

?????? C-243/03

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«??? — ??????? ??? ????? ??? ????? — ??? ?????????? ??? ?????????????? ??
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????????? ??? ?????????? M. Poares Maduro ??? 10?? ?????? 2005

????????? ??? ?????????? (????? ?????) ??? 6?? ?????????? 2005

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????????????? ?????????? — ?????????? ??? ?????????? — ????? ?????? ?????? — ??????
????????? ??? ?????????????? ??? — ?????? ??? ?????? ?????? — ?????????? ???
????????????? ?????????? — ?????? ?????????? ?????? ?????? ?????????? ??? ??????????
????????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????????????? ??
????????????? — ??? ??????????

(?????? 77/388 ??? ??????????, ??? 17 ??? 19)

?? ?????? ??? ?????? ??? ?????? ?????????? ?????? ?????? ?????????????? ??? ??????????????
????????? ??? ?????? ?????????????? ?????? ??? ?????? ??? ?????? ?????? ??????????????, ??? ???
????? ??? ? ?????? ?????? ??? ?????? ?????????????? ??? ??????????????, ?????????????? ???
????????????? ??? ?????? ??? ?? ?????????? ?????? ???, ???, ??? ?? ?????? 17 ??? 19 ???
????? ??????? 77/388, ??? ?????????????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????
?? ??? ?????? ?????? ?????????.

(?. ??? 37 ??? ??????).

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

??? 6?? ?????????? 2005 (*)

«??? — ??????? ??? ????? ??? ????? — ??? ?????????? ??? ?????????????? ??
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????? ?????? C-243/03,

? ? ?????????? ?????? ??? ?????? 226 ?? ??? ?????? ??????????, ? ??? ?????? ?????? ??? 6
?????? 2003,

????????? ??? ?????????? ??????????, ?????????????? ??? ?? E. Traversa,
????????????? ??? ?? N. Coutrelis, ???????, ?? ??? ?????????? ??? ????????????,
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????????? ??????????, ?????????????? ??? ?? G. de Bergues ??? ?? C. Jurgensen-Mercier,

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????????? ??? ??????, ?????????????? ??? ?? N. Díaz Abad,
???????????,

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

????????? ??? ??? A. Rosas, ??????? ????????, J.-P. Puissochet, S. von Bahr (?????????),
J. Malenovský ??? U. Löhmus, ????????,

??????? ??????????: M. Poiares Maduro

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

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

???? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? 10?? ?????? 2005,

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1 ?? ?? ?????????? ??? ?????????? ???, ? ??????? ??? ?????????? ?????????? ???
?? ?? ?????????? ?? ?????????? ??? ? ??????? ??????????, ?????????? ??? ?????? ??????
???? ?????????? ??? ?????????? ?????????? ??? ?????? ?????????? ??? (?? ???:
???) ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ??? ?????? ??? ? ?????? ?????? ??? ?????
????????????? ?? ?????????? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????
????? ???, ???, ??? ?? ????? 17 ??? 19 ??? ?????? ?????? 77/388/???, ??? ??????????,,
??? 17?? ????? 1977, ??? ?????????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????
?? ??? ?????? ?????? ?????? – ????? ?????? ?????? ?????? ?????????? ??? ?????: ??????????
????????? ??? (?? ???. ??? 09/001, ?. 49), ??? ?????????????? ?? ??? ?????? 95/7/?? ??
????????? ??? 10?? ?????? 1995 (?? L 102, ?. 18, ??? ????: ??? ??????).

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

2 ?? ?????? 2, ??????? ??????, ??? ?????? ?????? 67/227/???, ??? ?????????? ??? 11??
????????? 1967, ??? ?????????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
???? ?????? ?????? ?????? (?? ???. ??? 09/001, ?. 3), ??? ?????????????? ?? ??? ???

3 ?????? 11, A, ?????????? 1, ???????? ??, ??? ????? ??????? ??????? ??? ???.
?????? ?? ???? ??????:

«???? ??? ??????????? ??????? ??? ??? ?????????? ?????????? [...] , ?????????? ?????????? ???
????????? ??? ?????? ?????? ? ?????????? ?? ?????? ??? ??? ?????? ?????? ??? ?????? ?????? ? ?????????????? ?
? ??????? ??? ?????????? ??? ??? ??????????, ??? ?????? ? ?????? ??????,
????????????????? ??? ?????????? ??? ?????????? [?????] ?? ??? ??? ?????? ?????? ???
?????».

