

?????? C-155/09

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«????????? ??????? - ?????? 12 ??, 18 ??, 39 ?? ??? 43 ?? - ?????? 4, 28 ?? 31 ???
????????? ??? ?? ??????????? ??? ??????????? ?????????????? ????? - ??????????? ??????????
- ??????????? ?????? ??? ?? ?????? ?????????????? ?????? ??? ?????? ?????????? ?????? ??? ?????? ??????
????????? - ?????? ?????????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ??? ?????? ?????? ?????????? ?????????? ??? ?????????? ?????? ?????? ?????? ?????? ???
????? ?????»

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

1. ?????????? ??? ?????????? ?????? - ?????????? ?????????? ?????????????? ???
????????? ?????????? ??? ?????? ??? ?????? ?????? - ?????? ?????????????? ??????????

(????? 18 ??, 39 ?? ??? 43 ??- ????????, ???, ????? 28 ?? 31)

2. ?????????? ??? ?????????? ?????? - ??? ?????????? - ?????????? ??? ?????????? -
????????? - ?????? ?????? ?????????????? ??????

(????? 12 ??, 18 ??, 39 ?? ??? 43 ??- ????????, ???, ????? 4, 28 ?? 31)

1. ?????????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? 18 ??, 39 ?? ??? 43 ??,
????? ??? ?????? 28 ?? 31 ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??????????????
?????, ?????? ?????? ?? ?????? ?????????? ??? ?????? ?????? ?????????????? ??????????
????????????? ??? ?????? ?? ?????? ??? ?????????? ?????? ?????? ??? ?????? ??????, ??? ??
??? ?? ?????? ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??
????????? ??? ???.

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

(??.. ??????? 45-46, 59, 63, ??????. 1)

2. ?????????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? 12 ??, 39 ?? ??? 43 ??,

????? ??? ?? ?????? 4, 28 ??? 31 ??? ?????????? ???, ?????? ?????? ?? ?????, ??? ????
????? ?????? ?????????? ??? ?????? ???, ??????????, ??? ?????????? ????????????, ???
??? ??? ?????????????? ?????? ?????????????? ??? ?????? ??? ?????????? ??? ? ??????
????????? ??? ?????? ?????.

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

(???. ??????? 69-71, 75, ??????. 1)

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

??? 20?? ?????????? 2011 (*)

«????????? ?????? ?????? – ?????? 12 ??, 18 ??, 39 ?? ??? 43 ?? – ?????? 4, 28 ??? 31 ???
????????? ??? ?? ?????????? ??? ?????????? ?????? ?????????? ?????? – ?????????? ??????????
– ?????????? ?????? ??? ?? ??? ?????? ?????????? ?????? ?????? ?????? ??? ?????? ??????
????????? – ?????? ?????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??????
????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????? ??????»

????? ?????? C?155/09,

? ? ?????????? ?????? ??? ?????? 226 ?? ??? ?????? ??????????, ? ?????? ?????? ??? 4
????? 2009,

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

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

?????,

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

????????? ??? ??? A. Tizzano, ?????? ???????, J.-J. Kasel, E. Levits, M. Safjan ??? M. Berger (?????????), ???????,

?????? ??????????: J. Mazák

?????????: R. ?ere?, ??????? ????????????,

?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ?????????? ??? 20?? ??? 2010,

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

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

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1 ?? ?? ?????????? ??? ?????????? ???, ? ??????? ??? ?????????? ?????????? ?????????? ???
?? ?? ?????????? ?? ?????????? ???:

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

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

? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? 18 ??, 39
?? ??? 43 ??, ??? ?? ?????? ??? ?????? 12 ??, ?????? ??? ?????? ??? ?????? 4, 28 ??? 31
??? ?????????? ??? ?? ?????????? ??? ?????????? ?????????? ??????, ??? 2?? ??? 1992
(?? 1994, L 1, ?, 3, ??? ????: ??????? ???), ?????? ?? ?? ??? ?????? ?????? ?????? ??????????????
?? ?????? ?????????? ?????????? ??? ?????????? ??? ??? ?????????? ???.

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

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

2 ?? ?????? 12, ?????? ??????, ?? ?????? ???:

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

3 ?? ?????? 18, ?????????? 1, ?? ?????? ???:

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

????????? ???..»

4 ?? ?????? 39, ?????????? 1 ??? 3, ?? ?????? ?? ????:

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

2. ? ?????????? ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????????? ?????? ??? ?????????? ??? ?????? ??? ?????? ???, ??? ?????? ???
?????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

3. ?? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???
??????, ?????????? ?????????? ??? ?????????? ???, ? ?????????? ?????????? ???
????????? ?????????? ??? ?????????? ?? ?????????? ???:

?) ?? ?????????? ??? ?????????? ??? ?????????? ??? ??????????.

?) ?? ?????????? ??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
?????.

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

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

5 ??? ???? 43 ??:

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

? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ???, ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????????? ???, ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? 48, ?????????? 2, ?????? ?? ??? ?????????? ???
????????? ??? ?? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??????.

6 ?? ?????????? ??? ?????? 2 ??? 5 ???????, ??? ??? ?????? 18 ??, ???
????????? ?? ??? ?????????? ??? ?????? 4, 28 ??? 31 ??? ?????????? ???.

