

?????? C-349/03

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

«????????? ??????? ?????? — ?????? 77/799/??? — ?????????? ?????????? ??? ?????????? ?????
— ??? ??? ??????? ????? ?????????? — ?????????? ?????????? ??? ?????? ?????? —
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????????? ??? ??????? ?????????? A. Tizzan? ??? 10?? ?????? 2005

????????? ??? ?????????? (????? ??????? ??????????) ??? 21?? ?????? 2005

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

????????? ??? ?????????? — ?????????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????
??? ?????? ??? ??????? ????? — ?????? 77/799 — ?????? ??? ?????? ?????????????? ???
??? ??? ??????? ????? ?????????? — ?????????? ??? ?????? ??? ?????? ??? — ??????????
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(????? ?????????? ??? 1972, ??? 28 ??? 29. ?????? 77/799 ??? ??????????)

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

????? ?????? ? ?????????? ??? ?????? 77/799, ??? ??? ?????????? ?????????? ??? ??????????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????, ??? ?????????????? ??
??? ?????? 79/1070 ??? 92/12, ??????? ?? ?? ?????? ???????, ??? ??????, ???
????????? ??? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
??????????, ?????? ??? ??????? ??? ?????? ??? ?????? ???, ?????? ??? ?????? ??? ???
????????????? ???, ??? ?????? ??? ?????? ??? ?????? ??? «?????? [??] ??????? ?? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???», ??? ??
????? ??? ?????? 28 ??? ?????? ??????????, ??? ?????????? ??? ?????? ??? ?????? ???
?????????.

????? ?????? ??? ?????????? ?????? ?????????? ???, ? ?????????????? ?????? 77/799 ???
????? ?????????? ??? ?????????? . ???????, ? ?????????? ?? ?????????? ??? ?? ??? ?????? ???
??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? 29 ??? ?????? ??????????, ?? ?????????? ?? ?? ?????????? I, ??? I, ??? 4, ???
????? ???, ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???

?????????? ??????, ??? ??????? ?? ??? ??????????? ??? ?? ?????????? ??????????????? ???
??? ?????????? ?????????? ?????????? ??? ??????? ?????? ??? ?????? ???, ??? ???
????????? ? ?????????????? ?????? 77/799 ??? ?????? ??? ?????? ?????? ?????? ???????????.

???? ???????, ?? ?????? ???????, ?? ??????????? ??? ?????? ??? ???????, ???
????? ??? ??? ?????????????? ??? ?????? ??? ?????? ?????? ?????? ???????????, ???
????????????? ?????? 77/799, ?????? ??? ?????????? ??? ?????? ??? ?? ??????.

(???. ??????? 42, 44-46, 50-51, 53-54, 56 ??? ??????).

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

??? 21?? ?????? 2005 (*)

«????????? ??????? ??? – ?????? 77/799/?? – ?????????? ?????????? ??? ??????? ??? –
??? ??? ??????? ??? ?????????? – ?????????? ?????????? ??? ?????? ?????? – ?????? ???
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???? ?????? C-349/03,

? ?????????? ?????? 226 ?? ??? ???????????, ? ?????? ?????????? ??? 7
????????? 2003,

????????? ??? ?????????? ??????????, ?????????????? ??? R. Lyal, ?? ???
????????? ??? ??????????,

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????????? ??? ???????, ?????????????? ??? N. Díaz Abad, ?? ??? ?????????? ???
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????????? ??????? ??? ??????? ?????????? ??? ?????? ??????????,
????????????? ??? K. Manji ??? ??? R. Caudwell, ?????????????? ??? ??? D. Wyatt,
QC, ?? ??? ?????? ??? ???????, ??? ????????????

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

????????? ??? ?? . ??????, ??????, ??? P. Jann, ??? A. Rosas, ??? R. Silva de Lapuerta
??? ??? A. Borg Barthet, ??????? ???????, ??? R. Schintgen, ??? N. Colneric (??????????),
??? S. von Bahr, ??? J. N. Cunha Rodrigues, ??? ?. ??????, ??? M. Illeši?, ??? J. Malenovský
??? ??? J. Klu?ka, ???????,

