

???????? C-233/09

Gerhard Dijkman ??? Maria Dijkman-Lavaleije

????

Belgische Staat

(?????? ?? hof van beroep te Antwerpen ??? ??? ?????? ?????????????? ??????????)

«????????? ?????? ?????????? – ?????????? ?????????? ?????????? – ?????? ?????? –
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(????? 56 ??)

?? ?????? 56 ?? ?????????? ?????????? ?????? ?????? ??? ?????? ?? ???????????????,
????????? ??? ?? ??? ????? ??????, ?? ?????? ?????????? ?????? ? ??????????
????????????? ??? ?????????????? ? ?????????? ?????????????????????? ?????? ?????? ??????
????? ?????????? ?? ?????? ?????? ?????????? ??? ?????? ?????? ?? ?? ??? ?????? ?????????? ???
????????? ??? ?? ??? ?????????? ??? ?????? ?????? ?????????????? ??? ?????? ?????? ???
????????? ???, ??? ?? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?
????????? ?????????????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ???, ??????
????????? ?? ?????????? ??? ?????? ??? ?????? ???, ?????? ?? ?? ?????????? ???, ???
????????? ???, ??? ?????????? ?' ??? ?????? ???.

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

(??, ?????? 31, 45-48, 57, 59, 62 ??? ??????.)

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

?? 1?? ?????? 2010 (*)

«????????? ?????? ????????? – ?????????? ?????????? ?????????? – ?????? ?????? –
????????? ?????????? ?????? ?? ??? ?????? ?????? ? ?????????? ???

????? ?????? C2233/09,

?? ?????????? ?????? ?????? ?????????? ?????????? ?????? 234 ??,
?? ?????? ?? hof van beroep te Antwerpen (?????) ?? ?????? ??? 16?? ?????? 2009, ?
????? ?????? ??? ?????? ??? 26 ?????? 2009, ??? ?????? ??? ???

Gerhard Dijkman,

Maria Dijkman-Lavaleije

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Belgische Staat,

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

????????? ??? ??? A. Tizzano, ?????? ???????, E. Levits (????????), M. Ileši?, M. Safjan

??? M. Berger, ????????,

?????? ??????????: P. Mengozzi

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

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

????????? ?????? ??? ?????????? ??? ??????:

- ? G. Dijkman ??? ? ?. Dijkman-Lavaleije,
- ? ??????? ????????, ?????????????? ??? ??? J.-C. Halleux,
- ? ?????????? ????????, ?????????????? ??? ??? R. Lyal ??? W. Roels,

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

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

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1 ? ?????? ?????? ?????????? ?????????????? ??????? ??? ??????? ??? ?????? 56,
????????? 1, ??.

2 ? ?????? ??? ?????????? ??? ?????? ????????, ??????, ??? G. Dijkman ???
?. Dijkman-Lavaleije ???, ???????, ??? Belgische Staat (????????? ???????), ??? ???
????????? ??? ??????? ?????????? ??? ?????? ??? ?????? ??????????, ?????? ???,
????????? ??? ?????? ?????????? ??? ?????? ?????????? ?????? ??? (?? ????: ????????)
????????? ??? (?? ????: 2004 2005 ??'
????????? ??? ?????? ?????????? ?????? ?????? (?? ????: ???) ??? ? ??????
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????????? ??? ?????????? ??? ?????? ?????? ?????? ?????????? ??? ?????????? ???.

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

3 ? ?????? ??? ?????? 261 ??? ?????? ?????????? ?????????? 1992 (Wetboek van de
inkomstenbelastingen 1992, ???: 1992), ??? ??? ?????? ??????? ??? ?????? ???????,
?????? ????, ?? ??????? ??? ??????? ??? ???????, ?? ??????? ??? ??????
??????, ???????, ???????, ???????, ??????? ??? ?????? ?????? ?????? ???????, ?????? ???
?? ?????? ?????? ??? ?????????? ??? ?????? ?????? ???????, ?? ?????? ?????? ????????
????????? ??? ?????? ?????????? ??? ?????? ???????, ?? ?????? ?????? ???????, ?????? ??? ??
????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ???????
????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???
????????? ??? ?????? ???????, ?????? ??? ?????????? ??? ? ?????????? ??? ??????
????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???.

