

?????? C-287/10

Tankreederei I SA

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Directeur de l'administration des contributions directes

[?????? ??? tribunal administratif (?????????????)

??? ??? ?????? ?????????????? ??????????]

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

(????? 56 ????)

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

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

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

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

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

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

(??, ??????? 17, 23, 25, 28-30, 32, 34 ??? ??????).

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

??? 22?? ?????????? 2010 (*)

«????????? ??? ?????? ?????????? – ?????????? ?????????? ??? ?????????? – ???????? ?????? ???
????????? – ?????????? ??? ?????????? ??? ?????????? ??? ? ?????????? ?????????? ???
???? ?????? – ?????????????? ?????? ?????????? ??? ?????????????? ??? ?????????????? ??? ?????? ???
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???? ?????? C?287/10,

?? ?????????? ??? ?????? ?????????? ?????????????? ?????????? ??? ?????? 267 ????,
??? ?????? ?? tribunal administratif (?????????????) ?? ?????? ??? 8?? ?????? 2010, ?
????? ?????? ??? ?????????? ??? 10 ?????? 2010, ??? ?????? ??? ??????

Tankreederei I SA

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Directeur de l'administration des contributions directes,

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

????????? ??? ??? K. Lenaerts (?????????), ?????? ????????, D. Šváby, E. Juhász, ?.
????? ??? T. von Danwitz, ????????,

????? ??????????: J. Kokott

?????????: A. Calot Escobar

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

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

- ? Tankreederei I SA, ??????????????? ??? ??? F. Collot, avocat,
 - ? ??????? ????????, ??????????????? ??? ??? G. de Bergues ??? B. Cabouat,
 - ? ?????????? ????????, ??????????????? ??? ??? R. Lyal ??? J.-P. Keppenne,
?????? ??? ??????? ??? ??????, ??? ??????? ?? ?????? ???????????, ?? ?????????? ???
?????? ??? ?????? ??????? ??? ???????,
?????? ??? ???????
- ???????
- 1 ? ??????? ??????? ?????????????? ?????????? ?????? ??? ??????? ??? ??????? 56 ???
??? 63 ???.
- 2 ? ??????? ??? ?????????? ??? ??????? ?????????? ??????? ??? ??????? ??? Tankreederei I
SA (??? ????: Tankreederei), ??????? ??????????????? ???, ?? ??? Directeur de
l'administration luxembourgeoise des contributions directes (????????? ??? ?????????? ???
????? ??? ??????????????), ??????? ??? ?????????? ??? ?????????? ??? ?? ?????????? ???
?? ??? ?????? ??? ??????? ??? ?????? ??? ???????????.
- ?? ???????
- 3 ?? ?????? 152 bis, ?????????? 1, ??? ?????? ??? 4?? ?????????? 1967 ??? ??? ???
????????? (Mémorial A 1967, ?. 1228), ??? ?????????????? ??? ??? ??? 19??
????????? 1986 (Mémorial A 1986, ?. 2330, ??? ????: LIR), ??????:
«?????? ??????? ???, ?? ?????????????? ??????? ??? ??????? ???????????????
????????? ???, ?? ?????????????? ??? ??????? ???, ?? ??? ?????????????? ??? ?????????????? 2
??? 7 ???????, ??? ?????? ?????????????? ??? ?????????????? ??? ??????? ??? ??????? ???
?????? 14. ?? ?????????? ??? ?????? ?? ?????????????? ??? ?? ?????????? ??? ?????????? ???
?????? ??????? ??? ?????????? ??? ?????????? ??? ???????- ????, ????, ??? ??
????????? ??? ?????? ??? ??????????..»
- ?? ????????
- 4 ? Tankreederei, ??? ??????? ??? ???????????, ???????????????, ?? ??? ?? ???????
????? ???, ??? ??????????? ??? ??????? ??? ?????????? ??? ?????????? ??? ??????????
????? ?? ??? ?????? (????????? ??? ? «bunkering») ?????? ??????? ??? ???????
(?????) ??? ??? ?????????? (???? ????).
- 5 ? Tankreederei ?????? ?? ??? ???????????, ??? ??? ??????? ??? ??? 2000 ??? 2003,
?? ?????????? ??? ?????? ??????????? ??? ?????? ??? ?????? 152 bis ??? LIR, ? ?????? ??? ???
??????????, ??? 11 ????? 2005, ??? ?? ??????? ??? ?????? ??? ??????? ??? ??????? ???
?????????? ??? ??? ??? ??? ??? ?????? ??? ?????????????? ??? ???????????.
- 6 ??? 28 ?????? 2005, ??????? ??????? ??? ?????????? ??? ?????????? ??? ?? ??? ???????,
????? ??????????? ?? ??????? ??? ??? 29?? ?????????? 2009 (??? ????: ??????? ??? 29??
????????? 2009).
- 7 ??? 23 ?????? 2009, ??????? ??????? ??? ?????? ??? ?????????? ??? ?????????? ???
?? ?????????? ??? 29?? ?????????? 2009. ??? ??????? ??? ?????????? ???, ?????????? ???