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

7 ?? ?????? 1, ?????????? 1, ??? ?????? 1078/1980 ?????? ???:

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

? ?????????? ?????????? ????????????, ??? ?????? ?????????????? ?????????? ?????????? ?????????? ??? ?????? ???
????????????? ??? ?????? ??? ?????????? ?? ??? ???? ???? ?????????? ?? ?????????? ?? ?????????? ??? ??? ???
????????? (3 000) ????????.»

8 ?? ?????? 1, ?????????? 3, ??? ?????? ?????? ?????? ?? ????:

«?? ?????????? ??? ?????????? ?????? ??? ?????????????? ?? ?????????? ?????????????? ?????????? ???
?? ?????? ??? ?????? ?????? ? ?????????? ??? ?????????? ??? (6) ?????????? ??? ??????

???' ??????????, ?????????? ?????????? ??? ?????? ?????? ??????, ?????????????? ? ??????????
??? ?????? ? ?????????? ??? ?????????? ??? ?????????? ??? (6) ?????????? ??? ??????
??? ?????? ?????????????? ?? ?????????? ??? ??????, ??? ?????? ?? ??? ?????? ?????????? ??? ??
????? ??? ?????? ?????? ??? ?????..»

9 ?? ?????? 1, ?????????? 7, ??? ?? ??? ?????? ?????? ??? ? ?????????? ?????????? ???
??? ?????????? ??? ?? ?????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ?????? ??????.

10 ????? ??? ??? 1, ?????????? 12, ??? ?????? 1078/1980 ???????????????, ??
????????? ??? 7?? ?????? 2005 ?????????? ?? ??? ?????? ?? ?????????? ??? ?????? ???
????????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ???.

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

11 ???? 6 ?????????? 2007, ? ?????????? ?????????? ??? ?????????? ?????????? ??????????
????????? ?? ?? ?????? ?????????? ???, ?????????? ?????????? ??? ??????,
????????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ??????, ??? ??????
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????????? ???
????? ?? ?????? ???, ???, ???????, ??? ?????????? ???????????, ?????????? ???
?? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ??????, ?????????? ???
????? ???, ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ???
????????? ??????, ?? ?? ??? ?????? ?????? ?????? ?????????? ??? ?????????? ???
??? ?????? 12 ??, 18 ??, 39 ??, 43 ??, ?????? ??? ?????? ??? ?????? 4, 28 ??, 31 ??,
???.

12 ???? 13 ?????????? 2008, ? ?????????? ?????????? ?????????? ??? ?? ??? ?????? ??????
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

13 ????????? ??? ? ?????????? ??? ?????? ??? ?????? ??????, ? ??????????, ??? 23
????????? 2008, ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???
?? ?????? ??????. ?? ?????? ?????? ?????? ?????? ??? ?????? ??? 21 ?????????? 2008
????????????? ??? ?????? ??? ?????? ??? ??????.

14 ? ????????, ????????, ??? ? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ??????
?????????, ????????, ?? ?????? ??? ?????? ??? ??????.

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

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

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

15 ? ????????, ?????????? ??? ?????? ??? ?????? ??? 13?? ?????? 1993, C-330/91,

Commerzbank (???????, 1993, ?. I?4017), ???????????, ??????, ???, ?????? ?? ??????? ?? ??????? ??
?????? ?????????? ??? ???? 1, ?????????? 3, ????? ?????, ??? ?????? 1078/1980 ???
????????? ???' ?????? ?????????? ?????????? ?????? ??? ?????? ??? ??????, ???
????????? ?????? ?????????? ??? ?????????? ??? ?????????????, ?????????? ??? ??????
????????? ?????? ???, ?? ??? ???? ??????, ?????? ?????, ?????? ??? ?? ??????
?? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ?????? ?????????? ??????????.

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

17 ???????, ??????????, ??????? ???, ??? ?????? ???, ??? ?????????? ??? 15?? ?????????? 2005,
C?464/02, ??????? ??? (?????? 2005, ?. I-7929), ?????? ??? 13?? ??????????
2003, C?209/01, Schilling ??? Fleck-Schilling (?????? 2003, ?. I?13389), ? ???????
????????? ??? ? ?????? ?????????? ??? ?????? 18 ??, ??????? ?? ?? ??????? ???
????? ??? ?????? ?? ?????????? ??? ?? ??????? ?????????? ??? ?????? ??? ?????? ???,
????????????? ??? ?????? 39 ?? ??? 43 ??, ??? ?????? ??? ?????? ???, ??? ??????
????????? ??? ??????????, ?? ??????? ?? ??? ?????? ?????????? ?????????? ??? ??????
????????? ??? ?????????? ??? ?????? ??? ?? ??????????, ??? ?????? ??? ?????? ??? ??????
??????, ??? ?????? ??? ?????? ?????? ?????????? ?????????????? ?????????????? ??? ?????????????? ??
???? ?????? ??? ?? ?????????? ?? ??????? ?????? ??? ?? ?????? ??? ?????????? ???
????????? ?????????? ?????????? ??? ?????? ?????? ?????? ?????? ??????. ?? ?????????? ???
????????? ? ?????????? ?????? ?????? ?????? ??? ?????? ?? ?????????? ??? ?????? ??????????
??? ?????????? ?? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??????????
??? ?????????? ??????, ??? ?? ?????????? ?????? ?????????? ??? ?????????? ??? ?????????? ???
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 18 ??, 39 ?? ??? 43 ??, ??????
????????? ??? ?? ?????????? ??? ?????? ??? ?? ?????? ?????? ?????? ??? ?????????? ???
????????????? ?? ??? ?????? ?????? ?? ?????????? ?????? ?????? ??? ?????? ???
????????????? ??? ?? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????????.

