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????? ?????? C?160/14,

??. ?????????? ?????? ?????????????? ?????????? ??? ?????? 267 ????, ???  
????????? ?? Varas Cíveis de Lisboa (??????????) ?? ??????? ??? 31?? ?????????? 2013, ?  
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João Filipe Ferreira da Silva e Brito ?.??.

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Estado português,

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

????????? ?? R. Silva de Lapuerta (??????????), ?????? ???????, ??? K. Lenaerts,  
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J.-C. Bonichot, A. Arabadjiev ??? ?. ???????, ???????,

????????? ??????????: Y. Bot

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25?? ?????????? 2015,

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??. J. Ferreira da Silva e Brito ?.??., ?????????????? ??? ??? C. Góis Coelho, S. Estima  
Martins ??? R. Oliveira, advogados,

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1

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2

H ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? J. Ferreira da Silva e Brito ??? ??? 96 ?????? ??? Estado português (????????????? ??????) ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?? Supremo Tribunal de Justiça (????????? ??????????).

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3

??. ??? ?????? 2001/23 ?????????????? ? ?????? 77/187/???. ??? ?????????? ?, ??? 14?? ?????????? 1977, ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? (?? ????. ????. 05/002, ?. 171),

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4

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«? ?????????? ??? ? ?????????? ??? ?????? ?????????? ?? ?????????????? ? ?????? ???  
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5

?? ?????? 1, ?????????? 1, ???????? ?? ???, ??? ?????? 2001/23 ?????? ?? ???;

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6

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

«?? ??????????? ?? ???? ??????????? ?? ???? ????????, ?? ???? ??????? ?? ???? ??????? ?? ???? ??????? ?  
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7

?? ?? 13 ?? ?? 67/2007 ?? ?? ??????? ?? ?? ??????? ?? ?? ??????? ?? ?? ??????? ?? ?? ??????? ?? ?? ??????? ?? ?? ??????? ?? ?? ??????? ?? ?? ??????? ?? ?? ??????? ?? ?? (Lei no 67/2007 — Aprova o Regime da Responsabilidade Civil Extracontratual do Estado e Demais Entidades Públicas), ?? 31?? ?? 2007 (Diário da República, 1? ??, ???. 251, ?? 31?? ?? 2007, ?. 91117), ?? ?? ??????? ?? ?? 31/2008, ?? 17?? ?? 2008 (Diário da República, 1? ??, ???. 137, ?? 17?? ?? 2008, ?. 4454, ?? ???: RRCEE), ?? ?? ?? ??:

«1. ??? ?????????? ??? ?????????? ?????? ?????? ?????? ?????? ??? ???????????????  
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2. ? ?????? ?????????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ??????????  
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8

???? 19 ?????????? 1993 ?????? ? Air Atlantis SA (??? ????: AIA), ?????? ??? ??????  
?? 1985 ??? ?????????????????? ??? ?????? ??? ?? ?????? ?????????? ??????????  
(????????? ??????). ??? ?????? ???, ?? ?????? ??? ?????? ??? ?????? ?????????? ?? ??  
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9

??? ??? 1? ????? 1993 ? TAP, ?????????? ?????? ??? AIA, ?????? ?? ?????? ??????????  
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10

?? ???????, ?? ??????? ??? ?????? ?????? ?????? ?????? ??? ?ribunal de ?rabalho de  
Lisboa (????????????? ??? ??????????) ?????? ??? ??? ?????? ??? ?????????? ??????????,  
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11

?? ?????? ??? 6? ?????????? 2007, ?? ?ribunal de ?rabalho de Lisboa ?????? ?? ???  
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?ribunal de ?rabalho de Lisboa ?????? ??? ?????? ???, ?? ?????????? ???, ??? ??????  
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12

???? ??? ??????? ??? ?????? ?????? ??? ?????? ??? Tribunal da Relação de Lisboa  
(????????? ??? ??????????), ?? ?????, ?? ?????? ??? 16? ?????????? 2008, ??????????  
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13

? ? ???????, ?? ??????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??? Supremo  
Tribunal de Justiça, ?? ????, ?? ??????? ?? 25?? ??????????? 2009, ?????? ?? ? ??????  
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1993, ??? ?? ??? ?????? «?????» ?? ?????? ??? ?????? ?????????? ??? AIA.  
????????? ?????????? ??? ?? «?????», ??? ?? ??? ??????, ??? ?? Supremo Tribunal de  
Justiça, ?? ?????? ?????????? ???????????.