?? ?????? 152 bis ??? LIR ????? ??????????? ?? ?? ?????? 56 ????. ????????????????,
??????, ??? ??????? ?????? ?????? ?????????? ?????????? ??? ?????????? ??? ???? ?? ??????
????????? ?? ??????? ?? ?????????? ??? ?????? ??? ?????? 14 ??? LIR ???, ???????,
??? ?? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ???
??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ???
????????? ??? ?????? ???, ?????????? ??? ?????? 29?? ?????????? 2009
????????? ?? ?????????? ?????????? ?????? ?????? ??? ?????? ??? ?????? ??????????????
???? ??????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?? ??? ?????? ?????? ???
????????? ??? ? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? Mertert ???, ?? ?? ??????, ??????????
?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???.

8 ?? ??????? ?? ?????????? ??? ? Tankreederei ????. ?????????????? ???
????????? ??? ?????????? ??? ?????? 29?? ?????????? 2009 ??????????
??? ?? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???
????????? ??? ?????????? ???, ??? ?????? ??? ?????? 152 bis ??? LIR, ?? tribunal
administratif ?????????? ???, ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

9 ?? tribunal administratif, ?????????? ??? ?????? ?? 152 bis ??? LIR
????????? ??? ?? ?????? ??? ??????, ?????????? ?? ?????????? ?? ?????????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???:

«????????? ?? ?????????? ??? ?????? 152 bis, ?????????? 1, ??? [LIR] ??? ?? ??? [56]
??? ??? [63] ??? ?????? ?????????? ??? ?????? ?????????????? ??????????????
????????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?? ??? ??
????????? ?????????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????????? ???
??? ? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? [...]
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????;».

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

10 ?? ?? ?????? ???, ?? ?????? ?????????? ???' ?????? ?? ?????????? ?? ??
????? 56 ??? 63 ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?? ??
????? ?????? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ??
????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ??
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ??
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

11 ??? ?????? ??? ?? ?????? ?????? ?????? ?????????? ?????????? ??? ?? ?? ??
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????, ?????????? ?? ?????? ?????? ??? ?????? 56 ??? 63 ??? ?? ??? ?????? ??? ?????? ???
????????? ?? ?????? 152 ??? LIR, ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ??????.

12 ??????, ??? ?? ?????????? ???, ??? ?? ?????????? ? Tankreederei ??? ?

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

13 ??? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ?????????? ?????? ?????? ??????????
????? ?????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

14 ???????, ??????, ??????, ? ?????? ?????????? ?????????? ??? ?????? ?????????????? ??? ??????
?????, ?? ?????? ??? ??????????, ??? ??? ?????? ???, ?? ?????? ?? ?????? ??? ?????? ??? ?????? (??.,
?????, ??????? ??? 28?? ?????????? 2010, C-72/09, Établissements Rimbaud, ??? ??? ???
????? ?????????? ??? ??????, ??? 23).

