

?????? C-153/08

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«????????? ?????? ????? – ?????????? ?????? ?????????? – ????? 49 ?? ?? 36 ??
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(????? 46 § 1 ?? ?? 49 ??- ?????? ??, ??? 36)

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

????????? ???, ?? ?????????????? ?? ??? ?????? ?????? ???, ??? ?????? ?????????? ??????
????????? ?????????? ??? ?? ?????? ??? ?????? ?????????????? ?????????? ??????????
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????? ?? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ??
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?? ??? ?????? ???, ?????? ??? ?????? ?????????? ?????????? ?????????? ??????????
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????? ?????? ?????? ???, ?????? ?????? ?????????? ? ?????? ?????? ??????, ??? ??? ?????? ???
????? 46, ?????????? 1, ??, ??? ??? ?????? ?????????? ?? ??? ?????? ??? ?????????? ???.

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?????? ?? ???????????, ??? ?? ?????????????? ?? ?????? ?????? ?????? ?????? ?????????????? ???
????????? ??????????? ?? ?????????????? ??????????????????. ??????????????, ? ???????????,
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?????????? ??????? ?????? ??? ??????????? ?? ?????? ?????????????? ??? ??????????????????. ???
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??????????, ? ?????????? ??? ?????????????? ??? ??? ?????? ?????????? ?? ?????????????? ??
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??, ???????, ??? ?????? ?? ?????????????? ?????????????? ?????????? ?????????? ??????????
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???? ????????, ? ????????, ????? ?????? ??? ?????????????????? ??? ?? ?????? ???.
46, ????????, 1, ??.

???? ?????? ??? ?? ?????????? ??? ?????? 36 ??? ?????????? ??? ?????? ?? ??? ?????? ??????
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?????????? ??? mutatis mutandis ??? ?? ??? ?????? ?? ?????? ???.

(?. ??????? 33-34, 38-41, 43, 45,47-49 ??? ??????.)

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??? 6?? ?????????? 2009 (*)

«????????? ??????? - ??????? ?????? ????????? - ????? 49 ?? ??? 36 ???
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?? ??????????? ?? ?????? ?? ?????? 226 ?? ??? ???????????, ? ?????? ???????? ?? 15
?????? 2008,

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

Lozano Palacios, ?? ????? ?????????? ??? ????????????????,

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?????????? ?? ????????, ?????????????????? ?? ?? F. Díez Moreno, ?? ??? ??????????
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?? ?????????? (????? ????),

?????????? ??? ??? P. Jann, ??????? ????????, M. Ileši?, A. Tizzano, E. Levits ??? J.-J. Kasel (?????????), ????????,

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

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

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?? 16?? ??????? 2009,

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1 ?? ??? ?????????? ???, ? ?????????? ??? ?????????????? ?????????????? ?????? ??? ??
?????????? ?? ?????????????? ??? ?? ?????????? ??? ??????????, ?????????????? ?? ???
?????????? ??????????? ????????, ??????? ?? ??? ????? ????? ??????????? ?? ??? ?? ??? ?? ???????????
??? ?? ??? ??????, ??????? ?? ??? ?????????? ??? ????? ??????????? ?? ??? ??????? ?? ??? ?????????? ???
???????, ??? ?????????????? ??? ????? ??????????? ?? ??? ????? ??????? ?? ??? ?????????? ??? ???????,
?????? ?? ??? ?????????? ??? ??????????? ?? ??? ??????????? ?? ??? ???????, ??????? ??
?????????? ?? ??? ?????? ??? ?? ?????????? ?????? ???, ???????????, ??? ?? ??? ????? 49 ?? ???
36 ??? ?????????? ??? ??? ?????????? ?????????? ???, ??? 2?? ??? ????? 1992 (?? 1994, L 1, ?.
3, ??? ????: ?????????? ???).

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2 ???? ?? ?????? 49, ?????? ???????, ??:

«???? ??????? ?? ??????? ????????, ?? ??????????? ?? ??????? ??????? ??????? ??
?? ??????? ?? ??????? ??????? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ??
?? ??????? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ??
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3 ?? ?????? 36, ??????????? 1, ??? ?????????? ??? ??????:

«???? ?????????? ??? ?????????? ??? ?????????? ??????????, ??? ?????????????? ?????????????? ???
????????? ??? ?????? ?????????? ??? ?????? ??? ?????????????? ???, ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?? ??? ??? ?????? ??? ?????? [????????? ??? ?????? ??????????]