?????? ??????????: A. Tizzano

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

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

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

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1 ? ??????? ??? ?????????? ?????????????? ?????? ?? ??? ?????????? ??? ??? ?? ???????????
?? ?????????? ??? ?? ??????? ?????????? ??? ?????????? ?????????????? ??? ?????? ???????????,
?? ?????????????? ??? ??????? ??? ?????????? ??? ?????????? 77/799/??? ??? ???????????, ???
19?? ??????????? 1977, ??? ?? ?????????? ?????????? ??? ?????????? ?????? ??? ???????
????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? (EE ????. ????. 09/001, ?. 86), ???
????????????? ?? ??? ?????? 79/1070/??? ??? ???????????, ??? 6?? ??????????? 1979 (??
???. ????. 09/001, ?. 109), ??? 92/12/??? ??? ???????????, ??? 25?? ??????????? 1992,
?????? ?? ?? ?????? ???????, ??? ??????, ??? ??????????? ??? ????? ??????????? ???
????????? ??? ??????????? ?? ?????????? ?????? ?????????????? (?? L 76, ?. 1, ??? ????:
????????????? ?????? 77/799), ?????? ??? ??????????? ??? ?????? ??? ?????? ??? ?? ??????? ??.

2 ?? ??????? ??? ??????? ??? ?????????? ??? ??????????? ??? 4?? ?????????? 2003 ??????????? ???
????????? ??? ??????? ?? ??????? ??? ???????????.

3 ?? ??????? ??? ??????? ??? ??????? ??? ?????????? ??? ?????????? ??? ??????????? ??? ???
????????? ??? ??? ?????????? ???.

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

? ??????? ?????????? ??? ??????? ??? ?????????? ??? ?????????? ??? ?? ?????? ?????????? ??? ???????????
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4 ?? ????? 28 ??? ?????? ??? ?????? ??? ?????????????? ??? ?????????? ??? ??????????? ??? ???????, ???
????????? ??? ??? ??????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
??? ??????????? ??? ?????? [?? (???? ?? ??????????? ???????) 1972, L 73, ?. 14, ???
????: ????? ???????????) ?????? ?? ???:

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

5 ??? ?? ????? 29 ??? ?????? ???????????, ?? ?????????? ?? ?? ?????????? I, ??? I,
?????? 4, ??? ?????? ????, ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???

? ?????? 77/799 ??? ?? ??????????? ???

6 ? ??????? 77/799, ??? ?????? ??????, ?????????? ??? ?????????? ?????????? ??? ??????????
????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??????. ? ?????? ??? ?????? ?????
????? 100 ??? ???????? ??? (??, ?????? ??????????????, ?????? 100 ??? ?????? ??, ??
????? ?????? ??? ??? 94 ??).

7 ? ??????? 79/1070 ?????????? ?? ?????? ?????????? ??? ??????? 77/799, ??? ??
?????????? ??? ??? ?????? ?????????????? ??? (??). ? ?????? ??? ?????? ?????? ?? ?? ??
????? 99 ??? ???????? ??? (?? ?????? ?????????????? ?? ??? ?????? ?????????? ?????? ??
????????? ??? ???????, ?????? ?????????????, ?? ?????? 99 ??? ??????? ??, ?? ???
????????? ??? ??? 93 ??) ??? 100 ??? ??????? ??.

8 ??????? ?? ??? ????? ??????????? ?????? ??? ??????? 79/1070, «? ??????? ??
?????????? ??? ??????????? ??? ??????????? ??? ?????? ?? ??????? ??? ?? ??????????? ??? ??
?????????? ??? ?????? ?? ?????????? ??? ?????????? ??? [...] ?????? ??? ???
????????? - [...] ?????? ??? ?????????? ??? ??? ?????? ?????????? ??? ?????? ??.
?????».

9 ? ??????? ??????????? ??? ?????? ?? ??? ?????? ??????? ?? ????:

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

10 ??? ????? ??????????? ??? ?????? ?? ?????? ??????? ??????????? ?? ????:

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

11 ? ??????? ??????????? ??? ?????? ?? ??????? 79/1070 ?????? ?? ????:

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

12 ??? ?? ?????? 2 ??? ?????? 79/1070, ?? ?????? ??? ?????? ?? ??? ?? ???????????,
?????????? ??? ??????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?? ??????????? ???
??? ?????? ??? ?? ?????????? ??? 1? ?????????? 1981.

