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??? 12?? ??????????? 2017 (*)

«???????????????? ??????????? – ?????? 99 ??? ?????????????? ?????????????? ??? ?????????????? – ?????? 355, ?????? 3, ????? – ?????????? ??? ?????????????? – ?????? 49 ????? – ?????? 63 ????? – ??????????? ?????????????????? – ?????????? ?????????? ??? ?????????????? – ?????????????? ?????????? ?????????????? ??????????»

???? ?????????? C-192/16,

?? ????????????????? ??????? ?????????????????? ?????????????? ?????????? ??? ??????? 267 ?????, ??? ?????????? ?? Upper Tribunal (Tax and Chancery Chamber) [????????? ?????????????????? ?????????? (?????? ?????????????? ??? ??????????????????), ?????????? ??????????] ?? ?????????? ??? 24?? ?????????? 2016, ? ?????? ?????????? ??? ?????????????? ?????? 6 ?????????? 2016, ??? ?????????? ??? ??????

Stephen Fisher,

Anne Fisher,

Peter Fisher

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Commissioners for Her Majesty’s Revenue & Customs,

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

Her Majesty’s Government of Gibraltar,

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

?????????????? ??? ????? M. Ileši? (?????????), ?????????? ??????????, A. Rosas, C. Toader, A. Prechal
??? E. Jaraši?nas, ??????????,

????????? ??????????????: M. Szpunar

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

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- ?? S. Fisher, A. Fisher ??? P. Fisher, ?????????????????????? ??? ??? R. Mullan ??? ??? H. Brown, barristers, ?????? ??? ??? ??? S. Bedford, conseillère,
- ? Her Majesty’s Government of Gibraltar, ?????????????????????? ??? ??? M. Llamas, QC,
- ? ?????????????? ??? ?????????? ??????????????, ?????????????????????? ??? ??? D. Robertson ??? ??? S. Simmons, ?????????????????????? ??? ??? D. Ewart, QC, ?????? ??? ??? ??? O. Jones, barrister,

– ? ??????? ?????????, ????????????????? ???? ??? L. Van den Broeck ??? M. Jacobs, ????????????????? ???? P. Vlaemminck ??? R. Verbeke, advocaten,

– ? ????????? ?????????, ????????????????? ???? ??? A. Sampol Pucurull ??? A. Rubio González,

– ? ????????? ?????????, ????????????????? ???? ??? R. Lyal ??? ??? J. Samnadda,

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1 ? ??????? ????????????????? ????????????? ????? ???? ????????? ???? ??????? 355, ?????? 3, ?????, ????? ???? ???? ??????? 49 ??? 63 ?????.

2 ? ??????? ???? ????????????? ???? ????????? ????????? ????????? ???? Stephen Fisher, Anne Fisher ??? Peter Fisher ??? ??? Commissioners for Her Majesty's Revenue & Customs (???????????? ???? ????????????? ?????, ????????? ??????????) ?? ????????????????? ????????? ????????????? ?????? ???? ????????? ? ? ?????? ????? ? ????????????????? ???? ????????????? ????? ??? ? ? ????????? ????????????? ???? ? ? 2000 ???? ? ? 2008.

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3 ?? ????????? XI ???? ?????? ???? ????????????? ?????, ???? ????????????? ???? ???? ????????????? ????? 26 ????????? 1945, ?? ?????? «???????????? ???? ?????? ? ? ????????????? ??????????», ????????????????? ? ? ?????? 73 ? ? ?????? ?????????????:

«?? ????? ???? ????????????? ??????, ???? ????? ? ????????????????? ???? ????????? ???? ????????? ?????????? ???? ? ? ?????? ?????? ???? ?????? ?????? ?????????????????, ????????????????? ???? ?????? ???? ?????????? ? ? ????????????????? ???? ?????????? ???? ?????????? ? ? ?????????? ? ? ?????????? ???? ?????????? ?????? ?????? ?????????? ???? ?????????? ?????? ?????? ?????????? ???? ?????????? ?????? ?????? ?????????? ???? [?]????? ??????, ??? ?????????? ???? ?????????? ?????? ???? ?????????? [...]».

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4 ?? ????????????? ?????? ????????? ???? ????????????? ??????????????. ??? ?????????? ?????? ???? ?????????? ?????????????.

5 ?? ????????? ?????????? ?????????, ?? ????????????? ????????????????????? ????? ?????????? ??? ?? ????????????? ?????????? ????? ???? ????????? ???? ????????? 73 ???? ?????? ???? ?????????? ??????.

6 ?? ????????? ????????? ???? ??????, ?? ????????????? ????????????? ????????????? ????????? ???? ??? ????????????????? ????????? ???? ????????? ????????????? ?????? ???? ????????? ?????? ???? ???? ????????? ???? ????????? 355, ??????? 3, ?????, ??? ???? ?????? ????????????????? ? ? ????????????? ???? ??????????. ? ?????? ???? ???? ????????????????????? ???? ????????????? ???? ??????, ??? ????????????? ???? ???? ????????????? ????????????? ???? ???? ?????????? ????????????? ???? ???? ??????????