4 ?? ?????? 17, ??????????? 2, ????????? ??, ??? ?? ???? ??????, ??? ???????????????
?? ?????????? ?? ?? ????? 28 ?? ??? ????? ??????, ?????? ??? «[?]?? ?? ?????? ?? ??
????? ? ?? ?????????? ?????????????????? ?? ?? ??? ?????????????? ?? ?? ??????????????
?????? ??, ? ?????????? ?? ?? ?????????? ?? ?? ??? ?????????? ?? ?? ??? ??, ??? ??
????? ??, ??? ?????????? [...] ??? ?????????? ? ?????????? ?? ?? ?????????? ?? ?? ??? ??,
????????????? ?? ?? ??? ?????? ?? ?? ?????????? ?? ?? ?????????? ?? ?? ??? ??????????,
????? ?? ?? ??? ?????????? ?? ?? ?????????? ?? ?? ?????????? ?? ?? ??? ?????????? ?? ??
????????? ?? ?? »..

5 ? ?????????? 5 ??? ????? ?????? ??????????????:

«???? ?????? ?? ?????? ??? ??? ??????????? ??? ?????????????????????? ??? ?????????????? ??? ?????????? ??? ?????
??? ??? ?????????? ?????????????? ??? ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? 2 ???
3, ?? ?????? ?????????? ?????????? ??? ??????, ??? ??? ??????, ?? ?????? ??? ?????? ??? ?????? ??????????
????????? ??? ??????????, ? ??????? ??????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??????????????
????? ?? ?????? ?????????? ??? ??? ??? ?????????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??????????.

? ?????????? ????. ????????????. ????. ???. ??????. ????. ??????. ????. ??????????????????. ????. ????.
?????????. ????. ????. ????. ??????. ???. ???. ??????. 19.

[...]»

6 ?????? 19, ?????????? 1, ??? ?????? ???????, ?? ????? «????????????? ?? ??????????
??? ???????», ?????? ?? ???:

«? ?????????? ?????????? ??? ?????????????? ??? ?? ?????? 17, ?????????? 5, ?????? ????,
????????? ??? ?? ?????? ??? ??????????????:

– ????? ??????????, ?? ?????????? ????? ?? ?????????? ??????? ??????????, ????

—???? ??????????????, ?? ????????? ????? ??? ?????? ?????? ???????, ?????? ?????
????????????? ?????, ??? ?????????? ????? ?????? ?????? ??? ?????????????????? ????? ??????????,,
????? ??? ????? ?????? ??? ??? ?????????????? ?????? ?????? ?????? ??????. ?? ?????? ????? ?????
??? ?????????? ?? ?????????????????? ????? ?????????????? ?? ?????? ??? ??????????????,, ????? ???
????????????? ??? ?? ?????? 11, ??? ?, ?????????? 1, ?????????? ??.».

[...]»

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

7 ?? ????? 212 ??? ??????? ???????????? ??????? (??? ????: ???) ??????:

«I. 1. ? ?????? ?????????????? ?????? ? ?????? ?????????? ?? ?????????? ??? ??????
????????????? ?????? ?????? ?? ?????????? ??? ??? ????? ?????????????? ?????? ???
????????? ??? ??? ?????? ???.

[...]

II. 1. ??????? ?? ????? ??? ?? ?????????? ?????????????????? ??? ?? ?????????? ???
????????????? ?????? ??? ??? ??? ?????? ?? ?????? ?????? ?????? ?????????? ?????????? ???
??????, ? ????? ??? ?????? ?? ?????????? ?????????? ?? ?????????? ?????? [?????? ??????]:

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

[...]»

8 ?? ????? 212 ??? ?????????? II ??? ???, ??? ?????????? ?? ?? ??? ?????? 2 ???
????????? 94-452, ??? 3?? ?????? 1994 (JORF[?????? ?????????? ??? ??????]
?????????] ??? 5?? ?????? 1994, ?. 8143), ??????:

«1. ?? ?????????? ??? ?????? ?? ??????, ??? ?????? ??? ?????????????? ??? ??
????????? ??? ?????? ?????????? ??? ?????? ?????????????? ?????, ??? ??????????
????????????? ?????? ?????????? ?????????? ????? ?????????? ?????? ?? ?????????? ??????
??? ?????? ?????????? ?????? ??? ?????????? ?? ?????? ??? ?????? ?????????? ??????
????????? ??? ?????????? ??? ?????? ?????????? ?????? ??? ?????? ?????????? ?????? ???
?????????.