??????????], ??? ????? ?????????????? ?? ?????? ?????? ??? ? ?????? ??? ???, ???
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4 ?? ?????? 7 ??? ??? 35/2006, ??? 28?? ?????????? 2006, ??? ????? ??????????????
????????? ?????????? ??? ?????? ?????????????????? ??? ?????? ?????? ?????? ??????????, ???
????????????? ?? ?????? ?????????? ??? ?????? ?????????? (BOE ????. 285, ??? 29??
????????? 2006, ?. 41734, ??? ????: ?????? ??? ?????? ??????????????), ?? ?????? ??????????
?? ?????? ?????? ?????????? ?????????????? ??? ?????? ?????????? ?????? ??????:

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ñ) ?? ?????????? ??? ?? ?????? ??? ?? ?????????? ??? ?????????????? ??? ?? ?????? ??????
????????? “Loterías y Apuestas del Estado” [????????? ?????????? ?????????????? ?????????? ???
?????????] ??? ??? ??? ?????????????? ? ??? ?????? ??? ?????????? ?????????????? ??????????, ???
?? ?? ?????????? ??? ?????????????? ?????? ??? ?????????? ??? ?????????????? ??? ?? ?????????? ??????
????? ??? ??? ??? ?????? ??? ?????? ?????????? ?? ?????? ?????? ?????? ?????????? ?????? ? Organización Nacional
de Ciegos Españoles [????????? ?????????? ?????? ??? ??????].

[...]»

5 ???' ?????????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????????????? ???, ???????????,
??? ?????? 33.1, 45 ??? 63, ?????????? 1, ?? ?????????? ??? ??????, ???????, ??????? ???
????????? ??? ?????????? ??? ?????? ?????????? ? ?????????? ?????????? ??????????????,
????????????????????? ??? ?????????????? ??? ?????????????? ?? ?????? ??? ?????????? ?????????? ? ???
????????????? ??? ?????????? ??? ??????????????, ?????????????? ??? ?????????? ??? ?????????? ??? ???
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6 ?? ??????? ?????????? ??? 4?? ?????????? 2006, ? ?????????? ?????????????? ?? ??????????
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????????????? ??? ?????????? ??? ??????, ??????? ??? ?????????? ??? ?????????? ??? ?????????? ???
??? ?????????? ?????? ??? ?????????????? ?? ?????? 49 ?? ??? 36 ??? ?????????? ???,
????????? ?? ?????????? ??? ?????????????? ?? ?????? ??????????, ??? ?? ?????????? ???
????????????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ?????????????? ??? ?????? ???
??? ?????? ??? ?? ??? ?????? ?????? ?? ??? ?????????? ??? ?????? ?????????? ??? ?????? ???.

7 ?? ??????? ??? ???????, ?? ?? ?????? ??????????, ?????????? ??? ? ??????
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????????????? ??? ?????? ?????????? ?????????? ?????????? ??? ?????? ?????????? ??? ??????????,
????? ??? ?????????? ??? ?????? ?? ?????????????? ??? ?????? ?????? ??? ?????? ?????? ??????????.,
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8 ??? 15 ?????????? 2006, ? ?????????? ?????? ?????????????? ??? ?????? ?? ??? ???
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9 ?? ??????? ?? 22?? ??????????? 2007, ? ??????? ?????????? ?????????? ???
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10 ?????????? ?? ?????????????? ??? ?????????? ??? ?????????? ??? ??????????, ? ??????????
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11 ? ??????? ??????????? ???, ?????????????? ?????? ??? ?????????? ??? ??????????????
????? ?????? ??? ?????????? ??????? ?????????? ???, ?????, ??? ?????????? ??? 13??
????????? 2003, C?42/02, Lindman (?????? 2003, ?. I?13519), ? ?????? ??? ??????
????????????? ??????? ?????????? ??????????, ?????? ??? ?? ?????????? ? ??????
????????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ???
????????? ?????????? ???' ??? ? ?????? ?????????? ??? ?????????? ??? ??????????????
????????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????????? ???
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????????? ?????? ??? ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ???
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????????? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????? 49 ?? ??? 36 ??? ??????? ???.