14

? ? Supremo Tribunal de Justiça ?????? ?????? ??? ?? ?????????????? ? ??????? ??? AIA  
???? TAP. ???????, ??? ?? ?? ??? ???????????, ? AIA ?????? ?????????? ??????????  
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15

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16

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«[?]????????? ?? ??????????? ?? ?????????? ?? ?? ?????? ?????????? ?? ?????? ??  
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17

???? ?? Supremo Tribunal de Justiça, «[?] ??? ?? ?????????? ?? ?????? ?????? ??  
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????????????? ?????? ??? ?????????????? ??? [????????? ??? ?????? ??? ??????] ???  
????????????? ?? ??????????????, ??? ?????????? ??? ?? ?????????? ??? ??????] ???  
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18

?? Supremo Tribunal de Justiça ?????????? ??? «[...] ?? ?????????? ???  
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?????] ??? “????????? ?????? ??????????”, ?????????? ??? ???? [2001/23] ??????  
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????????? ??? ?????? ??? (????????? ??? ??????) ?????????? ?????? ???, ???  
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19

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Supremo Tribunal de Justiça ??? ?????? ??????, ??????, ?????, ?????? ??????  
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2001/23, ???, ??????, ?? ?? ??? ?????? ?????????? ?????? ??? ?????????? ??? ??  
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20

?? Estado português ?????????? ???, ?????? ??? ?? ??? 13, ?????????? 2, ???  
RRCEE, ? ????? ?????????? ??? ?? ?????????? ?? ?????????? ??? ?????????? ???  
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21

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2001/23, ??? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?? ??? ??  
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Justiça ??? ?????????? ?? ?????? ?????? ?????????? ?????? ?????? ??? ??  
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22

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23

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24

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?????????? (??. ?????????? Merckx ??? Neuhuys, C?171/94 ??? C?172/94, EU:C:1996:87,  
????? 28? Hernández Vidal ?.??., C?127/96, C?229/96 ??? C?74/97, EU:C:1998:594, ?????? 23,  
????? ??? Amatori ?.??., C?458/12, EU:C:2014:124, ?????? 29 ??? ??? ??????????????  
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25

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Spijkers, 24/85, EU:C:1986:127, ?????? 11 ??? 12? Güney-Görres ??? Demir, C?232/04 ???  
C?233/04, EU:C:2005:778, ????? 31 ??? ??? ??????????? ???????, ????? ??? Amatori  
?.., C?458/12, EU:C:2014:124, ????? 30 ??? ??? ??????????? ??????????).

26

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?? ???? ??? ???? ??????, ?? ?? ??????, ?? ?????????? ?????????????? (???. ?????????? Spijkers,  
24/85, EU:C:1986:127, ??? 13? Redmond Stichting, C?29/91, EU:C:1992:220, ??? 24;  
Süzen, C?13/95, EU:C:1997:141, ??? 14, ??? ??? Abler ?.., C?340/01, EU:C:2003:629,  
????? 33).

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??????????, ?? ?????????? ???? ?????????????? ??? ? ?????? ??? ?????? ?? ?????????? ???  
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?????? 2001/23, ??????? ??' ?????? ??????? ?? ?? ???? ?????????? ??????????????, ???  
?????? ?? ?????? ??????? ?? ?????????????? ?? ?? ?????????????? ?? ?? ?????????????? ???  
??????????, ??? ??????????? ? ?? ?????? ??? ?????????????? ??? ?? ?????????? ???  
(?? . ??????? Süzen, C?13/95, EU:C:1997:141, ??? 18? Hernández Vidal ??., C?127/96,  
C?229/96 ??? C?74/97, EU:C:1998:594, ??? 31? Hidalgo ??., C?173/96 ??? C?247/96,  
EU:C:1998:595, ??? 31, ??? ??, ??' ???, UGT-FSP, C?151/09, EU:C:2010:452, ???  
28).