? ??????? ?? ?????? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ???????, ? ??????
????????? ?????? ?????????? ??? ?????? ??? ?????? 207 bis,
????????????? ??? ?????? ??? ??????????:

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

b) ??? ??????????, ?? ??????? ??? ?????? ??? ?????? ??? ?????? ???????, ??? ??????
????????????? ???, ?? ?????? ??? ?????? ??? ?????? ??? ?????????????? ??? ?????? ??? ??????
????? ??? ??? ?????? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ??????????, ?????????????????? ??? ?????? ??? ??? ?????????? ?????? ??? ???
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[...]»

9 ?? ?????? 2 ??? ??????? ??? ?????????? ?????????? ??? ???????, ??? 8??
????????? 1994 (?????? ?????? ?????????? ??????????, ?????? ?????? 3 CA-94,
?? 22?? ?????????? 1994, ??? ????: ?????????? ??? 8?? ?????????? 1994), ?? ????

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

«150. H ?????? ??? ?????????? ??????????

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

[...]

151. ?? ?????? ??? ?????????? ??? ?? ?????????? ??????????

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

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

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??? ?????? ?????????? ??? ?????? ? ??? ?????? ?????? ?????? ?????? ?? 1 186 000 ?????? ???
(FRF) (????????????????? ??? ?????), ?? ??? ?????? ?? ?????? ??? 186 000 FRF
????????? ??? ??, ?????????????? ?? ?????? (?? ?????? 20 %) ?? ??????????
????????? ??? 237 200 FRF.

O ?????? ??? ?????????? ??? ?????? ??? ?????????????? ?????? ?????? ?? ??? ???
????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
?????????. ??????, ? ?????? ??? ?????????? ?? ?????? (186 000 FRF) ?????? ?? ??????
????? ??? ?? ?????? ??? 186 000 FRF x 80 % = 148 800 FRF.

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

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

10 ? ?????? ??????????, ? ?????? ?????? ?????? ??? ?????? ??????????, ??? 23 ??????
2001, ?????? ?????? ?? ?? ?????? ?????? ??? ?????? ?????????? ?????????? ??? ??????
17, ?????????? 2 ??? 5, ??? 19 ??? ?????? ??????, ?????? ? ?????? ??????????, ??????,
????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ????,
????????????????? ??? ?????? ?????? ?????????? ?????????? ?????????? ????,
????????? ?????? (??? ????: ?????? ?????????? ??? ??????) ???, ??????,
?????????, ?? ?? ?????? ??? ?????? ?????? ??????????, ?? ?????? ??? ?????? ???,
????????? ?? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???.

11 ? ????????, ????????, ??? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ????????, ????????, ??? 20 ?????? 2001, ?????????? ??? ?????? ?? ???
????? ?????? ?? ?? ?????? ?????? ??? ?????? ?? ?????? ?????? ?????????? ????
????????? ?? ?? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ???.

12 ?? ????????, ??? ?????? ??? ?????? ?????? ??? ?????????, ? ?????? ?????? ???, ?? ?????? ??? 7?
????????? 2002, ??????????, ?????? ???, ??? ? ?????? ?????? ?????????? ?????????? ????
????????? ??? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ???.

? ?????????????? ??? ??????? ??? ??? ?????? ??? ?????????? ??? (??? ????: ??????
?????????? ????) ??? ??? ??? ?????? ??? ?????????? ??? ?????? ???.

13 ??? 26 ??????? 2002, ? ??????? ?????? ?????? ?????????????? ?????????????? ???
??? ?????? ?????? ??? ?????? ??????, ??? ?????????? ??? ??? ?????? ??? ??????????
????????? ??? ?????? ??? ?????????? ??? ??????, ??? ?????????? ?? ???????, ???
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??? ? ??????
????????? ??? ?????? ??? ?????????????? ?? ?????????? ??? ?????? ???.