12 ??????, ? ??????? ?? ?????????? ?????????? ??? ?????? ??? ??????????????
????? ??????? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ??????????, ??? ??????????????
?? ?????????? ?????????????? ??????. ??????????, ?????? ?????????? ??? ? ??????
????, ?????? ?????? ?????????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????,
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13 ? ?????????? ??? ???? ???? ???? ?????? ?????????? ?????????? ??? ?????? ??
????????????? ??? ???? ?????????? ?????????? ??? ?????????? ?? ?????? ??? ???? ???? ???? ?????
????????????? ??? ???? ??????. ?????????? ???, ? ?? ?????? ???, ??? ?? ?????? ???
????? ??? ?????? ?????????? ?????????? ??? ???? ???? ?????? ??? ?????????? ???
????????????? ???, ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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14 ??????, ??? ?? ????? 25 ??? ?????????????? ?????????? Lindman ?????????? ??? ??
????????????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??
????????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???
????? ??? ?????????? ??? ?? ?????? ????. ?? ??????????, ?? ?????????? ??? ?????? ???
????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

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

16 ????? ?????? ????? ?????????? ??? ??????????? ??? ?????????????????? ??????? ??? ??????????
????????????????? ??? ?? ????? ?????????????? ??? ??????????????, ? ?????????? ?????????? ??? ??
????????????? ?? ??? ?????? ?????? ? ?????????? ?????????? ?????????? ?? ?????????? ?? ?????????? ?? ??????????,
?? ??????????, ??? ?????????????? ?? ?????????? ??? ?????????, ??? ?????????? ??? ?? ???
???????. ?????????, ? ?????????? ?????? ??? ? ?????????????? ?????? ??? ?????????? ??
?????????????, ??????????, ??? ?????????? ??? ?????????? ??????????, ??? ?? ???
????????? ?? ?????????? ???.. ?????????? ?? ??? ?? ?????? ??? ??? ?????? ???
????????????? ?????? ??? ?????????? ?????????????????? ?????????????? ?????? ??????
????????? ?? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??????
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17 ?????? ?????? ??? ??????? ?????????????????? ??? ?????????????? ??? ?????????????? ?????????? ??
????? ?????????? ??? ????? ?????????? ? ????????, ? ?????????? ?????? ??? ??? ?????? ??
????????????? ?????? ??? ? ?????????? ?????? ?????? ?? ?????????? ??? ??? ??? ?? ??????????
????????????? ?????? ?????????????? ??? ?????? ?????????????????? ?? ??? ?????? ????.
?????????????, ??? ?????? ?? ?? ????? ?????????????? ?????????????? ?? ??? ?????? ????, ??
????? ?????????? ??? ?????????? ?????? ?????? ?? ?????????????? ??? ?????????? ???, ??
????? ?????? ?????????? ?? ?? ?????????? ??????.

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

21 ?????????? ????? ????? ?????????????????? ??? ??????????????, ? ?????????????? ??? ?????????????????? ???