28

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

29

??????????????, ????????, ???, ?? ?????????? ??? ?????? ??? ?????? ????, ? ?????? ????  
??? ?????? ??? ??????????? ??????????, ? ?????????? ?????? ?????? ??? ?????? ???  
????????? ??????? ?????????? ?? ?????????? ? ?????? «????????????? ??????????????»,  
????? ??? ?????? ??? ?????? 1, ?????????? 1, ??? ?????? 2001/23 (??., ??' ???? ??? ??????,  
?????? Liikenne, C:172/99, EU:C:2001:59, ??? 39).

30

???????, ??? ?????????? ??? ???. ?????? ??????????, ? TAP ?????????? ???.  
????????? ??? ???. ?????????????? ??? AIA ????. ?????? ?????????? ?????????? ?????????? ??? ???.  
????????? ??? ???. ???. ??? ??????????, ??????? ??? ?????????????? ??? ???.  
????????? ?????????? ??? ?????????? ??? ?????????????? ??? ?????????????? ?????????? ??? ???.  
AIA. ???????, ??? TAP ??????? ??? ?????? ?????? ??????????.

31

????? ?????????? ? ??????? ?????????????? ??? ?????? 48, 51, 53, 56 ??? 58 ??? ?????????? ???,  
????????????? ?????????? ??????????????, ??? ?? ?????? ??? ?????????? ??? ?????????????? ??? ?????  
????? 26 ??? ?????????? ??????????, ??? ??????, ??? ?????? ??? ?????? ??????,  
????????????? ??????????????, ??? ?? ????? 1, ?????????? 1, ??? ?????? 2001/23. ???  
????? ??? ?????? ??? ?????????? ??? TAP ??? ?????????? ??? ??? ?????????? ??? AIA  
????? ?????????? ?????????? ?????????? ???????, ???????, ?????? ???  
????????? ?? ?????????? ??? ?????????? ??? AIA ??? TAP, ??? ?????????? ??????????  
????? ??? ??? ??? ????? ?????? ?????????? ??? ?????????????? ??? ?????????? ? ???, ??????  
??? ?????????????? ?? ?????????? ??? ??? TAP ?????? ??? ?????????? ??? ?????? ??? ?????????? ???  
? ???, ??? ?????????? ??? TAP ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???  
AIA ?????????? ?? ?????? ?????????? ?????? ?? ??? ?????? ??? ?????? ?????????? ?????? ???,  
??, ???, ???, ??? ?????? ??? TAP, ??? ??? 1? ??? 1993, ?????????? ??? ???  
????????? ?????? ??? ? AIA ?????????? ??? ?? ??? ??? ??? ??? ?????????? ??? 1993,  
????? ??? ?????????? ??? ??? ?????? ??? ?????????? ?????????????? ?????????? ???  
?????????.

32

???? ???? ????????, ????, ??? ???? ??????, ????, ??? ???? ??, ????????, ???, ??? ???? 1,  
????????? 1. ??? ?????? 2001/23. ?? ???????, ??? ???? ?????, ??? ???? ?????, ??? ???? ?????, ??? ???? ?????

???? ?????? ??? ??????????? ??????? ? ??? ?????????????? ??? ?????? ???, ?????? ??  
?????????? ??? ?????????? ??? ???????????, ??? ?????? ??? ??????????? ? ??????????  
??????, ??????, ??? ??????????????? ?????? ??? ??????????? ??? ?????????? ??????????  
????? ???, ???????, ??? ?????????? ??? ?????????????? ??? ?????? ??? ?????????? ??????????  
?????? ??????. ??? ?????????? ??? ???????, ??? ?????? ??? ?????????? ?? ??????? ??? ??  
?????? ?????? ?????????????? ??? ??? ?????? ??????? ??? ?????????? ?????? ??? ??  
????????? ??????, ?????????? ???, ?? ??? ??????????, ?????????? ??? ?????? ??????????  
?????????, ??? ?????????????? ??? ? TAP ?????????? ??? ?????????? ?????????????? ??? AIA  
???? ??? ???? ??? ?????????? ??????.

