

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

??? 4?? ???? 2017 (*)

«????????? ??????? ?????? – ?????????? – ?????????? ?????? ??? ?????????? – ????? 63 ??? –
????? 40 ??? ?????????? ??? – ?????????? ????? – ?????????? ????? ?? ??????????????
????????? – ?????????? ?????????? ?????????? ????? ?????????? ????? ?? ??????????????
????????? ?????? ??????, ????? ??? ?? ?????????? ????? ?????????? ????? ?????????? ??
??? ??? ??? ?????????? – ?????????? ????? – ?????????? – ??????????»

???? ?????? C98/16,

??. ?????????? ?????? ??? ??????????, ?????????? ?????? ??? ?????? 258 ??? ???.
17 ?????????? 2016,

????????? ???????, ?????????????? ??? ??? W. Roels ??? ?. ??????????????,

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

????

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

?????,

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

????????? ??? ??? A. Prechal, ?????? ???????, A. Rosas (?????????) ??? E. Jaraši?nas,
???????,

????? ??????????: J. Kokott

?????????: A. Calot Escobar

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

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

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

???????

1 ?? ?? ?????????? ??? ?????????? ???, ? ?????????? ?????????? ?????? ??? ?? ??????????
?? ?????????? ??? ? ?????????? ??????????, ?????????? ??? ?????????? ??? ?? ??????????
????????? ? ?????? ?????????? ?????? ??? ??? ??? ?????????????? ??????????
????????? ?????? ?????????? ??? ??? ?????????? ?????? ?? ?????????????? ??????????
????????????? ?? ??? ?????? ??? ??? ?????????? ?????? ?? ?????? ??? ?????????? ??????????
????? (??), ?????? ??? ?????????? ??? ?????? ??? ?? ????? 63 ??? ??? ??? ?? ????? 40
??? ?????????? ??? ??? ?????????? ?????????? ???, ??? 2?? ????? 1992 (?? 1994, L 1, ?. 3,
??? ????: ??????? ???).

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

2 ?? ?????? 25, ?????????? 3, ?? ?????? ?????? ?????????? ?????????? ?????????? ?? ?????? ?? ??????:

«????????? ?? ?????? ??????????, ??? ???? ?????????? ??? ?????????? 5 ??? ?????? 29, ?? ??????, ?????? ?????????? ???:

[...]

(?) ?? ?? ?????????? ?????? ???????, ?? ?????? ?????? ? ?????????? ?? ?????????? ?????? ?????? ?????, ?? ?????? ?????? ???????, ?? ?????? ?????? ?????????? ?????? ?? ?????? ?????? ?????? ?????? 96 ??? ?????????? 2039/1939 (?? 455 ??), ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 1 ??? ?????? 2039/1939.»

3 ?? ?????? 29, ?????????? 5, ??????? ??, ??? ?????? ?????? ??? ?????? ?? ??????:

«? ?????? ?????? ?????? ?????? ?????????? ?? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? 3 ??? ?????? 25 ?????????? ?? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? (0,5 %). ? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? (0,5 %).»

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

4 ??? 24 ?????????? 2012, ??????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?? ?????????? «EU Pilot», ? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 25, ?????????? 3, ?????? ??, ??? ??? ?????? 29, ?????????? 5, ??? ?????? ?????? ?????? (?? ????: ?????? ?????? ??????) ??? ???? 63 ??? ??? ??? ??? 40 ??? ?????? ???, ??? ?????? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

5 ?? ??? ???????, ??? 4?? ?????????? ?? ??? 1?? ?????????? 2013, ? ??????? ?????????? ?????? ??? ?????? ??? ?????? ? ??????.

6 ? ???????, ???????? ??? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 21 ?????????? 2013, ?????????? ?????? ?????, ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? 21?? ?????? 2014. ??? ?????? ???, ? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

7 ?????? ??????, ? ?????? ?????? ?????? ?? ?????? ??? ?????? ?????? ?????? ?????? ??????.

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

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

8 ? ??????? ?????????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 63 ??? ??? ???.