14 ? ??????? ??? ?????? ?????????????? ??? ??? ??????? ??? ?????????? ??? ??????????
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15 ? ??????? ?????? ??? ?????? ?????????? ???, ?? ? ? ?????? 150 ??? 151 ???
????????? ??? 8?? ?????????? 1994, ??????? ?????????? ??? ?????????? ??? ??????????
??? ??? ? ?????? ??? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??? 2 ??? ?????? ???.

16 ??????, ? ??????? ?????????? ???, ??? ?????? ??? ?????? ?????? ?????????? ?????
????, ?????? ??? ?????? ??????, ? ?????? ??? ?????????? ?????? ?????? ?????? ???
????????? ?????? ??? ??????, ??? ?? ?????? ?????????? ?????????? ?????????? ???
?????????, ??? ?????? ?? ?????? 19, ?????????? 1, ??? ?????? ????, ???,
?????????, ?? ?????? ??? ?????? ?? ??? ?????? ??? ?????? 17, ?????????? 5, ???
?????, ??? ?? ??? ?????? (????????? ?????? ??? ?????? ?????? ??? ?????? ??????
????????? ??? ?????? ?????? ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????????), ?????? ?? ?????? ?????? ?? ???????, ?????? ??? ??? ??????
?????????. ??? ??? ??????, ?????? ??? ?????? ?????? ?????? ?????? ??? ??????
?????????, ??? ?????? ??? ?????? ??? ?????? ?????? ??? ??????????, ??? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??????
????, ?? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????? ? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ??? ???.

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

18 ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ???, ????? ?????? ???
????? ??????, ??? ??? ?????? ??? 11, A, ?????????? I, ?????? ??, ??? 19, ???
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ??? ??? ??????
????????? ??? ?????? ??? ??????, ???, ?????? ?????? ?????????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? (??.
????????? ??? 21?? ?????????? 1988, 50/87, ?????? ??? ?????? ?????? 1988, ?.
4797, ?????? 16 ??? 17, ??? ??? 6?? ?????? 1995, C?62/93, BP ??????????, ?????? 1995,
. I-1883).

19 ??? ?????? ?? ?????? 2, ?????? ??????, ??? ?????? ??????, ? ?????? ?????? ??????????
??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? 17, ?????????? 2, ???

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

20 ? ??????? ?????????? ??????? ?? ? ?????????? ?? ??? ?????????????? ??????????????
????????? ???, ????, ? ???? ???? ?????????? ??? ?????? ?????????? ?????????? ???
????????? ???? ???? ?????????????? ???? ?????????? ??? ?????? 2, ?????????? ??????, ??? ??????
????????, ???? ??????? ?? ?????????? ??? ?????? 17, ?????????? 2, ??? ?????? ??????
????? ??????????????.

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

22 ??????????????, ??? ? ? ??????? ??????????, ??? ? ? ?????????? ??? ??????????
????????? ??? ??? ? ???? ??? ??? ??? ?????????? ?????? ?? ?????? ??? ??????
????????? ?? ?????? ?????????? ??? ??? ??? ?????????????? ?????? ?????? ?? ??????
??? ???, ?????????? ?? ??????? ?????????? ??? ?????? ?? ???????, ?? ?????? ??? ??????
????????? ? ?????????? ??? ??? ?????? ?? ?????? ?????? ??? ?????? ?????? ??? ??????
??? ?????????? ??? ??? ? ? ? ?????????? ?????? (??., ?????? ????, ?????????? ??? 5?? ????
1982, 15/81, Schul, ?????? 1982, ?. 1409, ??? 10, ??? ??? 27?? ?????????? 2001, C-
16/00, Cibo Participations, ?????? 2001, ?. I-6663, ?????? 31 ??? 33).

23 ? ??????? ?????????? ?????????????? ?????? ??? ? ?????? ??? ?????????????? ??? ??????
?? ????? 19, ?????????? 1, ??? ????? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ?????
????? ?????????????? ??? ?????????? ??? ?????????? ????? ?????????? ?? ?????????? ?? ?????????? ???
????????? ??? ?????????? ??? ?????? ??? ???? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ? ?????????? ??? ??? ?, ??? ? ?????? ??? ?????? ??? ?????????? ??? ?, ???'
???????, ?????????? ??????????.