4 ??? ?? ?????? 313 ??? ??? 1992, ?? ?????????????? ??? ?????????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ?????? ?????? ??? ??? ?? ??? ?????? ??? ???????, ??? ??
????? ??? ?????????? ??? ?????? ?????? ?????, ??? ?????? ?? ??? ?????? ?????????? ???
????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????????? ??? ?????????? ???,
????????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???.

? ?????? ??? ??????? ?????? ??? ?????????? ??' ?????? ??? ???????????? ??? ??? ??? ??????????

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

5 ?? ????? 465 ??? ??? 1992 ?????????? ??? ?? ?????????? ??? ?? ?????? ?????? ?????? ??

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

6 ?? ????? 466 ??? ??? 1992 ?????? ?? ???:

«? ?????? ?????? ?????? [...] ??? ? ?????? ?????? ??? [????] ??? ?????? ?????? ??????

?? ??????, ?????????????? ?? ??? ??? [????] ? ?????? ??????????:

- ??? ?????????????? ?? ?????????????? ??? ?????? 157 ??? 168 ??? 175 ??? 177

??????????, ?? ???????????, ?? ???' ?????? ?????? ?????????????? ??? ??? ????????

????? ??? ? ?????? ?????? ??? ?????? ?????? 134 ??? 277 ??? 296.

- ??? ?????????? ?? ?????????????? ??? ?? ?????? 157 ??? 168 ???????????, ?

?????????? ??? ?? ??? 175 ??? 177 ?????????? ?????? ??? ?? ?????????? ??? ???

?? ??? 444.»

7 ??? ?? ????? 467 ??? ??? 1992, ? ?????????? ??? ?? ?????? ?????? ?????????????? ???

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

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

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8 ?? ????? 468 ??? ??? 1992 ?????????? ?? ???:

«? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????????????? ??? ??? ??? ???

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[...]»

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

9 ?? ?????????? ??? ?????? ??????, ?????????? ??????, ???????, ??? ??????????

???? ?????? ??? ??? ??? ?? ?????????? ??? 2004, ?????????? ?????????? ???

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

?????, ??? ?????? ?????? ?????? 33 780 ??? ??? ?????????? ??? 90 030,52 ???,

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

10 ?? ??? ?????? ?????? ??? ?????? ??? ?????????? ?? ?? ??? ?????? ?????????? ???, ?? ?? ???

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????????? 15 % ?? 25 %. ???????, ? ?????????? ?? ?? ??? ?????? ???

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????????? ??? 8 % ?? ?????? ??? ?????? ???.

11 ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?? ??? ?????? ???

????????? ???, ?????????? ???, ???, ??? ?????? ??? ?????? 25 % ?? ???

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

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

12 ??? ?? ?????????? ??? 2005, ?? ?????????? ??? ?????? ??? ?????? ???

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

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

??????????, ??? ?????????? ????? 14 551,23 ??? ?? G. Dijkman ??? 15 359,53 ??? ??
??? M. Dijkman-Lavaleije, ?? ????? ?? ?????????? ?????????????? ?????????????? ??? ??
???????? ???.

13 ?????? ?? ?? ?????? ?? ?? ??? ?????????? ?? ?? ?????? ?????? ?????? ?? ?? ??
???? ?????????? ?? ?????? ?? ?????????? 25 %, ??? ?? ?????? ?????? ?????? ?? ??
????????? ???, ?? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?? ?? ?? ??
??????, ?????????? ?? ?????? ?????? ?????? ?? ?? ?????? ?????? ?????? ?????? ?? ??
?????? ?????? ?????? ?? ?? ?????? 2004.

14 ?????? ?? ?????????? ??? ??????????????, ?? ?????????????? ??? ?????? ???
????????? ??? rechtbank van eerste aanleg van Antwerpen (????????????? ?????????? ???
????????), ?? ?????? ?????? ??? ?????? ???.