???????????? ???? ????????? (?? 1982, L 388, ?. 42, ??? ?????: ????? ????????????????????? ???? 1972)
???????????? ??????? ???? ?????????? ?????????? ??? ?????????? ?? ???? ?????? ??????????? ????
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7 ???? 28 ??? ??????? ????????????????? ???? 1972 ???????:

«?? ????????? ???? ????????? ???? ??????????????? ?? ??????????? ???? ????????????? ??????????????????? ||
???? ?????????? ???? ??? ???? ?????????? ?? ?????? ?????? ???? ?????????? ?????? ?????? ?????????????
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????????????? ?????????????????????? ????????????? ?????????????? ?????? ?????????????? ??????????????»

8 ????????? ???? ????????? 29 ??? ????????? ?????????????????? ???? 1972, ?? ?????????????? ?? ??
????????????? I, ?????? I, ??????? 4, ??????, ?? ?????????????? ?????????????????? ???? ?? ?????????????????? ?????????
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9 ???? ???? ?????? ???? ?????????????????? ?????????????????????? ???? ?????????????????? ???? ?????????? ??????, ??
????????? Stephen ??? Anne Fisher ?????????????????? ???? ?????????? ?????????????, ?????? ??????? ?? ?????????
???????????? ??????, ?????? ?? ?? ??? ?????????? ??????, Peter ??? Dianne Fisher. ? P. Fisher ?????????? ??
????????????? ???? ?????????? ?????????????? ???? ?????????? ???? 2004. ? S. Fisher ??? ? P. Fisher ???????
????????????? ??????????, ??? ? A. Fisher ?????? ?????????????????? ?????????????????.

10 ??? ?? 1988, ? ????????????????? Fisher ?????????? ?? 100 % ??? ?????????????? ???? Stan James
(Abingdon) Limited (??? ?????: SJA), ? ??????? ?????? ???? ???? ???? ?????????? ??????????????. ?
????????????????????????? ???? ?????????????? ??????? ?????????????????? ?????? ?????????? ??????????????????, ?????? ??, ??? ??
1999 ??? ?????, ?????? ?????????????????????? ?????????????? ?????????????????? ??????????????, ???
????????????????? ?????? ?????????????? («telebetting») ??? ?????? ?????????? ?????????????????????? ???? ?????????????????? ??
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11 ?? 1999, ?? ?????????????????????? ???? ?????????? ?????????????????? ??????????????????????
?????????????????????, ?????????? ???? Betting and Gaming Duties Act 1981 (?????? ???? 1981 ?????? ???????
????????????????????? ???? ?????????? ??????????????), ?? ?????????????????? ???? ???? ?? ?????????????????? ???? ?????????????,
? ?????????? ???? ???? ???? ???? ?????????????????????????????? ???? ??????? 9 %, ?? ??????? ?????????????????? ??????
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12 ??? ??? ?????????? ???? 1999, ? SJA ?????????? ?? ?????????? ?????????????????? ???? ??????????
????????????????????????????? ???? ?????????? ?????????????????? ?????? ???? ?????????????????? ???? ???? ??????????????????. ????? 29
???????????????????? 2000, ? SJA ?????????????????? ?? ?????????????????????????? ???? ?????????? ?????????????????????? ??????
????????????????, ?????? ?? ?? ?????????????????? ???? ???? ?????????????????, ?? ?????????????? ?????????????????? ???? ?? ?????????
???? ?????????????????? ???? ?????????????????? ???? ?????????????????, ?? Stan James Gibraltar Limited (??? ?????: SJA), ? ??????? ??????? ?????? 100 % ?????? ?????????????????? Fisher.

13 ?? ??? ?????????????????? ?????????????????? ??????? ???? ???? ?????????????? ???? ?? 2000 ???? ?? 2008,