??? ?????????????? ??? Lindman ??? ????? ???? ?? ??????????? ?? ???????????,
????????? ???, ?? ??????? ?? ??? ?????? ??? ?????? ??? ?? ?????? ??????? ?? ??
???? ??????? ?????????? ??????????, ? ?????? ??? ?????? ?????? ?????????? ??????????
????????, ??? ?????? ?????? ?????????? ?? ?????????? ??? ?????, ?????? ?????? ???
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ??? ???
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22 ??? ??????????, ?? ??????? ??? ??????? ??????????? ???, ?????? ??? ?? ?????????? ???
? ??????? ??????? ??????? ?????????? ??? ?????????? ???????, ? ??????????????
????? ??????????????, ?????? ??? ?????????? ?????? ??? ?????????????? ??? ??? ??
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23 ??? ??????, ??? ?????? ??? ?????????? ???, ?? ??????? ??? ?????????? ?????? ??? ??
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????????? ??? ?? ?????????? ??? ?????? ?????? ??? ?????????? ??? ??? ??? ?????? ?????????? ??
????????? ??? 24?? ?????? 1994, C?275/92, Schindler (?????? 1994, ?. I?1039), ??? 21??
????????? 1999, C?124/97, Läärä (?????? 1999, ?. I?6067) ?????? ??? ??? 21?? ??????????
1999, C?67/98, Zenatti (?????? 1999, ?. I?7289), ? ?????????? ??? ?????????? ??
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24 ??? ??? ?????????? ??? ?????? ?????????? ??? ?? ??? ?????? ??? ?????? ?????????? ??????
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25 ? ?????? ?????? ?????? ??? ?????????? ??? ?? ?????? ?????? ?????? ??? ?????? ??? ???????????, ???,
??????, ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ???, ???????, ??? ??? ?????? ?????????? ???
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26 ????, ??? ?????? ??? ?????? ??? ?????? ??? ?????????????? ??? ?????? ??? ??????????
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27 ????, ??? ?????? ??? ?????????? ??? ???????????, ?? ??????? ??? ???????
????????? ???, ??? ??????, ? ?????? ?????? ?????????? ???, ?????? ?????? ?????? ???
????????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????, ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????????. ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ?? ?????????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??? ???
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28 ???' ?????, ?????? ?? ??????????? ???, ??????? ???? ?????? ?????????? ?????????? ???
????????????? ??? ?????? ?????, ?? ?????? ??? ?????? ?????? ?? ?????? ??? ?????? ??? ??????????
???? ?????? ?? ?????????? ?????? (????????? ??? 11?? ?????????? 1995, C?80/94,
Wielockx, ?????? 1995, ?. I?2493, ??? 16, ??? 16?? ?????? 1998, C?264/96, ICI, ??????
1998, ?. I?4695, ??? 19, ??? 29?? ?????? 1999, C?311/97, Royal Bank of Scotland,
?????? 1999, ?. I?2651, ??? 19, ??? 6?? ?????? 2000, C?35/98, Verkooijen, ?????? 2000,
. I?4071, ??? 32, ??? Lindman, ??????????????, ??? 18).

29 ??? ?????? ??? ?????????? ?? ??? ?????????? ?????? ??? ?????????? ?????????? ???
????????, ?????? ?????? ??????????, ??? ?????? ?????? ?? ?????????? ?? ?????? ???
????????????? ?????????????? ??????, ??? ?????????????? ??? ?????????? ??? ?????????? ???
????????????? ?????????????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? (?. ?????? Lindman,
?????????????, ??? 19). ??????, ? ?????????? ?????? ?????? ?????? ?????? ?????? ???
?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? (?. ?????? ???
8?? ?????????? 2009, C?42/07, Liga Portuguesa de Futebol Profissional ??? Bwin International,
??? ??? ?????????? ??? ?????? ??? ??????, ??? 51).

30 ???????????, ?? ?????????? ??? ?????????????? ?????? ?????????? ??? ?????????? ???
????? ??? ?????? ??? ?? ?????????? ?????? ?????????? ?????????? ??? ?????? ???
????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????? ??? ??????
????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????? ??? ??????????
???? ?????? ?????????? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
(?., ?????? ???, ?????? ??? 27?? ?????????? 2009, C-318/07, Persche, ??? ???
????????? ??? ?????? ??? ??????, ??? 44).

31 ????????, ?????? ??? ?????? ?????? ?????????? ??? ?????????????? ?? ?????????? ?? ???
????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ??????
????????? ??????, ?????? ?? ?????????? ?? ?????????????? ?? ?????????? ??? ??????
????? ??????, ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ??????,
????????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? (?., ??? ???
????? ???, ?????????? ??? 14?? ?????????? 2006, C-386/04, Centro di Musicologia Walter
Stauffer, ?????? 2006, ?. I-8203, ??? 40, ??? 11?? ?????????? 2007, C-76/05, Schwarz
??? Gootjes-Schwarz, ?????? 2007, ?. I-6849, ??? 81, ??? ??? Persche, ??????????????,
????? 49).

32 ?? ?????????? ?????????? ??? ?????????? ??? ?????????? ?? ??? ?????? ??? ?????? ???
????? ??? ?????????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? (????? Persche, ??????????????,
????? 50).