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

9 ????????, ???' ????, ??? ?? ??????? ?????????? ?????? ?? ?????????? ??
????????????? ?????? ?? ?????????? ?????? ? ?????????? ?????? ?? ??????????????
????????? ?????? ?????? ??? ?????? ??? ?????? ?? ???, ??? ?????? ??? ?????????? ??
????????? ?????? ?????? ??? ?????? ???? ???, ?? ?????? ??? ?????????? ??? ???
????????? ?????????? ?? ?? ?????????? ?????? ?????????? ?????? ?????? ?????????? ?????
????? ????. ?? ?? ??????, ? ??? ?????? ?????????? ?????????? ??? ?????????????? ??
????? ?????? ?????? ??????????, ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????????,
????????? ?????? ?????????? ??? ?????????? ?????? ??? ?????????? ??.

10 ? ??????? ?????????? ??? ?????? ??? 22? ?????? 2010, Mattner (C?510/08,
EU:C:2010:216, ??? 26), ?? ??? ?????? ?? ?????????? ????, ?? ??? ??? ??????, ??? ??
????? ??? ?????????? ??? ?? ??? 63, ?????????? 1, ??? ?? ?????????? ???
????????? ?????? ??? ?????????? ?????????????? ??? ?????? ?? ?????????? ??
????? ??? ?????? ??? ?????? ??? ?????????? ?????? ?????? ?????????? ??? ??????
????? ?????????? ?? ?????? ?????????? ?????????? ??? ?????? ?????????? ?? ?????? ???.

11 ??? ??? ?? ??? ?????? ?? ?????? ?????? ?????? ?????? ???' ?????????? ??? ?? ???
????????? ??? ?????????? ??? ???? ?? ??????, ??? ??? ?????????? ?????????? ??? ??????????
????????? ??? ??? ?????????? ??????????, ??? ?????? ??? ?????????? ??? ??????
????????? ?? ?????????? ??? ?????????? ?????????? ??? ?????? ?????? ??? ?????? ?? ???
??? ?? ?????? ??? ?????????? ??? ?????? ?????????? ?????????? ??? ?? ?????????? ???
????????? ??? ?????? ?????? ??? ?????? ?????????? ??? ??????.

12 ????????, ? ??????? ?????????? ??? ? ????????, ??? ?????????? ??????????
????????? ??? ???????, ??? ??????? ?????????? ?????????? ??? ?????????? ??? ??????? ??
????? ??? ??? ??????? ?????????? ??? ?????????? ??? ??????? ?????????? ??? ??????? ??
????????? ?????????? ??? ??? ???????, ?? ?????????? ?? ?????????? ?????????? ?? ???????
????????? ?? ??????? ??? ?????????? ?????? ??? ?????????? ?????????? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??????????, ????,
????? ?????? ??? 10? ?????? 2011, Missionswerk Werner Heukelbach (C?25/10,
EU:C:2011:65, ??? 37), ?? ??? ?????? ?? ?????????? ?????? ??? ?????????? ??? ?????? 63
????? ?????????? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ?? ?????? ??? ??????????
????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ??????
??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.
??? ?????? ??? ?????? ??? ?????? ??????.

13 ????????, ??? ??? ?? ?????????? ??? ?????????? ?????????? ??? ?? ??? ??????????
??? ?????????? ??????????, ? ??????? ?????? ??? ?? ?????? ?????? ??? ?????? ???
????? ??? ?? ??? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????? ??? ?????????? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????????? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

14 ?? ?????????? ?? ?????????????? ?? ?????????? ? ?????????? ?????????????? ???
????????????? ?? ?????????????? ?? ?????? ?? ??????????????, ? ?????????? ?????????????? ???,
????? ?????? ?????????????? ?? ??????????????, ? ?????????? ?? ?????????? ?? ?????????? ?? ??????????
????? ?????? ?? ?????????????? (??., ?? ?????? ??, ??????? ?? 28?? ?????????? 1986,
????????? ?? ?????? 270/83, EU:C:1986:37, ?? 26). ??????????, ?? ?????? ?????????? ??
????????? ?? ?????? ?????? ?? ?????? ?????????? ?? ?????? ?????????? ?? ?????? ?????? ??
?? ?????? ?????? ?? ?????? ?????? ?? ?????? ?????? ?? ?????? ?????? ?? ?????? ?????? ??
??? ?? ?????? ?????? ?? ?????? ?????? ?? ?????? ?????? ?? ?????? ?????? ???.