15 ?????? ??? hof van beroep te Antwerpen (????????? ??? ??????), ?? ??????????????
??? ?????? ???, ???, ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? 2004 ??? 2005 ?? ?????????? ??? ???
????????? ??? ?????? ???, ???, ?? ?????? ?????? ?? ?????? ?? ?????????? ???
????????? ?? ??? 11 906 ??? 3 479 ???, ?? ?????? ?????? ??? ?????? ??
????? ??? ?????????? ??? ??? ?? ?????? ?????????? . ???????, ?????? ??? ?????? ???
????? 2 206 ??? 800 ??? ?????????? ??? ?????? ?????? ???.

16 ?? hof van beroep te Antwerpen ?????? ?? ?????????? ??? ?????????????? ???
????? ??? ?? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?? ??? ??????????
??? ?????? ??? ?????? ???.

17 ??? ?????? ?? ?????????? ???, ?? ?????? ?????????? ??? ?????????? ???,
????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ???,
??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ?? ?????????? ???
????? ??? ?????????? ??? 313 ??? 1992 ?????? ?? ?? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? . ???, ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? , ?? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ?? ?? 465 ??? 466 ??? ???
1992. ???????, ??? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????? ???, ?? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ???
????????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ???
????????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ???
????????? ??? ?????? ??? ?????? ???, ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ???.

18 ?? ??? ?????? ???, ?? hof van beroep te Antwerpen ?????? ?? ?????????? ??
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???:

«????????? ?????? ?? ?????? 56, ?????????? 1, ?? ?? ?? ?? ?? ?????? ?????????? ???,
????? ?????? ? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ???
????? ???, ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
465 ??? [?? 1992] ?????? ?????? ?????? ?????? ???, ?? ?????? ?????? ??? ?????? ???
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???

????????? ???????, ?? ?????? ?????????? ? ?????????? ?????????? ?????? ??? ?????? ?????? ??????
????????? ?? ?????????? ??? ?????????? ??? ?????????? ?????? ?????????? ?????????? ?????????? ??????
??? ??????? ?????? ??? ?? ?????? 313 ??? [?? 1992] ???, ????????, ???????? ?? ??????????
??? ??? ?? ?????? 465 ??? [?? 1992] ????????, ????????, ?? ?? ??? ?? ???? ?
?????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????????????????? ??? ?????;»

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19 ?? ?? ??????? ???, ?? ?????? ??????????? ?????? ??????????????? ?? ??????????????????? ?? ?? ??
?????? 56 ?? ?????????? ??????????? ??????? ??????? ??????? ??????? ?? ?? ?? ??????
?????????????? ?? ??????? ?? ?? ?? ?????? ???????, ?? ?????? ?????????? ??????? ?
????????? ??????????? ?? ??????? ?? ??????????? ? ??????????? ??????????????????? ?????? ??
?????? ???, ?????????? ?? ??????? ??????? ???, ?? ??? ?????? ?????????? ?? ?? ?? ??
????????? ?? ?? ??????? ??????? ?? ?????? ??????????? ?? ?????????? ??????????????? ??
?????? ?? ?? ??????? ???, ?? ?? ?????????? ??????????????????? ?????? ?? ?? ??????? ??????? ??
????????? ???, ?? ?? ??????? ??????? ?? ??????????? ?? ?????????? ??????? ??, ??????? ??
?? ?????????? ???, ?? ?? ??????? ???, ?? ?? ?????????? ??, ?? ?????????? ?? ?? ??????? ??.

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

20 ??????????????? ???, ??? ????? ????? ??????????, ?????????? ? ?????? ?????????? ??????????
????? ?????????? ??? ?????? ?????, ?? ?????? ??? ????? ?????? ?? ?????? ?? ?????? ???
????????? ??? ?????? ?????? ?? ?????? ??? ?????? (?., ?????? ?????, ?????????? ??? 12??
????????? 2006, C?374/04, Test Claimants in Class IV of the ACT Group Litigation, ??????
2006, ?. I-11673, ??? 36- ??? 8?? ?????????? 2007, C?379/05, Amurta, ?????? 2007, ?. I-
9569, ??? 16, ??? 19?? ?????????? 2009, C?540/07, ???????? ??? ?????????, ???
??? ??? ?????????????? ??? ?????? ??? ???????, ??? 28).

