

Avis juridique important

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62001J0384

????????? ??? ??????????? (?????? ?????) ??? 8?? ????? 2003. - ?????????? ??? ??????????
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????? 12, ?????????? 3, ??????? ?? ??? ?? - ?????????? ??????? ?????? ??? ??????????
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?????? C-384/01.

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?????????? ??? ?????????? ?????????? ?????? ??? ?????????? ?????????? - ??????
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(?????? ??? ?????????? 77/388, ??? 12 § 3, ?????. ?_)

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\$\$\$\$\$????? ??? ?? ??????? ??? ?????? 12, ?????????? 3, ??????? ?, ?? ??????
??????, ??? ?? ??? ?????? 96/95, ? ?????? ?????????? ??? ?????????? ??????????
?????????? ??? ????? ?????????????? ?????? ??? ?????????? ?????? ??? ??????????
?????????, ?????????? ?????? ?????? ??? ?????????? ?????? ?? ?????????? ??? ??????
?????????? ?????????? ?? ??? ?? ??? ????? ?????????? ?????? ??? ??????????
?????????. ?????????? ?????? ??? ?????????? ?????????? ?? ?????????? ??? ??????????
??????????, ??? ?? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ?? ?????????? ??????
?????????? ?????????? ??? ????? ?????????? ???, ??? ?????? ?? ?????????? ??? ??????
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(??, ??????? 24, 26-28)

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????? ???????? C-384/01,

????????? ??? ??????????? ???????????, ?????????????? ??? ??? E. Traversa ??? C. Giolito,
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????????? ????????????, ?????????????? ??? ??? G. de Bergues ??? P. Boussaroque,
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??? ??? ?? ??????????? ?? ??????????? ??? ? ??????? ???????????, ???????????
????????? ??????????? ??? ??? ??????? ????? ?? ????? ??????????? ??????? ??????? ???
????????? ??????????? ??? ?? ??????? ???????, ?????? ??? ??????????? ??? ??????? ???
?????? 12, ??????????? 3, ??????? ?_ ??? ?, ??? ????? ??????? 77/388/??? ??? ??? ???????????,
??? 17?? ??_?? 1977, ??? ??????????? ??? ??????????? ??? ??????? ???, ??? ???????
?? ??? ??????? ??????? - ??? ??????? ??????? ????? ??????????? ????: ???????????
?????????? ??? (?? ????. ????. 09/001, ?. 49), ??? ??????????? ??? ??? ??? ????? 96/95/??
?? ???????????, ??? 20?? ??????????? 1996, ??? ???????????, ?? ??? ?? ??? ??? ???????????
??????????, ??? ??????? 77/388 (EE L 338, ?. 89),

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

?????????? ??? ??? ?. Watheler, ??????? ????????, D. A. O. Edward (?????????), A. La
Pergola, P. Jann ??? A. Rosas, ????????,

?????? ??????????: S. Alber

?????????: R. Grass

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

???? ?? ????? ?? ?????? ??????????? ??? ??????? ??? ??????????? ??? ??? ?? ???????????
?? 10?? ??????? 2002,

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1 ?? ?????????? ??? ??????? ??? ?????????? ??? ?????????? ??? ?????????????? ??? 5 ?????????? 2001, ?
????????? ??? ?????????? ?????????? ???????, ??????? ??? ?????? 226 ??, ?????????? ???
???? ?? ?????????? ?? ?????????? ??? ?????? ??? ?????? ???????????, ?????????????? ??????????
????????? ??? ??? ??????? ??????? ??? ?????? ??????????? ??????? ??? ??????????
????????? ??? ?? ??????? ???????, ?????? ??? ??????????? ??? ?????? ??? ?? ?????? 12,
????????? 3, ??????? ?_ ??? ?, ??? ????? ??????? 77/388/??? ??? ???????????, ??? 17??
??_?? 1977, ??? ??????????? ??? ??????????? ??? ??????? ???, ??? ??????? ????: ???????????

?????????? ?? (?? ??. ???. 09/001, ?. 49), ??? ?????????????? ??? ?? ?????? 96/95/??
?? ??????????, ?? 20?? ?????????? 1996, ?? ??????????, ?? ?? ?? ?? ?? ?? ?? ??????????
?????????, ?? ?????? 77/388 (?? L 338, ?. 89, ?? ?: ??? ??????).

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2 ?? ????? 12, ?????????? 3, ??????? ?_, ?? ????? ?????? ?????? ?????????? ?? ???:

«? ?????????? ?????????? ?? ?????? ?????????????? ?????? ?????? ?????? ?? ?? ?????? ??? ??
??????? ?? ?????????????? ?????? ??? ?????? ?????? ?? ?????? ??? ?????? ?????? ??? ??
????? ??????????. ?? ?? 1? ?????????? 1997 ??? 31 ?????????? 1998, ?? ??????
???? ?? ?????? ?? ?????? ?????? ??? 15 %.