15 ?????, ?? ?????? ?? ??? ?????????????????? ?????? ??? ?????? ?????????????? ??
????????? ??????????, ? ?????????? ?????????????? ???, ??? ?????? ?????????? ???
?????????, ? ?????????? ?? ?????????? ?????????????? ?????? ??? ?????????? ?????????? ???
????????? ??????????. ??????????, ??? ?????? ??? ?????????????? ??????????????, ??? ???
????????? ?? 10?? ?????????? 2011, Missionswerk Werner Heukelbach (C?25/10,
EU:C:2011:65, ?? 30), ?????????? ?? ?????? ?????????????? ?? ?????? ?????? ?? ??????????????
????????? ?????????????? ?? ?? ?????????? ?????????????? ??????????????, ?????????????? ??
????????????? ?? ?? ?????? ?????? ?????? ?? ?????????????? ?? ?????????????? ?? ?? ?????? ??????
???.

16 ? ?????????? ?????????? ?????????? ??? ?????????????????? ?? ?????????????? ??
????????? ?? ?? ?????????? ?????????? ?????????? ?? ??? ?????? ?????? ?????? ?? ??????????.

17 ?????, ?? ?????? ?????? ?? ?????? ?????? ?? ?????? ?????????? ?? ?????????????? ??
?? ? ?????????? ?????????? ?????????? ?? ?????? ?????????? ?????????? ?????? ?????????? ??
????????????? ?????????? ?????????? ?????????? ?????????? ?????????? ?? ?????????????? ??????????
?????????. ??????????, ?? ?????? ?????????? ?? ?????? ?????? ?? ?????? ?????? ?????? ??
????????? ?? ?? ?????????? ?????????? ?????????? ?? ?????? ?????????? ?? ?????? ?? ??????????
????? ?? ?????????? ?????????? ?????????? ?? ?????? ?????? ?? ?????? ??????????, ? ??????
?????, ?? ?????? ??????????, ?????????? ?? ?????????? ?? ?? ?????????? ?? ?? ?????????? ??
????????? ?? ?? ?????? ??????????.

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

19 ? ?????????? ?????????? ?????????? ?? ? ?????????? ?? ?????? ?????????? ?? ?? ??
?? 22?? ?????????? 2010, Mattner (C?510/08, EU:C:2010:216), ??? ?????? ?????????? ??
?????????, ?? ?????? ?????? ?? ?????????? ??' ?????????? ?? ??????????, ?????????? ??
?? ?????????? ?? ?? ?????????? ?? ?????? ?????????? ?? ?????? ?? ?????? ?? ?? ??
????????? ?? ?? ?????????? ?? ?????? ?????????? ?? ?????????? ?? ?????? ?????????????? ??
????? ?? ?????? ?????????? ??????????, ? ?????? ?? ?????? ?????????? ??????????, ?? ?? ??
????????? ?? ?? ?????? ?????????? ?? ?????? ?????????? ??????????, ?? ?? ?? ??
????????? ?? ?? ?????? ?????????? ?? ?????? ?????????? ?????????? ?? ?? ?? ??.

20 ??? ?? ?????????? ??????????, ?? ?? ?????? ?????? ?????? ?????????? ?? ?????????? ??
?? ?????????? ?? ?? ?????? ?????? ?????? ?????? ?? ?????? ?????????? ?? ?????????? ?? ??????????
?? ?????? ?????????????? ?? ?????? ?????? ?? ?????? ?????? ?????? ?????????? ?? ??????????
????????????? ?? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????????? ?? ?? ??
????????? ?? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??

?????????.