18 ??????, ? ?????? ?????????? ??? ??????? ??? ?????? 39 ?? ??? 43 ??
????????? ??? ?????????? ??? ?????????? ??? ?????????, ?? ?????? 18 ?? ??????????
????????? ??? ??? ??????, ?????????? ???, ?? ?????????, ??? ?????? ??? ?????????????? ?? ??? ??????
????????? ?? ??? ??????, ?????????? ???, ?? ?????????, ??? ?????? ??? ?????? ??? ??????????????.

19 ??? ??? ?????? ??????, ? ?????? ?????? ??? ?? ??? ???? 1, ?????????? 1 ??? 3,
????? ??????, ??? ?????? 1078/1980 ?????????? ??? ?????? 28 ??? 31 ??? ?????????? ???.

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

21 ?? ??? ???? ???? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ?? ?? ???
????????? ?????????? ?????? ?????? ?????, ?????, ?? ?????????? ??? ?????? ??? ?????? ?? ?????? ???
????????? ?????? ?????? ?????? ?????? ??? ?????????? ??? ?????????? ?????????? ??? ??????
????????? ? ?????? ?????? ?????? ??? ?????? 1078/1980 ??? ?????????? ?????????? ???
????????? ?? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????????
?? ?????????? ??? ?????? ?????? ???, ?????, ?????? ?????????? ??? ??????.

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

22 ???????, ? ??????? ?????????????? ??? ?????????? ?????????????? ?????????? ?????????? ??????????
????????? ??? ??? ??????? ??? ?? ??? ????? ?????, ???, ??? ??????????, ? ?????????? ?????????? ??? ???????
????????? ??? ??????? ?????????? ?????? ??? ?????????? ??? ?????????????? ??? ?????????? ??? ???????,
????????? ?????? ?? ?????????? ??????, ? ?????????? ??? ?????????? ?????????????? ??? ?????????? ??? ?
????????? ??? ?????? ?? ?????????? ??????, ? ?????????? ??? ?????????? ?????????????? ??? ?????????? ??? ?
????????? ??? ?????? ?????????? ?????? ??? ?????????? ?????? ??? ?????????? ?????????? ??? ???????, ??
????????? ??? «????????? ??????». ??? ???????, ? ?????? ?????????? ?????????? ??? ???????, ???
????????? ?????? ?????????? ??? ??????? ??? ?????? ??? ?????????? ??? ?????????? ??? ???????, ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ???????, ???
?? ??????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???.

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

24 ?????, ? ??????? ??????????, ??????, ?? ?????????? ??? ?????? ? ?????????? ? ??????????
??????????, ??? ?? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????? ??? ???????
????????? ?? ?????? ?????????? ??? ??????? ??? ?????? ??? ?????? ?????????? ?????????????? ???
??? ??????????????. ?????????? ??? ??????? ??? ? ??????? ??? ?????????? ??? ?????????? ??? ??
????????? ?????????? ??? ???????, ??? ???, ?? ?????, ??? ?????????? ??? ?????? ??? ??????????
????????? ??? ?????? ??? ?????? ??? ??????????. ?? ?????? 1, ?????????? 3, ??? ?????? ???,
??? ?????? 1078/1980 ??????? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ???????,
????? ? ??????? ??? ?????????? ?? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
?? ?? ?? ?????????? ??????? ??? ?????? ??? ???????, ??? ??? ?????? ??????? ??? ???????, ?? ??????????????
???? ?? ???.

25 ? ??????? ?????????? ?????????? ??? ?????? ??? ?? ??????? ??????????,
??????????????, ???' ????, ???, ?????? ?????? ?????? ??? ?????? ?? ?????? 12 ?? ??? ?? ?? ??
????? 39 ?? ?????????? ??? ?????? ?????? ?????? ?????????? ??? ?????????? ?????????? ??? ???????, ??? ???????
??? ??????? ??? ?????? ?????????? ?????? ??? ?????????? ?????????? ??? ?????????? ?????????? ??? ???????
??? ??? ?????????? ?????????? ??? ?????????? ?????????? ??? ?????? ?????????? ?????????? ??? ??????? ??
????????? ??? ?????????? ??? ?????????? ?????????? ??? ?????????? ?????????? ??? ??????? ??? ??????????
??? ?????? ? ??????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ???????, ???
????????? ?? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????? ??? ???????,
????????? ??? ?????? ??? ?????????? ??? ??????? ??? ?????? ??? ?????? ??? ??????? ??? ???????.

26 ???????, ? ??????? ?????????? ?????????? ??? ?????????? ??? ?????????? ?? 1992 ??????????,
????????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???
????????? ??? ??? ?????? ?????????? ??? ?????? 1078/1980, ?????????? ??? ?????? ??? ??