21 ???????, ?????? ?????? ?????? ?? ??????? ?? ???? ?????? ?????????? ?????? ???
?????? ?????? ?????? ?? ?????????? ?? ???? ?? ???? 49 ?? ??? ?? ???? ?? ???? ?? ??
????? 56 ?. ???????????, ???? ??? ?? ???? ???????, ??????? ?????? ?? ??????
????????? ?????? ?? ?????????? ?? ???? ?????? ?? ???? ?????? ?? ???????, ?????? ???
????????? ?? ???????, ? ??????? ?? ???? ?????? ?? ???? ?????? ?? ???? ???????, ???
??? ?? ?????????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ??????? ????
????????? ?? ??? ?? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ??????
????????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ??????
?? ??????? ???.

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

23?????????? ?? ??????????, ??????, ??? ?? ?????? 49 ?? ?????????? ??? ??????????
????????????? ??? ?????????? ?????? ?????????? ??????????, ?????? ??? ?? ?????? ??????????????
????????? ??? ?????? ?????? ?????????? ?????????? ?????????? ??? ??? ?? ?????? ??? ??????
????? ??????, ?????? ?????? ?? ??????????????, ?? ?????????????? ? ?? ?????????? ??????????
????????? ??? ?????????????? ??? ?????????? ?????????? ??? ?????? ?????????????? ??
????? ?????? ????, ??? ?????? ?????? ?????? ?????????? ?????????? (?. ?????? ?? 8?
????????? 2009, C?42/07, Liga Portuguesa de Futebol Profissional ??? Bwin International, ???
??? ??? ?????????? ????, ??? ???????, ?????? 51 ??? ??? ?????????????? ??????????).

24 ???????, ????, ?????????????, ?? ?????? 49 ?? ?????? ?????????????? ?? ?????? ??????

????? ??? ?????????? ??????????, ???? ??? ????? ???????? ??? ?? ??? ????? ?????????? (??., ???
??? ?????? ???, ??????? ??? 3? ???????? 2006, C?290/04, FKP Scorpio
Konzertproduktionen, ??????? 2006, ?. I?9461, ????? 32 ??? ??? ????? ?????????? ??????????).

25 ???????, ??????????? ??? ?????????? ??? ?????????? ??? ??????????, ??? ??? ?????? ??? ??????
56, ?????????? 1, ??, ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????
????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?? ??? ?????? ??? (??., ?????? ???, ?????????? ??? 26? ?????????? 2000,
C?478/98, ??????? ??? ??????, ??????? 2000, ?. I-7587, ????? 18, ????? ??? ??? 11??
?????? 2009, C?155/08 ??? C?157/08, X ??? Passenheim-van Schoot, ??? ??? ???
????????? ??? ??? ??????, ??? 33).

26 ??? ??? ?????? ?????? ?????????? ?????????? ???, ?????????? ?? ?????? ?? ??????
????????? ??? ?????? ?? ?????? ??? ??? ?????????? ?????????? ??? ?????? ??? ??????
??????, ?????? ?? ?????????? ??? ?????? ?? ?????????? ??? ??? ?????? ?????? (??., ???
??? ?????? ???, ?????? ??? 24? ????? 2007, C-157/05, Holböck, ??????? 2007, ?. I-4051,
????? 22 ??? ??? ?????????? ??????????).

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

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

29 ???????, ??? ?????????? ?? ?????? ??????????, ??? ?????? ?????????? ??? ???
????????? ??? ?????? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ??? ??????, ?????? ??
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ?????? ???
????????? ?????? ??? ?????? ?????? ???, ???????, ?? ?????????? ??? ?????? ???
????????? ????. ???, ? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ???
????????? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ??? ?????? ??? ?????? 49 ??.

30 ??? ? ?????????? ????, ??? ???????, ?? ?????????? ??? ?????? ??? ?????? ???
????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???.

31 ???, ? ?????????? ??? ?????? ?????? ?????? ?????????? ?????????? ?????? ??? ???
????????? ??? ?????????? ??? ?????? ?? ?????????? ?? ?????????? ??? ?????? ?????? ??? ??
????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ?????? ???
????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???' ???
????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? (??., ??? ??? ?????? ???,
????????? ??? 12? ?????????? 2006, C?446/04, Test Claimants in the FII Group Litigation,

?????? 2006, ?. I?11753, ???? 166, ??? ?? 18?? ?????????? 2007, C?436/06, Grønfeldt,
?????? 2007, ?. I?12357, ???? 14).