[...]

?? ?????? ??? ?????? ?????? ?? ?????????? ?????? ?? ?????????? ?????? ?????????? ?????????? ??
????????? ?????? ?????? ?????????? ?? ?????? ??? ?????????? ?????? ?????, ?? ?????? ??? ?????? ??
????? ?????? ?? 5 %, ?? ?????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?»

3 ?? ????? 12, ?????????? 3, ??????? ?_, ?? ????? ?????? ?????? ?????????? ?? ???:

«?? ?????? ??? ?????? ?? ?????????? ?????? ?????????? ?????? ?????? ?????????? ??????????
????? ??? ?????????? ??? ??? ??? ??? ?????? ?????? ?????? ?????????? ?????????? ??? ??
????????? ?? ?????? ?????? ??? ?????????? ?? ?????? ?????? ?????? ?????? ??? ?????????? ??????
?? ?????????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
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4 ?? ????? 29 ?? ????? 98-1266, ?? 30?? ?????????? 1998, ?? ?? ?????????????? ??
1999 (JORF ?? 31?? ?????????? 1998, ?. 20050), ?????????? ?? ?? 279 ?? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????:

«????? ??? ?????????????? ??? ?????? ?????????? ?????? ?????????? 5,50 % ?? ?? ????:

[...]

b decies. ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????????? ???????,
?? ?????? ?????????? ??? ?????? ?????? »..

5 ? ?????? ?????????? ??????????, ???????, ?????????? ?????????? 5,50 % ?? ?? ??
????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????????? ?????? ??? ??
????????? ?????????? 19,60 % ?? ?? ??? ?????????? ??? ??? ?????? ?????? ?????? ??????????.

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

6 ?? ?? 8 ?????? 1998 ?????? ???, ? ?????? ?????? ?????? ?????????? ??? ??????????
?? ?? ?????? ??? ?? ????????, ?????? ??? ?????? 12, ?????????? 3, ?????????? ?_, ??
????? ??????, ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??????
????? ??? ?????????? ??????.

7 ? ?????? ??? ?????? ??? ?????? ?????? ?????, ?? ?? ?? 31 ?????? 1998 ?????? ???,
????????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?? ?? ?????? ??? ??
????????? ???, «[?]????? ?? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??????
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? ??????, ????, ??? ???????????, ? ?????????? ???????, ? ?????????? ??? ??????? ???., ?
????????? ?????????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ???????.
????? ?? ??? ?????????? ??????????».

8 ??? 7 ?????????? 1998, ?? ??????? ?????? ?????? ?????????? ??? ?????? ?????? ?? ??
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«????? ???????,

??? ??? 31 ??????? 1998 ??????? ??? ??????? ???, ??? ?? ??? 12, ?????????? 3,
????????? ?, ??? ??? ???????, ? ?????????? ?????????? ??? ?? ?????????? ?? ??????????
??? ??? ?????? ??? ?????? ?????? ?????????? ??????? ??? ?????? ??? ?????????? ??? ??
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?????) ??? ??? ?????????? ?????? ??? ?? ?????????????? ??? ?????? ???
????????????????? ?????????? ??? ??? ??? ??? ??? ?????? ?????????? ??????????.

?? ?????? ??? ?????????????? ??? ?????? ?????????? ?????????? ?????????? ??? ??
????? ??? ?????????? ??????????: ??? ?????????? ?????? ? ?????????? ???
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???????, ??? ? ?????????? ??? ?????????? ?????? ?????? ??? ?????????? ????????. ??
????????? ??? ?? ?????????? ??? ?????????? ?????? ?????? ?????? ??????????????
????? ??? ?????? ??? ?????????????? ??? ?????? ?????? ?????? ?????? ?????????? ???, ??????????
????? ?????????????? ??? ?? 27 % ??? ?????????? ?????? ?????? ??????, ??????????
??? ?? ??????? ??? ?????? ?????? ?????????????? ?????? ??? ?????? ??? ?????? ??? ??????
??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ? ??????????.

9 ??? 7 ?????????? 1998 ? ??????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?? ?? ???
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«????? ???????, ??? ???????????,

??? ?????????? ??? ?? 7 ?????????? ?????? ?????? ???, ?? ??????? ??? ?? 31
?????? ??????? ???, ?? ?? ?????? ??? ?????? ?????????????? ??????? ?? ???
????????????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??????
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????????? ?? ??? ?????????? ??? ?????? 12, ?????????? 3, ??????? ?_, ??? ?????? ??????
??, ? ?????????? ?????????? ??? ?????? ?? ?????????? ?????? ?????? ?????? ?????? ??????
??? ?????????? ?????? ?????? ??????.