? ?????????? ?????????? ?????? ??????????????? ??? ?????? ?????????? ?????? ?????? ?????? ?? ???
????? ??????? ?????????????? ??? ?????? ?????????????? ??? ??? ?????? ??????????. ??????????,
?? ??? ?????????? ??????? 21? ?????? 2004 ?????????? ???, ?????????? ??? ?? ?
????????? ??? ?? ??? ??????????, ? ?????? ?????????? ??? ?????????????? ??? ?????????????? ??????????
??? ??????? ??? ?????? ?????? ?? ?????????? ?? ??? ?????? ?????????? ?????????????? ??????????,
????????? ?????????????? ??????, ?????????? ?????????, ?????????????? ?????????? ??????????
????????????? ?????????????? ??????, ?????????? ?????????? ?????????? ?????????? ????.

27 ??????????, ?? ??? ? ? ?????? ??? ???? ?????? ?????? ?????? ?????????????? ??? ??????? ??? ??????
??? ?????? ??? ?????? ??? ?????????????? ??? ?????? ?????? ?????????????? ??? ??? ?????? ?????????? ??
?????? ?????????? ??? ?????? ?????? ??????????, ??? ?????????? ??? ?? ??? 12 ?? ??? 18 ??, ?
????????? ?????????? ?????????? ?????????? ?? ??? ?? ? ? ?????????? ?????????? ??????????????,
?? ?????? ?? ?? ?????????? ?????????, ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?? ??????
????????? ?????? ??? ?????????????? ?????? ??????????. ??????????, ??? ?? ?? ??? ?????? ??????
?????, ?? ?????? ??? ?????? ?????????, ??? ?????? ?????????? ??? ?????? ?????????? ??? ??????????
????????? ?????????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??????????,
????????? ??? ??? ??? ?????? ?????????? ?????? ?????? ?????? ?????? ??? ?????????? ?????? ??????????
????????? . ? ?????? ?????? ?????????? ?????????? ???, ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??????
????????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ??????
????, ?????????? ??? ??? ?????? ???.

28 ????, ?? ??? ? ? ?????????????? ??? ???? ???? 1, ?????????? 3, ?????? ??????,
??? ?????? 1078/1980, ? ??????? ?????????? ?????????? ??? ???? ???? ?????? ??????
????????????? ??? ??? ?????? ?????? ?????????? ???, ???????, ?? ??? ?????? ??????????
????????? ?????????? ??? ?????????? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ??? ??????

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

30 ?????????, ? ?????? ??? ?????? ??? 7? ?????? 2005 ?????? ?? ??? ???'
????????? ?? ?????????? ?????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ???
????????????? . ? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???,
????????? ??? ???????, ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ???, ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

31 ??????, ? ?????? ?????? ?????????? ?????????? ??? ?????? ?????? ??? ?????? ? ??????

??? ??? ??????? ???? ??? ?????????? ?????? ?????????? ??? ??? ?????????? ?? ??????????????????
?? ?????????? ?????? ?? ?????? ?????????? ??? ???, ???' ????????, ?????????? ??????????????
?? ?? ?????????? ?? ? ? ??????????????. ?? ???? ?? ????????????, ?? ?? ???? ?????? ??????
????????????? ??? ? ?????????? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?? ??????
??? ?? ??? 1, ?????????? 7, ??? ??? 1078/1980 ?????? ??? ? ?????????? ?????????? ????
??? ??? ??? ?? ?????????? ?? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?? ??????????
?????????. ? ?????? ??????????, ?????? ?????????? ??????????????, ??? ?????? ??????
????????? ??? ?? ?????? ??? ?????? ?????????? ?????????? ?????? ??? ??? ?? ??????
????????? ?????????????? ??? ??? ? ?????????? ?????? ??? ?????????? ??? ?????? ?????? ??
?????????.

32 ? ?????????? ?????????? ????, ??????, ??? ?? ?????????? ??? ?????????? ??? ?????????? ???
????????? ?????? ?????????? ??? ?? ?????????? ??? ?????? ?????? ??? ?????? 1078/1980, ??? ?
????????? ?????????? ?? ?????????? ??? ?????????? ?????? ?? ?????????? ?????????? ???
????????? ??????, ?????? ???????????. ?????????? ?????? ??? ?? ?????????? ??? ?? ?????????? ???
????? ?? ?????? ?????????? ?????? ??? ?????? ??? ?????????? ?????? ?? ?????????? ???
?????????, ??? ?? ?????? ?????? ?????? ?????????? ?????? ??? ?????? ??? ?????????? ??????????
?????????, ?????? ??? ?????? ?????????? ??????. ???????, ?? ?????? ?????????? ??? ??????
????????? ?????? ??? ?????????? ?????? ?????? ?????????? ??????????????, ? ?????????? ??? ??????
????????? ?????? ??? ?????????? ??????.

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

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

35 ?????, ? ?????????? ?????????? ?????????? ???, ?????? ?? ?????????? ??? ??????
?? ?????? ?????, ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????????,
????????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????, ?????????? ??
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????????
????????? ??? ?????? ??? ?????????? ?????????? ?????????? ??? ?????? ??? ??????????
????????? ??? ?????????? ?? ?????? ?????? ?????????? ??? ?????????? ?????????? ??? ?????? ???
????????? ??? ??????????, ??????????????, ??? ?? 27?? ?????????? 2000, C-190/98, Graf
(?????? 2000, ?. I-493), ?? ?? ??? ?????? ?????? ?????????? ??? ??????????, ??? ??
????????? ??????????????, ?? ?????? ?????????? ??? ?????????? ??? ?????? ??? ??????????
?? ?????????? ?? ?????? ?????????? ??? ?????????? ?? ?????? ??? ?????? ??? ?????????? ???
????????? ?????????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????.