?????????? ????? ?????????????? ????? S. ??? P. Fisher, ????? ??? ?????A. Fisher, ???
????????? ?????????? ??? ??? ?????? ??? SJG. ?? ?? ????? ?????????????? ????? ??????????? ?????
??? ??????????? ??? ??????? 739 ??? Income and Corporation Taxes Act 1988 (?????? ??? 1988
????? ?????? ?????????????? ??? ?????? ??????????), ? ?????? ?????????????? ????? ?????????? ???
????????????????? ??? ??????? ?????????? ????? ?????????????????? ?????????????????? ???????????, ??????????
??? ??????? ?? ?????????? ?????????????? ?????????????? ?? ?????????? ?????????????????? ?????? ???
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14 ?? First-tier Tribunal (Tax Chamber) [????????????????? ?????????????????? ?????????? (?????????????
??????), ?????????? ?????????????] ??????? ??? ?? ?? ?????? ?????????????? ?????? ??????????? ???
????????????????? ?????????????? ??? ??? ??? ?????????? ?? ?????? ?????? ??????? ??? ?? ?????? ???????
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????????????????? ?????????????? ?????????? ???, ?????????? ??? ?????? ?? ??????? ?????????????????? ?????
????????? ??? 12?? ?????????????????? 2006, Cadbury Schweppes ??? Cadbury Schweppes Overseas
(C-196/04, EU:C:2006:544), ? ?????????? ?????? ?????????????????? ??? ??? ?????????????????? ??????????
????????????????? ?????????????? ?????????????????? ??? ?????????????????? ?????????????????? ???
????????????????????? ??? ?????? 49 ?????? ???/? ??? ?????????????????? ?????? ?????????????? ??????????
????????????????? ??? ?????????????????????? ??? ??????? 63 ?????.

15 ?? ?????????????????? ?????????????????? ??????? ??? ?? S. ??? P. Fisher ??? ?????????????? ??
????????????????????? ?? ?????? 49 ?????? ???/? ?? ?????? 63 ?????, ?????? ?????? ??? ? SJG ?????
????????????????????? ??? ?????????????? ??? ? ?????????????????? ?????? ?????? ?????????? ?????????????? ???
????????????? ??????????????, ?? ?????????????????? ? ?????????? ?????? ?????? ?????? ?????????????? ?? ??? ??????????
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????? ?????????????? ?? ?????????????????? ??? ?????????????????? ??????, ?????? ?????? ??? ?????? ?????????? ??????????
???, ??????????, ??? ?????????????? ?? ??? ?????????????? ? ?????????????? ??????. ?????? ?? S. ??? P. Fisher
???? ??? ? ?????????????????? ??? ?????????????????? ?????? ?????????? ?????????????? ?????? ??? ?????????????? ???
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16 ?? ?????????? ??????????????????, ?????????? ???' ??????, ?????????? ??? ? ?????????? ??? ?????????? ???
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??? ?????????????? ??????, ?????????????????? ?? ?????? ??? ?????????? 49 ??? 63 ?????, ?? ?????????????? ?? ??
?????? 355, ??????? 3, ??????. ?? ?????????? ?????????????????? ?????????????????????? ??? ?? ?????????????????? ??? ??????
?? ?????????????????? ??? ?????????? ?? ?????????????????? ?? ?? ?????????? ??? ?????????? ?????????????????? ?????? ?
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17 ??? ??? ?????????????? ??????, ?? Upper Tribunal (Tax and Chancery Chamber) [?????????
????????????????????? ?????????????? (?????? ?????????????????? ??? ??????????????????????), ?????????? ?????????????]
????????????????? ?? ?????????????????? ??? ?????????? ??? ?????????????????? ??? ?? ?????????????? ??? ?????????????????? ??
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«1) ??? ?????? ?????????? ??? ????????? 49 ?????? (????????????????? ??????????????????????) ??? ??? ?? ?????????
??? ?????????????????????? ?????????? ?????????? ??? ?????????????????? ??? ??? ?????????????? ??????????????????.

?) ?????????? ?? ?????????????????? ??? ?? ?????????? ?????????????????? ?? ?????????????????????????????????? ?? ??? ??????

????? ????? ??? ??? ????? ?????? ?????? [...] ??? ????? ?????? ??? ?????? ??? ??????
???, ?? ???, ????? ?????? ?? ?????????? ??? ?? ?????? 49 ????? ??? ????? ?????? ??? ????? ?
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???? ????????????????? ??????????????, ?????? ?? ?? ????? ?????? ??? ????? ?????????? ????? ??????
????? ?? ?????? ??? ?????????? ?? ?????????????? ??? ?????????????? ??????;

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?) ?????????????? ?????? ??? ?????? 355, ?????????????? 3, ?????, ????? ?? ?????????? ??
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?????????, ?? ?????????????? ??? [...] ? ?????? ??? ?????????????? ?????????????????? ?????? ???
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????? ?? ?????????????? ?????? ??? ?????? ?????????? ??? ?????? 49 ?????, ? ??? [...] ?? ?????? 49
???? ?????? ?????????? ?????????????? ?? ?????????????? ?????????????? ??? ??? ?????????? ???
????????? ?????????? ?????????? ??? ?????????????? ?????????????????? ??? ?????????? (?? ?????????
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?) ?????? ?? ?????????? ?? ?????????????????????? ?? ?????? ?????? ? ?????? ??????, ??
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2) ??? ?????? ?????? ?????????????????????? (?? ?????? ??????????????????????) ? ?????????? ???
????????? ?????????????? ?? ?????????????? ??? ?????????? ??? ?????? 63 ????? (?? ?????????? ?????
????? ?? ?????????? ?????? ??????????) ??? ??? ??? ?????? 49 ?????;»

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18 ??? ?? ?????? 99 ??? ?????????????? ?????????????????? ??? ??????????????, ?????? ? ?????????? ??
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19 ? ?? ??? ?????????? ??????? ? ?????????????? ?????? ??? ?????? ??????.