13 ? ?????? 92/12 ??????? ??? ?????? ?? ?????? ??? ?????? ?????????? ??? ??????? 77/799, ???
? ?????? ??? ?? ?????????? ??? ?????? ?????? ?????? ?????????? ??? ??????? ??? ??????? ??
??????????, ?? ?????????? ??? ?? ?????????? ???, ??? ??? ??? ?? ???????????????
?????. ? ?????? 92/12 ??????? ?? ??? ??? 99 ??? ??????? ???, ??? ???
?????????? ?? ??? ?????? ?????????? ???.

14 ??? ????? ??????????? ??? ?????? ?? ??????? 92/12 ??????????? ?? ????:

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

15 ? ??????? ??????????? ??? ?????? ?? ??? ?????? ?????? ?????????? ???, ??????????? ??
?????????? ?? ??????????? ??? ?????????? ??? ?????? ?????????? ???, ?? ?????????? ???

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

16 ?? ?????? 1, ??????????? 1, ??? ?????????????????? ??????? 77/799 ?????????? ?? ????:

- ?????? ??? ??? ??????????????? ??????,
 - ??????? ??? ??? ?????????????? ??? ??? ??? ????????????,
 - ??????? ??? ??? ?????????????? ??? ??? ??? ?????????????? ??? ??? ??? ????????????,
 - ??????? ??? ??? ?????????????? ??? ??? ??? ?????????????????? ??????.»

17 ?? ?????? 8, ??????????? 1, ??? ?? ??? ?????? ??????? ?? ????:

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

18 ???? ?? ?????? 31, ??????????? 1, ??? ??????? 92/12, ?? ?????? ??? ?????? ?? ???? ???
????????? ??????????, ??????????? ??? ?????????? ?????????? ??? ???? ?????????? 1? ?????????? 1993.

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

19 ? ??????????, ?????????? ?? ???? ?????? ?????????? ??? ???? ?????????????? ??? ?? ???? ?????????????? ??? ??
?????? ?????????? ??? ???? ?????????????? ?????? 77/799 ??? ?????????? ?????? ???, ???
????? ?? ?????? ??? ??????????, ?????? ?? ?????????? ??? ?????? 226 ?? ?????? ??
????????? ?????? ??? ?????? ??? ?????? ??? ?? ???? ?????? ?????? ??? ?????? ?? ???? ?????? ???
????????? ????. ?????? ????, ?? ?????????? ?????? ?????????? ?????? ?????? ??? ?????? ??
????? ??? ?????? ?????? ?????? ?? ???? ?????? ?????? ??? ?? ???? ?????? 26 ???
1997, ?? ?? ?????? ?????????????? ?? ?????????? ?????? ??? ?? ???? ?????? ?????????? ??????????
[Income Tax (Amendment) (N° 2) Ordinance 1997] ??? ?? ?????? ?????? ?? ?????? ??? 1?
????????? 1997. ?? ?????? ?????????? ?????? ???, ??? ?????? ?? ???? ?????? ???
??? ?? ?????? ?? ?????????? ?????? ??? ?????? ?????????? ?????? ?????????? ?????? ???
?????????, ?? ?????????? ??? ?? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ??????
????????? ??? ?? ?????? ??????. ??? 27 ?????? 2002 ? ??????, ??? ?? ??
????????????? ?????? ??????, ?????? ?????????????? ?????? ?? ??? ?????? ?????? ??
?? ?? ?????? ?????? ?? ?????????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??
??? ?????????? ??? ?????? ??????. ? ??????, ?????? ?????? ??? ?? ???? ?????? ??? ?????? ???
??? ?????????? ? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???
????????? ?? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
?????, ?????????? ?? ?????????? ??? ?????? ?????? ??? ?????? ?????? ???.

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

20 ? ?????????? ?????????? ??? ?? ??????? ??? ?????????? ????????????, ??????? ??? ??????
28 ??? ?????? ????????????, ??? ?? ?????? ?????????? ??? ??????? ????????????, ??? ??????
?????? ?????????? ??? ?????? ?????????????? ?? ??????? ??? ?????? ?????????? ????????????, ??? ??????
??? ??? ?? ?????????? ??? ?????????? ??? ??????? ??? ?????? ?????????? ??? ?????? ??????
???????????, ??? ?????? ?????? ??? ?????? ???.

21 ? ?????????? ????????????, ??? ? ????????????, ?????? 77/799 ????????
????? ??? ?????????? ??? ?????????? ??? ??????? ??? ?????? ?????????? ??? ????????????, ????????
????? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ???
??? ??? ?????????? ??? ??????????.