33

??????????, ??? ??? ??????? 46 ??? 47 ??? ??????? Klarenberg (C?466/07, EU:C:2009:85)  
?????????? ??? ??? ?? ?????????? ??? ?????????? ??? ?????????????? ?????????? ???????  
????? ? ?????????? ??? ??? ??????? ?????????? ??? ?????????? ? ?????????????? ??????  
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34

??????, ? ?????????? ??? ?????????? ?????? ?????? ??? ??????? ??????????????????  
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?????????, ?????????? ?? ??? ??? ?????????? ?????????? ??? (?? . ??????)  
Klarenberg, C?466/07, EU:C:2009:85, ????? 48).

35

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?? ?? ??? 1, ?????????? 1, ??? ?????? 2001/23 ??? ??? ?????? ??? ???? «?????????»  
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????? ???, ??? ??????? ??? ???????????, ? ??????? ??????? ?????????? ?????????????? ???  
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36

? ? ? ?????? ??????????? ???????, ? ? ?????? ?????????? ?????? ?? ?????????????? ?,  
?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???, ???, ???,  
??? ?????????? ??? ??????? ?????????? ??? ?????? ??? ?????? ?????????? ?????????? ???, ???, ???,  
????? ??? ??? ??????? ??? ?????? ??? ?????????? ?????? ?????????? ?????????? ???, ??? ?? ??? ?? 1,  
????????? 1, ??? ?????? 2001/23, ?? ??? 267, ??? ?????, ???, ???, ??? ??? ?????? ???  
????????? ?? ?????????? ??? ?????? ??? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ??????????  
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37

???????, ???????? ? ?????????? ??? ?????? 267 ??? ????? ??????? ????? ?????????????? ?????  
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????? ??? ?????? 267, ?????? ??????, ???, ?????? ?????????? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? (???. ?????? Consiglio nazionale dei geologi ??? Autorità  
garante della concorrenza e del mercato, C?136/12, EU:C:2013:489, ????? 25 ??? ???  
????????? ??????????).

38

????? ?????? ?? ?????????????? ??? ?????????????? ??????????????, ??? ?????????????? ???  
?????????? ?????????? ??? ??? ?????????? ??? ?????????? Cilfit ?.?. (283/81, EU:C:1982:335),  
?? ?????? ?????????? ??? ?????? ?? ?????????? ??? ?????????? ?? ?????? ??? ???? ???  
????????? ??????? ??????????, ??? ?????????? ??? ?????? ??? ?????? ?????????? ??????? ???  
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39

?????????, ?? ??????????? ????? ?????????????? ??? ? ??????? ??? ?????????????? ????? ?????  
?? ??????? ????? ?? ?????????????? ??? ??????? ??? ??????, ??? ??????????  
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??? ?????????? ??? ?????? (?????? Intermodal Transports, C?495/03, EU:C:2005:552, ???  
33).

40

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??? ?????? ??????????? ??? ???????, ??? ?? ??? ?????????? ?????????? ?????????? ?????????  
??????????, ???, ???????, ?? ?????????? ?? ??? ?????????? ??? ?????????? ?????????? ?????????  
?????? ?????????? ??? ??????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? (?. ??????)  
Intermodal Transports, C?495/03, EU:C:2005:552, ??? 37 ??? ????? ??????????????  
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41

?????????, ??? ??????????? ? ?????? ?????????????? ?????????? ?????? ?????? ?????? ?????????????? ???  
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????????????? ?????????? ??? ?? ?????? 267, ??? ??????, ???.

