

GE_GERICHTE ATAS/912/2005 vom 11. Oktober 2005

GE Cour de justice, 2005-10-11, DE

Quelle: https://mcp.opencaselaw.ch/entscheid/ge_gerichte_ATAS_912_2005

FR: GE_GERICHTE ATAS/912/2005 du 11 octobre 2005

IT: GE_GERICHTE ATAS/912/2005 del 11 ottobre 2005

Erwägungen

E. 5

+100? 566@! 1) D E => C(" 01+ 0" &
+ : D + / " : 1+ " 0> " =
0? 1 " " 9 * : D *)F :
D> " 0 0 C1 + @66 B 9 : 1 G9 @9 +1
: " + H B1* 5667! %0+ /: D1 D
+ ? "1 /)1 " \$ " : ' + >
:1! 0? 0" + : " " BB" 1+ " 00?
>: 1 B " + " "(I 1 "1 01+ ! +
1 + 1= " " " : + : " " " " / " D " ? " + 1=
" " > " + : " " " 9

79 > "1 1 " " = "1 " " ,H B1* : (+ ? +
1 9

49 : 1* + 5, 0 5667! %0+ ! 1B1 " /:
10" . 6@2- :? 1 : > BB B1+1 +
"1 :? D 5@ 0 566@ " " +:" " " C
D + > + ? " " : " " + > +
+ + + 0 + > 0 + * BB" , =*
566@! : : " = " + 9

H9 * "1 . +1" 0 ! > "1 1 " +(D E " "
6@2- > . B + 010 + # \$ " 01+ 0" "
C" 1 " & " +1? "1 ' + A 9 " " >1" "
: + " 1 " / 1 0 " / " +> 9 %
1" 1 +1: 1 D 0" : " 0: ? 9 + 0+ D B
0 " " 1 + 010 9 > / " + B 0

„, „

„5 > / " + + + " +> D =>
J + # \$ " D +1: 1 + 010 +
\$ 9 B 0 : " : + 01+ 0" " C" 1 . >1"
) 9 0 D + " 1 + " +> ! =>
1" 1 + " " K = > : " 0 " : (+
\$ = > : : B C + ,L766 B 9 +

2-3425667 % -28 % 0 0" D 01+ 0" " C" 1 " \$
+1: ") 1 1 : " : + ,L766 B 9
0 + : 1+ " 0> " " = 0? 1 01+ 0" " C" 1

: " + , = 566@! " " : : 1 " + " ! +
0 + + 0 " " 1 + " " 1 = " " " + > " " " +
"

2 + \$! : 1 " " + " " : 1 + >
0 + ! + " B " : * + 0 : 0 " + B 0

,, ! . " " : " " " D > * (" 1 + : "
+ * 01 + ! 0 : " " + " " " + : " " " + " +
1 : 1 * + 1 = 9 " B " : + + " " " " 001 +
" 0 " 1 " " 1 9

> 1 " + + + " / : " " " + 1 = " 0 : . > 1 "
) ! B " D > " " + " " " ! ? 1 1 B + " " ! :
+ 1 " C 1 ! C Q 0 " 1 " + " " > : + > + 9 " D
" M " + : " " B . > 1 ") " ? " 1 ! " "
+ " + * " + 1 0 " F " 0 : I " 1 " 1 01 + ; < ! 0 : "
" + + 1 + 1 = ; 5 < " + " " " + : " " " ; < 9
+ 1 = " 0 : + " " " " " + 00 " 1 : 1 2
+ > " \$! : : 1 " + " . " " : " "
D " " 1 : D > : : * 1 = " "
+ * : " " C A " D 0 " : B) 9 " "
" . : " ' * + " * " " D : : 1 " +
+ " " " " " +

2 + > \$: * + 01 + / 9 D > > '
+ / * 0 " . " " B ! " M " + " " " :
C) : > " " " + > 0 + 0 : 1 " " D
% + 1 + + 1 * " B 0

.,59

49 > : (! " % 0 + > " B + 1 " + " * :
B + 0 ? " B " " + 01 + 0 " " C " 1 " &
9 + 1 : + " + : 1 * . > " " " +
? + 1 ! D E = + . * 1 " 1 + + D > : : " "
" + + " * + > & \$ " 0 " (+ : C) + :
" " " 1 + : " +