15 ?? ?????????? ??? ?????????????? ??? ?????? ??? ?? ?????? 56 ??? ?????????? ???
????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ?? ?????????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ?????????? ???' ?? ? ?????? ?????????? ???
????????????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ?????? (??., ?????? ????,
????????? ??? 11?? ?????? 2009, C-155/08 ??? C-157/08, X ??? Passenheim-van Schoot,
????????? 2009, ?. I-5093, ????? 32). ?? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???
?? ?????????? ?????? ??? ?????? (??., ?????? ????, ?????? ??? 4?? ?????????? 2008, C-
330/07, Jobra, ?????? 2008, ?. I-9099, ????? 19).

16 ???????, ?? ?????????? ??? ?????? ?? ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????????? ??? ?????? ??
????????? ??? ?????????? ??? ?????? ?????? ?????????? ?? ?????? ?????? ???, ?????????? ???,
?? ??? ??? ?????????? ??? ?????? ??? ?????? ? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ??? (??., ??????
?????, ?????? ??? 11?? ?????? 2007, C-208/05, ITC, ?????? 2007, ?. I-181, ????? 56).

17 ?? ??????????, ?????????? ? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????
?????, ? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ??????
??????, ?? ?????? ? ?????? ?????????? ??? ?????? ??????????????, ?? ?????????? ??????????
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?? ?????????? ??? ?????? ?????????? ??
????? ??????, ???????, ?? ??? ?? ?????????? ??? ?????? ?????? ?????? ?????????? ??? ?? ??
????????, ?? ??? ?????? ?????, ?????????? ??? ??? ?????? ?????? ?????? ?? ??????????????
????????? ??? ?????? ??? ?????????? ??? ?? ?????? ?????, ??? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? (??., ??????,
????????? ?????? ??? 24).

18 ? ?????? ?????? ?????????? ?????????, ???????, ?????????? ??? ?????????? ???
?????? ?????????? ??? ?????? ??? ?????? ??? ?????? 56 ???.

19 ? ?? ??? ?????????? ??? ?????? ?? ?????? ?????? ?????? ?? ?????????????? ???
????????? ??? ?????? ?????? ?????????? . ??? ???? ?????? ?????? ??? ?????? ???, ???, ??
????? ? ?????? ??? ?????? ?????? ?? ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ???
????? ??? ?? ??? ?????????? ?? ?????? ?????? ?????? ?????? (??., ??????, ?????????? ???
30?? ?????????? 2007, C-150/04, ?????? ??? ?????? ?????? 2007, ?. I-1163, ????? 46,
?? ??? 15?? ?????? 2010, C-96/08, CIBA, ??? ??? ??? ?????? ?????? ?????????? ??? ??????,
????? 45).

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

21 ?? ???? ????????????, ???. ????????????, ????. ?????? ???. ????????????, ???. ?????? ???.
????????????? ????????????, ???. ?????? ???. ????????????, ???. ?????? ???. ?????? ???.
????????????? ????????, ???. ?????? ???. ????????????, ???. ?????? ???. ????????????, ???.
????? ???. (??., ?????? ???., ?????? ???. 13??. ????????????, 2005, C-446/03, Marks &
Spencer, ?????? 2005, ?. I-10837, ?????? 45, 46 ??? 51).

22 ??????????????, ??? ? ?????????????? ???????, ??? ?????????? ? Tankreederei ??? ?
????????, ???, ??????? ?? ?? ?????????? ??? ??????? ?? ?????? ???????????, ??
?????????????? ??? Tankreederei ??????? ?? ??? ?????????????? ?????????????? ??? ??????
????? ??????? ?? ?????????? ??? ??? ?????????? ?? ?? ?????? ??? ?? ?????? ?????? ??????? ?
?????? ?????? ??? ???????????, ?????????????? ?????????????? ??? ????????????.
????????, ?? ??????? ?? ?????????? ????? ?????????? ??? ?????????????? ?? ??????? ??
????????? ?? ??????????? ?? ?????? ?? ??? ?????? ??? ????? ?????????????? ???????
????????????? ?? ??? ??? ?????? ?????????? ?????? ??? ?????? ?????? ?????? ??? ?????? 11 ???
???????? ?????? (??., ???????, ?????????????? ?????? Jobra, ??????? 32 ??? 33).