22 ? ??????? ??? ????????????, ??? ?? ????????, ??? ?????????? ????????????
???????????, ??? ?????? ??? ????????????, ??? ??????? ??? ?????? ???, ??? ?? ????
???????????, ??? ?????????? ?? ?????????? ??? ??????? ??? ?????????? ??? ?????? ????????????. ?
????? ??????? ??? ??????? ????????????, ??? ??????? ??? ?????????? ??? ?????? ????????????
??? ?????? ?????????? ??? ?? ?????????? ??? ??????? ??? ?????????? ??? ?????? ?????????? ??? ??
???????????, ??? ?????????? ??? ???????, ??? ?? ?????????????? ??? ????????????, ??
???????????, ??? ?????????? ??? ??????? ??? ?????? ??? ?????????? ??? ?? ?????????? ??? ???
???????????. ?? ?????????????? ??? ??????? 77/799 ?? ??? ??????? 79/1070 ??? 92/12 ???
???????????, ??? ??????? ??? ??? ?? ?????????? ??? ??????? ??? ?????? ?????? ??????. ??? ?????????? ???
???????????.

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

24 ??? ??????? ??? ????????????, ?? ????????????, ?? ????????????, ??? ????????????, ??? ??
?? ?????? 10 ?? ??????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ????????????, ??? ??
?????????.

25 ? ?????? 92/12, ?????????? ??? ?????? ?????? ?????? ?????????????? ??? ????????????, ???
???????????, ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????????? ?????????? ????????????, ????????????
???????????, ??? ?????? 99 ??? ?????? ?????? ????. ?? ??????? ??? ?????? ??? ?????? ??? ??????
???????????????, ?? ?????? ??? ?????? ?????? ?????????? ?????????? ?????????? ??? ?????? ??? ?? ???
????????? ??? ?????????? ?????????? ?????????? ??????, ??? ?????? ?????? ?????? ??????, ? ??????
79/1070 ?????? ?? ?????????? ??? ?????? 100 ??? ?????????? ????. ? ?????? ??? ??
???????????????, ??? ?? ?????????? ??? ?????? ?????? ?????? ?????????? ??? ?????? 77/799, ??? ??
????????????? ??? ?? ??? ?? ??? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??????????
?? ?????????? ??? ?????????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ???
?????? 28 ??? ?????? ??????????.

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

27 ??? ?? ?????????? ??????????, ? ?????????? ?????????? ??? ?????????? ??? ?????????? ???

???? ? ?????????? ??? ?? ??????????? ??? ?????????? ?????? ??? ?????????? ????????, ??????
????????? ????. ?? ?????????? ??? ????????, ??? ??????? ?????????? ??? ?????? ??? ??????????
????????? ??? ????????, ??? ?????? ?????????? ?????????? ??? ?? ?????????? ??? ? ??
????????? ??? ?????????? ?????? 77/799 ??? ?????????? ?????????? ??? ?????? ??? ??????
????. ? ?????? ?????????? ??? ?????????? ?????? ?????? ?????? ?????????? ??? ?? ??????
????????? ?????? ??????, ?? ?????? ?????????? ??? ?? ?????? 10 ??.

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

29 ??? ??????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ? ?? ????
??? ?????????? ??? ?????? ??? ?????????? ???, ?? ?????????? ??? ?????????? ??? ?????? ??? ?
????? 77/799, ??? ?????????? ??? ?? ??? ?????? 79/1070 ? ?? ??? ?????? 92/12, ??? ??
????? ?? ??? ?????? ??? ?????? ???.

30 ?? ?????????? ??? ?????? ?????????? ? ?????????? ?????????? ?????? ??? ? ??????????
????????? ??? ?? ?????? ??? ?????? ?????????? ??? ?? ??? ?????? ?????????? ?????????? ????
????????? ??? ?????????? ??? ?? ?????? ??? ?????? ?????? ?? ?????????? ?????????? ??? ??
????? ?????????? ??? ?????????? ?????? 77/799. ?????? ??? ?????? ?????? ?????? ?????? ??
??? ?????????? ? ?????????? ??? ?? ?????? ?????????? ??????????.

31 ? ?????????? ??? ?????????? ?????????? ?????????? ?? ?????? ??? ??????????. ??? ??
????????? ???, ?? ?????????? ??? ?????? ?????? 77/799 ?????? ?? ??? ??????
79/1070 ??? ?????? ?? ??? ?????? 92/12, ??? ?? ?????? ??? ?????? ?? ?????? ??? ?????? ???
????????? ??? ??????????, ?? ?????? ?????????? ??? ??????????.