42

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

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43

??????????, ??????????????? ???, ??? ????? ?? ??????????? ?? ??????????? ???????, ???  
???? ?????????? ??? ??? ??????? 24 ??? 27 ??? ??????? ??????????, ? ??????? ???  
????????????? ?????????????? ??? ????? ??????? ??????? ?????????? ?? ??????? ??????? ???????  
??????????, ?? ????, ??????? ????, ??????????? ?? ?????????? ?? ?????????? ???????????  
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44

?????????????, ??? ?????????????? ??? ?????? ??? ?????? ??????, ?? ?????? ??????????????????  
????? ??? ???? ?????? ?????????????? ?????????????? ?????? ?? ?????? ?????? ?????? ???  
????? ??? ?????????????? ??????????????, ??? ??? ?????? 2001/23, ??? ??? ??? ??  
????????????????? ?????????????? ?????????? ??? ?????????? ? ?????? ??? ??? ??????  
????? ???, ????, ?????? ?????????? ?? ?????????? ??? ?????? ??? ?????????? ?? ?????? ???  
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45

???? ???? ??????? ??????? ?????????? ??? ?? ???? ??????? ??????? ??????? ?? ???? ???? ? ? ???????  
???? ?? ????? 267, ????? ??????, ??? ????? ?? ?????? ??? ?????????? ??? ?????????? ?????? ?? ??????? ??  
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????????? ?????? ??? ?????????? ?? ?????? ??? ??????? ?????? ?? ?????? ??????? ??? ??????? ??  
????????? ?????? ??????????????, ??? ?? ????? 1, ?????????? 1, ??? ?????? 2001/23, ???  
????????? ??? ?????? ??? ??????? ?????? ??? ??????? ?????, ?? ?????? ??????????????????  
???? ??? ??? ?????? ?????????? ?????????? ?????? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
????? ??? ??? ??? ?????? ??? ?????????? ?????????? ?????? ?? ?????? ?????? ?????? ??? ?????? ???  
????? ??? ??? ??? ??? ?? ?????????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???

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46

47

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

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?????? ?????????????????? ?????? ??? ??????? ??? ?? ?????????? ? ?????????? ???  
????????????? ??? ?????? ?????????????? ?? ??? ?????????? ?????? ?????????? ? ?????????? ???  
????????? ??????????????, ?? ?????? ?????????? ??? ?????? ?????????? ?? ?????????? ?????? ???  
????????? ??? ??????? ?? ?????? ?????????????? ?? ?????? ?????????? ?????????? ??????  
????? ?????????????? ?? ?????????? ?????? (???. ?????? Köbler, C:224/01, EU:C:2003:513,  
????? 33).

48

????????? ??????????? ???? ?? ?????????????? ??? ?????? ???? ???? 13,  
????????? 2, ??? RRCEE, ? ?????? ?????????? ??? ? ?????? ?????????? «?????????»  
???? ?????????? ?????? ??? ?????????? ?????????? ??? ? ?????? ?????????? ??????  
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49

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

???? ?????????? ???? ?????????????? ???? ?????????? ???? ?????????? ???? ?????? 267, ????? ??????, ????,

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

50

???????????????? ???? , ?????? ?????????????? ?? ?????????????? ??? ?? ?????????????? ??? ?? ?????????????? ???  
????????? ??? ???????, ?????? ??? ?????? ? ?????????? ?????????? ?????????? ??? ?????? ?????????? ??????????????,  
?? ??????? ?????????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????? ??? ?????? ???  
????????? ??? ??????? ?????????? ??? ?????? ?????????? ?????? , ?? ?????????? ??? ??  
????????????? ??? ?????? ??????? ?????????? ?? ?????????? ?????????? ?????????? ?????????? ?????????? ?? ???  
????????????? ??? ?????? ??? ?????? ?? ?????? ?????????? ?????????? ?????????? ??? ?????????? ???  
????????? ?????????? ?????????? ?????????? ?????????? ??? ?????????? ?????????? (????? ???  
?????????????) ????. ?????? ?? ?????? ?????????? ??? ?? ?????????? ?????????? ?????????? ?????????? ?  
????????????? ?????? ??? ?????????? (????? ??? ?????????????????????) (???. ?????? Fuß,  
C?429/09, EU:C:2010:717, ????? 62 ??? ????? ?????????????? ??????????).

51

?????? ???? ???? ?, ??? ? ?????????????? ??? ?? ??? 13, ?????????? 2, ???  
RRCEE, ?????? ?? ?????????? ?????????? ?????? ??? ?????????? ?????????? ??? ???  
????? ??? ?????????? ? ?????? ?????? ??? ?????? ??? ??????.