23 ? ?????????? ??????????? ?? ?????? ?????? ?? ?????????????????? ?? ??? ???? ?????
????????????? ?? ???? ?????? ?? ?????? ?????????????? ??????????????, ? ?????? ??? ???? ?????
??? ??????????? ?????????? ?????????? ?????????? (???. ?????????? ?? 28??
????????? 1992, C-204/90, Bachmann, ?????? 1992, ?. I-249, ??? 28, ??? C-300/90,
????????? ??? ???????, ?????? 1992, ?. I-305, ??? 21).

24 ??????????????, ??? ?? ??????????? ?????????? ?????????? ?' ????? ?? ??????????
?????? ?? ?????????????? ??? ??????? ????? ?????? ?????? ??? ?????? ??? ??????
?????????? ?????????????? ??? ??? ?????????????? ??? ??? ?????????????? ??????????
????????? (??., ????, ?????? ??? 29?? ??????? 2007, C-347/04, Rewe Zentralfinanz,
?????? 2007, ?. I-2647, ????? 62 ??? ??? ?????????????? ??????????).

25 ???????, ??? ??????????????? ? ????????, ??????? ?????????? ??? ?? ?????????? ???
????????????? ??? ?????????? ??? ??????? ?????? ?????, ??? ?????? ??????????
????????? ??? ??????????????, ??????, ??????, ??? ?????????? ?? ?????????? ???
?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????????
????? ??? ?????????????? ??? ??? ?????? ??? ???, ???????, ?? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? ?? ?????? ???
????????? ??? ?????? ?????????????? ??? ??? ?????? ??? ?????????? ??? ??? ?? ?? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? (?)
??????, ?????? Jobra, ?????????????, ??? 34 ??? ??? ?????????? ??? ?????????).

26 ???????, ?????????? ?? ?????????? ?? ???? ?????? ?????????? ?? ???? ?????????? ?? ???? ?????????? ??
????? ?? ???? ?????????? ?? ???? ?? ??????? ?? ???? ?????????? ?? ???? ?????????? ?? ???? ?? ???? ?????????? ??
????????? ?? ???? ?? ???? ?????????????????? ?? ???? ??????????????, ?? ???? ?? ???? ?????????? ??
???? ?? ???? ?? ???? ?????????????? ?? ???? ?? ???? ?????? ?????? (??., ???????, ??????? ??
13?? ??????? 2000, C-251/98, Baars, ??????? 2000, ?. I-2787, ????? 40).

27 ????? ?????? ??? ??????? ?????????? ??? ?????????? ?????????? ??? ??????
????????? ??? -? ????, ?? ???????, ????, ??? ?????? ??? ?????? ???, ?? ??????????
??? ?????????? ??? ?????????? ?????????? ??? Tankreederei-, ? ?????? ???
????????????? ??? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ??
????????????? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ??? (?) ,

???????, ???????? ??? 3?? ?????????? 2002, C-136/00, Danner, ?????? 2002, ?. I-8147,
????? 56, ??? ??? 27?? ?????????? 2009, C-318/07, Persche, ?????? 2009, ?. I-359, ????
46).

28 ????? ?????? ??? ??????? ?????????? ?????????????? ??????????????, ??????????, ???????,
 ??? ?????? ?????????? ??? ?????????????? ??? ?????????? ?????? ??? ?????????? ?????? ??
 ?????????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ??????????????, ?????? ???
 ??? ?????????? ????????????????, ?????????????? ?????? ??? ?????? ?????? ??? ? ??????????
 ?????????? ?????????????? (??., ?????? ????, ?????? Jobra, ??????????????, ????? 35
 ??? ??? ?????????????? ??????????).