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

22 ??? ????????, ?? ??? ?????? ??? ??????????????????, ????, ?? ?????????? ?? ??????????
????????? ?????? ?????????? ??????? ?? ?????????????? ?? ??? ?????????????? ?????????? ?? ??? ??
????????????? ?? ??? ?????? ??????, ?? ?????????? ?? ??? ?? ??? ?????? ?????????? ??????????
????????????? ?????????????????, ???, ?????????, ?? ?????????????? ??? ?????????????? ??????????????
????????? ?? ?????????? ?????????? ?????? ?????????? ?????????????? ?????????????? ?????? ?? ??? ??
?????????????.

23 ??????, ? ??????? ?????????????? ?????????????? ??? ?? ?????????????? ??? ??????????
????????? ??? ??????????, ??? ?? ??? ?????????? ??? ??????????????????, ??????????????????
??? ?????????? ??? ?????? ??????????????, ?? ?????????????? ?? ??? ?? ??? ?????? ?? ?????????? ?
????? ??? ?????????? ?????? ??? ?????? ?? ?????????? ??? ?????????? ?????????????? ??? ??????????
?????????.

24 ?? ?????? ??? ?????? ?????? ?????? ??? ?? ?????? ?? ??????????????, ??? ?? ?????? ???
????????? ?????????????? ?????????? ?? ??? ?????????? ?????????? ?? ??? ??????, ? ?????????? ???
????????????? ?????????? ?? ??? ?????? ?? ?????? ?????????? ?? ??? ?????????? ?? ??? ??????????
????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 65 ??? ?????? ??? ??????
????????? ??? ?????? ?????????? ??????????.

25 ?????, ? ?????????? ?????????????? ?????????????? ??? ?? ?????????? ?????????? ??? ??????
????? ??? ?????????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

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

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

26 ??? ?????? ?????????? ??? ??????????, ? ?????????? ??????, ? ?????? ??????????
??? ?????????? ??? ?? ?????????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ?
????? ?????? ?????? ?????? ??? ?????? ??? ?????? 63 ???, ?????? ?? ?? ?????????? ???
????????? ??? ?????? ?????????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? (?????????
??? 10?? ?????????? 2011, Missionswerk Werner Heukelbach, C?25/10, EU:C:2011:65, ???
16, ??? ?? 26?? ????? 2016, ?????????? ??? ??????, C?244/15, EU:C:2016:359, ??? 25
??? ??? ?????????????? ??????????).

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

28 ??????, ?? ?????????? ??????????, ??? ?????????? ?? ??? ?? ??? ?????????????? ???

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

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

29 ?? ????? 63, ?????????? 1, ??? ?????????? ?????? ??? ?????????????? ???
????????? ?????????? ??? ?????? ??? ?????? ???.

30 ??? ?????? ?????????? ??? ???????????, ??? ?????? ??? ?????????? ??? ?????????? ???
????? ??? ?????????? ??? ?? ??? 63, ?????????? 1, ??? ?? ?????????? ???
????????? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????????? ???
????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????? ?????????? ?? ?????????? ?????? ??? ?????? ??? ?????????? ? ?????????? ???
????? ?????? (????????? ??? 22? ?????? 2010, Mattner, C?510/08, EU:C:2010:216,
????? 26, ??? ??? 26? ?????? 2016, ??????? ??? ??????, C?244/15, EU:C:2016:359,
????? 28 ??? ??? ?????????? ??????????).

31 ?? ?????????? ??? ?????????, ??? ??????? ???, ??? ?????? ??? ?????????? ???
????????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ? ??? ??????????
????? ??? ?????? ??? ??????, ??? ?????? ?? ?????????? ?? ?????? ??? ??????????
????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ??????????
?? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? (??., ??' ??? ??
?????, ?????????? ??? 17? ?????? 2013, Welte, C?181/12, EU:C:2013:662, ?????? 25
??? 26, ??? 3? ?????????? 2014, ??????? ??? ?????? ??????, C?127/12, ?? ??????????????,
EU:C:2014:2130, ????? 58, ?????? ??? 26? ?????? 2016, ??????? ??? ??????,
C?244/15, EU:C:2016:359, ?????? 29).