20 ?? ?? ?????????????? ???, ?? ?????? ?????? ?? ?????????????? ??? ??????, ?? ??????
????????????? ??????, ???' ??????, ??? ?? ?????? 355, ?????? 3, ?????, ?? ?????????????? ?? ? ??????
49 ????? ? ?? ?????? 63 ?????, ????? ??? ?????? ??? ? ?????? ??? ?????????????? ?????????????????? ?
??? ?????????????? ?????????? ??? ?????????????? ??? ?????????????? ?????????? ?????????????? ???
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21 ?????????????????? ?????????????? ??? ?? ?????? ??????????????, ??? ?????? ?????????????????? ??
?????????????, ?????????????????? ?????? ??? ?????????????????? ??? ??????????????, ?????? ??? ??????????????????
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2017, Congregación de Escuelas Pías Provincia Betania, C-74/16, EU:C:2017:496, ¶¶ 24-25 (the Court found that the national law in question was not compatible with Article 14 of the ECHR, which guarantees the right to a fair trial, in particular the right to a reasonable time for the trial, and the right to be heard, in particular the right to be heard by the court that has jurisdiction to hear the case).

22. The Court found that the national law in question was not compatible with Article 14 of the ECHR, which guarantees the right to a fair trial, in particular the right to a reasonable time for the trial, and the right to be heard, in particular the right to be heard by the court that has jurisdiction to hear the case.

23. The Court found that the national law in question was not compatible with Article 14 of the ECHR, which guarantees the right to a fair trial, in particular the right to a reasonable time for the trial, and the right to be heard, in particular the right to be heard by the court that has jurisdiction to hear the case. (C-591/15, EU:C:2017:449), ¶¶ 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

24. The Court found that the national law in question was not compatible with Article 14 of the ECHR, which guarantees the right to a fair trial, in particular the right to a reasonable time for the trial, and the right to be heard, in particular the right to be heard by the court that has jurisdiction to hear the case. (C-591/15, EU:C:2017:449), ¶¶ 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

25. The Court found that the national law in question was not compatible with Article 14 of the ECHR, which guarantees the right to a fair trial, in particular the right to a reasonable time for the trial, and the right to be heard, in particular the right to be heard by the court that has jurisdiction to hear the case. (C-268/15, EU:C:2016:874, ¶¶ 47-49; C-591/15, EU:C:2017:449, ¶¶ 33-35).

26. The Court found that the national law in question was not compatible with Article 14 of the ECHR, which guarantees the right to a fair trial, in particular the right to a reasonable time for the trial, and the right to be heard, in particular the right to be heard by the court that has jurisdiction to hear the case. (C-591/15, EU:C:2017:449), ¶¶ 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

27. The Court found that the national law in question was not compatible with Article 14 of the ECHR, which guarantees the right to a fair trial, in particular the right to a reasonable time for the trial, and the right to be heard, in particular the right to be heard by the court that has jurisdiction to hear the case. (C-591/15, EU:C:2017:449), ¶¶ 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

63 ?????????? ??????? ?????????? ????? ?????? ??? ?????????? ?????????????????? ??? ???
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35 ????????, ? ?? ????? ?????????? ??? ?????????? ?????????????? ?? ?????? 49 ??? 63 ????? ???
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??? ?? ?????? ???????, ?????????? ??? ??????? 355, ??????? 3, ?????, ??? ??? ?????? ??????????????
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????????????????????? ??? ?????????????? ?? ?????????? ??????? ?????????? ?????????????????? (??., ???'
?????????, ?????????? ??? 13?? ?????????? 2017, The Gibraltar Betting and Gaming Association,
C?591/15, EU:C:2017:449, ?????? 47).

36 ? ?? ??? ?????????? ??? ?????????????? ?????? ?? ??? ?????????? ?????? ?????????? ?? ??
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591/15, EU:C:2017:449).

37 ??????????????, ?????? ??????, ??????, ?? ?????????????????? ??? ?????????????? ??? ?? ??????????
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13?? ?????????? 2017, The Gibraltar Betting and Gaming Association, C-591/15, EU:C:2017:449,
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38 ?????????? ?????? ??? ?????????? ?????????, ??? ?????????????????? ?????????????? ??????? ?? ?????? ?
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39 ?????????????? ??? ? ?????????? ?????????????????? ?????? ?? ?????? ?????? ?????????????? ??? ?????????? ??????
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