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

37 ????????, ? ?????????? ?????????? ??????, ??? ?????????? ??? ?????????? ??? ??????????????, ??? ?
????????? ??? ?????? ?????? ?? ?????????? ??? ?????? ?? ??? ?????????? ?????????? ???
????????? ?????????? ??? ?????? 1078/1980. ?????? ??? ? ?????? ??? ?????????? ??? ??????????
????????? ?????????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ??????.

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

38 ?? ?? ??????, ? ??????? ???????????, ??????????????? ??? ?????????? ??? 24??
?????????? 1994, C?343/92, Roks ??. (?????? 1994, ?. I-571), ????? ?? ???? 1??
?????????? 1996, C?280/94, Posthuma-van Damme ??? Oztürk (?????? 1996, ?. I?179),
?????????? ??? ?? ??????? ?????????? ??????? ?? ??? ?????????? ?????????? ???
?????????? ??? ?????????? ??????? ?? ?????????? ?? ?????? ??? ?? ?????????? ???
?????????? ??? ?????????? ?? ?????? ?? ?????? ??? ?????? ??? ?????????? ???
?????????? ??? ?????????? ??? ?? ?????? ?? ?????? ??? ?????? ??? ?????????? ???
??????????, ??? ?? ??????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?? ?????????? ???
?????????? . ?? ?? ??????, ? ??????? ?????????? ?????????? ??? ?? ?????? 1, ??????????
1 ??? 3, ????? ??????, ??? ????? 1078/1980 ??? ?????????? ??? ?????? ??? ?????? ???
?????????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????????? ?? ??????? ?????? ???.

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

39 ?????????? ?????????????? ?? ??????????? ???, ??? ?????? ?????????? ???
??????????, ??????? ? ?????? ?????????? ?????????? ??? ?????????????? ??? ?????? ???,
???? ??????? ?????????? ?? ??? ?????? ?????????? ?? ?????? ??? ?????? (??., ??????
????, ?????????? ??? 4?? ?????? 2004, C-334/02, ??????? ??? ?????????, ??????? 2004, ?.
I-2229, ????? 21- ??? 18?? ?????????? 2007, C?104/06, ??????? ??? ?????????, ???????
2007, ?. I?671, ????? 12, ??? ??? 17?? ?????????? 2008, C?152/05, ??????? ???
????????, ??????? 2008, ?. I?39, ??? 16).

40 ?????, ???????, ?? ??????? ???, ??? ?????????? ?? ?????????? ?? ???????, ?? ????? 1,
?????????? 1 ??? 3, ????? ??????, ??? ????? 1078/1980 ?????? ?????????? ???
?????????? ?????????? ?????????? ??? ???????, ??? ?????? ??? ?????????? ??? ??
????? 18 ??, 39 ??, 43 ??, ????? ??? ?? ??? 4, 28, ??? 31 ??? ??????? E??.

41 ?? ????? 18 ??, ?? ?????? ?????????? ??????? ?? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???,
????????????? ??? 39 ??, ??? ?????? ??? ?????????? ?????????????? (??.. ?????????? ??? 26??
????????? 2006, C-345/05, ??????? ??? ???????????, ??????? 2006, ?. I?10633, ????? 13-
????????? ??? ???????, ???????, ????? 15, ??? ??????? ??? ???????????, ???????, ?????
18).

42 ??? ???????, ?????? ?? ???????, ??????, ?? ?? ??? 39 ?? ??? 43 ??
?????????? ?????? ???????, ??? ?????? ??? ?????? 1, ?????????? 1 ??? 3, ????? ??????,
??? ????? 1078/1980.

43 ????? ? ? ?????????? ?? ??? ?????????? ??????????? ??? ?????????? ??????????? ??? ?????????
????????? ??? ? ? ?????????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????
????????????????? ?????????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????
????????? ??? ? ? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??
????????? ?????????? ?????????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? (??.
????????????? ?????????? ??????????, ????? 34 ??? ??? ?????????????? ?????????? ?????????? ?????????? ??????
????????? ?????????? ?????????????? ????? 15- ?????????? ??? ?????????? ????? 17,
????? ??? ?????????? ??? ?????????? ????? 21).

44 ?? ??????????, ? ?????? ?????????? ?????????? ?????????? ??? ? ? ?????????? ??????????
???????????, ??? ?????? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ? ? ???,
????????? ?????? ??? ?????????? ?????????? ?????????? ??? ?????? ??? ?????????? ?????????? ??????????
????? ? ?????? ?????? ??? ??????.

45 ??????, ?????????????? ???, ??? ?????? ?????????? ??? ?????????? ??? ?????????????? ?? ??????
????? ??? ?????????????? ??? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ??????
????????? ??? ?????? ??? ?????????????? ??? ?????? ?????????? ??? ?????? ???' ?????????? ????
????????? ?????????????? ???, ?????????? ??? ?????? ??? ?????? ??? ?????????? (??., ??????
?????, ?????????? ??? 12? ?????????? 1974, 152/73, Sotgiu, ?????? ??? 1974, ?. 87,
????? 11- Commerzbank, ??????, ??? 14, ??? ??? 1?? ?????? 2009, C?103/08,
Gottwald, ?????? 2009, ?. I?9117, ??? 27).