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

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

26 ? ?????????? ?????????? ?????????????? ??? ? ?????? ?????????????? ??? ? ?????????? ?????????????? ??? ?
????????? ??? ???? ???? ?????????????? ??? ???? ???? ?????????????? ??? ???? ???? ?????? ?????????? ???? ?
????????? ?????????????? ??? ???? ?????? ??? ???? ?????? ?????????? ???? ???? ???? ???? ???? ???? ???? ?
????? ?????????????? ??? ???? ?????? ??? ???? ?????? ??????????, ??? ???? ???? ???? 19, ??????????
1, ??? ???? ?????, ???????????, ??? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?
????? ???? ???? ???? ???? 11, ?, ?????????? 1, ?????????? ?, ??? ???? ???? ?????. ? ???? ???? ???? ?
????? ???? ?, ??????????, ?????????? ?? ? ???? ?????? ?????? ??? ???? ???? ???? ???? ???? ???? ?
????? ???? ?, ??? ???? ???? ????.

27 ? ?????????? ?????????? ????????????, ??????, ??? ?? ?????? ???? ?????? ???
?????????? ?? ??? 19 ??? ?????? ??????? ??????????? ??? ?????? 17, ?????????? 5, ???
???, ???????, ??????? ?? ?????????? ?? ??????? ?????? ??? ?????? ??? ?? ??????
?????????? ??? ??, ??? ?? ??? ?????? ??? ?????? ??? ?????????? ??? ??.

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

28 ?????? ?? ?????????? ???, ??? ?????? ??????????, ?? ???????? ??? ?????? ?????? ???
?????????? ?? ?? ??? 17 ?? . ??? ?????? ??????? ?????????? ??????????? ??? ??
????????? ?? ?? ??? ?????, ???' ?????, ?? ???????????. ?? ??????? ??? ?????? ???
????????? ?? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ?? ??????? ??? ?????????? ??
????????. ??? ?????????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????????? ??? ?????? ?? ?????????? ??? ?????????? ?? ??? ??
????? ????. ??? ???????, ?????????? ??? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?? ?????? ??? (??., ?????? ???, ?????????? ??? ?????? ??? ?????? ???
??????, ??????? 15 ?? 17. ?????????? ??? ?????? BP ??????????, ??? 18, ??? ??????
?? 8?? ?????????? 2002, C-409/99, Metropol ??? Stadler, ?????? 2002, ?. ?-81, ??? 42).

29 ??????, ?? ??? 17, ?????????? 1, ??? ?? ??? ?????? ?????? ??? ?? ??????
???? ?????? ?????? ??? ?? ?????? ??? ?????? ?? ?????? ?????????? ???????????, ???,
???? ?? ?????????? 2 ?? ?????? ???, ? ?????????? ?? ?????? ??? ???????, ??? ?? ??? ??
????? ?? ?? ?????????? ?????????????? ??? ?? ?????? ??? ?????? ??? ?????????? ??? ??????
??, ?? ?????????? ??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?? ??? ?????? ??? ?????? ??? ?????????? ? ?????????? ??? ?? ??? ?????????? ???
?? ?????????? ??? ?? ??? ?????????? ? ?????????? ??? ?? ??? ?????????? ??? ?????? ???
????????? ??? ?? ??? ?????????? ??? ?? ?????????? ??? ?????????? ??? ?? ??? ?????? ???.

30 ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?? ?????? 17, ?????????? 5,
????? ??? ?????? ???, ??? ?????? ?????? ?????? ??? ?? ?????? ??? ?????? 19 ??? ???
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?? ?????? ??? ?????? ??? ??
????????? ?? ?????? 17, ?????????? 5, ?????? ??????, ???????, ??????, ??? ?????? ??? ??
????????? ??? ?????? ?? ??? ?????? ?????? ?????? ?????? ??? ?????????? ??? ?????? ??? ??
????????? ??? ?????? ???, ???, ?????? ?????, ??? ?????????? ??? ?????????? ??? ??????????
?? ?????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??????????.

31 ?? ??? 11, A, ?????????? 1, ??????? ??, ??? ?????? ?????? ?????? ??? ??
????????? ??? ?????????? ??? ?????? ?? ??? ?????? ?????? ? ?????????? ?????????? ??? ??
????. ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? ??? ??,
????????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?? ?????? 19,
????????? 1, ??? ?????? ?????? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??
????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???.