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

33 ??????, ??? ?? ?????????? ?????????? ??? ?? ?????????? ?????? ?? ?????? ?????? ???,
???' ????, ??? ?? ?????? ??? ?????? ??? ?? ?????? ?????? ?????? ?????? ??? ?????? ???,
??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ? ??? ?? ??? ?????? ?????? ?????? ???,
????? ?????? ??? ?????? ?? ?????? ?? ??? ?????? ??? ?????? ?? ?????? ??? ?????? (???????
??? 3?? ?????????? 2006, C?452/04, Fidum Finanz, ?????? 2006, ?. I?9521, ????? 34- ??.
??????, ???' ???????, ?????? ??? 17?? ?????????? 2009, C?182/08, Glaxo Wellcome, ???
??? ??? ?????????? ??? ?????? ??? ???????, ?????? 37).

34 ?? ??????????, ? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??????
????????????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???, ???????, ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ???.

35 ???????, ? ?????? ??? ?????? ??? ?????????? ?????????? ??? ??????, ??? ??
????????? ??? ?????? ??? ??????, ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? . ? ??????
??? ?? ??? ?????? ???, ??? ??????, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ???, ?' ??? ?? ??????, ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ?????? ??? ?????? ??? ?????? ???.

36 ???????, ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? 31 ??
????????? ???, ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???,
? ?????? ???' ?????? ?????????? ??? ?? ?????? 56 ??.

37 ? ?????????? ??? ?????? ??? ?????????? ??? ?? ?????????? ??? ?????? ??? ?????? ???
??????, ??????, ?????? ?? ?????????? ??? ?????????? ??? ?? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ???, ??????, ?????? ??? ?????? ???, ?? ??? ?? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?? ??? ?????? ???.

38 ?? ??? ?? ?????? ???, ?????? ???' ???? ?? ?????????? ???, ?? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ???, ?????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

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

40 ????????, ?????? ?? ??????????? ??? ? ??????? ?????????? ?????? ??? ?????? ?????? ??????
??? ?????????? ??? ?????? ?????? ?????? ?????? ?????????????? ??? ?????????????? ??? ?????? ??????????
????????????????? ??? ?????? ?????? ?????? ???????, ?? ?????? ?? ?????? ??? ?????? ??? ??????????
??? ?????????????? ??? ??????????? ?????????????????????? ?????? ??? ?????? ?????????? ???????,
?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ???????
????????? ??? ??????????.

41 ??????????, ??? ???? ??????????, ?????????? ?????????????? ?????????????? ??? ?????
????????? ?? ?????????? ?????????? ??? ?????? ?? ?????????? ??? ?????????????? ?? ?? ??? ??????
?? ?????? ?????? ?????? ?????? ?????????????? ???????????????, ?????? ??? ?? ?????????? ???
????????? ??? ?????? ?????? ?????? ?????????????? (??., ??? ??? ?????? ????, ?????????? ??? 6?? ??????
2000, C?35/98, Verkooijen, ?????? 2000, ?. I?4071, ????? 61, ??? Amurta, ??????????????,
????? 75).

42 ???????, ? ??????? ??????????? ?????? ??? ????? ?????? ??????? ??? ?????
?????? ??????????? ??? ??????????? ?????? (??., ??? ??? ?????? ???,
?????? ??? 15?? ??????????? 2000, C-34/98, ??????? ??? ???????, ??????? 2000, ?. I-
995, ??? 49- ??? 11?? ??????? 2004, C?9/02, de Lasteyrie du Saillant, ??????? 2004, ?. I?
2409, ??? 43, ??? ??? ??? 14?? ??????????? 2006, C?170/05, Denkavit Internationaal ???
Denkavit France, ??????? 2006, ?. I?11949, ??? 50).