29 ??????????, ? ??????? ????? ????? ????? ?????? ?????? ?????? ??? ??????????????
??? ?????????????? ?????????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ??????
????????? ??? ??????????????, ?????? ?? ??? ?????? ??????, ?????? ??? ?????? ?????? ??? ??????
?????, ?????????????? ?????????? ??? ?? ?????????????? ??? ?????? ?????? ?????? ??????????????
(??., ???????, ?????? Jobra, ??????????????, ?????? 36 ??? 38).

30 ??????, ??? ?????? ?? ??????????????? ??? ?????????? ?????????????? ?????????? ?? ??
????????????? ??? ?????? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ??????????????????,
??? ?????????? ??? ?? ?????????????????? ?? ?????????????????? ?????????? ??? ?????????? ? ??????
??? ?????????? ???, ?? ??? ?????????? ?? ?????????? ?????????? ?????????? ?????????? ?????????? ???
????????????? ??? ?????????????????? ??? ??? ?????????? ??? ?????????? ?????????? ?????????? ??????, ??????
?? ?????????? ???, ???????, ? ??????? ??? ?????????? ??? ?????????? ?????????? ??? ?????????? ???
????????? ?? ?????????? ??? ?????? ?????? ?? ?? ?????????? ?????????????? ??????????????????
????????? ??? ?????????????? ??? (??., ???????, ??????? ?? 14?? ?????????????? 2006, C-
386/04, Centro di Musicologia Walter Stauffer, ??????? 2006, ?. I-8203, ?????? 39).

31 ??????????, ??? ????? ?? ?????????? ?? ??????? ????? ?????????? ?????? ?????????? ?????? ?????????
??? ?????????? ??? ??????? ?? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??????, ?? ??????????
????? ?????? ???, ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????, ? ?????? ???
????????? ??? ?? ?????????? ??????, ?? ?????? ??? ?????? ?????? ?????? ?????????? ??????????
????? ??? ?????????? ??? ?????????? ?????????????? ??? ?????? ?????? ?????? ?????????? (?).., ???????,
?????? ??? 1?? ?????????? 2009, C-103/08, Gottwald, ?????? 2009, ?. I-9117, ?????? 32
??? 34).

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

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

34 ???????, ??? ?????????? ??????? ?????? ?? ?????? ? ??????? ?????? ?? ?????? 56 ????
????? ??? ?????? ??? ?????????? ??????? ??????? ?????? ??????? ?????? ??? ?????? ???
????????? ? ??????? ?????? ??? ?????????? ?? ?????????? ??? ?????? ?????? ??????????????
????????? ??? ?????? ???, ??? ??? ?????? ???, ???, ??? ?????? ??? ?? ?????????? ???, ??? ????
????????? ? ?? ??? ?????? ??????, ?????????? ??? ?????? ?????? ?????? ?????? ??????.

35 ??? ??? ??????? ??????, ??????? ? ??????? ????? ??? ?? ? ?? ??? ????? ?????? ???????
?????? ?????? ?? ??????????? ????? ?????????? ??? ?????????? ??? ??? ??? ???????
?????????? ??? ???????? (??., ??????, ?????? Jobra, ???????????????, ????? 42).

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

36 ?????????? ??? ? ??????? ?????????? ??? ?? ??? ????? ?????? ?????????? ??? ?????? ???
??? ?????????? ?????????????? ??? ?????? ?????? ?????? ?????? ?????????? ?????????? , ?' ???
?????????? ?? ?????????? ??? ??? ?????????? ?????? . ?? ?????? ??? ?????? ?????????? ???
???? ?????????? ?????????? ??? ?????????? , ??? ??? ?? ??? ?????? , ???
??????????.

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

? ? ?????? **56** ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ?????? ?????? ??????
??? ?????? ??? ?????????? ? ?????? ?????? ?????? ?????????? ?? ?????????? ??? ?????????? ???
????? ?????????? ?????? ?????????? ??? ?????? ?????? ???, ??? ??? ??? ??? ??? ??
????? ?????????? , ??? ?? ?????? ?????????? ? ?? ?????? ?????? , ?????????? ???
????? ?????? ?????? ??????.

(?????????)

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