32 ? ?????????? ??? 77/799 ??????????, ??????? ?????? ??? ?????????? ??????????
????? ????, «????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ????
?????» ??? ?? ?????? ??? ?????? 28 ??? ?????? ?????????? ???, ??? ??????, ??? ??
????? ?????? ??? ???????. ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?? ?????? ???.

33 ??? ???? ?????????? ??? ?????????? ?????? ??????, ? ?? ??? ?????? ??? ??
????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????
????? ???????????. ??? ?????? ?????????? ??? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ??
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????? ??? ?????? ??? ?????? ??? ???????. ? ?????? ?????????? ??? ?????? ??? ?????? ???
92/12 ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????.

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

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

35 ?? ?????????????? ??? ?????? ?????????? ??? ?????? 77/799, ?? ??????
????????????????? ?? ??? ?????? ??? ?????? 79/1070 ??? 92/I2, ?????????????? ??? ??????
99 ??? ?????????? ???, ?? ?????? ?????? ??? ?????????????? ??? ?????????????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ?????????????? ??? ?????? ?????????? ??? ??
????????????? ??? ?????????????? ??? ?????????????? ??? ?????????????? ??????. ?? ?????????? ??????
??? ?????????????? ?? ?????? ??? ?????? ??? ?????????????? ??? ?????????????? ?????????? ??????, ???
?? ?????????? ??? ? ??? ??? ?? ?????? ??? ?????? ??????????????, ??? ?????? ?? ?????? ??????
??? ?? ?????????? ??? ?????? ?????????????? ??????????, ??? ?????????? ?? ?????? ?? ??????
??? ?????????? ??? ?????? ?????????? ?????????????? ??????????, ??? ?????????? ?? ?????? ?? ??????
??? ?????????? ?????? ??? ?????? ??? ?????????? ??? ??????.

36 ? ?????????? ??? ?????????? ?????????? ?????????????? ??? ?? ???????????, ?? ?? ?????? 67
??? ?????????? ??? 29?? ?????????? 2004, C-338/01, ?????????? ??? ?????????????? (???????) 2004,
. I-4829), ?????????? ??? ? ?????? «????????????? ??????????» ??? ?????? 95, ??????????
2, ?? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
????????????? ?? ?????????? ??? ?????? ??? ??????, ??? ?????????????? ??????????, ?? ???
????????? ??? ??????, ??? ?????????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??????????
??????, ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????? ??? ??????. ?
????? ??? ?????? ??? ?????????? ???' ?????????? ??? ?????? ?????????? ??? ?????? ??????????.

37 ? ?????????? ??? ?????????? ?????????? ?????? ?????? ?? ??? ?????????? ??? ?????????? ???
????????? ?????????? ?????????? ??????????, ? ?????? ?????????????? ?? ??? ?????? ??????????
???? ?????? ??? ??? ?? ?????? ?????????? ?????????????? [???. ??? ?????? ?????????????? ???
??? ?????????? (?) 1798/2003 ??? ??????????, ??? ??? 7?? ?????????? 2003, ??? ??
????????? ?????????? ??? ?????? ??? ?????? ?????? ?????????????? ?????? ??? ??? ?????????? ???
????????? (??) 218/92 (?? L 264, ?. I)].

38 ??? ??? ?????????? ??? ?????????? ?????? ??????????, ? ?????????? ?????????? ???
????????? ??? ?????? 10 ?? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????????? ??
????????? ??? ??? ?????????? ??? ?????? 28 ?? ?????? ?????? ?????????? ?????? ?????? ??? ?????? ???
????? ??? ??? ??? ?????? ??? ?? ?????? 10 ??.

39 ??? ??? ?????????? ??? ?????????? ?????? ?????????, ?? ?????????? ??? ?????????? ??
????????? ??? ?????????? ?????? ?? ?? ?????? ?????????? ??? ?????????? ?? ?????????? ??
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????????? ?? ?????????? ???
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40 ?? ?????????? ?????? ? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??
????????? ?????? ??? ?????????? ??? ?????? ??????, ?????? ?? ?????? ?????? ??? ? ??????
????????? ??? ??? ?????? ??? ?????? ?? ?? ?????? ??? ?????????????? ?????? 77/799
????? ??? ?????? ??? ??? ?????? ?????? ?????? ?????? ??????????.