33 ??? ?????????? ? ?????? ?????????? ?? ?? ?????? 66 ??? ?????????? ???,

????????????? ? ?????????? ??? ?? ??????? ?????????????? ??? ?? ?????? ??? ??????, ?? ???
??? ?? ??????? ??? ??????? ???, ?????????????? ?????? ?????, ?????????????? ?????? ?????????? ?
????????????? ?????? ??????? ?????????? ?????? ?????? ??? ?? ?????? ?????????? ?????? ??????
?????? ?? ??? ?????????????? ??? ?? ?????? ??? ?????????? ?????? ??? ?????? 7, ??????? ??,
??? ?? ??? ?????? ?????? ?????????? ?????? ?????? ??? ?????????? ?????? ?????? ?? ?????? ???
????????? ?????? ?????? ?????? ?????? ??????.

34 ??? ?? ?????? ??????, ?????????? ? ?????????? ??? ? ??? ?? ?????? 7, ??????? ??
??, ??? ?? ??? ?????? ?????? ?????????? ?????????? ??????????, ?????? ?????????? ?
????????? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ??????
????? ??? ?????????? ??? ?? ??? ??????, ?????? ?????????? ?????? ?????? ?????????? ??????????
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????????? ??? ?????? ?????? ?????????? ?????? ?????? ??? ?????? ?????? ?????????? ??????
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35 ??????, ? ?????????? ??? ?????? ?????? ?????????????? ??? ?? ?????? ?????????? ??? ??
????? ??? ?????????? ?? ??????? ?????? ?????????? ?? ?????? ??? ?????????????? ??? ??
????? ?????? ??? ??, ??????? ??? ??, ?? ?????????? ?? ??????????, ??? ?????? ???
????????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ???????, ????????
??? ??????????. ???????????, ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
????????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? 7,
?????? ??, ??? ?????? ??? ?????? ?????? ??????????. ?????? ???????, ? ?????????? ??? ??????????
????? ?? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ?????????????? ?? ?????? ?????? ???
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????????????? ??? ?????? ??? ??????.

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36 ??????, ?????? ?? ?????????? ???, ?????? ? ?????????? ??? ?????????? ??? ?????????? ???,
??????, ?????? ?????????? ?????????? ?????? ?????? ?????????? ???, ??? ?????? ?
????????? ??? ?????????? ?, ?????? ??? ?????? ??? ? ?? ?????????? ??? ?? ?????? ???
????? ?????? ?????? ?????? ??? ?????????? ?? ?? ???????, ?????? ???, ???????, ? ????????
??? ?????????? ??? ?????????? ?????? (??., ??????????, ?????? Liga Portuguesa de
Futebol Profissional ??? Bwin International, ???????????, ??? 56), ?? ?????? ??????????
?? ?????????? ?????????? ??? ?????????? ?????? ?????????? ?????????? ???, ???, ?? ???
????? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?????????? (??., ??? ?? ???
????, ?????????? ??? 30?? ??????? 1995, C-55/94, Gebhard, ??????? 1995, ?. I-4165, ???
37, ??? 6?? ??????? 2003, C-243/01, Gambelli ?.??., ??????? 2003, ?. I-13031, ??? 65,
??? 6?? ??????? 2007, C-338/04, C-359/04 ??? C-360/04, Placanica ?.??., ??????? 2003, ?. I
1891, ??? 49, ??? ?? Liga Portuguesa de Futebol Profissional ??? Bwin International,
????????????? ???, ??? 60).

37 ??? ?? ?????????? ??? ?????????? ?????? ???, ??? ?????? ??? ??
??????????, ??? ? ??????? ?? ?????????? ?????? ?????? ???????, ??? ?????????? ??? ?? ??
????????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????? ?????? ?????????? ???????, ???
?? ??? 46 ??, ??? ?????? ?????????? ?? ????? 55 ??, ??? ?? ?????? ???, ?? ??????
????????? ??? ?? ?????? ?????? (?????? ?? 16?? ?????????? 2003, C-388/01, ???????
???? ???????, ??????? 2003, ?. I?721, ??? 19).

38 ??? ???????, ? ??????? ?? ?????????? ?????????? ??? ?????? ?? ?????????? ???