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????????? ?????? ??? ?????? ??? ??????????, ??? ?????????? ?? ?????? ??????, ??? ??????????????
??? ?????????? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??
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????????? ?_.

???? ??? ?? ?????????? ??? ?????? ??? ?????????? ? ????????, ??????? ??? ?????? 12,
????????? 3, ??????? ?_, ?????????? ?? ??????? ?? ??????, ??? ?????????? ??? ???
????????? ?? ?? ?????????? ?????? ?????? ?????????? ??? ?????? ??? 31??
?????? ?????????? ??? ?????????? ?? ??? ?????? ??? ?????? ??????. ?? ?????? ?? ?????? ??
???? ?? ?? ??? ?????? ??? ?????????? ???.

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10 ?? ??????? ??? ?????? ??? ?????????? ?? ??? ?????? ??? ?????????? ??? 7?? ?????????? 1998. ???
?????, ??? 30 ?????????? 1998 ?? ?????? ?????????? ?????????? ??? ??? 98-1266, ??
????? 29 ??? ?????? ?????????? ?? ?????? 279 ??? ?????? ?????????? ?????????? ???,
????????? ??? 5,50 % ??? ?????? ??? ??? ?????? ??? ?????? ?????? ?????? ??????????
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11 ??? 22 ?????????? 1999 ? ???????, ?????????? ??? ? ?????? ?????????? ??????????, ??????????
?? ??? ?????? 29, ??????? ?? ??? 12, ?????????? 3, ??????? ?_ ??? ?, ??? ???
??????, ?????????? ?? ??? ??? ?????? ?????? ?????? ??????, ?????????? ?? ?? ???????
?? ?????????? ??? ?????? ?????? ???.

12 ???????? ?????????? ?? ?????? ??? ?????????? ?????, ? ???????? ?????? ??? 13
?????? 2000 ?????????? ???, ?????????????? ??? ?????? ?????????? ?? ?? ?????????? ???
????????? ?????? ??? ?????? ?? ?????? ?????? ?????? ??? ?????? ?? ?? ?????? ???
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13 ??? 7 ?????????? 2000 ?? ??????? ?????? ?????? ?????????? ??? ?? ?????????????? ???
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14 ?? ?? ??????? ?? ?????? ??? ?????????? ?????? ?????? ?? ?? ?????????? ?????? ?? ??
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?? ??????? ?????????? ??? ??? ?????????? ?????? ??????, ?????????? ??? ?????????? ???
????? 12, ?????????? 3, ??????? ?_ ??? ?, ??? ?????? ??????, ??????????, ??????????
15 ? ??????? ?????? ?????? ?????????? ??? ?????? ??????.

16 ??????, ? ??????? ?? ?????? ?????? ?????????? ?????? ?? ?? ?????????? ??? «?????? ?????? ???
?????? ??? ?????? ?????????? ?????? ??? ?????? ??????, ??? ?????????? ???
?????? ??????» ?? «????????? ?????? ?????? ??? ?????? ?????????? ??????» ??? ??? ???
?? ?????? 12, ?????????? 3, ??????? ?_, ??? ?????? ??????. ??????????, ??????????
?? ?? ?? ?? ?????? ?????? ?? ?????? ?? ?????????????? ?????? ?? ?????????? ???
«????????????? ?????? ??? ?????????? ?????? ?????????? ???, ?????????? ??? ??? ???
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17 ???????, ??? ?? ?????? ??? ?????????, ?????? ??? ?? ?????????? ??? ?????? ??????????
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18 ???????, ? ??????? ???????????, ??????????? ??? ??????? ???????, ??????? ??
?????????? ??? ??? 12, ?????????? 3, ??????? ?_, ??? ??? ????? ??????? ????????. ??
????????? ??? ????? ?? ??????? ????? ???????.

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19 ?????? ?? ?????????? ???, ??? ?????????? ??? ?????? ?????? 7 ??? 9 ??? ??????
?????????, ? ??????? ??? ?????? ?????? ??? «[?]????? ?? ?????? ?????? ????????
????????? ??? ??? ?????????? ?????????, ?????? ?? ?????????? ?????????? ??????????»
?? ??????? ??? ?????? ?????? ??? ?????? ???, ???????, «????????? ??? ???
????????? ?????? ??? ?????? ?????? ?????? ??????». ?? ??? ??? 7 ?????????? 1998
????????? ???, ? ??????? ?????????? ??? ?? ?????????? ??? ??? ?????????? ??? ???
«????????? ??? ?? ??????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
??? ?????????? ?????? ?????????? ?????????? ??????????»