+ > > " : + : 1 * + " G9

" * D + = " : 1 " 00 " + " F"
58 * , 338 + > BB % , 56237 ! ; + = : + , 338
P 6, 8, < ! / " 0 + D + 0 D > " 0 0 ? +
D > 1 1 + " + * " : + " C) + : + " 01 +
/ C " 1 + > " 0 0 ? * 9

2-3425667 % 728 % B ! > " / : 10 " B + 1
" 9 - 6 " - 4 + " 1 9 ! + : " ! " * . ? " "
+ 0 C + ! > " : 1 " 1 " B 1 : \$ 9
1 D ! + : " + " " : : ? 9

H9 < / " 0 + L "9 -@ 9 5 ! B1+1 : " +1 +
+ : C) ! : L ?) " + ! + M "
+ : " " : 1* / "9 5 9 5 53 B . L1) :
+ 01+ 9 : " +1) O L
?) " + : C) M " +L C 0 " . L1 "
) : + " D 01+ 9 : " 0 " :
 C) + M " + : " " B . L1) 9 L "9 -@ 9 5
 : + . L "9 58 9 5 + : = " + B1+1 ;&&
,335 575<! + : "1 : " ,H +1 0? ,335 ;

,335 :9 , -67< " : " 7 " ? ,33- ; ,33- :9 ,8@H< O
L + 1 . D + : " + : 0 " 9 \$
 ? + L "9 -@ 9 5 ! L " "1 /1 " * 1 + "1 "9
-4 " -H + > + L %0 + 5H = ,337 ;
< " B . L1 " + + : C) 9 \$: 0 (+
 + : " ! " "1 E " " . L1) G! L ?
) " + : C) M " + " "0 " BB "1 .
 L1) + L) + " +1 0 " " "
 : "1 ; 9 5 < 9 +1 " 0 : + O B
+L C 0 " . L1) " ?) " 0 " : C) : + 0 "
B " " D 01+ / ; 9 -< 9 B " " + : " B / L1 "+
+ : C) + : " " . L1) ; 9 @ < 9 \$ L 9
, + L "9 -4 ! +1 : "0 " ; 1 : "0 " B1+1 + L "1 <
< +1) ! : (* "1 " 00 " 0 : " ! : " " :
1* / "9 57! 9 5! " 53 + " + M " 1 . L1 "
) " : : L ?) " + " "
 D L : * " F" B \$ 9 +1 : "0 " L
 : + : B ") = D L . = + " " +1 1) " 0 " B
 D " 00 " B1+1 + : " ") 1 1 +1 1
 D > " " + : " " : 1 "1 > 1 " : 1 " ? 9
 B1+1 " % +1 1) 1 : * 1) 0 " " 0 " (+L1 "+
+ : " " +1 : "0 " D ! : : 1 "1 ! L :
1 " ? + " " 9 L + 0 " : 0 D * "1 0 B "1
 : B1+1 1 " " + B) + B "1 : 1* . L "9
-@ 9 5 + (" D " 0 " " +1 1) 1 +1 : "0 "
 +L1 " ? " + : " " D : * " F" B
 \$! 0 D L " L " 1) 0 " : 1 + B / + +
 : C) + M " ; B9 "9 -4 9 @ " K & ,58 H7 < 9 ? <
 " ! " +0 " " D ! +L 0 ("
) 1 " ? ! " 1 D L " 0 ! . L1) ! . + " "
 "0 " 01+ / D : * " F" +0 " 1 \$! :
 : " ? " : C) /

2-3425667 % 428 % + " + L "9 -4 9 @ " 0 " B D
 " " + " "0 " L : 1 "1 1 " ? " " D L L
 : * + LF" 9 = " B " +L " " 0 D L & \$
 : (* : " " + B " D L " " L " 0 : 0 " :
 1 " ? : +L1 * + " " ! " 00 + ! + " " .