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

41 ??????? ??? ?????? 299, ?????????? 4, ??, ? ??????? ??? ?????????? ??? ????????,
????? ?? ?????????? ?????? ?????? ??? ????????, ??? ?? ?????????? ??????? ??? ??????
????????? ?????? ?? ??????? ??????????. ??????????, ??????? ??? ?????? ?????????? ??????????????,
????????? ?????????? ??? ??????? ?????? ?????? ?????? ?????????? (?).. ??????? ???
23? ?????????? 2003, C-30/01, ??????? ??? ?????? ?????????? ??????????, ??????? 2003, ?. I-
9481, ????? 47)- ?? ?????????? ????? ?????????? ????? ?? ?????? ?????????? ?????? ???
?????? ?????? ??? ?????? ??? ?????????? ??? ?? ?????????? ?????.

42 ??? ?? ????? 28 ??? ?????? ?????????? ?????????? ??? ?? ??????? ??? ??????? ???
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ??? ??????
???? ?? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ??????????, ?????? ?? ?? ??????????
??? ?????????? ??????, ?????????? ?????? ?????????? ??? ?????????? ??? ?????????? ?????.

43 ? ?? ??? ?????? ???????, ??????? ??????? ?????????? ??? ?? ??????? ???
????????? ?????? ??? ?????? ??? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?? ?????????? ?? ?????? ?????????? ??? ?????????? ??? ?????????? ???
????? ?????? ?????? ?? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? 10, ?????? ??????, ??????
?????????, ??, ??? ?? ?????? ?? ?????? ??? ?????? ?????? ?? ?????????????? ??? ?????????? ???
????????? ??? ?????????? ??? (?. ?????? ??? ?????? ??? 25? ?????????? 1988, 194/85
??? 241/85, ??????? ??? ??????????, ?????? 1988, ?. 1037, ????? 20).

44 ??? ???????, ??? ?????? ?? ?????????????? ?? «?????? ??????? ?? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? », ??? ??
????? ??? ?? ??? ?????? 28, ?? ?????????? ??? ?????????? ??? ?????? ?? ?????????? ???
????? ?????? ??? ?????? ?? ?????? ??? ?? ?????? ??? ?????? ??? ?????????? ?? ?????????? ???
??? ?????? ??? ?????????? ?????? ??? ?????????? ??? ?????????? ???.

45 ? ?????????? 77/799 ????, ??? ?????????? ?????? ??? ?? ?????? ??? 8,
????????? 1, ?? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????????? ??? ??????????
????????? ? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ???, ??
????????? ??? ?? ?????? ???.

46 ??? ???????, ?????? ?? ?????? ?????? ??? ? ?????????????? ?????? 77/799, ???????
????? ??? ??, ??? ?????? ??? ?????? ??? ? «?????? [??] ??????? ?? ??? ??????????
??? ?????????? ??? ?????? ?????? ??? ?? ?????? ?????? ?????????? », ??? ?? ?????? ???
????? 28 ??? ?????? ??????????.

47 ? ??????? ??? ?????????? ?????? ??? ?????????? ??? ?????? ??????? ??? ?????? ???
?? ?????????? ?? ??? ?????????????? ?????? ?????? ?????? ??? ?????? ??? ??????????, ?? ??? ??
????????? ? ?????? «????????? ?????? » ??? ?????? 95, ?????????? 2, ?? ??? ?? ?
????? «????????? ?????? ??? ?????? » ??? ?????? 28 ??? ?????? ??????????.

48 ? ?????? ?????????? ?????? ??? ?????????? 1798/2003, ??? ?????? ?????????? ?
????????? ??? ?????????? ??????????, ?????????? ?????? ?? «?? ?????? ?????????? ?
????????? ??? ?? ?????????? ??? ?????? ?????? ?????? ?? ??????, ??????, ??
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
?? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??????
????????? ? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

49 ????????, ?? ??????? ??? ?????????? ???????, ??? ????? ?? ????? 28 ???
?????? ???????????, ??? ?????????? ?? ?????????? ??? ?????????? ??? ???????????
?????? ??????? ??????? ??? ?????????? ???????, ???????, ?? ??? ????? ????? ???????????
?????? ??????? ??????? ??? ?????????? ???????, ???????, ??? ????? ????? ???????????
????????? ?? ??? ?? 93 ??, ?? ????? ??????? ??? ???????, ???????, ??? ??, ?? ??
????? 28 ??? ?????? ???????????, ??????? ??? ?????? ???????????, ???????, ??? ??, ??
????? ??? ?????? ??????? ?? ??????? ??? ??????? ??? ??????? ??? ??????? ??? ?????? ??
?????????? ?? ?? ????? 46 ??? ??????? ???????.