32 ?? ??????????, ?? ??????? ?????????? ?????????? ?????????? ?????????? ???
????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????????? ???
????????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ???
????? ? ??? ??? . ???????, ??? ??? ?????? ?????? ?? ?????????? ?????? ??????????
????????? ? ?????????? ?????? ?????? ?????? ?????? ?????? ?????????? ??????????
????????? 0,5 %, ??? ? ?????? ?????? ?????? ?????? ??? ?????? ?? ?????????? ??? ??????
????????? ?? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?? ??? ??? ???
????? ?? ?????????? ? ??? ??? ?????? ?????? . ??? ?????????? ??? ???, ?? ??????????
??? ? ??? ??? ?????????? ??? ??????????, ? ?????????? ?????? ?????????? ???
20 ??? 40 %, ?????? ?? ??? ??? ?????? ?????? ?????????? ?????????? ???.

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

34 ???????, ??? ?????? ?????????? ? ???????, ? ???????, ??? ?????????? ???
????????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

???

35 ??????????, ?? ??????? ?????????? ?????????? ?????????? ??? ?????????? ?????????? ????
??? ?????????? ??? ?????? ??? ?????? ??? ?????? 63, ?????????? 1, ????.

???

36 ?????????????? ?????????????? ???, ?????? ??? ?????? 65, ?????????? 1, ?????????? ?,
????, «[?] ???? ?????? ??? ?????? 63 [?] ??? ?????? ?? ?????????? ??? ?????? ?????? [...] ??
????????? ??? ?????? ?????? ?????????? ??? ?????????? ??? ?????? ?????? ?? ??????
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
??? ?????? ??? ???? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? 65, ?????????? 1, ????????, ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???
????????? 3, ????, ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 63
????.

37 ?????? ?????? ?????????? ?? ?????? ?????????? ??????, ??????, ??? ??????????????
????????????? ???? ?????? ?????????? ?????? 65, ?????????? 1, ?????????? ?,
???? ???, ????????, ??? ?????????? ?????? ?????? ?? ?????? ?????????????? ??? ?? ?????? 65,
????????? 3, ????. ??' ????, ??? ?? ?????? ??? ?????? ?????? ?????? ???, ??? ??
????? ?????? ?????? ?????? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ?????? ??? ??
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?? ?????? ???
????????? ?? ?????? ?????? ?? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? (??., ??? ?? ?????? ???, ?????? ???
26?? ??? 2016, ??????? ??? ?????? C?244/15, EU:C:2016:359, ?????? 34 ??? 35 ???
???? ?????? ?????? ??????).

38 ?? ??????????, ????????????, ????????????, ??????, ???, ?????????? ??? ?? ?? ??????????????
????????? ??????????, ??? ?????? ?????? ?? ?????????? ?? ?????????????? ?????? ??? ??
????????? ?????????? ??? ?????? ?????? ?????? ?? ?????????? ?????? ??? ?? ?? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ??? ?? ?????? ??? ?????? ?????? ??? ??

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

40 ??? ????????, ?????? ? ?????? ?????????? ?????????? , ??? ?????? ?????????? ???
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? , ??? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? , ??? ?????? ??? ?????? ???
????????? , ??? ?? ??? ??? ?????? ?????? ?????? ?????? , ??? ?????? ??? ??

? ?????????????? ?? ??????? ???? ??????? ??? ??????. ????????, ? ??????? ??????????,
????????????? ??? ????? ?????????? ??? ????? ??????? ??? ?????????? ?? ??????????????
????????? ??? ????? ?????? ?????????? ???, ?? ??????? ?? ??? ????? ??? ??????????
?????????, ??????? ?????????? ??? ??? ??????? ?????? ??? ??? ????? ??????????
????? ?????????????? ??????? ??? ?????? ?? ?????????? ?????? ?????????? ?????????? (??., ??'
????????, ??????? ??? 17?? ?????????? 2013, Welte, C?181/12, EU:C:2013:662, ??? 51 ???
???? ?????????????? ??????????).