■ "■ ■■■■ ■ ■+ " ■■! ■■ : ■■ ■■ ■C■)■ +■ ■■■■ ■ M"■9 ■■ ■L■■■" :■■■ :
■ ■■■■"■■■" ■1■■■■■■■■ ■ +■ ■ 0?■■■ ■■■■ ■■■■■■■■■ ■■ 1"■?■ ■■■■■■"! ■■
■■■■ :■ ■■■■! ■■ ■ ■"■ +■■■ : ■■"■" ■■ +(■ ■ ■ D■■■ ■■ ()■■■ ■1)■■■■ ■■■
■■■BB ■■00■■■" : 1■■■ : ■ F" ■ ■:■■ D■1■ ;■B9 & ,,- ■? 45 ■ ■■ +9 -<9 ■■ '
■■ ■ ■ ■■ ■■ :■ " ■■■■ ■ +■ ■L■■■■■■ ■ +L■■■■ :■ " D■■■ ■■ : ■■"■" ■ %
■■ ■■■■■■ +■■■ ■ "9 57 ■■9 5 ■" 53 ■ ■■ % 1: ■+■■■" ■■ ■ "(■ +L■+1D■■■" ■
■■■ :■ ■■■■ 1■■■■■■0■■■" :■■■ F" ■ B ■ ■ ■ ■ ■ \$■ ■■■■ ■" +L■■■" ■ :■ "! D■■■
■■■■ ■ "(■■ +L■BB ■■■■ "1 ■" +L1■ ■ 0 ■ "1 ■ ■■" 1)■■■■0■■■" : ■ ■■ ■ 0:"■
; & ,58 ■ H7<9 89 ■ ■>■■■:(■■■! ■■ ■■ ■ ■■" ■>■■■" ■■+■ ■■ & ■■■■ +■■■
■■■ ?■" +>■■■C■"■ +■■■ 01+ ■■0■■■"■! ■■ D■ ■/■■■■" : 1■ ■10■■■" ■■ ■■
■■■"(■ +>■)■■■■9 ■■ ■>■■■" :■■■ ■ ■ :■■■■ ■■■1)■1 D■■■ ■■■■ 01+
■■■0■■■"■ : ■■■■ "■ ■■ :■■■*■■■" F" ■ B ■ ■ ■ ■ ■ \$■ ■■■■9 & ■■ + (■ ■ ■ ■ ■■"
+■ ■ ■ ■■"■"■ D■■■ ■■ ■■ ■■■■%0■■■+ ■ ■>■ :■■■ . : ■■+ ■ ■■ ■C■)■ ■■
■ M" +■ ■■■■ 01+ ■■0■■■"■9

39 ■■ ■■ ■ ■■" ■>1" ■■■■ ■■:■■■+■■■" +■ ■■ D■> ■ ■■ ■ " :■■■ "■■■■ ■
0:"■ +■ B■ " D■> ■■ ■ ■" ■■■■ ?■■■0■■■" 0■ ■■■■ 0■ ■C1 ■■ & ■■■■9
■■■ ■>' ■ ■■:■■■+■■■" :■■■ +■ +■ . ■■ ■■?■" "■" ■ +■ ■■ : ■■■■ :■ ■ ■■ ■■
■■■■■ D■■■ ■>■■■■■ ■■■■■■%0■■■+ ■ +■* ■ " ■■ ■■ ■■■■ 0:"■ ■ ■■■■ :
■■■"■" ■ ■■ ?■)■" ■0■■■" . ■■ ■C■)■ +■ :■ ■■ ■ ■■ ■ ■■ ■" :■■■■■
+>■■■■ : ■■"■" ■ ■1)■■■■ ; & ,54 ■ --5<9

■■ ■■ B■ " D■■■ ■■■■ 01+ ■■0■■■" ■ ■D■ ■ ■■ & ■■■■ ■ ■■" ■■
■>■■■:(■■■ 0 ■■ ■C■ ■! ■■ ■■■■ ■ " F" ■ :■ " ■■■■"9

,69 ■■ ■■ ■ ■■" ■* D■■■ ■■B ■ ■■ B■ " D■■■ ■■■■ : 1■1+■■■"■■■ ■■
■■■■■%0■■■+ ■■ ■■ : (■ +■■■D■■■■■■■■ ■ ■*■ " 1"1 ■BB ■ 1 ■■ ■■■ ■ ■■"
" ■= ■ ■ ■0? ■ ■1 ■■■■ B ■■ :C■ 0■■■■■" D■■■ ■■■■■01 ■■ & ■■■■! ■■
D■■■ ■> ■ ■*■ " ■■ D■■■ "■■■ ■■ ■■ ■" :■■■ ■■ ■■■■ ■*■■■ ■> ■" 01■! ■
■>■■■ ■ " :■■■ ■ ■■■■■■ +■ ■ ■" ■" +>■■■■■ ■■■■■■ ■*■■■ ■■■■■■%■ ■"
■>■■■ ■ " :■■■ :■1 : ■ ■■■■ B ■■■■C ■■ +■ ,L766 B 9