44 ?? ???? ?? ??????? ??????, ? ??????? ?????????? ??????? ??? ? ?????????? ???
????????????? ? ?????? ?????????? ?????????? ?????????? ? ?????????? ??? ??????
????????? ??? ?????? ??? ?????????????? ??? ?????????????? ?????????????? ? ??????????
??? ?????????????? ??? ?????? ?????????? ?????????????? ??? ?????? ??? ?????? ??? ??????
????????? ?? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ??????
????????? ?? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ??????
????????? ?? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????????? ??? 22?
????????? 2008, C-282/07, Truck Center (?????? 2008, ?. 10767), ?? ??????????
????????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ?????????????? ??
????????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?? ?????????? ??? ??????
????????? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??????
??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

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

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

47 ???????, ?? ??? ??? ?????? ??? ? ??????? ??? ?????? ??? ?????? ??? ??????, ?
?????? ?????????? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????????
??? ?????? ?????? ? ??? ?????? ?????? ??? ? ??? ?????????? ??? ?????? ??? ??????
??? ??? ??? ??? ??? ?????????? ?????? ??????, ? ?????????????? ??? ??????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ??? ?????? ???.

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

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

49 ??? ?????????? ??? ?????? ??????????, ?????? ?????? ??? ?????????? ??? ??????
????????? ??? ?????????? ?????? ??? ?????????? ??? ?????? ?????? ?????????? ???
????? 58 ?? ?????? ? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?? ??
????????? ??? ?? ?????????? ??? ?????? ?????? ??? ?????? (?).., ??? ??? ?????? ???,
????????? ??? 23? ?????? 2007, C?112/05, ?????? ??? ?????? ?????? 2007, ?.
I?8995, ?????? 72 ??? 73 ?????? ??? ?????? ?????????? ??????).

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

51 ???, ?? ?????????? ?? ??? ?????????? ??? ad hoc ?????????? ??? ??????????????
??? ?? ?????????? ??? ?????? ??? ?????? ?????, ??? ?????????? ??? ?????? ?????????????? ???
????? ?????????? ?, ?????? ?????? ?? ???? ?????? ?????????? ?????? ??? ??????, ???
????? ?????????? ?, ???, ??? ?? ???? ?????, ?????????? ?????? ?????? ?????? ??? ??????,
??? ?????? ??? ???? ?????? ?????? ??? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??? ?????? ??????.

52 ?????????????? ??? ??????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
??? ?????????? ??? ??????? ??? ?????? ?????? ?????????? ???, ?? ?????? ??? ??????????
????????? ??? ?????? ?? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ??????????
????????? ?, ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????????? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????, ???????, ?? ?????????? ??? ?????? ?????? ?????? ???
????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??? ?????? ???, ?????????? ??? ??? ??????????
????????? ??? ?????? ??? ?????? ?????, ?????? ?? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???.

53 ???, ?? ???? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???
????? ? ??? ?????? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ??????
?? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?? ?????????? ??? ?????? ?? ?????????? ???
????????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ??????
????????? ???, ?????????? ??? ?? ?????????? ?????? ??? ?????? ?????? ??? ?????? ???
??? ?????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???.

54 ?? ??? ?????? ?????????????? ?????? ??????, ?????? ?? ??????????, ??????, ???
?? ?????????? ??? ??? ?????? ??? ???? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?? ?????????? ?????? ?????? ??? ?????? ??? ?????? ??? ??????????
??? ?????????? ? ?????? (????????? ??? 28? ?????? 1992, C-204/90, Bachmann,
????????? 1992, ?. I-249, ??? 28, ??? ?? ?????????? 2004, C-319/02, Manninen, ??????
2004, ?. I-7477, ??? 42, ??? ?? 27? ?????? 2008, C?418/07, Papillon, ?????? 2008, ?.
I?8947, ??? 43).

55 ??????????, ??? ???? ?????????? ?????????? ?????????? ??? ?????????? ???, ??
????????? ?????? ?? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ???
????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ?, ?? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
??? ?????? ??? ???? ?????????? ?????? (?. ?????????? ?????? Papillon, ???
44 ??? ??? ?????????? ??????).

56 ???, ??? ???? ?????? ?? ?? ?????? 46 ??? ?????? ??????????, ??????????
????????? ??? ???? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ???
????????? ?????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?? ?? ?? ?????? ??????????
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????

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

57 ???????, ? ??????? ?????????? ?? ?????????????? ?? ?????????????? ???????????
?????????? ?????????????????? ?? ?????????????? ?? ?????????????? ?? ??????? ?? ???????????.