46 ????? ?????????? ?????? ??? ?????????? ?????? ??? ?????????? ??? ?????????? ?????????? ??????????
??? ?????? ??? ?????????? ? ??? ????????, ?????? ??? ?????????? ?? ?????????? ??? ?????????? ????
????? ???, ??? ?????? ??? ?????? ?????? ?????? ?????, ??? ?????? ??? ?? ?????????? ?? ??????
??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????, ??? ?????? ??? ?? ?????????? ?? ??????
????????? ?? ???, ????? ?????????? ??? ?????????? (??., ?????, ?????????? ??? 29?
????????? 1999, C?224/97, Ciola, ?????? 1999, ?. I-2517, ??? 14- 16?? ??????????
2003, C-388/01, ?????? ??? ?????? 2003, ?. I-721, ??? 14, ??? Gottwald,
??????, ??? 28).

47 ?? ??????????, ???, ?? ??? 1, ?????????? 3, ??? ??????, ??? ???? 1078/1980
?????????? ?? ??? ?????? ??? ?????? ?????????, ?????????? ??? ? ?????????? ????
?????????? ?? ?????????? ??? ?????? ?????? ??? ??? ?????? ?????????? ?????????? ??? ??????????
?????. ?????????? ???, ?????? ?????????? ?????? ??? ?????????? ?????????? ??? ??????????
????????? ?? ???????, ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????
????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????
????????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????, ????
????????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????.

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

49 ??? ?????? ??? ??????????, ? ?????????????? ?????? ??? ?????????? ??? ?????????? ???
????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???, ?????? ??? ??????????
??? ?????????? ?????????? ??? ?????? ??? ?????? 39 ?? ??? 43 ??, ?????????? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

50 ???????, ??????????????? ?? ??????????? ??? ??????????? ??? ??? ??? ??? ?????????
???? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????????? ?????? ??? ??????, ??
????? 1, ?????????? 1 ??? 3, ??? ??? 1078/1980 ?????????? ?? ?????????? ?????? ???
????????? ?????????? ??? ?????????? ??? ?????????? ?????? ??????????????, ??? ???
?????????????, ??????????, ??? ?? ??? 39 ?? ??? 43 ??.

51 ???????, ??? ????? ?????????? ?????????? ??? ?? ?????? ?????? ??? ?????????? ??
 ?????????? ? ?? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????????
 ?????????? ??? ?????? ? ?????? ?????? ?????? ?????????? ?? ?????????????? ??? ???
 ?????????? ??? ?????????? ?????? ?????? ??????????, ?????? ?????????? ??? ???
 ???????? ??? ?????? ?????? ??? ??? ?????????? ?? ?????? ??? ??? ?????????? ???
 ?????????? ?????? ????? (??., ?????? ?????, ?????????????? ?????????? ??????????
 ??? ??????????, ??? 24- ?????? ??? ??????, ??? 25, ??? ?????? ???
 ???????, ??? 26).

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

53 ?????? ??? ?? ?????? ?????? ??? ?????????? ?? ?????????????? ?????? ?????????????? ???
????????????? ?????????? ??? ?????? ?????????? ?????????????? ??? ????????, ?????????????? ?
????????????? ??? ? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????? 1,
????????????? 3, ?????? ??????, ??? ????? 1078/1980 ??? ??????????????, ?? ??? ????? ??????????
??? ??? ?????????? ??? ?????????? ?? ?????????????? ?? ?????? ?????? ??? ?????????? ??
????????? ??? ?????????? ??? ?????????????? ?????? ??????.

55 ? ?????????? ??? ?????? ?????? ??? ?? ??? ???? ? ? ?????????? ??? ?????? ???
????????? ???????, ?? ??? ?????? ?????? ?????????? ??? ?? ??? ?????? ??????????, ?? ???
?? ??? ?????? ?????????? ??? ?????????? ?? ?????? ? ?????? ? ?????? ??????????. ?????????? ???
??? ?????? ?????????? ??? ? ?????????? ??? ?????? ?????????? ???, ??? ?????????? ??? ?
????? 1078/1980 ??? ?????????? ??? ?? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ??
????????? ??? ??? ?????? ?????? ?????????? ?????????? ?????????? ?????????? ??? ?????? ??? ??
?? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?? ?????? ? ??? ??? ?????? ??? ??
??? ?????????? ????. ??? ?? ?????? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?????? ??? ?????????? ?????? ?????????? ??? ?????????? ??? ?????? ??? ??

? ?????????????????? ?????????? ??? ???? ???? 1078/1980. ???????, ? ??????????
????????? ??? ?????????? ??? ? ?????????? ?????????? ??? ??? ????? ?????? ??????????
????????? ?????????? ?????????? ?? ?????????? ?????????? ?? ?????? ?????? ?????? ?? ??????????
????? ??? ?????? ?????????? ?????????? ?????? ??????.

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

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

58 ???????, ?????? ??????? ??? ? ?????????????? ??? ?????? 1, ?????????? 1 ??? 3,
????? ??????, ??? ?????? 1078/1980 ?????? ?????? ??? ?????? ?????? ?????? ??? ???
????????? ??? ?????????? ??????.