?????? ??? ?? ?????????? ??? ?? ?????????????? ??? ?? ?????? ??????? ??????? ??????? ???????
?????? ??????? ?? ??????, ??????? ??????? ? ??????? ??????? ??????, ??? ?? ?????? ??????? ???
?????? 46, ??????? ?? 1, ??, ??? ?? ????? ??????? ??????? ?? ??? ?? ?????? ??? ??????????????.
??????, ?????? ?? ??????? ?? ??????? ?????? ??????? ??????? ??????? ?????? ?????? ??????? ??
?????????? ?? ??????? ?? ??????? ?????? ??????? ??????? ?????? ?? ?????? ?????? ??????? ??
????????? ?? ?? ?????? ??? ?????????????? (?????? ?? 10?? ??????? 2009, C?169/07,
Hartlauer, ??? ?? ?????? ?????? ??????????? ??? ??????, ????? 55, ??? ?? Liga Portuguesa de
Futebol Profissional ??? Bwin International, ??????????????, ????? 61).

39 ??????, ??? ?? ?????? ??? ?? ?????? ??? ?? ?????????? ??? ?? ?????????????? ?????? ???
????????? ?????????????? ??? ?? ?????? ?????????? ??? ?? ?????????????? ??? ?? ?????????????? ???
????????????? ?? ? ?????? ?????? ??????, ??????????, ??? ?? ?????? ??? ?????? ??? ???????
?????. ?????? ?????? ?????? ?????? ?????? ???, ??? ?????????? ??? ?? ?????????? ???
??????????, ?? ?????? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?? ?????????? ???
??????????, ??? ?? ?????????????? ??? ?????? ?????? ?????? ?????? ?????????? ??? ???????
?????????? ?? ?????????????? ?????????????? ?????????????? ??? ?????????? ???, ???????,
????? ??? ?????????? ??? ?? ?????? ??? ?? ?????????? ??? ?????????? ?????????? ?????????? ???
????? ??? ?????????? ??? ?? ?????? ?????? ??? ?????????? ??? ?????????? ?????????? ???
????????? ??? ?????? (??., ??? ?? ?????? ???, ?????????????? ?????? ?????? Gambelli
??., ??? 74, ??? ?? Centro di Musicologia Walter Stauffer, ??? 61).

40 ???????, ??? ?? ?????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ???????, ?????? ??
????????? ???, ??????? ? ?????? ?????? ??? ?????? ??? ?????????? ?? ??????? ?? ??????? ???
????? ??? ?????????? ??? ?????? ??????, ?????????, ?? ?????????? ?????????? ?????????? ???
????????? ???, ???????, ?? ?????????? ??? ?????? ?????? ??? ?????????? ?????? ?????? ??????? ???
?? ?????? ?? ?????????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???????
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41 ?? ???????, ??? ?? ?????????? ? ?????? ?????????? ?? ?????? ?????????? ?? ?? ?????? 85 ??
????????? ???, ? ??????? ??? ?????????? ??? ?????????? ??? ?? ?????? ?????????? ?? ?????????? ???
????????? ??? ?????????? ?? ?????????? ??? ?????? ??????, ?????? ?????? ??? ?????????? ???
????????? ?? ?????? ??? ?????????? ???, ???????, ??? ?????? ?????????? ???
????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???.

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

43 ??????, ??? ?? ?????? ?? ?????????? ??? ?? ?????????? ??? ?? ?????? ??? ?? ??????????
?? ?????????? ?? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
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????????? ?????? ?????? ?? ?????????? ??? ?????? ??? ?? ?????????? ?????? ?????? ??? ?? ???
????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????????? ?????? ?????????? ??? ??
????????? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ?????????? Schindler, ??? 60, ??? Zenatti, ??? 36). ???????, ??? ??
????????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ?????????? ?????? ??? ?????? ???
?????? ??? ?? ?????? ??? ?????? 46 ?? ?? ?????? ??? ?????????? ??? ?????????? ???

?????? ??????????? ?? ?????? ?????? ?????? ?????????? ?? ?????????? ? ?????? (??.,
????? ????, ??????????????? ?????? ?????? ?????? ????, ?????? 19 ?? 22,
????? ??? Gambelli ?.??., ??? 61).

44 ???????, ??? ????? ?? ?????????? ?? ?????????? ?????? ?? ?? ?????????? ??
??????????, ?????? ?? ?????????????? ???, ?????? ??? ?????????????? ??
????????? ?? ???????, ? ?????????? ??? ?????????? ?? ?????????? ??
????????????? ?????? Schindler, Läärä ?.??., ??? ??? Zenatti, ??? ????? ??
????????????? ?????? ???, ??? ?????? ?? ?????????? ?? ??????????.

