || ??? ??????? ?? ?????? ?? ?????????? ?????????? ? ?????? ?????????? ??
????????? ??? ??????, ??? ??? ?????? ????? ?????????????? ??? ??? ?????? ??? ?????? ???
????? ?????????? ?????????? ??? ??? ?????? ?????? ??? ??????.

49

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

50

? ???? ???? ?? ?????????? ??? ?????? ?? ?????????? ?????? ??? ?????? ?????????? ??
????????? ??? ?????? ??? ?????? 13, ?????????? 2, ?????? ???, ???
????????? 1408/71, ?????? ?? ?? ?????? ?? ?????? ??? ?????? ? ?????????? ??????
????? ?????? ?? ????? ?????? ?????? ? ?????????? ?????? ?????? ?????? ?? ??????
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51

? ??????, ??? ???? ?? ?????????? ??? ???? ?????? ??? ?????????? ??? ?????????? ???
????? ?????? ?????? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ???? ?????? ???
?????, ??? ??????, ??? ?????????? ??? ?????? ?????? ??? ?????? ?? ??? ?????????? ?
????????? ??? ?????? ?????? (???. ?????? ?????? ??? ?????? ??? ??????, C?347/98,
EU:C:2001:236, ??? 31). ??? ?????? ?????? ?? ??????????, ?????? ??????, ??? ????? 33 ??
????????? van Pommeren?Bourgondiëن (C?227/03, EU:C:2005:431), ?????????? ??? ??????
????????? ??? ?????? ?????? ?? ?????????? ??? ?????????? ??????.

52

???????, ??? ?????????????? ??? ??? 10? ??? ?????????? (???) 574/72 ???
?????????, ??? 21? ?????? 1972, ??? ??? ?????? ?????????? ??? ?????????? 1408/71
(?? ??. ???. 05/001, ?. 138), ??? ?????????????? ??? ?????????? ?? ??? ??????????
118/97, ? ?????????? ??? ?? ?????????????? ??? ??? ?????? ? ?????????? ??????? ??????
????? ?? ?????????? ?? ??? ?????? ??? ?????????? ??? ?????? 13, ?????????? 2,
??????? ???, ??? ?????????? 1408/71 ?????????????? ?????? ?? ??? ?????????? ???
????????? ???.

53

???????, ???, ??? ?????????? ???????, ? ??????? ?? ??? ?????????? ??????? ??????????
?? ??????? ?????? ?????? ?????????????? ?? ?????? ?? ??? ??? L. Kik ?????? ??? ??????
??????. ?????????? ??? ?? ?????????? ? ?????????? ??????? ?? ?? ?????? ??? ??????????
?? ?????????? ??? ?????? ???????, ?? ?????? 13, ?????????? 2, ?????????? ???, ???
????????? 1408/71 ?? ??? ?????? ??????? ?? ??? ?????????? ??? ?????? ??? ?????? ???.

54

?? ?? ??????, ?????? ?? ?????? ???, ?? ?????? ???????, ?????? ? ?????? ???????
????????? ??????? ?? ??? ?????? ??? ???????, ?? ?????????? ?????????????? ??
????????? ??? ?? ?????????? ??? ?????? || ??? ?????????? 1408/71, ?????? ??? ??????
13, ?????????? 2, ?????????? ???, ??? ?????????? ???.

55

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?? L. Kik ?????????? ?????????? ??? ?????? ?? ?? ?????? ??? ??????.

56

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????? ?? ?????????? 1408/71, ?????????? ? ?????????? ??? ? ?????????? ??????? ???
????? 13, ?????????? 2, ??????? ??, ???, ? ?????? ?????????? ?? ?????????? ??
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57

?? ?????????? ???????, ?? ?????????? ?????? ??? ?????????? ?????????? ?????? ??????
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????? ??? ?????????? ?????????? ??? ?????????? ? ?????????? ?????????? ?? ??
????????? ??? ?????? (?? . ?????? Aldewereld, EU:C:1994:271, ??? 20).

58

?? ??????????, ?????? ??? ?????? ??? ?????? ??? ??? ?????? ?????????? ? ?????? Aldewereld
(EU:C:1994:271, ??? 21), ?? ??? ?????????? ?????????? ?? ?? ?????????? ??? ??????
?????, ? ??? ?????? ??? ?????????? ?? ???????, ?????? ? ?????????? ??? ??????????
?? ? ????? ?????????? ??? ?????? . ???, ???, ?????????? ?? ?????????? ??? ??????
22 ??? ?????????? ???????, ? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ???
????????? ?????????? ??? ?????????? ??? ?????????? 1408/71, ?? ?????????? ??? ??????
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59

?? ?? ???? ?????????? ?? ?? ???? ?? ???? ???? , ? ?? ?? ???? ?????????? ?? ???? ?????????? ?? ?? ??
?????? 14, ?????????? 2, ??????? ??, ????? ?????, ??? ?????????? 1408/71, ??????
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60