■■■ : ■■ :■ +■ ■■ ? ■■■■ B 1) " ■■■■ ■■: "■ ■■" ■■>■+0 ■■" ■" ■■" ■+0 ■
■" 1■9 >■■■" ■ ■■ D■>■■■ ■■■■■■)■■■0■■■" ■ ■■■■ +1■ ■ ■■ ■1■■■ :■■■*■■■
?■)■ ■>■+0 ■ ■" ■" ■ . ■ ■■■■■■" . ■■ ■+0 ■ ■" 1 ■■ ■*■■■"■)■ ■ ■" ■ ■ .
■■■ ■! ■ ■■■■ ■ ■+ " ■■ ■■■■ *■■■"■■■ ■ ■" 1■■■ ■■ I

,9 D■■■ ■>■■■" "1 ■ " ■"■ *■■■■■ +■■■■ ■■■■ ■ "■■■" ■ ■ ■■ ("■ . ■>1)■ + +■
:■ ■ ■■■■■ +1"■ 0 ■1■■■ K

59 D■>■■■■■ ■ " ■) " ■ ■" ■■■■■1■ ■* ■) +■■■■ ■■■■ ■ 0 "■■■ +■ ■■■■
0:1"■■■■■ K

2-3425667 % H28 %

-9 D■■■ ■>■+0 ■ ■" 1 ■>■ " :■ ■■ ■■+ ■ ■ 0:"■ 001+ ■"■0■■■" +■ ■> ■■/■■■"
"■+■ +■ ■■■■■)■■■0■■■" ?"■■■■ I

@9 D■> ■ ■■ ■ " B ■+1 ■■ ■■■■■■ %■ : ■ : ■■+ ■ +■■■ + ■: ■ " ■■ D■> ■ ■■
■■■■ ■ " 0 + B ■ ■■■■■■ ■■? ■■ : 1=■+ ■■ ■ D■> ■ ■ " 0 ■! ■■ ■■ ?■■■
+>■■■ ■■■■■)■■■0■■■" ■ +>■■■■ +1■ ■ ■ ■ ■1■ +■ ■>■+0 ■■" ■" ■! ■■
■■■"■ D■> ■ ■>■■■" :■■■■ ■■ 0■■■■ ■ +>■■■■ 0:■ ■■■■■ ■■? +■ : 1=■+ ■■ K

79 D...> " :...C...)1 +:... 0 0... " O ...)...0... " 1"1 + ...19 ; & ... :?... 1 ...9 9 +... ,3 0... ,38@ K & ... :?... 1 ...9...9 +... 54 =... ,38@ K & ... :?... 1 ...9 9 +... -6 ... " ? ... ,33H<9

\$...BB... " *...0... " ... " ... 0? ... +... " ... %1...01 1... " :0:... ! B ... " +... " " D... > ... " 01... > :... %0F0... : ... C)... M" +... 01+ ...0... " ...C... "1 : 1...1+...00... "9 ... " +(... . : 1... " > ?) *... B *... +... >... 1! ... " ... 0... " 9

2-3425667 % 828 % ... , +0... +!*... ,... *... , +...

... 1/...2... 3 ...4... 5...6)%& ... , 7 ... 2...

,9 ... *?...9 ... 2...

59 ... = "...9 -9 ... " D... : ...1+...) "... "9

@9 ...B 0... :... " ... +... D...>... :... *... " B 0... " : 1... " F" +... +1... +... -6 = ... +(... " B ... " :... :... 00...+1 ... + ...1 ... ?... B1+1 ... +... ! \$...CR... A... C BD... 4! 466@ ... ! ... " ... /...0:... 9 ... +1... :... " F" : ...)19 ... 010 ... + " I ... < ... + D... /... "0... " D... +1... " +1... ?" ... :... +... +1... " "D...1...K ?< ... /: ... : ... D... 0 " B ... " 0 : ... * +...0...+... " " " +1... " K < : " ...) ... + ... : 1... " "9 \$... 010 ... " :... " 1...10... " 1...01 1... " < ?< ... " < ... % +... ! ... ? ... B1+1 ... +... : ... :... " ... 0... " (... D...> ... +... * ... +1... *?...9 ... 010 ... +... 0... " 0 '... +... : ... *! D... " = "... ! ... D... +1... " "D...1... " >... *... ::... +... D... 1"1 ... /:1+ 1... ;... "9 , -5! ,64 ... " ,68 ... <9

...) ...BB (...

... %... S

... 1... +... " I

... T ...

... : ... B 0... +... : 1... " F" ... " B 1... /: ... " ... D...> . >...BB ... B1+1 ... +... "1 :?... D... :...) ...BB ...