52

????????????, ??? ?? ???? ?????? ??? ?????????????? ?????????????? ?????? ??? ??'  
????????????? ?????? ?????????? ??? ?? ?????????????? ??? ?????? ?????? ??????????????  
????????????? ??? ?? ?????????? ??? Supremo Tribunal de Justiça ?????? ??????????????  
?????????????.

53

?????????????? ???????, ??????? ?? ???? ???? ?????? ??? ??????????? ?? ??? ??????????? ?????  
????? ? ??????? ?????? ??? ?????? ?????? ??????, ??????????? ?? ?????? ???? ???? ??  
?????? ?????? ??? ???? ??? ?????? ??? ?????????? ??? ?????????? ?????? ??? ??  
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54

?????? ?? ???? ??????? ??????????? ?? ?????? ??? ?????? ??? ??????????? ??  
???? ?????? ??? ?????? ??? ??? ?????? ?????? ?????? ??????, ??????????????? ??,  
?????? ??????? ??????? ?????????? ??? ??????, ??? ?????????? ?????? ?????? ??? ?????? ???  
?????? ?????????? ? ?????????? ??? ?????? ?????? ?????????? ?????? ??? ?????? ???  
?????????????, ??????? ??? ?????? ??? ?????????????? ?????????? ??? ?????? ??? (??.,  
?? ?? ?????? ???, ?????? Fallimento Olimpiclub, C?2/08, EU:C:2009:506, ?????? 22 ??  
24).

55

???? ?????? ?? ??????? ?? ?????? ???? ?????? ?? ?????? ??? ??????????? ?? ??? ??????? ??  
????, ?????? ?? ?????????? ?? ?????? ??? ?????????? ?? ?????? ??? ?????????? ?? ??? ??????????  
?????????? ?? ?????????? ?? ?????? ??? ?????????? ?? ?????? ??? ??????????, ??? ???????????, ???  
?????????? ?? ??? ?????? ??? ?????????? ?? ?????????? ?????????? ??? ?????? ??? ???????.  
?????????? ?? ?????? ??? ?????????? ?? ?????? ??? ?????????? ?? ?????? ??? ??????? ?? ???  
??????????, ??? ?????????? ?? ?????? ??? ?????????? ?? ?????? ??? ??????? ?? ?? ?????? ??? ??????  
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????????, ? ?????? ??? ?????? ?????????? ?? ?????? ??? ?????????? ?????????? ?? ??????????, ?? ??????????  
????????????? ?? ??? ??????, ?? ?????????? ?? ?????? ??? ?????????? ?? ?????????? ?? ??? ?????? ???  
????? ?????? ??????, ??? ?????? ?????????? ?? ?????? ??? ?????????? ?? ?????????? ?? ??? ?????? ???  
????????????? ?? ?????? ??? ?????????? ?? ?????? ??? ?????????? ?? ?????? ??? ?????????? ??  
????. ?? ??? ??????????, ? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ?? ??? ?????????? ?? ?????? ??? ?????? ??????????, ??? ?????? ??? ?????????? ???  
????????? ?? ?????????? ?? ?????? ??? ?????? ??? ?????? (??. ?????? Köbler, C?224/01,  
EU:C:2003:513, ??? 39).

56

???? ?????? ?? ?????????? ?? ?????? ?????????? ?? ??? ?????? ??? ?????????? ?? ???????,  
????????????? ??, ??? ?????? ?? ?????? ??? ?????????? ?? ??? ?????? ??? ?????? ?? ?????????????? ??  
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57

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

58

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

?????????? ? ????? (??., ??' ??? ?????, ???????, ??????? Specht ?.??., C?501/12 ??? C?506/12, C?540/12 ??? C?541/12, EU:C:2014:2005, ????? 98 ??? ????? ?????????????? ??????????).

59

60

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

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61

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

1)

?? ?????? 1, ?????????? 1, ??? ?????? 2001/23/?? ??? ??????????, ??? 12?? ?????? 2001,  
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2)

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3)

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(?????????)

( \*1 ) ?????? ??????????: ? ??????????.