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??? ??????? ??? ??????? ??? ??????? ???????, ? ??????? ??? ?????? ??? ?????? ??? ???????, ???
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??? ??????? ??? ?????? ??????? ???????, ?????? ?????????????? ?? ?????? ??? ??????? ??? ??????? ??
????? ??? ?????? ??? ? ?? ??? ?????? ???????, ??? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ? ??????
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61

???? ????????, ?? ????????, ?????????????? ??? ? L. Kik, ?????????? ?????????? ???
????? ??? ?????? ?????? ???? ? ?? ?????????????? ?? ??? ????? ?????? ??? ?????? ?
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62

??????????, ?????????????? ?????? ??? ? ?????????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????????
????????? ?? ?? ??? ????? ??? ?????????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??????????????
????????? ??? ?????????? ???, ???????? ??? ?????????? ??? ??????????, ? ??????????
????????? ??? ?????????? ???????????, ??? ? L. Kik, ??? ???? ???? ?????? ??? ?????? ??? ?????? ???
???????, ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????????????
??????????, ??????? ?? ?????????????? ???, ??????? ?? ?? ?????? 15, ?????????? 2, ?????
??????????, ??? ?????????? 1408/71, ?????? ? ?????????? ??? ?????????? ?????????????? ??????????????
????? ???????, ?? ?? ?????? ?????? ?? ?????????? ? ?????????? ???????????????, ??????????????
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63

???? ?????????? ???, ??????? ?? ??? ?????????? 1408/71, ? ?????????? ??? ??????
????????????? ??? ???????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ??????????, ??? ? L. Kik,
?? ?????????? ??????? ?????????? ??????????, ?????????? ? ?????????? ??? ??????
?????? ??? ???????? ??? ?????? ??????????. ????????, ?????? ?? ?????????? ???
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????????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?? ?????????? ???
????????????????? ??? ?????? ??? ?????????? ??? ?????????? (???????)
van Pommeren-Bourgondiëen, EU:C:2005:431, ??? 34 ??? ??? ?????????? ??? ??????????).

????????????? ??? ???? ?????? ??? ?????????????? ???????, ??? ??????? ??????? ???????
 ?? ?????? ? ??????? ??? ?? ?????????????? ??? ?????? ?? ??? ?????????? 1408/71
 ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????? ?????????? ?????? ???
 ?????? ??? ? ??????? ???????, ? ??? ?????????? ?????????????? ???????, ?????? ???
 ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???, ?
 ?????? ?????? ?????? ?????????????? ?? ?????? ??? ?????? ?????? ?????? ?????? ???
 ?????? ??? ??????, ?????? ??? ?????? ??? ?????????? ?????????????? ???????, ???????,
 ??? ?????????? ??? ?????????? ?????????? ?????????? ?????????? ??? ??? ?????? ???
 ?????????? ?????????????? ?????? ?????????? ??? ?????????? ??? ?????? ?????????? ???
 ?????? ???.. ???????, ??? ?????????? ??? ?????? ??? ?????????? ??? ???????, ??
 ?????????? ???, ??????? ?? ??? ?????????? ???????, ? ?????????? ??? ?????????? ???
 ?????????? ??? ?????? ??? ?????????? ???????, ??? ?????? ??? ?????? ?????????? ???
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 ?????????? ?????????????? ??? ?????? ?????? ??? ?????? ?????????? ?????????? ?, ' ???
 ?????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ?????? ??? ?????? ??????????
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1)

? ?????????? (???) 1408/71 ??? ??????????, ??? 14?? ?????? 1971, ??? ?????????? ???
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 ??? ?????????? ??? ?????? ?????????? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
 ?????????? ?? ??? ?????? (??) 118/97 ??? ??????????, ??? 2?? ?????? 1996, ???
 ??? ?????? ?????????? ?? ??? ?????? (??) 307/1999 ??? ??????????, ??? 8??
 ?????????? 1999, ??? ??? ?????? ??? ?????? ?????????? ??? ? L. Kik, ? ??????
 ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ??? ?????? ?????????? ???
 ?????? ???, ?????????? ?? ??? ?????? ?????????? ?????? ??? ?????? ?????? ?????? ???
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 ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ? ??????, ??????
 ?????????? ?????? ?? ?????????? ?????? ??? ?????? ??? ?????? ?????? ?????????? ???,
 ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ??? ???
 ??????, ??????????????, ???, ?? ?????? ??? ?????? ?????? ?????? ??? ??? ??? ?????? ???
 ??? ??????, ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? 1408/71, ???
 ?????????? ??? ?????? 118/97, ??? ??? ?????? ?????????? ??? ?????? ??? 307/1999.

2)

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?????? ?????????? ?? ?????? ?? ???? ?? ?????????? 1408/71, ??? ?????????????? ??
????????? ?? ??? ?????????? 118/97, ??? ??? ????? ?????????????? ?? ??? ????? ??????????
307/1999, ??? ??? ?????? ?? ?????? ?? ?????? ?? ??????, ? ??? ??????????
?????????????, ??????? ?? ?????????????? ?? ?????? ?? ?????? ?? ??? ????? ?????????? ??
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(???????????)

(*1) ??????? ?????????????: ? ??????????.