41 ????????, ? ??????? ???? ?????????? ??? ?????????? ?????? ?????????????? ?? ???
?????? ?????? ??? ?????? ? ??? ???, ??? ??? ?????????? ???????????, ??? ? ?????????? ??
????????????? ?????????? ??? ??????? ? ?????????? ?????? ?????? ?????? ??????
????????????? ??? ??????? ??? ?????????? ??? ?????????? ?????? ?????????? ??? ??? ??? ???
????????? ??? ?????? ??????????.

42 ?? ?? ??? ?????????? ??? ?????????? ??? ?? ??????? ??? ?? ?????????? ??
????????????? ?????????? ???????????????, ??? ?????????? ?????????, ??? ??????????
????, ? ?????? ??? ?????????? ?????????? ??????? ??? ??? ?????????? ??????????????
????????? ??? ?????????? ?????? ??????.

43 ????????, ?? ?????????? ??? ?????????? ???, ??????? ?????? ??? ??? ??? ??????
????? ?? ???????, ?? ?????????? ??? ?? ??????? ?????????? ??????????
????????????? ?? ??????? ?????????? ??? ?????? ?????????? ???????, ??????, ??? ??????????
?? ??? ??? ?????? ?????????? ??? ?????????? ?????????? ??????? ??? ??? ?????? ??? ??????
?????? ?????????? ???, ???????, ??? ?????????? ?????? ??? ?????????? ???????,
????????? ??? ?????????? ?? ?????? ?? ?????????? ?????? ?????? ?????????????? ??? ???
????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????????????? ??? ???
?? ?? ?????????? ??? ?????????? ?? ??? ?????? ??? (????????? ??? 27?? ??????????
2009, Persche, C?318/07, EU:C:2009:33, ??? 44, ??? ??? 10?? ?????????? 2011,
Missionswerk Werner Heukelbach, C?25/10, EU:C:2011:65, ??? 30).

44 ??????????, ?? ?????????? ?? ?????????? ?? ??????? ??? ?????? ??? ?????????? ?? ???
?????? ?? ??? ???, ??? ??? ???, ??? ?? ??? ?????????? ?? ?????????? ??????????????
????????? ??? ?????? ??? ?????????????? ?????????? ?????????? ?????????? ?????????????? ???
?? ?????????? ?????????? ??? ?????? ?????????????? ?? ??? ?????? ?????? ?????? (??., ??
???? ??????, ?????????? ??? 27?? ?????????? 2009, Persche, C?318/07, EU:C:2009:33, ???
46, ??? ??? 10?? ?????????? 2011, Missionswerk Werner Heukelbach, C?25/10,
EU:C:2011:65, ??? 31).

45 ????????, ?????? ?? ?????????? ?? ? ?????????? ?????????? ??? ?????????? ??
????????? ?? ?????????? ?????????? ?????? ?? ?????????? ?????????? ?????????????? ???
????????? ??? ?????? ??????????.

46 ? ?????????? ??????????? ?????????????? ???' ?????? ??? ? ??????? ?????????? ???????
???? ??? ?????????????? ?????????????? ?????????????? ??? ?????????????? ?????? ??????????
?? ?????????????? ?????????????? ?????????????? ?????????? ??? ?? ?????? ??? ?????? ???
?? ?????????? ??? ??? ?????? ?????? ??????. ??????????, ?? ?????? ??? ?????? ???
??????????, ??? ??? ?????? ???, ?????????????? ?? ?????????????? ? ??????????????
?????????? ?????????????? ??? ?? ?????? ??? ?????? ??? ?????? ?? ?????????????? ?????? ???
????????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????????????? ??????????????
????????????? ?????????????? ??? ?????? ??? ?????? ??? ?????? ?? ?????????????? ? ??????????
????????????? ?????????? ???, ?????????????? ?????? ??? ?????? ??? ?????????? ??????????????
?????????? ??? ?????? ???, ? ?????????? ??? ?????? ??? ?????????????? ?????????????? ??? ???
????? ?? ?????????? ??? ?????? ??? ?????????? ?????.