59 ?????? ??? ?????? ???, ?????????? ???? ? ?????????? ??? ? ?????????? ??? ??????
????????? ??? ?? ??? 1, ?????????? 1 ??? 3, ?????? ???, ??? ?????? 1078/1980,
?????, ??? ?????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????
??? ?????? ??? ?????? ??????, ??? ?????? ?????? ?????????? ?????????? ??? ?????????? ??? ?
????????? ??? ?????????? ?? ?????? ? ?????? ?????????? ???, ?????????? ??? ??????
????????? ??? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ???
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? 39 ?? ??? 43 ??.

60 ???????, ?? ??? ???? ???? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????
????? ?????????? ?????????? ??????, ?????????? ???? ?????? ?????????? ??? ??????
????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? 18 ?? (??. ?????????? ??? 5??
????? 2007, C?522/04, ?????? ??? ??????, ?????? 2007, ?. I?5701, ??? 72, ???
????????? ??? ?????????? ??????, ?????????? 30).

61 ? ??????? ?????????? ??????, ??????, ???, ?? ??? ???? ?????????? , ? ????????
????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? 28 ?? 31 ??
????????? ??? ?????? ?? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ??? ??? ??????????
????????? ???, ??????????.

62 ???????, ?????????? ??? ???? ???? ?????? ??? ?????????? ??? ?????????? ??? ????
????????? ?????????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ?????????? ??? ?
????? 28 ?? 31 ?? ?????? ???, ?????????? ?? ??? ?????? ?????? ??? ?????????? ??? ????
39 ?? ??? 43 ??.

63 ????? ????????, ?????????? ? ?????????? ???, ?????????? ?????? ??? ???,
???' ??????? ?? 1, ?????????? 1 ?? 3, ?????? ??????, ?? ????? 1078/1980,
????????????? ??? ?? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??????
??? ?? ?? ?????? ?? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??????
????????????? ??? ???????????, ? ?????? ?????? ?????????? ?????? ??? ?????? ???
????? ?????? ??? ?????? 18 ??, 39 ?? ??? 43 ??, ?????? ??? ?????? 28 ?? 31 ??
????????? ???.

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

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

64 ? ??????? ?????????? ??? ?? ?????? 1, ?????????? 3, ??????? ??????, ??? ???
1978/80 ??????? ??? ?????????? ??? ?????????? ?????? ??? ?????? ?? ?????? ?????? ??? ??
?????? ?????????? ?????????? ?????????? ??? ?????????? ??? ?? ?????? ???, ?????? ??? ?? ??
?????? ?? ?????? ?????? ??? ?????? ?????????? ??? ??????. ??? ?????? ?????? ??? ?? ??
?????? ?? ?????? ?????????? ?? ?????????? ?? ?????????? ?????? ?????? ?????? ??? ?????? ???
?????????.

65 ?????? ?? ?? ?????? ??? ?? ?????????? ?? ?????? 12, ?????? ??????, ??,
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ?????????? ??
????????? ??? ?????? ?????? ?????? ??? ?????????? ?? ?????????? ?????? ?????? ?????? ??? ??
????????? ?????? ?????? ?????? ??? ?????????? ?? ?????????? ?????? ?????? ?????? ?????? ??? ??
????????? ?????? ?????? ?????? ?????? ??? ?????????? ?? ?????????? ?????? ?????? ?????? ??? ??
????????? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ??? ??
????????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??
????????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??.

66 ? ??????? ?????????? ?????????? ??? ? ??????? ??? ?????? ?????? ? ???
????????? ?????????? ??????????, ?? ?????? ?????????? ??? ??? ?????? ?????? ??? ?? ??????
????????? ??? ?????? ?????? ?????????? ??? ? ?????? ?????? ??? ?? ??????
????????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ?????????? ?????? ??? ?? 1078/1980
???? ?? ?????????? ??? ?????????????? ??? ?????? ?????????? ?????????????? ??? ?????? ??? ??
????? ? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ??? ?? ?????? ?????? ??? ??
????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?? ?????? ??? ??
????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?? ?????? ??? ??
????? ? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ??
????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?? ?????? ??? ??
????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?? ?????? ??? ??
????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?? ?????? ??? ??
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?? ?????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?? ?????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ??.

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

67 ?? ??? ?? ?????? ?????? ??? ?????????? ??? ?????? ?? ?????? ??? ? ??????? ??? ? ??????? ??? ??
?? ??? ?????? ?????????? ?????????? ??? ??? ?????? ?????? ?????? ?????? ??? ?? ?????? ??? ??
????????? ??????????, ?????????? ??? ?????????? ??? ?? ?????? 1, ?????????? 3, ???????

??????, ??? ???? 1078/1980 ?????????? ?? ?????????? ??? ?????????????.

68 ??? ???? ?? ?????????? ??? ??? ????? ???????, ? ??? ???? ?? ?????????????? ???
??????????, ??? ???? ?????????? ??? ????? 12 ?? ??? ???? ?? ????? 39 ?? ? 43 ??, ??????????
?? ??? ?????????????? ??? ?????????? ?????????? ??? ????? ?????????? ??? ?? ???
????????????? ??? ?????????? ?????' ????? ?????. ?????? ?????????????? ??
????????? ?? ?????????? ????? ?? ?????????? ?? ?????????? ?? ?????????? ??
????????? ?? ?????????? ??? ?????????? ?? ?????????? ?? ?????????? ??
????????? ????? (??., ???????, ??????? ??? 5?? ??????? 2008, C?164/07, Wood,
?????? 2008, ?. ?-4143, ??? 13, ??? ?? 16?? ??????? 2008, C?524/06, Huber, ???????
2008, ?. !?9705, ??? 75).