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

46 ??????, ????, ?? ??????? ?? ?, ??? ?????????? ? ?????? ?????????? ???????, ???,
?? ?????? 93 ??? 104 ??? ??????? ?? ?, ? ?????? ?????? ??? ???????, ?? ???
??????????, ?????? ??? ???????, ??????, ??? ?????? ??? ?????????? ??? ???????,
??????, ?????????? ??? ?????????? ??? ?? ?????????? ?? ?????????? ?? ???????????
?????? ??? ?????????? ???, ???????, ??? ?????? ??? ?????????? ??? ??????????
????????? ??? ??? ?????? ?????? ?????? ?????? ??? ?? ??? ?????? ?????????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????????? ???.

47 ??? ???????, ? ??????? ?? ?????????? ??????? ??? ??????? ?? ?? ?????????????? ??
??? ?????? ??? ?????? 46, ?????????? 1, ??.

48 ??? ?????? ??? ?? ?????????? ??? ?????? 36 ??? ?????????? ??? ?????? ?? ?? ??????
?????????? ?? ??? ???' ?????? ?????????? ?????????? ??? ?????? 49 ??, ?? ???????????
????????? ?????? mutatis mutandis ??? ?? ??? ?? ?????? ???.

49 ??????? ??? ??????? ???????????, ?????????? ? ?????????? ?? ?? ??????? ??
??????????, ??????????? ?? ??? ?????????? ?????????? ?????????? ?? ?????? ??????????? ??
????? ??????????? ?? ?????????? ??? ?????????? ??? ?? ?????????? ?? ???????, ???????
??? ?????????? ??? ?????????? ??? ?????????? ??? ?? ?????????? ??? ?????????? ??????????
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????? ??
????????? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ?????????? ??? ?? ?????? ??? ?????? ??? ??????
? ??? ?????????? ?????????? ??? ?????? ?????????? ??? ?? ?????? ??? ?????? ??? ??????
?? ??? ?????? ??? ?? ?????? 49 ?? ??? 36 ??? ?????? ???.

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

50 ??? ?? ??? 69, ?????????? 2, ??? ?????????? ???????????, ? ?????????? ???????
?????????? ?? ??? ?????????? ????, ?????? ?????? ?????? ?????? ??? ???????????
????????? . ??? ?? ??????? 3, ?????? ??????, ??? ?????? ?????, ?? ?????????? ???????
????? ??? ???????, ?? ?????????? ?????? ?? ?????????? ?? ?????? ?? ?????? ?? ??????????? ??
????? ?????????? ?????? ?? ?????????? ??? ?????. ?????? ?????? ?? ?????? ?? ?????? ??
????? ?????????? ?????? ??? ???????, ??? ?????? ?????? ?? ?????? ?? ?????? ??

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

1) ?? ?????????? ??? ????????, ???????????? ?? ??? ????? ?????????? ???????????
?????? ? ??? ?????????????? ??? ????? ?????????? ?? ?????????? ??? ?????????? ???
????????????? ??? ?? ?????????? ?? ???????, ??????? ??? ?????????? ???
????????????? ??? ?????????? ?? ??????? ?????? ??? ?????? ??? ?? ?????? ???
??? ?????? ?????????????? ??? ?????? ?????? ??? ?????? ??? ?? ?????? ???
????????????? ?????????? ?????????? ? ?????? ?????? ?????????? ???????????, ??? ??
????????? ?? ?????????? ??? ?????????? ??? ?? ?????????? ?? ???????, ???
??? ?????????? ??? ?????????? ??? ?????? ?????? ?????????? ?? ??? ?????? ???
????? ??? ?????? ? ??? ?????????? ?????????? ?????? ?????? ?????????? ??? ??????
????? ??? ?????? ??? ?????? ??? ?? ?????? 49 ?? ??? 36 ??? ?????????? ???
??? ?????????? ?????????? ???, ??? 2?? ??? 1992.

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

3) ? ?????????? ??? ?????????? ?????????? ??? ?? ?????????? ??? ?????????? ???
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(?????????)

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