58 ????????, ?? ?????????? ??? ?????????????? ??? ? ?????? ?????????????? ???
????????????????????? ??? ?????????????? ?????? ?????? ?????????? ??? ??????
????????? ??? ?????? ?? ?????????????? ?????????? ??? ?????? ??? ??????
????????? ??? ?????????? ? ?????? (??., ??? ??? ?????? ???, ??????????????)
????? X ??? Passenheim-van Scoot, ??? 45 ??? ??? ?????????? ???).

59 ???????, ????? ?? ? ?????? ?????????????? ??? ?????????????????? ???
????????????? ??????? ??????? ?? ?????????? ??? ?????? ??? ?????????? ???????????, ??? ??
????? ? ??????????? ?????? ?????????? ??????? ?? ?????? ??? ?????????? ?????? ?????? ??
????????????? ??? ?????? ??? ?????????????? ??? ?????? ??? ??????????, ??? ?????? ??
????????????? ?? ??????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????????? ??? ??
????????? ??? ??? ?????????? ??? ?????? ??? ?????????? ?????????????? ??????????????
????? ??? ?????? ??? ?????????? ?????????? ???.

60 ????????, ?? ?????????? ??? ????? ?????? ??? ?????????? ?????????? ?????? ???
????????? ??? ?????? ??? ?? ?????????????? ??? ?????????? ??? ?????????? ???
????????????? ? ?????? (??.. ?????????????? ?????? Papillon, ????? 54 ??? ?????
????????????? ??????????).

61 ????????, ??????????? ?? ???? ?? ?????? ??? ?????? ?????? ?????? ?????? ? ?????? ?????? ??????????
???? ?????? ?? ?????????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ??
????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????? ?? ?????????? ?? ?????????? ?? ?????? ??.

62 ??????????? ?????? ?? ????????????, ??? ?????????? ??????? ?????? ?? ?????? ??
????????? ??? ?? ????? 56 ?? ?????????? ?????????? ??????? ?????? ??? ?? ?????? ??
???????????????, ???????? ?? ???? ?? ?????? ??????? ??????, ?? ?????? ?????????? ?????? ?
????????? ?????????? ??? ?????????? ?????? ?????????? ?????????? ?????????? ?????? ?????
????????? ?????? ?????????? ?? ?????? ?????? ?????? ??? ?? ??? ?????? ?????? ?? ?? ???
????????? ??? ?????? ?????? ??? ?????? ?? ?????? ?????????? ?????? ?????????? ?????????? ???
????? ??? ?????? ??? ?????????? ???, ??? ?? ?????????? ?????? ?????? ?????? ??? ?????????? ???
????????????? ? ?????????? ?????????????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ???,
????? ?????????? ?? ?????????? ??? ?????? ?????? ???, ?????? ??? ?????? ??? ?????????? ???,
????? ?????????? ??? ?????????? ??? ?????? ???, ?????????? ?' ?????? ??? ???.

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

63 ?????????? ??? ? ??????? ?????????? ??? ?? ????? ????? ?????????? ??? ?????? ?????
??? ?????????? ?????????????? ??? ??????? ??????? ??? ?????? ?????????? ????????????, ?' ????
?????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ?????? ??? ?????? ?????????? ??????????
????? ?????????? ?????????????? ??? ????????????, ???? ??? ?? ??? ?????????? , ??? ???????????.

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

?? ????? 56 ?? ?????????? ?????????? ??????? ?????? ??? ?????? ??
?????????????, ??????? ?? ?????? ?????? ?????? ??????, ?? ?????? ??????????
????? ? ??????? ?????????? ?? ?????????? ? ?????????? ? ??????????
????????????? ?????? ?????? ?????? ?????? ?????? ?????????? ?? ??????????
????????? ??? ?? ??? ?????? ?? ?? ??? ?????????? ??? ?????? ?????? ?? ???
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ??????
????, ??? ?? ?????????? ?????? ?????? ??? ?????? ?????? ??? ?????? ???, ???
????????? ?? ?????????? ??? ?????? ???, ?????? ?? ?? ?????????? ???,
???? ?????? ???, ??? ?????? ?' ?????? ??? ???.

(?????????)

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