69 ?? ??????????, ?????????? ??? ?? ??????? ??????? ??? ?? ??????? ?????? ???
????? ??? ?? ??????? ?????????? ??? ?????????? ?? ?????????? ??? ?????????? ???
??????????, ??? ????? ?? ????? ?????? ?????? ?? ??????? ?? ?????? ??? ?????, ?? ???????
?????????. ???????, ???, ??? ????? 1, ?????????? 3, ?????? ???????, ??? ?????
1078/1980, ?? ??? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ?????? ? ???
????????? ?????? ??? ?? ?????? ?? ??????? ?????, ?? ????? ?? ?????? ???
???? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????, ????? ?? ??????
????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?? ?????? ?????? ???
??????, ??? ???? ?????? ?????? ?????? ?????, ? ??? ?????? ?????? ?????? ??? ?? ?????? ?????? ???
????? ??????, ?????? ?????? ?????? ??????.

70 ? ?????????? ?????????? ?????????? ??? ? ?? ??? ?????? ?????????? ?????????????? ??
?????????? ??? ?? ?????? ?????? ?????? ?????? ???????, ??????, ?? ?????????? ??? ??????????
?????????? ??? ?? ?????? ?????? ?????? ?????? ?????? ???????, ?????? ??? ?? ???
????????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?? ??? ?????? ?????? ???
????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????????? ??? ??? ??
?????????. ???????, ? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
?????? ??? ?????? ?????????????? ?????? ?????, ??? ?? ?????? ?????? ??? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???.

71 ?? ??? ???????, ??????? ?????????? ??? ?? ??? ?????? ?????????? ??
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????????????
????????? ??? ?????? ?? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??? ??
????? ?? ?????? 1, ?????????? 3, ??????? ??????, ?? ?????? 1078/1980 ???????, ?? ??????
?? ?????????? ?????? ?????? ?????? ?????? ??? ?? ?????? ??????.

72 ???????, ? ?????????? ?????????? ??? ??????? ???? ?????? ?????? ? ?? ?????????? ??????????
????????? ??? ?? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????????? ???????????,
?????? ?? ?????? 1, ?????????? 3, ??????? ??????, ?? ?????? 1078/1980 ???????, ??
????????? ?? ?????????? ??? ?????? ?? ?????? ?????? ?????? ?????? ???????, ?????? ??????
????????? ?????? ??? ?? ?????? 12, ?????? ??????, ??, 39 ?? ?? 43 ??.

73 ? ?????????? ?????????? ???????, ???????, ???, ??????? ??? ?? ??? ?????? ???????, ? ???????
????????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? 4, 28 ?? 31
?? ???????, ?????? ?? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???????, ??
????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???????.

74 ???????, ?????????? ??? ?? ??? ?? ?????? 4 ?? ?????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ?????? ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?????? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? 28 ?? 31 ?? ??
????? ???????, ?????????? ?? ??? ?????? ?????? ??? ?????? 12 ??, 39 ?? ?? 43 ??,

??????????.

75 ???? ????????, ??????????? ? ?????????? ???, ?????????? ????????, ??? ????????,
??????????????, ??? ??? ??? ?????????????? ??? ??? ?? ??????? ?????????? ?? ?? ???????,
????????? ?????????? ??? ??? ?????? ?????? ?????? ?????????? ??? ?????? ???????, ? ???????,
????????? ?????? ??? ??????????? ??? ?????? ?????? ?????? ??? ?????? 12 ??, 39 ?? ??? 43 ??,
????? ??? ??? ?????? 4, 28 ??? 31 ??? ?????????? ???.

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

76 ???? ?? ??? 69, ?????????? 2, ??? ?????????? ????????????, ? ??????? ??????????
????????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ??????????
?????????. ?????????? ??? ? ?????????? ?????? ?? ?????????????? ??? ?????????? ??????
????????? ?????????? ? ??? ?????? ???????, ?? ?????? ?????? ??? ?????? ?? ?????????? ???
????????? ??????.

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

1) ? ?????????? ??????????:

– ?????????? ?????????? ??? ??? ??? ?????????????? ????????, ???' ????????
?? ?????? 1, ?????????? 1 ??? 3, ????? ??????, ??? ????? 1078/1980,
????????????? ??? ?????? ??? ?????? ??? ?????????? ?????? ?????? ??? ??????
????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????? ?????? ???
????????????? ?? ?????????????? ??? ????????????, ???

– ?????????? ????????, ??? ?????????? ????????????, ??? ??? ??? ??? ???
????????????? ??? ??? ?? ??????? ?????????? ?? ?????? ?????????? ??????????
???? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ??????????,
????? ??? ?????? ?????????? ??? ?????? ?????? 12 ??, 18 ??, 39 ?? ??? 43
?? ??? ??? ??? ??? ?????? 4, 28 ??? 31 ??? ?????????? ??? ??? ?????????? ??????????
????, ??? 2?? ??? 1992.

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

(?????????)

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