20 ??????? ??? ?????????? ? ??????? ??? ?????????? ?????? ?????? ?????????? ??? ?? ??????
??? ?????????? ??? ?? ?????? ??? ?? ?????? ?? ?????? ?? ?????? ?????????? ?? ?????????? ??
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????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???.

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

22 ?????? ?? ?????????? ??? ?? ?????? 12, ?????????? 3, ??????? ?_, ??? ???
????????? ?????????? ??? ? ?????? ?????????? ???, ? ?????????? ??????????, ?????? ??
????????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ?????????? ??????????.

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

24 ?? ??? 12, ?????????? 3, ??????? ?_, ??? ??? ?????? ?????? ?????????? ??? ??????????
????????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??????????.

25 ?? ?????????? ??? ?????? ?????? ??? ?????????? ??? ? ?????????? ?????????? ?????????? ???
????????? ??? ?????????? ?????????? ??? ?????? 12, ?????????? 3, ??????? ?_, ??? ???
????????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??????????
????????? ?, ? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ??? ??? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??????????
????????? ?????? ??? ?????? ?????? ?????? (????????? ??? 3?? ??_?? 2001, C-481/98,
????????? ??? ?????? ?????? 2001, ?. ?-3369, ?????? 21 ??? 22).

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

27 ?? ??? ?????? ???????, ?????????? ??? ?? ?????? ??? ?????? 12, ?????????? 3, ???????
?_, ??? ?????? ?????? ?????????? ?????? ??? ?????? ?????? ?????? ?? ?????????? ???
????????? ?????????? ?????????? ?? ??? ?? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???.

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

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

29 ?????? ?????????? ?? ?????????? ??? ? ?????????? ??? ?????????? ??? ? ?????????? ??????????
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ?? ?????????? ?????????? ??????????
????????? ?????????? ??? ?????????? ??? ?????? ?????????? ?????????? ??? ???? ?? ???
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30 ? ?????????? ??? ? ?????????? ?????????? ?????????? ??? ?????? ?? ?????????? ???????
????????? ??? ?????????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???
????????? ??? ???? 12, ?????????? 3, ?????????? ?_, ??? ?????? ?????? ?????? ??????????.

??? ??? ?????????????? ??? ???? 12, ?????????? 3, ?????????? ?_, ??? ?????? ?????? ??????
?????????

31 ? ??????? ?????? ???, ?????????? ?? ??? ?????? ?? ??? ?????? ?????????? ?????????? ???
????????? ??? ?????? ???, ?? ?????? ?????? ?? ??? ?????? ?? ?????? ?? ?????????? ???
????????? ??? ?????????? ??? ?????? 12, ?????????? 3, ?????????? ?_, ??? ?????? ?????? ??????.

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

33 ? ??????? ??? ???? ?????????? ??? ????? ?????????? ?????? ?????????? ? ?????????? ???
????????? ??? ???? ???.

34 ?????? ??? ???? ?????????? ??? ? ?????????? ?????????? ?? ?????????? ??? ?????????? ???
????? ??? ???? ?????????? ?????????????? ?????????? ??? ?????????? ?????? ??? ?????? ???
????????? ??? ??? ?????????? ??????, ?????? ??? ?????? ??? ?????? ??? ??? ??? ?????? ???
????????? ??? ??? ?????? ??? ??????, ??? ???? ?????????? ??? ??? ??? 7 ?????????? 1998
????????? ??? ?????????? ???.

35 ??? ?????????? ??????????, ?? ??? ??? 7 ?????????? 1998 ?????????? ??? ? ?????????? ???
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36 ??' ?????? ??? ?????????? ??? ?????????? ??? ? ?????????? ??? ?????????? ???, ??? ????
????????? ?????????? ??? ?????? 12, ?????????? 3, ?????????? ?_, ??? ?????? ?????? ???,
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37 ????????, ??? ?????? ?? ????????, ??? ???????, ??? ???????, ??? ???????, ??? ???????, ??? ???????, ??? ???????, ??? ???????, ??? ???????, ??? ???????.

38 ?????? ??? ?????? ?????? ?? ?????? ?????? ?????? ?????? ??? ????????, ? ???????, ??? ???????.

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39 ??? ?? ??? 69, ?????????? 2, ??? ?????????? ?????????? ? ?????????? ?????????? ?????????? ?????????? ????, ?????? ?????? ?????? ??????. ?????? ? ?????? ?????????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

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1) ?????????? ??? ???????.

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