47 ? ?????????, ??? ?????????? ??? ???????????, ? ?????? ?????????? ???
????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????????????? ??? ??? 65 ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????? ??????????????
?? ?????? ?????? ?? ?????????????? ?????????? ?????????? ?????????????? ??? ??????
(????????? ??? 7?? ?????????? 2004, Manninen, C?319/02, EU:C:2004:484, ??? 49, ???
27?? ?????????? 2009, Persche, C?318/07, EU:C:2009:33, ??? 46, ??? ??? 10??
????????? 2011, Missionswerk Werner Heukelbach, C?25/10, EU:C:2011:65, ??? 31). ??
???? ?????? ?????? ??? ??? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??????????
(??., ??' ??? ??? ??????, ??????? ??? 21?? ?????????? 2016, ??? ??????, C?201/15,
EU:C:2016:972, ??? 72 ??? ??? ?????????? ??????????).

48 ? ???????, ? ??????? ?????????? ??? ?????????? ?????? ?????????? ?????????? ???
????????? ??? ?? ???????????, ?? ???????????, ?????????? ??? ?????????? ???
??? ??????? ??? ??? ??? ?????? ??? 63 ???.

??? ??? ?????????? ??? ?????? 40 ??? ?????????? ???

49 ??? ?????? ??? ?? ?????????? ??? ?????? 40 ??? ?????????? ??? ?????? ???
????????? ??? ?????????? ?? ??? ???' ?????? ?????????? ?????????? ??? ?????? 63 ???,
????????? ? ?????????? ? ?????? ?????????? ???????, ??????? ?? ??? ??????
????????? ??? ?????????? ??????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? 63 ???,
??????, ??? ?????????? ??? ??? ?????? ???????, mutatis mutandis ??? ?? ??? ?? ?? ???
????? 40 (??., ??' ??????, ??????? ??? 1?? ?????????? 2011, ??????? ??? ??????,
C?250/08, EU:C:2011:793, ??? 83 ??? ??? ?????????? ??????????).

50 ? ???????, ? ??????? ??? ?????????? ?????? ?????? ??????.

51 ? ??????? ???, ?????????????? ??? ? ?????????? ???????????, ?????????? ???
????????? ?? ??? ?????????? ? ??? ?????? ?????????? ??? ??? ??? ??? ??????????????
????????? ?????????? ??? ?????? ?????????? ??? ??? ?????? ??? ?????? ??? ???, ?????? ???
????????? ??? ?????? ??? ??? 63 ??? ??? ??? ??? 40 ??? ?????????? ???.

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

52 ??????? ??? ?????? 138, ?????????? 1, ??? ?????????? ???????????? ???
??????????, ? ??????? ?????? ?????????? ?????????????? ??? ????, ?????? ?????? ?????? ??????
????? ??? ?????????? ??????. ?????????? ??? ? ?????????? ?????? ??? ?????????? ???
????? ??? ?????????? ??? ? ?????????? ???????, ? ?????????? ?????????? ?????? ??
????????? ??? ?????????? ???.

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

1) ? ??????? ??????????, ?????????? ??? ?????????? ??? ?????????? ?? ??? ?????? ?????????? ?
????? ?????????? ??? ??? ??? ??? ?????????? ?????? ??? ?????????? ?????? ??????????
????????????? ??? ??? ?????? ??? ??? ?????????? ?????? ??? ?????????? ???
????????????? ??? (??), ?????? ??? ?????????? ??? ?????? ??? ?? ?????? 63 ???
??? ??? ?? ??? 40 ??? ?????????? ??? ??? ?????????? ?????????? ???, ??? 2??
????? 1992.

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

Prechal

Rosas

Jaraši?nas

????????????? ?? ?????? ?????????? ??? ???????????, ??? 4 ????? 2017.

? ??????????

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

A. Calot Escobar

A. Prechal

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