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

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

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

34 ???????, ??????, ??????????? ? ?????? ??? ?????????????????? ??? ???? ??????
????????? ? ?????? ?????????? ??? ???? 2, ?????? ??????, ??? ?????? ??????.
???????, ? ?????? ????, ?? ??? ????? ?????????????? ?????? ???? ??? ???? ?????????? ???
????? ? ???? ?????? ?????? ?????????? ?????? ??? ???? ??????, ??? ?????? ??
????????? ??? ???? ??? ???? ?????????? ??? ???? ??? ???? ?????? ?????????? ???
????????? ??? ???? ?????? (?? . ?????????? ?????? ?????? ?????? ?????? ??????, ?????? 23).

35 ???????, ?????? ?? ?????????????? ???, ??? ?????????? ? ?????? ?????????? ???
?? ?????? 23 ??? ????????, ?? ?????? ??? ?????????????? ?? ?????????? ??? ???? ???,
?????, ??? ???? ?? ?????? ??? ???? ?????? ??? ?????????? ???????????. ??????????????,
??? ??? ?????? ??? 8?? ??????? 2001, C?338/98, ?????? ??? ???? ??????, ????, ????,
2001, ?. I?8265, ?????? 55 ??? 56, ?????????? ???, ????? ??? ???? ?????????? ??? ????
????? ??? ???? ?????? ?? ?????????? ??? ????? ?????? ?????????? ?? ??? ?????????????? ???
??? ??? ?????? ??????, ??? ???? ?????????? ??? ?????, ?? ?????? ??? ???? ?????? ???
????????? ??? ???? ?????? ??? ?????? ??? ???? ???? ???? ???? ???? ???? ????.

36 ?? ??? ???? ???? ?????????? ??? ?????????? ??? ??????????, ?? ??? ???? ?????????? ???
????? 19 ??? ????? ??????, ?????????? ? ?????????? ???, ??????, ? ?????? ???
????????? ?????????? ??? ???? ?????? ?????????? ??? ?????? ??? ???? ???, ??????,
????????? ??? ???? ??? ???? ?????????? ??? ?????? ?????????? (?? . ?????? ?????????? ???
????????? ??????????, C?204/03, ?????? ??? ???? ??????, ??? ??? ???? ?????????? ???
??? ??????, ?????? 24 ??? 25).

37 ??????????, ?? ?? ??????, ? ?????????? ??? ???? ?????? ??????????, ??????????
????? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ???? ??? ???? ??? ????
????? ?????????? ??? ???? ?????? ??? ???? ?????? ??? ?????? ??? ?????? ?????????? ???
?????????, ?????? ??? ?????????? ??? ?????? ??? ???? ???? ?????? ??? ???? ???? ???? ????
?? ??? 17 ??? 19 ??? ?????? ??????.

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

38 ??? ???? 69, ?????????? 2, ??? ?????????? ??????????, ? ?????? ??????????
????????? ??? ?????? ?????? ??????, ?????? ?????? ?????? ?????? ??? ???? ??????
????????? . ?????? ? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ???
????????? ??? ???? ? ?????? ?????? ?????? ??????, ?????? ??? ???? ???? ?????????? ???
????????? ????. ???' ?????????? ??? ?????????? 4, ?????? ??????, ??? ?????? ??????, ??
????????? ??? ???????, ?? ?????? ?????? ??? ?????? ??????, ?????? ?? ?????? ??????
????? ???.

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

1) ? ??????? ??????????, ?????????? ?????? ?????? ??? ?????????????? ??
????????????? ?????????? ??? ????? ?????????????? ?????? ??? ?????? ??? ?????
????? ?????????? ??? ??? ?????? ??? ? ?????? ?????? ??? ?????? ?????????????? ??
?????????????, ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??,
?????, ??? ?? ????? 17 ??? 19 ??? ?????? ?????? 77/388/??? ??? ??????????, ???
17?? ????? 1977, ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ?? ??? ????? ?????? ?????? – ??? ?????? ?????? ?????? ??????????????
?????: ?????????? ?????????? ???, ??? ?????????? ?? ??? ?????? 95/7/?? ???
?????????, ??? 10?? ?????? 1995.

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

3) ?? ?????? ??? ?????????? ?????? ?? ?????????? ?????? ???.

(?????????)

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