50 ??? ??? ?? ??????? ?????????? ??? ? ?????????????? ?????? 77/799 ??? ??????????
??? ???????, ??????? ??? ?? ???.

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

51 ??????? ?????????????? ???, ??? ?? ??? 29 ??? ?????? ???????????, ?? ??????????
?? ?? ??????? I, ??? I, ?????? 4, ??? ?????? ????, ?? ?????????? ??? ??????????????
??? ?????????? ?????????? ??????. ? ?????????? ??? ???????, ??? ?? ?? 28 ???
?????? ???????????, ?? ?????????? ?????.

52 ??? ??? ??????? ??? ??????? ??????? ??? ?????????? ?? ??????????? ?? ?
????????? ??? ?????????? ??? ?? ??????? ?????? ?????????? ?????? ?????? ??? ?? ???
????????? ??? ?????????? ?? ?????????? ??? ??????? 92/12 ??? ??? ?????????? ???
????????????? ??????? ??? ?????????? ??? ?????????? ?????? ?????????? ?????? ???????????.

53 ???????????, ??? ?? ?? ??????? ??? ??????? ?? ?????????? ??? ??????? ??? ??
????????? ??? ?? ??? ?????, ? ??????? ??? ??????? ??? ??????? ?????? ??? ?? ??????????
?????????? ??? ?? ??????? ?????????? ?????????? ??? ??????? ?????? ??? ?? ??????
????, ??? ????? ?????????? ? ?????????? ?????? 77/799 ??? ?????? ??? ?????? ??? ??????? ???
???????????. ?? ??????? ??? ?? ?????? ??? ?????????? ?????????? ??? ?????????? ??? ??
???? ?????? ?????????? ??? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????????
??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????.

54 ??? ???????, ? ?????????? 77/799 ??? ?????? ??? ???????, ?? ??????????,
?????? ??? ?? ?????? ??? ??????? ??? ?????? ??? ???????.

55 ?????? ??? ???????, ? ??????? ??? ??????? ?????? ??? ??????? ?? ??????? ???????.

56 ??? ???????, ?????????? ? ?????????? ??? ?? ??????? ???????, ?? ???????????
?? ?????? ??? ???????, ??? ?????? ??? ?? ?????? ??? ?????? ??????? ???????????, ??
????????????? ??? 77/799, ??? ?????? ??? ?????????? ??? ?????? ??? ?? ??????? ??.

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

57 ??? ?? ??? 69, ?????????? 2, ??? ??????? ???????????, ? ??????? ???????
????????????? ??? ?????????? ?????, ?????? ?????? ?????? ?????? ??? ??????????
????????? ?????? ??? ?? ?????? ?????? ?????? ??? ?????? ??? ??????? ?????? ??? ??????????
????????? ??????, ?? ?????? ?????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????????? ????. ???
?? ????? 69, ?????????? 4, ????? ?????, ??? ????? ??????????, ?? ?????? ????.
??????, ??? ??????? ??? ???, ?? ?????? ?? ???????.

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

1) ?? ??????? ??????? ??? ??????? ?????????? ??? ??????? ?????????? ???????????, ??
????????????? ??? ?????? ??? ?????????, ??? ?????? ??? ?????? ??????????????
????? ??? ??? ?????? ??????? ??????? ???????????, ??? ?????? 77/799/???

? ??????????, ??? 19?? ?????????? 1977, ??? ???? ?????????? ?????????? ???
????????? ??? ???? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???
????????????? ?? ??? ?????? 79/1070/??? ??? ??????????, ??? 6?? ??????????
1979, ??? 92/12/??? ??? ??????????, ??? 25?? ?????????? 1992, ??????? ?? ??
????? ????????, ??? ??????, ??? ?????????? ??? ????? ?????????? ??? ?????? ???
??? ?????????? ?? ?????????? ?????? ??????????, ?????? ??? ?????????? ???
????? ??? ?? ????????.

2) ?????????? ?? ??????? ?????????? ??? ?????? ?????????? ??? ????????

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

(?????????)

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